

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Curren D. Price, Jr.



Thursday, May 23, 2013
10:00 am
Room 113
Part B
Consultants: Joe Stephenshaw

Item Number and Title

Page

Vote Only

0855	Gambling Control Commission	
	(1) Remote Caller Bingo.....	3
0250	Judicial Branch	
	(1) Trial Court Trust Fund – Technical Adjustment.....	3
	(2) Immediate and Critical Needs Account Transfer.....	4
	(3) Control Section 15.45	4
	(4) New Long Beach Courthouse	4
	(5) Trial Court Efficiency Proposals and Fee Revenue Increase.....	6
5225	California Department of Corrections and Rehabilitation	
	(1) Health Care Reorganization.....	9
5227	Board of State and Community Corrections	
	(1) Executive Committee Language	10
	(2) Baseline Budget Adjustment.....	10

To be Heard

0250	Judicial Branch	
	(1) Issue 1 – Judicial Branch Contract Law Audits	14
	(2) Trial Courts Cash Management	15
	(3) Judicial Branch – Capital Outlay Projects	17

5225	California Department of Corrections and Rehabilitation	
	(1) Expand Fire Camp Capacity	20
	(2) Parole Compliance Workload	21
	(3) Population Adjustment	23
	(4) Juvenile Population Adjustment	24
	(5) Public Safety Trailer Bill Language	24
	(6) Community Corrections Performance Incentive Act	26
	(7) Reappropriation and Scheduling of Rehabilitation Program Funds	29
	(8) Parolee Mental Health and Medi-Cal Expansion	31
	(9) AB 900 General Fund	33

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Vote Only

Gambling Control Commission (0855)

Issue 1 – Remote Caller Bingo

Governor’s Proposal. The May Revision proposes \$2,000 to support workload associated with the licensing of Remote Caller Bingo vendors, and trailer bill language to extend the repayment date of two loans from the Gambling Control Fund that were used by the Gambling Control Commission to establish the Remote Caller Bingo Program.

Background. SB 1369 authorized remote caller bingo as a game that allows specific nonprofit organizations to use audio or video technology to remotely link designated in-state facilities to cosponsor live bingo games, if authorized pursuant to local ordinance and approved by the commission. The commission is required to regulate remote caller bingo, including, but not limited to, licensure, operation and development of regulations.

Recommendation. Approve as budgeted.

Judicial Branch (0250)

Issue 1 – Trial Court Trust Fund – Technical Adjustment

Governor’s Proposal. An April Finance Letter proposes a decrease of \$28 million in Trial Court Trust Fund Authority to correct a technical error related to the Automated Traffic Enforcement proposal from fiscal year 2010-11.

Background. The Automated Traffic Enforcement proposal was rejected, however, the expenditure authority, to support the increased workload associated with the proposal, was not reduced to reflect this action. This adjustment reduces the expenditure authority in the Trial Court Trust Fund, accordingly.

Recommendation. Approve as proposed.

Issue 2 – Immediate and Critical Needs Account Transfer

Governor’s Proposal. The Governor’s May Revision proposes an amendment to the Immediate and Critical Needs Account transfer item to ensure the transfer does not adversely affect ongoing construction projects.

Background. The Governor’s budget included a \$200 million transfer to the General Fund, from the Immediate and Critical Needs Account (one of the courts two primary construction funds) to offset a \$200 million augmentation to the Trial Court Trust Fund. The May Revision amends this transfer to specify that it take place “upon the order of the Director of Finance”. This amendment is proposed to ensure that the transfer is not made in a manner that affects ongoing construction projects.

Recommendation. Approve as proposed.

Issue 3 – Control Section 15.45

Governor’s Proposal. The Governor’s May Revision proposes that Control Section 15.45 be added in order to offset General Fund Payments to the Trial Court Trust Fund with funds received from county offices of education.

Background. The proposed language, below, is consistent with language that has been used in the past for offsets to trial court expenditures.

“The Controller shall offset General Fund payments to the Trial Court Trust Fund from Item 0250-111-0001 of Section 2.00 with any funds received from county offices of, education for reimbursement of trial court costs, pursuant to Section 2578 of the Education Code. These offsets shall be recorded as a reduction of total expenditures and shall not be a reduction to any department or program.”

Recommendation. Approve as proposed.

Issue 4 – New Long Beach Courthouse

Governor’s Proposal. The Governor’s Budget proposes \$34.8 million (\$54.2 million in 2014-15) from the Immediate and Critical Needs Account (ICNA) for the initial annual service fee for the new Long Beach court building.

Background. The 2007-08 Budget Act directed the Administrative Office of the Courts (AOC), to gather information regarding the possible use of a public-private partnership (P3) for the construction of a new facility, to replace the existing courthouse in Long Beach. In December 2010, the AOC entered into a P3 contract that required a private developer to finance, design, and build a new Long Beach courthouse, as well as to

operate and maintain the facility over a 35-year period. At the end of this period, the judicial branch will own the facility. In exchange, the contract requires the AOC to make annual service payments, totaling \$2.3 billion over the period. Occupancy of the new Long Beach courthouse will begin in September 2013.

The type of P3 used for this project is when a single contract is entered into with a private partner (often a consortium of several companies) for the design, construction, finance, operation, and maintenance of an infrastructure facility. In order for a private partner to be willing to finance these costs, the contract must specify a mechanism for repaying the partner. In many cases, this involves a revenue source created by the project (such as a toll or user fee on the infrastructure facility), with the private partner taking on the risk that the projected revenues will materialize at the level anticipated. Alternatively, the state can commit to making annual payments to the partner from an identified funding source. In this case, the Governor is proposing that the annual payments for the new Long Beach courthouse be made from ICNA.

The Judicial Branch has two primary court construction funds, the State Court Facilities Construction Fund, which receives approximately \$130 million annually from fees and penalty assessments to support trial court construction projects, and ICNA, which receives approximately \$320 million annually from various civil and criminal fines and fees originally intended to support 41 trial court construction projects that were deemed to be immediate and critical by the Judicial Council.

The Long Beach courthouse project was not originally on the list of projects the judicial branch planned to be funded from ICNA. Instead, the branch had assumed that the project would be funded from the General Fund. Therefore, the plan to use ICNA funds for these service payments, combined with other reductions to ICNA's fund balances, resulted in a Judicial Council decision to indefinitely delay four court construction projects (Fresno County, Southeast Los Angeles, Nevada City, and Sacramento).

Staff Comments. Given the substantial commitment of resources required to support this project (\$2.3 billion over 35 years) and the continuing pressures on the GF, ICNA seems to be a reasonable funding source for this project. However, the Legislature should examine not only this project's impact on ICNA, but also other budget actions that have diverted resources from the fund. These actions have included significant transfers to the GF to offset trial court funding reductions (including an ongoing \$50 million annual transfer to the Trial Court Trust Fund) and a \$90 million loan to the GF that was originally scheduled to be repaid in the budget year (the Governor's budget does not include this repayment). In order to effectively move forward with a court construction plan utilizing ICNA resources, the fund must be stabilized to a degree that provides certainty that scheduled projects can proceed.

Staff notes that the LAO released a report in November of 2012, *Maximizing State Benefit from Public Private-Partnerships*, in which they analyzed recent state P3 projects including the new Long Beach courthouse. The LAO found that the P3 practices, used by the state entities carrying out the projects they reviewed are not

necessarily aligned with the P3 best practices identified in research. For example, the departments did not use clear P3 processes and they appear to have selected projects not well-suited for a P3 procurement. In addition, the LAO found that the analyses done to compare project costs under different procurement options were based on several assumptions that are subject to significant uncertainty and interpretation, and tended to favor the selection of a P3 approach.

Based on the LAO's review and findings, they identified several opportunities for the state to further maximize its benefits when deciding to procure a state infrastructure project as a P3. Specifically, they recommend that the Legislature:

- Specify P3 project selection criteria in state law in order to provide for greater consistency across departments in terms of how P3s are selected.
- Require a comparative analysis of a range of procurement options (including design–bid–build, design–build, and P3) for all potential P3 infrastructure projects, in order to better determine which procurement option would most effectively benefit the state, as well as allow the state to better balance the potential benefits of increased private sector involvement, with the potential risks unique to each project.
- Require the existing Public Infrastructure Advisory Commission (PIAC) to approve state P3 projects, in order to improve the consistency of the state's P3 approval process.
- Require PIAC to 1) have a broad mix of expertise related to P3 and state finance and procurement, 2) develop additional best practices for the state's use of P3s, and (3) evaluate other state departments to determine if they would benefit by having P3 authority.

