

SUBCOMMITTEE NO. 5

Agenda

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



Tuesday, February 1, 2022
9:00 a.m.
State Capitol - Room 4203

Consultant: Nora Brackbill, Ph.D.

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Public Comment

ALL ITEMS HELD OPEN

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ITEMS FOR DISCUSSION

VARIOUS DEPARTMENTS

Issue 1: Juvenile Justice Realignment

Governor’s Budget. The proposed budget includes \$100 million one-time General Fund for the Board of State and Community Corrections (BSCC) to administer the County Operated Juvenile Facility Grant Program. The funding would help counties improve their juvenile facilities in anticipation of the closure of the Division of Juvenile Justice (DJJ).

Background.

The 2019-20 Budget Act included a plan to realign the juvenile justice system to the county level and close DJJ at the California Department of Corrections and Rehabilitation (CDCR). Prior to realignment, most juvenile offenders were already housed or supervised by counties. However, counties could choose to send juveniles who had committed violent, serious, or sex offenses to state facilities operated by DJJ. Prior to realignment, DJJ facilities housed around 650 youth.

However, youth housed in DJJ facilities largely did not have access to the types of rehabilitative programming and community connections that are necessary for a humane and successful juvenile justice system¹. First, the location of DJJ facilities means that many youth offenders are moved far from home, making it difficult to maintain ties with their families and communities. Second, DJJ facilities were notorious for violence and had high recidivism rates². Overall, the facilities operated more like adult prisons than as spaces where young offenders could develop and prepare for adult life outside the criminal justice system. In addition, due to decades of declining juvenile crime rates, both DJJ and county juvenile facilities are operating under capacity, so there is opportunity for consolidation.

Realignment is intended to move juvenile justice in California toward a rehabilitative, trauma-informed, and developmentally appropriate system. The plans for realignment are outlined in SB 823 (Committee on Budget and Fiscal Review), Chapter 337, Statutes of 2020 and SB 92 (Committee on Budget and Fiscal Review), Chapter 18, Statutes of 2021. Per the realignment timeline, DJJ stopped accepting most transfers from counties on July 1, 2021, and will completely shut down by June 30, 2023. As a result, counties will be responsible for caring for youth with more serious needs and who have committed more serious offenses. To support counties in this transition, the realignment plan included the creation of the Office of Youth and Community Restoration (OYCR) to provide statewide assistance, coordination, and oversight. This new office is under the Health and Human Services Agency (HHS) rather than under CDCR or BSCC, reflecting the shift away from corrections towards services and treatment. The plan also outlined a process for counties to establish Secure Youth Treatment Facilities (SYTFs) for high-level offenders who would have previously been housed at DJJ.

¹http://www.cjcj.org/uploads/cjcj/documents/unmet_promises_continued_violence_and_neglect_in_california_division_of_juvenile_justice.pdf, <https://jije.org/2020/05/19/californias-closure-of-djj-is-victory-with-significant-challenges/>

² <https://www.latimes.com/california/story/2021-02-15/california-youth-prisons-closing-criminal-justice-reform>, <https://www.mercurynews.com/2007/02/27/report-finds-cya-prison-still-fails-inmates/>, <https://www.latimes.com/archives/la-xpm-1999-dec-24-mn-47028-story.html>

However, counties are concerned about their ability to care for the youth who would have gone to DJJ. While there is plenty of capacity at the county level, the facilities are not necessarily well-suited to provide the types of programming envisioned in the realignment.

Previously Allocated Resources. The 2020-21 budget included \$9.6 million General Fund for planning and facilities, and the gradual implementation of block grants to counties at a rate of \$225,000 per realigned youth per year. This will amount to \$209 million statewide per year after full realignment. This funding is currently administered by BSCC.

The state has also provided resources to counties for juvenile justice several times throughout the years, corresponding with changes in alignment and totaling over \$200 million annually. These include:

- *Youth Offender Block Grants.* This provided counties with \$117,000 per ward for lower-level offenders that were realigned to the county level in 2007, per SB 81 (Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007.
- *Local Youthful Offender Rehabilitative Facility Construction.* SB 81 also provided counties with lease-revenue funding to construct or renovate juvenile facilities. A total of \$300 million was allocated.
- *Juvenile Re-entry Grants.* The state provided funding to the counties after juvenile parolees released from DJJ were realigned to the county level as part of the 2010-11 budget.

Proposed County Operated Juvenile Facility Grant Program. The Administration is proposing a grant program, administered by BSCC, to provide \$100 million one-time General Fund to counties to invest in their juvenile facilities, in anticipation of the closure of DJJ. The funding could be used to support modifications, renovations, repairs, and maintenance for existing county-operated juvenile facilities, with a focus on providing therapeutic, youth-centered, trauma-informed, and developmentally appropriate rehabilitative programming for youth. Youth facilities are defined to include juvenile halls (WIC 850 and 870), secure youth treatment facilities (WIC 875), and juvenile ranches or camps (WIC 880). The funding cannot be used to increase the capacity of county youth facilities. Up to 5 percent of the funds would be available for BSCC for administrative costs.

Funding would be prioritized for counties that:

- (1) Have not previously received funding through the Local Youthful Offender Rehabilitative Facility Construction Grants (WIC 1971 and 1973).
- (2) Modernize units and sleeping rooms to meet or exceed the applicable Title 24 building standards, which became effective January 1, 2020.

DJJ Population Projections. Compared to the 2021 Budget Act projections, the Governor's Budget estimates an average daily population of 657 youth in 2021-22 and 544 youth in 2022-23, which represents an increase of 44 youth in 2021-22 and a decrease of 69 youth in 2022-23,

respectively. Accordingly, the Budget reflects an increase of \$1.8 million General Fund in 2021-22 and a decrease of \$10.1 million General Fund in 2022-23. The temporary increase in 2021-22 is the result of DJJ processing a backlog of youth committed prior to July 1, 2021, due to pausing intake in response to COVID-19. According to these projections, DJJ would still have 493 youth in custody as of June 2023.

LAO Comments.

Proposal Not Based on Thorough Assessment of County Facility Needs. While the administration conducted a survey to determine whether counties would be interested in receiving additional facility funding, no assessment has been carried out to detail the extent to which existing county facilities are currently in need of repair or not adequate to provide rehabilitative programs or other services for realigned youths. Moreover, the administration has not provided detailed cost estimates for addressing any identified deficiencies— making it difficult for the Legislature to evaluate the appropriateness of the proposed \$100 million.

Newly Constructed Beds Should Be Accounted for. Due to the facility grant funds that the state has provided to counties in recent years, a significant number of newly constructed beds have become or will become available. Specifically, 614 new beds have been constructed since 2013 and 318 new beds are expected to become available over the next several years, for a total of 932 new beds— somewhat more than the number of youths expected to be realigned to counties in 2024-25. In assessing whether existing county facilities are adequate, it is important to consider the availability of the new beds, as they could be more conducive to programming and in better condition than a county's existing beds.

Counties With Facility Needs Can Contract for Needed Facilities. We also note that while it is possible that some counties—particularly smaller counties—may have some facility needs, such counties can contract with other counties to house realigned youths. A survey conducted by BSCC following the passage of SB 823 found that several counties would be willing to take realigned youths from other counties.

Staff Comments.

Role of OYCR. SB 823 specified that no juvenile grants shall be awarded by BSCC without the concurrence of OYCR. It also specified that all juvenile justice grant administration functions should move from BSCC to OYCR by January 1, 2025. For this proposal, the Administration has confirmed that OYCR would be involved, but their role is not clear from the budget proposal or budget bill language. OYCR is also in the process of reviewing each county's plans for juvenile justice, as required by SB 823, which is supposed to include an outline of facilities. It would be useful for the Legislature to have more information about the facilities elements contained in the county plans to assess the need for this funding.

Lack of detail. The Administration has not provided any details on the grants themselves, including the size of the grants or number of awards, and an outline of the selection process, including how grants would be ranked and who would be on the selection committee. The proposal does not specify how much funding would go towards different types of facilities, such as SYTFs, or how

the Administration will ensure that the facilities are aligned with the new vision for juvenile justice. For example, some counties may use this funding to upgrade their juvenile halls, which may not result in the desired types of space. The proposal also doesn't outline reporting requirements. The Legislature should consider defining more of these parameters in language.

DJJ Transfer Plan Missing. SB 92 required CDCR to provide a plan by January 1, 2022 for transferring the remaining youth in DJJ by the closure date. This plan has not yet been provided.

LAO Recommendation. Because the administration did not provide adequate justification for the level of facility funding requested and it is not clear why additional funding is necessary, we recommend that the Legislature reject the Governor's proposed County Operated Juvenile Facility Grant Program. To the extent the administration is able to provide a detailed assessment of county juvenile facility needs that account for newly constructed beds in the future, the Legislature could consider providing facility grants to counties at that time.

