# Overview of the
# 2020-21 Budget Bill

Senate Bill 808

As Introduced on January 10, 2020

Senate Committee on Budget and Fiscal Review

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Dear Colleagues:

I am pleased to provide you with a copy of the *Overview of the 2020-21 Budget Bill*, which has been prepared by the staff of the Senate Committee on Budget and Fiscal Review. The document is intended to highlight the Governor's major proposals and provide additional information and framework to support the review of these proposals. This document, together with other materials, will provide the basis for budget hearings throughout the spring.

The first section presents an overview of the state's fiscal condition and the Governor's fiscal proposals. The next section is organized by budget subcommittee and provides overviews of major issues. For each major issue, this report provides relevant background material, an explanation of the budget proposal, and a discussion of important matters to consider.

In the Appendix, we include supplementary fiscal documents prepared by the Department of Finance. The Appendix also includes a working timeline for completing the 2020-21 budget, a historical listing of adopted state budgets, and a schedule of budget committee consultants and their respective areas of responsibility.

If you have questions, please do not hesitate to contact me or the committee staff.

Sincerely,

HMitchell

**HOLLY J. MITCHELL**
Chair

# Table of Contents

# Budget Overview

## INTRODUCTION

The Governor has proposed a budget for the 2020-21 fiscal year that includes General Fund resources of $156.9 billion and expenditures of $153.1 billion. Based on the budget proposal, the General Fund would end the 2020-21 fiscal year with an unencumbered reserve of $1.6 billion. The budget also includes deposits of $2.0 billion to the Budget Stabilization Account (BSA), resulting in an expected balance in this account of $18.0 billion at the end of the budget year and $110 million to the Public School System Stabilization Account (PSSSA), bringing its balance to $487 million. The Governor's budget does not include an additional deposit into the Safety Net Reserve, maintaining the $900 million balance currently in this reserve.

The General Fund continues to be in a relatively strong position. According to the Legislative Analyst's Office's (LAO) Overview of the Governor's Budget, the Governor has a $5.9 billion surplus to allocate in the 2020-21 budget. The Governor's near term revenue estimates from the state's three largest taxes are very close to those of the LAO's in their November 2019 Fiscal Outlook. In allocating this surplus, the Governor balances the majority of this surplus among the state's discretionary reserve and one-time and ongoing spending. Specifically, the Governor proposes a year-end balance in the Special Fund for Economic Uncertainties of $1.6 billion, $2.5 billion for one-time or temporary priorities, and $1.4 billion in ongoing commitments (growing to $1.8 billion upon full implementation). Overall, General Fund spending in 2020-21 is expected to increase by $5.3 billion from the revised 2019-20 budget act. When accounting for all funds, including special funds and bond funds, the Governor's budget proposes $222.2 billion in total expenditures.

California's fiscal strength remains strong due in large part to efforts in recent years to build the state's reserves and pay down debts and liabilities. Although there are persistent risks – primarily from actions and policies of the federal government - our state is well positioned to mitigate the next economic downturn. However, as we have steadily built the state's non-Proposition 98 General Fund, the Legislature may want to consider whether the level of Proposition 98 protection is sufficient.

## OVERVIEW OF GOVERNOR'S BUDGET PROPOSAL

### Overall Structure

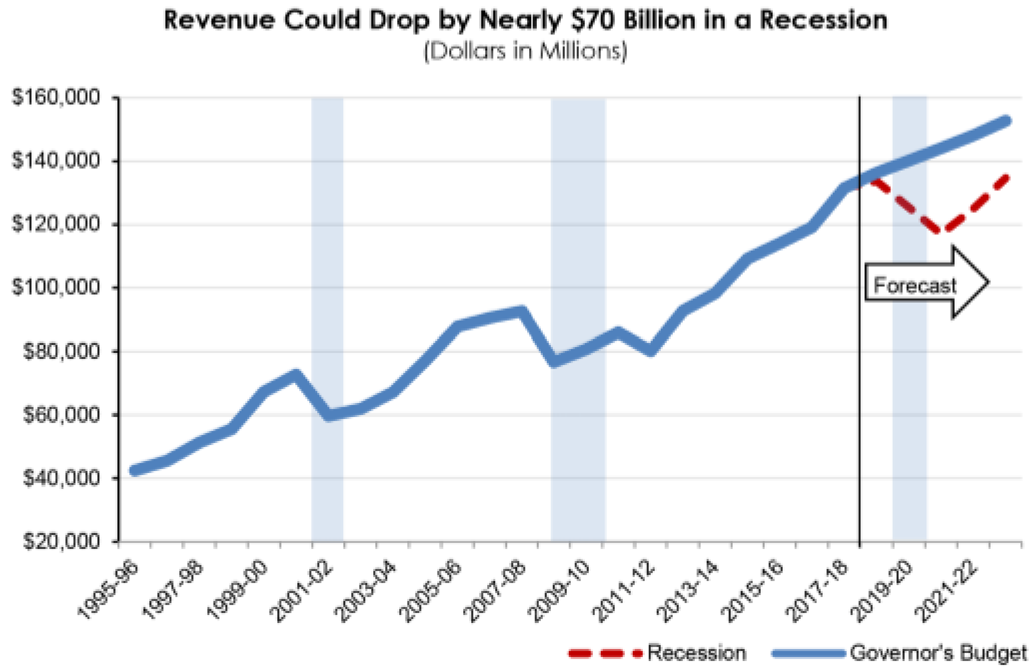
Overall, the Governor's proposed 2020-21 budget includes $156.9 billion in General Fund revenues and other resources and $153.1 billion in total General Fund expenditures ($95.5 billion in non-Proposition 98 and $57.6 billion in Proposition 98 funds). The proposed budget would provide for a $1.6 billion unencumbered reserve balance in the Special Fund for Economic Uncertainties (SFEU), a $900 million Safety Net Reserve, a PSSSA balance of $487 million, and reflect $18.0 billion in the BSA (including a $2.0 billion deposit in the budget year). The Governor's proposed 2020-21 budget includes significant one-time investments while committing $1.4 billion to new expenditures on an ongoing basis.

The General Fund budget details are summarized below.

**2019-20 and 2020-21**
**General Fund Summary**
**(Dollars in Millions)**

| | Revised 2019-20 | Proposed 2020-21 |
|---|---|---|
| **PRIOR YEAR BALANCE** | $8,497 | $5,234 |
| Revenues and transfers | $146,486 | $151,635 |
| **TOTAL RESOURCES AVAILABLE** | **$154,983** | **$156,869** |
| Non-Proposition 98 Expenditures | $93,344 | $95,510 |
| Proposition 98 Expenditures | $56,405 | $57,573 |
| **TOTAL EXPENDITURES** | **$149,749** | **$153,083** |
| **FUND BALANCE** | | |
| Encumbrances | $2,145 | $2,145 |
| Special Fund for Economic Uncertainties | $3,089 | $1,641 |
| Budget Stabilization Account | $16,018 | $17,977 |
| Safety Net Reserve | $900 | $900 |
| Public School System Stabilization Account | $524 | $487 |

**Fiscal Stability**
The economic expansion coming out of the last downturn has now entered its 11th year, which is the longest period of sustained growth since World War II. The 2019 budget act continued a trend of building reserves and paying down budgetary debts and unfunded liabilities. Per the Governor's Budget, California will have total reserves in the budget year of approximately $21 billion to help mitigate against the next economic downturn. However, managing a recession will still be challenging. The Governor's Budget points out that even a moderate recession could result in revenue declines of nearly $70 billion and a budget deficit of over $40 billion over three years. The following chart from the Governor's Budget displays such an impact of a moderate recession on General Fund revenues.




Besides the overarching uncertainty of when the next economic downturn will occur, the Governor's Budget assumes federal approval of the Managed Care Organization (MCO) tax authorized in AB 115 (Committee on Budget and Fiscal Review) Chapter 348, Statutes of 2019 with revenues beginning to accrue in 2021-22. This revenue is an essential component in the proposed budget remaining structurally balanced through 2023-24. It is worth noting that federal government recently rejected California's application for the MCO tax. However, the Administration has indicated the intent of the state addressing concerns raised by the federal government in an amended application.

In addition, the Governor's Budget forecast assumes that nearly $2 billion in expenditures that were subject to suspension on December 31, 2021, pursuant to the 2019 Budget Act, will now be subject to suspension on July 1, 2023. Although the Governor pushes these suspensions back 18 months, these expenditures are necessary to support critical programs and, as such, are difficult to assume as a necessary tool for balancing the budget through 2023-24.

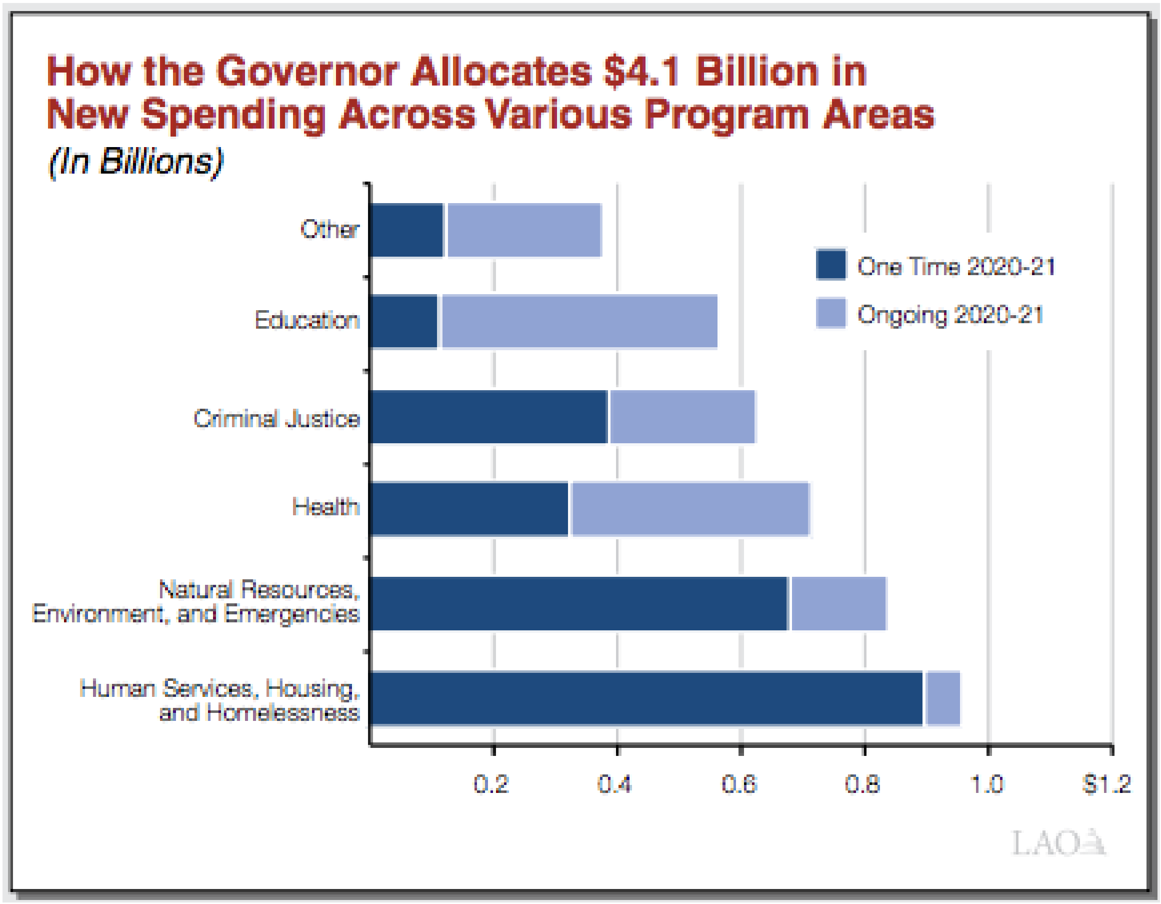
## BUDGET YEAR PROPOSED EXPENDITURES

The proposed budget includes additional required programmatic increases and new spending. The table below summarizes the Governor's proposed expenditures by program area. The largest expenditures by program are in K-12 education and health and human services.

**General Fund Expenditures**
**Current and Budget Year**
**(Dollars in Millions)**

| **Program Area** | **Revised 2019-20** | **Proposed 2020-21** | **Change** |
|---|---|---|---|
| K-12 Education | $58,675 | $59,639 | $964 |
| Higher Education | 17,490 | 17,509 | 19 |
| Health and Human Services | 41,893 | 47,454 | 5,561 |
| Corrections and Rehabilitation | 13,432 | 13,387 | -45 |
| Business, Consumer Services, Housing | 1,465 | 348 | -1,117 |
| Transportation | 287 | 240 | -47 |
| Natural Resources | 3,812 | 3,812 | - |
| Environmental Protection | 672 | 140 | -532 |
| Labor and Workforce Development | 186 | 159 | -27 |
| Government Operations | 1,839 | 1,413 | -426 |
| General Government: | | | |
| Non-Agency Departments | 1,025 | 987 | -38 |
| Tax Relief / Local Government | 505 | 432 | -73 |
| Statewide Expenditures | 2,558 | 3,043 | 485 |
| Legislative, Judicial and Executive | 5,909 | 4,520 | -1,389 |
| **Total** | **$149,749** | **$153,083** | $3,335 |

The Governor's budget proposes some specific policy and budgetary changes. According to the LAO's overview of the budget, the Governor had a surplus of approximately $5.9 billion to allocate, of which, $2.5 billion is dedicated to one-time spending, $1.4 billion is dedicated to ongoing spending, $1.6 billion is dedicated to the discretionary reserve, and the balance accounted for by non-spending changes. The following chart from the LAO displays, by program, the breakout of one-time and ongoing expenditures as proposed by the Governor.




Some of the more important aspects of the budget proposal are outlined below:

**Education and Higher Education**

- **K-12 Education and Early Education.** In K-12 education, the Governor proposes to provide $1.2 billion in ongoing Proposition 98 General Fund to provide a cost-of-living adjustment for the Local Control Funding Formula of 2.29 percent. In addition, the Governor proposes to provide an additional $250 million Proposition 98 General Fund for special education tied to early intervention and inclusive education, $900 million one-time Proposition 98 General Fund for teacher professional development, recruitment, and preparation, $300 million one-time Proposition 98 General Fund for community schools, and $300 million one-time Proposition 98 General Fund for opportunity grants for low performing schools and districts. For Early Childhood Education, the Governor proposes $31.9 million non-Proposition 98 General Fund in 2020-21, increasing to $127 million annually in future years, to expand state preschool by an additional 10,000 slots.

- **Higher Education.** The budget provides the University of California and the California State University an increase of $169.2 million ongoing General Fund and $199 million ongoing General Fund, respectively, to support operational costs, enrollment growth and student support services. The budget provides $25 million ongoing General Fund to support expanded enrollment at UC Riverside School of Medicine and $15 million ongoing General Fund to expand health services provided by the UC San Francisco School of Medicine and UC Merced. The budget also provides $83 million Proposition 98 General Fund to support and expand community college apprenticeship programs.

**Health and Human Services**

- **California Access to Housing and Services Fund.** The Budget provides $750 million one-time General Fund to establish a new fund (administered by the Department of Social Services), with the goal of reducing street-based homelessness and increasing the number of stable housing units. The fund will be used to develop new housing and provide housing vouchers.

- **CalWORKs Grant Increases.** The budget includes $73.6 million in 2020-21, funded through the Child Poverty and Family Supplemental Support Subaccounts of the Local Revenue Fund, to provide a 3.1 percent increase to Maximum Aid Payment levels, effective October 1, 2020.

- **Developmental Services Rate Increases.** The budget includes $18 million ($10.8 million General Fund) in 2020-21 and $35.9 million ($21.6 million General Fund) in 2021-22 to provide supplemental rate increases for Early Start Specialized Therapeutic Services, Infant Development and Independent Living services. Additionally, these increases and temporary rate increases made to various service codes in the 2019 Budget Act are extended to July 1, 2023, instead of the original July 1, 2021 sunset date. Increases are subject to sunset only if certain conditions are met.

- **Medi-Cal Eligibility for Seniors Regardless of Immigration Status.** The budget proposes $80.5 million ($64.2 million General Fund) in 2020-21 to extend Medi-Cal eligibility for all individuals 65 and older regardless of immigration status, effective no sooner than January 1, 2021. These figures include $5.9 million General Fund costs to the Department of Social Services for additional In-Home Supportive Services (IHSS) for this population. When fully implemented, this expansion of coverage will result in annual costs of $350 million ($320 million General Fund), including $119.5 million of General Fund costs for IHSS.

- **Reducing Prescription Drug Costs.** The Administration intends to propose five initiatives to reduce prescription drug costs for taxpayers, employers, and consumers. The budget includes three of those proposals: 1) expanding existing authority for the Department of Health Care Services (DHCS) to negotiate supplemental prescription drug rebates with manufacturers using the best international price, rather than the best domestic price; 2) authorizing DHCS to negotiate supplemental rebates for targeted populations outside the Medi-Cal program; and 3) continuing to expand partnerships with local governments and other purchasers in the state's pharmaceutical purchasing program administered by the Department of General Services. In addition, the Administration intends to submit two proposals during Spring 2020: 1) establishing a single, statewide market for drug pricing, the Golden State Drug Pricing Schedule, and enabling all public and private purchasers to combine purchasing power and solicit bids from manufacturers to sell their drugs at a uniform price; and 2) establishing a California generic drug label and contracting with one or more generic drug manufacturers to manufacture certain generic drugs on behalf of the state and other participating entities.

**Resources and the Environment**

- **Climate Budget.** The Governor proposes a Climate Budget for a total of $12.5 billion over the next five years. For 2020-21, the Climate Budget proposal includes the following:

| | |
|---|---|
| Climate Resilience Bond | ($4.75 billion bond proposed for November election.) |
| Cap & Trade Expenditure Plan | $965 million |
| Climate Catalyst Fund | 250 million |
| General Fund one-time investments | 169 million |
| General Fund ongoing expenditures | 35 million |
| Existing bond and special fund expenditures | 308 million |
| **Climate Budget 2020-21 TOTAL** | **$1.727 billion** |

  - **Climate Resilience Bond.** The Governor proposes a $4.75 billion climate resilience bond for the November 2020 ballot to support investments over the next five years to reduce climate risks in natural and built infrastructure. Approximately 80 percent of proposed bond funds would be allocated to address immediate, near-term risks, such as floods, drought, and wildfires. Approximately 20 percent would address long-term climate risk (sea level rise and extreme heat).

  - **Cap & Trade Expenditure Plan.** The Governor proposes $965 million in discretionary spending of the Greenhouse Gas Reduction Fund, as follows:

**Cap & Trade Expenditure Plan**

| Investment Category | Amount *(In millions)* |
|---|---|
| Air toxic and criteria pollutants | $235 |
| Low carbon transportation | 400 |
| Healthy forests | 208 |
| Climate smart agriculture | 18 |
| Short-lived climate pollutants | 35 |
| Climate mitigation and resilience | 11 |
| Research and technical assistance | 25 |
| Workforce training | 33 |
| **TOTAL** | **$965** |

  - **Climate Catalyst Fund.** The Governor proposes to establish the Climate Catalyst Fund for a total of $1 billion General Fund investment ($250 million in 2020-21, and additional funding in later years). The revolving loan fund would be administered by the state's infrastructure Economic Development Bank in consultation with the Strategic Growth Council and the Labor and Workforce Development Agency. The fund is proposed to focus on transportation emission reduction, climate smart agriculture and forestry, and circular economy to address waste and recycling.

- **Department of Toxic Substances Control (DTSC) Reform.** The Governor proposes $3 million General Fund in 2020-21 and statutory changes to establish a five-member board with the charge of setting fees, hearing permit appeals, and providing strategic guidance to DTSC.

- **CalFire.** The Governor proposes $120 million General Fund in 2020-21 ($150 million ongoing) and 677 positions, phased in over five years.

**Energy**

- **Utility Wildfire Safety and Process Reform.** The budget includes 107 positions at the California Public Utilities Commission, and $30.2 million ongoing from several special funds, to develop new procedures and processes to better balance energy reliability, affordability, safety, and accountability, as the state pursues its clean energy goals.

**Housing and Homelessness**

- **California Access to Housing and Services Fund.** The budget provides $750 million one-time General Fund to establish a new fund (administered by the Department of Social Services), with the goal of reducing street-based homelessness and increasing the number of stable housing units. The fund will be used to develop new housing, provide housing vouchers, and to stabilize board and care facilities. The fund will be administered via contracts between the department and regional administrators.

- **Low-Income Housing Tax Credits.** The budget includes $500 million in Low- Income Housing Tax Credits. These tax credits will support both typical affordable housing projects ($300 million) and mixed-income projects ($200 million), the same split as in the 2019-20 budget.

**General Government and Public Safety**

- **Expanding Role of Department of Business Oversight to Consumer Financial Protection.** The Governor's budget proposes $10.2 million Financial Protection Fund and 44 positions, growing to $19.3 million and 90 positions in 2022-23 for the new California Consumer Financial Protection and Innovation department. Use of funds is proposed to go towards licensing and examining new industries, researching market developments of consumer products and services, offering consumer services for financial empowerment for older Americans, military service members, and recent immigrants, offering legal support for administration of new laws, providing enforcement to prevent unfair and abusive practices, establishing a new Financial Technology Innovation Office and expanding administrative and information technology staff to support increased regulatory responsibilities.

- **Cannabis Regulation.** After the passage of Proposition 64, the Control, Regulation and Tax Adult Use of Marijuana Act, the Legislature provided three-year, limited-term resources in the 2017 Budget Act to allow various state entities to perform their respective duties related to cannabis activities. These resources will expire at the end of this fiscal year. The budget consolidates the licensing entities into one standalone department, the Department of Cannabis Control.

- **Infrastructure Plan.** The budget proposes to spend $53.3 billion in state infrastructure over the next five years. This includes $45 billion for transportation infrastructure over five years, with $8.7 billion in 2020-21.

- **Prison Closure.** The Governor's budget includes proposals in criminal justice that continue in the steps of Realignment, Propositions 47 and 57 as well as other initiatives to reduce the state prison population and provide increased access to rehabilitation and reentry opportunities. The Administration, coinciding with declining prison populations, proposes a prison closure plan that includes ending all private in-state contract correctional facilities for male inmates by April 2020, phasing out two of the remaining three male, public in-state contract corrections facilities by 2021, and phasing out the third public in-state contract facility no later than July 2022. Additionally, given the projected decline in inmate population by 4,300 between June 2021 and June 2024, the Administration has stated the intention to close a state-operated prison in the next five years.

- **Jail Oversight.** The budget includes plans to provide increased oversight of local jails in coordination with the Board of State and Community Corrections so that deficiencies in substandard jails are addressed and that county jails are operated at the national standard.

- **Probation Reform.** The Governor's budget proposes reforms to the probation system, including funding to supervise and provide probation for those with misdemeanor charges and the reduction of misdemeanor probation terms to two years, and allowance for earned discharge.

- **Rehabilitative Programming.** With regards to rehabilitation programming, two key proposals include: 1) increased higher education opportunities through a partnership between the California Department of Corrections and Rehabilitation and California State University and 2) new programs that will cluster 5,800 incarcerated youth under the age of 26 together at select adult institutions in campus-style environments. A model program will be established at Valley State Prison in Chowchilla for both the education and youth programs.

- **Criminal Fines and Fees.** The budget proposes to reduce criminal fines and fees for low-income and indigent Californians by including funding for a statewide program that allows low-income and indigent individuals to apply online to have their fines and fees for traffic and non-traffic infractions reduced.

- **Vaping Tax.** The Governor's budget proposes a new nicotine content-based E-cigarette tax. The vaping tax will begin on January 1, 2021, and will be $2 for each 40 milligrams of nicotine in the product. Revenues from the new tax are expected to be $32 million in 2020-21, and will be deposited into a new special fund to be used for administration, enforcement, youth prevention, and health care workforce programs.

## STATE ECONOMY AND REVENUES

**Economic Outlook**

Economic forecasts play an integral role in the state's revenue forecast and fiscal outlook. The state's revenue structure is very 'elastic', meaning it is highly sensitive to economic changes. This is particularly true for personal income tax receipts, which tend to grow (or decline) proportionally more than increases (or decreases) in the underlying income base. The sales and use tax, the second largest state revenue source, is sensitive to consumer confidence and consumption patterns. The property tax, which benefits the General Fund through additional resources for K-12 education, reacts to changes in the underlying property asset values and home sale prices.

Nationally, the Governor's budget forecast assumes slowing economic growth over the next few years, with real Gross Domestic Product (GDP) growth of 2.0 percent through 2021 gradually slowing to approximately 1.5 percent in 2022 and 2023. Growth is expected to be impacted by increased pressure from tariffs, slowing global economic growth, slower investments and other risks. The Governor's budget assumes that consumption will continue to be the main driver of growth as record low unemployment puts upward pressure on wages and consumer sentiment remains strong.

The U.S. unemployment rate was 3.5 percent through much of the final quarter of 2019, its lowest rate since December 1969. The Governor's budget forecasts that continued GDP and labor force growth will result in a further decline of the unemployment rate to 3.4 percent by the second half of 2020, where it will remain for four consecutive quarters before gradually rising to above 4.0 percent by 2023.

According to the Governor's budget, U.S. inflation was 2.1 percent in November 2019 and is projected to remain around 2.0 percent throughout the forecast period. Housing and energy prices are forecast to contribute approximately 69 percent toward overall national inflation.

The Federal Reserve cut benchmark interest rates by 25 basis points three consecutive times between July and October 2019, bringing the target range to between 1.5 percent and 1.75 percent. The Administration points out that low interest rates can encourage increased business investments and consumer spending, however, as interest rates approach zero, there is limited room for further rate reductions.

California's unemployment rate fell to 3.9 percent in November 2019. The Administration points out that, historically, such low levels of unemployment are associated with high wage growth due to the impact of the tight labor market. Since prior to the last recession, California has added almost 2.1 million nonfarm jobs. Goods producing industries now have approximately 64,000 fewer jobs than during the pre-recession peak, however, the service sector has added approximately 2.2 million jobs.

The Governor's budget forecast assumes real average wage gains accruing to lower-wage workers. California personal income is projected to grow at around 4.0 percent annually through the forecast period.

Overall, the Governor and the LAO both forecast continued growth in the economy, and accompanying increases in state revenues. However, they both point to a slowdown in this economic growth over the forecast period and cite risks, including the length of the current economic expansion, and uncertainty created by the political climate and federal actions. As such, although the Governor's budget includes an unprecedented level of reserves, the LAO suggests that the Legislature consider a target level of reserves and take other actions to prepare for a potential economic downturn.

**General Fund Revenues**

California relies on a broad range of taxes and other revenues to support the activities of the General Fund; however, the personal income tax, sales and use tax, and corporation taxes account for approximately 97 percent of General Fund revenues. For the budget year, the personal income tax is expected to generate $102.9 billion (67.8 percent), the sales and use tax $28.2 billion (18.6 percent), and the corporation tax $16 billion (10.6 percent). The General Fund revenue forecast has continued to improve, reflecting strong corporate tax receipts, an upgraded wage forecast, and a stock market that was stronger than expected. As a result, before accounting for transfers such as to the Rainy Day Fund, General Fund revenue is higher than the 2019 Budget Act projections by $5.8 billion from 2018-19 through 2020-21.

The Governor's budget forecasts that revenue, including transfers, is expected to be $146 billion in 2019-20 and $152 billion in 2020-21. The projected increase since the 2019 Budget Act is due to an improved outlook for corporation tax. The personal income tax has been revised downward due to an assumed shift of proprietorship income from the personal income tax to the corporate tax. The sales tax forecast has not changed significantly. Over the next three fiscal years, personal income tax is down $1.5 billion, sales tax is up $129 million, and corporation tax is up $5 billion.

The reduction in personal income tax from the proprietorship income shift is offset partially by an upgrade in the wage forecast and a strong stock market. The improved corporate tax forecast reflects strong receipts, in part driven by the shift of proprietorship income. The table below presents the state's General Fund revenues for the current and budget year:

**General Fund Revenues**
**Current Year Revised and Budget Year Forecast**
**(Dollars in Millions)**

| Revenue Source | 2019-20 | 2020-21 | Change | Percent Change |
|---|---|---|---|---|
| Personal Income Tax | $103,922 | $102,878 | -$1,045 | -1.0% |
| Sales and Use Tax | 28,086 | 28,243 | 157 | 0.6% |
| Corporation Tax | 13,599 | 16,007 | 2,408 | 17.7% |
| Insurance Tax | 2,934 | 3,117 | 182 | 6.2% |
| Alcohol Beverage Tax | 392 | 389 | -3 | -0.8% |
| Cigarette Tax | 60 | 58 | -2 | -3.0% |
| Pooled Money Interest | 736 | 514 | -221 | -30.1% |
| Other Taxes and Fees | 1,347 | 2,198 | 851 | 63.2% |
| **Subtotal** | $151,075 | $153,403 | $2,328 | 1.5% |
| Transfers | -4,009 | -1,768 | 2,242 | -55.9% |
| **Total** | **$147,066** | **$151,635** | **$4,569** | **3.1%** |

# SUBCOMMITTEE NO. 1

## EDUCATION

**K-14 Education**



**Higher Education**

# Proposed Expenditures of Proposition 98 Resources

## BACKGROUND

California provides academic instruction and support services to over six million public school students in kindergarten through twelfth grades (K-12) and 2.1 million students in community colleges. There are 58 county offices of education, approximately 1,000 local K-12 school districts, more than 10,000 K-12 schools, and more than 1,200 charter schools throughout the state. Of the K-12 students, approximately 3.9 million are low-income, English learners, or foster youth students or some combination of those categories. Approximately 1.27 million of the K-12 students served in public schools are English learners. There are also 72 community college districts, 114 community college campuses, and 70 educational centers. Proposition 98, which was passed by voters as an amendment to the state Constitution in 1988, and revised in 1990 by Proposition 111, was designed to guarantee a minimum level of funding for public schools and community colleges.

The proposed 2020-21 budget includes funding at the Proposition 98 minimum guarantee level of $84 billion. The Governor’s budget also proposes to provide total Proposition 98 funding for 2018-19 of $78.5 billion, an increase of $301.5 million over the 2019 final budget act level. For 2019-20, the Governor estimates an increase in the total Proposition 98 minimum guarantee of $517 million for a total of $81.6 billion. These adjustments are the result of increased property taxes in 2018-19 and increased General Fund revenues in both years. Additional Proposition 98 funds in 2020-21 are proposed to be used primarily to provide a cost-of-living-adjustment (COLA) for the Local Control Funding Formula (LCFF), to provide funding for special education-related services, and for various targeted one-time programs. These proposals are more fully described later in this section.

**Proposition 98 Funding.** State funding for K-14 education—primarily K-12 local educational agencies and community colleges—is governed largely by Proposition 98. The measure, as modified by Proposition 111, establishes minimum funding requirements (referred to as the “minimum guarantee”) for K-14 education. General Fund resources, consisting largely of personal income taxes, sales and use taxes, and corporation taxes, are combined with the schools’ share of local property tax revenues to fund the Proposition 98 minimum guarantee. These funds typically represent about 80 percent of statewide funds that K-12 schools receive. Non-Proposition 98 education funds largely consist of revenues from local parcel taxes, other local taxes and fees, federal funds and proceeds from the state lottery. In recent years, there have been two statewide initiatives that increased General Fund revenues and therefore, the Proposition 98 minimum guarantee. Proposition 30, passed by the voters in 2012, raised sales and income taxes, but was designed to phase out over seven years. Anticipating the expiration of the Proposition 30 taxes, Proposition 55 was passed by voters in 2016, extending the income tax portion of Proposition 30 for another 12 years.

The table below summarizes overall Proposition 98 funding for K-12 schools and community colleges since 2007-08, or just prior to the beginning of the recent recession. 2011-12 marks the low point for the guarantee, with steady increases since then. The economic recession impacted both General Fund resources and property taxes. The amount of property taxes has also been impacted by a large policy change in the past few years—the elimination of redevelopment agencies (RDAs) and the shift of property taxes formerly captured by the RDAs back to school districts. The guarantee was adjusted to account for these additional property taxes, so although Local Educational Agencies (LEAs) received significantly increased property taxes starting in 2012-13, they received a roughly corresponding reduction in General Fund.

**Proposition 98 Funding**
**Sources and Distributions**
**(Dollars in Millions)**

| | Pre-Recession **2007-08** | Low Point **2011-12** | Revised **2018-19** | Revised **2019-20** | Proposed **2020-21** |
|---|---|---|---|---|---|
| **Sources** | | | | | |
| General Fund | 42,015 | 33,136 | 54,506 | 56,405 | 57,573 |
| Property taxes | 14,563 | 14,132 | 23,942 | 25,168 | 26,475 |
| **Total** | **56,577** | **47,268** | **78,448** | **81,573** | **84,048** |
| **Distribution** | | | | | |
| K-12 | 50,344 | 41,901 | 69,165 | 71,482 | 74,172 |
| CCC | 6,112 | 5,285 | 9,195 | 9,477 | 9,807 |
| Other | 121 | 82 | 88 | 90 | 107 |
| Reserve | 0 | 0 | 0 | 524 | -38 |

Source: Legislative Analyst's Office and Department of Finance

**Calculating the Minimum Guarantee.** The Proposition 98 minimum guarantee is determined by comparing the results of three "tests," or formulas, which are based on specific economic and fiscal data. The factors considered in these tests include growth in personal income of state residents, growth in General Fund revenues, changes in student average daily attendance (ADA), and a calculated share of the General Fund. When Proposition 98 was first enacted by the voters in 1988, there were two "tests", or formulas, to determine the required funding level. Test 1 calculates a percentage of General Fund revenues based on the pre-Proposition 98 level of General Fund that was provided to education, plus local property taxes. The Test 2 calculation is the prior year funding level adjusted for growth in student ADA and per capita personal income. K-14 education was initially guaranteed funding at the higher of these two tests. In 1990, Proposition 111 added a third test, Test 3, which takes the prior year funding level and adjusts it for growth in student ADA and per capita General Fund revenues. The Proposition 98 formula was adjusted to compare Test 2 and Test 3, the lower of which is applicable. This applicable test is then compared to Test 1; and the higher of the tests determines the Proposition 98 minimum guarantee. Generally, Test 2 is operative during years when the General Fund is growing quickly and Test 3 is operative when General Fund revenues fall or grow slowly.

**Proposition 98 Tests**
**Calculating the Level of Education Funding**
**(Including the 2020-21 Governor's Budget Estimate)**

| Test | Calculated Level | Operative Year | Times Used |
|---|---|---|---|
| Test 1 | Based on a calculated percent of General Fund revenues (currently around 38 percent). | If it would provide more funding than Test 2 or 3 (whichever is applicable). | 8 |
| Test 2 | Based on prior year funding, adjusted for changes in per capita personal income and attendance. | If growth in personal income is ≤ growth in General Fund revenues plus 0.5 percent. | 13 |
| Test 3 | Based on prior year funding, adjusted for changes in General Fund revenues plus 0.5 percent and attendance. | If statewide personal income growth > growth in General Fund revenues plus 0.5 percent. | 10 |

The Governor's proposal assumes that in 2018-19, 2019-20, and 2020-21 the Proposition 98 minimum guarantee is calculated under Test 1.

Generally, the Proposition 98 minimum guarantee calculation was designed in order to provide growth in education funding equivalent to growth in the overall economy, as reflected by changes in personal income (incorporated in Test 2). In a Test 3 year, the Proposition 98 minimum guarantee does not grow as fast as in a Test 2 year, recognizing the fact that the state's General Fund is not reflecting the same strong growth as personal income and the state may not have the resources to fund at a Test 2 level; however, a maintenance factor is created, as discussed in more detail later.

The Test 1 percentage is historically-based, but is adjusted, or "rebenched," to account for large policy changes that impact local property taxes for education or changes to the mix of programs funded within Proposition 98. In the past few years, rebenching was done to account for property tax changes, such as the dissolution of the RDAs, and program changes, such as removing childcare from the Proposition 98 minimum guarantee and adding mental health services. In 2020-21, the Governor's Budget adjusts the Test 1 percentage for the continued impact of prior RDA changes. The 2020-21 Proposition 98 guarantee is likely to remain a Test 1 even with some changes in factors at the May Revision. Revenues are growing steadily but slowly, ADA is declining, and property tax growth is high, all contributing to a Test 1 for 2020-21 and for the out-years.

**Suspension of Minimum Guarantee.** Proposition 98 includes a provision that allows the Legislature and Governor to suspend the minimum funding requirements and instead provide an alternative level of funding. Such a suspension requires a two-thirds vote of the Legislature and the concurrence of the Governor. To date, the Legislature and Governor have suspended the Proposition 98 minimum guarantee twice; in 2004-05 and 2010-11. While the suspension of Proposition 98 can create General Fund savings during the year in which it is invoked, it also creates obligations in the out-years, as explained below.

**Maintenance Factor.** When the state suspends the Proposition 98 minimum guarantee or when Test 3 is operative (that is, when the Proposition 98 minimum guarantee grows more slowly due to declining or low General Fund growth), the state creates an out-year obligation referred to as the "maintenance factor." When growth in per capita General Fund revenues is higher than growth in per capita personal income (as determined by a specific formula also set forth in the state Constitution), the state is required to make maintenance factor payments, which accelerate growth in K-14 funding, until the determined maintenance factor obligation is fully restored. Outstanding maintenance factor balances are adjusted each year by growth in student ADA and per capita personal income.

The maintenance factor payment is added on to the minimum guarantee calculation using either Test 1 or Test 2.

- In a Test 2 year, the rule of thumb is that roughly 55 percent of additional revenues would be devoted to Proposition 98 to pay off the maintenance factor.

- In a Test 1 year, the amount of additional revenues going to Proposition 98 could approach 100 percent or more. This can occur because the required payment would be a combination of the 55 percent (or more) of new revenues, plus the established percentage of the General Fund—roughly 38 percent—that is used to determine the minimum guarantee.

Prior to 2012-13, the payment of maintenance factor was made only on top of Test 2; however, in 2012-13, the Proposition 98 guarantee was in an unusual situation as the state recovered from the recession. It was a Test 1 year and per capita General Fund revenues were growing significantly faster than per capita personal income. Based on a strict reading of the Constitution, the payment of maintenance factor is not linked to a specific test, but instead is required whenever growth in per capita General Fund revenues is higher than growth in per capita personal income. As a result, the state funded a maintenance factor payment on top of Test 1 and this interpretation can result in the potential for up to 100 percent or more of new revenues going to Proposition 98 in a Test 1 year with high per capita General Fund growth. This was the case in 2014-15, when the maintenance factor payment was more than $5.6 billion. However, since the last recession the state has significantly increased funding for K-14 education due in part to payments made towards reducing the maintenance factor balance. As a result, the maintenance factor obligation was paid off in 2017-18.

**Average Daily Attendance.** One of the factors used to calculate the Proposition 98 minimum guarantee level is growth in ADA. In a Test 2 or Test 3 year, the guarantee is adjusted for changes in ADA. However, there is a hold harmless provision for reductions in ADA. Under that provision, negative growth is only reflected if the preceding two years also show declines. Under current projections, which reflect birth rates and migration, K-12 ADA is expected to decline slightly in coming years and the hold harmless will no longer apply for the guarantee calculation, contributing to a dampening effect on Proposition 98 guarantee growth in future years.

**Settle-Up.** Every year, the Legislature and the Governor estimate the Proposition 98 minimum guarantee before the final economic, fiscal, and attendance factors for the budget year are known. If the estimate included in the budget for a given year is ultimately lower than the final calculation of the minimum guarantee, Proposition 98 requires the state to make a "settle-up" payment, or series of payments, in order to meet the final guarantee for that year. The 2019-20 budget included additional Proposition 98 General Fund to fully pay off settle-up obligations from 2016-17 and prior years. The Governor's budget proposal for 2020-21 increases expenditures to meet the higher guarantee levels calculated for 2018-19 and 2019-20 as a result of the Governor's budget estimates.

**Proposition 98 Certification.** The 2018 budget package included a new process for certifying the Proposition 98 guarantee and the 2019 budget package made additional changes to this process. Under current statute, certification of the guarantee is a process by which the Department of Finance (DOF), in consultation with the Department of Education and the Chancellor's Office of the Community Colleges, verifies the factors for the calculation of the Proposition 98 guarantee and the appropriations and expenditures that count towards the guarantee level. Certifying the guarantee results in a finalized guarantee level for the year, as well as finalizing any settle-up owed as a result of changes in the guarantee level. Adjustments will be made to increase the guarantee after the fiscal year is over if the calculation results in an increase in a prior year, but makes no changes in the event of a decrease in a prior year. Prior to this new process, the guarantee was last certified for 2008-09. In August 2018, DOF released the proposed certification for the 2009-10 through 2016-17 fiscal years. The total settle-up obligation associated with those five years was calculated at $687 million and was fully paid off in the 2019-20 budget.

**Public School System Stabilization Account (PSSSA).** The state's Proposition 98 Rainy Day Fund was established with the passage of Proposition 2 in 2014. Proposition 2 also requires a deposit in a Proposition 98 Rainy Day Fund under certain circumstances. These required conditions are that maintenance factor accumulated prior to 2014-15 is paid off, Test 1 is in effect, the Proposition 98 guarantee is not suspended, and no maintenance factor is created. A deposit to the PSSSA was first required in the 2019-20 budget when $376 million was reserved. The 2020-21 Governor's budget proposal assumes that the 2019-20 deposit is now required to be $524 million, however that in 2020-21, a withdrawal of $38 million is made based on the assumption that the guarantee is growing more slowly than per capita personal income.

## GOVERNOR'S PROPOSAL - K-12 EDUCATION

**Funding Level.** The budget includes a proposed Proposition 98 funding level of $74.3 billion for K-12 programs (including preschool provided by LEAs). This includes a year-to-year increase of $2.7 billion in Proposition 98 funding for K-12 education, as compared to the revised Proposition 98 K-12 funding level for 2019-20. Under the Governor's proposal, ongoing K-12 Proposition 98 per pupil expenditures increase from $12,119 provided in 2019-20 (revised) to $12,619 in 2020-21, an increase of 4.1 percent. The Governor's major K-12 spending proposals are identified below.

**K-12 Local Control Funding Formula.** The bulk of funding for school districts and county offices of education for general operations is provided through the LCFF and is distributed based on the number of students served and certain student characteristics. The state fully funded the LCFF in 2018-19 and has annually adjusted the grant amounts by a COLA. The proposed budget provides a COLA of 2.29 percent, approximately $1.2 billion, for the 2020-21 fiscal year, bringing total LCFF funding to $64.2 billion.

**K-12 Special Education.** The 2019-20 budget included a total increase of $645 million in ongoing Proposition 98 General Fund for special education. Of this, $152.6 million was provided to increase base special education funding rates to ensure that all Special Education Local Plan Areas (SELPAs) receive at least the statewide target rate under the existing AB 602 funding formula. The remaining $492.7 million created the Special Education Early Intervention Preschool grant, to be provided to LEAs based on the number of three-through five-year olds with exceptional needs. The budget also includes language to specify that the increase in the statewide funding rate is contingent upon the passage of legislation in the 2020-21 budget to reform the special education system to improve outcomes for students. The proposed budget includes the following changes to special education:

- A new special education base formula based on a three year rolling average of ADA and a fifteen percent increase to the base formula funding (funded with the $645 million increase provided in 2019-20).

- An additional $250 million in ongoing Proposition 98 General Fund based on the number of three to five year old children with exceptional needs served by the school district.

- $500,000 one-time Proposition 98 General Fund for a study of current SELPA governance and accountability and $600,000 one-time Proposition 98 General Fund for two workgroups to study improved accountability for special education service delivery and student outcomes.

The Administration notes that the funding changes included in the 2020-21 proposal would be the first phase of a multi-year reform of special education with future years to focus on incorporating feedback from the study and workgroups, reforms related to whole-child and family wrap-around services, specialized services such as out-of-home and non-public school placements and state special schools, and aligning with recommendations from the forthcoming Master Plan for Early Learning and Care.

**Teacher Training, Recruitment, and Retention.** The proposed budget includes a total of $900 million in one-time Proposition 98 General Fund to be allocated as follows:

- $350 million to increase funding for the Educator Workforce Investment Grant, which supports professional learning opportunities for teachers and paraprofessionals across the state. This new funding will be provided through a competitive process focused on professional learning related to special education, mental health, interventions, English language learners, social-emotional learning and restorative practices, non-discrimination and anti-bullying, computer science, science, technology, engineering, and math.

- $18 million for the California Collaborative for Educational Excellence to increase awareness of supports and services in the areas of focus identified in the Educator Workforce Investment Grant increase.

- $193 million for the Workforce Development Grant Program to address workforce shortages in high-need subjects and areas.

- $175 million to expand the Teacher Residency Program for sponsored, one-year intensive, mentored, clinical teacher preparation programs, for high-need subject areas in high-need communities.

- $100 million for the California Teacher Credential Award Program for stipends for fully-credentialed teachers who complete four years of teaching in high-need subject areas in high-need schools.

- $64.1 million for the California Classified School Employees Credentialing Program to provide grants to local education agencies to recruit non-certificated school employees to become certificated classroom teachers.

- Finally, the proposed budget suspends accreditation fees for institutes of high education and local educational agencies that administer a teacher preparation or induction program.

**K-12 School Facilities.** In November 2016, the voters passed the Kindergarten through Community College Facilities Bond Act of 2016 (Proposition 51), which authorizes the state to sell $9 billion in general obligation bonds for K-14 facilities ($7 billion for K-12 and $2 billion for community colleges). The proposed budget includes approximately $1.5 billion in K-12 bond authority in 2020-21, similar to the amount included in 2019-20, for new construction, modernization, career technical education, and charter facility projects.

**Community Schools.** The proposed budget includes $300 million in one-time Proposition 98 General Fund to establish community school grants for local educational agencies supporting innovative community school models, including those focused on mental health and related services, collaborative teaching and leadership, family and community engagement, and extended learning time.

**Opportunity Grants.** The proposed budget includes $300 million in one-time Proposition 98 General Fund to establish opportunity grants for the state's lowest performing schools and school districts and to expand the capacity of the California Collaborative for Educational Excellence to support and assist grantees, and the system as a whole.

**Child Nutrition.** The proposed budget includes $60 million in ongoing Proposition 98 General Fund to increase funding for school nutrition and $10 million in one-time Proposition 98 General Fund to provide training for school food service workers. This is related to a $10 million proposal for the Department of Food and Agriculture to establish a Farm to School Grant Program.

**Computer Science.** The proposed budget includes a total of $18.8 million in one-time Proposition 98 General Fund to support computer science ($15 million for grants to local educational agencies for teacher training, $2.5 million for a county office of education to compile and share resources statewide, and $1.3 million for a computer science University of California subject matter project).

**K-12 Enrollment.** The proposed budget reflects an estimated decrease in student enrollment in the K-12 system. Specifically, it reflects a decrease of $268.5 million Proposition 98 General Fund in 2019-20, as a result of a decrease in the projected ADA, as compared to the 2019 Budget Act. For 2020-21, the Governor's proposed budget reflects a decrease of $175.1 million Proposition 98 General Fund to reflect a projected further decline in ADA for the budget year.

**Cost-of-Living Adjustments.** The proposed budget also provides $122.4 million Proposition 98 General Fund to support a 2.29 percent COLA for categorical programs that are not included in LCFF. These programs include special education and child nutrition, among others. The proposed funding level for the LCFF includes COLAs for school districts and county offices of education.

**Local Property Tax Adjustments.** The proposed budget includes an increase of $7.3 million in Proposition 98 General Fund in 2019-20 and a decrease of $1.1 billion in Proposition 98 General Fund in 2020-21 for school districts and county offices of education related changes to offsetting local property taxes.

**California Newcomer Education and Well-Being Project (CalNEW).** The proposed budget includes $15 million in one-time Proposition 98 General Fund for CalNEW. This program was established in 2017-18 and funded with General Fund. This new funding is available over three years and would assist school districts in supporting students who are refugees or unaccompanied, undocumented minors in English language proficiency, academic performance, and general well-being.

**Fresno Integrated K-12 Education Collaborative.** The budget also proposes an increase of $17 million in one-time General Fund to support a plan to design education pathways through K-16 education and into the workforce in the greater Fresno region.

**LCFF Fiscal Accountability.** The proposed budget includes $600,000 in one-time Proposition 98 General Fund to support the creation of an online Local Control and Accountability Plan portal and co-locate this new tool with the existing School Accountability Report Card for increased public transparency. The Administration also commits to engage in a process to identify areas for strengthening accountability for the provision of services for high need students.

## ISSUES TO CONSIDER

**Calculation of the Guarantee Level.** The minimum guarantee level is calculated based on the best available factors at the time. However, between the January budget proposal and the May Revision of the budget, the minimum guarantee calculation can change significantly, usually due to changes in state revenues. The Legislature will want to consider potential changes in preparing a Proposition 98 expenditure package. The LAO notes that their estimate of the Proposition 98 minimum guarantee is very similar to the Governor's, however both the LAO and the Governor note that there continues to be some economic risk of recession in the near future.

For the 2020-21 budget, the sensitivity of the minimum guarantee calculation to changes in underlying factors is straightforward as it is a Test 1 year; an increase or decrease of one dollar in revenue would increase or decrease the guarantee by approximately 40 cents. A Test 1 is likely to remain operative in 2020-21 and future years.

**One-Time or Ongoing Funding.** In the past six years, enacted budgets have included substantial one-time expenditures within Proposition 98, from $413 million to $1.2 billion. While these funds have been dedicated to various one-time education priorities, they have also provided a cushion against having to make difficult cuts should the minimum guarantee decrease in future years. The Governor's proposed 2020-21 budget includes significant one-time Proposition 98 expenditures using ongoing funding, approximately $1.2 billion. While this continues to provide a healthy recession cushion, school districts continue to experience increasing cost pressures (discussed in more detail below). The Legislature may wish to consider out year projections for the minimum guarantee and how they prefer to balance ongoing needs with prudent budgeting.

**K-12 Education Cost Pressures.** Despite large increases in Proposition 98 funding over the past few years and changes in the distribution of new revenues through the passage of LCFF, school district finances and fiscal health can vary due to unique local needs, student population, regional cost differences, and the ability to raise additional local funding. School districts generally cite insufficient "base" LCFF funding, declining enrollment, costs of providing special education and annual increases to the employer share of the California State Teachers Retirement System (CalSTRS) and the California Public Employees' Retirement System (CalPERS) as creating the largest cost pressures for their budgets. The 2020-21 Governor's Budget proposal reflects a relatively modest COLA, significantly less than the COLA rate in the past few years, however the proposal does include additional investments in special education, an important cost driver for school districts. Many of the other proposals in the Governor's budget target funds for one-time expenditure on programs that reflect the Governor's priorities for improving educational outcomes.

The Legislative Analyst's Office recently published a report: *The 2020-21 Budget: School District Budget Trends*. In this report the LAO notes major cost drivers for school districts' budgets include declining enrollment trends, increased pressure to hire additional support staff, and pressure to increase compensation given the rising cost of living in California. The LAO also notes that while there are some districts in fiscal distress, the vast majority of districts continue to have positive budget ratings. However if the Legislature wanted to further address fiscal stability of school districts, the LAO notes that the Legislature has several options including increased LCFF funding, additional special education funding, or pension relief.

The Legislature may wish to consider the amount of funding dedicated to targeted one-time programs in the Governor's budget and whether those amounts and efforts are consistent with Legislative priorities for improving education, and whether the amount of funds that are provided for general operational costs of school districts in this budget proposal are sufficient to help school districts maintain fiscal stability.

# Students with Disabilities

## BACKGROUND

Children with developmental delays or physical impairments may need intervention or supports of some form and are eligible to receive supportive services through a variety of programs. Once a child enters the public school system, typically at age 5, the school district of residence provides both education services and eligible special education supports and services for identified disabilities that would otherwise hinder a child from receiving a "free and appropriate public education." For infants, toddlers, and preschool aged children (generally ages 0-5), families may need to navigate a variety of programs to meet the educational and developmental needs of their children. Once a child enters the public school system, the child is eligible to receive services through age 21.

"Special education" describes the specialized supports and services that schools provide for students with disabilities under the provisions of the federal Individuals with Disabilities Education Act (IDEA). Federal special education laws originally enacted in 1975 and reauthorized as IDEA in 2004, require states to provide early intervention services for infants and toddlers and schools to provide "specially designed instruction, and related services, at no cost to parents, to meet the unique needs of a child with a disability." The law requires the provision of these special supports and services to students with exceptional needs from age 0 to age 22, or until they graduate from high school with a diploma.

Children with disabilities who are younger than age 5 and are not yet in school settings receive supports and services in different ways. For infants and toddlers (ages 0-3 years old), an individualized family service plan is created and services are generally provided by regional centers. These centers are non-profit agencies overseen by the Department of Developmental Services. However, a small percentage of infants and toddlers with special needs are served by school districts. A small number of school districts that had historically served these children were grandfathered into the current system and currently serve approximately 5,000 children. In addition, schools serve a small number of infants and toddlers (approximately 1,000) who have only a hearing, visual, or orthopedic (HVO) impairment. The state's federal IDEA plan required HVO-related services to be provided by the schools if an HVO impairment is the child's only disability. Once a child reaches age 3, the responsibility for serving children with disabilities is transferred to the school district of residence and regional centers are required to work with school districts during this transition.[1] Through regional centers and school districts, the state also operates a child-find system to identify children for evaluation for early intervention and special education eligibility.

To determine a child's eligibility for special education, schools must conduct a formal evaluation process within a prescribed timeline. If it is determined that a child is an eligible student with disabilities, a team including special education staff, school staff, parents, and other appropriate personnel meet to develop an individualized education program (IEP) to define the additional special education supports and services the school will provide. Each student's IEP differs based on his or her unique needs. Specialized academic instruction is the most common service that schools provide. This category includes any kind of specific practice that adapts the content, methodology, or delivery of instruction to help students with

[1] Legislative Analyst's Office, *Evaluating California's System for Serving Infants and Toddlers with Special Needs*, January 4, 2018.

disabilities access the general curriculum. Other commonly provided services include speech and language, physical and occupational therapy, behavioral support, and psychological services. Federal law also dictates that students must receive a Free Appropriate Public Education in the Least Restrictive Environment. This means that to the greatest extent possible students with disabilities are to receive their education in the general education environment with peers without disabilities. California is currently 43rd in the nation in terms of students with disabilities spending at least 80 percent or more of their day in general education.

In 2018-19, 795,047 children, ages 0-22 received special education under the provisions of IDEA in California. This represents approximately 12.5 percent of the total state student population. Specific learning disabilities is the most common disability category for which students are identified, followed by the disability category of speech and language impairments. In recent years, the disability category of autism moved in to the position of third highest category. This is after a decade of increased incidence – now comprising nearly 14 percent of the students with disabilities student population. Different types of disabilities are more prevalent at different ages. For example, speech impairments are most common in earlier grades, while learning disorders are generally identified later in a child's educational career. Schools integrate services and supports into the regular school day for transitional kindergarten through grade 12 students. For children ages 3-5 years old not yet attending school or who are served in an early care setting, preschool, or at home, the school district of residence provides services that may occur at the child's education or care setting, or at a facility designated by the school district. These services are in addition to the early education and child care services children may be receiving if they are enrolled in one of the state or federally-funded programs or in some other early education or care setting.

**Special Education Local Plan Areas (SELPAs) and Fund Distribution.** State and Federal special education funding is distributed regionally through 134 SELPAs to school districts and charter schools in the state. Most SELPAs are collaborative consortia of nearby districts and charter schools, although some large districts have formed their own single district SELPAs, while five SELPAs consist of only charter schools.

California relies primarily on a "census–based" funding methodology that allocates special education funds to SELPAs based on the total number of students attending, regardless of students' disability status. This funding model, often referred to as the AB 602 formula, after the implementing legislation (AB 602 [Davis and Poochigian], Chapter 854, Statutes of 1997), implicitly assumes that students with disabilities and associated special education costs are relatively equally distributed among the general student population and across the state. The amount of per–pupil funding each SELPA receives varies based on historical factors. After receiving its allocation, each SELPA develops a local plan for how to allocate funds to the school districts and charter schools in its region based on how it has chosen to organize special education services for students with disabilities. The ADA used to calculate the AB 602 formula is based on enrollment in grades kindergarten through grade 12 (including transitional kindergarten). Although SELPAs are serving 3-5 year olds, they do not receive any additional funding under the AB 602 formula for these children, with the exception of funds provided in 2019-20. Federal funds are available for regional center services and a small amount (about $100 million) is available for preschool services.

State and federal special education categorical funding totals over $5 billion annually. California's model for serving special education services reflects that school districts first use their general purpose, Local Control Funding Formula (LCFF) funds to meet the needs of all students, including those with disabilities, and then use a combination of state and federal special education funding and other local general purpose funds to cover the costs of additional services students with disabilities may need. While it is difficult to measure the amount of additional resources school districts provide from other areas of their budget for special education, according to a report by the Public Policy Institute of California, state and federal funding cover approximately 40 percent of cost of special education, with school districts covering the remaining costs from other fund sources.[2] In recent years, the costs of special education have risen due to schools identifying higher numbers of students with disabilities, and similar to general education, due to rising salary and benefit costs for teachers of special education students.

**2019-20 Budget Actions.** The 2019-20 budget included a total increase of $645 million in ongoing Proposition 98 General Fund for special education. Of this, $152.6 million was provided to increase base special education funding rates to ensure that all SELPAs receive at least the statewide target rate (approximately $557 per ADA in 2019-20) under the existing AB 602 funding formula.

The remaining $492.7 million created the Special Education Early Intervention Preschool grant, provided to school districts based on the number of three through five-year olds with exceptional needs. These funds were unrestricted. Therefore school districts could use these for any purpose. Local Educational Agencies (LEAs), school districts, county offices of education, and charter schools could use these to fund special education services that were previously paid for with their general operations funding (including services provided to 3-5 year olds), freeing up funds for other school district needs.

The budget also included language to specify that the increase in the statewide funding rate and early interventions be allocated in a one-time manner and future allocation methodologies would be contingent upon the passage of legislation in the 2020-21 budget to reform the special education system to improve outcomes for students.

**Special Education Oversight**. State oversight of special education is primarily through LEA developed Local Control and Accountability Plans (LCAPs) and the state's California Schools Dashboard. In the development of the template for the LCAP, the State Board of Education (SBE) specifically included a reference to students with disabilities, as follows: "For school districts, the LCAP must describe, for the school district and each school within the district, goals and specific actions to achieve those goals for all students and each student group identified by the LCFF (ethnic, socioeconomically disadvantaged, English learners, foster youth, pupils with disabilities, and homeless youth), for each of the state priorities and any locally identified priorities." As such, the SBE, and through authorizing statute, the Legislature, intended for the goals, actions, and services within the LCAP to be aligned with priorities for all students, including students with disabilities. In practice, the extent to which actions, services and expenditures for students with disabilities are included in the LCAP varies by each LEA.

In addition, the state has moved to a rubric for identifying the performance of each LEA on each state indicator by pupil subgroup. The California School Dashboard displays this information online. LEAs failing to meet specified benchmarks or progress towards benchmarks are identified for technical assistance. The first cohort of LEAs was identified for technical assistance under the new Dashboard system in December of 2017. Out of a total of 228 districts identified, 163 were identified based on the performance for their students with disabilities student group in one or more priority areas. In 2018, this grew to 243 out of 374 LEAs identified based on the performance for their students with disabilities student group. And the most recent cohort of LEAs identified in December of 2019, 187 of 333 LEAs were identified based on the performance for their students with disabilities student group. Performance

[2] Public Policy Institute of California, Special Education Finance in California

of student with disabilities on standardized tests (including the California Alternate Assessment specifically designed for students with significant cognitive disabilities) has improved over the past several years, but a majority of students with disabilities still fails to meet state and federal achievement expectations. The most recent graduation rate data (2017-18 school year data) shows that approximately 71.4 percent of students with disabilities graduate on time with a high school diploma, compared with 83.5 percent for all students.

**Recent Statewide Efforts to Improve Special Education Outcomes.** As part of the 2018-19 budget agreement, a structure for providing support for LEAs identified for differentiated assistance or intervention was refined in statute, specifying the process for county offices of education (COEs) to support school districts in need of technical assistance and the ability of a school district to seek assistance from the COE and other providers. Similar adjustments were made to the process for the Superintendent of Public Instruction (SPI) to assist struggling COEs.

Statute also established a formula for providing funding for COEs to support school districts. Under this formula, COEs would receive base funding plus additional funding determined by the number of school districts identified as in need of differentiated assistance on the dashboard, and a total of $53.8 million in ongoing funding was provided to COEs for this purpose in 2018-19 and increased by an additional $20.2 million in 2019-20. These funds support COEs in working with school districts identified in 2018-19 and 2019-20 for targeted technical assistance in areas of performance deficiencies, which for many LEAs is the students with disabilities student subgroup.

**Additional Support Structures.** In 2018-19, statute also established various lead agencies to provide support and spur capacity building across the state as well as to provide a resource for specific issue areas. Seven geographic lead agencies (COEs and collaborations of COEs) were established to build the capacity of other COEs in the region, coordinating and collaborating on technical assistance across the region, providing technical assistance to a school district if a COE is unable to, and identifying existing resources and developing new resources upon request of the California Collaborative for Educational Excellence (CCEE) or the SPI. As of March 2019, seven geographic lead agencies have been established.

**Special Education Local Plan Areas (SELPAs) Lead Agencies.** The 2018-19 budget also included $10 million in ongoing Proposition 98 funding to establish between six and 10 SELPAs to serve as special education resource leads to work with COEs to improve outcomes for students with disabilities. El Dorado County SELPA, West San Gabriel Valley SELPA, and Riverside County SELPA were selected to serve as California's SELPA System Improvement Leads.

The work of the SELPA System Improvement Leads will focus on building the capacity of SELPAs in the areas of data use and governance, continuous improvement, and implementation of high-leverage practices. Over the next five years, the SELPA System Improvement Leads will aim to empower SELPAs and LEAs to improve outcomes for students with disabilities by creating and aligning resources and supports under One System for all students. This will be done through the facilitation of technical assistance, professional learning, and coaching aimed at allowing SELPAs to implement data best practices across LEAs, with a focus on data governance and continuous improvement.

An additional four SELPAs were selected to be statewide hubs on particular issues as follows: 1) Imperial County SELPA – English Language Learners; 2) South County (San Diego) SELPA – Equity and Disproportionality; 3) Marin County SELPA – Autism; and, 4) Placer County SELPA – Open

Access Project. The work of the SELPA lead agencies is underway, however statewide impact will likely take some time.

**Special Education Teaching Workforce.** The state faces two major challenges when it comes to the special education teaching force. The first is an ongoing shortage of special education teachers and specialists and the second is ensuring that teachers, both special education, and general education teachers, are prepared to support all children.

Special education teachers receive their credentials specifically to work with students with disabilities – providing instruction and coordination of services. Special education teachers generally receive a credential specific to the disability types of the students they serve. In addition to teachers, specialists provide a range of direct services to students with disabilities. Services can include providing a student who has a speech impediment with speech therapy and providing sign language interpretation for a student who is deaf. According to the LAO[3], school districts have long reported teacher shortages in California (and in most other states), particularly in special education. School districts generally use the same tools to cover special education shortages as they do for teachers in other areas: hiring teachers with short-term permits and waivers, recruitment from outside the district, sharing specialists across schools, and other measures. California has made investments in addressing the teacher shortage, funding programs to: recruit new teachers to the state and candidates into the profession; provide teacher residencies; help classified employees obtain their teaching credentials; increase space in education specialist programs at the California State Universities: and other targeted programs. However, many of these efforts will take a few years before teachers under these programs enter classrooms.

The LAO also notes in their analysis of the special education teacher shortage that special education teachers typically have additional responsibilities, beyond those of general education teachers, such as developing detailed and time-consuming individual education plans for each of their students. They also typically oversee and coordinate teams of specialists who work with students. In addition, the LAO notes that in interviewing school administrators, special education teachers also tend to spend much more of their time involved in litigation and legal challenges brought by dissatisfied parents.

The Commission on Teacher Credentialing (CTC) recently reformed the way the state credentials special education teachers, reducing the number of specialist credential categories. In addition, the CTC reformed the credentialing system for all teachers in the fall of 2017, requiring a "common trunk" approach to teacher preparation that prepares teachers to meet the universal teaching performance expectations that are expected of all candidates seeking general education or special education credentials. Commission standards require that candidates learn how to work with all students, including those with disabilities in the general education classroom. This approach includes clinical practice in schools, particularly those serving students with disabilities in the Least Restrictive Environment and demonstration of the ability to adapt learning for students with disabilities. In their August 2018 commission meeting, the CTC adopted the new Education Specialist Teaching Credential Program Standards and Teaching Performance Expectations to help teacher preparation programs transition to credential changes and new assessments. While these updates are a clear step in the right direction to ensuring teachers feel prepared to teach all students, these changes were recent and do not impact the existing teaching stock, most of which haven't had the benefit of preparation under these new standards.

[3] Legislative Analyst's Office, The 2018-19 Budget: Proposition 98 Education Analysis, February 7, 2018.

## GOVERNOR'S PROPOSAL

**2020-21 Proposal:**

The proposed budget includes the following changes to special education:

- A new special education base formula based on an three year rolling average of average daily attendance (ADA) and a fifteen percent increase to the base formula funding (funded with the $645 million increase in 2019-20).

- An additional $250 million in ongoing Proposition 98 General Fund based on the number of 3 to 5 year old children with exceptional needs served by the school district (Funding would go out on a one-time basis in 2020-21).

- $500,000 one-time Proposition 98 General Fund for a study of current SELPA governance and accountability and $600,000 one-time Proposition 98 General Fund for two workgroups to study improved accountability for special education service delivery and student outcomes ($250,000 for alternative pathways to diploma, and $350,000 for standardizing the IEP template).

The Governor's budget summary specified the following considerations for future phases:

1) Finalizing the new special education funding formula to support equity, and more inclusive practices and early intervention services;

2) Incorporating changes in statute based on recommendations from the governance and accountability workgroups established in the Budget;

3) Pursuing reforms related to family and student engagement, including whole-child and family wrap around services and refining funding, accountability, and service delivery for specialized services such as out-of-home placements, non-public school placements and the State Special Schools; and,

4) Incorporating recommendations from the Master Plan for Early Learning and Care into the K-12 infrastructure of early intervention services for young children with exceptional needs.

The Governor's budget includes the following other special education-related proposals:

- Expand the use of the Educationally-Related Mental Health services funding to mental health services for students at large. Currently funds are restricted to education-related mental health.

- Place a four-year moratorium on the creation of new single-district SELPAs.

- Provide $4 million to a COE for dyslexia training and a statewide conference.

- Specify that special education is a priority area in the proposed new California Teacher Credential Award Program; and Educator Workforce Investment Act.

## ISSUES TO CONSIDER

Staff notes that the special education proposal in the 2020-21 Governor's budget makes for a promising start to a conversation in this budget cycle on special education reform and reflects a commitment to addressing this issue that was put in place in the 2019-20 budget. The Legislature and the Governor have similar goals in providing additional funds for LEAs providing special education services to support better outcomes for students with disabilities. When considering the proposal, there are a variety of areas in which the Legislature may wish to consider options and priorities, as noted below.

**New Special Education Base Formula.** The Governor proposes that 2020-21 is the first year of a multi-year effort to reform special education funding within the state. The largest piece of this reform in the Governor's proposal is an increase to the special education base funding rate. Under the proposal AB 602 funding is estimated to be 15 percent higher than was received in 2019-20, however this increase refers to total funding. Without detailed models of this change (expected to be provided from DOF in the coming weeks), it is unclear on how this funding increase breaks out across school districts. The rough estimate from the Administration at this point is that new base rates would be approximately $650 per ADA.

The Governor's proposal also includes a hold harmless on the base rate for AB 602; no school district would receive less than they received in 2019-20 for the AB 602 base rate funding. It is possible that some districts would receive less than the total special education funding (base rate plus early intervention grant funding) they received in 2019-20. This may be a concern for school districts already receiving relatively higher rates, as they adjust their budgets relative to 2019-20 investments, however their ongoing ADA funding rate would likely be increased under this formula.

The Governor's proposed change in the way ADA is calculated for the AB 602 formula will help school districts, particularly those with growing special education identification. The AB 602 formula is census-based, meaning that funds go out based on the total ADA of the school districts within a SELPA. ADA is calculated at the SELPA level, meaning that an increase in ADA in one school district could be masked by a decrease in another school district and as a result no declining enrollment protection would be provided to the SELPA. The new approach creates a stronger soft landing for declining enrollment school districts by taking a rolling 3-year average of ADA of each school district and then rolling it up to the SELPA level, so the declining enrollment protection applies at the school district level.

The Legislature may wish to consider the overall funding level that may be needed for special education services and given the historical federal share, what share the state can provide and what share local school districts can be expected to contribute. The Legislature may also wish to consider what adjustments to a future formula will be needed in order to address differing needs and challenges across the state. Additional conversations are needed to shape the parameters of any studies funded in the budget and to further define what future phases of special education reform could look like. In taking a step towards a new funding formula, establishing shared expectations between the Legislature, Governor, and education community for future changes would help to make progress on this important issue.

**Special Education Services for Preschool-Aged Children.** School districts lack a dedicated funding stream for serving 3 to 5 year old children with disabilities who are not yet in transition kindergarten or kindergarten. School districts are required to implement a child find program to ensure that they identify eligible children. School districts must then provide services for this population within their special education funding stream and potentially using other general purpose funding. Early identification and intervention provide benefits for school districts in potentially reduced special education services required in future years and improved outcomes for students.

