

California State Assembly



Informational Hearing Agenda

Assembly Budget Subcommittee No. 6 on Public Safety

Assemblymember James Ramos, Chair

Monday, March 3, 2025
2:30 P.M. – State Capitol, Room 447

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Public Comment will be taken in person after the completion of all panels and any discussion from the Members of the Subcommittee.

Items To Be Heard

5225 – California Department of Corrections and Rehabilitation (CDCR)

Issue 1: Population Projections and Preliminary Assessment of Impacts from Proposition 36

CDCR will provide an overview of the state's prison population projections and their preliminary assessment of Proposition 36's impact on the state prison population.

Panel

- Cathy Jefferson, Deputy Director, Office of Research, CDCR
- Caitlin O'Neil, Legislative Analyst's Office
- Patrick Plant, Department of Finance
- Justin Adelman, Department of Finance

Background

The Governor's Budget proposal includes \$13.87 billion (\$13.5 billion General Fund and \$370,000 other funds) and 60,018.1 budgeted positions.

There are currently 31 prisons across the state. The total prison population as of January 29, 2025 was 91,016 (87,397 male and 3,619 female). Of this total, 88,077 individuals are housed in state prisons, 1,733 are housed in camps, 175 are in the Department of State Hospitals, and 1,031 are in various other placements including community reentry programs. The available design capacity of the prisons are 73,910 which translates to a court ordered maximum capacity of 101,626 beds. The court ordered restriction does not apply to camp beds and the total available prison capacity excludes beds available in community reentry programs and other placements which currently total over 1,200 additional beds. In total, current state prison capacity is approximately 103,000 beds with a total 91,016 incarcerated population.

CDCR projects the average daily incarcerated population for 2024-25 to be 91,672 and 93,278 in 2025-26. However, even with the expected increase from Proposition 36, the population is still projected to continue its overall long-term downward trend to 90,998 in 2027-28. By comparison, the adult incarcerated prison population was 134,433 on January 1, 2015. While CDCR has some preliminary numbers related to the impact of Proposition 36, the Department will further refine these data points as more information becomes available in the coming months and years. Preliminary analysis indicates a prison population increase of approximately 3,300 people as a result of Proposition 36.

The average parolee population is projected to be 34,940 in 2024-25 and is expected to rise to 35,671 in 2025-26. Proposition 36 is projected to slightly increase the parole population, which is anticipated to remain relatively stable over the next few years, falling to 33,756 by June 30, 2029.

Legislative Analyst's Office (LAO)

The LAO provides the following analysis and recommendations:

Impact of Proposition 36 on Prison Population Is Likely Overestimated for Current and Budget Years. The department did not provide detailed backup showing its methodology to estimate the impact of Proposition 36 on the prison population. However, based on discussions with the department, it is our understanding that CDCR used the number of people that were admitted to prison for drug possession and certain lower-level theft crimes in 2013-14, the year before Proposition 47 (2014) reduced prison admissions for these crimes by converting them to misdemeanors. The department then assumed that the same number of people would again be admitted to state prison under Proposition 36 and would remain in state prison for 11 months on average. We find that this estimation methodology is problematic for the following reasons:

- **Does Not Account for Key Features of Treatment-Mandated Felony.** CDCR's estimate assumes that the same number of people who were committed to prison for drug possession prior to Proposition 47 would again be committed to prison under Proposition 36. However, this is not plausible for two primary reasons. First, Proposition 36 only allows people who possess certain drugs to be charged with a treatment-mandated felony if they have at least two past drug convictions, whereas, people who possessed drugs prior to Proposition 47 could be charged with a felony even without any prior convictions. Second, it requires that people are generally given the option of treatment in lieu of incarceration in county jail or state prison. Accordingly, the number of people that reach prison under Proposition 36 for drug possession is likely to be substantially smaller than the number of people that were sentenced to prison for drug possession prior to the passage of Proposition 47.
- **Includes Crimes That Were Not Affected by Proposition 36.** The methodology counts 2013-14 prison admissions for people who were convicted of receiving stolen property. However, this crime was generally not affected by Proposition 36. Similarly, the estimate appears to include *all* admissions for the lower-level theft crimes affected by Proposition 47. However, Proposition 36 only affects a subset of those cases, such as by allowing multiple acts of misdemeanor theft to be prosecuted as a felony if the combined dollar amount exceeds \$950.
- **Excludes Crimes That Were Affected by Proposition 36.** The methodology does not include several crimes that were affected by Proposition 36. These include cases in which people receive time added to their sentence for selling high volumes of illegal drugs, being armed with a firearm during the commission of a drug felony, or selling drugs to a person who suffers significant physical injury as a result of using the drug.

The first two flaws discussed above cause the department's methodology to overestimate the impact of Proposition 36. The third flaw causes the methodology to underestimate the impact. On net, we find that the methodology likely overestimates the impact of Proposition 36 in the current and budget years. This is because the third flaw largely involves crimes that drive a

relatively smaller number of prison admissions per year but have longer lengths of stay in prison. Accordingly, the effect of the third flaw—which leads to underestimation—is likely relatively negligible for near-term projections.

Our estimates suggest that the average daily prison population impact of Proposition 36 could be in the low hundreds in 2024-25 and grow to around 1,000 or so in 2025-26—less than half of the magnitude of the administration’s estimates. This would cause CDCR to be overbudgeted in the millions of dollars in 2024-25 and tens of millions of dollars in 2025-26. However, any estimate at this early point in the implementation of Proposition 36 is subject to significant uncertainty.

Administration’s Assumption That Proposition 36 Will Impact the Parole Population in the Budget Year Is Not Plausible. People whose current offense is classified as serious or violent, as well as certain others, such as high-risk sex offenders, are placed on state parole supervision after they are released from prison. All other people released are placed under the supervision of a county probation officer. Only two components of Proposition 36 relate to serious or violent crimes, meaning only these provisions could impact the parole population. First, Proposition 36 specified that selling drugs to a person who suffers a significant physical injury as a result of using the drug is a serious and violent crime. Second, the measure requires courts to warn people convicted of selling certain drugs that they could be charged with murder if they sell or provide illegal drugs that kill someone. This could make it more likely for them to be convicted of murder—also a serious and violent crime—in the future if they later sell drugs to someone who dies. Both of these crimes would carry relatively long prison sentences. Accordingly, it is not plausible that someone could commit one of these crimes, serve a sentence, and be released to parole before the end of 2025-26. This means that the proposed 2025-26 budget includes roughly a few million dollars in excess funding for parole.

Recommendation

Direct CDCR to Address Key Flaws in Its Proposition 36 Population Impact Estimates at the May Revision. We recommend that the Legislature direct the department in spring budget hearings to address the key flaws in its Proposition 36 population estimates and adjust its population-related funding requests at the May Revision accordingly. We recognize that any estimates will be subject to significant uncertainty due to the limited amount of actual data since the enactment of Proposition 36. However, the key flaws we identify above are conceptual problems that can be improved through reasonable assumptions in areas where actual data are lacking. We will continue to monitor CDCR’s populations and the other factors affecting the proposed adjustments and make recommendations based on the updated information available at the May Revision, including the administration’s revised population projections.

Staff Recommendation: Hold Open.

Issue 2: 2024 Budget Act Reductions

The Legislative Analyst's Office will provide an overview of statewide reductions and CDCR will provide an overview of their proposed reductions in the Governor's budget proposed for 2025-26.

Panel

- Caitlin O'Neil, Legislative Analyst's Office
- Orlando Sanchez Zavala, Legislative Analyst's Office
- Duane Reeder, Deputy, CCHCS Fiscal Management Services, CDCR
- Cynthia Mendonza, Deputy Director, Office of Fiscal Services, CDCR
- Justin Adelman, Department of Finance
- Lynne Ishimoto, Department of Finance

Background

The 2024 Budget Act included statewide reductions of 7.95% from state departments' General Fund state operations and sweeping of vacant positions. These proposed reductions were estimated to generate about \$3 billion in 2024-25 savings, without impacting existing state employee labor agreements or collective bargaining rights. Not all state entities were subjected to these reductions, and the reduction total to CDCR's operating budget was significantly less. The final budget agreement included an ongoing reduction of approximately \$392 million beginning in 2025-26.

