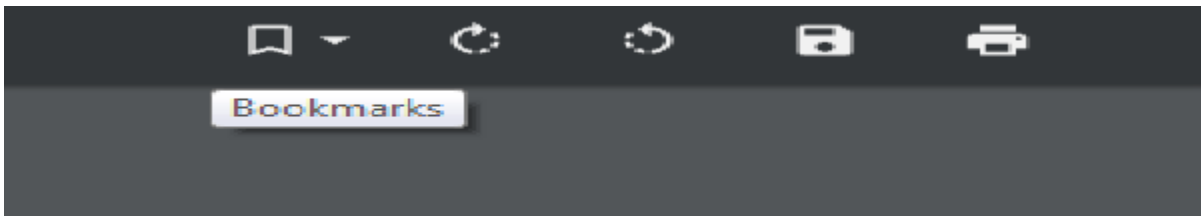


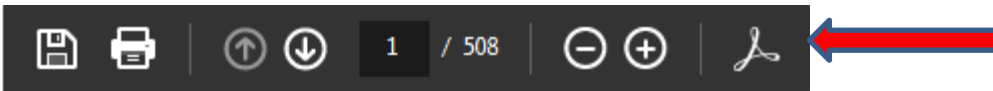
Senate Budget and Fiscal Review

The 2016 Agendas for Subcommittee No. 5 on Corrections, Public Safety and the Judiciary are archived below. To access an agenda or outcomes by a specific date, please refer to “Bookmarks” icon on the screen. Depending on your web browser the bookmarks menu will look different. Below are instructions to help you find the “Bookmarks” icon in Internet Explorer 11, Mozilla Firefox, or Chrome.

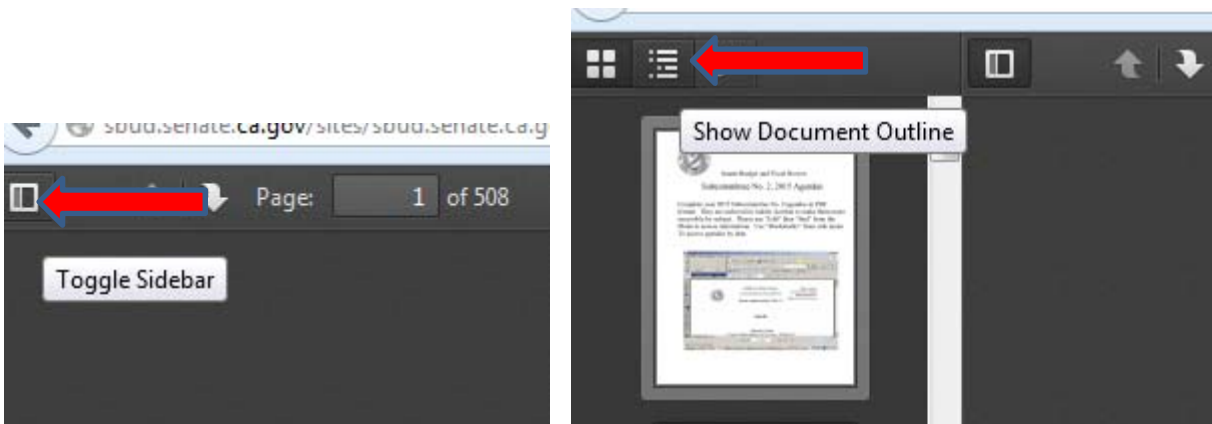
Chrome has access to Acrobat bookmark located in the upper right hand corner



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



SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 3, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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ITEMS TO BE HEARD

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION

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

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

The CDCR is organized into the following programs:

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

The 2015 Budget Act projected an adult inmate average daily population of 127,990 in the current year. The current year adult inmate population is now projected to decrease by 0.2 percent, for a total population of 127,681. The budget year adult inmate population is projected to be 128,834, a 0.7 percent increase over the current year.

As of February 24, 2016, the total in-custody adult population was 127,304. The institution population was 112,927, which constitutes 135.2 percent of prison capacity. The most overcrowded prison is the Valley State Prison in Chowchilla, which is currently at 168.7 percent of its capacity. For female inmates, Central California Women's Facility in Chowchilla is currently the most overcrowded at 143 percent of its capacity.

The Governor's budget proposes total funding of \$10.5 billion (\$10.3 billion General Fund and \$300 million other funds) in 2016-17. This is an increase of approximately \$500 million (\$470 million General Fund) over 2014-15 expenditures. The following table shows CDCR's total operational expenditures and positions for 2014-15 through 2016-17.

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

| Funding | 2014-15 | 2015-16 | 2016-17 |
|--------------------------------|---------------------|---------------------|---------------------|
| General Fund | \$9,803,883 | \$10,096,700 | \$10,273,008 |
| General Fund, Prop 98 | 15,018 | 18,843 | 19,185 |
| Other Funds | 63,144 | 63,205 | 63,775 |
| Reimbursements | 181,302 | 189,050 | 185,152 |
| Recidivism Reduction Fund | 14,679 | 28,609 | - |
| SCC Performance Incentive Fund | -1,000 | -1,000 | -1,000 |
| Total | \$10,077,026 | \$10,395,407 | \$10,540,120 |
| Positions | 52,647 | 53,344 | 54,071 |

Issue 1: Population Trends and Budget Overview

Governor's Budget. The budget proposes total funding of \$10.5 billion (\$10.3 billion General Fund and \$248 million other funds) in 2016-17. This is an increase of approximately \$500 million General Fund over 2014-15 expenditures.

CDCR Adult Institution Population – The adult inmate average daily population is projected to increase from 127,681 in 2015-16 to 128,834 in 2016-17, an increase of 1,153 inmates. This constitutes a slight decrease from the 2015-16 projection and a slight increase from the 2015 Budget Act's 2016-17 projection.

CDCR Parolee Population – The average daily parolee population is projected to decrease from 43,960 in 2015-16 to 42,571 in 2016-17, a decrease of 1,389 parolees. This is a decrease from the 2015 Budget Act projections.

CDCR, Division of Juvenile Justice (DJJ) Population – The DJJ's average daily ward population is increasing, when compared to 2015 Budget Act projections. Specifically, the ward population is projected to increase by 37 in 2015-16, for a total population of 714; and 42 in 2016-17, for a total population of 719.

Mental Health Program Caseload – The population of inmates requiring mental health treatment is projected to be 35,743 in 2015-16 and 36,825 in 2016-17. This is an increase of 571 and 1,653, respectively, over the 2015 Budget Act projections. The budget includes \$14.7 million General Fund for the staffing increases related to the population increase.

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

Public Safety Realignment. In 2011, the Legislature approved a broad realignment of public safety, health, and human services programs from state to local responsibility. Included in this realignment were sentencing law changes requiring that certain lower-level felons be managed by counties in jails and under community supervision rather than sent to state prison. Generally, only felony offenders who have a current or prior offense for a violent, serious, or sex offense are sentenced to serve time in a state prison. Conversely, under realignment, lower-level felons convicted of non-violent, non-serious, and non-sex-related crimes (colloquially referred to as "non-non-nons") serve time in local jails. In addition, of those felons released from state prison, generally only those with a current violent or serious offense are supervised in the community by state parole agents, with other offenders supervised by county probation departments. Responsibility for housing state parole violators was also shifted from state prisons to county jails.

In adopting this realignment, the Legislature had multiple goals, including reducing the prison population to meet the federal court-ordered cap, reducing state correctional costs, and reserving state prison for the most violent and serious offenders. Another goal of realignment was to improve public safety outcomes by keeping lower-level offenders in local communities where treatment services exist and where local criminal justice agencies can coordinate efforts to ensure that offenders get the appropriate combination of incarceration, community supervision, and treatment. For many,

realignment was based on the confidence that coordinated local efforts are better suited for assembling resources and implementing effective strategies for managing these offenders and reducing recidivism. This was rooted partly in California's successful realignment reform of its juvenile justice over the last 15 years and the success of SB 678 (Leno), Chapter 608, Statutes of 2009, which incentivized evidence-based practices for felony probationers through a formula that split state prison savings resulting from improved outcomes among this offender population.

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

According to the January 2016 status report to the three-judge panel, as of December 23, 2015, 2,168 inmates had been released due to Proposition 36.

Passage of Proposition 47. In November 2014, the voters approved Proposition 47, which requires misdemeanor, rather than felony, sentencing for certain property and drug crimes and permits inmates previously sentenced for these reclassified crimes to petition for resentencing. The Administration estimates that Proposition 47 will reduce the average number of state prison inmates in 2015–16 by about 4,700.

Proposition 47 requires that state savings resulting from the proposition be transferred into a new fund, the Safe Neighborhoods and Schools Fund. The new fund will be used to reduce truancy and support drop-out prevention programs in K-12 schools (25 percent of fund revenue), increase funding for trauma recovery centers (10 percent of fund revenue), and support mental health and substance use disorder treatment services and diversion programs for people in the criminal justice system (65 percent of fund revenue). The Director of Finance is required, on or before July 31, 2016, and on or before July 31 of each fiscal year thereafter, to calculate the state savings for the previous fiscal year compared to 2013-14. Actual data or best estimates are to be used and the calculation is final and must be certified by the State Controller's Office no later than August 1 of each fiscal year. The first transfer of state savings to the Safe Neighborhoods and Schools Fund will occur in 2016-17, after the Department of Finance (DOF) calculates savings pursuant to the proposition. Consequently, the budget does not reflect estimated 2015-16 savings related to Proposition 47.

The Administration estimates that initial savings for the first year of Proposition 47 will be \$29.3 million and on-going savings are currently estimated to be \$57 million per year.

Three-Judge Panel Population Cap. In recent years, the state has been under a federal court order to reduce overcrowding in the 34 state prisons operated by CDCR. Specifically, the court found that prison overcrowding was the primary reason the state was unable to provide inmates with constitutionally adequate health care and ordered the state to reduce its prison population to 137.5 percent of design capacity by February 28, 2016. (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 or fire camps are not counted toward the overcrowding limit.)

The changes discussed above, along with increased investment in rehabilitation funding and other sentencing changes allowed the state to meet its court-ordered population cap a year before the deadline. As of February 16, the state's prisons were at 135.2 percent of their design capacity, creating a buffer of approximately 1,900 beds.

CDCR's Updated Plan for the Future of Corrections: CDCR's *Updated Plan for the Future of Corrections* notes that the original blueprint significantly underestimated the inmate population. The original blueprint assumed an inmate population of approximately 124,000 as of June 30, 2017. The revised estimates suggest that the population will bottom out at 128,000 in June 2016, and will begin to rise, reaching 131,000 inmates by June 30, 2020. The report notes that it is this increased population that drives their request to maintain a higher capacity than assumed in the original blueprint. The new plan will be discussed in detail in the next agenda item.

Issue 2: CDCR's Updated Plan for the Future of Corrections

Governor's Budget. The budget proposes total funding of \$10.5 billion (\$10.3 billion General Fund and \$200 million other funds) in 2016-17. This represents a \$470 million increase over the 2015 Budget Act and a \$1.1 billion increase over 2012 Budget Act, when the original blueprint was approved. Specifically related to the original blueprint, the budget requests:

- Legislative authority to continue the use of in-state and out-of-state contract beds beyond the December 31, 2016 sunset date established by SB 105 (Steinberg) Chapter 310, Statutes of 2013.
- Continued operation of the California Rehabilitation Center, which was slated to be closed in The Future of California Corrections Blueprint and whose closure was assumed under the 2012 Budget Act.
- \$6 million General Fund to address critical repairs and deferred maintenance projects at the facility in Norco, California.

The specific details on many of the Administration's proposals related to the updated plan will be heard in future subcommittee hearings.

Background. In April 2012, CDCR released its blueprint detailing the Administration's plan to reorganize various aspects of CDCR operations, facilities, and budgets in response to the effects of the 2011 realignment of adult offenders, as well as to meet federal court requirements. The blueprint was intended to build upon realignment, create a comprehensive plan for CDCR to significantly reduce the state's investment in prisons, satisfy the Supreme Court's ruling to reduce overcrowding in the prisons, and get the department out from under federal court oversight. In the blueprint's introduction, the Administration stated:

Given the ongoing budget problems facing California it has become increasingly important to reexamine the mission and priorities of the corrections system. With dedicated funding directed to county governments to manage lower level offenders, realignment allows the state to focus on managing the most serious and violent offenders. And it allows counties to focus on community-based programs that better promote rehabilitation. Not only is this good corrections policy, but it also allows the state to achieve significant budgetary savings from a department whose share of General Fund expenditures had grown from 3 to 11 percent over the last 30 years.

As a result of the declining populations, the state will be able to save nearly half a billion dollars by closing the California Rehabilitation Center—one of its oldest, most costly, and inefficient prisons to operate—and ending contracts for out-of-state prison facilities. The savings contemplated in this plan will be attained by safely reclassifying inmates, housing inmates in facilities that are commensurate with their custody level, and working to reduce recidivism. Capitalizing on the opportunities created by realignment will create a safer, more effective correctional system, and allow the state to regain control of its prison system by satisfying federal court requirements.

Combining the actual budget savings with the avoided expenditures that would have been required without realignment, over a ten year span the state will have saved and avoided over \$30 billion in General Fund costs that may now be used to help balance the state budget or for other critical areas such as education and health care.

The Budget Act of 2012 and related trailer bills approved both funding augmentations and reductions associated with the blueprint and adopted necessary statutory changes. In addition, the Legislature made several changes to the blueprint to increase transparency and accountability, including creating a separate budget item for CDCR's rehabilitative programs and giving the Office of the Inspector General (OIG) oversight over the implementation of certain aspects of the blueprint.

In addition to an expectation of General Fund savings, the Legislature, in approving the blueprint and public safety realignment one year earlier, expressed concerns during budget hearings that the Administration had not provided a comprehensive plan designed to reduce the number of people either coming to prison for the first time or returning to prison. The Legislature and the federal court both signaled clearly to the Administration that the state could not grow its way out of this problem by simply increasing prison capacity. Furthermore, through budget hearings and discussions with the Administration the Legislature was reassured that if it approved the construction of infill facilities and allowed for in-state contracted prisons, once the new facilities were open, the state would not have added any new capacity, CDCR would close California Rehabilitation Center (CRC), and out-of-state inmates would return to in-state prisons.

SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013. Subsequent to the passage of the 2012 Budget Act, in September 2013, the Legislature passed, and the Governor signed, SB 105 to address the federal three-judge panel order, which 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 avoid the early release of inmates, which might otherwise be necessary for compliance. The measure included sunset provisions allowing for contracted facilities until January 1, 2017. The measure also required that, should the federal court modify its order capping the prison population, a share of the \$315 million appropriation in Chapter 310 would be deposited into a newly-established Recidivism Reduction Fund.

Four years later, despite (1) the commitment made in the original blueprint, (2) an understanding between the Legislature and the Administration based on the original blueprint proposal and the discussions and hearings surrounding the approval of SB 105 that the approval of funding for more contract prison beds and the construction of three infill projects would not result in additional prison beds in the long-term, and (3) the state assumption in the blueprint that adopting the proposals through the 2012-13 budget would result in \$3 billion in savings per year, the 2016-17 budget proposes to spend over \$1 billion more than the state spent in 2011-12 (growing to over \$2.3 billion if the revenue shifted to counties for realigned felons is included). In addition, with the activation of new infill facilities this spring, the state will maintain 5,211 more beds than at the time of the blueprint.

CDCR's Original Blueprint and the Updated Blueprint

On January 20, 2016, the Administration released *An Update to the Future of California Corrections* to document why certain commitments made in the original blueprint did not materialize, and to establish new long-term priorities for CDCR. Below are key provisions that differ between the original and revised blueprint:

Original Blueprint: Higher Prison Population Estimates Than Projected in 2012. The original blueprint assumed that the prison population would continue on a downward trend. The blueprint projected a total population of 133,746 inmates as of June 2012. By the end of 2014-15 that population was projected to be 123,149. Of the 123,149 inmates, 117,565 were projected to be housed in adult institutions, with the remainder housed in fire camps or contract facilities; this would result in the state being at 142.3 percent of prison capacity.

- **Updated Blueprint.** One of the most significant revisions to the original blueprint is the population estimate. The updated plan notes that the original blueprint significantly underestimated the inmate population. The original blueprint assumed an inmate population of approximately 124,000 as of June 30, 2017. The revised estimates suggest that the population will bottom out at 128,000 in June 2016, and will begin to rise, reaching 131,000 inmates by June 30, 2020. The report notes that it is this increased population that drives their request to maintain a higher capacity than assumed in the original blueprint as discussed in more detail below.

Original Blueprint: \$3 billion in Savings Did Not Materialize. The Administration asserted that the blueprint would reduce state spending on adult prison and parole operations by \$1 billion in 2012-13, as a result of 2011 realignment. The plan estimated that these savings would grow to over \$1.5 billion by 2015-16, and assumed an ongoing annual savings of over \$3 billion. Over ten years, the blueprint projected a state General Fund savings of approximately \$30 billion.

- **Updated Blueprint.** Rather than achieving the ongoing annual savings of over \$3 billion per year over CDCR's pre-realignment budget envisioned in the original blueprint, the CDCR budget has consistently grown since the time of its adoption. The proposed 2016-17 budget for CDCR is approximately \$10.3 billion. In addition, the estimated realignment revenue for local community corrections (which would otherwise come to the state General Fund) is \$1.3 billion. This totals \$11.6 billion in spending on California's incarcerated felons. Prior to realignment, in 2010-11, the state spent approximately \$9.7 billion on incarcerated felons housed in state institutions and camps.

The revised plan details several areas where costs have risen in excess the assumptions made in the original blueprint. Specifically, increased employee compensation and retirement costs are estimated to consume about \$835 million in 2016-17. In addition, costs for the Correctional Health Care Facility (CHCF) have increased by approximately \$289 million. Along with those increases, the CDCR budget now contains \$430 million in lease-revenue bond payments per year (an increase of \$170 million over the 2012 Budget Act) related to the cost of constructing CHCF, Health Care Facility Improvement Projects, infill capacity, and construction grants provided for local jails. Finally, the report notes that 11,396 inmates remain in leased or contracted facilities that cost the state \$385 million per year.

Original Blueprint: No Elimination of Contracted Prison Beds. The department began sending inmates out-of-state when overcrowding was at its worst in 2007. At the time of the blueprint, there were more than 9,500 inmates housed outside of California. The blueprint projected that by 2014-15 there would be 1,864 inmates remaining in out-of-state contract beds and committed to ending all out-of-state contracts by 2015-16. Returning out-of-state inmates to in-state facilities was expected to save the state \$318 million annually. In addition, the blueprint assumed that as of June 30, 2016, there would only be 1,825 inmates in in-state contract beds.

- **Updated Blueprint.** The Administration proposes maintaining 4,900 inmates in out-of-state facilities in Arizona and Mississippi for the foreseeable future. As noted above, the Administration thinks that the higher than originally projected inmate population will require them to continue to need out-of-state capacity. However, the Administration also requires legislative approval to continue the use of out-of-state beds because the statutory language authorizing contract beds is scheduled to sunset.

In addition to out-of-state contracts, CDCR has increased utilization of in-state contract beds above the levels contained in the original blueprint. As noted above, there were approximately 5,600 inmates in in-state contract beds, including California City, as of January 20, 2016. The budget also contains trailer bill language extending the sunset date for in-state contract facilities and the lease of California City, all of which are due to expire on December 31, 2016. The draft trailer bill language proposes extending the sunset for all contract and lease facilities until December 31, 2020.

Original Blueprint: Makes Minimal Progress on Rehabilitation. The blueprint required the department to improve access to rehabilitative programs and place at least 70 percent of the department's target population (approximately 36 percent of the total prison population) in programs consistent with academic and rehabilitative needs. The blueprint further set June 30, 2015, as the completion date for reaching that goal.

Toward that end, the blueprint required the establishment of reentry hubs at certain prisons to provide intensive services to inmates as they get closer to being released. It also required the creation of enhanced programming yards, which are designed to incentivize positive behavior. For parolees, the blueprint increased the use of community-based programs to serve, within their first year of release, approximately 70 percent of parolees who need substance-abuse treatment, employment services, or education.

- **Updated Blueprint.** In the revised blueprint, the Administration notes that it fell short of reaching its target and has only reached 60 percent of the target population. Further, the department continues to count an inmate who shows up for only one day for a program toward meeting the goal of reaching their target. The Office of the Inspector General has consistently recommended that CDCR only count a person as having met the requirement when the person completes a program. Given CDCR's counting method, it is unclear how many people receive rehabilitative programming, either in the larger population or within their much smaller target population. The revised blueprint notes that CDCR is working with the Inspector General to revise their counting methodology and they acknowledge that the new methodology would take the department farther away from the original goal.

Original Blueprint: Successfully Increased In-State Prison Capacity. As noted above, the original blueprint required the return of all inmates who were being housed outside of California. In order to accommodate the return of those inmates and the closure of the California Rehabilitation Center (discussed below), the blueprint outlined a plan for increasing in-state prison beds through the modification of existing facilities and the construction of three new infill-projects.

The blueprint called for the construction of additional low-security prison housing at three existing prisons. The proposed projects would have capacity for 3,445 inmates under the 145 percent population cap proposed by the blueprint (design capacity of 2,376 beds) and would include space to permit the operation of inmate programs such as mental health treatment and academic programs. In addition, the blueprint called for the renovation of the DeWitt Nelson Youth Correctional Facility to house adult offenders. The facility would serve as an annex to the California Health Care Facility (CHCF) that was under construction in Stockton. Under the proposed 145 percent population cap, the DeWitt facility would have capacity for 1,643 lower-security inmates (design capacity of 1,133 beds). Finally, the blueprint proposed converting the Valley State Prison for Women into a men's facility and the conversion of treatment facilities at Folsom Women's Facility into dormitory housing.

- **Updated Blueprint.** The department has fully activated the DeWitt Annex at CHCF, with a design capacity of 1,133 beds. In addition, they anticipate the activation of the infill projects at Mule Creek State Prison and RJ Donovan State Prison later this spring. Those infill projects will add an additional 2,376 beds to the prison system. Combined, these projects approved through the blueprint, increase the state's prison capacity by over 4,807 inmates (under the current population cap of 137.5 percent).

The updated report, however, rather than reducing contract capacity or closing CRC (as discussed below) finds that CDCR has an on-going need for additional capacity. Specifically, the original blueprint assumed that the bed capacity at the end of 2015-16 and ongoing would be approximately 124,438 beds. In the updated plan, the Administration assumes there will be an on-going need for 133,054 beds, which is an increase of 8,616 beds.

Original Blueprint: Will Not Close the California Rehabilitation Center (CRC) in the Foreseeable Future. The blueprint assumed that one prison, CRC (Norco), would be closed in 2015-16. This planned closure was due to the fact that CRC is in need of significant maintenance and repair. In addition, the Administration proposed that the savings achieved from closing CRC would offset the costs of operating the new infill beds (mentioned above). This goal was revised by SB 105 which suspended this requirement pending a review by the Department of Finance and CDCR that will determine whether the facility can be closed.

The 2015-16 budget included statutory language requiring the Administration provide an updated comprehensive plan for the state prison system, including a permanent solution for the decaying infrastructure of the California Rehabilitation Center. In addition, state law provides legislative findings and declarations that, given the reduction in the prison population, the Legislature believes that further investment in building additional prisons is unnecessary at this time and that the California Rehabilitation Center can be closed without jeopardizing the court-ordered population cap.

- **Updated Blueprint.** The new blueprint is intended to fulfill the requirement in the 2015-16 budget that the Administration provide the Legislature with an updated comprehensive plan for the prison system. However, in the revised blueprint, the Administration maintains that they are unable to close CRC in the near future, but states that it remains committed to its

closure at an unspecified future date. The proposed budget also includes \$6 million in General Fund for critical repairs to the facility. In addition, the report states that the Administration will work with the Federal Healthcare Receiver to determine other physical plant improvements needed to improve health care access at the facility.

Achieved Standardized Staffing Levels. Realignment's downsizing left the department with uneven, ratio-driven staffing levels throughout the system. The blueprint proposed adopting a standardized staffing model for each prison based on factors such as the prison's population, physical design, and missions. For the most part, prison staffing levels would remain fixed unless there were significant enough changes in the inmate population to justify opening or closing new housing units. In contrast, historically prison staffing levels were adjusted to reflect changes in the inmate population regardless of the magnitude of those changes.

- **Updated Blueprint.** The report notes that the department has fully adopted a standardized staffing model and no longer uses a staffing model based upon the size of the prison population. The 2016-17 budget includes resources for 23,151 correctional officers to provide security at all state-run institutions and camps. This is an increase of 1,099 over the number of correctional officer positions at the time of the original blueprint. A portion of this increase is due to the activation of California City, the California Healthcare Correctional Facility (CHCF) and the infill projects at RJ Donovan and Mule Creek. However, it is also important to note that in April 2012, when the blueprint was released, the prison population was close to 138,000 inmates. At its peak population of approximately 170,000 inmates, CDCR was budgeted for approximately 24,332 correctional officers.

**California Department of Corrections and Rehabilitation:
Summary of Institutions, Inmates and Correctional Officers**

| Year ¹ | Number of Institutions | Number of Conservation/Inmate Camps | Number of Inmates ² | Number of Correctional Officers | Inmate to Correctional Officer Ratio |
|-------------------|------------------------|-------------------------------------|--------------------------------|---------------------------------|--------------------------------------|
| 2006-2007 | 33 | 42 | 173,000 | 24,332 | 7.1:1 |
| 2012-2013 | 33 | 42 | 138,000 | 22,052 | 6.2:1 |
| 2016-2017 | 35 | 43 | 129,000 | 23,151 | 5.6:1 |

¹ 2006-07 and 2012-13 population figures as of June 30. 2016-17 represents the average population projected in the Governor's January budget.

² Totals rounded to the nearest 1,000.

Future Vision. CDCR's updated plan includes a section on the department's future vision. That section primarily discusses CDCR's current investments in rehabilitation programming, safety, and security. For example, the plan discusses the type of education provided to inmates, including career technical education and community college. In addition, the plan discusses the creation of reentry hubs, the provision of substance abuse treatment, innovative programming grants, arts-in-corrections, the Cal-ID project, and many other efforts that have been introduced and promoted by the Legislature. In terms of safety and security, the plan mentions the department's drug and contraband interdiction pilot and the cell phone signal blocking technology that has been implemented at 18 prisons over the last few years.

In terms of future planning, the report contains the following major new initiatives or expansions of existing efforts:

- A commitment to evaluating all levels of rehabilitation programming, including inmate education.
- A budget request for \$15.2 million General Fund to continue the expansion of substance use disorder treatment at all state institutions.
- A budget request for \$57.1 million General Fund to continue and expand community reentry facilities. The department currently has 220 beds and plans to expand to 680 beds during 2016-17. \$25 million of the funding is designated as incentive payments for local communities that allow long-term conditional use permits for community reentry facilities.
- The establishment of a pilot program for in-prison sex offender treatment for 80 inmates at the Substance Abuse Treatment Facility in Corcoran.
- A budget request to increase funding dedicated toward services directed at long-term offenders, including residential and support services for offenders who are being released after long sentences, specialized programming for long-term offenders, and the expansion of the offender mentor certification program to provide training for inmates to become mentors for drug and alcohol counseling. In addition, the department plans to create a pre-employment transitions program and a community transitional housing program dedicated to long-term offenders.
- To enhance safety, CDCR plans to begin installing video surveillance systems at Mule Creek State Prison and RJ Donovan Correctional Facility in order to evaluate the benefits of using video technology to improve safety and security in the prisons.

Legislative Analyst's Office (LAO) Recommendations Related to the Revised Blueprint.

Approve Extension of Contract Bed Authority. The LAO recommends that the Legislature approve the Administration's requested extension of authority to procure contract beds. The LAO notes that it is very likely that the Administration will need to continue utilizing contract beds over the next several years in order to maintain compliance with the prison population cap.

Reduce Prison Capacity by Closing CRC. The LAO recommends that the Legislature direct CDCR to reduce its prison capacity in order to achieve a reduced buffer of 2,250 in 2016-17. They further recommend that the Legislature direct the department to achieve this capacity reduction by closing CRC. The LAO estimates this approach would eventually achieve net savings of roughly \$131 million annually, relative to the Governor's proposed approach. These savings are achieved primarily from reduced costs to operate CRC but also include reduced debt service from avoided capital outlay costs that the LAO estimates would need to be invested in order to keep CRC open permanently. These savings would be somewhat offset by increased costs for contract beds needed to replace a portion of the capacity lost from the closure of CRC. The LAO also recommends that the Legislature reject the Governor's proposed augmentation of \$6 million for special repairs at CRC, as these repairs would be unnecessary if CRC is closed.

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

1. Please explain why the population projections in the original blueprint ended up being so significantly wrong.
2. Please provide an update on how you plan to address the Inspector General's ongoing concern that CDCR measures an inmate who shows up one day for programming toward meeting their target. Why isn't program completion the measure that you use?
3. Given the value of rehabilitation programming, both in terms of the health of an institution and in reducing recidivism, why is the department continuing to focus only on a fairly small subset of the inmate population when considering an appropriate target population?
4. In your revised plan, you mention the significant value of the innovative programming grants. If those grants have proven to be effective in expanding programming, why isn't there a proposal to continue providing those grants?
5. Restorative justice programs such as Guiding Rage into Power (GRIP) and Getting Out by Going In (GOGI), are showing positive results in terms of reducing recidivism. Have you considered formalizing their role in rehabilitation and reentry services for long-term offenders, much in the way you have with former volunteer arts programs through Arts in Corrections?

Staff Comment. During future hearings, the subcommittee will be discussing standardized staffing, community reentry and other alternative placements, and rehabilitative programming, in depth. In addition, the subcommittee will be conducting oversight on the treatment of Coleman inmate-patients, which constitutes a growing population within CDCR according to their updated blueprint.

The Prison Population Reduction and General Fund Costs Savings Envisioned in the Blueprint Have Not Materialized. The long-term plan for the state's corrections system was developed in the context of restructuring the prison system in response to realignment and the federal court's ongoing requirement that the state reduce its prison population to 137.5 percent of capacity. However, instead of reducing the state's investment in the correction's system, as promised by the blueprint, that investment continues to grow at a significant rate. Given that the Administration is asking the Legislature to disregard their original commitment to returning prisoners from out-of-state prisons and close CRC, the Legislature may wish to use this opportunity to reassess other agreements that were made in the context of adopting the blueprint-- including standardized staffing-- and consider alternative, sustainable, long-term solutions that will both reduce the prison population and limit General Fund costs associated with incarcerating large numbers of Californians for significant periods of time.

Alternative Custody Placements. The Legislature may wish to find ways of supporting and expanding the initiatives outlined in the "Future Vision" portion of the new plan, which includes system changes that have long been priorities of the Legislature. For example, the Legislature may wish to invest any capacity expansion in reentry programs in the community for both men and women. The budget includes \$32.1 million General Fund to continue and expand the male community reentry program. The state currently has space to house 220 men in community facilities during the last few months of their sentence, and budget proposes expanding that capacity to 680 community reentry beds.

Increase Evidence-Based Programming for Long-Term Offenders. The plan and budget include efforts to increase rehabilitation programming and services for long-term offenders who were previously serving life sentences but are now able to be released on parole due to recent statutory changes. The budget includes \$10 million in funding to increase rehabilitation treatment and services specifically for this long-term population. The Legislature may consider additional funding to provide evidence-based, restorative justice programming opportunities for this population in their last 12- to 24-months of incarceration.

In the last two years, the Legislature has provided \$5.5 million for innovative programming grants. The Recidivism Reduction Fund money has allowed volunteer groups which have demonstrated success in providing programs focused on offender responsibility and restorative justice principles to receive funding to expand their programs to underserved prisons. While this grant program has allowed for an increase in volunteer programming at certain institutions, the Legislature may wish to consider committing on-going funding to non-profit organizations which have successfully provided evidence-based restorative justice programming to life-term or long-term inmates. As these programs are shown to reduce recidivism and reduce institutional violence, an investment that incorporated these programs into the reentry programming provided to long-term inmates, would likely reduce recidivism and reduce the prison population.

Issue 3: Pew Research Center *Results First Initiative***Panelists**

Sara Dube – Director, State Policy, Pew-MacArthur Results First Initiative, The Pew Charitable Trust

Ashleigh Holand – Manager, State Policy, Pew-MacArthur Results First Initiative, The Pew Charitable Trusts

Scott Kernan – Secretary, California Department of Corrections and Rehabilitation

Background. The Pew-MacArthur Results First Initiative, a project of The Pew Charitable Trusts and the John D. and Catherine T. MacArthur Foundation, works with states to implement a cost-benefit analysis approach that helps them invest in policies and programs that are proven to work. Since 2011, the Pew-MacArthur Results First Initiative has partnered with multiple states in this capacity. Among the states partnering with Pew are Texas, New York, Oregon, Massachusetts, and Wisconsin.

CDCR has recently begun working with Pew to begin a large-scale evaluation of the programs offered to CDCR inmates and parolees to best identify which programs are cost-effective and successful, and to prioritize and expand on effective, evidence-based programs based on the Results First analysis.

Four County Pilot Project. In California, Pew has already partnered with four pilot counties to evaluate the effectiveness of local correctional programs and policies. Those four counties are Fresno, Kern, Santa Barbara, and Santa Cruz. Since partnering with the Pew-MacArthur Results First Initiative in 2013, these California counties have used Results First to develop policies and programs to serve the realigned felon population and reduce recidivism.

Staff members from the Results First Initiative have worked closely with staff and leadership from each of the four counties to develop customized tools to help them identify and invest in effective programs that yield high returns. These tools and the Results First process enable leaders to catalog what programs they are operating, assess the evidence of these programs' effectiveness, and compare current and alternative programs based on their expected return on investment and the impact on key outcomes, such as reduction in recidivism.

The Results First staff also works with county leaders to use this information to inform budget and policy decisions. By implementing the Results First approach, each county has forged critical partnerships that encompass a wide range of criminal justice agencies, including offices of sheriffs, probation, courts, public defenders, district attorneys, and police, as well as other social service and health agencies. The counties have also formed cross-agency teams to gather, share, and analyze data to address common challenges of reducing recidivism and improving public safety.

Although there were some differences across counties, each followed the same general process in implementing the Results First approach. This process began with developing an inventory of currently funded programs that included information on each program's design, costs, capacity, and populations served. Next, the counties assessed the programs against the evidence base and built a customized benefit-cost model. Finally, policymakers have used these tools to help guide budget and policy decisions. The state-level program should operate in much the same way.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 10, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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PROPOSED FOR VOTE ONLY**0250 Judicial Branch**

1. **Trial Court Security (non-sheriff).** The budget proposes \$343,000 General Fund for cost increases related to court security services provide by marshals in the superior courts of Shasta and Trinity counties. The funds are necessary to address increased costs for court-provided (non-sheriff) security to maintain funding at 2010 security levels.

0820 Department of Justice

1. **Criminal Justice Reporting (AB 71).** The budget proposes \$374,000 General Fund and four positions to meet the reporting requirements associated with AB 71(Rodriguez, Chapter 462, Statutes of 2015), which requires law enforcement agencies to report to DOJ data on certain use of force incidences.
2. **Bureau of Gambling Control Training.** The budget proposes a \$200,000 appropriation (Gambling Control Fines and Penalties Account) to develop an on-going academy style training program for all levels of employees (both sworn and non-sworn).

ITEMS TO BE HEARD

0820 DEPARTMENT OF JUSTICE

Issue 1: Armed Prohibited Persons System (APPS)

Governor's Budget. The budget proposes an on-going increase of \$4.7 million in Firearms Safety and Enforcement Special Fund (FS&E) to provide permanent funding for 22 positions for APPS investigations. Currently, all APPS-related activities are funded through the Dealer Record of Sale Special Account (DROS) account. The DROS fund requires an appropriation from the Legislature. The FS&E fund is continuously appropriated. Therefore, if the proposed funding shift is approved, the Department of Justice (DOJ) would not require future legislative authority to expend money deposited in the fund for APPS.

January 21, 2016 Letter from the Attorney General. After the release of the Governor's January budget proposal, Attorney General Kamal Harris sent all members of the Legislature a letter requesting an on-going, permanent increase of \$8 million to retain 30 investigator, six supervisory and 12 non-sworn analyst positions within DOJ's Bureau of Firearms that had been authorized on a limited term basis by SB 140, (Leno), Chapter 2, Statutes of 2013.

Background

Firearms in California. Under California law, in order to purchase a firearm, an individual must provide a licensed gun dealer with proof of age (21 years for handguns and 18 years for long guns), pass a background check, pay a \$25 fee, and wait for 10 days. In addition, a person purchasing a gun must provide proof that he or she passed the gun safety exam. All firearms must be sold with a locking device. Under certain circumstances, individuals are prohibited from owning or possessing firearms. Generally, a person is prohibited from owning guns if any of the following apply to the individual is on probation or parole or has been:

- Convicted of a felony or of certain misdemeanors.
- Proven to be a danger to himself/herself or others due to a mental illness.
- Been restrained under a protective order or restraining order.
- Convicted of certain crimes as a juvenile and adjudged a ward of the state.

In recent years, there has been a continued and substantial increase in gun purchases, extending through 2013. For example, between calendar year 2012 and calendar year 2013, gun purchases rose by over 15 percent in California. In 2014, the number of sales dipped for the first time since 2007. The table that follows illustrates the annual number of overall purchases of firearms in the state. Despite the dip, gun sales in California have almost tripled over the last decade.

**Firearms in California
Purchases and Denials**

| Year | Hand Guns Purchased | Hand Gun Denials | Long Guns Purchased | Long Gun Denials | Total Guns Purchased | Total Denials |
|-------------|----------------------------|-------------------------|----------------------------|-------------------------|-----------------------------|----------------------|
| 2004 | 145,335 | 1,497 | 169,730 | 1,828 | 315,065 | 3,325 |
| 2005 | 160,990 | 1,592 | 183,857 | 1,878 | 344,847 | 3,470 |
| 2006 | 169,629 | 2,045 | 205,944 | 1,689 | 375,573 | 3,734 |
| 2007 | 180,190 | 2,373 | 190,438 | 1,926 | 370,628 | 4,299 |
| 2008 | 208,312 | 2,737 | 216,932 | 2,201 | 425,244 | 4,938 |
| 2009 | 228,368 | 2,916 | 255,504 | 2,221 | 483,872 | 5,137 |
| 2010 | 236,086 | 2,740 | 262,859 | 2,286 | 498,945 | 5,026 |
| 2011 | 293,429 | 3,094 | 307,814 | 2,764 | 601,243 | 5,805 |
| 2012 | 388,006 | 3,842 | 429,732 | 3,682 | 817,738 | 7,524 |
| 2013 | 422,030 | 3,813 | 538,419 | 3,680 | 960,179 | 7,493 |
| 2014 | 512,174 | 4,272 | 418,863 | 4,297 | 931,037 | 8,569 |

Firearms Regulation Funding. Every individual purchasing a firearm in California is required to pay a \$25 assessment. All of the funds go primarily toward supporting firearm safety and regulation within the DOJ. The \$25 total is the sum of three separate state fees:

- \$19 background check fee payable to the DROS account, which currently funds the APPS program.
- \$5 is payable to the FS&E fund.
- \$1 firearm safety device fee is paid to the Firearms Safety Account (FSA).

Statistics on Gun Violence. The Centers for Disease Control reports that in 2013, 33,636 people died in firearms-related deaths in the United States. That equates to 10.6 people out of every 100,000. Of those deaths, 11,208 were homicides. According to statistics gathered by the Brady Campaign to Prevent Gun Violence, over 100,000 people a year in the United States are shot. According to the latest United States Department of Justice data, in 2011, about 70 percent of all homicides and eight percent of all nonfatal violent victimizations (rape, sexual assault, robbery and aggravated assault) were committed with a firearm, mainly a handgun. A handgun was used in about seven in ten firearm homicides and about nine in ten nonfatal firearm violent crimes in 2011. In the same year, about 26 percent of robberies and 31 percent of aggravated assaults involved a firearm, such as a handgun, shotgun or rifle.

Beginning in 1999, DOJ Bureau of Firearms began to study some of California's high-profile shootings in an effort to determine if there were remedial measures that could be enacted to curtail instances of gang violence and other similar violent events. The study found that many of the offending individuals were law-abiding citizens when they purchased the firearms, and were subsequently prohibited from gun ownership due to the reasons listed above. At the time of the study, DOJ lacked the capacity to determine whether or not an individual who had legally purchased a firearm, and subsequently became prohibited from such ownership, was still in possession of a firearm.

In addition, even if such a determination could have been made, the DOJ lacked the authority to retrieve that weapon from the prohibited person.

In 2001, the Legislature created the Prohibited Armed Persons File to ensure otherwise prohibited persons do not continue to possess firearms (SB 950 (Brulte), Chapter 944, Statutes of 2001). SB 950 provided DOJ with the authority to cross-reference their database of individuals who own handguns with their database listing of prohibited individuals. The 2002 Budget Act included General Fund support of \$1.0 million for DOJ to develop the Armed Prohibited Persons System (APPS). The database was complete in November 2006, with continued funding to support the program provided from the General Fund. Further legislation, SB 819 (Leno) Chapter 743, Statutes of 2011, allowed the department to utilize funds within the Dealers Record of Sale Account (DRoS) for firearm enforcement and regulatory activities related to the Armed Prohibited Persons System.

SB 950 also mandated that DOJ provide investigative assistance to local law enforcement agencies to better insure the investigation of individuals who continue to possess firearms despite being prohibited from doing so. (Penal Code § 30010) DOJ states that its special agents have trained approximately 500 sworn local law enforcement officials in 196 police departments and 35 sheriff's departments on how to use the database during firearms investigations. The department states it has also conducted 50 training sessions on how to use the vehicle-mounted California Law Enforcement Telecommunications System terminals to access the database.

Local law enforcement agencies are provided monthly information regarding the armed and prohibited persons in the agency's jurisdiction. Given this access, once the armed and prohibited person is identified, DOJ and local agencies could coordinate to confiscate the weapons. However, at the present time, many agencies are relying on assistance from DOJ's criminal intelligence specialists and special agents to work APPS cases. When local agencies do confiscate weapons, they are required to send DOJ a notice so that the individual can be removed from the list.

In 2013, the Legislature, in coordination with DOJ, determined that there was a significant workload resource gap. At that time, it was estimated that approximately 2,600 offenders were added to the APPS list annually, creating a significant backlog in the number of investigations. According to DOJ, each special agent is capable of conducting 100 APPS investigations over a one-year period. During fiscal year 2012-13, the Bureau of Firearms had authority for 21 agents. Therefore, the bureau was capable of conducting roughly 2,100 investigations on an annual basis with that special agent authority, which would add 500 possible armed and prohibited persons to the backlog each year. The DOJ's Bureau of Firearms workload history is provided below.

**Armed Prohibited Persons
Workload History**

| Fiscal Year | Armed and Prohibited Persons Identified | APPS Investigations Processed |
|-------------|---|-------------------------------|
| 2007-08 | 8,044 | 1,620 |
| 2008-09 | 11,997 | 1,590 |
| 2009-10 | 15,812 | 1,763 |
| 2010-11 | 17,606 | 1,700 |
| 2011-12 | 18,668 | 1,716 |
| 2012-13 | 21,252 | 2,772 |
| 2013-14 | 22,780 | 4,156 |
| 2014-15 | 17,479 | 7,573 |

To address the workload resources required to both reduce the growing backlog, and actively investigate incoming cases in a timely fashion, the Legislature passed SB 140, (Leno), Chapter 2, Statutes of 2013. SB 140 provided DOJ with \$24 million from the Dealer's Record of Sale (DROS) account in order to increase regulatory and enforcement capacity within DOJ's Bureau of Firearms. The resources financed in SB 140 were provided on a three-year limited-term basis, which, according to the DOJ, was adequate time to significantly reduce or eliminate the overall number of armed and prohibited persons in the backlog. Ongoing cases could be managed with resources within DOJ's Bureau of Firearms. Additionally, the measure included reporting requirements due annually to the Joint Legislative Budget Committee.

During the 2015 budget hearing process last spring, the Legislature expressed concern that half-way through the three years, the department had spent 40 percent of the \$24 million, and the backlog had only been reduced by approximately 3,770. In addition, the Bureau of Firearms had hired 45 agents, as of the date of their update, but had only retained 18 agents. Of the agents that left the bureau, the vast majority went to other agent positions in DOJ. It is unclear what caused this staff retention issue, whether it was due to the fact that the new positions were limited-term or that more senior agents were permitted to transfer. As a result, some SB 140 funding that was intended to directly address the APPS backlog was instead used to conduct background checks, provide training and to equip newly hired who agents subsequently left the bureau.

2015 Budget Actions. The 2015 Budget Act provided DOJ's Bureau of Firearms with 22 additional permanent positions dedicated to APPS investigations and required that they be funded utilizing existing resources. In addition, supplemental reporting language required DOJ to provide the Legislature, no later than January 10, 2016, an update on the department's progress on addressing the backlog in the APPS program and hiring and retaining investigators in the firearms bureau.

DOJ APPS Backlog Supplemental Report. *The Senate Bill 140 Supplemental Report of the 2015-16 Budget Package* submitted by DOJ notes that as of December 31, 2015, the department had addressed a combined total of 33,264 prohibited persons in the APPS database since July 1, 2013. However, as of the end of December 2015, 12,691 people remained of the 21,249 person backlog identified on January 1, 2014. DOJ has committed to eliminating the entire backlog by December 2016. However, given their current pace, it is unclear how they will achieve that goal in the next 11 months.

As noted above, the report also required DOJ to address concerns raised by the Legislature surrounding the high turnover and vacancy rate among agents in the firearms bureau. The department notes that they continue to have vacancies but have taken steps to retain agents, including instituting a 24-month transfer freeze for new agents. The department currently has 73 agent positions dedicated to APPS enforcement. As of July 1, 2015, 57 of the 73 positions were filled. However, rather than making progress in filling vacant positions, by December 31, 2015, there were a total of 75 agents positions dedicated to APPS but only 54 of them were filled, leaving 21 vacancies.

Despite on-going challenges associated with eliminating the APPS backlog and retaining agents, the department notes that between July 1, 2013 and October 31, 2015, approximately 18,608 cases had been closed at an average cost of \$775 per case. In addition, during the same reporting period (July 1, 2013 through December 31, 2015) the firearms bureau recovered 9,732 firearms, almost 950,000 rounds of ammunition, 6,425 magazines, and 9,475 large capacity magazines.

California State Auditor Report. In addition to concerns raised by the Legislature, on July 9, 2015, the State Auditor released a follow-up report to an audit of the APPS program conducted in 2013. Along with other concerns raised in that report, the most recent auditor report noted little or no progress in reducing the backlogs in DOJ's processing queues—the daily queue and a historical queue—noted in the State Auditor's 2013 report. Specifically:

- During late 2012 and early 2013, DOJ had a backlog of more than 1,200 matches pending initial review in its daily queue—a queue that contains the daily events from courts and mental health facilities that indicate a match and could trigger firearm ownership prohibition. Because a backlog in this queue means that DOJ is not reviewing these daily events promptly, the auditor recommended that DOJ establish a goal of no more than 400 to 600 cases in the daily queue. In the most recent audit, the auditor found that DOJ's daily queue during the first quarter of 2015 was over 3,600 cases—six times higher than its revised ceiling of 600 cases. Just as it did during the previous audit, DOJ cites its need to redirect staff to another Bureau of Firearms priority, which has a statutory deadline, as the reason for the continuing backlog. The auditor believes that if DOJ had a statutory deadline on the initial processing of the matches in the APPS database, it would encourage DOJ to avoid redirecting APPS unit staff. The chief of the bureau believes that seven days is a reasonable time frame to complete an initial review of matches.
- DOJ is unlikely to complete its review of events in the historical queue by its December 2016 goal, set forth in the October 2013 audit report. The former assistant bureau chief explained that the backlog in DOJ's historical queue consists of persons who registered an assault weapon since 1989 or acquired a firearm since 1996 and who have not yet been reviewed for prohibiting events since DOJ implemented the APPS database in November 2006. In the previous report, the auditor reported that as of July 2013, DOJ's historical backlog was nearly 380,000 persons; now as of April 2015, its historical backlog was still over 257,000 potentially prohibited persons. Based on DOJ's annual averages of reviewing the historical backlog since 2010, the auditor estimates that DOJ will not complete its review of the historical backlog until 2018, based on DOJ's most productive year. Based on its current pace of completion, the review would not be complete until 2022. The longer it takes DOJ to review the records in historical backlog, the longer armed prohibited persons keep their firearms, which increases the risk to public safety.

In response to the report, DOJ stated:

APPS grows by approximately 3,000 persons per year, but California local law enforcement does not have sufficient resources to proactively locate and contact armed and prohibited persons. To address this problem, Attorney General Harris sponsored Senate Bill 819 in 2011 to fund increased enforcement efforts. After its enactment, Attorney General Harris ordered a series of sweeps that successfully took firearms out of the possession of persons prohibited due to their criminal histories or mental health. After the success of these sweeps, Attorney General Harris sought and received additional resources from the Legislature in July 2013, via Senate Bill 140, to hire 36 additional agents for the APPS program. This has enabled the DOJ to conduct 13,313 APPS investigations from July 1, 2013, to May 30, 2015, and reduced the APPS subject backlog from an estimated 28,000 subjects (if not for the additional resources acquired via SB 140) to 15,797 APPS subjects as of June 19, 2015. That is a net reduction of more than 12,000 subjects.

DOJ is committed to eliminating the APPS historical backlog by December 2016. As previously indicated, the DOJ has continued to monitor and respond to workload fluctuations impacting APPS processing. Additionally, the DOJ did establish realistic goals to complete the backlog by December 31, 2016. However, the unforeseen loss of analytical staff, and the continued high level of firearms sales have forced the DOJ to redirect staff to meet the legislative time frames associated with completing background checks on firearm purchases in California. The DOJ agrees with this recommendation and is currently in the process of implementing a strategy to temporarily redirect staff from other areas of the department to assist with the historical backlog and for adding analytical staffing resources to the BOF to meet workload demands, thereby eliminating the need to redirect staff away from the goal of eliminating the APPS historical backlog by December 31, 2016.

In addition to the above response to the auditor's follow-up report, DOJ provided an update in its recent SB 140 Supplemental Report. As of January 1, 2016, the historical backlog had been reduced to 122,566.

Firearms and Domestic Violence Education and Intervention Project. Domestic violence involving firearms is a serious problem in California. Most intimate partner homicides involve firearms. Among women in shelters in California, one third come from homes where firearms are kept, and two thirds of those women report that their partner has used a firearm against them. Since 1999, California has prohibited the possession of firearms by persons subject to domestic violence restraining orders. Research suggests that such a prohibition may be effective, but it has never been systematically enforced.

In 2006, the California Department of Justice began work with San Mateo County and Butte County on pilot programs of systematic enforcement of the firearms prohibition. The initiative sought to identify persons owning or possessing firearms among respondents to domestic violence restraining orders and recover or otherwise dispose of their firearms as quickly as possible. San Mateo County implemented its initiative in May 2007; Butte County followed in April 2008. Both pilot programs ended in June 2010.

Teams of two detectives in each county reviewed all domestic violence restraining orders issued in their counties. To determine whether respondents were linked to firearms, detectives checked records in the state's Automated Firearm System (AFS) and other databases and reviewed the documents accompanying every order. Reports from petitioners were enhanced by a firearm identification form used by both teams. When firearm involvement was known or suspected, the teams often interviewed protected parties to gather additional information.

According to the evaluation of the pilot, "Considered alone, recovering firearms from restraining order respondents was associated with substantial and statistically significant decreases in overall risk of arrest in San Mateo County and a comparable, though non-significant, decrease in risk of arrest for violent and firearm-related crimes other than domestic violence. This is a particularly promising finding given the large increase in risk among respondents who had multiple prior arrests, a characteristic shared by nearly 85 percent of respondents who had been linked to firearms in both counties."¹

Questions for the Department of Justice. DOJ should be prepared to address the following questions:

1. In 2013, the legislature appropriated \$24 million to the Department of Justice to reduce the backlog in the Armed Prohibited Persons System (APPS). How much of the \$24 million has been spent? Please describe how these funds were spent.
2. Over \$18 million has been spent of the \$24 million appropriation. What was the backlog in the APPS in July of 2013? What is the current backlog?
3. The Department of Justice has had a difficult time retaining agents to handle the APPS cases. In fact, in the January 1, 2016 Supplemental report, the Department stated "At the start of Fiscal Year 2014-2015 there were 78 agent positions, 55 which were filled. During this timeframe: 28 agents were hired; 19 agents transferred to another bureau with the Department; three agents retired; two agents returned to their prior employer; and two agents promoted." The number of transfers appears to be drastically reduced in 2015-2016, what caused this reduction? Why did the department not take action to limit transfers prior to legislative involvement?
4. After much discussion last year, the legislature requested that the Department of Justice consider sending letters to individuals on the APPS. According to the January 2016 Supplemental Report, the department stated that it has sent out 55 letters in December. How many cases have been closed as a result of these letters? Are there plans to expand the letter program? The January 2016 Supplemental Report states that the department has determined that it will not send letters to individuals who are prohibited because of a felony, violent misdemeanor, mental health adjudication or domestic violence restraining order, is this still the department's position?

¹ "Firearms and Domestic Violence Education and Intervention Project Final Report of Process and Outcomes." Violence Prevention Research Program, School of Medicine, University of California, Davis and Center for Gun Policy and Research, Bloomberg School of Public Health, Johns Hopkins University. April 2012 (Revised October 2012).

5. Please describe the Firearms and Domestic Violence Education and Intervention Project and its outcomes.
6. Given the pilot project in San Mateo and Butte counties, and your partnerships with other state and local law enforcement through task forces committed to combating gang activity and drug trafficking, why hasn't DOJ expanded on those efforts in the area of APPS and gun trafficking?

Staff Comments

Create an Incentive for Local Law Enforcement Agencies to Collect Firearms. Given the success of the San Mateo and Butte counties pilot project, the committee may wish to consider creating an incentive program designed to provide an incentive payment equal to the APPS average cost per investigation for every new APPS case resulting from a domestic violence restraining order, gun violence restraining order or mental health prohibition that is closed at the local level.

Seek Assistance from Other Statewide Entities. Given the on-going struggle of DOJ to fill investigative positions in their firearms bureau and to process the APPS backlog and assess new cases, the Legislature may want to consider creating a partnership between DOJ and other state-wide law enforcement entities, like the California Highway Patrol (CHP), to investigate prohibited persons and firearms trafficking cases, and retrieve prohibited firearms and ammunition. DOJ currently focuses on a geographic region of the state for its APPS investigations, rather than prioritizing new cases throughout the state that may be easier to resolve. The CHP has officers stationed widely throughout the state. This partnership may allow the state to prioritize cases based on time in the system, rather than geographic region, thus resolving cases more quickly.

Prohibit the Transferring of Resources From One Program Area to Another. One problem raised during discussions surrounding DOJ's efforts to investigate firearms, and in the auditor's follow-up report, is that the department appears to shift or loan both sworn and non-sworn staff among their various bureaus and programs in order to increase the number of investigations in one area versus another area. The Legislature may wish to restructure the DOJ budget to prohibit or restrict the movement of personnel and funding from one area to another.

Should DOJ Increase the DROS Fee? Under current law, the DROS fund is intended to provide DOJ with the funding necessary for all firearms-related regulatory and enforcement activities related to the sale, purchase, possession, loan or transfer of firearms. Should the fee prove insufficient, DOJ has the authority to increase the fee at a rate not to exceed the Consumer Price Index (CPI). (Penal Code § 28225) The Legislature may wish to suggest that DOJ increase the DROS fee, rather than authorizing use of the FS&E fund for APPS-related activities. Should the CPI prove to be an inadequate increase, DOJ may wish to propose a statutory change allowing them to increase the fee beyond the CPI.

Remove Continuous Appropriations. As noted above, the DROS fund requires an appropriation from the Legislature for all expenditures; the other two firearms-related funds do not. Allowing other branches of government to spend funds without legislative authority or appropriation potentially erodes the Legislature's constitutional authority to establish policy priorities and funding levels for the state. It has been a long-standing policy among the fiscal committees in both houses to limit or prohibit continuous appropriations. The Legislature may wish to consider removing the continuous

appropriations from both the FS&E fund and the FSA fund, regardless of the Legislature's decision on the APPS funding proposal.

Establish a Deadline for Reviewing New Cases. The State Auditor has recommended that the Legislature require DOJ complete an initial review of cases in the daily queue within seven days and periodically reassess whether DOJ can complete these reviews more quickly. The auditor believes that this would ensure that DOJ fairly balances competing responsibilities and avoids redirecting APPS unit staff to conduct Dealers' Record of Sale background checks.

Issue 2: Fraud and Elder Abuse Enforcement Enhancement

Governor's Budget. The Governor's budget proposes a \$7.8 million augmentation (\$5.9 million in federal funds and \$2 million from the False Claims Act Fund), to support 35 additional positions for the bureau, as well as to lease office space for the establishment of three satellite offices in Fresno, Riverside, and San Francisco. The requested positions include: 18 special agents, 6 investigative auditors, 5 deputy attorney generals, 3 legal secretaries, 2 staff information systems analysts, and 1 office technician. DOJ plans to use the proposed resources to first eliminate the backlog of cases beginning in 2016–17. On an ongoing basis, the proposed resources would be used to address an anticipated increase in workload associated with an increasing elderly population and the Medi-Cal eligibility expansion. The department also intends to expand its abilities to investigate and prosecute fraud, such as by expanding its role in fraud related to managed care providers and using data-mining to identify patterns of fraudulent activity.

Background. Federal law requires that state attorneys general investigate allegations of Medicaid (Medi-Cal in California) fraud and complaints of abuse and neglect of patients in facilities paid by federal Medicaid funding. In 1978, the Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA) was created in the Attorney General's office. On average, the bureau opens 1,000 criminal investigations each year and they currently have approximately 231 backlogged cases.

Legislative Analyst's Office. The LAO has expressed concern over the on-going nature of the request. They recommend that the Legislature provide DOJ with \$7.8 million on a one-time basis from the Federal Trust Fund and the False Claims Act Fund to support 35 positions to eliminate an existing backlog largely related to abuse and neglect cases. However, as of this time, there is insufficient information to justify the need for these resources on an ongoing basis, as proposed by the Governor.

Questions for the Department of Justice. DOJ should be prepared to address the following questions:

1. One of DOJ's major justifications for ongoing resources is that the number of Medi-Cal beneficiaries has almost doubled, resulting in increased DOJ Medi-Cal fraud workload. However, DOJ is only responsible for fraud committed by providers (Department of Health Care Services is responsible for fraud committed by beneficiaries). As a result, an increase in beneficiaries doesn't necessarily increase DOJ workload. Why would an increase in the number of Medi-Cal beneficiaries increase DOJ workload? Has the number of Medi-Cal providers increased?
2. The bulk of BMFEA workload appears to involve elderly abuse and neglect cases. However, the justification in the BCP focuses more heavily on Medi-Cal provider fraud. How much ongoing workload can be attributed to abuse and neglect cases versus provider fraud cases?

Issue 3: Major League Sporting Event Raffles Program

Governor's Budget. The proposed budget requests a three-year limited-term General Fund increase of \$335,000 beginning in 2016-17 and two positions to address the workload related to the implementation of the Major League Sporting Event Raffles Program.

Background. Chapter 509, Statutes of 2015 (SB 549, Hall) authorizes a professional sports organization to conduct a 50/50 raffle for the purpose of directly supporting a specified beneficial or charitable purpose in California, or financially supporting another private, nonprofit, eligible organization. These types of charitable raffles are raffles in which 50 percent of the proceeds go to the winner, and 50 percent of the proceeds go to the local charities designated by the professional sports team for that particular event.

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

0250 JUDICIAL BRANCH

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

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

Key Legislation

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

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

SB 1407 (Perata), Chapter 311, Statutes of 2008, authorized various fees, penalties and assessments, which were to be deposited into the Immediate and Critical Needs Account (ICNA) to support the construction, renovation, and operation of court facilities. In addition, the bill authorized the issuance of up to \$5 billion in lease-revenue bonds.

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

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

Budget Overview. The Governor's proposed budget includes \$3.6 billion (\$1.7 billion General Fund and \$1.9 billion in other funds) in 2016-17 for the judicial branch. Of that amount, \$2.8 billion is provided to support trial court operations. The following table displays three-year expenditures and positions for the judicial branch; as presented in the Governor's budget.

(Dollars in thousands)

| Program | 2014-15 | 2015-16 | 2016-17 |
|--|--------------------|--------------------|--------------------|
| Supreme Court | \$43,363 | \$46,519 | \$46,438 |
| Courts of Appeal | 211,101 | 219,274 | 224,784 |
| Judicial Council | 134,104 | 134,203 | 133,173 |
| Judicial Branch Facilities Program | 320,469 | 369,788 | 409,904 |
| State Trial Court Funding | 2,537,897 | 2,674,738 | 2,804,693 |
| Habeas Corpus Resource Center | 12,819 | 14,525 | 15,015 |
| Offset from Local Property Tax Revenue | -30,000 | -30,000 | -30,000 |
| Total | \$3,228,997 | \$3,429,047 | \$3,604,007 |
| Positions | 1752.2 | 1714.0 | 1,717.0 |

Issue 1: Trial Court Augmentation and On-Going Trial Court Shortfall

Governor's Budget. The Governor's proposed 2016–2017 budget provides approximately \$4 billion for the judicial branch and includes \$146.3 million in new funding. The proposed new funding would be allocated for innovation grants, language access expansion in civil proceedings, workload associated with Proposition 47 implementation, Trial Court Trust Fund revenue shortfall backfill, and court construction projects.

The \$4 billion budget proposal for the judicial branch includes \$1.7 billion in General Fund, representing 1.4 percent of all General Fund spending. The judicial branch represents 2.1 percent of total state funds of \$170.7 billion. Approximately 77 percent of the branch's operational budget is allocated to the trial courts.

Prior Budget Actions. Over the last several years, the Legislature has included augmentations in the trial court budget in an attempt to begin reducing the funding shortfall and to ensure that the gap does not continue to grow.

In the 2014-15 budget, the Legislature approved an increase of \$60 million General Fund for trial court funding, for a total General Fund increase of \$160 million. Specifically, the budget included a five percent increase in state trial court operations, for a total increase of \$86.3 million. In addition, the budget provided an increase of \$42.8 million General Fund to reflect increased health benefit and retirement adjustment costs for trial court employees. Finally, the Legislature authorized a General Fund increase of \$30.9 million to account for an estimated shortfall in the Trial Court Revenue Trust Fund.

In 2015-16 the state's overall trial court budget provides an increase of \$168 million, or 9.7 percent, from the 2014-15 amount. This augmentation included \$90.6 million General Fund in on-going additional funding to support trial court operations; \$42.7 million General Fund for increases in trial court employee benefit costs; and \$35.3 million General Fund to backfill reductions in fine and penalty revenue in 2015-16. In addition, the budget:

- **Trial Court Trust Fund Revenue Shortfall.** Provided additional \$15.5 million General Fund to cover the revenue shortfall in the trial court budget. This brought the total General Fund transfer for the shortfall to \$66.2 million.
- **Dependency Counsel.** Increased funding for dependency court attorneys in 2015-16 and on-going by \$11 million in General Fund. In addition, the budget shifted all dependency counsel funding to a separate item within the trial courts budget to insure that it remains dedicated to funding attorneys who represent children and their parents in the dependency court system.

**Trial Court Funding Reductions and Offsets
(Dollars in Millions)**

Source: Legislative Analyst's Office, 2016

| Trial Court Reductions | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 (proposed) |
|-------------------------------------|-----------------|----------------|----------------|----------------|-------------------------------|
| One-time reduction | -\$418 | \$0 | \$0 | \$0 | \$0 |
| Ongoing reductions (ongoing) | -\$724 | -\$664 | -\$577 | -\$486 | -\$466 |
| Total | -\$1,142 | -\$664 | -\$577 | -\$486 | -\$466 |
| Funding Offsets | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 (proposed) |
| Transfer from other funds | \$401 | \$107 | \$107 | \$93 | \$93 |
| Trial court reserves | \$385 | \$200 | \$0 | \$0 | \$0 |
| Increased fines and fees | \$121 | \$121 | \$121 | \$121 | \$121 |
| Statewide programmatic changes | \$21 | \$21 | \$21 | \$21 | \$21 |
| Total | \$928 | \$449 | \$249 | \$235 | \$235 |
| Total Trial Court Reductions | -\$214 | -\$215 | -\$328 | -\$251 | -\$231 |

Budget impact on children in the child welfare system. When a child is removed from his or her home because of physical, emotional, or sexual abuse, the state of California assumes the role of a legal parent and local child welfare agencies are entrusted with the care and custody of these children. County child welfare works in partnership with the courts, attorneys, care providers, and others to meet desired outcomes of safety, permanency, and well-being for foster children. Through the dependency court, critical decisions are made regarding the child's life and future – i.e., whether the child will return to his or her parents, whether the child will be placed with siblings, and what services the child will receive.

Every child in the dependency court system is assigned his or her own attorney who represents that child's interests. Budget reductions over the years have increased the caseloads of children's attorneys. Children's attorneys represent, on average 250 clients per year, far above the recommended optimal standard of 77 clients and maximum of 188 clients per attorney. Inadequate funding can impede services to children and families and may result in delays in court hearings, all of which undermines county child welfare's efforts for improved outcomes for children, such as reunifying children with their families, placing children with siblings, and finding a permanent home through adoption or guardianship.

For several years, the Legislature has worked to increase funding for dependency counsel but has remained largely unsuccessful. In the 2015-16 budget, the Legislature included \$11 million General

Fund augmentation to reduce the overall funding need from \$33 million to \$22 million. In addition, the Legislature shifted dependency counsel funding into its own budget item to ensure that those funds would remain dedicated to dependency counsel and could not be shifted to other funding priorities.

At the urging of the Administration, the Judicial Council was asked to develop a new funding methodology to determine the appropriate caseload and funding level for dependency attorneys. In addition, the Judicial Council was asked to begin redistributing funding among the courts to create a more equitable attorney-client caseload ratio throughout the different courts. The Judicial Council has completed the first phase of a three phase redistribution process.

Budget Impact on legal aid services. The Equal Access Fund (EAF) supports approximately 100 legal aid non-profits providing critical assistance to low-income Californians throughout the state. The EAF was established in 1999 with a \$10 million on-going General Fund appropriation, in subsequent years the EAF also began to receive a portion of court filing fees. The Governor's budget contains a total of approximately \$16 million (\$10.6 million General Fund and \$5.5 million special fund). Legal aid services providers argue that their funding remains unchanged despite significant increases in the number of clients who need their services. Providers further note that California was 10th in the nation in state funding for legal services but has now fallen to 22nd in the nation. They further note that the state of New York provides \$85 million per year for their legal aid programs.

Dependency attorneys and legal aid services providers are just two of many groups in recent years that have expressed concern that reductions in court funding has significantly reduced Californians' access to justice. In addition to concerns from these entities, across the state courthouses and courtrooms have been closed and hours have been reduced due to a lack of funding. The latest data available shows that between October 19, 2010 and April 2014, the Judicial Council had received notice of the following reductions:

- 51 courthouses closed.
- 205 courtrooms closed.
- 30 courts with reduced public service hours.
- 37 courts with reduced self-help/family law facilitator services.

Legislative Analyst's Office (LAO). The Governor's budget proposes a \$20 million General Fund base augmentation for trial court operations. The LAO notes that the Administration has not provided sufficient information to justify why the trial courts need this additional funding. For example, it is unclear what specific needs at the trial courts are not currently being met that necessitate an augmentation. Moreover, the LAO notes that the Governor's budget already includes \$72 million for workload changes, increased costs, and the expansion of specific services—making it even less clear why the proposed \$20 million in resources is needed for trial court operations. Accordingly, the LAO recommends rejecting the proposal.

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

1. Please explain how the Administration arrived at the \$20 million base augmentation figure.

2. The reallocation of funding for dependency counsel contained in last year's budget was approved with the assumption that increased funding would likely be provided to help mitigate the cuts to courts that had previously invested heavily in their dependency counsel funding. Does the Judicial Council intend to continue with the reallocation despite the lack of additional funding?

3. If available, please provide an update on the number of courthouses and court rooms closed and the number of courts that continue to have reduced hours.

Issue 2: Court Innovations Grant Program

Governor’s Budget. The Governor’s budget proposes \$30 million in one–time General Fund support to create a new Court Innovations Grant Program. According to background information provided by the Administration, the proposed program, which would be developed and administered by Judicial Council, would provide grants on a competitive basis to support trial and appellate court programs and practices that promote innovation, modernization, and efficiency. Grants would be two to three years in duration and could be awarded up until 2019–20. Grant funds could be encumbered through 2019–20, after which any unexpended funds would revert to the state General Fund.

According to the Administration, courts would be required to describe how grant funds are to be used to support the development of sustainable, ongoing programs and practices that can be adopted and replicated by other courts. Participating programs will also be required to provide measurable results, outcomes, or benefits to demonstrate the impact of the program on the court and the public.

Legislative Analyst’s Office (LAO). The LAO recommends that the Legislature withhold action on the Governor’s proposal to provide \$30 million in one–time funding from the General Fund for trial and appellate court innovation, modernization, and efficiency projects, pending additional information from the Administration and judicial branch (such as the specific programs and services that would be funded). To the extent that such information is not provided, the LAO recommends the Legislature reject the proposal.

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

1. Please provide some specific examples of the projects envisioned under this grant program. What is the estimated savings associated with the proposals?

Issue 3: Rate Increase for Appellate Attorneys

Governor's Budget. The Governor's budget includes an on-going augmentation of \$4.3 million General Fund to provide a \$10 per hour rate increase for panel attorneys appointed by the Courts of Appeal.

Background. Under the United States Constitution, indigent defendants convicted of felony crimes have a right to a court-appointed attorney for the initial appeal of their convictions. These appeals court appointed attorneys are paid hourly for their duties. Statewide there are currently 890 attorneys have been appointed by the court of appeal to represent indigent defendants. Currently, these attorneys are paid between \$85 and \$105 per hour for their work. The Judicial Council believes that a \$10 per hour increase is necessary in order to attract and recruit new attorneys and retain experienced attorneys.

Judicial Council Request. As noted above, the Governor's budget requests funding for a rate increase for the appellate attorneys. The Judicial Council, however, has raised concerns about the adequacy of funding for the appellate projects. These organizations manage the court-appointed counsel system in that district and perform quality control functions. The projects are responsible for working with the panel attorney to ensure effective assistance is provided, reviewing claims for payment for the work performed by the panel attorneys to ensure consistency and controls over the expenditure of public money, and training attorneys to provide competent legal counsel.

The Judicial Council requests a \$2.2 million increase for California's six Appellate Projects to allow them to continue providing competent representation in criminal and juvenile cases in the Courts of Appeal and death penalty cases in the Supreme Court (\$1.4 million combined for the five Court of Appeal appellate projects working on non-death penalty cases, \$800,000 for the Supreme Court appellate project working on death penalty cases). The council notes, "The Appellate Projects are critical to ensuring that we satisfy the constitutional guarantee that indigent defendants convicted of a felony have competent counsel."

The council further argues, "Virtually all of the funding for the Appellate Projects comes from the contracts they have with the Courts of Appeal. While the costs of rent, employee benefits, mandatory professional and fiduciary insurance, the need for improved technology, and all other costs of doing business have increased substantially, the amount of funding available for these projects has not increased since FY 2007-08. Absent additional funding, the projects have indicated they will no longer be able to continue providing the same level of services, oversight, and support for the panel attorneys and the courts."

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

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

1. Given the wide variety of needs, including dependency counsel and legal aid services funding shortages, how did you determine that an increase in funding for appellate attorneys was the most critical need at this time?
2. Why didn't the Administration believe an augmentation was necessary for the appellate projects but that one was warranted for the appellate attorneys?

Issue 4: Language Access

Governor's Budget. The Governor's budget includes an on-going General Fund augmentation of \$7 million to expand language interpreter services to all civil proceedings.

Background. On January 22, 2015, the Judicial Council approved a comprehensive *Strategic Plan for Language Access in the California Courts*, which includes eight strategic goals and 75 detailed recommendations to be completed in three distinct phases." Fundamental to the plan is the principle that the plan's implementation will be adequately funded so the expansion of language access services will take place without impairing other court services. The Judicial Council created Language Access Plan Implementation Task Force charged with turning the Language Access Plan (LAP) into a practical roadmap for courts by creating an implementation plan for full implementation in all 58 trial courts.

The annual funding for court interpreter services has historically been limited primarily to constitutionally-mandated cases, including criminal cases and juvenile matters. Current funding is not sufficient to support growth and expansion of interpreter services into domestic violence, family law, guardianship and conservatorship, small claims, unlawful detainers and other civil matters. This augmentation will allow the courts to continue to provide court interpreter services in civil matters, and assure all 58 trial courts that increased funding for expanded court interpreter services for limited English proficient court users in civil is available.

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

8140 OFFICE OF THE STATE PUBLIC DEFENDER**Issue 1: Defense Services for Condemned Inmates**

Governor's Budget. The budget proposal requests \$1.05 million and 7.5 permanent positions (4.5 attorneys, 1 legal analyst, 1 association information systems analyst, and 1 staff services analyst) to address a delay in the office's ability to accept new appointments in death penalty cases.

Background. The California Legislature created the Office of the State Public Defender (OSPD) in 1976 to represent indigent criminal defendants on appeal. The office was formed in response to the need for consistent, high-quality representation of defendants in the state appellate courts. Over the years, the mission of the agency has changed. At the time, it was envisioned that OSPD would provide a counter-weight to the Attorney General's criminal appeals division. In the 1990s OSPD shifted its resources to focus primarily on post-conviction appellate representation in death penalty cases. In 1998, OSPD's primary statutory mission became the representation of indigent death row inmates in their post-conviction appeals.

Over the past decade, OSPD lost 50 percent of their staff due to budget reductions. OSPD notes that this reduction has made it impossible for them to accept appointments in death penalty appeals in a timely manner. The office further notes that this will not fully address their current backlog, but it is a first step.

Currently, 59 death row inmates await the appointment of appellate court counsel. According to OSPD, it generally takes at least five years for an inmate to receive appellate court counsel.

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

0280 COMMISSION ON JUDICIAL PERFORMANCE**Issue 1: Increased Workload**

Governor's Budget. The budget proposal requests \$257,000 General Fund for one investigative attorney and one staff secretary.

Background. The Commission on Judicial Performance (CJP) is an independent, constitutionally-created body that was established in 1960. CJP is responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges. The commission's jurisdiction includes all active judges and justices of California's superior courts, Courts of Appeal and Supreme Court, and former judges for conduct prior to retirement or resignation.

Justification. Over the past 10 years, CJP's workload has increased. In 2014, CJP received 1,302 complaints against judges and subordinate judicial officers, a 16 percent increase over the 1,120 complaints received in 2005. The commission conducted 139 investigations in 2014, which constitutes a 78 percent increase over the investigations conducted in 2005. CJP has not received authorization or funding for additional staff since 1999-2000. CJP notes that over the past decade, investigations have taken considerably longer. The average length of an investigation is now over 16 months, as opposed to 10 months a decade ago. The increased length of the investigations have resulted in fewer formal proceedings, resulting in a number of serious cases being backed up for hearings.

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

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 17, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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ITEMS TO BE HEARD

5225 CALIFORNIA CORRECTIONAL HEALTHCARE SERVICES (CCHCS)

The CCHCS receivership was established as a result of a class action lawsuit (*Plata v. Brown*) brought against the State of California over the quality of medical care in the state's 34 adult prisons. In its ruling, the federal court found that the care was in violation of the Eighth Amendment of the U.S. Constitution which forbids cruel and unusual punishment. The state settled the lawsuit and entered into a stipulated settlement in 2002, agreeing to a range of remedies that would bring prison medical care in line with constitutional standards. The state failed to comply with the stipulated settlement and on February 14, 2006, the federal court appointed a receiver to manage medical care operations in the prison system. The current receiver was appointed in January of 2008. The receivership continues to be unprecedented in size and scope nationwide.

The receiver is tasked with the responsibility of bringing the level of medical care in California's prisons to a standard which no longer violates the U.S. Constitution. The receiver oversees over 11,000 prison health care employees, including doctors, nurses, pharmacists, psychiatric technicians and administrative staff. Over the last ten years, healthcare costs have risen significantly. The estimated per inmate health care cost for 2015-16 (\$21,815) is almost three times the cost for 2005-06 (\$7,668). The state spent \$1.2 billion in 2005-06 to provide health care to 162,408 inmates. The state estimates that it will be spending approximately \$2.8 billion in 2016-17 for 128,834 inmates. Of that amount, \$1.9 billion is dedicated to prison medical care under the oversight of the receivership.

CDCR Historical Health Care Costs Per Inmate

| Program | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 |
|--------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Medical | \$10,841 | \$12,917 | \$12,591 | \$13,661 | \$15,496 | \$16,843 |
| Dental | \$1,094 | \$1,128 | \$1,165 | \$1,247 | \$1,311 | \$1,378 |
| Mental Health | \$2,806 | \$2,236 | \$2,279 | \$2,587 | \$2,990 | \$3,594 |
| Total Health Care | \$14,740 | \$16,281 | \$16,035 | \$17,496 | \$19,796 | \$21,815 |

Issue 1: Update on Healthcare Transition

Governor's Budget. The budget includes \$1.9 billion General Fund for prison medical care. At the request of the receiver, this amount includes \$26.8 million for increased pharmaceutical costs, \$12.1 million to expand janitorial services at the California Health Care Facility in Stockton, and \$11.9 million to establish executive healthcare management teams at prisons that currently share management oversight and create supervisory ratios for certain healthcare classifications. The Administration notes that these augmentations support the transition of medical care back to the state.

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

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

Since the appointment of the receivership, spending on inmate health care has almost tripled. A new prison hospital has been built, new systems are being created for maintaining medical records and scheduling appointments, and new procedures are being created that are intended to improve health outcomes for inmates. According to the CCHCS, over 450,000 inmates per month have medical appointments and the rate of preventable deaths has dropped 54 percent since 2006 (from 38.5 per 100,000 inmates in 2006 to 17.7 per 100,000 inmates in 2014).

Chief Executive Officers for Health Care. Each of California's 34 prisons has a chief executive officer (CEO) for health care who reports to the receiver. The CEO is the highest-ranking health care authority within a CDCR adult institution. A CEO is responsible for all aspects of delivering health care at their respective institution(s) and reports directly to the receiver's office.

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

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

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

Region I: Pelican Bay State Prison, High Desert State Prison, California Correctional Center, Folsom State Prison, California State Prison Sacramento, Mule Creek State Prison, California State Prison San Quentin, California Medical Facility, and California State Prison Solano.

Region II: California Health Care Facility, Stockton, Sierra Conservation Center, Deuel Vocational Institution, Central California Women’s Facility, Valley State Prison, Correctional Training Facility, Salinas Valley State Prison, and California Men’s Colony.

Region III: Pleasant Valley State Prison, Avenal State Prison, California State Prison Corcoran, Substance Abuse Treatment Facility, Kern Valley State Prison, North Kern State Prison, Wasco State Prison, California Correctional Institution, California State Prison Los Angeles County, and California City Prison.

Region IV: California Institution for Men, California Institution for Women, California Rehabilitation Center, Ironwood State Prison, Chuckawalla Valley State Prison, Calipatria State Prison, Centinela State Prison, and RJ Donovan Correctional Facility.

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

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

In 2013, court-appointed medical experts began conducting follow-up evaluations of prisons scoring 85 percent or higher in the OIG’s third cycle of medical inspections. (Those evaluations are discussed in more detail in a later item.) The expert panel found that six of the ten institutions evaluated had an inadequate level of medical care, despite scoring relatively high overall ratings in the OIG’s evaluations. The difference between the two types of evaluations resulted in very different findings. The OIG’s evaluations focused on the institutions’ compliance with CDCR’s written policies and procedures for medical care. The court experts, however, focused on an in-depth analysis of individual

patients' medical treatment to determine the quality of care at each prison. After meeting with the receiver's office and the court medical experts, the Inspector General decided that his inspections should be modified to include the methodologies used by the medical experts in order to determine the quality of care being provided.

Previous Budget Action. The 2015-16 budget provided \$3.9 million and 19 additional positions to allow the Office of the Inspector General (OIG) to annually evaluate the quality of medical care provided to inmates in all of the California Department of Corrections and Rehabilitation (CDCR) adult institutions. The medical inspections staff increase included:

- Three Analysts
- Three Nursing Consultants
- Three Physicians
- Nine Registered Nurses
- One Nursing Supervisor

Transition Planning. On September 9, 2012, the federal court entered an order entitled Receivership Transition Plan and Expert Evaluations. As part of the transition from the receivership, the court required the receiver to provide CDCR with an opportunity to demonstrate their ability to maintain a constitutionally-adequate system of inmate medical care. The receiver was instructed to work with CDCR to determine a timeline for when CDCR would assume the responsibility for particular tasks.

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

- Health Care Access Units are dedicated, institution-based units, comprised of correctional officers, which have responsibility for insuring that inmates are transported to medical appointments and treatment, both on prison grounds and off prison grounds. Each institution's success at insuring that inmates are transported to their medical appointments/treatment is tracked and published in monthly reports.
- The Activation Unit is responsible for all of the activities related to activating new facilities, such as the California Health Care Facility at Stockton and the DeWitt Annex. Activation staff act as the managers for CDCR and coordinate activities such as the hiring of staff for the facility, insuring that the facility is ready for licensure, overseeing the ordering, delivery, and installation of all equipment necessary for the new facility, as well as a myriad of other activities. Activation activities, again, are tracked on monthly reports provided to the receiver's office.

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

- Quality Management
- Medical Services

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

Process for Delegating Responsibility to State. In March 2015, the Plata court issued an order outlining the process for transitioning responsibility for inmate medical care back to the state. Under the order, responsibility for each institution, as well as overall statewide management of inmate medical care, must be delegated back to the state. The court indicates that, once these separate delegations have occurred and CDCR has been able to maintain the quality of care for one year, the receivership would end.

The federal court order outlines a specific process for delegating care at each institution back to the state. Specifically, each institution must first be inspected by the Office of the Inspector General (OIG) to determine whether the institution is delivering an adequate level of care. The receiver then uses the results of the OIG inspection—regardless of whether the OIG declared the institution adequate or inadequate—along with other health care indicators, including those published on each institution’s Health Care Services Dashboard, to determine whether the level of care is sufficient to be delegated back to CDCR. To date, the OIG has completed inspections for 13 institutions and has found nine to be adequate and four to be inadequate.

As of March 11, 2016, the receiver has delegated care at Folsom State Prison and the Correctional Training Facility at Soledad back to CDCR. The receiver is currently in the process of determining whether to delegate care at the other institutions that have been found adequate by the OIG. In addition, the receiver could also delegate care at the four prisons deemed inadequate by the OIG if care has been found to have improved. The OIG plans to complete medical inspections for the remaining institutions by the end of 2016. The process for delegating the responsibility for headquarters functions related to medical care does not require an OIG inspection. Under the court order, the receiver only has to determine that CDCR can adequately carry out these functions.

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

1. Please provide an update on the delegation of any additional responsibility from the receiver to CDCR since last spring.
2. How are you training both the medical and custodial staff to ensure the provision of adequate medical care and that the staff understand what adequate care entails?
3. What procedures have you put in place throughout the system to ensure that adequate care continues once the receivership ends?

4. It has been a concern of the Legislature that there is on-going tension between the custody staff and medical staff in terms of proper procedures that should be followed when someone is in medical danger. In several incidents in recent years, the custody staff's concerns appear to have outweighed the medical staff's. What has the receiver's office done to develop a formal procedure for each institution that clarifies what should happen in such emergencies when the medical staff requires that someone be removed from a cell and the custody staff refuses? What type of training has been provided to both the custody staff and the medical staff in this area? Have you seen a change in the way that medical staff and custody staff are interacting?

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

1. Please respond to the receiver's assessment of the current medical situation in the adult institutions.
2. What types of specialized training and written policies are provided to CDCR custody staff prior to allowing them to work in a medical unit or with inmate-patients?
3. The Department of State Hospitals uses medical technical assistants (MTA) instead of correctional officers to provide custody in their psychiatric inpatient programs. Does CDCR use MTAs to provide custody for inmates with significant medical or mental health needs? If not, why not?

Issue 2: California Health Care Facility – Stockton Janitorial Services

Governor’s Budget. The budget proposes five positions and \$6.4 million General Fund in the current year, and \$12 million General Fund in the budget year, to contract with PRIDE Industries to provide janitorial services for the California Healthcare Facility (CHCF) in Stockton.

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

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

Despite being aware of serious problems at the facility as early as September of 2013, it was not until February of 2014, that the receiver closed down intake at the facility and stopped admitting new prisoners. In addition, the receiver delayed the activation of the neighboring DeWitt-Nelson facility, which is designed to house inmate labor for CHCF, prisoners with mental illnesses, and prisoners with chronic medical conditions who need on-going care. The CHCF resumed admissions in July 2014, and currently houses about 2,200 inmates.

PRIDE Industries. PRIDE is a non-profit organization operating in 14 states that employs and serves over 5,300 people, including more than 2,900 people with disabilities.

Previous Budget Actions. The 2015-16 budget included a General Fund augmentation of \$76.4 million, and 714.7 additional clinical positions to increase staffing at CHCF, including primary care, nursing, and support staff. The receiver is also received a supplemental appropriation to cover the partial-year cost of the proposed staffing increase in 2014-15. With the augmentation to CHCF, total clinical staffing costs increased from about \$82 million annually to about \$158 million, annually, and staffing levels increased from 810 positions to 1,525 positions.

The 2014-15 budget included a General Fund augmentation of \$12.5 million General Fund to increase staffing at CHCF to address problems raised by the federal healthcare receiver around plant operations, food services, and custody staffing.

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

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

1. Please describe the various alternatives you considered prior to entering into the contract with PRIDE Industries, including using state employees or the current CalPIA training program.
2. Concerns have been expressed about bringing potentially vulnerable individuals into a work environment that will require them to interact with individuals who perhaps have a history of manipulating, victimizing and preying on people. Please describe the steps PRIDE Industries, CDCR and the receiver's office are taking to ensure that CHCF will be a safe place to work for PRIDE employees.

Issue 3: Healthcare Supervisory Positions

Governor's Budget. The Governor's budget proposes a \$12 million General Fund augmentation and 68.6 additional positions to increase health care executive and supervisory staffing levels throughout the prison system.

Background. In 2014-15, the receiver adopted a medical classification staffing model (MCM) which is a new population methodology that is now used to adjust medical staffing based upon patient-inmate acuity and each institution's medical mission. That staffing model, however, did not include any adjustments in the supervisory classifications that are necessary to carry out the administrative functions of the healthcare facility.

In an effort to control costs, the first healthcare receiver implemented a sister institution structure for several prisons. While most institutions have their own health care executive management teams, there are 16 sister institutions—eight pairs of prisons that are very near to one another—that share health care executive management teams. The following are the current institution pairings:

- High Desert State Prison and the California Correctional Center
- Central California Women's Facility and Valley State Prison
- California Institution for Women and California Rehabilitation Center
- Avenal State Prison and Pleasant Valley State Prison
- Calipatria State Prison and Centinela State Prison
- California Correctional Institution and California City Correctional Facility
- Chuckawalla Valley State Prison and Ironwood State Prison
- Deuel Vocational Institution and Sierra Conservation Center

Previous Budget Actions. As noted above, in the 2014-15 budget, the Legislature approved a new healthcare staffing model which included the reduction of 148 positions and the approval of the implementation of the MCM.

Legislative Analyst's Office. The LAO recommends that the Legislature reject the Governor's proposal to provide a \$6 million augmentation in 2016-17 to provide for a separate executive management team at each institution, as such separate teams do not appear to be necessary in order to deliver a constitutional level of care.

While the LAO recognizes the need to transition control of inmate medical care back to the state in a timely manner, their analysis indicates that the need for each of the 16 sister institutions to have its own executive management team has not been justified.

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

1. Please address the LAO's findings that institutions that are sharing an executive team have been found to be providing a constitutional level of care. Why do you believe it is necessary at this time to require each institution to have its own, separate team?

Issue 4: Increased Pharmaceutical Costs

Governor's Budget. The proposed budget includes \$20 million General Fund in 2015-16 and \$27 million General Fund in 2016-17 and on-going to address shortfalls in pharmaceutical funding caused by increasing drug costs, the implementation of the Electronic Health Record System (EHRS) and the implementation of the Women's Health Care Initiative (WHCI). The specific components driving the increase are as follows:

- Pharmaceutical cost increases — \$27.6 million in 2015-16 and \$35.5 million in 2016-17.
- Implementation of the pharmacy program in EHRS — \$7.5 million in 2015-16 and \$5.5 million in 2016-17.
- Women's Health Care Initiative — \$632,000 beginning in 2016-17.
- Hepatitis C Treatment Savings — \$15 million in 2015-16 and 2016-17.

Background. The receiver's office is currently responsible for providing medical pharmaceuticals prescribed by physicians under his management, as well as psychiatric and dental medications prescribed by psychiatrists and dentists managed by CDCR. From 2004-05 through 2014-15, the inmate pharmaceutical budget increased from \$136 million to \$236 million. (The pharmaceutical budget reflects only the cost of pharmaceuticals and not the cost of medication distribution or management.) According to information provided by the LAO, the level of spending on pharmaceuticals per inmate has also increased over this time period, increasing from \$860 in 2004-05 to \$2,000 by 2014-15, an increase of over 130 percent.

Women's Health Care Initiative. Recently, CCHCS established a Women's Health Care Initiative that is responsible for insuring that the health care of incarcerated female patients meets community standards. Among other findings, it was determined that family planning services at the California Institution for Women, the Central California Women's Facility and the newly established Folsom Women's Facility needed enhancements. As a result, part of the pharmaceutical budget will now include funding for birth control/contraception services for female patients who would benefit from their use. Effective use of family planning services will reduce the risks of unwanted pregnancies as a result of conjugal visits, as well as providing services for women nearing parole who are seeking assistance.

Previous Budget Actions. Last year's budget included a one-time General Fund augmentation of \$18.4 million in 2014-15 for unanticipated increases in the pharmaceutical budget. In addition, the budget included a General Fund increase of \$51.8 million in 2014-15, and \$60.6 million in 2015-16, for the cost of providing inmates with new Hepatitis C treatments.

