

The 2013-14 Budget:

Governor's Criminal Justice Proposals



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EXECUTIVE SUMMARY

Criminal Justice Spending Basically Flat. The proposed total level of spending on criminal justice programs is \$13.2 billion in 2013-14. This is an increase of about 2 percent over estimated current-year expenditures. The Governor's budget includes General Fund support for criminal justice programs of \$10.1 billion in 2013-14, an increase of about 4 percent over the current year. Under the proposed budget, General Fund support for the California Department of Corrections and Rehabilitation (CDCR) is basically flat in 2013-14, and total support for the judicial branch budget is proposed to increase by 7 percent in 2013-14.

Relatively Few Major Criminal Justice Proposals. Compared to prior years, the Governor's 2013-14 budget includes few major proposals. The budget, however, includes a one-time \$200 million transfer from a court construction fund to the General Fund, as well as a proposal to fund the ongoing service payments for the new Long Beach Courthouse from the same construction fund. In considering these proposals, the Legislature will want to weigh the General Fund benefits of these proposals against the likely delays in court construction projects that could result. The budget for CDCR includes a significant policy proposal to modify an existing grant program designed to bolster county probation programs and incentivize reductions in the number of probation failures that go to prison. In particular, the proposed modifications are meant to account for changes in who is eligible to be sentenced to state prison after recent policy changes. While the administration is right to propose changes to the existing formula, we find that the methodology proposed has serious flaws that could undermine the effectiveness of the program.

Potential Reductions Identified. In reviewing the Governor's budget, we identify several proposals that we believe could be reduced on a workload or policy basis. For example, we find that the caseload request for the Division of Juvenile Justice (DJJ) is likely overestimated by several million dollars because actual population trends are much lower than budgeted. We also recommend reverting an existing appropriation set aside for future CDCR infrastructure projects. This would save the state \$10 million in the budget year and better preserve the Legislature's oversight authority. We also find that the state could save \$7.5 million in 2013-14 by rejecting the administration's proposal to increase an existing grant to cities to support police services. The administration provided no workload justification for the proposal, nor is the augmentation necessary to address the administration's concern that the grants could not be provided to all cities in 2013-14.

Opportunities for Legislative Oversight. The relatively small number of major criminal justice proposals this year provides the Legislature with an opportunity to do more oversight of existing programs. This report highlights several such areas that could use such oversight. For example, trial courts face ongoing budget reductions and beginning in 2014-15 will no longer have significant reserves with which to offset these reductions. The Legislature will want

to have judges, court executives, and other court stakeholders report on what plans they are making to implement reductions, how these plans will impact court users, and what options the courts and the Legislature have to reduce court operations costs. We also recommend that the federal court-appointed Receiver managing the prison medical program report at budget hearings on a new staffing methodology that he is implementing. Finally, we recommend that the Legislature require the Board of State and Community Corrections (BSCC) to report on its efforts to develop strategies for providing greater technical assistance to local criminal justice agencies, as well as expand its criminal justice data collection program.

