

SUBCOMMITTEE NO. 5

Agenda

Senator Maria Elena Durazo, Chair
Senator Shannon Grove
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Upon adjournment of session
1021 O Street - Room 2200

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ITEMS FOR DISCUSSION

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Public Comment

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ITEMS FOR DISCUSSION**5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION****Issue 1: Visitation and Remote Communication Opportunities**

Background. Numerous studies have demonstrated the benefits of contact between incarcerated people and their loved ones¹. 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 However, this clause was repealed in 1996 (SB 1221, Statutes of 1996, Chapter 132), to allow for visitation to be used as a reward (or lack of visitation as a punishment).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, it 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 has been suspended at various points due to increases in cases. Currently, CDCR classifies institutions as either “Outbreak Phase” if there have been three or more related cases of COVID-19 among incarcerated persons within 14 days, or “Open Phase” otherwise. Institutions in the outbreak phase are closed to visitation and have limited opportunities for programming and other non-essential health care and other functions. As of April 24, 2022, all CDCR institutions were classified as open.

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)². ViaPath also is taking over the tablet program, which was piloted by JPay³. Through

¹ https://www.prisonpolicy.org/blog/2021/12/21/family_contact/

² <https://www.cdcr.ca.gov/family-resources/gtl-tablets/>

³ <https://prisonjournalismproject.org/2021/03/26/when-california-prisons-switch-tablet-vendors/>

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.

Issue 2: Control Section 20.00

Governor’s Budget. The Administration proposes to add control section language to the annual budget act that would allow the Department of Finance (DOF) to extend the encumbrance and liquidation deadlines for and revert various bond and non-governmental cost funds upon providing the Joint Legislative Budget Committee (JLBC) with a 30-day notification.

Background. Each year, the budget includes a significant amount of language to reappropriate funding, extend encumbrance periods, and otherwise adjust previously approved funding. The proposed control section language would change the process for approving changes to funding approved for projects funded by certain bonds and accounts. The funds proposed to be covered by this process include, for example, lease revenue bonds, as well as several General Obligation bond funds. The change would not apply to General Fund expenditures and would largely affect resources-related projects.

Currently, the administration must submit a budget change proposal through the traditional budget process to request reappropriations and reversions associated with such funds. According to DOF, this proposal is intended to reduce the amount of technical workload associated with making reappropriation and reversion requests. DOF further indicates that its intent is to retain transparency by including a spreadsheet with certain key information about the requested extensions and reversions (such as relevant dates and dollar amounts) along with the JLBC notification, and to limit its use of this new authority to technical actions that would not be expected to raise concerns. Under the proposed language, notifications could be submitted at any time during the year. However, DOF indicates that it anticipates submitting most proposed extensions and reversions as part of two submissions per year, likely January/February and April/May.

This language does not affect General Fund expenditures, which constitute most of CDCR’s capital outlay projects. There is currently one lease revenue bond-funded project at CDCR, which was reappropriated in 2021-22. This project is to build a 50-bed Mental Health Crisis Facility at the California Institute for Men, Chino⁴. This project was submitted as a Capital Outlay Budget Change Proposal in 2021-22 and had to be approved through the standard BCP process. Under the new process, the reappropriation could be made through a JLBC notification.

LAO Comments.

Proposal Has Some Merit, But Recommend Modifications to Increase Legislative Oversight. We find the concept of streamlining the process for the administration to request technical, non-controversial reappropriations/extensions and reversions of certain bond and non-governmental funds to be reasonable. However, in general, the JLBC process can make it more challenging for the Legislature to perform its oversight role than the traditional budget process. Accordingly, ensuring that the administration limits its use to cases that are indeed technical and non-controversial will be important, and any revised process should provide the Legislature with the time and information necessary to facilitate its review. We therefore recommend that the Legislature consider modifying the proposed language in the following areas:

