

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 5 ON PUBLIC SAFETY

ASSEMBLYMEMBER REGINALD BYRON JONES-SAWYER SR., CHAIR

WEDNESDAY, APRIL 17, 2013

1:30 P.M. - STATE CAPITOL ROOM 444

VOTE-ONLY CALENDAR

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VOTE ONLY ITEMS

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

VOTE-ONLY ISSUE 1: TECHNICAL BUDGET ADJUSTMENT

The Governor's Budget proposes a no-cost technical adjustment to CDCR's items of appropriation to better align spending authority with program costs. Specifically, this proposal:

- 1) Moves \$1.5 million for the Family Liaison Services contract from Program 48 (Adult Education, Vocation and Offender Programs – Administration) to Program 29 (Adult – Institutions Administration);
- 2) Moves \$569,000 and an associated position for the LA County Court Contract from Program 29 to Program 31 (Parole Operations – Adult Community Based Programs); and,
- 3) Moves \$1.9 million and 17 positions for the Parole Hearing Team (related to the Victims Bill of Rights Act of 2008 [Marcy's Law]) and four positions associated with the *Armstrong* lawsuit (American with Disabilities Act (ADA) remedies) from the Office of Legal Affairs (OLA) to the Board of Parole Hearings (BPH).

BACKGROUND

Family Liaison Contract. The Family Liaison Contract provides services to inmates and their families, (including: pre-release planning and communication with families and friends). This contract is managed by the Division of Adult Institutions (DAI) and not the Division of Rehabilitative Programs, as such, funding for the contract is being realigned to the DAI.

LA County Court Contract. The LA County Court Contract provides services to parole violators as an alternative to incarceration. Because the contract provides services to parolees, funding for the program is being shifted to Parole Operations, rather than DAI.

Board of Parole Hearings. With the passage of "Marcy's Law," the BPH is required to maintain an independent legal staff to ensure independent legal operation. Consistent with this directive, a new Chief Counsel gubernatorial appointment to the Board was established. The primary functions of the legal positions currently in OLA are to ensure the BPH is in compliance with the Armstrong Remedial Plan, to monitor and evaluate revocation units at institutions and county jails, and to assist in ADA training. Transfer of the 21 total positions from the OLA will appropriately align the Chief Counsel's managerial, personnel and unit budgetary authority.

Staff Recommendation: Approve as budgeted

VOTE-ONLY ISSUE 2: STATEWIDE BUDGET PACKAGES AND ADVANCED PLANNING

The Governor's Budget proposes \$750,000 in general obligation bond funds to support workload associated with planning capital outlay projects at youth and adult correctional facilities. This workload typically consists of site assessments, environmental reviews, and the development of scope, cost, and schedule projections.

BACKGROUND

The CDCR currently operates 33 adult prisons and three juvenile facilities, along with more than 40 adult or juvenile conservation camps. The range of capital outlay needs across the facilities is broad and varied. The development of well documented and justified capital outlay requests requires the development of budget packages. Additionally, the need arises during the fiscal year to perform advance planning functions such as environmental reviews and site assessments to determine the feasibility of future capital outlay requests. To perform these functions, the CDCR has typically been provided with a Statewide Budget Packages and Advance Planning appropriation in the annual Budget Act. Provisional language is included with this appropriation limiting it to projects that meet both of the following two criteria: 1) the project being studied has not already received funding for the Legislature; and, 2) the project is being prepared for funding consideration in either of the next two state budget acts.

Staff Recommendation: Approve as budgeted

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Effective July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) was created pursuant to the Governor's Reorganization Plan No. 1 of 2005 and SB 737 (Romero), Chapter 10, Statutes of 2005. All departments that previously reported to the Youth and Adult Correctional Agency (YACA) were consolidated into CDCR and included the California Department of Corrections, Youth Authority (now the Division of Juvenile Justice), Board of Corrections (now the Corrections Standards Authority (CSA)), Board of Prison Terms, and the Commission on Correctional Peace Officers' Standards and Training (CPOST). Effective July 1, 2012, SB 92 (Committee on Budget and Fiscal Review), Chapter 36, Statutes of 2011 created the Board of State and Community Corrections ("BSCC"), which superseded the CSA.

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

The CDCR is organized into the following programs:

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

CDCR's adult inmate average daily population is projected to decrease from 132,223 in 2012-13 to 128,605 in 2013-14, a decrease of 3,618 inmates, or 2.7 percent. The average daily parolee population is projected to decrease from 57,640 in 2012-13 to 42,958 in 2013-14. These decreases are primarily attributable to the shift in responsibility for lower-level offenders from the state to counties pursuant to The Public Safety Realignment of 2011. The Governor's Budget proposes \$8.97 billion and 59,736.2 positions for the CDCR in 2013-14.

