

AGENDA ASSEMBLY BUDGET SUBCOMMITTEE NO. 4 ON STATE ADMINISTRATION

Assemblymember Juan Arambula, Chair

TUESDAY, MARCH 16, 1:30 PM
STATE CAPITOL, ROOM 447

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CONSENT ITEMS**ITEM 0820 DEPARTMENT OF JUSTICE**

ISSUE 1: DEALER'S RECORD OF SALE WORKLOAD INCREASE

The Governor's 2010-11 budget includes \$257,000 from the Dealer's Record of Sale (DROS) account to support 3 positions that will address workload increases related to firearms eligibility background checks. Additionally, this request includes \$512,000 from the DROS account in 2009-10 to address consulting costs due to increases in weapons transactions.

ISSUE 2: COMPLIANCE AND ENFORCEMENT INVESTIGATION WORKLOAD

The Governor's 2010-11 budget includes \$184,000 from the Gambling Control Fund to support 2 positions in order to supplement compliance and enforcement activities in the California's card rooms.

ISSUE 3: COPS TECHNOLOGY PROGRAM GRANT

The Governor's 2010-11 budget includes \$500,000 in Federal Fund authority, on a one-time basis, to support a federal grant that will support implementation of Department of Justice's (DOJ) Vision 2015 Criminal Justice Information Sharing Project in Santa Clara County.

ISSUE 4: SB 741, PROPRIETARY SECURITY SERVICES ACT

The Governor's 2010-11 budget includes \$75,000 from the Fingerprint Fees Account (FFA) to provide Criminal Offender Account Information to the Department of Consumer Affairs.

ISSUE 5: AB 1025, ACTIVITY SUPERVISOR CLEREANCE CERTIFICATE

The Governor's 2010-11 budget includes \$172,000 from the FFA to process submissions related to Activity Supervision Clearance Certificates, which are required for those who supervise, direct, or coach a pupil activity program affiliated with a school district.

ISSUE 6: SB 477, CUSTODIAN OF RECORDS

The Governor's 2010-11 budget includes \$378,000 from the FFA to perform duties related to the development and implementation of the Custodian of Record Certification Program to oversee the licensing and certification of custodians of records in California.

ITEM 5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION**ISSUE 1: PROGRAM FUNDING REALIGNMENT**

The Governor's 2010-11 budget proposes to align existing programs with expenditure authority within the California Department of Corrections and Rehabilitation's (CDCR) budget. This proposal does not result in increased costs.

ISSUE 2: INMATE DENTAL SERVICES PROGRAM RESTRUCTURE

The Governor's 2010-11 budget includes proposes to restructure and reorganize the inmate dental program to achieve a more streamlined program resulting in General Fund reductions of \$5 million in 2009-10, \$11.2 million in 2010-11, and \$10.6 million ongoing. These reductions will be used to offset the \$100 million unallocated reduction included in the 2009 Budget Act.

ISSUE 3: DJJ EDUCATION PROP 98 SAVINGS

The Governor's 2010-11 budget includes a reduction of \$6.4 million Prop 98 funding by removing one-time funding for operating equipment and expenses and removing funding for teacher recruitment and retention that should have been reduced as DJJ education positions have reduced in recent years.

ITEMS TO BE HEARD

ITEM 0820 DEPARTMENT OF JUSTICE

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 DOJ is responsible for providing skillful and efficient legal services on behalf of the people of California. The Attorney General represents the people in all matters before the Appellate and Supreme Courts of California and the United States; serves as legal counsel to state officers, boards, commissions, and departments; represents the people in actions to protect the environment and to enforce consumer, antitrust, and civil rights laws; and assists district attorneys in the administration of justice. The Department also coordinates efforts to address the statewide narcotic enforcement problem; assists local law enforcement in the investigation and analysis of crimes; provides person and property identification and information services to criminal justice agencies; 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.