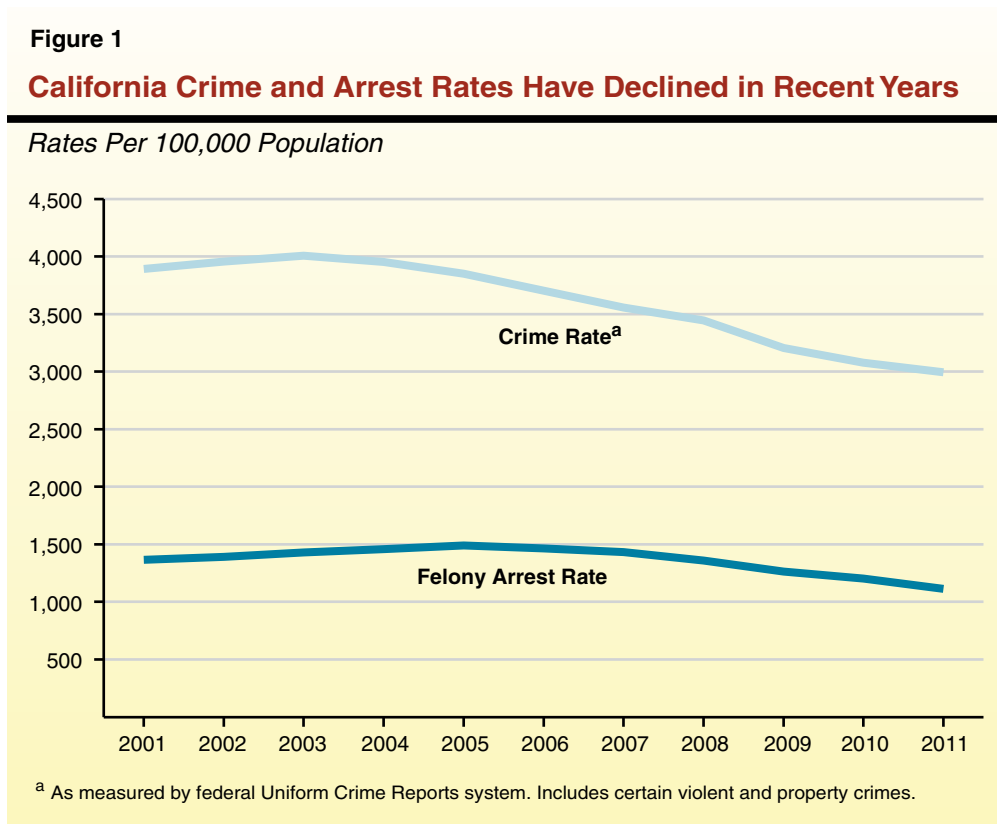
CRIMINAL JUSTICE BUDGET OVERVIEW

The primary goal of California’s criminal justice system is to provide public safety by deterring and preventing crime, punishing individuals who commit crime, and reintegrating criminals back into the community. The state’s major criminal justice programs include the court system, prisons and parole, and the Department of Justice (DOJ). The Governor’s budget proposes General Fund expenditures of about \$10 billion for judicial and criminal justice programs. Below we (1) discuss recent criminal justice trends, (2) describe recent trends in state spending on criminal justice, and (3) provide an overview of the major changes in the Governor’s proposed budget for criminal justice programs in 2013-14.

100,000 population—has declined by 23 percent between 2003 and 2011 (the most recent year that data is available). Similarly, the felony arrest rate has declined by 18 percent between 2005 and 2011. There is no consensus among researchers as to what is driving the declining crime rate in California. We note, however, that California’s declining crime rate mirrors national trends. While it is also not clear what is driving the recent drop in the state’s arrest rate, that decline could reflect both the decrease in crime, as well as the effects of local budget reductions to law enforcement agencies due to the recession. (For more information on recent criminal justice statistics in the state, see our January 2013 report *California’s Criminal Justice System: A Primer*.)

Recent Criminal Justice Trends and Major Policy Changes

Crime and Arrest Rates Decline in Recent Years. The past three decades have seen a significant decline in the rate at which Californians report crimes to law enforcement, as well as a similar decline in the rate of law enforcement arrests for felony offenses. As shown in Figure 1, the crime rate in California—measured as the number of selected crimes reported per



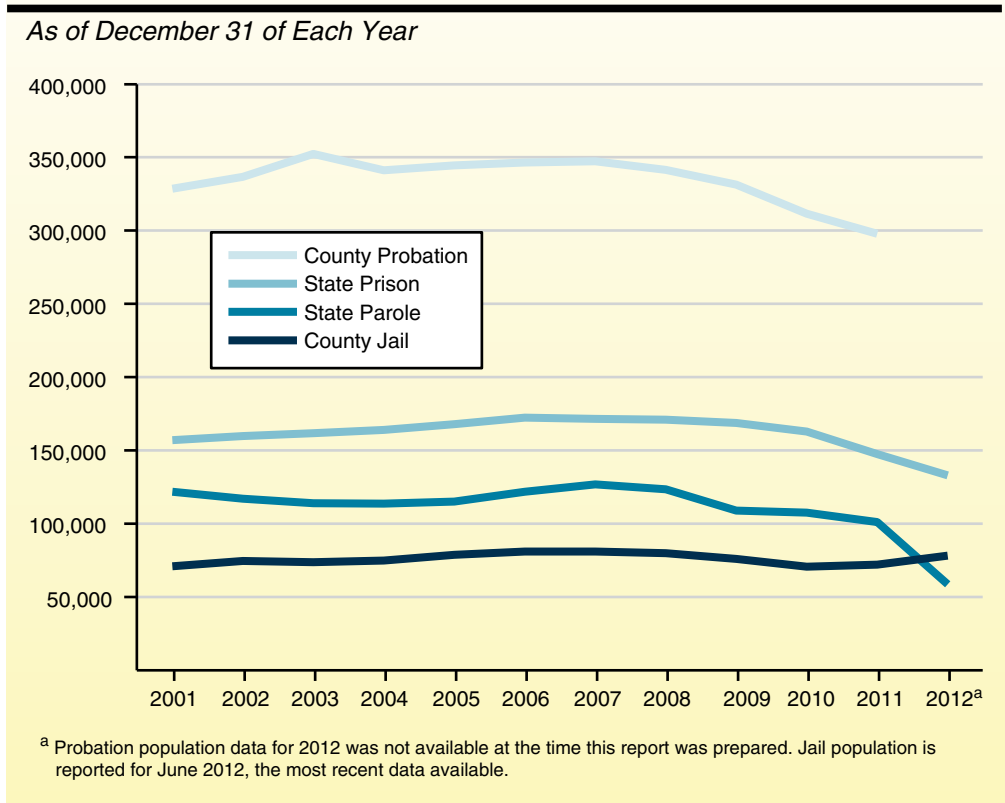
Recent Policy Changes Likely to Affect Correctional Populations in Coming Years.

