

# SUBCOMMITTEE NO. 5

# Agenda

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



Thursday, March 4, 2021  
30 Minutes after adjournment of PART A  
State Capitol - Room 3191  
PART B

Consultant: Christopher Francis, Ph.D.

<u>Item</u>	<u>Department</u>	<u>Page</u>
<b>Discussion Issues</b>		
<b>0552</b>	<b>Office of Inspector General</b>	
<b>5225</b>	<b>Department of Corrections and Rehabilitation</b>	
Issue 1	Oversight: Special Review of the CDCR's New Procedure for Handling Grievances Involving Staff Misconduct	3
Issue 2	<i>Armstrong</i> Court Compliance	6
<b>0530</b>	<b>California Health and Human Services Agency (CHHS)</b>	
Issue 3	Office of Youth and Community Restoration	10
<b>Various Departments</b>		
Issue 4	County Probation Proposals	13
<b>0820</b>	<b>Department of Justice (DOJ)</b>	
Issue 5	Various Legislative Proposals	17
Issue 6	Bureau of Forensic Services (BFS) Proposals	24
Issue 7	Healthcare Rights and Access Workload	27
Issue 8	Continuation of CURES Help Desk Resources	28
<b>5227</b>	<b>Board of State and Community Corrections (BSCC)</b>	
Issue 9	Increase in Title II Spending Authority	30
<b>8830</b>	<b>California Law Revision Commission</b>	
Issue 10	Additional Resources for the Committee on Revision of the Penal Code	31

**Public Comment**

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## DISCUSSION ITEMS

**0552 OFFICE OF THE INSPECTOR GENERAL (OIG)**

**5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)**

### **Issue 1: Special Review of the CDCR's New Procedure for Handling Grievances Involving Staff Misconduct**

#### **Background and Timeline.**

The CDCR defines a staff misconduct grievance as an allegation that staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, that would more likely than not subject a staff member to adverse disciplinary action if it were found to be true. In January 2018, the Secretary of the CDCR and attorneys from the Prison Law Office requested that the OIG assess Salinas Valley State Prison's (SVSP) process of handling inmate allegations of staff misconduct, referred to as "staff complaints." The OIG conducted an investigation and released a report with findings on January 24, 2019. The findings included the following:

- Between December 1, 2017 through May 31, 2018, there were 3,218 staff complaint appeals statewide. SVSP received 298 during this same period of time which was significantly higher than other institutions.
- The process utilized at SVSP to review allegations was inadequate and the assigned staff investigators were inadequately trained.
  - Of the 188 staff complaint inquiry reviews, 55 percent were found to be inadequate and 92 percent had at least one significant deficiency.
  - Of the 150 staff complaint inquiries that could have had relevant evidence to collect, reviewers failed to do 60 percent of the time.
  - Of the 61 reviewers at this one prison, only 23 percent had received any relevant training on the complaint inquiry process and 8 percent had received none.
- Staff Complaint Reviewers were not independent and, at times, displayed bias in favor of their fellow staff members, ignored inmate witness testimony, and often compromised confidentiality.
  - The prison assigned a reviewer who worked on the same yard and shift as the subject of the inquiry 60 percent of the time.
  - In at least 5 instances, the reviewer was actually involved in the incident giving rise to the staff complaint.
  - In a significant number of appellant and witness interviews, reviewers compromised the confidentiality of the process.
- While most of the staff complaint inquiries were completed within the required time frames, inmates were not notified, as required, when inquiries were overdue.
- SVSP staff worked more thoroughly when reviewing complaints submitted by attorneys who represented inmates but they still did not complete high quality inquiries.

***OIG Recommendations in 2019 Report.*** Amongst the OIG's recommendations were the following:

- To address the independence and quality issues identified in the report, a complete overhaul of the staff complaint process and reassignment of the responsibility of conducting staff complaint inquiries to employees who work outside of the prison's command structure which is the Division of Adult Institution is needed. To achieve this, a regionalized model should be adopted so that reviewers are not co-located in the facilities where they conduct staff complaint inquiries.
- Provide comprehensive and ongoing training to all staff members who may be assigned to conduct staff complaint processes and assign inquiries to only those individuals who have received training and are certified.
- Consider requiring reviewers receive a certificate from the California Commission on Peace Officer Standards and Training with respect to conducting investigations.
- Consider requiring audio-recorded interviews of staff subjects and witnesses and video-record or at least audio-record all appellant and inmate witness interviews.

Although the OIG only reviewed one institution, the policies and procedures at SVSP are in place statewide. Any structural limitations or weaknesses of the grievance process at SVSP likely exist at other institutions.

***CDCR's 2019 proposal in response to OIG report-staffing and location.*** To address the independence and quality issues raised in the OIG audit, CDCR submitted a budget proposal to the Legislature, requesting \$9.8 million General Fund and 47 positions in 2019-20 and ongoing to implement a new regional model for reviewing and investigating inmate complaints of staff misconduct, as well as revise CDCR's grievance review process. This new process would conduct inquiries into incarcerated persons' allegations of staff misconduct through a new unit, called the Allegation Inquiry Management Section (AIMS).

The department proposed, at the time, to establish 47 positions: one chief deputy administrator, six captains, 36 correctional lieutenants, one analyst, and three office technicians. CDCR also proposed to structure the unit similar to OIA's regionalized investigative staffing model, in which correctional lieutenants would be assigned to specific adult institutions. Under this model, their sole responsibility would be to conduct staff complaint inquiries, of which there were 6,259 in 2018 at the institutional level. CDCR estimated that a complete and thorough inquiry of a staff complaint, including interviews, evidence gathering, report writing, and management review, will take an average of 12 hours. The inquiry unit staff work locations would be based in the three OIA regional offices overseen by the chief deputy administrator.

The department's proposal was included in the 2019 Budget Act. In turn, the department developed new regulations and procedures for handling grievances involving staff misconduct; it also established AIMS and hired staff. The new process went into full effect on April 1, 2020.

***The Allegation Inquiry Management Section (AIMS) processes.*** Below is a summary of the AIMS process:

1. An incarcerated person files a grievance with the prison's Office of Grievances where it is reviewed, logged and then passed to a coordinator. The coordinator selects those grievances that they believe contains an allegation of staff misconduct using the definition in 2(a) below as reference. This is then sent to the reviewing authority (the prison's warden or deputy warden).
  2. The warden or chief deputy warden then determines whether the allegation meets the following definition of staff misconduct:
    - a) An allegation that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, which, if true, would more likely than not subject a staff member to adverse discipline.
  3. If the allegation does meet the definition, the warden or chief deputy warden is required to refer the grievance to the OIA. If the grievance provides sufficient information to establish a reasonable belief that the alleged misconduct happened, it must go to the OIA's Central Intake Unit, with a request for a formal investigation or permission to take adverse action without additional investigation. If not, it goes to AIMS with a request for an inquiry.
4. AIMS first reviews the grievance to see if it meets threshold requirements which includes considerations such as whether AIMS disagrees with the warden's determination that the allegation meets the definition of staff misconduct or the claim concerns harm to a person other than the person who signed the grievance, among others. If the grievance meets any of these criteria, the grievance is returned with no inquiry or investigation. For those that meet the threshold criteria, AIMS performs an allegation inquiry that involves interviews, and information gathering. Once AIMS staff establish a reasonable belief that staff misconduct occurred, they stop the inquiry and are not required to complete it. AIMS staff then summarize the information into a report without a judgement of guilt or innocence. The regulations are silent as to what happens to the report but the OIG observed its return back to the prison warden. If the warden determines that the report establishes a reasonable belief that the staff member engaged in misconduct, the report is returned to the OIA's Central Intake Unit where it reviews the report and takes one of three actions:
- a) If the Central Intake Unit concludes there is sufficient evidence to sustain the allegations by a preponderance of the evidence, it will authorize the warden to take adverse action against employee without any further investigation;
  - b) If the Central Intake Unit concludes that there is reasonable belief that misconduct occurred, it will approve and open a formal investigation into the allegation; or
  - c) If the Central Intake Unit concludes there is no reasonable belief that misconduct occurred, it will reject the request to open an investigation and return the report to the warden.

***Exclusions to the AIMS process.*** The following types of allegations are not referred to AIMS and are retained at the prison level:

- a) Unnecessary or excessive use of force that was reported by staff but did not result in serious bodily injury.
- b) Sexual misconduct or sexual harassment against an incarcerated person.
- c) Staff involvement in due process violations during the disciplinary process.
- d) Disagreement with staff decisions during the disciplinary process
- e) Issuance of false rules violation reports

- f) Staff misconduct in connection with the Americans with Disabilities (ADA) reasonable accommodation process.

