

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Lois Wolk



Thursday, May 26, 2011
9:30 a.m.
Room 113

Consultant: Keely Martin Bosler

<u>Item</u>	<u>Department</u>	<u>Page</u>
Vote Only Agenda		2
	California Department of Corrections and Rehabilitation	2
	California Prison Health Care Services.....	7
0552	Office of the Inspector General	10
	Public Safety Realignment.....	16
5225	California Department of Corrections and Rehabilitation	19

Corrections, Public Safety and the Judiciary

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Vote Only Agenda

California Department of Corrections and Rehabilitation

1. Contract Bed Funding Budget Bill Items and Language

May Revision. The Governor's May Revision proposes to Add Items 5225-006-0001 and 5225-007-0001 and budget bill language to reschedule contract bed funding and allow the Administration to clearly schedule savings resulting from realignment to the appropriate program area. This proposal does not result in a net General Fund impact.

Background. The CDCR houses approximately 6,250 inmates in contract facilities within California and approximately 10,470 inmates in out-of-state contract facilities. In order to accurately track funding for both in-state and out-of-state contract beds, the Administration is proposing to remove funding for these services from CDCR's main Item of appropriation and create distinct Items for each one. As the need for contract beds is reduced, pursuant to implementation of AB 109 (Chapter 15, Statutes of 2011), the Administration will reduce the new contract bed appropriations accordingly.

This proposal is comprised of a decrease of \$375.9 million to Item 5225-001-0001, additions of \$280.6 million to Item 5225-006-0001 and \$95.3 to Item 5225-007-0001 and budget bill language as follows:

Item 5225-006-0001

Provisions:

1. The Director of Finance shall reduce this Item by \$179,354,000, to reflect the portion of realignment savings to be achieved through the reduction or elimination of contracts with private entities for out-of-state housing of state inmates. No other item of appropriation may be used to pay for the costs of such contracts.

Item 5225-007-0001

Provisions:

1. The Director of Finance shall reduce this Item by \$77,406,000, to reflect the portion of realignment savings to be achieved through the reduction or elimination of contracts with private entities for in-state housing of state inmates. No other item of appropriation may be used to pay for the costs of such contracts.

2. CDCR Population Adjustment

May Revision. The Governor's May Revision proposes a reduction of \$342,000 General Fund (\$6.5 million in 2010-11) and \$1.4 million General Fund Proposition 98 to reflect changes in the adult and juvenile inmate, ward and parolee populations.

Background. As part of the Governor's budget each year, and again as part of the May Revision, the Governor proposes adjustments to CDCR's budget based on projected changes in the department's caseloads. This includes adjustments based on costs associated with changes in the inmate, parole, and juvenile populations supervised by CDCR. It also includes budget revisions based on associated workload changes associated with population-related workloads, including parole revocations, mentally ill inmates, contracted beds, and local assistance to reimburse jails for housing parole violators.

The Governor's May Revision proposal reflects a decrease of 165 inmates in the current year, compared to previous projections, and no change in the budget year, for a total of 163,634 in 2010-11 and 163,152 in 2011-12. The projection also reflects increases in the estimated parolee population of 478 in 2010-11 and 352 in 2011-12, increasing to a total of 114,168 in the current year and 107,354 in the budget year. For juveniles, the population funding request projects a decrease of 34 wards and no change in parolees in the current year and a decrease of 104 wards and 342 parolees in the budget year, resulting in totals of 1,270 wards and 1,520 parolees in the current year and 1,165 wards and 1,178 parolees in the budget year.

Staff Comments. The Administration reports that it did not adjust funding in the budget year, based on adult inmate population projections, because CDCR's actual adult inmate population has tracked higher than projections. However, it is unclear why actual population is tracking higher than projected or if this trend will sustain. Additionally, given the public safety realignment, there will likely be substantial changes to CDCR's adult inmate population in the budget year, which would affect current trends. For these reasons, it is unclear why CDCR's standard May Revision adult inmate population adjustment was not made.

Staff Recommendation. Reduce CDCR's population adjustment by \$21.4 million to account for the May Revision projections.

3. Unfunded Position Authority Reduction

May Revision. The Governor's May Revision proposes to abolish 1,019.7 unfunded positions. The unfunded positions are a result of various position reduction drills in which funding was swept but the position authority was not taken from the CDCR in the formal budget process.

Background. This proposal reduces position authority due to the following reductions:

- ***Governor's Position Reduction.*** In 2009-10, the Governor's Office directed departments to reduce their position authority by 7,000 positions. CDCR's reduction target related to this drill was 800 positions. Field and headquarters positions were taken down from individual institutions/offices/facilities but not all of them were taken down in a formal budget process. Of the 800 positions reduced, the CDCR still retains 382.2 positions that this proposal eliminates.
- ***Workforce Cap. Pursuant to the 2010-11 Workforce Cap.*** \$20 million was reduced from CDCR's budget and positions were taken from individual offices. However, CDCR still retains unfunded position authority. This proposal will eliminate 107.6 unfunded positions.

- ***Vacant Position Abolishment Process.*** In 2009-10, pursuant to state law concerning the abolishment of vacant positions, the CDCR agreed to reduce 300.5 positions. Authority for 3.9 of these positions still remains and will be removed by this request.
- ***Headquarters Reduction.*** In the Spring of Fiscal Year 2010-11, the CDCR implemented a reduction of 410.7 positions to its headquarters position authority. As a result of this reduction, the CDCR is abolishing 287.7 vacant or un-established positions and 123 filled positions.
- ***Internal Reductions.*** The CDCR has implemented a series of monthly position reductions that has resulted in a total reduction of 200.7 positions. This request eliminates the 115.3 positions that remain.

Staff Recommendation. Approve the May Revision request to reduce the positions.

4. Juvenile Parole Realignment—Technical Clean Up

Background. Chapter 729, Statutes of 2010 (AB 1628) was passed to realign juvenile parole to the counties. This action was taken after significant contraction of the juvenile population in state facilities over the past ten years. The relatively small number of youth on state parole has made the program expensive and relatively inefficient to operate.

May Revision. The May Revision has requested technical trailer bill language to authorize the Division of Juvenile Justice to transfer wards under their jurisdiction to county probation departments, pursuant to AB 1628, regardless of the committing court. Existing law only authorizes the Division to transfer wards committed by a juvenile court, but some commitments are made by superior courts.

Staff Comments. Staff finds that this language clarifies a technical oversight in the original legislation.

Staff Recommendation. Staff recommends that the subcommittee approve this technical trailer bill language.

5. CDCR Capital Outlay Reappropriations

April Finance Letter. An April Finance Letter by the Governor proposes to reappropriate \$471,000 General Fund to finish working drawings on two CDCR capital outlay projects, (1) California Men's Colony, San Luis Obispo: Central Kitchen Replacement (\$258,000), and (2) Correctional Training Facility, Soledad: Solid Cell Fronts (\$213,000).

Background. The following are short descriptions of the projects:

- ***California Men's Colony, San Luis Obispo: Central Kitchen Replacement.*** The California Men's Colony, Central Kitchen Replacement project will design and construct a new 9,600 square foot central kitchen and two new 4,500 square foot satellite dining facilities. The new kitchen layout will reduce blind spots, improve work area efficiency, and use durable materials resistant to deterioration due to water.

- **Correctional Training Facility, Soledad: Solid Cell Fronts.** In order to improve the safety of staff, the CDCR is undertaking an effort to retrofit old administrative segregation units with open barred cell fronts and cell doors to a solid cell front design. The solid cell front design reduces the opportunity for gassing or spearing attacks by inmates upon staff. Funding for project working drawings is being reappropriated. Finalization of the working drawings is pending incorporation of changes to the project mandated by the State Fire Marshall. The reappropriation is necessary to ensure that CDCR can encumber funds to pay for this work.

Staff Recommendation. Approve April Finance Letter request.

6. CDCR Capital Outlay Proposal Withdrawals

May Revision. The Governor's May proposes a reduction of \$6.5 million General Fund by withdrawing two capital outlay proposals contained in the Governor's Budget, (1) Ironwood State Prison: Heating, Venting, and Air Conditioning project (\$6.1 million), and (2) Wasco State Prison: Blast Chiller Installations (\$436,000).