⁴ https://esd.dof.ca.gov/Documents/bcp/2122/FY2122_ORG5225_BCP4624.pdf

Types of Projects Covered. We recommend that the Legislature consider adding additional limitations on this new authority to ensure that it only applies to projects and programs for which the Legislature is comfortable that a JLBC process would provide adequate oversight. For example, the Legislature could consider excluding certain bond-funded projects from this process if there are concerns that these projects may require additional oversight. For example, greater oversight of prison projects that are not on track to be completed in the timeline initially presented to the Legislature could be warranted. This is because inmate population projections indicate that the state could be in a position to close around four additional prisons (beyond the one prison already identified by the administration for closure) within the next several years and it would not be cost-effective to reappropriate funds to continue projects at prisons that could be closed. Accordingly, the Legislature may wish to consider excluding the California Department of Corrections and Rehabilitation's (CDCR's) prison projects from this process to preserve its current oversight of prison infrastructure projects. Alternatively or additionally, the Legislature could consider excluding bond-funded projects that meet certain criteria from this process. For example, the Legislature could exclude lease-revenue funded projects that (1) are above a certain dollar threshold if it is concerned about applying the proposed process to very large legislatively-established projects or programs (such as CDCR's Health Care Facility Improvement Program, which totaled over \$1 billion in lease revenue bonds) or (2) have already received one or more previous reappropriations/extensions due to concerns about projects that have continuously experienced lengthy delays.

Timing. It is more difficult for the Legislature to adequately review JLBC notifications that are received during periods of peak budget workload. Accordingly, we recommend the Legislature consider adding language to the proposed control section requiring corresponding JLBC notifications to be submitted prior to May 1st each year. If the administration would like to request additional funding extensions or reversions after May 1st, it could do so through a traditional budget request.

Information Provided. As mentioned above, in our conversations with DOF, we understand that it intends to provide a spreadsheet with certain key information on the proposed extensions along with the JLBC notification in order to facilitate legislative review. In order to memorialize DOF's intent for the benefit of future policymakers, we recommend that the Legislature add language to the control section *requiring* that this information be provided as part of the notification.

Staff Recommendation. Hold Open.

Issue 3: Community Reentry Programs

Proposal. The Senate is considering a proposal to expand community reentry programs, which provide incarcerated persons with a community-based residential setting for the last portion of their sentence.

Background. More than 30,000 people are released from California’s prisons each year. Approximately 46 percent of released inmates in California are reconvicted within three years of release. This high rate of recidivism results in significant increases in crime and cost to the state and reflects the significant barriers to successful reentry. Many incarcerated persons are in prisons located far from their homes, with limited opportunities to stay connected with their families, communities, and the resources they will need to successfully reenter.

Existing Programs. CDCR currently operates the Male Community Reentry Program (MCRP) and the Custody to Community Transitional Reentry Program (CCTRP) to provide community settings for men and women, respectively, nearing the end of their sentences. There is capacity for around 1,000 people in these programs, who participate for up to two years at the end of their sentence. There are MCRP locations in Butte (serving Tehama, Nevada, Colusa, Glenn, Sutter, Placer and Yuba), Kern, Los Angeles, and San Diego counties. There are CCTRPs in San Diego, Kern, San Joaquin, Sacramento, and Los Angeles counties. The programs provide a range of community-based, rehabilitative services that assist with substance use disorder, mental health care, medical care, employment, education, housing, family reunification, and social support.

Eligibility. CDCR has the authority to set regulations for MCRP and CCTRP eligibility. Generally, incarcerated persons must apply to participate. Incarcerated persons with certain convictions (including sexually violent offenses), who are deemed high-risk, or have attempted escapes or had other misconduct are not eligible for MCRP and CCTRP. In addition, there must be a facility in the person’s County of Last Legal Residence, or they may request to transfer post-release supervision to a county with a facility. Participants may also be returned to state prison at CDCR’s discretion.

Cost. CDCR contracts with outside entities to operate the facilities. In FY 20-21, CDCR was authorized to spend \$36 million on MCRP. The average daily cost per inmate in CDCR is \$291⁵. However, many of these are fixed costs (for example facility costs). The LAO estimates that the marginal cost of housing one person at CDCR is around \$35 per day.

