



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #270

### **Standard Budget Adjustments -- Overtime (Corrections -- Departmentwide)**

[LFB 2009-11 Budget Summary: Page 202, #1]

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#### **CURRENT LAW**

Under the Department of Administration's 2009-11 budget instructions to state agencies, standard budget adjustments are defined as "a category of cost changes common across all agencies that are considered 'housekeeping' in nature and are required to continue a base level of services into the next biennium." Among the standard budget adjustments is an item for the funding of overtime costs. Since overtime costs are removed from an agency's base budget when calculating the full funding of salaries and fringe benefits in the upcoming biennium, an agency's overtime calculation represents an agency's total estimate overtime funding.

#### **GOVERNOR**

Provide total overtime funding of \$34,472,300 in 2009-10 (\$32,422,700 GPR, \$2,043,700 PR, and \$5,900 SEG), and \$35,121,300 in 2010-11 (\$33,058,800 GPR, \$2,056,400 PR, and \$6,100 SEG) for the Department of Corrections.

#### **DISCUSSION POINTS**

1. Overtime funding for the Department of Corrections under AB 75 identified in Table 1.

**TABLE 1**  
**Department of Corrections AB 75 Overtime Budget**  
**2009-10 and 2010-11**

<u>Program</u>	<u>2009-10</u>			<u>2010-11</u>		
	<u>GPR</u>	<u>PR</u>	<u>SEG</u>	<u>GPR</u>	<u>PR</u>	<u>SEG</u>
Management Services	\$70,500	\$40,000	\$0	\$71,900	\$40,700	\$0
Adult Institutions	30,598,000	311,500	5,900	31,198,300	317,300	6,100
Probation, Parole and Extended Supervision	1,742,300	17,100	0	1,776,500	17,500	0
Secretary's Office	10,700	0	0	10,900	0	0
Juvenile Corrections	<u>1,200</u>	<u>1,675,100</u>	<u>0</u>	<u>1,200</u>	<u>1,680,900</u>	<u>0</u>
Total	\$32,422,700	\$2,043,700	\$5,900	\$33,058,800	\$2,056,400	\$6,100

2. For the 2009-11 biennium, AB 75 allocates approximately 90% of all budgeted overtime in the Department of Corrections to the Division of Adult Institutions (DAI). Of the total overtime budget, approximately 68% is allocated for security staff in DAI. The Division operates the state's 20 correctional institutions, 16 minimum-security correctional centers, and oversees prison bed contracts. Institutional operations include assigning inmate security levels, designating institutional placement and programming needs, and providing health services, employment training, and educational programming. As a portion of the Department's GPR adjusted base budget for state operations (\$961,992,900 annually), DAI represents 80% of the funding and 78% of the positions.

3. The state is required to follow the federal Fair Labor Standards Act, which requires employers to pay certain employees overtime compensation at a rate of 1.5 times their regular hourly wage for each hour that exceeds 40 hours per week (premium overtime), and permits government employers the option of providing compensatory time at a rate of 1.5 hours for each hour of overtime hour worked, rather than paying the employee for overtime worked.

4. Most Department of Corrections employees are covered by one of the state's collective bargaining agreements. Under the agreements, overtime hours are based on all hours an employee works in "pay status," rather than the actual hours an employee works. For example, if an employee works four eight-hour shifts in a week (32 hours) and, in the same week, uses eight hours of vacation, or is absent due to illness for an eight-hour shift, the employee's premium overtime hours in that week would begin with any hours the employee works beyond the 32 hours, rather than the hours the employee worked that exceed 40 hours.

5. Another factor in the bargaining agreements that increases the cost of overtime is that senior employees (who usually have the highest wages) are provided the first opportunity to accept voluntary overtime. Under the bargaining agreements, non-voluntary overtime is assigned to employees with the least seniority. Further, the agreements provide that many represented employees may earn up to an additional hour of sick leave when they work 16 or more hours of

overtime during a two-week pay period, up to an additional 26 hours per year.

6. In June, 2008, the Legislative Audit Bureau (LAB) submitted a letter report to the Audit Committee that discussed the use of overtime in state agencies. With respect to Corrections, LAB noted:

- The operation of Corrections' institutions requires "three daily shifts in order to provide 24-hour security and care for inmates. DOC has 10,350 authorized full-time equivalent (FTE) positions to staff the correctional institutions and to monitor adults and juvenile under community supervision. Premium overtime has been a challenge for DOC for many years. Its annual budget for overtime has not kept pace with overtime incurred, especially for correctional officers and sergeants, forcing internal reallocation of funds."

- In 2007, correctional officers and sergeants accounted for 77.8% of all premium overtime cost for the Department of Corrections.

