Senate Budget and Fiscal Review—Mark Leno, Chair

SUBCOMMITTEE NO. 5 Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Lois Wolk

Thursday, February 10, 2011
10:00 a.m. (or upon adjournment)
Room 113

Consultants: Brian Brown

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Items to Be Heard

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5225 California Department of Corrections and Rehabilitation 19

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-324-9335. Requests should be made one week in advance whenever possible.

Vote Only Items

	Issue	2011-12 Amount	Fund Source	Staff Recommendation
	Judicial Branch (0250)			
1	Conservatorship program	-	Trailer bill language	Approve as proposed
	Department of Corrections and Rehabilitation (5225)			
1	CMF ICF Activation	$1,958,000	General Fund	Reduce by $714,000
2	CMC MHCB Activation	$1,087,000	General Fund	Approve as budgeted
3	Correctional Health Care Facility	$948,000	General Fund	Approve as budgeted
4	Medication management	$11,869,000	General Fund	Reject without prejudice
5	Receiver unallocated reduction	-$163,200,000	General Fund	Approve as budgeted
6	Custody and mental health collaboration	$1,239,000	General Fund	Approve as budgeted
7	Armstrong Effective Communication	$279,000	General Fund	Reject without prejudice
8	AB 1844 Implementation	$1,023,000	General Fund	Approve as budgeted
9	Technical adjustment	$0	General Fund	Reject without prejudice
10	Academy and OPOS Support	$13,884,000	General Fund	Reject without prejudice

Vote Only Items – Issue Descriptions

Judicial Branch (0250)

VO Issue 1 – Conservatorship Program Trailer Bill Language

Background. The Conservatorship and Guardianship Reform Act of 2006 (AB 1363, Jones) was designed to increase court oversight of the conservatorship and guardianship system. Among other change, the Act requires Judicial Council to develop qualifications and continuing education requirements for probate court judges, attorneys, and court investigators and to establish uniform standards for conservatorships and guardians. It also requires the probate court to review conservatorships at a noticed hearing six months after appointment of the conservator and annually thereafter. Due to budget constraints, the state budget has delayed funding this program on a one-year basis each year since the Act was passed.

Proposal. The Governor's budget assumes a permanent decrease of $17.4 million to reflect the elimination of statutory requirements to implement the Act. The proposed change would relieve the courts of the mandated responsibilities under the Act, but would still allow for individual courts who have been implementing parts of the Act to continue to do so.

Staff Comments. When this issue was previously before the committee, the committee held this issue open pending receipt of the administration's trailer bill language which has subsequently been provided.

Staff Recommendations. Approve as proposed.

CA Department of Corrections and Rehabilitation (5225)

VO Issue 1 – CMF ICF Activation

Background. The CDCR is scheduled to open a new Intermediate Care Facility (ICF) at the California Medical Facility (CMF – Vacaville) in October 2011. The ICF will house seriously mentally ill inmates in need of longer-term inpatient treatment. Construction of the project was funded through AB 900 and is consistent with the *Coleman* court's direction to increase ICF capacity in the prison system. The Department of Mental Health will provide the clinical staffing for this facility. CDCR is responsible for providing the security staffing.

Proposal. The CDCR is requesting $1.958 million and 20.0 PYs in 2011-12, growing to $2.35 million and 25.1 PY in 2012-13 to provide custody staffing for the activation and operation of the 64-bed ICF at CMF.

Staff Comments. When previously heard in front of the committee, the LAO raised a concern the funding request for activation of these new beds does not account for the offsetting savings that should occur from taking down beds in other facilities. Since that time, CDCR has provided information that the offsets should be $714,000 in the budget year, growing to $1,507,000 the following year when the facility is fully activated for a full year.

Staff Recommendation. Reduce request by $714,000.

VO Issue 2 – CMC MHCB Activation

Background. The department is currently constructing a 50-bed Mental Health Crisis Bed (MHCB) unit at the California Men's Colony (CMC – San Luis Obispo) with a scheduled completion date of July 2012. It is expected that it will obtain licensure in September 2012 and will immediately initiate the admission process of inmate-patients. This project is consistent with the activation plan approved by the *Coleman* court.

The goal of the MHCB program is designed a short-term housing and treatment program to provide services for conditions which require an inpatient setting to improve acute mental health symptoms, including suicidal behavior. The MHCB program operates 24 hours a day, 7 days a week. An inmate-patient admitted to the MHCB for mental health treatment may have acute symptoms of a serious mental disorder or may be suffering from a significant or life-threatening disability. Many conditions may precipitate a mental health crisis during institution confinement. Such factors as the restrictions of confinement, pressures to conform to the prison lifestyle, and fear of more predatory inmates may disrupt an inmate's coping abilities. An inmate with no known mental health history may suffer acute symptoms, while another with mental illness in remission may have recurring symptoms.

Proposal. The Governor's budget proposes $1 million General Fund and 9.1 positions in 2011-12 (growing to $18.9 million General Fund and 182.8 positions in 2012-13) for implementation of a 50-bed licensed MHCB unit at CMC in compliance with a *Coleman* Court order.

Positions are necessary in order to meet mandated licensing requirements for this facility within court ordered timelines. This will enable CDCR to comply with the March 31, 2010 *Coleman* Court order to reduce or eliminate the wait lists for inpatient care and, in the interim, to better serve the treatment needs of *Coleman* class members placed on such list.

Staff Comments. When previously heard in front of the committee, the LAO raised a concern the funding request for activation of these new beds does not account for the offsetting savings that should occur from taking down beds in other facilities. Since that time, CDCR has provided information that suggesting that there are not offsetting savings to MHCB's. This is because inmates are only placed in these beds for short periods and staffing levels are not adjusted for the short period that inmates are in MHCB.

Staff Recommendation. Approve as budgeted.

VO Issue 3 – Correctional Health Care Facility

Background. The Correctional Health Care Facility (CHCF - Stockton) is being constructed on the site of the Northern California Youth Correctional Center and will include 1,722 beds of all security levels, along with all necessary support and rehabilitation program space. This project will replace temporary beds currently in use, and it is included in CDCR's long-range plan for medical and mental health beds provided to the *Coleman* court. It includes 337 high acuity or Correctional Treatment Beds, 673 low acuity or Outpatient Housing unit beds, 137 Mental Health Crisis Beds, 475 Department of Mental Health Intermediate Care Facility beds, and 100 Inmate Work Crew beds. In total, 949 of the 1,722 beds will require licensure under Title 22. The facility is scheduled to begin activation in July 2013. The facility is expected to be fully activated by December 2013.

Proposal. The Governor's budget proposes $948,000 and 5 positions in 2011-12 ($1.9 million and 10 positions in 2012-13 and ongoing) to provide resources for a core Pre-Activation Management Team for CHCF.

The CDCR and California Prison Health Care Services is requesting these positions effective January 1, 2012 which is 18 months in advance of the activation of the CHCF. According to the department and Receiver's Office, this amount of pre-activation time is longer than for most new CDCR facilities but is necessary because of the size and complex mission of the facility, as well as to achieve required licensure. These positions are comprised primarily of the facility's executive management staff (warden, chief medical officer), as well as some support staff.

Staff Comments. This project is a component of the department's long-range bed plan to address prison overcrowding and provide appropriate housing for inmates with mental illness or other medical problems that make living in a prison's general population difficult or dangerous. Moreover, the Joint Legislative Budget Committee reviewed and concurred with the construction of this project. Major facilities typically employ a phased activation of staffing that starts with the management team that will operate it. The ten positions requested in this proposal will form the leadership team for CHCF, carrying out pre-activation activities, then deploying to the facility to conduct its ongoing operations.