Staff Recommendation. Hold Open.

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)

CDCR manages the state's prison system, with an emphasis on rehabilitation and preparing individuals to successfully reintegrate into their communities upon release. CDCR employs over 60,000 staff, accounting for roughly 25 percent of California state employees (excluding public universities). The Governor's budget proposes total funding of \$14.2 billion (\$13.8 billion General Fund and \$364.4 million other funds) for CDCR in 2022-23.

CDCR is organized into six divisions:

- Division of Adult Institutions (DAI)
- Division of Adult Parole Operations (DAPO)
- Division of Health Care Services (DHCS)
- Facility Planning, Construction and Management (FPCM)
- Division of Juvenile Justice (DJJ)
- Division of Rehabilitative Programs (DRP)

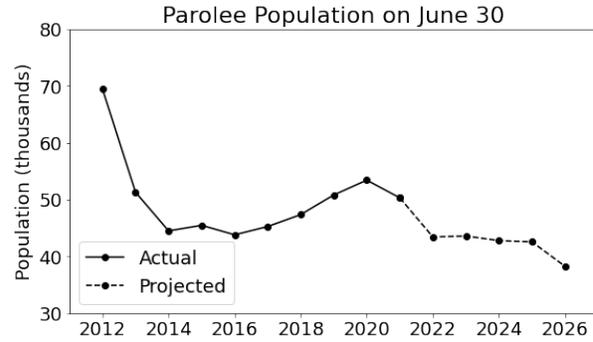
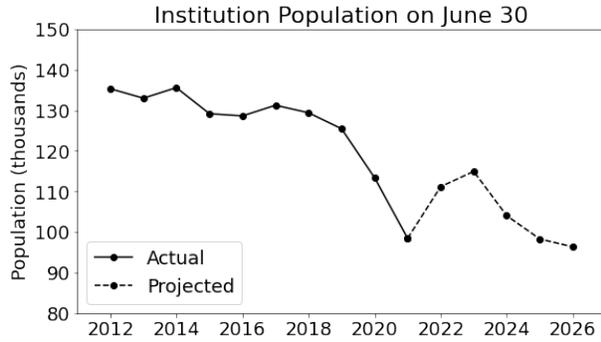
CDCR also contains other offices and programs, including the Board of Parole Hearings (BPH) and the Prison Industry Authority (PIA).

Issue 2: Population Projections

Adult Incarcerated Population. Compared to the 2021 Budget Act projections, the adult incarcerated average daily population is projected to decrease by 1,705 in 2021-22, and increase by 6,605 in 2022-23, to a total of 104,554 and 112,864, respectively. The 2021-22 decline is primarily due to actions taken to reduce the prison population in response to COVID-19 and the 2022-23 increase is largely due to the resumed intake of individuals sentenced to prison but held in county jails pending transfer to state prison. However, the population is trending downward in the long term, and is projected at 100,361 for 2024-25.

Adult Parolee Population. Compared to 2021 Budget Act projections, the average daily parolee population is projected to remain the same in 2021-22, with a slight increase of 9, followed by a decrease by 4,716 parolees in 2022-23, totaling 54,244 and 49,499, respectively. The decline in 2022-23 is related to an overall decrease in the incarcerated population and shorter parole terms.

When compared to the projected average daily population at the 2021 Budget Act, these changes result in a decrease of \$56.9 million General Fund in 2021-22, and a decrease of \$19.4 million General Fund in 2022-23. A handout has been provided by CDCR to accompany this item.



Data from CDCR

LAO Comment. The Governor’s budget proposes \$92.3 million (mostly from the General Fund) to accommodate a 6,605 increase (from 106,259 to 112,864) in the projected average daily inmate population in 2022-23 relative to what was assumed in the enacted 2021-22 budget. The administration indicates that this increase is largely due to the intake of a backlog of people who were sentenced to prison but housed in county jails while prison admissions were halted in response to the COVID-19 pandemic.

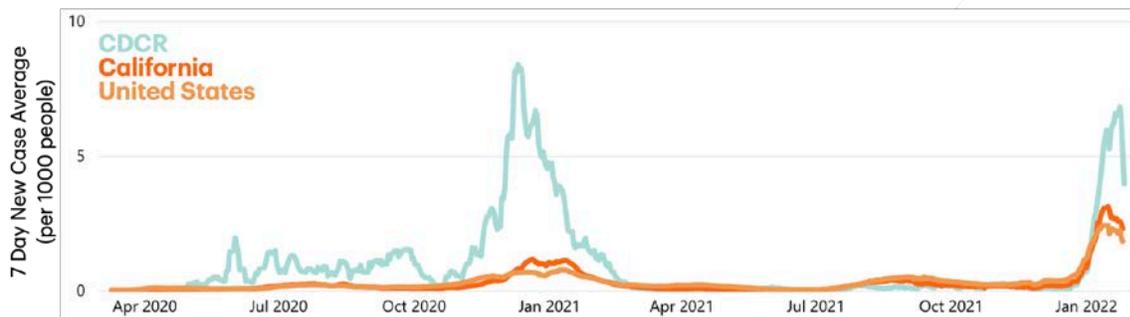
As of January 12, 2022, the inmate population was 99,110 and the administration indicated that the backlog in jails had largely been eliminated. Accordingly, it seems implausible that the average daily inmate population will reach 112,864 in 2022-23 as assumed in the Governor’s budget. This suggests that the proposed budget overestimates the projected inmate population in the budget year, potentially by several thousand. Based on our discussions with the administration, this is likely for two reasons. First, it appears that this overestimate was largely driven by an assumption that admissions to prison would be higher between July and December 2021 than they actually were. Second, the administration’s projections do not account for Chapter 728 of 2021 (SB 843, Allen), which requires resentencing of individuals to lesser terms to reflect the elimination of certain sentencing enhancements. The administration indicates that its spring 2022 population projections and associated budget adjustments at the May Revision will reflect both the lower than expected admissions and the estimated impact of Chapter 728. Accordingly, we withhold recommendation on the administration’s adult population funding request until the May Revision.

Staff Recommendation. Hold open.

Issue 3: COVID-19 Direct Response Expenditures

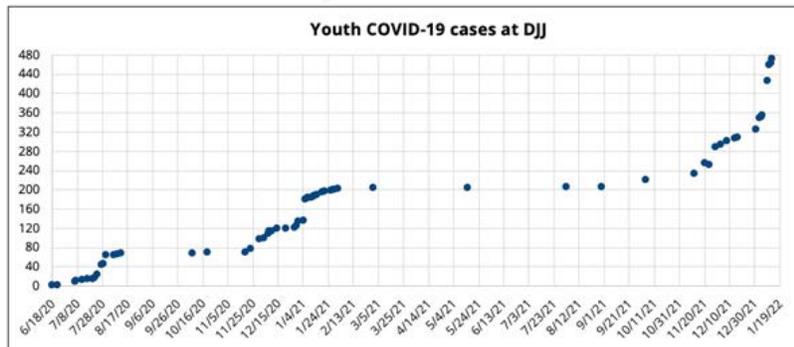
Governor’s Budget. The proposed budget includes \$424.7 million one-time General Fund in 2022-23 for CDCR’s response to the COVID-19 pandemic. There has been a recent surge of cases within the prison system, leading CDCR to suspend visitation and intake from county jails and limit programming and transfers.

Background. As of January 28, 2022, the incarcerated population has had a total of 64,900 cases and 246 deaths since the beginning of the pandemic, including 6,098 active cases³. In addition, as of January 27, 2022, there have been a total of 38,845 cases and 50 deaths among CDCR staff, including 4,412 active cases⁴. Rates of COVID-19 within the incarcerated population have outpaced state and national averages throughout much of the pandemic (see below).



Source: CDCR

DJJ has had a total of 571 cases, and has 41 active cases as of January 26, 2022⁵. COVID-19 cases at DJJ have also risen dramatically recently, and at least one youth was admitted to the hospital after experiencing serious symptoms⁶. The data available for DJJ is more limited due to medical privacy laws for minors. Juvenile offenders also did not have the same early release opportunities as the adult population (although the density of juvenile facilities was also lower to begin with). There also have been reports of staff not wearing masks or other protective equipment⁷.



Cumulative COVID-19 cases at DJJ. Source: CJCJ⁸

³ <https://www.cdcr.ca.gov/covid19/population-status-tracking/>

⁴ <https://www.cdcr.ca.gov/covid19/cder-cchcs-covid-19-status/>

⁵ <https://www.cdcr.ca.gov/juvenile-justice/pandemic-response/>

⁶ <https://calmatters.org/justice/criminal-justice/2022/01/covid-juvenile-prisons/>

⁷ <https://www.theguardian.com/world/2021/jan/08/coronavirus-california-detention-custody>

⁸ <http://www.cjcyj.org/news/13205>

Population Reduction. In response to the pandemic, and in acknowledgement that the prison environment is particularly conducive to the transmission COVID-19, CDCR took steps to reduce its inmate population.

