

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 5 ON PUBLIC SAFETY

ASSEMBLYMEMBER CRISTINA GARCIA, CHAIR

MONDAY, FEBRUARY 14, 2022
2:30 PM, STATE CAPITOL – ROOM 437

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. The Capitol will be open for attendance of this hearing. Any member of the public attending a hearing in the Capitol will need to wear a mask at all times while in the building.

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](tel:877-692-8957), access code: [131 54 37](tel:1315437)

ITEMS TO BE HEARD

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5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION
0552 OFFICE OF INSPECTOR GENERAL

ISSUE 1: CDCR: POPULATION PROJECTIONS

The Department of Corrections and Rehabilitation (CDCR) will provide the latest prison population projections for the state prison population.

PANELISTS

- Chris Chambers, Deputy Director of Office of Research, CDCR
- Caitlin O’Neil, Legislative Analyst’s Office

*The Department of Finance is available for questions from the Subcommittee.

BACKGROUND

The Governor proposes a total of \$14.2 billion (\$13.8 billion General Fund and \$364.4 million other funds) and 65,288 positions (56,226.5 in 2021-22) for the California Department of Corrections and Rehabilitation (CDCR) to operate 33 state owned and operated prisons and 1 leased and operated prison with a total prison population of 96,696 (as of February 2, 2022).

According to CDCR, current projections show the incarcerated population is temporarily trending upward and is expected to increase by 8,310 individuals between 2021-22 and 2022-23, primarily because CDCR has resumed intake from county jails. The population is projected to resume long-term downward trends to 100,361 in 2024-25. As of December 2021, 725 individuals remained in county jails for transfer and CDCR estimates that the backlog will have cleared by January of 2022. The average daily parolee population is projected to decrease by 5,306 to 42,963 in 2022-23 and projected to further decline to 38,284 by June 30, 2026. The following table shows the prison population decline from 2012 to 2021.

Table 1: Institution and Active Parole Population, June 30, 2012 through June 30, 2026

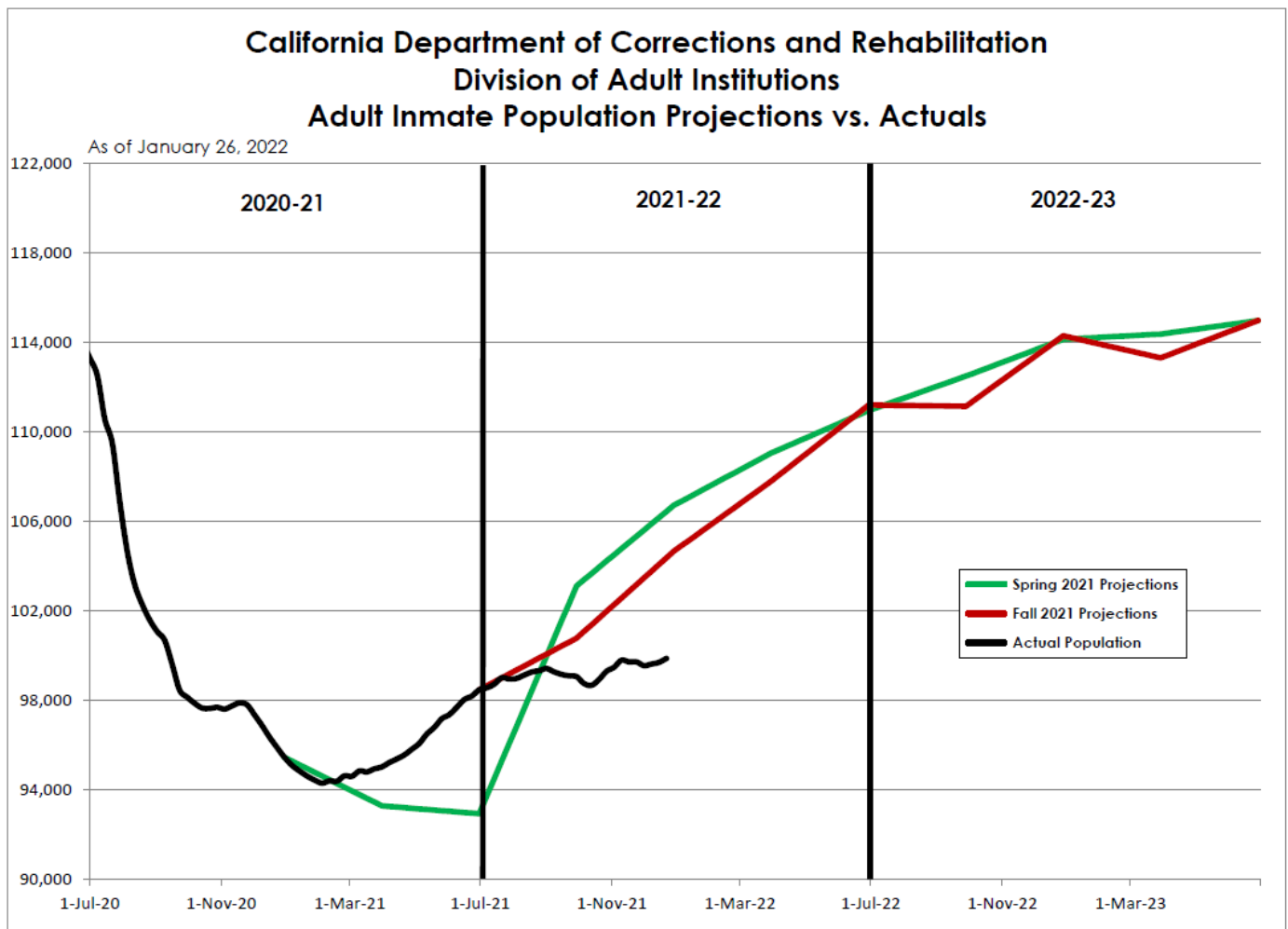
June 30	Institution			Percent Change	Active Parole	
	Female	Male	Total		Total	Percent Change
Actual						
2012	6,471	128,852	135,323	N/A	69,435	N/A
2013	5,995	127,019	133,014	-1.7%	51,300	-26.1%
2014	6,306	129,294	135,600	1.9%	44,499	-13.3%
2015	5,857	123,325	129,182	-4.7%	45,473	2.2%
2016	5,769	122,874	128,643	-0.4%	43,814	-3.6%
2017	5,971	125,289	131,260	2.0%	45,261	3.3%
2018	5,906	123,511	129,417	-1.4%	47,370	4.7%
2019	5,691	119,781	125,472	-3.0%	50,822	7.3%
2020	4,721	108,682	113,403	-9.6%	53,427	5.1%
2021	3,910	94,562	98,472	-13.2%	50,322	-5.8%

