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*Senate Budget and Fiscal Review—Nancy Skinner, Chair*

## **SUBCOMMITTEE NO. 5**

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## **Agenda**

**Senator Maria Elena Durazo, Chair**  
**Senator Shannon Grove**  
**Senator Dave Cortese**  
**Senator Josh Newman**



## *Public Safety, the Judiciary, Labor and Transportation*

**Thursday, May 13, 2021**  
**State Capitol - Room 3191**  
**5 minutes after discussion items for Part A concludes**

### **PART B**

Consultant: Christopher Francis, Ph.D.

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## ITEMS FOR DISCUSSION

### 0250 JUDICIAL BRANCH

#### Issue 1: Fines and Fees

**Background.** The following special panel will discuss California’s Criminal Fine and Fee System.

**Overview of CA’s fine and fees structure.** At every point in the criminal legal process, California state law authorizes counties to charge administrative fees. These fees are levied on top of monetary sanctions that California imposes on people who have committed an infraction or offense: For example, fines, penalty assessments, and restitution. From booking and arrest to representation by a public defender and probation supervision, an individual can face a host of fees and a subsequent collection process. Although state law authorizes such fees, local jurisdictions have the discretion over the specific fees to impose and for what amounts to charge for each fee imposed.

**Criminal Fines and Fees.** During court proceedings, trial courts typically levy fines and fees upon individuals convicted of criminal offenses (including traffic violations).

**Probation Fees.** State law authorizes counties to levy fees on probationers to cover probation-related costs. For example, a probationer who is subject to electronic monitoring—such as being required to wear a Global Positioning System (GPS) unit on his or her ankle—can be charged for its costs.

The total amount owed by an individual begins with a base fine set in state law for each criminal offense. State law then requires courts to add certain charges to this fine. On a limited basis, counties and courts can levy additional charges depending on the specific violations and other factors. Statute gives judges some discretion to reduce the total amount owed by waiving or reducing certain charges.

**Fine and Fee Levels Set to Serve Multiple Purposes.** The state has enacted various fines and fees for various purposes. Some (such as the base fine) are generally tied to the seriousness of the crime. Others (such as the DNA assessments) were enacted to generate revenue to fund specific activities. Finally, some fines and fees were enacted to help offset state or local costs for providing particular services to individuals paying the specific charge.

**Numerous Funds Eligible to Receive Fine and Fee Revenue.** Over 50 state funds—in addition to many local funds throughout the state—are eligible to receive fine and fee revenue. However, some of these funds receive very little revenue, such as those that only receive revenue from fines and fees for specific offenses that occur infrequently.

***Complex Process for Distributing Fine and Fee Revenue.*** State law (and county resolutions for certain local charges) dictate a very complex process for the distribution of fine and fee revenue. State law currently contains at least 215 distinct code sections specifying how individual fines and fees are to be distributed to state and local funds, including additional requirements for when payments are not made in full. In order to comply with these requirements, collection programs must carefully track, distribute, and record the revenue they collect.

***Total Fine and Fee Levels Have Increased Significantly.*** Since 2005, the number and size of charges added to the base fine have increased significantly—resulting in increases in the total amount owed by individuals convicted of criminal offenses. For example, the total penalty for a stop sign violation has increased by at least 54 percent since 2005.

**2. Impacts of Fines and Fees: Who levies fees in California and what are the impacts on communities?** Currently, 54 of 58 California counties charge one or more such administrative fees. But research on criminal administrative fee collection across California shows that some counties spend equal to or more than fees than they actually collect. Additional research shows that these fees are most commonly levied on low-income people who encounter the criminal justice system- the majority of whom are people of color and originate from traffic stops. Overall, the fees lead to inefficient use of resources, are unstable sources of revenue for governments, and drive low-income people into greater debt.

**3. Recent legislation: Family over Fees Act.** The 2020 Budget Act, through AB 1869, will, effective July 1, 2021, make the following changes to 23 criminal administrative fees:

- Repeals statutes associated with Public Defense Fees, Cost of Counsel, Public Defense Registration Fee, and Public Defense Fees for Minors.
- Repeals statutes associated with various Criminal Justice Administration Fees. Specifically, repeals provisions allowing for the recovery of costs associated with arrest.
- Repeals statutes associated with the \$25 Administrative Processing Fee and \$10 Citation Processing Fee.
- Repeals the Interstate Compact Supervision Fee. Specially repeals statutes that provide that a probationer cannot be released to another state until the probationer has paid the reasonable costs of processing their request to move states.
- Repeals statutes associated with alternative custody. For example, it eliminates the ability to charge an administrative or application fee for work furlough or home detention and eliminates other fees relating to home detention. Moreover, it repeals provisions that allow fees for pretrial electronic monitoring, provides the ability of probation to charge a person for electronic monitoring, and gives a county the ability to seek reimbursement for the reasonable costs of county parole supervision. Finally, it repeals the Probation Department Investigation/Progress Report Fee.