The 2019-20 budget included some additional funding based on this population and the Governor's recent budget proposal for 2020-21 also includes some funding based on this population but the restrictions on expenditures are different. The new funding for 3 to 5 year old children with exceptional needs served by the school district is similar to the early intervention preschool grant of 2019-20 in that it is allocated on the same basis and is noted to be one-time. However, trailer bill language specifies that funds must be used for increased or improved services for children with exceptional needs. School districts must spend these funds in addition to what they already spend on special education and cannot displace general operations funding used on special education. School districts will not view this as the same fiscal relief they benefited from in the similar 2019-20 grant. The $250 million allocated for this purpose would remain special education funding in future years at the state level under the special education maintenance of effort but may be allocated differently.

Ongoing funding for the services provided to the 3 to 5 year old population has yet to be determined. The Legislature may wish to consider whether the new proposal is the correct next step to move towards supporting services for 3 to 5 years olds and whether the state can further incentivize best practices for serving our youngest children with special needs.

**Special Education Workforce.** Staff also notes that while ongoing funding is needed to support LEAs in providing special education, there are also a variety of uses for one-time funds that would help to strengthen the system. A teacher shortage is particularly acute in the area of special education across the state. Despite efforts over the past few years to recruit new teachers and retain current teachers, additional supports for the special education teacher workforce are still needed. In addition, students receiving special education services may be integrated into a mainstream classroom, often providing benefits for both the student and the classroom peer group. Current general education teachers may not have received significant amounts of training on special education services. Professional development for general education teachers, special education teachers, and para-educators focusing on best practices for serving special education students in inclusive environments is also needed to support the integration of all students.

**Child Care and Early Education Connections.** The Legislature may also wish to consider whether the state is providing adequate resources for supporting young children with disabilities and their families. The system of subsidized child care and state preschool currently provides roughly over 500,000 slots across child care, state preschool, and transitional kindergarten programs. However, this is only a fraction of the more than two million children who are potentially income-eligible for subsidized care (half of whom are younger than school age). In addition, only a small fraction of children served in non-public school settings, such as state preschool or child care are children with disabilities. Families and children may benefit extensively from not only receiving appropriate special education supports and services, but also from participating in a mainstream setting with their peers, and research shows these benefits have particular value when they are provided earlier in childhood. Making choices about priorities when considering the expansion of early education opportunities speaks to the dual purpose that child care and early education provides to families: a family support for working parents and an educational benefit for young children. The Legislature may wish to keep the needs of this population in mind when evaluating special education proposals, but also in considering policies in the early education area.

# Update and Review of Calbright College

## BACKGROUND

AB 1809 (Committee on Budget), Chapter 33, Statues of 2018, created a fully online community college, known as Calbright College, to be administered and overseen by the California Community Colleges Board of Governors (BOG) who act as the college's Board of Trustees. The college was established to create accessible, flexible, and high quality online content, courses and programs with labor market value and provide industry-valued credentials for Californians. The proposal sought to help the 2.5 million Californians between the ages of 25 and 34 year olds whose highest educational attainment is either high school or some college. These courses and programs must lead to a pathway offered at a traditional college.

The 2018 budget provided $100 million Proposition 98 General Fund one-time for startup costs and $20 million Proposition 98 General Fund ongoing for operations. The startup funding may be spread over a seven-year period and used for technology, building space, and business plan development, among other things.

At the January 13, 2020 Board of Trustees meeting, Calbright College Chief Executive Officer (CEO) Heather Hiles resigned, effective March 31, 2020, and will be on leave until that time. On February 11, 2020, the BOT appointed Ajita Menon as interim President and CEO.

**Budget Spending**

As noted above, the 2018 budget provided Calbright College $100 million Proposition 98 General Fund one-time for startup costs and $20 million Proposition 98 General Fund ongoing for operations. During budget deliberations, the Administration provided the Legislature a breakdown of how funds will be used:

- $20 million Proposition 98 General Fund ongoing: (1) $11 million for academic and classified salaries and benefits, (2) $3 million for technology, (3) $5 million for program pathways implementation, and (4) $1 million for professional services.

- $100 million Proposition 98 General Fund one-time: (1) $11 million for operating expenses, (2) $25 million for technology and capital outlay, (3) $23 million for core functions, (4) $16 million for scaling efforts, (5) $5 million for implementation of business plan and accreditation, and (6) $20 million for research and development.

**Update on Calbright Spending Plan.** In 2018-19 Calbright College spent approximately $3.4 million Proposition 98 General Fund ongoing, which almost exclusively paid for other operating expenses ($1.6 million of which was for administrative support for the Foundation for California Community Colleges and $1.4 million was for consultants). The college did not spend any of the one-time funding.

In 2019-20, Calbright College plans to spend $19.9 million Proposition 98 General Fund ongoing as follows: (1) $17.5 million on academic and classified salaries and employee benefits, and (2) $2.4 million on other operating expenses and technology. Calbright College also plans to spend $14.8 million in 2019-20 for capital outlay, which is funded by ongoing carryover from the 2018-19 budget. In addition, Calbright College plans to spend $15.6 million Proposition 98 General Fund one-time as follows: (1) $5.5 million on operating expenses and learner supports, (2) $2.9 million on outreach, and (3) $7.2 million on technology capital outlay.

The balance of Calbright College's budget is $84.4 million Proposition 98 General Fund one-time and $5.2 million Proposition 98 General Fund ongoing from 2018-19 unspent. Based on the milestone report, Calbright intends to expend the remaining one-time funds in Fiscal Year 2021-22. Staff notes that Calbright College's spending plan does not track neatly with the breakdown that the Administration provided the Legislature during the 2018-19 budget process. From conversations with Calbright College, the Administration's proposal was in place by the original implementation team, and was a point in-time projection of the spending needs and funding uses.

**Cost Per Student.** The milestone report also notes that based on planned enrollment and proposed budget, the cost per student enrolled in college will be approximately $98,000 in 2019-20 and will decrease to approximately $1,530 by 2025-26. Calbright College notes that this is because in 2019-20, it plans to enroll 350 students and in 2025-26 it plans to enroll 22,400 students, and systems and processes are being built and scaled.

**Fifty Percent Law.** Calbright is required to comply with §84362 of the Education Code, also known as the 50 percent law. The 50 percent law requires districts to spend 50 percent of their general operating budget on salaries and benefits of faculty and instructional aids engaged in direct classroom instruction. During the November 18th Board of Trustees meeting, Calbright College noted that the Chancellor's Office will not be evaluating Calbright College to the 50 percent law because they do not receive apportionment. However, the Chancellor's Office has since clarified with staff that the receipt of apportionment is not a required condition for compliance with the 50 percent law.

Existing law, §84040 of the Education Code, requires each community college district to provide an annual audit of all funds and the fiscal condition of the district to the BOG. The Chancellor's Office determines the amount a district needs to spend to meet the 50 percent law based on these documents. The penalty associated with failing to comply with the 50 percent law is to withhold state apportionment. Calbright College was not evaluated for 2018-19 compliance with the 50 percent law because Calbright did not have specified education expenditures. For future years, Calbright College will be subject to the 50 percent law consistent with all California community college districts.

**Financial Reporting.** Existing law, §70901(b)(2) of the Education Code, requires the BOG to provide general supervision over community college districts. The BOG is required to evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed by districts, and provide assistance when districts encounter severe management difficulties.

Additionally, Title 5 §58310 of the California Code of Regulations, requires that a designee of the governing board of each community college district submit a quarterly report and present on the financial condition of the district to the district's governing board. The district is also required to submit copies of the report to the Chancellor at least 45 days after each quarter.

Calbright College has informed staff that the college has submitted financial reports for 2018-19 and the first quarter of 2019-20 in the format prescribed by the Chancellor's Office. The college is working to finalize and submit their second quarter of 2019-20 financial report to the Chancellor's Office. The college has also submitted their 2018-19 Report on Audit of Financial Statements to the Chancellor's Office.

The Legislature may wish to ask the Chancellor's Office regarding the BOG evaluation of the college's fiscal and educational effectiveness, pursuant to existing law.

**Programs and Degrees**

Initially, Calbright College will provide short-term programs for working adults who have no postsecondary education or industry-valued credentials. Within the first three years, the Calbright College is required to develop at least three short-term program pathways linked with industry needs. These pathways must not be duplicative of programs offered at existing community colleges and to be offered under a flexible calendar with open entry and exit times. This means that students are not bound to the traditional start and end dates of the academic calendar (semester or quarter). For every 10 pathways offered by the online college, at least one pathway must be developed in collaboration with an existing community college.

**Competency Based Education.** Existing law requires Calbright College to use competency based education that recognize students' prior learning – this includes military services, registered apprenticeship training, existing industry certifications, or other career experience. Calbright College uses a direct assessment competency based education approach, which involves self-paced learning and evaluation of student achievement based on acquisition of competencies rather than the credit hours or clock hours of instructional time (such as traditional semesters and quarters). Examples of direct assessments include projects, papers, presentations, exams, or portfolios that demonstrate mastery of a desired skill. According to a 2020 Chancellor's Office report, *Recommendations to Encourage the Use and Development of Competency-Based Courses and Programs and Review of the Statewide Approval Process to Offer Online Courses Under a Flexible Calendar*, under the direct assessment approach, programs establish "credit-hour equivalencies" for the student learning outcomes they evaluate and transcripts reflect competency gains rather than grades or credit hours earned.

**Programs.** During the 2018-19 legislative session, the Chancellor's Office announced the first three programs in medical coding, information technology and supervisor roles. Calbright College is currently offering programs in medical coding for professional services, introduction to cybersecurity (Security+), and introduction to information technology support (A+). The college is currently not offering a program regarding supervisor roles. Calbright College states that prior to the appointment of the college's current management, a decision was made not to develop the supervisor program because most of the jobs would be in retail, and the estimated wage gains were not significant enough.

**Career Development and College Preparation (CDCP).** Calbright College notes that their programs are non-credit Career Development and College Preparation (CDCP) pathways. CDCP provides instruction in elementary and secondary education, English as a second language (ESL), vocational skills, and workforce preparation that is part of a sequence of related courses leading to a certificate.

**Enrollment.** From October 1 through December 31, 2019, 2,625 students started their applications, 1,412 completed applications, 651 completed orientation, 465 completed their education plan, 449 enrolled in essentials courses, and 20 enrolled in a program pathway. Approximately 40 percent of students selected the IT support program, 20 percent selected the cyber security program and 40 percent selected the medical coding program.

Of the 450 students that are enrolled in program essentials, 145 students (or 32 percent) are from Los Angeles County, 166 students from Orange, Riverside, Sacramento, San Bernardino and San Diego combined (or 36.8 percent), with the remaining 139 students spread throughout the state.

The chart below displays demographic data regarding Calbright College students, and compares them to available data for the CCC system.

| | **Calbright College Percentage** | **2018-19 Systemwide Percentage** | **2018-19 Systemwide Percentage – noncredit students** |
|---|---|---|---|
| **Ethnicity** | | | **(noncredit and vocational noncredit)** |
| None stated | 12 | 5.1 | 12.6 and 12.4 |
| Hispanic or Latino | 16 | 45.3 | 41.5 and 34.9 |
| Asian | 9 | 11.5 | 17.4 and 14.2 |
| Black or African American | 18 | 5.8 | 3.2 and 4.9 |
| American Indian / Alaskan Native | 2 | 0.4 | 0.24 and 4.0 |
| Native Hawaiian or Other Pacific Islander | 0 | 3.0 | 0.2 and 0.4 |
| White | 37 | 25.2 | 22.3 and 28.0 |
| Multi-ethnicity | N/A | 3.9 | 10.6 and 1.7 |
| **Age Range** | | | **(noncredit and vocational noncredit)** |
| Less than 20 years old | 0.9 | 28.9 | 14.5 and 3.7 |
| Age 20-24 years old | 7.3 | 28.9 | 10.4 and 11.2 |
| Age 25-39 years old | 49.1 | 26.9 | 25.5 and 36.8 |
| Age 40 and above | 42.7 | 15.3 | 49.5 and 48.4 |
| **Higher Education Attainment Level** | | **Percentage of students in Spring 2019** | **Percentage of noncredit students in Spring 2019** |
| No response | 20 | 15.3 | 42.4 |
| Bachelor's degree or higher | 24 | 8 | 15.1 |
| No degree | 47 | 71.6 | 25.1 |
| Associated degree | 9 | 4.1 | 3.9 |
| **High School Education Level** | | **Percentage of students in Spring 2019** | **Percentage of noncredit students in Spring 2019** |
| Received a H.S. diploma in the US | 74 | 62.2 | 14.6 |

| | | | |
|---|---|---|---|
| Passed H.S. equivalency test and received a certificate | 10 | 3.6 | 1.9 |
| Received a diploma or from a foreign secondary school | 11 | 4.7 | 8.1 |
| Received a Certificate of California H.S. Proficiency | 1 | 1.2 | 0.5 |
| Enrolled in adult School | 1 | 0.5 | 1.7 |
| Not a graduate of, and no longer enrolled in H.S. | 3 | 2.4 | 11.1 |

**Associates Degree in General Studies.** The Calbright College Milestone Report, which was released on August 1, 2019, notes that it will offer an Associate Degree in General Studies.

Calbright College announced it will seek accreditation initially through the Distance Education Accrediting Commission (DEAC) and in the long-term will seek accreditation through Accrediting Commission of Community and Junior Colleges (ACCJC). ACCJC requires that an institution offer an associate degree with appropriate general education and area of studies. Accreditation is described more in depth later in the agenda. Calbright College has informed staff that the purpose of the associate degree in general studies is to meet standards for regional accreditation, and that it is not the intent of the college to expand associate degree offerings. However, it is unclear if an associate degree in general studies will meet ACCJC standards or if a four-year institution will accept credits associated with this degree.

**Industry and Employer Needs**

Education Code §75007 (b)(2) specifies that while Calbright College seeks accreditation, California Workforce Development Board (CWDB) and the Employment Development Department (EDD) shall determine whether programs offered by the online college have job market value to California industries by utilizing existing programmatic review process. It is unclear if Calbright College has worked with CWDB and EDD, and whether they have determined whether these programs have job market value. As of early January, CWDB staff indicated that they did not receive contact from Calbright College on this matter.

The Chancellor’s Office requested Calbright College provide labor market information to the Chancellor’s Office during their program review and approval process. Staff requested a copy of the labor market data that was submitted and reviewed, however, the Chancellor’s Office notes that “they did not maintain a copy as the information was not required to be chaptered at the state.”

The Chancellor’s Office operates under a data sharing agreement with the EDD to collect wage and employment data for program graduates. This information is provided to colleges and the Chancellor’s Office through Launchboard, and to the public through the Student Success Metrics and Salary Surfer. Salary Surfer uses the aggregated earnings of graduates from a five-year period to provide an estimate on the potential wages to be earned two and five years after receiving a certificate or degree in certain disciplines. However, a 2017 Legislative Analyst’s Office (LAO) Report, *Effects of Increases in Noncredit Course Funding Rates*, which reviewed career development and college preparation (CDCP) programs, notes that “the CCC Student Success Scorecard measures completion of certificates, degrees, or transfer within six years for students who initially enrolled in CDCP courses, but the Salary Surfer, which shows earnings of certain CCC graduates, as well as CCC's basic skills outcomes tracking tool, exclude noncredit students." Calbright College's programs are noncredit CDCP.

**Job and Salary Projections.** Calbright College notes that they are working with the Chancellor's Office to formalize their relationship with EDD. They also note that they consulted with data from EDD to help establish the first three job training programs. According to Calbright College's milestone report, an estimated 11,000 new medical coder jobs will be added between 2017 and 2024. The milestone report also cited a CompTIA report, *Cyber States 2018*, which states that 400,000 technology jobs were posted in California 2017.

According to the Centers of Excellence (COE) for Labor Market Research, which provides labor market research for community colleges, notes that the 2018 median pay for medical records and health information technicians was approximately $45,000. COE notes that the median wage for a computer user support specialist, who has some college and no degree, is approximately $53,500.

In April of 2018, the Chancellor's Office and the Service International Employees Union - United Health Workers (SEIU-UHW) announced a potential partnership with Calbright College to develop a medical coding program for their members. However, in 2019, SEIU-UHW instead partnered with Western Governors University (WGU) for a medical coding program.

**Business Partnerships.** Calbright College has stated that they will announce their first business partnerships in 2020. The college notes that it will target large-scale private employers. As noted earlier, 20 students are currently enrolled in the program pathways; the Legislature may wish to consider the timing of when students are ready to be placed in an apprenticeship or internship and when the employer partnerships are formalized. Additionally, the Legislature may wish to consider where students are located and where the business partnerships and apprenticeships are, and if this may impact access to training. Lastly, the Legislature may wish to ask how Calbright College is working with local workforce investment boards and labor organizations to address local workforce needs and employee upskilling.

**Program and Degree Duplication**

Education Code §75001(d)(1) specifies that Calbright College shall create new programs that are not duplicative of programs offered at other local community colleges. Additionally, Education Code §75001(f)(1) and (2) specifies that it is the intent of the Legislature that the college create unique content and deliver it in a manner that is not duplicative of programs offered at other local community colleges. For each new program created, the Chancellor's office must notify the Legislature and the Department of Finance on how the program is not duplicative of programs offered at other colleges.

Calbright College is currently offering programs in medical coding, cyber security and information technology. Many community colleges currently offer programs in these areas. The Academic Senate provided staff with the following non-exhaustive list of programs that may be similar:

- Medical Coding
    - Santa Barbara College: A fully online program available to students statewide and features a certificate of achievement that is available through the California Virtual Campus – Online Education Initiative (CVC OEI).

- Cybersecurity

- Merritt College: An online degree and certificate program.
- San Diego Continuing Education: A competency based noncredit program.
- Cosumnes River College, Fresno City College, Pierce College and Cerro Coso College partnership: A fully online program, available to students statewide, and offers online certificates of achievement through the CVC OEI.

* Introduction to Information Technology and Support:
  - Cerro Coso College: A fully online program, available to students statewide, and features a fully online certificate of achievement through CVC OEI.
  - San Diego Continuing Education: An interactive competency based online micro-credential academy that is free, fully online, and offers flexible scheduling. This program is set to launch in the fall of 2020.

Certificates of achievements are short programs of study designed for students wishing to enter a new career or enhance their current job skills. Typically, COAs focus on major courses and do not include general education coursework. In many cases, COA coursework can also satisfy Associate Degree or Associate Degree for Transfer (ADT) requirements.

The Chancellor's Office states that the courses and programs highlighted by the Academic Senate do not use direct-assessment competency-based education, do not have an open entry and exit enrollment, do not offer a Career Development and College Preparation (CDCP) Competency Certificate, and are not non-credit programs (except for the San Diego cyber security program).

On September 30, 2019, the Chancellor's Office notified the Department of Finance and the Legislature that the "combination of the Calbright College programs' design elements involving competency-based learning, asynchronous self-paced learning, applied learning, and statewide online platform, establish that the programs are not duplicative of programs offered at other community colleges." The Chancellor's Office notes that while these individual elements may be implemented in existing programs, no existing program includes all of these elements.

The Chancellor's Office further states that statute did not define "not duplicative," and determined that it "not intended to be so broad as to preclude any overlap between Calbright College programs and other community college programs… statute does not require all content to be unique."

The Chancellor's Office further states that "while it may not be clear at this time where the line will be between a Calbright College program that is not duplicative and Calbright College program that is duplicative, this line will be clearer overtime as the Chancellor's Office considers additional Calbright College programs."

However, according to the Academic Senate of the California Community Colleges letter dated October 7, 2019, "California Code of Regulations Title 5 defines an 'education program' as 'an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to an institution of higher education' In order for a program to be 'non-duplicative,' the program must consist of unique content, regardless of how the content is delivered. Any program that currently exists at any college, regardless of mode of delivery, would be a duplicative program."

The Legislature may wish to consider whether the Chancellor's Office and Calbright College's interpretation of duplication is consistent with the Legislature's intent. The differences in interpretation of duplication among stakeholders has led to confusion in the field, particularly among faculty and community colleges. In order to ensure compliance with statute and legislative intent of the college, the Legislature may wish to clarify the definition of duplication.

**General Studies Associate Degree.** According to the milestone report, Calbright College believes that the associate degree in general studies will not be duplicative of associate degrees at other community colleges. However, according to an August 5, 2019 letter, the Academic Senate for California Community Colleges stated that general studies degrees do not exist at other colleges because "Title 5 §55063 was amended in 2009 to clarify that a degree requires both a specific area of focus – an area of emphasis or a major- and general education; under Title 5, a degree cannot consist solely of general education… After 2009, colleges were required to delete general studies degrees as inappropriate to meet student needs." Furthermore, ACCJC accreditation standards require "all degree programs include focused study in at least one area of inquiry or in an established interdisciplinary core."

The Chancellor's Office has not received a request from Calbright College to offer a general studies associates degree. If the Chancellor's Office receives a request to approve an associate's degree from Calbright College, the Academic Affairs Division will evaluate against all requirements for degree offerings, as is required of all colleges.

The Legislature may wish to consider if offering a general studies associate degree is appropriate given Title 5 regulations and ACCJC accreditation standards. Furthermore, the Legislature may also wish to consider Calbright College's interpretation of duplication in the context of the associate's degree in general studies compared to the other programs the college offers. Specifically, the Legislature may wish to ask how Calbright College determined that the associate degree in general studies is not duplicative.

**Accreditation**

Accreditation is a voluntary, non-governmental peer review process used to determine academic quality. Accrediting agencies are private organizations that establish operating standards for educational or professional institutions and programs, determine the extent to which the standards are met, and publicly announce their findings.

Under federal law, the United States Department of Education (USDE) establishes the general standards for accreditation agencies and is required to publish a list of recognized accrediting agencies that are deemed reliable authorities on the quality of education provided by their accredited institutions. There are three basic types of accreditation:

a) *Regional Accreditation*. There are six USDE-recognized regional accrediting agencies. Each regional accreditor encompasses public, the vast majority of non-profit private (independent), and some for-profit postsecondary educational institutions in the region it serves. California's regional accrediting agency is separated into two commissions: the Accrediting Commission for ACCJC and the Senior College and University Commission (WASC-Sr.).

b) *National Accreditation*. National accreditation is not based on geography, but more focused to evaluate specific types of schools and programs. National accreditation is designed to allow nontraditional colleges (trade schools, religious schools, certain online schools) to be compared against similarly designed institutions. Different standards and categories are measured, depending on the type of institution.

c) *Specialized/Programmatic Accreditation.* Offered by accrediting agencies that represent specific fields of study, these agencies do not accredit entire colleges but instead accredit the programs within colleges that prepare students for the specific field or industry. In most cases, specialized accreditation alone does not enable participation in state and federal financial aid programs.

The ACCJC is the regional accrediting agency for California community colleges. It accredits institutions in the western region of the country (California, Hawaii, and U.S. territories) which have as a primary mission the granting of associate degrees, but which may also award certificates and other credentials.

Colleges that offer predominantly distance or correspondence education may seek accreditation from the DEAC. DEAC is recognized by the USDE as a national accrediting agency for distance education institutions. National accreditation is popular among online colleges as well as technical training, vocational and professional certification programs.

Students attending an unaccredited college may experience limitations including being ineligible to sit for some applicable licensure examination or for government financial aid programs. Additionally, a degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions.

Existing law requires the college to seek accreditation and meet requirements for students to become eligible for federal and state financial aid. Statute also requires the College to provide evidence of having achieved pre-accreditation by April 1, 2022 and full accreditation from an agency recognized by the USDE by April 1, 2025. Calbright had considered seeking accreditation from both the ACCJC and DEAC. It appears that the college has moved forward with the DEAC and its unclear whether it plans to pursue ACCJC accreditation in the future. The accreditation process takes 18-24 months for DEAC. While Calbright is seeking accreditation, current law requires the College to inform potential and enrolled students regarding the implications of taking courses prior to accreditation and how the college will help students rectify this issue in the future.

**Several Milestones and Reporting Requirements for College.** AB 1809 required the online college to meet certain program, administrative, and accreditation milestones within the first seven years. For example, by July 1, 2019, the college must:

1. Develop a seven-year implementation plan, validate a business plan, and develop three program pathways. The college must also develop an accreditation plan and create an outreach plan.

2. Develop internal business processes and personnel policies, such as hiring, salaries, and evaluations, and establish outcome goals including job classifications.

3. Map the student experience.

4. Develop an accreditation plan.

5. Create a statewide outreach plan, which includes working with immigrant groups and community based organizations.

6. Define the duties for instruction support, program development and other student experiences.

7. Establish a process for recognition of prior learnings.

8. Enroll students by the last quarter of 2019.

According to responses from Calbright College, the college is in progress to meeting these statutory milestones.

Existing law, §75011 of the Education Code, requires the college to report by August 1, 2020, regarding start up milestones, including enrollment and program pathways. The college is also required to report by August 1, 2021 regarding startup milestones, including student enrollment, the number of designed programs, and student outcomes. This report will be a comprehensive status report on the college's activities and outcomes, including information regarding student employment and earning gains after completion of programs as well as other student success metrics, and a qualitative description of the college's efforts and progress to reach and serve working adults.

In addition, by August 1, 2022 and each year thereafter, the college must also report on the progress on transition planning for the scaling phase and qualitative description of innovative teaching and student support practices and technologies developed by the college.

By January 1, 2026, an independent evaluator must assess Calbright College regarding progress on program production, relationships with industry partners and student success outcomes.

**Student Fees.** Existing law authorizes Calbright College to establish an affordable fee structure, that is equivalent to or less than fees charged by traditional community colleges. Students must also be eligible for fee waivers such as the College Promise Grant. The enrollment fees at the CCCs are the lowest in the country, at $46 per unit, and have not changed since 2012-13. During budget deliberations, the Chancellor's Office stated that Calbright College's new fee structure could be an experimental, subscription-based flat rate for a set time period (or academic term). Prior to establishing the fee structure, the college must notify the Legislature and the Department of Finance 60 days before the effective date of the structure.

According to the Milestone Report, it is the college's goal to offer free programs to students. However, information regarding this was not found on the website, and the "financial aid" tab for students was under construction. Calbright College notes that they are only offering non-credit CDCP pathways, and since students are not earning credit, students are not charged credit fees. Additionally, Calbright College staff has indicated that they will pay for students' credential examination fees.

**Employment Services Fees.** Calbright College notes that once a student achieves their student learning outcomes, the student will be placed in a paid apprenticeship or internship. The milestone report states that the college intends to generate revenue through employment services fees. Specifically,

1. Employer of Record Services Fees: Calbright College will contract with employers by acting as the employer of record, such as workers' compensation, during the student's paid apprenticeship. Target indirect costs will be between 15 percent and 30 percent of direct costs.

2. Job Placement Fees: Employers who employ a Calbright College graduate, and who do not participate in the apprenticeship phase, will pay a 15 percent placement fee on the first year base compensation for the position.

As noted earlier, Calbright College has not finalized their employer partnerships, and therefore it is unclear what the employment services fee will be or how much students will earn on their paid apprenticeships or internships. Calbright College notes that most of their students are working adults, which is why they are interested in the flexible course schedule that Calbright offers. The Legislature may wish to consider how students will be able to schedule their paid internships and apprenticeships when many students are working adults. Additionally, the Legislature may wish to consider how these paid internships and apprenticeships may supplement or supplant their current daily wages if they modify their current work schedules.

The Legislature may also wish to consider what the rationale is for authorizing Calbright College to offer an alternative fee structure if the college is currently offering free programs through the CDCP programs. The Legislature may wish to ask Calbright College if it plans to change its fee structure or program offerings, such as credit programs.

**Governance**

Existing law specifies the Community College Board of Governors serve as the Board of Trustees for Calbright College. The 17-member Board of Governors is appointed by the governor and formally interacts with state and federal officials and other state organizations. Existing law states that the Board of Governors is expressly determined to not have a conflict of interest in the administration of Calbright College.

Unlike the Board of Governors, each of the 72 community college districts has a locally-elected Board of Trustees, responsive to local community needs and charged with the operations of the local colleges, and typically serves four-year terms. Local board of trustees are elected either at large from the community college district boundaries or based on each trustee areas in the community college district.

Under this model, the Board of Governors both oversees the entire statewide system and all 114 colleges, as well as manage the activities of Calbright College such as hiring of personnel and faculty, and curriculum development. Many Calbright College Board of Trustees meetings have been held on the same day as the Board of Governors meetings, which have created time constraints in deliberating the college's activities. Additionally during recent Board of Governors' hearings, several members of the board as well as the public have questioned whether they were the appropriate entity to oversee the activities of Calbright College.

As noted earlier, at the January 13, 2020 BOT meeting, Calbright College Chief Executive Officer (CEO) Heather Hiles resigned, effective March 31, 2020, and will be on leave until that time. On February 11, 2020, the BOT appointed Ajita Menon as interim President and CEO.

**Staffing and Hiring**

Existing law specifies that Calbright College's chief executive officer is authorized to hire sufficient number of qualified faculty that meet minimum qualifications established by the college. Existing law also states that the BOG must employ and assign all personnel consistent with the minimum standards and establish employment practices, salaries and benefits for all employees. Existing law requires the BOG to contract with a community college district BOT for the purpose of establishing a separate collective bargaining agreement for Calbright College employees pursuant to the Educational Employment Relations Act. This allows faculty and staff to negotiate salaries, health, benefits, working conditions, class size, among others.

**Staffing and Hiring Update.** Calbright College has an agreement with South Orange Community College District (SOCCD) to provide support and consultation services, additionally the milestone report identifies SOCCD as the partner to assist the college for the purposes of collective bargaining. At this time, the college has hired 31 administrators and two classified employees. The college has not hired full-time faculty nor have they established an academic senate or collective bargaining agreement.

Calbright College's BOT considered an item to hire faculty at their December 2019 and January 2020 board meetings, however, the items were not acted on. These items considered hiring two instructors, two learner coaches and one counselor. While each community college district may have different hiring processes and procedures, §87360 (b) of the Education Code states that "hiring criteria, policies, and procedures for new faculty members shall be developed and agreed upon jointly by representatives of the governing board, and the academic senate, and approved by the governing board."

According to the SOCCCD administrative regulation (AR) 4011.1, two thirds of the recruitment committee must be full-time faculty. Additionally, depending on the local process, discipline faculty may be involved in writing the job description, determining additional desirable or preferred qualifications, and applicant screening criteria. AR 4011.1 states that departmental faculty have 10 business days to review and comment on the job announcement draft and prepare a list of qualifications for the positions. The departmental faculty may also recommend supplementary duties and responsibilities. AR 4011.1 also states that at least two discipline experts from the committee shall determine which applicants meet minimum qualifications as described in the job announcement and in accordance to the minimum qualifications as determined by the BOG.

It is unclear if faculty were involved in Calbright College's initial hiring committee, interviews, development of the job descriptions, or other hiring processes. In the legislative findings and declarations section of Calbright College's authorizing statute, it states that "California recognizes the dedication of every faculty member, classified staff member, manager and administrator of the Community College system toward support the success of California's community college students. As dedicated leaders, innovators and educators, faculty will be integral to the success of the California Online Community College." Providing the academic senate and faculty the opportunity to meaningfully participate in the hiring process may help ensure discipline expertise, quality of their faculty peers and success for students.

Calbright College staff recently indicated that they will create a hiring committee with the state academic senate to help develop faculty and counselor hiring processes and procedures. As noted earlier, approximately 20 students have completed the program essentials portion of their curriculum and are now enrolled in the program pathways. As more students complete their "essentials courses" and begin their program pathways, faculty will be needed to provide instruction and support for students, as well as program and disciple expertise.

## GOVERNOR'S PROPOSAL

The Governor's budget continues to support funding for Calbright College and does not propose any changes to the college or its programs.

**University of California Extension Programs.** The Administration proposes $4 million one-time General Fund to support degree and certificate completion programs at UC extension centers, with a focus on the development of online programs.

**California State University Extended and Continuing Education Programs.** The Administration proposes $6 million one-time General Fund to support the development or expansion of degree and certificate completion programs through CSUs extended continuing education programs, with a focus on online programs.

## ISSUES TO CONSIDER

**Leveraging Existing CCC Programs.** Existing law requires Calbright College to utilize and leverage, where appropriate, existing community college programs and activities including Zero-Textbook-Cost Degree Grant Program, Open Educational Resources, the Strong Workforce Program, Online Education Initiative (OEI) and the Guided Pathways Program framework.

Calbright College states that they have utilized some OEI resources, such as adopting best practices for online learning and instructional design. However, they have not utilized or leveraged the other programs listed above. Since it is clear that the Legislature's intent to build upon existing work and promote collaboration, the Legislature may wish to ask what the rationale is for not utilizing and leveraging existing programs and resources within the community college system. Furthermore, since many community colleges are currently offering online education or CDCP programs, the Legislature may also wish to ask how Calbright College has worked or consulted with other colleges in developing their curriculum, pathways, and student support services among others.

**Online Education Initiative.** The OEI was established in 2013, and includes several projects: (1) a common course management system (Canvas) for colleges, (2) resources to help community college faculty design high-quality courses, (3) online learner readiness modules, (4) tutoring and counseling platforms, (5) exam-proctoring solutions, and (6) the CCC Online Course Exchange. Currently, 57 community colleges participate in the OEI consortium.

The state initially funded the OEI with $17 million Proposition 98 General Fund in 2013-14 and has provided a base amount of $10 million Proposition 98 General Fund annually thereafter to increase CCC students' access to and success in online courses. The 2016-17 budget included $20 million one-time Proposition 98 General Fund to accelerate progress on the initiative. The 2017-18 budget increased the base amount by $10 million Proposition 98 General Fund ongoing; bringing annual funding to $20 million Proposition 98 General Fund ongoing to provide systemwide access to Canvas. The 2018-19 budget provided $35 million Proposition 98 General Fund one-time for the Improving Online CTE Pathways Grant, which is described later in the agenda.

**Online Course Exchange.** The CCC Online Course Exchange has six participating colleges that allow a student to search for an open online class across the participating colleges and enroll instantly without submitting an additional application. By June 2020, 11 additional colleges plan to participate in the online course exchange. The goal is to have this level of connectivity systemwide by June 2023.

**California Virtual Campus.** OEI also houses the California Virtual Campus, which provides an online course finder for 70 community colleges, and holds information regarding 88 associate degree for transfer programs that contain an online pathway, 73 short-term fully online certificates of achievement, and course section data for 17,280 courses.

**Canvas.** Calbright College is also required to contribute online content and classes to the OEIs common course management system, Canvas. Canvas allows students taking online courses to (1) interact with faculty, (2) access course materials, content and assignments, (3) submit work, (4) post materials, and (5) access help resources. Canvas is being used at 114 community colleges and students can use it on their mobile devices. Prior to Canvas, students taking online courses and faculty teaching online courses at multiple colleges had to navigate different interfaces and websites across colleges. Students from across the state, regardless of which college they are enrolled, will utilize canvas, which will help provide students consistency in their education experience. Canvas provides efficiencies in cost, training and ease of access for students.

Calbright College is required to inform professional development opportunities to the rest of the system regarding innovative teaching and support methodologies and technology through the OEI and Institutional Effectiveness Partnership Initiative.

Calbright College internally decided that the use of Canvas was not an appropriate learning management system for its courses because Canvas was not built for competency based programs. This was not publically discussed prior to the finalization of this decision.

**Improving Online CTE Pathways Grant Program.** The 2018-19 budget provided $35 million one-time Proposition 98 General Fund to provide competitive grants to community college districts that develop online programs and courses that support either of the following:

1. Lead to short-term, industry-valued certificates or credentials, or programs; or
2. Enable a student in a pathway developed by the California Online Community College to continue their education in a pathway offered by an existing college.

Grants may not exceed $500,000 per college/district and grants may be awarded to individual colleges or districts or multiple colleges or districts working as partners.

One hundred colleges responded to a Request for Applications process, and 70 qualifying projects were funded. These grants will create 407 new or improved fully online pathways leading to higher-wage employment. Many of these new programs will be implemented in June. Additionally, 792 courses were created or improved in 27 CTE discipline areas. The OEI will provide a comprehensive report of the awards to the Legislature in March. Below are summaries of four grants that were funded:

1. **Mt. San Antonio College** was awarded $250,000 in Improving Online CTE Pathways grant funds from CVC-OEI for a project called ‘Promoting Success for Online Students and Faculty.’ This project will: a) pilot tools for students to track progress on academic pathways, and b) build a coordinated support structure for students staying on their existing academic pathways, especially online CTE pathways. Mt. SAC intends to build on existing support for online students by offering targeted support structures for specific groups whose success rates in online classes are disproportionately lower than the overall increase in online success rates.

2. **San Diego Continuing Education** was awarded $500,000 for a project called ‘Project WIN (Workforce Innovation Now): Initiatives to Support Immediate Online Growth and Quality.’ This project will: 1) serve working adult learners with noncredit career training in Business,

Digital Media, and Information Technology; 2) integrate the college's Strong Workforce Pathways work around intake, assessment, orientation, and counseling in support of online education; 3) create at least one new online CTE program in Coding; and 4) create or revise, and professionalize at least five hybrid certificates with at least ten courses in Business and Accounting, Information Technology, and/or Digital Media with NetLab for IT virtual labs.

3. **Norco College** was awarded $367,855 for a project called 'Improving Online CTE Pathways Grant Program.' This project will adapt Norco's suite of Game Development programs so that students will have the option of completing them entirely online. Elements include: 1) effective online pedagogy and support strategies; 2) instructional materials including videos that reinforce online learning; and 3) virtual student support systems that will include supplemental instruction, tutoring and a remote game studio lab that will be accessible to students at regularly scheduled timeframes throughout each academic term.

4. **San Bernardino Valley College** was awarded $482,180 for a project called 'Creating and Expanding Quality Accessible Online Pathways for Students.' This project will 1) establish a formalized peer online course review process for CTE courses; 2) explore potential partnerships, curriculum, technologies, and unconventional lab solutions to support CTE programs requiring hands on labs, such as Diesel, to become fully online; 3) increase the number of high-quality fully-online CTE pathways by capitalizing on those programs currently offered partially online; and, 4) develop new fully-online CTE programs to meet workforce and industry needs, targeting American Sign Language Interpreting, Art and Entrepreneurship, and Media Academy.

As noted above, 100 out of the 115 colleges applied for the Improving Online CTE Pathways Grant, which demonstrates the systems interest in offering or improving online education programs. During the 2018 budget deliberations, some members of the Legislature noted that community colleges and OEI are currently offering online education programs. Moreover, some members of the Legislature questioned whether Calbright College should be a separate entity or if the OEI or other community colleges could be provided the flexibility and authority to offer programs that the proposed online college would do. Various organizations and stakeholder groups continue to raise these questions.

**Requires Chancellor's Office to Make Recommendations for Providing Existing Colleges More Flexibility.** AB 1809 required the Chancellor's Office, by January 1, 2019, to recommend to the Board of Governors ways of making online and competency-based programs easier and more attractive for colleges to develop and operate. The Chancellor's Office recommendations must include ways to streamline the processes for (1) funding noncredit competency-based programs, and (2) offering online courses under a flexible calendar. The Chancellor's Office submitted the following recommendations to the Board of Governors at their January 18, 2020 meeting.

1. Convene a cross-sector workgroup to recommend a funding structure that would compensate colleges for direct assessment competency-based education offerings. This workgroup would be complemented by the Student Centered Funding Formula Oversight Committee, which is expected to recommend integrating non-credit programs within the new funding formula.

2. Design an alternative approval process for direct assessment competency-based education offerings, and specify policies and regulations to govern this process. This work should build from the foundational California Community College Curriculum Committee process and recommendations.

3. Further research the academic calendar policy constraints to understand the modifications required to enable direct assessment approaches to competency-based education.

4. Further research the options for modular scheduling and course scheduling independent of any term configuration.

5. Follow Calbright College's development of competency-based education to learn from their experiences and to identify policy and regulation barriers and possible modifications.

Staff notes that the Chancellor's Office report to the BOG was more than a year past the statutory deadline. Many of the recommendations from the Chancellor's Office notes that additional research is needed to address the questions raised by the Legislature in 2018. The Legislature may wish to ask the Chancellor's Office what the timeline is for the research and workgroup meetings, who will be involved in these deliberations, and a report back to the BOG as well as the Legislature on their activities. Furthermore, as colleges continue to expand their online programs and as Calbright College continues to develop, the Legislature may wish to continue to monitor and provide oversight over student outcomes, particularly addressing the achievement gaps and job attainment.

# SUBCOMMITTEE NO. 2

## RESOURCES, ENVIRONMENTAL PROTECTION, ENERGY and TRANSPORTATION

# The Governor's Climate Budget Proposal

## BACKGROUND

According to the National Aeronautic and Space Administration (NASA), scientists attribute the global warming trend observed since the mid-20th century to the human expansion of the "greenhouse effect" – warming that results when the atmosphere traps heat radiating from Earth toward space. In its Fifth Assessment Report, the Intergovernmental Panel on Climate Change, a group of 1,300 independent scientific experts from countries all over the world under the auspices of the United Nations, concluded there is more than 95 percent probability that human-produced greenhouse gases such as carbon dioxide, methane, and nitrous oxide have caused much of the observed increase in Earth's temperatures over the past 50 years. Climate change is complex and has many facets, including science, economics, society, politics, and moral and ethical questions. It is a global problem felt on local scales.

Responding to climate change involves two general approaches: (1) mitigating greenhouse gas emissions (particularly reduction), and (2) adapting to actual or expected impacts created by climate change.

**MITIGATING GREENHOUSE GAS (GHG) EMISSIONS**

**GHG Emission Sources.** GHG emissions are derived from a wide variety of sources. According to the California Air Resources Board (ARB), 2017 California carbon emissions totaled 424.1 MMTCO2e (million metric tons of carbon dioxide equivalents). A breakdown of sources of GHG emissions by economic sector is as follows:

- Transportation 41 percent
- Industrial 24
- Electricity (in-state generation) 9
- Electricity (imported) 6
- Agriculture 8
- Residential 7
- Commercial 5

The significant majority of transportation emissions is generated by light duty vehicles. Examples of industrial sources include refineries, general fuse use, oil and gas extraction, and cement production.

**Key Legislation Addressing GHG Emissions.** Over the last two decades, California has developed a series of policies and legislation to address its carbon footprint and associated pollution, most notably AB 32 (Núñez and Pavley), Chapter 488, Statutes of 2006. AB 32 requires ARB to determine the 1990 statewide GHG emission level and achieve a reduction in GHG emissions to that level by 2020.

AB 32 requires ARB to inventory GHGs in California (including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) and approve the aforementioned statewide GHG emissions limit. In addition, AB 32 requires ARB to (1) implement regulations that achieve the maximum technologically feasible and cost-effective reduction of GHG emissions, (2) identify and adopt regulations for discrete early-action measures, and (3) prepare and approve a Scoping

Plan, to be updated at least once every five years, to achieve the maximum technologically feasible and cost-effective reduction of GHG emissions. Due to a variety of factors, most importantly being the great recession that started in 2008, California will achieve the goals of AB 32 in advance of the 2020 deadline.

SB 32 (Pavley), Chapter 249, Statutes of 2016, requires ARB to ensure that statewide GHG emissions are reduced to at least 40 percent below the 1990 level by December 31, 2030. This goal helps keep California on target to achieve the level of reductions scientists say is necessary to meet the goals of the Paris Agreement, which calls for limiting global warming to well below 2 degrees Celsius and pursuing efforts to limit it to 1.5 degrees Celsius.

AB 398 (E. Garcia), Chapter 135, Statutes of 2017, extends the authority of ARB to implement a cap-and-trade program. AB 398 specifies a variety of requirements on the post-2020 cap-and-trade program; most notable are: (1) requiring the banking of allowances from the current cap-and-trade program into the post-2020 program, (2) specifying industry assistance factors for the post-2020 program, and (3) the adoption of a price ceiling in the program, at which point an unlimited number of allowances must be made available for purchase.

**The Scoping Plan.** AB 32 creates a comprehensive, multi-year program to reduce GHG emissions in California. AB 32 requires ARB to develop a Scoping Plan that describes the approach California will take to reduce GHGs to achieve the goal of reducing emissions to 1990 levels by 2020. The Scoping Plan was first approved by ARB in 2008 and must be updated every five years. In 2016, SB 32 codified a 2030 GHG emissions reduction target of 40 percent below 1990 levels. With SB 32, the Legislature passed companion legislation AB 197 (E. Garcia), Chapter 250, Statutes of 2016, which provides additional direction for developing the Scoping Plan. ARB completed the second update to the Scoping Plan to reflect the 2030 target in January 2017.

The Scoping Plan lays out California's overall climate policy portfolio as follows:

- Double building efficiency
- Increase renewable power
- More clean, renewable fuels
- Cleaner zero or near-zero emission cars, trucks, and buses
- Walkable/bikeable communities with transit
- Cleaner freight and goods movement
- Slash potential "super-pollutants" from dairies, landfills, and refrigerants
- Cap emissions from transportation, industry, natural gas, and electricity
- Invest in communities to reduce emissions

The Scoping Plan notes that a balanced mix of strategies can provide the state with a great level of certainty in meeting the target at a low cost while also improving public health, investing in disadvantaged and low-income communities, protecting consumers, and supporting economic growth, jobs, and energy diversity.

**Major GHG Emissions Policies.** California has established seven major policies to meet statewide GHG limits, as follows:

- ***Cap-and-Trade.*** The Cap-and-Trade regulation establishes a "cap" on overall emissions from large emitters by issuing a limited number of permits (also known as allowances). Allowances can be bought and sold (traded), which creates a market price for allowances and an incentive for lowest cost reductions. *(More details below.)*

- ***Short-Lived Climate Pollutants (SLCPs).*** Regulations and incentives are intended to reduce certain types of emissions from dairies, landfills, and refrigeration equipment. Climate pollutants including methane, tropospheric ozone, hydrofluorocarbons (HFCs), and soot (black carbon), are relatively short-lived (anywhere from a few days to a few decades), but when measured in terms of how they heat the atmosphere (global warming potential, or GWP), can be tens, hundreds, or even thousands of times greater than that of carbon dioxide.

  Because SLCPs remain in the atmosphere for a relatively short period, but have a much higher GWP than carbon dioxide, efforts aimed at reducing their emissions in their near term would result in more immediate climate, air quality, and public health benefits, rather than a strategy focused solely on carbon dioxide. According to ARB's website, "while the climate impacts of CO2 reductions take decades or more to materialize, cutting emissions of SLCPs can immediately slow global warming and reduce the impacts of climate change." Recent research estimates that SLCPs are responsible for about 40 percent of global warming to date and that actions to reduce SLCP emissions could cut the amount of warming that would occur over the next few decades by half.

- ***Renewable Portfolio Standard (RPS).*** RPS regulations require utilities to provide a certain percentage of electricity from qualifying renewable sources, such as wind and solar. Most recently, SB 100 (de León), Chapter 312, Statutes of 2018) accelerated the RPS to require utilities generate 44 percent of their energy from renewable energy sources by December 31, 2024, 52 percent by December 31, 2027, and 60 percent by December 31, 2030. SB 100 also states that it is California policy that 100 percent of energy in the state be RPS-eligible or zero-carbon by December 31, 2045.

- ***Energy Efficiency.*** Energy efficiency regulations and financial incentives encourage more efficient energy use in commercial buildings, homes, and manufacturing facilities. In addition to the RPS, SB 350 (de León and Leno), Chapter 547, Statutes of 2015, established new energy efficiency goals for the state by (1) requiring the California Energy Commission to establish annual targets for statewide energy efficiency savings and demand reductions that will achieve a cumulative doubling of statewide energy efficiency savings in electricity and natural gas final end uses of retail customers by January 1, 2030, (2) requiring the Public Utilities Commission to establish efficiency targets for electrical and gas corporations consistent with this goal, and (3) requiring local publicly-owned electric utilities to establish annual targets for energy efficiency savings and demand reductions consistent with this goal. ARB claimed, in the last update to the Scoping Plan, that energy efficiency would be responsible for 10 percent of the GHG emissions reductions necessary to achieve the SB 32 target.

- ***Low Carbon Fuel Standard (LCFS).*** LCFS regulation requires transportation fuel suppliers to reduce the amount of GHGs per unit of fuel used in California. LCFS is also known as carbon intensity of fuels.

- ***Vehicle-Related Programs.*** Vehicle-related programs consist of regulations and incentives to encourage more efficient light- and heavy-duty vehicles, as well as promote certain types of technologies such as electric vehicles. Vehicle-related programs include the following:

    - *Enhanced Fleet Modernization Program and Clean Cars 4 All.* EFMP is designed to encourage low-income drivers to retire their older, high-emitting vehicles and replace them with newer, cleaner, more fuel-efficient vehicles. CC4A is a complementary incentive program and augments the EFMP base program by adding up to an additional $5,000 in incentives for the subset of participants living in or near a disadvantaged community census tract and who choose an advanced technology replacement vehicle (e.g., hybrid, plug-in hybrid, and battery electric vehicles).

    - *Clean Vehicle Rebate Project (CVRP).* In order to promote the production and use of zero-emission vehicles. CVRP enables the purchaser or lessee of an eligible vehicle to receive a rebate of up to $5,000. CVRP was initially designed to achieve 1.5 million zero emission vehicles on the road by 2025.

    - *Zero Emission Vehicle (ZEV) Regulation.* The ZEV regulation requires large volume and intermediate volume vehicle manufacturers that sell cars in the state to produce ZEVs (e.g., battery electric and fuel cell vehicles), clean plug-in hybrids, clean hybrids and clean gasoline vehicles with near-zero tail pipe emissions. The ZEV regulation requires that 15 percent of new car sales be ZEVs by 2025.

- ***Vehicle Miles Traveled (VMT).*** VMT planning strategies and financial incentives are intended to reduce the amount of light-duty vehicle use through such things as increased transit and changes to land use.

According to the Legislative Analyst's Office (LAO), the electricity sector has been the primary driver of GHG emission reductions over the last decade. Annual emissions from the electricity sector have declined by about 40 million metric tons (40 percent) over this period. Reductions have mostly been due to a change in the mix of resources used to generate electricity – primarily large increases in renewables (solar and wind) and, to a lesser extent, reductions in the amount of coal.

Cap-and-Trade was designed as a "backstop" to other climate change policies in the march to the AB 32 goal, with the bulk of GHG emission reductions coming from other measures. It was designed to account for about 15 percent of the state's emission reductions, and experts say that it will likely end up accounting for less. Although the other measures, a broad suite of sector-specific regulations, are often called "complimentary," they have been the main drivers of GHG emissions reductions in California.

## CLIMATE CHANGE IMPACTS

**Climate Change Projected to Have Significant Effects on the Environment.** According to the LAO, scientists are conclusive that some degree of climate change already is inevitable. The changing climate will have several consequential effects on California over the coming decades. Indeed, such impacts have already begun. In recent years, the state experienced a severe drought, multiple serious wildfires, and periods of record-breaking heat, all of which scientists suggest likely are harbingers of future conditions. In addition to these more episodic events, science has shown that the changing climate will result in a gradual and permanent rise in global sea levels. In the coming years, the state will need to broaden its focus from efforts to mitigate the effects of climate change to also undertake initiatives centered on how communities can adapt to the approaching impacts.

Climate change could have a myriad of consequential effects in California, including the following:

- ***Sea-Level Rise (SLR).*** According to the LAO, California could experience as much as seven feet of SLR by 2100. Given the significant natural resources, public infrastructure, housing, and commerce located along California's 840 miles of coastline, the certainty of rising seas poses a serious and costly threat. Recent estimates project that compared to 2000, sea levels along the California coast south of Mendocino will rise between 1.5 inches and one foot by 2030 and between five inches and two feet by 2050. These changes would impact both human and natural resources along the coast, increasing the risk of inundation of buildings and infrastructure, salt-water intrusion into groundwater basins, and beach erosion.

  Most responsibility for SLR preparation lies with local governments, however the state has a vested interest in ensuring the coast is prepared. Waiting too long to initiate adaption efforts likely will make responding effectively more difficult and costly. According to the LAO, key coastal adaptation challenges for local governments include the following:

  - Funding constraints hinder both planning and adaptation projects.
  - Limited local government capacity restricts their ability to take action.
  - Adaptation activities are constrained by a lack of key information.
  - Lack of forums for shared planning and decision-making impede cross-jurisdictional collaboration.
  - Responding to SLR is not yet a priority for many local residents or elected officials.
  - Protracted process for attaining project permits delays adaption progress.

- ***Flooding.*** Climate models predict less frequent, but more intense storm patterns, which would increase inland flooding risk. Floods cause significant risk to human life, as well as damage roads, buildings, and other infrastructure.

- ***Temperature Increases.*** Extreme heat events are projected to worsen through the state. By midcentury, for example, the Central Valley is projected to experience high heat events that are two weeks longer. Changing temperatures could affect human health, agricultural production, and natural habitats.

- ***Drought.*** Warmer temperatures would contribute to more frequent and intense droughts by leading to more precipitation falling as rain rather than snow, faster melting of winter snowpack, greater rates of evaporation, and drier soils. These conditions decrease the amount of spring snowmelt runoff upon which the state historically has depended for its annual water supply, as well as increases the demand for irrigation water in both agricultural and urban settings.

- ***Wildfires.*** Climate change is expected to make forests more susceptible to extreme wildfires. One study, for example, predicts that by 2100, the frequency of extreme wildfires burning over approximately 25,000 acres would increase by nearly 50 percent, and that the average area burned statewide would increase by 77 percent.

- ***Warming Oceans.*** Evidence indicates that climate change is degrading the state's marine environment. In recent years, California's coastal environment has experienced a historic marine heat wave, record harmful algal bloom, fishery closures, and a significant loss of northern kelp forests.

The environmental effects would vary by region and could affect communities differently. Some effects include reduced public health from high heat events; reduced water supply, water quality, and agricultural production from droughts; increased energy costs from increased average temperatures; and increased risks to public safety and infrastructure from flooding and wildfires.

**Fiscal Effects of Climate Change.** According to the LAO, emerging research findings suggest economic costs on the order of tens of billions of dollars for California by the end of the century associated with certain climate impacts, particularly increased human mortality, reduced agricultural production, and higher energy expenditures. Another recent analysis estimates that there is $150 billion of property value at risk of damage just from modest sea-level rise projected to occur by 2100.

Future costs to state or local governments include the following:

- *Disaster Response and Recovery.* State and local governments incur costs to respond to major disasters such as wildfires and floods. To the extent that climate change increases the risk of such events, there could be large one-time costs.
- *Annual Operating Expenses.* Government agencies might devote a greater share of their budget resources to prevention and response activities, such as to combat wildfires, maintain flood protection infrastructure, and supply clean drinking water.
- *Infrastructure Modifications and Replacement.* State and local governments have billions of dollars of infrastructure that could be damaged by climate change-induced events, such as wildfires, flooding, and sea-level rise. This infrastructure includes roads and highways, water treatment facilities, schools, and other public buildings. Choices include "hardening" infrastructure to prevent or reduce damage when events occur, making infrastructure more resilient to accommodate changing conditions, and relocating facilities to lower-risk sites.

## CLIMATE CHANGE ADAPTATION AND RESILIENCY

***Reducing Vulnerability to Climate Change.*** All sectors in California – including residents, businesses, agricultural producers, and state and local governments – have the potential to be adversely impacted by the effects of climate change. According to the California Natural Resources Agency's Fourth Climate Assessment, if we continue on our business as usual path, the cost of climate change to the state will reach $113 billion annually by 2050. Investing in climate prevention and adaptation measures now could save the state billions of dollars in future damages.

According to the LAO, planning for these impacts is key to long-term resiliency by developing strategies to minimize the worst potential impacts. Developing and implementing effective risk reduction measures is a multistep process that includes assessment of risks and costs, development of adaptation plans, selection of specific projects and policies, implementation, and ongoing monitoring. Because of the number of steps and their potential complexity, it often will take years to develop and implement mitigation measures. For this reason, developing an effective response requires early planning – before the worst climate change impacts are felt. The LAO states the key steps in adaptation planning and implementation are as follows:

1. *Conduct Vulnerability Assessment.* Develop understanding of how climate change might effect different jurisdictions. Model various climate change scenarios and assess the potential exposure and impacts to key assets (such as infrastructure, property, and natural resources) and services (such as drinking water and emergency response).

2. *Develop Adaptation Plan.* Based on assessed vulnerabilities, determine specific strategies that can be undertaken to reduce the amount of risk and damage that will be experienced. Identify overall approach and priorities, policies, potential projects, and timelines.

3. *Develop Detailed Project Plans and Policies.* Develop specific implementation plans for adaptation projects including engineering design, environmental permitting, costs, funding sources, deadlines, and anticipated performance measures. Research and draft new policies and solicit public feedback.

4. *Implement Adaptation Projects and Policies.* Construct projects. Adopt and enforce policies.

5. *Monitor and Evaluate Effectiveness of Projects and Policies.* Conduct multiyear monitoring to assess how well projects and policies are meeting anticipated objectives as conditions change and whether modifications may be necessary to maintain or improve outcomes.

California agencies have completed several reports in recent years designed to identify climate change risks and provide guidance to state and local governments on how to do adaptation planning. Examples include:

- "Paying It Forward: The Path Toward Climate-Safe Infrastructure in California," (California Natural Resources Agency [CNRA], 2018) provides information on how to incorporate climate change projections into the state's infrastructure design, planning, and implementation.

- "California's Fourth Climate Change Assessment," (Office of Planning and Research [OPR], California Energy Commission, and CNRA, 2018) provides scientific assessments of climate-related vulnerabilities.

- "Planning and Investing for a Resilient California: A Guidebook for State Agencies," (OPR, 2018) is a guidance document on steps of climate change planning for state agencies.

- "Safeguarding California Plan: 2018 Update," (CNRA, 2018) is a catalogue of ongoing actions and recommendations to protect infrastructure, communities, services, and the natural environment from climate change.

- "Climate Adaptation Planning Guide: Planning for Adaptive Communities," (California Emergency Management Agency, CNRA, 2012) provides guidance for local governments and regional collaboratives to address the consequences of climate change.

These documents generally focus broadly on statewide climate change risks and planning strategies.

***Integrated Climate Adaptation and Resilience Program (ICARP).*** SB 246 (Wieckowski), Chapter 606, Statutes of 2015, directed the Office of Planning and Research to form ICARP, which is designed to develop a cohesive and coordinated response to the impacts of climate change across the state. Through its activities, ICARP will develop holistic strategies to coordinate climate activities at the state, regional and local levels, while advancing social equity. ICARP has two components: the State Adaptation Clearinghouse and the Technical Advisory Council (TAC). The State Adaptation Clearinghouse is a centralized source of information and resources to assist decisionmakers at the state, regional, and local levels when planning for and implementing climate adaptation projects to promote resiliency across California. TAC brings together local government, practitioners, scientists, and community leaders to help coordinate activities that better prepare California for the impacts of a changing climate. TAC supports the Governor's Office of Planning and Research in its goal to facilitate coordination among state, regional, and local adaptation and resiliency efforts, with a focus on opportunities to support local implementation actions that improve the quality of life for present and future generations.

## CLIMATE CHANGE FUNDING MECHANISMS

### CAP-AND-TRADE PROGRAM

**A Market-Based Approach to Reducing GHG Emissions.** Cap-and-Trade is a market-based approach to reducing emissions. The Cap-and-Trade regulation places a "cap" on aggregate GHG emissions from large GHG emitters, such as large industrial facilities, electricity generators and importers, and transportation fuel suppliers. Capped sources of emissions are responsible for roughly 80 percent of the state's GHG emissions. Sources included under the cap are termed "covered entities." To implement the Cap-and-Trade program, ARB issues carbon allowances equal to the cap, and each allowance is essentially a permit to emit one ton of carbon dioxide equivalent. Entities can also "trade" (buy and sell on the open market) the allowances in order to obtain enough to cover their total emissions. Over time, the cap declines, resulting in GHG emission reductions.

Two forms of compliance instruments are used: allowances and offsets. Allowances are generated by the state in an amount equal to the cap and may be "banked" (i.e., allowing current allowances to be used for future compliance). An offset is a credit for a real, verified, permanent, and enforceable emission reduction project from a source outside a capped sector (e.g., a certified carbon-storing forestry project). Some fraction of allowances are allocated freely to covered entities, a small portion are set aside as part of an allowance-containment reserve (a cost-containment mechanism that releases additional allowances into the market to slow price increases), and the rest are auctioned off quarterly.

**Summary of California-Quebec Joint Auction Settlement Prices and Results**

| Auction Name | Total Current Auction Allowances Offered | Total Current Auction Allowances Sold | Current Auction Settlement Price | Total Advance Auction Allowances Offered | Total Advance Auction Allowances Sold | Advance Auction Settlement Price |
|---|---|---|---|---|---|---|
| Nov 2019 Joint Auction (JA) #21 | 67,435,661 | 67,435,661 | $17.00 | 9,038,000 | 9,038,000 | $16.80 |
| Aug 2019 JA #20 | 66,289,515 | 66,289,515 | $17.16 | 9,038,000 | 9,038,000 | $16.85 |
| May 2019 JA #19 | 66,321,122 | 66,321,122 | $17.45 | 9,038,000 | 9,038,000 | $17.40 |
| Feb 2019 JA #18 | 80,847,404 | 80,847,404 | $15.73 | 9,038,000 | 5,983,000 | $15.62 |
| Nov 2018 JA #17 | 78,825,717 | 78,825,717 | $15.31 | 9,401,500 | 9,401,500 | $15.33 |
| Aug 2018 JA #16 | 79,421,265 | 79,421,265 | $15.05 | 9,401,500 | 9,401,500 | $14.90 |
| May 2018 JA #15 | 90,587,738 | 90,587,738 | $14.65 | 12,427,950 | 6,057,000 | $14.53 |
| Feb 2018 JA #14 | 90,215,920 | 98,215,920 | $14.61 | 12,427,950 | 8,576,000 | $14.53 |

*Source: ARB. Last updated November 2019. Allowances offered are sold in metric tons. Current Auction Settlement Price means the allowance price that resulted from the sale of allowances in the Current Auction per metric ton. Advance Auction Settlement Price means the same for future vintages allowances offered in the Advance Auction. All prices are shown in the table above are in US dollars.*

**Greenhouse Gas Reduction Fund (GGRF).** Cap-and-Trade auction proceeds are deposited into GGRF. GGRF revenue to date is as follows:

**GGRF Revenue to Date**

| Auction Quarter or Fiscal Year | Proceeds of Auction to GGRF |
|---|---|
| Q4 2019 (November) | $739,265,162.01 |
| Q3 2019 (August) | $729,162,758.22 |
| FY 2018-19 | $3,207,445,517.33 |
| FY 2017-18 | $2,913,174.716.32 |
| FY 2016-17 | $891,915,202.45 |
| FY 2015-16 | $1,829,134,502.71 |
| FY 2014-15 | $1,490,776,416.79 |
| FY 2013-14 | $477,140,441.20 |
| FY 2012-13 | $257,264,031.64 |
| **TOTAL** | **$12,535,278,748.67** |

*Source: ARB. Last updated December 2019.*

Proceeds from Cap-and-Trade auctions provide an opportunity for the state to invest in projects that help California achieve its climate goals and provide benefits to disadvantaged communities. Statutes require a state agency, prior to expending any money appropriated to it by the Legislature from GGRF, to prepare a description of: 1) Proposed expenditures; 2) How they will further the regulatory purposes of AB 32; 3) How they will achieve specified GHG emissions reductions; 4) How the agency considered other objectives of that act; and, 5) How the agency will document expenditure results.

***GGRF: Over 60 Percent of Annual Revenue to Certain Programs and Approximately 40 Percent Discretionary.*** Over the last several years, the Legislature has committed to ongoing or multiyear funding for a variety of programs, including:

- ***"Off-the-Top" Allocations to Backfill Certain Revenue Losses.*** AB 398 and subsequent legislation allocates GGRF to backfill state revenue losses from (1) expanding a manufacturing sales tax exemption and (2) suspending a fire prevention fee that was previously imposed on landowners in State Responsibility Areas (SRA fee). Under current law, both of these backfill allocations are subtracted—or taken off the top—from annual auction revenue before calculating the continuous appropriations discussed below. These allocations are roughly $100 million annually.

- ***Continuous Appropriations.*** Several programs are automatically allocated 60 percent of the remaining annual revenue. State law continuously appropriates annual revenue (minus the backfills taken off the top) as follows: (1) 25 percent for the state's high-speed rail project, (2) 20 percent for affordable housing and sustainable communities grants (with at least half of this amount for affordable housing), (3) 10 percent for intercity rail capital projects, and (4) 5 percent for low carbon transit operations.

- ***Safe Drinking Water Program.*** Last year, the budget included $100 million GGRF to the Safe and Affordable Drinking Water Fund as established by SB 200 (Monning), Chapter 120, Statues of 2019, which provides funding for local water systems to ensure an adequate and affordable supply of safe drinking water. Trailer bill language dedicated five percent of GGRF annual appropriation (with a cap of $130 million), which begins in 2020-21 and sunsets 2030, for safe drinking water and provides a General Fund backstop for the Safe Drinking Water Fund should the five percent of GGRF fall below $130 million beginning in 2023-24.

The remaining revenues — sometimes referred to as "discretionary"— are allocated through the annual budget process, and funds generally support activities intended to facilitate GHG reductions. Historically, some of these expenditures have been allocated on a one-time basis, while other programs have been allocated funding on a multiyear basis.

The following table shows the Cap-and-Trade discretionary spending plan that was approved in the 2019 Budget Act:

**2019-20 GGRF Discretionary Spending Plan**

| Investment Category | Program | Department | Amount *(in millions)* |
|---|---|---|---|
| Air Toxic and Criteria Air Pollutants | AB 617 - Community Air Protection | ARB | 245 |
| | AB 617 State and Local Implementation Costs | ARB | 20 |
| | Technical Assitance to Community Groups | ARB | 10 |
| Low Carbon Transportation | Clean Vehicle Rebate Project | ARB | 238 |
| | Clean Trucks, Buses & Off-Road Freight Equipment | ARB | 182 |
| | Enhanced Fleet Modernization Program, School Buses & Transportation Equity Projects | ARB | 65 |
| Healthy Forests | Healthy & Resilient Forests (SB 901) | CalFire | 165 |
| | Prescribed Fires & Fuel Reduction (SB 901) | CalFire | 35 |
| | Wildland-Urban Interface (WUI) and Other Fire Prevention Activities | CalFire | 10 |
| | Urban Forestry | CalFire | 10 |
| Climate Smart Agriculture | Agricultural Diesel Engine Replacement & Upgrades | ARB | 65 |
| | Healthy Soils | Food & Agriculture | 28 |
| | Methane Reduction | Food & Agriculture | 34 |
| Short-Lived Climate Pollutants | Waste Diversion/Recycling Infrastructure | CalRecycle | 25 |
| | HFC Refrigerants | ARB | 1 |
| Climate Mitigation & Resilience | Coastal Resilience/Adaptation | Various | 3 |
| | Transformative Climate Communities | Strategic Growth Council | 60 |
| | Urban Greening | Natural Resources Agency | 30 |
| | Energy Corps | Conservation Corps | 6 |
| | Low-Income Weatherization | Community Services and Development | 10 |
| Climate & Clean Energy Research and technical assistance to disadvantaged communities | Climate and Energy Research | Strategic Growth Council | 5 |
| | A study on the Transition to a Carbon-Neutral Economy Study and a study on identifying top strategies to reduce emissions from the transportation sector. | CalEPA | 3 |
| | Technical Assistance to Disadvantaged Communities | Strategic Growth Council | 2 |
| Workforce Training | Apprenticeships for a Green Economy | Workforce Development Board | 35 |
| Safe Drinking Water | Safe Drinking Water | State Water Resources Control Board | 100 |
| | | **TOTAL** | **$1,387** |

## GENERAL OBLIGATION BONDS

**Recent Natural Resources Related Bonds.** According to the LAO, since 2000, voters have approved about $31 billion in general obligation bonds in statewide elections to pay for different types of natural resources and environmental protection-related projects. Two most recent such bonds were (1) Proposition 1 in 2014, which provided $7.5 billion primarily for water supply infrastructure, water quality improvements, and habitat restoration activities; and (2) Proposition 68 in 2018, which provided $4.1 billion primarily for state and local parks and habitat conservation and restoration activities.

Almost 90 percent of Proposition 1 has been appropriated, with most of that committed to specific projects. Over half of Proposition 68 funds have been appropriated in the first two fiscal years since its passage.

**Natural Resources General Obligation Bonds Approved by Voters Since 2000**
*(Dollars in Millions)*

| Proposition | Date | Primary Purposes | Amount[a] |
|---|---|---|---|
| 12 | March 2000 | Parks and habitat protection | $2,100 |
| 13 | March 2000 | Water supply and flood protection | 1,884 |
| 40 | March 2002 | Habitat protection, water quality, and parks | 2,597 |
| 50 | November 2002 | Coastal protection, Delta, water supply and quality | 3,345 |
| 1E | November 2006 | Flood protection | 3,990 |
| 84 | November 2006 | Water quality, habitat protection, flood protection, and parks | 5,266 |
| 1 | November 2014 | Water supply, habitat protection, and water quality | 7,465 |
| 68 | June 2018 | Habitat protection, parks, and flood protection | 4,100 |
| **Total** | | | **$30,747** |

[a] Reflects amounts authorized by voters as adjusted by Proposition 1 and Proposition 68.