- "DOC's adult institutions routinely incur anticipated and unanticipated overtime. Anticipated overtime includes scheduled overtime to address vacancies and planned staff absences, while unanticipated overtime occurs to address unforeseen staff absences; medical needs of inmates requiring hospitalization; or additional security needs such as in times of prison lockdowns. DOC follows procedures prescribed by statewide and locally negotiated collective bargaining agreements for offering employees the option to work such shifts based on seniority."

- Two factors that have contributed to Corrections' increased use and cost of overtime are that "the number of authorized correctional officer positions has not kept pace with the increases in the number of inmates at the adult correctional institutions. Another is the use of sick leave by correctional officers and sergeants."

- During the 2005-07 biennium, Corrections anticipated reduced inmate populations and as a result planned to eliminate 90 correctional officer and sergeant positions. "Because of an unexpected increase in the adult inmate population that began in January 2006, DOC did not make these reductions." The Joint Committee on Finance subsequently restored 77 of the positions under s. 13.10 and the 2007-09 biennial budget.

- As part of the 2007-09 biennial budget, the Joint Committee on Finance provided 50 additional correctional officer positions to address overtime, and required the Department to submit a biennial report on overtime usage beginning January, 2009. The LAB noted that, as of the writing of the letter report, all of the restored positions had been filled and all but six of the newly created positions were also filled.

- Regarding the use of sick leave and its impact on overtime costs:

"DOC has identified the use of sick leave by correctional officers and sergeants as another major factor affecting overtime. Its fiscal year (FY) 2005-06 and FY 2006-07 records attribute an average of \$14.0 million in overtime to their sick leave use. Correctional

officers and sergeants earn the same amount of sick leave as do most other state employees: 130 hours, or 16.25 days, annually. In addition, under the collective bargaining agreements with WSEU, SEIU Healthcare, and WLEA, many represented employees—including correctional officers and sergeants—can earn up to an additional 1 hour of sick leave when they work 16 or more hours of overtime during a pay period, up to an additional 26 hours per year.

Based on DOC's records, we estimated correctional officers and sergeants use an average of 106 hours, or 13.25 days, of sick leave annually. In contrast, a report from the central payroll system shows that state employees on the system used an average of 65.4 hours, or 8.17 days, of sick leave during 2007. We also note that 24.0 percent of correctional officers and sergeants employed for all of 2007 had leave balances of less than 40 hours at the end of the year. DOC monitors correctional officers' and sergeants' sick leave use for potential abuse and notes that in 2007 it terminated nine staff for absenteeism-related issues and placed approximately 10 percent on sick leave monitoring status. However, DOC believes that current sanctions are not sufficient to effectively deter repeated abuse.

DOC believes it has limited options for addressing its increasing overtime costs because of difficulties in obtaining additional position authority to quickly respond to inmate growth. However, it notes recent steps taken to minimize the effect of vacancies on overtime, such as targeting recruitment efforts in various areas of the state. DOC recently initiated a pilot program at the Fox Lake Correctional Institution that uses a pool of correctional officers as "relief positions" to provide flexibility in scheduling, and it plans to study the program's effectiveness in reducing reliance on overtime shifts. While it is too early to assess the success of the pilot program, DOC indicates that it may extend the program to other institutions and that the program may be useful in determining an optimal number of positions to reduce overall costs."

7. The LAB's report concluded with a recommendation that the Department of Corrections and the Department of Health Services analyze overtime use at their facilities and submit options for reducing costs to the Audit Committee by January 5, 2009. On March 24, 2009, the Office of State Employment Relations (OSER) indicated to the Audit Committee Cochairs that the Office was coordinating a response for the two agencies and that response would be provided by late April, 2009. This report has not yet been received and OSER has indicated that written response would not be provided until "perhaps the week of May 18<sup>th</sup>."

8. On April 17, 2009, the LAB updated its analysis of overtime usage. In general, the trends observed in the previous report were still evident. However, the report notes that Corrections' use of premium overtime declined by \$1.3 million between 2006-07 and 2007-08.

9. In 2007-08 and, to date, in 2008-09, based on the Department's overtime tracking system, the use of sick leave accounted for approximately 48% of the use of overtime in the Division of Adult Institutions. The next most significant category of overtime usage was overtime due to position vacancies. In other words, overtime that was required because the Department could not hire authorized positions, retain employees in existing positions, or as a result of promotions or retirements. In 2007-08, overtime to cover vacant positions accounted for approximately 10% of overtime usage; for 2008-09, to date, 8%. Of the remaining 44% of overtime usage, approximately

29% is associated with security overtime for inmate health vigils, special posts, construction projects, inmate trip escorts, training, security emergencies, and other employment-related matters.

10. As indicated in the LAB report, the utilization of overtime associated with sick leave is largely a collective bargaining and contract administration matter. It is anticipated that OSER's report to the Audit Committee will address the management and administration issues. Likewise, it is assumed that the usage of overtime to address position vacancies can be largely addressed by the Department in conjunction with on-going human resources activities associated with recruitment and retention of employees. However, the other reasons for security overtime may represent a situation which could be addressed through increased position authorization.