In April 2020, CDCR expedited the release of almost 3,500 incarcerated persons serving a sentence for non-violent offenses, who do not have to register as a sex offender, and who had 60 days or less to serve.

In July 2020, CDCR implemented a community supervision program. Inmates were eligible if they are within 180 days of release; were not serving a current term for domestic violence, a violent crime, or were required to register as a sex offender; and did not have a risk assessment score that indicates a high risk for violence. About two-thirds of these incarcerated people were released to Post Release Community Supervision (county probation) and one-third were released to state parole. The last list of potentially eligible people was created on July 29, 2021 and is being processed. No new eligibility will be extended.

CDCR also reviewed and released people deemed at high risk medically for COVID-19 on a case-by-case basis. Additionally, on July 9, 2020, CDCR applied a one-time 12-week positive programming credit to all eligible inmates to recognize the impact the COVID-19 Pandemic has had on inmates' access to programs and credit earnings.

Suspension of Intake from Counties. On March 24, 2020, the Governor issued Executive Order N-36-20, to mitigate the spread of COVID-19 in the state's adult institutions by stopping intake for 30 days, which was subsequently extended to 60 days. Since then, COVID-19 outbreaks have led to intermittent suspensions of intake from county jails at both adult and juvenile facilities. Currently, intake is suspended at DJJ, Wasco State Prison, and North Kern State Prison, but is open at Central California Women's Facility.

Impact on visitation and programming. COVID-19 severely impacted CDCR's ability to provide in-person visitation and programming. Currently, in-person visitation is suspended at DJJ and at adult facilities. At DJJ, all volunteer programs have been suspended since March 18, 2020, but the California Education Authority is continuing high school classes. There have been recent reports of highly restricted programming at youth facilities among outbreaks⁹. Visitation and programming are also discussed in more detail in later discussion items.

Vaccinations and testing. Vaccinations are currently required for employees and incarcerated workers in health care settings. In other settings, employees do not have to be vaccinated but are required to test twice a week. As of January 28, 2022, 81 percent of the incarcerated population and 71 percent of CDCR employees were fully vaccinated. However, vaccination rates vary widely across facilities and settings. For example, three institutions (Pelican Bay State Prison, High Desert State Prison, and the California Correctional Center) have staff vaccination rates at or below 50 percent. The highest staff vaccination rates are at the medical facilities, including the California Health Care Facility and the California Medical Facility, where vaccines are mandated for employees.

⁹ http://www.cjcg.org/uploads/cjcg/documents/DJJ_on_the_brink_2021.pdf

Plata v Newsom. On September 27, 2021, as part of ongoing oversight related to the *Plata* case, CDCR was ordered to mandate vaccinations for employees entering CDCR institutions and incarcerated persons who work outside of an institution or accept in-person visitation, to protect the health and rights of the incarcerated population. The *Plata* case is a class action lawsuit where prisoners alleged that CDCR inflicted cruel and usual punishment by being deliberately indifferent to serious medical needs. A settlement agreement was reached in 2002, but a lack of progress led a federal judge to place California’s prison medical care system under the control of a court-appointed Receiver¹⁰. The vaccine mandate was the Receiver’s recommendation¹¹. However, the Administration appealed the mandate, and a stay was granted on November 26, 2021. The Administration has argued that the mandate would lead to staffing shortages¹².

San Quentin Outbreak and Lawsuit. In May 2020, CDCR transferred 121 people from the California Institute for Men, the state prison with the highest COVID-19 rate at the time, to San Quentin without adequate testing and isolation. This transfer initiated an outbreak at San Quentin, in which over 2,600 staff and incarcerated people tested positive (representing 75 percent of the prison population) and 28 incarcerated people and 1 correctional officer died. In addition, a months-long lockdown was initiated. Hundreds of petitions were filed alleging unlawful incarceration under the Eighth Amendment’s prohibition against cruel and unusual punishment. In November 2021, a judge ruled for the petitioners, agreeing that CDCR acted with deliberate indifference and inflicted cruel and unusual punishment. However, no remedy was ordered¹³.

Previously Allocated Resources. CDCR has spent a total of \$1.1 billion on COVID prevention, mitigation, and response activities in 2019-20 and 2020-21 (see below table). In addition, the 2021 Budget Act included \$407.9 million one-time General Fund for COVID-19 response.

COVID-19 Direct Response Costs

Cost Category	2019-20 Actual Costs	2020-21 Actual Costs	Total Actual Costs
Corrections and Rehabilitation			
Temporary Suspension of Prison Intake	\$31,215,000	\$176,827,000	\$208,042,000
Reentry Housing	\$0	\$15,183,000	\$15,183,000
Project Hope (CDCR)	\$0	\$478,000	\$478,000
Personal Protective Equipment	\$23,330,000	\$18,837,000	\$42,167,000
Medical Surge/Tents	\$1,198,000	\$154,600,000	\$155,798,000
Testing (Employee)	\$2,518,000	\$270,738,000	\$273,256,000
Testing (Inmate)	\$6,101,000	\$128,909,000	\$135,010,000
Cleaning	\$20,740,000	\$27,624,000	\$48,364,000
Other Staffing and Operational Costs	\$63,804,000	\$168,568,000	\$232,372,000
Totals	\$148,906,000	\$961,764,000	\$1,110,670,000

¹⁰ https://prisonlaw.com/post_case/plata-v-brown/

¹¹ <https://prisonlaw.com/wp-content/uploads/2021/09/21.09.27-Doc-3684-Order-re-mandatory-vaccinations.pdf>

¹² <https://www.latimes.com/california/story/2021-11-04/newsom-guards-challenge-vaccine-mandates-at-prisons>

¹³ <https://sfpublicdefender.org/news/2021/11/judge-rules-cdcr-inflicted-cruel-unusual-punishment-on-incarcerated-people-at-san-quentin-during-covid-19-pandemic/>

Source: Department of Finance

The proposed funding includes \$392.5 million for California Correctional Health Care Services (CCHCS) and \$32.2 million for CDCR. Proposed uses of the funding include testing and vaccination for incarcerated persons and staff, medical staffing registry and overtime, medical treatment, purchasing personal protective equipment and air filters, overtime, and medical surge tents and equipment rental contracts in the case of an outbreak. A breakdown of the funding request is provided in the table below. The Administration has indicated that this is an estimate of potential needs over the next fiscal year.

COVID-19 Direct Response Budgeted and Proposed Costs

COVID-19 Direct Response Activities	2021 Budget Act	2021-22 Proposed Funding Over 2021 Budget Act	2022-23 Proposed Funding
California Department of Corrections and Rehabilitation	\$410,486,000	\$205,547,000	\$424,669,000
Hospital and Medical Surge	\$29,245,000	\$0	\$10,905,000
State Response Operations	\$82,767,000	\$0	\$32,154,000
Statewide Testing	\$198,440,000	\$205,547,000	\$380,109,000
Vaccine Distribution and Administration ^{1/}	\$2,500,000	\$0	\$1,501,000
Temporary Suspension of Prison Intake	\$97,534,000	\$0	\$0

^{1/} The 2021B budget Act did not specifically identify an amount for vaccine distribution and administration for the California Department of Corrections and Rehabilitation (CDCR). Estimated costs for vaccine-related activities were reflected in the broader state response operations assumptions. CDCR currently estimates it will expend \$2.5 million for this purpose in 2021-22, which will be absorbed within existing resources.

Control Section Language. As with prior COVID-19 expenditures, the Administration is requesting control language allowing additional flexibility in how the funding is used. The 2021-22 budget included control section language allowing the administration to shift resources budgeted for COVID-19 response between and within nine departments over the course of the fiscal year, subject to 10-day notification to the Joint Legislative Budget Committee (JLBC). The administration is proposing to modify this section to also allow the amount budgeted for COVID-19 response in three departments—including CDCR—to be increased subject to 10-day JLBC notification.

LAO Comments. At this time, the administration has not provided sufficient information to allow the Legislature to evaluate these proposals. It is unclear whether the proposed level of funding is appropriate as the department has not yet provided adequate justification, such as projections of the number of inmates and employees requiring tests or personal protective equipment. Accordingly, we recommend that the Legislature require the department to provide the information necessary to justify the proposal.

Staff Recommendation: Hold Open.

Issue 4: Visitation and Remote Communication Opportunities

Background. Numerous studies have demonstrated the benefits of contact between incarcerated people and their loved ones¹⁴. These include improved mental and physical health for the incarcerated person, as well as better behavior while incarcerated, more successful re-entry, and reduced recidivism rates. Therefore, increasing opportunities for in-person visitation and remote communications is both humane and promotes public safety for the community.

