

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 5 ON PUBLIC SAFETY

ASSEMBLYMEMBER CRISTINA GARCIA, CHAIR

**MONDAY, MARCH 21, 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)

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5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**ISSUE 1: LONG TERM PRISON INFRASTRUCTURE STRATEGY AND 2021 SUPPLEMENTAL REPORTING LANGUAGE****PANELISTS**

- Dean Borg, CDCR
- Caitlin O'Neil, Legislative Analyst's Office
- Department of Finance

BACKGROUND

Prison Population and Prison Bed Capacity. In 2009, a three judge panel ordered CDCR to reduce its total prison population to no more than 137.5% of its capacity. At the time of the court order, CDCR's population was more than 160,000 incarcerated people. CDCR's design capacity for its prisons (excluding camp beds), is 81,962 and with the court ordered cap, approximately 112,698 persons can be incarcerated without violating the court ordered cap. The current prison population as of March 2, 2022 (excludes 1,355 individuals incarcerated in camps) is 91,137, which equates to 111.2% of design capacity occupied at the prisons and 40.2% design capacity occupied in the camps. The following table illustrates occupied beds and available capacity as of March 2, 2022:

	Occupied	Available Capacity
State Prisons	91,137	112,698
State Camps	1,355	3,368 ¹
In-State Public Contract Beds	1,999	2,400
Department of State Hospitals	182	182 ²
CRPP Supervision (alternative custody program, custody to community treatment reentry program, male community reentry program, medical parole, medical reprieve program, medically vulnerable release)	1,010	1,500 ³
Total	95,583	120,148

As part of the 2020-21 Budget, the Governor committed to closing two prisons. The table below illustrates the prison population and the available capacity at the time of the Administration's announcement and compares the information to current population and capacity numbers.

¹ State camp beds are not subject to the 137.5% population cap.

² Assumes DSH beds remain constant but this number can fluctuate based on actual need.

³ Estimated capacity based on pending bed expansions.

	At the time of Governor's Closure of Two Prisons in the 2020-21 Budget	March 2, 2022
In-Prison Population	114,446	91,137
Available Prison Capacity	116,989	112,698
Other CDCR Population (camps, CA City, etc.)	9,204	4,546
Other CDCR Capacity (camps, CA City, etc.)	Approximately 10,000	Approximately 5,000

Budget Growth. Despite the significant prison population reduction over the last 12 years by more than 60,000 incarcerated people, CDCR's budget has grown by more than \$5 billion, costing approximately \$145,000 to incarcerate one person, per year. In comparison, it costs approximately \$39,000 to incarcerate one person, per year in a federal prison and Texas spends approximately \$23,000 annually to incarcerate a person. While staffing and medical costs are significant drivers of budget growth, CDCR could certainly curb the burgeoning cost of state corrections with a long term strategic plan for its capital and maintenance investments.

2021 Supplemental Reporting Language (SRL). As part of the of the 2021-22 budget process, supplemental reporting language was adopted by the Legislature that directed CDCR to create a "Prison Infrastructure Improvement Strategy" that would identify projects estimated to cost \$5 million or more that are likely needed within the next ten years. The specific provisions of the SRL are as follows:

- a) For each project identified, the department shall report all of the following information:
 - (i) A brief description of the project, its estimated cost, the estimated time to complete the project, and why it is needed.
 - (ii) Whether it would be funded as a major capital outlay project or from the support budget for special repair or deferred maintenance.
 - (iii) The category of need it addresses, including fire/life safety, rehabilitative or healthcare programming, staff and population safety, or court-ordered or regulatory requirements.
 - (iv) In cases when a significant portion of a facility is identified for repair or replacement, via one or multiple projects, the department shall explain what viable alternatives to rebuilding or repairing the facility it considered, such as redesigning, consolidating, or relocating facilities to achieve better outcomes or lower operational costs.
- b) In identifying the projects, the department shall seek opportunities to consolidate prisons to achieve efficiencies.
- c) The department shall describe how the identified projects support a long-term, durable portfolio of facilities to meet the department's mission and the state's long-term need for prison capacity.
- d) The department shall describe the steps taken in the project planning and prioritization process to minimize investments in prisons that may be included in closure decisions beyond

the number of closures identified in Penal Code Section 5003.7 unless they are needed to ensure safe operation of the facility until it is closed.

e) If, after January 10, 2022, the department identifies changes to the projects reported pursuant to this supplemental report, it shall notify the budget committees of both houses of the Legislature and the Legislative Analyst's Office of the changes and the justification for these changes.

The subsequent report that was submitted on February 11, 2022 identified 45 projects needed at 25 prisons that would cost approximately \$1.8 billion. It also included general descriptions of processes that CDCR uses to select projects and the consideration of alternatives. The report was unresponsive to provisions b, c, and d of the SRL.

Infrastructure and Maintenance Needs. Prior to the closure of the Deuel Vocational Institute, CDCR's adult institutions encompassed over 24,000 acres of land, including 4,000 buildings that comprised of 42 million square feet and an estimated 22,000 individual pieces of equipment and utility system components. CDCR's infrastructure and deferred maintenance needs are significant—they exceed \$20 billion and grow steadily every year. A statewide study of the twelve oldest prisons identified \$11.24 billion in repairs and replacements. In addition, CDCR's Master Plan Annual Report for 2018, 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 2018 report, 26 of 34 prisons had an FCI of over 50%. The average FCI of all prisons is 60. CDCR's Master Plan reports after 2018 no longer include the FCI of each prison and the associated capital outlay and infrastructure needs of each prison.

STAFF COMMENT

Staff provides the following analysis of the report submitted by CDCR in response to the SRL:

- CDCR provided a summary of their process in selecting projects but did not provide any specific information relating to the selected list of projects.
- CDCR provided a general description of how consolidation decisions would be made, and what factors would be considered but did not seek any actual consolidation options.
- The department also stated that a durable portfolio of prison capacity would need to meet a variety of housing and treatment needs, including varying levels of secure housing, medical and mental health needs, rehabilitative programming, educational

programming, vocational education programming, and reentry services. They also stressed the need for flexibility of space ends. However, CDCR did not provide any information on what the specific needs are or how the proposed projects would meet those needs.

- As for minimizing investments in prisons that may close, CDCR stated that closure decisions are “point in time” decisions and, to reduce the risk of wasteful spending, they look at trends in the population, recruitment and retention of staff, and other programmatic goals to guide their proposals which are then reviewed by CDCR leadership and DOF. CDCR and DOF indicated they are not planning for any additional prison closures at the time of drafting the report and therefore their report did not consider any of these factors in identifying projects.

CDCR has indicated they will try to provide additional information requested by the Legislature that was not included in their report, but a timeline of when this information would be available as not yet been provided.

Staff Recommendation: Hold Open.

ISSUE 2: CELLULAR INTERDICTION

The California Department of Corrections and Rehabilitation will provide an overview of their cellular interdiction proposal.