Staff Recommendation. Approve as budgeted.

VO Issue 4 – Medication Management

Background. Providing timely access to the full continuum of care, including access to prescribed medications, treatment modalities, and appropriate levels of care, is an essential component of the Receiver's Turnaround Plan of Action. At the same time, it is also incumbent on California Prison Health Care Services to mitigate health care expenditures.

Medication administration falls under the purview of nursing care. Each institution utilizes Registered Nurses (RN), Licensed Vocational Nurses (LVN), and Certified Nursing Assistants (CNA) to provide nursing care. While RNs are responsible for assessing, planning, implementing, and evaluating patient care, and CNAs perform simple nursing tasks associated with activities of daily living, it is the LVN who is responsible for administering most medications in the prison setting. Currently, only individuals who have completed the licensure requirements for RN or LVN may administer medications. RNs typically are not used to administer medications in outpatient health care settings because of the associate labor costs. The LVN is the lowest cost provider that can perform medication administration functions.

Proposal. The Governor's budget proposes $11.9 million GF and 211.3 two-year limited term Licensed Vocational Nurse (LVN) positions in 2011-12 to perform medication management functions in outpatient clinics.

Staff Comments. Staff notes that last year the Receiver's Office was provided with $10.1 million General Fund and 145 LVN positions to perform medication management functions in outpatient clinics. The 2009-10 budget assumed that provision of these staff positions would result in a reduced reliance on nursing overtime and registry, resulting in net savings to the department. The Receiver’s Office reports that those authorized positions had not yet been filled as of January.

Staff Recommendation. Deny without prejudice. Waiting until Spring to consider this proposal will allow the Legislature to see if the positions provided in the current year budget are filled and result in the type and magnitude of savings anticipated. If so, that may suggest that the additional positions proposed are warranted as a more cost-effective approach to medication management.

VO Issue 5 – Receiver Unallocated Reduction

Background. The current-year budget included an $820 million reduction to the budget for inmate health care. This estimate was based on the previous administration's estimate of the savings that would be achieved if CDCR's per capita inmate health care costs were reduce to the same level as in the state of New York.

Proposal. The Governor's budget modifies the ongoing reduction to the budget for inmate health care to $163.2 million in the budget year ($82.6 million in 2010-11). This ongoing reduction represents approximately a 10 percent reduction.

Staff Comments. According to the Receiver's office, the analysis of the previous administration was faulty in that the comparison with New York's prison spending did not include many of the same types of administrative, contracting, and other expenditures as incurred within CDCR's budget for inmate health care. The Receiver reports that the current proposal is much more realistic and consistent with his goal of providing constitutionally adequate inmate health care services in a more cost-effective manner. To date, the Receiver's office has not identified a specific plan for how it will achieve these reductions.

Staff Recommendation. Approve as budgeted.

VO Issue 6 – Custody and Mental Health Collaboration Training

Background. The *Coleman* lawsuit resulted in a finding against the State and the appointment of a Special Master to monitor mental health services delivery in CDCR to achieve a constitutional level of care as determined by the court. The *Coleman* Court monitors have consistently, over sixteen years, noted discord between custody and mental health staff. This is not uncommon within prison systems based on the different missions of custody and mental health treatment providers. Based on these ongoing concerns, the Court ordered the CDCR to develop a training program to enhance collaboration between custody and mental health staff who assess needs and provide care for inmate-patients with mental illness.

The court order mandates training for custody, nursing and mental staff at the following institutions: California State Prison, Corcoran (COR), California State Prison, Los Angeles County (LAC), Richard J. Donovan Correctional Facility (RJD), California State Prison, Sacramento (SAC), Substance Abuse Treatment Facility (SATF), California State Prison, San Quentin (SQ) and Salinas Valley State Prison (SVSP).

Proposal. The Governor's budget proposes $1.2 million General Fund in 2011-12 (growing to $1.9 million General Fund in 2012-13) to provide court-ordered training sessions to custody and mental health staff training at select institutions.

To comply with the court order, funding is required to:

- Provide relief coverage for the regularly assigned duties of custody and nursing staff at seven institutions so they can attend the eight-hour training (approximately 9,964 of the 11,090 staff to be trained are in posted positions);
- Cover the travel expenses that must be incurred by Division of Correctional Health Care Services (DCHCS) and the Mental Health Program; and,
- Provide for necessary supplies and course materials.

Staff Comments. Staff raises no specific concerns with this proposal. The training is court-ordered, and estimated costs seem reasonable. The costs are not proposed to be ongoing.

Staff Recommendation. Approve as budgeted.

VO Issue 7 – Armstrong Effective Communication

Background. In October 2009, the United States District Court of California mandated through the *Armstrong* court order that CDCR must provide sufficient certified sign language interpreters at institutions where hearing impaired inmates are housed. This court order enforces compliance with the Americans with Disabilities Act (ADA).

The CDCR provides educational and substance abuse programs in prisons throughout California. The CDCR houses hearing impaired inmates at four prisons – California Institution for Men (Chino), High Desert State Prison (Susanville), California Medical Facility (Vacaville), and the Substance Abuse Treatment Facility (Corcoran) – where these inmates are currently unable to participate in these programs.

Proposal. The Governor's budget proposes $279,000 General Fund for sign language interpreter contract services. These services are for hearing impaired inmates participating in educational and substance abuse treatment programs at the four prisons identified above. This funding will be used to hire contract interpreter staff.

Staff Comments. It is unclear how CDCR estimated the number of inmates requiring these services, as well as the amount of funding being requested.

Staff Recommendation. Deny without prejudice. It may not make sense to approve this funding if funding for CDCR prison programs are reduced by $150 million. Therefore, it may make sense to wait until later in the spring to determine how much program funding is ultimately going to be provided in CDCR's budget.

VO Issue 8 – AB 1844 Chelsea King Predator Prevention Act

Background. Assembly Bill 1844 (Chapter 219, Statutes of 2010 - Fletcher), also known as the Chelsea King Child Predator Prevention Act of 2010 or Chelsea's Law, targets dangerous, sexually violent criminals. It toughens prison sentences, lengthens the time that violent sex offenders who are released from prison must remain on parole, improves methods used by the state to evaluate the dangerousness of these offenders, requires polygraph tests of all sex offenders on parole or probation, and improves the state's online sex-offender database. The bill also authorized the collection of fees from service providers of sex offender treatment programs to cover the associated costs.

Governor Schwarzenegger directed the California Sex Offender Management Board (CASOMB) to determine where systemic changes or improvements can be made in order to protect the public. Following the board's review, the Governor directed his administration to take action on the recommendations provided by the board including the implementation of the sex offender containment model included in Chelsea's Law.

Proposal. The Governor's budget proposes $1 million ($98,000 General Fund and $925,000 Special Deposit Fund) and six three-year limited term positions for the CDCR to meet the provisions of Assembly Bill 1844. Specifically, the request is designed to accomplish the following activities as required by AB 1844:

- The development of standards for certification of sex offender management professionals, as well as management of the certification process.
- Fingerprinting of treatment providers seeking certification to provide sex offender treatment.
- Train staff on the use of sex offender assessment instruments chosen by the CASOMB.
- A contract for measuring program performance.

The table below summarizes the staff and funding requested for each of these purposes.

