Senate Budget and Fiscal Review—Mark Leno, Chair

SUBCOMMITTEE NO. 5 Agenda

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

Thursday, May 9, 2013
9:30 am or Upon Adjournment of Session
Room 113

Consultants: Joe Stephenshaw

Item Number and Title **Page**

Vote Only

To be Heard

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Vote Only

California Horse Racing Board (1750)

The California Horse Racing Board (CHRB) regulates parimutuel wagering for the protection of the public and promotes the horse racing and breeding industries. Jurisdiction and supervision over meetings in California where horse races with wagering on their results are held, and over all things having to do with the operation of such meetings, are vested in the seven-member California Horse Racing Board, who are appointed by the Governor. Principal activities of the Board include:

- Protecting the public's interests.
- Licensing of racing associations and participants in the racing industry.
- Enforcing laws, rules, and regulations pertaining to horse racing in California.
- Acting as a quasi-judicial body in matters pertaining to horse racing meets.
- Encouraging agriculture and the breeding of horses in the state.
- Collecting the State's lawful share of revenue derived from horse racing meets.
- Tabulating, analyzing, and publishing statistical racing information.
- Conducting research to determine the cause and prevention of horse racing accidents and the effects of drug substances on horses, and to detect foreign drug substances.

The Governor's budget proposes $11.6 million, from the California Horse Racing Fund, and 57 positions for the CHRB in 2012-13.

Issue 1 – Exchange Wagering

Governor's Proposal. An April finance letter proposes $443,000 from the Horse Racing Fund, per-year on a two-year limited-term basis, to implement exchange wagering in California.

Background. Chapter 283, Statutes of 2010 (SB 1072), authorizes the California Horse Racing Board (CHRB) to license entities to operate exchange wagering systems. Exchange wagering is based on a stock exchange model allowing account holders the ability to buy and sell the outcome of horse races in a manner similar to day trading on the stock exchange. The departure from traditional pari-mutual wagering is that exchange wagering allows account holders to bet on a horse to lose a race. This raises the possibility of race fixing, making the integrity of the wager a particularly important task.

License fees collected, proportionately paid by the total number of providers each racing year will be deposited into the Horse Racing Fund to enable the department to recover the costs for licensing, enforcing, auditing and regulating exchange wagering. The CHRB will issue two-year licenses.

The CHRB will need to dedicate staff to real-time monitoring. Current audit and enforcement staff must be trained in the intricacies of fraud investigations and online fraud trends and patterns. The current CHRB network will undergo modifications to be compatible with case management systems and the exchange providers wagering platforms in order to conduct meaningful audits.

The CHRB's auditing staff will be assigned bet monitoring responsibilities in real-time, using software to ensure exchange wagering is being conducted fairly and to identify unusual or suspicious patterns.

Recommendation. Approve as budgeted.

Items to be Heard

California Department of Corrections and Rehabilitation (5225)

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

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

The CDCR is organized into the following programs:

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

The adult inmate average daily population is projected to decrease from 132,223 in 2012-13 to 128,605 in 2013-14, a decrease of 3,618 inmates, or 2.7 percent. The average daily parolee population is projected to decrease from 57,640 in 2012-13 to 42,958 in 2013-14. These decreases are primarily due to shifting the responsibility of short-term, lower-level offenders from the state to counties, pursuant to AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, reductions in the number of felony probationers entering state prison, and the 2012 passage of Proposition 36, which revised California's "Three Strikes" law.

The Governor's Budget proposes $8.97 billion and 59,736.2 positions for the CDCR in 2013-14. The following table shows CDCR's total operational expenditures and positions for 2011-12 through 2013-14.