PANELISTS

- Tammy Irwin, CDCR
- Caitlin O'Neil, Legislative Analyst's Office
- Department of Finance

Proposed Funding

The Governor's Budget proposes 5 positions and \$12.6 million General Fund in 2022-23 (increasing to \$18.5 million in 2023-24 and decreasing to \$2.4 million in 2026-27 and ongoing) to install new cellphone interdiction technology at all 33 state-owned and operated prisons. CDCR expects that the technology will better enable it to detect and deactivate illegal cellphones, which can pose security concerns in prisons and contribute to crime outside of prison. Under the proposal, CDCR would install the technology at 8 prisons in 2022-23, 12 prisons in 2023-24, 12 prisons in 2024-25 and one prison in 2025-26. After the technology is installed, ongoing funding would support staff to operate and maintain the equipment. At 18 of these prisons, the new technology would replace existing cellphone interdiction technology that is outdated and of limited effectiveness. The remaining 15 prisons do not currently have any cellphone interdiction technology.

LEGISLATIVE ANALYST'S OFFICE (LAO)

Installing Cellphone Interdiction Technology Has Merit, But Not at Prisons That Could Be Closed. The idea of installing new cellphone interdiction technology at prisons is reasonable as it could help reduce crime both inside and outside of prisons. However, recent inmate population projections suggest that the state could be in a position to close around 5 of its 33 state-owned prisons by 2025-26. As such, providing funding to install cellphone interdiction technology at all state-owned prisons over the same time period does not appear to be a cost-effective use of state resources. Under the Governor's proposal, cellphone interdiction technology could be installed at prisons that are closed shortly thereafter.

LAO Recommendations. To reduce the risk of installing cellphone interdiction technology at prisons that are subsequently closed, we recommend: (1) providing funding for only a portion of the Governor's proposal; and, (2) ensuring that the technology is only installed at prisons that are not strong candidates for closure. Specifically, we recommend that the Legislature only approve funding at this time to support the proposed installation at 8 prisons in 2022-23 and 12 prisons in 2023-24 and reject the proposed installation in subsequent years at the remaining prisons. We also recommend approving funding necessary to operate and maintain the equipment at the 20 prisons.

Before approving the above funding, we recommend the Legislature direct CDCR to provide a list of what 20 prisons it plans to install the technology at so that the Legislature can ensure that the list only includes prisons that are unlikely to be closed, such as prisons that provide

essential health care services and/or have facilities capable of housing inmates with a wide range of security classifications. CDCR can request additional funding in the future when it is clearer whether and what additional prisons are likely to be closed. We note that only approving funding to install and operate cellphone interdiction technology at 20 prisons would also improve legislative oversight regarding the implementation of the technology. This is because CDCR would have to obtain legislative approval to proceed with implementation at additional prisons. This would allow the Legislature to ensure the technology is being implemented effectively and in a manner consistent with its priorities, before determining whether to provide funding to support the installation at the remaining prisons.

Staff Recommendation: Hold Open.

VARIOUS DEPARTMENTS

ISSUE 3: GOVERNOR'S PUBLIC SAFETY PACKAGE

The Department of Justice (DOJ), the Board of State and Community Corrections, and the California Military Department will provide an overview of the following proposals in Governor's public safety package: (1) the Organized Retail Theft Prevention Grant Program; (2) the Vertical Prosecution Grant Program; (3) the Counter Drug Task Force Program; (4) DOJ Organized Retail Crime Enterprises Program; and, (5) the DOJ Task Force Program.

BACKGROUND

On December 17, 2021, the Governor unveiled his "Real Public Safety Plan" which aims to "bolster local law enforcement response, ensure prosecutors hold perpetrators accountable and get guns and drugs off our street." Specifically, the goals of this plan are to: (1) reduce organized retail theft and mitigate harm on businesses that have been victims of such crimes; (2) reduce the presence of firearms, thereby reducing both violent crimes involving firearms and suicides; and, (3) reduce other crimes, particularly drug-trafficking by transnational criminal organizations. Figure 1 provides an overview of the specific proposals in the Governor's public safety package.

Figure 1

Overview of Governor's Proposed Public Safety Package

(In Millions)

	Department	2022-23	2023-24	2024-25	2025-26	2026-27 and Ongoing
Proposals Addressing Organized Retail Theft						
Organized Retail Theft Prevention Grant Program	BSCC	\$85.0	\$85.0	\$85.0	—	—
Vertical Prosecution Grant Program	BSCC	10.0	10.0	10.0	—	—
CHP Organized Retail Crime Task Force Expansion	CHP	6.0	6.0	6.0	\$10.5	\$15.0
DOJ Organized Retail Crime Enterprises Program	DOJ	6.0	6.0	6.0	0.4	0.5
Grants to Small Business Victims of Retail Theft	GO-Biz	20.0	—	—	—	—
Proposals Addressing Firearms						
Gun Buyback Grant Program	BSCC	\$25.0	—	—	—	—
UC Firearm Violence Research Center	UC	2.0	\$2.0	\$2.0	\$2.0	\$2.0
Proposals Addressing Drug Trafficking and Other Crime						

Counterdrug Task Force Program Expansion	CMD	\$20.0	—	—	—	—
DOJ Task Force Program	DOJ	5.0	\$5.0	\$5.0	\$5.0	\$5.0
Totals		\$179.0	\$114.0	\$114.0	\$17.9	\$22.5

BSCC = Board of State and Community Corrections; CHP = California Highway Patrol; DOJ = Department of Justice; GO-Biz = Governor's Office of Business and Economic Development; CMD = California Military Department

Proposed Funding

The proposed budget includes a total of \$179 million General Fund in 2022-23 (declining to \$22.5 million annually by 2026-27) across multiple state departments to support the implementation of the Governor's public safety package.

Panel 1: Organized Retail Theft Prevention Grant Program

- Katie Howard, Executive Director, Board of State and Community Corrections
- Caitlin O'Neil, Legislative Analyst's Office
- Department of Finance

The Governor's budget proposes \$85 million annually from 2022-23 through 2024-25 for the BSCC to administer a new competitive grant program to support local law enforcement agencies in preventing organized retail theft and enforcing theft-related laws. Proposed provisional budget language specifies that priority "shall be given to localities that do not have a designated California Highway Patrol task force and that have the largest increases in theft-related crimes over a three-year period based on the most recent available data." According to the Administration, this language is intended to prioritize grant funds for law enforcement agencies in the Fresno and Sacramento areas where the Governor proposes to establish two new California Highway Patrol Organized Retail Crime Task Forces.

Panel 2: Vertical Prosecution for Organized Retail Theft

- Katie Howard, Executive Director, Board of State and Community Corrections
- Caitlin O'Neil, Legislative Analyst's Office
- Department of Finance

The Governor's budget proposes \$10 million annually from 2022-23 through 2024-25 for BSCC to administer a new competitive grant program for district attorneys to fund vertical prosecution of organized retail theft. Vertical prosecution is a strategy in which the same attorney is responsible for all aspects of a case from arraignment to disposition. According to the Administration, funding would be prioritized for district attorney offices that have attorneys dedicated to the existing and proposed California Highway Patrol Organized Retail Crime Task Forces.

