

AGENDA
ASSEMBLY BUDGET SUBCOMMITTEE NO. 5
ON PUBLIC SAFETY

ASSEMBLYMEMBER SHIRLEY N. WEBER, PH.D., CHAIR

MONDAY, MARCH 2, 2020

2:30 P.M. – STATE CAPITOL, ROOM 437

ITEMS TO BE HEARD

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ITEMS TO BE HEARD

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

ISSUE 1: POPULATION OVERVIEW AND THE GOVERNOR'S PRISON CLOSURE PROPOSAL

The California Department of Corrections and Rehabilitation (CDCR) will open this issue with an overview of population trends and the Governor's prison closure proposal.

PANELISTS

- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office
- Don Specter, Prison Law Office

BACKGROUND

Proposed Funding and Prison Closure Proposal

The Governor's proposed budget includes \$13.4 billion (\$13.1 billion General Fund and \$307 million other funds) for CDCR in 2020-21. The Governor's Budget also included the following narrative: "The Department [CDCR] projects that the population will decline by approximately 4,300 inmates between June 2021 and June 2024. If these population trends hold, the Administration will close a state-operated prison within the next five years."

The Brown Administration and CDCR first announced plans for a prison closure in 2012. CDCR recognized that it was "**essential to catalogue both how the prison budget would be reduced and how the prisons would operate with a significantly reduced population.**" The closure proposal assumed that the prisons could operate at 145 percent capacity¹ and named California Rehabilitation Center (Norco) to close by 2015-16. To support this closure plan, the Legislature provided resources for the construction of three infill projects in three existing prisons for approximately 3,300 beds and the renovation of the Dewitt Juvenile Facility for adult prisoners, which would provide approximately 1,100 beds. Ultimately, Norco was not closed due to CDCR's incorrect assumption that the court would allow the department to operate at 145% capacity.

¹ CDCR was denied this request by the courts. CDCR is required to maintain the total prison capacity at or under 137.5% of design capacity, although each prison may exceed this capacity as long as the total capacity is at or below this number.

Population Projections from CDCR

CDCR Adult Institution Population. The adult inmate average daily population is projected to decline by 1,216 in 2019-20 and decrease by 2,155 in 2020-21, to a total of 124,655 and 123,716, respectively. These changes result in a decrease of \$30.9 million General Fund in 2019-20 and a decrease of \$54.8 million General Fund in 2020-21.

Adjusted Population Projections from the Subcommittee

The following shows prison population projections from 2019 thru 2024 based on analysis of estimated projections that reflect adjustments made to CDCR’s Fall 2019 population projections, to account for the estimated effects of Chapter 590 of 2019 (SB 136).

	2019 (Actual)	2020	2021	2022	2023	2024
Prison Population	125,472	123,831	121,983	119,879	118,019	116,572

Available Capacity Assessment from the Subcommittee

According to the prioritization language from the 2018 Budget Act, private contract beds must be eliminated first, but the Legislature may wish to consider maintaining in-state public contract beds for a period of time to provide the state with maximum flexibility. Additionally, local officials state there have been \$4.1 million in investments public contract facilities, including cameras and a new roof to accommodate the state contracts. Staff notes it is very likely that these facilities are in much better habitable conditions than CDCR’s prisons. As of February 19, 2019, there are 123,283 individuals in CDCR’s custody as shown below:

	Occupied	Available Capacity
State Prisons	114,354	116,989
State Camps	3,069	4,580 ²
In-State Contract Beds	4,399 (490 are private male beds ³)	3,909 public beds ⁴
Department of State Hospitals	304	304 ⁵
CRPP (community beds)	1,157	1,500 ⁶
Total	123,283	126,785

² State camp beds are not subject to the 137.5% population cap.

³ Excludes CA City Correctional Facility which is a private facility leased by the state but staffed by state employees.

⁴ The number assumes all private beds will be drawn down, with the exception of California City which is staffed by CDCR employees, but keep open publicly contracted beds

⁵ Assumes DSH beds remain constant but this number can fluctuate based on actual need.

⁶ Estimated capacity based on pending bed expansions.

