

**AGENDA****ASSEMBLY BUDGET SUBCOMMITTEE NO. 5 PUBLIC SAFETY****ASSEMBLYMEMBER REGINALD B. JONES-SAWYER SR., CHAIR****WEDNESDAY, MAY 7, 2014  
1:30 P.M. - STATE CAPITOL ROOM 437**

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## VOTE ONLY ISSUES

### 0250 JUDICIAL BRANCH

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<b>VOTE ONLY ISSUE 1: CAPITAL OUTLAY REAPPROPRIATIONS</b>
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The Judicial branch is requesting additional time to expend past year appropriations by means of a new budget item (0250-490):

1. Imperial County: New El Centro Courthouse—Working drawings. The completion of the preliminary plans phase was delayed by a design review mandated by the Council that resulted in a scope change, approved on November 8, 2013. The preliminary plans are currently scheduled to be completed in July 2014. The reappropriation of funding for working drawings will allow this project to continue without further delay.
2. Riverside County: New Indio Juvenile and Family Courthouse—Working drawings. The completion of the preliminary plans phase was delayed by a pre-construction design review mandated by the Council. Preliminary plans are scheduled to be completed in November 2014. The reappropriation of funding for working drawings will allow this project to continue without further delay.

**5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**

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**VOTE ONLY ISSUE 2: SEX OFFENDER MANAGEMENT BOARD SPRING FINANCE LETTER**

The Administration submitted a Spring Finance Letter requesting two, two-year, limited-term positions and \$311,000 (General Fund) for the training requirements and workload increases imposed by Chelsea's Law (Chapter 219, Statutes of 2010) for the California Sex Offender Management Board and the State Authorized Risk Assessment Tolls for Sex Offenders.

**VOTE ONLY ISSUE 3: PAROLE REVOCATION AND COMPLIANCE WORKLOAD**

The Spring Finance Letter requests the continuation of \$5.191 million (General Fund) and the conversion of 36 parole agent 1 positions from limited-term to permanent positions in order to manage the ongoing workload associated with parole revocations and court compliance.

**VOTE ONLY ISSUE 4: ENHANCED CDCR LITIGATION BCP**

The Governor's budget requests \$1.36 million for five additional full-time deputy Attorney General positions in order to provide ongoing representation for CDCR in the class action cases of Coleman v. Brown, Plata v. Brown, the Three Judge Panel, and other class action litigation.

**VOTE ONLY ISSUE 5: SB 260 BCP**

The Governor's Budget includes \$1.586 million (General Fund) and 3.5 limited-term positions to implement Chapter 312, Statutes of 2013 (SB 260). SB260 requires the Board of Parole Hearings to conduct a youth offender parole hearing to consider release of offenders who committed specified crimes prior to being 18 years of age and who were sentenced to state prison.

SB 260 makes a person eligible for release on parole at a youth offender parole hearing during the 15th year of incarceration if the person meeting these criteria received a determinate sentence, during the 20th year if the person received a sentence that was less than 25 years to life, and during the 25th year of incarceration if the person received a sentence that was 25 years to life. SB 260 requires the board, in reviewing a prisoner's suitability for parole, to give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.

SB 260 also requires that, in assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, be administered by licensed psychologists employed by the board and take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual. SB 260 also permits family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the young person prior to the crime or his or her growth and maturity since the commission of the crime to submit statements for review by the board.

## ITEMS TO BE HEARD

### **2720 CALIFORNIA HIGHWAY PATROL**

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#### **ISSUE 1: AIR FLEET REPLACEMENT**

The issue before the subcommittee is the California Highway Patrol's plan to continue with the refresh of its existing Air Fleet.

#### **PANELISTS**

- Legislative Analyst's Office
- California Highway Patrol
- Department of Finance
- Public Comment

#### **BACKGROUND (PROVIDED BY LAO)**

The Governor's budget proposes a multiyear plan to replace CHP's aircraft that have exceeded 10,000 flight hours and maintain an air fleet size of 26 aircraft. Specifically, the Governor proposes one-time funds from the MVA of \$16 million to replace four aircraft in 2014–15, \$14 million, to replace three aircraft in 2015–16, and \$14 million to replace three aircraft in 2016–17. Additionally, the Governor's proposal would provide CHP with \$8 million (MVA) each year on an ongoing basis beginning in 2017–18 to replace two aircraft per year to continuously maintain an air fleet size of 26 aircraft. Under the proposal, each of CHP's eight geographic divisions would maintain two airplanes and one helicopter, with two additional helicopters distributed to divisions at CHP's discretion. As part of its request for funding, CHP provided a report in response to the SRL discussed above.

Currently, CHP operates an air fleet of 15 planes and 15 helicopters. According to CHP, the air fleet is used to provide assistance to CHP field-related operations and allied agencies across the state for (1) emergency response, (2) homeland security missions (such as patrolling the state's electrical and water infrastructure), (3) patrol of rural roadways, (4) speed enforcement, (5) enforcement other than speed, (6) special events, and (7) transportation. Some of the allied agencies that are provided assistance include local police departments, county sheriffs, state departments (such as the Department of Water Resources and Department of Fish and Wildlife), and federal departments (such as the Department of Homeland Security).

Most of CHP's air fleet was purchased several years ago with one-time federal grants that the state received to promote traffic safety or homeland security. For example, 14 of CHP's 15 airplanes were purchased with federal funds. According to CHP, an aircraft is typically in need of replacement after 10,000 flight hours as the cost to maintain and repair such an aircraft significantly increases thereafter. This is consistent with the best practices used by other law enforcement agencies in regards to air fleet replacement. The CHP states that 19 of its 30 aircraft currently have been flown for more than 10,000 hours. In addition, CHP spends about \$2 million annually to operate and maintain each aircraft.

In adopting the 2013-14 budget, the Legislature approved CHP's request for \$17 million from the MVA to replace four of its oldest aircraft. As part of its request, the CHP indicated its desire to replace its entire air fleet over the next several years. In order to properly assess such future requests from CHP, the Legislature adopted supplemental report language (SRL) as part of the 2013-14 budget requiring CHP to provide a report by March 1, 2014 that includes (1) an overall assessment of its air fleet needs and (2) a detailed plan regarding the replacement and maintenance of its air fleet, including specific timelines and cost projections associated with aircraft replacement and maintenance.

#### **Status of procurements funded in the 2013-14 Budget Act**

On February 24, 2014, DGS posted the Fixed Wing Airplane bid soliciting vendors to participate. The bids were due on April 1, 2014, and they were reviewed and evaluated on April 3, 2014. The Notice of Intent to Award was posted on April 16, 2014.