The following two tables provide CDCR's institutional population projections through 2025-26.

Fiscal Year	Average Daily Population*		Population as of June 30**		
	2021-22	2022-23	2023-24	2024-25	2025-26
Adult Inmate Population Estimate					
Spring 2021 (2021 Budget Act)	106,259	113,472	105,093	98,829	N/A
Fall 2021 (2022-23 Governor's Budget)	104,554	112,864	104,050	98,324	96,378
Difference between Spring/Fall	(1,705)	(608)	(1,043)	(505)	N/A
% change between Spring/Fall	-1.6%	-0.5%	-1.0%	-0.5%	N/A

*CDCR's Adult Inmate population projections are calculated as an Average Daily Population for the current and budget years.

** CDCR's out-year projections provide the total estimated Adult Inmate population as of June 30 each fiscal year.

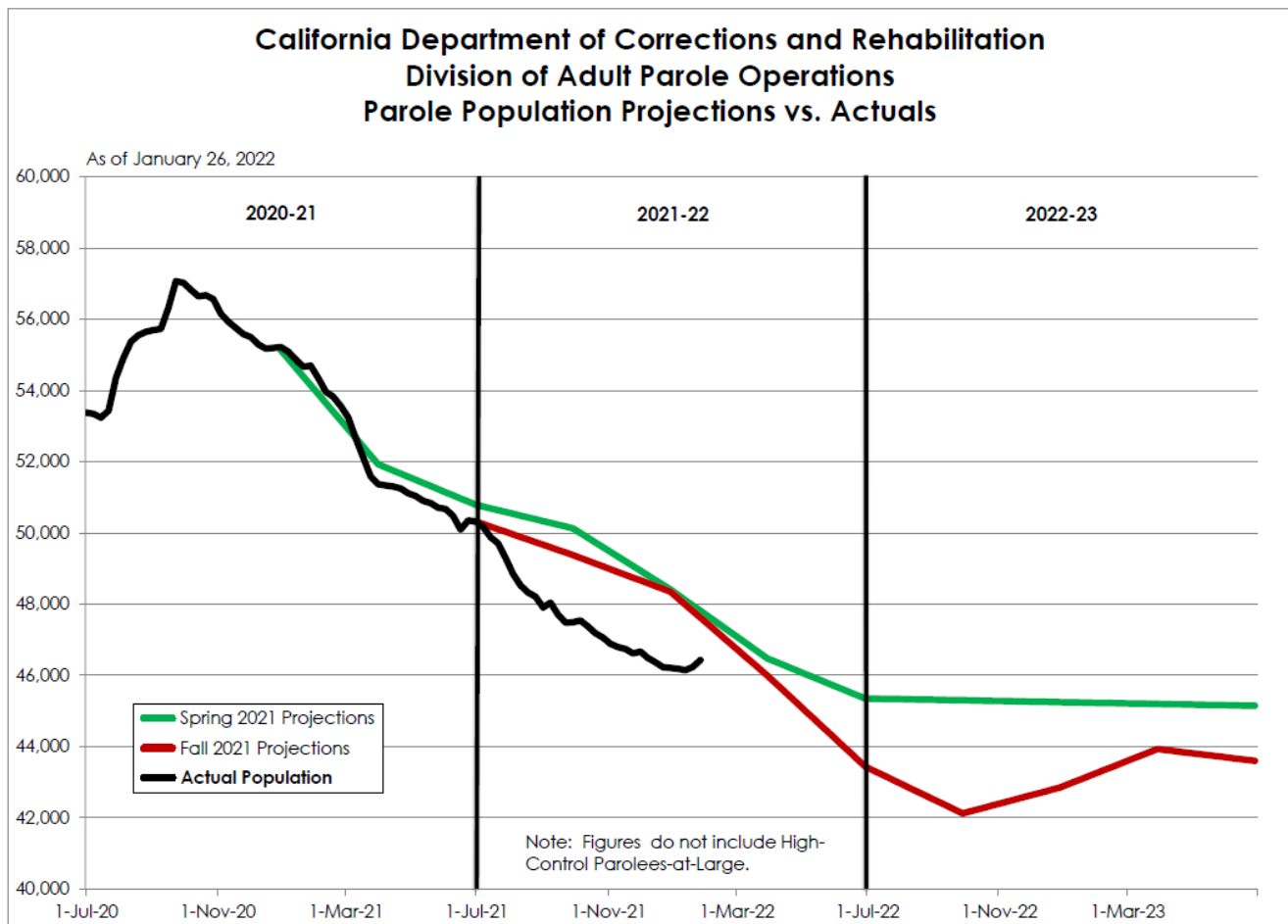


The following tables provide parole population projections through 2025-26.