Legislative Analyst's Office. An independently verified source to determine how pharmaceutical prices have changed, or are likely to change in the future, is an appropriate method to use when determining whether adjustments in the pharmaceutical budget are necessary. Accordingly, using the pharmaceutical consumer price index (CPI) for estimating future increases in pharmaceutical costs seems reasonable. However, the receiver proposes using past-year changes in the pharmaceutical CPI to estimate future-year changes, rather than relying on available projections of how the pharmaceutical CPI is actually expected to change. Using pharmaceutical CPI projections is preferable as it may account for changes in the market that are not reflected in the past-year values of the index. For example, pharmaceutical CPI projections for 2015-16 and 2016-17 are lower than the 4.9 percent

growth assumed by the receiver. Specifically, projections of the pharmaceutical CPI suggest that prices will only increase by 3.8 percent in 2015–16 and by 3.3 percent in 2016–17. Accordingly, these projections suggest that the pharmaceutical budget requires \$1.7 million less than proposed by the Governor in 2015–16 and \$4.3 million less in 2016–17.

In view of the above, LAO recommends that the Legislature approve increases to the inmate pharmaceutical budget based on projections for the pharmaceutical CPI in 2015–16 and 2016–17. However, in order to determine the appropriate adjustments, they recommend the Legislature hold off on taking such action until the receiver provides additional information. Specifically, the receiver should provide by April 1 (1) an updated estimate of current-year monthly pharmaceutical expenditures, and (2) an updated estimate of the pharmaceutical CPI for the remainder of the current-year and the budget-year based on the most recent projections available.

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

1. Please respond to the LAO recommendation and explain why the current methodology does not rely on available CPI projections for pharmaceutical costs and instead relies on past changes.

Issue 5: Recruitment and Retention/Student Loan Repayment Program

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

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

Availability of Student Loan Repayment Programs to Assist in Attracting Medical Staff. The receiver's workforce development unit has relied on tools such as the Federal Loan Repayment Program (FLRP) which provides physicians with federal funding to pay student loan debts in exchange for working in a federal-designated health professional shortage area. The state's prisons are often included in those designated areas. However, since 2012 FLRP funding has been reduced and fewer programs meet the requirements as a designated health professional shortage area. CCHCS notes that the number of employees receiving funding through FLRP (mostly psychiatrists) has decreased from 231 participants in 2012 to 36 participants in 2015, an 84 percent decrease.

Previous Budget Actions. The 2015 budget act included \$872,000 from the General Fund, and eight positions, to build an internal recruitment and retention program designed to recruit and retain clinicians and other medical personnel.

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

1. The 2015-16 budget included funding to allow the receiver to increase clinician recruitment activities. Please provide an update on that effort.
2. The subcommittee held a joint hearing with the Senate Committee on Public Safety on March 15, 2016, to explore ways in which CDCR can better train and support staff working in the state's prisons. Specifically, the both committees would like to ensure that custody staff and others working in highly stressful and often volatile environment are provided with the tools they need to successfully navigate often complicated and difficult interactions with inmates. Similarly, the

medical staff in the institutions must often deal with difficult and stressful situations. Has your office considered ways in which training and other supports may need to be expanded to ensure the best environment for both the medial employees and the patients in their care?

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**Issue 1: Physician and Licensed Vocational Nurse Coverage**

Governor's Budget. The budget proposes \$2 million General Fund beginning in 2016-17 to provide additional medical coverage at the in-state contract facilities, as required by the federal receiver's office.

Background. The *Plata v. Brown* lawsuit requires that the state provide a constitutional level of care for all inmates in the state's prison system. While the receivership has been primarily focused on improving care at the 34 state-run institutions, the receiver has required that inmates housed in the in state contract facilities must receive a level of care that is consistent with the medical care provided to all patients housed within CDCR.

Legislative Analyst's Office. The LAO has not raised any concerns with this budget request.

Issue 2: Access to Healthcare

Governor's Budget. The Governor's budget requests \$9.4 million General Fund and 78.4 positions in 2016-17, \$11.8 million General Fund and 98.7 positions in 2017-18, and \$12.2 million General Fund and 102 positions in 2018-19 and ongoing, for increased staffing needs related to the Health Care Facility Improvement Program (HCFIP), triage and treatment areas/correctional treatment centers, and the heating, ventilation, and air conditioning system replacement at Ironwood State Prison.

All but five of the positions requested are for additional correctional officers. Sixty one of the new positions will be providing security for new or expanded primary care clinics at 23 institutions. The 36 remaining correctional officer positions will provide security at the triage and treatment areas or correctional treatment centers at 18 institutions. The standardized staffing model used by CDCR to determine staffing needs is based upon changes to the physical layout of a prison or changes in activities, rather than being based on the number of inmates housed in an institution. Therefore, despite a declining inmate population, the need for security staff is increasing.

The remaining five positions are for the stationary engineers due to the increased workload resulting from the construction of a new chilled water plant at Ironwood State Prison.

Background

Health Care Facility Improvement Program (HCFIP). As discussed in previous agenda items, the healthcare receivership was established by U.S. District Court Judge Thelton E. Henderson as the result of a 2001 class-action lawsuit (*Plata v. Brown*) against the State of California over the quality of medical care in the State's then 33 prisons. The court found that the medical care was a violation of the Eighth Amendment of the U.S. Constitution, which forbids cruel and unusual punishment. The state settled the suit in 2002, and in June 2005, Judge Henderson established a receivership for prison medical care. A major component of the receiver's "Turnaround Plan of Action" includes HCFIP.

The goal of HCFIP is to provide a facilities infrastructure within the CDCR institutions. This allows timely, competent, and effective health care delivery system with appropriate health care diagnostics, treatment, medication distribution, and access to care for individuals incarcerated within the CDCR. The existing health facilities, constructed between 1852 and the 1990s, were deficient and did not meet current health care standards, public health requirements and current building codes. The facilities also served a population that was greater in number than when it was originally built. These conditions were one of the conditions leading to the *Plata v. Brown* lawsuit.

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

On October 26, 2012, delegation of the HCAUs was turned over to the secretary of CDCR. Upon the effective date of the delegation, the secretary assumed control of the HCAU. Because standardized staffing was implemented prior to the delegation of HCAU positions being turned over to the CDCR's direct control, the CDCR did not include HCAU posts in the reviews and standardization of custody

health care positions. The Division of Adult Institutions, working collaboratively with the California Correctional Health Care Services, has identified 18 institutions with custody staffing deficiencies within the triage and treatment areas and correctional treatment centers.

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

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

Legislative Analyst's Office. The LAO recommends that the Legislature reduce the Governor's proposal to provide \$524,000 for maintenance of the new central chiller system at Ironwood State Prison (ISP) by \$275,000 to reflect savings available from eliminating maintenance on the pre-existing cooling system.

Issue 3: Segregated Housing Unit Conversion

Governor's Budget. The Governor's budget proposes to reduce General Fund support for CDCR by \$16 million in 2015–16 and by \$28 million in 2016–17 to account for savings from a reduction in the number of inmates housed in segregated housing units. According to the department, the policy changes it is implementing pursuant to the *Ashker v. Brown* settlement will reduce the number of inmates held in ASUs and SHUs, allowing it to convert several of these units to less expensive general population housing units. For example, CDCR estimates that the number of inmates held in SHUs could decline by around 1,000, or about one-third of the current population.

In addition, the Administration requests \$3.4 million General fund for 2015-16 and \$5.8 million General Fund for 2016-17 to increase the number of staff in the Investigative Services Unit (ISU), which would offset the above 2016–17 savings. The redirected funding would support the addition of 48 correctional officers to the ISU, an increase of 18 percent. According to the Administration, these positions are needed to handle workload from an anticipated increase in gang activity related to the new segregated housing policies. Specifically, the department plans to use the additional positions to monitor the activities of gang members released to the general population. The department is requesting 22 of the proposed positions be approved on a two-year, limited-term basis because it has not yet determined the exact amount of ongoing workload associated with the segregated housing policy changes.

Background. CDCR currently operates different types of celled segregated housing units that are used to hold inmates separate from the general prison population. These segregated housing units include:

Administrative Segregation Units (ASUs). ASUs are intended to be temporary placements for inmates who, for a variety of reasons, constitute a threat to the security of the institution or the safety of staff and inmates. Typically, ASUs house inmates who participate in prison violence or commit other offenses in prison.

Security Housing Units (SHUs). SHUs are used to house for an extended period inmates who CDCR considers to be the greatest threat to the safety and security of the institution. Historically, department regulations have allowed two types of inmates to be housed in SHUs: (1) inmates sentenced to determinate SHU terms for committing serious offenses in prison (such as assault or possession of a weapon) and (2) inmates sentenced to indeterminate SHU terms because they have been identified as prison gang members. (As discussed below, changes were recently made to CDCR's regulations as a result of a legal settlement.)

Segregated housing units are typically more expensive to operate than general population housing units. This is because, unlike the general population, inmates in segregated housing units receive their meals and medication in their cells, which requires additional staff. In addition, custody staff are required to escort inmates in segregated housing when they are temporarily removed from their cells, such as for a medical appointment.

Ashker v. Brown. In 2015, CDCR settled a class action lawsuit, known as *Ashker v. Brown*, related to the department's use of segregated housing. The terms of the settlement include significant changes to many aspects of CDCR's segregated housing unit policies. For example, inmates can no longer be

placed in the SHU simply because they are gang members. Instead, inmates can only be placed in the SHU if they are convicted of one of the specified SHU-eligible offenses following a disciplinary due process hearing. In addition, the department will no longer impose indeterminate SHU sentences. The department has also made changes in its step-down program to allow inmates to transition from segregated housing (including SHUs and ASUs) to the general population more quickly than before.

Investigative Services Unit (ISU). CDCR currently operates an ISU consisting of 263 correctional officer positions located across the 35 state-operated prisons. Correctional officers who are assigned to the ISU receive specialized training in investigation practices. These staff are responsible for various investigative functions such as monitoring the activities of prison gangs and investigating assaults on inmates and staff.

Legislative Analyst's Office (LAO)

Proposed ISU Staffing Increase Lacks Detailed Workload Analysis. While the LAO acknowledges that the new segregated housing policies may drive some increased workload for the ISU, the department has not established a clear nexus between the policy changes and the increased workload. In particular, the department has been unable to provide a detailed analysis which indicates the specific workload increases that will result from the policy changes and how it was determined that 48 is the correct number of staff to handle this increased workload. Without this information it is difficult for the Legislature to assess the need for the requested positions.

Other Factors Have Impacted ISU Workload in Recent Years. There are a variety of factors that drive workload for the ISU, such as the number of violent incidences occurring in the prisons. It appears that a couple of these key factors have declined in recent years. First, the number of inmates in CDCR-operated prisons has decreased from about 124,000 in 2012-13 to a projected level of about 117,000 in 2015-16. Second, the number of assaults on inmates and staff has decreased from about 8,500 in 2012-13 to about 1,200 in 2014-15. Accordingly, the ISU now has fewer inmates to monitor and fewer assaults to investigate. Despite these developments, correctional officer staffing for the ISU has actually increased slightly from 253 officers in 2012-13 to 263 officers in 2014-15. This raises the question of whether any increased workload for the ISU resulting from segregated housing policy is offset by other workload decreases in recent years, meaning that potential workload increases could be accommodated with existing resources.

LAO Recommendation. The LAO recommends that the Legislature reject the Administration's proposal for \$5.8 million to fund increased staffing for the ISU because the proposal lacks sufficient workload justification, particularly in light of recent declines in other ISU workload.

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

1. Please provide an update on the SHU conversion. Have all inmates with indeterminate SHU terms been released?
2. Is CDCR providing any specialized programming to assist inmates who have served long SHU terms as they reintegrate back into the general prison population?

3. Please provide information on any problems that have arisen as a result of inmates being reintegrated back into the general population.

Issue 4: Alternative Housing for Inmates**Governor's Budget**

Conservation Camps. The budget does not propose any changes or expansions to the budget for the 44 conservation camps, and the budget proposes a combined CDCR/CalFIRE annual camp budget of approximately \$200 million General Fund.

Male Community Reentry Program (MCRP). The Governor's budget proposes \$32 million (General Fund) in 2016–17 and \$34 million in 2017–18 to expand the MCRP. The 2016–17 appropriation includes \$20 million to support existing contracts and \$12 million to expand the program. The proposed augmentation would allow CDCR to contract with four additional facilities—three in Los Angeles County and one in San Diego County—to provide an additional 460 beds. In addition, CDCR proposes to increase the amount of time participants can spend in the program from 120 days to 180 days.

Custody to Community Transitional Re-Entry Programs (CCTRP) for Women. The proposed budget includes an increase of \$390,000 General Fund on-going to expand both their San Diego CCTRP and Santa Fe Springs CCTRP by an additional 36 beds each.

Alternative Custody Program. The proposed budget includes an increase of \$3.3 million General Fund and 20 positions in 2015-16 and \$6 million General Fund and 40 positions in 2016-17 and on-going for the workload associated with implementing a 12-month Alternative Custody Program for male inmates as is required by the *Sassman v. Brown* judgement.

Background. For decades, the state's prison system has included alternative types of housing for certain low-risk inmates. Among these programs are the following:

Conservation (Fire) Camps — The Conservation Camp Program was initiated by CDCR to provide able-bodied inmates the opportunity to work on meaningful projects throughout the state. The CDCR road camps were established in 1915. During World War II much of the work force that was used by the Division of Forestry (now known as CalFIRE), was depleted. The CDCR provided the needed work force by having inmates occupy "temporary camps" to augment the regular firefighting forces. There were 41 "interim camps" during WWII, which were the foundation for the network of camps in operation today. In 1946, the Rainbow Conservation Camp was opened as the first permanent male conservation camp. Rainbow made history again when it converted to a female camp in 1983. The Los Angeles County Fire Department (LAC), in contract with the CDCR, opened five camps in Los Angeles County in the 1980's.

There are 43 conservation camps for adult offenders and one camp for juvenile offenders. Three of the adult offender camps house female fire fighters. Thirty-nine adult camps and the juvenile offender camp are jointly managed by CDCR and CalFIRE. Five of the camps are jointly managed with the Los Angeles County Fire Department.

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 March 9, 2016, there were 3,554 inmates living and working in the camps.

The Male Community Reentry Program (MCRP) — MCRP is designed to provide or arrange linkage to a range of community-based, rehabilitative services that assist with substance use disorders, mental health care, medical care, employment, education, housing, family reunification, and social support. The MCRP is designed to help participants successfully reenter the community from prison and reduce recidivism.

The MCRP is a voluntary program for male inmates who have approximately 120 days left to serve. The MCRP allow eligible inmates committed to state prison to serve the end of their sentences in the community in lieu of confinement in state prison.

The MCRP is a Department of Health Care Services-licensed alcohol or other drug treatment facility with on-site, 24-hour supervision. Participants are supervised by on-site correctional staff in combination with facility contracted staff.

As of March 9, 2016, there were 137 male inmates in the MCRP.

The Custody to Community Transitional Reentry Program (CCTRP) — CCTRP allows eligible inmates with serious and violent crimes committed to state prison to serve their sentence in the community in the CCTRP, as designated by the department, in lieu of confinement in state prison and at the discretion of the secretary. CCTRP provides a range of rehabilitative services that assist with alcohol and drug recovery, employment, education, housing, family reunification, and social support.

CCTRP participants remain under the jurisdiction of the CDCR and will be supervised by the on-site correctional staff while in the community. Under CCTRP, one day of participation counts as one day of incarceration in state prison, and participants in the program are also eligible to receive any sentence reductions that they would have received had they served their sentence in state prison. Participants may be returned to an institution to serve the remainder of their term at any time.

As of March 9, 2016, there were 235 female inmates in the CCTRP.

Alternative Custody Program (ACP) — In 2010, Senate Bill 1266 (Liu), Chapter 644, Statutes of 2010, established the ACP program within the CDCR. The program was subsequently expanded in 2012 by SB 1021 (Committee on Budget and Fiscal Review), Chapter 41, Statutes of 2012. Under this program, eligible female inmates, including pregnant inmates or inmates who were the primary caregivers of dependent children, are allowed to participate in lieu of their confinement in state prison. Through this program, female inmates may be placed in a residential home, a nonprofit residential drug-treatment program, or a transitional-care facility that offers individualized services based on an inmate's needs. The program focuses on reuniting low-level inmates with their families and reintegrating them back into their community.

All inmates continue to serve their sentences under the jurisdiction of the CDCR and may be returned to state prison for any reason. An inmate selected for ACP is under the supervision of a parole agent and is required to be electronically monitored at all times.

To be eligible for the program, a woman must, meet the eligibility criteria, and cannot have a current conviction for a violent or serious felony or have any convictions for sex-related crimes.

Services for ACP participants can include: education/vocational training, anger management, family- and marital-relationship assistance, substance-abuse counseling and treatment, life-skills training, narcotics/alcoholics anonymous, faith-based and volunteer community service opportunities.

On September 9, 2015, the federal court found in *Sassman v. Brown* that the state was unlawfully discriminating against male inmates by excluding them from the ACP and ordered CDCR to make male inmates eligible for the program. The ruling now requires the state to expand the existing female Alternative Custody Program to males.

As of March 9, 2016, there were 38 inmates participating in ACP.

None of the inmates in these alternative housing program count toward the state's 137.5 percent prison population cap established by the federal court. Therefore, these programs and their expansion create an important tool for the state's prison population management.

Legislative Analyst's Office (LAO)

MCRP. The LAO recommends that the Legislature reject the Governor's proposed \$32 million General Fund augmentation for the Male Community Reentry Program (MCRP), as it is unlikely to be the most cost-effective recidivism reduction strategy given that it (1) does not target higher-risk offenders and (2) it is very costly. To the extent that the Legislature wants to expand rehabilitative programming, the LAO recommends directing the department to come back with a proposal that focuses on meeting the rehabilitative needs of higher-risk offenders.

CCTRP and ACP. The Governor's proposals to expand CCTRP and allow male inmates to participate in the ACP appear to be aligned with recent court orders. However, unlike the current ACP which takes inmates for up to 24 months, the budget proposes reducing that time to the last 12 months of an inmate's sentence. However, the LAO notes that the Administration has not provided information to justify that change. Therefore, they recommend that the Legislature withhold action on the Governor's proposal to reduce the length of the alternative custody programs pending additional information to determine whether the proposed change is warranted.

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

1. Several months ago, CDCR staff and the contractor for the Bakersfield MCRP mentioned that there was difficulty finding male inmates to fill all 50 of the beds in that program. Based on the recent population reports, it would appear that continues to be a problem? What is CDCR doing to promote the MCRP's among inmates and what is your plan for ensuring that all MCRP beds are continuously filled?

2. Please explain how CDCR determines an inmates eligibility for a conversation camp and how many years an inmate can be housed and work in a camp.
3. Last year, CDCR proposed expanding eligibility for the conservation camps but has since backed off on that expansion. Please explain why you decided not to expand eligibility. In addition, please provide an update on the population of the camps and your ability to safely and effectively keep those camps filled.
4. Does the training and experience received by an inmate in a fire camp allow them to gain employment as a CalFIRE firefighter upon their release? If not, has CDCR considered working with CalFIRE and the State Personnel Board to ensure that those individuals are eligible to compete for those positions?

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 17, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 113

Outcomes

Consultant: Julie Salley-Gray

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ITEMS TO BE HEARD

5225 CALIFORNIA CORRECTIONAL HEALTHCARE SERVICES (CCHCS)

The CCHCS receivership was established as a result of a class action lawsuit (*Plata v. Brown*) brought against the State of California over the quality of medical care in the state's 34 adult prisons. In its ruling, the federal court found that the care was in violation of the Eighth Amendment of the U.S. Constitution which forbids cruel and unusual punishment. The state settled the lawsuit and entered into a stipulated settlement in 2002, agreeing to a range of remedies that would bring prison medical care in line with constitutional standards. The state failed to comply with the stipulated settlement and on February 14, 2006, the federal court appointed a receiver to manage medical care operations in the prison system. The current receiver was appointed in January of 2008. The receivership continues to be unprecedented in size and scope nationwide.

The receiver is tasked with the responsibility of bringing the level of medical care in California's prisons to a standard which no longer violates the U.S. Constitution. The receiver oversees over 11,000 prison health care employees, including doctors, nurses, pharmacists, psychiatric technicians and administrative staff. Over the last ten years, healthcare costs have risen significantly. The estimated per inmate health care cost for 2015-16 (\$21,815) is almost three times the cost for 2005-06 (\$7,668). The state spent \$1.2 billion in 2005-06 to provide health care to 162,408 inmates. The state estimates that it will be spending approximately \$2.8 billion in 2016-17 for 128,834 inmates. Of that amount, \$1.9 billion is dedicated to prison medical care under the oversight of the receivership.

CDCR Historical Health Care Costs Per Inmate

| Program | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 |
|--------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Medical | \$10,841 | \$12,917 | \$12,591 | \$13,661 | \$15,496 | \$16,843 |
| Dental | \$1,094 | \$1,128 | \$1,165 | \$1,247 | \$1,311 | \$1,378 |
| Mental Health | \$2,806 | \$2,236 | \$2,279 | \$2,587 | \$2,990 | \$3,594 |
| Total Health Care | \$14,740 | \$16,281 | \$16,035 | \$17,496 | \$19,796 | \$21,815 |

Issue 1: Update on Healthcare Transition

Governor's Budget. The budget includes \$1.9 billion General Fund for prison medical care. At the request of the receiver, this amount includes \$26.8 million for increased pharmaceutical costs, \$12.1 million to expand janitorial services at the California Health Care Facility in Stockton, and \$11.9 million to establish executive healthcare management teams at prisons that currently share management oversight and create supervisory ratios for certain healthcare classifications. The Administration notes that these augmentations support the transition of medical care back to the state.

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

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

Since the appointment of the receivership, spending on inmate health care has almost tripled. A new prison hospital has been built, new systems are being created for maintaining medical records and scheduling appointments, and new procedures are being created that are intended to improve health outcomes for inmates. According to the CCHCS, over 450,000 inmates per month have medical appointments and the rate of preventable deaths has dropped 54 percent since 2006 (from 38.5 per 100,000 inmates in 2006 to 17.7 per 100,000 inmates in 2014).

Chief Executive Officers for Health Care. Each of California's 34 prisons has a chief executive officer (CEO) for health care who reports to the receiver. The CEO is the highest-ranking health care authority within a CDCR adult institution. A CEO is responsible for all aspects of delivering health care at their respective institution(s) and reports directly to the receiver's office.

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

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

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

Region I: Pelican Bay State Prison, High Desert State Prison, California Correctional Center, Folsom State Prison, California State Prison Sacramento, Mule Creek State Prison, California State Prison San Quentin, California Medical Facility, and California State Prison Solano.

Region II: California Health Care Facility, Stockton, Sierra Conservation Center, Deuel Vocational Institution, Central California Women’s Facility, Valley State Prison, Correctional Training Facility, Salinas Valley State Prison, and California Men’s Colony.

Region III: Pleasant Valley State Prison, Avenal State Prison, California State Prison Corcoran, Substance Abuse Treatment Facility, Kern Valley State Prison, North Kern State Prison, Wasco State Prison, California Correctional Institution, California State Prison Los Angeles County, and California City Prison.

Region IV: California Institution for Men, California Institution for Women, California Rehabilitation Center, Ironwood State Prison, Chuckawalla Valley State Prison, Calipatria State Prison, Centinela State Prison, and RJ Donovan Correctional Facility.

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

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

In 2013, court-appointed medical experts began conducting follow-up evaluations of prisons scoring 85 percent or higher in the OIG’s third cycle of medical inspections. (Those evaluations are discussed in more detail in a later item.) The expert panel found that six of the ten institutions evaluated had an inadequate level of medical care, despite scoring relatively high overall ratings in the OIG’s evaluations. The difference between the two types of evaluations resulted in very different findings. The OIG’s evaluations focused on the institutions’ compliance with CDCR’s written policies and procedures for medical care. The court experts, however, focused on an in-depth analysis of individual

patients' medical treatment to determine the quality of care at each prison. After meeting with the receiver's office and the court medical experts, the Inspector General decided that his inspections should be modified to include the methodologies used by the medical experts in order to determine the quality of care being provided.

Previous Budget Action. The 2015-16 budget provided \$3.9 million and 19 additional positions to allow the Office of the Inspector General (OIG) to annually evaluate the quality of medical care provided to inmates in all of the California Department of Corrections and Rehabilitation (CDCR) adult institutions. The medical inspections staff increase included:

- Three Analysts
- Three Nursing Consultants
- Three Physicians
- Nine Registered Nurses
- One Nursing Supervisor

Transition Planning. On September 9, 2012, the federal court entered an order entitled Receivership Transition Plan and Expert Evaluations. As part of the transition from the receivership, the court required the receiver to provide CDCR with an opportunity to demonstrate their ability to maintain a constitutionally-adequate system of inmate medical care. The receiver was instructed to work with CDCR to determine a timeline for when CDCR would assume the responsibility for particular tasks.

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

- Health Care Access Units are dedicated, institution-based units, comprised of correctional officers, which have responsibility for insuring that inmates are transported to medical appointments and treatment, both on prison grounds and off prison grounds. Each institution's success at insuring that inmates are transported to their medical appointments/treatment is tracked and published in monthly reports.
- The Activation Unit is responsible for all of the activities related to activating new facilities, such as the California Health Care Facility at Stockton and the DeWitt Annex. Activation staff act as the managers for CDCR and coordinate activities such as the hiring of staff for the facility, insuring that the facility is ready for licensure, overseeing the ordering, delivery, and installation of all equipment necessary for the new facility, as well as a myriad of other activities. Activation activities, again, are tracked on monthly reports provided to the receiver's office.

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

- Quality Management
- Medical Services

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

Process for Delegating Responsibility to State. In March 2015, the Plata court issued an order outlining the process for transitioning responsibility for inmate medical care back to the state. Under the order, responsibility for each institution, as well as overall statewide management of inmate medical care, must be delegated back to the state. The court indicates that, once these separate delegations have occurred and CDCR has been able to maintain the quality of care for one year, the receivership would end.

The federal court order outlines a specific process for delegating care at each institution back to the state. Specifically, each institution must first be inspected by the Office of the Inspector General (OIG) to determine whether the institution is delivering an adequate level of care. The receiver then uses the results of the OIG inspection—regardless of whether the OIG declared the institution adequate or inadequate—along with other health care indicators, including those published on each institution’s Health Care Services Dashboard, to determine whether the level of care is sufficient to be delegated back to CDCR. To date, the OIG has completed inspections for 13 institutions and has found nine to be adequate and four to be inadequate.

As of March 11, 2016, the receiver has delegated care at Folsom State Prison and the Correctional Training Facility at Soledad back to CDCR. The receiver is currently in the process of determining whether to delegate care at the other institutions that have been found adequate by the OIG. In addition, the receiver could also delegate care at the four prisons deemed inadequate by the OIG if care has been found to have improved. The OIG plans to complete medical inspections for the remaining institutions by the end of 2016. The process for delegating the responsibility for headquarters functions related to medical care does not require an OIG inspection. Under the court order, the receiver only has to determine that CDCR can adequately carry out these functions.

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

1. Please provide an update on the delegation of any additional responsibility from the receiver to CDCR since last spring.
2. How are you training both the medical and custodial staff to ensure the provision of adequate medical care and that the staff understand what adequate care entails?
3. What procedures have you put in place throughout the system to ensure that adequate care continues once the receivership ends?

4. It has been a concern of the Legislature that there is on-going tension between the custody staff and medical staff in terms of proper procedures that should be followed when someone is in medical danger. In several incidents in recent years, the custody staff's concerns appear to have outweighed the medical staff's. What has the receiver's office done to develop a formal procedure for each institution that clarifies what should happen in such emergencies when the medical staff requires that someone be removed from a cell and the custody staff refuses? What type of training has been provided to both the custody staff and the medical staff in this area? Have you seen a change in the way that medical staff and custody staff are interacting?

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

1. Please respond to the receiver's assessment of the current medical situation in the adult institutions.
2. What types of specialized training and written policies are provided to CDCR custody staff prior to allowing them to work in a medical unit or with inmate-patients?
3. The Department of State Hospitals uses medical technical assistants (MTA) instead of correctional officers to provide custody in their psychiatric inpatient programs. Does CDCR use MTAs to provide custody for inmates with significant medical or mental health needs? If not, why not?

Issue 2: California Health Care Facility – Stockton Janitorial Services

Governor’s Budget. The budget proposes five positions and \$6.4 million General Fund in the current year, and \$12 million General Fund in the budget year, to contract with PRIDE Industries to provide janitorial services for the California Healthcare Facility (CHCF) in Stockton.

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

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

Despite being aware of serious problems at the facility as early as September of 2013, it was not until February of 2014, that the receiver closed down intake at the facility and stopped admitting new prisoners. In addition, the receiver delayed the activation of the neighboring DeWitt-Nelson facility, which is designed to house inmate labor for CHCF, prisoners with mental illnesses, and prisoners with chronic medical conditions who need on-going care. The CHCF resumed admissions in July 2014, and currently houses about 2,200 inmates.

PRIDE Industries. PRIDE is a non-profit organization operating in 14 states that employs and serves over 5,300 people, including more than 2,900 people with disabilities.

Previous Budget Actions. The 2015-16 budget included a General Fund augmentation of \$76.4 million, and 714.7 additional clinical positions to increase staffing at CHCF, including primary care, nursing, and support staff. The receiver is also received a supplemental appropriation to cover the partial-year cost of the proposed staffing increase in 2014-15. With the augmentation to CHCF, total clinical staffing costs increased from about \$82 million annually to about \$158 million, annually, and staffing levels increased from 810 positions to 1,525 positions.

The 2014-15 budget included a General Fund augmentation of \$12.5 million General Fund to increase staffing at CHCF to address problems raised by the federal healthcare receiver around plant operations, food services, and custody staffing.

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

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

1. Please describe the various alternatives you considered prior to entering into the contract with PRIDE Industries, including using state employees or the current CalPIA training program.
2. Concerns have been expressed about bringing potentially vulnerable individuals into a work environment that will require them to interact with individuals who perhaps have a history of manipulating, victimizing and preying on people. Please describe the steps PRIDE Industries, CDCR and the receiver's office are taking to ensure that CHCF will be a safe place to work for PRIDE employees.

Action: Issue discussed, no action taken.

Issue 3: Healthcare Supervisory Positions

Governor's Budget. The Governor's budget proposes a \$12 million General Fund augmentation and 68.6 additional positions to increase health care executive and supervisory staffing levels throughout the prison system.

Background. In 2014-15, the receiver adopted a medical classification staffing model (MCM) which is a new population methodology that is now used to adjust medical staffing based upon patient-inmate acuity and each institution's medical mission. That staffing model, however, did not include any adjustments in the supervisory classifications that are necessary to carry out the administrative functions of the healthcare facility.

In an effort to control costs, the first healthcare receiver implemented a sister institution structure for several prisons. While most institutions have their own health care executive management teams, there are 16 sister institutions—eight pairs of prisons that are very near to one another—that share health care executive management teams. The following are the current institution pairings:

- High Desert State Prison and the California Correctional Center
- Central California Women's Facility and Valley State Prison
- California Institution for Women and California Rehabilitation Center
- Avenal State Prison and Pleasant Valley State Prison
- Calipatria State Prison and Centinela State Prison
- California Correctional Institution and California City Correctional Facility
- Chuckawalla Valley State Prison and Ironwood State Prison
- Deuel Vocational Institution and Sierra Conservation Center

Previous Budget Actions. As noted above, in the 2014-15 budget, the Legislature approved a new healthcare staffing model which included the reduction of 148 positions and the approval of the implementation of the MCM.

Legislative Analyst's Office. The LAO recommends that the Legislature reject the Governor's proposal to provide a \$6 million augmentation in 2016-17 to provide for a separate executive management team at each institution, as such separate teams do not appear to be necessary in order to deliver a constitutional level of care.

While the LAO recognizes the need to transition control of inmate medical care back to the state in a timely manner, their analysis indicates that the need for each of the 16 sister institutions to have its own executive management team has not been justified.

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

1. Please address the LAO's findings that institutions that are sharing an executive team have been found to be providing a constitutional level of care. Why do you believe it is necessary at this time to require each institution to have its own, separate team?

Action: Approved as budgeted.

Vote: 3 – 0

Issue 4: Increased Pharmaceutical Costs

Governor's Budget. The proposed budget includes \$20 million General Fund in 2015-16 and \$27 million General Fund in 2016-17 and on-going to address shortfalls in pharmaceutical funding caused by increasing drug costs, the implementation of the Electronic Health Record System (EHRS) and the implementation of the Women's Health Care Initiative (WHCI). The specific components driving the increase are as follows:

- Pharmaceutical cost increases — \$27.6 million in 2015-16 and \$35.5 million in 2016-17.
- Implementation of the pharmacy program in EHRS — \$7.5 million in 2015-16 and \$5.5 million in 2016-17.
- Women's Health Care Initiative — \$632,000 beginning in 2016-17.
- Hepatitis C Treatment Savings — \$15 million in 2015-16 and 2016-17.

Background. The receiver's office is currently responsible for providing medical pharmaceuticals prescribed by physicians under his management, as well as psychiatric and dental medications prescribed by psychiatrists and dentists managed by CDCR. From 2004-05 through 2014-15, the inmate pharmaceutical budget increased from \$136 million to \$236 million. (The pharmaceutical budget reflects only the cost of pharmaceuticals and not the cost of medication distribution or management.) According to information provided by the LAO, the level of spending on pharmaceuticals per inmate has also increased over this time period, increasing from \$860 in 2004-05 to \$2,000 by 2014-15, an increase of over 130 percent.

Women's Health Care Initiative. Recently, CCHCS established a Women's Health Care Initiative that is responsible for insuring that the health care of incarcerated female patients meets community standards. Among other findings, it was determined that family planning services at the California Institution for Women, the Central California Women's Facility and the newly established Folsom Women's Facility needed enhancements. As a result, part of the pharmaceutical budget will now include funding for birth control/contraception services for female patients who would benefit from their use. Effective use of family planning services will reduce the risks of unwanted pregnancies as a result of conjugal visits, as well as providing services for women nearing parole who are seeking assistance.

Previous Budget Actions. Last year's budget included a one-time General Fund augmentation of \$18.4 million in 2014-15 for unanticipated increases in the pharmaceutical budget. In addition, the budget included a General Fund increase of \$51.8 million in 2014-15, and \$60.6 million in 2015-16, for the cost of providing inmates with new Hepatitis C treatments.

Legislative Analyst's Office. An independently verified source to determine how pharmaceutical prices have changed, or are likely to change in the future, is an appropriate method to use when determining whether adjustments in the pharmaceutical budget are necessary. Accordingly, using the pharmaceutical consumer price index (CPI) for estimating future increases in pharmaceutical costs seems reasonable. However, the receiver proposes using past-year changes in the pharmaceutical CPI to estimate future-year changes, rather than relying on available projections of how the pharmaceutical CPI is actually expected to change. Using pharmaceutical CPI projections is preferable as it may account for changes in the market that are not reflected in the past-year values of the index. For example, pharmaceutical CPI projections for 2015-16 and 2016-17 are lower than the 4.9 percent

growth assumed by the receiver. Specifically, projections of the pharmaceutical CPI suggest that prices will only increase by 3.8 percent in 2015–16 and by 3.3 percent in 2016–17. Accordingly, these projections suggest that the pharmaceutical budget requires \$1.7 million less than proposed by the Governor in 2015–16 and \$4.3 million less in 2016–17.

In view of the above, LAO recommends that the Legislature approve increases to the inmate pharmaceutical budget based on projections for the pharmaceutical CPI in 2015–16 and 2016–17. However, in order to determine the appropriate adjustments, they recommend the Legislature hold off on taking such action until the receiver provides additional information. Specifically, the receiver should provide by April 1 (1) an updated estimate of current–year monthly pharmaceutical expenditures, and (2) an updated estimate of the pharmaceutical CPI for the remainder of the current–year and the budget–year based on the most recent projections available.

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

1. Please respond to the LAO recommendation and explain why the current methodology does not rely on available CPI projections for pharmaceutical costs and instead relies on past changes.

Action: Held open pending updated information from during May Revise.

Issue 5: Recruitment and Retention/Student Loan Repayment Program

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

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

Availability of Student Loan Repayment Programs to Assist in Attracting Medical Staff. The receiver's workforce development unit has relied on tools such as the Federal Loan Repayment Program (FLRP) which provides physicians with federal funding to pay student loan debts in exchange for working in a federal-designated health professional shortage area. The state's prisons are often included in those designated areas. However, since 2012 FLRP funding has been reduced and fewer programs meet the requirements as a designated health professional shortage area. CCHCS notes that the number of employees receiving funding through FLRP (mostly psychiatrists) has decreased from 231 participants in 2012 to 36 participants in 2015, an 84 percent decrease.

Previous Budget Actions. The 2015 budget act included \$872,000 from the General Fund, and eight positions, to build an internal recruitment and retention program designed to recruit and retain clinicians and other medical personnel.

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

1. The 2015-16 budget included funding to allow the receiver to increase clinician recruitment activities. Please provide an update on that effort.
2. The subcommittee held a joint hearing with the Senate Committee on Public Safety on March 15, 2016, to explore ways in which CDCR can better train and support staff working in the state's prisons. Specifically, the both committees would like to ensure that custody staff and others working in highly stressful and often volatile environment are provided with the tools they need to successfully navigate often complicated and difficult interactions with inmates. Similarly, the

medical staff in the institutions must often deal with difficult and stressful situations. Has your office considered ways in which training and other supports may need to be expanded to ensure the best environment for both the medial employees and the patients in their care?

Action: The subcommittee directed budget staff to work with the receiver and the Administration to develop language for a loan repayment program for both CDCR and the Department of State Hospitals.

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**Issue 1: Physician and Licensed Vocational Nurse Coverage**

Governor's Budget. The budget proposes \$2 million General Fund beginning in 2016-17 to provide additional medical coverage at the in-state contract facilities, as required by the federal receiver's office.

Background. The *Plata v. Brown* lawsuit requires that the state provide a constitutional level of care for all inmates in the state's prison system. While the receivership has been primarily focused on improving care at the 34 state-run institutions, the receiver has required that inmates housed in the in state contract facilities must receive a level of care that is consistent with the medical care provided to all patients housed within CDCR.

Legislative Analyst's Office. The LAO has not raised any concerns with this budget request.

Action: Approved as budgeted.

Vote: 3 – 0

Issue 2: Access to Healthcare

Governor's Budget. The Governor's budget requests \$9.4 million General Fund and 78.4 positions in 2016-17, \$11.8 million General Fund and 98.7 positions in 2017-18, and \$12.2 million General Fund and 102 positions in 2018-19 and ongoing, for increased staffing needs related to the Health Care Facility Improvement Program (HCFIP), triage and treatment areas/correctional treatment centers, and the heating, ventilation, and air conditioning system replacement at Ironwood State Prison.

All but five of the positions requested are for additional correctional officers. Sixty one of the new positions will be providing security for new or expanded primary care clinics at 23 institutions. The 36 remaining correctional officer positions will provide security at the triage and treatment areas or correctional treatment centers at 18 institutions. The standardized staffing model used by CDCR to determine staffing needs is based upon changes to the physical layout of a prison or changes in activities, rather than being based on the number of inmates housed in an institution. Therefore, despite a declining inmate population, the need for security staff is increasing.

The remaining five positions are for the stationary engineers due to the increased workload resulting from the construction of a new chilled water plant at Ironwood State Prison.

Background

Health Care Facility Improvement Program (HCFIP). As discussed in previous agenda items, the healthcare receivership was established by U.S. District Court Judge Thelton E. Henderson as the result of a 2001 class-action lawsuit (*Plata v. Brown*) against the State of California over the quality of medical care in the State's then 33 prisons. The court found that the medical care was a violation of the Eighth Amendment of the U.S. Constitution, which forbids cruel and unusual punishment. The state settled the suit in 2002, and in June 2005, Judge Henderson established a receivership for prison medical care. A major component of the receiver's "Turnaround Plan of Action" includes HCFIP.

The goal of HCFIP is to provide a facilities infrastructure within the CDCR institutions. This allows timely, competent, and effective health care delivery system with appropriate health care diagnostics, treatment, medication distribution, and access to care for individuals incarcerated within the CDCR. The existing health facilities, constructed between 1852 and the 1990s, were deficient and did not meet current health care standards, public health requirements and current building codes. The facilities also served a population that was greater in number than when it was originally built. These conditions were one of the conditions leading to the *Plata v. Brown* lawsuit.

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

On October 26, 2012, delegation of the HCAUs was turned over to the secretary of CDCR. Upon the effective date of the delegation, the secretary assumed control of the HCAU. Because standardized staffing was implemented prior to the delegation of HCAU positions being turned over to the CDCR's direct control, the CDCR did not include HCAU posts in the reviews and standardization of custody

health care positions. The Division of Adult Institutions, working collaboratively with the California Correctional Health Care Services, has identified 18 institutions with custody staffing deficiencies within the triage and treatment areas and correctional treatment centers.

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

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

Legislative Analyst's Office. The LAO recommends that the Legislature reduce the Governor's proposal to provide \$524,000 for maintenance of the new central chiller system at Ironwood State Prison (ISP) by \$275,000 to reflect savings available from eliminating maintenance on the pre-existing cooling system.

Staff Note. The Administration has determined that they do not need the five additional stationary engineers at this time. Therefore, the subcommittee should reject \$524,000 in General Fund and the five positions, regardless of the action taken on the remainder of the proposal.

Action: Rejected \$525,000 General Fund and the five stationary engineer positions and held open the remainder of the proposal.

Vote: 3 – 0

Issue 3: Segregated Housing Unit Conversion

Governor's Budget. The Governor's budget proposes to reduce General Fund support for CDCR by \$16 million in 2015–16 and by \$28 million in 2016–17 to account for savings from a reduction in the number of inmates housed in segregated housing units. According to the department, the policy changes it is implementing pursuant to the *Ashker v. Brown* settlement will reduce the number of inmates held in ASUs and SHUs, allowing it to convert several of these units to less expensive general population housing units. For example, CDCR estimates that the number of inmates held in SHUs could decline by around 1,000, or about one-third of the current population.

In addition, the Administration requests \$3.4 million General fund for 2015-16 and \$5.8 million General Fund for 2016-17 to increase the number of staff in the Investigative Services Unit (ISU), which would offset the above 2016–17 savings. The redirected funding would support the addition of 48 correctional officers to the ISU, an increase of 18 percent. According to the Administration, these positions are needed to handle workload from an anticipated increase in gang activity related to the new segregated housing policies. Specifically, the department plans to use the additional positions to monitor the activities of gang members released to the general population. The department is requesting 22 of the proposed positions be approved on a two-year, limited-term basis because it has not yet determined the exact amount of ongoing workload associated with the segregated housing policy changes.

Background. CDCR currently operates different types of celled segregated housing units that are used to hold inmates separate from the general prison population. These segregated housing units include:

Administrative Segregation Units (ASUs). ASUs are intended to be temporary placements for inmates who, for a variety of reasons, constitute a threat to the security of the institution or the safety of staff and inmates. Typically, ASUs house inmates who participate in prison violence or commit other offenses in prison.

Security Housing Units (SHUs). SHUs are used to house for an extended period inmates who CDCR considers to be the greatest threat to the safety and security of the institution. Historically, department regulations have allowed two types of inmates to be housed in SHUs: (1) inmates sentenced to determinate SHU terms for committing serious offenses in prison (such as assault or possession of a weapon) and (2) inmates sentenced to indeterminate SHU terms because they have been identified as prison gang members. (As discussed below, changes were recently made to CDCR's regulations as a result of a legal settlement.)

Segregated housing units are typically more expensive to operate than general population housing units. This is because, unlike the general population, inmates in segregated housing units receive their meals and medication in their cells, which requires additional staff. In addition, custody staff are required to escort inmates in segregated housing when they are temporarily removed from their cells, such as for a medical appointment.

Ashker v. Brown. In 2015, CDCR settled a class action lawsuit, known as *Ashker v. Brown*, related to the department's use of segregated housing. The terms of the settlement include significant changes to many aspects of CDCR's segregated housing unit policies. For example, inmates can no longer be

placed in the SHU simply because they are gang members. Instead, inmates can only be placed in the SHU if they are convicted of one of the specified SHU-eligible offenses following a disciplinary due process hearing. In addition, the department will no longer impose indeterminate SHU sentences. The department has also made changes in its step-down program to allow inmates to transition from segregated housing (including SHUs and ASUs) to the general population more quickly than before.

Investigative Services Unit (ISU). CDCR currently operates an ISU consisting of 263 correctional officer positions located across the 35 state-operated prisons. Correctional officers who are assigned to the ISU receive specialized training in investigation practices. These staff are responsible for various investigative functions such as monitoring the activities of prison gangs and investigating assaults on inmates and staff.

Legislative Analyst's Office (LAO)

Proposed ISU Staffing Increase Lacks Detailed Workload Analysis. While the LAO acknowledges that the new segregated housing policies may drive some increased workload for the ISU, the department has not established a clear nexus between the policy changes and the increased workload. In particular, the department has been unable to provide a detailed analysis which indicates the specific workload increases that will result from the policy changes and how it was determined that 48 is the correct number of staff to handle this increased workload. Without this information it is difficult for the Legislature to assess the need for the requested positions.

Other Factors Have Impacted ISU Workload in Recent Years. There are a variety of factors that drive workload for the ISU, such as the number of violent incidences occurring in the prisons. It appears that a couple of these key factors have declined in recent years. First, the number of inmates in CDCR-operated prisons has decreased from about 124,000 in 2012-13 to a projected level of about 117,000 in 2015-16. Second, the number of assaults on inmates and staff has decreased from about 8,500 in 2012-13 to about 1,200 in 2014-15. Accordingly, the ISU now has fewer inmates to monitor and fewer assaults to investigate. Despite these developments, correctional officer staffing for the ISU has actually increased slightly from 253 officers in 2012-13 to 263 officers in 2014-15. This raises the question of whether any increased workload for the ISU resulting from segregated housing policy is offset by other workload decreases in recent years, meaning that potential workload increases could be accommodated with existing resources.

LAO Recommendation. The LAO recommends that the Legislature reject the Administration's proposal for \$5.8 million to fund increased staffing for the ISU because the proposal lacks sufficient workload justification, particularly in light of recent declines in other ISU workload.

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

1. Please provide an update on the SHU conversion. Have all inmates with indeterminate SHU terms been released?
2. Is CDCR providing any specialized programming to assist inmates who have served long SHU terms as they reintegrate back into the general prison population?

3. Please provide information on any problems that have arisen as a result of inmates being reintegrated back into the general population.

Action: Held open.

Issue 4: Alternative Housing for Inmates**Governor's Budget**

Conservation Camps. The budget does not propose any changes or expansions to the budget for the 44 conservation camps, and the budget proposes a combined CDCR/CalFIRE annual camp budget of approximately \$200 million General Fund.

Male Community Reentry Program (MCRP). The Governor's budget proposes \$32 million (General Fund) in 2016–17 and \$34 million in 2017–18 to expand the MCRP. The 2016–17 appropriation includes \$20 million to support existing contracts and \$12 million to expand the program. The proposed augmentation would allow CDCR to contract with four additional facilities—three in Los Angeles County and one in San Diego County—to provide an additional 460 beds. In addition, CDCR proposes to increase the amount of time participants can spend in the program from 120 days to 180 days.

Custody to Community Transitional Re-Entry Programs (CCTRP) for Women. The proposed budget includes an increase of \$390,000 General Fund on-going to expand both their San Diego CCTRP and Santa Fe Springs CCTRP by an additional 36 beds each.

Alternative Custody Program. The proposed budget includes an increase of \$3.3 million General Fund and 20 positions in 2015-16 and \$6 million General Fund and 40 positions in 2016-17 and on-going for the workload associated with implementing a 12-month Alternative Custody Program for male inmates as is required by the *Sassman v. Brown* judgement.

Background. For decades, the state's prison system has included alternative types of housing for certain low-risk inmates. Among these programs are the following:

Conservation (Fire) Camps — The Conservation Camp Program was initiated by CDCR to provide able-bodied inmates the opportunity to work on meaningful projects throughout the state. The CDCR road camps were established in 1915. During World War II much of the work force that was used by the Division of Forestry (now known as CalFIRE), was depleted. The CDCR provided the needed work force by having inmates occupy "temporary camps" to augment the regular firefighting forces. There were 41 "interim camps" during WWII, which were the foundation for the network of camps in operation today. In 1946, the Rainbow Conservation Camp was opened as the first permanent male conservation camp. Rainbow made history again when it converted to a female camp in 1983. The Los Angeles County Fire Department (LAC), in contract with the CDCR, opened five camps in Los Angeles County in the 1980's.

There are 43 conservation camps for adult offenders and one camp for juvenile offenders. Three of the adult offender camps house female fire fighters. Thirty-nine adult camps and the juvenile offender camp are jointly managed by CDCR and CalFIRE. Five of the camps are jointly managed with the Los Angeles County Fire Department.

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 March 9, 2016, there were 3,554 inmates living and working in the camps.

The Male Community Reentry Program (MCRP) — MCRP is designed to provide or arrange linkage to a range of community-based, rehabilitative services that assist with substance use disorders, mental health care, medical care, employment, education, housing, family reunification, and social support. The MCRP is designed to help participants successfully reenter the community from prison and reduce recidivism.

The MCRP is a voluntary program for male inmates who have approximately 120 days left to serve. The MCRP allow eligible inmates committed to state prison to serve the end of their sentences in the community in lieu of confinement in state prison.

The MCRP is a Department of Health Care Services-licensed alcohol or other drug treatment facility with on-site, 24-hour supervision. Participants are supervised by on-site correctional staff in combination with facility contracted staff.

As of March 9, 2016, there were 137 male inmates in the MCRP.

The Custody to Community Transitional Reentry Program (CCTRP) — CCTRP allows eligible inmates with serious and violent crimes committed to state prison to serve their sentence in the community in the CCTRP, as designated by the department, in lieu of confinement in state prison and at the discretion of the secretary. CCTRP provides a range of rehabilitative services that assist with alcohol and drug recovery, employment, education, housing, family reunification, and social support.

CCTRP participants remain under the jurisdiction of the CDCR and will be supervised by the on-site correctional staff while in the community. Under CCTRP, one day of participation counts as one day of incarceration in state prison, and participants in the program are also eligible to receive any sentence reductions that they would have received had they served their sentence in state prison. Participants may be returned to an institution to serve the remainder of their term at any time.

As of March 9, 2016, there were 235 female inmates in the CCTRP.

Alternative Custody Program (ACP) — In 2010, Senate Bill 1266 (Liu), Chapter 644, Statutes of 2010, established the ACP program within the CDCR. The program was subsequently expanded in 2012 by SB 1021 (Committee on Budget and Fiscal Review), Chapter 41, Statutes of 2012. Under this program, eligible female inmates, including pregnant inmates or inmates who were the primary caregivers of dependent children, are allowed to participate in lieu of their confinement in state prison. Through this program, female inmates may be placed in a residential home, a nonprofit residential drug-treatment program, or a transitional-care facility that offers individualized services based on an inmate's needs. The program focuses on reuniting low-level inmates with their families and reintegrating them back into their community.

All inmates continue to serve their sentences under the jurisdiction of the CDCR and may be returned to state prison for any reason. An inmate selected for ACP is under the supervision of a parole agent and is required to be electronically monitored at all times.

To be eligible for the program, a woman must, meet the eligibility criteria, and cannot have a current conviction for a violent or serious felony or have any convictions for sex-related crimes.

Services for ACP participants can include: education/vocational training, anger management, family- and marital-relationship assistance, substance-abuse counseling and treatment, life-skills training, narcotics/alcoholics anonymous, faith-based and volunteer community service opportunities.

On September 9, 2015, the federal court found in *Sassman v. Brown* that the state was unlawfully discriminating against male inmates by excluding them from the ACP and ordered CDCR to make male inmates eligible for the program. The ruling now requires the state to expand the existing female Alternative Custody Program to males.

As of March 9, 2016, there were 38 inmates participating in ACP.

None of the inmates in these alternative housing program count toward the state's 137.5 percent prison population cap established by the federal court. Therefore, these programs and their expansion create an important tool for the state's prison population management.

Legislative Analyst's Office (LAO)

MCRP. The LAO recommends that the Legislature reject the Governor's proposed \$32 million General Fund augmentation for the Male Community Reentry Program (MCRP), as it is unlikely to be the most cost-effective recidivism reduction strategy given that it (1) does not target higher-risk offenders and (2) it is very costly. To the extent that the Legislature wants to expand rehabilitative programming, the LAO recommends directing the department to come back with a proposal that focuses on meeting the rehabilitative needs of higher-risk offenders.

CCTRP and ACP. The Governor's proposals to expand CCTRP and allow male inmates to participate in the ACP appear to be aligned with recent court orders. However, unlike the current ACP which takes inmates for up to 24 months, the budget proposes reducing that time to the last 12 months of an inmate's sentence. However, the LAO notes that the Administration has not provided information to justify that change. Therefore, they recommend that the Legislature withhold action on the Governor's proposal to reduce the length of the alternative custody programs pending additional information to determine whether the proposed change is warranted.

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

1. Several months ago, CDCR staff and the contractor for the Bakersfield MCRP mentioned that there was difficulty finding male inmates to fill all 50 of the beds in that program. Based on the recent population reports, it would appear that continues to be a problem? What is CDCR doing to promote the MCRP's among inmates and what is your plan for ensuring that all MCRP beds are continuously filled?

2. Please explain how CDCR determines an inmates eligibility for a conversation camp and how many years an inmate can be housed and work in a camp.
3. Last year, CDCR proposed expanding eligibility for the conservation camps but has since backed off on that expansion. Please explain why you decided not to expand eligibility. In addition, please provide an update on the population of the camps and your ability to safely and effectively keep those camps filled.
4. Does the training and experience received by an inmate in a fire camp allow them to gain employment as a CalFIRE firefighter upon their release? If not, has CDCR considered working with CalFIRE and the State Personnel Board to ensure that those individuals are eligible to compete for those positions?

Action: Approved the proposals as budgeted and adopted placeholder trailer bill language authorizing CDCR to expand up to 12 months the time an inmate can spend in the male community reentry program prior to their release.

Vote: 2 – 1 (Anderson: no)

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, April 7, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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

PROPOSED FOR VOTE ONLY**Board of State and Community Corrections**

- 1. Funding Reduction for Standards and Training for Corrections** – The budget proposes a reduction of \$489,000 in spending authority from the Corrections Training Fund. The requested reduction is due to lower than anticipated program costs.

California Department of Corrections and Rehabilitation

- 2. Sex Offender Management Board** – The proposed budget includes \$212,000 General Fund and two permanent analyst positions beginning in 2016-17 due to increased workload for the California Sex Offender Management Board and the State Authorized Risk Assessment Tools for Sex Offenders Task Force, primarily related to an anticipated increase in the need for certified treatment providers and programs as required by Chelsea’s Law.

ITEMS TO BE HEARD

5227 BOARD OF STATE AND COMMUNITY CORRECTIONS
0250 JUDICIAL BRANCH
Issue 1: Proposition 47

Governor’s Budget. The Governor’s budget includes \$21.4 million to address increased trial court workload associated with voter approval of Proposition 47 (the Safe Neighborhoods and Schools Act), which reduced many possessory drug offenses and low-value property thefts to misdemeanors (described in detail below). This second year of proposed new funding is \$13.8 million more than originally estimated for 2016–2017.

In addition, the budget assumes an initial Proposition 47 savings in 2016-17 of \$29.3 million, growing to an annual on-going savings of \$57 million per year. Proposition 47 requires the Department of Finance to provide their first official estimate by July 31, 2016, and on July 31 each year thereafter.

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

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, ¹ 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. |

¹ “A wobbler” refers to a crime that can either be charged as a misdemeanor or a felony.

| | |
|---------------------------|--|
| 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.

Proposition 47 requires that state savings resulting from the proposition be transferred into a new fund, the Safe Neighborhoods and Schools Fund (SNSF). 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).

Role of the Legislature in Determining Proposition 47 Savings. The proposition does not provide for legislative input on the calculation of the savings. The Administration and the State Controller have sole discretion over determining the amount of the state savings. Specifically, the statute requires that Director of Finance, on or before July 31, 2016, and on or before July 31 of each fiscal year thereafter, calculate the state savings for the previous fiscal year compared to 2013-14. Actual data or best estimates are to be used and the calculation is final and must be certified by the State Controller's Office no later than August 1 of each fiscal year. The first transfer of state savings to the Safe Neighborhoods and Schools Fund will occur in 2016-17, after the Department of Finance (DOF) calculates savings pursuant to the proposition.²

AB 1056 (Atkins) Chapter 438, Statutes of 2015. AB 1056 was enacted to establish a grant program and process for the Proposition 47 savings – the "Safe Neighborhoods and Schools Fund" – to be allocated by the BSCC. The key features of AB 1056 enumerate a number of prioritized proposal criteria, such as those proposals that include mental health services, substance use disorder treatment services, misdemeanor diversion programs; housing-related assistance that utilizes evidence-based models; other community-based supportive services, such as job skills training, case management, and civil legal services; and proposals that advance principles of restorative justice while demonstrating a capacity to reduce recidivism. In addition, the bill codifies characteristics for the executive steering community (discussed in more detail in the next item).

Legislative Analyst's Office (LAO). The LAO plays a key role in the initiative process. They work with DOF to prepare an impartial assessment of each statewide initiative submitted by the public before it can be circulated for signature gathering. State law requires that this analysis provide an estimate of the measure's impact on state and local government revenues and costs. The analysis typically also includes relevant background information and a summary of the measure's provisions. The LAO does not take a position on proposed initiatives, nor does it advise proponents on what

² 2015-16 Governor's Budget Summary

changes they should make during the public review period. The Attorney General incorporates a summary of the fiscal estimate developed jointly by the LAO and DOF into the summary that is included on the petitions circulated by signature gatherers.

LAO Independent Ballot Analysis for Proposition 47. Following is the independent fiscal analysis provided by the LAO for proposition 47:

This measure would have a number of fiscal effects on the state and local governments. The size of these effects would depend on several key factors. In particular, it would depend on the way individuals are currently being sentenced for the felony crimes changed by this measure. Currently, there is limited data available on this, particularly at the county level. The fiscal effects would also depend on how certain provisions in the measure are implemented, including how offenders would be sentenced for crimes changed by the measure. For example, it is uncertain whether such offenders would be sentenced to jail or community supervision and for how long. In addition, the fiscal effects would depend heavily on the number of crimes affected by the measure that are committed in the future. Thus, the fiscal effects of the measure described below are subject to significant uncertainty.

State Effects of Reduced Penalties

The proposed reduction in penalties would affect state prison, parole, and court costs.

State Prison and Parole. This measure makes two changes that would reduce the state prison population and associated costs. First, changing future crimes from felonies and wobblers to misdemeanors would make fewer offenders eligible for state prison sentences. We estimate that this could result in an ongoing reduction to the state prison population of several thousand inmates within a few years. Second, the resentencing of inmates currently in state prison could result in the release of several thousand inmates, temporarily reducing the state prison population for a few years after the measure becomes law.

In addition, the resentencing of individuals currently serving sentences for felonies that are changed to misdemeanors would temporarily increase the state parole population by a couple thousand parolees over a three-year period. The costs associated with this increase in the parole population would temporarily offset a portion of the above prison savings.

State Courts. Under the measure, the courts would experience a one-time increase in costs resulting from the resentencing of offenders and from changing the sentences of those who have already completed their sentences. However, the above costs to the courts would be partly offset by savings in other areas. First, because misdemeanors generally take less court time to process than felonies, the proposed reduction in penalties would reduce the amount of resources needed for such cases. Second, the measure would reduce the amount of time offenders spend on county community supervision, resulting in fewer offenders being supervised at any given time. This would likely reduce the number of court hearings for offenders who break the rules that they are required to follow while supervised in the community. Overall, we estimate that the measure could result in a net increase in court costs for a few years with net annual savings thereafter.

Summary of State Fiscal Effects. *In total, we estimate that the effects described above could eventually result in net state criminal justice system savings in the low hundreds of millions of dollars annually, primarily from an ongoing reduction in the prison population of several thousand inmates. As noted earlier, any state savings would be deposited in the Safe Neighborhoods and Schools Fund to support various purposes.*

County Effects of Reduced Penalties

The proposed reduction in penalties would also affect county jail and community supervision operations, as well as those of various other county agencies (such as public defenders and district attorneys' offices).

County Jail and Community Supervision. *The proposed reduction in penalties would have various effects on the number of individuals in county jails. Most significantly, the measure would reduce the jail population as most offenders whose sentence currently includes a jail term would stay in jail for a shorter time period. In addition, some offenders currently serving sentences in jail for certain felonies could be eligible for release. These reductions would be slightly offset by an increase in the jail population as offenders who would otherwise have been sentenced to state prison would now be placed in jail. On balance, we estimate that the total number of statewide county jail beds freed up by these changes could reach into the low tens of thousands annually within a few years. We note, however, that this would not necessarily result in a reduction in the county jail population of a similar size. This is because many county jails are currently overcrowded and therefore release inmates early. Such jails could use the available jail space created by the measure to reduce such early releases.*

We also estimate that county community supervision populations would decline. This is because offenders would likely spend less time under such supervision if they were sentenced for a misdemeanor instead of a felony. Thus, county probation departments could experience a reduction in their caseloads of tens of thousands of offenders within a few years after the measure becomes law.

Other County Criminal Justice System Effects. *As discussed above, the reduction in penalties would increase workload associated with resentencing in the short run. However, the changes would reduce workload associated with both felony filings and other court hearings (such as for offenders who break the rules of their community supervision) in the long run. As a result, while county district attorneys' and public defenders' offices (who participate in these hearings) and county sheriffs (who provide court security) could experience an increase in workload in the first few years, their workload would be reduced on an ongoing basis in the long run.*

Summary of County Fiscal Effects. *We estimate that the effects described above could result in net criminal justice system savings to the counties of several hundred million dollars annually, primarily from freeing jail capacity.³*

³ Legislative Analyst's Office. *Proposition 47: Criminal Sentences, Misdemeanor Penalties, Initiative Statute*. July 17, 2014. LAO.CA.GOV.

As noted above, currently, the Administration estimates that \$29.3 million from the General Fund would be deposited into the SNSF on July 31, 2016 for expenditure in 2016–17, based on its estimates of the savings and costs resulting from the implementation of Proposition 47. This amount is significantly different from the low hundreds of millions noted in the LAO’s ballot initiative estimate.

On February 16, 2016, the LAO released a report on the fiscal impact of Proposition 47. Generally, the report found that the Administration significantly underestimated the savings associated with Proposition 47 and overestimated the costs. Specifically, the LAO noted:

How Much Money Should Be Deposited to SNSF in 2016–17. Based on its estimates of the savings and costs resulting from the implementation of Proposition 47, the Administration currently estimates that it will deposit \$29.3 million from the General Fund into the SNSF for expenditure in 2016–17. The LAO finds that the Administration likely underestimates the savings and overestimates the costs resulting from the measure. For example, the LAO estimates that the actual level of prison savings due to Proposition 47 could be \$83 million, higher compared to the Administration’s estimate. Overall, the LAO estimates that the SNSF deposit in 2016–17 could be around \$100 million higher than the Administration’s figure.

How to Pay for SNSF Deposit in 2016–17. The Administration proposes to allow both the state courts and the Department of State Hospitals (DSH) to keep savings they are estimated to realize as a result of Proposition 47. The LAO finds that this would reduce legislative oversight by allowing these agencies to redirect their savings to other programs and services without legislative review or approval. The LAO recommends that the Legislature reduce the budgets for the courts and DSH to account for the savings resulting from this measure.

Allocation of Funds Deposited Into SNSF. Under the measure, funds deposited in the SNSF are required to be annually allocated as follows: (1) 65 percent for the Board of State and Community Corrections (BSCC) to support mental health and substance use services, (2) 25 percent for the California Department of Education (CDE) to support truancy and dropout prevention, and (3) 10 percent for the Victim Compensation and Government Claims Board (VCGCB) for grants to trauma recovery centers (TRCs). The LAO finds that the Administration’s proposal to allocate the funds provided to BSCC based on recently passed legislation to be reasonable. In addition, the LAO recommends that the funds provided to CDE be allocated to schools with the highest concentrations of at-risk students and that schools be given flexibility in deciding how to best use the funds. Finally, the LAO also recommends that the VCGCB be given more guidance on how to manage the grants to TRCs. Specifically, the LAO recommends that the Legislature (1) structure the grants to ensure the funds are spent in an effective manner, (2) ensure that the state receives federal reimbursement funds for all eligible services provided by TRCs, (3) expand TRCs to additional regions of the state, and (4) evaluate grant recipients based on outcomes.

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

1. Given DOF’s role in developing the fiscal estimate for the ballot initiative, it is surprising that the new estimate of savings is significantly different. How do you account for the significant difference between the original estimate and the most recent estimate?

5227 BOARD OF STATE AND COMMUNITY CORRECTIONS

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

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

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

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

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

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

| | |
|----------------------|--|
| Linda Penner | Chair |
| Scott Kernan | Secretary of CDCR |
| Bobby Haase | Director of Adult Parole Operations, CDCR |
| Dean Growdon | Sheriff of Lassen County |
| Geoff Dean | Sheriff of Ventura County |
| Leticia Perez | County Supervisor, Kern County |
| Michelle Scray Brown | Chief Probation Officer, San Bernardino County |
| Michael Ertola | Chief Probation Officer, Nevada County |
| Ramona Garrett | Retired Judge, Solano County |
| David Bejarano | Chief of Police, City of Chula Vista |
| Scott Budnick | Founder of the Anti-Recidivism Coalition |
| David Steinhart | Director of Juvenile Justice Program Commonweal |
| Mimi H. Silbert | Chief Executive Officer and President of Delancey Street Foundation |

The Governor's budget proposes total funding of \$417.6 million (\$328.7 million General Fund) and 86.5 positions for the BSCC.

(dollars in millions)

| | Funding | Positions |
|--|----------------|------------------|
| Administration, Research and Program Support | \$ 4.8 | 24.8 |
| Corrections Planning and Grant Programs | 137.5 | 30.0 |
| Local Facilities Standards, Operations, and Construction | 253.9 | 19.2 |
| Standards and Training for Local Corrections | 21.4 | 13.0 |
| BSCC Total | \$417.6 | 86.5 |

Issue 2: BSCC Grant Programs and the Grant Making Process

Governor’s Budget. The proposed budget contains multiple items that will require the Board of State and Community Corrections (BSCC) to use their executive steering committee (ESC) process. Among those programs included in the budget are \$250 million General Fund for jail construction grants and \$6 million General Fund for on-going funding for grants designed to improve the relationship between local law enforcement and the communities they serve.

Background. The BSCC’s work involves collaboration with stakeholders, primarily local probation departments, sheriffs, county administrative offices, justice system partners, community-based organizations, and others. The BSCC sets standards and provides training for local adult and juvenile corrections and probation officers. It is also the administering agency for multiple federal and state public safety grants, including the Edward Byrne Memorial Justice Assistance Grants, several juvenile justice grants, Mentally Ill Offender Crime Reduction Grants, and jail construction grants.

Executive Steering Committees (ESC). In 2011, a longstanding practice of the BSCC and its predecessor entities (the Corrections Standards Authority and the Board of Corrections) to seek the input of outside experts and stakeholders through executive steering committees (ESC) was codified. Penal Code section 6024 now provides:

The board shall regularly seek advice from a balanced range of stakeholders and subject matter experts on issues pertaining to adult corrections, juvenile justice, and gang problems relevant to its mission. Toward this end, the board shall seek to ensure that its efforts (1) are systematically informed by experts and stakeholders with the most specific knowledge concerning the subject matter, (2) include the participation of those who must implement a board decision and are impacted by a board decision, and (3) promote collaboration and innovative problem solving consistent with the mission of the board. The board may create special committees, with the authority to establish working subgroups as necessary, in furtherance of this subdivision to carry out specified tasks and to submit its findings and recommendations from that effort to the board.

The BSCC (and its predecessors) has employed this process in numerous contexts, including the promulgation of regulations and the development of requests for proposals for grant programs. In addition, in 2013 AB 1050 (Dickinson; Chapter 2070, Statutes of 2013) was enacted to require the BSCC to develop definitions of certain key terms, including recidivism and, in doing that work, to “consult with” specified stakeholders and experts. (Penal Code Sec. 6027.)

As discussed in the previous item, AB 1056 was enacted to establish a grant program and process for the Proposition 47 savings – the “Safe Neighborhoods and Schools Fund” -- to be allocated by the BSCC. The key features of AB 1056 enumerate a number of prioritized proposal criteria, and codify characteristics for an ESC reflecting a “balanced and diverse membership from relevant state and local government entities, community-based treatment and

service providers, and the formerly incarcerated community.” This ESC is tasked by law with developing specified guidelines for the program.

Recently, BSCC staff advised prospective Proposition 47 ESC members that employees of nongovernmental entities or service providers that “might receive Prop 47 funding” are “financially interested” individuals for purposes of Government Code section 1090 and, as a result, are prohibited from participating in the ESC process. In addition, nongovernmental stakeholders were advised that they would be regarded as “financially interested” and ineligible for ESC participation if they “serve with an organization that might make a contribution” to the Proposition 47 fund. Prospective Proposition 47 ESC members were “encouraged to consider these points carefully, and consult with an attorney if necessary.”

These limitations have been applied by the BSCC only to persons who are employees of nongovernmental entities. A 2013 trailer bill provision (SB 74 (Committee on Budget and Fiscal Review) Chapter 30, Statutes of 2013)) sought by the Administration expressly provided that for purposes of Government Code section 1090 – the conflict of interest law noted above – “members of a committee created by the board, including a member of the board in his or her capacity as a member of a committee created by the board, have no financial interest in any contract made by the board, including a grant or bond financing transaction, based upon the receipt of compensation for *holding public office or public employment.*” (emphasis added.) BSCC has applied these provisions to impose different conflict rules for government employees and nonprofit employees.

In addition to the Proposition 47 ESC, which has yet to be formed, the BSCC recently advised persons already serving on the ESC for the \$6 million “Strengthening Law Enforcement and Community Relations” grants, that “the board cannot approve funding to the agencies in which the community-based organizations that participated in drafting the RFP were financially interested.” This appears to be a retroactive application of the BSCC’s recent conflict determination on an ESC which already has completed some of its recommendations to the board. The BSCC consequently has extended the due date for these applications, although that extension does not appear to affect the application disqualification impact of these recent conflict decisions on persons who served on this ESC.

Current Governor’s Budget BSCC Grant Proposals

Strengthening Law Enforcement and Community Relations Grants. The 2015 budget act include a new \$6 million grant program designed to provide local law enforcement entities with funding for programs and initiatives intended to strengthen the relationship between law enforcement and the communities they serve. The initiatives could include training for front-line peace officers on issues such as implicit bias; assessing the state of law enforcement-community relations; supporting problem-oriented initiatives such as Operation Ceasefire; and restorative justice programs that address the needs of victims, offenders, and the community. The Legislature proposed the funds following a hearing in early 2015 that was prompted by several controversial officer-involved shootings and other racially charged incidents across the country. The Governor has proposed \$6 million in ongoing funding in the Budget Act of 2016, which, if approved, would allow the BSCC to finance additional qualifying proposals.

The request for proposal (RFP) requires that 30 percent of the grant funding must be passed through to the community groups and organizations with which the law enforcement agency is partnering. The BSCC intends to judge and rate the proposals based on the strength of collaborations and how well they meet criteria spelled out in the RFP. The maximum grant for a single law enforcement agency will be \$600,000. Joint agency applications are eligible for up to \$850,000. A 20 percent match is required. The grants are payable over two years. Law enforcement agencies were required to notify the BSCC of their intent to apply by March 18, 2016. Proposals are due on April 15, 2016.

As mentioned above, after the grant request for proposal had been developed by the ESC, BSCC sent out a notice to their ESC members on March 15th telling them that if they were a nongovernmental agency, they would not be allowed to participate in the grant program as a contract or subcontractor. The same prohibition did not apply the governmental entities participating in the ESC process

Jail Construction Grants. Since 2011 Public Safety Realignment, county jails have been housing some felony offenders. Older jails do not lend themselves to the kinds of treatment and programming space needed to run effective in-custody programs that lead to success once an offender is released. The state has provided \$2.2 billion in lease-revenue bond authority for local jail construction over the last several years, with the most recent rounds of funding focused on treatment and programming space and better beds, rather than increased capacity.

In the previous lease-revenue bond programs, counties were designated as large (population greater than 700,000), medium (population 200,001-700,000) or small (population 200,000 or less). Funding was earmarked for each of these categories and counties were able to request a maximum amount of funding based on their size.

- AB 900 (Solorio and Aghazarian) Chapter 7, Statutes of 2007, authorized \$1.2 billion in lease-revenue bond funding for local jail construction projects. Under the two phases of the program, 21 counties received awards, of which six were large counties, eight were medium counties, and eight were small counties. Funding went primarily to those counties operating under a court-ordered population cap. When all construction is completed, over 9,000 jail beds will be added.
- SB 1022 (Committee on Budget and Fiscal Review) Chapter 42, Statutes of 2012, authorized \$500 million in lease-revenue bond funding and funded 14 county awards, of which three were large counties, five were medium counties, and six were small counties. This funding was primarily available to build better beds and treatment and programming space rather than increasing capacity. The program specified that counties seeking to replace or upgrade outdated facilities and provide alternatives to incarceration, including mental health and substance use disorder treatment, would be considered. The funding provided space for education and substance use disorder classes, day reporting centers and transitional housing.
- SB 863 (Committee on Budget and Fiscal Review) Chapter 37, Statutes of 2014, authorized an additional \$500 million in lease-revenue bond financing and funded 15 county awards, of which four were large counties, five were medium counties, and six were small counties. Similar to SB 1022, funding was primarily available for improving existing capacity and treatment and programming space. The awarded projects included reentry programming space, education and vocational classroom space, medical and mental health housing, and dental clinical space.

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

1. Please tell the committee which of your grant programs currently, or as proposed in the Governor's budget, use the ESC process.
2. Will the recent communications from the BSCC to its ESC members and prospective members have a chilling effect on the willingness of nongovernmental stakeholders and experts to participate on ESCs? Will these recent communications and the approach taken by the BSCC foster trust between the BSCC and its non-governmental community stakeholders?
3. The policy value of the BSCC being informed by advice from a broad range of stakeholders and experts has long been recognized. Providing protections against self-interest or the appearance of self-interest in the decisions of the BSCC is equally important. Is the law as interpreted by the BSCC general counsel – applying different standards to government employees and non-profit employees – the best way to promote these two important values? Recognizing that BSCC staff is following what it believes to be the law on conflicts of interest, is there a way we can fix the law, so that all stakeholders, government and nongovernment alike, can be equally engaged in advising the board without exposing these stakeholders either to real conflicts, or potential appearances of conflict?
4. The Governor's Office of Emergency Services (OES) administers a number of grants, including the recent additional \$233 million from the federal Victims of Crime Act (VOCA) Formula Grant Program. In administering these funds, OES has a steering committee comprised of a number of stakeholders, including nonprofits which receive grant awards under this program. Why do the nonprofits which served on the Cal OES VOCA Steering Committee not have the same conflict problems identified by the BSCC for its ESCs? How does OES handle conflict issues? Can the OES approach be used by BSCC?
5. In terms of the request for additional jail construction funding, the Administration has provided no justification. Please explain the need for funding and why this is an appropriate use of one-time General Fund over other state funding priorities.

Legislative Analyst's Office (LAO).

Reject Proposed Jail Funding. The LAO Advises that while it is possible that there may be some need for additional state funding for county jail construction, the Administration has not been able to provide a detailed assessment of the current need. Absent such justification, we recommend that the Legislature reject the Governor's proposal to provide \$250 million from the General Fund for jail construction.

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**Issue 1: Arts in Corrections Update**

Governor’s Budget. The budget includes on-going funding of \$2 million General Fund for the Arts in Corrections program administered by the California Arts Council.

Background. Prior to the most recent recession, California had pioneered the concept of art-as-rehabilitation. In 1977, artist Eloise Smith, then the director of the California Arts Council, proposed the idea of art in prison as a way to “provide an opportunity where a man can gain the satisfaction of creation rather than destruction.” She found private funding to launch an arts program in one prison, and it grew to six prisons. In 1980, California became the first state to fund a professional arts program – named Arts in Corrections – throughout its prison system. “It was recognized as an international model for arts in corrections,” says Craig Watson, director of the California Arts Council, which again is administering the program.

In 1983, University of San Francisco professor Larry Brewster performed a financial analysis at four prisons that found benefits from the program was more than double the costs. He also found that inmates in the arts program were 75 percent less likely than others to face disciplinary actions. “It’s critically important,” Brewster says of the program he’s now studied for three decades. He went on to note, “It instills a work ethic and self-confidence. “People in the arts programs don’t cause problems because they don’t want to lose the privilege of being in the program.”

By 2000, state budget cuts began to squeeze prison arts dry. In 2003, the program lost most of its funding, and by 2010 it had lapsed altogether. Some arts programs continued to work with inmates – the Prison Arts Project, the Marin Shakespeare Company and the Actors’ Gang – but they were privately funded.⁴

Studies have shown that arts programs in prisons reduce behavioral incidents, improve relationships not only between various populations housed within the prison but with guards and supervisory staff, and reduce recidivism. Specifically, a 1987 state Department of Corrections study showed that recidivism among inmates in the arts programs, two years after their release, dropped by nearly 40 percent. In addition, studies have demonstrated that arts in corrections programs can have a positive impact on inmate behavior, provide incentives for participation in other rehabilitative programs, and increase critical thinking, positive relationship building, and healthy behaviors.

The New Arts in Corrections program. The state’s Arts in Corrections program began as a one-time, two-year pilot program in 2014, using \$2.5 million unspent CDCR rehabilitation funds and administered by the California Arts Council. The Arts Council worked closely with the Department of General Services to develop an RFP over a very short period of several months. Organizations were then given three weeks in which to draft their proposals and submit them. Under this expedited time frame, the Arts Council, over a three to four month period beginning in February 2014, was able to develop an RFP, solicit applications, review applications, award funding and begin the pilot program

⁴ The Orange County Register. “The state is reviving an arts program for inmates. Can it help?” August 17, 2015.

by June 2014. The renewed program offers arts to offenders in many forms such as literacy, visual arts, performing arts, and media arts as well as drawing, painting, and sculpting.

Despite one year remaining in the pilot project, the 2015-16 budget included \$2 million General Fund to expand the pilot into an on-going program, which is currently available at 18 institutions. The Arts Council intends to use the \$1.5 million in remaining funding to conduct research in the value of arts programs, fund special projects, including arts in corrections pilots, that partner with universities, provide arts programming for inmates with mental illnesses, provide art programming as support for inmates approaching reentry, and provide specialized programming focused on job training.

Current service providers. In partnership with CDCR, the California Arts Council has contracted with the following organizations to provide rehabilitative arts services in state correctional facilities.

Actors' Gang - Los Angeles, CA
Alliance for California Traditional Arts (ACTA) - Fresno, CA
Dance Kaiso - San Francisco, CA
Fresno Arts Council – Fresno, CA
Inside Out Writers – Los Angeles, CA
Marin Shakespeare Company - San Rafael, CA
Muckenthaler Cultural Center - Fullerton, CA
Red Ladder Theatre Company / Silicon Valley Creates - San Jose, CA
Strindberg Laboratory - Los Angeles, CA
William James Association- Santa Cruz, CA

Legislative Analyst's Office (LAO). When the Legislature heard the 2015 May Revise proposal to provide \$2 million for an Arts in Corrections program, the LAO noted while such training could have some benefits, based on their review of existing research, they found little evidence to suggest that it is the most cost-effective approach to reducing recidivism. As such, the LAO recommended that the Legislature instead allocate these funds to support the expansion of existing programs that have been demonstrated through research to be cost-effective at reducing recidivism, such as cognitive behavioral therapy or correctional education programs.

Issue 2: Educational Opportunities Update

Governor's Budget. The proposed budget includes a total of \$186 million (\$180 million GF/Prop 98) for the current year and \$197 million (\$190 million GF/Prop 98) for 2016-17 for education programming.

The budget includes \$480,000 General Fund for increased security staff in order to allow community college courses to be taught in the evenings in prison.

Background. Inmate Education, both academic and career technical education, are key to giving inmates the skills and social support they need in finding employment upon release from prison. While some higher education and community organizations have traditionally provided career skills development opportunities to inmates, until recently, few collaborations had resulted in the hands-on sequences of courses leading to industry or state certifications known to be key in seeking subsequent employment. As discussed in more detail below, the passage of SB 1391 (Hancock) Chapter 695, Statutes of 2014, has allowed CDCR to expand their voluntary education programs to include in-person community college courses for inmates, thus allowing CDCR to expand their range of educational programs.

As part of CDCR's Division of Rehabilitative Programs, the Office of Correctional Education (OCE) offers various academic and education programs at each of California's adult state prisons. The goal of OCE is to provide offenders with needed education and career training as part of a broader CDCR effort to increase public safety and reduce recidivism. CDCR currently gives priority to those inmates with a criminogenic need for education. The department's main academic focus is on increasing an inmate's reading ability to at least a ninth-grade level.

All adult schools in the CDCR prisons are fully accredited by the Western Association of Schools and Colleges (WASC) to ensure the highest level of education, and some Career Technical Education programs offer industry standard certification.

The Office of Correctional Education focuses on the following programs:

- **Adult Basic Education (ABE) I, II, and III.** The Office of Correctional Education (OCE) manages Educational Programs for inmates/students. Inmates/students with reading skills below the ninth grade level may attend Adult Basic Education. Adult Basic Education (ABE) is divided into class levels I, II, and III. These ABE programs are targeted to serve the academic needs of the inmate/student population. ABE provides opportunities for acquiring academic skills through an emphasis on language arts and mathematics. The Test of Adult Basic Education (TABE) assessment is used to determine the initial placement of each inmate/student into an appropriate ABE level.

ABE I includes inmates/students who have scored between 0.0 and 3.9 on the reading portion of the TABE assessment. ABE II includes inmates/students with a reading score between 4.0 and 6.9. ABE III includes inmates/students with reading scores between 7.0 and 8.9. To advance or promote from one level to the next, inmates/students must show curriculum competence, completion or

achieve a higher TABE score through the TABE matrix testing process. As inmates/students progress through the ABE program levels, increasingly difficult language and mathematical concepts are introduced.

The ABE classes are designed to prepare the inmates/students for entry into a high school equivalency program or a high school diploma program, if certain criteria are met. ABE programs are available to all populations through class assignments and as a voluntary education program that may include tutorial support.

- **Career Technical Education (CTE) Programs.** CTE training is provided in six different career sectors that include the building trade and construction sector, the energy and utilities sector, the finance and business sector, the public service sector, manufacturing and product development sector, and the transportation sector.

Each of the 19 CTE programs is aligned with a positive employment outlook within the State of California, providing an employment pathway to a livable wage. Each of the CTE programs is also aligned to industry recognized certification.

- **General Education Development (GED).** The General Education Development (GED) program is offered to inmates/students who possess neither a high school diploma nor a high school equivalency certificate. Inmates/students receive instruction in language arts, mathematical reasoning, science, and social studies. To achieve the GED certificate, inmates/students must achieve a minimum score of 150 in each section and a total score of 600. Inmates/students must meet test requirements based upon their Tests of Adult Basic Education (TABE) results.

In January 2015, all CDCR institutions began delivering the GED 2014 test. Currently that test is computer-based. Due to custody constraints, some inmates may be allowed to take a paper and pencil version, on a case-by-case determination. The GED 2014 test is taken on a computer which delivers test data directly to the scoring site. The test is scored and results are returned immediately. A passing score on the GED 2014 test ensures that an adult's high school equivalency credential signifies he or she has the skills and knowledge necessary to take the next critical steps, whether entering the job market or obtaining additional education.

Inmates/students are placed into the GED program after completing Adult Basic Education (ABE) III or achieving the required TABE score and do not possess a high school diploma or a high school equivalency certificate. Inmates/students who are accepted into the GED program are provided educational support in completing the specific subject matter that will allow them to successfully pass the GED 2014 exam.

- **High School Diploma (HD) Program.** To be eligible for the HD program, designated Office of Correctional Education (OCE) staff review high school transcript information from the last high school the inmate/student attended. Based upon an analysis of the transcript, the inmate/student receives instruction in the areas needed for graduation.

Areas of high school instruction include life science, economics, U.S. history, U.S. government, English, and math. After completing instruction and successfully passing each required course and

exit examination, inmates/students may receive a high school diploma. For placement purposes, inmates/students need to be able to function at a high school grade level (9-12).

Inmates/students accepted into the HD program are provided support in completing targeted subject matter that will allow them to fulfill their graduation requirements.

- ***Voluntary Education Program (VEP)***. The purpose of the VEP is to offer inmates access to educational programming when an educational assignment is not available and/or to supplement traditional educational programming with opportunities for improvement in literacy and academic skills. Inmates are not assigned, but rather enrolled, and have no assigned hourly attendance requirements. The program is open entry/open exit.

The VEP includes literacy, adult secondary education, and/or college services. It offers participants the opportunity to continue progressing toward academic advancement and the attainment of a General Educational Development (GED) certificate, high school diploma, or college degree.

The program is designed to provide inmates/students support, as needed, in order for them to be able to succeed in their academic program. This support may begin at the very basic level for some inmates/students and may last throughout their academic program, while other inmates/students may enroll in VEP for assistance in a college course and only use the program for a very short time.

- ***Voluntary Education Program (VEP) – College***. Access to college courses is available to inmates/students through the VEP. Senate Bill 1391 (discussed below) will have significant impact on incarcerated students, allowing colleges to offer classes inside prisons. Currently CDCR works with 27 different college institutions, teaching close to 7,000 inmates. This bill will allow California Department of Corrections and Rehabilitation's Office of Correctional Education (OCE) to expand college programs.

OCE is currently working with the leaders of our existing college partners to create a list of minimum standards, as well as proper training for new colleges. Training will include topics as follows: safety/security, working with custody, the criminal personality, academic rigor, and providing degrees with transferable credits.

Inmates/students who participate in college courses through VEP receive academic support as needed. This support includes teacher-assisted tutoring, peer tutoring at some institutions, test-proctoring, and limited access to used textbooks in some institutions. Inmate/student progress is monitored, and course completions are verified and reported. Inmates may earn milestone credits for college course participation.

- ***Library Services***. Law and recreational Library Services are offered at all institutions, providing inmates with an extensive collection of recreational fiction and non-fiction books, as well as reference reading materials; e.g. selected periodicals, encyclopedias, selected Career Technical Education and college level textbooks, and basic literacy materials recommended by the American Library Association and the American Correctional Association. Additionally, the legal research materials in all of the libraries are offered in digital format and provide meaningful access to the

courts in accord with all current court requirements. The libraries also offer materials to support inmate rehabilitation, and include resources on employment, community reentry, and life skills.

- ***Institutional Television Services (ITVS)***. Television programming is provided to inmates at all CDCR institutions. Each institution has a television specialist and television communication center that produces, schedules, and delivers a mixture of television network programming, movies, and a compliment of rehabilitation television programs. ITVS interactive television programming also supports a variety of educational programming from basic literacy to GED preparation courses, as well as pre-recorded college courses.

Infrastructure improvement through Internet Protocol Television Integration (IPTV) is underway. It will provide central streaming, centralized programming content, improved delivery of content, create the ability to add channel capacity, provide television transmissions to all institutions, increase the number of areas served in the institutions, update the technology and improve the reliability of Institutional Programming.

- ***Recreation***. The Recreation Program offers various activities for the inmate population. Activities include intramural leagues and tournaments in both team and individual sports, board games, courses on personal fitness, and a selection of institutional movies.

Approximately 45,000 inmates participate in recreation-sponsored tournaments and activities on a monthly basis.

The department notes that, in order to continue improving education in prison, additional issues need to be addressed such as providing individually tailored education programming, reducing interruptions in learning due to movement between facilities, and improving offenders' familiarity with computer technology.

Retention and Recruitment of Teachers and Librarians. CDCR has been successful over the last two years in hiring approximately 160 additional academic teachers to expand CDCR's educational services in prison. However, in several key areas, CDCR continues to struggle with filling vacant teaching and librarian positions. Based on recent data provided by the department, as of January, CDCR had a vacancy rate of 33.3 percent for science teachers, 28.2 percent for math teachers, and 24.1 percent for librarians. In addition, unlike public school systems that can access a pool of substitute teachers to fill interim vacancies or teach during the absence of a permanent teacher, prisons generally cannot hold classes or provide access to the libraries unless the teacher or librarian is present. Therefore, having a successful strategy for recruiting and retaining skilled educators who are willing to work in a prison setting is critical to meeting the educational needs of inmates.

SB 1391 (Hancock) Chapter 695, Statutes of 2014. College-level academics have been shown to have positive impacts on recidivism and improve offender reentry. However, until the passage of SB 1391, state law prevented community colleges from receiving payment for any courses not available to the general public, including for incarcerated individuals. Specifically, SB 1391 allowed community colleges to receive payment for courses offered in prisons. After its passage, CDCR entered into an agreement with the California Community College Chancellor's Office to develop four pilot programs to provide inmate access to community college courses that lead to either careers or transfer to a four-year university.

The pilot districts of Antelope Valley, Chaffey, Los Rios, and Lassen were awarded \$2 million to develop their inmate education programs with an emphasis on face-to-face instruction. Classes in these pilot districts began in late January 2016, and will each serve 21 to 30 inmates per semester. Business and business entrepreneurship programs will be offered at Lancaster State Prison, California Institution for Women, Folsom's Women's Facility, and High Desert State Prison.

In addition to the pilot colleges, the change in state law made it easier for other local colleges to offer courses for inmates. Currently, 14 community colleges offer inmate courses to approximately 7,500 inmates throughout the state. These programs, including distance learning, offer inmates a variety of programs including general education, humanities, psychology, and business.

To further expand course offerings to inmates throughout the state, the California Community College Chancellor's Office hosted an Inmate and Reentry Education Summit in December 2015 in Northern California. Over 245 participants from non-profit organizations, community colleges and the California Department of Corrections and Rehabilitation attended the event. The Chancellor's Office reports that 10 to 12 additional colleges are interested in creating inmate education programs. The summit provided interested colleges with inmate education program best practices and planning information. Additionally, the summit included information to improve college services for recently released individuals on their campuses. The Chancellor's Office plans to host another summit in Southern California this spring.

To help provide access to these new community college programs, the budget includes \$480,000 for custody staff to oversee evening college courses offered in prisons, similar to the security provided in other educational and career technical education programs. This augmentation will improve the safety of inmates and volunteer professors that provide instruction for in-prison college courses.

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

1. Did the shift from written to computerized GED testing result in a reduction in the number of inmates obtaining their certificates? If so, how does the department intend to better prepare students to take a computerized test?
2. Please provide information on any department efforts to recruit and retain teachers and librarians.
3. As the department expands inmate's access to college courses, have you considered any strategies for expanding staff's, especially correctional staff's, access to college courses and degree or certificate programs?

Issue 3: Innovative Programming Grants Update

Governor's Budget. The budget does not contain any funding to continue the innovative programming grants.

Background. In 2014, the Legislature created the innovative programming grants program using the Recidivism Reduction Fund. The program was designed to provide volunteer programming that focuses on offender responsibility and restorative justice principles at underserved, remote prisons. In addition, the program required that the funding be provided to not-for-profit organizations wishing to expand programs that they are currently providing in other California state prisons. Finally, the program required that priority be given to level IV institutions.

