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AGENDA

February 23, 2017

10:00 or Upon Adjournment – State Capitol, Room 4203

The State of Corrections: An Update on Recent Trends

- I. Welcoming Remarks and Introductions (10 minutes)**
- II. Recent Population Reduction Measures (7 minutes)**
 - a. Legislative Analyst's Office
- III. Why Funding Continues to Increase as the Population Decreases (7 minutes)**
 - a. Department of Finance
- IV. The Necessity of Hope: The Impact of Recent Sentence Reform Measures (30 minutes)**
 - a. Robert Garcia, Assistant Executive Director, Jesuit Restorative Justice Initiative
 - b. Cirese LaBerge, Anti-Recidivism Coalition
 - c. Michael Mendoza, Policy Associate, Dream Corps #cut50
- V. Recidivism: The Importance of Quality Rehabilitative Programming (30 minutes)**
 - a. Tim Robbins, Founding Artistic Director, The Actors' Gang
 - b. George Luna, Lead Facilitator for Guiding Rage Into Power (GRIP), Insight-Out
 - c. Robert A. Barton, California Inspector General
- VI. Where Do We Go From Here?(10 minutes)**
 - a. Scott Kernan, Secretary, California Department of Corrections and Rehabilitation
- VII. Public Comment (10 minutes)**

The State of Corrections: An Update on Recent Trends

A Brief History of California Sentencing Changes

California law identifies three categories of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime, and an individual convicted of a felony may be sentenced to state prison under certain circumstances. Individuals convicted of felonies who are not sentenced to state prison are sentenced to county jail, supervised by the county probation department in the community, or both.

Existing law classifies some felonies as “violent” or “serious,” or both. Examples of felonies currently defined as violent include murder, robbery, and rape. While almost all violent felonies are also considered serious, other felonies are defined only as serious, such as assault with intent to commit robbery. Felonies that are not classified as violent or serious include grand theft (not involving a firearm) and, until the passage of Proposition 47 in November, possession of a controlled substance. In recent years, states have begun reconsidering whether the punishments meted out for various crimes appropriately fit the nature of the crime. Much of this reconsideration came as prisons became overcrowded due to enhanced sentences and as increasingly large portions of state budgets were being dedicated to prison spending.

California’s Sentence Enhancements. In 1976, California moved away from the practice of indeterminate sentencing which allowed judges to sentence an individual to prison for a range of time (i.e. five years to life for robbery). In its place, the Legislature passed the determinate sentencing law (DSL), which was designed to provide transparency and uniformity in sentencing. Under the DSL, a judge must impose one of three specified terms for each criminal law violation, and the individual must serve a minimum portion of the term imposed. For example, California’s penal code specifies terms of two, three, or five years of incarceration for second-degree robbery. The DSL was intended to reduce overcrowding in prisons by fixing sentences for certain crimes and removing judges’ ability to lengthen sentences.

Over time, the Legislature passed laws creating sentence enhancements that could be added to the base crime under specific circumstances. Most notably, the Legislature approved the “Three Strikes and You’re Out” law in 1994 which is discussed in detail in the following section. In addition, in 1997, the Legislature passed the “Use a Gun and You’re Done” law which significantly increased the penalty for using a gun during the commission of a crime. As a result of enhancements passed over that last 40 years, determinate sentences that were designed to reduce the prison population by reducing the number of years a person serves for a crime has resulted in a significant increase in prison sentences. For example, there are enhancements related to previous felony convictions, using a firearm in the commission of a crime, committing a crime as part of a street gang, carjacking, crimes causing great bodily injury, and the commission of certain sex crimes.¹ Individuals convicted of crimes eligible for multiple enhancements can often double or triple the amount of time they are required to serve in prison. As an example, an

¹ For more information on enhancements, see Penal Code Title 16, General Provisions, beginning with Section 667.

individual could receive a seven year sentence for manslaughter. However, if the individual used a gun and shot a person standing in the entrance to a house, the perpetrator could receive a 25-years to life sentence enhancement tacked onto the regular sentence for shooting into an occupied dwelling, resulting in a 32-year sentence. Likewise, an individual convicted of attempted murder could receive a 15-year sentence with an additional 25-years to life enhancement for being an ex-felon discharging a firearm and an additional 25-years to life enhancement for being an ex-felon in possession of a firearm. For this particular individual, the base crime carried a 15-year sentence and his conviction included an additional 94 years due to the enhancements.²

Research on the impact of enhancements has determined that longer prison sentences does not deter individuals from committing crime, nor is it an effective crime fighting tool. According to the California Budget and Policy Center, studies have shown that communities experience less crime when prison sentences are reduced. Specifically, they note that during periods when California, New Jersey, and New York were significantly decreasing their prison populations relative to nationwide trends, these states saw greater reductions in violent crime than did the rest of the country.³

California’s “Three Strikes” Law. The “Three Strikes and You’re Out” law, passed in 1994, imposed a life sentence for almost any crime, no matter how minor, if the defendant had two prior convictions for crimes defined as serious or violent by the California penal code. Statistics from the California Department of Corrections (CDCR) indicate that the law disproportionately affects minority populations. Over 45 percent of inmates serving life sentences under the Three Strikes law are African-American. The Three Strikes law is also applied disproportionately to defendants with physical or mental disabilities. California's State Auditor estimates that the Three Strikes law added over \$19 billion to the state's prison budget. There has also been widespread criticism that the Three Strikes law has had little, if any, impact on public safety.

According to The Sentencing Project, the United States is the world's leader in incarceration, with 2.2 million people currently in the nation's prisons or jails – a 500 percent increase over the past 30 years. This rate of incarceration is far greater than any other industrialized nation and unprecedented throughout the history of the United States. These trends have resulted in prison overcrowding and required states to use increasing shares of their budgets to fund the rapidly expanding penal system.⁴ In California alone, the public safety budget has grown from \$1 billion in 1984-85, which constituted four percent of the state General Fund at the time, to over \$13 billion (including realigned revenue) in 2017-18, constituting approximately ten percent of the state’s General Fund.