Capital and Infrastructure Needs

The 2016 Budget Act provided \$5.41 million to fund a state-wide study for the renovation/replacement of CDCR's twelve oldest prisons. The study aimed to evaluate housing, program, and services buildings and infrastructure systems. The study would also include recommendations regarding renovations or replacements necessary to maintain the current level of operations. Twelve individual reports on each prison were produced and submitted at the end of 2019. The report noted that "there is little uniformity in the types of physical plants in the 12 prisons...[there are] significant differences in types of construction methods and materials...[they] also have varied missions [which] lead to different plan layouts, building types, and construction types." The report also stated that some of the prisons have been expanded over time with "newer semi-autonomous facilities" and that that "significant investments over time" were made to repair or replace building components. The total costs for repairs and replacements are summarized below:

Prison	Year Built	Cost of Repairs/ Replacement	Design Capacity (beds)	Specialized Missions
San Quentin	1852	\$1.65 billion	3,082	CTC, PIP, Condemned, RC, ASU
Folsom State Prison	1880	\$799.58 million	2,469	ASU
CA Institution for Men	1941	\$1.23 billion	2,976	OHU, MHCB, ASU, RC
Correctional Training Facility	1946	\$1.32 billion	3,312	OHU, ASU
CA Institution for Women	1952	\$413.05 million	1,078	CTC, EOP, MHCB, OHU, PIP, PSU, SHU, CAMPS, ASU
Deuel Vocational Institution	1953	\$803.55 million	1,681	OHU, ASU, RC
CA Correctional Institution	1954	\$530.69 million	2,783	OHU, ASU
CA Men's Colony	1954	\$1.56 billion	3,838	CTC, EOP, MHCB, ASU
CA Medical Facility	1955	\$763.5 million	2,361	ACU, CTC, EOP, ICF, MHCB, OHU, ASU
CA Rehabilitation Center	1962	\$1.16 billion	2,491	OHU
CA Correctional Center	1963	\$502.52 million	1,733	OHU, ASU, CAMPS
Sierra Conservation Center	1965	\$504.42 million	1,726	OHU, CAMPS, ASU
TOTAL		\$11.24 billion		

ASU: Administrative Segregation Unit, CAMPS: conservation camps, CTC: Correctional Treatment Center, EOP: Enhanced Outpatient Program, ICF: Intermediate Care Facility, MHCB: Mental Health Crisis Bed, OHU: Outpatient Housing Unit, PIP: Psychiatric Inpatient Program, PSU: Psychiatric Services Unit, RC: Reception Center, SHU: Security Housing Unit

While the study provided specific information related to CDCR's 12 oldest prisons, there are 22 other state owned and operated prisons that are in need of critical repairs and investments. According to CDCR's Master Plan Annual Report for Calendar Year 2018⁷ (report), the other 22 prisons have \$8 billion in capital outlay and infrastructure needs based on their Facility Condition Index (FCI). An FCI is a standard facility management benchmark that is used to objectively assess the current and projected condition of a building asset. When a prison's FCI has reached 50% or more, it is "an indicator that a significant portion of the asset's constituent systems can no longer reliably sustain their design level of function. The FCI range is interpreted as follows:

0 to 5 percent: Excellent
5 to 10 percent: Good
10 to 25 percent: Fair to Poor
25 to 50 percent: Poor to Very Poor
51 Percent and beyond: Very Poor to Extremely Poor

According to the report, 26 of 34 prisons have an FCI of over 50%. The average FCI of all prisons is 60.

2018 Budget Act Prioritization Language

As part of the 2018 Budget Act, the Legislature enacted, in Penal Code 2067, a response to continued declines in the state prison population, which requires the ending of all private contract beds staffed by non-public employees as the population is drawn down. It further states the following in subdivision (b):

As the population of offenders in private in-state male contract correctional facilities identified in subdivision (a) is reduced, and to the extent that the adult offender population continues to decline, the Department of Corrections and Rehabilitation shall accommodate the projected population decline by reducing the capacity of state-owned and operated prisons or in-state leased or contract correctional facilities, ***in a manner that maximizes long-term state facility savings, leverages long-term investments, and maintains sufficient flexibility to comply with the federal court order*** to maintain the prison population at or below 137.5 percent of design capacity.

⁷ The 2019 report was unavailable at the time of the drafting of this agenda.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The Legislative Analyst's Office provides the following analysis and recommendations:

- The proposed operational funding is \$75 million more than the previous year but does not include anticipated increases in employee compensation costs because they are accounted for elsewhere in the budget. These increases are currently budgeted to exceed \$100 million.
- The Governor's budget proposes \$497 million in capital outlay spending.
- CDCR will make budget adjustments in May based on updated population projections that will include the estimated effects of two policy changes:
 - Chapter 590 of 2019 (SB 136) which eliminates a one-year sentence enhancement for prior offenses in certain cases.
 - A planned regulatory change that will advance certain inmates' release consideration dates when they earn credits for certain significant educational achievements.

