Senate Budget and Fiscal Review—Scott D. Wiener, Chair

SUBCOMMITTEE NO. 5 Agenda

Senator Aisha Wahab, Chair
Senator María Elena Durazo
Senator Josh Newman
Senator Kelly Seyarto

Thursday, February 29, 2024
9:30 a.m. or Upon Adjournment of Session
State Capitol – Room 112

Consultant: Nora Brackbill, Ph.D.

ITEMS FOR DISCUSSION

Public Comment

ITEMS FOR DISCUSSION

5225 DEPARTMENT OF CORRECTIONS AND REHABILITATION

Issue 1: Department Overview

Panelists

- Jeff Macomber, Secretary, CDCR

Department of Finance (DOF) and Legislative Analyst's Office (LAO) are available for questions.

Background. The California Department of Corrections and Rehabilitation (CDCR) is responsible for the incarceration of certain adults convicted of felonies, including the provision of rehabilitation programs, vocational training, education, and health care services.

As of February 14, 2024, CDCR was responsible for incarcerating about 93,600 people[1]. Most of these people are housed in the state's 32 prisons and 34 conservation camps. The Department also supervises and treats about 35,100 adults on parole, is responsible for the apprehension of those who commit parole violations, and operates one juvenile conservation camp.

The Governor's budget proposes total funding of $14.5 billion ($14.1 billion General Fund and $364.3 million other funds) for the CDCR in 2024-25, a slight decrease compared to the revised 2023-24 level of $15.0 billion (although this does not account for any increases in employee compensation costs in 2024-25, which are reflected elsewhere in the budget). The proposed budget would provide CDCR with a total of 61,153 positions in 2024-25, a decrease of 1,044 positions from the revised 2023-24 level.

The Governor's budget includes $105.3 million in General Fund solutions under CDCR's budget. This includes $46.7 million in recovered savings from lower than expected workloads or utilizations, $27.2 million in delays, $24.1 million in reductions, and a $7.3 million fund transfer.

They are outlined in the table below:

General Fund Solution	Summary	Category
Audio Video Surveillance System (AVSS) Implementation Delay	The Administration proposes to delay the installation of five fixed camera projects costing $27.2 million General Fund from 2023-24 to 2025-26 and 2026-27. The proposed budget maintains $50.4 million General Fund in 2023-24 and associated ongoing resources to implement five other projects.	Delay
Recidivism Reduction Fund Transfer	Transfer $7.3 million of unobligated funds from the Recidivism Reduction Fund to the General Fund.	Fund Transfer

[1] https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2024/02/Tpop1d240214.pdf

Division of Adult Parole Operations (DAPO Urinalysis Contract Funding Reduction	Reduction of $100,000 ongoing General Fund to adjust a contract for parolee urinalysis testing. The Administration noted that contract utilization has declined due to the declining parolee population, and is returning the savings to the General Fund.	Recovered Savings
2024-25 SB 990 County of Release Legislative BCP – Reversal	Reversion of $1.9 million General Fund in 2023-24 and ongoing due to reduced workload related to the implementation of SB 990 (Hueso), Chapter 826, Statutes of 2022. The Administration noted that less funding than anticipated was needed to fulfill the obligations of the bill.	Recovered Savings
Division of Juvenile Justice (DJJ) Warm Shutdown Reduction	Reduction of $909,000 General Fund to maintain the closed DJJ facilities. The 2023-24 budget included $1.7 million for facility maintenance at recently-closed DJJ facilities, but the Administration noted that the actual maintenance costs were lower than expected.	Recovered Savings
COVID-19 Workers' Compensation (SB 1159) Reduction	Reversion of $5 million in 2023-24 and $9 million in 2024-25 for COVID-19 related workers compensation funding.	Recovered Savings
COVID-19 Prevention and Response Funding – 2023-24 Savings	Reversion of $38.8 million General Fund in 2023-24 for prevention, mitigation, and response activities. California Correctional Health Care Services (CCHCS) received $83.1 million one-time in 2023-24 for this purpose, but is only projecting to spend $53.8 million. This projected COVID-19 savings is a combination of lower than anticipated testing volumes for staff and incarcerated persons, slightly offset by new vaccine costs, which were previously provided at no cost to the Department. CDCR also received $13.8 million one-time for Personal Protective Equipment (PPE), cleaning, and overtime, and is projecting to spend only $4.4 million.	Recovered Savings
Reduction of TransMetro Bus Contract	Eliminates $2 million in funding for bus transportation to prison visits. This funding was added in the 2021-22 budget, when the third day of in-person visitation was added. The Administration noted that the bus service was underutilized.	Reduction
Baseline Administrative Reduction	Reduction of $15 million ongoing General Fund in CDCR's administrative funding.	Reduction
Employee Health Program Reduction	Reduction of 38.0 positions and $7.1 million General Fund in 2024-25 and ongoing for the Employee Health Program.	Reduction

Staff Recommendation. Hold open.

Issue 2: Population Projections and Closure Plans

Proposal. The proposed budget reflects the following:

- *Adult Institution Population*. The average daily adult incarcerated population for 2023-24 is projected to be 94,222, a slight increase as compared to spring projections. The population is expected to decline to 91,685 in 2024-25 and 88,183 in 2026-27.

- *Parolee Population*. The parolee average daily population is projected to be 36,495 in 2023-24 and 35,454 in 2024-25.

- *Population-Based Funding Adjustments.* The adjusted population funding has a $20.4 million net increase in the current year and an $8.4 million net increase in the budget year as compared to what was assumed in the 2023-24 Budget act.

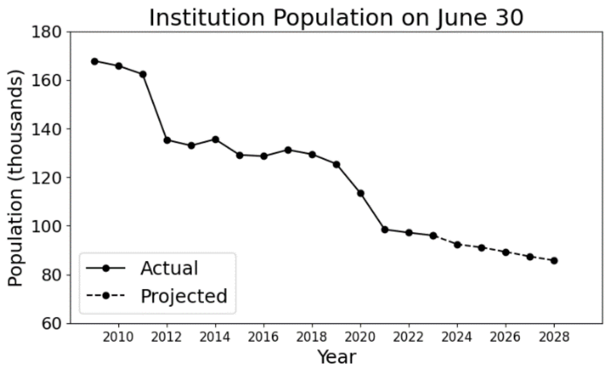
- *Savings from Previously Planned Prison Closures*. The proposed budget reflects savings of $465 million General Fund from previous facility closures and deactivations. In addition, the proposed budget includes savings of $156 million annually beginning in 2024-25 to reflect the planned closure of California City Correctional Facility, and $148 million annually beginning in 2025-26 to reflect the planned closure of Chuckawalla Valley State Prison. No additional closures or deactivations are proposed.