ISSUE 1: UPDATE ON RECEIVERSHIP AND RECENT COURT FILINGS

The Health Care Receiver will open this issue with a brief update on California's progress toward ensuring adequate inmate health care. This discussion will include an update on the recent stream of health care and population reduction related court filings.

PANELISTS

- J. Clark Kelso, Receiver, California Correctional Health Care Services
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

In 2001, a federal class-action lawsuit alleged that the dire state of medical care in California state prisons violated the 8th amendment of the U.S. Constitution, which prohibits cruel and unusual punishment. In 2002, the State settled the lawsuit by agreeing to reform the system. After several years of little progress, the court removed control of prison medical care from the State and appointed a federal Receiver to oversee the reform process. The receiver's job is to bring the level of medical care in California prisons to a standard, which no longer violates the U.S. Constitution. Once that goal is accomplished and sustainability is ensured, the court will return control of prison medical care to the State and the Receivership will end.

Specifically, the Receiver is responsible for:

- Providing health care to nearly 130,000 inmates.
- Delivering health care at 33 adult institutions in California.
- Overseeing more than 7,000 California prison health care positions, including doctors, nurses, pharmacists, and administrative staff.

In 2006, plaintiffs filed a motion to convene a three-judge panel in the Plata lawsuit under the 1996 Prison Litigation Reform Act, claiming that overcrowded conditions in California's prisons resulted in unconstitutional medical care for inmates. The second lawsuit joined in the three-judge panel, the Coleman case, involves mental health services for inmates.

In 2007, a three-judge panel was convened to address claims that overcrowding in state prisons results in unconstitutional medical care.

In 2009, the three-judge panel ordered the state to reduce its adult institution population to 137.5 percent of design capacity within two years, equivalent to a reduction of about 40,000 inmates. The state appealed this decision, but in 2011, the U.S. Supreme Court upheld the panel's ruling. Since 2007, California has taken numerous actions to reduce overcrowding. The most significant ongoing actions are realigning lower-level offenders and parole violators to local jurisdictions, and increasing prison health care bed and treatment capacity. These actions have been effective in reducing the prison population while maintaining public safety, eliminating the use of all non-traditional beds, and allowing the CDCR to focus on providing rehabilitation programs to reduce recidivism.

The three-judge panel issued another order in October 2012 requiring the state to develop two plans to reduce the prison population to 137.5 percent of design capacity by June 27, 2013 and December 27, 2013.

In January 2013, the Administration filed a motion to vacate or modify the court's population reduction order. In the filing, the CDCR contended that "The state has already taken significant actions in all areas this court identified as potential ways to safely reduce the prison population." The CDCR also argued that "Further prison population reductions to satisfy the court's population cap cannot be achieved unless the court alters state law, dictates the adoption of risky prison policies, and orders the outright early release of inmates serving prison terms for serious and violent felonies."

The Administration's position is that the state is now able to deliver health care to inmates at a level that meets, or exceeds, constitutional standards ultimately justifying an end to federal court oversight. The Administration references statements made by the Plata case Receiver (Clark Kelso), the Coleman case Special Master (Matthew Lopes), and the newly appointed Secretary of the CDCR (who served as an expert for Plaintiffs at trial), and recent Office of the Inspector General (OIG) reviews to support their contention that the CDCR's medical delivery system is improving. However, the Coleman case Special Master and the Plata case Receiver have subsequently released statements indicating their disagreement with the state's contention that federal court oversight is no longer needed.

On April 11, 2013, The Three Judge Panel denied the Governor's motion to vacate or modify the court's population reduction order. Specifically, in the response, the Court reiterated that "defendants must immediately take further steps to comply with this Court's June 30, 2011 Order, as amended on January 29, 2013, requiring defendants to reduce the overall prison population to 137.5 percent design capacity by December 31, 2013".

STAFF COMMENTS/QUESTIONS

While the Administration has not yet publicly indicated its next action, members of the Subcommittee may wish to begin the process of identifying palatable population reduction solutions to be employed in the event that portions of the plan requiring Legislative approval are undesirable

ISSUE 2: DEWITT NELSON CORRECTIONAL ANNEX

The Health Care Receiver will open this issue with a brief discussion on the Governor's Budget request for the resources necessary for activation of the DeWitt Nelson Annex.