Summary of Request

Purpose	Positions	Funding	Fund Source
Certification standards & implementation	6	$519,000	Special Deposit Fund
Fingerprinting treatment providers	0	$406,000	Special Deposit Fund
Staff training	0	$68,000	General Fund
Contract to develop evaluations	0	$30,000	General Fund
Totals	***6***	***$1,023,000***	

Staff Comments. Staff raises no specific concerns with this request. The AB 1844 placed new responsibilities on the department that drive additional workload. Most of this additional workload is funded from the Special Deposit Fund, not the General Fund.

Staff Recommendation. Approve as budgeted.

VO Issue 9 – Technical Adjustment

Proposal. The California Department of Corrections and Rehabilitation (CDCR) requests authority to permanently realign funding for a number of its budget programs and divisions beginning in 2010-11. The department finds that in various instances, certain activities have been budgeted in one part of their budget but are really more appropriately budgeted in another. The department says that this proposal does not change in any way what positions are authorized or where they work – for example, in the field or headquarters. The request only changes where the positions and funding are allocated within the department's budget.

The net result of this request is summarized in the table below.

Summary of Technical Adjustment Proposal – 2011-12

Budget Program	Change in Funding	Change in Positions
Central administration	-$4,005,601	317
Corrections Standards Authority	18,094	-4
Division of Juvenile Justice	-1,435,065	-16
Adult prisons	16,150,632	-167
Adult parole	-2,033,789	-25
Board of Parole Hearings	-772,082	-11
Adult programs	-1,658,361	-22
Inmate health care	-6,263,828	-71
Net Totals	***$0***	***0***

This budget request includes 14 distinct budget adjustments across more than 20 budget programs. Some examples of the adjustments proposed include the following:

- Transferring $5.6 million from the inmate health care program to the adult prison program to account for a misallocation of funding for custody positions to the health care budget associated with the activation of a Mental Health Crisis Bed Unit at the California Medical Facility.
- Transfers a total of $14.9 million from various budget programs to the budget for central administration in accordance with a directive by the Office of the Chief Information Officer that all department IT functions have a direct reporting relationship to the department's Chief Information Officer.
- Reallocation of $96.7 million within the adult parole budget programs to align funding with the authorized purposes, specifically by increasing the allotments for community based programs for parolees.

Staff Recommendation. Reject without prejudice. Revisiting this proposal in the Spring will allow the Legislature more time to review the specific adjustments proposed in light of realignment and administration efforts to reduce headquarters positions.

VO Issue 10 – Academy and OPOS Support

Background. In June 2010, the CDCR received approval from the Public Works Board for three major infill projects planned as part of the Long Range Integrated Strategy Plan for AB 900, including the California Health Care Facility in Stockton, the DeWitt Conversion in Stockton, and the Estrella Conversion in Paso Robles. The projected hiring need for the AB 900 facilities includes approximately 1,081 peace officer staff beginning in July 2012 through June 2016. This information along with the revised projected hiring needs from Division of Adult Institutions (DAI) was utilized to determine that 2,968 correctional officers (CO) need to be hired over the next two years. In order to meet these needs, CDCR projects that it will need to hire 1,484 cadets per year each of the next two years.

In 2009-10, the number of academy cadets was reduced from 1940 to 799, with a corresponding reduction in funding ($20 million). Additionally, in 2009-10, staffing for the department's Office of Peace Officer Selection (OPOS) was reduced from 221 positions to 103 positions. The OPOS is responsible for correctional officer recruitment and conducting pre-hiring assessments of applicants.

Proposal. The Governor's Budget proposes $13.3 million and 18 positions in 2010-11 (growing to 13.9 million in 2011-12) to increase the number of correctional officer cadets to meet the projected correctional officer hiring needs. This request has the following two components:

- Requests $11.4 million to increase the budgeted capacity of Basic Correctional Officer Academy. This would allow the department to increase the number of cadets in the Academy from 799 to 1484 annually. This expansion will address the CO hiring needs for the AB 900 facilities as well as address retirements and attrition.

- Requests 18.0 positions and $1.9 million in 2010-11 and $2.4 million in 2011-12 for the Office of Peace Officer Selection (OPOS) to process approximately 26,000 CO applications annually. This funding includes resources to do the following process the following application components for each applicant: online application, written examination, background investigation, psychological written, psychological oral examination, pre-employment medical clearance, and physical ability testing.

The department notes that if the Governor's realignment proposal regarding Low Level Offenders is adopted, the funding and position authority requested in this proposal would be unnecessary.

Staff Recommendation. Deny without prejudice.

Items to Be Heard – Outline

California Victims Compensation and Government Claims Board

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Department of Corrections and Rehabilitation

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CA Victim Compensation and Government Claims Board (1870)

Department Overview. The governing body of the California Victim Compensation and Government Claims Board (VCGCB) consists of three members: the Secretary of the State and Consumer Service Agency who serves as the chair, the State Controller, and a public member appointed by the Governor. The VCGCB provides responsive financial compensation to remedy the financial burdens of victims of crime through a stable Restitution Fund, and for those with claims against the State, an opportunity to resolve those claims or proceed with other remedies. The primary objectives of the VCGCB are to:

- Compensate victims of violent crime and eligible family members for certain crime-related financial losses.
- Review and act upon civil claims against the state for money or damages.
- Resolve bid protests with respect to the awarding of state contracts for the procurement of goods and services. Provide for reimbursement of counties' expenditures for special elections called for by the Governor to fill vacant seats in the Legislature and Congress.
- Determine the eligibility of individuals for compensation for pecuniary injury sustained through erroneous conviction and imprisonment.
- Process claims for the Missing Children Reward Program to assist local law enforcement agencies or other parties involved in the identification and recovery of missing children in California.
- Assist with the administration of the California State Employees Charitable Campaign.
- Process claims through the Good Samaritan Program to private citizens who are injured rescuing another person, preventing a crime, or assisting a law enforcement officer.

Budget Overview. The Board has a proposed budget of $155.2 million in 2011-12, an increase of about $3.9 million over the current year. The Restitution Fund makes up about three-quarters of the department's budget expenditure authority. The department has no General Fund. The Board is authorized for about 283 positions in the budget year.

Issue 1 – Restitution Fund Insolvency

Background. Victims of crime and their families are eligible to receive state funding for crime-related financial costs through the Restitution Fund. The Restitution Fund also funds other crime-related programs, including $15.2 million to support local anti-gang grants and the Internet Crimes Against Children Task Force administered by CalEMA, as well as the Witness Protection Program administered by the Department of Justice. The Restitution Fund also funds $11.6 million for 161.5 positions in 20 Joint Powers local claims processing units and $1.3 million for 44 restitution specialists in the offices of 25 district and city attorneys. These specialists – mostly paralegal and support staff – work with local officials to pursue the imposition of and promote the collection of restitution fines and orders. To encourage collection of restitution, the law provides a 10 percent rebate to counties.

Proposal. The Board proposes several changes designed to ensure the solvency of the Restitution Fund through 2011-12. In total, these changes would reduce Restitution Fund expenditures by $5,827,000 and increase Federal Trust Fund expenditures by $500,000. More specifically, the changes proposed by the Board are as follows:

- Reduce operating expenditures by $2.2 million in 2011-12 (and $3.5 million in 2010-11).
- Limit growth in Restitution Fund claim payments to 2.5 percent by reducing the rate of payment for mental health interns and a more stringent review of additional sessions authorized via an Additional Treatment Plan (ATP).
- Shift $500,000 in Restitution Fund claim payment expenditures to federal funds in the current and budget years.
- Reduce Joint Powers claims processing and restitution specialist contracts by 5 percent ($707,000).
- Reduce the baseline budget for the 10 percent county rebates by $2.4 million to more closely align with actual expenditures.