Individuals convicted of crimes can be placed under correctional supervision. Less serious offenders generally are sentenced to county jail and/or probation, while more serious offenders are sentenced to state prison followed by state parole. Figure 2 shows state and local correctional populations over the last decade. As indicated, all of these offender populations decreased by varying amounts in recent years until 2011, at which time the county jail population increased while the other populations continued to decline. (At the time of this publication, data for the 2012 probation population was not available.) There are several likely explanations for these recent declines. First, declining crime and arrest rates have probably had some impact on the number of offenders sentenced to state and local corrections. Second, and probably

more significantly, state and local governments have taken actions to reduce correctional budgets due to the recession. The state, for example, has made various policy changes in recent years designed to reduce the number of offenders in prison and on parole, including permitting greater use of medical parole, removing certain lower-level parolees from supervised caseloads, and increasing credits inmates can earn towards their release date. The most significant of these changes, however, happened in 2011 with the passage of “realignment” which, among other changes, made felons ineligible for state prison unless they had a current or prior conviction for a serious, violent, or sex-related offense. Realignment has already resulted in decreases of tens of thousands of inmates and parolees who are no longer eligible for state prison and parole. Conversely, under realignment more offenders will be sentenced to local jails and/or probation in coming years, which are

likely to increase by a total of tens of thousands of offenders. Unfortunately, at the time of this publication, there is little data available on how realignment has affected local jail and probation caseloads. (For more information on realignment, see our August 2011 publication *2011 Realignment: Addressing Issues to Promote Its Long-Term Success.*)

Figure 2
Adult Correctional Populations in California



In addition, in November 2012 voters approved Proposition 36, which modified the state’s three strikes law. Proposition 36 requires that a life term in prison for a third strike generally be limited to those offenders who have two or more prior serious or violent convictions and whose new conviction is also a serious or violent offense. (Previously, the third strike could be any felony—not just a serious or violent felony.) The measure also allows existing third strikers to petition the courts for a reduced sentence if their third strike offense was a nonserious, non-violent offense. This measure could reduce the prison population by as many as a couple thousand inmates over the next few years, depending, in part, on how many current inmates are resentenced by the courts.