Recommendation. 1) Approve the proposal to fund the service payment for the new Long Beach courthouse from ICNA.

2) Adopt trailer bill language to a) require the AOC Judicial Council to report to the Legislature on aspects of the Long Beach project in order to assess the value of this project delivery method, and b) require the development and adoption of best practices for P3 projects, as recommended by the LAO in their November 2012 report.

Issue 5 – Trial Court Efficiency Proposals and Fee Revenue Increase

Governor's Proposal. The Governor proposes trailer bill language for a range of statutory changes to reduce trial court workload through administrative efficiencies and increase user fees to support ongoing workload at the trial courts.

An April Finance Letter proposes an increase of \$10.3 million to the Trial Court Trust Fund to reflect anticipated revenues associated with three of these proposals: the exemplification of record (\$164,660), copy and comparison (\$5.9 million), and mailing services fees (\$200,000), and also the \$30 fee for court reporting services lasting under one hour as authorized by the 2012 Budget Act (\$4.0 million).

Background. In May 2012, the Judicial Branch identified 17 proposals for trial court efficiencies in a report to the Legislature. The Governor is proposing to implement 11 of the 17 options. Of the 11 proposed changes, five changes would reduce trial court workload and operating costs, and six would increase user fees to support ongoing workload. These changes would provide the courts with approximately \$30 million in ongoing savings or revenues to help address prior-year budget reductions. The following is an outline of the 11 proposals, as presented by the LAO:

1. ***Court-Ordered Debt Collection.*** Courts (or sometimes counties on behalf of courts) may choose to utilize the state's Tax Intercept Program, operated by the Franchise Tax Board (FTB) with participation by the State Controller's Office (SCO), to intercept tax refunds, lottery winnings, and unclaimed property from individuals who are delinquent in paying fines, fees, assessments, surcharges, or restitution ordered by the court. Current law allows FTB and SCO to require the court to obtain and provide the social security number of a debtor prior to running the intercept. Under the proposed change, courts will no longer be required to provide such social security numbers to FTB. Instead, FTB and SCO (who issues payments from the state) would be required to use their existing legal authority to obtain social security numbers from the Department of Motor Vehicles. This change will reduce court costs associated with attempting to obtain social security numbers from debtors.
2. ***Destruction of Marijuana Records.*** Courts are currently required to destroy all records related to an individual's arrest, charge, and conviction for the possession or transportation of marijuana if there is no subsequent arrest within two years. Under the proposed change, courts would no longer be required to destroy marijuana records related to an infraction violation for the possession of up to 28.5 grams of marijuana, other than concentrated cannabis. This proposed change would reduce staff time and costs associated with the destruction process.
3. ***Preliminary Hearing Transcripts.*** Courts are currently required to purchase preliminary hearing transcripts from certified court reporters and provide them to attorneys in all felony cases. In all other cases, the courts purchase transcripts upon the request of parties. Under the proposed change, courts would only be required to provide preliminary hearing transcripts to attorneys in homicide cases. Transcripts would continue to be provided upon request for all other case types. This change reduces costs as the court will no longer be required to purchase copies of all non-homicide felony cases from the court's certified court reporter, but will only need to purchase them when specifically requested.
4. ***Court-Appointed Dependency Counsel.*** Current law states that parents will not be required to reimburse the court for court-appointed counsel services in dependency cases if (1) such payments would negatively impact the parent's ability to support their child after the family has been reunified or (2) repayment would interfere with an ongoing family reunification process. Designated court staff currently has the authority to waive payment in the first scenario, but are required to file a petition for a court hearing to determine whether payment can

be waived in the second scenario. Under the proposed change, staff would be permitted to waive payments under this second scenario, thereby eliminating the need for some court hearings.

5. **Exemplification of a Record.** Exemplification involves a triple certification attesting to the authenticity of a copy of a record by the clerk and the presiding judicial officer of the court for use as evidence by a court or other entity outside of California. The fee for this certification is proposed to increase from \$20 to \$50. The cost of a single certification is \$25. The increased fee is estimated to generate \$165,000 in additional revenue.
6. **Copies or Comparisons of Files.** The fee for copies of court records is proposed to increase from \$0.50 to \$1 per page, which is estimated to generate an additional \$5.9 million in revenue. Additionally, fees to compare copies of records with the original on file would increase from \$1 to \$2 per page.
7. **Record Searches.** Current law requires court users to pay a \$15 fee for any records request that requires more than ten minutes of court time to complete. Typically, courts interpret this to mean that the fee can only be applied when the search for any single record takes more than ten minutes to complete, regardless of the total number of requests made by the requester. Under the Governor's proposal, courts would charge a \$10 administrative fee for each name or file search request. A fee exemption is provided for an individual requesting one search for case records in which he or she is a party.
8. **Small Claims Mailings.** The fee charged for mailing a plaintiff's claim to each defendant in a small claims action would increase from \$10 to \$15 to cover the cost of postal rate increases that have occurred over the past few years.
9. **Deferred Entry of Judgment.** Courts would be permitted to charge an administrative fee—up to \$500 for a felony and \$300 for a misdemeanor—to cover the court's actual costs of processing a defendant's request for a deferred entry of judgment. This occurs when the court delays entering a judgment on a non-violent drug charge pending the defendant's successful completion of a court-ordered treatment (or diversion) program.
10. **Vehicle Code Administrative Assessment.** Courts would be required to impose a \$10 administrative assessment for every conviction of a Vehicle Code violation, not just for subsequent violations as required under current law. This new assessment is estimated to generate \$2.2 million in annual revenue.
11. **Trial by Written Declaration.** Currently, defendants charged with a Vehicle Code infraction may choose to contest the charges in writing—a trial by written declaration. Originally implemented to allow individuals living far from the court to contest the charge, courts have discovered that more and more individuals living close to the court have been using this service. If the local violator is unsatisfied with the decision rendered in the trial by declaration process, they may then personally contest the charges in court as if the trial by written declaration never took place. In recognition of the unintended increased workload, this proposal would eliminate the right to a trial in front of a judge after a defendant has chosen to proceed with a trial by written declaration.

Staff Comments. Staff notes that there have been concerns raised with some of these trial court efficiency proposals. In particular, there is concern that providing preliminary hearing transcripts in felony cases, other than homicide cases, only upon request, will create a significant burden for defense counsel. Additionally, court user fees have been a primary solution in addressing reductions to trial court funding, shifting the burden from the General Fund to users. However, with the need to operationalize trial court funding reductions as outlined in the first issue, the Legislature should strongly consider these proposals.

Recommendation. Approve the following proposals:

1. Court-Ordered Debt Collection
2. Court-Appointed Dependency Counsel
3. Copies or Comparisons of Files
4. Exemplification of a Record
5. Small Claims Mailing
6. Trial by Written Declaration
7. Approve the April Finance Letter to recognize increased fee revenue.

Approve the following proposals with modification:

1. Preliminary Hearing Transcripts – Modify to allow a local court, by rule, to require counsel to make a request for preliminary hearing transcripts.
2. Records Search – Exempt the press from new fee.

Department of Corrections and Rehabilitation (5225)

Issue 1 – Health Care Reorganization

Governor's Proposal. The May Revision proposes trailer bill language intended to authorize the establishment of a third undersecretary, to oversee CDCR's adult inmate health care services programs. The proposal also includes two new director positions to report to the undersecretary; one to oversee the Division of Health Care Operations and the other to oversee the Division of Health Care Policy and Administration.

Background. The proposed positions will not be filled until the Administration has confirmed a transition timeline with the Receiver's Office and the federal court overseeing the *Plata v. Brown* litigation. When necessary, funding to support the proposed positions will be redirected from within CDCR's budget.

Recommendation. Approve as proposed.

Board of State and Community Corrections (5227)

Issue 1 – EXECUTIVE COMMITTEE LANGUAGE

Governor’s Proposal. The May Revision proposes trailer bill language to provide that members of the board are not financially interested in any contract made by the board based upon the receipt of compensation for holding public office or public employment. This would ensure the continued use of the historically effective Executive Steering Committee (ESC) process for developing recommendations to the Board.