(dollars in thousands)

Funding	2011-12	2012-13	2013-14
General Fund	$9,206,232	$8,662,460	$8,694,201
General Fund, Prop 98	19,492	18,204	18,778
Other Funds	87,731	71,973	72,501
Reimbursements	107,394	179,469	179,897
Total	$9,420,849	$8,932,106	$8,965,377
Positions	53,688.4	58,607.0	59,736.2

Issue 1 – Proposition 36 Workload

Governor's Proposal. An April Finance Letter proposes $766,000 General Fund in 2013-14 ($153,000 General Fund in 2014-15) to fund overtime needed to address workload resulting from the passage of the Three Strikes Reform Act of 2012 (Proposition 36).

Background. Proposition 36 amended provisions of law pertaining to "Three Strike" offenders by restructuring the sentencing guidelines for repeat offenders whose current conviction is a non-serious, non-violent offense from an indeterminate (life) term to a determinate (non-life) term. Offenders convicted and sentenced prior to the passage of Proposition 36 who are currently serving a life term may petition the court for re-sentencing. CDCR is required to provide the court with information related to the petitioners' disciplinary and rehabilitation records while incarcerated and any other evidence the court determines to be relevant in deciding whether a new sentence should be established.

CDCR reports that there are approximately 10,000 offenders currently serving a life term pursuant to the "Three Strikes" law and, of these, approximately 2,800 are eligible for re-sentencing under Proposition 36. It is anticipated that the majority, if not all, of these 2,800 eligible offenders will petition the court for re-sentencing.

CDCR's Case Records Administrative Services has developed and implemented an approach to manage the increase in requests from inmates and their attorneys filing petitions for re-sentencing with superior courts and from county district attorneys, probation departments, and superior court judges responsible for responding to the petitions. In addition, CDCR's litigation and case records offices are responsible for responding to document requests via the subpoena process from courts or written requests from inmates and the department must perform duties related to the rights of victims.

Staff Comment. Given the workload associated with Proposition 36, this is a reasonable request. However, in regard to Proposition 36, staff notes that concerns have been raised regarding availability of treatment and/or services for offenders released pursuant to the proposition.

According to CDCR, the court dispositions under Proposition 36 cases fall into the following categories: discharged, Post Release Community Supervision (PRCS), parole or future release date. Those offenders falling in the categories of PRCS or parole are linked to services provided by the counties (for PRCS) and Division of Adult Parole Operations (for parolees).

CDCR reports that they have been working collaboratively with various stakeholders and advocacy groups to assist these offenders in accessing resources once released. For example, Stanford Law School has taken on the task of developing an update resources manual identifying the various programs provided at the local level for all 58

counties in California. Likewise, CDCR is working with the Delancey Street program in San Francisco, where representatives from this agency conduct prison visits to explain the program and interview Proposition 36 eligible inmates for admission upon release. The Delancey Street program has the ability to place released offenders in programs in California and out-of-state. This program will provide housing and training to springboard their successful reentry into society.

CDCR is also pursuing discussions with the Santa Clara Reentry program for similar services. Various public defenders and inmate advocacy groups are assisting inmates file Prop 36 petitions. These entities provide services and information that to inmates through the process. They also work with eligible inmates on family reunification, to the extent they can.

Inmates resentenced and requiring a release from prison as a result of Proposition 36 are screened to determine if they have any medical conditions which require facilitated placement upon release. Once determined that the need is present, staff work on community-based case arrangements and benefit entitlements, as needed.

Recommendation. Approve as proposed.

Issue 2 – Sex Offender Treatment for Non-High Risk Sex Offender Parolees

Governor's Proposal. An April Finance Letter proposes $5 million General Fund in 2013-14 ($12.4 million ongoing, beginning in 2014-15) in order to provide mandatory sex offender treatment to both high-risk and non-high-risk sex offenders.

Background. Chapter 219, Statutes of 2010 (AB 1844), which is also known as the Chelsea King Child Predator Prevention Act of 2010 or "Chelsea's Law," requires that the Division of Parole Operations (DAPO) provide sex offender treatment to all sex offender parolees in a program certified by the California Sex Offender Management Board, including both High-Risk Sex Offender (HRSO) and Non-High-Risk Sex Offender (Non-HRSO) parolees.