According to Amity, building out a single 200-bed facility costs \$10 to \$15 million and the average daily cost per person in an MCRP is \$100 to \$150. If the facility were full, the short-term operational costs to the state would be around \$8 million per year (the difference between the marginal cost of housing 200 people at CDCR and the estimated cost of housing 200 people at an MCRP). However, in the long term, the facility would save the state around \$10 million per year (the difference between the full cost of housing 200 people at CDCR and the estimated cost of housing 200 people at an MCRP). This estimate also does not include the additional savings and other benefits the state would receive from reducing the reconviction rate.

⁵ https://lao.ca.gov/policyareas/cj/6_cj_inmatecost

Healthcare Costs. CDCR is responsible for the health care of people in its custody, which accounts for around 30 percent of the cost of incarcerating an individual. Currently, individuals in MCRP and CCTRP are not eligible to draw down federal funding through Medi-Cal. However, some states, including California, have been granted waivers to provide transitional care for re-entry⁶. If an agreement or waiver can be worked out to use federal funding for some health care services in community reentry programs, that would represent significant additional savings to the state.

Effect on Recidivism. A study published in June 2021 that was prepared for CDCR by Stanford University's Public Policy Program found that people who participated in these community reentry programs for nine months or longer were 92% less likely to be reconvicted than a control group that completed their full sentences within California prisons⁷. The results also suggest that while some effects were seen at 7 months, the programs were most effective if people participated for at least 9 months. The authors recommended that the state ensure MCRP stays are at least nine months long, expand MCRP to additional sites and locations, and continue to collect data and analyze outcomes.

CDCR's recidivism reports have also shown that the three-year reconviction rate for women who participated in the women's residential reentry program was nearly half the overall female reconviction rate (20% for participants in the program compared to 35% overall)⁸, and numerous other studies have found similar positive effects in other states and in federal programs.

The Federal Bureau of Prisons places people serving up to their final year of a federal sentence in community-based transitional housing run by contractors. Unlike in California, placement in one of these federal programs is mandatory in most cases.

Recommendation of the Committee on Revision of the Penal Code. The 2021 Annual Report from the Committee on Revision of Penal Code⁹ included a recommendation to expand CDCR's existing community-based residential reentry programs.

The Committee made two specific recommendations:

1. Expand the current programs so that eventually all people serve up to their last two years of prison in community-based residential reentry programs.
2. Allow the Board of Parole Hearings to grant release to a residential reentry program.

The Committee also included two additional points for consideration:

- The location of the community-based reentry housing programs should be within close proximity to participants' counties of origin in order to best help them transition back to their communities.

⁶ https://www.shadac.org/sites/default/files/publications/Justice-involved1115-waiver-initiatives_01.2020.pdf

⁷ https://stacks.stanford.edu/file/druid:bs374hx3899/MCRP_Final_060421.pdf

⁸ <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/09/Recidivism-Report-for-Offenders-Released-in-Fiscal-Year-2015-16.pdf>

⁹ http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf

- The Committee noted concerns about the operation of residential reentry programs by for-profit entities, as some believe they employ “exploitative practices,” and their incentives may not be best-aligned with assisting people to successfully transition back to their communities and lower recidivism.

Staff Recommendation. Hold Open.

Issue 4: Real-Time Measurement of Parole Programming and Outcomes

Proposal. The Senate is considering a proposal to enable additional analysis of CDCR's data on reentry programming and outcomes.

Background.

CDCR collects a significant amount of data about its in-custody population, as well as the parolees it supervises. Despite this, it is often difficult to get data about the successes or failures of various reentry programs, such as those providing short-term housing, substance use disorder treatment, or other supportive services.

