

## OVERSIGHT HEARING AGENDA

### ASSEMBLY BUDGET SUBCOMMITTEE No. 5 ON PUBLIC SAFETY

ASSEMBLYMEMBER GILBERT CEDILLO, CHAIR

WEDNESDAY, FEBRUARY 29, 2012  
4:00 P.M. - STATE CAPITOL ROOM 127

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### *California Department of Corrections and Rehabilitation Population Overview*

1. Prison Population Trends
  - ❖ Legislative Analyst's Office
2. The Plata/Coleman Court Order
  - ❖ Legislative Analyst's Office
3. Actions Taken by California to Reduce Prison Overcrowding
  - ❖ California Department of Corrections and Rehabilitation
4. February 27<sup>th</sup> Update: The Plata/Coleman Court Order
  - ❖ California Department of Corrections and Rehabilitation
5. Institution Expenditures
6. Population Reduction Savings (\$1.6 Billion)
7. Member Questions & Comments

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**5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**

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The mission of the California Department of Corrections and Rehabilitation (CDCR) is to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities. The CDCR is organized into the following Adult and Juvenile programs:

- ❖ Corrections and Rehabilitation Administration;
- ❖ Corrections Standards Authority;
- ❖ 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 Program; Inmate Activities; Administration;
- ❖ Adult Health Care Services; and,
- ❖ Juvenile: Operations and Offender Programs; Academic and Vocational Education; Parole Operations; Health Care Services.

As one of the largest departments in state government, the CDCR operates 36 youth and adult correctional facilities and 44 youth and adult camps. In addition, the CDCR contracts for multiple adult parolee service centers and community correctional facilities. The CDCR also operates family foundation facilities, adult prisoner/mother facilities, youth and adult parole units and sub-units, parole outpatient clinics, licensed general acute care hospitals, regional parole headquarters, licensed correctional treatment centers, hemodialysis clinics, outpatient housing units, a correctional training center, a licensed skilled nursing facility, and a hospice program for the terminally ill. In addition, the CDCR has six regional accounting offices and leases more than two million square feet of office space. The CDCR's infrastructure includes more than 40 million square feet of building space on more than 26,000 acres of land (40 square miles) statewide.

The Governor's Budget proposes \$8.9 billion (\$8.7 billion General Fund) and 58,528.2 positions for CDCR operations in 2012-13. This reflects a decrease of \$364.2 million (\$316.1 million General Fund) and 2,621.9 positions from the 2011-12 Budget Act. The Governor is also proposing \$1.3 billion (\$52 million General Fund) for infrastructure needs. This reflects a decrease of \$1 billion (\$28 million General Fund) from the 2011-12 Budget Act.

Fund Source (000s)	2010-11 Actual	2011-12 Projected	2012-13 Proposed	BY to CY Change	% Change
<b>General Fund</b>	\$ 9,481,820	\$ 8,980,824	\$ 8,664,771	\$ (316,053)	(4)%
<b>General Fund, Proposition 98</b>	24,510	23,623	21,229	(2,394)	(-10)
<b>Other Funds</b>	214,963	247,604	201,832	(45,772)	(-18)
<b>Infrastructure Funding</b>	564,616	2,272,277	1,262,102	(1,010,175)	(44)
<b>Infrastructure Funding General Fund (Non-add)</b>	20,436	23,852	51,835	27,983	117
<b>Total Expenditure</b>	\$10,285,909	\$11,524,328	\$10,149,934	\$(1,374,394)	(12)%
<b>Positions</b>	57,620.6	61,150.1	58,528.2	(2,621.9)	(4)

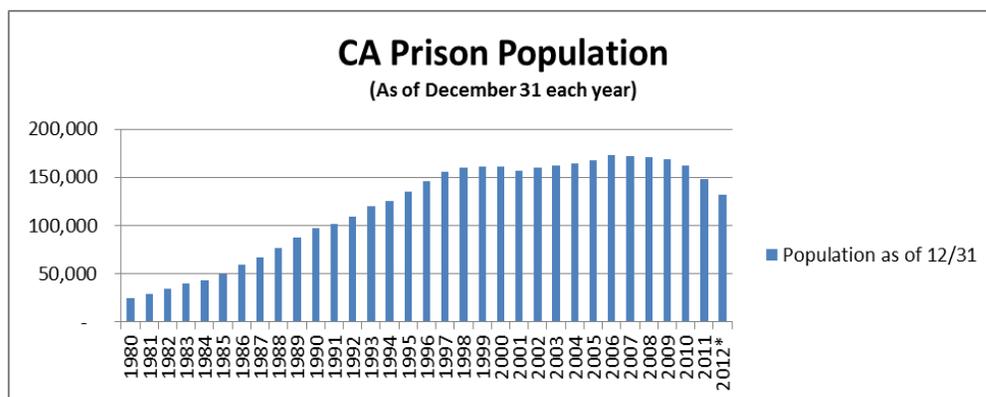
### ISSUE 1: POPULATION (1980 – PRESENT)

