

AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 5 ON PUBLIC SAFETY

ASSEMBLYMEMBER MIA BONTA, CHAIR

MONDAY, MARCH 27, 2023
2:30 P.M., 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.

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 DEPARTMENT OF CORRECTIONS AND REHABILITATION**ISSUE 1: PAROLE HEARING PROCESS**

This item consists of two information subpanels related to CDCR's parole hearing process.

Subpanel 1: Promoting Equity in the Parole Hearing Process**PANELISTS**

- Caitlin O'Neil, Legislative Analyst's Office
- Jennifer Shaffer, Executive Officer, Board of Parole Hearings, CDCR
- Keith Wattley, Executive Director, Uncommon Law
- Allison Hewitt, Department of Finance

BACKGROUND

The Legislative Analyst's Office (LAO) has provided a handout that summarizes their report released in January of 2023 titled, "Promoting Equity the in Parole Hearing Process" which includes a background on the parole hearing process.

Uncommon Law. Uncommon Law is a non-profit organization that supports people navigating the state's parole process through trauma informed legal representation, mental health counseling, legislative and policy advocacy, and in-prison programming led by individuals who have been through the process themselves. The organization provides pro-bono legal representation and advocacy to clients in CDCR. In the 2019 Budget Act, Uncommon Law was provided \$4 million one-time funding to implement a pilot program to deliver hearing preparation services to parole candidates.

STAFF COMMENT

The Subcommittee is in receipt of letters from stakeholders related to Subpanel 1.

Correspondence from Professor Kristen Bell (University of Oregon) whose ongoing research of 25,000 parole hearing transcripts from 2010-2019, focuses on parole-release decisions, particularly in the state of California.¹ The findings include:

- From 2010 to 2019, in every year except 2016 and 2017, Black parole candidates had the lowest grant rates. In 2016 and 2017, Latino candidates had the lowest grant rates.

¹ The research is ongoing and includes a larger number of transcripts, as well as variables other than race. The information provided to the Subcommittee focus on the 25,838 transcripts during the 2010-2019 period where the overall grant rate was 30%.

- Using the same data, when considering only initial hearings, Black parole candidates were about 20% less likely than white candidates to be granted parole.
- When various indicators of rehabilitation are held constant across racial groups, including participation in programs or education attainment, the grant rate of Black parole candidates are lower.
- The data, while it shows there is significant risk of racial inequity in parole outcomes, does not necessarily show that race causes differences in parole outcomes. It is unclear as to what is causing the pattern of lower rates but the research names the following possible reasons:
 - Implicit bias among parole commissioners.
 - Implicit bias among the forensic psychologists that may assign higher risk scores to Black parole candidates.
 - Black parole candidates are less likely to retain private attorneys.

In addition, correspondence from Michael Brodheim (Legal Assistant, San Francisco Public Defender's Office, and also went through CDCR's parole process), included comments based on CDCR parole hearing data from July 1, 2019 to June 30, 2020, covering 6,635 hearings (received via a Public Records Act). The comments included the perception that the identity of the presiding parole commissioner may have an impact on the outcome of the parole hearing, that Black parole candidates are least likely granted parole, and Black parole candidates benefited the least from the Youth Offender Parole program.

Subpanel 2: Medical Records (ISUDTP) and the Parole Hearing Process

PANELISTS

- Jennifer Shaffer, Executive Officer, Board of Parole Hearings, CDCR
- Don Specter, Executive Director, Prison Law Office
- Allison Hewitt, Department of Finance

BACKGROUND

Medical Records and Parole Hearings. CDCR's regulations include Health Insurance Portability and Accountability Act (HIPAA) protections for incarcerated people against the public disclosure of medical information, absent a voluntary signed disclosure using CDCR form 7385. Medical records, including records pertaining to participation in the Integrated Substance Use Disorder Treatment Program, are available to parole commissioners during their parole hearing deliberations.

Integrated Substance Use Disorder Treatment Program (ISUDTP). CDCR has estimated that nearly two-thirds of their current institutional population has a substance use disorder. CDCR reported 51 overdose deaths, primarily from opioids, in 2019, which was the highest overdose mortality rate for a state prison system in the United States.²

² Integrated Substance Use Disorder Treatment Report for 2019 through 2021. California Correctional Health Care Services, CDCR.

Substance use disorder, and the accompanying medical complications including heart and lung disease, stroke and cancer, have resulted in significant increase in health care costs in the prisons. As part of the 2019 Budget Act, the Legislature provided funding to rollout a statewide Integrated Substance Use Disorder Treatment Program (ISUDTP) at all state prisons in recognition of the severity of substance use disorder and its impact on health and recidivism. As of January 2022, CDCR had screened more than 64,690 people for substance use disorder, provided assessments for an additional 38,638, and prescribed medication assisted treatment (MAT) to 22,558 individuals. Nearly 9 out of 10 incarcerated people offered MAT accepted the treatment. According to CDCR, preliminary information shows the positive impact ISUDTP had had on overdoses. From 2019 to 2020, the rate of overdose deaths have declined by 58%.