The Governor's Budget proposes \$16.2 million General Fund to support 135 positions necessary for the activation of the DeWitt Nelson Annex. These resources would increase to \$36.6 million and 333.5 positions upon full implementation (by 2014–15). This includes costs related to administrative, security, health care, and support staff, as well as the equipment and supplies necessary to operate the facility.

PANELISTS

- J. Clark Kelso, Receiver, California Correctional Health Care Services
- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

The DeWitt Nelson Correctional Annex project consists of converting the decommissioned Division of Juvenile Justice facility previously known as the DeWitt Nelson Youth Correctional Facility to a semi-autonomous, non-licensed Adult Male Level II facility.

The DeWitt Nelson Correctional Annex joined with the California Health Care Facility (CHCF) will create a unified health care complex allowing both facilities to efficiently transition inmate-patients between the two, while avoiding transportation and security costs as well as the need for expensive medical services in community hospitals and clinics. Construction of the complex is expected to be completed by February 2014, intake is expected to commence in March 2014, and the facility is expected to be fully operational by May 2014.

STAFF COMMENTS/QUESTIONS

This proposal is consistent with the Department's long-term healthcare plans as submitted to the Court. Further, this proposal will likely result in the avoidance of significant costs associated with inmate medical services in community hospitals and clinics.

Staff Recommendation: Approve as Budgeted

ISSUE 3: MEDICATION MANAGEMENT NURSING STAFF

The Health Care Receiver will open this issue with a brief discussion on the necessity of the proposed conversion of 211 temporary nursing positions to permanent positions.

The Governor's Budget proposes a permanent augmentation of \$15 million General Fund to support the conversion of 211 temporary nursing positions to permanent.

PANELISTS

- J. Clark Kelso, Receiver, California Correctional Health Care Services
- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

In 2010-11, the Legislature approved 237 permanent nursing positions in prisons to distribute medication to inmates in a more efficient manner. This included 70 positions initially approved for other purposes that were later redirected to medication distribution. Subsequently, the 2012-13 budget provided an additional 211 positions on a two-year limited-termed basis, for a total of 448 departmental nursing positions for medication distribution.

At the time the above positions were requested, the Receiver's office indicated that the additional nursing positions were needed to reduce the use of overtime and registry nurses, which generally are more expensive than using departmental staff. The Receiver reported that it spent about \$51 million in 2009-10 on overtime and registry nurses to distribute medications to inmates. The Receiver's office contends that providing additional positions would result in overtime and registry savings that would more than offset the cost of the new positions. The Receiver also contends that hiring permanent staff will improve the quality of inmate care because registry staff are generally less familiar with CDCR processes and procedures and are less likely to be invested in meeting performance standards.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO has raised a concern that the future need for these positions is unclear. According to the LAO, the Receiver's ongoing medication distribution workload, and thus the future need for the 211 nursing positions, remains unclear and data provided by the Receiver indicates that the medication distribution workload is declining. The LAO points out that between May 2009 and the first quarter of the 2012-13 fiscal year, the number of medications distributed to inmates by nursing staff declined about 20 percent (from 84,000 to 67,000 per month). The declining workload appears to be driven primarily by two factors. First, the number of prescriptions written per inmate has decreased from 3.9 in June 2009 to 3.7 in December 2012. Second the prison population decreased by about 31,000 inmates over the same period. This includes a decline of about 2,000 mentally ill inmates who generally receive more medications than other inmates. As a result, changes in the mentally ill inmate population have a relatively greater impact on medication distribution workload.

The LAO also points out that, in addition to the declining workload, several of the Receiver's major initiatives that could potentially impact the need for medication distribution nurses remain incomplete. For example, the CHCF and Dewitt facilities are not yet activated. In addition, the Receiver reports that the consolidation of medically complex inmates at medical hubs is only about halfway complete and will not be finished for a couple of years. These changes will involve the transfer of thousands of medically complex inmates, many of whom require multiple medications, throughout the prison system. As the Receiver reallocates nursing staff among prisons to deliver medication to these inmates, there may be opportunities for the Receiver to achieve efficiencies that would decrease the overall staffing need.

According to the Receiver's office, the reduction in workload to date has not been accompanied by a commensurate reduction in staffing. This is because of the way the office has allocated staff among prisons and among yards within prisons. Moreover, the Receiver claims that, in the future, the new staffing methodology will make annual adjustments to nursing staff levels to account for reductions in the inmate population and future operational changes. However, it is impossible to evaluate this claim because the Receiver has not provided any details on the new staffing methodology.

Finally, the LAO has pointed out that, in 2012, the Receiver's office provided notice of the development of a new staffing methodology for inmate medical services. According to the Receiver, the new methodology will allocate staff among prisons based on the amount and types of medical services provided at each location. The new methodology is expected to result in staffing reductions and fiscal savings.