This trailer bill will make the unpaid balances related to the aforementioned eliminated fees uncollectible. The 2020 Budget Act appropriated \$50,000 from the General Fund in the 2020-21 fiscal year to the Department of Finance to begin implementation of the provisions of this act and appropriates \$65 million annually from the General Fund to the Controller beginning in the 2021-22 fiscal year to the 2025-26 fiscal

year, inclusive, to backfill revenues lost from the repeal of those fees specified in this act, unless future legislation extends the provisions of this act. The funds are appropriated to the Controller for allocation to counties according to a schedule provided by the Department of Finance. Finally, the bill expressed the intent of the Legislature to pursue legislation with the Budget Act of 2021 to finalize the funding allocation methodology for distribution to counties.

**4. Recent Governor’s Proposal: Ability to Pay Pilot (2018) and Statewide Expansion (2021).** The 2018 Budget Act included \$3.4 million General Fund and 7.0 positions for 2018-19 (\$1.36 million ongoing) and trailer bill language in SB 847 (Committee on Budget), Chapter 45, Statutes of 2018 to design, deploy and maintain software to adjudicate traffic violations online, including ability to pay determinations, in eight pilot courts. The language requires that the tool recommend a reduction of at least 50 percent of the total amount owed for individuals who receive specified public benefits or live at a monthly income of 125 percent or less of the current poverty guidelines, as updated periodically in the Federal Register by the United States Department of Health and Human Services pursuant to Section 9902 of Title 42 of the United States Code. Additionally, individuals are provided information in multiple languages and typically receive the decision of the court within 30 days.

It also included requirements to develop an array of online services for the public including hearing date requests, continuance, online trials and chat bot guidance. By the end of 2019-20, eight courts were to have implemented online ability to pay determinations with a two-way court case management system data exchange. By the first quarter of 2021, the additional online functions noted above will be developed and implemented in the pilot courts.

As of November 2020, Shasta, Tulare, Ventura, San Francisco, Santa Clara and Fresno pilot courts are all live with online ability to pay determination processing. Monterey will be live with online ability to pay determinations by January 2021. In these counties, users access a website, enter their citation number and are guided through a process to provide relevant financial information for a judge to review and consider an adjusted fine or fee. The judicial determination is made and a final court order is emailed back to the user with instructions about a payment or community service plan as appropriate.

***Purpose of 2021-22 ATP proposal: Expand Online Adjudication Tool Statewide.*** The Governor’s budget requires the Judicial Council to (1) develop an online adjudication tool for all infraction violations (not just traffic infractions) that would include an ability-to-pay component and (2) make the tool available statewide by July 1, 2024. While trial courts could choose whether to make use of the full online tool, all courts would be required to offer the ability-to-pay component of the tool by July 1, 2024. Specifically, the Judicial Council estimates implementation costs of \$4.4 million in 2021-22, \$6.2 million in 2022-23, \$6.4 million in 2023-24, and \$2.7 million annually thereafter to work with courts by cohort to adopt new technology. Each cohort is organized by case management system, cloud hosted verses locally hosted, and court size. The Judicial Council will establish eleven cohorts to be deployed over three fiscal years.

***Backfill Expected Reduction in Fine and Fee Revenue.*** Given that the online adjudication tool allows individuals to more easily seek reductions in the total amount of criminal fines and fees that they are assessed, the amount of criminal fine and fee revenue collected is

expected to decline on an ongoing basis. To address this decline, the Governor’s budget proposes an ongoing backfill for reductions in revenues. Specifically, the Governor’s budget estimates that this backfill will be \$7.9 million in 2021-22, \$18.9 million in 2022-23, \$40.7 million in 2023-24, and \$55.8 million annually thereafter to backfill the estimated loss in revenue to Judicial Branch funds, as a result of the penalty reductions. In 2021-22, \$7.9 million will be available for the existing seven pilot courts plus ten new courts (in two cohorts), to backfill the estimated loss in revenue to support the Judicial Branch, as a result of the penalty reductions.

Budget bill language is proposed with respect to the backfill process detailing that funds appropriated in this item may be transferred to the State Trial Court Improvement and Modernization Fund (0159), Trial Court Trust Fund (0932), State Court Facilities Construction Fund (3037), and the Court Facilities Trust Fund (3066) to backfill revenue reductions resulting from the expansion of ability-to-pay determinations. The amount to be transferred to each fund will be determined by the Department of Finance using information provided by the trial courts and the Judicial Council.

**Trailer Bill Language in ATP Proposal.** The Governor’s proposal also includes trailer bill language eliminating the pilot program established in the 2018-19 budget and making certain components of the pilot program permanent, such as requirements related to the ability-to-pay determinations and to online trials for those trial courts that choose to offer them. Under the language, an evaluation of the pilot program activities would no longer be required.