**State Indebtedness.** According to the LAO, the state has about $82 billion of General fund-supported bonds on which it is making annual principal and interest payments. In addition, the voters and the Legislature have approved about $42 billion of General Fund-supported bonds that have not yet been sold. Most of these bonds are expected to be sold in the coming years as additional projects need funding.

As of March 2019, the LAO estimated that the state is paying about $6 billion annually from the General Fund to repay bonds (including roughly $1 billion for natural resources-related debt service). Consequently, the state's debt service ratio – the portion of the state's annual General Fund revenues spent on bond debt – is under five percent.

As a general principle, the LAO states that general obligation bonds should be used for the construction and acquisition of capital improvements as well as associated planning costs. Directing bond funds to long-term capital improvements ensures that bond spending provides benefits over many years so that future taxpayers do not bear the cost of projects that do not benefit them.

**The Costs of Bond Financing.** After selling bonds, the state makes annual payments over the following few decades until the bonds are paid off. The state pays more for a project funded by bonds than if the state does not borrow money for the project because of the interest costs. The amount of additional cost depends primarily on the interest rate and the time period over which the bonds have to be repaid. In the past, the LAO has estimated that the cost of using bonds after adjusting for inflation is about $1.30 for each $1 borrowed.

**CALIFORIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (IBank)**

**IBank.** IBank was created in 1994 to finance public infrastructure and private development that promote a healthy climate for jobs, contribute to a strong economy and improve the quality of life in communities. IBank operates pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act and is located within the Governor's Office of Business and Economic Development. A five-member Board of Directors govern IBank. IBank has broad authority to issue tax-exempt and taxable revenue bonds, provide financing to public agencies, provide credit enhancements, acquire or lease facilities, and leverage state and federal funds. IBank programs include the following:

- ***Infrastructure State Revolving Fund (ISRF) Loans.*** IBank has financed more than $720 million in low-cost ISRF loans to state and local government entities for infrastructure and economic expansion projects since 1999.

- ***Bond Financings.*** IBank has issued more than $39 billion of tax-exempt and taxable conduit bonds for public agencies, nonprofits, manufacturing companies, and exempt facilities since 1995.

- ***ISRF Bonds.*** Since 2002, IBank has issued more than $480 million of ISRF bonds to provide the revenue source for direct, low-cost financing to public agencies for infrastructure and economic expansion projects.

- ***California Lending for Energy and Environmental Needs (CLEEN) Center Loans.*** IBank has financed nearly $7 million in direct loans under its CLEEN Center, which was established in 2014.

- ***Green Bonds.*** IBank has issued nearly $1.4 billion Green Bonds since 2016. The bond proceeds provide financial assistance to local agencies such as the State Water Resources Control Board Clean Water and Clean Drinking Water State Revolving Fund Programs.

- ***Safe Drinking Water State Revolving Fund (SDWSRF).*** IBank has provided nearly $89 million in short-term loans to the California Drinking Water Program since 2013. These financings are matching funds that allowed the SDWSRF to receive approximately $445 million in federal capitalization grants. The SDWSRF finances drinking water infrastructure improvements for communities.

- ***Small Business Loan Guarantee Program.*** IBank has supported more than 20,000 loans amounting to more than $3 billion for entrepreneurs through its various credit enhancement programs, with more than $1.8 billion in loan guarantees since the early 2000's.

- ***Jump Start Loan Program.*** IBank has made $295,000 in microloans to 33 low-wealth entrepreneurs in low-wealth communities and provided 965 hours of Technical Assistance to 324 small businesses in these communities.

IBank has financed more than $40.5 billion of infrastructure and economic development projects over the years.

## GOVERNOR'S PROPOSAL

The Governor proposes a $12.5 billion climate budget, which will be rolled out over five years, and includes GGRF, a proposed climate resilience bond, and a low-interest loan fund. The proposal is meant to be comprehensive and collaborative.

**Climate Budget**
(Dollars in Millions)

| Funding Mechanism | 2020-21 Total | 5 Year Total |
|---|---|---|
| Climate Resilience Bond | - | $4,750 |
| Cap and Trade Expenditure Plan | $965 | $4,825 |
| Climate Catalyst Fund | $250 | $1,000 |
| General Fund One-Time Investments | $169 | $169 |
| General Fund Ongoing Expenditures | $35 | $315 |
| Existing Bond and Special Fund Expenditures | $308 | $1,424 |
| **Total** | **$1,727** | **$12,483** |

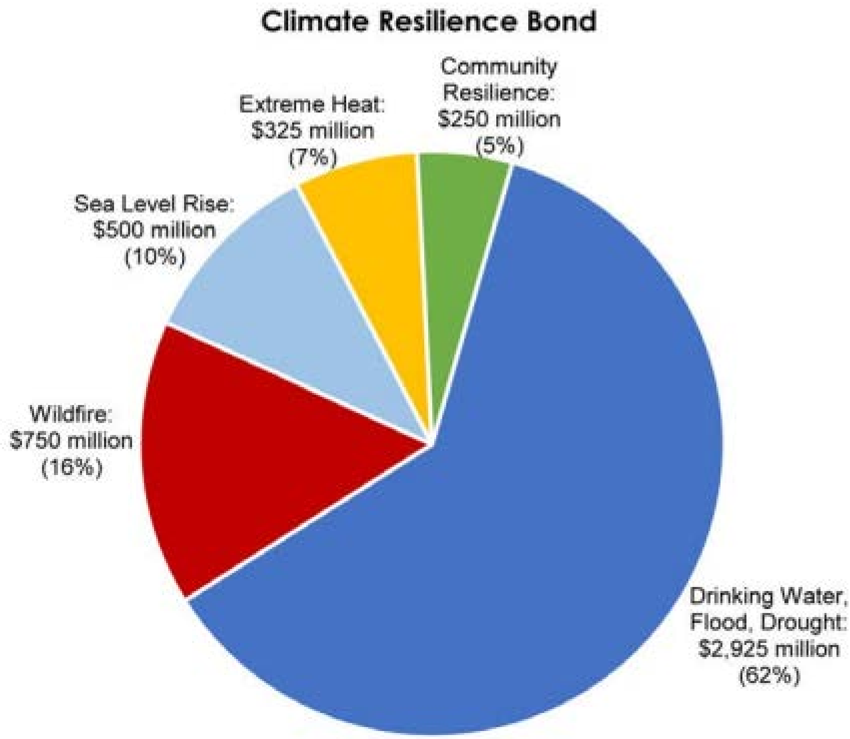
The Governor states that the climate budget is part of how the state would fund the California Green New Deal Act, introduced earlier this week by Assemblymember Bonta, which focuses on climate goals and issues of inequality.

**Cap-and-Trade Expenditure Plan.** The Governor proses a $965 million discretionary spending plan for GGRF.

**2020-21 Cap and Trade Expenditure Plan**
(Dollars in Millions)

| Investment Category | Department | Program | Amount |
|---|---|---|---|
| Air Toxic and Criteria Air Pollutants | Air Resources Board | AB 617 - Community Air Protection and Local Programs to Reduce Air Pollution | $200 |
| | | AB 617 - Local Air District Implementation | $25 |
| | | AB 617 - Technical Assistance to Community Groups | $10 |
| Low Carbon Transportation | Air Resources Board | Clean Vehicle Rebate Program | $125 |
| | | Clean Trucks, Buses and Off-Road Freight Equipment | $150 |
| | | Enhanced Fleet Modernization Program, School Buses and Transportation Equity Projects | $75 |
| | | Agricultural Diesel Engine Replacement and Upgrades | $50 |
| Healthy Forests | CAL FIRE | Healthy and Resilient Forests | $165 |
| | | Forest Carbon Plan: Prescribed Fire and Fuel Reduction | $35 |
| | | 2019 Fire Safety and Prevention Legislation | $8 |
| Climate Smart Agriculture | Department of Food and Agriculture | Healthy Soils | $18 |
| Short-Lived Climate Pollutants | CalRecycle | Waste Diversion | $15 |
| | Department of Food and Agriculture | Methane Reduction | $20 |
| Integrated Climate Action: Mitigation and Resilience | Coastal Commission and SF Bay Conservation and Development Commission | Coastal Resilience | $4 |
| | California Conservation Corps | Energy Corps | $7 |
| Research and Technical Assistance | Natural Resources Agency, California Energy Commission, Office of Planning and Research, and Strategic Growth Council | Climate Change Research, Technical Assistance, and Capacity Building | $25 |
| Workforce Training | Workforce Development Board | Apprenticeships and Job Creation/Just Transition Strategies for a Carbon Neutral Economy | $33 |
| | | **Total** | **$965** |

**Climate Resilience Bond.** The Governor proposes to put a $4.75 billion bond before voters in November 2020 to fund a variety of activities intended to help the state mitigate and prepare for the effects of climate change and reduce the risks from water, fire, extreme heat, and sea level rise. Once issued, the bond would generate annual debt service costs, which are included in the Governor's multiyear General Fund expenditures estimates.




The bond is intended to address risks especially in California's most vulnerable communities. About 80 percent of the bond addresses immediate risks, such as floods, drought, and wildfires. The remainder addresses long-term challenges, including sea level rise and extreme heat.

The following page provides a further breakdown of proposed allocations for the bond.

**Climate Resilience Bond**
(Dollars in Millions)

| Investment Category | Department | Program | Amount |
|---|---|---|---|
| Drinking Water, Flood, Drought | Department of Water Resources / State Water Resources Control Board | Regional and Inter-regional Water Resilience | $1,000 |
| | Department of Water Resources | Sustainable Groundwater Management | $395 |
| | State Water Resources Control Board | Safe Drinking Water | $360 |
| | Department of Water Resources | Flood - Urban/USACE Projects | $340 |
| | | Flood - Systemwide Multi-benefit | $270 |
| | Natural Resources Agency | Salton Sea | $220 |
| | California Department of Food and Agriculture | Environmental Farming Incentive Program | $200 |
| | Department of Fish and Wildlife | Enhanced Stream Flows and Fish Passage | $140 |
| | | Subtotal | $2,925 |
| Wildfire | Natural Resources Agency, CAL FIRE, and Office of Emergency Services | Hardening of Critical Community Infrastructure | $500 |
| | CAL FIRE | Forest Health | $250 |
| | | Subtotal | $750 |
| Sea Level Rise | Ocean Protection Council | Coastal Wetland Restoration | $320 |
| | | Nature-Based Solutions to Build Resilience | $130 |
| | | Demonstration Projects to Protect Critical Infrastructure | $50 |
| | | Subtotal | $500 |
| Extreme Heat | Natural Resources Agency | Urban Greening and Forestry | $200 |
| | Strategic Growth Council | Cool Surface Materials | $125 |
| | | Subtotal | $325 |
| Community Resilience | Strategic Growth Council | Community Resilience Planning | $25 |
| | | Community Resiliency Centers | $225 |
| | | Subtotal | $250 |
| | | **Total** | **$4,750** |

More than 60 percent of the bond focuses on reducing risk to water systems in communities, including funds for sustainable groundwater management, safe drinking water, flood control, the Salton Sea, farm incentives, and safe passage for fish in streams and rivers.

The bond allocates $500 million to harden infrastructure in high-fire-risk communities and $250 million for forest health projects, which is in addition to fuel reduction activities paid for by GGRF and the amount that utilities are required to contribute.

**Climate Catalyst Revolving Loan Fund.** The Governor proposes to establish a new loan program at the I-Bank. I-Bank provides financial assistance to local governmental entities by lending funds at below-market rates. The proposed Climate Catalyst Revolving Loan Fund will lend money to private organizations for projects determined to advance the state's environmental goals, along with other priorities – such as creating high-quality jobs. The climate-related projects will be selected based on criteria developed in consultation with the Strategic Growth Council and Labor and Workforce Development Agency. Eventually, the administration intends for the proposed lending program to be self-sustaining from fees and interest earnings.

The Governor proposes $1 billion General Fund ($250 million this budget year and $750 million in 2023-24). The fund will provide low-interest loans for climate-related projects that help the state meet its climate goals and create jobs. The projects will focus on reducing transportation emissions through ZEVs and infrastructure, climate smart agriculture, landowner loans for forest management, and recycling.

The Climate Catalyst Revolving Loan Fund will offer low-interest lending to small businesses and organizations that have green ideas but may not be established or connected enough to compete for venture capital funding. The funding of these projects could bring them far enough along for other investors to feel comfortable stepping in – help provide incentive for private money to flow into infrastructure and projects. The proposal could help bridge a gap in funding for climate innovations that have reached early levels of commercialization, but are not mature enough to attract venture capital. This fund could help fill the gap in enabling these projects to attract the kind of capital needed to get to scale and in a timeline that would actually benefit the fight against climate change, a bringing together of technology innovation and policy innovation.

Projects will be chosen on their ability to meet the state's environmental goals and the need to access low-cost borrowing. Applicants will also need to show how their projects will create high quality, good-paying jobs for the workers they hire.

## ISSUES TO CONSIDER

**The Climate Budget.** The Governor proposes a $12.5 billion climate budget, which will be rolled out over five years, and includes a $965 million Cap-and-Trade discretionary spending plan, a proposed $4.75 billion climate resilience bond, and a proposed $1 billion Climate Catalyst Revolving Loan Fund.

A significant amount of money is being proposed to address GHG emission reductions, mitigation, adaption, and other indirect issues. However, there does not seem to be a clear roadmap outlining the climate change-related problems and goals that this funding is intended to address, estimated costs, or how to measure progress in reaching those goals. Oversight of the funding, assessing whether the appropriations provide a strong and balanced portfolio to address short- and long-term climate-change issues, and transparency become much more difficult without such clarity. In other words, how do we know that we are doing the right things at the right amount?

**Cap-and-Trade Spending Plan.** The proposed Cap-and-Trade spending plan reduces or eliminates programs that have been funded previously through GGRF. For example, Transformative Climate Communities, which received $60 million GGRF last year, has no proposed funding in this proposal. In addition, the Low-Income Weatherization program, which received $10 million last year, has no GGRF funding proposed. CVRP GGRF funding was $238 million last year and is proposed to be funded at $125 million this year.

The Legislature may wish ask the Administration what criteria was used to select the proposed programs in the GGRF spending plan. The Legislature may wish to consider alternative sources of funding for programs that have historically been GGRF funded, but are not funded in the Governor's proposal.

**Climate Catalyst Fund.** The Governor's proposal to establish this new loan program requires IBank to consult with the Strategic Growth Council and the Labor and Workforce Development Agency. The Legislature may wish to consider the following questions:

- Do these entities have scientific/environmental expertise in climate change? Will ARB have any role in this proposed endeavor?
- What entity(-ies) will ensure and measure success of the program in reducing GHG emissions or efforts to adapt to climate change?
- How will the program be governed?
- What kind of oversight does the Administration intend to provide?
- What criteria will IBank use to select loan recipients?
- How will the fund set interest rates for loans?

In 2018, Governor Brown proposed to create the California Integrated Climate Investment Program, which would have appropriated $20 million GGRF for IBank to provide seed funding to accelerate private sector investments in California infrastructure projects that reduce GHG emissions and improve climate resilience. With the establishment of the program, the Administration proposed to convene an advisory group of leading experts to develop advanced funding pathways and a better pipeline of investable projects, creating new markets for California businesses. The program would have initially provided financing for innovative infrastructure projects that reduce GHG emissions and improve climate resilience through IBank's CLEEN Center. This proposal was not included as part of the 2018 Budget Act.

Governor Newsom proposes a similar program, but on a much larger scale – $1 billion General Fund ($250 million this budget year and $750 million in 2023-24) for a new Climate Catalyst Fund, which will provide low-interest loans for climate-related projects that help the state meet its climate goals and create jobs.

These two proposals by different administrations seem similar in nature but substantially different in proposed amount of funding. The Legislature may wish to consider what factors contribute to assessing the need to commit $1 billion for the Climate Catalyst Fund proposal when a similar proposal two years ago requested $20 million.

**Multiple Climate Resilience Bonds Proposed.** As noted above, the Governor proposes a $4.75 billion climate resilience bond. Currently being considered in the Legislature are two other climate resilience-related bonds: SB 45 (Allen, Portantino, and Stern) and AB 352 (E. Garcia). SB 45 would enact the Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Act of 2020, which authorizes the sale of $5.51 billion in general obligation bonds, upon approval by voters at the November 2020 statewide general election. AB 352 would enact the Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Act of 2020, which authorizes $3.92 billion in general obligation bonds, upon approval by voters at the November 2020 statewide general election. The Legislature may wish to consider how these three proposals that serve the same purposes may conflict or complement one another, and whether it would be prudent to advance a single bond measure.

# Wildfire Preparedness and Response

## BACKGROUND

### WILDFIRES

Wildfires are sweeping and destructive blazes that can occur in forestlands, grasslands, and brushlands. In California, wildfires have escalated significantly in severity over recent years, getting larger and more unpredictable. Fires today burn twice as many acres and for twice as long as they did in the 1990s. Experts believe that a combination of factors will result in serious fire seasons for the indefinite future. Among other factors, three primary reasons why California wildfires have become more catastrophic include: (1) the climate is becoming warmer; (2) more people are living in areas more prone to combustability; and (3) there is more fuel for the fires to burn. Over the past generation, the fire season has grown at the front end by approximately 30 days and extended at the back end by about another 30 days.

In addition, the continued expansion of human development into previously undeveloped land plays a significant role in the destructiveness and deaths involved in recent wildfire events. On average, 95 percent of fires in California are caused by some form of human activity, such as: vehicle sparks, lawn mowers, faulty residential electrical connections, power lines, target shooting, fireworks, cigarettes, debris burns, campfires, and power equipment. At the same time that human activity is the cause of most wildfires, more people are increasingly impacted by the damage from them as well.

**Wildland-Urban Interface (WUI).** WUI is the area where houses and wildland vegetation meet or intermingle, and where wildfire problems are most pronounced. WUI includes three main components: human presence, wildland vegetation, and a distance that represents the potential for effects (e.g., wildland fire and human activity) to extend beyond boundaries and impact neighboring lands.

When people build houses close to forests or other types of natural vegetation, it poses two problems related to wildfires. First, there will be more wildfires due to human ignitions. Second, wildfires that occur will pose a greater risk to lives and homes. They will be hard to fight, and letting natural fires burn becomes impossible[1]. An estimated 54 percent of California ecosystems are fire dependent, meaning that fire is essential to the health of most ecosystems. For example, some seeds need fire to germinate. In addition, fires can clear a forest of underbrush, leaving ash and opening the forest floor up to sunlight. The resulting grasses, herbs, and regenerated shrubs provide food for many wildlife species. In addition, where the ground has a deep accumulation of fallen branches and dry litter, fires can reduce this debris and supply nutrients to the soil.

One-third of United States (US) homes are now built in WUI areas, which are the fastest-growing land use type. California's WUI zone grew 20 percent from 1990 to 2010, according to US Forest Service data. The number of housing units in WUI, has gone from 3.3 million in 1990 to 4.4 million in 2010.

[1] Radeloff, V.C., D.P. Helmers, H.A. Kramer, M.H. Mockrin, P.M. Alexandre, A. Bar-Massada, V. Butsic, T.J. Hawbaker, S. Martinuzzi, A.D. Syphard, and S.I. Stewart. 2018. *Rapid growth of the U.S. Wildland Urban Interface raises wildfire risk.* Proceedings of the National Academy of Sciences, 115(13): 3314-3319.)

Demographic trends do not suggest slower future WUI growth. Furthermore, climate change projections indicate that conditions favorable for wildfire will occur more frequently in the future. Thus, increased wildfire ignition rates due to WUI expansion will initiate more wildfires in vegetation that is more susceptible to fire spread, leading to more widespread fires and possibly more severe fire behavior. Researchers note that this suggests that WUI growth and climate change together will compound the existing problems with wildfires in the WUI.

**Forestland.** There are 33 million acres of forest in California, including:

- 57 percent (19 million acres) owned and managed by federal agencies (including the US Forest Service, Bureau of Land Management, and National Park Service).

- 3 percent (700,000 acres) owned by state and local agencies, including CalFire, local open space, park and water districts and land trusts.

- 40 percent (13.3 million acres) privately owned, including individuals/families, Native American tribes, and companies.

**State's Forests Are in Poor Condition, Increasing Risk of Severe Wildfires.** According to the Legislative Analyst's Office (LAO), roughly one-third of California is forested, and these forests provide critical air, water, wildlife, climate, and recreational benefits. However, a combination of factors have resulted in poor conditions across these forests, including excessive vegetation density and an overabundance of small trees and brush. There are a few primary reasons for the vast amount of fuel load present in wildlands. First, the most recent drought weakened forests. The drought, in combination with the bark beetle infestation resulted in more than 129 million dead trees in the Sierra Nevada. In addition, the Little Hoover Commission states that a century-old policy of putting out all fires, known as fire suppression, has created overcrowded forests. According to a study,[2] fire suppression in many dry forest types has left a legacy of dense, homogenous forests. Such landscapes have high water demands and fuel loads, and when burned can result in catastrophically large fires. These conditions have contributed to more prevalent and severe wildfires and unprecedented tree mortality in recent years. Experts are concerned these trends will continue if steps are not taken to significantly improve the health of the state's forests.

**State Responsibility Area (SRA).** The SRA consists of 13.2 million acres of forestland – mostly privately owned – for which CalFire is responsible for preventing and suppressing wildfires. SRA does not include lands within city boundaries or under federal ownership.

**SRA: SRA Fire Prevention Fee.** AB 29 X1 (Blumenfield), Chapter 8, Statutes of 2011 First Extraordinary Session, established the SRA Fire Prevention Fee, which was later suspended as of 2017. The purpose of the fee is to help pay for fire prevention services within the SRA. The fee applied to all habitable structures within the SRA. Effective July 1, 2013, the fee was levied at the rate of $152.33 per habitable structure. The fee funded a variety of fire prevention services and programs in the SRA, including fuel reduction activities that lessen risk of wildfire to communities and evacuation routes. Other activities included helping communities create and update their Community Wildlife Protection Plans, defensible space inspections, fire prevention engineering, emergency evacuation planning, fire prevention education, fire hazard severity mapping, implementation of the State and local Fire Plans,

[2]"Managed Wildfire Effects on Forest Resilience and Water in the Sierra Nevada," (Ecosystems, 2017) by Gabrielle Boisramé (University of California, Berkeley), et al.,

and fire-related law enforcement activities such as arson investigation. The goal of the fee was, over time, to return fees (in the form of fire prevention activities) across the entire SRA where habitable structures exist.

From 2011-12 through 2016-17, the fee funded over $195 million of fire prevention programs and activities, which were prioritized based on the 2010 California Strategic Fire Plan. The last fiscal year the SRA fee was collected was in 2016-17. In 2017, Governor Brown signed AB 398 (E. Garcia, et al.), Chapter 135, Statutes of 2017, which suspended the fee until 2031. Instead, the revenue that would have been derived from the fee is now backfilled by the Greenhouse Gas Reduction Fund (GGRF).

**Major State Expenses Related to Wildfires.** Over the last few fiscal years, mitigation and suppression expenses have ranged between $2 billion to $3 billion with fire suppression making up the bulk of expenses.

**Major Wildfire Mitigation and Suppression Expenditures**

| **Category** | **2017-18** *(in thousands)* | **2018-19** *(in thousands)* | **2019-20** *(in thousands)* | **2020-21** *(in thousands)* |
|---|---|---|---|---|
| Mitigation | 311,105 | 360,904 | 439,333 | 518,538 |
| Fire Suppression | 1,826,403 | 2,610,453 | 2,217,399 | 2,295,301 |
| CalFire Capital Outlay | 23,313 | 106,322 | 87,153 | 164,922 |
| **TOTAL** | **2,160,821** | **3,077,679** | **2,743,885** | **2,978,761** |

*Source: LAO.*

The following table shows CalFire's budget from the past two years and the department's proposed budget for 2020-21.

**CalFire Total Budget**
*(In Millions)*

| Program | 2018-19 | 2019-20 | 2020-21 |
|---|---|---|---|
| **Fire Protection** | **$2,434** | **$2,136** | **$2,224** |
| Fire control, prevention, cooperative agreements, and camps | 1,665 | 1,860 | 1,942 |
| Emergency Fund | 769 | 276 | 282 |
| **Other Programs** | **$336** | **$369** | **$355** |
| Resources Management | 287 | 306 | 289 |
| Office of the State Fire Marshall | 41 | 51 | 55 |
| Department of Justice Legal Services | 5 | 7 | 7 |
| Board of Forestry and Fire Protection | 3 | 5 | 4 |
| **Totals** | **$2,770** | **$2,505** | **$2,579** |

*Source: LAO*

**CalFire: Wildfire Prevention Activities.** CalFire provides resource management and wildland fire protection services. CalFire operates 234 fire stations and also staffs local fire departments when funded by local governments. CalFire contracts with county agencies in six counties to provide wildland protection services.

CalFire's resource management and fire prevention programs include: forest and vegetation treatments, wildland pre-fire engineering, land use planning, education and law enforcement. The purposes of these activities are to reduce the number of fire starts, create more fire resistant and defendable communities, and reduce the overall intensity of wildfire. Typical projects include: forest thinning, vegetation clearance, prescribed fire, defensible space inspections, emergency evacuation planning, fire prevention education, fire hazard severity mapping, and fire-related law enforcement such as fire cause investigation and civil cost recovery for negligently started fires.

**CalFire Wildfire Prevention Activities**

| Fiscal Year | Prescribed Burns *(Acres)* | Defensible Space Inspections *(Number of Inspections Performed)* |
|---|---|---|
| 2019-20 *(July 1, 2019 to Nov. 30, 2019)* | 12,747 | 105,113 |
| 2018-19 | 31,305 | 204,341 |
| 2017-18 | 19,413 | 217,666 |

**CalFire and the Emergency Fund (E-Fund).** According to CalFire, the department's base budget, through its main budget item, pays for initial attack fires, which are fires that can generally be contained and controlled by the next morning. CalFire has a separate funding source, the E-Fund, to pay for extraordinary fire suppression costs when fires cannot be contained and controlled by the next morning. These fires are generally referred to as extended attack and major incidents, which are the fires that are given proper names such as the Thomas and Camp fires. The E-Fund pays for these types of fire suppression costs, which are unbudgeted costs, such as:

- Overtime for CalFire firefighters to work beyond their existing 72-hour shifts (base budget) to fight the fires;
- Overtime costs for the people who fill in and cover the required shift for the person at the incident;
- Hiring local government to help fight the fire;
- California Department of Corrections and Rehabilitation and California Conservation Corps costs for fire crews;
- Costs to create the Incident Base and for its operation; to feed all incident personnel; and,
- Contracted aircraft, dozer, water tender, and other fire suppression vendors.

According to CalFire, the E-Fund also pays for additional fire detection capability to retain minimum initial attack capability during extreme fire conditions, to minimize the greater costs caused by fires escaping initial attack (which is commonly referred to as pre-positioning, where CalFire strategically locates fire suppression assets in advance of predictive weather conditions). It may also be used on a reimbursable basis for assistance-by-hire (for fire emergencies), typically when the federal government agencies, such as the US Forest Service and/or Bureau of Land Management request for CalFire to fight fires on the land that is under their management and financial responsibility.

An initial E-Fund appropriation is included in the annual budget act. CalFire then submits to the Legislature and the Department of Finance (DOF) quarterly actual and projected full year expenditure information for review and approval. DOF may augment the budget for the projected full year expenditure amount, once the Legislature has approved the quarterly letter, no sooner than 30 days after it is submitted, unless an earlier approval is requested.

**Wildfire Incidents 2013-2019.** The following table is a summary of all wildfire incidents, including those managed by CalFire and other partner agencies over the past seven years.

**Number of Wildfires and Acres Burned**

| Year | Incidents | Acres | Fatalities | Structures Damaged or Destroyed |
|---|---|---|---|---|
| 2019 | 7,860 | 259,823 | 3 | 732 |
| 2018 | 7,639 | 1,963,101 | 100 | 24,226 |
| 2017 | 9,270 | 1,548,429 | 47 | 10,280 |
| 2016 | 6,954 | 669,534 | 6 | 1,274 |
| 2015 | 8,283 | 880,889 | 7 | 3,159 |
| 2014 | 7,233 | 625,540 | 2 | 471 |
| 2013 | 9,907 | 601,625 | 1 | 456 |

*Source: CalFire.*

As shown above, while there was a significant spike in the number of acres burned in 2017 and 2018, the acres burned in 2019 is notably lower than all of the previous six years.

The following chart includes key wildfire- and emergency-related augmentations provided in the 2019-20 Budget.

**Key Fire-Related Augmentations Provided in 2019-20 Budget**
*(Dollars in Millions)*

| Purpose | Amount | Fund Source |
|---|---|---|
| **Department of Forestry and Fire Protection (CalFire)** | **$492.5** | |
| Implement forest health and fire prevention grants and projects[a] | 165.0 | GGRF |
| Helicopter replacement (third year of funding) | 109.0 | General Fund |
| Initiate new capital outlay projects | 56.0 | General Fund |
| Purchase 13 additional year-round fire engines | 40.3 | General Fund |
| Establish prescribed burn crews[a] | 35.0 | GGRF |
| Implement the first year of a plan to accept seven used federal C-130 air tankers | 17.7 | General Fund |
| Additional staff to support wildfire operations | 15.1 | General Fund |
| Development of new fire response technology or equipment through new procurement approach | 15.0 | General Fund |
| Support five additional CCC crews dedicated to CalFire for fire response and prevention activities | 13.6 | General Fund |
| Support wildfire mitigation efforts, such as permit streamlining and technical assistance[a] | 11.0 | GGRF |
| Expand two employee wellness programs for CalFire employees | 6.6 | General Fund |
| Join and expand existing network of fire detection cameras | 5.2 | General Fund |
| Augment routine replacement of mobile equipment, such as bulldozers and fire engines | 3.0 | General Fund |
| **Office of Emergency Services (OES)** | **$111.2** | |
| Plan for and mitigate effects of public power shutoffs | 75.0 | General Fund |
| Funds for prepositioning mutual aid | 25.0 | General Fund |
| Aviation contract resources in Orange County | 4.5 | General Fund |
| Construct fire training center in San Jose | 3.0 | General Fund |
| Purchase of OES' fire apparatus maintenance shop | 2.2 | General Fund |
| San Francisco firefighting equipment purchases | 1.0 | General Fund |
| East Contra Costa fire equipment, vehicle, or facilities acquisitions or improvements | 0.5 | General Fund |
| **California Public Utilities Commission (CPUC)** | **$78.1** | |
| Hire consultants to help CPUC represent state interests in Pacific Gas and Electric bankruptcy | 28.0 | PUCURA |
| Contract with third parties to inspect utility infrastructure for compliance with safety requirements | 25.0 | PUCURA |
| Contract with third parties to develop plan for improving state regulation of utility wildfire safety | 13.0 | PUCURA |
| Review utilities' wildfire mitigation plans and other workload related to implementing 2018 legislation | 9.1 | PUCURA, PUCPAOA |
| Additional staff to oversee de-energization and identify opportunities to streamline regulatory process | 3.0 | PUCURA |
| **Local Government (Budget Item 9210)** | **$26.3** | |
| Funds for wildfire-impacted counties | 15.0 | General Fund |
| Assistance to communities affected by Camp fire | 10.0 | General Fund |
| Preparation of Paradise environmental documents | 0.8 | General Fund |
| Property tax backfill as a result of the 2018 wildfires | 0.5 | General Fund |
| **Other** | **$42.4** | |
| SMMC–Woolsey fire restoration and recovery | 15.0 | General Fund |
| Parks–Wildfire repair and recovery | 7.9 | General Fund |
| CCC–Establish four forestry corps crews[a] | 4.5 | General Fund |
| SWRCB–Implement a streamlined permit to address water quality along utility corridors subject to vegetation removal[a] | 4.4 | WDPF, General Fund |
| DFW–Address increased environmental review and permitting workload[a] | 3.5 | TRFRF, General Fund |
| CARB–Conduct prescribed burn smoke monitoring, forecasting, modeling, and reporting activities[a] | 3.4 | GGRF |
| DOF–Hire consultants to help administration implement Chapter 79 of 2019 (AB 1054, Holden) | 2.0 | General Fund |
| CMD–Administrative resources to support fire response | 1.7 | General Fund |
| Total | $750.5 | |

[a] Implements a package of wildfire-related legislation passed in 2018.
CCC = California Conservation Corps; SWRCB = State Water Resources Control Board; DFW = Department of Fish and Wildlife; CARB = California Air Resources Board; DOF = Department of Finance; CMD = California Military Department; PUCURA = Public Utilities Commission Utilities Reimbursement Account; PUCPAOA = Public Utilities Commission Public Advocates Office Account; GGRF = Greenhouse Gas Reduction Fund; TRFRF = Timber Regulation and Forest Restoration Fund; WDPF = Waste Discharge Permit Fund; SMMC = Santa Monica Mountains Conservancy; and Parks = Department of Parks and Recreation

*Source: LAO*

## GOVERNOR'S PROPOSAL

The Governor's budget proposal provides General Fund augmentations for various programs to improve the state's emergency preparedness and response. Major proposals include: (1) $120 million (growing to $150 million annually) for an increase of 677 positions and equipment replacements for CalFire; (2) $80 million on a one-time basis for the California Natural Resources Agency to collect data and create maps of the state using light detection and ranging analysis (commonly known as LiDAR); and (3) $50 million on a one-time basis to the Governor's Office of Emergency Services for community power resiliency to mitigate the impact of power outages, such as those related to disasters or preventing wildfires.

Among the various wildfire-related budget requests, the Governor proposes the following:

- **Fire Protection Enhancements.** $142.6 million ($135.1 million General Fund) and 555 positions, phased in over five years, including $93.4 million ($85.7 million General Fund) and 294 positions in 2020-21 for additional firefighting staff to provide CalFire operational flexibility throughout the fire year based on fire conditions, support necessary relief for firefighting personnel, and improve employee health and safety. The additional resources will be available to: (1) provide coverage behind personnel vacations, sick days, and major incidents, (2) provide an immediate resource pool to staff additional engines during late fall, winter, and early spring, should conditions require an increase to the existing 65 year-round engines, and (3) preposition firefighting personnel in high-risk areas of the state by adding a fourth firefighter during peak fire season, as fire conditions dictate, on a portion of CalFire engines.

- **Wildfire Mitigation Financial Assistance Pilot Program (AB 38)**. $9.2 million ($933,000 General Fund) in 2020-21, and $6.9 million ($805,000 General Fund) in each subsequent year through 2024-25, for CalFire to support implementation of the Wildfire Mitigation Financial Assistance Pilot Program and other requirements pursuant to AB 38 (Wood), Chapter 391, Statutes of 2019. These resources and complementary funding for Cal OES will support a home hardening pilot program, with a focus on homes located in low-income communities in areas of high fire risk. The Administration proposes to administer $100 million for this pilot program.

- **Wildfire Forecast and Threat Intelligence Integration Center (SB 209).** $8.7 million General Fund, $191,000 Public Utilities Commission Utilities Reimbursement Account (PUCURA) in 2020-21, $6.1 million General Fund and $190,000 PUCURA in 2021-22, and $6 million General Fund and $190,000 PUCURA ongoing to support 22 positions requested by OES, CalFire , the California Public Utilities Commission, and the California Military Department for the implementation and strategy development of the Wildfire Forecast and Threat Intelligence Integration Center.

- **Wildland Firefighting Research Grant.** $5 million General Fund one-time to provide a research grant to California State University, San Marcos to study enhanced firefighting equipment and strategies to protect firefighters from the conditions present during wildfires in the WUI.

The Governor also proposes augmentations to CalFire's budget as they relate to staffing levels, capital improvements (such as replacement of helitack facilities), and an anticipated workload increase for workers' compensation claims.

## ISSUES TO CONSIDER

**Factors Associated with Wildfire Increases.** Three primary reasons California wildfires have become more catastrophic include: (1) climate change; (2) more people living in areas more prone to combustability; and, (3) more fuel for fires to burn. The Legislature may wish to consider what steps the state should take in each of these categories to reduce the quantity and destruction of these wildfires, as well as how the state can influence or encourage actions at the local level for the same purpose.

For example, when considering the increase in residences in the WUI, a question arises as to what the state can do to influence local governments regarding where and how homes and communities are built in high fire risk areas.

Also, in terms of reducing fuel load, a question arises as to whether the state should reconsider the practice of only suppressing wildfires and whether there are instances or circumstances in which it may make more practical, ecological, and/or fiscal sense to manage a wildfire instead.

**CalFire Staffing Increase.** The 2019 Budget Act approved 228 positions including 131 positions to staff 13 new fire engines, heavy equipment operators, and five additional California Conservation Crews dedicated full-time to CalFire for fire response and prevention activities.

The Governor's budget proposal includes $142.6 million ($135.1 million General Fund) and 555 positions, phased in over five years, including $93.4 million ($85.7 million General Fund) and 294 positions in 2020-21 for additional firefighting staff. These positions are all firefighters generally speaking, but are Fire Captains and Fire Apparatus Engineers, which are higher level positions. Fire captains can drive the truck or run the hose or any other lower level activity. They provide flexibility, however that comes at a cost. Is there any need for more lower level firefighting positions, which are not included in this BCP?

Also, a question arises as to what is considered a *minimum* number of firefighters needed for the department, full-time and seasonal, as well as what an *optimal* level of staffing would be.

CalFire notes that when the firefighters are not suppressing fires, they are working on prevention measures. However, CalFire has also noted that fire season is now considered year-round as opposed to a shorter period of time. Do firefighters have sufficient time to spend on forest health/fire prevention work, considering that the fire season has greatly extended in recent years? Is there a need for more positions to focus on prevention activities?

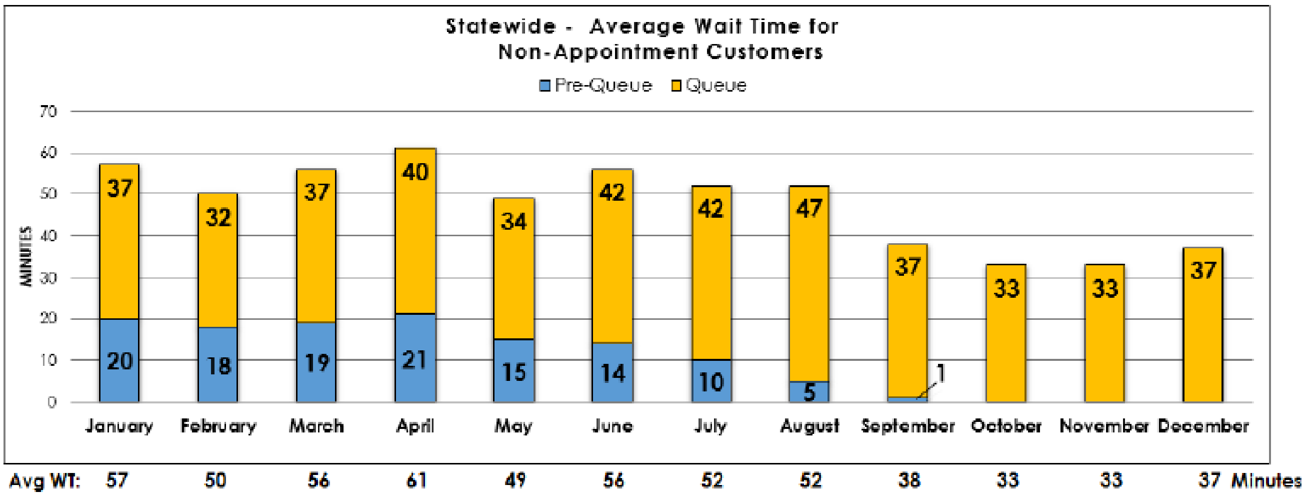
# Department of Motor Vehicles: REAL ID Preparations and Wait Times

## BACKGROUND

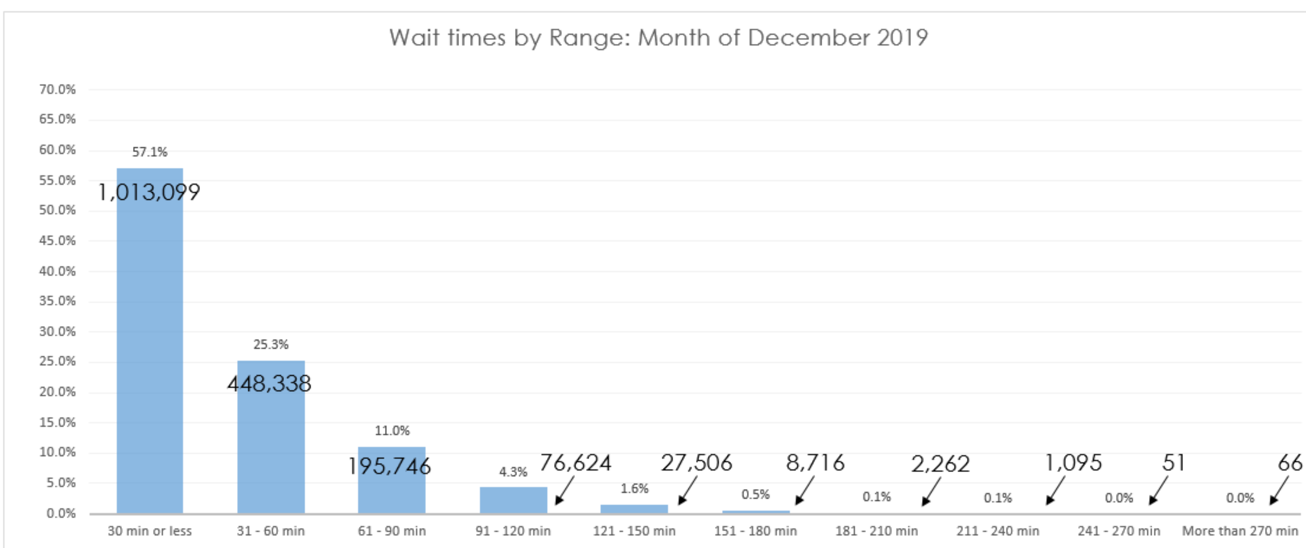
**REAL ID Act.** The federal government enacted the REAL ID Act in 2005, which requires state-issued driver licenses and identification (ID) cards to meet minimum identity verification and security standards in order for them to be accepted by the federal government for official purposes—such as accessing most federal facilities or boarding federally regulated commercial aircraft. In California, after October 1, 2020, only REAL ID compliant driver licenses or ID cards, and other federally acceptable forms of ID (such as a passport) can be used for these purposes. The federal Secretary of Homeland Security has deemed 48 states (including California) REAL ID complaint, while Oregon and Oklahoma have received an extension for compliance.

**Impact of REAL ID Implementation on DMV.** California began issuing REAL ID compliant driver licenses and ID cards in January 2018 and reports having issued about 7.2 million as of December 2019. Individuals seeking compliant driver licenses and ID cards must visit a field office and provide certain specified documents that DMV staff verify and scan. This has increased workload at DMV field offices, as these transactions take longer to process than noncompliant transactions. Individuals sometimes do not bring in the required documentation and therefore must make repeated trips to the DMV in order to successfully complete the process. Additionally, more individuals—such as those who would otherwise have renewed their licenses by mail or those whose licenses expire after the October 2020 federal deadline—are visiting field offices to obtain compliant driver licenses or ID cards.

**DMV Wait Times Increased Significantly Initially, Then Dropped.** Despite receiving additional funding to support the increased workload (as discussed later), DMV field offices began reporting a significant increase in wait times mid-2018. At its peak, some individuals visiting certain offices could experience wait times of several hours. Since then, and with the addition of resources and some process improvements, wait times have dropped. As shown in the figure below, average wait times for a non-appointment customer averaged 114 minutes in August 2018 and 37 minutes in December 2019. According to DMV, it has achieved these reduced wait times through various actions, including hiring temporary workers, extending field office hours, and expanding the number of self-service terminals available for individuals to conduct transactions outside of field offices or without the assistance of DMV staff.




However, the average wait time is not indicative of everyone's experience. At the 20 DMV field offices with the greatest wait times, the average wait time in August 2018 for a non-appointment customer was 177 minutes. In December 2019, the average wait time was 59 minutes, an increase of seven minutes from November. To better reflect the range of wait times customers may experience in a field office, the figure below shows the wait times by range in December 2019. This data shows that in December 2019, 12,190 individuals waited over 2.5 hours. By contrast, in August 2018, nearly 150,000 individuals waited over 2.5 hours.



## EVALUATIONS OF DMV OPERATIONS

The Department of Finance's Office of State Audits and Evaluations (OSAE) and the California Government Operations Agency's DMV Strike Team both completed reviews of DMV's operations.

**Department of Finance OSAE Performance Audit.** In September 2018, Governor Brown directed OSAE to conduct a performance audit of DMV's IT and customer service functions. The audit objectives were to 1) assess the efficiency and effectiveness of DMV's current operations and make recommendations to improve its practices and enhance the field office customer experience and 2) evaluate DMV's information technology (IT) system and its impact on the field office customer experience. Overall, the audit was very critical of DMV's management and operations and found that its operations were not always efficient and effective in delivering services and that DMV has operated with significant weaknesses in its underlying governance structure and organizational culture. The audit finds that "without strengthening the underlying foundation supporting its operations, DMV will continue facing challenges in efficiently and effectively delivering services to its customers." The audit identifies many opportunities for improvement. These findings are summarized below, and detailed in Appendix A of this audit report. DMV's corrective action plan to address the audit's findings and recommendations is due by the end of May 2019.

Findings related to operations and the field office customer experience include:

- *Significant deficiencies in planning and implementation of the REAL ID program negatively impacted the field office customer experience.* The field office customer experience was significantly impacted by the implementation of REAL ID, manifested mainly by long field office wait times in summer 2018. The approach for complying with REAL ID was inconsistent in the decade leading up to implementation, the REAL ID IT project was not recognized as a priority until 2017, and DMV missed opportunities to reevaluate policy impacting the frequency with which customers require its services.

- *Organizational and reporting structure is outdated and does not reflect current operational needs.* The outdated organizational and reporting structure is reflected in DMV's reliance on its decades-old field office grading for resource allocation, inconsistencies in regional office oversight of field offices, and ineffectiveness of the vertical and hierarchical communication structure.

- *Budgeting and staffing approach is not focused on maximizing field office capacity.* DMV has taken steps to increase its field office capacity; however, opportunities for increasing and analyzing capacity exist related to field office service windows, absenteeism, and requesting field office positions.

- *Appointment practices need improvement.* Significant weaknesses in DMV's appointment practices impact customers' ability to consistently reserve appointments in a timely manner. Specifically, the appointment system allows for variations in appointment availability among regions, the reservation of duplicate appointments, and inconsistent verification of appointment authenticity within field offices.

- *Monitoring of the field office customer experience needs improvement.* Although DMV takes a centralized approach to collect, analyze, and review direct customer feedback, other initiatives such as the Command Center created in 2018, and Lean Six Sigma Team created in 2016, were untimely implemented and could do more to support DMV's strategic goal to provide superior customer service. Further, DMV's Internal Audit Unit is underutilized with respect to monitoring the field office customer experience.

- *Enhancements to field office customer service were inconsistently implemented and additional opportunities for improvement exist.* Despite DMV implementing several operational enhancements in its field offices, these enhancements were inconsistently implemented and additional opportunities for improvement exist.

- *Field office employee development resources are inadequate.* DMV's current training, employee transaction manuals, policies, and procedures are not comprehensive, intuitive, or regularly updated, and do not adequately emphasize customer service.

Findings related to information technology's impact on the field office customer experience include:

- *Insufficient network system infrastructure and lack of monitoring processes contributed to field office outages, impacting customers' ability to obtain DMV services.* Significant components affecting network connectivity are in need of upgrading and DMV's practices for monitoring and resolving IT related issues are ineffective. This impacts field offices' ability to consistently provide timely and reliable service to customers.

- *Project prioritization, management, testing, and documentation practices need improvement*. Weaknesses exist in DMV's project prioritization, defect resolution, testing, and documentation processes.

- *Legacy computer programming languages contributes to succession planning risks.* Although DMV has taken steps towards sustaining its institutional knowledge related to legacy programming languages, DMV faces succession planning risks because of the knowledge and skills needed to maintain the legacy language, further exacerbated by the IT workforce approaching retirement age.

**Government Operations Agency's DMV Strike Team.** In January 2019, Governor Newsom tasked the Government Operations Agency Secretary to lead a DMV Strike Team to affect change and reinvention at the DMV. The team is working on a series of efforts to streamline and enhance services to customers and begin the transition to a user-centered culture. Below is a description of some of the areas that the Strike Team has identified as opportunities for improvement and a summary of early efforts.

- *Pilot "pop-up" DMV office.* Better prepare customers and prioritize those who must have a REAL ID. The Strike Team proposed piloting a "pop-up" DMV office in April 2019 where DMV served numerous employees at one site working with the employer to ensure their employees have the documentation that is needed.

- *Implement outreach campaign.* Increase public awareness through an outreach campaign that helps to ensure customers bring in the documentation they need, but also so that they do not unnecessarily visit the DMV for other transactions.

- *Facilitate documentation preparedness.* Allow customers to upload documents needed for REAL ID in advance of coming into a DMV office.

- *Streamline REAL ID processes using a contractor*. DMV began work to streamline REAL ID processes in early 2019, began implementing changes to the process statewide in June and July 2019.

- *Staffing.* Assess the staffing approach being used to handle the increase in customers.

- *Training.* Actions are needed to improve staff training.

- *Enhance the customer experience.* The Strike Team suggests expanding credit card use to field offices. It also suggests making changes to the DMV website so that it is easier for people to find the information they need and to conduct transactions.

- *Improve customer interactions.* Explore ways to improve the DMV call center and add on-line capabilities such as live chat.

- *Improve mailroom processes.* Examine mailroom processes to speed turnaround time and reduce errors.

- *Expand the use of kiosks.* Physically increase the number of kiosks available statewide to 200 by the end of the year and to possibly add more services to the kiosks.

- *Fill key vacancies.* The Administration appointed Steve Gordon as Director of the DMV in July 2019, and has worked to fill other key managerial vacancies.

## FUNDING FOR REAL ID WORKLOAD

To support the increased workload related to REAL ID, the Legislature has appropriated additional resources to DMV the last few years. The figure below shows the amounts provided to DMV in the last three fiscal years and what is proposed for 2020-21. The funding provided in the past for REAL ID implementation and proposed for 2020-21 is discussed in more detail below.

| Fiscal Year | Funding (millions) | Positions |
|---|---:|---:|
| **2016-17** | **$4.5** | **70** |
| **2017-18** | **$23.0** | **218** |
| 2018-19 Budget Act | $46.6 | 550 |
| 2018-19 (August 2018) | $16.6 | 230 |
| 2018-19 (January 2019) | $40.4 | 120 |
| 2018-19 (March 2019) | $6.0 | 300 |
| **Subtotal 2018-19** | **$109.6** | **1,200** |
| **2019-20 Budget Act** | **$242.2** | **2,052** |
| **2020-21 Budget Proposal** | **$200** | **1,992** |
| **Total** | **$579.3** | **N/A** |

**2016-17 and 2017-18 REAL ID Funding.** DMV received $4.5 million from the Motor Vehicle Account (MVA) to begin implementation of REAL ID in 2016-17. In 2017-18, $23 million was provided from the MVA to support 218 positions.

**2018 Budget Act Provided REAL ID Funding.** In the 2018 Budget Act, $46.6 million from the MVA was appropriated to support 550 positions. The 2018-19 budget included provisional language that authorized the Department of Finance to provide DMV with additional resources as needed no sooner than 30 days following notification to the Joint Legislative Budget Committee (JLBC).

**August 2018 Supplemental Funding Request.** An additional $16.6 million and 230 positions were requested and provided pursuant to this authorization in August 2018 in order to help DMV reduce the significant wait times in the field offices.

**January 2019 Supplemental Funding Request.** In January 2019, DOF submitted a subsequent notification to the JLBC that it intends to provide DMV with an additional $40.4 million to maintain existing wait times in the current year no earlier than April 30, 2019. This amount consists of (1) $17.5 million for additional expenditures in the first six months of the current year, and (2) $22.9 million for additional expenditures in the remaining portion of the year. DMV plans to use this funding to support an additional 120 positions, as well as to maintain all the activities enacted to date (such as the extension of field office operational hours).

**March 2019 Supplemental Funding Request.** In late March 2019, DMV submitted another funding request for $6 million that would fund the following.

- $4.5 million for an additional 300 temporary positions to begin in May 2019.
- $1 million for a training contract to provide one full day of training for all field office staff simultaneously, likely in June, to train staff in order to reduce transaction times, return visits, and as a result wait times.
- $250,000 to initiate an outreach campaign for REAL ID.

**2019-20 Budget Act.** The REAL ID funding provided in 2017-18 and 2018-19 was limited term and expired June 30, 2019. To continue the implementation of REAL ID, the 2019-20 budget provided $242.1 million in 2019-20 and $199.8 million in 2020-21. This was intended to address the REAL ID workload demands and respond to the OSAE audit and Strike Team review. The resources supported four primary categories of activities: 1) increased REAL ID workload, 2) customer service improvements, 3) operational improvements, and 4) IT improvements.

| Request Category | Amount |
|---|---|
| REAL ID & Transaction Volume | $196 million |
| Customer Service Improvements | $17.7 million |
| Operational Improvements | $29.5 million |
| IT Improvements | $17 million |
| Less Credit Card Fee Savings | ($18.2 million) |
| **Total Request** | **$242 million** |

**REAL ID and Transaction Workload**
The 2019-20 request includes a total of $196 million for increased REAL ID and other transaction workload that includes the following:

- $150 million for 1,900 temporary positions.
- $12.4 million for four drivers' license processing centers in Los Angeles, Stanton, San Jose, and Fontana and for the cost of providing extended hours and weekends at field offices.
- $9.8 million for expanded janitorial services.
- $9.5 million for an outreach campaign.
- $6 million for identity management application software for customers who use the online DL/ID card application.
- $6.8 million for DL/ID card contract for duplicates.

**Customer Service Improvements**
The 2019-20 request includes $17.7 million for the following efforts to improve customer service:

- $100,000 for DMV identifiable attire such as lanyards to address an OSAE finding.
- $2 million for a website redesign.
- $500,000 for a Chatbot user contract.
- $14.2 million for customer relationship management systems that include live chat services.

**Operational Improvements**
The 2019-20 includes $29.5 million for various operational improvements described below:

- $600,000 for a learning management system that will combine department-wide training management, records, and reporting.
- $1.4 million for 12 departmental training officers.
- $700,000 for two mobile command units to be used for emergencies or short-term office closures.
- $2.8 million for 30 positions to staff the mobile command units and to operate "pop ups" for outreach events.
- $6 million for 32 district manager positions that will be allocated to each of the eight regional offices throughout the state.
- $900,000 for 32 vehicles for district managers (one-time and $100,000 ongoing) to enable them to visit field offices in the region.
- $964,000 for eight district analyst-level positions.

- $1.6 million for software for online DL/ID replacement.
- $8.3 million (growing to $14.4 million in 2020-21 and ongoing) for 200 new self-service terminals.
- $2.6 million to replace 88 of DMV's fleet of 298 vehicles and $1.6 million ongoing for future replacements.
- $1 million for a consultant to develop an effective governance structure.
- $1 million for organizational change management services.
- $150,000 for appointment system modifications.
- $1 million ($4 million in 2020-21) for field office assessment and redesign.

**Information Technology Improvements**
The 2019-20 request includes $17 million for IT improvements as follows:

- $3.1 million for an IT refresh to replace IT equipment that has reached the end of its useful life on a five-year replacement schedule.
- $4.7 million for network redundancy as recommended by OSAE.
- $3 million for document authentication devices (one-time) that have reached their end of useful life.
- $6.2 million for 6,500 new personal computers (one-time and $900,000 ongoing).

**Less Credit Card Fee Savings**
The budget included funding for DMV to install the infrastructure necessary to accept credit card payments in field offices, and to pass along the associated credit card fees to customers. DMV previously paid for a customer's credit card fees. In 2019-20 this is estimated to save the Department roughly $18 million.

**Current Status and Recent Actions.** As of December 31, 2019, DMV produced and issued 7.2 million REAL ID driver license and identification cards. However, the Department projects that 16,062,170 REAL IDs will need to be processed by October 1, 2020, with another 2,342,265 REAL IDs needing to be processed after October 1, 2020 through December 31, 2020.

To hit their goal of issuing 16 million REAL IDs by October 2020, DMV projects that they will need to issue more than 800,000 per month over the course of FY 2019-20. To date, the Department has issued between roughly 350,000 and 470,000 per month. The Department has indicated that this under-performance is a result of both longer processing times and lower customer volume than anticipated. To address this, the Department has indicated that it is working to implement the recommendations of a number of process improvement pilot efforts statewide. They anticipate that this will reduce the processing time for a REAL ID application from 18 minutes to 10 minutes, allowing the Department to process more per day. Additionally, the Department has launched a public education and communication campaign to encourage customers to come to the field offices earlier, rather than waiting for the deadline to get their REAL ID. This is intended to drive up customer volume in the intervening months.

DMV has implemented a number of efforts funded in the 2019-20 budget. These include the following:

- The department installed repeaters and connectors that expand Wi-Fi capabilities in field offices, allowing employees with tablets to check customers into the queue system while in line. This has contributed to the elimination of pre-queue wait times.

- The Departmental Training Branch received 12 new training staff in the 2019-20 budget to ensure timely training. The 12 trainers have been selected and reported to the Departmental Training Branch prior to September.

- DMV contracted with McKinsey & Company for consultative services to improve the DMV customer experience, in particular as it relates to the implementation of REAL ID. Tools developed through these efforts include:

  - **Operation Excellence: DMV Training –** The DMV closed 183 DMV field offices, Commercial Drive Test Centers, and Industry Business Centers throughout the state for a one-day comprehensive training on REAL ID procedures and customer service. This training was held on July 24, 2019.

  - **Digital Field Office Guide –** DMV simplified more than 25 policy memos that frontline employees previously had to sort through into one simplified “source of truth” document to answer customer inquiries.

  - **REAL ID Microsite (www.realid.dmv.ca.gov) –** DMV created a single web resource for REAL ID that provides clear, streamlined information regarding how to get a REAL ID and a decision tree to determine if users need a REAL ID or can wait.

## ISSUES FOR CONSIDERATION

**Governor’s 2020-21 Budget Proposal**

The 2020-21 budget proposal includes $200 million from the Motor Vehicle Account for additional REAL ID workload. This is the second year of the two-year funding for additional staff and new processes provided in the 2019-20 budget.

The DMV is the primary point of contact between many Californians and the state government. Recent events have strained this relationship, and damaged the trust that exists between the state and the people who live here. Clearly, DMV must take action to address these issues.

**Wait Times Likely to Get Worse in the Near Future.** The DMV has processed about 7.2 million REAL ID driver’s licenses and ID cards. DMV estimates it will need to process roughly 9 million more cards by the October 2020 deadline —a monthly volume that is more than double the amount DMV is currently processing per month. As a result, it is very likely that, even with significant investments and changes at the DMV, wait times are likely to increase over the next few months.

**Workload Surge Likely Coming.** As noted above, DMV's rate of processing REAL IDs is lower than their workload projections require to hit their goal of 16 million REAL IDs by October 2020. This means that, in addition to falling behind their projected pace, a potential backlog of individuals who need a REAL ID by October 2020, but who have yet to get one, is building up. This suggests that there is a potential surge in REAL ID applications, above and beyond what DMV has projected, could materialize in the months leading up to the deadline. If DMV is not prepared for this surge, it could result in a return to long wait times and public discontent with the department.

DMV has identified this issue, but has yet to propose a plan for dealing with future surges in workload. Given the compressed timeline, the department should be taking steps now to prepare for this possible surge in workload. July 2020 is too late. The Legislature may want to discuss the actions the department is taking now to prepare for this deadline, and identify options for addressing a surge in applications should one materialize.

**DMV Could Explore Creative Solutions in the Short Term.** Federal law will require a compliant REAL ID to fly or enter government buildings come October 2020. Given the likely late surge in applications, it is possible that there would be many thousands of people who would apply for a REAL ID too close to the October 2020 deadline to receive their REAL ID. The Legislature may want to consider asking DMV to identify options for fast-tracking REAL ID applications for those who are eligible to receive them, and provide the necessary documentation, but are applying too close to the deadline to receive their ID in time.

While the October 2020 deadline is the most pressing concern, this issue is likely to persist past that date. It is easy to imagine an individual applying for a REAL ID immediately before a necessary flight, leaving them without the needed ID to board. DMV should consider what actions it can take to mitigate this issue.

**REAL ID Deadline Most Immediate, But Not Only Concern.** While meeting the requirements of the REAL ID Act have put an acute strain on the Department, it is not the only issue facing the department. The current REAL ID push has created an opportunity to reimagine DMV and reevaluate all of its business functions and operations to modernize its services and efficiencies. The challenge is to address the immediate challenge of REAL ID while creating a more responsive, efficient, and functional DMV organization.

The 2019-20 budget focused on REAL ID implementation, but also supported a multi-year approach to addressing some of the department's longer-term issues, such as information technology modernization, implementation of Motor Voter, and overall culture shift within the department. Successfully managing the implementation of REAL ID while building the foundation for longer-term reforms will require managerial capability as well as strong oversight from the Legislature. The Legislature should focus on meeting the requirements of the REAL ID act, but not at the expense of longer term reforms. Future budget deliberations should address this issue directly – particularly given the precarious nature of the Motor Vehicle Account's fund balance (given that the MVA is the primary fund supporting DMV's operations).

# SUBCOMMITTEE NO. 3

## HEALTH and HUMAN SERVICES

# Homelessness

## BACKGROUND

Homelessness in California is no longer confined to urban corridors. It pervades both urban and rural communities across the state and puts stress on local resources, from emergency rooms to mental health and social services programs to jails. Recent federal data estimates the state's homeless population at 151,278 in 2017, or 27 percent of the nation's homeless population.

**Continuums of Care and Point in Time Counts.** The number of people experiencing homelessness each year is determined by a point in time count (PIT) conducted on one night in January, by local community Continuums of Care (CoCs - local collaborative bodies led by a county or non-profit organization, and in a few cases a city). The PIT includes people experiencing homelessness who are "sheltered" –living in temporary shelters –and those who are "unsheltered," or living out in the open. The PIT is required by the U.S. Department of Housing and Urban Development (HUD) as a condition of receiving federal funding. The PIT has limitations: it is conducted on one night of the year, so it does not capture those people who cycle in and out of homelessness; it does not include people who are staying in a temporary situation; and, CoCs use different methodology to conduct their PIT, making it harder to compare data across the state.

The chart below summarizes the current California homeless PIT counts by sub-population:

| **Breakdown of Homeless PIT by Sub-Population (January 2019)** | |
|---|---|
| Total People Experiencing Homelessness | 151,278 |
| Unsheltered | 108,432 |
| Families with Children | 22,501 |
| Unaccompanied Youth | 11,993 |
| Chronic Individuals | 41,557 |
| Veterans | 10,980 |

**Homelessness Across Sub-Populations.** While certain populations, including veterans, families, and unaccompanied youth, often face higher rates of homelessness compared to the population at large, the conditions and circumstances of homelessness can vary for each of these groups, as can the services and supports that are most useful to them.

- Veterans - Veterans experiencing homelessness, according to HUD's January 2019 point-in-time count, accounted for 37,085 individuals experiencing homelessness nationwide on a single night in January 2019. Of those individuals, 29 percent (10,980 veterans) resided in California. According to the National Coalition for Homeless Veterans, the nation's veterans who experience homelessness are predominantly male (approximately 91 percent of the population), single, living in urban settings, and often suffering from mental illness, alcohol, and/or substance use disorders. While homelessness is caused by multiple, complex factors, veterans who have experienced post-traumatic stress disorder and/or substance use disorders have been found to be more at risk of experiencing homelessness, especially when those individuals lack a support network, or have difficulty obtaining employment in the civilian workforce. According to the

2019 PIT count, 70 percent of veterans experiencing homelessness in California were unsheltered.

- Families - Homelessness looks different when it affects families with children, often consisting of young, single mothers with young children. Families with children experience homelessness for a number of reasons, including an inability to afford housing or conflicts with other family members. Nationwide, 53,692 families with children were homeless during the 2019 PIT count. In California, 7,044 families were homeless during the 2019 PIT count. According to the 2019 PIT count, 22 percent of families with children experiencing homelessness in California were unsheltered.

- Survivors of Domestic Violence - For many, domestic violence can be an immediate cause of homelessness. Oftentimes the primary concern of an individual fleeing domestic violence is safety; as such, survivors of domestic violence frequently seek refuge in transitional housing programs or even emergency shelters. According to the 2019 PIT count, 44,752 survivors of domestic assault were homeless nationwide. 9,016 of these were in California. Depending on the nature of the domestic violence, survivors may be in need of short-or long-term rental assistance, as well as supportive services to address trauma.

- Seniors - Studies have shown that the number of seniors experiencing homelessness is also on the rise, with the number of sheltered elderly individuals experiencing homelessness increasing by 48.2 percent between 2007 and 2016. Though Social Security, Medicare, and Medicaid provide supports and services to seniors, not all seniors are able to access social safety net programs for which they may be eligible. Seniors often live on fixed incomes; faced with rising costs of housing and medical care, many seniors are forced onto the streets. And while shelters exist to serve individuals experiencing homelessness, facilities are often not equipped to provide the specialized care that seniors in need of medical care often require. Due to increased vulnerability as a result of their age and accompanying medical conditions, seniors experiencing homelessness are often susceptible to victimization.

- Unaccompanied Youth - A youth experiencing homelessness is defined as a minor younger than 18 or a young adult between 18 and 24 years old who is living independently without shelter. According to the 2019 PIT count, there were 35,038 homeless unaccompanied youth nationwide, with 11,993 in California. Homelessness among youth differs from homelessness among adults and families with children, and can often include sleeping on the streets, living in cars, living in shelters, or couch surfing, which refers to the practice of moving between temporary living arrangements, often a friend or family member's couch, without a secure place to live. One in 30 adolescent minors between ages 13 and 17 experiences homelessness in a year, and roughly 25 percent of this involves couch surfing only. Due to increased susceptibility to exploitation and violence, youth experiencing homelessness may develop substance use issues or engage in survival sex in order to find shelter or food.

- Students - Additionally, students, particularly those working towards obtaining higher education, face similar issues of housing insecurity. According to a 2018 study, 10.9 percent of California State University students reported experiencing homelessness one or more times over the course of the preceding 12 months. Of those students surveyed, 18 percent of those who had experienced homelessness identified as Black/African-American and first-generation college attendees. Reports also indicate that 45 percent of students throughout the nation reported housing insecurity.

- LGBTQ Youth - Recent studies have also demonstrated that youth who identify as lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ) are 120 percent more likely to experience homelessness than non-LGBTQ youth, and data show that up to 40 percent of the population of youth experiencing homelessness identifies as LGBTQ. While familial conflict has been reported as the most common cause of all youth homelessness, LGBTQ youth cite familial rejection of their gender identity as a primary cause of homelessness. As a result, services and supports for LGBTQ youth tend to focus on housing and identity-related supports to address the trauma of familial rejection and homelessness.

- Urban vs Rural Homelessness - Perceptions of homelessness often involve individuals living on the streets, beneath freeway overpasses, or in temporary or emergency shelters. However, the conditions and characteristics of homelessness not only vary across subpopulations, they also vary geographically, particularly when contrasting urban settings to rural ones. Individuals and families in rural areas often do not experience homelessness in the same way that their counterparts located in urban and suburban areas do. Rather than living on the streets or in shelters, rural homelessness can frequently take the form of individuals or families moving between substandard, overcrowded, and/or cost-burdened housing situations, or moving in with friends or relatives. This may primarily be due to the presence of familial networks, and a lack of service providers and supports, such as a shortage of affordable housing, inadequate mental health and substance abuse services, and a lack of support for victims of domestic violence.

**Impacts of Homelessness.** Homelessness has been correlated with a number of negative effects, including high rates of chronic disease and acute illnesses, a broad range of mental health and substance use issues, greater exposure to violence, malnutrition, extreme weather, and criminal charges. The conditions of homelessness can themselves make it more difficult to exit homelessness by creating barriers to the resources often necessary to obtaining income through training, education, and employment (barriers can include limited access to transportation, computers and printers, work-appropriate clothing, facilities for showering or bathing, and the like). Lack of recent and consistent rental or other housing history can make it more difficult to obtain housing. Additionally, a number of local jurisdictions have adopted laws that create crimes related to homelessness. These laws –including bans on camping in public, panhandling in public, loitering, sitting or lying down in certain public locations, and sleeping in cars–can make individuals experiencing homelessness more vulnerable to arrest, and therefore more susceptible to fines, jail time, and possession of a criminal record. Some of the sub-populations discussed above can be at particular risk of certain negative impacts of homelessness. For example, youth experiencing homelessness have been found to be at greater risk of commercial sexual exploitation and other forms of victimization, with LGBTQ youth facing higher rates of these instances than their heterosexual and cisgender counterparts.