STAFF COMMENT

According to the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, "protecting the confidentiality of patient information is critical in substance use disorder treatment. Without adequate protection, clients may avoid treatment if they are concerned their diagnosis or treatment information will be disclosed without their consent."³ Forty-two Code of Federal Regulations Part 2 ("Part 2"), protects the privacy and security of information in any form that would directly or indirectly identify a person as having sought or received substance use disorder (SUD) treatment from a Part 2 program. While Part 2 only applies to Part 2 programs as defined under 42 CFR §2.11 (CDCR is not a Part 2 program), for individuals, whether incarcerated or not, studies have consistently shown that confidentiality and privacy are significant considerations for participation in an SUD program due to the stigma and discrimination associated with SUD and SUD treatment.

Concerns have been raised by stakeholders regarding the accessibility of medical records pertaining to ISDUTP to the parole board and the impact it may have on the incarcerated individual's participation in the program and how information related to the individual's participation may be used in a manner leading to an adverse outcome at a parole consideration hearing.

Parole release decisions rely on a number of factors, which include medical information and a person's substance use history. There are legitimate reasons as to why medical records may be pertinent to assessing a person's release eligibility, particularly as it relates to the level of risk for reoffending, and conditions and reentry supports that the individual may require upon release. Due to the overwhelming number of individuals in state prison that have a substance use disorder and its nexus to recidivism, the need to maximize participation in the treatment program is a shared goal by the Administration and the Legislature. The Subcommittee may wish to consider policies that strike the balance of ensuring the parole board has the relevant information they need for their decision making process, while including safeguards that maximize participation in ISUDTP without fear of an unjustified adverse outcome at a parole consideration hearing.

Staff Recommendation: Hold Open.

³ <https://www.samhsa.gov/about-us/who-we-are/laws-regulations/public-comments-confidentiality-regulations#:~:text=Protecting%20the%20confidentiality%20of%20patient,be%20disclosed%20without%20their%20consent.>

ISSUE 2: CLASS ACTION LITIGATION

The LAO will provide an overview of the major ongoing class action lawsuits against CDCR and CDCR shall provide an overview of the costs associated with class action litigation, including litigation costs and costs for remedial measures.

PANELISTS

- Orlando Sanchez-Zavala, Legislative Analyst's Office
- Dr. Joseph Bick, Director, Division of Correctional Health Care Services, CDCR
- Connie Gipson, Director, Division of Adult Institutions, CDCR
- Allison Hewitt, Department of Finance

BACKGROUND

CDCR is under a number of long standing and still heavily litigated class action lawsuits for a number constitutional violations, violations of federal law, and other policies that endanger the lives of incarcerated people and staff, frustrate the department's own goals towards providing rehabilitation, and ultimately thwart the state's public safety goals in improving outcomes of people in prison and reducing recidivism. Case names are often referred to by the plaintiff's name, as the name of the Governor (defendant) has changed over the years, as many of the cases have persisted for decades. The major class action lawsuits are described in Part One of the Background.

The Subcommittee requested comprehensive information related to litigation costs and the costs for remedial measures related to the various class action lawsuits against CDCR. CDCR provided annual costs and positions for the Office of Legal Affairs from 2015-2016 through 2021-22 and costs for legal services provided by the Department of Justice for the same time period and a table of "litigation specific budget change proposals" from 2016-17 through 2023-24, which includes the proposed "Court Compliance Initiative." This information is described in Part Two of the Background.

Part One: Major Class Action Lawsuits

1. *Coleman v. Newson* (*Coleman*, 912 F. Supp. 1282 (E.D. Cal.1995)). *Coleman* is a federal class action lawsuit filed in 1990 on behalf of incarcerated people who receive mental health care in CDCR. Plaintiffs alleged that inadequate mental care placed people at serious risk of death, injury, and prolonged suffering. In 1995, a federal court found CDCR violated the Eighth Amendment against cruel and usual punishment and that prison officials showed deliberate indifference to the needs of mentally ill incarcerated people. The Court identified six areas that required improvements: (1) screening; (2) treatment programs; (3) staffing; (4) accurate and complete records; (5) medication distribution; and, (6) suicide prevention. CDCR has yet to fully comply with many orders issued by the U.S. District Court for the Eastern District of California. The court issued an injunction requiring comprehensive changes to the prison mental health system, appointed a Special Master to monitor CDCR's compliance with the remedial plan ("Mental Health Services Delivery System Program Guide") CDCR submitted, which the court accepted.

On January 6, 2023, the *Coleman* court invited the United States Attorney General to rejoin the case due to ongoing constitutional violations in the delivery of mental health care, specifically on the lack of progress with mental health staffing, suicide prevention, and insufficient monitoring tools. In its order, the court stated:

“Further delay is particularly likely given that the state has adopted a distracting and costly scorched-earth litigation strategy, prosecuting more than a dozen appeals and mandamus petitions within the last five years alone, none successful. During this same time period, the court has found the state to have engaged in knowing presentation of misleading evidence to the court and its Special Master. While contributing to delay, the state’s litigation strategy also appears to have substantially interfered with the dedicated efforts of many within CDCR itself—from the Secretary to mental health administrators to clinicians—to remedy constitutional violations in good faith. It also appears to have blocked the possibility of further court-convened settlement efforts.”

Chief United States District Judge Kimberly Mueller

Most recently, on February 28, 2023, the state was issued yet another federal court order which fine the state \$1,000 a day for each of the 15 unmet safeguards related to suicide prevention until all of the prisons are in full compliance, beginning April 1, 2023. The federal judge also indicated that she will impose fines for the state’s failure to hire enough mental health professionals.⁴ During an eight year period, more than 200 individuals committed suicide in prisons as CDCR failed to implement the court ordered reforms. A hearing has been set for August to collect more than \$1.7 million in fines that have accumulated since 2017 under a previous order for delays in transferring incarcerated people to state mental hospitals.

