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California State Senate

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BUDGET AND FISCAL REVIEW

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Agenda

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January 30, 2014

10:30 a.m. or

**Upon adjournment of Session
State Capitol, Room 4203**

Corrections and Rehabilitation: Realignment, Court Oversight and Legislative Options

- I. Is the State's Cost of Incarceration Continuing to Grow? An Overview and Update on CDCR's California Corrections Blueprint**
 - a. Aaron Edwards, Senior Fiscal and Policy Analyst, Legislative Analyst's Office

- II. An Update on Crime in California**
 - a. Magnus Lofstrom, Research Fellow, Public Policy Institute of California

- III. California's Prison Population: Where Are We Now and Where Are We Going?**
 - a. Martin Hoshino, Undersecretary of Operations, California Department of Corrections and Rehabilitation

- IV. Cost-Effective Strategies for Enhancing Public Safety**
 - a. Chuck DeVore, Vice President for Policy, Texas Public Policy Foundation
 - b. Terri McDonald, Assistant Sheriff, Los Angeles County
 - c. Karen Tamis, Senior Program Associate, Vera Institute of Justice

- V. Public Comment**

Corrections and Rehabilitation: Realignment, Court Oversight, and Legislative Options

PURPOSE

The purpose of this hearing is to review the status of the California prison and criminal justice system just over two years after the state realigned responsibility for certain offender populations to the counties in October of 2011, and adopted, with the 2012-2013 budget, California Department of Corrections and Rehabilitation's (CDCR) *Future of California Corrections: A Blueprint to Save Billions of Dollars, End Federal Court Oversight and Improve the Prison System*. Realignment and the *Blueprint* constitute the state's key set of foundational reforms intended to achieve three primary goals: reduce state correctional costs in proportion to other general fund expenditure categories; reduce the state's prison population to a level compliant with federal court orders; and improve public safety and reduce recidivism among criminal offenders. This hearing will update the committee on the status of progress towards achieving these objectives, and explore opportunities for further reforms consistent with these objectives and prudent investment of public safety resources.

In this hearing, the Legislative Analyst's Office (LAO) will provide an update on the *Blueprint* in the context of the Governor's proposed budget, realignment, and recent rulings by the federal three-judge panel. In addition, the Public Policy Institute of California (PPIC) will present the latest statistics on crime in the state and CDCR will provide an update on the current prison population and an assessment of "who is coming in the door" of our prisons. The second half of the hearing will include a panel of experts who will discuss the importance of investing public safety dollars in cost-effective ways that have proven to be successful for reducing the incarceration rate over the long-term.

The information provided in this hearing is particularly relevant since the CDCR budget makes up a significant portion of the state's General Fund expenditures each year and the Legislature has taken action in recent years to reduce what the state spends on incarceration. The Governor's proposed budget for CDCR requests \$9.8 billion (\$9.5 billion General Fund) in funding, an increase of \$1.1 billion, or 12 percent in the last two years. In addition, the state is redirecting almost \$1 billion in sales tax revenue to counties in order to pay for their costs to house, supervise, and rehabilitate approximately 25,000 realigned inmates and probationers. This constitutes a total public investment of approximately \$11 billion in 2014-15.

BACKGROUND

For years, California's prison system has faced costly and seemingly endless challenges. Decades old class-action lawsuits challenge the adequacy of critical parts of its operations, including its health care system, its parole-revocation process, and its ability to accommodate inmates with disabilities. In one case, a federal court seized control over the prison medical care system and appointed a Receiver to manage its operations. The Receiver remains in place today. The state's difficulty in addressing the prison system's multiple challenges was exacerbated by an inmate population that—until recently—had been growing at an unsustainable pace. Overcrowded prison conditions culminated in a ruling, in the spring of 2011, by the United States Supreme Court ordering California to reduce its prison population by tens of thousands of inmates by June 2013. At the same time that prison problems were growing, the state's budget faced significant challenges exacerbated by CDCR's rapidly growing budget.

It is within this context that the Legislature and the Governor enacted realignment, shifting responsibility for certain lower level, non-violent, felony offenders from the state to the counties. In addition to realignment, in 2012 the Administration proposed a comprehensive plan – the *Blueprint* – to improve the effectiveness of the state's prison system. The Legislature adopted the plan and approved the necessary funding and statutory changes.