Over the last two years, CDCR has awarded approximately \$5.5 million in innovative programming grants to non-profit organizations or individuals to increase the volunteer base at underserved institutions. This funding included \$2.5 million in grants funded from fiscal year 2014-15, and an additional \$3 million awarded in fiscal year 2015-16.

During the last two years, over 80 grants of varying sizes have been provided to non-profit organizations providing volunteer program's in the state prisons. Through these grants, innovative programming has been significantly expanded at 17 underserved institutions. Among the institutions that have benefited from these programs are Pelican Bay State Prison, High Desert State Prison, Chuckawalla Valley State Prison, and Ironwood State Prison, which are among the state's most geographically-remote institutions.

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

1. Given the Administration's finding that the innovative grants have successfully expanding programming to underserved prisons, why didn't the budget include funding to continue the program?
2. Every prison has a community resource manager (CRM) who serves as a liaison with the community and plans and directs major programs. As part of their role, they facilitate volunteer programs within the prisons, including those organizations that receive innovative programming grants. Concern has been raised that, at some institutions, the CRMs have either not been supportive of the innovative programs or have been unable to assist with their implementation due to other priorities. How does the department ensure that the grant recipients are adequately supported in their efforts to expand their programs to institutions that have not traditionally worked with outside, volunteer organizations? Was any training or guidance specifically provided to the CRMs to help them understand their role in facilitating the programs?

Issue 4: Expansion of Programs and Services for Lifer Population

Governor's Budget. The budget proposes an increase of \$10.5 million General Fund for the expansion of several programs for life-term and long-term offenders. The budget proposes using the funds toward increasing services, as follows:

- \$3.1 million for 136 additional beds in Parolee Service Center Program.
- \$3.4 million to expand the In-Prison Longer-Term Offender Program to level III and IV facilities, increasing the number of program slots by 1,700.
- \$3.1 million to expand the Pre-Employment Transitions Program to all prisons. In addition, the Governor proposes discontinuing the use of contractors for the program and instead hiring teachers. The program will serve approximately 23,000 inmates per year.
- \$423,000 to expand the Offender Mentor Certification Program which trains long-term and life-term inmates to become drug and alcohol counseling mentors. Once the mentors obtain 4,000 hours of work experience in treatment programs, they will be eligible to obtain a substance abuse counselor certification. This expansion will train an additional 64 inmates annually.
- \$480,000 for increased custody staff to oversee evening college courses offered in prisons.

Background. Long-term offenders are individuals who have been sentenced to a life term in prison with the possibility of parole, with the Board of Parole Hearings (BPH) making the determination whether parole is ultimately granted. In part due to significant changes in state law regarding inmates serving life sentences who are now eligible for parole, there has been an increase in the rate at which BPH grants parole in recent years, the number of long-term offenders granted parole increased from 541 in 2009 to 902 in 2014.

SB 260 and SB 261. As required by SB 260 (Hancock) Chapter 312, Statutes of 2013, the Board of Parole Hearings implemented the Youth Offender Parole Program, which provides youth offender parole hearings for specified offenders who were convicted of a crime prior to their 18th birthday and sentenced to state prison. This program was further expanded by SB 261 (Hancock) Chapter 471, Statutes of 2015, by increasing eligibility to those convicted of a crime committed before the age of 23. An inmate is eligible for a youth offender parole hearing during the 15th year of their sentence if they received a determinate sentence; 20th year if their controlling offense was less than 25 years to life; and during the 25th year if their controlling offense was 25 years to life. Inmates who were immediately eligible for a youth offender hearing when SB 260 took effect on January 1, 2014, were required to have their hearing by July 1, 2015. Those with an indeterminate sentence who were immediately eligible for a youth offender parole hearing on January 1, 2016, as a result of SB 261, are required to have their hearing completed by January 1, 2018. Determinately-sentenced offenders immediately eligible as a result of SB 261 are required to have their hearing before December 31, 2021.

Elderly Parole. The three-judge court order established the elderly parole program which allows inmates who are age 60 or older and who have served 25 years of continuous incarceration to be

considered for parole at a parole suitability hearing. Offenders who are eligible for elderly parole are eligible for parole consideration regardless of whether they are serving an indeterminate or determinate sentence. The number of inmates who will be eligible for a hearing under the elderly parole program will increase significantly over the next ten years.

In 2015, BPH scheduled 5,300 hearings, 959 of which were for youthful offenders and 1,012 were for inmates eligible for elderly parole. Offenders sentenced to life without the possibility of parole or condemned inmates are not eligible to apply for youthful offender or elderly parole.

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

According to the Governor's budget, it is estimated that approximately 2,800 inmates will be eligible for resentencing under Proposition 36. The most recent Three-Judge Panel status report on the reduction of the prison population shows that as of December 23, 2015, 2,168 of those eligible have been resentenced and released from prison.

SB 230 (Hancock) Chapter 470, Statutes of 2015. On October 3, 2015, the state also enacted SB 230, which requires that once a person is found suitable for parole he or she be released, rather than being given a future parole date. Prior to the passage of SB 230, a person could be found suitable for parole by BPH and still not be released for years because of the various enhancements that have been added to the person's term.

Rehabilitation for Long-Term Offenders. All of the recent changes discussed above have provided inmates serving life sentences, who previously may not have had an opportunity to leave prison, with an opportunity to leave and return to their communities, if BPH determines that it is safe for them to do so. According to the department, due to the nature of their commitment offenses, long-term offenders spend a significant amount of time in prison and thus may have challenges adjusting to life outside of prison. In order to alleviate these challenges, CDCR has established rehabilitative programs that specifically target long-term offenders:

Long-Term Offender Program (LTOP). The LTOP provides rehabilitative programming (such as substance use disorder treatment, anger management, and employment readiness) on a voluntary basis to long-term offenders at three state prisons—Central California Women's Facility in Chowchilla, California Men's Colony in San Luis Obispo, and California State Prison, Solano.

Offender Mentorship Certification Program (OMCP). The OMCP trains long-term offenders as substance use disorder counselors while they are incarcerated. Upon graduation from the training program, participants are employed by CDCR to deliver counseling services to their fellow inmates. There are currently two sessions offered annually, allowing up to 64 offenders to be certified as mentors each year.

In addition, CDCR offers various other rehabilitative programs that are generally available to inmates and parolees, including long-term offenders. However, those programs are not necessarily widely available to all inmates at all prisons and may have long waiting lists, at those prisons where they are offered.

Legislative Analyst's Office (LAO).

Approve Proposed Expansion of Programming for Higher-Risk Offenders. The LAO recommends that the Legislature approve the portion of the proposal—totaling \$4 million—that would expand rehabilitative programming opportunities for higher-risk offenders that are consistent with programs shown to be cost-effective methods for reducing recidivism. Specifically, the LAO recommends providing the requested funding to support (1) the expansion of the OMCP, (2) the expansion and modification of the Transitions Program, and (3) custody overtime needed to operate community college programs.

Reject Remainder of Proposal. The LAO recommends that the Legislature reject the remainder of the Governor's proposal to expand programs for long-term offenders. While they acknowledge that these programs may provide some benefit to long-term offenders, research suggests that the department could achieve greater benefits to public safety by instead targeting higher-risk offenders. To the extent that the Legislature is interested in further expanding rehabilitative programming, the LAO recommends that it direct the department to come back with a proposal that targets higher-risk offenders and reduces the number of such offenders who are released from prison without receiving any programming targeted toward their identified needs.

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

1. The LAO has noted that as high as 40 percent of high-risk offenders are being released without being provided any rehabilitative programming. Do you agree with that estimate? In addition, please provide the committee with the department's plan for expanding the availability of programming to include the majority of, if not all, high-risk offenders to ensure that they are adequately prepared to leave prison and return to their communities?
2. Given the studies that show that maintaining strong family relationships help to significantly reduce the likelihood of an individual returning to jail or prison once they are released, has the department considered revising its family visit policy to allow inmates serving longer terms or life terms to receive extended family visits as a way of helping them prepare for their return to their families and communities upon their release?
3. Given the demonstrated success of restorative justice programs in reducing recidivism, especially for those inmates serving long terms, has the department considered contracting with non-profit organizations currently providing those programs as volunteers to allow them to expand to become a formal part of your long-term offender programming?

Issue 5: Enhanced Drug and Contraband Interdiction

Governor’s Budget. The budget proposes \$7.9 million General Fund to continue the existing 11 institution pilot program and expand the enhanced efforts at three intensive institutions.

The Governor’s budget for 2016–17 requests \$7.9 million in one–time funding from the General Fund and 51 positions to extend the enhanced drug interdiction pilot program for an additional year, as well as expand the level of services provided through the pilot program. According to CDCR, the continuation of the existing pilot program for one more year would allow the department to collect additional data to analyze its effectiveness. In addition, CDCR intends to expand certain interdiction efforts to (1) increase the frequency of random screening of staff and visitors at intensive interdiction prisons and (2) lease three additional full body X–ray machines to screen visitors. The department states that these additional resources are necessary to assess the efficacy of increased screening.

The department has indicated that it intends to issue a preliminary evaluation report on the pilot program but has not provided an estimate of when that report will be released. In addition, the department intends to issue a final evaluation report in the spring of 2017.

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

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

The Legislature provided CDCR with \$5.2 million (General Fund) in both 2014–15 and 2015–16 to implement a two–year pilot program intended to reduce the amount of drugs and contraband in state prisons. Of this amount, \$750,000 annually was used for random drug testing of 10 percent of inmates per month at all 34 state prisons and the California City prison, which are all operated by CDCR. In addition, CDCR had redirected resources in 2013–14 to begin random drug testing 10 percent of the inmate population each month beginning January 2014. The remaining amount was used to implement enhanced interdiction strategies at 11 institutions, with eight prisons receiving a “moderate” level of interdiction and three prisons receiving an “intensive” level.

According to CDCR, each of the moderate institutions received the following: (1) at least two (and in some cases three) canine drug detection teams; (2) two ion scanners to detect drugs possessed by inmates, staff, or visitors; (3) X–ray machines for scanning inmate mail, packages, and property as well as the property of staff and visitors entering the prison; and (4) one drug interdiction officer. In addition to the above resources, each of the intensive institutions received: (1) one additional canine team, (2) one additional ion scanner, (3) one full body scanner at each entrance and one full body X–ray scanner for inmates, and (4) video cameras to surveil inmate visiting rooms. In 2015, the

Legislature passed legislation requiring the department to evaluate the pilot drug testing and interdiction program within two years of its implementation.

Legislative Analyst's Office (LAO).

Approve Temporary Extension of Drug Testing. The LAO recommends that the Legislature approve the portion of this request—\$750,000 from the General Fund—associated with continuing the random drug testing for one additional year. The drug testing program appears to have increased the rate at which CDCR is identifying inmates who use illegal drugs. In addition, the collection of additional drug test results should help the department to assess whether the removal of drug interdiction resources, as recommended below, affects the rate of drug use in prisons. Based on the result of the department's final evaluation, the Legislature could determine whether to permanently extend the drug testing program.

Reject Remainder of Proposal to Extend Drug Interdiction Pilot Program. The LAO recommends that the Legislature reject the remainder of the Governor's proposal to extend and expand the drug interdiction pilot program. Extending the program now would be premature given that (1) preliminary data suggest that it is not achieving its intended outcomes and (2) CDCR has not yet fully evaluated its effectiveness. The LAO also recommends that the Legislature direct the department to accelerate its timeline for evaluating the program so that it is completed in time to inform legislative deliberations on the 2017–18 budget, such as whether any of the interdiction strategies should be permanently adopted.

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

1. Please provide the most recent data on how much contraband has been seized specifically as a result of the pilot and who was found with the contraband (i.e. visitors, staff, inmates).
2. In exchange for approving the enhanced drug interdiction pilot, including increased drug testing, the Administration assured the Legislature that those individuals testing positive for illegal substances would receive treatment, rather than punishment. Given the very limited availability of treatment, have you been able to keep that agreement?
3. Please provide updated data on the number of inmates testing positive for illegal substances, how many received treatment, and how many received a rules violation.

Issue 6: Substance Use Disorder Treatment Expansion

Governor's Budget. The budget proposes \$15.2 million General Fund and 51.6 additional positions to continue the expansion of substance abuse treatment programs to the 11 remaining adult institutions. Of the requested positions, 15.6 are correctional officers, 11 are parole services associates, 11 are correctional counselor III positions, and 11 are office technicians.

In addition, the budget includes \$70 million General Fund in the current year and \$68 million General Fund in 2016-17 for funding substance use disorder treatment for parolees through the Specialized Treatment for Optimized Programming (STOP) program.

Background. Providing offenders with access to substance use disorder treatment has a meaningful impact on reducing recidivism, and is a critical aspect of an inmate's rehabilitation. Without addressing this need, all other aspects of the inmate's rehabilitation are impacted. According to the 2014 Outcome Evaluation Report by CDCR's Office of Research, offenders who were assigned to an in-prison substance use disorder treatment and completed treatment while in the community had a recidivism rate of 20.9 percent compared to 55.6 percent for those who did not receive any substance use disorder treatment. The department currently offers evidence-based substance use disorder treatment programs for inmates as part of their reentry programming. Currently, treatment is offered in the 13 reentry hubs, four in-state contract facilities, the California City Correctional Facility and in 10 non-reentry institutions. The treatment programs are generally 150 days in length.

CDCR Automated Risk and Needs Assessment Tool data demonstrates that approximately 70 percent of the inmate population has a moderate to high criminogenic need for substance use disorder treatment. There are currently approximately 117,000 inmates in the state's institutions. Based on CDCR's data, over 80,000 of them need some level of treatment. Currently, CDCR provides some level of treatment at 23 prisons (the 13 reentry hubs and 10 additional prisons), generally at the end of an inmate's term. Despite the significant need and the proven value of treatment in reducing recidivism, CDCR currently only has the capacity to treat less than 2,500 inmates per year. The proposed expansion will result in a total capacity of 3,168 treatment slots.

Office of the Inspector General. According to the Inspector General's *California Rehabilitation Oversight Board Annual Report* from September 2015, as of June 30, 2015, the capacity for substance abuse treatment (SAT) programming is 3,036, not including 88 enhanced outpatient program slots. This is an increase of 1,218 from June 30, 2014, where the SAT capacity was 1,818. Although the department's contracted capacity is 3,036, the department reports it currently has an operational capacity of 1,374 programming slots with an annual capacity of 2,748. The department reports that the difference in contracted capacity and operational capacity is due to space limitations pending the arrival of program modular buildings, construction, and space repurposing to accommodate the contracted capacity.

Specialized Treatment for Optimized Programming (STOP). STOP contractors provide comprehensive, evidence-based programming and services to parolees during their transition into the community. Priority is given to parolees who are within their first year of release and who have demonstrated a moderate to high risk to reoffend, as identified by the California Static Risk Assessment (CSRA), and have a medium to high need, as identified by the Correctional Offender

Management Profiling for Alternative Sanctions (COMPAS) reentry assessment tool. STOP services include (but are not limited to):

- Substance Use Disorder Treatment
- Detoxification Services
- Preventive and Primary Health Care Services
- General Health Education Services
- Motivational Incentives
- Anger Management
- Criminal Thinking
- Life Skills Programs
- Community and Family Reunification Services
- Employment and Educational Services
- and Referrals
- Individual, Family and Group Counseling
- Sober Living Housing
- Faith-Based Services

Medication-Assisted Substance Use Disorder Treatment. Generally, CDCR does not provide medication-assisted treatment in their institutions. Medication-assisted treatment (MAT), including opioid treatment programs (OTPs), combines behavioral therapy and medications to treat substance use disorders. Generally, MAT includes the use of buprenorphine, methadone, naltrexone and naloxone (for opioid overdose). According to a report from the federal Substance Abuse and Mental Health Services Administration (SAMHSA):

Medication-assisted treatment is treatment for addiction that includes the use of medication along with counseling and other support. Treatment that includes medication is often the best choice for opioid addiction. If a person is addicted, medication allows him or her to regain a normal state of mind, free of drug-induced highs and lows. It frees the person from thinking all the time about the drug. It can reduce problems of withdrawal and craving. These changes can give the person the chance to focus on the lifestyle changes that lead back to healthy living.

Taking medication for opioid addiction is like taking medication to control heart disease or diabetes. It is NOT the same as substituting one addictive drug for another. Used properly, the medication does NOT create a new addiction. It helps people manage their addiction so that the benefits of recovery can be maintained. There are three main choices for medication.

The most common medications used in treatment of opioid addiction are methadone and buprenorphine. Sometimes another medication, called naltrexone, is used. Cost varies for the different medications. This may need to be taken into account when considering treatment options. Methadone and buprenorphine trick the brain into thinking it is still getting the problem opioid. The person taking the medication feels normal, not high, and withdrawal does not occur. Methadone and buprenorphine also reduce cravings. Naltrexone helps overcome addiction in a different way. It blocks the effect of opioid drugs. This takes away the feeling of getting high if the problem drug is used again. This feature makes naltrexone a good choice to

prevent relapse (falling back into problem drug use). All of these medications have the same positive effect: they reduce problem addiction behavior.⁵

Since December 2014, naltrexone has been made available in California through an expedited process to all alcohol or opioid dependent patients who are Medi-Cal beneficiaries with a felony or misdemeanor charge or conviction who are under supervision by the county or state. In 2015, San Mateo provided \$2 million in funding to create naltrexone programs in emergency rooms and clinics.

Other States' Medication Assisted Treatment Programs. Several states have begun expanding their in-prison treatment to provide medication-assisted treatment when appropriate. For example, in 2015 Pennsylvania expanded their treatment to include naltrexone as part of their reentry program at eight of their correctional institutions for inmates with opioid and alcohol dependence. The state of Colorado provides comprehensive treatment, including naltrexone, to parolees. Finally, Massachusetts has implemented a statewide prison reentry program that includes the use of naltrexone for people with alcohol and opioid dependence. Kentucky, as well, provides naltrexone to treat opioid dependence. In addition to those states, Florida, Illinois, Indiana, Maryland, Missouri, New Jersey, Ohio, Tennessee, Utah, West Virginia, and Wisconsin have all begun using a medication assisted treatment model for individuals involved in the criminal justice system as a way of treating opioid dependence.

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

1. Under what circumstances, if any, does CDCR use medication-assisted treatment? If none, why not?
2. Given the large number of inmates needing treatment, why is the Administration only proposing 3,000 additional treatment slots?
3. Providers for the STOP program recently submitted a letter stating that they believe the program has a funding shortfall of over \$8 million in the current year and that the problem will increase to over \$13 million in 2016-17. Has the Administration reviewed their claims and do you agree that there is a shortfall? If not, please explain why not. If you agree that the caseload projections have resulted in a funding shortfall, what is the Administration's plan for providing adequate funding for parolees in need of substance use disorder treatment?

⁵ United State Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, *Medication Assisted Treatment for Opioid Addiction: Facts for Families and Friends*, 2011.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, April 7, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 113

Outcomes

Consultant: Julie Salley-Gray

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

PROPOSED FOR VOTE ONLY**Board of State and Community Corrections**

- 1. Funding Reduction for Standards and Training for Corrections** – The budget proposes a reduction of \$489,000 in spending authority from the Corrections Training Fund. The requested reduction is due to lower than anticipated program costs.

California Department of Corrections and Rehabilitation

- 2. Sex Offender Management Board** – The proposed budget includes \$212,000 General Fund and two permanent analyst positions beginning in 2016-17 due to increased workload for the California Sex Offender Management Board and the State Authorized Risk Assessment Tools for Sex Offenders Task Force, primarily related to an anticipated increase in the need for certified treatment providers and programs as required by Chelsea’s Law.

Subcommittee Action: Approve as Budgeted**Vote: 3 – 0**

ITEMS TO BE HEARD

5227 BOARD OF STATE AND COMMUNITY CORRECTIONS
0250 JUDICIAL BRANCH
Issue 1: Proposition 47

Governor’s Budget. The Governor’s budget includes \$21.4 million to address increased trial court workload associated with voter approval of Proposition 47 (the Safe Neighborhoods and Schools Act), which reduced many possessory drug offenses and low-value property thefts to misdemeanors (described in detail below). This second year of proposed new funding is \$13.8 million more than originally estimated for 2016–2017.

In addition, the budget assumes an initial Proposition 47 savings in 2016-17 of \$29.3 million, growing to an annual on-going savings of \$57 million per year. Proposition 47 requires the Department of Finance to provide their first official estimate by July 31, 2016, and on July 31 each year thereafter.

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

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, ¹ 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. |

¹ “A wobbler” refers to a crime that can either be charged as a misdemeanor or a felony.

| | |
|---------------------------|--|
| 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.

Proposition 47 requires that state savings resulting from the proposition be transferred into a new fund, the Safe Neighborhoods and Schools Fund (SNSF). 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).

Role of the Legislature in Determining Proposition 47 Savings. The proposition does not provide for legislative input on the calculation of the savings. The Administration and the State Controller have sole discretion over determining the amount of the state savings. Specifically, the statute requires that Director of Finance, on or before July 31, 2016, and on or before July 31 of each fiscal year thereafter, calculate the state savings for the previous fiscal year compared to 2013-14. Actual data or best estimates are to be used and the calculation is final and must be certified by the State Controller's Office no later than August 1 of each fiscal year. The first transfer of state savings to the Safe Neighborhoods and Schools Fund will occur in 2016-17, after the Department of Finance (DOF) calculates savings pursuant to the proposition.²

AB 1056 (Atkins) Chapter 438, Statutes of 2015. AB 1056 was enacted to establish a grant program and process for the Proposition 47 savings – the "Safe Neighborhoods and Schools Fund" – to be allocated by the BSCC. The key features of AB 1056 enumerate a number of prioritized proposal criteria, such as those proposals that include mental health services, substance use disorder treatment services, misdemeanor diversion programs; housing-related assistance that utilizes evidence-based models; other community-based supportive services, such as job skills training, case management, and civil legal services; and proposals that advance principles of restorative justice while demonstrating a capacity to reduce recidivism. In addition, the bill codifies characteristics for the executive steering community (discussed in more detail in the next item).

Legislative Analyst's Office (LAO). The LAO plays a key role in the initiative process. They work with DOF to prepare an impartial assessment of each statewide initiative submitted by the public before it can be circulated for signature gathering. State law requires that this analysis provide an estimate of the measure's impact on state and local government revenues and costs. The analysis typically also includes relevant background information and a summary of the measure's provisions. The LAO does not take a position on proposed initiatives, nor does it advise proponents on what

² 2015-16 Governor's Budget Summary

changes they should make during the public review period. The Attorney General incorporates a summary of the fiscal estimate developed jointly by the LAO and DOF into the summary that is included on the petitions circulated by signature gatherers.

LAO Independent Ballot Analysis for Proposition 47. Following is the independent fiscal analysis provided by the LAO for proposition 47:

This measure would have a number of fiscal effects on the state and local governments. The size of these effects would depend on several key factors. In particular, it would depend on the way individuals are currently being sentenced for the felony crimes changed by this measure. Currently, there is limited data available on this, particularly at the county level. The fiscal effects would also depend on how certain provisions in the measure are implemented, including how offenders would be sentenced for crimes changed by the measure. For example, it is uncertain whether such offenders would be sentenced to jail or community supervision and for how long. In addition, the fiscal effects would depend heavily on the number of crimes affected by the measure that are committed in the future. Thus, the fiscal effects of the measure described below are subject to significant uncertainty.

State Effects of Reduced Penalties

The proposed reduction in penalties would affect state prison, parole, and court costs.

State Prison and Parole. This measure makes two changes that would reduce the state prison population and associated costs. First, changing future crimes from felonies and wobblers to misdemeanors would make fewer offenders eligible for state prison sentences. We estimate that this could result in an ongoing reduction to the state prison population of several thousand inmates within a few years. Second, the resentencing of inmates currently in state prison could result in the release of several thousand inmates, temporarily reducing the state prison population for a few years after the measure becomes law.

In addition, the resentencing of individuals currently serving sentences for felonies that are changed to misdemeanors would temporarily increase the state parole population by a couple thousand parolees over a three-year period. The costs associated with this increase in the parole population would temporarily offset a portion of the above prison savings.

State Courts. Under the measure, the courts would experience a one-time increase in costs resulting from the resentencing of offenders and from changing the sentences of those who have already completed their sentences. However, the above costs to the courts would be partly offset by savings in other areas. First, because misdemeanors generally take less court time to process than felonies, the proposed reduction in penalties would reduce the amount of resources needed for such cases. Second, the measure would reduce the amount of time offenders spend on county community supervision, resulting in fewer offenders being supervised at any given time. This would likely reduce the number of court hearings for offenders who break the rules that they are required to follow while supervised in the community. Overall, we estimate that the measure could result in a net increase in court costs for a few years with net annual savings thereafter.

Summary of State Fiscal Effects. *In total, we estimate that the effects described above could eventually result in net state criminal justice system savings in the low hundreds of millions of dollars annually, primarily from an ongoing reduction in the prison population of several thousand inmates. As noted earlier, any state savings would be deposited in the Safe Neighborhoods and Schools Fund to support various purposes.*

County Effects of Reduced Penalties

The proposed reduction in penalties would also affect county jail and community supervision operations, as well as those of various other county agencies (such as public defenders and district attorneys' offices).

County Jail and Community Supervision. *The proposed reduction in penalties would have various effects on the number of individuals in county jails. Most significantly, the measure would reduce the jail population as most offenders whose sentence currently includes a jail term would stay in jail for a shorter time period. In addition, some offenders currently serving sentences in jail for certain felonies could be eligible for release. These reductions would be slightly offset by an increase in the jail population as offenders who would otherwise have been sentenced to state prison would now be placed in jail. On balance, we estimate that the total number of statewide county jail beds freed up by these changes could reach into the low tens of thousands annually within a few years. We note, however, that this would not necessarily result in a reduction in the county jail population of a similar size. This is because many county jails are currently overcrowded and therefore release inmates early. Such jails could use the available jail space created by the measure to reduce such early releases.*

We also estimate that county community supervision populations would decline. This is because offenders would likely spend less time under such supervision if they were sentenced for a misdemeanor instead of a felony. Thus, county probation departments could experience a reduction in their caseloads of tens of thousands of offenders within a few years after the measure becomes law.

Other County Criminal Justice System Effects. *As discussed above, the reduction in penalties would increase workload associated with resentencing in the short run. However, the changes would reduce workload associated with both felony filings and other court hearings (such as for offenders who break the rules of their community supervision) in the long run. As a result, while county district attorneys' and public defenders' offices (who participate in these hearings) and county sheriffs (who provide court security) could experience an increase in workload in the first few years, their workload would be reduced on an ongoing basis in the long run.*

Summary of County Fiscal Effects. *We estimate that the effects described above could result in net criminal justice system savings to the counties of several hundred million dollars annually, primarily from freeing jail capacity.³*

³ Legislative Analyst's Office. *Proposition 47: Criminal Sentences, Misdemeanor Penalties, Initiative Statute*. July 17, 2014. LAO.CA.GOV.

As noted above, currently, the Administration estimates that \$29.3 million from the General Fund would be deposited into the SNSF on July 31, 2016 for expenditure in 2016–17, based on its estimates of the savings and costs resulting from the implementation of Proposition 47. This amount is significantly different from the low hundreds of millions noted in the LAO’s ballot initiative estimate.

On February 16, 2016, the LAO released a report on the fiscal impact of Proposition 47. Generally, the report found that the Administration significantly underestimated the savings associated with Proposition 47 and overestimated the costs. Specifically, the LAO noted:

How Much Money Should Be Deposited to SNSF in 2016–17. Based on its estimates of the savings and costs resulting from the implementation of Proposition 47, the Administration currently estimates that it will deposit \$29.3 million from the General Fund into the SNSF for expenditure in 2016–17. The LAO finds that the Administration likely underestimates the savings and overestimates the costs resulting from the measure. For example, the LAO estimates that the actual level of prison savings due to Proposition 47 could be \$83 million, higher compared to the Administration’s estimate. Overall, the LAO estimates that the SNSF deposit in 2016–17 could be around \$100 million higher than the Administration’s figure.

How to Pay for SNSF Deposit in 2016–17. The Administration proposes to allow both the state courts and the Department of State Hospitals (DSH) to keep savings they are estimated to realize as a result of Proposition 47. The LAO finds that this would reduce legislative oversight by allowing these agencies to redirect their savings to other programs and services without legislative review or approval. The LAO recommends that the Legislature reduce the budgets for the courts and DSH to account for the savings resulting from this measure.

Allocation of Funds Deposited Into SNSF. Under the measure, funds deposited in the SNSF are required to be annually allocated as follows: (1) 65 percent for the Board of State and Community Corrections (BSCC) to support mental health and substance use services, (2) 25 percent for the California Department of Education (CDE) to support truancy and dropout prevention, and (3) 10 percent for the Victim Compensation and Government Claims Board (VCGCB) for grants to trauma recovery centers (TRCs). The LAO finds that the Administration’s proposal to allocate the funds provided to BSCC based on recently passed legislation to be reasonable. In addition, the LAO recommends that the funds provided to CDE be allocated to schools with the highest concentrations of at-risk students and that schools be given flexibility in deciding how to best use the funds. Finally, the LAO also recommends that the VCGCB be given more guidance on how to manage the grants to TRCs. Specifically, the LAO recommends that the Legislature (1) structure the grants to ensure the funds are spent in an effective manner, (2) ensure that the state receives federal reimbursement funds for all eligible services provided by TRCs, (3) expand TRCs to additional regions of the state, and (4) evaluate grant recipients based on outcomes.

Subcommittee Action: Held open and directed the LAO to work with DOF and the Judicial Council to provided updated costs and savings estimates taking into account the LAO’s findings.

5227 BOARD OF STATE AND COMMUNITY CORRECTIONS

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

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

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

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

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

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

| | |
|----------------------|--|
| Linda Penner | Chair |
| Scott Kernan | Secretary of CDCR |
| Bobby Haase | Director of Adult Parole Operations, CDCR |
| Dean Growdon | Sheriff of Lassen County |
| Geoff Dean | Sheriff of Ventura County |
| Leticia Perez | County Supervisor, Kern County |
| Michelle Scray Brown | Chief Probation Officer, San Bernardino County |
| Michael Ertola | Chief Probation Officer, Nevada County |
| Ramona Garrett | Retired Judge, Solano County |
| David Bejarano | Chief of Police, City of Chula Vista |
| Scott Budnick | Founder of the Anti-Recidivism Coalition |
| David Steinhart | Director of Juvenile Justice Program Commonweal |
| Mimi H. Silbert | Chief Executive Officer and President of Delancey Street Foundation |

The Governor's budget proposes total funding of \$417.6 million (\$328.7 million General Fund) and 86.5 positions for the BSCC.

(dollars in millions)

| | Funding | Positions |
|--|----------------|------------------|
| Administration, Research and Program Support | \$ 4.8 | 24.8 |
| Corrections Planning and Grant Programs | 137.5 | 30.0 |
| Local Facilities Standards, Operations, and Construction | 253.9 | 19.2 |
| Standards and Training for Local Corrections | 21.4 | 13.0 |
| BSCC Total | \$417.6 | 86.5 |

Issue 2: BSCC Grant Programs and the Grant Making Process

Governor’s Budget. The proposed budget contains multiple items that will require the Board of State and Community Corrections (BSCC) to use their executive steering committee (ESC) process. Among those programs included in the budget are \$250 million General Fund for jail construction grants and \$6 million General Fund for on-going funding for grants designed to improve the relationship between local law enforcement and the communities they serve.

Background. The BSCC’s work involves collaboration with stakeholders, primarily local probation departments, sheriffs, county administrative offices, justice system partners, community-based organizations, and others. The BSCC sets standards and provides training for local adult and juvenile corrections and probation officers. It is also the administering agency for multiple federal and state public safety grants, including the Edward Byrne Memorial Justice Assistance Grants, several juvenile justice grants, Mentally Ill Offender Crime Reduction Grants, and jail construction grants.

Executive Steering Committees (ESC). In 2011, a longstanding practice of the BSCC and its predecessor entities (the Corrections Standards Authority and the Board of Corrections) to seek the input of outside experts and stakeholders through executive steering committees (ESC) was codified. Penal Code section 6024 now provides:

The board shall regularly seek advice from a balanced range of stakeholders and subject matter experts on issues pertaining to adult corrections, juvenile justice, and gang problems relevant to its mission. Toward this end, the board shall seek to ensure that its efforts (1) are systematically informed by experts and stakeholders with the most specific knowledge concerning the subject matter, (2) include the participation of those who must implement a board decision and are impacted by a board decision, and (3) promote collaboration and innovative problem solving consistent with the mission of the board. The board may create special committees, with the authority to establish working subgroups as necessary, in furtherance of this subdivision to carry out specified tasks and to submit its findings and recommendations from that effort to the board.

The BSCC (and its predecessors) has employed this process in numerous contexts, including the promulgation of regulations and the development of requests for proposals for grant programs. In addition, in 2013 AB 1050 (Dickinson; Chapter 2070, Statutes of 2013) was enacted to require the BSCC to develop definitions of certain key terms, including recidivism and, in doing that work, to “consult with” specified stakeholders and experts. (Penal Code Sec. 6027.)

As discussed in the previous item, AB 1056 was enacted to establish a grant program and process for the Proposition 47 savings – the “Safe Neighborhoods and Schools Fund” -- to be allocated by the BSCC. The key features of AB 1056 enumerate a number of prioritized proposal criteria, and codify characteristics for an ESC reflecting a “balanced and diverse membership from relevant state and local government entities, community-based treatment and

service providers, and the formerly incarcerated community.” This ESC is tasked by law with developing specified guidelines for the program.

Recently, BSCC staff advised prospective Proposition 47 ESC members that employees of nongovernmental entities or service providers that “might receive Prop 47 funding” are “financially interested” individuals for purposes of Government Code section 1090 and, as a result, are prohibited from participating in the ESC process. In addition, nongovernmental stakeholders were advised that they would be regarded as “financially interested” and ineligible for ESC participation if they “serve with an organization that might make a contribution” to the Proposition 47 fund. Prospective Proposition 47 ESC members were “encouraged to consider these points carefully, and consult with an attorney if necessary.”

These limitations have been applied by the BSCC only to persons who are employees of nongovernmental entities. A 2013 trailer bill provision (SB 74 (Committee on Budget and Fiscal Review) Chapter 30, Statutes of 2013)) sought by the Administration expressly provided that for purposes of Government Code section 1090 – the conflict of interest law noted above – “members of a committee created by the board, including a member of the board in his or her capacity as a member of a committee created by the board, have no financial interest in any contract made by the board, including a grant or bond financing transaction, based upon the receipt of compensation for *holding public office or public employment.*” (emphasis added.) BSCC has applied these provisions to impose different conflict rules for government employees and nonprofit employees.

In addition to the Proposition 47 ESC, which has yet to be formed, the BSCC recently advised persons already serving on the ESC for the \$6 million “Strengthening Law Enforcement and Community Relations” grants, that “the board cannot approve funding to the agencies in which the community-based organizations that participated in drafting the RFP were financially interested.” This appears to be a retroactive application of the BSCC’s recent conflict determination on an ESC which already has completed some of its recommendations to the board. The BSCC consequently has extended the due date for these applications, although that extension does not appear to affect the application disqualification impact of these recent conflict decisions on persons who served on this ESC.

Current Governor’s Budget BSCC Grant Proposals

Strengthening Law Enforcement and Community Relations Grants. The 2015 budget act include a new \$6 million grant program designed to provide local law enforcement entities with funding for programs and initiatives intended to strengthen the relationship between law enforcement and the communities they serve. The initiatives could include training for front-line peace officers on issues such as implicit bias; assessing the state of law enforcement-community relations; supporting problem-oriented initiatives such as Operation Ceasefire; and restorative justice programs that address the needs of victims, offenders, and the community. The Legislature proposed the funds following a hearing in early 2015 that was prompted by several controversial officer-involved shootings and other racially charged incidents across the country. The Governor has proposed \$6 million in ongoing funding in the Budget Act of 2016, which, if approved, would allow the BSCC to finance additional qualifying proposals.

The request for proposal (RFP) requires that 30 percent of the grant funding must be passed through to the community groups and organizations with which the law enforcement agency is partnering. The BSCC intends to judge and rate the proposals based on the strength of collaborations and how well they meet criteria spelled out in the RFP. The maximum grant for a single law enforcement agency will be \$600,000. Joint agency applications are eligible for up to \$850,000. A 20 percent match is required. The grants are payable over two years. Law enforcement agencies were required to notify the BSCC of their intent to apply by March 18, 2016. Proposals are due on April 15, 2016.

As mentioned above, after the grant request for proposal had been developed by the ESC, BSCC sent out a notice to their ESC members on March 15th telling them that if they were a nongovernmental agency, they would not be allowed to participate in the grant program as a contract or subcontractor. The same prohibition did not apply the governmental entities participating in the ESC process

Jail Construction Grants. Since 2011 Public Safety Realignment, county jails have been housing some felony offenders. Older jails do not lend themselves to the kinds of treatment and programming space needed to run effective in-custody programs that lead to success once an offender is released. The state has provided \$2.2 billion in lease-revenue bond authority for local jail construction over the last several years, with the most recent rounds of funding focused on treatment and programming space and better beds, rather than increased capacity.

In the previous lease-revenue bond programs, counties were designated as large (population greater than 700,000), medium (population 200,001-700,000) or small (population 200,000 or less). Funding was earmarked for each of these categories and counties were able to request a maximum amount of funding based on their size.

- AB 900 (Solorio and Aghazarian) Chapter 7, Statutes of 2007, authorized \$1.2 billion in lease-revenue bond funding for local jail construction projects. Under the two phases of the program, 21 counties received awards, of which six were large counties, eight were medium counties, and eight were small counties. Funding went primarily to those counties operating under a court-ordered population cap. When all construction is completed, over 9,000 jail beds will be added.
- SB 1022 (Committee on Budget and Fiscal Review) Chapter 42, Statutes of 2012, authorized \$500 million in lease-revenue bond funding and funded 14 county awards, of which three were large counties, five were medium counties, and six were small counties. This funding was primarily available to build better beds and treatment and programming space rather than increasing capacity. The program specified that counties seeking to replace or upgrade outdated facilities and provide alternatives to incarceration, including mental health and substance use disorder treatment, would be considered. The funding provided space for education and substance use disorder classes, day reporting centers and transitional housing.
- SB 863 (Committee on Budget and Fiscal Review) Chapter 37, Statutes of 2014, authorized an additional \$500 million in lease-revenue bond financing and funded 15 county awards, of which four were large counties, five were medium counties, and six were small counties. Similar to SB 1022, funding was primarily available for improving existing capacity and treatment and programming space. The awarded projects included reentry programming space, education and vocational classroom space, medical and mental health housing, and dental clinical space.

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

1. Please tell the committee which of your grant programs currently, or as proposed in the Governor's budget, use the ESC process.
2. Will the recent communications from the BSCC to its ESC members and prospective members have a chilling effect on the willingness of nongovernmental stakeholders and experts to participate on ESCs? Will these recent communications and the approach taken by the BSCC foster trust between the BSCC and its non-governmental community stakeholders?
3. The policy value of the BSCC being informed by advice from a broad range of stakeholders and experts has long been recognized. Providing protections against self-interest or the appearance of self-interest in the decisions of the BSCC is equally important. Is the law as interpreted by the BSCC general counsel – applying different standards to government employees and non-profit employees – the best way to promote these two important values? Recognizing that BSCC staff is following what it believes to be the law on conflicts of interest, is there a way we can fix the law, so that all stakeholders, government and nongovernment alike, can be equally engaged in advising the board without exposing these stakeholders either to real conflicts, or potential appearances of conflict?
4. The Governor's Office of Emergency Services (OES) administers a number of grants, including the recent additional \$233 million from the federal Victims of Crime Act (VOCA) Formula Grant Program. In administering these funds, OES has a steering committee comprised of a number of stakeholders, including nonprofits which receive grant awards under this program. Why do the nonprofits which served on the Cal OES VOCA Steering Committee not have the same conflict problems identified by the BSCC for its ESCs? How does OES handle conflict issues? Can the OES approach be used by BSCC?
5. In terms of the request for additional jail construction funding, the Administration has provided no justification. Please explain the need for funding and why this is an appropriate use of one-time General Fund over other state funding priorities.

Legislative Analyst's Office (LAO).

Reject Proposed Jail Funding. The LAO Advises that while it is possible that there may be some need for additional state funding for county jail construction, the Administration has not been able to provide a detailed assessment of the current need. Absent such justification, we recommend that the Legislature reject the Governor's proposal to provide \$250 million from the General Fund for jail construction.

Subcommittee Action: Held open and directed staff to develop trailer bill language that allows for a broad array of governmental and non-governmental entity participation while protecting both groups from potential conflicts of interest.

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**Issue 1: Arts in Corrections Update**

Governor’s Budget. The budget includes on-going funding of \$2 million General Fund for the Arts in Corrections program administered by the California Arts Council.

Background. Prior to the most recent recession, California had pioneered the concept of art-as-rehabilitation. In 1977, artist Eloise Smith, then the director of the California Arts Council, proposed the idea of art in prison as a way to “provide an opportunity where a man can gain the satisfaction of creation rather than destruction.” She found private funding to launch an arts program in one prison, and it grew to six prisons. In 1980, California became the first state to fund a professional arts program – named Arts in Corrections – throughout its prison system. “It was recognized as an international model for arts in corrections,” says Craig Watson, director of the California Arts Council, which again is administering the program.

In 1983, University of San Francisco professor Larry Brewster performed a financial analysis at four prisons that found benefits from the program was more than double the costs. He also found that inmates in the arts program were 75 percent less likely than others to face disciplinary actions. “It’s critically important,” Brewster says of the program he’s now studied for three decades. He went on to note, “It instills a work ethic and self-confidence. “People in the arts programs don’t cause problems because they don’t want to lose the privilege of being in the program.”

By 2000, state budget cuts began to squeeze prison arts dry. In 2003, the program lost most of its funding, and by 2010 it had lapsed altogether. Some arts programs continued to work with inmates – the Prison Arts Project, the Marin Shakespeare Company and the Actors’ Gang – but they were privately funded.⁴

Studies have shown that arts programs in prisons reduce behavioral incidents, improve relationships not only between various populations housed within the prison but with guards and supervisory staff, and reduce recidivism. Specifically, a 1987 state Department of Corrections study showed that recidivism among inmates in the arts programs, two years after their release, dropped by nearly 40 percent. In addition, studies have demonstrated that arts in corrections programs can have a positive impact on inmate behavior, provide incentives for participation in other rehabilitative programs, and increase critical thinking, positive relationship building, and healthy behaviors.

The New Arts in Corrections program. The state’s Arts in Corrections program began as a one-time, two-year pilot program in 2014, using \$2.5 million unspent CDCR rehabilitation funds and administered by the California Arts Council. The Arts Council worked closely with the Department of General Services to develop an RFP over a very short period of several months. Organizations were then given three weeks in which to draft their proposals and submit them. Under this expedited time frame, the Arts Council, over a three to four month period beginning in February 2014, was able to develop an RFP, solicit applications, review applications, award funding and begin the pilot program

⁴ The Orange County Register. “The state is reviving an arts program for inmates. Can it help?” August 17, 2015.

by June 2014. The renewed program offers arts to offenders in many forms such as literacy, visual arts, performing arts, and media arts as well as drawing, painting, and sculpting.

Despite one year remaining in the pilot project, the 2015-16 budget included \$2 million General Fund to expand the pilot into an on-going program, which is currently available at 18 institutions. The Arts Council intends to use the \$1.5 million in remaining funding to conduct research in the value of arts programs, fund special projects, including arts in corrections pilots, that partner with universities, provide arts programming for inmates with mental illnesses, provide art programming as support for inmates approaching reentry, and provide specialized programming focused on job training.

Current service providers. In partnership with CDCR, the California Arts Council has contracted with the following organizations to provide rehabilitative arts services in state correctional facilities.

Actors' Gang - Los Angeles, CA
Alliance for California Traditional Arts (ACTA) - Fresno, CA
Dance Kaiso - San Francisco, CA
Fresno Arts Council – Fresno, CA
Inside Out Writers – Los Angeles, CA
Marin Shakespeare Company - San Rafael, CA
Muckenthaler Cultural Center - Fullerton, CA
Red Ladder Theatre Company / Silicon Valley Creates - San Jose, CA
Strindberg Laboratory - Los Angeles, CA
William James Association- Santa Cruz, CA

Legislative Analyst's Office (LAO). When the Legislature heard the 2015 May Revise proposal to provide \$2 million for an Arts in Corrections program, the LAO noted while such training could have some benefits, based on their review of existing research, they found little evidence to suggest that it is the most cost-effective approach to reducing recidivism. As such, the LAO recommended that the Legislature instead allocate these funds to support the expansion of existing programs that have been demonstrated through research to be cost-effective at reducing recidivism, such as cognitive behavioral therapy or correctional education programs.

Issue 2: Educational Opportunities Update

Governor's Budget. The proposed budget includes a total of \$186 million (\$180 million GF/Prop 98) for the current year and \$197 million (\$190 million GF/Prop 98) for 2016-17 for education programming.

The budget includes \$480,000 General Fund for increased security staff in order to allow community college courses to be taught in the evenings in prison.

Background. Inmate Education, both academic and career technical education, are key to giving inmates the skills and social support they need in finding employment upon release from prison. While some higher education and community organizations have traditionally provided career skills development opportunities to inmates, until recently, few collaborations had resulted in the hands-on sequences of courses leading to industry or state certifications known to be key in seeking subsequent employment. As discussed in more detail below, the passage of SB 1391 (Hancock) Chapter 695, Statutes of 2014, has allowed CDCR to expand their voluntary education programs to include in-person community college courses for inmates, thus allowing CDCR to expand their range of educational programs.

As part of CDCR's Division of Rehabilitative Programs, the Office of Correctional Education (OCE) offers various academic and education programs at each of California's adult state prisons. The goal of OCE is to provide offenders with needed education and career training as part of a broader CDCR effort to increase public safety and reduce recidivism. CDCR currently gives priority to those inmates with a criminogenic need for education. The department's main academic focus is on increasing an inmate's reading ability to at least a ninth-grade level.

All adult schools in the CDCR prisons are fully accredited by the Western Association of Schools and Colleges (WASC) to ensure the highest level of education, and some Career Technical Education programs offer industry standard certification.

The Office of Correctional Education focuses on the following programs:

- **Adult Basic Education (ABE) I, II, and III.** The Office of Correctional Education (OCE) manages Educational Programs for inmates/students. Inmates/students with reading skills below the ninth grade level may attend Adult Basic Education. Adult Basic Education (ABE) is divided into class levels I, II, and III. These ABE programs are targeted to serve the academic needs of the inmate/student population. ABE provides opportunities for acquiring academic skills through an emphasis on language arts and mathematics. The Test of Adult Basic Education (TABE) assessment is used to determine the initial placement of each inmate/student into an appropriate ABE level.

ABE I includes inmates/students who have scored between 0.0 and 3.9 on the reading portion of the TABE assessment. ABE II includes inmates/students with a reading score between 4.0 and 6.9. ABE III includes inmates/students with reading scores between 7.0 and 8.9. To advance or promote from one level to the next, inmates/students must show curriculum competence, completion or

achieve a higher TABE score through the TABE matrix testing process. As inmates/students progress through the ABE program levels, increasingly difficult language and mathematical concepts are introduced.

The ABE classes are designed to prepare the inmates/students for entry into a high school equivalency program or a high school diploma program, if certain criteria are met. ABE programs are available to all populations through class assignments and as a voluntary education program that may include tutorial support.

- **Career Technical Education (CTE) Programs.** CTE training is provided in six different career sectors that include the building trade and construction sector, the energy and utilities sector, the finance and business sector, the public service sector, manufacturing and product development sector, and the transportation sector.

Each of the 19 CTE programs is aligned with a positive employment outlook within the State of California, providing an employment pathway to a livable wage. Each of the CTE programs is also aligned to industry recognized certification.

- **General Education Development (GED).** The General Education Development (GED) program is offered to inmates/students who possess neither a high school diploma nor a high school equivalency certificate. Inmates/students receive instruction in language arts, mathematical reasoning, science, and social studies. To achieve the GED certificate, inmates/students must achieve a minimum score of 150 in each section and a total score of 600. Inmates/students must meet test requirements based upon their Tests of Adult Basic Education (TABE) results.

In January 2015, all CDCR institutions began delivering the GED 2014 test. Currently that test is computer-based. Due to custody constraints, some inmates may be allowed to take a paper and pencil version, on a case-by-case determination. The GED 2014 test is taken on a computer which delivers test data directly to the scoring site. The test is scored and results are returned immediately. A passing score on the GED 2014 test ensures that an adult's high school equivalency credential signifies he or she has the skills and knowledge necessary to take the next critical steps, whether entering the job market or obtaining additional education.

Inmates/students are placed into the GED program after completing Adult Basic Education (ABE) III or achieving the required TABE score and do not possess a high school diploma or a high school equivalency certificate. Inmates/students who are accepted into the GED program are provided educational support in completing the specific subject matter that will allow them to successfully pass the GED 2014 exam.

- **High School Diploma (HD) Program.** To be eligible for the HD program, designated Office of Correctional Education (OCE) staff review high school transcript information from the last high school the inmate/student attended. Based upon an analysis of the transcript, the inmate/student receives instruction in the areas needed for graduation.

Areas of high school instruction include life science, economics, U.S. history, U.S. government, English, and math. After completing instruction and successfully passing each required course and

exit examination, inmates/students may receive a high school diploma. For placement purposes, inmates/students need to be able to function at a high school grade level (9-12).

Inmates/students accepted into the HD program are provided support in completing targeted subject matter that will allow them to fulfill their graduation requirements.

- ***Voluntary Education Program (VEP)***. The purpose of the VEP is to offer inmates access to educational programming when an educational assignment is not available and/or to supplement traditional educational programming with opportunities for improvement in literacy and academic skills. Inmates are not assigned, but rather enrolled, and have no assigned hourly attendance requirements. The program is open entry/open exit.

The VEP includes literacy, adult secondary education, and/or college services. It offers participants the opportunity to continue progressing toward academic advancement and the attainment of a General Educational Development (GED) certificate, high school diploma, or college degree.

The program is designed to provide inmates/students support, as needed, in order for them to be able to succeed in their academic program. This support may begin at the very basic level for some inmates/students and may last throughout their academic program, while other inmates/students may enroll in VEP for assistance in a college course and only use the program for a very short time.

- ***Voluntary Education Program (VEP) – College***. Access to college courses is available to inmates/students through the VEP. Senate Bill 1391 (discussed below) will have significant impact on incarcerated students, allowing colleges to offer classes inside prisons. Currently CDCR works with 27 different college institutions, teaching close to 7,000 inmates. This bill will allow California Department of Corrections and Rehabilitation’s Office of Correctional Education (OCE) to expand college programs.

OCE is currently working with the leaders of our existing college partners to create a list of minimum standards, as well as proper training for new colleges. Training will include topics as follows: safety/security, working with custody, the criminal personality, academic rigor, and providing degrees with transferable credits.

Inmates/students who participate in college courses through VEP receive academic support as needed. This support includes teacher-assisted tutoring, peer tutoring at some institutions, test-proctoring, and limited access to used textbooks in some institutions. Inmate/student progress is monitored, and course completions are verified and reported. Inmates may earn milestone credits for college course participation.

- ***Library Services***. Law and recreational Library Services are offered at all institutions, providing inmates with an extensive collection of recreational fiction and non-fiction books, as well as reference reading materials; e.g. selected periodicals, encyclopedias, selected Career Technical Education and college level textbooks, and basic literacy materials recommended by the American Library Association and the American Correctional Association. Additionally, the legal research materials in all of the libraries are offered in digital format and provide meaningful access to the

courts in accord with all current court requirements. The libraries also offer materials to support inmate rehabilitation, and include resources on employment, community reentry, and life skills.

- ***Institutional Television Services (ITVS)***. Television programming is provided to inmates at all CDCR institutions. Each institution has a television specialist and television communication center that produces, schedules, and delivers a mixture of television network programming, movies, and a compliment of rehabilitation television programs. ITVS interactive television programming also supports a variety of educational programming from basic literacy to GED preparation courses, as well as pre-recorded college courses.

Infrastructure improvement through Internet Protocol Television Integration (IPTV) is underway. It will provide central streaming, centralized programming content, improved delivery of content, create the ability to add channel capacity, provide television transmissions to all institutions, increase the number of areas served in the institutions, update the technology and improve the reliability of Institutional Programming.

- ***Recreation***. The Recreation Program offers various activities for the inmate population. Activities include intramural leagues and tournaments in both team and individual sports, board games, courses on personal fitness, and a selection of institutional movies.

Approximately 45,000 inmates participate in recreation-sponsored tournaments and activities on a monthly basis.

The department notes that, in order to continue improving education in prison, additional issues need to be addressed such as providing individually tailored education programming, reducing interruptions in learning due to movement between facilities, and improving offenders' familiarity with computer technology.

Retention and Recruitment of Teachers and Librarians. CDCR has been successful over the last two years in hiring approximately 160 additional academic teachers to expand CDCR's educational services in prison. However, in several key areas, CDCR continues to struggle with filling vacant teaching and librarian positions. Based on recent data provided by the department, as of January, CDCR had a vacancy rate of 33.3 percent for science teachers, 28.2 percent for math teachers, and 24.1 percent for librarians. In addition, unlike public school systems that can access a pool of substitute teachers to fill interim vacancies or teach during the absence of a permanent teacher, prisons generally cannot hold classes or provide access to the libraries unless the teacher or librarian is present. Therefore, having a successful strategy for recruiting and retaining skilled educators who are willing to work in a prison setting is critical to meeting the educational needs of inmates.

SB 1391 (Hancock) Chapter 695, Statutes of 2014. College-level academics have been shown to have positive impacts on recidivism and improve offender reentry. However, until the passage of SB 1391, state law prevented community colleges from receiving payment for any courses not available to the general public, including for incarcerated individuals. Specifically, SB 1391 allowed community colleges to receive payment for courses offered in prisons. After its passage, CDCR entered into an agreement with the California Community College Chancellor's Office to develop four pilot programs to provide inmate access to community college courses that lead to either careers or transfer to a four-year university.

The pilot districts of Antelope Valley, Chaffey, Los Rios, and Lassen were awarded \$2 million to develop their inmate education programs with an emphasis on face-to-face instruction. Classes in these pilot districts began in late January 2016, and will each serve 21 to 30 inmates per semester. Business and business entrepreneurship programs will be offered at Lancaster State Prison, California Institution for Women, Folsom's Women's Facility, and High Desert State Prison.

In addition to the pilot colleges, the change in state law made it easier for other local colleges to offer courses for inmates. Currently, 14 community colleges offer inmate courses to approximately 7,500 inmates throughout the state. These programs, including distance learning, offer inmates a variety of programs including general education, humanities, psychology, and business.

To further expand course offerings to inmates throughout the state, the California Community College Chancellor's Office hosted an Inmate and Reentry Education Summit in December 2015 in Northern California. Over 245 participants from non-profit organizations, community colleges and the California Department of Corrections and Rehabilitation attended the event. The Chancellor's Office reports that 10 to 12 additional colleges are interested in creating inmate education programs. The summit provided interested colleges with inmate education program best practices and planning information. Additionally, the summit included information to improve college services for recently released individuals on their campuses. The Chancellor's Office plans to host another summit in Southern California this spring.

To help provide access to these new community college programs, the budget includes \$480,000 for custody staff to oversee evening college courses offered in prisons, similar to the security provided in other educational and career technical education programs. This augmentation will improve the safety of inmates and volunteer professors that provide instruction for in-prison college courses.

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

1. Did the shift from written to computerized GED testing result in a reduction in the number of inmates obtaining their certificates? If so, how does the department intend to better prepare students to take a computerized test?
2. Please provide information on any department efforts to recruit and retain teachers and librarians.
3. As the department expands inmate's access to college courses, have you considered any strategies for expanding staff's, especially correctional staff's, access to college courses and degree or certificate programs?

Issue 3: Innovative Programming Grants Update

Governor's Budget. The budget does not contain any funding to continue the innovative programming grants.

Background. In 2014, the Legislature created the innovative programming grants program using the Recidivism Reduction Fund. The program was designed to provide volunteer programming that focuses on offender responsibility and restorative justice principles at underserved, remote prisons. In addition, the program required that the funding be provided to not-for-profit organizations wishing to expand programs that they are currently providing in other California state prisons. Finally, the program required that priority be given to level IV institutions.

Over the last two years, CDCR has awarded approximately \$5.5 million in innovative programming grants to non-profit organizations or individuals to increase the volunteer base at underserved institutions. This funding included \$2.5 million in grants funded from fiscal year 2014-15, and an additional \$3 million awarded in fiscal year 2015-16.

During the last two years, over 80 grants of varying sizes have been provided to non-profit organizations providing volunteer program's in the state prisons. Through these grants, innovative programming has been significantly expanded at 17 underserved institutions. Among the institutions that have benefited from these programs are Pelican Bay State Prison, High Desert State Prison, Chuckawalla Valley State Prison, and Ironwood State Prison, which are among the state's most geographically-remote institutions.

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

1. Given the Administration's finding that the innovative grants have successfully expanding programming to underserved prisons, why didn't the budget include funding to continue the program?
2. Every prison has a community resource manager (CRM) who serves as a liaison with the community and plans and directs major programs. As part of their role, they facilitate volunteer programs within the prisons, including those organizations that receive innovative programming grants. Concern has been raised that, at some institutions, the CRMs have either not been supportive of the innovative programs or have been unable to assist with their implementation due to other priorities. How does the department ensure that the grant recipients are adequately supported in their efforts to expand their programs to institutions that have not traditionally worked with outside, volunteer organizations? Was any training or guidance specifically provided to the CRMs to help them understand their role in facilitating the programs?

Issue 4: Expansion of Programs and Services for Lifer Population

Governor's Budget. The budget proposes an increase of \$10.5 million General Fund for the expansion of several programs for life-term and long-term offenders. The budget proposes using the funds toward increasing services, as follows:

- \$3.1 million for 136 additional beds in Parolee Service Center Program.
- \$3.4 million to expand the In-Prison Longer-Term Offender Program to level III and IV facilities, increasing the number of program slots by 1,700.
- \$3.1 million to expand the Pre-Employment Transitions Program to all prisons. In addition, the Governor proposes discontinuing the use of contractors for the program and instead hiring teachers. The program will serve approximately 23,000 inmates per year.
- \$423,000 to expand the Offender Mentor Certification Program which trains long-term and life-term inmates to become drug and alcohol counseling mentors. Once the mentors obtain 4,000 hours of work experience in treatment programs, they will be eligible to obtain a substance abuse counselor certification. This expansion will train an additional 64 inmates annually.
- \$480,000 for increased custody staff to oversee evening college courses offered in prisons.

Background. Long-term offenders are individuals who have been sentenced to a life term in prison with the possibility of parole, with the Board of Parole Hearings (BPH) making the determination whether parole is ultimately granted. In part due to significant changes in state law regarding inmates serving life sentences who are now eligible for parole, there has been an increase in the rate at which BPH grants parole in recent years, the number of long-term offenders granted parole increased from 541 in 2009 to 902 in 2014.

SB 260 and SB 261. As required by SB 260 (Hancock) Chapter 312, Statutes of 2013, the Board of Parole Hearings implemented the Youth Offender Parole Program, which provides youth offender parole hearings for specified offenders who were convicted of a crime prior to their 18th birthday and sentenced to state prison. This program was further expanded by SB 261 (Hancock) Chapter 471, Statutes of 2015, by increasing eligibility to those convicted of a crime committed before the age of 23. An inmate is eligible for a youth offender parole hearing during the 15th year of their sentence if they received a determinate sentence; 20th year if their controlling offense was less than 25 years to life; and during the 25th year if their controlling offense was 25 years to life. Inmates who were immediately eligible for a youth offender hearing when SB 260 took effect on January 1, 2014, were required to have their hearing by July 1, 2015. Those with an indeterminate sentence who were immediately eligible for a youth offender parole hearing on January 1, 2016, as a result of SB 261, are required to have their hearing completed by January 1, 2018. Determinately-sentenced offenders immediately eligible as a result of SB 261 are required to have their hearing before December 31, 2021.

Elderly Parole. The three-judge court order established the elderly parole program which allows inmates who are age 60 or older and who have served 25 years of continuous incarceration to be

considered for parole at a parole suitability hearing. Offenders who are eligible for elderly parole are eligible for parole consideration regardless of whether they are serving an indeterminate or determinate sentence. The number of inmates who will be eligible for a hearing under the elderly parole program will increase significantly over the next ten years.

In 2015, BPH scheduled 5,300 hearings, 959 of which were for youthful offenders and 1,012 were for inmates eligible for elderly parole. Offenders sentenced to life without the possibility of parole or condemned inmates are not eligible to apply for youthful offender or elderly parole.

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

According to the Governor's budget, it is estimated that approximately 2,800 inmates will be eligible for resentencing under Proposition 36. The most recent Three-Judge Panel status report on the reduction of the prison population shows that as of December 23, 2015, 2,168 of those eligible have been resentenced and released from prison.

SB 230 (Hancock) Chapter 470, Statutes of 2015. On October 3, 2015, the state also enacted SB 230, which requires that once a person is found suitable for parole he or she be released, rather than being given a future parole date. Prior to the passage of SB 230, a person could be found suitable for parole by BPH and still not be released for years because of the various enhancements that have been added to the person's term.

Rehabilitation for Long-Term Offenders. All of the recent changes discussed above have provided inmates serving life sentences, who previously may not have had an opportunity to leave prison, with an opportunity to leave and return to their communities, if BPH determines that it is safe for them to do so. According to the department, due to the nature of their commitment offenses, long-term offenders spend a significant amount of time in prison and thus may have challenges adjusting to life outside of prison. In order to alleviate these challenges, CDCR has established rehabilitative programs that specifically target long-term offenders:

Long-Term Offender Program (LTOP). The LTOP provides rehabilitative programming (such as substance use disorder treatment, anger management, and employment readiness) on a voluntary basis to long-term offenders at three state prisons—Central California Women's Facility in Chowchilla, California Men's Colony in San Luis Obispo, and California State Prison, Solano.

Offender Mentorship Certification Program (OMCP). The OMCP trains long-term offenders as substance use disorder counselors while they are incarcerated. Upon graduation from the training program, participants are employed by CDCR to deliver counseling services to their fellow inmates. There are currently two sessions offered annually, allowing up to 64 offenders to be certified as mentors each year.

In addition, CDCR offers various other rehabilitative programs that are generally available to inmates and parolees, including long-term offenders. However, those programs are not necessarily widely available to all inmates at all prisons and may have long waiting lists, at those prisons where they are offered.

Legislative Analyst's Office (LAO).

Approve Proposed Expansion of Programming for Higher-Risk Offenders. The LAO recommends that the Legislature approve the portion of the proposal—totaling \$4 million—that would expand rehabilitative programming opportunities for higher-risk offenders that are consistent with programs shown to be cost-effective methods for reducing recidivism. Specifically, the LAO recommends providing the requested funding to support (1) the expansion of the OMCP, (2) the expansion and modification of the Transitions Program, and (3) custody overtime needed to operate community college programs.

Reject Remainder of Proposal. The LAO recommends that the Legislature reject the remainder of the Governor's proposal to expand programs for long-term offenders. While they acknowledge that these programs may provide some benefit to long-term offenders, research suggests that the department could achieve greater benefits to public safety by instead targeting higher-risk offenders. To the extent that the Legislature is interested in further expanding rehabilitative programming, the LAO recommends that it direct the department to come back with a proposal that targets higher-risk offenders and reduces the number of such offenders who are released from prison without receiving any programming targeted toward their identified needs.

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

1. The LAO has noted that as high as 40 percent of high-risk offenders are being released without being provided any rehabilitative programming. Do you agree with that estimate? In addition, please provide the committee with the department's plan for expanding the availability of programming to include the majority of, if not all, high-risk offenders to ensure that they are adequately prepared to leave prison and return to their communities?
2. Given the studies that show that maintaining strong family relationships help to significantly reduce the likelihood of an individual returning to jail or prison once they are released, has the department considered revising its family visit policy to allow inmates serving longer terms or life terms to receive extended family visits as a way of helping them prepare for their return to their families and communities upon their release?
3. Given the demonstrated success of restorative justice programs in reducing recidivism, especially for those inmates serving long terms, has the department considered contracting with non-profit organizations currently providing those programs as volunteers to allow them to expand to become a formal part of your long-term offender programming?

Subcommittee Action: Held open.

Issue 5: Enhanced Drug and Contraband Interdiction

Governor’s Budget. The budget proposes \$7.9 million General Fund to continue the existing 11 institution pilot program and expand the enhanced efforts at three intensive institutions.

The Governor’s budget for 2016–17 requests \$7.9 million in one–time funding from the General Fund and 51 positions to extend the enhanced drug interdiction pilot program for an additional year, as well as expand the level of services provided through the pilot program. According to CDCR, the continuation of the existing pilot program for one more year would allow the department to collect additional data to analyze its effectiveness. In addition, CDCR intends to expand certain interdiction efforts to (1) increase the frequency of random screening of staff and visitors at intensive interdiction prisons and (2) lease three additional full body X–ray machines to screen visitors. The department states that these additional resources are necessary to assess the efficacy of increased screening.

The department has indicated that it intends to issue a preliminary evaluation report on the pilot program but has not provided an estimate of when that report will be released. In addition, the department intends to issue a final evaluation report in the spring of 2017.

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

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

The Legislature provided CDCR with \$5.2 million (General Fund) in both 2014–15 and 2015–16 to implement a two–year pilot program intended to reduce the amount of drugs and contraband in state prisons. Of this amount, \$750,000 annually was used for random drug testing of 10 percent of inmates per month at all 34 state prisons and the California City prison, which are all operated by CDCR. In addition, CDCR had redirected resources in 2013–14 to begin random drug testing 10 percent of the inmate population each month beginning January 2014. The remaining amount was used to implement enhanced interdiction strategies at 11 institutions, with eight prisons receiving a “moderate” level of interdiction and three prisons receiving an “intensive” level.

According to CDCR, each of the moderate institutions received the following: (1) at least two (and in some cases three) canine drug detection teams; (2) two ion scanners to detect drugs possessed by inmates, staff, or visitors; (3) X–ray machines for scanning inmate mail, packages, and property as well as the property of staff and visitors entering the prison; and (4) one drug interdiction officer. In addition to the above resources, each of the intensive institutions received: (1) one additional canine team, (2) one additional ion scanner, (3) one full body scanner at each entrance and one full body X–ray scanner for inmates, and (4) video cameras to surveil inmate visiting rooms. In 2015, the

Legislature passed legislation requiring the department to evaluate the pilot drug testing and interdiction program within two years of its implementation.

Legislative Analyst's Office (LAO).

Approve Temporary Extension of Drug Testing. The LAO recommends that the Legislature approve the portion of this request—\$750,000 from the General Fund—associated with continuing the random drug testing for one additional year. The drug testing program appears to have increased the rate at which CDCR is identifying inmates who use illegal drugs. In addition, the collection of additional drug test results should help the department to assess whether the removal of drug interdiction resources, as recommended below, affects the rate of drug use in prisons. Based on the result of the department's final evaluation, the Legislature could determine whether to permanently extend the drug testing program.

Reject Remainder of Proposal to Extend Drug Interdiction Pilot Program. The LAO recommends that the Legislature reject the remainder of the Governor's proposal to extend and expand the drug interdiction pilot program. Extending the program now would be premature given that (1) preliminary data suggest that it is not achieving its intended outcomes and (2) CDCR has not yet fully evaluated its effectiveness. The LAO also recommends that the Legislature direct the department to accelerate its timeline for evaluating the program so that it is completed in time to inform legislative deliberations on the 2017–18 budget, such as whether any of the interdiction strategies should be permanently adopted.

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

1. Please provide the most recent data on how much contraband has been seized specifically as a result of the pilot and who was found with the contraband (i.e. visitors, staff, inmates).
2. In exchange for approving the enhanced drug interdiction pilot, including increased drug testing, the Administration assured the Legislature that those individuals testing positive for illegal substances would receive treatment, rather than punishment. Given the very limited availability of treatment, have you been able to keep that agreement?
3. Please provide updated data on the number of inmates testing positive for illegal substances, how many received treatment, and how many received a rules violation.

Subcommittee Action: Adopted the LAO recommendation to fund on-going drug testing and reject the remainder of the request to extend the pilot project for an additional year.

Vote: 2 – 0 (Anderson: absent)

Issue 6: Substance Use Disorder Treatment Expansion

Governor's Budget. The budget proposes \$15.2 million General Fund and 51.6 additional positions to continue the expansion of substance abuse treatment programs to the 11 remaining adult institutions. Of the requested positions, 15.6 are correctional officers, 11 are parole services associates, 11 are correctional counselor III positions, and 11 are office technicians.

In addition, the budget includes \$70 million General Fund in the current year and \$68 million General Fund in 2016-17 for funding substance use disorder treatment for parolees through the Specialized Treatment for Optimized Programming (STOP) program.

Background. Providing offenders with access to substance use disorder treatment has a meaningful impact on reducing recidivism, and is a critical aspect of an inmate's rehabilitation. Without addressing this need, all other aspects of the inmate's rehabilitation are impacted. According to the 2014 Outcome Evaluation Report by CDCR's Office of Research, offenders who were assigned to an in-prison substance use disorder treatment and completed treatment while in the community had a recidivism rate of 20.9 percent compared to 55.6 percent for those who did not receive any substance use disorder treatment. The department currently offers evidence-based substance use disorder treatment programs for inmates as part of their reentry programming. Currently, treatment is offered in the 13 reentry hubs, four in-state contract facilities, the California City Correctional Facility and in 10 non-reentry institutions. The treatment programs are generally 150 days in length.

CDCR Automated Risk and Needs Assessment Tool data demonstrates that approximately 70 percent of the inmate population has a moderate to high criminogenic need for substance use disorder treatment. There are currently approximately 117,000 inmates in the state's institutions. Based on CDCR's data, over 80,000 of them need some level of treatment. Currently, CDCR provides some level of treatment at 23 prisons (the 13 reentry hubs and 10 additional prisons), generally at the end of an inmate's term. Despite the significant need and the proven value of treatment in reducing recidivism, CDCR currently only has the capacity to treat less than 2,500 inmates per year. The proposed expansion will result in a total capacity of 3,168 treatment slots.

Office of the Inspector General. According to the Inspector General's *California Rehabilitation Oversight Board Annual Report* from September 2015, as of June 30, 2015, the capacity for substance abuse treatment (SAT) programming is 3,036, not including 88 enhanced outpatient program slots. This is an increase of 1,218 from June 30, 2014, where the SAT capacity was 1,818. Although the department's contracted capacity is 3,036, the department reports it currently has an operational capacity of 1,374 programming slots with an annual capacity of 2,748. The department reports that the difference in contracted capacity and operational capacity is due to space limitations pending the arrival of program modular buildings, construction, and space repurposing to accommodate the contracted capacity.

Specialized Treatment for Optimized Programming (STOP). STOP contractors provide comprehensive, evidence-based programming and services to parolees during their transition into the community. Priority is given to parolees who are within their first year of release and who have demonstrated a moderate to high risk to reoffend, as identified by the California Static Risk Assessment (CSRA), and have a medium to high need, as identified by the Correctional Offender

Management Profiling for Alternative Sanctions (COMPAS) reentry assessment tool. STOP services include (but are not limited to):

- Substance Use Disorder Treatment
- Detoxification Services
- Preventive and Primary Health Care Services
- General Health Education Services
- Motivational Incentives
- Anger Management
- Criminal Thinking
- Life Skills Programs
- Community and Family Reunification Services
- Employment and Educational Services
- and Referrals
- Individual, Family and Group Counseling
- Sober Living Housing
- Faith-Based Services

Medication-Assisted Substance Use Disorder Treatment. Generally, CDCR does not provide medication-assisted treatment in their institutions. Medication-assisted treatment (MAT), including opioid treatment programs (OTPs), combines behavioral therapy and medications to treat substance use disorders. Generally, MAT includes the use of buprenorphine, methadone, naltrexone and naloxone (for opioid overdose). According to a report from the federal Substance Abuse and Mental Health Services Administration (SAMHSA):

Medication-assisted treatment is treatment for addiction that includes the use of medication along with counseling and other support. Treatment that includes medication is often the best choice for opioid addiction. If a person is addicted, medication allows him or her to regain a normal state of mind, free of drug-induced highs and lows. It frees the person from thinking all the time about the drug. It can reduce problems of withdrawal and craving. These changes can give the person the chance to focus on the lifestyle changes that lead back to healthy living.

Taking medication for opioid addiction is like taking medication to control heart disease or diabetes. It is NOT the same as substituting one addictive drug for another. Used properly, the medication does NOT create a new addiction. It helps people manage their addiction so that the benefits of recovery can be maintained. There are three main choices for medication.

The most common medications used in treatment of opioid addiction are methadone and buprenorphine. Sometimes another medication, called naltrexone, is used. Cost varies for the different medications. This may need to be taken into account when considering treatment options. Methadone and buprenorphine trick the brain into thinking it is still getting the problem opioid. The person taking the medication feels normal, not high, and withdrawal does not occur. Methadone and buprenorphine also reduce cravings. Naltrexone helps overcome addiction in a different way. It blocks the effect of opioid drugs. This takes away the feeling of getting high if the problem drug is used again. This feature makes naltrexone a good choice to

prevent relapse (falling back into problem drug use). All of these medications have the same positive effect: they reduce problem addiction behavior.⁵

Since December 2014, naltrexone has been made available in California through an expedited process to all alcohol or opioid dependent patients who are Medi-Cal beneficiaries with a felony or misdemeanor charge or conviction who are under supervision by the county or state. In 2015, San Mateo provided \$2 million in funding to create naltrexone programs in emergency rooms and clinics.

Other States' Medication Assisted Treatment Programs. Several states have begun expanding their in-prison treatment to provide medication-assisted treatment when appropriate. For example, in 2015 Pennsylvania expanded their treatment to include naltrexone as part of their reentry program at eight of their correctional institutions for inmates with opioid and alcohol dependence. The state of Colorado provides comprehensive treatment, including naltrexone, to parolees. Finally, Massachusetts has implemented a statewide prison reentry program that includes the use of naltrexone for people with alcohol and opioid dependence. Kentucky, as well, provides naltrexone to treat opioid dependence. In addition to those states, Florida, Illinois, Indiana, Maryland, Missouri, New Jersey, Ohio, Tennessee, Utah, West Virginia, and Wisconsin have all begun using a medication assisted treatment model for individuals involved in the criminal justice system as a way of treating opioid dependence.

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

1. Under what circumstances, if any, does CDCR use medication-assisted treatment? If none, why not?
2. Given the large number of inmates needing treatment, why is the Administration only proposing 3,000 additional treatment slots?
3. Providers for the STOP program recently submitted a letter stating that they believe the program has a funding shortfall of over \$8 million in the current year and that the problem will increase to over \$13 million in 2016-17. Has the Administration reviewed their claims and do you agree that there is a shortfall? If not, please explain why not. If you agree that the caseload projections have resulted in a funding shortfall, what is the Administration's plan for providing adequate funding for parolees in need of substance use disorder treatment?

Subcommittee Action: Held open.

⁵ United State Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, *Medication Assisted Treatment for Opioid Addiction: Facts for Families and Friends*, 2011.

SUBCOMMITTEE NO. 4 and 5

**Senator Loni Hancock
Senator Joel Anderson
Senator Jim Beall**



**Senator Richard D. Roth,
Senator Steven M. Glazer
Senator Janet Nguyen
Senator Richard Pan**

**Thursday, April 21, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 2040**

Consultants: Samantha Lui and Julie Salley-Gray

PART A

INFORMATIONAL HEARING

“Programs for Victims of Crime”

I. Department Overview

- **Gina Buccieri-Harrington, Assistant Director, Grants Management, Office of Emergency Services**
- **Valinda Roberts, Administrative Deputy, California Victim Compensation and Government Claims Board**

II. Perspectives

- **Anita Lee, Legislative Analyst’s Office**
- **Christine Ward, Crime Victims Assistance Network Foundation**

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

California funds services to victims of crimes through 47 separate programs, administered by different entities, including: the Victim Compensation and Government Claims Board (VCGCB), the Governor's Office of Emergency Services (OES), the Department of Justice (DOJ), and the California Department of Corrections and Rehabilitation (CDCR). The purpose of the informational hearing is to present the various roles of the departments that, directly or indirectly, provide services to victims of crime; examine how departments can improve coordination; and assess whether outcomes are being appropriately measured or delivered in an intentional manner.

GOVERNOR'S BUDGET

Victim Compensation and Government Claims Board (VCGCB). The budget proposes \$125 million for VCGCB in 2016-17. Of that amount, \$111 million would be dedicated to victim compensation, \$89 million for direct services at the local level, and \$36 million for state administrative operations. The budget also assumes that \$2.9 million will be available from Proposition 47 for the expansion of trauma recovery centers. Similar to the 2015 proposed budget, the Governor's budget proposes shifting the Government Claims Program to the Department of General Services, effective July 1, 2016. This would result in a shift of nine positions and approximately \$1.2 million in funding to support the positions. This proposal will be discussed further in Part B of today's hearing.

Office of Emergency Services. The Governor's budget proposes \$8.3 million (\$1.3 million General Fund) for state operations costs associated with administering the victim services programs housed at OES, and proposes \$169 million for local assistance for victims services projects.

BACKGROUND

Office of Emergency Services

The Office of Emergency Services (OES) is the Governor's lead response agency during disasters and emergencies. In 2004-05, when the Office of Criminal Justice Planning (OCJP) was eliminated, OES absorbed many of the state's victim grant programs; despite, according to the LAO, OES not having expertise in these program areas at that time. The OES largely serves as a pass-through entity, and provides state and federal funding to the majority of the state's victim services grant programs.

How does OES distribute funds? In 2014-15, OES provided over \$105.8 million (\$21.5 million General Fund, \$65.7 federal funds, and \$18.7 special funds) to various victim programs.¹ According to OES, allocation amounts are based on "historical funding levels and historical reversion rates in determining funding ranges for specified programs. Individual project allocations are [based on] service area population, population and crime statistics, as well as recommendations of advisory groups." If funds for victim services are unused at the end of the

¹ Governor's Office of Emergency Services Grant Management, Criminal Justice and Victim Services Division, *Joint Legislative Budget Committee Report* (January 2015), <http://www.caloes.ca.gov/GrantsManagementSite/Documents/2015%20JLBC%20Report.pdf>

grant period, funds revert back to the state, or federal government for federal awards. It is unclear the amount of state or federal reversion that occurs.

Monitoring performance. The OES provides the Joint Legislative Budget Committee (JLBC) an annual report detailing statistical and funding data for its criminal justice and victim service grant activities. The report evaluates quantitative outputs, such as the number of services provided for sub-recipients, as opposed to qualitative outcomes that indicate if an activity has the intended impact to improve a victim's safety or emotional wellbeing. In addition, OES conducts programmatic site visits at least once every three years, as well as state and federal financial and compliance reviews. The OES also indicates it conducts audits "when deemed necessary," but no additional specificity was provided as to what circumstances would trigger an audit.

Funding requirements. Federal and state requirements often govern the use of funding for victim grant programs. However, these requirements are typically broad and provide the state a significant degree of flexibility in determining the number and type of victim programs the state administers. For example, federal funding sources specify minimum amounts to be spent on various types of programs, such as requiring that a minimum of 30 percent of federal Violence Against Women Act (VAWA) funds be spent on direct services to victims.

Federal funds conditions do not require the state to fund specific programs or a number of programs. For programs that receive state funds, OES has significant flexibility to determine allocation amounts because funding for these programs is generally appropriated in aggregate in the annual departmental budget, without allocated amounts for each program. Along with the discretion to determine funding levels for programs, OES also can establish new programs, and does so based on the recommendations of its advisory task forces.

Victim-Related Task Forces. The OES administers five victim-related task forces, which collect and disseminate information on victim needs and best practices for programs serving victims. These task forces can recommend the creation of new grant programs, or changes to existing programs, as well as recommend how to allocate funding associated with its various victim programs. The five task forces are:

- Domestic Violence Advisory Council.
- State Advisory Committee on Sexual Assault.
- Children's Justice Act Task Force.
- Child Abduction Task Force.
- Violence Against Women Act Implementation Committee.

Stakeholders. Representation on each task force is primarily based on statutory or funding requirements. According to OES, if representation is not dictated, OES consults with current stakeholders to select who will represent victim groups previously prioritized by OES. The stakeholder selection and identification process begins with a formal solicitation for members,

applicant scoring, and selection based on highest combined score. The OES director makes the final approval in the selection process.

Victim Witness Assistance Program. The OES administers the Victim Witness Assistance Program, which provides grants to 58 counties and the City of Los Angeles for victim witness assistance centers. These centers serve approximately 150,000 victims each year, and primarily focus on assisting victims through the justice system and accessing other victim programs through the help of a victim advocate. For example, advocates at the centers accompany victims to court and assist them in applying for compensation from the California Victim Compensation Program (CalVCP) within the VCGCB (discussed below). Assistance centers are located statewide, with 51 victim witness assistance centers based in district attorney's offices; three in county probation departments; three in community-based organizations; one in a county sheriff's department; and one in the Los Angeles City Attorney's Office. In 2013-14 and 2014-15, approximately \$10.8 million was provided to the program. For 2013-14, around 55,000 crisis intervention services were provided to victims of crime, and 144,600 new victims of crime were served.²

Various Other Victim Grant Programs. The OES administers 39 additional grant programs that fund local agencies and community-based organizations, such as rape crisis centers that provide counseling services, self-defense training, and staff who can accompany victims to hospitals or other appointments. Some programs also provide training and other assistance to law enforcement, first-responders, and community-based providers in developing effective approaches to assisting victims.

California Victims Compensation Government Claims Board

The VCGCB is a three-member board comprised of the Secretary of the Government Operations Agency, the State Controller, and a gubernatorial appointee. It administers four victim programs: the CalVCP, trauma recovery center (TRC) grants, the Good Samaritan Program, and the Missing Children Reward Program. The board also administers the Government Claims Program, which processes claims for money or damages against the state, and a program that pays claims to wrongfully imprisoned individuals.

The CalVCP, which is responsible for providing compensation to victims of crimes who have been injured, or face the threat of injury, is the largest of VCGCB's programs. CalVCP provides an array of services, including mental health and medical services, which a victim's insurance policy may not cover. The Restitution Fund is the primary source of funding for CalVCP, with the majority of this funds revenue stemming from restitution fines, diversion fees, and orders and penalties paid by criminal offenders. For example, when a defendant is found guilty of a crime, as part of the court's ruling, a defendant may be ordered by the court to pay a series of fines and penalties. The collected money is divided among several parties, in accordance with state law. Depending on the situation, the compensation can be provided directly to the victim, or to the provider of services. A portion of the money collected by defendants is deposited directly into

² Pursuant to the federal VOCA statistical requirements, the number of victims served and number of services are counted once, so figures may be underrepresented.

<http://www.caloes.ca.gov/GrantsManagementSite/Documents/VW%20done.pdf>

the Restitution Fund. Restitution Fund revenues are used as a match to draw down federal funds under federal Victims of Crime Act (VOCA) grant program. The CalVCP receives 60 cents in matching federal VOCA grant funding for each dollar spent to provide victims with services.

Application to VCGCB. Individuals can submit an application directly to VCGCB themselves, or with the assistance of others, such as private attorneys or victim advocates. Victim advocates are individuals who are trained to assist victims and work for locally-run victim witness assistance centers. Because applicants must submit additional information after the initial application, such as a copy of the crime report to verify eligibility for the program, an advocate typically assists in these subsequent steps.

Trauma Recovery Centers. The VCGCB also administers a grant program that funds trauma recovery centers (TRCs), which provided services such as: cooperation of victims with law enforcement; mental health treatments; community-based outreach; and referrals to other state and community services. There are currently six TRCs across the state. Currently, VCGCB provides a total of \$2 million (Restitution Fund) over the next two years in grants to three TRCs:

- **Children’s Nurturing Project (CNP)**, located in Fairfield, will receive \$426,341 in grant funds from CalVCP. It is partnering with LIFT3 Support Group to provide trauma-informed mental health treatment, case management, and community outreach.
- **Fathers and Families of San Joaquin**, a community-based organization (CBO) that has been serving at-risk populations and trauma victims since 2003, is receiving an award of \$716,932 to open the **Stockton Trauma Recovery Center (STRC)**. It is partnering with San Joaquin Behavioral Health Services to provide comprehensive mental health and recovery services to victims of crime.
- **Special Service for Groups (SSG)**, a community-based organization that serves south Los Angeles, will receive \$856,727 this year. The SSG TRC provides mental health services to underserved crime victims through a partnership with the Homeless Outreach Program Integrated Care System (HOPICS), local service providers, and the District Attorney’s Victim Assistance Center.

Any portion of funding not used within the specified grant period will revert to the Restitution Fund. Last year’s awardees, the Downtown Women’s Center in Los Angeles and California State University, Long Beach, will be receiving funding through the end of fiscal year 2015-2016.

The tables below reflect the various grants awarded and recipients during the last three TRC grant cycles.

| Fiscal Year | Agency | Amount Awarded | Contract Length | Contract Start | Contract End |
|-------------|--|----------------|-----------------|----------------|--------------|
| 2013-14 | CSU Long Beach TRC | \$534,579 | 12 Months | 4/7/2014 | 4/6/2015 |
| | Special Services for Groups (Los Angeles) | \$611,392 | 16 Months | 3/1/2014 | 6/30/2015 |
| | UC San Francisco | \$854,029 | 24 Months | 7/1/2014 | 6/30/2016 |
| | Total Awards | \$2,000,000 | | | |
| | | | | | |
| 2014-15 | CSU Long Beach TRC | \$1,330,403 | 24 Months | 4/7/2015 | 4/6/2017 |
| | Downtown Women's Center (City Los Angeles) | \$669,597 | 24 Months | 3/1/2015 | 2/28/2017 |
| | Total Awards | \$2,000,000 | | | |
| | | | | | |
| 2015-16 | Special Services for Groups (Los Angeles) | \$856,727 | 24 Months | 7/1/2015 | 6/30/2017 |
| | Stockton TRC | \$716,932 | 24 Months | 7/1/2015 | 6/30/2017 |
| | Solano County TRC (Fairfield) | \$426,341 | 24 Months | 7/1/2015 | 6/30/2017 |
| | Total Awards | \$2,000,000 | | | |

Beginning in 2016-17, funding for TRCs will increase as a result of Proposition 47 (November 2014). Proposition 47, which reduced the penalties for certain crimes and reduced the number of inmates in state prisons, will provide state savings (discussed below in "Issues to Consider." Under the measure, these savings will be deposited into a special fund with 10 percent of the funds provided to VCGCB for TRCs.

Other Programs for Victims

CDCR Programs. Although the majority of CDCR's workload relates to supervising offenders in state prison and on parole, the department also offers certain services to victims. For example, CDCR collects the criminal fines and fees owed by inmates in its facilities, such as: (1) restitution orders (payments owed directly to victims), and (2) restitution fines (paid into the Restitution Fund). Typically, when CDCR collects fines and fees owed by offenders, it transfers them out of inmate accounts (accounts, similar to bank accounts, maintained for inmates). When CDCR is collecting restitution orders for victims, the department transfers the funds from an inmate's account to VCGCB, who then provides the funds to the victim. In addition, when requested, CDCR will notify victims of certain changes in an inmate's status, such as if an inmate is eligible for parole, or escapes from prison. The CDCR also administers a program that provides a limited amount of funding to assist victims with the cost of travel if they choose to attend a parole hearing.

DOJ Programs. The department provides victim assistance in cases directly prosecuted by DOJ or when DOJ is seeking to uphold a conviction on appeal. These services are similar to those provided by victim witness assistance centers, and primarily involve assisting the victim through the justice system. DOJ notifies victims on the status of all cases that are appealed.

Where are we now?

2015-16 Context. Last year, the Administration proposed shifting the Government Claims Program to the Department of General Services (DGS), while keeping the administration of VCGCB's remaining programs, primarily victims programs, with the board. According to the Administration, the Government Claims Program is better aligned with the mission of DGS to provide services to departments statewide.

In response to, and during the consideration of the proposed reorganization, the Legislature adopted supplemental reporting language (SRL) as part of the 2015 Budget Act, with a report due to the Legislature on January 10, 2016. The SRL directed the Administration (VCGCB and OES) to outline a plan "to reorganize the administration of the state's victim programs to bring all of the state's victim programs under the same administering entity." The SRL required the report to "include a proposed timeline for the new administering agency to develop a comprehensive strategy for victim programs that, at a minimum: (a) evaluates and recommends changes to the number, scope, and priority of state victim programs, and (b) ensures that the state receives all eligible federal funds for victim programs."³

Report to the Legislature. On January 8, 2016, the Administration submitted a two page report that, aside from providing background on VCGCB and OES and their existing collaborative efforts (e.g., regional trainings, outreach materials), concludes: "[T]he Administration does not believe that a consolidation of victim programs is warranted at this time," noting that "existing programs are working together to ensure that victims are well-served and able to easily access the programs available to them."

Legislative Analyst's Office Comments and Recommendations

A March 2015 LAO report⁴ found significant weaknesses in the state's programs for victims, specifically: (1) programs lack coordination; (2) the state is possibly missing opportunities for federal VOCA grants; (3) many programs are small and appear duplicative; (4) narrowly targeted grant programs undermine prioritization; and (5) limiting advocates to victim witness assistance centers limits access to CalVCP. To address these weaknesses, the LAO recommended to, among other recommendations:

- **Restructure and Shift All Major Victim Programs to the Restructured VCGCB.** Shift all non-victim programs out of VCGCB to allow the board to focus solely on administering victim programs. In order to facilitate the restructured responsibilities of VCGCB, change the board's membership to add specific expertise in victim issues. The restructured board could administer all of the state's major victim programs. As such, shift all of the victim programs administered by OES to VCGCB.

³ The SRL can be accessed on page 32 of the document, <http://lao.ca.gov/reports/2015/supplemental/2015-16-supplemental-report.pdf>

⁴ *The 2015-16 Budget: Improving State Programs for Crime Victims*

- **Utilize Proposition 47 Funds to Improve Program Access.** Beginning in 2016–17, the state will begin providing additional grants to trauma recovery centers (TRCs), as required by Proposition 47 (approved by voters in 2014). Ensure these funds are used to improve access to victim services, such as expanding TRCs to additional regions of the state and allowing them to have victim advocates.

ISSUES TO CONSIDER

No Administration-Generated Plan for Reorganization. The SRL required the Administration provide the Legislature with a plan to reorganize the administration of victim programs under one entity, as well as a proposed timeline for that new entity to develop a comprehensive strategy for victim programs. However, the report the Administration provided failed to do so; instead it provided information about its existing practices and noted the, “Administration does not believe a consolidation is warranted.” The Administration attributed the shortcomings of the report to a lack of funding and staff resources.