Background. The following are short descriptions of the projects:

- **Ironwood State Prison: Heating, Venting, and Air Conditioning.** This project will replace the evaporative cooling system with a Heating, Ventilation, and closed loop chilled water Air Conditioning (HVAC) system at Ironwood State Prison (ISP) in support of 20 housing units and a majority of the other institutional support facilities, and to install an energy saving roof membrane with insulation. Also a new Central Chiller Plant and the installation of a dedicated emergency power back-up generator to operate the Central Chiller Plant during power outages. Preliminary plans were funded in the 2008 Budget Act and were approved by the Public Works Board in November 2010.

The institution "swamp cooler" type air handling units at ISP have deteriorated and prematurely reached the end of their useful life. Despite continued maintenance and repair efforts, the units continue to corrode and are unreliable. Corrosive salt laden water generated by and leaking from the air handling units has caused extensive damage to areas surrounding the units (roofs and walls).

From July to October, temperatures frequently range from 93 to 105 degrees Fahrenheit inside and 110 to 130 degrees Fahrenheit outside.

- **Wasco State Prison: Blast Chiller Installations.** This proposal requested funding to purchase and install two additional blast-chill units in the Main Kitchen at Wasco State Prison. The intent of the project was to resolve long-standing operational and equipment issues resulting from population increases.

The Administration is withdrawing these proposals in order to address the state's budget shortfall. However, they have indicated the intent to move forward with these projects in the future.

Staff Recommendation. Staff recommends that the Subcommittee approve these project delays given current fiscal conditions.

7. Condemned Inmate Complex – San Quentin

May Revision. The Governor's May Revision proposes \$19.2 million General Fund to repay a loan provided to CDCR from the Pooled Money Investment Board, which funded the San Quentin Condemned Inmate Complex (CIC) project. In addition, a \$1.3 million General Fund loan plus any accrued interest will be forgiven. These actions are necessary because the Administration has terminated the project.

Background. The 2003-04 Budget Act authorized \$220 million in lease-revenue bonds for the design and construction of a new CIC for condemned male inmates at California State Prison, San Quentin. The original project was designed to provide 1,408 beds which were projected to meet the department's condemned inmate population needs through 2037.

However, because of increased costs related to this project, cost containment measures were taken in September 2005 to: (1) eliminate one housing unit, thereby reducing the number of beds by 18 percent; and (2) change the project scope for warehouse and maintenance support space from the construction of freestanding buildings to the conversion of existing dormitory buildings. Even with these cost containment measures, it was recognized that the project was over budget. As such, the 2008-09 Budget Act included an additional \$136 million in lease-revenue bonds.

In the past, the LAO has raised several concerns as well as recommended canceling the CIC project at San Quentin and building additional prison capacity for condemned and maximum-security inmates at a lower cost per bed elsewhere. The LAO also has noted that some states house condemned inmates with other Level IV inmates in a single facility and suggested that this could also be an option for CDCR.

The Legislature has also raised concerns about the CIC project in recent years and has expressed such concerns through adoption of budget bill language (BBL). Specifically, this year BBL was adopted that restricted expenditures for the construction of the condemned inmate complex until the following conditions were met: (1) the CDCR determined that it can legally double-cell inmates on death row, and (2) the prison overcrowding issue before the supreme court is resolved.

Staff Comment. Given the significant concerns regarding this project through the years, the Administration's action to terminate this project is appropriate. Although, the sunk costs create a current General Fund pressure, this action will avoid future long-term debt service costs associated with this project.

Staff Recommendation. Adopt the Administration's May Revise proposal to cover the costs associated with terminating the San Quentin Condemned Inmate Complex project.

California Prison Health Care Services

1. Medical Parole

Background. Chapter 405, Statutes of 2010 (SB 1399, Leno) enacted a medical parole law. This law was sponsored by the Medical Receiver as one of several policies sought to reduce the overall cost of prison medical services. This law allows for the parole of prisoners that are permanently medically incapacitated with a medical condition that renders the prisoner permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care.

The state continues to fund the non-federal share (50 percent) of the medical costs of those offenders that are released from prison on medical parole. The savings from this policy are related to the guarding costs that are no longer required when the offender is placed on parole and is no longer in custody of CDCR.

May Revision. The May Revision proposes to add budget bill language to authorize the Receiver, on behalf of CDCR, to process and pay for all medical claims for inmates placed on medical parole from funds available in the Medical Services Program.

Staff Comments. The CDCR just proposed to parole its first medical parole inmate this past weekend. It is unclear to staff why the process has taken nearly six months to commence, thereby saving the state very little in the current fiscal year and contributing to the Receiver's deficiency in the current year.

This budget bill language allows the Receiver to pay for all medical claims for medical parolees. However, it is unclear that the Receiver has the authority to audit these claims to ensure their reasonableness.

Staff Recommendation. Staff recommends that the Subcommittee approve this budget bill language with modifications to ensure the Receiver has the authority to audit the medical claims submitted for medical parolees.

2. Recovery of Overpayments to Medical Providers

May Revision. The Governor's May Revision proposes trailer bill language to allow the Receiver to recover overpayments made to medical providers and apply the recoveries to the fiscal year in which they were collected.

In addition, the language would allow the Department of Finance to increase an item of appropriation for the fiscal year in which the collection was made and authorize any recoveries made prior to July 1, 2011 to be applied to fiscal year 2010-11.

Background. The Receiver employs a third party administrator who audits medical claims. This practice has also been placed in statute so when the receivership goes away the State will be required to continue that practice. To date, approximately \$28 million has been recovered.

Currently, funding recovered is credited to the year in which it was paid. This proposal would not only allow for the Receiver and the State to account for funding when it is actually received, but would also provide further incentive to retrieve overpayments.

Staff Recommendation. Approve the Proposal with an amendment to require reporting to the Legislature on the amounts collected and any appropriation augmentations.

3. Medi-Cal Reimbursements

Background. In 2010 the Legislature enacted AB 1629 (Budget) that allowed for the development, by CDCR and the Department of Health Care Services, a process to maximize federal financial participation for the provision of inpatient hospital services rendered to individuals who, but for their institutional status as inmates, are otherwise eligible for Medi-Cal or for the Coverage Expansion and Enrollment Demonstration Project.

May Revision. The May Revision proposes trailer bill language to allow the Receiver's medical staff to sign on behalf of inmates to obtain Medi-Cal eligibility. This trailer bill language also makes technical changes to the law enacted last year related to obtaining Medi-Cal reimbursements for inmates in inpatient hospital care per subsequent changes in state law related to the Medi-Cal program.

Staff Comments. The Receiver has indicated that they have had issues with inmate patients that have refused to sign the Medi-Cal eligibility forms for a variety of reasons. This has needlessly slowed down the process to implement this new initiative to draw down additional federal funds. The Receiver indicates that he is currently focusing on the enrollment of inmates over 65 and pregnant inmates.

Staff Recommendation. Staff recommends that the Subcommittee approve this placeholder trailer bill language.

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.

Governor's Budget. 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 started to fill these positions earlier this year; therefore, there is not enough data to determine whether these nursing resources have reduced reliance on nursing overtime and registry. However, analytically these nursing resources, if properly managed, will be a less costly way of delivering medication management than the current reliance on nursing registry and higher paid nursing staff.

Staff Recommendation. Staff recommends that the Subcommittee take the following actions:

- Approve this budget request.
- Approve supplemental report language that requests that the Receiver report on the savings attributed to the LVN resources hired over the past two years, by prison.

0552 Office of the Inspector General

1. Workload Reduction and Reorganization

Background. The Office of the Inspector General (OIG) was established by the Legislature in 1994 to review the policies and procedures of the Youth and Adult Correctional Agency, now the California Department of Corrections and Rehabilitation (CDCR), in conducting audits and investigations. In 1998 and 1999, acting in response to legislative hearings that revealed widespread abuse in the state's correctional system, the Legislature significantly expanded the Inspector General's responsibility for overseeing California's correctional agencies and transformed the OIG into an independent agency reporting directly to the Governor. The OIG is comprised of three bureaus; the Bureau of Audits, the Bureau of Investigations, and the Bureau of Independent Review. In addition, the California Rehabilitation Oversight Board (C-ROB) is also supported by the OIG.