Fiscal Year	Average Daily Population*		Population as of June 30**		
	2021-22	2022-23	2023-24	2024-25	2025-26
Parole Population Estimate					
Spring 2021 (2021 Budget Act)	48,208	44,218	38,770	38,023	N/A
Fall 2021 (2022-23 Governor's Budget)	47,629	42,892	42,796	42,570	38,284
Difference between Spring/Fall	(579)	(1,326)	4,026	4,547	N/A
% change between Spring/Fall	-1.2%	-3.0%	10.4%	12.0%	N/A

*CDCR's Parole population projections are calculated as an Average Daily Population for the current and budget years.

** CDCR's out-year projections provide the total estimated Parole population as of June 30 each fiscal year.



Staff Recommendation: Hold Open

ISSUE 2: CDCR: UPDATE ON COVID-19 IN THE PRISONS

CDCR will provide an update on the status of COVID-19 in the state prisons, the factors contributing to the outbreaks, and their ongoing mitigation efforts.

PANELISTS

- Kathleen Allison, Secretary, CDCR
- Madelynn McClain, Deputy Director, Fiscal Services, CDCR
- Orlando Sanchez Zavala, Legislative Analyst's Office

*Department of Finance is available for questions from the Subcommittee. The Receiver's Office was unavailable for this hearing.

BACKGROUND**COVID-19 in CDCR**

The Assembly Budget Subcommittee No. 6 on Budget Process, Oversight and Program Evaluation and this Subcommittee have held various hearings on CDCR's COVID-19 response. The 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 3, 2022.

	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
February 3, 2022	4,974	2,899	62,019	37,779	248	50

*According to the CDCR tracker on February 3, 2022, 7,048 new cases among the incarcerated population and 3,282 new staff cases were reported over a 14 day period.

Surges in COVID-19 infections in the public are generally followed by surges in carceral settings. While CDCR has implemented a number of policies and protocols to mitigate the impacts of COVID-19 in its prisons, the challenges persist, due in large part to new variants of the COVID-19 virus.

In August of 2021, the Federal Receiver requested a vaccination mandate for all CDCR staff to the U.S District Court. At the time, 42% of custody staff in CDCR had received at least one dose of the vaccination and only 40% of corrections officers statewide were fully vaccinated. The court agreed and ordered a vaccination mandate which was subsequently challenged by the California Correctional Peace Officers Union and the Newsom Administration. A stay was granted by the court of appeals and a final decision is pending. The mandate was supposed to have taken effect by January 12, 2022. CDCR data (as of 1/18/22) indicates the following vaccination rates among various staff:

	Vaccinated	Partially Vaccinated	Unvaccinated
Statewide staff required by CA Dept. Public Health (CDPH) Order	84%	1%	15%
Healthcare Staff	89%	1%	10%
Custody Staff	81%	1%	18%
Administrative, Maintenance, and Operations Services Staff	84%	1%	15%
Contractors	61%	2%	36%

While the overall vaccination rates of the various staff are higher than the overall 73.5%¹ statewide vaccination rate of all Californians, several prisons have lower vaccination rates as indicated below.

- High Desert State Prison: 36% of custody staff and 33% of administrative staff are unvaccinated.
- Pelican Bay State Prison: 32% of custody staff, 30% of healthcare staff, and 30% of staff required by the CDPH order are unvaccinated.
- California City Correctional Facility: 34% of custody staff are unvaccinated.
- California State Prison, Sacramento: 70% of contractors (166) and 29% of staff required by the CDPH order are unvaccinated.
- California Correctional Institution: 31% of custody staff and 29% of administrative staff are unvaccinated.
- Mule Creek State Prison: 34% of custody staff are unvaccinated.
- Valley State Prison: 31% of custody staff and 50% of contractors (2) are unvaccinated.
- Sierra Conservation Center: 33% of administrative staff and 29% of contractors (2) are unvaccinated.
- California Correctional Center: 33% of administrative staff and 44% of contractors (4) are unvaccinated.
- California Medical Facility: 52% of contractors (271) are unvaccinated.
- Chuckawalla Valley State Prison. 67% of contractors (6) are unvaccinated.

¹ <https://covid19.ca.gov/vaccination-progress-data/#overview>

- Ironwood State Prison: 31% of administrative staff and 50% of contractors (1) are unvaccinated.
- California State Prison Solano: 39% of contractors (7) are unvaccinated
- Wasco State Prison: 55% of contractors (57) are unvaccinated

As of January 9, 2022, CDCR implemented a mandatory statewide 15 day modified program to limit movement between and throughout prisons which has been extended to February 13 and in-person parole suitability hearings have been suspended through March 31, 2022, including all requirements for board appointed attorneys to consult with their clients. All in-person visitation and family visits have been suspended until further notice.