**Staff Comment.** The Judicial Branch’s ATP Expansion proposal was also heard in the Feb 18, 2021 Subcommittee No. 5 item and it was held open.

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

## 5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION

### Issue 2: Spring Capital Outlay BCPs

**Governor’s Budget.** The budget includes the following capital outlay Spring BCPs for the CDCR:

Proposal	Fund Source and Positions	Notes
Health Care Facility Improvement Program	\$43,235,000 Lease Revenue Bond	To increase the lease revenue appropriation authorized by Government Code Section 15819.403 by \$43.235 million to complete construction of the remaining Health Care Facility Improvement Program (HCFIP) projects. As of December 2020, nine of the 25

<p>(HCFIP)—Increase Lease Revenue Appropriation</p>		<p>projects funded by this appropriation have been completed. Four additional projects are scheduled for completion in 2021; the remaining projects are scheduled for completion on a rolling basis through 2023.</p> <p>Originally, \$900.42 million lease revenue bond financing authority was provided to CDCR to design and construct medical, dental, and mental health treatment or housing space at existing prison facilities. The amount authorized has been increased in the following manner: \$43 million in the 2018 Budget Act, \$49.85 million in the 2019 Budget Act, and \$32.53 million in the 2020 Budget Act. In total, the appropriation has been augmented by \$187.35 million for HCFIP projects (18.3 percent). Government Code Section 13332.11 authorizes the State Public Works Board to augment this appropriation up to 20 percent to address cost increases to established projects. However, based on estimated project costs, CDCR is anticipating that funding is needed beyond the 20 percent augmentation authority.</p> <p>The cost increases for HCFIP projects have been approved as a result of several issues, including but not limited to delays in construction, project management issues, non-compliance with fire/light/safety requirements, and poor architectural and engineering design performance.</p>
<p>Chuckawalla Valley State Prison, Blythe: New Potable Water Wells</p>	<p>This proposal requests funding for the construction plans phase of this project. The total estimated project cost is \$821,000 General Fund.</p>	<p>To design two new groundwater wells to supply adequate amounts of potable water for incarcerated people and staff at Chuckawalla Valley State Prison and Ironwood State Prison. Approximately \$4 million has been spent on repairs for all 6 wells in the past 10 years because of well failure. This is a problem caused by the basin composition of sand and gravel mixing with the water supply, which causes damage to the well casings, pumps, or motors. Problem: CVSP and ISP currently have two operational wells (Well 3 and 6), which are able to meet the water needs of two institutions during non-peak times. However, even operating continuously, the remaining wells are unable to meet the peak water demand times, which typically occur from July through October each year. The wells are approximately 30-35 years old and must operate 24/7 to meet the minimum potable water needs.</p> <p>CDCR is soliciting a contractor to repair Wells 2 and 4 – using support funds – due to the institutions having only two operational wells. However, even if these were repaired in a short period of time, based on historical interruptions to potable water availability the repair will not satisfy the long term sustainable solution to ensure potable water is available for incarcerated people and staff at both institutions. Two additional wells are</p>

		<p>needed to allow regular maintenance to be performed and to provide more operational reliability in case of future well failure.</p>
<p>Ironwood State Prison (ISP), Blythe: Heating, Ventilation, and Air Conditioning System Supplemental Appropriation</p>	<p>A supplemental appropriation for the construction phase in the amount of \$11,491,000 Lease Revenue Bond. The total estimated project cost is \$187,424,000.</p>	<p>To provide supplemental funding to complete the construction of a new central chiller water plant as well as replacement of existing air handling units (AHUs) and improvements to existing roofs, fire dampers, and smoke evacuation systems to correct damage caused by the existing evaporative cooling system at ISP. During construction, it was determined that the existing appropriation is not adequate to complete the project.</p> <p>According to the CDCR, construction is approximately 62 percent complete. However, the need for additional funding to complete construction has been identified. The construction cost increase is associated with the following items: • Design errors and omissions due to cooling system inefficiency of the housing units, Central Water Plant routing between A and B Yards, missing condensate piping required for the new AHUs, and coordination of the existing exhaust vents with the AHUs; A rotating amount of empty housing units are required for construction of this project. Isolation, quarantine, and social distancing requirements due to the COVID-19 pandemic have precluded the ability to have empty housing units on a regular basis since Spring 2020; • Unforeseen field conditions related to housing unit cell duct cleaning and required balancing and commissioning; and • Additional soft costs due to the extended construction duration.</p>