**Approaches to Addressing Homelessness.** Efforts to address homelessness can be broadly sorted into a handful of categories. These include:

- Housing First - Housing First is an approach to homelessness that prioritizes moving people quickly into permanent, affordable housing without precondition and then providing supportive services in order to help people avoid returning to homelessness. Housing First is premised on the idea that housing should not be denied to anyone, even if they are abusing alcohol or other substances. Supportive services are offered to maximize housing stability and prevent returns to homelessness, as opposed to addressing predetermined treatment goals prior to providing housing. Housing First has been shown to reduce the overall local costs incurred when localities provide social services to people where they are, rather than allowing them to continue to cycle through emergency rooms, jails, and treatment centers. The federal government has moved to a Housing First model over the last decade that prioritizes permanent supportive housing. Chronic homelessness in the nation decreased by 27 percent between 2010 and 2016 as the federal government adopted the Housing First model. California embraced a Housing First model in 2015. SB 1380 (Mitchell), Chapter 847, Statutes of 2016, created the Homeless Coordinating and Financing Council to coordinate the state's response to homelessness and required all state agencies or departments that operate programs that provide housing or housing-related services to people experiencing homelessness or at risk of homelessness to adopt guidelines and regulations to include Housing First policies.

- Emergency shelters, crisis services and navigation centers - Emergency shelters and crisis services help people meet immediate survival needs by providing food, shelter, clothing, and hygiene services while connecting them to stable housing. In recent years, some local jurisdictions have opened navigation centers as a response to homelessness. In San Francisco, the navigation centers are designed to shelter residents experiencing long-term homelessness and differ from a traditional shelter in that they have few barriers to entry and intensive case management services.

- Rapid re-housing - Rapid re-housing is a housing model designed to provide temporary housing assistance to people experiencing homelessness by moving them quickly out of homelessness and into permanent housing. Rapid re-housing is provided through short-term intervention to pay housing expenses (including rental arrears, ongoing rent, and moving costs) and case management focused on housing stability. Rapid re-housing is a relatively new response to homelessness that became more prominent during the Great Recession. A study conducted by the Urban Institute found that rapid re-housing is a successful intervention for families. It has low barriers to entry, high placement rates, and low rates of return to shelter. However, rapid re-housing does not solve long-term housing affordability problems. After families exit rapid re-housing, many experience high rates of residential instability. Many move again or double up within a year and face challenges paying for rent and household necessities.

- Permanent supportive housing - Decades of research show that supportive housing with a Housing First requirement –a stable, affordable place to live with no limit on that stay, along with services that promote housing stability–ends homelessness among people who experience chronic homelessness. Supportive housing can lower public health costs and improve property values, and decreases recidivism in our local jails and state prisons. For these reasons, the state has invested millions of dollars in leveraging federal and local dollars to create more supportive housing.

- Capacity building - Capacity building at the local level is an important activity that helps to coordinate and improve the local response to homelessness. State funding can be used to improve local coordinated entry systems, develop plans to address homelessness, and collect and analyze data.

**Key Federal Programs.** Federal programs for those experiencing or at risk of homelessness generally are designed to provide housing assistance and other services such as health care, job training, or substance abuse treatment. The Departments of Health and Human Services (HHS), HUD, and Veterans

Affairs (VA) are responsible for the majority of programs. HUD is the primary agency providing funding for housing, such as emergency shelters, permanent housing, and transitional housing. In addition, HUD collects data on homelessness in part to assist with service planning on the federal level. The Homeless Management Information System (HMIS) is a computerized data collection tool specifically designed to capture client-level, system-wide information over time on the characteristics and services needs of men, women and children experiencing homelessness. HMIS allows the aggregation of individual-level data across homeless service agencies to generate unduplicated counts and service patterns of individuals served. CoCs are required to have an HMIS system with the capacity to collect unduplicated counts of individuals and families experiencing homelessness.

The U.S. Interagency Council on Homelessness is required to coordinate the federal response to homelessness and has taken several steps to coordinate efforts and promote initiatives across federal agencies, including developing a strategic plan and criteria and benchmarks for ending homelessness, including veteran homelessness and chronic homelessness.

**State Level Efforts to Address Homelessness.** A number of efforts aimed at preventing and addressing homelessness are already underway in California. These efforts vary widely, with differing characteristics related to their administering department/agency; eligibility requirements; populations served; focus on prevention, amelioration, and/or long-term supports and services; types of supports and services offered; and others. These include:

- **Whole Person Care Pilots.** The Whole Person Care (WPC) Pilots, administered by the Department of Health Care Services (DHCS), coordinate health, behavioral health, and social services in a patient-centered manner with the goals of improved beneficiary health and well-being through more efficient and effective use of resources. WPC Pilots allow individual public entities or a consortium of public entities to integrate care for a particularly vulnerable group of Medi-Cal beneficiaries who have been identified as high users of multiple systems and continue to have poor health outcomes. WPC Pilot entities identify target populations, share data between systems, coordinate care in real time, and evaluate individual and population progress. WPC Pilots provide eight categories of services including: 1) outreach to identify prospective enrollees and assess their eligibility in the field or in clinical and other settings; 2) coordination of medical, behavioral health, and social services to improve health and reduce unnecessary utilization; 3) financial and other assistance in accessing and obtaining sustainable housing solutions to maintain and/or achieve healthy, stable living situations; 4) peer support staff with lived experience similar to the target populations; 5) assistance with applying for, obtaining, and/or appealing for public benefits; 6) employment assistance including training on resume building, interview skills, and/or other supports necessary in order to obtain a job; 7) sobering center services providing a safe environment for intoxicated individuals to receive detoxification services; and 8) post-acute medical respite services for enrollees discharged from the hospital and other inpatient settings, which allow enrollees to recuperate in a safe environment until they have the resources to care for themselves.

- **Homeless Emergency Aid Program (HEAP)**. HEAP provided block grants directly to federally-designated Continuums of Care (CoCs) and large cities with populations over 330,000, so they may provide immediate emergency assistance to people experiencing homelessness or those at imminent risk of homelessness. The parameters of the program are intentionally broad to allow local communities to be creative and to craft programs that meet the specific needs they have identified. Eligible uses included, but were not limited to, the following:

  - Homelessness prevention activities.
  - Criminal justice diversion programs for homeless individuals with mental health needs.
  - Establishing or expanding services meeting the needs of homeless youth or youth at risk of homelessness.
  - Emergency aid.

- **Homeless Housing Assistance and Prevention Program (HHAPP).** HHAPP built on HEAP and provided funds to help local jurisdictions to combat homelessness. The program funded activities that prevent homelessness, provide support to homeless individuals, and help move homeless individuals to permanent housing, and required applicants for funds to demonstrate efforts at regional coordination in their application, and to demonstrate how the requested funds would close existing gaps in addressing homelessness.

The California Department of Social Services currently oversees five different housing programs designed to assist recipients of its other programs (such as CalWORKs and Adult Protective Services) that are homeless or are at risk of becoming homeless. All programs following a Housing First model.

- **CalWORKs Housing Support Program (HSP).** The CalWORKs HSP assists homeless CalWORKs families in obtaining permanent housing. The program defines "homeless" as lacking a permanent and regular nighttime residence and either living in a shelter or place not meant for human habitation or in receipt of a judgment for eviction as ordered by the court.

  - HSP follows a Housing First model and uses evidence-based housing interventions. Counties are also required to collaborate with local homelessness Continuums of Care (CoC). Counties have flexibility within these parameters to design their program, based on the needs of their community and individual clients. The program's design helps families quickly secure permanent housing, without preconditions, to help achieve self-sufficiency and increase overall child well-being. Listed below are HSP services.

<u>Financial Assistance</u>

- Rental assistance
- Security deposits
- Utility payments
- Moving costs
- Hotel and motel vouchers

<u>Housing Stabilization and Relocation</u>

- Landlord recruitment
- Case management
- Housing outreach and navigation
- Legal services
- Credit repair

Since the establishment of the program in 2014, it has permanently housed 14,500 families. CDSS allocated program funds competitively based on need, the degree to which counties meet performance benchmarks, and the ability of counties to innovate via continuous quality improvement efforts. In fiscal year 2014-15, CDSS distributed $20 million to 20 counties. In

2018-29, $71.2 million was distributed across 52 participating counties. The 2019-20 Budget Act appropriated $95.3 million for the program.

- **CalWORKs Homeless Assistance (HA) Program.** The HA program was established to help CalWORKs families meet the reasonable costs of securing housing. HA offers both temporary and permanent homeless assistance payments to eligible CalWORKs families once every 12 months, with exceptions. Eligible families are either lacking a fixed or regular nighttime residence, residing in a shelter or place not designed as regular sleeping accommodation, or have received a "pay rent or quit" notice. Families must also have less than $100 in resources.

  Temporary assistance provides $85 a day for a family of up to four members, with each additional family member receiving an additional $15 a day, up to a daily maximum of $145. Permanent assistance provides security deposit costs, including last month's rent, or helps families maintain housing by providing up to two months of outstanding rent payments. In 2017-18, the program served 63,890 families. 2019-20 expenditures for the program totaled $28.7 million.

- **Bringing Families Home (BFH) Program.** The state established the BFH program to reduce the number of families in the child welfare system experiencing or at risk of experiencing homelessness, increase family reunification, and prevent foster care placement. Participating counties provide housing and case management services. The type of housing intervention provided is determined by the family's level of need.

  To be eligible, families must be homeless or have housing instability and have an open family maintenance or family reunification case with Child Welfare Services. Amongst those who are eligible, funded programs should first prioritize child welfare-involved families who are homeless followed by those who will imminently lose their housing. From July 2017 to November 2018, 1,111 families were approved; 642 families were provided temporary housing; 440 families were permanently housed.

  The 2016-17 Budget Act included $10 million General Fund (one-time) for BFH. The program requires a dollar-for-dollar county match, bringing the total program budget to $20 million. The funds were available for three years from July 2016 through June 2019 to 12 participating counties. The 2019-20 Budget Act provided an additional $25 million General Fund (one-time) for the program to be used for three years, ending on June 30, 2022.

- **Housing and Disability Advocacy Program (HDAP).** The HDAP program assists homeless, disabled individuals in applying for disability benefit programs, while also providing housing supports. Counties administer the program and are required to offer outreach, case management, disability advocacy, and housing assistance. Individuals who are disabled or likely disabled and who are experiencing homelessness are eligible, giving the highest priority to those who are chronically homeless and rely most heavily on state and county-funded services. There are currently 39 counties receiving HDAP funding.

  Between January and November 2018, 1,153 participants engaged in HDAP services. The 2017-18 Budget Act appropriated $45 million General Fund (one-time) for the program. The program requires a dollar-for-dollar county match bringing the total program budget to $90 million over three years, from July 1, 2017, through June 30, 2020. Beginning in 2019-20, the state budget funds the program at $25 million on an ongoing basis.

- **Home Safe Program.** The Home Safe Program supports the safety and housing stability of individuals involved in Adult Protective Services (APS) by providing housing-related assistance. Home Safe assists APS clients who are experiencing, or at imminent risk of experiencing, homelessness due to elder or dependent adult abuse, neglect, self-neglect, or financial exploitation. A range of services, including short-term financial assistance, legal services, eviction prevention, and landlord mediation, are available to eligible individuals.

  The 2018-19 Budget Act included $15 million General Fund (one-time) for the program. The program requires a dollar-for-dollar county match, bringing the total to $30 million over three years, ending June 30, 2021. CDSS allocated funds to twenty-four counties on a competitive basis. A portion of the available funds is required to be used for program evaluation.

**Recent Investments**

The Legislature has made several investments in addressing the state's affordable housing and homelessness crisis over the last several years.

**2018-19 Investments.** SB 2 (Atkins), Chapter 364, Statutes of 2017, provided an ongoing source of revenue for affordable housing and homelessness programs, providing an estimated $289 million per year for a variety of programs. The 2018 budget included roughly $250 million in funds from SB 2. The 2018 budget included $500 million in one-time General Fund resources for the Homeless Emergency Aid Program, which provides funds to address homelessness directly to the state's 11-largest cities and 43 Federally-designated CoCs. In 2018, voters also approved a $4 billion bond issuance for affordable housing and homelessness issues. Additionally, 20 percent of state cap-and-trade revenues are continuously appropriated to the Affordable Housing and Sustainable Communities program. These investments are summarized below.

This package included $500 million for the Homeless Emergency Aid Program (HEAP), which provided block grants directly to federally-designated CoCs and large cities with populations over 330,000, so they may provide immediate emergency assistance to people experiencing homelessness or those at imminent risk of homelessness.

$62.5 million in SB 2 funding was provided to the Housing for a Healthy California program (HHC), which creates supportive housing for individuals who are recipients of, or eligible for, health care provided through the California Department of Health Care Services' Medi-Cal program. The goal of the HHC program is to reduce the financial burden on local and state resources due to the overutilization of emergency departments, inpatient care, nursing home stays, and use of the corrections systems and law enforcement resources as the point of health care provision for people who are chronically homeless or homeless and high-cost health care users. An additional $62.5 million in SB 2 funds were provided for the California Emergency Solutions and Housing program (CESH), which funds five primary activities: housing relocation and stabilization services (including rental assistance), operating subsidies for permanent housing, flexible housing subsidy funds, operating support for emergency housing interventions, and systems support for homelessness housing delivery systems.

The 2018 Budget Act also included General Fund expenditure authority of $50 million for the Department of Health Care Services (DHCS) to provide counties with targeted funding for multi-disciplinary teams to support intensive outreach, treatment, and related services for homeless persons with mental illness. These interventions were intended to result in earlier identification of mental health needs, prevention of criminal justice involvement, and improved coordination of care for this population at the local level.

**2019-20 Investments.** The 2019-20 budget included significant new investments in both combating homelessness and spurring the development of affordable housing. This included:

- $250 million in one-time funds for planning grants to help local jurisdictions with the 6th cycle of the Regional Housing Needs Assessment. This funding is split 50/50 between regional bodies and local governments.

- $500 million in one-time funds for housing-related infrastructure, provided through the Infill Infrastructure Grant Program at the Department of Housing and Community Development. Funding is divided as follows:

  - $410 million in competitive funding available to all jurisdictions.
  - $90 million available over-the-counter to small jurisdictions.

- $640 million in one-time funds for the Homeless Housing Assistance and Prevention Program to help local jurisdictions combat homelessness. Funding is divided as follows:

  - $275 million for cities with populations larger than 300,000.
  - $175 million for counties.
  - $190 million to CoCs.

- $500 million in one-time funds for loan programs through the California Housing Finance Agency (CalHFA) to support low, moderate, and mixed-income developments.

- $500 million in one-time funds to expand the state's Low-Income Housing Tax Credit program.

- $100 million, available until June 30, 2025, for Whole Person Care pilots to provide funding for supportive housing services for individuals who are homeless or are at risk of becoming homeless, with a focus on individuals with mental illness.

- $14.7 million in 2019-20, and $27.6 million ongoing for the CalWORKs HA program to eliminate the requirement that allowable days of assistance be used consecutively within a 12-month period.

- $25 million in one-time funds for the BFH program, and another $25 million for the HDAP.

## GOVERNOR'S PROPOSAL

The budget includes a broad and far reaching homelessness package. This package includes:

- **California Access to Housing and Services Fund**. The budget provides $750 million one-time General Fund to establish a new fund (administered by the Department of Social Services), with the goal of reducing street-based homelessness and increasing the number of stable housing units. The fund will be used to develop new housing, provide housing vouchers, and to stabilize board and care facilities. The fund will be administered via contracts between the department and regional administrators. The Administration is asking for early action to establish this fund and begin the work of developing the required contracting and administrative mechanisms.

- **Medi-Cal Healthier California for All.** The budget includes $582.5 million ($291.3 million General Fund and $291.3 million federal funds) in 2020-21 and $1.2 billion ($582.5 million General Fund and $582.5 million federal funds) in 2021-22 and 2022-23 to expand capacity for enhanced care management and in-lieu-of services (ILOS) delivered by Medi-Cal managed care plans under the Administration's Medi-Cal Healthier California for All proposal. Of these funds, $225 million ($112.5 million General Fund and $112.5 million federal funds) are for the implementation of the new, statewide mandatory enhanced care management benefit beginning January 1, 2021. $357.5 million ($178.8 million General Fund and $178.8 million federal funds) are for sustaining and transitioning existing in-lieu-of services currently offered under Whole Person Care or the Health Homes Program, as well as expanding capacity and infrastructure for ILOS in counties in which they currently do not exist. ILOS are benefits that may be offered by a Medi-Cal managed care plan and include: housing transition navigation services, housing deposits, housing tenancy and sustaining services, short-term post-hospitalization housing, respite, recuperative care, day habilitation programs, Skilled Nursing Facility (SNF) transition/diversion to assisted living facilities, SNF transition to a home, environmental accessibility adaptations (home modifications), medically-tailored meals, supplemental personal care services, and sobering centers.

  According to DHCS, these investments would be structured as incentive payments to Medi-Cal managed care plans and are allowable under federal regulations to be provided in addition to the actuarially sound capitation payment plans would otherwise receive. These payments are meant to be passed through to ILOS providers to build capacity and infrastructure to allow for sustainable delivery of these services to the plan's beneficiaries. Plans would be required to include an ILOS in its population health management plan and offer the service to beneficiaries prior to receiving any incentive payments.

- **Behavioral Health Task Force.** The budget establishes a Behavioral Health Task Force that will bring together relevant state departments, counties, advocates, health plans, providers, and other stakeholders to review existing policies and programs and coordinate system changes to prevent and respond to the impacts of mental illness and substance use disorders in California communities. The Administration intends to work to reform the Mental Health Services Act (Proposition 63) to better focus on people with mental illness who are also experiencing homelessness, who are involved in the criminal justice system, and for early intervention for children.

- **Community Care Collaborative Pilot.** The budget includes three positions and General Fund expenditure authority of $457.3 million over six years to implement a Community Care Collaborative Pilot program in three counties to provide incentives to treat and serve individuals deemed incompetent to stand trial (IST) in the community. The goals of the pilot include: 1) significantly reducing the overall rate of felony defendants declared IST, 2) demonstrating effective strategies to treat and house individuals with complex behavioral health issues who are often homeless or at risk of homelessness, 3) building a full and appropriate CoCs in the community to break the cycle between homelessness and jail or prison, 4) invest in effective pre-arrest and pre-booking programs to reduce the rate of arrests and re-arrests, and 5) promote increased funding flexibility to reduce a siloed approach to service and treatment delivery for this population.

## ISSUES TO CONSIDER

**Administration's Request for Early Action Raises Concerns.** The Administration has indicated that they will seek early action from the Legislature on language to define the outlines of the program and to allow DSS to begin drafting the Request for Applications to select the regional administrators. This is intended to allow the Administration to complete much of the work required to let the contracts prior to funding being appropriated for the program, accelerating the deployment of funds once the new fiscal year begins.

While there is merit to starting the contracting process early, this approach raises serious implementation and oversight questions. Specifically, providing early authority to begin the contracting process limits the Legislature's ability to make changes to the program, or to make other budgetary decisions with a General Fund impact, should realities on the ground or budget condition demand. As such, the Legislature should ensure that they are comfortable with the overall shape, scope, and design of the program prior to taking any action to authorize the Administration to begin the contracting process.

**Overall Approach and The State's Long-Term Strategy.** As discussed earlier, recent state investments in combating homelessness have been focused on emergency measures - shelter construction, service expansion, capacity building, and the like. This was a response to the critical nature of the issue and the desire for flexibility amongst local actors, with the understanding that local actors best understood their needs and capabilities. While HHAPP funds have yet to be disbursed, applications for HEAP funding have suggest that flexibility has been an important component of the state's response.

However, it is clear that the state cannot remain on an emergency footing with regards to homelessness indefinitely. A long-term approach to combating and managing the issue, one that balances state priorities with local flexibility, is essential. Such a strategy will, by necessity, prioritize different interventions and populations than the current emergency approach.

With that in mind, there is merit in the Administration's proposal to focus on prevention and connection to services. These priorities are in-line with long-term solutions to the issue, and could help prevent new individuals from falling into homelessness while addressing the needs of those already experiencing homelessness. However, it is unclear what the Administration's long-term homelessness strategy is, and how this proposal fits into it. For example, it is unclear which sub-populations are being targeted, and why, or how (or whether) the Administration plans to support this approach in the long-term.

A truly comprehensive strategy will require several things:

- Determining which populations to target, and why.
- Determining which interventions are most appropriate and effective, and why.
- Determining the role of the state, local government, and other actors in the given interventions.
- Determining how to pay for a chosen strategy.

The Legislature should take steps to answer these questions prior to making any decisions on the Administration's proposal, and to ensure that any action taken supports the chosen strategy.

As previously mentioned, California currently has several programs aimed at reducing homelessness, administered by different departments and agencies. These programs often exist in separate silos and it is unclear whether there is much or any collaboration among them. Homelessness is a complex, multilayered issue that requires a multipronged approach. In the development of a long-term strategy, the Legislature should consider current programs and how to foster collaboration among them. With its focus on supportive services, the Administration's proposal does have value. However, the Legislature should consider incorporating the Administration's priorities into its current programs, including both these programs and the Administration's priorities in the aforementioned multipronged approach.

**One-time Versus Ongoing Funding.** As noted above, one of the primary considerations of any long-term state strategy for addressing homelessness should be how to pay for it. To date, the state has predominantly taken a year-by-year approach, with multiple years of one-time funding. While this has granted the state financial flexibility, it has made it more difficult for local governments, service providers, and other stakeholders to effectively plan for the future. If the state is planning to take a longer-term approach to the issue, it is reasonable to consider whether one-time resources are the appropriate approach, or if an ongoing commitment to the issue would be more effective.

**Building Off of Previous Investments.** Recent state investments in combating homelessness have been made either on an emergency basis, and therefore with maximum flexibility and focus on immediate impact, or targeted at specific sub-populations of the homeless, such as CalWORKs recipients or victims of domestic violence. The Administration's proposal folds in health and social services and focuses on homelessness prevention. While there is significant merit in broadening the state's approach in this way, it raises questions of implementation.

Most of the work of combating homelessness is done at the local level, by cities, counties, CoCs, and community-based organizations. The state funding provided over the last two years has supported efforts by these actors at the local level, including shelter construction and operation, service expansion, and capacity building. While state investments have predominantly been in the form of one-time funds, these funds are spent down over multiple years, giving local governments and community based organizations a multi-year pipeline of projects and programs.

The Administration's proposal, with its focus on prevention and social services, marks a departure from this approach. In refocusing state funds towards prevention and social services, it creates a potential planning issue for local jurisdictions and organizations. These stakeholders, in following the uses of state funds defined in the enacting statute, focused their investments on shelters, connection to services, and capacity building. The Administration's new proposal, in changing these priorities, forces local jurisdictions to reprioritize programs and projects in the out years. While the Administration's priorities have merit, care needs to be taken to ensure that redirecting local efforts in this manner doesn't limit or undo progress made over the last several years.

**Role of the State, Local Governments, and Community-Based Organizations.** The Administration's proposal raises questions regarding the appropriate role of the state, local government, and other stakeholders in addressing homelessness. Over the past several years, the state has provided funds to local governments and CoCs. These actors have then typically contracted with direct service providers - whether private actors, community-based organizations, or others - to deliver services or projects that address homelessness.

The Administration's proposal takes a different approach by having the state contract directly with regional administrators, who will be responsible for the delivery of services within their jurisdiction. While the Administration has not provided details on who the regional administrators are, they have indicated that they are unlikely to be local governments.

While there are valid arguments for taking the Administration's approach, turning away from the historical approach raises questions about the appropriate role of the state, local government, and other stakeholders in addressing homelessness. Each actor brings different capabilities to the table - cities control land use and are therefore well-suited to capital projects, siting and (with private or non-profit developers) constructing new shelters and supportive housing; counties are responsible for the delivery of most social services, and are therefore well-suited to playing this role in homeless populations; and community-based organizations have deep knowledge of homeless populations in their communities, uniquely positioning them to connect individuals with needed services and solutions. The Legislature should consider how these varying capabilities should be utilized in combating homelessness, and how the Administration's proposal does or does not do so, prior to taking action.

# California Advancing and Innovating in Medi-Cal

## SUMMARY

The Governor's January budget includes funding and forthcoming statutory changes to commence a comprehensive effort to transform the Medi-Cal program. The California Advancing and Innovating in Medi-Cal (CalAIM) initiative is an ambitious effort to incorporate evidence-based investments in prevention, case management, and non-traditional services into the Medi-Cal program. Many of these investments were piloted during the state's most recent 1115 Waiver, Medi-Cal 2020, and the Administration is seeking to incorporate these programs into existing Medi-Cal delivery systems on a more consistent, statewide basis. CalAIM also seeks to reform payment structures for Medi-Cal managed care plans and county behavioral health programs to streamline rate-setting and to reduce documentation and auditing workload for plans and their network providers. Other components of CalAIM include changes to populations and services that would be delivered in the fee-for-service or managed care system, continuation of certain dental services piloted in the Dental Transformation Initiative, statewide incorporation of long-term services and supports as a mandatory managed care benefit, engaging stakeholders to consider applying for a federal waiver of the prohibition on matching funds for services provided in an Institute for Mental Disease (IMD), and testing full integration of physical, behavioral, and oral health service delivery under a single contracted entity.

CalAIM represents a significant transformation of the health care delivery systems that provide physical health, behavioral health, and oral health care services to Medi-Cal beneficiaries. However, the proposal also represents an opportunity to build into the foundations of the new Medi-Cal program an incentive structure that achieves a healthier Medi-Cal population with a comprehensive, whole-person approach that addresses the social determinants of health and avoids cross-cutting impacts and cost shifts to other state or local social service and public safety agencies. While the Administration's CalAIM proposal contains the broad outlines of building such a foundation, the Legislature will need to carefully evaluate each component of the proposal to ensure the program changes that are ultimately implemented are consistent with the values of a publicly-supported health care program.

## BACKGROUND

**California's Section 1115 Waiver – Medi-Cal 2020.** Section 1115 of the Social Security Act authorizes the federal Department of Health and Human Services to allow experimental, pilot, or demonstration projects likely to assist in promoting the objectives of Medicaid. The broad authority under Section 1115 allows states to request a waiver of Medicaid coverage requirements, such as the requirement that Medicaid benefits be offered uniformly statewide, which allows operation of demonstration components in specified counties or provision of benefits to specific populations. States may also request waiver of restrictions on expenditure authority, which allows states to receive federal financial participation for certain benefits not ordinarily eligible for federal Medicaid funds.

California's first 1115 Waiver, the Medi-Cal Hospital/Uninsured Care Demonstration, was approved in 2005 for five years and restructured the state's hospital financing system. California renewed the 1115 Waiver for an additional five years in 2010, renaming it "Bridge to Reform" and focusing on readying state health programs for implementation of the federal Affordable Care Act. Specifically, the Bridge to Reform Waiver: 1) allowed for health care coverage of up to 500,000 uninsured individuals in county

Low Income Health Programs who would later become eligible for the state's optional expansion of Medi-Cal, 2) increased funding for uncompensated care, 3) improved care coordination for vulnerable populations such as individuals dually eligible for Medicare and Medi-Cal (dual-eligibles), and 4) promoted transformation of public hospital care delivery systems.

The most recent Waiver renewal, "Medi-Cal 2020", was approved until December 31, 2020, and contains four primary components: Whole Person Care Pilots, Public Hospital Redesign and Incentives in Medi-Cal, the Global Payment Program, and the Dental Transformation Initiative.

**Whole Person Care Pilots.** The Whole Person Care (WPC) Pilots coordinate health, behavioral health, and social services in a patient-centered manner with the goals of improved beneficiary health and well-being through more efficient and effective use of resources. WPC Pilots allow individual public entities or a consortium of public entities to integrate care for a particularly vulnerable group of Medi-Cal beneficiaries who have been identified as high users of multiple systems and continue to have poor health outcomes. WPC Pilot entities identify target populations, share data between systems, coordinate care in real time, and evaluate individual and population progress. Allowable target populations include one or more of the following:

- High Utilizers – Individuals with repeated incidents of avoidable emergency use, hospital admissions, or nursing facility placement
- Chronic Conditions – Individuals with two or more chronic conditions
- MH/SUDS – Individuals with mental health and/or substance use disorders
- Homelessness – Individuals currently experiencing homelessness
- At-Risk-Of Homelessness – Individuals who are at risk of homelessness, including individuals who will experience homelessness upon release from institutional settings
- Justice-Involved – Individuals recently released from institutions, including jail or prison

WPC Pilots are permitted to provide services that would best fit the needs of their target populations and could be delivered with existing infrastructure and resources. The eight categories of services provided by the pilots are as follows[1]:

- Outreach – Outreach services to identify prospective enrollees and assess their eligibility in the field or in clinical and other settings.
- Care Coordination – Coordination of medical, behavioral health, and social services to improve health and reduce unnecessary utilization in high-risk, high utilizer target populations.

[1] Pourat N, Chuang E, Chen X, O'Masta B, Haley LA, Lu C, Huynh MP, Albertson E, and Huerta DM. Interim Evaluation of California's Whole Person Care (WPC) Program. Los Angeles, CA: UCLA Center for Health Policy Research, September 2019.

- Housing Support – Assistance in accessing and obtaining sustainable housing solutions to maximize the number of enrollees living in healthy, stable living situations. Financial assistance used to maintain and/or achieve healthy, stable living situations.

- Peer Support – WPC staff with lived experience similar to the target populations who provide knowledge, guidance, and emotional, social, or practical support to WPC enrollees. These individuals often provide care coordination and housing support services, as well as guiding and supporting enrollees through behavioral health and social services.

- Benefit Support – Assistance with applying for, obtaining, and/or appealing for public benefits (e.g., Supplemental Security Income, Cal-Fresh, etc.).

- Employment Assistance – Workforce training on resume building, interview skills, and/or other supports necessary in order to obtain a job.

- Sobering Center – A safe environment for intoxicated individuals to receive detoxification services.

- Medical Respite – Post-acute respite services for enrollees discharged from the hospital and other inpatient settings, which allow enrollees to recuperate in a safe environment until they have the resources to care for themselves.

DHCS approved 25 applications for WPC Pilots from the following entities[2]:

| Lead Entity | Estimated Five-year Beneficiary Count | Total Five-Year Budget |
|---|---|---|
| Alameda County Health Care Services Agency | 20,000 | $283,453,400 |
| City of Sacramento | 4,386 | $64,078,680 |
| Contra Costa Health Services | 15,600 | $203,958,160 |
| County of Marin, Dept. of Health and Human Services | 3,516 | $20,000,000 |
| County of Orange, Health Care Agency | 9,303 | $31,066,860 |
| County of San Diego, Health & Human Services Agency | 1,049 | $43,619,950 |
| County of Santa Cruz, Health Services Agency | 625 | $20,892,336 |
| County of Sonoma, Dept. of Health Services | 3,040 | $16,704,136 |
| Kern Medical Center | 2,000 | $157,346,500 |
| Kings County Human Services Agency | 600 | $12,848,360 |
| L.A. County Department of Health Services | 154,044 | $1,260,352,362 |
| Mendocino County Health and Human Services Agency | 600 | $10,804,720 |
| Monterey County Health Department | 500 | $34,035,672 |
| Napa County | 800 | $22,921,433 |
| Placer County Health and Human Services Department | 450 | $20,126,290 |
| Riverside University Health System - Behavioral Health | 38,000 | $35,386,995 |
| San Bernardino Co. - Arrowhead Regional Med. Center | 2,000 | $24,537,000 |

[2] Department of Health Care Services. "California Whole Person Care Applications Statistics". February 2019.

| | | |
|---|---|---|
| San Francisco Department of Public Health | 16,954 | $161,750,000 |
| San Joaquin County Health Care Services Agency | 2,255 | $18,365,004 |
| San Mateo County Health System | 5,000 | $165,367,710 |
| Santa Clara Valley Health and Hospital System | 10,000 | $250,191,859 |
| Small County WPC Collaborative (San Benito, Mariposa) | 287 | $10,362,176 |
| Shasta County Health and Human Services Agency | 600 | $19,403,550 |
| Solano County Health & Social Services | 250 | $4,667,010 |
| Ventura County Health Care Agency Pl | 2,280 | $107,759,837 |
| **TOTAL** | **294,139** | **$3,000,000,000** |

The total budget for the WPC Pilots is $3 billion ($1.5 billion local funds and $1.5 billion federal matching funds). WPC Pilots targeting individuals at risk of or experiencing homelessness were permitted to implement housing interventions, such as tenancy-based care management services or county housing pools, with the non-federal portion of pilot funding. In addition, the 2019 Budget Act included a one-time General Fund investment of $100 million to assist WPC Pilots with funding for the costs of long-term and short-term housing, such as hotel vouchers and rental subsidies, as well as capital investment for housing projects for Med-iCal beneficiaries who are mentally ill and are experiencing homelessness, or are at risk of homelessness. These funds were distributed as follows[3]:

| **ALLOCATION OF 2019 BUDGET ACT WHOLE PERSON CARE HOUSING FUNDING** | | | |
|---|---|---|---|
| ***Pilot*** | ***Allocation*** | ***Pilot*** | ***Allocation*** |
| Alameda | $ 4,647,159.90 | City of Sacramento | $ 3,059,351.17 |
| Contra Costa | $ 2,058,505.04 | San Benito | $ 1,600,251.33 |
| Kern | $ 1,213,867.52 | San Bernardino | $ 1,646,279.96 |
| Kings | $ 1,166,795.01 | San Diego | $ 5,327,990.32 |
| Los Angeles | $ 36,139,682.34 | San Francisco | $ 8,130,059.30 |
| Marin | $ 2,522,162.80 | San Joaquin | $ 1,366,774.54 |
| Mariposa | $ 1,033,636.00 | San Mateo | $ 2,340,849.14 |
| Mendocino | $ 1,137,158.69 | Santa Clara | $ 5,680,408.35 |
| Monterey | $ 2,407,786.57 | Santa Cruz | $ 2,642,337.19 |
| Napa | $ 1,491,766.53 | Shasta | $ 1,198,355.90 |
| Orange | $ 3,413,986.51 | Solano | $ 1,603,827.17 |
| Placer | $ 1,318,475.78 | Sonoma | $ 3,284,476.48 |
| Riverside | $ 1,999,856.42 | Ventura | $ 1,568,200.04 |
| | | **TOTAL** | **$100,000,000.00** |

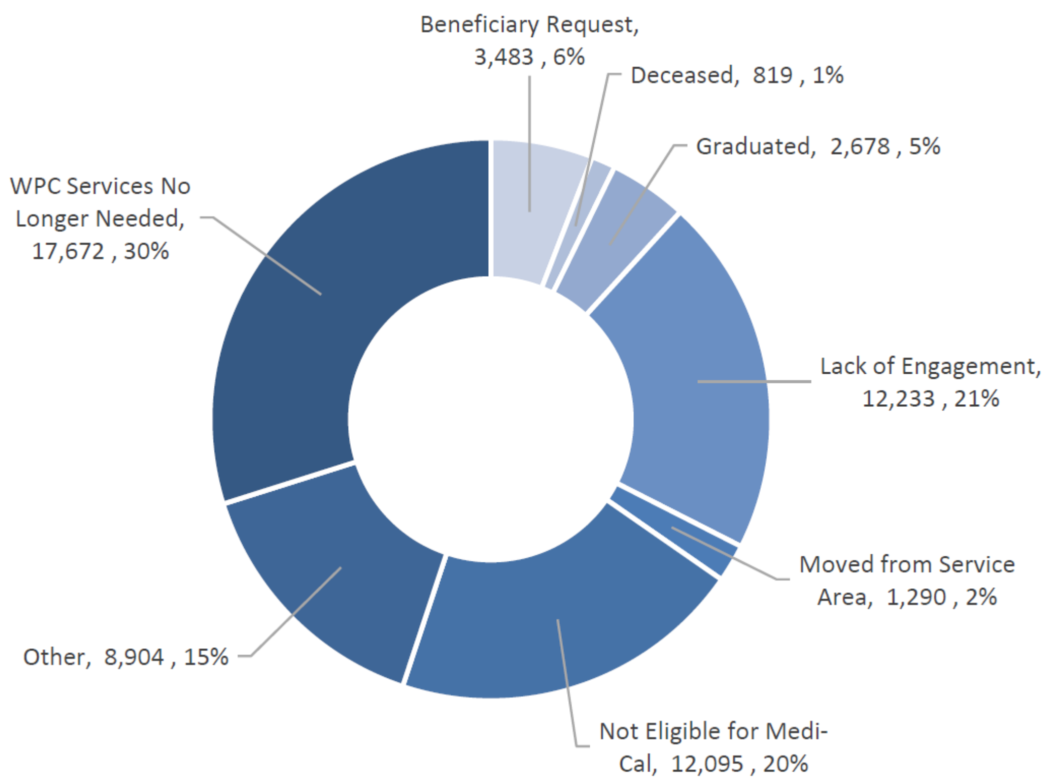
[3] Department of Health Care Services. "One Time Housing Fund Overview and Methodology". August 8, 2019.

**Interim Evaluation of WPC Pilots[4].** In January 2020, researchers at the UCLA Center for Health Policy Research released a draft interim evaluation of California's WPC program, conducted under a contract with DHCS to fulfill the evaluation requirements included in the state's 1115 Waiver. The UCLA researchers surveyed the WPC pilots to identify populations served, pilot infrastructure, and whether the pilots are improving the delivery of care, improving beneficiary health, lowering costs and building a sustainable, collaborative program.

The 25 WPC Pilot programs each identified different target populations, with nine targeting just one of the six eligible populations, and one (Los Angeles) targeting all six. 16 pilots targeted High Utilizers, five targeted Chronic Conditions, 11 targeted MH/SUDS, 15 targeted Homelessness, 10 targeted At-Risk-Of Homelessness, and four targeted Justice-Involved.

Pilots reported using a wide range of outreach strategies to identify eligible beneficiaries, including use of administrative and electronic medical record data, referrals and warm hand-offs from partner organizations, self-referrals, and street outreach.

Between January 2017 and December 2018, cumulative enrollment in WPC Pilots was 108,667 unique individuals, with 60,776 currently enrolled at that point in time. 49.4 percent of enrollees (53,697) had been enrolled continuously, 43.9 percent of enrollees (47,755) disenrolled permanently, and 6.9 percent (7,461) enrolled and disenrolled multiple times. The primary reasons for disenrollment were: 1) WPC Services No Longer Needed (30 percent), 2) Lack of Engagement (21 percent), 3) Not Eligible for Medi-Cal (20 percent), 4) Other (15 percent), 5) Beneficiary Request (6 percent), 6) Graduated (5 percent), 7) Moved from Service Area (2 percent), and 8) Deceased (1 percent).




[4] Pourat N, et al., September 2019.

During the evaluation period, WPC Pilot enrollees were more likely to be male (55 percent), age 50-64 (35 percent), and white (28 percent). Most target populations were consistent with these overall results with some notable exceptions, including: 1) High Utilizers were the only population that were majority female (53 percent), while other populations ranged from 56 percent male (Chronic Conditions) to 74 percent (Justice-Involved); 2) Justice-Involved were the only population whose enrollees were most often age 18-34 (48 percent), as well as more often Latino (38 percent).

**WPC Enrollee Demographics - Gender**

| **Gender** | **Male** | **Female** |
|---|---|---|
| **OVERALL** | **55%** | **45%** |
| High Utilizers | 47% | 53% |
| Chronic Conditions | 56% | 44% |
| MH/SUDS | 59% | 41% |
| Homelessness | 66% | 34% |
| At-Risk-Of Homelessness | 65% | 35% |
| Justice-Involved | 74% | 26% |

**WPC Enrollee Demographics – Race/Ethnicity**

| **Race/ Ethnicity** | **White** | **African American** | **Latino** | **Asian American/ Pacific Islander** | **American Indian/ Alaska Native** | **Other/ Unknown** |
|---|---|---|---|---|---|---|
| **OVERALL** | **28%** | **25%** | **23%** | **6%** | **<1%** | **16%** |
| High Utilizers | 29% | 22% | 24% | 8% | <1% | 17% |
| Chronic Conditions | 35% | 11% | 33% | 7% | <1% | 12% |
| MH/SUDS | 40% | 10% | 27% | 6% | <1% | 15% |
| Homelessness | 31% | 28% | 21% | 4% | <1% | 16% |
| At-Risk-Of Homelessness | 32% | 24% | 32% | 2% | <1% | 9% |
| Justice-Involved | 35% | 17% | 38% | 1% | <1% | 9% |

**WPC Enrollee Demographics – Race/Ethnicity**

| **Age Group** | **0-17** | **18-34** | **35-49** | **50-64** | **65+** |
|---|---|---|---|---|---|
| **OVERALL** | **1%** | **27%** | **28%** | **35%** | **9%** |
| High Utilizers | 1% | 29% | 26% | 33% | 12% |
| Chronic Conditions | <1% | 25% | 28% | 41% | 6% |
| MH/SUDS | <1% | 26% | 29% | 38% | 8% |
| Homelessness | <1% | 24% | 31% | 38% | 6% |
| At-Risk-Of Homelessness | <1% | 30% | 32% | 35% | 3% |
| Justice-Involved | <1% | 48% | 33% | 17% | 1% |

Despite differences in target populations, WPC Pilots offered many of the same categories of benefits to beneficiaries, offering between three and seven of the eight services. 100 percent of pilots offered both Care Coordination and Housing Support services, 80 percent offered Peer Support, 72 percent offered Benefit Support, 52 percent offered Outreach, 40 percent offered Medical Respite, 28 percent offered Sobering Centers, and 20 percent offered Employment Assistance. The percentages of pilot beneficiaries in each category that received each type of service were as follows:

**Percentage of WPC Populations Receiving Services by Category[5]**

| | **Outreach Services** | **Care Coordination** | **Housing Support** | **Peer Support** |
|---|---|---|---|---|
| ***WPC Population:*** | | | | |
| Enrolled | 11% | 77% | 69% | 46% |
| Not Enrolled | 84% | 0% | 0% | 0% |
| | | | | |
| ***Enrolled Target Populations:*** | | | | |
| High Utilizers | 14% | 83% | 75% | 70% |
| Chronic Conditions | 41% | 61% | 32% | 34% |
| MH/SUDS | 31% | 71% | 50% | 45% |
| Homelessness | 21% | 68% | 59% | 19% |
| At-Risk-Of Homelessness | 46% | 24% | 19% | 10% |
| Justice-Involved | 79% | 26% | 18% | 16% |

[5] Pourat N, et al., September 2019.

| | Benefit Support | Employment Assistance | Sobering Centers | Medical Respite |
|---|---|---|---|---|
| ***WPC Population:*** | | | | |
| Enrolled | 69% | 45% | 5% | 3% |
| Not Enrolled | 0% | 0% | 16% | 0% |
| | | | | |
| ***Enrolled Target Populations:*** | | | | |
| High Utilizers | 72% | 60% | 8% | 1% |
| Chronic Conditions | 28% | 10% | 1% | 1% |
| MH/SUDS | 34% | 10% | 24% | 3% |
| Homelessness | 51% | 23% | 5% | 5% |
| At-Risk-Of Homelessness | 47% | 9% | 3% | 2% |
| Justice-Involved | 20% | 15% | 3% | 1% |

In addition to these characteristics of the WPC Pilots, the UCLA evaluation made the following key observations:

1) Progress on Care Coordination – By the end of the evaluation period, Pilots had successfully formed care coordination teams, established data sharing protocols across service agencies, and standardized care coordination processes. Areas for further improvement included more formal data sharing agreements, encouraging systematic use of universal consent forms, promoting field-based outreach and service delivery, using peers with lived experience on care coordination teams, training staff to improve quality and outcomes, and leveraging resources and partnerships to address structural housing problems.

2) Improvements in Care Delivery – The evaluation found substantial evidence the Pilots successfully provided better care to enrollees. Outcomes data demonstrated success in follow-up after hospitalization for mental illness at 7 and 30 days, improvements in rates of initiation and engagement in SUD treatment, and increased rates of timely provision of comprehensive care plans and suicide risk assessments.

3) Health Improvements – The evaluation found some evidence of improved health, which could not be fully attributed to the Pilot, including improvements in rates of emergency department (ED) visits, hospitalizations and all-cause readmissions in the second and third years. However, these data were not significantly different than the control group. There were also clear improvements in beneficiaries' overall and emotional health, controlled blood pressure, and A1C levels.

4) Housing Services Delivered, But Permanent Solutions Challenging – The evaluation found substantial evidence of success in delivery of housing services and potential success in reducing ED visits. However, there were challenges in retaining permanent housing, including lack of funding for direct housing provision and lack of adequate housing supply. Some Pilots worked with external partners to mitigate these challenges.

**Public Hospital Redesign and Incentives in Medi-Cal (PRIME).** PRIME builds upon the public hospital delivery system reforms implemented under the previous Bridge to Reform Waiver and seeks to continue improving the way care is delivered in California's safety net hospitals to maximize health care value and move toward alternative payment models, such as capitation and other risk-sharing arrangements. Participating PRIME entities, Designated Public Hospital (DPH) systems or District/Municipal Public Hospitals (DMPH), must submit plans to achieve goals within one of the following domains:

- **Domain 1: Outpatient Delivery System Transformation and Prevention**. These projects are meant to: 1) ensure patients experience timely access to high-quality, efficient, and patient-centered care; 2) identify and increase rates of cost-effective standard approaches to prevention services for a select group of high-impact clinical conditions and populations such as cardiovascular disease, breast, cervical and colorectal cancer, and obesity; and 3) reduce disparities and variation in performance of targeted prevention services within their systems.

- **Domain 2: Targeted High-Risk or High-Cost Populations.** These projects are focused on specific populations that would benefit most significantly from care integration and alignment. Particular attention will be focused on managing and coordinating care during transitions from inpatient to outpatient and post-acute settings.

- **Domain 3: Resource Utilization Efficiency.** These projects are meant to reduce unwarranted variation in use of evidence-based diagnostics and treatments, targeting overuse, misuse, as well as inappropriate underuse of effective interventions. Projects will also eliminate the use of ineffective or harmful targeted clinical services.

DHCS has approved a total of 17 plans submitted by DPHs and 37 submitted by DMPHs to become PRIME entities. These entities are eligible to receive up to $3.7 billion combined in federal Medicaid funding over five years for achieving metrics in implementing clinical projects designed to change the way care is delivered. 1115 Waiver financing regulations require these funds to be matched with a non-federal share of funding, which is provided by other governmental health entity funds that are transferred to DHCS as intergovernmental transfers (IGTs).

**Global Payment Program.** The Global Payment Program establishes a statewide pool of funding for the remaining uninsured by combining federal Disproportionate Share Hospital and uncompensated care funding. The program establishes individual public hospital system "global budgets" for each hospital from overall annual threshold amounts determined through analysis of services provided to the uninsured. Public hospital systems can achieve their "global budget" by meeting a service threshold that incentivizes movement from high cost, avoidable services to providing higher-value and preventative services. The program divides services into four categories for evaluating funding:

- Traditional provider-based, face-to-face outpatient encounters

- Other non-traditional provider, groups, prevention/wellness, face-to-face

- Technology-based outpatient

- Inpatient facility

**Dental Transformation Initiative.** DHCS implemented four dental "domains", collectively referred to as the Dental Transformation Initiative (DTI) in order to improve the quality of care and increase utilization of dental services. The four domains of the DTI program are:

1. Increase Preventive Services Utilization for Children - This domain aims to increase the statewide proportion of children ages one through twenty enrolled in Medi-Cal who receive a preventive dental service in a given year. The domain's goal is to increase utilization among children by at least 10 percent over a five year period. DHCS offers financial incentives for dental service office locations that increase delivery of preventive oral care to Medi-Cal eligible children.

2. Caries Risk Assessment and Disease Management – Under this domain, dental providers receive incentive payments for performing caries risk assessments and for each service performed under a pre-identified treatment plan for children ages six and under.

3. Increase the Continuity of Care - This domain aims to encourage continuity of care among Medi-Cal beneficiaries age 20 and under. Dental provider service office locations receive an incentive payment for maintaining continuity of care for enrolled child beneficiaries for two, three, four, five, and six year continuous periods. Incentive payments are made annually.

4. Local Dental Pilot Programs (LDPPs) – 15 LDPPs were approved, although two have been withdrawn, to address one or more of the previous three domains through alternative programs, using strategies focused on rural areas including local case management initiatives and education partnerships. DHCS requires LDPPs to have broad-based provider and community support and collaboration including Tribes and Indian health programs, with incentives related to goals and metrics that contribute to the overall goals of any one of the three domains.

**Challenging Federal Landscape for 1115 Waiver Renewal.** The state's 1115 Waiver provides authority and federal funding for these four programs (WPC Pilots, PRIME, Global Payment Program, and DTI), but also provides authority for other major programs including the Medi-Cal managed care delivery system, the Drug Medi-Cal Organized Delivery System, community-based adult services, the Coordinated Care Initiative, and the California Children's Services (CCS) pilot project. Although the current waiver was approved under the previous federal Administration, CMS indicated at the time that it was unlikely California would be able to renew many of these programs or the associated federal funding under a future 1115 Waiver due to changes in how CMS planned to calculate incurred costs and savings achieved as part of the Waiver's budget neutrality requirement. DHCS indicates it is unlikely that the new federal Administration would have a more favorable outlook than the last Administration to a potential renewal of California's 1115 Waiver programs.

**Health Homes Program.** AB 361 (Mitchell), Chapter 642, Statues of 2013, authorizes DHCS to implement the Medicaid Health Home Program (HHP) Services benefit, which provides enhanced care coordination benefits for members with chronic conditions with the goal of reducing state Medi-Cal costs by decreasing avoidable emergency department and inpatient stays, and improving health outcomes for Medi-Cal's most vulnerable beneficiaries. Established under Section 2703 of the federal Affordable Care Act, states that adopt the HHP benefit receive a 90 percent federal match for program services for two years. After two years, the federal match converts to the 50 percent federal matching rate.

HHP benefits are structured to be provided by a network including the managed care plan, one or more Community-Based Care Management Entities (CB-CMEs), and Community-Based Organizations (CBOs). Plans are responsible for the overall administration of HHP, including payment, member assignment to providers, oversight, data sharing and analytics, training, and ensuring timely access to care. CB-CMEs, selected and certified by the plan, serve as the single community-based entity with responsibility for ensuring access to services, either directly, or through subcontracting arrangements with other entities, including CBOs, or individuals.

To be eligible for HHP, a member must be a full-scope Medi-Cal beneficiary with no share of cost and meet the following eligibility criteria:

1. <u>Chronic condition</u> – A chronic condition in at least one of the following categories:
   a. At least two of the following:
      i. Chronic obstructive pulmonary disease
      ii. Diabetes
      iii. Traumatic brain injury
      iv. Chronic or congestive heart failure
      v. Coronary artery disease
      vi. Chronic liver disease
      vii. Chronic renal disease
      viii. Dementia
      ix. Substance use disorders
   b. Hypertension and one of the following:
      i. Chronic obstructive pulmonary disease
      ii. Diabetes
      iii. Coronary artery disease
      iv. Chronic or congestive heart failure
   c. One of the following:
      i. Major depression disorders
      ii. Bipolar disorder
      iii. Psychotic disorders
   d. Asthma

2. <u>Acuity/Complexity Criteria</u> – Has three or more eligible chronic conditions, at least one hospital stay in the last year, three or more emergency department visits in the last year, or is chronically homeless.

The six core HHP services are as follows:

1. <u>Comprehensive Care Management</u> – Activities related to engaging members to participate in the HHP and collaborating with HHP members and their family/support persons to develop their comprehensive, individualized, person-centered care plan, called a Health Action Plan (HAP).

2. <u>Care Coordination</u> – Services to implement the HHP member's HAP including, but not limited to, navigation and coordination of health, behavioral health, and social services systems, including housing; monitoring and supporting treatment adherence; monitoring and coordinating referrals and follow ups; and sharing information with all involved parties and providers.

3. Health Promotion – Services to encourage and support HHP members to make lifestyle choices based on healthy behavior.

4. Comprehensive Transitional Care – Services to facilitate HHP members' transitions from and among treatment facilities to reduce avoidable HHP member admissions and readmissions.

5. Individual and Family Support Services – Activities that ensure the HHP member and family/support persons are knowledgeable about the member's conditions to facilitate adherence to treatment and medication management.

6. Referral to Community and Social Supports – Determining appropriate services to meet the needs of HHP members, identifying and referring members to available community resources and providers, and following up with members.

DHCS began implementing HHP in 12 counties beginning July 1, 2018. Counties are scheduled to implement HHP in four groups and each group will implement in two phases. Phase 1 will implement HHP services for members with certain chronic conditions and substance use disorders. Phase 2 will implement HHP services for members with certain serious mental illness conditions. AB 361 also requires DHCS, within two years of implementation, to provide an evaluation of the program to the fiscal and policy committees of the Legislature. The implementation schedule for the program is as follows:

| Groups | Counties | (Phase 1) Implementation date for members with eligible chronic physical conditions and substance use disorders | (Phase 2) Implementation date for members with eligible serious mental illness conditions |
|---|---|---|---|
| Group 1 | San Francisco | July 1, 2018 | January 1, 2019 |
| Group 2 | Riverside<br>San Bernardino | January 1, 2019 | July 1, 2019 |
| Group 3 | Alameda<br>Imperial<br>Kern<br>Los Angeles<br>Sacramento<br>San Diego<br>Santa Clara<br>Tulare | July 1, 2019 | January 1, 2020 |
| Group 4 | Orange | January 1, 2020 | July 1, 2020 |

As of September 30, 2019, a total of 14,300 members have enrolled in HHP including 539 in Group 1 (San Francisco), 7,436 in Group 2 (Riverside, San Bernardino), and 6,325 in Group 3 (Alameda, Imperial, Kern, Los Angeles, Sacramento, San Diego, Santa Clara, Tulare).

**Behavioral Health Services in Medi-Cal.** Behavioral health services are provided to Medi-Cal beneficiaries through several different delivery systems. Three separate systems provide mental health services to Medi-Cal beneficiaries including county mental health plans, Medi-Cal managed care plans, and the fee-for-service delivery system. Three systems provide Drug Medi-Cal services including the Drug Medi-Cal Organized Delivery System, county-administered Drug Medi-Cal, and state-administered Drug Medi-Cal.

**Medi-Cal Mental Health.** There are three systems that currently provide mental health services to Medi-Cal beneficiaries:

1. **County Mental Health Plans (MHPs) -** California provides Medi-Cal specialty mental health services (SMHS) under a federal 1915(b) waiver that includes outpatient SMHS, such as clinic outpatient providers, psychiatrists, psychologists and some nursing services, as well as psychiatric inpatient hospital services. Children's SMHS is provided under the federal requirements of the EPSDT benefit for persons under age 21. County mental health plans are responsible for the provision of SMHS and Medi-Cal enrollees must obtain SMHS through the county. SMHS is a Medi-Cal entitlement for adults and children that meet medical necessity criteria, which consist of having a specific covered diagnosis, functional impairment, and meeting intervention criteria.

2. **Managed care plans –** The Affordable Care Act expanded the scope of Medi-Cal mental health benefits and required these services to be provided by Medi-Cal managed care plans excluding those benefits provided by county mental health plans under the SMHS waiver. Generally these are mental health services for those with mild to moderate levels of impairment. The mental health services provided by managed care plans include:

    - Individual and group mental health evaluation and treatment (psychotherapy)
    - Psychological testing when clinically indicated and medically necessary to evaluate a mental health condition
    - Outpatient services for the purposes of monitoring drug therapy
    - Outpatient laboratory, drugs, supplies and supplements
    - Psychiatric consultation

3. **Fee-For-Service Provider System -** Effective January 1, 2014 the mental health services listed below are also available through the fee-for-service provider system:

    - Individual and group mental health evaluation and treatment (psychotherapy)
    - Psychological testing when clinically indicated and medically necessary to evaluate a mental health condition

- Outpatient services for the purposes of monitoring drug therapy
- Outpatient laboratory, drugs, supplies and supplements
- Psychiatric consultation

**Drug Medi-Cal.** Established in 1980, the Drug Medi-Cal program provides medically necessary substance use disorder (SUD) treatment services to eligible Medi-Cal beneficiaries for specific, approved services. Beginning in 2011, administration of the Drug Medi-Cal program was transferred from the Department of Alcohol and Drug Programs (DADP) to DHCS and the program was realigned to the counties as part of 2011 Realignment. Drug Medi-Cal had previously been funded with General Fund and federal funds. 2011 Realignment redirected funding for both Drug Medi-Cal and discretionary SUD programs, including those supported by the Substance Abuse Prevention and Treatment block grant, to the counties. Counties provide the non-federal share of expenditures, which are matched with federal funds, for Drug Medi-Cal services as they existed in 2011 and for individuals eligible for Drug Medi-Cal under 2011 Medi-Cal eligibility rules in place before implementation of the optional expansion of Medi-Cal.

Both DHCS and counties have specific oversight requirements for Drug Medi-Cal. DHCS is tasked with administrative and fiscal oversight, monitoring, auditing and utilization review. Counties can contract for Drug Medi-Cal services directly, or contract with DHCS, which then directly contracts with providers to deliver Drug Medi-Cal services. Counties that elect to contract with DHCS to provide services are required to maintain a system of fiscal disbursement and controls, monitor to ensure that billing is within established rates, and process claims for reimbursement. DHCS has also implemented the Drug Medi-Cal Organized Delivery System Waiver, a pilot project to test organized delivery of an expanded benefit package for substance use disorder services.

**Drug Medi-Cal Organized Delivery System.** The Drug Medi-Cal Organized Delivery System (DMC-ODS) Waiver is a voluntary pilot program that offers California counties the opportunity to expand access to high-quality care for Medi-Cal enrollees with SUD. The goal of the DMC-ODS Waiver is to demonstrate how organized SUD care improves beneficiary health outcomes, while decreasing system-wide health care costs. Counties that choose to participate in the DMC-ODS Waiver are required to provide access to a full continuum of SUD benefits modeled after criteria developed by the American Society of Addiction Medicine (ASAM). Counties are required to submit implementation plans and proposed interim rates for all county-covered SUD services, except NTP rates, which are set by DHCS.

To receive services through the DMC-ODS Waiver, beneficiaries must meet the following criteria:

1. The beneficiary must be enrolled in Medi-Cal
2. The beneficiary must reside in a county that is participating in the DMC-ODS Waiver
3. The beneficiary must have at least one diagnosis from the Diagnostic and Statistical Manual of Mental Disorders (DSM) for Substance-Related and Addictive Disorders with certain exceptions, or for youth under 21, be assessed as “at-risk” for developing a SUD
4. The beneficiary must meet the ASAM Criteria definition of medical necessity for services (or ASAM adolescent treatment criteria for youth under 21).

**County Reimbursement for Behavioral Health Services in Medi-Cal.** Through reforms implemented in the 1991 and 2011 Realignments, counties are responsible for the non-federal share of specialty mental health and Drug Medi-Cal services provided to most Medi-Cal beneficiaries. Counties provide for the delivery of services and submit expenditure reports to DHCS to receive federal matching funds. Claims are paid to counties on an interim basis, pending cost reporting after the end of the fiscal year. DHCS reconciles the interim payments made to counties with the submitted cost reports and recoups from counties that received excess interim payments or makes additional payments to counties that received insufficient interim payments. In addition, DHCS audits each cost report, which may result in additional adjustments. Counties are permitted to appeal audit findings, which may lead to still more adjustments to reimbursements. The cost-based reimbursement structure for behavioral health services can often take several years to resolve, leading to uncertainty for county behavioral health system financing.

**Eligibility for Specialty Mental Health and Substance Use Disorder Services.** Medi-Cal beneficiaries must demonstrate medical necessity to be eligible to receive specialty mental health services or substance use disorder services from county service delivery systems. State law defines a service as medically necessary for individuals 21 years of age and older when it is reasonable and necessary to protect life, to prevent significant illness or significant disability.[6] For individuals under 21 years of age, a service is medically necessary if the service is necessary to correct or ameliorate mental illnesses and conditions.[7,8]

## GOVERNOR'S PROPOSAL

**California Advancing and Innovating in Medi-Cal.** In October 2019, the Administration released its California Advancing and Innovating in Medi-Cal (CalAIM) proposal, which seeks to significantly reform the delivery of physical health, behavioral health, and oral health care services in the Medi-Cal program. Due to a challenging federal landscape for renewal of certain programs under an 1115 Waiver, the Administration has moved to transition many of these programs into managed care benefits under a new 1915(b) Waiver, maintain some programs under the 1115 Waiver authority, and make other changes through amendments to the State Plan. The main categories of program changes contemplated by the Administration's CalAIM proposal and associated timelines are as follows:

- Managed Care Reforms
    - Benefit Standardization (January 2021)
    - Standardization of Mandatory Managed Care Populations (January 2021)
    - Regional Capitated Rate-Setting (Targeted counties – January 2021; Statewide – January 2023)
    - National Committee for Quality Assurance (NCQA) Accreditation (January 2025)
- Population Health Management (January 2021)

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[6] California Welfare and Institutions Code, Section 14059.5
[7] 42 United States Code Section 1396d(r)(5)
[8] California Welfare and Institutions Code, Section 14059.5

- Enhanced Care Management/In-Lieu-Of Services (January 2021)
- Behavioral Health Payment Reform and Eligibility Criteria (No sooner than January 2021)
- Consideration of Institutions of Mental Disease Waiver (TBD)
- Long-Term Services and Supports Integration (January 2021)
- Full Integration Plans (Contracts – July 2022; Service Delivery – January 2024)

**1915(b) Waiver Authority for Managed Care Delivery System and Reforms.** The Administration proposes to transition the authority to deliver Medi-Cal benefits through managed care plans from the expiring 1115 Waiver to a new 1915(b) Waiver. While the managed care authorities provided by the two waivers are similar, there are key differences. For example, while 1115 Waivers require budget neutrality (federal expenditures must not be greater under the waiver than they would have been without the waiver), 1915(b) Waivers only require the demonstration of cost effectiveness and efficiency (actual expenditures cannot exceed projected expenditures)[9].

***<u>MANAGED CARE REFORMS</u>***

**Benefit Standardization.** Under the Administration's CalAIM proposal, DHCS would standardize which Medi-Cal benefits are provided in the managed care delivery system and which benefits are provided in another delivery system. The proposed changes, effective January 1, 2021, are as follows:

*Managed Care Benefits*

- <u>Long-term care</u> – All institutional long-term care services would become the responsibility of a beneficiary's managed care plan including skilled nursing facilities, pediatric and adult subacute care facilities, intermediate care facilities for individuals with developmental disabilities, disabled/habilitative/nursing services, and specialized rehabilitation in a skilled nursing facility or intermediate care facility.
- <u>Organ transplants</u> – All major organ transplants would become the responsibility of a beneficiary's managed care plan.

*Other Delivery Systems*

- <u>Pharmacy</u> – Consistent with the Governor's 2019 Executive Order, and the Administration's Medi-Cal Rx proposal, all prescription drugs and/or pharmacy services billed on a pharmacy claim would be provided in the fee-for-service delivery system.
- <u>Specialty mental health services</u> – Specialty mental health services currently the responsibility of Kaiser plans in Solano and Sacramento counties, would be provided by the local mental health plans.

[9] MACPAC. "Features of federal Medicaid managed care authorities". January 2016.

- Multipurpose Senior Services Program – The Multipurpose Senior Services Program, which had previously been scheduled to become the responsibility of Medi-Cal managed care plans in Coordinated Care Initiative counties will instead remain a benefit under the existing 1915(c) Home- and Community-Based Services Waiver.

- Optical Lenses – Fabrication of optical lenses currently the responsibility of CenCal Health and Health Plan of San Mateo would become a fee-for-service benefit, similar to the delivery of this benefit in the remainder of the state. This change was effective January 1, 2020.

**Standardization of Mandatory Managed Care and Fee-for-Service Populations.** Under CalAIM, the Administration proposes to standardize which categories of Medi-Cal beneficiaries would be required to enroll in a managed care plan to receive benefits and which beneficiaries would be required to receive benefits in the fee-for-service delivery system. According to DHCS, standardization would enhance coordination of care and reduce complexity across the Medi-Cal program. Implementation of this change would occur in two phases: 1) non-dual-eligible populations would transition in January 2021; and 2) dual-eligible populations would transition in January 2023.

Populations currently receiving benefits in the fee-for-service delivery system that would be required to enroll in a Medi-Cal managed care plan are as follows:

- Individuals eligible for long-term care services, including those with a share of cost

- Trafficking and Crime Victims Assistance Program beneficiaries, not including those with a share of cost

- Individuals participating in accelerated enrollment

- Child Health and Disability Prevention infant deeming

- Pregnancy-related Medi-Cal

- American Indians

- Beneficiaries with other health care coverage

- Beneficiaries living in rural ZIP codes

- All dual-eligible beneficiaries, not including those with a share of cost or with restricted-scope benefits, beginning January 1, 2023

Populations currently receiving benefits in the managed care delivery system that would be required to receive benefits in the fee-for-service delivery system:

- Individuals receiving restricted-scope benefits

- Individuals with a share of cost, including Trafficking and Crime Victims Assistance Program, but excluding long-term care

- Presumptive eligibility
- State medical parole, county compassionate release, and incarcerated individuals
- Non-citizen pregnancy-related aid codes enrolled in Medi-Cal, not including Medi-Cal Access Infant Program enrollees

According to DHCS, enrollment requirements for foster care children and youth will remain unchanged pending discussions and recommendations of a proposed foster care workgroup on future delivery system reforms for this population.

**Regional Managed Care Rate-Setting.** Under CalAIM, DHCS would move towards a regional managed care rate-setting methodology to simplify capitation payments for Medi-Cal managed care plans. DHCS reports it currently calculates more than 4,000 individual rates, one for each beneficiary category in each managed care plan. According to DHCS, this level of complexity limits the ability to advance value-based and outcomes-focused rate setting methodologies and complicates annual federal approval of managed care rates. The department believes regional rate-setting would incentivize efficiencies through competition with other regional plans and provide a larger, multi-county base for averaging rate components. The Administration proposes a two phased approach to the transition to regional capitated rate-setting:

- <u>Phase I: Targeted Counties</u> – During calendar year 2020, DHCS would engage and collaborate with Medi-Cal managed care plans to advance new regional rate-setting approaches and streamline rate processes and methodologies in targeted counties. Beginning January 1, 2021, DHCS would implement regional rate-setting in targeted counties. The CalAIM proposal does not identify these counties or what aspects of a county would determine eligibility to participate in this targeted approach.
- <u>Phase II: Statewide</u> – After evaluating and refining the regional rate-setting processes implemented in Phase I, DHCS would implement regional rate-setting statewide beginning no sooner than January 1, 2023.

**National Committee for Quality Assurance Accreditation.** The National Committee for Quality Assurance (NCQA) is a private, non-profit organization that reports measures of healthcare quality and offers accreditation for managed care plans. NCQA is responsible for the Healthcare Effectiveness Data and Information Set (HEDIS), which measures more than 90 measures across six domains of care for managed care plans, consumers, and public agencies to evaluate and encourage performance improvement. NCQA also offers accreditation to managed care plans and other health care-related entities in the areas of quality improvement, population health management, network management, utilization management, credentialing, member rights and responsibilities, and member connections.

Under CalAIM, DHCS would require all Medi-Cal managed care plans to be accredited by the NCQA by 2025. Currently, 26 states require Medicaid managed care plans to achieve NCQA accreditation. 14 Medi-Cal managed care plans are currently NCQA accredited, with 3 plans currently in the accreditation process. In addition to requiring accreditation, DHCS would use information obtained from the accreditation review to satisfy certain state and federal oversight requirements of Medi-Cal managed care plans. DHCS would no longer conduct independent oversight of these requirements, but would instead focus on more robust oversight of other requirements, such as annual medical audits.

According to DHCS, certain categories of oversight would be likely candidates for the department to use accreditation review to deem managed care plans in compliance, as the NCQA requirements exceed both federal and state compliance requirements. These categories are as follows:

- Information Requirements
    - Format of enrollee information
    - Mechanisms to help enrollees and potential enrollees understand the requirements and benefits of the plan
    - Oral interpretation and written translation services for written materials
    - Non-English versions and auxiliary aids for written materials
    - Availability of assistance
    - Right to request hearing and appeal timeframes
    - Advance directives
    - Auxiliary aids and units providing member services
    - Enrollee Handbook
    - Updating of provider directories
    - Formulary content and format

- Access to Care – Availability of Services
    - Maintain and monitor network of appropriate providers

- Access to Care – Coordination and Continuity of Care
    - Care and coordination of services for all plan enrollees
    - Provide for initial screening
    - Share results with state
    - Ensure enrollee's privacy is protected during coordination of care
    - Assessment for enrollees with special health care needs or need long-term services and supports (LTSS)
    - Service plan for enrollees with LTSS needs
    - Direct access to specialists for enrollees with special health care needs

- Access to Care – Coverage and Authorization of Services
    - Coverage: may not deny or reduce the amount, duration, or scope of service
    - Coverage: limits on service on basis of criteria such as medical necessity
    - Review criteria for authorization of services
    - Decision to approve or deny service may be made by individual with expertise
    - Written notice of denial

- Structure and Operations - Confidentiality

- Quality Measurement and Improvement – Practice Guidelines
    - Adoption of practice guidelines
    - Dissemination of guidelines
    - Application of guidelines

- Quality Measurement and Improvement – Quality Assessment and Performance Improvement Program
    - Implement an ongoing comprehensive quality assessment and performance improvement program
    - Mechanisms to detect under- and over-utilization and appropriateness of care
    - Measure and report to the state on its performance

- Grievances – General Requirements
    - Level of appeals
    - Filing requirements

- Grievances – Timely and adequate notice of adverse benefit determination
    - Timing of notices related to termination, suspension, or reduction of services

- Grievances – Handling of grievances and appeals
    - Extension of appeals timeframes
    - Content of appeal resolutions

- Grievances – Expedited resolution of appeals
    - Expedited review process for appeals
    - Action following denial of request for expedited resolution

- Grievances – Recordkeeping requirements
    - Records of grievances and appeals

- Grievances – Continuation of benefits while appeal and state fair hearing are pending
    - Timeliness of filing of appeals
    - Continuation of benefits during an appeal
    - Duration of benefits and enrollee responsibility during an appeal
    - Services furnished while an appeal is pending

In addition to these likely candidates for deeming under CalAIM, DHCS is considering, pending further analysis, the following categories of requirements that meet or exceed either the federal or state standard, or both:

- Access to Care – Emergency and post-stabilization services
    - Denial of payment for emergency services
    - Rules for emergency services

- Access to Care – Availability of Services
    - Provides female enrollees with direct access to a women's health specialist within the provider network
    - Provides for a second opinion from a network provider, or arranges for the enrollee to obtain one outside the network, at no cost to the enrollee
    - Delivery Network – Out of Network Coverage
    - Delivery Network – Out of Network Costs
    - Delivery Network – Family Planning
    - Furnishing of Services

- Access to Care – Assurances of Adequate Capacity and Services
  - Nature of supporting documentation

- Access to Care – Coverage and Authorization of Services
  - Specifying medically necessary services
  - Standard authorization procedures

- Structure and Operations – Provider Selection
  - Credentialing, re-credentialing, non-discrimination

- Structure and Operations – Subcontractual relationships and delegation

- Quality Measurement and Improvement – Health Information Systems

- Grievances
  - Grievance and appeals system
  - Content adverse benefit determination notices
  - Timing of notices, extension of timeframes
  - Providing assistance to members for completing forms and other grievance/appeal steps
  - Appeals timeframes
  - Format of appeals notices
  - Distribution of information on appeals and grievances.