What is the Legislature’s role to empower departments? In early conversations with the Administration, there appears a willingness to have thoughtful discussions about an impartial evaluation, which incorporates direct feedback from the community, is conducted in a manner that is respectful of departments’ and community-based organizations current expertise, and does not disrupt, or jeopardize, federal or state grants. The subcommittees may wish to: (1) re-submit an identical reporting requirement that outlines specific workgroup topics and deadlines and requires legislative staff participation; (2) require the LAO to write a follow-up report to its 2015 release; or, (3) empower the departments (OES, VCGCB, CDCR, and DOJ) to identify and fund an entity to assess the state’s victims services programs and provide recommendations.

Re-thinking Outcomes and Competitive Grants. When OCJP was eliminated in 2004-05, OES, with its expertise in federal grants management and despite some concerns that it may not be the “right home,” assumed responsibility for victims services program. Nearly twelve years later, the Legislature is considering how the state can better coordinate victim services in a manner that is client-centered. However, it appears some of the same issues that plagued the OCJP persist today. In 1998-99, the LAO recommended eliminating the OCJP’s Evaluation Branch because, although it had a \$2 million ongoing consulting contract to fund studies on whether measure can be developed to assess OCJP programs, “the branch has no plans to evaluate the effectiveness of the OCJP program.” Instead, OCJP reviewed agency compliance with grant requirements and regulation, similar to OES’ current quantitative compliance review. As such, the subcommittees may wish to consider working with OES to define metrics that are more qualitative and informative and can be provided back to the state in a streamlined manner. Further, the subcommittees may wish to consider whether the current competitive grant structure inadvertently encourages organizations, that serve similar populations of victims, to be less collaborative; and whether it is fair for organizations that are well-resourced to compete with smaller organizations.

Show Me the Money. On December 17, 2015, OES notified the Joint Legislative Budget Committee (JLBC) that it was awarded an additional \$233 million from the federal Victims of

Crime Act (VOCA) Formula Grant Program. The letter indicated that OES intended to allocate these funds to eight existing programs and eight new programs under the expenditure authority provided to OES in the 2015 Budget Act. The OES reportedly received notification of this influx of federal funds as early as 2014, yet the Legislature was not notified until December 2015.

When questioned by the JLBC regarding the budget authority that would allow the department to expend \$233 million in unanticipated federal funding without legislative approval, the department noted it has approximately \$1 billion in excess budget authority for the allocation of federal funding. However, this funding authority was included to allow for the receipt of federal funds related to disaster assistance, not for victims-related funding.

In light of OES's interpretation of budget authority and its grant award process, the subcommittees may wish to consider the following:

- Is it appropriate for the federal budget authority line item to include both disaster and victims-related service funding?
- How can the Legislature statutorily ensure that providers, local governments (cities, counties, etc.), legislative members, community organizations, and advocates are included in a transparent and public stakeholder process?

The subcommittees may wish to require OES, in its budget display, to split funding -- those intended, and allocated for, disaster-response and those related to victims services.

Mission-tasked. OES is primarily responsible for the state's readiness, response, and recovery from natural disasters and man-made emergencies. In response to California's wildfires, the department appropriately redirected staff and resources to the emergency. It appears potentially problematic for the state's victim services programs to be administered by the same entity whose mission requires the dispatching of personnel across the state in response to emergencies, possibly disrupting services for and diverting resources from victims of crime. The subcommittees may wish to ask the department how it ensures that victim services programs are uninterrupted during state emergencies.

Creating a Focused Entity to Assist Victims of Crimes. The LAO report and recommendations make clear the lack of collaboration among the various entities that serve to assist victims of crimes. As such, the subcommittees may wish to consider how it should restructure and broaden membership of the VCGCB to include representatives of victims services providers, the district attorneys, and trauma recovery centers; and whether creating a single entity within a more appropriate agency, such as the Health and Human Services Agency, which is accustomed to leading multiple different departments in providing federal and state benefits to vulnerable or at-risk populations, or a different division, may allow OES to focus its existing strengths in victims services.

Investment in Trauma Recovery Centers. Initial Department of Finance estimates suggest that the amount of savings due to Proposition 47 is much less than originally anticipated. Rather than the \$10 million to \$20 million range in new funding for TRCs suggested by the LAO, the budget includes less than \$3 million for TRC expansion. Penalties in a determinate sentencing system

like California's have been informed greatly by victim advocates. In addition, victim compensation has developed as an important response to crime, which is rooted in a growing awareness of the impact of crime on victims. The TRC model focuses on healing harm. Although some community-based advocates are concerned about expanding TRCs, arguing instead to enhance current programs, like victim witness, rape crisis centers, or domestic violence programs, the subcommittee may wish to consider how TRCs and organizations that service specific victims populations may be better equipped to work cohesively, so that one does not undermine the other.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, April 21, 2016
Upon Adjournment of Joint Hearing, Subcommittee No. 4 and No. 5
State Capitol - Room 113

Consultant: Anita Lee and Farra Bracht

PROPOSED FOR VOTE-ONLY

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Public Comment

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

PROPOSED VOTE-ONLY

7350 DEPARTMENT OF INDUSTRIAL RELATIONS

Issue 1: Enhanced Enforcement and Compliance (2015 Legislation)

The Department of Industrial Relations (DIR) requests 33.5 positions and \$5.970 million in fiscal year (FY) 2016-17, 28.5 positions and \$4.494 million in FY 2017-2018 and 22.5 positions and \$3.475 million on-going to assist DIR and its Division of Workers' Compensation (DWC) and Division of Labor Standards Enforcement (DLSE) in fulfilling the provisions of recently chaptered legislation.

Division of Workers' Compensation (DWC)

1. **AB 438** (Chiu), Chapter 515, Statutes of 2015, mandates DIR and DWC to make specified forms, notices, and fact sheets available In Chinese, Tagalog, Korean, and Vietnamese by January 1, 2018. The bill also requires the administrative director of DWC to make recommendations regarding any other documents that should be translated into languages other than English and requires the DIR and DWC to submit the recommendations and any translated documents to the Legislature. DIR requests one-time contract funds of \$175,000 FY 2016-17 to implement the requirements of the bill.
2. **AB 1124** (Perea), Chapter 525, Statutes of 2015, requires the administrative director of the Division of Workers' Compensation (DWC) to establish a drug formulary, on or before July 1, 2017, as part of the medical treatment utilization schedule, for medications prescribed in the workers' compensation system. The administrative director must meet and consult with stakeholders, as specified, prior to the adoption of the formulary. The legislation requires DIR to publish two interim reports on the DIR website regarding status of the creation of the formulary through implementation. Quarterly updates are required to allow for the provision of all appropriate medications, including medications new to the market. The administrative director is also to establish an independent pharmacy and therapeutics committee to review and consult with the administrative director in connection with updating the formulary, as specified.

DIR requests one industrial relations counsel III (specialist) position, one staff services manager I position, three associate governmental program analyst positions, and 0.5 staff services analyst (SSA) position for a total of 5.5 positions and an augmentation of \$1.6 million in 2016-17 and \$1.4 million ongoing to implement the requirements of the bill.

Division of Labor Standards Enforcement (DLSE)

1. **AB 219** (Daly), Chapter 739, Statutes of 2015, expands the definition of "public works" under the California Prevailing Wage Law to include "the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state." The amendments only apply to contracts awarded on or after July 1, 2016. DIR requests an augmentation of \$133,000 and one deputy labor commissioner I in FY 2016-17 and \$125,000 ongoing to implement the requirements of the bill.

-
2. **AB 621** (Roger Hernández), Chapter 741, Statutes of 2015, creates the Motor Carrier Amnesty Program. Port drayage companies, who misclassified employees as independent contractors, will be provided an opportunity to voluntarily come forward to participate in a limited amnesty program by entering into a settlement agreement with the labor commissioner. Under the terms of the settlement agreement, the motor carrier must agree to pay all wages and benefits owed to previously misclassified independent contractors, and all taxes owed to the state as a result of such misclassification. In addition, the company must agree to classify any present or future commercial drivers as employees. In exchange, a motor carrier that enters into such a settlement agreement will be relieved of liability for statutory or civil penalties based on previous misclassification of drivers.

DIR requests \$960,000 in 2016-17 to support five deputy labor commissioner I (DLC I) positions and 0.5 staff services analyst (SSA), with an augmentation of \$170,000 to support one DLC I and 0.5 SSA ongoing. These resources are necessary to implement the requirements of the bill.

3. **AB 970** (Nazarian), Chapter 783, Statutes of 2015, gives the labor commissioner statutory authority to cite for violations of local wage law as well as for failure to reimburse or indemnify employees for business expenses - enhancing the Labor Commissioner's ability to enforce wage and hour laws to the fullest extent for all California workers. The main cost driver of this bill is anticipated to be the section that gives the Labor Commissioner authority to issue citations for violations of Labor Code 2802, which provides that an employer shall indemnify their employees against losses incurred through the course of performing their job. DIR requests one deputy labor commissioner I (DLC I) position and an augmentation of \$127,000 in FY 2016-17, and \$119,000 ongoing, to support the Division of Labor Standards Enforcement (DLSE) efforts in the implementation of the bill.
4. **AB 1513** (Williams), Chapter 754, Statutes of 2015, deletes three obsolete study requirements for the worker' compensation system; clarifies and codifies the pay requirements for piece rate workers for nonproductive time and rest and recovery period time; and establishes a process through which employers, during a prescribed time period, can make back wage payments for rest and recovery periods and nonproductive time in exchange for relief from statutory penalties and other damages. DIR requests \$117,000 in FY 2016-17 for one associate governmental program analyst position to implement the requirements of the bill.
5. **SB 358** (Jackson), Chapter 546, Statutes of 2015, and **AB 1509** (Roger Hernández), Chapter 792, Statutes of 2015. SB 358 prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, except where the employer demonstrates certain conditions.

AB 1509 extends current employment retaliation protections to an employee who is a family member of a person who engaged in, or is perceived to have engaged in, legally protected conduct. This bill also exempts household goods carriers from the client employer and labor contractor liability provisions in law.

DIR requests one deputy labor commissioner I and an augmentation of \$132,000 in the first year and \$124,000 ongoing to implement the requirements of these bills.

6. **SB 588** (de León), Chapter 803, Statutes of 2015, allows the labor commissioner to file a lien or levy on an employer's property in order to assist the employee in collecting unpaid wages when there is a judgment against the employer. DIR requests 13.0 positions and an augmentation of \$1.9 million in FY 2016-17, 13.0 positions and \$1.8 million in 2017-18, and nine positions and \$1.1 million ongoing to support DLSE's efforts in the implementation of this bill. To accomplish this, DIR plans 1.5 deputy labor commissioner II, six deputy labor commissioner I, 1.5 office technician, three industrial relations counsel III position (two-year limited-term funding), and one legal secretary position (two-year limited-term).

Staff Recommendation: Approve as budgeted.

Vote:

7501 DEPARTMENT OF HUMAN RESOURCES**Issue 1: Information Security Staffing**

The Department of Human Resources (CalHR) requests one permanent position and \$154,000 (\$19,000 General Fund, \$11,000 Central Service Cost Recovery Fund, \$25,000 Deferred Compensation Plan Fund, \$99,000 Reimbursements) in FY 2016-17, and \$145,000 (\$17,000 General Fund, \$10,000 Central Service Cost Recovery Fund, \$24,000 Deferred Compensation Plan Fund, \$94,000 Reimbursements) in FY 2017-18 and ongoing, to address workload resulting from security assessments and the need to improve security practices in the department.

Background.

The Information Technology Division (ITD) within CalHR has the responsibility of providing information technology services for both CalHR and the State Personnel Board (SPB). ITD maintains web sites, applications and sensitive and confidential data sets that serve state departments, state employees, and the public.

The state runs a significant risk of liability if there were to be sensitive data loss and/or continues to have an inaccessible web presence. ITD handles sensitive data for all state employees. All departments, state employees, and the public interact with CalHR and SPB applications, data sets, and websites. If there were a data breach, the state would be responsible for notifying those affected by the breach.

ITD does not have a full-time Information Security Officer (ISO). As a result of security assessments, it has become evident that CalHR needs additional assistance in maintaining the proper and effective documentation, policies, procedures, or unbiased internal checks. CalHR handles several data sets that are considered sensitive. The workload for ensuring security compliance requires a dedicated ISO.

CalHR has a part-time ISO that is split between three different areas: 1) the department's lone quality assurance tester for all websites and software applications; 2) the department's privacy program manager (which is also recommended to be a dedicated position); and 3) serves as the department's ISO. If CalHR does not ensure the proper procedures, documentation and policies, it puts the sensitive data maintained by CalHR at risk. CalHR states that it needs to adhere to the state security standards, and notes that this cannot be accomplished with current resources.

According to CalHR, this request will allow the department to conduct biennial risk assessments, required by the State Administrative Manual, and certify risk and privacy program compliance on a yearly basis as required by the Statewide Information Management Manual.

Staff Recommendation: Approve as budgeted.

Vote:

Issue 2: Developmental Disability Internship Program (SB 644)

This proposal requests two permanent positions and \$164,000 (\$94,000 General Fund and \$70,000 Central Service Cost Recovery Fund) in FY 2016-17 and \$146,000 (\$83,000 General Fund and \$63,000 Central Service Cost Recovery Fund) ongoing.

Background. Senate Bill 644 (Hancock), Chapter 356, Statutes 2015 allows a person with a developmental disability to complete an internship (paid or unpaid) in lieu of the requirement to take and pass the Readiness Evaluation prior to being hired into state civil service. Upon successful completion of the internship the person would be eligible for appointment to the Job Examination Period. SB 644 requires the CalHR to create the internship program in coordination with the state departments of Developmental Services and Rehabilitation, and to refer the names of these eligible applicants to the appointing powers for examination appointments.

The requested resources will support the development and implementation of the new internship program, inclusive of internship tools and policy, as well as department implementation guidance and ongoing administrative support of Limited Examination and Appointment Program (LEAP) program operations.

Once the internship and readiness evaluation are established, CalHR anticipates operations must expand to address increased customer service requests by phone, email, and United States Postal Service mail, as well as document processing related to statewide coordination and oversight of LEAP internships. CalHR will develop a mechanism to support ongoing program usage by state agencies and job applicants with developmental disabilities.

Staff Recommendation: Approve as budgeted.

Vote:

Issue 3: Expansion of the Healthier U State Employee Wellness Program

This proposal requests \$100,000 in reimbursement authority for FY 2016-17 and \$250,000 in ongoing reimbursement authority beginning in FY 2017-18, to phase-in implementation and support of a wellness program service for all state employees.

Background. In 2012, the State Controller's Office, State Treasurer's Office, the California Public Employees' Retirement System (CalPERS), Service Employees International Union Local 1000 and CalHR partnered to create Healthier U, a model workplace wellness and injury prevention program. Due to budget constraints, funding from the California Endowment, California Wellness Foundation, California Health Care Foundation, Sierra Health Foundation, CalPERS, and Kaiser Permanente was obtained for the pilot. The pilot series included the Department of Public Health (DPH) and the Department of Health Care Services (DHCS) East End Complex and, because of the pilot's success, funders extended the two-year pilot to a third year.

In 2013, Healthier U piloted Thrive Across America, Kaiser Permanente's core intervention program with a goal of 20 percent participation at DPH and DHCS. Healthier U exceeded this goal with a 32 percent participation rate. In 2014-15, Healthier U piloted another wellness program Health Trails, that was addressed various health practices, including fruit and vegetable consumption, stress management, fitness, nutrition, and weight control. Kaiser provided funding for Health Trails annual license for online software that allowed participants to track their health practices, which ended June 2015. Healthier U partners plan to seek funding from Kaiser to sustain the wellness program service for CDPH and SHCS during 2016.

The 2015-16 May Revision provided CalHR with a position to expand the Healthier U program. The position allows CalHR to move forward to develop and release a Request for Proposal for a core wellness program accessible to all state employees.

The requested resources will be used to contract with a vendor, to develop and phase-in implementation of a core wellness program accessible to all state employees, including communication costs to train, promote and implement the program statewide.

Staff Recommendation: Approve as budgeted.

Vote:

7920 CALIFORNIA TEACHERS' RETIREMENT SYSTEM**Issue 1: Investment Portfolio Complexity**

California Teachers' Retirement System (CalSTRS) requests a permanent funding augmentation of \$2.6 million for 15 positions and travel costs for investment branch staff. Eleven of these positions would allow each unit in the investment branch to 1) increase the number of assets managed internally to reduce the cost of externally managing the portfolios; 2) mitigate risk through research in new investment strategies, sustainability, as well as environmental, social, and governance issues that arise; and 3) manage the increased complexity and size of the investment portfolio. The other four positions will provide financial services (two positions) and human resources support (two positions) for the increased staff and volume of work associated with the size and complexity of the investment portfolio. CalSTRS estimates that for each staff added to support the internal management of portfolios, it saves about \$1.2 million in external management fees.

Staff Recommendation: Approve as budgeted.

Vote:

ISSUES PROPOSED FOR DISCUSSION/VOTE

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

Overview. The Employment Development Department (EDD) connects employers with job seekers, administers the Unemployment Insurance, Disability Insurance, and Paid Family Leave programs, and provides employment and training programs under the federal Workforce Innovation and Opportunity Act. Additionally, EDD collects various employment payroll taxes including the personal income tax, and collects and provides comprehensive economic, occupational, and socio-demographic labor market information concerning California's workforce.

The department, with the assistance of the state Workforce Investment Board (WIB), also administers the federal Workforce Investment Opportunity Act (WIOA) program, which provides employment and training services. Local area WIBs partner with EDD's Job Services program to provide job matching and training services to job seekers. The chart below shows EDD's 2016-17 budget.

3-YR EXPENDITURES AND POSITIONS

| | Positions | | | Expenditures | | |
|---|----------------|----------------|----------------|---------------------|---------------------|---------------------|
| | 2014-15 | 2015-16 | 2016-17 | 2014-15* | 2015-16* | 2016-17* |
| 5900 Employment and Employment Related Services | 1,222.4 | 1,329.7 | 1,329.7 | \$162,307 | \$192,207 | \$188,770 |
| 5910 Tax Collections & Benefit Payments | 5,552.2 | - | - | 12,091,029 | - | - |
| 5915 California Unemployment Insurance Appeals Board | 477.1 | 474.3 | 450.3 | 79,627 | 75,408 | 72,508 |
| 5920 Unemployment Insurance Program | - | 2,785.1 | 2,749.9 | - | 6,504,130 | 6,334,482 |
| 5925 Disability Insurance Program | - | 1,299.7 | 1,299.7 | - | 6,139,876 | 6,496,828 |
| 5930 Tax Program | - | 1,564.8 | 1,517.0 | - | 207,640 | 194,092 |
| 5935 Employment Training Panel | 87.7 | 85.1 | 85.1 | 78,954 | 73,732 | 73,084 |
| 5940 Workforce Innovation and Opportunity Act | 137.5 | 144.2 | 144.2 | 392,083 | 401,884 | 397,699 |
| 5945 National Dislocated Worker Grants | 1.1 | 1.5 | 1.5 | 5,974 | 45,000 | 45,000 |
| 9900100 Administration | 583.9 | 701.0 | 701.0 | 81,279 | 86,495 | 86,495 |
| 9900200 Administration - Distributed | - | - | - | -77,218 | -86,095 | -86,095 |
| TOTALS, POSITIONS AND EXPENDITURES (All Programs) | 8,061.9 | 8,385.4 | 8,278.4 | \$12,814,035 | \$13,640,277 | \$13,802,863 |
| FUNDING | | | | 2014-15* | 2015-16* | 2016-17* |
| 0001 General Fund | | | | \$266,315 | \$194,483 | \$147,259 |
| 0184 Employment Development Department Benefit Audit Fund | | | | 11,963 | 40,525 | 51,295 |
| 0185 Employment Development Department Contingent Fund | | | | 119,841 | 140,277 | 152,155 |
| 0514 Employment Training Fund | | | | 83,466 | 76,688 | 76,285 |
| 0588 Unemployment Compensation Disability Fund | | | | 5,628,525 | 6,196,873 | 6,553,537 |
| 0869 Consolidated Work Program Fund | | | | 398,057 | 446,884 | 442,699 |
| 0870 Unemployment Administration Fund | | | | 574,430 | 571,260 | 536,035 |
| 0871 Unemployment Fund | | | | 5,610,015 | 5,860,907 | 5,742,322 |
| 0908 School Employees Fund | | | | 103,352 | 80,918 | 73,980 |
| 0995 Reimbursements | | | | 17,226 | 27,244 | 27,296 |
| 3259 Recidivism Reduction Fund | | | | 845 | 4,218 | - |
| TOTALS, EXPENDITURES, ALL FUNDS | | | | \$12,814,035 | \$13,640,277 | \$13,802,863 |

Issue 1: Unemployment Insurance Program Funding

Governor's Budget Proposal. EDD requests a reduction of \$33.9 million and 148.2 Personnel Equivalents (PE) in Unemployment Administration Fund authority for 2016-17 due to updated workload estimates, reduced federal carryforward, and reduced Electronic Benefit Payment (EBP) earnings. To offset the decrease in federal earnings, carryforward, and EBP revenue, the EDD requests an increase of \$10.4 million of Contingent Fund and \$10.4 million of Benefit Audit Fund (BAF) to continue to support the Unemployment Insurance Program. The additional funding will allow the EDD to meet its service targets for answering telephone calls, scheduling eligibility determination interviews, processing claims, and responding to online inquiries.

The Governor's budget proposes budget bill language to allow the department to adjust its state supplemental funding in both BAF and Contingent Fund (CF). This would allow EDD, upon notification to DOF and the Legislature, to make current year and budget year changes to its state supplemental funding.

Background

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

Over the past several years, the UI program has received multiple augmentations from state and special funds in order to address a structural funding deficit and to increase service levels. These augmentations have made it possible for EDD to continue to meet the service level targets which were identified as part of a 2014-15 Finance Letter. Specifically, these resources were used to increase the number of telephone calls answered and to reduce call demand by processing Internet and paper claims, Internet inquiries, and scheduling eligibility determination interviews more timely. The EDD was appropriated \$27.8 million of BAF and \$14.0 million of CF in the 2015 Budget Act to continue to maintain the level of service which began in 2013-14.

Funding and PE History
(Dollars in millions)

| | 2013-14 | 2014-15 | 2015-16 |
|--|--------------|--------------|--------------|
| Base Program Funding | | | |
| Federal Funds (Base/Above-Base) | 417.8 | 384.7 | 374.6 |
| Federal Carryover | 79.8 | 48.8 | 16.7 |
| Contingent Fund | | | 68.1 |
| Other Special Funds | 74.0 | 23.7 | 17.7 |
| BCP/Finance Letter/Revise Augmentations | | | |
| Federal Funds | 35.4 | 21.0 | |
| Contingent Fund | 29.7 | 64.0 | 14.0 |
| General Fund | | 24.9 | |
| Benefit Audit Fund | | | 27.8 |
| Grand Total Funding | 636.7 | 567.1 | 518.9 |
| Positions | | | |
| Actual PEs | 4,769.7 | 4,298.2 | |
| Estimated PE's | | | 3,984.0 |

Actual and Estimated UI Workload

| Fiscal Year | Initial Claims | Weeks Claimed | Non-Monetary Determinations | Appeals Closed |
|--------------------|----------------|---------------|-----------------------------|----------------|
| 2007-08 | 2,682,767 | 23,211,414 | 1,221,434 | 289,754 |
| 2008-09 | 5,082,849 | 48,585,669 | 1,384,178 | 333,415 |
| 2009-10 | 6,953,048 | 77,824,741 | 1,546,422 | 453,633 |
| 2010-11 | 6,899,259 | 69,629,674 | 1,343,179 | 468,804 |
| 2011-12 | 5,743,599 | 57,696,934 | 1,230,785 | 445,746 |
| 2012-13 | 4,807,433 | 44,905,472 | 1,306,238 | 415,203 |
| 2013-14 | 4,013,891 | 32,761,583 | 1,010,443 | 351,864 |
| 2014-15 | 2,706,390 | 21,627,694 | 848,335 | 266,187 |
| 2015-16 (forecast) | 2,595,031 | 21,496,680 | 832,650 | 250,320 |
| 2016-17 (forecast) | 2,486,000 | 20,620,160 | 809,750 | 237,030 |

Service Levels. The 2013-14, 2014-15, and 2015-16 augmentations have offset the program's underfunding at the federal level, resulting in increased service levels, and helping the EDD achieve the benchmarks set forth in each request. The federal underfunding is expected to continue, leaving the state to rely on ongoing alternate funding sources to maintain the gains in service that have been achieved to date.

This proposal will enable EDD to continue its efforts to provide acceptable levels of service to California's UI claimants. Additionally, this proposal establishes a baseline methodology to continue to address the federal underfunding issue annually, as well as continuing to maintain adequate service levels to California's UI population.

Baseline Methodology. The Governor proposes a single calculation that identifies the staffing needs of the UI program. The main difference between this methodology and the prior methodology is that the EDD leverages the existing model to fund specific workloads at 100 percent, as opposed to the 2012-13 service level of 85 percent. As illustrated below, this results in additional PE needs for those workloads which have been targeted in 2014-15 and 2015-16.

Maintaining the three service level workloads at 100 percent of the funded model eliminates the need for the Department to calculate an additional service level need, as had been the practice in 2014-15 and 2015-16. The additional service level calculation included in the 2015-16 Budget Act was 594 PEs.

PE Calculations Using New Method

| Workload Category | Workload Estimate | SFY 2014-15 MPUs | 2012-13 Service Levels (85%) | Current Service Levels (100%) | Variance |
|-----------------------------|-------------------|----------------------|------------------------------|-------------------------------|----------|
| Initial Claims | 2,486,000 | 34.420 | 720.0 | 847.1 | 127.1 |
| Weeks Claimed | 20,620,160 | 1.656 | 287.4 | 338.1 | 50.7 |
| Non-Monetary Determinations | 809,750 | 75.063 | 511.4 | 601.7 | 90.3 |
| | | Total PE Need | 1,518.8 | 1,786.9 | 268.1 |

Updated UI Workload Projections. There has been a decrease in UI program workload over the last 12 months. The following table compares May 2015 workload projections for 2015-16 to October 2015 projections for 2016-17:

Workload Comparisons

| Workload Category | 2015-16 May 2015 | 2016-17 October 2015 | Variance | Percentage Change |
|--------------------------------|---------------------|-------------------------|-----------|----------------------|
| Initial Claims | 2,723,000 | 2,486,000 | -237,000 | -8.7% |
| Weeks Claimed | 21,888,000 | 20,620,160 | 1,267,840 | -5.8% |
| Non-Monetary Determinations | 818,470 | 809,750 | -8,720 | -1.1% |
| Appeals | 253,150 | 237,030 | -16,120 | -6.4% |

As a result of the workload changes and the new methodology for service levels, there is a decreased need for staff when compared to the staffing level of 3,984.0 which was established for 2015-16. Utilizing the new methodology, a PE need of 3,835.8 has been identified at a cost of \$509.9 million for 2016-17. This equates to a reduction of 148.2 PEs and \$9.0 million in expenditures.

Funding Issues. The drop in workload results in a reduction of expenditures. The reduction in expenditures results in EDD and California Unemployment Insurance Appeals Board receiving less money from the federal government. The decrease in federal dollars is estimated to be a \$12.6 million reduction in the new base grant allocation and updated above base earnings for 2016-17. Additionally, EDD anticipates that by the end of 2015-16 all of the UI carryforward (\$16.7 million) will be exhausted, leaving no UI carryforward going into 2016-17. Lastly, the existing EBP contract will be ending on July 31, 2016. The EDD solicited bids from vendors for a new EBP contract starting in 2016-17. The selected vendor's revenue share figure is almost 80 percent less than the current contract. Once this contract goes into effect in 2016-17, it is estimated that EDD will lose approximately \$800,000 a month, equating to a reduction of \$9.6 million over the course of the year.

The EBP revenues are shared between the UI and Disability Insurance programs. The UI revenue is deposited back into the program in order to offset program expenses. The DI revenue share is deposited back into the Unemployment Compensation Disability Fund. It is estimated that the UI Program EBP revenue will be reduced by \$4.8 million annually due to the change in the contract.

Because of the various decreases in funding, and by capturing additional resources through Control Section and Employee Compensation adjustments, the EDD has identified a need of \$20.7 million in order to fill the current funding gap. Due to the availability of funding in both BAF and CF, the EDD is proposing to split the need between the two fund sources evenly. The following table illustrates the identified funding gap:

**Funding and Expenditure Changes
(Dollars in millions)**

| | 2015-16 | 2016-17 | Variance |
|--|----------------|----------------|-----------------|
| Program Funding | | | |
| Federal Funds (Base/Above-Base) | \$374.6 | \$362.1 | (\$12.5) |
| Federal Carryover | 16.7 | 0.0 | (16.7) |
| Contingent Fund | 82.1 | 85.0 | 2.9 |
| Other Special Funds | 45.5 | 42.0 | (3.5) |
| Grand Total Funding | \$518.9 | \$489.2 | (\$29.8) |
| Estimated Expenditures | \$518.9 | \$509.9 | (\$9.0) |
| Funding Gap (Funding less Expenditures) | | | (\$20.8) |

Budget Bill Language. In order for the EDD to address funding changes (increases or decreases) and maintain adequate levels of service, EDD is proposing budget language that would allow the department to adjust its state supplemental funding in both BAF and CF. This would allow EDD, upon notification to DOF and the Legislature, to make current year and budget year changes to its state supplemental funding. The proposed language is currently included in the budget act for the UA Fund, the Unemployment Compensation Disability Fund, and the Consolidated Work Program Fund.

If additional budget language is not included in the budget act, and if sequestration reductions are applied to FFY 2017 UI grants, UI Program services would be severely impacted and would need to absorb an estimated \$24.1 million reduction in federal resources.

Staff Recommendation: Approve as budgeted.

Vote:

Issue 2: Benefit Overpayment Collection Automation Resources – Spring Finance Letter

Spring Finance Letter. The Governor requests a one-time budget augmentation of \$1.6 million in SFY 2016-17 and a one-time augmentation of \$6.1 million in FY 2017-18. This finance letter also requests an ongoing appropriation of \$1.1 million beginning in FY 2018-19 for the support of the new Benefit Overpayment Collection System (BOCS) application. These requests will be used to fund contracts, hardware, software, ongoing support, and 12.3 new temporary PEs to replace the existing application used to collect UI and DI overpayments with an integrated and automated system.

The proposed solution will significantly reduce the risk of failure of the existing system by integrating the BOCS application into the Accounting and Compliance Enterprise System (ACES), which will also allow for a new revenue collection tool in the form of bank levies, which is estimated to bring in almost \$23 million in additional funds annually once fully implemented.

Background.

The California Unemployment Insurance Code authorizes EDD to recover UI and DI fraud and non-fraud benefit overpayments paid to claimants.

Resource History – Existing System Support of Benefit Overpayment Application

Dollars in thousands

| Program Budget | SFY 09/10 | SFY 10/11 | SFY 11/12 | SFY 12/13 | SFY 13/14 | SFY 14/15¹ |
|-----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------------------|
| Actual Expenditures | \$209 | \$210 | \$212 | \$219 | \$222 | \$231 |
| Revenues | \$ 138,355 | \$158,963 | \$183,040 | \$176,037 | \$176,644 | \$363,387 |
| Authorized Positions | 2 | 2 | 2 | 2 | 2 | 2 |
| Filled Positions | 2 | 2 | 2 | 2 | 2 | 2 |
| Vacancies | 0 | 0 | 0 | 0 | 0 | 0 |

Currently, the Tax Branch is operating under two collection systems; the ACES and the BOCS application. The ACES is supported, scalable, and continuously receives version and service-pack updates. The BOCS application is written in Visual Basic 6.0 (VB6) programming language with an Access database (Access is not an EDD database standard), is no longer supported by or receiving software updates from Microsoft, and is at great risk of failure. BOCS is reliant upon the expertise of two programmers for support and maintenance.

BOCS application interfaces with other EDD systems to collect overpayments. At the end of FY 2014-15, the EDD's benefit overpayment accounts receivable totaled approximately \$1.3 billion, which was comprised of over 590,000 outstanding overpayments. If the current application were to fail, the ability to collect overpayment debt would be adversely affected, whereby the EDD benefit overpayment collections would revert to manual processes and result in a substantial loss of revenue. Therefore, due to the risk of failure associated with the current application and the continued need to collect benefit overpayments in the most cost effective manner, the EDD is proposing the existing application be retired and the functionality configured into the existing ACES.

¹ Includes Treasury Offset Program (TOP) revenue

Major Project Objectives

- **Revenue Generation:** The EDD has the legal authority to issue bank levies (or freeze bank accounts) as a means of recovering UI and DI benefit overpayments. EDD proposes to use bank levies for the most egregious debtors with multiple fraudulent overpayments, high debt balances of at least \$5,000, accounts that meet minimum wage criteria standards, and accounts in which other collection methods have previously failed. Prior to issuing a bank levy, EDD will provide notices and billing statements that explain the reason for the debt, how to pay in full or set up a payment arrangement and, how to contact EDD to speak with a representative for additional information.

The current BOCS application does not have the necessary capabilities to collect money through a levy process. Failure to take advantage of the levy collection tool, as a means of generating additional revenue, results in missed opportunities to deposit monies into both the UI and DI funds, BAF and CF. The EDD estimates that once fully implemented, this solution will bring in an additional \$23 million annually tied to this new collection tool. The estimated revenue figures were derived by using the FY 2014-15 results from an existing tax program that also involves bank levies, the Financial Institution Records Match (FIRM) program. A percentage of what the Collection Division (CD) collected from FIRM was computed through a collection rate that used the FIRM recoveries by its associated Accounts Receivable (AR) from levies sent. The collection rate was then applied to the ending BOCS Fraud Overpayments AR from UI and DI fraud accounts that were greater than \$5,000 as of June 30, 2015.

- **Better Service to Customers:** Currently, customers cannot self-serve through the Internet. Customers must contact the BOCS staff during office hours to obtain or provide routine information related to their account, thereby preventing staff from working on high priority accounts and denying customers the ability to self-serve. The proposed system will provide self-service capabilities that will include general information and frequently asked questions. Authenticated customers will be provided access to view and update account information, establish payment arrangements, view history, and make payments. With the new self-service options, EDD estimates a savings of approximately 6.8 PEs; however, these staff will be redirected to address additional workload associated with the new bank levy process.
- **Automation of Existing Work Processes:** The UI-IAD manually posts all payment remittance transactions from scanned hard copy images to a claimant's benefit overpayment collection account. Payments are made with a credit card or via paper form (e.g. personal check, cashier's check, or money order) and are remitted with or without a payment coupon. Prior to posting a payment remittance to the Single Client Data Base (SCDB), a vast number of paper remittances require manual research and analysis to ensure the payment will be posted to the correct benefit overpayment collection account. Paper remittances received with a payment coupon do not require analysis prior to being posted to the SCDB. In FY 2014-15, the monthly average of processed paper remittances was 31,140, of which 16,274 were received with a payment coupon. Manually keying paper remittances introduces errors through data entry resulting in potential inaccurate postings, which may trigger erroneous collection actions. With this new integrated system the department estimates that the number of manual remittances would be cut in half within a year, resulting in a savings of approximately 1.1 PEs; however, these staff will be redirected to address additional workload associated with the new bank levy process.

One-Time IT Resources. In order to incorporate the BOCS functionality into the existing ACES application, the EDD will contract with FAST Enterprises as the primary vendor. FAST's key responsibility as the system integrator will be to transfer the BOCS functionality into the ACES application. Using the existing application and vendor will reduce the risk, effort, and cost in developing a benefit overpayment application. FAST is the chosen contractor because they are the only vendor with rights to maintain and support its proprietary COTS application, GenTax, which is used by ACES. Since GenTax is a proprietary product developed by FAST, only FAST has the core-code access and knowledge of their product to ensure the system is maintained and updated in a manner that is optimal. No other vendor or state staff has the access or capability of creating or distributing modifications to their core-code.

The project will also require 12.3 new PEs of state IT staff (4.8 in 2016-17 and 7.5 in 2017-18) to complete project-related activities, in addition to the activities performed by the vendor. Program staff will also be leveraged throughout the project lifecycle, acting as subject matter experts who will specify business requirements, rules, and workflows. Program staff will be required for testing, training, and organizational change support activities, as well. However, the program positions will be redirected from other duties throughout the duration of the project. EDD's IT staff will be performing the following functions in addition to the vendor:

- Project management including scheduling, identifying and managing project risk
- Requirements elicitation and refinement
- Primary vendor procurement and scanning vendor procurement
- System design sessions with the primary vendor
- Legacy system data migration and modification activities
- Document and Information Management Center (DIMC) related activities for adding the scanning and remittance transaction postings
- Developing and modifying interfaces with existing EDD systems
- Developing test scripts, test plans for system, interface, user, penetration, end to end and stress testing (these are done by non-prime vendor staff to ensure the solution truly meets the department's needs)

Outcomes and Accountability. EDD notes that the proposed solution will provide a modern, integrated and automated system that includes an improved payment remittance process and will use overpayment liability collection, storage, and account management to increase the effectiveness of the EDD's operations and staff.

Below are the EDD's projected outcomes if the implementation of BOCA moves forward:

- Increase system support by integrating the BOCS into the ACES after implementation.
- Collect approximately \$23 million through the levy process, within one year after implementation
- Improve access to the EDD by offering self-service options to benefit overpayment customers with a 10 percent adoption rate, within one year after implementation
- Reduce the number of manually posted paper remittances by 50 percent, within one year after implementation.
- Process incoming correspondence automatically following implementation.

- Provide customers with additional payment options to facilitate compliance by allowing customers to make electronic payments for billed liabilities, within 18 months after implementation.
- Leverage the ACES functionality to automate work processes requiring manual intervention by integrating the BOCS into the ACES system, within 18 months after implementation.

The schedule of the Benefit Overpayment Collection Automation project milestones and target completion dates are below:

| Major Milestones | Est. Completion Date |
|-------------------------|-----------------------------|
| Project Initiation | July 2016 |
| Requirements Phase | October 2016 |
| Vendor on Board | January 2017 |
| Design Phase | April 2017 |
| Development Phase | December 2017 |
| Testing Phase | April 2018 |
| Implementation | June 2018 |
| System Acceptance | June 2018 |
| Project Closeout | February 2019 |
| PIER | February 2019 |

Staff Recommendation. Hold Open.

7320 PUBLIC EMPLOYMENT RELATIONS BOARD

The Public Employment Relations Board (PERB) is a quasi-judicial administrative agency charged with administering the eight statutes that establish the collective bargaining process for about 2.3 million governmental employees in California. In this role, PERB (1) ensures these laws are implemented and applied consistently and (2) mediates and adjudicates disputes between governmental employers and employees. Such disputes include “unfair labor practice” claims. Section 3541 of the Government Code establishes PERB and specifies that the board “shall be independent of any state agency.” The board consists of up to five members appointed by the Governor with the advice and consent of the Senate; however, the board can establish a quorum—allowing it to conduct business—with three members.

3-YR EXPENDITURES AND POSITIONS

| | Positions | | | Expenditures | | |
|--|-------------|-------------|-------------|-----------------|-----------------|-----------------|
| | 2014-15 | 2015-16 | 2016-17 | 2014-15* | 2015-16* | 2016-17* |
| 6070 Public Employment Relations Board | 51.5 | 47.6 | 52.6 | \$8,854 | \$9,287 | \$10,338 |
| TOTALS, POSITIONS AND EXPENDITURES (All Programs) | 51.5 | 47.6 | 52.6 | \$8,854 | \$9,287 | \$10,338 |
| FUNDING | | | | 2014-15* | 2015-16* | 2016-17* |
| 0001 General Fund | | | | \$8,768 | \$9,101 | \$10,218 |
| 0995 Reimbursements | | | | 86 | 186 | 120 |
| TOTALS, EXPENDITURES, ALL FUNDS | | | | \$8,854 | \$9,287 | \$10,338 |

Issue 1: Augmentation to Reduce Backlog and Los Angeles Regional Office Relocation

Governor’s Budget. The Governor proposes two augmentations for PERB: (1) \$885,000 General Fund to fund five new positions—bringing the board’s total position authority to 62 positions—and (2) \$217,000 General Fund to pay for costs associated with relocating the Glendale office.

The Administration indicates that its proposal for five new positions and \$885,000 in 2016-17 (\$873,000 ongoing) is intended to address increased workload, reduce backlogs, and contribute towards meeting statutory requirements. The requested funding would support four of the five positions. The fifth position would be funded with existing departmental resources freed up by canceling a contract with the Department of General Services (DGS) to provide administrative services. The new positions would be distributed across PERB’s four divisions, with two new supervising attorney positions under the Office of the General Counsel (one based in Oakland and one in Glendale).

The Los Angeles regional office is located in Glendale. This regional office is PERB’s busiest regional office and processes more than 50 percent of cases. The board has occupied its current building since March 2009, with an annual rent of \$259,000. DGS determined that the existing office space does not fully comply with federal and state laws that establish standards to ensure buildings are accessible to people with disabilities. DGS directed PERB to move to a building that complies with these laws before February 2017, when the “soft term” of the existing lease expires. The Administration’s proposal provides \$100,000 one-time funding for moving to the new building, and \$117,000 on an ongoing basis, to pay for increased rental costs.

Background

Of PERB’s 57 total authorized positions, 13 positions are dedicated to the State Mediation and Conciliation Service (SMCS), which mediates public sector contract labor disputes between employers and unions and conducts representation elections. The other 44 positions are dedicated to PERB’s adjudication functions, including the Office of the General Counsel and the Division of Administrative Law.

Budgetary Challenges. Recently, PERB reportedly has had budget problems. For example, at the December board meeting, it was noted that PERB management, facing significant budget challenges, “opted to hold off pursuing the layoff process and instead decided to cut back its operating budget wherever possible and not fill vacancies.”

In many cases, departments hold authorized positions vacant and redirect the funds associated with vacant positions to pay for rising costs, such as operating expenses, equipment and merit salary adjustments. The 2016-17 Governor’s Budget estimates that in 2015-16 about nine percent of authorized non-higher education executive branch positions were held vacant statewide.

PERB has relied on about 9.5 positions (or 17 percent of its authorized positions) being vacant in order to redirect \$767,000 to pay for higher-than-budgeted costs associated with personnel and operations and equipment. These vacancies appear to have been in the adjudication sections of PERB, with no vacancies among the 13 SMCS positions. Instead, most of PERB’s vacancies are among attorney classifications reporting to the board’s General Counsel, an office that, among other duties, provides the first level of PERB review of unfair labor practice charges. This all suggests that over 20 percent of the 44 non-SMCS positions at PERB may have been vacant at some points in recent years, in part to redirect funds in the board’s budget. This is an inordinate number of vacant positions relative to what

is typical among state departments. Additionally, PERB has operated with a vacant seat on its appointed board. Board members each receive a salary of nearly \$140,000 and benefits. As the Administration indicates in one of the 2016-17 PERB budget proposals, relying on a vacant board seat to maintain operations “is inefficient and carries significant implications, particularly when the Governor appoints a full board.” Currently, PERB has one board vacancy.

Growth in Responsibilities and Backlogs

Over the decades since PERB was established, PERB has become responsible for adjudicating labor disputes between an increasing number of governmental employers and employees. PERB’s jurisdiction has grown from overseeing one statute covering approximately 470,000 employees in 1976 to eight statutes covering approximately 2.3 million employees.

The Administration indicates there is a significant backlog in unfair labor practice charges filed with PERB. Over the past 20 years, the number of unfair labor practice charges filed with PERB doubled but the number of staff working on this workload has decreased as (1) the number of positions authorized for PERB’s non-SMCS workload remained relatively flat at about 45 positions and (2) positions in the Office of the General Counsel have been held vacant for budgetary purposes. The Administration’s budget proposal suggests that it should take the Office of General Counsel less than 60 days to complete its investigation and issue a determination for unfair labor practice charges. Currently; however, it typically takes more than five months for the office to do this work.

While considering the 2015-16 state budget, members of the Legislature’s budget committees considered a proposal to augment PERB’s budget by \$1 million. This augmentation ultimately was not included in the final 2015-16 budget. The Administration committed to working with PERB to determine its resource needs while developing its 2016-17 budget proposal.

Legislative Analyst’s Office Comments and Recommendations

LAO notes that any appropriation for PERB’s lease must be based on estimated costs; however, the Administration has not yet identified the building to which PERB would move. The administration’s proposal is constructed on assumptions from one estimate DGS provided, however the actual cost could be higher or lower than this estimate. At PERB’s February board meeting, staff indicated that two prospective spaces (1) likely would be more expensive than the Administration assumes and (2) each were 600 square feet smaller than the amount of space DGS estimated would be necessary. To the extent that this is true, higher rental costs could force PERB to redirect money from elsewhere in its budget—including holding positions vacant—to cover these additional costs. In addition, the smaller office space could negatively affect PERB’s ability to process cases.

The LAO states that the Administration’s budget proposal would allow PERB to employ more people than it currently does, and this could have some effect in reducing the backlog. However, LAO notes that it seems unlikely that the Administration’s proposal would provide enough resources for PERB to significantly reduce the existing backlog of cases. In particular, the vacant positions PERB currently relies on for budgetary purposes may remain vacant. Moreover, if expenses for the board’s relocated office space in the Los Angeles area exceed budgeted amounts, there could be additional pressures to hold positions vacant.

LAO suggest the Legislature ask PERB and affected employer and employee groups their views on how fast cases should be addressed by the board. The Legislature may then wish to adopt budget bill language communicating clearly its goal for case processing times and requiring reporting over the

next year on PERB's progress in moving toward this goal. This desired timeline for case processing could help inform the Legislature's budget decisions for PERB.

LAO advises that the Legislature ask PERB what level of funding and staffing is necessary to process cases within the desired amount of time. Key questions that the Legislature can consider include:

- Are there additional efficiencies that can be realized in case processing to help reduce processing times and backlogs?
- In order to process cases within the desired amount of time, how many people would PERB need to employ? Would the existing or proposed mix of employee classifications need to be altered in order to achieve this goal?
- Are budgeted funds for the Glendale office relocation sufficient to cover associated costs and prevent the need to hold positions vacant in order to fund office costs?

Staff Comments

Staff agrees with the LAO and recommends that PERB work with the Department of Finance to provide an alternative to the two budget proposals before the subcommittee that would identify adequate resources to address the backlog, short-term staffing needs, resources for the Los Angeles relocation, and the appropriate processing times for cases to be addressed by the board.

Staff agrees with the LAO on developing BBL or SRL requiring PERB to report to the Legislature the amount of time it takes it to process the average case in July 2016 to establish a baseline and again in January 2017 and May 2017 to inform the Legislature's decisions related to the 2017-18 budget.

Staff Recommendation. Hold Open

7350 DEPARTMENT OF INDUSTRIAL RELATIONS

The Department of Industrial Relations (DIR) was established in 1927 to help improve working conditions for California's wage earners. DIR administers and enforces laws governing wages, workers' compensation insurance, hours and breaks, overtime, retaliation, workplace safety and health, apprenticeship training programs, and medical care and other benefits for injured workers. DIR also publishes materials and holds workshops and seminars to promote healthy employment relations, conducts research to improve its programs, and coordinates with other agencies to target egregious violators of labor laws and tax laws in the underground economy.

3-YR EXPENDITURES AND POSITIONS

| | Positions | | | Expenditures | | |
|--|----------------|----------------|----------------|------------------|------------------|------------------|
| | 2014-15 | 2015-16 | 2016-17 | 2014-15* | 2015-16* | 2016-17* |
| 6080 Self-Insurance Plans | 21.7 | 22.9 | 22.8 | \$4,390 | \$6,356 | \$6,313 |
| 6090 Division of Workers' Compensation | 953.3 | 959.6 | 959.8 | 181,506 | 205,376 | 205,461 |
| 6095 Commission on Health and Safety and Workers' Compensation | 7.7 | 6.8 | 6.8 | 2,735 | 3,520 | 3,475 |
| 6100 Division of Occupational Safety and Health | 680.9 | 719.6 | 743.7 | 123,628 | 144,686 | 146,445 |
| 6105 Division of Labor Standards Enforcement | 444.3 | 431.4 | 482.9 | 68,485 | 75,569 | 87,144 |
| 6110 Division of Apprenticeship Standards | 49.6 | 51.9 | 51.9 | 10,321 | 10,811 | 10,850 |
| 6120 Claims, Wages, and Contingencies | - | - | - | 87,608 | 181,712 | 181,712 |
| 9900100 Administration | 352.2 | 357.4 | 373.2 | 51,542 | 56,836 | 60,346 |
| 9900200 Administration - Distributed | - | - | - | -51,541 | -56,836 | -60,346 |
| TOTALS, POSITIONS AND EXPENDITURES (All Programs) | 2,509.7 | 2,549.6 | 2,641.1 | \$458,674 | \$628,030 | \$641,400 |

Issue 1: Division of Labor Standards Enforcement Resources

Governor's Proposal. The Division of Labor Standards Enforcement (DLSE) requests an increase of 28.5 positions and \$4.988 million from the Labor Enforcement and Compliance Fund (LECF) in FY 2016-17, 28.5 positions and \$4.756 million from LECF in FY 2017-18, with an on-going need of 26.5 positions and \$3.7 million from LECF resources to achieve the following for the Wage Claim Adjudication (WCA) unit and the Retaliation Complaints Investigation (RCI) unit. These additional resources seek to address the backlog that has accumulated due to an increase in caseload and the increase in complexity associated with evolving labor law requirements.

The positions under this proposal include:

- 2.0 deputy labor commissioner (DLC) IV for WCA
- 2.0 industrial relations counsel III for RCI
- 3.0 deputy labor commissioner (DLC) III for RCI
- 6.0 deputy labor commissioner (DLC) II for WCA
- 11.0 deputy labor commissioner (DLC) I for RCI
- 1.0 associate governmental program analyst for WCA
- 3.5 office technician (typing) for RCI

In addition to the positions, funding is requested for the reclassification of 16.0 deputy labor commissioner Is into deputy labor commissioner IIs for RCI, the reclassification of a management service technician into a deputy labor commissioner I, and limited-term temporary help/overtime funding to assist with backlogs for WCA.

Background.

Wage Claim (WCA) Unit. The Governor's budget proposes a total of 9.0 positions - six deputy labor Commissioner IIs, two deputy labor commissioner IVs and 1.0 Associate Government Program Analyst. The WCA unit within the Labor Commissioner's office accepts claims from individuals for unpaid wages, unpaid vacation or sick leave, missed meal and rest breaks, and other unpaid compensation. WCA is the largest unit within DLSE with approximately 200 positions. In the WCA unit, there are 16 offices across the state with each managed by a deputy labor commissioner (DLC) III, who report directly to the assistant chief over the WCA unit.

The WCA unit adjudicates claims filed by workers for nonpayment of wages, overtime, vacation pay, or other forms of compensation. WCA deputies (DLC I) hold informal conferences between employers and employees to resolve wage disputes. If a matter cannot be resolved at the informal conference, an administrative hearing (Berman hearing) is held by conducted by a hearing officer (DLC II) to make a final determination on the matter.

- **Hearing Referral.** In 2014, approximately half of the settlement conferences resulted in a referral for an administrative hearing. While this statewide referral rate has been steady for the last three years, the rate varies among the WCA offices throughout the state. Van Nuys referred only 32 percent of cases for a hearing, while Los Angeles referred 71 percent of their cases. This difference may indicate a disparity between these offices in how settlements conferences are approached. Additionally, there are significant differences in the length of time between when a case is filed and when it is referred to hearing. The statewide average length of time

from when cases are filed to when it is referred to a hearing is 75 days, however Sacramento took an average of 36 days compared to an average of 145 days in Van Nuys.

- **Hearings.** The statutory requirement between the end of settlement conferences and the start of a hearings is within 120 days, and while the state average in 2014 was four months, busier offices, this can take as long as eight months. For example, from the point of referral, the Oakland office took 36 days to start a hearing, whereas, San Bernardino took 243 days. In 2014, 11,568 Berman cases were referred for a hearing, but only 8,707 of those cases were heard, and as a result 2,861 hearings were not held. However, after taking into considering possible settlements, the remaining backlog is 1,704 hearings.

The Administration estimates that the additional six hearing officer positions (DLC IIs) will result in an additional 1,800 hearings annually. The Governor also proposes additional funding for temporary help and/or overtime funding equivalent to three DLC II positions on a two-year limited-term basis to help reduce the time it takes for a hearing to get scheduled. The Governor's proposes to provide a two additional DLC IVs to help the assistant chief oversees 16 district offices with over 200 staff.

Lastly, the Governor's budget proposes one associate governmental program analyst be added for data management and other support needs of the assistant chief. Currently, the assistant chief of WCA has no support staff. Extensive data collection and management tasks are all being managed by the assistant chief, which has required significant amounts of time for review and anomaly identification and resolution. This data is important because it helps management identify both problems and best practices and provide a means to identify when additional positions are needed.

The Retaliation Complaints Investigation (RCI) Unit. The Governor's budget requests a total of 19.5 positions (11.0 deputy labor commissioner I positions, three deputy labor commissioner III positions, 3.5 office technicians typing, and two industrial relations counsel III specialist positions).

The RCI unit accepts complaints from employees and job applicants who suffer retaliation because they engage in an activity protected by any law under the jurisdiction of the labor commissioner. The most common allegations of retaliation are for filing or threatening to file a labor law violation complaint with the labor commissioner or for complaining about dangerous working conditions. If an employee is afraid of losing their job for reporting unsafe working conditions or stolen wages, it will significantly decrease the likelihood that these violations get reported to DIR. The RCI unit has a northern and southern branch and each is managed by a DLC III who oversees the six offices within each, both reporting directly to the labor commissioner.

In 2014, the RCI unit received 3,800 complaints that alleged retaliation violation. The unit accepted 1,874 for investigation; others were rejected because they were outside of their jurisdiction. From 2011 to 2014, RCI acceptance rate of cases grew by 48 percent, an increase of 16 percent each year. It is assumed that the current growth will continue due to a recent change in Labor Code 98.6, which carries a \$10,000 civil penalty payable to the worker for most retaliation violations.

It currently takes an average of 122 days from when a case is opened to the time it is assigned to a DLC I, primarily due to the need to close out the backlog carryover of 2,247 unassigned cases. This results in a delay in the assignment of new cases. This delay can decrease the likelihood of a settlement because the employer's liability grows as the complainant remains unemployed therefore the resistance to settle is greater. Conversely, the complainant may simply give up on their case because they've found another job, thus, allowing the employer to avoid the consequences of engaging in retaliation.

For cases that are not settled, abandoned, or withdrawn, a DLC I will recommend a determination to the labor commissioner, chief of DLSE, who will then issue a final determination. These determinations are subject to appeal and are not legally binding. If an employer refuses to comply with the determination (payment of lost wages, offer of reinstatement, etc.), a court must prove the determination in order to be enforceable. This requires DLSE attorneys (industrial relations counsels (IRCs)) to try the case in court in order to enforce these determinations and to recover any wages and/or penalties on behalf of the worker. At the end of the year, there were 2,247 open cases, with 888 cases being first opened in 2013 or earlier. Of those 888 cases, 140 are pending determination to be upheld in court or for collection, and 30 remain on appeal.

In addition to this workload, the IRCs also provide consultative services to DLC Is on active investigations; conduct research on recent legislation to determine the impact on the retaliation cases; update RCI's legal manual and publications; address specific requests from the labor commissioner regarding retaliation law; and enforce judgments as they are issued by the court. Currently, there are three IRC positions to handle this workload, however, this is insufficient and there is now a backlog of 80 determination cases that have yet to even be filed in court.

The DIR notes that the additional resources will help close an additional 650 cases; however the backlog will not be fully eliminated. There has been a consistent accrual of about 400-500 new unassigned cases each year, and with these new resources, Department of Finance argues that RCI should be able reduce the number of new unassigned cases.

Staff Recommendation: Approve as budgeted.

Vote:

Issue 2: Private Attorneys General Act

Summary. The Labor and Workforce Development Agency and the Department of Industrial Relations (DIR) request 10.0 positions and \$1.6 million in resources from the Labor and Workforce Development Fund (LWDF) for the 2016-17 fiscal year and \$1.5 million ongoing to increase the number of staff to review notices and oversee the Private Attorneys General Act (PAGA)

The Governor also proposes trailer bill language to modify PAGA, including requiring additional information on PAGA proceedings and providing DIR the authority to create employer amnesty programs.

Background.

When an employer does not pay wages as required by law (such as overtime), statute allows employees to recover these wages, either through an administrative proceeding with the state's Labor and Workforce Development Agency (LWDA) or through private legal action in Superior Court. In addition to wages that may be recovered, statute also specifies civil penalties may be imposed on employers who violate Labor Code provisions. These civil penalties are intended to act as a deterrent against violations. The LWDA and the related state agencies that it oversees, including DIR, the Division of Labor Standards Enforcement (DLSE) and Division of Occupational Safety and Health (DOSH) within DIR, are responsible for enforcing the Labor Code and are authorized to impose civil penalties.

Employees may seek to recover wages improperly withheld through private legal action against the employer, and for those who do so, the PAGA—enacted by Chapter 906 of 2003 (SB 796, Dunn) and Chapter 221 of 2004 (SB 1809, Dunn)—grants employees the right to additionally seek civil penalties from employers. Prior to PAGA, penalties could only be pursued by LWDA and related state agencies. The general intent of PAGA is to allow employees to pursue civil penalties through the legal system when LWDA and related state agencies do not have the resources to do so. While civil penalties collected by LWDA are generally deposited in the state General Fund, any penalties collected under PAGA are split between the employee, who receives 25 percent, and LWDA, which receives the remaining 75 percent. The LWDA's portion of PAGA penalties is deposited into the Labor and Workforce Development Fund (LWDF), which is used for enforcement of labor laws and to educate employers and employees about their rights and responsibilities under the Labor Code.

PAGA Process. An individual who wishes to pursue civil penalties against an employer must provide a written notice to both the employer and LWDA of the alleged violations and his or her intent to pursue civil penalties under PAGA. This notice is the first step in a PAGA claim. This notification requirement is intended to allow LWDA to step in and investigate claims that it views as preferable to handle administratively rather than through the PAGA process, such as when the claim overlaps with other matters already under investigation by LWDA. LWDA notes that since 2014, only one position performs a high-level review of PAGA notices and determines which claims to investigate. As a result, less than half of PAGA notices were reviewed, and less than one percent of PAGA notices have been reviewed or investigated since PAGA was implemented.

In most cases, LWDA has 30 days to determine whether to investigate and, if it does investigate, 120 additional days to complete the investigation and determine whether to issue a citation. If LWDA does not investigate, or does investigate but does not issue a citation, or when an investigation is not completed, or not completed on time, the PAGA claim is automatically authorized to proceed. For certain violations that are considered less serious (for example, failing to correctly display the legal name and address of the employer on an itemized wage statement), employers are provided 33 days to

prevent a PAGA claim from proceeding by correcting the alleged violations. The number of PAGA notices received by LWDA over the past few years is displayed below.

PAGA Notices Filed With LWDA

| | |
|------|-------|
| 2010 | 4,430 |
| 2011 | 5,064 |
| 2012 | 6,047 |
| 2013 | 7,626 |
| 2014 | 6,307 |

When a PAGA notice is investigated, LWDA reports that it has difficulty completing the investigation within the timeframes outlined in PAGA.

Once the PAGA claim proceeds, LWDA typically receives no further information beyond payment of the portion of any civil penalties that is due to the LWDF. Civil penalties can be assessed through the PAGA process in two ways. When the court finds that the allegations in the PAGA claim have merit, they have the authority to impose civil penalties. Alternatively, the parties to the claim may settle out of court and include civil penalties as part of such a settlement. However, not all settlements include civil penalties. In fact, LWDA reports that in 2014-15 it received just under 600 payments for PAGA claims that resulted in civil penalties. This number is low relative to the amount of PAGA notices LWDA receives each year (roughly 10 percent of notices received in 2014), implying that the final disposition of a large portion of PAGA claims, and likely many settlements, do not involve civil penalties. When cases that involve a PAGA claim settle out of court and civil penalties are included as part of the settlement, PAGA requires court review and approval of the settlement.

Reports of Undesirable Outcomes from PAGA Litigation. The LWDA highlights concerns from stakeholders that the outcomes of PAGA litigation may not always be in the best interest of the state, as a whole. Specifically, the concern has been raised that some employers are incurring substantial legal costs to defend against PAGA claims that allege what might be viewed as relatively minor labor law violations. On the other hand, the department also claims that PAGA settlements may not achieve the same level of wage recovery and civil penalties as might be the case were LWDA to investigate. Parties to PAGA claims currently are not required to notify LWDA on the outcomes of PAGA claims after the agency declines to investigate or issue a citation (other than to forward any penalties due to the LWDF), as a result, the department states that complete information on the final disposition of PAGA claims is not available. This lack of information makes it difficult to evaluate whether, and how often, these potential undesirable outcomes are occurring.

Governor’s Proposal. The Governor’s proposal would provide \$1.6 million in 2016-17, and \$1.5 million ongoing, from the LWDF to support ten new positions—one at LWDA and nine at DIR.

| Classification | Agency | Number of Positions |
|--|--------|---------------------|
| Assistant General Counsel | LWDA | 1 |
| Attorney IV | DIR | 3 |
| Deputy Labor Commissioner III | DIR | 1 |
| Investigator | DIR | 1 |
| Legal Analyst | DIR | 1 |
| Auditor I | DIR | 2 |
| Office Technician | DIR | 1 |
| Total | | 10 |
| PAGA = Private Attorneys General Act; LWDA = Labor and Workforce Development Agency; and DIR = Department of Industrial Relations. | | |

The Administration estimates that the proposed positions would review about 900 additional PAGA notices (a more in-depth review than current resources allow) and investigate an additional 45 claims each year. The proposed positions would also help address some increased workload related to various proposed changes to the PAGA process described below.

The Governor proposes trailer bill language that makes several changes to the PAGA process, described below.

- **Require Additional Information to the LWDA.** The proposal would (1) require that initial PAGA notices filed with LWDA have more detail than is currently required about the legal contentions and authorities supporting each alleged violation, (2) require that DIR receive a copy of the complaint when the legal action is initiated, (3) require that DIR be notified of the terms of PAGA settlements, and (4) require all PAGA-related notices to LWDA or related state agencies be submitted through a new online system.
- **Require a Filing Fee for PAGA Notices.** The proposal would require that employees wishing to pursue a PAGA claim pay a fee of \$75 (or \$150 if the PAGA claim is seeking penalties on behalf of ten or more employees) when filing the initial PAGA notice with LWDA, except when the alleged violation relates to workplace safety or health. These fees would be deposited into the LWDF and used to offset some of the cost of the proposed new positions.
- **Require That PAGA Notices Involving Multiple Employees Be Verified.** The proposal would require that PAGA notices that are seeking penalties on behalf of ten or more employees be verified, meaning that the employee filing the notice must attest that the information in the notice is true.

- **Clarify That Employers May Request LWDA Investigation.** The proposal would amend PAGA to clarify that employers who receive a PAGA notice have the ability to request an investigation by LWDA or related state agencies. Employers would be required to pay a \$50 fee to file such a request.
- **Extend Investigation Time Lines.** The proposal would extend the time allotted for LWDA to consider whether to investigate the violations in a PAGA notice from 30 to 60 days and extend the time to investigate and issue a citation from 120 to 180 days.
- **Require Court Approval of All PAGA Settlements.** Currently, courts are generally required to review and approve only PAGA settlements that include civil penalties or that relate to violations of health and safety requirements. The proposal would require that all settlements be submitted to the court for review and approval.
- **Allow LWDA to Object to Proposed PAGA Settlements.** Currently, in addition to being reviewed by the court, PAGA requires that settlements related to health and safety requirements are also submitted to DOSH for comment and that courts give appropriate weight to DOSH comments when considering approval of the settlement. The proposal would extend this requirement to all PAGA settlements by allowing the director of DIR to object to any proposed settlement prior to the court's consideration of the settlement.

Amnesty Program. In some instances where a widespread industry practice has been found to be in violation of labor law, the Legislature has enacted temporary amnesty or safe harbor programs to allow affected employers to receive relief from potentially substantial penalties in exchange for quickly compensating employees for past violations. The Governor's proposal would give DIR the authority to create temporary amnesty programs when certain conditions exist, including:

1. A court decision or other legal development invalidates a common industry practice that a substantial portion of the industry believed, in good faith, to be legal;
2. A decision or legal development affects at least 10,000 employees and is likely to lead to PAGA claims against at least five employers;
3. An amnesty program is likely to provide more relief to employees than private legal action.

The process of creating a temporary amnesty program would begin after a petition from an interested party (such as an employer) is filed with DIR and an opportunity is given to other interested parties, including employees, employers, and worker or industry advocacy groups, to comment on the petition. Amnesty programs created under the proposed new authority would be limited to 18 months and would require that an employer fully compensate employees for any back wages due.

Legislative Analyst's Office Comments and Recommendations.

- **Approve Requested Funding and Positions.** To enable LWDA to more effectively fulfill its role of reviewing and, in some cases, investigating PAGA claims, the LAO recommends the Legislature approve funding for the ten positions requested in the Governor's proposal. If the Legislature does not approve the Administration's proposed fee on PAGA filings, the LWDF has a sufficient balance to pay the full cost of these positions for the next several years, but the ability of the fund to support the positions over the longer term is unclear because it depends on potential growth or decline in PAGA penalty payments (payments appear to have been

increasing in recent years). Should the Legislature approve the requested positions but reject the proposed fee, it will be important to monitor the condition of the LWDF and consider future adjustments to the expenditures of the fund or possibly identify an additional funding source, such as a potential fee on PAGA filings as proposed by the Governor, as necessary.

- **Amend PAGA to Require That Additional Information Be Provided to LWDA.** The Administration has raised concerns about possible negative outcomes from PAGA litigation for both employers and employees, but because comprehensive information about the final disposition of PAGA claims is not available to the LWDA, it is difficult to assess how seriousness or prevalence these issues. The LAO recommends adopting the Governor's proposal to require more detail in initial PAGA notices, require that LWDA receive copies of PAGA complaints and any settlement agreements, and require that notices to LWDA related to PAGA claims be submitted through an online system.
- **Reject Remaining Proposed PAGA Amendments Without Prejudice in Favor of Separate Legislative Deliberation on PAGA Priorities.** Specifically, the LAO recommends rejecting without prejudice (1) the proposed filing fee, (2) verification of PAGA notices involving more than ten employees, (3) clarifying that employers may request an LWDA investigation following a PAGA notice, (4) extending investigation time-lines, (5) requiring court approval of all PAGA settlements, and (6) allowing LWDA to object to proposed PAGA settlements. LAO states that these proposals should be reviewed through the legislative policy process, which allows for greater input from affected stakeholders to identify potential benefits and drawbacks, and allows for consideration of potential reporting requirements that would draw on the better information LWDA receives on the final outcomes of PAGA litigation.
- **Reject Proposed Language Allowing DIR to Create Ad Hoc Temporary Amnesty Programs.** LAO recommends rejecting proposed language to grant DIR the authority to create temporary amnesty programs on an ad hoc basis, in favor of reviewing proposals for such programs on a case-by-case basis through the regular legislative policy process. This approach may slow the creation of future amnesty programs relative to what might be possible under the Governor's proposal, but would preserve the Legislature's important role in determining when to relieve significant groups of employers from penalties associated with violating labor law.

Staff Comments.

The Governor's trailer bill language proposes fundamental policy changes to PAGA, such as, how long employees should wait for LWDA to conduct an investigation before the claim may proceed, and whether LWDA should be able to influence the outcome of a PAGA claim once it has decided not to investigate or issue a citation. The significant changes may be more appropriately considered in the legislative policy committee process rather than the state budget process.

Most significantly, the Governor's proposal grants DIR the authority to create an ad hoc temporary amnesty program. Giving DIR the authority to create future amnesty programs, under certain conditions but without specific legislative authorization in each case, would likely expedite the creation of such programs. However, LAO believes that the Legislature has an important role to play in considering when employers should be granted relief from penalties imposed for violating labor law, and under what terms this relief should be granted. LAO and staff is concerned that giving DIR the authority to establish amnesty programs on an ad hoc basis would undermine the Legislature's role in this area, and believe that this concern outweighs the potential benefit of establishing future amnesty programs more rapidly.

Staff Recommendation: Reject the pieces of the Administration's proposed trailer bill related to PAGA that seek to: (1) clarify that employers may request an investigation following the receipt of a PAGA claim, (2) require verification of PAGA notices involving more than ten employees, and (3) grant authority to DIR to create ad hoc employer amnesty programs under specified conditions.

Hold the balance of the proposal open pending continuing dialogue between interested stakeholders and the Administration, with a request that the subcommittee be advised of the status of the proposal prior to the May Revision.

Vote:

Issue 3: Revenue and Expenditure Alignment for Various Special Funds

Summary. The Governor's budget proposes to align expenditure authority and special fund revenue from various fees and permits to the appropriate program; increase resources for labor law enforcement in the car wash program to help bring its special funds into balance; delete decades-old statutory caps on certain fees to allow for proper cost recovery; and clean up and standardize language for various fees and permits. This proposal includes statutory changes to various sections of the Labor Code for the Division of Occupational Safety & Health (DOSHS) and the Division of Labor Standards Enforcement (DLSE).

Approximately \$1.6 million in regulatory licenses and permits are deposited into the General Fund each year as a result of the DIR's regulatory activities, even though the General Fund no longer provides any support to the department. These recommendations, if approved, will redirect these monies into DIR special funds, providing a commensurate offset to employers by reducing the annual employer assessment. This proposal will not affect the department's fine and penalty revenue, approximately \$25 million annually, which will continue to be deposited into the General Fund.

Included in this proposal is the elimination of seven positions related to the Child Performer Services Permit program; with one of these positions being redirected to the Asbestos and Carcinogen Unit and another four positions being redirected to labor law enforcement in the car wash industry.

- Redirect regulatory fees from the General Fund to offset employer assessments. The DIR formerly received significant support from the General Fund, and various regulatory fees were deposited into the General Fund to offset General Fund costs. Since 2014-15, DIR has not received any General Fund support and is now fully supported by assessments paid by all employers. In several instances, the proposal would redirect regulatory fees (about \$1.6 million) back to DIR to offset the amount of revenues needed from the employer assessment.
- Remove statutory caps on regulatory fees. In some cases, current law places caps on the fees that DIR may charge for various regulatory activities. The proposal would remove these caps to give DIR the flexibility to set fees that cover the costs of regulatory activities. This is intended to avoid the need, now or in the future, for additional funding from the employer assessment to cover the costs of regulatory activities that are not fully covered by capped fees.
- Clarify that regulatory fees may be set to cover indirect costs. In some cases, current law specifies that fees may be set to cover only the direct costs of inspections and approval processes. Previously, indirect overhead costs related to these activities would have been borne by the General Fund. Since the General Fund no longer supports DIR operations, overhead costs must either be supported by the regulatory fees or by the broad employer assessment. The proposal clarifies that regulatory fees may be set to cover a reasonable percentage of overhead that may be attributable to the regulatory activity, offsetting the revenues that need to be raised through the general employer assessment.
- Abolish certain funds with limited purposes and small appropriations. In some cases, DIR administers funds with narrow purposes and relatively small appropriations. The proposal would abolish some of these funds and redirect fee revenues to larger, general purpose funds that would pay for program operations going forward.

The table below, compiled by the LAO, summarizes the major issues identified and solutions proposed by DIR, along with the amount of General Fund dollars that would be redirected to offset the employer assessment.

| Program/Activity | Issues Identified by DIR | Solutions Proposed by DIR | General Fund Revenue Redirected to Offset Employer Assessment |
|--|---|---|--|
| <p><u>Temporary Entertainment Work Permits</u></p> <p>Chapter 557 of 2011 (AB 1401, Committee on Arts, Entertainment, Sports, Tourism, and Internet Media) newly required temporary permits for minors under age 16 to be employed in the entertainment industry. Chapter 557 also created the Entertainment Work Permit Fund (EWPF) to receive permitting fees and to pay for the administration of the program by the Division of Labor Standards Enforcement (DLSE).</p> | <p>The amount of fees deposited into the EWPF and level of administrative expenditures was small are viewed as insufficient to justify maintaining a separate fund.</p> <p>Since the 2014-15 budget, administrative expenses of the program have been funded from the Labor Enforcement and Compliance Fund (LECF).</p> | <p>Amend the Labor Code to deposit permit fees in the LECF to support the administration of temporary entertainment work permits.</p> <p>Abolish the EWPF and transfer resources to the LECF.</p> | None |
| <p><u>Farm Labor Contractor Licenses</u></p> <p>Chapter 3 of Part 6 of Division 2 of the Labor Code (beginning with Section 1682) requires that farm labor contractors to be licensed by DLSEr. A portion of licensing fees are deposited into the Farmworker Remedial Account, which is used to compensate individuals for certain damages caused by farm labor contractors, a portion is dedicated to funding enforcement of farm labor contractor requirements, and a portion is deposited in the General Fund.</p> | <p>A portion of fees are deposited in the General Fund, even though the General Fund no longer supports DLSE's activities.</p> | <p>Amend the Labor Code to redirect the portion of farm labor contractor licensing fees currently deposited in the General Fund to the LECF to support enforcement of farm labor contractor requirements.</p> | \$670,000 |

| Program/Activity | Issues Identified by DIR | Solutions Proposed by DIR | General Fund Revenue Redirected to Offset Employer Assessment |
|--|---|--|---|
| <p><u>Talent Agency Licensing Fee</u> Chapter 4 of Part 6 of Division 2 of the Labor Code (beginning with Section 1700) requires that talent agencies be licensed.</p> | <p>Talent agency licensing fees are deposited in the General Fund, even though General Fund no longer supports DLSE's activities.</p> | <p>Amend the Labor Code to redirect talent agency licensing fees currently deposited in the General Fund to the LECF to support the administration of licensing activities.</p> | <p>\$174,000</p> |
| <p><u>Child Performer Services Permit</u> Chapter 634 of 2012 (AB 1660, Campos) requires individuals that represent artists who are minors to obtain a child performer services permit (CPSP) from DLSE. Chapter 634 also established the CPSP Fund to receive permit fees and pay for the costs of administering the program. The DLSE currently has nine positions associated with the CPSP program.</p> | <p>Seven positions are not needed to administer the CPSP program. The amount of fees deposited into the CPSP Fund and level of administrative expenditures was small are viewed as insufficient to justify maintaining a separate fund.</p> | <p>Reallocate one position to the Asbestos and Carcinogen Unit and four positions to enforcement in the car wash industry.</p> <p>Amend the Labor Code to deposit CPSP fees in the LECF to support the administration of the CPSP program.</p> <p>Abolish the CPSP Fund and transfer resources to the LECF.</p> | <p>None</p> |
| <p><u>Car Wash Worker Fund</u> Chapter 2 of Part 8.5 of Division 2 of the Labor Code (beginning with Sections 2054) requires that all employers that operate car washes to annually register with DLSE and pay fees. Current law sets the fee and provides that the fee may be adjusted to reflect inflation. A portion of registration fees are deposited in the Car Wash Worker Restitution fund to compensate car wash workers for unpaid wages. The remainder of the fees are deposited in the Car Wash Worker Fund (CWWF) and are used to pay for</p> | <p>The CWWF has a large surplus. Field enforcement in the car wash industry is inadequate.</p> <p>Field enforcement is currently funded from the LECF.</p> <p>The administration does not have the ability to increase or decrease the amount of fees paid by car wash employers.</p> | <p>Provide four positions (reallocated from the CPSP program) for increased field enforcement in the car wash industry, funded from the CWWF.</p> <p>Amend the Labor Code to allow DLSE to set the registration fee at levels necessary to support direct and indirect costs of administering car wash requirements.</p> | <p>None</p> |

| Program/Activity | Issues Identified by DIR | Solutions Proposed by DIR | General Fund Revenue Redirected to Offset Employer Assessment |
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| <p>administering the registration process and enforcing labor law requirements in the car wash industry.</p> | | | |
| <p><u>Industrial Home Work License and Permit Fees</u> Part 10 of Division 2 of the Labor Code (beginning with Section 2650) provides that an individuals may not employ industrial homeworkers without obtaining a license, or be employed as an industrial homeworker without obtaining a permit, from DLSE and paying a fee.</p> | <p>Industrial homework licensing and permit fees are currently deposited in the General Fund, even though the General Fund does not support DLSE’s activities.</p> | <p>Amend the Labor Code to redirect industrial homework license and permit fees currently deposited in the General Fund to the LECF to support the administration of licensing and permitting activities.</p> | <p>\$1,000</p> |
| <p><u>Construction and Demolition Work Permits and Registrations</u> Chapter 6 of Part 1 of Division 5 of the Labor Code (beginning with Section 6500) requires that permits be obtained from the Division of Occupational Safety and Health (DOSH) prior to the initiation of specified projects and operations, including the construction of certain trenches, buildings, demolitions, or use diesel engines in mines and tunnels. Chapter 6 also requires contractors that work with asbestos to register with the state. Contractors pay fees to obtain permits and registrations under Chapter 6.</p> | <p>Permitting and registration fees are current deposited into the General Fund, even though the General Fund does not support DOSH’s activities.</p> | <p>Amend the Labor Code to redirect construction and demolition work permits and registrations currently deposited in the General Fund to the Occupational Safety and Health (OSH) Fund.</p> | <p>\$492,000</p> |

| Program/Activity | Issues Identified by DIR | Solutions Proposed by DIR | General Fund Revenue Redirected to Offset Employer Assessment |
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| <p><u>Elevator Permits and Inspector Certifications</u> Chapter 2 of Part 3 of Division 5 of the Labor Code (beginning with Section 7300) requires that certain conveyances, including elevators, escalators, and other platform lifts, pay a fee and obtain a permit from DOSH prior to operation. Chapter 2 also requires conveyance inspectors pay a fee and obtain a certification from DOSH.</p> | <p>Current law allows permitting and certification fees cover only the cost of actual inspections and certifications, not indirect administrative costs. However, the General Fund no longer supports DOSH’s indirect administrative costs, such that indirect costs are borne by employers at large.</p> <p>Current law prohibits DOSH from charging a fee for the inspection of a conveyance that was inspected by an authorized inspector not employed by DOSH. However, current law does not specify that that DOSH may charge a fee to process and issue the required permit.</p> | <p>Amend the Labor code to clarify that permitting and certification fees may include a reasonable percentage of indirect administrative costs, in addition to the actual direct costs of permitting and certification activities.</p> <p>Amend the Labor Code to clarify that DOSH may charge a fee to process and issue operating permits when inspections are performed by authorized inspectors not employed by DOSH.</p> | <p>None</p> |
| <p><u>Aerial Passenger Tramways</u> Chapter 4 of Part 3 of Division 5 of the Labor Code (beginning with Section 7340) requires that passenger tramways must pay a fee and obtain a permit from DOSH prior to operation.</p> | <p>The term “aerial” is dated and does not apply to most tramways in operation today.</p> <p>Since 2007, tramway permitting fees have been currently deposited into the Elevator Safety Account (which also receives permitting fees for elevators and portable amusement rides). DOSH would prefer to deposit only elevator-related fees into the Elevator Safety Account.</p> <p>Current law allows permitting and certification fees cover only the cost of actual inspections and certifications, not indirect administrative costs. However, the General Fund no longer supports DOSH’s indirect administrative costs, such that indirect costs are borne by</p> | <p>Amend the Labor Code to delete the word “aerial.”</p> <p>Amend the Labor Code to redirect revenues and liabilities related to tramways from the Elevator Safety Account to the OSH Fund.</p> <p>Amend the Labor code to clarify that permitting and certification fees may include a reasonable percentage of indirect administrative costs, in addition to the actual direct costs of permitting and certification activities.</p> | <p>None</p> |

| Program/Activity | Issues Identified by DIR | Solutions Proposed by DIR | General Fund Revenue Redirected to Offset Employer Assessment |
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| | <p>employers at large.</p> <p>Current law allows DOSH to charge a fee to process permit applications when the tramway is inspected by an inspector not employed by DOSH. However, current law places a \$10 cap on the fee that limit's DOSH's ability to recover its full costs.</p> | <p>Amend the Labor Code to remove the cap on fees to process permits for tramways inspected by an inspector not employed by DOSH.</p> | |
| <p><u>Tower Crane Permit and Inspector Certification Fees</u></p> <p>Chapter 5 of Part 3 of Division 5 of the Labor Code (beginning with Section 7370) requires that employers obtain a permit in order to operate tower cranes and requires DOSH to charge a fee to cover the cost of issuing permits and performing inspections as part of the permitting process.</p> <p>Additionally, Chapter 5 requires that certain cranes be certified by licensed certification agencies.</p> | <p>Current law allows permitting and certification fees cover only the cost of actual inspection, permitting, and licensing activities, not indirect administrative costs. However, the General Fund no longer supports DOSH's indirect administrative costs, such that indirect costs are borne by employers at large.</p> <p>Crane permitting fees and licensure fees for certifying agencies are currently deposited in the General Fund, even though the General Fund does not support DLSE's activities.</p> | <p>Amend the Labor code to clarify that permitting and licensing fees may include a reasonable percentage of indirect administrative costs, in addition to the actual direct costs of inspection, permitting, and licensing activities.</p> <p>Amend the Labor Code to redirect permitting and licensing fees currently deposited in the General Fund to the Occupational Safety and Health (OSH) Fund.</p> | \$265,000 |
| <p><u>Pressure Vessel Certifications of Inspectors, Permits, Inspections, and Related</u></p> <p>Chapter 4 of Part 6 of Division 4 of the Labor Code (beginning with Section 7720) allows DOSH to collect fees for the inspection of pressure vessels and for other consultations, surveys and audits related to pressure</p> | <p>Unlike other statutes that require fees for inspections and permitting, the language in Chapter 4 is permissive.</p> <p>Current law allows DOSH to charge a fee to process permits for pressure vessels. However, current law places a \$15 cap on the fee that limit's DOSH's ability to recover its full costs.</p> <p>Unlike other statutes that allow fees to be charged for processing</p> | <p>Amend the Labor Code to require DOSH to collect fees for inspections and permitting.</p> <p>Amend the Labor Code to remove the \$15 cap on permitting fees.</p> <p>Amend the Labor Code to specifically permit DOSH to</p> | None |

| Program/Activity | Issues Identified by DIR | Solutions Proposed by DIR | General Fund Revenue Redirected to Offset Employer Assessment |
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| vessel permitting. | <p>permits in cases when the inspection is made by a certified inspector not employed by DOSH, the language in Chapter 4 is inconsistent and prohibits the collection of any when the inspection is conducted by an inspector not employed by DOSH (even though DOSH still has to process the permit).</p> <p>Current law does not specifically state that fees may be set to cover both the direct and indirect overhead costs of activities related to pressure vessels. However, the General Fund no longer supports DOSH's indirect administrative costs, such that the current language could be interpreted to mean that indirect costs are borne by employers at large.</p> | <p>charge a fee to process a permit for pressure vessels when the inspection is performed by a certified inspector not employed by DOSH.</p> <p>Amend the Labor Code to clarify that fees may set to cover both direct and indirect costs of administering Part 6.</p> | |
| <p><u>Portable Amusement Ride Inspections</u> Part 8 of Division 5 of the Labor Code (beginning with Section 7900) requires portable amusement rides to be inspected and receive a permit to operate, and allows DOSH to collect fees for such inspections.</p> | <p>Unlike other statutes that require fees for inspections and permitting, the language in Part 8 is permissive.</p> <p>Current law allows fees to cover only the cost of actual inspection, not indirect administrative costs. However, the General Fund no longer supports DOSH's indirect administrative costs, such that indirect costs are borne by employers at large. In the case of California Portable Ride Operators, LLC v. Division of Occupational Safety and Health, the court found that DOSH could not levy a fee to cover indirect costs based on current law.</p> <p>Current law allows DOSH to charge a fee to process permits for amusement rides when</p> | <p>Amend the Labor Code to require DOSH to collect fees for inspection and permitting activities.</p> <p>Amend the Labor Code to clarify that fees may be set to cover both direct and indirect costs, and provide authority for emergency regulations to adjust fees.</p> <p>Amend the Labor Code to remove the \$10 cap on fees to process a permit when the inspection was performed by a certified inspector not employed by DOSH.</p> | None |

| Program/Activity | Issues Identified by DIR | Solutions Proposed by DIR | General Fund Revenue Redirected to Offset Employer Assessment |
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| | <p>inspections are performed by a certified inspector not employed by DOSH. However, current law places a \$10 cap on the fee that may limit DOSH’s ability to recover its full costs.</p> <p>Current law deposits portable amusement ride fees into the Elevator Safety Account. DOSH would prefer for these revenues to be deposited into the OSH Fund.</p> <p>Current law requires DOSH to prepare an annual report summarizing all inspections of amusement rides and accidents and submit this report to the Division of Fairs and Expositions in the Department of Food and Agriculture. While the report may have value in general, the Department of Food and Agriculture does not need the report.</p> | <p>Amend the Labor Code to redirect portable amusement ride fees from the Elevator Safety Account to the OSH fund.</p> <p>Amend the Labor Code to require the annual report on amusement rides to be posted to the DIR website instead of submitting to the Department of Food and Agriculture.</p> | |
| <p><u>Permanent Amusement Ride Safety Inspection Program</u> Part 8.1 of Division 5 of the Labor Code requires permanent amusement rides to be inspected and certified and allows DOSH to collect fees to cover the cost of administering the inspection and certification process.</p> | <p>Unlike other statutes that require fees for inspections and permitting, the language in Part 8.1 is permissive.</p> <p>Current law allows fees to cover only the cost of actual inspection, not indirect administrative costs. However, the General Fund no longer supports DOSH’s indirect administrative costs, such that indirect costs are borne by employers at large.</p> <p>Current law deposits portable amusement ride fees into the Elevator Safety Account. DOSH would prefer for these revenues to be deposited into the OSH Fund.</p> | <p>Amend the Labor Code to require DOSH to collect fees for the inspection and certification of permanent amusement rides.</p> <p>Amend the Labor Code to clarify that fees may be set to cover both direct and indirect costs of inspection and certification activities.</p> <p>Amend the Labor Code to redirect permanent amusement ride fees from the Elevator Safety Account to the OSH</p> | <p>None</p> |

| Program/Activity | Issues Identified by DIR | Solutions Proposed by DIR | General Fund Revenue Redirected to Offset Employer Assessment |
|--|--|--|---|
| | Part 8 requires that portable amusement ride owners that fail to pay required fees must also pay a penalty. Part 8.1 does not place a similar requirement on owners of permanent amusement rides. | fund. Amend the Labor Code to require the same penalty for nonpayment of permanent amusement ride fees as is required for portable amusement ride fees. | |
| <p><u>Tunnels and Mines Blasters' Licenses and Certification of Gas Testers and Safety Representatives</u></p> <p>Chapter 3 of Part 9 of Division 5 of the Labor Code (beginning with Section 7990) requires that individuals must be licensed in order to work as a blaster (use explosives) in a mine or tunnel and sets a fee for obtaining such a license.</p> <p>Chapter 3 also requires that individuals must be certified before working as a gas tester or safety representative in a mine or tunnel, and sets a fee for obtaining such a certification.</p> | <p>Current law caps the fee for blasters licenses and gas testers/safety representative certifications at \$15, limiting DOSH's ability to cover costs.</p> <p>Current law does not specify that fees may be set to cover both direct and indirect costs of administering the licensing and certification process. However, the General Fund does not support DOSH activities, meaning that the costs of these activities are born by employers at large.</p> <p>Fees from license and certification applications are deposited into the General Fund. However, the General Fund no longer supports DOSH operations.</p> | <p>Amend the Labor Code to remove the cap on fees for blasters licenses and gas testers/safety representatives certifications.</p> <p>Amend the Labor Code to clarify that fees may be set to cover both direct and indirect costs of administering the licensing and certification processes.</p> <p>Amend the Labor Code to redirect fee revenues that had been deposited into the General Fund to the OSH fund.</p> | \$5,000 |
| <p><u>Certification of Asbestos Consultants and Training Programs</u></p> <p>Chapter 3 of Part 10 of Division 5 of the Labor Code (beginning with Section 9020) provides for DOSH to certify asbestos consultants and allows DOSH to charge a fee for the certification process. These fees are deposited into the Asbestos Consultant Certification</p> | <p>Unlike other statutes that require fees for certifications and approvals, the language in Chapter 3 is permissive.</p> <p>Current law does not specifically state that fees may be set to cover both the direct and indirect overhead costs of activities asbestos consultant certification and training approval. However, the General Fund no longer supports DOSH's indirect administrative costs, such that</p> | <p>Amend the Labor Code to require DOSH to collect fees for asbestos consultant certification and training approval.</p> <p>Amend the Labor Code to clarify that fees may be set to cover both the direct and indirect costs of certification and approval activities.</p> | |

| Program/Activity | Issues Identified by DIR | Solutions Proposed by DIR | General Fund Revenue Redirected to Offset Employer Assessment |
|---|--|--|---|
| <p>Account in the Asbestos Consultant Certification Fund.</p> <p>Chapter 3 also provides for DOSH to approve training entities to conduct task-specific training programs based on the state’s asbestos health and safety standards and allows DOSH to charge a fee for the approval process. These fees are deposited into the Asbestos Training Approval Account in the Asbestos Consultant Certification Fund.</p> | <p>the current language could be interpreted to mean that indirect costs are borne by employers at large.</p> <p>Both the Asbestos Consultant Certification Account and the Asbestos Training Approval Account have surplus balances.</p> <p>The asbestos consultant certification and asbestos training approval processes are currently subsidized to a significant extent by the OSH Fund.</p> <p>The asbestos consultant certification and asbestos training approval processes are understaffed, resulting in backlogs.</p> | <p>Amend the Labor Code to abolish the Asbestos Consultant Certification Fund and both accounts within it, redirect fees to the OSH fund, and deposit the balance of the fund in the OSH fund.</p> <p>Going forward, activities would be paid for from the OSH fund.</p> <p>Provide funding from the OSH fund for 1.0 staff services analyst to increase DOSH’s ability to meet timelines.</p> | |
| Total | | | \$1,607,000 |

Staff Comments. The subcommittee received a letter from the Western Carwash Association (CWA) that expresses support for the four new positions being sought for carwash enforcement as part of this proposal, but CWA objects to the proposal to allow the labor commissioner the authority to periodically adjust the annual registration fees that would help to fund these four positions, and argues that Car Wash Worker Fund maintains a balance that can support these positions for the foreseeable future.

Staff Recommendation. Staff recommends that the Car Wash Worker Fund component of this issue be held open and that the balance of the BCP be approved, with the trailer bill proposal adopted as placeholder to allow for technical adjustments that may be necessary as part of the trailer bill process.