As part of the 2005 reorganization of what became CDCR, Senate confirmation of prison wardens was eliminated and a warden vetting and ongoing audit function was statutorily established with the OIG. The appointment of wardens, and overarching issues related to warden recruitment, tenure, and accountability continue to challenge CDCR and generate concern from the Legislature. Additionally, last year, the OIG was the subject of a Senate Office of Oversight and Outcomes report concerning the peace officer status of OIG lawyers and auditors. In budget actions taken earlier this year, that status was eliminated for all but 25 OIG positions.

The following are the main bureaus within the OIG:

Bureau of Audits. The Bureau of Audits conducts audits of state prison wardens and correctional facility superintendents; special reviews and audits of correctional agencies and programs; investigations into alleged misconduct by employees of correctional agencies; and medical inspections of the 33 adult prisons operated by CDCR .

The OIG performs mandated audits of the CDCR's correctional institutions once every four years. The office also conducts "baseline" audits of each warden one year after appointment.

At the discretion of the Inspector General, the OIG may conduct an audit of any state adult or juvenile correctional facility or any board, program, or function within the Department of Corrections and Rehabilitation.

Bureau of Investigations. The Bureau of Investigations (BOI) is responsible for conducting a variety of investigations for the OIG. The BOI is comprised of three units: the Central Intake Unit, the Fraud Investigation Unit, and the Special Investigations Unit.

- **Central Intake Unit.** The Central Intake Unit program uses a proactive approach to gather information from CDCR sources, such as incident reports, databases, and financial documents. This information is analyzed, classified, and organized by analytical staff. The aim is to identify trends and hot spots in order to best focus audit and investigative

resources toward fighting fraud, waste, and abuse. This process is also inclusive of complaints received by the OIG.

- **Fraud Investigation Unit.** The mission of the Fraud Investigation Unit is to protect the taxpayers of the State of California and the financial integrity of the CDCR by actively identifying and investigating fraud, waste, and abuse.
- **Special Investigations Unit.** The mission of the Special Investigations Unit is to protect the citizens of the State of California by ensuring the integrity of CDCR by actively identifying and investigating allegations of criminal wrongdoing, administrative misconduct, complaints of retaliation; as well as, conducting warden/superintendent vetting, and dignitary protection. Investigations may result from complaints by correctional employees, members of the public, inmates, wards, and parolees, or may be initiated at the request of the Governor, members of the Legislature, the Secretary of the CDCR, or the Inspector General.

Bureau of Independent Review (BIR). Established directly in response to the *Madrid* lawsuit, BIR is responsible for real-time oversight of internal affairs investigations conducted by the CDCR. Staffed with teams of attorneys and investigators in regional offices throughout the state, the bureau provides contemporaneous oversight as internal affairs investigations are carried out.

Semi-annual reports providing a synopsis of each case reviewed by BIR, as well as an assessment of the quality of the investigation, the appropriateness of any disciplinary action, the bureau's recommendations regarding the disposition of the case, the level of discipline imposed, and the agreement or lack of agreement between the bureau's recommendations and the department's actions in the matter are provided to the Governor and the Legislature and posted on the OIG's website. The bureau also issues an annual report summarizing its recommendations concerning internal affairs misconduct and use-of-force investigations, including data on the number, type, and disposition of complaints against correctional officers and staff. The annual report is also provided to the Governor and the Legislature and posted on the OIG's website.

California Rehabilitation Oversight Board (C-ROB). Assembly Bill 900 (the Public Safety and Offender Rehabilitation Services Act of 2007) created C-ROB within the OIG. C-ROB's mandate is to regularly examine the various mental health, substance abuse, educational, and employment programs for inmates and parolees operated by CDCR.

C-ROB meets no less than quarterly and submits reports to the Governor and the Legislature no less than biannually (March 15 and September 15). C-ROB reports include findings on the effectiveness of treatment efforts, rehabilitation needs of offenders, gaps in offender rehabilitation services in the department, and levels of offender participation and success in the programs. The board also makes recommendations to the Governor and the Legislature with respect to modifications, additions, and eliminations of offender rehabilitation and treatment programs.

May Revision. The Governor's May Revision proposes General Fund savings of \$6.5 million in 2011-12 (\$12.6 million ongoing) as a result of eliminating all workload conducted by the Office of the Inspector General (OIG), except for the Bureau of Independent Review (BIR). OIG's

prison medical inspection workload would be transferred to the Office of State Audits and Evaluations (OSAE) within the Department of Finance.

(Dollars in Millions)

Administration's OIG Reduction Proposal		
	2011-12	2012-13
Med Inspection	-\$0.9	-\$2.9
Warden Vetting	-\$2.7	-\$4.5
Special Reviews	-\$1.2	-\$1.9
Investigations	-\$1.4	-\$2.2
Intake	-\$0.8	-\$1.3
C-ROB	-\$0.3	-\$0.5
Administration	-\$0.9	-\$1.9
Total OIG Reduction	-\$8.2	-\$15.2
OSAE Cost	\$1.7	\$2.6
Net State Savings	\$6.5	\$12.6

The following is a summary of the components of the May Revision proposal to streamline the OIG's functions:

- Medical Inspections.** The OIG performs evaluations of CDCR medical operations within adult correctional facilities with an annual budget of **\$2.9 million and 17 positions**. The OIG began this program at the request of the Receiver's Office and in response to the *Plata* lawsuit regarding medical care in CDCR institutions. The Receiver's Office views this function as vital to ensuring that CDCR is providing adequate healthcare throughout its 33 institutions. The Administration is proposing that these inspections be performed by OSAE beginning in the second half of fiscal year 2011-12. Primarily by utilizing lesser compensated personnel, OSAE would not require the same level of resources to perform this service (\$2.6 million and 16 positions).
- Vetting of Wardens and Associated Facility Inspections.** The OIG is budgeted at **\$4.5 million and 33 positions** for vetting of warden and superintendent candidates and associated facility inspections. Currently, the Governor submits names of candidates for warden and superintendent positions to the OIG. The OIG evaluates the Candidate's experience and background to ensure that they are qualified for the specific institution for which they are recommended. In addition, the OIG performs facility inspections prior to the appointment of new warden or superintendent candidates and a one-year follow up inspection. The administration is proposing to eliminate this function of the OIG. Warden candidates would be appointed by the Governor, upon the recommendation of the Secretary of the CDCR.

- ***Special Reviews and Follow-up Special Reviews.*** The OIG is funded with **\$1.9 million and 14 positions** related to developing reports that identify systemic problems of the institutions at the request of various stakeholders and to follow-up on issues raised in special review reports. The Administration proposes the elimination of special reviews and follow-up special reviews. The Administrations suggests these reviews could be performed by other entities (State Auditor, OSAE, or CDCR) as requested.
- ***Investigations.*** The OIG is funded with **\$2.2 million and 16.5 positions** to conduct retaliation investigations, criminal administrative investigations, and fraud investigations for sensitive cases typically involving high-ranking administrators. The Administration contends that these functions are duplicative and can be eliminated from the OIG.
- ***Intake.*** The OIG is funded with **\$1.3 million and 9.5 positions** in order to process complaints and tips that are submitted through its hotline. The OIG operates a toll-free tip line and posts notices of the line in CDCR facilities and offices. The Administration proposes to eliminate this function.
- ***California Rehabilitation Oversight Board.*** The OIG is funded with **\$500,000 and 0.5 positions** to operate C-ROB. Since CDCR has experienced significant reductions to its rehabilitation programs in recent budget, the Administration proposes to eliminate C-ROB.
- ***Administration.*** Due to the overall reduction, the Administration proposes reducing OIG's administration budget from **\$2.4 million and 20 positions** to \$500,000 and 9 positions.

Use-of-Force and Disciplinary Action Reviews within the CDCR. This function is performed by BIR, which has \$6.1 million in funding and 38 positions to support oversight related to the *Madrid* class action lawsuit which was recently closed. The Administration proposes that these resources be maintained because they were a vital part in meeting the requirements of the *Madrid* lawsuit and necessary to ensure that the recent improvements to operations of CDCR's Office of Internal Affairs continue.