Prior to the passage of Chelsea's Law, DAPO received $42.7 million for HRSO treatment (based on $14,010 per offender for a population of 3,050). After Chelsea's Law went into effect, DAPO continued to receive this level of HRSO funding and additional funding provided for polygraph testing. Pursuant to CDCR's *Blueprint*, DAPO's budget was zero-based and the average treatment services cost was reduced to $6,759, based on the existing HRSO treatment contracts, which included polygraph testing. Currently, there is no sex offender treatment funding provided for the Non-HRSO population.

As of the Governor's budget, DAPO's funding for HRSO treatment in 2013-14 was $27.7 million, based on an average daily population of 4,097. However, the department has had trouble obtaining adequate treatment services. At the start of 2012-13, there were only 600 filled contracted sex offender treatment slots. CDCR reports that, since then, DAPO has significantly increased the number of contracted HRSO treatment slots and is working to enroll HRSO parolees.

Recommendation. Approve as proposed.

Issue 3 – Office of Legal Affairs Attorney General Fees

Governor's Proposal. An April Finance Letter proposes $11.5 million General Fund to augment CDCR's, Office of Legal Affair's budget for payment of fees and costs to the Office of the Attorney General (OAG) for litigation services provided to CDCR.

Background. Prior to the 2011 budget act, the OAG had a billable relationship with clients whose budgets are supported by special funds. However, for clients whose budgets are supported by the General Fund, the OAG received a direct General Fund appropriation to provide legal services. The 2011 budget revised this process to make all of the OAG's state clients billable, including the General Fund clients. This change was driven by OAG resource pressures and was meant to allow the OAG and its state clients to manage their legal services resources in a more efficient manner. Pursuant to this change, the OAG began billing CDCR directly for legal services. In order to pay for these services, CDCR received an appropriation of $40.4 million.

At the end of 2011-12, the OAG billed CDCR $51.9 million, leaving an $11.5 million shortfall that was covered by redirection of other resources. The CDCR anticipates that they will continue to utilize OAG legal services at a similar rate, which is driving the current request.

Staff Comment. In the year and a half since the OAG began billing CDCR for legal services, CDCR's costs have clearly outpaced their budget. However, staff would note that one of the justifications presented to the Legislature for allowing the OAG to bill state departments for legal services was that each department would manage their use of OAG resources in a more efficient manner, thereby, reducing costs. As such, the CDCR reports that it has taken steps to improve efficiencies in its working relationship with the OAG, including:

- In 2012, CDCR, in conjunction with the OAG, undertook a pilot project which serves to delegate settlement authority to the OAG, in appropriate cases. The purpose of the pilot project is to settle certain cases early in the litigation and streamline settlement approval processes, thus reducing overall litigation costs to CDCR.

- Attorneys on CDCR's litigation management team continue to evaluate individual cases in an effort to balance liability exposure with the cost of defense to determine the most reasonable and cost-efficient resolution of those cases for CDCR. Those attorneys also make every effort to resolve cases of clear liability as soon as possible to reduce the amount of litigation costs incurred on those cases. The above-described pilot project greatly reduces the need for CDCR's litigation management team attorneys and OAG counsel to spend time evaluating cases with minimal liability exposure, thus allowing them to focus their time managing and resolving cases with more significant exposure to liability and cases with the potential to affect CDCR's policies and procedures.

- Utilizing CDCR staff as often as possible for nonspecific litigation functions; e.g., review of documents for discovery responses, drafting discovery responses, drafting necessary declarations for filings, drafting of regulations and policy to address litigated issues.

However, even with these efforts, CDCR has not been able to reduce the number of OAG billable hours. In the two years prior to the switch to billable hours, 2008-09 and 2009-10, the OAG estimated that CDCR required 295,071 and 243,638, hours of staff time, respectively. Since the switch to billable hours, CDCR has been billed for 311,057 hours in 2011-12 and 145,911 hours in 2012-13 (thru 12/31/12).