² Examples of enhancements come from a February 26, 2016, news story published by NBC’s Bay Area affiliate (<http://www.nbcbayarea.com/investigations/Thousands-of-California-Inmates-Face-Extraordinarily-Long-Sentences-Because-of-Enhancements-370335951.html>)

³ Teji, Selina. *Sentencing in California: Moving Toward a Smarter, More Cost-Effective Approach*, California Budget and Policy Center. December 2015.

⁴ Information on rates of incarceration comes from www.sentencingproject.org.

National Sentencing Trends. After 30 years of “tough on crime” sentencing, people throughout the country from across the political spectrum have begun rethinking the incarceration of such a large percentage of the population in prisons and jails. States, including California, Texas, and New York have found that justice systems focused primarily on punishment rather than treatment and rehabilitation, are not sustainable or necessarily healthy for society. According to a recent *New York Times* article, experts have found that longer sentences and mandatory minimum sentences, which have been the trend over the last few decades, have had a minimal effect on reducing crime. Critics argue that imprisoning more people for long periods of time does not necessarily make society safer.⁵

According to testimony presented to the Senate Budget and Fiscal Review Committee in January 2014 by former California Assembly Member Chuck DeVore, who is now the Vice President of the Texas Public Policy Foundation, who oversees the Right on Crime Initiative, despite its long-standing reputation as a “law and order” state, Texas started implementing criminal justice reforms in 2007. Those reforms primarily focus on diverting low-level, non-violent offenders away from prison and toward treatment or other supportive, rehabilitative, services. Since this shift away from incarceration toward other alternatives, such as substance abuse and mental health treatment, Texas has seen its crime rate drop faster than the national average. As of 2013, Texas had closed three of its prisons and has saved more than \$2 billion by avoiding the need to build 17,000 additional prison beds.⁶

Three-Judge Panel. In 2009, a federal three-judge panel declared that overcrowding in the state’s prison system was the primary reason that the CDCR was unable to provide inmates with constitutionally-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. Since that time, the state has made significant changes designed to reduce the number of people in the state’s prison system.

Public Safety Realignment. In 2011, the Legislature 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, under realignment, 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. 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.

⁵ Eckholm, Erik. “In a Safer Age, U.S. Rethinks Its ‘Tough on Crime’ System.” *New York Times*, January 13, 2015.

⁶ Testimony of Chuck DeVore before the Senate Budget and Fiscal Review Committee on January 30, 2014.

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, reducing state correctional costs, and reserving state prison for the most violent and serious offenders. Another 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. For many, realignment was based on a confidence that coordinated local efforts are better suited for assembling resources and implementing effective strategies for managing these offenders and reducing recidivism. This was rooted partly in California's successful realignment reform of its juvenile justice 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 between the state and county probation departments resulting from improved outcomes among this offender population.

Passage of Proposition 36. The passage of Proposition 36 in 2012, resulted in reduced prison sentences served under the Three Strikes law for certain third strikers whose current offenses were non-serious, non-violent felonies. The measure also allowed resentencing of certain third strikers who were serving life sentences for specified non-serious, non-violent felonies. The measure, however, provides for some exceptions to these shorter sentences. Specifically, the measure required that if the offender has committed certain new or prior offenses, including some drug, sex, and/or gun related felonies, he or she would still be subject to a life sentence under the three strikes law.⁷

February 2014 Court Order. On February 10, 2014, the federal court ordered the state to implement several population reduction measures to comply with the court-ordered population cap, and appointed a compliance officer with the authority to order the immediate release of inmates should the state fail to maintain the final benchmark. The court reaffirmed that CDCR would remain under the jurisdiction of the court for as long as necessary to continue compliance with the final benchmark of 137.5 percent of design capacity and establish a durable solution.

The February 10, 2014, order required the CDCR to:

- Increase prospective credit earnings for non-violent second-strike inmates, as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings for parole consideration.
- Release inmates who have been granted parole by the Board of Parole Hearings but have future parole dates.

⁷ Legislative Analyst's Office, "Proposition 36: Three Strikes Law. Sentencing for Repeat Felony Offenders. Initiative Statute," July 18, 2012.

- Expand CDCR’s medical parole program.
- Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole (the “elderly parole” program).
- Increase its use of reentry services and alternative custody programs.

SB 260 and 261. In 2013, SB 260 (Hancock), Chapter 312, Statutes of 2013, created a youthful offender parole process. Under this bill, individuals who committed their crimes under the age of 18 would be eligible for parole, even if serving a life sentence. Specifically, the legislation established a youth offender parole hearing, which is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 18 years of age at the time of his or her controlling offense. The bill created the following parole mechanism for a person who was convicted of a controlling offense that was committed before the person had attained 18 years of age:

- If the controlling offense was a determinate sentence, the person is eligible for release after 15 years.
- If the controlling offense was a life-term of less than 25 years, the person is eligible for release after 20 years.
- If the controlling offense was a life-term of 25 years to life, the person is eligible for release after 25 years.

In 2015, SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded the youthful parole process to include people who were convicted of committing a crime prior to attaining the age of 23.

Passage of Proposition 47. In November 2014, the voters approved Proposition 47, the Reduced Penalties for Some Crimes Initiative, which requires misdemeanor, rather than felony sentencing, for certain property and drug crimes and permits inmates previously sentenced for these reclassified crimes to petition for resentencing.

