



LEGISLATIVE ALERT

Via Electronic Mail

DATE: April 26, 2007

TO: CSAC Board of Directors
County Administrative Officers
CSAC Corrections Reform Working Group
CSAC Corporate Associates

FROM: Steve Keil, CSAC Interim Executive Director
Elizabeth Howard, CSAC Legislative Representative
Rosemary Lamb, CSAC Legislative Analyst

RE: Legislative Alert: Corrections Reform Package Breaks

Taking swift and decisive action today to address the overcrowding and recidivism problems that plague the state prison system, the Legislature passed AB 900 (Solorio/Aghazarian), the Public Safety and Offender Rehabilitation Services Act of 2007. The Assembly approved the bill on a 70-1 vote, the Senate on a 27-11 vote. The measure seeks to head off federal court action, including the possible imposition of a prison population cap and the potential of a federal receivership.* The reform package contains infrastructure funding for approximately 13,000 jail beds to address overcrowding issues in local detention facilities, in addition to resources for 40,000 state beds. The agreement addresses the adult corrections system only; the Governor's juvenile justice realignment proposal is still on the table and presumably will proceed on a separate track as part of the budget process.

The reform package differs in one notable way from the corrections proposal unveiled in the Governor's January budget: it eliminates the proposal to require counties to house state inmates for certain crimes for up to three years in local facilities. Further, it does not include support for adult probation services, a Sentencing Commission structure, nor changes to the parole system. It is reported that these elements will be given further consideration outside of the reform deal approved today. The correction package puts a strong emphasis on programming and rehabilitation efforts for the prison population.

* In December 2006, U.S. District Judge Lawrence Karlton gave the State of California six months to demonstrate that the Department of Corrections and Rehabilitation (CDCR) is taking necessary steps to address overcrowding in the state prison system. (A hearing before the federal court is scheduled for June 4.) The state correctional facilities currently are housing about 172,000 inmates, a number estimated to be 70 percent over capacity. Judge Karlton's December decision delaying the creation of a three-judge panel that would make recommendations to address overcrowding (including, potentially, the imposition of a population cap that could trigger early release of prisoners) was apparently related to improvements the judge had seen in the state's efforts to address overcrowding problems.

SUMMARY OF AB 900 (Solorio/Aghazarian)

The Public Safety and Offender Rehabilitation Services Act of 2007 provides for significant infrastructure investment in two phases:

Phase I – \$3.6 billion in lease revenue bonds; 24,000 state beds

- 12,000 infill beds for existing prisons Of the 12,000 infill beds in Phase I, approximately 7,500 beds are specified for 10 designated prisons; they are intended to replace "bad" beds (those currently in dayrooms, gymnasiums, and programming space).
- 6,000 re-entry beds Re-entry facilities would be state-funded and -operated; these

facilities would be placed in communities and include a rigorous programming component to assist inmates close to parole or parole violators with a more successful re-integration into society. These will be secure facilities of up to 500 beds each, located primarily in urban areas.

- 6,000 medical beds

The use of these state beds (i.e., mental health or long-term care) would be determined by the federal court Receiver over the prison health system.

Phase II – \$2.5 billion in lease revenue bonds; 16,000 state beds

- 4,000 additional infill beds
- 10,000 additional re-entry beds
- 2,000 additional medical beds

Commencement of Phase II construction would occur only if certain condition or benchmarks are met, as follows:

- Half of the Phase I beds are constructed or sited.
- Drug treatment slots are filled.
- California Rehabilitation Oversight Board is appointed and operational.
- Inmates are being appropriately assessed and placed into rehabilitation programs.
- There is increased inmate participation in educational programs.
- Mental health day treatment facilities are open and operational.
- A prison-to-employment plan is completed.
- Vacancies in rehabilitation and treatment personnel are filled.
- CDCR management issues are addressed

The Phase II lease revenue bond authority would expire in 2014.

Local jail beds – \$1.2 billion in lease revenue bonds + 25 percent local match

- 13,000 local jail beds: 8,000 to be built in Phase I and 5,000 in Phase II.
- Phase II construction of local beds commences only if at least 4,000 local beds and 2,000 re-entry beds from Phase I have been built.
- Local match of 25 percent is required (Government Code Section 15820.907(a)), with a waiver process for counties with a population of less than 200,000.
- Unspecified mechanism to give preference for a portion of local jail bed funding to counties that (1) assist in the siting of state re-entry facilities or mental health day treatment and crisis care centers and (2) provide a continuum of care to parolees for mental health and substance abuse needs (Section 15820.907(b) and (c)).
- Jail bond program administered through the Corrections Standards Authority.