Background. Government Code 1090 did not exempt the BSCC Board members for serving on the ESC, or any subcommittee delegated responsibility from the board to develop the criteria for Requests for Proposals (RFP). [For example, a sheriff serving on the BSCC could be accused of influencing the outcome of the RFP, thereby giving him/her (department) a competitive advantage if their county submitted a proposal to receive an award, or a sheriff's employee (subordinate officer) could serve as an ESC member or on a subcommittee and they could influence the outcome to benefit the sheriff.] The BSCC has relied on a recusal process, in accordance with the law, to prohibit any board member who might have a financial interest from taking action to recommend funding for their proposal (i.e., if the board member's city or county submitted an application for award, he/she would not be able to participate in the board's discussion or to vote to approve an award from city or county).

The TBL will exempt board members, who receive compensation for holding public office or employment, and allow them to continue to serve as ESC members or on any delegated committee.

Recommendation. Approve as proposed

Issue 2 – Baseline Budget Adjustment

Governor’s Budget. The Governor’s Budget proposes 9 positions, funded from existing resources, for research activities, the administration of the local jail construction financing program, authorized by Chapter 42, Statutes of 2012 (SB 1022), and other administrative functions necessary for the board to operate as an independent entity. These positions consist of 5 research positions (1 Research Specialist V, 1 Research Specialist III, 2 Research Program Specialist I’s, and 1 Research Analyst), 3 Associate Governmental Program Analysts, and 1 Executive Assistant.

Background. This BCP reflects BSCC’s identification of workload priorities. Each division, as well as the management team, assessed its operations and identified whether staffing levels and classifications were adequate and appropriate. This

proposal requests positions that were identified as needed to fill gaps. The 9 positions will be funded by the redirection of existing resources as follows:

- Temporary help will be reduced to \$148,000, from \$351,000, and budgeted overtime will be reduced from \$40,000 to \$0, for a net savings of \$243,000.
- \$321,000, of \$531,000 in funds, budgeted to match federal fund expenditures for administration of various juvenile justice grants (Title II, Title V, and Juvenile Justice Accountability Block Grant); will be redirected due to a decline in awards.
- Approximately \$306,000 will be redirected from grant administration programs that would instead be eligible for federal grant program funding.

According to the Administration, the two proposed administrative positions would provide support to the board that was previously provided by CDCR, prior to BSCC becoming a separate state entity. According to the board, the new research unit would be tasked with revising BSCC's correctional surveys, managing the collection of data, as well as developing and carrying out a research agenda. The BSCC also plans to utilize these researchers to help develop a web-based reporting system for counties to submit correctional data, as well as an online dashboard to make the data more readily available to the public.

SB 1022 provides up to \$500 million in state lease-revenue bond financing for construction, expansion or renovation of adult local criminal justice facilities in California. Consistent with the stated legislative intent, applicant counties are expected to judiciously consider programming needs to manage the offender population, and the range of alternatives to incarceration that may affect bed space needs, while employing the least restrictive options.

The legislation specifies funding consideration shall be given to counties that are seeking to replace existing compacted, outdated, or unsafe housing capacity or are seeking to renovate existing, or build new, facilities that provide adequate space for the provision of treatment and rehabilitation services, including mental health treatment.

Staff Comment. This proposal represents BSCC's efforts to prioritize existing resources in light of their new responsibilities.

Recommendation. Approve this request with the adoption of the following budget bill language to 1) require the BSCC to report on activities related to evidence-based practices and 2) require that one of the research positions be designated for juvenile justice issues.

- The Board of State and Community Corrections shall develop recommendations for how it can build its clearinghouse and technical assistance capacity for collecting and providing user-friendly information to assist state and local corrections with selecting, implementing, and evaluating evidence-based or promising programs, services, and treatment practices for managing criminal offenders in the community. The board shall provide a written report to the

appropriate fiscal and policy committees of the Legislature of its recommendations, and a description of how the board developed its recommendations, on or before May 1, 2014.

- The positions included in this item for research activities shall include 1 juvenile justice research and program specialist to assist BSCC, including its Juvenile Justice Standing Committee, in the development of standardized juvenile justice system performance and quality assurance measures, and in planning for necessary upgrades of state and local data systems to support those measures, with the goal of advancing juvenile justice best-practices that will promote public safety while assuring positive outcomes for justice-involved youth.

Items to be Heard

Judicial Branch (0250)

Article VI of the California Constitution creates the Supreme Court of California and the Courts of Appeal to exercise the judicial power of the state at the appellate level. Article VI also creates the Judicial Council of California to administer the state's judicial system. Chapter 869, Statutes of 1997, created the California Habeas Corpus Resource Center to represent any person financially unable to employ appellate counsel in capital cases.

Chapter 850, Statutes of 1997, enacted the Lockyer-Isenberg Trial Court Funding Act of 1997 to provide a stable and consistent funding source for the trial courts. Beginning in 1997-98, consolidation of the costs of operation of the trial courts was implemented at the state level, with the exception of facility, revenue collection, and local judicial benefit costs. This implementation capped the counties' general-purpose revenue contributions to trial court costs at a revised 1994-95 level. The county contributions become part of the Trial Court Trust Fund, which supports all trial court operations. Fine and penalty revenue collected by each county is retained or distributed in accordance with statute.

Chapter 1082, Statutes of 2002, enacted the Trial Court Facilities Act of 2002, which provided a process for the responsibility for court facilities to be transferred from the counties to the state by July 1, 2007. This Chapter also established several new revenue sources, which went into effect on January 1, 2003. These revenues are deposited into the State Court Facilities Construction Fund for the purpose of funding the construction and maintenance of court facilities throughout the state. As facilities transferred to the state, counties also contributed revenues for operation and maintenance of court facilities based upon historical expenditures.

In enacting these changes, the Legislature sought to create a trial court system that was more uniform in terms of standards, procedures, and performance. The Legislature also wanted to maintain a more efficient trial court system through the implementation of cost management and control systems.

The Judicial Council is the policymaking body of the California courts, which is the largest court system in the nation. Under the leadership of the Chief Justice, and in accordance with the California Constitution, the council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice. The Administrative Office of the Courts (AOC) implements the council's policies.

Currently, the state maintains 58 trial court systems, each having jurisdiction over a single county. These courts have trial jurisdiction over all criminal cases (including felonies, misdemeanors, and traffic matters). They also have jurisdiction over all civil cases (including family law, probate, juvenile, and general civil matters).

The mission of the Judicial Branch is to resolve disputes arising under the law and to interpret and apply the law consistently, impartially, and independently to protect the rights and liberties guaranteed by the Constitutions of California and the United States, in a fair, accessible, effective, and efficient manner.

Major Trial Court Realignment Legislation

Legislation	Description
<i>Lockyer–Isenberg Trial Court Funding Act of 1997.</i> Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle)	Transferred financial responsibility for trial courts (above a fixed county share) from the counties to the state.
<i>Trial Court Employment Protection and Governance Act.</i> Chapter 1010, Statutes of 2000 (SB 2140, Burton)	Classified most individuals working in the trial courts as court employees.
<i>Trial Court Facilities Act of 2002.</i> Chapter 1082, Statutes of 2002 (SB 1732, Escutia)	Initiated the transfer of ownership and responsibility of trial court facilities from the counties to the state.

Issue 1 – Judicial Branch Contract Law Audits

Governor’s Proposal. The Governor’s budget proposal includes trailer bill language authorizing the AOC to contract with the Controller, Department of Finance (DOF), or State Auditor to perform mandated contracting audits.

Background. A trailer bill associated with the 2011 Budget Act included contracting requirements for the Judicial Branch. Most notably, the Judicial Branch is now required to follow essentially the same requirements that apply to state agencies, and the Judicial Council and trial courts were required to adopt contracting manuals that mirror the Public Contract Code, and are similar to other related state policies. It also requires the AOC to report, twice annually, to the Legislature and State Auditor regarding procurement and contracting practices. Lastly, the State Auditor was mandated with establishing an audit program and the courts were required to contract with the State Auditor for the auditors required under this program.

Staff Comments. Staff notes that concerns have been raised by the AOC that the new contracting code audits have been too costly. Therefore, the proposed trailer bill language was developed to give the AOC greater flexibility in choosing the least costly auditing agency among the Controller, DOF, or the State Auditor. However, the State Auditor has reported that, based on experience from the audits done to date, they believe that they can reduce the future costs of the court contracting audits. One of their suggestions is to perform future trial court audits utilizing a risk-based approach

Cost aside, it is important to note that the Legislature selected the State Auditor's office to perform these duties based on a determination that they were the most appropriate entity for the task.