**OIG 2021 Special Review on CDCR's Staff Misconduct Inquiry Process (AIMS).** The OIG's report covers a five month period to assess the AIMS process. Some of the results are as follows:

- Between April 1, 2020 and August 31, 2020, a five month period, AIMS process handled about 86 total staff misconduct grievances per month. Prisons received 468 staff misconduct grievances per month, nearly the volume the department projected AIMS could perform.
- During this same period of time, wardens exonerated 98.3 percent of the allegations of staff misconduct.
- There were 50,412 grievances filed by an incarcerated person to the local prison's Office of Grievances where staff and the warden made determinations:
  - 48,073 grievances were retained at the prison level and characterized as routine grievances. The OIG estimates that 4,200 of these may have been mischaracterized as a routine grievance when they should have been characterized as a staff misconduct grievance
  - 2,339 grievances were characterized as staff misconduct grievances.
    - 1,798 were retained the grievance at the prison for a local inquiry or a supervisory review
    - 541 were referred to the Office of Internal Affairs' AIMS for inquiry.
    - Zero were referred to the Office of Internal Affairs' Central Intake Unit for consideration of a formal investigation or for permission to take adverse action without an investigation.
- Of the 541 grievances wardens referred to AIMS, the new unit accepted 428 (79 percent) and returned 113 (21 percent) without an inquiry.
- Grievances AIMS refused to accept included allegations of unreasonable use of force, threats and intimidation, dishonesty, neglect of duty, sexual misconduct, and retaliation, among other serious allegations.
- AIMS investigators abruptly stop their work as soon as they form a reasonable belief that staff misconduct occurred and before they gather all witnesses' risks, leaving undiscovered relevant evidence and may cause related allegations to pass uninvestigated.

**Staff Recommendation.** Oversight item. No action is needed at this time.

## Issue 2: *Armstrong Court Compliance*

**Governor's Budget.** The budget includes \$13.5 million General Fund and 22.8 positions in 2020-21, \$10.1 million General Fund and 34.9 positions in 2021-22, and \$7.0 million and 34.9 positions in 2022-23 and ongoing to deploy the Audio Video Surveillance System (AVSS) and body-worn cameras at Richard J. Donovan (RJD) Correctional Facility, AVSS at part of California State Prison, Los Angeles County, create the Staff Complaint Screening Process, and expand the Allegation Inquiry Management

Section in order to reform the staff complaint process to comply with the requirements ordered by the United States District Court in *Armstrong v. Newsom* (No. 4:94-cv-02307-CW N.D. Cal.).

**Background.**

***Armstrong lawsuit.*** The federal Americans with Disabilities Act (ADA) provides civil rights protections and equal access to public and private services and facilities for individuals with disabilities. The Prison Law Office and Rosen Bien Galvan and Grunfeld (RBGG) filed the class action lawsuit *Armstrong* in federal court in 1994 against the Governor of California and CDCR because people with certain disabilities did not have equal access to prison programs, services, and activities, as required by the Americans with Disabilities Act (ADA). Over the years, the name of the case has changed as different Governors came into office. Currently the case is named *Armstrong v. Newsom*, but it normally is referred to simply as *Armstrong*. In 1999, CDCR negotiated a settlement in the lawsuit and developed the Armstrong Remedial Plan (ARP) to address the areas of noncompliance. The federal court as a result ordered prison officials to follow the ADA, to provide disability accommodations, and to make sure that the prisons are accessible for class members. In 2007, the court issued an injunction because it found CDCR to be in continued violation of the ADA and ARP.

Between 2015 and 2019, the parties filed several joint status reports. As of May 2020, the most recent status report was filed on January 15, 2020. The statement presented the status of issues such as allegations of abuse and violence by CDCR staff, accommodations for deaf prisoners, the problem of equal access to job and program assignments for people with disabilities, statewide durable medical equipment reconciliation and accuracy of disability tracking information, accommodations for blind and low vision class members, and more. For the most part, the parties continued to work collaboratively and in good faith. However, the plaintiffs expressed concern about ongoing reports of discrimination by CDCR staff against class members. In 2019, the plaintiffs had sent a letter cataloguing multiple incidents of staff misconduct against *Armstrong* and *Coleman v. Brown* (E.D. Cal.) class members at Richard J. Donovan Correctional Facility (“RJD”) over the past two and a half years and demanding that CDCR implement remedial measures by January 1, 2020. Given the ongoing reports of abuse, plaintiffs had begun taking depositions of CDCR staff members in January 2020. Additionally, plaintiffs remained concerned about accommodations for D/deaf prisoners, in particular with respect to defendants’ heavy reliance on video remote interpretation (VRI), which plaintiffs’ counsel have observed to be inadequate in many group settings, in violation of the ADA and court orders.<sup>1</sup>

On February 28, 2020, the plaintiffs filed a sealed motion for an injunction stopping defendants from assaulting, abusing and retaliating against people with disabilities at RJD. In support of their motion, 54 incarcerated people submitted declarations. Some of the declarants alleged instances in which correctional officers at RJD retaliated against them or others for, among other things, submitting or threatening to submit complaints regarding staff misconduct or failures to provide disability accommodations. Some of the declarants also alleged instances in which correctional officers at RJD retaliated against incarcerated people by charging incarcerated people with false rules violations reports.<sup>2</sup>

***Coleman v. Newsom.*** On September 13, 1995, a federal court in Sacramento ruled that the CDCR is not providing adequate mental health care. The ruling was in a case called *Coleman v. Wilson* (now *Coleman*

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<sup>1</sup> Description taken from: University Of Michigan Law School Civil Rights Litigation Clearinghouse, *Armstrong v. Newsom*, <https://www.clearinghouse.net/detail.php?id=572>.

<sup>2</sup> *Ibid.*

*v. Newsom*). The case covers all prisoners with serious mental disorders housed in California state prisons. The case continues today.

The Court said that prison officials violated the cruel and unusual punishment clause of the Constitution because they did not provide adequate mental health care. The Court identified six areas where the CDCR needs to make improvements: screening, treatment programs, staffing, accurate and complete records, medication distribution, and suicide prevention. Also, the Court found that prison officials violated the law by depriving prisoners of involuntary medication. Finally, the Court found that prison officials violated the Constitution by punishing prisoners for misconduct, placing them in Administrative Segregation, and using a taser or 37 mm gun without considering the mental health needs of the prisoners. The Court approved CDCR's plan for providing mental health care. That plan is now set forth in the "Mental Health Services Delivery System Program Guide." The Court also appointed a Special Master who, among other things, monitors and reports on CDCR's compliance with the mental health Program Guide.

***Video Surveillance at Prisons.*** In 2015, the Office of Inspector General (OIG) conducted a special review of High Desert State Prison (HDSP). The resulting report stated, "Surveillance is invaluable in capturing misconduct, documenting inmate activity, and exonerating employees who have been wrongly accused of misconduct. High quality visual recordings of incidents can serve to resolve...conflicting accounts. In addition, there are many rule violations and crimes inmates commit that visual recordings could memorialize for just resolution." The report further recommended CDCR "immediately install cameras in all inmate areas, including, but not limited to, the exercise yards, rotundas, building dayrooms, patios, and program offices of HDSP."

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

Also in 2016, a *Coleman* Special Master monitoring team toured California State Prison, Sacramento (SAC) due to an increased number of allegations against the staff within their Psychiatric Services Unit, Treatment Centers, and Administrative Segregation Units. The resulting report recommended CDCR install video surveillance cameras to increase observation and provide transparency in areas where actions leading to allegations commonly occur. In 2018-19, CDCR received funding and installed 178 video surveillance cameras at SAC.

***2020 U.S. District Court Order in response to plaintiffs' motions.*** In September 2020, the U.S. District Court of California also ordered CDCR in *Armstrong v. Newsom* (No. 4:94-cv-02307-CW N.D. Cal.) to install surveillance cameras in all areas of RJD to which incarcerated people have access, including, but not limited to, all exercise yards, housing units, sally-ports, dining halls, program areas, and gymnasiums within 90 days. CDCR was further ordered to retain all footage for a minimum of 90 days and footage of use of force and other triggering events retained indefinitely. The Court further ordered CDCR to begin using body-worn cameras (BWC) for all correctional officers and Sergeants at RJD who may have any interaction with protected class members within 60 days. The court ordered the CDCR to develop this plan within 21 days after finding that systemic abuses against incarcerated people with disabilities



existed, were documented in more than one hundred declarations, and that the CDCR were aware of these abuses violated the ADA and court orders previously issued in *Armstrong v. Newsom*.