The Governor's proposed budget includes DOJ resources totaling \$749.9 million (\$246.3 million General Fund (GF) and 5,013.4 positions.

ISSUE 1: LEGAL SERVICES FUND SWAP

The Governor's 2010-11 budget proposes to reduce the DOJ's GF authority by \$53.9 million, with a corresponding amount to be available for allocation via a new budget control section, and an increase in the Legal Service Revolving Fund of \$48.2 million in order to bill GF clients for future DOJ legal services.

BACKGROUND

Currently, the DOJ has a "fee for service" relationship with clients whose budgets are supported by special funds. For clients whose budgets are supported by the GF, the DOJ receives a direct General Fund appropriation to provide legal services. The DOJ believes that the ability to bill clients for services provides a method to ensure that the level of services is warranted since the client is ultimately paying for the service.

The DOJ's legal services budget has been reduced over the last two fiscal years due to the state budget pressures resulting in limits on casework that DOJ can accept for "non-billable" GF clients. This has led to an increase in the DOJ's authorization for GF clients to hire outside counsel, which is often more costly.

In order to shift DOJ legal service funding for GF clients to the clients, the Administration proposes to add Control Section 5.20 to the budget bill, which would allow the Department of Finance (DOF) to adjust the GF appropriation level of individual departments to allocate funding for legal services. Decisions would be based on departmental requests provided to and approved by DOF. The DOF would be required to report quarterly to the Joint Legislative Budget Committee (JLBC) on allocations made pursuant to this control section. Additionally,

this proposal would eliminate the existing statutory provision that specifies that charges for DOJ legal services generally may not be made against the GF.

COMMENTS

DOJ legal resources have been stretched thin in recent years. To support workload driven by GF clients, DOJ attorneys have had to work an increased level of overtime and the department has expressed concern related to retention of staff. While this proposal would provide relief by allowing for a more efficient management of DOJ legal resources, the following should be considered:

Problem driver. While this proposal would result in over 50 GF supported state entities being switched to billable clients, the California Department of Corrections and Rehabilitation (CDCR) uses the majority of DOJ GF legal resources and the overwhelming majority of cases that the DOJ has had to return, and approve outside legal representation for, have been to the CDCR. Of the total number of "non-billable" hours that the DOJ reported for GF clients in 2008-09 (456,267), the CDCR used approximately 66 percent (294,905). By contrast, the department that accounted for the second most "non-billable" hours, The Department of Mental Health, used 21,595 hours. In fact, the CDCR used more than double the combined total hours used by the next nine biggest "non-billable" clients.

Will this proposal create immediate deficiencies. While the DOF proposes to include \$53.9 million in Control Section 5.20 to allocate to DOJ GF legal clients, for 2008-09 the DOJ reported legal services provided to these clients that would equate to approximately \$77.6 million if they were provided using the proposed "fee for service" model. This represents a gap of \$23.7 million. Even though this proposal may provide a fiscal incentive for departments to keep a sharper eye on their use of DOJ legal services, given the amount of legal services used in the past, there is a strong possibility that the funding contained in Control Section 5.20 will be insufficient and will result in departments submitting deficiency requests.

Concerns expressed by clients. GF clients such as The State Lands, Coastal and SF Bay Conservation and Development Commissions have expressed great concern that by creating competition for limited DOJ legal resources and requiring DOF approval, this proposal will jeopardize their independence and hinder their ability to fulfill their missions.

The Legislative Analyst Office (LAO) found that this proposal has merit and could eventually lead to savings by state agencies on the cost of legal representation. However, the LAO recommends that the Legislature amend the proposed budget control section to provide for stronger legislative oversight of the new process. In particular, it should specify that any request above \$1 million may proceed no sooner than 30 days after the Director of DOF provides notification of the proposed expenditures to the JLBC. In addition, the LAO recommend that the budget control section process proposed by the Administration be approved by the Legislature only for 2010-11, in order to complete the move towards an effective billable-services system as early as possible. Finally, the LAO recommend that the Legislature appropriate the funding for legal services in an item in the budget.