Panel 3: Counterdrug Task Force Program Expansion

- Major General Matthew Beevers, California Military Department
- Anita Lee, Legislative Analyst's Office
- Department of Finance

The Governor's budget provides a \$20 million one-time General Fund augmentation to the California Military Department (CMD) for its existing Counterdrug Task Force Program. This program, which currently receives \$27 million annually in federal funds, provides support to local law enforcement agencies in areas known to have high levels of drug trafficking. The Administration indicates that requests for assistance from local law enforcement have far exceeded CMD's level of ongoing funding. Accordingly, the proposal would allow CMD to fulfill in 2022-23 more of the requests it receives from local law enforcement. It is expected that 100 service members will be deployed for drug interdiction efforts to assist various LEAs. The Counterdrug Task Force is a federally funded, Title 32 program that has been part of California National Guard's (CNG) mission since 1986.

Panel 4: DOJ Organized Retail Crime Enterprises (ORCE) Program and DOJ Task Force Program

- Ashley Harp, Department of Justice
- Anita Lee, Legislative Analyst's Office
- Department of Finance

1. The Governor's budget proposes \$6 million annually from 2022-23 through 2024-25 (declining to \$500,000 annually beginning in 2026-27) for a new program to pursue ORCE investigations and prosecutions. Specifically, the proposed resources for the first three years would support 28 positions—15 positions to pursue ORCE investigations and 13 positions and legal resources to prosecute resulting ORCE cases. The ORCE investigators plan to focus on complex, multi-jurisdictional organized retail theft crime networks for fraud, tax evasion, and other white-collar crimes. These investigators would coordinate with federal, state, local, and retail partners as well as coordinate data collection and information. The annual funding after the first three years would support one sworn DOJ agent who currently participates in the existing California Highway Patrol Organized Retail Crime Task Force (The position is currently funded with limited-term funding.)

2. The Governor's Budget proposes \$5 million General Fund in 2022-23 and ongoing to maintain DOJ oversight of collaborative law enforcement task forces statewide. According to DOJ, these costs are currently supported by existing funding in its budget associated with vacant positions and it will no longer be available as DOJ expects to fill the vacant positions. The task forces are led by experienced task force commanders who are responsible for training, supervising and leading local law enforcement personnel in major investigations throughout California. As of August 2021, the DOJ Task Force Program included eight task forces around the state. These task forces, which generally consist of a DOJ commander and various federal and/or local law enforcement participants, typically focus on more serious or complex criminal investigations—such as complex homicides or violent crimes, drug smuggling networks, or transnational gangs. Specific activities depend on the priorities of the task force participants, but generally focus on regional needs. These task forces are supported by state, local, and federal funds, with each task force participant's employing agency typically paying for their participant's salary and associated costs. For example, the state typically pays for the salary and associated costs (such as equipment) of the DOJ commander.

LEGISLATIVE ANALYST'S OFFICE (LAO)**Package Lacks Clear Objectives, Other Public Safety Goals Could Be Higher Priority.**

Overall, we find that the Governor's package lacks clear objectives for achieving the intended public safety goals. We also find that the Legislature may determine that there are other public safety goals of higher priority than those put forward by the Governor, such as targeting the recent increase in some violent crimes—particularly involving firearms—rather than retail theft.

Two Proposals Appear Reasonable, Others Raise Concerns. Related to the Governor's nine proposals, we find that two of the proposals—a proposed \$2 million ongoing General Fund augmentation to support the University of California Firearm Violence Research Center and \$5 million ongoing General Fund to maintain the Department of Justice Task Force Program—appear reasonable. We identify concerns with the remaining seven proposals. Specifically, we find that: (1) the Board of State and Community Corrections grant program proposals would provide the Administration with significant implementation authority; (2) details on the grants to small business victims of retail theft are not yet available; and, (3) certain proposals may not be structured to achieve their desired outcomes.

LAO Recommendations. We recommend the Legislature consider approving \$7 million ongoing General Fund to support the two proposals that appear reasonable. For the remaining funding, we recommend the Legislature first consider whether public safety is a priority for additional funding relative to its other budget priorities. If public safety is a priority, we recommend that the Legislature consider how to allocate the remaining funding by determining its specific highest-priority public safety goals, specifying clear objectives, and providing funding in a manner that ensures its goals and objectives are achieved. To assist the Legislature with its deliberations, we provide various options—such as those that expand upon existing programs or are based on research—that the Legislature could take to the extent it prioritizes addressing specific crime-related public safety goals.

STAFF COMMENT

Organized Retail Task Grant Program. Staff notes that sufficient details regarding the grant program are not available for the Legislature to consider prior to approving or rejecting the resources. For example, the competitive grants are available for police departments, sheriffs, and probation for flexible uses, including probation supervision and diversion—but the full list of activities and permissible uses would only be identified by the BSCC after the Legislature approves the funding. The Department of Finance states that quarterly reporting of grant specific outcome data will be required but the actual data points have not yet been identified. Staff notes that in order to ensure that funding is directed for the intended purpose and to assess the impact of the funding, budget bill language requiring the identification of permissible uses as well as identifying reporting metrics is necessary for the Legislature to exercise sufficient oversight. In addition, the Legislature may wish to identify permissible uses, such a technology, and other priorities and strategies, to maximize the impact of the proposed resources.

Vertical Prosecution. Staff notes that the Department of Finance has stated district attorney offices did not request this funding, nor has there been any information provided to indicate a backlog of organized retail theft prosecution cases or insufficient resources to prosecute these types of cases. To assess this proposal, the Subcommittee may need this additional

information to evaluate the merits of this proposal. Further, vertical prosecution is a victim centered approach that is typically used in cases of sexual assault, domestic violence, child abduction, human trafficking, etc. to help reduce victim trauma. It is unclear why the Administration's proposal requires a vertical prosecution approach for organized retail theft, rather than allowing district attorney offices the flexibility to use approaches they find to be the most effective. Should the Legislature be interested in approving this proposal, staff recommends budget bill language restricting its use for prosecuting organized retail crimes and reporting on expenditures.

The Subcommittee is in receipt of letters of support from a variety of stakeholders in support of the following proposals in this Subcommittee: Organized Retail Task Grant Program, resources for prosecution for organized retail theft and DOJ's ORCE program. The stakeholders include the California Retailers Association, California Chamber of Commerce, Home Depot, Target, California Grocers Association, National Federation of Independent Business, Los Angeles County Business Federation, International Council of Shopping Centers and others.

Staff Recommendation: Hold Open.

0820 DEPARTMENT OF JUSTICE

ISSUE 4: DNA ID FUND RESTORATION

The Department of Justice will provide an overview of their DNA ID Fund Restoration proposal.