Vote:

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| Issue 4: Mining and Tunneling Safety Inspectors |
|--|

Governor’s Budget Proposal. DIR requests two positions and \$563,000 for 2016-17 and \$548,000 ongoing, from the Occupational Safety & Health (OSH) fund for the Division of Occupational Safety and Health (DOSH) to provide resources to begin to close the gap between current inspections levels and current statutory requirements for inspecting California tunnels and mines. Included in the cost of this proposal is \$155,000 for overtime expenditures, which will effectively add one additional position, for the equivalent of three additional inspectors.

DOSH also plans to fund a study to examine the statutory requirements of the Tom Carrell Memorial Tunnel and Mine Safety Act of 1972, in conjunction with advancements in technology, state and federal standards and regulations, and any other industry factors to determine what changes, if any, to current statutory and/or regulatory requirements might be advisable.

Background. The Mining and Tunneling Unit’s responsibilities include:

1. Conducting pre-job safety conferences prior to any initial tunneling or underground mining operation;
2. Performing mandated periodic inspections of tunnels under construction, underground mines, surface mines, quarries and enforces compliance with Title 8 as required;
3. Conducting accident, complaint and referral inspections of activities at mines and tunnels under construction and enforces compliance with Title 8 as required;
4. Conducting certification exams for safety representatives and gas testers to work in tunnels and mines;
5. Giving licensing exams for blasters to use explosives and provides oversight on all demolition projects using explosives;
6. Issuing permits allowing the use of diesel engines in tunnels and mines and enforces compliance with the provisions of the permits.

Resource History

| Program Budget | 2010/11 | 2011/12 | 2012/13 | 2013/14 | 2014/15 |
|-------------------------|----------------|----------------|----------------|----------------|----------------|
| Authorized Expenditures | 3,643 | 3,707 | 3,083 | 3,627 | 3,758 |
| Actual Expenditures | 3,167 | 3,369 | 2,883 | 3,132 | 3,572 |
| Revenues | | | | | |
| Authorized Positions | 31.0 | 29.0 | 25.0 | 23.0 | 25.0 |
| Filled Positions | 24.4 | 24.4 | 20.8 | 20.6 | 21.5 |
| Vacancies | 6.6 | 4.6 | 4.2 | 2.4 | 3.5 |

Workload History

| Workload Measure | 2010/11 | 2011/12 | 2012/13 | 2013/14 | 2014/15 |
|--|----------------|----------------|----------------|----------------|----------------|
| Complaints & Accidents | 21 | 35 | 36 | 49 | 27 |
| Tunnels - Total Mandated Inspections | 435 | 478 | 391 | 394 | 454 |
| Tunnels - Inspections | 103 | 93 | 46 | 79 | 118 |
| Tunnels - No Inspection | 332 | 385 | 345 | 315 | 336 |
| Mines - Total Mandated Inspections | 509 | 502 | 503 | 491 | 513 |
| Mines - Inspections | 353 | 336 | 226 | 194 | 313 |
| Mines - No Inspection | 156 | 166 | 277 | 297 | 200 |
| Tunnel Pre-Jobs | 256 | 281 | 267 | 232 | 275 |
| Examinations | 421 | 449 | 415 | 375 | 320 |
| Training ² (days) | 396 | 352 | 220 | 264 | 352 |
| Administrative Duties ³ (hours) | 639 | 568 | 355 | 426 | 568 |

As indicated by the workload history table, the division currently lacks the resources to fulfill its statutory mandate to conduct all required inspections of tunnels and mines each year. Those requirements are:

1. Surface mines require one inspection per year;
2. Underground mines require four inspections per year;

² Training - Mandatory classroom, web-based and field training for each inspector, averaging 36 days

³ Administrative Duties - Average 71 hours per inspector per year, and include staff meetings, responding to phone inquiries, testing and calibration of equipment, completion of time sheets and travel expense claims, Acting Supervisor duties, providing technical support to the regulated community, reading Division's Policy and Procedure Manual and its updates, delivering speeches to public groups, etc.

3. Tunnels under construction require six inspections per year;
 - a. Large tunnel projects (i.e., tunnels under construction for 12 to 14 months) require six mandated inspections;
 - b. Medium tunnel projects (i.e., tunnels under construction for 4-6 months) require an average of two mandated inspections; and
 - c. Small tunnel projects (i.e., tunnels under construction for less than 4 months) require, in general, only one inspection.

Tunnel Inspections. DIR reports an average of 428 inspections of new tunnels has been required each year for the past six years as a result of new tunnel construction. An average of 77 percent of these mandated inspections (or 331 as reflected in the workload table) were not inspected in accordance with statutory requirements. However, an onsite pre-job conference is conducted for every tunnel project.

Mine and Quarry Inspections. DIR reports an average of 505 inspections of mines and quarries were required each year for the last six years. An average of 46 percent of these mandated inspections (or 231 as reflected in the workload table) were not inspected in accordance with statutory requirements. The federal Mine Safety and Health Administration conducted an additional 291 inspections of California mines over the past year, in accordance with federal regulations. However, federal standards for mine inspections differ from California's regulatory standards. Mandates in the Labor Code express legislative intent to protect workers from the hazards of operations conducted in tunnels, mines, and quarries, which are among the highest-risk workplaces in the state. Even without regard to the expected construction of 20 major tunnels over the next three years, additional resources are needed to meet the state mandates designed to protect these workers.

Outcomes and Accountability. With the resources provided by this proposal the Mining and Tunneling Unit will be able to conduct an additional 124 mandated tunnel inspections and 87 mandated mine inspections.

In addition, the study mentioned in the summary section will provide the division with recommendations regarding what steps, if any, could be taken to utilize a collaborative, coordinated, and/or complementary approach with regard to federal agency inspections of mines, and if additional resources could be needed in the future.

Staff Recommendation: Approve as budgeted.

Vote:

Issue 5: Amusement Ride and Tramway Staffing Increases

Governor's Budget. The Governor's budget proposal requests two associate safety engineer (ASE) positions for permanent and temporary amusement ride inspections and one senior safety engineer (SSE) position to supervise, review engineering plans and perform aerial passenger tramway inspections.

The Governor also proposes trailer bill language to eliminate redundant inspections, and allow DOSH to more fully exercise its statutory authority to inspect permanent amusement rides after receiving notification of an injury accident and temporary amusement rides (TAR) when a ride is disassembled, moved, and reassembled.

After enactment of the proposed trailer bill language submitted with the Governor's budget change proposal for "Revenue & Expenditure Alignment for Various Special Funds" these positions will be funded from the Occupational Safety and Health Fund.

Background.

ART Unit staff are based in two offices (Sacramento and Santa Ana) covering the entire state, with the tramway inspectors based only in one office (Sacramento). For all new rides and tramways and for any modifications (an average of 153 each year for the past five years) made to any of this equipment, an ART inspector must review engineering and design plans, operating specifications, and maintenance requirements in order to properly inspect these devices.

The ART Unit investigates many complaints and accidents. These activities are complex and time consuming. Due to the small size of the ART Unit, one or two significant accidents can significantly decrease the ability of ART Unit staff to complete all of the mandated ride and tramway inspections.

Permanent Amusement Rides (PAR). Currently there are approximately 1,434 permanent rides in California. Many permanent amusement rides are very complicated and take significant amounts of time to review and inspect. Due to insufficient staffing, the ART Unit is not able to complete all of its required PAR inspections. Pre-announced qualified safety inspector (QSI) inspections are prioritized, along with new ride and major modification inspections, because these types of inspections must be completed in order for the amusement ride to open and operate for the public. Consequently, ART Unit staff is not able to complete all other required types of inspections.

On average over each of the past five years, 491 accidents were reported to the Division, of which approximately 50 percent, warranted investigation because the accidents were caused by problems with the design, construction, maintenance, or operation of the ride. At current staffing levels, only an average of 89 accidents inspections were conducted each year, resulting in 64 percent significant accidents (or 157) not being investigated.

With the additional resources in this proposal, the department estimates that the ART Unit will be able to complete all its mandated annual ride inspections, approximately 4,138, and will conduct approximately 246 injury accident inspections annually.

Temporary Amusement Rides (TAR). Currently there are more than 950 temporary amusement rides in California. Operators of these rides must obtain a permit each year from the ART Unit as a

condition of operation. On average over the past five years, 922 permits were issued to temporary ride operators each year. Each permit may require up to three (or more) site inspections, depending on the condition of the ride. The ART Unit conducts an average of 1,182 permit inspections each year for temporary rides.

The ART Unit is authorized to inspect temporary rides each time a ride is disassembled and reassembled. There are more than 27,000 instances of rides being disassembled, moved, and reassembled during the year. However, at current staffing levels, the ART Unit does not have the capacity to perform inspections each time a ride is disassembled, moved, and reassembled.

On average over each of the past five years, 14 rides were inspected a second time during the annual permit cycle, which represents only 1.5 percent of the average number of 922 rides permitted annually and only 0.05 percent of over 27,000 instances of rides being disassembled, moved, and reassembled. The department estimates that the proposed resources will allow the ART Unit to conduct a second inspection of approximately 277 portable rides annually.

Aerial Passenger Tramways (TRAMS). Currently there are 344 aerial passenger tramways in California, many of them ski-lift type equipment. The ART Unit must inspect each tramway twice a year and issue permits for operation valid for up to one year. In addition, for all new and altered tramways, the ART Unit must review and approve plans and design information certified by an engineer before the tramway may be put into operation.

On average over the past five years, 691 inspections of existing tramways were required each year. Approximately 10 percent or 67 of these mandated inspections were not conducted.

The department estimates that the additional resources will allow the ART Unit to complete all of its mandated tramway inspections, approximately 691 in number..

Under the Governor's proposal, the increased number of inspections will be tracked and measured using the DOSH ART Public Inspection Safety Information Management System (PISIMS). Continuous monitoring, feedback, and communication will be maintained by the ART Unit regional manager and supervising senior safety engineers to support and require improved performance based on the increased staffing.

Previously, DOSH provided an annual report to the Division of Fairs and Expositions (Department of Food and Agriculture) summarizing its inspections, accident investigations, and temporary ride route information. Subject to the approval of the proposed trailer bill language (TBL) in DIR's Revenue & Expenditure Alignment for Various Special Funds proposal, DOSH would post this annual report on its website.

Lastly, under the Governor's proposal, the department notes that ART Unit inspectors will not incur overtime, the Tramway program will be managed by a supervising senior safety engineer who will review engineering for both rides and tramways and will conduct complex research needed for the older equipment, and the ART regional manager will provide the SSE assistance in producing future regulatory packages that need to be updated, since the TAR and TRAM regulations are old and outdated in reference to the current industry standards.

Staff Recommendation. Approve as budgeted.

Vote:

Issue 7: Process Safety Management for Non-Refinery Facilities (Oversight Item)

The Process Safety Management (PSM) Unit within the Division of Occupational Health (DOSH) enforces process safety management procedures for potentially hazardous processes that exist in a wide variety of industries, including oil refineries. The PSM Unit was established after the 1999 fire at the Tosco refinery in Martinez that killed four workers. California is the only state to have a dedicated unit for this function to inspect 15 refineries and 1,940 other facilities that use, process, or store large quantities of toxic, flammable, or explosive chemicals. These non-refinery facilities include, but are not limited to, ammonia refrigeration, water treatment and waste water treatment, chemical plants, and explosive manufacturers.

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

The 2014-15 budget also included budget bill language that required the department to report on the status of PSM effort, including the status of the department's annual workload evaluation of the staffing needed to meet the enforcement requirements for both refinery facilities and non-refinery facilities that meet the threshold for Cal-OSHA PSM regulatory oversight, and the aggregate fees needed to support the function; DIR's process or plan for categorizing non-refinery facilities that meet the threshold for Cal-OSHA Process Safety Management regulatory oversight by type of facility, risk level, and inspection cycles; and number of inspections performed, to date, during the current fiscal year, by both type of facility and type of inspection. The report noted that DIR would continue monitoring workload and inspection/enforcement needs to ensure staffing levels and fee amounts are sufficient to support enforcement of existing law.

As a follow up to the report described above, the 2015-16 budget included supplemental reporting language requiring DIR to report to the Joint Legislative Budget Committee (JLBC) by March 31, 2016, on (1) its methodology and criteria for assessing the risk of non-refinery facilities subject to PSM oversight; (2) the number and types of inspections and the number and types of violations at non-refinery facilities during the 2014-15 fiscal year; (3) an estimate of the additional staff and augmentation of resources needed to increase the portion of non-refinery facilities inspected annually to 10 percent, 25 percent, and 50 percent; and (4) the department's assessment of the adequate frequency of inspections at non-refinery facilities subject to PSM oversight.

PSM Regulatory Oversight for Non-Refinery Facilities Report. The report notes that given the high number of facilities in the state, resources have been prioritized based on federal criteria and ranking of facilities into risk levels. DIR notes that the PSM non-refinery program currently has six associate safety engineers that are trained to conduct program quality verification (PQV) inspections. A PQV inspection is a thorough assessment of a facility's safety preparations and emergency response procedures. Each inspector is able to conduct about 7.5 inspections per year, for an annual total of 45 PQV inspections statewide.

Planned inspections for 2016 include a combination of high (69 percent) and moderate/lower risk facilities (31 percent) that handle or process ammonia, chlorine, or other chemical types. In 2017 and 2018, continued emphasis will be placed on high risk facilities, reflecting half (49 percent) of the

annual number of inspections, displayed below. Additionally, a sample of facilities inspected and cited for violations in 2015 will be selected for follow up inspection in 2018.

Proposed PSM Non-Refinery Inspection Composition

| Level of Risk/ Chemical Type | Number of facilities selected for inspection (percentage of annual total) | | Total number of facilities in state |
|---------------------------------|---|-----------|---|
| | 2017 | 2018 | |
| High risk | 22 49% | 22 49% | 58 |
| Moderate risk | 5 11% | 5 11% | 268 |
| Lower risk | 4 9% | 4 9% | 569 |
| Ammonia | 5 11% | 5 11% | 865 |
| Chlorine | 5 11% | 3 7% | 675 |
| Other ² | 4 9% | 3 7% | 400 |
| Follow up ³ | 0 0% | 3 7% | 45 |
| TOTAL | 45 | 45 | 1,940¹ |

Number of high, moderate, and lower risk facilities determined according to [U.S. Congressional Research Service Memorandum: Risk Management Program \(RMP\) Facilities in the U.S. as of November 2012](#).

Percentage totals may not equal 100 due to rounding.

¹ Some sites may be double counted among risk types. For example, some ammonia facilities are also considered high risk, and some chlorine facilities are also considered moderate risk.

² Other includes referrals (other government agencies, unions), self-referrals (CSHO opens an inspection), high profile, media events, records inspection, permit inspection.

³ Randomly selected from facilities inspected in 2015.

Enforcement Results

In 2014-15, the PSM non-refinery unit completed 45 Program Quality Verification (PQV) inspections at non-refinery sites. The focus of the inspections was high-risk facilities and timely, effective abatement. In addition to the 45 programmed inspections, another 22 inspections were conducted in response to complaints, accidents or other referrals, totaling 67 inspections for the year.

Non-Refinery Enforcement, FY 204-15

| Inspection type | # | % |
|------------------------------|-----------|------------|
| Program Quality Verification | 45 | 67.1 |
| Complaint | 6 | 9.0 |
| Accident | 5 | 7.5 |
| Other* | 11 | 16.4 |
| TOTAL | 67 | 100 |

* Other includes referrals (other government agencies, unions), self-referrals (CSHO opens an inspection), high profile, media events, records inspection, permit inspection.

Non-Refinery Inspection Results, FY 2014-15

| Violation type | # | % |
|----------------|------------|------------|
| Serious | 63 | 26.7 |
| General | 159 | 67.4 |
| Regulatory | 14 | 5.9 |
| Willful | 0 | 0.0 |
| Repeat | 0 | 0.0 |
| TOTAL | 236 | 100 |

Of the 236 non-refinery inspection violations recorded during FY 2014-15 year, 26.7 percent were serious, meaning that they carry a realistic possibility that death or physical harm could result from the actual hazard created by the violation and the employer had knowledge of the workplace conditions or practices that created the hazard. Additionally, 67.4 percent were general violations, meaning that the injury or illness that would most likely result from the unsafe condition would probably not cause death or serious physical. The remaining 14 violations (5.9 percent) were regulatory, which refers to violations that pertain to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute.

Staffing Projections

The Legislature also required DIR to estimate the resources needed to meet specified annual inspection targets for non-refinery facilities. There are currently 1,940 facilities in California and each inspector can complete an average of 7.5 PQV inspections annually. The chart below displays the staffing projections needed to meet various inspection benchmarks.

Non-Refinery PSM Unit Staffing Projections

| % of Non-refinery Facilities | # Annual PQV Inspections | Total # Inspectors Required | Estimated Costs for Inspectors (\$, thousands)* | Estimated Benefit Costs for Inspectors (\$, thousands) |
|------------------------------|--------------------------|-------------------------------|---|--|
| 2 | 45 | 6 (current staffing level) | 513—642 | 231—289 |
| 10 | 194 | 26 | 2,223—2,781 | 1,000—1,251 |
| 25 | 485 | 65 | 5,558—6,953 | 2,501—3,129 |
| 50 | 970 | 129 | 11,031—13,799 | 4,964—6,210 |

*Estimated costs are based on the salary range for the associate safety engineer classification. This amount does not include administrative costs or supervisory staff support.

Inspection Frequency. DIR notes that non-refinery facilities will be randomly selected for inspection based on the risk level and type of chemical. Inspection resources will be prioritized by the severity of risk and industry composition in the state. DIR notes that facility composition will be monitored to ensure that the allocation of resources aligns with changes in the industry over time. Approximately ten percent of the inspected facilities that are found to be out of compliance will be randomly selected for a follow-up inspection three years later. Additionally, facilities that had citations for serious violations will also be prioritized in these follow-up inspections.

Staff Comments. As noted above, the Legislature approved additional staff in previous budget years to enhance PSM Unit resources in response to the Chevron refinery explosion. The PSM Unit plays a critical role in protecting workers and the communities in which the facilities operate. As described above, 26.7 percent of violations were noted as serious, meaning that they carry a realistic possibility that death or physical harm and the employer had knowledge of the workplace conditions or practices that created the hazard. However, under the current resources, only two percent of non-refinery facilities are annually inspected. The PSM Units inspections of non-refinery facilities are important, as highlighted by the Central Texas fertilizer plant explosion that killed 14 people and injured approximately 200, and the incident in which chemicals used to clean coal leaked into the Elk River in Charleston, West Virginia, contaminating drinking water of some 300,000 residents. These incidents demonstrate the critical need to ensure appropriate safety measures are in place.

7501 DEPARTMENT OF HUMAN RESOURCES

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

- Manage examinations, salaries, benefits, position classification, training, and all other aspects of state employment other than those areas assigned to the State Personnel Board (SPB) under the civil service provisions of Article VII of the California Constitution.
- Represent the Governor in collective bargaining with unions representing rank and file state employees.
- Set salaries and benefits for employees excluded from collective bargaining and employees exempted from civil service.
- Serve as the sole fiduciary and administrative body for the Savings Plus Program (defined contribution program for fulltime and part-time state employees).
- Provide legal representation to state agencies for appeals of disciplinary actions and labor relations matters.
- Hold ex-officio membership to the 13-member Board of Administration of the California Public Employees' Retirement System.

3-YR EXPENDITURES AND POSITIONS

| | Positions | | | Expenditures | | |
|--|--------------|--------------|--------------|-----------------|-----------------|------------------|
| | 2014-15 | 2015-16 | 2016-17 | 2014-15* | 2015-16* | 2016-17* |
| 6200 Human Resources Management | 154.7 | 155.5 | 178.2 | \$27,175 | \$30,849 | \$33,489 |
| 6205 Local Government Services | - | - | - | 2,444 | 2,598 | 2,713 |
| 6210 Benefits Administration | 55.5 | 57.5 | 57.5 | 20,620 | 26,864 | 26,869 |
| 6215 Benefit Payments | - | - | - | 33,263 | 36,503 | 36,503 |
| 9900100 Administration | 52.3 | 54.2 | 56.2 | 7,213 | 7,953 | 8,262 |
| 9900200 Administration - Distributed | - | - | - | -6,221 | -6,904 | -7,190 |
| TOTALS, POSITIONS AND EXPENDITURES (All Programs) | 262.5 | 267.2 | 291.9 | \$84,494 | \$97,863 | \$100,646 |
| FUNDING | | | | 2014-15* | 2015-16* | 2016-17* |
| 0001 General Fund | | | | \$6,802 | \$8,723 | \$9,227 |
| 0367 Indian Gaming Special Distribution Fund | | | | 6 | 75 | 75 |
| 0821 Flexelect Benefit Fund | | | | 20,433 | 27,743 | 27,601 |
| 0915 Deferred Compensation Plan Fund | | | | 10,814 | 14,983 | 15,020 |
| 0995 Reimbursements | | | | 26,913 | 30,649 | 31,831 |
| 8008 State Employees Pretax Parking Fund | | | | 1,613 | 1,400 | 1,400 |
| 8049 Vision Care Program for State Annuitants Fund | | | | 11,873 | 8,784 | 8,784 |
| 9740 Central Service Cost Recovery Fund | | | | 6,040 | 5,506 | 6,708 |
| TOTALS, EXPENDITURES, ALL FUNDS | | | | \$84,494 | \$97,863 | \$100,646 |

Issue 1: Civil Service Improvement

Governor's Budget. The Governor's budget requests the following resources over the next three years to implement civil service improvement reforms:

- 16 positions and \$1.92 million (\$606,000 General Fund, \$848,000 Reimbursement, \$462,000 Central Service Cost Recovery Fund) in fiscal year 2016-17;
- 17 positions and \$1.85 million (\$558,000 General Fund, \$864,000 Reimbursement, \$426,000 Central Service Cost Recovery Fund) in fiscal year 2017-18, and
- \$1.84 million (\$558,000 General Fund, \$855,000 Reimbursement, \$426,000 Central Service Cost Recovery Fund) in fiscal year 2018-19 to implement Civil Service Improvement reforms and identify new areas for improvement.

The Governor also proposes trailer bill language to:

- Simplify the exempt appointee reinstatement guidelines by consolidating various periods which an employee is required to make a request for reinstatement. The new guidelines require no break in state service, and submittal of a request within 10 working days after the effective date of termination, regardless of exempt appointment type. If an employee seeks reinstatement after more than 10 working days after the effective date of termination, reinstatement is at the discretion of the appointing power.
- Revise provisions to grant employees in exempt positions with reinstatement rights, who have at least 5 years of state service, within four years of termination, a right to obtain civil service appointment list eligibility by taking a deferred examination for any class that has a current eligible list and for which the employee meets the minimum qualifications of the class.
- Removes probationary period for individuals who successfully complete the Limited Examination and Appointment Program job examination period and are appointed to a position.
- Specifies that an overpayment of leave credits to state employees occurs when the employee receives compensation in exchange for leave erroneously credited to the employee for the purposes of an action to recover overpayment.
- Specifies managers, supervisors and Career Executive Assignment (CEAs) will be required to complete various leadership training and development as prescribed by the department.
- Repeal existing law that prohibits a non-clerical position under the Fair Political Practices Commission from inclusion in the same civil service classification with a position in another department or agency.

Background The proportion of state employees age 50 or older is nearly 41 percent. These potential retirees have critical experience and institutional knowledge that will leave with them. These circumstances make CSI critical to the state's overall efforts to maintain the talent needed to perform the missions and achieve the strategic goals of California's many civil service organizations.

The 2015-16 Budget Act adopted various civil service improvements, including:

- Consolidating various hiring eligibility list requirements into a single process, under the “Rule of Three Ranks,” which would allow hiring managers to consider all eligible persons whose examination scores result in them being in the top three ranks;
- Expanding the pool of candidates eligible to compete for a career executive assignment CEA position to include individuals from the private sector;
- Reconciling department budgets to help promote greater transparency in how departments develop their support budgets, which include vacant positions, personal services and operating expenses and equipment.

In 2016-17, CalHR intends to implement reforms that have already begun, identify new areas for improvement, and continue to state's comprehensive analysis of civil service to identify future modernizations and efficiencies. These include simplifying the state's outdated job classification system, working with each department to create a workforce development plan, and improving the state's outreach and recruitment efforts. The resources included in this budget proposal will directly address several Civil Service Improvement initiatives, specifically:

Exams

- Increase multi-departmental exams (e.g., consortium exams).
- Create a repository of job analyses and exams for departmental use to alleviate exam costs.

Recruiting

- Create an Online-Career Center to assist in determining eligibility for jobs/classifications.
- Align departmental and statewide recruitment efforts.
- Innovate statewide recruitment by using social media. Establish statewide recruitment program that promotes broad-based recruitment.
- Develop or make use of apprenticeship/internship/fellowship programs as a recruitment tool.
- Create and implement an employer-of-choice campaign for the State of California. Collaborate with state employee organizations to emphasize the importance of government work and job satisfaction

Workforce Planning

- Support departments' efforts to complete strategic and workforce plans (e.g., succession and future needs planning).
- Ensure all departmental workforce plans are submitted to CalHR to create a statewide workforce plan.

Classification Consolidation

- Consolidate and reduce the number of job classifications.

- Simplify job classification titles.
- Clarify job classifications descriptions.
- Abolish classes, automatically, that are vacant for more than two years.
- Establish clear and sensible allocation criteria that allows departments to allocate classes in a manner that addresses their programmatic needs.
- Create human resource/labor relations credentialing program to professionalize classes.

Training

- Develop multi-level training for supervisors, managers and executives aligned with the state's leadership competency models and the Administration's leadership philosophy.
- Provide employees broader training opportunities.
- Partner with unions to develop employee training that is consistent and comprehensive.
- Create a management development track. Develop high-performing CEAs for leadership roles.
- Partner with higher education to provide career advancement courses for state employees, including tuition, fee subsidies, and release time from work to attend courses.
- Train managers in performance measurement and management.
- Train supervisors and managers to deal with poor performance by using progressive discipline.

CalHR's requested positions will support statewide Human Resources efforts described above, rather than a department-level approach, which the Administration notes is costly and less effective at resolving statewide civil service trainings.

Staff Comments.

Staff agrees with the administration that additional efficiencies and transparency in the state civil service process would help in the recruitment and retention of the state's future workforce.

Last year, the Governor proposed significant policy changes to the state's civil service program during May Revision through trailer bill language giving the Legislature little time to review the proposal before the budget deadline. Additionally, members of the budget subcommittee noted these proposals may have been better discussed through the policy committee process. Similar to last year, staff questions whether some of the proposed trailer bill language may be better suited for a policy committee discussion.

Staff Recommendation: Hold Open

Issue 2: Human Resources Audits

Governor's Budget. The department requests 5.7 positions and \$701,000 (\$400,000 in General Fund, \$301,000 in Central Service Cost Recovery Fund) in FY 2016-17, and 9.4 positions and \$991,000 (\$565,000 in General Fund, \$426,000 in Central Service Cost Recovery Fund) in FY 2017-18 and ongoing to fund an audit program for human resource practices delegated to departments by CalHR.

Background. The Governor's Reorganization Plan Number One (GRP1) of 2011 consolidated all of the functions of the Department of Personnel Administration and the merit-related operational functions of the State Personnel Board (SPB) into CalHR. Specifically, SPB programs related to appointments consultation, career executive assignment allocations, test development, recruitment, examinations, psychological and medical screening, training, and the Office of Civil Rights transferred to CalHR.

The GRP preserved SPB's constitutional authority to administer the merit system. SPB currently retained an appeals unit and created the Policy Unit and Compliance Review Unit (CRU) to establish merit-related policy and conduct reviews of departmental merit related practices to ensure compliance. CRU currently performs standard reviews of four major areas including examinations, appointments, equal employment opportunity, and personal services contracts. CRU also does special investigations of certain agencies' merit-related personnel practices.

This budget proposal would allow CalHR to expand the scope of items departments are audited on beyond merit-related issues into more operational practices that have been delegated to departments, and for which CalHR provides policy direction. Some examples of these audits would include authorizing hiring above minimum salaries appropriately for new hires coming into state service; authorizing out-of-class pay appropriately, and ensuring its revisited determinations appropriately and ensuring arduous pay is authorized appropriately.

The goal of the Governor's vision for civil services improvement is to delegate more human resources functions to departments. Delegation will only be successful if oversight functions are built in early in the process to ensure that practices are consistent across departments.

The chart below is a comparison of current CalHR oversight functions, SPB audit functions, and proposed CalHR audit functions:

| Human Resources Quality Review (HRQR)* (Review & Training) | Delegation Project* (Monthly Monitoring of Self-Reporting) | SPB Audits today (Dept. Audit Every 3 Years) | Audits proposed scope growth |
|--|--|--|--|
| Position Allocation (Review & Training) Duty statements (Training) Class Specifications (Training) Out-of-Class Grievances (Training) | Unlawful Appointments Exceptional Allocations CEA Leveling/Salary Exceptions | EEO Program Supervisor Training (Gov. Code § 19995.4) Sexual Harassment Training (Gov. Code § 12950.1) Ethics Training (Gov. Code § 11146) Examinations (Review of Exam File) Appointments including: <ul style="list-style-type: none"> • Transfers/Permissive Reinstatements • Mandatory Reinstatements • Temporary Authorization Utilization (TAU) • Emergency Appointments • Training & Developments Assignment • Personal Services Contracts (Gov. Code § 19130) | Compensation: <ul style="list-style-type: none"> • Hiring Above Minimum (HAM) • Out-of-Class Pay • Salary Determinations • Confidential Status • Arduous Pay • Administrative Time Off (ATO) • Timekeeping Exams/Appointments: <ul style="list-style-type: none"> • Withholds • Additional Appointments • Appropriate use of Special Consultants, Retired Annuitants, and Student Assistants • Limited-Term Appointments • Job Analysis Layoff Process Worker's Compensation Citizenship Bilingual Services |

The Administration notes that the proposed resources will help develop and implement audit tools and plans for the proposed audit scopes listed above, as well as for implementation of the audit plan of departments statewide.

Staff Recommendation. Approve as budgeted.

Vote:

Issue 3: Review of the Merit System Services Program

Governor's Budget. The department requests one-year limited-term funding of \$115,000 in reimbursement authority in FY 2016-17 to develop a strategy to transfer back state duties performed by Cooperative Personnel Services (CPS), the contractor that currently administers the Merit System Services (MSS) program on behalf of CalHR.

Background. Since 1939, the federal government has required the state to ensure that counties are administering a merit-based personnel system for programs receiving federal funds such as Medi-Cal, Child Support Services, and Cal-Fresh. Prior to 1970, predecessors of the current Department of Social Services (DSS) and Department of Health Care Services (DHCS) ensured county compliance with the merit system. In 1970, responsibility for administering all MSS programs was consolidated and transferred to the State Personnel Board (SPB). The SPB thereafter managed this program until 1985, when the entirety of the actual program operation work was contracted out to CPS.

The current contract with CPS expires on June 30, 2016. For the current fiscal year, the contract amount is approximately \$2.3 million. There has been some question about whether SPB should administer the program since the work performed by CPS is typically performed by civil service employees including personnel selection, appointments, workforce reductions, disciplinary actions, and other personnel related issues

When the program was transferred from SPB to CalHR on January 1, 2014, as part of GRP 1 (2011), the CalHR Legal Division researched the federal legal requirements and discovered that, although the federal law changed significantly in the mid-1990's affording increased flexibility to the states, California did not revise the existing regulations to take advantage of the streamlined oversight program permitted by the new federal law. The updated federal regulations simply require that states ensure that local personnel operations are consistent with six high-level principles of merit-based personnel management.

Under the current program, counties can either request to independently run their own merit system pursuant to county ordinances, in which case they are subject to a state audit, or they can have the state administer their personnel system for MSS program employees, in which case they are subject to existing state regulations.

For counties electing to have CalHR administer the county personnel system for their MSS program employees, the new regulations place greater emphasis on the employing county practices, even though CalHR will be doing the oversight work. The new regulations will enable all employees within the county to be treated similarly, regardless of the funding for their positions. CalHR anticipates that the revised regulations will encourage additional counties to manage their own merit system program employees independently and will shrink the state's role in the operation of the merit-based personnel systems for MSS employees in the counties. CalHR will adopt the revised regulations later this year.

CPS directly operates merit-based civil service systems for the MSS program employees in 28 of the 58 California counties and conducts audits of the remaining 30 counties who are approved to operate their own systems. CalHR currently has one half-time position dedicated to administration of the CPS contract. This half-time position is insufficient to analyze core CPS operations and then develop a plan to move the operations to CalHR. To assess and understand the staffing and approach CPS utilizes to operate the program, CalHR will need a temporary help position to gather information and plan for the assumption of CPS's duties by CalHR. This position will work with the counties and CPS to evaluate

the work CPS performs and to develop an implementation plan for assuming these duties. Developing this plan will require CalHR to gain a thorough understanding of CPS's current operations, and to work with counties to develop new, less duplicative, and more efficient practices.

The proposed resources will allow CalHR to a study and evaluate CPS's current operations and design an implementation plan and schedule for assuming these responsibilities and operating the program in-house. Additionally, these findings will help CalHR prepare a proposal for consideration in the 2017-18 Governor's Budget that will bring the MSS program under CalHR's authority and operation.

Staff Recommendation. Approve as budgeted.

Vote:

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, April 21, 2016
Upon Adjournment of Joint Hearing, Subcommittee No. 4 and No. 5
State Capitol - Room 113

Consultant: Anita Lee and Farra Bracht

OUTCOMES

PROPOSED FOR VOTE-ONLY

| <u>Item</u> | <u>Department</u> |
|------------------------|---|
| 7350 Issue 1 | Department of Industrial Relations Enhanced Enforcement and Compliance (2015 Legislation) Approved as budgeted 2-0 |
| 7501 Issue 1 | Department of Human Resources Information Security Staffing - Approved as budgeted 2-0 |
| Issue 2 | Developmental Disability Internship Program (SB 644) - Approved as budgeted 2-0 |
| Issue 3 | Expansion of the Healthier U State Employee Wellness Program - Approved as budgeted 2-0 |
| 7920 Issue 1 | California State Teachers' Retirement System Investment Portfolio Complexity - Approved as budgeted 2-0 |

ISSUES PROPOSED FOR DISCUSSION/VOTE

| <u>Item</u> | <u>Department</u> |
|------------------------|--|
| 7100 Issue 1 | Employment Development Department Unemployment Insurance Program Funding - Approved as budgeted 2-0 |
| Issue 2 | Benefit Overpayment Collection Automation Resource – HELD OPEN |
| 7320 Issue 1 | Public Employment Relations Board Augmentation to Reduce Backlog and Los Angeles Regional Office Relation – HELD OPEN |

| <u>Item</u> | <u>Department</u> |
|--------------------|--|
| 7350 | Department of Industrial Relations |
| Issue 1 | Division of Labor Standards Enforcement- Approved as budgeted 2-0 |
| Issue 2 | Private Attorney General Act – Approved positions, rejected trailer bill language without prejudice 2-0 |
| Issue 3 | Revenue and Expenditure Alignment for Various Special Funds – Approved BCP and trailer bill language, held Car Wash Worker Fund components open 2-0 |
| Issue 4 | Mining and Tunneling Safety Inspections – Approved as budgeted 2-0 |
| Issue 5 | Amusement Ride and Tramway Staffing Increase – Approved as budgeted 2-0 |
| Issue 6 | Process Safety Management Oversight |
| 7501 | Department of Human Resources |
| Issue 1 | Civil Service Improvement – Held Open |
| Issue 2 | Human Resources Audits – Approved as budgeted 2-0 |
| Issue 3 | Review of the Merit System Services Program – Approved as budgeted 2-0 |

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, April 28, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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| Item 2 | Patient Cost Recovery System | | 3 |
| Discussion Items | | | |
| 0530 | Health and Human Services | | |
| Issue 1 | Office of Law Enforcement Support Update | | 4 |
| 5225 | California Department of Corrections and Rehabilitation | | |
| 4440 | Department of State Hospitals | | |
| 5225 | California Correctional Healthcare Services | | |
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PROPOSED FOR VOTE ONLY**4440 DEPARTMENT OF STATE HOSPITALS (DSH)**

1. **DSH Hospital Injury and Illness Prevention Implementation.** The Governor's budget requests the authority to transition five existing two-year limited-term positions to permanent positions, which would require an on-going General Fund augmentation of \$522,000. These positions would implement new Hospital Injury and Illness Prevention plans required under a settlement agreement with the Department of Industrial Relations. This request would allow for one analyst position at each of the five state hospitals.
2. **Patient Management Unit.** The Governor's budget proposes transitioning 10 limited-term positions into permanent positions for the on-going operation of the patient management unit (PMU), which provides centralized management of patient admissions and reporting on patient population trends. The transition would require on-going funding of \$1.1 million General Fund.
3. **Third-Party Patient Cost Recovery System.** The Governor's budget proposes transitioning 15 limited-term positions to permanent full-time positions to continue improvements to the patient cost recovery system. This transition would cost \$3.2 million General Fund (\$2.8 million on-going and \$400,000 one-time) and is estimated to save the General Fund over \$5 million per year in state hospital costs.

ITEMS TO BE HEARD**0530 HEALTH AND HUMAN SERVICES AGENCY (HHS)****Issue 1: Office of Law Enforcement Support Update**

Over the last several years, the Legislature and the Administration have engaged in a discussion regarding the need for independent oversight of the state hospitals and developmental centers. The discussion included a wide range of options, including expanding the jurisdiction of the Office of the Inspector General (OIG) to oversee the facilities and establishing an office at the HHS to provide oversight. The Legislature initially expressed concerns with HHS's ability to provide independent oversight of departments that report directly to the agency. In response, HHS enlisted the assistance of the OIG and the California Highway Patrol to develop a robust Office of Law Enforcement Support (OLES) that will be responsible for both providing oversight of the law enforcement and employee conduct at both departments, and will also establish uniform training for the law enforcement employees in the state hospitals and developmental centers and establish uniform policies and procedures regarding such things as the use of force and the appropriate procedures for processing and investigating allegations and complaints of mistreatment.

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

The proposed creation of the OLES in last year's budget came about in response to underperformance by the Office of Protective Services (OPS) within each developmental center and state hospital. CHHS conducted an in-depth analysis of OPS operations within DSH which revealed the following critical deficiencies:

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

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

The report also included the following recommendations for next steps:

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

As a result of the ultimate agreement between the Administration and the Legislature on the appropriate way to provide oversight of the state hospitals and developmental centers and to avoid potential bias if the individuals tasked with creating the policies and procedures are also investigating allegations of misconduct, OLES has been organized into the following units:

1. **Intake Analysis Unit:** This unit is comprised of staff who receive and review information pertaining to incidents occurring in DDS, DSH or in a psychiatric center located within a California Department of Corrections and Rehabilitation institution in order to determine whether OLES monitoring or investigation is appropriate under established procedures. The OLES Chief makes the final determination whether to monitor or investigate the incident during the daily Intake meeting.
2. **Investigations Unit:** Investigates any incident at a DDS or DSH facility that involves DDS or DSH law enforcement personnel and meets the statutory or alleges serious misconduct by law enforcement personnel or that the Chief of the OLES, the Secretary of the HHSA, or the Undersecretary of the HHSA directs the OLES to investigate.
3. **Investigation Monitoring/Oversight Unit:** Performs contemporaneous oversight of investigations and the employee disciplinary process, both serious criminal and administrative allegations against non-peace officer staff, investigated by the DSH involving an incident that meets the criteria of WIC §4023, and investigations conducted by the DDS involving an incident that meets the criteria of WIC §4427.5. The unit evaluates each investigation and the disciplinary process and completes a summary of its findings to be provided to the Semi-Annual Report Assessment Unit.
4. **Semi-Annual Report Assessment Unit:** Monitors and evaluates the departments' law enforcement implementation of policy and procedures, training, hiring, staff development, and accountability. This unit shall report these assessments as part of the semi-annual report along with making recommendations of best law enforcement practices to the departments.

In addition, similar to the OIG's semi-annual reports on the California Department of Corrections and Rehabilitation (CDCR), OLES is required to report semi-annually to the Legislature beginning October 1, 2016, on the following:

- The number, type, and disposition of complaints made against employees.
- A synopsis of each investigation reviewed by the Office of Law Enforcement Support.
- An assessment of the quality of each investigation.
- The report of any settlement and whether the Office of Law Enforcement Support concurred with the settlement.
- The extent to which any disciplinary action was modified after imposition.
- Timeliness of investigations and completion of investigation reports.
- The number of reports made to an individual's licensing board, in cases involving serious or criminal misconduct by the individual.
- The number of investigations referred for criminal prosecution and employee disciplinary action and the outcomes of those cases.
- The adequacy of the State Department of State Hospitals' and the Developmental Centers Division of the State Department of Developmental Services' systems for tracking patterns and monitoring investigation outcomes and employee compliance with training requirements.

Current Budget. Current funding for OLES is \$2.7 million per year, which funds 21 permanent positions and six outside consultants from the Highway Patrol, CDCR and the OIG.

**5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR) AND CALIFORNIA CORRECTIONAL HEALTHCARE SERVICES (CCHCS)
4440 DEPARTMENT OF STATE HOSPITALS (DSH)**

Issue 1: *Coleman, et al, v Brown*

Background. Over the past few decades, state prisons have increasingly become mental health treatment facilities. Data suggests that the number of people with mental illness in prison has almost doubled in the last 15 years. Currently, 45 percent of inmates have been treated within the last year for a severe mental illness.

How Did Prisons Become Mental Health Service Providers? Prior to 1957, mental health services were delivered to some persons with serious mental illness by a state-operated and funded institutional system, which included state hospitals for persons with mental illness and two state hospitals serving persons with mental illness and/or a developmental disability.

In 1957, the California Legislature passed the Short-Doyle Act in response to the growing number of people with mental illness being confined in public hospitals, many of whom were institutionalized inappropriately or subject to abuse while residing in a state facility. The act, which provided state funds to local mental health service delivery programs, was developed to address concerns that some individuals with mental illness were better served by local, outpatient services rather than 24-hour hospital care. Lawmakers believed that local programs would allow people with mental illnesses to remain in their communities, maintain family ties, and enjoy greater autonomy. When first enacted, the Short-Doyle Act provided state funding for 50 percent of the cost to establish and develop locally administered-and controlled community mental health programs.

In 1968, the Legislature passed the Lanterman-Petris-Short Act (LPS), which further reduced the population of state mental health hospitals by requiring a judicial hearing prior to any involuntary hospitalization. The LPS also initiated increased financial incentives for local communities to provide of mental health services. As a result of this long-term transfer of state operation and oversight to a decentralized, community-based mental health care delivery model, the state mental health hospital population declined from 36,319 in 1956 to 8,198 in 1971. Three public mental hospitals closed during this time period. The Legislature intended for savings from these closures to be distributed to community programs. However, in 1972 and 1973 then-Governor Ronald Reagan vetoed the transfer of these funds.¹

Throughout the 1970s and 1980s counties contended that the state was not providing adequate funds for community mental health programs. In addition, several counties were receiving less funds on a population basis than other counties. This disparity was addressed, with varying levels of success, in both the 1970s and the 1980s with the allocation of “equity funds” to certain counties. Realignment of mental health programs, enacted in 1991, has made new revenues available to local governments for mental health programs but, according to local mental health administrators, funding continued to lag behind demand.²

¹Historical background from The Stanford Law School Three Strikes Project, “When Did Prisons Become Acceptable Mental Healthcare Facilities?”

²Legislative Analyst’s Office “Major Milestones: 43 Years of Care and Treatment of the Mentally Ill”, March 2, 2000.

In the past decade, California has made a significant investment in community mental health treatment funding. In November 2004, California voters approved Proposition 63, also known as the Mental Health Services Act. Proposition 63 provides state funding for certain new or expanded mental health programs through a personal income tax surcharge of one percent on the portion of a taxpayer's taxable income in excess of \$1 million. Revenues generated by the surcharge are dedicated to the support of specified mental health programs and, with some exceptions, are not appropriated by the Legislature through the annual budget act. Full-year annual Proposition 63 revenues to date have ranged from about \$900 million to \$1.5 billion, and could vary significantly in the future. Between 2004-05 and 2013-14, the fund has collected over \$11 billion for local mental health services.³

Proposition 63 funding is generally provided for five major purposes: (1) expanding community services, (2) providing workforce education and training, (3) building capital facilities and addressing technological needs, (4) expanding prevention and early intervention programs, and (5) establishing innovative programs.

In 2013, the federal Patient Protection and Affordable Care Act (ACA) (health care reform) significantly increased access to private and public health care coverage, including mental health services. Included in this healthcare expansion was the expansion of Medi-Cal coverage to adults with incomes up to 138 percent of the federal poverty level (FPL). Generally, these are childless adults who are nonelderly and nondisabled. Under the ACA, the federal government will pay for 100 percent of the costs for this population for the first three years (2014-2016), with funding gradually decreasing to 90 percent in 2020. Allowing single, childless adults to receive Medi-Cal should significantly increase access to mental health services for those adults who would otherwise only have access through public county services or the criminal justice system.

The Legislature also passed the Investment in Mental Health Wellness Act (SB 82 (Senate Budget and Fiscal Review Committee), Chapter 34, Statutes of 2013). The bill authorized the California Health Facilities Financing Authority (CHFFA) to administer a competitive selection process for capital capacity and program expansion to increase capacity for mobile crisis support, crisis intervention, crisis stabilization services, crisis residential treatment, and specified personnel resources. The budget provided \$142 million General Fund for these grants. In addition, the bill implemented a process by which the Mental Health Services Oversight and Accountability Commission (MHSOAC) allocates funding for triage personnel to assist individuals in gaining access to needed services, including medical, mental health, substance use disorder assistance and other community services. The 2013-14 budget provided \$54 million (\$32 million MHSA State Administrative Funds and \$22 million federal funds) in on-going funding for this purpose.

Currently, due to the expansion of Medi-Cal eligibility, the state has greatly increased its efforts to assure that anyone leaving prison or county jail is enrolled in Medi-Cal and has access to necessary health care services, including mental health treatment.

Ralph Coleman, et al. v. Edmund G. Brown Jr, et al. Primarily because the prison system was severely overcrowded and the provision of mental health treatment was significantly lacking for inmates in need, a class action suit was filed in the United States District Court in 1991 arguing that

³ Mental Health Service Act (MHSA) – Revenue Summary, January 2015

prisoners with mental illness were subjected to cruel and unusual punishment, a violation of the inmates eighth amendment protections.

In order to find in favor of the plaintiffs, the court needed to determine that the violations were both objective and subjective in nature. In order to meet the objective standard, the court must find that the deprivations were sufficiently serious to constitute the unnecessary and wanton infliction of pain. For the subjective standard, the courts must find that the treatment constituted deliberate indifference, was wanton and showed a pattern of being malicious and sadistic.

In 1995, following a 39-day trial, District Court Judge Lawrence Karlton found that current treatment for mentally ill inmates violated those inmates' eighth amendment protections against cruel and unusual punishment. Judge Karlton found "overwhelming evidence of the systematic failure to deliver necessary care to mentally ill inmates" who, among other illnesses, "suffer from severe hallucinations, [and] decompensate into catatonic states." Although a special master was appointed by the court to oversee implementation of a remedial plan, the situation continued to deteriorate, according to periodic reports from the special master.⁴ Twenty-five years after the federal suit was filed, the state remains under the control of the federal court in *Coleman v. Brown* and is under regular review and oversight by the special master.

In the original ruling, the court identified six areas in which CDCR needed to make improvements: mental health screening, treatment programs, staffing, accurate and complete records, medication distribution and suicide prevention. In subsequent rulings, the courts expanded the areas of concern to include use of force and segregation policies. In addition, the courts also required that condemned inmates in San Quentin State Prison have access to inpatient, acute-care treatment.

On the following page is a detailed timeline of the major events related to *Coleman v. Brown* over the last 25 years.

⁴ Stanford Law School Three Strikes Project, "When Did Prisons Become Acceptable Mental Healthcare Facilities?"

Major Milestones in the *Coleman v. Brown* case

| Year | Event |
|-------------|--|
| 1991 | The Coleman class-action lawsuit was filed in U.S. District Court, Eastern District, alleging that mental health care in state prisons violated the Eighth Amendment's ban of cruel and unusual punishment. |
| 1995 | The Coleman court found that the State was deliberately indifferent to the mental health needs of inmates in violation of the Eighth Amendment. A special master was appointed. |
| 1997 | The Coleman court approved a plan to address the inadequacies in mental health care. |
| 2006 | Plaintiffs in the Plata and Coleman cases requested the convening of a Three-Judge Panel to review whether overcrowding was the primary cause of the failure to provide adequate medical and mental health care. |
| 2008 | The Three-Judge Panel trial took place. |
| 2010 | The Three-Judge Panel ordered the State to reduce its adult institution population to 137.5 percent of design capacity within two years and according to a schedule of four benchmarks at six-month intervals. The State appealed to the U.S. Supreme Court. |
| 2011 | In April, Public Safety Realignment (AB 109 (Committee on Budget) Chapter 15, Statutes of 2011), designed to bring about a significant reduction in the prison population, was enacted. It eventually reduced the adult institution population by 25,000. |
| 2011 | In May, the U.S. Supreme Court affirmed the Three-Judge Panel's order. |
| 2013 | In January, Governor Brown filed a motion to terminate the Coleman lawsuit and to end the requirement to reduce the prison population to 137.5 percent of design capacity. The Coleman court denied this motion. |
| 2013 | In May, the plaintiffs filed a motion in court alleging the unconstitutional use of force and an inadequate discipline process against the Coleman class members. |
| 2013 | In July, the court ordered the special master to monitor the psychiatric programs run by the Department of State Hospitals, particularly in regards to the adequacy of staffing and the use of handcuffs at all times for patients who are out of their cells. |
| 2013 | In December, the court ordered the state to develop a long-term solution for providing inpatient care for condemned inmates currently housed on California's death row. |
| 2014 | In April, the Coleman court ruled that California's use of force and segregation of mentally ill inmates violated the inmate's 8th amendment rights. |
| 2014 | In May, the Special Master released his report on the adequacy of inpatient mental health care, including the psychiatric programs run by DSH. The special master also filed an assessment of the San Quentin plan to provide inpatient care for condemned inmates and the court provided additional reporting orders. |
| 2014 | In August, the court issued further orders regarding segregation and use of force. |
| 2015 | In January, the Governor's budget proposal included a request related to complying with the 2014 court orders. In addition, the Special Master released his report on suicide prevention practices. |

Source: Events through April 2013 are from CDCR's May 2013 "Timeline in the Plata (medical care), Coleman (mental health care) and Three-Judge Panel (prison crowding) cases"

State Prison Population. CDCR is responsible for the incarceration of the most serious and violent adult felons, including the provision of training, education, and health care services. As of April 20, 2016, CDCR housed about 116,903 adult inmates in the state's 34 prisons and 43 fire camps. Almost 113,000 of those inmates are in state prisons, which results in those institutions currently being at 134.5 percent of their design capacity. Approximately 4,942 inmates are housed in out-of-state contracted prisons, 5,645 are housed in in-state contracted facilities, and 3,536 are housed in fire camps. CDCR also supervises and treats about 44,000 adult parolees. Approximately 45 percent of inmates have been treated for severe mental illnesses within the last year.

The Coleman Class. As of April 18, 2016, there are currently 37,431 inmates in the Coleman class (35,335 men and 2,096 women). According to a December 24, 1998, court ruling on the definition of the class, the plaintiffs' class consists of all inmates with serious mental disorders who are now, or who will in the future be, confined within CDCR. A "serious mental disorder" is defined as anyone who is receiving care through CDCR's Mental Health Services Delivery System (MHSDS).

MHSDS provides four levels of care, based on the severity of the mental illness. The first level, the Correctional Clinical Case Management System (CCCMS), provides mental health services to inmates with serious mental illness with "stable functioning in the general population, an administrative segregation unit (ASU) or a security housing unit (SHU)" whose mental health symptoms are under control or in "partial remission as a result of treatment." As of April 18, 2016, 28,773 mentally ill inmates were at the CCCMS level-of-care.

The remaining three levels of mental health care are for inmates who are seriously mentally ill and who, due to their mental illness, are unable to function in the general prison population. The Enhanced Outpatient Program (EOP) is for inmates with "acute onset or significant decompensation of a serious mental disorder." EOP programs are located in designated living units at "hub institution[s]." As of April 18, 2016, 6,940 inmates with mental illness were receiving EOP services and treatment.

Mental health crisis beds (MHCBs) are for inmates with mental illness in psychiatric crisis or in need of stabilization pending transfer either to an inpatient hospital setting or a lower level-of-care. MHCBs are generally licensed inpatient units in correctional treatment centers or other licensed facilities. Stays in MHCBs are limited to not more than ten days. Currently, there are 414 inmates receiving this level-of-care.

Finally, several inpatient hospital programs are available for class members who require longer-term, acute care. These programs are primarily operated by the Department of State Hospitals (DSH), with the exceptions of in-patient care provided to condemned inmates and to female inmates. There are three inpatient psychiatric programs for male inmates run by DSH that are on the grounds of state prisons. Those programs are DSH-Stockton, on the grounds of the Correctional Healthcare Facility; DSH-Vacaville, on the grounds of Vacaville State Prison; and DSH-Salinas Valley, on the grounds of Salinas Valley State Prison. There are currently approximately 1,100 patients in those facilities and the DSH budget for those inmates is approximately \$245 million General Fund per year. As of April 18, 2016, 1,304 inmates were receiving inpatient care, 45 of those patients were women and 36 were condemned inmates housed at San Quentin State Prison. The remaining 1,223 are receiving care in a DSH facility.

In addition to the patients in the prison-based psychiatric programs, approximately 250 Coleman class inmates are receiving care at Atascadero State Hospital and Coalinga State Hospital. The DSH budget for those patients is \$52 million General Fund per year.

May 2014 Special Master Report Highlights Regarding Both CDCR and DSH Inpatient Mental Health Care. As part of the ongoing court oversight, the special master issued a key report in 2014 on the adequacy of mental health care for CDCR inmates housed in inpatient, long-term, acute care beds. The investigation found significant lapses in the treatment being provided to inmate-patients.

The special master noted that individual therapy was rarely offered, even to those patients who were not ready for group therapy or for who group therapy was contraindicated. At Coalinga State Hospital (one of the two state hospitals that houses CDCR inmate-patients), patients reported that their only individual contact with clinicians occurred on the hallways of the unit. Further, even when individual clinical interventions were indicated for a patient in a treatment team meeting, they were not included in the patient's treatment plan.

The report also noted that at Salinas Valley Psychiatric Program (SVPP), it was the default practice to have two medical technical assistants (MTA) in the treatment room based on institutional cultural perceptions of patient dangerousness rather than on an individualized assessment of the actual potential danger to clinicians and the need to have MTAs present. Similarly, Vacaville Psychiatric Program (VPP) required two escorts for any patient movement, regardless of the patients' custody status, classification, or behavior. In some instances, activities were cancelled due to the unavailability of MTAs to escort the patients. According to both clinical and administrative staff, this was the primary reason for limiting out-of-cell activities.

Condemned patients who require an acute level of treatment are currently treated at VPP. According to the investigation, these patients received far less treatment than other acute level patients and no access to group activities or an outdoor yard. In addition, they were only allowed one hour in the day room per week. Reportedly, these patients had weekly contact with a psychiatrist or psychologist. But that contact either happened through the doors of their cells or in a non-confidential setting.

Finally, patients at the Stockton State Hospital (on the grounds of the Correctional Health Care Facility) reported that it was considerable more restrictive than the prisons from which they were referred, stating that it was like being in a maximum security environment, spending 21 to 22 hours per day in their rooms.

Another prevalent theme throughout the report was the lack of uniform policies and procedures throughout all aspects of the program. The report notes that all six of the inpatient programs used their own distinct systems of orientation, cuffing, and restrictions for newly admitted patients, steps/stages through which patients had to progress in order to fully access treatment, and the imposition of restrictions on patients following behavioral problems or disciplinary infractions. In addition, the six program varied widely in terms of the amount and severity of restrictions on patients' movements, contact with others, and eligibility to receive treatment.

The special master also found that placement of new patients in extremely restrictive conditions was often based on the individual program's established procedures rather than on the severity of the

individual patients' mental illness, their propensity for aggressive or self-harming behavior, or their readiness for treatment.

The report found that there was a need for the development of a consistent, more therapeutically-oriented and less punitively-oriented system that could be applied across all six of the programs. More importantly, the report notes, the emphasis throughout needs to be redirected toward greater individualization of any necessary restrictions and staging of patients based on their unique needs and away from an automatic presumption of violent behavior, anti-therapeutic withholding of interaction with others, and deferral of much needed treatment.

According to the Administration, the special master has completed his most recent round of reviews and an updated report on the care being provided to inmates under both DSH and CDCR's care is expected in the coming months.

Recent Coleman Court Orders. On April 14, 2014, Judge Karlton ruled that California continued to violate the constitutional safeguards against cruel and unusual punishment by subjecting inmates with mental illness to excessive use of pepper spray and isolation. He gave the state 60 days to work with the special master to revise their excessive force policies and segregation policies, and to stop the practice of holding inmates with mental illness in the segregation units simply because there is no room for them in more appropriate housing. He also ordered the state to revise its policy for strip-searching inmates with mental illness as they enter and leave housing units. The 60-day deadline for some of the requirements was subsequently extended until August 29, 2014.

The department submitted a revised use of force policy to the courts that limits the use of pepper spray on inmate-patients and revises their cell management strategy. On August 11, 2014, the court accepted the new policies. Among other changes to the policy, correction staff is required to consider an inmate's mental health prior to using any controlled use of force. That consideration must include the inmate's demeanor, bizarre behavior status, mental health status, medical concerns and their ability to comply with orders. In addition, a mental health clinician must evaluate an inmate's ability to understand the orders, whether they are a Coleman class inmate or not. They must also evaluate whether the use of force could lead to a decompensation of the person's mental health.

On August 29, 2014, the state submitted a plan to comply with the remainder of the April 14 court order and the court accepted the plan. Under this court order, CDCR is required to create specialty housing units for inmates with mental illness who are removed from the general population. These specialized units must include additional out-of-cell activities and increased treatment. Under this plan, male inmates in short-term restricted housing will receive 20 hours of out-of-cell time each week, which is twice the amount of time offered to CCCMS inmates in the existing segregation units. Female inmates in short-term housing, however, will only receive 15 hours of out-of-cell time each week, which is 50 percent more than the current ten hours. In the longer-term restricted housing, male and female inmates will be allowed 15 hours a week in out-of-cell time.

The plan also requires that CDCR conduct a case-by-case review of all Coleman class inmates with lengthy segregation terms, in an attempt to decrease the length of stay for inmates in segregated environments. Additionally, the plan establishes a case review for all inmates being released from DSH or CDCR psychiatric inpatient beds who are facing disciplinary terms in segregation to ensure that the inmate is returned to appropriate housing and not to segregation.

In several areas, the plan presented by CDCR extended beyond the court order and included additional training and collaboration between mental health staff and custody staff. The plan also requires custody staff to make security checks on all inmates in specialized restricted housing twice every hour and requires that licensed psychiatric technicians conduct daily rounds to check on every inmate's current mental health status. The increased checks are designed to reduce suicides and suicide attempts among this population, which have been an ongoing concern of the court. Finally, the plan increases the amount of property allowed for inmates in short-term restricted units. For example, inmates will now be allowed one electrical appliance if their cell allows for it. If it does not, they will be provided with a radio.

Last Year's Budget Action. In response to the critical report by the Coleman special master and the Administration's failure to make progress in determining whether or not CDCR should resume control of the acute inmate-patients, the Legislature required DSH to submit a report before January 10, 2016, detailing steps they have taken to provide Coleman patients with treatment consistent with constitutional mandates. In addition, the report required an update on the Administration's discussions regarding shifting responsibility for care and treatment from DSH back to CDCR.

In response to the requirement, DSH submitted their report on April 1, 2016. In the report they note that DSH has taken the following steps to ensure that appropriate care is being provided to Coleman inmate-patients in their care:

- The formation of a centralized Recruitment Unit focused on recruiting and retaining qualified clinical staff.
- The formation of a multidisciplinary committee to assess the laundry and supply process.
- The development of new policies concerning the use of mechanical restraints.
- The establishment of a pilot project at the Vacaville Psychiatric Program to allow patients to attend treatment groups and have access to the yard more quickly without the use of restraints.
- The development of a patient reservation and tracking system.
- An increase in the number of group treatment hours and improved tracking of patient treatment.

In terms of the required update on the potential transfer of responsibility for patients from DSH to CDCR, the report fails to provide the required update. Instead, the report states, "DSH and CDCR continue to evaluate the feasibility, possible timing, and potential outcomes of returning the responsibility for the *Coleman* patients inpatient psychiatric treatment to CDCR."

Memorandum of Understanding (MOU) Between DSH and CDCR. Despite the Administration's statement that they are continuing to evaluate the transition of Coleman inmate-patients receiving acute-level treatment, the two departments entered into an MOU agreement in November of 2015 regarding their individual obligations surrounding the treatment of intermediate and acute care Coleman inmate-patients who are being treated in DSH facilities. The report provided by DSH to the Legislature does not discuss the MOU.

Questions for the Administration. Members may want to consider asking the following:

1. Your caseload projections for the coming year show a growing number of inmates with mental illnesses. How do you prepare your custody staff to interact safely and effectively in individuals who are mentally ill?
2. Why was the update on the potential shift of care of Colman inmate-patients from DSH to CDCR not provided, as requested in supplemental reporting language?
3. In addition, why did the report fail to mention the existence of the memorandum of understanding, the existence of which suggests that the Administration has indeed determined that DSH should continue providing care to Coleman inmate-patients?
4. Please present the MOU and describe what problems you believe are resolved through it.

Issue 2: Healthcare for *Plata* Class Inmates Under the Care of State Hospitals

Background. The California Correctional Health Care Services (CCHCS) receivership was established as a result of a class action lawsuit (*Plata v. Brown*) brought against the State of California over the quality of medical care in the state's 34 adult prisons. In its ruling, the federal court found that the care was in violation of the Eighth Amendment of the U.S. Constitution which forbids cruel and unusual punishment. The state settled the lawsuit and entered into a stipulated settlement in 2002, agreeing to a range of remedies that would bring prison medical care in line with constitutional standards. The state failed to comply with the stipulated settlement and on February 14, 2006, the federal court appointed a receiver to manage medical care operations in the prison system. The current receiver was appointed in January of 2008. The receivership continues to be unprecedented in size and scope nationwide.

The receiver is tasked with the responsibility of bringing the level of medical care in California's prisons to a standard which no longer violates the U.S. Constitution. The receiver oversees over 11,000 prison health care employees, including doctors, nurses, pharmacists, psychiatric technicians and administrative staff. Over the last ten years, healthcare costs have risen significantly. The estimated per inmate health care cost for 2015-16 (\$21,815) is almost three times the cost for 2005-06 (\$7,668). The state spent \$1.2 billion in 2005-06 to provide health care to 162,408 inmates. The state estimates that it will be spending approximately \$2.8 billion in 2016-17 for 128,834 inmates. Of that amount, \$1.9 billion is dedicated to prison medical care under the oversight of the receivership.

Until the last few years, the receivership has focused mainly on improving the quality of care within the state-run prisons. However, in response to concerns from the receiver, CDCR has put forward funding requests in the last two years to increase the medical care provided to inmates housed in the state's contracted facilities. For example, the 2015 budget act included \$3.2 million General Fund beginning 2015-16 for 24-hour registered nurse coverage for inmates housed in the six modified community correctional facilities (MCCFs) and one female community re-entry facility. The 24-hour coverage was required by the health care receiver, in order to provide the same level of coverage to inmates in contract facilities as is currently provided to inmates in the state-run prisons. This expansion of the receivership appears to be an acknowledgement that the scope of the receiver's oversight extends beyond the walls of the state's 34 prisons to all of the facilities that house CDCR inmates.

Coleman Patients Receiving Acute Care Treatment. As discussed in the previous item, several inpatient hospital programs are available for Coleman class members who require longer-term, acute care. These programs are primarily operated by the Department of State Hospitals (DSH), with the exceptions of in-patient care provided to condemned inmates and to female inmates.

Items of concern. As discussed in the previous item, last year the Coleman special master found significant lapses in the mental health treatment being provided to inmate-patients.

More recently, a lawsuit has been filed by the family of a Coleman inmate-patient under the care of DSH and CDCR who allegedly died from inadequate nutrition. Regardless of the merits of that lawsuit, it raises the question of the role of the healthcare receiver in ensuring that all the *Plata* class inmates who are permanently or temporarily housed outside of the state's 34 prisons are receiving a constitutional level of care.

Scope of the Inspector General's Medical Inspection Teams. In March 2015, the Plata court issued an order outlining the process for transitioning responsibility for inmate medical care back to the state. Under the order, responsibility for each institution, as well as overall statewide management of inmate medical care, must be delegated back to the state. The court indicates that, once these separate delegations have occurred and CDCR has been able to maintain the quality of care for one year, the receivership would end.

The federal court order outlines a specific process for delegating care at each institution back to the state. Specifically, each institution must first be inspected by the Office of the Inspector General (OIG) to determine whether the institution is delivering an adequate level of care. The receiver then uses the results of the OIG inspection—regardless of whether the OIG declared the institution adequate or inadequate—along with other health care indicators, including those published on each institution's Health Care Services Dashboard, to determine whether the level of care is sufficient to be delegated back to CDCR.

What is unclear about the current transition process is whether or not the Inspector General's investigations should include the healthcare being provided to the inmate-patients being treated in DSH's psychiatric inpatient programs that are housed within the three state prisons. Under the state's current model, the healthcare provided to the inmates being treated in DSH-Stockton receive their medical care from the receiver's medical staff at CHCF. However, at the other two psychiatric inpatient programs, DSH staff provide medical care to the inmates they are treating. Therefore, when the OIG medical teams evaluate the level of care being provided to inmates at Salinas Valley and Vacaville prisons, it is unclear if those evaluations should include the care provided to all inmates in those prisons or only to those under CDCR's jurisdiction. If the courts determine that the quality of care of all of the inmates is of concern, the IG's oversight authority and access would need to be statutorily expanded to include these particular DSH facilities.

Questions for the Administration. Members may want to ask the following:

1. The Inspector General has been given a specific role in determining whether or not an institution is providing a constitutional level of healthcare. Currently, the OIG does not have access to or jurisdiction over the inmates being housed and treated in the DSH facilities located within the California Medical Facility in Solano or Salinas Valley State Prison. Does that present a problem in their ability to adequately assess the quality of healthcare being provided at those prisons?
2. Given the ambiguity of the status of the inmate-patients under the care of DSH, why didn't the recent MOU between CDCR and DSH require that the psychiatric inpatient programs, at a minimum, follow all of CDCR's policies and procedures related to the medical care of its inmates housed in the co-located prison? Alternatively, why didn't CDCR agree to provide medical care for the inmate patients at the Salinas Valley and Vacaville PIPs, similar to the arrangement currently in place in the Stockton facility?

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**Issue 1: Update on the Condemned Inmate Psychiatric Inpatient Program at San Quentin Prison**

Previous Budget Action. The 2015 Budget Act included 99.8 positions and \$11 million General Fund for both CDCR and California Correctional Health Care Services (CCHCS) to provide clinical support, custody staff, equipment and training to operate a 40-bed acute level-of-care psychiatric facility to provide treatment for condemned inmates with mental illnesses severe enough to require inpatient care. \$4.3 million General Fund is for CDCR and \$6.7 is for CCHCS. With that funding, CDCR was able to convert 17 existing mental health crisis beds and 23 medical beds to psychiatric inpatient beds.

Background. As discussed in detail in the next item, in 2014 the *Coleman v. Brown* special master released a report detailing the lack of adequate care being provided to *Coleman* inmate-patients requiring long-term, acute levels of care. In particular, the report noted a particular lack of treatment provided to condemned inmate-patients being treated by the Department of State Hospitals (DSH) in their Vacaville Psychiatric Program (VPP). As a result of the *Coleman* courts on-going findings in regard to the lack of treatment provided to condemned inmate-patients at VPP, the *Coleman* court required CDCR to establish the San Quentin Psychiatric Inpatient Program (PIP), run by CDCR medical and mental health staff.

The San Quentin PIP is a 40-bed, fully-licensed, Joint Commission-accredited program that provides long-term acute and intermediate levels of psychiatric inpatient care to male condemned patients. Its mission is to provide effective and evidence-based psychiatric treatment to relieve or ameliorate acute and refractory mental health disorders that disrupt the patients' expected level of functioning in the prison environment.

The PIP opened on October 1, 2014, in response to the evolving clinical needs of the condemned population and in compliance with federal court orders. The opening and ongoing success of the PIP is the result of collaborative efforts between San Quentin State Prison, CDCR headquarters, the federal health care receiver, plaintiffs' counsel, and the *Coleman v. Brown* special master team. The average daily census has been 37 patients, with a maximum census of 40.

The evidence-based treatment provided in the San Quentin PIP is individualized and patient-centered to meet the unique needs of each patient. The PIP offers incentive-based rewards for certain behavior consistent with positive reinforcement theory. Treatment is offered seven days a week from the early morning through the evening hours. In addition to providing individual psychotherapy and psychiatric medication treatment, the PIP employs an active group and activities program. For example, group therapy, educational groups, substance use groups, recreational yards, outdoor therapeutic yards, and dayroom activities are consistently offered in order to address the chronic mental illness symptoms that diminish functioning and quality of life. Given the large volume of offered services, patients are able to choose the activities they attend. This patient-centered choice facilitates a greater sense of satisfaction, autonomy, and ownership over one's treatment. As a result, treatment becomes more tailored and efficacious at addressing the individual needs of the patient.

Each treatment team consists of the patient, a psychiatrist, a psychologist, a social worker, a recreational therapist, nursing staff, and custody staff. Additional disciplines may be involved based on

individual circumstances (e.g., clergy, primary care). Custody treatment team members may consist of correctional counselors, unit officers, and custody supervisors. Continuous collaboration between health care and custody staff is an essential component of the PIP treatment milieu. Incarceration in general, and condemned row more specifically, involves a unique set of social and cultural stressors that may impact the well-being of PIP patients. Custody staff is able to appreciate and communicate these correctional stressors to other members of the treatment team so a more complete appreciation of the challenges faced by the patient is obtained.

In preparation for discharge, extensive collaboration between inpatient and outpatient San Quentin health care and custody staff occurs so that the transition back to the Enhanced Outpatient Program (EOP) or Correctional Clinical Case Management System (CCCMS) treatment setting is organized, thoughtful, and therapeutic.

Issue 2: California Men's Colony Mental Health Crisis Beds

Governor's Budget. The Governor's budget requests \$9.2 million General Fund and 62.4 positions to activate 32 mental health crisis beds (MHCBs) at the California Men's Colony (CMC) in San Luis Obispo. The positions requested include five psychiatrists, six clinical psychologists, and approximately 19 correctional officers.

Background. The most recent projections from CDCR suggest a significant increase over the 2015 budget assumptions. In the Governor's current budget proposal, the Administration anticipates that the population of inmates requiring mental health treatment will be 35,743 in 2015-16 and 36,825 in 2016-17. This is an increase of 571 and 1,653, respectively, over the 2015 Budget Act projections. As of April 18, 2016, there were 414 inmates receiving a crisis level-of-care through CDCR's MHCBs.

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

Questions for the Administration. Members may want to ask the following questions:

1. The Legislature has consistently heard over the years that it is difficult to find and retain psychiatric clinicians at the state hospital in Atascadero. Presumably, CDCR has run into the same problem at CMC. If this is the case, why do you think this is the appropriate institution for mental health crisis beds?
2. While increasing the number of crisis beds at CMC may reduce your waiting lists for those beds, how will you ensure that this increase will not result in psychiatrists currently employed at Atascadero State Hospital from leaving that facility to work for CDCR, where they will both be paid more and feel that they are working in a more secure setting?
3. If this proposal does result in fewer clinicians being available to work at Atascadero State Hospital, would that potentially increase your waiting list for Coleman patients in need of on-going acute care treatment because the Atascadero State Hospital will no longer have enough clinicians to provide treatment?

Issue 3: Spring Finance Letter – Mentally Disordered Offenders (MDO)

Spring Finance Request. The Administration is requesting a \$2.2 million General Fund augmentation for 16 additional correctional counselor positions to coordinate the MDO certification process. Upon completing their sentence, a portion of inmates with severe mental disorders are declared a danger to others and are paroled to the Department of State Hospitals (DSH) as an MDO.

Background/Justification. MDO certifications are coordinated by correctional counselors. As recently as 2011-12, CDCR had MDO coordinator positions to specifically conduct these certifications. However, in 2012-13, these positions were incorporated into overall correctional counselor workload. As a result, the MDO certification workload is now spread amongst all CDCR correctional counselors. The department generally uses an inmate-to-correctional counselor ratio of 150:1 for these positions. Accordingly, as the overall prison population declined, the number of correctional counselors also declined. However, during this same period, the number of MDO certifications increased, likely because the population of mentally ill inmates increased despite a reduction in the total inmate population. According to the department, due to the combination of reductions in correctional counselor staffing and increases in the mentally ill population, it has not been able to complete the increasing MDO workload in a timely manner.

Legislative Analyst’s Office (LAO). The LAO notes the following concerns:

While we acknowledge that MDO workload has increased, the administration’s proposal to add 16 positions on an ongoing basis does not resolve the problem that MDO certification workload is tied to the mentally ill population, not the overall inmate population. A more reasonable approach would be to create a ratio to allocate MDO coordinator positions based on the mentally ill population. This additional ratio would ensure that the department has the appropriate number of MDO coordinators needed to complete MDO certifications on an ongoing basis. Accordingly, we recommend rejecting the current proposal and directing the department to develop a ratio to budget MDO coordinator positions based on the mentally ill inmate population and make a corresponding adjustment to the correctional counselor ratio to account for the reduced workload. Once the department has an opportunity to develop ratios that accurately reflect these changes in workload, the Legislature can review any corresponding budget changes at that time.

Questions for the Administration. Members may want to ask the following questions:

1. Please explain the correctional counselors’ role in determining whether or not an inmate receives a designation as a mentally disordered offender upon their release. In addition, what type of specialized training do these correctional counselors have to prepare them to serve as an MDO coordinator?

4440 DEPARTMENT OF STATE HOSPITALS (DSH)

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

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

California's State Hospital System

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

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

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

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

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

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

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

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

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

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

Committed Directly From Superior Courts:

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

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

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

**State Hospitals & Psychiatric Programs
Caseload Projections***

| | 2015-16 | 2016-17 |
|--|--------------|--------------|
| Population by Hospital | | |
| Atascadero | 1,252 | 1,252 |
| Coalinga | 1,293 | 1,293 |
| Metropolitan | 803 | 803 |
| Napa | 1,177 | 1,177 |
| Patton | 1,533 | 1,533 |
| Subtotal | 6,058 | 6,058 |
| Population by Psych Program | | |
| Vacaville | 392 | 392 |
| Salinas | 235 | 235 |
| Stockton | 480 | 480 |
| Subtotal | 1,107 | 1,107 |
| Population Total | 7,165 | 7,165 |
| Population by Commitment Type | | |
| Incompetent to Stand Trial (IST) | 1,477 | 1,477 |
| Not Guilty By Reason of Insanity (NGI) | 1,411 | 1,411 |
| Mentally Disordered Offender (MDO) | 1,385 | 1,385 |
| Sexually Violent Predator (SVP) | 907 | 907 |
| Lanterman-Petris-Short Act – Civil Commitments | 614 | 614 |
| <i>Coleman</i> Referral – Hospitals | 256 | 256 |
| <i>Coleman</i> Referral – Psych Programs | 1,107 | 1,107 |
| Department of Juvenile Justice | 8 | 8 |

*The caseloads in this table are from the DSH 2016-17 January budget binder and reflect the estimated number of cases on the last Wednesday of the fiscal year. On average, the Governor's budget documents show an average daily caseload of 6,982 in 2015-16, growing to 7,165 in 2016-17.

State Hospitals Budget

The Governor's proposed budget includes \$1.8 billion for DSH in 2016-17 (\$1.7 billion General Fund). This represents a \$6.5 million decrease over 2015-16 funding. The proposed budget year position authority for DSH is 10,301 positions, a decrease of five positions from the current year.

(dollars in thousands)

| Funding | 2014-15 Actual | 2014-15 Projected | 2015-16 Proposed |
|---------------------------|---------------------------|------------------------------|-----------------------------|
| General Fund (GF) | \$1,525,443 | \$1,620,485 | \$1,631,202 |
| Reimbursements | 124,237 | 155,265 | 138,022 |
| CA Lottery Education Fund | 141 | 24 | 24 |
| Total | \$1,649,821 | \$1,775,774 | \$1,769,248 |
| Positions | 10,844 | 10,306 | 10,301 |

Issue 1: Bureau of State Audits *Improper Activities Audit*

Background. The California State Auditor puts out regular reports on their investigations of whistleblower complaints. In February of 2016, the State Auditor released a report on their most recent investigations of improper activities by state agencies and employees. The report contained two findings related to the Department of State Hospitals (DSH).

- **Patton State Hospital.** The auditor found that four psychiatrists at Patton State Hospital regularly worked an average of 22 to 29 hours per week during the 2014-15 fiscal year, rather than the required 40 hours per week. In total, the report notes, the psychiatrists worked 2,254 hours less than required. In addition, two of the four psychiatrists engaged in other employment during their regularly scheduled state work hours and were dishonest regarding their attendance and outside employment. According to the audit findings, both supervisors and the executive management were aware of the psychiatrists' failure to work 40 hours per week and did not attempt to resolve the situation.

Beyond the specific finding, the audit report notes that this problem is likely not limited to these four psychiatrists or to Patton State Hospital. The report includes the following concerns:

During our investigation we learned that the practice of failing to work an average of 40 hours per week and misusing state resources may not be isolated to the four psychiatrists we investigated. The staff we interviewed, including supervisors, managers, and officials, informed us that the majority of psychiatrists, as well as some psychologists and social workers, average less than 40-hour workweeks. They based their comments on their own observations and on information provided to them by other employees. Managers were able to list nearly 35 employees whom they believe regularly arrived late, left early, or worked fewer than 40 hours per week.

A senior executive at Patton informed us that his observations suggest that none of the psychiatrists at Patton work the 10-hour days for which they are scheduled and that the average is probably closer to 6 hours per day. He also told us that officials at the other state hospitals have shared with him that the attendance patterns of their psychiatrists and other doctors is similar to, or even worse than, those at Patton. . . .

Managers also told us that the problem of psychiatrists failing to work their required hours has existed since the 1990s and that over the years it has become part of the culture at Patton that psychiatrists can come and go as they please without accountability. They stated that the psychiatrists have a sense of entitlement and do not believe that the 40-hour workweek applies to them.

Perhaps the most disconcerting aspect of the psychiatrists' attendance behavior is the negative impact it could have on patient care and staff safety. Supervisors, managers, and hospital officials pointed out that when psychiatrists work fewer hours, it limits patient care. Although we found no specific examples of patient neglect, the hospital could provide more robust care to its patients if the psychiatrists worked the hours in their regularly scheduled shifts. An official in charge of medical services explained that when psychiatrists work fewer hours, they have limited interactions with their patients. Conversely, if they were to work their required

number of hours, they could see more patients, interact with them longer, and provide more therapeutic treatment. The official also noted that the risk to staff and patients increases when the most highly trained and skilled clinicians are not present.

- **Medical Director Conflict of Interest.** A medical director at one of the state hospitals violated financial disclosure laws when he failed to report his financial interest in a pharmaceutical company. Specifically, the psychiatrist received almost \$30,000 in income from the company while he was acting as the medical director. In addition, the audit found that DSH failed to provide adequate oversight to ensure that designated employees file their financial disclosure forms.

Questions for the State Auditor. Members may want to ask the following:

1. During the course of your investigation, were you able to determine how long the executive management team had known about the clinicians working reduced hours?
2. Your report indicates that the problem regarding DSH staff working reduced hours may be systemic. What recommendations do you have regarding system-wide changes for DSH?

Questions for the Administration. Members may want to ask the following:

1. What steps have you taken throughout the state hospital system, including psychiatric programs, to determine the extent of the problem and to ensure that the state is not paying clinicians, or other staff, for full-time work when they are not, in fact, working 40 hours per week?
2. As previously discussed, the last special master report on the treatment of Coleman patients under the care of the state hospitals found that very little treatment was being provided to the inmate-patients in your care. When this issue was discussed last year, you attributed a significant amount of the problem to your failure to keep adequate records detailing how much treatment individuals were receiving. In addition, you noted a high vacancy rate among your clinicians as contributing to the problem.

Given the findings of the State Auditor, would it be fair to assume that this culture of not requiring your mental health professionals to work the required number of hours may be a large contributor to the problem? Have the findings in this report been discussed with the special master?

Issue 2: Proposition 47 Savings

Background. As discussed in detail during this subcommittee's April 7, 2016, hearing, in November 2014, the voters approved Proposition 47, which requires misdemeanor rather than felony sentencing for certain property and drug crimes and permits inmates previously sentenced for these reclassified crimes to petition for resentencing. The proposition requires that state savings resulting from the proposition be transferred into a new fund, the Safe Neighborhoods and Schools Fund (SNSF). 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 expected state savings will come from a reduced number of individuals in both state prison and state hospitals and reduced costs to the trial courts.

Governor's Budget. The proposed budget assumes an initial Proposition 47 savings in 2016-17 of \$29.3 million, growing to an annual on-going savings of \$57 million per year. Of the 2016-17 amount, the Department of Finance assumed that \$8.7 million would come from a savings to the DSH as a result of fewer individuals accused of felonies being committed to state hospitals as a result of being deemed incompetent to stand trial (IST).

Rather than reflect that savings in the DSH budget, the Administration chose to reinvest the funding in the DSH budget to fund IST placements in order to further reduce the IST waiting list.

Legislative Analyst's Office (LAO). The LAO recommends that the Legislature reduce the program budgets of DSH by \$8.7 million General Fund to account for savings associated with the reduced workload. The LAO notes that the Administration's proposal for DSH to keep savings they are estimated to realize as a result of Proposition 47 reduces legislative oversight by allowing DSH to redirect their savings to other programs and services without legislative review or approval. Essentially, instead of simply redirecting the Proposition 47 savings, the Administration should have put forward proposals to both reduce the DSH budget by \$8.7 million GF and a separate proposal to increase funding for the IST population due to an estimated increase in workload.

Issue 3: Conditional Release Program

Governor's Budget. The proposed budget includes an additional \$3.8 million General Fund in 2016-17 for increased costs related to DSH's Conditional Release Program (CONREP). The increased costs are primarily related to an expected increase in the CONREP-sexually violent predator (SVP) caseload (\$3 million General Fund). The remaining amount (\$800,000 General Fund) is due to a change in the contracting, away from an allocation-based methodology to a service-based methodology.

Background. CONREP provides community treatment and supervision for individuals who have been found to be not guilty by reason of insanity (NGI), incompetent to stand trial (IST), or have been designated as mentally disordered offenders (MDO) or sexually violent predators (SVP).

CONREP offers individuals direct access to mental health services during their period of outpatient treatment. These services are provided by specialized forensic mental health clinicians and include individual and group therapies, home visits, substance use disorder screening and psychological assessments. Currently, DSH contracts with 11 providers for these services. DSH estimates that the non-SVP CONREP caseload will be 654 individuals in both 2015-16 and 2016-17.

CONREP for Sexually Violent Predators. SVP patients in the state hospital system are individuals who are convicted of a sex offense and also found to have a mental disorder that makes him a danger to others and likely to engage in sexually violent behavior in the future. After the completion of the prison term of a person convicted of committing a sexually violent crime, both DSH and the CDCR evaluate the individual to determine whether or not he meets the criteria to be designated as an SVP. If a person is designated as an SVP and the courts agree with the designation, that individual is then committed to DSH upon completion of their prison term. Every year, DSH will evaluate their SVP patients to determine whether or not they meet the criteria to be released to CONREP or conditionally discharged. That consideration includes whether the release is in the best interest of the individual and whether or not conditions can be imposed upon the release that would adequately protect the community.

For SVPs, state law requires that all SVPs who are conditionally released into their original communities must be provided with both treatment and supervision. Currently, DSH contracts with one provider who provides both the required specialized treatment and supervision for these individuals. DSH estimates that there will be 14 SVP-designated individuals in CONREP in 2015-16. However, there are currently 12 additional SVP-designated individuals who have court petitions for release into CONREP. If the court approves all of the petitions, DSH assumes the CONREP-SVP caseload will grow to 26 individuals in 2016-17.

The cost for the CONREP-SVP cases is significantly higher than regular CONREP cases, primarily due to the security requirement. Courts may order 24 hour-a-day, seven day a week security of people in the CONREP-SVP for time-limited period during transition from state hospital to community setting (several weeks to several months, depending on circumstances). Currently, one individual has been receiving 24 hour-a-day security for over a year due to safety concerns. DSH does not know when security for this individual can be suspended. The 2014-15 average cost-per-case, excluding security, is approximately \$258,000 for CONREP-SVP services and treatment. The cost rose to an

average of \$310,000 per year when security was included. In contrast, the annual cost-per-case for the regular CONREP cases during 2014-15 was \$34,000 per year.

New Contracting Methodology. Historically, DSH has entered into annual contracts with providers that required the payment of a fixed monthly rate, regardless of the services provided to individuals in CONREP. However, a recent audit by the Department of Finance's Office of State Audits and Evaluations found that this contracting process for CONREP had inadequate internal controls in place and lacked fiscal accountability and transparency. In response, DSH has developed a new funding methodology that relies, in part, on the services provided to people in CONREP. Specifically, according to DSH, the department will work with their contractors to establish a rate based both on the anticipated caseload and the services the contractors are expected to provide.

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

Questions for the Administration. Members may want to consider asking the following:

1. Your proposal assumes that all 12 individuals with petitions before the court will be released to the CONREP program by July 1, 2016. Why do you assume that will be the case? In the last five years, how many individuals have petitioned the court for release? Of those petitions, how many were accepted and how many were denied? Why does the budget assume the court will rule on the petitions by July 1?
2. Given your new contracting methodology, if the 12 cases do not appear as of July 1, will the payments to the contractor only reflect the actual caseload? In addition, if all 12 cases do not materialize, given the high cost per case, will the unspent funding revert to the General Fund or will you simply spend it elsewhere in your budget?
3. In reviewing your caseload projections for your inpatient SVP program, it appears you are assuming a static caseload of 907 for both 2015-16 and 2016-17. If you are expecting 12 of those cases to move into CONREP-SVP, why don't you assume a corresponding reduction in caseload and funding for 2016-17 in the inpatient SVP caseload?
4. Given that these individuals are most likely eligible for the state's Medi-Cal program, why are the treatment services provided through CONREP funded with General Fund rather than through the Medi-Cal program, which allows the state to draw down federal funding to cover at least half of the cost of treatment?
5. There has been a concerted effort in recent years in county jails and state prisons to ensure that all individuals who are eligible for Medi-Cal are enrolled in and receiving benefits through the program upon their release. Please describe your efforts at ensuring that all patients who leave the state hospitals are enrolled in Medi-Cal, if eligible.

Issue 4: Jail-Based Competency Treatment Program Expansion

Governor's Budget. The proposed budget includes \$1.5 million General Fund to establish a new 10-bed jail-based competency treatment program (JBCT - formerly the ROC program) in Sonoma County.

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

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

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

Prior Year Budget Augmentation. The 2015 Budget Act included \$6.1 million General Fund to support the expansion of DSH's existing jail-based competency treatment program in San Bernardino County. In addition, the budget included \$4 million General Fund to support up to 32 additional beds in other interested counties.

Recent JBCT Program Expansions. During 2015, DSH expanded the JBCT program to include an additional 76 beds in the San Bernardino county jail to primarily serve Los Angeles county IST patients. In addition, the Sacramento county jail now has a partnership with the University of California, Davis to run a 16-bed JBCT program to serve IST patients from Sacramento, Fresno, and San Joaquin counties. The Sacramento JBCT is ultimately expected to expand to 32 beds; however, the county has delayed activation of the remaining 16 beds.

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

Questions for the Administration. Members may want to the following questions:

1. Please provide the committee with an update of your jail-based competency programs, including the reason for Sacramento County's delay in adding their remaining 16 beds.
2. Other counties, including Alameda and San Diego, have expressed an interest in participating in the JBCT program. Please provide an update on which counties you are currently in contact with regarding the potential for expansion.
3. Given the growing interest among counties, why are you only including a small, 10-bed expansion in the budget, rather than a proposal that would allow for greater expansion to other interested counties during 2016-17?

Issue 5: Jail-Based Competency Treatment – IST Evaluator Request

Governor’s Budget. The budget includes two positions and \$336,000 General Fund at the request of Los Angeles County to provide two IST patient evaluators to determine the appropriate care and placement for patients.

Justification. Prior to the availability of restoration of competency (ROC) programs, placement options for patients requiring placement in a secure treatment facility were essentially limited to a state hospital program. With the addition of the ROC programs as an option for placement, the Los Angeles County Mental Health Court interprets the statute that the court must make the placement determination between the state hospital and ROC. To ensure equal consideration of placement to a ROC or state hospital program, clinical review and evaluation of an IST’s medical and mental health records are required and in cases where documentation is inadequate, IST evaluators will conduct interviews with the patients for a proper determination and recommendation to the court for placement at either a state hospital or the ROC program.

With the majority of new referrals coming from LA County, the workload to determine the most appropriate placement option has significantly increased. The DSH is unable to absorb this workload and is requesting funding to establish 2 psychologist positions to serve as the IST evaluators.

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

Questions for the Administration. Members may want to ask the following questions:

1. According to the budget documents, these two positions have been included in the budget at the request of Los Angeles County. Please explain why, other than its size, Los Angeles needs these additional evaluators and other counties do not? Shouldn’t the goal for all of your patients, including the IST population, be to ensure that they are being placed efficiently and in the most appropriate treatment setting?

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



OUTCOMES

Thursday, April 28, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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

PROPOSED FOR VOTE ONLY**4440 DEPARTMENT OF STATE HOSPITALS (DSH)**

1. **DSH Hospital Injury and Illness Prevention Implementation.** The Governor's budget requests the authority to transition five existing two-year limited-term positions to permanent positions, which would require an on-going General Fund augmentation of \$522,000. These positions would implement new Hospital Injury and Illness Prevention plans required under a settlement agreement with the Department of Industrial Relations. This request would allow for one analyst position at each of the five state hospitals.
2. **Patient Management Unit.** The Governor's budget proposes transitioning 10 limited-term positions into permanent positions for the on-going operation of the patient management unit (PMU), which provides centralized management of patient admissions and reporting on patient population trends. The transition would require on-going funding of \$1.1 million General Fund.
3. **Third-Party Patient Cost Recovery System.** The Governor's budget proposes transitioning 15 limited-term positions to permanent full-time positions to continue improvements to the patient cost recovery system. This transition would cost \$3.2 million General Fund (\$2.8 million on-going and \$400,000 one-time) and is estimated to save the General Fund over \$5 million per year in state hospital costs.

