

SUBCOMMITTEE NO. 5

Agenda

Senator Nancy Skinner, Chair
Senator Joel Anderson
Senator Jim Beall



Thursday, April 20, 2017
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State Capitol - Room 112

REVISED

Consultant: Julie Salley-Gray

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ITEMS TO BE HEARD

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION

Issue 1: Proposition 57 Implementation Budget Proposal

Governor's budget. Under Proposition 57, the budget estimates a net savings of \$22.4 million General Fund in 2017-18, growing to a net savings of approximately \$140 million by 2020-21. Specifically, the budget includes the following costs and savings.

2017-18 Proposition 57 Budget Impact (Dollars in Thousands)

Cost	
Department of Juvenile Justice Population Increase	\$ 4,867
Parole	\$ 4,392
Board of Parole Hearings	\$ 1,305
Implementation BCP	\$ 5,687
Total Costs	\$ 16,251
Savings	
Department of Juvenile Justice Reimbursement from Counties	\$ (3,192)
Adult Institutions - Population Reduction	\$ (7,382)
Out-of-State Contract Population Reduction	\$ (28,078)
Total Savings	\$ (38,652)
Net Cost/Savings	\$ (22,401)

In addition, the Governor's proposal includes trailer bill language adding a 15th parole commissioner to the Board of Parole Hearings.

Caseload Impact. The Administration assumes that Proposition 57 will result in 1,959 fewer inmates in 2017-18, growing to 9,956 fewer in 2020-21. In addition, they assume that there will be 1,038 more parolees in 2017-18, growing to 3,545 by 2020-21.

Background. Approved by voters in November, Proposition 57, the California Parole for Non-Violent Criminal and Juvenile Court Trial Requirements Initiative, brings three major changes to sentencing:

- Allows individuals convicted of nonviolent felonies to be considered for parole after completing the sentence for their primary offense.
- Allows CDCR to award additional sentence reduction credits for rehabilitation, good behavior or educational achievements.

- Requires a judge's approval before most juvenile defendants can be tried in an adult court.

Emergency Regulations. In March the Administration filed emergency regulations with the Office of Administrative Law. Those regulations provide the following parameters for implementing the proposition:

Implement New Nonviolent Offender Parole Consideration Process. On July 1, 2017, the Administration plans to begin the parole consideration process for nonviolent offenders. As noted above, under the proposition inmates will be eligible for parole consideration upon the completion of the sentence for their primary offense. Prior to Proposition 57, any enhancements included in the sentence were included in establishing an eligible parole date. Specifically, the Administration is making the following implementation assumptions:

- The changes brought by Prop 57 are similar to the changes implemented by CDCR several years ago for second strike offenders. CDCR is viewing Proposition 57 as an expansion of that parole existing process.
- At this time, the regulations exclude people who are third strike offenders who have a non-violent third strike.
- CDCR assumes that 50 percent of eligible inmates will be screened out due to their recent conduct in prison. Of the 50 percent who receive a parole hearing, 50 percent will be granted parole.

Expand Sentencing Credits. The administration plans to increase the number of credits inmates earn for good behavior and participation in rehabilitation programs. It anticipates that changes to good conduct credits will go into effect on May 1, 2017 and that changes to credits inmates earn for participation in rehabilitation programs, such as modifications to milestone credits, will go into effect on August 1, 2017. Specifically, the regulations make the following changes:

Good Conduct Credit

- The regulations simplify the existing categories around which inmates can receive credit for good behavior and how much they can receive.
 - Condemned inmates and inmates serving life without the possibility of parole (LWOP) will not be allowed to receive credit, which is the same as the current policy.
 - Violent felons can currently receive a reduction between zero and 15 percent of their sentence for good behavior. Under the regulations, all violent felons can receive a reduction of up to 20 percent of their sentence.
 - Nonviolent third strike inmates will be able to receive a reduction of up to 33.3 percent of their time.
 - Inmates in minimum custody facilities can receive up to half of their time off for good behavior.

- Inmates who are working in fire camps can earn up to 66.6 percent of their time off for good behavior if they are in for a nonviolent offense. Those in for a violent offense can earn a reduction of 50 percent of their time.

Milestone Completion Credits

- Under current law, only people serving terms for non-violent crimes are eligible for milestone credits. The Prop 57 regulations extend eligibility for milestone credits to all inmates, with the exception of those who are condemned or serving LWOP sentences.
- Expands the amount of milestone credits an inmate can earn from six weeks per year to 12 weeks.
- Programs eligible for milestone credits include academic programs, substance use disorder treatment, social life skills programs, career technical education, cognitive behavioral treatment, enhanced outpatient programs, or other approved programs with demonstrated rehabilitative qualities.
- The milestone credits will not be applied retroactively.

Rehabilitation Achievement Credits

- These credits constitute a new type of credit earning. Under the regulations, inmates participating in volunteer programs will now be eligible to earn credits toward their sentences for participation.
- As with milestone credits, all inmates regardless of their offense, with the exception of condemned and LWOP inmates will be eligible for achievement credit earnings.
- Under the regulations, an inmate will earn one week of credit for every 52 hours of participation in a volunteer activity – with a maximum of four weeks per year.
- As with the milestone credits, these credits will not be applied retroactively.
- Wardens at each institution will be in charge of creating an eligible list of volunteer programs for their prison. The Administration argues that this will allow for more flexibility among the prisons since they all have varying amounts and types of volunteer programs. CDCR headquarters will provide some level of guidance over the development of the lists.

Educational Merit Credit

- As with the rehabilitation achievement credits, this is a new credit. Inmates will now receive credit for extraordinary educational achievements.
 - Inmates completing their GED or high school diploma will receive three months of credit.
 - Inmates completing an AA, BA, or other college degree will receive six months of credit.

- Inmates completing their offender mentor certificate program will receive six months of credit.
- Unlike the previous credits, this credit will be retroactive and will be cumulative for those inmates receiving more than one degree or certificate.
- In order to receive the credit, the inmate will need to have done at least 50 percent of the work toward the degree or certificate in prison.

Heroic Acts Statute

- Under current law, an inmate can be awarded up to 12 months credit for a heroic act. Proposition 57 does not change that credit earning.

Future Senate Public Safety Hearing on Proposition 57. The subchair of this committee, Senator Nancy Skinner, is also the chair of the Senate Public Safety Committee and has committed to holding a hearing in that committee on Proposition 57 to discuss the Administration's regulations and other policy issues related to the implementation of the proposition.

SB 260 and 261. In 2013, SB 260 (Hancock), Chapter 312, Statutes of 2013, created a youthful offender parole process. Under this bill, individuals who committed their crimes under the age of 18 would be eligible for parole, even if serving a life sentence. Specifically, the legislation established a youth offender parole hearing which is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 18 years of age at the time of his or her controlling offense. The bill created the following parole mechanism for a person who was convicted of a controlling offense that was committed before the person had attained 18 years of age:

- If the controlling offense was a determinate sentence the person is eligible for release after 15 years.
- If the controlling offense was a life-term of less than 25 years, the person is eligible for release after 20 years.
- If the controlling offense was a life-term of 25 years to life, the person is eligible for release after 25 years.

In 2015, SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded the youthful parole process to include people who were convicted of committing a crime prior to attaining the age of 23.

