

AGENDA

Assembly Budget Subcommittee No. 5 on Public Safety

Assemblymember Cristina Garcia, Chair

**MONDAY, FEBRUARY 8, 2021
2:30 PM, STATE CAPITOL – ROOM 437**

Due to the regional stay-at-home order and guidance on physical distancing, seating for this hearing will be very limited for press and for the public. All are encouraged to watch the hearing from its live stream on the Assembly's website at <https://www.assembly.ca.gov/todaysevents>.

We encourage the public to provide written testimony before the hearing. Please send your written testimony to: BudgetSub5@asm.ca.gov. Please note that any written testimony submitted to the committee is considered public comment and may be read into the record or reprinted.

A moderated telephone line will be available to assist with public participation. The public may provide comment by calling the following toll-free number: 877-692-8957, access code: 131 54 37

ITEMS TO BE HEARD

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5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION**ISSUE 1: POPULATION PROJECTIONS AND BUDGET OVERVIEW**

The Department of Corrections and Rehabilitation (CDCR) will provide the latest prison population projections and a broad overview of the department's overall budget.

PANELISTS

- Kathleen Allison, Secretary, CDCR

*The Legislative Analyst's Office and Department of Finance are available for questions from the Subcommittee.

BACKGROUND

As of February 1, 2021, the total state incarcerated population is 94,310 (total in custody in the state prisons is 89,554). As of January 27, 2021, the total parole population is 54,694. CDCR halted intake from county jails beginning March 24, 2020, resumed intake in August, and halted intake again on November 26, 2020, which is still in effect today. CDCR projects the average daily adult incarcerated population for 2021-22 to be 95,324 and the daily average parolee population to be 45,924. The table below compares CDCR's past two enacted budgets and this year's proposed budget:

	<u>2019-20 Enacted Budget</u>	<u>2020-21 Enacted Budget</u>	<u>2021-22 Proposed Budget</u>
Total Budget	\$12.98 billion (\$12.57 billion GF)	\$13.86 billion (\$13.12 billion GF)	\$13.26 billion (\$12.78 billion GF)
Budgeted Positions	57,561.2	57,819.1	55,355.6
Total Prison Population (Average Daily Population)	122,640 ¹	122,536 ²	95,324

¹ Average of 2019-20 weekly population reports.

² As of the release of the Governor's Budget for 2021-22, CDCR projects the average daily adult incarcerated population for 2020-21 to be 97,950, a decrease of 24,586 from what was assumed in the 2020-21 enacted budget.

Proposed Funding

The Governor's Budget proposes a total of \$13.26 billion (\$12.78 billion General Fund and \$480 million other funds) to CDCR to operate 35 state prisons. Also, the Governor's Budget projects that a total of \$163.4 million will be needed to reimburse county sheriffs. This projection estimate includes reimbursements already made and additional reimbursements that are anticipated at this time. CDCR's budget change proposals include 172.4 new permanent positions (growing to 224 in out years) and 27 new limited-term positions for CDCR to effectuate new and continuing programs and implementation of new legislation.

Staff Recommendation: Budget change proposals will be discussed in upcoming hearings.

ISSUE 2: UPDATE ON COVID-19 MITIGATION EFFORTS IN CDCR

The Office of Inspector General will provide an overview of Part 3 of their COVID-19 review of the state prisons. The Receiver's Office will provide a status update on CDCR's ongoing mitigation efforts.

PANELISTS

- Roy Wesley, Inspector General
- Clark Kelso, Federal Receiver
- CDCR staff available for questions from the Subcommittee

*The Legislative Analyst's Office and Department of Finance are available for questions from the Subcommittee.

BACKGROUND**COVID-19 in CDCR**

The Assembly Budget Subcommittee No. 6 on Budget Process, Oversight and Program Evaluation held a hearing on CDCR's COVID-19 response on November 10, 2020. The numbers of current COVID 19 numbers, cumulative infection numbers, and the number of deaths as a result of the illness, is reflected below and is compared to the most current data available as of February 1, 2021.

	Active COVID-19 cases (incarcerated)	Active COVID-19 cases (staff)	Cumulative COVID-19 cases (incarcerated)	Cumulative COVID-19 cases (staff)	Deaths (incarcerated)	Deaths (Staff)
Nov 10, 2020 Subcommittee 6 hearing	766	467	16,166	4,575	81	10
February 1, 2021	2,103	1,197	47,500	15,153	195	22

*There are currently 66 incarcerated individuals receiving medical care at outside medical health care facilities.

Since the beginning of the pandemic, CDCR's responses to address COVID-19 in the state prisons has evolved. Among the adopted measures include the following:

- Stoppage of visitation on March 11, 2020 and stoppage of all family visits and tours by March 16, 2020. Stoppage of intake from county jails beginning March 24, 2020, as referenced in Issue 1.

