

AGENDA

Assembly Budget Subcommittee No. 5 on Public Safety

Assemblymember Cristina Garcia, Chair

MONDAY, MARCH 1, 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](tel:877-692-8957), access code: [131 54 37](tel:1315437)

ITEMS TO BE HEARD

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**0552 OFFICE OF INSPECTOR GENERAL
5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION****ISSUE 1: SPECIAL REVIEW OF THE STAFF MISCONDUCT PROCESS; ARMSTRONG COURT COMPLIANCE BUDGET PROPOSAL**

The Office of Inspector General (OIG) will provide an overview of key findings and recommendations from their Special Review of the Staff Misconduct Process. The California Department of Corrections and Rehabilitation (CDCR) will provide a response to the special review and provide an overview of their Armstrong Court Compliance budget proposal.

PANELISTS

- Caitlin O’Neil, Legislative Analyst’s Office
- Roy Wesley, Inspector General
- Kathleen Allison, Secretary, CDCR
- Amy Miller, CDCR
- Eric Swanson, CDCR

BACKGROUND

In January of 2018, the Secretary of CDCR and the Prison Law Office requested the OIG to assess Salinas Valley State Prison’s process of handling prisoner allegations of staff misconduct, referred to as “staff complaints.” The ensuing report showed significant deficiencies in the existing staff complaints process, poor quality controls, and significant risk of bias. While the OIG report was specific to Salinas Valley, complaints from across the state indicated the problem was systemic. As a response to these concerns and a desire for improved oversight, the Legislature restored the OIG’s ability to conduct discretionary audits as part of the 2019 Budget Act and provided \$3.49 million ongoing General Fund to support this restoration. During the March 2, 2020 Subcommittee hearing, the Subcommittee requested time to review the proposed draft emergency regulations describing the new staff complaint process due to several concerns, including the exclusion of certain categories of serious staff misconduct. Despite this request, CDCR adopted the regulations using their emergency regulations authority, denying the Subcommittee with sufficient opportunity to review the proposed regulations.

Staff Misconduct Allegations. The following represents some of the types of staff misconduct allegations brought to the attention of the Subcommittee.

Armstrong v. Newsom: Notice of Motion and Motion to Stop Defendants from Assaulting, Abusing, and Retaliating Against People with Disabilities at R.J. Donovan Correctional Facility; Memorandum of Points and Authorities. February 2, 2020.

“An officer called [an incarcerated person] who uses a walker a “crippled motherfucker,” before pepper spraying him in the face, hitting him in the face with the pepper spray canister, and then kicking and stomping [him] on [his] back and neck. The assault

occurred because the [incarcerated] person had threatened to complain about the officer refusing to provide assistance carrying a heavy box of legal mail.”

“...staff stood on the back of an acutely suicidal person while he yelled, ‘I can’t breathe!’ He died. Prior to his death, officers ignored the man’s cries for help for thirty minutes before finally dragging him out of his cell and handcuffing his badly bleeding wrists.”

“...[an incarcerated person] with a mobility disability protested on September 24, 2019 that an officer was searching him in a way that was incompatible with his disability-based limitations...In response, the officer told the [incarcerated person], “I don’t give a shit,” slammed [him] to the ground, and then punched and kicked him in the face and ribs. After the class member was restrained in handcuffs, the officer stepped on the class member’s head and high-fived nearby staff members.”

Letter from RBGG¹ to CDCR Office of Legal Affairs dated November 13, 2019

“One person was allegedly thrown out of his wheelchair and then, while on the ground, was kned in the head by staff so hard it caused bleeding in his brain such that he had to be placed into a medically-induced coma.”

“In one attack, five staff members broke a mentally ill person’s arm without any apparent justification for the use of force. Then, staff denied him access to medical care for nearly six hours...while other incarcerated people pleaded with staff to allow him to be taken to be seen by medical staff. In another brazen incident that is now the subject of a federal lawsuit, three incarcerated people with disabilities were publicly attacked by multiple officers in the middle of an occupied dayroom for doing nothing more than yelling at those officers to stop beating a fellow prisoner.”