Action: Approved budget requests.

Vote: 2 – 0 (Anderson – no vote recorded)

ITEMS TO BE HEARD**0530 HEALTH AND HUMAN SERVICES AGENCY (HHS)****Issue 1: Office of Law Enforcement Support Update**

Over the last several years, the Legislature and the Administration have engaged in a discussion regarding the need for independent oversight of the state hospitals and developmental centers. The discussion included a wide range of options, including expanding the jurisdiction of the Office of the Inspector General (OIG) to oversee the facilities and establishing an office at the HHS to provide oversight. The Legislature initially expressed concerns with HHS's ability to provide independent oversight of departments that report directly to the agency. In response, HHS enlisted the assistance of the OIG and the California Highway Patrol to develop a robust Office of Law Enforcement Support (OLES) that will be responsible for both providing oversight of the law enforcement and employee conduct at both departments, and will also establish uniform training for the law enforcement employees in the state hospitals and developmental centers and establish uniform policies and procedures regarding such things as the use of force and the appropriate procedures for processing and investigating allegations and complaints of mistreatment.

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

The proposed creation of the OLES in last year's budget came about in response to underperformance by the Office of Protective Services (OPS) within each developmental center and state hospital. CHHS conducted an in-depth analysis of OPS operations within DSH which revealed the following critical deficiencies:

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

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

The report also included the following recommendations for next steps:

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

As a result of the ultimate agreement between the Administration and the Legislature on the appropriate way to provide oversight of the state hospitals and developmental centers and to avoid potential bias if the individuals tasked with creating the policies and procedures are also investigating allegations of misconduct, OLES has been organized into the following units:

1. **Intake Analysis Unit:** This unit is comprised of staff who receive and review information pertaining to incidents occurring in DDS, DSH or in a psychiatric center located within a California Department of Corrections and Rehabilitation institution in order to determine whether OLES monitoring or investigation is appropriate under established procedures. The OLES Chief makes the final determination whether to monitor or investigate the incident during the daily Intake meeting.
2. **Investigations Unit:** Investigates any incident at a DDS or DSH facility that involves DDS or DSH law enforcement personnel and meets the statutory or alleges serious misconduct by law enforcement personnel or that the Chief of the OLES, the Secretary of the HHSA, or the Undersecretary of the HHSA directs the OLES to investigate.
3. **Investigation Monitoring/Oversight Unit:** Performs contemporaneous oversight of investigations and the employee disciplinary process, both serious criminal and administrative allegations against non-peace officer staff, investigated by the DSH involving an incident that meets the criteria of WIC §4023, and investigations conducted by the DDS involving an incident that meets the criteria of WIC §4427.5. The unit evaluates each investigation and the disciplinary process and completes a summary of its findings to be provided to the Semi-Annual Report Assessment Unit.
4. **Semi-Annual Report Assessment Unit:** Monitors and evaluates the departments' law enforcement implementation of policy and procedures, training, hiring, staff development, and accountability. This unit shall report these assessments as part of the semi-annual report along with making recommendations of best law enforcement practices to the departments.

In addition, similar to the OIG's semi-annual reports on the California Department of Corrections and Rehabilitation (CDCR), OLES is required to report semi-annually to the Legislature beginning October 1, 2016, on the following:

- The number, type, and disposition of complaints made against employees.
- A synopsis of each investigation reviewed by the Office of Law Enforcement Support.
- An assessment of the quality of each investigation.
- The report of any settlement and whether the Office of Law Enforcement Support concurred with the settlement.
- The extent to which any disciplinary action was modified after imposition.
- Timeliness of investigations and completion of investigation reports.
- The number of reports made to an individual's licensing board, in cases involving serious or criminal misconduct by the individual.
- The number of investigations referred for criminal prosecution and employee disciplinary action and the outcomes of those cases.
- The adequacy of the State Department of State Hospitals' and the Developmental Centers Division of the State Department of Developmental Services' systems for tracking patterns and monitoring investigation outcomes and employee compliance with training requirements.

Current Budget. Current funding for OLES is \$2.7 million per year, which funds 21 permanent positions and six outside consultants from the Highway Patrol, CDCR and the OIG.

**5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR) AND CALIFORNIA CORRECTIONAL HEALTHCARE SERVICES (CCHCS)
4440 DEPARTMENT OF STATE HOSPITALS (DSH)**

Issue 1: *Coleman, et al, v Brown*

Background. Over the past few decades, state prisons have increasingly become mental health treatment facilities. Data suggests that the number of people with mental illness in prison has almost doubled in the last 15 years. Currently, 45 percent of inmates have been treated within the last year for a severe mental illness.

How Did Prisons Become Mental Health Service Providers? Prior to 1957, mental health services were delivered to some persons with serious mental illness by a state-operated and funded institutional system, which included state hospitals for persons with mental illness and two state hospitals serving persons with mental illness and/or a developmental disability.

In 1957, the California Legislature passed the Short-Doyle Act in response to the growing number of people with mental illness being confined in public hospitals, many of whom were institutionalized inappropriately or subject to abuse while residing in a state facility. The act, which provided state funds to local mental health service delivery programs, was developed to address concerns that some individuals with mental illness were better served by local, outpatient services rather than 24-hour hospital care. Lawmakers believed that local programs would allow people with mental illnesses to remain in their communities, maintain family ties, and enjoy greater autonomy. When first enacted, the Short-Doyle Act provided state funding for 50 percent of the cost to establish and develop locally administered-and controlled community mental health programs.

In 1968, the Legislature passed the Lanterman-Petris-Short Act (LPS), which further reduced the population of state mental health hospitals by requiring a judicial hearing prior to any involuntary hospitalization. The LPS also initiated increased financial incentives for local communities to provide of mental health services. As a result of this long-term transfer of state operation and oversight to a decentralized, community-based mental health care delivery model, the state mental health hospital population declined from 36,319 in 1956 to 8,198 in 1971. Three public mental hospitals closed during this time period. The Legislature intended for savings from these closures to be distributed to community programs. However, in 1972 and 1973 then-Governor Ronald Reagan vetoed the transfer of these funds.¹

Throughout the 1970s and 1980s counties contended that the state was not providing adequate funds for community mental health programs. In addition, several counties were receiving less funds on a population basis than other counties. This disparity was addressed, with varying levels of success, in both the 1970s and the 1980s with the allocation of “equity funds” to certain counties. Realignment of mental health programs, enacted in 1991, has made new revenues available to local governments for mental health programs but, according to local mental health administrators, funding continued to lag behind demand.²

¹Historical background from The Stanford Law School Three Strikes Project, “When Did Prisons Become Acceptable Mental Healthcare Facilities?”

²Legislative Analyst’s Office “Major Milestones: 43 Years of Care and Treatment of the Mentally Ill”, March 2, 2000.

In the past decade, California has made a significant investment in community mental health treatment funding. In November 2004, California voters approved Proposition 63, also known as the Mental Health Services Act. Proposition 63 provides state funding for certain new or expanded mental health programs through a personal income tax surcharge of one percent on the portion of a taxpayer's taxable income in excess of \$1 million. Revenues generated by the surcharge are dedicated to the support of specified mental health programs and, with some exceptions, are not appropriated by the Legislature through the annual budget act. Full-year annual Proposition 63 revenues to date have ranged from about \$900 million to \$1.5 billion, and could vary significantly in the future. Between 2004-05 and 2013-14, the fund has collected over \$11 billion for local mental health services.³

Proposition 63 funding is generally provided for five major purposes: (1) expanding community services, (2) providing workforce education and training, (3) building capital facilities and addressing technological needs, (4) expanding prevention and early intervention programs, and (5) establishing innovative programs.

In 2013, the federal Patient Protection and Affordable Care Act (ACA) (health care reform) significantly increased access to private and public health care coverage, including mental health services. Included in this healthcare expansion was the expansion of Medi-Cal coverage to adults with incomes up to 138 percent of the federal poverty level (FPL). Generally, these are childless adults who are nonelderly and nondisabled. Under the ACA, the federal government will pay for 100 percent of the costs for this population for the first three years (2014-2016), with funding gradually decreasing to 90 percent in 2020. Allowing single, childless adults to receive Medi-Cal should significantly increase access to mental health services for those adults who would otherwise only have access through public county services or the criminal justice system.

The Legislature also passed the Investment in Mental Health Wellness Act (SB 82 (Senate Budget and Fiscal Review Committee), Chapter 34, Statutes of 2013). The bill authorized the California Health Facilities Financing Authority (CHFFA) to administer a competitive selection process for capital capacity and program expansion to increase capacity for mobile crisis support, crisis intervention, crisis stabilization services, crisis residential treatment, and specified personnel resources. The budget provided \$142 million General Fund for these grants. In addition, the bill implemented a process by which the Mental Health Services Oversight and Accountability Commission (MHSOAC) allocates funding for triage personnel to assist individuals in gaining access to needed services, including medical, mental health, substance use disorder assistance and other community services. The 2013-14 budget provided \$54 million (\$32 million MHSA State Administrative Funds and \$22 million federal funds) in on-going funding for this purpose.

Currently, due to the expansion of Medi-Cal eligibility, the state has greatly increased its efforts to assure that anyone leaving prison or county jail is enrolled in Medi-Cal and has access to necessary health care services, including mental health treatment.

Ralph Coleman, et al. v. Edmund G. Brown Jr, et al. Primarily because the prison system was severely overcrowded and the provision of mental health treatment was significantly lacking for inmates in need, a class action suit was filed in the United States District Court in 1991 arguing that

³ Mental Health Service Act (MHSA) – Revenue Summary, January 2015

prisoners with mental illness were subjected to cruel and unusual punishment, a violation of the inmates eighth amendment protections.

In order to find in favor of the plaintiffs, the court needed to determine that the violations were both objective and subjective in nature. In order to meet the objective standard, the court must find that the deprivations were sufficiently serious to constitute the unnecessary and wanton infliction of pain. For the subjective standard, the courts must find that the treatment constituted deliberate indifference, was wanton and showed a pattern of being malicious and sadistic.

In 1995, following a 39-day trial, District Court Judge Lawrence Karlton found that current treatment for mentally ill inmates violated those inmates' eighth amendment protections against cruel and unusual punishment. Judge Karlton found "overwhelming evidence of the systematic failure to deliver necessary care to mentally ill inmates" who, among other illnesses, "suffer from severe hallucinations, [and] decompensate into catatonic states." Although a special master was appointed by the court to oversee implementation of a remedial plan, the situation continued to deteriorate, according to periodic reports from the special master.⁴ Twenty-five years after the federal suit was filed, the state remains under the control of the federal court in *Coleman v. Brown* and is under regular review and oversight by the special master.

In the original ruling, the court identified six areas in which CDCR needed to make improvements: mental health screening, treatment programs, staffing, accurate and complete records, medication distribution and suicide prevention. In subsequent rulings, the courts expanded the areas of concern to include use of force and segregation policies. In addition, the courts also required that condemned inmates in San Quentin State Prison have access to inpatient, acute-care treatment.

On the following page is a detailed timeline of the major events related to *Coleman v. Brown* over the last 25 years.

⁴ Stanford Law School Three Strikes Project, "When Did Prisons Become Acceptable Mental Healthcare Facilities?"

Major Milestones in the *Coleman v. Brown* case

| Year | Event |
|-------------|--|
| 1991 | The Coleman class-action lawsuit was filed in U.S. District Court, Eastern District, alleging that mental health care in state prisons violated the Eighth Amendment's ban of cruel and unusual punishment. |
| 1995 | The Coleman court found that the State was deliberately indifferent to the mental health needs of inmates in violation of the Eighth Amendment. A special master was appointed. |
| 1997 | The Coleman court approved a plan to address the inadequacies in mental health care. |
| 2006 | Plaintiffs in the Plata and Coleman cases requested the convening of a Three-Judge Panel to review whether overcrowding was the primary cause of the failure to provide adequate medical and mental health care. |
| 2008 | The Three-Judge Panel trial took place. |
| 2010 | The Three-Judge Panel ordered the State to reduce its adult institution population to 137.5 percent of design capacity within two years and according to a schedule of four benchmarks at six-month intervals. The State appealed to the U.S. Supreme Court. |
| 2011 | In April, Public Safety Realignment (AB 109 (Committee on Budget) Chapter 15, Statutes of 2011), designed to bring about a significant reduction in the prison population, was enacted. It eventually reduced the adult institution population by 25,000. |
| 2011 | In May, the U.S. Supreme Court affirmed the Three-Judge Panel's order. |
| 2013 | In January, Governor Brown filed a motion to terminate the Coleman lawsuit and to end the requirement to reduce the prison population to 137.5 percent of design capacity. The Coleman court denied this motion. |
| 2013 | In May, the plaintiffs filed a motion in court alleging the unconstitutional use of force and an inadequate discipline process against the Coleman class members. |
| 2013 | In July, the court ordered the special master to monitor the psychiatric programs run by the Department of State Hospitals, particularly in regards to the adequacy of staffing and the use of handcuffs at all times for patients who are out of their cells. |
| 2013 | In December, the court ordered the state to develop a long-term solution for providing inpatient care for condemned inmates currently housed on California's death row. |
| 2014 | In April, the Coleman court ruled that California's use of force and segregation of mentally ill inmates violated the inmate's 8th amendment rights. |
| 2014 | In May, the Special Master released his report on the adequacy of inpatient mental health care, including the psychiatric programs run by DSH. The special master also filed an assessment of the San Quentin plan to provide inpatient care for condemned inmates and the court provided additional reporting orders. |
| 2014 | In August, the court issued further orders regarding segregation and use of force. |
| 2015 | In January, the Governor's budget proposal included a request related to complying with the 2014 court orders. In addition, the Special Master released his report on suicide prevention practices. |

Source: Events through April 2013 are from CDCR's May 2013 "Timeline in the Plata (medical care), Coleman (mental health care) and Three-Judge Panel (prison crowding) cases"

State Prison Population. CDCR is responsible for the incarceration of the most serious and violent adult felons, including the provision of training, education, and health care services. As of April 20, 2016, CDCR housed about 116,903 adult inmates in the state's 34 prisons and 43 fire camps. Almost 113,000 of those inmates are in state prisons, which results in those institutions currently being at 134.5 percent of their design capacity. Approximately 4,942 inmates are housed in out-of-state contracted prisons, 5,645 are housed in in-state contracted facilities, and 3,536 are housed in fire camps. CDCR also supervises and treats about 44,000 adult parolees. Approximately 45 percent of inmates have been treated for severe mental illnesses within the last year.

The Coleman Class. As of April 18, 2016, there are currently 37,431 inmates in the Coleman class (35,335 men and 2,096 women). According to a December 24, 1998, court ruling on the definition of the class, the plaintiffs' class consists of all inmates with serious mental disorders who are now, or who will in the future be, confined within CDCR. A "serious mental disorder" is defined as anyone who is receiving care through CDCR's Mental Health Services Delivery System (MHSDS).

MHSDS provides four levels of care, based on the severity of the mental illness. The first level, the Correctional Clinical Case Management System (CCCMS), provides mental health services to inmates with serious mental illness with "stable functioning in the general population, an administrative segregation unit (ASU) or a security housing unit (SHU)" whose mental health symptoms are under control or in "partial remission as a result of treatment." As of April 18, 2016, 28,773 mentally ill inmates were at the CCCMS level-of-care.

The remaining three levels of mental health care are for inmates who are seriously mentally ill and who, due to their mental illness, are unable to function in the general prison population. The Enhanced Outpatient Program (EOP) is for inmates with "acute onset or significant decompensation of a serious mental disorder." EOP programs are located in designated living units at "hub institution[s]." As of April 18, 2016, 6,940 inmates with mental illness were receiving EOP services and treatment.

Mental health crisis beds (MHCBs) are for inmates with mental illness in psychiatric crisis or in need of stabilization pending transfer either to an inpatient hospital setting or a lower level-of-care. MHCBs are generally licensed inpatient units in correctional treatment centers or other licensed facilities. Stays in MHCBs are limited to not more than ten days. Currently, there are 414 inmates receiving this level-of-care.

Finally, several inpatient hospital programs are available for class members who require longer-term, acute care. These programs are primarily operated by the Department of State Hospitals (DSH), with the exceptions of in-patient care provided to condemned inmates and to female inmates. There are three inpatient psychiatric programs for male inmates run by DSH that are on the grounds of state prisons. Those programs are DSH-Stockton, on the grounds of the Correctional Healthcare Facility; DSH-Vacaville, on the grounds of Vacaville State Prison; and DSH-Salinas Valley, on the grounds of Salinas Valley State Prison. There are currently approximately 1,100 patients in those facilities and the DSH budget for those inmates is approximately \$245 million General Fund per year. As of April 18, 2016, 1,304 inmates were receiving inpatient care, 45 of those patients were women and 36 were condemned inmates housed at San Quentin State Prison. The remaining 1,223 are receiving care in a DSH facility.

In addition to the patients in the prison-based psychiatric programs, approximately 250 Coleman class inmates are receiving care at Atascadero State Hospital and Coalinga State Hospital. The DSH budget for those patients is \$52 million General Fund per year.

May 2014 Special Master Report Highlights Regarding Both CDCR and DSH Inpatient Mental Health Care. As part of the ongoing court oversight, the special master issued a key report in 2014 on the adequacy of mental health care for CDCR inmates housed in inpatient, long-term, acute care beds. The investigation found significant lapses in the treatment being provided to inmate-patients.

The special master noted that individual therapy was rarely offered, even to those patients who were not ready for group therapy or for who group therapy was contraindicated. At Coalinga State Hospital (one of the two state hospitals that houses CDCR inmate-patients), patients reported that their only individual contact with clinicians occurred on the hallways of the unit. Further, even when individual clinical interventions were indicated for a patient in a treatment team meeting, they were not included in the patient's treatment plan.

The report also noted that at Salinas Valley Psychiatric Program (SVPP), it was the default practice to have two medical technical assistants (MTA) in the treatment room based on institutional cultural perceptions of patient dangerousness rather than on an individualized assessment of the actual potential danger to clinicians and the need to have MTAs present. Similarly, Vacaville Psychiatric Program (VPP) required two escorts for any patient movement, regardless of the patients' custody status, classification, or behavior. In some instances, activities were cancelled due to the unavailability of MTAs to escort the patients. According to both clinical and administrative staff, this was the primary reason for limiting out-of-cell activities.

Condemned patients who require an acute level of treatment are currently treated at VPP. According to the investigation, these patients received far less treatment than other acute level patients and no access to group activities or an outdoor yard. In addition, they were only allowed one hour in the day room per week. Reportedly, these patients had weekly contact with a psychiatrist or psychologist. But that contact either happened through the doors of their cells or in a non-confidential setting.

Finally, patients at the Stockton State Hospital (on the grounds of the Correctional Health Care Facility) reported that it was considerable more restrictive than the prisons from which they were referred, stating that it was like being in a maximum security environment, spending 21 to 22 hours per day in their rooms.

Another prevalent theme throughout the report was the lack of uniform policies and procedures throughout all aspects of the program. The report notes that all six of the inpatient programs used their own distinct systems of orientation, cuffing, and restrictions for newly admitted patients, steps/stages through which patients had to progress in order to fully access treatment, and the imposition of restrictions on patients following behavioral problems or disciplinary infractions. In addition, the six program varied widely in terms of the amount and severity of restrictions on patients' movements, contact with others, and eligibility to receive treatment.

The special master also found that placement of new patients in extremely restrictive conditions was often based on the individual program's established procedures rather than on the severity of the

individual patients' mental illness, their propensity for aggressive or self-harming behavior, or their readiness for treatment.

The report found that there was a need for the development of a consistent, more therapeutically-oriented and less punitively-oriented system that could be applied across all six of the programs. More importantly, the report notes, the emphasis throughout needs to be redirected toward greater individualization of any necessary restrictions and staging of patients based on their unique needs and away from an automatic presumption of violent behavior, anti-therapeutic withholding of interaction with others, and deferral of much needed treatment.

According to the Administration, the special master has completed his most recent round of reviews and an updated report on the care being provided to inmates under both DSH and CDCR's care is expected in the coming months.

Recent Coleman Court Orders. On April 14, 2014, Judge Karlton ruled that California continued to violate the constitutional safeguards against cruel and unusual punishment by subjecting inmates with mental illness to excessive use of pepper spray and isolation. He gave the state 60 days to work with the special master to revise their excessive force policies and segregation policies, and to stop the practice of holding inmates with mental illness in the segregation units simply because there is no room for them in more appropriate housing. He also ordered the state to revise its policy for strip-searching inmates with mental illness as they enter and leave housing units. The 60-day deadline for some of the requirements was subsequently extended until August 29, 2014.

The department submitted a revised use of force policy to the courts that limits the use of pepper spray on inmate-patients and revises their cell management strategy. On August 11, 2014, the court accepted the new policies. Among other changes to the policy, correction staff is required to consider an inmate's mental health prior to using any controlled use of force. That consideration must include the inmate's demeanor, bizarre behavior status, mental health status, medical concerns and their ability to comply with orders. In addition, a mental health clinician must evaluate an inmate's ability to understand the orders, whether they are a Coleman class inmate or not. They must also evaluate whether the use of force could lead to a decompensation of the person's mental health.

On August 29, 2014, the state submitted a plan to comply with the remainder of the April 14 court order and the court accepted the plan. Under this court order, CDCR is required to create specialty housing units for inmates with mental illness who are removed from the general population. These specialized units must include additional out-of-cell activities and increased treatment. Under this plan, male inmates in short-term restricted housing will receive 20 hours of out-of-cell time each week, which is twice the amount of time offered to CCCMS inmates in the existing segregation units. Female inmates in short-term housing, however, will only receive 15 hours of out-of-cell time each week, which is 50 percent more than the current ten hours. In the longer-term restricted housing, male and female inmates will be allowed 15 hours a week in out-of-cell time.

The plan also requires that CDCR conduct a case-by-case review of all Coleman class inmates with lengthy segregation terms, in an attempt to decrease the length of stay for inmates in segregated environments. Additionally, the plan establishes a case review for all inmates being released from DSH or CDCR psychiatric inpatient beds who are facing disciplinary terms in segregation to ensure that the inmate is returned to appropriate housing and not to segregation.

In several areas, the plan presented by CDCR extended beyond the court order and included additional training and collaboration between mental health staff and custody staff. The plan also requires custody staff to make security checks on all inmates in specialized restricted housing twice every hour and requires that licensed psychiatric technicians conduct daily rounds to check on every inmate's current mental health status. The increased checks are designed to reduce suicides and suicide attempts among this population, which have been an ongoing concern of the court. Finally, the plan increases the amount of property allowed for inmates in short-term restricted units. For example, inmates will now be allowed one electrical appliance if their cell allows for it. If it does not, they will be provided with a radio.

Last Year's Budget Action. In response to the critical report by the Coleman special master and the Administration's failure to make progress in determining whether or not CDCR should resume control of the acute inmate-patients, the Legislature required DSH to submit a report before January 10, 2016, detailing steps they have taken to provide Coleman patients with treatment consistent with constitutional mandates. In addition, the report required an update on the Administration's discussions regarding shifting responsibility for care and treatment from DSH back to CDCR.

In response to the requirement, DSH submitted their report on April 1, 2016. In the report they note that DSH has taken the following steps to ensure that appropriate care is being provided to Coleman inmate-patients in their care:

- The formation of a centralized Recruitment Unit focused on recruiting and retaining qualified clinical staff.
- The formation of a multidisciplinary committee to assess the laundry and supply process.
- The development of new policies concerning the use of mechanical restraints.
- The establishment of a pilot project at the Vacaville Psychiatric Program to allow patients to attend treatment groups and have access to the yard more quickly without the use of restraints.
- The development of a patient reservation and tracking system.
- An increase in the number of group treatment hours and improved tracking of patient treatment.

In terms of the required update on the potential transfer of responsibility for patients from DSH to CDCR, the report fails to provide the required update. Instead, the report states, "DSH and CDCR continue to evaluate the feasibility, possible timing, and potential outcomes of returning the responsibility for the *Coleman* patients inpatient psychiatric treatment to CDCR."

Memorandum of Understanding (MOU) Between DSH and CDCR. Despite the Administration's statement that they are continuing to evaluate the transition of Coleman inmate-patients receiving acute-level treatment, the two departments entered into an MOU agreement in November of 2015 regarding their individual obligations surrounding the treatment of intermediate and acute care Coleman inmate-patients who are being treated in DSH facilities. The report provided by DSH to the Legislature does not discuss the MOU.

Questions for the Administration. Members may want to consider asking the following:

1. Your caseload projections for the coming year show a growing number of inmates with mental illnesses. How do you prepare your custody staff to interact safely and effectively in individuals who are mentally ill?
2. Why was the update on the potential shift of care of Colman inmate-patients from DSH to CDCR not provided, as requested in supplemental reporting language?
3. In addition, why did the report fail to mention the existence of the memorandum of understanding, the existence of which suggests that the Administration has indeed determined that DSH should continue providing care to Coleman inmate-patients?
4. Please present the MOU and describe what problems you believe are resolved through it.

Issue 2: Healthcare for *Plata* Class Inmates Under the Care of State Hospitals

Background. The California Correctional Health Care Services (CCHCS) receivership was established as a result of a class action lawsuit (*Plata v. Brown*) brought against the State of California over the quality of medical care in the state's 34 adult prisons. In its ruling, the federal court found that the care was in violation of the Eighth Amendment of the U.S. Constitution which forbids cruel and unusual punishment. The state settled the lawsuit and entered into a stipulated settlement in 2002, agreeing to a range of remedies that would bring prison medical care in line with constitutional standards. The state failed to comply with the stipulated settlement and on February 14, 2006, the federal court appointed a receiver to manage medical care operations in the prison system. The current receiver was appointed in January of 2008. The receivership continues to be unprecedented in size and scope nationwide.

The receiver is tasked with the responsibility of bringing the level of medical care in California's prisons to a standard which no longer violates the U.S. Constitution. The receiver oversees over 11,000 prison health care employees, including doctors, nurses, pharmacists, psychiatric technicians and administrative staff. Over the last ten years, healthcare costs have risen significantly. The estimated per inmate health care cost for 2015-16 (\$21,815) is almost three times the cost for 2005-06 (\$7,668). The state spent \$1.2 billion in 2005-06 to provide health care to 162,408 inmates. The state estimates that it will be spending approximately \$2.8 billion in 2016-17 for 128,834 inmates. Of that amount, \$1.9 billion is dedicated to prison medical care under the oversight of the receivership.

Until the last few years, the receivership has focused mainly on improving the quality of care within the state-run prisons. However, in response to concerns from the receiver, CDCR has put forward funding requests in the last two years to increase the medical care provided to inmates housed in the state's contracted facilities. For example, the 2015 budget act included \$3.2 million General Fund beginning 2015-16 for 24-hour registered nurse coverage for inmates housed in the six modified community correctional facilities (MCCFs) and one female community re-entry facility. The 24-hour coverage was required by the health care receiver, in order to provide the same level of coverage to inmates in contract facilities as is currently provided to inmates in the state-run prisons. This expansion of the receivership appears to be an acknowledgement that the scope of the receiver's oversight extends beyond the walls of the state's 34 prisons to all of the facilities that house CDCR inmates.

Coleman Patients Receiving Acute Care Treatment. As discussed in the previous item, several inpatient hospital programs are available for Coleman class members who require longer-term, acute care. These programs are primarily operated by the Department of State Hospitals (DSH), with the exceptions of in-patient care provided to condemned inmates and to female inmates.

Items of concern. As discussed in the previous item, last year the Coleman special master found significant lapses in the mental health treatment being provided to inmate-patients.

More recently, a lawsuit has been filed by the family of a Coleman inmate-patient under the care of DSH and CDCR who allegedly died from inadequate nutrition. Regardless of the merits of that lawsuit, it raises the question of the role of the healthcare receiver in ensuring that all the *Plata* class inmates who are permanently or temporarily housed outside of the state's 34 prisons are receiving a constitutional level of care.

Scope of the Inspector General's Medical Inspection Teams. In March 2015, the Plata court issued an order outlining the process for transitioning responsibility for inmate medical care back to the state. Under the order, responsibility for each institution, as well as overall statewide management of inmate medical care, must be delegated back to the state. The court indicates that, once these separate delegations have occurred and CDCR has been able to maintain the quality of care for one year, the receivership would end.

The federal court order outlines a specific process for delegating care at each institution back to the state. Specifically, each institution must first be inspected by the Office of the Inspector General (OIG) to determine whether the institution is delivering an adequate level of care. The receiver then uses the results of the OIG inspection—regardless of whether the OIG declared the institution adequate or inadequate—along with other health care indicators, including those published on each institution's Health Care Services Dashboard, to determine whether the level of care is sufficient to be delegated back to CDCR.

What is unclear about the current transition process is whether or not the Inspector General's investigations should include the healthcare being provided to the inmate-patients being treated in DSH's psychiatric inpatient programs that are housed within the three state prisons. Under the state's current model, the healthcare provided to the inmates being treated in DSH-Stockton receive their medical care from the receiver's medical staff at CHCF. However, at the other two psychiatric inpatient programs, DSH staff provide medical care to the inmates they are treating. Therefore, when the OIG medical teams evaluate the level of care being provided to inmates at Salinas Valley and Vacaville prisons, it is unclear if those evaluations should include the care provided to all inmates in those prisons or only to those under CDCR's jurisdiction. If the courts determine that the quality of care of all of the inmates is of concern, the IG's oversight authority and access would need to be statutorily expanded to include these particular DSH facilities.

Questions for the Administration. Members may want to ask the following:

1. The Inspector General has been given a specific role in determining whether or not an institution is providing a constitutional level of healthcare. Currently, the OIG does not have access to or jurisdiction over the inmates being housed and treated in the DSH facilities located within the California Medical Facility in Solano or Salinas Valley State Prison. Does that present a problem in their ability to adequately assess the quality of healthcare being provided at those prisons?
2. Given the ambiguity of the status of the inmate-patients under the care of DSH, why didn't the recent MOU between CDCR and DSH require that the psychiatric inpatient programs, at a minimum, follow all of CDCR's policies and procedures related to the medical care of its inmates housed in the co-located prison? Alternatively, why didn't CDCR agree to provide medical care for the inmate patients at the Salinas Valley and Vacaville PIPs, similar to the arrangement currently in place in the Stockton facility?

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**Issue 1: Update on the Condemned Inmate Psychiatric Inpatient Program at San Quentin Prison**

Previous Budget Action. The 2015 Budget Act included 99.8 positions and \$11 million General Fund for both CDCR and California Correctional Health Care Services (CCHCS) to provide clinical support, custody staff, equipment and training to operate a 40-bed acute level-of-care psychiatric facility to provide treatment for condemned inmates with mental illnesses severe enough to require inpatient care. \$4.3 million General Fund is for CDCR and \$6.7 is for CCHCS. With that funding, CDCR was able to convert 17 existing mental health crisis beds and 23 medical beds to psychiatric inpatient beds.

Background. As discussed in detail in the next item, in 2014 the *Coleman v. Brown* special master released a report detailing the lack of adequate care being provided to *Coleman* inmate-patients requiring long-term, acute levels of care. In particular, the report noted a particular lack of treatment provided to condemned inmate-patients being treated by the Department of State Hospitals (DSH) in their Vacaville Psychiatric Program (VPP). As a result of the *Coleman* courts on-going findings in regard to the lack of treatment provided to condemned inmate-patients at VPP, the *Coleman* court required CDCR to establish the San Quentin Psychiatric Inpatient Program (PIP), run by CDCR medical and mental health staff.

The San Quentin PIP is a 40-bed, fully-licensed, Joint Commission-accredited program that provides long-term acute and intermediate levels of psychiatric inpatient care to male condemned patients. Its mission is to provide effective and evidence-based psychiatric treatment to relieve or ameliorate acute and refractory mental health disorders that disrupt the patients' expected level of functioning in the prison environment.

The PIP opened on October 1, 2014, in response to the evolving clinical needs of the condemned population and in compliance with federal court orders. The opening and ongoing success of the PIP is the result of collaborative efforts between San Quentin State Prison, CDCR headquarters, the federal health care receiver, plaintiffs' counsel, and the *Coleman v. Brown* special master team. The average daily census has been 37 patients, with a maximum census of 40.

The evidence-based treatment provided in the San Quentin PIP is individualized and patient-centered to meet the unique needs of each patient. The PIP offers incentive-based rewards for certain behavior consistent with positive reinforcement theory. Treatment is offered seven days a week from the early morning through the evening hours. In addition to providing individual psychotherapy and psychiatric medication treatment, the PIP employs an active group and activities program. For example, group therapy, educational groups, substance use groups, recreational yards, outdoor therapeutic yards, and dayroom activities are consistently offered in order to address the chronic mental illness symptoms that diminish functioning and quality of life. Given the large volume of offered services, patients are able to choose the activities they attend. This patient-centered choice facilitates a greater sense of satisfaction, autonomy, and ownership over one's treatment. As a result, treatment becomes more tailored and efficacious at addressing the individual needs of the patient.

Each treatment team consists of the patient, a psychiatrist, a psychologist, a social worker, a recreational therapist, nursing staff, and custody staff. Additional disciplines may be involved based on

individual circumstances (e.g., clergy, primary care). Custody treatment team members may consist of correctional counselors, unit officers, and custody supervisors. Continuous collaboration between health care and custody staff is an essential component of the PIP treatment milieu. Incarceration in general, and condemned row more specifically, involves a unique set of social and cultural stressors that may impact the well-being of PIP patients. Custody staff is able to appreciate and communicate these correctional stressors to other members of the treatment team so a more complete appreciation of the challenges faced by the patient is obtained.

In preparation for discharge, extensive collaboration between inpatient and outpatient San Quentin health care and custody staff occurs so that the transition back to the Enhanced Outpatient Program (EOP) or Correctional Clinical Case Management System (CCCMS) treatment setting is organized, thoughtful, and therapeutic.

Questions for the Administration. Members may want to ask the following:

1. Will you please tell the committee how the San Quentin PIP provides treatment to its patients and how it may differ from other inpatient mental health services provided to the patient population at CDCR?
2. Have you found that you need to take extra security precautions to keep your staff safe while they work with patients in the PIP?
3. Are there any policies or best practices used at the San Quentin PIP that you would suggest be adopted statewide?

Issue 2: California Men's Colony Mental Health Crisis Beds

Governor's Budget. The Governor's budget requests \$9.2 million General Fund and 62.4 positions to activate 32 mental health crisis beds (MHCBs) at the California Men's Colony (CMC) in San Luis Obispo. The positions requested include five psychiatrists, six clinical psychologists, and approximately 19 correctional officers.

Background. The most recent projections from CDCR suggest a significant increase over the 2015 budget assumptions. In the Governor's current budget proposal, the Administration anticipates that the population of inmates requiring mental health treatment will be 35,743 in 2015-16 and 36,825 in 2016-17. This is an increase of 571 and 1,653, respectively, over the 2015 Budget Act projections. As of April 18, 2016, there were 414 inmates receiving a crisis level-of-care through CDCR's MHCBs.

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

Questions for the Administration. Members may want to ask the following questions:

1. The Legislature has consistently heard over the years that it is difficult to find and retain psychiatric clinicians at the state hospital in Atascadero. Presumably, CDCR has run into the same problem at CMC. If this is the case, why do you think this is the appropriate institution for mental health crisis beds?
2. While increasing the number of crisis beds at CMC may reduce your waiting lists for those beds, how will you ensure that this increase will not result in psychiatrists currently employed at Atascadero State Hospital from leaving that facility to work for CDCR, where they will both be paid more and feel that they are working in a more secure setting?
3. If this proposal does result in fewer clinicians being available to work at Atascadero State Hospital, would that potentially increase your waiting list for Coleman patients in need of on-going acute care treatment because the Atascadero State Hospital will no longer have enough clinicians to provide treatment?

Action: Approved as budgeted.

Vote: 3 – 0

Issue 3: Spring Finance Letter – Mentally Disordered Offenders (MDO)

Spring Finance Request. The Administration is requesting a \$2.2 million General Fund augmentation for 16 additional correctional counselor positions to coordinate the MDO certification process. Upon completing their sentence, a portion of inmates with severe mental disorders are declared a danger to others and are paroled to the Department of State Hospitals (DSH) as an MDO.

Background/Justification. MDO certifications are coordinated by correctional counselors. As recently as 2011-12, CDCR had MDO coordinator positions to specifically conduct these certifications. However, in 2012-13, these positions were incorporated into overall correctional counselor workload. As a result, the MDO certification workload is now spread amongst all CDCR correctional counselors. The department generally uses an inmate-to-correctional counselor ratio of 150:1 for these positions. Accordingly, as the overall prison population declined, the number of correctional counselors also declined. However, during this same period, the number of MDO certifications increased, likely because the population of mentally ill inmates increased despite a reduction in the total inmate population. According to the department, due to the combination of reductions in correctional counselor staffing and increases in the mentally ill population, it has not been able to complete the increasing MDO workload in a timely manner.

Legislative Analyst’s Office (LAO). The LAO notes the following concerns:

While we acknowledge that MDO workload has increased, the administration’s proposal to add 16 positions on an ongoing basis does not resolve the problem that MDO certification workload is tied to the mentally ill population, not the overall inmate population. A more reasonable approach would be to create a ratio to allocate MDO coordinator positions based on the mentally ill population. This additional ratio would ensure that the department has the appropriate number of MDO coordinators needed to complete MDO certifications on an ongoing basis. Accordingly, we recommend rejecting the current proposal and directing the department to develop a ratio to budget MDO coordinator positions based on the mentally ill inmate population and make a corresponding adjustment to the correctional counselor ratio to account for the reduced workload. Once the department has an opportunity to develop ratios that accurately reflect these changes in workload, the Legislature can review any corresponding budget changes at that time.

Questions for the Administration. Members may want to ask the following questions:

1. Please explain the correctional counselors’ role in determining whether or not an inmate receives a designation as a mentally disordered offender upon their release. In addition, what type of specialized training do these correctional counselors have to prepare them to serve as an MDO coordinator?

Action: Approved the spring letter request.

Vote: 3 – 0

4440 DEPARTMENT OF STATE HOSPITALS (DSH)

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

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

California's State Hospital System

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

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

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

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

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

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

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

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

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

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

Committed Directly From Superior Courts:

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

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

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

**State Hospitals & Psychiatric Programs
Caseload Projections***

| | 2015-16 | 2016-17 |
|--|--------------|--------------|
| Population by Hospital | | |
| Atascadero | 1,252 | 1,252 |
| Coalinga | 1,293 | 1,293 |
| Metropolitan | 803 | 803 |
| Napa | 1,177 | 1,177 |
| Patton | 1,533 | 1,533 |
| Subtotal | 6,058 | 6,058 |
| Population by Psych Program | | |
| Vacaville | 392 | 392 |
| Salinas | 235 | 235 |
| Stockton | 480 | 480 |
| Subtotal | 1,107 | 1,107 |
| Population Total | 7,165 | 7,165 |
| Population by Commitment Type | | |
| Incompetent to Stand Trial (IST) | 1,477 | 1,477 |
| Not Guilty By Reason of Insanity (NGI) | 1,411 | 1,411 |
| Mentally Disordered Offender (MDO) | 1,385 | 1,385 |
| Sexually Violent Predator (SVP) | 907 | 907 |
| Lanterman-Petris-Short Act – Civil Commitments | 614 | 614 |
| <i>Coleman</i> Referral – Hospitals | 256 | 256 |
| <i>Coleman</i> Referral – Psych Programs | 1,107 | 1,107 |
| Department of Juvenile Justice | 8 | 8 |

*The caseloads in this table are from the DSH 2016-17 January budget binder and reflect the estimated number of cases on the last Wednesday of the fiscal year. On average, the Governor's budget documents show an average daily caseload of 6,982 in 2015-16, growing to 7,165 in 2016-17.

State Hospitals Budget

The Governor's proposed budget includes \$1.8 billion for DSH in 2016-17 (\$1.7 billion General Fund). This represents a \$6.5 million decrease over 2015-16 funding. The proposed budget year position authority for DSH is 10,301 positions, a decrease of five positions from the current year.

(dollars in thousands)

| Funding | 2014-15 Actual | 2014-15 Projected | 2015-16 Proposed |
|---------------------------|---------------------------|------------------------------|-----------------------------|
| General Fund (GF) | \$1,525,443 | \$1,620,485 | \$1,631,202 |
| Reimbursements | 124,237 | 155,265 | 138,022 |
| CA Lottery Education Fund | 141 | 24 | 24 |
| Total | \$1,649,821 | \$1,775,774 | \$1,769,248 |
| Positions | 10,844 | 10,306 | 10,301 |

Issue 1: Bureau of State Audits *Improper Activities Audit*

Background. The California State Auditor puts out regular reports on their investigations of whistleblower complaints. In February of 2016, the State Auditor released a report on their most recent investigations of improper activities by state agencies and employees. The report contained two findings related to the Department of State Hospitals (DSH).

- **Patton State Hospital.** The auditor found that four psychiatrists at Patton State Hospital regularly worked an average of 22 to 29 hours per week during the 2014-15 fiscal year, rather than the required 40 hours per week. In total, the report notes, the psychiatrists worked 2,254 hours less than required. In addition, two of the four psychiatrists engaged in other employment during their regularly scheduled state work hours and were dishonest regarding their attendance and outside employment. According to the audit findings, both supervisors and the executive management were aware of the psychiatrists' failure to work 40 hours per week and did not attempt to resolve the situation.

Beyond the specific finding, the audit report notes that this problem is likely not limited to these four psychiatrists or to Patton State Hospital. The report includes the following concerns:

During our investigation we learned that the practice of failing to work an average of 40 hours per week and misusing state resources may not be isolated to the four psychiatrists we investigated. The staff we interviewed, including supervisors, managers, and officials, informed us that the majority of psychiatrists, as well as some psychologists and social workers, average less than 40-hour workweeks. They based their comments on their own observations and on information provided to them by other employees. Managers were able to list nearly 35 employees whom they believe regularly arrived late, left early, or worked fewer than 40 hours per week.

A senior executive at Patton informed us that his observations suggest that none of the psychiatrists at Patton work the 10-hour days for which they are scheduled and that the average is probably closer to 6 hours per day. He also told us that officials at the other state hospitals have shared with him that the attendance patterns of their psychiatrists and other doctors is similar to, or even worse than, those at Patton. . . .

Managers also told us that the problem of psychiatrists failing to work their required hours has existed since the 1990s and that over the years it has become part of the culture at Patton that psychiatrists can come and go as they please without accountability. They stated that the psychiatrists have a sense of entitlement and do not believe that the 40-hour workweek applies to them.

Perhaps the most disconcerting aspect of the psychiatrists' attendance behavior is the negative impact it could have on patient care and staff safety. Supervisors, managers, and hospital officials pointed out that when psychiatrists work fewer hours, it limits patient care. Although we found no specific examples of patient neglect, the hospital could provide more robust care to its patients if the psychiatrists worked the hours in their regularly scheduled shifts. An official in charge of medical services explained that when psychiatrists work fewer hours, they have limited interactions with their patients. Conversely, if they were to work their required

number of hours, they could see more patients, interact with them longer, and provide more therapeutic treatment. The official also noted that the risk to staff and patients increases when the most highly trained and skilled clinicians are not present.

- **Medical Director Conflict of Interest.** A medical director at one of the state hospitals violated financial disclosure laws when he failed to report his financial interest in a pharmaceutical company. Specifically, the psychiatrist received almost \$30,000 in income from the company while he was acting as the medical director. In addition, the audit found that DSH failed to provide adequate oversight to ensure that designated employees file their financial disclosure forms.

Questions for the State Auditor. Members may want to ask the following:

1. During the course of your investigation, were you able to determine how long the executive management team had known about the clinicians working reduced hours?
2. Your report indicates that the problem regarding DSH staff working reduced hours may be systemic. What recommendations do you have regarding system-wide changes for DSH?

Questions for the Administration. Members may want to ask the following:

1. What steps have you taken throughout the state hospital system, including psychiatric programs, to determine the extent of the problem and to ensure that the state is not paying clinicians, or other staff, for full-time work when they are not, in fact, working 40 hours per week?
2. As previously discussed, the last special master report on the treatment of Coleman patients under the care of the state hospitals found that very little treatment was being provided to the inmate-patients in your care. When this issue was discussed last year, you attributed a significant amount of the problem to your failure to keep adequate records detailing how much treatment individuals were receiving. In addition, you noted a high vacancy rate among your clinicians as contributing to the problem.

Given the findings of the State Auditor, would it be fair to assume that this culture of not requiring your mental health professionals to work the required number of hours may be a large contributor to the problem? Have the findings in this report been discussed with the special master?

Issue 2: Proposition 47 Savings

Background. As discussed in detail during this subcommittee's April 7, 2016, hearing, in November 2014, the voters approved Proposition 47, which requires misdemeanor rather than felony sentencing for certain property and drug crimes and permits inmates previously sentenced for these reclassified crimes to petition for resentencing. The proposition requires that state savings resulting from the proposition be transferred into a new fund, the Safe Neighborhoods and Schools Fund (SNSF). 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 expected state savings will come from a reduced number of individuals in both state prison and state hospitals and reduced costs to the trial courts.

Governor's Budget. The proposed budget assumes an initial Proposition 47 savings in 2016-17 of \$29.3 million, growing to an annual on-going savings of \$57 million per year. Of the 2016-17 amount, the Department of Finance assumed that \$8.7 million would come from a savings to the DSH as a result of fewer individuals accused of felonies being committed to state hospitals as a result of being deemed incompetent to stand trial (IST).

Rather than reflect that savings in the DSH budget, the Administration chose to reinvest the funding in the DSH budget to fund IST placements in order to further reduce the IST waiting list.

Legislative Analyst's Office (LAO). The LAO recommends that the Legislature reduce the program budgets of DSH by \$8.7 million General Fund to account for savings associated with the reduced workload. The LAO notes that the Administration's proposal for DSH to keep savings they are estimated to realize as a result of Proposition 47 reduces legislative oversight by allowing DSH to redirect their savings to other programs and services without legislative review or approval. Essentially, instead of simply redirecting the Proposition 47 savings, the Administration should have put forward proposals to both reduce the DSH budget by \$8.7 million GF and a separate proposal to increase funding for the IST population due to an estimated increase in workload.

Action: Adopted the LAO recommendation to reduce DSH's overall funding by \$8.7 million General Fund.

Vote: 2 – 1 (Anderson – no)

Issue 3: Conditional Release Program

Governor's Budget. The proposed budget includes an additional \$3.8 million General Fund in 2016-17 for increased costs related to DSH's Conditional Release Program (CONREP). The increased costs are primarily related to an expected increase in the CONREP-sexually violent predator (SVP) caseload (\$3 million General Fund). The remaining amount (\$800,000 General Fund) is due to a change in the contracting, away from an allocation-based methodology to a service-based methodology.

Background. CONREP provides community treatment and supervision for individuals who have been found to be not guilty by reason of insanity (NGI), incompetent to stand trial (IST), or have been designated as mentally disordered offenders (MDO) or sexually violent predators (SVP).

CONREP offers individuals direct access to mental health services during their period of outpatient treatment. These services are provided by specialized forensic mental health clinicians and include individual and group therapies, home visits, substance use disorder screening and psychological assessments. Currently, DSH contracts with 11 providers for these services. DSH estimates that the non-SVP CONREP caseload will be 654 individuals in both 2015-16 and 2016-17.

CONREP for Sexually Violent Predators. SVP patients in the state hospital system are individuals who are convicted of a sex offense and also found to have a mental disorder that makes him a danger to others and likely to engage in sexually violent behavior in the future. After the completion of the prison term of a person convicted of committing a sexually violent crime, both DSH and the CDCR evaluate the individual to determine whether or not he meets the criteria to be designated as an SVP. If a person is designated as an SVP and the courts agree with the designation, that individual is then committed to DSH upon completion of their prison term. Every year, DSH will evaluate their SVP patients to determine whether or not they meet the criteria to be released to CONREP or conditionally discharged. That consideration includes whether the release is in the best interest of the individual and whether or not conditions can be imposed upon the release that would adequately protect the community.

For SVPs, state law requires that all SVPs who are conditionally released into their original communities must be provided with both treatment and supervision. Currently, DSH contracts with one provider who provides both the required specialized treatment and supervision for these individuals. DSH estimates that there will be 14 SVP-designated individuals in CONREP in 2015-16. However, there are currently 12 additional SVP-designated individuals who have court petitions for release into CONREP. If the court approves all of the petitions, DSH assumes the CONREP-SVP caseload will grow to 26 individuals in 2016-17.

The cost for the CONREP-SVP cases is significantly higher than regular CONREP cases, primarily due to the security requirement. Courts may order 24 hour-a-day, seven day a week security of people in the CONREP-SVP for time-limited period during transition from state hospital to community setting (several weeks to several months, depending on circumstances). Currently, one individual has been receiving 24 hour-a-day security for over a year due to safety concerns. DSH does not know when security for this individual can be suspended. The 2014-15 average cost-per-case, excluding security, is approximately \$258,000 for CONREP-SVP services and treatment. The cost rose to an

average of \$310,000 per year when security was included. In contrast, the annual cost-per-case for the regular CONREP cases during 2014-15 was \$34,000 per year.

New Contracting Methodology. Historically, DSH has entered into annual contracts with providers that required the payment of a fixed monthly rate, regardless of the services provided to individuals in CONREP. However, a recent audit by the Department of Finance's Office of State Audits and Evaluations found that this contracting process for CONREP had inadequate internal controls in place and lacked fiscal accountability and transparency. In response, DSH has developed a new funding methodology that relies, in part, on the services provided to people in CONREP. Specifically, according to DSH, the department will work with their contractors to establish a rate based both on the anticipated caseload and the services the contractors are expected to provide.

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

Questions for the Administration. Members may want to consider asking the following:

1. Your proposal assumes that all 12 individuals with petitions before the court will be released to the CONREP program by July 1, 2016. Why do you assume that will be the case? In the last five years, how many individuals have petitioned the court for release? Of those petitions, how many were accepted and how many were denied? Why does the budget assume the court will rule on the petitions by July 1?
2. Given your new contracting methodology, if the 12 cases do not appear as of July 1, will the payments to the contractor only reflect the actual caseload? In addition, if all 12 cases do not materialize, given the high cost per case, will the unspent funding revert to the General Fund or will you simply spend it elsewhere in your budget?
3. In reviewing your caseload projections for your inpatient SVP program, it appears you are assuming a static caseload of 907 for both 2015-16 and 2016-17. If you are expecting 12 of those cases to move into CONREP-SVP, why don't you assume a corresponding reduction in caseload and funding for 2016-17 in the inpatient SVP caseload?
4. Given that these individuals are most likely eligible for the state's Medi-Cal program, why are the treatment services provided through CONREP funded with General Fund rather than through the Medi-Cal program, which allows the state to draw down federal funding to cover at least half of the cost of treatment?
5. There has been a concerted effort in recent years in county jails and state prisons to ensure that all individuals who are eligible for Medi-Cal are enrolled in and receiving benefits through the program upon their release. Please describe your efforts at ensuring that all patients who leave the state hospitals are enrolled in Medi-Cal, if eligible.

Action: Held open.

Issue 4: Jail-Based Competency Treatment Program Expansion

Governor's Budget. The proposed budget includes \$1.5 million General Fund to establish a new 10-bed jail-based competency treatment program (JBCT - formerly the ROC program) in Sonoma County.

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

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

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

Prior Year Budget Augmentation. The 2015 Budget Act included \$6.1 million General Fund to support the expansion of DSH's existing jail-based competency treatment program in San Bernardino County. In addition, the budget included \$4 million General Fund to support up to 32 additional beds in other interested counties.

Recent JBCT Program Expansions. During 2015, DSH expanded the JBCT program to include an additional 76 beds in the San Bernardino county jail to primarily serve Los Angeles county IST patients. In addition, the Sacramento county jail now has a partnership with the University of California, Davis to run a 16-bed JBCT program to serve IST patients from Sacramento, Fresno, and San Joaquin counties. The Sacramento JBCT is ultimately expected to expand to 32 beds; however, the county has delayed activation of the remaining 16 beds.

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

Questions for the Administration. Members may want to the following questions:

1. Please provide the committee with an update of your jail-based competency programs, including the reason for Sacramento County's delay in adding their remaining 16 beds.
2. Other counties, including Alameda and San Diego, have expressed an interest in participating in the JBCT program. Please provide an update on which counties you are currently in contact with regarding the potential for expansion.
3. Given the growing interest among counties, why are you only including a small, 10-bed expansion in the budget, rather than a proposal that would allow for greater expansion to other interested counties during 2016-17?

Action: Approved as budgeted.

Vote: 2 – 0 (Beall – no vote recorded)

Issue 5: Jail-Based Competency Treatment – IST Evaluator Request

Governor’s Budget. The budget includes two positions and \$336,000 General Fund at the request of Los Angeles County to provide two IST patient evaluators to determine the appropriate care and placement for patients.

Justification. Prior to the availability of restoration of competency (ROC) programs, placement options for patients requiring placement in a secure treatment facility were essentially limited to a state hospital program. With the addition of the ROC programs as an option for placement, the Los Angeles County Mental Health Court interprets the statute that the court must make the placement determination between the state hospital and ROC. To ensure equal consideration of placement to a ROC or state hospital program, clinical review and evaluation of an IST’s medical and mental health records are required and in cases where documentation is inadequate, IST evaluators will conduct interviews with the patients for a proper determination and recommendation to the court for placement at either a state hospital or the ROC program.

With the majority of new referrals coming from LA County, the workload to determine the most appropriate placement option has significantly increased. The DSH is unable to absorb this workload and is requesting funding to establish 2 psychologist positions to serve as the IST evaluators.

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

Questions for the Administration. Members may want to ask the following questions:

1. According to the budget documents, these two positions have been included in the budget at the request of Los Angeles County. Please explain why, other than its size, Los Angeles needs these additional evaluators and other counties do not? Shouldn’t the goal for all of your patients, including the IST population, be to ensure that they are being placed efficiently and in the most appropriate treatment setting?

Action: Approved the funding on a two-year limited-term basis and required the department to work with the LAO and budget staff to develop trailer-bill language clarifying that jail-based competency programs are part of the state hospital’s continuum of care and are not separate from the state hospital system.

Vote: 2 – 0 (Beall – no vote recorded)

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 5, 2016
9:30 a.m. or upon adjournment of session
State Capitol - Room 113

Consultant: Julie Salley-Gray

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

PROPOSED FOR VOTE ONLY**Commission on Peace Officer Standards and Training (POST)**

1. **Homeland Security Training.** The Commission on Peace Officer Standards and Training (POST) requests \$455,000 (Anti-terrorism Fund) one-time in 2016-17 to design, deliver and implement timely, relevant and credible anti-terrorism and threat assessment training for peace officers and first responders to prevent, disrupt, mitigate, detect and respond to acts of terrorism and violent extremism.
2. **Mental Health Training (SB 11 and SB 29).** The Commission on Peace Officer Standards and Training requests \$777,000 (Peace Officers' Training Fund) in 2016-17 and \$156,000 (Peace Officers' Training Fund) beginning in 2017-18 to provide reimbursements to local law enforcement agencies for peace officers attending new mental health training courses mandated by Senate Bill 11 (Beall and Mitchell), Chapter 468, Statutes of 2015, and Senate Bill 29 (Beall), Chapter 469, Statutes of 2015.

California Department of Corrections and Rehabilitation (CDCR)

3. **AB 900 Reappropriation.** CDCR requests budget bill language allowing the reappropriation of funding for six AB 900 projects that have been delayed for various reasons, including delays in design and the need for additional structural design. CDCR anticipates that all of these projects will begin construction in fall 2016. The projects include five Health Care Facility Improvement Program projects and a potable water storage reservoir projects at Calipatria State Prison.

Chapter 7, Statutes of 2007 (AB 900, Solorio), was designed to relieve the significant overcrowding problems facing state prisons. Specifically, AB 900 authorized a total of approximately \$7.7 billion for a broad package of prison construction and rehabilitation initiatives.

Judicial Branch

4. **Spring Letter: Trial Court Capital Outlay Reappropriations.** The Judicial Branch requests budget bill language allowing the reappropriation of approximately \$70.4 million from the Immediate and Critical Needs Account (ICNA) due to delays in planning and construction for five courthouses (Santa Barbara, Sonoma, El Dorado, Sacramento, and Glenn).
5. **Mendocino—New Ukiah Courthouse.** The Judicial Council requests a re-appropriation from the Immediate and Critical Needs Account (Fund 3138) of \$6.1 million for the working drawings phase for the Mendocino— New Ukiah Courthouse. This project will provide a new eight-courtroom courthouse of approximately 90,206 building gross square feet (BGSF) in the City of Ukiah. Re-appropriation is being requested due to delays in the Acquisition phase related to the clean-up of the site prior to acquisition by the state.
6. **Stanislaus-New Modesto Courthouse.** The Judicial Council requests a re-appropriation from the Immediate and Critical Needs Account (Fund 3138) of \$15.3 million to complete the working drawings phase for the Stanislaus—New Modesto Courthouse. The project will provide a new 27-courtroom, approximately 308,964 building gross square feet (BGSF) courthouse in the City of Modesto.

Department of State Hospitals (DSH)

7. **Enhanced Treatment Unit Reappropriation.** DSH requests a \$12,336,000 capital outlay reappropriation due to delays surrounding the renovations to provide Statewide Enhanced Treatment Units (ETU) at two state hospitals. DSH is proposing a retrofit of existing facilities in order to provide statewide ETU rooms system-wide.

Subcommittee Staff Recommendation: Approve budget and spring finance letter requests.

ITEMS TO BE HEARD

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION**Issue 1: Board of Parole Hearings (BPH) – Youthful Offender Parole Hearings Workload**

Governor's Budget. The proposed budget includes \$3.7 million General Fund and 19 permanent, full-time positions for the Board of Parole Hearings (BPH) and Division of Adult Institutions (DAI) for the workload associated with implementing SB 261 (Hancock), Chapter 471, Statutes of 2015, and SB 519 (Hancock), Chapter 472, Statutes of 2015.

Background. On October 3, 2015, Governor Brown signed into law SB 261. This bill amends Sections 3051 and 4801 of the Penal Code. Whereas previous law requires BPH to conduct a parole suitability hearing for inmates convicted of specified crimes if they were under the age of 18 at the time of the offense, SB 261 extends these "youth offender hearings" to inmates who were under the age of 23 at the time of their offense.

The bill requires BPH to complete, by July 1, 2017, all youth offender parole hearings for inmates who were sentenced to indeterminate terms and who are eligible for a hearing on January 1, 2016, when the bill took effect. The bill requires BPH to complete, by July 1, 2021, all youth offender parole hearings for determinately-sentenced inmates who become eligible for a hearing as a result of this bill. Finally, the bill requires BPH to provide these determinately-sentenced youth offenders with a consultation by July 1, 2017. Governor Brown also signed SB 519 as a companion to SB 261. This law adds Section 3051.1 to the Penal Code to extend each of the deadlines in SB 261 by six months. As a result, BPH has until December 31, 2017 to provide a parole hearing for indeterminately sentenced youth offenders, and until December 31, 2021 to provide a parole hearing to determinately-sentenced youth offenders who become eligible for a hearing as a result of SB 261. Finally, BPH will have until December 31, 2017, to provide indeterminately-sentenced youth offenders with a consultation.

Staff Recommendation. Approve as budgeted.

Issue 2: Board of Parole Hearings (BPH) – Confidential File Summaries

Governor’s Budget. The proposed budget includes \$705,000 General Fund and five permanent full-time positions to complete confidential file summaries in order to provide procedural due process to inmates. The CDCR, Board of Parole Hearings (BPH) is requesting five positions (one correctional counselor III [CCIII] and four correctional counselor Is [CCI]) to perform the following functions:

- Review information contained in the confidential portion of an inmate's central file prior to a board hearing, and generate summaries of that information to be served on the inmate and his or her attorney prior to the hearing. Create summaries of confidential information to be used in parole suitability determination.
- Review pre-hearing documents submitted by inmates, their counsel, victims, and prosecutors to determine whether they contain confidential information and if this information should be redacted, placed in the confidential section of the inmate's central file, or both.

Background. The Attorney General has opined that it is a violation of due process of law for BPH to deny an inmate parole based on information contained in the confidential section of the inmate's central file without first notifying the inmate that the information exists and providing the inmate with a summary of the information. Several writs have been filed against BPH on this issue. The Division of Adult Institutions (DAI) is the custodian of records for inmate central files and only a CCIII or above can authorize information be deemed confidential and provide a summary of it. BPH and DAI need to determine what confidential information in an inmate's central file may be relevant to BPH and the Governor when determining the inmate's parole suitability, and provide the inmate and his attorney with a summary of it in advance of the hearing. BPH currently schedules 400-450 hearings per month throughout the state.

Staff Recommendation. Approve as budgeted.

Issue 3: Board of Parole Hearings (BPH) – Workload Increase

Governor’s Budget. The proposed budget includes a request for \$1.7 million General Fund and 9.6 additional administrative law judge and clinical psychologist positions due to a projected increase in the number of hearings and comprehensive risk assessments in 2016-17.

Background. BPH’s deputy commissioners are administrative law judges who perform a variety of hearing officer duties mandated by statute and court order. Among other duties, they serve on two and three-person panels with a commissioner to determine the parole suitability for life-term and other long-term inmates. The deputy commissioners are also responsible for reviewing offender files and issuing written decisions for a variety of hearing-related issues. In addition, they are responsible for determining whether parolees should be discharged from parole, and for reviewing outstanding warrants for parolees who have absconded.

BPH’s Forensic Assessment Division is comprised of forensic clinical psychologists who provide BPH parole suitability hearing panels with expert opinions regarding a life-term offender’s potential risk of future violence. They prepare reports using evidence-based risk assessment tools, interview each inmate, perform comprehensive reviews of the inmate’s history and compile it into a comprehensive risk assessment report.

Staff Recommendation. Approve as budgeted.

Issue 4: California Rehabilitation Center – Critical Repair Funding

Governor’s Budget. The proposed budget includes a request for \$6 million General Fund for critical repairs needed to maintain the health and safety of inmates and staff at the California Rehabilitation Center. Specifically, the funding will allow for the following repairs:

- ***Water Distribution System - \$500,000.*** CDCR proposes to replace five pairs of water valves at key distributions points. The aforementioned valves have failed in the closed position which prevents the distribution of fresh water to certain sections of the institution. The State Water Resource Control Board, Drinking Water Division has issued several quarterly Notice of Violations (NOV) for low or non-detectable chlorine residual levels at the established testing points in the institution. The replacement of these valves is required to circulate potable water and achieve compliance relative to the NOV.
- ***Building #107 - \$1.5 million.*** This building was constructed by the United States Navy after 1941 and served as a hospital for wounded soldiers. The plumbing and mechanical systems have exceeded their 50-year life expectancy and are in need of replacement. The Inmate Ward Labor program has renovated seven bathroom/shower facilities; however, there are five more facilities that require renovation in order to comply with applicable building and health codes. The plumbing system has leaked for several years and as a result: the plaster has deteriorated, the wall and floor tiles have sustained significant damage, the paint is peeling in several areas, and the ventilation systems are not capable of removing humidity that is generated by hot water from the showers. A complete replacement of the piping, mechanical systems, walls, and tile is required to restore the bathroom/shower facilities to a usable condition.
- ***Electrical Distribution Replacement - \$2 million.*** The high voltage electrical distribution system was initially installed in 1929 and is approximately 86 years old. On November 6, 2015, during a wind storm event, the institution experienced a total black-out as a result of high voltage conductor wires, with worn-off insulation, making contact with one another. The dilapidated condition of the high voltage power poles, cross arms, insulators, and the wire conductors requires immediate attention in order to prevent another black-out and potential catastrophic system-wide failure. Due to the age of the system and related ultraviolet damage, the insulation protecting the wiring conductor has deteriorated and in many instances, has completely failed fully exposing the conductors to potential circuit shorting. Although there is a separation between the high voltage conductors, approximately 80 years of service life has allowed the copper conductors to fatigue, stretching them at least 25 percent. This condition allows the wind to swing the wire conductors into one another and because the insulation has deteriorated or is non-existent, the conductors are able to make contact, creating electrical shorts between phases and potentially to a grounding source. This condition violates all applicable National Electrical Codes, presents risk to those who work on the system, and creates significant operational problems during unanticipated black-out conditions. A complete replacement of the overhead distribution system which includes power poles, insulators, and conductors is necessary to prevent power outages due to the aforementioned conditions.
- ***Repair Wooden Dorms - \$2 million.*** The dorms currently used by CRC inmates were initially constructed by the US Navy in 1941. These wooden barracks were constructed to house sailors and met the Federal Standards of that era; however, the barracks do not meet current building codes or the California Department of Corrections and Rehabilitation Design Criteria Guidelines. The structures have housed inmates since the early 1960s but were never intended to function beyond their expected

useful life and require extensive repairs in the restroom/shower portions of the buildings. Since 1963, the institution's maintenance staff has attempted to make repairs to the wooden dorms; however, the extent of the repairs required in this case is beyond the staff's capabilities. CDCR's internal Architectural and Engineering Section has assessed these dorms and have concluded that a complete renovation of the shower/restroom areas is required in order to continue use of these housing units.

Legislative Analyst's Office (LAO). The LAO recommends that the Legislature reject the Governor's proposed augmentation of \$6 million for special repairs at CRC as these repairs would be unnecessary if CRC is closed.

Staff Recommendation. Approve as budgeted.

Issue 5: Capital Outlay

The department proposes three capital outlay proposals and support services totaling approximately \$36.7 million (General Fund). The proposals include:

- **California Correctional Center, Susanville: Arnold Unit and Antelope Camp Kitchen/Dining Replacement.** This proposal requests funding to demolish and replace two existing kitchen/dining buildings, one each at Arnold Unit and Antelope Camp. The project scope includes the design and construction of new, pre-engineered metal kitchen/dining buildings, with exterior paving and fencing.

Preliminary plans were funded in the 2014 Budget Act and working drawings were funded in the 2015 Budget Act. The 2016-17 Governor's budget proposed \$14,302,000 for the construction phase. This request updates the construction amount to \$15,353,000, an increase of \$1,051,000. The increase is based on the refinement of construction costs and resolution of construction phasing during the working drawing phase. A new location for the Antelope Camp kitchen/dining building was identified to allow continued use of the existing building to feed Arnold and Antelope Camp inmates while construction of the new building was underway. The current total estimated project cost is \$17,392,000.

- **Deuel Vocational Institution: New Boiler Facility.** This proposal requests \$4 million to build a new central high-pressure steam boiler facility at Deuel Vocational Institution. Boiler replacement is required for compliance with San Joaquin Valley Air Pollution Control District regulations for gas-fired boiler emissions standards. Funding is being requested for the construction phase of this project. Design of this project was funded by the department's Special Repair budget. The total estimated project cost is \$4,414,000.
- **Deuel Vocational Institution: Solid Cell Fronts.** This proposal requests \$11.6 million to replace the existing barred cell fronts in the K-Wing Administrative Segregation Unit (ASU) at the Deuel Vocational Institution (DVI) with solid cell fronts. The K-Wing contains 143 cells, one Americans with Disabilities Act (ADA) cell, and six showers that do not currently have solid cell fronts. The scope of work will include new locking mechanisms, solid fronts on the six showers that serve the unit, modifications to the existing heating/ventilation system, upgrades to the electrical system, asbestos and lead paint abatement, and the addition of local fire alarm and fire suppression systems.

The renovation of ASUs with solid cell fronts addresses an important security need within prison facilities. In addition, the replacement of barred cell fronts and cell modifications related to heating/ventilation systems reduces suicide risks, which is of interest to the federal court in *Coleman v. Brown*.

Preliminary plans were funded in the 2007 Budget Act and working drawings were funded in the 2015 Budget Act. This proposal requests project funding for the construction phase, which has been updated to include current fire code requirements identified during design. The total estimated project cost is \$12,814,000.

- **Statewide: Master Plan for Renovation/Replacement of Original Prisons.** This proposal requests \$5.4 million for consultant services to perform a study of the prisons constructed prior to 1980. The study will 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.

- **Statewide: Budget Packages and Advance Planning.** This request provides \$250,000 in annual funding to perform advance planning and prepare budget packages for capital outlay projects to enable the Department to provide detailed information on scope and costs of planned projects.

Staff Recommendation. Approve as budgeted.

Issue 6: Spring Finance Letter – Career Technical Education Curricula and Certification

Governor’s Budget. The California Department of Corrections and Rehabilitation (CDCR) will open this issue with a brief overview of the request for \$4.1 million (General Fund) and seven permanent positions in 2016-17, \$2 million (General Fund) in 2017-18 and \$1.4 million (GF) ongoing for the Career Technical Education Curricula and Certification Compliance project.

Background. The CDCR, Division of Rehabilitative Programs (DRP) requests resources and funding for the Career Technical Education (CTE) Curricula and Certification Compliance Project, which will bring CDCR's current vocational infrastructure into compliance with industry certifications and curricula necessary to promote offender employment upon release. This infrastructure allows online access for classroom coursework, real-time shop exercises, and certification exams while providing inmate-students digital literacy skills and enhanced professional development.

The requested seven permanent positions are from the Enterprise Information Services (EIS) Division and will be necessary in the implementation and support of this initiative. Specifically, EIS is requesting four system software specialists (SSS) II (technical), one SSS I (technical), and two staff information systems analysts (specialist).

The department's Office of Correctional Education (OCE) delivers CTE. The program prepares inmate-students with viable, industry required skills, course content to ensure skill attainment, and provides recognized certifications to promote offender employment upon release, in an effort to ultimately reduce recidivism. Additionally, CTE programs provide inmates with the opportunity to earn milestone credits, which can reduce inmates' time of incarceration through the active participation and completion of certain rehabilitative programs.

The OCE provides 19 CTE programs with a total capacity of approximately 8,450 inmates. CTE programs currently use a combination of file and written material, as well as audio and video media, from physical CDs and DVDs, to provide instruction across these programs. Inmates currently receive classroom training from instructors, and take CTE certification tests using written and hands-on proof of learning methods in the CTE designated areas within the institutions. However, commercial vendors are progressively moving their information content to digital-network media (e.g., Internet, organizational intranet, local area network) and are discontinuing the physical and paper-based media, standalone computer software loading, including the critical certification testing and issuance process. This renders the current method of physical and paper based methods obsolete. There is currently no mechanism in place to support online access for inmate-student use in the CTE shops or classroom areas.

Five certification exams are now only offered exclusively online: Automotive Service Excellence (ASE) - Auto Mechanics; Inter-Industry Conference on Auto Collision Repair (ICAR) - Auto Body; Electronic Technician Association (ETA) - Electronics; Office Service and Related Technologies (OSRT); and Computer Literacy (includes computing fundamentals and Microsoft certification). Five out of nineteen or twenty-six percent (26 percent) of CTE programs will not meet the completion requirements for inmates to take the certification exams. These five programs combined make up approximately 5,000 of the total CTE capacity of approximately 8,450. Additionally, the remaining twelve programs are beginning to migrate their text books, teacher resources, and instructional videos to an online or digital format, while two programs are migrating to digital only. The current system is no longer sustainable for students without access to a secured Internet.

Staff Recommendation. Approve as budgeted.

Staff Comment. The subcommittee received an overview of prison education programs during its April 7th hearing. Please see that agenda for details regarding CDCR's educational programs.

Issue 7: Automated Reentry Management System (ARMS)

Governor's Budget. CDCR requests \$4.5 million (General Fund) in 2016-17 and 2017-18 to implement phase two of the Automated Reentry Management System (ARMS).

Background. ARMS is a new case management system that will track offender program participation, assist with meeting legal mandates, and provide data for better evidence-based practices for offender rehabilitation.

The Division of Rehabilitative Programs is responsible for managing contracts that provide rehabilitative program services (in-prison and community-based) to offenders statewide; the Division of Adult Parole Operations contracts with providers for rehabilitative services for sex offenders and mentally ill parolees; and the Division of Adult Institutions contracts with providers of community and contracted correctional facilities that administer rehabilitative programs.

As part of the Three-Judge Court order to implement prison population reduction measures, CDCR expanded rehabilitation programs. To assist with these expansions and the tracking of rehabilitative programming across various divisions, CDCR implemented the first phase of ARMS. Phase one of ARMS allows CDCR to appropriately collect data that shows offenders have completed in-prison programs.

Phase one of the ARMS solution, which will be fully implemented in June 2016, will "track an offender's rehabilitative life cycle and begin implementing performance-based contracting for rehabilitative services, which help reduce recidivism" by tracking the following for in-prison programs:

- Referral and enrollment in programs
- Secondary assessment data
- Case planning and management, including case notes
- Program participation and session tracking
- Basic reporting information on programs

The improved data availability will assist in the evaluation of program effectiveness by the Pew-MacArthur Results First Initiative.

Legislative Analyst's Office (LAO). Given that ARMS may allow the department to improve the provision of rehabilitative services, the LAO does not raise concerns with the goals of the project. They also do not have concerns with the project's cost. However, they are concerned that the initial phase of the project was funded with unspent funds originally budgeted for rehabilitation programs. This raises several issues for legislative consideration. Specifically, the LAO states:

Redirection of Funds Undermines Legislative Oversight. The \$15 million spent on ARMS since 2013-14 originated from funds budgeted for rehabilitative programs that were unspent. Although the department did not violate any laws or regulations, choosing to fund the program in this manner limited legislative oversight as it effectively prevented the Legislature from assessing whether the project should be undertaken.

Underspending Problem Larger Than Originally Thought. In recent years, CDCR has had difficulty fully expending its program budgets for rehabilitation programs. This fact has typically come to the Legislature's attention when the department has requested through the Section 26.00 section letter process that unspent funds in the department rehabilitation program budgets be shifted to other program budgets. (Section 26.00 of the budget specifies that any transfer in excess of a certain threshold may only be authorized upon 30-day notification to the Joint Legislative Budget Committee, in order to allow the Legislature to maintain oversight of the funds it appropriates before they are spent for a different purpose than budgeted.) For example, CDCR redirected \$10.3 million in unspent rehabilitation program budget funds in 2013-14 and \$21 million in such funds in 2014-15 through the Section 26.00 process. Underspending can also come to the Legislature's attention when the department reverts unspent funds to the General Fund at the end of a fiscal year. For example, CDCR reverted \$8,000 in funds budgeted for rehabilitation programs in 2013-14 and \$250,000 in such funds in 2014-15.

However, a full accounting of the level of underspending on rehabilitation programs should also include funds shifted from rehabilitation programs to other priorities within the rehabilitation program budgets. In addition to ARMS, the department reports that it used unspent funds within rehabilitation program budgets on various items such as Reentry Kiosks, in-prison modular space, and the Strategic Offender Management System project. The department was unable to provide the total amount of unspent rehabilitation funds that were spent on these items.

Review Use of Funds. Given that the Legislature currently has limited information about these redirections, the Legislature could direct the department to provide additional information on this process either at budget hearings or through supplemental reporting language. Specifically, the Legislature could request:

- A list of rehabilitation programs that did not spend all their allocated funding in the most recent completed fiscal year and how those funds were redirected.
- A list of programs that received any unspent funds.
- An explanation of why each program with unspent resources was unable to spend the funds allocated to it.
- An explanation of how the department prioritized programs that received those unspent funds.
- Similar information, to the extent it is available, on rehabilitation programs not expected to fully utilize their funding in the current year and the department's plans for those funds.

If the Legislature finds that some of the programs that are not fully expending their funds are priorities, it could work with the department to identify legislative responses to help address the issue. For example, if the department is having trouble executing contracts for particular rehabilitative programs, the Legislature could make changes to the contracting process to help the department spend these funds. If the Legislature determines that some of the programs that are not fully expending their funds are lower priorities, it could decide to permanently reprioritize the funds for these programs to higher priorities, including other rehabilitation programs.

Staff Recommendation. Approve as budgeted.

0250 JUDICIAL BRANCH**Issue 1: Capital Outlay**

Governor's Budget. The Judicial Branch proposes sixteen capital outlay proposals and support services totaling approximately \$569 million from various court construction accounts. The proposals include:

- **Trial Court Facility Maintenance.** The Judicial Council requests a one-time augmentation of \$3.5 million from the Immediate and Critical Needs Account for facility modification projects at the Michael Antonovich Antelope Valley Courthouse (Antonovich Courthouse) and the Alfred J. McCourtney Juvenile Justice Center (McCourtney JJC).
- **Imperial County—New El Centro Courthouse.** The Judicial Council requests a \$39.3 million appropriation from the Public Building Construction Fund Sub-Account (Fund 0668) for the construction phase for the Imperial - New El Centro Courthouse.

The project will provide a new four courtroom courthouse of approximately 47,512 building gross square feet (BGSF) in the City of El Centro. This project will consolidate court operations from two facilities and will relieve the current space shortfall, increase security, and replace inadequate and obsolete buildings in Imperial County. The total revised project cost based upon the current schedule and updated to the July 2015 California Construction Cost Index is estimated at \$47.3 million, without financing. The total cost of the project, including financing, will be funded by Senate Bill 1407 (Perata), Chapter 311, Statutes of 2008 revenues.

- **New Alameda Courthouse Capital Outlay Project Funding Plan.** The Judicial Council proposes a transfer of \$377,000 in FY 2016-17 and \$903,000 beginning in FY 2017-18 from the Court Facilities Trust Fund (CFTF) to the Immediate and Critical Needs Account (ICNA) to support the financial plan for the construction of the Alameda County - New East County Hall of Justice.

The funds being transferred are from the Gale Schenone Hall of Justice's County Facility Payment which is deposited into the CFTF. The transfer would begin upon the trial courts vacation of the Gale Schenone leased facility after project completion and will be in place until the loan from the ICNA is fully paid off, which is estimated to occur in 7-8 years. The FY 2016-17 amount of \$377,000 has been prorated based on the projected date of the lease termination.

- **Riverside County-New Mid-County Civil Courthouse.** The Judicial Council requests \$5.7 million from the Immediate and Critical Needs Account (Fund 3138) for the working drawings phase of a new nine courtroom courthouse of approximately 89,690 Building Gross Square Feet (BGSF) in the City of Menifee in Riverside County.

This project will replace the existing inadequate and obsolete Hemet court facility, relieve the current space shortfall, and increase security in Riverside County. This project provides four courtrooms for new judgeships. The total revised project cost based upon the current schedule and updated to the July 2015 California Construction Cost Index is estimated at \$90 million, without financing. The total cost of the project, including financing, will be funded by Senate Bill 1407 revenues.

- **Riverside County-New Indio Juvenile and Family Courthouse.** The Judicial Council requests appropriation of \$44.1 million, \$42.4 million from the Public Building Construction Fund Sub-Account and a cash appropriation of \$1.6 million from the Immediate and Critical Needs Account (Fund 3138) for the construction phase for a new approximately 53,255 building gross square feet, five-courtroom courthouse in the City of Indio. The revised square footage of 53,255 BGSF represents a 3.1 percent reduction of 1,712 square feet from the previously authorized project scope. The cash appropriation of \$1.6 million is requested for building demolition, relocation of existing site utilities and demolition and reconstruction of a security fence.

This project will consolidate court operations from two facilities and will relieve the current space shortfall, increase security, and replace inadequate and obsolete buildings in Riverside County. This project provides three courtrooms for new judgeships. The total revised project cost based upon the current schedule and updated to the July 2015 California Construction Cost Index is estimated at \$52.9 million, without financing. The total cost of the project, including financing, will be funded by Senate Bill 1407 revenues.

- **Tuolumne - New Sonora Courthouse.** The Judicial Council requests a \$55.4 million appropriation from the Public Building Construction fund Sub-Account (Fund 0668) for the construction phase for the Tuolumne—New Sonora Courthouse. The project will provide a new five-courtroom courthouse of approximately 61,537 building gross square feet (BGSF) in the City of Sonora.

This project will consolidate operations from three facilities and will relieve the current space shortfall, increase security, and replace inadequate and obsolete buildings in Tuolumne County. The total revised project cost based upon the current schedule and updated to the July 2015 California Construction Cost Index is estimated at \$6.2 million, without financing. The total cost of the project, including g financing, will be funded by Senate Bill 1407 revenues.

- **Los Angeles County - New Hollywood Courthouse.** The Judicial Council requests a one-time appropriation of \$14.7 million from the Immediate and Critical Needs Account (Fund 3138) for cash funding for the design-build phase of the Los Angeles—New Hollywood Courthouse, to provide a four-courtroom courthouse of approximately 61,603 building gross square feet (BGSF), including secure parking, to replace the existing Los Angeles Mental Health Courthouse in the County of Los Angeles. The Judicial Council further requests a change in scope from a modernization of the existing Hollywood Courthouse to the construction of a new building on the site of the existing Hollywood Courthouse. This proposal will replace the previously authorized capital outlay project (91.19.006) for the Los Angeles-Hollywood Courthouse Modernization and will increase the design-build phase authority of \$44.6 million for a total design-build phase appropriation of \$59,332 million. In addition, the Judicial Council is requesting a name change to the New Hollywood Courthouse from the Hollywood Courthouse Modernization.

The total revised project cost based upon the current design-build schedule is estimated at \$60.3 million. The total cost of the project will be funded by Senate Bill 1407 revenues. The County of Los Angeles will contribute towards their share of tenant improvement costs through a one-time payment of their share in cash or in the form of an equity buyout to lease approximately 11,105 usable square feet (USF) of office space.

- **Shasta County-New Redding Courthouse.** The Judicial Council requests a \$133.1 million appropriation from the Public Building Construction fund Sub-Account (Fund 0668) and \$2.3 million from the Immediate and Critical Needs Account (Fund 3138) for the construction phase for the Shasta—New Redding Courthouse. This includes a re-appropriation of \$174,000 previously authorized in the FY 2015-16 Budget Act pursuant to item 0250-301-3138 schedule (3) for construction and an increase of \$2.1 million from that \$.174 million previously authorized for the cash-funded demolition phase and will include additional scope including utility relocation, hazmat abatement. This increase will be offset by a decrease in the bond-funded Construction phase value included in the FY 2016 17 Governor's budget. The project will provide a new 14-courtroom courthouse of approximately 165,296 building gross square feet (BGSF) in the City of Redding.

This project will consolidate court operations from three facilities and will relieve the current space shortfall, increase security, and replace inadequate and obsolete buildings in Shasta County. In addition, this project provides two courtrooms for new judgeships. The total revised project cost based upon the current schedule and updated to the July 2015 California Construction Cost Index is estimated at \$154.7 million, without financing. The total cost of the project, including financing, will be funded by Senate Bill 1407 revenues.

- **Stanislaus County-New Modesto Courthouse** The Judicial Council requests an appropriation from the Immediate and Critical Needs Account (Fund 3138) of \$2.1 million for the pre-construction demolition of eight existing structures located at the site of the Stanislaus—New Modesto Courthouse. This appropriation is requested in addition to the working drawings phase appropriation which is already included in the FY 2016-17 Governor's budget. This pre-construction demolition cost will be deducted from the total construction phase estimate. The project will provide a new 27-courtroom, approximately 308,964 building gross square feet (BGSF) courthouse in the City of Modesto.

This project will consolidate court operations from four facilities and will relieve the current space shortfall, increase security, and replace inadequate and obsolete buildings in Stanislaus County. In addition, this project provides five unfinished courtrooms for new judgeships. The cost to finish the courtrooms will be requested when the judgeships are funded. The total revised project cost based upon the current schedule and updated to the January 2016 California Construction Cost Index is estimated at \$263 million, without financing. The total cost of the project, including financing, will be funded by Senate Bill 1407 revenues.

Legislative Analyst's Office (LAO). The LAO finds that the Administration's January and April capital outlay proposals would likely result in ICNA becoming insolvent in about 15 years, with additional future projects speeding up ICNA's insolvency. As a result, the LAO recommends that the Legislature direct Judicial Council to report at budget hearings on how it plans to ensure money would be available to fully fund the debt service of the proposed projects. Pending its receipt and review of this report, they recommend the Legislature withhold action on the Administration's proposals.

Additionally, the judicial branch has eight other courthouse projects that will require construction funding in the future. Because Judicial Council should be matching expenditures to revenues available in ICNA under state law, the LAO recommends the Legislature adopt supplemental reporting language requiring the Judicial Council to submit a plan by January 10, 2017 for addressing the long-term solvency of ICNA within existing financial resources. Such a plan could include alternative financing agreements (such as partnering with counties to finance facilities), delaying projects, reducing expenditures on construction

projects, or reducing expenditures on facility modification projects. The Legislature could then use this plan to help determine what additional projects, if any, should move forward when the projects seek additional funding in the future budgets.

Staff Recommendation. Approve as budgeted.

Issue 2: Trial Court Automation

Phoenix Financial System Funding Shift. The Judicial Council requests an ongoing augmentation of \$8.7 million General Fund to support the Judicial Council state operations costs related to the Phoenix Financial System (Phoenix). The Phoenix program is a statewide system utilized by the trial courts for financial and human resources management assistance. The State Trial Court Improvement and Modernization Fund (IMF) currently funds a portion of the Phoenix Program, but the continued decline in revenue over the past several years has led to potential solvency issues in the IMF.

The Phoenix Financial System enables the courts to produce a standardized set of monthly, quarterly, and annual financial statements that comply with existing statutes, rules, and regulations and are prepared in accordance with generally accepted accounting principles.

The Phoenix Human Resources System provides a comprehensive information system infrastructure that supports trial court human resources management and payroll needs. Designed for integration with the Phoenix Financial System and first deployed in July 2006, the system offers standardized technology for human resources administration and payroll processing, provides consistent reporting, ensures compliance with state and federal labor laws, collects data at the source, provides central processing, and provides manager and employee self-service functions to the courts.

Information Systems Control Enhancements. The Judicial Council requests \$3.2 million (in 2016-17) and \$1.9 million (ongoing) to strengthen information technology security controls and enhance the reliability of Judicial Branch data. Specifically, the funds requested would be used for the following information technology related items:

- **Audit and Accountability** - the implementation of user access auditing tools within the courts;
- **Risk Assessment** - the establishment of annual information systems risk assessments;
- **Contingency Planning** - the implementation of information technology disaster recovery infrastructure and capabilities within the Judicial Council;
- **Security Program Management** - the implementation of a formalized information security program within the Judicial Council; and
- **Media Protection** - the preparation for the implementation of a data classification program within the Judicial Council. This request includes three full-time employees to support information technology security and disaster recovery programs within the Judicial Council

The increasing frequency of information technology security breaches in both public and private sector organizations has demonstrated a need for the Judicial Council to review its ability to protect itself from compromise, and should a breach or infrastructure outage occur, to be able to recover effectively and in a timely manner. Focus is needed both within the Judicial Council, and in the Judicial Council's ability to more effectively assist the courts in these areas.

The National Institute of Standards and Technology (NIST), part of the U.S. Department of Commerce, provides standards, guidelines and other useful security-related information which organizations can use to assess their security posture, and to implement or strengthen controls to improve their security posture. Among these offerings is Special Publication 800-53, which provides specific guidance in a broad range of areas including security management, access controls, configuration management, contingency planning, incident response, and more. The Judicial Council has reviewed NIST's Special Publication 800-53, and has identified the five critical areas where investment is critical. These five areas are "Audit

and Accountability", "Risk Assessment", "Contingency Planning", "Security Program Management", and "Media Protection".

Staff Recommendation. Approve as budgeted.

4440 DEPARTMENT OF STATE HOSPITALS**Issue 1: Capital Outlay**

The department proposes four capital outlay proposals and support services totaling approximately \$37.6 million (General Fund). The proposals include:

- **Metropolitan State Hospital.** The proposed budget includes \$31,182,000 in capital outlay funding for this project is to increase the secured bed capacity at Metropolitan State Hospital (MSH). This project will increase capacity to house forensic inmates by securing 505 beds by constructing a secured fence for two buildings at the hospital. The proposed project will construct two perimeter security fences, one fence around the Continuing Treatment West (CTW) building and adjacent park, and a second perimeter fence around the skilled nursing facility (SNF). The scope includes 16-foot high fences with electronic security features including sensor cable, closed circuit TV, card access, floodlights, and alarms, six new kiosks, interior security enhancements in unit and patios, the addition of perimeter roads, replacement parking, and the construction of a bathroom facility in the park. The total project cost is estimated to be \$35,530,000.

The 2015 Budget Act provided \$3.6 million General Fund for the planning and drawing phases of secured fencing to enclose two buildings and add secured fencing around the adjacent park.

- **Atascadero State Hospital.** This request provides \$5,288,000 for a seismic project that will correct the structural deficiencies in the main East-West corridor at Atascadero State Hospital (ASH). This corridor is a major thoroughfare for the hospital and is integrated with multiple ward buildings. Hundreds of staff and patients travel along this corridor daily. Because this section of the hospital is designated a Risk Level V on the Division of the State Architect's (DSA) Seismic Risk Assessment scale, DSH is proposing to seismically retrofit it to lower the risk of injury or death in the event of an earthquake.
- **Coalinga State Hospital.** This request provides \$603,000 for the design and construction of a secure treatment courtyard at Coalinga State Hospital (CSH). The current main courtyard is undersized and cannot serve as an area of refuge in the event of a fire. Additionally, the current courtyard does not provide sufficient space for group exercise, social interactions, and other outdoor activities. This project will erect a new courtyard that will have enough open-air space to accommodate the full capacity of the facility in the event of a fire and for outdoor activities.
- **Patton State Hospital.** This request provides \$554,000 to remove and replace deficient SimplexGrinnell Fire Alarm Control Panels (FACP) and associated components in four patient occupied buildings at Patton State Hospital (PSH) which have reached the end of their usable life and are no longer serviceable. This project will enable PSH to bring the existing fire alarm systems into compliance with regulatory requirements. The existing fire alarm systems are a safety hazard. The four buildings, 30, 70, U, and EB, included in this project house the majority of PSH's patients. These buildings also contain kitchens, dining rooms, medical and dental clinics, therapeutic areas, offices, and nursing stations for staff. Failure to address the fire alarm systems at PSH puts both patients and staff at risk should a fire occur and the notification alarm to evacuate fails.

Staff Recommendation. Approve as budgeted.

Issue 2: Unified Hospital Communications Public Address System

Governor's Budget. DSH requests \$6.5 million General Fund and two full-time permanent positions in 2016-17 (\$1.6 million in out-years) for the first phase in the development of a Unified Hospital Communications (UHC) system to provide continuity and standardization throughout the state hospitals. Specifically, this request addresses the Public Address (PA) systems and related Local Area Network (LAN) systems at DSH-Coalinga and DSH-Patton.

Background. DSH staff throughout the hospital system require regular, accurate and up-to-date hospital communications. PA systems are believed to be a critical component to the overall safety of staff and patients. While every DSH hospital has some form of a PA system, DSH states that these PA systems lack sufficient campus coverage, are outdated, in constant need of repair, and no longer under warranty. For example, the PA system at DSH-Coalinga is ten years old and DSH-Patton is over 30 years old. The DSH proposes the integration of, and where necessary replacement of, existing PA systems into a more comprehensive and reliable network based PA system with wider campus coverage at the Coalinga and Patton State Hospital facilities. DSH-Coalinga and DSH-Patton are the focus of the proposal because both locations have the least amount of coverage and are most prone to errors. DSH hopes to update additional hospitals at a later date.

