

# SUBCOMMITTEE NO. 5

# Agenda

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Senator Nancy Skinner, Chair  
Senator Joel Anderson  
Senator Jim Beall



Thursday, May 18, 2017  
9:30 a.m. or adjournment of session  
State Capitol - Room 3191

## PART A

Consultant: Julie Salley-Gray

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**PROPOSED FOR VOTE ONLY****California Department of Corrections and Rehabilitation (CDCR)**

1. **Transfer of Immediate and Acute Levels of Care from the Department of State Hospitals (DSH) to CDCR.** The May Revision requests that \$4 million General Fund be shifted from DSH's budget to CDCR to reflect that transfer of employee compensation and benefits associated with the transfer of the psychiatric programs to CDCR. In addition, the May Revision requests that provisional language be added to provide flexibility to CDCR and the receiver to process vendor invoices and employee payment activities incurred by DSH as of June 30, 2017.

**January Budget Proposal.** The Governor's budget proposes to shift responsibility for the three inpatient psychiatric programs DSH operates in state prisons to CDCR beginning in 2017-18. Accordingly, the budget proposes a transfer of \$250 million (General Fund) and 1,978 positions from DSH to CDCR effective July 1, 2017.

**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's March 16th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

**Staff Recommendation:** Delay the transfer until stakeholders have met and agreed on key terms of the transition.

2. **Proposition 57.** The May Revision assumes a net savings of \$38.8 million General Fund in 2017-18, growing to a savings of approximately \$186 million General Fund in 2020-21. In addition, the May Revision requests an additional \$1 million General Fund for the workload associated with Proposition 57, bringing the total funding request to \$6.7 million General Fund.

**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's April 20th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

**Staff Recommendation:** Approve the May Revision proposal. In addition, approve the following:

- Redirect \$5.5 million General Fund from the Administration's drug interdiction proposal to maintain on-going for restorative justice and offender responsibility long-term offenders programming.
- Redirect \$250,000 in CDCR General Fund savings from the rejection of the drug interdiction proposal to the Community Colleges Chancellors Office (CCCO) and require that the CCCO work with the Underground Scholars organization at the University of California at Berkeley to replicate their existing program on community college campuses.
- Adopt draft placeholder trailer bill language requiring CDCR to establish and maintain a statewide memorandum of understanding with the federal Social Security Administration to allow inmates to apply for and receive social security cards and to allow the Administration to process SSI claims under the pre-release program. In addition, require the State Department of Social Services, on or before March 31, 2018, to request a waiver to allow for the pre-enrollment of otherwise eligible applicants to the CalFresh program up

to one month prior to the applicants' reentry into the community from a county jail or the state prison.

- Adopt draft, placeholder trailer bill language to authorize a person who is committed to a state hospital after being found not guilty by reason of insanity to petition the court to have the maximum term of commitment reduced to what it would have been had Proposition 36 or Proposition 47 been in effect at the time of the original determination. The bill would require the petitioner to show that he or she would have been eligible to have his or her sentence reduced under the relevant proposition and to file the petition prior to January 1, 2021, or at a later date with a showing of good cause.

3. **California Medical Facility – Psychiatric Inpatient Program.** The budget requests \$11.4 million General Fund to convert an enhanced outpatient unit into a 74-bed intermediate care facility (ICF) at the California Medical Facility.

**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's March 16th hearing. The agenda and video recordings from that hearing are available on the State Senate website.

**Staff Recommendation:** Approve as budgeted.

4. **Mental Health Crisis Beds.** The Administration requests \$3,661,000 General Fund for California Institution for Men, and \$3,597,000 General Fund for Richard J. Donovan Correctional Facility, in order to construct licensed 50-bed mental health crisis facilities at each institution.

**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's April 27<sup>th</sup> hearing.

**Staff Recommendation:** Approve funding for the 50-bed facility at the Richard J. Donovan Correctional Facility and reject the funding for the facility at the California Institution for Men.