The Court contended that BWCs are likely to improve investigations of misconduct by staff and reduce the incidence of violations of class members' rights under the Armstrong Remedial Plan (ARP) and American with Disabilities Act (ADA).

The Court also ordered CDCR to develop measures in order to reform its staff complaint, investigation, and discipline processes, which shall be included in the RJD ARP.

In addition, the court order expands the responsibility of AIMS to conduct inquiries on not only staff complaints, but also alleged violations pertaining to other categories such as ADA, ARP, Health Care, Use of Force, and the Prison Rape Elimination Act. The state is currently appealing the order.

***CDCR Justification and Projected Use of Resources.***

**Request Components, by Program**

<b>Program Component</b>	<b>2020-21 Positions</b>	<b>2020-21 Dollars</b>	<b>2021-22 Positions</b>	<b>2021-22 Dollars</b>
Supervisory Staffing at RJD	11.8	\$1.8 million	17.9	\$3.0 million
Staff Complaint Screening Unit and Allegation Inquiry Management Section	6.8	\$1.5 million	10.0	\$2.3 million
AVSS/BWC Technology at RJD	4.2	\$10.2 million	6.0	\$1.3 million
AVSS Technology at LAC	-	-	1.0	\$3.5 million
<b>Total</b>	<b>22.8</b>	<b>\$13.5 million</b>	<b>34.9</b>	<b>\$10.1 million</b>

Depending on the institution size and design, each AVSS may consist of approximately 500 to 1,000 digital cameras installed inside and outside the buildings throughout an institution. Typical locations include, but are not limited to: yards, housing units, program buildings, administration buildings, visiting rooms, gymnasiums, sally ports, and visitor processing areas. This proposal, unlike existing AVSS in the department, also includes a BWC for each correctional officer and sergeant identified at RJD as having regular interaction with inmate Armstrong class members. This equates to approximately 735 BWCs for correctional officer and sergeant positions at RJD, along with 960 fixed cameras that include audio recording capabilities.

CDCR requests a supervisory component consisting of nine Correctional Sergeants and one Correctional Lieutenant 7-day posts with relief at RJD to ensure oversight and implementation. These staff will ensure compliance with newly established guidelines, policies, and procedures. Some of the duties include, but are not limited to, training personnel, reviewing video footage, conducting daily tours of housing units, leading investigations of allegations and grievances, identifying corrective measures, reporting findings, monitoring appropriate housing of inmates, and ensuring equal access to programs, services, and activities.

This proposal also includes funding for camera installation at LAC as a proactive approach to address similar issues to those at RJD. The selection of these yards was based on the population demographics and the nature of the allegations received. This approach demonstrates the Department's commitment to this strategy while balancing current budget constraints with the efficient use of state funds to focus on specific locations within the Department. This would provide CDCR the resources to immediately procure and deploy AVSS for Facilities B and D at LAC, which includes one Correctional Officer position without relief and 269 fixed cameras.

**Staff Recommendation.** Hold open.

## 0530 CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY (HHS)

### Issue 3: Office of Youth and Community Restoration

**Governor's Budget.** The Governor's budget includes 19.0 permanent positions and \$3.4 in 2021-22 and \$3.1 in ongoing General Fund to establish and operate the Office of Youth and Community Restoration (OYCR).

#### Background.

The Governor's January Budget in 2020 proposed to transfer the Division of Juvenile Justice (DJJ) to a newly created independent department within the Health and Human Services Agency (HHS) on July 1, 2020. That approach was intended to align the rehabilitative mission of the state's juvenile justice system with trauma-informed and developmentally appropriate services supported by programs overseen by the state's HHS. The unprecedented fiscal impact of COVID-19 resulted in the withdrawal of this proposal. Subsequently, the 2020 May Revision proposed to expand on previous efforts to reform the state's juvenile justice system by transferring the responsibility for managing all youthful offenders to local jurisdictions.

**SB 823 (Committee on Budget and Fiscal Review), Chapter 337, Statutes of 2020.** SB 823 established a plan to fully realign the state's juvenile justice responsibilities to counties. DJJ will generally stop intake beginning 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 provides 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.

**Statute establishing OYCR.** SB 823 established the Office of Youth and Community Restoration (OYCR) within the Health and Human Services Agency (HHS), effective July 1, 2021. The objective of the OYCR is to fulfill the rehabilitative purpose of the state's juvenile justice system through trauma-

informed and developmentally appropriate services and programs. Per statute, the office assumed the following responsibilities:

“(a) Commencing July 1, 2021, there is in the California Health and Human Services Agency the Office of Youth and Community Restoration.

(b) The office’s mission is to promote trauma responsive, culturally informed services for youth involved in the juvenile justice system that support the youths’ successful transition into adulthood and help them become responsible, thriving, and engaged members of their communities.

(c) The office shall have the following responsibility and authority:

(1) Once data becomes available as a result of the plan developed to Section 13015 of the Penal Code, develop a report on youth outcomes in the juvenile justice system.

(2) Identify policy recommendations for improved outcomes and integrated programs and services to best support delinquent youth.

(3) Identify and disseminate best practices to help inform rehabilitative and restorative youth practices, including education, diversion, re-entry, religious and victims’ services.

(4) Provide technical assistance as requested to develop and expand local youth diversion opportunities to meet the varied needs of the delinquent youth population, including but not limited to sex offender, substance abuse, and mental health treatment.

(5) Report annually on the work of the Office of Youth and Community Restoration.

(d) The office shall have an ombudsman that has the authority to do all of the following:

(1) Investigate complaints from youth, families, staff, and others about harmful conditions or practices, violations of laws and regulations governing facilities, and circumstances presenting an emergency situation.

(2) Decide, in its discretion, whether to investigate a complaint, or refer complaints to another body for investigation.

(3) Resolve complaints when possible, collaborating with facility administrators and staff to develop resolutions that may include training.

(4) Publish and provide regular reports to the Legislature about complaints received and subsequent findings and actions taken. The report shall comply with all confidentiality laws.

(e) The Office of Youth and Community Restoration shall evaluate the efficacy of local programs being utilized for realigned youth. No later than July 1, 2025, the office shall report its findings to the Governor and the legislature.

(f) Juvenile grants shall not be awarded by the Board of State and Community Corrections without the concurrence of the office. All juvenile justice grant administration functions in the Board of State and Community Corrections shall be moved to the office no later than January 1, 2025.”

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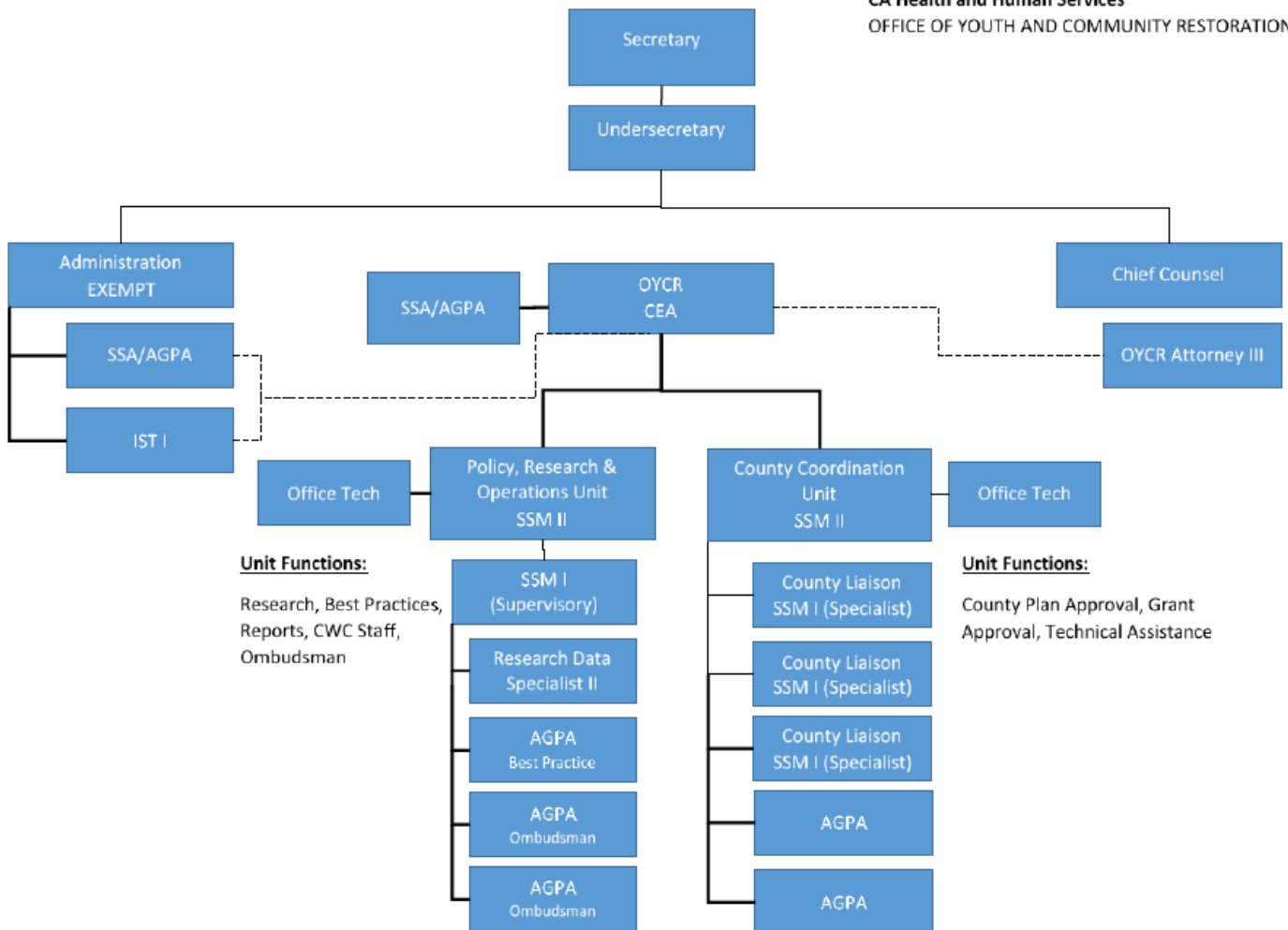
(a) Until July 1, 2023, the committee established pursuant to Section 12824 of the Government Code shall be responsible for advising and providing recommendations related to policies, programs, and approaches that improve youth outcomes, reduce youth detention, and reduce recidivism for the population in subdivision (b) of Section 1990.