There was one unsuccessful bidder, Cessna, that believes it should have been selected in accordance with the solicitation criteria. They have exercised the appeal process outlined in Title 1 of the California Code of Regulations, Section 1400 et seq, to address their concerns. DGS is currently preparing a response to Cessna's concerns.

#### **The Lao has raised the following Concerns with the proposal**

We recognize that most of CHP's existing air fleet are reaching the end of their useful life and these needs will need to be addressed. However, we find that the Governor's proposed plan to replace 26 of the 30 aircraft raises three main issues that merit legislative consideration.

Unclear What Size of Air Fleet Is Needed. While the report provided by CHP on its air fleet includes various information (such as each aircraft's record of maintenance and fuel costs), the report does not provide sufficient information justifying the size of the air fleet being proposed. For example, the report simply states that CHP needs 26 aircraft to achieve its goal to perform 26,000 total flight hours per year and provide each CHP division with three aircraft. However, it is unclear from the information provided to the Legislature whether this number of flight hours and aircraft is the right amount to support CHP's core activities, particularly given limited resources and the high cost to purchase, operate, and maintain the aircraft. For example, the report did not include specific metrics that describe the benefits that the state would receive from the proposed air fleet size, as compared to a smaller or larger size. It is possible that a fewer number of flight hours and aircraft would provide similar benefits to the state as the level proposed. For example, providing only two aircraft for each regional division might be sufficient.

Future Ongoing Replacement Funding "Locks in" Air Fleet Size. As indicated above, the Governor's proposal includes \$8 million beginning in 2017–18 on an ongoing basis for CHP to replace future aircraft as needed to maintain 26 aircraft. This assumes that CHP will always need 26 aircraft in the future and that the aircraft will require replacement on a set schedule. However, it is uncertain if that will be the case, as several factors could influence the need for a smaller or larger fleet size in the future (such as less assistance requested by allied agencies). In addition, it is possible that the future aircraft could last longer than planned, due to less hours flown than expected and improvements in the quality of aircraft being purchased.

Appropriateness of Using MVA Funds to Support All Replacement Costs. As described above, CHP's current air fleet was primarily purchased with one-time federal funds to promote traffic safety and homeland security missions. Under the Governor's proposal, all of the new aircraft would be purchased with monies from the MVA, which generates its revenues primarily from driver license and vehicle registration fees. The Governor's proposal raises the issue of whether it is appropriate for the MVA to be the sole funding source for this purpose. Under Article XIX of the State Constitution, any revenues from fees and taxes on vehicles or their use—such as driver license and vehicle registration fees—can only be used for the state administration and enforcement of laws regulating the use, operation, or regulation of vehicles used upon the public streets and highways. It is unclear whether all of the activities supported by CHP's air fleet meet this requirement, such as patrolling the state's electrical and water infrastructure.

Moreover, CHP reports that it frequently uses its air fleet to assist various allied agencies (such as local law enforcement offices). According to CHP, such assistance increased several years ago as some allied agencies (particularly local law enforcement agencies) faced fiscal constraints during the economic downturn in operating and maintaining their own existing air fleets. Given the high cost to the state in maintaining CHP's air fleet and that the budgets of the allied agencies may have begun to recover, the Legislature may want to consider requiring certain allied agencies to reimburse CHP for some or all of the costs it incurs in providing them with air support. We also note that

requiring such reimbursements might encourage allied agencies to be more efficient and selective when requesting air support assistance from CHP.

**LAO RECOMMENDATIONS**

In view of the above issues, we recommend the Legislature withhold action on the Governor's proposal pending additional information from CHP and legislative deliberations regarding (1) the need for the size of the air fleet proposed and (2) the appropriateness of using the MVA as the sole funding source to purchase aircraft (including whether allied agencies should reimburse CHP for some of the costs).

**STAFF COMMENTS**

Staff concurs with the LAO's assertion that the "appropriate" size for the CHP's air fleet should be assessed at some point. However, staff notes that if such an assessment were commissioned, and the findings implemented, the level of resources the CHP is requesting for the 2014-15 fiscal year would still be necessary to maintain a minimal air fleet. Further, staff notes that any significant reduction in the size of the CHP's air fleet would undoubtedly be accompanied by a corresponding reduction in services provided by the CHP's air units.



**0250 JUDICIAL BRANCH**

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**ISSUE 1: Los Angeles County Mental Health Courthouse project**

The issue before the subcommittee is the Judicial Branch's updated plan for the Los Angeles County Mental Health Courthouse project.

**PANELISTS**

- Administrative Office of the Courts
- Legislative Analyst's Office
- Department of Finance
- Public Comment

**BACKGROUND**

The Judicial branch is requesting a \$44,603,000 augmentation from the Immediate and Critical Needs Account (ICNA) for design and construction. A scope change is also requested to convert this project from new construction to the renovation of the existing state-owned Hollywood Courthouse.

The Administrative Office of the Courts (AOC) has been unable to find a suitable site for this project, which has resulted in a multi-year delay. Because of recent court operation changes, the AOC has determined that the renovation and expansion of the Hollywood Courthouse, which is no longer used for judicial proceedings, is ideal for reuse for mental health matters. The AOC estimates the renovation of this facility would save approximately \$50 million and speed up the timeline of this critical project. Savings are mainly attributed to not having to acquire land, and decreased escalation costs as this project could start sooner than if land needed to be acquired. The AOC plans to deliver this project utilizing the design-build method.

This request includes the following additional changes:

- Increase the size of the project by a net of 1,555 square feet (sf), from 43,445 sf to 45,000 sf. The additional space will be used by county justice partners, consistent with the current arrangement at the existing Mental Health Courthouse and will be leased at market rates, or other equitable terms.
- Add one hearing room (900 sf), included in the net increase noted above. The currently authorized project includes a total of three courtrooms and no hearing rooms. The Los Angeles County Superior Court determined it would be more efficient to consolidate jury trials in three courtrooms and use a hearing room for all other mental health proceedings in one centralized, Mental Health Courthouse.

- Reversion of \$32,883,000 from the existing \$33,457,000 in site acquisition funding because it is no longer needed for this project, as described above. The balance will be used to acquire the county's portion of equity in the Hollywood Courthouse (approximately 9 percent).

**ISSUE 2: Alameda County: New East County Hall of Justice**

The issue before the subcommittee is the Judicial Branch's updated plan for the Alameda County: New East County Hall of Justice.