Staff Comments. The fiscal health of the Restitution Fund has oscillated over the years from periods that included high fund balances to periods of projected insolvency. According to the Board, the fund has periodically faced fiscal challenges because there is no direct association or control between the Restitution Fund revenues and program expenditures. So, for example, in 1993 the Legislature decided to provide the Fund with a $44 million loan from the General Fund. More recently, the Restitution Fund provided an $80 million transfer to the General Fund.

In recent years, the Restitution Fund has been heading for insolvency because its annual expenditures exceed its annual revenues. The table below shows the Fund's projected expenditures, revenues, and year-end balance assuming approval of this request.

Restitution Fund Condition
(In millions of dollars)

Fiscal Year	Beginning Balance	Revenues	Expenditures	Ending Balance
2009-10	$51.8	$117.3	$123.4	$45.8
2010-11	$45.8	$113.3	$131.7	$27.4
2011-12	$27.4	$112.3	$134.8	$4.9

As shown in the figure above, Restitution Fund revenues are declining, while expenditures are climbing. In 2011-12, the projected revenues are $22.5 million less than projected expenditures, even with the changes proposed in this request. This raises fundamental questions about the long-term health of the Restitution Fund.

Addressing the long-term solvency of the Restitution Fund involves two questions: (1) how can restitution revenues be increased, and (2) how can expenditures be decreased? It is unclear why restitution revenues are decreasing, though one possibility is that, given the state's economy, offenders are less able to pay fines and penalties and/or judges are ordering less. Another possibility is that due to state and local budget cuts, counties and courts have had to reduce their collection efforts.

According to the Board, the main driver of increased Restitution Fund costs are the number of claims filed. The following table shows the increase in applications received and allowed over the past three years.

Restitution Applications and Payments

Fiscal Year	Applications Received	Bills Received	Total Payments
2007-08	53,693	243,043	$81,209,610
2008-09	54,572	308,057	$94,027,080
2009-10	57,254	206,315	$96,575,800

It is also worth noting that in 2008, both the Legislative Analyst's Office and the Bureau of State Audits issued reports that, among other findings, identified what appeared to be excessive administrative costs in the department. The LAO found that in 2006-07, administrative costs equaled 31 percent of the total state and federal funding for the program, an amount significantly higher than several other states. Similarly, the BSA found that administrative costs ranged between 26 and 42 percent of Restitution Fund disbursements annually.

When the committee heard this issue earlier this year, the committee directed the department to report back on what additional longer-term options it was considering to ensure the solvency of the Restitution Fund. The department has provided the committee with a list of options that total over $40 million in cost short to long-term cost

reductions, as well as a few options that could potentially increase revenues. The committee may wish to direct the department to provide an overview of these options during the hearing. In addition to the options presented by the department, the LAO asserts that the Board could further reduce its administrative costs which could achieve savings in the millions of dollars annually.

Staff Recommendation. Approve as budgeted. This proposal should ensure the solvency of the Restitution Fund in the budget year. The committee may want to revisit this issue in the spring to further discuss strategies to ensure the longer-term solvency of the Fund.

CA Department of Corrections and Rehabilitation (5225)

Departmental Overview. Effective July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) was created pursuant to the Governor's Reorganization Plan 1 of 2005 and Chapter 10, Statutes of 2005 (SB 737, Romero). All departments that previously reported to the Youth and Adult Correctional Agency (YACA) were consolidated into CDCR and include YACA, the California Department of Corrections, Youth Authority, Board of Corrections, Board of Prison Terms, and the Commission on Correctional Peace Officers' Standards and Training.

According to the department's website, its mission is to "enhance public safety through the safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities."

The CDCR is responsible for the incarceration, training, education, and care of adult felons and nonfelon narcotic addicts, as well as juvenile offenders. The CDCR also supervises and treats adult and juvenile parolees, and is responsible for the apprehension and reincarceration of those parolees who commit new offenses or parole violations. The department also sets minimum standards for the operation of local detention facilities and selection and training of law enforcement personnel, as well as provides local assistance in the form of grants to local governments for crime prevention and reduction programs.

The department operates 33 adult prisons, including 12 reception centers, a central medical facility, a treatment center for narcotic addicts under civil commitment, and a substance abuse facility for incarcerated felons. The CDCR also operates five juvenile correctional facilities, including two reception centers. In addition, CDCR operates dozens of adult and juvenile conservation camps, the Richard A. McGee Correctional Training Center, and nearly 200 parole offices, as well as contracts to house inmates in several in-state and out–of–state correctional facilities.

Budget Overview. The Governor proposes a CDCR budget of $9.3 billion, of which $9.1 billion is General Fund. General Fund spending is proposed to be a slight decrease - $7 million – compared to the current year projected expenditure level. Note, however, that this proposed funding level does not fully account for the budgetary impact of the Governor's realignment proposals which are currently being considered by the Legislature. In total, about $8.1 billion of the CDCR budget is for operation of the state prisons with the remaining funding adult parole, juvenile justice, the Board of Parole Hearings, the Corrections Standards Authority, and department administration.

Issue 1 – Structural Shortfall

Background. The administration finds that CDCR has chronic structural budget problems driven by a number of factors. In prior years, the Department absorbed ever-increasing costs by redirecting resources away from other programs and priorities. Consequently, there was reduced operation of inmate education and work programs, reductions in non-custody support staff, freezes placed on purchasing and training, increased equipment and physical plant failures due to deferred maintenance, and positions being held vacant to divert salary savings to cover shortfalls. Due to unallocated budget cuts and reductions in program funding, the department finds that it has fewer funds available to redirect existing resources to offset its structural shortfall.

Proposal. The Governor's Budget proposes $395.2 million General Fund to address ongoing structural imbalances within CDCR's budget. This total includes five distinct requests.

(A) Fund Salaries Three-Quarters Step ($266.5 million). In 2003-04, the Department of Finance approved that new positions be funded at the mid-step. However, CDCR finds that most custody staff is currently paid at or near the top step of the salary range. A comparison of mid-range salary funding to actual staffing costs for all institutions' reflects a $266.5 million shortfall. Consequently, CDCR requests funding prison custody staff – correctional officers, sergeants, and lieutenants – at the three-quarters step of their salary ranges.

(B) Medical Guarding and Transportation Workload ($55.2 million). The CDCR is mandated to provide appropriate, timely, and adequate medical care to all inmates. Court decisions such as *Coleman v. Schwarzenegger* and *Plata v. Schwarzenegger* have resulted in significant increases in the provision of outside medical care, a trend which has increased custody costs associated with transporting and guarding inmates when receiving health care treatment outside of the prisons. The base funding level for Medical Guarding and Transportation (MGT) is $66.4 million. The CDCR has actually been incurring costs totaling $137.6 million for MGT, or $71.2 million more than budgeted. The department projects that these costs will decline in coming years due to efforts by the Receiver but still estimates that CDCR will need an augmentation of $55.2 million in 2011-12 and ongoing to fund MGT operations.

(C) Unfunded Swing Space ($17.3 million). Appropriate housing has to be found for all inmates. This can be challenging due to all of the factors that go into determining a safe and appropriate housing option for each inmate. These factors include security classification, offense history, mental health need, medical conditions, gang affiliations, known enemies, infectious diseases, developmental disabilities, and physical disabilities. According to the department, these factors make it unreasonable to assume that every funded prison bed is filled each day of the year. Therefore, the department finds that funding for "swing space" should be provided.