Three-Judge Panel. In 2009, a federal three-judge panel declared that overcrowding in the state system was the primary reason that CDCR was unable to provide inmates with constitutional adequate health care. The court ruled that in order for CDCR to provide such care, overcrowding would have to be reduced. Specifically, the court ruled that by June 2013, the state must reduce the inmate population to no more than 137.5 percent of the “design capacity” in the 33 prisons operated by CDCR. Design capacity generally refers to the number of beds CDCR would operate if it housed only one inmate per cell and did not use temporary beds, such as housing inmates in gyms. Inmates housed in contract facilities or fire camps are not counted toward the overcrowding limit. In May 2011, the U.S. Supreme Court upheld the three-judge panel's ruling. Under the population cap imposed by the federal court, the state would need to reduce the number of inmates housed in its 33 state prisons by about 34,000 inmates relative to the prison population at the time of the ruling.

In October 2012, the federal three-judge panel ordered the state to present two plans for how it would further reduce the state's prison population either by the original deadline of June 2013, or by a deadline of December 2013. On January 7, 2013, the Administration released its response to the court. The Administration requested that the court modify or vacate its population reduction order altogether. While the three-judge panel did not issue judgment on whether to vacate the population limit, it did extend the deadline for meeting the limit from June 2013 to December 2013. It also ordered the Administration to continue working toward meeting the limit in December but did not order the Administration to take any specific actions.

In June of 2013, the court ordered Governor Brown to reduce the prison population by 9,600 inmates by the end of the year. The state's response was reflected in part by the passage of SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013. That measure authorizes \$315 million to meet the court's order either through increasing prison bed capacity or, to the extent the court grants more time for California to meet the court's order, increasing California's cost-effective investments in evidence-based practices and policies to reduce recidivism.

On September 24, 2013, the three-judge panel issued an order directing the state to meet with inmate attorneys to discuss how to implement a long-term overcrowding solution. The order also prohibits the state from entering into any new contracts for out-of-state housing without an order of the court. A subsequent order moved the deadline for meeting the population cap to April 18, 2014, and required that both parties in the case work to reach an agreement on how to best reach the 137.5 percent goal.

Unfortunately, the parties were unable to come to a long-term solution by the deadline provided by the court. On January 13, 2014, the court noted the failure of the plaintiffs and the defendants to find a solution and the court ordered both sides to submit plans that they believe will allow the state to achieve compliance with the court ordered population cap of 137.5 percent of design capacity. The court is expected to rule by mid-February on whether or not it will grant the state's most recent request for a two-year extension of the deadline to reduce the prison population.

Realignment. In 2011, the state approved a broad realignment of public safety, health, and human services programs from state to local responsibility. Included in this realignment were sentencing law changes requiring that certain lower-level felons be managed by counties in jails and under community supervision rather than sent to state prison. Generally, only felony offenders who have a current or prior offense for a violent, serious, or sex offense are sentenced to serve time in a state prison. Conversely, lower-level felons convicted of non-violent, non-serious, and non-sex-related crimes (colloquially referred to as "non-non-nons") serve time in local jails under realignment. In addition, of those felons released from state prison, generally only those with a current violent or serious offense are supervised in the community by state parole agents, with other offenders supervised by county probation departments. Responsibility for housing state parole violators was also shifted from state prisons to county jails.

In adopting this realignment, the Legislature had multiple goals, including reducing the prison population to meet the federal court-ordered cap and reducing state correctional costs. Another stated goal of realignment was to improve public safety outcomes by keeping lower-level offenders in local communities where treatment services exist and where local criminal justice agencies can coordinate efforts to ensure that offenders get the appropriate combination of incarceration, community supervision, and treatment. Rooted partly in California's successful realignment reform of its juvenile justice system over the last 15 years, and the success of SB 678 (Leno) Chapter 608, Statutes of 2009, which incentivized evidence-based practices for felony probationers through a formula that split state prison savings resulting from improved outcomes among this

offender population between the state and the counties, realignment was based on the belief that coordinated local efforts are better suited than the state for assembling resources and implementing effective strategies for managing these offenders and reducing recidivism.