Impact of Proposition 57 on Youthful Offenders. For youthful offenders, the credit earnings will apply to their original eligibility parole date and not to their youthful offender parole eligibility date. However, youthful offenders are included in the new formula that calculates eligibility for parole based upon their primary offense and not on the enhancements to their sentences. In some instances, applying credit earnings to the primary eligibility date rather than the youthful offender date could result in a shorter sentence than the youthful offender parole date.

2016 Budget Act Rehabilitation Augmentations. The 2016 budget contained \$431 million General

fund for inmate rehabilitative programs. This represents approximately \$100 million more than the 2015-16 budget. The increased funding included:

- \$4 million General Fund to expand Arts in Corrections to all 35 state prisons.
- \$18.9 million General Fund to expand substance use disorder treatment to the remaining 11 prisons that are currently without a program and to expand the number of slots at prison-based reentry hubs.
- \$5.5 million General Fund to provide innovative, restorative justice-based programs for long-term and life-term inmates.
- \$3.1 million General Fund to continue the innovative programming grants designed to expand volunteer-based, restorative justice and offender responsibility-centered programs at underserved prisons.
- \$2.3 million General Fund to expand 12 career technical education programs.
- \$4.1 million General Fund (\$10.6 million in 2017-18 and \$4.2 million on-going) to provide secured internet access at all state prisons.
- \$3 million Proposition 98 funding to provide inmates enrolled in community colleges access to textbooks through eReaders.
- \$3.4 million General Fund (\$2.1 million of which is one-time) to add 1,700 slots to the Long-Term Offender Program.
- \$423,000 General Fund for 64 additional slots for the Offender Mentor Certification Program which allows inmates to obtain substance use disorder treatment certification.
- \$3.1 million General fund to expand the Transitions Program to all prisons to offer employment preparation and job readiness training. The program will serve approximately 23,000 inmates per year.

The current proposal does not include additional funding for rehabilitative programming beyond what was approved in the 2016 budget act.

Legislative Analyst's Office (LAO)

LAO Issues

Parole Consideration Process –

Exclusion of Certain Nonviolent Offenders Appears to Violate Measure. The LAO finds that the Administration's plans to exclude nonviolent third strikers and sex registrants from the new parole consideration appears to violate the language of Proposition 57. This is because the proposition specifies that all inmates serving a prison term for a nonviolent offense shall be eligible for parole consideration. By automatically excluding nonviolent sex registrants and third strikers, the Administration would not provide parole consideration to this subset of these offenders.

Uncertain Whether Including Certain Offenders With Violent Convictions Permitted. It is uncertain whether the Administration's plan to include certain offenders who have completed a prison term for a violent felony but are still serving a prison term for a nonviolent felony offense that they were convicted of at the same time is consistent with the intent of Proposition 57. This is because the measure could be interpreted to limit eligibility to inmates who were sent to prison for nonviolent offenses.

Initiating Process After Primary Term Completed Appears Unnecessarily Costly. Based on the Administration's plan not to initiate the parole consideration process until after nonviolent offenders have completed their primary term, inmates approved for parole would not be released immediately. Instead, inmates would have their case reviewed and decided on by a deputy commissioner after completing their primary term. While this particular process could be done relatively quickly, if approved for parole, the inmates would then go through reentry planning activities (such as receiving pre-release risk and needs assessments), which the Administration reports take about 60 days to complete. As such, these inmates would not be released until around 60 days—in some cases more, depending on the actual timing of the review process—after they have served the full term for their primary offense.

On the other hand, if BPH initiated the parole consideration process sometime before nonviolent offenders completed their primary term, CDCR could release inmates approved for parole shortly after their primary term and achieve the associated population reduction and savings. One way this could be done is for BPH to make a preliminary release decision 60 days before such inmates complete their primary terms. Reentry planning activities would then occur during the 60 days between the preliminary release decision and when inmates complete their primary terms. A final parole consideration decision—based on a review of inmates' behavior in the 60 days since the preliminary release decision and any other relevant new data available—would be made upon the completion of inmates' primary terms. The LAO notes that in some cases, this could result in reentry plans being made for some inmates who are ultimately not released under the new parole consideration process.

To the extent that such an alternative approach reduces the time nonviolent offenders serve in prison by two months, the LAO estimates that this approach could potentially result in several millions of dollars in savings annually relative to the Governor's proposal depending on the actual number of offenders approved for parole. While a portion of these savings could be offset by the cost of reentry planning for inmates who are ultimately not released, these additional costs are likely to be minor.

Parole Consideration Process Inherently Subjective. Throughout an inmate's time in prison, CDCR records specific information on him or her, such as the extent to which the inmate participated in rehabilitation programs and rules violations. In preparation for the parole consideration process, BPH would supplement this information by soliciting input from victims, district attorneys, and the inmate. By the time the inmate is actually considered for parole, BPH would have a multitude of qualitative and quantitative data about the inmate. Deputy commissioners would use these various types and sources of information to make a release decision.

According to CDCR, deputy commissioners currently use their professional judgment to synthesize various sources and types of information about inmates to make a decision about whether to release an inmate for the nonviolent second striker parole process. However, this process is inherently subjective. For example, it is possible that deputy commissioners could over or under value various aspects of inmate data they review, such as criminal history or completion of rehabilitation programs. In addition, it can be difficult to ensure that different deputy commissioners make decisions in a consistent and completely transparent manner that is free from any unconscious biases.

In order to improve accuracy and reduce subjectivity of parole board decisions, several states use statistically-validated, structured decision-making tools as part of their parole consideration process.

These tools guide commissioners through a process of weighing several different sources of information about an inmate. For example, Pennsylvania's Parole Decisional Instrument combines the results of several actuarial risk assessments and inmates' institutional behavior and programming history into a numerical score, yielding a parole recommendation that commissioners can supplement with their qualitative observations. Accordingly, decisions guided by such instruments weigh factors in a consistent manner; are transparent, as they can be shown to be based on specific factors; and are less likely to be subject to unconscious bias. In addition, research suggests that such actuarial tools can improve public safety by yielding better release decisions than professional judgment alone.

New Sentencing Credits –

Lack of Information on Inmate Access to Programs. The population impact of CDCR's planned milestone and participation credits will depend on inmates' access to the programs that yield credits. However, the Administration indicates that it has not done an analysis of how the availability of these programs will impact credit earning under their plan. On the one hand, the changes in these credits could reduce the inmate population by less than the Administration expects if there is not enough capacity in rehabilitative and educational programs to allow inmates to earn the number of credits assumed by the Administration. On the other hand, to the extent there is more than enough capacity, the planned changes to credit earning could impact the population by more than the Administration expects. This creates significant uncertainty about how Proposition 57 will actually impact the state's inmate population. Such uncertainty makes it difficult for the Legislature to evaluate the Governor's proposed budget adjustments.

Effectiveness of CDCR's Programs Remain Unclear. Inmates who participate in approved programs earn credits, which allow them to accelerate their release, regardless of whether the programs are effective in reducing their risks to public safety. In order to protect public safety, it is critical that the approved programs are effective at reducing recidivism. However, CDCR currently has only done a limited analysis of the effectiveness of its programs. This analysis found that the recidivism rates of offenders who received substance use disorder treatment reoffended at lower rates than those who had not. While many of the other programs offered in prisons have been shown to be effective elsewhere, analyses of California's current implementation of these programs have not been completed.