**LAO Assessment for HCFIP Proposal**

*Not Cost-Effective to Continue Projects at Prisons That Could Be Closed.* While the LAO finds that it is appropriate to increase the lease revenue authority available for HCFIP projects, it would not be cost effective to provide additional authority for projects at prisons that will be closed in the near future. Due to declining populations, CDCR has announced plans to close the Deuel Vocational Institution (DVI) in Tracy by September 30, 2021 and the California Correctional Center (CCC) in Susanville by June 30, 2022. (The department also announced that it will close two minimum security yards—one at California Correctional Institution in Tehachapi and one at Correctional Training Facility in Soledad.) CDCR’s projections of the population suggest that state would likely be able to close three additional prisons by 2024-

25. Based on the LAO's initial review, the California Men's Colony (CMC) in San Luis Obispo, the California Rehabilitation Center in Norco, San Quentin State Prison, and the Correctional Training Facility in Soledad appear to be strong candidates for closure. This is primarily because these prisons all have high estimated repair and/or operational costs relative to their capacity.

Despite CMC being a strong candidate for closure, CDCR has indicated that \$8.2 million of the proposed lease revenue authority would support the HCFIP project at CMC. The administration has stated that the project is over 80 percent complete and that the remainder of the project is expected to be completed by August 2023. Accordingly, allocating additional lease revenue authority to this project could mean the prison is closed before or shortly after the project is complete. The LAO notes that the Administration does not currently plan to use the proposed lease revenue authority for HCFIP projects at the other prisons that they have identified as strong candidates for closure or are scheduled to be closed. However, the proposed budget trailer legislation would not prohibit the Administration from doing so.

### **LAO Recommendation for HCFIP Proposal**

***Modify Proposal to Ensure Authority Not Used for Projects at Prisons Likely to Close.*** The LAO recommends modifying the Administration's proposal to ensure that funding is not spent unnecessarily on prisons that are closed shortly thereafter. Specifically, the LAO recommends that the Legislature direct the administration to provide a list by the May Revision of prisons that are strong candidates for closure. The Legislature could use this information to determine if it agrees with this assessment or if it finds that other prisons would be strong candidates for closure. The LAO recommends that the Legislature then modify the proposed budget trailer legislation to prohibit the Administration from using additional lease revenue authority for HCFIP projects at prisons that the Legislature views as are strong candidates for closure and adjusting the proposed increase in lease revenue authority accordingly. The LAO further recommends directing the Administration to not use its ability to augment the legislatively approved lease revenue authority to provide funding for those projects at prisons the Legislature determines as strong candidates for closure.

**Staff Recommendation.** Hold open all three proposals.

### **Issue 3: State of Remote Communications at CDCR Adult Prisons**

**Background.** People who are incarcerated maintain contact with loved ones via phone, video, and text communications—all of which are remote communications. Prisons and jails contract with private companies to provide and manage telephone service for their institutions. GTL and ConnectNetwork are the two entities that provide telephone services to individuals incarcerated at CDCR facilities. These phone systems provide features such as enabling certain numbers from being blocked and allowing correctional staff to monitor calls.

**Remote Communications during COVID-19 at CDCR.** The COVID-19 pandemic led to the suspension of in-person visitation on March 11, 2020 to mitigate the spread of the novel coronavirus within prisons. In its place, the CDCR adopted or revised strategies to provide remote communication methods to incarcerated people.

**Phones guidelines during COVID-19.** Communication via phone, mail, and electronic mail at some institutions, remained available with numerous free phone call days offered to each incarcerated person per month.

The Division of Adult Institutions then expanded phone access for certain privilege groups via current phone equipment, with extra precautions taken to clean phones and allow physical distancing to limit possible exposure and transmittal of illness. The following populations were allowed to make calls above their privilege group until further notice:

- People in Administrative Segregation for non-disciplinary reasons, designated Privilege Group B, are allowed one phone call per week (previously one per month; Privilege Group A are normally allowed one call per week)
- People on “C” Status are allowed one call every two weeks
- All others in restricted housing are allowed to make one phone call once every two weeks (previously no phone calls permitted)
- Reception Center inmates will be provided one phone call per week (previously one call within first seven days and one per month after)
- Inmates in Psychiatric Inpatient Program settings will be allowed one call per week unless they are prohibited by the Interdisciplinary Treatment Team (with documented clinical justification).

**Implementation of video visitation during COVID-19.** CDCR in December 2020 began offering real-time video visiting at 33 institutions and most conservation camps as a safe way for incarcerated people to see and speak with their loved ones. Under the new system, each inmate have a free 60-minute video visit every 30 days.

CDCR’s electronic messaging provider for the incarcerated population, JPay, provided reduced-priced emails to those incarcerated at the pilot institutions and free emails for those who cannot afford it. The five pilot sites that currently have the technology include: High Desert State Prison, Kern Valley State Prison, California Institution for Women, Central California Women’s Facility, and Substance Abuse Treatment Facility. At some of these institutions, only certain yards currently have this technology.

