

# California Department of Corrections and Rehabilitation

## Inmates Sentenced Under the Three Strikes Law and a Small Number of Inmates Receiving Specialty Health Care Represent Significant Costs

REPORT NUMBER 2009-107.2, MAY 2010

### *Response from the California Department of Corrections and Rehabilitation and California Prison Health Care Services as of November 2010*

The Joint Legislative Audit Committee requested that the Bureau of State Audits evaluate the effect of California's rapidly increasing prison population on the state budget. We were asked to focus on specific areas of the California Department of Corrections and Rehabilitation's (Corrections) operations to provide the Legislature and the public with information necessary to make informed decisions. This is our second report related to this request and contains the following subject areas:<sup>1</sup>

- Review the current cost to house inmates; stratify the costs by their security level, age, gender, or any other relevant category tracked by Corrections; and determine the reasons for any significant cost variations among such levels and categories.
- To the extent possible, determine the costs for incarceration under the three strikes law. At a minimum, determine the incarceration cost for each of the following three scenarios:
  - The third strike was not a serious and violent felony.
  - One or more of the strikes was committed as a juvenile.
  - Multiple strikes were committed during one criminal offense.
- Review the number of vacant positions during the last five years and determine whether they affect the annual overtime costs and whether filling vacancies would save Corrections money.
- Determine the extent to which Corrections currently uses and plans to use telemedicine. Further, determine if by using telemedicine Corrections is reducing inmate medical and custody costs and the cost to transport and guard inmates outside the prison environment.

For this report, we determined the number of striker inmates whose current offense was not a serious and violent felony, striker inmates who committed one or more serious or violent offenses as a juvenile, and striker inmates who committed multiple serious or violent offenses on the same day. We also estimated the potential cost of the additional

### **Audit Highlights . . .**

*Our review of California's increasing prison cost as a proportion of the state budget and California Department of Corrections and Rehabilitation's (Corrections) operations revealed the following:*

- » *Inmates incarcerated under the three strikes law (striker inmates):*
  - *Make up 25 percent of the inmate population as of April 2009.*
  - *Receive sentences that are, on average, nine years longer—resulting in about \$19.2 billion in additional costs over the duration of their incarceration.*
  - *Include many individuals currently convicted for an offense that is not a strike, were convicted of committing multiple serious or violent offenses on the same day, and some that committed strikeable offenses as a juvenile.*
- » *Inmate health care costs are significant to the cost of housing inmates. In fiscal year 2007–08, \$529 million was incurred for contracted services by specialty health care providers. Additionally:*
  - *30 percent of the inmates receiving such care cost more than \$427 million.*
  - *The costs for the remaining 70 percent averaged just over \$1,000 per inmate.*
  - *The costs for those inmates who died during the last quarter ranged from \$150 for one inmate to more than \$1 million for another.*

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<sup>1</sup> We addressed many of the objectives contained in the Joint Legislative Audit Committee's request in a report we published in September 2009 titled: *California Department of Corrections and Rehabilitation: It Fails to Track and Use Data That Would Allow It to More Effectively Monitor and Manage Its Operations* (report 2009-107.1).

- » *A significant portion of the increased workload due to medical guarding and transportation is covered through overtime.*
- » *The large leave balances of custody staff, to which the furlough program has contributed a significant amount, will eventually cost the State from \$546 million to more than \$1 billion.*

years of incarceration imposed by the three strikes law for each of these groups. Further, we reviewed additional information regarding vacant positions and leave usage and examined state laws, policies, and procedures relevant to these subjects. In addition, to expand on the information presented in our prior report regarding the stratification of incarceration costs by inmate characteristics, we analyzed cost data for contracted specialty health care and reviewed certain characteristics of inmates receiving specialty care. We also reviewed the California Prison Health Care Services' (Health Care Services) plans for containing health care costs, including its plan and associated costs for increasing the use of telemedicine.