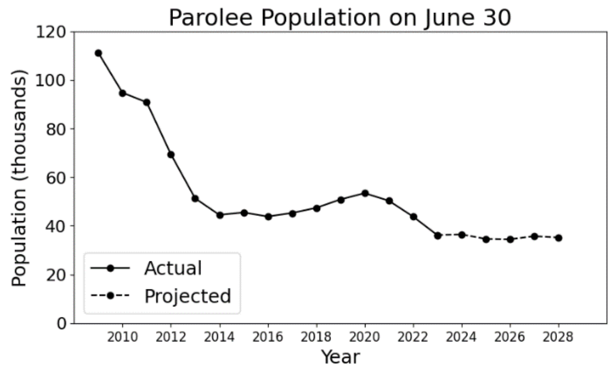
- *Administrative Reduction for Prison Closures.* The budget includes $9.6 million savings in 2024-25 and $11.1 million ongoing to reflect a reduction in administrative workload and positions associated with the closures.

Panelists

- Jana Sanford-Miller, Deputy Director, Office of Research, CDCR
- Justin Adelman, Associate Director, Budget Management Branch, CDCR
- Jennifer Benavidez, Deputy Director, Division of Adult Institutions Facility Operations, CDCR
- Dave Lewis, Director, Facility Planning, Construction and Management, CDCR
- Lynne Ishimoto, Principal Program Budget Analyst, DOF
- Patrick Plant, Staff Finance Budget Analyst, DOF
- Koreen van Ravenhorst, Principal Program Budget Analyst, DOF
- Caitlin O'Neil, Principal Fiscal & Policy Analyst, LAO
- Orlando Sanchez Zavala, Fiscal & Policy Analyst, LAO

Background. The prison population has significantly decreased over the past twenty years in response to litigation, policy reforms, the COVID-19 pandemic, and other factors. The total population has decreased nearly 50 percent from the peak in 2006. The parole population has also declined, reflecting the declining prison population, changes to parole terms, realignment, and other policy reforms.





Data from CDCR[2]

Prison Overcrowding and the Three-Judge Panel. In October 2006, at the height of prison overcrowding, CDCR's population was 173,479, with prisons operating at more than 200 percent of design capacity[3]. In January 2010, a special three-judge court ordered California to reduce its prison population to 137.5 percent of design capacity within two years[4]. The ruling was part of a consolidated proceeding that included the plaintiffs of two major class action lawsuits related to access to healthcare: *Coleman v. Newsom*, which was filed in 1990 on behalf of all California state prisoners with serious mental illness, and *Plata v. Newsom*, which was filed in 2001 on behalf of all prisoners. Both lawsuits are still active today and have resulted in significant federal oversight of CDCR's healthcare system. The plaintiffs of those two cases believed that a remedy for unconstitutional medical and mental health care could not be achieved without reducing overcrowding. They moved their respective District Courts to convene a three-judge court empowered by the Prison Litigation Reform Act of 1995 to order reductions in the prison population. This decision was upheld by the Supreme Court of the United States in 2011.

In response, the state took steps to expand capacity and reduce the population and reached the 137.5 percent milestone in 2015. The state's response included:

- *Expanding Capacity*. CDCR expanded capacity in their health care facilities and utilized out-of-state, private, and local facilities. The state has since ended its use of these placements as the population declined.

- *Public Safety Realignment.* In 2011, the responsibility for some offenders, primarily newly-convicted, low-level offenders without current or prior serious or violent offenses, was shifted from the state to counties, meaning those individuals served their sentences in county jails rather than state prisons.

[2] https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2024/01/Fall-2023-Population-Projections-Publication.pdf
[3] https://www.cdcr.ca.gov/news/2019/06/25/california-department-of-corrections-and-rehabilitation-exits-last-out-of-state-prison/
[4] https://rbgg.com/news/coleman-plata-supreme-court/

- *Policy Reforms*. The state expanded credit-earning opportunities, created a parole consideration process for nonviolent, determinately-sentenced incarcerated persons who have served the full term of their primary offense in state prison, expanded medical and elderly parole, and made other significant sentencing reforms to reduce the amount of time individuals spend in state prison. Some of these were court-ordered changes and were enacted as part of Proposition 57 in 2016.

*COVID-19 Impact***.** The COVID-19 pandemic has contributed to a sharp decrease in the prison population over the past few years. The decline was attributed to halted intake from county jails, expedited release and community supervision programs for individuals with non-violent offenses, and an initial decrease in crime during the lockdowns. CDCR also released people deemed at high risk medically for COVID-19 on a case-by-case basis.

In previous years, the Administration had projected a short-term increase in the prison population as intake from counties resumed and other pandemic impacts ended or ramped down. However, the population has not returned to expected levels. This may reflect changes in crime trends during the pandemic, more time served at the county level than anticipated, or other unknown factors.

Other Changes to the Population. Although the overall prison population is declining, the population is aging, and CDCR has reported an increase in incarcerated persons with disabilities and accessibility issues. As of August 2021, over 11,000 people in CDCR's facilities required disability accommodations. CDCR also has reported increasing numbers of individuals requiring treatment for substance use disorder and the Hepatitis C Virus, as well as other physical, mental, and behavioral health needs.

*Aging Facilities and Delayed Maintenance***.** The average age of CDCR's correctional facility portfolio exceeds 45 years, with approximately 35 percent of the portfolio exceeding 50 years of age. Historically, the resources necessary to maintain, repair, and replace aging equipment and structures have not been available, leading to a backlog of infrastructure needs and deteriorating buildings. Major ongoing capital outlay projects include improvements to healthcare spaces, roof replacements, accessibility improvements, general maintenance funding, expanding programming spaces, and improving energy efficiency. Many of these improvements are court-ordered and/or critical safety improvements.

Matching Facility Portfolio to Changing Population. As the population has declined in the wake of the Three-Judge Panel ruling, the state has correspondingly reduced capacity. Initially, the state did this by discontinuing contract placements, including in out-of-state and private prisons. The state is now in the position to close state-owned and -operated facilities, saving hundreds of millions to billions of dollars in operation, maintenance, repair, and other infrastructure costs.

As CDCR considers closing prisons, it must consider how to best match its facilities to changing population needs. Many institutions serve specialized sectors of CDCR's population, including women's prisons, institutions that focus on health care or contain specialized mental health facilities or programs, different security levels and housing types, accessible facilities, etc. Some institutions also have specialized functions, such as Sierra Conservation Center, which serves as the training hub for people going to conservation camps, and the license plate factory at Folsom, which has produced every license plate made in the state since 1947.