5. **Security Housing Unit (SHU) Conversion.** The Governor's budget proposes to reduce General Fund support for CDCR by \$42.4 million in 2016-17, and by \$8.3 million in 2017-18, to account for net savings from the conversion of various housing units.

**Spring Finance Letter.** The Administration has provided an April 1st letter requesting \$539,000 for preliminary plans and working drawings for Pelican Bay State Prison's Facility D Yard renovations. The construction project proposes construction of a recreational yard that would consist of a multipurpose field, basketball half-court, two handball courts, a fitness area, 15 tables, a toilet yard, drinking fountain, storage container and a custody observation post.

**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's March 9<sup>th</sup> hearing. In addition, the spring finance letter item was discussed during the subcommittee's April 27<sup>th</sup> hearing. The agenda and video recordings from those hearings are available on the State Senate website.

**Staff Recommendation:** Approve as budgeted.

6. **Standardized Staffing Adjustments.** The Governor's budget proposes \$5.9 million and 44.1 positions beginning in 2017-18 to augment custody standardized staffing levels at three adult institutions designed to provide sufficient security coverage based on institution design and for activation of additional space.

**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's March 9<sup>th</sup> hearing. The agenda and video recordings from that hearing are available on the State Senate website.

**Staff Recommendation:** Approve as budgeted

7. **Medical Parole/Compassionate Release/Elderly Parole.** 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. Among the items included in the court order were the expansion of parole for inmates 60 and over and an expansion of elderly parole.

**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's April 20<sup>th</sup> hearing. The agenda and video recordings from that hearing are available on the State Senate website.

**Staff Recommendation:** Adopt draft placeholder trailer bill language that achieves the following:

- Medical Parole
  - Clarifies that individuals being considered for medical parole can be cared for at home, if they have proper medical care and an appropriate residence with adequate care.
  - Expands eligibility for medical parole to inmates with a significant and permanent condition, disease, or syndrome resulting in the prisoner being physically or cognitively debilitated or incapacitated.
  - Requires that any inmates released on medical parole must have access to healthcare insurance either through Medi-Cal or another means.
  - Removes the requirement that the state cover all medical-related costs for the inmate.
  - Creates a process by which any inmate released on medical parole, who is found to have inadequate housing or medical care will be returned to CDCR custody.
- Elderly Parole
  - Establishes elderly parole in state statute allowing for parole for eligible offenders who are 60 or older, have served at least 20 years of the sentences, and who are deemed not to be a threat to public safety.
- Compassionate Release
  - Expands compassionate release to all inmates who are suffering from late-stage dementia and who are medically incapacitated. Approval will be required from a judge in the county of the institution where the inmate is housed. In addition, requires an administrative action from the executive director of the Board of Parole Hearings or the Secretary of CDCR for an inmate to be eligible for consideration for compassionate release.

8. **Medication Management.** The May Revision requests a decrease of \$2.3 million General Fund to account for projected overtime and registry savings resulting from the medication management proposal.

**January Budget Proposal.** The proposed budget requests \$8.9 million from the General Fund and 105.2 additional positions for medication management based on a new staffing model developed by the receiver that includes licensed vocational nurse (LVN) positions to staff each pill window throughout the day and distribute medication, inmates are allowed to keep their own medications to use as needed.

**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's April 27<sup>th</sup> hearing. The agenda and video recordings from that hearing are available on the State Senate website.

**Staff Recommendation:** Approve as proposed.

9. **Population Adjustments.** The May Revision requests the following population adjustments based upon updated caseload projections and additional alternative custody program placements:

- **Adult Population Adjustment** – The population adjustment includes a net decrease of \$21.3 million and 8.8 positions, which is comprised of a \$21,293,000 General Fund decrease and a \$67,000 Inmate Welfare Fund decrease.

The May Revision reflects an estimated average adult daily population of 127,693 in fiscal year 2017-18. This is 466 fewer than projected in the Governor's budget. The projected adult parolee average daily population is 47,274 in 2017-18. This is an increase of 2,513 from the Governor's budget projection.