Proposition 47 requires that state savings resulting from the proposition be transferred into a new fund, the Safe Neighborhoods and Schools Fund. The new fund will be used to reduce truancy and support drop-out prevention programs in K-12 schools (25 percent of fund revenue), increase funding for trauma recovery centers (10 percent of fund revenue), and support mental health and substance use disorder treatment services and diversion programs for people in the criminal justice system (65 percent of fund revenue). The Director of Finance is required on or before July 31 of each fiscal year to calculate the state savings for the previous fiscal year compared to 2013-14.

In the proposed budget, the Administration estimates that the 2016-17 savings associated the Proposition 47, will be \$42.9 million in 2016-17, an increase of \$3.5 million in savings over 2015-16. On-going savings are estimated to be \$69 million.⁸

Crime and Arrest Rates

According to the California Attorney General's Open Justice database, California's crime rate has reached its lowest rate in 47 years. Every violent and property offense has decreased in both overall number and rate per population. California's property crime rate which includes burglary, motor vehicle theft, and larceny-theft, also declined dramatically between 1982 and 2014 for each offense. During this period, rates for burglary decreased by 74 percent, motor vehicle theft 41 percent and larceny-theft by 59 percent. Since 1980, California has seen an overall dramatic decrease in its violent crime rate, which includes homicide, rape, robbery, and aggravated assault. When comparing 1982 to 2014, rates for homicide decreased by 61 percent, rape 52 percent, robbery 66 percent and aggravated assault 37 percent.⁹

In 2014, there were 1.42 million total arrests, at a rate of 3,641 arrests per 100,000 residents. Since 1990, misdemeanor arrest rates have steadily declined and felony arrests rates have slightly decreased.¹⁰ In 2015, the arrest rate in California overall was 4.4 percent lower than the arrest rate in 2014. The majority of the decline was due to a 17.1 percent decline in juvenile arrests. The felony arrest rate decreased by 29 percent, while the total misdemeanor arrest rate increased by 8.8 percent. In 2015, the total violent offense arrest rate increased one percent, the homicide arrest rate remained the same and the robbery and kidnapping arrest rates increased by 6.7 percent and 15.2 percent, respectively. In 2015, 45.4 percent of misdemeanor arrests were either alcohol or drug-related. In 2015, 66.9 percent of felony arrests resulted in a conviction.¹¹

California's Prison Population Declines

As described in detail above, California has moved away from prison toward treatment and rehabilitation within the last five years due to public safety realignment in 2011; changes in the Three Strikes law in 2012; and the passage of Proposition 47 in 2014. These factors also significantly contributed to a reduction in California's state prison population, which peaked at 173,000 in 2007, has declined to 118,560 inmates in adult institutions as of January 11, 2017. Currently, the state's prisons are at 133.8 percent of their design capacity. As these sentencing changes continue to be implemented and Proposition 57 is implemented, discussed later in this document, the population should continue to decline.

California's Use of Private Prisons

Growth of the Private Prison Industry. In the 1970s and 80s, the war on drugs and harsher sentencing policies, including mandatory minimum sentences, fueled a rapid expansion in the

⁸ 2017-18 Governor's Budget Summary

⁹ California Department of Justice, Open Justice database.

¹⁰ California Department of Justice, Open Justice database.

¹¹ California Department of Justice, 2015 Crime in California report, p 1-2.

nation's prison population. The resulting burden on the public sector led private companies to step in during the 1970s to operate halfway houses. They extended their reach in the 1980s by contracting with the Immigration and Naturalization Service (INS) to detain undocumented immigrants. These forms of privatization were followed by the appearance of for-profit, private prisons.¹²

There are two private, for-profit companies providing the majority of private housing and rehabilitation services to inmates in the United States: 1) Corrections Corporation of America (CCA) (now Core Civic), established in 1983, and 2) Wackenhut Corrections Corporation (now the GEO Group, Inc.), established in 1984. Today, CCA and GEO Group collectively manage the majority of the contracts in the United States, which resulted in combined revenues exceeding \$3.2 billion in 2015. CCA, as the largest private prison company, manages more than 89,000 inmates and detainees in 77 facilities. GEO Group, as CCA's closest competitor, operates slightly fewer, with 64 facilities and 74,000 beds.¹³ Smaller companies, including Management & Training Corporation, LCS Correctional Services, and Emerald Corrections also hold multiple prison contracts throughout the United States.¹⁴

As of 2014, over eight percent of U.S. prisoners were held in privately-owned prisons. In 2014, seven states housed at least 20 percent of their inmate populations in private prisons. A total of 131,300 inmates were housed in private facilities between those states and the federal Bureau of Prisons. This figure represents a decrease of 2,100 prisoners from 2013. According to the federal Bureau of Justice Statistics, since 1999, the size of the private prison population grew 90 percent, from 69,000 inmates in 1999 to 131,000 in 2014. The use of private prisons was at its peak in 2012, when 137,000 inmates (almost nine percent of the total prison population) were housed in private facilities.¹⁵

In addition to federal prisoners, the United States detains approximately 400,000 immigrants per year. As of 2016, the Detention Watch Network (DWN) reports that 73 percent of detained immigrants were held in private, for profit prisons.¹⁶ That percentage equates to almost 300,000 individuals held in private, for-profit immigration detention facilities throughout the United States, including in California.

Concerns about the use of for-profit contractors in state and federal prisons have grown in recent years. Reports detailing physical and sexual abuse, contraband, excessive use of force, inadequate safety measures, lack of adequate healthcare, and lack of programming have surfaced in many states, including federal facilities in California.¹⁷

¹² Mason, Cody. *Too Good to be True: Private Prisons in America*. The Sentencing Project, January 2012.

¹³ CCA and Geo 2015 Annual Reports.

¹⁴ Mason, Cody.

¹⁵ Prisoners in 2014. Bureau of Justice Statistics, Office of Justice Programs, United State Department of Justice. www.bjs.gov.