The issue before the Subcommittee is State Prison Population and how it has been impacted by recent court decisions and policy changes.

### BACKGROUND

#### Drivers of Growth

California's Prison population has grown by more than 500 percent since 1980 (from roughly 25,000 in 1980 to more than 130,000 in 2012). This anomalous growth was fueled primarily by two pieces of "tough on crime" legislation, The Uniform Determinate Sentencing Act of 1976 and The "Three Strikes" law of 1994. As California's prison population swelled over the past three decades, the state proceeded in building twenty-one new adult prisons to accommodate the influx of new prisoners. Nonetheless, even with the activation of twenty-one new prison facilities, California's inmate population growth outpaced prison capacity by up to 102 percent. The disparity between the number of prisoners and prison capacity created a situation of immense overcrowding, substandard health care, security risks, and an inability to consistently provide much needed inmate educational, vocational, and rehabilitative programs.



### **Major Drivers of Prison population growth:**

**1976 - Uniform Determinate Sentencing Act.** *The Uniform Determinate Sentencing Act represented a significant change in California's criminal justice system. Specifically, it shifted the purpose of imprisonment in California from rehabilitation to punishment. It also removed much of the disparity in sentencing for offenders convicted of similar crimes. In the years following enactment, numerous sentencing enhancements were adopted resulting in longer prison stays. This is reflected in the seemingly uninhibited population growth that occurred between 1987 and 1998. This period also included a prison construction boom that resulted in the activation of 20 state prisons.*

**1994 - Three Strikes.** *California's three strikes law requires significantly longer prison sentences for specified felons while also restricting those individuals from earning credits that would otherwise reduce their time in prison. As of June 30, 2010, the California state prison population included 32,479 second strikers and 8,647 third strikers. Because "strike" sentences can be triggered by any felony conviction – including "wobblers" and nonviolent offenses - strikers are serving lengthy and life sentences for convictions as trivial as receiving stolen property.*

### **Plata v. Brown and Coleman v. Brown**

In November 2006, plaintiffs in two ongoing class action lawsuits—*Plata v. Brown* (involving inmate medical care) and *Coleman v. Brown* (involving inmate mental health care)—filed motions for the courts to convene a three-judge panel pursuant to the U.S. Prison Litigation Reform Act. The plaintiffs argued that persistent overcrowding in the state's prison system was preventing California from delivering constitutionally adequate health care to inmates. In July 2007, the federal courts convened such a three-judge panel to determine whether (1) prison overcrowding was the primary cause of California's inability to provide constitutionally adequate inmate health care; and, (2) a prisoner release order was the only way to remedy these conditions.

On August 4, 2009, the three-judge panel declared that overcrowding in the state's prison system was the primary reason that California was unable to provide inmates with constitutionally adequate health care. Specifically, the court ruled that in order for California to

provide such care, overcrowding would have to be reduced to no more than 137.5 percent of the design capacity of the prison system within two years. (Design capacity generally refers to the number of beds that the CDCR would operate if it housed only one inmate per cell and did not “double-bunk” in dormitories.) The court required the state to reduce overcrowding to specific design capacity limits at six-month intervals leading up to the two-year deadline. The court also required the state to submit a plan identifying what measures it would implement to reduce overcrowding. The court ruling applies to the number of inmates in prisons operated by CDCR, and does not preclude the state from holding additional offenders, in other public or private facilities.