Proposed Funding

COVID-19 Direct Response Expenditures. The Governor’s Budget requests \$424.7 million one-time General Fund in fiscal year 2022-23 related to continued costs for responding and mitigating the impacts of the COVID-19 Pandemic. This request proposes \$424.7 million in fiscal year 2022-23 to continue the Department’s efforts to prevent the spread of COVID-19, and minimize risks to incarcerated persons and staff. According to CDCR, \$392.5 million will primarily be used for testing and vaccination of incarcerated persons and staff, medical staffing registry and overtime, medical treatment, and purchasing PPE; \$32.2 million for PPE items, such as masks, gloves, eye protection, gowns, cleaning supplies, and high-efficiency particulate air filter Air Purifier machines, overtime expenditures, for extra coverage to support the COVID-19 response, and medical surge tents and equipment rental contracts in the event there are COVID-19 outbreaks at the institutions.

Funding from the 2021 Budget Act. The 2021 Budget Act provided \$408 million from the General Fund for CDCR’s COVID-19 response. As shown below, these funds were budgeted for various costs, including testing, surge capacity, custody overtime (such as from staff who are absent due to COVID-19), and cleaning, as well as reimbursements for county jails housing people sentenced to state prison due to the suspension of intake. The 2021 Budget Act also includes a control section regarding the General Fund resources appropriated to nine specific departments, including CDCR, for COVID-19 related activities—totaling \$1.7 billion. Specifically, the control section allows the Department of Finance to reduce or shift resources between the nine departments, as well as to shift the budgeted resources to other departments, for COVID-19-related activities, upon ten-day notification to the Joint Legislative Budget Committee.

2021-22 Funding for CDCR COVID-19 Response

Statewide testing	\$198,440,000
Temporary suspension of prison intake	97,534,000
State response operations ^a	82,767,000

Hospital and medical surge	29,245,000
Total	\$407,986,000

^aIncludes custody overtime and cleaning.

Staff Comment. The Subcommittee has requested a detailed breakdown of proposed expenditures and as of the drafting of this agenda, the information is still pending from the department.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO provides the following analysis and recommendations regarding the Governor's proposal.

Lack of Justification for Level of Resources Requested in 2022-23. We acknowledge that CDCR will need additional funding in 2022-23 for COVID-19 response. However, at the time of this analysis, the department was not able to provide sufficient information to justify the estimated COVID-19 direct response costs of \$425 million in 2022-23. For example, the department has not provided projections of the number of inmates and employees requiring tests, costs per tests, or the amount of expected overtime that led to these projections. Also, given that current research suggests that COVID-19 is not commonly spread through surfaces, it is unclear why the department needs additional funding related to cleaning. Absent this information, it is difficult for the Legislature to adequately determine whether the level of resources requested is appropriate.

Proposal Likely Will Need to Be Revised. The projection of the inmate population in 2022-23 is likely to be revised downward at the May Revision due to prison admissions being lower than expected and the need to account for new sentencing changes that will reduce the population. While such a decline in the projected inmate population could result in less COVID-19 response costs than currently assumed in the Governor's budget for 2022-23 (for example, fewer inmates requiring testing), it is also possible that changes in pandemic conditions—such as the emergence of a new variant—could require more resources than currently proposed. Accordingly, it is likely that this will need to be revised in the spring based on updated data.

Recommendation: Direct CDCR to Submit Revised Proposal With Adequate Justification. We recommend that the Legislature withhold action on the proposed resources for CDCR's 2022-23 COVID-19 response and direct the department to submit a revised proposal at the May Revision. The revised proposal should include adequate justification for the identified expenditures (such as estimates of the number of staff and inmates needing testing and personal protective equipment) and account for revised projections of the inmate population and any changes in pandemic conditions.

Staff Recommendation: Hold Open.

**ISSUE 3: STAFF COMPLAINT PROCESS AND ASSOCIATED BUDGET CHANGE PROPOSAL FROM CDCR;
STAFF COMPLAINT MONITORING BUDGET CHANGE PROPOSAL FROM THE OFFICE OF INSPECTOR
GENERAL**

CDCR will provide an overview of their new staff complaint process and associated request for resources. The Office of Inspector General (OIG) will provide an overview of their proposal to provide oversight and monitoring of CDCR's new staff complaint process.

PANELISTS

- Amy Miller, Director, Division of Internal Oversight and Research, CDCR
- Amarik Singh, Inspector General
- Caitlin O'Neil, Legislative Analyst's Office

*The Department of Finance is available for questions from the Subcommittee.

BACKGROUND

History. CDCR is under federal court orders (*Coleman*, since 1995, and *Plata*, since 2006) for failing to provide a constitutional level of mental and medical health care. In addition, CDCR is under the *Armstrong* remedial plan, stemming from violations of the Americans with Disabilities Act and the *Clark* remedial plan to address issues specific to prisoners with developmental disabilities. The impetus for this new grievance review/staff complaint process was partially based on a 2019 report, released by the Office of Inspector General (OIG), regarding staff complaints at Salinas Valley State Prison (SVSP). The Secretary of CDCR and the Prison Law Office requested the OIG to assess SVSP's handling of prisoner allegations against staff. Findings by the OIG included an inadequate staff review inquiry process for the majority of allegations that were reviewed, deficient training of staff, and the presence of bias in conducting reviews. The OIG also made several recommendations as a result of these findings, including a complete overhaul of the system to address independence and quality issues, the provision of comprehensive and ongoing training of staff, and audio and/or video recording of witness interviews.