¹⁶ Small, Mary, et al. *A Toxic Relationship: Private Prisons and U.S. Immigration Detention*. December 2016. Detention Watch Network.

¹⁷ To date, the Legislature is unaware of any complaints of excessive use of force or criminal activities related to private facilities housing California inmates. However, as discussed later in the piece, all but one of the contract facilities appears to be providing inadequate medical care.

In 2010, the American Civil Liberties Union (ACLU) filed a lawsuit against CCA related to their running of the Idaho Correctional Center (ICC) in Boise, Idaho. The suit came about after reports began to surface about violence in ICC. The ACLU's complaint detailed more than 30 assaults that they argued might have been prevented had CCA operated ICC in a responsible manner.¹⁸ In addition, in 2010, the Governor of Kentucky ordered the removal of over 400 female inmates from a CCA-run facility after over a dozen women complained of being sexually assaulted by male correctional officers.

CCA, however, is far from alone in complaints about the conditions in their institutions and the treatment of inmates. In 2012, the *New York Times* published a series of investigative articles about the treatment and oversight of inmates at the Albert M. "Bo" Robinson Assessment and Treatment Center in New Jersey run by Community Education Centers (CEC). The complaints ranged from the sexual assault of inmates by CEC staff, to a lack of security that led to inmates assaulting and robbing each other during the night when only one or two staff were assigned to overseeing housing units of 170 inmates. According to the *New York Times'* findings, inmates regularly asked to be returned to a state-run prison where they felt safer.¹⁹

In Mississippi, a prison run by Management and Training Corporation (MTC) was deemed by one federal judge to be so corrupt that it was "effectively run by gangs in collusion with corrupt prison guards." In 2012, federal judge Carlton Reeves wrote in a 2012 settlement order that it "paints a picture of such horror as should be unrealized anywhere in the civilized world." That prison was shut down in September 2016.²⁰

GEO Corporation has also faced its share of issues over the years. Of particular note are reports on the treatment of immigrants being detained in GEO's detention facility in Adelanto, California. The ACLU, DWN, and Community Initiatives for Visiting Immigrants in Confinement (CIVIC) have all detailed abuses related to the Adelanto facility. In an October 2015 report, CIVIC and DWN outlined complaints of medical abuse and neglect relating to at least one preventable death and four instances of physical abuse by GEO staff.

In addition, GEO's Walnut Grove Youth Correctional Facility in Mississippi was under federal investigation in 2012 after hundreds of brutality complaints. The facility was also the subject of a federal lawsuit claiming that inmates "live in unconstitutional and inhumane conditions and endure great risks to their safety and security" due to understaffing, violence, corruption, and a lack of proper medical care.²¹

Generally, complaints about the private prison industry have been focused on the fact that facilities contain too few staff and that they are both underpaid and undertrained for their jobs.

¹⁸ Pevar, Stephan. *Is CCA Guilty?* March 5, 2014. www.aclu.org

¹⁹ Dolnick, Sam. "At a Halfway House, Bedlam Reigns." *New York Times*. June 17, 2012.

²⁰ Williams, Timothy. "Privately Run Mississippi Prison, Called a Scene of Horror, is Shut Down." *New York Times*. September 15, 2016.

²¹ Mason, Cody. *Too Good to be True: Private Prisons in America*. The Sentencing Project. January 2012.

Thus as a result of inadequate staffing, inmates in private prisons are subject to more violence and sexual assault, higher rates of contraband, inadequate food, and inadequate medical care.

Federal Bureau of Prisons. In August 2016, the United States Attorney General's Office of the Inspector General released a report comparing the federal Bureau of Prison-operated institutions to the private prisons under contract with the federal government. The agency found that private prisons were more dangerous and less hygienic than government facilities, citing higher instances of assault, inappropriate use of solitary confinement and inadequate medical treatment. In addition, the report found that the Bureau of Prisons needed to improve how they monitor the contracts.²² As a result, the Attorney General's Office called for the phasing-out of the use of private prisons. In a memo to the Director of the Federal Bureau of Prisons, then-Deputy Attorney General, Sally Yates noted of private prisons:

*They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security. The rehabilitative services that the Bureau provides, such as educational programs and job training, have proved difficult to replicate and outsource, and these services are essential to reducing recidivism and improving public safety.*²³

The prior federal Administration intended to begin phasing out the use of for-profit facilities for inmates, and possibly for immigration detainees. It is unclear whether or not the new Administration will continue with that commitment. However, increasing stock prices for both GEO and CCA, might indicate that the industry and stockholders believe the country will rely more on private prisons, rather than doing away with them. Since the current president was elected, CCA stock has jumped 78 percent and GEO Group Inc., is up 53 percent.²⁴

California's Private Prison Facilities. Private contract prison facilities have been an important tool for California in reducing overcrowding in its prisons in recent years. In September 2013, the Legislature passed, and the Governor signed, SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013, 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 provided the California Department of Corrections and Rehabilitation (CDCR) with an additional \$315 million in General Fund support in 2013-14 and authorized 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 contracts were intended to be short-term in nature and were entered into in lieu of building additional prisons throughout the state. In 2014, the state housed approximately 9,000

²² *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons.* Office of Inspector General, United States Department of Justice. August 2016.

²³ Memorandum to the Acting Director, Federal Bureau of Prisons, from Sally Q. Yates, Deputy Attorney General. August 18, 2016.

²⁴ Etter, Lauren. *America's Private Prisons are Back in Business.* Bloomberg. January 10, 2017.