Staff Comments. The reduction and realignment of OIG's responsibilities is consistent with the Administration's broader effort to achieve governmental efficiencies. In addition to the Administration's proposal, the Legislature has taken recent steps to improve the operational structure of the OIG. Specifically, as a result of a report by the Senate Office of Oversight and Outcomes, a recent legislative budget action reduced the number of Peace Officer positions within the OIG and a current bill, SB 490 (Hancock), seeks to further streamline and narrow OIG's functions and responsibilities.

Even with the overall efforts to achieve efficiencies in the OIG's operations and duties, staff notes the following concerns with the Administration's proposal:

- ***Medical Inspections.*** Transferring OIG's Medical Inspections responsibility to OSAE at this time seems to create significant unknown risk in respect to ultimately satisfying the demands of the *Plata* court while achieving minimal savings (\$300,000 ongoing). Specifically, the OIG's office and staff have established a medical inspection program that all parties agree is sufficient and has set benchmarks that can be used to establish when an acceptable level of inmate medical care is being delivered and the state can assume responsibility. The OIG began developing its Medical Inspection Program in

2007 and began institution medical inspections in September of 2008. Since that time, they have completed inspection of all 33 adult institutions. Staff finds that transferring this workload to OSAE at this time risks losing the extensive program knowledge and established process that exists within the OIG. In addition, even if an acceptable medical inspection program can be established at OSAE, it is unclear how long such a transition would take, which creates a risk that the state's timeline to ultimately comply with the *Plata* court could be significantly extended.

- ***California Rehabilitation Oversight Board.*** Likewise, eliminating C-ROB removes a function that is essential in ensuring that CDCR is maximizing the use of its limited rehabilitative programming resources while only achieving minimal savings (\$500,000). Due to recent budget actions, the CDCR has undertaken a complete overhaul of inmate program delivery and services. Due in part to C-ROB's reporting and monitoring, CDCR has been able to make adjustments to improve its modified programs and services.
- ***Warden Vetting.*** Prior to the OIG assuming this responsibility, wardens were subject to Senate confirmation. Having wardens appointed by the Governor at the recommendation of CDCR would remove independent input from the process. Additionally, the OIG's vetting process includes aspects that are critical in ensuring candidates are appropriate for these important public safety positions.

There is perpetual turnover of wardens that require continual vetting of prospective candidates. As of April 4, 2011, out of the 33 adult prisons, and 5 youth facilities (2 of which share a superintendent), CDCR has 19 acting wardens and four acting superintendents. Of the acting wardens, five have gone through the vetting process and are pending appointment by the Governor, three are currently in the vetting process, and the vetting process has been suspended for two candidates pending the outcome of open investigations. Two of the acting superintendents are retired annuitants and the other two have not been forwarded for vetting.

- ***Special Reviews.*** Staff finds that there is a unique role for independent oversight of prison activities, given the closed nature of the state prisons. These reviews can help to raise awareness of problems or actions that would otherwise not be brought to the public's attention. While there was a significant expansion of the OIG's budget and workload over the past several years, staff finds that there continues to be a role for the OIG in uncovering issues that deserve public attention.

Staff Recommendation. Reject the Governor's proposal, but approve the following to streamline the OIG's mission and reduce the OIG's budget by \$5.6 million in 2012-13 (this will be a lesser amount in the budget year):

1. Reduce special reviews, investigations, and intake by \$2.9 million – cutting the program by more than one-half.
2. Reduce administration by \$1.9 million.
3. Reduce warden vetting and specifically the follow-up audits by \$750,000.
4. Convert 26 positions currently classified as peace officers to non-peace officer classifications.

5. Approve placeholder trailer bill language to reduce the scope of the OIG's review and audit authority

This action would maintain medical inspections, reduced warden vetting, the C-ROB, and a significantly reduced special review capability at OIG.

Public Safety Realignment

Governor's Budget and 2011 Budget Conference Committee. The Governor's budget and a subsequent revision by the Governor submitted to the Legislature on February 25, 2011, proposed a significant public safety realignment to be enacted through a constitutional amendment that also allocated \$5.9 billion in revenues from the state to local governments to support the realigned activities. The content of the proposed realignment, which was subsequently approved by the 2011 budget conference committee, is outlined in the table below.

Program	2011-12	2014-15	2011-12	2014-15
	Feb 25	Feb 25	May Rev	May Rev
Fire and Emergency Response	\$52.0	\$52.0	\$52.0	\$52.0
Court Security	485.0	485.0	497.8	497.8
Vehicle License Fee Public Safety	506.4	506.4	504.4	504.4
Lower-level Offenders/Parole Violators	1,096.0	705.1	955.3	762.2
Realign Adult Parole	421.2	183.0	420.5	187.7
Realign Remaining Juvenile Justice	156.0	234.0	241.5	241.5
Mental Health Services:				
EPSDT	0.0	636.9	0.0	579.0
Mental Health Managed Care	0.0	190.7	0.0	183.7
— AB 3632 Services	0.0	150.9	0.0	150.9
Existing Community Mental Health	1,077.0	1,077.0	1,077.0	1,077.0
Substance Abuse Treatment	184.0	184.0	183.6	183.6
Foster Care and Child Welfare Services	1,623.9	1,703.9	1,567.2	1,567.2
Adult Protective Services	55.0	55.0	55.0	55.0
State Penalty Funds to Locals	40.5	40.5	40.5	40.5
Existing Juvenile Justice Realignment	97.1	103.3	97.1	103.3
Funded Public Safety Mandates	50.9	50.9	50.9	50.9
Growth*	0.0	888.4	0.0	1,069.6
Total	\$5,931.0	\$7,255.0	\$5,599.4	\$7,012.0

May Revision. The Governor's May Revision retains most of the revised realignment structure that was adopted by the 2011 Budget Conference Committee in March. Realignment would still be funded by extending the current sales tax rate and Vehicle License Fee (VLF) rates, but the package would be reduced from \$5.9 billion to \$5.6 billion. The proposed modifications are as follows:

- **Revenues.** The size of the realignment package would be reduced by \$270 million, with that amount directed to the schools – this represents 0.10 percent of the Vehicle License Fee revenue.

- **Mandates and Penalty Funds.** Public safety mandate reimbursement funding (\$50.9 million) and state penalty funds that support peace officer training (\$21 million) and corrections training (\$19.5 million) would be removed from realignment and continue to be funded in the state budget. These programs both employ reimbursement methodologies with cities and counties and the amount allocated each year is dependent on the claims being submitted, a substantially new methodology would have to be developed to make these programs work in a realignment framework.
- **Court Security.** The May Revision revises the court security estimate from \$485 million to \$497.8 million. The increases are related to costs associated with the parole revocation hearing workload (\$2.5 million) transferred to the courts as part of AB 109 (Budget) passed earlier this year and applying a 2.2 percent inflation factor (\$10.7 million) to more accurately reflect the 2011-12 cost figure.
- **Local Public Safety Grants.** The May Revision proposes to retain \$2 million in grant funding that historically has not been allocated to local agencies. This money has been used to support activities at the Department of Justice and the UC Board of Regents. This will reduce the allocation made in realignment for local public safety grant programs to \$504.4 million.
- **Low-Level Offender Cost Methodology.** The May Revision revises the cost methodology associated with the shift of low-level offenders and parole violators from the state to local governments as approved in AB 109 (Budget) passed earlier this year. The new model better reflects additional workload expected for the District Attorneys and Public Defenders related to the parole revocation hearings. The original cost methodology also did not include funding for programming for offenders serving time in jails. These two changes to the methodology increase the amount realigned to the counties by approximately \$44.6 million.
- **Student Mental Health.** Student mental health, or AB 3632 funding, would be removed from realignment and placed within a re-benched Proposition 98 guarantee. (This issue will be covered by Senate Budget Subcommittee #1 on Education.)
- **Child Welfare Services.** Realignment funding for child welfare services would be reduced by \$68 million due to adjustments made to transfer AB 3632 funding from the counties to the schools and other adjustments to not realign some adoptions and child welfare work that should be retained at the state level. (This issue will be covered by Senate Budget Subcommittee #3 on Health and Human Services.)
- **Fire Protection Services.** Fire protective services would be removed from realignment and continue to be funded in the state budget. (This issue will be handled by Subcommittee #2 on Resources and Environmental Protection.)