One of the means used to cover the cost of OAG services has been the redirection of resources available through staffing vacancies. CDCR's Office of Legal Affairs is currently authorized for 187.7, positions of which 150.7 are filled.

Staff acknowledges that there appears to be a gap between the amount of funding provided to CDCR to pay for OAG legal services and the actual cost of these services. However, the driver of this gap is unclear and, in fact, the department has recently indicated that there are OAG costs that CDCR was responsible for, prior to the 2011-12 switch, that are a significant factor. In addition, before additional funding is provided, the department should provide greater detail on the actions that have been taken to contain OAG legal services costs, the savings associated with these actions, and the reasons that further cost savings measures are not feasible.

Recommendation. Reject the proposal. Adopt budget bill language requiring CDCR to report to the Legislature, by April, 1 2014, on 1) the efforts the department has taken to contain OAG legal services costs, 2) the savings associated with these actions and the extent to which these savings may increase in future years, and 3) any additional steps the department could take to create efficiencies and the amount of savings such steps would create or the reasons that further cost savings measures are not feasible. In addition, the report should contain detail regarding drivers of these costs, including: 1) the types of cases that drive the need for OAG services, 2) the extent to which any of these cases can be handled by CDCR staff in the Office of Legal Affairs, 3) the number of cases in each type, and 4) a breakout of the type of services provided by the OAG for each case type, along with a breakout of costs, or billable hours, associated with the services performed.

Issue 4 – Correctional Officer Academy Budget Bill Language

Governor's Proposal. An April Finance Letter proposes budget bill language to authorize the Department of Finance, upon notification to the Legislature, to augment CDCR's Correctional Officer (CO) academy, based on a need to train cadets above the currently-funded level.

Background. As part of the *Blueprint*, the CDCR received funding to accommodate 720 cadets for 2013-14. The assumptions that drove this level of funding included recognition that the CDCR would be reducing a significant number of parole agents, who would then transfer to CO positions. As such, a transitional academy was established through funding provided in the 2012 budget act.

The Department of Finance is now reporting that the CO and cadet availability assumptions have not materialized to the extent necessary to ensure that CO vacancies are appropriately filled in 2013-14. Based on updated projections, it appears CDCR will have a significantly higher cadet need in 2013-14 (approximately 2,000 cadets). As such, the following language has been proposed to augment the CO academy based on cadet need:

> *Upon order of the Director of Finance, the amount available for expenditure in this item may be augmented by the amount necessary to address the department's projected Correctional Officer cadet need. The Department of Finance shall provide notification in writing to the Joint Legislative Budget Committee of any augmentation approved under this provision not less than 30 days prior to the effective date of the augmentation. This 30-day notification shall include: a) a comprehensive analysis of the Correctional Officer need including vacant, filled, and temporary positions, b) assumptions relating to attrition rate, available resources, and processing timelines, and c) a detailed workload and cost analysis that compares the current funding level to the overall cadet need.*

Staff Comment. It appears that the actual cadet need in 2013-14 will likely be significantly higher than the 720 cadets that were assumed in the Governor's budget. Because of the multiple factors that impact this need (including; staffing of the Correctional Health Care Facility and DeWitt Annex, layoffs resulting from realignment, and attrition), the proposed approach for budget bill language to augment the academy, as necessary, is reasonable. However, the language should be amended to cap the amount by which funding can be augmented, based on the department's academy capacity. This cap should be $16.6 million based on a total capacity to train an additional 680 cadets.

Recommendation. Approve the requested budget bill language, revised to set a cap of $16.6 million.

Commission on State Mandates (8885)

The objective of the Commission on State Mandates is to fairly and impartially hear and determine if local agencies and school districts are entitled to reimbursement for increased costs mandated by the state, consistent with Article XIII B, Section 6 of the California Constitution. The Commission was created as a quasi-judicial body to determine state-mandated costs. The Commission consists of the Director of Finance, the State Controller, the State Treasurer, the Director of the Office of Planning and Research, a public member with experience in public finance, and two additional members from the categories of city council member, county supervisor, or school district governing board member, appointed by the Governor and approved by the Senate.