**Text communication services during COVID-19.** JPay has also extended inbound email print services to all institutions at a reduced rate. This service enables incarcerated people’s family and friends to use the JPay app to send e-correspondence, which mailroom staff then print

and deliver with regular mail. Family and friends purchase stamps for this service. This service is available at adult prisons and juvenile facilities, and will continue into 2022.

Effective May 4, 2020, the Enterprise Inmate Communication (EIC) program currently piloted at Central California Women’s Facility, California Institution for Women, High Desert State Prison (Facility C), Kern Valley State Prison (Facility C) and Substance Abuse Treatment Facility was temporarily expanded for those inmates who possess a JPay EIC tablet. Inmates with tablets are eligible to access, free of charge, the following offers via the kiosk system, (all content will be reviewed prior to being made available):

- Life Skills & Betterment: Up to 30 free videos focusing on teaching and improving life skills to help cope with challenges during and after incarceration.
- Motivational Speeches: Six free audio recordings by Andre Norman, creator of the “Academy of Hope” series
- Entertainment: One free video game per week for four weeks.
- Effective May 12, inmates with tablets may also have unlimited free access to the News Stand application, which delivers daily updated news, for one month.

**Upcoming Changes.** In March 2021, the CDCR announced that call rates would be reduced, and kiosks and tablets will be added throughout the state to expand on-demand communication services including video calling and secure messaging. The technology will also provide individuals incarcerated at CDCR access to a range of media and rehabilitative resources. Before March 2021, the cost of phone calls from CDCR adult institutions were \$0.076 per minute for local calls and \$0.21 per minute for interstate calls. However, effective March 2021, the phone rates on per-minute and 15 minute bases changed. The overall changes are documented below:

*Per minute phone rates in the new GTL contract*

- Domestic calls: 2.5 cents per minute
- International calls: 7 cents per minute
- Electronic correspondence: 5 cents per item or 2,000 characters.

*Comparison of 15-minute telephone calls for new and old rates:*

	ADULT			YOUTH			
	Local (Same Area Code)	InterLATA (Within CA)	Interstate (Within US)	Local	InterLATA	Interstate	International
2013-2019	\$1.44	\$2.025	\$3.75 Collect	\$0.42	\$0.45	\$1.98	\$11.252

			\$3.15 Prepaid				
7/1/19 to 12/30/20	\$1.23	\$1.23	\$3.15	\$0	\$0	\$0	\$11.25
2020-2021	\$1.14	\$1.14	\$3.15	\$0	\$0	\$0	\$11.25
<b>2021- Future</b>	<b>\$0.375</b>	<b>\$0.375</b>	<b>\$0.375</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1.05</b>

*Tablet services:*

<b>Communications Services</b>	<b>Current Rates at 5 Pilot Sites</b>	<b>New Rates Statewide</b>
Email/Secure Messaging (Inbound and Outbound)	\$0.35 (1 Stamp)	<b>\$0.05 per 2,000 characters</b>
Inbound Electronic Correspondence Services	\$0.35 (1 Stamp)	<b>\$0.05 per 2,000 characters</b>
Video Clips	\$1.05 (3 Stamps)	<b>\$0.05</b>
E-Cards	\$0.35 (1 Stamp)	<b>\$0.05</b>
Photos	\$0.35 (1 Stamp)	<b>\$0.05</b>
E-Books	\$0	<b>\$0</b>
Games	\$0.99 - \$8.95	<b>\$0</b>
MP3 Songs	\$0.99 - \$1.99 per song	<b>Premium Music - \$7.99/month</b> <b>Streaming Internet Radio (no playlists or caching or download) 5.49/month</b>
Movie Rentals	Not offered	<b>\$1.99/month</b>
Print Services	\$0.35 (Per Page)	<b>\$0.05 (Black &amp; White)</b> <b>\$0.25 (Color)</b>
Podcasts	Not offered	<b>\$2.49/month</b>
Premium Audio Books	Not offered	<b>\$5.49/month</b>

***Past and ongoing reform efforts and legislation to address CDCR phone rates.*** The price of remote communications overall has come under scrutiny in the past several years and still exists despite the recent changes during the COVID-19 pandemic. Advocates previously argued that inmates' phone call rates are excessively high due in part to the concession fees, also known as commissions that phone service

providers pay to state and local prison systems in exchange for exclusive contracts. As a result, in 2007, the Legislature approved SB 81 (Committee on Budget and Fiscal Review, Chapter 175, Statutes of 2007) as a budget trailer bill. SB 81 directed a four-year phase out of concession fees in phone service contracts for state correctional facilities.