Letter from RBGG to Special Master Matthew A. Lopes, Coleman Special Master Team dated November 7, 2019

“Plaintiffs’ counsel conducted nineteen interviews with California Institution for Women (CIW) class members...[a] significant number of interviewees reported to Plaintiffs that there is a pervasive culture of misconduct among staff members at CIW. Numerous CIW class members, who did not want to be named due to fear of retaliation, provided detailed and credible accounts of being sexually assaulted by male correctional officers. Among other examples, CIW class members described staff members who solicited class members for sexually explicit photos; staff members who traded contraband in exchange for sexual favors from class members, verbal sexual harassment...and staff members that retaliated against class members who reported sexual assault.

Allegation Inquiry Management Section (AIMS): AIMS is the new unit in CDCR that is dedicated to conducting inquiries into claims of misconduct by staff. It was established as a response to the OIG report on Salinas Valley as well as letters of concern from attorneys representing incarcerated individuals. The 2019 Budget Act included \$9.8 million General Fund and 47 positions ongoing to implement this new model based on a workload analysis that AIMS

¹ Rosen Bien Galvan and Grunfeld, the firm representing the *Armstrong* class.

would process approximately 5,700 staff misconduct grievances annually. AIMS went into full effect on April 1, 2020. Below is a summary of the AIMS process:

1. An incarcerated person files a grievance with the prison's Office of Grievances where it is reviewed, logged and then passed to a coordinator. The coordinator selects those grievances that they believe contains an allegation of staff misconduct using the definition in 2(a) below as reference. This is then sent to the reviewing authority (the prison's warden or deputy warden). The following types of allegations are not referred to AIMS and are retained by the prison:
 - a. Unnecessary or excessive use of force that was reported by staff but did not result in serious bodily injury.
 - b. Sexual misconduct or sexual harassment against an incarcerated person.
 - c. Staff involvement in due process violations during the disciplinary process.
 - d. Disagreement with staff decisions during the disciplinary process
 - e. Issuance of false rules violation reports
 - f. Staff misconduct in connection with the Americans with Disabilities (ADA) reasonable accommodation process.
2. The warden or chief deputy warden then determines whether the allegation meets the following definition of staff misconduct:
 - a. An allegation that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, which, if true, would more likely than not subject a staff member to adverse discipline.
3. If the allegation does meet the definition, the warden or chief deputy warden is required to refer the grievance to the Office of Internal Affairs (OIA).
 - a. If the grievance provides sufficient information to establish a reasonable belief that the alleged misconduct happened, it must go to the OIA's Central Intake Unit, with a request for a formal investigation or permission to take adverse action without additional investigation. If not, it goes to AIMS with a request for an inquiry.
4. AIMS first reviews the grievance to see if it meets threshold requirements which includes considerations such as whether AIMS disagrees with the warden's determination that the allegation meets the definition of staff misconduct or the claim concerns harm to a person other than the person who signed the grievance, among others. If the grievance meets any of these criteria, the grievance is returned with no inquiry or investigation. For those that meet the threshold criteria, AIMS performs an allegation inquiry² that involves interviews, and information gathering. Once AIMS staff establish a reasonable belief that staff misconduct occurred, they stop the inquiry and are not required to complete it. AIMS staff then summarize the information into a report without a judgement of guilt or

² CDCR differentiates between an "allegation inquiry" (process of gathering preliminary information concerning a claim or allegation of staff misconduct) and an "investigation" (the collection of evidence that supports or refutes an allegation of misconduct, including criminal investigations, administrative investigations, retaliation investigations, or allegation inquiries). Confusingly, "an allegation inquiry" is also considered an investigation in the department's operations manual.

innocence. The regulations are silent as to what happens to the report but the OIG observed its return back to the prison warden. If the warden determines that the report establishes a reasonable belief that the staff member engaged in misconduct, the report is returned to the OIA’s Central Intake Unit where it reviews the report and takes one of three actions:

- a. If the Central Intake Unit concludes there is sufficient evidence to sustain the allegations by a preponderance of the evidence, it will authorize the warden to take adverse action against employee without any further investigation;
- b. If the Central Intake Unit concludes that there is reasonable belief that misconduct occurred, it will approve and open a formal investigation into the allegation; or
- c. If the Central Intake Unit concludes there is no reasonable belief that misconduct occurred, it will reject the request to open an investigation and return the report to the warden.