**PANELISTS**

- Administrative Office of the Courts
- Legislative Analyst's Office
- Department of Finance
- Public Comment

**BACKGROUND**

The Judicial branch is requesting a \$39,113,000 augmentation from the ICNA for acquisition cost based on a plan to shift this project from a lease purchase, as currently-authorized, to a cash-funded acquisition project. The 2012 Budget Act reappropriated \$50 million from ICNA to acquire an equity interest in the state's portion of the New East County Hall of Justice (Project) and authorized the Judicial Branch (Branch) to enter into a Lease Purchase Agreement (LPA) with the County of Alameda (County) to develop and finance the Project, with annual lease payments to be made by the Judicial Branch to acquire the balance of equity in the project.

The proposed shift to a cash-funded acquisition project would utilize available cash resources and avoid unnecessary and potentially costly risks related to the LPA, and lowers the cost of the project. The proposed funding would allow the Branch to acquire the Project from the County upon completion in lieu of financing the acquisition over many years, as currently authorized.

Pursuant to Item 0250-491, Provision 1, Budget Act of 2012 (Chapters 21 and 29, Statutes of 2012), as amended by Chapter 5, Statutes of 2013, the Branch must notify the chairpersons of the committees in each house of the Legislature that consider appropriations and the Joint Legislative Budget Committee of the terms and conditions of the agreement on this project 30 days prior to entering into any agreements. The Judicial Council (Council) intends to provide separate notice to the Legislature, as required, with more specific details on both the cash option proposed here and the LPA option prior to the May Revision.

It is further requested that provisional language be added to clarify that the expenditures proposed from the ICNA above are considered a "loan" pursuant to and will be repaid by funds currently dedicated to cover the lease payments under the LPA.

**ISSUE 3: JUDICIAL BRANCH BUDGET**

The issue before the subcommittee is the Judicial Branch's Budget.

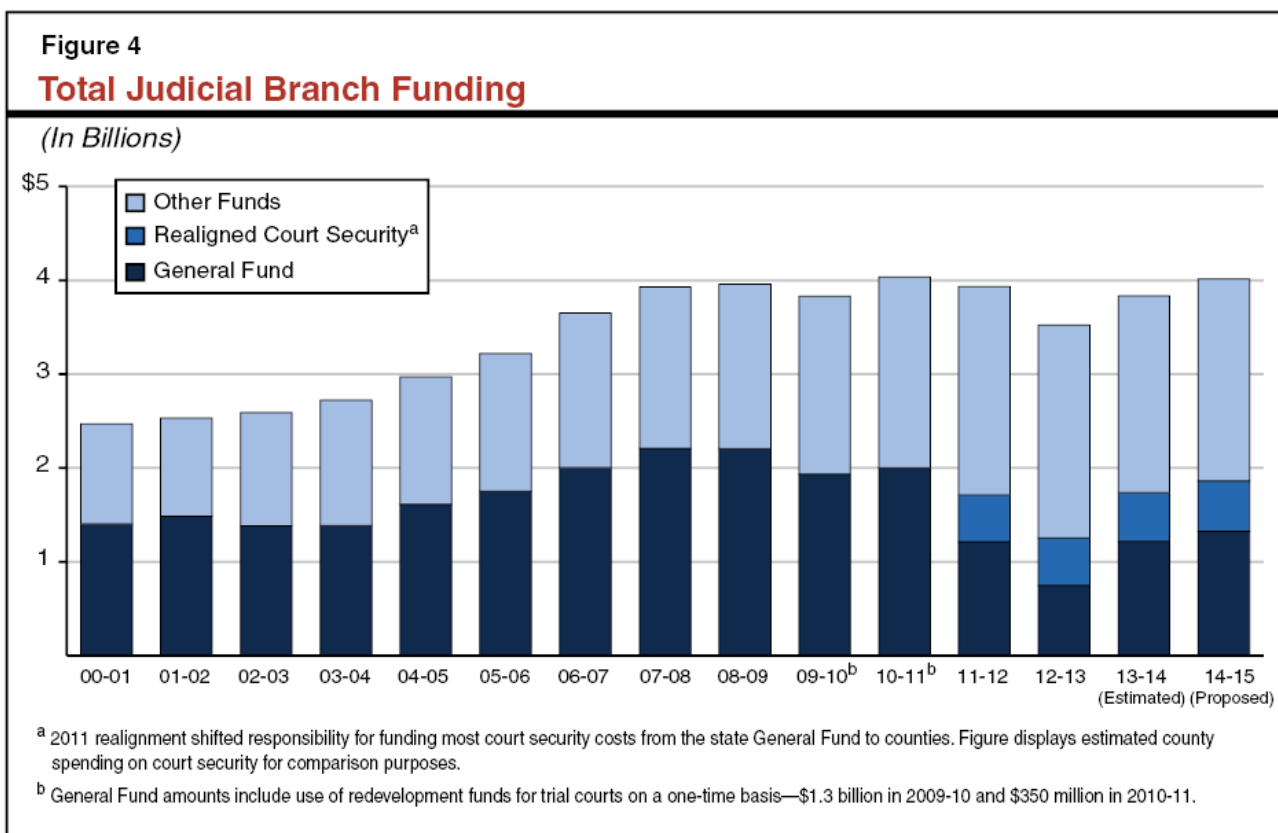
**PANELISTS**

- Legislative Analyst's Office
- Administrative Office of the Courts
- Department of Finance
- Public Comment

**BACKGROUND (PROVIDED BY LAO)**

The judicial branch is responsible for the interpretation of law, the protection of an individual's rights, the orderly settlement of all legal disputes, and the adjudication of accusations of legal violations. The branch consists of statewide courts (the Supreme Court and Courts of Appeal), trial courts in each of the state's 58 counties, and statewide entities of the branch (the Judicial Council, Judicial Branch Facility Program, and the Habeas Corpus Resource Center). The branch receives revenues from several funding sources including the state General Fund, civil filing fees, criminal penalties and fines, county maintenance-of-effort payments, and federal grants.

Figure 4 shows total funding for the judicial branch from 2000–01 through 2014–15. As shown in the figure, funding for the branch peaked in 2010–11 at roughly \$4 billion and then subsequently declined through 2012–13. This decline is primarily due to significant reductions in the level of General Fund support provided to the branch during this time period. We note, however, that total funding for the judicial branch increased in 2013–14 and is proposed to increase in 2014–15 under the Governor's budget. Specifically, the *2013–14 Budget Act* included a \$63 million General Fund augmentation for the judicial branch and the Governor's budget for 2014–15 proposes an additional \$105 million General Fund augmentation. Under the Governor's budget, the General Fund share of the total judicial branch budget will be 33 percent in 2014–15.