(b) The committee established pursuant to Section 12824 of the Government Code shall work directly with the Office of Youth and Community Restoration, the Division of Juvenile Justice, and shall be staffed by the California Health and Human Services Agency.”

**Staffing and Resource Request.** In order to implement the provisions of SB 823, HHSA’s proposal includes resources for 19 full-time employees. A proposed organizational chart for the office is below.

19 total PY’s

CA Health and Human Services  
OFFICE OF YOUTH AND COMMUNITY RESTORATION



**Staff Recommendation.** Hold open.

**VARIOUS DEPARTMENTS****Issue 4: Various County Probation Proposals**

**Governor’s Budget.** The Governor’s budget for 2021-22 includes three proposals to increase state General Fund support for county probation departments:

1. ***SB 678 (Leno), Chapter 608, Statutes of 2009 Grant Modification***—A proposed modification to the grant program created by The California Community Corrections Performance Incentives Act of 2009 which provides grants to counties through the CDCR. Specifically, the proposal freezes the SB 678 formula and includes an adjustment to the SB 678 grant program to provide each county with their maximum SB 678 grant award from the prior three fiscal years through trailer bill language. In order to support this adjustment, CDCR’s proposed budget includes a \$10.3 million General Fund augmentation, bringing the total SB 678 grant awards to \$123 million in 2021-22 and ongoing.
2. ***New Probation Grant Program***—\$50 million one-time in 2020-21 to support a new county probation grant program that would be administered by the Board of State and Community Corrections (BSCC). According to the administration, the funds are intended to assist with the potential decline in SB 678 grants (as previously discussed) and help probation departments implement SB 823 and AB 1950.
3. ***Funding for COVID-19-Related Releases***—\$12.1 million one-time in 2021-22 for BSCC to support county probation department workload associated with supervising certain people released from state prison early in response to the novel coronavirus disease 2019 (COVID-19). Staff notes that this item was also heard on February 4, 2021 in Subcommittee No. 5.

**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.

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 will generally stop intake beginning 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 provides 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.

#### **LAO Assessments and Recommendations for SB 678 Proposal**

- ***Adjustment to SB 678 Grant Appropriate in Near Term.*** Given that the COVID-19-related releases to PRCS and AB 1950 will likely reduce SB 678 grant awards for reasons unrelated to their performance, we find that it is appropriate to temporarily adjust the grant formula.
- ***Recommendation: Approve Proposed SB 678 Grant Modification for One Year.*** The SB 678 grant program provides funding to county probation departments as an incentive for them to reduce the percentage of felons on county supervision sent to state prison. The Governor proposes to modify the program so that counties receive their maximum grant from the prior three years and provide \$10.3 million (General Fund) to support this modification. Otherwise, grant amounts would decline due to policy changes unrelated to county performance. Given this, the LAO recommend approving the modification but only for one year and directing the Administration to provide a plan for incorporating performance into the grant in the future— consistent with the original intent of the program.
- ***Recommendation: Direct Administration to Provide Long-Term Plan for SB 678.*** To ensure the intent of SB 678 is preserved in the long run, the LAO recommends that the Legislature adopt budget trailer legislation directing the Department of Finance to provide a long-term plan for adjusting the SB 678 formula to preserve its incentive structure no later than January 10, 2022.

#### **LAO Assessments and Recommendations for New Probation Grant Program**

- ***No Apparent Need for Requested Funding.*** At the time of this analysis, the administration has not provided any information to justify the need for the proposed \$50 million. Moreover, it has not defined a particular problem that cannot be addressed with the state resources currently available to county probation departments, including funding to implement SB 823 which will increase over the next few years. In addition, since the Governor’s budget also includes additional funding to specifically prevent a decline in SB 678 grant awards (as discussed earlier), it is unclear why additional funds are needed for the same purpose. The LAO also note that AB 1950 is not expected to lead to any direct costs for probation departments. This is because AB 1950

actually reduces the amount of time people spend on probation, which, in turn, should significantly reduce probation workload and costs.

- ***No Allocation Plan Provided.*** The Administration has not provided a plan for how the grant funding would be allocated. For example, the administration has not indicated what criteria would be used to determine the amount of funding each county would receive. Without this such information, it is difficult for the Legislature to determine if the requested resources will be targeted effectively at achieving expected outcomes.
- ***Lack of Accountability.*** The Administration has not provided any language that specifically requires counties to use the funds for activities consistent with the proposal's intent. Moreover, unlike funding provided through SB 678 and SB 823, the proposal does not include any requirements for county probation departments to report on how they plan to spend (or actually spent) the funds. Accordingly, probation departments would have the ability to use the funding for purposes unrelated to the implementation of recent policies or keeping youth and adults out of the criminal justice system. Recommendation
- ***Recommendation: Reject Proposed Probation Grant Program.*** In view of the lack of justification, allocation plan, and accountability mechanisms, the LAO recommends that the Legislature reject the Governor's proposal to establish a new grant program for county probation departments.

#### **LAO Assessment and Recommendations for Funding for COVID-19 Related Releases**

- ***Uncertain How Many COVID-19-Related Releases to PRCS Will Occur in 2021-22.*** There is significant uncertainty as to the exact number of inmates who will be released early onto PRCS in 2021-22 to mitigate the spread of COVID-19 in the state's prisons. This is due to two primary reasons:
  1. First, as vaccines become more widely available over the next few months, there will likely be less of a need to reduce the density of the prison population. The LAO notes that vaccinations are already taking place in prison and the federal Receiver responsible for overseeing inmate health care reports that all interested inmates could be vaccinated within weeks if a sufficient amount of vaccines become available.
  2. Second, while this proposal assumes 2,600 COVID-19-related releases to PRCS in 2021-22, other portions of the proposed budget assume that there will be no COVID-19-related releases. Specifically, the proposed CDCR budget is based on population estimates that assume COVID-19-related releases to PRCS will stop by June 30, 2021 (before the start of the next fiscal year). This suggests that either (1) the proposed funding for PRCS due to COVID-19-related releases is not needed or (2) CDCR's budget for 2021-22 should be reduced to reflect a lower inmate population resulting from the anticipated COVID-19-related releases.

***Recommendation: Withhold Action on Proposed Funding for Expedited Releases to PRCS.*** Given the above uncertainty, we recommend that the Legislature withhold action on the Governor's proposal until the May Revision. By the time of the May Revision, there should be greater clarity on the likelihood of



the COVID-19-related releases to PRCS continuing into 2021-22 and the potential implications this would have on the budget.

