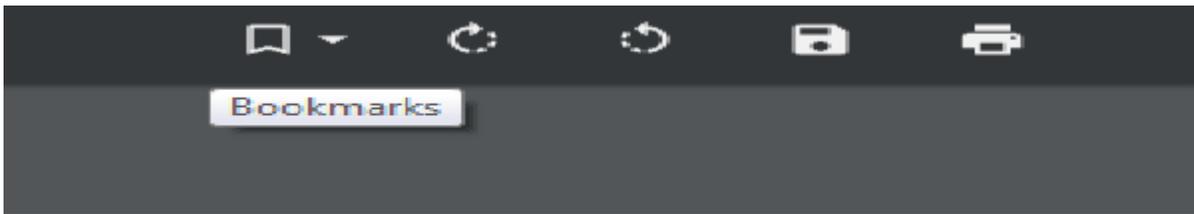


Senate Budget and Fiscal Review

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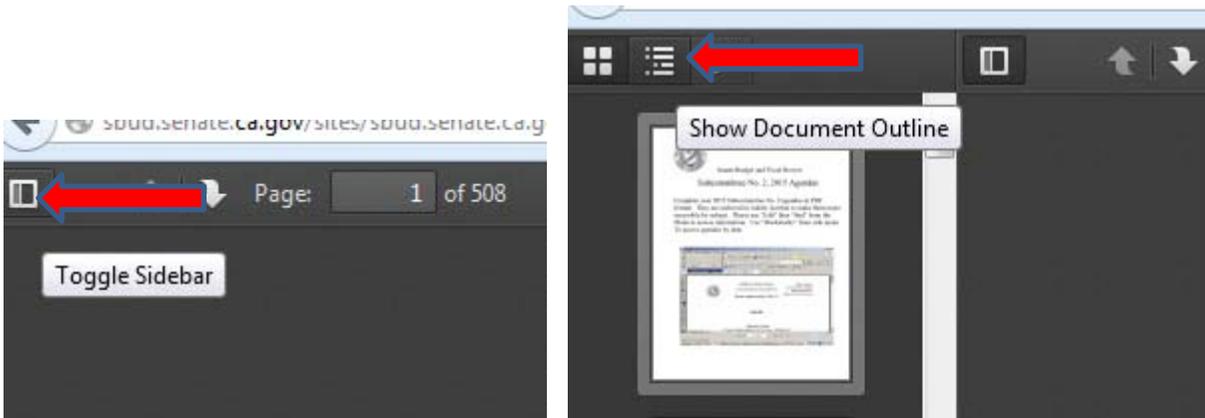
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SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 2, 2017
9:30 a.m. or upon adjournment of
The Joint Legislative Budget Committee
State Capitol - Room 113

Consultant: Julie Salley-Gray

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ITEMS TO BE HEARD

0250 JUDICIAL BRANCH

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. Total funding for the judicial branch has steadily increased between 2012-13 (year in which the judicial branch last received a significant reduction in General Fund support) and 2016-17, and is proposed to remain relatively flat in 2017-18 at about \$3.9 billion. Of the total budget proposed for the judicial branch in 2017-18, about \$1.7 billion is from the General Fund—nearly 43 percent of the total judicial branch budget. This is a net General Fund reduction of \$119 million, or 6.7 percent, below the 2016-17 amount. This net reduction primarily reflects a \$108 million decrease related to the expiration of various one-time expenditures in 2016-17 (such as \$25 million for the Court Innovation Grant Program).

(Dollars in thousands)

Program	2015-16	2016-17	2017-18
Supreme Court	\$42,906	\$48,101	\$48,577
Courts of Appeal	216,721	232,075	232,683
Judicial Council	132,869	138,484	137,628
Judicial Branch Facilities Program	355,864	444,804	440,929
State Trial Court Funding	2,645,581	2,776,062	2,792,364
Habeas Corpus Resource Center	13,276	15,751	15,814
Offset from Local Property Tax Revenue	-26,662	-37,275	-37,275
Total	\$3,380,555	\$3,618,002	\$3,630,720
Positions	1731.4	1717.0	1,719.0

Issue 1: Chief Justice's Budget Priorities

Chief Justice's Budget Priorities. Each year, after reviewing the Governor's proposed budget, California's Chief Justice develops a list of funding priorities for the judicial branch. This year's list includes the following priorities:

- ***\$158.5 million funding shortfall.*** The Chief Justice argues that providing \$158.5 million General Fund to the judicial branch would help close the current funding shortfall of over \$400 million.
- ***\$22 million for dependency counsel.*** An augmentation of \$22 million General Fund per year would reduce the dependency counsel caseloads from 225 cases per attorney to 188 cases per attorney.
- ***\$560 million for court construction and facilities.*** The Chief Justice notes that since 2009, the state has removed \$510 million in General Fund each year from the court budget and has continued to redirect \$50 million for court operations. These funds are used for construction and maintenance, which will be discussed in detail at a later hearing.
- ***Judgeships.*** While the Chief Justice supports the Governor's proposal to redirect four judgeships (discussed in detail in a later item), she notes that their current judicial needs assessment demonstrates the statewide need for 188 new judges.

Governor's Budget. The Governor's budget proposes \$3.7 billion from all state funds (General Fund and state special funds) to support the judicial branch in 2017-18, an increase of \$13 million, or 0.3 percent, above the revised amount for 2016-17. (These totals do not include expenditures from local revenues or trial court reserves.) Of this amount, roughly three-fourths would support state 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 provided 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 provided the following:

- ***Trial Court Trust Fund Revenue Shortfall.*** \$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.

The 2016-17 judicial branch budget included the following augmentations:

- **Trial Court Employee Costs.** \$16.1 million General Fund to cover increased employee benefit costs.
- **Trial Court Augmentation.** \$20 million (or one percent) General Fund base augmentation for trial court operations.
- **Trial Court Emergency Reserve.** \$10 million General Fund on a one-time basis to establish a state level reserve for emergency expenditures for the trial courts.
- **Proposition 47.** A one-time General Fund augmentation of \$21.4 million to address the increased workload associated with Proposition 47 (The Safe Neighborhoods and Schools Act) passed by voters in 2014. In addition, the budget anticipates the trial courts will save \$1.7 million General Fund a year as a result of the reduced workload associated with Proposition 47.
- **Innovation Grants.** \$25 million one-time for innovative programming (\$10 million General Fund and a transfer of \$15 million from deferred maintenance to Innovation Grants program).

Role of Dependency Counsel. 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 an attorney who represents the 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. The final 2016 budget act did not include additional funding for dependency counsel.

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.

Staff Recommendation. Hold open overall trial court funding pending any May Revise updates.

Issue 2: Funding for Legal Services and the Equal Access Fund

Governor’s Budget. The Governor’s proposed budget includes \$15.9 million in funding for the Equal Access Fund (\$10.4 million General Fund and \$5.5 million Special Funds).

Background. Civil legal aid organizations provide free legal assistance to low-income Californians, people with disabilities, and seniors. Legal aid helps people with problems such as foreclosure, unemployment, domestic violence, health access, consumer debt, housing, and re-entry. Although many people believe that they have a “right to an attorney,” there is no right to an attorney in civil cases. Legal aid attorneys help those who are most vulnerable and who most need an attorney’s assistance.

Federal Funding for Legal Services. The largest single funder of legal aid in the nation—and in California—is the federal government, largely through the Legal Services Corporation. Eleven of California’s ninety-four legal aid programs receive LSC funding. California’s share of LSC funding is approximately \$41 million for 2017. California’s community of legal aid programs also receive approximately \$8 million in funding from the Older Americans Act and \$28 million in a mix of many other smaller federal funds, including from the Department of Justice, Department of Education, and office of the Violence Against Women Grants.

Equal Access Fund. 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. As noted above, the Governor’s budget contains a total of approximately \$16 million (\$10.4 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.

The 2016 Budget. The budget included a one-time \$5 million augmentation for the Equal Access Fund.

Staff Comments. Given the heightened role of legal services attorneys and concerns about cuts to federal funding, the committee may wish to consider providing an on-going General Fund augmentation.

Staff Recommendation. No action is necessary at this time.

Issue 3: Proposition 63 Implementation

Governor's Budget. The Governor's proposed budget does not contain funding related to the trial courts' implementation of Proposition 63, Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban (2016).

Background. On November 8, 2016, Proposition 63, the Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban (2016), was approved by a wide margin with over 63 percent of voters voting "yes." The proposition establishes a regulatory process for ammunition sales, creates a new court process to ensure the removal of firearms from prohibited persons after they are convicted of a felony or certain misdemeanors, and tightens the restrictions around the ownership and use of large capacity magazines. Additionally, Proposition 63 states that the Legislature can change its provisions if such changes are "consistent with and further the intent" of the measure. Such changes can only be made if approved by 55 percent of the members of each house of the Legislature and the bill is enacted into law.

New Court Process for Removal of Firearms. As noted previously, Proposition 63 created a new court process to ensure that individuals convicted of offenses that prohibit them from owning firearms do not continue to have them. Beginning in 2018, the measure requires courts to inform offenders upon conviction that they must (1) turn over their firearms to local law enforcement, (2) sell the firearms to a licensed firearm dealer, or (3) give the firearms to a licensed firearm dealer for storage. The measure also requires courts to assign probation officers to report on what offenders have done with their firearms. If the court finds that there is probable cause that an offender still has firearms, it must order that the firearms be removed. Finally, local governments or state agencies could charge a fee to reimburse them for certain costs in implementing the measure (such as those related to the removal or storage of firearms).

Currently, 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. This proposition shifts the burden from DOJ to local law enforcement and the courts by requiring probation officers to report to the court on the disposition of the firearms owned by prohibited persons.

Staff Comments. The judicial branch estimates increased costs of approximately \$11.5 million per year for the workload associated with the proposition. The Governor's budget does not contain any funding for this workload. The committee may wish to consider dedicating funding to assist the courts in establishing a process for retrieving firearms from newly prohibited persons at the time of their felony conviction.

Staff Recommendation. No action is necessary at this time.

Issue 4: Proposition 64 Implementation

Governor's Budget. The Governor's budget proposes a total of \$51.4 million from Marijuana Control Fund (MCF) in 2017-18 across four departments: Department of Consumer Affairs, the Department of Public Health, the California Department of Food and Agriculture, and the Board of Equalization. The budget also requests about 190 positions in 2017-18 across these departments.

The proposed budget, however, does not contain any funding for the judicial branch to assist with the requirement.

Background. In 1996, voters approved Proposition 215, which legalized the use of medical cannabis in California. However, the measure did not create a statutory framework for regulating or taxing it at the state or local level. In June 2015, Governor Brown signed the Medical Marijuana Regulation and Safety Act, comprised of Assembly Bill 243 (Wood), Chapter 688, Statutes of 2015; Assembly Bill 266 (Bonta), Chapter 689, Statutes of 2015; and Senate Bill 643 (McGuire), Chapter 719, Statutes of 2015. The act was later renamed the Medical Cannabis Regulation and Safety Act (MCRSA). Together, these bills established the oversight and regulatory framework for the cultivation, manufacture, transportation, storage, and distribution of medical cannabis in California.

In November 2016 voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). AUMA legalized nonmedical, adult use of cannabis in California. Similarly to MCRSA, the act creates a regulatory framework for the cultivation, manufacture, transportation, storage and distribution of cannabis for nonmedical use.

Change in Penalties for Future Cannabis Crimes. The measure changes state cannabis penalties. For example, possession of one ounce or less of cannabis is currently punishable by a \$100 fine. Under the measure, such a crime committed by someone under the age of 18 would instead be punishable by a requirement to attend a drug education or counseling program and complete community service. In addition, selling cannabis for nonmedical purposes is currently punishable by up to four years in state prison or county jail. Under the measure, selling cannabis without a license would be a crime generally punishable by up to six months in county jail and/or a fine of up to \$500. In addition, individuals engaging in any cannabis business activity without a license would be subject to a civil penalty of up to three times the amount of the license fee for each violation. While the measure changes penalties for many cannabis-related crimes, the penalties for driving a vehicle while under the impairment of cannabis would remain the same. The measure also requires the destruction, within two years, of criminal records for individuals arrested or convicted for certain cannabis-related offenses.

Individuals Previously Convicted of Cannabis Crimes. Under the measure, individuals serving sentences for activities that are made legal or are subject to lesser penalties under the measure would be eligible for resentencing. For example, an offender serving a jail or prison term for growing or selling cannabis could have their sentence reduced. (A court would not be required to resentence someone if it determined that the person was likely to commit certain severe crimes.) Qualifying individuals would be resentenced to whatever punishment they would have received under the measure. Resentenced individuals currently in jail or prison would be subject to community supervision (such as probation) for up to one year following their release, unless a court removes that requirement. In addition, individuals who have completed sentences for crimes that are reduced by the measure could apply to the courts to have their criminal records changed.

Staff Comments. This item is a follow-up to the Senate Budget and Fiscal Review Committee hearing on February 16, 2016, during which the committee discussed the legalization of cannabis in California. The issue before Subcommittee #5 is whether or not to provide one-time funding for the trial court workload associated the destruction of criminal records and the resentencing of individuals convicted of cannabis-related crimes. The Judicial Branch estimates costs of approximately \$20 million over four years. Those costs may be partially offset by savings due to the reduction in charges related to cannabis.

Staff Recommendation. No action is necessary at this time.

Issue 5: Sustain Justice Case Management System

Governor’s Budget. The Judicial Council requests \$4.1 million General Fund in 2017-18 and \$896,000 General Fund in 2018-19 to update the Sustain Justice Edition Case Management System in the Superior Courts of California - Humboldt, Lake, Madera, Modoc, Plumas, Sierra, San Benito, Trinity and Tuolumne Courts. This request supports the transition to modern commercial off-the-shelf case management systems.

Background. The California court system—the largest in the nation, with more than 2,000 judicial officers, 19,000 court employees, and nearly 10 million cases—serves over 38 million people —12.5% of the United States population. During 2013-2014, 7.5 million cases were filed in these courts at some 500 court locations throughout the state. A case management system is central to court operations by facilitating the track and recording of case information, processing and managing filings and collecting and reporting on revenues from filings, fines and fees.

In 2002, the judicial branch initiated the development of the statewide CCMS to replace numerous case management systems used by individual trial courts to schedule, process, and track court cases. The goal of CCMS was to develop a single, statewide, modern case management system that would have various benefits, such as increased electronic access to court records and greater efficiency from less work associated with paper-driven filings. CCMS was developed in iterations with a small number of courts deploying and testing either the criminal module (CCMS V2) or the civil module (CCMS V3). The final version (CCMS V4) was intended to be a statewide system that covered all case types. The CCMS project was ultimately terminated in 2012 without being fully deployed statewide.

A number of trial courts delayed replacing existing case managements systems while waiting for the completion of CCMS. After the termination of the CCMS project, a number of trial courts used their reserves (unspent funds from prior years) to replace all or parts of their case management systems. As of January 2017, 31 courts reported completing the replacement of all or a part of their case management systems. Numerous other replacements are currently in progress. Additionally, as part of the 2016-17 budget, the Legislature approved \$25 million in one-time General Fund support over three years to replace CCMS V3 for the four courts still using the system.

Legislative Analyst’s Office (LAO)

Only Approve Funding for Fit-Gap Analysis. The LAO finds that it is premature to consider approving funding to replace the case management systems for nine trial courts without a fit-gap analysis. Accordingly, they recommend that the Legislature modify the Governor’s proposal to only approve funding for the judicial branch to conduct a more detailed fit-gap analysis to ensure that the cost estimates for replacing the existing systems with the newer eCourt systems are accurate. The LAO estimates that the cost of such an analysis is not likely to exceed several hundred thousand dollars. This would ensure that the Legislature has adequate information to assess the proposed project in its future budget deliberations. This is particularly important as the judicial branch has historically had difficulty successfully implementing case management systems and does not go through the state’s regular IT review process.

Direct Judicial Branch to Revise Cost-Benefit Analysis. The LAO also recommends that the Legislature direct the judicial branch to revise its cost-benefit analysis of the proposed project to

accurately reflect the estimated costs and benefits, including any changes due to the fit-gap analysis recommended above. This would help the Legislature and the judicial branch determine whether the new eCourt systems are the most cost-effective alternative to the existing systems.

Staff Recommendation. Hold open.

Issue 6: Funding Increase for Appellate Projects

Governor's Budget. The Judicial Council requests an ongoing augmentation of \$1.04 million General Fund to support increased costs for contractual services in the Supreme Court's Court-Appointed Counsel Project (\$255,000) and the Courts of Appeal Court Appointed Counsel Project offices (\$786,000) beginning in 2017-18.

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. California has six appellate projects that 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.

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 \$95 and \$115 per hour for their work.

The 2016 Budget. The 2016 budget included 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. However, the proposal did not include funding for the projects themselves that oversee the attorneys.

In 2016, the Judicial Council requested 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). Funding for that request was not included in the final budget. However, as noted above, the Governor's proposed budget includes a portion of the funding that was requested last year.

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

Staff Recommendation. Approve as budgeted.

Issue 7: Language Access

Governor's Budget. The Governor's 2017-18 budget provides \$352,000 from the Improvement and Modernization Fund (IMF) and two positions on an ongoing basis for the video remote interpreting (VRI) spoken language pilot. Specifically, these resources would be used to support various activities related to the implementation and evaluation of the pilot, such as project management and the development of training materials. Upon completion of the pilot, the judicial branch indicates that these resources will be used to expand VRI to interested trial courts, monitor the implementation of VRI, manage statewide agreements for purchasing VRI equipment, and provide subject matter expertise.

In addition, the Governor's 2017-18 budget provides a \$490,000 one-time appropriation from the Court Interpreters' Fund to support various activities to benefit the court interpreters program. This funding will support six activities including: expanding the interpreter testing program to include American Sign Language, providing training to help individuals become certified court interpreters, and conducting outreach to recruit individuals to become certified court interpreters.

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 2016 budget. The annual funding for court interpreter services had historically been limited primarily to constitutionally-mandated cases, including criminal cases and juvenile matters. Funding was 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. The 2016 budget included an augmentation of \$7 million General Fund to expand language interpreter services to all civil proceedings. This augmentation allowed 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.

Due to concerns raised by the Legislature related to the growing use of video remote interpreters, the budget contained language specifying that the \$7 million augmentation was required to be used on in-person interpreters whenever possible.

VRI Pilot Project. The judicial branch began its work on the VRI pilot project in March 2016. The purpose of the VRI pilot is to measure the effectiveness of various available technologies and identify potential challenges with using VRI. To date, the branch has funded the pilot using existing staff and fiscal resources, including one-time funding from operational savings. The judicial branch will also be contracting with San Diego State University to help evaluate the VRI pilot. The judicial branch currently estimates that courts will test the use of VRI for six months in 2017-18 and that the evaluation will be complete by the summer of 2018.

Currently, three vendors of remote interpreter equipment and three courts (Merced, Ventura, and Sacramento Superior Courts) have been selected for the pilot. The vendors have agreed to provide the equipment at no cost to the trial courts for the purpose of this pilot. The pilot courts are currently in the process of determining which courtrooms will test the vendor equipment and which case types will make use of the equipment during the pilot.

Legislative Analyst's Office (LAO). The LAO recommends that the Legislature reject the Governor's proposed \$352,000 and two positions to complete the VRI pilot project. The judicial branch initiated the project on its own last year with existing resources, which suggests that it would be willing to use existing funding on a one-time basis in 2017-18 to complete the project. The also also recommend the Legislature direct Judicial Council to submit a report evaluating the pilot upon its completion.

In addition, the LAO recommends the Legislature approve the proposed \$490,000 in one-time funding from the Court Interpreters' Fund for various activities to improve the provision of the state's court interpreter services as the request appears reasonable.

Staff Recommendation. Adopt the LAO recommendation and reject funding for the VRI pilot, pending an evaluation of the current pilot, and approve \$490,000 in one-time funding from the Court Interpreters' Fund.

Issue 8: Vacant Superior Court Judge Reallocation and Trial Court Security

Governor’s Budget. The proposed budget includes statutory language shifting four vacant superior court judgeship positions in the state. Specifically, the Governor proposes shifting two vacancies from Alameda County and two from Santa Clara County to Riverside and San Bernardino counties.

In addition, the budget proposes providing Riverside and San Bernardino counties with \$280,000 in on-going General Fund to offset the security costs of those four judgeships.

Background. Each year, the Judicial Council is required to conduct a judicial needs assessment to determine whether or not the state has enough judges. For the last decade, California has had a shortage of judges. The most recent report, released in October of 2016, found a shortage of 189 judgeships statewide. The greatest need is in Riverside and San Bernardino counties, which have a shortage of 47 and 48 judgeships, respectively.

2011 Realignment of Trial Court Security. As part of the 2011-12 budget plan, the Legislature enacted a major shift, or “realignment,” of state criminal justice, mental health, and social services program responsibilities and revenues to local government. This realignment shifted responsibility for funding most trial court security costs (provided by county sheriffs) from the state General Fund to counties. Specifically, the state shifted \$496 million in tax revenues to counties to finance these new responsibilities. State law also requires that any revenue from the growth in these tax revenues is to be distributed annually to counties based on percentages specified in statute. Due to this additional revenue, the amount of funding provided to counties to support trial court security has grown since 2011-12 and is expected to reach nearly \$558 million in 2017-18, an increase of \$61 million (or 12 percent). This additional revenue is distributed among counties based on percentages specified in statute.

Additional General Fund Recently Appropriated for Greater Levels of Trial Court Security. The California Constitution requires that the state bear responsibility for any costs related to legislation, regulations, executive orders, or administrative directors that increase the overall costs borne by a local agency for realigned programs or service levels mandated by the 2011 realignment. As part of the annual budget act, the state provided \$1 million in additional General Fund support in 2014-15, \$2 million in 2015-16, and \$7 million in 2016-17, above the tax revenue provided through the 2011 realignment, to provide counties with funding to address increased trial court security costs. Eligibility for these funds was limited to counties experiencing increased trial court security costs resulting from the construction of new courthouses occupied after October 9, 2011 (around the time of implementation of the 2011 realignment). Counties are required to apply to the Department of Finance (DOF) for these funds and only receive funding after meeting certain conditions—including that the county prove that a greater level of service is now required from the county sheriff than was provided at the time of realignment. Of the additional funds provided, DOF allocated \$713,000 in 2014-15, \$1.9 million in 2015-16, and currently estimates the allocation of about \$2.7 million to qualifying counties in 2016-17. The Governor’s budget proposes continuing to provide \$7 million in General Fund to augment trial court security funding.

Legislative Analyst's Office (LAO). According to the LAO's findings, the Administration has not shown that additional trial court security funding resources are needed. Accordingly, they recommend that the Legislature reject the Governor's proposal for a \$280,000 General Fund augmentation for increased trial court security costs.

Staff Comments. Since the inception of the use of General Fund to augment the realigned revenue to support trial court security, the Legislature has expressed concerns with the Administration's lack of justification for the augmentation. Over the last few years, the General Fund augmentation has grown from just over \$550,000 to \$7 million. While the item before the committee today is a \$280,000 augmentation related to the transfer of judgeships and not the larger issue of the increased security funding related to court construction, the committee may wish to consider revisiting the larger funding with the intention of setting aside a portion of the funding to pay any future successful local mandate claims and eliminating the remainder of the augmentation.

Staff Recommendation. Reject the \$280,000 augmentation for trial court security and hold open the trailer bill language.

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 9, 2017
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 2016 Budget Act projected an adult inmate average daily population of 128,821 in the current year. The current year adult inmate population is now projected to increase by 0.2 percent to 129,015. The budget year adult inmate population is projected to be 128,159, a 0.7 percent decrease over the current year.

As of March 1, 2017, the total in-custody adult population was 129,407. The institution population was 114,192, which constitutes 134.2 percent of prison capacity. The most overcrowded prison is the North Kern State Prison in Delano, which is currently at 175.5 percent of its capacity. For female inmates, Central California Women's Facility in Chowchilla is currently the most overcrowded at 145.7 percent of its capacity.

The budget proposes total funding of \$11.3 billion (\$11 billion General Fund and \$307 million other funds) for CDCR in 2017-18. This is an increase of approximately \$940 million General Fund over 2015-16 expenditures and \$300 million General Fund over the 2016-17 budget. The following table shows CDCR's total operational expenditures and positions for 2015-16 through 2017-18.

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

Funding	2015-16	2016-17	2017-18
General Fund	\$10,005,918	\$10,645,694	\$10,945,438
General Fund, Prop 98	15,350	18,970	18,972
Other Funds	62,171	63,863	71,416
Reimbursements	219,886	185,182	236,786
Recidivism Reduction Fund	18,960	-	-
SCC Performance Incentive Fund	-1,000	-1,000	-1,000
Total	\$10,321,285	\$10,912,952	\$11,271,841
Positions	54,433	53,578	56,461

Issue 1: Adult Population Estimates

Governor’s Budget. The budget proposes total funding of \$11.3 billion (\$11 billion General Fund and \$307 million other funds) for CDCR in 2017-18. This is an increase of approximately \$300 million General Fund over the 2016-17 budget. This increase reflects higher costs related to (1) a proposed shift of responsibility for operating inpatient psychiatric programs in prisons from the Department of State Hospitals (DSH) to CDCR [*to be discussed in subcommittee #5 on March 16*], (2) debt service payments for construction projects, and (3) a proposed reactivation of housing units that were temporarily deactivated due to inmate housing unit transfers made pursuant to the *Ashker v. Brown* settlement. This additional proposed spending is partially offset by various spending reductions, including reduced spending for contract beds [*to be discussed in subcommittee #5 on April 27*].

Adult Institution Population. The adult inmate average daily population is projected to decline from 129,015 in 2016-17 to 128,159 in 2017-18, a decrease of 856 inmates. This constitutes a decrease from the 2016 Budget Act’s 2016-17 projection.

Parolee Population. The average daily parolee population is projected to increase from 43,686 in 2016-17 to 44,761 in 2017-18, an increase of 1,075 parolees. This is an increase from the 2016 Budget Act projections.

Mental Health Program Caseload. The population of inmates requiring mental health treatment is projected to be 36,283 in 2016-17 and 36,571 in 2016-17. This is an increase of 320 and 608, respectively, over the 2016 Budget Act projections.

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

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

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

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

- Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings for parole consideration.
- Release inmates who have been granted parole by the Board of Parole Hearings but have future parole dates.
- Expand CDCR's medical parole program.
- Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole (the "elderly parole" program).
- Increase its use of reentry services and alternative custody programs.

SB 260 and 261. In 2013, SB 260 (Hancock), Chapter 312, Statutes of 2013, created a youthful offender parole process. Under this bill, individuals who committed their crimes under the age of 18 would be eligible for parole, even if serving a life sentence. Specifically, the legislation established a youth offender parole hearing which is a hearing by the Board of Parole Hearings for the purpose of

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

reviewing the parole suitability of any prisoner who was under 18 years of age at the time of his or her controlling offense. The bill created the following parole mechanism for a person who was convicted of a controlling offense that was committed before the person had attained 18 years of age:

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

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

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

Proposition 47 requires that state savings resulting from the proposition be transferred into a new fund, the Safe Neighborhoods and Schools Fund. The new fund will be used to reduce truancy and support drop-out prevention programs in K-12 schools (25 percent of fund revenue), increase funding for trauma recovery centers (10 percent of fund revenue), and support mental health and substance use disorder treatment services and diversion programs for people in the criminal justice system (65 percent of fund revenue). The Director of Finance is required on or before July 31 of each fiscal year to calculate the state savings for the previous fiscal year compared to 2013-14.²

In the proposed budget, the Administration estimates that the 2016-17 savings associated the Proposition 47, will be \$42.9 million in 2016-17, an increase of \$3.5 million in savings over 2015-16. On-going savings are estimated to be \$69 million.

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

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

² 2015-16 Governor's Budget Summary

CDCR is currently working on regulations to implement the proposition and anticipates that they will be in place by October 1, 2017.

[The details of the Governor's Proposition 57 proposal will be discussed during the subcommittee hearing on April 20th.]

Thanks in large part to these recent efforts, California's prison population, which peaked at 173,000 in 2007, has declined to 118,560 adult inmates as of January 11, 2017. Currently, the state's prisons are at 133.8 percent of their design capacity. As these sentencing changes continue to be implemented and Proposition 57 is implemented, the population should continue to decline.

Legislative Analyst's Office (LAO). Traditionally, the LAO withholds their recommendation on the Administration's adult population funding request pending updates in the May Revision.

Staff Recommendation. Hold open pending May Revise updates.

Issue 2: Standardized Staffing

Governor's Budget. The Governor's budget proposes \$5.9 million and 44.1 positions beginning in 2017-18 to augment custody standardized staffing levels at three adult institutions designed to provide sufficient security coverage based on institution design and for activation of additional space. Specifically, the budget requests the following:

- California institution for Women (CIW) -- 32.5 correctional officers and \$4,251,000 and four correctional sergeants and \$610,000. In order to increase inmate supervision in an effort to reduce the number of inmate incidents, comply with review of, and documentation in, court mandated logs and reports, as well as increase the number of staff available to respond to other medical and psychiatric emergencies this request will establish:
 - Six correctional officer positions for housing units - one on each housing unit on first watch.
 - 11 correctional officer positions for security patrols - one on first watch, five on second watch, and five on third watch.
 - Two correctional officer positions for yard officers - one on second watch and one on third watch.
 - Three sergeant positions for supervision of correctional officers and inmates - one on first watch, one on second watch; and one on third watch.
 - The remaining 14.5 positions are needed to provide coverage for these security staff if they are out on leave, such as when a correctional officer uses vacation or sick leave.
- California Health Care Facility (CHCF) -- 2.5 correctional officer (CO) positions for five two-day posts to staff a new visiting center currently under construction.
- Deuel Vocational institution (DVI) -- 5.1 correctional officers - \$667,000, and \$19,000 in one-time funding for improvement of yard infrastructure. This request will activate an existing recreation yard and establish 5.1 CO positions on second watch for the observation and yard posts to provide sufficient security coverage and inmate supervision.

In addition, the proposed budget includes an overall staffing savings reduction of \$42.3 million General Fund in 2016-17 and \$8.3 million General Fund in 2017-8 related to various housing unit conversions (discussed in detail in the next item).

Background. In the 2012 blueprint, CDCR established a standardized staffing model at the adult institutions to achieve budgetary savings and improve efficiency in operations. Prior to standardized staffing, the department's budget was adjusted on a 6:1 inmate-to-staff ratio based on changes in the inmate population. For every six inmates, the department received or reduced the equivalent of one position. These staffing adjustments occurred even with minor fluctuations in population and resulted in staffing inconsistencies among adult institutions. The prior staffing model allowed local institutions to have more autonomy in how budgeted staffing changes were made. The standardized staffing model provides consistent staffing across institutions with similar physical plant/design and inmate populations. The model also clearly delineates correctional staff that provides access to other important activities, such as rehabilitative programs and inmate health care. The concept that an

institution could reduce correctional staff for marginal changes in the inmate population was not valid without further detriment to an institution's operations. Therefore, the standardized staffing model was established to maintain the staff needed for a functional prison system.

According to the Administration, given the significant population reductions 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 (LAO). The LAO did not raise any concerns with this proposal.

Staff Recommendation. Approve as budgeted.

Issue 3: Security Housing Unit Conversion

Governor's Budget. The Governor's budget proposes to reduce General Fund support for CDCR by \$42.4 million in 2016-17 and by \$8.3 million in 2017-18 to account for net savings from the conversion of various housing units. According to the Administration, a significant driver of conversions proposed in 2016-17 and 2017-18 is the implementation of the 2016 *Ashker v. Brown* settlement, which made the criteria for housing inmates in security housing units more stringent. For example, at Pelican Bay State Prison in Crescent City, the Administration is proposing to convert 576 deactivated security housing unit beds to 720 level II beds. Because security housing units require more custody staff than most other units, these conversions would result in net savings.

Background. CDCR periodically converts housing units to accommodate fluctuations in the security requirements or needs of its inmate population, such as by converting administrative segregation beds (high security) to general population beds (lower security). When the department converts a housing unit, the unit's staffing complement is adjusted to reflect the requirements of the new inmates to be housed there.

Segregated Housing. 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 is 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. Due to the *Ashker* settlement, the number of inmate in SHU housing has been reduced from over 3,500 inmates to 460.

Investigative Services Unit (ISU). CDCR currently operates an ISU consisting of 285 correctional officer positions located across the 35 state-operated prisons. Correctional officers who are assigned to the ISU receive specialized training in investigation practices. This staff is responsible for various investigative functions such as monitoring the activities of prison gangs and investigating assaults on inmates and staff. The 2016 budget included \$2.7 million and 22 correctional officer positions for the ISU. The Administration argued that the additional funding and positions would provide increased staffing to investigate potential increases in gang-related activity as a result of the reduction of the number of inmates serving long-term Segregated Housing Unit terms.

Legislative Analyst's Office (LAO) The LAO recommends that the Legislature approve the proposed housing unit conversions and the corresponding adjustments to the department's budget.

Staff Comment. As noted above, the Administration proposes converting the deactivated security housing unit at Pelican Bay State Prison into a level II housing unit. CDCR's facilities for men are broken down into four levels of classification and inmates are housed based upon their security risk. Level I constitutes the lowest level, with inmates being housed in fire-camps and other open dormitories with a low level of security. Level II facilities also consist primarily of open dormitories with a secure perimeter, which may include armed coverage. Generally speaking, inmates in level II housing units are the most likely to participate in programs and are often at the end of their prison sentences.

Pelican Bay is the state's most remote prison and is located on the border between California and Oregon. Roughly 30 percent of the staff at Pelican Bay lives in Oregon. Pelican Bay is among the state's lowest in terms of programming opportunities for inmates, offering only two career technical education programs (cosmetology and electrical). In addition, given the remote location of the prison, it is also one of the most difficult prisons to find volunteer organizations willing to provide innovative programming, which has become one of the cornerstones of inmate rehabilitation in recent years. Its location, several hundred miles from a major airport, also makes it difficult for families to travel to the prison to visit people who are housed there. Given the remote location of the prison and the difficulty in providing rehabilitative programming, the Committee may wish to consider whether it is an appropriate place for level II inmates.

Staff Recommendation. Hold open pending updated information in the May Revision.

Issue 4: Update on Culture Change Initiatives

Governor's Budget. The Governor's budget requests \$11.732 million General Fund (\$10.516 million one-time) beginning in 2017-18 to implement a comprehensive video surveillance pilot program at the Central California Women's Facility and High Desert State Prison. This request includes funding for four one-year limited-term positions.

High Desert State Prison (HDSP). Over the last decade, reports of mistreatment of inmates by staff at High Desert have been an area of concern for the Senate. On December 1, 2010, the President pro Tempore of the Senate, Darrell Steinberg, and budget committee chair, Mark Leno, sent a letter to the Office of the Inspector General (OIG) and secretary of CDCR outlining the results of a Senate review of allegation of inmate abuse in the behavioral management unit (BMU) at High Desert. In that review, the Senate found that the responses of both the OIG and CDCR were "largely inadequate, ad hoc, and displayed the absence of a uniform and reliable system of response, referral and follow-through to ensure corroborated abuses were addressed and corrected."

Approximately five years later, the reports of abuse continued and the Senate Rules Committee authorized the Inspector General, who provides external oversight of CDCR, to conduct a special review of HDSP with respect to (1) excessive use of force against inmates, (2) internal reviews of incidents involving the excessive use of force against inmates, and (3) protection of inmates from assault and harm by others. In that letter, the Senate Rules Committee outlined a number of allegations that had prompted the request for the review. Among those allegations were the following:

- A March 2015 incident involving a mobility-impaired inmate who was reportedly assaulted by staff, and consequently required outside medical treatment, for refusing to remove and relinquish footwear worn to assist with his medical condition.
- A March 2015 incident involving an inmate who was attacked by his cellmate after custodial officers allegedly told other inmates that he was a sex offender. Prior to the incident, the inmate who was attacked allegedly reported to staff that he was being extorted by other inmates and feared harm from his cellmate.
- A March 2015 incident involving a hearing-and speech-impaired inmate who was reportedly wrestled to the ground and severely assaulted after noncompliance with oral instructions from custodial staff even though the inmate was wearing a brightly-colored vest identifying his impairments.

As a result of that review, the OIG has raised numerous concerns about mismanagement and staff misconduct at HDSP. In the report of findings from the review, the OIG highlighted several areas of concern, including staff intentionally endangering inmates by disclosing their sex offender status to other inmates and staff tampering with inmate appeals and mail. In total, the OIG made 45 specific recommendations to CDCR, one of which was the installation of cameras in all inmate areas at the prison. This recommendation was made in response to three specific problems identified by the OIG:

Use of Excessive Force. Incident reporting data, staff and inmate complaints, rules violation reports, and Office of Internal Affairs' investigations reviewed by the OIG suggest that HDSP staff have used excessive or unnecessary force on inmates at alarming rates.

Reluctance to Engage When Force Is Required. Despite the apparent excessive force used against inmates, the OIG learned from interviewing inmates and reviewing incident reports that HDSP staff may be delaying their response in some circumstances where use of force is necessary to stop serious harm to inmates who are victims of attack.

Lack of Reliable Eyewitness Accounts. The OIG argues that allegations of inappropriate use of force are very difficult to substantiate because of the practice among HDSP correctional officers of refraining from providing information that could implicate a fellow officer.

In addition, in 2016, CDCR engaged the services of the Association of State Correctional Administrators to provide an independent follow-up assessment of the conditions at High Desert. That report was released in September of 2016. This assessment confirmed many of the concerns raised by the Senate and OIG and offered a series of recommendations for improving High Desert's culture.

Central California Women's Facility. According to CDCR, CCWF has experienced an increase in violence, attempted suicide, and contraband since the transfer of women offenders from Valley State Prison for Women to CCWF in 2012. For example, the department reports cellphone related rule violations increased at CCWF by 164 percent between 2012 and 2015. It also reports that in 2015-16, CCWF had 146 violent incidents, one riot, and 11 attempted suicides.

Workplace Excellence. In an attempt to change the culture and improve both the working and living conditions inside of the state's prisons, the chair of the Senate Public Safety Committee and this subcommittee convened a joint oversight hearing in March of 2016. That hearing included testimony from the Inspector General, CDCR executive management and the California Correctional Peace Officers Association. As a result of that hearing, the Senate proposed a series of policy changes and budget augmentations designed to assist in supporting excellence in the correctional officer workforce. Among those items proposed by the Senate for the budget were the following:

- Funding for CDCR to develop and implement an innovative management grant program which would provide funding for individual institutions to implement programs designed to promote occupational, personal, and family well-being for the workforce; improve the effectiveness of prison yard programming and security for staff and inmates; and programs that provide resilience training and occupational wellness for correctional staff.
- Funding for CDCR to receive onsite guidance, training, and consultation from the National Institute of Corrections for the purposes of developing and implementing a new cadet field mentorship pilot program.
- Funding for CDCR to develop and implement a comprehensive workforce excellence program designed to provide innovative workforce development at institutions facing high levels of violence, lockdowns, workers' compensation claims and other indicators of stress in the workforce.

The 2016 Budget Act. The 2016 budget included \$4 million General Fund for CDCR to increase its leadership training efforts, evaluate its current workforce, and create a succession management plan. The funding is intended to be used to promote and develop programs focused on workplace excellence,

wellbeing, leadership, and the recruitment and retention of mid-level and high-level managers. In addition, the budget included the following provisions related to the use of the \$4 million:

1. *The Department of Corrections and Rehabilitation shall consider a partnership with the National Institute of Corrections for the purposes of developing and implementing training modules or programs focused on correctional peace officer recruitment, retention, and mentorship.*
2. *The Department of Corrections and Rehabilitation shall consider options for promoting or developing programs focused on workforce excellence; occupational, personal, and family well-being of the Department's workforce; evaluating and reducing stress in the workforce; supervisory and managerial leadership; and recruiting, developing, and retaining mid-level and high-level managers.*
3. *It is the intent of the Legislature that the Department of Corrections and Rehabilitation increase levels of compliance with mandated trainings such as Basic and Advanced Supervision and Sergeants' and Lieutenants' Academies, within existing resources.*

Video Surveillance Pilot. Following a special review at HDSP in 2015, the Office of Inspector General recommended CDCR to "immediately install cameras in all inmate areas, including, but not limited to, the exercise yards, rotundas, building dayrooms, patios, and program offices of HDSP." In 2016, CDCR installed 207 cameras, as well as video monitoring software in designated high traffic and large congregation areas within the institution. Advanced video surveillance technology enables institutions to provide more comprehensive monitoring and a heightened level of safety and security.

Since the transfer of women offenders from Valley State Prison for Women to CCWF, there has been an increase in violence, and/or attempted suicide, and drug and contraband trafficking. Although video surveillance enhancement is needed at all institutions, CDCR determined that CCWF and HDSP are the institutions with the greatest and most immediate need. While CDCR has policies and procedures in place to prevent suicides, physical incidents, staff misconduct, and contraband trafficking, video surveillance, CDCR argues, will give CCWF and HDSP the opportunity to use state-of-the-art technology to augment staff resources with objective, available as needed, video cameras.

Legislative Analyst's Office (LAO). The LAO recommends that the Legislature reject the Governor's proposal to implement comprehensive video surveillance at High Desert and CCWF as it is premature until the current video surveillance pilot is completed. In addition, the LAO recommends that the Legislature direct the department to report at spring budget hearings on alternative strategies that it is considering for addressing the problems at HDSP and CCWF.

Staff Comments

Inmate Grievance and Appeal Process. One of the findings in the OIG review of High Desert was that the inmate appeals process was not operating adequately and that the staff complaint process was broken. The review notes, "Very few staff complaints were referred for investigation and those that were referred have not been adequately monitored and traced for response. Also, [High Desert] does not have a process for addressing officers who are repeatedly accused of misconduct by different inmates." CDCR has since noted that they are looking at changes to their policies surrounding inmate

appeals and staff complaints. The Committee may wish to ask CDCR to report on that process during future subcommittee hearings. In addition, requiring a review of video footage, when available, for all staff complaints may assist in better determining the validity of those complaints.

Staff Resiliency Skills Training. Among the recommendations from the Inspector General, in regards to High Desert, was the need for resiliency skills training for the staff. Resiliency skills training is designed to assist employees working in dangerous, high-stress environments to disengage from those environments and develop strategies designed to inoculate them against the damaging health impacts of operating at a high level of hypervigilance on a daily basis. The review recommendation highlights a staff resiliency training program being developed by the Center for Mindfulness in Corrections that is “geared toward developing consistent and healthy self-care practices and a safe environment to disengage from the negative drama.” The report notes resilience programs show promising results in law enforcement agencies across the country and recommends that it be piloted at an institution like High Desert with the ultimate goal of expanding statewide.

In order to assist CDCR in establishing a resiliency training pilot program, the Legislature augmented funding requested by the Governor in the 2016 budget and included the budget bill language discussed previously that requires CDCR to consider using the funding to develop a program designed to increase the *occupational, personal, and family well-being of the Department’s workforce*. It does not appear that CDCR is planning on establishing a resiliency pilot at this time with the provided funding. The Committee may wish to consider redirecting a portion of the \$4 million included in the current year budget toward a resiliency pilot project at High Desert and one other institution.

Staff Recommendation. Approve as budgeted and require that guidelines for the video surveillance pilot include a requirement that appeals coordinators in the pilot institutions review video of any incidents prior to determining the disposition of an inmate complaint or appeal, especially in the case of staff complaints. In addition, request that the OIG assess the impact of the cameras on the pilot institutions and report back during future budget hearings.

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 16, 2017
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**0530 HEALTH AND HUMAN SERVICES AGENCY – OFFICE OF LAW ENFORCEMENT SUPPORT (OLES)**

- 1. Information Technology and Leased Vehicle Funding.** The proposed budget requests \$271,000 in 2016-17 and \$146,000 ongoing General Fund for information technology and leased vehicles. Specifically, OLES requests funding to cover operating expenses for leased vehicles and contract costs for reengineering, implementation, licensing and support of their information technology systems.

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)

- 2. Mental Health Crisis Beds.** The proposed budget includes a General Fund savings of \$9.2 million General Fund and a reduction of 62.4 positions because CDCR was unable to activate 32 mental health crisis beds at the California Men's Colony.

ITEMS TO BE HEARD

0530 HEALTH AND HUMAN SERVICES AGENCY (HHS) – OFFICE OF LAW ENFORCEMENT SUPPORT

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 is responsible for providing oversight of the law enforcement and employee conduct at both departments, establishing 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 the Department of Developmental Services (DDS), Department of State Hospitals (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.

Current Budget. Current funding for OLES is \$2.7 million per year, which funds 21 permanent positions.

Issue 1: Overview of Findings from First Year of Semi-Annual Reports

Background. Similar to the OIG's semi-annual reports on CDCR, OLES is required to report semi-annually to the Legislature on the following:

- The number, type, and disposition of complaints made against employees.
- A synopsis of each investigation reviewed by OLES.
- An assessment of the quality of each investigation.
- The report of any settlement and whether OLES 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' (DSH) and the Developmental Centers Division of the State Department of Developmental Services' (DDS) systems for tracking patterns and monitoring investigation outcomes and employee compliance with training requirements.

Between July 1, 2016, and December 31, 2016, OLES reviewed 832 incident reports. The incidents included alleged misconduct by state employees, serious offenses between facility residents and reports of resident pregnancies and deaths. Of those incidents, OLES found that 230 of them required investigations and/or monitoring. For the full calendar year, 1,662 incidents were reported to OLES, which equates to more than four incidents a day, seven days a week. The number of incidents was more than double the number projected by OLES when it first began monitoring DSH and DDS.

The largest number of reported incidents from both departments involved allegations of abuse. Almost half of the reported incidents met the criteria for OLES to investigate and/or monitor. At DSH, the second largest category of incidents during the reporting period was allegations of sexual assault. Slightly over forty percent of the reports involved a patient sexually assaulting another patient.

As a result of the first year of oversight, OLES has made 39 recommendations to the departments – 19 at DSH and 20 at DDS.

Staff Recommendation. This is an oversight item. No action is necessary at this time.

**4440 DEPARTMENT OF STATE HOSPITALS AND
5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION****Issue 2: Coleman Overview**

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. Almost half of the people in the state prisons 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.

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 proposed 2017-18 budget provides \$67 million (\$45 million MHSOAC 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 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.³ 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.

What follows is a detailed timeline of the major events related to *Coleman v. Brown* over the last 25 years.

Major Milestones in the *Coleman v. Brown* case

Year	Event
1991	The <i>Coleman</i> 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 <i>Coleman</i> 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 <i>Coleman</i> court approved a plan to address the inadequacies in mental health care.
2006	Plaintiffs in the <i>Plata</i> and <i>Coleman</i> 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.

³ Stanford Law School Three Strikes Project, "When Did Prisons Become Acceptable Mental Healthcare Facilities?"

Year	Event
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 <i>Coleman</i> lawsuit and to end the requirement to reduce the prison population to 137.5 percent of design capacity. The <i>Coleman</i> 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 <i>Coleman</i> 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 <i>Coleman</i> 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.
2015	Under the guidance of the court, CDCR made revisions to its Rules Violation Report (RVR) process.
2015	In July, the special master learned that despite having 256 low-custody treatment beds at DSH-Atascadero, the average monthly number of inmate admissions was "a mere nine patients." In August, the court ordered the <i>Coleman</i> parties to appear for a status conference.
2016	In May, the special master submitted both his 26 th Round Monitoring Report on Compliance with Provisionally Approved Plans, Policies and his monitoring report on Mental Health Inpatient Care Programs for Inmates.
2017	On March 8 the <i>Coleman</i> court accepted the findings in the special master's report on inpatient care programs and adopted in full the majority of his recommendations.

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 March 8, 2017, CDCR housed about 117,842 adult inmates in the state's 35 prisons and 43 fire camps. Over 114,000 of those inmates are in state prisons, which results in those institutions currently being at 134.3 percent of their design capacity. Approximately 4,318 inmates are housed in out-of-state contracted prisons, 6,086 are housed in in-state contracted facilities, and 3,567 are housed in fire camps. CDCR also supervises and treats about 45,000 adult parolees. Approximately 29.5 percent of inmates have been treated for severe mental illnesses within the last year.

The *Coleman* Class. As of March 6, 2017, there are currently 38,124 inmates in the *Coleman* class (35,681 men and 2,443 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 March 6, 2017, 28,917 inmates with mental illness 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 March 6, 2017, 7,451 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 375 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 \$250 million General Fund per year. As of March 6, 2017, 1,381 inmates were receiving inpatient care, 44 of those patients were women receiving care at the California Institution for Women (CIW) and 37 were condemned inmates housed at San Quentin State Prison. The remaining 1,300 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.

2016 Special Master's Report on the Mental Health Inpatient Care Programs for Inmates. As a follow up to the May 2014 report discussed previously, the special master released an updated report on inpatient care on May 25, 2016. In that report, the special master noted that the issue surrounding the transfer of *Coleman* inmate-patients to the least restrictive level-of-care discussed over two decades-ago remained a problem. Specifically, the 256 beds at Atascadero State Hospital designated for *Coleman* class members remained underutilized, despite the existence of a waiting list for inpatient care. In addition, the report expresses frustration with CDCR for raising the concept of taking over inpatient treatment for at least the last decade without following through. The report notes, "Each time the concept is raised but not followed through, the time and attention expended are wasted."

The report also notes the success of the California Institution for Women (CIW) psychiatric inpatient program and the San Quentin inpatient program. The special master states that the programs have taken root and are maturing as viable, successful programs. He further states that from a long-term perspective, they indicate some level of promise for CDCR's potential to successfully assume more responsibility for the inpatient care of its inmates. He writes that in building and maintaining these two inpatient programs, CDCR has learned much first-hand about operating its own inpatient programs at its prisons. Finally, he states, "If CDCR is serious about a 'lift and shift' at the three DSH psychiatric programs, now is the time for CDCR to proceed in that direction."

Regarding the other inpatient programs, the special master found areas of concern including vacancy rates that remained high in the area of psychiatrists and psychologists (for example, a 68 percent psychiatry vacancy at Atascadero, which was reduced to a 37 percent functional rate due to the use of contract staff). In contrast, both the CIW and San Quentin programs did not have any vacancies in the area of psychiatrists and psychologists during the report period. In addition, the report found the use of treatment teams to develop individual treatment plans is lacking in the facilities run by DHS. In addition, the time and effectiveness of both group therapy and individual treatment were also lacking. Areas of concern for each facility are highlighted below.

DSH-Atascadero

- At the time of their review, 41 percent of the beds designated for *Coleman* patients were filled by non-*Coleman* patients.
- Behavioral therapy-based treatment plans were used minimally and not available to all patients for which they were clinically indicated.
- The hospital characterized discharge planning as "burdensome" and reported that it was difficult to make contact with CDCR's coordinators and correctional counselors.

DSH-Coalinga

- At the time of the review, the program had a 33 percent vacancy rate for psychiatrists but all psychology and social work positions were filled.
- Group therapy was by far the predominant treatment modality, comprising 99.7 percent of treatment.
- The average length of stay for *Coleman* patients was 288 days.

DSH-Salinas Valley

- Staff noted that the underutilization of individual therapy was due to insufficient staffing and the facility's requirement that they use medical technical assistants (MTAs), custody officers with medical training, to escort patients.
- MTAs remain in the room during individual therapy sessions, rather than standing outside the door.
- Even when clinically indicated, the facility underutilized behavioral plans and behavioral interventions.

DSH-Vacaville

- At the time of the review, the program had a vacancy rate of 12 percent for psychiatry; 26 percent for psychology; 24 percent for social work; 39 percent for senior RNs; and 70 percent for psychiatric technicians.
- Numerous administrative and supervisory clinical positions were vacant or filled by staff in acting capacities.
- Acute care patients reported that individual therapy was not available and, except for occasional cell-front assessments, psychiatry meetings only occurred within the treatment team setting.

DSH-Stockton

- In numerous cases, patients receiving acute treatment were assigned diagnoses without supporting documentation or evidence discernible from their records.
- Patients receiving acute treatment received very little out-of-cell treatment, which is inadequate for patients in that level of care, and particularly so in cases where treatment plans are insufficiently individualized.
- Treatment plans were overly vague and could not reasonably be expected to work as a platform for actionable treatment interventions, objectives, and goals.

California Institution for Women Psychiatric Inpatient Program (CDCR)

- There were no clinical staff vacancies at the time of the review.
- Patients received an average of one hour per week of individual therapy and were offered approximately 15 hours a week of group therapy.
- No patients had access to jobs or educational classes.
- A performance improvement committee met monthly and established performance improvement goals.

San Quentin Condemned Inmate Psychiatric Inpatient Program (CDCR)

- The facility met or exceeded established clinical staffing ratios.
- Patients in both the acute care and intermediate care units received adequate and appropriate care.

- Some treatment plans were not individualized to include specific interventions to address identified mental health issues.
- Patients were offered unstructured out-of-cell activities including plans to offer unstructured yard time on completion of the construction of the yard.

As a result of the review of all of the inpatient programs, the special master provided the following recommendations:

- 1) CDCR and DSH and *Coleman* plaintiffs should meet in intervals of no less than 60 days to track and ensure appropriate mental health bed utilization.
- 2) DSH should continue to work on their staffing plan for their inpatient programs and they shall provide the special master with monthly updates on their implementation of their staffing plan.
- 3) DSH should develop a plan within 90 days for the creation of a continuous quality improvement process.
- 4) DSH should develop within 90 days a plan for the creation of a consistent and uniform patient level system to be utilized across all of its inpatient programs.

On March 8, 2017, the *Coleman* court adopted all but the first recommendation.

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.

On March 8, 2017, the court entered an order adopting the second, third and fourth recommendations in the special master's *Monitoring Report on the Mental Health Inpatient Care Programs for Inmates*.⁴ In addition, the order required DSH to continue working on developing staffing plans, a continuous quality improvement process, and the creation of a consistent and uniform patient level system to be utilized across all of its inpatient programs that treat *Coleman* class members.⁵

Staff Recommendation. This is an oversight item. No action is necessary at this time.

⁴ ECF No. 5448

⁵ ECF No. 5573

Issue 3: Transfer of Immediate and Acute Levels of Care from DSH to CDCR

Governor's Budget. The Governor's budget proposes to shift responsibility for the three inpatient psychiatric programs DSH operates in state prisons to CDCR beginning in 2017-18. Accordingly, the budget proposes a transfer of \$250 million (General Fund) and 1,978 positions from DSH to CDCR effective July 1, 2017. Almost 90 percent of these positions are for treatment staff, including 495 psychiatric technicians and 374 registered nurses. The remaining 10 percent are administrative positions. According to the Administration, having CDCR operate these inpatient psychiatric programs would reduce the amount of time it takes for an inmate to be transferred to a program as only CDCR staff would need to approve referrals for the beds. Specifically, the Administration expects that the time needed to process an intermediate care facility (ICF) referral will decline from 15 business days to nine business days and from six business days to three business days for acute treatment program (ATP) referrals.

For the next two years, CDCR plans to operate the three inpatient psychiatric programs in the same manner as DSH. For example, CDCR plans to use identical staffing packages and classifications to provide care and security. The department indicates that it will assess the current staffing model during these two years and determine whether changes to these programs are necessary. The Governor does not propose shifting responsibility for the 306 beds in DSH-Atascadero and DSH-Coalinga that serve low-custody ICF inmates. According to the Administration, CDCR does not currently have sufficient capacity to accommodate the inmates who are housed in these beds. However, the Administration indicates that the long-term plan is to shift these inmates to CDCR when capacity becomes available.

Background. As discussed in the previous item, several inpatient hospital programs are available for inmates who are members of the *Coleman* class who require longer-term, acute care. These programs are primarily operated by 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 \$250 million General Fund per year. As of March 6, 2017, 1,381 inmates were receiving inpatient care, 44 of those patients were women and 37 were condemned inmates housed at San Quentin State Prison. The remaining 1,300 are receiving care in a DSH facility.

San Quentin Inpatient Facility. In 2014, the *Coleman* 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 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* special master. 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.

Legislative Analyst's Office (LAO). Given the uncertainty as to whether or not the proposed shift in responsibility would result in more cost-effective care being delivered, LAO recommends that the Legislature reject the Governor's proposal and instead shift a limited number of beds over a three-year period. Specifically, LAO recommends the Legislature implement a pilot program in which CDCR would provide inpatient psychiatric care to a portion of inmates who would otherwise get their care from DSH. Such a pilot would allow the Legislature to determine (1) whether wait times for these programs decrease as expected, (2) what particular staffing changes need to be made and the cost of making those changes, and (3) the effectiveness of the treatment provided. The LAO recommends that the pilot include both ICF and ATP units and be operated at more than one facility. For example, CDCR could have responsibility for an ATP unit at CHCF and an ICF unit at CMF. This would ensure that the pilot can test CDCR's ability to operate multiple levels of care at multiple facilities. In

addition, the LAO recommends that the pilot include one unit that is currently being operated by DSH, and one new unit that would be operated by CDCR.