Visitation. In 1975, the Legislature laid out a list of rights for the incarcerated population, such as the right to correspond confidentially with a lawyer (PEN 2601). This section originally included the right “To have personal visits; provided that the department may provide such restrictions as are necessary for the reasonable security of the institution.” However, this clause was repealed in 1996 (SB 1221, Statutes of 1996, Chapter 132), to allow for visitation to be used as a reward (or lack of visitation as a punishment). During this time, visitation days and hours were also severely curtailed. As of January 2020, institutions only offered two days of in-person visitation per week. According to the Coalition for Family Unity, only 34 percent of incarcerated people in California receive one or more visit a year.

The enacted 2021-22 budget included a third day of in-person visitation on Fridays at all institutions. In addition, provides visitors with free transportation on select days throughout the year to all prisons via chartered busses. The budget appropriated \$20.3 million ongoing General Fund to support this change.

COVID-19 and Visitation. In March 2020, due to the COVID-19 pandemic, CDCR stopped in-person visiting to curtail the spread of the virus into the prison. CDCR resumed in-person visitation on April 10, 2021, but it was suspended again on January 8, 2022 due to a surge in cases. Visitation is also suspended at DJJ.

CDCR created a phased approach to in-person visiting. Depending on the current number of new COVID-19 cases, an institution is classified via one of three phases:

- Phase 1 – three or more positive COVID-19 incarcerated persons related cases. Video visits only for one hour.
- Phase 2 – no new outbreak of COVID-19 cases for at least 14 days. In-person visitation with one approved visitor per incarcerated person for a maximum of two hours. Video visits are also available for one hour.
- Phase 3 – no new outbreak of COVID-19 cases for at least 28 days. In-person visitation with up to three approved visitors per incarcerated person for two hours. Video visits are also available for one hour.

As of January 27, 2022, all CDCR institutions were in Phase 1.

¹⁴ https://www.prisonpolicy.org/blog/2021/12/21/family_contact/

Remote Communication Options. Several measures were implemented to increase remote communications during the pandemic. These include increasing the number of free phone calls, offering one-hour video visits (beginning December 2020), and expanding a tablet program that will allow for text messaging and emails.

Most of these services are provided by ViaPath Technology (formerly known as Global Tel Link or GTL)¹⁵. ViaPath also is taking over the tablet program, which was piloted by JPay¹⁶. Through this program, ViaPath will provide tablets to the entire incarcerated population, which they can use for video calling, text messaging, and other functions. Incarcerated persons receive some free services, including limited phone calls and messaging, and access to certain books and reading materials. They can also pay for additional services, including music, videos, audiobooks and additional communications. These contracts are no cost to the state, and ViaPath provides the equipment, including the tablets. In May 2021, CDCR renegotiated the phone contract to reduce rates to 2.5 cents per minute for domestic calls, 7 cents per minute for international calls, and 5 cents per item or 2,000 characters of electronic correspondence.

The enacted 2021-22 budget included \$12 million General Fund one-time for CDCR to add an additional 60 minutes of free telephone calls to each incarcerated person every two weeks, bringing the total amount of free calling to 75 minutes every two weeks. This funding was also intended to cover 60 free electronically transmitted outgoing written messages, equivalent to an email or instant message, per month.

Visiting Scheduling Application (VSA). Through a separate contract, ViaPath also operates the application through which people sign up for in-person and video visits. This process was migrated earlier this year from a different application called Vpass. However, significant issues with VSA have been reported, exacerbated by extremely high demand for still limited appointment availability. This include technical issues such as freezing and crashing due to high traffic when appointments are released. In addition, due to limited availability, appointments are often immediately booked. This has led to considerable frustration, as family members wake up early (many appointments are released at 6am) and spend a long time trying to get into and through the system only to find that all the appointments are gone already.

This is an informational item to receive an update from the Administration on the status of visitation and communication options at CDCR, including the implementation of the referenced items from the 2021-22 Budget and, with acknowledgement of the necessary pandemic restrictions, what additional steps could be taken to improve the visitation process for incarcerated persons and their loved ones.

Staff Recommendation. This is an informational item, and no action is needed.

¹⁵ <https://www.cdcr.ca.gov/family-resources/gtl-tablets/>

¹⁶ <https://prisonjournalismproject.org/2021/03/26/when-california-prisons-switch-tablet-vendors/>

Issue 5: Tattoo Removal Program

Governor’s Budget. The proposed budget includes \$567,000 General Fund in 2022-23 and \$1.1 million General Fund through 2025-26 to implement a tattoo removal program.

Background. CDCR estimates that 12 percent of the current incarcerated population have highly visible tattoos, such as on the face or hands. Any tattoos, but especially offensive tattoos, tattoos related to gangs, or highly visible tattoos, can be a barrier to employment. In addition, participants trying to leave gangs may find it difficult if they have visible gang-related tattoos.

CDCR implemented a pilot tattoo removal program at Folsom Women’s Facility and the Sacramento-based Custody to Community Transition Reentry Program Facility. In this program, a van with the necessary tattoo removal equipment came to the facility, and participants were escorted to the van for short treatments. CDCR estimates that it takes six treatments on average to remove tattoos. This pilot program supported 372 participants over three years. Funding was included to expand the pilot in the 2019 Budget Act, but the funding was swept in 2020 due to the anticipated impacts of the COVID-19 pandemic.

This funding would be used to expand the tattoo removal program to all institutions, with priority going to individuals in the gang debriefing process and to individuals being released within two years with highly visible tattoos. CDCR estimates these groups to include 91 and 1,452 participants respectively, representing nearly all participants in the gang debriefing process and roughly 5 percent of people within two years of release. This is lower than the estimated 12 percent of people who would have highly visible tattoos, but CDCR does not expect everyone to participate. Captains at each institution will be responsible for verifying participants for the program.

CDCR estimates that tattoo removals would begin in January 2023 (which is why the budget year request is lower than future years). The funding will be used to pay for the contracted tattoo removal services, custody overtime to escort participants to treatments, and one administrative staff position to oversee the program. That staff will also be responsible for tracking program utilization, interest, and waitlists across institutions. In 2024-25, CDCR will review the program to assess the need for and level of ongoing resources needed.

Staff Comment. The demand for services is difficult to estimate, and it is not clear how CDCR will prioritize participants if the program is oversubscribed. For example, according to CDCR’s estimates of the prevalence of highly visible tattoos and the number of people within two years of release, there will be over 3,300 eligible participants. CDCR estimates less than half of those will elect for tattoo removal. In the 2019 proposal, the Administration estimated roughly double the participants (although the incarcerated population has significantly changed over the course of the pandemic). The Legislature may want to request program updates prior to the proposed 2024-25 evaluation to ensure the program is funded at the appropriate level.

Staff Recommendation. Hold Open.

Issue 6: Rehabilitative Programming Support

Governor’s Budget. The proposed budget includes \$3.9 million General Fund and 62.5 positions in 2022-23 and \$4.6 million General Fund and 72.5 positions in 2023-24 and ongoing for support for rehabilitative programming services for CDCR and CCHCS, including 43 Management Service Technician (MST) positions for Inmate Activity Groups (IAGs) and 19.5 Office Technician (OT) positions in 2022-23 for Nursing Led Therapeutic Groups (NLTGs); increasing to 29.5 OTs in 2023-24 and ongoing for NLTGs.

Background.

Proposition 57. In 2016, voters approved Proposition 57, which authorizes CDCR to “award sentence credits for rehabilitation, good behavior, or educational achievements.” (Cal. Const., art. I, § 32). These credits are used to accelerate release dates or parole consideration hearings as applicable. Incarcerated persons can get credits in five categories: (1) Good Conduct Credit, (2) Milestone Completion Credit, (3) Rehabilitative Achievement Credit, (4) Education Merit Credit, and (5) Extraordinary Conduct Credit.

Rehabilitative Achievement Credit (RAC). Incarcerated people can earn RAC for participation in approved rehabilitative programs, including IAGs and NLTGs. The credit earning rate is 10 days per 52 participation hours, up to 40 days per year. All eligible activities, attendance, and credit awarding must be entered and tracked in the Strategic Offender Management System (SOMS).

IAGs. The implementation of Prop 57 has led to an expansion of IAGs, from 1,100 in 2016-17 to 4,650 in 2021-22. Examples of IAGs include Narcotics Anonymous, Substance Abuse Treatment, Like Skills, and Victim Awareness. To be eligible for RAC, IAGs must be sponsored by CDCR staff and approved by the Division of Adult Institutions (DAI). Typically, this oversight has been provided by Self-Help Sponsors (SHSs), a part-time, dual-appointment position that CDCR employees may choose to take on in addition to their primary role. In addition, the 2018 Budget Act provided CDCR with 13 MST positions at institutions with 30 hours or more per week of RAC programming during evening and weekend hours. At that time, CDCR expected that the number of IAG programs would grow to 3,000 by the end of 2018-19.