Rehabilitative Elements

- Expanded substance abuse treatment to treat a minimum of 4,000 additional inmates in in-custody programs.
- State-provided aftercare services are required for parolees who participate in in-custody drug treatment programs.
- CDCR to develop and implement a comprehensive, interdisciplinary assessment of inmates.
- CDCR to obtain day treatment and contract for crisis care services for parolees with mental health problems and “shall work with counties to obtain day treatment and crisis care services for parolees with the goal of extending services upon completion of the offender’s period of parole, if needed” (Penal Code Section 3073).
- CDCR to develop an inmate treatment and prison-to-employment plan to address education and rehabilitation programs.
- Establishment of the California Rehabilitation Oversight Board, an 11-member body to examine mental health, substance abuse, educational and employment programs for inmates and parolees (Penal Code Section 6141).

Mitigation/Elements of Local Interest

- Mitigation for construction of state beds pursuant to existing Penal Code Section 7005.5.
- Appropriation of \$300 million in state general funds for capital outlay for renovation, improvement, and expansion of existing state prison facilities.
- Concurrence of local government regarding siting of re-entry facility, giving local jurisdiction the authority to identify the location.
- Standard environmental reviews required.

Out-of-state Transfers

- Gives CDCR authority through 2011 to transfer up to 8,000 state inmates in out-of-state facilities.
- Specifies that inmates with serious medical or mental health issues are exempted from out-of-state transfers.

CSAC'S RESPONSE

We are continuing to work to fully vet the language in AB 900. Based on our preliminary read of the provisions, the package appears balanced, with a clear commitment to increasing state and local capacity as well as focused rehabilitation efforts. From the county perspective, the proposal is a marked improvement over the initial proposal unveiled in January, and we believe the Governor and the Legislature made significant strides to address and anticipate local concerns.

CSAC supports the adult corrections reform package in concept. We will continue to examine the statutory language of AB 900 in the coming days; we encourage counties to carefully analyze the provisions and identify areas requiring further discussion. CSAC will work to compile a list of implementation and process issues that bear further discussion. Those issues include, but are not limited to, the following:

- Sufficiency of mitigation provisions;
- Linkage between jail construction funding and siting incentives;
- Clarification on timing of county jail construction;
- Broad county (supervisor or county administrative/executive officer) representation on the California Rehabilitation Oversight Board (Penal Code Section 6140); and
- Joint state/local enterprise to develop service capacity to assure continuum of care.

NEXT STEPS

It is expected that AB 900 will be transmitted to the Governor next week; he is expected to sign the bill. It is an urgency measure, which means the provisions become effective the day following the Governor's signature.

Attached is the Governor's Office press release announcing the agreement on the corrections reform package. We also have attached a letter from the Democratic legislative leaders to the Governor outlining their ongoing concerns with and priorities for the reform effort. It is clear that the Legislature is committed to additional work to resolve the myriad issues involved in administration of the state's prison system and the implementation of the reform package.

FURTHER INFORMATION

For additional information on the corrections reform package, please contact Elizabeth Howard (916/327-7500 x537) or Rosie Lamb (916/327-7500 x503).

Governor Announces Historic Agreement to Reform California’s Corrections System

On April 26th, Governor Schwarzenegger held a press conference to discuss AB 900 a historic, bipartisan agreement to reform California’s corrections system. The Governor was joined by Senate President Pro Tem Don Perata and Senate Republican Leader Dick Ackerman. The Governor also met with Assembly leaders following the bill’s Assembly passage.

A Seismic Shift in California Corrections

The historic prison agreement struck on April 25, 2007 by legislative leaders and Governor Schwarzenegger completes a major effort to reform California’s prison system. This agreement represents a seismic shift in California’s corrections system, moving away from a model of massive, remotely-located prisoner warehouses that breed more crime to smaller facilities with improved rehabilitation programs designed to reduce crime and enhance public safety. It provides for the first and largest prison capital outlay program in decades.

Since taking office the Governor has worked to address overcrowding and dangerous conditions in our prisons and county jails, enhance rehabilitation, and reduce recidivism. In 2005, the Legislature passed SB 737 reforming the management of California’s corrections system. In 2006 the Governor proposed moving away from warehousing prisoners to smaller, community-based facilities with enhanced substance abuse, job training and other rehabilitation programs. To address dangerous levels of overcrowding, Governor Schwarzenegger convened a special session of the state Legislature to fix our prisons. When those reforms stalled, he reintroduced comprehensive prison reform in his January 2007 State of the State Address.