In response to the above ruling, the Schwarzenegger Administration initially submitted a plan that included various compliance measures, such as changes in parole practices, expanded use of contract prison facilities, and the construction of new prisons. However, the court rejected this plan because it would have only reduced overcrowding to 151 percent of design capacity within two years. At the request of the court, the Schwarzenegger Administration submitted a revised plan in November 2009 that kept the prior measures, but also included additional sentencing law changes to meet the 137.5 percent population limit. On January 12, 2010, the three-judge panel issued a final ruling that the state’s revised plan met its requirements, but left it up to the state to decide which specific measures to implement so long as its overall target for reduction of the inmate population was met. The court also required the state to report at specific intervals on its progress. However, the court stayed implementation of all aspects of this ruling while the state appealed the decision of the three-judge panel to the U.S. Supreme Court.

On May 23, 2011, the U.S. Supreme Court upheld the three-judge panel’s ruling, declaring that “without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill” inmates in California’s prisons. However, the high court indicated that the state could request the three-judge panel to modify certain aspects of its ruling.

On June 7 and July 21, 2011, the Administration submitted reports to the three-judge panel updating the court on steps taken thus far to reduce prison overcrowding.

### **California's response to the Court's Ruling**

In response to the court's ruling, the state has implemented various measures to ensure compliance:

- ❖ **Realignment of Certain Adult Offenders and Parolees (AB 109 (Budget Committee), Chapter 15, Statutes of 2011)**. Effective October 1, 2011, counties became responsible for the supervision of prisoners placed on parole whose last offense was not a violent or serious crime. There are certain exceptions to this rule if the offender is judged to be “high risk”. In addition, newly convicted offenders deemed to be non-violent, non-serious, and non-sex offenders remain in counties on community supervision or in local jails in lieu of sentences to state prison. Management of lower risk parole violators was also transferred to the local level. AB 109 was enacted prospectively, which means no inmates housed in state prison were transferred to county jails or released early. The realignment also provides counties with funding to carry out their new responsibilities.