As shown in Figure 5, the Governor’s budget proposes \$3.3 billion from all state funds to support the judicial branch in 2014–15, an increase of \$157 million, or 5 percent, above the revised amount for 2013–14. (These totals do not include expenditures from local revenues or trial court reserves.) Of the total budget proposed for the judicial branch in 2014–15, roughly \$1.3 billion is from the General Fund. This is a net increase of about \$105 million, or 8.6 percent, from the 2013–14 level.

**Figure 5**  
**Judicial Branch Budget Summary—All State Funds** *(Dollars in Millions)*

	2012–13 Actual	2013–14 Estimated	2014–15 Proposed	Change From 2013–14	
				Amount	Percent
State Trial Courts	\$2,237	\$2,443	\$2,531	\$88	3.6%
Supreme Court	43	44	45	1	1.5
Courts of Appeal	202	208	211	3	1.6
Judicial Council	135	142	141	–1	–0.4
Judicial Branch Facility Program	195	267	332	65	24.3
Habeas Corpus Resource Center	13	14	14	—	1.4
<b>Totals</b>	<b>\$2,825</b>	<b>\$3,117</b>	<b>\$3,274</b>	<b>\$157</b>	<b>5.0%</b>

## **\$100 Million General Fund Augmentation for Trial Court Operations**

### **Background**

Prior-Year Budget Reductions and Offsets. The judicial branch received a series of one-time and ongoing General Fund reductions from 2008–09 through 2012–13. By 2012–13, the branch had received ongoing General Fund reductions totaling \$778 million. Of this amount, \$724 million in ongoing General Fund reductions were allocated to the trial courts. However, the 2013–14 budget provided a \$60 million General Fund augmentation to the trial courts to help offset these reductions. Specifically, the augmentation reduced the total ongoing General Fund reductions to the trial courts to \$664 million in 2013–14.

Additionally, since 2008–09, the Legislature and Judicial Council (the policymaking and governing body of the judicial branch) used various one-time and ongoing solutions to offset most of the reductions to the trial courts. Such solutions included using revenues from increased fines and fees, transfers from judicial branch special funds, and trial court reserves. (Reserves are the accumulation of unspent funds from prior years that are carried over and kept by each trial court.)

Despite most of the reductions being offset, the trial courts still had to absorb \$215 million in General Fund reductions in 2013–14. (We would note that some courts may have used one-time resources to absorb their share of this reduction in 2013–14. Such courts will have to absorb these reductions again in 2014–15. In contrast, other courts may have absorbed more than their share of the reduction in 2013–14 in order to plan ahead for additional ongoing reductions the following year.) Trial courts have taken various actions to accommodate these reductions. These actions include leaving staff vacancies unfilled, renegotiating contracts with employees and vendors, delaying purchases, closing courtrooms or courthouses, reducing clerk office hours, and reducing self-help and family law services. While the impacts of these actions vary across courts and depend on the specific operational choices made by each court, some of these actions have resulted in reduced access to court services, longer wait times for court services and hearings, and courts being unable to complete workload in a timely manner.

In order to help minimize the extent to which these operational actions affected court users, a number of courts also made various changes to their operations. These changes include installing dropboxes for individuals to submit court paperwork when clerks' offices are closed and purchasing kiosks where individuals can pay for traffic tickets. In addition, some courts have made multiyear investments to operate more efficiently. For example, some courts have shifted to electronic filing of documents in certain case types and developed online systems where individuals can automatically schedule hearings for select case types.

New Funding Allocation Methodology. In April 2013, the Judicial Council approved a new method for allocating funds appropriated for trial court operations in the annual state budget to individual trial courts. This new methodology, also known as the Workload Allocation Funding Methodology (WAFM), is intended to distribute funding among the trial courts based on workload. (Previously, such funding was allocated on a

“pro rata” basis, generally based on the historic share of statewide allocations received by each trial court.) Specifically, the new formula starts with a Resource Assessment Study (RAS), which estimates the number of personnel needed for each court primarily based on the number of filings for various case types and the amount of time it takes staff to process each filing. Each court’s estimated staffing need is then converted to a cost estimate for personnel and combined with various other cost factors not captured in the RAS model (such as workload costs and other factors considered unique to a specific trial court) to determine the total estimated workload–driven costs for each trial court. The total cost for each court is then used to determine that court’s percentage of total trial court operations costs. These percentages are then applied to the funding appropriated to the trial courts in the state budget to determine how much funding each individual trial court will receive that year.

Beginning in 2013–14, the judicial branch implemented a five–year plan to phase in the implementation of its new allocation methodology. Under the plan, a greater percentage of funds appropriated for trial court operations will be allocated using WAFM each year with a lesser amount being allocated under the old methodology. Upon full implementation, 50 percent of trial court operations funding will be allocated using WAFM, and 50 percent will be allocated using the old pro rata percentages. However, the branch intends to allocate any augmentations provided to trial court operations (such as the \$60 million General Fund augmentation provided in the 2013–14 budget) based on the WAFM model, unless the funding is provided for a specified purpose (such as for court interpreters for example). To the extent such additional funding is provided, the branch will shift an equivalent amount of funding from the amount allocated based on the old methodology to the amount allocated based on WAFM (referred to as the “dollar–for–dollar match”), thereby reducing the amount allocated using the old method and increasing the amount allocated by WAFM. Therefore, under the branch’s plan, additional funding will result in a greater share of trial court funding allocated using WAFM. The judicial branch reports that it would take a cumulative \$700 million augmentation for all trial court operations funding to be allocated under WAFM.

### **Governor’s Proposal**

The Governor’s budget for 2014–15 proposes an ongoing General Fund augmentation of \$100 million to support trial court operations. (The budget also provides a \$5 million augmentation to support state level courts and Judicial Council operations.) The budget requires that the additional funding be allocated based on WAFM. However, the trial courts would have flexibility in spending these funds.

*Augmentation Reduces Ongoing Reductions.* As discussed previously, the total ongoing General Fund reductions to the trial courts totaled \$664 million 2013–14. The Governor’s augmentation would reduce these ongoing reductions to \$564 million for 2014–15. As shown in Figure 6, the budget assumes that \$249 million in resources will be available to help offset a portion of this reduction. This leaves \$315 million in reductions that will have to be absorbed by trial courts in 2014–15, a net increase of \$100 million over the amount already assumed to be absorbed by the trial courts in 2013–14. This net increase in reductions results from the lack of trial court reserves available to offset ongoing reductions.