NLTGs. CCHCS and CDCR offer health education programs through NLTGs, which are also eligible for RAC. According to the Health Care Department Operation Manual, these programs are designed to “provide education on disease processes, positive health behaviors and health improvement, therapeutic interventions (clinical and self-directed), and are designed to improve the patient’s overall quality of life and health status.” CCHCS runs more than 300 NLTGs and is anticipating this to grow to more than 1,300 statewide by 2023-24.

Projected Outcomes - IAG

Workload Measure	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27
Current IAG programs ¹	4,650	4,743	4,838	4,935	5,034	5,135

¹ 4,650 IAGs with a 2% annual growth in 2022-23 and ongoing.

Projected Outcomes – NLTG

Workload Measure	2021-22	2022-23	2023-24	2024-25 ²	2025-26	2026-27
NLTG programs ¹	300	800	1,300	1,326	1,353	1,379

¹ 300 NLTGs with anticipated implementation at 12 institutions in FY 2022-23 and FY 2023-24, for a total of 24 institutions.

² Beginning in 2024-25 a 2% annual growth is applied to reflect the expected NLTG program growth.

Source: Department of Finance

COVID-19 Impact. The COVID-19 pandemic heavily disrupted programming at CDCR and prevented incarcerated persons from earning RAC. In response, on July 9, 2020, CDCR applied a one-time 12-week positive programming credit to all eligible inmates to recognize the impact the COVID-19 Pandemic has had on inmates’ access to programs and credit earnings. Additionally, CDCR is in the process of implementing the Alternative RAC Earning IAG pilot program (in-cell RAC).

Proposed Funding. CDCR is asking for an additional 43 MSTs to provide RAC support. The total cost of this part of the request is \$3.7 million, but \$1.4 million would be diverted from the current funding for SHSs. CDCR is having trouble consistently filling those positions, particularly during the pandemic, and would shift that workload to the full-time MSTs. CCHCS is requesting 19.5 OTs in 2022-23, increasing to 29.5 OTs in 2023-24 and ongoing.

Staff Comment. Given the impact of the pandemic on programming, it is not clear whether these are the appropriate resources for this program at this time. The Administration indicated that the projections for programming demand were largely made prior to the pandemic. It is not clear when this programming will be fully functional again, or what the long-term form of the programming will look like. The Legislature may want to consider the timing of these resources.

Staff Recommendation. Hold Open.

Issue 7: Bachelor's Degree Program Expansion

Governor's Budget. The Governor's 2022-23 budget proposes \$5 million General Fund (decreasing to \$4.7 million annually beginning in 2024-25) and 15 positions to maintain and expand the number of prisons offering bachelor's degree programs in partnership with several different California State University (CSU) campuses. The resources would be used to maintain programs at four prisons whose existing funding is expiring and create new programs at three additional prisons. The funding would support administrative support positions and a customized database subscription for inmates to access scholarly journal articles. The proposal assumes federal funds would be accessible to most students and estimates that participants will be enrolled on a full-time basis at a cost of about \$10,000 per student.

Background. A recent study of a college-in-prison program in New York found that participation in the program reduced recidivism by 38 percent, and greater levels of participation correlated closely with even lower rates of recidivism¹⁷. California currently offers community college programs that lead to associate degrees at almost all facilities and offers bachelor's degree programs at a handful of institutions.

Existing Degree Programs. CDCR has implemented community college programs at 33 of the 34 CDCR institutions (California Health Care Facility in Stockton is the only exception). College programs have grown substantially since the passage of Chapter 695, Statutes of 2014 (SB 1391), which allows local community colleges to provide programming inside adult institutions in a closed classroom environment. Classes are restricted only to incarcerated individuals and colleges do not have to meet local residency requirements required on community-based campuses. In Spring 2021, 6,426 incarcerated people enrolled in community college courses. There are 1,499 incarcerated students who have already received associate degrees. At most institutions, students do not have the opportunity to continue to pursue a bachelor's degree. As a result, many students obtain multiple associate degrees.

CDCR currently provides one, fully operational, bachelor's degree program at California State Prison, Los Angeles County (LAC) through California State University, Los Angeles (CSULA). 37 people have graduated with bachelor's degrees in communications through this program. 45 students started the program, but some were transferred, and one died from COVID-19¹⁸. This program is set to expire June 30, 2024.

Additional pilot programs are operated at:

- Folsom State Prison (FSP) and Mule Creek State Prison (MCSP) through California State University, Sacramento (CSUS).
- Central California Women's Facility (CCWF) and Valley State Prison through California State University, Fresno.

¹⁷ <https://www.tandfonline.com/doi/full/10.1080/07418825.2021.2005122>, <https://www.eurekalert.org/news-releases/937161>

¹⁸ <https://www.latimes.com/california/story/2021-11-04/freed-prisoner-earns-college-degree-in-reentry-program>

These programs are set to expire June 30, 2022.

These are two-year programs for students who have already received an Associate degree. CDCR has one pilot program that partnered with a private college, but this proposed funding would be used exclusively for CSU partnerships. CDCR has indicated that the LAC program will be used as a model for the new programs. CDCR has not finalized what degrees will be offered (each institution will have one option) but indicated that they would likely be humanities or liberal arts focused, based on surveys of potential students.

Pell Grants. Incarcerated people in the United States were eligible to receive Pell Grants starting in 1965. However, the Violent Crime and Law Enforcement Act, passed in 1994, banned incarcerated students from receiving Pell Grants and prompted the shutdown of many college programs in prisons. In 2016, the Second Chance Pell Pilot Program expanded funding again to incarcerated students on a limited basis. Through Spring 2023, CDCR estimates that 50 percent of students will be covered by Pell grants.

In December 2020, Congress passed a COVID-19 stimulus package that included the resumption of federal financial aid for incarcerated individuals. This will provide access to federal Pell Grant funds for all qualified CDCR students by July 2023, paying up to \$6,495 per year for college tuition. In 2023-24 and ongoing, CDCR estimates that 90 percent of students will be covered by Pell grants, which will cover roughly 64 percent of the program costs.

Proposed Expansion. CDCR is requesting resources to continue the programs at LAC, FSP, MCSP, CCWF, and to create new programs at California Institute for Women, California Institute for Men, and Calipatria State Prison. These institutions were chosen based on the number of students having already earned an associate degree. CDCR is planning for two cohorts of 25-30 students per facility.

In addition to tuition and supplies, the requested resources (outlined in the table below) include:

- a subscription to access library materials, customized to the needs and restrictions of the incarcerated population.
- 8 Supervisors of Academic Instruction (SAI), including:
 - 7 field SAIs (one at each institution) responsible for identifying candidate students and coordinating with the colleges on implementation, operation, and evaluation of the programs.
 - 1 SAI at headquarters responsible for managing wait lists, responding to incarcerated individual appeals, coordinating academic counseling, approval of credit earnings, overseeing staff development, ensuring accreditation, responding to grievances, technology needs and integration, and other supervisory duties.
- 7 AGPAs (one at each institution) to provide administrative support.

Fiscal Year	Student Cost Total	EBSCO Subscription	Position Cost	Grant Funding	Total Requested
2022-23	\$3,060,000	\$495,000	\$2,375,000	\$ (974,000)	\$4,956,000
2023-24	\$3,978,000	\$495,000	\$2,344,000	\$(2,280,000)	\$4,537,000
2024-25	\$4,284,000	\$495,000	\$2,344,000	\$(2,455,000)	\$4,668,000

Source: Department of Finance

LAO Comment. Expanding higher education is promising because various studies show that education—including higher education—can reduce the number of offenders who recidivate (or reoffend) and that the resulting correctional savings can more than offset their costs. In addition, the proposal would increase the number of inmates who obtain sentencing credits for earning bachelor’s degrees, which could create further state savings from reduced sentences. However, we note that some key questions remain unanswered about the proposal that make it difficult for the Legislature to evaluate.

Specifically, the department has not provided information on:

- Which majors would be offered.
- Which inmates would be eligible for enrollment.
- What specific courses and services (such as tutoring, academic counseling, and career advising) would be offered to ensure inmates can successfully complete bachelor’s degrees.
- Which services CSU would be responsible to provide and which ones CDCR would provide.
- Whether all necessary stakeholders were involved in the planning, such as the Academic Senate, to ensure the program will be implemented properly.