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

**0820 DEPARTMENT OF JUSTICE (DOJ)**

**3-YEAR EXPENDITURES AND POSITIONS**

		Positions			Expenditures		
		2018-19	2019-20	2020-21	2018-19*	2019-20*	2020-21*
0435	Division of Legal Services	1,650.5	1,686.8	1,718.8	\$465,171	\$546,740	\$558,705
0440	Law Enforcement	941.8	1,046.2	1,052.8	230,215	300,309	287,705
0445	California Justice Information Services	1,024.9	1,082.3	1,120.4	206,281	239,119	245,159
9900100	Administration	897.8	897.2	909.2	116,825	140,665	143,813
9900200	Administration - Distributed	-	-	-	-116,825	-140,665	-143,813
<b>TOTALS, POSITIONS AND EXPENDITURES (All Programs)</b>		<b>4,515.0</b>	<b>4,712.5</b>	<b>4,801.2</b>	<b>\$901,667</b>	<b>\$1,086,168</b>	<b>\$1,091,569</b>

\*Dollars in Thousands

**Issue 5: Various Legislative Proposals**

**Governor’s Budget.** The budget includes the following proposals to implement legislation passed during the 2020 session:

BCP/PROJECT NAME	PROPOSED RESOURCES	DESCRIPTION
Police Use of Force AB 1506 (McCarty), Chapter 326, Statutes of 2020	67 positions and \$13 million General Fund in 2021-22, and \$13.5 million in 2022-23 and ongoing	<p><b>Background.</b> AB 1506 requires DOJ to investigate all Officer-Involved Shootings (OISs) resulting in the fatality of a civilian who was not armed with a deadly weapon.</p> <p>This bill creates a division within the Department of Justice to, upon the request of a law enforcement agency, review the use-of-force policy of the agency and make recommendations, as specified.</p> <p>This bill requires a state prosecutor to investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian, as defined. The bill would make the Attorney General the state prosecutor unless otherwise specified or named. The bill authorizes the state prosecutor to prepare a written report, and would require the state prosecutor to post any reports made on a public internet website.</p>

		<p>The bill requires, commencing July 1, 2023, the Attorney General to operate a Police Practices Division within the department to review, upon the request of a local law enforcement agency, the use of deadly force policies of that law enforcement agency and make recommendations, as specified.</p> <p>OISs account for roughly 140 civilian fatalities per year.</p> <p><b>Proposed use for resources.</b> Overall, DOJ proposes to use the requested resources to provide crime scene response and investigation, investigative analysis and reporting, legal support, review cases for possible charges, criminal case assistance, parallel criminal investigations, and administrative case oversight. The DOJ will establish three teams, one in each of the northern, central, and southern regions of California, to conduct investigations across the state per the mandates of AB 1506.</p>
<p>Reparation Task Force AB 3121 (Weber), Chapter 319, Statutes of 2020</p>	<p>\$1.1 million General Fund and 5 positions in 2021-22 and 2022-23</p>	<p><b>Background.</b> The passage of AB 3121 establishes the Task Force to Study and Develop Reparation Proposals for African Americans (Task Force). DOJ will oversee the Task Force, which will consist of nine members appointed by a specific selection process. During the Task Force’s two-year effective period, the Task Force will be required to compile a detailed report on slavery in the United States, and recommend the methods, forms, and eligibility criteria for compensation related to slavery. Ultimately, the Task Force is required to produce a written report of its findings and recommendations to the Legislature. Without an appropriation by the Legislature, Task Force membership will be limited to agencies with an ability to reallocate preexisting resources for staff involvement, thereby potentially eliminating agencies that could be critical in assessing issues and recommending solutions.</p> <p>Civil Rights Enforcement Section is the DOJ section responsible for handling the investigation of violations of state and federal civil rights laws, and the enforcement of those laws through civil litigation and judgment implementation against those who violate those laws.</p> <p><b>Proposed use of resources.</b> AB 3121 requires CRES to staff, convene, manage, and advise the Task Force, and will require DOJ to engage in substantial work to develop a written final report for the Legislature. This</p>

		<p>work will commence immediately given the statutory requirement to convene the Task Force prior to June 1, 2021. The Deputy Attorney General IV will have primary responsibility for developing the written work product and handling all legal research, review, and analysis. The Senior Legal Analyst will work with the Deputy Attorney General to support legal aspects, and will also handle many of the non-legal aspects of the development of information to support the Task Force’s work. Finally, the Associate Governmental Program Analyst will have primary responsibility for all management and coordination aspects of the Task Force’s work and regularly scheduled meetings.</p>
<p>Juvenile Court and Probation Statistical System Update (JCPSS) SB 823 (Committee on Budget and Fiscal Review), Chapter 337, Statutes of 2020</p>	<p>\$1.9 million General Fund in 2021-22 and \$1 million in 2022-23</p>	<p><b>Background.</b> JCPSS is the primary statewide database of information collected from county agencies on all youth probation referrals, court actions, and final dispositions. The system also maintains data on a defined universe of data elements for each individual juvenile whose identifying information is entered into the system. Counties submit data into JCPSS on a monthly basis, via manual data entry or by web enabled uploading process.</p> <p>SB 823 established a plan to fully realign the state’s juvenile justice responsibilities to counties. DJJ will generally stop intake beginning July 1, 2021. Going forward, youths who would otherwise have been placed in DJJ will instead be supervised by county probation departments.</p> <p>Moreover, SB 823 requires DOJ to, “submit a plan for the replacement of JCPSS with a modern database and reporting system.” SB 823 will require DOJ to submit a plan to the Legislature by January 1, 2023, to replace JCPSS with a modern database and reporting system. SB 823 also requires DOJ to convene a working group consisting of key stakeholders for this effort. To develop the plan, SB 823 requires DOJ to create a working group to consider a wide variety of factors including many with significant legal consequences, such as privacy, pre and post adjudication detention terms, operation of the juvenile detention system, and the operational feasibility of the new system.</p> <p><b>Proposed use of resources.</b> To convene a working group necessary to submit a plan for the replacement of the Juvenile Court and Probation Statistical System with a modern database and reporting system.</p>

<p>Pawnbrokers, AB 1969 (Blanca Rubio), Chapter 185, Statutes of 2020</p>	<p>\$491,000 Secondhand Dealer &amp; Pawnbroker Fund in 2021-22 and \$114,000 in 2022-23</p>	<p><b>Background.</b> Assembly Bill 391, enacted on August 17, 2012, mandated the DOJ develop and implement a single, statewide, uniform electronic reporting system. The system that is known as the California Pawn &amp; SecondHand Dealer System (CAPSS) will be used by licensed secondhand dealers and pawnbrokers to report tangible personal property transactions as required by current law and it will serve as the single, statewide repository for this information. The CAPSS is funded entirely by secondhand dealers and pawnbrokers license fees and will be made available free of charge to authorized law enforcement agencies.</p> <p>Because CAPSS is made widely available to law enforcement agencies, it is conceivable that sworn officers employed by the federal agency Immigration and Customs Enforcement (ICE) would be authorized to perform queries and obtain reports from the system. According to the author, there is some anecdotal evidence that ICE agents have used CAPSS reports to identify potential subjects of interest in immigration enforcement activities, since many undocumented communities rely on a Matricula Consular to prove their identities.</p> <p>AB 1969 eliminates the requirement that the name and address of a seller or pledger of secondhand goods be reported to law enforcement when the seller or pledger verifies their identity with a Matricula Consular, and requires the state's database of secondhand property transactions to direct law enforcement to the dealer to obtain the seller or pledger's identity.</p> <p><b>Proposed Use of Resources.</b> The passage of AB 1969 requires DOJ to perform database upgrades/modifications to include the option of “on file” for specified data fields in lieu of required personal identifying information when a Matricula Consular is used. The resources would be used to perform database upgrades and modifications to comply with the mandates.</p>
<p>Personal information: Social Security Numbers: State Agencies AB 499 (Mayes), Chapter 292, Statutes of 2020</p>	<p>\$425,000 General Fund in 2021-22 and \$168,000 in 2022-23</p>	<p><b>Background.</b> Beginning January 1, 2023, AB 499 prohibits a state agency from sending outgoing United States mail to an individual if the mail contains the individual’s full social security number unless the number is truncated to its last four digits. By September 1, 2021, this bill requires state agencies to report to the Legislature on why full social security numbers are included on any mailed documents.</p>