On February 19, 2025, the Legislative Analyst's Office published the following information regarding the overall state reductions and the accompanying information that was to be shared with the Legislature:

The administration identified significantly lower General Fund savings across state departments relative to what was assumed in the 2024-25 budget. The administration indicates that it identified about \$800 million General Fund savings in 2024-25 and less than \$700 million ongoing General Fund savings beginning in 2025-26 across state departments—less than one-fourth of the \$2.8 billion in ongoing General Fund savings across state departments that was assumed in the 2024-25 budget. Across all funding sources, the administration identified \$1.7 billion in ongoing savings resulting from the two control sections. Of this total, the administration indicates that it was able to identify more non-General Fund savings than General Fund savings—with the General Fund representing 43 percent of the total identified savings—far below the 2024-25 budget assumption that 78 percent of the savings from state departments would benefit the General Fund. The administration also assumes that about 6,400 vacant positions would be eliminated, compared with the 10,000 assumed in the 2024-25 budget. The funding associated with these 6,400 vacant positions are more heavily funded from non-General Fund sources than the 2024-25 budget assumed. Whereas the 2024-25 budget assumed

that one-half of the funding associated with eliminated positions would be from the General Fund, the administration indicates that 37 percent of the funding associated with the identified positions is from the General Fund.

Lack of Information on Savings Provided to Legislature

List From Administration Does Not Fully Meet Reporting Requirements. The list of identified savings that the administration provided to the Legislature provides very high-level information and does not fully meet the reporting requirements specified under the control sections for the January 10 reports. (We note that the Control Section 4.05 October 1, 2024 reporting requirement was satisfied by the administration providing to the JLBC the instructions it sent departments in [Budget Letter 24-24](#). The JLBC has not been notified of any departments with identified savings exceeding 7.95 percent.) There is no information about specific funding sources, affected programs, or affected job classifications as is required by the control sections.

Very Limited Information Available About How Savings Would Be Achieved From DOF... When compared with the amount of information that departments must submit to justify even small increases in their budgets (for example, the level of detail provided in budget change proposals), the two-page list to explain a multibillion-dollar adjustment to the budget that affects virtually all departments is insufficient to adequately inform the Legislature of the action. Moreover, discussions with DOF did not provide us much additional information about identified savings. DOF indicated that more information would be available in the spring, and suggested that we should ask individual departments for specific information about the actions they took to achieve the savings and the potential effects of the savings.

...Or Departments. We sent inquiries to some of the largest departments to better understand how the identified savings might be implemented. While a couple of departments provided us relatively detailed information—for example, indicating that the savings would be achieved through hiring freezes, leveraging more federal funds, reducing general expenses (printing costs, travel, and/or discretionary training), or moving to supply more administrative services in-house—the most common response we received from departments was that DOF was working on the proposal and that more information would be available in the spring.

Reductions to CDCR. CDCR provided a handout to the Subcommittee which is also available on the Assembly Budget website that describes the Control Section 4.05 and 4.12 reductions proposed in the Governor's budget. The proposed reduction of \$185.78 million in 2025-26 and \$193.6 million ongoing thereafter is approximately 1% of CDCR's total proposed budget and \$200 million less than what was anticipated in the 2024 Budget Act. The proposed savings includes a reduction of 1,196.3 positions, leaving the Department with 60,018.1 budgeted positions. The Legislature also negotiated the inclusion of the following provisional language in the 2024 Budget Act:

It is the intent of the Legislature that in implementing the state operations reduction pursuant to Section 4.05, no reductions shall be made, to the extent possible, to the level, quantity, or quality of rehabilitative and reentry programming, especially programs provided by community-based non-profit organizations, or of programs related to family connection, including phone calls and the frequency and duration of visitation. The department shall first consider other reductions that do not otherwise violate a court order or jeopardize the health and safety of the staff, incarcerated persons, or the public. The Integrated Substance Use Disorder Treatment Program is not included in the category of rehabilitative or reentry programming for the purposes of this provision.

Staff Comment: The Subcommittee may wish to consider the impact that CDCR's lower than expected reduction, by \$200 million ongoing General Fund, will have on out-year deficits. The Subcommittee may also wish to consider the impact the lower than expected reduction will have against the Legislature's priorities for potentially restoring other reductions, such as investments for higher education, and any new spending the Legislature wishes to propose.

Staff notes that the published budget change proposals for CDCR in the Governor's proposed budget includes more than \$235 million in new spending for 2025-26.

Staff Recommendation: Hold Open.

Issue 3: Overview of Litigation against CDCR

The California Department of Corrections (CDCR) will provide an overview of litigation against CDCR, primarily focusing on class action litigation, the status of the litigation, and measures the Department has implemented in order meet court mandates and reduce future litigation.

Panel

- Jared Lozano, Deputy Director, Division of Adult Institutions and Facility Support, CDCR
- Cynthia Mendonza, Deputy Director, Office of Fiscal Services, CDCR
- Alyssa Cervantes, Department of Finance
- Kimberly Harbison, Department of Finance
- Caitlin O'Neil, Legislative Analyst's Office
- Orlando Sanchez Zavala, Legislative Analyst's Office

Background

CDCR continues to face a number of long standing, and still heavily litigated, class action lawsuits¹ for a number of constitutional violations, violations of federal law, and other policies that endanger the lives of incarcerated people and staff, frustrate the Department's own goals implementing the "California Model", and ultimately impede the state's public safety goals in improving outcomes and reducing recidivism. In addition, taxpayer costs associated to defending against and addressing the litigation have been in the billions and continue to burden the Department and the state. In order to monitor these significant costs, the Legislature required the annual reporting of class action litigation costs annually for five years, which first began as part of the 2022 Budget Act, and was then made an ongoing requirement in the 2024 Budget Act. The reporting requires the following:

The Department of Corrections and Rehabilitation shall report spending on class action lawsuits against the department to the budget committees of both houses and the Legislative Analyst's Office by January 31 of each year. At a minimum, this report shall include spending for each lawsuit in the most recently completed fiscal year on all litigation activities including, but not limited to, the costs of the department's legal staff time, payments to outside counsel for legal services, and payments to plaintiffs, monitors, and court experts.

The most recently submitted report for 2023-24 is available as a handout for the Subcommittee and is posted on the Assembly Budget Committee's website. A condensed summary of the report is as follows:

- During Fiscal Year 2023-24, there were seventeen putative and certified class actions pending against CDCR.

¹ Case names are often referred to by the plaintiff's name, as the name of the Governor (defendant) has changed over the years, as many of the cases have persisted for decades.

- Seven cases were in the remedial and monitoring phase (all federal court), which involves CDCR's compliance with the remedial plans or settlement agreements, the continuing jurisdiction of the federal court, ongoing negotiation and attempts to resolve issues arising from CDCR's compliance. In addition, renewed litigation can occur. Monitoring CDCR's compliance is the responsibility of the plaintiffs' counsel and any assigned court monitors.
 - Two cases have been certified by the courts and were still in the litigation phase.
 - Eight cases were not certified by the courts. (As of the date of the report, five of these cases have been resolved or dismissed by the court)
- Fees paid by CDCR/State to defend against litigation in 2023-24:
 - \$4.78 million to the Department of Justice.
 - \$3.73 million on contract counsel fees.
 - \$4.44 million for CDCR attorneys and clerical staff for work performed on class action litigation.
 - \$19.73 million to plaintiffs' attorneys².
 - \$10.31 million for payment to the Special Master for *Coleman*.
 - Unknown costs related to Plata's Federal Receivership.
 - \$891,902 for the cost of court appointed experts.
 - TOTAL: \$43.88 million³

Major Class Action Lawsuits

1. Coleman v. Newson (*Coleman*, 912 F. Supp. 1282 (E.D. Cal.1995)). *Coleman* is a federal class action lawsuit filed in 1990 on behalf of incarcerated people who receive mental health care in CDCR. Plaintiffs alleged that inadequate mental care placed people at serious risk of death, injury, and prolonged suffering. In 1995, a federal court found CDCR violated the Eighth Amendment against cruel and usual punishment and that prison officials showed deliberate indifference to the needs of mentally ill incarcerated people. The Court identified six areas that required improvements: (1) screening; (2) treatment programs; (3) staffing; (4) accurate and complete records; (5) medication distribution; and, (6) suicide prevention. CDCR has yet to fully comply with many orders issued by the U.S. District Court for the Eastern District of California. The court issued an injunction requiring comprehensive changes to the prison mental health system, appointed a Special Master to monitor CDCR's compliance with the remedial plan ("Mental Health Services Delivery System Program Guide") CDCR submitted, which the court accepted.

On January 6, 2023, the *Coleman* court invited the United States Attorney General to rejoin the case due to ongoing constitutional violations in the delivery of mental health care, specifically on the lack of progress with mental health staffing, suicide prevention, and insufficient monitoring tools. In its order, the court stated:

² The Prison Litigation Reform Act entitles plaintiffs' counsel to attorneys' fees in actions related to prison conditions brought forward by an incarcerated person where they are determined to be the prevailing party.