Furthermore, the department did not yet provide information to assess whether the assumptions about program costs, full-time enrollment, number of positions necessary, and amount of funds eligible for reimbursement are justified. In addition, the department has not provided information on why it needs a General Fund augmentation to continue to operate some of the programs, since they were established and have since operated within the department’s existing budget. Accordingly, we recommend that the Legislature require the department to provide the information necessary to justify the proposal.

Staff Recommendation: Hold Open.

Issue 8: Cellular Interdiction Program

Governor's Budget. CDCR requests \$12.6 million General Fund and five positions in 2022-23; \$18.5 million in 2023-24, \$17.9 million in 2024-25, \$3.7 million in 2025-26; and \$2.4 million in 2026-27 and ongoing to upgrade and expand its cellular interdiction solution to all 33 operational, state-owned prisons.

Background. CDCR confiscated 11,852 cell phones in 2020. CDCR investigations have shown that these phones are used to coordinate to bring additional contraband into prisons, and have been used to coordinate murder, attempted murder, and conspiracy to commit murder against Peace Officers, incarcerated persons, and members of the public. According to CDCR, contraband cell phones have also been used to harass victims, threaten witnesses and officials, and commit fraud and identity theft.

CDCR currently operates Managed Access System (MAS) at 18 institutions. While CDCR attempts to prevent contraband cell phones from entering prisons in the first place, MAS adds another layer of protection by interrupting the functioning of any contraband phones. MAS currently does this by creating a local, private cellular network that only authorized devices can connect to. CDCR also adds detected unauthorized devices to the National Stolen Phone Database, which blocks their ability to connect to major carriers. CDCR received \$1.8 million General Fund in 2021-22 and ongoing to maintain MAS.

However, the hardware owned by CDCR only covers certain frequency bands, but commercial cell phone networks have expanded into new frequency bands. CDCR has been testing Evolved MAS (EMAS) at five institutions. EMAS acts as a roaming carrier, enabling greater control over the devices on the network. The funding requested here would enable CDCR to roll out EMAS at all institutions, and to upgrade the hardware to cover all commercial frequency bands. As cellular technology continues to evolve, EMAS will likely need software updates. However, the hardware update to cover all commercial frequency bands is a one-time investment.

LAO Recommendation. The 2021-22 budget package included supplemental reporting language directing CDCR to submit by January 10, 2022 a report identifying and prioritizing all special repair and deferred maintenance projects and capital outlay projects estimated to cost over \$5,000,000 that are likely to be needed within the next ten years. In identifying and prioritizing projects, the administration shall consider various factors, including the possibility of future prison closures. Accordingly, this report could provide information on the administration's long-term infrastructure plans that would affect the Legislature's view of these projects. For example, it doesn't seem prudent to pursue the proposed information technology projects at facilities that will be closed or significantly renovated. To date, the administration had not submitted this report to the Legislature. However, the administration has indicated that it expects to do so by the end of January 2022. Accordingly, the Legislature does not have sufficient information to fully assess proposals related to modifying CDCR infrastructure, such as these. Accordingly, we recommend that the Legislature withhold action until the department provides the report.

Staff Recommendation: Hold Open.

Issue 9: Statewide Correctional Video Surveillance Continuation

Governor’s Budget. The proposed budget includes \$80.3 million General Fund and 32.0 positions in 2022-23, and \$7.6 million General Fund in 2023-24 and ongoing to deploy fixed cameras at ten institutions, deploy body-worn cameras at four institutions, and manage and maintain video.

Background. CDCR has been expanding the use of video surveillance at state prisons to help monitor activities, provide evidence in disputes or allegations of misconduct, and track contraband. Much of the implementation has been at the recommendation of the Office of the Inspector General (OIG), or by recommendation or order of the courts or other oversight bodies related to the *Armstrong* and *Coleman* lawsuits.

In 2015, the OIG conducted a special review of High Desert State Prison (HDSP), and recommended CDCR “...immediately install cameras in all inmate areas, including, but not limited to, the exercise yards, rotundas, building dayrooms, patios, and program offices of HDSP.”

In 2016, CDCR installed an Audio-Video Surveillance System (AVSS) with 207 high-definition cameras in designated high-traffic and large congregation areas at HDSP. This served as a technical pilot, enabling CDCR to test the viability of operating this type of equipment on CDCR’s network. In 2017-18, CDCR received funding to complete the AVSS at HDSP and install the AVSS at Central California Women’s Facility (CCWF). These locations were determined to have an immediate need for AVSS based on criteria such as the number of violent incidents in 2015-16.

Also in 2016, a *Coleman* Special Master monitoring team recommended CDCR install video surveillance cameras to increase observation and provide transparency in areas where actions leading to allegations commonly occur. In 2018-19, CDCR received funding and installed 178 video surveillance cameras at SAC.

In September 2020, the United States District Court ordered CDCR in *Armstrong v. Newsom* (No. 4:94-cv-02307-CW N.D. Cal.) to install surveillance cameras in all areas of Richard J. Donovan Correctional Facility (RJD) to which incarcerated people have access, including, but not limited to, all exercise yards, housing units, sally ports, dining halls, program areas, and gymnasiums, within 90 days. CDCR was further ordered to retain footage of use of force and other triggering events indefinitely, and all other footage for a minimum of 90 days. The Court also ordered the use of body-worn cameras (BWCs) within 60 days for all correctional officers at RJD who may interact with protected class members.

Effective January 19, 2021, CDCR deployed BWCs in compliance with the court’s order at RJD. All correctional officers and sergeants who interact with the incarcerated population are required to wear a BWC. In addition, CDCR activated 966 high-definition cameras in designated high-traffic and large congregation areas on April 5, 2021, in accordance with the *Armstrong* court directive.

In March 2021, the United States District Court ordered CDCR in *Armstrong v. Newsom* (No. 4:94-cv-02307-CW N.D. Cal.) implement the same remedial measures that were required at RJD at five prisons—California State Prison, Los Angeles County (LAC), California State Prison,

Corcoran (COR), Substance Abuse Treatment Facility (SATF), California Institution for Women (CIW), and Kern Valley State Prison (KVSP). The 2021 Budget Act includes resources to enable CDCR to implement these measures.

The 2021 Budget Act also included resources for CDCR to implement AVSS at Salinas Valley State Prison (SVSP), California Correctional Institution (CCI), and Mule Creek State Prison (MCSP) and complete the AVSS installation at SAC.

Perimeter Monitoring. CDCR has also reported a significant increase in the number of incidents where intruders have gained access to institutional grounds to introduce illegal drugs and contraband into an institution by throwing contraband into the Minimum Support Facility (MSF) perimeter. AVSS installations use radar technology to cover vulnerable areas outside the MSF perimeter. This technology detects movement outside of the perimeter and alerts staff to potential security incidents and is integrated into the existing Video Management System (VMS) software. The VMS is programmed to send real time alerts or trigger an alarm when the system detects activity in the covered area. Modern cameras utilize infrared illumination to allow the camera to record at night without the need for traditional exterior lighting and will be used to monitor the perimeter, in conjunction with the radar technology, where necessary to see in low light situations.

Retention of Video. The video collected here would be stored for at least 90 days. In addition, the following events would require staff to preserve the recorded data until instructed otherwise, as potential evidence in investigations and in administrative, civil, or criminal proceedings:

- Any use of force incident
- Riots
- Suspected felonious criminal activity
- Any incident resulting in serious bodily injury, great bodily injury, and all deaths
- All PREA allegations
- Allegations of incarcerated individual misconduct (i.e., Serious Rules Violation Reports by staff)
- Allegations of staff misconduct by an incarcerated individual, employee, visitor, or other person
- Incidents that may potentially be referred to the District Attorney's Office
- An employee report to supervisor of on-the-job injury, or
- Incarcerated individual claims with the Department of General Services, Office of Risk and Insurance Management, and Government Claims Program

Additionally, the Office of Grievances may request to review audio and/or video recordings when conducting an inquiry as it relates to a submitted appeal.

Impact of video evidence. Since implementation at CCWF, HDSP, and RJD, these institutions have utilized their AVSS to identify suspects in investigations, including attempted homicides. The institutions have successfully utilized video from their respective systems to locate lost, misplaced, or stolen items eliminating the need for lengthy searches and potential lockdown situations leading to modified programming.

Institution	Rules Violation Reports (RVR)			Staff Complaints			Incident Reports		
	Video Available	Impact	No Impact	Video Available	Impact	No Impact	Video Available	Impact	No Impact
CCWF	1,927	1250	851	932	582	179	1219	630	560
HDSP	3,645	2,205	1,772	406	332	37	1301	999	308
Totals	5,572	3,455	2,623	1,338	914	216	2,520	1,629	868

The data in this table represents the number of times AVSS was available for Rule Violation Reports, Staff Complaints, and Incident Reports and if the video had an impact at CCWF and HDSP. A single video can be used in more than one Rule Violation Report. This data covers February 1, 2018 through May 31, 2020. Source: CDCR’s Office of Research.