Completed and Planned Capacity Reduction. The state has deactivated or plans to deactivate the following facilities:

- Dueul Vocational Institution (DVI) in Tracy, California on September 30, 2021.
- California Correctional Center (CCC) in Susanville in June 2023.
- Six yards at facilities across the state in the 2023-24 fiscal year.
- California City Correctional Facility (CAC; the leased facility) by March 2024.
- Chuckawalla Valley State Prison (CVSP) by March 2025.

CDCR estimates that these deactivations collectively will result in ongoing General Fund savings totaling about $770 million annually. Deactivation has also allowed the state to avoid funding infrastructure repairs that would otherwise have been needed to continue operating these facilities. No additional closures are proposed in the Governor's budget, despite continued declines in the population and the lack of a rebound in population after the initial impacts of the pandemic[5].

Currently, the court-ordered capacity limit means that the state is prohibited from housing more than 103,853 people in state-owned prisons (137.5 percent of the design capacity of remaining facilities). Despite the recent deactivations, the LAO estimates that CDCR will be operating roughly 15,000 empty beds in 2024-25. According to CDCR, this capacity is needed for sufficient flexibility and uncertainty in the population projections. Prior to the pandemic, CDCR typically maintained a roughly 2,000 bed buffer to account for fluctuations in the population and needs.

Operational Capacity. The court-ordered capacity limit may not be the optimal operational capacity of the state prison system. As part of the 2023-24 budget, CDCR was required to estimate a system-wide operational capacity that would "allow each facility to operate in a manner that is rehabilitative, safe, and cost efficient", and include an assessment on space available for programming, health care services, and bed needs, and to comply with class action litigation requirements (Section 5033 of the Penal Code).

CDCR submitted a report that assesses the number of programming and work assignments (not including volunteer-led groups or other activities that are not counted as assignments) available at each institution, based on currently available and budgeted opportunities. The overall operational capacity was not uniquely defined because the report acknowledges that not everyone will participate in work or programming assignments, but does not specify how the number of work assignments relates to an operational capacity that would "allow each facility to operate in a manner that is rehabilitative, safe, and cost efficient." The report does not explore whether there are reasonable ways to increase the number of assignments at a given facility.

The other factors mentioned in Section 5033 of the Penal Code are discussed in general terms. For example, the report "assumes institutions have adequate physical space, in most instances, to meet the medical and mental health care needs of patients as required under various class action

[5] https://lao.ca.gov/Publications/Report/4304; https://lao.ca.gov/Publications/Report/4186; https://www.curbprisonspending.org/wp-content/uploads/2021/04/Peoples-Plan-for-Prison-Closure.pdf

lawsuits," and states that "[o]vercrowding in correctional settings creates stressful environments" without defining what population level constitutes overcrowding.

LAO Comments and Recommendations. The Governor proposes reductions to CDCR's funding to account for previous capacity reductions and for the planned deactivation of a prison in March 2025. In addition, the budget reflects operation of nearly 15,000 empty beds in 2024-25, which is projected to grow to about 19,000 by 2028. This means the state could deactivate around five additional prisons. However, the Administration indicates that doing so could create challenges, such as reducing the availability of treatment and reentry programs. The LAO finds that, while mitigating such challenges could create some new costs, these would be far less than the nearly $1 billion needed to continue operating five prisons. Accordingly, the LAO recommends that the Legislature direct CDCR to begin planning to reduce capacity by deactivating prisons and report on how to mitigate any resulting challenges.

State Law Arguably Requires CDCR to Accommodate Population Declines Through Capacity Reductions. PC 2067 requires CDCR to accommodate projected population declines by reducing capacity in a manner that maximizes long-term savings, leverages long-term investments, and maintains sufficient flexibility to comply with the court-ordered population limit. PC 2067 also requires CDCR to consider certain factors—such as operational cost and subpopulation-specific housing needs—in determining how to reduce capacity. In view of the opportunity for significant savings and the possibility of mitigating negative effects on housing flexibility, PC 2067 arguably requires CDCR to further reduce capacity.

Staff Comment

What Does Capacity Mean and What is a Reasonable Buffer? CDCR operates within the court-ordered capacity limit of 137.5 percent of design capacity. However, the rapid spread of COVID-19 within prisons showed that operating at a lower percent of design capacity may be desirable in certain circumstances. Many prisons also struggle to find enough space for educational, vocational, and other types of programming. On the other hand, design capacity is a technical term, and it is not clear how well that reflects operational capacity, or what population or density would be comfortably housed in any given institution.

The report required by Section 5033 of the Penal Code was intended to help address these questions. However, it does not provide a clear answer from the Administration's perspective, and is not based on fundamental limitations of the physical space or the footprint of the facilities. It is not clear whether the assumption that the number of assignments at a given facility cannot be reasonably increased is accurate, for example by repurposing existing spaces, using timeslots such as evenings and weekends, using outdoor space, or using remote programming.

In addition to these questions about the optimal capacity, it is not clear how much buffer is needed between the maximum capacity and the population size. The Legislature should consider whether returning to roughly 2,000 people shy of the court-ordered maximum population should be the goal, or if there is another target that balances the need to accommodate short-term fluctuations, the operational capacities of the institutions, and the costs of maintaining extra space.

Use of closed prison facilities. It is not clear what CDCR intends to do with the deactivated properties in the long-term. CDCR indicated that DVI will become surplus property and can be sold, but that CCC and CVSP are interconnected with neighboring institutions and would be difficult to separate. In addition, yards that are closed cannot be individually parceled off and sold. In these cases, CDCR plans to maintain the facilities in the "warm shutdown" mode indefinitely. A similar situation is developing with the properties that housed the Division of Juvenile Justice. It is not clear how much maintenance CDCR will be performing on these properties, and whether parts of them will still be used for various purposes. The state should consider potential options for the physical facilities and land after the closures. Maintaining most deactivated facilities in warm shutdown indefinitely may not be a prudent use of state resources. It is also not clear how much maintenance CDCR plans or would need to do at facilities in warm shutdown.

Staff Recommendation. Hold open.

Issue 3: Reappropriation of California Reality Based Training Center Funding

Proposal. The proposed budget includes the reappropriation of $8.5 million General Fund from the 2021 Budget Act to complete renovations of the California Reality Based Training Center.

Panelists

- Kristina Ortiz, Correctional Business Manager, CDCR
- Caitlin O'Neil, Principal Fiscal & Policy Analyst, LAO
- Joshua Wittmershaus, Junior Staff Analyst, DOF
- Cynthia Mendonza, Principal Program Budget Analyst, DOF

Background. The 2021 Budget Act included $8.5 million to convert the Northern California Women's Facility in Stockton, which closed in 2003, into a new training facility, known as the California Reality Based Training Center (CRBTC). The goal is to provide correctional officers in the academy with experience in a real, physical prison setting, prior to their first assignment. In the original proposal from 2021, CDCR stated that "training is limited due to the lack of access to real control booths, medical offices, dining halls, visiting rooms, and dayrooms/tiers as it is not feasible to use operational institutions," and that trainees would "gain hands-on experience for job duties such as inmate escorting, hospital transportation, visitor processing, and vocational and education inmate counting in institution areas such as mainline and restricted housing units, tower operation, armed posts, and control booths."