Unclear Rationale Behind Credit Reduction for Certain Programs. The Administration plans to reduce credits awarded for a few programs, including Guiding Rage Into Power (GRIP) and two theology programs. It is unclear why the Administration chose to reduce credits awarded for these programs.

Fiscal Impact –

Budgetary Impacts Subject to Change. The Administration's implementation plan changed somewhat between the release of the Governor's January budget proposal and the release of the emergency regulations in March 2017. These changes to the implementation plan will likely alter somewhat the Administration's projected population impacts and budget requests, though at the time of this analysis the Administration had not provided these updates.

In addition, the regulations for the nonviolent offender parole consideration process and new credit earning policies are not yet finalized. Accordingly, the Administration's implementation plans and timeline are subject to further change, which raises additional uncertainty about their budgetary effects.

Population Impacts of Proposition 57 Are Difficult to Predict. Even if the Administration's regulations do not change, its projections of the Proposition 57 impacts would still be subject to uncertainty because of the inherent difficulty of projecting the effects of the measure. For example, the effects of the parole consideration process will depend on decisions made by deputy parole commissioners. Similarly, the effects of the proposed credit expansion will depend on how inmates respond to increased good conduct credit earning rates and credits for participating in programs and activities as well as the capacity of these programs. Finally, the effect on the Division of Juvenile Justice (DJJ) will depend on decisions made by juvenile court judges.

LAO Recommendations

Direct Administration to Report on Final Regulations. The LAO recommends that the Legislature direct the Administration to provide a report no later than 30 days after the regulations on the new parole consideration process for nonviolent offenders are finalized. This report should (1) summarize the final regulations, (2) discuss how the final regulations differ from the emergency regulations (including justification for any differences), and (3) identify how the changes affect CDCR's budget and populations.

Parole Consideration Process –

Direct Administration to Justify Definition of Nonviolent Offender. The LAO recommends that the Administration report at budget and policy hearings on the following issues:

- The legal and policy basis for excluding nonviolent sex registrants and third strikers from the parole consideration process.
- The legal basis for including in the nonviolent offender parole consideration process certain offenders who have completed a prison term for a violent felony but are still serving a prison term for a nonviolent felony offense.

Seek Advice From Legislative Counsel on Timing of Parole Consideration. In order to ensure that the measure is implemented in the most effective and efficient manner, the LAO recommends that the Legislature consult with Legislative Counsel to determine whether Proposition 57 allows BPH to initiate parole consideration before an inmate completes his or her primary term. If Legislative Counsel advises the Legislature that BPH can begin parole consideration as such, the LAO recommends that the Legislature direct the Administration to report, during spring budget hearings, on how it could begin to consider inmates for parole prior to completion of their primary terms.

Direct BPH to Investigate Using a Structured Decision-Making Tool. Given the potential benefits, the LAO recommends that the Legislature direct BPH to investigate using a structured decision-making tool in the future. Specifically, the LAO recommend that the Legislature direct BPH to report by December 1, 2018, on available structured decision-making tools and the estimated costs, opportunities, and challenges associated with adapting such tools for use in parole consideration reviews required by Proposition 57, as well as the other parole processes conducted by BPH. (This

should give BPH time to focus on implementing the new parole consideration process before considering changes to it.) This report would allow the Legislature to determine whether to require BPH to use such a tool in the future.

New Sentencing Credits –

Direct Department to Assess Program Capacity. The LAO recommends that the Legislature direct CDCR to report at budget hearings on the number and type of programs through which inmates would receive credits, the current capacity and attendance rates for these programs, and the corresponding effect they may have on the inmate population. This information would allow the Legislature to assess whether or not the current availability of programs is sufficient. The Legislature could then decide whether it needs to adjust funding for programs accordingly.

Direct Administration to Evaluate Credit-Yielding Programs. The LAO recommends that the Legislature direct CDCR to contract with independent researchers (such as a university) to evaluate the effectiveness of its rehabilitation programs and that it prioritize credit-yielding programs for evaluation. The LAO estimates that such evaluations would cost a few million dollars and could take a few years to complete. The outcomes of the evaluations would allow the Legislature in the future to prioritize funding for programs that have been shown to reduce recidivism.

Direct Administration to Explain Credit Reductions. The LAO recommends that the Legislature direct the Administration to report during budget and policy hearings on its rationale for reducing milestone credits for specific programs.

Fiscal Impact –

Withhold Action Pending the May Revision. Uncertainty in the population impacts of Proposition 57 makes it difficult to assess the Governor’s population-related budget requests. In addition, uncertainty in the timing of and workload required to implement and operate the new parole process and credit policies make it difficult to assess the Governor’s requested funding for implementation. Given these uncertainties, the LAO recommends that the Legislature withhold action on the Administration’s January budget adjustments pending the receipt of revised adjustments from the Administration.

Staff Comments

Program Opportunities for Parole-Eligible Individuals. One of the criteria for parole eligibility is being able to demonstrate work toward rehabilitation by participating in programming. Unfortunately, opportunities for programming can be limited and vary widely between prisons and even between housing units within prisons. So, while an inmate who is eligible for parole may have participated in every program offered to him or her, it still may not be enough for the parole board.

In addition, until recently, certain programs and treatment were primarily concentrated in 11 prisons that CDCR had designated as “reentry hubs.” Therefore, unless an inmate was housed in one of those 11 facilities, they may not have access to substance use disorder treatment or cognitive behavior therapy treatment, both of which may be required for parole.

As noted previously, the 2016 budget included almost \$100 million in additional funding for rehabilitative programs. The current budget does not include any expansion beyond that. It is unclear what the impact of that expansion will be on inmates' ability to participate in a variety of rehabilitative programs. If the 2016 expansion does not significantly increase program availability at all prisons and on every yard, it may be that those inmates who have availed themselves of every rehabilitation program available will now find that they have very limited options for earning credits. The effect of these regulations on this key group of inmates could be chilling. These are the very inmates who should be rewarded under proposition 57 because they are the most likely to succeed upon their release.

Unless programming and treatment is expanded throughout the prison system and includes enough slots to satisfy the long list of inmates who are waiting for programs, initiatives like Proposition 57, which expanded eligibility for parole, may not reach as many inmates as possible, thus limiting the state's ability to stay under the population cap without the use of private prison contracts or construction of new prisons.

Since it is too early to determine the impact of the program expansion in the current year, the Legislature may wish to ask CDCR to provide a report on the availability of programming for every inmate and the size of waiting lists for all of their programs, including volunteer programs. This would allow the Legislature to direct funding and programs toward institutions that do not appear to have adequate programs available to service inmates who are interested in rehabilitation.

Effectiveness and Quality of Rehabilitation Services and Programs. The Senate has led the way in expanding rehabilitation programs in the prisons, beginning in 2013 with the passage SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013, which provided the CDCR with an additional \$315 million in General Fund in order to expand prison capacity. SB 105 required that any unspent funding be placed in a recidivism reduction fund and be used to increase rehabilitative programming in prisons and provide funding for other programs that have been shown to reduce the likelihood that someone would return to prison after being released. Through that funding, the Legislature established innovative program grants that were designed to expand the number of restorative justice/offender responsibility programs available throughout the prison system.