New Staff Complaint Process. Since 2019, CDCR has worked to develop a new staff complaint process to address concerns raised by the *Armstrong* plaintiffs, the Office of Inspector General, the Legislature, and the incarcerated individuals in CDCR's custody. After a series of changes to the 2019 proposed "Allegation Inquiry Management Section," and new emergency regulations, the department has proposed the following new process for allegations against staff by an incarcerated person or a parolee. The new process routes all grievances to a new Centralized Screening Team (CST) located within the Office of Internal Affairs (OIS) to determine the how each grievance will be handled. The emergency regulations associated with this new process went into effect January 1, 2022. The process is summarized below:

- 1. Intake, Screening, and Routing.** Grievances will be collected by the prison's Office of Grievances, and screened for any urgent issues (i.e. anything requiring an immediate

response) within one business day. Grievances will be sent to the CST and processed within three to five business days. CST staff may need to follow up with the complaint for additional information and will log each grievance in the new database. Upon review of each grievance, CST staff will take the following actions:

- Return “routine grievances” back to the prisons. These are grievances that do not contain an allegation of staff misconduct.
- Grievances that contain an allegation of staff misconduct that are listed on the Allegation Decision Index (ADI) will remain in the Office of Internal Affairs’ Allegation Investigation Unit (AIU) for a full investigation. These are more serious violations, including use of force, Prison Rape Elimination Act, sexual misconduct, discrimination, and destruction of evidence.
- Grievances that contain an allegation of staff misconduct not included on the ADI will be returned to the prison for a local inquiry. However, CST staff have the discretion to elevate these to the AIU rather than return them to the prison based on their assessment.

2. Investigation, Inquiry or Other. Depending on the decision of CST, AIU will perform an investigation within 120 days, or a Local Designated Investigator (LDI) at the prison will perform a local inquiry within 60 days. In the case of a local inquiry, the final report must be reviewed by an AIU Captain before the inquiry is completed. If the LDI establishes reasonable belief that an allegation occurred that is likely to lead to adverse action, the LDI is to stop the inquiry and escalate the complaint directly to AIU. Finally, either the AIU Investigation Report or the LDI Inquiry Allegation Report is returned to the hiring authority (warden) for review and disposition. Neither the AIU report nor the LDI report will make a determination on the allegation(s)—they will only provide a finding of facts.

3. Resolution. Once the report is provided to the hiring authority (warden), the process remains largely the same as before. Hiring authorities make a determination as to whether the allegation of misconduct is sustained and order an appropriate action which is then recorded in the new database.

Oversight. Under Penal Code 6126(i), the Office of Inspector General (OIG) is required to provide contemporaneous oversight of grievances that fall within CDCR’s process for reviewing and investigating allegations of staff misconduct submitted by incarcerated individuals and parolees and submit reports annually beginning in 2021. Currently, the OIG has 5 positions for these purposes.

Proposed Funding

1. Staff Misconduct Investigation Expansion at CDCR. The Governor's Budget requests \$35.6 million General Fund and 175 positions 2022-23, scaling to 192 positions ongoing and \$37 million General Fund in 2023-24, \$34.9 million General Fund in 2024-25, \$35 million General Fund in 2025-26, and \$34.2 million General Fund in 2025-26 and ongoing, to restructure CDCR's staff misconduct allegation complaint screening, referral, investigative, and disciplinary processes. This funding would supplement previously allocated positions and funding.

Current Level of Resources (CDCR)	Proposed 2022-23	Proposed 2023-24	Total at Full Implementation
\$28.52 million	\$35.6 million	\$37 million	\$65.52 million
142 positions	175 positions	192 positions	334 positions

Workload Justification. CDCR used three months of data from 2021 (5% of all custody grievances submitted at each prison and a sampling of CDCR Form 1824s (reasonable accommodation requests) from 2020) and extrapolated over 12 months to estimate the workload associated with staff complaints. CDCR will be expanding the sources of complaints to including third party complaints. The following table shows the estimated number of anticipated claims:

Annual claims estimated to be received by Centralized Screening Team from all complaint sources	220,000
Estimated number of claims that may contain an allegation of staff misconduct (approx. 21%)	46,000
Estimated cases sent by AIMS for inquiry (approx. 19%)	8,424
Estimated cases returned to prisons (approx. 81%)	37,576

CDCR estimates that CST staff will take an average of 18 minutes to complete one grievance review and 24 hours for each investigation conducted by the OIA's Administrative Investigation Unit (AIU). In addition, of the 8,424 cases that will be investigated by the AIU, CDCR's Office of Legal Affairs estimates that 5,122 cases (61%) will require legal representation. The legal workload estimate is 15 hours per case for legal representation. Finally, CDCR requires technology resources to maintain a statewide database for grievances and staff complaints, and administrative support for various components of the overall proposal.

2. OIG Staff Complaint Monitoring Budget Proposal. The Governor's Budget requests \$2.3 million General Fund and 16 positions in 2022-23, and \$3.6 million and 24 positions ongoing, to review a portion of the staff complaints to determine if the CST is routing complaints involving allegations of staff misconduct for the appropriate level of review, and to monitor a portion of the staff misconduct investigations. The 2019 Budget Act provide \$3.49 million ongoing to restore the OIG's discretionary auditing authority and provide oversight of the staff complaint process. Five positions were dedicated to the staff complaint monitoring process.