OIG Special Review on CDCR’s Staff Misconduct Inquiry Process (AIMS). The OIG’s report covers a five month period to assess the AIMS process. Between April 1, 2020 and August 31, 2020, AIMS dealt with 428 total staff misconduct grievances (compared to the 5,700 allegations CDCR estimated in their AIMS budget proposal for 47 positions). During this same period of time, wardens exonerated 98.3% of the allegations of staff misconduct. The table summarizes the grievances that were assessed at the prison level as to whether an allegation of staff misconduct was included.

| Assessment of whether the grievance includes an allegation of staff misconduct | During April 1-August 31, 2020, 50,412 grievances filed |
|--|--|
| First level of discretion: Grievance Coordinators | 6,562 |
| Second level of discretion: Wardens or Chief Deputy Wardens | 2,339 |
| Third level of discretion : Staff misconduct grievances referred to AIMS by Wardens or Chief Wardens | 541* |

*AIMs returned 113 of the grievances back to the prisons and ultimately only accepted 428 in total.

The most significant concern articulated in the OIG report is that **the new process still lacks independence from the prison’s chain of command**, a concern voiced by the Subcommittee in previous hearings. The OIG has provided a comprehensive summary of its findings and recommendations in two handouts for the Subcommittee. Some of the findings include:

- CDCR’s AIMS process requires wardens and prison staff to apply their personal, subjective interpretations in deciding whether a grievance remains in the prison or is sent to AIMS.
- Wardens frequently overruled grievance coordinators when determining whether a grievance actually alleged staff misconduct. From June 1, 2020 to August 31, 2020³, grievance coordinators found a total of 3,937 grievances that they believed alleged staff

³ Prior to June 2020, CDCR did not track the number of grievances categorized as staff misconduct by grievance coordinators.

misconduct. Wardens overruled nearly 2/3 of these grievances (2,563) and only agreed that 1/3 (1,374) alleged staff misconduct.

- AIMS refuses to investigate several serious types of misconduct and allegations that do not meet several poorly conceived procedural requirements, such as the requirement to file the grievance within 30 days of the incident. In addition, use of force that does not result in serious bodily injury, due process violations during the disciplinary process, sexual misconduct and harassment under the Prison Rape Elimination Act (PREA), and several other serious categories of staff misconduct are kept in the prisons and not sent to AIMS.
- Once AIMS staff begin an inquiry into an allegation, they stop the inquiry once they form a reasonable belief that staff misconduct occurred, without actually completing the inquiry.
- Weaknesses in CDCR's data collection and tracking process limit the ability to effectively analyze trends and assess the process.

Proposed Funding

Armstrong Court Compliance Proposal. CDCR requests \$13.5 million General Fund and 22.8 positions in 2020-21, \$10.1 million General Fund and 34.9 positions in 2021-22, and \$7.0 million and 34.9 positions in 2022-23 and ongoing to deploy the Audio Video Surveillance System (AVSS) and body-worn cameras at Richard J. Donovan Correctional Facility, AVSS at part of California State Prison, Los Angeles County, create the Staff Complaint Screening Process, and expand AIMS in order to reform the staff complaint process to comply with the requirements ordered by the United States District Court in *Armstrong v. Newsom*.

Office of Inspector General Proposed Budget. The total proposed funding for the OIG for 2021-22 is \$28.98 million and 143.8 budgeted positions. As part of the 2019 Budget Act, the Legislature required the OIG to provide "contemporaneous oversight of grievances that fall within the department's process for reviewing and investigating inmate allegations of staff misconduct and other specialty grievances, examining compliance with regulations, department policy, and best practices (Penal Code 6126(i))." The OIG currently has 5 budgeted positions for this purpose. As mentioned previously, CDCR was provided with \$9.8 million and 47 positions for AIMS which is a subset of the Office of Internal Affairs total budget of \$46.4 million and 237 budgeted positions. The Subcommittee may wish to provide sufficient funding to the OIG so that their office can provide oversight over a minimum of 25% of staff grievances to identify problems with compliance and identify subsequent corrective action.

Staff Recommendation: The Subcommittee may wish to adopt trailer bill language to move the CDCR staff grievance/complaint process from regulations into statute in order to: 1) revise the current process to make it independent from the prisons' chain of command by centralizing the processing and investigation of all allegations of staff misconduct within the Office of Internal Affairs; 2) include a statewide review process to ensure consistent and fair disciplinary determinations; and, 3) require CDCR to centralize and track data regarding the staff grievance/complaint process.