		<p>The bill requires a state agency that, in its own estimation, is unable to comply with the restrictions on mailing social security numbers that have not been truncated to submit an annual corrective action plan to the Legislature until it is in compliance. The bill makes the reports, action plans, and related correspondence confidential and would prohibit their public disclosure.</p> <p>Existing law, Penal Code sections 11121 through 11127, allows persons for whom DOJ maintains a criminal history record to engage in the record review process. This process allows applicants to obtain a copy of their personal criminal history record that is compiled from DOJ’s files, and allows the applicant to refute any inaccurate information in the record. Penal Code section 11124 requires DOJ to furnish a copy of the criminal history record—which contains the applicant’s social security number—to the applicant or to an individual designated by the applicant.</p> <p><b>Proposed Use of Resources.</b> AB 499 therefore requires DOJ to remove the applicant’s full social security number from the record before a copy of the record is mailed to the applicant or an individual designated by the applicant. To meet these mandates, DOJ will need to make modifications to various systems, including the Automated Criminal History System, the California Restraining and Protective Order System, and the Wanted Person System. To make necessary information technology upgrades, DOJ intends to use consultant and staff resources.</p>
<p>Firearms: Inspections AB 2061(Limón), Chapter 273, Statutes of 2020</p>	<p>2 positions and \$152,000 Dealers’ Record of Sale Special Account in 2021-22, \$600,000 in 2022-23, and \$445,000 annually thereafter</p>	<p><b>Background.</b> AB 2061 will, beginning July 1, 2022, allow DOJ to inspect firearms dealers, ammunition vendors, or manufacturers participating in a gun show or event, to ensure that all transfers or sales are conducted in compliance with applicable state and local laws. The bill will also allow DOJ to inspect ammunition vendors to ensure compliance with applicable state and federal laws. Finally, the bill will allow the department to adopt regulations to administer the application and enforcement of laws relating to gun shows and ammunition vendors.</p> <p>Although current law allows DOJ to inspect the records of some vendors at gun shows, historically, the Bureau of Firearms has been unable to execute compliance inspections due to a lack of program dedicated resources. This has obstructed DOJ’s</p>

		<p>ability to establish a comprehensive, proactive inspection procedure and visible footprint at gun shows. Furthermore, a lack of administrative authority has impaired DOJ’s ability to effectively account for, plan, and schedule inspections.</p> <p><b>Proposed Use of Resources.</b> DOJ will be able to write gun show compliance regulations, hire two permanent staff dedicated to conducting inspections, and support overtime hours for existing staff, to inspect approximately 40 percent of gun shows throughout California and request Special Agent enforcement assistance when potential criminal activity has been identified.</p> <p>The requested resources and overt gun show inspection authority provided by AB 2061 will allow DOJ to deploy Field Representatives to inspect vendors at gun shows, which currently is not occurring. For context, an “inspection” is conducted by Field Representatives and criminal investigations are conducted by Special Agents. An inspection by Field Representatives may lead to a criminal referral to Special Agents who would potentially open an investigation. Without Field Representative involvement, Bureau of Firearms Special Agents have attended 46 gun shows between January 1, 2016 and December 31, 2020, averaging 9 per year. With AB 2061, DOJ anticipates the inspection of gun show vendors by Department Field Representatives will increase compliance with existing laws and regulations and will result in criminal investigations of ammunition vendors and licensed gun dealers. With the resources requested, DOJ anticipates attending 40 gun shows per year to conduct the requisite vendor inspections.</p>
<p>Firearms Dealers: Conduct of Business AB 2362 (Muratsuchi) Chapter 284, Statutes of 2020</p>	<p>\$301,000 Dealers’ Record of Sale Special Account in 2021-22 and \$139,000 annually thereafter and one position</p>	<p><b>Background.</b> To operate in California, firearms dealers and license holders must have: (1) a valid federal firearms license, (2) a regulatory or business license issued by a county or other local agency, (3) a valid seller’s permit issued by the State Board of Equalization, and (4) a Certificate of Eligibility issued by DOJ. If firearms dealers and license holders have all of these items, they are included on a DOJ-maintained, centralized list that allows them to operate their business. DOJ conducts spontaneous, on-site inspections of firearms dealers and license holders to verify they are complying with California’s firearms laws. DOJ’s Field Representatives review dealers’ records to ensure compliance with transfer requirements, dealer record and record retention</p>

		<p>requirements, facility maintenance and security requirements, and waiting period requirements.</p> <p>If a dealer or license holder is out of compliance, DOJ may provide verbal warnings to the dealer or license holder. DOJ may also send written notification to the dealer or license holder requesting corrective action. Follow up inspections may be performed to confirm if the corrective action has been taken.</p> <p>AB 2362 authorizes, commencing July 1, 2022, DOJ to impose civil fines on firearms dealers for breaches of regulations or prohibitions related to their firearms dealers license. Specially DOJ is authorized to impose a civil fine not exceeding \$1,000 for a violation of those prohibitions, and a civil fine not exceeding \$3,000 for a violation of those prohibitions when the licensee has received written notification from the department regarding the violation and fails to take corrective action, as specified, or the department determines the licensee committed the violation knowingly or with gross negligence.</p> <p><b>Proposed Use of Resources.</b> To promulgate regulations, process an increase in citation assessments and forfeiture hearings for licensed dealers, update information technology infrastructure, and for licensing costs.</p> <p>The Bureau of Firearms is requesting one permanent Associate Governmental Program Analyst for the Training, Information and Compliance Section to track violations and fines issued, follow up on corrective actions with Field Representatives, and distribute notices to the industry, beginning July 1, 2021. The Bureau of Firearms is also requesting one limited-term Associate Governmental Program Analyst for the Legislation, Regulations and Public Records Act Unit for promulgating regulations regarding civil fines for non-compliant firearms dealers, beginning July 1, 2021.</p>
<p>Firearms: Unsafe Handguns AB 2847 (Chiu), Chapter 292, Statutes of 2020</p>	<p>\$674,000 Dealers' Record of Sale Special Account in 2021-22 and \$1.2 million in 2022-23</p>	<p><b>Background.</b> Federal law currently imposes no design safety standards on domestically manufactured firearms. As a result, due to poor construction or design, firearms may jam, misfire, or malfunction. In 1999, California acted to fill gaps in the federal product safety law by enacting the Unsafe Handgun Act (UHA), which required that all newly developed handgun models meet basic reliability and safety standards to be certified for sale or manufacture by DOJ. In California, the only</p>

		<p>handguns that may be imported by gun manufacturers to be sold as new in the state are those that are listed on DOJ’s “handgun roster.” The handgun roster is a list of firearms deemed “not unsafe” after having passed numerous safety tests. DOJ determines what can or cannot go on the handgun roster.</p> <p>AB 2847 requires, commencing July 1, 2022, all semiautomatic pistols not already listed on the Department of Justice (DOJ) roster of “not unsafe” handguns be equipped with chamber load indicators, magazine disconnect mechanisms, and microstamping technology. AB 2847 eases compliance by requiring that newly developed semiautomatic pistol models etch microstamping characters on one place on the interior of the firearm, as opposed to two as currently required. Additionally, AB 2847 furthers implementation of the new UHA requirements by directing the Attorney General to remove three previously grandfathered handgun models from the roster for each new compliant handgun model that is introduced.</p> <p><b>Proposed Use of Resources.</b> To promulgate regulations prompted by this measure and, potentially, related to IT system changes and litigation. Specifically, the DOJ states that changes need to be made to the Automated Firearms System, Dealers’ Record of Sale (DROS), DROS Entry System (DES), and Consolidated Firearms Information System. The requested resources would be dedicated to ensuring that the functionality specific to AB 2847 remains operational as subsequent changes are made to the impacted systems.</p>
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**Staff Recommendation.** Hold open all proposals.