<https://www.bloomberg.com/news/articles/2017-01-10/trump-deportation-plan-to-hand-windfall-to-a-dying-u-s-industry>

inmates in out-of-state, private prisons. Since that time, the state has considerably reduced its reliance on out-of-state, private prisons and now houses approximately half of the 2014 number of inmates out-of-state. CCA runs both out-of-state prisons used by California to house 4,722 inmates 2,580 in Arizona and 2,142 in Mississippi.²⁵

In California, GEO and CCA currently operate eight state facilities, including a recent contract with GEO for an 80-bed community re-entry facility in San Francisco. The 2017-18 proposed budget assumes the state will house 7,865 California inmates in private, contract prisons (3,750 in out-of-state prisons and 2,342 in in-state prisons). These totals do not include the estimated 2,381 inmates who will be housed in California City, a prison owned by CCA and run by the state. In addition to prison facilities, the state currently contracts with both GEO and CCA to provide reentry services, parole services, substance use disorder treatment, and cognitive behavioral therapy.

California in 2016-17 has approximately \$330 million in contracts with for-profit companies providing either housing or rehabilitation services and treatment for CDCR inmates. Of that amount, \$240.5 million is for private prison facilities both in-state and out-of-state. The remaining \$89 million is for contracts providing substance use disorder treatment, cognitive behavioral therapy, parolee services, and community reentry. Of the total amount, \$187 million is for contracts with CCA (\$182.4 million for facilities and \$4.6 million for cognitive behavioral therapy) and \$71 million is for GEO contracts (\$58 million for facilities and \$12.4 million for rehabilitation and reentry programming). The next largest correctional contractor is CEC for \$24 million.

As discussed previously, all three companies have come under considerable scrutiny nationally for their treatment of inmates and employees. Except for complaints about inadequate medical care, the Legislature has not received any complaints or reports to suggest that the problems reported in the private institutions in other states or under federal jurisdiction exist in the private state facilities in California.

²⁵ Out-of-state population based on CDCR's weekly population report for the week ending January 18, 2017.

The following table includes all of the companies providing either housing or rehabilitation services in California's prison system.

Private Provision of Housing and Rehabilitation Services

	2017-18 Proposed Budget	2017-18 Estimated Caseload
PRIVATE PRISONS		
In-State Modified Community Correctional Facilities		
Golden State -- GEO Group	\$ 15,689,862	683
Desert View -- GEO Group	\$ 15,689,862	683
Central Valley -- GEO Group	\$ 15,689,862	683
McFarland Female Community Re-entry Facility -- GEO Group	\$ 10,040,095	293
Out-of-State Correctional Facilities in Mississippi and Arizona		
La Palma in Arizona -- CCA	\$ 75,426,460	3,067
Tallahatchie in Mississippi -- CCA	\$ 15,215,540	1,833
Total	\$ 147,751,681	7,242
Privately-Owned Facility Leased to the State		
California City -- CCA*	\$ 72,159,958	2,381
	2016-17 Contract Amounts**	
REHABILITATION/REENTRY/PAROLE PROGRAMS***		
Behavioral Systems Southwest -- Parolee Day Reporting Center	\$ 1,127,269	
Behavioral Systems Southwest -- Parolee Service Center	\$ 2,146,653	
Community Education Centers, Inc. -- Cognitive Behavioral Treatment	\$ 7,397,050	
Community Education Centers, Inc. -- Specialized Treatment for Optimal Programming (STOP)	\$ 16,884,330	
Corrections Corporation of America (CCA) -- Cognitive Behavioral Treatment	\$ 4,599,000	
GEO Group (dba BI Incorporated) -- Parolee Day Reporting Centers	\$ 6,304,198	
GEO Group (dba Cornell Corrections of California) -- Parolee Service Center	\$ 1,749,185	
GEO Group (dba GEO Reentry Services, LLC) -- Cognitive Behavioral Treatment	\$ 3,545,421	
GEO Group -- Cognitive Behavioral Treatment	\$ 1,467,440	
GEO Group (dba GEO Reentry, Inc.) -- Male Community Reentry Program	\$ 1,432,558	
National Crossroads -- Parolee Service Center	\$ 837,310	
Lifesigns Now -- Interpreter Services	\$ 160,000	
Interpreting & Consulting -- Video Remote Interpreting	\$ 692,640	
Total	\$ 48,343,055	

*Of the \$72 million budgeted for California City, approximately \$30 million is for lease payments to CCA.

** CDCR does not project the amount of contracts on a contract-by-contract basis when building their budget.

*** These contracts include those in the Division of Rehabilitative Programming budget and not those in the Division of Parole Operations.

Contract Monitoring of Private Facilities. California does not seem to have encountered the same problems with private facilities as other states and the federal government. One reason for that may be the state policies put in place to closely monitor and oversee the running of the private facilities. For example, all inmates housed in private facilities must be supervised in the same manner and under the same rules as the state-run prisons. These rules include an appeals process that requires all complaints filed by inmates be handled in the same manner as in the state-run prisons. In addition, CDCR has an appeals coordinator and two analysts who monitor

the appeals process for all of the contracted facilities. These appeals are also tracked using the state's Inmate Appeals Tracking System.

In addition to CDCR's monitoring of contract facilities, the state's Inspector General has the same oversight and authority over private facilities as he does over the state-run prisons. For example, the Office of the Inspector General (OIG) monitors all use-of-force complaints, Prison Rape Elimination Act (PREA) complaints, and surveys rehabilitation programming. In addition, notices are required to be posted throughout the prison providing the information necessary for inmates to contact the OIG directly with complaints and concerns. The OIG, however, does not monitor healthcare in the contract facilities.