***POPULATION HEALTH MANAGEMENT***

**Population Health Management Program.** Under the Administration's CalAIM proposal, Medi-Cal managed care plans would be required to develop and maintain a population health management (PHM) program, defined as a model of care and a plan of action designed to address member health needs at all points along the continuum of care. The PHM program would adhere to NCQA standards and additional requirements established by the department. The implementation of this requirement would occur as part of the new Medi-Cal managed care plan contracts expected to begin on January 1, 2021, and the required PHM plan would be filed with the state annually. The PHM program would include assessment and risk stratification of plan members, integration of wellness and prevention services, case management, identification and delivery of in-lieu-of services, and care transition management.

**Risk and Need Assessment – Existing Requirements.** Medi-Cal managed care plans are currently required to perform an initial health assessment, completed during a member's initial encounter with a provider, which consists of a comprehensive medical and social history, a physical examination, and an age-specific Individual Health Education Behavioral Assessment (IHEBA). An IHEBA is a comprehensive assessment of a member's current acute, chronic, and preventive health needs and identification of members whose health needs require more extensive coordination with other services. [10] [11] [12] DHCS currently allows plans to utilize the Staying Healthy Assessment (SHA), a tool developed

[10] Department of Health Care Services. Medi-Cal Managed Care Division (MMCD) Policy Letter 13-001: "Requirements for the Staying Healthy Assessment/Individual Health Education Behavioral Assessment". October 8, 2013.
[11] Department of Health Care Services. MMCD Policy Letter 08-003. "Initial Comprehensive Health Assessment". May 5, 2008.
[12] Title 22, California Code of Regulations, Sections 53851 (b) (1), 53902 (m), and 53910.5 (a) (1).

by DHCS in 1999 as a standardized IHEBA. Although plans are encouraged to use the SHA, plans may use an alternative IHEBA tool if certain requirements are met.

| Medi-Cal Managed Care Plan Requirements<br>Periodicity of Staying Healthy Assessment | | | | |
|---|---|---|---|---|
| **Periodicity** | **Administer** | **Administer/Re-Administer** | | **Review** |
| **Age Groups** | **Within 120 Days of Enrollment** | **1st Scheduled Exam** (after entering new age group) | **Every 3-5 Years** | **Annually** (intervening years) |
| 0-6 months | X | X | | |
| 7-12 months | X | X | | |
| 1-2 years | X | X | | X |
| 3-4 years | X | X | | X |
| 5-8 years | X | X | | X |
| 9-11 years | X | X | | X |
| 12-17 years | X | X | | X |
| Adult | X | | X | X |
| Senior | X | | X | X |

**Source:** Medi-Cal Managed Care Division (MMCD) Policy Letter 13-001: "Requirements for the Staying Healthy Assessment/Individual Health Education Behavioral Assessment". October 8, 2013.

In addition to their health assessment requirements, plans are also required to apply a DHCS-approved risk stratification mechanism or algorithm to beneficiaries that are seniors and persons with disabilities to identify those with higher risk and complex health care needs. Similarly, plans participating in the Whole Child Model are required to apply risk stratification to identify risk and need of enrolled California Children Services-eligible children.[13]

**Risk and Need Assessment – CalAIM Requirements.** Under CalAIM, all Medi-Cal managed care plans would conduct an initial assessment of all new members' risk and need by assessing behavioral, developmental, physical, and oral health status, and social determinants of health, within 90 days of the effective date of plan enrollment. Plans would also be required to conduct the same assessment of existing members within one year of program implementation. The assessments would include use of all available data sources and data analytics, and member contact and evidence-based screening. The data would include previous screening or assessment data, disengaged member reports, claims or encounter data (including DHCS fee-for-service data), pharmacy data, laboratory data, electronic health records, and results of predictive modeling or specific algorithms. The member contact and screening would replace the existing Staying Healthy Assessment/Individual Health Education Behavioral Assessment (SHA/IHEBA), health information form/member evaluation tool (HIF/MET), and the health risk stratification and assessment survey for seniors and persons with disabilities. Plans would be

[13] Department of Health Care Services. "DHCS Care Coordination Project: MCP Assessment of Risk and Need". Care Coordination Advisory Committee Meeting Materials. August 29, 2018.

permitted to conduct the member contact screening via multiple modalities including phone, in-person, electronic, or mail, as long as responses are amenable to data mining and exchange with DHCS. Plans would be required to make at least three attempts to contact the member. After assessment, plans would be required to risk stratify the population of beneficiaries to determine the level of intervention required and assign members to tiers or subsets of care to address needs and intensities. Assignment to tiers or subsets of care would include determination of eligibility for various levels of case management, including enhanced care management, or benefits offered as in-lieu-of services. Beneficiaries would be reassessed annually for risk and need.

**Addressing Risk and Need.** Plans would be required to provide certain services to address risk and need identified during the assessment process. General requirements and services would include: 1) a toll-free line for primary care providers and specialists to assist with referrals for conditions that require further evaluation or treatment; and 2) a 24-hour toll-free nurse advice line for members seeking technical, clinical, and referral assistance for physical, oral, and behavioral health services to address urgent needs. Plans would be required to demonstrate how they support practice change activities, the deployment of evidence-based tools for providers, and models of service delivery that optimize health care and coordinated health care and social services. Plans would also be required to develop or provide access to a current and updated community resource directory for case managers and contracted providers.

**Wellness and Prevention.** Plans would be required to integrate wellness and prevention services according to the benefits outlined in the managed care contract. These services include: 1) all visits and services for children pursuant to the American Academy of Pediatrics Bright Futures periodicity schedule, and 2) all visits and services for adults pursuant to United States Preventive Services Task Force (USPSTF) Grade "A" and "B" recommendations. Plans would be required to monitor the provision of these services by primary care providers as part of the Facility Site Review process, as well as provide health educational materials about topics such as disease management, preventive services, Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services, how to access benefits, and other managed care plan health promotion materials.

**Members with Emerging Risks.** Plans would be required to manage members with emerging risks. This level of management would include: 1) ensuring providers are able to refer members to plan services when an emerging risk or need is identified, 2) ensuring members receive appropriate follow-up for these emerging risks or needs, 3) referring members in need of care coordination to a case manager within 30 calendar days, and 4) assessing needs and deploying appropriate community resources and strategies to mitigate impacts of social determinants of health. Plans would also be required to use predictive analytics to inform them about which patients, communities or populations are emerging as high risk, as well as identify and address the needs of outliers with more specific services and supports.

**Case Management.** Plans would be required to provide case management to beneficiaries with medium to high risk, or who may have emerging risks that would benefit from case management services. Beneficiaries could be assigned to one of three types of case management based on assessment of risk and need:

1) Basic case management for beneficiaries at lower levels of complexity, intensity, or duration. Services would be provided by the plan, clinic- or community-based staff, including non-licensed staff. This level of case management would include an individual care plan, an assigned case

manager, assignment to a certified patient-centered medical home, participation in the plan's disease management program, or participation in another plan's PHM program.

2) Complex case management, in accordance with NCQA requirements, provides coordinated care and services for high-risk beneficiaries who have experienced a critical event or diagnosis that requires extensive use of resources.

3) Enhanced care management for beneficiaries at the highest risk level who need long-term coordination for multiple chronic health and/or behavioral health conditions, as well as multiple social needs and utilization of multiple service types and delivery systems. This level of management is similar to the activities of the Whole Person Care and Health Homes pilot projects, providing wrap-around services for high-risk beneficiaries.

**In Lieu of Services.** Plans would also be permitted to voluntarily provide "in-lieu-of services" (ILOS), which are flexible wrap-around services that are provided as a substitute or to avoid utilization of other services such as hospital or skilled nursing facility (SNF) admissions, discharge delays, or emergency department use. ILOS would be integrated into case management for medium and high-risk beneficiaries and may fill gaps in Medi-Cal State Plan benefits including to address social determinants of health. DHCS proposes the following ILOS options: housing transition navigation services, housing deposits, housing tenancy and sustaining services, short-term post-hospitalization housing, respite, recuperative care, day habilitation programs, SNF transition/diversion to assisted living facilities, SNF transition to a home, environmental accessibility adaptations (home modifications), medically-tailored meals, supplemental personal care services, and sobering centers.

**Transitional Services and Coordination with External Entities and Skilled Nursing Facilities.** Plans would be required to provide transitional services for beneficiaries transferring from one setting or level of care to another. This includes safe comprehensive discharge planning from hospitals, continued access to services to prevent readmission, and incorporation of transitional language into subcontracts with community physical and behavioral health hospitals, residential treatment facilities, and long-term care facilities. The specific requirements are as follows: 1) use of a standardized, DHCS-approved discharge risk assessment tool for re-institutionalization, re-hospitalization, and/or substance use disorder treatment recidivism; 2) completion of a written discharge plan shared with the beneficiary and all treating providers; 3) seeking beneficiary permission to share information with clinical and non-clinical providers; 4) development of discharge planning policies and procedures in collaboration with all hospitals; 5) processing of all hospital prior authorization requests within two business days for clinic services such as therapy, home care, equipment, medical supplies, or pharmaceuticals; 6) education of hospital discharge planning staff on services requiring prior authorization; and 7) reduction of delayed discharges due to health plan authorization procedures.

Plans would also be required to describe in the PHM how they will manage linguistically and culturally appropriate coordination and referral of beneficiaries to health care and social services programs such as behavioral health, dental, and home- and community-based services. These services would be listed as part of the PHM and the health plan would coordinate with competent external entities to deliver the services.

Plans would also be required to coordinate with hospital or other acute care facility discharge planners and nursing facility case managers or social workers to ensure smooth transitions of beneficiaries to or from skilled nursing facilities. These requirements include assisting beneficiaries with care options, including home- and community-based services, when the beneficiary no longer meets medical necessity criteria for skilled nursing, as well as ensuring availability of medically necessary services to facilitate the beneficiary's recovery. Plans would also coordinate with skilled nursing facilities to provide case management and transitional care services to ensure coverage of all medically necessary services.

**Oversight and Technical Assistance to Plans for PHM.** DHCS proposes to require Plans to have internal monitoring processes in place to ensure compliance with the PHM with quality assurance reviews of risk stratification processes, documentation of care and treatment plans, referral management, coordination of care, and identification of appropriate case management including follow-through. Plans would document these quality assurance reviews annually, or upon DHCS request, and plans would be responsible for ensuring delegated entities comply with all requirements. DHCS also proposes to increase its oversight and assessment of plans, including changes to audit procedures and imposition of corrective action plans and financial sanctions. DHCS would provide plans with technical assistance through these changes.

DHCS also proposes to require Plans to implement health information technology to support population health principles, integrated care and care coordination across the delivery system. This technology would include electronic health records, emergency department information exchange, clinical data repositories, registries, decision support and reporting tools that support clinical decision-making and case management. Plans would be required to develop data exchange protocols before initiating services with any subcontracted entities to support integrated behavioral health and physical health coordination for beneficiaries across benefit delivery systems.

DHCS also proposes to provide submission templates and best practice examples of current PHMs from California's and other states' Plans, consider creation of a learning collaborative, and evaluate best methods for initial assessment and risk stratification, coordination with external entities, transition coordination, discharge risk assessment tools, general beneficiary medical record release consent forms, collection and submission of social determinants of health data through ICD-10 coding, data exchange protocols and development of health information technology and exchange policies.

## ***ENHANCED CARE MANAGEMENT AND IN-LIEU-OF SERVICES***

**Enhanced Care Management.** Under CalAIM, DHCS proposes to require Medi-Cal managed care plans to provide an enhanced care management benefit to beneficiaries determined to be high risk under a Plan's risk stratification processes and algorithms. As part of its population health management program requirements, health Plans would be required to submit an Enhanced Care Management Model of Care proposal by January 1, 2021. By that date, Plans would also be required to complete readiness for delivery of the benefit to the following mandatory target populations: 1) high utilizers with frequent hospital or emergency room visits; 2) individuals at risk for institutionalization with serious mental illness, children with serious emotional disturbance or substance use disorder with co-occurring chronic health conditions; 3) individuals at-risk for institutionalization and eligible for long-term care; 4) nursing facility residents who want to transition to the community; 5) children or youth with complex physical, behavioral, developmental, and oral health needs; and 6) individuals experiencing chronic homelessness or at risk of becoming homeless. By January 1, 2023, Plans would be required to update their Model of Care to include reentry for individuals transitioning from incarceration.

According to DHCS, this benefit would build upon the efforts of the Whole Person Care and Health Homes pilots and eventually replace those programs. The benefit would be delivered by care managers with a high-touch, in-person approach with frequent contact and development of relationships with beneficiaries and their families, as well as engagement in needs assessment and care planning processes. The care manager would be the beneficiary's primary point of contact and would be responsible for ensuring all physical, behavioral, long-term care, developmental, oral, social, and psychosocial needs are met in the safest, least restrictive way possible while considering the most cost-effective way to address those needs. Care managers would connect beneficiaries with providers and social service systems, identify and coordinate in-lieu-of services, assist in transitions between care settings, provide beneficiary and family education and support to improve treatment adherence and medication management, navigate beneficiaries' connection to community and social services, and assist beneficiaries in obtaining housing.

**In-Lieu-Of Services.** Under CalAIM, the Administration proposes to allow plans to voluntarily include one or more in-lieu-of services (ILOS) in their population health management plans. According to federal rules[14], ILOS are medically appropriate and cost-effective alternatives to covered Medi-Cal services and are typically delivered by a different provider, or in a different setting than a traditional Medi-Cal service. DHCS is proposing to allow plans to choose from the following 13 services:

- Housing Transition/Navigation Services – These services assist beneficiaries with obtaining housing and include assessing a beneficiary's housing needs, developing a housing support plan, navigating housing options and applications, assisting with advocacy and securing available income and housing subsidy resources, assisting with reasonable accommodation and move-in readiness, and coordinating necessary environmental modifications.

- Housing Deposits – These services assist beneficiaries with securing or funding one-time housing services that do not constitute room and board including security deposits, setup fees or deposits for utilities or other services, first month coverage of utilities, first and last month's rent if required for occupancy, health and safety services such as pest eradication or cleaning upon moving in, and medically necessary adaptive aids and services such as air conditioners or air filters.

- Housing Tenancy and Sustaining Services – These services assist beneficiaries in maintaining safe and stable tenancy after housing is secured including early identification and intervention for behaviors that may jeopardize housing, education and training on rights and responsibilities of tenants and landlords, coordination and assistance to maintain relationships with landlords and resolve disputes, advocacy and linkage to community resources to prevent eviction, health and safety visits, unit habitability inspections, and training for independent living and life skills.

- Short-Term Post-Hospitalization Housing – These services may include supported housing in an individual or shared interim housing setting and are designed to assist beneficiaries who are homeless and who have high medical or behavioral health needs with the opportunity to continue their recovery immediately after exiting an inpatient hospital, substance abuse or mental health treatment facility, custody facility, or recuperative care.

[14] 42 Code of Federal Regulations Section 438.3. "Standard contract requirements". May 6, 2016.

- Recuperative Care (Medical Respite) – These services provide short-term residential care for beneficiaries who no longer require hospitalization, but still need to heal from an injury or illness and whose condition would be exacerbated by an unstable living environment. At a minimum, the service would include interim housing with a bed and meals with ongoing monitoring of the beneficiary's condition. The service may also include limited or short-term assistance with activities of daily living, coordination of transportation to post-discharge appointments, connection to other necessary health and human services benefits or housing, or stabilizing case management relationships and programs.

- Caregiver Respite – These services provide relief to caregivers of beneficiaries who require intermittent temporary supervision and may be provided by the hour on an episodic basis, by the day or overnight, or include services that attend to the beneficiary's basic self-help needs or other activities of daily living.

- Day Habilitation Programs – These services assist beneficiaries in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in the beneficary's natural environment. These services may include training or assistance with the use of public transportation, personal skills development in conflict resolution, community participation, developing and maintaining interpersonal relationships, daily living skills, community resource awareness (e.g. police, fire, other local services), selecting and moving into a home, locating and choosing suitable housemates, locating household furnishings, settling disputes with landlords, managing personal financial affairs, managing needs for personal attendants, dealing with and responding to governmental agencies and personnel, asserting rights through self-advocacy, and coordinating health and human services benefits.

- Nursing Facility Transition/Diversion to Assisted Living Facilities – These services assist beneficiaries to live in the community or avoid institutionalization by transitioning to a Residential Care Facility for Elderly and Adult (RCFE) or Adult Residential Facility (ARF). These services, which do not include room and board, may include assessing housing needs and presenting options, assessing onsite service needs at the RCFE or ARF, assisting in securing a residence, communicating with facility administration and coordinating the move, establishing procedures and contacts to maintain housing placement, and coordinating with enhanced care management or other in-lieu-of services necessary for stable housing.

- Nursing Facility Transition to a Home – These services assist beneficiaries to live in the community and avoid institutionalization by transitioning to a private residence. These services, which do not include room and board, may include assessing housing needs and presenting options, assisting in securing housing, communicating with landlords and coordinating the move, establishing procedures and contacts to maintain housing placement, and coordinating with enhanced care management or other ILOS necessary for stable housing.

- Personal Care and Homemaker Services – These services assist beneficiaries with activities of daily living such as bathing, dressing, toileting, ambulation, or feeding. These services also assist beneficiaries with instrumental activities of daily living such as meal preparation, grocery shopping and money management. These services are provided in addition to any approved In-Home Supportive Services (IHSS) benefits approved by the county or during any IHSS waiting period.

- <u>Environmental Accessibility Adaptations (Home Modifications)</u> – These services provide physical adaptations to a home that are necessary to ensure the health, welfare, and safety of a beneficiary, or enable the beneficiary to function with greater independence in the home. Adaptations may include installation of ramps and grab-bars, doorway widening for beneficiaries who require a wheelchair, installation of stair lifts, bathroom or shower accessibility, installation of specialized electric or plumbing systems to accommodate medical equipment or supplies, installation and testing of a Personal Emergency Response System for beneficiaries who are alone for significant parts of the day without a caregiver and otherwise require routine supervision.

- <u>Meals/Medically Tailored Meals</u> – These services help beneficiaries achieve nutrition goals at critical times to help them regain and maintain their health and may include meals delivered to the home immediately following discharge from a hospital or nursing facility, or medically-tailored meals provided to the beneficiary at home to meet the unique dietary needs of a chronic condition.

- <u>Sobering Centers</u> – These services provide a safe, supportive environment to become sober for individuals found to be publicly intoxicated and who would otherwise be transported to an emergency department or jail. These services also include medical triage, lab testing, a temporary bed, rehydration and food service, treatment for nausea, wound and dressing changes, shower and laundry facilities, substance use education and counseling, homeless care support services, and screening and linkage to ongoing supportive services.

**Investment in Enhanced Care Management and ILOS Capacity and Infrastructure.** The Governor's January budget includes $582.5 million ($291.3 million General Fund and $291.3 million federal funds) in 2020-21 and $1.2 billion ($582.5 million General Fund and $582.5 million federal funds) in 2021-22 and 2022-23 to expand capacity for enhanced care management services and ILOS delivered by Medi-Cal managed care plans under the Administration's CalAIM proposal. Of these funds, $225 million ($112.5 million General Fund and $112.5 million federal funds) are for the implementation of the new, statewide mandatory enhanced care management benefit beginning January 1, 2021. $357.5 million ($178.8 million General Fund and $178.8 million federal funds) are for sustaining and transitioning existing ILOS currently offered under Whole Person Care or the Health Homes Program, as well as expanding capacity and infrastructure for ILOS in counties in which they currently do not exist.

According to DHCS, these investments would be structured as incentive payments to Medi-Cal managed care plans and are allowable under federal regulations to be provided in addition to the actuarially sound capitation payment Plans would otherwise receive. These payments are meant to be passed through to ILOS providers to build capacity and infrastructure to allow for sustainable delivery of these services to the Plan's beneficiaries. Plans would be required to include an ILOS in its population health management plan and offer the service to beneficiaries prior to receiving any incentive payments.

## ***<u>BEHAVIORAL HEALTH PAYMENT REFORM AND ELIGIBILITY CRITERIA</u>***

**Behavioral Health Payment Reform.** Under CalAIM, DHCS proposes to reform behavioral health payment methodologies in a multi-step process from the current cost-based reimbursement process to a rate-based and value-based structure using intergovernmental transfers to fund the non-federal share of services. The first step in the process would transition behavioral health services from the current claims coding system, Healthcare Common Procedure Coding System (HCPCS) Level II, to HCPCS Level I. According to DHCS, this transition would allow for more granular claiming and reporting of services provided, as well as more accurate reimbursements. This transition would occur no sooner than January 1, 2021.

After the transition to HCPCS Level I, DHCS proposes to set rates for behavioral health services by peer groups of counties with similar costs of doing business. DHCS would make annual updates to established rates to ensure reimbursement reflects the costs of providing services. DHCS would, at first, make payments to counties on a monthly basis, and would eventually transition to a quarterly payment schedule.

**Medical Necessity Criteria Reforms.** Under CalAIM, DHCS proposes to modify the existing medical necessity criteria for behavioral health services to ensure behavioral health needs are being addressed and guided to the most appropriate delivery system as well as provide appropriate reimbursement to counties. The proposed changes would separate the concept of eligibility for services from that of medical necessity, allow counties to provide services to meet a beneficiary's behavioral health needs prior to diagnosis of a covered condition, implement a standardized level of care assessment tool (one for beneficiaries over 21 and one for beneficiaries under 21), and make other revisions and technical corrections. These changes would ensure that eligibility criteria, largely being driven by level of impairment as well as diagnosis or a set of factors across the bio-psycho-social continuum, would be the driving factor for determining the delivery system in which a beneficiary should receive services. DHCS proposes to make these changes effective January 1, 2021.

***OTHER PROPOSED CHANGES***

**Long-Term Services and Supports Integration.** Under CalAIM, DHCS proposes to make several changes to the delivery system for long-term services and supports (LTSS) that build upon the state's dual demonstration project, the Coordinated Care Initiative (CCI). In the seven CCI demonstration counties, all Medi-Cal beneficiaries currently are required to receive LTSS benefits through a managed care plan. Beginning January 1, 2021, DHCS would transition all LTSS services into managed care for all managed care beneficiaries statewide. In addition, DHCS plans to discontinue Cal MediConnect, the managed care plans under CCI that coordinate Medi-Cal and Medicare benefits for dual eligible beneficiaries, on December 31, 2022, at the end of the federal demonstration period. The proposal would require Medi-Cal managed care plans to operate Dual Eligible Special Needs Plans, federally authorized health plans that coordinate Medi-Cal and Medicare services for dual eligible beneficiaries, and transition dual eligible beneficiaries into managed care for LTSS benefits, beginning January 1, 2023.

**Full Integration Plans.** Under CalAIM, DHCS proposes to, in consultation with stakeholders, test the effectiveness of full integration of physical health, behavioral health, and oral health under one contracted entity. DHCS indicates that topics for consideration of this proposal would include identifying which delivery systems would be part of the plan, determining the participation criteria for entities, identifying the challenges and opportunities of a fully integrated plan, planning the steps and timelines necessary for implementation, evaluating impacts on other non-Medi-Cal programs, consideration of blending of complex funding streams, and mechanisms for accountability. DHCS has proposed the following timelines for activities related to implementation of full integration plans:

- January 2020 – Full Integration Plan workgroup meetings begin
- January – December 2021 – Build full integration plan contract and request for proposal
- January – July 2022 – Post request for proposal and evaluate responses
- July 2022 – Award Full Integration Plan contracts
- July 2022 – December 2023 – Readiness activities and implementation planning
- January 2024 – Full Integration Plans go live in counties that have opted in to participate

**Consideration of Institutions for Mental Disease Exclusion Waiver.** Federal Medicaid law prohibits the payment of federal matching funds for services provided to Medicaid beneficiaries in an institution for mental disease (IMD). Section 1905(i) of the Social Security Act defines an IMD as any "hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services". However, recent federal guidance allows states to apply for a waiver to receive federal matching funds for services provided during short-term stays for acute care in settings that qualify as an IMD.[15] DHCS proposes to solicit input from stakeholders on whether to apply for this waiver opportunity.

**Future of Other 1115 Waiver Programs.** While many elements of the Whole Person Care program would be transitioned to the enhanced care management and ILOS benefit structure under the CalAIM proposal, DHCS is proposing to transition other elements of the state's expiring 1115 Waiver, Medi-Cal 2020 into new programs under the State Plan, the state's new 1915(b) Waiver, or a limited 1115 Waiver Renewal.

- <u>PRIME Transition to Quality Incentive Program</u> – DHCS proposes to extend the PRIME funding structure from July 1 until December 31, 2020. Beginning January 2021, DPH systems and DMPHs would participate in the Quality Incentive Program (QIP), which provides directed payments to hospitals that achieve specified improvement targets.
- <u>Global Payment Program</u> – DHCS proposes to extend the Global Payment Program through a limited 1115 Waiver renewal, beginning July 1, 2020.
- <u>Dental Transformation Initiative Transition to State Plan</u> – DHCS proposes to transition the authority for certain incentive payments that were part of the Dental Transformation Initiative to the State Plan. Providers would receive incentive payments for: 1) caries risk assessment for ages zero to six; 2) silver diamine fluoride treatment of ages zero to six, nursing facility residents, and disability population; and 3) pay for performance incentives for preventive services and establishing continuity of care through dental homes.

[15] Center for Medicare and Medicaid Services. "State Medicaid Directors Letter SMD #18-011 – Opportunities to Design Innovative Service Delivery Systems for Adults with a Serious Mental Illness or Children with a Serious Emotional Disturbance". November 13, 2018.

- Drug Medi-Cal Organized Delivery System – DHCS proposes to transition the services and delivery system for the Drug Medi-Cal Organized Delivery system to the state's new 1915(b) Waiver.

## ISSUES TO CONSIDER

**Transforming Medi-Cal to Focus on the Whole Person.** The Administration's CalAIM proposal is ambitious in its scope and has the potential to build a strong foundation to transform the state's Medi-Cal program into a whole person-centered health care delivery system that focuses on prevention and addresses the social determinants of health. Many of the program changes proposed under CalAIM have been tested under federal waivers or through state initiatives and have demonstrated some evidence of success. Given the expiration of the 1115 Waiver and a longstanding desire to reorient the focus of the Medi-Cal program, the timing of the Administration's proposal is appropriate.

**Significant New Responsibilities for Medi-Cal Managed Care Plans.** Equal to the ambition of the Administration's proposal are the technical challenges associated with investing a vast array of new care responsibilities in the state's Medi-Cal managed care plans. In particular, the transition of enhanced care management and ILOS from the Whole Person Care Pilots and the Health Homes program to the responsibility of managed care plans is a significant new area of services that plans may not be accustomed to delivering to Medi-Cal beneficiaries. Similarly, while the majority of Medi-Cal beneficiaries receive LTSS benefits through a managed care plan in Coordinated Care Initiative counties and other counties with LTSS integration, there are many Medi-Cal managed care plans that have no experience with delivering the LTSS benefit.

The investment of significant new responsibilities in managed care plans may be a logical choice given the flexibilities in service delivery offered by federal regulations. However, there have been significant recent concerns about Medi-Cal managed care plans' ability to deliver the services for which they are already responsible. For example, recent state audits have demonstrated that around half of all children in the Medi-Cal program are not receiving the pediatric preventive services for which they are eligible.[16] This includes less than 27 percent of eligible children receiving required testing for lead poisoning, the subject of a separate state audit.[17] While DHCS has implemented several new measures to hold plans accountable for their contractual responsibilities, the Legislature should consider whether more robust oversight and accountability measures are warranted given the significant new responsibilities the Administration is proposing to transition into managed care.

**NCQA Accreditation and Deeming Raise Additional Oversight Concerns.** The CalAIM proposal also includes planning to require Medi-Cal managed care plans to become accredited by the NCQA and to allow DHCS to deem accredited plans to be in compliance with a multitude of state and federal regulatory and contract requirements. While the goal of streamlining and focusing state oversight activities on high priority requirements is reasonable, the categories of requirements for which the state would defer to NCQA's accreditation review process under CalAIM are cause for concern. For example, DHCS would no longer conduct independent oversight of denials of limits on services, compliance with procedures for grievances and appeals, appropriate translation of written materials, and updates to plan

[16] California State Auditor. "Report 2018-111: Department of Health Care Services - Millions of Children in Medi-Cal Are Not Receiving Preventive Health Services". March 2019.
[17] California State Auditor. "Report 2019-105: Childhood Lead Levels – Millions of Children in Medi-Cal Have Not Received Required Testing for Lead Poisoning". January 2020.

provider directories. These requirements and others have been the subject of recent legislation as well as legislative oversight hearings. The Legislature should carefully consider whether it is appropriate to defer oversight of such critical aspects of the Medi-Cal program to a private, non-profit entity.

**Plan Member Assessment and Risk Stratification Require Additional Safeguards.** The CalAIM proposal includes a requirement that Medi-Cal managed care plans, as part of a population health management plan assess each plan member's risk and need by assessing behavioral, developmental, physical and oral health status, and social determinants of health. These assessments are required within 90 days of plan enrollment for new members and within one year of implementation of the population health management plan for existing members. Plans are required to make at least three attempts to contact a member by phone, in-person, electronically, or by mail. It is unclear what level of oversight DHCS would conduct over the processes plans employ to contact members and conduct assessments. Many of the members that would benefit from the new service delivery options available under CalAIM may be difficult to contact, much less assess for risk and need. It is unclear whether CalAIM would require plans to adopt many of the successful outreach strategies employed by the WPC Pilots, including administrative and electronic medical record data, referrals and warm hand-offs from partner organizations, self-referrals, and street outreach. The Legislature should consider whether DHCS should take a more proactive role in monitoring plans' success in assessing all of their members and incorporating successful outreach strategies for beneficiaries, particularly those who are most difficult to contact.

Once plans have conducted assessments, CalAIM proposes to require plans to risk stratify member populations to determine the level of intervention that members require. This risk stratification process would essentially serve as a plan-level determination of eligibility for certain services. For example, enhanced care management is a benefit plans are required to provide to members, but only to those who are considered to be at highest risk. Differences between plan risk stratification processes could lead to differential determinations of eligibility for enhanced care management services, among other higher intensity services including ILOS.

CalAIM would require plans to develop and use available data sources, predictive analytics, and algorithms to determine a member's level of risk. However, a recent study published in *Science* raises additional concerns about plans' risk stratification process.[18] The study evaluated an algorithm widely used in the commercial health insurance market to determine member risk, comparing the algorithmic risk score with other measures of overall member health status. The study found, because the algorithm uses health care expenditures as a proxy for health status, the algorithm was biased against populations with less access to health care, in this case black beneficiaries. The study found that using actual health status, rather than health expenditures, to determine risk would have resulted in an increase of availability of care for the plan's black beneficiaries of between 17.7 and 46.5 percent. The study notes that the key flaw in this algorithm, use of health expenditures as the primary accuracy metric, is utilized by the 10 most widely used industry algorithms, applied to more than 200 million people in the United States each year. In addition, many of these algorithms are proprietary, which prevents public scrutiny of how these algorithms determine eligibility for and access to programs that are stratified by risk. Given these concerns, and the potential for introducing a source of racial and other bias into Medi-Cal determinations of eligibility for these critical new programs, the Legislature should consider whether it is appropriate

[18] Obermeyer, Ziad, Powers, Brian, Vogeli, Christine, Mullainathan, Sendhil. "Dissecting racial bias in an algorithm used to manage the health of populations". Science. 366, 447-453. October 25, 2019.

for a public health care program to allow these determinations to be made by processes and algorithms that can be hidden from public scrutiny by intellectual property protections.

**Enhanced Care Management and ILOS Should Build on Existing Infrastructure.** The availability of the new enhanced care management benefit and ILOS offer the potential to build on the successes of the Whole Person Care (WPC) Pilots and the Health Homes Program to coordinate care across health and human service delivery systems for high risk patients with complex health needs. In counties that have implemented WPC and Health Homes, significant local efforts have resulted in a coordinated network of service providers that deliver care to these populations. The Legislature should ensure that, as DHCS transitions these services into a managed care plan responsibility under CalAIM, every effort is made to transition these local networks of providers to the new delivery system, as well. Counties and pilot programs spent significant public resources to build these provider networks, as well as to build credibility with the beneficiaries they serve. DHCS has indicated a willingness to consider requiring Medi-Cal managed care plans to contract with these existing providers to deliver enhanced care management and ILOS benefits, as well as to provide funding to fill gaps in existing service networks and build new service networks where they do not currently exist. The Legislature should engage thoughtfully with DHCS during the budget process to evaluate how to build on and expand these service delivery networks.

**Managed Care Plans Have More Limited Incentives for Adoption of ILOS Benefits.** According to DHCS, CalAIM proposes to allow managed care plans to offer ILOS benefits on a voluntary basis under the authority of federal rules promulgated in 2016.[19] DHCS indicates that, although federal rules allow the proposed ILOS benefits to be offered as mandatory benefits (with the exception of sobering centers), CalAIM pursued a voluntary approach due to a lack of current provider capacity for these benefits to qualify for incorporation into the State Plan and managed care contracts. State and federal laws and regulations impose certain requirements regarding provider availability and uniform access to care for benefits offered under Medi-Cal. However, DHCS has also indicated the Administration's investment of $357.5 million ($178.8 million General Fund and $178.8 million federal funds) in the Governor's January budget to support existing ILOS infrastructure and to support expansion of new ILOS infrastructure and benefit delivery is intended to lead to improvements in provider and service capacity that could allow incorporation of ILOS as mandatory Medi-Cal benefits. The Legislature should continue these discussions with DHCS to determine the necessary steps and evaluations that would need to occur to transition ILOS into mandatory Medi-Cal benefits, including an estimated timeline of when key milestones in that process would be achieved. In particular, the Legislature should focus on incorporation of housing supports and home- and community-based services as mandatory benefits and follow closely the example of other states, such as Minnesota, that have incorporated housing supports into their State Plan.[20]

In the interim, while these benefits may only be offered on a voluntary basis by Medi-Cal managed care plans, the Legislature should consider whether the incentive structure of reducing inpatient and long-term care utilization costs is sufficient to encourage plans to adopt a robust suite of ILOS benefits. WPC Pilots and Health Homes Programs implemented by local lead entities have significant cross-cutting incentives to address the needs of high risk populations with complex health and behavioral health conditions. County budgets are impacted by failure to care for these individuals in several different areas

[19] 42 Code of Federal Regulations Section 438.3. "Standard contract requirements". May 6, 2016.
[20] Minnesota Department of Human Services. "Housing support approved as new Medicaid benefit". Press release: August 15, 2019.

including health services, behavioral health services, local law enforcement, jails, quality of life, and economic development. When these service delivery options are incorporated as voluntary benefits for Medi-Cal managed care plans, the incentives for plans to coordinate a whole person approach will be limited to potential impacts on health care service utilization. In order to avoid the potential for cost-shifting to other systems, such as prisons or state hospitals, the Legislature should consider whether reduction in utilization of high-cost health care services should be the only mechanism for encouraging plans to implement ILOS benefits, or whether CalAIM should incorporate other desirable outcomes (e.g. reduced justice-involvement, stable employment, health status improvements, etc.) into the incentive structure for plans to offer these critical services.

# Challenges to a Sustainable Service System for the Intellectually and Developmentally Disabled

## BACKGROUND

### SYSTEM OVERVIEW

In California, the Lanterman Developmental Disabilities Services Act entitles persons with a developmental disability, as defined in law, access to services and supports. California has a uniquely designed community-based system of services and supports for persons with intellectual and developmental disabilities (IDD). The Department of Developmental Services (DDS) oversees the delivery of a variety of services to more than 330,000 children and adults. Home and community-based services (HCBS) are primarily delivered through 21 nonprofit Regional Centers (RCs) that, in turn, contract with several thousand nonprofit and for-profit service providers (vendors). RCs coordinate the delivery of more than 150 services to support people with IDD. RCs conduct outreach, assessment and intake activities; determine, through an individualized planning process, services and supports necessary to meet the needs of each person and, when appropriate, their family; and secure those identified services and supports for the consumer.

California has served persons with developmental disabilities in state-owned and operated institutions since 1888. Prior to 1969, state developmental centers were the primary provider of state-funded services to persons with developmental disabilities. At its peak in 1968, the developmental center system housed over 13,400 individuals in seven facilities. The passage of legislation in 1969 and successor legislation in 1977 (known collectively as the Lanterman Act) marked a significant shift in the state's approach to serving individuals with intellectual and developmental disabilities. Prior to this shift, the typical advice for a parent of a child with a developmental disability was to place their child in an institution. With the Lanterman Act, California accepted responsibility for serving its residents with IDD.

The shift from institutionalization brought about by this legislation caused a dramatic increase in community-based services. Since its enactment, the Lanterman Act has been amended to give consumers and families a stronger voice in determining the services and supports they receive through a person-centered planning process, and has introduced new models of service delivery, including supported living services, supported employment services, and self-determination (in which consumers and families receive a set budget and directly control expenditures on services and supports of their choosing). Additionally, new residential models have been developed to provide more intensive medical and behavioral supports in a home-setting.

### CURRENT RATE SYSTEM

With the proliferation of community-based services and the downsizing of state-funded services, the state has had to establish a system for paying vendors for services provided. The state's system for establishing payment rates for the services delivered by these providers is complex, encompassing several different methodologies depending on the service provided. Rates are often inconsistent, in some cases paying providers different rates for delivering the same service in the same area. Service providers, consumers, and other stakeholders have all expressed confusion and disillusionment with the current rate-setting system. The methodology to establish rates for services is based on the type of service vendors have been approved to provide. Below is an explanation of the various rate-setting methodologies and the applicable services for each methodology.

- DDS-set rates. Some service rates are set by DDS either through cost statements, rate schedules, by statute, or by regulation. Service rates covered by this methodology include community-based day programs, community care facilities, in-home respite, supported employment, work activity programs, and infant development programs.

- Rates established by Medi-Cal. If a service is also provided under the Medi-Cal program, then the RC may pay no more than the rate established by Medi-Cal for the same service. This methodology primarily applies to medical service providers, such as nurses, home health aides, and therapists.

- Usual and customary rates. Many services funded by RCs are from providers whose business includes serving people other than those with IDD. In instances where at least 30 percent of a provider's customers are not RC consumers or their families, then the rate the RC may pay for the service is the rate the provider regularly charges the general public. Examples of services with usual and customary rates include daycare, diaper services, and public transportation providers. Note that the majority of service providers mostly serve RC clients.

- Rates established by the California Department of Social Services (DSS). This category includes out-of-home respite services that are provided in facilities with rates established by the DSS.

- Rates set by RC mileage reimbursement. Some transportation services have rates that can be set based on what the RC reimburses its own employees for travel.

- Rates set through negotiation between the RC and the provider. If none of the other methods for establishing a service rate apply, then the service rate is determined through negotiation between the RC and the provider. Examples of services subject to negotiated rates include supported living, specialized residential facilities, and behavior analysts.

For some services, multiple methodologies may be applicable. In these instances, the rate is based on the provider's already established rate or the rate established by DDS. Otherwise, the rate is established through negotiation between the RC and the provider. Over the years, payment rates have been subject to various reductions, freezes, and other constraints, particularly during economic downturns.

These changes are detailed in the table below.

| Fiscal Year | Adjustment |
|---|---|
| 2003-04 | ⬇ Rate freezes for a number of services, including community-based day programs, supported living, and transportation |
| 2004-05 | ⬇ Rates for work activity programs were frozen |
| 2006-07 | ⬆ Rate increases to account for rising statewide minimum wage<br>⬆ 3 percent increases for a number of services with rates set by DDS or through negotiation with RCs<br>⬆ Targeted 3.86 percent wage enhancement for certain services provided in integrated settings<br>⬆ 24 percent increase for supported employment |
| 2007-08 | ⬆ Rate increases to account for rising statewide minimum wage |
| 2008-09 | ⬇ Rate freezes for all services with negotiated rates<br>⬇ Implementation of statewide median rates that set a limit on negotiated rates for new providers<br>⬇ 10 percent reduction for supported employment |
| 2009-10 | ⬇ 3 percent reduction for all services except supported employment and usual and customary rates |
| 2010-11 | ⬇ 1.25 percent reduction for all services except supported employment and usual and customary rates |
| 2011-12 | Institution of updated statewide median rates |
| 2012-13 | ⬆ Restoration of 3 percent reduction |
| 2013-14 | ⬆ Restoration of 1.25 percent reduction |
| 2014-15 | ⬆ Rate increases to account for rising statewide minimum wage<br>⬆ 5.82 percent increase for in-home respite, supported living, and personal assistance due to change in federal overtime rules |
| 2016-17 | ⬆ Rate increases for various services including supported and independent living, respite, transportation, and supported employment (AB 1 X2) |
| 2019-20 | ⬆ Time-limited rate increases for various services, set for suspension in 2023, unless certain conditions are met. For specific conditions see SB 81(Senate Budget and Fiscal Review Committee), Chapter 28, Statutes of 2019. |

**2015-16 EXTRAORDINARY SESSION**

In response to concerns about the sustainability of the system that serves individuals with developmental disabilities Governor Edmund G. Brown, Jr. called for the Legislature to convene an extraordinary session. In June 2015, Governor Brown issued a proclamation calling for, amongst other provisions, "Sufficient funding to provide additional rate increases for providers of Medi-Cal and developmental disability services." The Governor also called for the Legislature to "consider and act upon legislation necessary to establish mechanisms so that any additional rate increases expand access to services; and increase oversight and the effective management of services provided to consumers with developmental disabilities…"

Ultimately, the California Legislature passed Assembly Bill 1 X2 (Thurmond, Beall, Bonta, Canella, and Maienschein), Chapter 3, Statutes of 2015-16 Second Extraordinary Session. The legislation appropriated additional funding for vendor rate increases and RC operations, required RCs to provide specified information to the DDS, and focused on addressing disparities within the system. $244.9 million (General Fund) was appropriated for the DDS vendor rate increases. Including federal funds, rates were increased by more than $400 million in total. The legislation targeted increases to a number of areas, including direct care workers, agency administrative expenses, and targeted increases for supportive and independent living services, respite, supported employment, and transportation. AB 1 X2 also required the DDS to submit a rate study to the appropriate committees of the Legislature "addressing the sustainability, quality, and transparency of community-based services…"

**RATE STUDY**

The Legislature approved $3 million (General Fund) for the study, and DDS contracted with Burns & Associates, Inc. to conduct the study. The study was submitted to the Legislature on March 15, 2019.

W&IC Section 4519.8

*On or before March 1, 2019, the Department shall submit a rate study to the appropriate fiscal and policy committees of the Legislature, addressing the sustainability, quality, and transparency of community-based services for individuals with developmental disabilities. The Department shall consult with stakeholders, through the developmental services task force process, in developing the study. The study shall include, but not be limited to, all of the following:*

*(a) An assessment of the effectiveness of the methods used to pay each category of community service provider. This assessment shall include consideration of the following factors for each category of service provider:*

*(1) Whether the current method of rate-setting for a service category provides an adequate supply of providers in that category, including, but not limited to, whether there is a sufficient supply of providers to enable consumers throughout the state to have a choice of providers, depending upon the nature of the service.*

*(2) A comparison of the estimated fiscal effects of alternative rate methodologies for each service provider category.*

*(3) How different rate methodologies can incentivize outcomes for consumers.*

*(b) An evaluation of the number and type of service codes for regional center services, including, but not limited to, recommendations for simplifying and making service codes more reflective of the level and types of services provided.*

**Development of Rate Models.** The development of the rate models began with a detailed review of service requirements. With Burns & Associates' assistance, the DDS undertook a comprehensive review of service definitions. This process also included a review of California-specific laws – such as labor-related requirements – that impact providers' costs. From this review, the DDS is compiling a list of potential statutory and regulatory changes that would be needed should the rate models be implemented. The rate models are built on detailed assumptions regarding a number of factors, including the wages, benefits, and productivity of the direct care worker; the agency's program operation and administrative costs; staffing ratios and staffing levels, attendance/absence factors, travel-related expenses, facility costs, and program supplies. Providers' costs generally reflect current rates rather than market-based conditions. For this reason, other data sources are used. These sources include California-specific, cross-industry wage data from the U.S. Department of Labor's Bureau of Labor Statistics, several sources that provide estimates of health insurance costs, and the Internal Revenue Services' mileage rate. Further, various analyses were undertaken to understand regional variability in costs associated with wages, travel, and real estate.

The draft rate models developed as a result of the rate study are intended to reflect assumptions on five key cost drivers: (1) the wage for the direct care worker, (2) the benefits package for the direct care worker, (3) the 'productivity' of the direct care worker (that is, the ratio of their billable hours to their work hours), (4) program operation costs, and (5) agency administration. Other cost drivers vary by service or location and may include staffing ratios, mileage, supervision, and facility costs. Key assumptions that broadly affect the draft rate models include state minimum wage requirements, a comprehensive benefits package for direct care workers, and the rate for administrative costs.

For each service and rate variant, a 'base' rate model is established. Then, to account for differences in wage, travel, and real estate costs across California, a draft rate model is established for each RC by applying a 'multiplier' for these three cost factors, as applicable, that reflects the cost in that RC in relation to the statewide value.

**Stakeholder Response.** Upon the release of the rate study on March 15, 2019, numerous stakeholders provided comments in public meetings and hearings, as well as in writing. Many acknowledged the significant amount of work that went into developing the rate models and commended how the models established a framework for estimating costs of services, allowed for rates that vary based on staff qualifications and other differences, and agreed with the recommendation to professionalize the direct care workforce. Conversely, providers expressed concerns with some of the assumptions used by Burns & Associates, and that the implementation of the rate models as developed would eliminate some service categories, collapse some services into a few categories, and create a homogenization of different programs.

**Response to Public Comments.** The DDS released responses to public comments along with its budget on January 10, 2020. In total, approximately 3,600 pages of comments were received. The released document summarized and categorized the comments, and contained detailed replies to hundreds of stakeholder comments. Commenters provided feedback on the rate study, as well as issues not within the scope of the study, such as the implementation of the rate models. A sample of shared comments submitted by multiple stakeholders include:

- Rate study does not address the requirement to assess whether current rate-setting methods provide an adequate supply of providers.
- No vendor rates should be reduced, and negotiated rates should be grandfathered.
- Some commenters expressed support for standardizing service codes and definitions, while others objected to the proposed consolidations of service codes, concerned that the consolidations may limit options.

- Some commenters expressed support for standardized rates, where all vendors are paid the same rate for providing the same service in the same area. However, others objected to standardized rates, stating that they are not equitable or consumer-driven.

- Commenters protested the recommendation that all services be converted to hourly billing, stating that it impairs the ability of vendors to meet individual needs.

- Rates should be tied to quality and outcomes for individuals. Commenters recommended that the DDS should track consumer satisfaction.

- Commenters expressed support for efforts made to differentiate rates by geography but also objected to various aspects of the regional adjustment factors.

- Commenters objected to the use of Bureau of Labor Statistics data to set wage assumptions, arguing that the data was outdated, among other things.

- Commenters challenged the use of a 12 percent rate for administrative expenses, suggesting that the rate models should include a higher percentage.

**Updated Rate Models.** Several changes to the original rate models were made in January 2020 which fell into three different categories: technical adjustments, methodological changes, and changes in response to public comments.

In general, these changes related to specific assumptions in rate models for individual services rather than fundamental assumptions that impacted all rate models. Changes were made to many service categories including personal support and training; residential; day, employment, and transportation; and professional. Changes affecting services in multiple categories were also made. Notable changes to the rate models in response to public comments include, but are not limited to the following:

- Incorporation of more current wage data, workers' compensation, and mileage rate data published after the release of the draft rate models.

- Increased wage assumptions for various services, including Supported Employment, Independent Living, Community-Based Day Programs, and registered behavior technicians.

- Withdrawal of the methodology to align rates for certain services with Medi-Cal rates and establishing rate models for these services (most notably affecting Specialized Therapeutic Services and certain professionals in Infant Development programs).

- Withdrawal of the methodology establishing separate short-term and long-term encounter rates for various in-home services.

- Added overtime to rate models for Supported Living and certain residential services.

- Withdrew the methodology to require Respite vendors supporting employer of record models to become financial management services agencies.

- Reduction in assumed attendance in day programs from 90 percent to 88 percent.

**Fiscal Impact.** In total, the estimated cost of fully implementing the study is $1.8 billion total funds. The estimate is based on 2019-20 spending projections and does not account for the rate increases included in the 2019-20 budget or the increases for additional service codes proposed in the 2020-21 budget. Note that all of the rate models mentioned here are proposed, and none have been implemented. However, supplemental rate increases included in the 2019-20 budget and proposed in the 2020-21 budget were determined using input from the rate models.

## THE 2019 BUDGET ACT

**Rate Increases.** The 2019-20 budget contained several provisions relating to the rate study, and more broadly, fiscal reform within the developmental services system. The budget provided for $206.7 million ($125 million General Fund) to provide rate increases of up to 8.2 percent for specified service providers, effective January 1, 2020. Details on specific increases are detailed in the table below.

| Service Code | Rate Increase |
|---|---|
| 017 - Crisis Team - Evaluation & Behavior Modification | 8.20% |
| 025 - Tutor Services – Group | 8.20% |
| 028 - Socialization Training Program | 8.20% |
| 048 - Client/Parent Support Behavior Intervention Training | 8.20% |
| 055 - Community Integration Training Program | 8.20% |
| 062 - Personal Assistance | 8.20% |
| 063 - Community Activities Support Services | 8.20% |
| 073 - Parent Coordinator Supported Living Prog | 6.30% |
| 091 - In-Home/Mobile Day Program | 8.20% |
| 093 - Parent-Coordinated Personal Assist Service | 8.20% |
| 094 - Creative Arts Program | 8.20% |
| 108 - Parenting Support Services | 8.20% |
| 109 - Program Support Group-Residential | 8.20% |
| 110 - Program Support Group-Day Service | 8.20% |
| 111 - Program Support Group-Other Services | 8.20% |
| 113 - DSS Licensed-Specialized Residential Facility | 8.20% |
| 420 - Voucher Respite | 8.20% |
| 465 - Participant-Directed Respite Services | 8.20% |
| 475 - Participant Directed Community-Based Training Services/ Adults | 8.20% |
| 510 - Adult Development Center | 8.20% |
| 515 - Behavior Management Program | 8.20% |
| 605 - Adaptive Skills Trainer | 3.90% |
| 612 - Behavior Analyst | 8.20% |
| 613 - Associate Behavior Analyst | 8.20% |
| 615 - Behavior Management Assistant | 8.20% |
| 616 - Behavior Technician - Paraprofessional | 8.20% |
| 635 - Independent Living Specialist | 2.40% |
| 645 - Mobility Training Services Agency | 8.20% |
| 650 - Mobility Training Service Specialist | 8.20% |
| 860 - Homemaker Services | 8.20% |
| 862 - In-Home Respite Services Agency | 8.20% |
| 864 - In-Home Respite Worker | 8.20% |
| 875 - Transportation Company | 8.20% |
| 880 - Transportation-Additional Component | 8.20% |
| 882 - Transportation-Assistant | 8.20% |
| 896 - Supported Living Services | 8.20% |
| 904 - Family Home Agency | 8.20% |
| 905 - Residential Facility Serving Adults-Owner Operated | 8.20% |
| 910 - Residential Facility Serving Children - Owner Operated | 8.20% |
| 915 - Residential Facility Serving Adults - Staff Operated | 8.20% |
| 920 - Residential Facility Serving Children-Staff Operated | 8.20% |
| 950 - Supported Employment-Group | 8.20% |
| 952 - Supported Employment-Individual | 7.60% |

**Fiscal and System Reform Workgroup.** SB 81 (Committee on Budget and Fiscal Review), Chapter 28, Statutes of 2019, required the DDS, beginning in the summer of 2019, to hold workgroups with stakeholders to discuss how to “create a sustainable, innovative, cost-effective, consumer focused, and outcomes-based delivery system.” The first meeting of this workgroup occurred on January 15, 2020, and mainly served as an orientation and brainstorming session for workgroup members. The workgroup received an overview of the DDS budget and deliberated future topics of discussion. The meeting also included the solicitation of ideas on specific measures and consumer outcomes the DDS should track as it shifts to a focus on personal client outcomes. The DDS will report on the progress and any outcomes of the workgroup during the 2020-21 budget process.

## GOVERNOR'S PROPOSAL

As summarized in the chart below, the Governor's budget proposes a total of $9.2 billion ($5.7 billion General Fund (GF)) for the DDS in 2020-21. The DDS estimates RCs will serve 368,622 individuals in 2019-20 and 302 individuals will reside in state-operated facilities on July 1, 2020.

**DDS Funding Summary**

| | **2019-20 (Current Year)** | **2020-21 (Budget Year)** | **Percent Change** |
|---|---|---|---|
| Community Services | $7.7 billion ($4.7 billion GF) | $8.8 billion ($5.3 billion GF) | 13.1% |
| State Operated Facilities | $326.4 million ($284 million GF) | $300.2 million ($267.1 million GF) | -8% |
| Headquarters Support | $97.9 million ($63.4 million GF) | $118.2 million ($74.5 million GF) | 20.8% |
| **Total** | **$8.2 billion ($5 billion GF)** | **$9.2 billion ($5.7 billion GF)** | **12.3%** |

The Governor's budget includes significant proposals to update caseload ratios for consumers ages three and four, provide incentive payments for well-performing RCs, provider rate increases, expand bed capacity in the Porterville Secure Treatment Program (STP), and increase support for individuals at risk of being placed in more restrictive settings.

Significant budget proposals include:

- **Rate Increases.** $18 million ($10.8 million General Fund) for provider rate increases, effective January 2021, for Early Start Specialized Therapeutic Services (an increase of about five percent), Independent Living Program (an increase of 8.2 percent), and Infant Development Program (an increase of 8.2 percent). This increase is in addition to an increase of $206.2 million ($124.5 million General Fund) to reflect the full-year impact of rate increases provided in the 2019 Budget Act. Note that all increases are subject to suspension on July 1, 2023, unless certain conditions are met as determined by the Department of Finance (DOF).

- **Performance Incentive Program.** $78 million ($60 million General Fund) to establish a performance incentive program for RCs. The program will align with each RC's performance contract and require RCs to meet an advanced tier of performance measures and outcomes to receive incentive payments.

- **Expansion of Bed Capacity in Porterville STP.** $8.9 million General Fund and 72.3 positions to temporarily expand bed capacity from 211 to 231 beds. The DDS will add an Intermediate Care Facility unit of 20 beds. This additional funding would expire on July 1, 2024, and the bed capacity would return to 211.

- **Systemic, Therapeutic, Assessment, Resources, and Treatment (START) Training.** $4.5 million ($2.6 million General Fund) to support individuals and prevent admissions into more restrictive settings through the provision of 24-hour crisis services and planning, and by providing training to families, support staff, and local partners. Currently, this resource is in place at two RCs. The additional funding would expand the training across six RCs.

- **Enhanced Caseload Ratios for Three- and Four-Year Olds.** $16.5 million ($11.2 million General Fund) to provide a 1:45 service coordinator to consumer caseload ratio for consumers ages three and four.

## ISSUES FOR CONSIDERATION

As the IDD service system has grown, multiple stresses have been placed on the system – all affecting the system's economic condition. This section discusses those individual pressures, as well as factors the Legislature should take into account while deliberating the DDS budget. Ultimately, the challenge facing the Legislature and the state is how to sustain an underfunded, open-ended entitlement system while also attempting to contain costs and make the system more cost-effective.

**Inadequate Vendor Rates.** As discussed earlier, the DDS rate study found that the system as a whole is underfunded by $1.8 billion. In budget hearings and other forums, vendors have remarked on how inadequate rates are stressing their organizations. Many have provided anecdotes on how low payment rates are forcing their organizations to close, making it harder for individuals to find the services they require. While the 2019 Budget Act provided funding for rate increases for some providers, and the 2020 proposed budget provides funding for additional increases, these increases are temporary. The DOF proposes to suspend these increases on July 1, 2023, unless certain conditions are met as determined by the DOF.

While this document has examined the development and concerns associated with the rate study itself, there is no plan to implement the study at this time. On January 22, 2020, the Senate Budget Subcommittee No. 3 held an informational hearing to discuss the rate study and its potential implementation. The subcommittee questioned the Administration about its plans for the next steps and requested a timeline of efforts to implement the study at its next subcommittee hearing on the topic. The Administration plans to work with the fiscal and system reform workgroup to determine these next steps. The Legislature should continue to drive the conversation on rate study implementation and question the Administration on its next steps in future subcommittee hearings.

**Growing Consumer Population and Changing Demographics.** The number of individuals receiving services has grown at an average annual rate of approximately four percent since 2009-10. In comparison, the population of California has grown by less than one percent each year in that same time frame. For 2020-21, the DDS estimates an annual caseload increase of 5.3 percent. A substantial portion of this increase is due to the rising number of consumers with autism. In the most recent edition of the annual DDS fact book[1] (using data from 2017-18), 36.7 percent of the consumer population had a diagnosis of autism. By June 2019, that percentage had increased to almost 40 percent[2]. In 2007-08, that percentage was 20.2 percent. Per-capita expenditures for autism are higher than expenditures for the other four development disability categories (intellectual disability, epilepsy, cerebral palsy, and a fifth category for other diagnoses receiving treatment similar to the previous four). The majority of consumers with autism are under 21 years of age. After age 21 the expenditures for consumers typically increase,

[1]California Department of Developmental Services, Fact Book: 16th Ed. (2019), https://www.dds.ca.gov/wp-content/uploads/2019/11/DDS_FactBook_2019.pdf.
[2]Data available at https://www.dds.ca.gov/transparency/facts-stats/quarterly-client-characteristics-reports/

as that is the age where Department of Education-funded services are no longer available. It is likely that as this group of consumers ages the impact on costs will be significant.

**RC Funding.** Funding for RC operations and personnel is based on an outdated formula created in 1978, known as the “Core Staffing Formula.” The formula provides a model for budgeting RC staff salaries and benefits using comparable point in time state classifications and wages. However, the formula has not been updated since 1990. That same year, RC salaries were uncoupled from state cost-of-living adjustments. Since then, RCs have had difficulty offering competitive salaries and have had to take other measures to staff their organizations (such as reducing staff educational and qualification levels).

This has also created difficulty in maintaining mandated caseload ratios. The inability to recruit and retain staff negatively impacts the quality of case management services provided to consumers. The Performance Incentive Program proposed in the Governor’s budget may be a step in addressing this problem. However, it raises a question as to whether it is fair to expect RCs that already struggle to meet caseload ratios to excel at certain performance measures. The DDS has yet to designate these performance measures and will seek the assistance of the DS Task Force to help design these measures in future meetings.

As mentioned earlier, the ultimate challenge before the state is how to continue to fund an entitlement system on a fixed budget. The Legislature must consider whether it wishes to continue to consider funding on a year-to-year basis or take a long-term view when budgeting for a growing entitlement system. While there is an agreement that the system is inadequately funded, there is no consensus on how to approach the problem. As part of that approach, the Legislature and the Administration must agree on how to implement the rate study. If the state ultimately decides to implement the rate study many questions remain to be answered before implementation. For example, the DDS must identify policy and/or regulatory changes that must be made prior to implementation. In the meantime, the Legislature could consider smaller-scale solutions that would provide some financial relief in the short-term.

Examples of these include:

- Restoration of services eliminated during times of recession (social recreation services).
- Allowing service providers in areas with a local minimum wage higher than the state minimum wage to apply for rate adjustments when the state minimum wage increases. (A fix to the so-called “minimum wage quirk.”)
- Elimination of the proposed suspension dates for supplemental rate increases, and various other policies, enacted in the 2019 Budget.

# Funding California's Child Support System

## BACKGROUND

The primary purposes of California's child support program are to establish child support orders, collect child support payments from noncustodial parents, and distribute collected child support to custodial parents and their children. Local Child Support Agencies (LCSAs), overseen by the state Department of Child Support Services (DCSS) collect and distribute child support payments. To do this work LCSAs locate noncustodial parents, certify paternity, establish child support orders, and enforce the payment of child support orders. Forty-nine LCSAs carry out these tasks at the local level. The majority of LCSAs serve one county, except for seven regionalized LCSAs that serve multiple counties. Parents can establish child support orders privately, through a private attorney or as the result of divorce proceedings, or through the state's program. The final authority for setting the amount of child support orders rests with the court system. The DCSS estimates that it will collect $2.5 billion in child support payments in 2019-20.

**Structure of the Child Support System.** The federal government requires states to maintain a child support program but allows states some flexibility in how to administer the program. Before 1999, county District Attorneys (DAs), with oversight from the Department of Social Services, administered the child support program at the local level. Legislation restructured the program in 1999 with oversight transferring to the newly created DCSS and local operations transferred to newly created LCSAs. This change was aimed at ensuring child support orders were established and enforced consistently across counties. The legislation tasked DCSS with identifying and encouraging consistent best practices across the state. Responsibilities of DCSS include program oversight, statewide Information Technology (IT) database management, and certain statewide enforcement activities. The main responsibilities of LCSAs are to locate noncustodial parents, certify paternity, establish and modify child support orders, and collect payments (through voluntary or enforcement actions).

While LCSAs collect information to determine a proposed order amount, the final authority to set child support orders falls to child support court commissioners. Commissioners specialize in hearing child support court cases, interpreting state and federal child support laws, and setting up child support orders. The Judicial Council of California, the policymaking body of the state's court system, receives funding from DCSS to oversee county child support courts. Judicial Council is also responsible for reviewing the statewide statutory formula for calculating child support payments every four years.

**Pass-Through for California Work Opportunity and Responsibility to Kids (CalWORKs) Families.** When a custodial parent applies for CalWORKs (California's version of the federal Temporary Assistance for Needy Families program), federal law requires them to sign over the majority of their child support payments to the state. These payments are distributed to state, federal, and county governments to reimburse some of their costs associated with public assistance benefits. When a current child support payment is collected for a party receiving public assistance benefits, the custodial parent will receive the first $50 of the child support payment. The balance of the payment is used to reimburse federal, state and county governments for the cost of the benefits. Approximately 75 percent of child support cases are assistance cases, the majority of which are current or former CalWORKs cases.

In 2019-20, the DCSS estimates it will collect $387 million in child support on behalf of former and current families receiving assistance benefits. Of this amount, the DCSS estimates that $366 million will be collected as assistance recoupment and will be used to reimburse the state ($168 million), counties ($23 million), and federal ($176 million) governments. In most cases, counties use their recoupment dollars for general county purposes and not specifically to augment funding for their LCSA. Of the remaining amount, $21 million was passed through to families receiving assistance.

**Funding Structure of Child Support Program.** The child support program is funded through federal (66 percent) and state funds (34 percent). Additionally, counties may supplement LCSAs with local matching funds. Funding for the county match is 34 percent county funds and 66 percent federal funds. Before 1999, the amount of funding for child support enforcement varied significantly across counties and depended on how much each county DA dedicated to the program. During the restructuring of the state's child support system in 1999, the state largely chose to base funding levels for LCSAs on the funding level in each county before that time. Since then, the state has provided a few budget augmentations for the program.

In 2005-06, the LCSAs received a one-time augmentation of $4.2 million for outreach and transition workload. In response to dwindling resources and flat funding, the Legislature provided an ongoing revenue stabilization funding augmentation of $18.7 million ($6.4 million General Fund) in 2008-09. That same year, $12.6 million was redirected from local assistance to state operations as the state centralized the printing and mailing of child support forms and notices at the Office of State Publishing. Funding levels for LCSAs remained flat until 2018-19 when DCSS received an ongoing augmentation of $9 million ($3 million General Fund and $6 million federal funds) to address the rise in LCSA operational costs. Additionally, the 2018-19 budget included language requiring the director of the DCSS and the president of the Child Support Directors Association of California to lead discussions for purposes of identifying operational inefficiencies and further refinements to the budget methodology. The language required the department to submit the report by July 1, 2019.

**2019 Budget Act.** In the Governor's 2019-20 budget an updated funding methodology for LCSAs was proposed. However, due to concerns about how the DCSS would address changing federal rules, among other issues, the 2019 Budget Act included limited funding for an interim funding methodology. The budget also included trailer bill language requiring the department to convene a series of stakeholder working sessions to develop an ongoing funding methodology and to provide a written update to the Legislature describing recommended changes by February 1, 2020.

That report was submitted to the Legislature on January 31, 2020. The report detailed the various recommendations discussed by the workgroup and included a list of potential efficiencies that could be implemented by the DCSS. Some recommendations suggested by the workgroup include the rounding of fractional positions that resulted in increased caseload to full-time equivalent positions, refining the methodology to calculate real estate and facility costs separately, providing incentive funding based on a customer satisfaction survey, and adjusting individual LCSA funding for caseload changes. Efficiencies laid out in the report include the option of statewide text messaging to communicate with customers, modifications to various regulations around driver's license suspensions, and establishing LCSAs that excel in handling certain types of cases to consolidate those cases (known as centers of excellence). However, the report did not discuss what processes the DCSS would need to undergo to make those efficiencies a reality. While the report did provide the various funding methodology refinements discussed by the workgroup the DCSS did not provide any recommendations for changes to the funding nor a detailed analysis of why the refinements suggested by the workgroup were rejected.

**Federal Office of Child Support Enforcement (OCSE) Final Rule.** On December 20, 2016, the federal OCSE published The Flexibility, Efficiency, and Modernization in Child Support Programs Final Rule (Final Rule). The Final Rule makes changes to the child support program, intended to increase the effectiveness of the program for all families, states, territories, and tribal programs. The rule also ensures that child support services are accessible to families and delivered fairly and transparently. Some of the changes include clarifying and streamlining regulations to improve the efficiency of child support programs; clarifying the variables that should be considered or included when calculating a child support order amount; expanding criteria for closing child support cases; and expanding the types of services for which federal financial participation is available. The rule increases public participation and transparency in state guidelines review processes and requires child support agencies to increase their case investigative efforts to improve the accuracy of child support orders. The table below highlights the major features of the Final Rule.

**Recent Federal Guidance Prioritizes Ability to Pay and Reliability**

*Major Features of the Federal Final Rule, December 2016*

- ✓ Set accurate child support obligations based on the noncustodial parent's ability to pay.
- ✓ Increase reliable, on-time payments to families.
- ✓ Move nonpaying cases to paying status.
- ✓ Increase the number of noncustodial parents supporting their children.
- ✓ Improve child support collection rates.
- ✓ Reduce the accumulation of unpaid and uncollectible child support debt.
- ✓ Incorporate technology and evidence-based standards that support good customer service and cost-effective management practices.

Source: Legislative Analyst's Office. "Analysis of Proposed Increase in State Funding for Local Child Support Agencies." March 26, 2019. https://lao.ca.gov/reports/2019/3989/child-support-032619.pdf

DCSS will be evaluating the provisions related to the Child Support Guideline in the context of the current Guideline Quadrennial review, which is a federally-required review of state child support order setting guidelines. DCSS met with LCSAs and the Judicial Council of California throughout 2018 to review both the Final Rule provisions related to the Guideline and the Quadrennial Review report. As of January 2019, the DCSS had implemented some provisions required by the Final Rule but was still working on implementing a few others. Provisions that still require a decision include guidelines for setting child support orders based on the non-custodial parent's earnings and ability to pay, and outlining procedures that must be taken to establish and modify child support orders. The department is awaiting feedback from its workgroup on those implementation decisions. All the provisions awaiting a decision are optional or have a compliance date of January 1, 2022.