2. *Plata v. Newsom (Plata, 445 F. Supp 3d 557).* *Plata* was filed on behalf of all incarcerated people in 2001 regarding an unconstitutional level of healthcare for people in prison, in violation of the Eight Amendment, the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act. A settlement was reached in 2002 but a lack of progress resulted in the state being placed under medical receivership in 2005, which included the court appointment of a Receiver. Judge Thelton Henderson stated that the prison medical system was “broken beyond repair” and that future harm was “virtually guaranteed in the absence of drastic action.” The court waived state law in multiple occasions to allow the Receiver to increase salaries of medical staff and to allow for certain contract bidding requirements to be waived for specific projects. Later, at the suggestion of the Receiver, the Office of Inspector General began inspecting CDCR’s medical care beginning in 2007.

3. *Three Judge Panel.* In November of 2006, *Plata* and *Coleman* plaintiffs filed motions for the courts to convene a three-judge panel pursuant to the United States Prison Litigation Reform Act. They argued that the persistent overcrowding in CDCR prisons prevented CDCR from providing a constitutionally adequate level of healthcare. In July 2007, the federal courts convened a three-judge panel to determine whether prison overcrowding was the primary cause of CDCR’s inability to provide adequate health care and whether a prisoner release order was the only way to remedy this situation. On

⁴ This Subcommittee will be hearing from CDCR psychiatrists on a mental health panel scheduled for a hearing on April 24.

August 4, 2009, the three-judge panel declared that overcrowding was the primary reason for CDCR's inability to provide constitutionally adequate healthcare and further required CDCR to reduce overcrowding to no more than 137.5% of the design capacity of the prisons within two years. The state was required to submit a plan to the court on how it would achieve this goal. The Schwarzenegger administration submitted a plan that included the construction of new prisons, expanded to use of contract facilities, and changes in parole but the court rejected the plan. This plan was rejected by the court and an updated plan that included additional sentencing law changes was submitted. On January 12, 2010, the three judge panel issued a final ruling that the state's revised plan met the requirements to reduce prison overcrowding but left it up to the state to decide which specific measures it would implement. The three-judge panel stayed implementation of the ruling as the state appealed the decision to the United States Supreme Court. The Supreme Court upheld the ruling and in his opinion, Justice Kennedy wrote:

"As a consequence of their own actions, prisoners may be deprived of rights that are fundamental to liberty. Yet the law and the Constitution demand recognition of certain other rights. Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment....Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society."

Following this ruling, a series of actions were taken, including the use of out of state prison bed contracts, in-state private and public contract beds, the construction of additional beds, 2011 Public Safety Realignment that realigned the responsibility of people convicted of non-serious, non-violent, and non sex offenses to county jails, sentencing reforms, increasing credit earning opportunities through the completion of rehabilitation programs, etc. CDCR has been in compliance with the population court order since 2015. As of March 8, 2023, the state's adult prison population occupies 110.9% of design capacity.

4. *Armstrong v. Newsom* (*Armstrong*; 942 F. Supp. 1252 (N.D. Cal. 1996), *aff'd* 124 F.3d 1019 (9th Cir. 1997)). *Armstrong* is a federal class action lawsuit filed against CDCR in 1994 on behalf of people with disabilities, including those with vision, kidney, hearing, mobility, speech, and or learning disabilities in CDCR custody. The lawsuit alleged that people with disabilities did not have equal access to programs and services, both in prison and while on parole, as required by the Americans with Disabilities Act (ADA). The following describes some of the conditions that were the basis of the lawsuit:

- During hearings before the Board of Prison terms, one incarcerated person was told to leave his wheelchair behind to crawl upstairs to attend his hearing; another incarcerated person who was deaf was shackled during his hearing and could not communicate with his sign language interpreter; and another incarcerated person who was blind said he was offered no assistance with complicated written materials. A federal District Court judge issued an injunction which was upheld by the Ninth Circuit Court of Appeals in 2001.

- Deaf people have been denied access to educational and rehabilitative programs, which places them at a disadvantage during the parole hearings, resulting in serving a longer period of time than their hearing counterparts. Plaintiffs' attorneys demanded the hiring of additional staff interpreters and for deaf individuals to be housed in program rich institutions.

In 1999, CDCR negotiated a settlement in the lawsuit and developed the Armstrong Remedial Plan (ARP) to address the areas of noncompliance. The federal court ordered CDCR to adhere to the ADA, to provide disability accommodations, and to ensure that the prisons are accessible for class members. Despite the longstanding lawsuit and remedial plan, the case continues to be heavily litigated as the courts have found CDCR in violation of both the ADA and the ARP. The following are two recent examples of ongoing litigation related to Armstrong:

- In 2020, a motion was filed that challenged CDCR's failure to safely house and provide accommodations to people with disabilities during the COVID-19 pandemic. Class members at the California Institution for Men were placed in inaccessible settings and individuals that had never tested positive of COVID-19 who were in their 60s, 70s, and 80s were housed in crowded dormitory settings with individuals with confirmed, active COVID-19 cases. The court issued an order requiring CDCR to establish and maintain safe, accessible housing, including for purposes of medical isolation and quarantine.
- Armstrong plaintiffs filed a series of motions in court, beginning in 2020⁵, related to allegations of abuse and violence by CDCR staff, retaliation or threats of retaliation for filing staff complaints, unequal access to job and program assignments for people with disabilities, statewide durable medical equipment reconciliation and accuracy of disability tracking information, insufficient accommodations for blind and low vision, and deaf class members, etc. In addition, some class members alleged instances where correctional officers at one prison charged people with false rules violation reports in retaliation. The resulting court orders primarily covered six prisons, which include the installation of fixed audio video surveillance systems (AVSS), the usage of body cameras, and a new staff complaint process. The United States Court of Appeals for the Ninth Circuit recently affirmed all portions of the district court's orders related to the staff complaint process and video surveillance. In the opinion, the court mentioned the "Defendants' prior failures to improve their accountability systems in the absence of specific, court-ordered instructions," among many other reasons to uphold the specific measures. AVSS is in the process of being implemented at other prisons and the Subcommittee has a budget proposal before it to complete the AVSS system at the remaining prisons.⁶ The staff complaint process at the 6 prisons under the court order differ from the staff complaint process that exists at the rest of the prisons. This was a change that CDCR made through their regulations process in the fall of last year. This has raised significant concerns for the *Armstrong* attorneys.

⁵ *Armstrong* attorneys testified in the Assembly Budget Subcommittee No. 5 hearing on March 6, 2023, and stated that issues with the staff complaint process had been raised several times beginning in 2005 with CDCR; however, changes with the policy only happened following the 2019 Inspector General's Report (that also occurred upon the urging of the Prison Law Office to CDCR) and the court filings by *Armstrong* attorneys in 2020.

⁶ This budget proposal was discussed at the March 6, 2023 Assembly Budget Subcommittee No. 5 hearing.

5. Clark v. California (Clark). *Clark* is a federal class action lawsuit filed in 1996 on behalf of incarcerated individuals with developmental disabilities. The lawsuit alleged that CDCR violated the ADA, section 504 of the Rehabilitation Act, and the Eighth and Fourteenth Amendments of the U.S. Constitution. The Clark Remedial Plan (CRP) was developed through settlement negotiations between the parties and was approved by the court in 2001. The CRP outlines CDCR's Developmental Disability Program (DDP), which is the department's plans, policies, and procedures for incarcerated individuals with developmental disabilities to ensure that they are appropriately identified and housed; ensure the safety of those with victimization concerns; ensure equal access to CDCR's programs, services, and activities; and provide accommodations in due process events.

6. Ashker v. Newsom (Ashker). *Ashker* is a class action lawsuit that was originally filed in 2009 and subsequently amended in 2012 on behalf of incarcerated individuals who were held in long term solitary confinement in the Security Housing Unit (SHU) at Pelican Bay State Prison. The plaintiffs alleged that long term solitary confinement (22 to 24 hours a day in a windowless cell for years and for some, over ten years or more) violated the Eighth Amendment's prohibition against cruel and unusual punishment and that the absence of meaningful review for SHU placement violates the prisoners' rights to due process. While this case reached a settlement in 2015, the court ordered additional monitoring due to ongoing constitutional violations in January 2019 and February of 2022. On January 5, 2023, the court found that CDCR engaged in retaliatory conduct against one of the original plaintiffs, Mr. Ashker, by placing him in administrative segregated housing since 2017, despite having been approved by the prison's institutional classification committee to remain in the general population. The court further ordered that the plaintiffs and CDCR meet regarding potential remedies within thirty days and to file statements to the court regarding the outcomes of that meeting within forty five days.

Part Two: Costs for Litigation Defense and Remedial Measures provided by CDCR and the Department of Finance

Legal Services. CDCR has positions and expenditures for legal services through its Office of Legal Affairs (OLA) and fees that are billed to CDCR from the Department of Justice (DOJ). OLA, as of 2021-22, has 206.6 positions and an annual budget of \$83.39 million. According to CDCR, for the last five years, the DOJ has billed CDCR for over 300,000 hours of legal services each year, with the highest in 2021-22 at 337,000 hours. OLA resources and DOJ fees cover costs associated with all the various types of litigation related activities CDCR manages, including the class action lawsuits outlined in Part One. For class action cases, in addition to OLA and DOJ, CDCR has also used outside contract counsel.

As part of the 2022 Budget Act, CDCR is required to do the following:

The Department of Corrections and Rehabilitation shall report spending on class action lawsuits against the department to the budget committees of both houses and the Legislative Analyst's Office by January 31 of each year for five years beginning in 2023. At a minimum, this report shall include spending for each lawsuit in the most recently completed fiscal year on all litigation activities (including, but not limited to, the costs of the department's legal staff time,

payments to outside counsel for legal services, and payments to plaintiffs, monitors, and court experts).

The report submitted on January 31, 2023 included the following information:

- During fiscal year 2021-22, there were 18 putative and certified class actions pending against CDCR. Seven of the 18 cases are in the remedial and monitoring phase having been previously settled, 4 cases have been certified by the courts and are still in the litigation phase, and the remaining 7 are not yet certified by the courts.
- In the 7 settled class action cases, which are all in federal court, the parties have either agreed to a remedial plan that is court approved and ordered, or the court has found against CDCR and order CDCR to devise and implement a remedial plan.
- In the past five years, the state has spent **\$142.78 million** on direct legal costs for the four most expensive class action lawsuits: *Coleman, Plata, Armstrong, and Ashker*.