Recommendation. Reject the proposed trailer bill. Adopt, the following solutions to address the cost of the State Auditor's court contracting audits:

1. Appropriate \$325,000 to the Trial Court Trust Fund.
2. Adopt budget bill language that specifies that this funding is to be allocated, by the Judicial Council, to trial courts that are audited by the State Auditor pursuant to the court's contracting provisions, and that the funds are to be paid the State Auditor for the costs of these audits.
3. Modify statute to make the court's contracting audit program a more selective, risk-based audit program.

Issue 2 – Trial Courts Cash Management

Governor's Proposal. The Governor has proposed trailer bill language to address trial court cash management concerns.

Background. Legislation associated with the realignment of trial courts, from the counties to the state, allowed the Judicial Council to authorize trial courts to establish reserves to hold any unspent funds from prior years. There were no restrictions placed on the amount of reserves each court could maintain or how they could be used. Trial courts had \$531 million in reserves at the end of 2011-12.

These reserves consist of funding designated by the court as either restricted or unrestricted. Restricted reserves include 1) funds set aside to fulfill contractual obligations or statutory requirements and 2) funds usable only for specific purposes. Examples of restricted reserves include funds set aside to cover short-term facility lease costs, service contracts, license agreements, and children's waiting rooms costs. Unrestricted reserves, on the other hand, are funds that are available for any purpose. Unrestricted funds are generally used to avoid cash shortfalls caused by normal revenue or expenditure fluctuations, to make one-time investments in technology or equipment, and to cover unanticipated costs.

As part of the 2012-13 budget package, the Legislature approved legislation to change the above reserve policy that allows trial courts to retain unlimited reserves. Specifically, beginning in 2014-15, each trial court will only be allowed to retain reserves of up to 1 percent of its prior-year operating budget. The judicial branch estimates that, in total, trial courts will be able to retain up to \$22 million in 2014-15. Additionally, legislation was approved to establish a statewide trial court reserve, managed by the Judicial Council, beginning in 2012-13. This statewide reserve consists of 2 percent of the total funds appropriated for trial court operations in a given year, \$27.8 million in 2012-13. Trial courts can petition the Judicial Council for an allocation from the statewide reserve

to address unforeseen emergencies, unanticipated expenses for existing programs, or unavoidable funding shortfalls. Any unexpended funds in the statewide reserve would be distributed to the trial courts on a prorated basis at the end of each fiscal year.

The Governor has proposed trailer bill language to help trial courts operationalize the new reserve policy and mitigate cash flow concerns by:

- Specifying that court reporting fees collected for proceedings lasting less than an hour be distributed to the court in which it was collected.
- Clarifying that each trial court's allocation be offset by the amount of reserves in excess of the amount allowable (1 percent).
- Allowing the AOC to transfer funds to the Trial Court Trust Funds, from other court funds (State Court Facilities Construction Fund, Immediate and Critical Needs Account, Judicial Branch Workers' Comp Fund), if the cash balance is insufficient to support trial court operations. The total amount of the outstanding loan cannot exceed \$150,000,000.
- Exempts certain funds from being included in the calculation of the 1 percent balance in unexpended funds that trial courts can carry-over from one fiscal year to the next.

Staff Comments. Reducing the amount of unexpended funds that trial courts are able to carry-over from year-to-year was a fundamental shift in the manner in which trial courts have been budgeted since the realignment of responsibility the state. Concerns have been raised by courts that a 1 percent reserve is insufficient to meet operational cash flow needs. In addition, there is concern that it could lead to an unintended practice of courts ensuring that they spend down as much funding as possible before the year-end, in order to avoid offsets in the following year's allocation. These concerns notwithstanding, the administration's language does address issues that have been identified with the new reserve policy.

In order to further address this issues the LAO has recommended the following:

- That the Legislature impose a three-year sunset for the proposed cash management language. They report that there remains significant uncertainty regarding the degree to which the primary components of the proposal, 1) loans from court special funds and 2) exempting statutorily-restricted funds from counting towards a court's 1 percent reserves cap, will work as intended, particularly given uncertainties about what changes to financial and operational practices trial courts will make to implement the 1 percent reserves policy.
- That the Legislature specify how any funds remaining at the end of a fiscal year, in excess of a court's 1 percent reserve cap; can be expended. Current law and the proposed language are silent on whether, for example, those funds are to be redistributed among the 58 trial courts or retained in the Trial Court Trust Fund for other purposes.
- That, in addition to the proposal to exempt statutorily-restricted funds, the Legislature also exempt three other categories of funds. Specifically, they find

that failure to exempt the following funds could make it unnecessarily difficult for courts to manage their cash once the reserves limit is in place in 2014-15: 1) funds restricted by existing contracts, 2) funds required to be kept by a court's payroll processor at all times, and 3) any funds loaned from judicial branch special funds to a trial court for cash flow purposes.

In addition, the LAO notes that the Administration's proposed language does not address a concern that they raised previously. Specifically, it does not provide a process for the authorization, funding, and oversight of projects traditionally funded from reserves, such as technology. They recommend that the Legislature require the Department of Finance, in consultation with the judicial branch, to develop a plan that can be considered in next year's budget hearings.

Recommendation. Approve trailer bill language to increase the amount of funds that a trial court can carryover, from one fiscal year to the next, to 12 percent. In addition, adopt the Administration's proposed exclusions from the calculation of the 12 percent carryover.

Issue 3 – Judicial Branch – Capital Outlay Projects
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Governor's Proposal. A May 1 Finance Letter proposes 1) \$522.3 million (\$511.4 in Lease Revenue Bond Authority (LRB), and \$10.9 from the Immediate and Critical Needs Account (ICNA) for the construction phase of three court construction projects, 2) \$15.4 million from the ICNA for the working drawings phase of five projects, 3) the reappropriation of \$240.2 million in LRB authority for the construction phase of one project, and 4) reimbursement authority of \$3.6 million for the preliminary plans phase of one project.

Background. The May 1 letter is requesting funding for the continuation phases for the following 9 projects:

	Courthouse Project	Phase	Fund Source	Amount
1	San Joaquin – New Stockton Courthouse	C	LRB State Court Facilities Construction Fund (SCFCF)	\$240,183,000 \$3,083,000
2	San Diego – New San Diego Central Courthouse	C	ICNA LRB	\$511,374,000 \$4,623,000

3	San Joaquin – Renovate and Expand Juvenile Justice Center	C	ICNA	\$3,205,000
4	Merced – New Los Banos Courthouse	W	ICNA	\$1,974,000
5	Tehama – New Red Bluff Courthouse	W	ICNA	\$3,982,000
6	Imperial – New El Centro Courthouse	W	ICNA	\$3,344,000
7	Riverside – New Indio Juvenile and Family Courthouse	W	ICNA	\$3,484,000
8	Glenn – Renovation and Addition to Willows Historic Courthouse	W	ICNA	\$2,600,000
9	Siskiyou – New Yreka Courthouse	P	Reimbursement	\$3,578,000

Staff Comments. These projects are consistent with the court's construction plans, as approved by the Judicial Council.

Recommendation. Approve as proposed.

California Department of Corrections and Rehabilitation (5225)

Effective July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) was created pursuant to the Governor's Reorganization Plan No. 1 of 2005 and Chapter 10, Statutes of 2005 (SB 737, Romero). All departments that previously reported to the Youth and Adult Correctional Agency (YACA) were consolidated into CDCR and included the California Department of Corrections, Youth Authority (now the Division of Juvenile Justice), Board of Corrections (now the Corrections Standards Authority (CSA)), Board of Prison Terms, and the Commission on Correctional Peace Officers' Standards and Training (CPOST). Effective July 1, 2012, Chapter 36, Statutes of 2011 (SB 92, Committee on Budget and Fiscal Review) created the Board of State and Community Corrections ("BSCC"), which superseded the CSA.

The mission of the CDCR is to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities.