Project Status. CDCR completed required fire and life safety upgrades in May 2023, which were significant and resulted in the delay of the project, and have installed fiber optic infrastructure. CDCR has spent $1.7 million on the project to date (see table below).

Resource History
CRBTC Funding

(Dollars in thousands)

Program Budget	**Phase I 2021-22**	**Phase II 2022-23**	**Phase III 2023-24**
Authorized Expenditures *	$4,540	$1,499	$8,451
Actual Expenditures	$1,700	$0 **	$0

* Authorized CRBTC OE&E Funding only
** Detailed spending noted in paragraph below

The projected timeline and costs are in the table below.

Projected Outcomes
Procurement Timeline with Approved Reappropriation

(Dollars in Thousands)

2021-22 CO Training Expansion and Job Shadowing Program (2023-24)	BCP Funded Amount	2024-25	2025-26
Electrical	$400	$400	-
Framing Contract	$500	-	$500
HVAC	$2,000	$80	$1,920
Roofing	$3,551	$3,551	-
Secure Doors	$2,000	$60	$1,940
Total	**$8,451**	**$4,091**	**$4,360**

Staff Comment.

Other Closed Facilities. Multiple facilities, both full prisons and individual yards, have closed since the initial approval of this project, including a Division of Juvenile Justice facility that is also in Stockton. Some of those facilities will be difficult for the state to offload due to their proximity to other CDCR facilities. It is not clear to what extent the Administration considered using other, more recently closed facilities, or using yards within an operating prison.

Incorporation of the California Model. The Administration indicated that California Model principles are already incorporated into the academy, and no specific adaptations to the training were planned to ensure that this training center incorporated California Model principles.

Staff Recommendation. Hold open.

Issue 4: Utilities Costs

Proposal. The Governor's budget includes $21.9 million General Fund in 2024-25 and ongoing to address the increased costs of utilities statewide.

Panelists

- Justin Adelman, Associate Director, Budget Management Branch, CDCR
- Caitlin O'Neil, Principal Fiscal & Policy Analyst, LAO
- Patrick Plant, Staff Finance Budget Analyst, DOF
- Cynthia Mendonza, Principal Program Budget Analyst, DOF

Background. In 2022, the utilities and waste removal funding methodology was revised. A new base was established, based on three years of actual expenditures, along with the authority to adjust annually using the California Consumer Price Index (CPI). However, utilities costs have increased more rapidly than CPI. For example, in 2022-23, CDCR expended $184.1 million on institution utilities, compared to $152.6 million in 2021-22, and $136.4 million in 2020-21, an increase of 35 percent over two fiscal years (see table below).

Resource History
(Dollars in thousands)

Program Budget	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Authorized Expenditures	$124,239	$124,492	$122,379	$122,542	$138,671	$140,180
Actual Expenditures	$135,504	$132,727	$136,446	$152,564	$184,083	$181,282[1]

[1]. 2023-24 reflects projected utilities expenditures.

CDCR indicated that this increase is due to increased rates, rather than increased usage (see below).

Fiscal Year	Therm Usage	Therm Cost (Dollars in thousands)	Electricity Cost (Dollars in thousands)
2020-21	33,832,010	$32,622	$77,870
2021-22	31,317,536	$31,231	$80,698
2022-23	32,158,324	$53,976	$94,167

CDCR projects its utilities cost to be $43.9 million more than budgeted in 2023-24, but is only requesting $21.9 million due to the budget condition. However, the Administration has indicated that they plan on requesting the full amount in future years and ongoing.

Staff Comments.

Renewable energy opportunities. It is not clear whether CDCR is maximizing opportunities for efficiency and energy generation, such as solar or wind power, at its facilities.

Ability to absorb costs. CDCR has been able to absorb significant costs in its general operating budget, including as proposed in this BCP. Without more insight into how CDCR absorbs such costs, the Legislature cannot assess how much can and should be absorbed by the Department.

Staff Recommendation. Hold open.

Issue 5: Healthcare

Proposal. The Governor's budget includes a total of $4.1 billion to deliver health care within the prison system. Significant adjustments include:

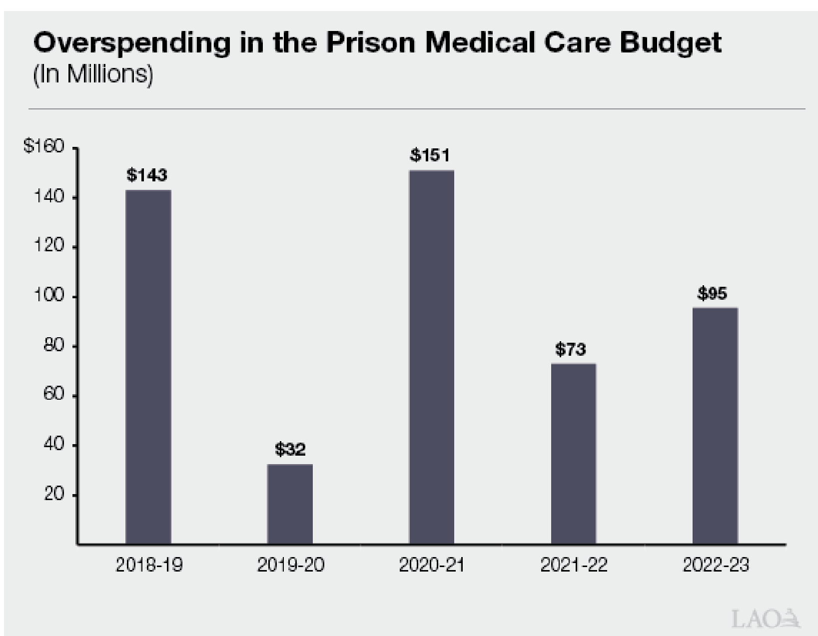
- $40 million one-time General Fund to address increased personnel and operational costs within the medical budget.

- $36.5 million ongoing General Fund and a change in methodology to address a structural deficit in funding for contract medical services, including $8.2 million to update the budgeting methodology based on medical risk acuity of the population, $13 million for the medical parole population, and $15 million for administrative claims fees.

Panelists.
- Duane Reeder, Deputy Director Fiscal Management Section, CDCR
- Dr. Renee Kanan, Deputy Director Medical Services, CDCR
- Orlando Sanchez Zavala, Fiscal & Policy Analyst, LAO
- Joshua Wittmershaus, Junior Staff Analyst, DOF
- Alyssa Cervantes, Staff Finance Budget Analyst, DOF
- Allison Hewitt, Principal Program Budget Analyst, DOF

Background.