In order to implement realignment and achieve improved outcomes at the local level, the Legislature shifted sales tax revenues to counties. In addition, those funding streams for counties are permanent and constitutionally protected (Cal. Const., art. XIII, § 36). Funding for the realignment of lower-level offenders both in county jails and on probation is estimated to be approximately \$1 billion in both 2013-14 and 2014-15. While this amount is less than would be needed to incarcerate and supervise this population at the state level, the estimated revenue for the counties assumes that the counties will rely less on incarceration and more on community supervision and treatment programs.

Estimates suggest that realignment has successfully reduced the state's prison population by about 25,000 inmates per year.

CDCR's Blueprint and Progress Toward Implementation. In April 2012, CDCR released a report entitled *The Future of California Corrections* detailing the Administration's long-range plan to reorganize various aspects of CDCR operations, facilities, and budgets in response to the effects of the 2011 realignment of adult offenders, as well as to meet federal court requirements. The *Blueprint* was intended to build upon realignment, create a comprehensive plan for CDCR to significantly reduce the state's investment in prisons, satisfy the Supreme Court's ruling to reduce overcrowding in the prisons (to 145 percent of design capacity, as proposed by the Administration at the time as an alternative of 137.5 percent), and get the department out from under federal court oversight. In the introduction to the *Blueprint*, the Administration states:

Given the ongoing budget problems facing California it has become increasingly important to reexamine the mission and priorities of the corrections system. With dedicated funding directed to county governments to manage lower level offenders, realignment allows the state to focus on managing the most serious and violent offenders. And it allows counties to focus on community-based programs that better promote rehabilitation. Not only is this good corrections policy, but it also allows the state to achieve significant budgetary savings from a department whose share of General Fund expenditures had grown from 3 to 11 percent over the last 30 years.

As a result of the declining populations, the state will be able to save nearly half a billion dollars by closing the California Rehabilitation Center—one of its oldest, most costly, and inefficient prisons to operate—and ending contracts for out-of-state prison facilities. The savings contemplated in this plan will be attained by safely reclassifying inmates, housing inmates in facilities that are commensurate with their custody level, and working to reduce recidivism. Capitalizing on the opportunities created by realignment

will create a safer, more effective correctional system, and allow the state to regain control of its prison system by satisfying federal court requirements.

Combining the actual budget savings with the avoided expenditures that would have been required without realignment, over a ten year span the state will have saved and avoided over \$30 billion in General Fund costs that may now be used to help balance the state budget or for other critical areas such as education and health care.

As noted above, the Legislature, through the Budget Act of 2012 and its related trailer bills, approved funding augmentations and reductions associated with the *Blueprint* and adopted necessary statutory changes. In addition, the Legislature made several changes to the *Blueprint* to increase transparency and accountability, including creating a separate budget item for CDCR's rehabilitative programs and giving the Office of the Inspector General (OIG) oversight over the implementation of certain aspects of the *Blueprint*.

The *Blueprint* contained the following major goals with the following results:

Reduce State Spending on Adult Prison and Parole Operations. In total, the Administration asserted that the *Blueprint* would reduce state spending on adult prison and parole operations by \$1 billion in 2012-13, as a result of 2011 realignment. The plan estimated these savings would grow to over \$1.5 billion by 2015-16 and assumed an annual, on-going savings of over \$3 billion. Over ten years, the *Blueprint* projected a state General Fund savings of approximately \$30 billion.

Current Status. While CDCR has been able to reduce General Fund expenditures in certain areas of their budget, overall the Governor's budget proposes a \$700 million increase between 2012-13 and 2013-14. The proposed budget further increases funding for 2014-15 by another \$400 million, resulting in a \$1.1 billion increase from 2012-13 to 2014-15.

Reduce the Prison Population. The *Blueprint* assumed that the prison population would continue on a downward trend. In addition, it assumed that two programmatic changes would result in a reduction of 500 inmates. First, the Administration proposed ending the Civil Addict Program, beginning in 2013. (This program allows courts to civilly commit offenders to prison to receive substance abuse treatment.) The Administration also proposed expanding the eligibility criteria for the Alternative Custody for Women program, which allows certain female offenders to serve their sentence in the community rather than in state prison.