Staff Comments. The Governor's proposal takes a significant step towards bringing services closer to the people, allows for more integrated service delivery, and allows the services to be tailored to local situations and conditions. In total, the May Revision realignment proposal dedicates \$5.6 billion in revenues in 2011-12 to fund a menu of programs shifted from the State to the locals.

The adjustments made by the Governor in the public safety area are mainly refinements to their earlier proposal that will simplify the overall implementation of the overall realignment proposal. Specifically, the mandates issue may be more appropriately handled through a different process other than realignment because counties and cities access mandate reimbursements in vastly different ways and the year-to-year reimbursements can also vary greatly. Also, the peace

officer training and corrections training program are both managed at the state level so realigning these funds would make the support of these efforts needlessly complicated.

Furthermore, the adjustments made to the cost methodology for the low-level offenders and parole violators and the adjustments to court security reflect further refinements that better reflect what the actual costs will be for counties taking on new responsibilities under realignment.

Staff Recommendation. Staff recommends that the Subcommittee take the following actions to amend the public safety realignment proposal approved in the 2011 Budget Conference Committee:

- Remove \$40.5 million related to public safety mandates and peace officer training and corrections training activities.
- Approve revised court security costs.
- Approve revised local public safety grant funding.
- Approve revised methodology for funding low-level offenders and parole violators.

5225 California Department of Corrections and Rehabilitation

Departmental Overview. Effective July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) was created pursuant to the Governor's Reorganization Plan No. 1 of 2005 and Chapter 10, Statutes of 2005 (SB 737, Romero). All departments that previously reported to the Youth and Adult Correctional Agency (YACA) were consolidated into CDCR and 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 non-felon narcotic addicts, as well as juvenile offenders. The CDCR also supervises and treats adult and juvenile parolees, and is responsible for the apprehension and re-incarceration 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 Legislature passed SB 69 (Budget) on March 17 of this year. This conference report appropriates \$9 billion, including \$8.9 billion from the General Fund for the support of CDCR. However, this proposed funding included some savings from realignment and the workforce cap. The May Revision now proposes \$9.5 billion for CDCR, including \$9.4 billion from the General Fund. This increase is due to a technical adjustment to show the savings related to realignment and CDCR's workforce cap in separate control sections. The CDCR is expected to find savings of nearly \$1 billion in the budget year due to various proposals to reduce operations, including realignment and the workforce cap. However, these savings are not achievable if funding for a local public safety grant program is not made and realignment does not occur.

1. Realignment Savings in CDCR

Background. The Governor's public safety realignment and specifically the policy changes implemented as part of AB 109 (Budget) are expected to save hundreds of millions at CDCR in the next coming years, growing to nearly *\$2 billion* by 2014-15. While there will be other factors impacting CDCR's cost during this time – these reductions are expected to occur from an overall reduction in the inmate population of 40,000 and parole population of nearly 80,000 attributed to realignment.

The corrections business is a people business and in order to save this level of resources the department will have to put together a very careful plan for achieving this savings and will need to act on that plan expeditiously. It will require *cancelling unneeded contracts* for private and public facilities, where legally feasible. It will also require the department to *manage* their workforce to achieve this level of savings. This will require closing housing units and consolidating parole offices and taking down associated staff resources.

May Revision. The May Revision assumes that the department will achieve \$684.2 million in savings in the budget year related to realignment. This is in addition to the workforce cap savings of \$194.5 million and Board of Parole Hearings savings related to realignment of \$36.2 million. Overall, the CDCR will have to achieve nearly \$1 billion in savings in the budget year.

The Administration has indicated that it will plan to achieve the *realignment savings* as follows:

- Adult Institutions (including contract beds) - \$442.8 million
- Parole Supervision - \$117.7 million
- Parole Programs - \$38.7 million
- Parole Leased Jail Beds - \$32.4 million
- Administration and Other - \$52.6 million

The Administration is proposing to restore \$240.6 million to CDCR's budget and make a commensurate adjustment downward in the realignment savings to consistently reflect the budget savings related to realignment.

Staff Comments. Achieving this level of savings will be difficult, but is necessary and will require considerable planning and action on behalf of the department. Planning is required because the state cannot cancel a contract or close a housing unit overnight. They must plan to move inmates and potentially move staff from one location in the state to another. This will be a considerable effort.

Furthermore, it is one thing to eliminate or take down positions on paper, but it is another thing to address actual people in these positions. There is likely to be significant vacancies in the upcoming year and annual attrition, but in some classifications the department may need to start a State Restriction of Appointment (SROA) list and/or enable a transfer process to transition employees from one institution to another. These processes take time and the department will need to plan ahead.

The department does not have a good “track record” in achieving savings targets. The Subcommittee will want to consider ways to “check in” on process and planning to ensure savings are being achieved.

The Legislature and Governor have already approved deep cuts to corrections rehabilitation programs. Over the past several years, rehabilitation programming in the prisons and on parole has been cut by more than 50 percent to approximately \$350 million. Additional cuts will come close to dismantling, in some areas, what little infrastructure is left of rehabilitation programming. Some of the staffing packages that were brought up with the activation of housing units (that will be reduced to meet the realignment savings) may have included teachers that were already eliminated over the last several years. If additional teachers are taken down as part of this effort, rehabilitation programming will have taken a disproportionate reduction.

In March 2011, the Legislature approved an additional \$150 million in rehabilitation programming. The department has come forward with their plans for achieving this reduction, which was reviewed by this Subcommittee on May 10. Staff has been told that a part of these reductions includes the elimination of contracts with community providers for supportive housing and other services for parolees. These programs are important to ensuring the success of parolees released from prison and more of these programs are needed to ensure stability for ex-offenders trying to get back on their feet and on top of their substance abuse issues. Eliminating these programs could result in these programs shutting their doors and losing their conditional use permits. This would be a tragedy especially when there is a real need for these facilities and for more of them. These contracts may be appropriately handed over to the counties depending on the type of inmates served in the program, but while realignment is in transition, the State should continue the contracts to avoid the dismantling of this important infrastructure.

Staff Recommendation. Staff recommends that the Subcommittee take the following actions:

- Approve technical adjustment to CDCR’s budget and the realignment item to consistently reflect realignment savings.
- Approve supplemental report language to ensure quarterly reporting on actions and savings related to realignment for the 2011-12 budget year.
- Approve placeholder budget bill language to guide the department’s position reductions so that they avoid taking down additional rehabilitation positions in the institutions beyond what has already been reduced.
- Restore \$49 million to continue contracts for services in the community that are set to be cancelled as part of the \$150 million unallocated rehabilitation reduction approved earlier this year. This funding should go to restore the following activities slated for elimination by the department until these contracts can be appropriately transitioned to the counties:
 - Existing residential multi-service center contracts - \$4.5 million
 - Other Substance Abuse Services Coordination Agencies Contracts, Sober Living and Out-Patient Services, Parolee Service Network, Bay Area Services Network, and Other Remedial Sanction Contracts (\$44.5 million).

This restoration should not stop the department’s efficacy review of these programming contracts to determine the most effective models for achieving parolee success.

2. Corrections Workforce Cap

Background. In 2010, Governor Schwarzenegger issued an executive order to institute a five percent workforce cap across state government. This workforce cap equated to reducing CDCR's budget by \$292.4 million. During the 2010-11 budget year, CDCR has not been able to meet this target and all of the other savings targets included in the 2010-11 budget act, which have resulted in a deficiency of approximately \$415 million.

May Revision. The May Revision includes a net increase of \$97,213,000 General Fund to reflect a recalculation of CDCR's workforce cap reduction target. The CDCR's new workforce cap target is based on 5 percent of its projected personal services costs after realignment is fully implemented, which decreases CDCR's workforce cap reduction target from \$292.4 million to \$194.5 million.

The Administration is proposing to separately track this savings separate from realignment to ensure that the Department meets this level of savings over the budget year. Therefore, the Administration is requesting that these savings be reflected in a new Control Section (Control Section 3.93) added to allow the Director of Finance to reduce CDCR's appropriation.