Current Level of Resources (OIG)	Proposed 2022-23	Proposed 2023-24 and Ongoing	Total at Full Implementation
\$555,000	\$2.3 million	\$3.6 million	\$4.15 million
5 positions	16 positions	24 positions	29 positions

If these resources are provided, the OIG would be able to review approximately 30% of the grievances filed to determine if CST is routing the complaints correctly. In addition, the OIG would be able to monitor 10% of the staff misconduct investigations handled by the AIU in the Office of Internal Affairs.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO provides the following analysis and recommendations.

Funding Proposed for CDCR to Implement New Process Appears Reasonable. We find that the funding proposed for CDCR to align its process for handling inmate and parolee allegations of staff misconduct to its current emergency regulations appears reasonable and would likely help address concerns that have been raised over the years.

Proposed Level of OIG Monitoring May Not Meet Legislative Expectations. The goal of monitoring is typically to be able to draw conclusions about an entire system by focusing on an adequately sized sample of cases processed in the system. There is no universally agreed upon percentage of cases that constitutes a sample size adequate to carry out effective monitoring. Under the Governor's proposal, OIG would be monitoring a relatively small sample size of investigations—and not monitoring the screening of certain claims or quality of local inquiries at all. As such, it is possible that the Governor's proposal may not meet legislative expectations. Specifically, under the Governor's proposal:

OIG Would Not Monitor Certain Types of Claims Received by CST. As previously mentioned, under the proposal, CST screening of the annual estimated 68,000 health care grievances, requests for reasonable accommodation, and third-party claims would not be monitored by OIG, based on the assumption that they are less likely to contain allegations of staff misconduct than regular grievances. According to CDCR, based on three months of data, about 22 percent of regular grievances contain allegations of staff misconduct, whereas CDCR estimates that about 19 percent of all other claims will contain allegations of staff misconduct. Accordingly, the frequency with which misconduct allegations are expected to be found in other claims is not substantially lower than for regular grievances.

OIG Would Monitor Lower Percent of Investigations than Under 989 Process. Under the Governor's proposal, OIG would monitor about 10 percent of investigations conducted by AIU. In comparison, OIG reports that it typically monitors about 15 percent of investigations under the 989 process. It is unclear why OIG would monitor a lower percentage in this case.

OIG Would Not Monitor Local Inquiries. CDCR expects that CST will annually identify 37,600 claims that contain allegations of less serious misconduct that would not be investigated by AIU. These claims will be sent by CST back to the referring prison or parole staff for a local inquiry into the matter. Reports prepared based on these inquiries will be reviewed for completeness by OIA staff. However, the Governor's proposal does not include resources for OIG to monitor these reports or the quality of review performed

by OIA staff. This is notable because concerns about the quality of local inquiries were a key driver for creation of CDCR's new process.

Ensure Level of Monitoring Resources Meets Legislative Expectations. As noted above, in recent years, the Legislature has expressed interest in OIG oversight of CDCR's handling of staff misconduct allegations arising out of the grievance and request for reasonable accommodation processes. In reviewing the Governor's proposal, we recommend that the Legislature determine its specific expectations and adjust the level of resources proposed by the Governor as needed to ensure its expectations are met. Specifically, the Legislature will want to consider the following:

Should OIG Monitor All Types of Claims Received by CST? Under the proposal, OIG would monitor 30 percent of regular grievances screened by CST but would not monitor screening of health care grievances, requests for reasonable accommodation, and third-party claims. If the Legislature wants OIG to monitor 30 percent of *all* types of claims submitted to CST, we estimate that an additional five positions and about \$600,000 annually above the Governor's proposal would be required.

Should OIG Monitor a Larger Portion of AIU Investigations? Under the proposal, OIG would monitor about 10 percent of AIU investigations. If the Legislature wants OIG to monitor a higher percent of AIU investigations it would need to provide additional resources. For example, we estimate that having OIG monitor 15 percent of AIU investigations—the same as the portion of investigations that OIG monitors in the 989 process—would require an additional seven positions and \$1 million annually at full implementation.

Should OIG Monitor Local Inquiry Reports? The Legislature could consider funding OIG so that it would be able to monitor a portion of the estimated 37,600 local inquiry reports. For example, we estimate that requiring OIG to monitor 20 percent of these reports—similar to the portion of investigations that OIG monitors in the 989 process—would require an additional four positions and \$500,000 above the Governor's proposed resources. We note, however, that the Legislature could make this change in a relatively cost neutral manner by reducing the portion of these reports monitored by CDCR OIA staff from 100 percent to 80 percent and redirecting savings from CDCR to pay for the increased OIG staff.

STAFF COMMENT

Since the OIG's report on the Salinas Valley State Prison report on the staff complaint process, CDCR has worked to improve its process to address concerns raised by the *Armstrong* plaintiffs, the Legislature, and other stakeholders. Significant improvements to the process, that are consistent with this Subcommittee's recommendations, include the following:

1. **Moved the initial determination of whether a grievance contains an allegation of staff misconduct to the Office of Internal Affairs.** By removing this decision point away from the prison chain of command, the intended goal is to address the issue of

bias and foster more independent decision making. In addition, investigations for those staff misconduct allegations listed on the ADI will also be handled by the Office of Internal Affairs.