Medical Program Shortfall. CDCR regularly exceeds its General Fund prison medical care budget, as shown in the figure below.



Source: LAO[6]

[6] https://lao.ca.gov/Publications/Report/4852#Prison_Medical_Care_Budget_Shortfall

According to CDCR, this shortfall is largely the result of overspending on personnel-related expenditures. Specifically, the Department cites costs related to vacancies including spending on overtime for staff that must complete workload associated with vacant positions and registry (contractors that provide services on an hourly basis when civil servants are unavailable). The Department also cites costs related to workers' compensation claims and lump sum payouts (payments made to employees to compensate them for unused leave when they leave state service) as contributing to the overspending in the prison medical care budget.

According to the Department, it has been able to redirect savings from vacancies elsewhere in the CDCR budget, including from mental health services, to cover the overspending in the prison medical care budget, but this redirection is no longer possible, so CDCR is requesting a one-time, $40 million augmentation. CDCR has not provided a breakdown of costs or a justification of why $40 million was requested. The Administration also indicated that ongoing funding will be needed, but more time is needed to determine the appropriate funding level.

Contract Medical Services. When CDCR is unable to provide necessary medical services to people held in prison because it lacks the needed equipment or specialist providers, the Department contracts for these services with external providers. These contract medical services are used in a number of circumstances ranging from trips to emergency departments for physical injuries to chronic medical issues that require specialized treatment. In some cases, providers are brought into facilities to deliver treatment. However, in many cases, people are transported out of a prison to receive care in the community, including inpatient care. Each time CDCR uses contract medical services, the Department is charged the full medical costs plus a $19 fee for administrative claims related to processing a CDCR patient through a community specialty care provider network. CDCR also covers the full cost of individuals in the community on medical parole, which is about $216,000 per year for around 50 individuals a year.

Since 2012-23, the contract medical budget has been funded at a flat rate of $2,763 per incarcerated person. However, the Administration states that this does not reflect the actual costs, especially given changes in the health needs of the population. For example, the proportion of individuals with highest medical risk category has increased from 5.45 percent in 2018-19 to 8 percent in 2023-24, while the proportion of individuals with the lowest medical risk has decreased from 51.44 percent in 2018-19 to 45.3 percent in 2023-24.The proportion of individuals over age 50 has also increased from 24 percent in 2018-19 to 28 percent in 2023-24.

Proposed Methodology. The contract medical program funding is adjusted as part of the population process. CDCR is proposing a new methodology for calculating this adjustment, based on the risk acuity of the population (shown in the table below), projections of medical parole, and the $19 administrative costs at a rate of 800,000 claims per year.

2023-24[1]				2024-25 Projection[3]			
Risk Level	Average Populati on	Per Capita[2]	Total Acuity Cost	Risk Level	Average Population	Per Capita[2]	Total Acuity Cost
HIGH 1	7,430	$21,168	$157,278,240	HIGH 1	7,219	$21,168	$152,811,792
HIGH 2	9,659	$6,323	$61,073,857	HIGH 2	9,385	$6,323	$59,341,355
MED	33,715	$2,230	$75,184,450	MED	32,757	$2,230	$73,048,110
LOW	42,074	$1,009	$42,452,666	LOW	40,879	$1,009	$41,246,911
TOTAL	**92,878**		**$335,989,213**	**TOTAL**	**90,240**		**$326,448,168**

[1]2023-24 Fall Population.

[2]Average Per Capita from 2018-19 to 2022-23.

[3]2024-25 Medical Classification Model Fall Population BY projections.

LAO Recommendation.

Reject the augmentation for the medical program. The LAO recommends that the Legislature reject the Governor's proposal. The LAO finds that the proposal does not make it clear why CDCR needs additional funding to address potential overspending in the prison medical care budget and cannot redirect funding from elsewhere in its budget as it has done previously. Moreover, even if overspending cannot be addressed by redirecting funding, the Department can seek additional funding through Item 9840-001-0001 or a supplemental appropriation. Finally, the proposal does not provide adequate justification for the requested $40 million, particularly given the budget problem facing the state. The LAO notes that rejecting this proposal will help the state address its budget problem.

Withhold Action and Direct CDCR to Develop Population-Based Budgeting Methodology for Federal Reimbursements and Administrative Claims. The LAO recommends the Legislature withhold action on this proposal until it is adjusted based on updated population projections as part of the biannual adjustment process at the May Revision. In addition, given that the $15 million for administrative claims fees and the $42 million in reimbursement authority is not population-driven, the LAO recommends that the Legislature direct CDCR to develop a new methodology for those aspects of the contract medical services budget that account for changes in the size and/or makeup of the prison population. This revised proposal could be considered by the Legislature at the May Revision. Given that the state is currently facing a budget problem, the LAO notes that the Legislature will need to weigh any potential increase in spending related to this proposal against its other spending priorities as it will likely need to offset cost increases with spending reductions elsewhere in the budget. Accordingly, proposals for new spending should meet a high threshold before being approved.

Staff Recommendation. Hold open.

Issue 6: COVID-19 Proposals

Proposal. The Administration proposes the following changes related to COVID-19 funding:

- $38.4 million General Fund in 2024-25 and ongoing for continued health care costs related to the prevention and mitigation of and response to COVID-19.

- Budget bill language allowing funding to be reduced if actual or estimated expenditures fall below the requested amount.

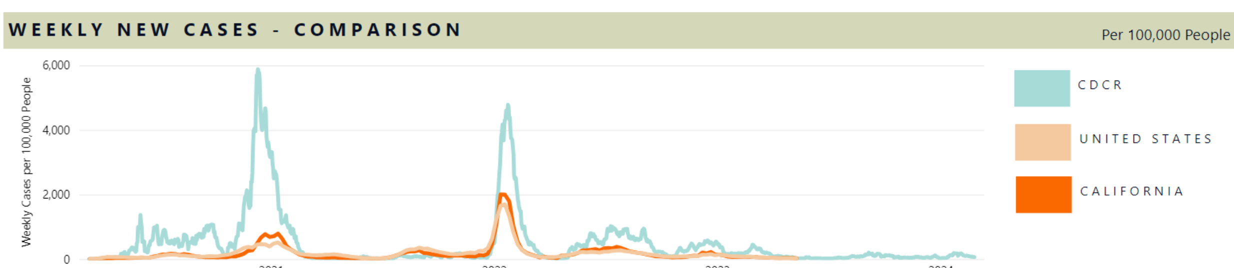
- Reversion of $38.8 million General Fund in 2023-24 for prevention, mitigation, and response activities.