The CDCR is proposing to achieve the following list of savings to meet its workforce cap in the budget year:

- Eliminate Holiday Relief Positions – \$38 million. This savings is made possible from changes made in the recently approved Bargaining Unit 6 contract.
- Institution Staffing - \$36 million. This savings reflects a 1 percent reduction to field custody positions.
- Headquarters Reductions - \$29 million. This savings will result from eliminating an additional 417.2 positions from headquarters. The Administration indicates that many of these positions are filled and a layoff process will need to commence by October 1, 2011 to achieve this savings. Some headquarters staff will have return rights to other positions in the field.
- Special Repairs Funding - \$20 million. This will reduce CDCR's ability to address only the most serious emergencies related to its infrastructure. This is not a personnel/workforce proposal to save funding.
- Close DJJ Facility - \$17.6 million. This savings is related to closing an additional DJJ facility. This savings will grow, but the layoff process will take time to implement.
- Parole Agent II Conversion - \$12 million. This savings is related to slowing the conversion of parole agent IIs from specialists to supervisory on a one-time basis.
- Minimum Supervision Parolees - \$8 million. This savings would be related to further reducing supervision of parolees that are low risk and already have minimal supervision.
- Reduce Gang GPS Program - \$5.1 million. The CDCR had implemented a gang GPS program that is not required by initiative or statute. This would reduce this program, but leave approximately 400 units available for high risk gang members.
- Reduce Parole Apprehension Teams - \$5.1 million. This reduction will reduce the number of special parole apprehension teams.
- Electronic In Home Detention - \$4.3 million. This would eliminate this program given the impact of realignment on the population that is in this program.

- Reduce Health and Mental Health Staffing at DJJ - \$4.2 million. This reduction will require DJJ to work with the *Farrell* court to reduce the health and mental health staffing within DJJ given the population reduction.
- Increase Parole Agent Ratios - \$3.6 million. This reduction will result from increasing parole agent ratios from 48:1 to 53:1.
- Reduce Peace Officer Positions at Headquarters - \$3.5 million. The department is planning to reduce the peace officer positions at headquarters.
- Consolidate DJJ Parole - \$3 million. The department is planning to consolidate the remaining DJJ parole activities with the adult parole activities until the last DJJ parolee is discharged. Juvenile parole was transferred to the counties last year.
- Other DJJ Savings - \$2.9 million. The department also plans to reduce the Juvenile Parole Board, reduce DJJ special repair funding, relocate DJJ headquarters, and work with the courts to adjust DJJ living unit size for additional savings.
- Reclassify Peace Officer Positions in the Field - \$2 million. The department will reclassify some peace officer positions in the field to non-peace officer positions.

Staff Comments. Like the savings resulting from realignment. The savings listed above require significant planning and expeditious action on behalf of the department. The list above includes major actions that will require real management of its workforce in order to achieve these savings.

Staff recognizes that other state departments were not provided with the advantage of having their workforce cap target reduced. However, staff also recognizes that running 24-hour operations does present special challenges to reducing workforce, especially when safety and security are of concern.

Staff finds that separately tracking a control section related to the workforce savings will allow for more transparency regarding how the department is doing in terms of meeting its savings target.

Staff Recommendation. Staff recommends that the Subcommittee take the following actions:

- Reduce the workforce cap calculation and approve the control section with modifications that require CDCR to meet this lower target related to workforce cap savings.
- Approve supplemental report language to ensure quarterly reporting on actions and savings related to the workforce cap for the 2011-12 budget year.

3. Board of Parole Hearings

Background. Assembly Bill 109 (Budget) that was passed earlier this year enacted major reform related to the parole revocation process. The law required that all offenders released from state prisons who commit a violation of the terms and conditions of parole or post-release supervision would be subject to revocation decisions by the courts. This eliminates the current role that the Board of Parole Hearings (BPH) has regarding revocation hearings that return offenders back to state prison for short revocation terms. This Legislation did not impact the role that the BPH has related to lifer inmate determinations.

May Revision. The May Revision proposes a decrease of \$36.2 million General Fund related to revocation workload reductions that will occur as a result of moving revocation hearings to the Judicial Branch. This savings will grow to \$61 million by 2013-14. Consistent with AB 109 (Budget), the Board will no longer be responsible for making final revocation decisions for offenders who violate the terms of their parole.

The Administration indicates that it will take the following actions in the budget year to reach this level of savings:

- Eliminate the CalPAP Contract - \$18.5 million. This contract is for legal representation for parolees.
- Eliminate Vacant Positions - \$10.2 million. The department indicates that BPH currently has 113 vacant positions that can be eliminated in the budget year.
- Reduce Additional Positions - \$3.8 million. The department will start the process of reducing the board by another 210 positions.
- Reduce Operating Expenses and Equipment - \$3.7 million. The department will also reduce additional OE&E related to the board.

Staff Comments. Staff finds that this reduction to BPH is significant, but appropriate given the passage of AB 109. Nevertheless, the board will need to reduce its staffing by nearly 65 percent and overall budget by one-third in one year. This will require planning and swift implementation of actions to reach this target.

Staff also notes that there is a separate proposal within the Judicial Branch to augment funding resources so that the courts can effectively take on their new responsibilities related to revocation decisions.

Staff also notes that AB 109 did not envision a parole revocation process exactly like the one that is currently in place. Therefore, additional clarifying language on what the courts will be responsible for and what will be handled administratively is still needed. The administration indicates that they are currently working on clean-up legislation that should be forthcoming.

Staff Recommendation. Staff recommends that the Subcommittee take the following action:

- Approve the proposal to reduce the Board of Parole Hearings.

4. Structural Shortfall

Governor's Budget. The Governor's Budget included \$395.2 million General Fund to address ongoing structural imbalances within CDCR's budget. The Legislature took an action to deny without prejudice \$134.4 million of the amount proposed. The Administration is requesting that this remaining \$134.4 million be approved as part of the May Revision.

Background. According to the Administration's proposal, since the early 1990s, the CDCR has seen significant growth and change, a doubling of the offender populations, opening of many new prisons, large parole case loads, an increased emphasis on rehabilitation strategies, increased legislative oversight and mandates, reorganization, federal oversight of the healthcare operations,

and resource scarcity in all functional areas of the organization. The CDCR now has 58,000 employees in over 450 job classifications, 33 adult prisons and 5 juvenile institutions with over 167,000 offenders and over 120,000 parolees in the system.

The CDCR continues to be under funded in many areas for custody overtime. In prior years, the Department absorbed these ever-increasing costs by redirecting resources away from other programs and priorities. Redirected resources resulted in reductions in inmate education and/or work programs, reduction in non-custody staff, freezes placed on purchasing and training, increased equipment and physical plant failures as necessary maintenance is deferred, and non-custody positions being held vacant to use salary savings to cover unfunded expenditures. Due to unallocated budget cuts and reductions in program funding, the Department no longer has the ability to redirect existing resources to offset the unfunded expenditures.

Salaries Funded at Mid-Range (\$266.5 million). In 2003-04, the Department of Finance approved that new positions be funded at the Mid-Range level. However, nearly every custody position is currently at or near the top step of the salary range. A comparison of Mid-Range to current step for all institutions' reflects a \$266.5 million shortfall. It is critical that this funding be provided to the adult institutions to ensure that they begin each fiscal year with enough funding to cover the anticipated salary and wages of their custody staff. If this funding is not provided, CDCR will need to continue to find ways to redirect resources from other operational areas. However, this is becoming more difficult, if not impossible, as unallocated reductions have eliminated the prior sources of funding available for redirection.

Medical Guarding and Transportation Workload (\$55.2 million). The California Department of Corrections and Rehabilitation (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 court monitors determining how services are to be provided, which has resulted in significant expenditure increases in outside medical care. CDCR's 2010-11 base funding for Medical Guarding and Transportation is \$66,420,000. However, in order to meet the mandates of the court orders and the demands of the Receivership, CDCR has been incurring costs totaling \$137,629,000, or \$71,209,000 more than budgeted. And while the gap between base funding and incurred costs has been narrowing in recent years, it is projected that the shortfall in funding within this operational area will continue into the future. Therefore, after taking into consideration continued declines in outside care/contract medical usage, it is projected that CDCR will need \$55,168,000 in 2011-12 and ongoing to fund this operational area.