2. **Changed the definition of “staff misconduct.”** The new definition of staff misconduct “refers to behavior that results in a violation of law, regulation, policy, or procedure, or actions contrary to an ethical or professional standard.” The previous definition requires an allegation of a violation of law, regulation, policy, procedure, or an act contrary to an ethical or professional standard **and** which, if true, would likely more than not subject the staff member to adverse disciplinary action. The new definition removes a subjective determination element in the old definition that was confusing and that could result in bias.
3. **Removed time constraints which allows the filing of grievances that contain an allegation of staff misconduct at any time.** While the department has stated that their data indicates the majority of received complaints are filed within the previous 30 day constraint, removing this requirement allows for additional complaints to be filed that historically have not been submitted for various reasons. For example, this Subcommittee has been informed that individuals, due to fears of retaliation, would want to wait until they are transferred to another prison, the staff in question are transferred prior to submitting a complaint, or some other change in circumstances to their environment occurs. In addition, for all other general grievances that do not contain allegation of staff misconduct, an incarcerated individual or parolee has 60 calendar days of discovering an adverse policy, decision, action, condition, or omission by the department. Discovery occurs when the person knew or should have reasonably known of the adverse policy, decision, action, condition, or omission.
4. **Statewide data tracking.** Currently, data and information related to staff complaints are not tracked consistently across the institutions. The new database will keep track of every grievance submitted and their final disposition. The data tracking will allow the department to identify trends at specific prisons or staff and also provide ongoing information on the workload for the department.

Other Issues for Consideration.

1. **Oversight.** The Subcommittee may wish to consider whether the proposed resources for oversight are sufficient to ensure accountability over the new staff complaint process. While the Armstrong plaintiffs’ attorneys will certainly play a role, without statewide, consistent oversight provided by the OIG, litigation will continue to precipitate reactionary policy change.

While the process by which the OIG will review the correct routing of staff complaints has not been finalized, staff notes that it may be a more efficient use of resources for the OIG to focus their review on the complaints that are routed back to the prisons, rather than all of the complaints, including ones that will remain in OIA for investigation as these have already been identified as containing a qualifying staff complaint. This method allows the OIG to focus their

review on the 81% of staff complaints that are sent back to the prisons to determine if they were routed correctly.

Also, while the proposed resources for the OIG provides some level of oversight of the process that occurs under the purview of the OIA and whether complaints are routed correctly, no resources are provided for oversight of the 81% (37,576) of allegations of staff misconduct that are returned to the prisons for a “local inquiry” by prison staff. In previous hearings, this Subcommittee identified several issues with bias, training, and other deficiencies with how staff complaints are handled in the prisons. The process of handling the complaints in the prisons remains largely the same. They will not be performed by dedicated staff trained for this purpose and will lack independence. While these local inquiries may be escalated to the Office of Internal Affairs, it first requires a subjective belief that *staff misconduct occurred that is likely to lead to adverse action*. In order for the OIG to monitor a minimum of 10% of these local inquiries, they will need a minimum of 52 additional staff, as well as supervisorial, managerial, and support positions, and possibly resources for office space.

Finally, the OIG lacks the authority to initiate investigations, a responsibility the office had prior to 2012. Creating independent and objective entities to conduct investigations was one of the three central tenets of United States Inspector General Act of 1978, which created inspectors general at the federal level. (92 Stat. 1101, section 2.) The Inspector General for the United States Department of Justice has authority to investigate allegations of misconduct by employees of the Federal Bureau of Prisons. Many other states, including New York and Florida provide investigatory authority for their Inspector Generals. California’s OIG can only monitor internal CDCR investigations and provide non-binding feedback. If the Legislature wishes to restore this critical authority, it may also wish to consider restoring peace officer status for OIG investigators which would put them on equal footing with correctional staff and the Office of Internal Affairs. This would allow for improved recruitment opportunities and provide them with equal access to information. The 2021 Budget Act included \$7 million ongoing General Fund contingent upon the passage of legislation, but no agreement has yet been reached.

2. Discipline. Once the AIU in the Office of Internal Affairs (OIA) completes their investigation, a report of their findings is provided to the hiring authority (warden). The report does not state whether the complaint is sustained or not; it is a presentation of the findings only. The hiring authority uses a preponderance of evidence standard to determine whether the findings are sustained, not sustained, exonerated, or no finding.

For inquiries that are conducted at the prisons, an Allegation Inquiry report is produced which is reviewed by an OIA manager to determine whether it is sufficient, complete, and unbiased. If approved, this report is provided to the hiring authority. For these reports, the hiring authority uses the same standard as described above with one additional layer of review: if the hiring determines that evidence of misconduct is likely to result in adverse action occurred but preponderance of the evidence does not exist, the warden must request an investigation by the OIA.

Concerns still remain as to whether the disciplinary actions resulting from the sustained findings of staff misconduct are appropriate, carried out in a timely fashion, and result in a decreased

level of staff misconduct. As the new process is fully implemented and the data becomes available, the Subcommittee may seek regular reporting on the disciplinary actions taken and the impact it has had on the incidence of staff misconduct.