³ This total does not include the unknown costs related to the Federal Receivership or costs associated with the implementation of remedial measures.

“Further delay is particularly likely given that the state has adopted a distracting and costly scorched-earth litigation strategy, prosecuting more than a dozen appeals and mandamus petitions within the last five years alone, none successful. During this same time period, the court has found the state to have engaged in knowing presentation of misleading evidence to the court and its Special Master. While contributing to delay, the state’s litigation strategy also appears to have substantially interfered with the dedicated efforts of many within CDCR itself—from the Secretary to mental health administrators to clinicians—to remedy constitutional violations in good faith. It also appears to have blocked the possibility of further court-convened settlement efforts.”

Chief United States District Judge Kimberly Mueller

On February 28, 2023, the state was issued another federal court order which fined the state \$1,000 a day for each of the 15 unmet safeguards related to suicide prevention until all of the prisons are in full compliance, beginning April 1, 2023. The federal judge also indicated that she will impose fines for the state’s failure to hire enough mental health professionals.⁴ During an eight year period, more than 200 individuals committed suicide in prisons as CDCR failed to implement the court ordered reforms. A hearing has been set for August to collect more than \$1.7 million in fines that have accumulated since 2017 under a previous order for delays in transferring incarcerated people to state mental hospitals.

On June 25, 2024, Chief U.S. District Judge Kimberly Mueller ordered the state to pay \$112 million in fines, finding CDCR in contempt for failing to provide adequate mental health care. On December 6, 2024, the Ninth Circuit heard the state’s appeal of the fines (totaling \$170 million by that point). The 2024 Budget Act included the following provision: Upon order of the Department of Finance, the Controller shall issue payment to the United States District Court for the Eastern District of California for any fines related to staffing vacancies ordered in *Coleman v. Newsom*. Payment shall be made from the General Fund. The Department of Corrections and Rehabilitation shall provide quarterly reports to the Joint Legislative Budget Committee on any fines paid to the court pursuant to this provision.

2. *Plata v. Newsom (Plata, 445 F. Supp 3d 557)*. *Plata* was filed on behalf of all incarcerated people in 2001 regarding an unconstitutional level of healthcare for people in prison, in violation of the Eight Amendment, the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act. A settlement was reached in 2002 but a lack of progress resulted in the state being placed under medical receivership in 2005, which included the court appointment of a Receiver. Judge Thelton Henderson stated that the prison medical system was “broken beyond repair” and that future harm was “virtually guaranteed in the absence of drastic action.” The court waived state law in multiple occasions to allow the Receiver to increase salaries of medical staff and to allow for certain contract bidding requirements to be waived for specific projects. Later, at the suggestion of the Receiver, the Office of Inspector General began inspecting CDCR’s medical care beginning in 2007.

3. *Three Judge Panel*. In November of 2006, Plata and Coleman plaintiffs filed motions for the courts to convene a three-judge panel pursuant to the United States Prison Litigation Reform

⁴ This Subcommittee will be hearing from CDCR psychiatrists on a mental health panel scheduled for a hearing on April 24.

Act. They argued that the persistent overcrowding in CDCR prisons prevented CDCR from providing a constitutionally adequate level of healthcare. In July 2007, the federal courts convened a three-judge panel to determine whether prison overcrowding was the primary cause of CDCR's inability to provide adequate health care and whether a prisoner release order was the only way to remedy this situation. On August 4, 2009, the three-judge panel declared that overcrowding was the primary reason for CDCR's inability to provide constitutionally adequate healthcare and further required CDCR to reduced overcrowding to no more than 137.5% of the design capacity of the prisons within two years. The state was required to submit a plan to the court on how it would achieve this goal. The Schwarzenegger administration submitted a plan that included the construction of new prisons, expanded to use of contract facilities, and changes in parole but the court rejected the plan. This plan was rejected by the court and an updated plan that included additional sentencing law changes was submitted. On January 12, 2010, the three judge panel issued a final ruling that the state's revised plan met the requirements to reduce prison overcrowding but left it up to the state to decide which specific measures it would implement. The three-judge panel stayed implementation of the ruling as the state appealed the decision to the United States Supreme Court. The Supreme Court upheld the ruling and in his opinion, Justice Kennedy wrote:

“As a consequence of their own actions, prisoners may be deprived of rights that are fundamental to liberty. Yet the law and the Constitution demand recognition of certain other rights. Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment....Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.”

Following this ruling, a series of actions were taken, including the use of out of state prison bed contracts, in-state private and public contract beds, the construction of additional beds, 2011 Public Safety Realignment that realigned the responsibility of people convicted of non-serious, non-violent, and non sex offenses to county jails, sentencing reforms, increasing credit earning opportunities through the completion of rehabilitation programs, etc. CDCR has been in compliance with the population court order since 2015 and with population reductions that have occurred in the last decade, the state has been able to end all out of state contracts, in-state contracts, end a long standing contract for a 2,500 bed facility in California City, and close three state owned prisons.

4. *Armstrong v. Newsom (Armstrong; 942 F. Supp. 1252 (N.D. Cal. 1996), aff'd 124 F.3d 1019 (9th Cir. 1997))*. *Armstrong* is a federal class action lawsuit filed against CDCR in 1994 on behalf of people with disabilities, including those with vision, kidney, hearing, mobility, speech, and or learning disabilities in CDCR custody. The lawsuit alleged that people with disabilities did not have equal access to programs and services, both in prison and while on parole, as required by the Americans with Disabilities Act (ADA). The following describes some of the conditions that were the basis of the lawsuit:

- During hearings before the Board of Prison terms, one incarcerated person was told to leave his wheelchair behind to crawl upstairs to attend his hearing; another incarcerated person who was deaf was shackled during his hearing and could not communicate with his sign language interpreter; and another incarcerated person who was blind said he was offered no assistance with complicated written materials. A federal District Court judge issued an injunction which was upheld by the Ninth Circuit Court of Appeals in 2001.
- Deaf people have been denied access to educational and rehabilitative programs, which places them at a disadvantage during the parole hearings, resulting in serving a longer period of time than their hearing counterparts. Plaintiffs' attorneys demanded the hiring of additional staff interpreters and for deaf individuals to be housed in program rich institutions.

In 1999, CDCR negotiated a settlement in the lawsuit and developed the Armstrong Remedial Plan (ARP) to address the areas of noncompliance. The federal court ordered CDCR to adhere to the ADA, to provide disability accommodations, and to ensure that the prisons are accessible for class members. Despite the longstanding lawsuit and remedial plan, the case continues to be heavily litigated as the courts have found CDCR in violation of both the ADA and the ARP. The following are two recent examples of ongoing litigation related to Armstrong:

- In 2020, a motion was filed that challenged CDCR's failure to safely house and provide accommodations to people with disabilities during the COVID-19 pandemic. Class members at the California Institution for Men were placed in inaccessible settings and individuals that had never tested positive of COVID-19 who were in their 60s, 70s, and 80s were housed in crowded dormitory settings with individuals with confirmed, active COVID-19 cases. The court issued an order requiring CDCR to establish and maintain safe, accessible housing, including for purposes of medical isolation and quarantine.
- Armstrong plaintiffs filed a series of motions in court, beginning in 2020⁵, related to allegations of abuse and violence by CDCR staff, retaliation or threats of retaliation for filing staff complaints, unequal access to job and program assignments for people with disabilities, statewide durable medical equipment reconciliation and accuracy of disability tracking information, insufficient accommodations for blind and low vision, and deaf class members, etc. In addition, some class members alleged instances where correctional officers at one prison charged people with false rules violation reports in retaliation. The resulting court orders primarily covered six prisons, which include the installation of fixed audio video surveillance systems (AVSS), the usage of body cameras, and a new staff complaint process. The United States Court of Appeals for the Ninth Circuit recently affirmed all portions of the district court's orders related to the staff complaint process and video surveillance. In the opinion, the court mentioned the "Defendants' prior failures to improve their accountability systems in the absence of specific, court-ordered instructions," among many other reasons to uphold the specific measures. AVSS is in

⁵ *Armstrong* attorneys testified in the Assembly Budget Subcommittee No. 5 hearing on March 6, 2023, and stated that issues with the staff complaint process had been raised several times beginning in 2005 with CDCR; however, changes with the policy only happened following the 2019 Inspector General's Report (that also occurred upon the urging of the Prison Law Office to CDCR) and the court filings by *Armstrong* attorneys in 2020.

the process of being implemented at other prisons and the Subcommittee has a budget proposal before it to complete the AVSS system at the remaining prisons.⁶ The staff complaint process at the 6 prisons under the court order differ from the staff complaint process that exists at the rest of the prisons. This was a change that CDCR made through their regulations process in the fall of 2024. This has raised significant concerns for the *Armstrong* attorneys.