PANELISTS

- Ashley Harp, Department of Justice
- Anita Lee, Legislative Analyst's office
- Department of Finance

Proposed Funding

DNA ID Fund Restoration. The Governor's Budget requests a technical revenue backfill of \$46.42 million General Fund in 2022-23, to backfill the continued decline in DNA Identification Fund revenue to support statewide laboratory operations and maintain current levels of forensic services. This proposal also includes provisional language that would allow the Director of the Department of Finance to augment the appropriation should funds be insufficient to support the Bureau of Forensic Services (BFS).

Historically, the BFS was primarily funded by the General Fund. With the passage of Proposition 69 in 2004, the BFS CAL-DNA Data Bank Program became funded under the DNA ID Fund, which receives revenue from court-levied fines and fees for all criminal offenses. Starting in 2012, the DNA ID Fund revenue was expanded to provide full support of the BFS, and it was expected to continue to provide complete funding support. However, the DNA ID Fund has experienced a significant revenue decline that started in 2015-16 and has continued through 2020-21. This decline is largely due to Proposition 47 (2014) which reclassified certain crimes from felonies to misdemeanors. The reduction in criminal penalties resulted in a decrease in levied and collected fines. Recently, the fund revenues have also declined due to the impact of the COVID-19 pandemic. As the majority of Californians were sheltering in place for many months and the courts were essentially closed, fewer fines were levied and collected, resulting in a reduction in funds deposited in the DNA ID Fund. Current projections suggest that in the event revenues continue to decline, the DNA ID Fund will collect less than \$30 million in 2021-22 and 2022-23.

**LEGISLATIVE ANALYST'S OFFICE
(LAO)**

Proposal Addresses DNA Identification Fund Shortfall in 2022-23. The Governor's proposal would address the projected DNA Identification Fund shortfall in the budget year and would maintain existing BFS service levels. We would note that the 2021-22 budget included provisional budget language allowing the Director of the Department of Finance to provide additional General Fund to backfill the DNA Identification Fund if revenues

decline further. Tens of millions of dollars could be needed if fine and fee revenues are not higher than currently projected for 2021-22.

Proposal Does Not Address Long-Term Fund Solvency. The Governor's proposal does not address the long-term solvency of the DNA Identification Fund. Because of the steady decline in criminal fine and fee revenue, BFS expenditures exceed estimated revenues by millions of dollars annually. Because the DNA Identification Fund will effectively have no fund balance at the end of 2022-23, this means that this fund is insolvent.

BFS Provides Certain Local Governments Substantial Benefits. City and county law enforcement and prosecutorial agencies are predominantly responsible for collecting and submitting forensic evidence for testing, as well as using the evidence to pursue criminal convictions in court. However, certain counties and cities benefit significantly more than others. Specifically, while 12 counties and 8 cities currently use their own resources to support local criminal laboratories, 46 counties generally do not have to use any of their resources for criminal laboratory services. This is because BFS is effectively subsidizing the agencies in these counties with tens of millions of dollars in services annually.

Local Governments Lack Incentive to Use BFS Services Cost-Effectively. BFS's current funding structure provides the agencies it serves with little incentive to use its services in a cost-effective manner. Since BFS does not charge for its services, these local agencies lack incentive to prioritize what forensic evidence is collected and submitted for testing. Their submissions instead are generally only limited by BFS's overall capacity and service levels, as determined by the amount of funding provided to the bureau in the annual state budget. In contrast, counties and cities that use their own resources to support their labs—or those that decide they want to pay a private laboratory for testing—have greater incentive to carefully prioritize what evidence should be tested and how quickly it should be done.

LAO Recommendations

1. Require Local Governments to Partially Support BFS Beginning in 2023-24. Given the substantial benefit that local agencies receive from BFS services, we recommend the Legislature require local governments to partially support BFS beginning in 2023-24. We also recommend the Legislature provide DOJ with direction on how much of BFS operation revenues should come from local agencies (such as one-third or one-half). This would generally reduce the amount of General Fund needed to support BFS costs on an ongoing basis. Additionally, this would also be more equitable than the existing system in which certain local governments receive services at no charge, while others pay to operate their own laboratories. Under our recommendation, agencies that receive service from BFS would be required to pay for a portion of the services they receive—providing greater incentive to prioritize workload to DOJ. DOJ would have flexibility in calculating each local agency's share of the BFS services it uses—including operation and facility costs—based on consultation with stakeholders and after considering various factors (including equity concerns). For example, DOJ could require local agencies pay more or less based on various factors—such as the specific type of forensic service sought, the speed of the service, or the size of the agency. The delayed implementation

date provides time for the implementation of a new funding structure and to allow agencies to adapt to the new funding framework.

2. Consider Alternative Funding Options in Forthcoming Report. As noted earlier, DOJ indicates that it is currently on track to submit the legislatively required March report identifying various options—other than the General Fund—to fund BFS operations. One of the options was required to include sharing costs with local agencies. As such, the alternative options identified by DOJ in its forthcoming report can be used to inform the specifics of a new funding structure. Regardless of the alternatives (such as if a new fund source other than the General Fund is identified), we do recommend that the local agencies provide *some* support in order to provide greater incentive to prioritize workload submitted to BFS.

3. Approve Governor's Proposal to Allow for Implementation of New Funding Structure. To provide DOJ and local governments time to implement and adapt to a new funding structure, we recommend approval of the Governor's proposal in order to ensure existing BFS service levels are maintained.

Staff Recommendation: Hold Open.

NON-DISCUSSION ITEMS

The Subcommittee does not plan to have a presentation of the items at this time 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.

0820 DEPARTMENT OF JUSTICE

ISSUE 5: VARIOUS BUDGET PROPOSALS
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1. Assembly Bill 3099 Reappropriation. The Governor's Budget proposes a reappropriation of \$3.84 million General Fund in 2022-22, which was appropriated pursuant to Subdivision (b) (24) of Section 19.57 of Chapter 69, Statutes of 2021 (SB 129), to be used for the purposes of implementing the provisions of Chapter 170, Statutes of 2020 (AB 3099). AB 3099 requires the DOJ to provide technical assistance to law enforcement agencies that have Native American lands within or abutting their jurisdiction and tribal governments with Native American lands, with or without tribal law enforcement and to conduct a study related to missing Native Americans. To accomplish these mandates, resources are needed through at least 2025-26. The 2021 Budget Act provided \$5 million in funding but did not specify the term of the funding and therefore would only be available in 2021-22 for encumbrance or expenditure.