In order to monitor the Receiver's progress in implementing the new staffing methodology, the 2012 Budget Act required the Receiver to report on the methodology not later than 30 days following its approval by the Department of Finance. The Receiver's office is in the process of implementing this new staffing methodology and reported to the LAO that over 800 positions are being eliminated. However, the Receiver has not provided the report required by the 2012 Budget Act or any other detail regarding the new staffing methodology.

STAFF COMMENTS/QUESTIONS

While the Governor's proposal does include detail on past expenditures for overtime and registry staffing, the proposal does not provide workload trend data to justify the ongoing nature of this proposal.

Further, the Subcommittee may wish to instruct the Administration and/or the LAO to conduct a cost benefit analysis on the prospect of employing electronic medication distribution equipment as a cost savings and quality control tool.

Staff Recommendation: Approve positions on a two-year limited-term basis.

ISSUE 4: CALIFORNIA HEALTH CARE FACILITY

The Administration will open this issue with a brief discussion on the Governor's Budget proposal and the Spring Finance Letter for the Health Care Facility.

The Governor's Budget proposes \$2.3 million (\$1.9 million ongoing) General Fund and 76.7 positions to support the ongoing operation of the California Health Care Facility.

A Spring Finance Letter proposes a reduction of \$137,000 and 1.8 positions (\$701,000 and 7 positions ongoing) to account for operational savings associated with a scope change to construct one electrified fence for CHCF and the DeWitt Annex, and to provide a warden and executive assistant to oversee operations at CHCF.

PANELISTS

- J. Clark Kelso, Receiver, California Correctional Health Care Services
- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

Governor's Budget Proposal. In November 2009, the CDCR, working collaboratively with the Federal Receiver, filed a Long-Range Integrated Strategy Plan to reduce overcrowding and provide for increased medical and mental health treatment beds. Construction of the CHCF was included in the long-range plan and is key to ultimately satisfying both the *Coleman* (mental health) and *Plata* (medical) courts.

The CHCF is currently under construction with the intake of inmates scheduled for July 22 of this year. The facility will include 1,722 beds of all security levels and will provide all necessary support and rehabilitation program spaces. CHCF establishes specialized housing with necessary health care treatment for a population of seriously and chronically, medically and mentally ill inmates. Funding for CHCF was approved in the 2011 and 2012 budget acts. This proposal includes adjustments based on continued evaluation of operating needs.

Spring Finance Letter. In the planning stages of CHCF, there has been uncertainty regarding overall responsibility for the facility. In March of 2012, it was determined that the facility would have a chief executive officer responsible for both health care and custody functions. As the activation has grown closer, it has been determined that a warden is necessary for the institution to effectively operate. This will allow the CHCF to have the same management structure as all other institutions and ensure that the appropriate level of oversight is in place for the custody/security side of operations. *Specifically, this portion of the proposal includes one Warden position and one Executive Assistant position at a cost of \$266,000 (General Fund)*

Funding and positions in the Governor's Budget request assumed that the DeWitt Annex facility would have a separate perimeter fence. This would have required resources to manage the transfer process between the DeWitt facility and CHCF, where a lot of medical services will be delivered to inmates. It has since been determined that a single perimeter fence will result in operational and fiscal efficiencies. *Specifically, this portion of the proposal eliminates the need for of nine permanent correctional officer positions and \$406,000 (General Fund) in 2013-14 and \$967,000 ongoing.*

The net fiscal impact of this Spring Finance Letter is a reduction of \$137,000 in 2013-14 and an ongoing reduction of \$701,000 per year.

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| STAFF COMMENTS/QUESTIONS |
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This proposal is consistent with the Department's long-term healthcare plans as submitted to the Court. Further, this proposal will likely result in the avoidance of significant costs associated with inmate medical services in community hospitals and clinics.

Staff Recommendation: Approve as Budgeted

ISSUE 5: MINOR CAPITAL OUTLAY PROJECTS

The CDCR will open this issue with a brief discussion on the proposed Minor Capital Outlay Projects.

The Governor's Budget proposes \$2.7 million in general obligation bond funds (remaining in the 1988 Prison Construction Fund) for the construction of five minor capital outlay projects at CDCR's adult and juvenile facilities.

PANELISTS

- California Department of Corrections and Rehabilitation (Capital Outlay)
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

Mule Creek State Prison, Central Control Staircase. The proposal includes \$600,000 to support the design and construction of an enclosed staircase to provide staff carrying weapons, tools and equipment with safe and secure roof access. The existing "ships ladder" poses safety concerns and has contributed to numerous staff injuries in the past.