5. Clark v. California (Clark). *Clark* is a federal class action lawsuit filed in 1996 on behalf of incarcerated individuals with developmental disabilities. The lawsuit alleged that CDCR violated the ADA, section 504 of the Rehabilitation Act, and the Eighth and Fourteenth Amendments of the U.S. Constitution. The Clark Remedial Plan (CRP) was developed through settlement negotiations between the parties and was approved by the court in 2001. The CRP outlines CDCR's Developmental Disability Program (DDP), which is the department's plans, policies, and procedures for incarcerated individuals with developmental disabilities to ensure that they are appropriately identified and housed; ensure the safety of those with victimization concerns; ensure equal access to CDCR's programs, services, and activities; and provide accommodations in due process events.

6. Ashker v. Newsom (Ashker). *Ashker* is a class action lawsuit that was originally filed in 2009 and subsequently amended in 2012 on behalf of incarcerated individuals who were held in long term solitary confinement in the Security Housing Unit (SHU) at Pelican Bay State Prison. The plaintiffs alleged that long term solitary confinement (22 to 24 hours a day in a windowless cell for years and for some, over ten years or more) violated the Eighth Amendment's prohibition against cruel and unusual punishment and that the absence of meaningful review for SHU placement violates the prisoners' rights to due process. While this case reached a settlement in 2015, the court ordered additional monitoring due to ongoing constitutional violations in January 2019 and February of 2022. On January 5, 2023, the court found that CDCR engaged in retaliatory conduct against one of the original plaintiffs, Mr. Ashker, by placing him in administrative segregated housing since 2017, despite having been approved by the prison's institutional classification committee to remain in the general population. The court further ordered that the plaintiffs and CDCR meet regarding potential remedies within thirty days and to file statements to the court regarding the outcomes of that meeting within forty-five days.

Costs for Litigation Defense and Remedial Measures provided by CDCR and the Department of Finance

Legal Services. CDCR has positions and expenditures for legal services through its Office of Legal Affairs (OLA) and fees that are billed to CDCR from the Department of Justice (DOJ). OLA, as of 2024-25, has 298.6 positions (92 additional positions since 2021-22) and an annual budget of \$95 million (an increase of \$11.61 million since 2021-22). According to CDCR, for the last five years, the DOJ has billed CDCR an average of 300,000 hours of legal services each year, with the highest in 2021-22 at 336,990 hours. OLA resources and DOJ fees cover costs associated with all the various types of litigation related activities CDCR manages, including class action lawsuits. In addition to OLA and DOJ, CDCR has also used outside contract counsel for class action lawsuits.

⁶ This budget proposal was discussed at the March 6, 2023 Assembly Budget Subcommittee No. 5 hearing.

Staff Comment

Staff notes that this agenda item does not include information related to individual lawsuits filed by incarcerated persons and others, nor does it include the costs to implement the court ordered, or otherwise settled on, remedial measures. Most recently, a remedial measure stemming from ongoing unresolved issues under *Armstrong* has forced the state to invest more than \$100 million annually to fix its staff complaint process, which has gone through several iterations in the last few years. Another example is the building of Health Care Facility Improvement Projects (*Plata*), in virtually every state prison, which has cost the state more than \$1.3 billion. These examples illustrate the significant taxpayer burden the state incurs as a result of ongoing violations of state and federal law that CDCR has historically struggled to curb.

As CDCR and the Administration continue to press on with implementing the “California Model⁷,” the Subcommittee may wish to better understand CDCR’s plan by asking the following questions:

- What is CDCR preemptively doing to reduce its legal vulnerability to both longstanding and new individual and class action lawsuits?
- For the longstanding class action lawsuits, what are the primary reasons impeding a final resolution?

Staff Recommendation: Hold Open.

⁷ Discussion related to the “California Model” is scheduled for a future Subcommittee hearing.

Issue 4: Air Cooling Pilot Program and other capital outlay/maintenance proposals.

CDCR will provide an overview of its Air Cooling Pilot Program budget proposal.

Panel

- Dave Lewis, Director, Division of Facility, Planning, Construction and Management, CDCR
- Cynthia Mendonza, Deputy Director, Office of Fiscal Services, CDCR
- Caitlin O'Neil, Legislative Analyst's Office
- Lynne Ishimoto, Department of Finance
- Kimberly Harbison, Department of Finance
- Amanda Garcia, Department of Finance
- Phil Osborn, Department of Finance

Background

The Legislative Analyst's Office provided the following background:

Many Prisons Experience High Summer Temperatures and Lack Adequate Cooling. Many of the state's prisons are located in areas that experience high summer temperatures, including the eastern and southeastern deserts, Central Valley, Antelope Valley, and Inland Empire. CDCR has traditionally used evaporative cooling (a system that cools air through evaporation of water, sometimes called a "swamp cooler") for the majority of housing areas. These systems were designed to keep indoor temperatures under 89 degrees Fahrenheit, though the department reports that its existing systems are not always capable of meeting even this standard.

High Heat Poses Health and Other Risks for People Who Live and Work in Prisons. In hotter temperatures, the body must work harder to cool itself. When the body's temperature control system cannot do so, significant physiological problems can occur—such as fainting, nausea, muscle cramps, damage to vital organs, and in extreme cases, death. These problems can set in more quickly for people who take medications (such as diuretics, antihistamines, and many mental health medications) or have other health conditions (such as cardiovascular disease or diabetes) that impair their body's temperature control system. Risk of heat-related illnesses also increases as humidity rises. Moreover, use of portable electric fans in certain hot conditions can speed the onset of heat-related illnesses by blowing hot air on the body and increasing the heat stress that the body must respond to. In addition to its direct risks to health, heat may also limit productivity (such as in education classes) and some studies indicate it is correlated with violence and self-harm.

CDCR Has Various Heat-Related Policies. CDCR has various policies intended to mitigate some of the negative effects of heat. For example, when indoor temperatures reach 90 degrees, staff initiate cooling and hydration procedures such as cool showers and misting and perform

increased observation of people with health conditions that make them particularly sensitive to heat.

CDCR Is Likely to Face Requirements to Limit Indoor Heat in Prisons. In July 2024, the Occupational Safety and Health Standards Board (OSHSB) approved a regulation requiring employers to take steps to protect workers from heat when indoor temperatures reach 82 degrees Fahrenheit, with additional requirements when temperatures reach 87 degrees Fahrenheit. Local and state correctional facilities were exempted from these regulations. However, OSHSB is in the process of developing an industry-specific regulation for workers in local and state correctional facilities. In addition, plaintiffs in an ongoing class action lawsuit related to prison medical care (known as *Plata v. Newsom*) have expressed concerns about extreme heat, suggesting that heat-related litigation is possible.

Governor's Budget Proposal

Air Cooling Pilot Program. The Governor's Budget proposes \$23.6 million one-time General Fund in 2025-26, and \$45.4 million one-time General Fund in 2026-27, for a pilot program to install and evaluate air cooling alternatives to improve indoor environments at the Central California Women's Facility (CCWF), California Medical Facility (CMF), Kern Valley State Prison (KVSP), and California State Prison, Los Angeles (LAC). The *Coleman* court mandated CDCR to establish and adhere to a Prevention Plan for Heat Related Pathologies. The Prevention Plan addresses the policies and procedures institutions must implement when "heat-risk incarcerated individuals" (incarcerated individuals on specified medications that face health risks in high heat conditions) are exposed to extreme high temperatures.

Legislative Analyst's Office (LAO)

The LAO provides the following analysis and recommendation regarding the Air Cooling Pilot Program:

Piloting Cooling Options Makes Sense. In view of the health and other risks posed by indoor heat as well as the likelihood that the state will face requirements related to indoor heat in prisons, it makes sense to proactively begin addressing the issue. In addition, piloting alternatives in four common housing unit design types is a reasonable step to inform a broader statewide strategy.

Department Has Not Provided a Detailed Plan to Evaluate Success. The department has not provided a detailed plan for how it would evaluate success in the pilot. For example, it has not described its plan for measuring temperature, such as whether it would use sensors located throughout housing units that continuously measure and transmit data or whether it would depend on staff to manually read and log temperatures. The department has also not specified the data to which it will compare the pilot sites. For example, it is unclear if it would compare pilot housing units to their own interior temperatures from previous years or if it would compare pilot housing units to data collected from other housing units over the same time period.