Unfunded Swing Space (\$17.3 million). Due to the unique nature of the CDCR adult inmate population, inmates must undergo very strict screening policy in order to be placed in the safest housing, while meeting all court mandates and special needs the inmate might have.

The following are a list of screening criterion which must be addressed, before the inmate can be placed in the right bed:

- Classification Score, determining the Security Level of the inmate.
- Participation in the Mental Health Services Delivery System, as well as the level of mental health impairment. (*Coleman* Lawsuit).

- Medical Screening (certain medical conditions preclude placement at some institutions).
- Gang Affiliations (Some gangs may be housed not only at a specific institution, but within a certain housing unit within an institution). The CDCR inmate population that includes more separate and distinct gangs than any other state.
- Known enemies. Enemies cannot be housed at the same institution.
- Communicable Infectious Disease Status.
- Developmental Disabilities (*Clark Lawsuit*).
- Physical Disabilities (*Armstrong Decree*).
- Sensitive Needs Yard Placement.

All of the above screening criterion must be taken into consideration when placing an inmate at an institution, or within a specific yard. Under many circumstances, these inmates may not be housed together in the same prison, or within the same yard. In addition, while CDCR is constantly attempting to keep swing space (empty beds) to a minimum, as CDCR becomes more driven by lawsuits and an unprecedented Prison Gang population, this task is becoming more difficult. Moreover, there will always be vacant beds in the system to facilitate movement. If this space did not exist, the backlog of inmates in Reception Centers and county jails would grow significantly.

As such, in recognition of the fact that it is unreasonable to assume that every bed is filled each day of the year, funding for swing space beds must be provided. Therefore, we are proposing to fund swing space beds based upon the prior year's Average Daily Population (ADP) for each adult institution. General Population (GP) institutions will be funded based upon 0.5 percent of their prior year ADP, while Reception Center (RC) institutions will be funded at 1 percent of their prior year ADP. Moreover, CDCR will include an annual adjustment in their population estimate (beginning in the fall of 2011) to reflect the estimated amount of swing space beds each adult institution will need in the upcoming fiscal year. Swing space beds will only be funded for the personnel services associated with each bed, as inmate OE&E is not incurred when beds are vacant. The current overcrowding marginal rate associated with Program 25 personnel services is approximately \$18,956 per bed. Based on the ADP of each institution in 2009-10, the CDCR needs 913 beds designated as swing space (22 beds per GP institution and 50 beds per RC institution). This results in an unallocated funding need of \$17,313,000 million.

Overtime Funding Not Adjusted for Employee Compensation (\$35.7 million). Although significant increases (34.23 percent) to Bargaining Unit 6 base salaries have occurred over the past several fiscal years, the declared base budget for overtime in Program 25 has not been adjusted to reflect those increases.

In 2001-02, the base for overtime was \$104,300,000 and in 2007-08 the base continued to be \$104,300,000 even though salaries have increased by 34.23 percent and staffing increased by 5,365 during this time period for Correctional Officers, Sergeants, and Lieutenants. We have calculated an overtime factor based on staffing in 2001-02 and the base overtime. This factor is increased to reflect the increase in salaries. By applying this methodology, the base overtime funding should be increased by \$35,702,000 for a total of \$140,003,000.

Legal Settlements and Outside Counsel (\$20.5 million). It is estimated that CDCR needs \$20,476,000 for 2011-12, and ongoing, to account for shortfalls in their Office of Legal Affairs (OLA) Budget. This request is due to the significant increases in the cost of legal settlements and judgments, outside counsel, special master and expert witness fees from class action lawsuits. Specifically, unfunded court mandates in various class action lawsuits are driving significant shortfalls. Because the class action cases are under remedial orders and the continuing jurisdiction of the court, the additional expenses affect both contracts for professional services, as well as settlements/judgments.

OLA's current budget is \$60,367,000, of which \$36,575,000 supports its 167.8 staff. That leaves \$23,792,000 in OE&E to cover legal settlements and judgments, outside attorney fees, special master/expert witness fees, and regular operating expenses. When reviewing CDCR's actual expenditures for settlements and judgments and attorney/special master/expert witness fees, these combined costs clearly exceed the available OE&E resources within OLA's budget by \$20,476,000. Therefore, in order to appropriately fund the CDCR for costs they incur within these areas, and to prevent the constant redirection of funding from other programs to cover these yearly expenses, an augmentation must be provided.

Staff Comments. While the majority of this proposal seems appropriate to address the structural imbalance of CDCR's budget, 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.

Additionally, it is unclear that funding for swing space is an issue or if population management practices are overly complicated. Moreover, given current overcrowding levels, it is unclear that the department can operate sufficient swing space even if warranted.

Staff Recommendation. Staff recommends that the Subcommittee approve \$102.8 million, which accounts for a reduction of \$14.3 million to the amount requested for legal services and \$17.3 million of the amount requested for swing space. Overall this will provide CDCR with \$348 million in 2011-12 to address its structural shortfall.

5. California Community Corrections Performance Incentive Act of 2009

May Revision. The May Revision proposes \$30 million General Fund and \$1.2 million California Community Corrections Performance Incentive Fund related to the final award calculations for the California Community Corrections Performance Incentive Act of 2009 (SB 678) and revised trailer bill language that is necessary to correctly implement the program.

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, SB 678 builds upon the initial allocation of JAG funding by establishing a system of performance-based funding that will share General Fund savings with county probation departments when they demonstrate success in reducing the number of adult felony probationers going to state prison because of committing new crimes or violating terms of probation.

This measure is designed to help lower California's prison admissions by reducing criminal behavior, and thus relieve overcrowding and save public funds.

SB 678 creates a State Community Corrections Performance Incentive Fund and authorizes the state to annually allocate money from this fund into a Community Corrections Performance Incentive Fund established by each county.

Each county must use the funding to establish a local community corrections program. These local programs must be targeted towards felony probationers and the funding should be used for specified purposes related to improving local probation practices. Each county is also required to identify and track outcome-based measures and report their plans and progress to the Administrative Office of the Courts (AOC).

At the end of every calendar year, the Department of Finance (DOF) is required to determine the statewide and county specific felony probation failure rates. Using a baseline felony probation failure rate of the years 2006-2008, DOF then calculates the amount of savings to be provided to each county.

Cost Avoidance to the State and County Payments for 2011-12. DOF reports that, based on four quarters of data for 2010, the total cost avoidance to the state as a result of a reduction in the number of felony probationers being sent to state prison in 2010 is \$178.4 million. This cost avoidance is a result of a state prison population reduction of approximately 6,182 offenders. Pursuant to the calculation based on the total cost avoidance to the state, \$87.5 million will be distributed to counties. In addition to the county payment, \$615,000 will be provided to the AOC to support administrative costs.

Prison Pop Reduction	State Cost Avoidance	County Payments
6,182	\$178.4 million	\$87.5 million

Data Provided and State Inmate Impact Review. Most of the data collected was either self-reported by counties or came from CDCR. The AOC provided county training on data collection

to help ensure data quality. To the extent that data gathered to make the calculations for county payments is not sufficient type or quality, SB 678 authorizes the DOF to estimate county payments utilizing a methodology that is consistent with the intent of the measure.

One way of analyzing whether SB 678 has had an impact on CDCR, and whether the estimated level of county payments is reasonable, is to look at CDCR's overall population trends. According to DOF, when looking at CDCR's population on a statewide level, CDCR's adult inmate population stood at 168,316 when SB 678 was chaptered in October of 2009. As of the May Revision, CDCR's projected population at the end of 2011-12 is 163,152, which represents an overall population decline of just over 3 percent.

In addition to their normal administrative functions, the AOC will conduct review of a significant random sample of counties for the purpose of verifying the accuracy of data and the methodology each county is using to report their population figures.