The Prison Litigation Reform Act (PLRA) entitles the plaintiffs' counsel to attorneys' fees in any action brought by an incarcerated individual regarding prison conditions, in which they are deemed to be the prevailing party. Attorneys' fees are limited to those that are directly and reasonably incurred in proving a violation of the plaintiffs' rights and in enforcing the relief ordered. Similarly, the Americans with Disabilities Act states that a court may, in its discretion, allow the prevailing party a reasonable attorney's fee, including litigation expenses and costs. As such, **of the \$34,147,798⁷ spent on all of its class action legal expenditures in FY 2021-22, nearly 50% or \$16,741,645 was spent on plaintiffs' attorneys' fees** in the seven class action cases that are currently in the remedial phase, which includes attorneys' fees for activities such as monitoring tours, client advocacy, negotiations (including those ordered by the court), drafting pleadings, reviewing documents, conferring with clients, as well as the fees of experts retained by plaintiffs' counsel.

Additional Costs Related to Class Action Litigation. The following information and three tables were submitted by CDCR in response to the Subcommittee's request for comprehensive information related to litigation costs and the costs for remedial measures related to the various class action lawsuits against CDCR. According to CDCR, the first two tables on the next page illustrate total expenditures for all legal activities, not just for costs for class action lawsuits and the third table on page 12 is, according to the CDCR:

"a list of examples of budget proposals associated with various court cases since 2016-17; however, with limited exceptions, such as Armstrong court compliance/continuation, these BCPs were implemented per agreements with the court and were not specifically court-ordered and represent the CDCR's commitment to be proactive in regards to litigation and serving the needs of our unique population. CDCR works collaboratively with the Receiver and the courts

⁷ \$32.99 million was spent on the major class action lawsuits described in this agenda.

to establish and maintain appropriate standards of care. This also includes items such as:

1. *Health Care Facility Improvement Projects.* The state has appropriated a total of approximately \$1.5 billion (General Fund and lease revenue bonds) necessary to deliver medical care in more appropriate clinical settings.

2. *Establishment of a comprehensive Hepatitis C Virus Treatment Program.* In 2018-19, CDCR expanded Hepatitis C treatment to all inmates infected with the disease, regardless of their stage of progression. Funding has been requested based on the estimated patient population; however, CDCR treated approximately 21,100 patients and expended approximately \$515 million between 2016-17 and 2020-21.

3. *Establishment of a comprehensive Integrated Substance Use Disorder Treatment Program (ISUDTP)* was critical to providing appropriate care, particularly in light of the national opioid crisis. In the 2019-20 and 2022-23 BCPs, CDCR expanded ISUDT treatment to provide access for all inmates in need of these services – including Medication-Assisted Treatment and Cognitive Behavior Interventions. As part of the 2023-24 Governor’s Budget proposal, a methodology was introduced to adjust position and funding based on the number of patients in the program. Currently, CDCR is treating approximately 16,000 patients and is projected to expend approximately \$218.6 million in 2022-23.”

Office of Legal Affairs			
Fiscal Year	Actual Positions	Actual Expenditures	Authorized Positions
2015-16	175.8	\$81,658	184.4
2016-17	169.9	\$75,136	201.4
2017-18	168.6	\$55,515	205.7
2018-19	175.2	\$73,871	204.7
2019-20	185.4	\$69,678	186.7
2020-21	194.8	\$75,319	196.7
2021-22	206.6	\$83,386	201.7

DOJ Legal Services	
Fiscal Year	Expenditures
2015-16	\$40,659
2016-17	\$40,659
2017-18	\$40,659
2018-19	\$40,659
2019-20	\$64,803
2020-21	\$67,836
2021-22	\$77,600

Litigation Specific Budget Change Proposals		Litigation	Ongoing Costs and Positions*	
2016-17	Alternative Custody for Males	Sassman	40.0	\$5,961,000
	Receiver: Electronic Health Record System	Various	-57.0	\$5,792,000
	Health Care Access Unit Staffing	Various	102.0	\$12,212,000
	Receiver: Supervisory Staffing Model	Plata	68.6	\$12,656,000
2018-19	Mental Health Bed Management	Coleman	115.9	\$19,889,000
	Receiver: Electronic Health Record System	Various	0.0	\$7,100,000
2019-20	ADA Improvements	Armstrong	0.0	\$4,187,000
	Janitorial Services at CHCF	Plata	0.0	\$6,117,000
2020-21	Intake Cell Retrofits for Suicide Prevention**	Coleman	0.0	\$3,840,000
2021-22	Armstrong Court Compliance (AVSS)	Armstrong	34.9	\$6,928,000
	Armstrong Court Compliance Continuation (AVSS)	Armstrong	152.1	\$27,960,000
	Statewide Process for UOF/PREA	Various	40.0	\$7,921,000
	Psychiatric Inpatient Program Integration and Standardization	Coleman	261.4	\$35,881,000
2022-23	ADA Facility Improvements**	Armstrong	0.0	\$22,154,000
	Mental Health Data Analysis and Informatics	Coleman	22.0	\$3,071,000
Proposed 2023-24	Court Compliance Initiative	Clark/Armstrong	2.0	\$496,000
Total Positions/Dollars			781.9	\$182,165,000

* Unless noted, positions and funding included in this column represent the ongoing amount upon full implementation of the BCP. Please refer to the individual BCPs for initial/one-time costs.