In order to ensure that the Legislature has adequate information after the completion of the pilot to determine the extent to which inpatient psychiatric program responsibilities should be shifted to CDCR, LAO recommends that the Legislature require CDCR to contract with independent research experts, such as a university, to measure key outcomes and provide an evaluation of the pilot to the Legislature by January 10, 2019. These key outcomes would include how successfully CDCR was able to return inmates to the general population without additional MHCB or inpatient psychiatric program admissions, whether wait times decreased, and the cost of the care provided. The LAO estimates the cost of this evaluation to be around a few hundred thousand dollars.

Staff Comments. 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 PIP; and the fact that CDCR does not appear to take a holistic approach to meeting increases in the need for care when the program is bifurcated between DSH and CDCR. 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.

The Governor's proposal consists of a shift of the existing programs and the existing personnel from DSH to CDCR. While this is a positive step in terms of CDCR's ability to seamlessly provide care for inmates throughout their mental health system, it is unclear that just shifting the programs as they are currently structured will fundamentally improve the level of care being provided. The Administration notes that the initial transfer is just the first step in a multi-year effort to improve the quality of care. The committee may wish to continue to closely monitor the progress CDCR is making in improving the quality of care provided to inmates with acute mental health needs, with the expectation that CDCR will ultimately provide the same robust level of care that is currently provided at the San Quentin facility to all inmates in the *Coleman* class.

Staff Recommendation. Approve as budgeted.

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION**Issue 4: California Medical Facility – Psychiatric Inpatient Program**

Governor’s Budget. The budget requests \$11.4 million General Fund to convert an enhanced outpatient unit into a 74-bed intermediate care facility (ICF) at the California Medical Facility.

Background. Inpatient psychiatric programs are operated in both state prisons and state hospitals. There are a total of 1,547 inpatient psychiatric beds. There are two levels of inpatient psychiatric programs:

ICF. ICFs provide longer-term treatment for inmates who require treatment beyond what is provided in CDCR outpatient programs. Inmates with lower security concerns are placed in low-custody ICFs, which are in dorms, while inmates with higher security concerns are placed in high-custody ICFs, which are in cells. There are 784 ICF beds, 700 of which are high-custody ICF beds in state prisons. In addition, there are 306 low-custody ICF beds in state hospitals.

Acute Treatment Programs (ATPs). ATPs provide shorter-term, intensive treatment for inmates who show signs of a major mental illness or higher level symptoms of a chronic mental illness. Currently, there are 372 APP beds, all of which are in state prisons.

In addition to these beds, there are 85 beds for women and condemned inmates in state prisons that can be operated as either ICF or ATP beds. As of January 2017, there was a waitlist of over 120 inmates for ICF and ATP beds.

Legislative Analyst’s Office (LAO). Given that there is currently a 120 inmate waitlist for inpatient psychiatric beds, the proposal to provide 74 additional beds appears justified on a workload basis. The LAO also notes that activating these additional beds could help reduce the amount of time that inmates on the waitlist spend in comparatively more expensive MHCBs.

Staff Recommendation. Approve as budgeted.

4440 DEPARTMENT OF STATE HOSPITALS

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

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

California's State Hospital System

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

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

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

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

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

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

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

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

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

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

Committed Directly From Superior Courts:

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

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

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

**State Hospitals & Psychiatric Programs
Caseload Projections***

	2016-17	2017-18
Population by Hospital		
Atascadero	1,258	1,225
Coalinga	1,293	1,303
Metropolitan	807	807
Napa	1,269	1,269
Patton	1,527	1,507
Subtotal	6,154	6,121
Population by Psych Program		
Vacaville	392	0
Salinas	235	0
Stockton	480	0
Subtotal	1,107	0
Population Total	7,261	6,121
Population by Commitment Type		
Incompetent to Stand Trial (IST)	1,552	1,530
Not Guilty By Reason of Insanity (NGI)	1,421	1,404
Mentally Disordered Offender (MDO)	1,322	1,325
Sexually Violent Predator (SVP)	920	920
Lanterman-Petris-Short Act – Civil Commitments	625	628
<i>Coleman</i> Referral – Hospitals	306	306
<i>Coleman</i> Referral – Psych Programs	1,107	0
Department of Juvenile Justice	8	8
Jail-Based Competency Contracted Programs		
San Bernardino/Riverside ROC	40	40
San Bernardino JBCT	76	76
Sacramento JBCT	32	32
San Diego JBCT	25	30
Sonoma JBCT	10	10
Kern Admission, Evaluation, and Stabilization Center	0	60
Total	183	248

*The caseloads in this table are from the DSH 2017-18 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 6,369 in 2017-18.

State Hospitals Budget

The Governor's proposed budget includes \$1.6 billion for DSH in 2016-17 (\$1.4 billion General Fund). This represents a \$278 million decrease over 2016-17 funding. The proposed budget year position authority for DSH is 8,550 positions, a decrease of 1,932 positions from the current year. This decrease in funding and positions is a result of the proposed transfer of acute care treatment for CDCR inmates from DSH to CDCR.

(dollars in thousands)

Funding	2015-16 Actual	2016-17 Projected	2017-18 Proposed
General Fund (GF)	\$1,606,390	\$1,727,968	\$1,443,593
Reimbursements	136,714	140,284	146,490
CA Lottery Education Fund	24	21	21
Total	\$1,743,128	\$1,868,273	\$1,590,104
Positions	10,974	10,482	8,550

Issue 5: Incompetent to Stand Trial and Jail-based Competency Proposals**Governor's Budget**

Admission, Evaluation and Stabilization (AES) Center. The Governor's budget for 2017-18 proposes to establish an AES Center, which would be located in the Kern County Jail. Specifically, the budget proposes a \$10.5 million General Fund augmentation and two positions for DSH to activate 60 beds in the Kern County Jail in Bakersfield to provide restoration services for IST patients. This works out to be a cost of \$175,000 per bed. According to the Administration, the AES Center would be used to screen jail inmates in Kern County, as well as some other Southern California counties, found to be incompetent to stand trial (IST) and determine whether they require the intensive inpatient treatment offered at state hospitals. If a patient does not require state hospital treatment, they would be treated at the AES Center. DSH would contract with Kern County to provide custody and treatment services to patients in the center.

The Administration is proposing budget trailer legislation to give DSH the authority to send any patient committed to DSH to the AES Center, even if that patient is not specifically committed to the AES Center by a judge. DSH indicates that this would generally allow the department, rather than trial court judges, to determine who is appropriate for the AES Center.

Jail-Based Competency Treatment Program. Due to the delayed activation of jail-based competency treatment (JBCT) programs in San Diego and Sonoma counties, the budget includes a General Fund savings of \$948,000 in 2016-17 and \$159,000 in 2017-18.

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

For a portion of this population, the state hospital system finds that restoring competency is not possible. For these individuals, the responsibility for their care returns to counties, which are required to retrieve the patients from the state hospitals within ten days of the medical team deeming the individual's competency to be unlikely to be restored. AB 2625 (Achadjian), Chapter 742, Statutes of 2014, changed this deadline for counties from three years to ten days. Prior to this bill, many individuals in this category would linger in state hospitals for years.

Over the past several years, the state hospitals have seen a growing waiting list of forensic patients, with a 10 percent annual increase in IST referrals from courts to DSH. Currently, there are 525 ISTs on the waiting list. DSH has undertaken several efforts to address the growing IST waitlist including: 1) increasing budgeted bed capacity by activating new units and converting other units; 2) establishing a statewide patient management unit; 3) promoting expansion of jail-based IST programs; 4) standardizing competency treatment programs; 5) seeking community placements; 6) improving referral tracking systems; and 7) participating in an IST workgroup that includes county sheriffs, the Judicial Council, public defenders, district attorneys, patients' rights advocates, and the Administration. DSH acknowledges that, despite these efforts, IST referrals have continued to increase. When queried

about the potential causes of the growing number of referrals from judges and CDCR, the administration describes a very complex puzzle of criminal, social, cultural, and health variables that together are leading to increasing criminal and violent behavior by individuals with mental illness.

Jail-Based Competency Treatment Program. 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, pursuant to 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.

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 General Fund 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.

2015 Budget Act. 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 has a partnership with the University of California, Davis to run a 32-bed JBCT program to serve IST patients from Sacramento, Fresno, and San Joaquin counties.

Currently, there are 148 JBCT beds throughout the state in Riverside, San Bernardino and Sacramento counties. The majority of the beds, 96, are in San Bernardino County. As noted above, the budget proposes adding an additional 40 beds, 30 in San Diego and 10 in Sonoma. Finally, DSH is working with Mendocino County to develop a small bed model that will be flexible in scope and able to serve a small number of IST patients. This small-county model is intended to serve as a template for other counties with low IST patient referral rates.

Legislative Analyst's Office (LAO). In light of the IST waitlist and the lower cost of providing treatment through the contract with Kern County, the LAO recommends that the Legislature approve the funding and positions requested by the department. They also recommend the Legislature revise the proposed budget trailer legislation to give DSH the authority to determine who is admitted to JBCT programs. Such a change would help achieve the intended goals of the proposed AES Center, but in a much broader way that maximizes the number of patients that receive treatment without waiting for a bed in a state hospital and reduces future state costs.

Staff Comments. Expanding programs that allows people who have been deemed incompetent to stand trial by reason of insanity, to receive mental health services in the county jail or community-based facility, 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 easy 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, 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*. However, DSH appears to be struggling in its ability to contract with counties to provide community restoration. This difficulty comes despite significant interest on the part of the county sheriffs to find ways to treat and restore people on the IST waiting list.

The annual cost of the JBCT program is approximately \$78,000 per bed, as opposed to an IST bed in a state hospital that costs approximately \$250,000 per year. Given the significant General Fund savings associated with the JBCT program, the subcommittee may wish to explore ways of more quickly and efficiently expanding the number of JBCT beds.

The creation of an AES center designed to further assess individuals before they reach the state hospitals, appears to be a reasonable strategy for reducing the IST waiting list. In addition, it suggests that after many years of the Legislature urging DSH to establish competency programs outside of the state hospitals, DSH has begun to embrace the philosophy that not every person who has been found to be incompetent to stand trial needs to be in a state hospital setting in order to be successfully returned to competency.

Staff Recommendation. Approve the proposed budget and adopt the proposed trailer bill as placeholder language with the intention to modify the language based upon the LAO's recommendation.

Issue 6: Enhanced Treatment Program Staffing

Governor's Budget. In order to implement Assembly Bill 1340 (Achadjian) Chapter 718, Statutes of 2014, DSH is requesting staff and resources for the Enhanced Treatment Program (ETP). DSH notes that the ETP will provide treatment for patients who are at the highest risk of violence and who cannot be safely treated in a standard treatment environment.

DSH plans to establish three 13-bed ETP units at DSH-Atascadero and one 10-bed ETP unit at DSH-Patton. DSH is requesting \$2.3 million in one-time funding and \$5.6 million ongoing to support the activation of the first two ETP units at DSH-Atascadero, as well as 44.7 positions in FY 2017-18 and 115.1 positions in FY 2018-19. Resources for DSH-Atascadero's third unit and DSH-Patton's unit will be requested in the FY 2018-19 Governor's budget estimate.

Background. The state hospitals were initially designed to accommodate a population that did not exhibit the same level of violence that the hospitals face today. Currently, 92 percent of the population has been referred to the state hospitals by the criminal justice system. Consequently, evidence reveals an increasing rate of aggression and violent incidents at state hospitals.

The Administration argues that, in spite of this significant change in the state hospitals' patient population, there is currently no legal, regulatory, or physical infrastructure in place for DSH to effectively and safely treat patients who have demonstrated severe psychiatric instability or extremely aggressive behavior. As a result, often the only option available to a state hospital dealing with an extremely violent patient is the use of emergency seclusion and restraints, which is a short-term and more extreme response. Subsequent to the use of seclusion and restraint, a violent patient must be placed in one-on-one or two-on-one observation, which DSH states is labor intensive and does not necessarily improve safety.

DSH received funding to retrofit existing facilities to establish enhanced treatment units (ETUs) to provide a secure, locked environment to treat patients that become psychiatrically unstable, resulting in highly aggressive and violent behavior toward themselves, other patients, or staff. According to DSH, candidates for an ETU would exhibit a level of physical violence that is not containable using other interventions or protocols currently available in the state hospitals.

DSH has operated an ETU at Atascadero State Hospital since 2011. This pilot project is distinguished from the existing enhanced treatment program in that it allows DSH to lock individual patients in their rooms. Under the current enhanced treatment program, patients are not in locked rooms.

Violence in DSH. DSH has experienced a decrease in the number of violent incidents between 2010 and 2015. DSH reports that violence predominantly comes from repeat aggressors, reporting that one percent of patients are responsible for 35 percent of DSH violence. The state hospitals have utilized programming, which the department attributes to the overall reduction in the numbers of both patient-aggressors and patient-victims.

According to DSH, in 2015, there were a total of 3,758 patient-on-patient assaults and 2,586 patient-on-staff assaults at state hospitals. Of the 9,948 patients treated in the state hospitals in 2015, 77 percent were non-violent, 22 percent committed 10 or fewer violent acts, and one percent committed 10 or more violent acts. Of all the violent acts committed, 65 percent are committed by those with 10

or fewer violent acts, and 35 percent are committed by those with 10 or more violent acts. A small subset of the population, 32 patients, commits the majority of aggressive acts. Assaults for the previous years are as follows: 3,486 patient-on-patient and 2,745 patient-on-staff in 2014; 3,372 patient-on-patient and 2,591 patient-on-staff in 2013; 3,844 patient-on-patient and 3,041 patient-on-staff in 2012; 4,075 patient-on-patient and 2,837 patient-on-staff in 2011; and 4,658 patient-on-patient and 2,691 patient-on-staff in 2010.

DSH notes that they are committed to reducing violence in its system. DSH has implemented a number of measures to reduce violence and increase safety for staff and patients. Most notable, DSH implemented personal duress alarm systems at each of its five state hospitals, developed the California Violence Assessment and Treatment Guidelines (Cal-VAT), and conducts violence risk assessments on its patients.

Enhanced Treatment Unit Pilot Project at Atascadero State Hospital. DSH issued a report in May 2013, *Enhanced Treatment Unit: Annual Outcome Report*, on the pilot project at Atascadero, which has operated since December 2011, but does not allow for locked doors. The goal of the ETU is to decrease psychiatric symptoms of some of the most violent patients in order to enable DSH to simultaneously assist the patients in their recovery, and increase safety in the facility. Patients must meet certain criteria, based on the patient's mental illness and psychiatric symptoms, before being admitted to the ETU. DSH reviews patient referrals to determine if patients meet the following entrance criteria:

- The patient engages in pathology-driven behaviors.
- The patient engages in recurrent aggressive behaviors that have been unresponsive to mainstream therapeutic interventions.
- The patient commits a serious assaultive act that results in serious injury.

The report concludes that the ETU has been successful in decreasing aggressive incidents and that the program as a whole is likely effective. Some of the contributing factors cited include staff with expertise in treating difficult patients and decreased staff-to-patient ratios; the presence of the Department of Police Services (Atascadero state hospital law enforcement); and the "calm milieu" of the ETU, which is attributed to the added staff with greater expertise in treating difficult and violent patients, i.e., the staff reacts to an incident in a manner that does not escalate the situation that may otherwise result in a violent act. While successful, DSH states that the Atascadero ETU accepts only those with Axis 1 diagnoses, such as schizophrenia, major depression, bipolar, and schizoaffective disorder. The Atascadero ETU intentionally avoids patients with Axis 2 diagnoses, which are various types of personality disorders that are often present in the patients involved in predatory violence. Patients with Axis 2 diagnoses have been involved in three recent murders of staff and patients, and are the patients the ETPs will treat.

AB 1340 (Achadjian) Chapter 718, Statutes of 2014. This legislation permitted the DSH to establish and administer a pilot enhanced treatment program (ETP) at each state hospital, for the duration of five calendar years, for testing the effectiveness of treatment for patients who are at high risk of the most dangerous behavior. In addition, it authorized ETPs to be licensed under the same requirements as acute psychiatric hospital and makes significant changes to current requirements and procedures related to the admission of patients and the administration of care. This legislation provides the necessary policy guidance for the development and running of potentially locked ETUs in the state

hospitals. The legislation required DSH to adopt and implement policies and procedures necessary to encourage patient improvement, recovery, and a return to a standard treatment environment, and to create identifiable facility requirements and bench marks. The policies and procedures are also required to provide all of the following:

- 1) Criteria and process for admission into an ETP pursuant to Section 4144 of the Welfare and Institutions Code.
- 2) Clinical assessment and review focused on behavior, history, high risk of most dangerous behavior, and clinical need for patients to receive treatment in an ETP as the least restrictive treatment environment.
- 3) A process for identifying an ETP along a continuum of care that will best meet the patient's needs, including least restrictive treatment environment.
- 4) A process for creating and implementing a treatment plan with regular clinical review and reevaluation of placement back into a standard treatment environment and discharge and reintegration planning as specified in subdivision (e) of Section 4144 of the Welfare and Institutions Code.

Use of Solitary Confinement. There are a variety of treatment options to address aggressive patient behavior within the state hospitals. While levels of security (ie. strong boundaries, a highly structured environment, and a lack of access to dangerous materials) are essential in addressing violence, experts caution against the use of solitary confinement as it may contribute to a patient's mental distress and may seem punitive. Experts therefore suggest avoiding seclusion, physical restraint, and sedation whenever possible. If necessary, ETUs should only be used if the patient remains unresponsive to all other therapeutic interventions available in a standard treatment setting.

In fact, it is widely accepted that solitary confinement of people with mental health disorders can cause those illnesses to worsen. Psychological research has found that a lack of social interaction can lead segregated housing unit inmates in prison to suffer from a variety of psychological and psychiatric illnesses. These can include chronic insomnia, panic attacks, and symptoms of psychosis (including hallucinations).

As discussed previously, the *Coleman* special master's investigation of programs for mentally ill inmates run by DSH found that patient-inmates at the Stockton State Hospital complained of being confined to their cells 21 to 22 hours per day and received very little human interaction or treatment, despite the damaging effects of confinement for people who are mentally ill. However, this report involved inmates who are in prison and being treated for a mental illness and the ETUs are designed for state hospital patients who are not inmates. Presumably, DSH will develop regulations and protocols that will prevent patients in an ETU from being confined to their room without human interaction for an extended period of time. However, the department does not have those written policies available at this time.

Legislative Analyst's Office (LAO)

Permanent Positions and Funding Not Necessary Given Pilot Is Only for Four Years. The Administration is requesting ongoing funding and positions to operate ETP units. However, AB 1340 only authorizes each ETP unit to operate for four years. To the extent that the required evaluation of each ETP unit finds that the program is effective, the Legislature could consider providing ongoing funding to operate the units as part of its budget deliberations in future years. Thus, the LAO finds that it is premature at this time to provide the department permanent funding and positions for ETP units.

Required Evaluations Will Allow Legislature to Assess Whether Pilot Units Should Continue After Four Years. The statutorily required evaluations should allow the Legislature to assess the effectiveness of the ETP pilot units and the extent to which such units should continue and be expanded on an ongoing basis. While DSH is required to provide various data in the evaluation reports (such as the length of time patients spend in the program), the department is not specifically required to provide some of the key outcomes that are necessary to measure whether ETP units are effective at reducing violence in state hospitals. These key outcomes are (1) whether ETP patients are able to return to the general population without additional violent incidents, (2) the effect of ETP units on overall rates of patient violence, and (3) whether the ETP pilot units could be modified in order to improve these outcomes.

Approve Funding and Positions on Limited-Term Basis. In view of the above, the LAO recommends the Legislature approve the funding and associated positions for each of the first two ETP units on a limited-term basis as envisioned in AB 1340, rather than on an ongoing basis as proposed by the Governor.

Adopt Budget Trailer Legislation to Provide Additional Detail on Required Evaluations. The LAO recommends that the Legislature adopt budget trailer legislation to require DSH, as part of its annual evaluation reports on ETP units, to provide information on the following key outcomes: (1) whether ETP patients are able to return to the general population without additional violent incidents, (2) the effect of ETP units on overall rates of patient violence, and (3) whether ETP units could be modified to improve these outcomes.

Staff Comments. Despite the passage of the initial legislation in 2014, and requests from the Legislature in 2015 and again in 2016, DSH has not developed any written policies and procedures surrounding the ETP units. Absent the Legislature reviewing those written policies to ensure that they include appropriate patient protections and a limited use of locked rooms, the committee may wish to reject funding for activating ETP units, pending a thorough vetting of the policies and procedures.

Staff Recommendation. Due to the absence of written policies and procedures, reject funding for the ETP unit activation until such time as those policies are provided to the Legislature for review.

Issue 7: Provisional Language: State Hospital Financial Activity Report

Governor’s Budget. The Administration proposes removing provisional language regarding the requirement for the Department of State Hospitals (DSH) to submit the annual report on state hospital financial activity. Their rationale is that the requirement was included in response to the transition from the Department of Mental Health (DMH) to DSH. According to the Administration, now that DSH operates all facilities in a more centralized manner, the need to compare across institutions is no longer necessary and preparing this report is time-consuming.

Legislative Analyst’s Office (LAO)

2015-16 LAO Budget Report: Improved Budgeting for the Department of State Hospitals. For several years the Legislature has expressed concern regarding the lack of transparency in the DSH budget. In 2015, the LAO provided an in-depth review of DSH’s budget and provided a series of recommendations for improving DSH’s budgeting methodology. The following is a brief summary of their findings:

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

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

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

*it provides, (2) improve incentives for the department to operate efficiently, and (3) allow the Legislature to provide increased oversight of DSH's budget and operations.*⁶

State Hospital Financial Activity Report. While the LAO understands that the state hospitals are operated in a more centralized fashion than used to be the case, they still think that the report provides useful information and do not think it should be eliminated entirely. However, it could be focused to provide the Legislature with more useful information. Some of the useful information already included in this report is the vacancy rates, overtime costs, and the total operating expenses and equipment (OE&E) costs. This allows the Legislature to get a picture how much it costs to operate a state hospital.

In addition, the LAO thinks including the following items would make the report more useful. Specifically, they would find the following three items useful: (1) Temporary help blanket positions by institution, (2) overtime breakdown between voluntary overtime and mandatory overtime (both hours and costs), and (3) vacancy rates for key positions by institution.

Staff Comments. Given the long-term concerns regarding DSH's budgeting practices and DSH's lack of improvement in its budgeting methodology, it appears unwise to remove any reporting requirements that may provide the Legislature with additional clarity and information as to how the department is using state General Fund dollars.

Staff Recommendation. Reject the removal of the provisional language and direct the LAO and Department of Finance to update the language to include the information recommended by the LAO. In addition, request that the LAO report on any improvements in the DSH budgeting process as it relates to their 2015 recommendations.

⁶ Larson, Sarah. *The 2015-16 Budget: Improved Budgeting for the Department of State Hospitals*. Legislative Analyst's Office. January 1, 2015.

Issue 8: Conditional Release Program Funding**Governor's Budget**

CONREP Transitional Housing Cost Increase (\$976,000 GF). For the continuation of the Statewide Transitional Residential Program (STRP) for CONREP patients, DSH is requesting \$976,000 in General Fund authority. STRP beds provide temporary housing to CONREP patients unable to live in the community without direct supervision. DSH activated 16 beds in FY 2016-17 and this request provides the ongoing funding for the continued operation of these beds.

CONREP Sexually Violent Predator (SVP) Program Cost Increase (\$2.4 million GF). Based on anticipated court-ordered release dates, DSH estimates the cost of releasing two additional SVP patients (with housing available) and two additional transient SVP patients in FY 2017-18 to be \$2.4 million. This funding will increase the current caseload for conditionally released SVPs from 19 in FY 2016-17 to 23 in FY 2017-18. Given the security requirements for this population, DSH is unable to absorb the cost increase with existing resources.

Background. The California Forensic Conditional Release Program (CONREP) oversees patients who have been conditionally released from DSH by a judge. DSH's medical directors recommend patients for release when their symptoms have been stabilized and they no longer present a danger to society. Only the courts have the authority to order a release. SVPs in CONREP receive an intensive regimen of treatment and supervision that includes at least weekly individual contact by supervision staff, specialized sex offender treatment, weekly drug screening, surveillance, polygraph examinations, and active Global Positioning System tracking.

CONREP was mandated as a state responsibility in 1984, and began operating in 1986. Its patients have typically experienced lengthy hospital stays and in some cases served full prison sentences. The goal of CONREP is to ensure public protection in California communities while providing an effective and standardized outpatient treatment system.

Most patients in the CONREP program have gotten there after a lengthy stay in a state hospital. Once psychiatric symptoms have been stabilized and the patients are considered no longer to be a danger, the state hospital medical director recommends eligible inpatients to the courts for outpatient treatment under CONREP.

Individuals must agree to follow a treatment plan designed by the outpatient supervisor and approved by the committing court. The court-approved treatment plan includes provisions for involuntary outpatient services. In order to protect the public, individuals who do not comply with treatment may be returned to a state hospital.

CONREP patients receive an intensive regimen of treatment and supervision that includes individual and group contact with clinical staff, random drug screenings, home visits, substance abuse screenings and psychological assessments. The department has performance standards for these services which set minimum treatment and supervision levels for patients in the program. Each patient is evaluated and assessed while they are in the state hospital, upon entry into the community, and throughout their CONREP treatment.

The state budget provides 100 percent of the funding for CONREP's intensive level of assessment, treatment and supervision. The department contracts with county mental health programs and private agencies to provide services.

Coverage for Mental Health Treatment. The Affordable Care Act provided one of the largest expansions of mental health and substance use disorder coverage in a generation, by requiring that most individual and small employer health insurance plans, including all plans offered through the health insurance marketplace cover mental health and substance use disorder services. Also required are rehabilitative and habilitative services that can help support people with behavioral health challenges. These protections built on the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) provisions to expand mental health and substance use disorder benefits and federal parity protections to an estimated 62 million Americans.

All state Medicaid programs, including Medi-Cal, provide some mental health services and some offer substance use disorder services to beneficiaries, and Children's Health Insurance Program (CHIP) beneficiaries receive a full service array. These services often include counseling, therapy, medication management, social work services, peer supports, and substance use disorder treatment. In addition, coverage for the Medicaid adult expansion populations is required to include essential health benefits, including mental health and substance use disorder benefits, and must meet mental health and substance abuse parity requirements under MHPAEA in the same manner as health plans.

Despite the Medicaid expansion through the Affordable Care Act in 2010, all care provided through CONREP continues to be funded through the state General Fund.

Reporting Requirements in the 2016 Budget Act. During last spring's subcommittee hearings, the Senate raised questions related to why DSH and their CONREP providers were not using Medi-Cal funding to offset the mental health and medical costs of individuals in CONREP. Specifically, the budget provided one-time funding for CONREP transitional housing and included provisional language requiring the department to prepare this report by January 10, 2017 and start seeking reimbursement by July 1, 2017.

The report submitted by DSH states that the majority of CONREP patients are currently enrolled in Medi-Cal and access medical and prescription medication services through Medi-Cal providers. The report goes on to mention that recent guidance from the Centers for Medicare and Medicaid Services (CMS) suggests that CONREP patients may not be eligible at all. The department sent a letter seeking clarification in November 2016, and has not yet received a response from CMS. As a result of this uncertainty, the department says further analysis is required before including Medi-Cal reimbursement into the CONREP model.

Legislative Analyst's Office (LAO). The Governor's proposed budget does not include language directing the department to continue to pursue Medi-Cal reimbursement. The LAO recommends directing the department to continue to pursue Medi-Cal reimbursement and submit an updated report as part of next year's budget process on its effort to do so.

Staff Comment. Given the federal government's interest in dismantling the Affordable Care Act, it is unclear whether this coverage will remain in the coming years.

Staff Recommendation. Approve the proposed budget on a one-time basis. In addition, adopt the LAO's recommendation requiring DSH to submit and updated report on January 1, 2018, with the expectation that the county mental health departments and private contractors seek Medi-Cal reimbursement for all reimbursable medical and mental health treatment by July 1, 2018, absent clear direction from the federal government that the medical and mental health costs for CONREP patients are not eligible.

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 23, 2017
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

8120 COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Issue 1: Law Enforcement Driving Simulators Replacement Project

Governor's Budget. The Commission on Peace Officer Standards and Training requests limited-term funding of \$1.9 million Motor Vehicle Account in 2017-18 and 2018-19 to replace 16 driving simulators (eight annually) and continue to maintain the remaining simulators that are out of warranty.

Background. Since January 1, 2002, POST Regulation 1005, mandated all peace officers (except reserve officers) below the rank of middle management and assigned to patrol, traffic or investigation who routinely effect physical arrest of criminal suspects are required to complete Perishable Skills training. Studies have shown that incidents involving Perishable Skills make up the majority of law enforcement deaths and serious injuries. Additionally, events associated with perishable skills are the primary impetus for a significant portion of civil litigation. These same studies show that after two years without refresher training, these skills begin to deteriorate. The skills for peace officers that have been identified as most perishable are driving, tactical firearms, force options, arrest and control, and verbal communication.

Perishable Skills training is mandated to consist of a minimum of 12 hours over the course of a two-year period. Of the total 12 hours required, a minimum of four hours of each of the following topical areas is required to be completed:

- Arrest and Control
- Driver Training/Awareness or Driving Simulator (LEDS)
- Tactical Firearms or Force Options Simulator (FOS)

With both the statutory mandate, and safety of officers and the community in mind, POST developed 24 Regional Skills Training Centers (RSTCs) (Attachment A) to provide a cost effective means of providing perishable skills training to the more than 80,000 sworn officers affected by this training requirement. Each RSTC is equipped with Law Enforcement Driving Simulators (LEDS) commensurate with the number of potential trainees requiring the training in their region.

As part of a 2009 contract, POST invested over \$11 million in LEDS, which included hardware, software and firmware (108 simulators, 26 instructor stations, six trailers, six generators, warranties and initial operations training). To meet these regulatory perishable skills training mandates, POST has trained approximately 57,796 Regular Basic Training recruits and peace officers for Perishable Skills training since the LEDS acquisition (2009-2015).

Staff Recommendation. No recommendation.

5227 BOARD OF STATE AND COMMUNITY CORRECTIONS**Issue 1: Proposed Elimination of the California Gang Reduction, Intervention and Prevention (CalGRIP) Program**

Governor's Budget. The Governor's budget proposes the elimination of the CalGRIP program.

Background. The CalGRIP program began in 2007 when Governor Schwarzenegger created the Governor's Office of Youth Violence Policy (OGYVP) initiated to help communities support strategies to reduce gang and youth violence. The program was first administered by the OGYVP, and later transferred to the California Emergency Management Agency (CalEMA), which is now the California Office of Emergency Services. At its onset, CalGRIP provided anti-gang funding to many state departments including: job training, education and intervention programs through the CalEMA, and the Employment Development Department; the Corrections Standards Authority (now the Board of State and Community Corrections (BSCC)), to spend \$1.1 million on anti-gang programs; and \$7 million for the California Highway Patrol to help local jurisdictions combat gang violence.

In July 2012, as a result of AB 1464 (Blumenfeld), Chapter 21, Statutes of 2012, the BSCC acquired sole administrative responsibility for the program. The administrative responsibility of the \$9.2 million annual grant program came to BSCC along with an increased level of accountability. Under BSCC, the CalGRIP allocation is based upon an applicant's ability to demonstrate that funding is used to implement evidence-based prevention, intervention and suppression programs.

For five years, the budget has appropriated \$9.2 million from the Restitution Fund every year to fund CalGRIP, a grant program to cities that provide a dollar-for-dollar match to implement evidence-based programs to reduce youth and group-related crime and violence. The budget sets aside one million dollars annually for the City of Los Angeles, with the remainder distributed to other cities of all sizes through a competitive application process administered by the BSCC. The grant program also requires that grantees distribute at least 20 percent of CalGRIP funds toward community-based organizations. According to BSCC records, in recent years cities have chosen to direct a majority of CalGRIP funding to community-based organizations. CalGRIP is currently administered on a three-year grant cycle that will end at the close of this year.

Through local funding matches, CalGRIP will have leveraged over \$55 million dollars in investments in 19 cities across the state from 2015-2017.

2014 CalGRIP Report to the Fiscal Committees of the Legislature. According to a 2014 report from BSCC, 21 percent of the funding was used on gang suppression activities, 36 percent on intervention, and 43 percent on prevention. Cities have used the funding to support Boys and Girls Clubs, Big Brother/Big Sister programs, functional family therapy, bullying prevention, Project CeaseFire, gun buy-back programs, and gang detective units.

Staff Recommendation. Hold open pending decisions regarding the state's fine and fee revenue.

VARIOUS DEPARTMENTS

Issue 2: Fines and Fees Proposals

Governor's Budget. Fine and revenue deposited into the State Penalty Fund (SPF) is distributed among nine other state funds, with each receiving a certain percentage under state law. The Governor proposes to eliminate the statutory formulas dictating how SPF revenues are distributed and, instead, appropriate revenues directly to certain programs based on his priorities. Under the plan, some programs would no longer receive SPF support entirely, while others would be reduced.

The Legislative Analyst's Office (LAO) included the following chart of the impact of the proposed cuts to programs receiving funding from the State Penalty Fund in their March 3, 2017, report on the *Governor's Criminal Fine and Fee Proposals*. In the Governor's budget, three programs are proposed for funding elimination: Internet Crimes Against Children; CalGRIP; and Local Public Prosecutors and Public Defenders Training. Of those three, the Internet Crimes Against Children program and the Local Public Prosecutors and Public Defenders Training both receive funding from either federal or local sources. Only CalGRIP would be eliminated entirely.

Figure 9

State Penalty Fund (SPF) Program Expenditures for 2016-17 and 2017-18—Governor's Proposal

(In Thousands)

Program	2016-17 ^a			2017-18 (Proposed)			Change From 2016-17
	SPF	Other Funds ^b	Total	SPF	Other Funds	Total	
Victim Compensation	\$15,114	\$105,120	\$120,234	\$9,082	\$111,228	\$120,310	\$76
Various OES Victim Programs ^c	12,494	63,403	75,897	12,053	57,929	69,982	-5,915
Peace Officers Standards and Training	32,132	30,734	62,866	46,496	3,787	50,283	-12,583
Standards and Training for Corrections	17,418	3,706	21,124	17,209	100	17,309	-3,815
CalGRIP	9,519	—	9,519	—	—	—	-9,519
CalWRAP	5,217	—	5,217	3,277	—	3,277	-1,940
Motorcyclist Safety	250	2,941	3,191	—	3,191	3,191	—
DFW employee education and training	450	2,477	2,927	450	2,194	2,644	-283
Bus Driver Training	1,364	219	1,583	1,038	100	1,138	-445
Traumatic Brain Injury	998	64	1,062	800	314	1,114	52
Internet Crimes Against Children	1,008	—	1,008	—	—	—	-1,008
Local Public Prosecutors and Public Defenders Training	850	31	881	—	—	—	-881
Totals	\$96,814	\$208,696	\$305,510	\$90,405	\$178,844	\$269,249	-\$36,261

a Estimated expenditures based on current law, historical budgeting practices, and best available data.

b Includes one-time funding to backfill reduction in SPF revenues—\$19.6 million from the General Fund and \$4.2 million from the Restitution Fund.

c Includes Victim-Witness Assistance Program, Victim Information and Notification Everyday Program, Rape Crisis Program, Homeless Youth and Exploitation Program, and Child Sex Abuse Treatment Program.

OES = Office of Emergency Services; CalGRIP = California Gang Reduction, Intervention, and Prevention; CalWRAP = California Witness Relocation and Protection Program; and DFW = Department of Fish and Wildlife.

Background. Trial courts are responsible for determining the total amount of fines and fees owed by individuals upon their conviction of a criminal offense. This calculation begins with a base fine that is set in state law for each criminal offense. For example, the base fine for the infraction of a stop sign violation is \$35, while the base fine for the misdemeanor of driving under the influence of alcohol or drugs is \$390. State law then requires the court to add certain charges to the base fine (such as other fines, fees, forfeitures, penalty surcharges, assessments, and restitution orders), which can significantly increase the total amount owed. State law also authorizes counties and courts to levy additional charges depending on the specific violation and other factors. After all of the different charges have been levied, the \$35 stop sign violation grows to \$280 and a driving under the influence violation result in fines as high as \$2,024. Finally, statute gives judges some discretion to reduce the total amount owed by waiving or reducing certain charges.

Distribution Among Numerous State and Local Funds. State law (and county board of supervisor resolutions for certain local charges) dictates a very complex process for the distribution of fine and fee revenue to numerous state and local funds. State law requires that a portion of fines and fees be allocated to specific purposes prior to distributing revenue to various state and local funds, such as to support most collection program operational costs related to collecting delinquent debt. Additionally, state law includes some distributions that vary by criminal offense and authorizes local governments to determine how certain fines or fees are to be distributed among various local funds. Finally, state law includes formulas for distributions of certain fines and fees.

State Receives Majority of Fine and Fee Revenue. According to available data compiled by the State Controller's Office and the judicial branch, a total of \$1.7 billion in fine and fee revenue was distributed to state and local governments in 2015-16. The state received \$881 million (or roughly half) of all revenue distributed that year. Of this amount, roughly 60 percent went to support trial court operations and construction. The LAO estimates that local governments received \$707 million (or 42 percent) of the total amount of fine and fee revenue distributed in 2015-16. The remaining \$114 million (or seven percent) went to collection programs to cover their operational costs related to the collection of delinquent debt.

State Penalty Fund (SPF). One of the major state funds that receives criminal fine and fee revenue is the SPF. Specifically, state law requires that a \$10 penalty assessment be added for every \$10 of the base fine, with 70 percent of the revenue deposited into the SPF. (The remaining 30 percent is deposited into county general funds.) The amount deposited into the SPF is then split among nine other state funds with each receiving a certain percentage under state law. These funds, which can also receive funds from other sources, then support various state and local programs—including the state's victim compensation program (Restitution Fund) and programs for state and local law enforcement (Peace Officers' Training Fund and Corrections Training Fund). Each of these funds primarily supports one specific program.

The amount of revenue deposited into the SPF peaked in 2008-09 at about \$170 million and has steadily declined since. (In adopting the 2016-17 budget, the Legislature appropriated, on a one-time basis, General Fund money to specific programs supported by SPF revenue to backfill the projected decline in fine and fee revenue.) Total revenue deposited into the SPF in 2017-18 is expected to be about \$94 million—a decline of about 45 percent since 2008-09.

Legislative Analyst's Office (LAO)

Deposit Most Criminal Fine and Fee Revenue in State General Fund. While the Governor's proposal to change the allocation of SPF revenues would be a step in the right direction in improving the state's fine and fee system, the LAO continues to believe that taking a much broader approach to changing the overall distribution of fine and fee revenue would be preferable. As discussed in their January 2016 report, they find that eliminating all statutory formulas related to fines and fees would give the state maximum control over fine and fee revenue. Accordingly, the LAO recommends the Legislature require that nearly all fine and fee revenue, excluding those subject to certain legal restrictions (such as money collected for violations of state law protecting fish and game), be deposited into the General Fund for subsequent appropriation by the Legislature in the annual state budget. Depositing all fine and fee revenue in the General Fund would allow the Legislature to maximize its control over the use of this money and to ensure that annual funding for state and local programs is based on workload and legislative priorities. Moreover, an annual review of programmatic funding levels would facilitate periodic reviews of programs to help ensure that they are operating effectively and efficiently. In addition, any fluctuations in the collection of fine and fee revenue would no longer disproportionately impact programs supported by fines and fees. Instead, fluctuations in revenue would be addressed at a statewide level across other state programs—ensuring that adjustments in funding levels were based on statewide legislative priorities.

Depositing all fine and fee revenue into the General Fund would eliminate the need for the Legislature to continuously identify and implement short-term solutions to address problems with various special funds currently facing or nearing structural shortfalls or insolvency. These funds include the Trial Court Trust Fund, the Improvement and Modernization Fund, the State Court Facilities Construction Account, the Restitution Fund, and the DNA Identification Fund. In addition, other funds could be in a similar situation in the future if collections of criminal fine and fee revenue continue to decline. Instead, the Legislature could focus on ensuring that programs provide legislatively desired service levels. However, because these programs would now be supported by the General Fund, decisions about General Fund expenditures would be more difficult as the Legislature would need to weigh funding for these programs against all other programs currently supported by the General Fund.

Staff Comments. The LAO recommends depositing most criminal fine and fee revenue into the state General Fund for subsequent appropriation by the Legislature in order to achieve multiple benefits, including maximizing the state's ability to allocate funding to programs based on program workload and legislative priorities. However, the LAO acknowledges that because these programs would now be supported by the General Fund, decisions about General Fund expenditures would be more difficult as the Legislature would need to weigh funding for these programs against all other programs currently supported by the General Fund. To the extent this is a concern for the Legislature, the Legislature could consider alternatives to Governor's proposal and the LAO recommendation. For example, the Legislature could establish one special fund that would receive nearly all criminal fine and fee revenue for subsequent appropriation to programs. This approach would achieve many of the benefits identified by the LAO in their recommended approach. However, the Legislature's ability to allocate funding to programs would be limited to the purposes of the new special fund and programs supported by the fund would still be disproportionately affected by fluctuations in fine and fee revenue. Another option is to split the deposit of fine and fee revenue between the state General Fund and a special fund and

shift high priority programs to the General Fund to insulate them from fluctuations in fine and fee revenue. This would increase the exposure of programs supported by the special fund to fluctuations in fines and fees, however.

Staff Recommendation. Hold open.

0250 JUDICIAL BRANCH**Issue 3: Driver's License Suspensions Trailer Bill**

Governor's Budget. Under existing law, courts can suspend or place a hold on an individual's driver's license for failing to pay court-ordered fines and fees or failing to appear in court. The Governor proposes to eliminate the ability to use driver's license holds and suspensions as a sanction for an individual's failure to pay their court-ordered fines and fees.

Background. If an individual does not pay a court-ordered fine or fee on time, the debt becomes delinquent. Under state law, after a minimum of a 20-day notification of delinquency, collection programs can utilize sanctions against an individual who either fails to pay their fines and fees (FTP) or fails to appear in court without good cause (FTA). Typically, collection programs progressively add sanctions to gradually increase pressure on debtors to make payment. While the same sanctions are available to all collection programs, each program can vary in how it uses these sanctions and when it leverages these sanctions.

Driver's License Holds. Under current law, courts can notify the Department of Motor Vehicles (DMV) to place a hold on a driver's license for an FTA or FTP. A driver's license hold generally only prevents an individual from obtaining or renewing a license until the individual appears in court or pays the owed debt. A hold placed for FTA may be added and removed at the court's discretion. Thus, courts use a hold for FTA as a tool to encourage individuals to contact the court. In contrast, a hold for FTP for a specific debt may only be placed once for that debt—thereby resulting in most courts leaving the hold in place until an individual pays off the debt in full. Additional holds for FTA or FTP for other criminal offenses can then result in the suspension of the license. Holds will be removed by the court once an individual appears in court or makes payment to address his or her debt.

Driver's License Suspensions. As required under current law, DMV will suspend an individual's license (1) if there are two or more holds or (2) if notification is received to suspend the license immediately. Individuals whose driver's license will be subject to suspension receive notice from the DMV that their license will be suspended by a specified date if they do not address all specified holds. Individuals whose driver's licenses are suspended are no longer legally allowed to drive. Once all holds are removed, the suspension is lifted. Individuals must then pay a fee to have their license reissued or returned.

LAO Recommendation. In considering the Governor's proposal, the Legislature will want to weigh the relative trade-offs in repealing the driver's license hold and suspension sanction for failure to pay court-ordered fines and fees. While this repeal would provide relief to such individuals, it would also negatively impact the ability of collection programs to enforce court-ordered fines and fees. The Legislature could also consider alternatives to the Governor's proposal in balancing these trade-offs. In addition, the LAO continues to recommend the Legislature require a comprehensive evaluation of collection practices and sanctions, as well as reevaluate the overall structure of the criminal fine and fee system.

Staff Recommendation. Approve the proposed trailer bill language as placeholder, draft language.

Issue 4: Trial Court Capital Outlay**Governor's Budget**

Various Capital Outlay Reappropriations. The Governor's budget proposes a reappropriation from the Public Buildings Construction Fund to extend the liquidation period of the construction phase until June 30, 2018, for each of the following four projects:

- Riverside County: New Riverside Mid-County Courthouse
- San Bernardino County: New San Bernardino Courthouse
- Tulare County: New Porterville Courthouse
- Calaveras County: New San Andreas Courthouse

This extension will allow for the Judicial Branch to make the final payments (totaling approximately \$7.9 million) and close out these four projects. Unforeseen construction delays resulted in outstanding payments being due past the expiration of the liquidation period on June 30, 2016.

Santa Clara Capital Outlay Project Funding Plan. The Governor's budget proposes a transfer of \$5,237,000 in 2017-18, which includes a catchup payment for 2016-17, and \$3,200,000 annually beginning in 2018-19 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 Santa Clara County - New Santa Clara Family Justice Center. The funds being transferred consist of the county facility payments (CFPs) for the six facilities being replaced by the new courthouse, less the amount required to offset ongoing facility operations of the new courthouse. The transfer would not begin until the termination of the existing leases for the six replaced facilities after project completion as the CFP is currently being used to fund these leases. It will be in place annually until the debt service from the bonds sold to finance the new courthouse is retired in 2037- 38.

Background. The Santa Clara County - New Santa Clara Family Justice Center project in the City of San Jose was originally authorized in the 2009-10 budget act. This project is on the list of projects to be funded by Senate Bill 1407 (Perata), Chapter 311, Statutes of 2008, as adopted by the Judicial Council in October 2008. Construction of the project began in August 2013, and estimated to be completed by August 2016.

This project creates operational efficiencies through consolidation of six facilities into one consolidated courthouse that will serve the families of Santa Clara County. The six leased facilities that will be replaced are the probate investigators facility, two different superior court administration facilities, Terrains Courthouse/Juvenile Dependency and Drug Court, Family Courthouse/Park Center and Notre Dame Courthouse.

Staff Comment. Given that in recent years local trial court construction has resulted in increasing General Fund expenditures for trial court security (see Issue 6), the Legislature may wish to require certification from the local counties that proceeding with the construction of any additional courthouses will not impact trial court security and will not require a General Fund augmentation.

Staff Recommendation. Approve the reappropriation. Hold open the Santa Clara request pending an assessment of the impact of the courthouse on trial court security costs.

Issue 5: Transfer of Judgeships

Governor's Budget. The proposed budget includes statutory language shifting four vacant superior court judgeship positions in the state. Specifically, the Governor proposes shifting two vacancies from Alameda County, and two from Santa Clara County to Riverside and San Bernardino counties.

Background. Each year, the Judicial Council is required to conduct a judicial needs assessment to determine whether or not the state has enough judges. For the last decade, California has had a shortage of judges. The most recent report, released in October of 2016, found a shortage of 189 judgeships statewide. The greatest need is in Riverside and San Bernardino counties, which have a shortage of 47 and 48 judgeships, respectively.

Staff Comment. There is no funding associated with this proposal other than for trial court security, which is discussed in the next item. Funding for the judge will be transferred internally by the Judicial Council and the local courts will be expected to provide the remainder of the staffing and costs from their existing trial court allocation.

Staff Recommendation. Approve the proposed trailer bill language as placeholder, draft language.

9285 & 9286 TRIAL COURT SECURITY FUNDING**Issue 6: Trial Court Security**

Governor’s Budget. The Governor’s proposed budget includes \$7 million General Fund to offset the costs of trial court security in counties that have built new courthouses.

In addition, the budget proposes providing Riverside and San Bernardino counties with \$280,000 in on-going General Fund to offset the security costs of those four judgeships.

Background

2011 Realignment of Trial Court Security. As part of the 2011-12 budget plan, the Legislature enacted a major shift, or “realignment,” of state criminal justice, mental health, and social services program responsibilities and revenues to local government. This realignment shifted responsibility for funding most trial court security costs (provided by county sheriffs) from the state General Fund to counties. Specifically, the state shifted \$496 million in tax revenues to counties to finance these new responsibilities. State law also requires that any revenue from the growth in these tax revenues is to be distributed annually to counties based on percentages specified in statute. Due to this additional revenue, the amount of funding provided to counties to support trial court security has grown since 2011-12 and is expected to reach nearly \$558 million in 2017-18, an increase of \$61 million (or 12 percent). This additional revenue is distributed among counties based on percentages specified in statute.

Additional General Fund Recently Appropriated for Greater Levels of Trial Court Security. The California Constitution requires that the state bear responsibility for any costs related to legislation, regulations, executive orders, or administrative directors that increase the overall costs borne by a local agency for realigned programs or service levels mandated by the 2011 realignment. As part of the annual budget act, the state provided \$1 million in additional General Fund support in 2014-15, \$2 million in 2015-16, and \$7 million in 2016-17, above the tax revenue provided through the 2011 realignment, to provide counties with funding to address increased trial court security costs. Eligibility for these funds was limited to counties experiencing increased trial court security costs resulting from the construction of new courthouses occupied after October 9, 2011 (around the time of implementation of the 2011 realignment). Counties are required to apply to the Department of Finance (DOF) for these funds and only receive funding after meeting certain conditions—including that the county prove that a greater level of service is now required from the county sheriff than was provided at the time of realignment. Of the additional funds provided, DOF allocated \$713,000 in 2014-15, \$1.9 million in 2015-16, and currently estimates the allocation of about \$2.7 million to qualifying counties in 2016-17. The Governor’s budget proposes continuing to provide \$7 million in General Fund to augment trial court security funding.

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. Increasing the funding to \$7 million in 2016, with the potential for an additional \$10 million increase in this year's May Revise, suggests that those concerns had merit.

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 noted 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.

Security for Transfer of Judgeships. According to the LAO's findings, the Administration has not shown that additional trial court security funding resources are needed. Accordingly, they recommend that the Legislature reject the Governor's proposal for a \$280,000 General Fund augmentation for increased trial court security costs.

Staff Comments. Since the inception of the use of General Fund to augment the realigned revenue to support trial court security, the Legislature has expressed concerns with the Administration's lack of justification for the augmentation. Over the last few years, the General Fund augmentation has grown from just over \$550,000 to \$7 million. The committee may wish to consider revisiting the larger funding with the intention of setting aside a portion of the funding to pay any future successful local mandate claims and eliminating the remainder of the augmentation.

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. Hold open pending updates in May Revise.

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



OUTCOMES

Thursday, March 23, 2017
9:30 a.m. or upon adjournment of Session
State Capitol - Room 113

Consultant: Julie Salley-Gray

<u>Item</u>	<u>Department</u>
8120 Issue 1	Commission on Peace Officer Standards and Training (POST) Law Enforcement Driving Simulators Replacement Project Held Open
5227 Issue 2	Board of State and Community Corrections Proposed Elimination of the CalGRIP Program Held Open
Various Issue 3	Multiple Departments Fines and Fees Proposals Held Open
0250 Issue 4	Judicial Branch Driver's License Suspension Trailer Bill Adopted placeholder language (3-0)
Issue 5	Trial Court Capital Outlay Approved the reappropriations (3-0), and Approved the Santa Clara request with trailer bill language memorializing the existing agreements between Santa Clara County and the state regarding trial court security (3-0).
Issue 6	Transfer of Judgeships Trailer Bill Adopted placeholder language consistent with SB 39 (Roth) (3-0)
9285 9286 Issue 7	Trial Court Security Trial Court Security - Judgeships Local Law Enforcement – Trial Court Security Funding Held Open

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 30, 2017
9:30 a.m. or upon adjournment of Session
State Capitol - Room 113
Consultant: Anita Lee

Vote Only Items

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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.

ITEMS TO BE HEARD VOTE ONLY

0559 SECRETARY FOR LABOR AND WORKFORCE DEVELOPMENT AGENCY

Issue 1: Associate Secretary for Farmworker and Immigrant Services

Governor's Budget Proposal. The Governor proposes to make the 2015-16 limited-term agency secretary position permanent, by providing the agency an increase of \$205,000 (reimbursement authority) and one position to identify and prevent abuses in the recruitment of H-2A temporary workers and to coordinate the programs within the Agency that are responsible for serving farmworkers and immigrants.

Background. The U.S. Department of Labor's H-2A temporary agricultural worker program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers, typically from Mexico, to the U.S. to perform agricultural labor of a temporary or seasonal nature that lasts no longer than one year. Employers must pay all travel costs and provide these workers with a copy of their contract, free housing, and three low-cost meals per day. To secure H-2A workers, employers typically rely on recruitment agencies to find and contract the workers on their behalf. Under the federal program, it is unlawful for recruiters or recruitment agencies to charge recruitment fees to H-2A workers. California's usage of the program has more than doubled since 2011-2012. In 2011-12 there were 58 job orders, accounting for 3,337 requested workers, of which 3,174 were certified; in the current program year 2015-16 there have been 261 job orders, accounting for 9,606 requested workers, of which 8,179 have been certified. In July 2014, Governor Brown signed a letter of intent to cooperate with Mexico's Secretary of Labor and Social Welfare to protect the rights of Mexican H-2A temporary workers in California.

The 2015-16 budget provided the agency a two-year limited-term funding to hire the agency secretary for Farmworker and Immigrant Services to design and implement a voluntary pilot program in the Salinas and Santa Maria areas to improve transparency and accountability in the recruitment chain of these workers, to reduce exploitation, and prevent labor violations among this vulnerable workforce. Upon being hired, the agency secretary engaged stakeholders from the advocate community, agricultural industry, bi-national worker advocates, the Mexican government and internal state entities to develop a survey instrument that best captures the demographic and compliance information necessary to identify bad actors and make policy recommendations.

The agency secretary is also responsible for implementing and overseeing the directives of the Director of Immigrant Integration within the agency and coordinating agency programs and resources that can be used to assist California's immigrant population in obtaining employment, labor rights protections, and accessing employment training resources. There are multiple programs within the agency serve farmworkers, including: 1) The Agricultural Services Unit, and the Monitor Advocate Office at the Employment Development; 2) The Division of Labor Standards Enforcement, and the Division of Occupational Safety and Health at the Department

of Industrial Relations, 3) the Workforce Development Board, and 4) the Employment Training Panel.

In February 2017, the agency secretary is launching the first intra-agency farmworker cross-training effort. This training will include a discussion on outreach best practices, engaging with indigenous farm workers, and best practices in collaboration and areas where these departments can collaborate more effectively. This initial training will also set the stage for regularly scheduled quarterly farmworker coordination meetings that will follow. The quarterly meetings will provide an opportunity for ongoing training for staff and coordination amongst departments interfacing with farm workers, paying particular attention for opportunities for multiple remedies across departments when it comes to farm worker protections.

The agency secretary will work with the state's workforce partners to identify gaps in services and programs, develop solutions and identify, promote, and implement best practices to expand access to workforce programs for the immigrant population. This position will also actively engage with immigrant rights stakeholders, and workforce partners to ensure collaboration in development and implementation of programs. The agency secretary will also be responsible for crafting and implementing a workforce navigator program which will be piloted in 2017-18. This pilot will help fund two to three locations where local boards can increase their staff capacity to hire "navigators" that can help increase the participation of immigrant and LEP participants in workforce programs. This pilot project will be implemented in targeted locations of the state that have a high density of LEP and Immigrant workers and will include a comprehensive program evaluation component to enable the agency secretary to evaluate and identify which practices are most effective at serving the target population. The goal for the pilot project is to ensure that navigators are the liaison for the LEP and immigrants enrolled in their programs, and that the navigator is properly trained to recruit, engage and support immigrant and English language learner participants through the workforce system and increase enrollment and completion by this population. One key component of the navigator program will be the ability to connect program participants with wrap around services, including transportation, housing, and other supportive services to ensure the participant has the tools needed to succeed and complete the training program.

Staff Recommendation. Approve as budgeted.

7501 DEPARTMENT OF HUMAN RESOURCES**Issue 2: Employee Outreach**

Summary. The Administration requests \$135,000 in reimbursement authority for 2017-18 and ongoing, to continue implementing a Statewide Employee Engagement Survey program that began in 2015.