STAFF COMMENTS

In 2009, a three judge panel ordered CDCR to reduce its total prison population to no more than 137.5% of the design capacity. This would require CDCR to reduce its population to approximately 117,000 prisoners in its 34 state owned and operated prisons. All out of state contracts in private and public facilities have ended. Currently, CDCR, in addition to its state owned and operated beds (116,989) utilizes approximately 9,300 additional beds within the state, broken down in the following manner:

- 490 private contract beds for males
- 200 private contract beds for females
- 1,600 publicly contracted beds for males
- 6,700 beds in various other placements, including conservation camps.

Using the Subcommittee's population projections provided on page 2 of this agenda, the following can be concluded:

- By 2024, comparing the population projections and available bed capacity the state may experience a 10,000 empty bed buffer. Even in just two years, a 6,000 bed buffer is likely to exist. These projections warrant the consideration of the following:
 1. Early prison closure planning, to maximize savings to the state and sufficient transition planning for impacted staff.
 2. The consideration on assessing more than one facility for closure.

In past years, CDCR has communicated to the Subcommittee regarding the need for a sufficient empty bed buffer to allow for fluctuations in the prison population as well as the ability to meet the federal court ordered population cap. In 2018, the comfortable buffer was estimated to be 2,500 beds. The Administration and CDCR has communicated a desire to prioritize the closure of public contracts prior to the closure of state owned and operated facility. Currently, these beds account for 1,611 beds as of February 19, 2020. Staff would recommend leaving these public contract beds open for the following reasons:

- More than \$4 million in improvements have been made in these facilities and they are in more habitable conditions than many of CDCR's prisons.
- The beds provide the state with more flexibility in developing a closure plan of a state owned and operated facility, particularly in light of the urgent capital needs of the majority of the state's prisons.

Even if the public contract beds are closed prior to the closure of a prison, sufficient capacity exists for the earlier planning of a prison closure (4,400 bed buffer by 2022) and the consideration of more than one facility for closure (8,600 bed buffer by 2024). This capacity is based on current projections without the consideration of additional reforms that may get adopted that further reduce the prison population.

Staff has requested additional information from the Administration and CDCR regarding capital needs and their prioritization, so that the Subcommittee can make more informed decisions in assessing capital outlay and facility improvement budget change proposals in facilities that the state intends to fund in the long-term.

Lastly, staff notes that the Administration and CDCR point to potential increases to the prison population due to a pending ballot initiative and other policies that may come down the pipeline. As a result, the Administration and CDCR caution any prison closure planning that is premature. If history is any indicator, staff notes that the vast majority of policies introduced, signed, and implemented in the last decade, including several voter initiatives, have all resulted in reforms aimed at lowering incarceration terms, increasing diversion programs, and increasing rehabilitation and reentry opportunities. And as a reminder, under Proposition 57, CDCR has the authority to award and expand credits for participation in programs to further reduce the prison population and enhance reentry outcomes.

Staff Recommendation: Hold Open.

ISSUE 2: UPDATE ON STAFF COMPLAINT PROCESS (AIMS)

The California Department of Corrections and Rehabilitation will provide a progress update on the new staff complaint process known as the Allegation Inquiry Management Section (AIMS).

PANELISTS

- California Department of Corrections and Rehabilitation
- Department of Finance
- Legislative Analyst's Office
- Don Specter, Prison Law Office

BACKGROUND

The 2019 Budget Act included \$9.8 million ongoing General Fund and 47 positions to the California Department of Corrections and Rehabilitation (CDCR) to implement a new regional model for reviewing and investigating prisoner complaints of staff misconduct, as well as revise CDCR's staff complaint process into the new "grievance review process."⁸ As of the drafting of this agenda, CDCR is still in the process of finalizing the emergency regulations for this new process.

The impetus for this new grievance review 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.

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.

⁸ For the purposes of clarification and this agenda, the current process for prisoners with complaints for staff misconduct will be referred as the "staff complaint process" and the new proposed process which is scheduled for implementation in March will be referred as the "grievance review process."