- Reversion of $5 million General Fund in 2023-24 and $9 million General Fund in 2024-25 for workers compensation.

Panelists

- Duane Reeder, Deputy Director Fiscal Management Section, CDCR
- Dr. Renee Kanan, Deputy Director Medical Services, CDCR
- Orlando Sanchez Zavala, Fiscal & Policy Analyst, LAO
- Alyssa Cervantes, Staff Finance Budget Analyst, DOF
- Allison Hewitt, Principal Program Budget Analyst, DOF

Background. As of February 22, 2024, the incarcerated population has had a total of 96,122 cases and 263 deaths since the beginning of the pandemic[7]. There are currently 109 active, in custody cases. As of the end of the state of emergency on February 28, 2023, CDCR is no longer reporting staff COVID-19 testing data[8]. Rates of COVID-19 within the incarcerated population have outpaced state and national averages throughout much of the pandemic (see below).



Vaccinations. Vaccinations are currently required for employees and incarcerated workers in health care settings. As of February 22, 2024, 75 percent of the incarcerated population and 66 percent of CDCR employees had completed their primary vaccination series. However, only 28 percent of the incarcerated population are completely up-to-date, including recommended booster shots. In addition, vaccination rates vary widely across facilities and settings. For example, at High Desert State Prison, only 47 percent of staff completed their primary series. The highest staff

[7] https://www.cdcr.ca.gov/covid19/population-status-tracking/
[8] https://www.cdcr.ca.gov/covid19/cdcr-cchcs-covid-19-status/

vaccination rates are at the medical facilities, including the California Health Care Facility and the California Medical Facility, where vaccines are mandated for employees. The percentages of employees who are up to date with their boosters is not available.

Testing and Masking Protocols. CDCR primarily uses testing for individuals who have symptoms or were potentially exposed. There is no regular screening testing of the incarcerated population or staff (even if staff are not vaccinated), and testing is not required for staff. Masks are not generally required.

Previously Allocated Resources. The Department has expended over $1.5 billion for COVID prevention, mitigation, and response activities, with funding for both California Correctional Health Care Services (CCHCS) and CDCR. However, this request is only for funding for CCHCS. The expenditure history for CCHCS is displayed below.

CCHCS COVID-19 Cost History[1]
(Dollars in Thousands)

Expenditures	2019-2020	2020-2021	2021-22	2022-23[2]	2023-24[3]	2024-25[4]
Testing (Employee)	$0	$81,197	$222,540	$29,659	$8,927	$7,434
Testing (Incarcerated Persons)	$6,093	$131,813	$104,183	$51,429	$15,151	$13,213
Medical Expenses (Registry)	$0	$99,574	$18,225	$22,367	$11,800	$0
Other Staffing & Operational Costs	$30,176	$83,720	$50,070	$28,713	$6,823	$6,686
Personal Protective Equipment	$21,309	$17,884	$10,641	$6,627	$4,802	$4,802
Cleaning	$180	$1,567	$1,444	$141	$0	$0
Vaccines[5]	$0	$0	$0	$0	$6,253	$6,253
Total	**$57,758**	**$415,755**	**$407,103**	**$138,936**	**$53,756**	**$38,388**

[1]Reflects CCHCS costs only. Does not include costs incurred by CDCR.

[2]CCHCS received $41.2 million in California Department of Public Health (CDPH) American Rescue Plan Act Reimbursements, bringing the total cost to the Department down to $97.7 million.

[3]Projected expenditures for 2023-24.

[4]Projected expenditures for 2024-25 and ongoing.

[5]Prior to 2023-24, vaccines were federally funded at no cost to the Department. Beginning in 2023-24, CCHCS utilized Departmental funds to purchase the COVID-19 vaccines due to the commercialization upon approval through the Food and Drug Administration.

LAO Comment.

Request Does Not Account for Recent Trends, Reflect a Standardized Methodology, or Projected Decline in Population. The LAO finds that the Department's proposed methodology to estimate its funding need does not factor in recent trends in COVID-19 prevalence, is not based on a standardized methodology, and does not reflect projected declines in the prison population. For example, the Department's methodology to estimate its funding need for testing of the prison population factors in expenditures between April 2023 and August 2023. As a result, CDCR's ongoing level of resources for testing of the prison population would be based on trends that do not reflect more recently available information given that CDCR indicates it will not update its request in the spring. This budgeting approach raises further concerns because it is not standardized to include the same months in the calculations for each of the expenditure categories. For example, it is unclear why the ongoing level of funding for testing of the prison population should be based on average expenditures between April 2023 and August 2023, while the funding for testing of staff should be based on average expenditures between April 2023 and September 2023. Moreover, the proposal assumes CDCR expenditures on COVID-19 health care costs will remain the same despite the fact that the prison population is projected to decline both in 2024-25 and future years, suggesting the Department's resource need will also decline going forward.

CDCR Has Not Explored Options to Reduce State Spending by Leveraging Employee Health Insurance. The state offers employer-sponsored health insurance to state employees, including CDCR. As such, CDCR staff are able to receive vaccinations against COVID-19 from their employer-sponsored health insurance. Notably, all employer-sponsored health insurance plans offered through the state provide COVID-19 vaccinations at no-cost to the employee. When asked whether the Department could leverage employee health insurance to offset the vaccine costs for employees, CDCR indicated that it had not explored such an option. This is noteworthy given that the Department is requesting resources for staff vaccinations against COVID-19 on an ongoing basis.

LAO Recommendation.

Withhold Action on Budget-Year Request and Direct CDCR to Provide Updated Proposal. The LAO recommends that the Legislature withhold action on the Governor's proposed resources for COVID-19-related health care costs in CDCR in 2024-25. The LAO also recommends the Legislature direct the Department to update its 2024-25 request in the spring to reflect more recent data. In doing so, the Department should use a standard snapshot of months when calculating its need for each of the activities it is requesting resources for and provide justification for why that set of months is reflective of its costs. Additionally, the Department should adjust the proposal to reflect the fact that the prison population is expected to decline between 2023-24 and 2024-25. Finally, the LAO recommends the Legislature direct CDCR to explore options to leverage the state's employer-sponsored health insurance to reduce the funding needed for employee vaccines and further adjust the proposal as necessary to reflect any resulting savings from doing so. These adjustments would likely reduce the overall cost of the proposal, freeing up General Fund resources that could be used to address the fiscal difficulties facing the state in the budget year.

Reject Funding for Future Years. The LAO recommends that the Legislature reject the funding proposed for the future and fund the Department's COVID-19-related health care workload on a one-time basis. The Department has provided little reason to think that its COVID-19-related funding needs will remain at 2023 levels in the future, particularly given the projected decline in the prison population. Moreover, funding such a request would increase the Department's baseline spending in the future, and the LAO finds that it is not prudent to make such a commitment given the fact that our office projects the state's fiscal difficulties will continue in future years.