Background. In 2015, the state hired a consultant to implement the first statewide employee engagement survey. The Governmental Operations Agency paid \$48,000 for the survey, and included 5,000 randomly selected employees. This survey provided a broad perspective on the level of engagement in California's workforce. The state must build on this first engagement effort by greatly expanding on the survey's ability to deliver more agency and department specific results on a reoccurring basis. The state does not currently provide department with their own workforce employee engagement data, or the tools and guidance needed to improve engagement, departments either expend resources to create their own surveys or don't seek to improve performance through engagement. Without comprehensive engagement data, CalHR notes that departments cannot benchmark their results with other organizations.

The reimbursement authority will allow CalHR to create and implement an ongoing program to survey the state's workforce on key engagement indicators. Additionally, CalHR will provide recommendations for standardized tools, resources and guidance to support individual departments efforts to improve employee performance through engagement. The primary short-term outcome of the requested resources is to develop a consistent state-wide survey for measuring employee engagement, along with a repeatable process for administering the survey in all state organizations. The long-term expected outcome includes improvement of employees and organizational performance as a result of organizations having and acting on employee engagement.

CalHR anticipates that by April 2017, they will develop and release a request for proposal for a statewide engagement survey, and have a vendor in place by July 2017, to support CalHR's engagement services.

Staff Recommendation. Approve as budgeted.

Issue 3: Statewide Training Center

Summary. The Governor's budget includes \$2.82 million in reimbursement authority and three positions in 2017-18, and \$2.79 million in reimbursement authority in 2018-19, and ongoing, to continue expanding the Statewide Training Center (STC) to accommodate increasing enrollment.

Background

In 2006, the original STC closed due to budget cuts. In 2012, the STC reopened, however training functions became decentralized as departments built their own training programs and established vendor contracts for outsourcing employee development services. The decentralized model resulted in system-wide inefficiencies, redundancy and inconsistencies in how the state develops the competencies of California's civil service workforce.

The STC's mission is to provide the state civil service workforce with low cost, relevant and appropriate soft skills, leadership and human resource technical training. The Administration notes that most departments do not have resource to conduct their own training programs. While these departments do not have staff to provide training, they do have funding available to send their staff to training. The STC offers training on a reimbursable basis. The new business model proposed by CSI will provide CalHR with greater leadership over statewide training curriculum in order to supply training. Under the Governor's proposal, the STC will develop centralized training models and content to address statewide needs as determined by CalHR statewide workforce planning data and training needs assessments. The STC will offer state-taught classes that will complement, or in some cases replace, existing vendor training. The STC will continue to partner with vendors to deliver requested training beyond CalHR's capacity, but the content will be owned by CalHR leadership and oversight.

The chart below displays participants at STC.

	2012-2013 Actual	2013-2014 Actual	2014-2015 Actual	2015-2016 Actual	2016-2017 Actual (July - January)
Participants	3,099	6,790	7,780	10,465	10,965

CalHR has developed the following multi-year phased approach to successfully perform its statewide mission:

- **Phase I - 2012-2017.** Offer state employees a wide variety of vendor supported STC training classes.
- The STC has been successful during Phase I. A 2016 CSI training initiative has helped expand STC training to four new regions across the state, creating greater demand for vendor supported STC classes.
- **Phase II – 2016-17.** Create statewide leadership, staff training and development

programs in order to analyze civil service training needs, oversee training curriculum design and evaluation, and facilitate sharing and collaboration on employee development solutions.

- **Phase III – 2017-18.** Offer a variety of leadership and staff development training classes through the STC taught by state employees.

CalHR is requesting three Training Officer II position to provide leadership and staff training through STC. Currently, the STC has no dedicated trainers to deliver revenue-producing state-taught classes. CalHR estimates that these three positions will provide about 2,400 hours in 2017-18 in training classes. The Administration notes that of the \$2.8 million in reimbursement authority, about 85 percent is for training.

Staff Recommendation. Approve as Budgeted.

Issue 4: Blanket Position Conversion for CalCareer Services

Summary. The Administration is proposing to convert three positions from limited-term to permanent to address recruitment and retention issues within CalCareer Services unit. The Administration is requesting position authority only, and the costs will be absorbed by the department.

Background. The CalCareer Services unit is responsible for providing the public with assistance with walk-in career search inquiries in the Job Center and providing proctoring services and administrative support to the in Testing Center. CalCareer Services is the first line of support to help applicants navigate the California State Jobs website. Specifically, CalCareer Services is responsible for answering and responding to state-wide incoming calls and emails regarding general questions on the civil service examination process, CalCareer account profiles, Limited Examination Appointment Process (LEAP), and Veterans' Preference program.

The CalCareer Services unit has had recruitment and retention challenges. Many applicants accept permanent intermittent or limited-term employment within CalCareer Services as a means to gain initial state employment and experience, but continue to seek full-time employment. Since January 2014, 11 staff has left CalCareer Services for full-time employment. Turnover is costly due to the onboarding process, and the resources it takes to train and develop staff that ultimately leave for full-time employment elsewhere. Currently, CalCareer Services has three permanent full-time positions, and three limited-term positions to provide statewide assistance to departments and the public. This combination of staffing has been insufficient to provide the high level of customer services expected from CalHR. CalHR notes that the average wait time for calls in 2016 was 26 minutes, and the goal is to reduce the wait times and complete calls in 10 minutes or less. Additionally, CalHR notes that in 2016, an average of 93 calls a month are dropped or abandoned.

Staff Recommendation. Approve as Budgeted.

Issue 5: Dependent Re-Verification Process.

Summary. The Governor's budget includes one position and \$175,000 in reimbursement authority for 2017-18, \$118,000 and in 2018-19, and ongoing, to perform the new workload to develop, implement and administer the dependent re-verification process.

Background. In January 2011, CalPERS Board of Administration endorsed the Health Benefits Purchasing Review (HBPR) project to develop strategies and initiatives to ensure the continuation and sustainability of the CalPERS Health Benefits Program. The HBPR resulted in the development of 21 initiatives, including dependent eligibility verification designed to influence health care delivery, improve health outcomes, and delivery sustainable programs. The purpose of the dependent eligibility verification project was to ensure all dependents enrolled in a CalPERS health plan met CalPERS' eligibility criteria and to prevent members and employers from having to pay health care costs for those who do not qualify. During verification, each subscriber with at least one dependent enrolled on their health plan was required to provide specific supporting documentation based on dependent type (e.g., spouse, domestic partner, child, parent-child relationship). The 2013-15 CalPERS Dependent Eligibility Verification project disenrolled 8,379 ineligible state employee dependents from the CalPERS health plans for a savings of over \$60 million.

Senate Bill 98, (Committee on Budget and Fiscal Review), Chapter 28, Statutes of 2015 designates CalHR to establish standards for the employing office of the state employee to conduct health dependent eligibility at least once every three years for spouses, domestic partners, children, stepchildren, and domestic partner children; and at least once annually for other children enrolled as dependents under parent-child relationship. Eligibility is the same for dental benefits as it is for health benefits.

CalHR is requesting funding to perform project management and other duties to administer dependent re-verification process and workload associated with oversight to ensure that departments are removing ineligible dependents from health and dental benefits. CalHR will hire a full-time staff personnel program analyst (SPPA), a classification that is responsible for the most complex and difficult personnel management assignments at the statewide human resources leadership level. The SPPA will conduct biweekly project meetings with CalPERS and departmental HR representatives, creating policy memos, training and procedural manuals, user guidance, and assisting state departments with re-verification process issues. On a continuing basis the SPPA will analyze enrollment data, monitor departmental compliance with health and dental dependent enrollments, train department HR staff on eligibility rules and enrollment, verification and termination procedures.

CalHR notes that on August 2017, the SPPA will begin monitoring departments to ensure that they are removing ineligible dependents from dental benefits, and develop a procedural manual to for the re-verification process, and conduct multi-departmental trainings. From 2018 onward, the SPPA will begin the re-verification process, among other duties described above.

Staff Recommendation: Approve as budgeted.

7300 AGRICULTURAL LABOR RELATIONS BOARD**Issue 6: Funding for Agricultural Labor Relations Board**

Governor's Budget proposal. The Agricultural Labor Relations Board (ALRB) requests the the current limited term funding of \$573,000 General Fund for limited-term positions: 1.5 hearing officer II positions and one Attorney IV position be made permanent. The workload for these positions has not decreased and is projected to increase as new satellite offices are fully opened and education and outreach efforts are increased.

Background. In 2015-16, ALRB received a temporary budget augmentation for three positions: two full-time hearing officer positions to address the backlog and ongoing caseload and one full-time attorney IV position to address the increased state and federal court litigation. These positions were authorized as limited-term for two years.

ALRB is requesting permanent augmentation for 1.5 hearing officer II positions, which would bring the ALRB's total permanent hearing officer staffing to three hearing officer positions. The hearing officer is the presiding administrative law judge and every case that comes before a hearing officer is fact-specific and unique in the complexity of the law involved. Hearing officer decisions are multifaceted and complex as cases can involve thousands of employees, resulting in numerous legal questions within a single case.

The ALRB notes that three permanent full-time hearing officer positions will allow them to timely schedule, preside over, and provide a final decision all in support of the protection of rights of California farmworkers. Moreover, ALRB recently opened a Santa Rosa sub-regional office, and is planning to open another office in the Indio sub-region, and notes that these additional offices will likely generate additional unfair labor practice filings, and increased workload through their presence in the area, as well as increased outreach to communities. Prior to the 2015-16 budget, it took 200 to 600 days to schedule a hearing. However, with the additional limited-term positions, hearings were scheduled within a 60 to 90 day time frame, which provided greater assurances to farmworkers will be available to participate in a hearing.

ALRB is also requesting permanent augmentation for the attorney IV position. In January 2014, to address the ALRB's increased state and federal court litigation workload, the Labor and Workforce Development Agency (LWDA) temporarily redirected resources to provide a limited-term Attorney IV position to the board to oversee, coordinate, and assist board counsel and attorneys assigned from the Office of the Attorney General to handle litigation. The 2015-16 budget provided a two year limited term attorney IV position for the ALRB, which expires in July. The primary responsibility of the attorney IV is appellate work where the position works with the three board vounsel positions to represent the ALRB in the most sensitive and complex matters.

Staff Recommendation. Approve as budgeted

7350 DEPARTMENT OF INDUSTRIAL RELATIONS**ISSUE 7: ENHANCED ENFORCEMENT COMPLIANCE AND APPRENTICESHIP SERVICES**

Summary. The Department of Industrial Relations requests 11 positions and \$1.7 million special funds in 2017-18, 25 positions and \$3.4 million special funds in 2018-19, with 19 positions and \$2.6 million special funds ongoing, to fulfill the provisions of recently chaptered legislation including:

- Assembly Bill 1066 (Gonzalez), Chapter 313, Statutes of 2016: Phase-In Overtime for Agriculture Workers
- Assembly Bill 1978 (Gonzalez), Chapter 373, Statutes of 2016: Property Service Workers
- Senate Bill 693 (Hueso), Chapter 774, Statutes of 2016: Workforce Expansion
- Senate Bill 1001 (Mitchell), Chapter 782, Statutes of 2016: Immigrant Workers Document Protections
- Senate Bill 1063 (Hall), Chapter 866, Statutes of 2016: Equal Pay – Race and Ethnicity
- Senate Bill 1167 (Mendoza), Chapter 839, Statutes of 2016: Indoor Heat Regulations

Background.

Assembly Bill 1066 (Gonzalez). AB 1066 removes an exemption for agricultural employees regarding hours, meal breaks, and other working conditions. The bill includes specific wage requirements, bringing farmworkers in line with the majority of employees in California who are protected by the existing mandate that any hours worked in excess of eight hours per day or 40 hours per week be paid at 1.5 times the regular pay. The bill provides for a phase-in approach for overtime requirements that gradually implement the eight hour workday for farmworkers over a four-year period.

The department requests \$40,000 for outreach in 2017-18, and two positions and \$308,000 in 2018-19, with \$267,000 ongoing to support its Division of Labor Standards Enforcement (DLSE) for increased workload created by the passage of AB 1066.

Assembly Bill 1978 (Gonzalez). AB 1978 establishes specific standards and protections for property service workers (otherwise known as janitors). The intent of the new law is to combat wage theft, ensure compliance with existing labor laws, and also lower instances of sexual harassment, sexual violence, and human trafficking in the property services industry, where it is particularly prevalent. The bill requires biennial in-person sexual violence and harassment training requirement for employees and employers, as well as requiring the registration of janitorial contractors with DIR.

The department requests an augmentation of three positions and \$442,000 in 2017-18, nine positions and \$1 million in 2018-19, with nine positions and \$967,000 ongoing. These positions will support DLSE in implementing the requirements under AB 1978.

Senate Bill 693 (Hueso). The Division of Apprenticeship Standards (DAS) promotes and develops apprenticeship training and enforces minimum apprenticeship standards. Among other mandates, DAS is the division within DIR responsible for approving new apprenticeships programs, ensuring that programs are adhering to its approved training standards, registering apprentices in approved programs, investigating apprentice complaints against programs, and issuing State certificates of completion to graduates of programs.

Because only registered apprentices may be paid a lower prevailing wage on publicly-funded “public works” projects, DAS regularly receives inquiries from the public to verify that a worker is a registered apprentice. Employers also contact DAS when they wish to confirm that worker has completed an apprenticeship and has graduated into a journey person. SB 693 allows a public entity to require a bidder, contractor, or other entity to use a skilled and trained workforce to complete a contract or project. DIR notes that the additional resources will allow the department to respond to inquiries and verification regarding DAS approved programs.

The Department requests one position and \$123,000 in 2017-18, (\$116,000) to provide resources for DAS to address additional workload as a result of SB 693.

Senate Bill 1001 (Mitchell). SB 1001 created a new protection that makes document abuse a strict liability violation regardless of intent. Specifically, this bill expands protection to immigrant applicants seeking employment by explicitly stating that it is unlawful to request more or different documents than required by federal law as a prerequisite to employment. The bill provides that an applicant for employment or an employee who believes their rights have been violated under this law may file a complaint with DLSE for equitable relief and penalties not to exceed \$10,000 per violation.

The department requests three positions and \$437,000 in 2017-18 and 2018-19 as a two-year limited-term funding, to support its DLSE for increased workload created by SB 1001.

Senate Bill 1063 (Hall). Existing law prohibits payment of a wage less than the wage rate 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. SB 1063 adds a new and discrete equal pay protection to the existing protection for gender-based disparity to also include a prohibition against paying lesser wage to an employee based on race or ethnicity. The amendments made by SB 1063 are an individual worker protection that will be enforced by the DLSE’s Retaliation Complaint Investigation unit within DIR.

The department requests three positions and limited-term augmentation of \$415,000 in 2017-18 and \$392,000 in 2018-19, to implement the requirements of SB 1063 that will expand equal pay protections to include a prohibition against paying a lesser wage to an employee based on race or ethnicity.

Senate Bill 1167 (Mendoza). The Division of Occupational Safety and Health (DOSH) is the sole agency responsible for protecting workers from health and safety hazards on the job. DOSH protects workers in almost every workplace in California through its enforcement, research, and standards, and consultation programs. SB 1167 requires DOSH to develop a new heat-illness

prevention standard for indoor workers which would specify necessary measures to control indoor exposures to heat and would make compliance and enforcement easier and more effective. The new standard completed by this bill could prompt engineering and administrative changes to reduce risks of heat stress for indoor employees.

The Department requests one position and \$212,000 for 2017-18 and seven positions and \$1.1 million in 2018-19, with \$1.3 million ongoing, to provide resources for DOSH to address the new activity of indoor heat exposure inspections to protect California workers as required by SB 1167.

Staff Recommendation. Approve as budgeted.

Issue 8: Division of Apprenticeship Standards Federal Apprenticeship Grant Funding

Summary. The Department of Industrial Relations (DIR) requests six positions and \$923,000 one-time for 2017-18 from the Federal Trust Fund for the Division of Apprenticeship Standards (DAS) to expand the number of opportunities for Californians to gain employable lifetime skills and provide employers with a highly skilled and experienced workforce. Through focused outreach and education, DAS aims to register 6,000 new apprentices, including women and underrepresented apprentices; and engage 100 non-traditional industry sponsors from advanced manufacturing, information technology, healthcare and transportation for potential apprenticeship program development.

Background.

As part of the California workforce development system, the primary responsibility of DAS is to promote and develop employment based apprenticeship training programs, to improve apprentices' working conditions, and to advance profitable employment opportunities for apprentices. DAS accomplishes these objectives by providing consultative services to apprenticeship program sponsors, employers, employee organizations, and education providers.

DIR and its key partners, such as the Labor and Workforce Development Agency (LWDA) and the Employment Development Department (EDD), are responding to the state's workforce need by developing a strategy to enhance current apprenticeship programs and develop new programs that will help address the need for workers in high-demand sectors, and from under-served populations and/or geographic areas of the state.

The Employment and Training Administration (ETA) and the U.S. Department of Labor (DOL) announced the availability of approximately \$50.5 million to fund an estimated 33 quality grant applications competitively awarded to states through grant funds authorized by the Consolidated Appropriations Act of 2016 for Apprenticeship USA State Expansion Grants. The grant was designed to provide states with an opportunity to further align resources to innovate, expand, and diversify registered apprenticeship to better respond to industry workforce demands. California was awarded \$1.8 million over 18 months from the ApprenticeshipUSA State Expansion Grant.

On October 5, 2011, Governor Jerry Brown signed into law Assembly Bill 554 (Atkins) Chapter 499, Statutes of 2011, which requires the Workforce Development Board (WDB) to partner with apprenticeship programs, creating a smoother training pathway that broadens access to apprenticeships. In addition, in 2014 the federal government reauthorized the old Workforce Investment Act (WIA) with the Workforce Investment and Opportunity Act (WIOA). As a result, DAS staff has been collaborating with WIA and WIOA partners, namely the WDB and community colleges, to provide training through pre-apprenticeship as well as apprenticeship offered by approved apprenticeship programs and to create new on the job training and apprenticeship programs. DAS has been working with the Community Colleges' Sector Navigators to broaden opportunities for apprenticeship by recreating existing program curricula and developing apprenticeship programs for new industries. DAS also continues to work with multiple private and public entities that received Accelerator Grants from the California Community College Chancellor's Office in 2014, helping them to set up new apprenticeship

programs.

Apprenticeship Program Expansion in Non-Traditional Industries. High-growth industries in California that are best suited for potential apprenticeship programs have been identified. The EDD Regional Economic Analysis Profile details projected growth in specific geographical areas where it is expected that apprenticeship expansion in these industry clusters will stimulate economic market growth and boost employment opportunities statewide. Four of these industries (healthcare services, information and communication technologies, transportation and logistics, and advanced manufacturing), will be targeted for apprenticeship expansion based on the need for workforce and education programs. California is in its second grant application cycle for creation of innovative new apprenticeship demonstration projects, as part of its “California Apprenticeship Initiatives.” The first round of state grants, which included a \$15 million grant program, awarded eight pre-apprenticeship grants, 14 apprenticeship grants, and one grant for technical assistance and evaluation. These grants provided innovative approaches to new kinds of apprenticeship programs in a wide range of non-traditional industries and occupations ranging from registered nurses, and early childhood educators.

Training. This proposal also will help facilitate an educational campaign directed to California employers and their associations, informing them of their benefits of registered apprenticeship. DAS will provide a two-day training session for front-line staff in regional DAS offices to provide ongoing technical assistance, consultation and oversight to all program sponsors to ensure continuous compliance with apprenticeship law and regulation.

DAS will continue to work with and engage the California Apprenticeship Council (CAC) to focus on expanding and improving the overall quality of apprenticeship programs. The CAC meetings provide an ideal setting for training the CAC and the public on ways to promote new programs, utilizing its partnerships with local communities involving parents, educators, and businesses to better educate each other on apprenticeship principles and providing policy advice to attract new apprenticeship sponsors and increase apprenticeship registration.

Increased Apprentice Participation in Underrepresented Populations. This proposal builds on the success of existing pre-apprenticeship and apprenticeship pilot programs, and will begin expanding opportunities to low-income areas with training and high quality job opportunities. Women represent 50.3 percent of the population (U.S. Census Bureau, 2016) in California but only six percent of registered apprentices in the state. A blue ribbon panel met to address this issue and produced a set of recommendations focused on enhanced recruitment through outreach, retention strategies to increase graduation rates, and leadership pathways to train, support, and motivate women to enter positions of leadership. These recommendations are central to the current strategic plan to engage and successfully graduate more women apprentices in California.

Staff Recommendation. Approve as budgeted.

7920 CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM**Issue 9: CalSTRS Budget Proposals**

The following CalSTRS proposals are recommended for vote only.

1. **Enterprise Risk, Compliance and Cyber Security:** \$1.39 million special funds to establish 11 positions to address an increasing need in enterprise wide risk management, security, and compliance. Of these positions: (1) Four positions to support organization wide risk management and enhance internal controls; (2) Two positions in the Office of General Counsel and Procurement Management to support organization wide compliance and management; (3) Five positions for the Information Security Office in the Office of General Counsel to deploy enhanced cyber security and information management controls. A major data breach at CalSTRS could cost an estimated \$190 million and could impact the delivery of member benefits.
2. **Member Service Center Resources.** The Governor's budget includes 13 positions and \$1.3 million to support member benefit education efforts, communication regarding supplemental retirement savings, and other member and employer outreach activities requested by the Teachers' Retirement Board (TRB). The positions will address staffing needs in the Glendale, Riverside, and San Diego Member Service Centers (MSC). These centers have been operating for about four years.
 - One pension program manager and five associate pension program analysts (Glendale)
 - Three associate pension program analysts (San Diego)
 - Three associate pension program analysts (Riverside)
 - One associate governmental program analyst (HQ).

Staff Recommendation. Approve as budgeted.

Issue 10: Investment Portfolio Budget Change Proposal

Summary. The Governor's budget includes \$3.23 million for 16 positions to reduce risk and increase efficiencies in the management of the investment portfolio. Thirteen of these positions will address critical investments branch resource needs, as a result of increased size and complexity of the portfolio.

The Investment Branch's workload is driven and authorized by the Investment Committee. The Investment Committee is composed of the full Teachers' Retirement Board and adopts strategic asset allocation targets that are implemented over the long term. The Branch is organized into asset classes and sub-units of those classes. These classes are currently working at full capacity, and will be facing challenges caused by bringing more of the fund under internal management. This move is designed to benefit the fund as a result of the reduced costs and increased control that it can provide. The requested positions are proposed to be allocated to the various classes and units.

Two positions will support Financial Services to provide investment accounting, operating cash management, program allocation, and financial reporting for the portfolio. The last position will provide software support to both Financial Services and Investment Branch users of CalSTRS' enterprise resource planning software. The additional staff will allow each unit within the Investment Branch to implement asset allocation. The CalSTRS Investment Branch 10-Year Comprehensive Financial Plan forecasts that the portfolio's total assets will grow by \$49 billion from fiscal year 2016-17 to 2017-18, with external management costs increasing by \$25.4 million. CalSTRS states that for each staff added to support the internal management of portfolios, CalSTRS saves about \$1.2 million in external management fees per year.

Staff Recommendation: Approve as budgeted.

ITEMS FOR DISCUSSION AND VOTE

7501 DEPARTMENT OF HUMAN RESOURCES

Issue 11: Civil Service Improvement Trailer Bill Language

Summary. The Governor’s budget proposes trailer bill language to continue advancing the Administration’s Civil Service Improvement efforts.

Background. According to the Government Operations Agency (GovOps), which oversees various departments, including CalHR, the goal of the Civil Service Improvement initiative is to produce a modern human resource system that will allow state departments to find and quickly hire the best candidates through a fair and merit-based process. Departments will be able to determine their workforce needs and will be equipped to train and develop their employees to maximize their potential to serve the department’s mission. An improved civil service system will produce a capable and engaged state workforce.

The 2015-16 budget act adopted various civil service improvements, including (1) 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; (2) Expanding the pool of candidates eligible to compete for a career executive assignment CEA position to include individuals from the private sector; and (3) 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.

The 2016-17 Budget Act provided CalHR with 16 positions in 2016-17, and 17 positions in 2017-18 to implement civil service improvements. Additionally, the Legislature adopted trailer bill language to simplify the exempt appointee reinstatement guidelines, remove the probationary period for individuals who successfully complete the Limited Examination and Appointment Program job examination period and are appointed to a position, among others.

Governor’s Budget

The Administration proposes trailer bill language to do the following:

1. **Probationary periods.** Extends the maximum probationary period from up to six months to up to 2 years, and requires probation periods between ranges of a classification. The Administration notes that this provides department’s sufficient opportunity to review the performance of probationary employees, particularly in classifications where certain key duties and functions are cyclical, like budgets.
2. **Employee Eligibility Lists.** Removes current requirements for when a department may refresh open and promotional eligible lists. Existing law allows departments to remove names from lists after one year. If a list has less than three names, a department may remove the list prior to the one year timeline. The Administration notes that TBL allows

departments the flexibility to recruit qualified candidates to take civil service exams. Also removes outdated wording concerning when departments can fix clerical errors on an eligibility list.

3. **Job Announcements.** Removes current requirements of information that must be included in an examination announcement. Currently, departments are required to notice the time and location of the examination, minimum qualifications and general scope of examination, among others. The Administration notes this change will promote uniformity in job announcements, making it easier for job seekers to review the announcements.
4. **Promotional Exams.** Clarifies that policies established by departments which employees can take promotional examination must be consistent with State Personnel Board rules. The Administration notes that this change promotes uniformity, fairness, and consistency for employees taking promotional exams.
5. **Exam Demonstration Projects.** Adds “methods of examination”, which will allow the state to explore different exam methodologies through a demonstration project.
6. **Employee Transfers.** To promote a qualified civil service working force, the requirement that the employee seeking transfer must meet the minimum qualifications of the “to” class has been added.
7. **Reemployment Lists / Top Three Rankings.** Allows departments to establish more or less than three rankings for eligibility lists. Removes certain procedures regarding eligibility lists as a result of the changes being made to Government Code Section 19054.
8. **Certifying Candidates.** Removes language regarding certifying eligible for an employee list. The Administration notes that this process is cumbersome, costly, rigid, and often arbitrary. Instead, the employee list will be certified per SPB rules. Order of preference to apply to reemployment lists only.
9. **Definition of an employee class/ class consolidation.** Amends the definition of employee class to also mean consolidation of similar classes in the same occupational area based on broader duties and responsibilities. The Administration notes that this reduces the costs associated with promotional examinations and encouraging retention of a qualified state workforce. Promotes upward mobility by creating better career ladders.
10. **Employee transfers.** Allowing a CalHR or an appointing power to determine when minimum qualifications should be met through exam, to avoid inconsistent outcomes with SPB rules.
11. **Alternate Employee Lists.** Specifies that the statute is concerning “alternate employee lists” to avoid confusion with the employee lists as specified in Government Code Section 19054.

12. **Gender Equity.** Replaces the outdated phrase “female dominated jobs” with “jobs that employ a higher proportion of females than males.”
13. **Supervisor Training.** Amends existing requirement for supervisor to be provided a minimum of 20 hours of training from a biannual basis to a biennial basis.
14. **Various topics.** Technical changes, such as replacing a reference to “Department of Personnel Administration” with “Department of Human Resources” to reflect departmental duties pursuant to GRP 1. Clarifies that SPB has authority over “appointments”, which is already outlined in the constitution.
15. **State Personnel Board Authority.** Specifies that references to the word “rules” is equivalent to “board rules” and “rules of the board”, as used in this part of the Government Code. This is consistent with the Civil Service Act and allows SPB “to make rules concerning the subject matter” in the statute.

Staff Comments.

In 2015-16 and 2016-17, the Administration proposed civil service improvement reforms through the budget process. In the past, members of the subcommittee noted these proposals may have been better discussed through the policy committee process. This trailer bill is 45 pages long, and proposes significant policy changes to the civil service process. Similar to previous years, staff questions whether proposed trailer bill language has a budget nexus, and that the proposal may be better suited for a policy committee discussion, or in the collective bargaining process.

The trailer bill proposes to extend the maximum probationary period from up to six months to up to two years, and requires probation periods between ranges of a classification, however the Administration has not provided justification for why this is necessary, and what deficiencies are with the current probationary period is. Additionally, it is unclear why a probation period between ranges of a classification is necessary. Staff is concerned that this could lead to unintended consequences where an employee to be on probation for a substantial portion of their career.

Moreover, it is unclear why the Administration seeks to eliminate basic information, such as time, location, and minimum qualifications for a position, from an examination announcement. This information may help individuals seeking state employment, and should this information be eliminated, the public may lack basic transparent information on how to gain employment.

Staff Recommendation. Hold Open.

Issue 12: Judges Salaries Trailer Bill Language

Summary: The Governor's budget proposes trailer bill language to clarify the statutory methodology used to calculate annual salary adjustment for state judges and justices, which is based on the average salary growth of civil service state employees.

Background.

The 2016-17 budget included trailer bill, Senate Bill 848 (Committee on Budget and Fiscal Review) Chapter 848, Statutes of 2016, which clarifies the statutory methodology used to calculate the annual salary adjustment for state judges and justices to include both salary increases and decreases for state employees to be considered when calculating the average state wage growth for purposes of adjusting salaries of judges and justices. Prior to the enactment of SB 848, the calculation only considered the average salary increase of state employees in the calculation.

Currently, CalHR captures the scheduled salary increases to be provided to state employees during the next fiscal year, and applies those raises to judges on July 1 of the same fiscal year.

The Administration notes that the proposed trailer bill modifies the methodology in cases where the state reaches a labor agreement after July 1, that includes salary increases during that fiscal year. Specifically, the trailer bill requires that salary increases made after July 1 that have been provided retroactively to state workers on July 1, will be included in the judges' calculation during that same fiscal period to ensure they receive the same level of salary increase.

As a result of this new methodology, judges will receive a one-time retroactive payment equivalent to a 0.16 percent salary increase. Item 9800 includes \$1 million General Fund to cover the cost of this retroactive payment.

On July 1, 2016, only four bargaining units had ratified agreements (BUs 5, 6, 9, and 10) with scheduled salary increases that are effective July 1, 2016. These were used to calculate the judicial salary increase of 1.36 percent for 2016-17. The next judicial salary calculation will be made on July 1, 2017, and will include any general salary increases (GSIs) for employees in the remaining bargaining units that are ratified and become effective during the 2016–2017 fiscal year.

Under the current methodology, if there are bargaining units that reach a ratified agreement after July 1, 2016, on or before July 1, 2017, 2016-17 salary increases will be included in the calculation for the judicial salary increase effective July 1, 2017, not retroactively. While most new contracts include GSIs that are effective midway through 2016-17 or July 1, 2017, recently negotiated contracts with BUs 7 and 18 included GSIs retroactive to July 1, 2016. Absent this trailer bill language, these increases for BUs 7 and 18 would not be included as part of the judges calculation until July 1, 2017, nor would they be retroactive.

Staff Recommendation: Hold Open.

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT**Issue 13: Tax Appeal Program Stabilization**

Summary. The California Unemployment Insurance Appeals Board (CUIAB) requests an augmentation of \$791,000 General Fund, \$791,000 Disability Insurance/Paid Family Leave (DI/PFL) funds and 12.5 positions (5.4 temporary position equivalents and 7.1 permanent position equivalents) in 2017-18 and 2018-19, and \$407,000 General Fund, \$407,000 DI/PFL funds, and 7.1 permanent position equivalents in 2019-20 and ongoing, to conduct mandated Tax Appeal Program functions in order to keep up with the incoming workload, reduce the high level of pending appeal caseload, and provide timely due process for California's employers who appeal their payroll tax liabilities and reserve account charges as assessed by EDD.

Background.

California Unemployment Insurance Appeals Board. The California Unemployment Insurance Appeals Board (CUIAB) was created by the Legislature in 1943, and is a quasi-judicial agency whose primary purpose is to conduct impartial hearings and issue prompt decisions to resolve disputed unemployment and disability determinations, and Employment Development Department (EDD) tax liability assessments. The Appeals Board consists of five members, three of which are appointed by the Governor and one each by the Senate Rules Committee and the Speaker of the Assembly.

If a party appeals an EDD decision, an Administrative Law Judge (ALJ) will review EDD's original decision. The ALJ can overturn, agree with, or modify EDD's decision. The losing party can appeal the ALJ's decision to CUIAB's board. The Board's decision is CUIAB's final decision. Workers and employers who disagree with CUIAB's final decision may appeal to the California Superior Court system, which is outside of CUIAB.

CUIAB's services are free to the participants, and do not require an attorney. The proceedings are funded almost completely by federal dollars, with state special funds paying for costs related to disability and paid family leave cases, and the state General Fund paying for less than one-half of one percent of the costs. In addition to reviewing judge's decisions, the Board issues precedent decisions and oversees CUIAB operations and its hearing facilities in twelve field offices and 43 satellite facilities around the state.

The EDD's tax program is a federal-state program that primarily collects and enforces payroll taxes from about one million California employers. When employers dispute EDD tax audits, tax liability statements, unemployment insurance (UI) reserve accounts and benefit charges, or other tax liabilities, they may file appeals with the CUIAB. Tax appeals make up about one percent of the total appeal caseload at the CUIAB, but take about three to four times the staff time to process as compared to benefit appeals.

The CUIAB has a high number of pending tax appeal and tax ruling appeal cases. As of July 31, 2016, the liabilities associated with CUIAB's current open balance of pending tax appeals total approximately \$339.5 million. This represents the tax liabilities at the time of the appeal, and then captured in CUIAB's appeal tracking system. When the EDD collects the upheld tax liabilities, the recovered monies are distributed among several funds.

According to the Administration, Each year, the CUIAB receives more tax appeals than it can process with the staff levels supported by available funding. This results in a growing number of pending tax appeals, delayed due process for employers, and delays in the State’s collection of upheld tax liabilities. For cases closed in SFY 2015-16, employers had waited 26 months on average, from the date the appeal was filed to the date the CUIAB decision was mailed, for resolution to their tax appeals. This also delays EDD’s collection of the tax liabilities upheld by CUIAB decisions. The Administration notes that the proposed additional resources will reduce the wait time from 26 months to about 9 months.

At the end of SFY 2015-16, the CUIAB had 4,800 pending first-level tax appeal cases and 3,400 pending first-level tax ruling appeal cases, for a total of 8,200 pending cases. During the fiscal year, the CUIAB received 2,500 new tax appeal cases and 1,200 new tax ruling appeals, for a total of 3,700 incoming cases.

According to the Administration, the total staffing needed to address the incoming workload and also reduce the pending caseload is 21.9 PEs, including one Presiding ALJ PE, 9.2 ALJ PEs, and 11.7 PEs in support staff. However, the CUIAB only receives enough funding to support 9.4 PEs, including 5.0 ALJ PEs. The UI funding is allocated by the EDD from the federal UI grant funds, based on an agreement with US Department of Labor, to fund CUIAB Tax Appeal Program activities.

SFYs 2017-18 & 2018-19	Projected Workload	First Level Avg Workload per ALJ	Second Level Avg Workload per ALJ	Presiding ALJ PEs	ALJ PEs	Support Staff PEs	Total PEs Needed	Current Staff Funded	Additional Staff Needed
Tax Appeals	3,770	474	379	1.0	8.1	10.7	19.8	8.4	11.4
Tax Ruling Appeals	1,830	1,622	1,298	-	1.1	1.0	2.1	1.0	1.1
Total	5,600			1.0	9.2	11.7	21.9	9.4	12.5

SFY 2019-20 & On Going	Projected Workload	First Level Avg Workload per ALJ	Second Level Avg Workload per ALJ	Presiding ALJ PEs	ALJ PEs	Support Staff PEs	Total PEs Needed	Current Staff Funded	Additional Staff Needed
Tax Appeals	2,620	474	379	1.0	5.6	8.2	14.8	8.4	6.4
Tax Ruling Appeals	1,220	1,622	1,298	-	0.7	1.0	1.7	1.0	0.7
Total	3,840			1.0	6.3	9.2	16.5	9.4	7.1

Staff Recommendation: Approve as budgeted.

Issue 14: Benefit Systems Modernization

Summary. The Governor proposes one-time \$4 million in special funds, and 15 positions, and a redirection of \$3.16 million in special funds and 15 positions in 2017-18 to complete stage two of the project approval lifecycle for its Benefit Systems Modernization Project. Included in the funding above is \$1.8 million as part of the one-time budget augmentation toward the requirements vendor contract, and \$1.1 million in provisional language. The resources will be for state staff, requirements vendor, project oversight from California Department of Technology, and for Independent Verification and Validation vendor services to continue activities towards building an integrated, secure and sustainable Benefits System to service California claimants seeking unemployment, disability or paid family leave benefits.

Background.

The EDD administers several benefit programs, including the Unemployment Insurance (UI), Disability Insurance (DI), and Paid Family Leave (PFL) programs that provide financial stability to workers and communities.

In 2012, a partial system modernization was completed for both the DI program, which implemented DI Online, and for the UI program, which implemented UI Online in 2015. The PFL system has not been modernized since being implemented in 2004. While the partial system modernization projects provided some relief in terms of new customer self-service capabilities, the resulting systems are now overly complex and not sustainable from both technology and staffing standpoints. The EDD possesses three independent, non-integrated benefit systems that all rely to varying degrees on an aging mainframe, Common Business Oriented Language (COBOL)-based system, as well as legacy external sub-systems and components. Maintaining viable system interfaces and data integrity between disparate benefit system databases that reside on different technological platforms is very complex, expensive, and difficult to maintain. In addition to the many technology challenges, recruitment and retention of staff with the COBOL skillset is increasing difficult as there is a diminishing base of staff with COBOL system knowledge.

EDD notes the following challenges with its current systems:

1. External Customers

- Limited Capabilities: Full service functionality and real time information is not available via the Internet and using smart phones.
- System Changes are Slow & Costly: EDD can't respond timely to customer, stakeholder, and legislative needs and expectations.

2. EDD Program Staff

- Complex: The legacy system and new system combination requires more staff time to use and maintain. There are many manual processes.
- Duplication: Multiple systems retain the same data and overlapping functions to ensure coordination between disparate systems. This results in duplicate work efforts and constant data synchronization problems.

- Work Arounds: Staff-built work-arounds (for example the use of 500 macros) in the legacy system result in mission critical undocumented and unsupported processes.

3. EDD Technical Staff

- High cost associated with maintaining both legacy and new systems.
 - a. SFY 2015-16 vendor only maintenance and operations support cost for current benefit systems was \$17.8 million.
 - b. Program funding has not kept pace with the increasing cost of maintaining the legacy and new systems.

As a result, the existing benefit systems are not fiscally sustainable. The EDD's customers experience a lack of consistency when utilizing the various benefit systems, certain customer groups cannot utilize online services and must submit information manually or through contacting an EDD representative.

Project Approval Lifecycle. The Department of Technology adopted the Project Approval Lifecycle (PAL) to improve the quality, value and likelihood of success for information technology (IT) projects undertaken by the State of California. The PAL is divided into four stages (Stage 1 Business Analysis, Stage 2 Alternatives Analysis, Stage 3 Solution Development and Stage 4 Project Readiness and Approval) each separated by gates of approval. Each stage consists of a set of prescribed, cross-functional, and parallel activities to develop deliverables used as the inputs for the next stage. The gates provide a series of “go/no go” decision points that request only the necessary and known information needed to make decisions for that particular point in time. Based on Stage 1 findings for the project, the Department of Technology identifies an estimated 10 percent savings in UI, DI, PFL and IT staff costs in addition to reductions in existing vendor contract costs following full implementation. The 10 percent figure is an estimate that will be further refined as this effort advances through the remaining PAL Stages.

Stage 2 provides a basis for project management, program and business management, executive management, and state-level control agencies to understand and agree on how the proposal's business objectives will be achieved. Market research is also conducted in Stage 2 based on the stated objectives as the means to research viable IT solutions (alternatives) available in the open market. Market research provides a process for gathering data on product characteristics, suppliers' capabilities and the business practices that surround them—plus the analysis of that data to define viable solution alternatives and make informed procurement decisions.

Governor's Budget.

The Governor proposes one-time \$4 million in special funds, and 15 positions, and a redirection of \$3.16 million in special funds and 15 positions in 2017-18 to complete stage two of the project approval lifecycle for its Benefit Systems Modernization Project.

Additionally, as part of the one-time budget augmentation, \$1.8 million is for the vendor contract. Budget Act provisional language would allow EDD's budget to be augmented by up to \$1.0 million, provided there is sufficient justification for an increase, in order to fully fund the

requirements vendor contract.

The Administration anticipates substantial ongoing savings after full systems replacement. These savings would derive from automating many Unemployment Insurance (UI), Disability Insurance (DI) and Paid Family Leave (PFL) claim filing processes that are currently done manually as well as eliminating the need for Information Technology (IT) staff to support existing legacy mainframe applications. The Business Analysis (Stage 1) of CDT's PAL process identifies an estimated 10 percent savings in UI, DI, PFL and IT staff costs in addition to reductions in existing vendor contract costs following full implementation. The 10 percent figure is an estimate that will be further refined as this effort advances through the remaining PAL Stages. This includes reaching out to states that have already enacted full modernizations to identify what the impact to their ongoing programmatic and support costs has been post implementation. Stage 2 of the PAL process will help the Department determine what ongoing savings may be realized by full systems replacement with the ultimate goal of reducing or eliminating the ongoing need for the UI program to rely on state General Fund support. This information will be used to plan and schedule future General Fund reductions as appropriate. This effort is EDD's primary strategy to reduce the UI program's dependence on the General Fund for supplemental funding.

The EDD has determined that the addition of ITB project managers and staff, and a redirection of program staff, is critical for the successful completion of the project planning phase. Program staff will be redirected full time to focus on the PAL activities and a backfill will be done to ensure the daily program duties are performed.

1. **One Benefits System:** EDD will replace three stand-alone systems with one benefits system that provides all functionality. This will mitigate the legacy system issues currently experienced including the ongoing support costs and sustainability. Other benefits include: mitigating data synchronization issues by having one logical database, eliminating duplicate logic/services thereby simplifying the system support required, and reducing the risk of erroneous data entry and duplication. Having one technology development platform reduces complexity and allows for more timely changes to the system. Faster issue resolution and the ability to develop, test, and release more system enhancements increases productivity.
2. **Technology Support:** Having one technology platform will reduce IT staff support costs as staff would only have one technology platform to support. Current benefit systems require different skill sets to maintain the systems (COBOL, .Net, Structured Query Language, and Database 2). With one platform, technical support staff, including developers and testers, will need to know one system, framework, etc.
3. **Better Service to Customers:** Having one benefits system will provide claimants and employers a single portal to EDD services. Customers using one benefits system will experience the same look and feel across all of the benefit programs across EDD. This will result in fewer identity and account management issues by having a standardized process for establishing a customer's identity. System availability will be improved by having fewer systems and sub-systems reliant on one another for business processing.

The EDD has determined that the addition of ITB project managers and staff, and a redirection of program staff, is critical for the successful completion of the project planning phase. Program staff will be redirected full time to focus on the PAL activities and a backfill will be done to ensure the daily program duties are performed.

Staff Recommendation. Approve as budgeted.

7350 DEPARTMENT OF INDUSTRIAL RELATIONS**Issue 15: Strategic Enforcement of Labor Standards**

Summary. The Administration proposes a three year phase-in and an increase of 31 positions and \$4.6 million in 2017-18, 58.5 positions and \$8.6 million in 2018-19, 82.5 positions and \$11.6 million in 2019-20, and \$11.4 million ongoing from the Labor Enforcement and Compliance Fund. These resources seek to combat wage theft and labor law violations. Additionally, the Administration is proposing accompanying trailer bill to address enforcement issues.

Background.

Division of Labor Standards Enforcement (DLSE) Responsible for Enforcing Labor Standards. State law places responsibility for enforcing labor standards on DLSE within the Department of Industrial Relations (DIR). The division is headed by the Labor Commissioner and carries out its enforcement responsibilities through several units:

- Bureau of Field Enforcement (BOFE). The BOFE carries out investigations of employers to enforce labor standards. Most BOFE investigations are the result of a complaint submitted to DLSE, but BOFE also initiates some investigations proactively. When an investigation identifies noncompliance, BOFE issues citations with penalties plus the amount of unpaid wages due to workers, if any. The BOFE also defends citations when they are appealed.
- Wage Claims Adjudication (WCA). This unit provides an administrative process for individual workers to pursue unpaid wages and other damages from an employer who has violated wage and hour requirements.
- Judgment Enforcement Unit (JEU). The JEU collects unpaid wages and penalties that are assessed against employers. Several strategies are used for collection, including the use of liens (which prevent the employer's property from being sold until unpaid wages and penalties are paid) and levies (which allow DLSE to seize unpaid wages and penalties from an employer's bank accounts and other property).
- Retaliation Complaints Investigations (RCI). The RCI unit investigates complaints from workers who allege that they faced unlawful retaliation - such as dismissal - because they engaged in certain protected activities, such as reporting a labor

standards violation to DLSE or threatening to report a violation. Following an investigation, the RCI unit issues a determination that may include requiring the employer to take actions to address the retaliation, such as reinstating the worker. If an employer does not comply with a determination, DLSE may pursue enforcement of its determination in trial court.

DLSE Funding. DLSE is funded almost entirely from various special funds. The LECF receives

revenues from an assessment on all employers that equals a percentage of the workers' compensation insurance premiums paid by employers. The amount of this assessment is set annually by DIR to cover the amount of spending from the LECF approved in the state budget.

Strategic Enforcement. In recent years, BOFE has targeted more of its investigations using what the administration describes as a strategic enforcement approach. This approach focuses on wage and hour violations, which are relatively complex and time-consuming to investigate, over violations of more easily verified violations like not carrying workers' compensation coverage. This approach also involves collaboration with worker and industry organizations (such as community-based groups, unions, and employer or industry associations) to identify targets for investigation and otherwise facilitate the investigation process. Specifically, the intent of the strategic enforcement approach is to take advantage of worker and industry organizations' ability to (1) provide information about which employers may have particularly serious or extensive labor standards violations and (2) facilitate the cooperation of workers, who play a significant role in investigations of wage and overtime violations but may be hesitant in some cases to cooperate with DLSE investigations because of distrust toward the agency or fear of retaliation from the employer. The new funding and positions requested in the Governor's proposal are intended to allow DLSE to increase the number of investigations conducted under the strategic enforcement approach.

Budget Change Proposal (BCP) Request. The BCP includes a significant increase to BOFE staff phased in over three years, with a 63 percent increase in BOFE staff in 2019-20, compared to 2016-17. Additionally, the BCP includes funding and positions to allow DLSE to increase the number of investigations conducted under the strategic enforcement approach. This approach focuses on wage and hour violations, which are relatively complex and time-consuming to investigate over violations of more easily verified violations, like not carrying workers' compensation coverage. The Administration's strategic enforcement approach also involves collaboration with worker and industry organizations (such as community-based groups, unions, and employer or industry associations) to identify targets for investigation and otherwise facilitate the investigation process.

Finally, the proposal identifies several industries as priorities for additional investigations. The priority industries include janitorial services, garment manufacturing, construction, residential care homes for the elderly and person with disabilities, car washes, agriculture, food processing, and restaurants. These industries overlap with industries previously identified by the Legislature as warranting an elevated level of oversight.

Trailer Bill Language. According to the DOF and the department, the proposed trailer bill language addresses many investigative and administrative process inefficiencies that encumber the Division staff in their investigations, enforcement actions, and payment of final wage judgements to workers. The main changes of the trailer bill are summarized below:

Changes to General Labor Standards Enforcement Processes

- Specify that the statute of limitations on workers recovering unpaid wages and other penalties (generally two to four years) looks back from the date that an employer is

notified of a BOFE investigation instead of the date citations are issued, to preserve the ability to recover unpaid wages and penalties that would have moved beyond the statute of limitations by the time a citation is issued.

- Allow BOFE citations to be served through certified mail. Currently, citations generally must be served in person.
- With some exceptions, prohibit employers from introducing documents as evidence to appeal a BOFE citation if those documents were previously requested as part of the BOFE investigation but were not provided.
- Allow certain workers in the car wash, farm labor, and garment manufacturing industries to recover unpaid wages and other damages from existing state special funds, and allow DLSE to subsequently recover the unpaid wages and damages from employers to reimburse those special funds. Currently, workers in these industries may only be compensated from the special funds for amounts they are unable to recover from the employer.
- Require the Department of Alcoholic Beverage Control, the Board of Barbering and Cosmetology, and the Bureau of Automotive Repairs to suspend or revoke licenses for employers if they have not satisfied judgments for unpaid wages and other damages. This is similar to an existing process at the Contractors State License Board.

Changes to Retaliation Investigation Processes

- Pause the statute of limitations for workers to pursue legal action against an employer for retaliation while a retaliation complaint is investigated by DLSE.
- Allow DLSE to decline to investigate a retaliation claim if the worker has initiated a parallel claim in another venue, such as challenging the alleged retaliation with the State Personnel Board, through a collective bargaining agreement grievance procedure, or through the courts.
- Allow DLSE to request a court order to temporarily reinstate a worker while a retaliation complaint investigation is ongoing.
- Extend the time the RCI unit has to investigate a retaliation complaint from 60 days to 1 year.
- Extend the time for employers to comply with DLSE's determination on a retaliation complaint investigation from 10 days to 30 days.
- Give the labor commissioner the discretion to delegate the approval of reports that are generated from retaliation complaint investigations. Currently, only the labor commissioner or a chief deputy may approve the reports.

- Eliminate the ability for parties to a retaliation complaint investigation to appeal DLSE's determinations to the director of DIR, except in certain cases where an administrative appeal is required by federal law.
- Specify that, if DLSE pursues court action to enforce its determination from a retaliation complaint investigation, it must do so within three years.
- Require an employer to pay for DLSE's legal costs when DLSE prevails in an action to enforce its determination on a retaliation complaint investigation.
- Place penalties on employers that willfully refuse to comply with a court order to enforce DLSE's determination from a retaliation complaint investigation.
- Clarify that workers may not be retaliated against for reporting a work-rated fatality, injury, or illness, or other activities protected by the federal Occupational Safety and Health Act.

Legislative Analyst's Office Comments.

Targeting of BOFE Inspections Appears to Have Significantly Improved in Recent Years.

The LAO notes legislatively-required reports for 2009-10 through 2013-14 indicates that the targeting of BOFE inspections significantly improved over this period. While the number of inspections and citations declined; the average number of citations per inspection increased—suggesting an increasing emphasis on employers with multiple violations over employers with fewer or no violations. The LAO notes that this measure does not necessarily indicate whether the violations uncovered through these inspections were the most serious. Additionally, the average amount of unpaid wages found due per filled staff position in BOFE also increased significantly over the same period, suggesting that resources dedicated to investigations of wage and hour violations became increasingly effective.

DLSE's Data Collection and Analysis Capabilities Are Still Developing. The DLSE implemented CalAtlas, an information technology system used to track complaints and investigations statewide, roughly six months ago. Prior to CalAtlas, information about complaints and investigations was not tracked consistently across field offices, limiting DLSE's ability to assess trends in complaints and analyze the effectiveness of past investigations and use this analysis to refine investigation targeting. The CalAtlas system represents a step forward in DLSE's ability to track information about complaints and investigations and use this information to improve their effectiveness. However, the Governor's proposal does not describe how the information that will be collected in CalAtlas will be used to inform strategic targeting of investigation resources going forward. Given how recently the new system was brought online, the LAO is concerned that DLSE's data collection and analysis capabilities may not have sufficiently developed to ensure the most effective use of the proposed increased staff.

Statutorily Required Report Is Past Due. As mentioned previously, state law requires that DLSE report to the Legislature each March on BOFE operations. Among other things, these reports are required to contain information about the labor commissioner's enforcement plan, the number of investigations conducted and the types of violations found, the amount of wages

found to be unlawfully withheld from workers and the amount of such wages collected. The most recent annual report to the Legislature was submitted in 2015, for the 2013-14 fiscal year. A report for 2014-15 should have been submitted in March 2016 but, as of the writing of this post, has not yet been submitted. A report for 2015-16 would be expected in March 2017. The Governor's proposal suggests that in future years the annual BOFE report would be the primary way that DLSE would update the Legislature about the outcomes and effectiveness of the requested new positions and funding. The delay in issuing the statutorily required report makes it difficult for the Legislature to evaluate the more recent effectiveness of BOFE inspections (that is, after 2013-14) and raises concerns about whether the annual BOFE report would be an adequate means for DLSE to report to the Legislature on the outcomes of this proposal.

Vacancies Are a Concern. In 2015-16, roughly 18 of the BOFE's 94 approved positions (about 20 percent) were vacant. The DLSE has identified several issues that have led to this level of vacancies, including problems with administrative challenges that prevented hiring for certain key investigative classifications for a period of time, infrequent examinations and small hiring lists, and increased retirements. The DLSE has taken some steps to reduce the number of vacancies and believes it has sufficient funding to fill previously approved but vacant positions. The 20 percent vacancy rate in 2015-16 represents an improvement over prior years, but the LAO remains concerned that a significant portion of the positions requested in the Governor's proposal might not be filled on a timely basis if they are approved.

The LAO recommends that the Legislature not approve further increases requested for 2018-19 and later years, instead requiring DLSE to return with a follow-up proposal as part of the Governor's 2018-19 budget. This approach would allow the Legislature to receive additional information on the implementation of any funding and positions approved for 2017-18, prior to approving any additional funding or positions.

Some Proposed Law Changes More Directly Related to Budget Proposal Than Others. The Governor's proposed trailer bill touches on many aspects of DLSE enforcement. Some of the proposed changes, such as allowing BOFE to serve citations through the mail, are directly related to creating efficiencies in enforcement processes and merit the Legislature's serious consideration. Other proposed changes are less related to the budget proposal, such as imposing new penalties on employers that fail to comply with a court's order to enforce DLSE's determination from a retaliation complaint investigation. These proposed changes may have merit, but may be deliberated to understand their implications. In order to fully understand the effects of the Governor's proposed trailer bill, the LAO recommends that the Legislature invite stakeholders, including workers, worker representatives, and employers, to comment on the various proposals' implications.

Staff Recommendation. Hold Open.

Issue 16: Public Works Enforcement

Summary. The Administration is proposing six positions and \$805,000 in 2017-18, and \$759,000 in 2018-19 from the Labor and Workforce Development Fund to education awarding bodies of their requirements to comply with registration requirements, and one attorney position with \$212,000 in 2017-18 and \$204,000 ongoing from the State Public Works Enforcement Fund. Additionally, the Administration is proposing to trailer bill language to increase enforcement and compliance with registration compliance.

Background

Existing law places certain requirements on most construction projects that receive public funding, referred to as “public works projects.” One of these requirements is that contractors on public works projects pay their workers “prevailing wages”—defined as the wages paid to a majority of workers in a particular type of work within the locality where the work is performed. The Labor Code also establishes other requirements for public works projects, including a requirement that contractors on certain public works projects employ apprentices. State law places responsibility for enforcing public works requirements on the Division of Labor Standards Enforcement (DLSE), within DIR. Specific DLSE responsibilities include determining prevailing wage rates, reviewing contractors’ payroll records, and conducting onsite investigations of public works projects.

Currently, the prevailing wage determination function and enforcement of the public works requirements are funded from the State Public Works Enforcement Fund (SPWEF), a special fund that receives revenues from an annual registration fee of \$300 paid by all contractors that wish to bid on public works contracts. The SPWEF is solely used to support public works enforcement. The contractor registration fee was established as part of the 2014-15 budget package. Prior to 2014-15, public works enforcement was supported by a combination of the Labor Enforcement and Compliance Fund (LECF), which receives the proceeds of a general assessment on all employers; a fee on bond proceeds for bond-funded public works projects; and the General Fund. Over the years, challenges with the previous system of collecting fees on bond proceeds made it difficult for DLSE to generate sufficient revenue to maintain public works enforcement, requiring the SPWEF to receive loans from other special funds and the General Fund. Currently, the SPWEF has a \$1.3 million loan from the General Fund, a \$2.2 million loan from the Uninsured Employer Benefit Trust Fund, and a \$5 million loan from the Occupational Safety and Health Fund that have not been repaid.

The Administration notes that the annual revenues from the recently created contractor registration fee are less than estimated when the fee was established and do not cover current spending levels for public works enforcement. Specifically, the administration estimates that expenditures from the SPWEF in 2016-17 will be \$13 million, while revenues coming into the SPWEF from the contractor registration fee will be only \$10 million. The shortfall of revenues will result in a \$3 million decline in the SPWEF’s reserve. If fee revenues continue at this level and no adjustments are made to spending levels, SPWEF’s reserves would be virtually exhausted in 2017-18.