** One-time costs only

Proposed Funding

1. Court Compliance Initiative. The Governor's Budget proposes \$500,000 General Fund and two positions in 2023-2024 and ongoing to support court-mandated remedial measures associated with the *Clark* and *Armstrong* class action lawsuits at institutions with the highest populations of incarcerated persons with disabilities. The workload associated with the quarterly interviews of Armstrong class members required by the new remedial measures at RJ Donovan and the 5 prisons ordered for the Armstrong Remedial Plan is a new workload for the Office of Ombudsman (OMB).

2. DOJ Legal Service Fees. The Governor's Budget proposes \$3.7 million General Fund in 2023-24 and ongoing for DOJ Legal Services fees. CDCR has an ongoing liability to pay for DOJ attorney, paralegal, auditor, and research analyst billable hours for not only current litigation, where CDCR is the client agency, but also for ongoing class action litigation related to cases such as *Armstrong*, *Coleman*, and *Plata*. Over the last five years, the DOJ has billed CDCR for over 300,000 hours of legal services on an annual basis. In 2021-22 CDCR was billed for 337,000 hours, the highest number of hours billed in the past five years. The requested funding would bring the total appropriation to \$73 million annually.

Previous Resources. The 2019 Budget Act included Control Section 5.00 to address the impact of updated DOJ legal service hourly billing rates on client agencies' appropriations, effective on September 1, 2019. In addition, CDCR's budget was augmented by \$14.4 million in 2019-20, and \$17.3 million in 2020-21 and ongoing. CDCR has permanently redirected \$9.9 million from its Administrative budget on an ongoing basis in the 2019 Budget Act. In addition, the 2022 Budget Act added \$1.5 million ongoing, increasing CDCR's ongoing General Fund for DOJ legal service fees to \$69.4 million.

3. Clark Litigation Compliance. The Governor's Budget proposes \$2.8 million General Fund and 17.0 positions in 2023-2024 and ongoing to support the remedial measures associated with the *Clark* class action lawsuit at institutions with the highest populations of individuals with developmental disabilities. The Strategic Offender Management System (SOMS) is one of CDCR's electronic records systems and provides enterprise-wide online access to individual offender information. According to CDCR, SOMS has had a significant increase of new functionality and enhancements driven by both CDCR and Legislative mandates over the years. *Clark*, *Armstrong*, and *Coleman* litigation have required new SOMS modules to be implemented, resulting in a notable increase in critical support and additional enhancements which are under development. CDCR states that the current staffing is not sufficient to provide enhancements to support full compliance with *Clark* mandated measures.

STAFF COMMENT

Staff notes that the some of the court orders require specific injunctive relief but other court orders require broader goals for the department to meet that are not prescriptive in nature. For example, the Three-Judge Panel required CDCR to reduce prison overcrowding to 137.5% of design capacity, but did not prescribe the specific manner in how the reduction should be made. Other court orders involved specific agreements on measure between the litigation parties. For example, the recent *Armstrong* orders required the installation of AVSS and body cameras at 6 prisons.

Staff also notes that the information received from CDCR does not satisfy the Subcommittee's request to receive a comprehensive overview of the costs associated litigation and costs related to remedial measures. CDCR and DOF have pointed to the complicated nature of identifying these costs due to the longstanding nature of the litigation the difficulty in isolating costs related to the request when they are spread across many program areas, the overall rising costs associated with staffing and the delivery of health and mental health care, and the assertion that some of these measures and investments may have been undertaken by CDCR absent any litigation. In addition, the implementation of these remedial orders have also lead to for the state. This amount, while unknown and speculative, is still likely substantial.

In addition to the information provided by CDCR and DOF in Part Two of the background section of this agenda, the following additional investments and costs related to the class action lawsuits are listed below in the following table.

	Investment	Cost	Year	Corresponding Lawsuit
1	AB 109 Realignment of individuals convicted of non-violent, non-serious, non-sex offenses to counties	\$16.6 billion ⁸ (includes base allocation and growth amount)	2011-12 to 2023-24	Three Judge Panel
2	AB 109 Realignment costs for district attorney and public defender offices to handle parole revocation hearings	\$600 million ⁹ (includes base allocation and growth amount)	2012-13 to 2023-24	Three Judge Panel
3	Out of State Prison Bed Contracts ¹⁰	\$1.2 billion	2010-11 to 2018-19	Three Judge Panel
4	In State Prison Bed Contracts ¹¹	\$1 billion	2010-11 to 2020-21	Three Judge Panel
5	Construction of CA Health Care Facility (CHCF)	\$840 million	2013	Three Judge Panel
6	Addition of 2,400 beds for low security prison housing at 3 existing prisons	\$810 million in Lease Revenue Bond Authority	2012-13	Three Judge Panel
7	Lease Revenue Bonds for: -AB 900 (Chapter 7, 2007) -SB 1022 (Chapter 42 of 2012) -SB 863 (Chapter 37 of 2014) -SB 844 (Chapter 34 of 2016)	\$2.47 billion ¹² Lease Revenue Bond Authority	2007-2016	Three Judge Panel

⁸ Realigned sales tax revenue for counties to house the realigned population.

⁹ Realigned sales tax revenue for the realigned population.

¹⁰ The state began using out of state facilities beginning in 2007-08 to alleviate prison overcrowding.