The *Blueprint* projected a total population of 133,746 inmates as of June 2012. By the end of 2014-15 that population was projected to be 123,149. Of the 123,149 inmates, 117,565 were projected to be housed in adult institutions (the

remaining inmates would be housed in fire camps or contract facilities), which would result in the state being at 142.3 percent of prison capacity.

Current Status. The most recent population projections estimate that the average daily population in the state's prisons will be 136,617 by the end of 2013-14 and will grow to 139,199 by the end of the next year. The projected population is over 16,000 inmates more than estimated in the *Blueprint*. The most recent population reports show that as of December 31, 2013, the state's prisons were at 145.5 percent of capacity.

Return Out-of-State Inmates. The department began sending inmates out-of-state when overcrowding was at its worst in 2007. At the time of the *Blueprint*, there were more than 9,500 inmates housed outside of California. The *Blueprint* committed to ending all out-of-state contracts by 2015-16. The *Blueprint* projected that by 2014-15 there would be 1,864 inmates remaining in out-of-state contract beds. Returning out-of-state inmates to in-state facilities was expected to save the state \$318 million annually.

Current Status. SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013 (discussed in more detail below), authorized CDCR to increase its level of contracted beds both in state and out of state. The 2014-15 budget proposed by the Governor assumes that almost 9,000 inmates will remain in out-of-state facilities.

Improve Access to Rehabilitation. The *Blueprint* required the department to improve access to rehabilitative programs and place at least 70 percent of the department's target populations (approximately 36 percent of the total prison population) in programs consistent with their academic and rehabilitative needs. The *Blueprint* further set June 30, 2015 as the completion date for reaching that goal.

Toward that end, the *Blueprint* required the establishment of reentry hubs at certain prisons to provide intensive services to inmates as they get closer to being released. It also required the creation of enhanced programming yards, in order to incentivize positive behavior. For parolees, the *Blueprint* increased the use of community-based programs to serve, within their first year of release, approximately 70 percent of parolees who need substance-abuse treatment, employment services, or education.

Current Status. The OIG's October 2013 report on the implementation of the *Blueprint* finds that only 13 percent of the targeted in-prison population received all of the necessary rehabilitation services during the fourth quarter of 2012-13.

Standardize Staffing Levels. Realignment's downsizing left the department with uneven, ratio-driven staffing levels throughout the system. The *Blueprint*

proposed adopting a standardized staffing model for each prison based on factors such as the prison's population, physical design, and missions. For the most part, prison staffing levels would remain fixed unless there were significant enough changes in the inmate population to justify opening or closing new housing units. In contrast, historically, prison staffing levels were adjusted to reflect changes in the inmate population regardless of the magnitude of those changes.

Current Status. The OIG's October 2013 report found that standardized staffing levels had been largely achieved. Specifically, at 32 of the 33 institutions they reviewed, they found that staffing patterns closely matched the standardized staffing reports.

Increase In-State Prison Capacity. As noted above, the *Blueprint* required the return of all inmates who were being housed outside of California. In order to accommodate the return of those inmates, and the closure of the California Rehabilitation Center (discussed below), the *Blueprint* outlined a plan for increasing in-state prison beds through the modification of existing facilities and the construction of three new infill-projects.

The *Blueprint* called for the construction of additional low-security prison housing at three existing prisons. The proposed projects would have capacity for 3,445 inmates under the 145 percent population cap proposed by the *Blueprint* (design capacity of 2,376 beds) and would include space to permit the operation of inmate programs such as mental health treatment and academic programs. In addition, the *Blueprint* called for the renovation of the DeWitt Nelson Youth Correctional Facility to house adult offenders. The facility would serve as an annex to the California Health Care Facility (CHCF) currently under construction in Stockton. Under the proposed 145 percent population cap, the DeWitt facility would have capacity for 1,643 lower-security inmates (design capacity of 1,133 beds). Finally, the *Blueprint* proposed converting the Valley State Prison for Women into a men's facility and the conversion of treatment facilities at Folsom Women's Facility into dormitory housing.

Current Status.