ISSUE 2: GUN SHOW PROGRAM AUGMENTATION

The Governor's 2010-11 budget proposes \$801,000 from the Dealers' Record of Sales (DROS) Account and 4 positions (\$616,000 and 4 positions shifted from the GF) to provide the Bureau of Firearms (BOF) with resources dedicated to the prevention of illegal firearms and ammunition sales at gun shows.

BACKGROUND

In 2000-01, the DOJ received funding to establish an enforcement team for the purposes of preventing sales of illegal firearms and ammunition by monitoring and investigating buyers and sellers participating in gun shows throughout California. This request will support BOF's ongoing efforts to investigate gun show transactions throughout the state.

DOJ recognizes gun shows as a source of many illegal transactions involving firearms and ammunition and cite actual evidence from investigations as well as a recent UC Davis report that found that gun shows are a major source of firearms used to commit crimes. Other than DOJ, there is no law enforcement agency targeting statewide gun shows. Local law enforcement agencies lack statewide jurisdictional authority, mobility, training, resources, or data capabilities to coordinate a comprehensive approach to monitoring California's gun shows.

Existing law regulates gun shows and firearms sales and requires gun show promoters to obtain a Certificate of Eligibility from the DOJ, and comply with various procedures in connection with gun shows. According to BOF, approximately 97 gun shows take place in California annually, representing approximately 340 days of gun show events, which must be monitored and investigated. The DOJ reports that resources available to provide a presence at gun shows have decreased by approximately 40 percent in recent years.

COMMENTS

Given the DOJ's responsibility to monitor gun shows in California in order to prevent illegal transactions and the limited resources available to carry out this responsibility, this request has merit. Providing resources for this activity from the DROS Account, which has a projected balance in the budget year of \$17.9 million, also takes pressure off of the GF.

The DOJ has reported that they are in the process of reducing the fee that pays into the DROS account, which may impact the fund balance going forward. In addition, concerns have been raised regarding appropriate use of the DROS Account.

ITEM 5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION

The mission of the California Department of Corrections and Rehabilitation (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 eleven programs: Corrections and Rehabilitation Administration; Corrections Standards Authority; Juvenile Operations; Juvenile Education, Vocations, and Offender Programs; Juvenile Parole Operations; Juvenile Health Care Services; Adult Operations; Adult Parole Operations; Board of Parole Hearings; Adult Rehabilitative Programs; and Correctional Health Care Services.

The CDCR operates 33 adult prisons, five juvenile institutions, and contracts for 13 Community Correctional Facilities, and 6 out-of-state facilities. Additionally, the CDCR is responsible for approximately 200 adult and juvenile parole offices and 50 conservation camps.

The Governor's proposed budget includes CDCR resources totaling \$8.8 billion (\$8.5 billion GF) and 61,792.8 positions.

ISSUE 1: SEX OFFENDER MANAGEMENT BOARD AND SARATSO REVIEW COMMITTEE

The Governor's 2010-11 budget proposes \$561,000 GF, which includes consulting and training costs, and 3.5 positions to fulfill the requirements of existing laws related to the establishment of the California Sex Offender Management Board (SOMB) and the State Authorized Risk Assessment Tools for Sex Offenders (SARATSO) Review Committee. This proposal represents the extension of previously approved limited-term positions.

BACKGROUND

SOMB. AB 1015 (2006) established SOMB to assess the CDCR's sex offender management practices and provide recommendations to the Legislature on ways to improve current management practices. The legislation contained a sunset clause for SOMB of January 1, 2010. SB 588 (2009) eliminated the sunset date, making SOMB a permanent board.

SARATSO. SB 1178 (2006) established SARATSO, requiring that all registered sex offender be assessed and that the state provide training on how to implement SARATSO statewide. SB 325 (2009), expanded the breadth of the SARATSO Review Committee and transferred it to the CDCR.