The CDCR is organized into the following programs:

- Corrections and Rehabilitation Administration
- Juvenile: Operations and Offender Programs, Academic and Vocational Education, Health Care Services
- Adult Corrections and Rehabilitation Operations: Security, Inmate Support, Contracted Facilities, Institution Administration
- Parole Operations: Adult Supervision, Adult Community-Based Programs, Administration
- Board of Parole Hearings: Adult Hearings, Administration
- Adult: Education, Vocation, and Offender Programs, Education, Substance Abuse Programs, Inmate Activities, Administration
- Adult Health Care Services

Issue 1 – Expand Fire Camp Capacity

Governor’s Proposal. The Governor’s May Revision proposes \$15.4 million General Fund, and 140 positions, to retain the maximum number of fire camps and inmate crews.

Background. CDCR’s *Blueprint* contained inmate population projections that predicted a fire camp average daily population (ADP) of 2,500, as of July 1, 2013. This is a decrease of 1,300 ADP from the current year. Based on the *Blueprint*’s population projections for inmate fire camps, the Governor’s Budget included staffing adjustments that reduce custody staffing by \$15.4 million and 140 positions in the budget year. However, based on results of the CDCR’s revised Inmate Classification Score System (ICSS), and increased felony admissions from the Spring 2012 projections, the CDCR now projects a fire camp ADP of 3,700 for 2013-14, and ongoing. This proposal retains the custody staffing scheduled to be reduced in 2013-14.

Should the department move forward with the Governor’s budget funding level for inmate fire camps in July 2013, the current population of 3,876 will have to be reduced to 2,500. Due to the camp inmate population not declining, 1,376 inmates would have to return to prison beds. In an effort to comply with the United States (U.S.) Supreme Court, this could adversely impact prisons overcrowding percentages. The U.S. Supreme Court ruling in 2011 ordered the Department to reduce prison crowding to 137.5 percent of the prison system’s design bed capacity by June 2013 (the date has since been moved to December 2013). If the custody positions are not restored, the camp inmates that would return to prison would fill Level I and Level II beds that could best be utilized by other Level I and Level II inmates that are not camp eligible.

The inmate fire crews provide a very direct and tangible benefit to the state. They currently provide emergency incident response, conservation work, and community service assistance. Without these crews, reliance on more expensive local, federal, and contract fire services increases. In addition, the interdependence of CAL FIRE and partner state agencies creates impacts to all parties when any one agency faces budget or restructuring changes.

Failure to mitigate the inmate firefighter population reductions will result in the loss of 75 crews by July 1, 2013. This represents over 38 percent of current crew strength (191 crews). One major emergency incident can require the use of 75 crews. During peak fire activity it is not uncommon to have two or three major fires at the same time. These reductions will severely impact the ability of CAL FIRE to suppress major fires, and result in an increased reliance on local, federal, and contract fire crews. Depending on local and national incidents, these crews may not be available, irrespective of cost.

The projected loss of 75 crews would reduce the conservation camp program to its lowest level of strength since 1971-1979. In view of the continual growth in population California has experienced since that time period, particularly in the wild land-urban interface, this decreased level of emergency response capability is a serious cause for

concern. Of the 20 largest, most damaging fires in California history, 11 have occurred since 2002.

In 2011-12, camp inmate hand crews (12 to 17 inmates per crew) worked a total of 31,514 non-emergency crew hours, at a rate of \$200 per day, plus administration fees. Inmate hand crews worked 1,063,648 emergency crew hours statewide. The majority of these emergency assignments were for fire or flood duty. An inmate hand crew costs \$3,457 per day for a fire assignment. A non-inmate crew, if available, costs \$13,373 per day, a difference of \$9,916. Other hand crews cost as much as \$22,866 per day. Consequently, reduction of these inmate crews would cost significantly more. CDCR has been able to regularly maintain the minimum crew size of 12 inmates and the maximum crew size of 17 inmates, based on population. Camps are rated for 4 to 7 fire crews per camp design/population.

Recommendation. Approve as proposed.

Issue 2 – Parole Court Revocation and Compliance Workload

Governor’s Proposal. The Governor’s May Revision proposes \$8.3 million General Fund, and 60.0 positions on a one-year limited-term basis, to address court revocation and compliance workload to address *Valdivia* compliance.

Background. The 2011 Public Safety Realignment shifted responsibility for the revocation and warrant processes from the Board of Parole Hearings (BPH) to the county court system. Effective July 1, 2013, BPH will cease to perform all functions related to the parole revocation process, and the Division of Adult Parole Operations (DAPO) will collaborate with each of the individual 58 county jurisdictions to adjudicate the parole revocations of the parolee population under DAPO’s jurisdiction.

In January of 2005, the United States District Court, Eastern District of California, issued a Stipulated Order for Permanent Injunction created by *Valdivia v. Brown*, which required the DAPO to implement a revocation process to adjudicate the technical parole violation and law violations committed by parolees under their supervision. In response to the *Valdivia* injunction, the DAPO/BPH implemented a revocation process and the BPH established and operated Decentralized Revocation Units (DRUs). The DRUs, up until June 30, 2013, will serve as a hub for all processes and procedures relating to revocation. Currently, the BPH has approximately 158.6 positions dedicated to the revocation process.

To comply with the mandates of *Valdivia*, the DAPO’s staff of 81.0 Parole Agent I’s advise parolees of their due process rights by providing the Notice of Rights/Notice of Charges documentation within three days of the parolee’s being placed in county level custody. These agents are responsible for locating and serving parolees at approximately 200 county jails and facilities within the 58 California counties. Multiple

attempts to provide the Notice of Rights/Notice of Charges may be necessary, due to the counties transporting parolees to and from jails or court.

On January 13, 2012, plaintiffs' counsel representing class members in the *Armstrong v. Brown* litigation renewed the filing of a motion claiming that CDCR had an obligation to ensure parolees, in their care, are afforded necessary ADA accommodations when they are housed in a county jail facility as a result of a violation of the conditions of their parole. The resulting court order required the CDCR to develop a plan (the Armstrong County Jail Plan) to ensure timely and appropriate accommodations for parolees incarcerated in county jails.

In order to comply with the requirements of the court order and the Armstrong County Jail Plan, the DAPO has been utilizing the existing 81.0 Parole Agent I's funded under *Valdivia v. Brown*, while simultaneously serving the Notice of Rights/Notice of Charges, to complete the additional tasks below:

- Within three business days of the arrival of a parolee at a county jail facility, the CDCR must locate and interview the parolee to determine the need for reasonable ADA accommodations.
- Class members housed in county jails must have access to CDCR grievance forms; DAPO agents provide each class member with these forms and assist in their completion if the parolee has a disability or need that warrants the agent's assistance.

In 2013-14, the *Blueprint* brought *Valdivia* positions down from 120 to 60, with the assumption that the remaining positions could accommodate court revocation workload and remaining *Valdivia* workload. With the transfer of the parole revocation process to the courts, and other process changes, such as the addition of authority for flash incarceration, it was anticipated that a significant portion of the *Valdivia* workload would no longer be required. However, at the time of the *Blueprint*, it was not known specifically what the court revocation process would entail or what the outcome of pending actions for the *Armstrong* lawsuit would be.

The CDCR reports that the courts have asked, as a part of the court revocation process, for DAPO to have designated court liaison agents that would work directly with the courts, as opposed to having numerous, changing parole agents of record, deal with the courts from case to case.

The department reports that they will be in significant fiscal and legal jeopardy if the funding is not allocated for these positions. The CDCR maintains that they will fail to meet county/court expectations in the midst of this transitional process; there will be a public safety detriment if DAPO is unable to adequately pursue parolees who need to be returned to custody; there will be a possible over detention, early release, and failure to discharge appropriately; there will be an inability to fully comply with *Armstrong* County Jail Plan, which will lead to contempt of court; and there may be more extensive litigation and fiscal liability to the CDCR.

Staff Comments. Staff notes that the Legislative Analyst's Office (LAO) recommends rejection of this proposal. The LAO reports that the administration has been unable to provide sufficient documentation to justify the positions on a workload basis. In particular, the department has not provided the data necessary to support its claim that parole revocations will be higher than previously anticipated, or how the number of revocations drives the need for 60 additional positions.

Recommendation. Approve as proposed.

Issue 4 – Population Adjustment

Governor's Proposal. The May Revision includes an increase of \$11.5 million GF in 2012-13, and \$6.7 million GF in 2013-14, to support various costs directly related to adult inmate and parole population changes.