Expansion of the Dewitt Nelson Youth Correctional Facility. In the 2012-13 budget, the Legislature authorized \$167 million in AB 900 (Solorio), Chapter 7, Statutes of 2007, lease-revenue authority to establish the Dewitt Nelson Correctional Annex. The annex will have the capacity to house 1,133 adult male inmates with medical needs which require them to have access to the adjoining California Health Care Facility or who will be working in the facility. Construction of the facility is scheduled to be completed and occupancy begun in March 2014.

Conversion of Valley State Prison for Women. The conversion has been completed and, currently, Valley State Prison houses approximately 3,300 male inmates. This equates to 166.3 percent of its design capacity.

Conversion of the Folsom Transitional Treatment Facility. In the 2012-13 budget, the Legislature authorized the expenditure of \$2.8 million for capital improvement projects for the facility to increase capacity. The facility was activated in January of 2013 and currently 341 female inmates are housed there, which equates to 84.6 percent of its capacity.

Construction of Three New Dormitory-Style Housing Units. The 2012 Budget Act included an additional \$810 million of lease-revenue bond financing authority for the design and construction of three new level II dormitory housing facilities at existing prisons. Two of these new dormitory housing facilities will be located adjacent to Mule Creek State Prison in Inyo, and the third will be located adjacent to the Richard J. Donovan Correctional Facility in San Diego. Solicitation of design-build proposals is currently underway. The Administration anticipates that the contracts will be awarded in spring 2014 and construction will be completed in late 2015 or early 2016.

Closure of the California Rehabilitation Center (CRC). The *Blueprint* assumes that one prison, CRC (Norco), will be closed in 2015-16. This planned closure was due to the fact that CRC is in need of significant maintenance and repair. In addition, the Administration proposed that the savings achieved from closing CRC would offset the costs of operating the new infill beds (mentioned above).

Current Status. SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013 (discussed in detail below), suspended the closure of CRC pending a review by CDCR and the Department of Finance to determine whether or not the facility can be closed. The most recent weekly population report (January 22, 2014) shows that just over 3,000 inmates are housed at CRC, which has a design capacity of 2,491. Not closing CRC, as proposed in the *Blueprint*, results in additional ongoing costs for CDCR of approximately \$150 million and unknown repair and maintenance costs.

SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013. In September 2013, the Legislature passed and the Governor signed SB 105 to address the federal three-judge panel order requiring the state to reduce the prison population to no more than 137.5 percent of design capacity by December 31, 2013. SB 105 provides the CDCR with an additional \$315 million in General Fund support in 2013-14 and authorizes the department to enter into contracts to secure a sufficient amount of inmate housing to meet the court order and to avoid the early release of inmates, which might otherwise be necessary to comply with the order. The measure also requires that if the federal court modifies its order capping the prison population, a share of the \$315 million appropriation in SB 105 would be deposited into a newly-established Recidivism

Reduction Fund. The Governor’s proposed budget (discussed below) assumes the state will receive a two-year extension, allowing for \$81.1 million to go into the Recidivism Reduction Fund.