Proposed Resources. This proposal would include funding for ten additional facilities, not yet specified. It would also include funding for the implementation of BWCs at CCI, SAC, CCWF, and SVSP.

Depending on the institution size and design, each AVSS may consist of approximately 500 to 1,000 digital cameras installed inside and outside the buildings throughout an institution. Typical locations include, but are not limited to: exercise yards, housing units, program buildings, administration buildings, visiting rooms, gymnasiums, sally ports, and visitor processing areas. This level of camera coverage far exceeds the existing coverage at other institutions.

The proposal also includes a total of 32 positions to support the expansion of AVSS:

- 4 Information Technology Specialist Is – one for each institution receiving BWC
- 14 Correctional Officers - one for each institution receiving AVSS or BWC for monitoring and reviewing video downloaded from the system, including processing AVSS Evidence Request Forms and storing requested events and performing follow-up investigations related to criminal conduct captured on BWCs
- 4 AGPAs to act as liaisons between institutions and internal stakeholders, including tracking compliance with BWC policies, tracking damaged and inoperable equipment, and monitoring triggering events – one for each institution receiving BWCs.
- 4 AGPAs in the Division of Adult Institutions (DAI) to perform redaction services in response to PRA requests
- 3 Special Agent Investigators and 1 Senior Special Agent for the Forensic Analysis Support Team (FAST) at the Office of Internal Affairs (OIA) to serve as video surveillance and BWC liaisons.
- A technical correction to add 2.0 Special Agent positions that were inadvertently left out of the 2021-22 Statewide Correctional Video Surveillance BCP

The proposed implementation timeline is:

Task	Approximate Timeframe
Establish, recruit and fill positions	July 2022 - September 2022
Conduct site visits and design systems	August 2022 - October 2022
Procure equipment and services	September 2022 - November 2022
Install network equipment	December 2022 - March 2023
Install cabling and cameras	December 2022 - June 2023
Train users	June 2023
Test cameras and validate viewing objectives	June 2023 - July 2023
Solution validated and accepted	July 2023

LAO Comment. As noted in the previous item, LAO recommends that the Legislature wait on investments such as these until CDCR provides the required special repair, deferred maintenance, and capital outlay project report.

Staff Comments.

Retention Period. The Legislature should consider whether the 90-day retention period is sufficient. While many events trigger longer retention periods, it is not clear how those events are identified. For example, allegations of staff misconduct may not be identified or filed for months after the initial event, by which time all video evidence may be gone.

Tracking camera downtime. The Legislature may want to consider how incidents of camera downtime are tracked, as monitoring that information could prevent incidents where cameras are intentionally turned off.

Staff Recommendation: Hold Open.

Issue 10: Various Legal and Information Technology (IT) Proposals

Governor’s Budget. The proposed budget includes the following legal and IT resources for CDCR:

- *Class Action Lawsuit Staff.* \$2.4 million General Fund and 14 positions in 2022-23 and \$2.3 million ongoing to handle the highly sensitive and complex legal work involved in class action lawsuits.
- *DOJ Legal Service Fees.* \$1.5 million ongoing General Fund for Department of Justice Legal Services fees, bringing the total allocation to \$69.4 million annually.
- *eDiscovery Platform, Redaction, and Delivery.* \$19.5 million General Fund and 10.0 positions in 2022-23 and \$1.4 million in 2023-24 and ongoing to develop an eDiscovery platform and increasing staffing for the centralized video storage and redaction unit.
- *Redaction Workload (SB 16).* \$1.1 million General Fund and 7.6 positions in 2022-23 and ongoing for compliance with Chapter 402, Statutes of 2021 (SB 16).
- *Privacy Office Augmentation.* 12.0 positions and \$2.1 million General Fund in fiscal year 2022-23 and ongoing for resources necessary to enhance CCHCS’ ability to identify, prevent, manage, and mitigate privacy, information security, and cybersecurity risks and threats, and address key vulnerabilities consistent with recent Corrective Action Plans (CAPs).
- *Security Solutions and Laptop End User Security.* 9 positions and \$4.4 million General Fund in 2022-23 and \$5.2 million General Fund in 2023-24 and ongoing to address information security and cybersecurity vulnerability.
- *Microsoft End User Licensing Agreement.* \$11.5 million General Fund in 2022-23, \$16.1 million in General Fund 2023-24, and \$17.5 million General Fund in 2024-25 and ongoing to cover the increased cost of moving to a statewide contract for Microsoft End User Licensing Agreement.

Background. CDCR faces an increasing legal and IT workload due to multiple, ongoing, complex lawsuits, new oversight measures, the implementation of new technology systems (such as AVSS), increased cybersecurity threats, and increased handling of sensitive electronic information.

Lawsuits. CDCR faces numerous, long-standing, and still heavily litigated class action lawsuits. CDCR estimates that over the past six years, cases such as *Armstrong*, *Coleman*, *Clark*, *Plata*, *Prison Legal News*, *Three-Judge Panel*, and *Askher* have cost the state over \$115 million in litigation costs. The oldest of these cases is *Coleman*, filed in 1990. Typically, the Department of Justice (DOJ) assists in the initial litigation of these cases, and CDCR’s Office of Legal Affairs (OLA) handles the ongoing workload associated with compliance.

These cases have also resulted in increasing oversight and scrutiny of CDCR by federal courts, plaintiff’s teams, other appointed overseers, and external stakeholders. These cases still produce new recommendations and mandates for increased oversight, such as the implementation of video surveillance described in the previous item. To terminate these cases, CDCR needs to demonstrate long-term solutions to the issues raised by the courts, including sustainable implementation of various mandates and orders.

Class Action Team (CAT). The ongoing workload associated with these lawsuits is handled by CAT within CDCR’s OLA. In 2015, the team handled 12 class action cases and 2 complex transgender cases; in 2021, the team handled 16 class action cases and 5 complex transgender cases. Between 2015 and 2021, despite successful efforts in terminating five class action cases, another nine new cases were filed. The team currently contains 18 attorneys, 6 of whom are being redirected from other OLA duties.

This team is currently understaffed, leading to long hours and retention issues. CDCR’s legal team is significantly smaller than the plaintiff’s teams, as outlined in the table below. As a result, the legal team is not able to take proactive steps to negotiate with plaintiffs and track CDCR’s compliance with new orders. In addition, these lawsuits are closely monitored by courts, plaintiffs, and advocates, and the office needs additional administrative staff to help track requests and letters. CDCR is requesting additional attorneys and administrative staff to relieve the current workload and allow CAT to be more proactive, with the goal of helping CDCR end some of the longest running cases.

Plaintiffs' Counsel's Legal Staffing 2020								
	Armstrong		Ashker		Coleman		Plata	
	Staff	Hours	Staff	Hours	Staff	Hours	Staff	Hours
Attorney	36	12,928.1	9	3,765.2	29	9,966.9	12	4,629.8
Admin	31	12,292.3	6	420.9	23	8,709.6	10	1,047.5
TOTALS	67	25,220.4	15	4,186.1	52	18,676.5	22	5,677.3

Office of Legal Affairs' Legal Staffing 2020								
	Armstrong		Ashker		Coleman		Plata	
	Staff	Hours	Staff	Hours	Staff	Hours	Staff	Hours
Attorney*	3	5,328.0	2	3,552.0	3	5,328.0	2	3,552.0
Admin**	2	2,131.2	2	1,420.8	1	225.0	1	225.0
TOTALS	5	7,460.0	4	4,972.8	4	5,328.0	3	3,777.0

*Hourly totals are approximated based on 1,776 hours per year, per staff member. Time worked over 1,776 has not been included as attorneys do not track their time per case as plaintiffs' counsel does due to their billable hour requirement. Therefore, the hours spent on each case is an approximation.

**The 2 existing analysts provide assistance across all cases. Hours worked across cases is approximated.

Source: Department of Finance

DOJ Legal Services. The Office of the Attorney General provides legal representation for CDCR and its employees in state and federal courts. Since 2011-12, DOJ has directly billed CDCR for legal services. Over the last four years, DOJ has billed CDCR for over 300,000 hours of legal services annually. CDCR has an ongoing appropriation of \$67.8 million to cover this but has consistently exceeded this amount and has absorbed the extra cost in the general department budget.

Data management. CDCR has an increasing amount of digital data and evidence, but no uniform data management system. Currently, this task is handled separately across units. This makes responding to discovery and Public Records Act (PRA) requests increasingly difficult. CDCR receives an average of 726.6 requests annually, and regularly must ask for extensions on these requests. As CDCR moves towards digital video surveillance, this becomes an even bigger task.