The Administration believes that one reason revenues have not met expectations is that some

contractors may not be complying with the registration requirement. During 2015-16, less than 30,000 contractors registered and paid the fee, compared to an initial rough estimate of 40,000 or more registrations. Through its enforcement efforts, DLSE found about 600 instances where contractors were working on a public works project during 2015-16 without registration. Contractors that are found to be bidding or working on a public works contract without registration are subject to a penalty of up to \$2,000 and may face temporary disqualification from bidding or working on public works projects for repeat violations.

The Administration also notes that some institutions that award public works contracts, known as “awarding bodies,” may not be adequately verifying that contractors bidding on projects have complied with the registration requirement before awarding the contract, thus potentially contributing to contractor noncompliance and reduced fee revenues. There currently is no specific penalty for an awarding body that fails to verify that contractors bidding or working on public works contracts are registered.

Governor’s Proposal

The Governor proposes a few actions to address the funding shortfall in the SPWEF in 2017-18 and later years. First, the Governor proposes to provide funding to DLSE on a two-year limited-term basis for six positions to conduct outreach with awarding bodies to improve their awareness of their responsibility to ensure that contractors have complied with this requirement, with the intent of increasing compliance and fee revenue over time. Funding for these positions—\$805,000 in 2017-18 and \$759,000 in 2018-19—would be provided from the Labor and Workforce Development Fund (LWDF), a special fund designated for enforcing Labor Code provisions and educating employers and workers about labor law. As part of this outreach, DLSE would encourage awarding bodies to require contractors to “prequalify,” or demonstrate compliance with various labor law requirements, including the contractor registration requirement, before bidding on public works contracts. Under current law, awarding bodies are authorized, but most are not mandated, to require contractors to prequalify. DLSE believes that increased use of prequalification could increase compliance with the contractor registration requirement and with labor law requirements generally.

The Governor’s proposal would reduce expenditures from the SPWEF by moving the support of the prevailing wage determination function from the SPWEF to the LECF beginning in 2017-18. This action would free up \$2.2 million in the SPWEF on an ongoing basis and would largely address the funding imbalance going forward, even if contractor registration fee revenues remain flat in future years.

For 2017-18 only, the Governor proposes to shift the portion of statewide administrative costs allocated to the SPWEF (such as the fund’s portion of reimbursements to the state Department of Finance and Department of Human Resources) to other special funds administered by DIR. This one-time action frees up an additional \$1.1 million in the SPWEF in 2017-18.

Current law gives DLSE the authority to “debar,” or prohibit a contractor from bidding or working on public works contracts, for up to three years if the contractor violates public works requirements under certain conditions. The Governor’s proposal would provide \$212,000 from the SPWEF for one additional Attorney III position to allow DLSE to conduct additional debarment proceedings.

In addition to the budget change proposal, the Administration is also proposing trailer bill language. Below is a summary of some of the key provisions included in the TBL:

- **Effective Date.** Applies requirement to register as a public works contractor to work performed on or after January 1, 2018, regardless of a contract date.
- **Small Projects Exemption.** Provides administrative relief for contractors and awarding agencies on small projects. Among the provisions, the TBL creates a new minimum threshold triggering registration requirement for projects over \$25,000 for new construction; over \$15,000 for maintenance.
- **Unregistered Contractor Sanctions.** Among its provisions, the TBL requires all contractors and subcontractors engaged in the performance of a public work must be registered. If the Labor Commissioner determines that a contractor or subcontractor has violated the registration requirement, unregistered contractors shall forfeit as a civil penalty to the state \$100 per day up to \$8,000. A registered public works contractor or subcontractor who enters into a contract with an unregistered lower-tier subcontract to perform any public work shall be subject to one or both of loss of registration from the current year, and a civil penalty of \$100 per day, up to \$10,000.
- **Public Works Fund.** Specifies that DOF and LWDA may approve a short-term loan each fiscal year from the LECF to the SPWF. Amends previous language specifying the loan source was the Labor and Workforce Development Fund.
- **Awarding Agency Sanctions.** Specifies that an Awarding Agency (AA) authority that fails to provide the notice to DIR, or enters into contract with or permits unregistered contractor or subcontractor to engage in work, is subject to fine of \$100 per day up to \$10,000. Additionally, if Labor Commissioner determines that AA willfully violated requirements of this section or chapter on 2 more projects within a 12 month period, the AA shall be ineligible to receive state funding or financial assistance for any construction project undertaken by the AA for one year. Penalties received shall be deposited into the State Public Works Enforcement Fund.
- **Liquidated Damages Waiver.** This bill deletes authority to waive liquidated damages for unpaid wages.

Legislative Analyst's Office Comments.

The LAO notes that the Administration's proposal to begin paying for the costs of prevailing wage determinations from the LECF instead of the SPWEF is a reasonable and straightforward way to relieve pressure on the SPWEF in the near term while the administration pursues efforts to increase SPWEF revenues through greater compliance with the contractor registration requirement. However, the LAO believes that the SPWEF is the preferable long-term funding source. Shifting the prevailing wage determination function to the LECF would mean that the costs of determining prevailing wages are funded from a general assessment on all employers, most of whom are not affected by prevailing wage requirements. Ideally, the prevailing wage

determination function would eventually shift back to the SPWEF as compliance with the contractor registration requirement improves and fee revenues increase. If the Legislature shifts prevailing wage determination to the LECF, the LAO recommends that the Legislature require that DLSE report at a later date on the feasibility of returning the prevailing wage determination function to the SPWEF.

The LAO notes that there may be other factors that affect compliance with the registration requirement that are at least as important as awarding bodies' awareness of their responsibilities, including the extent to which awarding bodies are (or are not) held accountable for verifying the registration of contractors. The proposal to provide temporary positions for outreach to awarding bodies should be considered in the context of other possible changes to increase awarding bodies' incentives to verify contractor registration. The administration's recently trailer bill proposal appears to include provisions intended to address some of these compliance issues.

The LAO recommends that the Legislature require DLSE to report by March 2019 on (1) changes in the amount of contractor registration fees collected; (2) the estimated effect of any efforts to increase compliance with the contractor registration fee, including outreach to awarding bodies and other steps to increase awarding body accountability for ensuring contractor registration; (3) what adjustments are necessary to the level of the contractor registration fee in order to support ongoing public works enforcement costs and repay the SPWEF's outstanding loans to other funds; and (4) the feasibility of shifting support for the prevailing wage determination function back to the SPWEF.

The LAO notes that given uncertainty in the level of ongoing contractor registration fee revenues in the SPWEF, it is premature to approve the administration's requested staff to pursue additional contractor debarments, even after taking steps to reduce SPWEF expenditures (such as shifting public works determination to the LECF). Accordingly, the LAO recommends the Legislature reject the proposed position.

Staff Comments. The subcommittee may wish to discuss with the Department what strategies are available to ensure oversight and the long term success of the program. The changes proposed in the trailer bill assume that shifting the responsibility and penalties to the awarding bodies will increase compliance. The funding for the program has had a history of challenges and it is uncertain how these changes will provide stability. Staff notes that it may be premature to permanently shift funding back to the LECF. Instead, shifting funding to the LECF in the short-term may be a more efficient approach, and have DIR report back based on the recommendations that the LAO. This may help the Legislature develop a better understanding of the impacts the BCP and trailer bill language has had on program and its fund condition. The LAO makes a reasonable argument that increasing staff for debarment may be premature, especially since the future funding for the program is uncertain. DIR has indicated that they are amenable to some type of reporting requirement.

Staff Recommendation. Hold Open.

Issue 17: Process Safety Management Unit - Non-Refinery Inspections

Summary. This proposal requests 13.0 positions, 10.0 of which will be safety engineers, and an augmentation of \$2.5 million in 2017-18 and \$2.4 million ongoing, to the Occupational Safety and Health Fund for the Division of Occupational Safety and Health (DOSH) to expand the existing Process Safety Management (PSM) non-refinery inspection program from 45 annual Program Quality Verification inspections to a total of 113 inspections annually.

Background. The 2014-15 budget increased the PSM function by 15.0 positions (11.0 new positions and 4.0 redirected from within DOSH) and \$2.4 million, which focused exclusively on the refinery inspection needs for the 15 refineries located in the state. The resources also allowed DOSH to acquire the necessary data, and develop the requisite methodology for evaluating and categorizing risk in the various non-refinery facilities.

California has approximately 1,940 non-refinery industrial facilities that handle or process anywhere from 50 to 120 million pounds of hazardous chemicals. These facilities include, but are not limited to, ammonia refrigeration, water treatment and wastewater treatment, chemical plants, and explosives manufacturers. All of these facilities fall under the jurisdiction of the PSM Unit.

In response to Senate inquiries and Supplemental Report Language regarding the number of staff and inspections required to provide adequate oversight of non-refinery facilities, DIR submitted a status report to the Legislature during 2016-17 budget hearings. The status report outlined the amount of resources needed to achieve various inspections levels, but did not make any specific recommendations regarding enforcement levels requested by DOSH at that time. This proposal identifies the augmentation needed to increase the capacity to inspect non-refinery facilities.

The PSM non-refinery program currently has six Safety Engineers (SE's) that are trained to conduct program quality verification (PQV) inspections. Three are located in the Santa Ana District Office and three are located in the Concord District Office. A PQV is a planned, proactive inspection and is a thorough assessment of a facility's safety preparations and emergency response procedures. A PQV inspection is more expansive than complaint and/or accident inspections, which are reactive in nature and generally focused on the specifics which gave rise to the accident or complaint. The other inspections may include, but are not limited to: referrals from other government agencies, and records and permit inspections.

To target non-refinery inspections on facilities that pose the greatest health and safety risk to workers and the public, DIR collaborates with the US Environmental Protection Agency (US EPA) to obtain risk information. As a result, the state has now ranked the 1,940 facilities on the basis of their risk to workers and the public. Each inspector is able to conduct about 7.5 inspections per year, at a rate of 200 to 300 hours per inspection, for an annual total of 45 PQV inspections statewide, exceeding the goal of 40 inspections which had been established for 2014-15. Under this proposal, the unit will increase its annual PQV inspections from 45 annually, to about 113 annually.

Staff Recommendation. Approve as Budgeted.

7900 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**Issue 18: Healthcare Fund Administrative Expenses Trailer and Budget Bill Language**

The Administration has proposed trailer and budget bill language that would do the following:

- **Require All Administrative Costs Be Paid from Contingency Reserve Fund (CRF).** Under the proposed language, all administrative expenses currently being paid from the Health Care Fund (HCF) would be paid from the Contingency Reserve Fund (CRF). Any future administrative expenses - regardless of health plan - would be paid only from the CRF. The proposed language does not eliminate the HCF. Instead, the HCF would continue to be used to pay for specified non-administrative costs.
- **Changes Language Related to Local Government Contributions to CRF.** The proposed language makes a number of changes to Section 22901 of the Government Code related to local government's contributions to the CRF. The language would require local governments to pay (1) the same surcharge to the CRF that the state pays and (2) additional surcharges for any administrative services provided to the local government that is not provided to the state.
- **Budget Bill Reduces CRF Reserve.** In past budgets, Control Section 4.20 has specified that CalPERS would maintain a three-month reserve in the CRF. The proposed budget bill language for Control Section 4.20 directs CalPERS to maintain a one-month reserve in the CRF.

Background. CalPERS administers the health plans offered to active and retired employees of the state and about 1,200 local governments in California. CalPERS incurs costs to administer the health plans provided to its members. These costs include personnel costs (CalPERS employees are state employees), costs to contract with consultants and professional services, and other operating expenses.

Current law allows these administrative expenses to be paid through two funds - the Public Employees' Contingency Reserve Fund (CRF) and the Public Employees' Health Care Fund (HCF) - so long as the costs are approved in the annual budget act.

The CRF was established in 1962 as a means to pay for administrative costs across the CalPERS healthcare program. Employers pay for administrative costs through a surcharge on health premiums. The HCF was established in 1988 to fund CalPERS "self-funded" plans, such as Preferred Provider Organization (PPOs). Contributions to the HCF are built into these plans' premiums.

Control Section 4.20. Control Section 4.20 of the annual budget act establishes the surcharge levied on the state to fund the CRF pursuant to Section 22885 of the Government Code. In 2016-17, this surcharge was established as 0.31 percent of gross health premiums paid by the employer. Section 22901 of the Government Code requires local governments that contract with CalPERS for health benefits to pay the same surcharge as the state to fund the CRF.

In addition, the Legislative Analyst's Office notes that Section 22901 gives the CalPERS board the authority to require contracting local governments to pay an additional amount so that the local government pays an amount sufficient to bear all of the administrative costs incurred by the

board in providing health benefits to the local government's active and retired employees. In most years, and currently, CalPERS indicates that it provides the state and contracting local governments the same administrative services. CalPERS typically charges state and local government employers the same surcharge to fund the CRF. In at least one instance, CalPERS has charged local governments an additional surcharge to pay for services not provided to the state.

In 2006-07, CalPERS charged contracting local governments an additional surcharge of 0.17 percent of premiums to pay for services related to a new accounting reporting requirement (GASB 45). CalPERS did not provide this service for the state because the State Controller's Office was given this responsibility. Whereas CalPERS charged the state a surcharge of 0.27 percent of premiums in 2006-07, it charged contracting local agencies 0.44 percent of premiums.

The Administration disagrees with the LAO's interpretation and states that there is ambiguity in current law to allow for local governments to be charged an additional surcharge, however there is precedence from CalPERS to charge an additional surcharge. It is unclear how the Administration's proposal would impact local governments.

Administrative Costs Have Grown. Administrative costs paid from the HCF and the CRF nearly doubled between 2006-07 and 2016-17. The 2017-18 budget assumes these costs will be about \$70 million, less than 1 percent of the total cost of CalPERS' health benefits program. DOF states that the CalPERS health benefits program's administrative costs have grown over the past decade primarily due to an increase in the number of health benefit plans containing a self-funded component. The growing number of health plans with a self-funded component - and membership in those plans - resulted in administrative costs paid from the HCF to increase much faster than costs paid from the CRF.

2016-17 Budget Act Action. Although the CRF always has been included in the budget, increased costs from the HCF historically were not considered in the state budget. In light of the rapid growth in costs paid from the HCF in recent years, the Legislature approved statutory changes as part of the 2016-17 budget package to require administrative expenses from the HCF be approved by the Legislature in the annual budget. Additionally, the 2016-17 Budget Act included provisional language directing DOF to complete a zero-based budget exercise in developing the 2017-18 budget. DOF's zero-based review was specifically directed to include (but not be limited to) the evaluation of program objectives, workload metrics, cost allocation methodologies, reserve levels, personnel services, and operating expenses and equipment.

Zero Based Budget Results. DOF provided staff with a one-page summary that included four bullets identifying DOF's conclusions from its zero-based budget exercise. DOF found that the CalPERS health benefits program is resourced adequately to carry out its statutory workload and requirements. Additionally, in meetings with staff, DOF has indicated that there has not been a gross misuse of funds. The Administration did not identify functions within the health benefits program that is not funded at an appropriate level. Out of five bullets listed in the administration's recommendations, two would require legislative actions, which are to reduce the reserve for administrative expenses from 3 months to one month, and to consolidate administrative revenues and expenditures into a single fund. The other bullets indicate that DOF will continue working with CalPERS on workload metrics, information technology project processes, and administrative efficiencies.

Staff Comments

Last year, the Legislature included additional transparency to the HCF by bringing the fund under the budget, thereby providing for Legislative review. This change only has been in place for seven months and was part of the budget package agreed to last year by the DOF and Legislature. It is unclear why a statutory change beyond the action taken last year is necessary. Additionally, it is unclear why the Administration is proposing to reduce the reserve from 3 months to 1 month, and how this would impact CalPERS operations.

Staff Recommendation. Hold open.

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, March 30, 2017
9:30 a.m. or upon adjournment of Session
State Capitol - Room 113
Consultant: Anita Lee

Senator Beall – Absent.

Vote Only Items

<u>Item</u>	<u>Department</u>	<u>Page</u>
0559	Secretary for Labor and Workforce Development Agency	
Issue 1	Associate Secretary for Farmworker and Immigrant Services - Approved as budgeted (2-0)	
7501	Department of Human Resources	
Issue 2	Employee Outreach - Approved as budgeted (2-0)	
Issue 3	Statewide Training Center - Approved as budgeted (2-0)	
Issue 4	Blanket Position Conversion for CalCareer Services - Approved as budgeted (2-0)	
Issue 5	Dependent Re-Verification Process – Held Open	
7300	Agricultural Labor Relations Board	
Issue 6	2017-18 Budget Proposal – Held Open	
7350	Department of Industrial Relations	
Issue 7	Enhanced Enforcement and Apprenticeship Services- Held Open	
Issue 8	Division of Apprenticeship Standards- Federal Grant Funding - Approved as budgeted (2-0)	
7920	California State Teachers' Retirement System	
Issue 9	2017-18 Budget Proposals - Approved as budgeted (2-0)	
Issue 10	Investment Portfolio Complexity - Approved as budgeted (2-0)	

Discussion and Vote Items

7501

California Department of Human Resources

Issue 11

Civil Service Improvement Trailer Bill Language – **Held Open**

Issue 12

Judges Salary Trailer Bill Language - **Approved as budgeted (2-0)**

7100

Employment Development Department

Issue 13

Tax Appeal Program Stabilization - **Approved as budgeted (2-0)**

Issue 14

Benefit Systems Modernization - **Approved as budgeted (2-0)**

7350

Department of Industrial Relations

Issue 15

Strategic Enforcement of Labor Standards – **Approved Budget Change Proposal (2-0); Trailer Bill Language: Held Open**

Issue 16

Public Works Enforcement- **Held Open**

Issue 17

Process Safety Management- **Non-Refinery - Approved as budgeted (2-0)**

7900

California Public Employees' Retirement System

Issue 18

Health Care Fund Administrative Expenses Trailer and Budget Bill Language-

Held Open

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, April 20, 2017
9:30 a.m. or upon adjournment of Session
State Capitol - Room 112

REVISED

Consultant: Julie Salley-Gray

<u>Item</u>	<u>Department</u>	<u>Page</u>
Discussion Items		
5225	Department of Corrections and Rehabilitation	
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Issue 3	Elderly and Medical Parole Update	19
Issue 4	Alternative Custody and Community Reentry Programs	21
Issue 5	Board of Parole Hearings: Positions for Second Striker Workload	24
Issue 6	Warden Recruitment and Retention Proposal	25
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ITEMS TO BE HEARD

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION

Issue 1: Proposition 57 Implementation Budget Proposal

Governor's budget. Under Proposition 57, the budget estimates a net savings of \$22.4 million General Fund in 2017-18, growing to a net savings of approximately \$140 million by 2020-21. Specifically, the budget includes the following costs and savings.

2017-18 Proposition 57 Budget Impact (Dollars in Thousands)

Cost	
Department of Juvenile Justice Population Increase	\$ 4,867
Parole	\$ 4,392
Board of Parole Hearings	\$ 1,305
Implementation BCP	\$ 5,687
Total Costs	\$ 16,251
Savings	
Department of Juvenile Justice Reimbursement from Counties	\$ (3,192)
Adult Institutions - Population Reduction	\$ (7,382)
Out-of-State Contract Population Reduction	\$ (28,078)
Total Savings	\$ (38,652)
Net Cost/Savings	\$ (22,401)

In addition, the Governor's proposal includes trailer bill language adding a 15th parole commissioner to the Board of Parole Hearings.

Caseload Impact. The Administration assumes that Proposition 57 will result in 1,959 fewer inmates in 2017-18, growing to 9,956 fewer in 2020-21. In addition, they assume that there will be 1,038 more parolees in 2017-18, growing to 3,545 by 2020-21.

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

- Allows individuals convicted of nonviolent felonies to be considered for parole after completing the sentence for their primary offense.
- Allows CDCR to award additional sentence reduction credits for rehabilitation, good behavior or educational achievements.

- Requires a judge's approval before most juvenile defendants can be tried in an adult court.

Emergency Regulations. In March the Administration filed emergency regulations with the Office of Administrative Law. Those regulations provide the following parameters for implementing the proposition:

Implement New Nonviolent Offender Parole Consideration Process. On July 1, 2017, the Administration plans to begin the parole consideration process for nonviolent offenders. As noted above, under the proposition inmates will be eligible for parole consideration upon the completion of the sentence for their primary offense. Prior to Proposition 57, any enhancements included in the sentence were included in establishing an eligible parole date. Specifically, the Administration is making the following implementation assumptions:

- The changes brought by Prop 57 are similar to the changes implemented by CDCR several years ago for second strike offenders. CDCR is viewing Proposition 57 as an expansion of that parole existing process.
- At this time, the regulations exclude people who are third strike offenders who have a non-violent third strike.
- CDCR assumes that 50 percent of eligible inmates will be screened out due to their recent conduct in prison. Of the 50 percent who receive a parole hearing, 50 percent will be granted parole.

Expand Sentencing Credits. The administration plans to increase the number of credits inmates earn for good behavior and participation in rehabilitation programs. It anticipates that changes to good conduct credits will go into effect on May 1, 2017 and that changes to credits inmates earn for participation in rehabilitation programs, such as modifications to milestone credits, will go into effect on August 1, 2017. Specifically, the regulations make the following changes:

Good Conduct Credit

- The regulations simplify the existing categories around which inmates can receive credit for good behavior and how much they can receive.
 - Condemned inmates and inmates serving life without the possibility of parole (LWOP) will not be allowed to receive credit, which is the same as the current policy.
 - Violent felons can currently receive a reduction between zero and 15 percent of their sentence for good behavior. Under the regulations, all violent felons can receive a reduction of up to 20 percent of their sentence.
 - Nonviolent third strike inmates will be able to receive a reduction of up to 33.3 percent of their time.
 - Inmates in minimum custody facilities can receive up to half of their time off for good behavior.

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

Milestone Completion Credits

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

Rehabilitation Achievement Credits

- These credits constitute a new type of credit earning. Under the regulations, inmates participating in volunteer programs will now be eligible to earn credits toward their sentences for participation.
- As with milestone credits, all inmates regardless of their offense, with the exception of condemned and LWOP inmates will be eligible for achievement credit earnings.
- Under the regulations, an inmate will earn one week of credit for every 52 hours of participation in a volunteer activity – with a maximum of four weeks per year.
- As with the milestone credits, these credits will not be applied retroactively.
- Wardens at each institution will be in charge of creating an eligible list of volunteer programs for their prison. The Administration argues that this will allow for more flexibility among the prisons since they all have varying amounts and types of volunteer programs. CDCR headquarters will provide some level of guidance over the development of the lists.

Educational Merit Credit

- As with the rehabilitation achievement credits, this is a new credit. Inmates will now receive credit for extraordinary educational achievements.
 - Inmates completing their GED or high school diploma will receive three months of credit.
 - Inmates completing an AA, BA, or other college degree will receive six months of credit.

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

Heroic Acts Statute

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

Future Senate Public Safety Hearing on Proposition 57. The subchair of this committee, Senator Nancy Skinner, is also the chair of the Senate Public Safety Committee and has committed to holding a hearing in that committee on Proposition 57 to discuss the Administration's regulations and other policy issues related to the implementation of the proposition.

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

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

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

Impact of Proposition 57 on Youthful Offenders. For youthful offenders, the credit earnings will apply to their original eligibility parole date and not to their youthful offender parole eligibility date. However, youthful offenders are included in the new formula that calculates eligibility for parole based upon their primary offense and not on the enhancements to their sentences. In some instances, applying credit earnings to the primary eligibility date rather than the youthful offender date could result in a shorter sentence than the youthful offender parole date.

2016 Budget Act Rehabilitation Augmentations. The 2016 budget contained \$431 million General

fund for inmate rehabilitative programs. This represents approximately \$100 million more than the 2015-16 budget. The increased funding included:

- \$4 million General Fund to expand Arts in Corrections to all 35 state prisons.
- \$18.9 million General Fund to expand substance use disorder treatment to the remaining 11 prisons that are currently without a program and to expand the number of slots at prison-based reentry hubs.
- \$5.5 million General Fund to provide innovative, restorative justice-based programs for long-term and life-term inmates.
- \$3.1 million General Fund to continue the innovative programming grants designed to expand volunteer-based, restorative justice and offender responsibility-centered programs at underserved prisons.
- \$2.3 million General Fund to expand 12 career technical education programs.
- \$4.1 million General Fund (\$10.6 million in 2017-18 and \$4.2 million on-going) to provide secured internet access at all state prisons.
- \$3 million Proposition 98 funding to provide inmates enrolled in community colleges access to textbooks through eReaders.
- \$3.4 million General Fund (\$2.1 million of which is one-time) to add 1,700 slots to the Long-Term Offender Program.
- \$423,000 General Fund for 64 additional slots for the Offender Mentor Certification Program which allows inmates to obtain substance use disorder treatment certification.
- \$3.1 million General fund to expand the Transitions Program to all prisons to offer employment preparation and job readiness training. The program will serve approximately 23,000 inmates per year.

The current proposal does not include additional funding for rehabilitative programming beyond what was approved in the 2016 budget act.

Legislative Analyst's Office (LAO)

LAO Issues

Parole Consideration Process –

Exclusion of Certain Nonviolent Offenders Appears to Violate Measure. The LAO finds that the Administration's plans to exclude nonviolent third strikers and sex registrants from the new parole consideration appears to violate the language of Proposition 57. This is because the proposition specifies that all inmates serving a prison term for a nonviolent offense shall be eligible for parole consideration. By automatically excluding nonviolent sex registrants and third strikers, the Administration would not provide parole consideration to this subset of these offenders.

Uncertain Whether Including Certain Offenders With Violent Convictions Permitted. It is uncertain whether the Administration's plan to include certain offenders who have completed a prison term for a violent felony but are still serving a prison term for a nonviolent felony offense that they were convicted of at the same time is consistent with the intent of Proposition 57. This is because the measure could be interpreted to limit eligibility to inmates who were sent to prison for nonviolent offenses.

Initiating Process After Primary Term Completed Appears Unnecessarily Costly. Based on the Administration's plan not to initiate the parole consideration process until after nonviolent offenders have completed their primary term, inmates approved for parole would not be released immediately. Instead, inmates would have their case reviewed and decided on by a deputy commissioner after completing their primary term. While this particular process could be done relatively quickly, if approved for parole, the inmates would then go through reentry planning activities (such as receiving pre-release risk and needs assessments), which the Administration reports take about 60 days to complete. As such, these inmates would not be released until around 60 days—in some cases more, depending on the actual timing of the review process—after they have served the full term for their primary offense.

On the other hand, if BPH initiated the parole consideration process sometime before nonviolent offenders completed their primary term, CDCR could release inmates approved for parole shortly after their primary term and achieve the associated population reduction and savings. One way this could be done is for BPH to make a preliminary release decision 60 days before such inmates complete their primary terms. Reentry planning activities would then occur during the 60 days between the preliminary release decision and when inmates complete their primary terms. A final parole consideration decision—based on a review of inmates' behavior in the 60 days since the preliminary release decision and any other relevant new data available—would be made upon the completion of inmates' primary terms. The LAO notes that in some cases, this could result in reentry plans being made for some inmates who are ultimately not released under the new parole consideration process.

To the extent that such an alternative approach reduces the time nonviolent offenders serve in prison by two months, the LAO estimates that this approach could potentially result in several millions of dollars in savings annually relative to the Governor's proposal depending on the actual number of offenders approved for parole. While a portion of these savings could be offset by the cost of reentry planning for inmates who are ultimately not released, these additional costs are likely to be minor.

Parole Consideration Process Inherently Subjective. Throughout an inmate's time in prison, CDCR records specific information on him or her, such as the extent to which the inmate participated in rehabilitation programs and rules violations. In preparation for the parole consideration process, BPH would supplement this information by soliciting input from victims, district attorneys, and the inmate. By the time the inmate is actually considered for parole, BPH would have a multitude of qualitative and quantitative data about the inmate. Deputy commissioners would use these various types and sources of information to make a release decision.

According to CDCR, deputy commissioners currently use their professional judgment to synthesize various sources and types of information about inmates to make a decision about whether to release an inmate for the nonviolent second striker parole process. However, this process is inherently subjective. For example, it is possible that deputy commissioners could over or under value various aspects of inmate data they review, such as criminal history or completion of rehabilitation programs. In addition, it can be difficult to ensure that different deputy commissioners make decisions in a consistent and completely transparent manner that is free from any unconscious biases.

In order to improve accuracy and reduce subjectivity of parole board decisions, several states use statistically-validated, structured decision-making tools as part of their parole consideration process.

These tools guide commissioners through a process of weighing several different sources of information about an inmate. For example, Pennsylvania's Parole Decisional Instrument combines the results of several actuarial risk assessments and inmates' institutional behavior and programming history into a numerical score, yielding a parole recommendation that commissioners can supplement with their qualitative observations. Accordingly, decisions guided by such instruments weigh factors in a consistent manner; are transparent, as they can be shown to be based on specific factors; and are less likely to be subject to unconscious bias. In addition, research suggests that such actuarial tools can improve public safety by yielding better release decisions than professional judgment alone.

New Sentencing Credits –

Lack of Information on Inmate Access to Programs. The population impact of CDCR's planned milestone and participation credits will depend on inmates' access to the programs that yield credits. However, the Administration indicates that it has not done an analysis of how the availability of these programs will impact credit earning under their plan. On the one hand, the changes in these credits could reduce the inmate population by less than the Administration expects if there is not enough capacity in rehabilitative and educational programs to allow inmates to earn the number of credits assumed by the Administration. On the other hand, to the extent there is more than enough capacity, the planned changes to credit earning could impact the population by more than the Administration expects. This creates significant uncertainty about how Proposition 57 will actually impact the state's inmate population. Such uncertainty makes it difficult for the Legislature to evaluate the Governor's proposed budget adjustments.

Effectiveness of CDCR's Programs Remain Unclear. Inmates who participate in approved programs earn credits, which allow them to accelerate their release, regardless of whether the programs are effective in reducing their risks to public safety. In order to protect public safety, it is critical that the approved programs are effective at reducing recidivism. However, CDCR currently has only done a limited analysis of the effectiveness of its programs. This analysis found that the recidivism rates of offenders who received substance use disorder treatment reoffended at lower rates than those who had not. While many of the other programs offered in prisons have been shown to be effective elsewhere, analyses of California's current implementation of these programs have not been completed.

Unclear Rationale Behind Credit Reduction for Certain Programs. The Administration plans to reduce credits awarded for a few programs, including Guiding Rage Into Power (GRIP) and two theology programs. It is unclear why the Administration chose to reduce credits awarded for these programs.

Fiscal Impact –

Budgetary Impacts Subject to Change. The Administration's implementation plan changed somewhat between the release of the Governor's January budget proposal and the release of the emergency regulations in March 2017. These changes to the implementation plan will likely alter somewhat the Administration's projected population impacts and budget requests, though at the time of this analysis the Administration had not provided these updates.

In addition, the regulations for the nonviolent offender parole consideration process and new credit earning policies are not yet finalized. Accordingly, the Administration's implementation plans and timeline are subject to further change, which raises additional uncertainty about their budgetary effects.

Population Impacts of Proposition 57 Are Difficult to Predict. Even if the Administration's regulations do not change, its projections of the Proposition 57 impacts would still be subject to uncertainty because of the inherent difficulty of projecting the effects of the measure. For example, the effects of the parole consideration process will depend on decisions made by deputy parole commissioners. Similarly, the effects of the proposed credit expansion will depend on how inmates respond to increased good conduct credit earning rates and credits for participating in programs and activities as well as the capacity of these programs. Finally, the effect on the Division of Juvenile Justice (DJJ) will depend on decisions made by juvenile court judges.

LAO Recommendations

Direct Administration to Report on Final Regulations. The LAO recommends that the Legislature direct the Administration to provide a report no later than 30 days after the regulations on the new parole consideration process for nonviolent offenders are finalized. This report should (1) summarize the final regulations, (2) discuss how the final regulations differ from the emergency regulations (including justification for any differences), and (3) identify how the changes affect CDCR's budget and populations.

Parole Consideration Process –

Direct Administration to Justify Definition of Nonviolent Offender. The LAO recommends that the Administration report at budget and policy hearings on the following issues:

- The legal and policy basis for excluding nonviolent sex registrants and third strikers from the parole consideration process.
- The legal basis for including in the nonviolent offender parole consideration process certain offenders who have completed a prison term for a violent felony but are still serving a prison term for a nonviolent felony offense.

Seek Advice From Legislative Counsel on Timing of Parole Consideration. In order to ensure that the measure is implemented in the most effective and efficient manner, the LAO recommends that the Legislature consult with Legislative Counsel to determine whether Proposition 57 allows BPH to initiate parole consideration before an inmate completes his or her primary term. If Legislative Counsel advises the Legislature that BPH can begin parole consideration as such, the LAO recommends that the Legislature direct the Administration to report, during spring budget hearings, on how it could begin to consider inmates for parole prior to completion of their primary terms.

Direct BPH to Investigate Using a Structured Decision-Making Tool. Given the potential benefits, the LAO recommends that the Legislature direct BPH to investigate using a structured decision-making tool in the future. Specifically, the LAO recommend that the Legislature direct BPH to report by December 1, 2018, on available structured decision-making tools and the estimated costs, opportunities, and challenges associated with adapting such tools for use in parole consideration reviews required by Proposition 57, as well as the other parole processes conducted by BPH. (This

should give BPH time to focus on implementing the new parole consideration process before considering changes to it.) This report would allow the Legislature to determine whether to require BPH to use such a tool in the future.

New Sentencing Credits –

Direct Department to Assess Program Capacity. The LAO recommends that the Legislature direct CDCR to report at budget hearings on the number and type of programs through which inmates would receive credits, the current capacity and attendance rates for these programs, and the corresponding effect they may have on the inmate population. This information would allow the Legislature to assess whether or not the current availability of programs is sufficient. The Legislature could then decide whether it needs to adjust funding for programs accordingly.

Direct Administration to Evaluate Credit-Yielding Programs. The LAO recommends that the Legislature direct CDCR to contract with independent researchers (such as a university) to evaluate the effectiveness of its rehabilitation programs and that it prioritize credit-yielding programs for evaluation. The LAO estimates that such evaluations would cost a few million dollars and could take a few years to complete. The outcomes of the evaluations would allow the Legislature in the future to prioritize funding for programs that have been shown to reduce recidivism.

Direct Administration to Explain Credit Reductions. The LAO recommends that the Legislature direct the Administration to report during budget and policy hearings on its rationale for reducing milestone credits for specific programs.

Fiscal Impact –

Withhold Action Pending the May Revision. Uncertainty in the population impacts of Proposition 57 makes it difficult to assess the Governor’s population-related budget requests. In addition, uncertainty in the timing of and workload required to implement and operate the new parole process and credit policies make it difficult to assess the Governor’s requested funding for implementation. Given these uncertainties, the LAO recommends that the Legislature withhold action on the Administration’s January budget adjustments pending the receipt of revised adjustments from the Administration.

Staff Comments

Program Opportunities for Parole-Eligible Individuals. One of the criteria for parole eligibility is being able to demonstrate work toward rehabilitation by participating in programming. Unfortunately, opportunities for programming can be limited and vary widely between prisons and even between housing units within prisons. So, while an inmate who is eligible for parole may have participated in every program offered to him or her, it still may not be enough for the parole board.

In addition, until recently, certain programs and treatment were primarily concentrated in 11 prisons that CDCR had designated as “reentry hubs.” Therefore, unless an inmate was housed in one of those 11 facilities, they may not have access to substance use disorder treatment or cognitive behavior therapy treatment, both of which may be required for parole.

As noted previously, the 2016 budget included almost \$100 million in additional funding for rehabilitative programs. The current budget does not include any expansion beyond that. It is unclear what the impact of that expansion will be on inmates' ability to participate in a variety of rehabilitative programs. If the 2016 expansion does not significantly increase program availability at all prisons and on every yard, it may be that those inmates who have availed themselves of every rehabilitation program available will now find that they have very limited options for earning credits. The effect of these regulations on this key group of inmates could be chilling. These are the very inmates who should be rewarded under proposition 57 because they are the most likely to succeed upon their release.

Unless programming and treatment is expanded throughout the prison system and includes enough slots to satisfy the long list of inmates who are waiting for programs, initiatives like Proposition 57, which expanded eligibility for parole, may not reach as many inmates as possible, thus limiting the state's ability to stay under the population cap without the use of private prison contracts or construction of new prisons.

Since it is too early to determine the impact of the program expansion in the current year, the Legislature may wish to ask CDCR to provide a report on the availability of programming for every inmate and the size of waiting lists for all of their programs, including volunteer programs. This would allow the Legislature to direct funding and programs toward institutions that do not appear to have adequate programs available to service inmates who are interested in rehabilitation.

Effectiveness and Quality of Rehabilitation Services and Programs. The Senate has led the way in expanding rehabilitation programs in the prisons, beginning in 2013 with the passage SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013, which provided the CDCR with an additional \$315 million in General Fund in order to expand prison capacity. SB 105 required that any unspent funding be placed in a recidivism reduction fund and be used to increase rehabilitative programming in prisons and provide funding for other programs that have been shown to reduce the likelihood that someone would return to prison after being released. Through that funding, the Legislature established innovative program grants that were designed to expand the number of restorative justice/offender responsibility programs available throughout the prison system.

Beyond those efforts, in recent years, the Legislature has segregated the funding used for rehabilitation programming in CDCR's budget to ensure that those funds could not be redirected toward increased security staffing or other funding priorities. In addition, in 2014, the Legislature passed SB 1391 (Hancock), Chapter 695, Statutes of 2014, which significantly expanded community college programs throughout the prison system. Perhaps most significantly, the legislation required that CDCR partner with local community college districts to provide in-prison, in-person college level courses.

The Administration has embraced and supported these efforts. In addition, they have expanded them by making innovative program funding a permanent part of the rehabilitation budget and by reinstating the Arts in Corrections program at all 36 state prisons. However, along with these efforts to expand the availability of rehabilitation programming, the question remains as to whether or not the programs and treatment being offered both in prison and upon release are effective and of a high quality. The LAO has continually recommended that the Legislature assess whether or not the \$400 million being spent each year on rehabilitation programming is being spent on programs that work to reduce recidivism. Toward that end, CDCR has been partnering with several national organizations to support and

evaluate parolee support and recidivism reduction strategies. These partnerships include evaluations of the Second Chance Act Adult Re-entry Demonstration projects with the National Institute of Justice, documentation of community re-entry programs with the University of California, Los Angeles and evaluation of re-entry and parolee programs with the Pew-MacArthur Results First Initiative to provide a cost-benefit analysis of current programs.

The Legislature may wish to ask CDCR to report during legislative budget hearings on the progress of the evaluations and to provide any results they have received. Depending upon the findings of the evaluations, the Legislature may want to examine the way in which rehabilitation funding is being spent and redirect it toward programs that are proven to reduce recidivism and tension in the prisons and improve the prison environment, thus improving people's chance of succeeding once they leave prison and providing a safer and productive environment for the 130,000 individuals confined to the prison system.

Allowing the wardens to determine which programs will be eligible for achievement credits. The Senate has talked a great deal over the years about the fact that some institutions embrace culture change and the value of rehabilitative programming and others do not. Given the varying cultures within the prisons system, giving wardens' control over this key aspect of the proposition could result in uneven opportunities throughout the system. While the leadership at some institutions clearly value programs like Guiding Rage Into Power (GRIP), the Actors' Gang Prison Project, and Center for Council, others have made it clear that they believe those programs are a waste of money. It is unclear how CDCR will ensure that equal opportunities are provided for inmates, regardless of the institution where they are currently housed and the philosophy of the staff in those prisons.

Definition of Violent Crime. Proposition 57 allows individuals convicted of nonviolent felonies to be considered for parole after completing the sentence for their primary offense. Under the language of the proposition, a violent felony is defined as those felonies listed under Penal Code Section 667.5(c). Since the passage of the proposition, there has been significant debate about what is and is not included on the list of violent felonies. Several bills have been introduced this legislative session to increase the number of crimes that are counted as violent. Therefore, it is likely that the debate will continue through the policy bill process.

Staff Recommendation. Hold open pending May Revision updates.

Issue 2: Division of Juvenile Justice – Population, Living Units and Programming

Governor’s budget. The Division of Juvenile Justice’s (DJJ) average daily ward population is decreasing slightly, when compared to 2016 Budget Act projections. Specifically, the ward population is projected to decrease by four in 2016-17, for a total population of 705; and projected to increase by 72 in 2017-18, for a total population of 779.

The significant increase in wards is as a result of Proposition 57, which requires that all juvenile offenders who committed their crimes prior to the age of 18 have a hearing in juvenile court before being transferred to adult court. Specifically, Proposition 57 only allows a juvenile felony offender age 16 or 17 to be transferred to an adult court, or age 14 or 15 for certain more serious felonies. The Administration anticipates that this change to state law will result in fewer juvenile offenders being tried in adult court and more juvenile offenders being sent to juvenile facilities. The budget assumes that this change will reduce the average daily adult inmate population by 81 in 2017-18 and will increase the juvenile population by 72, as noted above.

The proposed budget includes \$4 million and 28.5 positions for the activation of an additional living unit at both N.A. Chaderjian (Chad) and Ventura Youth Correctional Facility (VYCF) to accommodate the projected increase of 72 youth in 2017-18.

Background. The state has four juvenile detention facilities: N.A. Chaderjian Youth Correctional Facility (Chad) and O.H. Close Youth Correctional Facility (Close) in Stockton housing 231 and 169 males, respectively, as of February 2017; Pine Grove Youth Conservation Camp in Pine Grove housing 60 males as of February; and, Ventura Youth Correctional Facility housing 179 males and 20 females. In total, there were 679 juveniles in a state detention facility in February of 2017.

The Division of Juvenile Justice provides education and treatment to California’s youthful offenders up to the age of 25 who have the most serious criminal backgrounds and most intense treatment needs. Most juvenile offenders today who require a locked facility are committed to county facilities in their home community where they can be closer to their families and local social services that are vital to rehabilitation.

As a result, DJJ’s population represents less than three percent of the 28,447 wardship probation placements and 366 adult court convictions in California in 2015.¹ The juveniles that end up in state-run juvenile facilities have committed a serious and/or violent felony that requires intensive treatment services conducted in a structured and secure environment.

According to CDCR’s most recent report to the Legislature on their annual performance measures, juveniles have a significantly higher rearrest and recidivism rate than adult offenders. For example, after three years, 51.3 percent of adults have been convicted of a new crime. For juveniles, however, the conviction rate after three years is 60.1 percent. While 75.1 percent of adults are arrested within three years of their release, 84.2 percent of juvenile wards have been arrested during the same time

¹ Department of Justice, *Juvenile Justice in California* (2015).

period. In addition, 38.1 percent of juvenile offenders are committed to an adult prison within three years of their release from a DJJ facility.²

As part of the 2010–11 budget, the Legislature realigned from the state to county probation departments full responsibility for supervising in the community all wards released from DJJ. Prior to this, these youth were supervised in the community by DJJ parole agents. In addition to supervising these wards, county probation departments are responsible for providing reentry services following their release. Counties are also responsible for housing in juvenile facilities wards who violate a condition of supervision. Counties receive funding for these responsibilities from the Juvenile Reentry Grant, which was incorporated into the Local Revenue Fund 2011 as part of the 2011 realignment. Counties are expected to receive \$8.2 million for these responsibilities in 2016-17. With the elimination of state parole for juvenile offenders and the handing over of post-release supervision to county probation departments, the state has no way of ensuring that youth released from state facilities receive adequate support and reentry services during the critical first few months of their release.

The proposed 2017-18 budget includes \$252,041 in funding per juvenile. In contrast, the budget proposes \$75,560 per year for each adult inmate. According to CDCR's website, DJJ provides academic and vocational education, treatment programs that address violent and criminogenic behavior, sex offender behavior, and substance abuse and mental health problems, and medical care. This treatment and programming description is similar to what the CDCR provides for adult inmates. However, the actual rehabilitation programming is significantly different.

Rehabilitation Programming. DJJ operates an accredited school district, providing youth with the same high school curriculum in each of its four institutions that they would receive in their local community. Youth attend school each day to achieve a high school diploma. Youth whose commitment period is too short to fulfill that requirement are guided through a GED curriculum. DJJ considers a diploma or GED a minimum requirement for parole consideration. Certificates in a variety of vocations and college classes are offered to graduates as well.

According to CDCR, youth are also encouraged to build positive social and leadership skills through participation in groups and activities such as the student council, spiritual services, and events and fundraisers for victims' rights.

Integrated Behavior Treatment Model (IBTM). The framework for DJJ's programs is the Integrated Behavior Treatment Model (IBTM). It is designed to reduce institutional violence and future criminal behavior by teaching anti-criminal attitudes and providing personal skills for youth to better manage their environment. DJJ staff from every discipline work as a team to assess the needs of each youth and to develop an individualized treatment program to address them. Through collaboration with the youth, the team administers a case plan that takes advantage of each youth's personal strengths to maximize treatment in other areas of their life to reduce the risk of re-offending.

The IBTM guides all services provided to youth from arrival at DJJ to community re-entry. Upon arrival, each youth is assessed to determine needs and strengths in the following areas:

- Education & Employment

² *Supplemental Report of the 2015-16 Budget Package Annual Performance Measures Report*. January 13, 2017.

- Attitudes & Thinking
- Mental & Physical Health
- Family & Community Support & Stability
- Peer Influences
- Violence & Aggression
- Substance Use

Using that information, staff works collaboratively with each other, the youth and the youth's family to develop and routinely update a treatment plan that helps the youth build skills for successful re-entry into the community. Positive skill building is strengthened through a comprehensive behavior management system that discourages negative behavior and uses daily, weekly and monthly rewards to recognize and encourage positive change.

As noted previously, despite what appears to be an intensive and individualized approach, the available data suggests that almost 85 percent of youth who leave the state facilities will be arrested within three years of their release, which is a much higher rate than inmates leaving adult institutions.

Volunteer Programs. Unlike many of the adult institutions, DJJ facilities appear to have a fairly limited number of volunteer programs for the wards. Pine Grove Conservation Camp has the most programs, with 13, and Ventura has the least, with only five volunteer programs. The other two have ten (Chad) and seven programs (Close). The majority of the programs at all of the institutions appear to be faith-based. With the exception of Incarcerated Men Putting Away Childish Things (IMPACT), which operates at three of the facilities, none of the programs appear to be based on restorative justice or offender responsibility principles.

In addition, despite being listed as volunteer programs, many on the list appear to be short-term or one-time in nature. For example, the Anti-Recidivism Coalition (ARC) is listed as providing volunteer programming at Chad and Pine Grove. However, according to ARC, they hold a monthly meeting with youth at Ventura who are scheduled to be going home and they meet with youth quarterly at the other three facilities. Similarly, Motorcycle Ministries visits Pine Grove monthly and the Lockwood Fire Department holds events twice a year at Pine Grove. Unlike volunteer programs in adult prisons, the presence of volunteer programs, and programming in general outside of the educational programs, are lacking.

Arts in the State's Juvenile Justice Facilities. Currently, the Arts in Corrections program is only available for adult inmates and the state does not provide an organized, formal arts program to the 700 juveniles confined to the four juvenile justice facilities. Through their schooling, students are required to take 10 hours of fine arts credit to meet California graduation requirements. In addition, the O. H. Close Youth Correctional Facility school has a band, recreational therapists are providing informal arts and crafts, and the Sexual Behavior Treatment Program has an arts component. This is in contrast to the adult institutions that all have Arts in Corrections programs overseen by the California Arts Council. (CAC).

Impact of Art Programs on At-Risk Youth. A 2012 National Endowment for the Arts research study used the data from four longitudinal databases to determine the relationship between arts involvement and academic and social achievements. The study concluded that teenagers and young adults who come from a low socio-economic background and have a history of in-depth arts involvement show

better academic outcomes than their peers who have less arts involvement. Specifically, students with high arts involvement had higher test scores, better grades, were more likely to graduate from high school and attend college, participated in student government and extracurricular activities at a higher rate, were more likely to have volunteered recently, and were more likely to vote or participate in political campaigns.

Essentially, the report found that socially and economically-disadvantaged children and teenagers who have high levels of art engagement or arts learning show more positive outcomes in a variety of areas than their low arts engaged peers. In fact, at-risk teenagers or young adults with a history of intensive arts experiences show achievement levels closer to, or in some cases exceeding, the levels shown by the general population.

State Supported Art Programs for At-Risk Youth. Through the California Arts Council, the state funds a number of art programs that impact at-risk youth. The council awards grant funding for programs in the following areas:

- **JUMP StArts:** Supporting arts education programs for youth in the local juvenile justice system.
- **Artists in Schools:** Supporting projects that integrate community arts resources into comprehensive, standards-based arts-learning at school sites.
- **Poetry Out Loud:** Helping students master public speaking skills & build self-confidence.
- **Cultural Pathways:** Strengthening the capacity of small organizations rooted in communities of color, recent immigrant and refugee communities, or tribal groups.
- **Artists Activating Communities:** Supporting sustained artistic residencies in community settings, demonstrating the arts to be a central component of civic life.
- **Local Impact:** Revitalizing California's underserved & rural communities through the arts.

Staff Comment

The Division of Rehabilitative Programming (DRP) Does Not Oversee Rehabilitation for Juveniles. As part of juvenile justice reforms in the early 2000s, the responsibility for all rehabilitative programming for juveniles was shifted to DJJ. Under CDCR's current structure, DRP is only responsible for programming in adult institutions. DJJ has its own staff that are responsible for programming. As a result, for example, CDCR currently has two superintendents over education, one for the adult institutions and one for the juvenile high schools. In addition, while DRP has worked diligently over the last few years to expand volunteer innovative programs and arts in corrections programs throughout the adult system, no such programs are provided to juveniles (discussed in detail below). Finally, CDCR has expanded college opportunities for adult inmates, but is not currently providing the same opportunity for in-person college courses for juvenile wards who have completed high school or received their GEDs.

The segregation was done at a time when CDCR was providing relatively little rehabilitative programming and the Legislature believed that juveniles would be better served if their programs were administered separately from the adult programs. Given the significant investment in rehabilitative programming at adult institutions in recent years and the recent expanded attention being paid to programming in the prison system, it may no longer be necessary to segregate the programming responsibilities for juveniles from programming for adults. In fact, it may be that the segregation of

responsibility has caused rehabilitative programming at DJJ to become neglected. Therefore, in order to create efficiencies and expand existing programs to DJJ, the committee may wish to consider explicitly returning responsibility for DJJ rehabilitation to DRP. The committee should further consider establishing one superintendent of education to oversee both educational systems. In addition, the committee may wish to direct CDCR to expand its current community college programs to include in-person college opportunities at all four DJJ facilities.

Expand Innovative Programming to Juvenile Justice Facilities. Beginning 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. Each year, the state's investment in these innovative programs has increased. As such, the investment has led to a significant expansion of effective, innovative rehabilitative programs throughout the adult system.

After reviewing the lack of innovative programming at the juvenile facilities and the proven success of many of the programs in adult facilities, an investment in bringing quality, innovative programs to juvenile facilities may help to reduce the high recidivism rates among the state's wards. Therefore, the Legislature may want to consider expanding the existing program to provide programs in the four juvenile facilities that have proven to be effective either in serving at-risk juveniles in the community or in adult prisons.

Establish an Arts Program at the State's Juvenile Justice Facilities. Efforts to reestablish the Arts-in-Corrections program have not included the state's four juvenile justice facilities. Extensive research has shown the myriad of ways that intensive and regular exposure to the arts can help at-risk youth succeed. As discussed previously, exposure to the arts improves academic outcomes, community engagement, and the treatment of trauma-based disorders. Studies of arts programs in juvenile justice settings have documented that participants with ongoing artistic engagement demonstrate significant decreases in levels of disengaged or disruptive behaviors; build stronger positive social networks; and are more likely to earn high school credit while in an institution.³

In addition, researchers have found that providing trauma-informed arts therapy at a younger age can help significantly reduce the impact of the trauma. In *Calm Through Creativity: How Arts Can Aid Trauma Recovery*, the authors note that, "Expressive arts support trauma recovery, especially for those victims who were traumatized or seek treatment at a young age, because they engage the regions of the brain that develop earlier in life." Essentially, young people may not have communication skills that allow them to access and discuss earlier traumas. However, they do have the ability to express themselves through pictures, music or other means of artistic expression. Tapping into the young brain's ability to process information through pictures, allows young people to process and heal from traumas that they otherwise may not be able to access until much later in life. It also allows young

³ Wolf, D.P. & Holochwost, S. (2014) *Our Voices Count: The Potential Impact of Strength-Based Music Programs in Juvenile Justice Settings*. Washington D.C.: National Endowment for the Arts.

people to reconnect with that image-based part of the brain, a process which calms the parts of the brain that have been overworked by trauma.⁴

As noted previously, the Arts Council provides funding for a number of programs directed at juveniles, both in schools and in the community. Among their programs specifically targeted at youth are: JUMP StArts, which provides art programs for youth involved in the juvenile justice system; Poetry Out Loud, which helps students master public speaking skills and build self-confidence; and, Artists in Schools, which supports projects that integrate community arts resources into comprehensive, standards-based arts-learning at school sites.

Given the proven benefits of arts engagement for incarcerated individuals and at-risk youth and the existence of AIC and multiple programs funded by the Arts Council targeted at youth, including those involved in the juvenile justice system, the Legislature may wish to establish an AIC program specifically designed for youth who are currently committed to the state's juvenile justice facilities.

Staff Recommendation. Hold open pending May Revision updates.

⁴ *Calm Through Creativity: How Arts Can Aid Trauma Recovery*. National Clearinghouse on Families and Youth, December 2013.

Issue 3: Elderly and Medical Parole Update

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

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

- Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings for parole consideration.
- Release inmates who have been granted parole by the Board of Parole Hearings but have future parole dates.
- Expand CDCR's medical parole program.
- Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole (the "elderly parole" program).
- Increase its use of reentry services and alternative custody programs.

Parole process for medically incapacitated inmates. Prison medical staff determine if an inmate is eligible for medical parole placement. BPH makes the decision to grant medical parole or not. Before the decision is made, the parole agent verifies the suitability of placing the inmate in a designated skilled nursing facility. The agent's role prior to placement is to verify that the inmate's placement will not jeopardize public safety (such as being placed a facility near the victim's address or employment). Once the inmate is placed, the inmate is placed on electronic monitoring by the parole agent and is supervised similar to a regular parolee. The parole agent is responsible for notifying BPH if there are any changes in the inmate's condition that warrant return to prison.

As of February 9, 2017, BPH had held 94 medical parole hearings under the revised procedures. An additional 28 were scheduled, but were postponed, continued, or cancelled. As of April 14, 2017, there were 25 people on medical parole in skilled nursing facilities.

Parole process for inmates 60 years of age or older having served at least 25 years. BPH schedules eligible inmates for hearings who were not already in the parole hearing cycle, including inmates sentenced to determinate terms. From February 11, 2014 through January 31, 2017, the board has held 1,780 hearings for inmates eligible for elderly parole, resulting in 465 grants, 1,181 denials, 134 stipulations to unsuitability, and there currently are no split votes that require further review by the full board. An additional 819 hearings were scheduled during this time period but were waived, postponed, continued, or cancelled.

Staff Comment. Current CDCR policy requires that inmates released on medical parole be housed in a skilled nursing facility, rather than cared for at home by family members. CDCR notes that there are a myriad of complex issues surrounding medical parole which prohibits them from placing inmates in private homes. In response to an inquiry on the policy CDCR notes, "They are under the jurisdiction of

CDCR and are on alternative custody in the licensed health care facility. There are currently five skilled nursing facilities where medical parole inmates are housed, and no current medical parole inmate is housed in a private residence.” According to BPH, no inmate has ever been approved for placement in a private home, and current CDCR policy requires placement in a skilled nursing facility. This policy differs from other policies related to paroled inmates and inmates in the Alternative Custody Program. Absent a stronger justification for not allowing significantly ill inmates to be cared for by willing family members, which might allow them to be eligible for Medi-Cal, the Legislature may wish to consider requiring CDCR to work with the health care receiver’s office to expand medical parole.

Staff Recommendation. This is an informational item. No action is necessary at this time.

Issue 4: Alternative Custody and Community Reentry Programs**Governor's Budget**

Male Community Reentry Program (MCRP). The Governor's budget proposes a \$7.5 million (General Fund) reduction in 2016–17 and a \$394,000 increase in 2017–18, due to delays in the MCRP expansion.