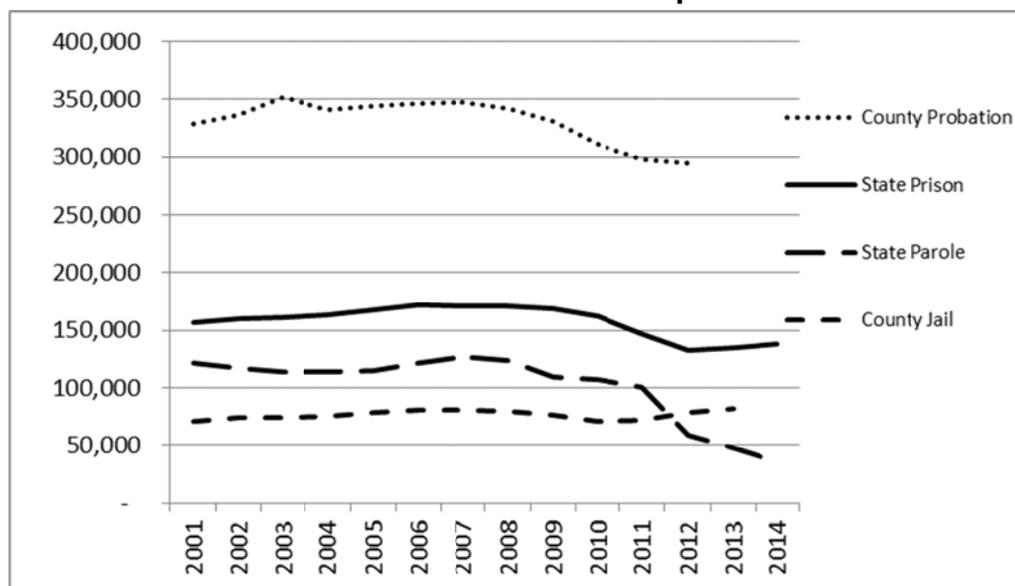
RECENT TRENDS

Crime Rates. According to the California Attorney General’s most recent report, violent and property crimes both increased slightly from 2011 to 2012. However, the 2012 rates remain at half of the rate seen 20 years ago. The homicide rate remained at a rate 18 percent lower than the average homicide rate for the prior ten years. In addition, the forcible rape and aggravated assault rates remain 7.1 and 2.7 percent lower than their respective rates two years ago. Finally, the motor vehicle theft crime rate decreased 26 percent from 2007 to 2012, the largest decrease of all the violent and property crimes.¹

Arrest Rates. In 2012, the arrest rate in California overall was 2.9 percent lower than the arrest rate in 2011. The majority of the decline was due to an 18.1 percent decline in juvenile arrests. The overall violent offense arrest rate decreased by 3 percent while property and drug offense arrest rates increased by 2.6 and 4.3 percent, respectively. Despite the increase in property and drug arrests, both arrest rates continue to be significantly lower in 2012 than they were in 2007, with a decrease of 25.3 percent and 19 percent, respectively. In 2012, 68.5 percent of adult felony arrests resulted in a conviction.²

Prison Population Projections. The adult prison population is expected to increase to 134,986 in the current year and grow to an average daily population of 137,788 in 2014-15, reaching approximately 140,000 by June 2015.

State and Local Corrections Populations



¹ (California Department of Justice, “Crime in California, 2012,” August 15, 2013.)

² (ibid)

GOVERNOR'S PROPOSED BUDGET

California Department of Corrections and Rehabilitation (CDCR). The Governor's budget proposes total funding of \$9.8 billion (\$9.5 billion General Fund and \$320 million other funds) in 2014-15. This represents a \$400 million increase over 2013-14 and a \$1.1 billion increase over 2012-13.

Court-Ordered Prison Population Cap. The proposed budget assumes the Federal Courts will grant California a two-year extension on meeting the court-imposed population cap of 137.5 percent of system-wide design capacity. Based on this assumption, the Governor's budget reflects total expenditures of \$228 million from the \$315 million appropriated in SB 105. The proposed plan would set aside \$81.1 million for use toward recidivism reduction efforts.

The proposed budget also states the intent of the Administration to immediately begin implementing measures required by the federal court pertaining to expanded medical parole, elderly parole, and credit enhancements.

Realignment Funding. As noted above, the Governor's budget estimates that there will be over \$1 billion in revenue available to counties in the Community Corrections Subaccount in both 2013-14 and 2014-15 to fund the population realigned to county supervision and jails.

Local Jail Construction. The Governor's budget includes \$500 million in lease-revenue bond financing for the construction of jail facilities in order to improve treatment space in local jails. This would bring the total state spending on local jail construction since 2007 to \$2.2 billion. The Governor's proposal would require a ten-percent funding match from counties wishing to access this funding.

Changes to Realignment. The Governor's budget proposes trailer bill legislation to require that any county jail felony sentence be a split sentence unless the court finds it to be in the interests of justice to impose a straight sentence. Under current law, judges are authorized to impose a straight sentence of time in jail or a split sentence of incarceration followed by a mandatory term of supervision for offenders convicted of a non-serious, non-violent, non-sex-related offense. This proposed change is intended to increase the use of split sentencing in order to reduce the time offenders spend in jail.

The Governor's budget proposes trailer bill legislation to require that sentences over 10 years be served in state prison. The Administration specifies that this proposed change is only to be implemented if the Administration is successful in its efforts to meet its court-ordered population cap. (The Administration assumes that this change would affect approximately 300 offenders annually.)