Systemwide Implementation Could Present Significant Challenges. While the exact scope of the problem is not clear, it seems likely that meeting the 79 degree goal statewide could be a major undertaking. Specifically, we find that statewide implementation could present the following significant challenges:

- **High Cost.** The department has not developed a cost estimate or time line to scale up air cooling because it intends to use the results of the pilot to inform its statewide strategy. However, our rough estimates suggest that the one-time installation costs to cool facilities statewide could total in the low billions of dollars. In addition, operation of mechanical cooling systems would increase ongoing utility costs. The department's engineering study estimates that the addition of mechanical cooling for facilities that previously have only included evaporative cooling will increase annual energy costs by \$77,000 to \$141,000 annually per building. If scaled up statewide, we estimate that the increase in CDCR's energy costs could be in the tens of millions of dollars annually.
- **Additional Strain on Project Planning and Management Capacity.** The potentially high cost of installing air cooling statewide would be in addition to the roughly \$1.5 billion in other infrastructure projects that CDCR estimates it will need to pursue over the next decade to address issues related to safety (such as replacement of fire suppression systems) and critical infrastructure (such as kitchen renovations). Accordingly, introduction of air cooling projects alone could potentially double the volume of projects over this time period. This would put additional strain on CDCR's project planning and management capacity, which is concerning given that effective project planning and management is important for ensuring projects are completed in an efficient and timely manner.
- **Operational Considerations Could Limit Implementation Speed.** CDCR indicates that installation of mechanical cooling could cause operational disruptions to housing units during construction, though the details cannot be determined until design is complete. To the extent people need to be relocated to other housing units during construction, this would limit the number of projects that can be ongoing at any given time. This is because the more housing units that are under construction at a given time, the more people will become concentrated in the remaining housing units. Accordingly, to avoid overcrowding, the department would likely have to pursue statewide implementation in several construction stages, which could take many years to complete.

Legislature Needs Additional Information to Provide Ongoing Oversight. Given the serious health risks posed by extreme heat in prisons and the significant challenges that could come with systemwide implementation of air cooling, it is important that the Legislature has information necessary to provide oversight going forward. For example, it might make more sense to close, or even rebuild, a prison with particularly significant infrastructure problems rather than pay to repair and upgrade it. However, to make this decision, the Legislature would need information about the condition of the infrastructure and estimated costs and time lines to address it. In addition, the Legislature needs information about what other strategies—besides major infrastructure modifications—CDCR is considering to mitigate heat. This is important because the pilot will not be completed until 2028-29 and statewide implementation could take many

years more. Accordingly, interim strategies to address heat are essential to mitigating health and litigation risks in the near term.

Recommendation

Approve Pilot. Given the health risks of extreme heat, the risks of heat-related litigation, and the reasonable approach to testing various air cooling alternatives proposed by the Governor, we recommend approving the proposed air cooling pilot.

Require CDCR to Provide Evaluation and Statewide Strategy by January 10, 2031. We recommend that the Legislature adopt trailer bill language requiring CDCR to provide an evaluation of the pilot by January 10, 2031 (a full year and a few months after the installation of the air cooling projects at the pilot sites is expected to be completed). To inform this trailer bill, we also recommend directing CDCR to provide during spring 2025 budget hearings a clear plan for how it will evaluate success in the proposed pilot. In addition to the evaluation, the department should submit in the January 10, 2031 report a recommended statewide strategy for scaling air cooling in a timely and efficient manner. To the extent the strategy would involve deactivating housing units while air cooling is being installed, the report should discuss how CDCR would manage the impact to the prison population and employees. In addition, the report should include consideration of options to expedite construction.

Require CDCR to Provide an Interim Report by January 10, 2026 With Information Necessary for Legislative Oversight. We recommend that the Legislature adopt budget bill language requiring CDCR to report by January 10, 2026 on the following:

- ***Systemwide Monitoring.*** The report should discuss the administration's current capabilities and/or plans to collect statewide data on temperature, humidity, and the availability of electric fans in housing units as well as other areas of prisons that may also require cooling, such as kitchens. Such data would be useful for CDCR and the Legislature in determining how to prioritize deployment of future cooling interventions. For example, if fans are not authorized in certain units due to security reasons or physical plant limitations, it could make sense to prioritize these units to receive mechanical cooling.
- ***Status of Existing Infrastructure.*** For each housing unit in the state, the report should indicate (1) their design type, (2) their existing air cooling infrastructure (if any), and (3) how many days they exceeded 78 degrees over the past year (or similar available data).
- ***Plan for Nontypical Housing Units.*** For those housing units that are not one of the four common design types included in the pilot, the report should discuss the steps CDCR has taken and/or plans to take (such as conducting additional engineering studies) to identify cooling options for them.
- ***Other Heat Mitigation Strategies.*** The report should discuss other policies and/or practices CDCR has adopted or is considering to mitigate the effects of indoor heat in the

near term. For example, these may include using portable air conditioning units, changing lightbulbs to LED, reducing humidity (such as by ensuring showers are properly ventilated), painting roofs to reflect solar radiation, modifying summer uniforms, creating cooling centers, or changes to policies for monitoring and responding to heat-related illnesses. In particular, the report should include a discussion of policies around electric fan usage, given that they can be helpful in some circumstances but increase risk of heat-related illness in others.

Various Non-Presentation Capital Outlay/Maintenance Budget Proposals

CDCR and the Department of Finance are available for any questions from the Subcommittee regarding the following capital outlay/maintenance budget proposals:

1. Statewide: Budget Packages and Advanced Planning. The Governor's Budget proposes \$500,000 General Fund to perform advanced planning functions and prepare budget packages for capital outlay projects so that CDCR can provide detailed information on scope and costs on requests for planned projects statewide. The current project schedule estimates these activities to begin in July 2025 and be completed in January 2027.

2. Valley State Prison, Chowchilla: New Potable Water Wells. The Governor's Budget proposes \$1,150,000 for Preliminary Plans. The project includes design and construction of two new groundwater wells. Total project costs are estimated at \$18,235,000, including Preliminary Plans (\$1,150,000), Working Drawings (\$1,665,000), and Construction (\$15,420,000). The construction amount includes \$9,822,000 for the construction contract, \$491,000 for contingency, \$1,277,000 for architectural and engineering services, \$613,000 for agency retained items, and \$3,217,000 for other project costs. The current project schedule estimates Preliminary Plans will begin in July 2025 and will be completed in September 2026. The Working Drawings are estimated to begin in October 2026 and will be approved in July 2027. Construction is scheduled to begin in November 2027 and will be completed in April 2029.

3. Americans with Disabilities Act Facility Improvements. The Governor's Budget proposes \$23.1 million one-time General Fund in 2025-26 for the construction of Americans with Disabilities Act (ADA) accessibility improvements at designated institutions. CDCR's Inmate/Ward Labor Program within the Division of Facility Planning, Construction and Management will perform the work and provide monthly project briefings to all project stakeholders, including CDCR and the Department of Finance, to provide accountability for all project resources, identifying progress and project status. CDCR has a Disability Placement Program (DPP), created in response to the federal class action lawsuit *Armstrong v. Newsom*. The DPP is CDCR's set of plans, policies, and procedures to ensure non-discrimination against incarcerated individuals with disabilities, consistent with the ADA. One component of the DPP was the designation of institutions for incarcerated individuals with mobility, hearing, visual, and speech impairments. Initially, there was a narrow scope of needed ADA improvements identified at DPP-designated institutions where only limited physical plant upgrades were made, rather than making each DPP institution fully compliant with the ADA. Although CDCR has addressed approximately 65 percent of the accessibility deficiencies identified in the site assessments, the

remaining scope requires more complex construction and detailed architectural and engineering design drawings, such as installation of grab bars, shower seats fixtures, and removal of curbs; plumbing chase reconfigurations to accommodate installation of accessible toilet/sink combination units; removal or relocation of bunks, shelves and desks; and extensive accessible paths of travel such as concrete walks, stairs, and ramps.