- Implementation of staff temperature screenings, and eventually, testing, as well as enhanced procedures during the transportation of incarcerated individuals.
- Increased cleaning and sanitation protocols.
- Provided early release of prisoners that were within 60 days of release. A subsequent executive order allowed for additional releases of individuals with fewer than 180 days left to serve on their sentence (continuing on a rolling basis), in addition to individuals who have one year or less remaining or who are incarcerated in specific prisons that have a high number of high risk patients.
- Issuance of guidance and materials that provide instructions on safety protocols.

Despite these measures, challenges remain due to the inconsistencies in adherence to protocols and inconsistencies in enforcement across all of its institutions.

Office of Inspector General: COVID-19 Review Series, Parts 1, 2, & 3

The Office of Inspector General (OIG) provides independent oversight of the state's correctional system. The mission of the OIG is to "safeguard the integrity of the State's correctional system by providing oversight and transparency through monitoring, reporting, and recommending improvements to the California Department of Corrections and Rehabilitation." The OIG monitors areas such as employee discipline, use of force, and medical inspections, and provides audits and special reviews by self-initiated audits, or by a request from the Governor, the Assembly, or the Senate.

In April of 2020, the Speaker of the Assembly requested the Office of Inspector General (OIG) to review the policies, guidance, and directives that the CDCR implemented beginning February 1, 2020 as a response to COVID-19. Specifically, the request asked for:

- 1) The Department's screening process for all individuals entering a prison or facility in which inmates are housed or are present;
- 2) Its distribution of personal protective equipment (PPE) to departmental staff and inmates; and,
- 3) How it treats inmates who are suspected to have either contracted or been exposed to COVID-19.

Part one focused on the screening process and part two focused on PPE equipment and physical distancing. Parts one and two were discussed as part of an informational hearing on November 10 in the Assembly Budget Subcommittee No. 6. Please refer to the findings in part one and part two in the handout. The Inspector General will provide the findings from part three in today's hearing which is provided in an additional handout. High level findings from part three include the following:

- Despite knowing COVID-19 test results were outdated, CDCR, through its California Correctional Healthcare Services (CCHCS) executives, pressured the California Institution for Men to transfer 189 individuals to Corcoran and San Quentin state prison. An email from executive correctional staff indicated a conscious decision to not retest individuals prior to transfer. Some of the prisoners that arrived during this transfer were already exhibiting symptoms.
- Once prisoners arrived in San Quentin, they were placed in a housing unit that had open cell doors where air could move and circulate. San Quentin was not equipped to properly quarantine individuals with suspected or confirmed COVID-19 cases and the prison failed to take actions that could have mitigated the widespread outbreak.

Within weeks of this transfer, more than 75% of the San Quentin prison population became infected with COVID-19. Nearly 280 employees also became infected. As a result, 28 incarcerated individuals and one staff died.

Vaccine Distribution

CDCR has been provided with the Moderna/Pfizer vaccine for distribution to staff and incarcerated people. Following guidance provided by the Centers for Disease Control, the California Public Health Department and the Advisory Committee on Immunization Practices, the first round of vaccines are being provided to eligible frontline staff and the highest risk incarcerated individuals from the following prisons: California Health Care Facility (CHCF), Central California Women's Facility (CCWF), and the California Medical Facility (CMF). The entire incarcerated population from CHCF and CMF are eligible to receive the vaccine. At CCWF, approximately 75 incarcerated individuals are eligible.

In addition, approximately 300-500 doses of the vaccine are available to each of the other state prisons, all of which are designated for eligible staff only. The Department states that eligible staff include those that are in close contact and/or have daily interactions with the incarcerated population. The Department has committed to providing vaccine distribution information as it becomes available, including how many staff and incarcerated individuals have been vaccinated along with any refusals from either group.

As of January 31, 2021, 22,689 staff and 10,626 incarcerated individuals have received the first round of vaccines.

Proposed Funding

The Governor's Budget includes a \$1.8 billion one-time General Fund proposal for COVID-19 Response Expenditures for a number of departments, including CDCR. This budget proposal will be discussed in a future budget committee hearing.

STAFF COMMENTS

While CDCR has implemented a number of policies and protocols to mitigate the impacts of COVID-19 in its prisons, it continues to struggle to contain the pandemic, due in part to the large number of prisons it operates, facility layouts that were not built to address public health emergencies, and inconsistencies in statewide implementation and oversight of protocols. It appears that the Department's initial response to the pandemic provided too much discretion to individual prisons, rather than instituting a consistent, statewide approach with adequate oversight. In addition, the most recent findings in the OIG's report indicates departmental decisions that are at odds with public health guidelines which ultimately put the lives of incarcerated people and staff at a greater risk of getting sick and dying from the virus.

In addition to challenges faced by department leadership, adherence to protocols by staff at the institutional level is difficult to track statewide. Similar to the findings in part 1 and 2 of the OIG's reports, anecdotal letters and messages received by the Subcommittee indicate ongoing issues with mask wearing adherence by staff and failure to follow other safety protocols. Recently, the California Correctional Peace Officers union planned a trip to Las Vegas in January, despite the rising numbers of infections and deaths in the state prisons and public health guidance against unnecessary travel. The trip was eventually canceled in the midst of a public outcry. While these types of activities are outside of the purview of the Department, if undertaken, these activities can increase the risk of exposure and infections of the virus to other staff and incarcerated individuals.