Balancing More Beds With Better Rehabilitation

Total Beds: 53,000. This \$7.7 (\$7.4 bonds/\$350 General Fund) billion agreement will provide 53,000 prison and jail beds in two phases. Phase I funding will permit immediate construction. Phase II funding is contingent on the California Department of Corrections and Rehabilitation meeting rehabilitation, management and construction benchmarks during Phase I.

- Phase I: \$3.6 billion lease revenue bond.
- Phase II: \$2.5 billion lease revenue bond. Must be enacted by 2014.
- Local matches: 25% (approximately \$300 million) of \$1.2 billion in lease revenue bonds for local jails.
- Additional funding: \$350 million General Fund (\$300 million for infrastructure, \$50 million for rehabilitation).

Prison and Community Re-Entry Beds for State Prisoners: 40,000. The agreement provides \$6.1 billion to increase the number of beds in state prisons. Rehabilitation services—like substance abuse treatment, mental health services and job training—will accompany all new bed construction.

- **Rehabilitation and Secure Re-Entry Beds: 16,000.** The agreement prioritizes rehabilitation and reducing recidivism. It directs CDCR to set aside 4,000 beds for drug treatment and create 16,000 new beds in secure re-entry facilities.
 - Phase I Construction:

- 6,000 secure re-entry beds.
- Phase II Construction:
 - 10,000 secure re-entry beds
- **“Infill” Beds: 16,000.** The agreement adds 16,000 beds at existing prisons to reduce the number of prisoners in bad beds. Currently state prisons currently house approximately 172,000 prisoners in facilities designed for about half that number.
 - Phase I Construction:
 - 12,000 infill beds
 - Phase II Construction:
 - 4,000 infill beds
- **Medical Beds: 8,000.** The agreement adds 8,000 medical, dental and mental health facility beds as mandated by the federal Receiver The Receiver will determine where these beds will be added, and what services (mental health, long-term care, other) they will provide.
 - Phase I Construction:
 - 6,000 medical beds
 - Phase II Construction:
 - 2,000 medical beds

Local Jail Beds: 13,000. The agreement provides \$1.2 billion to increase the number of beds in local county jails by approximately 13,000 to remediate overcrowding faced by counties across the state. Counties are required to match 25% of the \$1.2 billion (approximately \$300 million), unless their population is less than 200,000—in these counties, the CSA can reduce or eliminate the match. Counties that assist the state in locating re-entry facilities and helping parolees get mental health services will receive funding preference. In 2005 alone, 233,388 individuals avoided incarceration or were released early from jail sentences due solely to a lack of jail space.

Out of State Prison Transfers: The agreement gives the Legislature clear statutory authority to voluntarily and involuntarily transfer prisoners out-of-state for the next four years. In October 2006 Governor Schwarzenegger authorized CDCR to transfer prisoners out-of-state by Executive Order.

Phase I Benchmarks: CDCR has committed to meeting specific benchmarks during Phase I to trigger Phase II funding. They are:

- Successfully completing construction of ½ of Phase I beds (12,000 new beds).
- 75% average participation in drug treatment programs over six months.
- Establishing the California Rehabilitation Oversight Board (C-ROB) in the Office of Inspector General.
- Proper assessment and placement of offenders in rehabilitation programs when they enter the system, and then again when they're a year away from parole.
- Increasing offender participation in classes and education programs.

- C-ROB's completion of a prison-to-employment plan.
- Providing mental health day treatment for parolees.
- Completion of various studies by CDCR and C-ROB assessing the effectiveness of inmate programming.