**Finding #1: Outdated and erroneous information reduces the usefulness of Corrections' data.**

We identified approximately 85,000 convictions that appeared to be associated with outdated information. Additionally, we identified 42,000 of the 2.8 million convictions we considered in our analysis that were associated with sentencing information related to 53 offenses that—according to Corrections' records—were effective for only one day, indicating errors in the data. When we asked about these errors, Corrections' staff stated that it updates sentencing information to reflect changes in the law once a year and sometimes only once every two years. However, Corrections stated that after the new laws go into effect, staff do not subsequently review convictions associated with the sentencing information that has been updated. Corrections also indicated that there are situations when staff will correct sentencing information, but some inmate convictions associated with the incorrect sentencing information may go undetected. According to Corrections, because inmate sentences imposed by the judicial system are based on legal documents and are tracked separately from the table that contains sentencing data in Corrections' data system, errors in the sentencing information do not affect the actual sentences that inmates serve. However, convictions associated with incorrect sentencing information may require Corrections' staff to perform additional analyses to determine if an individual's actual sentence was inappropriate. Corrections also told us that incorrect sentencing information could lead to inaccurate estimates of the average daily population in future years, which are used to estimate budgetary costs or savings. Finally, although Corrections indicated that the clean up of existing data will be part of implementing a new system, its plan does not address in detail how historical data will be reviewed or corrected.

We recommended that to address the erroneous sentencing information and inappropriate assigned convictions in its data system, Corrections should complete its clean up of data that will be transferred into the new system, ensuring that this review includes a detailed evaluation of convictions that have been assigned outdated sentencing information as well as deleting erroneous sentencing information before it begins using its new data system. We also recommended that Corrections create a schedule for regular checks of the accuracy of existing sentencing information, as well as the accuracy with which sentencing information has been assigned to convictions.

***Corrections' Action: Pending.***

In its six-month response, Corrections stated that it reviewed a sample of convictions that appear questionable. However, according to the description of its analysis, in selecting this sample Corrections failed to consider the universe of errors we identified during the audit. In addition, Corrections' review focused on those inmates serving active terms for one of the identified convictions. From the results of this review, Corrections concluded that the procedure to clean up the data is labor intensive and because of the resources necessary to review the potentially erroneous records, it believes that such a review would pose a hardship on its staff and, in its opinion, would provide minimal results.

Case records staff stated that they will work with the Enterprise Information Services (EIS) and Strategic Offender Management System (SOMS) project team to identify and correct questionable data when Corrections begins the conversion process to move data into its new system. However, the EIS and SOMS project team states that it has deferred to Case Records staff, because they are the owners of the data. In response to our questions about the conflicting information in its six-month response, Corrections stated that the Case Records' description indicates when the data will be moved to the new system, and in contradiction to the six-month response further states that data clean-up efforts have been ongoing and will continue to be made by Case Records staff. However, Corrections did not provide any documentation substantiating the data clean up described.

Corrections also reviewed and updated its procedures for adding or altering sentencing information in its Offender-Based Information System. However, this response fails to completely address the recommendation. Specifically, Corrections does not address the evaluation of the accuracy of existing sentencing information as we recommended.

**Finding #2: Most specialty health care costs were associated with a small population of inmates, and older inmates were generally more costly.**

Our analysis of the information in Health Care Services' Contract Medical Database found that 70 percent of the inmate population with specialty health care costs during fiscal year 2007–08 averaged just more than \$1,000 and cost \$42 million in total, while the remaining 30 percent of the inmates cost \$427 million. We also found that a small percentage, 2 percent or 1,175 inmates, represented 39 percent—or \$185 million—of the total contracted specialty health care costs. Further, although we noted that the average contracted specialty health care costs generally increased with the age of inmates, the cost of specialty health care associated with inmates that died during the last quarter of fiscal year 2007–08 were significantly greater than those of any specific age group. Each of the 72 inmates who died during the last quarter incurred, on average, \$122,300 for specialty health care services for fiscal year 2007–08. Costs for the 72 inmates who died totaled \$8.8 million and costs for each individual ranged from \$150 to \$1 million.

We recommended that Health Care Services continue to explore methods of reducing the costs of medical care to the State, including those of inmates with high medical costs. These efforts could include proposing a review of the program that allows for the early release of terminally ill or medically incapacitated inmates, and other possible means of altering the ways in which inmates are housed without unduly increasing the risk to the public.

***Health Care Services' Action: Partial corrective action taken.***

In its six-month response, Health Care Services states that it is in the process of establishing internal processes to implement a bill recently passed to provide medical parole. These processes will allow for the medical parole of eligible inmates who do not pose a risk to public safety. Health Care Services stated that it anticipates implementing these processes in January 2011 when the law takes effect. Health Care Services has not yet provided documentation substantiating the actions described.