11. If the Committee wishes to reduce the reliance on overtime to staff correctional activities such as inmate health vigils, special posts, construction projects, inmate trip escorts, training, security emergencies, and other employment-related matters, increased staffing could be provided. In order to reduce the amount of overtime funding attributable to these activities by approximately 50%, 65.0 GPR correctional officer positions could be provided. Because training of new officers would be necessary, and positions would be phased in over a six month period, overtime cost reductions would be less in 2009-10 than in 2010-11. Table 2 identifies the overtime reduction and position costs over the 2009-11 biennium. [Alternative 2]

**TABLE 2**

**Overtime Cost Reduction Alternative**

	<u>2009-10</u>	<u>2010-11</u>	<u>Biennial Total</u>
Overtime Cost Reduction	-\$1,688,200	-\$3,442,600	-\$5,130,800
Position Costs	<u>2,418,900</u>	<u>3,254,400</u>	<u>5,673,300</u>
Total	\$730,700	-\$188,200	\$542,500

12. As Table 2 identifies, it is estimated that while providing increased staff would reduce overtime costs beginning in 2010-11, in 2009-10 overtime cost reduction would not offset the staff costs. In the longer term, however, the provision of staff would address one of the concerns raised by Corrections in the LAB report (the difficulty in obtaining position authorization) and would reduce the necessity to utilize overtime funding in the future.

13. As in past years, the administration's funding recommendation to support overtime costs is based on the number of overtime hours that have been worked by staff in a previous time period, with certain adjustments. While the method of estimating overtime hours in future years appears reasonable, it provides little incentive for the agency to minimize overtime costs if the facilities can fund overtime costs within the agency's current year budget, since the actual number of overtime hours that are worked by staff provides the basis for requesting additional funds in future biennia.

Rather than providing additional staff to reduce the use of overtime, the Committee could reduce the amount of funding budgeted in AB 75 to support overtime costs. This option assumes that, with less funding available, managers will make greater efforts to reduce overtime utilization. For example, the Committee could reduce GPR funding for overtime costs at DAI institutions in AB 75 recommended by the Governor by 2.5% or 5% in each year of the biennium, which would generate savings of \$1,545,000 GPR or \$3,089,800 GPR, respectively, in the biennium. [Alternatives 3 and 4]

14. As indicated previously, under 2007 Act 20, Corrections was required to submit a biennial report on overtime to the Committee on or before January 1 of each odd-numbered year. Specifically, the statutory language (s. 301.03(6t)) states: "On or before January 1 of each odd-numbered year, submit a report to the joint committee on finance and to the chief clerk of each house of the legislature on the use of overtime in the state correctional institutions, identifying the state correctional institution, the amount and costs of overtime at each correctional institution, and the reason for the overtime at each correctional institution."

15. The overtime monitoring report submitted to the Committee in January, 2009, did identify the overtime costs by institution. Although required to identify the "amount and costs of overtime," Corrections' report only identified the costs of overtime. Further, reasons for the overtime were not identified by institution, but rather were generally described. If the Committee wishes to be provided with a more detailed information on actual overtime expenditures by institution and the reason for the overtime expenditure at each institution, current law could be modified to specify that costs be reported by institution combined with the reason for the overtime. [Alternative 5]

**ALTERNATIVES**

1. Approve the Governor's recommendation to provide total overtime funding of \$34,472,300 in 2009-10 (\$32,422,700 GPR, \$2,043,700 PR, and \$5,900 SEG), and \$35,121,300 in 2010-11 (\$33,058,800 GPR, \$2,056,400 PR, and \$6,100 SEG) for the Department of Corrections.

2. Reduce overtime funding in the Department of Corrections by \$1,688,200 GPR in 2009-10 and \$3,442,600 GPR in 2010-11. Provide \$2,418,900 GPR in 2009-10 and \$3,254,400 GPR in 2010-11 and 65.0 GPR correctional officer positions annually to reduce the use of overtime.

<b>ALT 2</b>	<b>Change to Bill</b>	
	Funding	Positions
GPR	\$542,500	65.00

3. Reduce funding by \$765,000 GPR in 2009-10 and \$780,000 GPR in 2010-11 to reduce funding in the bill for overtime by 2.5%.

<b>ALT 3</b>	<b>Change to Bill Funding</b>
GPR	- \$1,545,000

4. Reduce funding by \$1,529,900 GPR in 2009-10 and \$1,559,900 GPR in 2010-11 to reduce funding in the bill for overtime by 5%.

<b>ALT 4</b>	<b>Change to Bill Funding</b>
GPR	- \$3,089,800

5. In addition to any of the above alternatives, modify current law to specify that costs reported by Corrections in its biennial report on overtime under s. 301.03(6t) identify overtime costs by each institution combined with the reason for the overtime.

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