The department requests $17.3 million to fund swing space in the prisons. Essentially, this proposal will provide additional funding over and above what is provided through the normal caseload budgeting process. This is proposed to be done by providing funds for unfilled prison beds. More specifically, the department is proposing to provide funding for 913 unfilled beds statewide. This estimate was based on providing the funding equivalent of an additional 0.5 percent of their general inmate population, while reception center institutions would be funded at an additional 1 percent of their population.

(D) Overtime Funding Not Adjusted for Employee Compensation ($35.7 million). Although significant increases (34.23%) to Bargaining Unit 6 base salaries have occurred over the past several fiscal years, the declared base budget for custody staff overtime has not been adjusted to reflect those increases. The department estimates that these higher salary levels contribute $35.7 million to its structural shortfall. The department reports that its base budget for custody overtime is $104.3 million.

(E) Legal Settlements and Outside Counsel ($20.5 million). The department estimates that CDCR needs $20.5 million to account for shortfalls in its Office of Legal Affairs (OLA) budget. This request is based on historical increases in the cost of legal settlements and judgments, use of outside counsel, and special master and expert witness fees from class action lawsuits. According to the department, these costs have been driven, in particular, by court mandates in various class action lawsuits. The department's current budget for OLA is $60.4 million. The CDCR finds that actual expenditures exceed its base budget by $20.5 million.

Budget Bill Language. The administration also proposes budget bill language requiring that three times during the budget year the department submit a report to the Department of Finance detailing how each prison's expenditures are tracking compared to its approved budget allotments. The language further requires the department to detail the reasons behind any projected overspending.

Staff Comments. The department has, in fact, suffered from shortfalls in various areas of its budget. In some years, this has resulted in a deficiency request. In other years, the department has managed to shift resources within it budget to cover those shortfalls. For example, the department reports than in some years savings – primarily salary savings resulting from vacant positions – in its administration, adult programs, and administration budget programs were used to offset shortfalls. Over the past couple of years, the department has seen its budgets for adult programs reduced by $250 million, and taken an additional $100 million unallocated reduction as part of the broader effort to balance the state's budget. These reductions have reduced the flexibility the department has to shift money internally. In 2010-11, the department overspent its budget and, as a consequence, was unable to pay some vendors, requiring those vendors to go to the Government Claims Board for reimbursement for services provided to the department.

Given this history, staff suggests that this effort to accurately and appropriately budgeting CDCR has merit. It will provide a more truthful reflection of their actual costs. In addition, it should mean that the department does not have to shift money around from one budget program to another nearly as often to cover shortfalls. This means, for example, that CDCR should have no reason to keep rehabilitation program positions vacant to generate salary savings, and instead should be expected to fully operate its programs as budgeted by the Legislature. It also means that the Legislature should be able to look at areas where CDCR has historically been able to operate with high savings levels, such as central administration to identify ongoing reductions.

So, while the committee should consider each of this proposal's components on its merits, the committee may want to consider how to implement this request in such a way as to ensure appropriate level of oversight and accountability of the department's expenditures. It is not always clear that the department as a whole or individual institutions and programs have managed their budgets as efficiently as they can. And while providing some or all of the funding requested here may be a more accurate reflection of true costs in CDCR, this alone does not guarantee effective fiscal management.

(A) Fund Salaries Three-Quarters Step ($266.5 million). Staff raises two concerns for committee consideration with this component of the proposal. First, there may be a minor technical issue with how this part of the shortfall was calculated. Staff has asked for more information regarding how CDCR calculated its base funding for salaries as it appears that the department may actually be overstating their base funding level.

Second, and the more substantial policy question, is whether funding CDCR custody positions at the three-quarters step will set a precedent for other classifications in CDCR or employees in other state agencies. State agencies generally can manage their resources if employee salaries start averaging something higher than the mid-step by keeping other positions vacant and using salary savings to offset the higher costs. However, this is not as easy in prisons which are 24-hour institutions with many posted positions. Keeping custody positions vacant only drives more overtime costs. So, approving this funding request may be a more accurate way to reflect CDCR's true salary costs. On the other hand, there are other state agencies that operate 24-hour institutions, such as the Department of Mental Health, that potentially face similar challenges and could come forward with similar budget requests in the future if their average costs increase significantly above the mid-step.

(B) Medical Guarding and Transportation Workload ($55.2 million). The department's costs for medical guarding and transportation have increased markedly in recent years, in particular due to the efforts of the federal Receiver to ensure better access to medical care. Now that the Receiver has begun to improve the provision of health care within the prisons and implemented utilization management programs, those costs have begun to come back down. In light of that, CDCR built in an assumed decrease in medical guarding costs compared to prior year levels. However, staff finds

on a technical basis that the 23 percent reduction was applied incorrectly and the requested augmentation can be reduced by $15,614,000.

(C) Unfunded Swing Space ($17.3 million). It makes sense that the department has to operate with an amount of swing space to accommodate all the movement of inmates that has to occur in the prisons on a daily basis as inmates move in and out of receptions centers, general population facilities, health and mental health care units, and disciplinary housing units. However, it is unclear that this is a funding issue as much as it is an issue about having sufficient numbers of beds of the different types available throughout the system. Moreover, given current overcrowding levels, it is unclear that the department can operate sufficient swing space.

(D) Overtime Funding Not Adjusted for Employee Compensation ($35.7 million). Staff raises no specific concerns with how this request was calculated. However, staff would note that the department proposed this same funding request in the budget two years ago. The committee rejected the proposal at that time, in particular because it found that the department did not have a plan for how it would contain and reduce overtime costs going forward. At that time, the committee adopted budget bill language requiring CDCR to develop such a plan and suggested that it would revisit this proposal after such a plan was developed and shared with the Legislature. Governor Schwarzenegger vetoed that language. Whether it approves this component of this proposal or not, the committee may want to consider adopting similar language again or otherwise present a plan to the committee.

(E) Legal Settlements and Outside Counsel ($20.5 million). It is unclear the degree to which CDCR might be better able to contain its legal costs. While its costs for settlements and judgments reached $33.8 million in 2009-10, it was only $19.4 million in 2006-07. Of course, much of these costs are driven by court decisions largely beyond the control of the department. On the other hand, these costs are frequently driven by ineffective department operations that result in lawsuits, its trouble rapidly correcting deficiencies alleged and sustained by courts, and potentially decisions to take some issues to trial that may not reflect cost-effective approaches to resolving disputes.

LAO Comments and Recommendations. While the LAO finds that the department's budget shortfalls are a persistent problem that merit being addressed, it has several concerns with this proposal. In summary, the LAO finds that this proposal does not, in fact, reflect a true accounting of the department's budget. It identifies certain areas of structural shortfall, but does not account for areas where the department historically has unspent moneys, such as parole and administration. Moreover, the budget does include budget reductions that are likely to be difficult for the department to meet, specifically the workforce cap and unallocated reduction to the Receiver's budget. The LAO also raises the concern that the proposal does not provide for any specific cost control measures or guarantees that the department will not overspend again in the future. Consequently, the LAO recommends that the Legislature reject this proposal

and require the administration provide a more comprehensive accounting of its fiscal needs.

Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following questions.