New Process: Allegation Inquiry Management Section (AIMS)

The new AIMS has not been finalized at the time of the drafting of this agenda. In January of 2020, CDCR shared the proposed new regulations with the Prison Law Office (PLO). PLO expressed concerns with the proposed regulations, noting also inclusion of problematic provisions that were not included in the previous version that was shared with them in the fall of 2019. PLO requested that CDCR not submit these to the Office of Administrative Law or take any action to implement them. CDCR provided the following information related to components of the new process:

Training. The Office of Internal Affairs and Office of Appeals will provide statewide grievance training to all staff attending the supervisory academy. CDCR will send the correctional lieutenants, who review staff complaints, to a POST-certified interview and interrogation techniques course. CDCR is adding reference material and refresher training through an online system to ensure staff stay current on regulatory updates and training. In addition, CDCR, through its Office of Legal Affairs and Office of Training and Professional Development, will provide training to current hiring authorities specific to their responsibilities in the grievance process, and will include this training for all new hiring authorities upon assignment.

Internal Auditing and Review of the Inquiry Process. To ensure the fidelity of the revised regulations and processes, CDCR's Office of Audits and Court Compliance will audit the prisons' handling of grievances both by tracking data department-wide and performing quality reviews of inquiries and related paperwork.

Restructuring the Grievance Process and Office of Appeals. CDCR will revise its regulations regarding administrative remedies for prisoners and parolees. The general grievance process (non-specialty grievances) will be reduced from the current three-level approach to two levels divided into "grievances" reviewed at the local level, and "appeals of grievances" reviewed by the Office of Appeals. To enhance the independent review of appeals of grievances, CDCR moved the Office of Appeals from the Division of Adult institutions and placed it under the purview of the Division of Correctional Policy Research and Internal Oversight (CPRIO). CDCR proposes to use existing resources within its Office of Audits and Court Compliance (OACC), which reports to CPRIO, to provide oversight of the new inquiry process. CDCR believes that this change is significant because CPRIO reports to a different undersecretary through a separate chain of command than the Division of Adult institutions within the CDCR's structure, with the goal of eliminating conflicts of interest between these two divisions. Final grievance decisions will be approved by the chief deputy administrator level or higher. Specialty grievances will continue to adhere to existing expedited review timeframes. New regulations will eliminate reasons to "cancel" or "reject" a grievance for technical problems, such as lack of signature, illegible handwriting, insufficient documentation, or excessive or obscene verbiage. The intended result is for institutional appeal offices to conduct more inquiries at the Institution level.

STAFF COMMENTS

CDCR has recently changed its mission. Its prior mission was to “enhance public safety through safe and secure incarceration of the most serious and violent offender, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our community.” The new mission is as follows:

To facilitate the successful reintegration of the individuals in our care back to their communities equipped with the tools to be drug-free, healthy, and employable members of society by providing education, treatment, rehabilitative, and restorative justice programs, all in a safe and humane environment.

In addition to this mission statement change, several of CDCR’s budget change proposals indicate a growing commitment to provide more and improved rehabilitative programming, provide more targeted support for young adults in prisons, and continuing to challenge the prevailing culture that has persisted despite decades of lawsuits and reform efforts. Amongst its proposed programs this year, CDCR will be expanding visitation hours in seven of its prisons with a future goal of adding an additional day of visitation in all of its prisons. CDCR proposes to partner with Cal State University to provide bachelor programs in several of its prisons, in recognition of higher education as a pathway to successful reentry. In addition, CDCR is proposing to target intensive programs and services to its young adult population who typically have the highest recidivism rates once they are released. All of these efforts are commendable and fall under the new mission they have adopted.

Ongoing staff complaints at R.J. Donovan State Prison and the California Institution for Women

Despite these efforts, CDCR continues to face challenges in shifting a culture that has yet to fully embrace the tenets of this new mission. In order for any of the proposed programs and policies aimed at reducing recidivism and improving outcomes to be successful, the “safe and humane environment” portion of the mission is critically fundamental. Without the ability to maintain a safe and humane environment, many, if not all of these endeavors, will ultimately fail. The Subcommittee is in receipt of a series of legal documents from Rosen, Bien, Galvan, and Grunfeld, LLP, (RBGG) who serve as plaintiffs’ co-counsel in both the *Coleman* and *Armstrong* class action lawsuits against the state. Under *Armstrong*, CDCR was found in violation of adhering to the Americans with Disabilities Act, including conditions in parole hearings and access to programs for individuals with physical disabilities. Under *Coleman*, CDCR is required to overhaul its mental health care system.