In more recent months, CDCR has implemented additional enhanced measures, such as regularly testing staff. According to a December 21, 2020 memo from CDCR, any staff member who refuses to take a test will be sent home without pay. Litigation against the state is ongoing (*Plata and Coleman*) where attorneys representing incarcerated individuals seek further relief and protections for vulnerable clients against COVID-19.

To support the enhanced policies and protocols adopted by CDCR to address COVID-19, oversight of adherence to these policies appears critical to reducing the number of infections and deaths. Many of the enhancements in procedures were made by the Department as a direct result of oversight from litigation or the OIG review. As such, the Subcommittee may wish to:

1. ***Request additional monitoring of the prisons.*** At the request of U.S Circuit Judge John Tigar, the OIG is providing some limited monitoring over the prisons on mask adherence, but the Subcommittee may want to request more robust monitoring of COVID-19 related

protocols as circumstances continue to evolve. Staff notes that such a request from the Legislature will likely require additional resources and staffing for the OIG, as their current capacity is limited by other monitoring obligations they currently hold.

2. ***Regular reporting on releases.*** Request monthly reporting from the Department on the number of releases from the prisons for the remainder of the year. The releases should be differentiated by those released as a result from an executive order from those that are released after having completed their sentences.

Staff Recommendation: The Subcommittee may wish to have a follow up hearing to provide ongoing oversight and receive updated information from CDCR regarding its ongoing COVID-19 mitigation efforts.

ISSUE 3: RECEIVER-QUALITY MANAGEMENT AND PATIENT SAFETY BCP

The Receiver will provide an overview of the Quality Management and Patient Safety budget proposal.

PANELISTS

- Clark Kelso, Receiver

*The Legislative Analyst's Office and Department of Finance are available for questions from the Subcommittee.

BACKGROUND

The Quality Management System (QMS) in CDCR comprises two major interrelated programs: Quality Management (QM) and Patient Safety (PS).

QM Program: The QM program continuously evaluates and improves performance of the health care delivery system by applying nationally-recognized principles, concepts, and models. Specifically, this program helps: establish strategic performance priorities, plans, and objectives; achieves strategic alignment between statewide policies and operationalization of those policies at individual institutions; organizes and manages priority improvement work through a quality committee structure; provides expertise and technical support for process redesign and change management techniques; maintains a performance evaluation program that includes the Health Care Services Dashboard, patient registries, data analytics, and health care informatics.

PS Program: The PS program is responsible for identifying, redesigning, and improving health care processes that specifically may place patients at risk for serious or fatal harm. The PS program identifies problematic systems using data and information from performance evaluation reports, management tools, and self-reported health care incidents (e.g., near misses, sentinel events, or adverse medication events).

The Federal Receiver's 2008 Turnaround Plan of Action (TPA) identified the establishment of a QMS as a critical step to move CDCR toward achieving a constitutional level of medical care and demonstrating that it can maintain an improvement system that includes ongoing process evaluation, redesign, and sustainability. As part of an approach for identifying and resolving remaining issues in the *Plata v. Newsom* litigation, the Federal Receiver brought in experts from the University of California, San Francisco (UCSF), in order to conduct an independent assessment of the PS program and provide recommendations to bring CDCR into alignment with broader health care industry and community best practices. According to the Department,

current QMS staffing is not sufficient to effectively implement the recommendations from UCSF regarding the development of local PS programs.

In the most recent assessment of each prison's QM and PS program, it was determined that the current model of QMSU support yields an average of 56 percent adherence to statewide standards as described in the Health Care Department Operations Manual. On the basis of this performance, CDCR does not believe the QMS is presently able to proactively identify and fix inefficient and ineffective processes that contribute to system failures and place patients in danger. Negative impacts may include avoidable hospitalizations, health complications, permanent disability, and death. CDCR states that without a robust QM System in place, prisons that have been delegated back to the state are at risk for revocation by the Receiver, and prisons that have yet to be delegated will be further delayed in returning to state control.

Proposed Funding

The Governor's Budget requests \$4.0 million General Fund and 23 positions in 2021-22, \$7.5 million General Fund and 45 positions in 2022-23, and \$11.7 million General Fund and 75.0 positions in 2023-24 and ongoing in order to expand the Quality Management System to address patient safety risks. This request is a resubmittal of a request originally included in the 2020 Governor's Budget which was withdrawn before passage of the 2020 Budget Act. It has been modified to have a phase-in period of three fiscal years, instead of two, as in the prior proposal.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO notes an error in this budget proposal regarding the number of positions requested beginning in 2022-23 and ongoing because the proposal does not take into account two planned prison closures. As such, there should be a reduction in two health program managers and two health program specialist positions in 2022-23 and ongoing, resulting in reduced costs of about \$500,000 General Fund annually.

Staff Recommendation: Hold Open.