Under the state's current healthcare structure, California Correctional Healthcare Services, the federally-appointed receiver monitors medical care at all contract facilities. The receiver's office audits all of the facilities at least once a year and then posts those audits online for the public to access. According to the receiver's audit reports, the standardized audit tool is designed to evaluate the effectiveness, efficiency and compliance of the health care processes implemented at each contracted facility. The audit instrument is intended to measure the facility's compliance with various elements of inmate-patient access to health care and to assess the quality of health care services provided to the inmate-patient population housed in these facilities. The audits include both a review of relevant paperwork and interviews with staff and inmates in the facilities.²⁶

Inadequate Medical Care. As noted previously, the federal healthcare receiver audits all of the in-state and out-of-state contract facilities each year, and all but one of those facilities is providing inadequate medical care, as indicated in the figure below. The audit findings include patients not being seen in a timely manner, patients not receiving their medications as required, and failing to properly dispose of used needles. In several facilities, nurses did not refer patients to a physician. In addition, in some instances, nurses did not confirm the identity of an individual before administering medications. The responsibility for the quality of medical care falls to CDCR. The federal receiver does not have jurisdiction over the contract facilities; however, he can refuse to allow inmates to be placed in them if the medical care remains inadequate. The receiver's office has expressed concern about the medical care being provided at the contract facilities, particularly the in-state facilities.

²⁶ <http://www.cphcs.ca.gov/ContractPrisonFacilities.aspx>

Results of Most Recent Healthcare Audits for Private Contract Facilities

Private Contract Facilities	2016 Audit Results
In-State Modified Community Correctional Facilities	
Golden State -- GEO Group	Inadequate
Desert View -- GEO Group	Inadequate
Central Valley -- GEO Group	Inadequate
McFarland Female Community Re-entry Facility -- GEO Group	Inadequate
Out-of-State Correctional Facilities in Mississippi and Arizona	
La Palma in Arizona -- CCA	Adequate
Tallahatchie in Mississippi -- CCA	Inadequate

The 2016 Budget Act provided \$2 million General Fund to increase medical coverage at in-state contract facilities, in addition to the contract amounts noted previously. The funding is intended to provide for a full-time physician and an additional licensed vocational nurse at each facility.

Proposition 57

Approved by voters in November, Proposition 57, the California Parole for Non-Violent Criminals and Juvenile Court Trial Requirements Initiative (2016), brings three major changes to sentencing:

- Allows individuals convicted of nonviolent felonies to be considered for parole after completing the sentence for their primary offense.
- Allows CDCR to award additional sentence reduction credits for rehabilitation, good behavior or educational achievements.
- Requires a judge's approval before most juvenile defendants can be tried in an adult court.

CDCR is currently working on regulations to implement the proposition and anticipates that they will be in place by October 1, 2017.

Governor's Proposition 57 Proposal

Changes to Credit Earnings. The proposition provides a significant amount of flexibility in terms of awarding inmates additional credits for good behavior and rehabilitation programming. The Administration's current proposal assumes that the department will make the following changes to credit earnings:

- Increase and standardize good-time credit earnings. Good-time credits are earned when an inmate avoids violating prison rules.

- All inmates in fire camps will receive 2-for-1 credit earning (two days off of their sentence for every day spent working in a fire camp).
- Violent offenders will earn 20 percent. Currently, violent offenders are eligible to earn anywhere from zero to 15 percent, depending upon their crime.
- Non-violent third-strike offenders will earn 33.3 percent. Currently, inmates serving time for a third-strike felony do not receive good-time credits.
- All inmates, with the exception of life-term inmates without the possibility of parole and condemned inmates, will be eligible to earn milestone credits. Milestone credits are earned when an inmate completes a specific education or training program that has attendance and performance requirements.
- Increase the amount of time an inmate can earn for milestone completion credits from six weeks per year to 12 weeks.
- Create new, enhanced milestone credits for one-time significant earned academic and vocational achievements, such as the earning of Associate of Arts and Bachelor's degrees, high school diplomas, the Offender Mentor Certification Program, and Career Technical Education certifications. Enhanced milestone credits will be applied retrospectively for those credits earned during the inmate's current term.
- Establish new achievement credits for inmates that have sustained participation in other rehabilitative programs and activities. Inmates will be able to earn up to four weeks of achievement credits in a 12-month period.

Credits earned by life-term inmates will be credited towards their minimum eligible parole date. CDCR does assume that, consistent with current practices, all credit earning will be revocable, based on behavior-based violations.

Caseload Impact. The Administration assumes that Proposition 57 will result in 1,959 fewer inmates in 2017-18, growing to 9,656 fewer in 2020-21. In addition, they assume that there will be 1,038 more parolees in 2017-18, growing to 4,550 by 2020-21.

Issues to Consider

Definition of Violent Crime. Proposition 57 allows individuals convicted of nonviolent felonies to be considered for parole after completing the sentence for their primary offense. Under the language of the proposition, a violent felony is defined as those felonies listed under Penal Code Section 667.5(c). In recent months there has been significant debate about what is and is not included on the list of violent felonies. Several bills have been introduced this legislative session to increase the number of crimes that are counted as violent. Therefore, it is likely that the debate will continue through the policy bill process.

Oversight and Monitoring Issues in California. As noted previously, in general, a system of oversight and monitoring has been put in place that helps to insure that inmates in private prisons are receiving the same supervision and care and have the same protections as those in the state-run prisons. The one area that may warrant closer oversight, and that has been of concern nationally, is the healthcare provided in the private facilities. As noted previously, all but one of the contract facilities is providing inadequate healthcare to inmates.

Currently, the OIG is responsible for monitoring the medical care for inmates in all of the state facilities. However, that monitoring does not extend to the contract facilities. The Inspector General notes that the reason they do not do medical inspections is because anyone with a serious health condition cannot be housed in a contract facility. However, given the poor quality of medical care found by the receiver, the Legislature may wish to expand OIG medical oversight to include private facilities.