¹¹ In-state contract beds began using in state contract beds in the 1980s, to house parole violators, among other purposes.

¹² Some of the authority has been subsequently reduced given that some counties have relinquished their awards.

DOF's website provides budget change proposals from 2016-17 to 2023-24¹³. During this period of time, CDCR had submitted a total of 344 budget change proposals of which the following relate to various ongoing class action lawsuits.

	Investment	Cost	Corresponding Lawsuit
	Medical Staffing Augmentation at CA Health Care Facility ¹⁴	\$76.4 million ongoing 2015 Budget Act	<i>Plata/ Coleman</i>
2016 Budget Act			
1	Deuel Vocational Institute: Solid Cell Fronts: construction phase	\$11.62 million	<i>Coleman</i>
2	Electronic Health Record System ¹⁵	\$80.6 million ¹⁶	<i>Plata/ Coleman</i>
3	Health Care Access Unit Staffing	\$8.86 million ongoing	<i>Plata</i>
4	Automated Reentry Management System (ARMS)	\$4.5 million in 2016-17 and 2017-2018	<i>Three Judge Panel</i>
2017 Budget Act			
5	CIM 50 Bed Mental Health Crisis Facility: preliminary plan phase	\$3.66 million	<i>Coleman</i>
6	CalPIA Janitorial Expansion ¹⁷	\$6 million in 2016-17, 13.75 million in 2017-18, \$21.64 million in 2018-19 and \$21.87 million on 2019-20	<i>Plata</i>
7	CTF: Administrative Segregation Cell Door Retrofit:	\$783,000	<i>Coleman</i>
8	Health Care Appeals Registered Nurses	\$5.4 million ongoing	<i>Plata</i>
9	Medication Management	\$8.95 million ongoing	<i>Plata/Coleman</i>
10	Pelican Bay State Prison: Facility D Yard: design phase	\$539,000	<i>Ashker</i>
11	Permanent Positions for Non-Violent Second Striker Workload	Position authority only	<i>Three Judge Panel</i>
12	Physician Retention Strategies	\$7.04 million in 2017-18 and \$13.99 million in 2018-19	<i>Plata</i>
13	RJ Donovan 50 bed Mental Health Crisis Facility: preliminary plan phase	\$3.6 million	<i>Coleman</i>
14	Suicide Watch Certified Nursing Assistants	\$3 million ongoing	<i>Coleman</i>

¹³ For the listed items, some variations in funding may exist based on the final enacted budget and modifications related to population changes.

¹⁴ Not found on DOF website and does not represent all relevant BCPS from the 2015 Budget Act.

¹⁵ This item is listed in the table provided by CDCR on page 11, but it only lists ongoing costs of \$5.8 million since 2019-20 and excludes the initial costs in 2016-17, 2017-18, and 2018-2019.

¹⁶ Includes total funding for 2016-17, 2017-18, and 2018-2019.

¹⁷ This items is listed in the table provided by CDCR on page 11 but does not include costs in out years.

15	Transfer of Intermediate and Acute Levels of Care	Transfer of \$250.41 million ongoing from DSH to CDCR	<i>Coleman</i>
2018 Budget Act			
16	CHCF Janitorial Technical Adjustment	\$8 million	<i>Plata</i>
17	Healthcare Services for Reentry Programs	\$10.8 million ongoing	<i>Plata</i>
18	CIM 50 Bed Mental Health Crisis Facility: working drawings phase	\$3.44 million	<i>Coleman</i>
19	CIM: Air Cooling Facility A: preliminary plans phase	\$935,000	<i>Coleman</i>
20	Janitorial Services at CHCF	\$185,000 in 2018-19 and \$3.6 million ongoing	<i>Plata</i>
21	Medical Distribution Improvements Phase II: preliminary plans phase	\$3.3 million	<i>Plata</i>
22	Psychiatry Registry Funding	\$18.1 million in 2018-19 and 2019-20	<i>Coleman</i>
23	Receiver: Correctional Clinic Model-Pharmaceuticals	\$4.5 million in 2018-19 and \$4.3 million ongoing	<i>Plata</i>
24	Video Surveillance for Mental health Units at CSP Sacramento	\$1.5 million in 2018-19 and \$177,000 ongoing	<i>Coleman</i>
25	Pelican Bay: Facility D Yard: construction phase	\$1.85 million	<i>Ashker</i>
2019 Budget Act			
26	ADA Accessibility Improvements at 2 Prisons ¹⁸	\$4.2 million 2019-20 and \$4.2 million in 2020-21	<i>Armstrong</i>
27	Janitorial Services at CHCF	\$6.1 million ongoing	<i>Plata</i>
28	CIM, Air Cooling Facility A: working drawings phase	\$931,000 million	<i>Coleman</i>
29	Medical Classification Model Update	\$27.9 million ongoing	<i>Plata</i>
30	Sign Language Interpreter Services ¹⁹	\$1.5 million ongoing	<i>Armstrong</i>
31	Medication Distribution Improvements—Phase II: working drawings phase	\$3.7 million	<i>Plata</i>
32	Pelican Bay: Facility D Yard: construction phase	\$3.92 million	<i>Ashker</i>
2020 Budget Act			
33	CSP Lancaster Medication Preparation Room: preliminary plans phase	\$300,000	<i>Plata</i>
34	CIM 50 bed Mental Health Facility: construction phase	\$91.03 million	<i>Coleman</i>
35	Expansion of Tele-psychiatry Program	\$5.9 million in 2020-21, \$5.5 million in 2021-22 through 2023-24, and \$8.4 million ongoing	<i>Coleman</i>
36	Psychiatry Registry Funding Augmentation	\$11.9 million ongoing	<i>Coleman</i>

¹⁸ This item is listed in the table provided by CDCR on page 12 but does not include the second year of funding.