2, Charitable Organizations: AB 488. The Governor's Budget proposes \$415,000 Registry of Charitable Trusts Fund and 4 positions in 2022-23 and \$659,000 in 2023-24 and ongoing to implement and pursue actions pursuant to Chapter 616, Statutes of 2021 (AB 488). AB 488, commencing January 1, 2023, will require that all charitable fundraising platforms and platform charities operating in California register annually with the Attorney General's Registry of Charitable Trusts, file annual reports and pay registration fees. Funding is needed to implement regulations and forms for AB 488 in 2022. Thereafter, staff will be required to educate the public, enforce the registration and reporting requirements, review the filings submitted by the platform fundraisers, investigate compliance with disclosure requirements, review and follow up on complaints filed against platforms and if necessary, file enforcement actions to enforce the registration, reporting and disclosure requirements of provisions of AB 488.

3. Criminal Law (SB 715). The Governor's Budget requests \$2.28 million Dealers' Record of Sales Account and 5 positions in 2022-23, increasing to \$3.46 million in 2023-24, \$1.48 million in 2024-25, \$1.02 million in 2025-26, and \$973,000 in 2026-27 and ongoing to facilitate and maintain multiple modifications to DOJ's firearms-related systems to meet the mandates outlined in Chapter 250, Statutes of 2021 (SB 715). SB 715 prohibits the possession of semiautomatic centerfire rifles and commencing July 1, 2023, the possession of any firearm by a minor, with certain exceptions. A violation of these provisions may be punishable as a misdemeanor. Commencing July 1, 2024, SB 715 also prohibits a dealer from returning to a seller or transferor a firearm if they may not legally own that firearm and would provide that in such cases, the seller or transferor loaning the firearm may request that the dealer retain possession of the firearm for up to 45 days so the seller or transferor may designate an eligible person to take possession

of that firearm. Finally, SB 715 requires the DOJ, commencing July 1, 2025, to confirm the validity of a hunting license with the Department of Fish and Wildlife as part of the background check for sales of firearms to persons under 21 years of age who are eligible to purchase a firearm based upon their possession of a hunting license.

4. Criminal Procedure: Resentencing (AB 1540). The Governor's Budget \$396,000 General Fund limited-term in 2022-23, decreasing to \$382,000 in 2023-24 through 2026-27, to provide legal response to appeals when criminal resentencing is denied, or a defendant claims an error occurred in resentencing, pursuant to Chapter 719, Statutes of 2021 (AB 1540). AB 1540 requires the court to: (1) state its reasoning for a resentencing decision on the record; (2) provide notice to the defendant; (3) set a status conference within 30 days of the receipt of the request; (4) appoint counsel for the defendant; and (5) authorizes the court to grant a resentencing without a hearing, if the parties are in agreement.

5. Felony Murder Resentencing (SB 775). The Governor's Budget requests \$3.6 million General Fund limited-term in 2022-23, and \$3.48 million in 2023-24 through 2025-26, to address increased resentencing hearings pertaining to initial sentence enhancements pursuant to Chapter 728, Statutes of 2021 (SB 775). SB 775 clarifies that persons who were prosecuted under a theory of felony murder or the natural and probable consequences doctrine, and who were convicted of attempted murder or manslaughter, may apply for the same resentencing relief as persons who were convicted of murder under the same theories.

6. Firearms Tracing (AB 1191). The Governor's Budget proposes \$327,000 General Fund and 2 positions in 2022-23 and \$306,000 in 2023-24 and ongoing to analyze and report on firearms that were illegally possessed, used in a crime, or suspected to have been used in a crime pursuant to Chapter 683, Statutes of 2021 (AB 1191). Commencing July 1, 2023, and annually thereafter, AB 1191 requires the DOJ to analyze information currently reported by law enforcement agencies (LEAs) regarding all firearms recovered by LEAs that were illegally possessed, used in a crime, or suspected to have been used in a crime, and submit an annual report to the Legislature summarizing the analysis.

7. Gender Identity: Female, Male or Nonbinary. The Governor's Budget proposes \$1.11 million General Fund in 2022-23 to begin implementation of necessary system modifications to meet the criminal justice community needs and mandates of Chapter 853, Statutes of 2017 (SB 179). Pre-existing law, as amended by SB 179 requires an applicant for a driver's license (or renewal) to choose a gender identity of female, male, or nonbinary, and requires the Department of Motor Vehicles (DMV) to provide for the amendment of an existing gender designation. SB 179 is specifically a mandate on the DMV; however, DMV driver's license and identification information is shared and utilized by agencies across the state, including the DOJ.

8. Human Trafficking: Vacatur Relief for Victims (AB 262). The Governor's Budget proposes \$491,000 General Fund and 1 position in 2022-23, \$99,000 in 2023-24, and \$95,000 in 2024-25 and ongoing to update the Criminal Justice Data Exchange pursuant to Chapter 193, Statutes of 2021 (AB 262). Beginning January 1, 2022, AB 262 will provide additional legal rights when a victim of human trafficking petitions the court to

vacate a conviction for a non-violent crime that was committed while the petitioner was a victim of human trafficking.

9. Law Enforcement Gangs (AB 958). The Governor's Budget proposes \$1.29 million General Fund and 5 positions in 2022-23, and \$1.25 million in 2023-24 and ongoing to respond to additional investigations that fall within the expanded definition of "law enforcement gangs" pursuant to Chapter 408, Statutes of 2021 (AB 958). The requested resources include an additional \$250,000 to support annual costs associated to legal experts. These experts are proposed to support the incorporation of AB 958's new definition of "law enforcement gang" into existing investigations, as well as to support new investigations relating to "law enforcement gangs," or other similar groups, and their impact on overall culture within law enforcement agencies. AB 958 requires all law enforcement agencies in California to "maintain a policy that prohibits participation in a law enforcement gang and that makes violation of that policy grounds for termination." It also requires that they cooperate in any investigation conducted by the DOJ for the purposes of investigating the existence of "law enforcement gangs."

10. Peace Officers: Release of Records (SB 16). The Governor's Budget proposes \$7.44 million (\$3.4 million General Fund and \$4 million Legal Services Revolving Fund (LSRF)) and 27 positions in 2022-23 and \$6.47 million (\$2.7 million General Fund and \$3.8 million LSRF) in 2023-24 and ongoing to prepare records pertaining to peace officer conduct for public disclosure pursuant to Chapter 402, Statutes of 2021 (SB 16). Senate Bill 16 expands the law that requires disclosure of records related to incidents involving certain types of conduct by a peace officer or custodial officer. The bill requires disclosure of three broad categories of records including records related to a sustained finding of an officer's (1) unreasonable or excessive force or (2) failure to intervene against another officer using unreasonable or excessive force must be disclosed, records relating to sustained findings of unlawful arrests and unlawful searches, records where a sustained finding was made by any law enforcement agency or oversight agency that an officer engaged in conduct involving prejudice or discrimination on the basis of specified protected classes (e.g., race, religion, national origin, disability, sex, sexual orientation, or other protected class). The bill requires the retention of all complaints and related reports or findings currently in an agency's possession.

11. Police Use of Force. The Governor's Budget proposes \$2.3 million General Fund in 2022-23 and 7 positions and \$1.6 million in 2023-24 and ongoing to implement Chapter 326, Statutes of 2020 (AB 1506). The 2021 Budget Act provided \$15.3 million in 2021-22 and \$15.6 million in 2022-23 and ongoing, which provided resources to address preliminary day-to-day operations and acquisition of equipment.