- What efforts is the department or administration taking to ensure better fiscal management and control within CDCR? What additional steps should the Legislature take in its oversight capacity?
- While potentially a more accurate reflection of actual salary costs, does the Legislature want to set the precedent of funding positions at three-quarters step in CDCR?
- Why does the department need additional funding for swing space? Is the need really for money or bed capacity?
- Should the Legislature adopt budget bill language again requiring CDCR to develop a plan for how it is going to control and manage overtime costs in the future?
- What efforts has the department made to reduce or contain the number of lawsuits and the costs associated with lawsuits?

Staff Recommendation. Approve with reductions totaling $82.955 million (listed below), and direct the department to continue to work with staff in reviewing this proposal this spring. Given the magnitude of the request, as well as the precedential nature of the component to fund salaries at three-quarters step, the committee may want to revisit this proposal in the spring.

- Reduce by $15,614,000 to reflect the technical change related to medical guarding and transportation.
- Reduce by $17,313,000 to reject the component related to unfunded swing space.
- Reduce by $35,703,000 to reject the overtime request. The department should come back in the spring and provide the committee with a plan for how it will contain and otherwise manage overtime costs in the future.
- Reduce by $14,325,000 to reflect the difference between the department's requested funding level for legal settlements and outside counsel and the amount spent in 2006-07, the lowest spending level for these activities since 2004-05.
- Modify the administration's proposed budget bill language to require that the department also provide the expenditure reports to the budget committees.

Issue 2 – Estrella Infill Beds

Background. The Estrella Correctional Facility project is the re-purposing of the Division of Juvenile Justice Facility previously known as El Paso De Robles Youth Correctional Facility (Paso Robles). This project is included in the CDCR's long-range plan for medical and mental health beds provided to the *Coleman* Court in November 2009.

The project includes housing, programming, health care facilities, inmate visiting and support facilities. The Estrella conversion will include a total of 1,000 beds for the following categories of inmates: 207 Specialized General Population, 292 General Population, 150 Enhanced Outpatient Program (EOP), 40 EOP Administrative Segregation, and 311 Inmate Work Crew.

Assembly Bill 900 (Public Safety and Offender Rehabilitation Services Act of 2007) authorized construction of infill beds and support program space at existing prison facilities. The CDCR, working collaboratively with the Federal Receiver filed a long-range Integrated Strategy Plan to reduce overcrowding and provide for increased medical and mental health beds. The *Coleman* court approved this plan.

The requested resources are based on a rollout schedule that projects facility activation beginning September 14, 2012 (though the Receiver's Office reports that minor delays have occurred, and construction is now assumed to be completed on October 4, 2012).

Proposal. The Governor's budget proposes $2.7 million GF and 21.4 positions in 2011-12 (growing to $41.5 million GF and 442.6 positions in 2012-13 and ongoing) to support the pre-activation, activation, and ongoing operation of the new Estrella Correctional Facility.

Staff Comments. This project is a component of the department's long-range bed plan to address prison overcrowding and provide appropriate housing for inmates with mental illness or other specialized needs (in the case of the specialized general population inmates). Moreover, the Joint Legislative Budget Committee reviewed and concurred with the construction of this project.

Backup information provided by the department identifies 72.5 positions that will be established for various pre-activation purposes. These positions are proposed to be established at various periods prior to activation of the facility ranging from two to ten months prior to the facility opening.

The LAO recommends the Legislature reduce the Governor's proposal to account for cost reductions that would be incurred at other facilities resulting from the activation of the four new prison facilities. However, this facility does not activate until 2012-13. So, there will be no offsetting savings in the budget year. In response to the LAO's

questions, the department estimates that the offsetting savings in 2012-13 will be about $6.6 million and 112 positions. This amount will increase in 2013-14 when the facility is fully activated for the entire fiscal year.

Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following questions.

- Does the Legislature still support activation of the Estrella project to relieve overcrowding and address current shortages of mental health beds?
- How did the department identify a need for 72.5 positions as part of the pre-activation staffing plan? What activities will these positions perform?

Staff Recommendation. Reduce by $1,328,000 – half of the amount requested. The department will certainly require pre-activation staffing to prepare for the activation of this new prison facility. However, it is unclear why it requires as many as 72.5 positions to carry out the necessary activities. Therefore, staff recommends approving half of the amount requested and suggests that the revisit the issue in the spring to ensure that the appropriate and necessary amount of staffing is provided.

Issue 3 – CIW CTC Activation

Background. Utilizing funding authorized under AB 900 (Solorio, Chapter 7, Statutes of 2007), the department is currently constructing a Correctional Treatment Center (CTC) at the California Institution for Women (CIW). CTC facilities provide both acute and intermediate level of care mental health treatment programs for inmate-patients. The project at CIW will add 45 licensed clinical beds to an existing 18-bed CTC, for a total of 63 CTC beds.

The table below provides a list of the different mental health classifications in CDCR that require specialized housing, including the number of inmates meeting those classifications, as well as the number of beds and wait lists for those beds.

CDCR Mental Health Services Delivery System

(As of January 10, 2011)

Category	Inmates	Capacity	Wait List
Enhanced Outpatient Program (EOP)	4,881	4,269	154
Psychiatric Services Unit (PSU)	367	394	121
Mental Health Crisis Beds (MHCB)	340	373	17
Intermediate Care Facilities (ICF)	606	732	375

Proposal. The Governor's budget requests a total of $1.5 million General Fund and 11.6 positions in 2010-11 and $10.1 million General Fund and 106.4 positions in 2011-12 (growing to $12.5 million and 135.4 positions in 2012-13) to provide staffing required for a this 45-bed inpatient accredited facility, as well as seek accreditation for the facility. The request is summarized in the table below.

CIW Correctional Treatment Center Budget Request

Fiscal Year	CTC Activation	Accreditation	Totals
2010-11	$905,000	$597,000	$1,502,000
2011-12	$8,909,000	$1,195,000	$10,104,000
2012-13	$11,314,000	$1,195,000	$12,509,000

The 45-bed CTC at CIW is scheduled for completion in December 2011. In order to comply with the *Coleman* Court Order, new staff is proposed to be hired by mid-October 2011, at least three months prior to the required licensing survey conducted by the Department of Public Health (DPH). The facility must pass this initial licensing inspection prior to the housing of inmate-patients in the facility.

Typically, the Department of Mental Health (DMH) operates CTCs in California's prisons. However, the department has determined that it intends to begin managing and operating its CTCs. This CTC at CIW is the first such facility proposed to be operated by CDCR and not DMH. Accordingly, the department will seek provisional Joint Commission Accreditation for the facility. The department states that accreditation will help ensure that it has the appropriate staffing, policies, and procedures in place to

take on this new responsibility, as well as demonstrate to the *Coleman* court that it is prepared to do so effectively. Requirements associated with obtaining accreditation by the Joint Commission exceed those of State licensure by DPH. In order to prepare for this accreditation, the department is requesting nine headquarter positions and $1.2 million ongoing to obtain and maintain Joint Commission Accreditation for the CIW facility and for other inpatient facilities that will be constructed over the next four years, including the inpatient facilities at California Medical Facility and Correctional Health Care Facility.

Staff Comments. The activation of this facility is consistent with the department's long-range plans to provide sufficient housing and treatment for seriously mentally ill inmates. The Legislature has already approved the construction of this facility knowing that there would be additional ongoing operating costs.

The LAO raises a concern that the funding requests for activation of these new beds does not account for the offsetting savings that should occur from taking down beds in other facilities. In response to the LAO's concerns, the department has estimated that there will be $84,000 in offsetting savings in the budget year, increasing to $1.1 million in the following year when the facility is fully activated for a full year.