ISSUE 2: VARIOUS BUDGET PROPOSALS

The Department of Corrections and Rehabilitation (CDCR) will provide an overview of various budget proposals.

- Annemarie Del Mugnaio, CDCR
- Sarah Larson, CDCR
- Chanel Brown, CDCR
- Caitlin O'Neil, Legislative Analyst's Office

Proposed Funding

1. Correctional Officer Training Expansion and Job-Shadowing Program. CDCR requests \$21.2 million General Fund and 59 positions in 2021-22, \$17.6 million in 2022-23, \$24.5 million in 2023-24, and \$16.1 million in 2024-25 and ongoing for departmental training of institution-based custody staff. This proposal also includes associated trailer bill language to effectuate changes within the request. CDCR will use resources to: 1) convert the Norther California Women's Facility (NCWF) into an advanced departmental training facility; 2) implement a four week job shadowing and New Employee Orientation program for newly graduated cadets; and, 3) increase Commission on Correctional Peace Officer Standards and Training (CPOST) staffing and providing funding necessary to reorganize and expand its oversight efforts.

Staff Comment. CDCR has described this proposal as largely supporting new cadets in establishing a foundation of learning to take on their respective posts in the prisons. In addition, job shadowing allows new cadets to receive support from more experienced correctional officers (CO). While some self-selection is afforded to cadets on which facility they will begin their careers, the actual post at the institution is based largely on seniority and labor agreements. These factors limit CDCR from filling positions in a manner that prioritizes experience and difficulty of posts. Ongoing training is provided through an annual training schedule that may change year to year, based on identified needs and the training is tailored to the various positions. In addition, refresher courses are required for any CO that has been out of their job for 12 months or more. Additional training can also be required as a result of an adverse action or disciplinary issue.

2. Technology for Inmates. CDCR requests \$23.2 million and 43.0 positions in 2021-22, and \$18.4 million and 38.0 positions in 2022-23 and ongoing to create a cloud network for rehabilitative programming support and deploy approximately 37,000 Thin Client laptops to provide rehabilitative programming to the incarcerated population. Each laptop will cost \$300 and will include a model that allows for repairs by the vendor and the replacement of the devices. Migrating to a cloud based system allows for greater flexibility in the administration of both the Test for Basic Adult Education and Comprehensive Adult Student Assessment System literacy and numeracy assessments, required by Penal Code and the Federal Workforce Innovation and Opportunity Act. Assessments can be available in more areas of the institution and provides greater testing security by offering unique randomized questions.

According to CDCR, nearly 54,000 people in prison lack their GED or high school equivalency and more than 46,000 people cannot read at a ninth grade level. The Department has approximately 700 students enrolled in high school diploma or equivalency courses and nearly 4,000 enrolled in GED courses, with more than 5,000 students on waitlists for those programs. Barriers to providing more programming include physical space limitations and insufficient levels of educational staff as many institutions are in remote locations. For higher education, many college instructors are required to drive 1-2 hours to reach remote institution locations to teach courses; their travel expenses are not reimbursed.

In 2016-17, CDCR began providing wireless network connectivity to support or expand programs. This allowed for the upgrade from textbook-based learning to digital learning platforms, including electronic certifications for vocational training. However, to date, no laptops have been provided to students. CDCR also plans to use video conferencing equipment in classrooms to extend instructors' reach to more students, potentially allowing them to teach multiple classrooms statewide.

Staff Comment. Research has shown the effectiveness of education programs in reducing recidivism and reducing violence in the prisons. A 2013 RAND study estimated that incarcerated people who enrolled in an education program were 43% less likely to return to prison than those that did not. A 2012 study by the Prison University Project (PUP), an organization that provides a higher education program in San Quentin State Prison, showed that PUP graduates who left prison recidivated with new crimes at a rate of 4%. Recently, Congress lifted the ban against incarcerated students from accessing Pell Grants. The Subcommittee is in receipt of correspondence from stakeholders expressing concern that CDCR may use these technology investments to replace in-person, face to face learning in the prisons, once the pandemic has subsided. In addition, stakeholders have expressed concern that with the availability of Pell Grants, private for-profit companies are seeking or will seek to enter into contracts with CDCR to provide distance learning and face to face learning. Stakeholders have expressed concern regarding the predatory nature of such companies and have questioned the quality of the instruction they could provide.