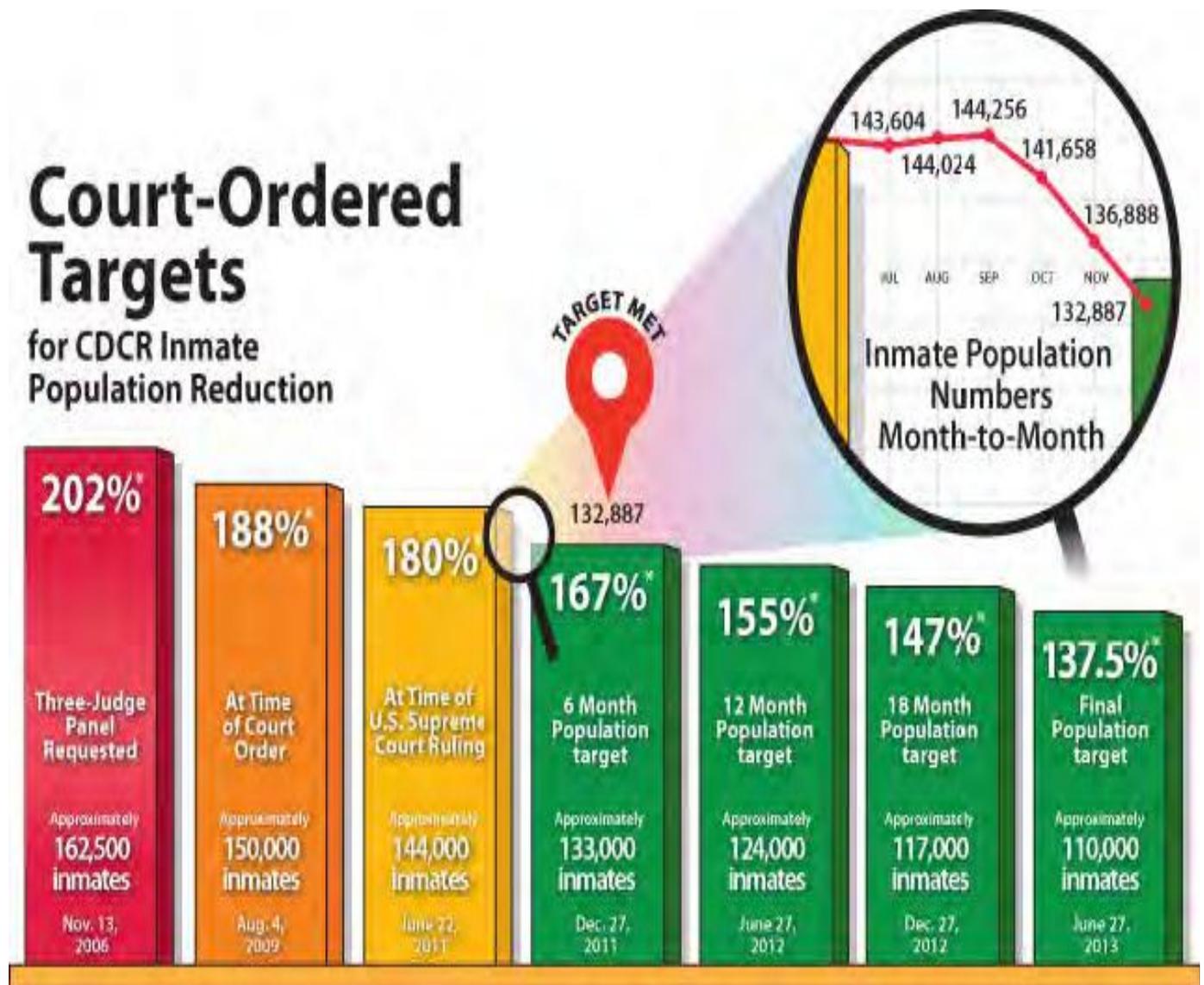
- ❖ **Various 2009-10 Statutory Changes.** The administration also noted in its reports to the court that 2009-10 budget legislation SB 18 X3 (Ducheny), Chapter 28, Statutes 2009-10 Third Extraordinary Session amended state law to: (1) make certain parolees with no serious, violent, or sex offenses ineligible for revocation to prison for parole violations; (2) increase the credits inmates can earn to reduce their prison stay; (3) increase the dollar threshold for certain property crimes to be considered a felony, thus making fewer offenders eligible for state prison; and, (4) establish parolee reentry courts to help prevent certain parolees from returning to state prison. The Administration also noted other legislation including SB 678 (Leno), Chapter 608, Statutes of 2009—a separately enacted bill that provides counties fiscal incentives to reduce the number of probationers sent to state prison.
- ❖ **Contract Correctional Facilities.** In October 2006, Governor Schwarzenegger issued a proclamation declaring a state of emergency on the basis that the level of overcrowding in the state prison system posed a substantial health and safety risk to inmates and staff. The proclamation—which is still in effect today—waived certain provisions of state law, thereby allowing CDCR to immediately contract with and transfer inmates to out-of-state correctional facilities. CDCR currently houses roughly 9,000 inmates out of state pursuant to the Governor’s emergency order in addition to the roughly 1,000 inmates housed in contract facilities located in California.
- ❖ **AB 900 (Solorio), Chapter 7, Statutes of 2007. Prison Construction Plan.** In 2007, the Legislature enacted AB 900, which, among other provisions, authorized roughly \$6.5 billion for the construction of additional inmate housing. In a 2011 report, The Legislative Analyst’s Office reported that several projects funded from AB 900 were being planned, designed, or constructed. At the time, these projects included: (1) a new inmate health care facility in Stockton; (2) new mental health facilities at two existing prisons; (3) the conversion of former juvenile facilities to adult facilities; and, (4) reentry facilities for inmates within one year of being released from custody. In what appears to be a decision based on recent population changes, the 2012 Governor’s Budget includes several proposals that significantly differ from previous construction plans.

### **Progress Toward Meeting Court Ordered Reduction**

In December 2011, California met the first of four population reduction benchmarks by reducing California’s prison population to 167 percent of design capacity (133,016 inmates). California is on the proper trajectory to meet the June 2011 population reduction benchmark of 155 percent of design capacity (124,000 inmates).

# Court-Ordered Targets

for CDCR Inmate Population Reduction



**\*Percent of design capacity**

Design capacity is the number of inmates a prison can house based on one inmate per cell, single-level bunks in dormitories, and no beds in spaces not designed for housing. The current design capacity of CDCR's 33 adult facilities is 79,858.