**Finding #3: Health Care Services has not calculated a savings associated with the decrease in the number of referrals for specialty health care.**

As part of its efforts to address concerns about unnecessary referrals for specialty health care, the receiver reported that it has implemented the use of specialty referral guidelines. In its cost-containment report, Health Care Services reports that since the implementation of the specialty referral guidelines in the fall of 2008, the number of requests for services decreased by 41 percent between April 2009 and January 2010. Despite this decrease in referrals in specialty care overall, the receiver stated that Health Care Services has not calculated the cost savings associated with the reduction in referrals. However, the receiver indicated that he believes the number of unnecessary referrals has decreased significantly. According to the Health Care Services' chief medical officer for utilization management, the data captured by the utilization management databases do not interface with any of Health Care Services' contract or claims databases. Because utilization management data do not interface with the contract or claims databases, Health Care Services is unable to associate specialty health care utilization with the cost of providing care. As a result, Health Care Services has not calculated a savings associated with the decrease in the number of referrals.

We recommended that to improve its ability to analyze and demonstrate the effectiveness of current and future utilization management efforts in containing health care costs, Health Care Services should identify a method to associate cost information with utilization management data.

***Health Care Services' Action: Pending.***

In its six-month response, Health Care Services stated that it has developed various reports that link volume data with paid claims so that high volume and high cost specialty and hospital data can be analyzed. However, it did not provide us with evidence of these reports, or a description of how they are being used to analyze or demonstrate the effectiveness of its efforts to use utilization management to contain health care costs.

**Finding #4: Health Care Services has not fully estimated the cost benefit of expanding telemedicine use.**

Although Health Care Services has continued expanding its use of telemedicine as part of its cost-containment strategy, it has not fully estimated the potential cost savings of using additional telemedicine. When we asked Health Care Services to provide us with an estimate of the number of medical specialty visits that could be replaced with telemedicine, the statewide program director for the Office of Telemedicine stated that the data systems needed to generate data that Health Care Services could use to estimate the percentage or number of medical specialty visits that could potentially be provided using telemedicine are not available.

Health Care Services did provide an estimate of the guarding and transportation costs that are avoided with each telemedicine consultation. This estimate included an updated methodology that addressed one of the concerns with its earlier estimate that we expressed in our prior report. However, the updated estimate did not address other concerns. For example, the calculation continues to exclude consideration of other factors that might affect costs, such as whether a subsequent in-person visit must be performed because the issue could not be treated through telemedicine. Further, even without considering the degree to which telemedicine consultations are unsuccessful because the issue must be treated through an in-person consultation, the underlying information used in Health Care Services' cost-avoidance figures varies between \$94 and \$1,233 per visit, suggesting that telemedicine consultations may not be cost-effective at some institutions.

We recommended that to determine whether the additional expansion of telemedicine is cost-effective within the California correctional system, Health Care Services should identify and collect the data it needs to estimate the savings of additional telemedicine through an analysis of the cost of specialty care visits currently provided outside the institution that could be replaced with telemedicine. We also recommended that Health Care Services further analyze the cost-effectiveness of telemedicine through

a more robust estimate of savings, including considering factors such as the percent of telemedicine consultations that required subsequent in-person visits because the issue could not be addressed through telemedicine.

***Health Care Services' Action: Pending.***

In its six-month response, Health Care Services indicated that its Office of Telemedicine Services has implemented collaboration between Utilization Management and Telemedicine to increase the use of telemedicine statewide and is tracking statistics. Health Care Services also stated that its efforts are ongoing and that as telemedicine visits increase and improve access to health care, improvements in public safety and decreases in travel and custody costs for off-site specialty consults and follow-ups should result. Health Care Services stated that cost-avoidance outcomes are to be determined by the health care access team and will be reflected in decreased transportation and guarding costs. However, Health Care Services' response to this recommendation did not provide a description of how it would analyze the cost of current specialty care visits provided outside of the institution that could be replaced with telemedicine. Health Care Services described several reports that it expects would be available by the end of December 2010 to evaluate initial and follow-up specialty encounters in an effort to provide more detail on such care. Health Care Services has not yet provided documentation substantiating the actions described.