Currently, as noted above, the healthcare receiver's office has an audit unit that monitors all in-state and out-of-state contract facilities' medical care. If the Legislature decides not to have the OIG monitor healthcare at private facilities while the receivership is in place, they may wish to shift the monitoring from the receiver to the OIG once the receivership ends. Absent placing the audit responsibility with the OIG, it is likely those monitoring functions would be transferred to CDCR when the receivership ends. In addition to considering the role of the OIG in monitoring healthcare at contract facilities, the Legislature should have the Administration report during budget hearings on the current state of medical care at each of the contract facilities and the steps they are taking to improve that care.

Ending Private Contracts or Closing a Prison. 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 are located adjacent to Mule Creek State Prison in Ione, and the third is located adjacent to Richard J. Donovan Correctional Facility in San Diego. All three infill projects have been completed and activated. At the time the Legislature approved the infill projects, the understanding was that the cost of operating the facilities would be offset by the closure of the California Rehabilitation Center (CRC) in Norco. CRC is one of the state's most dilapidated prisons and it is in need of several hundred million dollars in repairs. Therefore, the new infill projects would replace the prison beds at CRC. The CRC closure would have saved the state approximately \$180 million in General Fund annually.

However, in budget discussions over the last two years, the Administration has successfully argued that CRC needed to be kept open in the short-term in order to insure that the state would stay safely below the federal population cap of 137.5 percent of the state's prison capacity. While it may be desirable to end the state's contract facilities as quickly as possible, it is unlikely the state would be able to end the contracts *and* close a prison in the near future. Therefore, if the contracts are terminated prior to a closure of one of the state's prisons, it is unlikely that a prison will be closed. It is more likely that the state will need to invest in the repair and rebuilding of CRC.

If the ultimate goal of the Legislature continues to be achieving long-term savings through the closure of one of the state's prisons, they may need to prioritize that over ending the use of private contract facilities. In the long-term, that strategy will achieve greater General Fund savings. Not only will the state save a minimum of \$160 million per year by reducing the number of prisons, but the state can also save over time as the number of contract beds are reduced. Unlike the budget for the state prisons, where the number of security staff is based upon the design of the facility rather than the number of inmates, the state pays for contract beds on a per-inmate basis.

Treatment and Rehabilitation Programming Provision by For-Profit Companies. While many of the investigations throughout the country have focused on the treatment of inmates housed in private prisons, these companies are also providing rehabilitative treatment in state-owned facilities and are running community reentry facilities. As the state works toward a durable solution for reducing its prison population, short of building more prisons and contracting for more private beds, the state must look toward changing sentences (as it has done) and must provide high quality, effective rehabilitation and reentry programming and treatment to ensure that people leaving prison do not return.

Given the vital importance of this aspect of the state's correctional system, the use of for-profit entities to provide critical programming and treatment for inmates has created a significant amount of concern. The Drug Policy Alliance and other advocates and non-profit service providers throughout the state have strongly objected to the use of for-profit companies to provide these services.

Maximizing Sentence Reduction Credits for Volunteer-Led Programs. Currently, inmates are only allowed to earn milestone credits in seven volunteer-led programs. According to the program providers, receiving milestone credits for their programs was a long and cumbersome process. CDCR is currently in the process of making decisions regarding sentence reduction credits, including determining which programs should be eligible for milestone credits. The Legislature may want to work closely with CDCR to ensure that those credits are maximized and that the criteria for determining eligibility is streamlined and allows as many programs as possible, especially innovative, volunteer-led programs, to provide credits.

Program Opportunities for Parole-Eligible Individuals. One of the criteria for parole eligibility is being able to demonstrate work toward rehabilitation by participating in programming. Unfortunately, opportunities for programming can be limited and vary widely between prisons and even between housing units within prisons. So, while an inmate who is eligible for parole may have participated in every program offered to him or her, it still may not be enough for the parole board. In addition, until the last year, certain programs and treatments were primarily concentrated in 11 prisons that CDCR had designated as "reentry hubs." Therefore, unless an inmate was housed in one of those 11 facilities, they may not have had access to substance use disorder treatment or cognitive behavior therapy treatment, both of which may be required for parole. In addition, access to programming can vary significantly within a prison. While inmates in some housing units may have access to programs and treatment,

inmates in another housing unit in the same prison may have limited programming opportunities. Unless programming and treatment is expanded throughout the prison system and includes enough slots to satisfy the long list of inmates who are waiting for programs, initiatives like Proposition 57, which expanded eligibility for parole, may not reach as many inmates as possible, thus limiting the state's ability to stay under the population cap without the use of private prison contracts or construction of new prisons.

Effectiveness and Quality of Rehabilitation Services and Programs. Over the last few years, the Senate has led the way in expanding rehabilitation programs in the prisons. SB 105 (Steinberg and Huff), Chapter 310, Statutes of 2013, provided the CDCR with an additional \$315 million in General Fund in order to expand prison capacity and required that any unspent funding be placed in a recidivism reduction fund to increase rehabilitative programming in prisons and support other programs that have been shown to reduce recidivism. Through that funding, the Legislature established innovative program grants that were designed to expand the number of restorative justice/offender responsibility programs available throughout the prison system.

The Legislature has segregated the funding used for rehabilitation programming in CDCR's budget to ensure that those funds could not be redirected toward increased security staffing or other funding priorities. In 2014, SB 1391 (Hancock), Chapter 695, Statutes of 2014, significantly expanded community college programs throughout the prison system, requiring that CDCR partner with local community college districts to provide in-prison, in-person college level courses.

