

AGENDA

Assembly Budget Subcommittee No. 6 on Budget Process, Oversight and Program Evaluation

Assemblymember Phil Ting, Chair

TUESDAY, NOVEMBER 10, 2020
1:30 PM, STATE CAPITOL – ROOM 4202

We encourage the public to provide written testimony before the hearing. Please send your written testimony to: BudgetSub6@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.

Due to the statewide stay-at-home order and guidance on physical distancing, seating for this hearing will be very limited for press and for the public. All are encouraged to watch the hearing from its live stream on the Assembly's website at <https://www.assembly.ca.gov/todaysevents>.

The Capitol will be open for attendance of this hearing, but the public is strongly encouraged to participate via the web portal, or one of the Remote Testimony Stations available for testimony throughout the state (see locations below).

- 1. Oakland – Elihu M. Harris, State Office Building (1515 Clay Street, Oakland, CA 94612)*
- 2. Fresno – Hugh Burns State Building (2550 Mariposa Street, Fresno, CA 93721)*
- 3. Los Angeles – Ronald Reagan State Building (300 South Spring Street, Los Angeles 90013)*
- 4. San Diego – State Building (1350 Front Street, San Diego, CA 92101)*

INFORMATIONAL HEARING COVID-19 MITIGATION EFFORTS IN THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

I. OPENING REMARKS

- Assemblymember Phil Ting, Chair
- Committee Members

II. PANEL 1: OVERVIEW OF COVID-19 MITIGATION EFFORTS IN CDCR PRISONS: INSPECTOR GENERAL'S REVIEW FINDINGS, *IN RE IVAN VON STAICH*, UPDATES AND RESPONSE FROM CDCR

- Roy Wesley, Inspector General, Office of Inspector General
- Luke Koushmaro, Legislative Analyst's Office
- Clark Kelso, Receiver
- Kathleen Allison, Secretary, Department of Corrections and Rehabilitation

QUESTIONS AND COMMENTS FROM MEMBERS

III. PANEL 2: ROADMAP TO INSTITUTION REOPENING AND REHABILITATIVE PROGRAMMING

- Kim Seibel, Deputy Director, Division of Adult Institutions
- Luke Koushmaro, Legislative Analyst's Office

QUESTIONS AND COMMENTS FROM MEMBERS

IV. PUBLIC COMMENT

V. ADJOURNMENT

BACKGROUND

State Prison Population

As of November 3, 2020, the total incarcerated population in state prisons is 92,330. Since March 11 of this year, 21,988 individuals have been released. This represents a combination of people who've finished their sentences and were set for release (approximately 2,500-3,000 people are released every month regularly) and early releases as a result of executive orders. In addition, the initial stoppage of intake from jails, which has slowly resumed, had contributed to this decrease in the prison population. Since CDCR resumed intake during the week of August 24, 1,251 people have been transferred from county jails to CDCR as of October 9, 2020. In addition, there are approximately, 7,700 people in county jails waiting transfer to CDCR.

COVID-19 in CDCR

As of November 3, 2020, 766 incarcerated individuals have active COVID-19 cases and there are 13 individuals currently receiving medical care in outside healthcare facilities.

CDCR has had a cumulative total of 16,166 total confirmed COVID-19 cases in the incarcerated population statewide and a total of 81 deaths.

There are currently 467 staff members that have active COVID-19 cases. There have been a cumulative total of 4,575 staff infections in prisons statewide and a total of 10 deaths.

Office of Inspector General: COVID-19 Review Series, Parts 1 & 2

In April of this year, the Speaker of the Assembly requested the Office of Inspector General (OIG) to review the policies, guidance, and directives that the CDCR implemented beginning February 1 as a response to COVID-19. Specifically, the request asked for:

- 1) The department's screening process for all individuals entering a prison or facility in which inmates are housed or are present,
- 2) Its distribution of personal protective equipment (PPE) to departmental staff and inmates; and,
- 3) How it treats inmates who are suspected to have either contracted or been exposed to COVID-19.

The OIG released a part one and part two of the COVID-19 series and has provided a summary of findings for this Subcommittee (please see handout). Part one focused on the screening process and part two focused on PPE equipment, as well as physical distancing. Part three of the series is pending.