Staff Recommendation. Hold open.

Issue 7: Employee Health Program Reduction

Proposal. The Governor's budget includes a reduction of 38.0 positions and $7.1 million General Fund in 2024-25 and ongoing for the Employee Health Program (EHP).

Panelists

- Duane Reeder, Deputy Director Fiscal Management Section, CDCR
- Debra Amos, Terrell, Chief Nurse Executive, CDCR
- Orlando Sanchez Zavala, Fiscal & Policy Analyst, LAO
- Alyssa Cervantes, Staff Finance Budget Analyst, DOF
- Allison Hewitt, Principal Program Budget Analyst, DOF

Background.

In October 2022, CDCR started EHP to mitigate COVID-19 transmission among CDCR staff by providing education, conducting contact tracing, administering vaccines, and reporting positive tests to staff. The federal Receiver—appointed by the *Plata v. Newsom* court to take control over the direct management and operation of the state's medical care—oversees EHP, which is primarily operated by medical staff. The 2022-23 Budget Act provided $22.8 million from the California Emergency Relief Fund and 157 positions on a one-time basis for the program to operate at each prison.

Prior to EHP, there was not one centralized program area within CDCR with dedicated resources to manage employee health, and CDCR was not in compliance with existing federal regulations around workplace safety and aerosol diseases. CDCR indicated it had accumulated about $1 million in workplace violations and citations from Cal/OSHA in a five-year period, due to its failure to maintain a workplace free from recognized hazards. Most fines were related to the prevention of aerosol transmitted diseases.

The enacted budget in 2023-24 included $15 million General Fund ongoing and 78 positions in 2023-24 to maintain EHP at every prison on an ongoing basis to focus on compliance with workplace safety regulations and mitigation of diseases such as tuberculosis, Hepatitis B, and influenza, in addition to COVID-19. According to CDCR, expanding the focus of EHP to include other diseases would help the Department reduce the spread of these diseases to staff, as well as workplace citations and fines associated with noncompliance with workplace safety regulations.

The Governor's budget proposes to reduce this program size by $7.1 million and by 38 positions, leaving $8 million ongoing and 40 positions for this program.

Staff Recommendation. Hold open.

Issue 8: Community Reentry Program Funding Adjustment

Proposal. The Governor's budget includes funding to increase contract rates and add annual inflationary adjustments for in-custody community reentry centers and post-release reentry programs to reflect increased costs and inflation, including:

- $11.4 million General Fund in 2024-25 growing to $15.9 million in 2028-29 to increase the contract rates for community reentry centers with contracts expiring in 2024-25.

- $2.3 million General Fund in 2024-25 growing to $3.4 million in 2028-29 for parole reentry contracts that recently expired or will expire in 2024-25.

Panelists

- Niki Dhillon, Deputy Director of Program Support, Division of Rehabilitative Programs, CDCR
- Caitlin O'Neil, Principal Fiscal & Policy Analyst, LAO
- Orlando Sanchez Zavala, Fiscal & Policy Analyst, LAO
- Joshua Wittmershaus, Junior Staff Analyst, DOF
- Allison Hewitt, Principal Program Budget Analyst, DOF

Background. CDCR currently contracts with providers to operate community-based pre-release and post-release programs with the goal of improving reentry outcomes. The programs provide a range of community-based, rehabilitative services that assist with substance use disorder, mental health care, medical care, employment, education, housing, family reunification, and social support.

Pre-Release Community Reentry Centers. The pre-release programs include the Male Community Reentry Program (MCRP) and the Custody to Community Transitional Reentry Program (CCTRP), for men and women respectively. These provide community settings for men and women who are still in custody with less than two years on their sentence. There is capacity for around 1,000 people in these programs. There are MCRP locations in Butte (serving Tehama, Nevada, Colusa, Glenn, Sutter, Placer and Yuba), Kern, Los Angeles, and San Diego counties. There are CCTRPs in San Diego, Kern, San Joaquin, Sacramento, and Los Angeles counties.

Effect on Recidivism. A study published in June 2021 that was prepared for CDCR by Stanford University's Public Policy Program found that people who participated in these community reentry center programs for nine months or longer were 92 percent less likely to be reconvicted than a control group that completed their full sentences within California prisons[9]. CDCR's recidivism reports have also shown that the three-year reconviction rate for women who participated in the women's residential reentry program was nearly half the overall female reconviction rate (20 percent for participants in the program compared to 35 percent overall)[10]. The 2021 Annual Report from the Committee on Revision of Penal Code[11] also included a recommendation to expand

[9] https://stacks.stanford.edu/file/druid:bs374hx3899/MCRP_Final_060421.pdf
[10] https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/09/Recidivism-Report-for-Offenders-Released-in-Fiscal-Year-2015-16.pdf
[11] http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf

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

Resources Available and Expansion Funding. CDCR is authorized to spend $36 million on MCRP, and can make adjustments through the population process. The 2022-23 Budget Act included $40 million per year for three years for CDCR to expand the community reentry center program. CDCR has executed contracts for two new locations. The first is with Mental Health Systems for a Fresno location with 114 beds, requiring a facility renovation. It is anticipated to open in October 2024. The second is with Amity for a new-build site in Sacramento with 150 beds. Construction is anticipated to start in late 2024 and is estimated to take 18 months to complete. In addition, CDCR released a Request for Information for potential additional sites, and responses were due in December 2023. The 2023-24 Budget Act also provided some flexibility for the expansion funding to be used to increase provider rates to maintain existing capacity.

Post-Release Parole Community Reentry Programs. CDCR also funds community programs for individuals on parole, to assist them after they have completed their sentence. Over the last three fiscal years, Division of Rehabilitative Programming (DRP) contractors have served 48,515 parolee participants (15,819 in 2020-21, 16,274 in 2021-22, and 16,422 in 2022-23). These programs include:

- Day Reporting Centers (DRCs) are non-residential programs that provide services such as counseling, anger management, education, and substance use disorder education, among others. There are 18 programs available in 14 counties[12]. The programs are 180 days, and can be extended by up to 185 days depending on need.

- Community Based Coalitions are similar to DRCs, and are offered in 10 locations in seven counties[13]. The programs can be up to a year.

- Long Term Offender Reentry and Recovery (LTORR) is a residential program that provides housing, meals, programming, supervision, and support services and resources[14]. There are 14 programs in eight counties. The programs are 180 days, and can be extended by up to 185 days depending on need.

- The Life Skills Training Program provides 18 months of firefighter training for parolees who participated in fire programs while incarcerated.