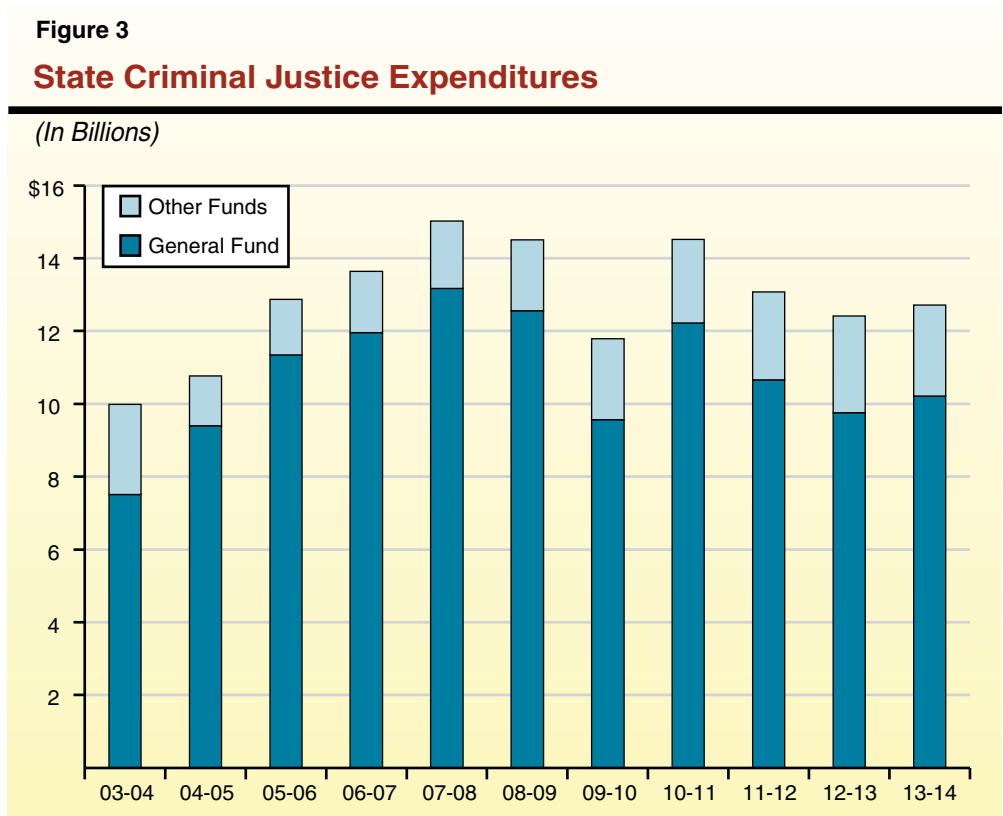
State Expenditure Trends

Realignment Has Reduced State Costs in Recent Years. Over the past decade, state spending on criminal justice programs has changed in sync with the state’s fiscal condition. As shown in Figure 3, state spending on criminal justice increased to about \$15 billion (\$13 billion General Fund) in 2007-08, an increase of 50 percent since 2003-04. In comparison, total state spending on criminal justice was about \$13 billion in 2011-12. Much of the decline in 2011-12 was the result of the 2011

realignment, which shifted responsibility for several major criminal justice programs—including the shift of trial court security costs and various grant programs—to counties. Over the past decade, roughly four out of every five dollars spent on criminal justice has been from the General Fund.

Governor’s Budget Proposes Modest Increase for Criminal Justice Programs

Figure 4 (see next page) summarizes expenditures from all fund sources for criminal justice programs in 2011-12 and as revised and proposed by the Governor for 2012-13 and 2013-14. As shown in the figure, total spending on criminal justice programs is proposed to increase from an estimated \$13 billion in the current year to \$13.2 billion in the budget year. This is an increase of 1.9 percent. General Fund spending is proposed to increase by 4.3 percent over current-year expenditure levels. As described in more detail below, this General Fund increase is primarily due



to the restoration of one-time reductions in the judicial branch.

Major Budget Proposals. The Governor’s budget includes relatively few major changes, particularly compared to prior years that included major policy changes (such as realignment) and significant budget cuts such as to the courts. Proposed funding for CDCR, which comprises two-thirds of total spending in this program area, is basically flat. The department’s budget includes additional correctional savings that will result from the continuing impact of realignment, as well as savings from reduced community corrections performance grants (discussed in more detail later in this report). These savings will be offset from additional costs associated with employee compensation (especially the expiration of the

personal leave policy at the end of the current year) and the additional staff necessary to activate two new prison facilities in Stockton. The Governor’s proposed budget for the judicial branch includes the restoration of \$418 million from the General Fund (which is being offset by special funds and trial court reserves in the current year). The budget also includes a one-time transfer of \$200 million from court construction funds to the General Fund, as well as the use of court construction funds to pay service payments on a new courthouse in Long Beach.