Beyond those efforts, in recent years, the Legislature has segregated the funding used for rehabilitation programming in CDCR's budget to ensure that those funds could not be redirected toward increased security staffing or other funding priorities. In addition, in 2014, the Legislature passed SB 1391 (Hancock), Chapter 695, Statutes of 2014, which significantly expanded community college programs throughout the prison system. Perhaps most significantly, the legislation required that CDCR partner with local community college districts to provide in-prison, in-person college level courses.

The Administration has embraced and supported these efforts. In addition, they have expanded them by making innovative program funding a permanent part of the rehabilitation budget and by reinstating the Arts in Corrections program at all 36 state prisons. However, along with these efforts to expand the availability of rehabilitation programming, the question remains as to whether or not the programs and treatment being offered both in prison and upon release are effective and of a high quality. The LAO has continually recommended that the Legislature assess whether or not the \$400 million being spent each year on rehabilitation programming is being spent on programs that work to reduce recidivism. Toward that end, CDCR has been partnering with several national organizations to support and

evaluate parolee support and recidivism reduction strategies. These partnerships include evaluations of the Second Chance Act Adult Re-entry Demonstration projects with the National Institute of Justice, documentation of community re-entry programs with the University of California, Los Angeles and evaluation of re-entry and parolee programs with the Pew-MacArthur Results First Initiative to provide a cost-benefit analysis of current programs.

The Legislature may wish to ask CDCR to report during legislative budget hearings on the progress of the evaluations and to provide any results they have received. Depending upon the findings of the evaluations, the Legislature may want to examine the way in which rehabilitation funding is being spent and redirect it toward programs that are proven to reduce recidivism and tension in the prisons and improve the prison environment, thus improving people's chance of succeeding once they leave prison and providing a safer and productive environment for the 130,000 individuals confined to the prison system.

Allowing the wardens to determine which programs will be eligible for achievement credits. The Senate has talked a great deal over the years about the fact that some institutions embrace culture change and the value of rehabilitative programming and others do not. Given the varying cultures within the prisons system, giving wardens' control over this key aspect of the proposition could result in uneven opportunities throughout the system. While the leadership at some institutions clearly value programs like Guiding Rage Into Power (GRIP), the Actors' Gang Prison Project, and Center for Council, others have made it clear that they believe those programs are a waste of money. It is unclear how CDCR will ensure that equal opportunities are provided for inmates, regardless of the institution where they are currently housed and the philosophy of the staff in those prisons.

Definition of Violent Crime. Proposition 57 allows individuals convicted of nonviolent felonies to be considered for parole after completing the sentence for their primary offense. Under the language of the proposition, a violent felony is defined as those felonies listed under Penal Code Section 667.5(c). Since the passage of the proposition, there has been significant debate about what is and is not included on the list of violent felonies. Several bills have been introduced this legislative session to increase the number of crimes that are counted as violent. Therefore, it is likely that the debate will continue through the policy bill process.

Staff Recommendation. Hold open pending May Revision updates.

Issue 2: Division of Juvenile Justice – Population, Living Units and Programming

Governor’s budget. The Division of Juvenile Justice’s (DJJ) average daily ward population is decreasing slightly, when compared to 2016 Budget Act projections. Specifically, the ward population is projected to decrease by four in 2016-17, for a total population of 705; and projected to increase by 72 in 2017-18, for a total population of 779.

The significant increase in wards is as a result of Proposition 57, which requires that all juvenile offenders who committed their crimes prior to the age of 18 have a hearing in juvenile court before being transferred to adult court. Specifically, Proposition 57 only allows a juvenile felony offender age 16 or 17 to be transferred to an adult court, or age 14 or 15 for certain more serious felonies. The Administration anticipates that this change to state law will result in fewer juvenile offenders being tried in adult court and more juvenile offenders being sent to juvenile facilities. The budget assumes that this change will reduce the average daily adult inmate population by 81 in 2017-18 and will increase the juvenile population by 72, as noted above.

The proposed budget includes \$4 million and 28.5 positions for the activation of an additional living unit at both N.A. Chaderjian (Chad) and Ventura Youth Correctional Facility (VYCF) to accommodate the projected increase of 72 youth in 2017-18.

Background. The state has four juvenile detention facilities: N.A. Chaderjian Youth Correctional Facility (Chad) and O.H. Close Youth Correctional Facility (Close) in Stockton housing 231 and 169 males, respectively, as of February 2017; Pine Grove Youth Conservation Camp in Pine Grove housing 60 males as of February; and, Ventura Youth Correctional Facility housing 179 males and 20 females. In total, there were 679 juveniles in a state detention facility in February of 2017.

The Division of Juvenile Justice provides education and treatment to California’s youthful offenders up to the age of 25 who have the most serious criminal backgrounds and most intense treatment needs. Most juvenile offenders today who require a locked facility are committed to county facilities in their home community where they can be closer to their families and local social services that are vital to rehabilitation.

As a result, DJJ’s population represents less than three percent of the 28,447 wardship probation placements and 366 adult court convictions in California in 2015.¹ The juveniles that end up in state-run juvenile facilities have committed a serious and/or violent felony that requires intensive treatment services conducted in a structured and secure environment.

According to CDCR’s most recent report to the Legislature on their annual performance measures, juveniles have a significantly higher rearrest and recidivism rate than adult offenders. For example, after three years, 51.3 percent of adults have been convicted of a new crime. For juveniles, however, the conviction rate after three years is 60.1 percent. While 75.1 percent of adults are arrested within three years of their release, 84.2 percent of juvenile wards have been arrested during the same time

¹ Department of Justice, *Juvenile Justice in California* (2015).

period. In addition, 38.1 percent of juvenile offenders are committed to an adult prison within three years of their release from a DJJ facility.²

As part of the 2010–11 budget, the Legislature realigned from the state to county probation departments full responsibility for supervising in the community all wards released from DJJ. Prior to this, these youth were supervised in the community by DJJ parole agents. In addition to supervising these wards, county probation departments are responsible for providing reentry services following their release. Counties are also responsible for housing in juvenile facilities wards who violate a condition of supervision. Counties receive funding for these responsibilities from the Juvenile Reentry Grant, which was incorporated into the Local Revenue Fund 2011 as part of the 2011 realignment. Counties are expected to receive \$8.2 million for these responsibilities in 2016-17. With the elimination of state parole for juvenile offenders and the handing over of post-release supervision to county probation departments, the state has no way of ensuring that youth released from state facilities receive adequate support and reentry services during the critical first few months of their release.

The proposed 2017-18 budget includes \$252,041 in funding per juvenile. In contrast, the budget proposes \$75,560 per year for each adult inmate. According to CDCR's website, DJJ provides academic and vocational education, treatment programs that address violent and criminogenic behavior, sex offender behavior, and substance abuse and mental health problems, and medical care. This treatment and programming description is similar to what the CDCR provides for adult inmates. However, the actual rehabilitation programming is significantly different.

Rehabilitation Programming. DJJ operates an accredited school district, providing youth with the same high school curriculum in each of its four institutions that they would receive in their local community. Youth attend school each day to achieve a high school diploma. Youth whose commitment period is too short to fulfill that requirement are guided through a GED curriculum. DJJ considers a diploma or GED a minimum requirement for parole consideration. Certificates in a variety of vocations and college classes are offered to graduates as well.