In re Ivan Von Staich

This past May, as a result of a severe outbreak of COVID-19 at the California Institution for Men (CIM), prison officials made the decision to transfer prisoners at CIM to other prisons throughout the state. One hundred twenty one individuals were transferred to San Quentin, none of whom had been tested for the virus up to a month prior to the transfer. Prior to this transfer, there were no positive cases in San Quentin's incarcerated population. Some of the transferred individuals tested positive immediately after arriving at San Quentin. Subsequent to the transfer, approximately 2,200 prisoners in San Quentin became infected, amounting to 75% of the total prison population. Twenty eight incarcerated individuals at San Quentin have died as a result of COVID-19. In addition, nearly 300 employees were also infected, with one death.

On October 20, 2020, the First Appellate District, Court of Appeal (*In re Ivan Von Staich*) ordered the state to reduce the San Quentin prison population by fifty percent (approximately 1,500 individuals), providing CDCR with wide latitude as to how this can be achieved. In its decision, the court referenced a United States Supreme Court decision (*Farmer, supra, 511 U.S. 825*) that stated, "an Eight Amendment claimant need not show

a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.” Further, the Court of Appeal stated:

“In the face of this pandemic, which appears to take its greatest toll among older individuals and in congregate living situations, and in an aged facility with all the ventilation, space, and sanitation problems referenced in the Urgent Memo, respondents’ failure to immediately adopt and implement measures designed to eliminate the double celling, dormitory style housing and other measures to permit physical distancing between inmates is morally indefensible and constitutionally untenable.”

On October 28, 2020, the California Supreme Court extended the 15 day review window for this case to 90 days (until February 17, 2021) which provides CDCR with additional time to respond to this decision. *In re Von Staich* did not provide a deadline for the fifty percent population reduction and also left the authority to resolved disputes about the order to the Marin Superior Court. In addition, there are a number of habeas cases currently before the Marin Superior Court.

Roadmap to Re-Opening

On August 14, 2020, CDCR released its Institutional Roadmap to Reopening (please refer to the handout) that provides, at a high-level, a multi-phased approach to reopen its statewide operations, using guidelines by the Centers for Disease Control and Prevention, the California Public Health Department, and other stakeholders. The plan broadly defines the phases but no specific timeline is included.

As visiting and the majority of rehabilitative programming has been suspended, concerns from stakeholders have been raised regarding the negative impact on rehabilitative progress for incarcerated people. In addition, credit earning opportunities through program participation has helped to reduce the prison population, in addition to supporting rehabilitative goals. Since the pandemic, CDCR has not suspended credit earning in the prisons, but due to the reduction in programming provided in-person, credit earning has slowed dramatically. In response to an inquiry submitted by subcommittee staff regarding alternative methods for rehabilitative program delivery, the department responded with the following:

“The department is using a variety of methods to continue programming during the pandemic. For example, some schools are providing lessons via housing unit TVs; some programs are being delivered in-cell using paper packets; and some programs utilize laptops, tablets, and digital learning management systems. The department is continuing to develop strategies for reopening in person programming as well as providing in-cell or remote programming.”

CDCR has also recently instituted “Positive Programming Credits” in 2020 and had awarded 82,966 credits in the month of July 2020. The following table compares the credits earned in previous years to this year:

Type of Credit	2018 (March 1 to Sept. 30)	2019 (March 1 to Sept. 30)	2020 (March 1 to Sept. 30)
Educational Merit Credits (GED, AA or BA degrees, peer literacy mentor, post graduate degrees)	1,994	10,987	642
Milestone Credits (academic programs, firefighter programs, self-help, cognitive behavior and substance use disorder treatment programs, etc.)	72,225	83,001	36,203
Rehabilitative Achievement Credits (RAC)	20,340	29,336	4,788
Positive Programming Credits	N/A	N/A	82,966

Source: California Department of Corrections and Rehabilitation, Division of Correctional Policy Research and Internal Oversight, Office of Research

The Subcommittee is in receipt of a letter signed by nearly 100 organizations, including community based organizations (CBOs) that provide rehabilitative programming to people in prisons through volunteer programs, or as Innovative or CARES program grantees, two CDCR run grant programs. The organizations are seeking the reinstatement of Rehabilitative Achievement Credit earning programs statewide, using alternative program delivery, such as correspondence based programming, that adheres to current public health guidelines. CDCR is considering a two year pilot program that would reach up to 10% of the prison population for RAC programming. In support of additional programming, the California Rehabilitation Oversight Board recommended “that the Office of Community Partnerships pursue expanding credit-earning opportunities for correspondence-based rehabilitative programs. A number of institutions indicated some rehabilitative programming continued only through correspondence. Incarcerated persons who are voluntarily continuing their rehabilitative efforts through correspondence are currently earning no credit.”

Staff Recommendation: Informational item only.