N. A. Chaderjian Youth Correctional Facility, Housing Unit HVAC System. The proposal includes \$600,000 to support the removal of the existing evaporative cooling system and the installation of a new HVAC system for Housing Unit I. This proposal moves toward compliance with a CDCR guideline requiring that mixed-use (inmate and staff) areas maintain a maximum indoor temperature of 89 degrees Fahrenheit. Further, the Administration contends that this HVAC upgrade is necessary to mitigate serious health concerns for the youth residing in this building who are taking heat-sensitive medications.

N. A. Chaderjian Youth Correctional Facility, Housing Unit HVAC System. The proposal includes \$600,000 to support the removal of the existing evaporative cooling system and the installation of a new HVAC system for Housing Unit II. This proposal moves toward compliance with a CDCR guideline requiring that mixed-use (inmate and staff) areas maintain a maximum indoor temperature of 89 degrees Fahrenheit. Further, the Administration contends that this HVAC upgrade is necessary to mitigate serious health concerns for the youth residing in this building who are taking heat-sensitive medications.

California Correctional Center, Air Cooling Units, Sierra Unit. The proposal includes \$442,000 to support the design and installation of an evaporative cooling system for the Sierra Living Unit. This proposal moves toward compliance with a CDCR guideline requiring that mixed-use (inmate and staff) areas maintain a maximum indoor temperature of 89 degrees Fahrenheit. Further, the Administration contends that this cooling system upgrade is necessary to mitigate serious, heat-related, health concerns for staff and inmates.

California Correctional Center, Air Cooling Units, Cascade Unit. The proposal includes \$442,000 to support the design and installation of an evaporative cooling system for the Cascade Living Unit. This proposal moves toward compliance with a CDCR guideline requiring that mixed-use (inmate and staff) areas maintain a maximum indoor temperature of 89 degrees Fahrenheit. Further, the Administration contends that this cooling system upgrade is necessary to mitigate serious, heat-related, health concerns for staff and inmates.

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| STAFF COMMENTS/QUESTIONS |
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While the need to update the proposed Mule Creek Staircase is not in question, staff is concerned that the identified cost may be excessive. The Administration has clarified that the request is based on a preliminary cost estimate; thus, the Subcommittee may wish to approve the request contingent on future Joint Legislative Budget Committee review of costs after the preliminary planning phase has been completed.

Staff Recommendation: Approve the minor capital outlay requests. However, schedule the Mule Creek project out separately, which will allow for a Joint Legislative Budget Committee review period, at the completion of preliminary plans, to reevaluate the project's cost.

ISSUE 6: IRONWOOD STATE PRISON – HEATING, VENTILATION, AND AIR CONDITIONING

The CDCR will open this issue with a brief discussion on the proposed HVAC upgrade.

The Governor's Budget proposes \$5.4 million (General Fund) to support the Working Drawings phase of the Ironwood State Prison (ISP) HVAC project.

PANELISTS

- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

In the late 1980s and early 1990s, the state built four prisons in the remote areas of Imperial County near Blythe and El Centro. Two of these prisons (ISP and Chuckwalla Valley State Prison [CVSP]) were constructed with evaporative cooling systems that prematurely deteriorated. The evaporative cooling systems installed were undersized and were not well adapted to the extreme temperatures in this area of the state. Further, the systems were located on the roofs of the housing units and leaked causing extensive damage to the roof and walls of the housing units. These leaks could potentially compromise the structural integrity of the building. Finally, the installed cooling units are not capable of generating the level of airflow necessary to appropriately cool the housing units, which regularly results in housing unit temperatures in the summer that are well over the CDCR guideline of 92 degrees Fahrenheit.

In October of 2003, the department completed a Building Repairs Assessment Study. In the study, the current and proposed systems for both ISP and CVSP were amortized over a 30-year life-cycle to determine the most economical and practical system upgrade to support the environmental demands. The most practical, long-term, and economic solution was determined to be the installation of the centralized chiller plant system.

The scope of this project includes replacing the deteriorated "swamp cooler" cooling system at ISP, repairing the collateral damage caused by the deteriorated system, and upgrading the emergency smoke evacuation system to be used during facility fires. Preliminary plans for this proposal were funded in the 2008 Budget Act and approved by the Public Works Board in 2010. The total estimated cost of this project is \$149 million (\$5.8 million for Preliminary Plans, \$5.4 million for Working Drawings, and \$138 million for construction). The Governor's 2014-15 budget proposal will likely include \$138 million General Fund to support the construction phase of the project.

Staff Recommendation: Approve as Budgeted