Recidiviz is a non-profit that specializes in analyzing criminal justice data. They currently work with eight other states to analyze corrections and parole data, and they have a data sharing agreement with CDCR. The budget proposal is for \$12 million over three years and includes the develop of a data collection and visualization tool that would enable easier access to data about reentry outcomes. The proposal includes analyzing reentry outcomes in the context of community characteristics such as availability of housing, transportation, employment, and treatment or reentry programming. Proposed metrics include outcomes, such as recidivism rates, and intermediate steps, such as securing housing.

Staff Recommendation. Hold Open.

Issue 5: Community Corrections Performance Incentive Fund Stabilization

Governor’s Budget. The Administration is requesting statutory changes be adopted to appropriate \$122,829,397 from the General Fund to the State Community Corrections Performance Incentives Fund, established pursuant to Penal Code section 1233.6, for the community corrections program for three years. These changes would establish the same level and allocation of funding specified in Chapter 80, Statutes of 2021 (AB 145) through 2024-25.

Background.

SB 678 and modifications. The Legislature designed the California Community Corrections Performance Incentives Act of 2009, or SB 678 program with two purposes: 1) to alleviate state prison overcrowding and 2) save state General Fund. These purposes are to be accomplished without compromising public safety by reducing the number of individuals on felony supervision (i.e. felony probation, mandatory supervision, post release community supervision) who are sent to state prison. The program is also designed to encourage county probation departments to use evidence-based supervision practices to accomplish these goals.

Since passage of the act, the State of California has adopted significant changes in criminal justice policies that directly impacted SB 678—most notably the 2011 Public Safety Realignment, which reduced the number of probationers eligible for revocation to state prison and created two new groups of offenders subject to local supervision. In order to maintain effective incentives and account for the significant changes in criminal justice policy, SB 85, adopted as a trailer bill to the 2015–2016 State Budget, revises the SB 678 funding formula and creates a funding methodology that should serve as a long-term formula.

The existing statutory formula is based on year-to-year prison revocation metrics and is intended to serve as a financial incentive for probation departments successfully keeping individuals on probation from returning to state prison. Below is a summary of the SB 678 funding formula, which includes three funding components:

- *Funding Component #1: Comparison of county to statewide return to prison rates.* The first funding component measures each county’s performance against statewide failure rates. Each county’s return to prison rate (RPR), which equals the number of individuals on felony probation, mandatory supervision, and PRCS sent to prison as a percentage of the total supervised population, is compared to statewide RPRs since the original SB 678 baseline period (2006– 2008).
- *Funding Component #2: Comparison of each county’s return to prison rate and its failure rate in the previous year.* The second funding component is based on how each county performs in comparison to its performance the previous year. Each year a county’s RPR from the previous year is applied to its current year’s felony supervised populations to calculate the expected number of prison revocations. If a county sends fewer individuals on felony supervision to prison than the expected number, the county will receive 35% of the state’s costs to incarcerate an individual in prison multiplied by the number of avoided prison stays. The number of avoided prison revocations are calculated separately for each

felony supervised population (i.e. felony probation, mandatory supervision, Post-Release Community Supervision).

- *Funding Component #3: \$200,000 minimum payment.* The third funding component guarantees a minimum payment of \$200,000 to support ongoing implementation of evidence-based practices. If a county's total payment (from funding components 1 and 2) is less than \$200,000, the Department of Finance will increase the final award amount so that it totals \$200,000.

Yearly Allocations from SB 678. At the end of each calendar year the California Department of Finance determines each probation department's SB 678 funding allocation based on each county's performance as described above. County probation departments must spend SB 678 funds on the implementation or enhancement of evidence-based practices, including, but not limited to, risk/needs assessment, use of graduated sanctions, and provision of evidence-based treatment modalities such as cognitive behavioral therapy.

