

April 23, 2015

Governor's Population Related Proposals for CDCR

LEGISLATIVE ANALYST'S OFFICE

Presented to:
Senate Budget and Fiscal Review Subcommittee No. 5
On Corrections, Public Safety and the Judiciary
Hon. Loni Hancock, Chair





Court-Ordered Population Cap

Court-Ordered Prison Population Cap			
	Design Capacity^a of CDCR Prisons	Population Cap (Percent of Design Capacity)	Inmates Allowed In CDCR Prisons
June 30, 2014 through February 27, 2015	82,707	143 percent	118,271
February 28, 2015 through February 27, 2016	82,707	141.5 percent	117,030
After February 27, 2016	85,082 ^b	137.5 percent	116,988

^a Design capacity generally refers to the number of beds CDCR would operate if it housed only one inmate per cell. Inmates housed in contract facilities are not counted toward the overcrowding limit.

^b Assumes that three infill facilities will be activated in February 2016 and that the court will immediately count the full design capacity of 2,376.

- Population Cap.** In recent years, the state has been under a federal court order to reduce overcrowding in the prisons operated by the California Department of Corrections and Rehabilitation (CDCR) by keeping the number of inmates housed in these prisons below the court-ordered population caps shown in the figure.
- CDCR Maintains “Buffer” Against Cap.** To ensure that the prison population does not exceed the cap, CDCR has reduced the population below the cap by thousands of inmates. This gap between the number of inmates CDCR is allowed to house in its 34 prisons and the number it actually houses acts as a buffer against the cap. Between June 2014 and November 2014, CDCR maintained an average buffer of about 2,000 inmates and at no point came within 1,000 inmates of the population cap.
- State Currently in Compliance.** As of April 8, 2015, the inmate population in the state’s prisons was about 112,000, or 5,200 inmates below the February 28, 2015 cap, and 1,900 inmates below the final February 2016 cap.



Governor's Proposal

Governor's Population-Related Proposals		
<i>(Dollars in Millions)</i>		
	2014-15	2015-16
Population Assumptions		
Prison Population—2014-15 Budget Act	135,482	135,482
Prison Population—2015-16 Governor's Budget	134,986	133,109
Prison Population Adjustment	-496	-2,373
Parole Population—2015-16 Budget Act	41,874	41,874
Parole Population—2015-16 Governor's Budget	41,874	42,003
Parole Population Adjustments	—	129
Budget Adjustments		
Medical staffing adjustment	\$12.4	\$10.8
New inmate housing activations	0.9	41.0
Inmate-related adjustments	0.1	-7.7
Contract bed adjustments	-9.5	2.3
Other adjustments	0.4	12.1
Proposed Budget Adjustments	\$4.3	\$58.5

- The budget-year net increase in costs is largely related to (1) the activation of new infill bed facilities at Mule Creek prison in Inyo and R.J. Donovan prison in San Diego, (2) a projected increase in certain populations of inmates needing mental health care, and (3) the activation of a new mental health treatment unit for condemned inmates at San Quentin Prison.
- These increases are partially offset by a projected reduction in the inmate population of about 1,900 inmates.



Governor's Proposal

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Plans for Complying With Court-Ordered Population Cap

- **Compliance Projected.** Due in part to the above inmate reduction, the Governor's budget projects that the state will maintain compliance with the court-ordered population cap throughout 2015-16. The state's ability to comply with the cap also depends on (1) the number of contract beds maintained by CDCR and (2) the design capacity of the state's 34 prisons.
- **Slight Increase in Contract Beds.** The Governor's budget includes \$495 million (General Fund) to maintain about 15,900 contract beds in 2015-16. This represents a slight increase (about 4 percent) from the revised current-year funding. Inmates housed in contract beds are not counted towards the population cap.
- **Activation of New Infill Beds.** The Governor's budget also includes \$36 million (General Fund) to activate three new infill bed facilities that are under construction. These facilities will add almost 2,400 beds to CDCR's 34 prisons. Because the state will be allowed to overcrowd to 137.5 percent of design capacity, the activation of these facilities will allow the state to add about 3,300 inmates to its prisons. The budget assumes that all three facilities will be activated in February 2016.