Additionally, due to the compounding costs of remote communications that still exist, families are unable to afford to talk with their loved ones. This is especially true for Black, Brown and low-income communities who are disproportionately impacted by criminal justice system contact, whose circumstances have been especially compounded amidst the ongoing COVID-19 pandemic. Therefore, this special panel will discuss remote communication rates as well as its impact on incarcerated people and their loved ones.

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

#### **Issue 4: Preparing Incarcerated People for Parole Hearings**

**Background.** The Board of Parole Hearings (BPH/Board) within CDCR is currently composed of 17 commissioners. Along with deputy commissioners, they consider whether to grant parole to all persons sentenced to state prison under the state’s indeterminate sentencing laws, as well as certain determinately sentenced incarcerated people, such as youth offenders and the elderly, who qualify for parole consideration. As well, BPH also conducts administrative reviews to consider parole for persons serving determinate sentences for nonviolent offenses under Proposition 57. Under indeterminate sentencing, individuals receive a sentence range, such as 25-years-to-life. Under determinate sentencing, individuals receive fixed prison terms with specified release dates. BPH also determines (1) whether to impose any special conditions on individuals who are granted parole—such as requiring participation in certain rehabilitative programs—once they are in the community and (2) how long those who are denied parole must wait until their next parole hearing, which can range from 3 to 15 years. In addition, BPH advises the Governor on applications for clemency and approves transfers of foreign-born incarcerated people to their native countries.

Parole hearings are supposed to determine whether a person is suitable for release or if he or she currently poses an unreasonable risk of danger to society. The hearing panel, which typically consists of one BPH commissioner and one deputy commissioner, considers many sources of information, including a risk assessment from a forensic psychologist, statements from the incarcerated person and victims, and records of the incarcerated person’s behavior and rehabilitative programming while incarcerated. Research indicates that some of the sources of information considered are better predictors of dangerousness than others. For example, risk assessments completed by psychologists are among the more reliable predictors of dangerousness.

**Outcomes of Parole Hearings.** The following are the typical outcomes from parole suitability hearings:

1. **Grant** – The inmate was found suitable for parole and, therefore, was granted parole.
2. **Deny** – The inmate was not found suitable and, therefore, was denied parole.
3. **Continue**– The hearing was started, but could not be completed for some reason. It will be scheduled for completion at a future date.
4. **Cancelled** – The parole hearing was cancelled. A parole-hearing is cancelled when there is no need for the hearing to go forward and it does not need to be rescheduled. For example, a hearing will be cancelled if the inmate was released pursuant to a court order or if the inmate dies. In these situations, the hearing is not “continued” or “postponed” because the hearing will not be rescheduled.
5. **Split** – The parole hearing resulted in a split decision. A split decision occurs when the members of a two-person parole hearing panel do not agree on (1) whether an inmate is suitable for parole, or (2) the length of a denial period (15, 10, 10, 7, 5, or 3 years) for an inmate who is unsuitable for parole.
6. **Postpone** – The hearing was postponed. The board may postpone a hearing on its own motion, at the request of an inmate, or for exigent circumstances. Sometimes postponements are requested days or weeks before the scheduled hearing date, but postponements may also occur on the day of a hearing.
7. **Waive** – The inmate waived his or her right to a hearing. An inmate may waive his or her right to a parole hearing for any reason for a period of one to five years as long as the request is submitted at least 45 calendar days prior to the hearing. A request to waive a hearing submitted less than 45 days before a hearing will be denied unless good cause is shown and the reasons for the waiver were not and could not reasonably have been known to the inmate 45 days prior to the hearing. Note: This rule has been suspended while hearings are conducted by videoconference during COVID. Persons may waive their hearings for any reason up to and included the day of their hearing. See Executive Order N-36-20, paragraph 4(c).
8. **Stip** – The inmate stipulated to being unsuitable and was denied parole without a parole hearing being held. A stipulation occurs when the board accepts an inmate’s offer to stipulate to his or her unsuitability for parole for a specified period (15, 10, 7, 5, or 3 years). If the board accepts an inmate’s offer to stipulate, it is considered a denial of parole for the stipulated period.

**Recent Legislation to expand parole eligibility.** SB 260 (Hancock), SB 261 (Hancock), and AB 1308 (Stone) created and expanded a program known as the Youth Offender Parole, providing parole opportunities for people who committed their crimes before the age of 26. California adopted an Elderly Parole program providing review for people who are 60 years of age, and have served at least 25 years on their current sentence to have a parole board hearing. Through SB 118 (Committee on Budget-2020), the budget changed the state’s compassionate release process by expanding the life expectancy for inmates who are eligible for recall of sentence for compassionate release from six months to 12 months and removing the Board of Parole Hearing from the process. Additionally the budget, through AB 3234 (Ting - 2020), changed the age for elderly parole eligibility from 60 to 50 and time served from 25 to 20 years. The 2018-19 Budget Act included a provision to increase the amount paid to attorneys who represent incarcerated people through the parole hearing process from \$450 per case to \$750 per case. Attorneys who are appointed to represents persons at parole hearings are assigned maximum of 13 hearings a week, once per a month.