Recent Policy Changes that Impact Probation Departments. The following changes will or have had impacts on probation departments:

- *Reduction in Maximum Probation Terms AB 1950 (Kamlager), Chapter 328, Statutes of 2020.* AB 1950 reduced maximum probation terms to one year for misdemeanors and two years for felonies. Previously, misdemeanor probation terms could last up to three years and felony probation terms could last up to five years or the maximum sentence for the offender's crime, whichever was greater.
- *COVID-19-Related Prison Releases to PRCS.* Beginning in April 2020, CDCR began releasing certain incarcerated persons with nonviolent offenses who are within 180 days of their release date in order to mitigate the spread COVID-19 by reducing the population density in prisons. This policy has resulted in a temporary increase in the PRCS population. The state has been providing county probation departments with about \$28 per day for each day that an inmate is released early.
- *Juvenile Justice Realignment.* SB 823 (Committee on Budget and Fiscal Review), Chapter 337, Statutes of 2020 established a plan to fully realign the state's juvenile justice responsibilities to counties. DJJ stopped intake on July 1, 2021. Going forward, youths who would otherwise have been placed in DJJ will instead be supervised by county probation departments. The 2020-21 budget provided BSCC with \$9.6 million (one-time General Fund) for competitive grants to counties intended to support the implementation of SB 823. Funds can be used for infrastructure-related needs and improvements associated with the realigned responsibilities. Recipients must submit a report on how the funding is used. Pursuant to SB 823, the state will provide annual General Fund support to counties beginning in 2021-22 with \$46.5 million— increasing to about \$208 million by 2024-25— to support the juvenile justice realignment. Funding will be distributed based on each county's total youth population, historical use of DJJ, and the number of youth with adjudications for certain serious or violent crimes. Beginning in 2022-23, counties will need to submit for state approval plans on how the funding would be utilized.

According to the Administration, the revocation data used in the formula has been significantly impacted by the pandemic and is complicated by factors beyond county probation departments' control. Providing payments based on current statutory requirements could impact individual counties unrelated to their performance.

Staff Comments.

Maintaining the intent of the funding. This funding is intended to serve as a financial incentive for probation departments to prevent individuals under their supervision from returning to state prison. Freezing the funding reduces this incentive, and it may be difficult to revert to the formula at the end of the three-year period. While the pandemic has complicated the data used in the formula, the Legislature should consider how to maintain the intent of the fund in light of the ongoing nature of the pandemic.

Staff Recommendation. Hold Open.

5227 BOARD OF STATE AND COMMUNITY CORRECTIONS**Issue 6: Adult Reentry Grant**

Background. In an effort to address some of the barriers to reentry, the Budget Act of 2018 allocated \$50 million on a one-time basis for reentry and diversion efforts. Budget bill language within SB 840 (Mitchell), Chapter 29, Statutes of 2018, specified that the funding should be allocated for reentry grants to community-based organizations for rental assistance (\$25 million), the rehabilitation of property or buildings for housing offenders released from prison (\$15 million), the warm hand-off and reentry of offenders transitioning from prison to communities (\$9.4 million), and the Berkeley Underground Scholars Initiative (\$150,000). The BSCC was selected as the entity to administer grant funding. Additional funding was provided in subsequent budgets, resulting in an ongoing baseline of \$37 million General Fund for the Adult Reentry Grant (ARG).

The 2021-22 budget included a one-time \$30 million General Fund augmentation to provide additional grant funding to organizations that provide rental assistance and warm handoff and reentry services for individuals released from state prisons. This brings the total funding level for 2021-22 to \$67 million, including \$31.825 million for Rental Assistance, \$31.825 for Warm Handoff and Reentry Services, and up to 5 percent to BSCC for administrative costs.

Permissible use of grant funds includes but is not limited to the following:

- Case management services
- Housing Navigation
- Permanent supportive housing
- Rent subsidies
- Short-term emergency housing assistance
- Transitional housing

As of February 2022, a total of 115 projects have been awarded \$105,727,500 in ARG funding. Cohort 1 funded 70 projects: 53 Warm Handoff projects, 16 Rental Assistance projects and 1 Rehabilitation of Property project. Cohort 2 funded 45 projects: 8 Rental Assistance projects and 37 Warm Handoff Reentry Services projects. A new competitive-bid process is currently under way and BSCC expects to award Cohort 3 Rental Assistance and Warm Handoff Reentry Services projects in Fall 2022.

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