Custody to Community Transitional Re-Entry Programs (CCTRP) for Women. The proposed budget includes a decrease of \$1.2 million General Fund and three positions in 2016-17 to reflect the current CCTRP population. The decrease is due to delayed activation of expansions in San Diego, Sacramento, and Santa Fe Springs.

Alternative Custody Program (ACP). The proposed budget does not include an adjustment to the base funding for ACP which is \$6 million General Fund and 40 positions.

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:

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.

Currently, CDCR has contracts with five MCRP facilities including two in Los Angeles County, one in Kern County, one in San Diego County, and one in Butte County, for a total of 460 beds. In addition, CDCR plans to open two additional facilities in early 2017, one in San Francisco County and a third in Los Angeles County. This will bring the total number of available beds to 680.

As of April 12, 2017, there were 447 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.

CDCR is projecting that there will be 332 CCTRP participants in 2016-17. As of April 3, 2017, a total of 40 inmates were approved for CCTRP participation and awaiting transfer. In addition, there were 10 inmates who have cleared the review process, but are awaiting the appropriate victim notifications before becoming fully endorsed. Beyond that 50, there were 18 inmates currently in the eligibility review process. Beyond those inmates in the process, there is no waiting list for participation in CCTRP.

As of April 12, 2017, there were 307 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 April 12, 2017, there were 162 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.

Staff Recommendation. This is an informational item. No action is necessary at this time.

Issue 5: Board of Parole Hearings: Positions for Second Striker Workload

Governor's budget. The budget requests the conversion of two limited-term positions within the BPH to permanent positions. There is no additional funding associated with this request. The Administration argues that the positions are necessary in order to manage the ongoing workload associated with processing parole suitability for non-violent, second striker inmates.

Background. As noted in the previous item, on February 10, 2014, the federal court ordered the state to implement several population reduction measures to comply with the court-ordered population cap and appointed a compliance officer with the authority to order the immediate release of inmates should the state fail to maintain the final benchmark. As part of that court order, CDCR was required to:

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

Since that time, BPH has needed to increase their staff to cover the new workload associated with the second striker parole requirements.

In 2015, CDCR received funding for seven permanent positions, two two-year limited-term positions, and a six-month extension of one limited-term position to accommodate increased workload due to the new parole process for second-strike offenders and youthful offenders. At the time of that request, the Governor noted that these additional positions would allow the board to complete comprehensive risk assessments every three years and promulgate regulations surrounding the new petition to advance a parole suitability hearing and administrative review process related to recent federal court rulings. No funding included in that request. BPH was able to absorb the cost within its existing budget.

At the time of that request, the board assumed that it would have a monthly average of 125 parole referrals. The data for January through June 2016, show a monthly average of 404 referrals.

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

Staff Recommendation. Approve as budgeted.

Issue 6: CDCR Warden Recruitment and Retention Proposal

Governor's budget. Budget item 9800 contains \$7 million General Fund for a CDCR warden recruitment and retention proposal. There is no formal budget change proposal or other detailed documents associated with this proposal.

According to conversations with the Administration, they propose providing people serving in the position of captain and above at CDCR with a two percent salary increase every year for three years, for a six percent increase in salary. However, the increases will not count toward an employee's retirement calculation until the employee completes three years in the position of captain or above. If, however, an employee is promoted within that three-year time period, the time served in the lower position will count toward the three-year requirement.

Background. The rapid turnover of wardens and other management in the prisons has been an ongoing concern for both the Legislature and the Administration. In 2016, 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.

Data provided by CDCR suggests those individuals in leadership/management roles of captain and above stay in their positions two years, on average, before either being promoted, retiring, or leaving the department.⁵ Specifically, captains stay an average of 25 months in their positions, wardens stay 24 months, and associate wardens stay an average of 23 months.

In the 2016 budget, the Senate included statute authorizing the creation of a senior warden classification that would allow the Administration to provide incentives for exceptional wardens to stay beyond their usual retirement age. That language was not included in the final budget, however. The proposal included in the budget this year will apply to all CDCR employees who are in a position of captain and above. It is not exclusive to wardens, nor does it apply only to management staff that the CDCR Secretary deems to be providing exceptional leadership.

Staff Comment. Item 9800 in the budget is generally reserved for salary and benefit increases agreed upon through collective bargaining and the contract process or for other technical adjustments related

⁵ Data includes employees in captain and above positions between August 2011 and December 2016.

to salaries and benefits. The warden proposal appears to be an anomaly on that list because it is neither a technical adjustment nor a salary and benefit increase for represented employees. In addition, the Administration did not provide a budget change proposal or any other detail or justification for the proposal. This lack of information makes it difficult to determine how the proposal will work to increase the time wardens and others remain in their positions and whether or not funding should be provided for this purpose.

Based on the few details provided by the Administration, it appears that the proposal will do relatively little to retain people in leadership positions. As previously noted, if a captain, for example, promotes to a higher position within the three-year time frame, the time spent as a captain will count toward the three years. Conceivably, an individual could be promoted each year and still be eligible for the retirement increase. In addition, someone who is promoted to a warden position will likely have already spent time in other eligible positions and therefore will not need to spend additional time as a warden in order to receive the benefit. As currently constructed, this appears to be little more than a six percent salary increase for everyone in a captain's position or above.

Recent Salary Increase for CDCR Employees. Last year's memorandum of understanding (MOU) for CDCR bargaining unit six employees included a 9.3 percent salary increase over a three year period, among other increased compensation. State law requires supervisors of bargaining unit 6 employees receive salary and benefit changes that are at least generally equivalent to the salary and benefits granted to the employees they supervise. According to the LAO analysis of the MOU, "The administration indicates that in 2015-16, this agreement will increase costs associated with Unit 6 supervisors and managers by \$6 million. We think it is reasonable to estimate that extending a comparable increase in compensation to Unit 6 supervisors and managers will increase state annual costs by between \$100 million and \$200 million (mostly from the General Fund) by 2018-19."

Given that the current proposal is unlikely to increase retention of people in leadership positions, this proposal would simply result in a six percent pay increase for captains and above, on top of the nine percent that they are currently in the process of receiving as a result of the 2015-16 MOU.

Staff Recommendation. Reject the proposed funding and direct the Administration to present the Legislature with a detailed proposal prior to May Revision that will require individuals to stay in their current positions for a minimum of three years in order to receive the retirement benefit related to the increased salary.

Issue 7: Information Security Office

Governor's budget. The Governor's budget requests \$2.6 million General Fund (\$635,000 one-time) and eight positions beginning in 2017-18 to establish a new Security Operations Center (SOC) to proactively address information security threats on a 24/7 basis. This proposal includes \$1.1 million for eight information technology (IT) positions and \$1.5 million for hardware and software, as well as security professional services, to aid in continuous security monitoring operations.

Approximately \$1.5 million of the request is contract dollars to provide security remediation, network, and security operations tools. The eight new positions will enhance the safety of the CDCR network and information using the new security tools and services. These positions include:

- One systems software specialist III (supervisory)
- Two systems software specialist III (technical)
- Three systems software specialist II (technical)
- Two systems software specialist I (technical)

These staff will perform security operational activities such as threat and vulnerability hunting, and incident response to adapt with the evolution of new threats and technology. With the number of new exploits, attacks, and alerts, existing CDCR security staff are not able to keep up with the analysis and remediation efforts on a manual basis on events to decipher whether they are credible threats.

Background. The Information Security Office is located within CDCR's Enterprise Information Services Division. The goal of the Information Security Office is to provide the working environment where all data is held with correct confidentiality controls, maintaining data integrity, and assuring data accessibility when and where required. The office recently began an effort to classify all electronic data and has been focused on high risk and confidential information controls. The office also works to stay ahead of quickly changing technology and a huge increase in data consumers, including the addition of several thousand inmates and parolees as users of the in-prison and community-based automated rehabilitative programs.

According to CDCR, technology is increasingly incorporated into the department's business and the lack of expansion in cybersecurity operations and personnel to support secure integration into CDCR's business has resulted in a current department gap. As CDCR increases its position to implement and support necessary access to department services which rely on IT access security operations, there is a clear need for dedicated staffing to increase proportionally to secure the digital realm. The security operations staffing are intended to operationalize security by mitigating and controlling the impact of any system and application abuse, and malicious misuse by internal and external threats. Existing positions are designated to support critical department systems and are allocated for existing application programming. These positions cannot be redirected or designated to perform full-time duties at the SOC without adverse impact to their current assigned areas.

Given the significant increase in the department's internet-enabled devices in recent years, especially in support of CDCR programming goals, active network monitoring is essential to verify that inmates and wards are not communicating outside of the facility or potentially re-victimizing the public via the internet or email access. Giving inmates and wards more direct public domain access poses significant risk without active monitoring.

Legislative Analyst's Office. The LAO provided the following comments on the Governor's general proposal to improve information security statewide:

Budget Proposals Seem Reasonable on an Individual Department Level. The LAO does not raise any particular concerns with each of the 12 budget proposals across various departments to strengthen information security. The LAO understands it is California Department of Technology's (CDT) practice to review IT-related budget proposals, including these security-related proposals. Although CDT did not initiate these proposals, it indicates that as part of its review, it validated the security issue identified by the department proposing its own proposal and assessed whether the department was taking a reasonable approach towards addressing the issue. This review is valuable given that CDT was created to provide IT-related expertise and the individual departments may not always know the best practices for addressing a security vulnerability that they face.

But Unclear Whether Proposals Address the State's Most Critical Security Risks. Although the LAO does not raise any particular concerns about this proposal, they state that it is unclear whether the package collectively addresses the state's most critical security risks - the IT systems with the most significant vulnerabilities and the most sensitive information. The individual departments do not have a comprehensive view of the entire state's security needs and therefore whether their individual information security needs are the most critical to address across state government. While CDT reviewed these individual requests to verify that there was some level of information security need, it did not determine whether the requested resources addressed the state's most critical information security issues. For example, a department may have high vulnerability but the associated information that would be released in the event of a security breach is not particularly sensitive. Consequently, this may not be the most critical vulnerability to resolve when other departments may have vulnerabilities that may lead to catastrophic consequences should information be breached or confidentiality not protected. Additionally, it is possible that departments that did not come forward with a budget request might have more critical security risks but are unaware of their own vulnerabilities. Ideally, the Legislature would want to make sure the state is focusing its attention and resources on addressing the IT systems that present the most critical security risks—those in the upper right quadrant of the figure.

LAO Recommendation

The LAO provided the following two recommendations:

CDT Should Take Leadership Role Ensuring Future Proposals Address Critical Security Risks. The LAO recommends the Legislature direct CDT to use the analysis from the new processes to inform future requests for budget augmentations to strengthen information security. As a next step, the LAO recommends that the Legislature direct CDT to consider the impact associated with a security breach and direct the administration to prioritize addressing high-vulnerability and high-sensitivity security risks for future budget requests. Requests from these departments would generally not benefit from CDT's strategic leadership and would have to be evaluated by the Legislature on a case-by-case basis. This recommendation addresses the current absence of a strategic approach on information security that makes it difficult for the Legislature to determine if these proposals address the most critical issues.

Direct Administration to Report at Budget Hearings on Whether Current Proposals Address Reasonable Security Risks. Although the LAO does not raise any particular concerns, it is not clear that the proposals address the areas where the state (1) is the most vulnerable and (2) has the most sensitive data. This is because the proposals did not benefit from CDT's new efforts to better assess IT security vulnerabilities. It is unlikely that CDT will be able to accomplish the type of comprehensive assessment the LAO recommends time for the 2017-18 proposals. Instead, the LAO recommends the Legislature use budget hearings to request that the departments make a convincing case to the Legislature that their proposals address reasonable IT security vulnerabilities that involve sensitive data.

Staff Recommendation. Hold open.

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, April 27, 2017
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**5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)****1. VARIOUS REAPPROPRIATIONS**

The California Department of Corrections and Rehabilitation requests \$250,000 in order to perform advance planning functions and prepare budget packages for capital outlay projects to enable the department to provide detailed information on scope and costs on requests for planned projects.

Ironwood: Heating, Ventilation, and Air Conditioning System. This project will design and construct a new central chiller plant as well as improvements to existing roofs, fire dampers, and smoke evacuation systems to correct damage caused by the existing deteriorated evaporative cooling system at Ironwood State Prison.

Due to a San Diego County Superior Court decision upholding a bid protest by the second lowest bidder and issuing a permanent injunction prohibiting work on the construction contract, it was determined that the best course of action would be to rebid the project and proceed with the completion of work under a new contract. Prior to the rebid, the working drawings need to be updated to reflect site condition changes and incorporate construction bulletins. Because the redesign is anticipated to be completed in late Spring 2017, it is not possible to allocate the construction phase funding prior to June 30, 2017.

Therefore, the department is requesting a reappropriation of \$140,018,000 for the construction phase in the 2017 Budget Act, to ensure that funding remains available for this project.

San Quentin: New Boiler Facility. This project will design and construct a new central high-pressure steam boiler facility at San Quentin State Prison. Boiler replacement is required for compliance with Bay Area Air Quality Management District regulations for gas-fired boiler emissions standards. The CDCR has determined that boiler technology has changed and a redesign of the boilers will eliminate the need for an additional control system, which allows for a smaller building and lower maintenance/operating costs. CDCR is currently in the process of redesigning the new boilers. As the redesign will not be completed until June 2017, it is not possible to allocate the construction phase funding prior to June 30, 2017.

Therefore, the department is requesting a reappropriation of \$18,071,000 in the 2017 Budget Act for the preliminary plans, working drawings, and construction phase funding, to ensure that funding remains available for this project.

Deuel: New Boiler Facility. This project will design and construct 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. The CDCR has determined boiler technology has changed and a redesign of the boilers will eliminate the need for an additional control system, which allows for a smaller building and lower maintenance/operating costs. CDCR is currently in the process

of redesigning the new boilers. As the redesign will not be completed until June 2017, it is not possible to allocate the construction phase funding prior to June 30, 2017.

Therefore, the department is requesting a reappropriation of \$4,041,000 in the 2017 Budget Act in order to fund the preliminary plans, working drawings, and construction phase funding, to ensure that funding remains available for this project.

Staff Note. The proposals included within this item were all previously appropriated funding for these projects, and the proposals simply seek to extend the timing that this funding will be available for utilization. No concerns have been raised related to these reappropriations.

Staff Recommendation. Approve as budgeted.

ITEMS TO BE HEARD

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION

Issue 1: Prison Sustainability

Special Presentation by Beth Waitkus, Founding Director of the Insight Garden Program (IGP).

IGP's mission is to facilitate an innovative curriculum combined with vocational gardening and landscaping training so that people in prison can reconnect to self, community, and the natural world. This "inner" and "outer" gardening approach transforms lives, ends ongoing cycles of incarceration, and creates safer communities. In 2002, Ms. Waitkus founded IGP at San Quentin State Prison and in 2014 the organization received its non-profit status. Over the past several years, as executive director, Ms. Waitkus has overseen program expansion to seven additional California prisons, two prisons in Indiana (including a juvenile facility), and a collaborative reentry program in New York City. Ms. Waitkus has won accolades for her prison work and is featured in the book, *Eco Amazons: 20 Women Who are Transforming the World* by Dorka Keehn as well as *ABC World News with Diane Sawyer*. She is a member of the American Correctional Association's Sustainability-Oriented and Environmentally Responsible Practices Committee, and has been involved with the national "greening prisons" movement.

Background. In recent years, correctional systems throughout the country have been evaluating the long-term impact of corrections buildings, operations and programs on the environment, community and economy and are creating sustainability plans and green practices regarding resource consumption: vehicle use; purchase of goods and services; facility construction, operation, and maintenance; and the education and training of prisoners. The benefits of greening correctional facilities are both short term and long term: they will consume fewer resources, create less pollution, and provide healthier environments for inmates, staff, visitors, and neighboring communities. Sustainable models for corrections go beyond facilities and operations by also providing a comprehensive strategy that provides access to viable hands-on training and job opportunities for inmates to reduce recidivism and influence them to become productive citizens in an emerging green economy.¹

What Do the Terms Green and Sustainable Mean? The terms "green" and "sustainable" are often used interchangeable. The World Commission on Environment and Development first defined the phrase "sustainable development" in 1987, "Sustainable development seeks to meet the needs and aspirations of the present without compromising the ability to meet the needs of future generations." Since that time, the term sustainability has come to refer to all technologies that improve efficiency of natural resource use, reduce negative impacts on natural environments and social systems, mimic natural process and systems, and restore the balance between human systems and natural resources. In addition, the term has been expanded to integrate economic issues, jobs, economics, social equity and ethical considerations.²

¹ Feldbaum, Mandy, et al. *The Greening of Corrections: Creating a Sustainable System*. March, 2011. United States Department of Justice, National Institutes of Corrections.

² Sheldon, Paul, et al. *Greening Corrections Technology Guidebook*. October, 2011. National Law Enforcement and Corrections Technology Center.

Similarly, “green” also means efficient in terms of efficiently meeting end-use needs in convenient, appropriate, and cost-effective ways to produce service and comfort with as few resources as possible.³ In terms of the budget, green refers to using the state’s General Fund resources for the state prison system more efficiently.

States on the Forefront of Prison Sustainability. States such as Ohio and Washington have been on the forefront of greening their prison system. The Ohio Department of Rehabilitation and Correction (ODRC) worked with the Vera Institute of Justice to develop the Ohio Green Prisons Project. A project designed to combine *Roots of Success*, a work readiness and environmental literacy curriculum, with certifications in green industry careers and connections to community colleges and employment partners after release. The laboratory and classroom for this work is the prison itself where people who are incarcerated learn by bringing green practices (such as, weatherization) and technologies to the facility where they reside thus producing energy-related cost savings, which can then be reinvested to sustain the program.⁴ In addition, in June of 2012, ODRC adopted their “Three-Year Strategic Sustainability Plan.” Among the stated goals of the plan are to reduce water usage by 15 percent; reduce electric and natural gas consumption by a combined 15 percent; reduce fuel consumption by 15 percent; and reduce waste sent to landfills by 75 percent.

The Washington State Department of Corrections has teamed with Evergreen State College to create the Sustainability in Prisons Project (SPP). Not only do they work to reduce the environmental, economic, and human costs of prisons by inspiring and informing sustainable practices. But participants in the project also conduct ecological research and conserve biodiversity by forging collaborations with scientists, inmates, prison staff, students, and community partners. For example, the project provides training for inmates and correctional staff through programs designed to improve prison sustainability and connect participants to the larger world of science and conservation. The project’s instructors range from biologists and farmers to business entrepreneurs and green energy experts. In addition, every prison in Washington State has implemented sustainable operations programs in waste sorting, composting, recycling, gardening, water and energy conservation, green purchasing, and more. Sustainable operations in Washington’s prisons range from very small scale, to industrial-size, state-of-the-art operations.

Equally important in the state’s SPP is their restorative nature program and community partnerships. Specifically, each prison has formed partnerships with nearby organizations that allow staff and inmates to directly contribute to communities outside the fence, and express their creativity and generosity. Statewide in 2015, the project grew more than 400,000 pounds of fresh produce for food banks and prison kitchens, and donated more than 30,000 hand-crafted items to non-profits. Finally, through their restorative nature project, SPP brings nature inside prisons with the motivation to relieve stress of prison environments. This program category is for the programs most focused on positive contact with nature, such as flower gardens, nature imagery, and ornamental ponds. The project is currently working to expand programming in this category to include more formal nature therapy.

³ Ibid.

⁴ Elkin, Evan and Leah Morgan. *Where do innovative program ideas come from? Lessons from Ohio*. October 3, 2012. Vera Institute of Justice.

Potential General Fund Savings. A 2011 article in *Corrections Today* cited studies that have determined that states can save at least \$1,000 per inmate by adopting green practices and reducing their energy costs by as little as five percent, with 120,000 inmates in the state's prison system, \$1,000 per inmate equates to \$120 million in savings. The state spends approximately \$113 million per year in utilities costs for the prison system. A reduction of five percent in utilities would save almost \$6 per year. Achieving a goal similar to Ohio's 15 percent reduction could save the state \$17 million each year. In addition to this savings, the state would also save money through reduced recidivism and could potentially earn revenue through adopting such programs as large scale recycling and composting.

Staff Comment. The subcommittee may want to consider requiring CDCR to work with the California Environmental Protection Agency, CalRecycle, the University of California at Davis, the National Institute of Corrections, and other interested stakeholders to develop a sustainability plan for California's prisons that establishes sustainability as a priority of the system by both reducing the environmental impact of the prison system and training inmates in environmental literacy and work readiness that allows them to successfully get living wage jobs and careers in the green economy when they leave prison and reenter society. In addition, any efforts to increase sustainability should apply both to the adult institutions and the juvenile justice facilities.

Staff Recommendation. No action is necessary at this time.

Issue 2: Pelican Bay Segregated Housing Unit Conversion Spring Letter

April 1st Letter. The Administration has provided an April 1st letter requesting \$539,000 for preliminary plans and working drawings for Pelican Bay State Prison's Facility D Yard renovations. The construction project proposes construction of a recreational yard that would consist of a multipurpose field, basketball half-court, two handball courts, a fitness area, 15 tables, a toilet yard, drinking fountain, storage container and a custody observation post.

This project is part of a larger plan to convert Facility D from a secured housing unit to a general population facility for level II inmates.

Related Budget Proposal. As discussed in the March 9th subcommittee hearing, the Governor's budget proposes to reduce General Fund support for CDCR by \$42.4 million in 2016-17, and by \$8.3 million in 2017-18, to account for net savings from the conversion of various housing units. According to the Administration, a significant driver of conversions proposed in 2016-17 and 2017-18 is the implementation of the 2016 *Ashker v. Brown* settlement, which made the criteria for housing inmates in security housing units more stringent. For example, at Pelican Bay State Prison in Crescent City, the Administration is proposing to convert 576 deactivated security housing unit beds to 720 level II beds. Because security housing units require more custody staff than most other units, these conversions would result in net savings.

Background. CDCR periodically converts housing units to accommodate fluctuations in the security requirements or needs of its inmate population, such as by converting administrative segregation beds (high security) to general population beds (lower security). When the department converts a housing unit, the unit's staffing complement is adjusted to reflect the requirements of the new inmates to be housed there.

Segregated Housing. 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 is 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. Due to the Ashker settlement, the number of inmate in SHU housing has been reduced from over 3,500 inmates to 460.

Staff Comment. As noted above, the Administration proposes converting the deactivated security housing unit at Pelican Bay State Prison into a level II housing unit. CDCR's facilities for men are broken down into four levels of classification and inmates are housed based upon their security risk. Level I constitutes the lowest level, with inmates being housed in fire-camps and other open dormitories with a low level of security. Level II facilities also consist primarily of open dormitories with a secure perimeter, which may include armed coverage. Generally speaking, inmates in level II housing units are the most likely to participate in programs and are often at the end of their prison sentences.

Pelican Bay is the state's most remote prison and is located on the border between California and Oregon. Roughly 30 percent of the staff at Pelican Bay lives in Oregon. Pelican Bay is among the state's lowest in terms of programming opportunities for inmates, offering only two career technical education programs (cosmetology and electrical). In addition, given the remote location of the prison, it is also one of the most difficult prisons to find volunteer organizations willing to provide innovative programming, which has become one of the cornerstones of inmate rehabilitation in recent years. Its location, several hundred miles from a major airport, also makes it difficult for families to travel to the prison to visit people who are housed there. Given the remote location of the prison and the difficulty in providing rehabilitative programming, the subcommittee may wish to consider whether it is an appropriate place for level II inmates prior to approving the Spring Finance request.

Staff Recommendation. Hold open pending population updates in the May Revision.

Issue 3: Mental Health Crisis Beds

Governor’s budget. The CDCR requests \$3,661,000 General Fund for California Institution for Men, and \$3,597,000 General Fund for Richard J. Donovan Correctional Facility in order to construct licensed 50-bed mental health crisis facilities at each institution.

California Institution for Men. The Governor’s January proposal requests funding to construct a licensed 50-bed mental health crisis facility at California Institution for Men (CIM), located in Chino. The building will be designed to allow for operation at the intermediate care facility (ICF) level-of-care if treatment acuity needs fluctuate. This proposal requests \$3.7 million in funding for the preliminary plan phase of this project. The total estimated project cost is \$55,308,000.

Richard J. Donovan Correctional Facility. This proposal requests funding to construct a licensed 50-bed mental health crisis facility at Richard J. Donovan Correctional Facility (RJD), located in San Diego. The building will be designed to allow for operation at the ICF level-of-care if treatment acuity needs fluctuate. This proposal requests \$3.7 million in funding for the preliminary plan phase of this project. The total estimated project cost is \$56,508,000.

Background

Inmate Mental Health. CDCR’s Mental Health Services Delivery System (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.”

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].”

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.

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.

For a detailed discussion related to CDCR inmates in need of mental health treatment, see this subcommittee’s March 16, 2017 agenda.

Mental Health Crisis Beds. Due to their immediate need for treatment, inmates identified as needing MHCBS are supposed to be transferred to these beds within 24 hours. If a bed is not available, alternative accommodations must be found, such as placing the inmate on suicide watch. As of April 17, 2017, there were 28 inmates on the waiting list for an MHCBS, 21 men and seven women. The Administration's proposal adds 100 additional crisis beds for male inmates. CDCR argues that the present waitlist, plus the projected MHCBS inmate-patient population, combined with the need to eventually cease operation of unlicensed beds, indicates an increased need for licensed MHCBS within the Southern California region.

CDCR's statewide MHCBS capacity for males is 373 licensed beds, with an additional 54 unlicensed beds that do not meet the required Correctional Treatment Center (CTC) licensing requirements. MHCBS are required to be licensed as CTCs pursuant to California Code of Regulations, Title 22, Division 5, Chapter 12. These 54 unlicensed beds can only be operated while CDCR is under the Coleman Court's jurisdiction, and thus are not counted as permanent MHCBS. CDCR's Fall 2016 projections indicate that the number of MHCBS needed for CDCR's male population in 2017 will be 495, increasing to approximately 499 by 2018. The fall projection, however, did not take into account the impact of Proposition 57 on this population.

CDCR notes that the deficiency of MHCBS is especially prominent within the Southern California region. Of the 373 licensed MHCBS, 111 are located in the northern region, 236 in the central region, and 26 are in the southern region. In Fiscal Year 2015-16, southern region institutions referred 1,156 inmate-patients to an MHCBS at another institution due to the originating institution either not having a MHCBS facility or no MHCBS being available at the time of the referral. Out of these 1,156 inmate-patient transfers, 798 of these (69 percent) were transferred to an institution outside the southern region. These longer distance transfers may result in inmate-patients in crisis experiencing an unnecessary delay in receiving critical treatment due to lengthy transport to a central or northern region institution.

Legislative Analyst's Office. According to the LAO, the Administration estimates that the annual cost to operate each facility will be \$24 million. The LAO notes that the proposed facility at CIM would require the construction and staffing of guard towers because the facility would be built outside the existing electric fence. The department indicates that staffing the guard towers would cost an additional \$3.9 million annually. Both facilities would be completed by the end of 2020-21.

Given the uncertain need for additional MHCBS, the LAO recommends the Legislature reject the Governor's proposal at this time to build two 50-bed MHCBS facilities at RJD and CIM. CDCR should monitor the effects of Proposition 57, the activation of the Intermediate Care Facility unit proposed for CMF, and any shift in mental health program responsibilities on the need for additional MHCBS. If this information shows a continuing need for additional MHCBS, the department can make a new request at that time. To the extent that the department determines there remains a need for the CIM project, it will have time to complete a project cost estimate for the CIM facility using an electric fence as opposed to manned guard towers. If it is more cost-effective to use an electric fence, the department could adjust its request accordingly.

Staff Comment. Given the size of the current waiting list for men (21 people), the unknown impact that both Proposition 57, and the transfer of acute care patients back from the Department of State Hospitals to CDCR, it is unclear why CDCR believe it will need 100 additional crisis beds for men in the next five years. In addition, as part of the justification for the expansion, CDCR notes that they currently have 54 unlicensed mental health beds that are only allowed to operate while CDCR is under the federal court's jurisdiction. The federal court special master has been overseeing mental health treatment for the last 20 years and there has been no indication that they will be releasing the state from its oversight over inmate mental health care any time in the near future.

Staff Recommendation. Approve funding for the 50 mental health crisis beds at R.J. Donovan prison and reject funding for the 50-bed expansion at the California Institution for Men.

Issue 4: Capital Outlay Proposals

Governor's budget. The Governor's budget contains the following capital outlay proposals:

2. HEALTH CARE FACILITY IMPROVEMENT PROGRAM - CALIPATRIA

The California Department of Corrections and Rehabilitation requests \$16,079,000 General Fund to remedy physical plant deficiencies in the health care facilities at Calipatria State Prison in order to comply with court requirements (Plata, Coleman, and Perez).

Phase I was funded as part of AB 900 (Solorio), Chapter 7, Statutes of 2007, and included renovations to their central health services and health care administration buildings. Phase II will reconfigure and renovate existing space and construct new Medical Treatment space additions to each of CAL's facilities A, B, C, and D primary care clinics, and construct a new, stand-alone administrative segregation unit (ASU) primary care clinic immediately adjacent to the ASU housing unit. These primary care clinic renovations and additions at facilities A, B, C and D will provide primary health care consultation and treatment consistent with the delivery of a basic level of care.

Background. This project is part of CDCR's Health Care Facility Improvement Program (HCFIP) to remedy deficiencies to health care facilities statewide. The purpose of the HCFIP is to provide a facilities infrastructure within CDCR that will support a timely, competent, and effective health care delivery system with appropriate health care diagnostics and treatment, medication distribution, and access to care for individuals incarcerated within CDCR.

3. POTABLE WATER RESERVOIR - CALIPATRIA

The California Department of Corrections and Rehabilitation requests \$6,939,000 General Fund to construct one new 1.25 million gallon (MG) potable water reservoir at Calipatria State Prison (CAL) and to repair and upgrade the existing 2.06 MG potable water reservoir. The total cost of the project is estimated to be \$7,672,000.

Background. According to CDCR, Calipatria has a need for the construction of a new potable water reservoir and upgrades to the existing potable water reservoir. CAL currently has one 2.06 MG water storage reservoir for the institution's water storage and system operation, which was installed in 1990. The existing reservoir has become corroded internally which poses a potential health risk to staff and inmates, as determined by the RWOCB. The existing reservoir must be emptied in order to make the necessary repairs. Specifically, there is a need for additional potable water storage capacity to supply uninterrupted safe drinking water and sufficient water flows for fire suppression to the institution during required maintenance to the existing potable water storage reservoir.

4. BRINE CONCENTRATOR SYSTEM REPLACEMENT – DEUEL VOCATIONAL INSTITUTION

The California Department of Corrections and Rehabilitation requests \$1,879,000 General Fund for the preliminary phase of the design and construction of a new Vibratory Shear Enhanced Process (VSEP) system to replace the existing brine concentrator system for Deuel Vocational Institution's (DVI) Reverse Osmosis Water Treatment Plant (ROWTP). The total estimated project cost is \$28,826,000.

Background. DVI's ROWTP began full-time operation in June 2009 and was permitted to operate in February 2010. It has proved to be unreliable due to failures of the brine concentrator system and the lack of redundancy of this system's components. Between February 2010 and March 2015, the ROWTP was out of service approximately 60 percent of the time due to various component failures within the brine concentrator system.

This project is required for compliance with the State Water Resources Control Board (SWRCB) for violations of secondary drinking water standards, and with the CRWOCB and WWTP for the effluent exceeding discharge requirements.

5. MEDICATION DISTRIBUTION IMPROVEMENTS

The California Department of Corrections and Rehabilitation requests \$2,569,000 General Fund for design and construction of two medication distribution rooms (MDRs) at California Correctional Institution (CCI) to provide the appropriate space with the proper infrastructure for secure medication distribution, infection control, environmental control and secure medication storage.

Background. Currently, the distribution of medication to general population (GP) inmates in facility A and B is being performed on the dayroom floor by nursing staff. This method is inefficient for nursing staff because they must move from housing unit to housing unit, rather than being located in a single MDR. This is unsafe for nursing staff, as inmates are freely moving in the dayroom. There is a possibility that medications can be stolen or vandalized since the medication tote or cart is in the open dayroom rather than in a secured room. Data connectivity is also not available for connections to information management systems for review of inmate-patient medical records.

6. ADMINISTRATIVE SEGREGATION CELL DOOR RETROFIT – CORRECTIONAL TRAINING FACILITY

The California Department of Corrections and Rehabilitation requests \$783,000 General Fund to replace the existing 144 barred cell fronts with more secure cell fronts with vision panels in the O-Wing ASU at the Correctional Training Facility in Soledad. The total estimated project cost is \$10.9 million and the working drawings were initially approved in 2008.

Background. The existing barred cell fronts provide inmates with the opportunity to physically assault staff or inmates, cause injuries from inmate manufactured weapons (spearing), expose persons to bodily waste thrown between the bars (gassing), and cause harm to staff and inmates from thrown burning objects or compressed canisters (i.e. medical inhalers) that are rigged to explode. In addition, the barred doors represent a potential suicide risk for inmates.

The proposed solid cell front and door system has a sliding food/cuff port cover and a tray delivery system that attaches to the door. The "safety feed" box greatly reduces the opportunity for staff assaults during feeding operations.

7. FIRE SUPPRESSION UPGRADE – PELICAN BAY

The California Department of Corrections and Rehabilitation requests \$1,117,000 General Fund in order to begin the preliminary plans phase to correct fire suppression system

deficiencies at Pelican Bay State Prison (PBSP) identified during an inspection by the State Fire Marshal (SFM). The estimated total cost of the project is \$17,793,000.

Background. During a recent inspection by the State Fire Marshall, it was identified that the housing units at PBSP were not constructed with an automatic fire suppression system as required by California Building Code (Code) Section 903.2.6.2. The code states, "Every building, or portion thereof, where inmates or persons are in custody or restrained shall be protected by an automatic sprinkler system conforming to National Fire Protection Association 13". Neither CDCR nor the SFM could locate an approved alternate means of protection for these buildings to explain why these housing units were built with no fire sprinklers, but both CDCR and the SFM agree there is a need to install fire suppression system upgrades.

8. STATEWIDE MINOR CAPITAL OUTLAY PROGRAM

The California Department of Corrections and Rehabilitation requests \$2,004,000 General Fund in order to fund four projects for Fiscal Year (FY) 2017-18 for the construction of minor capital outlay improvements at the California Department of Corrections and Rehabilitation's adult and juvenile facilities is included with this submission.

Calipatria Substance Use Disorder Treatment (SUDT) Program Space. The existing building used for SUDT programming at Calipatria contains one large area subdivided by a portable divider to conduct community meetings and group therapy sessions. These sessions are held twice a day with 12 inmates in each area, for a total of 48 inmates per day. The program cannot currently accommodate more than this quantity of inmates without further subdividing this space to ensure a safe and secure environment for staff and inmates.

In order to remedy this issue, CDCR requests a total of \$496,000 order to provide the required confidential treatment space and private offices as required by HIPAA. This funding would allow for construction of four treatment classrooms and five private offices.

Centinela SUDT Program Space. The existing building used for SUDT programming at Centinela contains two large areas used to conduct community meetings and group therapy sessions. These sessions are held twice a day, with 12 inmates in each area, for a total of 48 inmates per day. These areas cannot currently accommodate more than 12 inmates per side/twice a day without further subdividing this space to ensure a safe and secure environment for staff and inmates.

In order to provide adequate space for SUDT programming, a total of \$617,000 is requested in order to construct four treatment classrooms, four private offices, and eight cubicles.

Los Angeles Minimum Support Facility Perimeter Fence. This proposal requests funding to extend the height of the level I minimum support facility (MSF) perimeter fence at the California State Prison, Los Angeles County (LAC). This project will raise the height of the looped razor wire topping the fence an additional two feet, mitigating the existing safety and security concerns associated with the current fence design. Currently, the fence is eight feet tall, and the existing 30-inch braided razor ribbon loops within approximately six feet of the ground. According to the department, this is a safety hazard because the perimeter is unpaved with no "Out of Bounds" markings or signs to warn inmates and staff of the hazard.

The total estimated cost of this project is \$299,000 and would allow for the fence to be extended an additional two feet, and would ensure that the razor wire does not dip below eight feet off the ground.

Pelican Bay Central Kitchen Walk-in Freezer Addition. The available freezer space in the main warehouse and central kitchen at PBSP is inadequate, leading to the inability to take advantage of bulk purchases at a lower cost per item, and ultimately resulting in higher daily food costs per inmate. PBSP has a total of 6,100 sf of freezer space to store all frozen food items. Purchasing in larger quantities would result in a cost savings on each item purchased. At least partially because of the smaller quantity purchases, PBSP has the highest food cost per inmate (\$3.94/day) of all California prisons. The average food cost per inmate at other facilities is \$3.39/day. PBSP estimates an annual cost savings of approximately \$88,000 as a result of being able to take advantage of larger bulk ordering of numerous products. At an estimated savings of \$88,000/year, PBSP anticipates a project return on investment within six years.

This proposal requests \$592,000 to construct a new walk-in freezer, measuring approximately 1,300 square feet (sf), adjacent to the central kitchen at Pelican Bay State Prison.

9. BUDGET PACKAGES AND ADVANCE PLANNING – STATEWIDE

The budget includes \$250,000 for CDCR to perform advance planning functions and prepare budget packages for capital outlay projects to enable CDCR to provide detailed information on scope and costs on requests for planned projects.

Background. CDCR currently operates 34 adult prisons and three juvenile facilities, along with 44 adult and juvenile conservation camps. The range of capital outlay needs across the facilities is broad and varied. The development of budget packages enables CDCR to develop well-documented and justified capital outlay requests for funding consideration in the annual budget act. Additionally, the need arises during the fiscal year to perform advance planning functions such as environmental reviews and site assessments to determine the feasibility of future capital outlay requests. To perform these functions, CDCR has often been provided with advanced planning funding through the annual budget act.

Provisional language is included with this appropriation limiting it to projects that meet both of the following two criteria:

- The project being studied has not previously received funding from the Legislature.
- The project is being prepared for funding consideration in future Governor's budgets or five-year infrastructure plans.

Legislative Analyst's Office (LAO)

Los Angeles Minimum Support Facility Perimeter Fence: The LAO sites CDCR's reports that no person has been injured by the razor wire and only one inmate has scaled the fence to successfully escape since the razor wire was installed in the mid-1990s. With no historical examples of injuries caused by the razor wire and a very low rate of escape, the LAO believes there is no reason to believe that injuries and escape are likely to occur in the future. Thus, the LAO finds that the current fence is adequate and recommends that the Legislature reject the Governor's proposal to provide General Fund support to raise the height of the fence at LAC because the need for a higher fence has not been justified.

Staff Recommendation. Reject the proposal for the Los Angeles perimeter fence and approve the remaining capital outlay budget proposals.

Issue 5: Healthcare Access Officers

Governor's budget. As part of the segregated housing unit conversion proposal, CDCR anticipates a reduced need for health care access staff by 48.2 positions and \$6 million in 2017-18. However, the budget requests the reallocation of the 48.2 positions and \$6 million made available by the housing unit conversions to units with the highest need for health care access staff in 2017-18 as identified by the Program Support Unit's analysis. CDCR reports that other housing units (that are not affected by the conversions) have an unmet need for health care access staff that is currently being met with overtime. Furthermore, the department reports that system wide workload for health care access staff is increasing.

While the larger housing unit conversion proposal was discussed by this subcommittee on March 9th, the health care access component was shifted to this hearing in order to include the federal receiver's office in the discussion of the need for additional health care access staff.

2016 Budget Act. The 2016 budget provided \$8.9 million General Fund and 73.4 positions in 2016-17, \$11.3 million General Fund and 88.7 positions in 2017-18, and \$11.7 million General Fund and 93.7 positions in 2018-19 and ongoing, for increased staffing needs related to the Health Care Facility Improvement Program (HCFIP), and triage and treatment areas/correctional treatment centers. This augmentation brought the total 2016-17 funding for healthcare access to \$465 million, which equates to 3,395.4 positions.

Background. 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.

Legislative Analyst's Office

Lack of Justification Showing Need for Reallocation. CDCR has provided two justifications for its proposed reallocation of the 48.2 health care access staff and about \$6 million in associated funding: (1) the currently high rates of overtime worked by other health care access staff and (2) the anticipated increase in the systemwide health care access workload. The LAO finds that the Administration has been unable to provide sufficient data on current and projected overtime worked by health care access staff at the institutions that would receive reallocated staff or the analysis done by CDCR's Program Support Unit to assess the current and projected need for health care access staff at these institutions.

As such, it is difficult for the Legislature to determine whether the proposed reallocation of health care access staff is justified.

Savings From Reduced Overtime Not Accounted for. To the extent that the positions do need to be reallocated to reduce overtime, The LAO estimates that the 48.2 health care access staff could reduce overtime costs by as much as \$4 million. Despite this, the Administration has not proposed any reduction in the health care access overtime budget.

Require Additional Information Before Taking Action. To assist the Legislature in its review of the proposed reallocation of health care access staff, the LAO recommends that it direct CDCR to provide the following information: (1) the Program Support Unit's data and analysis of current and projected need for health care access staff at institutions that would receive the reallocated staff and (2) current and projected health care access staff overtime rates at these institutions. With this information, the Legislature would be in a better position to determine whether the proposed reallocation of health care access staff is warranted or whether it needs to be modified. If the department is unable to provide the above information, the LAO recommends that the Legislature reject the proposed reallocation and reduce CDCR's budget by 48.2 health care access staff and \$6 million in General Fund support.

Staff Recommendation. Approve as budgeted.

Issue 6: Prison Health Care Update

Governor's Budget. The budget includes \$2 billion General Fund for prison medical care provided by the federal receiver. At the request of the receiver, this amount includes \$2.1 million for property controller positions to oversee all healthcare assets, \$5.4 million for registered nurses to triage and remedy medical appeals, \$8.9 million for licensed vocational nurses to distribute medication to inmates, \$13.8 million to expand the California Prison Industry Authority janitorial services, and \$3.1 million for certified nursing assistants to provide one-on-one surveillance of inmates on suicide watch. 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.

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.

CDCR Historical Health Care Costs Per Inmate⁵

Program	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17 ⁶
Medical	\$10,840	\$12,917	\$12,591	\$13,661	\$15,496	\$16,745	\$17,334
Dental	\$1,000	\$1,057	\$1,095	\$1,167	\$1,222	\$1,321	\$1,265
Mental Health	\$2,587	\$2,069	\$2,118	\$2,399	\$2,783	\$3,057	\$3,362
Dental and MH Admin	\$313	\$238	\$231	\$269	\$295	\$322	\$462
Total Health Care	\$14,740	\$16,281	\$16,035	\$17,496	\$19,796	\$21,445	\$22,423

⁵ Beginning 2011-12, Mental Health Nursing was transferred to the Medical Program.

⁶ 2016-17 is based on the budget authority as of the 2017-18 Governor's Budget.

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 2016-17 (\$22,423) is 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 \$2.9 billion in 2017-18 for 128,159 inmates. Of that amount, \$2 billion is dedicated to prison medical care under the oversight of the receivership.

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, in the month of December 2016 over 527,000 health care appointments were requested for inmates. The rate of preventable deaths has dropped significantly since 2006 (from 38.5 per 100,000 inmates in 2006 to 9.3 per 100,000 inmates in 2015). The rate of preventable deaths in 2015 is the lowest since the beginning of the receivership.

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.

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 April 2016, the receiver has delegated care for the following prisons back to CDCR:

- Folsom State Prison
- The Correctional Training Facility at Soledad
- Chuckawalla Valley State Prison
- California Correctional Institution at Tehachapi
- Pelican Bay State Prison
- Centinela State Prison
- Sierra Conservation Center at Jamestown
- California Institution for Men at Chino
- Avenal State Prison
- San Quentin
- California Institution for Women at Corona

The receiver continues to determine whether to delegate care at other 11 institutions that have been found adequate by the OIG, and can also delegate care at prisons deemed inadequate by the OIG based on various other performance measures available for his use. Recently, the OIG finished its round of medical inspections (round four) with the release of its report this month on the California Health Care Facility in Stockton and is currently in the process of beginning its round five of medical inspections. 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.

Staff Recommendation. This is an item intended to provide the subcommittee with an update on the state of inmate healthcare and to serve as an introduction to the budget requests that follow. As such, no action is required at this time.

Issue 7: CalPIA Janitorial Contract

Governor's budget. California Correctional Health Care Services (CCHCS) requests \$5,976 million General Fund (GF) in fiscal year 2016-17, \$13.8 million GF in 2017-18, \$22 million GF in 2018-19, and \$22 million GF in 2019-20 for California Prison Industries Authority (CalPIA) janitorial services for increased space driven by the Health Care Facility Improvement Project (HCFIP) and statewide medication distribution (SWMD) improvements.

Background. CalPIA's Healthcare Facilities Maintenance (HFM) Program supports CDCR's HCFIP and SWMD improvements. The HFM program trains and employs 450 offenders. The establishment of the HFM program is the result of a partnership between CalPIA and CCHCS. Offenders learn current effective janitorial methods and practices for various medical settings and have the opportunity to attain accredited, certified training in a custodial maintenance course. Offenders also receive training in important standards, including Occupational Safety and Health Administration (OSHA) requirements.

In 2013-14 CCHCS entered into contract with CalPIA Healthcare Facilities Maintenance (HFM) program as a solution to an outstanding stipulation from the Plata class action lawsuit. The stipulation required California Department of Corrections and Rehabilitation (CDCR) to develop policies and procedures to ensure every patient receives adequate health care services in a clean and sanitary environment. The HFM program provides custodial services to maintain a clinical health care level of cleaning in medical areas, mirroring health care standards and meeting licensing requirements for the existing 1.8 million square feet of health care space within the institutions currently being cleaned by HFM.

As HCFIP and SWMD improvements are completed, there is a need to expand the existing HFM program to include the cleaning and sanitizing of the newly constructed medical space. The funding increase is based upon the estimated completions dates of those improvements.

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

Staff Recommendation. Approve as budgeted.

Issue 8: Suicide Watch

Governor's budget. The Governor's budget requests \$3.06 million General Fund and 184.5 positions in fiscal year 2017-18, and \$3.02 million General Fund and 184.5 positions beginning in 2018-19, to address the increased suicide watch workload. In outgoing years, this will be included in the annual population adjustment to reflect changes in usage.

Background. Increased suicide watch utilization creates a resource issue for CCHCS. According to CCHCS, redirecting staff (especially high cost classifications) to cover the suicide watch workload has caused staffing deficiencies in other areas. This has begun to impact inmate programming. For example, the receiver's office notes if custody staff are redirected to suicide watch, then programming (education, vocation, etc.) can be altered or cancelled. In addition, if health care staff are redirected to suicide watch, then clinic lines may be cancelled and other non-critical patient care impacted. Annual expenditures for suicide watch had traditionally been around \$9 million, but expenditures have risen with the increased utilization of suicide watch. According to CCHCS, during the last four months of 2015-16, the number of suicide watches increased dramatically. This rapid increase has continued into 2016-17.

Coleman v. Brown Special Master Suicide Prevention Report. In January of 2015 the *Coleman* Special Master submitted his audit of suicide prevention practices to the federal court. In the summary of findings, the Special Master notes:

It is the opinion and conclusion of this reviewer that the applicable provisions of the Coleman Program Guide on suicide prevention and response provide reasonable and comprehensive guidelines for the identification and management of suicidal inmates. However, the most significant finding from this audit was that suicide prevention practices in the prisons often did not mirror program guide requirements. While CDCR has made important advances with its suicide prevention practices, it has not yet fully implemented a thorough, standardized program for the identification, treatment, and supervision of inmates at risk for suicide. From 2010 through 2013, the number of inmate suicides in CDCR prisons annually has remained nearly unchanged. Across the same period the rate of inmate suicides per 100,000 in CDCR prisons has remained substantially higher than the inmate suicide rate of 16 suicide deaths per 100,000 inmates in other correctional systems throughout the United States.

This audit was the continuation of an on-going concern of the Coleman court that CDCR is not doing enough to identify and help inmates with suicidal tendencies. This court noted the need for a program to identify, treat, and supervise inmates at risk for suicide from as far back as its remedial order in this case in 1995 and has entered several orders on suicide prevention practices over the ensuing years. Among other issues raised in this most recent report is the special master's concern that the perception that all inmates who threaten suicide are manipulative persists among the treatment teams as a misguided mindset that needs to be repeatedly addressed by CDCR.⁷

⁷ *Coleman v. Brown. Special Master's Report on His Expert's Audit of Suicide Prevention Practices in the Prisons of the California Department of Corrections and Rehabilitation.* Case 2:90-cv-00520-KJM-DAD, Document 5258, Filed 01/14/15.

Legislative Analyst's Office. The Governor's budget proposes \$3.1 million from the General Fund for 184.5 additional CNA positions, as well as temporary help to conduct suicide watch for patients awaiting transfer to MHCBS. The LAO notes that the total cost of the Governor's proposal is \$12.1 million. However, \$9 million of the total cost would be offset by funding that is currently used for overtime and registry staff costs associated with suicide watch.

It appears that this adjustment does not account for the full reduction in overtime and registry costs. The LAO estimates that the 184.5 new CNA positions would work 316,000 hours at a total cost of \$10.5 million. However, based on information provided by the receiver, the LAO estimates that this could avoid the need for \$13.3 million in overtime and registry costs—about \$4.3 million more than assumed in the Governor's budget. It is possible that some of the suicide watch workload is currently being covered by individuals who are being redirected from other duties, such as guarding rehabilitation programs or providing medical treatment to inmates. This could reduce the additional \$4.3 million in savings identified above as these redirected positions would return to their original duties rather than be eliminated. At the time of the LAO's analysis, the receiver had not provided sufficient information to assess the extent to which this is the case.

Staff Recommendation. Approve as budgeted.

Issue 9: Healthcare Appeals Pilot

Governor's budget. The California Correctional Health Care Services (CCHCS) requests \$5.4 million General Fund and 36 positions beginning in fiscal year 2017-18. This request will provide registered nurses to work as health care appeals coordinators to ensure clinical review of all health care appeals is available at each adult institution within the CDCR.

Background. Concerns about the overly bureaucratic nature of the health care appeals process, excessive screen outs, and lack of clinical triage/intervention were raised by federal Judge Thelton Henderson, the Plata Court, the receiver, and CCHCS legal counsel in late 2014. Responding to these concerns, on September 1, 2015, CCHCS launched a Health Care Appeal Pilot at three institutions: Central California Women's Facility, California Substance Abuse Treatment Facility (SATF), and California State Prison, Solano.

The pilot focused on two main changes:

1. The establishment of health care appeals coordinators to conduct clinical triage, conduct a clinical review when appropriate, and facilitate early face-to-face clinical intervention when appropriate.
2. The simplification of the health care appeals process by eliminating one institutional level of review.

This approach ensures the reduction of redundancy in the health care appeals process. The pilot institutions have reported positive results related to the upfront clinical triage and ability to address urgent/emergent issues immediately. According to the receiver's office, the coordinators have successfully integrated their advocacy and proactive handling of the health care appeals primarily due to being available to address questions and the provision of patient education. Overall, the pilot institutions have seen the following positive results: 1) there has been a reduction in the number of health care appeals rejected or cancelled due to "non-urgent" clerical reasons (such as, but not limited to: missing documents, threats or abusive language within appeal, no adverse effect on welfare, etc.); 2) an increase in patient access to care due to coordinator intervention; 3) and an increase in the number of health care appeals resolved at the institutional level.

Legislative Analyst's Office. The LAO recommends that the Legislature direct the receiver to implement this new process without additional funding. Given that the new process would likely reduce costs, the LAO recommends that the Legislature direct the receiver to implement it at all institutions. However, because it could be managed within existing resources and would likely reduce costs, the LAO finds no reason to provide the receiver with additional funding to implement it. Accordingly, the LAO recommends that the Legislature reject the proposed funding.

It is worth noting that the receiver has sent the LAO additional information on the appeals process, which the LAO is still reviewing to determine if it changes the recommendation above.

Staff Comment. The committee has expressed concerns in recent years with CDCR's appeals process, both in terms of inmates' complaints about healthcare and general complaints about treatment within the institutions. As noted in the agenda for this subcommittee's March 9th hearing:

One of the findings in the OIG review of High Desert was that the inmate appeals process was not operating adequately and that the staff complaint process was broken. The review notes, "Very few staff complaints were referred for investigation and those that were referred have not been adequately monitored and traced for response. Also, [High Desert] does not have a process for addressing officers who are repeatedly accused of misconduct by different inmates." CDCR has since noted that they are looking at changes to their policies surrounding inmate appeals and staff complaints.

The subcommittee may wish to ask the department to provide an updated on reforms to the inmate appeals and complaints process during either its open issues hearing on May 11th or during the May Revision hearings.

Staff Recommendation. Approve as budgeted.

Issue 10: Licensed Vocational Nurse – Medication Management

Governor’s budget. The proposed budget requests \$8.9 million from the General Fund and 105.2 additional positions for medication management based on a new staffing model developed by the receiver that includes licensed vocational nurse (LVN) positions to staff each pill window throughout the day and distribute medication inmates are allowed to keep their own medications to use as needed.

Background. Most medications are distributed to inmates from pill windows at various locations throughout each prison. Inmates typically line-up at these windows to receive their medication four times a day --morning, noon, later afternoon, and before they go to sleep. In addition, some medication is distributed to inmates to keep and use as needed, such as an asthma inhaler. Typically, licensed LVNs distribute medication to inmates. The 2016-17 budget included a total of \$80 million for LVNs engaged in medication management.

According to the receiver, budgeted staffing levels have not been adequate to complete daily medication distribution. This is because the current staffing model used to determine level of LVNs and associated funding needed each year for medication management does not account for certain factors that have increased workload in recent years. Such factors include additional pill windows that have since been added to facilities and the need to distribute medication that inmates keep and use as needed. As a result, institutions have relied on overtime and registry staff to complete this increased workload not accounted for under the current staffing model (registry staff are contractors that provide services on an hourly basis when civil servants are unavailable).

Legislative Analyst’s Office. Additional medication management workload not captured by the receiver’s current staffing model was generally completed with overtime and registry staff. Because the new staffing model should account for all medication management workload, costs associated with the use of overtime and registry staff for medication management should be largely eliminated. The LAO notes, however, that the proposal does not reflect a reduction in overtime or registry related to medication management. At the time of this analysis, the receiver was not able to provide a sufficient amount of information to estimate the level of savings possible.

Staff Recommendation. Approve as budgeted.

Issue 11: Health Care Property Controllers

Governor's budget. The budget requests \$2.14 million General Fund and 25.3 positions fiscal year 2017-18, and \$2.97 million General Fund and 37 positions beginning in 2018-19, to support development, implementation, and maintenance of the Enterprise Asset Management (EAM) program and to ensure that health care (including medical, mental health, and dental programs) assets are properly tracked and serviced throughout their lifecycles.

Background. Equipment management involves systematically tracking equipment throughout its lifecycle to ensure that it is properly maintained and available for use when needed. CDCR's Division of Adult Institutions (DAI) is currently responsible for managing all of the department's equipment - such as computers, e-readers, and exam tables - including those used by health care programs. DAI equipment management staff use several separate electronic systems to track the CDCR's equipment. According to the CDCR, the increasing volume and complexity of health care-related equipment, along with growth in equipment used by CDCR's educational and vocational programs, have resulted in an unmanageable workload for DAI staff. Furthermore, the receiver reports that inspectors have observed at several institutions that medical equipment is often improperly stored, damaged, or unaccounted for.

The receiver indicates that if CDCR cannot sufficiently track and maintain its medical, mental health, and dental equipment, it risks spending unnecessarily to replace missing equipment, and the quality of health care could be compromised. As a result, in 2014 the receiver hired two staff with existing resources to establish an equipment management unit within CCHCS. The receiver reports that this initial effort highlighted the magnitude of the deficiencies in the equipment management process for inmate health care and concluded that existing DAI staffing levels were insufficient to provide the needed support.

The receiver argues that in addition to the requirement for CDCR to become accountable for its overall assets, it is critical that the asset management system be particularly robust as it relates to the institutional health care system. Health care assets must be available and in serviceable condition when needed, otherwise patient access to care will be compromised. The manner in which these assets are used requires a very well-functioning, standardized system, enterprise-wide.