**Attorney-client interactions issues.** . Each incarcerated person is provided counsel for the parole hearing process. In 2019, BPH initiated a new panel attorney program to recruit, train, and appoint attorneys. The BPH contracts with a nonprofit entity, Parole Justice Works, to train and monitor the quality of representation provided by panel attorneys. Since January 2020, all panel attorneys appointed by the BPH are expected to meet with their clients for an average of one hour within 30 days of appointment – before the incarcerated person is interviewed by a BPH forensic psychologist for their Comprehensive Risk Assessment. They are also expected to meet with their client again for at least an hour once the Comprehensive Risk Assessment is produced. Prosecutors are required to submit any documents for BPH consideration at least 10 days prior to a parole hearing. Currently, there is no requirement that a panel attorney meet with their client a third time prior to the hearing to review documents submitted by the prosecutor. In addition, panel attorneys do not receive additional pay to represent their client, should their case be referred for review by the full Board at one of the Board’s monthly executive board meetings.

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

## VARIOUS DEPARTMENTS

### Issue 5: Oversight of State Funding To the California District Attorneys Association (CDAA)

**Background.** The California District Attorneys Association (CDAA) is a not-for-profit membership organization that consists of individuals who work in the criminal prosecution field, such as district and city attorneys and victim-witness supervisors. CDAA is governed by a 17-person Board of Directors and engages in various activities—most notably legislative advocacy and statewide training in a range of topic areas, such as the prosecution of environmental violations and asset forfeiture cases. CDAA receives funding from various sources—such as membership dues, state and federal government funds, and litigation proceeds—to support its activities. Some of these funds are “restricted,” or required to be used for specific purposes. The [LAO handout linked](#) provides information on state funding provided to CDAA and a summary of a December 2020 audit of certain CDAA programs and the restricted funds that support them.

**CDAA Initiated Audit.** In light of concerns raised internally about whether certain monies received by CDAA were being used consistent with their restricted uses, CDAA retained an external auditor in August 2020 to conduct a line-item audit of settlement, judgment, and grant monies provided for roughly six environmental- and worker safety-related CDAA programs since 2002.

**Audit Findings: Practice of Borrowing Restricted Funds.** CDAA routinely borrowed restricted funds from the programs and treated these funds as unrestricted. This practice has been instrumental to CDAA’s financial viability since 2004. (The LAO notes the audit found that state funds provided from the Environmental Enforcement Training Account were spent consistent with the restrictions on their use.) **Nearly**

**\$3 Million Owed.** As of June 2020, \$2.9 million was still owed to CDAA’s environmental and worker safety programs from its unrestricted general purpose account. CDAA does not currently have sufficient resources to repay this amount.

**Concerns with Internal Accounting Practices.** The following are concerns shared about CDAA’s internal accounting practices:

- Around \$725,000 in received monies were misallocated between the audited programs.
- CDAA’s audited financial statements for each fiscal year since 2005 have inaccurately reported the majority of revenues and net assets as unrestricted.
- Internal financial reports lacked information on whether program funds were restricted. Such reports also lacked other information needed to assess each program’s overall fiscal condition.
- Internal accounting practices—specifically how revenues and transfers were documented—changed around fiscal year 2016. This resulted in certain financial reports being internally inconsistent.

**Actions Adopted By CDAA Board in June 2020 Before Audit Began.** CDAA’s Board of Directors took action to improve its financial practices in June 2020—prior to the start of the audit. The auditor agreed that these actions were appropriate. Specifically, CDAA took action to:

- Deposit Future Funds in Restricted Accounts. All future monies received by CDAA environmental and worker safety programs will be deposited into separate restricted financial accounts independent of its unrestricted general purpose account.
- Increase Internal Oversight. Copies of bank statements associated with these new accounts will be provided to the Co-Chairs of CDAA’s Environmental Committee.
- Provide General Fund Support for Environmental Programs. Fiscal support for CDAA environmental programs will be provided from its unrestricted general purpose account when alternative funding sources are not available.
- Repay Borrowed Monies. At least 10 percent of unencumbered, unrestricted general purpose account monies will be set aside at the end of each fiscal year in order to restore the fund balances of CDAA’s environmental and worker safety programs.

**Audit Recommendations for CDAA.** The following recommendations were provided in the CDAA audit:

- Take proactive steps to review funding restrictions—such as seeking clarification on the intended use of received monies, presuming judgment monies are restricted, and appropriately documenting any restrictions—in order to eliminate any ambiguities on whether received funds are restricted.
- Improve external reporting by informing those entities who provided monies related to judgments on how those monies were used for all CDAA programs.
- Increase internal reporting to leadership and oversight bodies (such as the Board of Directors), including additional information related to restrictions on the use of received monies.
- Improve accounting practices in specific ways in order to ensure financial reports are internally consistent.
- Improve internal communication by providing copies of any judgments tied to monies for CDAA to its accounting department and document such monies in certain ways to track whether they have actually been received.