4. California Health Care Facility, Stockton: Potable Water Treatment System. The Governor's Budget proposes \$982,000 for the working Drawings of this project. The project includes design and construction of a potable water treatment system. Total project costs are estimated at \$8,628,000, including Preliminary Plans (\$959,000), Working Drawings (\$982,000), and Construction (\$6,687,000). The construction amount includes \$3,331,000 for the construction contract, \$167,000 for contingency, \$890,000 for architectural and engineering services, \$515,000 for agency retained items, and \$1,784,000 for other project costs. The Preliminary Plans began in July 2024 and will be completed in October 2025. The Working Drawings are estimated to begin in October 2025 and will be approved in September 2026. Construction is scheduled to begin in January 2027 and will be completed in April 2028.

5. Ironwood State Prison, Blythe: New Potable Water Wells—construction and Reappropriation of Working Drawings. The Governor's Budget proposes a reappropriation of \$638,000 for the unencumbered portion of working drawings and funding to construct two new groundwater wells to supply adequate amounts of potable water for incarcerated individuals and staff at Ironwood State Prison (ISP). A portion of the working drawings funding was not encumbered by June 30, 2023. This proposal also requests funding for the construction phase of this project. The total estimated project cost is \$13,433,000. The project includes the construction of two new groundwater wells. Total project costs are estimated at \$13,433,000, including Preliminary Plans (\$821,000), Working Drawings (\$1,122,000), and Construction (\$11,490,000). The construction amount includes \$7,406,000 for the construction contract, \$370,000 for contingency, \$928,000 for architectural and engineering services, \$613,000 for agency retained items, and \$2,173,000 for other project costs. Preliminary Plans began in July 2021 and were completed in May 2023. The Working Drawings began in May 2023 and will be approved in July 2025. Construction is scheduled to begin in November 2025 and will be completed in April 2027.

Staff Recommendation: Hold Open.

Issue 5: CIM Mental Health Crisis Facility Staffing Proposal and other various budget proposals

The Department of Finance will provide an overview of the California Institution for Men (CIM) 50-bed Mental Health Crisis Facility Staffing proposal.

Panel

- Dr. Amar Mehta, Deputy Director, Mental Health, CDCR
- Duane Reeder, Deputy Director, CCHCS Fiscal Management Services, CDCR
- Orlando Sanchez Zavala, Legislative Analyst's Office
- Alyssa Cervantes, Department of Finance
- Kimberly Harbison, Department of Finance

Background

The Legislative Analyst's Office provided the following background:

Overview of CDCR Mental Health. All people entering the prison system are screened for mental health needs. About one-third of the prison population has a diagnosed mental health need. The mental health care provided at the prisons is subject to the oversight of a Special Master appointed as part of the *Coleman v. Newsom* federal court case, which ruled in 1995 that CDCR was not providing constitutionally adequate mental health care. Most people in prison with a mental health need can be treated in an outpatient setting, meaning they live in a prison housing unit and receive regular mental health treatment but do not require 24-hour care. However, under certain circumstances, some people may require more intensive treatment provided in an inpatient bed. These inpatient beds provide intensive 24-hour care with the goal of preparing the people to return to an outpatient program.

CDCR Operates Mental Health Crisis Beds (MHCBs) to Address Shorter-Term Acute Needs. If people are suffering from severe symptoms of a serious mental health need that cannot be managed by an outpatient program, they are generally sent to MHCBs, which provide short-term housing and 24-hour care. Due to their immediate need for treatment, people referred to MHCBs are supposed to be transferred to these beds within 24 hours. When an MHCB is unavailable at a specific prison, CDCR typically transports people to another prison with an available MHCB. Under CDCR regulations, people are not supposed to stay in MHCBs for more than ten days. The annual cost of operating each MHCB is around \$400,000—including custody staff. Currently, there are 392 MHCBs at men's prisons and 41 MHCBs at women's prisons. Normally, MHCBs must be licensed by the California Department of Public Health to ensure compliance with minimum standards established for patient safety and quality of care. However, 53 of the MHCBs in CDCR are unlicensed and are legally allowed to operate only due to a waiver from the *Coleman* court. Most of the state's unlicensed MHCBs are in a 34-bed facility operated at the California Institute for Men (CIM) in Chino.

CDCR Uses Other Types of Inpatient Mental Health Beds for Longer-Term Needs. If a patient's condition is stabilized in an MHCB, the patient is generally sent back to a housing unit.

However, if the patient's condition requires longer-term, 24-hour care, the patient may be admitted to inpatient beds designed for such care. In prison, these beds are operated by CDCR. However, patients may also be placed in such beds in a state hospital operated by the Department of State Hospitals (DSH) through a referral process. There is a total of 1,632 of these beds—1,296 in prisons and 336 in state hospitals. These beds are divided into the following two types based on the nature of the care they provide:

- **Acute Psychiatric Programs (APPs).** APPs provide shorter-term, intensive treatment for people who show signs of a major mental illness or higher-level symptoms of a chronic mental illness. Patients are supposed to be transferred to an APP within 72 hours of the referral, but no more than ten days after the referral and can generally stay up to 45 days. Currently, there are 489 APP beds, all of which are in state prisons. The annual cost of operating one of these beds is \$300,000.
- **Intermediate Care Facilities (ICFs).** ICFs provide care beyond what is provided in CDCR outpatient programs, but are available for longer time periods than MHCBS or APPs. People with lower security concerns are placed in low-custody ICFs, which are in dorms, while those with higher security concerns are placed in high-custody ICFs, which are in cells. There are 722 ICF beds in state prisons, 658 of which are high-custody ICF beds. In addition, there are 306 low-custody ICF beds in state hospitals which CDCR can refer patients to. Each ICF bed in a state prison costs around \$246,000 annually to operate, while those in DSH cost around \$393,000 annually.

The department also maintains 85 beds for women and people sentenced to death in state prisons that can be operated as either ICF or APP beds. Additionally, there are 30 beds in state hospitals that CDCR can refer women to. Due to the specific groups these beds serve, these beds are costlier to operate—about \$364,000 annually.

CDCR Determines How Many Beds to Operate Based on Projections and Court Requirements. The number of beds CDCR operates are a part of a court-required bed plan. The department determined how many beds to operate based on projections of the mental health population completed by a private contractor using a methodology approved by the federal court. These projections are updated biannually and used to develop a bed need study that compares the department's mental health bed capacity with its current and projected mental health populations. The court requires CDCR to operate at least 10 percent more beds than the projections imply would be needed to act as a "buffer" against unexpected surges in bed need. (We note that the bed need study counts the 336 inpatient beds in state hospitals towards the prison inpatient capacity.) CDCR cannot modify the number of beds without notifying the Special Master and receiving approval from the *Coleman* court.

CDCR Is Constructing a Mental Health Crisis Facility at CIM to Reduce Unlicensed Beds and Transfer Time. Since 2017, the state has approved a total of \$141.1 million (\$7.5 million General Fund and \$133.6 million lease revenue bond authority) to construct a 50-bed mental health crisis facility at CIM. CDCR sought the project in order to (1) replace 34 unlicensed MHCBS at CIM with licensed beds and (2) reduce the amount of time it takes to transfer people in Southern California prisons to MHCBS by adding 16 MHCBS in the region. CDCR reports that,

currently, a lack of MHCBS in Southern California forces it to transfer some people in Southern California prisons to Central and Northern California prisons where more MHCBS are available. The project at CIM is expected to be completed in October of 2025.

CDCR Is Being Fined for Failing to Fill Mental Health Positions. As part of the ongoing *Coleman* court case, CDCR has been incurring fines monthly since April 2023 for failing to reduce vacancy rates for five mental health classifications, which include: psychiatrists; psychologists; clinical social workers; recreational therapists; and medical assistants. Many of these positions are used to operate inpatient mental health beds. The *Coleman* court requires that each of the five classifications have a vacancy rate below 10 percent otherwise the state is fined for each classification out of compliance. The state has paid over \$150 million in fines so far, which are deposited in a special account to support staff recruitment and retention. At the time of publication, CDCR is still accruing fines but the court has paused on collecting and spending the fines due to ongoing litigation.

Governor's Proposal

California Institution for Men (CIM) 50-bed Mental Health Crisis Facility (MHCF) Staffing. The Governor's Budget proposes 13.4 positions and \$3.0 million General Fund in 2025-26, expanding to 20.4 positions and \$4.4 million General Fund in 2026-27, and ongoing to staff a licensed 50-bed Mental Health Crisis Facility at the California Institution for Men. The MHCF will provide housing and treatment for the incarcerated population who experience a mental health crisis or require other levels of licensed mental health care needs at CIM. Additionally, this building is designed to provide care for those who need a Mental Health Crisis Bed or an Intermediate Care Facility, for flexibility of treatment.