- Specialized Treatment for Optimized Programming (STOP)[15] contractors provide programming in services to parolees in their first year of release with a focus on substance use disorder treatment. STOP services are provided through a network of community providers located in most counties and managed by six regional placement offices.

[12] https://www.cdcr.ca.gov/rehabilitation/drc/
[13] https://www.cdcr.ca.gov/rehabilitation/cbc/
[14] https://www.cdcr.ca.gov/rehabilitation/ltrr/
[15] https://www.cdcr.ca.gov/rehabilitation/stop/

Resources Available. CDCR is authorized to spent $143.6 million annually on these community programs. In addition, the Returning Home Well program, which provided temporary housing, was provided with $20.9 million federal funding in 2020-21 and 2021-22, and $10.6 million General Fund in 2022-23, 2023-24, and 2024-25.

Proposed Resources and Funding Methodology. With the exception of the one-time infusion of the expansion funding to the MCRPs and CCTRPs, the baseline funding for these programs has not been increased in recent years, despite rising operational costs. The Administration has also had trouble soliciting bids for multiple sites due to noncompetitive rates being offered. Lower rates can also lead to bids from lower quality programs.

The Administration is proposing to use a standard methodology to adjust the rates for both pre-release and post-release program operators to account for rising costs. The methodology includes a one-time catch-up based on changes in the Consumer Price Index (CPI) over the prior contract term, and an ongoing annual two percent increase. The approach above would apply to a total of 11 DRC and LTORR contracts included in the BCP, and to MCRP and CCTRP sites, for which funding is requested through the CDCR population adjustments. The Administration plans to apply a similar methodology to future expiring contracts for parole reentry programs.

Staff Comment.

Operators. These programs are operated by both for-profit and nonprofit entities. Concerns have been raised over the state's use of for-profit entities in the area, as their incentives may not be aligned with successfully reentry and reduced recidivism. The state has also tried to reduce the use of private contractors in correctional settings. The Committee on the Revision of the Penal Code noted this concern in its recommendation that the state expand the MCRP and CCTRP[16]. The Legislature should consider the use of private entities in this area.

Lack of data and oversight. Concerns have been raised about the lack of state oversight and data on STOP[17]. For example, CDCR did not track recidivism, and had limited data on completion rates. Their list of providers also included inaccurate information, including businesses that had closed and sites with suspended business licenses and nonprofit statuses. While this proposal does not specifically include funding for STOP providers, the BCP noted that "[t]he Administration plans to apply a similar methodology to future expiring contracts for parole reentry programs." The lack of data and oversight may also extend to the other parole program advisors. The Legislature should consider how to provide better oversight of these programs, and whether and what kind of outcome tracking should be required.

Staff Recommendation. Hold open.

[16] http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf
[17] https://calmatters.org/justice/2023/07/california-prisoner-rehabilitation-centers/

Issue 9: Increased Attorney Fees for Board of Parole Hearings

Proposal. The California Department of Corrections and Rehabilitation, Board of Parole Hearings (BPH) requests $2.1 million General Fund in 2024-25 and on-going to maintain updated funding for fees paid to attorneys who represent incarcerated persons at parole hearings.

Panelists

- Jennifer Shaffer, Executive Officer, BPH
- Caitlin O'Neil, Principal Fiscal & Policy Analyst, LAO
- Skyler-Myles Clinton Cobb, Junior Staff Analyst, DOF
- Cynthia Mendonza, Principal Program Budget Analyst, DOF

Background.

Statue gives parole candidates the right to an attorney at parole hearings. BPH appoints an attorney for candidates who do not hire a private attorney or receive free services from a private attorney. Private attorneys that provide free services are often affiliated with nonprofit organizations specializing in parole hearings. 7,697 (about 90 percent) candidates who had parole hearings scheduled to take place in 2021 relied on a state-appointed attorney.

In the 2021 Budget Act, BPH received $1.75 million one-time General Fund for a pilot program, which required state appointed attorneys to provide an additional hour of counsel to incarcerated persons before they are interviewed for their comprehensive risk assessment (CRA). This counsel included education and advice on the importance of the CRA and its role in the parole decision-making process. The pilot program provided $150 for the additional hour of counsel, increasing the total attorney flat rate fee from $750 to a more competitive fee of $900 per case. In 2023-24, BPH received one-time funding of $1.6 million to extend the extra hour of counsel, and increase the flat rate fee to $945 per case.

In a recent poll survey conducted by the Parole Justice Works (PJW), the majority of people (63 percent) who were represented by a state-appointed panel attorney stated that they were satisfied, or more than satisfied with the representation at the parole hearing. Additionally, a majority (59 percent) indicated that the pre-hearing preparation with their attorney either made a big difference in the hearing or was important to their hearing.

The pilot helped reduce vacancy rates for appointed attorneys. In October of 2021, the vacancy rate was 30 percent, then it dropped to 17 percent with the implementation of the pilot program and has continued declining due to the increased flat rate fee incentive. The current vacancy rate is six percent. The pilot program also resulted in the Board updating its procedures to delay CRA interviews until at least 30 days after state-appointed counsel has been appointed.

The Administration is proposing to extend this program again and increase the flat rate fee to $1,005 due to increasing cost of representation and updated rates. This was calculated by surveying 10 counties and the federal courts hourly rates for criminal defenders, and then assuming each case takes eight hours.

Equity in Parole Hearings. In January 2023, the LAO released a report on equity in the parole process[18]. In it, they noted that candidates with state appointed attorneys had worse outcomes than candidates with private attorneys, including being half as likely to be granted parole, receiving longer denial periods on average, being more than twice as likely to waive their right to a parole hearing, and being four times as likely to stipulate to unsuitability. The report contained many recommendations, and listed some options that could be considered if further analysis indicated that it was a key issue in the quality of state appointed representation. One of those options was further increasing attorney pay. Other options included shifting the responsibility of representation to another entity entirely independent of BPH, providing funding for expert opinions in some cases, and expanding hearing preparation.

Staff Comment.

Rate calculation and amount of time spent on cases. The requested flat rate of $1,005 per case was established by surveying ten counties and the federal courts hourly rates for criminal defenders, and then assuming each case takes eight hours. However, it is not clear how this compares to cost or amount of time private attorneys spend on parole cases. In addition, some concerns have been raised about the flat rate structure, as there is not a financial incentive to spend time or offer extra time or support with the client. Finally, it is not clear how BPH ensures that appointed attorneys are fulfilling the BPH expectations in terms of amount of time spent with the client. For example, the 2021 Budget Act included provisional language requiring BPH was required to report the number of clients who received an extra hour of attorney-client interaction, and BPH's answer assumed that every client with a state appointed attorney received the extra hour.

Staff Recommendation. Hold open.

[18] https://lao.ca.gov/Publications/Report/4658