The committee may also want to consider whether it wishes to fund the additional staffing requested for headquarters accreditation staffing. While it is certainly the case that this facility must meet basic licensing standards, accreditation is not required. The department does report, however, that national accreditation is likely to be an important step in demonstrating to the *Coleman* court that the department can effectively manage its mental health programs and, eventually, end federal court oversight. Though this may be a laudable goal, the committee may want to consider whether this accreditation work is something the department should do with existing resources, particularly in light of the state's overall fiscal problems.

Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following questions.

- What offsetting savings should the department experience from activating this facility? How did the LAO arrive at its conclusion that savings should reach a couple of millions of dollars in the budget year?
- Has the administration and LAO agreed upon a reasonable level of offsetting savings?
- Can the department effectively run this CTC, a type of facility that is operated by DMH in all other CDCR prisons where such facilities are located?
- How important is it that the department seek accreditation of this facility?

- If the department does seek accreditation, should it use its existing resources rather than requesting $1.2 million for this purpose?
- How long is accreditation staff needed? If approved, should they be limited term?

Staff Recommendation. Reduce by a total of $1,279,000. This reduction includes $84,000 associated with offsetting savings and $1,195,000 associated with the accreditation staffing requested.

Staff agrees with the department that seeking accreditation is a worthwhile goal that should be pursued but believes that the department should utilize existing headquarters resources for this purpose. While the department does not have existing staff specifically dedicated to seeking accreditation, its existing staff already has the responsibility of designing effective procedures and protocols.

Issue 4 – Headquarters and Licensure Positions

Background. Assembly Bill 900 (Public Safety and Offender Rehabilitation Services Act of 2007) authorized construction of infill beds, and support program space at existing prison facilities. CDCR, working collaboratively with the Federal Receiver filed a Long-Range Integrated Strategy Plan to reduce overcrowding and provide for increased medical and mental health beds. In total, this bed plan assumes that by 2015 the department will activate about 9,900 new prison beds (not including reentry facilities), many of which will serve medically or mentally ill inmates.

Proposal. The Governor's budget proposes $5.1 million GF and 17 headquarters positions in 2011-12 ($5.0 million and 17 positions in 2012-13) to support the activations of the new facilities funded through AB 900.

The CDCR and California Prison Health Care Services (CPHCS) anticipate pre-activation activities will continue for 4-5 years. The CDCR and CPHCS have established a core Facilities Planning and Activation Management Team made up of various executive and administrative support positions. Responsibilities of this new staff would include facility planning and activation management, meeting licensure requirements, recruitment, acquisition and procurement, and labor negotiations.

Staff Comments. The LAO finds that while CDCR has identified an increase in workload that will result from the planning for the activation of new prison facilities, their analysis indicates that the department currently has unutilized resources within its central administration budget that could be used for such planning activities. This is because the department currently has vacancies in several of the employee classification categories for which it is requesting additional positions and funding. For example, CDCR is requesting two additional program analysts in central administration despite the fact that the department currently has over 100 vacancies in this classification. Furthermore, in 2009-10, CDCR had $43 million in savings in its budget for central administration at the end of that year. The fact that the Department has not spent all of its allocated funding for administration in the past suggests that there could be savings in other central administration functions that the Department has not identified which could support the above facility activation planning activities. In view of the above, the LAO recommends that the Legislature reject the Governor’s proposal.

Additionally, the Receiver’s Office testified to the Assembly budget subcommittee that heard this issue that it could absorb its share of the requested positions.

Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following questions.

- Can the state afford to provide the department with more administrative positions in light of the state's budget problems?
- What headquarters positions does CDCR already have that can help manage the activation of these facilities?
- To what extent do the positions being requested overlap with the functions that are to be performed by pre-activation staff being requested in other budget requests (such as Estrella and CHCF)?

Staff Recommendation. Deny. While the activation of new facilities will drive additional workload for the department, staff recommends that the department be required to absorb this workload within existing resources. As the LAO notes, there have been unfilled vacant positions resulting in significant headquarters savings in recent years. Moreover, in light of the state's general budget problems, the addition of administrative positions does not seem warranted at this time.

Issue 5 – San Quentin Condemned Extended EOP

Background. The EOP Condemned program at San Quentin State Prison (SQ) provides mental health services to 25 inmate-patients with serious and persistent mental illness on California's death row. This program consists of mental health staffing and additional out-of-cell time for these inmates Monday through Friday. According to the department, when not treated appropriately, this population frequently requires suicide watch and/or admission to higher levels of care. Six out of the last seven suicides at SQ occurred in this population.

Proposal. The Governor's budget proposes $603,000 General Fund and 5.7 positions to extend the Enhanced Outpatient Program (EOP) to seven days a week for condemned inmates at SQ.

According to the department, this request will provide more intensive EOP services and assist these inmates to better adapt to life within the Condemned Housing Unit. In so doing, the department believes it will reduce the likelihood that inmates' mental health condition will decompensate on days when services are not available which then requires more intensive and expensive care. For example, housing inmates in an Intermediate Care Facility (ICF) costs approximately $200,000 per inmate per year.

In order to provide the extended level of service in the condemned EOP program, the staffing complement is proposed to be extended to a seven day per week schedule. Existing staffing models were used to calculate staffing for a 5-day per week program level. This staffing level was increased to account for the increase from 5 to 7-day service and to maintain continuity of care. With the increase in number of days of service, and number of hours of programming, there is an increase in demand for guarding and escort officers. During the time that the Extended Condemned EOP Program is in operation custody staff must also ensure all mandated programs are being successfully met (e.g., legal appointments, religious services, medical appointments, showers, exercise yard and distribution of medication).

Staff Comments. Since release of the Governor's budget, the administration has identified an error in its budget calculations. Specifically, the department's estimates assumed a count of 40 inmates requiring EOP services on death row. In fact, the correct number is 25. Consequently, the administration is revising its request to $445,000 and 4.3 positions.

Staff notes that an additional correction needs to be made to reduce the request by an additional $54,000 and 0.6 positions. This is because of a technical error calculating the security coverage.

Aside from these technical issues, staff raises a concern that it is not clear from the department's proposal how significant of a problem decompensation of EOP

condemned inmates actually is. For example, the proposal does not identify how frequently these inmates decompensate and require a higher and more expensive level of treatment, or how often that happens at least in part due to the lack of mental health services on weekends. In addition, the proposal asserts that when inmates do decompensate and are placed in higher levels of treatment, this is very expensive – perhaps as much as $200,000 per inmate per year for an ICF bed. While it is almost certainly true that housing an inmate in an ICF is significantly more expensive than EOP level treatment, the department's proposal does not include a cost comparison that accounts for factors such as length of stay.

Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following questions.

- How many suicide attempts have there been among the EOP population on death row over each of the past few years?
- Is this proposal in response to a direct court order?
- How often do condemned EOP inmates decompensate to the point of needing to be transferred to a higher level of care? Has the department determined that this happens more frequently due to the lack of mental health services over the weekends?
- Has the department determined that the proposed approach is definitely the more cost-effective approach to managing this population?

Staff Recommendation. Reject without prejudice. This request may very well be a more cost-effective and sound correctional approach to treating the condemned EOP inmates. However, it is not entirely clear that that is the case based on the information currently provided by the department. Rejecting without prejudice will allow the committee more time to review whether this staffing request is warranted based on actual operational need at SQ, as well as determine if it is a cost-effective approach.