- **Juvenile Population Adjustment** – The May Revision includes a decrease of \$813,000 General Fund in 2016-17, and \$3.3 million General Fund in budget year, for costs related to a smaller than anticipated juvenile ward population. Specifically, the May Revision projects the average daily population of juveniles are 683 in the current year, and 736 in the budget year. This is a decrease of 22 and 43 ward, respectively, as compared to the January estimates.

**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's May 16<sup>th</sup> hearing. In addition, the juvenile justice population and facilities were discussed on April 20<sup>th</sup>. The agenda and video recordings from those hearings are available on the State Senate website.

**Staff Recommendation.** Approve the proposed adjustments. In addition, approve the following for the Division of Juvenile Justice (DJJ):

- Redirect \$500,000 in existing DJJ funding each year for three years to fund to innovative programming grants for the three DJJ facilities. Require the Division of Rehabilitative Programming to work with DJJ to award the three-year grants.
- Redirect \$300,000 in existing DJJ funding and add two permanent Community Resource Managers for DJJ – one in Ventura and one in Stockton.

10. **Case Management Reentry.** The May Revision requests \$2.7 million General Fund and 21 positions to continue the case management reentry program (CMRP), which is designed to provide

intensive case management services to address homelessness, joblessness, mental illness, and developmental disabilities among parolees in five counties.

**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's May 16<sup>th</sup> hearing. The agenda and video recordings from that hearing are available on the State Senate website.

**Staff Recommendation.** Expand the funding to \$5.4 million General Fund and 42 positions to expand the program to five additional counties.

11. **Minor Capital Outlay.** The May Revision requests the reduction of \$7,000 to reflect the substitution of a minor capital outlay project. Instead of a walk-in freezer at Pelican Bay State Prison, the Administration proposes substituting interior perimeter fencing improvements at the California Institution for Women.

**Staff Recommendation:** Approve as proposed.

### Judicial Branch

12. **Veterans Collaborative Courts Evaluation.** California law authorizes counties to establish collaborative justice courts, including drug and mental health courts. These collaborative or "problem-solving" justice courts address the cases of nonviolent offenders by combining judicial monitoring with intensive treatment services over approximately 18 months.

During the last decade, this emerging recognition of the particular challenges and opportunities for dealing with nonviolent veteran offenders led to creation of the veterans treatment court (VTC), a hybrid drug and mental health court that uses the drug court model. The VTC offers veterans of the United States Armed Forces a comprehensive, treatment-based alternative to incarceration for non-violent criminal offenses.

**Previous Subcommittee Hearing:** This item was discussed during a joint hearing between the Veterans Affairs Committee and Subcommittee #4 on May 12. The agenda and video recordings from that hearing are available on the State Senate website.

**Staff Recommendation:** Provide \$100,000 General Fund one-time as matching funds to \$100,000 in private funding for an independent evaluation of the effectiveness of veterans treatment courts.

13. **San Diego County Courthouse Trailer Bill Language.** The May Revision requests the adoption of trailer bill language that transfers the title of the old San Diego courthouse and adjacent old county jail to San Diego County from the state. In exchange, the county will release the state from the obligation to demolish and remove those buildings.

**Staff Recommendation:** Modify the language to prohibit any new detention facilities from being constructed on any of the parcels and approve the language as draft, placeholder trailer bill language.

**Department of Justice**

14. **Agency Counsel Trailer Bill Language.** The May Revision includes proposed language clarifying existing law that the Attorney General has clear authority to act as legal counsel in judicial and administrative proceedings involving state agencies, as well as deliver approving legal opinions on bonds. The language also authorizes state agencies to employ in-house legal counsel for any other purpose, without seeking authorization from the Attorney General. The language maintains the existing requirement that authorization from the Attorney General be obtained prior to employment of private, outside counsel.

**Staff Recommendation:** Approve as draft, placeholder trailer bill.

**Local Law Enforcement**

15. **Probation Chief Trailer Bill Language.** The budget includes proposed trailer bill language that specifies the duties of county chief probation officers. The language would also require that the chief probation officer not be placed under the authority of a separate county agency to perform these duties.