Budget Assumes 2011 Public Safety Realignment Funding on Track. As described above, the 2011-12 budget package included statutory changes to realign several criminal justice

Figure 4
Judicial and Criminal Justice Budget Summary

(Dollars in Millions)

	Actual 2011-12	Estimated 2012-13	Proposed 2013-14	Change From 2012-13	
				Actual	Percent
Department of Corrections and Rehabilitation	\$9,421	\$8,932	\$8,965	\$33	0.4%
General Fund	9,206	8,662	8,694	32	0.4
Special and other funds	215	270	271	2	0.6
Judicial Branch	\$3,100	\$2,901	\$3,106	\$206	7.1%
General Fund	1,215	755	1,155	400	53.0
Special and other funds	1,885	2,146	1,951	-194	-9.1
Department of Justice	\$585	\$727	\$754	\$27	3.7%
General Fund	101	167	174	8	4.5
Special and other funds	484	561	580	19	3.4
Board of State and Community Corrections	—	\$134	\$129	-\$5	-3.4%
General Fund	—	42	44	3	6.7
Special and other funds	—	92	85	-7	-7.9
Other Departments^a	\$276	\$283	\$264	-\$19	-6.8%
General Fund	105	84	64	-20	-23.8
Special and other funds	171	199	200	1	0.3
Totals, All Departments	\$13,382	\$12,977	\$13,219	\$242	1.9%
General Fund ^b	\$10,628	\$9,710	\$10,132	\$422	4.3%
Special and other funds	2,754	3,267	3,087	-180	-5.5

^a Includes Office the Inspector General, Commission on Judicial Performance, Victims Compensation and Government Claims Board, Commission on Peace Officer Standards and Training, State Public Defender, and debt service on general obligation bonds.

^b Does not include revenues to General Fund to offset corrections spending, including revenues from the federal State Criminal Alien Assistance Program and from counties for continuing to house and supervise previously convicted felons who otherwise would have been subject to the 2011 realignment of lower-level offenders. Detail may not total due to rounding.

and other programs from state responsibility to local governments, primarily counties. Along with the shift—or realignment—of programs, state law realigned revenues to locals. Specifically, current law shifts a share of the state sales tax, as well as Vehicle License Fee revenue, to local governments. The passage of Proposition 30 by voters in November 2012, among other changes, guaranteed

these revenues to local governments in the future. The Governor’s budget includes an estimate of revenues projected to go to local governments over the next few years. These estimates are generally in line with prior estimates. As shown in Figure 5, total funding for the criminal justice programs realigned is expected to increase from \$1.4 billion in 2011-12 to \$2.2 billion in 2013-14.

JUDICIAL BRANCH

Overview

The judicial branch is responsible for the interpretation of law, the protection of an individual’s rights, the orderly settlement of all legal disputes, and the adjudication of accusations of legal violations. The branch consists of statewide courts (the Supreme Court and Courts of Appeal), trial courts in each of the state’s 58 counties, and statewide entities of the branch (the Judicial Council, Judicial Branch Facility Program, and the Habeas Corpus Resource Center). The branch receives revenues from several funding sources including the state General Fund, civil filing fees, criminal penalties and fines, county maintenance-of-effort payments, and federal grants.

Figure 6 (see next page) shows total funding for the judicial branch from 2000-01 through 2013-14. As shown in the figure, funding for the branch peaked in 2010-11 at roughly \$4 billion but has declined somewhat in more recent years. General Fund support for the branch has been reduced significantly during this time. Under the Governor’s budget, the General Fund share of

the entire branch budget will have declined from a high of 56 percent in 2008-09 to 30 percent in 2013-14. Much of these General Fund reductions have been offset by increased funding from other sources, such as transfers from branch special funds and additional revenues from court-related fee increases.

As shown in Figure 7 (see page 11), the Governor’s budget proposes \$3.1 billion from all state funds to support the judicial branch in 2013-14, an increase of \$206 million, or roughly 7 percent, above the revised amount for 2012-13. (These totals do not include expenditures from local revenues or trial court reserves, which we discuss in more detail below.) Of the total budget proposed for the judicial branch in 2013-14, nearly \$1.2 billion is from the General Fund. This is a net increase of \$400 million, or 53 percent, from the

Figure 5
Estimated Revenues to Counties for 2011 Realignment of Criminal Justice Programs

(In Millions)

	2011-12	2012-13	2013-14
Community corrections	\$354.3	\$920.2	\$1,088.6
Trial court security	446.9	506.7	518.7
Law enforcement grants	489.9	489.9	489.9
Juvenile justice grants	97.2	109.1	121.1
District attorneys and public defenders	12.7	19.8	23.1
Totals	\$1,401.0	\$2,045.7	\$2,241.4

2012-13 level. The increase in General Fund support is primarily due to the restoration of a one-time \$418 million reduction to the trial courts in the current year.