Background. The revised average daily population projections for adult inmates are 132,621 in 2012-13 (an increase of 404 inmates above the Governor's budget projection) and 128,885 in 2013-14 (an increase of 280 inmates above the Governor's budget projection). The revised average daily parolee population projection is 62,498 in 2012-13 (an increase of 60 parolees above the Governor's budget projection), and 46,358 in the budget year (a decrease of 1,262 parolees below the Governor's budget projection). The mental health population is projected to be 31,889 in the current year and 31,753 in the budget year, an increase of 6.6 percent in 2012-13 and 7.9 percent in 2013-14, over the projections included in the Governor's budget, but only a 1.3 percent increase in the mental health population since the beginning of 2012-13.

The biggest driver of the population funding increase is the projected increase in the mental health population. Due to court ordered mental health staffing ratios, the May Revision mental health population projections result in increases of \$9.7 million in 2012-13 and \$11.7 million in 2014-15.

The population adjustment also includes an increase in the statewide inmate feeding budgeted rate of \$0.04. This increase will bring the budgeted rate to \$3.14 per inmate, per day, for food and supplies to account for a 4 percent increase to Prison Industry Authority (PIA) food prices over the 2011-12 rates.

Recommendation. Approve as proposed.

Issue 5 – Juvenile Population Adjustment

Governor's Proposal. The May Revision proposes to adjust the CDCR's budget based on updated juvenile ward population trends. This proposal includes a decrease of \$425,000 General Fund in 2012-13, and a decrease of \$2.8 million General Fund in 2013-14.

Background. Specifically, it is requested that Item 5225-001-0001 be decreased by \$1.4 million and 78.1 positions, reimbursements be decreased by \$416,000, and Item 5225-011-0001 be decreased by \$1 million Proposition 98 General Fund and 12.6 positions to reflect revised juvenile population projections. Adjusted for recent juvenile population trends, the May Revision reflects an estimated average daily population of 679 wards in 2013-14, which is 234 less than projected in the Governor's budget. This adjustment also addresses the following Division of Juvenile Justice (DJJ) budget changes necessary for DJJ to adequately serve a reduced juvenile population:

- Establishes a ward-driven Operating Expenses and Equipment budget adjustment.
- Augments DJJ's salaries and wages budget to reflect actual custody salaries for filled positions, consistent with the adjustments made to the Division of Adult Institutions (DAI) in 2011-12, and Division of Parole Operations in 2012-13
- Augments DJJ's budget for the actual cost of mental health treatment provided by the Department of State Hospitals
- Shift \$1.1 million in workers compensation funding from the Division of Adult Institutions' budget to the Division of Juvenile Justice's budget. This change is necessary to align expenditure authority with the proper program.

Recommendation. Approve as proposed. In addition, adopt budget bill language to require the DJJ report back to Joint Legislative Budget Committee on potential cost reductions as their population declines.

Issue 6 – Public Safety Trailer Bill Language

Governor's Proposal. The Administration has proposed trailer bill language related to state and local public safety issues.

The proposals for the subcommittee's consideration are:

Notification of Reception Center or Parole Office Closure – Require CDCR to provide written notification at least 90 days prior to the opening, closure, or change of location of a reception center or parole office.

Misclassified Post-Release Community Supervision or Parole Placement – Provide a 60-day period during which an offender can be transferred from the jurisdiction of parole to probation or from probation to parole. After this period, the offender would remain under the supervision of the jurisdiction to which the offender was released for the remainder of his/her supervision term, regardless of the original offense.

Health Care Information for Offenders Released from Prison to Post Release Community Supervision - Provides for a standard set of health care information to be provided by the CDCR to counties for all inmates placed on post-release community supervision, regardless of whether the inmate consents to the release of health care information. This will require an exemption from federal HIPAA regulations, which would be requested after legislation is enacted.

Parole Revocation Hearings – Current law provides that parole revocation hearings happen in the jurisdiction of where a parolee resides. The proposed language revises current law to state that a parole revocation hearing could also occur in the jurisdiction where the parole violation occurred, as recommended by the Board of Parole Hearings/Administrative Office of the Courts transition working group.

Mandatory Supervision Following Early Release of Split Sentence – Clarifies existing law to specify that the supervision portion of a split sentence begins when the person is released from jail. This avoids a gap in supervision in those instances when inmates are released early due to jail capacity issues.

Controller Disbursement of Local Subventions: Monthly vs. Quarterly – Pursuant to current law, the Controller disburses subventions from the Law Enforcement Services Subaccount (JJCPA/COPS, Booking Fees, Juvenile Probation, et al) and the Juvenile Justice Subaccount (YOBG and JRF) on a quarterly basis. These funds should be disbursed monthly, consistent with the intent of realignment in maximizing local control and flexibility.

Ongoing Law Enforcement Services Growth Allocation – The realignment superstructure bill trailer bill did not specify how growth funding is allocated to the various subaccounts after 2012-13. This proposal would continue the current distribution split on an ongoing basis.

Conservation Camp Credits for Locals – Local governments lack the statutory authority to provide credits for programs similar to those conducted by the state. Inmates in state prisons can earn six weeks per year for completing educational programs. Also at the state level, inmates earn two for one credits for time served in fire camps. Local agencies propose establishing statutory authority to provide credits for

education programs and participation in conservation camps, which contain crews that do outdoor preservation projects, such as cleaning up parks and open spaces.

Staff Comment. These proposals are consistent with the intent of public safety realignment and support the effort to provide locals with tools that enhance their ability to successfully carryout their new responsibilities.

Recommendation. Approve as proposed.

Issue 7 – Community Corrections Performance Incentive Act (SB 678)

Governor's Proposal. The May Revision proposes \$72.1 million (for a total of \$106.9 million), and trailer bill language, to support county probation departments that are successful in reducing felony probation failure rates.

The trailer bill language proposes to:

- 1) require the AOC to collect additional data on the felony probation population relating to the number of Penal Code Section 1170(h) convictions;
- 2) revise the probation failure rate calculation so that it includes revocations resulting in county jail incarceration;
- 3) add a third tier of performance incentive payments for counties that demonstrate improved felony probation outcomes, but that still have combined probation failure rates above the 2006 through 2008 baseline statewide average; and,
- 4) remove the statutory authority to fund the Administrative Office of the Courts' (AOC) workload associated with SB 678 and realignment (a separate appropriation was proposed in the Governor's Budget); and
- 5) extends the \$200,000 minimum payment to counties performing better than the statewide average.

Background. The California Community Corrections Performance Incentive Act of 2009 (SB 678) established a system of performance-based funding that shares state General Fund savings with county probation departments when they demonstrate success in reducing the number of adult felony probationers going to state prison because of committing new crimes or violating the terms of probation. SB678 was designed to help decrease California's prison admissions by reducing criminal behavior, and thus relieve prison overcrowding and save public funds.

Based on a jurisdiction's success, measured by the reduction of felony probationers who are sent to prison, the state shares a portion of its savings achieved with those

jurisdictions that are successful in reducing the number of felony probationers committed to state prison. At the end of every calendar year, the California Department of Finance (Finance) is required to determine the statewide and county specific felony probation failure rates. Using a baseline felony probation failure rate for calendar years 2006 through 2008, Finance calculates the amount of savings to be provided to each county probation department.

Based on improvements in probation failure rates reflected in the increase in grant funding provided to counties, the SB 678 grant program was very successful. The county funding level grew from \$89.2 million in 2011-12 to \$138.9 million in 2012-13, due to improved performance in the prevention of probation failures. Over these two years, it is estimated that SB 678 prevented over 15,000 prison admissions.

Governor's Budget Proposal

Based on data from the first two quarters of calendar year 2012, Finance estimated SB 678 payments to counties to total \$35 million, according to the calculation methodology laid out in current law. Following this methodology, the amount of funding available under SB 678 was reduced significantly due to the implementation of 2011 public safety realignment and standardized staffing within California's prisons.

As a result of realignment, a large portion of adult felony probationers who are revoked or commit new crimes, now serve their sentences in county jails instead of prison (50.1 percent). The amount of state savings to be shared with county probation departments was reduced because these offenders are no longer eligible for state prison. In order to estimate this impact with available data, the ADP avoidance attributable to revocations served in county jail was not included in the calculation used to determine the performance incentive payment for the county. This required an adjustment to the 2006 through 2008 established baseline rate in order to isolate the impact of the prison eligible offenders by estimating that 49.9 percent of the offenders would have had prison eligible crimes.