According to CDCR, youth are also encouraged to build positive social and leadership skills through participation in groups and activities such as the student council, spiritual services, and events and fundraisers for victims' rights.

Integrated Behavior Treatment Model (IBTM). The framework for DJJ's programs is the Integrated Behavior Treatment Model (IBTM). It is designed to reduce institutional violence and future criminal behavior by teaching anti-criminal attitudes and providing personal skills for youth to better manage their environment. DJJ staff from every discipline work as a team to assess the needs of each youth and to develop an individualized treatment program to address them. Through collaboration with the youth, the team administers a case plan that takes advantage of each youth's personal strengths to maximize treatment in other areas of their life to reduce the risk of re-offending.

The IBTM guides all services provided to youth from arrival at DJJ to community re-entry. Upon arrival, each youth is assessed to determine needs and strengths in the following areas:

- Education & Employment

² *Supplemental Report of the 2015-16 Budget Package Annual Performance Measures Report*. January 13, 2017.

- Attitudes & Thinking
- Mental & Physical Health
- Family & Community Support & Stability
- Peer Influences
- Violence & Aggression
- Substance Use

Using that information, staff works collaboratively with each other, the youth and the youth's family to develop and routinely update a treatment plan that helps the youth build skills for successful re-entry into the community. Positive skill building is strengthened through a comprehensive behavior management system that discourages negative behavior and uses daily, weekly and monthly rewards to recognize and encourage positive change.

As noted previously, despite what appears to be an intensive and individualized approach, the available data suggests that almost 85 percent of youth who leave the state facilities will be arrested within three years of their release, which is a much higher rate than inmates leaving adult institutions.

Volunteer Programs. Unlike many of the adult institutions, DJJ facilities appear to have a fairly limited number of volunteer programs for the wards. Pine Grove Conservation Camp has the most programs, with 13, and Ventura has the least, with only five volunteer programs. The other two have ten (Chad) and seven programs (Close). The majority of the programs at all of the institutions appear to be faith-based. With the exception of Incarcerated Men Putting Away Childish Things (IMPACT), which operates at three of the facilities, none of the programs appear to be based on restorative justice or offender responsibility principles.

In addition, despite being listed as volunteer programs, many on the list appear to be short-term or one-time in nature. For example, the Anti-Recidivism Coalition (ARC) is listed as providing volunteer programming at Chad and Pine Grove. However, according to ARC, they hold a monthly meeting with youth at Ventura who are scheduled to be going home and they meet with youth quarterly at the other three facilities. Similarly, Motorcycle Ministries visits Pine Grove monthly and the Lockwood Fire Department holds events twice a year at Pine Grove. Unlike volunteer programs in adult prisons, the presence of volunteer programs, and programming in general outside of the educational programs, are lacking.

Arts in the State's Juvenile Justice Facilities. Currently, the Arts in Corrections program is only available for adult inmates and the state does not provide an organized, formal arts program to the 700 juveniles confined to the four juvenile justice facilities. Through their schooling, students are required to take 10 hours of fine arts credit to meet California graduation requirements. In addition, the O. H. Close Youth Correctional Facility school has a band, recreational therapists are providing informal arts and crafts, and the Sexual Behavior Treatment Program has an arts component. This is in contrast to the adult institutions that all have Arts in Corrections programs overseen by the California Arts Council. (CAC).

Impact of Art Programs on At-Risk Youth. A 2012 National Endowment for the Arts research study used the data from four longitudinal databases to determine the relationship between arts involvement and academic and social achievements. The study concluded that teenagers and young adults who come from a low socio-economic background and have a history of in-depth arts involvement show

better academic outcomes than their peers who have less arts involvement. Specifically, students with high arts involvement had higher test scores, better grades, were more likely to graduate from high school and attend college, participated in student government and extracurricular activities at a higher rate, were more likely to have volunteered recently, and were more likely to vote or participate in political campaigns.

Essentially, the report found that socially and economically-disadvantaged children and teenagers who have high levels of art engagement or arts learning show more positive outcomes in a variety of areas than their low arts engaged peers. In fact, at-risk teenagers or young adults with a history of intensive arts experiences show achievement levels closer to, or in some cases exceeding, the levels shown by the general population.

State Supported Art Programs for At-Risk Youth. Through the California Arts Council, the state funds a number of art programs that impact at-risk youth. The council awards grant funding for programs in the following areas:

- **JUMP StArts:** Supporting arts education programs for youth in the local juvenile justice system.
- **Artists in Schools:** Supporting projects that integrate community arts resources into comprehensive, standards-based arts-learning at school sites.
- **Poetry Out Loud:** Helping students master public speaking skills & build self-confidence.
- **Cultural Pathways:** Strengthening the capacity of small organizations rooted in communities of color, recent immigrant and refugee communities, or tribal groups.
- **Artists Activating Communities:** Supporting sustained artistic residencies in community settings, demonstrating the arts to be a central component of civic life.
- **Local Impact:** Revitalizing California's underserved & rural communities through the arts.

Staff Comment

The Division of Rehabilitative Programming (DRP) Does Not Oversee Rehabilitation for Juveniles. As part of juvenile justice reforms in the early 2000s, the responsibility for all rehabilitative programming for juveniles was shifted to DJJ. Under CDCR's current structure, DRP is only responsible for programming in adult institutions. DJJ has its own staff that are responsible for programming. As a result, for example, CDCR currently has two superintendents over education, one for the adult institutions and one for the juvenile high schools. In addition, while DRP has worked diligently over the last few years to expand volunteer innovative programs and arts in corrections programs throughout the adult system, no such programs are provided to juveniles (discussed in detail below). Finally, CDCR has expanded college opportunities for adult inmates, but is not currently providing the same opportunity for in-person college courses for juvenile wards who have completed high school or received their GEDs.

The segregation was done at a time when CDCR was providing relatively little rehabilitative programming and the Legislature believed that juveniles would be better served if their programs were administered separately from the adult programs. Given the significant investment in rehabilitative programming at adult institutions in recent years and the recent expanded attention being paid to programming in the prison system, it may no longer be necessary to segregate the programming responsibilities for juveniles from programming for adults. In fact, it may be that the segregation of

responsibility has caused rehabilitative programming at DJJ to become neglected. Therefore, in order to create efficiencies and expand existing programs to DJJ, the committee may wish to consider explicitly returning responsibility for DJJ rehabilitation to DRP. The committee should further consider establishing one superintendent of education to oversee both educational systems. In addition, the committee may wish to direct CDCR to expand its current community college programs to include in-person college opportunities at all four DJJ facilities.

Expand Innovative Programming to Juvenile Justice Facilities. Beginning in 2014, the Legislature created the innovative programming grants program using the Recidivism Reduction Fund. The program was designed to provide volunteer programming that focuses on offender responsibility and restorative justice principles at underserved, remote prisons. In addition, the program required that the funding be provided to not-for-profit organizations wishing to expand programs that they are currently providing in other California state prisons. Finally, the program required that priority be given to level IV institutions. Each year, the state's investment in these innovative programs has increased. As such, the investment has led to a significant expansion of effective, innovative rehabilitative programs throughout the adult system.

After reviewing the lack of innovative programming at the juvenile facilities and the proven success of many of the programs in adult facilities, an investment in bringing quality, innovative programs to juvenile facilities may help to reduce the high recidivism rates among the state's wards. Therefore, the Legislature may want to consider expanding the existing program to provide programs in the four juvenile facilities that have proven to be effective either in serving at-risk juveniles in the community or in adult prisons.