Implementation of Prior-Year Budget Reductions to Trial Courts

Background

Prior-Year Budget Reductions and Offsets.

The judicial branch has received a series of one-time and ongoing General Fund reductions since 2008-09. By 2012-13, the branch had received ongoing General Fund reductions totaling \$778 million. Of this amount, \$54 million were allocated to the state-level courts and

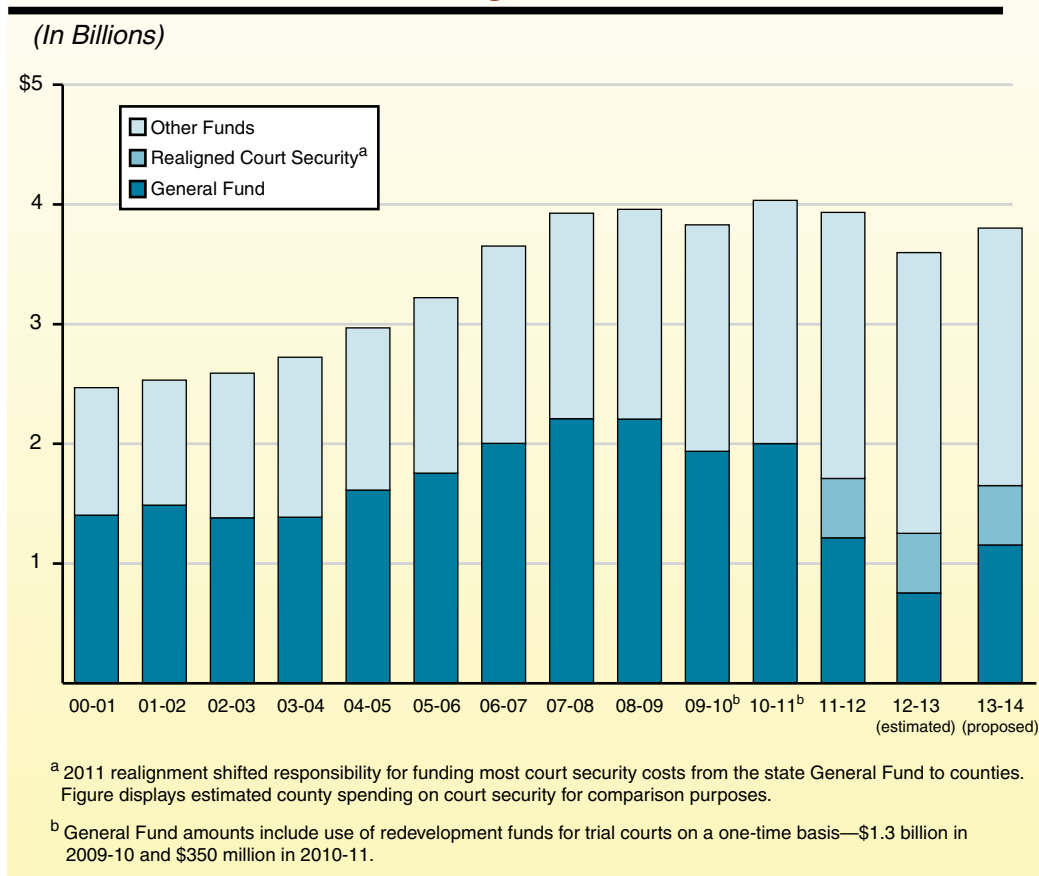
branch entities, while \$724 million in reductions were allocated to the trial courts. However, the Legislature and Judicial Council—the policymaking and governing body of the judicial branch—used various one-time and ongoing solutions to offset most of the reductions to the trial courts. For example, in 2012-13, about 80 percent of the total reductions to the trial courts was offset, primarily by using revenues from increased fines and fees, transfers from judicial branch special funds, and trial court reserves. (Reserves are the accumulation of unspent funds from prior years that are carried over and kept by each trial court.) Over the last five years, most of the transfers to the trial courts came from three special funds: the State Court Facilities Construction Fund (SCFCF), the Immediate and Critical Needs Account (ICNA),

and the State Trial Court Improvement and Modernization Fund (IMF). (The IMF is used to fund various efforts, such as judicial education programs, self-help centers, and technology projects.)

Recent Court Actions to Implement Reductions.