Additionally, CDCR implemented standardized staffing on July 1, 2012, which provides for a cost-effective, safe, and efficient prison system. Standardized staffing allows for the inmate density to range from 100 to 160 percent of design capacity, without the need to adjust the number of correctional officers. As a result, the new marginal rate used to calculate SB 678 state cost savings has decreased from almost \$30,000 to approximately \$10,000 per inmate, annually.

May Revision Proposal

The May Revision proposes a \$72.1 million augmentation to the SB 678 funding allocation formula, bringing the total funding for county probation departments to \$106.9 million for fiscal year 2013-14. The revised formula: 1) now includes felony probation failures resulting in jail incarceration, in addition to those resulting in prison incarceration, to determine a county's overall probation failure rate; 2) makes an adjustment to the 2012 marginal rate for CDCR inmates; 3) adds a third tier for

performance incentive payments; and 4) adds counties with failure rates below the statewide average to the counties entitled to receive a minimum of \$200,000.

Overall county performance, and the determination of which counties are eligible for High Performance and Tier payments, is based on a comparison between the historical baseline probation failure rate and: 1) the rate of felony probationers who fail and are sent to prison for new crimes or revocations; and 2) the rate of felony probationers who fail and are sent to jail for new crimes or revocations. The baseline probation failure rate was based on data from 2006 through 2008, when all felony probationers had convictions for prison eligible crimes. However, we do not have data on the commitment offense for each of these felony probationers. Consequently, there is no data on the number of felony probationers that committed crimes that have since been realigned and are now eligible for incarceration in jail. Without this data, there is no accurate way to measure a county's performance in preventing prison incarcerations against the established baseline rate for 2012. As a result, in order to maintain a fair measure of felony probation performance for 2012, Finance proposes to include felony probation failures resulting in prison *and* jail incarceration to measure a county's overall performance.

Secondly, the marginal rate has been adjusted to account for the implementation of standardized staffing on July 1, 2012. As discussed above, standardized staffing resulted in a reduction in the marginal rate for each prisoner prevented from coming to prison. Standardized staffing reduced the marginal cost from close to \$30,000 per inmate to approximately \$10,000 per inmate annually. As a result, the revised marginal rate used for SB 678 is \$20,000 per inmate, since standardized staffing was in place for only half of calendar year 2012.

New to the SB 678 formula this year, is the establishment of a third tier for performance incentive payments. The third tier of performance will provide an incentive payment equal to the estimated number of probationers successfully prevented from being sent to prison or jail, multiplied by 30 percent of the cost the state would have incurred for that inmate (\$20,000 for 2012). This third tier will be applied to any county that demonstrated an improvement in its felony probation failure rate, but that still has a felony probation rate that is above the 2006 through 2008 baseline statewide failure rate of 7.88 percent.

The funding made available by the establishment of the third tier was used to provide counties with probation failure rates below the 2012 statewide average, with a minimum payment of \$200,000. Current law provides that any county eligible for a tier payment award shall receive a minimum of \$200,000. This proposal would add counties with a probation failure rate below the statewide average, but that did not show improvement compared to its baseline rate, with the same minimum payment. This change, in combination with the establishment of the third tier payments, provides for a more equitable distribution of SB 678 funding.

Staff Comments. SB 678 was established to incentivize best practices at the local level by sharing state savings with probation departments for improving public safety outcomes. While realignment and standardized staffing have impacted the structure of the program, given the success of the program, the fundamental of incentivizing best practices should be maintained going forward. As such, in addition to the Administration's proposal, it has been suggested that SB 678's authorizing statute should be amended to capture a broader range of the population that is now managed by probation departments and measure the outcomes of this expanded population for possible inclusion in the program's funding formula. Lastly, given the proven success of the program, the committee should consider removing the program's sunset date.

Recommendation. Adopt the Administration's May Revise proposal. Add trailer bill language to broaden the scope of the probation population that could be considered in the programs funding formula to include post release community supervision and mandatory supervision caseloads and remove the 2015 sunset date.

Issue 8 – Reappropriation and Scheduling of Rehabilitation Program Funds

Background. Due to recent concerns regarding unspent funds or shifting of rehabilitation funds within CDCR's budget to cover other expenses, the 2012 Budget Act included a separate item of appropriation for CDCR rehabilitative programs. By creating this separate item, the Legislature intended to increase accountability of funds that are budgeted for rehabilitative programs and ensure that the funds are spent as intended.

It has come to the subcommittee's attention that, in the current year, there will be a year-end balance of funds in CDCR's rehabilitation programs item. To ensure that this funding is utilized to enhance inmate rehabilitative programs, it is recommended that the sub-committee reappropriate the balance of funds in Item 5225-008-0001, Budget Act of 2012, for the following purposes:

- Maintenance and upgrades of certain CDCR classroom and rehabilitative programming spaces (\$5.4 million). Budget bill language to require the use of inmate ward labor where possible.
- A pilot project for a re-entry program for locals to receive inmates 60 days prior to release in order to provide services prior to reentry into the community. The pilot would be authorized to take place in four counties (San Francisco, Los Angeles, Marin, and San Diego) and the counties would be required to report on program outcomes (\$5 million).
- A pilot project to provide a fiscal incentive for participation in CDCR vocational programs (\$4.4 million).

- An allocation to the Prison Industry Authority (PIA) to support the Career Technical Education program. Budget bill language would require the PIA to report on its budget and expenditures during the fiscal year (\$3.1 million).
- One-time funding to support parolee reentry courts (\$2.3 million).

In addition, while the 2012 Budget Act created Item 008 within CDCR's budget to separate funding for the Division of Rehabilitative Programs from the Division of Adult Institutions, approximately \$7.8 million remains in Item 001 for Program 48-Adult Education, Vocation and Offender Programs-Adult Administration. The sub-committee should consider eliminating Program 48 in Item 001 and moving activities and funds to other programs and items, as specified, which is consistent with the Legislature's action to separate funding for the Division of Rehabilitative Programs beginning in 2012-13.

While we do not currently have the specific funding or positions associated with the Community Resource Managers or Inmate Leisure Time Activity Groups, the CDCR and Finance should be directed to work together to determine how the resources are to be divided consistent with the recommended action of the subcommittees. To the extent other programs are funded in Program 48 within Item 001, the subcommittees direct staff, CDCR, and Finance to work together to identify the appropriate scheduling for those programs consistent with the intent to eliminate Program 48 within Item 001. Finance should report the final scheduling amounts to subcommittee staff. Below are the approximate resources that would be rescheduled.

Approximately \$3.6 million in expenditures for Community Resource Managers - 1 position per institution dedicated to bringing programs into prisons. Recommend moving the positions and funding to Program 48 within Item 008, beginning in 2013-14.

Approximately \$4.2 million for Inmate Leisure Time Activity Groups- Provides staff (self-help sponsors) to oversee inmates participating in programs conducted by community providers/volunteers (i.e., Alcoholics Anonymous, Narcotics Anonymous, Anger Management, and Problem Resolution).

- Self-help sponsors are custody staff or correctional counselors that monitor inmate participation, escort volunteers to group locations, and initiate custody response when necessary. Sponsors are paid hourly since this is not full-time/scheduled workload.
- These staff perform a custody-related function and custody staff are funded only in Item 001. Custody (Officers, Sergeants, and Lieutenants) staff are funded in Program 25 (Adult Institution General Security) and Correctional Counselors are funded in Program 27 (Adult Institution Inmate Support). Recommend moving the funding associated with overseeing inmate participation from Program 48 to Program 27 within Item 001.

Recommendation. Approve the reappropriation of CDCR rehabilitative programs funding to support the items listed above and approve the elimination of program 48 from CDCR's main item and the rescheduling of funds included in the item and creating

a separate budget program for the Sex Offender Management Board. The Department of Finance shall report the final scheduling to committee staff and the Legislative Analyst's Office for review prior to making the final adjustment.

Issue 9 – Parolee Mental Health and Medi-Cal Expansion

Background.

The federal Affordable Care Act

Historically, the state has spent tens of millions of dollars annually from the General Fund for the CDCR to provide mental health treatment services to mentally ill parolees. With the implementation of the federal Affordable Care Act, federal Medicaid reimbursements could be attained for some of the costs of these existing services. Moreover, the amount of federal reimbursements could increase significantly under the federal Patient Protection and Affordable Care Act (ACA) if the Legislature chooses to expand Medi-Cal to provide health coverage to most low-income individuals, as authorized by ACA.