Issue 6 – SB 678 Community Corrections Performance Incentive Grants

Background. In an effort to stem the flow of felony probationers being sent to state prison, the Legislature approved two distinct measures aimed at improving felon outcomes. First, the Budget Act of 2009 included a $45 million appropriation of federal Edward Byrne Justice Assistance Grant (JAG) funds that was distributed to all 58 county probation departments. This funding is being used by counties to provide evidence-based supervision, programs, or services to adult felon probationers.

The purpose of the JAG funding was to provide immediate funding to county probation departments to jumpstart development of evidence-based probation supervision practices in order to improve felony probation performance and reduce the likelihood that these probationers will commit new crimes or other violations and be sent to state prison.

Second, the California Community Corrections Performance Incentive Act of 2009 (SB 678, Leno) builds upon the initial allocation of JAG funding by establishing a system of performance-based funding for adult probation departments statewide. This bill was designed to achieve the dual purpose of reducing criminal behavior by adult felony probationers, as well as use state correctional resources more efficiently. This is accomplished through a complicated formula that for each county counts the number of adult felony probations sent to state prison each year compared that counties historical average. To the extent that counties are effective at reducing reoffending among this population, the state provides a payment to the county equivalent to 45 percent of the state's savings that accrue from the reduced state prison population. Counties are then required to invest that funding in evidence-based probation practices, including supervision, evaluation, treatment services, and sanctions.

In effect, SB 678, along with the initial funding provided through the JAG funds, provides more funding to the front end of the correctional system where it can be used more effectively and efficiently to reduce crime. At the same time, it reduces state corrections costs.

Proposal. The Governor's budget estimates that $55.2 million General Fund will be paid to counties pursuant to the California Community Corrections Performance Incentive Act of 2009 (SB 678).

Also, the administration is requesting trailer bill language that would accomplish the following objectives:

- Make technical changes to clarify that the State Community Corrections Performance Incentive Fund comes from a transfer from the General Fund, and requiring the State Controller to distribute the funding from the State

Performance Incentive Fund to each county's Performance Incentive Fund, as prescribed by DOF.

- Modify the formula for SB 678 to change how each county's baseline probation failure rate is calculated so that more recent years are weighted more heavily.

Staff Comments. The administration's proposal is consistent with the intent of SB 678 and is based on an estimate that counties sent 4,079 fewer probation failures to state prison in 2010 as compared to before the law was passed. This represents savings to the state of more than $100 million.

While the administration's estimate of these savings appears reasonable, it is based on only the first two quarters of 2010 data. The administration will provide updated estimates as part of the May Revision based on the full year of actual data for 2010.

These proposed trailer bill change related to the funding formula merits further discussion. The administration finds that the current formula defining the historical average of probation failures in each county results in an overestimate. This is because there was a trend of declining probation failures sent to the state. To attempt to correct for this, the administration proposes to weight more recent years more heavily in the formula. This results in a decrease in the amount of funding that will be sent to counties but may more accurately reflect the actual impact of SB 678. This change would not affect the amount of additional funding counties would receive if they continue to reduce their probation failure numbers in 2011 and beyond compared to their success in 2010.

Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following questions.

- Is the change to the SB 678 formula as proposed by the administration a fair and appropriate reflection of the Legislature's intent?
- To what extent would doing changing the formula affect county probation departments' ability to implement effective programs?
- How will realignment, as proposed by the Governor affect the program created by SB 678? Are there ways to incorporate incentives for best practices and cost-effective use of resources into realignment, consistent with the approach of SB 678?

Staff Recommendation. Hold open the funding request pending May Revision. Deny without prejudice the administration's proposed trailer bill language.

Issue 7 – Budget Cut to Rehabilitation Programs

Background. The Governor's budget estimates the department will spend about $452 million on inmate and parole rehabilitation programs in the current year. This amounts to about 5 percent of CDCR's budget. The table below summarizes this spending:

Current-Year Spending (GF) on Inmate and Parolee Rehabilitation Programs

Program	Spending *(In millions)*	Spending per Inmate/Parolee
Inmate Education	$109.5	$670
Inmate Vocational Training	24.3	$148
Inmate Substance Abuse Treatment	41.4	$252
Parolee Substance Abuse Treatment	141.3	$1,256
Parolee Programs – various	135.6	$1,205
Total	***$452.1***	

It costs approximately $4,000 to have an inmate in a full-time education or vocational training classroom for a year. It costs approximately $7,000 to put a parolee into residential substance abuse treatment for 90 days. According to studies, only about one-quarter of state inmates are able to read a high school level, and 56 percent of inmates are in high need of drug abuse treatment and 43 of prison inmates are in high need for treatment for alcohol abuse. (There may be some overlap between these two populations.)

Proposal. The Governor's budget includes a cut of $150 million to CDCR's inmate and parolee rehabilitation programs. The department is still in the process of determining how that reduction will be implemented and allocated among its various education, vocation, substance abuse, and parolee programs. This reduction is one-time in nature and is proposed to be restored in 2012-13.

The administration suggests that these reductions are appropriate given the proposal to realign many offenders to county jurisdictions. It finds the department will have to reevaluate how it operates its offender programs based on the shift of population and determine the most appropriate types of programs to offer the remaining population.

Staff Comments. Staff raises a couple of concerns with this proposal. First, there could be a negative public safety impact to this proposal. Research consistently finds that effectively designed and operated rehabilitation programs are an effective tool to reducing reoffending when inmates are released from prison. For example, the Washington State Institute for Public Policy (WSIPP) has conducted meta-analyses which compile and consolidate the findings of numerous other reports and concluded that inmate education and vocational programs reduce recidivism by 7 percent and 9 percent, respectively. Prison and community substance abuse treatment reduces recidivism by 6 percent and 9 percent, respectively. Moreover, WSIPP found that the

savings to taxpayers and the public from providing these programs far outweighs the costs to provide them. In their report, WSIPP estimated that these programs resulted in net savings ranging from $7,800 to $13,700 per participant. These findings suggest that reducing funding for these programs not only affects public safety, but can be a short-sighted budget solution.

Second, while the administration is correct to note that significant realignment will probably require a reshaping of the department's programs, staff would note that this would not occur on a large scale in the budget year. The administration's realignment proposals are to be implemented prospectively. Therefore, inmates and parolees already in CDCR prisons and on CDCR caseloads would continue to be there and would continue to benefit from programs in the budget year.

While staff finds significant concerns with this proposal, it does comprise a significant one-time budget solution. Therefore, staff recommends that the Legislature seek offsetting budget solutions should it seek to restore some or all of this proposed cut.

Key Questions for Legislative Consideration. In reviewing this proposal, the committee may wish to consider the following questions.

- Is light of both the research on the effectiveness or correctional rehabilitation programs, as well as the state's fiscal problems, is this cut a reasonable budget solution?
- What options does the Legislature have to provide offsetting budget solutions in order to restore some or all of this cut on a one-time basis?
- To what extent is the department able to determine how effectively it operates its inmate and parolee rehabilitation programs?

Staff Recommendation. Reject the cut to rehabilitation programs.

In addition, revert the remaining amount of General Fund allocated in 2011-12 for infrastructure projects in AB 900 – about $73.8 million – to offset this restoration. In combination with the other reductions recommended in this agenda, the restoration of this $150 million cut will be fully offset and, therefore, not result in any General Fund increase relative to the Governor's budget.

Finally, adopt budget bill language requiring that the funding provided in the budget for inmate and parole rehabilitation programs can only be used for that purpose and any funds budgeted for that purpose buy unspent at the end of the budget year should revert to the General Fund. This action will mean that the department cannot divert money from programs to other areas of operation without legislative consent.