Despite most of the reductions

Figure 6
Total Judicial Branch Funding



being offset, the trial courts had to absorb \$214 million in General Fund reductions in 2011-12 and 2012-13. Based on our discussions with officials from and visits to various trial courts throughout the state, we find that trial courts have taken various actions to accommodate these reductions. These actions include leaving staff vacancies unfilled to reduce employee compensation costs, renegotiating contracts, delaying purchases, closing courtrooms or courthouses, reducing clerk office hours, and reducing self-help and family law services. The impacts of these actions vary across courts and depend on the specific operational choices these courts have made. One commonly reported operational consequence of these actions is reduced public access to court services. For example, many courtroom and courthouse closures occurred in outlying branch locations, which now forces some court users to travel further distances to go to a different location. Moreover, the additional distance can make it difficult for some court users to make their court appearances, such as to contest evictions or resolve custody disputes. Additionally, courts report that reductions in service hours of clerks' offices, self-help centers, and family law offices result in long lines and, in some

cases, court users being turned away. Consequently, more self-represented individuals appear in court with incomplete or inaccurate forms requiring greater judicial time.

Other commonly reported operational consequences include longer wait times for court services and hearings, as well as increased backlogs in court workload. For example, a number of courts report that a reduction in staff who provide mediation services in custody cases has resulted in two to four month delays in obtaining a mediation appointment. Because mediation is required before a judge can issue a custody or support order, court users sometimes wait months before the court can resolve the custody issue. Additionally, court staff frequently prioritize processing documents necessary to meet statutory deadlines or that are needed for upcoming cases. Consequently, staff delay the processing of lower priority documents, which can negatively affect court users who need these documents processed in order for their case to proceed or conclude. For example, some courts report additional delays of six months or longer to process default civil judgments, which generate the final court order authorizing plaintiffs to collect compensation.

Figure 7
Judicial Branch Budget Summary—All State Funds

(Dollars in Millions)

	2011-12 Actual	2012-13 Estimated	2013-14 Proposed	Change From 2012-13	
				Amount	Percent
State Trial Courts	\$2,680	\$2,268	\$2,431	\$163	7.2%
Supreme Court	41	44	44	—	—
Courts of Appeal	199	202	205	2	1.0
Judicial Council	121	149	151	2	1.3
Judicial Branch Facility Program	174	224	263	39	17.4
Habeas Corpus Resource Center	12	14	14	—	—
Subtotals	(\$3,227)	(\$2,901)	(\$3,106)	(\$206)	(7.1%)
Offsets from local property tax revenue ^a	-\$127	—	—	—	—
Totals	\$3,100	\$2,901	\$3,106	\$206	7.1%

^a Local government funding was used on a one-time basis to offset General Fund costs for courts.

Efforts to Reduce Impacts on Court Users.

In order to help minimize the extent to which the above actions affected court users, a number of courts made various changes. These changes include installing dropboxes for individuals to submit court paperwork when clerks' offices are closed, kiosks where individuals can pay for traffic tickets, and online systems for individuals to automatically book hearings in select case types. Some courts have made multiyear investments, such as shifting to electronic filing of documents in certain case types. The Legislature also sought to minimize the impact on trial courts. For example, during its deliberations on the 2012-13 budget, the Legislature requested that the judicial branch submit a report on potential operational efficiencies, including those requiring statutory amendments. The Legislature's intent was to identify efficiencies that, if adopted, would help the trial courts address their ongoing budget reductions. In May 2012, the judicial branch submitted to the Legislature a list of 17 measures that would result in greater operational efficiencies, reduced costs, or additional court revenues. This list was approved by the Judicial Council after consultation with trial court executives and presiding justices.

Governor's Proposal

The Governor's budget for 2013-14 fully restores a \$418 million one-time reduction to the trial courts made in 2012-13. It also assumes that \$200 million in trial court reserves will be available for use by the trial courts to offset previously approved reductions. In addition, the Governor proposes statutory changes to implement 11 of the 17 options identified by the judicial branch in its May 2012 report to the Legislature. Of the 11 proposed changes, 4 changes would reduce trial court workload and operating costs, and 7 would increase user fees to support

ongoing workload. Examples of the proposed changes include amending the requirement to provide preliminary hearing transcripts in all felony cases and increasing fees to cover costs of mailing certain documents. A summary of the full list of 11 proposed administrative efficiencies and user fees are provided in the box on page 14. The Governor estimates that these changes would provide the courts with about \$30 million in ongoing savings or revenues to help address prior-year budget reductions.