**Issue 6: Bureau of Forensic Services (BFS) Proposals**

**Governor’s Budget.** The budget includes two proposals related to the Bureau of Forensic Services:

1. **Ongoing General Fund Backfill.** The Governor’s budget proposes \$16 million to backfill a projected decline in criminal fine and fee revenue in the DNA Identification Fund in order to maintain existing service levels in the budget year. Specifically, the budget proposes (1) a \$6 million ongoing General Fund augmentation in 2021-22 (increasing to \$18.3 million annually beginning in 2022-23) and (2) an ongoing redirection of \$10 million General Fund from the



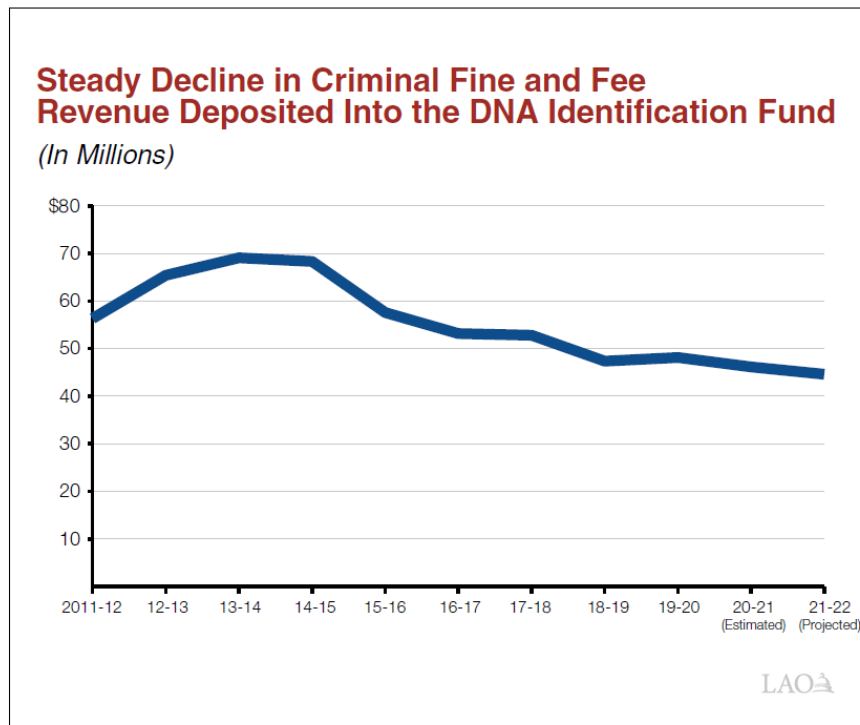
California Justice Information Services Division (CJIS). As a result of these proposed actions, the Governor’s budget includes \$94 million in total operational support for BFS in 2021-22, nearly the same as the current year. The Governor proposes to backfill the \$10 million redirection from CJIS from another DOJ special fund—the Fingerprint Fees Account (FFA). (FFA cannot directly backfill BFS due to statutory limits on how the funds in FFA can be used.)

2. ***One-Time Funding for New Consolidated Forensic Laboratory Campus.*** The Governor’s budget includes \$6.5 million one-time General Fund for the performance criteria phase for a proposed consolidated forensic campus on land leased from the California State University, Sacramento. The campus would consolidate the state’s DNA laboratory, the Sacramento regional laboratory, the state’s criminalistics training institute, and BFS headquarters into one facility. The estimated total cost of the project is \$435 million.

### **Background.**

***Overview of BFS.*** The bureau’s ten regional laboratories provide criminal laboratory services—such as DNA testing and on-site crime scene investigative support—at no charge for local law enforcement and prosecutorial agencies in 46 counties that do not have access to these services. BFS also assists the 12 counties and 8 cities that operate their own laboratories in cases where BFS offers services their laboratories lack. (Local agencies also contract with private or other governmental laboratories for services.) Additionally, BFS operates the state’s DNA laboratory as well as the state’s criminalistics training institute.

***BFS Funding Sources.*** BFS receives support primarily from the DNA Identification Fund (a state fund that receives criminal fine and fee revenue) and the state General Fund. As shown in the figure, the amount of revenue deposited into the DNA Identification Fund has steadily declined since 2013-14. To help address this steady decline and to maintain BFS service levels, the state has provided the fund a General Fund backfill since 2016-17.



**LAO Assessment and Recommendation for BFS Backfill**

*Proposal Addresses DNA Identification Fund Revenue Decline.* The Governor’s backfill proposal would address the decline in revenue deposited into the DNA Identification Fund and maintain current BFS service levels.

*However, Unclear if FFA Redirection Is Sustainable.* FFA generally receives revenues from fees charged for employment- or licensing-related background checks. FFA revenues are projected to decline. Specifically, revenues in 2019-20, 2020-21, and 2021-22 are estimated to be nearly 25 percent lower than 2018-19 levels. This could be due to the pandemic reducing the number of people seeking background checks. If revenues do not sufficiently increase, FFA may become insolvent in 2022-23. Thus, it is unclear whether it is sustainable to redirect FFA funds to the DNA Identification Fund on an ongoing basis as proposed.

*BFS Provides Certain Local Governments Substantial Benefits.* A large share of BFS resources are dedicated to providing forensic services to local law enforcement and prosecutorial agencies, which are predominantly responsible for collecting and submitting forensic evidence for testing and using the evidence to pursue criminal convictions. However, certain counties and cities benefit significantly more than others. Specifically, BFS effectively subsidizes agencies in 46 counties that generally do not use any of their own resources for criminal laboratory services.

*Local Governments Lack Incentive to Use BFS Services Cost-Effectively.* Since BFS does not charge for its services, local agencies lack incentive to prioritize what forensic evidence is collected and submitted for testing. Submissions are generally only limited by BFS's overall capacity and funding. In contrast, the 12 counties and 8 cities that support their own labs—and those agencies that pay to use private laboratories—have greater incentive to carefully prioritize what evidence should be tested and how quickly it should be done.

**Recommendation:** *Approve Governor's Proposed Backfills for Two Years.* The LAO recommends that the Legislature approve the Governor's proposed backfill proposal, but only for two years to ensure FFA can provide the level of support proposed on an ongoing basis. This would also support BFS until the new funding framework discussed below can be implemented.

**Recommendation:** *Require Local Governments to Partially Support BFS Beginning in 2023-24.* Given the substantial benefit that local agencies receive from BFS services, the LAO recommends that the Legislature take steps to require local agencies to partially support BFS beginning in 2023-24. Agencies would be required to pay for a portion of services they receive, providing greater incentive to prioritize workload submitted to DOJ. The delayed implementation date provides time for DOJ to calculate each agency's share of costs and to allow agencies to adapt to the new funding framework.

**Recommendation:** *Require DOJ Develop Plan for Calculating Local Government's Share of BFS Support.* The LAO recommends that the Legislature direct DOJ to submit a plan for calculating each local agency's share of the BFS services it uses—including operating and facility costs—and report on this plan no later than October 1, 2022 to allow for its consideration as part of the 2023-24 budget. The LAO recommends that the Legislature provide guidance on the development of this plan. This includes requiring that at least half of BFS operating revenues come from local agencies, in order to generally reduce the need for the General Fund to support BFS costs on an ongoing basis. DOJ would have flexibility to develop the specifics of the plan after consulting with stakeholders. For example, DOJ could require local agencies to pay more or less based on various factors—such as the specific type of forensic service sought, the speed of the service, or the size of the agency.

### **LAO Recommendation for Consolidated Forensic Laboratory**

**Recommendation:** *Consider Facility Proposal After Implementing New Funding Structure.* The LAO recommends that the Legislature reject the Governor's facility proposal until the new funding framework is implemented. The new framework would incentivize local agencies to find the most cost-effective way to obtain laboratory services. This could impact the volume and type of cases sent to BFS, which could then require BFS to modify the amount or type of services it provides or how it provides such services. Changes to BFS's overall workload or organization could change its need for the proposed consolidated forensic science laboratory campus.

**Staff Recommendation.** Hold open.

### **Issue 7: Healthcare Rights and Access Workload**

**Governor's Budget.** The Department of Justice requests 10 positions and \$2.1 million Public Rights Law Enforcement Special Fund in 2021-22 and ongoing to address the workload related to healthcare rights and access.

**Background.** Ranging from abortion rights to drugs costs, and from the price of insurance to the availability of affordable elder care facilities, healthcare issues affect the lives of nearly all Californians every day. The Healthcare Rights and Access Section conducts proactive legal and policy work to increase and protect access to quality and affordable healthcare in the State of California, and oversees and leads all work in the area of consumer healthcare rights, including healthcare and prescription drug marketing, nonprofit healthcare transactions, violations of antitrust laws, healthcare privacy, and healthcare civil rights. The Attorney General has challenged or resisted changes in the law that would curtail reproductive rights, exclude health coverage for the LGBTQ community and permit businesses to avoid or reduce their obligations to provide health insurance. The section also ensures consumer protection involving healthcare privacy, medical debt, healthcare fraud and false advertising cases.

The 2020 Budget Act included \$6.9 million in 2020-21 (\$3.7 million Attorney General Antitrust Account and \$3.2 million Unfair Competition Law Fund) and \$6.7 million annually thereafter (\$3.6 million Attorney General Antitrust Account and \$3.1 million Unfair Competition Law Fund) to establish the Healthcare Rights and Access Section to consolidate and centralize healthcare litigation within DOJ. The creation of the Healthcare Rights and Access Section centralized the Division of Public Rights' healthcare expertise into one section to provide for increased focus, efficiency, collaboration and coordination on healthcare issues.