In His Own Words

"We are on the verge of making history again in California. For decades, the prison overcrowding crisis was ignored in Sacramento. Rooms were double bunked, then triple bunked, and our recidivism rate soared. In my State of the State Address in January, I proposed comprehensive prison reform and am very encouraged that the Legislature, after months of hard work, is about to take action. This proposal will bring critical new rehabilitation programs and create desperately-needed space to relieve overcrowding. I am particularly proud of the innovative rehabilitation programs like the re-entry facilities that are included. Don Perata, Fabian Nunez, Dick Ackerman and Mike Villines deserve all the credit for putting the needs of California first and stepping up to address a very real threat to our public safety." – Governor's Statement on Prison Reform Deal, April 25, 2007

On the Record

Court Receiver Robert Sillen on General Fund. "If they're (Department of Finance) smart, and they are, they'll do it through bonds, not me reaching into the General Fund." - Testimony Before Little Hoover Commission, November 16, 2006

Court Receiver Robert Sillen Is "Willing To Back Up The Truck" To Raid State Treasury. "Robert Sillen, the court-appointed prison health care receiver, said he's willing to back up the truck to raid the state treasury if need be, waive whatever civil service protections and state laws that get in his way and seek contempt-of-court citations against any state employee who tries to thwart his efforts to renovate California's \$1.5 billion prison medical system." - "Bold vow on inmate health," Sacramento Bee, November 17, 2006

Joan Petersilia and Robert Weisberg: Re-Entry Centers Are "Clearly Necessary." "The governor also suggests new local re-entry centers to help disperse inmates out of prison. These are clearly necessary, but must be sensibly designed and operated – small and close to prisoners' homes, with job training, family unification and other forms of re-entry planning. They need to be transitional 'decompression chambers,' especially for those who have served longer than five years." - "Slammer time," Op-Ed, Sacramento Bee, July 23, 2006

Just the Facts

Early Release. In 2005 alone, 233,388 individuals avoided incarceration or were released early from jail sentences due solely to a lack of jail space. Currently, 20 jails are under court-ordered population caps and 12 counties have established self-imposed caps. Source: "Do the Crime, Serve the Time? Maybe Not In California," California State Sheriff's Association, June 2006.

Overcrowding and Violence. Crowding, and the tremendous increase in the prisoner population that underlies it, fuels violence. Crowding severely limits or eliminates the ability of prisoners to be productive, which can leave them feeling hopeless; pushes officers to rely on forceful means of control rather than communication, and makes it harder to classify and assign prisoners safely and identify the dangerously mentally ill. Source: "Confronting Confinement," John J. Gibbons, Nicholas de B. Katzenbach, The Commission On Safety And Abuse In America's Prisons. June 2006.

Impact on Families. Between 1991 and 1999, the number of children with a parent in a federal or state correctional facility increased by more than 100%, from approximately 900,000 to approximately 2,000,000. According to the Bureau of Prisons, there is evidence to suggest that inmates who are

connected to their children and families are more likely to avoid negative incidents and have reduced sentences. Source: "The Impact Of Incarceration: Issues Affecting Reentry," U.S. Department of Justice, Reentry Working Group. May 2004.

Recidivism. National statistics show that 10 percent of all state parolees fail to report to parole officers after release. In California that rate is over 20 percent, which may be due in part to California's lack of an effective re-entry strategy for its prisoners. Source: California Department Of Corrections and Rehabilitation.

Secure Re-Entry Facilities. A 2003 Ohio Community Corrections Association study showed that 400 offenders could be served, at an annual cost savings of \$2 million, by providing 100 halfway house beds for re-entry prerelease/transitional control or for parole violators in lieu of returning to prison. Source: "Halfway House Utilization: The Key to Reentry, A Cost Savings Report," Anne Power, Power & Associates. Prepared for the Ohio Community Corrections Association. February 25, 2003.

PERATA/NUNEZ LETTER TO GOVERNOR ON PRISON REFORM

Wednesday, April 25, 2007

April 25, 2007

Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814

Re: Prison Reform Package

Dear Governor Schwarzenegger:

We are sending you comprehensive prison package but at the same time must outline some of the fundamental issues that have come to light primarily through the work of Senate and Assembly Subcommittees.

The Legislature wants a comprehensive prison reform plan that provides the public safety the public expects and deserves.

Between sixteen and seventeen thousand inmates are sleeping in gymnasiums, dayrooms, classrooms and hallways which poses a risk to the inmates and staff at institutions.

The Legislature does not want a court takeover of the system; it is the responsibility of Administration in conjunction with the Legislature to solve this prison morass. But, we will not blindly give a blank check and throw good money after bad. That's happened before resulting in a billion dollars wasted on drug treatment, seventy percent recidivism and a court takeover of medical care.

A quick fix without fundamental changes and effective reform is simply "running in place".

Yet the Department repeatedly demonstrates it is flatly unable to deliver on its promises. Furthermore, Senate Budget Subcommittee 4 hearings expose glaring problems with the proposal before us.

At this time, the department is not prepared to manage the proposals now before the legislature.