12. Privacy: Genetic Testing Companies (SB 41). The Governor's Budget proposes \$396,000 General Fund and 2 positions in 2022-23, and \$382,000 in 2023-24 and ongoing to address an increase in consumer complaints, engage in settlement proceedings, and enforce consumer genetic privacy pursuant to Chapter 191, Statutes of 2021 (SB 41). SB 41 would establish the Genetic Information Privacy Act, which would require a direct-to consumer genetic testing company, as defined, to provide a consumer with certain information regarding the company's policies and procedures for the collection, use, maintenance, and disclosure, as applicable, of genetic data, and to obtain

a consumer's express consent for collection, use, or disclosure of the consumer's genetic data, as specified.

13. Reproductive Health Care Services (AB 1356). The Governor's Budget proposes \$879,000 General Fund and 4 positions in 2022-23 and \$671,000 in 2023-24 and ongoing to implement new data reporting requirements, prepare an annual report that details anti-reproductive healthcare rights violations and criminal offenses, and provide legal guidance to state and local entities pursuant to Chapter 191, Statutes of 2021 (AB 1356).

14. Sentencing: Resentencing to Remove Sentencing Enhancements (SB 483). The Governor's Budget proposes \$794,000 General Fund limited-term in 2022-23 and \$768,000 in 2023-24 to address increased resentencing hearings pertaining to initial sentencing enhancements pursuant to Chapter 728, Statutes of 2021 (SB 483). SB 483 effective 2022-2023 will repeal of sentence enhancements for prior prison or county jail felony terms and for prior convictions of specified crimes related to controlled substance retroactively.

15. Sex Offender Registration Re-tiering. The Governor's Budget proposes \$4.5 million General Fund in 2022-23 and \$2.2 million in 2023-24 and ongoing to support previously established positions which are required on an ongoing basis to address the continued workload growth that has been generated by the mandates outlined in Chapter 541, Statutes of 2017 (SB 384). There are currently 140,000 sex offender registrants in the state database, all of whom will have to be assigned by the CSOR into one of the three tiers before January, 2023. SB 384 required the DOJ to develop new policies, procedures, business processes, workflows, functionality and modules to train the courts, district attorneys, and law enforcement entities on the new policies, procedures, and system changes necessary to support the SB 384 tiering and petition termination requirements. The DOJ received the necessary position authority for the permanent positions from the 2018 Budget Act and 2019 Budget Act, but only limited-term funding which expires June 30, 2022.

16. Firearms IT System Modernization Project. The Governor's Budget requests \$5.19 million Dealer Record of Sale Special Account in 2022-23 to plan and analyze the efforts necessary to modernize DOJ's firearms systems. This request will support the continuation of the California Department of Technology Project Approval Lifecycle Framework, to define the solution requirements, develop solution procurements, baseline project, and obtain project approvals. The DOJ has built and operates 17 firearms information technology systems, and an estimated 34 business processes, in response to the needs of the firearms legislative mandates in California.

17. Registry of Charitable Trusts Workload. The Governor's Budget proposes \$1.4 million Registry of Charitable Trusts Account and 10 positions in 2022-23, \$1.3 million and 11 positions in 2023-24, \$1.4 million and 12 positions in 2024-25, and \$1.4 million and 13 positions in 2025-26 and ongoing to support increased workload from increased registrations and delinquency reduction. The Registry's workload has increased in the last four years. Every month, the Secretary of State (SOS) authorizes the formation of 800 new charities. At current staffing levels, the Registry can only process 468 applications a month. Based on weekly reports from the SOS and the Franchise Tax Board, it is estimated that there are approximately 133,119 unregistered charities

operating in California in violation of Gov. Code Sections 12585 and 12596. Currently, the Registry manages over 119,847 registered organizations. Of those organizations 53,135 are delinquent in their annual filings and 65,344 are current. The Registry has also identified 133,119 unregistered organizations.

18. Replacement of the License 2000 System. The Governor's Budget proposes \$902,000 Gambling Control Fines and Penalties Fund in 2022-23 to support continued Project Approval Lifecycle (PAL) efforts related to the replacement of the Bureau of Gambling Control's License 2000 System. Maintaining the existing system, if it is even possible to locate resources (staff/contracts), would result in costly ongoing contractual obligations that could increase annually due to the current technology being obsolete and potential down times/system failures.

19. Tribal Nation Grant. The Governor's Budget proposes \$137,000 Indian Gaming Special Distribution Fund in 2022-23 and ongoing, and 1 permanent position, to comply with mandated duties associated with the Tribal Nation Grant Fund Program. This is a new program with no previous workload. There are two categories of grants that can be awarded to the tribes: an equal distribution grant of a pre-determined amount and regular grants that are dependent on the applicant's request. A large number of applications are expected to be received for consideration of both types of grants. In addition, Government Code section 12019.65, subdivision (f) mandates audits of the use of these funds, in accordance with processes developed by the Tribal Advisor and Panel.

Staff Recommendation: Hold Open.

8940 MILITARY DEPARTMENT

ISSUE 6: VARIOUS BUDGET PROPOSALS

1. Consolidated Headquarters Complex. The Governor's Budget proposes \$158.5 General Fund million to pay off the Pooled Money Investment Account (PMIA) loan that is currently outstanding for the construction phase of the Consolidated Headquarters Complex in Sacramento. The project is expected to be complete in late 2022 and will bring together staff who are currently scattered throughout locations in the greater Sacramento area into a unified location. This project was authorized for total funding of approximately \$155.7 million through the Public Buildings Construction Fund (lease revenue bond financing), including \$141.9 million in the Budget Act of 2017, with additional augmentations of \$13.8 million in 2020. To finance projects funded by the Public Buildings Construction Fund, the State Public Works Board typically provides an interim loan for the construction phase of a project, then issues tax-exempt lease revenue bonds upon project completion. Federal tax code for the issuance of tax-exempt bonds requires, among other things, that bonds must be issued within three years of initial project expenditures. Due to significant delays in the construction completion schedule, this project no longer qualifies for tax-exempt financing, and would likely require the issuance of taxable bonds, which could significantly increase the cost of financing. This request will eliminate the need to issue costlier bonds, resulting in debt service savings of approximately \$120 million over the 25-year life of the bonds. This request will reimburse the following costs related to the outstanding interim loan: \$155.7 million for project costs, \$2.8 million for interest costs, and \$48,000 for administrative fees associated with the interim financing provided from the PMIA.

2. Consolidated Headquarters Complex Reappropriation. The Governor's Budget proposes reappropriation of the unencumbered balance of Public Buildings Construction Fund (lease revenue bond financing) for the continuing Design-Build phase of the Consolidated Headquarters Complex (CHQC) project in Sacramento. The purpose of this request is to continue the appropriation period through project completion, which is anticipated in fall 2022.