**Previous Subcommittee Hearing:** This item was discussed during the subcommittee's May 4<sup>th</sup> hearing. The agenda and video recordings from that hearing are available on the State Senate website.

**Staff Recommendation:** Approve as draft, placeholder language and direct the Department of Finance, the Legislative Analyst's Office and staff to modify the language to address the concerns of juvenile justice advocates and to clarify that nothing in the language is intended to reduce county board of supervisors' authority over the probation department or to reduce the ability of probation departments to collaborate with other county partners.

16. **Extradition Subsistence Rates Trailer Bill.** This trailer bill sets various reimbursement rates associated with transporting fugitives. Specifically, the language provides that a person transporting a fugitive shall be reimbursed as follows:

- Breakfast - \$6.00
- Lunch - \$11.00
- Dinner - \$18.00
- Incidental allowance - \$3.75
- Prisoner, patient, ward, or fugitive per meal - \$3.00

**Staff Recommendation:** Approve as draft, placeholder trailer bill language.

## ITEMS TO BE HEARD

**0280 COMMISSION ON JUDICIAL PERFORMANCE****Issue 1: State Audit**

The Commission on Judicial Performance (CJP), established in 1960, is the state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges, pursuant to Article VI, Section 18 of the California Constitution. The commission's jurisdiction includes all active judges and justices of California's superior courts, Courts of Appeal and Supreme Court, and former judges for conduct prior to retirement or resignation. CJP's mandate is to protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system.

The commission is composed of 11 members: three judges appointed by the Supreme Court; two attorneys appointed by the Governor; and, six lay citizens, two of which are appointed by the Governor, two by the Senate, and two by the Assembly. Members are appointed to four-year terms and may serve two terms and do not receive a salary. In addition, the commission has 21 paid staff members.

The proposed 2017-18 budget for CJP is just over \$5 million General Fund. This is an increase of \$70,000 over the 2016-17 budget.

**CJP Audit.** On August 10, 2016, the Joint Legislative Audit Committee (JLAC) unanimously approved an audit of CJP to examine its finances and policies and practices for handling and resolving complaints against judges. In response to the requirements of the audit, CJP filed a complaint against the State Auditor in San Francisco on October 20, 2016 – *Commission on Judicial Performance v. Howle*, CPF515308 (S.F. Super. Ct.). The petition seeks injunctive relief to block the auditor's access to confidential records related to judicial complaints and investigations, and seeks to ensure the CJP does not bear any cost of the audit. In addition, the petition requests the auditor be required to refrain from auditing the discretionary exercise of CJP's core constitutional functions as required by the separation of powers doctrine.

Members of the Legislature have expressed concerns that rather than comply with the audit, CJP hired private attorneys and initiated an action in court which they believe was designed to thwart the audit that was authorized by JLAC. To date, CJP's outside representation for this matter has cost the commission \$78,000 General Fund. Members have noted that this action appears to be a refusal on the part of CJP to be transparent and accountable to the public.

In response to Legislative concerns regarding CJP's actions, the commission notes:

*The commission filed the declaratory relief action in order to get guidance from the court about the scope of the audit, including the commission's obligations with respect to confidential records being sought by the Auditor. The California Constitution provides that certain records are confidential and gives the commission the authority to provide confidentiality for complaints and investigations. The commission has done so to protect complainants and witnesses, in addition to judges. The issue for the court to resolve is whether records that have constitutional protection are also subject to the statutory provision granting the Auditor access to private agency records.*



*Moreover, the Auditor's records are subject to the Public Records Act, pursuant to Government Code section 8545, and its ability to avoid disclosure of confidential records has not been tested. The Auditor could not give us assurances that the commission's confidential records would not be subject to disclosure. Faced with these uncertainties and its obligations to various constituencies who have relied on the commission's confidentiality protections, the commission was compelled to seek judicial guidance.*