**Figure 6**  
**Trial Courts Budget Reductions Through 2014–15 (Dollars In Millions)**

	2008– 09	2009– 10	2010– 11	2011– 12	2012– 13	2013– 14(Estimated)	2014– 15(Budgeted)
<b>General Fund Reduction</b>							
One– time reduction	–\$92	–\$100	–\$30	—	–\$418	—	—
Ongoing reductions (cumulative)	—	–261	–286	–\$606	–724	–\$664	–\$564
<b>Total Reductions</b>	<b>–\$92</b>	<b>–\$361</b>	<b>–\$316</b>	<b>–\$606</b>	<b>–\$1142</b>	<b>–\$664</b>	<b>–\$564</b>
<b>Solutions to Address Reduction</b>							
Construction fund transfers	—	\$25	\$98	\$213	\$299	\$55	\$55
Other special fund transfers	—	110	62	89	102	52	52
Trial court reserves	—	—	—	—	385	200	—
Increased fines and fees	—	18	66	71	121	121	121
Statewide programmatic changes	—	18	14	19	21	21	21
<b>Total Solutions</b>	<b>—</b>	<b>\$171</b>	<b>\$240</b>	<b>\$392</b>	<b>\$928</b>	<b>\$449</b>	<b>\$249</b>
<b>Reductions Allocated to the Trial Courts<sup>a</sup></b>	<b>–\$92</b>	<b>–\$190</b>	<b>–\$76</b>	<b>–\$214</b>	<b>–\$214</b>	<b>–\$215</b>	<b>–\$315</b>

<sup>a</sup> Addressed using various actions taken by individual trial courts, such as the implementation of furlough days and reduced clerk hours, as well as use of reserves (separate from those mandated by budget language or Judicial Council).

### **Challenges to Addressing Ongoing Budget Reductions**

***Increased Employee Benefit Costs.*** The trial courts indicate that they will face increased cost pressures in 2014–15 related to growing retirement and benefit costs. Currently, individual trial courts (primarily presiding judges and/or court executive officers) conduct separate and independent negotiations with local labor organizations representing most trial court employees. This differs from the collective bargaining process for most state employees, where the California Department of Human Resources oversees statewide labor negotiations on behalf of the Governor. In addition, unlike memoranda of understanding (MOU) negotiated with state employees, agreements negotiated with trial court employees are not subject to ratification by the Legislature and cost increases are not automatically included in the budget. Moreover, some trial court employees continue to participate in county retirement and health benefit programs. As a result, both the state and individual trial courts lack control over the level of these benefits set by the counties and provided to these trial court employees, and more importantly, the costs that must be paid to provide those benefits.



In recent years, concerns have been raised regarding whether trial courts have been effectively containing costs in their negotiations with trial court employees. For example, the *Governor's Budget Summary* raises the concern that trial court employees in a number of courts are not (1) making retirement contributions or (2) making contributions in a manner similar to executive branch employees, who are generally required to contribute 8 percent to 10 percent of their salary towards these costs. In view of such concerns, the administration has not proposed additional funding specifically for increased trial court retirement and benefit costs since 2010–11. According to the judicial branch, these unfunded cost increases will reach an estimated \$64.1 million by the end of 2013–14. Without additional resources to support these costs, trial courts will use more of their operational funds to meet these obligations, which could result in reduced levels of service to the public.

*Few Statutory Changes to Increase Efficiency Adopted to Date.* In 2012–13, the Legislature requested that the judicial branch submit a report on potential operational efficiencies, including those requiring statutory amendments. The Legislature's intent was to identify efficiencies that, if adopted, would help the trial courts address their ongoing budget reductions. In May 2012, the judicial branch submitted to the Legislature a list of 17 measures that would result in greater operational efficiencies or additional court revenues. (Our publication, *The 2013–14 Budget: Governor's Criminal Justice Proposals*, describes in detail many of these measures.) However, only four administrative efficiencies and user fee increases have subsequently been implemented to date. In order to effectively absorb ongoing budget reductions, additional changes to make the courts operate more efficiently will likely need to be adopted.

*Less Resources Available to Offset Reductions.* Over the last five years, the state has transferred funds from various judicial branch special funds (such as those related to court construction) to help offset budget reductions to the trial courts. However, the availability of resources from these funds to offset reductions in the budget year will be limited. For example, most of the transfers to the trial courts have come from three special funds: the State Court Facilities Construction Fund (SCFCF), the Immediate and Critical Needs Account (ICNA), and the State Trial Court Improvement and Modernization Fund (IMF). However, the repeated transfer of dollars from these three funds has greatly reduced their fund balances. As a result, additional transfers would likely delay planned projects or reduce certain services typically supported by the fund (such as judicial education programs and self-help centers). Additionally, as we discuss in the next section, the fund balances for the SCFCF and ICNA have been identified as potential sources for temporary cash flow loans, which places further constraints on the availability of these funds to offset reductions.

Similarly, trial courts used their reserves to minimize the impact of ongoing funding reductions upon court users. However, the repeated use of reserve funds over the past five years and the full implementation of the new trial court reserves policy mean minimal reserve funds will be available to help offset budget reductions in 2014–15. (We discuss the reserves policy in more detail later in this report.)

Limited Ability to Increase Revenues to Offset Reductions. The Legislature has approved increases in criminal and civil fines and fees in recent years to fund court facility construction projects and to offset reductions to trial court funding. As can be seen in Figure 7, revenues from the recent fee increases are projected to decline in 2013–14 but will generally meet the original revenue estimates of the courts. Moreover, revenues for most of the individual fee increases are lower than what was projected. This could be an indication that, at least for some fines and fees, additional increases may not result in as much revenue as previously achieved. This could also be a signal of reduced access to justice as fewer people are accessing the civil court process because of the increased costs.

**Figure 7**  
**Total Revenues From Recent Fee Increases (Dollars in Millions)**

Fee or Penalty	Fee Increase	Initial Revenue Projections	2012–13 Revenues (Actual)	Current Revenue Projections for 2013–14 <sup>a</sup>
<b>Increased in 2010–11</b>				
Summary Judgment Fee	\$300	\$6.2	\$5.3	\$4.7
Telephonic Hearing Fee	20	6.0	7.1	3.9
First Paper Filing Fee	20 or 40	40.1	31.8	30.6
Pro Hac Vice Fee	250	0.8	0.5	0.5
Parking Citation Penalty	3	10.5	25.5	21.3
<b>Total New Revenues</b>		<b>\$63.6</b>	<b>\$70.3</b>	<b>\$61.0</b>
<b>Increased in 2012–13</b>				
Jury Deposit Fee	\$150	\$11.7	\$17.9	\$11.5
Motion Fee	20	8.3	7.6	7.4
First Paper Filing Fee	40	21.1	20.4	20.5
Will Deposit Fee	50	2.2	1.0	1.0
Complex Case Fee	450	7.1	11.3	13.3
<b>Total New Revenues</b>		<b>\$50.4</b>	<b>\$58.2</b>	<b>\$53.8</b>

<sup>a</sup> Estimated using partial-year revenues received through November 30, 2013.