Legislative Analyst's Office (LAO)

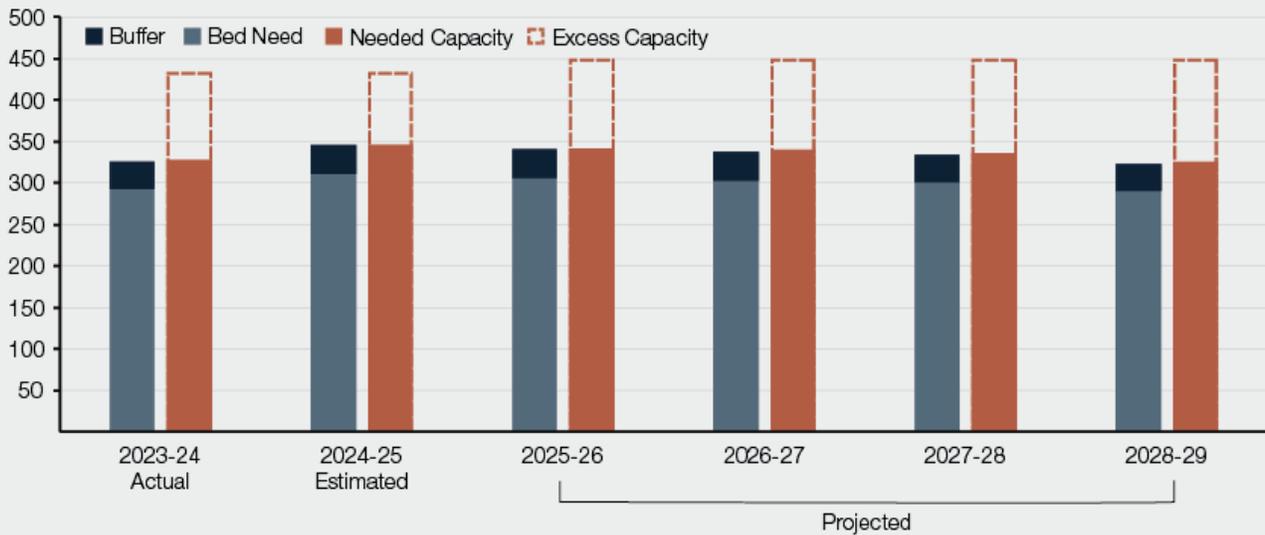
The LAO provides the following analysis and recommendation regarding the CIM 50 bed Mental Health Crisis Facility Staffing proposal:

Activation of Mental Health Crisis Facility Would Increase Amount of Statewide Excess Capacity. The underlying rationale for the newly constructed facility still remains, as it would allow the department to convert its unlicensed beds to licensed beds and it would help address capacity limitations in the Southern California region, thereby reducing the number of people needing to be transferred to other parts of the state. However, while the new facility helps address regional capacity challenges, the department has excess MHCBS capacity when viewed at the statewide level. As shown in Figure 3, with the added capacity provided under this proposal, the department will continue to have more than enough existing capacity to meet all of its current and projected needs for licensed MHCBS. CDCR needs 341 MHCBS systemwide in 2025-26, but it is proposing to operate 449 MHCBS—an excess of 109 MHCBS (84 at men's prisons and 25 at women's prisons). Furthermore, CDCR's MHCBS needs are projected to decline by 25 additional beds by June of 2029. Based on this projection, excess capacity would rise to 134 beds. This does not account for the increase in the prison population caused by Proposition 36, which could also increase the mental health population. However, we anticipate that even after adjusting for the effects of Proposition 36 there will still be excess capacity. For

example, if Proposition 36 increases the number of MHCBS needed by 4 percent in 2025-26 (the amount the administration expects the measure to increase the overall population by in that year) there would still be 95 excess beds in 2025-26. (The bed need study, as well as the projections of the prison population and the effects of Proposition 36, will be updated at the May Revision. For more information, please see the “State Prison and Parole Population and Other Biannual Adjustments” section of this brief.)

Figure 3

Department Has More MHCB Capacity Than Needed



Note: The mental health populations do not account for impacts of Proposition 36 (2024). Therefore, the estimated number of MHCBS needed could be understated by roughly a few percentage points according to current administration projections.
 MHCBS = Mental Health Crisis Bed.



MHCBS Proposal Does Not Account for Reduced Costs Related to Transfers. As discussed above, the new MHCBS facility would likely reduce transportation costs, as fewer people in Southern California would need to be transferred to beds in more northern parts of the state. However, the Governor’s proposal does not account for these potentially modest savings.

CDCR Also Continuing to Operate Excess APP and ICF Bed Capacity. As shown in Figure 4, CDCR is also operating excess capacity in other types of inpatient beds, including 205 APPs, 327 ICFs at both men’s prisons and state hospitals, 32 APP/ICF beds at women’s prisons, and 13 APP/ICF beds for the condemned population. Similar to MHCBS, adjusting the population for Proposition 36 would somewhat reduce the amount of excess capacity in these beds, but the department would likely still be operating significantly more inpatient beds than needed.

Figure 4

Department Has More Acute Psychiatric Program (APP) and Intermediate Care Facilities (ICF) Beds Than Needed

	Proposed Capacity	2025-26		2029	
		Projected Bed Need	Excess Capacity	Projected Bed Need	Excess Capacity
ICF ^a	1,028	702	327	667	361
APP	489	285	205	271	218
Women’s prisons ^b	75	43	32	42	33
Condemned population	40	27	13	25	15
Totals	1,632	1,056	577	1,005	627

^a306 of these beds are in state hospitals.

^b30 of these beds are in state hospitals.

Note: Totals may not add due to rounding.

Reducing Excess Capacity Would Create Savings and Help With Court Compliance. If the department were to reduce MHCBS, APP, and ICF bed capacity, we estimate that this could result in annual ongoing savings ranging from tens of millions of dollars to more than \$100 million, depending on the number of actual beds that are deactivated. The savings primarily would result from the elimination of hundreds of mental health positions needed to staff these beds. The reductions in staffing would have the added effect of reducing the vacancy rate of mental health staff. This would help the state comply with the *Coleman* court’s order to reduce mental health vacancies, likely allowing the state to reduce the amount of fines that would be levied on the state. As such, there could be additional significant fiscal benefits from rightsizing inpatient mental health bed capacity based on the projected need. As discussed earlier, CDCR would need to notify the Special Master and receive approval from the *Coleman* court to make changes in bed need capacity.

Recommendation

Approve Activation. We recommend approving the proposed activation of the CIM mental health crisis facility. Doing so would allow the department to convert unlicensed MHCBS to licensed beds. This could improve the quality of care provided by the state. Furthermore, it could reduce the time it takes to transfer people from the Southern California region to MHCBS.

Direct CDCR to Seek Approval to Align Inpatient Bed Capacity With Updated Bed Need Study. Given that CDCR's estimates indicate there would be 686 excess inpatient beds—including MHCBS and other inpatient beds operated by CDCR and DSH—in 2025-26, we recommend that the Legislature direct CDCR to seek approval from the *Coleman* court to reduce excess capacity as part of the May Revision. Specifically, we recommend directing CDCR to seek authorization from the *Coleman* court to include a proposal in the May Revision to reduce inpatient bed capacity based on a revised bed need study. To ensure excess capacity does not accumulate in future years, we further recommend that the Legislature add budget bill language requiring CDCR to regularly seek adjustments to its inpatient mental health bed capacity based on the bed need study. We anticipate these changes would reduce CDCR costs—both from operating the excess capacity and avoided fines—by potentially more than \$100 million annually, if all the excess beds are approved for deactivation by the *Coleman* court. This would not only free up General Fund resources that could be used to address the multiyear deficits facing the state, but could help CDCR comply with the *Coleman* court order to reduce mental health vacancies. To the extent, the *Coleman* court denies a plan to deactivate excess bed capacity, it would benefit the Legislature to understand what criteria, threshold, or buffer the state would have to achieve under the *Coleman* court in order to deactivate some, if not all, of the excess capacity. The Legislature could consider having CDCR work with Special Master to produce such a report at that time.

Direct CDCR to Account for Transportation Savings. Because the MHCBS proposal did not account for potential savings from transportation costs, we recommend that the Legislature also direct CDCR to include a proposal at the May Revision that accounts for such savings.