### **Current Projections Show Population Reductions May Not be Met in Out Years**

Based on CDCR's current population projections, it appears that the state may not meet the future population limits set by the federal court. In particular, the projections show the state missing the final population limit of no more than 110,000 inmates housed in state prisons by June 2013. Specifically, the projections show the state exceeding this limit by about 6,000 inmates. However, the projections indicate that the state will meet the court-imposed limit by the end of 2014. (note that the increase in the population limit in September 2013 reflects the completion of the California Health Care Facility in Stockton, which will provide the state with additional housing capacity.) Nonetheless, other unknown factors could change actual outcomes in either direction. While the department's current projections indicate that the state would miss the court's upcoming deadlines, there is uncertainty as to whether the state will actually, miss those deadlines as they approach. This is because CDCR's population projections could be either higher or lower than what actually materializes. For example, over the past several months, the inmate population has actually been lower than what the department projected in the fall 2011. Moreover, the accuracy of the department's projections historically decline the further into the projection period one looks. In the current situation—post-realignment—where a major change in policy has just been enacted, it is exceedingly difficult for the department to forecast how the prison population will be affected a few years. Again, CDCR's longer-term projections could be either high or low depending on a variety of future factors, such as how successful counties are in managing their existing and realigned offender populations and whether there are any significant changes in judicial and prosecutorial practices that affect the number of offenders sentenced to state prison.

### **Recent Court Activity**

Amid concerns that the CDCR's current plan does not go far enough in addressing prison overcrowding, the plaintiffs in the Plata and Coleman cases filed a motion for an order requiring the state to demonstrate how the required population reduction will be realized by June 2013. The Court has directed the state to file a response to the motion on or before February 27, 2012 and the plaintiffs to file a reply on or before March 5, 2012. No hearing will be necessary unless otherwise ordered.

## **LAO RECOMMENDATIONS**

### **Direct Administration to Request More Time to Comply**

Given the uncertainty about whether, and in what timeframe, CDCR will be able to meet the federal court's population limits, we recommend that the Legislature closely monitor the department's progress over the coming year. However, if the department's updated population projections—which will be provided as part of the Governor's May Revision—continue to project that the state will miss the population limits in the short run, we recommend that the Legislature direct the administration to request that the three-judge panel modify its compliance deadlines in order to provide the state with additional time to meet the required population limits. The U.S. Supreme Court suggested in its recent court ruling that such a request for more time to the federal three-judge panel would be reasonable. Moreover, given that the recently enacted policy changes are projected to bring the state into compliance on an ongoing basis, we believe the state has a strong case to make to the court for additional time. Making the request sooner

rather than later is also important, as it will give the state ample time to plan how it will comply with the deadline if the federal court rejects the request.

### **Consider Other Options if Additional Reductions Are Needed**

Absent an extension, the Legislature may have to consider additional policy changes that would further reduce the inmate population. While there are some options that the Legislature could choose from, these options are much more limited than in past years because so many of the lowest-level offenders have been realigned to the counties. Some of the available population reduction strategies include expanding the use of contract facilities and fire camps, expanding alternative custody or work furlough programs, increasing the amount of credits inmates earn, and changing sentencing laws.

#### **PANELISTS**

Department of Finance

CDCR – Please be prepared to address the following in your testimony:

- ❖ Provide detail on the CDCR's February 27, 2012 response to the court.
- ❖ The impact of recent population reductions on:
  - Fire camps
  - "Unconventional beds"
  - Inmates housed in out of state facilities
  - Changes in institution missions
  - Plan for shifting women inmates out of the Valley State Women's Prison

Legislative Analyst's Office

**ISSUE 2: UPDATE ON \$380 MILLION AUGMENTATION INTENDED TO ADDRESS STRUCTURAL IMBALANCES IN THE CDCR'S BUDGET**

The issue before the Subcommittee is institution expenditures and the statutorily required report detailing how each institution's expenditures are tracking compared to its approved allotment.

The report is required pursuant to the following supplemental reporting language (Item 5225-001-0001, Provision 4, Budget Act of 2011).

*Not later than 75 days following enactment of this act, and subsequently on March 1, and two weeks after the release of the May Revision, the Secretary of the Department of Corrections and Rehabilitation shall submit a report to the Director of Finance and the chairpersons and vice chairpersons of the committees in both houses of the Legislature that consider the State Budget detailing how each adult institution's expenditures are tracking compared to its approved allotments. If any adult institution's expenditures are trending above the allotments provided to it, the Secretary of the Department of Corrections and Rehabilitation shall detail the reasons why the institution is spending at a level above its allotments and list the actions the department is undertaking in order to align expenditures with approved allotments.*

**BACKGROUND**

Throughout recent history, the CDCR has continually exceeded its budgeted expenditure authority. In order to mitigate the amount of deficiency funding requested, the CDCR has repeatedly redirected funding away from other areas in the CDCR budget including inmate educational, vocational, and rehabilitative programs. To support all remaining excess expenditures, the CDCR normally requests supplemental appropriation legislation.