Establish an Arts Program at the State's Juvenile Justice Facilities. Efforts to reestablish the Arts-in-Corrections program have not included the state's four juvenile justice facilities. Extensive research has shown the myriad of ways that intensive and regular exposure to the arts can help at-risk youth succeed. As discussed previously, exposure to the arts improves academic outcomes, community engagement, and the treatment of trauma-based disorders. Studies of arts programs in juvenile justice settings have documented that participants with ongoing artistic engagement demonstrate significant decreases in levels of disengaged or disruptive behaviors; build stronger positive social networks; and are more likely to earn high school credit while in an institution.³

In addition, researchers have found that providing trauma-informed arts therapy at a younger age can help significantly reduce the impact of the trauma. In *Calm Through Creativity: How Arts Can Aid Trauma Recovery*, the authors note that, "Expressive arts support trauma recovery, especially for those victims who were traumatized or seek treatment at a young age, because they engage the regions of the brain that develop earlier in life." Essentially, young people may not have communication skills that allow them to access and discuss earlier traumas. However, they do have the ability to express themselves through pictures, music or other means of artistic expression. Tapping into the young brain's ability to process information through pictures, allows young people to process and heal from traumas that they otherwise may not be able to access until much later in life. It also allows young

³ Wolf, D.P. & Holochwost, S. (2014) *Our Voices Count: The Potential Impact of Strength-Based Music Programs in Juvenile Justice Settings*. Washington D.C.: National Endowment for the Arts.

people to reconnect with that image-based part of the brain, a process which calms the parts of the brain that have been overworked by trauma.⁴

As noted previously, the Arts Council provides funding for a number of programs directed at juveniles, both in schools and in the community. Among their programs specifically targeted at youth are: JUMP StArts, which provides art programs for youth involved in the juvenile justice system; Poetry Out Loud, which helps students master public speaking skills and build self-confidence; and, Artists in Schools, which supports projects that integrate community arts resources into comprehensive, standards-based arts-learning at school sites.

Given the proven benefits of arts engagement for incarcerated individuals and at-risk youth and the existence of AIC and multiple programs funded by the Arts Council targeted at youth, including those involved in the juvenile justice system, the Legislature may wish to establish an AIC program specifically designed for youth who are currently committed to the state's juvenile justice facilities.

Staff Recommendation. Hold open pending May Revision updates.

⁴ *Calm Through Creativity: How Arts Can Aid Trauma Recovery*. National Clearinghouse on Families and Youth, December 2013.

Issue 3: Elderly and Medical Parole Update

Background. On February 10, 2014, the federal court ordered the state to implement several population reduction measures to comply with the court-ordered population cap and appointed a compliance officer with the authority to order the immediate release of inmates should the state fail to maintain the final benchmark. The court reaffirmed that CDCR would remain under the jurisdiction of the court for as long as necessary to continue compliance with the final benchmark of 137.5 percent of design capacity and establish a durable solution.

The February 10, 2014, order required the CDCR to:

- Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings for parole consideration.
- Release inmates who have been granted parole by the Board of Parole Hearings but have future parole dates.
- Expand CDCR's medical parole program.
- Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole (the "elderly parole" program).
- Increase its use of reentry services and alternative custody programs.

Parole process for medically incapacitated inmates. Prison medical staff determine if an inmate is eligible for medical parole placement. BPH makes the decision to grant medical parole or not. Before the decision is made, the parole agent verifies the suitability of placing the inmate in a designated skilled nursing facility. The agent's role prior to placement is to verify that the inmate's placement will not jeopardize public safety (such as being placed a facility near the victim's address or employment). Once the inmate is placed, the inmate is placed on electronic monitoring by the parole agent and is supervised similar to a regular parolee. The parole agent is responsible for notifying BPH if there are any changes in the inmate's condition that warrant return to prison.

As of February 9, 2017, BPH had held 94 medical parole hearings under the revised procedures. An additional 28 were scheduled, but were postponed, continued, or cancelled. As of April 14, 2017, there were 25 people on medical parole in skilled nursing facilities.

Parole process for inmates 60 years of age or older having served at least 25 years. BPH schedules eligible inmates for hearings who were not already in the parole hearing cycle, including inmates sentenced to determinate terms. From February 11, 2014 through January 31, 2017, the board has held 1,780 hearings for inmates eligible for elderly parole, resulting in 465 grants, 1,181 denials, 134 stipulations to unsuitability, and there currently are no split votes that require further review by the full board. An additional 819 hearings were scheduled during this time period but were waived, postponed, continued, or cancelled.

Staff Comment. Current CDCR policy requires that inmates released on medical parole be housed in a skilled nursing facility, rather than cared for at home by family members. CDCR notes that there are a myriad of complex issues surrounding medical parole which prohibits them from placing inmates in private homes. In response to an inquiry on the policy CDCR notes, "They are under the jurisdiction of

CDCR and are on alternative custody in the licensed health care facility. There are currently five skilled nursing facilities where medical parole inmates are housed, and no current medical parole inmate is housed in a private residence.” According to BPH, no inmate has ever been approved for placement in a private home, and current CDCR policy requires placement in a skilled nursing facility. This policy differs from other policies related to paroled inmates and inmates in the Alternative Custody Program. Absent a stronger justification for not allowing significantly ill inmates to be cared for by willing family members, which might allow them to be eligible for Medi-Cal, the Legislature may wish to consider requiring CDCR to work with the health care receiver’s office to expand medical parole.

Staff Recommendation. This is an informational item. No action is necessary at this time.

Issue 4: Alternative Custody and Community Reentry Programs**Governor's Budget**

Male Community Reentry Program (MCRP). The Governor's budget proposes a \$7.5 million (General Fund) reduction in 2016–17 and a \$394,000 increase in 2017–18, due to delays in the MCRP expansion.

Custody to Community Transitional Re-Entry Programs (CCTRP) for Women. The proposed budget includes a decrease of \$1.2 million General Fund and three positions in 2016-17 to reflect the current CCTRP population. The decrease is due to delayed activation of expansions in San Diego, Sacramento, and Santa Fe Springs.

Alternative Custody Program (ACP). The proposed budget does not include an adjustment to the base funding for ACP which is \$6 million General Fund and 40 positions.

Background. For decades, the state's prison system has included alternative types of housing for certain low-risk inmates. Among these programs are the following:

The Male Community Reentry Program (MCRP) — MCRP is designed to provide or arrange linkage to a range of community-based, rehabilitative services that assist with substance use disorders, mental health care, medical care, employment, education, housing, family reunification, and social support. The MCRP is designed to help participants successfully reenter the community from prison and reduce recidivism.

The MCRP is a voluntary program for male inmates who have approximately 120 days left to serve. The MCRP allow eligible inmates committed to state prison to serve the end of their sentences in the community in lieu of confinement in state prison.

The MCRP is a Department of Health Care Services-licensed alcohol or other drug treatment facility with on-site, 24-hour supervision. Participants are supervised by on-site correctional staff in combination with facility contracted staff.

Currently, CDCR has contracts with five MCRP facilities including two in Los Angeles County, one in Kern County, one in San Diego County, and one in Butte County, for a total of 460 beds. In addition, CDCR plans to open two additional facilities in early 2017, one in San Francisco County and a third in Los Angeles County. This will bring the total number of available beds to 680.