3. State Information Technology Network—Phase 3. The Governor's Budget proposes 11 positions and \$3.1 million General Fund in 2022-23, and \$2.1 million General Fund annually thereafter, to continue the development, implementation, and maintenance of its State Information Technology Network. The Military was granted nine positions and \$3.9 million General Fund (\$2.8 million ongoing and \$1.1 million one-time) in the 2020 Budget. An additional 11 positions and \$2.7 million General Fund (\$2.1 million ongoing and \$0.6 million one-time) was provided in the 2021 Budget.

4. State Personnel Staffing. The Governor's Budget proposes 4 positions and \$479,000 General Fund in 2022-23, and \$475,000 General Fund annually thereafter to provide the administrative staff capacity to meet the increase in requirements, reduce administrative errors in classification, payroll, benefits, accruals, etc., and ensure compliance with state policies and regulations.

5. Enhancing and Expanding Fire Crews (Operation Rattlesnake). The Governor's Budget proposes 15 positions and \$39.9 million General Fund in 2022-23, and \$41.3 million General Fund annually thereafter, to convert 13 Type I hand crews currently operating on temporary COVID-19 Federal Emergency Management Agency (FEMA) funding and seasonal reimbursement contracts with California Department of Forestry and Fire Protection (CAL FIRE) into 14 Type I, year-round hand crews that conduct vegetation management, hazardous fuel reduction projects, and wildland fire suppression. CMD maintains a reciprocal cooperative agreement with the foresting agencies that defines the force packaging and procedures for CMD activations to a wildland fire. In 2019, CAL FIRE partnered with CMD to develop full-time year-round concept for hand crews, forming Joint Task Force Rattlesnake. Joint Task Force Rattlesnake originally consisted of five hand crews, formed by the Governor's General Order 2019-01, Executive Order N-05-19, to assist in the prevention of wildfires in the State of California and assist with the completion of 35 priority fuel reduction projects. After the successful implementation of Joint Task Force Rattlesnake and recognizing the need for additional hand crews, the Budget Act of 2020 provided CAL FIRE funding to support 10 CMD crews to operate for six months out of every year through an inter-agency agreement. This funding was designed to give CAL FIRE fuels mitigation assistance and temporary help Fire Captain and Firefighter positions to supervise and support those crews.

Staff Recommendation: Hold Open.

5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

ISSUE 7: VARIOUS BUDGET PROPOSALS

1. CA Health Care Facility (CHCF), Stockton: Facility B Individual Exercise Yards.

The Governor's Budget requests \$2.04 million to construct 10 individual exercise yards in Facility B of CHCF to allow maximum custody patients receiving inpatient mental health treatment to participate in out-of-cell recreation therapy. The total estimated cost of the project is \$2.578 million.

2. CA State Prison Corcoran: Correctional Treatment Center Individual Exercise Yards.

The Governor's Budget requests \$381,000 General Fund to design two individual exercise yards to allow maximum custody Mental Health Crisis Bed patients receiving inpatient mental health treatment to participate in out-of-cell recreation therapy. The total estimated project cost is \$1.836 million.

3. CA State Prison, Corcoran: Radio Tower and Equipment Vault.

The Governor's Budget requests \$806,000 to design a radio communications system to support a new radio tower and a new radio communications vault to support radio communications between Corcoran State Prison and the California Substance Abuse Treatment Facility.

4. CA State Prison, Los Angeles: Medication Preparation Room Unit D5.

The Governor's Budget \$3.035 million to construct a medication preparation room in housing unit D5 to provide timely patient access to medication in compliance with *Plata*. The total estimate project cost is \$3.66 million.

5. CA State Prison, Folsom: New Cognitive Behavioral Treatment Classrooms and Reappropriation:

The Governor's Budget requests a reappropriation of \$14.42 million for the working drawings and construction phase to construct three classroom buildings to support the Cognitive Behavioral Intervention program. Funding will revert for this project on June 30, 2022, providing insufficient time to finalize invoices. The total estimated project costs is \$15.37 million.

6. CA Substance Abuse Treatment Facility: Air Cooling Facility F and G.

The Governor's Budget requests \$13.39 million for the construction phase to install air cooling systems with required fire/light/safety improvements in facility F and G housing units. The total estimated project cost is \$16.09 million.

7. Chuckawalla Valley State Prison: New Potable Water Wells.

The Governor's Budget requests \$1.12 million to design two new groundwater wells to supply potable water at Chuckawalla and Ironwood State Prison. The total estimated project cost is \$12.26 million.

8. Correctional Training Facility, Soledad. Health Care Facility Improvement Program—Specialty Care Clinic Reappropriation:

The Governor's Budget requests a reappropriation of \$1.61 million so that the funding remains available to complete the construction of the project which has been extended due to design errors and omissions.

9. Folsom State Prison: Water Storage Tanks Reappropriation: The Governor's Budget requests a reappropriation of \$1.4 million due to coordination needed during the construction phase of electrical, fire alarm, and controls, extending the construction phase.

10. Ironwood State Prison: Heating, Ventilation, and Air Conditioning System—Lease Revenue to General Fund. The Governor's Budget requests \$182.4 million General Fund to pay off a Pooled Money Investment Account (PMIA) loan that is currently outstanding for the construction phase of the Ironwood State Prison, Blythe: Heating, Ventilation, and Air Conditioning System project. This project was authorized for total funding of approximately \$178 million through the Public Buildings Construction Fund (lease revenue bond financing) in the Budget Acts of 2014 and 2021. To finance projects funded by the Public Buildings Construction Fund, the State Public Works Board typically provides interim financing for the construction phase of a project, then issues tax-exempt lease revenue bonds as permanent project financing. Federal tax code for the issuance of tax-exempt bonds requires, among other things, that bonds must be issued within three years of initial project expenditures. The project no longer qualifies for tax-exempt financing, and would likely require the issuance of taxable bonds, which could significantly increase the cost of financing. This request will eliminate the need to issue costlier taxable bonds, resulting in debt service avoidance of approximately \$140 million over the 25-year life of the bonds. This request will reimburse the following costs related to the outstanding interim loan: \$178.2 million for project costs, \$4.1 million for interest costs, and \$70,000 for administrative fees associated with the interim financing provided from the PMIA.

11. Monterey County AB 900 Jail Project—Lease Revenue Bonds to General Fund. The Governor requests \$82.9 million to pay off the Pooled Money Investment Account (PMIA) loan that is currently outstanding for the preliminary plans, working drawings, and construction phases of the Monterey County Jail project. The project includes the design and construction of an addition to the existing jail in the City of Salinas. The expansion will include housing and program space and provide approximately 600 beds. This project was established and authorized for total funding of approximately \$80 million through the Public Buildings Construction Fund (lease revenue bond financing) in a State Public Works Board (SPWB) action on September 13, 2013 through Government Code Sections 15820.91-15820.917. To finance projects funded by the Public Buildings Construction Fund, the SPWB typically provides an interim loan for the project, then issues tax-exempt lease revenue bonds upon project completion. Federal tax code for the issuance of tax-exempt bonds requires, among other things, that bonds must be issued within three years of initial project expenditures. Due to significant delays in the construction completion schedule, this project no longer qualifies for tax-exempt financing, and would likely require the issuance of taxable bonds, which could significantly increase the cost of financing. This request will eliminate the need to issue costlier bonds, resulting in debt service avoidance of approximately \$45 million over the 15-year life of the bonds.