Legislative Analyst's Office. Both the receiver and DAI report that the current staffing level and systems for managing all of the department's equipment (including those related to health care) are inadequate. The Governor's proposal attempts to address the existing challenge related to health care equipment in isolation from the larger problem that has been identified. Specifically, the proposal would establish a separate system and process for tracking health care equipment by creating a new unit at headquarters, developing new policies and procedures, using an electronic system that the department has not previously used for equipment management, and hiring new staff at each institution. We find that this bifurcated approach is problematic for three reasons:

- First, the proposal does not address DAI's existing challenge in managing non-health care equipment.
- Second, creating a separate system for health care equipment would be inefficient. For example, under the proposal, each prison would have one position specifically dedicated to the

management of health care equipment and one position specifically dedicated to management of all other equipment, with each position reporting to a different office within CDCR headquarters. Such an approach does not take into account the different needs across institutions and how those needs could change over time. This is because it is possible that some institutions may have a greater need for the management of non-health care equipment compared to the management of health care equipment.

- Finally, such a bifurcated approach would likely not make sense as various aspects of inmate medical care continue to be delegated back to CDCR. For example, the Receiver has delegated responsibility for inmate medical care at ten institutions back to CDCR to date. Given that CDCR will eventually be responsible for integrating all aspects of inmate medical care into its operations, it is problematic that the receiver would initiate a bifurcated approach to asset management in the midst of this transition.

Staff Recommendation. Approve as budgeted.

Issue 8 Suicide Watch

Approved as budgeted and require CDCR and the Receiver's Office to report during next year's budget hearings on the savings related to a reduction in overtime and registry staff costs.

Vote: 3 - 0

Issue 9 Health Care Appeals Pilot

Approved as budgeted.

Vote: 3 - 0

Issue 10 Licensed Vocational Nurse – Medication Management – HELD OPEN

Issue 11 CCHCS Property Controllers

Approved as budgeted.

Vote: 3 - 0

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 4, 2017
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. **Language Access.** The Governor's 2017-18 budget provides \$352,000 from the Improvement and Modernization Fund (IMF) and two positions on an ongoing basis for the video remote interpreting (VRI) spoken language pilot. Specifically, these resources would be used to support various activities related to the implementation and evaluation of the pilot, such as project management and the development of training materials. Upon completion of the pilot, the judicial branch indicates that these resources will be used to expand VRI to interested trial courts, monitor the implementation of VRI, manage statewide agreements for purchasing VRI equipment, and provide subject matter expertise.

In addition, the Governor's 2017-18 budget provides a \$490,000 one-time appropriation from the Court Interpreters' Fund to support various activities to benefit the court interpreters program. This funding will support six activities including: expanding the interpreter testing program to include American Sign Language, providing training to help individuals become certified court interpreters, and conducting outreach to recruit individuals to become certified court interpreters. This issue was heard by the subcommittee on March 2nd.

Staff Recommendation. Adopt the LAO recommendation to reject funding for the VRI pilot, pending an evaluation of the current pilot, and approve \$490,000 in one-time funding from the Court Interpreters' Fund.

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

2. **Video Surveillance Pilot.** The Governor's budget requests \$11.732 million General Fund (\$10.516 million one-time) beginning in 2017-18 to implement a comprehensive video surveillance pilot program at the Central California Women's Facility and High Desert State Prison. This request includes funding for four one-year limited-term positions. This issue was heard by the subcommittee on March 9th.

Staff Recommendation. Approve as budgeted and require that guidelines for the video surveillance pilot include a requirement that appeals coordinators in the pilot institutions review video of any incidents prior to determining the disposition of an inmate complaint or appeal, especially in the case of staff complaints. In addition, request that the Office of the Inspector General assess the impact of the cameras on the pilot institutions and report back during future budget hearings. In addition, require CDCR to retain video footage for 90 days.

3. **Information Security Office.** The Governor's budget requests \$2.6 million General Fund (\$635,000 one-time) and eight positions, beginning in 2017-18, to establish a new security operations center (SOC) to proactively address information security threats on a 24/7 basis. This proposal includes \$1.1 million for eight information technology (IT) positions and \$1.5 million for hardware and software, as well as security professional services, to aid in continuous security monitoring operations. This issue was heard by the subcommittee on April 20th.

Staff Recommendation. Approve as budgeted.

8120 COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

4. **Law Enforcement Driving Simulators Replacement Project.** The Commission on Peace Officer Standards and Training requests limited-term funding of \$1.9 million Motor Vehicle Account in 2017-18 and 2018-19 to replace 16 driving simulators (eight annually) and continue to maintain the remaining simulators that are out of warranty. This issue was heard by the subcommittee on March 23rd.

Staff Recommendation. Reject the proposed funding augmentation.

0530 OFFICE OF LAW ENFORCEMENT SUPPORT

5. **Information Technology and Leased Vehicle Funding.** The proposed budget requests \$271,000 in 2016-17, and \$146,000 ongoing, General Fund for information technology and leased vehicles. Specifically, OLES requests funding to cover operating expenses for leased vehicles and contract costs for reengineering, implementation, licensing and support of their information technology systems.

Staff Recommendation. Approve as budgeted.

5227 BOARD OF STATE AND COMMUNITY CORRECTIONS

6. **Juvenile Reentry Grant Trailer Bill Language.** The proposed trailer bill language deletes the requirement that the information regarding discharged wards includes their names, and would instead require that the information include a unique identifier for each ward. BSCC currently collects this information, and provides the information to the Department of Finance without the ward's name in order to protect the individual.
7. **Post Release Community Supervision Clarification.** The Governor's budget includes trailer bill language clarifying that the term "residence" for purposes of post release community supervision (PRCS) includes one or more location at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including but not limited to, a house, apartment building, motel, hotel, homeless shelter, recreational or other vehicle. In addition, the language requires that if a person has no residence, he or she must inform the county probation department that he or she is a transient.

Staff Recommendation. Approve all three as draft trailer bill language.

ITEMS TO BE HEARD

0820 DEPARTMENT OF JUSTICE

Issue 1: Update by Attorney General Xavier Becerra

Attorney General. The constitutional office of the Attorney General, as chief law officer of the state, has the responsibility to see that the laws of California are uniformly and adequately enforced. This responsibility is fulfilled through the diverse programs of the Department of Justice (DOJ). The Attorney General's responsibilities include safeguarding the public from violent criminals, preserving California's spectacular natural resources, enforcing civil rights laws, and helping victims of identity theft, mortgage-related fraud, illegal business practices, and other consumer crimes.

Under the state Constitution, the Attorney General is elected to a four-year term in the same statewide election as the Governor, Lieutenant Governor, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, and Insurance Commissioner. In 1990, California voters imposed a two-term limit on these statewide offices.

On January 24, 2017, Xavier Becerra was sworn in as the 33rd Attorney General of the State of California, and is the first Latino to hold the office in the history of the state. He was appointed by the Governor as a replacement for former Attorney General Kamala Harris, who was elected to the United States Senate.

Attorney General Becerra previously served 12 terms in Congress as a member of the U.S. House of Representatives. While in Congress, Attorney General Becerra was the first Latino to serve as a member of the Committee on Ways And Means, served as Chairman of the House Democratic Caucus, and was Ranking Member of the Ways and Means Subcommittee on Social Security.

Prior to serving in Congress, Attorney General Becerra served one term in the California Legislature as the representative of the 59th Assembly District in Los Angeles County. He is a former deputy attorney general with the California Department of Justice. The Attorney General began his legal career in 1984 working in a legal services office representing persons with mental illness.

Department of Justice. The Attorney General oversees more than 4,500 lawyers, investigators, sworn peace officers, and other employees at DOJ. DOJ is responsible for providing legal services on behalf of the people of California. The Attorney General represents the people in all matters before the appellate and supreme courts of California and the United States; serves as legal counsel to state officers, boards, commissioners and departments; represents the people in actions to protect the environment and to enforce consumer, antitrust, and civil laws; and assists district attorneys in the administration of justice. The DOJ also provides oversight, enforcement, education and regulation of California's firearms/dangerous weapons laws; provides evaluation and analysis of physical evidence; regulates legal gambling activities in California; supports the telecommunications and data processing needs of the California criminal justice community; and pursues projects designed to protect the people of California from fraudulent, unfair, and illegal activities.

Budget Overview. The Governor’s 2017-18 budget proposes \$858 million to support DOJ. This is an increase of \$33 million, or four percent, over the estimated current-year level of expenditures. Roughly half of DOJ’s budget supports its Division of Legal Services, while the remainder supports its Division of Law Enforcement and its California Justice Information Systems Division. Of the total budget proposed for DOJ in 2017-18, about one-fourth—\$215 million—is from the General Fund. The General Fund amount is \$6 million, or nearly three percent, below 2016-17 spending.

Staff Recommendation. This is an informational item. No action is necessary at this time.

Issue 2: Changes to Firearm Laws**Governor's Budget**

Senate Bill 880 (Hall), Chapter 48, Statutes of 2016, and Assembly Bill 1135 (Levine), Chapter 40, Statutes of 2016 – Assault Weapon Registration/Bullet Buttons. The budget proposes an increase of \$2,588,000 and 27 positions in 2017-18 in the Dealer Record of Sale (DROS) Special Fund spending authority to implement the provisions of Senate Bill 880 and Assembly Bill 1135. The requested funding would be loaned from the Firearms Safety and Enforcement (FS&E) Special Fund, and would be repaid no later than June 30, 2021, by revenue in the DROS fund.

AB 857 (Cooper), Chapter 60, Statutes of 2016 – Ghost Guns. The budget proposes an increase of \$1,368,000 in 2017-18, \$1,022,000 in 2018-19, \$866,000 in FY 2019-20, and \$820,000 ongoing in DROS Special Fund spending authority to support eight positions to implement the provisions of AB 857. The requested funding would be loaned from the FS&E Special Fund, and would be repaid no later than June 30, 2021, by revenue in the DROS fund.

Proposition 63 Implementation. Proposition 63 included a \$25 million General Fund loan for the Department of Justice to begin implementing the changes included in the proposition. The Governor's proposed budget does not include any information on how the department intends to spend the funds or the costs associated with implementation.

Background

California has some of the most stringent gun control laws in the United States. Over the last 25 years, California has steadily increased gun control regulations, beginning in 1990 with Governor George Deukmejian supporting a ban on assault weapons after a 1989 mass shooting at a Stockton schoolyard killing five children and wounding 30 others. Gun deaths in California have fallen 20 percent since 2000, while nationally they have remained roughly the same.¹ This past fall, through the passage of Proposition 63, Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban (2016), and the enactment of a series of firearms bills, California has moved to further regulate the sale and ownership of guns.

Statistics on Gun Violence. The Centers for Disease Control reports that in 2015, 33,390 people died in firearms-related deaths in the United States. That equates to 10.2 people out of every 100,000. In California, 2,935 people died in firearms-related deaths, which equates to 7.4 people out of every 100,000. According to statistics gathered by the Brady Campaign to Prevent Gun Violence, over 100,000 people a year in the United States are shot.² 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

¹ Skelton, George. "If California voters approve stronger gun control, the message sent at the ballot box will be heard across the U.S." *Los Angeles Times*, October 24, 2016.

² Brady Campaign to Prevent Gun Violence. *Key Gun Violence Statistics*. www.bradiycampaign.org.

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.³

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:

- The individual is on probation or parole.
- The individual has been convicted of a felony or of certain misdemeanors.
- The individual has been proven to be a danger to himself or herself or to others due to a mental illness.
- The individual has been restrained under a protective order or restraining order.
- The individual has been 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 2016. In fact, for the first time in the state's history, in 2016, over one million guns were sold. This represents an increase of almost 50 percent over sales in 2015. The number of long guns nearly doubled in sales and handgun sales increased by 18 percent. The table that follows illustrates the annual number of overall purchases of firearms in the state.

**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
2015	483,372	5,417	397,231	4,252	880,603	9,669
2016	572,644	6,172	758,678	6,149	1,331,322	12,321

³ Firearm Violence, 1993-2011. www.bjs.gov

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

- \$19 background check fee payable to the Dealer Record of Sale (DROS) Special Account.
- \$5 payable to the Firearms Safety and Enforcement Special Fund (FS&E).
- \$1 firearm safety device fee payable to the Firearms Safety Account (FSA).

Beginning in 1999, the 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. 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 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 DROS Account for firearm enforcement and regulatory activities related to APPS.

Federal Definition of *Fugitive from Justice*. California and other states have generally used the federal Brady Act definition of "fugitive from justice" as a prohibition against people with outstanding arrest warrants from owning and purchasing firearms. In February of this year, the federal government determined that the Brady Act definition does not authorize a prohibition against the sale of firearms to an individual merely because they have an outstanding arrest warrant. Under the revised federal definition, a fugitive from justice is someone who has: (1) fled the state; (2) has done so to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding; and (3) is subject to a current or imminent prosecution or testimonial obligation. The DOJ estimates that based on their 2016 data, this change in definition would result in approximately 2,500 denials to purchase firearms that would now be allowed under current law.

PROPOSITION 63: Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban (2016). On November 8, 2016, Proposition 63, the Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban, was approved by a wide margin, with over 63 percent of voters voting "yes." The proposition establishes a regulatory process for ammunition sales, creates a new court process to ensure the removal of firearms from prohibited persons after they are convicted of a felony or certain misdemeanors, and tightens the restrictions

around the ownership and use of large capacity magazines. Additionally, Proposition 63 states that the Legislature can change its provisions if such changes are “consistent with and further the intent” of the measure. Such changes can only be made if approved by 55 percent of the members of each house of the Legislature and the bill is enacted into law.

Regulation of Ammunition Sales. Proposition 63 includes various regulations related to the sale of ammunition. Some of the regulations would replace existing law with similar provisions. However, other regulations proposed by Proposition 63 are different, as discussed below.

Requirements to Buy Ammunition. Proposition 63 includes various requirements for individuals seeking to buy ammunition and for DOJ to regulate such purchases. Specifically, the measure:

- Requires individuals to obtain a four-year permit from DOJ to buy ammunition and for ammunition dealers to check with DOJ that individuals buying ammunition have such permits.
- Requires DOJ to revoke permits from individuals who become prohibited.
- Allows DOJ to charge each person applying for a four-year permit a fee of up to \$50 to support its various administrative and enforcement costs related to ammunition sales.

The state, however, enacted legislation in July 2016, to replace the above provisions with alternative ones. Specifically, under the legislation, (discussed in more detail below):

- Ammunition dealers would be required to check with DOJ that individuals seeking to buy ammunition are not prohibited persons at the time of purchase.
- DOJ could charge individuals up to \$1 per transaction.

Licenses to Sell Ammunition. Proposition 63 requires individuals and businesses to obtain a one-year license from DOJ to sell ammunition.

Other Ammunition Requirements. The proposition prohibits most California residents from bringing ammunition into the state without first having the ammunition delivered to a licensed ammunition dealer, beginning in January 2018.

New Court Process for Removal of Firearms. Proposition 63 created a new court process to ensure that individuals convicted of offenses that prohibit them from owning firearms, do not continue to have them. Beginning in 2018, the measure requires courts to inform offenders upon conviction that they must (1) turn over their firearms to local law enforcement, (2) sell the firearms to a licensed firearm dealer, or (3) give the firearms to a licensed firearm dealer for storage. The measure also requires courts to assign probation officers to report on what offenders have done with their firearms. If the court finds that there is probable cause that an offender still has firearms, it must order that the firearms be removed. Finally, local governments or state agencies could charge a fee to reimburse them for certain costs in implementing the measure (such as those related to the removal or storage of firearms).

Currently, 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. This proposition shifts the burden from DOJ to local law enforcement and the courts by requiring probation officers to report to the court on the disposition of the firearms owned by prohibited persons.

Large Capacity Magazines. Since 2000, state law has generally banned individuals from obtaining large capacity magazines (defined as those holding more than ten rounds of ammunition). The law, however, allowed individuals who had large capacity magazines before 2000 to keep them for their own use. Beginning July 2017, recently enacted law will prohibit most of these individuals from possessing these magazines. Individuals who do not comply are guilty of an infraction. However, there are various individuals who will be exempt from this requirement—such as an individual who owns a firearm (obtained before 2000) that can only be used with a large capacity magazine. Proposition 63 eliminates several of these exemptions, as well as increases the maximum penalty for possessing large capacity magazines. Specifically, individuals who possess such magazines after July 2017, would be guilty of an infraction or a misdemeanor.

Reporting Requirements. The measure includes a number of reporting requirements related to firearms and ammunition. For example, the measure requires that ammunition dealers report the loss or theft of ammunition within 48 hours. It also requires that most individuals report the loss or theft of firearms within five days to local law enforcement. An individual who does not make such a report within five days would be guilty of an infraction for the first two violations. Additional violations would be a misdemeanor. This measure also reduces the penalty for an individual who knowingly submits a false report to local law enforcement from a misdemeanor to an infraction and eliminates the prohibition from owning firearms for ten years for such an individual.

Penalty for Theft of Firearms. Under current state law, the penalty for theft of firearms worth \$950 or less is generally a misdemeanor punishable by up to one year in county jail. Under this measure, such a crime would be a felony and could be punishable by up to three years in state prison. Additionally, individuals previously convicted of a misdemeanor for the theft of a firearm would be prohibited from owning firearms for ten years. Currently, there is no such prohibition for a misdemeanor conviction for theft of firearms.⁴

2016 LEGISLATIVE GUN PACKAGE

In 2016, the Legislature passed a series of firearm safety laws designed to strengthen the states gun control laws. Among those laws were the following statutory changes:

Bullet Buttons – Senate Bill 880 (Hall and Glazer), Chapter 48, Statutes of 2016, and Assembly Bill 1135 (Levine), Chapter 40, Statutes of 2016. California law bans as assault weapons semiautomatic rifles and handguns with the capacity to accept a detachable ammunition magazine and which also have any one of the enumerated weapon characteristics (e.g., folding stock, flash suppressor, pistol grip, or other military-style features). Under state regulation, if a tool is required to release the magazine, it is not considered “detachable.” In response to this definition, firearm manufacturers have developed the bullet button to make military-style weapons compliant in

⁴ Legislative Analyst's Office, *Proposition 63: Firearms. Ammunition Sales. Initiative Statute*. November 8, 2016.

California. The bullet button is a device that allows gun owners to detach their magazines quickly by inserting the tip of a bullet or some other small tool into a button on the side of their weapons, undermining the intent and effect of the state's assault weapon ban.

These bills closed the loophole in existing law by redefining assault weapon in statute to include a semiautomatic, centerfire rifle or pistol that does not have a fixed magazine but does have one of the other enumerated military-style features. They further defined a fixed magazine to mean an ammunition feeding device contained in, or permanently attached to, a firearm such that it cannot be removed without disassembling the firearm action.

The legislation exempts those firearms that are assault weapons that do not have a fixed magazine if they were lawfully purchased and possessed before January 1, 2017, so long as the firearm is registered with DOJ.

Ghost Guns – Assembly Bill 857 (Cooper), Chapter 60, Statutes of 2016. Under federal law, it is illegal for an unlicensed person to make a firearm for sale or distribution. A loophole in the law, however, allows for the construction of firearms by unlicensed individuals so long as the firearms are made for personal use and not sold or transferred. These homemade guns are assembled through the purchase of unfinished receivers, or 80 percent completed lower receivers. Unfinished receivers, in many ways the engine of a firearm, are not technically considered firearms because of their incomplete stage and thus do not require a serial number or background check for purchase. With an unfinished receiver, a firearm parts kit, and basic drilling machinery, an individual can assemble a fully-functional firearm without being subject to the requirements placed on all other firearms transactions. Moreover, when homemade guns are seized from prohibited people, law enforcement agencies are put in the impossible situation of identifying and cataloging the firearm, as required for administrative purposes, because of a lack of any unique serial number or identifying mark. This is particularly burdensome when law enforcement seizes a large quantity of homemade guns, an occurrence that is becoming more commonplace.

AB 857 requires a person, commencing July 1, 2018, to apply to and obtain from DOJ a unique serial number or other mark of identification prior to manufacturing or assembling a firearm; and requires by January 1, 2019, any person who, as of July 1, 2018, owns a firearm that does not bear a serial number assigned to it to obtain a unique serial number or other mark of identification.

Regulation of Ammunition – Senate Bill 1235 (de León), Chapter 55, Statutes of 2016. California had enacted legislation designed to keep guns out of the hands of criminals, but until 2016, it had done little to prevent criminals, gang members, and other prohibited people from procuring the ammunition that fuels gun violence. Several cities require vendors to keep records of ammunition sales, leading to the arrest of thousands of armed and dangerous criminals. Similarly, California enacted statewide legislation requiring vendors to record handgun ammunition sales, but this law has been tied up in litigation involving the statutory definition of handgun ammunition. Consequently, as the result of a court injunction preventing enforcement of the law, any criminal can purchase ammunition, no questions asked.

This legislation replaced the language in Proposition 63 and required vendors to obtain a state license to sell ammunition, log information about ammunition transactions, and screen the ammunition

purchaser for any prohibitions at the point of sale. There are three main components to the legislation: vendor licensing, purchase authorization, and purchase information collection.

Gun Violence Research – Assembly Bill 1602 (Committee on Budget), Chapter 24, Statutes of 2016. Research related to firearms violence and its prevention is limited, due in part, to congressional limits placed on the Centers for Disease Control and Prevention that, in effect, curtail federal funding for firearm violence research. However, many argue there is a need for more—and more sophisticated—research so that California, and the nation, can mount effective, evidence-based responses to combat gun violence.

The Budget Act of 2016 included \$5 million one-time General Fund over five years to establish a firearm violence research center at the University of California. Budget trailer bill language specified the research include, but not be limited to, the effectiveness of existing policies and laws, and efforts to promote the responsible ownership and use of firearms.

Under the legislation, the center will be housed in the University of California system and operate under the following principles:

- Interdisciplinary work of this center should address the nature of firearm violence; individual and societal determinants of risk for involvement in firearm violence, whether as a victim or a perpetrator; the individual, community, and societal consequences of firearm violence; and the prevention and treatment of firearm violence.
- The center should conduct basic, translational, and transformative research with a mission to provide the scientific evidence on which sound firearm violence prevention policies and programs can be based. Its research should extend to firearm violence as a form of terrorism.
- The center should work on a continuing basis with policy makers in the California Legislature and state agencies to identify, implement, and evaluate innovative firearm violence prevention policies and programs.

Gun Lending – Assembly Bill 1511 (Santiago and Chiu), Chapter 41, Statutes of 2016. Prior to passage of this legislation, gun owners were allowed to loan firearms to a person, personally known to them for up to 30 days. This category of individuals was extremely broad. AB 1511 limited a gun owner’s ability to loan firearm to only his or her family members.

Legislative Analyst’s Office. The LAO did not raise any concerns with budget proposals related to SB 880 and AB 857.

Staff Comments

Require a Detailed Accounting of \$25 million General Fund Appropriated through the Proposition. As noted previously, Proposition 63 included a \$25 million appropriation as a General Fund loan for the Department of Justice to begin implementation of the requirements of the proposition. The Governor’s proposed budget, however, does not include any details on how those funds will be spent. The Legislature may wish to require DOJ to submit a report on the implementation of Proposition 63 and the related expenditures.

Require an Annual Report to the Legislature on the Removal of Guns from Armed Prohibited Persons. Over the last several years, the Legislature has expressed concerns related to the backlog of individuals in the Armed Prohibited Persons System who had not surrendered their firearms. During those discussions, the Legislature considered creating a partnership between DOJ and other state and local law enforcement to assist in the retrieval of prohibited firearms. Proposition 63 creates just such a partnership by establishing a new court process related to prohibited persons. The Legislature may wish to require annual updates from DOJ and the Judicial Council related to the removal of guns from prohibited persons.

Federal Definition of *Fugitive from Justice*. Given the impact of the new federal interpretation of a “fugitive from justice,” the subcommittee may wish to consider placing state prohibitions against the ownership of firearms for people with felony or prohibiting misdemeanor arrest warrants into statute.

Staff Recommendation. Approve both proposals and adopt draft, placeholder trailer bill language establishing a state prohibition against owning, purchasing, receiving, possessing, or having under his or her custody or control a firearm or ammunition if that person has a current felony warrant or a prohibiting misdemeanor warrant, consistent with current law; and extending the deadline for the registration of a semiautomatic firearm that does not have a fixed magazine by six months. In addition, add provisional language allowing for the expenditure of the appropriation for SB 880 over a two-year period.

5227 BOARD OF STATE AND COMMUNITY CORRECTIONS (BSCC)**Issue 3: Jail and Juvenile Facility Construction Update**

Background. 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 \$2.5 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.
- SB 844 (Committee on Budget and Fiscal Review), Chapter 34, Statutes of 2016, authorized \$250 million in lease-revenue bond financing to assist counties with jail construction. In order to receive a construction grant, counties must submit their plans for reducing sexual abuse in county jails and must provide in-person visitation for their inmates. In addition, the bill included \$20 million in lease-revenue bond financing to assist Napa County with repairs and upgrades to the Napa County jail that are necessary as a result of damage sustained during the 2014 earthquake.

Juvenile Detention Facility Construction. SB 81 (Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007, also known the "Juvenile Justice Realignment" bill, signed by Governor Schwarzenegger in 2007, limited the types of offenders who could be committed to state youth correctional institutions and providing funding to county probation systems to improve their capacity to handle higher-end offenders. In addition, the bill authorized the sale of up to \$300 million in revenue bonds for the construction of county juvenile detention facilities.

Contracting Out Jail and Detention Space. A number of counties have contracts with state and local entities to lease jail space. In some counties, such as San Bernardino, space has been leased to Los Angeles County for a jail-based competency program to help restore people with mental illnesses to competency so that they can stand trial. In other cases, a county might have an agreement with a neighboring county to provide overflow space if there is a shortage of beds in a particular county.

Approximately 20 counties have contracts with the federal government to house federal inmates or detainees. With the exception of Yolo County, all of those contracts are to lease county jail space for adults. There are primarily two types of contracts with the federal government. One is with the United States Marshal's Office for the purposes of housing inmates who are either awaiting trial in a federal court, currently being tried, or have been convicted and are awaiting sentencing. The other type of contract is with the Immigration Customs and Enforcement (ICE), which uses the space to hold immigrants who are in the country without the proper documentation.

The BSCC does not routinely collect data on contracts that counties have to lease out their excess bed capacity. However, they did recently conduct a survey of the counties that determined that there were almost 3,000 federal inmates and detainees in California's county jails. The Senate asked BSCC to collect additional information on counties that reported having 100 or more federal contract beds. The following table provides information on whether the people are being held for the US Marshals Office or are detainees being held for ICE. In addition, the table provides information on whether those counties have received jail construction funding from the state.

County	2017 Federal Contract ADP*	US Marshal	ICE	Construction Grant Funding	Grant Source	Notes
Alameda	Apr 2017: 312	312	0	\$ 54,340,000	SB 863	US Marshal inmates are primarily pre-trial or pre-sentenced.
Contra Costa	Feb 2017: 194	0	194	\$ 70,000,000	SB 844**	Inmates are primarily pre-trial under the jurisdiction of ICE. The county does not keep track of the breakdown of type of federal inmate.
Fresno	Feb 2017: 99	99	0	\$ 79,194,000	SB 1022	In 2010, Fresno County entered into an Intergovernmental Agreement with the U.S. Marshals Service for up to 400 beds adult male beds. This standard IGA template allows for other federal entities, including the Bureau of Prisons and Immigrations Customs Enforcement, to use the services contracted by USMS.
Kern	Apr 2017: 116	116	0	\$ 100,000,000	AB 900	US Marshal inmates (112 to date) are pre-trial or pre-sentenced. Once sentenced, the inmates are transferred to a designated facility within a couple weeks. BOP inmates (4 to date) are serving their sentences or program violations in the facility.
Orange	Feb 2017: 771	0	771	\$ 180,000,000	AB 900/SB 1022	The majority of federal inmates are ICE detainees; the facility does not typically hold inmates for the US Marshal.
Sacramento	Feb 2017: 374	217	110	\$ 80,000,000	SB 1022	ICE detainees are held at Rio Cosumnes Correctional Facility (2017 ADP: 110). Federal inmates held for court proceedings are held at the Sacramento Main Jail (2017 ADP: 217)
Yuba	Mar 2017: 155	0	155	\$ 20,000,000	SB 863	Federal population is all ICE detainees; the population of federal inmates has decreased recently due to flooding.

* Average daily population (ADP).

** SB 844 funding has not been awarded yet. Contra Costa County has requested \$70 million.

Recent ICE Audit of Orange County Jail. A March 6, 2017, report released by the Office of the Inspector General, Department of Homeland Security raised significant concerns about the treatment of immigration detainees being held in Orange County's Theo Lacy Detention Center. Among the issues raised in the report was the fact the detainees were served spoiled lunch meats, forced to use dirty showers, and subjected to harsh solitary confinement.⁵ According to the press coverage, "During a surprise visit to the jail in November, federal officials found unsafe food handling and unsanitary living conditions in the jail's immigration units, including moldy bathroom stalls and trash-strewn cells."⁶

Staff Comments. The state does not currently have a mechanism for overseeing either the detention of immigrants within the state or the care being provided in county jails. While the BSCC does conduct audits of jails and juvenile facilities, their focus is on ensuring that county policies are being followed, not in reviewing the adequacy of those policies. Their role is one of providing assistance and support to local law enforcement, not oversight. Therefore, there is currently no mechanism for the Legislature or the Governor to request that BSCC investigate or audit specific areas of concern. In addition, it may be useful for the Legislature to establish a single state agency that is responsible for oversight over the treatment of people who are detained in facilities in the state on behalf of the federal government because they do not have the proper documentation to remain in the United States.

⁵ Office of Inspector General. Management Alert on Issues Requiring Immediate Action at the Theo Lacy Facility in Orange, California. U.S. Department of Homeland Security. March 6, 2017.

⁶ Wyler, Grace. "Immigrant inmates given rotten meat, 24-hour solitary at Orange County jail, watchdog finds." *Orange County Register*, March 10, 2017.

Specifically, the subcommittee may wish to consider the following:

- Expand BSCC's authority to allow them to conduct special investigations or audits at the request of the Legislature or the Governor.
- Establish an Office of Immigrant Oversight within the Attorney General's office and give the Attorney General the authority to monitor and review the care of immigrants being detained in facilities in California.

Staff Recommendation. This is an informational item. No action is necessary at this time.

Issue 4: Chief Probation Officer Trailer Bill

Governor's Budget. Proposed trailer bill language specifies the duties of county chief probation officers. The language would also require that the chief probation officer not be placed under the authority of a separate county agency to perform these duties.

Background. Currently, the laws governing the probation department in each county are in various different parts of the state codes, making it unnecessarily complicated and confusing. According to the Administration, the intent of this proposal is to consolidate those various duties in one section, not to give probation or counties more or different duties, but rather to clarify how the probation department is organized within the county.

Legislative Analyst's Office. The LAO did not raise any concerns with this proposed language.

Staff Comments. The members of the juvenile justice community have concerns about the current language designating probation as the exclusive agency for juvenile justice supervision and placement—something that probation cannot always do alone, and something that the courts should have some say in as well. They would like a modification to the language that acknowledges situations in which supervision is ordered or monitored by the court or shared with a community agency. In addition, they have raised questions related to how juvenile justice probation operations would be managed under the revisions relating to adult and chief probation officer positions.

Staff Recommendation. Approve as draft, placeholder language and direct DOF, the LAO and staff to modify the language to address the concerns of juvenile justice advocates.

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 4, 2017
9:30 a.m. or upon adjournment of Session
State Capitol - Room 113

OUTCOMES

Consultant: Julie Salley-Gray

<u>Item</u>	<u>Department</u>	<u>Vote-Only</u>
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0250 Item 1	Judicial Branch Language Access	
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Adopt the LAO recommendation to reject funding for the VRI pilot, pending an evaluation of the current pilot, and approve \$490,000 in one-time funding from the Court Interpreters' Fund.

Vote: 2-1 (Anderson, no.)

5225 Item 2	California Department of Corrections and Rehabilitation Video Surveillance Pilot	
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Approve the budget request, augment the Office of the Inspector (OIG) budget by \$73,000 General Fund on 3-year limited term basis for one position to allow the OIG to assess the impact of the cameras on the pilot institutions, and other institutions that use video surveillance, and report to the JLBC and both houses' budget committees and public safety committees by March 1st of each year. In addition, require that guidelines for the video surveillance pilot include a requirement that appeals coordinators in the pilot institutions review video of any incidents prior to determining the disposition of an inmate complaint or appeal, especially in the case of staff complaints. Finally, require CDCR to retain video footage for 90 days.

Vote: 3-0

Item 3	Information Security Office	
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Approve as budgeted.

Vote: 3-0

8120 Commission on Peace Officer Standards and Training
 Item 4 Law Enforcement Driving Simulators Replacement Project
 Reject the proposed funding augmentation.

Vote: 3-0

0530 Office of Law Enforcement Support
 Item 5 Information Technology and Leased Vehicle Funding

Approve as budgeted.

Vote: 3-0

5227 Board of State and Community Corrections
 Item 6 Juvenile Reentry Grant Trailer Bill Language

Approve as draft trailer bill language.

Vote: 3-0

Item 7 Post Release Community Supervision Clarification

Approve as draft trailer bill language.

Vote: 3-0

Discussion Items

0820 Department of Justice
 Issue 1 Update by Attorney General Xavier Bacerra - INFORMATIONAL
 Issue 2 Changes to Firearms Laws:
 Proposition 63
 Senate Bill 880 (Hall) Chapter 48, Statutes of 2016
 Assembly Bill 857 (Cooper) Chapter 60, Statutes of 2016

Approve both proposals and adopt draft, placeholder trailer bill language establishing a state prohibition against owning, purchasing, receiving, possessing, or having under his or her custody or control a firearm or ammunition if that person has a current felony warrant or a prohibiting misdemeanor warrant, consistent with current law; and extending the deadline for the registration of a semiautomatic firearm that does not have a fixed magazine by six months. In addition, add provisional language allowing for the expenditure of the appropriation for SB 880 over a two-year period.

Vote: 2-1 (Anderson, no.)

5227 Board of State and Community Corrections
 Issue 3 Jail and Juvenile Facility Construction Update - INFORMATIONAL

Issue 4 Chief Probation Officer Trailer Bill Language – HELD OPEN

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 11, 2017
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. **Funding Increase for Appellate Projects.** The Judicial Council requests an ongoing augmentation of \$1.04 million General Fund to support increased costs for contractual services in the Supreme Court's Court-Appointed Counsel Project (\$255,000) and the Courts of Appeal Court Appointed Counsel Project offices (\$786,000), beginning in 2017-18.

This item was discussed during the March 2nd subcommittee hearing.

Staff Recommendation. Approve as budgeted.

2. **Sustain Justice Case Management System.** The Judicial Council requests \$4.1 million General Fund in 2017-18, and \$896,000 General Fund in 2018-19, to update the Sustain Justice Edition Case Management System in the Superior Courts of California - Humboldt, Lake, Madera, Modoc, Plumas, Sierra, San Benito, Trinity and Tuolumne Courts. This request supports the transition to modern commercial off-the-shelf case management systems.

This item was discussed during the March 2nd subcommittee hearing.

Staff Recommendation. Approve as budgeted.

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION

3. **Warden Recruitment and Retention Proposal.** Budget item 9800 contains \$7 million General Fund for a CDCR warden recruitment and retention proposal. There is no formal budget change proposal or other detailed documents associated with this proposal.

Staff Recommendation. Reduce the proposed funding by \$5 million and limit the salary increases to the captain through warden ranks in the prisons (excluding headquarters staff). It is the intent of the Legislature that this funding will be used to improve the retention of captains, associate wardens, deputy wardens, and wardens. CDCR will be required to report during budget hearings each year on the impact of the funding increase on retention of staff in these classifications.

5225 PRISON INDUSTRY AUTHORITY (PIA)

4. **Prison Industry Authority's Self-Supporting Requirement.** The Administration has proposed trailer bill language clarifying that PIA is not required to have immediate cash available for funding retiree health care and pension liabilities above the amounts established in the Budget Act. In addition, the language prohibits PIA from establishing cash reserves to fund retiree health care and pension liabilities above the amount specified in the annual Budget Act.

Staff Recommendation. Approve the proposed language as draft, placeholder language.

4440 DEPARTMENT OF STATE HOSPITALS

5. **State Hospital Financial Activity Report.** The Administration proposes removing provisional language regarding the requirement for the Department of State Hospitals (DSH) to submit the annual report on state hospital financial activity.

This item was discussed during the March 16th subcommittee hearing.

Staff Recommendation. Reject the removal of the provisional language and direct the LAO and Department of Finance to update the language to include the information recommended by the LAO.

6. **Enhanced Treatment Program (ETP) Staffing.** The Administration is requesting \$2.3 million in one-time funding, and \$5.6 million ongoing, to support the activation of the first two ETP units at DSH-Atascadero, as well as 44.7 positions in FY 2017-18, and 115.1 positions in FY 2018-19.

This item was discussed during the March 16th subcommittee hearing.

Staff Recommendation. Due to the absence of written policies and procedures, reject funding for the ETP unit activation until such time as those policies are provided to the Legislature for review.

7. **Conditional Release Program (CONREP).** For the continuation of the Statewide Transitional Residential Program (STRP) for CONREP patients, DSH is requesting \$976,000 in General Fund authority.

Based on anticipated court-ordered release dates, DSH estimates the cost of releasing two additional SVP patients (with housing available) and two additional transient SVP patients in FY 2017-18 to be \$2.4 million. This funding will increase the current caseload for conditionally released SVPs from 19 in FY 2016-17 to 23 in FY 2017-18.

This item was discussed during the March 16th subcommittee hearing.

Staff Recommendation. Approve the proposed budget on a one-time basis. In addition, adopt the LAO's recommendation requiring DSH to submit and updated report on January 1, 2018, with the expectation that the county mental health departments and private contractors seek Medi-Cal reimbursement for all reimbursable medical and mental health treatment by July 1, 2018, absent clear direction from the federal government that the medical and mental health costs for CONREP patients are not eligible.

ITEMS TO BE HEARD

4440 DEPARTMENT OF STATE HOSPITALS

Issue 1: Capital Outlay Proposals

Governor's budget. The Governor's budget contains the following capital outlay proposals:

1. FIRE ALARM SYSTEM UPGRADE – METROPOLITAN STATE HOSPITAL

The Administration requests \$3,916,000 General Fund to upgrade the existing fire alarm systems for the Chronic Treatment East (CTE) building at DSH-Metropolitan. The upgraded fire alarm system will be fully automatic and will specify the location of an incident and/or alarm activation and connected to the new central monitoring system.

Background. All buildings that house patients have security measures limiting freedom of movement, including the ability to freely exit buildings. As such, the State Fire Marshal (SFM) has established minimum building and maintenance standards for fire alarm systems for these facilities. Failure to maintain these mandatory systems can and will result in enforcement actions from the SFM.

The current fire alarm system is 25 years old. It is challenging to obtain necessary parts for regular maintenance and fixes because there is a lack of consistent and trained personnel to maintain the system. There are numerous devices that fail on a frequent basis causing the panel to show a red flag, requiring a response. DSH-Metropolitan is reporting failures five to six times a week due to hot weather conditions. These incidents have caused shut downs of the air handling units patient occupied units.

The local fire department does not respond to DSH-Metropolitan alarm activations. Hospital police officers are the first responders in the event of fire alarm activation, if the fire alarm is determined to be creditable, the local fire department is contacted. Currently, during an active fire alarm, the entire building must exit because fire alarms do not specify location of fire. With the proposed system, it will be possible to exit into adjoining fire smoke compartments. This allows the hospital flexibility in evacuating patients from the building which is useful from an operational treatment and security perspective.

2. FIRE ALARM SYSTEM UPGRADE – PATTON STATE HOSPITAL

The Administration requests \$6,140,000 General Fund to remove and replace deficient fire alarm control panels and associated components in four patient occupied buildings at Patton State Hospital which have reached the end of their usable life and are no longer serviceable.

Background. The fire alarm systems in the four secured patient housing buildings and treatment areas are severely compromised and not in compliance with regulatory requirements and customary industry standards.

This project will enable Patton to bring the existing fire alarm systems into compliance with regulatory requirements. The existing fire alarm systems are a safety hazard. The four buildings included in this project house the majority of the hospital's patients. These buildings also contain kitchens, dining rooms, medical and dental clinics, therapeutic areas, offices, and nursing stations for staff.

3. COURTYARD GATES AND SECURITY FENCING – NAPA STATE HOSPITAL

The Administration requests a reversion of \$2,029,000 in existing General Fund for the construction phase and a new appropriation of \$3,875,000 for a net impact of \$1,846,000 General Fund for working drawings and construction (based on bidding in August 2016) to improve security in the courtyards at the patient housing buildings which include replacement of gates and fabricating and installing extensions to raise the height of security fencing.

Background. The project consists of the design, fabrication and installation of extensions to raise the height of the 44 existing courtyard security fences and selective demolition and replacement of existing courtyard gates at DSH-N patient housing buildings. The purpose of this project is to eliminate existing security vulnerabilities in the courtyard fencing and gates that have allowed forensic and civilly-committed patients to climb over the fence and escape from their home unit courtyards.

4. NEW ACTIVITY YARD – COALINGA STATE HOSPITAL

The Administration requests \$5,738,000 General Fund to design and construct a secure treatment courtyard at Coalinga State Hospital (CSH).

Background. As presently configured, the current main courtyard is far too small for its intended usage, with a practical-use capacity of approximately 60 patients. With a current census of approximately 1,150 patients, the current main courtyard cannot serve as an evacuation point in the event of a fire. This creates a significant concern since the patients of CSH are entirely forensic and must be able to be evacuated to a secured location at least 50 feet away from the facility.

Additionally, the main courtyard and the smaller courtyards attached to the residential units are proving inadequate for exercise and treatment purposes. Because use of each residential courtyard requires staff to monitor patient usage, utilizing them is staff intensive and difficult for the hospital. Additionally, the current courtyards are too small for aerobic activities. With diabetes and chronic excess weight problems for patients, the need for exercise opportunities and programs are critical to maintain physical and psychological health.

5. CONSOLIDATION OF POLICE OPERATIONS – METROPOLITAN STATE HOSPITAL

DSH requests \$1,327,000 General Fund to construct a new building to consolidate the DSH-Metropolitan Department of Police Services, Office of Special Investigation, and the Emergency Dispatch Center.

Background. The three affected offices are located in buildings that have significant health and safety issues. These issues include asbestos in floor tiles and a seismic risk assessment of Level V, which means it is unacceptable for hospitals and essential facilities. Additionally, the configuration of these existing buildings were not originally designed as police facilities, which impacts quality, efficiency, and security of police operations.

DSH buildings housing the aforementioned police functions must qualify as essential services buildings. As the buildings currently housing the police operations functions do not qualify as essential services buildings, the hospital must relocate these operations to buildings that meet regulatory requirements so that the hospital can ensure responsiveness after a disaster.

6. ENHANCED TREATMENT UNITS REAPPROPRIATION – STATEWIDE

DSH requests a reappropriation of \$11,467,000 General Fund to renovate the existing state hospitals at Atascadero and Patton to provide enhanced treatment units (ETU). DSH-Atascadero will have 39 rooms and DSH-Patton will have 10 rooms for a total of 49 ETU rooms.

Background. DSH is proposing, in accordance with AB 1340 (Achadjian), Chapter 718, Statutes of 2014, to construct enhanced treatment units that will provide a more secure environment for patients that become psychiatrically unstable, resulting in highly aggressive and dangerous behaviors. Patients in this state of psychiatric crisis require individualized and intensive treatment of their underlying mental illness, while reducing highly volatile and violent behavior. The proposed ETUs are intended to create secure locations within the existing hospitals to provide a safe treatment environment for both staff and patients. Patients will be housed individually and provided with the heightened level of structure necessary to allow progress in their respective treatment.

During the preliminary plans phase, it was necessary to modify the design in order to meet clinical treatment requirements. The scope includes the conversion of existing patient dorm rooms to individual rooms, individual and group treatment space, the installation of lockable doors, toilets and sinks in patient rooms, and the conversion of existing day/dining rooms into laundry day/dining rooms and other related program space.

Due to this modified design and subsequent scope change, the completion of preliminary plans was delayed and resulted in modifications to the construction estimates. Preliminary plans were approved on December 15, 2016; the project has recently begun the working drawings phase. The result of this delay is that construction is not expected to be started until after June 30, 2017, necessitating the re-appropriation for construction funds.

Legislative Analyst’s Office (LAO). The LAO did not raise any concerns related to these capital outlay proposals.

Staff Recommendation. Approve as budgeted.

Issue 2: Napa State Hospital Earthquake Repairs

Governor's Budget. DSH requests a \$6.2 million General Fund loan that would be repaid with federal reimbursements as phases of the project are constructed. Accordingly, the Governor's budget also includes \$6.2 million in federal reimbursement authority. The Administration anticipates this funding will be sufficient to complete the first two phases of the project.

Background. DSH-Napa suffered damage as part of the 2014 South Napa Earthquake. After the earthquake, DSH requested federal funding to make repairs to buildings damaged in the earthquake. In 2015, DSH secured a grant from the Federal Emergency Management Agency (FEMA) to cover up to 75 percent of project costs once portions of the project are completed. In adopting the 2015-16 Budget Act, the Legislature approved one-time funding of \$5.7 million from the General Fund to cover the state's 25 percent share of the estimated \$22.9 million project, as well as \$17.2 million in reimbursement authority to allow the department to use the federal funding it expects to receive for the project. After DSH submitted a description of the project to the federal government in 2015, FEMA decided that the project could not be approved without more detailed drawings and specifications on how project repairs of historical buildings would be completed. In order to complete this additional design work, DSH spent \$1 million of the \$5.7 million provided in 2015-16, with the remaining \$4.7 million going unspent in 2015-16. This design work is scheduled to be completed by July 2017.

DSH has divided the project into three phases. The first phase will repair three buildings identified as historically significant. The department estimates the cost of the first phase will be \$6 million and be completed by July 2019. The second phase of the project will be to repair 21 buildings located outside the secure treatment area (STA), which is the area where patients accused of crimes are housed. The department estimates the cost of the second phase will be \$2.3 million and also be completed by July 2019. The third phase of the project will be to repair 15 buildings located within the STA. At this time, the department has not provided the cost estimate or project schedule for the third phase.

Legislative Analyst's Office (LAO)

Necessary Information About Third Phase of Project Not Included. While DSH provides cost estimates and project schedules for the first two phases of the project, this same information has not been submitted for the third phase of the project. It is important for the Legislature to know how much the entire project is expected to cost and when it is scheduled to be completed before allocating funds for the construction of the first two phases.

Assumes Funding Provided in 2015-16 Remains Available for Project. As previously indicated, the Legislature appropriated \$5.7 million on a one-time basis for the DSH-Napa project. However, the Governor's budget assumes that \$2.1 million from this one-time appropriation remains available to fund the state's share of the cost for the first two phases of the project. Based on the LAO's conversations with the Administration, it appears that when the 2015-16 budget was adopted, DOF erroneously entered the funding as an ongoing appropriation in its fiscal data system.

Withhold Action Until New Funding Plan and Complete Cost Estimates and Project Schedule Are Available. Given that DSH has not submitted complete information on the third phase of the project, the LAO recommends that the Legislature withhold action until the department submits a complete cost estimate and project schedule for all three phases of the project.

Direct DOF to Report How It Plans to Fix Error. The LAO also recommend that the Legislature direct DOF to report at spring budget hearings on how it plans to correct the error that it acknowledges was made in reflecting the \$5.7 million that was appropriated in 2015-16 as an ongoing adjustment to DSH's base budget (rather than as a one-time appropriation as approved by the Legislature).

Staff Recommendation. Approve the General Fund loan and the increased federal funding authority necessary to repay the loan.

0250 JUDICIAL BRANCH**Issue 3: Capital Outlay Spring Finance Letter**

Spring Finance Letter. The Administration has submitted a spring finance letter requesting the following capital outlay augmentations for the Judicial Branch:

1. NEW EAST COUNTY HALL OF JUSTICE DATA CENTER – ALAMEDA COUNTY

The Administration requests an appropriation of \$1,576,000 from the Immediate and Critical Needs Account (ICNA, Fund 3138) for the preliminary plans (\$1,000), working drawings (\$52,000) and construction (\$1,523,000) phases of the Alameda County - New East County Hall of Justice Courthouse Data Center.

Background. This project was initiated in fiscal year 2014-15 with an acquisition appropriation that allowed the court to enter into a project delivery agreement with Alameda County, who is constructing the courthouse. The courthouse is almost complete, with an anticipated move-in date of June 2017. The agreement did not include construction of the data center. However, the county has agreed to transfer existing courthouse construction funds to the Judicial Council to pay for the data center project. The data center is necessary to operate information technology portions of the new courthouse.

In addition, the court currently pays \$540,000 per year to lease data center space from an outside party. Therefore, the completion of the data center will significantly offset court costs in the long run. The new courthouse, located in Dublin, is approximately 147,000 square feet and will provide 13 criminal courtrooms. The new five-story facility replaces the six-courtroom Gale-Schenone Hall of Justice and the seven-courtroom Allen E. Broussard Courthouse.

2. NEW YREKA COURTHOUSE – SISKIYOU COUNTY

The Administration requests an appropriation of \$664,000 from the Immediate and Critical Needs Account (Fund 3138) to fund the demolition of the existing structures on the acquired site for the new Siskiyou—New Yreka Courthouse.

Background. The new court house will be a five-courtroom, approximately 68,000 building gross square feet courthouse in the city of Yreka. The requested pre-construction demolition cost will be deducted from the total construction phase estimate. When fully constructed, this project will relieve the current space shortfall, increase security, and replace inadequate and obsolete buildings in Siskiyou County. The total project cost is estimated at \$66 million.

Staff Comment. Similar to the action taken by the subcommittee on March 10th related to funding for the San Mateo courthouse, the subcommittee may wish to adopt trailer bill language that requires the Judicial Council and the Siskiyou County Sheriff to certify prior to proceeding with the construction of the new courthouse that the new courthouse will not increase trial court security costs.

Legislative Analyst's Office (LAO). The LAO has not raised any concerns related to this Spring Finance Letter.

Staff Recommendation. Approve funding for both projects and adopt placeholder trailer bill language requiring the Judicial Council and the Siskiyou County Sheriff to certify, prior to proceeding with the construction, that the new courthouse design will not increase court security costs.

Issue 3: Information Technology Spring Finance Letter

Spring Finance Letter. The Administration has submitted a spring finance letter requesting the following information technology augmentations for the Judicial Branch:

1. STATEWIDE ELECTRONIC FILING IMPLEMENTATION

The Judicial Council requests a General Fund loan of \$671,000 in 2017-18, and \$491,000 in 2018-19, to the Trial Court Trust Fund to support three positions to develop and maintain a standards-based statewide e-filing environment that will promote, enable, and assist full court participation in e-filing. The loan will be repaid no later than June 30, 2021.

The positions requested in this proposal would support the following key areas:

1. Integration with an identity and access management system.
2. Integration with the preferred financial gateway where the Judicial Council has secured favorable rates.
3. Establishment and initial operations of standards management, certification, and support services for statewide e-filing managers and e-filing service providers.
4. Support for superior court e-filing implementations leveraging the established e-filing environment.

This proposal also includes provisional language to specify that funding is to be used for the Statewide Electronic Filing Program. According to Judicial Council, upon implementation of a statewide e-filing solution, courts and court users will experience lower/more transparent e-filing costs and streamlined e-filing services. The Judicial Council positions will promote, enable, and assist full court participation in e-filing.

2. DOCUMENT MANAGEMENT SYSTEM FOR THE APPELLATE COURTS

The Judicial Council requests an augmentation of \$5.3 million Appellate Court Trust Fund (\$1.4 million in 2017- 18, \$873,000 in 2018-19, \$973,000 in 2019-20 and 2020-21, \$833,000 in 2021-22, and \$240,000 in 2022-23 and ongoing) for the purchase, deployment, and ongoing maintenance of a document management system (DMS) for the appellate courts.

By transitioning to a DMS, appellate courts will capture, manage, store, share, and preserve essential case documents and administrative records.

The Judicial Council argues that electronic filing can provide cost savings and efficiencies for the courts by providing:

- Speedier processes by eliminating the time required for mailing or personal delivery of pleadings and other documents.
- Greater efficiency from the instantaneous, simultaneous access to filed court documents for participants in the case, for judges and court staff, and members of the public (to publicly available court documents) from any internet capable location.
- Fewer delays caused by lost or misplaced paper documents and files.
- Fewer personnel involved in receiving, processing, filing, and storage of paper files.

- Reduction or elimination of costs for archival record storage.

Legislative Analyst's Office (LAO) Comments on Appellate Court Document Management System (DMS) Request. The LAO is concerned that the judicial branch has not yet finalized a deployment plan for implementing the DMS across the Supreme Court and Courts of Appeal. This is problematic because deployment choices could impact the total amount of funding needed for the project as well as the specific amount of funding needed in each fiscal year. For example, deployment could be compressed into a shorter timeframe requiring more funding in the near term and less funding in future years.

The LAO recommends the Legislature withhold action on this proposal until after it receives a finalized deployment plan and cost estimate from the judicial branch. Having a final cost estimate allows the Legislature to more accurately assess the merits of this proposal. The judicial branch currently estimates that the deployment plan will be finalized in May.

Staff Recommendation. Approve the Spring Finance Letter funding request.

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 11, 2017
9:30 a.m. or upon adjournment of Session
State Capitol - Room 113

OUTCOMES

Consultant: Julie Salley-Gray

<u>Item</u>	<u>Department</u>
0250 Item 1	Judicial Branch Funding Increase for Appellate Projects

Committee Action: Approve as budgeted

Vote: 2 – 0, Anderson absent

Item 2	Sustain Justice Case Management System
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Committee Action: Approve as budgeted

Vote: 2 – 0, Anderson absent

5225 Item 3	Department Of Corrections and Rehabilitation Warden Recruitment and Retention Proposal
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Committee Action: Reduce the proposed funding by \$5 million and limit the salary increases to the captain through warden ranks in the prisons (excluding headquarters staff). It is the intent of the Legislature that this funding will be used to improve the retention of captains, associate wardens, deputy wardens, and wardens. CDCR will be required to report during budget hearings each year on the impact of the funding increase on retention of staff in these classifications.

Vote: 2 – 0, Anderson absent

5225	Prison Industry Authority
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Item 4 Prison Industry Authority's Self-Supporting Requirement

Committee Action: Approve the proposed language as draft, placeholder language.

Vote: 2 – 0, Anderson absent

4440 **Department of State Hospitals**
Item 5 State Hospital Financial Activity Report

Committee Action: Reject the removal of the provisional language and direct the LAO and Department of Finance to update the language to include the information recommended by the LAO.

Vote: 2 – 0, Anderson absent

Item 6 Enhanced Treatment Unit Program Staffing

Committee Action: Approve as budgeted

Vote: 2 – 0, Anderson absent

Item 7 Conditional Release Program

Committee Action: Approve the proposed budget on a one-time basis. In addition, adopt the LAO's recommendation requiring DSH to submit and updated report on January 1, 2018, with the expectation that the county mental health departments and private contractors seek Medical reimbursement for all reimbursable medical and mental health treatment by July 1, 2018, absent clear direction from the federal government that the medical and mental health costs for CONREP patients are not eligible.

Vote: 2 – 0, Anderson absent

4440 **Department of State Hospitals**
Issue 1 Capital Outlay Proposals

Committee Action: Approve as proposed, along with the May Revision proposal. In addition, the Administration is directed to provide the Legislature with a master plan for capital outlay projects at the state hospitals.

Vote: 2 – 0, Anderson absent

Issue 2 Napa State Hospital Earthquake Repairs – Held open pending a May Revise Update

0250 **Judicial Branch**
Issue 3 Capital Outlay Spring Finance Letter

Committee Action: Approve funding for both projects and adopt placeholder trailer bill language requiring the Judicial Council and the Siskiyou County Sheriff to certify, prior to proceeding with the construction, that the new courthouse design will not increase court security costs.

Vote: 2 – 0, Anderson absent

Issue 4 Information Technology Spring Finance Letter

Committee Action: Approve the Spring Finance Letter funding request. In addition, adopt draft, placeholder language requiring that all systems meet federal and state disability standards.