Various Non-Presentation Budget Proposals

CDCR and the Department of Finance are available for any questions from the Subcommittee regarding any of the following budget proposals:

1. Continuation of Employment Leave Expansion. The Governor's Budget proposes 15 positions and \$2.2 million General Fund in 2025-26 and ongoing to meet the workload increase associated with Chapter 748, Statutes of 2022 (AB 1041), which expanded the class of people an employee can take leave to care for, to now include a "designated person" as identified by the employee at the time of a leave request. "Designated person" means any individual related by blood, or whose association with the employee is the equivalent of a family relationship. The 2023 Budget Act provided CDCR with position authority and funding on a two-year limited term basis to handle the projected increase in protected leave cases under the California Family Rights Act and Family and Medical Leave Act, including employee injury or illness and medical care, family member injury or illness and medical care or pregnancy disability leave. This funding comes to an end on June 30, 2025. At the time of the 2023-24 BCP submission, CDCR projected to receive 22,500 requests through 2022, justifying the need for 13 positions. The 2022 cases came in lower at 17,194 but increased by more than 5,600 from 2022 to 2023, a 32 percent year-over-year increase. In 2024, that increase is anticipated to continue, with the Department potentially receiving 24,000 cases, nearly doubling the 13,546 received as of July 2024.

Assembly Appropriations Analysis of AB 1041. Additional costs of an unknown amount for state departments to the extent this bill increases use of CFRA or paid sick days.

2. COVID-19 Mitigation Efforts. The Governor's Budget proposes \$12.8 million General Fund in 2025-26 for continued health care costs related to the prevention and mitigation of, and response to, COVID-19 and implementation of the state's SMARTER Plan. Additionally, budget bill language is requested to allow funds to be reduced if actual or estimated expenditures fall below the requested amount. From 2019-20 through 2023-24, CCHCS has expended over \$1.0 billion for COVID-19 prevention, mitigation, and response activities. CCHCS requests the following resources for each category:

- Employee Testing: \$3.2 million based on a monthly average of expenditures for employee testing from January 2024 to June 2024.
- Incarcerated Person Testing: \$5.1 million based on a monthly average of tests administered from March 2024 to July 2024, less the anticipated number of reduced Reception Center tests.
- Other Staffing and Operational Costs: \$2.4 million for treatment costs and to continue wastewater testing efforts.
- Personal Protective Equipment: \$2.1 million based on a monthly average of expenditures from July 2023 to June 2024 for rapid COVID-19 test kits and other COVID-19 medical supplies, such as masks, gowns, respirators, and miscellaneous supplies.

Additionally, CCHCS will incorporate the costs for COVID-19 vaccines into its Pharmaceutical population standard adjustment and additional resources for vaccines will be addressed through this adjustment as part of CDCR's biannual population adjustment process. This will align the funding for COVID-19 vaccines with other vaccinations the Department currently provides, such as the annual flu vaccine or the Tetanus, Diphtheria, Pertussis vaccine.

3. Extension of COVID-19 Workers' Compensation Benefits. The Governor's Budget proposes \$33 million one-time General Fund in 2025-26 and \$35 million in 2026-27, and 16 two-year limited-term positions for workers' compensation workload and costs related to COVID-19. On September 17, 2020, the Governor signed Senate Bill 1159 to protect the health and safety of all employees and the public by facilitating provisions of workers' compensation benefits. Assembly Bill 1751, signed by Governor Newsom on September 29, 2022, extended the protections of the COVID-19 presumption statutes to January 1, 2024. CDCR received 27 four-year limited-term positions in the 2021 Budget Act. This funding comes to an end June 30, 2025.

Based on the current 1,085 open COVID-19 workers' compensation claims and 93.25 average new claims per month, CDCR and CCHCS request an extension of funding related to these costs for two additional years to continue to assess need, as CDCR and CCHCS may require ongoing and permanent funding because of moderate and severe COVID-19 claims remaining open for extended periods of time. The Workers' Compensation categories range from minor to severe, and claims payments include temporary disability, industrial disability liabilities,

permanent disability, death benefits, and SCIF service fees. The annual cost of these claims are as follows:

- \$19.6 million in 2021-22,
- \$22.6 million in 2022-23, and
- \$26.2 million in 2023-24.

4. Public Safety Radio Replacement. The Governor's Budget proposes \$19.8 million General Fund in 2025-26 and ongoing to support CDCR's public safety radio operability and fund an ongoing replacement cycle to maintain the public safety radio communications equipment. CDCR's radio equipment is comprised of 30 radio systems and approximately 15,500 radios (i.e. hand-held portables, emergency vehicle mobiles, remote stations, consolettes, and base stations). Other technologies, such as pagers, satellite phones, and cellular devices, do not meet communication requirements and interoperability for routine, critical, or emergency response. Interoperability allows CDCR to connect to disparate radio systems from other law enforcement agencies. Currently, 98 percent of the radio equipment is past its lifecycle and is operating beyond the recommended operational cycle by multiple years. In December 2023, the manufacturer notified the State of California they had a depleted inventory of parts to support the existing radio equipment. California Office of Emergency Services' Public Safety Communications, the oversight agency tasked with radio system maintenance and repair, informed CDCR they are receiving broken radios that are no longer repairable.

5. Technical Adjustments. The Governor's Budget proposes a net-zero realignment of budget authority within CDCR programs and \$7,000 to correct miscoding related to the Division of Juvenile Justice closure.

6. Workers' Compensation Adjustment for Health Care Programs. The Governor's Budget proposes \$8.5 million General Fund in 2025-26 and ongoing to address a shortfall in the workers' compensation authority and to reassess expenditures annually as part of the Governor's Budget process. California Correctional Healthcare Services (CCHCS) has maintained an authority of approximately \$52.0 million for workers' compensation from 2020-21 to 2024-25, while the actual expenditures have ranged from approximately \$57.3 million to a projected \$62.7 million. CCHCS projects to expend \$64.3 million for workers' compensation in 2025-26, which creates a total shortfall of \$11.7 million. This proposal is based on the following assumptions:

- The methodology for funding CCHCS workers' compensation costs will focus on direct costs incurred related to institution-based staffing. CCHCS will continue to absorb administrative and headquarters-related workers' compensation costs.
- CCHCS will absorb a portion of the estimated increase in workers' compensation costs and implement various mitigation measures with the hope of limiting increases in workers' compensation costs over time.

This amount requested was calculated by utilizing a three-year average projection for 2025-26 and adding an average growth percentage of 2.57 percent based on the prior 3 years of CCHCS workers' compensation actuals.

7. Elimination of Blueprint Monitoring Functions trailer bill. The trailer bill proposes to remove the requirement that the Inspector General conduct oversight and inspection of the “The Future of California Corrections: A Blueprint to Save Billions of Dollars, End Federal Court Oversight, and Improve the Prison System,” a document released by CDCR in 2012 with a goal to save nearly \$30 billion dollars for other critical state programs and services in the next decade.

Staff Comment: CDCR’s budget in 2012 was roughly \$9 billion, which has grown by more than 35% in the past decade. Compared to 2012, CDCR currently operates fewer state prisons and has 50,000 fewer prisoners since the Blueprint was released. CDCR is still under federal court oversight.

8. Elimination of the California Rehabilitation Oversight Board (C-ROB) trailer bill. The trailer bill proposes to repeal the provisions establishing C-ROB, a board that exists within the Office of Inspector General.

9. Elimination of the Council on Criminal Justice and Behavioral Health trailer bill. The trailer bill proposes to repeal the provisions establishing the Council on Criminal Justice and Behavioral Health within CDCR.

Staff Recommendation: Hold Open.

Non-Presentation Item

7870 California Victim Compensation Board

Issue 6: Appeals Workload

The California Victim Compensation Board and the Department of Finance are available for any questions from the Subcommittee.

Appeals Workload. The Governor’s Budget proposes \$4,435,000 Restitution Fund and 17.0 positions in 2025-2026, and \$4,224,000 in 2026-2027 and ongoing to provide resources to meet the appeals workload in the Legal Division. This request is driven primarily by the court decision in *Mothers Against Murder (MAM) v. CalVCB*, which mandates that CalVCB provide in-person hearings for all appealed denials. Prior to this case, CalVCB relied on a now invalid regulation that allowed for resolution of the majority of appeals on the written record. This new direction significantly exacerbates the appeal workload. According to statutory requirements in the Government Code, appeals must be processed within six months of a claimant filing the appeal, unless CalVCB lacks sufficient information to make a decision. Currently, the average processing time of 325 days far exceeds the mandated timeframe. The MAM decision will further increase this processing time.

Staff Recommendation: Hold Open.

This agenda and other publications are available on the Assembly Budget Committee’s website at: [Sub 6 Hearing Agendas | California State Assembly](#). You may contact the Committee at (916) 319-2099. This agenda was prepared by Jennifer Kim and Bernie Orozco.