The federal Affordable Care Act could expand Medi-Cal coverage, including mental health, to approximately one million uninsured eligible Californians, which is anticipated to include individuals recently released from local jails and state prison.

The Division of Adult Operations (DAPO) utilizes contracted social workers to provide Transitional Case Management Program (TCMP) for inmates transitioning back to the community. TCMP services are provided for eligible inmates and parolees under the jurisdiction of the CDCR. The TCMP program works at enrolling inmates who are 120 days from release for state and federal benefits. Under the current program the TCMP reaches approximately 15% of the population prior to their release.

Integrated Services for Mentally Ill Parolees (ISMIP)

To date, several research studies have demonstrated that affordable housing coupled with support services, also known as supportive housing, leads to a reduction in recidivism among vulnerable offenders who suffer from mental illness (SMI) and who are homeless.

To address the needs of parolees who suffer from SMI, AB 900 (Solario), Chapter 7, Statutes of 2007, required the CDCR to provide services in day treatment or crisis care centers to at least 300 parolees who suffer from serious mental illness and who are at-risk for homelessness. Using AB 900 funding, the CDCR Division of Adult Parole Operations (DAPO) developed the Integrated Services for Mentally Ill Parolees (ISMIP) program, which is based on the adult system of care model to provide wraparound services that are flexible and tailored to each individual's rehabilitative needs.

DAPO's ISMIP Program is a comprehensive model that provides varied levels of care, supportive/transitional housing, and an array of mental health rehabilitative services to assist with the development of independent living in the least restrictive environment possible. Parole Agents and parole outpatient clinic (POC) staff refer parolees to contracted ISMIP providers for day treatment and crisis care services. Each parolee-client has a designated mental health personal services coordinator (or case manager) who, as a part of a multidisciplinary treatment team, is responsible for providing or assuring coordinating needed services including:

- Housing
- Crisis Care - 24 / 7 / 365 (including in-patient services)
- Mental Health Treatment
- Substance Abuse Treatment
- Life Skills
- Vocational training
- Education
- Benefit Entitlements
- Transitional Plans for County Services
- Medication Management
- Transportation

Data provided by CDCR and the providers in the ISMIP program showed that of the 1,502 individuals in the program, the recidivism rate was only 24 percent, compared to a 71 percent recidivism rate for other parolees with severe mental health disorders.

Recommendation. 1) Reverse the Blueprint reduction to the TCMP program (\$0.487 million) and add 55 social workers to the TCMP program to pre-enroll all offenders leaving state prison on Medi-Cal. This will expand health care and mental health care services to both parolees and offenders on post-release community supervision. The cost of the expansion would be offset by the reduction of prescription costs by CDCR because 100 percent of the costs would be covered by Medi-Cal. CDCR's cost for providing prescription drugs to parolees has fluctuated from \$30 million to \$10 million annually.

2013-14 Costs

Additional 55 TCMP workers:	\$4.400 million (assumes \$80k per)
Reverse Blueprint Reduction:	\$0.487 million

2) Increase the ISMIP program from 300 parolees to 1,000 parolees who suffer from serious mental illness and who are at-risk for homelessness.

2013-14 Costs

Increase ISMIP:	\$6.917 million
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Issue 10 – AB 900 General Fund

Background. Chapter 7, Statutes of 2007 (AB 900, Solorio), among other changes, authorized \$6.5 billion for prison construction and improvement initiatives intended to relieve overcrowding in state prisons. Of this amount, \$6.2 billion was lease–revenue bond authority for the construction of additional prison beds—including new “infill” facilities built at existing prisons—and health care improvement projects. The balance was a \$300 million appropriation from the General Fund to renovate, improve, or expand sewage, water, and other types of infrastructure capacity at existing prison facilities. In subsequent years, the allowable uses of the General Fund appropriation were expanded in statute to include, for example, the design or construction of prison dental and medication distribution improvements.

Subsequent legislation also exempted projects funded by the General Fund appropriation from the state’s traditional capital outlay approval process that requires the Legislature to approve funding for capital projects as part of its annual budget deliberations. Instead, CDCR was only required to provide the Joint Legislative Budget Committee (JLBC) with a notification when the department intended to use the General Fund appropriation for a project. The CDCR had to provide this notification at least 30 days prior to submitting the project’s scope to the State Public Works Board (SPWB) for initial approval. If JLBC did not raise concerns with the project, it was deemed approved by the Legislature. Similarly, CDCR was required to provide preliminary plans to JLBC 45 days in advance of submitting them to SPWB. These two processes were put in place to expedite the approval process for these types of projects, given the state’s overcrowded prisons and the potential for sewage, water, and other infrastructure systems to become more overloaded with the construction of the new infill facilities originally included in the AB 900 construction plan. Budget trailer legislation that was part of the 2012–13 budget package further expedited this approval process. Generally, current law now only requires CDCR to notify the JLBC simultaneously with (rather than in advance of) the department’s submission of one of these projects to SPWB for approval. In addition, current law does not require CDCR to wait to find out whether JLBC has any concerns with the project before moving forward with a project funded by the AB 900 General Fund appropriation.

In response to CDCR’s plans to operationalize changes driven by realignment, the Legislature adopted a proposal to eliminate \$4.1 billion of the lease–revenue bond authority remaining for AB 900 projects as part of a trailer bill associated with the 2012 Budget Act. The General Fund appropriation amount, however, was not modified.

Currently, about \$110 million of the original \$300 million General Fund appropriation in AB 900 remains unspent. The Governor’s budget proposes to spend about \$10 million of this amount in 2013–14, but has not identified what specific projects the funds will be spent on.

LAO Analysis. The finds that there remains little justification for the expedited approval process for CDCR infrastructure and other projects that can be funded from the continuation of the AB 900 General Fund appropriation. The primary reasons for providing the expedited process—significant prison overcrowding, the need to accommodate additional infill construction, and the need to fund dental and medication distribution improvements—no longer exist. In addition, the current review process for these projects effectively eliminates the Legislature’s ability to conduct oversight of them. Finally, restricting the use of the General Fund appropriation to CDCR limits the Legislature’s budgetary flexibility.

Exempting projects funded by the AB 900 General Fund appropriation from the state’s traditional capital project approval process largely removes the Legislature’s ability to conduct oversight of the projects. In a normal capital outlay approval process, the Legislature reviews and approves a project at multiple stages, which allows the Legislature to conduct oversight of a project and even terminate it if there are problems or if the project no longer meets legislative priorities. Under current law, however, the Legislature does not have such oversight opportunities for projects funded from the AB 900 appropriation. Also, by restricting the use of the appropriation to CDCR, current law further limits the ability of the Legislature to use these funds for other, potentially more critical priorities that may exist on a statewide basis.

LAO Recommendation. In view of the above, we recommend that the Legislature adopt trailer bill legislation to revert the remaining \$110 million from the AB 900 General Fund appropriation to the state General Fund. This will effectively result in having CDCR’s infrastructure projects being subject to the state’s traditional capital outlay approval process. This will increase legislative oversight of CDCR’s infrastructure improvement projects and allow the Legislature to determine the use of the funds currently in the AB 900 General Fund appropriation based on its own priorities.

Staff Comment. The Administration reports that The LAO write-up also asserts that the AB 900 appropriations were originally made to authorize projects necessary to address significant prison overcrowding. This overcrowding was the primary driver of this need. However, in assessing whether or not the need behind these authorizations still exists it is important to consider more than just the recent population reductions. A significant factor in this infrastructure need is the inadequacy of the existing prison infrastructure systems as compared to current code requirements and operational demands, as well as the premature deterioration of many of these infrastructure systems as a result of the demands from years of overcrowding. Simply removing a portion of the population from these prisons doesn’t address the condition of the existing infrastructure systems. The decreased demand provides some relief, but many of the needs do not change proportionately with the population of the institutions. Given the current dynamics of federal court oversight of the prison system population and the capacity needs within the prison system it is essential that the existing prison system capacity be maintained.

This Conceptual AB 900 General Fund plan is aimed at making infrastructure improvements that are important to maintaining the existing prison capacity.

Recommendation. Remove the authority for the remaining \$100 million in AB General Fund after 2013-14.