12. San Quentin State Prison: New Boiler Facility Reappropriation. The Governor's Budget requests reappropriation of \$2.876 million for the construction phase that has been delayed due to COVID-19.

13. Sierra Conservation Center: Health Care Facility Improvement Program-Central Health Services Building Renovation Reappropriation. The Governor's Budget

requests reappropriation of \$1.94 million to complete the construction part of this project due to a delay caused by design errors and omissions.

14. Valley State Prison: Arsenic and Manganese Removal Water Treatment Plant Reappropriation. The Governor's Budget requests reappropriation of \$375,000 due to the need for additional water constituent analysis as a result of drought conditions during the working drawings phase.

Staff Recommendation: Hold Open.

0250 JUDICIAL BRANCH

ISSUE 8: VARIOUS BUDGET PROPOSALS
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1. Trial Court Operations Adjustment. The Governor's Proposal includes an \$84.2 million augmentation for Trial Court Operations which is a 3.8% increase in funding to adjust for inflation.

2. Branchwide IT Modernization. The Governor's Budget proposes 27 positions, and \$34.7 million General Fund in 2022-23; 15 additional positions and \$38.8 million General Fund in 2023-24; 8 additional positions and \$40.4 million General Fund in 2024-25 and total of 50 positions and \$40.3 million ongoing funding to support Judicial Branch modernization and stabilization efforts for the trial courts, Courts of Appeal, and the Supreme Court. The funds will be used for the recruitment of management, project management, engineers, development architects, and security staff positions. From 2016-17 through 2021-22, the budget provided a total of \$149.4 million for modernization projects including digitization of court records, a statewide electronic filing program, IT modernization, and the online adjudication of traffic violations. A survey conducted with the 58 county trial courts in 2020 identified the following top five priorities: (1) Remote Appearance Technology; (2) Digital Court Records; (3) Next Generation Cloud Services; (4) Digital Services; and, (5) Data Driven Forms.

LAO Analysis and Recommendations. The proposal for a new Judicial Branch Information Security Office seems reasonable. Court operations are increasingly reliant on technology to operate effectively. Additionally, the courts receive, access, and process information that can be confidential or private. Accordingly, it is reasonable for the judicial branch to have an office dedicated to addressing information security issues across the state, particularly since this minimizes the need for such expertise at each individual court. Second, the proposal requesting direct allocations to and related staffing for the state courts and trial courts seems reasonable. The requested funding would provide individual courts with a small amount of annual resources that could help address more routine and/or smaller modernization efforts. These allocations recognize that each court's modernization needs may not be the same. Additionally, the funding provides a certain amount of flexibility to individual courts to adjust to address the most immediate needs as they arise (such as sudden equipment failure). The staffing would also provide the state courts with sufficient capacity and expertise to oversee the effective completion of modernization projects.

Judicial Branch Modernization Program Reduces Legislative Oversight, but Could Have Some Benefits as Well. The proposed Judicial Branch Modernization Program reduces legislative oversight of technology projects. This is because it lacks the same oversight mechanisms that exist when funding is allocated by the Legislature to specific projects through the annual budget process. Allocating funding through the budget process to specific projects or providing limited-term funding for specified purposes allows the Legislature to ensure that funded projects are of high priority and reflect statewide policies and priorities for court processes and procedures. This approach also allows the Legislature to assess whether each budget request accurately identifies a problem or need and presents a cost-effective solution, clear outcome expectations, complete and

accurate costs, a comprehensive and reasonable implementation plan, and clear metrics to monitor the implementation of the solution. In addition, this approach allows the Legislature to take certain steps—such as requiring a project be piloted first, approving only partial funding, or requiring the reporting of certain information on a regular basis—to ensure it has sufficient oversight of projects. Such steps can be tailored specifically to individual projects.

As proposed by the Governor, this level of oversight would not occur over the projects that would be funded through the proposed Judicial Branch Modernization program. This is because Judicial Council would have full discretion to allocate funding to branchwide projects and court-specific projects based on its priorities. While Judicial Council has developed a fairly robust process for identifying, approving, and conducting oversight of technology projects, those processes do not generally allow for legislative oversight or input unless the request is submitted for consideration through the budget process. We note that the level of annual funding proposed by the Governor for the new program would likely result in most of the funded projects being smaller in scope. However, because this funding is ongoing, it could enable the funding of multiyear projects—including projects whose total costs could reach into the millions of dollars.

While the specific structure of the Governor’s proposal raises concerns, we acknowledge that there are a few advantages to providing some amount of discretionary funding for branchwide modernization projects selected by Judicial Council during the course of a fiscal year. For example, such an approach would give Judicial Council the flexibility to respond quickly as needs arise across the branch. We note that the discretion provided to Judicial Council to allocate \$25 million in modernization funding in 2020-21 likely helped courts more rapidly change their business practices to operate during the pandemic. Additionally, such an approach could eliminate the need for the Legislature to consider budget requests each year for relatively small technology projects.

Recommendations

Approve Proposals for New Judicial Branch Information Security Office (\$3.7 Million) and Direct Allocations to State and Trial Courts (\$7.3 Million). We recommend the Legislature approve the proposals for the new Judicial Branch Information Security Office as well as the direct allocations to the state and trial courts. As discussed above, the Judicial Branch Information Security Office would address an important judicial branch information security need while the direct allocations to the state and trial courts would provide a small amount of ongoing, flexible funding for technology modernization efforts at each individual court based on their needs.

Modify Proposed Judicial Branch Modernization Program to Ensure Appropriate Legislative Oversight (\$23.5 Million). To the extent that providing some discretionary funding for branchwide modernization projects to be selected by Judicial Council is a legislative priority, we recommend that the Legislature modify the proposed Judicial Branch Modernization Program to increase legislative oversight. Specifically, we recommend the Legislature specify limits on the types of projects that can be funded or set a total per-project cost limit on projects that can be funded. This would limit the number or types of projects that could be pursued without legislative oversight through the annual state budget process. We also recommend requiring annual reporting from Judicial

Council on what projects are expected to receive funding through the program each year and how program funds were actually used in the prior year. This would allow the Legislature to conduct regular oversight of the program, provide input prior to allocation of program funds, and identify areas where legislative action could be merited. Depending on the specific modifications made to the Governor's proposal, the Legislature will want to adjust the amount of funding accordingly.

Staff Recommendation: Hold Open.

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