Vote: 2 – 0, Anderson absent

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Tuesday, May 16, 2017
9:30 a.m. or upon call of chair
State Capitol - Room 113

Consultant: Julie Salley-Gray

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PROPOSED FOR VOTE ONLY**Various Departments**

1. **State Penalty Fund (SPF) Proposal.** The Governor proposes to eliminate the statutory formulas dictating how SPF revenues are distributed and, instead, appropriate revenues directly to certain programs based on his priorities. Under the plan, some programs would no longer receive SPF support entirely, while others would be reduced.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's March 23rd hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Approve the Governor's proposal to eliminate the statutory formulas and reject the Governor's spending plan. Instead, allocate the SPF funding as follows:

Program/Fund	2017-18 SPF Funding
Fish & Game Preservation Fund	100
Peace Officer Standards and Training Program	46,496
Standards and Training for Corrections Program	10,000
Traumatic Brain Injury Program	600
Driver Training Program	1,038
Victim/ Witness Assistance Programs	12,053
California Witness Relocation and Protection Program	3,277
Restitution Fund	9,082
Internet Crimes Against Children Task Forces	-
California Gang Reduction, Intervention, and Prevention Program	7,500
Local Public Prosecutors and Public Defenders Training Program*	450
Motorcyclist Safety Program	-
Total	90,596

* Funding restored for training for local public defenders.

In addition provisional language shall be included in the budget that does the following:

- Los Angeles County shall receive \$750,000 of the funding as a set-aside.
- Cities applying for California Gang Reduction, Intervention and Prevention (CalGRIP) Program funds are required to provide clearly defined, measurable objectives for their grant proposals. Grant recipients are also required to provide the BSCC with quantifiable measures of progress in meeting those objectives.
- The Board of State and Community Corrections (BSCC) is required report to the Legislature once per funding cycle on the overall effectiveness of CalGRIP.

- BSCC is required to prioritize proposals from cities that are disproportionately and persistently affected by violence. In addition, BSCC is required to prioritize proposals that would direct resources to programs that have been shown to be the most effective at reducing violence.
- The minimum threshold of funds grantees are required to distribute to community-based organizations is increased to 50 percent, and eligibility for primary applications is extended to community-based organizations.

Finally, CalGRIP's name shall be amended to the California Violence Reduction, Intervention & Prevention (CalVRIP) Grant Program, in order to more correctly reflect modern, evidence-based approaches to achieving reductions in crime and violence.

Board of State and Community Corrections (BSCC)

2. **Jail Visitation Requirements.** As discussed during the February 21st joint hearing, in recent years it has come to the state's attention that some county jails are no longer providing in-person visitation. Instead they are allowing only visitation via video. In addition, despite significant concern from the Legislature, BSCC has recently developed regulations that grandfather in a large number of counties who have expressed an interest in only providing video visitation. According to the last information from the BSCC, over 20 counties have either already stopped providing in-person visitation or plan on stopping in-person visitation. Of those jails, eight do not appear to have the physical space to accommodate in-person visits.

Previous Subcommittee Hearing: This item was discussed during a joint hearing between the Senate Public Safety Committee, and both the Senate and Assembly public safety budget subcommittees on February 21, 2017. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Adopt placeholder trailer bill language that does the following:

- Requires that a county providing video visitation, also provide in-person visitation.
- Temporarily exempts the following eight county jails from providing in-person visitation once BSCC has inspected the jail and certified that it does not have space for in-person visitation:
 - Kings County Jail Facility
 - Kings County Branch Jail
 - Madera County Adult Correctional Facility
 - San Bernardino High Desert Detention Center
 - San Mateo Maple Street Correctional Facility
 - Solano County -- Stanton Correctional Facility
 - Tulare South County Detention Facility
 - Imperial Oren R. Foy Medical Security Facility
- Requires all other county jail facilities to provide in-person visitation, if they are providing video visitation.

- Requires the eight exempt county facilities to provide for in-person visitation within five years of passage of the 2017 budget. In addition, those counties will receive priority for any jail construction funding that is relinquished to the BSCC in order to retrofit the existing jails to provide for in-person visitation. Any additional construction funding provided by the state can only be used for in-person visitation space.
 - Temporarily suspends all construction (with the exception of counties that have broken ground on new facilities) pending certification from the BSCC that the new facilities, funded with the assistance of the state, will have appropriate space for in-person visitation.
 - Prohibits counties from charging for video visitation, whether the visitor is in the facility or conducting visitation from a remote location.
3. **BSCC Review Functions.** During the subcommittee's May 4th hearing related to the construction of county jail facilities, the subcommittee expressed concern related to the lack of mechanism that allows the Legislature or the Governor to request that BSCC investigate or audit specific areas of concern related to county jails and juvenile detention facilities. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Adopt the following as draft, placeholder trailer bill language:

When requested by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, the Board of Corrections shall review policies, practices, and procedures of local detention facilities. The Board of Corrections shall report its findings to the requesting entity.

4. **Post Release Community Supervision.** The May Revision includes \$15.4 million General Fund for post-release community supervision (PRCS) as a result of an increase in the number of offenders eligible due to Proposition 57 and various court-ordered measures. This is an increase of \$4.4 million General Fund over the amount estimated in the Governor's January budget.

Staff Recommendation: Approve as proposed.

Judicial Branch

5. **State Controller's Office Audit Language.** The May Revision requests provisional language that specifies that \$540,000 in Item 0250-101-0932 is available for the audit work that is being conducted by the State Controller's Office. The language puts a cap on the amount of resources provided to the SCO.

Staff Recommendation: Approve as proposed.

6. **Technical Adjustment.** The May Revision requests a decrease of \$2.1 million General Fund to reflect updated health benefit and retirement rate changes for trial court employees.

Staff Recommendation: Approve as proposed.

7. **San Diego County Courthouse Trailer Bill Language.** The May Revision requests the adoption of trailer bill language that transfers the title of the old San Diego courthouse and adjacent old

county jail to San Diego County from the state. In exchange, the county will release the state from the obligation to demolish and remove those buildings.

Staff Recommendation: Approve the language as draft, placeholder trailer bill language.

Department of State Hospitals (DSH)

8. **Admission, Evaluation and Stabilization (AES) Center.** The May Revision proposes a decrease of \$3.6 million General Fund for the AES Center due to a six-month delay in implementation. The remaining General Fund amount requested is \$5.9 million.

January Budget Proposal. The Governor's budget proposes to establish an AES Center, which would be located in the Kern County Jail. Specifically, the budget proposes a \$10.5 million General Fund augmentation and two positions for DSH to activate 60 beds in the Kern County Jail in Bakersfield to provide restoration services for Incompetent to Stand Trial (IST) patients.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's March 16th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Approve as proposed.

9. **Jail-Based Competency Treatment (JBCT) Program.** The May Revision proposes increased funding of \$3.1 million General Fund to add 24 additional JBCT program beds. In addition, the May Revision requests \$1.7 million General Fund in 2017-18 and \$2.5 million General Fund ongoing to support increased costs related to the existing JBCT programs.

January Budget Proposal. Due to the delayed activation of JBCT programs in San Diego and Sonoma counties, the budget includes a General Fund savings of \$948,000 in 2016-17 and \$159,000 in 2017-18.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's March 16th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Approve as proposed.

10. **Enhanced Treatment Program (ETP) Staffing Adjustment.** The May Revision requests an increase of \$122,000 General Fund due to increased costs associated with the activation of their ETP units. The request includes funding for a patients-rights advocate at each location to provide advocacy services to patients during the ETP referral process.

Staff Recommendation: Approve as proposed.

11. **Conditional Release Program: Sexually Violent Predator Caseload.** The May Revision requests a reduction of \$2.5 million General Fund for the conditional release program due to a decrease in the sexually violent predator caseload.

Staff Recommendation: Update the subcommittee's previous action to include the May Revision funding adjustment.

12. **Transfer of Sexually Violent Predator Screening.** The May Revision requests the transfer of \$483,000 and 2.5 positions from DSH to CDCR to reflect the transfer to the SVP screening services from one department to the other. DSH currently performs the SVP clinical screenings for CDCR, under this proposal, those screenings will now be done by CDCR.

Staff Recommendation: Approve as proposed.

13. **Napa State Hospital Earthquake Repairs.** The May Revision requests an increase of \$654,000 to the original General Fund loan amount. In addition, it increases the federal reimbursement amount by the same amount and updates the amount in the provisional language.

January Budget Proposal. The Administration requested a \$6.2 million General Fund loan that would be repaid with federal reimbursements as phases of the project are constructed. Accordingly, the Governor's budget also includes \$6.2 million in federal reimbursement authority. The Administration anticipates this funding will be sufficient to complete the first two phases of the project.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's May 11th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Approve as proposed.

Commission on Peace Officer Standards and Training (POST)

14. **Spring Finance Letter: Funding Adjustment and Provisional Language.** The Administration submitted a spring finance letter requesting a realignment of \$4 million State Penalty Fund beginning 2017-18 from training contracts to local agency reimbursements. In addition, the letter requests the restoration of provisional language related to "Tools of Tolerance" training conducted by the Simon Wiesenthal Center-Museum of Tolerance.

Staff Recommendation: Approve as proposed.

ITEMS TO BE HEARD**4440 DEPARTMENT OF STATE HOSPITALS (DSH)****Issue 1: Metropolitan State Hospital Movement of Patients**

May Revise Proposal. The May Revision requests \$7.9 million General Fund and 22 positions in 2017-18, and \$12.4 million General Fund and 35.5 positions in 2018-19, to support the transfer of 150 Lanterman-Petris-Short (LPS) patients at Metropolitan State Hospital. The patients will be moved to another building to allow additional incompetent to stand trial (IST) waitlist commitments to be placed in secured treatment beds beginning in 2018-19.

Background. DSH continues to experience significant waiting lists for their IST treatment beds. Among the various efforts being implemented to increase the number of beds and reduce the waiting list is a capital outlay project at Metropolitan State Hospital. The 2016 budget provided \$31,182,000 in capital outlay funding for this project is to increase the secured bed capacity at Metropolitan State Hospital. The 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 current May Revision proposal moves the current LPS patients in those buildings to alternative buildings on the hospital grounds so that construction can proceed.

Justification. According to DSH, because of the differences between the building lay outs, such as number of units and number of beds, the additional nursing staff are needed to comply with unit staffing requirements. The additional ancillary staff are also needed to maintain licensing standards and for the overall operations of the 100s building. Because the 100s building cannot accommodate all LPS patients, there will be LPS patients remaining on several units in CTW, thus the need for additional staff to operate two separate patient buildings on two separate parts of the hospital's campus.

Staff Recommendation. Approve as proposed.

Issue 2: Metropolitan State Hospital Central Utility Plant

Metropolitan State Hospital. The May Revision includes provisional language to enable DSH to request funding necessary to continue to contract for heating and cooling through the existing central utility plant for the Metropolitan State Hospital.

Background. For many years, DSH has contracted with Wheelabrator Norwalk Energy Corporation to provide steam and chilled water to DSH-Metropolitan from a central utilities plant located at the facility that is owned and operated by the corporation. However, the contract is set to expire in February 2018. In November 2016, the Department of General Services informed the department that it cannot extend the existing contract, but has to go through a competitive bid process or purchase the facility and operate it with DSH staff. According to the department, if no action is taken by February 2018, the plant could cease operating, which could threaten the licensure of DSH-Metropolitan. In response, the Administration is proposing provisional language giving it the authority to spend any amount necessary to continue to operate the central utilities plant.

Legislative Analyst's Office (LAO). While it is critical to maintain access to the utilities provided by the plant, we recommend rejecting the proposed provisional language as it significantly undermines legislative control. At budget hearings, the Administration should discuss possible alternatives—both short-term and long-term. In addition, the LAO will be researching alternatives available to address the ongoing need for the plant and will advise you of them in the near future.

Staff Recommendation. Approve the proposed language.

0820 DEPARTMENT OF JUSTICE**Issue 3: Legal Resources for Federal Actions**

May Revise Proposal. The May Revision requests \$6.5 million and 31 positions for two years to address new legal workload related to various actions taken at the federal level that impact public safety, healthcare, the environment, consumer affairs, and other constitutional issues.

Background. The Department of Justice (DOJ) notes that beginning on January 20, 2017, the current president and his administration have issued a number of executive orders that effectively challenge the dual sovereignty of our federal system and presented a significant impact to a vast area of public policy. Due to those actions, the Attorney General and the department have expended over 13,000 hours of legal time on federal administration matters between January 20, 2017 and May 8, 2017. They note that this workload equates to approximately 19 attorneys and \$6.5 million in unfunded work.

Staff Comments

Immigration Detention. As discussed during the subcommittee's May 4th hearing, one impact of the federal administration's new policies has been an increase in the detention of people originally from other countries who do not have current legal immigration status. Many of those people are detained in county jails and private detention facilities within California. Currently, the state does not have a mechanism for overseeing the detention of immigrants within the state and ensuring that they are provided with proper care or that their rights are being protected. A single state agency should be established that is responsible for oversight over the treatment of people who are detained in facilities in the state on behalf of the federal government because they do not have the proper documentation to remain in the United States.

Secure Choice. The Secure Choice Pension is intended to provide retirement security for workers in the private sector through access to a defined benefit pension. Once Secure Choice is fully operational in 2019, private employers will be required to either provide their employees with retirement benefits through a retirement plan or provide their employees with voluntary access to Secure Choice. Given that the state's Secure Choice pension program could be affected by potential actions at the federal level, this directive would give the DOJ the ability to appropriately respond.

Staff Recommendation. Augment the May Revision request by \$1 million in on-going General Fund and adopt placeholder trailer bill to require DOJ to monitor the treatment of immigrants being detained in California. The department shall audit each facility annually and report to the Legislature and Governor its findings.

In addition, adopt placeholder trailer bill requiring that for potential litigation involving California's Secure Choice, the Attorney General's Office shall contract with attorneys that possess a comprehensive knowledge of the Employee Retirement Income Security Act of 1974 (ERISA) and have extensive experience litigating ERISA claims in the federal trial and appellate courts.

Finally, adopt the following as draft, placeholder trailer bill language:

A city, county, city and county, or a local law enforcement agency shall not enter into, or renew, or modify a contract with the federal government to expand the number of contract beds being utilized detain immigrants in civil immigration proceedings.

Issue 4: DNA Identification Fund

May Revise Proposal. In order to address significant DNA Identification Fund revenue decline and provide funding stability to the Bureau of Forensic Services' (BFS) statewide operations, the May Revision requests a reallocation \$15 million in existing General Fund spending authority from DOJ's Division of Legal Services (\$5 million) and the Division of California Justice Information Services (\$10 million) to the Division of Law Enforcement.

In addition, the May Revision requests an augmentation of \$5 million in False Claims Act Fund in the Division of Legal Services in order to maintain ongoing federal grant match commitments, and an augmentation of \$10 million in Fingerprint Fees Account funding in the Division of California Justice Information Services to maintain existing background check program activities.

Current Fund Condition. The DNA Identification Fund, which primarily supports the Department of Justice (DOJ) Bureau of Forensic Services, has been structurally imbalanced since 2010-11 and would likely be facing insolvency in the current year absent planned expenditure reductions. In 2015-16, DOJ spent \$70 million from the fund to support forensic activities. The 2016 budget anticipated similar levels of expenditures. However, the Administration currently estimates that the fund will only be able to support \$62 million in expenditures in 2016-17. The 2017 budget estimates a further decline to \$59 million in 2017-18. This will require DOJ to immediately absorb at least \$11 million in reductions in the current and budget year. Such a significant reduction will likely impact DOJ's ability to process evidence in a timely manner, potentially resulting in significant backlogs.

Staff Recommendation. Approve as proposed.

0250 JUDICIAL BRANCH**Issue 5: Transition to FI\$Cal**

May Revise Proposal. The May Revision requests an augmentation of \$5.3 million General Fund (\$2 million in 2017-18, \$1.8 million in 2018-19, and \$1.5 million in 2019-20 and ongoing) and six positions to support the transition from the Judicial Council's current financial system to the FI\$Cal system.

Background. The Judicial Council currently uses the Oracle Financial System (Oracle) to perform accounting, budgeting, and procurement functions. There are substantial software and hardware upgrades necessary to add new functional models to the current Oracle System.

Staff Recommendation. Approve as proposed.

Issue 6: Sacramento County Courthouse

May Revise Proposal. The May Revision requests the reappropriation of \$16 million from the Immediate and Critical Needs Account for the working drawings phase of the new Sacramento County courthouse. This project will provide a new 53-courtroom courthouse. The estimated total cost for the construction of the new courthouse is approximately \$450 million.

Legislative Analyst's Office (LAO). There are a couple issues the Legislature may want to consider with respect to the Administration's proposal to reappropriate \$16 million from the Immediate and Critical Needs Account (ICNA) for the working drawings phase for the new Sacramento courthouse. Funding was initially provided from ICNA for the preliminary plans and working drawing phases as part of the 2014-15 Budget Act. Given the continued lack of ICNA funding to support this project's construction phase and the fact that working drawings generally only have a limited shelf-life, the Legislature could consider reverting these funds to ICNA. This funding could then be used to address other trial court needs that are a higher legislative priority.

The LAO notes that not reappropriating the funding for working drawings would be consistent with Judicial Council's approach on other ICNA projects. As part of the 2016-17 Budget Act, the Legislature directed the judicial branch to submit a plan to address the long-term insolvency of ICNA within existing resources. This direction has resulted in Judicial Council deciding to allow projects to only complete the phase they are currently in. The Sacramento courthouse is currently in the process of completing the preliminary plans phase.

Staff Comment. In previous actions, the subcommittee has taken the position of requiring that prior to the expenditure of any trial court construction funding, the Judicial Council and the county sheriff certify that the design for the new courthouse will not increase the county's overall trial court security costs. The subcommittee has applied this trailer bill language to both the Siskiyou County courthouse project and the Santa Clara County courthouse funding reappropriation.

Staff Recommendation. If the subcommittee acts to approve the May Revision request, trailer bill language should be included for the new Sacramento courthouse that requires that prior to the expenditure of any construction funding, the Judicial Council and the Sacramento County sheriff will certify that the design will not increase overall trial court security costs.

9285 & 9286 LOCAL ASSISTANCE – TRIAL COURT SECURITY**Issue 7: Trial Court Security Funding**

Governor’s Budget. The Governor’s budget proposes to provide a \$7 million General Fund increase to offset the trial court security costs for those courts completing construction of new courthouses after October 9, 2011. In addition, the budget includes \$280,000 in 2017-18, and \$560,000 ongoing General Fund to offset the security costs related to the transfer of four judgeships between counties.

2011 Realignment of Trial Court Security. As part of the 2011-12 budget plan, the Legislature enacted a major shift, or “realignment,” of state criminal justice, mental health, and social services program responsibilities and revenues to local government. This realignment shifted responsibility for funding most trial court security costs (provided by county sheriffs) from the state General Fund to counties. Specifically, the state shifted \$496 million in tax revenues to counties to finance these new responsibilities. State law also requires that any revenue from the growth in these tax revenues is to be distributed annually to counties based on percentages specified in statute. Due to this additional revenue, the amount of funding provided to counties to support trial court security has grown since 2011-12 and is expected to reach nearly \$558 million in 2017-18, an increase of \$61 million (or 12 percent). This additional revenue is distributed among counties based on percentages specified in statute.

Additional General Fund Recently Appropriated for Greater Levels of Trial Court Security. The California Constitution requires that the state bear responsibility for any costs related to legislation, regulations, executive orders, or administrative directors that increase the overall costs borne by a local agency for realigned programs or service levels mandated by the 2011 realignment. As part of the annual budget act, the state provided \$1 million in additional General Fund support in 2014-15, \$2 million in 2015-16, and \$7 million in 2016-17, above the tax revenue provided through the 2011 realignment, to provide counties with funding to address increased trial court security costs. Eligibility for these funds was limited to counties experiencing increased trial court security costs resulting from the construction of new courthouses occupied after October 9, 2011, (around the time of implementation of the 2011 realignment). Counties are required to apply to the Department of Finance (DOF) for these funds and only receive funding after meeting certain conditions—including that the county prove that a greater level of service is now required from the county sheriff than was provided at the time of realignment. Of the additional funds provided, DOF allocated \$713,000 in 2014-15, \$1.9 million in 2015-16, and currently estimates the allocation of about \$2.7 million to qualifying counties in 2016-17. The Governor’s budget proposes continuing to provide \$7 million in General Fund to augment trial court security funding.

County Sheriffs’ Role in the Trial Court Design Process. According to the Judicial Council, the local county sheriffs have significant input in the Judicial Council’s capital projects. The sheriffs’ staff are included in all space programming meetings for the screening and holding areas. They are included in pre-design activities and throughout the design development and schematic design process where they work with architects on the layout of each room of their space. Finally the sheriff is including throughout the working drawings phase and the actual construction phase. Therefore, county sheriffs appear to have some control over how the courthouse design will affect their ability to provide security within their existing county resources.

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 in 2016 demonstrated that those concerns were well founded.

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.

As it relates to this year's request for additional security funding related to the judgeships, the LAO found that the Administration has not shown that additional trial court security funding resources are needed. Accordingly, they recommend that the Legislature reject the Governor's proposal for a \$280,000 General Fund augmentation for increased trial court security costs.

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 both the \$7 million and \$280,000 in General Fund proposed to augment the \$557.6 million in realignment revenue provided in 2017-18 for trial court security.

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)**Issue 8: Population Adjustments**

May Revise Proposal. The May Revision requests the following population adjustments based upon updated caseload projections and additional alternative custody program placements:

- **Adult Population Adjustment** – The population adjustment includes a net decrease of \$21.3 million and 8.8 positions, which is comprised of a \$21,293,000 General Fund decrease and a \$67,000 Inmate Welfare Fund decrease.

The May Revision reflects an estimated average adult daily population of 127,693 in fiscal year 2017-18. This is 466 fewer than projected in the Governor’s budget. The projected adult parolee average daily population is 47,274 in 2017-18. This is an increase of 2,513 from the Governor’s budget projection.

- **Juvenile Population Adjustment** – The May Revision includes a decrease of \$813,000 General Fund in 2016-17, and \$3.3 million General Fund in budget year, for costs related to a smaller than anticipated juvenile ward population. Specifically, the May Revision projects the average daily population of juveniles are 683 in the current year, and 736 in the budget year. This is a decrease of 22 and 43 ward, respectively, as compared to the January estimates.

Staff Comment. The subcommittee discussed the Governor’s January population projections during its March 9th hearing. In addition, the subcommittee had an in-depth discussion of CDCR’s juvenile justice programs, alternative custody and housing programs during its April 20th hearing. Agendas and video recordings from both hearings are available on the State Senate website.

Staff Recommendation. Hold open.

Issue 9: Drug Interdiction

May Revise Proposal. The May Revision requests \$6.7 million General Fund and 43 positions to establish two permanent canine teams at each state prison as a statewide drug and contraband interdiction strategy.

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

Finally, the 2014 budget included trailer bill language outlining the requirements and parameters for the enhanced drug interdiction efforts. For example, the language requires that the drug interdiction efforts be applied to all individuals, including staff and vendors, and that the searches be random and unpredictable and that CDCR use methods to ensure that profiling is not practiced. In addition, the language requires that all individuals who have a positive alert be informed of their options, including, but not limited to, unclothed body searches. The 2015 budget included additional trailer bill language requiring an independent evaluation of the effectiveness of CDCR's drug interdiction efforts and removing the strip search requirement from statute.

Drug Interdiction Evaluation. On April 29, 2017, a report on the effectiveness of CDCR's drug interdiction efforts by University of California at Berkeley and the Public Policy Institute of California was submitted to the Legislature. The results of the study were mixed and presented no clear solution to reducing drugs and other contraband in the prison system. Of particular note, the evaluation states that the data received by the use of canine teams was insufficient to definitively determine the value of this particular interdiction strategy. The evaluation did find a statistically significant decline in the proportion of drug tests that resulted in a failure (roughly 25 percent) at the enhanced interdiction institutions. However, at the same institutions they also found an increase in the recorded instances of inmate misconduct, primarily driven by drug-related rules violations. At the same time, they also found a statistically significant decline in cellphone violations at the enhanced institutions.

The evaluators suggest two alternate/complimentary strategies that are not punitive in nature and that may further reduce the amount of illegal drugs and cellphones in the prison system. They opine that the significant cost of legal phone calls in prison may lead to an increased demand for illegal cellphones, which allow inmates who often come from "poor or near-poor" families to stay in touch with their families. They suggest that CDCR experiment with providing a weekly call allowance free of charge and assess whether this leads to a reduced number of cellphone-related rules violations. In addition, similar to recommendations provided by this subcommittee in past years, the evaluators recommend enhanced substance use disorder treatment that utilizes substance replacement therapies such as methadone or naltrexone.¹

It is worth noting that CDCR is currently conducting a medication assisted treatment pilot that involves the use of naltrexone for substance use disorder treatment. However, the pilot does not include the use of methadone.

Staff Recommendation. Hold open.

¹ Raphael, Steven, et al. "The Effects of California's Enhanced Drug and Contraband Interdiction Program on Drug Abuse and Inmate Misconduct in California's Prisons." University of California at Berkeley. April 29, 2017.

Issue 10: Case Management Reentry

May Revise Proposal. The May Revision requests \$2.7 million General Fund and 21 positions to continue the case management reentry program (CMRP), which is designed to provide intensive case management services to address homelessness, joblessness, mental illness, and developmental disabilities among parolees in five counties.

Background. In the 2014 budget, \$2.5 million in Recidivism Reduction Fund money was dedicated to creating a pilot project designed to provide intensive case management for high risk parolees who are the most likely to return to prison. The pilot was implemented in Sacramento, San Diego, San Francisco, Kern and Los Angeles counties.

On March 2, 2017, the University of California at Los Angeles provided the final evaluation of the case management reentry pilot. The report found that their early review indicates that overall CMRP may hold promise for reducing recidivism and increasing the quality of life for mentally ill offenders returning to the community. The researchers note that not enough parolees have had time to move through all three phases of the program and therefore concrete results about the success of the intervention will need to wait until the program has been in place for a longer period of time.

Staff Comment. This pilot project was implemented at the urging of the Senate during negotiations related to Recidivism Reduction Fund spending.

Staff Recommendation. Hold open.

Issue 11: Roof Replacement

May Revise Proposal. The May Revision requests \$34.9 million General Fund to replace roofs at the California Correctional Institution, Pleasant Valley State Prison, and Salinas State Prison. The Administration notes that the severity of storms in California this past year has damaged the roofs at these three prisons.

Staff Recommendation. Hold open.

Issue 12: Physician Retention Strategies

May Revise Proposal. The May Revision requests \$7 million General Fund and 44 positions 2017-18, growing to \$14 million in 2018-19, to implement physician retention strategies to address high vacancy rates in the state prisons. The resources will allow the federal healthcare receiver to expand the current telemedicine program and establish regional support teams.

Justification. Through prior recruitment efforts, the federal receiver's office has found that many candidates are not interested in working in an institution setting, but would be interested in providing telemedicine services. The expansion of telemedicine, the receiver believes, will provide an effective way of addressing vacancies that cannot be readily filled through the normal civil service process or contract registry. In addition, the receiver believes that the creation of regional support times will help to retain medical personnel by providing coaching, mentoring, and orientation for primary care physicians who are

new to working in a prison setting. In addition, the regional support teams will provide coverage for short-term absences of physicians in the prisons.

Legislative Analyst's Office (LAO). As discussed below, the LAO recommends approving the requested telemedicine and regional support team positions. However, they recommend only providing \$1.8 million in 2017-18 and ongoing, as the remaining funds for these positions can be derived from physician salary savings.

Telemedicine. The LAO recommends approving the 31 positions for telemedicine, which would be funded by salary savings in 2017-18. However, they recommend rejecting the proposed \$10.4 million from the General Fund to pay for these positions on an ongoing basis starting in 2018-19. General Fund resources would only be necessary if all physician vacancies are filled by the end of 2017-18, which seems highly unlikely given the historical difficulty of filling these positions. To the extent that the Receiver demonstrates that vacant positions have been filled and there is no longer salary savings in the future, additional resources could be requested at that time.

Regional Support Teams. The LAO recommends approving the 13 positions regional support team positions. However, they recommend only approving \$1.8 million of the proposed funding—half the amount proposed by the Receiver. This \$1.8 million would be used to support the work related to training and supporting newly hired physicians. Since the remainder of the workload would be covering for vacant physician positions or physicians on leave, that workload can be supported by the physician salary savings. To the extent that the Receiver demonstrates that vacant positions have been filled and there is no longer salary savings in the future, additional resources could be requested at that time.

Staff Comment. The subcommittee discussed the problem of recruitment and retention of medical personnel during its subcommittee hearings on March 16th and April 27th. Agendas and video recordings from both hearings are available on the State Senate website.

Staff Recommendation. Hold open.

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Tuesday, May 16, 2017
9:30 a.m. or upon call of chair
State Capitol - Room 113

OUTCOMES

Consultant: Julie Salley-Gray

<u>Item</u>	<u>Department</u>	Vote-Only Items
Item 1	Various State Penalty Fund Proposal	

Committee Action: Approve the Governor's proposal to eliminate the statutory formulas and reject the Governor's spending plan. Instead, allocate the SPF funding as follows:

Program/Fund	2017-18 SPF Funding
Fish & Game Preservation Fund	100
Peace Officer Standards and Training Program	46,496
Standards and Training for Corrections Program	10,000
Traumatic Brain Injury Program	600
Driver Training Program	1,038
Victim / Witness Assistance Programs	12,053
California Witness Relocation and Protection Program	3,277
Restitution Fund	9,082
Internet Crimes Against Children Task Forces	-
California Gang Reduction, Intervention, and Prevention Program	7,500
Local Public Prosecutors and Public Defenders Training Program	450
Motorcyclist Safety Program	-
Total	90,596

In addition provisional language shall be included in the budget that does the following:

- City of Los Angeles shall receive \$750,000 of the funding as a set-aside.

- Cities applying for California Gang Reduction, Intervention and Prevention (CalGRIP) Program funds are required to provide clearly defined, measurable objectives for their grant proposals. Grant recipients are also required to provide the BSCC with quantifiable measures of progress in meeting those objectives.
- The Board of State and Community Corrections (BSCC) is required report to the Legislature once per funding cycle on the overall effectiveness of CalGRIP.
- BSCC is required to prioritize proposals from cities that are disproportionately and persistently affected by violence. In addition, BSCC is required to prioritize proposals that would direct resources to programs that have been shown to be the most effective at reducing violence.
- The minimum threshold of funds grantees are required to distribute to community-based organizations is increased to 50 percent, and eligibility for primary applications is extended to community-based organizations.

Finally, CalGRIP's name shall be amended to the California Violence Reduction, Intervention & Prevention (CalVRIP) Grant Program, in order to more correctly reflect modern, evidence-based approaches to achieving reductions in crime and violence.

Vote: 3 – 0

5227 Board of State and Community Corrections
Item 2 Jail Visitation Requirements

Committee Action: Adopt placeholder trailer bill language that does the following:

- Requires that a county providing video visitation, also provide in-person visitation.
- Temporarily exempts the following eight county jails from providing in-person visitation once BSCC has inspected the jail and certified that it does not have space for in-person visitation:
 - Kings County Jail Facility
 - Kings County Branch Jail
 - Madera County Adult Correctional Facility
 - San Bernardino High Desert Detention Center
 - San Mateo Maple Street Correctional Facility
 - Solano County -- Stanton Correctional Facility
 - Tulare South County Detention Facility
 - Imperial Oren R. Foy Medical Security Facility
- Requires all other county jail facilities to provide in-person visitation, if they are providing video visitation.
- Requires the eight exempt county facilities to provide for in-person visitation within five years of passage of the 2017 budget. In addition, those counties will receive priority for any jail construction funding that is relinquished to the BSCC in order to retrofit the existing jails to

provide for in-person visitation. Any additional construction funding provided by the state can only be used for in-person visitation space.

- Temporarily suspends all construction (with the exception of counties that have broken ground on new facilities) pending certification from the BSCC that the new facilities, funded with the assistance of the state, will have appropriate space for in-person visitation.
- Prohibits counties from charging for video visitation, whether the visitor is in the facility or conducting visitation from a remote location.

Vote: 3 – 0

Item 3 BSCC Review Functions

Committee Action: Adopt the following as draft, placeholder trailer bill language:

When requested by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, the Board of Corrections shall review policies, practices, and procedures of local detention facilities. The Board of Corrections shall report its findings to the requesting entity.

Vote: 3 – 0

Item 4 Post Release Community Supervision

Committee Action: Approve as proposed.

Vote: 3 – 0

0250 Judicial Branch

Item 5 State Controller's Audit Language

Committee Action: Approve as proposed.

Vote: 3 – 0

Item 6 Technical Adjustment

Committee Action: Approve as proposed.

Vote: 3 – 0

Item 7 Transfer of San Diego County Courthouse Trailer Bill

No action

4440 Department of State Hospitals

Item 8 Admission, Evaluation and Stabilization (AES) Center

Committee Action: Approve as proposed.

Vote: 3 – 0

Item 9 Jail-Based Competency Treatment Program

Committee Action: Approve as proposed.

Vote: 3 – 0

Item 10 Enhanced Treatment Unit Staffing

Committee Action: Approve as proposed.

Vote: 3 – 0

Item 11 Conditional Release Program – Sexually Violent Predator Caseload

Committee Action: Update the subcommittee's previous action to include the May Revision funding adjustment.

Vote: 3 – 0

Item 12 Transfer of SVP Screening Services

Committee Action: Approve as proposed.

Vote: 3 – 0

Item 13 Napa State Hospital Earthquake Repairs

Committee Action: Approve as proposed.

Vote: 3 – 0

8120 Commission on Peace Officer Standards and Training

Item 14 Spring Finance Letter: Funding Adjustment and Provisional Language

Committee Action: Approve as proposed.

Vote: 3 – 0

Discussion Items

4440 Department of State Hospitals

Issue 1 Metropolitan State Hospital: Movement of Patients

Committee Action. Approve as proposed and require the LAO and DOF to report on strategies to reduce the IST population, including pre-trial diversion options.

Vote: 3 – 0

Issue 2 Metropolitan State Hospital Central Utility Plant

No action

0820 Department of Justice
Issue 3 Legal Resources for Federal Actions

Committee Action. Adopt placeholder trailer bill to require DOJ to monitor the treatment of immigrants being detained in California. The department shall audit each facility annually and report to the Legislature and Governor its findings.

In addition, adopt placeholder trailer bill requiring that for potential litigation involving California's Secure Choice, the Attorney General's Office shall contract with attorneys that possess a comprehensive knowledge of the Employee Retirement Income Security Act of 1974 (ERISA) and have extensive experience litigating ERISA claims in the federal trial and appellate courts.

Finally, adopt the following as draft, placeholder trailer bill language:

A city, county, city and county, or a local law enforcement agency shall not enter into, or renew, or modify a contract with the federal government to expand the number of contract beds being utilized detain immigrants in civil immigration proceedings.

Vote: 2 -1 (Anderson, no)

Issue 4 DNA Identification Fund Revenue Shortfall

Committee Action: Approve as proposed.

Vote: 3 – 0

0250 Judicial Branch
Issue 5 Transition to FI\$Cal

Committee Action: Approve as proposed.

Vote: 3 – 0

Issue 6 New Sacramento Courthouse

Committee Action: Reject the proposed reappropriation.

Vote: 3 – 0

9285/9286 Local Assistance – Trial Court Security
Issue 7 Trial Court Security Funding

Committee Action. Reject both the \$7 million and \$280,000 in General Fund proposed to augment the \$557.6 million in realignment revenue provided in 2017-18 for trial court security.

Vote: 2 -1 (Anderson, no)

5225 **California Department of Corrections and Rehabilitation**
Issue 8 Population Adjustment

No action

Issue 9 Drug Interdiction

Committee Action: Reject the proposed funding.

Vote: 2 -1 (Anderson, no)

Issue 10 Case Management Reentry Program

No action

Issue 11 Roof Repair

Committee Action: Approve as proposed.

Vote: 3 – 0

Issue 12 Physician Retention Strategies

Committee Action: Adopt the LAO approving the 31 positions for telemedicine, which would be funded by salary savings in 2017-18; and rejecting the proposed \$10.4 million from the General Fund to pay for these positions on an ongoing basis starting in 2018-19. In addition, approve the 13 regional support team positions and \$1.8 million of the proposed funding

Vote: 3 – 0

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 18, 2017
9:30 a.m. or adjournment of session
State Capitol - Room 3191

PART A

Consultant: Julie Salley-Gray

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PROPOSED FOR VOTE ONLY**California Department of Corrections and Rehabilitation (CDCR)**

1. **Transfer of Immediate and Acute Levels of Care from the Department of State Hospitals (DSH) to CDCR.** The May Revision requests that \$4 million General Fund be shifted from DSH's budget to CDCR to reflect that transfer of employee compensation and benefits associated with the transfer of the psychiatric programs to CDCR. In addition, the May Revision requests that provisional language be added to provide flexibility to CDCR and the receiver to process vendor invoices and employee payment activities incurred by DSH as of June 30, 2017.

January Budget Proposal. The Governor's budget proposes to shift responsibility for the three inpatient psychiatric programs DSH operates in state prisons to CDCR beginning in 2017-18. Accordingly, the budget proposes a transfer of \$250 million (General Fund) and 1,978 positions from DSH to CDCR effective July 1, 2017.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's March 16th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Delay the transfer until stakeholders have met and agreed on key terms of the transition.

2. **Proposition 57.** The May Revision assumes a net savings of \$38.8 million General Fund in 2017-18, growing to a savings of approximately \$186 million General Fund in 2020-21. In addition, the May Revision requests an additional \$1 million General Fund for the workload associated with Proposition 57, bringing the total funding request to \$6.7 million General Fund.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's April 20th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Approve the May Revision proposal. In addition, approve the following:

- Redirect \$5.5 million General Fund from the Administration's drug interdiction proposal to maintain on-going for restorative justice and offender responsibility long-term offenders programming.
- Redirect \$250,000 in CDCR General Fund savings from the rejection of the drug interdiction proposal to the Community Colleges Chancellors Office (CCCO) and require that the CCCO work with the Underground Scholars organization at the University of California at Berkeley to replicate their existing program on community college campuses.
- Adopt draft placeholder trailer bill language requiring CDCR to establish and maintain a statewide memorandum of understanding with the federal Social Security Administration to allow inmates to apply for and receive social security cards and to allow the Administration to process SSI claims under the pre-release program. In addition, require the State Department of Social Services, on or before March 31, 2018, to request a waiver to allow for the pre-enrollment of otherwise eligible applicants to the CalFresh program up

to one month prior to the applicants' reentry into the community from a county jail or the state prison.

- Adopt draft, placeholder trailer bill language to authorize a person who is committed to a state hospital after being found not guilty by reason of insanity to petition the court to have the maximum term of commitment reduced to what it would have been had Proposition 36 or Proposition 47 been in effect at the time of the original determination. The bill would require the petitioner to show that he or she would have been eligible to have his or her sentence reduced under the relevant proposition and to file the petition prior to January 1, 2021, or at a later date with a showing of good cause.

3. **California Medical Facility – Psychiatric Inpatient Program.** The budget requests \$11.4 million General Fund to convert an enhanced outpatient unit into a 74-bed intermediate care facility (ICF) at the California Medical Facility.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's March 16th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Approve as budgeted.

4. **Mental Health Crisis Beds.** The Administration requests \$3,661,000 General Fund for California Institution for Men, and \$3,597,000 General Fund for Richard J. Donovan Correctional Facility, in order to construct licensed 50-bed mental health crisis facilities at each institution.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's April 27th hearing.

Staff Recommendation: Approve funding for the 50-bed facility at the Richard J. Donovan Correctional Facility and reject the funding for the facility at the California Institution for Men.

5. **Security Housing Unit (SHU) Conversion.** The Governor's budget proposes to reduce General Fund support for CDCR by \$42.4 million in 2016-17, and by \$8.3 million in 2017-18, to account for net savings from the conversion of various housing units.

Spring Finance Letter. The Administration has provided an April 1st letter requesting \$539,000 for preliminary plans and working drawings for Pelican Bay State Prison's Facility D Yard renovations. The construction project proposes construction of a recreational yard that would consist of a multipurpose field, basketball half-court, two handball courts, a fitness area, 15 tables, a toilet yard, drinking fountain, storage container and a custody observation post.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's March 9th hearing. In addition, the spring finance letter item was discussed during the subcommittee's April 27th hearing. The agenda and video recordings from those hearings are available on the State Senate website.

Staff Recommendation: Approve as budgeted.

6. **Standardized Staffing Adjustments.** The Governor's budget proposes \$5.9 million and 44.1 positions beginning in 2017-18 to augment custody standardized staffing levels at three adult institutions designed to provide sufficient security coverage based on institution design and for activation of additional space.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's March 9th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Approve as budgeted

7. **Medical Parole/Compassionate Release/Elderly Parole.** On February 10, 2014, the federal court ordered the state to implement several population reduction measures to comply with the court-ordered population cap and appointed a compliance officer with the authority to order the immediate release of inmates should the state fail to maintain the final benchmark. Among the items included in the court order were the expansion of parole for inmates 60 and over and an expansion of elderly parole.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's April 20th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Adopt draft placeholder trailer bill language that achieves the following:

- Medical Parole
 - Clarifies that individuals being considered for medical parole can be cared for at home, if they have proper medical care and an appropriate residence with adequate care.
 - Expands eligibility for medical parole to inmates with a significant and permanent condition, disease, or syndrome resulting in the prisoner being physically or cognitively debilitated or incapacitated.
 - Requires that any inmates released on medical parole must have access to healthcare insurance either through Medi-Cal or another means.
 - Removes the requirement that the state cover all medical-related costs for the inmate.
 - Creates a process by which any inmate released on medical parole, who is found to have inadequate housing or medical care will be returned to CDCR custody.
- Elderly Parole
 - Establishes elderly parole in state statute allowing for parole for eligible offenders who are 60 or older, have served at least 20 years of the sentences, and who are deemed not to be a threat to public safety.
- Compassionate Release
 - Expands compassionate release to all inmates who are suffering from late-stage dementia and who are medically incapacitated. Approval will be required from a judge in the county of the institution where the inmate is housed. In addition, requires an administrative action from the executive director of the Board of Parole Hearings or the Secretary of CDCR for an inmate to be eligible for consideration for compassionate release.

8. **Medication Management.** The May Revision requests a decrease of \$2.3 million General Fund to account for projected overtime and registry savings resulting from the medication management proposal.

January Budget Proposal. The proposed budget requests \$8.9 million from the General Fund and 105.2 additional positions for medication management based on a new staffing model developed by the receiver that includes licensed vocational nurse (LVN) positions to staff each pill window throughout the day and distribute medication, inmates are allowed to keep their own medications to use as needed.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's April 27th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Approve as proposed.

9. **Population Adjustments.** The May Revision requests the following population adjustments based upon updated caseload projections and additional alternative custody program placements:

- **Adult Population Adjustment** – The population adjustment includes a net decrease of \$21.3 million and 8.8 positions, which is comprised of a \$21,293,000 General Fund decrease and a \$67,000 Inmate Welfare Fund decrease.

The May Revision reflects an estimated average adult daily population of 127,693 in fiscal year 2017-18. This is 466 fewer than projected in the Governor's budget. The projected adult parolee average daily population is 47,274 in 2017-18. This is an increase of 2,513 from the Governor's budget projection.

- **Juvenile Population Adjustment** – The May Revision includes a decrease of \$813,000 General Fund in 2016-17, and \$3.3 million General Fund in budget year, for costs related to a smaller than anticipated juvenile ward population. Specifically, the May Revision projects the average daily population of juveniles are 683 in the current year, and 736 in the budget year. This is a decrease of 22 and 43 ward, respectively, as compared to the January estimates.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's May 16th hearing. In addition, the juvenile justice population and facilities were discussed on April 20th. The agenda and video recordings from those hearings are available on the State Senate website.

Staff Recommendation. Approve the proposed adjustments. In addition, approve the following for the Division of Juvenile Justice (DJJ):

- Redirect \$500,000 in existing DJJ funding each year for three years to fund to innovative programming grants for the three DJJ facilities. Require the Division of Rehabilitative Programming to work with DJJ to award the three-year grants.
- Redirect \$300,000 in existing DJJ funding and add two permanent Community Resource Managers for DJJ – one in Ventura and one in Stockton.

10. **Case Management Reentry.** The May Revision requests \$2.7 million General Fund and 21 positions to continue the case management reentry program (CMRP), which is designed to provide

intensive case management services to address homelessness, joblessness, mental illness, and developmental disabilities among parolees in five counties.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's May 16th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation. Expand the funding to \$5.4 million General Fund and 42 positions to expand the program to five additional counties.

11. **Minor Capital Outlay.** The May Revision requests the reduction of \$7,000 to reflect the substitution of a minor capital outlay project. Instead of a walk-in freezer at Pelican Bay State Prison, the Administration proposes substituting interior perimeter fencing improvements at the California Institution for Women.

Staff Recommendation: Approve as proposed.

Judicial Branch

12. **Veterans Collaborative Courts Evaluation.** California law authorizes counties to establish collaborative justice courts, including drug and mental health courts. These collaborative or "problem-solving" justice courts address the cases of nonviolent offenders by combining judicial monitoring with intensive treatment services over approximately 18 months.

During the last decade, this emerging recognition of the particular challenges and opportunities for dealing with nonviolent veteran offenders led to creation of the veterans treatment court (VTC), a hybrid drug and mental health court that uses the drug court model. The VTC offers veterans of the United States Armed Forces a comprehensive, treatment-based alternative to incarceration for non-violent criminal offenses.

Previous Subcommittee Hearing: This item was discussed during a joint hearing between the Veterans Affairs Committee and Subcommittee #4 on May 12. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Provide \$100,000 General Fund one-time as matching funds to \$100,000 in private funding for an independent evaluation of the effectiveness of veterans treatment courts.

13. **San Diego County Courthouse Trailer Bill Language.** The May Revision requests the adoption of trailer bill language that transfers the title of the old San Diego courthouse and adjacent old county jail to San Diego County from the state. In exchange, the county will release the state from the obligation to demolish and remove those buildings.

Staff Recommendation: Modify the language to prohibit any new detention facilities from being constructed on any of the parcels and approve the language as draft, placeholder trailer bill language.

Department of Justice

14. **Agency Counsel Trailer Bill Language.** The May Revision includes proposed language clarifying existing law that the Attorney General has clear authority to act as legal counsel in judicial and administrative proceedings involving state agencies, as well as deliver approving legal opinions on bonds. The language also authorizes state agencies to employ in-house legal counsel for any other purpose, without seeking authorization from the Attorney General. The language maintains the existing requirement that authorization from the Attorney General be obtained prior to employment of private, outside counsel.

Staff Recommendation: Approve as draft, placeholder trailer bill.

Local Law Enforcement

15. **Probation Chief Trailer Bill Language.** The budget includes proposed trailer bill language that specifies the duties of county chief probation officers. The language would also require that the chief probation officer not be placed under the authority of a separate county agency to perform these duties.

Previous Subcommittee Hearing: This item was discussed during the subcommittee's May 4th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

Staff Recommendation: Approve as draft, placeholder language and direct the Department of Finance, the Legislative Analyst's Office and staff to modify the language to address the concerns of juvenile justice advocates and to clarify that nothing in the language is intended to reduce county board of supervisors' authority over the probation department or to reduce the ability of probation departments to collaborate with other county partners.

16. **Extradition Subsistence Rates Trailer Bill.** This trailer bill sets various reimbursement rates associated with transporting fugitives. Specifically, the language provides that a person transporting a fugitive shall be reimbursed as follows:
- Breakfast - \$6.00
 - Lunch - \$11.00
 - Dinner - \$18.00
 - Incidental allowance - \$3.75
 - Prisoner, patient, ward, or fugitive per meal - \$3.00

Staff Recommendation: Approve as draft, placeholder trailer bill language.

ITEMS TO BE HEARD

0280 COMMISSION ON JUDICIAL PERFORMANCE**Issue 1: State Audit**

The Commission on Judicial Performance (CJP), established in 1960, is the state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges, pursuant to Article VI, Section 18 of the California Constitution. 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. CJP's mandate is to protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system.

The commission is composed of 11 members: three judges appointed by the Supreme Court; two attorneys appointed by the Governor; and, six lay citizens, two of which are appointed by the Governor, two by the Senate, and two by the Assembly. Members are appointed to four-year terms and may serve two terms and do not receive a salary. In addition, the commission has 21 paid staff members.

The proposed 2017-18 budget for CJP is just over \$5 million General Fund. This is an increase of \$70,000 over the 2016-17 budget.

CJP Audit. On August 10, 2016, the Joint Legislative Audit Committee (JLAC) unanimously approved an audit of CJP to examine its finances and policies and practices for handling and resolving complaints against judges. In response to the requirements of the audit, CJP filed a complaint against the State Auditor in San Francisco on October 20, 2016 – *Commission on Judicial Performance v. Howle*, CPF515308 (S.F. Super. Ct.). The petition seeks injunctive relief to block the auditor's access to confidential records related to judicial complaints and investigations, and seeks to ensure the CJP does not bear any cost of the audit. In addition, the petition requests the auditor be required to refrain from auditing the discretionary exercise of CJP's core constitutional functions as required by the separation of powers doctrine.

Members of the Legislature have expressed concerns that rather than comply with the audit, CJP hired private attorneys and initiated an action in court which they believe was designed to thwart the audit that was authorized by JLAC. To date, CJP's outside representation for this matter has cost the commission \$78,000 General Fund. Members have noted that this action appears to be a refusal on the part of CJP to be transparent and accountable to the public.

In response to Legislative concerns regarding CJP's actions, the commission notes:

The commission filed the declaratory relief action in order to get guidance from the court about the scope of the audit, including the commission's obligations with respect to confidential records being sought by the Auditor. The California Constitution provides that certain records are confidential and gives the commission the authority to provide confidentiality for complaints and investigations. The commission has done so to protect complainants and witnesses, in addition to judges. The issue for the court to resolve is whether records that have constitutional protection are also subject to the statutory provision granting the Auditor access to private agency records.

Moreover, the Auditor's records are subject to the Public Records Act, pursuant to Government Code section 8545, and its ability to avoid disclosure of confidential records has not been tested. The Auditor could not give us assurances that the commission's confidential records would not be subject to disclosure. Faced with these uncertainties and its obligations to various constituencies who have relied on the commission's confidentiality protections, the commission was compelled to seek judicial guidance.

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 18, 2017
9:30 a.m. or adjournment of session
State Capitol - Room 3191
PART A
Consultant: Julie Salley-Gray

Item

Department

5225 California Department of Corrections and Rehabilitation
Item 1 Transfer of Immediate and Acute Levels of Care from DSH to CDCR

Committee Action: Delay the transfer until stakeholders have met and agreed on key terms of the transition.

Vote: 3 – 0

Item 2 Proposition 57

Committee Action: Approve January proposal, related trailer bill as placeholder language, and the May Revision update. In addition, approve the following:

- Redirect \$5.5 million General Fund from the Administration's drug interdiction proposal to maintain on-going for restorative justice and offender responsibility long-term offenders programming.
- Redirect \$250,000 in CDCR General Fund savings from the rejection of the drug interdiction proposal to the Community Colleges Chancellors Office (CCCO) and require that the CCCO work with the Underground Scholars organization at the University of California at Berkley to replicate their existing program on community college campuses.
- Adopt draft placeholder trailer bill language requiring CDCR to establish and maintain a statewide memorandum of understanding with the federal Social Security Administration to allow inmates to apply for and receive social security cards and to allow the Administration to process SSI claims under the pre-release program. In addition, require the State Department of Social Services, on or before March 31, 2018, to request a waiver to allow for the pre-enrollment of otherwise eligible applicants to the CalFresh program up to one month prior to the applicants' reentry into the community from a county jail or the state prison.
- Adopt draft, placeholder trailer bill language to authorize a person who is committed to a state hospital after being found not guilty by reason of insanity to petition the court to have the maximum term of commitment reduced to what it would have been had Proposition 36

or Proposition 47 been in effect at the time of the original determination. The bill would require the petitioner to show that he or she would have been eligible to have his or her sentence reduced under the relevant proposition and to file the petition prior to January 1, 2021, or at a later date with a showing of good cause.

Vote: 2 – 1 (Anderson “no.”)

Item 3 California Medical Facility – Psychiatric Inpatient Program

Committee Action: Approve as budgeted.

Vote: 3 – 0

Item 4 Mental Health Crisis Beds

Committee Action: Approve funding for the 50-bed facility at the Richard J. Donovan Correctional Facility and reject the funding for the facility at the California Institution for Men.

Vote: 3 – 0

Item 5 Housing Unit Conversions

Committee Action: Approve the housing unit conversions as budgeted, the May Revision adjustments, and the proposed spring finance request.

Vote: 3 – 0

Item 6 Standardized Staffing Adjustments

Committee Action: Approve as budgeted.

Vote: 3 – 0

Item 7 Medical Parole/Compassionate Release/Elderly Parole

Committee Action: Adopt draft placeholder trailer bill language that achieves the following:

- Medical Parole
 - Clarifies that individuals being considered for medical parole can be cared for at home, if they have proper medical care and an appropriate residence with adequate care.
 - Expands eligibility for medical parole to inmates with a significant and permanent condition, disease, or syndrome resulting in the prisoner being physically or cognitively debilitated or incapacitated.
 - Requires that any inmates released on medical parole must have access to healthcare insurance either through Medi-Cal or another means.
 - Removes the requirement that the state cover all medical-related costs for the inmate.

➤ Creates a process by which any inmate released on medical parole, who is found to have inadequate housing or medical care will be returned to CDCR custody.

- Elderly Parole

➤ Establishes elderly parole in state statute allowing for parole for eligible offenders who are 60 or older, have served at least 20 years of the sentences, and who are deemed not to be a threat to public safety.

- Compassionate Release

➤ Expands compassionate release to all inmates who are suffering from late-stage dementia and who are medically incapacitated. Approval will be required from a judge in the county of the institution where the inmate is housed. In addition, requires an administrative action from the executive director of the Board of Parole Hearings or the Secretary of CDCR for an inmate to be eligible for consideration for compassionate release.

Vote: 2 – 1 (Anderson “no.”)

Item 8 Medication Management

Committee Action: Approve as proposed.

Vote: 3 – 0

Item 9 Population Adjustments

Committee Action: Approve the proposed adjustments. In addition, approve the following for the Division of Juvenile Justice (DJJ):

- Redirect \$500,000 in existing DJJ funding each year for three years to fund to innovative programming grants for the three DJJ facilities. Require the Division of Rehabilitative Programming to work with DJJ to award the three-year grants.
- Redirect \$300,000 in existing DJJ funding and add two permanent Community Resource Managers for DJJ – one in Ventura and one in Stockton.

Vote: 3 – 0

Item 10 Case Management Reentry

Committee Action: Expand the funding to \$5.8 million General Fund and 42 positions to expand the program to five additional counties.

Vote: 3 – 0

Item 11 Minor Capital Outlay

Committee Action: Approve as proposed.

Vote: 3 – 0

0250 **Judicial Branch**
Item 12 Veterans' Collaborative Courts Evaluation

Committee Action: Provide \$100,000 General Fund one-time as matching funds to \$100,000 in private funding for an independent evaluation of the effectiveness of veterans treatment courts.

Vote: 3 – 0

Item 13 San Diego County Courthouse Trailer Bill Language

Committee Action: Approve the proposed trailer bill language with a modification to prohibit any new detention facilities from being constructed on any of the parcels as draft, placeholder trailer bill language.

Vote: 3 – 0

0820 **Department of Justice**
Item 14 Agency Counsel Trailer Bill Language

Committee Action: Approve as draft, placeholder trailer bill.

Vote: 2 – 1 (Anderson “no.”)

Item 15 **Local Law Enforcement**
 Probation Chief Trailer Bill Language

Committee Action: Approve as draft, placeholder language and direct the Department of Finance, the Legislative Analyst's Office and staff to modify the language to address the concerns of juvenile justice advocates and to clarify that nothing in the language is intended to reduce county board of supervisors' authority over the probation department or to reduce the ability of probation departments to collaborate with other county partners.

Vote: 3 – 0

Item 16 Extradition Subsistence Rates Trailer Bill

Committee Action: Modify the language to establish that the reimbursement rate shall be the same for the inmates, wards, and fugitives as the person who is transporting the fugitive and approve as draft, placeholder trailer bill language.

Vote: 3 – 0

0280 **Commission on Judicial Performance**
Issue 1 State Audit - INFORMATIONAL/NO ACTION

[Note: The chair directed staff and the LAO to work with the commission, the state auditor, and the Joint Legislative Audit Committee to determine if there is any statutory fix needed to address concerns related to protecting confidentiality during audits.]

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 18, 2017
9:30 a.m. or upon adjournment of Session
State Capitol - Room 3191(room change)

Consultant: Anita Lee

AGENDA PART B

Vote Only Items

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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.