## GOVERNOR'S PROPOSAL

The 2020-21 Governor's budget proposes a total of $1.2 billion ($362.4 million General Fund) for the department. The DCSS estimates total child support collections will equal $2.6 billion ($160.4 million General Fund). The table below provides a summary of the proposed 2020-21 funding for the department.

| DCSS Funding for 2020-21 | | | | | |
|---|---|---|---|---|---|
| | Federal | State | County | Reimbursements | Total |
| State Operations | $130 million | $57.6 million | $0 | $123,000 | $187.7 million |
| Local Assistance | $654.2 million | $304.7 million | $13.6 million | $0 | $972.5 million |
| | | | | **Total** | $1.2 billion |

**LCSA Funding Methodology.** The budget includes an increase of $56 million ($19.1 million General Fund) in 2020-21 for LCSAs, consistent with the interim funding methodology adopted in the 2019 Budget Act.

**Disregard Payments to CalWORKs Families.** The budget proposes to increase the amount of child support payments passed to CalWORKs families, effective January 1, 2022. The $50 disregard payment made to families would increase to $100 for families with one child, and $200 for a family with two or more children. The Administration anticipates that this change will result in an additional $34 million annually passed to approximately 160,000 CalWORKs families. The budget also includes $800,000 ($300,000 General Fund) in 2020-21 for the necessary automation changes needed to implement the proposal in 2021-22. There is a corresponding increase of $600,000 in the California Department of Social Services budget to make necessary automation changes.

**Forgiveness of Uncollectible Debt.** The budget also proposes changes to statute to forgive past-due child support payments (on state-owed debt only) that are determined to be uncollectible, beginning on January 1, 2022.

## ISSUES FOR CONSIDERATION

**2020-21 Governor's Budget and Effects on Budget Methodology.** The proposals included in the Governor's budget raise many questions on how they will affect LCSA caseload and funding. The significant proposals offered are likely to affect LCSA caseload, and therefore funding for LCSA operational costs may need to be reconsidered. Questions that arise in the consideration of this proposal include:

- What is the definition of "uncollectible?" The proposed trailer bill language appears to leave the definition of "uncollectible" up to the DCSS or LCSAs. The language does list specific factors that must be taken into account when determining what is uncollectible, such as the source of income or incarceration history as well as specific conditions that would designate a specific case as uncollectible. While there are certain conditions listed that would qualify some debt as uncollectible, it is unclear if the LCSA or the DCSS could designate other debt that does not meet these conditions as uncollectible. This may potentially lead to different LCSAs implementing the policy differently throughout the state.

- What effect will the forgiveness of uncollectible debt have on LCSA workload, and thus LCSA funding? How much work goes into tracking down parents with debt? If significant caseworker time is spent working on cases with "uncollectible" debt then it is likely that caseload will decrease once these debts are forgiven, and funding levels for LCSAs may need to be reconsidered.

- What fiscal impact will the increased CalWORKs child support pass-through have on the state? The DCSS has estimated that an additional $34 million will be passed through to CalWORKs families, but it is unclear what impact this will have on the state General Fund. The federal government requires parents receiving public benefits to sign over a portion of their child support to reimburse governments for the cost of public assistance. If the pass-through to these families is increased, would the state be required to pay the balance of this reimbursement to the federal government?

**Operational Efficiencies and Budget Methodology Refinements**. As stated earlier, the 2018 Budget Act required the DCSS to set up a working group to identify operational inefficiencies and further refinements to the budget methodology. The Legislature directed DCSS and the LCSAs to identify operational efficiencies that would make the program more cost-effective and efficient, and intended that these efficiencies would be incorporated into the new funding methodology. The DCSS submitted its report on operational efficiencies to the Legislature in May 2019, close to five months after the DCSS released its proposal for a permanent budget methodology in the Governor's January budget. As the report was submitted months after the proposed budget and so close to the budget deadline, it is unclear as to whether these efficiencies were considered during the development of the budget methodology.

Additionally, the report itself does not identify costs associated with any of the efficiencies listed in the report. It is unclear whether the DCSS thoroughly explored these efficiencies and their effect on funding. Reducing costs would help minimize the need for additional General Fund support for LCSAs. The Legislature should consider whether it would like to direct the DCSS to identify costs associated with the operational efficiencies it has pinpointed and whether the department's funding should be adjusted accordingly. If the Legislature does not wish to reduce LCSA funding perhaps it should consider directing LCSAs to use that "excess" funding for specified purposes.

Additionally, the Legislature may want to request information from the DCSS on LCSA use of the first year of funds and whether LCSAs are on track to use all of the allocated funding. Having this information will aid the Legislature when making decisions about the second year of funding.

As mentioned earlier, during the fall of 2019 the DCSS held a series of working groups to discuss changes to the budgeting methodology included in the 2019 Budget Act.

<u>Family Code Section 17306.1</u>

*(c) (1) The Department of Child Support Services shall convene a series of stakeholder working sessions to develop the ongoing methodology, which shall take effect in the 2020–21 fiscal year. There shall be at least three working sessions during the Summer and Fall of 2019, beginning as early as possible after July 1, 2019.*

*(2) The working sessions shall include, but not be limited to, representatives from the Child Support Directors Association, the Legislative Analyst's Office, the Department of Finance, consultants from the Assembly and Senate Health and Human Services budget subcommittees, any other interested Legislative consultants, antipoverty advocates, advocacy organizations representing custodial and non-custodial parents, including father's rights advocates, impacted families, and any other interested advocates or stakeholders for the child support program.*

*(3) The working sessions shall do all of the following:*

*(A) Further refine or change the local child support agency funding methodology defined in subdivision (a), including accounting for performance incentives to be provided in future years.*

*(B) Discuss additional strategies that might improve the customer service, pragmatic collectability, and cost efficiency of the child support program and assess fiscal impact to operations and collections.*

*(C) Consider any policy changes that may affect the workload and associated funding needs of the local child support agencies and assess fiscal impact to operations and collections.*

*(D) Consider the ways that child support collection improves outcomes for children, impacts the well-being of children in relationship to their parents who are ordered to pay support, particularly their fathers, and impacts the racial wealth gap and further analyze the impact that child support has on parents ordered to pay support who do not have the capacity to pay.*

*(d) The department shall provide a written update describing recommended changes to the funding methodology described in subdivision (a) to the relevant policy committees and budget subcommittee of the Legislature on February 1, 2020. The written update shall include, but not be limited to, a description of the programmatic and policy changes discussed in the working sessions, the feasibility of implementing the discussed programmatic and policy changes, the impact that the discussed programmatic and policy changes would have on operations, collections, and families served, and additional required statutory changes.*

The report was submitted to the Legislature on January 31, 2020. While the report does include the changes to the budget methodology and programmatic and policy changes discussed in the workgroup, it does not provide a discussion about the feasibility of many of the recommended funding, program, and policy changes. There is also no discussion of the impact of the changes on collections and families served. Several of the items detailed in the statute are not included in the report.

SB 80 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2019, laid out what was to be addressed in the report. The Legislature intended to use the report as a tool to refine the budgeting methodology. However, the DCSS failed to provide a thorough analysis of the workgroup recommendations and did not make suggestions for potential changes to the budgeting methodology.

The Legislature should direct the DCSS to provide the additional information required in the statute. The Legislature may also want to question the DCSS on its rationale for not providing updates to the budgeting methodology and ask for additional details on the feasibility of implementation of the recommended changes.

**Final Rule Implementation.** The DCSS developed its funding methodology before full implementation of the Final Rule. The Final Rule places a greater emphasis on setting orders based on actual earnings to collect more reliable child support payments. Yet, provisions setting guidelines for setting child support orders based on the non-custodial parent's earnings and ability to pay and outlining procedures to establish and modify child support orders have yet to be implemented by the department. Those implementation decisions are likely to affect LCSA workload and the associated time it takes to complete certain tasks; thus affecting the resources needed for these tasks.

As with the proposals offered in the Governor's budget, the Final Rule represents a policy shift for the state's child support program and would require an update to the child support program. Changes to local operations and corresponding changes to funding needs would require a new, wide-ranging budgeting methodology. The Legislature should direct the department to identify those changes and consider them when considering updates to the DCSS' funding methodology.

# SUBCOMMITTEE NO. 4

## STATE ADMINISTRATION and GENERAL GOVERNMENT

# California Consumer Financial Protection

## BACKGROUND

The financial crisis of 2007-08 brought into focus the existing imbalance between promoting innovation and investment in a free-market system with protecting consumers and securing the US economy at large. The need to readjust this balance caused Congress and President Obama to enact the Dodd-Frank Wall Street Reform and the Consumer Protection Act of 2010. The Dodd-Frank Act authorized the creation of the Consumer Financial Protection Bureau (CFPB), an agency singularly tasked to ensure banks, lenders, and other financial service companies treat consumers fairly. The Dodd-Frank Act also gave the CFPB and states broad authority to provide consumers with more protection against unfair, deceptive, and abusive practices (UDAAP) when accessing financial services and products. In California, the state agency tasked with the primary regulatory responsibility to both protect consumers and protect the health of the financial service market is the Department of Business Oversight (DBO).

DBO was established in 2013 with the merger of the Department of Corporation (DOC) and the Department of Financial Institutions (DFI) and housed under the newly created Business, Consumer Services & Housing Agency. The merger was initiated by Governor Edmond G. Brown Jr. in 2012 under the Governmental Reorganization Plan No. 2 which eliminated two agencies and reorganized departments into newly focused agencies with the intent to streamline government activities and reduce unnecessary spending. As a result, DBO consolidated the State's oversight of financial businesses by merging the activities of DOC (which regulated financial entities such as securities brokers and dealers, financial planners, and mortgage lenders unaffiliated with banks) with the DFI (which had regulatory powers over state-chartered banks, credit unions, money transmitters, and savings and loan associations).

**Role of Department of Business Oversight.** DBO’s statutory authority mainly originates from the California Financial Code and the California Corporations Code regulating the soundness and safety of financial services and products provided to consumers. The department carries out three main functions: (1) licensing and regulation, (2) oversight and enforcement, and (3) consumer services. As the State’s primary financial service regulator, DBO issues licenses to various banking and crediting institutions as well as non-banking financial servicing entities including financial technology (fintech) providers. However, given the vast financial market system, there are also various consumer financial products or services offered to Californians by persons or businesses that DBO does not regulate. This includes financial products and services regulated by the federal government and/or by other state agencies but not required to be licensed and regulated under DBO’s current statutory authority. The following table is a non-exhaustive summary of financial services, providers and activities regulated and unregulated by the DBO.

| | |
|---|---|
| **DBO regulated Banking Services, Activities and Providers** | Banks (state-chartered banks, foreign banks, industrial banks, public banks), Credit Unions, Money Transmitters (issuer of payment instruments, money orders, travelers' checks), Agents of Depository, Insurance Premium Financing, Securities Brokers and Dealers |
| **DBO regulated Non-banking Services, Activities and Providers** | Payday Lenders, Check Sellers, Bill Payers, Proraters, Mortgage Loan Originators, Investment Advisers, Student Loan Servicers, Escrow Agents, Property Assessed Clean Energy (PACE) Program Administrators, off-exchange commodities, State-Licensed Consumer and Commercial Lending, Loan Association, Offer and Sale of Securities |
| **DBO Unregulated Services, Activities and Providers** | *Non-fintech:* Debt collectors, Auto Financing Transactions, Lead Generation, Debt Buying, Consumer credit reporting agencies, credit services organizations, retail installment sales, rent-to-own companies, check cashers, debt settlement companies<br>*Fintech:* virtual currency businesses, earned income access providers, digital financial coaching or advisement, bank partnership products |

At the beginning of 2018, DBO reported maintaining oversight of 23 financial service industries, and licensing and supervising more than 360,000 individuals and businesses. By the end of September 2019, the DBO was overseeing businesses with a cumulative total of over $1.1 trillion in assets in the banked financial institutions alone. To carry out these responsibilities, DBO is equipped with approximately 593 staff positions and a total budget of $108 million drawn largely from the State Corporations Fund and Financial Institutions Fund.

| | Expenditure* | | | | Staffing | | | |
|---|---|---|---|---|---|---|---|---|
| **Program** | Actual 2017-18 | Actual 2018-19 | Estimated 2019-20 | Proposed 2020-21 | Actual 2017-18 | Actual 2018-19 | Estimated 2019-20 | Proposed 2020-21 |
| Investment Program | $27,614 | $30,407 | $33,736 | $33,673 | 165.7 | 175.6 | 177.4 | 177.4 |
| Lender-Fiduciary Program | $23,595 | $24,072 | $26,953 | $27,624 | 143 | 145.7 | 143.7 | 146.7 |
| Licensing and Supervision of Banks and Trust Companies | $27,047 | $28,432 | $29,504 | $30,140 | 169.7 | 174.3 | 171 | 174 |
| Money Transmitters | $4,282 | $4,545 | $5,559 | $5,561 | 32.6 | 34.9 | 31.3 | 31.3 |
| Administration of Local Agency Security | $480 | $535 | $587 | $587 | 2 | 2 | 1.8 | 1.8 |
| Credit Unions | $10,158 | $10,953 | $11,800 | $12,159 | 67.4 | 69.9 | 67.9 | 69.9 |
| CalMoney Smart | | | | $1,345 | | | | 1 |
| California Consumer Financial Protection | | | | $10,196 | | | | 44 |
| Total (All Programs) | $93,176 | $98,944 | $108,139 | $121,285 | 580.4 | 602.4 | 593.1 | 646.1 |

* Dollars in thousands

The second function of the DBO is to supervise and oversee financial institutions and services and enforce fair and sound practices in accordance to DBO regulations and California laws. DBO, therefore, has the authority to perform routine examinations of books and records, investigate potential cases of unlawful activity, and respond to consumer complaints. Enforcement of DBO laws could result in administrative orders to stop violations of the laws, denial, censure, suspension, revocation or possession of license, and suspension or barring of individuals from participation in industry. DBO can also take civil injunctive actions, appoint receivers over companies, and obtain equitable remedies including consumer compensation, rescission, restitution and penalties against the violators. California's UDAAP statute also broadly prohibits unlawful, unfair, or fraudulent business practices and deceptive advertising, and it is not undercut by exemptions for particular businesses. The DBO shares the authority of UDAAP statue enforcement with the Attorney General.

Recent examples of DBO's enforcement authority include settlement and punitive actions taken against state interest cap evading and unlawful mortgage payments. In 2018-19, auto title lender TitleMax of California Inc., California Check Cashing Stores LLC, Speedy Cash, Advance America, Check Into Cash of California Inc., Quick Cash Funding LLC, and Fast Money Loan were all found pushing loans and interest rates beyond the state cap. After launching an investigation, DBO returned over $2.6 million to more than 29,000 customers and charged companies more than $300,000 in cost of fees and penalties. In late 2019, the DBO facilitated and refunded $7.8 million to 94,000 California homeowners after an investigation into mortgage servicer CitiMortgage revealed overdue interests on customers' escrow impound accounts.

The third function of DBO is consumer education. Despite California being the 5th largest economy in the world, a third of Californians remain unbanked or underbanked and only half of Californian households are prepared for an unexpected emergency of $400. Nearly 3.8 million Californians owe $134 billion in student loan debt and half of those borrowers live in rural communities. Additionally, according to the October 2017 CFPB report, complaints from California military service members are overrepresented. Although, only five percent of the California population are veterans, 11 percent of all complaints received from Californians, from 2011 to 2017, were from military service members and their families. In addition to monitoring a healthy financial market, consumer education and empowerment has often been seen as a key tool in protecting consumers against abusive practices and elevating the financial status of communities. To that effort, DBO provides information materials, first-timer guides, fraud protection tips, know-your-right brochures for vulnerable and targeted groups like military families and seniors, and sends out consumer alerts notifying suspicious and malice activities relating to financial activities and services. More recently, the California Senate passed SB 455 (Bradford), Chapter 478, Statues of 2019, tasking the DBO to set up financial empowerment grant programs to fund educational content, individualized financial coaching, and financial products to support unbanked and underbanked consumers.

**Challenges in Federal Consumer Protection.** Despite DBO's activities, Californian consumers heavily rely on the federal CFPB for protection. The 2018 CFPB report ranks California 10th in the nation with 63,096 complaints filed from January 2017 to June 2018. CFPB receives complaints from California residents regarding issues around debt collection, credit reporting, and issues around mortgage payment among many others. Through California local government and CFBP's actions, $3.6 million were awarded to California residents from the 2018 Wells Fargo's unauthorized account suit. However, the current activities by the Trump Administration under the direction of Mick Mulvaney and Kathleen Kraninger have caused the CFPB to fall short of its entrusted responsibilities. Key examples of the weakening of CFPB's activities include a severe drop in enforcement cases (upward to 80 percent), reduction of enforcement fines, delayed protections for pay day lending, lack of enforcement activities for proven discriminatory acts, dismantling of CFPB's unit dedicated to students and young consumers, and reduced examination of military lending protection compliance.

**Legislative Response to Weakened Federal Consumer Protection**. In response, the California Assembly passed a Joint Resolution 48 (Chapter 199, Statutes of 2018) urging the President and Congress to maintain the integrity of the CFPB. In 2019, Assembly Member Limón introduced legislation, AB 1048, seeking to enhance DBO's capacity for enforcement and investigation of potential for financial harm. The bill was followed by an informational hearing with the Assembly Banking and Finance Committee where gaps in CFPB activities were highlighted. Over the past year, several legislative bills from the Senate and Assembly have also been introduced in an effort to fill the regulatory and consumer protection gap in student loan servicers (AB 376(Stone)), lead generators (AB 642(Limón)), debt collection agencies (SB 750 (Wieckowski)), public banks (AB 857(Chiu), Chapter 442, Statues of 2019), earned income access providers (SB 472 (Caballero)), rent reporting (SB 619 (Hueso)), non-mortgage consumer loans (SB 482 (Hueso)), real estate brokers (AB 687 (Daly)), and legislation for protection of elder and dependent adults against financial abuse (SB 496 (Moorlach), Chapter 272, Statues of 2019). Other states have also responded by re-vamping their in-state consumer protection activities to close the gap left by reduced CFPB functions. Pennsylvania, New Jersey and Delaware have created consumer protection units and offices under their respective Attorney General office. In Maryland, the state legislature passed the Maryland Financial Consumer Protection Act of 2018 strengthening UDAAP protections, increasing civil penalty for violators, and expanding the authority of the Attorney General and the Commissioner of Financial Regulation to enforce consumer protection laws.

## GOVERNOR'S PROPOSAL

The Governor seeks to expand DBO's regulatory authority to oversee larger sectors of the financial marketplace and revamp the state's effort to improve consumer protection through the Budget Act bill and trailer bill language. The table below summarizes the current condition of the sources of expenditure for the department. Adjustments from the baseline are low, however, the proposal seeks to transfer expenditure funds from the Financial Institutions Fund and the State Corporations Fund into the Financial Protection Fund with a proposed 10.8 percent increase in overall expenditure for DFPI in FY 2020-21.

| | **2019-20*** | **2020-21*** |
|---|---|---|
| **State Corporations Fund** | $ 60,559 | $ (60,532) |
| **Financial Institutions Fund** | $ 34,163 | $ (35,078) |
| **Financial Protection Fund** | - | $ 106,164 |
| **Local Agency Deposit Security Fund** | $ 587 | $ 587 |
| **Credit Union Fund** | $ 11,450 | $ 11,809 |
| **Financial Empowerment Fund** | - | $ 1,345 |
| **Reimbursements** | $ 1,380 | $ 1,380 |
| **Total Expenditure (*in thousands)** | $ 108,139 | $ 121,285 |

More specifically the proposal includes the following components:

- Trailer bill language seeks to enact the California Consumer Financial Protection Law (CCFPL) to promote fair competition and consumer welfare while protecting Californian consumers from unfair, deceptive, and abusive practices.

- The CCFPL proposes to repeal and amend parts of the Corporations Code and the Financial Code and envelope various consumer finance laws under DBO's statutory authority including federally enumerated laws and laws previously not included under DBO's authority. Examples include various parts of the California Civil Code, the California Fair Employment and Housing Act, and the federal Military Lending Act.

- Retaining all the powers, duties, responsibilities and functions of DBO and additionally layered with new expanded authority, the DBO is changed to the new Department of Financial Protection Innovation (DFPI) effective July 1, 2020.

- In addition to roles and responsibilities of the DBO, the Governor's proposal and the new CCFPL will authorize DFPI to (1) register and license new-covered persons or businesses providing financial services or products in California, (2) bring administrative and civil actions against unfair, deceptive, abusive acts and practices in coordination with other regulatory and enforcement bodies, (3) employ staff and resources towards market trend analysis and consumer behavior research, and (4) to provide expanded consumer communication and education services.

- To exercise DFPI's newly proposed authority and carry out its newly mandated activities, the Governor's proposal asks for $10.2 million for 44 permanent, new staff positions in 2020-21 growing to $19.3 million and 90 positions in 2022-23.

- The budget proposal further elaborates plans to establish a new Financial Technology Innovation Office for innovative fintech products, a Supervision and Registration Office for registering and supervising new classes of financial services and products, and a new Consumer Financial Protection division under DFPI. The latter will focus on research, education and outreach through its two main offices: the Market Monitoring, Consumer Research, Insights and Analytics Office, and Office of Consumer Outreach and Education.

## ISSUES TO CONSIDER

**The Need for Adequate Oversight and Enhanced Consumer Protection.** Lessons from the 2008 crisis clearly showed that the harmful policies and practices began several years prior to the financial downturn. Effective regulatory framework for consumer financial protection and strategic marketplace foresight could shield the state from another national or global crisis. Currently, DBO is overtasked in one area as it spends 70 percent or more of its operational expenditures on licensing and supervising activities of banked businesses and transactions. Consequently, regulation of nonbanking financial services and providers and consumer financial education and empowerment activities take the smaller portion of the pie. The DBO, despite being mandated to protect consumers and the health of financial markets, has no research and market analysis resources required to understand market health, anticipate consumer trends and prepare for regulatory strategies to minimize or eliminate consumer harm. The Legislature should consider the value of such a function as the state is certain to face future economic slowdown. Additionally, according to the National Consumer Law Center's State's UDAAP Evaluation Report of 2018, UDAAP protections in California are less than optimal because the state lacks an empowered rulemaking authority ready to take regulatory actions. Abusive and deceptive practices impact young consumers, seniors, military families, low-income consumers and minorities the hardest. At its peak functional capacity, CFPB had brought racial discrimination cases against banks in mortgage lending and automobile lenders for systematic auto loan rate hikes. The Governor's proposal authorizes the new DFPI to enforce various consumer protection laws and prepare targeted consumer outreach efforts addressing the needs of military service members, seniors, students, and new Californians. The Legislature should consider the alignment of these efforts with state and federal UDAAP legislative, regulatory and enforcement efforts. Additionally, the Legislature should consider the measure of effectiveness and the mode(s) of outreach in serving the aforementioned communities.

**Financial Innovation and Consumer Protection Policies for the 21st Century.** According to the Research and Market's US Fintech Market report, more than $2.4 trillion flowed through fintech in activities and services like digital payment, digital commerce, robo-advisors, and personal finance in 2018. Through financial technology, consumers have the ability to store, share, and spend money with the aid of new technologies that may or may not be developed through banks, credit unions and other financial institutions. The current technology enabled financial era requires a thoughtful regulatory framework that can capture the heterogeneous and decentralized fintech market place. According to the Governor's proposal, its newly formed Financial Technology Innovation Office will be utilized to encourage innovation, enable fintech to operate nationwide, and research emerging and new innovative technologies. However, the Legislature should consider how to best utilize such department resources to better understand the unique set of challenges and opportunities and the varied set of consumer and investor risks in the financial technology sector. The utility of new roles in DFPI should also be maximized to arm the legislature with the appropriate tools necessary to avoid piecemeal regulatory approaches and keep pace with the fast-paced and continually evolving landscape of fintech.

**New Covered Persons.** The proposal seeks to use settlement revenues in the State Corporations Fund and the Financial Institutions Fund to support implementation of the new DFPI and CCFPL for the next three fiscal years. Afterwards, DFPI expects to conduct its ongoing regulatory duties using the cost of new covered person fees and potentially increased license assessments and fees. The proposal anticipates more than 9000 new-covered persons to come under the new jurisdictions of the DFPI. The Legislature should consider the specifics of new licensees under CCFPL, the level of urgency of the regulatory structure for consumer protection, the capacity of DFPI to accomplish such a large influx, and the impacts of possible fee increases on businesses and state revenue.

**Necessary Reorganization for Consumer Protection and Oversight.** It was only in 2013 that two different departments came together to form the DBO. With the newly proposed DFPI, the Governor's proposal tasks the department with major undertakings require total resources of 90 positions and $44.3 million during the estimated three years it will take to be fully implemented. The proposed reorganization would add a senior deputy commissioner, create a new division, establish three new targeted units, and revamp multiple existing efforts in the DBO. The Legislature should weigh the value of such administrative shifts against the utility of expanded consumer protection laws and efforts in the existing DBO infrastructure for the ultimate benefit of consumers and responsible businesses. The Legislature should also consider the extent of oversight necessary to monitor and realize promised reorganization and revamped consumer protection services.

**Proposed Office of Ombudsperson.** The department proposes to create an Office of Ombudsperson to serve as independent, impartial, confidential resource to stakeholders to ensure complaints and staff enjoy impartial review at the department. However, the proposal only allots a single Staff Services Manager I position for this role with minimal authority and mechanism of report. The Legislature should consider the value of empowered personnel equipped with appropriate reporting mechanisms that will ensure accountability and responsiveness of DFPI to licensees, businesses and consumers.

# State-Regulated Cannabis

## BACKGROUND

Since the passage of Proposition 64—the Control, Regulation and Tax Adult Use of Marijuana Act, which authorized adults aged 21 years or older to legally grow, possess, and use marijuana for non-medical purposes—in 2016, the Legislature passed two pieces of legislation that further implemented the Act. First, in 2017, the Legislature passed SB 94 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2017, the Medicinal and Adult-Use Cannabis Regulation and Safety Act, that created a single-comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing and sale of both medicinal and adult-use cannabis. Then, in 2019, AB 97 (Committee on Budget), Chapter 40, Statutes of 2019, strengthened enforcement tools and licensing requirements, and extended the time for local governments to undergo the California Environmental Quality Act to July 1, 2021 for cannabis activities, among other provisions.

Prior to the passage of Proposition 64, the Legislature and the voters created a layered network of cannabis-related policies. These include:

- In 1996, California voters approved Proposition 215, known as the Compassionate Use Act, which statutorily authorized the use of medical cannabis, and provided protections for physicians who made medical cannabis recommendations.

- In 2003, SB 420 (Vasconcellos), Chapter 875, Statutes of 2003, established the voluntary Medical Marijuana Program under the California Department of Public Health, which provided access to medical cannabis for qualified patients and primary caregivers and created a medical marijuana identification card and registry database.

- In 2015, Governor Jerry Brown signed the Medical Marijuana Regulation and Safety Act, comprised of AB 243 (Wood), Chapter 688, Statutes of 2015; AB 266 (Bonta), Chapter 689, Statutes of 2015; and SB 643 (McGuire), Chapter 719, Statutes of 2015. Together, these bills established the oversight and regulatory framework for the cultivation, manufacture, transportation, storage, and distribution of medical cannabis in California.

As a result of varied and layered policies, the pathway for cannabis licensure has been, anecdotally, burdensome and costly. Existing law and regulations require operators to be dually-licensed at both the state and local levels. However, it is estimated that approximately 76 percent of cities and 69 percent of counties have passed ordinances that ban all legal medicinal and adult-use cannabis sales in their jurisdictions.[1] Less than 40 percent of California's 482 cities and 58 counties currently permit commercial cannabis businesses. It is estimated that approximately 80 percent of California's cannabis businesses operate in the underground market – while California is expected to generate $3.1 billion in licensed cannabis sales this year, nearly $8.7 billion is expected to be spent in the illicit market.[2]

[1] https://www.latimes.com/california/story/2019-08-14/californias-biggest-legal-marijuana-market
[2] https://www.bcc.ca.gov/about_us/documents/cac_annual_report_2019.pdf

**State and Local Governance.** While the law prior to Proposition 64 generally limited a medical cannabis licensee to hold state licenses in no more than two categories, Proposition 64 allowed nonmedical cannabis licensees to hold licenses in more than two categories. For vertically-integrated licensees, this could mean interfacing with several state licensing authorities and experiencing challenges during enforcement efforts. The regulatory entities listed below are responsible for regulating cannabis standards for labelling, testing, and packaging products and to develop a system to track such products from production to sale. Local governments continue to have the ability to regulate where and how cannabis businesses operate.

**Cannabis Industry Regulated by Multiple State Agencies**

| Regulatory Agency | Primary Responsibilities |
|---|---|
| Bureau of Cannabis Control | License cannabis distributors, transporters, testing facilities, and retailers. |
| Department of Food and Agriculture | License and regulate cannabis growers. |
| Department of Public Health | License and regulate producers of edible cannabis products. |
| State Water Resources Control Board | Regulate the environmental impacts of cannabis growing on water quality. |
| Department of Fish and Wildlife | Regulate environmental impacts of cannabis growing. |
| Department of Pesticide Regulation | Regulate pesticide use for growing cannabis. |

**Taxes on Cannabis.** Proposition 64 established two state excise taxes on cannabis: 1) a 15 percent excise tax on retail gross receipts, and 2) a cultivation tax on harvested plants, which, as of January 1, 2020, is $9.65 per ounce of dried flowers, $2.87 per ounce of dried leaves, and $1.35 per ounce of fresh plants. The California Department of Tax and Fee Administration (CDTFA), which administers these cannabis taxes, is statutorily required to adjust the cultivation tax rates annually for inflation. Proposition 64 eliminated the standard sales tax on medical marijuana patients with a state ID card; but recreational cannabis is subject to existing state and local sales tax. Lastly, locals have discretion on setting additional taxes on cannabis activity.

At the end of 2019, CDTFA raised the mark-up[3] on wholesale cannabis from 60 percent to 80 percent, in addition to adjusting the state's cultivation tax up by more than four percent. Industry stakeholders have advised that such increases to what were already viewed as significant tax burdens will likely exacerbate financial issues that legal cannabis businesses are facing while most consumers remain in the illicit market.

[3] In an arm's length transaction, meaning the consideration received reflects the fair market value between two parties under no requirement to participate in the transaction, the distributor calculates the cannabis excise tax based on the "average market price," which is computed by applying the CDTFA's predetermined mark-up rate.

The following chart from the Legislative Analyst's Office (LAO) outlines the cannabis tax structure.

**California's Cannabis Taxes**

| Tax | Type | Rate on January 1, 2020 |
|---|---|---|
| State retail excise tax | Ad valorem tax primarily on wholesale sales | Nominally 15 percent of retail price. In practice:<br>• For most sales, administratively determined percentage of wholesale price (currently 27 percent)<br>• For some sales, 15 percent of retail price |
| State cultivation tax | Weight-based tax on harvested cannabis | • $9.65 per ounce of dried cannabis flowers<br>• $2.87 per ounce of dried cannabis leaves<br>• $1.35 per ounce of fresh cannabis plant |
| Local taxes | Varies; most commonly ad valorem or based on square footage | Varies—on average, roughly equivalent to a 14 percent tax on retail sales[a] |

[a] LAO estimate of the average cumulative tax rate, including taxes on cultivation, manufacturing, distribution, testing, and retail.

**Regulatory Costs.** The 2017 Budget Act included actions to allow the state entities to perform their respective duties related to cannabis activities, and these proposals were approved on a three-year, limited-term basis. This included a transfer of up to $100.7 million General Fund as a loan to the Cannabis Control Fund, to support the majority of the state regulatory responsibilities.

| **2017 Budget Act – Cannabis-Related Actions*** | | | |
|---|---|---|---|
| DEPARTMENT | POSITIONS | AMOUNT | PURPOSE |
| Department of Consumer Affairs (DCA)/Bureau of Cannabis Control | 120 | $22.5 million Cannabis Control Fund | 1) $12 million and 82 positions for licensing and enforcement, 2) $5.4 million and 38 positions to address workload increases in DCA's Division of Investigation and administrative staff to support the Bureau of Cannabis Control, and 3) $5.1 million for the implementation of an information technology (IT) solution that would provide licensing and enforcement functions, budget bill language for the Bureau of Cannabis Control to augment their resources by up to 10 positions upon notification of the Joint Legislative Budget Committee. |
| Bureau of Cannabis Control | 5 | $664,000 Cannabis Control Fund | Environmental impact review activities. |
| Bureau of Cannabis Control | N/A | $3 million Cannabis Control Fund | Quality assurance and tax verification inspectors. |
| Department of Public Health | 3 | $1.4 million Cannabis Control Fund | IT application for licensing medical cannabis manufacturers, including $410,000 for licensing medical cannabis testing laboratories to the Bureau. |
| Department of Public Health | 50 | $9.3 million Cannabis Control Fund | Implement cannabis manufacturer regulations, licensing, enforcement, training, and IT activities. Provisional language was also included that provides the department the flexibility to increase resources if the licensing workload is higher than estimated. |

| | | | |
|---|---|---|---|
| Department of Public Health | N/A | $250,000 Cannabis Control Fund | Maintain the state medical identification card program. |
| Department of Food and Agriculture | 50.8 | $22.4 million Cannabis Control Fund | 1) $16.9 million and 13 positions for implementation of the Track and Trace IT project, 2) 3.5 positions to enforce measurement standards, and 3) $5.5 million and 34.3 positions for licensing and enforcement activities. |
| Department of Food and Agriculture | 10 | $3.9 million Cannabis Control Fund | Environmental impact review activities. |
| Department of Food and Agriculture | N/A | $2.3 million Cannabis Control Fund | Implement responsibilities associated with statute, including establishing an office to meet the needs of the residents of the North Coast. |
| Department of Tax and Fee Administration (formerly Board of Equalization) | 3.9 new and 16.1 redirected | $2.7 million Cannabis Control Fund and $2.5 million redirected | Perform tax administration and collection responsibilities. |
| Department of Fish and Wildlife | 63 | $17.2 million multiple sources | Support the development and implementation of the regulatory programs by the California Department of Food and Agriculture and the State Water Resources Control Board. |
| Water Board | 85 | $13.5 million multiple sources | Provided $9.8 million and 65 positions in 2017-18, which increased to $13.5 million and 85 positions in 2018-19. Develop a statewide water quality permit and expanded water rights registration process for cannabis cultivation. |
| Department of Pesticide Regulation | N/A | $1.3 million Cannabis Control Fund | Develop and update guidelines for pesticide use on cannabis, prepare training programs and outreach materials to inform cultivators and protect workers during the cultivation and harvesting processes, and evaluate requests for Special Local Needs pesticide registrations. In 2018-19 and 2019-20, the allocation increases by $1 million annually for county agricultural commissioners to provide training, outreach, and education to industry regarding the proper and safe use, handling, and disposal of pesticides at cultivation sites. |
| Cannabis Control Appeals Panel | 8 | $1 million Cannabis Control Fund | Operations of the Appeals Panel to effectively review all appeals related to cannabis licensing decisions. |
| **TOTAL** | | | |
| | **414.8** | | |

* Additional resources were provided since this time.

**Cannabis Equity Programs.** The burdens of cannabis prohibition in California, including arrests, convictions, and long-term collateral consequences fell disproportionately on African-Americans and Latinx communities, despite the fact that people of all races use and sold cannabis at nearly identical rates. The California Department of Justice data shows that from 2006 to 2015, inclusive, African-Americans were two times more likely to be arrested for cannabis misdemeanors and five times more likely to be arrested for cannabis felonies than whites. During the same period, Latinx Californians were 35 percent more likely to be arrested for cannabis crimes than whites.[4]

In response to the disproportionate impacts of cannabis prohibition on disadvantaged communities in California, some local jurisdictions established equity programs that assist those impacted by cannabis prohibition in overcoming longstanding barriers to entry into the legal cannabis market. These local efforts included application assistance, microloans for businesses, or technical assistance. In 2018, the Legislature passed SB 1294 (Bradford), Chapter 794, Statutes of 2018, the California Cannabis Equity Act, which provides state resources to local equity applicants. Pursuant to SB 1294, the budget provided resources for local equity programs, with the 2018 budget providing $10 million, and the 2019 budget providing nearly $30 million.

In 2019, the Legislature passed SB 595 (Bradford), Chapter 852, Statutes of 2019, that requires cannabis licensing entities to develop and implement a program that provides a fee deferral or fee waiver to obtain or renew a license for a needs-based applicant or licensee, as specified, contingent upon an appropriation in the annual Budget Act or another statute.

## GOVERNOR'S PROPOSAL

The Governor's budget forecasts that cannabis taxes will generate $479 million in 2019-20 and $550 million in 2020-21. The Administration also proposes to simplify the tax structure by moving the collection of the cultivation tax to the first distributor rather than the final distributor, and moving the collection of the excise tax to the retailer rather than the distributor.

Additionally, the Administration proposes to consolidate the three licensing entities into a single Department of Cannabis Control. Details on this proposal are still forthcoming.

## ISSUES TO CONSIDER

**State and Local Control: Reducing Barriers Into the Legal Market.** Given the reality of a vast majority of local jurisdictions that have banned cannabis enterprises, and that cannabis products in the illicit market are outselling those in the legal market, the Legislature may wish to deliberate different avenues to reduce barriers in the legal market. The Bureau of Cannabis Control Cannabis Advisory Committee 2019 Annual Report finds that "the overarching reality remains that the regulatory pathway to licensure may discourage unlicensed businesses from seeking licensure. At the same time, the current structure may actually promote the unlicensed market." Some of these avenues may include:

- *Reducing the cannabis tax burden, both in terms of tax liability on those operating in the legal market, as well as on consumers*. It is estimated that a vast majority of the cannabis market in California is still illegally operating, and the cost of regulated products are more expensive and oftentimes cannot compete with regard to cost during this transitional time. The Legislature may wish to consider ways to help decrease the cost of regulated products, even temporarily, and ease the costs of regulation on the licensees. As an example, a current bill, AB 1948 (Bonta), would reduce the excise tax on sales from 15 percent to 11 percent through 2023 and suspend the cultivation tax through 2023.

[4] Chapter 794, Statutes of 2018 (Senate Bill 1294)

- *Streamlining the pathway to licensure*. With dual licensure, licensees are required to navigate the local licensing process, and then again on the state level, at times with three different state licensing entities. While the Administration is proposing to consolidate the three different licensing entities on the state level, the Legislature may want to consider simplifying the state licensing process for those who are already licensed on the local level.

- *Easing the regulatory burden of cannabis cultivation to better match other agricultural products*. For example, cannabis goods must be tested and pass certain thresholds set by regulation before it goes to market. Cannabis cultivation that occurs within the vicinity of farms using pesticides on its food products risk failure of its product batches due to pesticide drift. The Legislature may wish to consider achieving a greater parity between the regulations around cannabis cultivation and the food that we eat.

# Department of Better Jobs and Higher Wages

## BACKGROUND

In 2002, the California Labor and Workforce Development Agency was created to oversee the Agricultural Labor Relations Board (ALRB), Department of Industrial Relations (DIR), Employment Development Department (EDD), Employment Training Panel (ETP), Public Employment Relations Board (PERB), Unemployment Insurance Appeals Board (UIAB) and the California Workforce Development Board (CWDB). These entities serve California workers and businesses by improving access to employment and training programs, enforcing California labor laws, and administering benefits including workers' compensation, unemployment insurance, and disability insurance and paid family leave.

In 2014, the federal Workforce Innovation Opportunity Act (WIOA) reauthorized several federal programs related to workforce development and adult education programs. WIOA requires the state to develop a unified state workforce plan, which includes state workforce goals, strategies, and common performance measures (skills gain, learning outcomes, employment, earnings and effectiveness in serving the employer). In 2019-20, the state received $381 million from WIOA, of which $324 million was distributed for local assistance to the Job Centers and Rapid Response programs and $57.2 million for state discretionary purposes and administration of programs and services.

The descriptions below provides an overview of WIOA core programs:

1. WIOA Title I - Adults, youth and dislocated worker programs: Title I provides ongoing federal funding that is mostly distributed to local workforce investment boards to support America's Job Centers of California (AJCC), formerly known as OneStops. California has over 200 AJCCs which provide workforce information, resources, and employment services to adults, youth, and dislocated workers. These services include job search assistance, career assessment, career counseling, on–the–job training, and adult education and training. Funds also support education and job programs, including YouthBuild and Job Corps, for youth ages 16–24 who are not in school or employed. The CWDB is the state agency responsible for Title I.

2. WIOA Title II - Adult Education and Family Literacy Act: Title II provides funding to adult education providers, such as higher education institutions, local educational agencies, nonprofit organizations, other organizations or agencies. Title II grants must supplement the following adult education services and programs: (1) adult literacy; (2) parents or family members education and skills programs; (3) high school diploma and postsecondary education and training, including through career pathways; and (4) English as Second Language. The California Department of Education is responsible for Title II.

3. WIOA Title III - Wagner-Peyser Act Program: Title III provides assistance to job seekers including those who are unemployed. The AJCC assist jobseekers in finding work and help employers recruit workers. EDD works with employers to list job openings on an open online database known as CalJOBS. EDD is responsible for Title III.

4. WIOA Title IV - Vocational Rehabilitation Program: Title IV supports employment-related vocational rehabilitation services to individuals with disabilities. The Department of Rehabilitation is responsible for Title IV.

**The California Workforce Development Board.** CWDB was established by an Executive Order in response to the federal Workforce Investment Act (WIA) of 1998. In 2014, the federal WIOA was signed into law and superseded WIA. CWDB is responsible for assisting the Governor in performing the duties and responsibilities required by WIOA. CWDB is the state's designated coordinating body for workforce issues and consists of 53 members appointed by the Governor. The board consists of a broad group of stakeholders, including representatives of the Legislature, business, labor, education, and corrections. The chart below displays CWDBs three year budget.

**3-YEAR EXPENDITURES AND POSITIONS**

| | | Positions | | | Expenditures | | |
|---|---|---|---|---|---|---|---|
| | | 2018-19 | 2019-20 | 2020-21 | 2018-19* | 2019-20* | 2020-21* |
| 6040 | California Workforce Development Board | 30.5 | 36.5 | 36.5 | $5,851 | $107,805 | $55,082 |
| **TOTALS, POSITIONS AND EXPENDITURES (All Programs)** | | **30.5** | **36.5** | **36.5** | **$5,851** | **$107,805** | **$55,082** |

| **FUNDING** | | **2018-19*** | **2019-20*** | **2020-21*** |
|---|---|---|---|---|
| 0001 | General Fund | $758 | $51,812 | $12,301 |
| 0890 | Federal Trust Fund | 4,438 | 4,922 | 4,971 |
| 0995 | Reimbursements | 151 | 1,160 | 260 |
| 3228 | Greenhouse Gas Reduction Fund | 400 | 35,050 | 32,550 |
| 3290 | Road Maintenance and Rehabilitation Account, State Transportation Fund | 104 | 14,861 | 5,000 |
| **TOTALS, EXPENDITURES, ALL FUNDS** | | **$5,851** | **$107,805** | **$55,082** |

WIOA requires the CWDB to develop, implement and modify the Unified or Combined State Plan in order to receive federal funding for WIOA core programs (Title I, II, III and IV). The Unified State Plan is a four-year strategic workforce plan that is modified every two years to account for changing economic conditions or updates to state strategies. The plan includes:

1. Strategic Planning Elements section. This section includes an analysis of the state's economic conditions, workforce characteristics, labor market trends, industry demands and workforce development activities. These analyses help form the state's vision and goals for the workforce development system, as well as alignment strategies for workforce programs. The state also is required to set specific growth targets for WIOA–funded programs related to WIOA's performance accountability measures. The state negotiates these targets with the federal government. The plan is intended to serve as California's framework for all workforce–related policy and program decisions as well as federal and state spending decisions.

2. Operational Planning Elements section. This section identifies and describes the state's efforts to support the strategic vision and goals. These efforts may include specific infrastructure, policies, and activities to meet its strategic goals. This section also includes a description of funded activities, how they align to state goals, how they coordinate with education partners, how the entities carrying out the programs are comprehensive and high quality, how activities coordinate with economic development strategies of the state, how they will improve access to industry valued certificates or credentials, and how the programs will be assessed and reviewed.

CWDB is also responsible for implementing strategies to support staff training and awareness, dissemination of best practices, and providing support for effective local boards. In addition, CWDB is responsible for local area allocation formulas, development of the statewide labor market information system, and development, review and recommendation of policies and guidance related to the appropriate roles and resource contributions of One-Stop partners.

**Department of Industrial Relations.** DIR was established in 1927 and is responsible for enforcing workers' compensation insurance laws, adjudicating workers' compensation claims, and addressing workplace health and safety. DIR 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 chart below displays DIR's three year budget, as well as information regarding specific units and divisions.

**3-YEAR EXPENDITURES AND POSITIONS †**

| | | Positions | | | Expenditures | | |
|---|---|---|---|---|---|---|---|
| | | 2018-19 | 2019-20 | 2020-21 | 2018-19* | 2019-20* | 2020-21* |
| 6080 | Self-Insurance Plans | 22.8 | 22.8 | 22.8 | $6,473 | $6,650 | $6,746 |
| 6090 | Division of Workers' Compensation | 973.5 | 928.6 | 991.0 | 229,569 | 242,758 | 261,856 |
| 6095 | Commission on Health and Safety and Workers' Compensation | 4.8 | 4.8 | 4.8 | 3,774 | 3,858 | 4,162 |
| 6100 | Division of Occupational Safety and Health | 741.7 | 727.7 | 745.7 | 164,161 | 172,173 | 186,738 |
| 6105 | Division of Labor Standards Enforcement | 554.4 | 605.9 | 658.9 | 103,915 | 122,531 | 136,770 |
| 6110 | Division of Apprenticeship Standards | 71.9 | 86.9 | 92.9 | 16,416 | 17,689 | 18,047 |
| 6120 | Claims, Wages, and Contingencies | - | - | - | 247,712 | 246,012 | 238,712 |
| 9900100 | Administration | 441.2 | 445.2 | 488.7 | 77,474 | 81,834 | 105,347 |
| 9900200 | Administration - Distributed | - | - | - | -77,474 | -81,834 | -105,347 |
| **TOTALS, POSITIONS AND EXPENDITURES (All Programs)** | | **2,810.3** | **2,821.9** | **3,004.8** | **$772,020** | **$811,671** | **$853,031** |

DIR's Division of Apprenticeship Standards (DAS) is responsible for administering the state's apprenticeship laws and enforcing apprenticeship standards regarding wages, hours, working conditions, and journeyperson certification. DAS consults with program sponsors and monitors programs to ensure high standards for on-the-job (OJT) training and supplemental classroom instruction. DAS consultants work locally with employers—and their collective bargaining partners where applicable—to develop new apprenticeship programs, determining the length of training and specific skills necessary to perform at the level required in the occupation.

Existing law also requires DAS to evaluate apprenticeship and preapprenticehsip programs to ensure that they comply with state standards and provide positive outcomes for their students. These evaluations must be public, and if there is a deficiency, DAS is required to recommend remedial actions within a specified time frame. DAS is required to annually report to the Legislature regarding information on the demographic breakdown of program participants, types of programs participants are registered in, program completion, remedial actions, applications received, reimbursement for related supplemental instruction pursuant to community college and school districts, among others.

**Employment Development Department (EDD).** EDD administers the Unemployment Insurance, Disability Insurance, and Paid Family Leave programs, and provides employment and training programs under the federal WIOA. Additionally, 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 the state's workforce. The chart below displays EDD's three year budget as well as information regarding grants and programs.

**3-YEAR EXPENDITURES AND POSITIONS †**

| | | Positions | | | Expenditures | | |
|---|---|---|---|---|---|---|---|
| | | 2018-19 | 2019-20 | 2020-21 | 2018-19* | 2019-20* | 2020-21* |
| 5900 | Employment and Employment Related Services | 1,331.7 | 1,331.7 | 1,331.7 | $206,498 | $212,747 | $212,863 |
| 5915 | California Unemployment Insurance Appeals Board | 435.1 | 411.7 | 408.2 | 80,028 | 79,421 | 78,745 |
| 5920 | Unemployment Insurance Program | 2,037.5 | 1,961.7 | 2,005.9 | 5,942,385 | 6,064,831 | 6,269,938 |
| 5925 | Disability Insurance Program | 1,422.9 | 1,473.4 | 1,553.0 | 7,897,808 | 8,505,747 | 9,595,234 |
| 5930 | Tax Program | 1,531.5 | 1,531.5 | 1,522.0 | 213,955 | 218,607 | 223,068 |
| 5935 | Employment Training Panel | 85.1 | 85.1 | 85.1 | 95,326 | 99,990 | 101,012 |
| 5940 | Workforce Innovation and Opportunity Act | 202.2 | 202.2 | 202.2 | 411,312 | 397,235 | 376,581 |
| 5945 | National Dislocated Worker Grants | 1.5 | 1.5 | 1.5 | 53,000 | 45,000 | 45,000 |
| 9900100 | Administration | 701.0 | 701.0 | 701.0 | 400 | 400 | 400 |
| **TOTALS, POSITIONS AND EXPENDITURES (All Programs)** | | **7,748.5** | **7,699.8** | **7,810.6** | **$14,900,712** | **$15,623,978** | **$16,902,841** |

The Employment Training Panel (ETP), under EDD, provides financial assistance to California businesses for customized worker training for new and existing employees. These programs are for current employees and companies facing out–of–state competition, recipients of unemployment benefits, and employers that meet certain criteria, such as those that are located in regions with high unemployment rates. ETP is funded from reimbursements from the state Employment Training Tax.

EDD also has a workforce services branch and labor market information division. This division collects, analyzes, and publishes statistical data and reports on California's labor force, industries, occupations, employment projections, wages, and other labor market and economic data.

## GOVERNOR'S PROPOSAL

**Community College Apprenticeship Programs.** The Governor's budget proposes $83.2 million Proposition 98 General Fund to support apprenticeship programs at the California Community Colleges. These investments are as follows: (1) $15 million to increase the California Apprenticeship Initiative, which creates apprenticeship programs in priority and emerging industries, (2) $20 million one-time to expand work-based learning models and programs, and (3) $48.2 million one-time for reimbursement for related supplemental instruction at the community colleges.

**Department of Better Jobs and Higher Wages.** The Governor's budget proposes $2.4 million General Fund and 10 positions in 2020-21. This will provide Labor Agency the necessary resources to establish the directorate for the Department of Better Jobs and Higher Wages. The new department will be comprised of CWDB, ETP, EDD's workforce services branch and labor market division, and DIR's DAS. The Governor's budget summary notes that this reorganization is intended to better align data, policy and program analysis of the state's workforce training programs.

## ISSUES TO CONSIDER

The Administration notes that this proposal will have accompanying trailer bill to implement the proposed creation of the Department of Better Jobs and Higher Wages. However, as of writing this report, the trailer bill language has not been released. The budget committee will provide an in-depth analysis of the trailer bill when it is available and the proposal will be discussed in detail during the budget subcommittee process.

The Legislative Analyst's Office report, *The 2020-21 Budget: Overview of the Governor's Budget*, noted the Governor's budget proposed the consolidation or creation of various departments. The LAO suggested several questions for the Legislature to consider as it reviews departmental organization changes. These questions include:

- Would the reorganization make programs more effective? Would the public receive better services as a result?
- Would the reorganization improve efficiency? Do existing programs exhibit duplication or a lack of coordination?
- Would the new structure improve accountability?
- How would the reorganization affect public understanding of government? Is the proposed rebranding aligned with the nature of the work done by the department or agency?
- How does the Administration intend to effectuate the reorganization—through budget trailer legislation or the executive branch reorganization process established in statute? The executive reorganization process not only is relatively expedient (it can be completed in 90 days) but also includes a framework designed to increase the likelihood that a reorganization would be effective and smoothly implemented?

In addition, the Administration's budget change proposal notes that the Department of Better Jobs and Higher Wages is to provide an integrated approach to workforce training programs. However, as noted earlier in the write up, much of the functions of the Labor Agency and the departments it oversees is to create a unified and collaborative approach to all workforce programs. It is unclear what the issues are currently, and how the creation of a new department within the same agency will address it. Additionally, the budget change proposal notes that the new department will promote equity and accessibility to programs. The Legislature may wish to consider if there are administrative or cultural deficiencies within the agency or the departments that should be remedied rather than creating a new department.

# Wage Claim Adjudication

## BACKGROUND

The Department of Industrial Relations (DIR) was established in 1927 and is responsible for enforcing workers' compensation insurance laws, adjudicating workers' compensation claims, and working to prevent industrial injuries and deaths. DIR 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.

### 3-YEAR EXPENDITURES AND POSITIONS †

| | | Positions | | | Expenditures | | |
|---|---|---|---|---|---|---|---|
| | | 2018-19 | 2019-20 | 2020-21 | 2018-19* | 2019-20* | 2020-21* |
| 6080 | Self-Insurance Plans | 22.8 | 22.8 | 22.8 | $6,473 | $6,650 | $6,746 |
| 6090 | Division of Workers' Compensation | 973.5 | 928.6 | 991.0 | 229,569 | 242,758 | 261,856 |
| 6095 | Commission on Health and Safety and Workers' Compensation | 4.8 | 4.8 | 4.8 | 3,774 | 3,858 | 4,162 |
| 6100 | Division of Occupational Safety and Health | 741.7 | 727.7 | 745.7 | 164,161 | 172,173 | 186,738 |
| 6105 | Division of Labor Standards Enforcement | 554.4 | 605.9 | 658.9 | 103,915 | 122,531 | 136,770 |
| 6110 | Division of Apprenticeship Standards | 71.9 | 86.9 | 92.9 | 16,416 | 17,689 | 18,047 |
| 6120 | Claims, Wages, and Contingencies | - | - | - | 247,712 | 246,012 | 238,712 |
| 9900100 | Administration | 441.2 | 445.2 | 488.7 | 77,474 | 81,834 | 105,347 |
| 9900200 | Administration - Distributed | - | - | - | -77,474 | -81,834 | -105,347 |
| **TOTALS, POSITIONS AND EXPENDITURES (All Programs)** | | **2,810.3** | **2,821.9** | **3,004.8** | **$772,020** | **$811,671** | **$853,031** |

The Labor Commissioner's Office, also known as the Division of Labor Standards Enforcement (DLSE) is comprised of the following units and program services:

1. Bureau of Field Enforcement (BOFE): BOFE is responsible for investigation and enforcement of statutes covering workers' compensation insurance coverage, child labor, cash pay, unlicensed contractors, Industrial Welfare Commission orders, as well as group claims involving minimum wage and overtime claims. BOFE also handles criminal investigations involving these group claims.

2. Wage Claim Adjudication (WCA): WCA adjudicates wage claims on behalf of workers who file claims for nonpayment of wages, overtime, or vacation pay, pursuant to California Labor Code Sections 96 and 98. DLSE deputies hold informal conferences between employers and employees to resolve wage disputes. If a matter cannot be resolved at the informal conference, an administrative hearing is held to make a final determination on the matter.

3. Retaliation Complaint Investigation Unit (RCI): RCI investigates workplace retaliation and discrimination complaints, including but not limited to: termination, suspension, demotion, reduction in pay or hours, disciplinary actions or threats, unfair immigration-related practices, pay inequity based on sex, race and ethnicity.

4. Registration Services: This unit administers exams, issues and renews permits, licenses, certifications, and registrations to farm labor contractors, employers of minors in agriculture, electricians seeking certification, employers of minors, entertainment industry, garment manufacturers and contractors, car washing and polishing firms, janitorial services and foreign labor contractors.

5. Public Works Unit: This unit enforces apprenticeship related requirements relative to public works projects and also administers registration of public work contractors and monitors and enforces state prevailing wage laws.

In addition, DIR also administers the claims, wages and contingencies program. The objectives of this program are to pay claims, wages, or contingency benefits, and to provide for payment of workers' compensation benefits to employees whose illegally uninsured employers have failed to make the benefit payments required under the Labor Code. The Labor Code establishes special accounts in which the Labor Commissioner deposits a portion of each Farm Labor Contractor's, Garment Manufacturer's, and Car Wash Operator's annual license fee. Funds from these accounts are to be disbursed for any wages to employees which exceed the limits of a licensee's bond or time certificate.

**Wage Claim Adjudication Process**

An employee alleging the non-payment of wages or other compensation by their employer, must file a claim with a local office of DLSE to initiate investigation of the claim by the Labor Commissioner. During the initial claim process, the employee may submit copies of documents, such as time records and pay stubs, in support of the claim. Existing law requires the deputy labor commissioner to notify the parties in 30 days from the date the complaint was filed regarding the next steps of the claim. The next steps may be referral to a conference, referral to a hearing, or dismissal of the claim. Not all cases will go to a conference before going to a hearing. DIR notes that many cases will be resolved informally before either a conference or a hearing is scheduled. In cases where the claims are very complex and involve a large number of employees and records, WCA refers these claims to BOFE for investigation.

**Conference.** If the Labor Commissioner determines that the next steps are to hold a conference, a notice will be sent out to all parties. The conference is conducted informally and parties are not under oath. The purpose of the conference is to determine if the claim can be resolved without a hearing. Plaintiffs are not required to prove their case at the conference. If the case is not resolved at the conference, the deputy labor commissioner will determine the appropriate action with regard to the claim, usually referral to a hearing or dismissal of the claim.

**Hearing.** Existing law requires that hearings are scheduled 120 days from the filing date. Although hearings are conducted in an informal setting, they are formal proceedings, as opposed to the conference. At the hearing, the parties and witnesses testify under oath and the proceedings are recorded. Each party has the following basic rights at the hearing:

1. To be represented by an attorney or other party of his or her choosing.

2. To present evidence.

3. To testify on their own behalf.

4. To have his or her own witnesses testify.

5. To cross-examine the opposing party and witnesses.

6. To explain evidence offered in support of his or her position and to rebut evidence offered in opposition.

7. To have an interpreter present, if necessary.

The hearing officer has sole authority and discretion for the conduct of the hearing and may:

1. Explain the issues and the meaning of terms not understood by the parties.

2. Set forth the order in which persons will testify, cross-examine and give rebuttal.

3. Assist parties in the cross-examination of the opposing party and witnesses.

4. Question parties and witnesses to obtain necessary facts.

5. Accept and consider testimony and documents offered by the parties or witnesses.

6. Take official notice of well-established matters of common knowledge and/or public record.

7. Ascertain whether there are stipulations by the parties that may be entered into the record.

8. Determine which witnesses may testify.

Within fifteen days after the hearing, the Order, Decision or Award (ODA) of the Labor Commissioner will be filed in the DLSE office and served on the parties shortly thereafter. The ODA will set forth the decision and the amount awarded, if any, by the hearing officer.

**Bureau of Field Enforcement.** In addition to the responsibilities outlined earlier, BOFE also collects unpaid wages, issues citations for violations of the Labor Code, and seeks injunctive relief to prevent further violation of the law. BOFE also focuses on major underground economy industries, such as agriculture, garment work, construction, car washing and restaurants, where labor law violations are the most rampant.

Existing law requires the Labor Commissioner to annually report to the Legislature regarding BOFE activities. The most recent report notes that in 2017-18, BOFE conducted approximately 2,000 inspections, issued 3,200 citation violations, assessed $77.6 million in penalties and $78.8 million in wages. The report further notes that of the penalties and wages assessed, only $15.1 million and $11.7 million were collected, respectively. The charts on the following pages provides a breakdown of the 2017-18 BOFE investigations, violations, and penalties and wages assessed and collected.

| Bureau (including Public Works) | | | | | | |
|---|---|---|---|---|---|---|
| FY 2017-2018, Results by Industry | | | | | | |
| Industry | # of Inspections | # of Violations | Penalties Assessed | Penalties Collected | Wages Assessed | Wages Collected |
| Agriculture | 87 | 96 | $715,608.93 | $310,074.41 | $1,845,556.22 | $24,498.50 |
| Auto Repair | 218 | 355 | $3,197,525.61 | $757,362.52 | $513,380.61 | $36,720.26 |
| Car Wash | 131 | 210 | $2,146,849.09 | $767,796.11 | $1,033,578.74 | $509,757.90 |
| Construction | 271 | 313 | $3,822,950.32 | $532,036.60 | $4,614,314.62 | $142,685.95 |
| Garment | 69 | 191 | $2,521,700.84 | $164,034.24 | $317,654.68 | $20,396.96 |
| Hotel | 33 | 47 | $247,875.41 | $45,873.47 | $205,959.48 | $71,659.54 |
| Janitorial | 11 | 48 | $1,347,047.49 | $57,616.65 | $4,450,433.53 | $49,693.27 |
| Nail Salon | 14 | 22 | $613,524.94 | $42,929.92 | $0.00 | $0.00 |
| Other | 573 | 863 | $18,452,360.03 | $3,510,202.62 | $23,636,434.12 | $2,709,458.98 |
| Residential Care | 2 | 14 | $956,400.00 | $2,196.88 | $1,951,511.52 | $0.00 |
| Restaurant | 532 | 890 | $11,672,588.45 | $1,991,832.18 | $16,926,088.52 | $684,758.53 |
| Retail | 104 | 185 | $3,822,055.20 | $274,344.03 | $3,591,957.19 | $146,587.98 |
| Security | 8 | 3 | $396,000.00 | $0.00 | $0.00 | $0.00 |
| Warehouse | 5 | 8 | $2,027,886.92 | $32,458.37 | $0.00 | $0.00 |
| Grand Total | 2,058 | 3,245[a] | $51,940,373.23 | $8,488,758.00 | $59,086,869.23 | $4,396,217.87 |
| *Less citations dismissed/ modified*[b] | | 160 | $3,705,444.37 | | $853,829.32 | |
| Subtotals | 2,058 | 3,085 | $48,234,928.86 | $8,488,758.00 | $58,233,039.91 | $4,396,217.87 |
| Public Works | 2,108 | 757[c] | $29,385,945.06 | $6,593,795.32[d] | $20,573,217.18 | $7,261,881.64 |
| ***TOTALS*** | ***4,166*** | ***3,842*** | ***$77,620,873.92*** | ***$15,082,553.32***[e] | ***$78,806,257.09*** | ***$11,658,099.51***[f] |

As shown above, the restaurant industry had the highest number of labor violations, second highest number of penalties assessed, and highest number of wages assessed. The report noted that in June 2018, the Labor Commissioner's Office cited Cheesecake Factory janitorial contractors more than $4.5 million for wage theft violations. Moreover, BOFE also cited seven Bay Area restaurants $10 million for wage theft.

| **Bureau (including Public Works)** | | | | | | |
|---|---|---|---|---|---|---|
| **FY 2017-2018, Results by Violation Category** | | | | | | |
| **Violation Category** | **# of Violations** | **Penalties Assessed** | **Penalties Collected** | **Wages Assessed** | **Wages Collected** |
| Workers' Compensation | 1,551 | $28,749,599.08 | $4,707,625.79 | $0.00 | $0.00 |
| Child Labor | 112 | $265,300.00 | $150,040.14 | $0.00 | $0.00 |
| Itemized Statement | 605 | $15,547,187.50 | $2,472,193.72 | $3,333,088.08 | $58,759.43 |
| Minimum Wage | 369 | $2,165,910.00 | $167,147.70 | $28,360,685.54 | $1,922,249.01 |
| Overtime | 145 | $895,862.50 | $145,634.77 | $8,309,688.70 | $1,533,752.71 |
| Garment | 69 | $439,400.00 | $80,349.91 | $0.00 | $0.00 |
| Garment Registration | 19 | $19,500.00 | $8,313.14 | $0.00 | $0.00 |
| Car Wash Registration | 68 | $607,100.00 | $541,214.32 | $0.00 | $0.00 |
| Unlicensed Construction Contractor | 27 | $564,200.00 | $51,461.83 | $0.00 | $0.00 |
| Rest and Meal Period | 146 | $1,313,214.15 | $107,864.18 | $9,518,754.40 | $720,449.76 |
| Misclassification | 3 | $1,295,000.00 | $0.00 | $0.00 | $0.00 |
| Unlicensed Farm Labor Contractor | 5 | $46,600.00 | $50,000.00 | $0.00 | $0.00 |
| Lactation Accommodation | 1 | $16,600.00 | $2,250.00 | $0.00 | $0.00 |
| Reimbursable Business Expenses | 15 | $14,650.00 | $0.00 | $625,513.31 | $6,475.79 |
| Violation of Reporting Time | 3 | $250.00 | $4,662.50 | $353.57 | $2,836.09 |
| Waiting Time Penalties | 107 | [redacted] | | $8,938,785.63 | $151,695.08 |
| Grand Total | 3,245[a] | $51,940,373.23 | $8,488,758.00 | $59,086,869.23 | $4,396,217.87 |
| *Less citations dismissed/modified*[b] | 160 | $3,705,444.37 | | $853,829.32 | |
| Subtotals | 3,085 | $48,234,928.86 | $8,488,758.00 | $58,233,039.91 | $4,396,217.87 |
| Public Works | 757[c] | $29,385,945.06 | $6,593,795.32[d] | $20,573,217.18 | $7,261,881.64 |
| ***TOTALS*** | ***3,842*** | ***$77,620,873.92*** | ***$15,082,553.32***[e] | ***$78,806,257.09*** | ***$11,658,099.51***[f] |

As shown above, the largest labor violation was related to workers' compensation, and as a result $28.8 million in penalties were assessed, of which $4.7 million was collected. Though the number of minimum wage violations was the third highest in the number of violations, it did result in the highest amount of wages assessed ($28.4 million).

BOFE also has a Judgement Enforcement Unit, which recovers money for BOFEs citation and unpaid wages. The Judgement Enforcement Unit's activities include: (1) investigating, serving and enforcing stop-work orders against businesses that fail to pay wage judgements, (2) suspension of various licenses, (3) arranging payment plans, (4) investigating and gathering evidence to support litigations against businesses that engage in fraudulent transfer of assets and other schemes to evade liability for citations and judgements, and (4) train and support BOFE deputies in asset investigation and other matters for effective enforcement of claims against business debtors. According to the BOFE report, the amount of money collected in 2017-18 was a 110 percent increase over the total in 2016-17.

**Previous Budget Acts.** The 2019-20 budget provided $7.3 million General Fund to the Garment Manufacturer's Special Account (GMSA) to reduce the backlog on unpaid wages for garment workers. The budget also included supplemental reporting language requiring the department to evaluate and develop recommendations to address the solvency of the GMSA and submit a report to the Legislature by February 1, 2020. As of writing this report, the supplemental report was not available.

The 2018-19 budget provided $465,000 from Labor Enforcement Compliance Fund (LECF) and $415,000 ongoing and four positions to DLSE to support staff recruitment and retention and to satisfy growing administrative needs.

In 2016-17, the budget provided 51 positions for DLSE to increase its targeted enforcement efforts. In 2017-18 the budget provided an additional 47 positions. The positions provided in 2017-18 increased BOFE staff by 63 percent compared to 2016-17. The additional positions focused on wage and hour violations. These types of violations are relatively complex and time-consuming to investigate compared to more easily verified violations, like not carrying workers' compensation coverage.

Additionally, the 2017-18 budget included trailer bill language regarding investigations, enforcement actions regarding payment of final wage judgements. The trailer bill modified the statute of limitations on workers recovering unpaid wages and other penalties, allowed certain workers to recover unpaid wages and other damages from special funds, and required an employer to pay the division's legal costs when the division prevails in an action to enforce its determination on a retaliation complaint, among others.

## GOVERNOR'S PROPOSAL

**Wage Claim Adjudication.** The Administration proposes a four-year phase-in and increase of 15 positions and $2.3 million in 2020-21, 31 positions and $4.6 million in 2021-22, 47 positions and $6.7 million in 2022-23, 63 positions and $8.8 million in 2023-24, with an ongoing need of $8.6 million from the LECF to assist in decreasing current wage claim processing times.

**Victims of Wage Theft.** The Administration proposes trailer bill language and budget bill language to remove statutory caps to the annual garment registration fee, address annual cash shortfalls in the Garment Manufacturers Special Account, streamline the process for executing payment to unpaid workers, and institute a safety net for victims of wage theft from all industries. In addition, the Administration requests a fund shift of $3.3 million in annual authority from the Garment Industry Regulation Fund (GIRF) to the Labor Enforcement & Compliance Fund, and elimination of the GIRF.

## ISSUES TO CONSIDER

The Administration released its proposed trailer bill language regarding victims of wage theft on February 1, 2020. As a result, staff was not able to provide an in-depth analysis on the trailer bill language prior to the release of this report. However, as budget hearings progress, staff will thoroughly analyze the language and its impacts.

As noted in the background section, existing law requires that a wage claim adjudication hearing take place within 90 days from the date that the Labor Commissioner determines to accept the complaint, which is a determination that is made within 30 days of filing. The Administration notes that in 2018 the time to process claims from filing to hearing has risen to an average of 396 days. The Administration has identified several offices holding hearings in excess of 400 days from filing: Long Beach, Los Angeles, Oakland, Sacramento, San Francisco, Santa Ana, Stockton and Van Nuys. The Administration estimates that their proposal will reduce wage claim processing time from claim filing to hearings and settlements by 50 percent. The Administration plans to place additional staff at high capacity offices to help reduce wait times, and assign staff to combat wage theft through a new low-wage industry initiative. The new low-wage industry initiative will require that low-wage industry claims be prioritized for in-person conferences, while deputies conduct telephone conferences for less complex, non-low wage industry cases.

These significant wait times not only delay justice for workers, but may also create economic and financial challenges for people seeking to recoup owed wages. As the Legislature considers the Administration's proposals, it may wish to ask the following questions:

1. As described earlier, the BOFE wage and violation assessments are large, however the Legislature may wish to ask why the amount of violation penalties and wages collected are significantly smaller than the amount assessed. For example, only 19.4 percent of violation penalties and 14.8 percent of wages assessed were collected. Are there administrative or legal barriers that make it difficult to collect assessments? What are some best practices to help people recoup wages owed?