Therefore, we need assurances about the following issues:

Fundamental Management Change

The Department desperately needs better management. High vacancy rates have plagued top management for the last several years. The recent reorganization created a level of uncertainty about lines of authority and responsibility, compounding the problem.

Before changes are implemented, management training programs must begin and individuals with expertise in management, budget and program must be assigned. Again, we suggest that you consider a "strike force" of individuals from other departments, retired annuitants, and professionals outside of government to assist CDCR.

Population management plan

In order to make effective decisions about inmate placement, programs and staff needs, you must produce a population management plan. Senate Budget Subcommittee 4 requested a plan during the 2006-07 budget discussion. It asked again last August during the special session. The Department has yet to produce it. Without the plan, it would be foolish for the legislature to appropriate \$10 billion as you have requested.

Infill Beds

As part of your proposal, you included 16,000 new infill beds. The Office of Facilities Management at CDCR has 309 employees with 35 vacancies. While the infill proposal, or at least variations of it, has been in circulation for nearly 9 months, the Legislature has yet to receive an analysis of the staffing needs to supervise these beds. At the least, in order to accomplish this infill plan, the department will need significant staff increases in this unit.

The infill beds proposed do not meet the security needs of inmates. If the department constructs the beds as proposed, there will be an excess of custody level one and level two beds but a shortage of level four beds.

Furthermore, the department has conducted only 11 site assessments, while the plan calls for facilities at 26 different locations. Therefore, it is unclear if this number is even feasible. Moreover, cost overruns have chronically plagued the Office of Facilities Management. Recently, project budget overruns average sixty-two percent (62%).

Finally, it was unclear if this construction is to replace bad beds or add capacity at existing facilities. Publicly, the secretary has said that they are replacements, yet privately we have been told that they are not. This has serious implications including: potential court involvement, staffing needs, program space and inmate participation, costs to local communities, and general fund expenditures. In the package we send you today, we clarify that the purpose of the beds is to replace the temporary beds.

Therefore, rather than providing the department with a single allocation, each project should be scheduled separately to provide appropriate and necessary legislative oversight. This requires a master plan for Legislative review prior to construction demonstrating that beds constructed meet the inmate need and that appropriate custody, program and construction staff are available. Program space is integral to provide adequate programs.

Reentry Beds

You proposed to construct 16,000 reentry beds in counties to house parole violators and inmates nearing their release dates.

The Department reports that it is in discussions with 22 local agencies regarding reentry facilities. But, no site work has begun??

In an April 12 hearing in Senate Budget Subcommittee 4, CDCR disclosed that local governments will have authority to select who will be housed at these facilities. While this may help in "selling" these projects to local communities, it seems to abrogate decisions about the level of custody and programming.

In sum, the plan for the reentry bed proposal needs work. Fundamental questions need answers, including: location, community support and infrastructure, services provided and capacity for these services, staffing needs and targeted inmates.

Staff Vacancies

There are thousands of vacancies for correctional officers, teachers and medical and mental health providers. With the exception of correctional officers, the department has no program to recruit or retain staff. Given the current vacancies, it is hard to believe the department can maintain existing programs much less operate expanded population and program without an aggressive recruitment and training plan.

Coordination with the Receiver

The department must work cooperatively with the Federal Receiver on capital outlay and staffing decisions. A virtual financial “black hole” exists now. It is impossible to set a budget under these conditions. There is specter and likelihood of enormous department deficiencies that will “crowd out” other essential general fund proposals like education, social services and basic infrastructure.

Programs and recidivism reduction strategies

Programs that will cut recidivism must be a fundamental component of any true reform. Inmate assessments, substance abuse and mental health programming for inmates and parolees, and vocational training must be a part of the package. The staff and space necessary to provide these services to inmates and parolees must be trained and available. There is no such evidence that this will be available.

In conclusion, we have agreed upon some key provisions of your proposal, but we must have a level of certainty that the department is in a position to deliver on its promises. And, we must have better substance abuse, mental health and education programming or the system will never change, our incarcerated population will grow as will the costs to taxpayers.

The people of the state of California expect that tax dollars will be spent efficiently and effectively. Without a clear plan and appropriate oversight, we do not believe the department can accomplish what you set out for it to do.

We believe that this proposal addresses our concerns, while achieving our mutual goal of avoiding future federal interdiction.

Sincerely,

Don Perata
Senate President pro Tem

Fabian Núñez
Speaker of the Assembly