The Administration has embraced and supported these efforts and expanded them by making innovative program funding a permanent part of the rehabilitation budget and by reinstating the Arts in Corrections program at all 36 state prisons. However, the question remains as to whether or not the programs and treatment being offered both in prison and upon release are effective and of a high quality. The Legislative Analyst's Office has continually recommended that the Legislature assess whether or not the \$400 million being spent each year on rehabilitation programming is being spent on programs that work to reduce recidivism. Toward that end, CDCR has been partnering with several national organizations to support and evaluate parolee support and recidivism reduction strategies. These partnerships include evaluations of the Second Chance Act Adult Re-entry Demonstration projects with the National Institute of Justice, documentation of community re-entry programs with the University of California, Los Angeles and evaluation of re-entry and parolee programs with the Pew-MacArthur Results First Initiative to provide a cost-benefit analysis of current programs.

The Legislature may wish to ask CDCR to report during legislative budget hearings on the progress of the evaluations and to provide any results they have received. Depending upon the findings of the evaluations, the Legislature may want to examine the way in which rehabilitation funding is being spent and redirect it toward programs that are proven to reduce recidivism and enhance the prison environment, thus improving people's chance of succeeding once they leave prison and providing a safer and productive environment for the 115,000 individuals confined to the prison system.

Ensure the Success of Innovative Programs and Arts Programs. In recent years, the Legislature has made significant investments in the expansion of innovative programs and arts programs. In 2014, the Legislature created the innovative programming grants program using the Recidivism Reduction Fund. The program was designed to provide volunteer programming that focuses on offender responsibility and restorative justice principles at underserved, remote prisons. In addition, the program required that the funding be provided to not-for-profit organizations wishing to expand programs that they are currently providing in other California state prisons. Finally, the program required that priority be given to level IV institutions. In the 2016 budget act, the Legislature continued their commitment to innovative, restorative justice programs by providing \$5.5 million General Fund to provide innovative, restorative justice-based programs for long-term and life-term inmates; and \$3.1 million General Fund to continue providing innovative programming grants.

During that same period, the Legislature and the Governor worked collaboratively to reinstitute the Arts-in-Corrections (AIC) program throughout the state's prison system. The original AIC program in the 1980s and 1990s included individual and group instruction in visual, performing, literary and media arts, and fine craft disciplines. The key to the original program was full-time artist/facilitators who were responsible for teaching, management of programs, screening and orientation of instructors, and who served as liaisons with contractors and outside art organizations. In addition to artist/facilitators, the state contracted with professional artists and community arts organizations to provide workshops and demonstrations, as well as funding for supplies and equipment.

The state's new AIC program began as a one-time, two-year pilot program in 2014, using \$2.5 million unspent CDCR rehabilitation funds and administered by the California Arts Council. The renewed program offers arts to offenders in many forms such as literary, visual arts, performing arts, and media arts, as well as drawing, painting, and sculpting. Despite one year remaining in the pilot project, the 2015 budget act included \$2 million General Fund to expand the pilot into an on-going program. The 2016 budget act included funding to expand AIC programs to all 36 CDCR adult institutions in 2017; and allow the Arts Council to provide more robust programming at current facilities, reaching more inmates on more yards. A multi-phased program expansion plan is currently being implemented by the Arts Council, in collaboration with CDCR.

As previously noted, a key component of the success of the old AIC program was the existence of an artist facilitator, or artist-in-residence, at every institution. Under the new program, there are no artist/facilitators coordinating the programs or teaching in the prisons. Instead, the job of facilitating the arts program and the innovative grants program has fallen to each institution's community resource manager (CRM). CRM's currently have a significant number of responsibilities including:

- Developing, allocating, coordinating, and controlling all community resources within a prison.
- Making resource availability/priority decisions within the institution.

- Designing and implementing new and innovative programs to benefit the inmates and institution.
- Soliciting community support and resources by working with community leaders and agencies, including making presentations and follow-up visits; implementing community-sponsored activities for inmates; and designing and implementing special events to inform the community of CDCR's role in the community and society at large.
- Negotiating contracts with public entities who wish to use inmate support services.
- Developing and implementing all volunteer training and orientation procedures; monitors and reports total number of volunteer hours; serves as staff liaison to the legislatively-mandated Citizens' Advisory Committee.
- Designing, coordinating, and monitoring at-risk youth intervention programs, self-help programs and innovative programming such as Narcotics Anonymous, Insight-Out, and Center for Council.
- Supervising chaplains, coordinating, monitoring, and supporting all religious programs, including, monitoring the implementation of court-mandated religious services such as the provision of inmate religious dietary needs.
- Monitoring gate clearances and institutional contractor identification cards for contractors and volunteers.²⁷

The recent addition of coordinating innovative and arts programs to their duties has raised significant concern among some providers of those programs. Community groups and volunteer groups throughout the state's prison system have expressed widespread concern for the CRMs' ability to successfully carry out their long list of duties, much less the added workload associated with coordinating and running a successful AIC program. In addition, some groups have noted that CRMs at some institutions are actually blocking their access to the prisons, rather than facilitating innovative programs and arts programs.

The Senate's version of last year's budget redirected some of the Governor's proposed CDCR augmentations to restore the artist/facilitators in all 36 institutions. However, the final budget did not include these positions. The Senate may wish to once again provide \$3.5 million General Fund to fund these positions, either by redirecting funding from the Governor's proposed budget or providing an augmentation. This would allow for additional art instruction and also provides the arts contractors and the Arts Council with an artist liaison in each institution to facilitate the programs and ensure that they are being fully utilized, rather than relying on overly burdened CRMs. Reestablishing artist/facilitators will also allow the arts programs to expand, reducing waiting lists.

²⁷ <http://www.calhr.ca.gov/>. Community Resources Manager, Department of Corrections (9608).

As the Legislature continues to invest and expand in both innovative programming and arts programming in prison, it become increasingly important that all 35 prisons work with the providers to ensure that inmates have access to the programs and that the providers have the support they need to successfully run the programs. Therefore, the Legislature should consider continuing their effort to reestablish artist/facilitators at all institutions and explore the possibility of expanding their duties to include facilitation of innovative programs.