3. Concerns of *Armstrong* plaintiffs. The *Armstrong* plaintiffs indicated that the emergency regulations largely reflect the agreed upon remedial plans. However, they have raised two primary concerns about implementation of the new staff complaint process². The first is the length of the proposed investigations, which allow 120 days for completion. The plaintiffs believe this is too long and have asked for 90 days. The second is the lack of a post-investigation review panel, which the plaintiffs had anticipated as the court had also ordered CDCR to improve its post-investigation review process. In the most recent Joint Case Status Statement, filed January 18, 2022, the plaintiffs also indicated that the implementation timeline, which goes through June 2023, is too long. They are requesting that the full process be implemented in the six prisons that are the focus of the *Armstrong* lawsuit on an accelerated timeline.

Staff Recommendation: Hold Open.

² https://rbgg.com/wp-content/uploads/Armstrong-Order-Re-Plaintiffs-Objections-to-Defs-Proposed-RJD-Plan-and-5-Prisons-Plan_-12-13-2021.pdf

ISSUE 4: OFFICE OF INSPECTOR GENERAL: MEDICAL INSPECTIONS BUDGET CHANGE PROPOSAL

The Office of Inspector General will provide an overview of their budget change proposal related to medical inspections.

PANELISTS

- Amarik Singh, Inspector General

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

BACKGROUND

In 2007, the federal-court-appointed Receiver in the *Plata v. Newsom* matter, who oversees the health care system in CDCR, approached the OIG about establishing a medical inspection process to provide a systematic objective evaluation of medical care provided at CDCR. In response, and in coordination with the parties in *Plata*, the OIG established a medical inspection process. In 2011, the Legislature amended the OIG's authority in Penal Code section 6126(f) to require that "the Inspector General shall conduct an objective, clinically appropriate, and metric-oriented medical inspection program to periodically review delivery of medical care at each state prison." The OIG's Medical Inspection Unit (MIU) is managed by a Chief Assistant Inspector General and is made up of four functional teams; a team of analysts who complete data analysis and sampling; a clinical case review team including physicians and nurse consultant program reviewers who determine whether institutions provide care consistent with professional standards; a team of compliance nurses who complete documentation review to determine whether institutional health care documentation shows that care has been provided consistent with departmental policy; and, a team of regional field nurses who complete onsite testing of the provision of care. The MIU is also supported by OIG editors who review, edit, and format medical inspection reports prior to publication.

The OIG's MIU conducts independent evaluations of the medical care provided to CDCR's incarcerated population. These evaluations are conducted in cycles and a subsequent report is produced. Currently, each cycle takes 3 to 3.5 years to complete medical inspections in all state prisons. In recent years, the Legislature provided funding for a statewide integrated substance use disorder treatment program, Hepatitis C treatment, increased telehealth services, external eConsult services, palliative care and hospice units, and a robust electronic health reporting system. These additions require regular updates and training for OIG staff.

Proposed Funding

The Governor's Budget requests \$3.26 million General Fund annually for three years to the Office of Inspector General to support additional staffing for the Medical Inspection Unit to complete medical inspections at CDCR prisons at an accelerated pace. Additionally, the OIG

requests \$589,000 ongoing General Fund for two additional editors to facilitate timelier medical inspection reports and a Nursing Supervisor position to support general unit operations.

STAFF COMMENT

Staff notes that CDCR has been under Federal Receivership over healthcare services for nearly 15 years. As prisons are delegated back to the state by the Federal Receiver, continued robust oversight over prison healthcare services is critical to maintaining and improving upon the progress that has been made. If and when federal receivership concludes, the OIG's MIU will continue providing the Legislature and the public with information and oversight.

The budget request, which is primarily for physician and nursing positions, requests funding for three years only. The Department of Finance has stated that the positions are permanent, although the funding is not, and has stated more data is needed to determine ongoing need as the basis for this proposal was based on information from 12 prisons. Staff notes that the OIG may face challenges in hiring medical positions that do not have associated permanent funding. Further, while the proposal does not include data from all 33 prisons, the Subcommittee typically relies on a subset of information to make determinations regarding resources, as do various departments in formulating their requests. For example, in providing the workload justification for the staff complaint process, CDCR looked at a subset of 5% of complaints to extrapolate total statewide need. Finally, the reduction of the medical inspection process from 3-3.5 years to 2 years has already been determined should these resources be provided. It is unclear as to what additional information is needed to determine ongoing need.

ISSUE 5: NON-DISCUSSION ITEMS

The Subcommittee does not plan to have a presentation of the items in this section of the agenda but the Department of Finance and the Legislative Analyst's Office are available to answer questions from members. Public Comment may be provided on these items.

CDCR: Thorough Investigations and Progressive Discipline of Employee Misconduct. The Governor's Budget requests \$6.2 million General Fund and 33 positions in 2022-23, growing to a total of \$11.8 million General Fund and 62 positions in 2024-25 and ongoing to CDCR, in order to conduct timely and thorough investigations and strengthen the department's disciplinary processes.

Office of Inspector General: Staffing Increase for the Oversight, C-ROB, and Intake Unit (OCI). The Governor's Budget requests \$232,000 ongoing General Fund and 2 positions to address increased workload of the Office of Inspector General's OCI Unit. This unit is currently staffed with a total of six line-staff positions and requires two additional Associate Deputy Inspector General positions to handle its increased complaint workload. Without additional support, the OCI Unit is unable to review, screen, and document complaints as thoroughly as the complaints require. The number of complaints the OCI Unit processes each year has steadily grown since 2014. The continued increase in complaints necessitates an increase in staff to screen and log complaints, research and analyze allegations, and respond to complainants.

Staff Recommendation: Hold Open.