**Finding #5: The number of correctional officer positions that Corrections indicated it filled is higher than the amount we calculated using the State Controller's Office (SCO) data.**

A summary of data collected by Corrections' program support unit indicated that it had filled about 1,070 more correctional officer positions than we calculated using SCO's position roster file. When we discussed the differences with Corrections' staff, the chief of the program support unit stated that there are a number of factors that could cause the differences. Some of the reasons he provided included a variance in the methodology used by each institution to determine the number of filled positions, significant lag time between when the positions are filled at institutions and when the institutions submit the paperwork and it is processed by SCO, and institutions counting staff that are in temporary positions—referred to as blanket positions—as filled positions.

We recommended that to ensure that SCO has accurate information on the number of authorized and filled positions, Corrections determine why the number of positions SCO indicates are vacant is higher than the number of vacant positions it is aware of, and submit information to SCO to correct this situation as necessary.

***Corrections' Action: Pending.***

In its six-month response, Corrections stated that it is developing and implementing the same Enterprise Resource Solution as SCO and that this automated system includes a strong position maintenance module that will improve the accuracy of position information. Corrections also stated that it has completed various efforts to improve its position data, including reconciling position data with SCO data, completing data cleansing activities and updating budget, SCO, and the automated system's position data, establishing a baseline position data set, and developing processes to ensure ongoing maintenance of position data. Corrections also stated that it is monitoring compliance and these efforts are ongoing. However, Corrections did not provide us with any documentation demonstrating the activities it cites in its six-month update.

**Finding #6: A significant number of medical guarding assignments are covered with overtime.**

Staff we interviewed at three institutions told us they either did not have authorized positions for medical guarding and transportation or the authorized positions were insufficient. For example, an associate warden at San Quentin told us that it guards inmates receiving inpatient care at Bay Area hospitals. She stated that the number of inmates in community hospitals varies from 10 to 35 per day,

but averages 19. She told us that guarding these inmates requires about 100 guarding assignments to provide coverage for a 24-hour shift. This is because guarding an inmate out of the institution typically requires two correctional officers per inmate for each of the three shifts a day. Further, she stated that, on average, 58 of these guarding assignments are not associated with authorized positions and are covered through overtime. This information is consistent with the receiver's February 2010 *Monthly Health Care Access Quality Report*, which indicated that as of February 2010, the monthly average for medical guarding and transportation for fiscal year 2009–10, based on information reported by the institutions, is 1,900 personnel years that is being covered by overtime, redirected, and part-time staff. The 1,900 personnel years include an average of 243,500 hours of overtime per month and accounts for 78 percent of the medical guarding and transportation hours. According to the director of administrative support services, Health Care Services decided not to request additional custody staff positions because it believes that referrals for outside specialty services will decrease in the future. In addition, according to the receiver, Health Care Services is considering a plan to place inmates with higher specialty care needs in institutions that can provide some of those specialties, thus reducing the number of inmates receiving care outside the institution. Finally, the director of administrative support services stated that, because emergency transportation cannot be predicted, it would be inefficient to staff for this item through established positions. However, given the amount of medical guarding and transportation work covered through overtime, we believe that care must be taken to ensure that the total amount of overtime worked by custody staff does not impact the safety of operations.

We recommended that to ensure that the total amount of overtime worked by custody staff does not unduly reduce their effectiveness and result in unsafe operations, Health Care Services should monitor overtime closely. If its efforts to reduce the number of referrals of inmates to outside specialty services do not reduce the amount of overtime worked by custody staff for the purpose of medical guarding and transportation, Health Care Services should explore other methods of reducing the total amount of overtime worked by custody staff.

***Health Care Services' Action: Pending.***

In its six-month response, Health Care Services stated that it is participating in a joint effort with Corrections to assess medical guarding and transportation staffing, as well as the use of overtime to ensure custody staffing needs are addressed. Based on the results of this effort, it plans to pursue a budget change proposal with Corrections regarding these issues. Health Care Services has not yet provided documentation substantiating the actions described. Health Care Services expects full implementation in June 2011.

**Finding #7: Some aspects of Corrections' staffing formulas are outdated and others appear to be flawed.**

To ensure that it hires sufficient staff to handle the guarding assignments that exist, Corrections uses staffing formulas to ensure, when the regularly scheduled custody staff are unavailable, that additional staff can work the assignment. These staffing formulas are also used to determine how many individuals can take vacation at any given time. We reviewed the documentation Corrections provided to support the specific calculations it used when updating the correctional officer staffing formula. Although we found that the factors that make up the formula agreed in total, some factors do not match the documentation provided as support for the calculations used to update the formula, which last occurred about six years ago. Because these formulas are used for staffing, such errors have an effect on Corrections' ability to ensure that custody staff are able to use the leave they earn.