COMMENTS

The activities of SOMB and the SARATSO Review Committee enhance public safety through policies that target a criminal population that not only poses risk to recommit crimes once released but also sparks heightened public concern. Through the legislation referenced above 1) Penal Code (PC) Section 290.05 requires the SARATSO Review Committee to provide training, conducted by an expert in the use of actuarial risk assessment instruments, to criminal justice staff who are completing risk assessment evaluations and 2) PC Section 9002 requires the SOMB to address any issues, concerns, and problems related to the community management of adult sex offenders. Further, the SOMB is a resource for the Legislature and the Governor and released a report of its findings and recommendations earlier this year.

ISSUE 2: MENTAL HEALTH PROGRAM STAFFING RATIOS

The Governor's 2010-11 budget proposes \$9.8 million GF and 73 positions, growing over the next five years to 362.1 positions and \$77.2 million annually upon full implementation. These positions are in addition to 245.1 positions authorized for CDCR in the 2008-09 budget, for a total of about 607.2 mental health positions.

BACKGROUND

In 2006, the federal court in the *Coleman v. Schwarzenegger* case pertaining to inmate mental health care required the CDCR to develop a new methodology for determining future staffing levels necessary to provide constitutionally adequate mental health care. In response to this court order, the 2006-07 budget included \$750,000 for the CDCR to conduct a staffing analysis study along with statutory language that specified that the results of this study would be incorporated in the subsequent budget process. The eventual study, known as the Staffing Analysis Model (SAM), was completed by external consultants and presented to the Legislature in June 2007. In general, SAM takes into account the types of tasks that need to be completed to provide such care, as well as the time it takes and the classification of employees needed to complete these tasks.

Based on the results of this model, the 2008-09 budget authorized 404.7 positions for inmate mental health care—(1) 245.1 mental health positions under the authority of CDCR and (2) 159.6 nursing positions who were under the authority of the Receiver, but intended to provide mental health services. However, the 2008-09 budget did not appropriate additional funding for these positions. This is because CDCR indicated that the positions would be funded temporarily with salary savings due to large vacancy rates in mental health position classifications. At this time, the department reports that none of the 404.7 positions have been filled. Moreover, the 2009-10 budget included an additional \$8 million to support staffing for mental health crisis beds based on the results of SAM.

The CDCR now reports that its mental health professionals do not believe SAM provides for adequate mental health staffing ratios. Furthermore, the CDCR reports that SAM requires the use of Excel spreadsheets that contain errors and results are difficult to verify or replicate. In order to address these issues, the Division of Correctional Health Care Services (DCHCS) Chief Deputy Secretary met and consulted with DCHCS mental health staff, other CDCR staff, and the Department of Finance to develop a new ratio-driven staffing model.

COMMENTS

The Legislative Analysts Office (LAO) raised the following concerns with this proposal:

Need for New Staffing Methodology Not Fully Justified. The CDCR perceives that SAM is now an unreliable model for estimating mental health staffing needs. The LAO's analysis indicates, however, that CDCR's logic for dropping SAM and moving to a new and more costly model is questionable.

Although the *Coleman* Special Master also raised a similar concern that some of the assumptions in SAM are flawed, he did find the model to be completely functional and adaptable. He recommended that the department address the flawed assumptions and then continue using SAM. Moreover, a report prepared for the department by the consultants that developed SAM appears to contradict some of CDCR's assertions.

The LAO also notes that the department plans to use its staffing-ratio methodology only for determining the need for certain mental health positions (such as psychologists and psychiatrists). For other types of positions (such as nurses), the department intends to continue using SAM. At this time, it is unclear why CDCR believes that two different staffing methodologies are warranted.

Vacancy Rates Remain High for Certain Mental Health Classifications. The LAO indicates that CDCR may not be able to effectively fill all of the requested positions in the timeline outlined by the department, due to the high vacancy rates that currently exist for such positions. More than half of the 607.2 positions that the department is seeking funding for over the next five years are for classifications with vacancy rates of more than 10 percent.