**Staff Recommendation.** Hold open.

#### **Issue 8: Continuation of CURES Help Desk Resources**

**Governor's Budget.** The Department of Justice requests \$484,000 Reimbursement authority in 2021-22 and ongoing to support the Controlled Substance Utilization Review and Evaluation System (CURES) Program. The Department of Consumer Affairs is responsible for reimbursing the Department of Justice for the maintenance and operation of the CURES system via an interagency agreement. A commensurate CURES Fund augmentation has been included in the Department of Consumer Affairs' budget to support this proposal.

**Background.** CURES is a database of Schedule II, Schedule III, Schedule IV and Schedule V controlled substance prescriptions dispensed in California serving the public health, regulatory oversight agencies, and law enforcement. CURES is committed to the reduction of prescription drug abuse and diversion without affecting legitimate medical practice or patient care.

Health and Safety Code section 11165 requires DOJ to maintain the CURES database and make information available to health care practitioners, pharmacies, and clinics to assist in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of these controlled substances; to law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II through IV controlled substances; and for statistical analysis, education, and research.

Health and Safety Code section 11165 requires the CURES database to comply with federal and state privacy and security laws and regulations, and authorizes the disclosure of data obtained from the CURES database to agencies and regulations regarding the use, access, disclosure, and security information within the CURES database.

The operation of CURES complies with all applicable federal and state privacy and security laws and regulations. The controlled substances dispensation history of an individual that is received by a practitioner or pharmacist from CURES is subject to the Confidentiality of Medical Information Act and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including the HIPAA regulations in 45 Code of Federal Regulations parts 160 and 164.

Access to CURES is strictly limited. Licensed health care practitioners and licensed pharmacists may access information in CURES only for patients under their care. Regulatory agency officials and law enforcement officials may access information in CURES only to assist the efforts of their agencies to control the diversion and resultant abuse of controlled substances.

**Resource Justification.** As of 2019-20, CURES system usage has remained steady with the volume of requests for access assistance, CURES usage training, and other related inquiries. In 2019, the CURES program received an average of 4,834 calls and emails per month. As the workload will be ongoing, the CURES Program will need to continue to provide timely responses and needed assistance critical to the work and mission of health care practitioners, law enforcement agencies, and regulatory board officials.

The 2019 Budget Act included two year limited-term funding associated with four help desk positions (two Associate Governmental Program Analysts and two Staff Service Analysts) for the CURES Program, which expire on June 30, 2021. Permanent funding is being requested to continue addressing the workload resulting from the CURES consultation requirements.

The costs of this proposal are to be reimbursed by the CURES Fund, which was established to reimburse DOJ for costs to operate and maintain CURES, via an interagency agreement with the Department of Consumer Affairs. As such, a commensurate CURES Fund augmentation has been included in the Department of Consumer Affairs' budget to support this proposal. It is anticipated that the CURES Fund will be sufficient to support the costs of this proposal.

**Staff Recommendation.** Hold open.

## 5227 BOARD OF STATE AND COMMUNITY CORRECTIONS (BSCC)

### Issue 9: Increase Title II Spending Authority

#### 3-YEAR EXPENDITURES AND POSITIONS

		Positions			Expenditures		
		2018-19	2019-20	2020-21	2018-19*	2019-20*	2020-21*
4940	Administration, Research and Program Support	31.7	24.8	27.8	\$6,305	\$12,601	\$18,541
4945	Corrections Planning and Grant Programs	22.1	27.6	31.6	157,873	343,019	291,476
4950	Local Facility Standards and Operations	14.0	8.4	8.4	2,386	2,709	2,706
4955	Standards and Training for Local Corrections	11.8	11.5	11.5	16,893	23,777	23,765
4965	County Facility Construction	8.0	8.9	8.9	1,759	1,959	1,961
<b>TOTALS, POSITIONS AND EXPENDITURES (All Programs)</b>		<b>87.6</b>	<b>81.2</b>	<b>88.2</b>	<b>\$185,216</b>	<b>\$384,065</b>	<b>\$338,449</b>

\*Dollars in Thousands

**Governor's Budget.** The Board of State and Community Corrections requests a one-time \$500,000 increase in 2021-22 in its Title II state operations federal spending authority to utilize federal funds to pay for a Reducing Racial and Ethnic Disparities consultant contract.

**Background and Justification.** The Title II grant program is funded by U.S. Office of Juvenile Justice and Delinquency Prevention. It grants funds in different areas and the projects are meant to reduce overrepresentation of youth of color in the justice system.

Per federal guidelines that states receiving Title II must created an advisory group to develop spending priorities, CA created the State Advisory Committee on Juvenile Justice and Delinquency Prevention (SACJJDP).

The SACJJDP approved the hiring of a consultant to develop a detailed review of each county, including the assessment of county interventions that result in the reduction of racial and ethnic disparity, and the identification of challenges and barriers that may exist within the county juvenile justice. The position is federally funded but the BSCC indicated that it does not have sufficient budget authority to draw down on the federal funds.

**Staff Recommendation.** Hold open.

**8830 CALIFORNIA LAW REVISION COMMISSION**

**Issue 10: Additional Resources for the Committee on Revision of the Penal Code**

**3-YEAR EXPENDITURES AND POSITIONS**

	Positions			Expenditures		
	2019-20	2020-21	2021-22	2019-20*	2020-21*	2021-22*
6740 California Law Revision Commission	5.3	7.6	10.6	\$1,630	\$1,540	\$2,139
<b>TOTALS, POSITIONS AND EXPENDITURES (All Programs)</b>	<b>5.3</b>	<b>7.6</b>	<b>10.6</b>	<b>\$1,630</b>	<b>\$1,540</b>	<b>\$2,139</b>

\*Dollars in Thousands

**Governor’s Budget.** The California Law Revision Commission (Commission) requests 3 positions and \$494,000 in reimbursement authority from the Office of the Legislative Counsel (with a corresponding augmentation to that office’s budget), in 2021-22 and ongoing on behalf of the Committee on Revision of the Penal Code (Committee), to increase the Committee’s efficiency and productivity and to address increased workload.

**Background.** The California Penal Code has dramatically increased in size from about 234,000 words in 1965 to 1.2 million in 2018. There are more than 5,000 separate criminal provisions specifying criminal behavior, penalties for convictions, additional enhancements, and credit earning once incarcerated. This complex statutory structure requires study and recommendations to revise the Penal Code. The reason for the new committee to be established as a component of the California Law Revision Commission is first because it would help the committee get up and running quickly, without the need to create new administrative and operational practices. Second, it would allow both the committee and Commission to work on separate tracks, without interfering with each other’s progress. Finally, it would allow for specialization of the membership of the two panels.

Historically, the Commission’s work has not focused on criminal justice reform. Its members were not chosen for expertise in that subject and generally have careers in civil, rather than criminal law. By contrast, the members of the Committee could be selected for their experience in criminal law and policy. While the committee would be a part of the Commission for the purposes of administration and staffing, the committee would have independent authority to make recommendations to the Legislature and the Governor—Commission approval would not be required for any policy decision of the committee. The committee would conduct its own meetings, based on its own deliberative materials. The Commission would not duplicate that work nor weigh-in on the committee’s recommendations. The independence of the committee is also important to maintaining the effectiveness of the Commission.

**2019 Budget Act and Committee establishment.** The Budget Act of 2019 included \$576,000 to support a new Committee that was established under the California Law Revision Commission. The new Committee has separate powers to make policies and take actions, and to review and make recommendations to the Legislature and the Governor on revisions to the Penal Code. The Committee began an effort to simplify and rationalize criminal law and criminal procedures, establish alternatives to incarceration that aid rehabilitation and protect public safety, improve parole and probation systems, and adjust the length of sentence terms based on certain considerations. The proposal included \$25,000 for the committee to hire an outside consultant to serve the committee’s needs.

The Committee was formed on January 1, 2020. In 2020, the Committee established a new set of policies, procedures, and practices to structure the conduct of its work, hired legal staff, began building a statewide aggregation of empirical data, secured significant donations of resources, and held 13 days of public meetings, with testimony from over 50 invited panelists from all interested groups. At its December meeting, the Committee approved 10 substantive recommendations for reforms to improve the criminal justice system.

***Justification of resources from BCP:*** The Committee is a multi-member body that is governed by the Bagley-Keene Open Meeting Act. This means that the Committee can only deliberate and make decisions in public meetings. This is a significant constraint on the Committee's productivity. It is therefore essential that the Committee have staffing levels that are sufficient to support the Committee in making the best use of its limited meeting time.

**Staff Recommendation.** Hold open.