As of April 12, 2017, there were 447 male inmates in the MCRP.

The Custody to Community Transitional Reentry Program (CCTRP) — CCTRP allows eligible inmates with serious and violent crimes committed to state prison to serve their sentence in the community in the CCTRP, as designated by the department, in lieu of confinement in state prison and at the discretion of the secretary. CCTRP provides a range of rehabilitative services that assist with alcohol and drug recovery, employment, education, housing, family reunification, and social support.

CCTRP participants remain under the jurisdiction of the CDCR and will be supervised by the on-site correctional staff while in the community. Under CCTRP, one day of participation counts as one day of incarceration in state prison, and participants in the program are also eligible to receive any sentence reductions that they would have received had they served their sentence in state prison. Participants may be returned to an institution to serve the remainder of their term at any time.

CDCR is projecting that there will be 332 CCTRP participants in 2016-17. As of April 3, 2017, a total of 40 inmates were approved for CCTRP participation and awaiting transfer. In addition, there were 10 inmates who have cleared the review process, but are awaiting the appropriate victim notifications before becoming fully endorsed. Beyond that 50, there were 18 inmates currently in the eligibility review process. Beyond those inmates in the process, there is no waiting list for participation in CCTRP.

As of April 12, 2017, there were 307 female inmates in the CCTRP.

Alternative Custody Program (ACP) — In 2010, Senate Bill 1266 (Liu), Chapter 644, Statutes of 2010, established the ACP program within the CDCR. The program was subsequently expanded in 2012 by SB 1021 (Committee on Budget and Fiscal Review), Chapter 41, Statutes of 2012. Under this program, eligible female inmates, including pregnant inmates or inmates who were the primary caregivers of dependent children, are allowed to participate in lieu of their confinement in state prison. Through this program, female inmates may be placed in a residential home, a nonprofit residential drug-treatment program, or a transitional-care facility that offers individualized services based on an inmate's needs. The program focuses on reuniting low-level inmates with their families and reintegrating them back into their community.

All inmates continue to serve their sentences under the jurisdiction of the CDCR and may be returned to state prison for any reason. An inmate selected for ACP is under the supervision of a parole agent and is required to be electronically monitored at all times.

To be eligible for the program, a woman must, meet the eligibility criteria, and cannot have a current conviction for a violent or serious felony or have any convictions for sex-related crimes.

Services for ACP participants can include: education/vocational training, anger management, family- and marital-relationship assistance, substance-abuse counseling and treatment, life-skills training, narcotics/alcoholics anonymous, faith-based and volunteer community service opportunities.

On September 9, 2015, the federal court found in *Sassman v. Brown* that the state was unlawfully discriminating against male inmates by excluding them from the ACP and ordered CDCR to make male inmates eligible for the program. The ruling now requires the state to expand the existing female Alternative Custody Program to males.

As of April 12, 2017, there were 162 inmates participating in ACP.

None of the inmates in these alternative housing program count toward the state's 137.5 percent prison population cap established by the federal court. Therefore, these programs and their expansion create an important tool for the state's prison population management.

Staff Recommendation. This is an informational item. No action is necessary at this time.

Issue 5: Board of Parole Hearings: Positions for Second Striker Workload

Governor's budget. The budget requests the conversion of two limited-term positions within the BPH to permanent positions. There is no additional funding associated with this request. The Administration argues that the positions are necessary in order to manage the ongoing workload associated with processing parole suitability for non-violent, second striker inmates.

Background. As noted in the previous item, on February 10, 2014, the federal court ordered the state to implement several population reduction measures to comply with the court-ordered population cap and appointed a compliance officer with the authority to order the immediate release of inmates should the state fail to maintain the final benchmark. As part of that court order, CDCR was required to:

- Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to BPH for parole consideration.

Since that time, BPH has needed to increase their staff to cover the new workload associated with the second striker parole requirements.

In 2015, CDCR received funding for seven permanent positions, two two-year limited-term positions, and a six-month extension of one limited-term position to accommodate increased workload due to the new parole process for second-strike offenders and youthful offenders. At the time of that request, the Governor noted that these additional positions would allow the board to complete comprehensive risk assessments every three years and promulgate regulations surrounding the new petition to advance a parole suitability hearing and administrative review process related to recent federal court rulings. No funding included in that request. BPH was able to absorb the cost within its existing budget.

At the time of that request, the board assumed that it would have a monthly average of 125 parole referrals. The data for January through June 2016, show a monthly average of 404 referrals.

Legislative Analyst's Office. The LAO did not raise any concerns with this proposal.

Staff Recommendation. Approve as budgeted.

Issue 6: CDCR Warden Recruitment and Retention Proposal

Governor's budget. Budget item 9800 contains \$7 million General Fund for a CDCR warden recruitment and retention proposal. There is no formal budget change proposal or other detailed documents associated with this proposal.

According to conversations with the Administration, they propose providing people serving in the position of captain and above at CDCR with a two percent salary increase every year for three years, for a six percent increase in salary. However, the increases will not count toward an employee's retirement calculation until the employee completes three years in the position of captain or above. If, however, an employee is promoted within that three-year time period, the time served in the lower position will count toward the three-year requirement.

Background. The rapid turnover of wardens and other management in the prisons has been an ongoing concern for both the Legislature and the Administration. In 2016, CDCR released an *Updated Plan for the Future of Corrections* as a follow-up to their 2012 blueprint. In the updated plan, CDCR noted:

Like most entities throughout state government, retention and succession planning has been an ongoing challenge for the Department. Succession planning provides the ability to forecast future workforce needs and develop strategies to promote a talented, competent workforce, and to mitigate the loss of institutional knowledge through attrition. The Department is currently underprepared for the impending retirement of highly skilled and experienced custody and technical supervisors, managers, and executives and previous efforts have not been robust enough to address the problem. The Department currently has 7,465 employees in supervisory, managerial and exempt classifications. Recent data show that approximately 74 percent of those employees will be at or reach retirement age in the next ten years. Furthermore, of the 74 percent, approximately 71 percent of those employees will be at or will reach retirement age in the next five years.

Data provided by CDCR suggests those individuals in leadership/management roles of captain and above stay in their positions two years, on average, before either being promoted, retiring, or leaving the department.⁵ Specifically, captains stay an average of 25 months in their positions, wardens stay 24 months, and associate wardens stay an average of 23 months.

In the 2016 budget, the Senate included statute authorizing the creation of a senior warden classification that would allow the Administration to provide incentives for exceptional wardens to stay beyond their usual retirement age. That language was not included in the final budget, however. The proposal included in the budget this year will apply to all CDCR employees who are in a position of captain and above. It is not exclusive to wardens, nor does it apply only to management staff that the CDCR Secretary deems to be providing exceptional leadership.

Staff Comment. Item 9800 in the budget is generally reserved for salary and benefit increases agreed upon through collective bargaining and the contract process or for other technical adjustments related

⁵ Data includes employees in captain and above positions between August 2011 and December 2016.

to salaries and benefits. The warden proposal appears to be an anomaly on that list because it is neither a technical adjustment nor a salary and benefit increase for represented employees. In addition, the Administration did not provide a budget change proposal or any other detail or justification for the proposal. This lack of information makes it difficult to determine how the proposal will work to increase the time wardens and others remain in their positions and whether or not funding should be provided for this purpose.