Salary Savings Remain Available. As mentioned previously, the department's initial plan was to fund the roughly 400 mental health positions authorized in the 2008-09 budget temporarily with salary savings. According to CDCR, none of these positions have been filled and \$46 million in salary savings from the vacant mental health positions has instead been spent on nursing registry. However, data provided to us by the department indicate that actual salary savings from the vacancies in mental health staff in 2008-09 totaled about \$100 million.

Staff notes that the CDCR now reports that information reported to the LAO was not completely accurate and salary savings do not exist.

State Costs for Mental Health Care Have Grown Significantly. The Governor's budget proposes a total of \$385 million from the General Fund for mental health services in 2010-11. This is \$219 million more than the amount the state spent on such services in 2005-06 — more than doubling expenditures in this area. The increases in General Fund expenditures on inmate mental health care have largely been driven by the need for additional staff (such as pharmacy technicians) and significant increases in employee compensation for existing staff (such as for psychiatrists).

Do to these concerns raised above, the LAO has recommended that the Legislature reject this proposal.

ISSUE 3: COLEMAN SHORT TERM AND INTERMEDIATE CUSTODY

The Governor's 2010-11 budget proposes \$6.7 million and 73.2 positions on a three year limited-term basis to provide custody staff for short-term and intermediate beds mandated by the *Coleman* court.

BACKGROUND

There are currently about 7,800 inmates in need of mental health treatment that requires some sort of specialized housing. More than two-thirds of these inmates are Enhanced Outpatient Program inmates who have significant enough mental health issues that they need to be housed in units separated from the General Population. The department also has about 2,000 inmates who need other types of specialized mental health housing generally based on the acuity of their mental health condition.

In March of 2009, the *Coleman* court ordered the CDCR to develop proposals that meet the remaining short-term, intermediate, and long-range mental health bed needs. The Department developed various short-term and intermediate proposals to meet *Coleman* bed needs that include 13 projects at 8 prisons.

COMMENTS

The CDCR reports that the number of security staff requested in this proposal is based on the Prev-Mix methodology, which was used in the past to determine mental health care staffing levels. The department also indicates that additional security staff, such as escort, may be needed.

The LAO has indicated that it is awaiting an update of implementation plans for the short-term and intermediate projects.

ISSUE 4: CORRECTIONAL TREATMENT CENTER, SAN QUENTIN STAFFING

The Governor's 2010-11 budget proposes \$762,000 and 12 positions to fund the licensing of a 50-bed Correctional Treatment Center (CTC) with a 17-bed Mental Health Crisis Bed (MHCB) unit at San Quentin (SQ).

BACKGROUND

This proposal addresses a Coleman court concern regarding the shortage of beds which prohibit timely placement of inmate-patients to a higher level of care. The Mental Health Program Guide requires that an inmate suffering from an acute, serious mental disorder resulting in a serious functional disability, or who is dangerous to self or others, be transferred to a MHCB. Per the Mental Health Program Guide, such inmate must be transferred within 24-hours of referral.

Currently there are 336 MHCBs at 20 institutions. The 17-bed MHCB unit at SQ was developed and implemented to address a *Coleman* court directive regarding the delay in obtaining admission to crisis beds. The average wait list for admission to a MHCB over the first six months of the 2008-09 fiscal year was 18-20 inmates.

Last year, the Legislature approved the department's 2009-10 April Finance Letter to staff the MHCB unit at the CTC at SQ. The positions approved in that request included 106.6 clinical and support positions.

COMMENTS

Title 22 and Title 24 regulations mandate minimum staffing levels for licensed facilities to ensure patient safety. The CDCR reports that the positions requested fulfill licensing and patient safety requirements. However, some of the positions requested (such as Office Techs) may not be mandated or could possibly be redirected from other responsibilities.