2. Which labor commissioner offices are considered high capacity? What are some of the causes for high wait times in some offices?

3. How are labor commissioner offices currently prioritizing wage claim cases?

4. How much of the current case load is attributed to low-wage industries?

Answers to these questions may help provide additional understanding on the scope of the problem and provide insight on how to best address wait times for workers.

# SUBCOMMITTEE NO. 5

## CORRECTIONS, PUBLIC SAFETY, AND THE JUDICIARY

**Corrections and Public Safety**

# California's Prison System: Past, Present, And Future

## GOVERNOR'S BUDGET

**Governor's Budget.** The 2020-21 budget for the California Department of Corrections and Rehabilitation (CDCR) proposes an increase of $74 million, or less than one percent, from the estimated 2019-20 spending level of approximately $13.4 billion. This increase reflects additional funding to (1) address deferred maintenance backlogs, (2) replace vehicles, and (3) support the ongoing preventative maintenance of CDCR facilities. The following table shows CDCR's total operational expenditures and positions for 2018-19 through 2020-21.

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

| Funding | 2018-19 | 2019-20 | 2020-21 |
|---|---:|---:|---:|
| General Fund | $12,260,035 | $12,991,819 | $13,088,380 |
| General Fund, Prop 98 | 18,306 | 21,893 | -- |
| CA State Lottery Education Fund CA Youth Authority | 63 | 104 | -- |
| Federal Trust Fund | 1,110 | 1,999 | 1,647 |
| Inmate Welfare Fund | 73,961 | 86,418 | 92,073 |
| Special Deposit Fund | 2,322 | 1,825 | 1956 |
| Reimbursements | 241,912 | 215,378 | 210,954 |
| Mental Health Services Fund | 637 | 1,616 | 1,202 |
| State Community Corrections Performance Incentive Fund | -1,000 | -1,000 | -1,000 |
| **Total** | **$12,597,346** | **$13,320,052** | **$13,394,852** |
| **Positions** | **57,589.8** | **57,726.6** | **56,998.9** |

*Source: Department of Finance*

The steady decline in adult prison population, covered below in the background section, has opened the opportunity to reduce the state's reliance on contract prison capacity. As a result of the projected decline in population, the budget projects ending all private in-state contract correctional facilities for male inmates by April 2020 (Desert View Modified Community Correctional Facility in February 2020 and Golden State Modified Community Correctional Facility in April 2020), phasing out two of the remaining three male, public in-state contract corrections facilities by 2021 (Taft Modified Community Correctional Facility in October 2020 and Shafter Modified Community Correctional Facility in April 2021), and phasing out the third facility (Delano Modified Community Correctional Facility) no later than July 2022. In the budget year, this accounts for a decrease of $56 million General Fund in 2020-21. Additionally, given the projected decline in inmate population by 4,300 between June 2021 and June 2024, the Administration intends to close a state-operated prison in the next five years.

## BACKGROUND

The United States continues to incarcerate in greater numbers than other countries. Currently, approximately 2.3 million people are incarcerated in prisons and jails—an astonishing increase from 500,000 in 1980.[1] This population accounts for 21 percent of the world's share of jail and prison populations—despite the United States containing five percent of the world's population. Compared to other nations, the United States heavily relies on jails and prisons as a criminal justice solution.

A 2014 report from the National Research Council that investigated the composition of the U.S.'s prison population attributed the staggeringly high prison population to the disproportionate incarceration of people of color. Though African-Americans and Hispanics make up approximately 32 percent of the U.S. population, both groups comprised 56 percent of all incarcerated people in 2015, with African-Americans constituting 34 percent of the correctional population.[2]

These statistics are equally staggering in California. In 2017, roughly 28.5 percent of the state's male prisoners were African American compared to just 5.6 percent of the state's adult male residents.[3] The imprisonment rate for African American men is 4,236 per 100,000 people compared to 422 per 100,000 people for white men.[4] Moreover according to the California Correctional Health Care Services, and substantiated by statistics, inmate patients are getting older and sicker, driving the need for additional and higher levels of care. According to the Public Policy Institute of California, between 2000 and 2017, the share of prisoners age 50 or older increased from four to 23 percent while the share of incarcerated people younger than 25 decreased from 20 to 10 percent. The average ages for incarcerated males and females is 40 and 38 years old respectively.[5]

Over the last decade, however, largely driven by federal court orders, California adopted criminal justice policies to reduce its state population. The result of such policies is a successful reversal from the upward trend in population increases that mirrored the explosive national growth. Moreover, court orders drove decisions to house incarcerated people at public and privately contracted prisons in addition to state run-and operated prisons. Given the Administration's 2020 announcement that a state-operated prison is being targeted for closure by 2024, and that the reliance on contract prisons is ending, this report examines the history of the CDCR, documents key policies over the last decade, and considerations to maintain a decline in population and keep the plan for closure on track.

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[1] NAACP. "Racial Disparities in Incarceration." https://www.naacp.org/criminal-justice-fact-sheet/
[2] Ibid.
[3] Heather Harris, Justin Goss, Joseph Hayes, and Alexandria Gumbs. "California's Prison Population." https://www.ppic.org/wp-content/uploads/jtf-prison-population-jtf.pdf. July 2019.
[4] Ibid.
[5] Ibid.

**Adult Population Characteristics as of January 8, 2020.** The CDCR is responsible for overseeing 183,493 people. There are 123,780 people who are in-state custody and 51,966 who are on parole or not currently under CDCR's jurisdiction while they are confined in another state or out to court. The institution population on February 21, 2019 was 117,317, which amounts to 134.5 percent of prison capacity. The most overcrowded male prison and overcrowded overall is California State Prison Solano, which is currently at 166.5 percent of its capacity. The most overcrowded female prison is Central California Women's Facility in Chowchilla, which is currently at 138.5 percent of its capacity. Moreover, California houses 5,018 inmates within various in-state contract beds, both private and public.

**Average Adult In-State Population Estimates.** The adult inmate average daily population is projected to decrease by one percent from 125,871 in spring 2019 to 124,655 in 2020-21. The overall current projections, however, show that the adult inmate population is trending downward and is expected to decrease by 939 between 2019-20 and 2020-21. Moreover, the Administration projects a decline in inmate population by 4,300 between June 2021 and June 2024. Figure 1 below presents the actual institution population between 2010 and 2019 (blue) as well as the projected population between 2020 and 2024 (red).

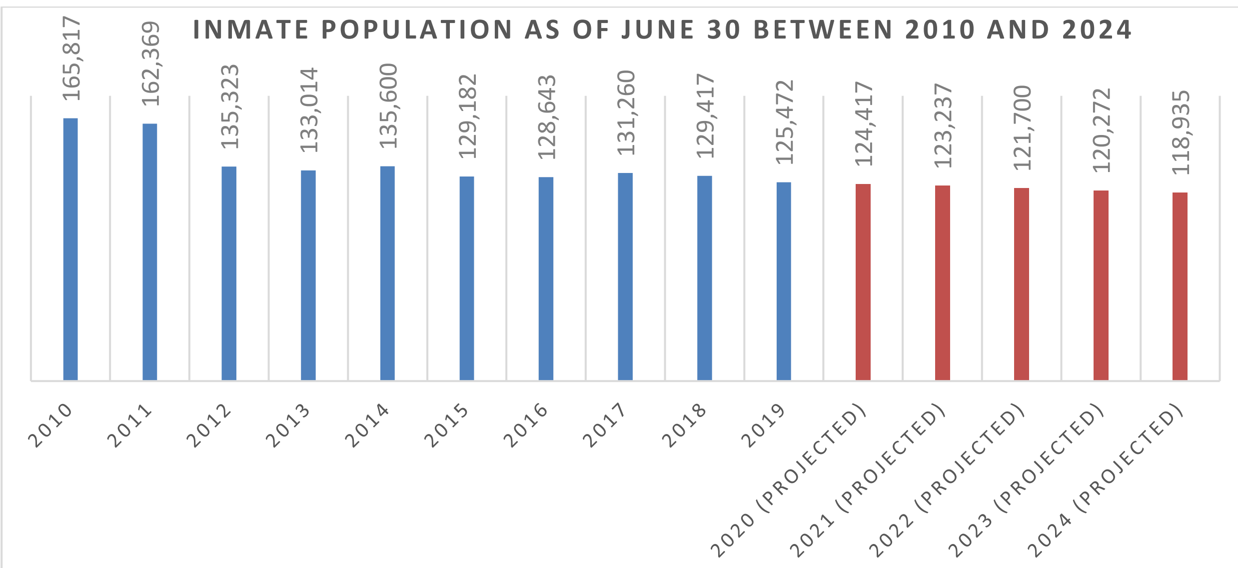


**Figure 1:** Institution population for a time period as reported in June 30, 2010 and as projected for June 30, 2024.

**Parolee Population.** The average daily parolee population is projected to increase by less than one percent from 50,442 in 2019-20 to 50,453 in 2020-21.

**Mental Health Program Caseload.** The population of inmates requiring outpatient mental health treatment was estimated to be 34,735 in 2019-20 and is projected to decrease to 34,515 in 2020-21.

**History of CDCR.** Effective July 1, 2005, the 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 were consolidated into CDCR and include the California Department of Corrections, Youth Authority (which is now the Division of Juvenile Justice (DJJ)), 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 (POST).

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

CDCR is organized into the following programs:

- Corrections and Rehabilitation Administration
- Peace Officer Selection and Employee Development
- Juvenile: Operations and Offender Programs; Academic and Vocational Education; Health Care Services[6]
- Adult Corrections and Rehabilitation Operations: Security; Inmate Support; Contracted Facilities; Institution Administration
- Parole Operations: Adult Supervision; Adult Community Based Programs; Administration; Sex Offender Management Board and State Authorized Risk Assessment Tool for Sex Offenders Review Committee
- Board of Parole Hearings: Adult Hearings; Administration
- Adult Rehabilitative Programs: Education; Cognitive Behavioral Therapy and Reentry Services; Inmate Activities; Administration
- Adult Health Care Services: Medical, Dental, and Mental Health Services; Psychiatric Programs; Ancillary Health Care Services; Medical, Dental, and Mental Health Services Administration

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

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

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[6] Effective July 1, 2020 the Division of Juvenile Justice will be shifted away from the CDCR and towards the Health and Human Services Agency. More information is contained later in this report.

**Public Safety Realignment.** In 2011, the Legislature approved a broad realignment of public safety, health, and human services programs from state to local responsibility. Included in this realignment were sentencing law changes requiring that certain lower-level felons be managed by counties in jails and under community supervision rather than sent to state prison. Generally, only felony offenders who have a current or prior offense for a violent, serious, or sex offense are sentenced to serve time in a state prison. Conversely, under realignment, lower-level felons convicted of non-violent, non-serious, and non-sex-related crimes (colloquially referred to as "non-non-nons") serve time in local jails. In addition, of those felons released from state prison, generally only those with a current violent or serious offense are supervised in the community by state parole agents, with other offenders supervised by county probation departments. Responsibility for housing state parole violators was also shifted from state prisons to county jails.

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

**SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013**. In September 2013, the Legislature passed, and the Governor signed, SB 105 to address the federal three-judge panel order that required the state to reduce the prison population to no more than 137.5 percent of design capacity by December 31, 2013. SB 105 provided the CDCR with an additional $315 million in General Fund support in 2013-14 and authorized the department to enter into contracts to secure a sufficient amount of inmate housing to meet the court order and to avoid the early release of inmates, which might otherwise be necessary to comply with the order. The contracts were intended to be short-term in nature and were entered into in lieu of building additional prisons throughout the state.

**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.[7]

**February 2014 Court Order.** On February 10, 2014, the federal court ordered the state to implement several population reduction measures to comply with the court-ordered population cap and appointed a compliance officer with the authority to order the immediate release of inmates should the state fail to

[7] Legislative Analyst's Office, "Proposition 36: Three Strikes Law. Sentencing for Repeat Felony Offenders. Initiative Statute." July 18, 2012.

maintain the final benchmark. The court reaffirmed that CDCR would remain under the jurisdiction of the court for as long as necessary to continue compliance with the final benchmark of 137.5 percent of design capacity and establish a durable solution.

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

- Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings for parole consideration.
- Release inmates who have been granted parole by the Board of Parole Hearings but have future parole dates.
- Expand CDCR's medical parole program.
- Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole (the "elderly parole" program).
- Increase its use of reentry services and alternative custody programs.

**Passage of Proposition 47.** In November 2014, the voters approved Proposition 47, the Reduced Penalties for Some Crimes Initiative, which requires misdemeanor rather than felony sentencing for certain property and drug crimes and permits inmates previously sentenced for these reclassified crimes to petition for resentencing. Table 1 below shows the modified penalties per Proposition 47.

Proposition 47 requires that state savings resulting from the proposition be transferred into a new fund, the Safe Neighborhoods and Schools Fund. The new fund will be used to reduce truancy and support drop-out prevention programs in K-12 schools (25 percent of fund revenue), increase funding for trauma recovery centers (10 percent of fund revenue), and support mental health and substance use disorder treatment services and diversion programs for people in the criminal justice system (65 percent of fund revenue). The Director of Finance is required on or before July 31 of each fiscal year to calculate the state savings for the previous fiscal year compared to 2013-14.[8]

[8] 2015-16 Governor's Budget Summary

**Table 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,[9] 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. |
| **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.

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

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

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

In November 2017 the Administration filed final regulations with the Office of Administrative Law on credit earning. CDCR proposed new changes to its credit regulations in December of 2018, to further increase credits inmates earn for participating in rehabilitative and educational activities starting in May 2019. The changes include:

- Allowing youth parole hearing dates to be advanced by credits.
- Allowing credit awards or restorations to advance a release date to up to 15 days from the date of award or restoration. This is a decrease of the current policy which is 60 days. Individuals convicted of certain offenses face longer time periods.
- Increasing the rate at which Rehabilitative Achievement Credits (RAC) can be earned and the maximum that can be earned in one year.
- Allowing inmates who earn more than the maximum of 40 calendar days in RAC credits per year to roll the excess over to the next year.
- Increasing credits earned for completion of high school diploma or high school equivalency from 90 to 180 days.

**AB 1812 (Committee on Budget), Chapter 36, Statutes of 2018.** State law, specifically AB 1812 requires the CDCR to begin reducing the population of private in-state male contract correctional facilities. As the population in private in-state male contract correctional facilities is reduced, AB 1812 would require CDCR, to the extent that the adult offender population continues to decline, to reduce the capacity of state-owned and operated prisons or in-state leased or contract correctional facilities, as specified. These specifications include reducing capacity in manner that maximizes long-term state facility savings, leverages long-term investments, and maintains sufficient flexibility to comply with the federal court order to maintain the prison population at or below 137.5 percent of design capacity. The CDCR shall take into consideration the following factors, including, but not limited to:

- The cost to operate at the capacity.
- Workforce impacts.
- Subpopulation and gender-specific housing needs.
- Long-term investment in state-owned and operated correctional facilities, including previous investments.
- Public safety and rehabilitation.
- The durability of the state’s solution to prison overcrowding.

**Status of DJJ and Imminent Shift to Health and Human Services.** Under current law, only youth adjudicated for a serious, violent, or sex offense can be sent to state facilities by juvenile courts. As a result, over 98 percent of juvenile offenders are housed or supervised by counties. As of 2016, there were approximately 39,000 youth involved in the county probation system, with 29,000 being wards under Welfare and Institutions Code Section 602 for felony and misdemeanor crimes. For a very small portion of the juvenile justice population, county probation departments determine that the crimes committed or the needs of the juvenile are so great that they cannot provide adequate care and treatment in their facilities. Those youth are then sent to DJJ facilities. The average daily population in fiscal years 2019-20 and 2020-21, including Department of State Hospitals, is 773 and 862 wards respectively.

A small number of wards (under two percent annually), generally constituting the state's most serious and chronic juvenile offenders, are committed to DJJ and become a state responsibility. DJJ, originally known as the California Youth Authority (CYA), was created by statute in 1941 and began operating in 1943 with the objectives of providing training and parole supervision for juvenile and young adult offenders. In a reorganization of the California corrections agencies in 2005, the CYA became the DJJ within CDCR. The Juvenile Parole Board, an administrative body separate from DJJ, determines a youth's parole readiness.

Youths committed directly to the DJJ do not receive determinate sentences. A youth's length of stay is determined by the severity of the committing offense and their progress toward parole readiness. However, DJJ is authorized to house youths until age 21 or 25, depending upon their commitment offense. DJJ also provides housing for youths under the age of 18 who have been sentenced to state prison. Youths sentenced to state prison may remain at DJJ until age 18, or if the youth can complete his or her sentence prior to age 25, the DJJ may house him or her until released to parole.

DJJ currently houses youth at three juvenile facilities and one conservation camp: O. H. Close Youth Correctional Facility (O.H. Close), N. A. Chaderjian Youth Correctional Facility (N.A. Chad), Ventura Youth Correctional Facility (Ventura), and Pine Grove Youth Conservation Camp (Pine Grove).

The Budget Act of 2019 included trailer bill language that renames DJJ to the Department of Youth and Community Restoration (DYCR) and shifts this department to the California Health and Human Services Agency on July 1, 2020. Moreover, the Budget Act of 2019 included the convening, no later than October 1, 2019, of a committee of the Child Welfare Council to provide input and recommendations related to the DYCR's policies and programs that promote a commitment to improving youth outcomes, reducing youth detention, and reducing recidivism. DYCR, in the Governor's budget is proposed to expand to 1,415.9 positions and $289.7 million ($260.8 million General Fund) in 2020-21 and $295.6 million ($266.8 million General Fund) in 2021-22 and ongoing.

**Privatization of Prisons on a National Scale.** The privatization of prisons is inextricably intertwined with American history, having roots that date back to America's early days. The reemergence of prison privatization began in the 1970's and 1980's, centuries after local governments reimbursed private jailers to hold people who were facing trial. The combination of the war on drugs and harsher sentencing policies, including mandatory minimum sentences, created rapid growth in the nation's prison population during that time. Private companies, in response to the pressures that rising populations placed on public institutions, stepped in during the 1970s to operate halfway houses. In the the 1980s, private companies contracted with the Immigration and Naturalization Service (INS) to detain undocumented immigrants. These forms of privatization were followed by the appearance of for-profit, private prisons. [10]

There are two private, for-profit companies that provide incarcerated people with private housing and rehabilitation services. These companies are Core Civic, established in 1983, and The GEO Group, Inc. (GEO Group), established in 1984. Today, Core Civic and GEO Group collectively manage the majority

[10] Cody Mason. *Too Good to be True: Private Prisons in America*. The Sentencing Project, January 2012.

of the contracts in the United States, which resulted in combined revenues of approximately $4.1 billion in 2018. [11] Core Civic, as the largest private prison company, manages 65 state and federal correctional facilities with a capacity of roughly 90,000 beds. GEO Group operates 69 state and federal correctional facilities with a capacity of 75,000 beds.[12] Smaller companies, including Management & Training Corporation, LCS Correctional Services, and Emerald Corrections also hold multiple prison contracts throughout the United States.[13]

According to the federal Bureau of Justice Statistics, since 1999, the size of the private prison population grew 90 percent, from 69,000 inmates in 1999 to 131,000 in 2014. As of 2014, over eight percent of U.S. prisoners were held in privately-owned prisons and seven states housed at least 20 percent of their inmate populations in private prisons. A total of 131,300 inmates were housed in private facilities between those states and the federal bureau of prisons. The use of private prisons was at its peak in 2012, when 137,000 inmates (almost nine percent of the total prison population) were housed in private facilities.[14]

**Ineffectiveness of Private Prisons at National Level.** In August of 2016, the United States Attorney General's Office of the Inspector General released a report comparing the federal Bureau of Prison-operated institutions to the private prisons under contract with the federal government. The agency found that private prisons were more dangerous and less hygienic than government facilities, citing higher instances of assault, inappropriate use of solitary confinement and inadequate medical treatment. In addition, the report found that the Bureau of Prisons needed to improve how they monitor the contracts.[15] As a result, the Attorney General's Office asked the federal government to phase-out their use of private prisons. In a memo to the Director of the Federal Bureau of Prisons calling for the phasing out of private prison contracts, Deputy Attorney General, Sally Q. Yates noted of private prisons:

> *They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security. The rehabilitative services that the Bureau provides, such as educational programs and job training, have proved difficult to replicate and outsource- and these services are essential to reducing recidivism and improving public safety.*[16]

**Private and Public Contract Facilities Associated with California.** California used private contract facilities to reduce overcrowding in its prisons throughout the last decade. These included in-state contract facilities, called Modified Community Correctional Facilities, run by other agencies or private companies and out-of-state prisons run by private companies. The CDCR also placed or places people in a facility called California City Correctional Facility which is privately owned. The state leases and staffs this facility. In 2014, the state housed approximately 9,000 inmates in out-of-state, private prisons.

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[11] Core Civic and GEO Group's 2018 Annual Reports.

[12] Ashler Stockler. Private Prison Company Geo Group Says Activists Pose Risk To Bottom Line," *Newsweek*, May 8, 2019.

[13] Cody Mason. *Too Good to be True: Private Prisons in America*. The Sentencing Project, January 2012.

[14] Prisoners in 2014. Bureau of Justice Statistics, Office of Justice Programs, United State Department of Justice. www.bjs.gov.

[15] *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons*. Office of Inspector General, United States Department of Justice. August 2016.

[16] Memorandum to the Acting Director, Federal Bureau of Prisons, from Sally Q. Yates, Deputy Attorney General. August 18, 2016.

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

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

Under the state's current healthcare structure, California Correctional Healthcare Services, under the leadership of the federally appointed receiver, monitors medical care at all contract facilities. The receiver's office notes that they audit all of the facilities at least once a year and then post those audits online for the public to access. According to the introduction for the audit reports, the standardized audit tool is designed to evaluate the effectiveness, efficiency and compliance of the health care processes implemented at each contracted facility. The audit instrument is intended to measure the facility's compliance with various elements of inmate-patient access to health care and to assess the quality of health care services provided to the inmate-patient population housed in these facilities. The audits include both a review of relevant paperwork and interviews with staff and inmates in the facilities.[17]

**No out-of-state contracts exist as of June 2019.** In June 2019, inmates housed at the La Palma Correctional Center in Arizona were returned to California and the contract with operator Core Civic was terminated. This transition marked the end of the state's reliance on out-of-state facilities to house incarcerated persons, which table 2 below documents. Previously, CDCR contracted to house some inmates in seven out-of-state facilities In October 2006, at the height of prison overcrowding, California's inmate population was 173,479 inmates and some prisons operated at more than 200 percent design capacity. In response to this crisis, CDCR temporarily housed inmates out of state to help ease overcrowding while long-term solutions were being implemented. The number of inmates housed out-of-state peaked in 2010 with more than 10,400 inmates.

**Table 2: Former contract facilities and close dates**

| Facility | Location | Contract Termination Date |
|---|---|---|
| West Tennessee Detention Facility | Tennessee | March 2009 |
| North Lake Correctional Facility | Michigan | October 2011 |
| Red Rock Correctional Center | Arizona | October 2013 |
| North Fork Correctional Facility | Oklahoma | November 2015 |
| Florence Correctional Facility | Arizona | February 2016 |
| Tallahatchie County Correctional Facility | Mississippi | July 2018 |
| La Palma Correctional Facility | Arizona | June 2019 |

[17] http://www.cphcs.ca.gov/ContractPrisonFacilities.aspx

**In-State Contract Prison Population in 2020.** As of January 8, 2020, three private community correctional facilities held 1,093 incarcerated persons. Public community correctional facilities, that the cities of Delano, Shafter, and Taft operate, held 1,516 incarcerated persons. The California City Correctional Facility, which is privately owned and CDCR operated, held 2,162 incarcerated persons. As of September 26, 2019, the CDCR no longer houses inmates at the 700-bed Central Valley Modified Community Correctional Facility in McFarland, a facility run by GEO Group.

**What's Next?** The significant and continuing decline in population offers an opportunity for California to comprehensively assess its prison system and invest in the best treatments and interventions for its current population. The decline also enables the state to explore interventions in order to reduce the number of people, youth and older, from recidivating. In addition, the declining population opens the door to close a state run and operated prison. But there must be several considerations to incorporate into plans to close a state-operated prison.

## ISSUES TO CONSIDER

**Following Through With Prison Closure and Learning From The Past.** In 2012, Gov. Jerry Brown called for the California Rehabilitation Center (CRC) in Norco prison to be shut by 2016. The 2012 Budget Act included an additional $810 million of lease-revenue bond financing authority for the design and construction of three new level II dormitory housing facilities at existing prisons. Two of these new dormitory housing facilities are located adjacent to Mule Creek State Prison in Ione, and the third is located adjacent to Richard J. Donovan Correctional Facility in San Diego. All three infill projects have been completed and activated. At the time the Legislature approved the infill projects, the understanding was that the cost of operating the facilities would be offset by the closure of the CRC. CRC is one of the state's most dilapidated prisons and it is in need of several hundred million dollars in repairs. Therefore, the new infill projects would replace the prison beds at CRC. That closure would have saved the state approximately $160 million in General Fund per year.

However, that plan did not materialize as the Administration argued that CRC needed to be kept open in the short-term in order to insure that the state would stay safely below the federal population cap of 137.5 percent of the state's prison capacity.

**Which Facility Should Be Targeted for Closure and What Are Some Important Selection Factors?** Though the answer to the previous question is unclear the Budget Act of 2018 suggested, but did not limit, the factors that the Administration should consider in its decisions to close a state-operated facility. Some of these factors are documented below.

- **Annual expenditures per facility.** Table 3 below documents the annual expenditures for adult in-state institutions and contract facilities[18]

| *Table 3: CDCR 2019-20 Estimated Expenditures, In-State Institutions and Contract Facilities* | |
|---|---|
| ***Division of Adult Institution Facilities*** | ***Estimated Expenditures ($)*** |
| Richard J. Donovan Correctional Facility | 263,954,525 |
| CA Substance Use Treatment Facility & State Prison | 248,831,854 |
| CA State Prison-Corcoran | 242,209,255 |
| San Quentin State Prison | 240,679,716 |
| CA Men's Colony | 237,154,091 |
| CA Institution for Men | 236,740,701 |
| CA State Prison-Sacramento | 235,017,338 |
| CA Healthcare Facilities | 226,687,642 |
| Salinas Valley State Prison | 226,004,940 |
| CA Correctional Institution | 223,671,481 |
| Kern Valley State Prison | 220,633,851 |
| Mule Creek State Prison | 213,604,245 |
| CA State Prison-Los Angeles County | 210,348,480 |
| Wasco State Prison | 206,722,398 |
| Correctional Training Facility | 199,943,718 |
| Pelican Bay State Prison | 194,727,865 |
| CA Medical Facility | 193,637,752 |
| North Kern State Prison | 191,217,726 |
| Avenal State Prison | 188,683,656 |
| High Desert State Prison | 186,934,925 |
| Pleasant Valley State Prison | 185,905,310 |
| CA Rehabilitation Center | 183,032,579 |
| Sierra Conservation Center | 178,478,185 |
| Centinela State Prison | 176,561,497 |
| Calipatria State Prison | 176,119,244 |
| CA State Prison-Solano | 175,810,306 |
| CA Correctional Center | 173,558,764 |
| Ironwood State Prison | 152,073,714 |
| Central CA Women's Facility | 151,439,640 |
| Valley State Prison | 142,064,321 |

[18] This table accounts for facilities that are under consideration for closure or will be closed. It omits the McFarland Female Community Reentry Facility and other Custody to Community Reentry Facilities.

| | |
|---|---|
| Folsom State Prison | 140,839,961 |
| CA Institution for Women | 139,670,771 |
| Deuel Vocational Institution | 136,237,244 |
| Chuckawalla Valley State Prison | 120,922,188 |
| | |
| ***Leased Facilities*** | ***Estimated Expenditures ($)*** |
| California City | 82,759,782 |
| | |
| ***In-State Contracted Facility (Public)*** | ***Estimated Expenditures ($)*** |
| Shafter Modified Community Correctional Facility | 12,497,842 |
| Delano Modified Community Correctional Facility | 11,679,312 |
| Taft Modified Community Correctional Facility | 11,377,085 |
| | |
| ***In-State Contracted Facility (Private)*** | ***Estimated Expenditures ($)*** |
| Golden State Modified Community Correctional Facility | 13,661,080 |
| Desert View Modified Community Correctional Facility | 13,645,344 |

The state would achieve long-term savings through the closure of one of the state's prisons. Not only will the state save a minimum of $121 million per year by reducing the number of prisons, but the state can also save over time as the number of contract beds are reduced. Unlike the budget for the state prisons, where the number of security staff is based upon the design of the facility rather than the number of inmates, the state pays for contract beds on a per-inmate basis.

- **Long-term investments in, costs to maintain for, and physical durability of a prison.** Facilities require routine maintenance, repairs, and replacement of parts to keep them in acceptable condition and to preserve and extend their useful lives. When such maintenance is delayed or does not occur, we refer to this as deferred maintenance (DM). The CDCR stated in 2019-20 budget deliberations that its existing $28 million special repairs or deferred maintenance funding baseline is inadequate and that new funds must address both urgent new needs and backlogged critical projects. But at their existing funding levels, CDCR is unable to do either effectively—causing a growth in their backlog that exceeds $1 billion. Damaged roofs and molding are two critical problems.

  Overall, roughly $260 million General Fund has been allocated to repair leaking roofs at more than two dozen of the state's 35 prisons over the last four years. The 2017 Budget Act provided $35 million General Fund for roof replacements at the California Correctional Institution, Pleasant Valley State Prison, and Salinas Valley State Prison. Providing this additional funding specifically for roofs allows the department to use special repair funding for other critical infrastructure needs, such as water conservation projects (e.g., leaking hydronic loops resulting in significant water loss) and regulatory compliance (e.g., damaged pond liners resulting in costly mitigation efforts). $60.7 million General Fund in 2018-19 was allocated for roof repairs at three state facilities and $20 million General Fund was allocated to repair interior water damage caused from roof leaks at various facilities. In addition, the budget requests $58.2 million General Fund in 2019-20 for roof replacements at two additional prisons. The 2019 Budget Act provided $2 million General Fund in 2019-20 for the design phase of roof replacements at High Desert State Prison and California State Prison, Solano and $69.7 million General Fund in 2020-21 for the construction phase. An enormous source of future renovation and infrastructure costs associated with SR/DM is the 12 original prisons that have not had sufficient updates since its date of construction.

- **The 12 original prisons study is important for influencing the closure plan if we want to consider the age, dilapidated infrastructure, safety, and costs of repair.** In the 2016 Budget Act, $5.4 million General Fund was allocated to the CDCR for consultant services to perform a study 12 original prisons constructed prior to 1980. Of these prisons, multiple were built during the 1800s, World War II, and/or contained aspects of military housing.[19] The study is supposed to evaluate the existing housing, program, and services buildings and infrastructure systems and develop recommendations regarding renovations or replacements necessary to maintain the current level of operations. This study is necessary to ensure continued compliance with the Three Judge Panel occupancy benchmark. According to an initial report, "the building and site systems evaluated at all 12 studied prisons has exceeded their expected useful life." Table 4 documents the projects and costs associated with repairing the 12 original prisons. Additionally, the table includes replacement costs which are, according to the reports, are defined as costs associated with constructing a prison of similar mission, population, location and types of housing.

**Table 4: Repair costs associated with 12 original prisons**

| Facility | City | Capital Outlay | Special Repair | Total | Repair Costs | Costs to Replace Facility |
|---|---|---|---|---|---|---|
| San Quentin State Prison | San Quentin | 9 | 2 | 11 | $1,646,929,000 | $2,800,000,000 |
| California Men's Colony | San Luis Obispo | 9 | 3 | 12 | $1,557,192,000 | $2,900,000,000 |
| Correctional Training Facility | Soledad | 22 | 4 | 26 | $1,317,660,000 | $2,565,000,000 |
| California Institution for Men | Chino | 21 | 5 | 26 | $1,228,339,000 | $2,200,000,000 |
| California Rehabilitation Center | Norco | 7 | 0 | 7 | $1,116,309,000 | $1,850,000,000 |
| Deuel Vocational Institution | Tracy | 11 | 2 | 13 | $803,545,000 | $1,300,000,000 |
| Folsom State Prison | Represa | 10 | 1 | 11 | $799,579,000 | $1,600,000,000 |
| California Medical Facility | Vacaville | 9 | 1 | 10 | $763,500,000 | $2,550,000,000 |

[19] "Study: California's 12 Oldest Prisons Need Major Fixes," The Associated Press, https://www.usnews.com/news/best-states/california/articles/2019-07-16/study-californias-12-oldest-prisons-need-major-fixes, July 2019.

| | | | | | | |
|---|---|---|---|---|---|---|
| California Correctional Institution | Tehachapi | 11 | 5 | 16 | $530,691,000 | $967,000,000 |
| Sierra Conservation Center | Jamestown | 8 | 1 | 9 | $504,418,000 | $925,000,000 |
| California Correctional Center | Susanville | 8 | 2 | 10 | $502,515,000 | $1,000,000,000 |
| California Institution for Women | Corona | 7 | 1 | 8 | $413,046,000 | $804,900,000 |
| | Totals | 132 | 27 | 159 | $ 11,183,723,000 | $21,461,900,000 |

The costs to repair these facilities are staggering, totaling $11 billion. For example, the cost estimate of repairs one completed study, for the California Medical Facility (CMF) in Vacaville, totals $763.5 million. This cost is similar to the construction costs for the most recent built prison at California Health Care Facility in Stockton ($839 million), a facility that had a Legionnaires outbreak in 2019. It may not be worth keeping one or more of these facilities open if there is more value in closing them and relocating incarcerated people to other facilities. Moreover, it may not be worth funding Capital Outlay requests at some of these facilities if they are targeted for closure. Therefore, the Legislature and the Administration should work to analyze which of these facilities are worth keeping open and which would have may be too costly to repair.

- ***Security level.*** The inmate classification is an overlooked but important consideration that the Legislature and the Administration should consider in its selection of a facility. The classification is interconnected with security level, staffing, and rehabilitation placements, all of which can alleviate cost and capacity pressures, and could potentially lead to a further reduction in prison population. The current inmate classification system, a methodology established in the early 2000s by researchers at the University of California, Los Angeles, assigns inmates to housing and varying degrees of security based on their assessed risk of misconduct, factors such as escape risk, and backgrounds (such as age at first arrest, age at assessment, gang affiliation, and number of prior incarcerations, prior rules violations, and behavior) during previous 12 months of incarceration. Accordingly, the classification system significantly influences how CDCR deploys scarce housing space and custody staffing and has important implications for state costs.

  Moreover, because the system determines where and how inmates are housed and supervised, it significantly affects the daily experiences of individual inmates. In addition, because housing and supervision placements can affect inmates' abilities to earn credits that reduce their prison terms, the classification system can affect how long some inmates ultimately spend in prison. Table 5 documents security requirements for each housing level according to the LAO[20].

[20] Legislative Analyst's Office. "Improving California's Prison Inmate Classification System," https://lao.ca.gov/Publications/Report/4023#top, May 2019.

**Table 5: Breakdown of coverage by security level**

| Level | Minimum Required Bed Type | Minimum Required Perimeter Security | Armed Coverage |
|---|---|---|---|
| I (lowest) | Dorms | None | None |
| II | Dorms | Electric fence or wall with guard towers | None |
| III | Cells | Electric fence or wall with guard towers | External |
| IV (highest) | Cells | Electric fence or wall with guard towers | External and internals |

Table 6, also from the LAO, documents, as of June 2018, the number of inmates and capacity at institutions.

**Table 6: Capacity breakdown by number of inmates**[21]

| Housing Level | Number of Inmates | Design Capacity | Percent of Capacity (%) |
|---|---:|---:|---:|
| I | 10,596 | 12,505 | 85 |
| II | 40,689 | 33,377 | 122 |
| III | 22,938 | 18,420 | 125 |
| IV | 23,759 | 14,936 | 159 |
| Totals | 97,982 | 79,238 | 124 |

CDCR's Level I facilities are only at 85 percent capacity, while Level II and III facilities are over 120 percent of capacity. As of February 27, 2019 the state housed nearly 3,500 inmates in conservation camps, though camps have a total design capacity of nearly 4,700. Accordingly, CDCRs overly expansive exclusions on camp eligibly, which have contributed to the roughly 1,000 vacant camp beds could be costing the state tens of millions of dollars annually in unnecessary expenditures on contract beds.

The Level I capacity is likely due to exclusions of certain inmates: People with low risk sex offenses are excluded from Level I housing and Minimum Custody and inmates with more than five years left to serve or minor felony detainers are excluded from Minimum Custody.

The unnecessary exclusions of certain inmates from Level I facilities and Minimum Custody likely increase state prison costs in two ways. First, inmates assigned to higher security settings earn fewer credit earning opportunities than they otherwise would at Minimum Custody settings or conservation camps. This, in turn, increases the inmate population and associated state costs. Second, it results in the state spending more than necessary on contract beds due to a lack of bed space in state prisons. The total cost savings would be linked to the amount of inmates moved to conservation camps.

[21] Ibid.

Inmate classification, and therefore security level, are interconnected with placement of incarcerated people who will be relocated upon facility closures and costs of maintaining contract beds per facility.

- **How would the state use the closed spaces and what is the vision for the remaining open facilities?** The state could look to remodel, retrofit, and certify the space that once held a prison to develop universities, colleges, or state hospital beds. Meanwhile, the Legislature and the Administration should consider whether the system of open prisons would be urban clusters located near incarcerated person's families, in locations closer to where it can be better staffed, filled with fewer facilities that have larger capacities or something completely different.

- **Order matters.** Do we close all contracted facilities first and then close a non-contracted facility? This consideration may be impacted by labor disputes that will assuredly happen, particularly in the districts with public contracts.

**Estimations of Projected Population Could Be Impacted by Future Legislation.** In their October 2019 brief, the LAO projected a decline of 6,800 inmates between October 2019 and June 2023.[22] These estimates, much like the Department of Finance's, are primarily due to increased parole consideration from Proposition 57. The LAO's estimates also account for estimated effects of sentencing changes, such as SB 136 (Wiener), Chapter 590, Statutes of 2019. SB 136 imposes a one-year sentence enhancement on a defendant sentenced on a new felony only if the defendant has a prior conviction for a sexually violent offense but eliminates the one year enhancement in other instances. Several methods of achieving population reduction at a more rapid rate include, but are not limited to, a modification of the inmate classification system that could lead to increased minimum security and Level I placements, reductions in the number of incarcerated people who experience mental illness, higher usage of transitional facilities, and granting parole to more people including incarcerated people eligible for elderly and medical parole.

**There Must Be A Balance, Not Trade-Off, Between Providing Successful Rehabilitation and Establishing A Durable Plan For Prison Closure.** Effective rehabilitation programs are a critical component to assisting individuals in their preparation for parole preparation and reentrance into the community. The most effective rehabilitation programs are typically those that provide the incarcerated with a safe space, support and guidance to address and process their unresolved traumatic experiences. By doing so, advocates argue, the participants are able to rehabilitate in a way that leads to improved emotional intelligence and communication skills. For example, some programs lead to better management of anger and stress. A byproduct of this is the reduction in recidivism and other measurements for effectiveness. The Insight Garden Program (IGP) conducted an informal recidivism study of 108 IGP graduates (over an eight year period), who paroled from San Quentin, found that only seven returned within three years. Insight-Out Guiding Rage into Power GRIP reports that in six years, 109 graduates were released and zero have come back to prison. Overall when rehabilitative programs are well-designed and implemented effectively, various studies show that they can reduce the number of

[22] Legislative Analyst's Office, "Planning for a Declining Inmate Population," https://lao.ca.gov/handouts/crimjust/2019/Declining-Population-101619.pdf, October 2019.

people who recidivate[23], deliver contentment from victims with the justice system,[24] and that the resulting savings can more than offset their costs.

But the rehabilitative mission can be undermined by improper implementation. In 2018, the Joint Legislative Audit Committee requested an audit of CDCR's rehabilitative programs which was subsequently completed in January of 2019. Findings from the audit include the following:

- CDCR's implementation of certain rehabilitation programs has not resulted in demonstrable reductions in recidivism. Amongst these observations was a lack of oversight that led to vendors using CBT curricula that were not evaluated for recidivism reduction. As a result, there has been no significant link between recidivism rates and the administered CBT classes. Therefore, the state is investing funding into programs that are less effective treatment options for inmates and do not result in many positive outcomes.

  According to the same report, the CDCR also has not assigned inmates to appropriate rehabilitation programs, has mismanaged their waiting lists, and has not had adequate staffing for rehabilitation programs. An analysis of waiting lists shows that the number of inmates and the average time spent on the lists are high for SUD rehabilitation programs. Amongst inmates who the CDCR labels as having a "severe to moderate" risk of recidivating, and have a moderate to severe need for programming, 12,796 inmates are on a waiting list that is, on average, 211 days. Additionally, there are 18,172 lower risk inmates on a waiting list for an average of 289 days. Moreover, priority was not given to inmates who have moderate to high risks of recidivating and who are within five years of release. At San Quentin, for example, three lower risk inmates obtained placement into CBT programming over 31 higher priority inmates. In some instances, inmates were not able to complete programming before their scheduled release dates. Finally, although staffing levels may be adequate to a minimum level, the inability to fully staff has resulted in the maximum number of eligible participants not being enrolled.

- CDCR is failing to place inmates into appropriate rehabilitation programs, leading to inmates being released from prison without having any of their rehabilitation needs met. CDCR failed to meet the rehabilitative needs of 62 percent of inmates released in 2017-18 who were assessed as at-risk of recidivating.

- Additional oversight is needed to ensure the effectiveness of the rehabilitation programs. CDCR has neither developed any performance measures for its rehabilitation programs, such as a target reduction in recidivism, nor has it assessed program cost-effectiveness.

If these implementation shortfalls are addressed and rehabilitation programs are successful at better placement and in addressing trauma, they can reduce recidivism post-release. Such changes can also result in both direct and indirect fiscal benefits to the state. Direct fiscal benefits include reduced incarceration costs as well as reduced crime victim assistance costs. Indirect benefits could include reduced costs for public assistance, as some offenders may receive job training that leads to employment, thereby reducing the level of public assistance needed.

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[23] Daly, K., Bouhours, B., Broadhurst, R., & Loh, N. (2013). Youth sex offending, recidivism and restorative justice: Comparing court and conference cases. *Australian & New Zealand Journal of Criminology*, *46*(2), 241–267. https://doi.org/10.1177/0004865812470383.

[24] Jeff Latimer, Craig Dowden, Danielle Muise, "The Effectiveness Of Restorative Justice Practices: A Meta-Analysis" *The Prison Journal*, Vol. 85 No. 2, June 2005 127-144 DOI: 10.1177/0032885505276969.

Therefore, state must not overlook the importance of rehabilitative services during its pursuit of closing a prison. If rehabilitation programs are operated effectively, these benefits can exceed the costs of providing the programs and result in net fiscal benefits to the state, including lower prison population. These services aid in the rehabilitation process and, eventually, provide a warm landing upon reentry—helping to provide a semblance of stability upon reentry. Addressing flaws and bolstering current programming, such as higher education opportunities currently offered by community based organizations and California's Community Colleges, will lead to the impacted populations being able to develop skills associated with managing substance use disorder treatment, education, housing, family reunification, vocational training and employment services. Comprehensive, supportive rehabilitative services during a prison sentence and post-release will assist the state in accomplishing a prison closure.

**The Legislature Should Consider Eliminating The Privatization of Parole and Other Services.** For-profit companies also provide rehabilitative treatment in state-owned facilities and run community reentry facilities. For example, the state currently contracts with GEO Group and CoreCivic to provide residential and non-residential reentry services, parole services, substance use disorder treatment, and cognitive behavioral therapy. As well, contracted local jails and detention centers are situated in California. Uses of for-profit entities to provide critical programming and treatment for inmates has created a significant amount of concern. The Drug Policy Alliance and other advocates and non-profit service providers throughout the state have strongly objected to the use of for-profit companies to provide these services. Therefore, the question before the Legislature is whether or not a company whose primary responsibility is making a profit for its shareholders and investors is capable of providing quality, effective programming and treatment or does that mission run contrary to their bottom line need to cut costs in order to return a profit.

As the state works toward a durable solution for reducing its prison population without building more prisons and contracting for more private beds, the state must balance long-term goals with high quality, effective rehabilitation and reentry programming and treatment to ensure that people leaving prison do not return. The prison closure proposal is an enormous step forward but absent of a fundamental framework and robust plan, we may introduce unintended consequences that will span decades. It is critical that we address large problems that are barriers on the path to a prison closure.

# Incarceration, Criminal Records, and Employment

## BACKGROUND

Employment carries significant meaning and importance, especially for those coming from vulnerable and disadvantaged communities. Employment provides emotional, financial, and mental stability, promotes self-esteem and self-sufficiency, and aids in recovery from mental illness, reintegration from prison, and/or physical/developmental disabilities. This report focuses on two populations who face difficulties in finding employment in California and across the United States: people who have criminal records and the subset who have criminal records and served sentences in county jails or state prisons. Barriers to employment for people who have criminal records and/or have been incarcerated can be significant. At the same time, there are shortages of labor in key fields that could provide opportunities for these individuals to fill critical needs.

**People With Criminal Records Are Disproportionately Shut Out Of Employment Opportunities.** In addition to those who served time in prison, those with criminal records face difficulties finding employment. According to the Institute for Justice (IJ), one in three Americans has a criminal record and "one out of every five" Americans needs a license to work. As recently as July 2018, the Prison Policy Initiative reported that the unemployment rate for people with criminal records is more than 27 percent, five times higher than the overall U.S. unemployment rate, or higher than the unemployment peak during the Great Depression. Their report also shows that disparities exist among racial lines: black women with criminal records rank at the top of that unemployment list (43.6 percent) and white men with criminal records rank at the bottom (18.4 percent).[1] The Center for Economic and Policy Research estimates that there were between 14 and 15.8 million working-age people with felony convictions in 2014, of whom between 6.1 and 6.9 million were former prisoners. In total, the barriers to employment for those with criminal records or who served prison sentences account for a loss of 1.7 to 1.9 million workers.[2] A large segment of the American population has a criminal record but cannot find stable employment because of their record.

**The Employment Prospects Are Stark For Reentry Populations.** A critical subset of those with criminal records are formerly incarcerated people who reenter local communities from prison. Reentry refers to the transition of individuals who are incarcerated in prisons or jails back into the community after release. Annually, approximately 600,000 people nationally and 50,000 people in California reenter communities. [3]

A 2014 report from the National Research council investigated the causes of, and consequences to, the rising prison population in the United States. The staggeringly high prison population is composed of people of color in disproportionate amounts. Though African-Americans and Hispanics make up approximately 32 percent of the U.S. population, both groups comprised 56 percent of all incarcerated

[1] Lucius Couloute and Daniel Kopf. "Out of Prison & Out of Work: Unemployment among formerly incarcerated people," Prison Policy Initiative. https://www.prisonpolicy.org/reports/outofwork.html.
[2] Cherrie Bucknor and Alan Barber. "The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies," Center for Economic and Policy Research. http://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf.
[3] E. Ann Carson, Ph.D. "Prisoners in 2016." Bureau of justice Statistics. https://www.bjs.gov/content/pub/pdf/p16.pdf

people in 2015, with African-Americans constituting 34 percent of the correctional population.[4] The statistics suggest that the labor barriers will significantly impact people of color re-entering communities.

Upon reentry into communities, formerly incarcerated people often face a range of challenges.[5] Many have low levels of education and literacy, limited prior attachment to the legal workforce, reduced ties to family and community, and histories of substance abuse and mental health problems. Other challenges include lack of basic documentation, such as a current driver's license, the use of criminal background checks by employers, and state laws and licensing requirements for jobs in certain fields that impede their ability to gain employment. Research has shown that large numbers of prisoners are released into a disproportionate number of vulnerable communities, causing instability and reduced social cohesion within these neighborhoods.[6]

California has among the highest recidivism rates in the nation, with many low-level criminal offenders committing new crimes within a year of release. Employment is a critical piece of the reentry puzzle. Studies suggest that employment programs offer the formerly incarcerated a better opportunity to reduce recidivism and increase the chances of addressing criminogenic behaviors. Employment offers stable incomes, structured timelines, resources and services through training that enhance a formerly incarcerated person's ability to reintegrate into his/her communities.[7] The collection of factors and challenges illustrates that there is a critical need for programming and policies inside and outside of the prison system to improve individuals' eligibility for employment.

**The Big Picture.** Currently, there are reentry efforts emerging throughout the U.S. and in California that employ evidence-based strategies with comprehensive planning and coordinated service delivery to increase the likelihood that individuals will make safe and successful transitions back into their communities after incarceration.

For example the state currently funds a grant program, known as ForwardFocus, which was established through AB 2060 (Pérez, V. Manuel), Chapter 383, Statutes of 2014. FowardFocus is a competitive grants program for county partnerships, typically comprised of the county, local board (and their America's Job Centers of California (AJCCs)), probation department, and local community based organizations (CBOs), who in turn coordinate services and provide integrated job training opportunities to recently released people. Participating county partnerships were encouraged to use evidence-based practices, as well as required to integrate matching funds and the services to be provided with grant funds.

Additionally, the California Department of Corrections and Rehabilitation (CDCR) provides pre-release programs as a way to make participants competitive for industry careers. Amongst these are pre-apprenticeship, career technical education (CTE), accredited certification, and firefighter training programs. Nevertheless, there continues to be a dearth of employment opportunities for both people with criminal histories and those who are reentering communities, despite the overwhelming demand for

[4] NAACP. "Racial Disparities in Incarceration." https://www.naacp.org/criminal-justice-fact-sheet/
[5] Jeanne Bellotti et al., "Examining a New Model for Prisoner Re-Entry Services: The Evaluation of Beneficiary Choice Final Report," March 16, 2011. https://www.dol.gov/asp/evaluation/completed-studies/Examining_a_New_Model_for_Prisoner_Reentry_Services/FINAL_REPORT_examining_new_model_prisoner_reentry_services.pdf.
[6] Ibid.
[7] Jeremy Travis, Bruce Western, and Steve Redburn. The Growth of Incarceration in the United States: Exploring Causes and Consequences. http://johnjay.jjay.cuny.edu/nrc/nas_report_on_incarceration.pdf

labor. The disconnect between unemployment and high labor demand within several industries is detailed further in this report.

**California's Approach to Workforce Development.** California's approach to workforce development involves creating goals, leveraging federal funding, and urging cooperation with local jurisdictions to accomplish those goals. The state's workforce plan lays out key goals that guide the activities of the workforce system. These goals include:

- Fostering "demand driven skills attainment."
- Workforce and education programs should align with industry needs.
- Enabling upward mobility for all Californians.
- Workforce and education programs should be accessible to all residents, including those with barriers to employment.
- Aligning, coordinating, and integrating services.
- Allocating resources efficiently to meet clients' unique workforce and education needs.

Each year, to meet these goals, federal Workforce Innovation and Opportunity Act (WIOA) funding is allocated to the California Workforce Development Board (State Board). The State Board then distributes WIOA funds to each of the 45 local boards, which use the funds to operate AJCCs within their jurisdictions. Local boards operate roughly 200 one stop job centers in California. In these centers, job seekers can search online job databases, take courses on resume building, receive individualized career counseling, enroll in career-focused coursework, and participate in on-the-job training. WIOA funding for job services at AJCCs is approximately $400 million annually. In addition to distributing federal funds, the State Board also sets statewide workforce development policy. California's general approach to employment incorporates federal, state, and local coordination. Prospective workers can also participate in pre-apprenticeship programs offered within California.

**Pre-Apprenticeship Programs and Curricula Overview.** Pre-apprenticeship programs are pre-requisite training courses that enable participants to increase their viability for employment in a trade industry. These courses are typically taken prior to apprenticeship completion and provide them with industry-relevant skillsets as well as familiarity with working environments. There are two different curriculums for building and trades pre-apprenticeship programs: the National Center for Construction Education & Research (NCCER) curriculum and the Multicraft Core Curriculum (MC3). The CDCR has used NCCER Curriculum since 2005 and maintains NCCER accreditation for the 35 adult prison facilities in California. Pre-apprenticeship and employment training courses are offered within prisons as part of the California Prison Industry Authority's (CALPIA) CTE.

**Descriptions of CTE Programs Offered in Prisons.** Pre-release CTE programs provide inmates the opportunity to earn Milestone Completion Credits. These credits reduce incarceration time by encouraging incarcerated people to actively participate in, and complete, rehabilitation programs. CALPIA touts its CTE program as "one of the most effective correctional rehabilitation programs in California," attributing a seven percent recidivism rate amongst participants to its programming.[8] This

[8] 2007/2008 through 2010/2011 study. Full study available at calpia.ca.gov

program was established in 2006 for pre-apprenticeship purposes and contained instruction from instructors under contract with local trade unions. The initial occupations of focus were carpentry, construction labor, and iron working. The CDCR works with instructors of whichever building trades are locals to the area. The industry sectors that fall under the CTE, which include construction trends, automotive, and technology sectors, are based on a 2012 market analysis. There are 220 core programs with computer literacy trainings to bring the total number of technical programs to 304. The table below shows six current CTE program offerings by CALPIA by program, description, and program completion goal.[9] Additionally, CALPIA offers accredited certification programs in a variety of other occupations such as opticians, installation and service for air conditioners, heat pumps, gas and oil heat, custodial maintenance, and dental technician amongst others.[10] At some institutions, CDCR reports that its CTE programs graduated participants.

**Table 1: Description of occupations and completion goals for CALPIA's CTE programs**

| Occupations | Description | Completion goals |
|---|---|---|
| Construction and Carpentry | Two separate six-month pre-apprenticeship training programs under the supervision of journeyman professionals working with the Northern and Southern California Construction and General Laborers Unions. | After completion of training, paroling offenders are eligible for placement in a full-scale apprenticeship programs.<br><br>Pre-Apprentice Carpentry graduates earn accredited certifications that meet the standards required by the union's training center. |
| Iron Worker | A six-month program under the supervision of journeyman professionals working with the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union #118. | After completion of training, paroling offenders are eligible for placement to continue their full-scale apprenticeship programs until completion. CALPIA pays the initial union dues and provides a full complement of tools to offenders who complete the program. |
| Commercial Diving | An 11-18 month program through the Marine Technology Training Center that provides commercial diving and underwater welding offender training program under the supervision of Journeyman Commercial Diver Instructors and U.S. Navy Reserve members. | Marine Technology Training Center graduates earn possible milestone credits and accredited certifications that meet the standards required by the U.S. Coast Guard, Department of Labor's Occupational Safety and Health Administration (OSHA), and the Association of Diving Contractors International. Job placement is available upon parole. |

[9] California Prison Industry Authority. "Career Technical Education." https://www.calpia.ca.gov/offender-development/career-technical-education-cte/.

[10] To see a full list of accreditation programs see here: https://www.calpia.ca.gov/offender-development/accredited-certification-programs/.

| | | |
|---|---|---|
| Facilities Maintenance | A three to six month facilities maintenance program that is under the supervision of CALPIA instructors. | This specific training will enable offenders to qualify to take state employment exams and obtain employment such as a Custodian/Maintenance Technician with the Department of General Services upon parole. |
| Computer-aided Design (CAD) | The CAD program is a six to twelve month technology-based training program under the supervision of certified CALPIA professionals. | Graduates can learn all three programs and obtain industry accredited certifications within the CAD program. |
| Computer Coding | Computer Coding is a six-month technology-based, training program under the supervision of CALPIA instructors, technology, business, community professionals and volunteers with the non-profit organization, The Last Mile. | The incarcerated can obtain industry accredited certifications. "Code.7370" offers three levels of coding certifications, to ensure that offenders continue to progress and hone their coding skills. |

**Pre-Apprenticeship Program Successes.** According to the CDCR, the pre-apprenticeship program has yielded success at multiple institutions. The building trades pre-apprenticeship program at Central California Women's Facility (CCWF) was started on May 14, 2014 and has graduated four classes with 19 graduates reported in June 2018. CCWF has had 67 inmates successfully complete the curriculum to date.[11] Inmate/Ward Labor staff in July 2018 recognized 31 inmates as part of the pre-apprenticeship program at the California State Prison, Solano. These participants received certificates in Leadership in Energy and Environmental Design (LEED) and Occupational Safety and Health Administration (OSHA-10).[12] Twenty-one inmates at the Fenner Canyon Conservation Fire Camp completed the MC3 Pre-Apprenticeship Program in May 2018. This version of the pre-apprenticeship program exposed inmates to various trades from plumbing and masonry, to carpentry and sheet metal work.[13] The rate at which carpentry program graduates return to prison is reported to be seven percent, as opposed to over 46 percent for the general state prison population.[14] There is evidence clearly correlating participation in these programs with positive employment outcomes post-incarceration.

**Demand For Careers in Building Trades and Other Industries Across California Is High.** The simultaneous labor shortages in a growing housing and development market can be resolved by creating an employment pathway for the formerly incarcerated. An industry-wide survey released in August 2017 by Autodesk and the Associated General Contractors of America showed that 70 percent of

[11] Inside CDCR. "CCWF graduates 19 from successful building trades program." https://www.insidecdcr.ca.gov/2018/06/ccwf-graduates-19-from-successful-building-trades-program/.
[12] Inside CDCR. "CSP-Solano sees 31 graduate Inmate/Ward Labor pre-apprenticeship program." https://www.insidecdcr.ca.gov/2018/07/csp-solano-sees-31-graduate-inmate-ward-labor-pre-apprenticeship-program/.
[13] The Anteleope Valley Times Staff. "First group completes prison Pre-Apprenticeship Program." http://theavtimes.com/2018/05/16/first-group-completes-prison-pre-apprenticeship-program/
[14] "Looking for the Next Generation of Carpenters." https://www.calpia.ca.gov/news/articles/the-northern-california-carpenter-magazine-highlights-calpias-pre-apprentice-trade-programs/

construction firms reported difficulties filling craft positions.[15] Moreover, 80 percent of the 127 California companies in the survey also reported having a hard time finding construction workers.[16] For example, various regions in California demonstrate a need for workers in building trades and other industries. A new report written by Valley Vision and the Centers of Excellence at Los Rios Community College District, Sacramento states that Sacramento needs 7,000 workers annually in construction and related fields in the next four years.[17] Of these 7,000 needed workers, about 2,000 are carpenters, 600 are electricians and 500 are heavy equipment operators—each of which are needed annually through 2021.[18] Estimators, sheet metal workers, HVAC installers and mechanics, and welders are other areas of need while lumbers, painters and masonry workers are in high demand. The labor shortages have economic impacts such as significant cost overruns and delays. Additionally, fewer firms might bid on construction projects if they're unable to have a sufficient supply of workers. These occupations are ripe for opportunities to increase the flow of formerly incarcerated individuals into employment.

**California's Wildfires and Related Disasters Amplify the Need for More Firefighters and Fire Preventions.** Firefighting is another sector that has high demand for workers, especially given the volume of fires throughout California in recent history. Five consecutive years of severe drought, a dramatic rise in bark beetle infestations and 129 million dead trees have cumulatively created unprecedented fire conditions resulting in severe, year-round wildfires. Eleven of California's most destructive wildfires have occurred in the last ten years. Historically, the California Department of Forestry and Fire Protection (CALFIRE) responds to over 5,600 wildfires annually. In recent years, wildfires have increased, reaching approximately 2,000 more than average in 2017. The table below documents the damage across California due to the largest fires in 2017 and 2018,

Between January 1 and December 31, 2017, over 1.7 million acres of land burned in California, over 47 people died as a result of the fires and over 12,000 buildings were damaged or destroyed (for more information on wildfires please see the section title Wildfire Prevention and Suppression under Resources. CALFIRE estimates that the emergency fire suppression costs for the 2017-18 fiscal year could reach $900 million. In addition, the California Insurance Commissioner reports that nearly 45,000 claims detailing almost $12 billion in losses have been filed for the fires in October and December 2018 alone. The major incidents experienced the past six years have been unprecedented in many prior firefighters' lifetimes. Experiencing a 100,000 or more-acre fire with unprecedented intensity and fire behavior used to be a once in a career occurrence. Fires of this acreage, type, and number of days needed for containment and control are predicted to continue to occur annually. Because the cause of the problem is multifaceted, the solution must also be multifaceted—and the formerly incarcerated are viable employment options.

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15 The Associated General Contractors of America. "Seventy-Percent of Contractors Have a Hard Time Finding Qualified Craft Workers to Hire Amid Growing Construction Demand, National Survey Finds." https://infogram.com/_/kWExw7zcm6IBO09urRde.

16 The Associated General Contractors of America. "2017 Workforce Survey Results: California Results."https://www.agc.org/sites/default/files/Files/Communications/2017_Workforce_Survey_California_0.pdf

17 Hudson Sangree. "Sacramento is poised for a building boom. Now it just needs construction workers." https://www.sacbee.com/article196700889.html.

18 Christine Alut. "News Release: Study Finds Workforce Shortage in Construction Sector Impedes Projects; Puts Upward Pressure on Housing Prices, Jan 2018." https://valleyvision.org/news-release-study-finds-workforce-shortage-construction-sector-impedes-projects-puts-upward-pressure-housing-prices/.

**Table 2: Number of Fires and Acres Burned**

| Interval | Fires | Acres |
|---|---|---|
| January 1, 2018 through December 30, 2018 | 6,284 | 876,147 |
| January 1, 2017 through December 30, 2017 | 7,117 | 505,956 |
| 5-year average (same interval) | 5,756 | 233,483 |
| 2018 Combined YTD (CALFIRE and US Forest Service) | 7,571 | 1,671,203 |

*Source: CALFIRE. Note: Statistics include all wildfires responded by CALFIRE in both the State Responsibility Area (SRA), as well as the Local Responsibility Area under contract with the department. Statistics may not include wildfires in SRA protected by CALFIRE's contract counties. Final numbers will be provided in the annual Wildfire Activity Statistics Report (Redbook) once it is published.*

**Table 3: Notable Destructive Wildfires in 2017 and 2018**

| FIRE NAME *(Cause)* | DATE | COUNTY | ACRES | STRUCTURES | DEATHS |
|---|---|---|---|---|---|
| Camp Fire *(Under investigation)* | Nov. 2018 | Butte | 153,336 | 18,804 | 86 |
| Woolsey *(Under investigation)* | Nov. 2018 | Ventura | 96,949 | 1,643 | 3 |
| Carr *(Human related)* | July 2018 | Shasta & Trinity | 229,651 | 1,604 | 8 |
| Mendocino Complex *(Under investigation)* | July 2018 | Colusa, Lake, Mendocino & Glenn | 459,123 | 280 | 1 |
| Redwood Valley *(Under investigation)* | Oct. 2017 | Mendocino | 36,523 | 546 | 9 |
| Thomas *(Under investigation)* | Dec. 2017 | Ventura & Santa Barbara | 281,893 | 1,063 | 2 |
| Nuns *(Under investigation)* | Oct. 2017 | Sonoma | 54,382 | 1,355 | 3 |
| Tubbs *(Under investigation)* | Oct. 2017 | Napa & Sonoma | 36,807 | 5,636 | 22 |
| Atlas *(Under investigation)* | Oct. 2017 | Napa & Solano | 51,624 | 783 | 6 |

Per the U.S. Department of Labor, firefighters typically do the following:[19]

- Drive firetrucks and other emergency vehicles,
- Put out fires using water hoses, fire extinguishers, and water pumps,
- Find and rescue victims in burning buildings or in other emergency situations,
- Treat sick or injured people,
- Prepare written reports on emergency incidents,
- Clean and maintain equipment, and
- Conduct drills and physical fitness training.

[19] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Firefighters, https://www.bls.gov/ooh/protective-service/firefighters.htm, *January 2020*.

Wildland firefighters are a subset of firefighters who use heavy equipment and water hoses to control forest fires. They also frequently create fire lines which is a swath of cut-down trees and dug-up grass in the path of a fire, to deprive a fire of fuel and use prescribed fires to burn potential fire fuel under controlled conditions. To fight the state's wildfires and other natural disasters, CALFIRE employs over 5,000 year-round professional firefighters and over 1,700 seasonal firefighters. In addition, they rely on 2,750 local volunteer firefighters. The state has heavily relied on incarcerated people to fight fires as well.

**The State Has Shown A Reliance on Incarcerated Firefighters.** As the state's need for people to fight an increasing number of wild fires grows, the number of inmates available to assist in those efforts continues to decline. Due to new sentencing laws and Public Safety Realignment in 2011, which shifted most non-violent, non-sex-related, non-serious offenders back to county jails, there are fewer people in prison at the lower security levels who are eligible to work and live in the state's fire camps. There are 43 conservation camps for adult offenders and one camp for juvenile offenders with enough capacity to house approximately 4,600 inmate firefighters. Three of the adult offender camps house female firefighters. Thirty-nine adult camps and the juvenile offender camp are jointly managed by CDCR and CALFIRE. The conservation camps, which are located in 29 counties, can house up to 4,522 adult inmates and 80 juveniles, which make up approximately 219 fire-fighting crews. A typical camp houses five 17-member fire-fighting crews as well as inmates who provide support services. As of January 31, 2018, there were 3,507 adults and 58 youth living and working in the camps. Despite the state's continued reliance on inmates to fight fires, participants are shut out of future employment opportunities.

**Eligibility for Inmate Firefighting.** All inmates must earn the right to work in a conservation camp by their non-violent behavior and conformance to rules while they are incarcerated. Only inmates who have earned minimum-custody status through good behavior can volunteer to work in fire camps. In addition, people in prison for arson, kidnapping, and violent sex offenses or who have attempted to escape within the previous 10 years or used force in an attempt to escape, are serving life sentences, or have a mental health diagnosis that requires treatment, are prohibited from working in the camps. In addition, an inmate must be within five years of their release date. Finally, inmates who volunteer for the camps must pass a medical exam and meet high physical fitness standards. There are strict eligibility standards for firefighting participants. Moreover, there are different training methods and expectations for inmates compared to professional firefighters.

**Training for Inmate Firefighters.** Training for inmate firefighters is significantly different from that of professional firefighters. One of the reasons for that noted by CDCR is that there are different expectations for inmate firefighting teams. Primarily, fire camp participants are tasked with containment functions requiring the use of hand tools such as chainsaws, axes, and rakes to contain fire by clearing out vegetation. CALFIRE firefighters have specialized responsibilities that require the use of heavy machinery and are tasked with search and rescue functions and structure-related firefighting duties.

Unlike training for professional firefighters, the CDCR fire crews do not receive any of the certificates needed to become career firefighters. Among those requirements for professional firefighters are the Basic Firefighter 1, which requires 179 hours of training, the completion of a respiratory protection program (RPP), emergency medical services training, and completion of a fire service training and education program (FSTEP), which includes: live-fire training, auto extrication (or any forcible entry) and wildland firefighting.

Governor Brown's Administration noted that due to the different level of training, despite significant experience working on fire lines, inmate firefighters are generally not successful in gaining post-incarceration employment in the firefighting field. But CALFIRE estimates that the use of inmate firefighters saves the state approximately $100 million per year because without the inmates, the state would need to pay additional career and volunteer firefighters throughout the state. Local volunteer firefighters are paid minimum wage for every hour they are dispatched to a fire line or emergency. The combination of training, expectations, and eligibility thus sets inmate participants up for failure in their employment pursuits upon release. By highlighting the economic savings that inmate firefighters provide and acknowledging the differences in standards and expectations, the state is continuously exploiting these participants without job prospect enhancement in return.

In 2012, President Barack Obama called for "ban the box" policies as a part of an expanded policy package to encourage successful reentry into local communities by way of employment. "Ban the box" refers to the deferment of disclosure of criminal history on initial applications for employment. Such a policy allows an applicant to reach the final offer stage of the job application process without his or her prior conviction being disclosed. Following the lead of President Obama were policies across many states to reduce barriers to employment. Eighteen states have reformed their occupational licensing laws to make it easier to acquire a license and work in that licensed field.[20] Several states allow the formerly incarcerated to petition a licensing board at any time, including before enrolling in any required training, to determine whether their record would lead to disqualification and/ or prevent licensing boards from using "vague, moral character standards to deny licenses" for the formerly incarcerated. The next section documents the legislation that California adopted to address the employment issues.

## KEY LEGISLATION

Below are some efforts that California has recently undertaken to tackle this issue, as well as other pieces of legislation to enhance the prison to employment pipeline:

AB 218 (Dickinson), Chapter 699, Statutes of 2013, prohibits any state or local agency from asking a job applicant to disclose criminal convictions on the initial employment application until after it has determined that the applicant meets the minimum employment qualifications for the position. AB 218 does not prohibit public agencies from inquiring about criminal conviction information later in the hiring process. Rather, it requires the public agency to refrain from doing so until it has determined that the applicant is qualified for the position.

SB 530 (Wright), Chapter 721, Statutes of 2013, states that a potential employer may not ask for, seek, or utilize as a factor in determining any condition of employment, information about a conviction that has been judicially dismissed or ordered sealed, as specified.

AB 1008 (McCarty), Chapter 789, Statutes of 2017, or the Fair Chance Act, builds on AB 218 by stating that it is an unlawful employment practice under Fair Employment and Housing Act (FEHA) for an employer with five or more employees to include on any application for employment any question that seeks the disclosure of an applicant's conviction history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to consider, distribute, or disseminate information related to specified prior

[20] Institute for Justice. " State Occupational Licensing Reforms for Workers with Criminal Records." https://ij.org/activism/legislation/state-occupational-licensing-reforms-for-people-with-criminal-records/

arrests, diversions, and convictions. However, there are some exceptions. The law does not apply to certain positions at health care facilities, farm labor contractors, or positions with state criminal justice agencies. It also does not apply to any position where an employer is required by another law to conduct background checks or restrict employment based on criminal history. Additionally, it requires licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs (DCA).