The documents submitted to the Subcommittee show ongoing cases of alleged staff misconduct against the class of individuals protected under *Coleman* and *Armstrong* and indicate deficient responses from CDCR. Below are some excerpts from the letters:

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

**Re: Armstrong v. Newsom/Coleman v. Newsom
Staff Misconduct at Richard J. Donovan Correctional Facility**

“...one [prisoner] asked for help carrying a package that he was unable to lift while using his walker, a staff member allegedly discharged an entire can of pepper spray in his face, struck him with the empty can, and then kicked him in the ribs and stomach.” In another case staff reportedly denied a person with a mobility impairment an extra shower as an accommodation for his disability and, after he filed a grievance regarding the issue, threatened him and ultimately orchestrated an assault on him by other incarcerated people. 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

**Re: Coleman v. Newsom
Plaintiffs’ Pre-Tour Monitoring Memorandum
28th Round Monitoring Tour, CA Institution for Women (CIW)**

“Plaintiffs’ counsel conducted nineteen interviews with 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.”

RBGG sent copies of 16 different advocacy letters to the Office of Inspector General (OIG). Upon review of the actions taken by CDCR in response to the letters and the complaints filed (some prisoners filed complaints with the prison prior to CDCR’s receipt of the letters from RBGG), the OIG concluded that CDCR’s “handling of these advocacy letters revealed a pervasive lack of timely follow through” and that in all cases, “the staff misconduct described was serious, and if true, would result in disciplinary action for the subject employees.” Of the 31 allegations raised in the letters, CDCR conducted an inquiry into only 3 of the allegations. One allegation of misconduct was referred to the Office of Internal Affairs (OIA), requesting an investigation, but OIA rejected the request and returned it back to the prison for further inquiry. The prison did not conduct any further inquiry.

The Subcommittee is also in receipt of legal correspondence between the Prison Law Office and CDCR and its institutions.

Letter from Prison Law Office to Warden Molly Hill of the California Institution for Women (CIW) dated October 18, 2019 regarding Prison Rape Elimination Act (PREA) Retaliation at CIW

This letter addressed retaliation experienced by two female prisoners after they reported sexual abuse under the Prison Rape Elimination Act (PREA). The female prisoners reported that a correctional officer (CO) solicited sex in exchange for contraband. After soliciting sexual acts, the CO provided them with chocolate bars. The CO later threatened the women for “insulting his gift” and that he “doesn’t like to be insulted.” The women indicated plans to report his conduct and initiated PREA complaints. The women were not provided access to a victim advocate/victim support during the investigation process. They were both charged with extortion; one woman is in administrative segregation as a “threat to the safety and security of the institution” and the other woman is in a Psychiatric Inpatient Program where she attempted suicide in September of 2019. She reported harassment from the administrative segregation staff prior to her suicide attempt.

PLO also expressed concerns about deaf prisoners in CDCR, who have limited knowledge of PREA due to low literacy rates and are unable to make confidential PREA reports in American Sign Language (ASL) due to videophones located in conspicuous places. The mandated PREA video that is required to be shown to prisoners does not have any captions or an ASL inset. In addition, blind prisoners have no way to submit written complaints electronically, and since information is not included in braille, they have to rely on others, losing confidentiality. CDCR had communicated to PLO that they would start a workgroup into this issue and submit

recommendations by the end of 2019; however, no such workgroup was ever started and no recommendations were provided.

Prison Rape Elimination Act (PREA)

PREA defines sexual abuse to include, “with or without the consent of the inmate,” various forms of sexual contact with a staff member, as well as voyeurism by a staff member.⁹ PREA requires that victims have access to “outside victim advocates for emotional support services.” PREA also has policies related to retaliation against individuals that file complaints. It states; “For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignment of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.”

Staff Assessment

The Subcommittee’s discussions on this issue last year prioritized the independence of a new staff complaint process to address concerns regarding quality issues and bias. CDCR’s proposal to move the process into the Office of Internal Affairs was one of the recommendations of the Subcommittee. While many staff complaints will be handled through this more independent process, staff complaints regarding use of force and sexual abuse, the most serious types of complaints, will not; they will still be addressed internally through existing processes. While use of force and PREA complaints have different timelines and response processes from general staff complaints, the very nature of these types of complaints warrant higher scrutiny and the same independence as other complaints. Based on the Legislature’s interest in the proper implementation of the new staff complaint process, staff recommends requiring CDCR to follow up with the Subcommittee (prior to the implementation of the new AIMS process) as to how it will address the need for independence regarding use of force and PREA complaints, including the consideration of moving these types of complaints into the existing Office of Internal Affairs.

Staff Recommendation: Hold Open.

This agenda and other publications are available on the Assembly Budget Committee’s website at: <https://abgt.assembly.ca.gov/sub5hearingagendas>. You may contact the Committee at (916) 319-2099. This agenda was prepared by Jennifer Kim.

⁹ 28 C.F.R. §115.6