DSH explains that the new PA system will allow for many health and safety improvements in the communication and dissemination of information quickly and intelligibly throughout the hospital campuses. New technology will allow for two-way communications between public speakers in key areas and dispatch, targeted announcements to specific hospital areas to prevent disruption in non-affected areas, clear and intelligible announcements, and message prioritization to prevent concurrent message delivery. Additionally, improvements and upgrades will help minimize the number of failures and unplanned down time thereby reducing potential health and safety implications for staff and patients.

As a part of this project, DSH will also need to upgrade its existing LAN system wherever necessary to support the new PA technology. These upgrades will be made in accordance with DSH architecture and adhere to the DSH medical grade standard. For many of the aging PA systems, the sound produced is either too quiet to be audible in a busy hospital environment or produces sound that has low intelligibility. Intelligibility is defined as the capability of being understood or comprehended (distinguishable and understandable). Voice alarms that are intelligible ensure that vital emergency messages transmitted through a building's PA system are clearly heard and understood.

DSH states that in a life-threatening situation, the right staff must get to the right place as quickly as possible. Whether it is a doctor page, an assault incident, a security incident or a fire, the PA system must reliably broadcast clear messages that everyone understands.

DSH argues that without the ability to intelligibly broadcast emergencies or security incidents throughout the facility, DSH puts its staff and patients at substantial risk. DSH has the opportunity to ensure that all staff and patients can be reached in emergency situations to reduce the likelihood of patient and staff injury by installing network based PA systems with full campus coverage.

Staff Recommendation. Approve as budgeted.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Wednesday, May 18, 2016
9:30 a.m. or upon call of chair
State Capitol - Room 2040

Consultant: Julie Salley-Gray

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

PROPOSED FOR VOTE ONLY**Department of Justice**

1. **Racial Identify Profiling Act of 2015.** The Department of Justice requests a permanent augmentation of 41 positions and \$7.9 million General Fund for the workload associated with AB 953 (Weber) Chapter 466, Statutes of 2015, which requires local law enforcement agencies to report specified information on traffic stops to the Attorney General's office; and establishes the Racial and Identity Profiling Advisory Board (RIPA).

Staff Recommendation: Approve as budgeted. The budget request is consistent with the fiscal analysis of the implementing legislation.

2. **Consumer Protection Enforcement Initiative.** The Department of Justice requests a permanent increase of seven positions and \$1.4 million from the Legal Services Revolving Fund for the purpose of reducing average case processing work time to work toward meeting the goals of the Department of Consumer Affairs Consumer Protection Enforcement Initiative.

Previous Subcommittee Hearing: This item was discussed and acted upon in Senate Budget and Fiscal Review Subcommittee No. 4, which handles the Department of Consumer Affairs budget.

Staff Recommendation: Conform to Subcommittee No. 4 action and reject the proposed funding.

3. **Major League Sports Betting Event Raffles.** The proposed budget requests a three-year limited-term General Fund increase of \$335,000 beginning in 2016-17 and two positions to address the workload related to the implementation of the Major League Sporting Event Raffles Program.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's March 10th hearing.

Staff Recommendation: Create the Major League Sporting Event Raffle Fund and approve a General Fund loan of \$335,000 per year, for three years.

4. **Armed Prohibited Persons System (APPS).** The budget proposes an on-going increase of \$4.7 million in Firearms Safety and Enforcement Special Fund (FS&E) to provide permanent funding for 22 positions for APPS investigations. Currently, all APPS-related activities are funded through the Dealer Record of Sale Special Account (DROS) account. The DROS fund requires an appropriation from the Legislature. The FS&E fund is continuously appropriated. Therefore, if the proposed funding shift is approved, the Department of Justice (DOJ) would not require future legislative authority to expend money deposited in the fund for APPS.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's March 10th hearing.

Staff Recommendation: Approve the budget proposal and adopt placeholder trailer bill language removing the continuous appropriation authority from both the FS & E fund and the Firearms Safety Account (FSA). In addition, provide the Attorney General's office with the authority to increase both the FS & E and the FSA fees at a rate not to exceed the Consumer Price Index (CPI).

5. **Technical Adjustment.** The Department of Justice requests to adjust spending authority in three special funds in order to properly align program activities with fund sources. Specifically, the Department of Justice would like to increase spending authority in the Unfair Competition Law Fund by \$10,746,000, increase spending authority in the Public Rights Law Enforcement Fund by \$5,724,000 and reduce spending authority in the Legal Services Revolving Fund by \$16,470,000. This is a zero cost request.

Staff Recommendation: Approve as proposed.

California Department of Corrections and Rehabilitation (CDCR)

6. **Spring Finance Letter: Automated Reentry Management System.** CDCR requests \$4.5 million (General Fund) in 2016-17 and 2017-18 to implement phase two of the Automated Reentry Management System (ARMS).

Previous Subcommittee Hearing: This item was discussed during the subcommittee's May 5th hearing.

Staff Recommendation: Approve the spring finance letter request and adopt supplemental report language (SRL) requiring CDCR to report on any unspent rehabilitation funds and how those funds were redirected within the rehabilitation budget by January 10, 2017.

7. **Deuel Vocational Institution: Solid Cell Fronts.** This proposal requests \$11.6 million to replace the existing barred cell fronts in the K-Wing Administrative Segregation Unit (ASU) at the Deuel Vocational Institution (DVI) with solid cell fronts. The K-Wing contains 143 cells, one Americans with Disabilities Act (ADA) cell, and six showers that do not currently have solid cell fronts. The scope of work will include new locking mechanisms, solid fronts on the six showers that serve the unit, modifications to the existing heating/ventilation system, upgrades to the electrical system, asbestos and lead paint abatement, and the addition of local fire alarm and fire suppression systems.

The renovation of ASUs with solid cell fronts addresses an important security need within prison facilities. In addition, the replacement of barred cell fronts and cell modifications related to heating/ventilation systems reduces suicide risks, which is of interest to the federal court in *Coleman v. Brown*.

Preliminary plans were funded in the 2007 Budget Act and working drawings were funded in the 2015 Budget Act. This proposal requests project funding for the construction phase, which has been updated to include current fire code requirements identified during design. The total estimated project cost is \$12,814,000.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's May 5th hearing.

Staff Recommendation: No recommendation.

8. **Segregated Housing Unit Conversion.** The Governor's budget proposes to reduce General Fund support for CDCR by \$16 million in 2015-16 and by \$28 million in 2016-17 to account for savings from a reduction in the number of inmates housed in segregated housing units. According to the department, the policy changes it is implementing pursuant to the *Ashker v. Brown* settlement will reduce the number of inmates held in ASUs and SHUs, allowing it to convert

several of these units to less expensive general population housing units. For example, CDCR estimates that the number of inmates held in SHUs could decline by around 1,000, or about one-third of the current population.

In addition, the Administration requests \$3.4 million General Fund for 2015-16, and \$5.8 million General Fund for 2016-17 to increase the number of staff in the Investigative Services Unit (ISU), which would offset the above 2016-17 savings. The redirected funding would support the addition of 48 correctional officers to the ISU.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's March 17th hearing.

Staff Recommendation: Reject the request for \$3.4 million General Fund for 2015-16, and \$5.8 million General Fund for 2016-17, and the addition of 48 correctional officer positions for the Investigative Services Unit. Approve the remainder of the proposal.

9. **Long-Term Offender Programming.** The budget proposes an increase of \$10.5 million General Fund for the expansion of several programs for life-term and long-term offenders.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's April 7th hearing.

Staff Recommendation: Approve the \$10.5 million General Fund increase. In addition:

- Augment the funding by \$5 million General Fund in 2016-7, and \$10 million General Fund in 2017-18 and on-going for CDCR to provide permanent funding to nonprofit organizations currently working in state prisons as volunteers or innovative program grant recipients who are providing restorative justice and offender accountability programs that have proven to be successful for long-term, life-term inmates.
- Adopt draft trailer bill language requiring CDCR to convene an on-going workgroup comprised of senior staff from organizations currently providing successful rehabilitative programming through private resources and funds provided by the Innovative Programming Grant program to assist CDCR in developing the scope of the offender responsibility/restorative justice programming, a method for evaluating the success of the programs, a plan for implementing the expanded programming at institutions with the greatest need, and to operate as a liaison between non-profit organizations providing innovative programming and CDCR headquarters to assist with any on-going implementation concerns. In addition, the language will require that inmates successfully completing these programs will receive milestone credits for their participation.
- Adopt placeholder trailer bill to allow inmates serving life terms to have extended family visits, if otherwise eligible.

10. **Council on Mentally Ill Offenders (COMIO).** The May Revision requests \$233,000 Mental Health Services Fund and two positions to support COMIO's activities including data collection and analysis regarding the service utilization by individuals with mental illness in the criminal justice system, and promotion of strategies to reduce criminalization of persons with mental illness.

Staff Recommendation: Approve as proposed.

11. **Community Corrections Performance Incentive Grant.** The May Revision proposes reducing community corrections performance incentive grant funding by \$4,344,000, based on a full year of actual data for calendar year 2015, pursuant to SB 678 (Leno), Chapter 608, Statutes of 2009.

Staff Recommendation: Approve as proposed.

Board of State and Community Corrections

12. **Strengthening Law Enforcement and Community Relations Grants.** The Governor has proposed \$6 million in ongoing General Fund to continue providing community relations grants.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's April 7th hearing.

Staff Recommendation: Conform to Assembly Budget Subcommittee No. 5 action and reject the proposed funding.

13. **Executive Steering Committee (ESC) Trailer Bill Language.** As discussed during the April 7th subcommittee hearing, BSCC has staff advised prospective Proposition 47 ESC members that employees of nongovernmental entities or service providers that "might receive Prop 47 funding" are "financially interested" individuals for purposes of Government Code Section 1090 and, as a result, are prohibited from participating in the ESC process. In addition, nongovernmental stakeholders were advised that they would be regarded as "financially interested" and ineligible for ESC participation if they "serve with an organization that might make a contribution" to the Proposition 47 fund. BSCC sent a similar notice the members of the Strengthening Law Enforcement and Community Relations Grant ESC. These limitations have been applied by the BSCC only to persons who are employees of nongovernmental entities.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's April 7th hearing.

Staff Recommendation: Adopt draft trailer bill language repealing the statutory changes that were adopted in the 2013 Public Safety Trailer Bill (SB 74 (Committee on Budget and Fiscal Review) Chapter 30, Statutes of 2013), which exempts government employees from certain conflict laws when they serve on committees under the board.

14. **City Police Department Funding.** The Governor's budget includes \$20 million General Fund for city police departments. The Legislature has not received any details on how the funding will be distributed, its purpose or justification for its inclusion in the budget.

Previous Subcommittee Hearing: As noted during the April 7th hearing, absent a proposal from the Administration, the subcommittee will not discuss the funding request.

Staff Recommendation: Reject the \$20 million GF augmentation for city police departments.

15. **Jail Construction Funding.** The Governor's budget includes \$250 million General Fund for jail construction funding for those counties that have not received previous funding or were only partially funded.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's April 7th hearing.

Staff Recommendation: Reject the Governor's proposed jail construction funding and instead, approve the following General Fund augmentations and necessary budget bill and trailer bill language for investments designed to reduce people's involvement in the criminal justice system. Specifically:

- \$100 million for grants for infrastructure upgrades and/or expansions to assist communities in providing services to combat homelessness, human trafficking, domestic violence, and provide mental health or substance use disorder treatment.
- \$80 million to build capacity for the continuum of children's mental health crisis services.
- \$29 million for local law enforcement to strengthen community relationships, combat crime and reduce the impact of the drug epidemic including funding for diversion, local law enforcement training, and resources to mitigate the impact of drug overdoses.
- \$28 million to help counties reduce teen pregnancies among at-risk youth and the spread of sexually-transmitted diseases.
- \$3 million for enhanced substance use disorder treatment and reentry support services for inmates and former inmates.

16. **Post Release Community Supervision.** The May Revision requests an increase of \$4.2 million General Fund to reflect a revised estimate of the temporary increase in the average daily population of offenders who have been placed on post release community supervision as a result of a court ordered expansion of two-for-one credits to eligible offenders.

Staff Recommendation: Approve as proposed.

Judicial Branch

17. **Court Innovation Grants.** The Governor's budget proposes \$30 million in one-time General Fund support to create a new Court Innovations Grant Program.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's March 10th hearing.

Staff Recommendation: Reject the \$30 million augmentation for innovation grants.

18. **Technical Adjustment.** The May Revision requests an increase of \$531,000 General Fund to reflect updated health benefit and retirement rate costs for trial court employees.

Staff Recommendation: Approve as proposed.

19. **Proposition 47 Workload and Savings.** The Governor's budget requests a one-time General Fund augmentation of \$21.4 million to address the increased workload associated with Proposition 47. In addition, the Governor's budget notes the trial courts will save \$1.7 million General Fund a year as a result of the reduced workload associated with Proposition 47. The proposed budget does not reflect those savings.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's April 7th hearing.

Staff Recommendation: Approve the one-time General Fund increase of \$21.4 million and reduce the on-going trial court budget by \$1.7 million General Fund.

Department of State Hospitals (DSH)

20. **Updated Proposition 47 Savings.** The updated estimate for Proposition 47 included in the May Revise estimates that the Department of State Hospitals will save \$8.9 million General Fund as a result of the reduced patient caseload due to Proposition 47.

Previous Subcommittee Hearing: The subcommittee reduced the DSH budget by \$8.7 million General Fund during its April 28th hearing.

Staff Recommendation: Increase the savings in the DSH budget to reflect the updated savings estimate of \$8,851,042.

21. **Napa State Hospital Earthquake Repairs.** The May Revision requests a General Fund decrease of \$989,000 to reflect updated costs associated with the repair of damages sustained at the Napa State Hospital during the August 2014 earthquake.

Staff Recommendation: Approve as proposed.

ITEMS TO BE HEARD

0820 DEPARTMENT OF JUSTICE

Issue 1: Rape Kit Testing Backlog

Background. Current law requires an adult arrested for or charged with a felony, and a juvenile adjudicated for a felony, to submit DNA samples. It also specifies that law enforcement should do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2015:

1. Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence; or
2. Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

Current law encourages DNA analysis of rape kits within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. Current law also encourages crime labs to do one of the following:

1. Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or
2. Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA.

Current law also requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run out.

SAFE-T was created by the Department of Justice in 2015, based on voluntary data input from law enforcement agencies, to help track how many rape kits were not being tested. However, a recent report by the California State Auditor found that law enforcement agencies rarely document reasons for not analyzing sexual assault evidence kits. The audit found 45 cases in which the kits were not submitted for analysis. Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases. Even though the individual reasons for not testing the kits was found to be reasonable, the report still stressed the need for more information about why agencies decide to send some kits for testing but not others.

Staff Comment. This is an oversight item. No action is necessary at this time. DOJ and the Legislative Analyst's Office will provide an update on the status of the testing of rape kits.

0250 JUDICIAL BRANCH**Issue 1: Trial Court Operations Funding**

Governor's Budget. The Governor's budget proposes a \$20 million (or one percent) General Fund base augmentation for trial court operations. In addition, the proposed budget includes a trailer bill proposal to shift four vacant judgeships from one area of the state to another.

Staff Comments. Overall trial court funding and the funding shortfall were discussed in detail in this subcommittee on March 10th. Among the concerns raised by the subcommittee members was the lack of adequate funding for dependency counsel. In addition, the Judicial Counsel noted that while the Administration proposed an hourly wage increase for appellate attorneys, no increased funding was provided for the six appellate projects. The March 10th agenda notes that the Judicial Counsel argues that "while the costs of rent, employee benefits, mandatory professional and fiduciary insurance, the need for improved technology, and all other costs of doing business have increased substantially, the amount of funding available for these projects has not increased since FY 2007-08."

Staff Recommendation.

1. Approve as budgeted and adopt as placeholder the Administration's proposed trailer bill language shifting four judgeships from Santa Clara and Alameda superior courts to San Bernardino and Riverside superior courts.
2. Reject the Governor's January budget proposed \$700,000 General Fund augmentation to counties for increased trial court security levels resulting from the reallocation of the trial court judgeships and their staffing complements.
3. Augment the trial courts budget for the dependency counsel by \$29 million General Fund and \$2.2 million General Fund to increase funding for the appellate projects. Approve budget bill language requiring \$7 million to be used on an on-going basis to hold those counties with lower client-to-attorney ratios harmless.

Issue 2: Civil Case Management System Replacement

May Revision Proposal. The May Revision requests a one-time General Fund augmentation of \$24.8 million. The request is for \$12.4 million in fiscal year (FY) 2016-2017; \$9.2 million in FY 2017- 2018; and \$3.2 million in FY 2018-2019 to replace the V3 Court Case Management System in the superior courts of Orange, Sacramento, San Diego, and Ventura counties.

Justification. Funding would support transition for four courts from the V3 case management system to modern, commercial off-the shelf case management systems:

- Odyssey from Tyler Technologies, in the Superior Courts of Orange, San Diego, and Ventura Counties.
- C-Trak from Thomson-Reuters, in the Superior Court of Sacramento County.

Both case management systems were selected by the courts following a Request for Proposal vetting and evaluation by the branch that resulted in Master Services Agreements for three vendors. Each court

further evaluated the three vendors, selected the case management system that best fits the court needs, and plans to convert all cases to a single vendor, as resources and funding are available.

The requested funding will be used to purchase case management system software, related software licenses and hardware, and changes to the new case management system to provide levels of functionality and performance that are similar to existing levels. It will also be used to configure the systems for each court, convert existing case data and electronic documents to the new system, and fund implementation costs, including limited-term staff, in each court.

Background. The judicial branch spends approximately \$6.5 million annually to maintain the V3 case management system (CMS) that is used by four courts—the Superior Courts of Orange, Sacramento, San Diego, and Ventura Counties—to manage approximately 25 percent of civil, small claims, probate, and mental health cases statewide. These courts made substantial contributions to the development of a case management system intended for use by all courts. The project to deploy the statewide system was terminated in March 2012, leaving these four courts with an aging case management system that cannot be improved without legislative approval.

Staff Recommendation. Approve as proposed.

Issue 3: Trial Court Emergency Reserve

Governor's Budget. The proposed budget includes \$10 million General Fund on a one-time basis to establish a state level reserve for emergency expenditures for the trial courts. Any funding used in the first year would be replenished through the Trial Court Trust Fund.

Trailer Bill Proposal. The Governor's budget includes trailer bill language modifying the current emergency reserve funding policy for the trial courts. Under this proposal, the Judicial Council would maintain \$10 million in a reserve to be used by individual trial courts in the event of an emergency. In addition, the language requires the Judicial Council to report to the Legislature and the Department of Finance by October 1 of each year all requests for funding and allocations made during the preceding year.

Under current law, the Judicial Council sets aside two percent of trial court funding for local trial court emergencies and is required to report to the Legislature on all requests and allocations by April 15 of each year.

Staff Recommendation. Approve as budgeted.

Issue 4: Sargent Shriver Civil Counsel Act

Trailer Bill. Authorizing statute for the Sargent Shriver Civil Counsel Act (Government Code Section 70626) is set to sunset on July 1, 2017. The Governor's budget does not include trailer bill language extending or eliminating the sunset.

Background. Since enactment of the Sargent Shriver Civil Counsel Act, AB 590 (Feuer), Chapter 457, Statutes of 2009, the Judicial Council has chosen seven pilot projects to provide legal representation to a selected number of low-income Californians. The Legislature has funded these projects at \$9.5 million per year (starting in 2011). The pilots are administered by the Judicial Council. These seven pilot projects,

each in a different area of the state, target cases involving critical legal issues that affect basic human needs such as housing, custody, conservatorship, and guardianship. In these kinds of disputes, low-income litigants are, for the most part, unrepresented—and often unaware of the various options open to them. The pilots target cases in which one side is represented by a lawyer and the other is not.

Each project is a partnership of a lead legal services nonprofit corporation, the court, and other legal services providers in the community. The projects provide legal representation to low-income Californians at or below 200 percent of the federal poverty level. When selecting cases, the agencies consider the complexity of the case and whether the potential client has special challenges, such as limited English proficiency, illiteracy, or disabilities. They also review how serious the case is and whether the client has a good chance of prevailing. In addition, the agencies look at whether providing assistance might save money in the long run by reducing the costs of social services such as homeless and domestic violence shelters.

Since the need for services is expected to outpace available funding, it is not possible to provide all eligible low-income parties with attorneys. Thus, the court partners also receive funding to change procedures and practices to ensure those parties who still lack attorneys have meaningful access to the courts, have their cases heard on the merits, and do not unintentionally give up their rights. These court services include expanded mediation assistance, language interpreters, a probate facilitator, a housing inspector, special parenting workshops, and other creative methods to address these important and challenging cases.

The legal services agencies selected for the pilot projects screen litigants to identify eligible clients and contract with other legal services providers in the community to provide services. Staff attorneys were hired, but pro bono work by outside attorneys is also encouraged. The lead legal services agency is the main point of contact for referrals from the court and other agencies. Some projects also provide assistance from social workers to help address the issues that clients face.

As one of the first programs in the country to combine representation for low-income persons in these types of cases with court innovation, the Sargent Shriver Civil Counsel Act has attracted national attention. The lessons learned should be helpful to other courts working on innovations—and to everyone interested in the best ways of ensuring that all persons coming to court get an appropriate level of legal assistance in these critical cases.

Funding. Total available funding for all projects is \$9.5 million per year, funded by a special \$10 supplemental filing fee on certain post judgment motions. New projects may be added by competitive grants if funds become available as the result of the termination or nonrenewal of a project.

Staff Recommendation: Adopt placeholder trailer bill language repealing the sunset of the Sargent Shriver Civil Counsel Act.

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)**Issue 1: Population Adjustments**

May Revise Proposal. The May Revision requests the following population adjustments based upon updated caseload projections, delays in construction, and additional alternative custody program placements:

- **Adult Population Adjustment** – The population adjustment includes a net decrease of \$9,977,000, which is comprised of a \$9,798,000 General Fund decrease and a \$179,000 Inmate Welfare Fund decrease.

The May Revision reflects an estimated average adult daily population of 128,821 in fiscal year 2016-17. This is 13 fewer than projected in the Governor’s budget. The projected adult parolee average daily population is 42,601 in 2016-17. This is an increase of 30 from the Governor’s budget projection.

- **Juvenile Population Adjustment** – The population adjustment includes a General Fund decrease \$259,000 and reimbursement increase of \$4,000 to reflect revised juvenile population projections. The May Revision reflects an estimated average daily population of 709 wards in 2016-17, which are 10 less than projected in the Governor’s budget.
- **RJ Donovan Correctional Facility Adjustment** – The population adjustment includes a reduction of \$10.3 million and 84.3 positions in 2015-16, and a net reduction of \$64,000 and 1.3 positions related to a six-month delay in the activation of the 792-bed infill project.
- **Alternative Custody Program (ACP) Population** – The population adjustment includes \$1.8 million General Fund and 9.5 positions to include supervision of the Alternative Custody Program participants in the calculation for the parole population, which is adjusted on an ongoing basis in the Fall Population and May Revision processes. The cost reflects the supervision of both male and female ACP participants.
- **Female Community Reentry Expansion** – The population adjustment includes the expansion of the Custody to Community Transitional Reentry Program (CCTRP) to include a new 50-bed facility in Sacramento. The cost of that expansion is \$2.8 General Fund and five positions in 2016-17, and an estimated \$2.5 million General Fund and five positions for 2017-18.

Additionally, the CCTRP adjustment includes a decrease of \$2.1 million General Fund and 3.8 positions in 2015-16 to reflect the updated population housed at the current CCTRP facilities.

Staff Comment. The subcommittee received an overview of the Governor’s January budget, including population projections, during its March 3rd hearing. In addition, the subcommittee had an in-depth discussion of CDCR’s alternative custody and housing programs during its March 17th hearing. Details and agendas from both hearings are available on the Senate Budget and Fiscal Review Committee’s website.

Staff Recommendation. Approve as proposed.

Issue 2: Electronic Health Records System (EHRS)

May Revision Proposal. The May Revision includes an increase of \$35.9 million General Fund to provide expanded functionality of the new electronic health record system to include dental patient and scheduling information. The May Revision commits \$80.6 million over the next three years for this purpose, and \$5.8 million on-going.

Background. The EHRS was developed to provide an electronic health record that would be available at all institutions without having to transport documents across institutions and would provide real-time data on the level of care provided to inmates. When the project was initially approved by the California Department of Technology in 2013, it estimated a total project cost of \$182 million. The project began in 2013 and was originally slated for completion in 2017. The initial design of the system was completed for testing in late 2015 and rolled out to pilot institutions to determine whether the system functioned as planned. The receiver indicates that during rollout problems were identified resulting in further implementation being postponed.

Staff Recommendation. Approve as proposed.

Issue 3: Basic Correctional Officer Academy

May Revision Proposal. The May Revision requests a General Fund decrease of \$21,487,000 and 265 positions to reduce the annual capacity for the Basic Correctional Officer Academy from approximately 3,300 to 2,100 cadets and align ongoing academy resources with current attrition rates. This adjustment includes two-year limited-term resources to operate two training academies annually for both the Division of Juvenile Justice and the Division of Adult Parole Operations.

Staff Recommendation. Approve the requested decrease. In addition, adopt placeholder trailer bill language requiring the Commission on Correctional Peace Officer Standards and Training (CPOST) to do the following:

- Consider including additional training in the areas of mental health and rehabilitation, as well as coursework on the theory and history of corrections as part of their review of the correctional officer academy training curriculum.
- Partner with the Office of the Chancellor of the California Community Colleges to develop a plan to affiliate the Department of Corrections and Rehabilitation with the community colleges for purposes of assisting in the training state correctional peace officer apprentices.
- Report to the Legislature on both of the above requirements.
- Establish and maintain an Internet Web site that includes specific information about the work of CPOST.

Issue 4: Leadership Training

May Revision Proposal. The May Revision includes \$4 million General Fund for CDCR to increase its leadership training efforts, evaluate its current workforce, and create a succession management plan. Primarily, the funding will be used for the following:

- \$2,296,000 to effectively implement a successful Leadership Training course. Through contract funding, CDCR will explore partnerships with the academic community to develop and deliver training that will improve the knowledge and skills of existing executive management while also preparing supervisory and managerial staff to assume higher-level executive positions.
- \$1,268,000 and nine positions for the Advanced Learning Institute, which includes travel costs, and training tools for the sergeants' academies.
- \$421,000 and four positions to develop, implement, and evaluate workforce and succession management for the department.

Background. Earlier this year, CDCR released an *Updated Plan for the Future of Corrections* as a follow-up to their 2012 blueprint. In the updated plan, CDCR noted:

Like most entities throughout state government, retention and succession planning has been an ongoing challenge for the Department. Succession planning provides the ability to forecast future workforce needs and develop strategies to promote a talented, competent workforce, and to mitigate the loss of institutional knowledge through attrition. The Department is currently underprepared for the impending retirement of highly skilled and experienced custody and technical supervisors, managers, and executives and previous efforts have not been robust enough to address the problem. The Department currently has 7,465 employees in supervisory, managerial and exempt classifications. Recent data show that approximately 74 percent of those employees will be at or reach retirement age in the next ten years. Furthermore, of the 74 percent, approximately 71 percent of those employees will be at or will reach retirement age in the next five years.

To address this issue, the Department will work with other agencies to design staff development programs. Specifically, the Department plans to create improved leadership training curricula which will enhance leadership skills and support continuous organizational development. The training will focus on executives as well as prepare employees for positions such as Warden and Superintendent. This training is imperative to prepare the Department's supervisory and managerial staff to assume executive-level positions as more executives retire. An effective succession management plan will help prepare staff to be successful future leaders.

This proposal is designed to begin addressing the shortfalls discussed in that report.

Staff Recommendation. Approve the proposed funding and concept, pending further discussion between the Administration and the Legislature on specific budget bill and trailer bill language. In addition, include the following augmentations:

- \$2 million one-time General Fund for CDCR to work with the National Institute of Corrections to develop a new cadet mentor pilot project designed to train CDCR sergeants and lieutenants to serve as mentors to new correctional officers.
- \$1 million one-time General Fund for Innovative Management Grants for the support of the department, including wardens committed to institution-based management initiatives which promote workforce excellence. Areas of innovation may include programs that provide resilience training and occupational wellness for correctional staff; programs that employ intra-institution collaborations to

measure and improve the effectiveness of prison yard programming and security for staff and inmates; programs that assess and promote the occupational, personal and family well-being of the department's workforce; and any other promising approaches designed to support the capabilities of the department's workforce.

- Adopt placeholder trailer bill language creating a senior warden position and giving Governor, upon recommendation of the secretary the authority to appoint a senior warden for a state prison in place of a warden.

Issue 5: Relief Factor Adjustment

May Revision Proposal. The May Revision requests a General Fund increase of \$11,897,000 and 107.5 positions to afford the California Department of Corrections and Rehabilitation (CDCR) sufficient time to standardize statewide relief utilization policies that will provide additional time off for correctional peace officers.

Background. The 2014 Budget Act changed the methodology CDCR uses to calculate the relief factor. Under the proposal, the relief factor would be calculated based solely on statewide actual leave usage rather than a combination of actual leave usage and accrual rates. In addition, the proposed methodology would incorporate types of leave (such as furlough days) that are not accounted for in the current relief factor.

Staff Recommendation. Approve as requested.

Issue 6: Rehabilitative Programs Expansion

May Revision Proposal. The May Revision includes \$24.5 million General Fund (\$3 million Proposition 98) for increased rehabilitative programming. The increases include investments in the following:

- eReader Community College Content (\$3 million Proposition 98 General Fund) – CDCR is currently using approximately 7,500 eReaders to provide inmates enrolled in community colleges with access to textbook content. This funding will allow inmates to continue accessing these materials through eReaders and open educational resources.
- Internet Protocol Television Integration Maintenance and Operations Support (\$3.7 million) – These resources will enable CDCR to create the necessary infrastructure at each prison to support a television network to deliver rehabilitative programming to more inmates. Ongoing resources will allow CDCR to support the infrastructure and develop additional program content.
- Cognitive Behavioral Therapy (\$2.2 million) – Expands Cognitive Behavioral Therapy programs currently offered at 13 reentry hubs to all institutions. This expansion will provide more inmates an opportunity to participate in rehabilitative programs, such as criminal thinking, anger management, and family relations.
- Substance Use Disorder Treatment (\$3.7 million) – This proposal adds 950 substance use disorder treatment slots to existing programs, thereby allowing CDCR to serve more inmates identified as having a substance use disorder.
- Career Technical Education Programs (\$2.3 million) – Adds 12 career technical education programs statewide to reduce the current waiting lists at institutions that have available classroom space to support these programs.

- Arts in Corrections (\$4 million) – The Arts in Corrections program is currently available at 19 institutions through a partnership with the California Arts Council. This proposal expands the program to all institutions to provide more inmates with an opportunity to participate in programs that have proven successful in changing behavior.
- Innovative Programming Grants (\$3.1 million) – Continues one-time funding to expand non-profit programs that have demonstrated success, and focus on offender responsibility and restorative justice principles to prisons with fewer volunteer programs available.
- Third Watch Overtime (\$2.5 million) – Provides funding for custody coverage on third watch to alleviate program space constraints on second watch.

Staff Comment. CDCR’s rehabilitation programming was discussed in detail by this committee on April 7th. Among the items heard were an update on the implementation of SB 1391 (Hancock), Chapter 695, Statutes of 2014, and overviews of Arts in Corrections, innovative programming grants, and inmate education.

Staff Recommendation.

Approve the following –

- eReader Community College Content (\$3 million Proposition 98 General Fund)
- Internet Protocol Television Integration Maintenance and Operations Support (\$3.7 million)
- Cognitive Behavioral Therapy (\$2.2 million)
- Career Technical Education Programs (\$2.3 million)
- Third Watch Overtime (\$2.5 million)

Approve with the following with modifications –

- Innovative Programming Grants (\$3.1 million) – Approve the May Revision request. In addition, make the funding on-going and require that the grants be awarded for a three-year period, rather than one year.
- Substance Use Disorder Treatment (\$3.7 million) – Approve both the Governor’s January budget augmentation (\$15.2 million) and the May Revision request. In addition, require CDCR to develop a plan to either move substance use disorder treatment the from the Division of Rehabilitative Services to the Division of Correctional Healthcare Services (DCHS), consistent with the mental health treatment, which is currently under DCHS, or to fully integrate both healthcare services and rehabilitation services as it relates to providing substance use disorder treatment to inmates. Require CDCR to provide their plan to the Joint Legislative Budget Committee and the budget committees in the Assembly and the Senate by January 10, 2017.

Approve, in addition to the May Revise proposal –

- Expand the SB 1391 pilot to include five additional prisons and two permanent positions in the Community Colleges Chancellor’s Office (CCCO) to coordinate community college programs within the state prison system. Specifically, CDCR shall provide the following funding to CCCO:
 - \$2 million in one-time General Fund over two years for five additional community college pilot programs.

- \$1 million in on-going General Fund to create a permanent infrastructure at the Chancellor's Office for staff and administrative expenses related to inmate education.

Hold open –

- Arts in Corrections (\$4 million) – This item will be taken up by the full budget committee next week in the context of a larger proposal to increase funding for the arts. Specifically, the budget committee will consider the following augmentations:
 - ✓ In community – Augmenting California Arts Council programs that expand access to art and art education in underserved communities.
 - ✓ In prison – Increasing the Arts in Corrections program to all 34 institutions as proposed in the May Revision and reinstating the artist facilitator positions at all prisons and expanding the duties of the artist facilitators to include facilitating innovative programming.
 - ✓ Reentry/Bridging – Establishing a pilot program within the California Arts Council to facilitate and expand arts programs designed to help former inmates with the transition from prison back into their community.

**5227 BOARD OF STATE AND COMMUNITY CORRECTIONS (BSCC)
8120 COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING (POST)****Issue 1: General Fund Backfill****May Revision Proposals.**

Commission on Peace Officers Standards and Training (POST). The Governor's May Revision proposes to shift an additional \$3.5 million in costs from the Peace Officers Training Fund (POTF) to the General Fund. This would be in addition to the \$13 million cost shift to the General Fund proposed in January.

The Governor's May Revision proposes to further reduce the amount transferred from the Driver Training Penalty Assessment Fund to POTF by nearly \$2 million. This would be in addition to the \$3 million reduced transfer proposed in January.

Board of State and Community Corrections (BSCC). The Governor's May Revision proposes to shift \$3.1 million in costs from the Corrections Training Fund (CTF) to the General Fund. This would be in addition to the \$490,000 reduction in expenditures from CTF proposed in January.

Staff Recommendation. Approve as proposed and budget as one-time adjustments to the related funds. In addition, require the Administration to present the Legislature with a plan in January 2017, with the release of the Governor's budget to address the on-going shortfalls of various state funds dependent upon criminal fine and fee revenue.

9285 LOCAL ASSISTANCE – TRIAL COURT SECURITY**Issue 1: Trial Court Security Funding**

May Revision Proposal. The May Revision proposes a \$2 million General Fund increase for trial court security funding, in addition to the \$3 million increase proposed in the Governor’s January budget.

Governor’s Budget. The Governor’s proposed budget includes a \$3 million General Fund increase to offset the trial court security costs for those courts completing construction after October 9, 2011. Total funding in the budget for trial court security local assistance is \$5 million General Fund.

Background. As part of public safety realignment in 2011, trial court security and a constitutionally-protected revenue stream to fund those security costs were shifted to the county sheriffs. The Governor’s May Revision assumes that there will be \$543.8 million in realigned revenue available for trial court security in 2016-17. In addition to that base amount, the budget assumes that there will be an additional \$13.6 million in growth funding. That constitutes a \$25 million increase over the 2014-15 funding level.

In the Administration’s May Revision letter they argue that construction projects occupied on or after October 9, 2011, that modify or create building features that increase the overall trial court security costs constitute a higher level of service and, therefore, require the state to provide annual funding to cover those costs.

Prior Budget Actions. The 2014 budget included an increase of \$1 million General Fund to address potential increased court security costs associated with new courthouse construction. In order to receive additional funding, counties are required to demonstrate that they have an increased need for security staff. The 2015 budget increased the funding to \$2 million General Fund.

Trailer Bill Language. In addition to the \$1 million in funding, the 2014 budget included statutory language limiting eligible courts that have an occupancy date on or after October 9, 2011. Based on the current list of construction projects, there are potentially 39 courthouses that may be able to argue the need for a General Fund augmentation for trial court security. The language further outlined a process the courts would need to go through in order to establish that they had increased trial court security costs as a result of construction.

Legislative Concerns. The state’s trial courts have faced significant cuts in recent years which have resulted in the closing of courtrooms throughout the state and a reduction in court-related services. As courtrooms are closed, the need for trial court security is reduced. However, despite a reduction in workload, the revenue provided to counties for trial court security has continued to grow under the realignment formula. In addition, according to the Judicial Council and the Administration, one of the benefits of the new court construction is that they generally require less security than the older courthouses that have multiple entrances.

The Legislature expressed concern with providing the \$1 million in 2014 because of the potential that the General Fund commitment for realigned trial court security would continue to increase year after year, similar concerns were expressed when the funding was doubled in 2015. The request to add an additional \$5 million in funding this year suggests that those concerns were not unfounded.

Legislative Analyst's Office (LAO). The LAO recommended rejecting the initial proposal during the May Revision process in 2014. They acknowledged that some courts may be experiencing an increased trial court security need; they were unable to determine whether there was a statewide net increase in the cost of court security. For example, they note that a number of trial courts closed courtrooms and/or courthouses to address their ongoing budget reductions—thereby reducing the trial court security need and generating cost savings that could be redirected to courts with increased costs. In addition, the 2011 realignment legislation did not envision the state providing each county funding based on its actual court security costs. As such, they argued, the proposal is not consistent with the original intent of the legislation.

Staff Comment. Informal discussions between staff and legislative counsel suggest that it is not certain that this would be a higher level of service. Members may wish to ask for a legislative counsel opinion before acting on any assumptions in this regard. In addition, the Legislature may wish to direct the Administration to use the Trial Court Security growth funding in realignment each year to cover any increased demands on trial court security related to courthouse construction.

Staff Recommendation. Reject the \$7 million in General Fund proposed to augment the \$557.4 million in realignment revenue provided in 2016-17 for trial court security.

4440 DEPARTMENT OF STATE HOSPITALS (DSH)**Issue 1: Incompetent to Stand Trial Caseload**

May Revision Proposal. The May Revision includes three proposals relating to treating people who have been deemed incompetent to stand trial (IST). Total requested funding for all three is approximately \$21 million General Fund and 175.5 positions. Specifically, the May Revision requests:

- \$12.9 million General Fund and 113.8 positions to activate 60 additional beds at Napa State Hospital. In addition, the May Revision proposes trailer bill language increasing the number of forensic patients that can be treated at Napa State Hospital.
- \$5.3 million General Fund and 61.7 positions to activate 25 IST beds at Metropolitan State Hospital. In addition, the May Revision includes a request for \$2.3 million in reimbursement authority to add 11 Lanterman-Petris-Short (civil commitment) beds at Metropolitan.
- \$2.7 million General Fund and one position to contract for 25 additional jail based restoration of competency beds.
- Budget bill language authorizing expenditures for the restoration of competency beds once the contracts have been executed.

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

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

Currently, three county sheriffs (Riverside, San Bernardino and Sacramento) have restoration of competency programs serving Los Angeles, Fresno and San Joaquin counties, in addition to the three counties running the programs. Currently, the JBCT program is only available in a county jail setting and not in community mental health facilities, despite language that allows for restoration of competency in either or jail or a community setting. While the Legislature has pushed DSH to prioritize jail and community-based restoration programs over state hospital expansions, progress continues to be slow. This difficulty comes despite significant interest on the part of the county sheriffs to find ways to treat and restore people on the IST waiting list.

The annual cost of the restoration of competency program is approximately \$78,000 per bed, as opposed to an IST bed in a state hospital that costs approximately \$250,000 per year. Staff has recently learned that DSH and San Diego are entering into negotiations for a 40 bed restoration program for San Diego. However, this proposal does not include funding for San Diego. Given the significant General Fund savings associated the planned program in San Diego, the Legislature may wish to reduce the state

hospital expansion by 40 beds and redirect \$4.9 million General Fund to the jail-based competency program to fund the San Diego program or other programs that may be ready to open during 2016-17.

Staff Recommendation:

1. Approve the proposal to expand forensic beds at Metropolitan State Hospital.
2. Reduce the proposed funding to expand forensic beds at Napa State Hospital by \$8.6 million General Fund allowing a 20-bed expansion and adopt the Administration's trailer bill language related to Napa State Hospital as draft, placeholder language.
3. Approve the request for funding for 25 jail-based competency beds and the related budget bill language and augment that funding by \$4.9 million General Fund and 40 additional jail-based beds.
4. Adopt draft, placeholder trailer bill language clarifying that jail and community-based restoration programs are part of the state hospitals' continuum of care.
5. Adopt supplemental reporting language requiring DSH to submit a report detailing the outcomes DSH uses to measure successful treatment and its progress toward successfully treating its entire patient population.

Issue 2: Conditional Release Program (CONREP)

May Revision Proposal. The May Revision requests \$1.6 million General Fund to activate up to 26 transitional beds for CONREP patients. These beds provide temporary housing for CONREP patients that require direct supervision to live in the community.

Governor's Budget. The proposed budget includes an additional \$3.8 million General Fund in 2016-17 for increased costs related to the DSH Conditional Release Program (CONREP). The increased costs are primarily related to an expected increase in the CONREP-sexually violent predator (SVP) caseload (\$3 million General Fund). The remaining amount (\$800,000 General Fund) is due to a change in the contracting, away from an allocation-based methodology to a service-based methodology.

Previous Subcommittee Action. On April 28th the subcommittee held open the Governor's budget request and directed DSH to provide the committee with updated estimates based upon phasing in the new CONREP-SVP cases and reducing the inpatient funding for the SVP caseload.

Background. CONREP provides community treatment and supervision for individuals who have been found to be not guilty by reason of insanity (NGI), incompetent to stand trial (IST), or have been designated as mentally disordered offenders (MDO) or sexually violent predators (SVP).

CONREP offers individuals direct access to mental health services during their period of outpatient treatment. These services are provided by specialized forensic mental health clinicians and include individual and group therapies, home visits, substance use disorder screening and psychological assessments. Currently, DSH contracts with 11 providers for these services. DSH estimates that the non-SVP CONREP caseload will be 654 individuals in both 2015-16 and 2016-17.

CONREP for Sexually Violent Predators. SVP patients in the state hospital system are individuals who are convicted of a sex offense and also found to have a mental disorder that makes him a danger to others and likely to engage in sexually violent behavior in the future. After the completion of the prison term of a person convicted of committing a sexually violent crime, both DSH and the CDCR evaluate the individual to determine whether or not he meets the criteria to be designated as an SVP. If a person is designated as an SVP, and the courts agree with the designation, that individual is then committed to DSH upon completion of their prison term. Every year, DSH will evaluate their SVP patients to determine whether or not they meet the criteria to be released to CONREP or conditionally discharged. That consideration includes whether the release is in the best interest of the individual and whether or not conditions can be imposed upon the release that would adequately protect the community.

For SVPs, state law requires that all SVPs who are conditionally released into their original communities must be provided with both treatment and supervision. Currently, DSH contracts with one provider who provides both the required specialized treatment and supervision for these individuals. DSH estimates that there will be 14 SVP-designated individuals in CONREP in 2015-16. However, there are currently 12 additional SVP-designated individuals who have court petitions for release into CONREP. If the court approves all of the petitions, DSH assumes the CONREP-SVP caseload will grow to 26 individuals in 2016-17.

The cost for the CONREP-SVP cases is significantly higher than regular CONREP cases, primarily due to the security requirement. Courts may order 24 hour-a-day, seven day a week security of people in the CONREP-SVP for time-limited period during transition from state hospital to community setting (several weeks to several months, depending on circumstances). Currently, one individual has been receiving 24 hour-a-day security for over a year due to safety concerns. DSH does not know when security for this individual can be suspended. The 2014-15 average cost-per-case, excluding security, is approximately \$258,000 for CONREP-SVP services and treatment. The cost rose to an average of \$310,000 per year when security was included. In contrast, the annual cost-per-case for the regular CONREP cases during 2014-15 was \$34,000 per year.

Staff Recommendation. Approve the CONREP funding increase as one-time funding and require DSH to transition the funding for the eligible treatment costs associated with CONREP to Medi-Cal by July 1, 2017.

Issue 3: Coleman Monitoring Team

May Revision Proposal. The May Revision requests \$876,000 and four positions to establish a Coleman monitoring team within the Department of State Hospitals to coordinate and monitor implementation of the Special Master's recommendations to improve inpatient care of Coleman patients at each facility.

The Coleman Class. As of April 18, 2016, there are currently 37,431 inmates in the Coleman class (35,335 men and 2,096 women). According to a December 24, 1998, court ruling on the definition of the class, the plaintiffs' class consists of all inmates with serious mental disorders who are now, or who will in the future be, confined within CDCR. A "serious mental disorder" is defined as anyone who is receiving care through CDCR's Mental Health Services Delivery System (MHSDS).

MHSDS provides four levels of care, based on the severity of the mental illness. The first level, the Correctional Clinical Case Management System (CCCMS), provides mental health services to inmates

with serious mental illness with “stable functioning in the general population, an administrative segregation unit (ASU) or a security housing unit (SHU)” whose mental health symptoms are under control or in “partial remission as a result of treatment.” As of April 18, 2016, 28,773 mentally ill inmates were at the CCCMS level-of-care.

The remaining three levels of mental health care are for inmates who are seriously mentally ill and who, due to their mental illness, are unable to function in the general prison population. The Enhanced Outpatient Program (EOP) is for inmates with “acute onset or significant decompensation of a serious mental disorder.” EOP programs are located in designated living units at “hub institution[s].” As of April 18, 2016, 6,940 inmates with mental illness were receiving EOP services and treatment.

Mental health crisis beds (MHCBS) are for inmates with mental illness in psychiatric crisis or in need of stabilization pending transfer either to an inpatient hospital setting or a lower level-of-care. MHCBS are generally licensed inpatient units in correctional treatment centers or other licensed facilities. Stays in MHCBS are limited to not more than ten days. Currently, there are 414 inmates receiving this level-of-care.

Finally, several inpatient hospital programs are available for class members who require longer-term, acute care. These programs are primarily operated by the Department of State Hospitals (DSH), with the exceptions of in-patient care provided to condemned inmates and to female inmates. There are three inpatient psychiatric programs for male inmates run by DSH that are on the grounds of state prisons. Those programs are DSH-Stockton, on the grounds of the Correctional Healthcare Facility; DSH-Vacaville, on the grounds of Vacaville State Prison; and DSH-Salinas Valley, on the grounds of Salinas Valley State Prison. There are currently approximately 1,100 patients in those facilities and the DSH budget for those inmates is approximately \$245 million General Fund per year. As of April 18, 2016, 1,304 inmates were receiving inpatient care, 45 of those patients were women and 36 were condemned inmates housed at San Quentin State Prison. The remaining 1,223 are receiving care in a DSH facility.

In addition to the patients in the prison-based psychiatric programs, approximately 250 Coleman class inmates are receiving care at Atascadero State Hospital and Coalinga State Hospital. The DSH budget for those patients is \$52 million General Fund per year.

Staff Comment. This subcommittee held an in-depth oversight hearing on the status of the Coleman-class inmate patients under the care of both CDCR and DSH on April 28th. The agenda and details of that hearing can be found on the Senate Budget and Fiscal Review Committee’s website.

In recent years, the Senate has expressed concern with the appropriateness of having DSH provide mental health treatment to CDCR’s inmates. Under the current system, the special master has found that DSH is providing an inadequate level of treatment both due to lack of available staffing and out of apparent fear of the dangers related to providing services and treatment to inmates; the clear demonstration by CDCR that they are better suited to treat even the most potentially dangerous inmate patients, as evidenced by the robust services and treatment being provided to condemned inmate-patients at the San Quentin psychiatric inpatient program (PIP) (discussed in detail in the April 28th subcommittee agenda); and the fact that CDCR does not appear to take a holistic approach to meeting increases in the need for care, as evidenced by the potential for the increased California Men’s Colony crisis level beds to reduce the availability of clinicians at DSH-Atascadero who treat Coleman patients needing acute levels of care (discussed in detail in the April 28th subcommittee agenda). On top of those issues, there appears to be an ambiguity regarding the healthcare provided to the Plata class inmates being housed in the co-located DSH PIP facilities needs to meet the same standards of care as that in CDCR’s state-run prisons.

Given the on-going concern with the DSH-run PIPs, the question remains as to whether or not CDCR should resume control over the longer-term treatment of Coleman inmate-patients. Dedicating permanent resources toward a workload that could be short-term in nature appears to be unnecessary.

Staff Recommendation. Approve the funding and the positions on a two-year limited term basis.

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Wednesday, May 18, 2016
9:30 a.m. or upon call of chair
State Capitol - Room 2040

Consultant: Julie Salley-Gray

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PROPOSED FOR VOTE ONLY**Department of Justice**

1. **Racial Identify Profiling Act of 2015.** The Department of Justice requests a permanent augmentation of 41 positions and \$7.9 million General Fund for the workload associated with AB 953 (Weber) Chapter 466, Statutes of 2015, which requires local law enforcement agencies to report specified information on traffic stops to the Attorney General's office; and establishes the Racial and Identity Profiling Advisory Board (RIPA).

Action: Approve as budgeted. The budget request is consistent with the fiscal analysis of the implementing legislation.

Vote: 2 - 1 (Anderson "no.")

2. **Consumer Protection Enforcement Initiative.** The Department of Justice requests a permanent increase of seven positions and \$1.4 million from the Legal Services Revolving Fund for the purpose of reducing average case processing work time to work toward meeting the goals of the Department of Consumer Affairs Consumer Protection Enforcement Initiative.

Action: Conform to Subcommittee No. 4 action and reject the proposed funding.

Vote: 3 - 0

3. **Major League Sports Betting Event Raffles.** The proposed budget requests a three-year limited-term General Fund increase of \$335,000 beginning in 2016-17 and two positions to address the workload related to the implementation of the Major League Sporting Event Raffles Program.

Action: Create the Major League Sporting Event Raffle Fund and approve a General Fund loan of \$335,000 per year, for three years.

Vote: 3 - 0

4. **Armed Prohibited Persons System (APPS).** The budget proposes an on-going increase of \$4.7 million in Firearms Safety and Enforcement Special Fund (FS&E) to provide permanent funding for 22 positions for APPS investigations. Currently, all APPS-related activities are funded through the Dealer Record of Sale Special Account (DROS) account. The DROS fund requires an appropriation from the Legislature. The FS&E fund is continuously appropriated. Therefore, if the proposed funding shift is approved, the Department of Justice (DOJ) would not require future legislative authority to expend money deposited in the fund for APPS.

Action: Approve the budget proposal and adopt placeholder trailer bill language removing the continuous appropriation authority from both the FS & E fund and the Firearms Safety Account (FSA). In addition, provide the Attorney General's office with the authority to increase both the FS & E and the FSA fees at a rate not to exceed the Consumer Price Index (CPI).

Vote: 2 - 1 (Anderson "no.")

5. **Technical Adjustment.** The Department of Justice requests to adjust spending authority in three special funds in order to properly align program activities with fund sources. Specifically, the Department of Justice would like to increase spending authority in the Unfair Competition Law Fund by \$10,746,000, increase spending authority in the Public Rights Law Enforcement Fund by \$5,724,000 and reduce spending authority in the Legal Services Revolving Fund by \$16,470,000. This is a zero cost request.

Action: Approve as proposed.

Vote: 3 - 0

California Department of Corrections and Rehabilitation (CDCR)

6. **Spring Finance Letter: Automated Reentry Management System.** CDCR requests \$4.5 million (General Fund) in 2016-17 and 2017-18 to implement phase two of the Automated Reentry Management System (ARMS).

Action: Approve the spring finance letter request and adopt supplemental report language (SRL) requiring CDCR to report on any unspent rehabilitation funds and how those funds were redirected within the rehabilitation budget by January 10, 2017.

Vote: 3 - 0

- ~~7. **Deuel Vocational Institution: Solid Cell Fronts.** This proposal requests \$11.6 million to replace the existing barred cell fronts in the K-Wing Administrative Segregation Unit (ASU) at the Deuel Vocational Institution (DVI) with solid cell fronts. The K-Wing contains 143 cells, one Americans with Disabilities Act (ADA) cell, and six showers that do not currently have solid cell fronts. The scope of work will include new locking mechanisms, solid fronts on the six showers that serve the unit, modifications to the existing heating/ventilation system, upgrades to the electrical system, asbestos and lead paint abatement, and the addition of local fire alarm and fire suppression systems.~~

~~The renovation of ASUs with solid cell fronts addresses an important security need within prison facilities. In addition, the replacement of barred cell fronts and cell modifications related to heating/ventilation systems reduces suicide risks, which is of interest to the federal court in *Coleman v. Brown*.~~

~~Preliminary plans were funded in the 2007 Budget Act and working drawings were funded in the 2015 Budget Act. This proposal requests project funding for the construction phase, which has been updated to include current fire code requirements identified during design. The total estimated project cost is \$12,814,000.~~

~~**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's May 5th hearing.~~

~~**Staff Recommendation:** No recommendation.~~

8. **Segregated Housing Unit Conversion.** The Governor's budget proposes to reduce General Fund support for CDCR by \$16 million in 2015-16 and by \$28 million in 2016-17 to account for savings from a reduction in the number of inmates housed in segregated housing units. According

to the department, the policy changes it is implementing pursuant to the Ashker v. Brown settlement will reduce the number of inmates held in ASUs and SHUs, allowing it to convert several of these units to less expensive general population housing units. For example, CDCR estimates that the number of inmates held in SHUs could decline by around 1,000, or about one-third of the current population.

In addition, the Administration requests \$3.4 million General Fund for 2015-16, and \$5.8 million General Fund for 2016-17 to increase the number of staff in the Investigative Services Unit (ISU), which would offset the above 2016-17 savings. The redirected funding would support the addition of 48 correctional officers to the ISU.

Action: Reject the request for \$3.4 million General Fund for 2015-16, and \$5.8 million General Fund for 2016-17, and the addition of 48 correctional officer positions for the Investigative Services Unit. Approve the remainder of the proposal.

Vote: 3 - 0

9. **Long-Term Offender Programming.** The budget proposes an increase of \$10.5 million General Fund for the expansion of several programs for life-term and long-term offenders.

Action: Approve the \$10.5 million General Fund increase. In addition:

- Augment the funding by \$5 million General Fund in 2016-17, and \$10 million General Fund in 2017-18 and on-going for CDCR to provide permanent funding to nonprofit organizations currently working in state prisons as volunteers or innovative program grant recipients who are providing restorative justice and offender accountability programs that have proven to be successful for long-term, life-term inmates.
- Adopt draft trailer bill language requiring CDCR to convene an on-going workgroup comprised of senior staff from organizations currently providing successful rehabilitative programming through private resources and funds provided by the Innovative Programming Grant program to assist CDCR in developing the scope of the offender responsibility/restorative justice programming, a method for evaluating the success of the programs, a plan for implementing the expanded programming at institutions with the greatest need, and to operate as a liaison between non-profit organizations providing innovative programming and CDCR headquarters to assist with any on-going implementation concerns. In addition, the language will require that inmates successfully completing these programs will receive milestone credits for their participation.
- Adopt placeholder trailer bill to allow inmates serving life terms to have extended family visits, if otherwise eligible.

Vote: 3 - 0

10. **Council on Mentally Ill Offenders (COMIO).** The May Revision requests \$233,000 Mental Health Services Fund and two positions to support COMIO's activities including data collection and analysis regarding the service utilization by individuals with mental illness in the criminal justice system, and promotion of strategies to reduce criminalization of persons with mental illness.

Action: Approve as proposed.

Vote: 3 - 0

11. **Community Corrections Performance Incentive Grant.** The May Revision proposes reducing community corrections performance incentive grant funding by \$4,344,000, based on a full year of actual data for calendar year 2015, pursuant to SB 678 (Leno), Chapter 608, Statutes of 2009.

Action: Approve as proposed.

Vote: 3 - 0

Board of State and Community Corrections

12. **Strengthening Law Enforcement and Community Relations Grants.** The Governor has proposed \$6 million in ongoing General Fund to continue providing community relations grants.

Action: Conform to Assembly Budget Subcommittee No. 5 action and reject the proposed funding.

Vote: 2 - 1 (Anderson “no.”)

13. **Executive Steering Committee (ESC) Trailer Bill Language.** As discussed during the April 7th subcommittee hearing, BSCC has staff advised prospective Proposition 47 ESC members that employees of nongovernmental entities or service providers that “might receive Prop 47 funding” are “financially interested” individuals for purposes of Government Code Section 1090 and, as a result, are prohibited from participating in the ESC process. In addition, nongovernmental stakeholders were advised that they would be regarded as “financially interested” and ineligible for ESC participation if they “serve with an organization that might make a contribution” to the Proposition 47 fund. BSCC sent a similar notice the members of the Strengthening Law Enforcement and Community Relations Grant ESC. These limitations have been applied by the BSCC only to persons who are employees of nongovernmental entities.

Action: Adopt draft trailer bill language repealing the statutory changes that were adopted in the 2013 Public Safety Trailer Bill (SB 74 (Committee on Budget and Fiscal Review) Chapter 30, Statutes of 2013), which exempts government employees from certain conflict laws when they serve on committees under the board.

Vote: 3 - 0

14. **City Police Department Funding.** The Governor’s budget includes \$20 million General Fund for city police departments. The Legislature has not received any details on how the funding will be distributed, its purpose or justification for its inclusion in the budget.

Action: Reject the \$20 million GF augmentation for city police departments.

Vote: 2 - 1 (Anderson “no.”)

15. **Jail Construction Funding.** The Governor’s budget includes \$250 million General Fund for jail construction funding for those counties that have not received previous funding or were only

Action: Reject the Governor’s proposed jail construction funding and instead, approve the following General Fund augmentations and necessary budget bill and trailer bill language for investments designed to reduce people’s involvement in the criminal justice system. Specifically:

| | |
|---|---------------|
| ➤ Community Services Infrastructure Grants | \$100 million |
| ➤ Development of a continuum of children's mental health crisis services | \$80 million |
| ➤ Law Enforcement Assisted Diversion Pilot Project | \$21 million |
| ➤ Teen pregnancy prevention for at-risk youth | \$10 million |
| ➤ Sexually Transmitted Disease Prevention for areas with high rates of STDs | \$10 million |
| ➤ Adolescent Family Life Program (AFLP) | \$6 million |
| ➤ Implicit Bias Training for local law enforcement | \$5 million |
| ➤ Drug Overdose Prevention Services for local law enforcement | \$3 million |
| ➤ Medical Model - Substance Use Disorder Pilot Project in CDCR | \$2.5 million |
| ➤ Prevention and treatment of hepatitis B (HBV) and hepatitis C (HCV) | \$2 million |
| ➤ Underground Scholars Outreach | \$500,000 |

Vote: 2 -1 (Anderson “no.”)

16. **Post Release Community Supervision.** The May Revision requests an increase of \$4.2 million General Fund to reflect a revised estimate of the temporary increase in the average daily population of offenders who have been placed on post release community supervision as a result of a court ordered expansion of two-for-one credits to eligible offenders.

Action: Approve as proposed.

Vote: 3 - 0

Judicial Branch

17. **Court Innovation Grants.** The Governor’s budget proposes \$30 million in one-time General Fund support to create a new Court Innovations Grant Program.

Action: Reject the \$30 million augmentation for innovation grants.

Vote: 2 -1 (Anderson “no.”)

18. **Technical Adjustment.** The May Revision requests an increase of \$531,000 General Fund to reflect updated health benefit and retirement rate costs for trial court employees.

Action: Approve as proposed.

Vote: 3 - 0

19. **Proposition 47 Workload and Savings.** The Governor’s budget requests a one-time General Fund augmentation of \$21.4 million to address the increased workload associated with Proposition 47. In addition, the Governor’s budget notes the trial courts will save \$1.7 million General Fund a year as a result of the reduced workload associated with Proposition 47. The proposed budget does not reflect those savings.

Action:

1. Approve the one-time General Fund increase of \$21.4 million

Vote: 3 - 0

2. Reduce the on-going trial court budget by \$1.7 million General Fund.

Vote: 2 - 1 (Anderson “no.”)**Department of State Hospitals (DSH)**

20. **Updated Proposition 47 Savings.** The updated estimate for Proposition 47 included in the May Revise estimates that the Department of State Hospitals will save \$8.9 million General Fund as a result of the reduced patient caseload due to Proposition 47.

Action: Increase the savings in the DSH budget to reflect the updated savings estimate of \$8,851,042.**Vote:** 2 - 1 (Anderson “no.”)

21. **Napa State Hospital Earthquake Repairs.** The May Revision requests a General Fund decrease of \$989,000 to reflect updated costs associated with the repair of damages sustained at the Napa State Hospital during the August 2014 earthquake.

Action: Approve as proposed.**Vote:** 3 - 0

ITEMS TO BE HEARD

0820 DEPARTMENT OF JUSTICE

Issue 1: Rape Kit Testing Backlog

Background. Current law requires an adult arrested for or charged with a felony, and a juvenile adjudicated for a felony, to submit DNA samples. It also specifies that law enforcement should do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2015:

1. Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence; or
2. Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

Current law encourages DNA analysis of rape kits within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. Current law also encourages crime labs to do one of the following:

1. Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or
2. Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA.

Current law also requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run out.

SAFE-T was created by the Department of Justice in 2015, based on voluntary data input from law enforcement agencies, to help track how many rape kits were not being tested. However, a recent report by the California State Auditor found that law enforcement agencies rarely document reasons for not analyzing sexual assault evidence kits. The audit found 45 cases in which the kits were not submitted for analysis. Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases. Even though the individual reasons for not testing the kits was found to be reasonable, the report still stressed the need for more information about why agencies decide to send some kits for testing but not others.

Staff Comment. This is an oversight item. No action is necessary at this time. DOJ and the Legislative Analyst's Office will provide an update on the status of the testing of rape kits.

0250 JUDICIAL BRANCH**Issue 1: Trial Court Operations Funding**

Governor's Budget. The Governor's budget proposes a \$20 million (or one percent) General Fund base augmentation for trial court operations. In addition, the proposed budget includes a trailer bill proposal to shift four vacant judgeships from one area of the state to another.

Staff Comments. Overall trial court funding and the funding shortfall were discussed in detail in this subcommittee on March 10th. Among the concerns raised by the subcommittee members was the lack of adequate funding for dependency counsel. In addition, the Judicial Counsel noted that while the Administration proposed an hourly wage increase for appellate attorneys, no increased funding was provided for the six appellate projects. The March 10th agenda notes that the Judicial Counsel argues that "while the costs of rent, employee benefits, mandatory professional and fiduciary insurance, the need for improved technology, and all other costs of doing business have increased substantially, the amount of funding available for these projects has not increased since FY 2007-08."

Action.

1. Approve as budgeted and adopt as placeholder the Administration's proposed trailer bill language shifting four judgeships from Santa Clara and Alameda superior courts to San Bernardino and Riverside superior courts.
2. Reject the Governor's January budget proposed \$700,000 General Fund augmentation to counties for increased trial court security levels resulting from the reallocation of the trial court judgeships and their staffing complements.
3. Augment the trial courts budget for the dependency counsel by \$29 million General Fund and \$2.2 million General Fund to increase funding for the appellate projects. Approve budget bill language requiring \$7 million to be used on an on-going basis to hold those counties with lower client-to-attorney ratios harmless.

Vote: 3 - 0**Issue 2: Civil Case Management System Replacement**

May Revision Proposal. The May Revision requests a one-time General Fund augmentation of \$24.8 million. The request is for \$12.4 million in fiscal year (FY) 2016-2017; \$9.2 million in FY 2017- 2018; and \$3.2 million in FY 2018-2019 to replace the V3 Court Case Management System in the superior courts of Orange, Sacramento, San Diego, and Ventura counties.

Justification. Funding would support transition for four courts from the V3 case management system to modern, commercial off-the shelf case management systems:

- Odyssey from Tyler Technologies, in the Superior Courts of Orange, San Diego, and Ventura Counties.
- C-Trak from Thomson-Reuters, in the Superior Court of Sacramento County.

Both case management systems were selected by the courts following a Request for Proposal vetting and evaluation by the branch that resulted in Master Services Agreements for three vendors. Each court further evaluated the three vendors, selected the case management system that best fits the court needs, and plans to convert all cases to a single vendor, as resources and funding are available.

The requested funding will be used to purchase case management system software, related software licenses and hardware, and changes to the new case management system to provide levels of functionality and performance that are similar to existing levels. It will also be used to configure the systems for each court, convert existing case data and electronic documents to the new system, and fund implementation costs, including limited-term staff, in each court.

Background. The judicial branch spends approximately \$6.5 million annually to maintain the V3 case management system (CMS) that is used by four courts—the Superior Courts of Orange, Sacramento, San Diego, and Ventura Counties—to manage approximately 25 percent of civil, small claims, probate, and mental health cases statewide. These courts made substantial contributions to the development of a case management system intended for use by all courts. The project to deploy the statewide system was terminated in March 2012, leaving these four courts with an aging case management system that cannot be improved without legislative approval.

Action. Approve as proposed and required DOF, LAO, Judicial Council and staff to draft provisional language related to providing JLBC with a Department of Technology review of the four projects, if the review can be done in a timely manner that does not delay the projects.

Vote: 3 - 0

Issue 3: Trial Court Emergency Reserve

Governor's Budget. The proposed budget includes \$10 million General Fund on a one-time basis to establish a state level reserve for emergency expenditures for the trial courts. Any funding used in the first year would be replenished through the Trial Court Trust Fund.

Trailer Bill Proposal. The Governor's budget includes trailer bill language modifying the current emergency reserve funding policy for the trial courts. Under this proposal, the Judicial Council would maintain \$10 million in a reserve to be used by individual trial courts in the event of an emergency. In addition, the language requires the Judicial Council to report to the Legislature and the Department of Finance by October 1 of each year all requests for funding and allocations made during the preceding year.

Under current law, the Judicial Council sets aside two percent of trial court funding for local trial court emergencies and is required to report to the Legislature on all requests and allocations by April 15 of each year.

Action. Approve as budgeted.

Vote: 3 - 0

Issue 4: Sargent Shriver Civil Counsel Act

Trailer Bill. Authorizing statute for the Sargent Shriver Civil Counsel Act (Government Code Section 70626) is set to sunset on July 1, 2017. The Governor’s budget does not include trailer bill language extending or eliminating the sunset.

Background. Since enactment of the Sargent Shriver Civil Counsel Act, AB 590 (Feuer), Chapter 457, Statutes of 2009, the Judicial Council has chosen seven pilot projects to provide legal representation to a selected number of low-income Californians. The Legislature has funded these projects at \$9.5 million per year (starting in 2011). The pilots are administered by the Judicial Council. These seven pilot projects, each in a different area of the state, target cases involving critical legal issues that affect basic human needs such as housing, custody, conservatorship, and guardianship. In these kinds of disputes, low-income litigants are, for the most part, unrepresented—and often unaware of the various options open to them. The pilots target cases in which one side is represented by a lawyer and the other is not.

Each project is a partnership of a lead legal services nonprofit corporation, the court, and other legal services providers in the community. The projects provide legal representation to low-income Californians at or below 200 percent of the federal poverty level. When selecting cases, the agencies consider the complexity of the case and whether the potential client has special challenges, such as limited English proficiency, illiteracy, or disabilities. They also review how serious the case is and whether the client has a good chance of prevailing. In addition, the agencies look at whether providing assistance might save money in the long run by reducing the costs of social services such as homeless and domestic violence shelters.

Since the need for services is expected to outpace available funding, it is not possible to provide all eligible low-income parties with attorneys. Thus, the court partners also receive funding to change procedures and practices to ensure those parties who still lack attorneys have meaningful access to the courts, have their cases heard on the merits, and do not unintentionally give up their rights. These court services include expanded mediation assistance, language interpreters, a probate facilitator, a housing inspector, special parenting workshops, and other creative methods to address these important and challenging cases.

The legal services agencies selected for the pilot projects screen litigants to identify eligible clients and contract with other legal services providers in the community to provide services. Staff attorneys were hired, but pro bono work by outside attorneys is also encouraged. The lead legal services agency is the main point of contact for referrals from the court and other agencies. Some projects also provide assistance from social workers to help address the issues that clients face.

As one of the first programs in the country to combine representation for low-income persons in these types of cases with court innovation, the Sargent Shriver Civil Counsel Act has attracted national attention. The lessons learned should be helpful to other courts working on innovations—and to everyone interested in the best ways of ensuring that all persons coming to court get an appropriate level of legal assistance in these critical cases.

Funding. Total available funding for all projects is \$9.5 million per year, funded by a special \$10 supplemental filing fee on certain post judgment motions. New projects may be added by competitive grants if funds become available as the result of the termination or nonrenewal of a project.

Action: Adopt placeholder trailer bill language repealing the sunset of the Sargent Shriver Civil Counsel Act.

Vote: 2 – 1 (Anderson “no.”)

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)**Issue 1: Population Adjustments**

May Revise Proposal. The May Revision requests the following population adjustments based upon updated caseload projections, delays in construction, and additional alternative custody program placements:

- **Adult Population Adjustment** – The population adjustment includes a net decrease of \$9,977,000, which is comprised of a \$9,798,000 General Fund decrease and a \$179,000 Inmate Welfare Fund decrease.

The May Revision reflects an estimated average adult daily population of 128,821 in fiscal year 2016-17. This is 13 fewer than projected in the Governor’s budget. The projected adult parolee average daily population is 42,601 in 2016-17. This is an increase of 30 from the Governor’s budget projection.

- **Juvenile Population Adjustment** – The population adjustment includes a General Fund decrease \$259,000 and reimbursement increase of \$4,000 to reflect revised juvenile population projections. The May Revision reflects an estimated average daily population of 709 wards in 2016-17, which are 10 less than projected in the Governor’s budget.
- **RJ Donovan Correctional Facility Adjustment** – The population adjustment includes a reduction of \$10.3 million and 84.3 positions in 2015-16, and a net reduction of \$64,000 and 1.3 positions related to a six-month delay in the activation of the 792-bed infill project.
- **Alternative Custody Program (ACP) Population** – The population adjustment includes \$1.8 million General Fund and 9.5 positions to include supervision of the Alternative Custody Program participants in the calculation for the parole population, which is adjusted on an ongoing basis in the Fall Population and May Revision processes. The cost reflects the supervision of both male and female ACP participants.
- **Female Community Reentry Expansion** – The population adjustment includes the expansion of the Custody to Community Transitional Reentry Program (CCTRP) to include a new 50-bed facility in Sacramento. The cost of that expansion is \$2.8 General Fund and five positions in 2016-17, and an estimated \$2.5 million General Fund and five positions for 2017-18.

Additionally, the CCTRP adjustment includes a decrease of \$2.1 million General Fund and 3.8 positions in 2015-16 to reflect the updated population housed at the current CCTRP facilities.

Staff Comment. The subcommittee received an overview of the Governor’s January budget, including population projections, during its March 3rd hearing. In addition, the subcommittee had an in-depth discussion of CDCR’s alternative custody and housing programs during its March 17th hearing. Details and agendas from both hearings are available on the Senate Budget and Fiscal Review Committee’s website.

Action. Approve as proposed.

Vote: 3 - 0

Issue 2: Electronic Health Records System (EHRS)

May Revision Proposal. The May Revision includes an increase of \$35.9 million General Fund to provide expanded functionality of the new electronic health record system to include dental patient and scheduling information. The May Revision commits \$80.6 million over the next three years for this purpose, and \$5.8 million on-going.

Background. The EHRS was developed to provide an electronic health record that would be available at all institutions without having to transport documents across institutions and would provide real-time data on the level of care provided to inmates. When the project was initially approved by the California Department of Technology in 2013, it estimated a total project cost of \$182 million. The project began in 2013 and was originally slated for completion in 2017. The initial design of the system was completed for testing in late 2015 and rolled out to pilot institutions to determine whether the system functioned as planned. The receiver indicates that during rollout problems were identified resulting in further implementation being postponed.

Action. Approve as proposed.

Vote: 3 - 0

Issue 3: Basic Correctional Officer Academy

May Revision Proposal. The May Revision requests a General Fund decrease of \$21,487,000 and 265 positions to reduce the annual capacity for the Basic Correctional Officer Academy from approximately 3,300 to 2,100 cadets and align ongoing academy resources with current attrition rates. This adjustment includes two-year limited-term resources to operate two training academies annually for both the Division of Juvenile Justice and the Division of Adult Parole Operations.

Action.

1. Approve the requested decrease.

Vote: 3 - 0

2. In addition, adopt placeholder trailer bill language requiring the Commission on Correctional Peace Officer Standards and Training (CPOST) to do the following:

- Consider including additional training in the areas of mental health and rehabilitation, as well as coursework on the theory and history of corrections as part of their review of the correctional officer academy training curriculum.
- Partner with the Office of the Chancellor of the California Community Colleges to develop a plan to affiliate the Department of Corrections and Rehabilitation with the community colleges for purposes of assisting in the training state correctional peace officer apprentices.
- Report to the Legislature on both of the above requirements.

- Establish and maintain an Internet Web site that includes specific information about the work of CPOST.

Vote: 2 – 1 (Anderson “no.”)

Issue 4: Leadership Training

May Revision Proposal. The May Revision includes \$4 million General Fund for CDCR to increase its leadership training efforts, evaluate its current workforce, and create a succession management plan. Primarily, the funding will be used for the following:

- \$2,296,000 to effectively implement a successful Leadership Training course. Through contract funding, CDCR will explore partnerships with the academic community to develop and deliver training that will improve the knowledge and skills of existing executive management while also preparing supervisory and managerial staff to assume higher-level executive positions.
- \$1,268,000 and nine positions for the Advanced Learning Institute, which includes travel costs, and training tools for the sergeants' academies.
- \$421,000 and four positions to develop, implement, and evaluate workforce and succession management for the department.

Background. Earlier this year, CDCR released an *Updated Plan for the Future of Corrections* as a follow-up to their 2012 blueprint. In the updated plan, CDCR noted:

Like most entities throughout state government, retention and succession planning has been an ongoing challenge for the Department. Succession planning provides the ability to forecast future workforce needs and develop strategies to promote a talented, competent workforce, and to mitigate the loss of institutional knowledge through attrition. The Department is currently underprepared for the impending retirement of highly skilled and experienced custody and technical supervisors, managers, and executives and previous efforts have not been robust enough to address the problem. The Department currently has 7,465 employees in supervisory, managerial and exempt classifications. Recent data show that approximately 74 percent of those employees will be at or reach retirement age in the next ten years. Furthermore, of the 74 percent, approximately 71 percent of those employees will be at or will reach retirement age in the next five years.

To address this issue, the Department will work with other agencies to design staff development programs. Specifically, the Department plans to create improved leadership training curricula which will enhance leadership skills and support continuous organizational development. The training will focus on executives as well as prepare employees for positions such as Warden and Superintendent. This training is imperative to prepare the Department's supervisory and managerial staff to assume executive-level positions as more executives retire. An effective succession management plan will help prepare staff to be successful future leaders.

This proposal is designed to begin addressing the shortfalls discussed in that report.

Action. Approve the proposed funding and concept, pending further discussion between the Administration and the Legislature on specific budget bill and trailer bill language. Ensure that leadership training includes training in cultural competency. In addition, include the following augmentations:

- \$2 million one-time General Fund for CDCR to work with the National Institute of Corrections to develop a new cadet mentor pilot project designed to train CDCR sergeants and lieutenants to serve as mentors to new correctional officers.
- \$1 million one-time General Fund for Innovative Management Grants for the support of the department, including wardens committed to institution-based management initiatives which promote workforce excellence. Areas of innovation may include programs that provide resilience training and occupational wellness for correctional staff; programs that employ intra-institution collaborations to measure and improve the effectiveness of prison yard programming and security for staff and inmates; programs that assess and promote the occupational, personal and family well-being of the department's workforce; and any other promising approaches designed to support the capabilities of the department's workforce.
- Adopt placeholder trailer bill language creating a senior warden position and giving Governor, upon recommendation of the secretary the authority to appoint a senior warden for a state prison in place of a warden.

Note: The action did not include the requested positions, just the funding for the leadership package.

Vote: 3 - 0

Issue 5: Relief Factor Adjustment

May Revision Proposal. The May Revision requests a General Fund increase of \$11,897,000 and 107.5 positions to afford the California Department of Corrections and Rehabilitation (CDCR) sufficient time to standardize statewide relief utilization policies that will provide additional time off for correctional peace officers.

Background. The 2014 Budget Act changed the methodology CDCR uses to calculate the relief factor. Under the proposal, the relief factor would be calculated based solely on statewide actual leave usage rather than a combination of actual leave usage and accrual rates. In addition, the proposed methodology would incorporate types of leave (such as furlough days) that are not accounted for in the current relief factor.

Action. Approve as proposed.

Vote: 3 – 0

Issue 6: Rehabilitative Programs Expansion

May Revision Proposal. The May Revision includes \$24.5 million General Fund (\$3 million Proposition 98) for increased rehabilitative programming. The increases include investments in the following:

- eReader Community College Content (\$3 million Proposition 98 General Fund) – CDCR is currently using approximately 7,500 eReaders to provide inmates enrolled in community colleges

with access to textbook content. This funding will allow inmates to continue accessing these materials through eReaders and open educational resources.

- Internet Protocol Television Integration Maintenance and Operations Support (\$3.7 million) – These resources will enable CDCR to create the necessary infrastructure at each prison to support a television network to deliver rehabilitative programming to more inmates. Ongoing resources will allow CDCR to support the infrastructure and develop additional program content.
- Cognitive Behavioral Therapy (\$2.2 million) – Expands Cognitive Behavioral Therapy programs currently offered at 13 reentry hubs to all institutions. This expansion will provide more inmates an opportunity to participate in rehabilitative programs, such as criminal thinking, anger management, and family relations.
- Substance Use Disorder Treatment (\$3.7 million) – This proposal adds 950 substance use disorder treatment slots to existing programs, thereby allowing CDCR to serve more inmates identified as having a substance use disorder.
- Career Technical Education Programs (\$2.3 million) – Adds 12 career technical education programs statewide to reduce the current waiting lists at institutions that have available classroom space to support these programs.
- Arts in Corrections (\$4 million) – The Arts in Corrections program is currently available at 19 institutions through a partnership with the California Arts Council. This proposal expands the program to all institutions to provide more inmates with an opportunity to participate in programs that have proven successful in changing behavior.
- Innovative Programming Grants (\$3.1 million) – Continues one-time funding to expand non-profit programs that have demonstrated success, and focus on offender responsibility and restorative justice principles to prisons with fewer volunteer programs available.
- Third Watch Overtime (\$2.5 million) – Provides funding for custody coverage on third watch to alleviate program space constraints on second watch.

Staff Comment. CDCR’s rehabilitation programming was discussed in detail by this committee on April 7th. Among the items heard were an update on the implementation of SB 1391 (Hancock), Chapter 695, Statutes of 2014, and overviews of Arts in Corrections, innovative programming grants, and inmate education.

Action.

Approve the following –

- eReader Community College Content (\$3 million Proposition 98 General Fund)
- Internet Protocol Television Integration Maintenance and Operations Support (\$3.7 million)
- Cognitive Behavioral Therapy (\$2.2 million)
- Career Technical Education Programs (\$2.3 million)
- Third Watch Overtime (\$2.5 million)

Approve with the following with modifications –

- Innovative Programming Grants (\$3.1 million) – Approve the May Revision request. In addition, make the funding on-going and require that the grants be awarded for a three-year period, rather than one year.

- Substance Use Disorder Treatment (\$3.7 million) – Approve both the Governor’s January budget augmentation (\$15.2 million) and the May Revision request. In addition, require CDCR to develop a plan to either move substance use disorder treatment from the Division of Rehabilitative Services to the Division of Correctional Healthcare Services (DCHS), consistent with the mental health treatment, which is currently under DCHS, or to fully integrate both healthcare services and rehabilitation services as it relates to providing substance use disorder treatment to inmates. Require CDCR to provide their plan (which should include a review of best practices) to the Joint Legislative Budget Committee and the budget committees in the Assembly and the Senate by January 10, 2017.

Approve, in addition to the May Revision proposal –

- Expand the SB 1391 pilot to include five additional prisons and two permanent positions in the Community Colleges Chancellor’s Office (CCCO) to coordinate community college programs within the state prison system. Specifically, CDCR shall provide the following funding to CCCO:
 - \$2 million in one-time General Fund over two years for five additional community college pilot programs.
 - \$1 million in on-going General Fund to create a permanent infrastructure at the Chancellor’s Office for staff and administrative expenses related to inmate education.

Hold open –

- Arts in Corrections (\$4 million) – This item will be taken up by the full budget committee next week in the context of a larger proposal to increase funding for the arts. Specifically, the budget committee will consider the following augmentations:
 - ✓ In community – Augmenting California Arts Council programs that expand access to art and art education in underserved communities.
 - ✓ In prison – Increasing the Arts in Corrections program to all 34 institutions as proposed in the May Revision and reinstating the artist facilitator positions at all prisons and expanding the duties of the artist facilitators to include facilitating innovative programming.
 - ✓ Reentry/Bridging – Establishing a pilot program within the California Arts Council to facilitate and expand arts programs designed to help former inmates with the transition from prison back into their community.

Vote: 3 - 0

**5227 BOARD OF STATE AND COMMUNITY CORRECTIONS (BSCC)
8120 COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING (POST)****Issue 1: General Fund Backfill****May Revision Proposals.**

Commission on Peace Officers Standards and Training (POST). The Governor's May Revision proposes to shift an additional \$3.5 million in costs from the Peace Officers Training Fund (POTF) to the General Fund. This would be in addition to the \$13 million cost shift to the General Fund proposed in January.

The Governor's May Revision proposes to further reduce the amount transferred from the Driver Training Penalty Assessment Fund to POTF by nearly \$2 million. This would be in addition to the \$3 million reduced transfer proposed in January.

Board of State and Community Corrections (BSCC). The Governor's May Revision proposes to shift \$3.1 million in costs from the Corrections Training Fund (CTF) to the General Fund. This would be in addition to the \$490,000 reduction in expenditures from CTF proposed in January.

Action. Approve as proposed.

Vote: 2 - 0 (Beall not voting.)

9285 LOCAL ASSISTANCE – TRIAL COURT SECURITY**Issue 1: Trial Court Security Funding**

May Revision Proposal. The May Revision proposes a \$2 million General Fund increase for trial court security funding, in addition to the \$3 million increase proposed in the Governor’s January budget.

Governor’s Budget. The Governor’s proposed budget includes a \$3 million General Fund increase to offset the trial court security costs for those courts completing construction after October 9, 2011. Total funding in the budget for trial court security local assistance is \$5 million General Fund.

Background. As part of public safety realignment in 2011, trial court security and a constitutionally-protected revenue stream to fund those security costs were shifted to the county sheriffs. The Governor’s May Revision assumes that there will be \$543.8 million in realigned revenue available for trial court security in 2016-17. In addition to that base amount, the budget assumes that there will be an additional \$13.6 million in growth funding. That constitutes a \$25 million increase over the 2014-15 funding level.

In the Administration’s May Revision letter they argue that construction projects occupied on or after October 9, 2011, that modify or create building features that increase the overall trial court security costs constitute a higher level of service and, therefore, require the state to provide annual funding to cover those costs.

Prior Budget Actions. The 2014 budget included an increase of \$1 million General Fund to address potential increased court security costs associated with new courthouse construction. In order to receive additional funding, counties are required to demonstrate that they have an increased need for security staff. The 2015 budget increased the funding to \$2 million General Fund.

Trailer Bill Language. In addition to the \$1 million in funding, the 2014 budget included statutory language limiting eligible courts that have an occupancy date on or after October 9, 2011. Based on the current list of construction projects, there are potentially 39 courthouses that may be able to argue the need for a General Fund augmentation for trial court security. The language further outlined a process the courts would need to go through in order to establish that they had increased trial court security costs as a result of construction.

Legislative Concerns. The state’s trial courts have faced significant cuts in recent years which have resulted in the closing of courtrooms throughout the state and a reduction in court-related services. As courtrooms are closed, the need for trial court security is reduced. However, despite a reduction in workload, the revenue provided to counties for trial court security has continued to grow under the realignment formula. In addition, according to the Judicial Council and the Administration, one of the benefits of the new court construction is that they generally require less security than the older courthouses that have multiple entrances.

The Legislature expressed concern with providing the \$1 million in 2014 because of the potential that the General Fund commitment for realigned trial court security would continue to increase year after year, similar concerns were expressed when the funding was doubled in 2015. The request to add an additional \$5 million in funding this year suggests that those concerns were not unfounded.

Legislative Analyst's Office (LAO). The LAO recommended rejecting the initial proposal during the May Revision process in 2014. They acknowledged that some courts may be experiencing an increased trial court security need; they were unable to determine whether there was a statewide net increase in the cost of court security. For example, they note that a number of trial courts closed courtrooms and/or courthouses to address their ongoing budget reductions—thereby reducing the trial court security need and generating cost savings that could be redirected to courts with increased costs. In addition, the 2011 realignment legislation did not envision the state providing each county funding based on its actual court security costs. As such, they argued, the proposal is not consistent with the original intent of the legislation.

Staff Comment. Informal discussions between staff and legislative counsel suggest that it is not certain that this would be a higher level of service. Members may wish to ask for a legislative counsel opinion before acting on any assumptions in this regard. In addition, the Legislature may wish to direct the Administration to use the Trial Court Security growth funding in realignment each year to cover any increased demands on trial court security related to courthouse construction.

Action. No action taken. May Revision augmentation not adopted.

4440 DEPARTMENT OF STATE HOSPITALS (DSH)**Issue 1: Incompetent to Stand Trial Caseload**

May Revision Proposal. The May Revision includes three proposals relating to treating people who have been deemed incompetent to stand trial (IST). Total requested funding for all three is approximately \$21 million General Fund and 175.5 positions. Specifically, the May Revision requests:

- \$12.9 million General Fund and 113.8 positions to activate 60 additional beds at Napa State Hospital. In addition, the May Revision proposes trailer bill language increasing the number of forensic patients that can be treated at Napa State Hospital.
- \$5.3 million General Fund and 61.7 positions to activate 25 IST beds at Metropolitan State Hospital. In addition, the May Revision includes a request for \$2.3 million in reimbursement authority to add 11 Lanterman-Petris-Short (civil commitment) beds at Metropolitan.
- \$2.7 million General Fund and one position to contract for 25 additional jail based restoration of competency beds.
- Budget bill language authorizing expenditures for the restoration of competency beds once the contracts have been executed.

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

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

Currently, three county sheriffs (Riverside, San Bernardino and Sacramento) have restoration of competency programs serving Los Angeles, Fresno and San Joaquin counties, in addition to the three counties running the programs. Currently, the JBCT program is only available in a county jail setting and not in community mental health facilities, despite language that allows for restoration of competency in either or jail or a community setting. While the Legislature has pushed DSH to prioritize jail and community-based restoration programs over state hospital expansions, progress continues to be slow. This difficulty comes despite significant interest on the part of the county sheriffs to find ways to treat and restore people on the IST waiting list.

The annual cost of the restoration of competency program is approximately \$78,000 per bed, as opposed to an IST bed in a state hospital that costs approximately \$250,000 per year. Staff has recently learned that DSH and San Diego are entering into negotiations for a 40 bed restoration program for San Diego. However, this proposal does not include funding for San Diego. Given the significant General Fund savings associated the planned program in San Diego, the Legislature may wish to reduce the state

hospital expansion by 40 beds and redirect \$4.9 million General Fund to the jail-based competency program to fund the San Diego program or other programs that may be ready to open during 2016-17.

Action:

1. Approve the proposal to expand forensic beds at Metropolitan State Hospital and Napa State Hospital and adopt the Administration's trailer bill language related to Napa State Hospital as draft, placeholder language.
2. Adopt draft, placeholder trailer bill language clarifying that jail and community-based restoration programs are part of the state hospitals' continuum of care.
3. Adopt supplemental reporting language requiring DSH to submit a report detailing the outcomes DSH uses to measure successful treatment and its progress toward successfully treating its entire patient population.

Vote: 3 - 0

Issue 2: Conditional Release Program (CONREP)

May Revision Proposal. The May Revision requests \$1.6 million General Fund to activate up to 26 transitional beds for CONREP patients. These beds provide temporary housing for CONREP patients that require direct supervision to live in the community.

Governor's Budget. The proposed budget includes an additional \$3.8 million General Fund in 2016-17 for increased costs related to the DSH Conditional Release Program (CONREP). The increased costs are primarily related to an expected increase in the CONREP-sexually violent predator (SVP) caseload (\$3 million General Fund). The remaining amount (\$800,000 General Fund) is due to a change in the contracting, away from an allocation-based methodology to a service-based methodology.

Previous Subcommittee Action. On April 28th the subcommittee held open the Governor's budget request and directed DSH to provide the committee with updated estimates based upon phasing in the new CONREP-SVP cases and reducing the inpatient funding for the SVP caseload.

Background. CONREP provides community treatment and supervision for individuals who have been found to be not guilty by reason of insanity (NGI), incompetent to stand trial (IST), or have been designated as mentally disordered offenders (MDO) or sexually violent predators (SVP).

CONREP offers individuals direct access to mental health services during their period of outpatient treatment. These services are provided by specialized forensic mental health clinicians and include individual and group therapies, home visits, substance use disorder screening and psychological assessments. Currently, DSH contracts with 11 providers for these services. DSH estimates that the non-SVP CONREP caseload will be 654 individuals in both 2015-16 and 2016-17.

CONREP for Sexually Violent Predators. SVP patients in the state hospital system are individuals who are convicted of a sex offense and also found to have a mental disorder that makes him a danger to others and likely to engage in sexually violent behavior in the future. After the completion of the prison term of a

person convicted of committing a sexually violent crime, both DSH and the CDCR evaluate the individual to determine whether or not he meets the criteria to be designated as an SVP. If a person is designated as an SVP, and the courts agree with the designation, that individual is then committed to DSH upon completion of their prison term. Every year, DSH will evaluate their SVP patients to determine whether or not they meet the criteria to be released to CONREP or conditionally discharged. That consideration includes whether the release is in the best interest of the individual and whether or not conditions can be imposed upon the release that would adequately protect the community.

For SVPs, state law requires that all SVPs who are conditionally released into their original communities must be provided with both treatment and supervision. Currently, DSH contracts with one provider who provides both the required specialized treatment and supervision for these individuals. DSH estimates that there will be 14 SVP-designated individuals in CONREP in 2015-16. However, there are currently 12 additional SVP-designated individuals who have court petitions for release into CONREP. If the court approves all of the petitions, DSH assumes the CONREP-SVP caseload will grow to 26 individuals in 2016-17.