### Augmentation May Only Minimize Further Service Reductions

Access to Court Services May Not Substantially Increase. While the Governor's budget provides an additional \$100 million in ongoing General Fund support for trial court operations, these funds may not result in a substantial restoration of access to court services. First, the Governor's budget does not include a list of priorities or requirements for the use of these additional funds, such as requiring that they be used to increase public access to court services. We note that the 2013–14 budget requires that the trial courts use the \$60 million augmentation provided to specifically increase access to court services, as well as report on both the expected and actual use of the funds. Second, as discussed above, trial courts (1) face increased cost pressures in 2014–15 and (2) will need to take actions to absorb around \$100 million in additional ongoing prior-year reductions as one-time solutions previously used to offset these reductions will no longer be available in 2014–15. Thus, trial courts will need to take

actions to absorb these cost increases and reductions on an ongoing basis, which could include further operational reductions. In view of the above, it is possible that the increased funding proposed in the Governor's budget will only minimize further reductions in court services.

*Impact of Funding Increase Will Vary by Court.* The LAO also notes that the impact of the proposed funding increase will vary across courts. This is because there are differences in:

- **Cost Pressures Faced by Courts.** Individual trial courts face different cost pressures. For example, some trial courts may have better controlled retirement and health costs through negotiations with employees, and therefore may be free to use more of the proposed augmentation for other purposes, such as increasing services to the public.
- **Operational Actions Taken to Address Reductions.** Trial courts also differ in the operational choices they made over the past few years to address their ongoing reductions. For example, some courts may have addressed most or all of their share of ongoing reductions through actions that resulted in ongoing savings. Thus, these particular courts may be able to use their share of the augmentation to restore services to the public. Other courts may have used limited-term solutions. To the extent that such limited-term solutions are no longer available, these courts will need to use more of the augmentation as a backfill to help minimize further service reductions.
- **WAFM Funding.** The implementation of WAFM impacts individual trial courts differently. The old prorata allocation methodology preserved existing funding inequities among the trial courts, as it was based on the historic share of funding received by courts rather than workload faced by the court. The WAFM corrects these inequities by redistributing funds among the courts based on workload. Thus, courts that historically have had more funding relative to their workload will benefit very little from the augmentation proposed by the Governor. In contrast, courts with less funding relative to their workload will benefit comparatively more from the augmentation.

#### LAO RECOMMENDATIONS

**Define Legislative Funding Priorities for Proposed Augmentation.** Given the cost increases in employee benefits and the limited availability of resources to help trial courts absorb an increasing amount of ongoing reductions in 2014–15, as well as legislative concerns regarding the likely negative impacts of such challenges on court users, we find that the Governor's proposed \$100 million augmentation merits consideration. However, if the Legislature determines that (1) further minimizing the amount of additional impacts on court users is a statewide priority and (2) efficiencies or other options do not allow the courts to provide the level of service it desires, the Legislature could choose to provide additional General Fund support on either a one-time or an ongoing basis.

Regardless of the amount of additional funding provided to the trial courts in 2014–15, we recommend that the Legislature establish priorities for how the increased funding

should be spent—for example, increasing access to court services. We also recommend that the Legislature require the courts to report on the expected use of such funds prior to allocation and on the actual use of the funds near the end of the fiscal year. Such information would allow the Legislature to conduct oversight to ensure that the additional funds provided are used to meet legislative priorities.

**Consider Implementing More Efficiencies.** We recommend that the Legislature consider further actions to help the trial courts operate more efficiently. For example, the Legislature could reevaluate the proposed statutory changes that were not enacted last year. These changes would allow the courts to do more with existing dollars, thereby minimizing the impact of their budget reductions. Additionally, in conversations with courts and other judicial branch stakeholders, a number of other such statutory changes exist that would increase efficiency. For example, courts have informed us that under current law, they may only discard death penalty files and exhibits upon the *execution* of the defendant. Since most individuals on death row are not executed but die due to natural causes, courts cannot destroy their case records and bear the costs of storing these files and exhibits indefinitely. The Legislature could modify current law to allow death penalty files and exhibits to be discarded on the *death* of the defendant, regardless of how the defendant died, which would reduce storage costs. Such changes could help provide the judicial branch with additional ongoing savings or revenues that could help further offset ongoing reductions. If the Legislature is interested in implementing a broader range of efficiencies beyond those already proposed, it could consider convening a task force to identify and recommend efficiencies, as we discuss in greater detail in the nearby box.

#### **Legislature Could Convene a Task Force to Recommend Efficiencies**

The Legislature could consider convening an independent task force—consisting of a broad range of judicial branch stakeholders—to comprehensively evaluate court processes and identify operational efficiencies that would reduce costs to the courts, improve delivery of court services, and increase access to court services. Although similar task forces have been convened in the past, these groups have only provided the Legislature with recommendations for which there is unanimous consensus. Consequently, the recommendations of these task forces have been limited in scope. To maximize the menu of efficiencies available for legislative consideration, the Legislature could direct the task force to identify all efficiencies proposed by stakeholders, along with an assessment of each efficiency's impact (fiscal or otherwise). Dissenting members would then be allowed to provide their concerns and rationale for opposition. This would then enable the Legislature to consider a broad range of efficiencies as well as the fiscal and policy implications of each option.

**Establish Comprehensive Trial Court Assessment Program.** Currently, there is insufficient information to assess whether trial courts are using the funding provided in the annual budget effectively. This makes it difficult for the Legislature to ensure that (1) certain levels of access to courts services are provided, (2) trial courts use existing and increased funding in an effective manner, and (3) funding is allocated and used consistent with legislative priorities. For example, it is unclear exactly how each trial court has absorbed past reductions and how such actions have impacted court outcomes. Thus, we recommend that the Legislature take steps towards establishing a

comprehensive performance assessment program for the trial courts. (We initially made such a recommendation in our 2011 report, *Completing the Goals of Trial Court Realignment*.) While the judicial branch collects some statewide information related to certain measures of trial court performance (such as the time it takes a court to process its caseload), it currently lacks a comprehensive set of measurements for which data is collected consistently on a statewide basis.

In developing a comprehensive performance assessment program, we first recommend that the Legislature specify in statute the specific performance measurements it believes are most important and require the Judicial Council to collect data on each measurement from individual trial courts on an annual basis. In determining the specific performance measurements, we believe that it will first be important for the Legislature to solicit input from the Judicial Council. Thus, we recommend the Judicial Council report to the Legislature by a specified date on its recommendations regarding appropriate measurements. In preparing this report, the Judicial Council should examine the measurements currently used by federal courts and other state courts.