Issue 1 – Domestic Violence Background Checks

Governor's Proposal. The Governor's budget proposes to suspend the mandate that requires local prosecutors to review criminal histories of defendants accused of domestic violence-related crimes and provide specified information to the courts. It also would allow the state to defer, to a future date, its obligation to pay the $15.9 million related to this mandate, owed to local governments. Suspending the mandate would make local compliance optional in the budget year.

Background. Chapter 572, Statutes of 2001 (SB 66, Kuehl), made several changes to state law related to domestic violence proceedings in criminal and family courts. Among these changes, Chapter 572 required that, in all criminal domestic violence cases, prosecutors must (1) review specified criminal justice databases in order to identify prior convictions and current restraining orders issued against the defendant, (2) present this information to the court at the bail consideration hearing and when the court considers a plea agreement, and (3) send information regarding a new conviction or restraining order to any other California criminal courts with existing restraining orders involving the same or related parties.

In July 2007, the Commission on State Mandates found that the state must reimburse cities and counties for specified costs associated with the three above requirements. On September 28, 2012, based on claims filed by 25 cities and counties for 2001-02 through 2010-11, the commission estimated the state's costs for this mandate to be $15.9 million.

The Legislative Analyst's Office (LAO) recommends that the Legislature eliminate future state costs for this mandate by amending statute to eliminate all the elements of state law that have been found to be a state-reimbursable mandate, as they are unnecessary to achieve the Legislature's objective of ensuring that judges have pertinent information regarding defendants' criminal histories.

The LAO suggests that, to the extent that the Legislature is concerned that eliminating this mandate would result in judges and prosecutors not consistently reviewing criminal histories before pertinent decisions in domestic violence cases, it could also amend state law to require judges to consider this information without specifically mandating that prosecutors provide it to them. Since the requirement would be placed on judges rather than local governments, this likely would not be considered a state-reimbursable mandate.

Recommendation. Approve the suspension, as proposed by the Administration.

Issue 2 – Identity Theft Investigations

Governor's Proposal. The Governor's budget proposes to suspend the mandate requirements that local law enforcement take police reports on cases of suspected identity theft and begin subsequent investigations. Suspending the mandate would make local compliance optional in 2013-14. It also would allow the state to defer to a future date, its obligation to pay the $67.7 million owed to local agencies.

Background. Chapter 956, Statutes of 2000 (AB 1897, Davis), made several statutory changes designed to make it easier for victims of identity theft to clear their names. The law permits individuals who believe they are victims of identity theft to initiate a criminal investigation by filing a report with their local law enforcement agency, as well as seek an expedited judicial process certifying their innocence when their identity was falsely used in a crime. Committee analyses of the bill indicate that the Legislature expected these provisions to be state-reimbursable mandates, but that the costs would be minor.

In March 2009, the Commission on State Mandates found that local law enforcement costs associated with two elements of Chapter 956, requirements to take police reports on cases of suspected identity theft and begin subsequent investigations, are reimbursable. In September 2012, the commission adopted a statewide cost estimate of $67.7 million based on claims submitted by about 200 cities and counties for the years 2002-03 through 2010-11.

According to the administration, local law enforcement entities have inherent reasons to continue these activities, even without state reimbursement.

The LAO has recommended that the Legislature eliminate future state costs for this mandate by amending the requirements that local law enforcement agencies take a police report and begin an investigation when a person residing in their jurisdiction reports suspected identity theft. According to the LAO, taking police reports for and beginning investigations of alleged crimes, including identity theft, are basic responsibilities of local law enforcement agencies, and the associated costs should be borne by local governments and not the state.

Recommendation. Approve the suspension, as proposed by the Administration.