¹⁹ This item may already be included in the table provided by CDCR on page 12.

37	Medication Distribution Improvements-Phase II: construction phase	\$31.9 million	<i>Plata</i>
38	Receiver: IT Security Staffing and Tools	\$2.9 million in 2020-21 and \$1.3 million ongoing	<i>Plata</i>
39	Receiver: Medical Imaging Equipment	\$1 million 2020-21 and approx. \$2 million ongoing	<i>Plata</i>
40	Receiver: Secure Electronic Data Unit for Patient Health Records	\$377,000 in 2020-21 and \$712,000 ongoing	<i>Plata</i>
2021 Budget Act			
41	Armstrong Court Compliance ²⁰	\$13.5 million in 2020-21, \$10.1 million in 2021-22, and \$7 million ongoing	<i>Armstrong</i>
42	Armstrong Court Compliance Continuation ²¹	\$80.5 million in 2021-22, \$28 million ongoing	<i>Armstrong</i>
43	CA Substance Abuse Treatment Facility and Corcoran: Air Cooling Facility G and F	\$2.7 million total costs \$14.8 million	<i>Coleman</i>
44	CIM: Air Cooling Facility A: construction phase	\$13.89 million	<i>Coleman</i>
45	CSP Lancaster: medication Preparation Room Unit D5: working drawings phase	\$328,000	<i>Plata</i>
46	Statewide Implementation of Fixed Video Surveillance	\$37.6 million in 2021-22, \$93.7 million in 2022-23, \$95.4 million in 2023-24, and \$11.1 million ongoing	<i>Armstrong</i> ²²
47	Receiver: Quality Management and Patient Safety	\$4 million in 2021-22, \$7.5 million in 2022-23 and \$11.7 million ongoing	<i>Plata</i>
47	Statewide Telepsychiatry Program Supervision	\$3.7 million ongoing	<i>Coleman</i>
2022 Budget Act			
49	Americans with Disabilities Act Staffing	\$2.6 million in 2022-23 and \$2.7 million ongoing	<i>Armstrong</i>
50	CIM, Chino: Air Cooling Facility New Appropriation, Reversion, and Reappropriation: construction phase	\$4.59 million ²³	<i>Coleman</i>
51	CIM 50 Bed Mental Health Crisis Facility New Appropriation, Reversion, Reappropriation: construction phase	\$29.54 million ²⁴	<i>Coleman</i>

²⁰ This item is listed in the table provided by CDCR on page 12 but reflects a different amount.

²¹ This item is reflected in the table provided by CDCR on page 12 but reflects a different amount.

²² While not directly ordered by the court, the initial investment of AVSS, body cameras, and policy changes at 6 prisons occurred as a result of litigation.

²³ The 2020 Budget Act include \$13.89 million for the construction phase and this amount reflects the additional amount requested for the construction phase.

²⁴ The 2020 Budget Act included \$91.03 million for the construction phase and this amount reflects the additional amount requested for the construction phase.

52	CSP Lancaster: Medication Preparation Room Unit D5: construction phase	\$3.04 million	<i>Plata</i>
53	CA Prison Industry Authority Janitorial Expansion	\$8.6 million in 2022-23, and \$10.5 million ongoing	<i>Plata</i>
54	Substance Abuse Treatment Facility, Corcoran Air Cooling Facility F and G: construction phase	\$13.39 million	<i>Coleman</i>
55	Class Action Lawsuit Staff	\$2.4 million in 2022-23 and \$2.3 million ongoing	<i>Coleman, Armstrong, others</i>
56	DOJ Legal Service Fees	\$1.5 million ongoing	<i>Various</i>
57	Staff Misconduct Investigation Expansion	\$34.4 million in 2022-23, \$37 million in 2023-24, \$34.7 million in 2024-25, \$35 million in 2025-25, and \$34.02 million ongoing	<i>Armstrong</i>
58	Statewide Medication Distribution Improvements Phase II New Appropriation, Reversion, and Reappropriation	\$7.38 million ²⁵	<i>Plata</i>
59	Statewide Correctional Video Surveillance Continuation	\$97.6 million in 2022-23, and \$7.8 million ongoing	<i>Plata</i>
2023-24 Proposed			
60	Clark Litigation Compliance	\$2.8 million ongoing	<i>Clark</i>
61	DOJ Legal Services Fees	\$3.7 million ongoing	<i>Various</i>
62	Staff Misconduct Investigation Expansion	\$9.6 million in 2023-24, \$9.3 million in 2024-25, and \$2.9 million ongoing	<i>Armstrong</i>
63	Statewide Correctional Video Surveillance Continuation	\$87.7 million in 2023-24, \$7.5 million in 2024-25 and 2025-26. Also, \$14.7 million ongoing beginning in 2026-27	<i>Armstrong</i>

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.

²⁵ The 2020 Budget Act provided \$10.99 million for the construction phase and this amount reflects the additional amount requested for the construction phase.