After the Legislature adopts specific performance measurements for the trial courts in statute, and once data on these measurements have been reported by the Judicial Council for at least two years, we recommend that the Legislature establish a system for holding individual courts accountable for their performance relative to those standards. Such an accountability system would involve the establishment of (1) a specific benchmark that the courts would be expected to meet for each measurement and (2) steps that would be taken should the court fail to meet the benchmark over time (such as by requiring a court that fails to meet a benchmark to adopt the practices of those courts that were successful in meeting the same performance benchmark).

**5225 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION****ISSUE 1: CALPIA FACILITIES MAINTENANCE BCP**

The issue before the subcommittee is the CDCR's proposal to enter into a statewide janitorial contract with the CALPIA Janitorial Services Enterprise to comply with mandates in the Plata vs. Brown case.

**PANELISTS**

- California Department of Corrections and Rehabilitation
- Legislative Analyst's Office
- Department of Finance
- Public Comment

**BACKGROUND**

The Governor's budget proposes to expand the California Medical Facility (CMF) pilot project regarding the cleaning of health care facilities on a statewide basis. Specifically, the budget proposes a \$14.5 million General Fund augmentation for 2014-15, which would increase to \$19.5 million in 2015-16, for the receiver to enter into a statewide health care facility janitorial contract with the California Prison Industry Authority (CalPIA). The Governor's budget also proposes the elimination of 83 receiver staff positions in 2014-15, as the CalPIA contract will replace existing receiver janitorial resources. The budget proposes to transfer these janitorial positions to CalPIA. In addition, the proposal includes one full-time staff position for program oversight, and anticipates employing 628 trained inmate laborers. The statewide contract cost will be approximately \$28 million in 2015-16 (upon full implementation), which translates to a cost of \$1.38 per square foot serviced.

As part of the 2002 settlement agreement in Plata v. Brown, CDCR agreed to ensure clean and sanitary health care environments in its prisons. Most of the cleaning is performed by inmates supervised by custody staff. Although the sanitation of health care facilities is held to a higher standard than the cleaning of non-health care facilities, the inmates do not receive training in health care facility cleaning and disinfection. The provision of these janitorial services varies widely by institution. While some institutions have fixed schedules to clean some or all of the health care areas at the institution, other institutions have no set cleaning schedules for any of their health care areas. In their analysis, the Legislative Analyst's Office notes that at some institutions, additional cleaning is done by contracted janitors.

In 2012, the Plata court ordered medical inspections of institutions that had reached a certain level of compliance with the 2002 settlement agreement. These inspections are performed by court experts and included an evaluation of health care cleanliness and sanitation (discussed in detail elsewhere in this agenda). Several of the audits identified deficiencies in facility cleanliness, which could delay the transfer of responsibility for the management and provision of inmate medical services back to the state. We also note that in 2012, the chief executive officer of the CMF in Vacaville approached CalPIA about developing a health care facilities cleaning service pilot project. The contract included the training of inmate laborers, staff oversight of inmate laborers, the maintenance of cleanliness in clinical areas, and the provision of cleaning materials. This pilot project has been extended through 2014 and now employs 46 inmate workers.

**LAO RECOMMENDATION**

While the LAO acknowledges the need for improved janitorial services, they recommend that the Legislature withhold action on this proposal until the receiver's office can justify the significant cost of the contract with CalPIA. The LAO also recommends the Legislature require the receiver's office to report at budget subcommittee hearings this spring on why these janitorial services cannot be provided at a lower cost by CalPIA or an outside contractor.

**ISSUE 2: PHARMACEUTICAL AUGMENTATION BCP**

The issue before the subcommittee is the CDCR's proposal to reduce the current year appropriation for pharmaceuticals by \$10 million and increase the pharmaceutical budget by \$34 million for 2014-15 and ongoing.

**PANELISTS**

- California Department of Corrections and Rehabilitation
- Legislative Analyst's Office
- Department of Finance
- Public Comment

**BACKGROUND**

The Governor's budget proposes adjustments to the inmate pharmaceutical budget for both the current and budget years. For 2013-14, the budget proposes to reduce the current-year pharmaceutical budget to \$168.4 million. For 2014-15 and ongoing, the budget proposes \$161.2 million for inmate pharmaceuticals. This \$161 million budget would become the new baseline for the receiver's pharmaceutical spending, establishing an ongoing budget based on current purchasing and prescribing practices.

The receiver's office is currently responsible for providing medical pharmaceuticals prescribed by physicians under his management, as well as psychiatric and dental medications prescribed by psychiatrists and dentists managed by CDCR. From 2004-05 through 2010-11, the inmate pharmaceutical budget increased from \$136 million to \$216 million. (The pharmaceutical budget reflects only the cost of pharmaceuticals and not the cost of medication distribution or management.)

Increases in the inmate pharmaceutical budget can occur for several reasons, such as additional inmates needing prescription drugs and increases in the rate at which inmates are prescribed drugs. Moreover, we note that pharmaceutical costs generally rise at a faster pace than inflation. For example, in 2012, average drug costs increased approximately 3.8 percent and average prices for brand name drugs increased 25.4 percent, compared to an overall 1.7 percent increase in consumer prices. Brand name drugs are often prescribed when generic alternatives are unavailable due to patent protections. In addition, while cost savings can be achieved by using a formulary (a list of preferred medicines that cost less), drugs that have few alternatives are less likely to have formulary options, which can also contribute to cost growth. This is particularly an issue for CDCR because the inmate population is disproportionately likely to have health issues for which there are no generic prescription therapies available. For example, about 26 percent of the inmate patient population has a serious mental health diagnosis and many mental health medications are patent-protected, which results in high mental health pharmaceutical costs.



Recognizing the uncertainty associated with pharmaceutical cost growth, the size and acuity of the patient population, and the potential cost savings of various programmatic changes initiated by the receiver, the Legislature increased the inmate pharmaceutical budget on a limited (rather than permanent) basis in recent years. Specifically, since 2007-08, the Legislature has provided only limited-term augmentations (typically for one to three years) to support inmate pharmaceutical costs. Spending on such costs has declined in the past couple of years compared to previous highs. The enacted 2013-14 budget includes a total of \$178 million for inmate pharmaceuticals. Of this amount, \$51 million was provided on a limited-term basis.