SB 1412 (Bradford), Chapter 987, Statutes of 2018, requires employers to only consider convictions relevant to the job for which an applicant is applying when screening job applicants using a criminal background check.

AB 2138 (Chiu), Chapter 995, Statues of 2018, reduces barriers to licensure for individuals with prior criminal convictions by limiting the discretion of a regulatory board within the DCA to deny a new license application to cases in which the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years no longer eligible for license denial, with several enumerated exemptions.

AB 2293 (Reyes), Chapter 342, Statutes of 2018, requires each local emergency medical services agency or other certifying entities to annually submit to Emergency Medical Services Authority (EMSA), by July 1 of each year, data on the approval or denial of Emergency Medical Technician (EMT)-I or EMT-II applicants including: 1) the total number of applicants, 2) the total number of applicants with a prior criminal conviction who applied for initial certification, 3) the number of applicants denied, 4) the number of applicants approved, and the number of applicants approved with restrictions, 5) the reason or reasons stated for denying or approving with restriction an applicant with a prior criminal conviction, 6) the restrictions imposed on approved applicants with a prior criminal conviction, and the duration of those impose restrictions; and, 7) race, ethnicity, gender, and age demographic data for all applicants who were denied, approved, or approved with restrictions.

The following pieces of legislation were crafted to enhance the prison to employment pipeline:

After AB 109 (Committee on Budget), Chapter 15, Statutes of 2011 was passed, the CDCR developed The Future of California Corrections: A Blueprint to Save Billions of Dollars, End Federal Court Oversight, and Improve the Prison System (Blueprint). The Blueprint provided additional instructors and associated funding to increase the number of CTE Programs by 98. In 2016-17, CDCR received funding to expand CTE programming to 12 additional sites as part of the Rehabilitative Programs Expansion. This included position authority and associated ongoing funding for one Supervisor of Correctional Education programs and 12 vocational instructors, as well as $1.4 million in one-time start-up funding. These expansions significantly increased inmate opportunities to receive training and certifications in trades that may provide viable employment with a livable wage upon their release from prison. In 2016-17, the Office of Correctional Education awarded nearly 10,400 CTE component completions eligible for milestone credits.

The 2017-18 budget provided $5 million and one position from the Road Maintenance and Rehabilitation Account, State Transportation Fund for 2017-18 through 2021-22, to implement pre-apprenticeship training programs, focused on formerly incarcerated, women, and people of color, in support of SB 1 (Beall), Chapter 5, Statutes 2017 projects. Additionally, Proposition 39 and the Clean Energy Jobs Act, SB 73 (Committee on Budget and Fiscal Review), Chapter 29, Statutes of 2013, created a construction pre-apprenticeship skills training grant program, which builds pipelines for the construction trades for disadvantaged youth, veterans and the formerly incarcerated, and appropriates $3 million Proposition 39 funds annually to the State Board from 2013-14 through 2017-18. Additionally, the state used $3 million from discretionary Workforce Innovation and Opportunity Act (WIOA) funds to fund the Workforce Accelerator Fund Awards, which funded 14 ex-offender projects (with $3.6 million in local matching funds).

The 2018 Budget Act included $14 million General Fund over two years to fund a new job training program for ex-offenders at the state's AJCCS and their subcontractors. The State Board estimated that about 1,000 ex-offenders would attain job placements as a result of these services. Additionally, the 2018 Budget Act provided $20 million General Fund over two years to provide supportive services such as bus passes, childcare vouchers, and housing assistance for ex-offenders who participate in job training. Lastly, the 2018 budget provided $1.8 million General Fund to local boards for the creation of regional partnerships and for planning between the local boards, CDCR, parole centers and county probation departments, community-based reentry services and others as authorized by the State Board. Grants would be made to each of the 14 workforce regions based roughly on the number of ex-offenders in each region.

The 2018 Budget Act also included $26.6 million General Fund ($18.9 million for the construction necessary to upgrade the camp; $7.7 million in 2018-19 for camp operations; and $6.3 million and 12.4 positions, ongoing) and trailer bill language to establish a Firefighter Training and Certification Program for 80 formerly incarcerated people to provide the necessary education and training to become a firefighter. The California Conservation Corps will be the employer of record and provide the base wages and benefits consistent with other Corps members. CALFIRE will be responsible for the administration of the facility, fire training, and certification.

CDCR and CALFIRE will jointly select participants for the program, and CALFIRE will recommend individuals who will be housed at fire camps. According to the proposal, the 18-month program will consist of three phases. Phase one is a three-month orientation that includes completion of life skills training, any required treatment programs, and basic forestry and firefighting courses. Phase two will include three months of firefighter training to complete advanced, comprehensive industry firefighter courses and certification; and phase three is a Type I Fire Crew assignment for 12 months, during which participants will gain the necessary hands-on work experience component of the program. Then-Governor Brown's Administration asserted that upon completion of the program, participants will be qualified through experience and certifications to apply for entry-level firefighting jobs with local, state, and federal firefighting agencies.

AB 1076 (Ting), Chapter 578, Statutes of 2019 commencing January 1, 2021, and subject to an appropriation in the annual Budget Act, requires the Department of Justice, on a monthly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure, as specified.

## GOVERNOR'S PROPOSALS

There are no Governor proposals for the 2020-21 budget year on this topic.

## ISSUES TO CONSIDER

**Barriers to Employment Still Exist.** Despite statewide and nationwide reforms, barriers to employment still exist in a variety of industries. IJ conducted a nationwide study to compare the burdens of occupational licensing on a state-by-state basis. Many of the occupations listed, such as optician, dental assistant, barber, truck driver, and EMT (more on this below)—industries that offer employment to the currently and formerly incarcerated—were profiled in this study. The study's results show that California has a combination of high average licensing fees ($486), long education and experience requirements (827 days lost) and a high number of licensing exams per industry (two).[21] Moreover, compared to other states, California contains the most burdensome licensing environments for low-income workers. Additionally, nearly 30 percent of California jobs require licensure, certification, or clearance by an oversight board or agency for approximately 1,780 different occupations. Applications for licenses are denied and licenses are revoked or suspended for many on the basis of prior convictions. Alleviating these burdens would result in a boon in the overall employment rate in these industries.

**Changes Related to Firefighting in Particular May Be Helpful.** For firefighting positions, the barriers are also significant. Currently, CALFIRE only requires criminal background checks for employees in specific classifications, such as law enforcement officers or investigators. However, it is likely that most firefighting jobs outside of CALFIRE require a criminal background check. While a background check does not prohibit an individual with a felony criminal record, it is unknown how that information is used to determine suitability for employment, since each local jurisdiction will have its own policies. To date, there has not been an analysis of the likelihood that people with a felony record will be able to find employment in local fire departments despite the heavy reliance of CALFIRE on inmate firefighters. Nor has there been any approved statutory language that would limit the ability of fire departments to disqualify applicants on the basis of their criminal records.

Regardless of other barriers to hiring, career firefighters are essentially required to obtain an EMT certificate in order to be eligible for an entry-level firefighting job. An EMT license enables firefighters to provide out-of-hospital treatment to sick or injured people. Certification requirements for EMTs are overseen by the state's emergency services agency (EMSA). EMSA is mandated by statute to develop and implement regulations that set training standards and the scope of practice for emergency medical personnel, including EMTs, Advanced EMTs, Paramedics, Mobile Intensive Care Nurses (MICN), Firefighters, Peace Officers and Lifeguards. The Emergency Medical Services Act (Division 2.5 of the Health & Safety Code) establishes a fingerprint and criminal record check as part of the licensing process. In addition, the act states in Health and Safety Code 1798.200:

*(b) The authority may deny, suspend, or revoke any EMT-P license issued under this division, or may place any EMT-P license issued under this division, or may place any EMT-P licenseholder on probation upon the finding by the director of the occurrence of any of the actions listed in subdivision (c). Proceedings against any EMT-P license or licenseholder shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

Section (c) states, in part:

[21] Dick M. Carpenter II, Ph.D., Lisa Knepper, Kyle Sweetland, and Jennifer McDonald, "License to Work: A National Study of Burdens from Occupational Licensing."*https://ij.org/report/license-work-2/ltw-state-profiles/ltw2-california/.*

(c) *Any of the following actions shall be considered evidence of a threat to the public health and safety and may result in the denial, suspension, or revocation of a certificate or license issued under this division, or in the placement on probation of a certificate holder or licenseholder under this division:*
*(1) Fraud in the procurement of any certificate or license under this division.*
*(2) Gross negligence.*
*(3) Repeated negligent acts.*
*(4) Incompetence.*
*(5) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of prehospital personnel.*
*(6) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.*

As a result of that statute, EMSA promulgated regulations that include the following restrictions:

*(c) The medical director shall deny or revoke an EMT or Advanced EMT certificate if any of the following apply to the applicant:*

*(1) Has committed any sexually related offense specified under Section 290 of the Penal Code.*[22]

*(2) Has been convicted of murder, attempted murder, or murder for hire.*

*(3) Has been convicted of two (2) or more felonies.*

*(4) Is on parole or probation for any felony.*

*(5) Has been convicted and released from incarceration for said offense during the preceding fifteen (15) years for the crime of manslaughter or involuntary manslaughter.*

*(6) Has been convicted and released from incarceration for said offense during the preceding ten (10) years for any offense punishable as a felony.*

*(7) Has been convicted of two (2) or more misdemeanors within the preceding five (5) years for any offense relating to the use, sale, possession, or transportation of narcotics or addictive or dangerous drugs.*

*(8) Has been convicted of two (2) or more misdemeanors within the preceding five (5) years for any offense relating to force, threat, violence, or intimidation.*

*(9) Has been convicted within the preceding five (5) years of any theft related misdemeanor.*

These restrictions prohibit any person who has been convicted of two or more felonies from ever receiving an EMT certificate, which is likely the majority of the state's prison population and a significant number of the state's jail population. In addition, for those relatively few people who have been convicted of committing only one felony and have been incarcerated in a state prison or county jail,

[22] Penal Code 290 is the "Sex Offender Registration Act" and requires lifetime sex offender registration for people who have committed the most serious sex-related crimes.

they will be ineligible to become an EMT for 10 years after their release. Given these limitations, absent any policy change, even inmates and former inmates who receive the necessary training to become professional firefighters will be unable to find employment in a local fire department since they cannot become a certified EMT.

A review of hiring qualifications for the state's 10 largest cities shows that San Francisco specifically prohibits anyone who has been convicted of a felony from becoming a firefighter requires EMT certificates and most people with felony records are prohibited from receiving EMT certificates and are rendered noncompetitive for entry level firefighter jobs. San Francisco's specific process states that convictions for misdemeanors within one year prior to application will be evaluated individually and may result in disqualification. Los Angeles' process explicitly states that applicants need a valid EMT certificate prior to hire. While Berkeley's process requires a current and valid California Paramedic License, which are requirements that build on EMT licenses.

In addition, the firefighting profession has high demand with local fire departments receiving hundreds of applications for each open firefighter position from people without criminal backgrounds. Therefore, it is highly unlikely that a department would decide to hire an applicant with a serious criminal background rather than one of the other applicants who has no prior criminal justice system involvement.

These people could conceivably work as firefighters for CALFIRE. In fact, the only minimum qualification for the entry firefighter I position in the state is that the applicant be 18 years old at the time they begin work. Needless to say, they do not require EMT certification to be firefighters. However, many CALFIRE firefighters have EMT certificates. Given these limitations, the Legislature will need to consider what policy changes are necessary to expand the training of inmates, as well as their eligibility for EMT certificates, provisional or non-provisional.

Moreover, the training given to inmate firefighters versus professional firefighters also makes inmate firefighters noncompetitive in the job market. As noted earlier, the training for firefighters who are incarcerated is very different than the training for professional firefighters. Currently, inmates receive none of the training or certificates necessary to work as a career firefighter once they are released from prison. Therefore, despite years of firefighting experience, people who worked as firefighters while in prison are unable to compete for firefighting jobs once they have completed their sentences. One way the state could expand the benefits for an inmate willing to work as a firefighter is to provide appropriate training and certification to become professional firefighters while they are serving their time in prison, rather than waiting until they finish their sentence to provide the training. In addition to expanding training, the Legislature should consider requiring CDCR to establish a process that assists people leaving prison with obtaining firefighting jobs, both at CALFIRE and in the community. Finally, the Legislature may wish to consider establishing an evaluation component for the fire camps to determine whether or not formerly incarcerated people are able to successfully find and retain work as career firefighters. Ultimately, the expectation of inmate and ex-offender firefighting programs should be that they are able to find work as career firefighters in local fire departments or in ancillary careers that utilize the skills they obtained during their training.

**Other Barriers That Impact Stability and Employment.** Citations that appear innocuous, such as a traffic ticket, can also pose barriers to employment, as well as lead to unemployment. A traffic ticket is a citation to appear in traffic court. The citation requires a ticket recipient to appear in court on or before a specific date. A person that receives a traffic citation does not need to appear in court if they pay the full amount of the fine. Until recently, when people with traffic tickets failed to pay the fine, the court notified the Department of Motor Vehicles (DMV) of the failure to pay. The passage of AB 103 (Committee on Budget), Chapter 17, Statutes of 2017, eliminated the ability for the courts and the DMV to hold or suspend an individual's license based on a failure to pay the traffic fine. AB 103 went into effect on June 27, 2017. Courts retain the power to notify the DMV of a failure to appear (FTA) in court and DMV will continue to suspend drivers' licenses on receipt of such information. A suspended driver's license for failure to appear, civil assessments of up to $300, and subsequent warrants can create a cascading effect. For many individuals, driving is a basic necessity as it allows them to commute to work, pick up children from school, and conduct other daily business. Thus, many continue to drive even if they lack a valid driver's license. This can result in additional fines and fees being assessed significantly increasing the total amount owed by an individual. This can create collateral damage for individuals who cannot afford to pay the exorbitant fines, resulting in wage garnishments, bench warrants, and job loss.

Even if occupational licensing barriers to employment are removed, comprehensive supportive and wraparound services during the pursuit of employment are needed. These services aid in the rehabilitation process and provide a warm landing upon reentry—helping to provide a semblance of stability upon reentry. Increasing funding and development of live-in programs for offenders serving the last part of their sentence in community programs, in lieu of confinement in state prison, would provide links to community rehabilitative services and programs. Thus, they would be better able to develop skills such as managing substance use disorder treatment, education, housing, family reunification, vocational training and employment services. Investments in local residency and support services to parolees, including substance use disorder treatment, cognitive outpatient and drop-in programs for parolees, can provide support in employment assistance and placement, relationships, education, housing and vocational training, behavioral therapies, life skills, employment, education and transitional housing.

Employment carries significant meaning and importance, especially for those coming from vulnerable and disadvantaged communities. Despite a number of progressive policies to increase employment opportunities for people who have criminal records and/or reentering our communities, significant barriers continue to exist. These barriers, as burdensome as occupational licensing and as simple as a traffic fine, can have damaging effects to a person's livelihood as well as local economies. It is important that the Legislature continue to investigate ways in which employment opportunity for these populations can be realized especially at a time in which demand for jobs in multiple industries are high.

# Juvenile Justice in California and the Department of Youth and Community Restoration

## BACKGROUND ON JUVENILE JUSTICE IN CALIFORNIA

California's juvenile justice system is largely administered locally by trial courts, county probation departments, and local law enforcement. Over the past 20 years, the Legislature has enacted various measures to realign to counties increasing responsibility for managing juvenile offenders.

**Adjudication of Cases.** Cases are handled differently in the juvenile justice system, as compared to the adult system. When a juvenile is arrested by a local law enforcement agency in California, there are various criminal justice outcomes that depend on the circumstances of the offense and the criminal history of the offender. Following the arrest of a juvenile, a law enforcement officer has discretion to release the juvenile to his or her parents, or to take the suspect to juvenile hall and refer the case to the county probation department. Many juveniles who are referred to county probation departments are arrested for more serious alleged offenses. Probation departments also receive referrals from non-law enforcement entities such as schools and parents. The probation department then has the option to close the case, place the juvenile in a diversion program, place the juvenile on informal probation, or refer the case to the courts. Most of these referrals are adjudicated in juvenile court but, depending on the nature of the alleged offense and the age of the accused, some cases may be prosecuted in adult criminal court.

Juvenile court judges then generally take the recommendations of probation department staff into account in deciding whether to make the offender a ward of the court. They also determine the appropriate placement and treatment for the juvenile based on such factors as the juvenile's offense, prior record, criminal sophistication, and the county's capacity to provide treatment. The courts place most juvenile offenders under the supervision of county probation departments, while a small number are sent to state institutions, either a juvenile facility operated by the California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (DJJ) or state prison.[1]

Under current law, only youth adjudicated for a serious, violent, or sex offense can be sent to state facilities by juvenile courts. As a result, over 98 percent of juvenile offenders are housed or supervised by counties. As of 2016, there were approximately 39,000 youth involved in the county probation system, with 29,000 being wards under Welfare and Institutions Code Section 602 for felony and misdemeanor crimes.[2] For a very small portion of the juvenile justice population, county probation departments determine that the crimes committed or the needs of the juvenile are so great that they cannot provide adequate care and treatment in their facilities. Those youth are then sent to DJJ facilities. There were only 653 youth under the jurisdiction of the DJJ in 2016, and 662 as of fall 2018 population projections.

[1] Legislative Analyst's Office, *California's Criminal Justice System: A Primer*, January 2013.
[2] Chief Probation Officers of California Fact sheet. Obtained 2019.

**Juvenile Justice Realignment.** As noted previously, over the last 20 years, the state has realigned responsibility for most youth in the juvenile justice system to the counties. Specifically, the Legislature and Governors took the following steps:

- **Sliding Scale.** In 1996, the Legislature passed, and Governor enacted, SB 681 (Hurtt), Chapter 6, Statutes of 1996, which established a sliding scale fee for counties committing wards to the state. Under this arrangement, counties were required to pay a share of the state's costs to house each ward sent to DJJ (then called the Department of the Youth Authority), with a higher share of costs paid for lower-level offenders than for higher-level offenders. SB 681 was designed to incentivize counties to manage less serious offenders locally and decrease state costs. This sliding scale was ultimately replaced with a flat fee of $24,000 per youthful offender in 2012.

- **Lower–Level Offenders.** Approximately a decade later, the state enacted SB 81 (Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007, which limited admission to DJJ only to juveniles who are violent, serious, or sex offenders. To help counties manage their new responsibilities for other offenders, SB 81 also established the Youthful Offender Block Grant (YOBG), which provided counties with $117,000 for each ward estimated to have been realigned to their responsibility under the measure. In addition, SB 81 also provided counties with $100 million in lease–revenue funding to construct or renovate juvenile facilities, an amount that later increased to $300 million.

- **Parolees.** Finally, in the 2010-11 budget, the Legislature and Governor realigned from the state to county probation departments full responsibility for supervising in the community all wards released from DJJ. As part of that measure, the Legislature also established the Juvenile Reentry Grant, which provides counties with ongoing funding for managing these parolees. Since the implementation of this Public Safety Realignment, DJJ's population has declined significantly. In 2008-09, the average daily population for youth housed at DJJ was 1,670, and there were 1,857 under the jurisdiction of Juvenile Justice Parole.

**Juvenile Court Petitions.** In 2016, there were 40,569 petitions filed in juvenile court. Each juvenile court petition can contain up to five different offenses. As a result, within those petitions filed, there were 60,239 different offenses. Of those petitions, 41 percent were for felony offenses, 43 percent were for misdemeanors, and 17 percent were for status offenses. Of the felony petitions, 31 percent were for violent offenses, 31 percent were for property offenses, 30 percent were for “other” offenses, and about seven percent were for drug offenses.[3]

Of those 40,569 cases filed in 2016, 63 percent ended up under the care of the county probation departments in wardship probation. About 50 percent of youth receiving wardship probation were sentenced to serve probation in their own or a relative’s home and 31 percent were sentenced to a locked county facility. 17 percent of the cases were dismissed. Of the remaining cases, seven percent resulted in informal probation, six percent resulted in non-ward probation, and about seven percent resulted in other dispositions, including transfer to adult court, deportation, diversion, or deferred entry of judgement. Finally, 183 youth were sent to one of the state’s facilities under the jurisdiction of CDCR’s DJJ.[4]

[3] Department of Justice, *Juvenile Justice in California* (2016), p. 32.
[4] Department of Justice, *Juvenile Justice in California* (2016), Table 21, p. 81.

**Juvenile Arrest Rates.** Juvenile crime rates have decreased dramatically in recent decades, declining from a peak of 408,131 juvenile arrests in 1974 down to 62,743 in 2016. More recently, juvenile felony arrests decreased by 54.7 percent between 2011 and 2016. In addition, juvenile misdemeanor and status offenses[5] decreased by 59.4 percent between 2011 and 2016.

**Direct Files to Adult Court.** Of the 376 adult court dispositions for juveniles in 2016, 290 dispositions resulted in a conviction, 51 were dismissed, two were acquitted, and 33 were shifted to juvenile court.[6] Of the 290 convictions, 180 were sentenced to adult prison or DJJ, 63 received probation and a jail term, nine received a jail term, and 20 received another sentence.

**Juvenile Recidivism Rates.** According to CDCR's most recent report to the Legislature on their annual performance measures, juveniles have a similar rearrest and recidivism rate to adult offenders overall. For example, after three years, 51.3 percent of adults have been convicted of a new crime. For juveniles, the conviction rate after three years is 53.8 percent. While 75.1 percent of adults are arrested within three years of their release, 74.2 percent of juvenile wards have been arrested during the same time period. In addition, 30.5 percent of juvenile offenders are committed to an adult prison within three years of their release from a DJJ facility. Finally, 64 percent of youth who returned to state-level incarceration did so within 18 months of their release from DJJ.[7]

However, when looking specifically at their similar-aged cohorts housed in state prisons, it appears that youth in DJJ facilities have a lower recidivism rate than their counterparts. For example, of the 18 and 19-year-olds released from state prisons in 2011-12 (the same year as the DJJ population that is being tracked for recidivism data), 67 percent had a new conviction after three years, as opposed to 54 percent of DJJ youth. Of the people between the ages of 20 and 24 who were released from prison in 2011-12, 63 percent had a new conviction within three years.[8]

The declining juvenile crime rate likely also contributed to the 73 percent decline in the state's DJJ population from 2,516 youth in 2007 to 653 youth in 2016.[9] Simultaneously, there has been a 60 percent reduction in the population housed in county juvenile camps and halls, down from 11,000 youth in 2007 to 4,200 youth in 2016.[10]

This significant and continuing decline offers an opportunity for California to comprehensively assess its juvenile justice system and invest in the best treatments and interventions for rehabilitating youth and emerging adults and to explore additional interventions in order to continue to reduce the number of young people who end up in the criminal justice system.

**Division of Juvenile Justice Overview.** A small number of wards (under two percent annually), generally constituting the state's most serious and chronic juvenile offenders, are committed to DJJ and

[5] A "status offense" is an offense that would not be considered a crime if it were committed by an adult. Examples include: underage drinking, skipping school, violating a city or county curfew, or running away.
[6] According to DOJ, the reason for the increase in the number of youth redirected to juvenile court was due to the passage of Proposition 57 in November of 2016, which requires that juvenile have a fitness hearing in juvenile court prior to being sent to an adult court.
[7] *Supplemental Report of the 2015-16 Budget Package Annual Performance Measures Report*. January 13, 2017.
[8] *2016 Outcome Evaluation Report: An Examination of Offenders Released in Fiscal Year 2011-12.* CDCR. October 2017. Page 21.
[9] Data provided by the Chief Probationers of California.
[10] Ibid.

become a state responsibility. DJJ, originally known as the California Youth Authority (CYA), was created by statute in 1941 and began operating in 1943 with the objectives of providing training and parole supervision for juvenile and young adult offenders. In a reorganization of the California corrections agencies in 2005, the CYA became the DJJ within CDCR. The Juvenile Parole Board, an administrative body separate from DJJ, determines a youth's parole readiness.

Youths committed directly to the DJJ do not receive determinate sentences. A youth's length of stay is determined by the severity of the committing offense and their progress toward parole readiness; however, DJJ is authorized to house youths until age 21 or 25, depending upon their commitment offense. DJJ also provides housing for youths under the age of 18 who have been sentenced to state prison. Youths sentenced to state prison may remain at DJJ until age 18, or if the youth can complete his or her sentence prior to age 25, the DJJ may house him or her until released to parole.

DJJ currently houses youth at three juvenile facilities and one conservation camp: O. H. Close Youth Correctional Facility (O.H. Close), N. A. Chaderjian Youth Correctional Facility (N.A. Chad), Ventura Youth Correctional Facility (Ventura), and Pine Grove Youth Conservation Camp (Pine Grove). The average daily population in fiscal year 2019-20 and 2020-21, including the Department of State Hospitals, is 773 and 862 youth respectively. N.A. Chad and O.H. Close, located in Stockton, are projected to house 313 and 207 males, respectively, in fiscal year 2020-21. Pine Grove, is projected to house 80 males and Ventura Facility is projected to house 229 males and 31 females in fiscal year 2020-21. In addition, two males under DJJ's jurisdiction were being housed at Department of State Hospital facilities. With 1,175 beds in the four facilities, the facilities are projected to be filled at 73 percent of capacity.

**Characteristics of Current DJJ Youth.**[11] Based on data provided by CDCR, on December 31, 2019, there were 764 youth with 745 having DJJ cases and 19 having Division of Adult Institution cases. Of these cases, 563 youth had an assault or robbery charge as the primary offense. 104 youth were convicted of a homicide and 74 were convicted of forcible rape or other eligible sex offense.[12] Approximately 97 percent of DJJ youth are male; of which, about 88 percent are either African–American or Latino and seven percent are white. The average age of DJJ-housed youth is 19.4 years old. [13]

**County of Origin.** As of December 31, 2019 the largest number of youth housed in DJJ facilities, 167, came from Los Angeles County. Separately, comparison of commitments by county shows that some smaller counties are responsible for a disproportionate number of youth sent to DJJ. For example, youth from Sacramento County, which comprises four percent of the state's population, constitute six percent of the DJJ population. In addition, Fresno County accounts for two percent of the state's population, but is responsible for five percent of the DJJ population. Kings County is home to less than one percent of Californians but account for approximately two percent of DJJ wards. By comparison, twenty-eight other small counties across the state do not have any youth housed at DJJ or have only one youth. And, there are larger counties who send fewer wards to DJJ. For example, Orange County, home to eight percent of the state's population, accounts for one percent of the DJJ population.

[11] At the time of this publication, statistics for the 2020-21 cohort were not obtained.
[12] California Department of Corrections and Rehabilitation. "Characteristics of the Division of Juvenile Justice Population." https://www.cdcr.ca.gov/Reports_Research/docs/research/Characteristics/06_2018_Characteristics_Report.pdfJune. 2018
[13] California Department of Corrections and Rehabilitation: Division of Juvenile Justice. "Population Overview." https://www.cdcr.ca.gov/Reports_Research/docs/research/Population_Overview/POPOVER2017.pdf.

***Farrell v. Kernan***. On January 16, 2003, Margaret Farrell, a taxpayer in California, filed a lawsuit against the director of what was then the CYA. The suit claimed CYA was expending funds on policies, procedures and practices that were illegal under state law. Farrell also claimed that CYA failed in its statutory duties to provide adequate treatment and rehabilitation for juvenile offenders in its care. The lawsuit also alleged that the youth offenders were denied adequate medical, dental and mental health care.

On November 19, 2004, the parties entered into a consent decree in which DJJ agreed to develop and implement six detailed remedial plans in the following areas: safety and welfare, mental health, education, sexual behavior treatment, health care, dental services, and youth with disabilities. After more than a decade of reforms in California's juvenile justice system – including limiting use of force, involving families in the rehabilitation of youth, and greatly reducing the juvenile offender population – on February 25, 2016, the Alameda County Superior Court terminated the *Farrell* lawsuit against DJJ.

**Rehabilitation Programming at DJJ.** According to CDCR's website, DJJ provides academic and vocational education treatment programs that address violent and criminogenic behavior, sex offender behavior, substance use disorder and mental health problems, and medical care. This treatment and programming description is similar to what the CDCR indicates that it provides for adult inmates. Through this programming, youth are also encouraged to build positive social and leadership skills through participation in groups and activities such as the student council, spiritual services, and events and fundraisers for victims' rights.

**Integrated Behavior Treatment Model (IBTM).** The framework for DJJ's programs is the IBTM. It is designed to reduce institutional violence and future criminal behavior by teaching anti-criminal attitudes and providing personal skills for youth to better manage their environment. DJJ staff from every discipline work as a team to assess the needs of each youth and to develop an individualized treatment program to address them. Through collaboration with the youth, the team administers a case plan that takes advantage of each youth's personal strengths to maximize treatment in other areas of their life to reduce the risk of re-offending.

The IBTM guides all services provided to youth from arrival at DJJ to community reentry. Upon arrival, each youth is assessed to determine needs and strengths in the following areas:

- Education & Employment
- Attitudes & Thinking
- Mental & Physical Health
- Family & Community Support & Stability
- Peer Influences
- Violence & Aggression
- Substance Use

Using that information, staff work collaboratively with each other, the youth, and the youth's family to develop and routinely update a treatment plan that helps the youth build skills for successful reentry into the community. Positive skill building is strengthened through a comprehensive behavior management system that discourages negative behavior and uses daily, weekly and monthly rewards to recognize and encourage positive change.

The impact of the IBTM treatment model on the recidivism rate for youth at DJJ is currently unknown. DJJ is currently working with the University of California at Irvine to conduct an updated outcomes evaluation, which will better measure the impact of the IBTM model. Unfortunately, the study will not be available until the second half of 2020, at the earliest.

**Education and Effective Learning.** The rehabilitation programming offered to adults and youth is significantly different. DJJ operates an accredited school district, providing youth with high school curricula in its four institutions similar to what they would receive in their local community. Youth attend school each day to achieve a high school diploma and youth whose commitment period is too short to fulfill that requirement are guided through a general education development (GED) curriculum. DJJ considers a diploma or GED a minimum requirement for parole consideration. Certificates in a variety of vocations and college classes are offered to graduates as well. During a December 2018 site visit to Chad and Close facilities, staff was informed that The Last Mile Coding programs will be expanded to Close and Ventura facilities in January and May 2019, respectively. Additionally, the Ventura facility's version of the program will incorporate a video-conference session between the Ventura-committed youth and Last Mile participants at San Quentin prison. Additionally, during the site visit DJJ administrators and staff expressed the desire to increase college opportunities in connection to implementing SB 1391 (Hancock and Wyland), Chapter 695, Statutes of 2014.

**Volunteer Programs.** DJJ facilities appear to have a fairly limited number of programs where volunteers interact with youth, as compared to adult institutions. As of 2017, Pine Grove has the most programs, with 13, and Ventura has the least, with only five volunteer programs. N.A. Chad and O.H. Close have ten and seven programs, respectively. Of note, some of these programs are faith-based and some are short-term in nature. The Incarcerated Men Putting Away Childish Things (IMPACT), an outlier to that trend, operates at three of the facilities and places an emphasis on restorative justice or offender responsibility principles. The Anti-Recidivism Coalition (ARC) is listed as volunteer programming at N.A. Chad and Pine Grove. However, according to ARC, they hold a monthly meeting with youth at Ventura who are scheduled to be going home and they meet with youth quarterly at the other three facilities. Similarly, Motorcycle Ministries visits Pine Grove monthly and the Lockwood Fire Department holds events twice a year at Pine Grove. Unlike volunteer programs in adult prisons, the presence of volunteer programs, and programming in general, outside of the educational programs, is lacking. The new leadership at DJJ is committed to significantly increasing community involvement in the facilities, including working with former prison inmates who can serve as mentors to the young men and women in the DJJ facilities.

**Arts in the State's Juvenile Justice Facilities.** Currently, the Arts in Corrections program overseen by the California Arts Council (CAC) is only available for adult inmates. The state does not provide an organized, formal arts program to juveniles confined in the four DJJ facilities. Through their schooling, students are required to take 10 hours of fine arts credit to meet California graduation requirements. In addition, the O.H. Close facility has a band, recreational therapists provide informal arts and crafts, and the Sexual Behavior Treatment Program has an arts component that includes peer-mentors. To rectify this problem, the 2017 Budget Act included $750,000 in General Fund for CAC to expand their Jump StArts grant program to include all of the state's DJJ facilities. From the most recent information on the 2017-18 grant cycle, Arts for Incarcerated Youth Network in Los Angeles County received a $42,500 grant to work with the CDCR to share best practices with staff and help them implement "an arts-based strategy of youth engagement, rehabilitation, and reentry," as well as lay "the foundation for local organizations to provide ongoing programming." Additionally, 916 Ink received a $2,500 grant to work with DJJ "to outline curriculum, train staff and work to schedule after school creative writing workshops for students" at the Chad and Close facilities.[14]

**Previous Efforts to Reorganize DJJ.** The Governor's budget for 2012-13 included a plan to complete the realignment of juvenile justice to counties. Under the plan, DJJ would have stopped receiving new wards on January 1, 2013. However, DJJ would continue to house wards admitted to its facilities prior to this date until they were released. The Administration estimated that DJJ's population would reach zero by June 30, 2015, at which time all DJJ facilities would have closed and the division would have been eliminated. However, in the May Revision that year, the Administration withdrew the proposal.

Since that time, some advocacy groups have continued to advocate for the closure of DJJ. In part, they argue, research shows that youth have better outcomes if they are housed in smaller settings and closer to their communities and families. On the other hand, counties have expressed serious concerns regarding their ability to effectively provide rehabilitative treatment and programming for those youth they currently send to the state.

**County Juvenile Justice System.** Most wards are placed under the supervision of the county probation department. These youth are typically placed in a county facility for treatment (such as juvenile hall or a camp) or supervised at home. Other wards are placed in foster care or group homes.

**County Services and Programs.** Counties vary widely in the quality and types of programs they provide for the youth in their locked juvenile facilities and no data is collected by the state on the specific types of rehabilitative programs provided in each local juvenile facility. However, appropriate schooling and mental health treatment is required to be provided to all of the youth, as well as substance use disorder treatment and cognitive behavioral therapy for those youth who need it. Many probation offices also work closely with their community partners to provide a wide array of programs, including art programs, faith-based programs, restorative justice programs, and foster grandparent programs.

**Innovative County Programs.** County probation departments and the juvenile justice system have made great progress over the last decade to ensure that only youth who are a threat to public safety or to themselves, and who cannot otherwise be safely served in the community, are detained. Improved screening to determine the need for detainment, statewide application of risk-needs assessment, implementation of effective prevention and diversion programs, and declining arrest rates have led to a two-fold impact on juvenile probation departments: 1) a decline in facility populations, and 2) a rise in the severity of the risks and needs of the youth who remain in juvenile facilities.

Examples of such programs include:

> **Coastal Valley Academy (San Luis Obispo County).** The Coastal Valley Academy (CVA) was established in San Luis Obispo County and is a custody commitment program in juvenile hall for 14-17-year old male and female youth who are moderate to high risk and in need of residential treatment. Youth are ordered to stay for 6-12 months and receive intensive case management, treatment and educational services through collaboration with local treatment providers and the County Office of Education. The physical features of the unit are more home-like and the programming, education,

[14] California Arts Council. "2017-2018 JUMP StArts Project Descriptions." http://arts.ca.gov/programs/files/FY1718_ProjectDescriptions_JUMP.pdf

living unit and recreation yard are all separate. CVS provides a safe, structured, and locally controlled alternative to group homes for youth that need to be removed from their homes, but are not appropriate for a home-based foster care setting. It also provides for greater family involvement as youth remain local.

**Job Training Center (Los Angeles County).** The Los Angeles County Probation Department intends to repurpose a juvenile camp into a voluntary residential reentry and vocational training center. Those eligible for the program would include youth exiting juvenile probation facilities or county jails, transition-age foster youth, and youth experiencing homelessness. The target population is young adults between 18 and 25. Youth in the program will be required to stay Monday through Friday and would be able to leave the campus on weekends, but participating in the program is voluntary. The camp conversion project is intended to equip these young adults with vocational skills and link youth to a pipeline of jobs in the county.

**Transitional Adult Youth Program (Alameda, Butte, Napa, Nevada, Santa Clara Counties).** SB 1004 (Hill), Chapter 865, Statutes of 2016, authorized the counties of Alameda, Butte, Napa, Nevada and Santa Clara to enact a pilot program that allows young adult offenders age 18-21 to be housed in a juvenile detention facility, as opposed to adult county jail. The program is voluntary for eligible young adults, and upon completion of the program, they will have their felony charges dismissed. Because these young adults will be housed in juvenile detention facilities, they will have services available to them, such as mental health, vocational, and educational services they otherwise would not get in a county jail. The program includes a portion of time in the juvenile hall with a focus on reentry and community supports to assist the participants in their transition back into the community.

**Gateway Program (San Bernardino County).** The Gateway program is a secure treatment facility that houses up to 42 youth and utilizes evidence-based assessments, treatment and evaluations aimed at reducing recidivism. The program is designed to house youth who have committed non-violent offenses and includes community access for those ready for reintegration services. Treatment includes mental health, family counseling, social learning activities, substance use counseling, anger management and employment services. The San Bernardino Probation Department works closely with the Department of Behavioral Health, County Schools, Workforce Development and private providers to provide services for the program.[15]

## GOVERNOR'S PROPOSAL

The Governor's budget proposes $289.7 million ($260.8 million General Fund) in 2020-21 and $295.6 million ($266.8 million General fund) annually thereafter and 1,415.9 positions to transition the Division of Juvenile Justice from the Department of Corrections and Rehabilitation to the Health and Human Services Agency as an independent department, effective July 1, 2020. These resources will establish the Department of Youth and Community Restoration and support the administrative functions necessary to operate independently. This amount includes the following aspects:

- The transition of 1,250.9 existing positions from DJJ to DYCR in 2020-21, increasing to 1,278.8 positions in 2021-22. These positions exclusively performed work related to DJJ within CDCR.

[15] Information on innovative county programs provided by the Chief Probation Officers of California.

Additionally some of the administrative workload for DJJ is currently centrally operationalized at CDCR such as the Human Resources, Business Services, and Accounting Offices. The budget transitions specific positions to DYCR that are identified as having workload supporting DJJ.

- An additional 112 positions to establish the administrative functions necessary to operate as an independent department in the budget year. In addition, DYCR is requesting $2.2 million General Fund ongoing to operate three 40-cadet Pre-Service Training Institutes—previously known as academies—annually at the Stockton Training Center.

## ADDITIONAL LEGISLATION AND INITIATIVES

**Legislation**. Following is a summary of legislation related to juvenile justice issues:

SB 94 (Committee on Budget and Fiscal Review), Chapter 25, Statutes of 2019, codifies the renaming of the Division of Juvenile Justice to the Department of Youth and Community Restoration and shifts this department to the California Health and Human Services Agency effective July 1, 2020. Moreover, the budget includes the convening, no later than October 1, 2019, of a committee of the Child Welfare Council to provide input and recommendations related to the DYCR's policies and programs that promote a commitment to improving youth outcomes, reducing youth detention, and reducing recidivism.

The Budget Act of 2019 appropriated $1.2 million General Fund and 8.8 positions in 2019-20, and $1.8 million General Fund and 12.0 positions in 2020-2021 and ongoing for staff to plan for the transition and launch of a new independent training institute that will train all staff on best practices so they can further the new DYCR's rehabilitative mission.

AB 1812 (Committee on Budget and Fiscal Review), Chapter 36, Statutes of 2018, included three major juvenile justice reform efforts: extension of the age of jurisdiction to 25 for certain DJJ committed youth, creation and implementation of a Young Adult Offender Pilot program, and the establishment of a Youth Reinvestment Fund. Trailer bill language made various other statutory changes.

The Budget Act of 2018 also allocated $3.8 million General Fund and included trailer bill language to establish a seven-year young adult pilot program within DJJ for a limited number of transition-aged youth. This program diverts youth from adult prison to a juvenile facility in order to provide developmentally appropriate rehabilitative programming.

Finally, the Budget Act of 2018 also provided $37.3 million General Fund on a one-time basis to establish the Youth Reinvestment Fund to support diversion of youth away from arrest and detention ($26.3 million), for social workers in public defender offices ($10 million), and to provide specialized diversion services for Native American Youth ($1 million). Trailer bill language requires the Board of State and Community Corrections (BSCC) to coordinate with the California Health and Human Services Agency and the State Department of Education for the administration and accountability of the grant program.

The Legislature and Governor enacted additional significant legislation in 2018. Specifically, SB 439 (Mitchell), Chapter 1006, Statutes of 2018, established 12 years of age as the minimum age for which the juvenile court has jurisdiction and may adjudge a person a ward of the court, except when there are allegations of specified violent felonies. On or after January 1, 2020, a minor under the age of 12 must be released to his or her parent, guardian, or caregiver if the minor comes to the attention of law enforcement because his or her conduct constitutes a crime or a status offense.

To increase the number of volunteer programs in the juvenile facilities, the 2017 Budget Act created two community resource manager positions and redirected $500,000 for innovative programming grants to expand the number of available volunteer programs.

SB 312 (Skinner), Chapter 679, Statutes of 2017, authorizes the court to order the sealing of records for certain serious or violent offenses committed when a juvenile was 14 years of age or older, as specified.

SB 625 (Atkins), Chapter 683, Statutes of 2017, authorized the Board of Juvenile Hearings (BJH) to make honorable discharge determinations and to grant an honorable discharge to a person discharged from a DJJ facility who has proven the ability to desist from criminal behavior and to initiate a successful transition into adulthood.

SB 261(Hancock), Chapter 471 of the Statutes of 2015 raised the age, from 18 to 23 years old, at which young offenders would be considered youth for those who committed specified crimes when they were under 18 years of age and who were sentenced to state prison for the purposes of parole.

SB 1021 (Committee on Budget and Fiscal Review), Chapter 41, Statutes of 2012, lowered the jurisdiction age for youth from 25 to 23 and replaced the previous sliding scale county reimbursement rates with an annual rate of $24,000 per youth committed to DJJ via juvenile court. It also eliminated juvenile parole, disciplinary time additions, and new parole violator admissions after December 31, 2012. The legislation also restructured the methodology for discharge consideration hearings.

AB 1628 (Blumenfield), Chapter 729, Statutes of 2010, transferred supervisorial responsibility to the county of jurisdiction’s probation department for community supervision of youth released on or after its implementation.

SB 81 (Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007; and AB 191 (Committee on Budget), Chapter 257, Statutes of 2007, restricted juvenile court commitments to cases committed for specified (serious/violent) offenses listed in subdivision (b) of Section 707 of the Welfare and Institution Code (WIC) or for specified non-WIC 707(b) sex offender registrants (Penal Code Section 290.008). Non-WIC 707(b) (excluding sex offenders) cases that were on parole on September 1, 2007 and were discharged once they completed their parole time.

SB 681 (Hurtt), Chapter 6, Statutes of 1996, required counties to pay the state for each juvenile court commitment pursuant to a “sliding scale fee system” based on commitment offense as an incentive to the county when they do not commit a juvenile because of the associated costs.

AB 3369 (Bordonaro), Chapter 195, Statutes of 1996, reduced the age limit for authorizing a transfer of a person to CYA, now known as DJJ, by the Director of CDCR to under 18 years and requires the transfer to terminate in specified situations. This was only applicable to minors convicted as an adult but housed at the DJJ under WIC 1731.5(c).

**Initiatives.** Below are relevant initiatives:

Proposition 57 – Public Safety and Rehabilitation Act of 2016 (November 8, 2016) provided juvenile court judges authority to decide whether juveniles aged 14 and older should be sentenced as adults for specified offenses.

Proposition 21 – Gang Violence and Juvenile Crime Preventive Act (March 7, 2000) made changes to the prosecution, sentencing, and incarceration of juvenile offenders:

- Increased punishment for gang-related felonies; death penalty for gang-related murder; indeterminate life sentences for home-invasion robbery, carjacking, witness intimidation, and drive-by shootings; created crime of recruiting for gang activities; and authorized wiretapping for gang activities.

- Allowed for the direct filing of a felony complaint to the adult criminal court for juveniles aged 14 years or older under a variety of circumstances.

- Eliminated informal probation for juveniles committing felonies.

- Required registration for gang related offenses.

- Designated additional crimes as violent and serious felonies, thereby making offenders subject to adult prosecution.

## ISSUES TO CONSIDER

**Addressable Problems Still Persist Inside the Juvenile Justice World.** Significant problems within the juvenile justice world persist. Institutionalized biases against youth, negative staff interactions with youth, as well as staff training and selection challenges all need to be addressed. Also, the anticipated increase in DJJ-committed youth due to the activation of the Young Adult Program and increase in age of jurisdiction to 25 raise new criminogenic needs for these emerging adults. In order to address the unique criminogenic and behavioral needs of young adults, it is important that age appropriate services are provided. Additionally, continued modification and enhancements are needed to better equip DJJ facilities to meet the needs of its youth. Those services include, but are not limited to the state's IBTM treatment model, cognitive behavioral therapy, mental health treatment, vocational training, and education, among others. In addition, an increased emphasis on volunteer programs in DJJ, which are far fewer in number than adult institutions, is needed.

One of the frustrations often noted by California's juvenile justice reform advocates is the significant lack of data from the counties that allows the state to measure the outcomes for youth. For example, a lack of recidivism data makes it difficult to assess the impact of a culture shift within DJJ. These frustrations were reiterated during 2018-19 Subcommittee 5 hearings. Staff from the O.H. Close facility also voiced frustrations with the inability to track the effectiveness of graphic design and arts classes provided to Sexual Behavior Treatment Program participants.

Some states are multiple steps ahead of California in their data reporting. These states include Florida, Maryland, Pennsylvania, Utah, and Virginia. They focus on in-depth recidivism research that includes "multiple populations, marker events and/or include more comprehensive analyses." These insights are more comprehensive and do not contain broad, vague, or varying definitions of recidivism. California, unlike many large states, has no state-level capacity to produce information on the recidivism or other outcomes of juveniles who are processed through the justice system. While California is moving rapidly to enact major juvenile justice system reforms, state and local data systems are outdated and unable to provide key information on youth outcomes, the impact of law changes, or the success of new programs.

In response to these frustrations, the Legislature created the California Juvenile Justice Data Working Group (JJDWG) in the 2014 budget trailer bill AB 1468 (Committee on Budget), Chapter 26, Statutes of 2014. That group, overseen by the BSCC, provided a comprehensive analysis and recommendations to the Administration and Legislature to upgrade the state's juvenile justice data capacity in 2016. One task assigned by legislation to the JJDWG in 2014 was to compare California's juvenile justice data capacity to the capacities of other states. The JJDWG report to the Legislature documented multiple ways in which California's data capacity falls below that of other major states. Generally, the larger data collection and reporting landscape has not significantly changed since 2014.

Post-reorganization of DJJ under HHS, supervision and accountability through effective and intense case management, diversion when possible, collaboration among community partners, and continued shifts from punitive to rehabilitative treatments are needed to serve our youth and to ensure that California increases the chances that our youth become successful and responsible adults who do not re-encounter the justice system.

# APPENDIX

# TIMELINE FOR THE 2020-21 BUDGET BILL

| | | |
|---|---|---|
| Thursday | January 10 | Governor submits State Budget to the Legislature. |
| Thursday | January 10 | Committee releases *Summary of Governor's Proposed 2020-21 Budget.* |
| Monday | January 13 | Legislative Analyst submits *The 2020-21 Budget: Overview of the Governor's Budget.* |
| Thursday | January 23 | Committee conducts overview hearing of the Governor's Proposed 2020-21 Budget. |
| Thursday | February 18 | Full Budget Committee holds informational hearing – The Governor's Climate Budget Proposal. |
| Thursday | February 20 | Full Budget Committee holds informational hearing – California's Prison System: Past, Present, and Future. |
| Thursday | February 27 | Full Budget Committee holds information hearing – Housing and Homelessness. |
| Tuesday | March 3 | Committee releases *Overview of the 2020-21 Governor's Budget.* |
| Thursday | March 5 | Subcommittee budget hearings begin. |
| Monday | April 1 | Department of Finance submits Finance Letters. |
| Thursday | April 2 | Spring Recess begins. |
| Tuesday | May 14 (est.) | Governor delivers May Revision to the Legislature. |
| Saturday | June 15 | Legislature must pass budget to meet constitutional deadline for passage of the budget. |
| Saturday | June 29 | Governor signs 2020-21 Budget. |

# Staff Assignments

| | |
|---|---|
| Overall Budget | Joe Stephenshaw<br>Elisa Wynne |
| Corrections and Public Safety | Christopher Francis |
| Developmental Services | Renita Polk |
| Education | |
| K-12 Education | Elisa Wynne |
| Higher Education | Anita Lee |
| Early Childhood Education | Elisa Wynne |
| Energy | James Hacker |
| Environmental Protection | Joanne Roy |
| Housing and Community Development | James Hacker |
| Judiciary | Christopher Francis |
| Labor and Employee Compensation | Anita Lee |
| Local Government | Yong Salas |
| Health | Scott Ogus |
| Human Services | Renita Polk |
| Resources | Joanne Roy |
| Taxes and Revenues | Joe Stephenshaw |
| State Administration | Yong Salas<br>Joe Stephenshaw<br>Meron Tesfaye |
| Transportation | James Hacker |
| Veterans Affairs | Yong Salas |
| Committee Secretary | Sandy Perez |
| Committee Assistant | Samuel Lanchester |

# CALIFORNIA STATE BUDGET HISTORY

| Fiscal Year | Bill and Chapter No. | Date Passed and Chaptered | | Total Budget ($ Billions) |
|---|---|---|---|---|
| 1965-66 | AB 500/757 | 6-18 | 6-30 | 4.0 |
| 1966-67[a] | SB 1XX/2 | 6-30 | 6-30 | 4.7 |
| 1967-68 | AB 303/500 | 6-29 | 6-30 | 5.0 |
| 1968-69 | SB 240/430 | 6-28 | 6-29 | 5.7 |
| 1969-70 | SB 255/355 | 7-3 | 7-3 | 6.3 |
| 1970-71 | AB 525/303 | 7-4 | 7-4 | 6.6 |
| 1971-72[b] | SB 207/266 | 7-2 | 7-3 | 6.7 |
| 1972-73[c] | SB 50/156 | 6-15 | 6-22 | 7.4 |
| 1973-74 | AB 110/129 | 6-28 | 6-30 | 9.3 |
| 1974-75 | SB 1525/375 | 6-28 | 6-30 | 10.3 |
| 1975-76 | SB 199/176 | 6-26 | 7-1 | 11.5 |
| 1976-77 | SB 1410/320 | 7-1 | 7-2 | 12.6 |
| 1977-78 | AB 184/219 | 6-24 | 6-30 | 14.0 |
| 1978-79 | AB 2190/359 | 7-5 | 7-6 | 18.8 |
| 1979-80 | SB 190/259 | 7-12 | 7-13 | 21.5 |
| 1980-81 | AB 2020/510 | 7-16 | 7-16 | 24.5 |
| 1981-82c | SB 110/99 | 6-15 | 6-28 | 25.0 |
| 1982-83 | AB 21/326 | 6-30 | 6-30 | 25.3 |
| 1983-84 | SB 123/324 | 7-19 | 7-21 | 26.8 |
| 1984-85c | AB 2313/258 | 6-15 | 6-27 | 31.0 |
| 1985-86c | SB 150/111 | 6-13 | 6-28 | 35.0 |
| 1986-87c | AB 3217/186 | 6-12 | 6-25 | 38.1 |
| 1987-88 | SB 152/135 | 7-1 | 7-7 | 40.5 |
| 1988-89 | AB 224/313 | 6-30 | 7-8 | 44.6 |
| 1989-90 | SB 165/93 | 6-29 | 7-7 | 48.6 |
| 1990-91 | SB 899/467 | 7-28 | 7-31 | 51.4 |
| 1991-92 | AB 222/118 | 6-20/7-4 | 7-16 | 55.7 |
| 1992-93 | AB 979/587 | 8-29 | 9-2 | 57.0 |
| 1993-94 | SB 80/55 | 6-22 | 6-30 | 52.1 |
| 1994-95 | SB 2120/139 | 7-4 | 7-8 | 57.5 |
| 1995-96 | AB 903/303 | 8-2 | 8-3 | 56.8 |
| 1996-97 | SB 1393/162 | 7-8 | 7-15 | 61.5 |
| 1997-98 | AB 107/282 | 8-11 | 8/18 | 67.2 |
| 1998-99 | AB 1656/324 | 8-11 | 8-21 | 71.9 |
| 1999-00 | SB 160/50 | 6/16 | 6/29 | 81.3 |
| 2000-01 | AB 1740/52 | 6/22 | 6/30 | 99.4 |
| 2001-02 | SB 739/106 | 7/21 | 7/26 | 103.3 |
| 2002-03 | AB 425/379 | 9/1 | 9/5 | 98.9 |
| 2003-04 | AB 1765/157 | 7/29 | 8/2 | 98.9 |
| 2004-05 | SB 1113/208 | 7/29 | 7/31 | 105.3 |
| 2005-06 | SB 77/38 | 7/7 | 7/11 | 117.3 |
| 2006-07 | AB 1801/47 | 6/27 | 6/30 | 131.4 |
| 2007-08 | SB 77/171 | 8/21 | 8/24 | 146.5 |
| 2008-09 | AB 1781/268 & AB 88/269 | 9/16 | 9/23 | 144.5 |
| 2009-10 | SBx3 1/Ch 1 & ABx4 1/Ch 1 | 2/20 – 7/23 | 2/19 - 7/28 | 119.2 |
| 2010-11 | SB 870/Ch 712 | 10/7 | 10/8 | 125.3 |
| 2011-12 | SB 87/Ch 33 | 6/28 | 6/30 | 129.5 |
| 2012-13c | AB 1464/Ch 21 & AB 1497/Ch 29 | 6/15 | 6/27 | 142.4 |
| 2013-14c | AB 110/Ch 20 | 6/14 | 7/1 | 145.3 |
| 2014-15c | SB 852/Ch. 25 | 6/15 | 6/20 | 156.4 |
| 2015-16c | AB 93/Ch 10, SB 97/Ch 11, and SB 101/Ch 321 | 6/15, 6/19 9/11 | 6/19, 6/24 and 9/22 | 167.6 |
| 2016-17c | SB 826/Ch 23, AB 1622/Ch 44, AB 1623/Ch 318, AB 1613/Ch 370 | 6/15, 6/30, 8/24, /31 | 6/27, 7/1, 9/13, and 9/14 | 170.9 |
| 2017-18c | AB 97/Ch 14, AB 120/Ch 22, SB 108/Ch 54, AB 98/Ch 12 and SB 107/Ch 53 | 6/15,6/15, 6/26, 6/15, 6/26 | 6/21, 6/27 and 7/10 | 183.3 |
| 2018-19c | SB 840/Ch29, SB 841/Ch 31, SB 856/Ch 30 SB 862/Ch 449 | 6/14, 6/14, 6/25 8/30 | 6/27, 6/27, and 6/27 9/17 | 201.4 |
| 2019-20c | AB 74/Ch. 23, AB 72/Ch. 1, AB 91/Ch. 39 AB 110/Ch. 80, SB 106/Ch. 55, and SB 109/Ch. 363 | 6/13, 2/11, 6/20 7/11, 6/24, and 9/13 | 6/27, 2/13, 7/1 7/12, 7/1 and 9/27 | 214.8 |

[a] *1966 Second Extraordinary Session.*
[b] *First year budget was to be enacted by June 15.*
[c] *June 15 constitutional deadline met.*

## General Fund Revenues
## 2020-21 Governor's Budget
(Dollars in Millions)

| | | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|---|---|---|---|---|---|---|
| 1 | **Major Revenues** | | | | | |
| 2 | Alcoholic Beverage Taxes and Fees | 383 | 389 | 394 | 400 | 406 |
| 3 | Cigarette Tax | 60 | 58 | 56 | 54 | 53 |
| 4 | Corporation Tax | 15,305 | 16,007 | 16,487 | 16,976 | 17,575 |
| 5 | Insurance Gross Premiums Tax | 3,023 | 3,117 | 3,221 | 3,329 | 3,441 |
| 6 | Personal Income Tax | 101,682 | 102,878 | 106,094 | 108,084 | 110,025 |
| 7 | Retail Sales and Use Tax | 27,185 | 28,243 | 28,955 | 29,682 | 30,449 |
| 8 | **Total Major Revenues** | **$147,638** | **$150,691** | **$155,208** | **$158,525** | **$161,948** |
| 9 | **Minor Revenues** | **2,761** | **2,712** | **2,494** | **2,427** | **2,208** |
| 10 | Trailer Coach License (In Lieu) Fees | (35) | (38) | (42) | (46) | (50) |
| 11 | Local Agencies - Cost Recoveries | (26) | (26) | (26) | (26) | (26) |
| 12 | Local Agencies - Miscellaneous Revenue | (165) | (160) | (152) | (144) | (144) |
| 13 | Royalties - State Lands | (126) | (86) | (83) | (84) | (78) |
| 14 | Investment Income - Pooled Money Investments | (574) | (514) | (581) | (667) | (759) |
| 15 | Abandoned Property Revenue | (443) | (432) | (437) | (442) | (449) |
| 16 | Cost Recoveries - Other | (1,050) | (852) | (551) | (380) | (50) |
| 17 | Miscellaneous Revenue | (46) | (44) | (44) | (44) | (44) |
| 18 | Penalty Assessments - Other | (103) | (365) | (384) | (401) | (416) |
| 19 | Other Miscellaneous Minor Revenues | (193) | (193) | (195) | (193) | (193) |
| 20 | **Revenue Transfers** | **-2,027** | **-1,682** | **-449** | **-60** | **-69** |
| 21 | Transfer to the BSA for Rainy Day Funds | (-2,050) | (-1,959) | (-728) | (-341) | (-352) |
| 22 | All Other Transfers | (23) | (277) | (279) | (281) | (283) |
| 23 | **Loans** | **-1,886** | **-86** | **1** | **11** | **1** |
| 24 | Weight Fee Transfers | (-922) | (0) | (0) | (0) | (0) |
| 25 | Loan Repayments to Other Funds | (-942) | (0) | (0) | (0) | (0) |
| 26 | All Other Loans | (-21) | (-86) | (1) | (11) | (1) |
| 27 | **Total Minor Revenues/Transfers/Loans** | **-$1,152** | **$944** | **$2,047** | **$2,378** | **$2,140** |
| 28 | **Total Revenues/Transfers/Loans** | **$146,486** | **$151,635** | **$157,255** | **$160,903** | **$164,088** |

*Dollars may not add due to rounding

## General Fund Multi-Year N98 Expenditures by Agency
## 2020-21 Governor's Budget
(Dollars in Millions)

| **N98 excludes Capital Outlay, Debt Service** | **2019-20** | **2020-21** | **2021-22** | **2022-23** | **2023-24** |
|---|---|---|---|---|---|
| Legislative, Executive | $3,145 | $1,849 | $1,347 | $1,333 | $2,081 |
| Courts | 2,591 | 2,505 | 2,547 | 2,592 | 2,643 |
| Business, Consumer Services, and Housing | 1,048 | 170 | 194 | 159 | 56 |
| Transportation | 96 | 16 | 9 | 8 | 8 |
| Natural Resources | 2,470 | 2,336 | 2,196 | 2,174 | 2,230 |
| Environmental Protection | 664 | 132 | 128 | 89 | 102 |
| Health and Human Services | 41,749 | 47,264 | 48,402 | 49,597 | 49,258 |
| Corrections and Rehabilitation | 12,789 | 12,770 | 12,622 | 12,665 | 12,675 |
| Education | 17,501 | 16,863 | 17,279 | 17,541 | 17,599 |
| Labor and Workforce Development | 186 | 159 | 124 | 122 | 120 |
| Government Operations | 1,809 | 1,413 | 1,261 | 1,246 | 2,370 |
| General Government | 3,467 | 4,388 | 4,660 | 5,475 | 5,032 |
| Non-Agency Departments | ( 920 ) | ( 908 ) | ( 818 ) | ( 813 ) | ( 812 ) |
| Tax Relief/Local Government | ( 505 ) | ( 432 ) | ( 427 ) | ( 427 ) | ( 427 ) |
| Statewide Expenditures | ( 2,041 ) | ( 3,048 ) | ( 3,415 ) | ( 4,235 ) | ( 3,794 ) |
| **Capital Outlay** | 493 | 351 | 330 | 210 | 327 |
| **Debt Service** | 5,335 | 5,294 | 5,714 | 5,765 | 6,066 |
| **Total N98 Expenditures** | **$93,344** | **$95,510** | **$96,814** | **$98,974** | **$100,566** |

Note: Totals may not add due to rounding

## Proposition 98 Multi-Year Forecast
## 2020-21 Governor's Budget

**(Dollars in Millions)**

| | 2018-19 | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|---|---|---|---|---|---|---|
| General Fund | $45,856 | $47,746 | $49,313 | $51,233 | $52,197 | $53,570 |
| Education Protection Account GF (Less health care share) | 8,649 | 8,659 | 8,260 | 8,101 | 8,444 | 8,418 |
| Total Prop 98 General Fund | 54,505 | 56,405 | 57,573 | 59,334 | 60,641 | 61,988 |
| Local Property Tax | 23,943 | 25,168 | 26,475 | 27,824 | 29,191 | 30,614 |
| **Total Prop 98** | $78,448 | $81,573 | $84,048 | $87,158 | $89,832 | $92,602 |
| | | | | | | |
| *Prop 98 Change to Prior-year* | *2,792* | *3,125* | *2,475* | *3,110* | *2,674* | *2,770* |
| *Percent Change to Prior-year* | *3.69%* | *3.98%* | *3.03%* | *3.70%* | *3.07%* | *3.08%* |
| *Prop 98 Operative Test* | *1* | *1* | *1* | *1* | *1* | *1* |
| *Maintenance Factor Balance* | *0* | *0* | *0* | *0* | *0* | *0* |
| | | | | | | |
| **Settle-Up** | | | | | | |
| Amounts Applied from Over Appropriations | -369 | 0 | 0 | 0 | 0 | 0 |
| General Fund Payments for Prior Fiscal Years | -100 | -318 | 0 | 0 | 0 | 0 |
| **Settle-Up Balance** | $318 | $0 | $0 | $0 | $0 | $0 |
| | | | | | | |
| **Mandate Balance** | $1,118 | $1,118 | $1,118 | $1,118 | $1,118 | $1,118 |
| | | | | | | |
| **Public School Stabilization Account Balance** | | 524 | 487 | 487 | 487 | 487 |

## General Fund Multi-Year Forecast
## 2020-21 Governor's Budget
(Dollars in Millions)

| | 2019-20 | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|---|---|---|---|---|---|
| **RESOURCES:** | | | | | |
| Prior Year Balance | $8,497 | $5,234 | $3,785 | $3,864 | $3,911 |
| Revenues/Transfers | $148,536 | $153,594 | $157,983 | $161,244 | $164,440 |
| Transfer to Budget Stabilization Account | -$2,050 | -$1,959 | -$728 | -$341 | -$352 |
| **Total Resources** | **$154,983** | **$156,869** | **$161,040** | **$164,767** | **$167,999** |
| **EXPENDITURES:** | | | | | |
| Proposition 98 | $56,405 | $57,573 | $59,334 | $60,641 | $61,988 |
| Non-Proposition 98 | $93,344 | $95,510 | $96,814 | $98,974 | $100,566 |
| Prop 2 Infrastructure/Deferred Maintenance | $0 | $0 | $1,028 | $1,240 | $1,146 |
| **Total Expenditures** | **$149,749** | **$153,083** | **$157,176** | **$160,856** | **$163,700** |
| **FUND BALANCES:** | $5,234 | $3,785 | $3,864 | $3,911 | $4,299 |
| Reserve for Encumbrances | $2,145 | $2,145 | $2,145 | $2,145 | $2,145 |
| SFEU | $3,089 | $1,641 | $1,719 | $1,767 | $2,155 |
| Safety Net Reserve | $900 | $900 | $900 | $900 | $900 |
| Budget Stabilization Account (Mandatory Deposits) | $12,924 | $14,883 | $15,611 | $15,952 | $16,304 |
| Budget Stabilization Account (Total Deposits) | $16,018 | $17,977 | $18,705 | $19,046 | $19,398 |
| Public School System Stabilization Account | $524 | $487 | $487 | $487 | $487 |
| Total Reserves | $20,532 | $21,005 | $21,811 | $22,200 | $22,939 |
| BSA mandatory balance as a percentage of General Fund Tax Proceeds | 8.7% | 9.8% | 10.0% | 10.0% | 10.0% |
| SFEU/Safety Net/PSSSA/Total BSA as a percentage of Total Resources | 13.2% | 13.4% | 13.5% | 13.5% | 13.7% |
| Operating Surplus/Deficit with BSA Transfer | **-$3,263** | **-$1,449** | **$79** | **$47** | **$388** |
| One-Time Investments | **$9,501** | **$2,314** | **$0** | **$0** | **$0** |
| Operating Surplus/Deficit--Excluding One-Time | **$6,238** | **$866** | **$79** | **$47** | **$388** |

Note: Totals may not add due to rounding

## Debts and Liabilities Eligible for Payments Under Proposition 2
## 2020-21 Governor's Budget
(Dollars in Millions)

| | Outstanding Amount at Start of 2020-21 [2/] | Proposed Use of 2020-21 Pay Down | Proposed Use of 2021-22 Pay Down | Proposed Use of 2022-23 Pay Down | Proposed Use of 2023-24 Pay Down |
|---|---|---|---|---|---|
| **State Retirement Liabilities** | | | | | |
| State Retiree Health | 85,595 | 340 | 350 | 365 | 375 |
| State Employee Pensions | 59,714 | 817 | 791 | 871 | 1,123 |
| Teachers' Pensions [1/] | 101,992 | 802 | 615 | 345 | 0 |
| Judges' Pensions | 3,299 | 0 | 0 | 0 | 0 |
| **Total** | **$250,600** | **$1,959** | **$1,756** | **$1,581** | **$1,498** |

[1/] The state portion of the unfunded liability for teachers' pensions is $33.4 billion.

[2/] For retiree health and pensions, the amounts reflect latest actuarial report available.

# Prop 2 Rainy Day Fund - 2020-21 and Out Years
# 2020-21 Governor's Budget

**(Dollars in Millions)**

| | | 2020-21 | 2021-22 | 2022-23 | 2023-24 |
|---|---|---|---|---|---|
| | **1.5% of General Fund Revenues & Transfers** | | | | |
| 1 | General Fund Revenues and Transfers (before BSA transfer) | $153,594 | $157,983 | $161,244 | $164,440 |
| 2 | 1.5% of General Fund Revenues & Transfers | $2,304 | $2,370 | $2,419 | $2,467 |
| | **Capital Gain Revenues (Sec 20(b))** | | | | |
| 3 | General Fund Tax Proceeds | $151,516 | $156,106 | $159,515 | $163,036 |
| 4 | Personal Income Taxes from Capital Gains | $14,727 | $14,331 | $13,960 | $13,898 |
| 5 | % of General Fund Tax Proceeds | 9.7% | 9.2% | 8.8% | 8.5% |
| 6 | 8% of General Funds Tax Proceeds | $12,121 | $12,488 | $12,761 | $13,043 |
| 7 | Personal Income Taxes from Capital Gains in Excess of 8% General Fund Tax Proceeds | $2,606 | $1,843 | $1,199 | $855 |
| 8 | Prop 98 Share of Capital Gains Tax Revenue above 8% | $992 | $702 | $456 | $327 |
| 9 | Non 98 Share of Capital Gain Tax Revenue above 8% | $1,614 | $1,141 | $743 | $528 |
| 10 | Total Available (Lines 2 and 9) | $3,918 | $3,511 | $3,162 | $2,995 |
| 11 | **Debt Repayment (50%)** | **$1,959** | **$1,756** | **$1,581** | **$1,498** |
| 12 | **Deposit to Rainy Day Fund (50%)** | **$1,959** | **$1,756** | **$1,581** | **$1,498** |
| 13 | **Cumulative Balance**[1/] | **$17,977** | **$19,733** | **$20,286** | **$20,544** |
| 14 | **10 percent of GF Tax Proceeds** | **$15,152** | **$15,611** | **$15,952** | **$16,304** |
| 15 | **Discretionary Balance** | **$3,094** | **$3,094** | **$3,094** | **$3,094** |
| *16* | *Mandatory Amount in Excess of 10 percent of General Fund Tax Proceeds - (for Infrastructure/Deferred Maintenance)* | *$0* | *$1,028* | *$1,240* | *$1,146* |
| 17 | **Mandatory Balance** | **$14,883** | **$15,611** | **$15,952** | **$16,304** |
| 18 | Mandatory Percentage | 9.8% | 10.0% | 10.0% | 10.0% |
| 19 | **Adjusted Cumulative Balance in Rainy Day Fund** [1/] | **$17,977** | **$18,705** | **$19,046** | **$19,398** |
| 20 | **Total Mandatory/Discretionary Balance as a Percentage of General Fund Tax Proceeds** | **11.9%** | **12.0%** | **11.9%** | **11.9%** |

[1/] Includes discretionary balance of $3.094b