Administration Indicates its Compliance Plan Accounts for Uncertainty

Population Projections Subject to Unusually High Degree of Uncertainty

- According to the administration, this year's projections are particularly uncertain due to the challenge of estimating the effects of Proposition 47 and other court-ordered population reduction measures. Due in part to this, CDCR has decided not to publish its estimate of the inmate population beyond 2015-16 as it normally would.

Timing of Activation of New Prison Facilities Is Uncertain

- The department plans to admit inmates into the new infill facilities in waves beginning in February 2016 and expects to reach full occupancy by July 2016. However, the administration indicates that construction crews could encounter unanticipated difficulties (such as poor weather) that could result in delayed activation.

Future Court Decision Will Affect Population Cap

- There is some uncertainty regarding how the federal court will count the additional infill capacity for the purpose of calculating the number of inmates the state can house in its 34 prisons.
- If the court counts the entire design capacity of the facilities immediately upon activation—irrespective of the number of inmates actually housed there—the population cap would increase by about 3,300 immediately. Alternatively, the court could determine that the facilities must be fully occupied before it counts the full design capacity. This would mean the population cap would remain thousands of inmates lower in the months in which the facilities are being filled.
- The court has required the state to meet with the plaintiff's attorneys in the case and attempt to reach an agreement regarding how the court should count new capacity.



Proposed Contract Bed Funding Higher Than Necessary

- ☑ The Governor's budget provides at least \$20 million more than necessary for contract beds in 2015-16. The amount could be even greater depending on whether the infill facilities are activated on time and how the court counts the new capacity.

- ☑ **Proposed Number of Contract Beds Would Result in Excessive Buffer**
 - The department is planning to maintain a buffer of several thousand inmates in 2015-16 by housing these inmates in contract beds rather than in the state's 34 prisons.
 - Because contract beds are typically more expensive than already constructed prison beds, the state could achieve savings by maintaining a smaller buffer without meaningfully increasing the risk of violating the cap. For example, if the department maintained a buffer in 2015-16 of about 2,500 beds—similar to the first several months of 2014-15—it could achieve tens of millions of dollars in savings.

- ☑ **Operational Savings Could Offset Contract Bed Costs if Infill Delayed**
 - If the activation of the infill facilities is delayed, some or all of the proposed \$36 million to support their activation would not be needed. The operational saving could easily reach into the tens of millions of dollars.
 - A delay would likely require the department to maintain the proposed level of contract beds during the last several months of 2015-16. However, the savings from the delayed activation could be used to partly offset the cost of any contract beds needed.



Proposed Contract Bed Funding Higher Than Necessary

(Continued)



Population Estimates Appear High

- The administration may be underestimating the population reductions from Proposition 47 because it made very cautious assumptions about its effects. If the inmate population is lower than projected, the excess contract bed funding could be even greater than described above.



Lack of Long-Term Population Projections Makes Planning Difficult

- ☑ In the long term, the Legislature may have a variety of options to achieve savings by reducing prison capacity as the inmate population declines. For example, it could consider permanently reducing contract beds or even closing a state prison.

- ☑ The appropriate course of action, and any necessary planning to achieve it, depends heavily on the estimated prison population in future years. As such, it is impossible for the Legislature to make an informed decision without the long-term population projections that the department has declined to provide this year.



LAO Recommendations



Withhold Contract Bed Funding Pending Additional Justification

- We find that the Legislature could reduce the Governor's proposed contract bed funding level by at least \$20 million by directing CDCR to move inmates from contract beds into state prisons.
- The amount of savings could exceed \$20 million depending on (1) the timing of the activation of the infill beds, (2) how the court counts the infill capacity, and (3) how the actual inmate population level compares to the administration's projections.
- As such, we recommend that the Legislature not approve the proposed contract bed funding until the department can provide information on (1) how the population projections for the current year compare with actual population levels, (2) whether the infill facilities are on track to be activated on schedule, and (3) the status of negotiations with plaintiffs on how the court will count the new capacity.



Direct CDCR to Provide Long-Term Population Projections

- We recommend that the Legislature direct CDCR to resume its historical practice of providing long-term population projections biannually. This information would allow the Legislature to better assess and plan for the long-term implications of Proposition 47 and determine how best to adjust the state's prison funding and capacity.