The cost for the CONREP-SVP cases is significantly higher than regular CONREP cases, primarily due to the security requirement. Courts may order 24 hour-a-day, seven day a week security of people in the CONREP-SVP for time-limited period during transition from state hospital to community setting (several weeks to several months, depending on circumstances). Currently, one individual has been receiving 24 hour-a-day security for over a year due to safety concerns. DSH does not know when security for this individual can be suspended. The 2014-15 average cost-per-case, excluding security, is approximately \$258,000 for CONREP-SVP services and treatment. The cost rose to an average of \$310,000 per year when security was included. In contrast, the annual cost-per-case for the regular CONREP cases during 2014-15 was \$34,000 per year.

Action. Approve the CONREP funding increase as one-time funding and require DSH to transition the funding for the eligible treatment costs associated with CONREP to Medi-Cal by July 1, 2017.

Vote: 3 - 0

Issue 3: Coleman Monitoring Team

May Revision Proposal. The May Revision requests \$876,000 and four positions to establish a Coleman monitoring team within the Department of State Hospitals to coordinate and monitor implementation of the Special Master's recommendations to improve inpatient care of Coleman patients at each facility.

The Coleman Class. As of April 18, 2016, there are currently 37,431 inmates in the Coleman class (35,335 men and 2,096 women). According to a December 24, 1998, court ruling on the definition of the class, the plaintiffs' class consists of all inmates with serious mental disorders who are now, or who will in the future be, confined within CDCR. A "serious mental disorder" is defined as anyone who is receiving care through CDCR's Mental Health Services Delivery System (MHSDS).

MHSDS provides four levels of care, based on the severity of the mental illness. The first level, the Correctional Clinical Case Management System (CCCMS), provides mental health services to inmates with serious mental illness with "stable functioning in the general population, an administrative segregation unit (ASU) or a security housing unit (SHU)" whose mental health symptoms are under control or in "partial remission as a result of treatment." As of April 18, 2016, 28,773 mentally ill inmates were at the CCCMS level-of-care.

The remaining three levels of mental health care are for inmates who are seriously mentally ill and who, due to their mental illness, are unable to function in the general prison population. The Enhanced Outpatient Program (EOP) is for inmates with “acute onset or significant decompensation of a serious mental disorder.” EOP programs are located in designated living units at “hub institution[s].” As of April 18, 2016, 6,940 inmates with mental illness were receiving EOP services and treatment.

Mental health crisis beds (MHCBS) are for inmates with mental illness in psychiatric crisis or in need of stabilization pending transfer either to an inpatient hospital setting or a lower level-of-care. MHCBS are generally licensed inpatient units in correctional treatment centers or other licensed facilities. Stays in MHCBS are limited to not more than ten days. Currently, there are 414 inmates receiving this level-of-care.

Finally, several inpatient hospital programs are available for class members who require longer-term, acute care. These programs are primarily operated by the Department of State Hospitals (DSH), with the exceptions of in-patient care provided to condemned inmates and to female inmates. There are three inpatient psychiatric programs for male inmates run by DSH that are on the grounds of state prisons. Those programs are DSH-Stockton, on the grounds of the Correctional Healthcare Facility; DSH-Vacaville, on the grounds of Vacaville State Prison; and DSH-Salinas Valley, on the grounds of Salinas Valley State Prison. There are currently approximately 1,100 patients in those facilities and the DSH budget for those inmates is approximately \$245 million General Fund per year. As of April 18, 2016, 1,304 inmates were receiving inpatient care, 45 of those patients were women and 36 were condemned inmates housed at San Quentin State Prison. The remaining 1,223 are receiving care in a DSH facility.

In addition to the patients in the prison-based psychiatric programs, approximately 250 Coleman class inmates are receiving care at Atascadero State Hospital and Coalinga State Hospital. The DSH budget for those patients is \$52 million General Fund per year.

Staff Comment. This subcommittee held an in-depth oversight hearing on the status of the Coleman-class inmate patients under the care of both CDCR and DSH on April 28th. The agenda and details of that hearing can be found on the Senate Budget and Fiscal Review Committee’s website.

In recent years, the Senate has expressed concern with the appropriateness of having DSH provide mental health treatment to CDCR’s inmates. Under the current system, the special master has found that DSH is providing an inadequate level of treatment both due to lack of available staffing and out of apparent fear of the dangers related to providing services and treatment to inmates; the clear demonstration by CDCR that they are better suited to treat even the most potentially dangerous inmate patients, as evidenced by the robust services and treatment being provided to condemned inmate-patients at the San Quentin psychiatric inpatient program (PIP) (discussed in detail in the April 28th subcommittee agenda); and the fact that CDCR does not appear to take a holistic approach to meeting increases in the need for care, as evidenced by the potential for the increased California Men’s Colony crisis level beds to reduce the availability of clinicians at DSH-Atascadero who treat Coleman patients needing acute levels of care (discussed in detail in the April 28th subcommittee agenda). On top of those issues, there appears to be an ambiguity regarding the healthcare provided to the Plata class inmates being housed in the co-located DSH PIP facilities needs to meet the same standards of care as that in CDCR’s state-run prisons.

Given the on-going concern with the DSH-run PIPs, the question remains as to whether or not CDCR should resume control over the longer-term treatment of Coleman inmate-patients. Dedicating permanent resources toward a workload that could be short-term in nature appears to be unnecessary.

Action. Approve the funding and the positions on a two-year limited term basis.

Vote: 3 – 0

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Wednesday, May 18, 2016
9:30 a.m. or upon call of the Chair
State Capitol - Room 2040

Consultant: Anita Lee and Farra Bracht

PART B

VOTE-ONLY ISSUES

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Issues Proposed for Vote-Only

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

Issue 1: Benefit Overpayment Collection Automation Resource

Spring Finance Letter: The Governor requests a one-time budget augmentation of \$1.6 million in FY 2016-17 and a one-time augmentation of \$6.1 million in FY 2017-18. This finance letter also requests an ongoing appropriation of \$1.1 million, beginning in FY 2018-19, for the support of the new Benefit Overpayment Collection System (BOCS) application. These requests will be used to fund contracts, hardware, software, ongoing support, and 12.3 new temporary PEs to replace the existing application used to collect unemployment insurance and disability insurance overpayments with an integrated and automated system. This item was heard in committee on April 21, 2016, and was held open.

The proposed solution will significantly reduce the risk of failure of the existing system by integrating the BOCS application into the Accounting and Compliance Enterprise System (ACES), which will also allow for a new revenue collection tool in the form of bank levies, which is estimated to bring in almost \$23 million in additional funds annually, once fully implemented.

Staff Recommendation: Approve as proposed.

Issue 2: Unemployment and Insurance Program Administration

The Governor’s May Revision includes various technical changes:

| Item | |
|---------------------------------|--|
| 7100-002-0001 | Unemployment Insurance Loan Interest Rate Reduction —Decrease of \$13.06 million to reflect reduced interest due to the federal government for borrowing that has occurred to provide unemployment benefits without interruption. |
| 7100-101-0871 and 7100-111-0890 | Unemployment Insurance Benefit Adjustments —Decrease of \$124.42 million to reflect a projected decrease in UI benefit payments due to historical trends and benefit payment projections. Decrease current year UI Benefit Authority in 2016-16 Fiscal Year by \$358.176 million due to improvement in the economy. |
| 7100-101-0588 | Disability Insurance Benefit Adjustment —Decrease of \$315.04 million to reflect a projected decrease in benefit payments due to lower anticipated average weekly benefit payments. Additionally, DI benefit authority in 2015-16 is decreased by 131.51 million based on decrease of current year benefit durations. |
| 7100-101-0908 | School Employees Fund Adjustment —Increase of \$11 million to reflect a projected increase of benefit payments and increase of \$12.58 million in current year benefit authority. |

Staff Recommendation: Adopt as proposed.

Vote:

Issue 3: Workforce Innovation and Opportunity Act (WIOA) Local Assistance Adjustments

Governor's Proposal. The May Revision proposes to decrease Item 7100-101-0869 and 7100-101-0890 by \$3.3 million to align budget authority with current federal allotments for local area activities. The benefit authority in 2015-16 is also being increased by \$834,000 to align with the federal youth activities funding.

Staff Recommendation: Approve as proposed.

Issue 4: Workforce Innovation and Opportunity Act (WIOA) Data Sharing

Governor's Proposal. The May Revision proposes trailer bill language that allows various departments to share information to support performance measurement and program evaluation under WIOA. Specifically, the language:

- Provides the California Workforce Development Board and other state agencies, such as the Chancellor of the California Community Colleges, the California Superintendent of Public Instruction, California Department of Rehabilitation, the California Department of Social Services, access to any relevant quarterly wage data for performance evaluation purposes under WIOA, along with other groups such as the Adult Education Grant Consortia and the community college Strong Workforce Taskforce.
- Authorizes the Department of Education to share necessary confidential information for performance tracking purposes with the Employment Development Department (EDD).

These changes will address data sharing gaps and legal barriers that could impede reporting requirements detailed under the WIOA. Without access to this information, under WIOA, the failure to report timely or complete performance data could result in a sanction to the Governor's Discretionary fund. While late quarterly reports (which begin later this year) do not appear to specifically be subject to sanctioning, they are necessary to track performance goals.

Staff Recommendation: Adopt placeholder trailer bill language.

Vote:

Issue 5: Unemployment Insurance Program Funding (May Revision Proposal)

Governor's Proposal: The Governor requests a reduction of \$4.5 million and 46.9 PE in Unemployment Administration authority for 2016-17 due to updated workload estimates. In addition, this request also includes a proposal to reduce the Benefit Audit Fund by \$23.6 million, and replace it with increases of \$19.7 million in General Fund and \$3.9 million in Contingent Fund (CF) due to in lower than previously anticipated revenue collections for the Treasury Offset Program.

- Item 7100-001-0001 is increased by \$19,651,000 and 154.1 positions
- Item 7100-001-0184 is decreased by \$23,611,000 and 185.2 positions
- Item 7100-001-0185 is increased by \$3,960,000 and 31.1 positions
- Item 7100-001-0870 is decreased by \$4,513,000 and 46.9 positions
- Item 7100-011-0890 is decreased by \$4,513,000 (non-add item)

In January, EDD proposed to increase funding for UI administration from the BAF and the CF to backfill a loss in federal funds. A portion of available BAF and CF funds were anticipated to come from the Treasury Offset Program (TOP), which allows the state to collect from UI claimants with overpayment liabilities by deducting the overpayments from claimants' federal income tax refunds. Revenues to BAF and CF from TOP were higher than expected in 2015-16. However, revenues from TOP in 2016-17 are now anticipated to be significantly less than estimated in EDD's January proposal. As a result, EDD estimates that \$19.7 million of General Fund support is needed to continue meeting service level targets.

Staff Recommendation: Approve as proposed.

Vote:

7320 PUBLIC EMPLOYMENT RELATIONS BOARD (PERB)

Issue 1: Augmentation to Reduce Backlog and Los Angeles Regional Office Relocation

Governor’s Budget: The Governor proposes two augmentations for PERB: (1) \$885,000 General Fund to fund five new positions—bringing the board’s total position authority to 62 positions—and (2) \$217,000 General Fund to pay for costs associated with relocating the Glendale office.

The Administration indicates that its proposal for five new positions and \$885,000 in 2016-17 (\$873,000 ongoing) is intended to address increased workload, reduce backlogs, and contribute towards meeting statutory requirements. The requested funding would support four of the five positions. The fifth position would be funded with existing departmental resources freed up by canceling a contract with the Department of General Services (DGS) to provide administrative services. The new positions would be distributed across PERB’s four divisions, with two new supervising attorney positions under the Office of the General Counsel (one based in Oakland and one in Glendale).

The Los Angeles regional office is located in Glendale. This regional office is PERB’s busiest regional office and processes more than 50 percent of cases. The board has occupied its current building since March 2009, with an annual rent of \$259,000. DGS determined that the existing office space does not fully comply with federal and state laws that establish standards to ensure buildings are accessible to people with disabilities. DGS directed PERB to move to a building that complies with these laws before February 2017, when the “soft term” of the existing lease expires. The Administration’s proposal provides \$100,000 one-time funding for moving to the new building, and \$117,000 on an ongoing basis, to pay for increased rental costs.

Staff Recommendation:

1. Approve \$885,000 to fund three of the proposed five positions, specifically one supervising attorney, one conciliator, and one staff services manager, and the balance to address operating expenses, and approve proposed funding for office relocation
2. Adopt the following budget bill language requiring PERB to report to the Joint Legislative Budget Committee, other fiscal committees of the Legislature, and the Legislative Analyst’s Office on its workload and resources:

The amount of time it takes the Public Employment Relations Board (board) to resolve labor disputes brought before it has an effect on labor relations and state and local governments’ ability to provide services to the public. Accordingly, it is the intent of the Legislature to provide the board sufficient resources to effectively and efficiently resolve cases in a timely manner. On or before January 10, 2017, and May 14, 2017, the board shall report to the Chairperson of the Joint Legislative Budget Committee, the chairpersons of the other fiscal committees of the Legislature, and the Legislative Analyst’s Office on its workload and resources. Specifically, for each of the three divisions of the board that resolve labor disputes—Office of General Counsel, Administrative Law Judges, and State Mediation and Conciliation, the board shall report for each quarter between July 1, 2015 and the reporting deadline (1) the number of open cases, (2) case aging and average processing time, (3) the number of authorized positions in the Division, and (4) the number of filled positions in the division.

Vote:

7350 DEPARTMENT OF INDUSTRIAL RELATIONS**Issue 1: Revenue and Expenditure Alignment for Various Special Funds**

Summary: The Governor's budget proposes to align expenditure authority and special fund revenue from various fees and permits to the appropriate program; increase resources for labor law enforcement in the car wash program to help bring its special funds into balance; delete decades-old statutory caps on certain fees to allow for proper cost recovery; and clean up and standardize language for various fees and permits. This proposal includes statutory changes to various sections of the Labor Code for the Division of Occupational Safety & Health (DOSHS) and the Division of Labor Standards Enforcement (DLSE).

Approximately \$1.6 million in regulatory licenses and permits are deposited into the General Fund each year as a result of the DIR's regulatory activities, even though the General Fund no longer provides any support to the department.

Subcommittee action on April 21, 2016. The subcommittee held the Car Wash Worker Fund component of this issue open, and the balance of the BCP was approved.

May Revise. The Administration proposed the following amendments for the Car Wash Worker Fund to clarify that the registration fee would not be increased unless the fund balance is projected to fall below 25 percent of annual expenditures:

2059. (a) The commissioner shall establish and collect from employers a registration fee of ~~two hundred fifty dollars (\$250)~~ for each branch location. The commissioner may periodically adjust the registration fee ~~fee for inflation~~ to ensure that it is sufficient to fund all direct and indirect costs to administer and enforce the provisions of this part.

(b) In addition to the fee specified in subdivision (a), each employer shall be assessed an annual fee equal to twenty percent of the registration fee established pursuant to subdivision (a) ~~of fifty dollars (\$50)~~ for each branch location, which shall be deposited in the Car Wash Worker Restitution Fund.

(c) The fee established pursuant to subdivision (a) shall not be increased unless the published fund balance is projected to fall below 25% of annual expenditures.

Staff Recommendation: Adopt placeholder TBL as proposed.

Vote:

Issue 2: Concrete Delivery and Public Works

Governor's Proposal: The May Revision proposes trailer bill language makes technical changes regrading concrete delivery and public works contracts to provide greater clarity for its implementation. Specifically, the language:

- Clarifies that nothing in the section shall cause an entity to be treated as a contractor or subcontractor for any purpose other than this section.
- Extends the time an entity hauling ready-mixed concrete can submit certified payroll records from three to five days.
- Clarifies that the section does not apply to public works contracts that are advertised for bid or awarded prior to July 1, 2016. .

On April 21, 2016, the subcommittee approved an augmentation of \$133,000 and one deputy labor commissioner I in FY 2016-17 and \$125,000 ongoing to implement AB 219 (Daly), Chapter 739, Statutes of 2015, which expands the definition of "public works" under the California Prevailing Wage Law to include "the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state."

Staff Recommendation: Approve as proposed.

Vote:

7501 DEPARTMENT OF HUMAN RESOURCES**Issue 1: Civil Service Improvement**

Governor's Budget: The subcommittee heard this item at its April 21, 2016 hearing, and held the item open. The Governor's budget requests the following resources over the next three years to implement civil service improvement reforms:

- 16 positions and \$1.92 million (\$606,000 General Fund, \$848,000 Reimbursement, \$462,000 Central Service Cost Recovery Fund) in fiscal year 2016-17;
- 17 positions and \$1.85 million (\$558,000 General Fund, \$864,000 Reimbursement, \$426,000 Central Service Cost Recovery Fund) in fiscal year 2017-18, and
- \$1.84 million (\$558,000 General Fund, \$855,000 Reimbursement, \$426,000 Central Service Cost Recovery Fund) in fiscal year 2018-19 to implement Civil Service Improvement reforms and identify new areas for improvement.

Staff Recommendation: Approve the proposed positions.

Vote:

7920 CALIFORNIA TEACHERS' RETIREMENT SYSTEM (STRS)**Issue 1: Revised Creditable Compensation (May Revision)**

Governor's Proposal: The Administration requests an increase of \$4.6 million General Fund due to an increase in creditable compensation reported by STRS for fiscal year 2014-15. The defined benefit payment will be increased by \$1 million, the pre-1990 defined benefit level payment will be increased by \$2.2 million, and the supplemental benefit maintenance account contribution will be increased by \$1.3 million. These adjustments represent existing statutory funding requirements.

Staff Comment: Staff has no concerns with this proposal.

Staff Recommendation: Approve as proposed.

Vote:

CONTROL SECTION 3.60**Issue 1: Rate Adjustments (May Revision)**

Governor's Proposal: The Administration requests that Control Section 3.60 be amended to capture reductions in state retirement contribution rates adopted by the CalPERS Board on April 18, 2015.

Background and Detail: The reduction is a result of new hires entering the system under lower benefit formulas pursuant to the Public Employees' Pension Reform Act of 2013, stronger than expected investment performance, higher mortality rates, and greater than expected contributions to the system.

The newly adopted state employer contribution rates result in total state costs of \$452.8 million and a decrease of \$89.8 million from the \$542.6 million included in the Governor's 2016-17 budget. Of the \$89.8 million, the General Fund amount is \$42.9 million, special funds are \$32.8 million and other nongovernmental cost funds are \$14.1 million. Additionally, it is requested that CalPERS' fourth quarter deferral be reduced by \$7.0 million General Fund from the Governor's budget to reflect the changes in retirement rates. The net effect of these changes is a decrease of \$35.9 million General Fund in 2016-17 as compared to the Governor's budget.

Staff Comment and Recommendation: Staff has no concerns. Approve as proposed.

Vote:

Issues Proposed for Discussion/Vote

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)

Issue 1: Paid Family Leave and State Disability Insurance Rate Increase (May Revision Proposal)

Governor's Proposal: The May Revision proposes a one-time augmentation of \$5,028,000 from the Unemployment Commensation Disability Insurance Fund in Fiscal Year (FY) 2016-17, along with a one-time augmentation of \$629,000 in FY 2017-18, to support the costs incurred as a result of AB 908 (Gomez), Chapter 5, Statutes of 2016. These resources will be used to fund vendor contracts and 16.4 Pes to perform modifications to the State Disability Insurance (SDI) program applications and processes as required to comply with AB 908.

AB 908 modifies the SDI program by increasing the wage replacement rate to 60 percent for middle and high-income workers, and to 70 percent for low-income workers. In order to comply with AB 908, extensive programming of the Employment Development Department's automated systems is required along with updates to SDI forms, publications, procedures, and training.

Background. The EDD will need to make programming changes to two major IT systems - the Single Client Database (SCDB) and the SDI Online system. The SCDB is EDD's main database and contains the wage and benefit data for the Unemployment Insurance and SDI programs. The SDI Online system allows customers to file SDI claims online. These systems would need to be programmed to capture the state average weekly wage for benefit calculation, and provide editing capabilities to accommodate future increases to the average weekly wage. EDD IT staff will be utilized to make changes to the SCDB, while vendor staff will be leveraged to make changes to the SDI Online system.

For FY 2016-17, EDD requires 11.1 PEs of state IT staff and one program position for the following activities in addition to the vendor:

- Project management including scheduling, identifying and managing project risk.
- Requirements elicitation and refinement.
- Developing test scripts, test plans for system, interface, user, penetration, end to end and stress testing (these are done by non-prime vendor staff to ensure the solution truly meets the department's needs).
- Analysis, design, coding, and testing of mainframe (SCDB) changes to both the SDI and PFL calculations.
- Setting up performance environments, databases, and providing support during project phases.
- Updating of SDI/PFL forms and publications, updating of information on the EDD website, and updating manuals and procedures for staff along with providing staff training on the new program changes.

Additionally, a significant portion (\$3.3 million) of the estimated one-time IT costs would be for a vendor to make changes to the SDI Online system, and for testing of those changes by vendor staff (along with EDD staff). Changes would also be required to the PFL application and the claims scanning/data capture system that EDD uses.

For SFY 2017-18, EDD requires 4.3 PEs of state IT staff for continued testing of the changes to the SCDB and SDI Online applications and to ensure that they will be able to revert to the previous calculation methodologies (effective January 1, 2022, pursuant to the provisions of AB 908). The required legislative reports will also be developed during this time period.

The EDD project management framework will ensure accountability for the requested funds. All vendor contracts related to this project will be deliverables-based to ensure delivery of appropriate hardware, software, documentation, etc., prior to payment. The vendor contracts will include language that states EDD shall be the sole judge of the acceptance of all work performed and all work products produced by the contractor to ensure quality standard are met.

The EDD uses the Cost and Resources Management Group within the Information Technology Branch to account for all dollars spent on staffing, hardware, software, and vendor contracts. EDD management will review staffing reports to ensure all project team members are fully engaged on the project.

The table below provides a schedule of milestones and targeted completion dates for this project:

| Major Milestones | Estimated completion dates |
|-------------------------|-----------------------------------|
| Project Initiation | May 31, 2016 |
| Requirements Phase | June 30, 2016 |
| Design Phase | September 30, 2016 |
| Development Phase | June 30, 2017 |
| Testing Phase | September 30, 2017 |
| Implementation | October 24, 2017 |
| Project Closeout | February 1, 2018 |

Staff Recommendation: Approve as proposed.

Vote:

Issue 2: Workforce Innovation Opportunity Act (WIOA) Discretionary Workforce Funds

The Governor’s Proposal: The May Revision proposes to use an increase of \$22 million discretionary workforce funds for a mix of purposes, including \$10 million and 58 positions for staff resources and training, \$8.6 million for grant expansion, and \$1.6 million for technological upgrades.

Background. Federal law provides that a certain portion of federal Workforce Innovation and Opportunity Act (WIOA) funding, up to 15 percent, may be held by the state for “statewide workforce investment activities,” while the remainder of WIOA funds are passed on to Local Workforce development boards to provide services to unemployed or underemployed adults and youth. The statewide funds are sometimes referred to as “discretionary funds.” The actual amount of discretionary funds that may be reserved at the state level, subject to the 15 percent cap, depends on congressional appropriations. In 2015-16, the state was able to reserve 10 percent of WIOA funds as discretionary funds. In 2016-17, the state may reserve 15 percent of WIOA funds as discretionary workforce funds. This results in an increase in total discretionary funds in 2016-17 of \$23.1 million from the prior year.

The Administration has proposed a mix of new programs and augmentations to previously existing programs, as shown in the table below. As in recent years, the administration’s proposal prioritizes the use of discretionary funds to develop the capacity of the state’s local workforce development system in areas that are emphasized by the federal WIOA legislation, including regional coordination and planning, program alignment, data sharing, and sector strategies. A portion of the discretionary funds are also provided to support programs that directly provide services to certain target populations. For example, the May Revision proposal includes additional funding for the Governor’s Award for Veteran’s Services and the Regional Workforce Accelerator program, focusing on ex-offender and immigrant populations, which are described in more detail below.

| Proposed Allocation of Increased WIOA Discretionary Funds in 2016-17 (Dollars in millions) | |
|--|-------|
| Funding for New Programs/Activities | |
| Technical assistance and training for state and local staff to implement State Strategic Workforce Plan. | \$5.0 |
| Funding to place unemployment insurance staff in AJCC’s: 48 positions for Employment Development Department to fund at least one UI trained individual in a designated comprehensive America's Job Centers of California to train existing workforce service staff and provide UI assistance. | 3.5 |
| Awards for development of model multiple-employer industry sector programs: This is a competitive Industry Sector grant for local workforce areas of coalitions to develop multi-employer workforce initiatives to develop career pathways for sectors with projected job growth. | 2.0 |
| Awards for “high performing boards,” pursuant to SB 985 (Lieu), Chapter 497, Statutes of 2011: This will provide grant awards to 33 local workforce investment boards that have received High-Performing Board status to engage businesses and workforce partners. | 1.7 |

| | |
|---|---------------------------|
| Improvements to the CalJOBS system: This will develop a mobile job search application, enhance document management and scanning capabilities, automate tracking of services using scan card technology, and develop a customer relationship management system. | 1.6 |
| WIOA program evaluation: This will provides research and evaluation of program practices from all discretionary and other CWDB and EDD investments. | 1.5 |
| Increased staff capacity for regional planning: This will support regional staff capacity to provide assistance and consulting grantee communities, Slingshot work, and the development of WIOA regional plans. | 1.2 |
| Performance and Participant Data Alignment: This will fund the development and implementation of state-level and local data sharing to improve services for job seekers as required under WIOA. | 1.0 |
| Support for Local Workforce Area consolidation planning: This will support and assist multiple local workforce areas to within a planning region to facilitate the re-designation into a single workforce area. | 0.6 |
| Labor market information support for local boards ^a | 0.5 |
| Subtotal | (\$18.6) |
| Augmentations to Existing Programs/Activities | |
| Governor's Award for Veteran's Grants: This will fund competitive grants with a focus on transitioning veterans into high-wage, high-demand occupations. | \$2.3 |
| Regional Workforce Accelerator Program (focusing on formerly incarcerated and immigrant populations): This program grants award to local programs to develop strategies and services to remove barriers and create improvements in training and job placement. | 2.0 |
| Disability Employment Initiative: This will expand funding for the Disability Employment Accelerator to support people with disabilities gain the necessary skills for employment. | 0.6 |
| Local program oversight and technical assistance. ^a | 0.5 |
| CWDB administration, policy development, and program partner coordination: This will provide nine positions for the California Workforce Development Board to handle the increased workload and responsibilities associated with WIOA implementation. | 0.5 |
| Financial management and information technology. ^a | 0.3 |
| EDD administration. ^a | 0.1 |
| Subtotal | (\$6.3) |
| Total | \$24.9^b |
| <p>a. The May Revision proposal includes a request for 10 additional positions associated with the combined increased funding for these items. b. Reflects a \$23.1 million year-over-year increase discretionary funds plus \$2.8 million in funds freed up by year-over-year reductions in funding for certain items, partially offset by a \$1 million year-over-year reduction in WIOA discretionary funds available to be carried in from the prior year.</p> <p>AJCC = America's Job Center of California (formerly known as OneStops), WIOA = Workforce Innovation and Opportunity Act, CWDB = California Workforce Development Board, and EDD = Employment Development Department.</p> | |

Legislative Analyst's Office. The May Revision proposal is consistent with federal law and with the recently completed State Strategic Workforce Plan, and the LAO has raised no issues. However, the LAO would also note that discretionary funds may be used to support a variety of programs and activities and that the Legislature may have priorities that differ from those in the May Revision.

Staff Recommendation: Approve as proposed.

Vote:

7350 Department of Industrial Relations (DIR)**Issue 1: Private Attorney General Act (PAGA)**

Governor's Proposal: The Governor proposes trailer bill language to amend the Private Attorney General Act. Specifically, the proposal:

1. Requires new case notices and any employer response to such a notice to be accompanied by a \$75 filing fee. Provides for waiver of fees for parties entitled to “in forma pauperis” status, using same standards applicable to court filing fees. The new notice filing fees will be recoverable costs in a PAGA action.
2. Requires plaintiff to provide Labor Workforce Development Agency (LWDA) with a file-stamped copy of the court complaint within 10 days following commencement of a civil action. This requirement is limited to cases filed on or after July 1, 2016.
3. Changes current superior court review and approval of PAGA penalties sought in proposed settlement to court review and approval of all settlements in PAGA actions.
4. Requires copy of proposed settlement to be submitted to LWDA at same that it is submitted to the court.
5. Requires parties to provide LWDA with a copy of the court’s judgment and any other order that denies or awards PAGA penalties within 10 days after entry.
6. Requires online filing/transmission of all items that must be submitted to LWDA.
7. Extends various time lines, including:
 - a. The time LWDA review new cases from 30 to 60 days.
 - b. The time after which a plaintiff may file suit if not notified of LWDA’s decision to accept a case for investigation from 33 to 65 days.
 - c. The time for LWDA to notify parties of intent to investigate violation from 33 to 65 days.
 - a. Provides LWDA with option to send notice to extend the 120 day time limit for investigating and citing the employer by an additional 60 days. (This provision will sunset in 2021, pursuant Section 4 of the bill.)

Background. When an employer does not pay wages as required by law (such as overtime), statute allows employees to recover these wages, either through an administrative proceeding with the state’s Labor and Workforce Development Agency (LWDA) or through private legal action in superior court. In addition to wages that may be recovered, statute also specifies civil penalties may be imposed on employers who violate Labor Code provisions. These civil penalties are intended to act as a deterrent against violations. The LWDA and the related state agencies that it oversees, including DIR, the Division of Labor Standards Enforcement (DLSE) and Division of Occupational Safety and Health (DOSH) within DIR, are responsible for enforcing the Labor Code and are authorized to impose civil penalties.

Employees may seek to recover wages improperly withheld through private legal action against the employer, and for those who do so, the PAGA—enacted by SB 796 (Dunn) Chapter 906, Statutes of 2003 and SB 1809 (Dunn), Chapter 221, Statutes of 2004—grants employees the right to additionally seek civil penalties from employers. Prior to PAGA, penalties could only be pursued by LWDA and related state agencies. The general intent of PAGA is to allow employees to pursue civil penalties through the legal system when LWDA and related state agencies do not have the resources to do so. While civil penalties collected by LWDA are generally deposited in the state General Fund, any penalties collected under PAGA are split between the employee, who receives 25 percent, and LWDA, which receives the remaining 75 percent. The LWDA's portion of PAGA penalties is deposited into the Labor and Workforce Development Fund (LWDF), which is used for enforcement of labor laws and to educate employers and employees about their rights and responsibilities under the Labor Code.

PAGA Process. An individual who wishes to pursue civil penalties against an employer must provide a written notice to both the employer and LWDA of the alleged violations and his or her intent to pursue civil penalties under PAGA. This notice is the first step in a PAGA claim. This notification requirement is intended to allow LWDA to step in and investigate claims that it views as preferable to handle administratively rather than through the PAGA process, such as when the claim overlaps with other matters already under investigation by LWDA. LWDA notes that since 2014, only one position performs a high-level review of PAGA notices and determines which claims to investigate. As a result, less than half of PAGA notices were reviewed, and less than one percent of PAGA notices have been reviewed or investigated since PAGA was implemented.

In most cases, LWDA has 30 days to determine whether to investigate and, if it does investigate, 120 additional days to complete the investigation and determine whether to issue a citation. If LWDA does not investigate, or does investigate but does not issue a citation, or when an investigation is not completed, or not completed on time, the PAGA claim is automatically authorized to proceed. For certain violations that are considered less serious (for example, failing to correctly display the legal name and address of the employer on an itemized wage statement), employers are provided 33 days to prevent a PAGA claim from proceeding by correcting the alleged violations. When a PAGA notice is investigated, LWDA reports that it has difficulty completing the investigation within the timeframes outlined in PAGA.

Once the PAGA claim proceeds, LWDA typically receives no further information beyond payment of the portion of any civil penalties that is due to the LWDF. Civil penalties can be assessed through the PAGA process in two ways. When the court finds that the allegations in the PAGA claim have merit, they have the authority to impose civil penalties. Alternatively, the parties to the claim may settle out of court and include civil penalties as part of such a settlement. However, not all settlements include civil penalties. When cases that involve a PAGA claim settle out of court and civil penalties are included as part of the settlement, PAGA requires court review and approval of the settlement.

Staff Comment: The subcommittee rejected the Governor's January trailer bill proposal regarding PAGA without prejudice, as much of the proposal warranted a larger policy discussion, and directed the Administration to return with a compromise proposal. This new trailer bill proposal removes several items that raised significant policy questions, including the ability to allow DIR to comment and object to proposed settlement in PAGA cases, requiring PAGA notices involving multiple employees to be verified, and allowing DIR to create an ad hoc employer amnesty program.

Staff Recommendation: Approve placeholder TBL.

Vote:

7900 California Public Employees' Retirement System (CalPERS)**Issue 1: CalPERS Board-Approved Budget**

Governor's Proposal: The Governor proposes various budget bill amendments to incorporate the CalPERS board-approved budget into the budget act. These changes are as follows and are display items for informational purposes to reflect a change in CalPERS' continuous appropriation authority.

- Item 7900-003-0830 is decreased by \$26.4 million.
- Item 7900-015-0815 is increased by \$515,000.
- Item 7900-015-0820 is increased by \$117,000.
- Item 7900-015-0830 is increased by \$510,000.
- Item 7900-015-0833 is increased by \$1.5 million.
- Item 7900-015-0849 is increased by \$7,000.
- Item 7900-015-0884 is increased by \$615,000.
- An increase of 39 positions.

The budget adopted by the CalPERS board reflects a total budget of \$1.788 billion, which represents a decrease of \$16.3 million percent from the 2015-16 budget of \$1.807 billion. These changes reflect the 2016-17 budget approved during the April 18, 2016 CalPERS board meeting. The budget's reduction is primarily driven by higher than anticipated position vacancies and lower than anticipated outside counsel and third party investment management fees.

It is also requested that Item 7900-001-0822 be added in the amount of \$40.5 million to replace Item 7900-015-0822 which is being eliminated. This includes an increase of \$6.9 million to reflect the budget approved by the CalPERS board.

Staff Recommendation: Approve the Governor's incorporation of the board-approved CalPERS budget into the state budget.

Vote:

Issue 2: CalPERS Health Benefit Administration

Governor's Proposal: The Governor's budget proposes changes in budget bill language and trailer bill language that effect the administration of the CalPERS health benefit.

Budget Bill Changes. The budget bill changes are summarized below:

- **Contingency Reserve Fund (CRF) Appropriation.** Authorizes the Department of Finance (DOF) to reduce the current year appropriation to reflect reductions in the CRF surcharge (Control Section 4.20) as a result of premium changes.
- **Remove Medicare Report Requirement Language.** CalPERS has met what was envisioned as a one-time reporting requirement.
- **Zero-Based Budgeting.** Directs CalPERS to work with DOF on a zero-based budgeting exercise for health care administration expenses, to prepare for the 2017-18 budget.
- **Removes 100-Day Report.** Deletes the 100-day reporting requirement.
- **Risk Adjustment.** Requires CalPERS to submit a one-time report on or before October 2016 covering the administration of its health care premium risk adjustment procedures for the premium years of 2014 through 2017.
- **Clarify Authority for Current Year Executive Order.** Adds revised dental rates to DOF authority to adjust for actual rates that have been negotiated.

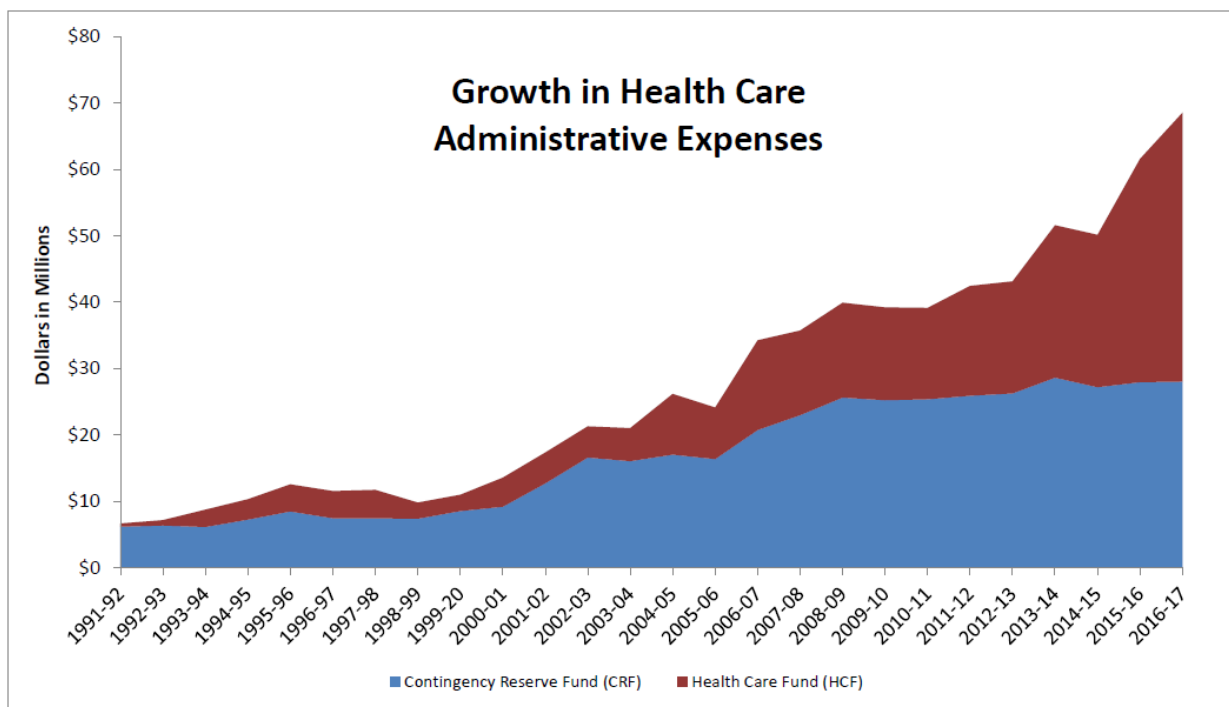
Trailer Bill Language. The Administration has proposed trailer bill language that does the following.

- **Legislative Oversight of the Contingency Reserve Fund (CRF).** Clarifies existing statute that health care administrative expenses in the CRF must be approved by the Legislature.
- **Legislative Oversight of the Public Employees Health Care Fund (HCF).** Establishes that health care administrative expenses in the HCF must be approved by the Legislature.
- **Risk Adjustment.** Requires CalPERS to disclose both adjusted and unadjusted risk single party premiums for each health plan.
- **Administrative Expenses.** Establishes that the state CRF surcharge is to be used for administrative expenses incurred on behalf of state employees and retirees.
- **Administrative Expenses.** Authorizes CalPERS to customize the CRF surcharge for contracting agencies (local agencies) based on service levels provided.

Background: CalPERS uses two funds to pay for its health care program administrative expenses. The first is the Contingency Reserve Fund (CRF). The CRF was established in 1962 to fund program-wide administrative activities for the CalPERS health care program. An employer-paid surcharge is levied on all health plays to pay for state personnel and operating expenses, and maintain a reserve. All funding changes to the CRF require approval through the annual legislative budget process.

The second fund is the Health Care Fund (HCF). The HCF was established in 1988 to fund the self-funded health benefit plans administered by CalPERS (PERSCheck, PERSCare, PERSSelect) that rely upon cash flows from premiums and investment income to fund health benefit payments. In addition, certain administrative costs can be run through this fund. These costs are not subject to the annual budget process.

As shown in the figure below, costs in the CRF have remained relatively flat in the last five years, while costs in the HCF have increased significantly. As a result, the Department of Finance has become concerned about the costs for this fund not being subject to the annual budget process and is recommending that the HCF go through the same budgetary processes as the CRF.



Risk Adjustment. Risk adjustment is used for a variety of purposes in the health care industry. One of the principal uses of risk adjustment is to set payments for health plans to reflect expected treatment costs of their members. Because of differences in health status and treatment needs, the cost of health care will vary from person to person. Without risk adjustment, plans have an incentive to enroll healthier patients and avoid sick patients, especially in cases where plans cannot use health status to set premiums. With risk-adjustment plans, receive a higher payment for members with multiple chronic illnesses than for members with no or limited health problems. If risk adjustment is done well, it should reduce the incentives for plans to avoid patients they expect to be costly. Risk adjustment was adopted as one of the major health reforms envisioned under the federal Affordable Care Act (ACA) to ensure that a health care plan will not benefit from enrolling a disproportionate share of healthy patients.

AB 2141 (Furutani), Chapter 445, Statutes of 2012, authorizes CalPERS to implement risk adjustment procedures that adjust and redistribute premium payments across its health plans based on rules and regulations established by the CalPERS Board of Administration. The bill also establishes that any risk adjustment program or procedure would be at the sole discretion of the board. The bill analysis states that this proposed risk-adjustment model could potentially save money to the extent that it encourages members to select the most cost-efficient health plans. Any savings will depend on several factors including: the adjustment methodology; the speed at which member behavior changes as a result; and the contribution formulas for the various participating employers and their employees/retirees.

Staff Comment: DOF has raised legitimate concerns that both of the funds (CRF and HCF) that are used to pay for the administration of CalPERS health benefit programs should be subject to the same level of oversight and that the Legislature should approve both funds through the annual budget process.

In addition, CalPERS was given the authority and directed to use risk adjustment for its health benefit plans. This approach is commonly accepted and used in the health care industry. At this time, DOF has not provided adequate justification for CalPERS to need to report on its risk adjustment procedures. If there are concerns about the efficacy of CalPERS' risk adjustment procedures, it may be more appropriate for this issue to be considered by the health policy committee, not the budget committee. Similarly, the policy issues associated with the administrative expenses for local governments seem more appropriate for consideration by the policy committees, not the budget committee.

Staff Recommendation: Approve as proposed all of the changes to the proposed budget bill language except for the requirement that CalPERS complete a report on its risk adjustment procedures. Adopt placeholder trailer bill language to approve the two changes in the proposed budget trailer bill language that ensure that both the CRF and HCF are approved by the Legislature and reject the remaining proposed changes related to risk adjustment and administrative expenses. Direct the Administration to pursue consideration of all items related to CalPERS' authority to use risk adjustment procedures and the policy issues associated with the administrative expenses for local governments to the policy committees for further discussion.

Vote:

9800 Augmentation for Employee Compensation and Control Section 3.61**Issue 1: Scheduled Employee Compensation Augmentation Increases (May Revision proposal)**

Governor's Budget Proposal: Budget Item 9800 allows for adjustments in departmental budgets to account for changes in employee compensation, including salaries, health and retirement benefits. This proposal would increase Item 9800-001-0001 by \$314,073,000, would increase Item 9800-001-0494 by \$32,345,000, and would increase Item 9800-001-0988 by \$15,931,000 to reflect changes discussed below.

Control Section 3.61 is used to prefund retiree health benefits through departmental budgets. The May Revision requests CS 3.61 be amended to reflect additional employer contributions for prefunding other postemployment benefits based on a recent agreement that has been collectively bargained with Bargaining Unit 6 (Correctional Officers.)

Background: Item 9800 includes all augmentations in employee compensation. These reflect increased enrollment in health and dental plans; updated employment information for salary increases previously provided in the Governor's budget; revised pay increases for judges; updated costs related to the salary survey estimates for the California Highway Patrol (Bargaining Unit 5); salary increases and benefit changes for state employees of the Judicial Branch and Commission on Judicial Performance, including justices and trial court judges; increase to salaries and revised benefits recently negotiate with correctional officers (Bargaining Unit 6) and scientists (Bargaining Unit 10); pay increases related to minimum wage changes (SB 3 (Leno), Chapter 4, Statutes of 2016); and retention incentives for the Department of Developmental Services facilities in Fairview, Sonoma, and Porterville.

While these figures include estimated health and dental premium rates, the final rates are not expected to be adopted by the CalPERS board until June 2016. If the actual rates differ from the estimated rates, a technical correction to the budgeted amounts will be made.

Regarding the change to CS 3.61 in fiscal year 2016-17, the state will match correction officer employees' contributions of 1.3 percent, effective July 1, 2016. Additionally the Judicial Council has agreed to adopt the Administration's retiree health prefunding strategies. Therefore, state employees of the Judicial Branch will also begin making contributions towards prefunding other postemployment benefits. In 2016-17, the state will match Judicial Branch state employees' contributions of 1.5 percent effective July 1, 2016.

Staff Comment: Staff has no concerns with these proposals.

Staff Recommendation: Approve as proposed.

Vote:

9804 Augmentation for Contracts Impacted by Minimum Wage**Issue 1: Control Section 3.63 (May Revision Proposal)**

Governor's Budget Proposal: The Governor's requests adding Control Section 3.63 to grant the Director of Finance the authority to fund expenditures for personal service contracts, or other personnel costs outside of standard civil service compensation, that are in accordance with Senate Bill 3 (Leno), Chapter 4, Statutes of 2016. This proposal would add Item 9804-001-0001 with the amount of \$2 million, and Item 9804-001-0494 with the amount of \$500,000, for additional costs related to personal service contracts impacted by the minimum wage.

Background: As part of regular operations, the state may enter into personal service contracts with local governments and other business entities to perform services for California. Some personal service contracts are directly impacted by minimum wage, notably California Department of Forestry and Fire Protection (CAL FIRE), which contracts with cities and counties to protect remote areas of the state. As the minimum wage rises for locally contracted fire fighters, there is an increased pressure on the state to augment contracts with these entities. This control section provides the Administration authority to augment departmental budgets that are directly impacted by minimum wage-related personal service contracts. Absent this control section, each individual department impacted by minimum wage personal service contracts would be required to submit annual budget change proposals. The legislature maintains the authority to augment this item (9804) annually, providing the Administration flexibility to allocate these funds without the need for individual budget change proposals. This proposal provides both the Administration and Legislature the flexibility to fund the impacts of the minimum wage legislation.

Six departments will be impacted by the new control section, CAL FIRE, California Conservation Corps, California Science Center, California Department of Transportation, Board of Equalization, and the Department of Industrial Relations.

Staff Recommendation: Approve as proposed.

Vote:

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 19, 2016
Upon Adjournment of Session
State Capitol - Room 113

Consultant: Anita Lee and Farra Bracht

PART B

VOTE-ONLY ISSUES

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

Issues Proposed for Vote-Only

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

| |
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| Issue 1: Benefit Overpayment Collection Automation Resource |
|--|

Spring Finance Letter: The Governor requests a one-time budget augmentation of \$1.6 million in FY 2016-17 and a one-time augmentation of \$6.1 million in FY 2017-18. This finance letter also requests an ongoing appropriation of \$1.1 million, beginning in FY 2018-19, for the support of the new Benefit Overpayment Collection System (BOCS) application. These requests will be used to fund contracts, hardware, software, ongoing support, and 12.3 new temporary PEs to replace the existing application used to collect unemployment insurance and disability insurance overpayments with an integrated and automated system. This item was heard in committee on April 21, 2016, and was held open.

The proposed solution will significantly reduce the risk of failure of the existing system by integrating the BOCS application into the Accounting and Compliance Enterprise System (ACES), which will also allow for a new revenue collection tool in the form of bank levies, which is estimated to bring in almost \$23 million in additional funds annually, once fully implemented.

Staff Recommendation: Approve as proposed.

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| Issue 2: Unemployment and Insurance Program Administration |
|---|

The Governor’s May Revision includes various technical changes:

| Item | |
|---------------------------------|--|
| 7100-002-0001 | Unemployment Insurance Loan Interest Rate Reduction —Decrease of \$13.06 million to reflect reduced interest due to the federal government for borrowing that has occurred to provide unemployment benefits without interruption. |
| 7100-101-0871 and 7100-111-0890 | Unemployment Insurance Benefit Adjustments —Decrease of \$124.42 million to reflect a projected decrease in UI benefit payments due to historical trends and benefit payment projections. Decrease current year UI Benefit Authority in 2016-16 Fiscal Year by \$358.176 million due to improvement in the economy. |
| 7100-101-0588 | Disability Insurance Benefit Adjustment —Decrease of \$315.04 million to reflect a projected decrease in benefit payments due to lower anticipated average weekly benefit payments. Additionally, DI benefit authority in 2015-16 is decreased by 131.51 million based on decrease of current year benefit durations. |
| 7100-101-0908 | School Employees Fund Adjustment —Increase of \$11 million to reflect a projected increase of benefit payments and increase of \$12.58 million in current year benefit authority. |

Staff Recommendation: Adopt as proposed.

Vote:

Issue 3: Workforce Innovation and Opportunity Act (WIOA) Local Assistance Adjustments

Governor's Proposal. The May Revision proposes to decrease Item 7100-101-0869 and 7100-101-0890 by \$3.3 million to align budget authority with current federal allotments for local area activities. The benefit authority in 2015-16 is also being increased by \$834,000 to align with the federal youth activities funding.

Staff Recommendation: Approve as proposed.

Issue 4: Workforce Innovation and Opportunity Act (WIOA) Data Sharing

Governor's Proposal. The May Revision proposes trailer bill language that allows various departments to share information to support performance measurement and program evaluation under WIOA. Specifically, the language:

- Provides the California Workforce Development Board and other state agencies, such as the Chancellor of the California Community Colleges, the California Superintendent of Public Instruction, California Department of Rehabilitation, the California Department of Social Services, access to any relevant quarterly wage data for performance evaluation purposes under WIOA, along with other groups such as the Adult Education Grant Consortia and the community college Strong Workforce Taskforce.
- Authorizes the Department of Education to share necessary confidential information for performance tracking purposes with the Employment Development Department (EDD).

These changes will address data sharing gaps and legal barriers that could impede reporting requirements detailed under the WIOA. Without access to this information, under WIOA, the failure to report timely or complete performance data could result in a sanction to the Governor's Discretionary fund. While late quarterly reports (which begin later this year) do not appear to specifically be subject to sanctioning, they are necessary to track performance goals.

Staff Recommendation: Adopt placeholder trailer bill language.

Vote:

Issue 5: Unemployment Insurance Program Funding (May Revision Proposal)

Governor's Proposal: The Governor requests a reduction of \$4.5 million and 46.9 PE in Unemployment Administration authority for 2016-17 due to updated workload estimates. In addition, this request also includes a proposal to reduce the Benefit Audit Fund by \$23.6 million, and replace it with increases of \$19.7 million in General Fund and \$3.9 million in Contingent Fund (CF) due to in lower than previously anticipated revenue collections for the Treasury Offset Program.

- Item 7100-001-0001 is increased by \$19,651,000 and 154.1 positions
- Item 7100-001-0184 is decreased by \$23,611,000 and 185.2 positions
- Item 7100-001-0185 is increased by \$3,960,000 and 31.1 positions
- Item 7100-001-0870 is decreased by \$4,513,000 and 46.9 positions
- Item 7100-011-0890 is decreased by \$4,513,000 (non-add item)

In January, EDD proposed to increase funding for UI administration from the BAF and the CF to backfill a loss in federal funds. A portion of available BAF and CF funds were anticipated to come from the Treasury Offset Program (TOP), which allows the state to collect from UI claimants with overpayment liabilities by deducting the overpayments from claimants' federal income tax refunds. Revenues to BAF and CF from TOP were higher than expected in 2015-16. However, revenues from TOP in 2016-17 are now anticipated to be significantly less than estimated in EDD's January proposal. As a result, EDD estimates that \$19.7 million of General Fund support is needed to continue meeting service level targets.

Staff Recommendation: Approve as proposed.

Vote:

7320 PUBLIC EMPLOYMENT RELATIONS BOARD (PERB)**Issue 1: Augmentation to Reduce Backlog and Los Angeles Regional Office Relocation**

Governor’s Budget: The Governor proposes two augmentations for PERB: (1) \$885,000 General Fund to fund five new positions—bringing the board’s total position authority to 62 positions—and (2) \$217,000 General Fund to pay for costs associated with relocating the Glendale office.

The Administration indicates that its proposal for five new positions and \$885,000 in 2016-17 (\$873,000 ongoing) is intended to address increased workload, reduce backlogs, and contribute towards meeting statutory requirements. The requested funding would support four of the five positions. The fifth position would be funded with existing departmental resources freed up by canceling a contract with the Department of General Services (DGS) to provide administrative services. The new positions would be distributed across PERB’s four divisions, with two new supervising attorney positions under the Office of the General Counsel (one based in Oakland and one in Glendale).

The Los Angeles regional office is located in Glendale. This regional office is PERB’s busiest regional office and processes more than 50 percent of cases. The board has occupied its current building since March 2009, with an annual rent of \$259,000. DGS determined that the existing office space does not fully comply with federal and state laws that establish standards to ensure buildings are accessible to people with disabilities. DGS directed PERB to move to a building that complies with these laws before February 2017, when the “soft term” of the existing lease expires. The Administration’s proposal provides \$100,000 one-time funding for moving to the new building, and \$117,000 on an ongoing basis, to pay for increased rental costs.

Staff Recommendation:

1. Approve \$885,000 to fund three of the proposed five positions, specifically one supervising attorney, one conciliator, and one staff services manager, and the balance to address operating expenses, and approve proposed funding for office relocation
2. Adopt the following budget bill language requiring PERB to report to the Joint Legislative Budget Committee, other fiscal committees of the Legislature, and the Legislative Analyst’s Office on its workload and resources:

The amount of time it takes the Public Employment Relations Board (board) to resolve labor disputes brought before it has an effect on labor relations and state and local governments’ ability to provide services to the public. Accordingly, it is the intent of the Legislature to provide the board sufficient resources to effectively and efficiently resolve cases in a timely manner. On or before January 10, 2017, and May 14, 2017, the board shall report to the Chairperson of the Joint Legislative Budget Committee, the chairpersons of the other fiscal committees of the Legislature, and the Legislative Analyst’s Office on its workload and resources. Specifically, for each of the three divisions of the board that resolve labor disputes—Office of General Counsel, Administrative Law Judges, and State Mediation and Conciliation, the board shall report for each quarter between July 1, 2015 and the reporting deadline (1) the number of open cases, (2) case aging and average processing time, (3) the number of authorized positions in the Division, and (4) the number of filled positions in the division.

Vote:

7350 DEPARTMENT OF INDUSTRIAL RELATIONS**Issue 1: Revenue and Expenditure Alignment for Various Special Funds**

Summary: The Governor's budget proposes to align expenditure authority and special fund revenue from various fees and permits to the appropriate program; increase resources for labor law enforcement in the car wash program to help bring its special funds into balance; delete decades-old statutory caps on certain fees to allow for proper cost recovery; and clean up and standardize language for various fees and permits. This proposal includes statutory changes to various sections of the Labor Code for the Division of Occupational Safety & Health (DOSHS) and the Division of Labor Standards Enforcement (DLSE).

Approximately \$1.6 million in regulatory licenses and permits are deposited into the General Fund each year as a result of the DIR's regulatory activities, even though the General Fund no longer provides any support to the department.

Subcommittee action on April 21, 2016. The subcommittee held the Car Wash Worker Fund component of this issue open, and the balance of the BCP was approved.

May Revise. The Administration proposed the following amendments for the Car Wash Worker Fund to clarify that the registration fee would not be increased unless the fund balance is projected to fall below 25 percent of annual expenditures:

2059. (a) The commissioner shall establish and collect from employers a registration fee of ~~two hundred fifty dollars (\$250)~~ for each branch location. The commissioner may periodically adjust the registration fee ~~fee for inflation~~ to ensure that it is sufficient to fund all direct and indirect costs to administer and enforce the provisions of this part.

(b) In addition to the fee specified in subdivision (a), each employer shall be assessed an annual fee equal to twenty percent of the registration fee established pursuant to subdivision (a) ~~of fifty dollars (\$50)~~ for each branch location, which shall be deposited in the Car Wash Worker Restitution Fund.

(c) The fee established pursuant to subdivision (a) shall not be increased unless the published fund balance is projected to fall below 25% of annual expenditures.

Staff Recommendation: Adopt placeholder TBL as proposed.

Vote:

Issue 2: Concrete Delivery and Public Works

Governor's Proposal: The May Revision proposes trailer bill language makes technical changes regrading concrete delivery and public works contracts to provide greater clarity for its implementation. Specifically, the language:

- Clarifies that nothing in the section shall cause an entity to be treated as a contractor or subcontractor for any purpose other than this section.
- Extends the time an entity hauling ready-mixed concrete can submit certified payroll records from three to five days.
- Clarifies that the section does not apply to public works contracts that are advertised for bid or awarded prior to July 1, 2016. .

On April 21, 2016, the subcommittee approved an augmentation of \$133,000 and one deputy labor commissioner I in FY 2016-17 and \$125,000 ongoing to implement AB 219 (Daly), Chapter 739, Statutes of 2015, which expands the definition of "public works" under the California Prevailing Wage Law to include "the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state."

Staff Recommendation: Approve as proposed.

Vote:

7501 DEPARTMENT OF HUMAN RESOURCES**Issue 1: Civil Service Improvement**

Governor's Budget: The subcommittee heard this item at its April 21, 2016 hearing, and held the item open. The Governor's budget requests the following resources over the next three years to implement civil service improvement reforms:

- 16 positions and \$1.92 million (\$606,000 General Fund, \$848,000 Reimbursement, \$462,000 Central Service Cost Recovery Fund) in fiscal year 2016-17;
- 17 positions and \$1.85 million (\$558,000 General Fund, \$864,000 Reimbursement, \$426,000 Central Service Cost Recovery Fund) in fiscal year 2017-18, and
- \$1.84 million (\$558,000 General Fund, \$855,000 Reimbursement, \$426,000 Central Service Cost Recovery Fund) in fiscal year 2018-19 to implement Civil Service Improvement reforms and identify new areas for improvement.

Staff Recommendation: Approve the proposed positions.

Vote:

7920 CALIFORNIA TEACHERS' RETIREMENT SYSTEM (STRS)**Issue 1: Revised Creditable Compensation (May Revision)**

Governor's Proposal: The Administration requests an increase of \$4.6 million General Fund due to an increase in creditable compensation reported by STRS for fiscal year 2014-15. The defined benefit payment will be increased by \$1 million, the pre-1990 defined benefit level payment will be increased by \$2.2 million, and the supplemental benefit maintenance account contribution will be increased by \$1.3 million. These adjustments represent existing statutory funding requirements.

Staff Comment: Staff has no concerns with this proposal.

Staff Recommendation: Approve as proposed.

Vote:

CONTROL SECTION 3.60**Issue 1: Rate Adjustments (May Revision)**

Governor's Proposal: The Administration requests that Control Section 3.60 be amended to capture reductions in state retirement contribution rates adopted by the CalPERS Board on April 18, 2015.

Background and Detail: The reduction is a result of new hires entering the system under lower benefit formulas pursuant to the Public Employees' Pension Reform Act of 2013, stronger than expected investment performance, higher mortality rates, and greater than expected contributions to the system.

The newly adopted state employer contribution rates result in total state costs of \$452.8 million and a decrease of \$89.8 million from the \$542.6 million included in the Governor's 2016-17 budget. Of the \$89.8 million, the General Fund amount is \$42.9 million, special funds are \$32.8 million and other nongovernmental cost funds are \$14.1 million. Additionally, it is requested that CalPERS' fourth quarter deferral be reduced by \$7.0 million General Fund from the Governor's budget to reflect the changes in retirement rates. The net effect of these changes is a decrease of \$35.9 million General Fund in 2016-17 as compared to the Governor's budget.

Staff Comment and Recommendation: Staff has no concerns. Approve as proposed.

Vote:

Issues Proposed for Discussion/Vote

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)

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|--|
| Issue 1: Paid Family Leave and State Disability Insurance Rate Increase (May Revision Proposal) |
|--|

Governor's Proposal: The May Revision proposes a one-time augmentation of \$5,028,000 from the Unemployment Commensation Disability Insurance Fund in Fiscal Year (FY) 2016-17, along with a one-time augmentation of \$629,000 in FY 2017-18, to support the costs incurred as a result of AB 908 (Gomez), Chapter 5, Statutes of 2016. These resources will be used to fund vendor contracts and 16.4 Pes to perform modifications to the State Disability Insurance (SDI) program applications and processes as required to comply with AB 908.

AB 908 modifies the SDI program by increasing the wage replacement rate to 60 percent for middle and high-income workers, and to 70 percent for low-income workers. In order to comply with AB 908, extensive programming of the Employment Development Department's automated systems is required along with updates to SDI forms, publications, procedures, and training.

Background. The EDD will need to make programming changes to two major IT systems - the Single Client Database (SCDB) and the SDI Online system. The SCDB is EDD's main database and contains the wage and benefit data for the Unemployment Insurance and SDI programs. The SDI Online system allows customers to file SDI claims online. These systems would need to be programmed to capture the state average weekly wage for benefit calculation, and provide editing capabilities to accommodate future increases to the average weekly wage. EDD IT staff will be utilized to make changes to the SCDB, while vendor staff will be leveraged to make changes to the SDI Online system.

For FY 2016-17, EDD requires 11.1 PEs of state IT staff and one program position for the following activities in addition to the vendor:

- Project management including scheduling, identifying and managing project risk.
- Requirements elicitation and refinement.
- Developing test scripts, test plans for system, interface, user, penetration, end to end and stress testing (these are done by non-prime vendor staff to ensure the solution truly meets the department's needs).
- Analysis, design, coding, and testing of mainframe (SCDB) changes to both the SDI and PFL calculations.
- Setting up performance environments, databases, and providing support during project phases.
- Updating of SDI/PFL forms and publications, updating of information on the EDD website, and updating manuals and procedures for staff along with providing staff training on the new program changes.

Additionally, a significant portion (\$3.3 million) of the estimated one-time IT costs would be for a vendor to make changes to the SDI Online system, and for testing of those changes by vendor staff (along with EDD staff). Changes would also be required to the PFL application and the claims scanning/data capture system that EDD uses.

For SFY 2017-18, EDD requires 4.3 PEs of state IT staff for continued testing of the changes to the SCDB and SDI Online applications and to ensure that they will be able to revert to the previous calculation methodologies (effective January 1, 2022, pursuant to the provisions of AB 908). The required legislative reports will also be developed during this time period.

The EDD project management framework will ensure accountability for the requested funds. All vendor contracts related to this project will be deliverables-based to ensure delivery of appropriate hardware, software, documentation, etc., prior to payment. The vendor contracts will include language that states EDD shall be the sole judge of the acceptance of all work performed and all work products produced by the contractor to ensure quality standard are met.

The EDD uses the Cost and Resources Management Group within the Information Technology Branch to account for all dollars spent on staffing, hardware, software, and vendor contracts. EDD management will review staffing reports to ensure all project team members are fully engaged on the project.

The table below provides a schedule of milestones and targeted completion dates for this project:

| Major Milestones | Estimated completion dates |
|-------------------------|-----------------------------------|
| Project Initiation | May 31, 2016 |
| Requirements Phase | June 30, 2016 |
| Design Phase | September 30, 2016 |
| Development Phase | June 30, 2017 |
| Testing Phase | September 30, 2017 |
| Implementation | October 24, 2017 |
| Project Closeout | February 1, 2018 |

Staff Recommendation: Approve as proposed.

Vote:

Issue 2: Workforce Innovation Opportunity Act (WIOA) Discretionary Workforce Funds

The Governor’s Proposal: The May Revision proposes to use an increase of \$22 million discretionary workforce funds for a mix of purposes, including \$10 million and 58 positions for staff resources and training, \$8.6 million for grant expansion, and \$1.6 million for technological upgrades.

Background. Federal law provides that a certain portion of federal Workforce Innovation and Opportunity Act (WIOA) funding, up to 15 percent, may be held by the state for “statewide workforce investment activities,” while the remainder of WIOA funds are passed on to Local Workforce development boards to provide services to unemployed or underemployed adults and youth. The statewide funds are sometimes referred to as “discretionary funds.” The actual amount of discretionary funds that may be reserved at the state level, subject to the 15 percent cap, depends on congressional appropriations. In 2015-16, the state was able to reserve 10 percent of WIOA funds as discretionary funds. In 2016-17, the state may reserve 15 percent of WIOA funds as discretionary workforce funds. This results in an increase in total discretionary funds in 2016-17 of \$23.1 million from the prior year.

The Administration has proposed a mix of new programs and augmentations to previously existing programs, as shown in the table below. As in recent years, the administration’s proposal prioritizes the use of discretionary funds to develop the capacity of the state’s local workforce development system in areas that are emphasized by the federal WIOA legislation, including regional coordination and planning, program alignment, data sharing, and sector strategies. A portion of the discretionary funds are also provided to support programs that directly provide services to certain target populations. For example, the May Revision proposal includes additional funding for the Governor’s Award for Veteran’s Services and the Regional Workforce Accelerator program, focusing on ex-offender and immigrant populations, which are described in more detail below.

| Proposed Allocation of Increased WIOA Discretionary Funds in 2016-17 (Dollars in millions) | |
|--|-------|
| Funding for New Programs/Activities | |
| Technical assistance and training for state and local staff to implement State Strategic Workforce Plan. | \$5.0 |
| Funding to place unemployment insurance staff in AJCC’s: 48 positions for Employment Development Department to fund at least one UI trained individual in a designated comprehensive America's Job Centers of California to train existing workforce service staff and provide UI assistance. | 3.5 |
| Awards for development of model multiple-employer industry sector programs: This is a competitive Industry Sector grant for local workforce areas of coalitions to develop multi-employer workforce initiatives to develop career pathways for sectors with projected job growth. | 2.0 |

Awards for “high performing boards,” pursuant to SB 985 (Lieu), Chapter 497, Statutes of 2011: This will provide grant awards to 33 local workforce investment boards that have received High-Performing Board status to engage businesses and workforce partners.

1.7

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| Improvements to the CalJOBS system: This will develop a mobile job search application, enhance document management and scanning capabilities, automate tracking of services using scan card technology, and develop a customer relationship management system. | 1.6 |
| WIOA program evaluation: This will provides research and evaluation of program practices from all discretionary and other CWDB and EDD investments. | 1.5 |
| Increased staff capacity for regional planning: This will support regional staff capacity to provide assistance and consulting grantee communities, Slingshot work, and the development of WIOA regional plans. | 1.2 |
| Performance and Participant Data Alignment: This will fund the development and implementation of state-level and local data sharing to improve services for job seekers as required under WIOA. | 1.0 |
| Support for Local Workforce Area consolidation planning: This will support and assist multiple local workforce areas to within a planning region to facilitate the re-designation into a single workforce area. | 0.6 |
| Labor market information support for local boards^a | 0.5 |
| Subtotal | (\$18.6) |
| Augmentations to Existing Programs/Activities | |
| Governor's Award for Veteran's Grants: This will fund competitive grants with a focus on transitioning veterans into high-wage, high-demand occupations. | \$2.3 |
| Regional Workforce Accelerator Program (focusing on formerly incarcerated and immigrant populations): This program grants award to local programs to develop strategies and services to remove barriers and create improvements in training and job placement. | 2.0 |
| Disability Employment Initiative: This will expand funding for the Disability Employment Accelerator to support people with disabilities gain the necessary skills for employment. | 0.6 |
| Local program oversight and technical assistance.^a | 0.5 |
| CWDB administration, policy development, and program partner coordination: This will provide nine positions for the California Workforce Development Board to handle the increased workload and responsibilities associated with WIOA implementation. | 0.5 |
| Financial management and information technology.^a | 0.3 |
| EDD administration.^a | 0.1 |
| Subtotal | (\$6.3) |
| Total | \$24.9^b |
| <p>a. The May Revision proposal includes a request for 10 additional positions associated with the combined increased funding for these items.</p> <p>b. Reflects a \$23.1 million year-over-year increase discretionary funds plus \$2.8 million in funds freed up by year-over-year reductions in funding for certain items, partially offset by a \$1 million year-over-year reduction in WIOA discretionary funds available to be carried in from the prior year.</p> | |
| <p>AJCC = America's Job Center of California (formerly known as OneStops), WIOA = Workforce Innovation and Opportunity Act, CWDB = California Workforce Development Board, and EDD = Employment Development Department.</p> | |

Legislative Analyst's Office. The May Revision proposal is consistent with federal law and with the recently completed State Strategic Workforce Plan, and the LAO has raised no issues. However, the LAO would also note that discretionary funds may be used to support a variety of programs and activities and that the Legislature may have priorities that differ from those in the May Revision.

Staff Recommendation: Approve as proposed.

Vote:

7350 Department of Industrial Relations (DIR)**Issue 1: Private Attorney General Act (PAGA)**

Governor's Proposal: The Governor proposes trailer bill language to amend the Private Attorney General Act. Specifically, the proposal:

1. Requires new case notices and any employer response to such a notice to be accompanied by a \$75 filing fee. Provides for waiver of fees for parties entitled to “in forma pauperis” status, using same standards applicable to court filing fees. The new notice filing fees will be recoverable costs in a PAGA action.
2. Requires plaintiff to provide Labor Workforce Development Agency (LWDA) with a file-stamped copy of the court complaint within 10 days following commencement of a civil action. This requirement is limited to cases filed on or after July 1, 2016.
3. Changes current superior court review and approval of PAGA penalties sought in proposed settlement to court review and approval of all settlements in PAGA actions.
4. Requires copy of proposed settlement to be submitted to LWDA at same that it is submitted to the court.
5. Requires parties to provide LWDA with a copy of the court’s judgment and any other order that denies or awards PAGA penalties within 10 days after entry.
6. Requires online filing/transmission of all items that must be submitted to LWDA.
7. Extends various time lines, including:
 - a. The time LWDA review new cases from 30 to 60 days.
 - b. The time after which a plaintiff may file suit if not notified of LWDA’s decision to accept a case for investigation from 33 to 65 days.
 - c. The time for LWDA to notify parties of intent to investigate violation from 33 to 65 days.
- a. Provides LWDA with option to send notice to extend the 120 day time limit for investigating and citing the employer by an additional 60 days. (This provision will sunset in 2021, pursuant Section 4 of the bill.)

Background. When an employer does not pay wages as required by law (such as overtime), statute allows employees to recover these wages, either through an administrative proceeding with the state’s Labor and Workforce Development Agency (LWDA) or through private legal action in superior court. In addition to wages that may be recovered, statute also specifies civil penalties may be imposed on employers who violate Labor Code provisions. These civil penalties are intended to act as a deterrent against violations. The LWDA and the related state agencies that it oversees, including DIR, the Division of Labor Standards Enforcement (DLSE) and Division of Occupational Safety and Health (DOSH) within DIR, are responsible for enforcing the Labor Code and are authorized to impose civil penalties.

Employees may seek to recover wages improperly withheld through private legal action against the employer, and for those who do so, the PAGA—enacted by SB 796 (Dunn) Chapter 906, Statutes of 2003 and SB 1809 (Dunn), Chapter 221, Statutes of 2004—grants employees the right to additionally seek civil penalties from employers. Prior to PAGA, penalties could only be pursued by LWDA and related state agencies. The general intent of PAGA is to allow employees to pursue civil penalties through the legal system when LWDA and related state agencies do not have the resources to do so. While civil penalties collected by LWDA are generally deposited in the state General Fund, any penalties collected under PAGA are split between the employee, who receives 25 percent, and LWDA, which receives the remaining 75 percent. The LWDA's portion of PAGA penalties is deposited into the Labor and Workforce Development Fund (LWDF), which is used for enforcement of labor laws and to educate employers and employees about their rights and responsibilities under the Labor Code.

PAGA Process. An individual who wishes to pursue civil penalties against an employer must provide a written notice to both the employer and LWDA of the alleged violations and his or her intent to pursue civil penalties under PAGA. This notice is the first step in a PAGA claim. This notification requirement is intended to allow LWDA to step in and investigate claims that it views as preferable to handle administratively rather than through the PAGA process, such as when the claim overlaps with other matters already under investigation by LWDA. LWDA notes that since 2014, only one position performs a high-level review of PAGA notices and determines which claims to investigate. As a result, less than half of PAGA notices were reviewed, and less than one percent of PAGA notices have been reviewed or investigated since PAGA was implemented.

In most cases, LWDA has 30 days to determine whether to investigate and, if it does investigate, 120 additional days to complete the investigation and determine whether to issue a citation. If LWDA does not investigate, or does investigate but does not issue a citation, or when an investigation is not completed, or not completed on time, the PAGA claim is automatically authorized to proceed. For certain violations that are considered less serious (for example, failing to correctly display the legal name and address of the employer on an itemized wage statement), employers are provided 33 days to prevent a PAGA claim from proceeding by correcting the alleged violations. When a PAGA notice is investigated, LWDA reports that it has difficulty completing the investigation within the timeframes outlined in PAGA.

Once the PAGA claim proceeds, LWDA typically receives no further information beyond payment of the portion of any civil penalties that is due to the LWDF. Civil penalties can be assessed through the PAGA process in two ways. When the court finds that the allegations in the PAGA claim have merit, they have the authority to impose civil penalties. Alternatively, the parties to the claim may settle out of court and include civil penalties as part of such a settlement. However, not all settlements include civil penalties. When cases that involve a PAGA claim settle out of court and civil penalties are included as part of the settlement, PAGA requires court review and approval of the settlement.

Staff Comment: The subcommittee rejected the Governor's January trailer bill proposal regarding PAGA without prejudice, as much of the proposal warranted a larger policy discussion, and directed the Administration to return with a compromise proposal. This new trailer bill proposal removes several items that raised significant policy questions, including the ability to allow DIR to comment and object to proposed settlement in PAGA cases, requiring PAGA notices involving multiple employees to be verified, and allowing DIR to create an ad hoc employer amnesty program.

Staff Recommendation: Approve placeholder TBL.

Vote:

7900 California Public Employees' Retirement System (CalPERS)**Issue 1: CalPERS Board-Approved Budget**

Governor's Proposal: The Governor proposes various budget bill amendments to incorporate the CalPERS board-approved budget into the budget act. These changes are as follows and are display items for informational purposes to reflect a change in CalPERS' continuous appropriation authority.

- Item 7900-003-0830 is decreased by \$26.4 million.
- Item 7900-015-0815 is increased by \$515,000.
- Item 7900-015-0820 is increased by \$117,000.
- Item 7900-015-0830 is increased by \$510,000.
- Item 7900-015-0833 is increased by \$1.5 million.
- Item 7900-015-0849 is increased by \$7,000.
- Item 7900-015-0884 is increased by \$615,000.
- An increase of 39 positions.

The budget adopted by the CalPERS board reflects a total budget of \$1.788 billion, which represents a decrease of \$16.3 million percent from the 2015-16 budget of \$1.807 billion. These changes reflect the 2016-17 budget approved during the April 18, 2016 CalPERS board meeting. The budget's reduction is primarily driven by higher than anticipated position vacancies and lower than anticipated outside counsel and third party investment management fees.

It is also requested that Item 7900-001-0822 be added in the amount of \$40.5 million to replace Item 7900-015-0822 which is being eliminated. This includes an increase of \$6.9 million to reflect the budget approved by the CalPERS board.

Staff Recommendation: Approve the Governor's incorporation of the board-approved CalPERS budget into the state budget.

Vote:

Issue 2: CalPERS Health Benefit Administration

Governor's Proposal: The Governor's budget proposes changes in budget bill language and trailer bill language that effect the administration of the CalPERS health benefit.

Budget Bill Changes. The budget bill changes are summarized below:

- **Contingency Reserve Fund (CRF) Appropriation.** Authorizes the Department of Finance (DOF) to reduce the current year appropriation to reflect reductions in the CRF surcharge (Control Section 4.20) as a result of premium changes.
- **Remove Medicare Report Requirement Language.** CalPERS has met what was envisioned as a one-time reporting requirement.
- **Zero-Based Budgeting.** Directs CalPERS to work with DOF on a zero-based budgeting exercise for health care administration expenses, to prepare for the 2017-18 budget.
- **Removes 100-Day Report.** Deletes the 100-day reporting requirement.
- **Risk Adjustment.** Requires CalPERS to submit a one-time report on or before October 2016 covering the administration of its health care premium risk adjustment procedures for the premium years of 2014 through 2017.
- **Clarify Authority for Current Year Executive Order.** Adds revised dental rates to DOF authority to adjust for actual rates that have been negotiated.

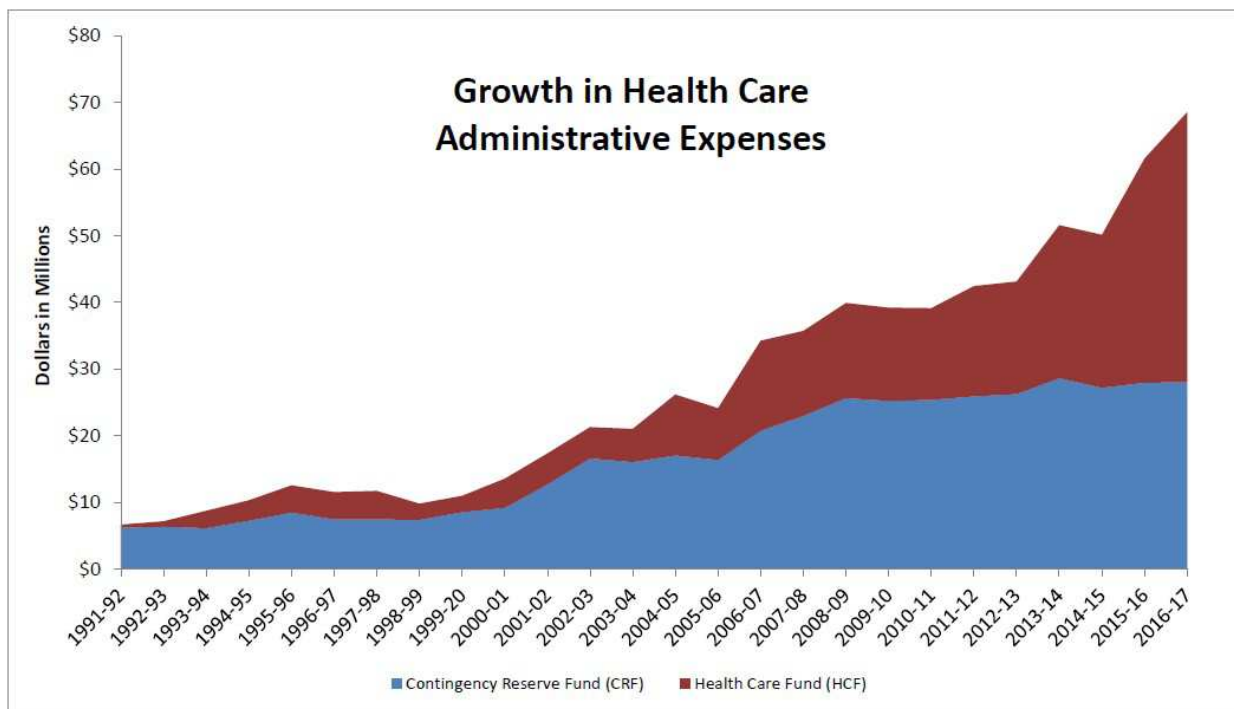
Trailer Bill Language. The Administration has proposed trailer bill language that does the following.

- **Legislative Oversight of the Contingency Reserve Fund (CRF).** Clarifies existing statute that health care administrative expenses in the CRF must be approved by the Legislature.
- **Legislative Oversight of the Public Employees Health Care Fund (HCF).** Establishes that health care administrative expenses in the HCF must be approved by the Legislature.
- **Risk Adjustment.** Requires CalPERS to disclose both adjusted and unadjusted risk single party premiums for each health plan.
- **Administrative Expenses.** Establishes that the state CRF surcharge is to be used for administrative expenses incurred on behalf of state employees and retirees.
- **Administrative Expenses.** Authorizes CalPERS to customize the CRF surcharge for contracting agencies (local agencies) based on service levels provided.

Background: CalPERS uses two funds to pay for its health care program administrative expenses. The first is the Contingency Reserve Fund (CRF). The CRF was established in 1962 to fund program-wide administrative activities for the CalPERS health care program. An employer-paid surcharge is levied on all health plays to pay for state personnel and operating expenses, and maintain a reserve. All funding changes to the CRF require approval through the annual legislative budget process.

The second fund is the Health Care Fund (HCF). The HCF was established in 1988 to fund the self-funded health benefit plans administered by CalPERS (PERSCheck, PERSCare, PERSSelect) that rely upon cash flows from premiums and investment income to fund health benefit payments. In addition, certain administrative costs can be run through this fund. These costs are not subject to the annual budget process.

As shown in the figure below, costs in the CRF have remained relatively flat in the last five years, while costs in the HCF have increased significantly. As a result, the Department of Finance has become concerned about the costs for this fund not being subject to the annual budget process and is recommending that the HCF go through the same budgetary processes as the CRF.



Risk Adjustment. Risk adjustment is used for a variety of purposes in the health care industry. One of the principal uses of risk adjustment is to set payments for health plans to reflect expected treatment costs of their members. Because of differences in health status and treatment needs, the cost of health care will vary from person to person. Without risk adjustment, plans have an incentive to enroll healthier patients and avoid sick patients, especially in cases where plans cannot use health status to set premiums. With risk-adjustment plans, receive a higher payment for members with multiple chronic illnesses than for members with no or limited health problems. If risk adjustment is done well, it should reduce the incentives for plans to avoid patients they expect to be costly. Risk adjustment was adopted as one of the major health reforms envisioned under the federal Affordable Care Act (ACA) to ensure that a health care plan will not benefit from enrolling a disproportionate share of healthy patients.

AB 2141 (Furutani), Chapter 445, Statutes of 2012, authorizes CalPERS to implement risk adjustment procedures that adjust and redistribute premium payments across its health plans based on rules and regulations established by the CalPERS Board of Administration. The bill also establishes that any risk adjustment program or procedure would be at the sole discretion of the board. The bill analysis states that this proposed risk-adjustment model could potentially save money to the extent that it encourages members to select the most cost-efficient health plans. Any savings will depend on several factors including: the adjustment methodology; the speed at which member behavior changes as a result; and the contribution formulas for the various participating employers and their employees/retirees.

Staff Comment: DOF has raised legitimate concerns that both of the funds (CRF and HCF) that are used to pay for the administration of CalPERS health benefit programs should be subject to the same level of oversight and that the Legislature should approve both funds through the annual budget process.

In addition, CalPERS was given the authority and directed to use risk adjustment for its health benefit plans. This approach is commonly accepted and used in the health care industry. At this time, DOF has not provided adequate justification for CalPERS to need to report on its risk adjustment procedures. If there are concerns about the efficacy of CalPERS' risk adjustment procedures, it may be more appropriate for this issue to be considered by the health policy committee, not the budget committee. Similarly, the policy issues associated with the administrative expenses for local governments seem more appropriate for consideration by the policy committees, not the budget committee.

Staff Recommendation: Approve as proposed all of the changes to the proposed budget bill language except for the requirement that CalPERS complete a report on its risk adjustment procedures. Adopt placeholder trailer bill language to approve the two changes in the proposed budget trailer bill language that ensure that both the CRF and HCF are approved by the Legislature and reject the remaining proposed changes related to risk adjustment and administrative expenses. Direct the Administration to pursue consideration of all items related to CalPERS' authority to use risk adjustment procedures and the policy issues associated with the administrative expenses for local governments to the policy committees for further discussion.

Vote:

9800 Augmentation for Employee Compensation and Control Section 3.61**Issue 1: Scheduled Employee Compensation Augmentation Increases (May Revision proposal)**

Governor's Budget Proposal: Budget Item 9800 allows for adjustments in departmental budgets to account for changes in employee compensation, including salaries, health and retirement benefits. This proposal would increase Item 9800-001-0001 by \$314,073,000, would increase Item 9800-001-0494 by \$32,345,000, and would increase Item 9800-001-0988 by \$15,931,000 to reflect changes discussed below.

Control Section 3.61 is used to prefund retiree health benefits through departmental budgets. The May Revision requests CS 3.61 be amended to reflect additional employer contributions for prefunding other postemployment benefits based on a recent agreement that has been collectively bargained with Bargaining Unit 6 (Correctional Officers.)

Background: Item 9800 includes all augmentations in employee compensation. These reflect increased enrollment in health and dental plans; updated employment information for salary increases previously provided in the Governor's budget; revised pay increases for judges; updated costs related to the salary survey estimates for the California Highway Patrol (Bargaining Unit 5); salary increases and benefit changes for state employees of the Judicial Branch and Commission on Judicial Performance, including justices and trial court judges; increase to salaries and revised benefits recently negotiate with correctional officers (Bargaining Unit 6) and scientists (Bargaining Unit 10); pay increases related to minimum wage changes (SB 3 (Leno), Chapter 4, Statutes of 2016); and retention incentives for the Department of Developmental Services facilities in Fairview, Sonoma, and Porterville.

While these figures include estimated health and dental premium rates, the final rates are not expected to be adopted by the CalPERS board until June 2016. If the actual rates differ from the estimated rates, a technical correction to the budgeted amounts will be made.

Regarding the change to CS 3.61 in fiscal year 2016-17, the state will match correction officer employees' contributions of 1.3 percent, effective July 1, 2016. Additionally the Judicial Council has agreed to adopt the Administration's retiree health prefunding strategies. Therefore, state employees of the Judicial Branch will also begin making contributions towards prefunding other postemployment benefits. In 2016-17, the state will match Judicial Branch state employees' contributions of 1.5 percent effective July 1, 2016.

Staff Comment: Staff has no concerns with these proposals.

Staff Recommendation: Approve as proposed.

Vote:

9804 Augmentation for Contracts Impacted by Minimum Wage**Issue 1: Control Section 3.63 (May Revision Proposal)**

Governor's Budget Proposal: The Governor's requests adding Control Section 3.63 to grant the Director of Finance the authority to fund expenditures for personal service contracts, or other personnel costs outside of standard civil service compensation, that are in accordance with Senate Bill 3 (Leno), Chapter 4, Statutes of 2016. This proposal would add Item 9804-001-0001 with the amount of \$2 million, and Item 9804-001-0494 with the amount of \$500,000, for additional costs related to personal service contracts impacted by the minimum wage.

Background: As part of regular operations, the state may enter into personal service contracts with local governments and other business entities to perform services for California. Some personal service contracts are directly impacted by minimum wage, notably California Department of Forestry and Fire Protection (CAL FIRE), which contracts with cities and counties to protect remote areas of the state. As the minimum wage rises for locally contracted fire fighters, there is an increased pressure on the state to augment contracts with these entities. This control section provides the Administration authority to augment departmental budgets that are directly impacted by minimum wage-related personal service contracts. Absent this control section, each individual department impacted by minimum wage personal service contracts would be required to submit annual budget change proposals. The legislature maintains the authority to augment this item (9804) annually, providing the Administration flexibility to allocate these funds without the need for individual budget change proposals. This proposal provides both the Administration and Legislature the flexibility to fund the impacts of the minimum wage legislation.

Six departments will be impacted by the new control section, CAL FIRE, California Conservation Corps, California Science Center, California Department of Transportation, Board of Equalization, and the Department of Industrial Relations.

Staff Recommendation: Approve as proposed.

Vote:

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Jim Beall



Wednesday, May 18, 2016
9:30 a.m. or upon call of the Chair
State Capitol - Room 2040

Consultant: Anita Lee and Farra Bracht

PART B

VOTE-ONLY ISSUES

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| 7100 | Employee Development Department | 3 |
| Issue 1 | Benefit Overpayment Collection Automation Resource | 3 |
| <i>Approved as proposed. Vote 3-0</i> | | |
| Issue 2 | Unemployment and Insurance Program Administration | 3 |
| <i>Approved as proposed. Vote 3-0</i> | | |
| Issue 3 | Workforce Innovation and Opportunity Act (WIOA) Local Assistance Adjustments | 4 |
| <i>Approved as proposed. Vote 3-0</i> | | |
| Issue 4 | Workforce Innovation and Opportunity Act (WIOA) Data Sharing | 4 |
| <i>Adopt placeholder trailer bill language. Vote 3-0</i> | | |
| Issue 5 | Unemployment Insurance Program Funding | 5 |
| <i>Approved as proposed. Vote 3-0</i> | | |
| 7320 | Public Employment Relations Board | 6 |
| Issue 1 | Augmentation to Reduce Backlog and Los Angeles Regional Office Relocation | 6 |
| <i>Adopted staff recommendation. Vote 3-0</i> | | |
| 7350 | Department of Industrial Relations | 7 |
| Issue 1 | Revenue and Expenditure Alignment for Various Special Funds | 7 |
| <i>Adopt placeholder trailer bill language as proposed. Vote 2-1</i> | | |
| Issue 2 | Concrete Delivery and Public Works | 8 |
| <i>Approved as proposed. Vote 3-0</i> | | |

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| 7501 | Department of Human Resources | 9 |
| Issue 1 | Civil Service Improvement | |
| Held Open | | 9 |

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| 7920 | California Teacher's Retirement System | 9 |
| Issue 1 | Revised Creditable Compensation | |
| Approved as proposed. Vote 3-0. | | |

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| Control Section 3.60 | | 10 |
| Issue 1 | Rate Adjustments | 10 |
| Approved as proposed. Vote 3-0. | | |

DISCUSSION / VOTE ISSUES

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| 7100 | Employment Development Department | 11 |
| Issue 1 | Paid Family Leave and State Disability Insurance Rate Increase | 11 |
| Approved as proposed. Vote 3-0 | | |

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| Issue 2 | Workforce Innovation Opportunity Act (WIOA) Discretionary Workforce Funds | 13 |
| Approved as proposed. Vote 3-0 | | |

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| 7350 | Department of Industrial Relations | 16 |
| Issue 1 | Private Attorney General Act | 16 |
| Approve placeholder trailer bill language. Vote 3-0 | | |

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| 7900 | California Public Employees' Retirement System | 18 |
| Issue 1 | CalPERS Board-Approved Budget | |
| Approved as proposed. Vote 3-0. | | |

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| Issue 2 | CalPERS Health Benefit Administration | 19 |
| Adopted the staff recommendation to approve as proposed all of the changes to the proposed budget bill language except for the requirement that CalPERS complete a report on its risk adjustment procedures. Adopt placeholder trailer bill language to approve the two changes in the proposed budget trailer bill language that ensure that both the CRF and HCF are approved by the Legislature and reject the remaining proposed changes related to risk adjustment and administrative expenses. Direct the Administration to pursue consideration of all items related to CalPERS' authority to use risk adjustment procedures and the policy issues associated with the administrative expenses for local governments to the policy committees for further discussion and have DOF develop metrics and a template and report those metrics to the Senate Public Employment and Retirement Committee. Vote 3-0. | | |

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| 9800 | Augmentation for Employee Compensation and Control Section 3.61 | |
| Issue 1 | Scheduled Employee Compensation Augmentation Increases | |
| Approved as proposed. Vote 3-0. | | |

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| 9804 | Augmentation for Contracts Impacted by Minimum Wage | 23 |
| Issue 1 | Control Section 3.63 | 23 |
| Approve as proposed. Vote 2-1 | | |