ISSUE 5: DJJ POPULATION MANAGEMENT SOLUTIONS

The Governor's 2010-11 budget proposes reductions of \$48 million (growing to \$64.8 million) and 574.1 positions due to changes to Division of Juvenile Justice (DJJ) policies.

BACKGROUND

Savings achieved in this proposal are driven by the following:

Limit Jurisdiction to Age 21. Currently, wards can be placed in a DJJ facility up to age 25. The Governor proposes statutory changes to limit the age of jurisdiction to 21 for all wards committed to DJJ after June 30, 2010.

The DJJ is one of four jurisdictions in the country with control of commitments up to the age of 25. County jurisdictions end at age 21. With the passage of SB 81 (2007), a ward cannot be committed to the DJJ if:

"the most recent offense alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707, unless the offense is a sex offense set forth in paragraph (3) of subdivision (d) of Section 290 of the Penal Code."

Due to the impact of SB 81, the majority of youth are committed until the age of 25.

Transfer Eligible Wards to Prison. Under current law, certain wards in DJJ facilities are eligible for transfer to adult prison when they turn age 18. However, there are some wards who are eligible for transfer that remain at DJJ facilities. The Governor proposes to transfer some of these wards.

In addition to juvenile court commitments, the DJJ also houses E and M cases, which are superior court commitments. E cases are minors admitted to the DJJ based on an agreement between the DJJ and the Division of Adult Institutions. M cases are minors ordered by the court to be housed in DJJ facilities until the age of 18. As of December 2009, there were 103 E and M cases in DJJ facilities that are over the age of 18.

Eliminate Use of "Time-Adds." The Juvenile Parole Board assigns each ward an initial parole consideration date. Currently, DJJ staff can delay the parole consideration date for disciplinary reasons, such as bad behavior. The Governor proposes to eliminate this practice (commonly referred to as time-adds).

COMMENTS

The Administration has indicated that it plans on revising this proposal. Further, the CDCR indicates that the DJJ's population appears to be trending down absent of all of the revisions contained in this proposal.

ISSUE 6: SCAPP

The Governor's 2010-11 budget assumes that the federal budget will include full reimbursement to California for the incarceration of undocumented immigrants under State Criminal Alien Assistance Program (SCAAP), totaling additional revenues of about \$880 million. These additional federal revenues count towards the administration's proposed "trigger" cuts, which if not achieved, would result in additional budget reductions across various departments and programs including the CDCR.

BACKGROUND

California, along with other states and local governments, receives a share of federal funding under SCAAP. This program reimburses jurisdictions for the costs associated with the incarceration of undocumented immigrants. The SCAAP funds received are deposited into the General Fund.

California has been historically under-funded for costs incurred as the result of incarcerating undocumented inmates. The Administration estimates that the state will receive about \$90.6 million in SCAAP funds in 2010-11 but that the state will incur total costs of about \$970 million to house undocumented immigrants. In 1997, California received \$166.9 million in SCAPP funds, while state costs from incarcerating undocumented inmates totaled \$539 million. California's unfunded costs have increased 136 percent from 1997 (\$372.1 million) to 2010 (\$879.7 million).

COMMENTS

As California's cost to house undocumented inmates have historically far exceeded SCAAP awards, it is unlikely the state will receive additional SCAPP funding for the 2010 fiscal year. As noted earlier this would "trigger other cuts, which the Administration proposes to come from options, which include:

- Elimination of CalWORKs
- Reduction of MediCal Eligibility
- 5 percent Reduction of State Employee Salaries
- Elimination of IHHS Program
- Elimination of Healthy Families
- Elimination of non-court required CDCR rehabilitation programs

Staff notes that, in last year's May Revision, the Administration proposed to save \$182 million through the commutation of undocumented inmate sentences by the Governor and the deportation of those inmates to their countries of origin. This is something the Governor has the authority to do under current law. To date, the Governor has failed to implement this proposal.