These errors are reduced by errors in the way in which Corrections calculates the amount of vacation leave that it allows custody staff to take. Specifically, the number of staff who can take vacation and holiday leave at an institution is based on the number of authorized guarding assignments and does not change based on the number of custody staff positions actually filled. However, when there are vacant positions, less vacation coverage is needed because there are fewer employees. In addition, individuals working overtime in place of staff who would otherwise fill vacant positions do not earn additional leave. As a result at institutions that have vacant positions, the staffing formula allows for

more holiday or vacation leave than the formula indicates custody staff earn. Because of the offsetting errors, depending on the number of vacant positions at a specific institution, correctional officers may be provided too many or too few opportunities to use the leave they earn.

We recommended that to ensure that custody staffing meets institutional needs, and to provide staff the opportunity to use the amount of leave that they earn in the future, Corrections update its staffing formulas to accurately represent each of the factors for which custody staff are unavailable to work, such as vacation or sick leave. Corrections should attend to this project before implementing its new business information system to ensure the updated formulas can be used as soon as practical. We also recommended that Corrections create a policy for regularly scheduled reviews of the data used in the staffing formulas and to update the formulas as necessary.

***Corrections' Action: Pending.***

In its six-month response, Corrections stated that it plans to conduct an annual review of the average usage and accrual rates for various leave categories and that it has collected the data and is in the process of reviewing the data. Corrections also stated that it is currently working to replace the relief methodology with a ratio driven formula and that the new formula will ensure staffing levels are adequate to allow custody staff to use the leave balances they earn. Corrections expects full implementation of this recommendation by June 2011.

**Finding #8: Growing leave balances, due in part to vacancies and errors in the staffing formulas, reduce current costs but represent a future liability.**

Various factors have caused Corrections' staff to accrue large leave balances. When this occurs, current staffing costs are reduced but the State incurs the cost in the future when staff take the leave or are paid for the balances when they quit or retire. Currently, the state furlough program is the most significant cause of the accumulation of leave balances for Corrections' custody staff.

Although many custody staff have chosen to use the furlough hours they have earned, the amount of leave they can take is limited, as defined in the staffing formulas. As a result, their use of furlough hours means they use less of other types of leave, causing balances in those categories to increase. Additionally, when vacant positions exist, custody staff who do not use the amount of leave they earn reduce the need for overtime to work the guarding assignments of those vacant positions. Although this reduces staffing costs in the near term, it contributes to the growth of staff leave balances and essentially defers the costs into the future. The liability that leave balances represent must be paid out at employees' retirement, if it is not addressed before then. If Corrections were to increase staffing or overtime to allow custody staff to take their accrued leave, it would represent, including sick leave, a liability we estimate to be approximately \$940 million. Alternatively, if paid out when individuals retire or quit in lump sums, the leave balance—minus sick leave that can be credited toward the amount of time an individual is considered to have worked when they retire but is not paid out—represents a liability to the State that we estimate at approximately \$500 million. Further, according to Corrections it does not budget for leave payouts upon retirement, so these costs represent an unbudgeted expense each year.

We recommended Corrections provide supplemental information to the relevant legislative policy and fiscal committees. Specifically, we recommended that the supplemental information include a calculation of the annual increase or decrease in its liability for the leave balances of custody staff to better explain the cause of changes in expenditures. We also recommended that the supplemental information include an estimate of the annual cost of leave balances likely to be paid for retiring custody staff.

*Corrections' Action: None.*

- In its six-month response to this recommendation, Corrections references its previous discussion regarding efforts to replace its staffing formula that will ensure adequate staffing levels to allow custody staff to use the leave they earn. However, in no way does this action communicate to the relevant legislative policy and fiscal committees the amount, or increase or decrease in Corrections' liability for custody staff leave balances, as we recommended.

Further, Corrections states that due to a number of factors influencing retirement decisions, it is difficult to accurately estimate the annual cost of leave balances paid out to retiring custody staff. As a result, it does not intend to provide any further response to this recommendation.