After numerous years of deficiency spending, a consensus was reached to provide an ongoing augmentation to address what was deemed to be a structural shortfall. The 2011 Budget Act included an augmentation of \$380 million to address the identified structural shortfall. This augmentation was adopted alongside supplemental reporting language intended to provide the Legislature with regular updates on departmental spending. In addition to providing regular updates, this language was also intended to provide adequate time to identify cost overruns and correct them within allotted resources.

The supplemental reporting language specifically called for the CDCR to submit a report on each adult institution's expenditures as compared to its approved allotment. The first report was due to the Legislature 75 days after enactment of the 2011 Budget Act. That due date has since passed; however, the Legislature has yet to receive the CDCR's report. Subsequent reports are due to the Legislature on March 1, 2012 and two weeks after the release of the Governor's May Revision.

**STAFF COMMENT**

The Assembly adopted the aforementioned \$380 million augmentation under the assumption that the structural shortfall in the CDCR's budget was being addressed. Thus, the Assembly is

expecting the CDCR to live within its current expenditure authority without redirecting funding away from much needed inmate educational, vocational, and rehabilitative programs.

Further, the Administration has verified the availability of institution expenditure data; therefore, it is unclear why the initial supplemental report has not been prepared and submitted for legislative review. The supplemental report is of utmost importance as it is intended to provide clarity on prison spending, reasons for cost overruns, and options for managing the CDCR's budget.

Considering the March 1<sup>st</sup> due date for the next report, staff recommends the Subcommittee direct the department to forego the past due report and provide the March 1st report on time.

<b>PANELISTS</b>
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Department of Finance

Legislative Analyst's Office – Please be prepared to address the following in your testimony:

- ❖ Institution spending
  - Over the past 5 years, how much expenditure authority has been shifted away from inmate educational, vocational, and rehabilitative programs.

CDCR – Please be prepared to address the following in your testimony:

- ❖ Institution spending
  - Are any institutions on pace to exceed their allotment?
  - What is being done to ensure institutions live within their allotments?
  - Who is responsible for ensuring institutions live within their allotments?
  - Who is responsible for submitting/collecting institution expenditure data?
  - One of the justifications for the structural shortfall BCP was to prevent CDCR from not implementing or underutilizing existing programs to cover deficiencies elsewhere in the budget. Is CDCR currently underutilizing or not implementing programs in 11-12 in anticipation of a deficiency elsewhere? If so, please identify the programs that are not being fully operated, and the amount of savings they are expected to achieve. Also, please identify the programs that are likely to have deficiencies and the amount of the deficiency expected.
- ❖ Timely submission of reports
  - Why wasn't the initial report submitted?
  - Who is responsible for generating and distributing this report?
  - On what date will the next report be submitted to the Legislature?

**ISSUE 3: POPULATION REDUCTION SAVINGS**

The issue before the Subcommittee is \$1.6 billion (\$453 million in 2011-12 and \$1.1 billion in 2012-13) in realignment savings as identified in the Governor's Budget proposal.

**BACKGROUND**

The Administration has identified \$1.6 billion in CDCR savings associated with population reductions driven primarily by realignment. Specifically, the Administration is expecting the adult inmate population to decrease by 13,114, or 8 percent, in 2011-12 and 30,985, or 19 percent, in 2012-13. The Administration is also projecting a decrease of 23,476 in the parolee population in 2011-12 and 51,898 in 2012-13, declining to a total parolee population of 84,862 in 2011-12 and 56,440 in 2012-13. The Administration has tied these population changes to state savings of \$453.3 million in 2011-12 and \$1.1 billion in 2012-13.

**STAFF COMMENT**

The May Revision to the Governor's Budget is expected to provide additional insight on the CDCR's ability to meet identified population and saving targets. Staff recommends no action be taken on the CDCR's January population projections with the understanding that May Revision population estimates will provide more current and relevant data.

**PANELISTS**

Department of Finance

Legislative Analyst's Office

CDCR – Please be prepared to address the following in your testimony:

- ❖ Is the CDCR on track to meet the savings targets?
- ❖ What is the CDCR's plan for meeting the savings targets?
- ❖ Will meeting the savings targets impact allocations for inmate educational, vocational, and rehabilitative programs?