**LAO RECOMMENDATION**

LAO has raised concerns with the proposal noting that increasing the ongoing base budget for a system that has not yet fully realized recommended efficiency improvements could remove any incentive for further improvement and result in excess cost. Thus, while they recommend that the Legislature approve the Administration's proposed pharmaceutical budget, the LAO recommends that it be for only two years (2014-15 and 2015-16), so that it can reevaluate the need for ongoing funding in two years. In addition, the LAO recommends that the Legislature require the receiver's office to perform an analysis of the potential savings that could be achieved by addressing the issues identified by the Office of the Inspector General and Health Management Associates and report to the Legislature by January 2016. This information will allow the Legislature to better assess what the ongoing size of the receiver's pharmaceutical budget should be when the limited-term funding expires.

**ISSUE 3: MEDICAL CLASSIFICATION STAFFING MODEL BCP**

The issue before the subcommittee is the CDCR's proposal to eliminate 148 positions and implement a new methodology for adjusting medical staffing based on patient-inmate acuity and each institution's medical mission

**PANELISTS**

- California Department of Corrections and Rehabilitation
- Legislative Analyst's Office
- Department of Finance
- Public Comment

**BACKGROUND**

The Governor's budget requests the reduction of 148.0 positions and the approval of the implementation of a new population methodology that will be used to adjust medical staffing based upon patient-inmate acuity and each institution's medical mission. There is no salary savings associated with the reduction in positions. The Administration contends that all associated savings have already been captured through the reduction in the prison population due to realignment.

In 2012, the receiver's office informed the Legislature that it was developing a new staffing methodology for inmate medical services. According to the receiver, the new methodology was intended to allocate staff among prisons based on the amount and types of medical services provided at each location. As such, prisons with more inmates with medical needs and higher medical acuity levels would be allocated more medical staff than other prisons. The receiver expected the methodology to significantly reduce the overall number of prison medical staff and result in significant savings.

In order to monitor the receiver's progress in implementing the new staffing methodology, the 2012-13 Budget Act required the receiver to report on the methodology not later than 30 days following its approval by the Department of Finance (DOF). Specifically, the receiver was required to submit to the Legislature a report that includes:

1. Data on the overall number of staff allocated to each of the state prisons, both prior to, and following the implementation of the revised methodology.
2. A detailed description of the methodology used to develop the revised staffing packages.
3. The estimated savings or costs resulting from the revised methodology.

During the 2013-14 budget deliberations, the receiver informed the Legislature that he was in the process of implementing the new staffing methodology and that over 800 positions would be eliminated as part of this effort. Beyond that, the receiver has not provided any additional details on the methodology. The receiver also informed the LAO that he did not intend to report to the Legislature (as required by the 2012-13 Budget Act) on the staffing methodology prior to its implementation because it had not been formally submitted to, nor approved by DOF. According to the receiver, the effect of the staffing changes on inmate medical care would be monitored over the next year and if there are no significant negative impacts, a formal budget request would be submitted to DOF in 2014-15.

**ISSUE 4: ARMSTRONG COMPLIANCE BCP AND SPRING FINANCE LETTER**

The issue before the subcommittee is the CDCR's proposals to:

- 1) add 42 full-time, permanent positions and \$4 million (General Fund) in order to assist in complying with the Armstrong Remedial Plan and the requirements of the Americans with Disabilities Act (ADA); and
- 2) grant a one-time augmentation of \$17.5 million (General Fund) to begin construction of ADA improvements at four prisons and begin the design phase for improvements at 15 additional institutions.

**PANELISTS**

- California Department of Corrections and Rehabilitation
- Legislative Analyst's Office
- Department of Finance
- Public Comment

**BACKGROUND**

**The Governor's budget** requests 42 full-time, permanent positions and \$4 million (General Fund) in order to assist in complying with the Armstrong Remedial Plan and the requirements of the Americans with Disabilities Act (ADA).

**The Governor's Spring Finance Letter** requests a one-time augmentation of \$17.5 million (General Fund) to begin construction of ADA improvements at four prisons and to begin the design phase for improvements at 15 additional institutions.

The federal Americans with Disabilities Act (ADA) provides civil rights protections and equal access to public and private services and facilities for individuals with disabilities. In 1994 a lawsuit, *Armstrong v. Brown*, was filed alleging CDCR was not in compliance with the ADA. In 1999, CDCR negotiated a settlement in the lawsuit and developed the Armstrong Remedial Plan (ARP) to address the areas of noncompliance. In 2007, the court issued an injunction because it found CDCR to be in continued violation of the ADA and ARP. In 2012, the court clarified the 2007 injunction, and specified that the receiver's office is also subject to the ARP. In August 2012, the receiver signed a memorandum of understanding (MOU) with the plaintiffs, requiring all medical staff to comply with ARP and all orders from the Armstrong court. Based on the outcomes of compliance reviews conducted by CDCR's Office of Audits and Court Compliance, the receiver's office currently has an Armstrong compliance percentage of 84 percent, with the goal of obtaining 100 percent compliance.

Currently, the workload associated with the MOU at each prison is being handled by administrative support staff in the inmate medical services program overseen by the

receiver. This workload is in addition to their normal responsibilities. The Legislative Analyst's Office notes that three analysts at CDCR headquarters are responsible for reviewing compliance documents and monitoring reports, as well as for developing corrective action plans and ensuring institution compliance with ARP. According to the receiver's office, there have been challenges in carrying out the above activities with existing staff. As a result, some institutions have experienced delays in submitting the required documents or, in some cases, have submitted incomplete documents. In addition, there have also been delays in the reviews conducted by staff at CDCR headquarters.

#### **LAO RECOMMENDATION**

The LAO finds that the two sign language interpreter positions proposed by the Governor are justified and recommend the Legislature approve them. However, while they acknowledge that the Armstrong MOU has resulted in increased workload for the receiver's office, the LAO is concerned that the other 40 additional positions proposed by the Governor on a permanent basis do not take into account the volume of workload either at a statewide level or at each institution. The LAO is concerned that workload will decline in future years and that approving permanent staff is unnecessary.

Given these concerns, the LAO recommends that the Legislature approve 14 one-year, limited-term positions statewide for the receiver to achieve ARP and ADA compliance. This would provide the receiver with the same compliance staff to total staff ratio that CDCR uses to achieve compliance. They also recommend that the Legislature require the receiver to report at budget hearings on specific workload and performance metrics by institution and statewide. The measures the receiver reports on should include, but not be limited to: performance on the Armstrong audit tool, performance on internal audits, volume of staff noncompliance allegations, volume of inquiries and cases closed, progress on corrective action plans, and number of staff training events. This information would allow the Legislature to reassess the appropriate level of staffing as part of its spring budget deliberations. Should the receiver present information that suggests that additional positions are necessary, or that positions should be provided on a permanent basis, the Legislature could modify the level of staffing at that time.