3. COVID-19 Workers' Compensation (SB 1159): CDCR requests \$51 million General Fund in 2021-22, \$59.9 million General Fund in 2022-23, \$68.7 million General Fund in 2023-24, and \$77.6 million General Fund in 2024-25 and 27.0 four year limited-term positions for workers' compensation costs related to COVID-19. This request also includes Budget Bill Language to provide augmentation and reversion authority related to costs associated with SB 1159. According to CDCR, the funding is necessary to address: (1) the increased volume of claims related to COVID-19 and (2) enable CDCR to meet tighter time constraints required by Chapter 85, Statutes of 2020 (SB 1159) in processing and evaluating workers' compensation claims and return-to-work activities. SB 1159 creates a rebuttable presumption, until January 1, 2023, that an employee's illness or death resulting from the COVID-19 arose out of and in the course of employment and is compensable under workers' compensation if the employee is a specified front-line employee, or if the place of employment experiences an outbreak of COVID-19. It also makes a claim relating to a COVID-19 illness presumptively compensable after 30 or 45 days,

rather than 90 days, which means the claim is presumed to be work-related unless evidence is presented to the contrary within the first 30 or 45 days.

As of December 14, 2020, of the 4,326 COVID-19 claims which have been submitted to the State Compensation Insurance Fund (State Fund) statewide, CDCR comprised approximately 1,951 or 45 percent of the total claims.

Staff Comment. CDCR has stated they applied the average length of time for a worker's compensation claim (3 years) as the basis for ongoing funding through 2024-25. CDCR further stated that an employee must reach their "Maximum Medical Improvement and Permanent and Stationary status, which can take years to ascertain" and that "there are many long-term effects of COVID that are still unknown and have the potential to cause permanent disability."

Although CDCR has stated it does not plan to submit an updated proposal in the spring, the Subcommittee may still wish to seek an updated estimate of anticipated claims based on newer available data in the spring than the December 14, 2020 data the budget proposal was based on. The Subcommittee may also wish to ask CDCR, to the extent possible, to take into account the availability of the vaccine and its impact on the number of anticipated claims. The budget proposal included budget bill language restricting the use of funding only for COVID-19 Workers' Compensation claims and any unspent funds will revert to the General Fund.

LEGISLATIVE ANALYST'S OFFICE (LAO)

Regarding the Correctional Officer Training Expansion and Job-Shadowing Program proposal, the LAO has the following recommendations:

1. Approve CPOST Funding but Require Report on Training. We recommend that the Legislature approve the requested resources for CPOST as the additional positions would better position CPOST to meet its Legislative mandates. In addition, we recommend that the Legislature pass budget trailer legislation requiring an annual report from CPOST beginning July 1, 2022 on the correctional training provided by CDCR. This report should include (1) data on relevant training outcomes (such as measures of employee performance and morale) and (2) the conclusions CPOST draws from the data and its plans to address any concerns or challenges identified.

2. Approve New Facility for Hands-On Training. We recommend that the Legislature approve the proposal to provide hands-on training to cadets as it appears worthwhile to ensure new correctional officers are sufficiently prepared to begin working.

3. Approve Fewer Resources Than Proposed for New Officer Job Shadowing Program. We recommend that the Legislature approve the proposal to provide three weeks of job shadowing for new officers but adjust the funding amount as follows:

- Reject 16 of the 33 proposed prison-based sergeants. This would reduce the level of funding needed for the program by \$2.7 million.

- Reduce proposed funding for new officer pay by \$1.4 million to more accurately reflect the number of new officers CDCR needs in 2021-22.

4. Require CDCR to Adjust Officer Training Funding Annually. Given that prison closures will reduce the need for new correctional officers in future years, funding for new officer training should be adjusted annually. Accordingly, we recommend that the Legislature pass budget trailer legislation requiring the administration to propose adjustments to CDCR's budget for training new correctional officers on an annual basis. Such adjustments should be based on projections of its need for additional correctional officers at least 18 months into the future to account for the time required to recruit and train new officers. This would ensure that funding for new officer training remains aligned with the actual need for new officers.

Staff Recommendation: Hold Open.