Vote Only Items

7100 EMPLOYMENT DEVELOPMENT DEPARTMENT

Issue 1: Disability Insurance Program

Summary. For 2016-17, this proposal requests a decrease of \$140.9 million in Disability Insurance (DI) benefits authority. For 2017-18, this proposal requests a decrease of \$132.0 million in DI benefits authority.

California's DI program contributes to the economic security of California by providing benefits to eligible workers. The DI program provides benefits to workers who are unable to work due to pregnancy or non-work related illness or injury. Although Workers' Compensation laws cover work-related disabilities, DI benefits may also be paid for work-related illnesses or injuries under certain circumstances.

Effective July 1, 2004, the DI Program expanded to include the Paid Family Leave (PFL) program. The PFL program provides up to six weeks of benefits to individuals who must be away from work to care for a seriously ill family member, domestic partner, or for the birth, adoption, or foster care placement of a child. Effective July 1, 2014, the PFL program was extended to allow workers to collect benefits while caring for seriously ill grandparents, grandchildren, siblings and parent-in-laws.

Benefit Payments: For 2016-17, benefit payments are projected to decrease by \$140,949,000 from the level estimated in the October 2016 Revise. The proposed change includes a decrease of \$151,466,000 in benefit payments for the DI program and an increase of \$10,517,000 in benefit payments for the PFL program. The DI program's Average Weekly Benefit Amount (AWBA) increased from \$524 to \$525 and the PFL program's AWBA decreased from \$582 to \$579.

In 2017-18 benefit payments are projected to decrease by \$131,992,000 from the level estimated in the October 2016 Revise. The proposed change includes a decrease of \$152,382,000 in benefit payments for the DI program and an increase of \$20,390,000 in benefit payments for the PFL program. The DI program's AWBA decreased from \$556 to \$555 and the PFL program's AWBA decreased from \$615 to \$611.

Staff Recommendation. Approve as Proposed.

Issue 2: Unemployment Insurance Program

Summary. For 2016-17, this proposal requests an increase of \$23.5 million in Unemployment Insurance (UI) benefits authority. For 2017-18, this proposal requests an increase of \$245.0 million UI benefits authority.

The Administration also proposes an increase of \$1.8 million to reflect an increase in interest due to the federal government borrowing that has occurred to provide unemployment benefits without interruption.

Background. As an employer-funded program, California's UI program contributes to the economic security of California by providing benefits to eligible workers. The UI program provides benefits to individuals who become unemployed through no fault of their own. Individuals file claims with the Employment Development Department (EDD) and, if determined eligible, are paid UI benefits. The Emergency Unemployment Compensation (EUC) program has expired as of December 28, 2013. Although the EUC program has expired, the EDD continues to process minimal workload related to the extensions. This proposal adjusts the authority needed to pay claims established in the October 2016 Revise. The EDD has adjusted the projections for UI workload and estimated UI claims based upon changes in the January 2017 economic outlook provided by EDD's Labor Market Information Division.

Benefit Payments: For 2016-17, benefit payments are projected to increase by \$23.53 million from the level previously estimated in the October 2016 Revise. Total benefit payments are estimated to be \$5.8 million. Increases are being driven by the increase in the unemployment level and an increase to the Average Weekly Benefit Amount (AWBA) from \$312 to \$316.

For 2017-18, benefit payments are projected to increase by \$245 million from the level previously estimated in the October 2016 Revise. Total benefit payments are estimated to be \$6 billion. Similar to the current year, the increase is driven by an increase in the unemployment level and the AWBA increasing from \$315 to \$320. The 2016-17 and 2017-18 projected benefit amounts include a buffer of three percent for economic uncertainties. Without this buffer, benefits would decrease by \$69.6 million in 2016-17 and increase by \$68.4 million in 2017-18.

Staff Recommendation. Approve as proposed.

Issue 3: School Employees Fund (SEF)

Summary. For 2016-17, this proposal requests a decrease of \$10.7 million in budget authority for School Employee Fund Local Assistance. For 2017-18, this proposal requests an increase of \$5.0 million in budget authority for SEF Local Assistance.

Background. The SEF is a joint pooled risk fund administered by EDD, which collects contributions based upon a percentage of total wages paid by public schools and community college districts. The contribution rate is calculated annually based upon the formula established per Section 823 of the California Unemployment Insurance Code. Money deposited in the SEF is used to reimburse the Unemployment Fund for the cost of Unemployment Insurance benefits paid to former employees of those school employers who have elected this option in lieu of paying the tax-rated method, as is required of private sector employers.

Upon recommendation by the School Employer Advisory Committee, and subsequent approval by the EDD Director, the SEF contribution rate is 0.05 percent for 2016-17 and an estimated 0.05 percent for 2017-18. The economy's steady growth and the implementation of the new Local Control Funding formula will support school budgets as benefits return to normal historical levels. Currently, there are approximately 1,331 public school districts and county offices of education (including charter schools) and 72 community college districts that have elected to participate in the fund.

Local Assistance (disbursements) includes benefit charges and claims management fees. The estimated Local Assistance for SFY 2016-17 is \$10,686,000 lower than reported in October 2016, for a total of \$86,203,000. The estimated Local Assistance for SFY 2017-18 is \$5,000,000 higher than reported in October 2016, for a total of \$79,918,000. Changes to Local Assistance estimates for both 2016-17 and 2017-18 were adjusted from the October 2016 forecast based on actual data from the current year and reflect a trend of UI benefits that continue to return to historical levels, which is consistent with the current economic outlook.

Staff Recommendation. Approve as proposed.

7300 AGRICULTURAL LABOR RELATIONS BOARD**Issue 4: Funding for Agricultural Labor Relations Board**

Governor's Budget proposal. The Agricultural Labor Relations Board (ALRB) requests the the current limited term funding of \$573,000 General Fund for limited-term positions: 1.5 hearing officer II positions and one Attorney IV position be made permanent. The workload for these positions has not decreased and is projected to increase as new satellite offices are fully opened and education and outreach efforts are increased.

Background. In 2015-16, ALRB received a budget augmentation of \$1.6 million for 13 positions. The General Counsel received nine of these positions were to expand local operations at two new regional offices. However, the second office just opened in February, and as of the end of 2016, only one new regional office was opened, and roughly 30 percent of the general counsels 39 positions were vacant.

ALRB is requesting permanent augmentation for 1.5 hearing officer II positions, which would bring the ALRB's total permanent hearing officer staffing to three positions. The hearing officer is the presiding administrative law judge and every case that comes before a hearing officer is fact-specific and unique in the complexity of the law involved. Hearing officer decisions are multifaceted and complex as cases can involve thousands of employees, resulting in numerous legal questions within a single case. Prior to the 2015-16 budget, it took 200 to 600 days to schedule a hearing. However, with the additional limited-term positions, hearings were scheduled within a 60 to 90 day time frame, which provided greater assurances to farmworkers will be available to participate in a hearing.

ALRB is also requesting permanent augmentation for the attorney IV position. In January 2014, to address the ALRB's increased state and federal court litigation workload, the Labor and Workforce Development Agency (LWDA) temporarily redirected resources to provide a limited-term Attorney IV position to the board to oversee, coordinate, and assist board counsel and attorneys assigned from the Office of the Attorney General to handle litigation. The 2015-16 budget provided a two year limited term attorney IV position for the ALRB, which expires in July. The primary responsibility of the attorney IV is appellate work where the position works with the three board counsel positions to represent the ALRB in the most sensitive and complex matters.

Staff notes two years ago, as a part of the 2015-16 budget act, the state provided additional positions with the understanding that there would be two additional regional offices. However, the second office recently opened in February. Given this and the vacancy rate, it may be premature to make these positions permanent. The subcommittee may wish to extend these limited term positions for another two years, and revisit the position authority moving forward

Staff Recommendation. Approve two-year limited term positions for 1.5 hearing officer II positions and one Attorney IV position.

7320**PUBLIC EMPLOYMENT RELATIONS BOARD****Issue 5: Augmentation for Public Employment Relations Board**

Summary. The May Revision proposes \$750,000 General Fund in 2017-18 and 2018-19, \$620,000 in 2019-20, and \$590,000 in 2020-21 and ongoing to provide the appropriate level of permanent funding to support all existing permanent positions, reduce existing backlogs, and improve PERB's timeliness for issuance of resolutions and case determinations.

Background. Beginning in 2002, PERB held open two Board member positions and their supporting staff, in order to utilize the resulting salary savings to meet PERB's other operational needs. Additionally, over the last 14 years it has been necessary for PERB to take other measures to balance its budget, such as holding as many as 9.5 positions vacant at any given time as well as participating in the state's layoff process. Most recently, in 2015-16, PERB instituted a self-imposed hiring freeze and reduced operations to remain within the budget appropriation, which increased the backlog of cases filed with the Office of the General Counsel by 68 percent.

A permanent increase in appropriation to fund the vacant Board member positions and their supporting staff is necessary to reduce the existing case backlog as well as ensure PERB can fill all current authorized positions. The salary and benefit cost for these positions is estimated at \$885,000. Pursuant to the Legislature's approval, \$435,000 was provided in the 2016-17 BCP to be allocated towards this structural shortfall, leaving a remaining balance of \$450,000. For FY 2016-17, PERB held 3.0 positions vacant to manage this structural shortfall and began filling positions on a limited term basis when salary savings from vacant appointee positions accrued.

PERB's caseloads fluctuate seasonally and with changes in the state's economy; however, historical data collected and reported annually reflects a constant workload growth that also correlates with the expansion of PERB's statutory responsibilities. In its approval of additional funding for FY 2016-17, the Legislature requested that PERB provide caseload and position tracking. The data collected thus far reflects an incremental growth in backlogged cases incurred due to vacancies within the office of the General Counsel. The positions were recently filled and the new staff are addressing the caseload.

PERB has determined that an effective timeline to complete investigations and issue determinations is within 60 days of the filing of an unfair practice case or representation matter. Currently, the office of the General Counsel takes more than five months to investigate and issue determinations in these matters and it often takes a year or more for the Board to receive a proposed decision, and years for the Board to issue a final determination. These delays are inconsistent with PERB's goals to provide meaningful resolution of labor disputes in a timely manner.

Staff Recommendation. Approve as proposed.

7350 DEPARTMENT OF INDUSTRIAL RELATIONS**Issue 6: Enhanced Enforcement Compliance and Apprenticeship Services**

Summary. The Department of Industrial Relations requests 11 positions and \$1.7 million special funds in 2017-18, 25 positions and \$3.4 million special funds in 2018-19, with 19 positions and \$2.6 million special funds ongoing, to fulfill the provisions of recently chaptered legislation:

- Assembly Bill 1066 (Gonzalez), Chapter 313, Statutes of 2016: Phase-In Overtime for Agriculture Workers
- Assembly Bill 1978 (Gonzalez), Chapter 373, Statutes of 2016: Property Service Workers
- Senate Bill 693 (Hueso), Chapter 774, Statutes of 2016: Workforce Expansion
- Senate Bill 1001 (Mitchell), Chapter 782, Statutes of 2016: Immigrant Workers Document Protections
- Senate Bill 1063 (Hall), Chapter 866, Statutes of 2016: Equal Pay – Race and Ethnicity
- Senate Bill 1167 (Mendoza), Chapter 839, Statutes of 2016: Indoor Heat Regulations

Background.

Assembly Bill 1066 (Gonzalez). AB 1066 removes an exemption for agricultural employees regarding hours, meal breaks, and other working conditions. The bill includes specific wage requirements, bringing farmworkers in line with the majority of employees in California who are protected by the existing mandate that any hours worked in excess of eight hours per day or 40 hours per week be paid at 1.5 times the regular pay. The bill provides for a phase-in approach for overtime requirements that gradually implement the eight hour workday for farmworkers over a four-year period.

The department requests \$40,000 for outreach in 2017-18, and two positions and \$308,000 in 2018-19, with \$267,000 ongoing to support its Division of Labor Standards Enforcement (DLSE) for increased workload created by the passage of AB 1066.

Assembly Bill 1978 (Gonzalez). AB 1978 establishes specific standards and protections for property service workers (otherwise known as janitors). The intent of the new law is to combat wage theft, ensure compliance with existing labor laws, and also lower instances of sexual harassment, sexual violence, and human trafficking in the property services industry, where it is particularly prevalent. The bill requires biennial in-person sexual violence and harassment training requirement for employees and employers, as well as requiring the registration of janitorial contractors with DIR.

The department requests an augmentation of three positions and \$442,000 in 2017-18, nine positions and \$1 million in 2018-19, with nine positions and \$967,000 ongoing. These positions will support DLSE in implementing the requirements under AB 1978.

Senate Bill 693 (Hueso). The Division of Apprenticeship Standards (DAS) promotes and develops apprenticeship training and enforces minimum apprenticeship standards. Among other

mandates, DAS is the division within DIR responsible for approving new apprenticeships programs, ensuring that programs are adhering to its approved training standards, registering apprentices in approved programs, investigating apprentice complaints against programs, and issuing State certificates of completion to graduates of programs.

Because only registered apprentices may be paid a lower prevailing wage on publicly-funded “public works” projects, DAS regularly receives inquiries from the public to verify that a worker is a registered apprentice. Employers also contact DAS when they wish to confirm that worker has completed an apprenticeship and has graduated into a journey person. SB 693 allows a public entity to require a bidder, contractor, or other entity to use a skilled and trained workforce to complete a contract or project. DIR notes that the additional resources will allow the department to respond to inquiries and verification regarding DAS approved programs. The Department requests one position and \$123,000 in 2017-18, (\$116,000) to provide resources for DAS to address additional workload as a result of SB 693.

Senate Bill 1001 (Mitchell). SB 1001 created a new protection that makes document abuse a strict liability violation regardless of intent. Specifically, this bill expands protection to immigrant applicants seeking employment by explicitly stating that it is unlawful to request more or different documents than required by federal law as a prerequisite to employment. The bill provides that an applicant for employment or an employee who believes their rights have been violated under this law may file a complaint with DLSE for equitable relief and penalties not to exceed \$10,000 per violation. The department requests three positions and \$437,000 in 2017-18 and 2018-19 as a two-year limited-term funding, to support its DLSE for increased workload created by SB 1001.

Senate Bill 1063 (Hall). Existing law prohibits payment of a wage less than the wage rate 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. SB 1063 adds a new and discrete equal pay protection to the existing protection for gender-based disparity to also include a prohibition against paying lesser wage to an employee based on race or ethnicity. The amendments made by SB 1063 are an individual worker protection that will be enforced by the DLSE’s Retaliation Complaint Investigation unit within DIR. The department requests three positions and limited-term augmentation of \$415,000 in 2017-18 and \$392,000 in 2018-19, to implement the requirements of SB 1063 that will expand equal pay protections to include a prohibition against paying a lesser wage to an employee based on race or ethnicity.

Senate Bill 1167 (Mendoza). The Division of Occupational Safety and Health (DOSH) is the sole agency responsible for protecting workers from health and safety hazards on the job. DOSH protects workers in almost every workplace in California through its enforcement, research, and standards, and consultation programs. SB 1167 requires DOSH to develop a new heat-illness prevention standard for indoor workers which would specify necessary measures to control indoor exposures to heat and would make compliance and enforcement easier and more effective. The new standard completed by this bill could prompt engineering and administrative changes to reduce risks of heat stress for indoor employees.

The Department requests one position and \$212,000 for 2017-18 and seven positions and \$1.1 million in 2018-19, with \$1.3 million ongoing, to provide resources for DOSH to address the new activity of indoor heat exposure inspections to protect California workers as required by SB 1167.

Staff Recommendation. Approve as budgeted.

Issue 7: Implementation of Chaptered Legislation Relating to Workers Compensation

Summary. In April, the Administration submitted a Spring Fiscal Letter proposing 73.0 additional positions and \$14.71 million in 2017-18 (\$13.6 million ongoing) from the Workers' Compensation Administration Revolving Fund to implement and meet the ongoing requirements of Senate Bill 1160 (Mendoza), Chapter 868, Statutes of 2016, and AB 1244 (Gray) Chapter 852, Statutes of 2016.

Background. SB 1160 and AB 1244 looked to address demonstrated fraud in the worker's compensation system. Recent news stories, including coverage by the Center of Investigative Reporting, show that workers' compensation provider fraud is endemic - notably in Los Angeles County -costing stakeholders and the system over \$1 billion in liens that had accumulated in the system at the time of this writing. In particular, the current workers' compensation lien claim and litigation system has proven to be highly exploitable by fraudulent medical providers.

SB 1160 was a reform bill intended to remove unnecessary litigation from the workers' compensation system that was exposed by SB 863 reforms. SB 1160 expedites medical treatment to injured workers within the first 30 days after their injury by exempting conservative treatment from utilization review, standardizing utilization review procedures, modernizing data collection in the system to improve transparency, and implementing anti-fraud measures in the filing and collection of lien claims for medical treatment. AB 1244 addresses medical provider fraud within the workers' compensation system and creates a new adjudication, stay, and suspension process for dealing with convicted and indicted providers that have medical lien claims within the system. These two bills are estimated to save the system \$800 million

Of the positions requested, 12.0 positions are needed to support three information technology projects which will help facilitate the necessary reform efforts: 1) Doctor's First Report of Injury; 2) Utilization Review Management and Provider Suspensions; and 3) Consolidated Lien Proceedings. Of the remaining 61.0 positions, 50.0 positions are specific to the anti-fraud provisions of these two bills focused on: 1) the work of the Anti-Fraud Unit; 2) Provider Suspension Hearings; and 3) Special Lien Proceedings.

The adoption of the two reform bills significantly increased the Department's role in combating fraud. The small investment in proposal staff are required to perform a variety of functions for hundreds of claims to achieve the estimated \$800 million in savings to the worker's compensation system. Given the level of savings that could be achieved, the Subcommittee may wish to revisit this issue in 2018-19 to insure that the department has adequate resources to carry out the newly mandated tasks.

Staff Recommendation. Approve as proposed.

Issue 8: Occupational Safety and Health Penalty Federal Compliance Trailer Bill

Summary. The Administration is proposing trailer bill to align state occupational safety and health administration plan to meet minimum federal standards. Under existing federal law, a state OSHA plans must meet minimum standards in order to gain federal approval and corresponding federal funding. Federal OSHA has identified a concern regarding how California's state plan handles certain retaliation claims relating to reports of an injury. The TBL would clarify that workers that report an injury that does not relate to a specific OSHA complaint or worker's compensation claim are still protected from retaliation. These changes would alleviate federal concerns regarding California's state plan and minimize the state's risk of losing federal approval and funding.

Staff Recommendation. Approve proposed trailer bill language.

Issue 9: Public Works Enforcement

Summary. The Administration is proposing six positions and \$805,000 in 2017-18, and \$759,000 in 2018-19 from the Labor and Workforce Development Fund to education awarding bodies of their requirements to comply with registration requirements, and one attorney position with \$212,000 in 2017-18 and \$204,000 ongoing from the State Public Works Enforcement Fund. Additionally, the Administration is proposing to trailer bill language to increase enforcement and compliance with registration compliance. This item was heard at the March 30th hearing.

Background

The Administration notes that the annual revenues from the recently created contractor registration fee are less than estimated when the fee was established and do not cover current spending levels for public works enforcement. Specifically, the administration estimates that expenditures from the State Public Works Enforcement Fund (SPWEF) in 2016-17 will be \$13 million, while revenues coming into the SPWEF from the contractor registration fee will be only \$10 million. If fee revenues continue at this level and no adjustments are made to spending levels, SPWEF's reserves would be virtually exhausted in 2017-18.

The Administration believes that one reason revenues have not met expectations is that some contractors may not be complying with the registration requirement. During 2015-16, less than 30,000 contractors registered and paid the fee, compared to an initial rough estimate of 40,000 or more registrations. Through its enforcement efforts, DLSE found about 600 instances where contractors were working on a public works project during 2015-16 without registration. Contractors that are found to be bidding or working on a public works contract without registration are subject to a penalty of up to \$2,000 and may face temporary disqualification from bidding or working on public works projects for repeat violations.

Governor's Proposal

The Governor proposes a few actions to address the funding shortfall in the SPWEF in 2017-18 and later years. First, the Governor proposes to provide funding to DLSE on a two-year limited-term basis for six positions to conduct outreach with awarding bodies to improve their awareness of their responsibility to ensure that contractors have complied with this requirement, with the intent of increasing compliance and fee revenue over time. As part of this outreach, DLSE would encourage awarding bodies to require contractors to "prequalify," or demonstrate compliance with various labor law requirements, including the contractor registration requirement, before bidding on public works contracts. Under current law, awarding bodies are authorized, but most are not mandated, to require contractors to prequalify.

The Governor's proposal would reduce expenditures from the SPWEF by moving the support of the prevailing wage determination function from the SPWEF to the LECF beginning in 2017-18 and beyond. This action would free up \$2.2 million in the SPWEF on an ongoing basis and would largely address the funding imbalance going forward, even if contractor registration fee revenues remain flat in future years.

For 2017-18 only, the Governor proposes to shift the portion of statewide administrative costs allocated to the SPWEF (such as the fund's portion of reimbursements to the state Department of Finance and Department of Human Resources) to other special funds administered by DIR. This one-time action frees up an additional \$1.1 million in the SPWEF in 2017-18.

Current law gives DLSE the authority to "debar," or prohibit a contractor from bidding or working on public works contracts, for up to three years if the contractor violates public works requirements under certain conditions. The Governor's proposal would provide \$212,000 from the SPWEF for one additional Attorney III position to allow DLSE to conduct additional debarment proceedings.

In addition to the budget change proposal, the Administration is proposed trailer bill language. Below is a summary of some of the key provisions included in the TBL:

- **Small Projects Exemption.** Provides administrative relief for contractors and awarding agencies on small projects. Among the provisions, the TBL creates a new minimum threshold triggering registration requirement for projects over \$25,000 for new construction; over \$15,000 for maintenance.
- **Unregistered Contractor Sanctions.** Among its provisions, the TBL requires all contractors and subcontractors engaged in the performance of a public work must be registered. If the Labor Commissioner determines that a contractor or subcontractor has violated the registration requirement, unregistered contractors shall forfeit as a civil penalty to the state \$100 per day up to \$8,000. A registered public works contractor or subcontractor who enters into a contract with an unregistered lower-tier subcontract to perform any public work shall be subject to one or both of loss of registration from the current year, and a civil penalty of \$100 per day, up to \$10,000.
- **Awarding Agency Sanctions.** Specifies that an Awarding Agency (AA) authority that fails to provide the notice to DIR, or enters into contract with or permits unregistered contractor or subcontractor to engage in work, is subject to fine of \$100 per day up to \$10,000. Additionally, if Labor Commissioner determines that AA willfully violated requirements of this section or chapter on 2 more projects within a 12 month period, the AA shall be ineligible to receive state funding or financial assistance for any construction project undertaken by the AA for one year. Penalties received shall be deposited into the State Public Works Enforcement Fund.

The May Revision proposed amendments to the trailer bill. Specifically, the new trailer bill language removed the provision regarding debarment, or loss of registration and disqualification of registration for the following year, as well as allowing registrants to register for multiple years at a time, and raising the registration fee from \$300 to \$400.

DLSE to report by March 2019 on (1) changes in the amount of contractor registration fees collected; (2) the estimated effect of any efforts to increase compliance with the contractor registration fee, including outreach to awarding bodies and other steps to increase awarding body accountability for ensuring contractor registration; (3) what adjustments are necessary to the

level of the contractor registration fee in order to support ongoing public works enforcement costs and repay the SPWEF's outstanding loans to other funds; and (4) the feasibility of shifting support for the prevailing wage determination function back to the SPWEF.

Staff Recommendation. Adopt proposed trailer bill language, and modify the budget change proposal to move the support of the prevailing wage determination function from the SPWEF to the LECF beginning in 2017-18 for two years. Additionally, adopt supplemental reporting language for the DLSE to report by March 2019 on (1) changes in the amount of contractor registration fees collected; (2) the estimated effect of any efforts to increase compliance with the contractor registration fee, including outreach to awarding bodies and other steps to increase awarding body accountability for ensuring contractor registration; (3) what adjustments are necessary to the level of the contractor registration fee in order to support ongoing public works enforcement costs and repay the SPWEF's outstanding loans to other funds; and (4) the feasibility of shifting support for the prevailing wage determination function back to the SPWEF.

Issue 10: Strategic Enforcement of Labor Standards

Summary. The Administration proposes a three year phase-in and an increase of 31 positions and \$4.6 million in 2017-18, 58.5 positions and \$8.6 million in 2018-19, 82.5 positions and \$11.6 million in 2019-20, and \$11.4 million ongoing from the Labor Enforcement and Compliance Fund. These resources seek to combat wage theft and labor law violations. Additionally, the Administration is proposing accompanying trailer bill to address enforcement issues. The subcommittee approved the position authority and funding at its March 30th hearing, however did not act on the trailer bill language.

Trailer Bill Language. The May Revision proposes the following changes summarized below:

- 1) **License Revocation:** The proposed amendments also clarify that the Labor Commission may refer a *final* unpaid wage judgment that have been unpaid for at least 30 days to the licensing agency to initiative disciplinary action to suspend or revoke current license or to deny renewal of a license. A valid wage claim does not turn into a judgment until all appeals have been exhausted, all judgments are considered final.
 - a. Added provision that the Labor Commissioner will not refer an employer to the respective licensing board if the licensee has a notarized and approved installment payment plan. If the licensee misses an installment the licensee is no longer excused from a referral under this section.
 - b. Upon full payment of a final judgment, at the licensee's request, the Labor Commissioner shall promptly notify the licensing agency that a wage judgment has been satisfied.
- 2) **Tolling Statute of Limitations:** The proposed amendments limits tolling period to 12 months. Specifically, upon issuing a notice to an employer about an opening an investigation the wages owed and related penalties and reimbursements as enumerated will toll for 12 months.
- 3) **Evidentiary Sanctions.** The proposed amendments provides that generally an employer will have no less than 15 days to respond to a Labor Commissioner's request for records. The Labor Commissioner may extend the time to produce records under at her discretion, under a variety of scenarios, including if the employer made good faith efforts to comply, and if a timely good faith response to the Labor Commissioner that additional time is needed.

Staff notes that while the proposed amendments have addressed a variety of stakeholder concerns, staff notes that the department is still in negotiating with stakeholders. In particular, stakeholders have concerns regarding provisions related to license revocation, attorney fees, and allowing DLSE to request a temporary reinstatement of a worker during an unlawful retaliation investigation. Staff notes that the Department and stakeholders are still collaborating on those provisions of the bill.

Staff Recommendation. Adopt placeholder trailer bill language.

7501 Department of Human Resources (CalHR)**Issue 11: Dependent Re-Verification Process.**

Summary. The Governor's budget includes one position and \$175,000 in reimbursement authority for 2017-18, \$118,000 and in 2018-19, and ongoing, to perform the new workload to develop, implement and administer the dependent re-verification process.

Background. In January 2011, CalPERS Board of Administration endorsed the Health Benefits Purchasing Review (HBPR) project to develop strategies and initiatives to ensure the continuation and sustainability of the CalPERS Health Benefits Program. The HBPR resulted in the development of 21 initiatives, including dependent eligibility verification designed to influence health care delivery, improve health outcomes, and delivery sustainable programs. The purpose of the dependent eligibility verification project was to ensure all dependents enrolled in a CalPERS health plan met CalPERS' eligibility criteria and to prevent members and employers from having to pay health care costs for those who do not qualify. During verification, each subscriber with at least one dependent enrolled on their health plan was required to provide specific supporting documentation based on dependent type (e.g., spouse, domestic partner, child, parent-child relationship). The 2013-15 CalPERS Dependent Eligibility Verification project disenrolled 8,379 ineligible state employee dependents from the CalPERS health plans for a savings of over \$60 million.

Senate Bill 98, (Committee on Budget and Fiscal Review), Chapter 28, Statutes of 2015 designates CalHR to establish standards for the employing office of the state employee to conduct health dependent eligibility at least once every three years for spouses, domestic partners, children, stepchildren, and domestic partner children; and at least once annually for other children enrolled as dependents under parent-child relationship. Eligibility is the same for dental benefits as it is for health benefits.

CalHR is requesting funding to perform project management and other duties to administer dependent re-verification process and workload associated with oversight to ensure that departments are removing ineligible dependents from health and dental benefits. CalHR will hire a full-time staff personnel program analyst (SPPA), a classification that is responsible for the most complex and difficult personnel management assignments at the statewide human resources leadership level. The SPPA will conduct biweekly project meetings with CalPERS and departmental HR representatives, creating policy memos, training and procedural manuals, user guidance, and assisting state departments with re-verification process issues. On a continuing basis the SPPA will analyze enrollment data, monitor departmental compliance with health and dental dependent enrollments, train department HR staff on eligibility rules and enrollment, verification and termination procedures.

CalHR notes that on August 2017, the SPPA will begin monitoring departments to ensure that they are removing ineligible dependents from dental benefits, and develop a procedural manual to for the re-verification process, and conduct multi-departmental trainings. From 2018 onward, the SPPA will begin the re-verification process, among other duties described above.

Staff Recommendation: Approve as budgeted.

7920 CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM**Issue 12: Revised Creditable Compensation**

Summary. The May Revise proposes a technical correction regarding the amount of General Fund contribution to CalSTRS based on the revision of the credible compensation. Credible compensation are types of compensation that are factored into the calculation of the pension benefit.

Background. The revision in the credible compensation results is an increase in funding \$3.7 million reported by CalSTRS for fiscal year 2015-16. This increase consists of \$801,000 in defined benefit payment, \$1.9 million in the pre-1990 defined benefit level, and \$993,000 for supplemental benefit maintenance account.

Staff Recommendation. Approve as proposed.

9800 Augmentation for Employee Compensation and Control Section 3.61**Issue 13: Scheduled Employee Compensation Augmentation Increases**

Governor's Budget Proposal. The Governor's May Revision proposes the following items related to employee compensation augmentations:

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 \$32.12 million, would increase Item 9800-001-0494 by \$9.98 million, and would increase Item 9800-001-0988 by \$4.92 million to reflect changes discussed below.

Control Section 3.61 is used to prefund retiree health benefits through departmental budgets. The May Revision requests control section 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 Physicians and Dentists (Bargaining Unit 16). Additionally, the Director of Finance has determined state employees of the Judicial Branch are required to contribute 2.3 percent effective July 1, 2017. As a result, the state will match Judicial Branch state employees' contributions of 2.3 percent effective July 1, 2017.

The May Revision also requests various General Fund items be increased by \$152.68 million, various special fund items be increased by \$39.88 million, various non-governmental cost funds be increased by \$26.68 million, and reimbursements for various items be increased by \$20.31 million to reflect salary and benefit increases for recently negotiated memorandum of understanding with bargaining units represented by the Service Employees International Union (SEIU), Firefighters (BU8), Craft and Maintenance Workers (BU12), Stationary Engineers (BU13), Psychiatric Technicians (BU18), Health and Social Service Professionals (BU19), and Excluded employees.

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 estimates 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), and increases to salaries and revised benefits recently negotiated with Physicians and Dentists (Bargaining Unit 16).

While these figures include estimated health premium rates, the Department of Finance notes that final health rates are not expected to be adopted by the California Public Employees' Retirement System Board of Administration until June 2017. If the actual rates differ from the estimated rates, a technical correction to the budgeted amounts will be made.

Staff Recommendation: Approve as proposed.

ITEMS FOR DISCUSSION/VOTE**7100 EMPLOYMENT DEVELOPMENT DEPARTMENT****Issue 14: Workforce Innovation Opportunity Act Discretionary Federal Funds**

Summary. The Governor’s May Revision proposes \$59 million in state-level discretionary federal Workforce Innovation Opportunity Act (WIOA) funding in 2017-18, a \$6.8 million decrease relative to 2016-17. This decrease reflects a reduction in available federal funding.

Background. Federal law provides that a certain portion of federal 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.

The May Revision proposal discontinues funding in 2017-18 for several items that are receiving funding in 2016-17, totaling \$10 million. The largest of these include:

- Regional staff capacity for state plan implementation (\$1.2 million in 2016-17).
- WIOA program evaluation (\$1.4 million in 2016-17).
- Technical assistance and staff training for state agencies, local areas, and One-Stop partners (\$4.5 million in 2016-17).
- Incentive funds for high performance local workforce boards pursuant to SB 698 (Lieu), Chapter 497 Statutes of 2011 (\$1.7 million in 2016-17).

The May Revision also decreases funding for some previously funded items while making offsetting increases in other previously funded items. Notably, the May Revision makes the following adjustments to existing items:

- **Funding for Regional Workforce Accelerator Program Reduced by \$8.3 Million.** The May Revision provides a total of \$2 million in discretionary funding for the Regional Workforce Accelerator Program, an \$8.3 million reduction relative to 2016-17 funding. The Regional Workforce Accelerator Program awards funds to local programs to test strategies for serving populations with barriers to employment. Recently, the Regional Workforce Accelerator program emphasized strategies to improve employment outcomes for formerly incarcerated and immigrant populations. This program has provided grants to 36 programs that serve people with low income, 35 programs that support disadvantaged youth, 19 programs that support ex-offenders, 11 programs that support people with disabilities, and 17 programs that support veterans. In total, 9,657 participants were served with the grants, and leveraged about \$17.3 million in other funds.

- **Funding for Slingshot Increased by \$5.6 Million.** The May Revision provides a total of \$10.5 million for “Slingshot 2.0,” an increase of \$5.6 million relative to 2016-17 funding. The Slingshot programs have been used to provide assistance to local workforce development areas in carrying out regional planning and service delivery efforts based on regionally selected solutions to regional problems. Funding in the May Revision for Slingshot 2.0 appears to be intended to continue support for regional planning and coordination with government, community and industry leaders, as well as building on projects initiated through the Regional Workforce Accelerator Program.
- **Funding for Model Multiple-Employer Industry Sector Programs Increased by \$1 Million.** The May Revision provides a total of \$3 million for the Model Multiple-Employer Industry Sector Programs item, a \$1 million increase over 2016-17 funding. This item awards funding to local workforce regions to implement or build on sector partnership strategies. Emphasis is on multiple-employer workforce initiatives that develop career pathways to industry sectors with projected significant job openings or job growth. This line-item will help implement the State Plan goal of income mobility through attainment of industry-valued credentials and apprenticeship- as well as WIOA priority of utilizing on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience opportunities, or transitional jobs.

The May Revision appears to propose just one completely new item—\$600,000 for services for in-school at risk youth. According to the administration, the funding is intended to expand youth services offered by state staff at local job centers, establish partnerships with other local agencies and community-based organizations, and educational institutions that work with youth.

In addition to the adjustments listed above, the Governor proposes to continue funding other services for targeted populations. Including the following:

- **Governor’s Award for Veterans’ Grants** - \$5.0 million. This grant will expand upon existing projects that accelerate employment and re-employment strategies for California veterans. Funds will focus on the efforts to transition veterans into high-wage, high-demand occupations to include: healthcare; professional, scientific and technical services; construction; transportation; security; utility and energy sectors; and information technology. The intent is to build meaningful and sustainable industry investment and partnership, system innovation, and to develop initiatives that have the best potential to place targeted veterans, including recently separated veterans, into self-sufficient jobs and on pathways to careers
- **Disability Employment Accelerator** - \$2.0 million. Funds will be used to design, develop, and implement projects that accelerate employment and re-employment strategies for people with disabilities by creating more effective linkages with California’s employer community. These strategies will help increase employer awareness and dispel myths and perceived barriers regarding hiring people with disabilities.

Workforce Innovation Opportunity Act Local Assistance Adjustments. Lastly, The May Revision proposes a decrease of \$19.45 million in 2017-18 to align budget authority with current federal allotments for local area activities.

Staff Recommendation. Approve as proposed.

7120**CALIFORNIA WORKFORCE DEVELOPMENT BOARD****Issue 15: Road Repair and Accountability Act – Pre-apprenticeship Training Programs**

Summary: The May Revision proposes \$5 million and 1.0 position payable from the Road Maintenance and Rehabilitation Account, State Transportation Fund for 2017-18 through 2021-22 to implement pre-apprenticeship training programs, focused on formerly incarcerated, women, and minorities, in support of Senate Bill 1 (Beall) Chapter 5, Statutes 2017 projects.

Background. SB 1 creates the Road Maintenance and Rehabilitation Program (RMRP) to address deferred maintenance on the state highway system and the local street and road system and appropriates \$5 million annually from 2017-18 through 2021-22 to the State Board to assist local agencies to implement policies to promote preapprenticeship training programs to carry out specified projects funded by the RMRP. Streets & Highways Code Section 2038 requires the State Board to develop guidelines for public agencies receiving RMRP funds to participate in, invest in, or partner with, new or existing pre-apprenticeship training programs. The State Board will develop local guidance and a statewide pre-apprenticeship skills training grant program to address the projected labor demand to support the transportation projects funded by the RMRP and to build pipelines into middle-class jobs in the construction trades for underserved Californians, including women, minorities, at-risk youth, and the formerly incarcerated.

The State Board will design a pre-apprenticeship training program that establishes and expands high-quality construction pre-apprenticeships across the state. Partnerships funded through this program will serve a minimum of 300 participants a year, with employment and income gains tracked through the state's workforce data reporting system. The State Board will utilize the Employment Development Department's (EDD) contracting, monitoring and reporting resources to ensure appropriate investment of resources, and the State Board and EDD will provide technical assistance to support and document grantee success. The State Board will issue regular updates on system innovation, lessons learned, and best practices to encourage program expansion, replication, and continuous improvement. The State Board will establish and execute an outcomes-driven work plan to develop and disseminate workforce guidelines for local transportation agencies, including a) research, analysis, and stakeholder engagement; b) the production of briefs and/or toolkits; and c) a statewide outreach plan including, e.g., webinars, briefings, and stakeholder convening.

The subcommittee may wish to consider how to promote linkages and coordination between various initiatives and partnerships between the Board, California Department of Corrections and Rehabilitation (CDCR) and CalTrans.

Staff Recommendation. Approve as proposed. Adopt placeholder budget bill language for State Board to also encourage partnerships and collaboration with other pre-apprenticeship programs beyond this proposal with CDCR and CalTrans.

7900 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**Issue 16: CalPERS Supplemental Payment**

Summary. The Governor's proposes borrowing \$6 billion from the state Pooled Money Investment Account (PMIA)—an account that invests money from the state and local governments—and use this money provide a supplemental payment to CalPERS to pay down a portion of state pension liabilities. According to the Administration, this would reduce unfunded liabilities, and save a net of \$11 billion over three decades. Moreover, the General Fund share of the repayment would come from Proposition 2.

Background

Pooled Money Investment Account. The PMIA holds funds on behalf of the state, as well as cities, counties, and other local entities in the separate Local Agency Investment Fund (LAIF). As of the quarter that ended in March 2017, the balance of the PMIA was roughly \$70 billion. Reserve balances in both the General Fund and other funds tend to grow during periods of economic expansion when revenues are higher. The state's portion accounted for two-thirds of this total while the local portion represented the remaining one-third. Much of the state funds invested in the PMIA are held in the Surplus Money Investment Fund (SMIF), the portion of the PMIA that holds most balances of the state's special funds. The PMIA is managed by the State Treasurer's Office and is governed by the Pool Money Investment Board, which includes the Treasurer, Controller, Director of the Department of Finance. In addition to be a short term investment account, the PMIA helps the state manage seasonal cash deficits. During times of cash imbalances, the General Fund borrows billions of dollars from other state funds held in the PMIA. The General Fund pays the PMIA back with interest each year.

Proposition 2. Proposition 2 amended the State Constitution to require the state to make certain extra annual debt payments and budget reserve deposits each year. These payments are required through 2029-30. Thereafter, the required annual debt payments become optional, but amounts not spent on debt must be deposited into the rainy day reserve. Unlike reserve requirements, which the Governor and Legislature may reduce during a budget emergency, the state may not reduce the required annual amounts of debt payments under Proposition 2 for any reason through 2029-30.

There are three types of outstanding debts eligible for payments under Proposition 2. They are: (1) certain budgetary liabilities (including the amounts the state's General Fund owes special funds, as described above), (2) certain payments of statewide pension system liabilities, and (3) prefunding for state retiree health benefits. Proposition 2 requires payments for pension and retiree health liabilities to be "in excess" of "current base amounts."

Governor's Proposal. In the May Revision, the Governor proposes borrowing \$6 billion from the SMIF to make a supplemental payment to CalPERS. This \$6 billion contribution would be in addition to the actuarially required contributions to CalPERS—referred to as an "additional

discretionary payment” to CalPERS. Rather than borrow from individual special funds as the state has done in past, this loan would come from PMIA as a whole.

The Administration proposes making lump installments throughout 2017-18 to accommodate for cashflow needs, however, the precise plan, such as the amount and when each of these installments occur is still being worked out.

CalPERS estimates that the \$6 billion in additional discretionary payment would substantially mitigate state employer contributions, specifically reducing the state’s annual contribution by \$638 million annually by 2023-24. These benefits will be distributed among General Fund and special funds that make pension payments.

Loan Repayment. The administration has not determined a precise plan for the state General Fund and other funds to repay the \$6 billion loan from the PMIA. The administration provided staff and the LAO a “working plan” that would pay the loan off in eight years. While the administration indicates that this payment period is flexible, it intends to take no longer than ten years to pay off the loan. Under the working plan, the General Fund would cover repayments on behalf of both itself and associated special funds in 2017-18 with a \$427 million repayment (consisting of a \$365 million principal payment plus a \$62 million interest payment) counted toward Proposition 2 debt payment requirements. Other funds would begin making payments in 2018-19 and would later proportionally compensate the General Fund for the 2017-18 payment.

Under the administration’s current projection of interest costs, total loan repayments—principal and interest payments—would be roughly \$7 billion. The administration’s proposal would, as the LAO understands it, distribute these costs across the General Fund and other funds based on the proportional split of pension contributions by fund source. Consequently, the General Fund and other funds would be charged for around 60 percent and 40 percent of these costs, respectively.

Proposition 2 Would Cover General Fund Portion of Loan Repayments. For the General Fund’s share of future loan repayments, the administration proposes establishing General Fund repayments based on the varying Proposition 2 debt payment requirements.

Special Funds Would Repay Loan Using Available Resources. Some of these funds may not have sufficient resources to cover those costs. In these cases, interim General Fund support may be necessary—essentially to loan some special funds and other funds money to cover their initial annual costs under this plan. Affected special funds would then owe this money (with interest) to the General Fund. The administration has not assessed how many funds would face this issue, nor the amount of General Fund resources needed to support them. Representatives of the administration have told staff and the LAO that they would work out these details during the summer after the final budget is adopted. Therefore the Administration does not know how many special funds will have difficulty making loan repayments under the proposal.

The LAO proposes the following recommendations:

Before the Legislature acts on the Governor’s proposal, the LAO recommends requiring the administration to perform more due diligence and report the results publically. These analysis include:

- **Legal Opinions.** Require the Administration to consult with fiduciary counsel—whether at the Attorney General’s Office or elsewhere—to determine if the proposal has problematic fiduciary implications for either the PMIB or CalPERS board. In addition, LAO recommends the administration be required to seek an Attorney General opinion and/or a public validation proceeding in the courts regarding the constitutionality of borrowing from the PMIA for this.
- **Risks and Uncertainties.** Require the Administration to report to the Legislature a comprehensive analysis conducted by professional actuaries—using stochastic modeling and other actuarial simulations—quantifying the uncertainties around the proposal. This analysis could include a determination of the probability that the proposal will produce a net benefit for the state—considering both CalPERS and the PMIA’s respective investment returns in the future. This analysis could also consider alternatives for prepayments in terms of their net benefit.
- **Special Funds’ Ability to Pay.** Require the Administration to identify state funds that likely cannot make the repayments in the first few years of implementation, the amount of those shortfalls, and a proposed solution that would allow each fund to pay over the long term. The administration could be required to provide (1) its best estimates of how much money special funds will need to borrow from the General Fund to make their payments, by year, and how their repayments to the General Fund will be structured, and/or (2) specific plans to change each affected special fund’s revenues or spending to cover these shortfalls.

Recommend Legislature Consult With California Actuarial Advisory Panel (CAAP). The CAAP consists of eight actuaries and was established in statute in 2008 to provide public agencies with impartial and independent information on pensions, retiree health benefits, and best practices. The LAO recommends that the Legislature formally ask the CAAP to provide an opinion on (1) the administration’s plans and estimates and (2) whether the state should make such a payment towards either pension or retiree health liabilities.

Recommend Legislature Act on Plan Later in Session After Receiving More Information. Final legislative action on the administration’s proposal can wait until after June 15. In particular, the LAO recommends the Legislature wait to act on this plan until after the administration has submitted the analyses listed above, which perhaps could be developed by the 2017 legislative session. If the analyses showed a high likelihood of net benefit to the state and there were no major legal concerns, the Legislature could pass implementing legislation.

Recommend Flexible Proposition 2 Debt Payments in Budget Plan. To pass a budget in June, the Legislature must include a schedule of required debt payments under Proposition 2. Instead of approving the proposal now without sufficient analysis, the Legislature could “pencil in” a flexible plan for Proposition 2. Under these provisions, the administration’s proposed \$427 million repayment would be released if the Legislature adopted implementing legislation later in the session. If no such legislative plan passed, the budget package would include an alternative purpose for the \$427 million loan repayment. For example, the Legislature could

direct the administration to make an additional, supplemental payment to CalPERS of this amount—but without any borrowing from PMIA.

Staff Comments. Staff notes that this is a significant proposal that the Administration is requesting in the May Revision process. The proposal may have merit, however, given the substantial impacts this this may have, staff recommends holding this item open for additional review.

Staff Recommendation. Hold Open

CONTROL SECTION 3.60**Issue 17: Control Section 3.60 State Retirement Contribution Rates**

Summary. The May Revision proposes to amend Control Section 3.60 be amended to reflect changes in state retirement contribution rates adopted by the CalPERS Board on April 18, 2017. Additionally, the Administration is proposing to amend Control Section 3.60 to also allow the Department of Finance to make supplemental payments to CalPERS for the state's retirement contributions using Proposition 2 funding.

Governor's Proposal. The reduction in employer contribution rates is a result of new hires entering the system under lower benefit formulas pursuant to the Public Employees' Pension Reform Act of 2013, greater than expected contributions to the system, and lower cost of living increases than estimated.

The newly adopted state employer contribution rates result in total state costs of \$473.85 million, a decrease of \$100.56 million from the \$574.41 million included in the Governor's Budget. Of the \$100.56 million decrease, the General Fund is \$67.23 million, special funds are \$19.31 million, and other nongovernmental cost funds are \$14.02 million. Additionally, it is requested that CalPERS' fourth quarter deferral be reduced by \$14.12 million General Fund from the Governor's Budget to reflect the changes in retirement rates. The net effect of these changes on the General Fund is a decrease of \$53.11 million in fiscal year 2017-18 compared to Governor's Budget.

In addition to the above adjustments, the Administration is also requesting language to be added to the control section, which implements provisions of the previous proposal to borrow \$6 billion to make a one-time payment to reduce state pension liabilities at CalPERS. Specifically, the language would provide \$427 million General Fund to make supplement the state's retirement contributions in 2017-18. The Department of Finance would transfer these funds either to the Public Employment Retirement Fund, or the Surplus Money Investment Fund (SMIF) for repayment of principal and interest of a cash loan that was made to supplement the state's retirement contributions.

Staff Comments. As noted in the previous item, the Governor's May Revision proposal to borrow \$6 billion to reduce state pension liabilities is a substantial request to during May Revise, and therefore may warrant further legislative review.

Staff Recommendation. Approve amendments to update state retirement contribution rates adopted by CalPERS. Hold open the proposal to transfer up to \$427 million General Fund in supplemental state retirement contribution.

Issue 18: CalPERS Administrative Budget Adjustments

Governor's Proposal: The Governor proposes various budget bill amendments to incorporate the CalPERS proposed budget, which the Board is anticipated to approve at its May 2017 board meeting. The proposals are as follows:

- 1) Decrease Item 7900-001-0822 by \$20.44 million (Public Employees' Health Care Fund)
- 2) Increase Item 7900-001-0950 by \$20.44 million (Public Employees' Contingency Reserve Fund)
- 3) Decrease Item 7900-003-0830 by \$118.49 million (CalPERS board administrative costs paid by the Public Employment Retirement Fund)
- 4) Increase Item 7900-015-0815 by \$31,000 (CalPERS board administrative costs paid by the Judges' Retirement Fund)
- 5) Decrease Item 7900-015-0820 by \$20,000 (CalPERS board administrative costs paid by the Legislators' Retirement Fund)
- 6) Decrease Item 7900-015-0830 by \$5.41 million (CalPERS board administrative costs paid by the Public Employees Fund)
- 7) Decrease Item 7900-015-0833 by \$291,000 (CalPERS board administrative costs paid by the Annuitants' health Care Coverage Fund)
- 8) Increase Item 7900-015-0849 by \$436,000 (CalPERS board administrative costs paid by the Replacement Benefit Custodial Fund)
- 9) Increase Item 7900-015-0884 by \$195,000 (CalPERS board administrative costs paid by the Judges' Retirement System Fund)

With the exception of the first two items, the items mentioned above are display items for informational purposes to reflect a corresponding change in CalPERS' continuous appropriation authority. All of these changes reflect the fiscal year 2017-18 budget proposed during the April 19, 2017 Board meeting, and anticipated to be approved in May. The budget proposed by CalPERS reflects a decrease of \$123.55 million primarily driven by a continued reduction in external investment management fees.

It is also requested that Control Section 4.20, which establishes the surcharge levied on the state to fund the Contingency Reserve Fund (CRF), be amended to support the administrative expenses of the CalPERS health care program. The CRF was established in 1962 as a means to pay for administrative costs across the CalPERS healthcare program. Employers pay for administrative costs through a surcharge on health premiums.

Background.

The first two items listed above and changes to the Control Section 4.20 deal with the Healthcare Fund Administrative Expenses. The Subcommittee heard the topic during the March 30th hearing. In January, the Administration proposed trailer bill language, and amendments to C.S. 4.20, to do the following:

- 1) **Require All Administrative Costs Be Paid from Contingency Reserve Fund (CRF).** All administrative expenses currently being paid from the Health Care Fund (HCF)

would be paid from CRF. Any future administrative expenses - regardless of health plan - would be paid only from the CRF. The Health Care Fund (HCF) was established in 1988 to fund CalPERS “self-funded” plans, such as Preferred Provider Organization (PPOs). Contributions to the HCF are built into these plans’ premiums.

- 1) **Changes Language Related to Local Government Contributions to CRF.** The proposed language makes a number of changes to Section 22901 of the Government Code related to local government’s contributions to the CRF. The language would require local governments to pay (1) the same surcharge to the CRF that the state pays and (2) additional surcharges for any administrative services provided to the local government that is not provided to the state.
- 2) **Budget Bill Reduces CRF Reserve.** In past budgets, Control Section 4.20 has specified that CalPERS would maintain a three-month reserve in the CRF. The proposed budget bill language for Control Section 4.20 directs CalPERS to maintain a one-month reserve in the CRF.

2016 Budget Act. Last year, the Subcommittee approved and the final budget included trailer bill language proposed by the Department of Finance to address the concerns with the administrative expenses related to the Health Care Fund and Contingency Reserve Fund to provide additional budget oversight.

- Government Code Section 22910: Clarifies existing statute establishing that CalPERS health care administrative expenses in the Contingency Reserve Fund must be approved by Legislature; and
- Government Code Section 22911: Establishes that CalPERS health care administrative expenses in the Health Care Fund must be approved by Legislature.

The approval of these two code section changes ensured Legislative oversight and brought both the CRF and HCF with regard to administrative funds under budget.

Staff Comments. Last year, the Administration also proposed and the Legislature rejected similar trailer bill language to establish that the CRF be used for administrative expenses. At the time, the subcommittee noted that policy issues associated with the administrative expenses for local governments seem more appropriate for consideration by the policy committees, not the budget committee. In January, the Administration again noted that trailer bill language is needed to require CalPERS to place all their administrative costs under the CRF. However, if the subcommittee approves Items 1 and 2 above, it may grant this without additional legislation to grant CalPERS this authority. This action is inconsistent with last year’s action taken by the Legislature to reject the proposal, and it is unclear how this conforms to what authority there is to do so, and whether this is counter to legislative oversight.

Staff Recommendation. Adopt items 3-9 of the May Revision Proposal. Reject Items 1 and 2; and reject the changes to C.S. 4.20 including the change from the 2016 Budget Act to change the reserve, and approve a one-month reserve.

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, May 18, 2017
9:30 a.m. or upon adjournment of Session
State Capitol - Room 3191(room change)

Consultant: Anita Lee

AGENDA PART B

Vote Only Items

<u>Item</u>	<u>Department</u>		<u>Page</u>
7100	Employment Development Department		
Issue 1	Disability Insurance Program		3
	Approved as proposed (3-0)		
Issue 2	Unemployment Insurance Program		4
	Approved as proposed (3-0)		
Issue 3	School Employees Fund (SEF)		5
	Approved as proposed (3-0)		
7300	Agricultural Labor Relations Board		
Issue 4	Funding for Agricultural Labor Relations Board		6
	Approved staff Recommendation: Approve two-year limited term positions for 1.5 hearing officer II positions and one Attorney IV position. (2-1) Anderson voting no.		
7320	Public Employment Retirement Board		
Issue 5	Augmentation for Public Employment Relations Board		7
	Approved as proposed (3-0)		
7350	Department of Industrial Relations		
Issue 6	Enhanced Enforcement Compliance and Apprenticeship Services		8
	Approved as proposed (2-1) Anderson voting no		
Issue 7	Implementation of Chaptered Legislation Relating to Workers Compensation	11	

Approved as proposed (3-0)

Issue 8 Occupational Safety and Health Penalty Federal Compliance Trailer Bill 12

Approved as proposed (3-0)

Issue 9 Public Works Enforcement 13

Approve Staff Recommendation. Adopt proposed trailer bill language, and modify the budget change proposal to move the support of the prevailing wage determination function from the SPWEF to the LECF beginning in 2017-18 for two years.

Additionally, adopt supplemental reporting language for the DLSE to report by March 2019 on (1) changes in the amount of contractor registration fees collected; (2) the estimated effect of any efforts to increase compliance with the contractor registration fee, including outreach to awarding bodies and other steps to increase awarding body accountability for ensuring contractor registration; (3) what adjustments are necessary to the level of the contractor registration fee in order to support ongoing public works enforcement costs and repay the SPWEF's outstanding loans to other funds; and (4) the feasibility of shifting support for the prevailing wage determination function back to the SPWEF. **(2-1) Anderson voting no.**

Issue 10 Strategic Enforcement of Labor Standards 16

Adopt placeholder trailer bill language. **(2-1) Anderson**

7501 Department of Human Resources (CalHR)

Issue 11 Dependent Re-Verification Process 17

Approve as budgeted, and adopt supplemental reporting language regarding outcomes of the BCP **(3-0)**

7920 CalSTRS

Issue 12 Revised Creditable Compensation (May Revision) 18

Approved as proposed (3-0)

9800 Employee Compensation and Control Section 3.61

Issue 13 Scheduled Employee Compensation Augmentation Increases (May Revision proposal) 19

Approved as proposed (2-1) Anderson voting no

Items for Discussion and Vote

7100 Employment Development Department

Issue 14 Workforce Innovation Opportunity Act Discretionary Federal Funds 20

Approve May Revision proposal, but modify funding for the Regional Workforce Accelerator Program for a total of \$4.8 million, and the Sling Shot Program for a total of \$7.7 million. **(3-0)**

7120 California Workforce Development Board

Issue 15 Road Repair and Accountability Act – Pre-apprenticeship Training Programs 23

Approve as proposed. Adopt placeholder budget bill language for State Board to also encourage partnerships and collaboration with other pre-apprenticeship programs beyond this proposal with CDCR and CalTrans. Approve technical adjustment to item 7120-001-3290 **(3-0)**

7900 California Public Employees' Retirement System
Issue 16 CalPERS Supplemental Payment 24
Held Open.

Issue 17 Control Section 3.60 State Retirement Contribution Rates 28
Approve amendments to update state retirement contribution rates adopted by CalPERS. Hold open the proposal to transfer up to \$427 million General Fund in supplemental state retirement contribution. **(3-0)**

Issue 18 CalPERS Administrative Budget Adjustments 29
Adopt items 3-9 of the May Revision Proposal. Reject Items 1 and 2; and reject the changes to C.S. 4.20 including the change from the 2016 Budget Act to change the reserve, and approve a one-month reserve. **(3-0)**

Public Comment