Based on the few details provided by the Administration, it appears that the proposal will do relatively little to retain people in leadership positions. As previously noted, if a captain, for example, promotes to a higher position within the three-year time frame, the time spent as a captain will count toward the three years. Conceivably, an individual could be promoted each year and still be eligible for the retirement increase. In addition, someone who is promoted to a warden position will likely have already spent time in other eligible positions and therefore will not need to spend additional time as a warden in order to receive the benefit. As currently constructed, this appears to be little more than a six percent salary increase for everyone in a captain's position or above.

Recent Salary Increase for CDCR Employees. Last year's memorandum of understanding (MOU) for CDCR bargaining unit six employees included a 9.3 percent salary increase over a three year period, among other increased compensation. State law requires supervisors of bargaining unit 6 employees receive salary and benefit changes that are at least generally equivalent to the salary and benefits granted to the employees they supervise. According to the LAO analysis of the MOU, "The administration indicates that in 2015-16, this agreement will increase costs associated with Unit 6 supervisors and managers by \$6 million. We think it is reasonable to estimate that extending a comparable increase in compensation to Unit 6 supervisors and managers will increase state annual costs by between \$100 million and \$200 million (mostly from the General Fund) by 2018-19."

Given that the current proposal is unlikely to increase retention of people in leadership positions, this proposal would simply result in a six percent pay increase for captains and above, on top of the nine percent that they are currently in the process of receiving as a result of the 2015-16 MOU.

Staff Recommendation. Reject the proposed funding and direct the Administration to present the Legislature with a detailed proposal prior to May Revision that will require individuals to stay in their current positions for a minimum of three years in order to receive the retirement benefit related to the increased salary.

Issue 7: Information Security Office

Governor's budget. The Governor's budget requests \$2.6 million General Fund (\$635,000 one-time) and eight positions beginning in 2017-18 to establish a new Security Operations Center (SOC) to proactively address information security threats on a 24/7 basis. This proposal includes \$1.1 million for eight information technology (IT) positions and \$1.5 million for hardware and software, as well as security professional services, to aid in continuous security monitoring operations.

Approximately \$1.5 million of the request is contract dollars to provide security remediation, network, and security operations tools. The eight new positions will enhance the safety of the CDCR network and information using the new security tools and services. These positions include:

- One systems software specialist III (supervisory)
- Two systems software specialist III (technical)
- Three systems software specialist II (technical)
- Two systems software specialist I (technical)

These staff will perform security operational activities such as threat and vulnerability hunting, and incident response to adapt with the evolution of new threats and technology. With the number of new exploits, attacks, and alerts, existing CDCR security staff are not able to keep up with the analysis and remediation efforts on a manual basis on events to decipher whether they are credible threats.

Background. The Information Security Office is located within CDCR's Enterprise Information Services Division. The goal of the Information Security Office is to provide the working environment where all data is held with correct confidentiality controls, maintaining data integrity, and assuring data accessibility when and where required. The office recently began an effort to classify all electronic data and has been focused on high risk and confidential information controls. The office also works to stay ahead of quickly changing technology and a huge increase in data consumers, including the addition of several thousand inmates and parolees as users of the in-prison and community-based automated rehabilitative programs.

According to CDCR, technology is increasingly incorporated into the department's business and the lack of expansion in cybersecurity operations and personnel to support secure integration into CDCR's business has resulted in a current department gap. As CDCR increases its position to implement and support necessary access to department services which rely on IT access security operations, there is a clear need for dedicated staffing to increase proportionally to secure the digital realm. The security operations staffing are intended to operationalize security by mitigating and controlling the impact of any system and application abuse, and malicious misuse by internal and external threats. Existing positions are designated to support critical department systems and are allocated for existing application programming. These positions cannot be redirected or designated to perform full-time duties at the SOC without adverse impact to their current assigned areas.

Given the significant increase in the department's internet-enabled devices in recent years, especially in support of CDCR programming goals, active network monitoring is essential to verify that inmates and wards are not communicating outside of the facility or potentially re-victimizing the public via the internet or email access. Giving inmates and wards more direct public domain access poses significant risk without active monitoring.

Legislative Analyst's Office. The LAO provided the following comments on the Governor's general proposal to improve information security statewide:

Budget Proposals Seem Reasonable on an Individual Department Level. The LAO does not raise any particular concerns with each of the 12 budget proposals across various departments to strengthen information security. The LAO understands it is California Department of Technology's (CDT) practice to review IT-related budget proposals, including these security-related proposals. Although CDT did not initiate these proposals, it indicates that as part of its review, it validated the security issue identified by the department proposing its own proposal and assessed whether the department was taking a reasonable approach towards addressing the issue. This review is valuable given that CDT was created to provide IT-related expertise and the individual departments may not always know the best practices for addressing a security vulnerability that they face.

But Unclear Whether Proposals Address the State's Most Critical Security Risks. Although the LAO does not raise any particular concerns about this proposal, they state that it is unclear whether the package collectively addresses the state's most critical security risks - the IT systems with the most significant vulnerabilities and the most sensitive information. The individual departments do not have a comprehensive view of the entire state's security needs and therefore whether their individual information security needs are the most critical to address across state government. While CDT reviewed these individual requests to verify that there was some level of information security need, it did not determine whether the requested resources addressed the state's most critical information security issues. For example, a department may have high vulnerability but the associated information that would be released in the event of a security breach is not particularly sensitive. Consequently, this may not be the most critical vulnerability to resolve when other departments may have vulnerabilities that may lead to catastrophic consequences should information be breached or confidentiality not protected. Additionally, it is possible that departments that did not come forward with a budget request might have more critical security risks but are unaware of their own vulnerabilities. Ideally, the Legislature would want to make sure the state is focusing its attention and resources on addressing the IT systems that present the most critical security risks—those in the upper right quadrant of the figure.

LAO Recommendation

The LAO provided the following two recommendations:

CDT Should Take Leadership Role Ensuring Future Proposals Address Critical Security Risks. The LAO recommends the Legislature direct CDT to use the analysis from the new processes to inform future requests for budget augmentations to strengthen information security. As a next step, the LAO recommends that the Legislature direct CDT to consider the impact associated with a security breach and direct the administration to prioritize addressing high-vulnerability and high-sensitivity security risks for future budget requests. Requests from these departments would generally not benefit from CDT's strategic leadership and would have to be evaluated by the Legislature on a case-by-case basis. This recommendation addresses the current absence of a strategic approach on information security that makes it difficult for the Legislature to determine if these proposals address the most critical issues.

Direct Administration to Report at Budget Hearings on Whether Current Proposals Address Reasonable Security Risks. Although the LAO does not raise any particular concerns, it is not clear that the proposals address the areas where the state (1) is the most vulnerable and (2) has the most sensitive data. This is because the proposals did not benefit from CDT's new efforts to better assess IT security vulnerabilities. It is unlikely that CDT will be able to accomplish the type of comprehensive assessment the LAO recommends time for the 2017-18 proposals. Instead, the LAO recommends the Legislature use budget hearings to request that the departments make a convincing case to the Legislature that their proposals address reasonable IT security vulnerabilities that involve sensitive data.

Staff Recommendation. Hold open.