**Staff Comment.** Subsequent to the release of the audit, the Subcommittee has received a letter from organizations addressed to the Legislature to “investigate, hold accountable, and provide oversight of the California District Attorneys Association for their egregious misuse of state funds earmarked for the enforcement of California’s environmental laws.” As well, the Attorney General’s office has notified CDAA that they will be conducting an investigation related to the audit. The California District Attorneys Association was invited to participate in today’s hearing but formally declined due to the Department of Justice investigation.

**Staff Recommendation.** This is an oversight item. No action is needed at this time.

## 8140 OFFICE OF STATE PUBLIC DEFENDER

### Issue 6: Funding for Public Defender (PD) Workload

**Background.** In California, the counties provide the constitutionally mandated legal services in a variety of ways. Most large counties provide the services through a county-wide public defender. Some counties contract-out public defender services to small firms or individuals in private practice. Although there are different models for providing these services, one common theme across the state is that counties struggle to keep up with the increasing workload necessary to reduce the state’s adult and juvenile prison population.

**Recent Legislation impacting PD workload for adults.** The Legislature passed various bills in recent years to achieve population reductions in state prison. Of note are the following:

- SB 1437 (Skinner), Chapter 1015, Statutes of 2018 was signed into law on September 30, 2018 and became effective January 1, 2019. The bills narrows the situations in which a person may be convicted of murder. For unsentenced, pending cases, the change in the law will be applied forthwith and no new implementation resources are necessary. However, SB 1437 is retroactive and incarcerated persons convicted of first- or second-degree murder under the old law may petition the court for resentencing if SB 1437 applies.
- AB 2942 (Ting) amended Penal Code section 1170(d) was signed into law on September 30, 2018 and became effective January 1, 2019. Previously, a court could recall the sentence of a state prisoner only with 120 days of imposition or upon the recommendation of the California Department of Corrections and Rehabilitation (CDCR). In practice, CDCR typically limited its recall recommendations to those cases in which a sentencing error had occurred, an applicable sentencing law had changed, or an inmate demonstrated “exceptional conduct” after a number of limiting criteria are applied. After AB 2942, the court may also recall a sentence based upon the recommendation of a district attorney which will then require public defenders to intervene on behalf of their clients.

**Recent Legislation impacting PD workload for youth.** Additionally, multiple bills led to expansion in youth parole eligibility. Notably, SB 260 (Hancock), Chapter 312, Statutes of 2013, SB 261 (Hancock), Chapter 471, Statutes of 2015, AB 1308 (Stone), Chapter 675, Statutes of 2017, and SB 394 (Lara) between 2014 and 2018 created the youthful offender parole (YOP) suitability hearing. SB 261, requires BPH to conduct youth parole hearings for those sentenced to state prison who committed specified crimes when they were under 23 years of age. BPH is required to complete by July 1, 2017 all youth parole hearings for individuals who were sentenced to indeterminate life terms and by July 1, 2021, youth sentenced to determinate terms, who become entitled to have their parole suitability considered at a youth parole hearing on the effective date of the bill. AB 1308, requires BPH to conduct youth parole hearings for those who committed specified crimes when they were 25 years of age or younger. BPH is required to complete, by January 1, 2020, all youth parole hearings for individuals who were sentenced to indeterminate life terms and by January 1, 2022, youth sentenced to determinate terms, who become entitled to have their parole suitability considered at a youth parole hearing on the effective date of the bill. SB 394 makes a person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which a life sentence without the possibility of parole has been imposed eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing. Overall the bills offer incarcerated persons whose eligible committing offense occurred when they were under the age of 26 a meaningful chance to parole back into the community. The underpinning of youth offender parole is based on scientific evidence showing that parts of the brain responsible for impulse control, understanding consequences, and other executive functions are not fully developed until mid-to-late 20s.<sup>1</sup>

**Backlog and Funding Issues.** Limited to no funding to public defender offices accompanied these new laws throughout the state as they committed to trying to help their clients benefit from these reforms, have struggled to handle the new workload. Consequently, a backlog of these cases exists, requiring that incarcerated persons who are eligible for release remain in state prison while they wait for an attorney to be assigned to their case. As a result, thousands of persons incarcerated in state prison who are statutorily and legally entitled to be released have not received the benefit of SB 1437. Likewise, YOP and Penal Code section 1170(d) candidates continue to serve prison sentences that no longer serve the interest of justice.

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

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<sup>1</sup> <https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/>