Trailer Bill Language (TBL). Clean-up TBL is proposed to address the following issues that have come to light since the passage of SB 678:

- Clarifies that in the State Community Corrections Performance Incentive Fund comes from the General Fund.
- Requires the State Controller's Office to distribute the funding in the State Community Corrections Performance Incentive Fund to each county's fund in a manner prescribed by DOF.
- Clarifies that the baseline probation failure rate shall be calculated utilizing a weighted average and include data from 2006 to 2008.
- Clarifies that the court administrative costs shall be paid from the estimated savings to the state, caps the AOC's costs at one percent and allows the courts to continue to do work related to judicial education, data quality, and general implementation assistance.
- Other minor technical changes.

Staff Comments. Research has shown that investing in local probation services not only results in fiscal efficiencies but can also have a positive impact on public safety. Utilizing this research as well as practices that are proving to be effective in other states (a recent report by the Pew Center on the States found that a similar measure in Arizona not only saved the state money but also has shown a reduction in the number of probationers convicted for new crimes), implementation of SB 678 is already showing signs that desired outcomes are being met. The state is saving money as a result of a reduction in the prison inmate population and local probation departments are being provided with significant resources to invest in evidence-based programs. SB 678 also shows that the state and locals can work together to effectively realign public safety responsibilities.

Notwithstanding the initial success of SB 678, staff notes that there are significant questions concerning the impact of current public safety realignment efforts, AB 109 (Chapter 15, Statutes of 2011). The Subcommittee may wish to ask the Administration how it plans to address potential overlaps or conflicts between the two efforts.

Staff Recommendation. Adopt the Administration's May Revision proposal to meet the funding requirements of SB 678 and adopt placeholder clean-up trailer bill language.

6. Corrections Standards Authority

Background. The Corrections Standards Authority (CSA) is a board within CDCR that is mandated by the Welfare & Institutions Code and the Penal Code. The requirements of this Authority include the following:

- Ensuring the establishment and continual re-evaluation of minimum standards for local juvenile and adult detention facilities, conducting "problem solving" inspections of all local detention facilities biennially, and reporting to the Legislature on the results of those inspections.
- Reviewing the architectural plans for construction and remodeling of all local detention facilities.
- Establishing recruitment, selection, and training standards for all local corrections personnel working in jails, juvenile detention facilities, or probation departments.
- Administering federal and state detention facility capital construction monies for the construction or renovation of local detention facilities.
- Administering state-funded local corrections at-risk and offender pilot, demonstration, and continuum of care programs.
- Conducting studies in crime and penology and creating, upon its own initiative or upon the request of the Governor, special commissions to assist the Board in the study of crime.

Prior to the 2005 reorganization, the Board of Corrections (now CSA) was a respected and in some areas innovative state entity generally well-regarded for its ability to effectively administer state programs that funded local correctional efforts, such as the juvenile justice challenge grants and mentally ill offender programs of the mid-to late 1990s and early 2000s. These programs reflected early state-local partnerships designed to fund offender programs that worked, and to collect data reflecting performance. The Legislature has increasingly relied on Board of Corrections (BOC), and now CSA, to implement innovative state-funded programs in the area of local corrections like probation.

However, the reorganization of CDCR that resulted in the merging of the old Board of Corrections into the CDCR superstructure took its toll on the stability of this Authority and significant retirements also impacted the expertise of the workforce. This has ultimately impacted the effectiveness and leadership of the current CSA.

May Revision. The May Revision includes various actions for savings associated with the identification of efficiencies in state operations, including identification of agencies, departments, and programs that can be reorganized to eliminate duplication and unnecessary functions. The governor has proposed the elimination of the following boards related to criminal justice policy:

- **Office of Gang and Youth Violence Prevention.** This office provides grants to various local governments to combat gang-related issues. The grants will continue to be administered by CalEMA. This proposal will save \$600,000 GF and 3.8 positions.

- **California Council on Criminal Justice.** This office had established funding priorities for federal criminal justice grants. However, these activities have been performed recently by the Administration and the Legislature with local input. This proposal would save approximately \$30,000 in federal funds.

The May Revision also proposes an increase of \$275,000 General Fund to allow CSA to continue to review and approve county juvenile justice plans as required by Government Code section 30061. As a result of the realignment of local public safety funding, this workload will no longer be funded through the Supplemental Law Enforcement Services Fund and will instead be funded by the General Fund.

Staff Comments. Staff finds that the recently enacted public safety realignment legislation (AB 109, Budget) provides an important juncture to re-evaluate the existing state infrastructure for providing oversight and policy leadership to the local public safety operations. Furthermore, the Administration has proposed the elimination of two commissions that currently have some role in guiding state policy on criminal justice matters.

Realignment is going to take time to implement, but the funding that will now be kept locally will allow locals to invest in solutions that address local problems. Sometimes it will make sense for counties to act regionally. A new CSA could help in developing these partnerships and regional solutions by providing leadership and policy guidance.

The mission of a new reorganized CSA *could* be as follows:

Provide statewide leadership, coordination, and technical assistance for state and local partnerships in California's adult and juvenile criminal justice system, including but not limited to implementation of realignment, and continue existing CSA functions relating to local corrections.

Furthermore, a new CSA could help to prioritize and better focus federal grant funds and other grant funds allocated by the state to local governments. This could help the State to provide incentives for local governments to invest in evidence based programming and other cost-effective programming that is results-oriented. Investing in local rehabilitation programs that work ultimately saves the state prison costs.

Staff Recommendation. Staff recommends that the Subcommittee take the following actions:

- Approve placeholder trailer bill language to establish a new Board of State and Community Corrections separate from CDCR that will help guide the state and local governments through realignment, provide ongoing leadership in the area of criminal justice policy and, in collaboration with the existing efforts of the Administrative Office of the Courts relating to SB 678, develop data and information related to the implementation of outcome-based measures and evidence-based practices with regard to realignment and other community correction efforts.
- Approve the Governor's May Revision proposal to eliminate the Office of Gang and Youth Violence Prevention and the California Council on Criminal Justice and transfer any related functions to a new Board of State and Community Corrections.

- Approve the \$275,000 for CSA (new Board) to continue to review the juvenile justice plans.

8. Armstrong Sign Language Interpreters

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.

Governor’s Budget and 2011 Budget Conference Committee. The Governor's budget proposed \$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.

This proposal was denied without prejudice in the final version of the 2011-12 Budget Act approved by the Budget Conference Committee in March pending additional information.

Staff Comments. The department has indicated that this small investment could help to prevent further court orders related to the *Armstrong* class action lawsuit.

Staff Recommendation. Staff recommends that the Subcommittee approve this request.

9. San Quentin Condemned Extended EOP

Background. The Enhanced Outpatient (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. There have been six suicides on death row since 2006.

Governor’s Budget and 2011 Budget Conference Committee. The Governor's budget proposes \$603,000 General Fund and 5.7 positions to extend the Enhanced Outpatient Program 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. Inmates in an Intermediate Care Facility (ICF) on suicide watch can cost more than \$500 per day. Furthermore, transporting a condemned inmate is a more staff intensive and costly process than a regular inmate transfer.

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).

This proposal was denied without prejudice in the 2011-12 Budget Act approved by the Budget Conference Committee this past March pending additional information.

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 if this proposal is approved, 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.

Staff Recommendation. Staff recommends that the Subcommittee approve this budget request with the following adjustments:

- Approve \$445,000 and 4.3 positions to reflect lower estimate of EOP condemned inmate population.
- Reduce by \$54,000 and 0.6 positions to reflect technical error in security coverage costing.

10. 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

Governor's Budget and 2011 Budget Conference Committee. The Governor's budget requested 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 total request is summarized in the table below. The 2011-12 Budget Act approved in the 2011 Budget Conference Committee included funding for the CTC activation, but denied without prejudice the accreditation staffing request.

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. 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 committee may 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.

Given the relatively limited pool of qualified mental health staff in the State, it does not make sense from a staffing perspective for the State to run two parallel mental health systems in the

Department of Mental Health and CDCR. There are considerable institutional barriers to overcome in melding these two bureaucracies, but more should be done to find synergies between these systems. This proposal moves in the opposite direction.

Staff Recommendation. Staff recommends that the Subcommittee sustain its earlier action and reject the accreditation resources related to this proposal.