The lack of a coherent system has made it difficult for CDCR to track and secure evidence, ensure nothing is deleted, corrupted, or tampered with, and has opened the department up to information security incidents. CDCR is requesting one-time funding for positions and software to develop and establish an eDiscovery system in collaboration with the California Department of Technology (CDT).

Redaction. In addition to an eDiscovery system, CDCR is requesting numerous resources for redaction of records requested through PRA or other means. As part of the eDiscovery system proposal, CDCR is requesting 10 permanent positions to expand the PRA Unit in the Department of Adult Institutions (DAI) to establish a centralized, specialized redaction team.

SB 16 Redaction. CDCR is also asking for separate redaction resources specific to the implementation of SB 16, which makes additional records related to peace officer and custodial officer investigation and personnel records available for PRA requests. However, prior to release, these records must be redacted to remove personal data or information like addresses and phone numbers, and the identity of the officer’s family members or of victims and informants. Under SB 1421, which established other categories of peace officer records subject to PRA requests, CDCR received approximately 254 requests from 2019 to 2021. Based on OIA records, CDCR is anticipating an additional roughly 90 requests a year for SB 16. \$1.1 million General Fund and 7.6 positions in 2022-23 and ongoing for compliance.

Sensitive Health Care Information. The Administration is also requesting resources to assist California Correctional Health Care Services (CCHCS) in managing and protecting sensitive digital records. CCHCS is a covered entity under the Health Insurance Portability and Accountability Act (HIPAA), meaning they must take certain measures to protect patient privacy and secure records. Recent security audits, assessments, and compliance reviews have identified specific vulnerabilities and risk factors with regard to CCHCS’ ability to adhere to HIPAA, state privacy, and Information Security Policy (ISP). In addition, CCHCS has recently experienced an increase in attacks on network infrastructure, endpoints, and email systems. Accordingly, CCHCS is requesting 12 positions and \$2.1 million for the Privacy Office to identify, prevent, manage, and mitigate privacy, information security, and cybersecurity risks and threats, and address key vulnerabilities consistent with recent Corrective Action Plans (CAPs).

Workload History

Workload Measure	PY – 4	PY – 3	PY – 2	PY-1	PY	CY
Number of Information Security Incidents	52	64	89	102	113	124
Number Requiring Breach Notices	31	47	33	19	18	37
Number of Individuals Impacted	681	400,699*	1,955	2,705	6,474	10,687

*The theft of a state-issued CCHCS laptop required that the Department send out notifications to every single inmate-patient and their designated points of contacts.

Source: DOF

Security Solutions and Laptop End User Security. CDCR is requesting resources to address cybersecurity threats. In addition to the health information held by CCHCS discussed above,

CDCR maintains sensitive data about its workforce and about the incarcerated population. CDCR is also considered a covered entity in regards to HIPAA. In addition, the expansion of telework and the increased introduction of laptops and other technology into prisons is creating additional cybersecurity concerns at CDCR. CDCR has indicated that the resources requested here would be used for:

- Vulnerability management.
- Data management.
- Security and privacy awareness training.
- Privileged access management.
- The development of a business impact analysis, which together with a technology recovery plan, guides the department's response to unplanned incidents such as natural disasters and cyber attack.
- Security and operational visibility.

CDCR is requesting 9 positions and \$4.4 million General Fund in 2022-23 and \$5.2 million General Fund in 2023-24 and ongoing to address information security and cybersecurity vulnerability. Of this amount, \$1.8 million in 2022-23 and \$2.6 million ongoing will support endpoint protection software for the 37,000 thin-client laptops that will be deployed systemwide for use by incarcerated individuals in conjunction with educational programming consistent with the 2021-22 Technology for Inmates Participating in Academic Programs BCP.

Microsoft End User Licensing Agreement. CDT has negotiated a statewide contract with Microsoft to provide services to all departments. CDCR and CCHCS have migrated to this new contract, but are requesting \$11.5 million General Fund in 2022-23, \$16.1 million in General Fund 2023-24, and \$17.5 million General Fund in 2024-25 and ongoing to cover the increased cost.

LAO Comments.

Redaction Requests. The Governor requests a total of 21.6 new positions and \$2.8 million (General Fund) annually beginning in 2022-23 for CDCR to perform workload related to redacting records so that they can be released under various conditions. These resources are included in the following four proposals:

- ***SB 1421 and SB 16 Redaction Workload (\$1.1 Million).*** Proposes 7.6 new positions for redaction of records released pursuant to Chapter 988 of 2018 (SB 1421, Skinner) and Chapter 402 of 2021 (SB 16, Skinner), which expanded the types of records of peace officer misconduct that are subject to Public Records Act requests.
- ***eDiscovery Platform, Redaction, and Delivery (\$1.4 Million).*** Includes 10 new positions to provide CDCR with dedicated staffing to address existing redaction workload not driven by Chapters 988 and 402. The department indicates that this existing redaction workload is currently being done by redirected positions and is also not getting done on time. In addition, the department proposes to realign 5 existing positions that are no longer needed in CDCR's Contract Beds Unit to address this workload.

- ***Statewide Correctional Video Surveillance Continuation (\$300,000)***. Proposes 4 new positions and \$300,000 to address an anticipated increase in redaction workload due to expansion of fixed video surveillance cameras and body-worn cameras.

To date, the administration has not provided enough information to justify the above proposals. Accordingly, we recommend that the Legislature require the department to provide the information necessary to justify the proposal.

Staff Comment. As indicated by the LAO, some of the proposals have related funding. For example, the Security Solutions and Laptop End User Security proposal includes data management, which is also covered in the eDiscovery proposal. The Legislature should consider how these funding proposals interact to ensure new technologies are efficiently deployed and initiatives are not duplicated.

Staff Recommendation. Hold Open.

Issue 11: Additional Staff for Victim Restitution Collection Services

Governor’s Budget. The proposed budget would authorize six extra positions for CDCR’s Victim Collection Services. These would be funded in 2022-23 and 2023-24 with the remaining resources in the Restitution Administrative Fee Fund. Beginning in 2024-25, CDCR proposes to shift all expenditures supporting Victim Restitution Collection Services from the Restitution Administrative Fee Fund (RAFF) to the General Fund, resulting in \$3.1 million General Fund and 21 positions in 2024-25 and ongoing.

Background. There are two types of restitution that perpetrators of a crime may be ordered to pay:

- (1) *Restitution Fines.* Restitution fines are paid into the Victim Compensation Fund, which the California Victim Compensation Board (CalVCB) uses to pay out victim compensation claims for things like crime scene clean-up, funerals, relocation costs and other eligible expenses. Restitution fines are not earmarked for specific victims, and the amount ordered is not related to a specific crime or a victim’s claim.
- (2) *Direct Orders.* In some cases, the perpetrator of a crime may be ordered to pay restitution directly to their victim(s) for specific expenses related to the crime, including stolen or damaged property, medical expenses, attorney’s fees, and other eligible expenses.

CDCR collects restitution from the incarcerated population and parolees. The amount of restitution collected by CDCR has grown from \$19 million in 2010 to \$37.4 million in 2020-21, a 60 percent increase. CDCR also works with victims to deliver direct restitution. CDCR has two main programs related to restitution, with a total of 15 staff:

- *Office of Victim and Survivor Rights and Services (OVSRS).* OVSRS is responsible for collecting court-ordered restitution and helping victims. The 2021 Budget Act included ten additional positions to expand OVSRS and help improve outreach to victims. However, CDCR estimates that there are 88,000 victims whom OVSRS has collected restitution for but whose information is unknown, so CDCR will have to track them down.
- *Accounting Services Branch (ASB).* ASB handles restitution-related financial transactions, including maintaining trust accounts for the incarcerated population and restitution balances for all parolees. ASB manages the Trust Restitution Accounting and Canteen System (TRACS), a database of financial information about banking, restitution, and canteen services for all incarcerated persons.

CDCR used to charge a 10 percent administrative fee on all collected restitution. That money was deposited into the RAFF and used to fund OVSRS and ASB. However, this fee was eliminated as part of the effort to reduce fines and fees throughout the criminal justice system (AB 177, Chapter 257, Statutes of 2021). The Administration proposes to spend down RAFF over the next two fiscal years, and then shift any remaining resources and all expenditures related to these programs to the General Fund in 2024-25.

This proposal includes six additional positions for OVSRS Restitution Services Unit (RSU). These positions would be used to respond to a generally increasing workload, as well as address a one-time workload related to AB 177. Specifically, CDCR will have to adjust each of the 54,000 cases they have forwarded to the Franchise Tax Board for collection to ensure the 10 percent administrative fee is removed.

Staff Comment. The Legislature should consider how this program fits into the statewide network of victim services, including those at CalVCB and other agencies and departments.

Staff Recommendation. Hold open.