Courts Must Absorb Additional \$234 Million in Ongoing Reductions by 2014-15. While the Governor's budget provides no new reductions, trial courts must still address ongoing reductions from prior years, totaling \$724 million in 2013-14. The budget assumes that \$476 million in resources will be available to help offset a large portion of this ongoing reduction (including the estimated savings or revenues from the Governor's proposed administrative efficiencies and user fee increases). This leaves \$248 million in reductions that will have to be absorbed by trial courts, an increase of \$34 million over the amount already assumed to be absorbed by the trial courts in 2012-13. As shown in Figure 8, the total amount of ongoing reductions that would be allocated to the courts increases to \$448 million in 2014-15, a total of a \$234 million increase from the current year. The increase in 2014-15 reflects the fact that there will be less resources available to the courts (such as trial court reserves) to offset ongoing reductions. (We discuss this issue in more detail later in this report.)

LAO Assessment

Proposed Efficiencies and Fee Increases Merit Consideration. The Governor's proposed statutory changes for administrative efficiencies and user fee increases merit consideration because they will generate ongoing cost savings or new revenues that will help courts meet their ongoing reductions.

As discussed above, all of these proposals have been vetted and are supported by the Judicial Council. To date, we have heard no significant concerns raised by court stakeholders regarding the efficiency proposals. While we recognize that the proposed fee increases may make it more difficult for those with less financial resources to access court services, the increases are designed to offset existing court costs to provide the services. While the Governor assumes that the proposed efficiencies and fee increases will generate revenues or savings of \$30 million, fiscal estimates for most of the proposed items were not available at the time of this publication. It is, therefore, difficult for us to assess whether \$30 million is a reasonable estimate that can be achieved.

Legislature Should Define Its Priorities for How Reductions Are Implemented. While the Governor’s proposed efficiencies and user fee increases provide some additional funds to help trial courts meet their ongoing reductions, additional solutions will still be required to address the bulk of their reduction. As indicated

above, trial courts addressed \$214 million of their ongoing reductions in 2011-12 and 2012-13 by making various operational changes. These actions frequently resulted in a backlog of cases, delays in processing court paperwork, and longer wait times for those seeking court services. Absent legislative action, trial courts will likely expand upon these actions to address \$234 million in additional ongoing reductions that require solutions in 2014-15. This would likely further reduce public access to court services. Given the magnitude of additional reductions which must be addressed by the courts in 2014-15, the Legislature will want to (1) establish its own priorities for how the budget reductions will be implemented by the judicial branch and (2) determine whether to minimize further impacts to court users by providing additional offsetting resources on a one-time or ongoing basis. In making these decisions, the Legislature has several options. However, each of these options has distinct trade-offs and is discussed in more detail below. (An evaluation of potential trial court governance changes,

Figure 8
Trial Courts Budget Reductions Through 2014-15

(In Millions)

	2008-09	2009-10	2010-11	2011-12	2012-13 (Estimated)	2013-14 (Budgeted)	2014-15 (Estimated)
General Fund Reductions							
One-time reduction	-\$92	-\$100	-\$30	—	-\$418	—	—
Ongoing reductions (cumulative)	—	-261	-286	-\$606	-724	-\$724	-\$724
Total Reductions	-\$92	-\$361	-\$316	-\$606	-\$1,142	-\$724	-\$724
Solutions to Address Reduction							
Construction fund transfers	—	\$25	\$98	\$213	\$299	\$55	\$55
Other special fund transfers	—	110	62	89	102	52	52
Trial court reserves	—	—	—	—	385	200	—
Increased fines and fees	—	18	66	71	121	121	121
Statewide programmatic changes	—	18	14	19	21	48	48
Total Solutions	—	\$171	\$240	\$392	\$928	\$476	\$276
Reductions Allocated to the Trial Courts^a	\$92	\$190	\$76	\$214	\$214	\$248	\$448

^a Addressed using various actions taken by individual trial courts, such as the implementation of furlough days and reduced clerk hours, as well as use of reserves (separate from those required by budget language or Judicial Council).

Summary of Proposed Administrative Efficiencies and User Fee Increases

The Governor proposes the following administrative efficiencies and user fee increases to generate savings or increase revenues to help trial courts address ongoing reductions. At the time of this report, neither the administration nor the judicial branch had provided estimates of the savings or additional revenue that could be achieved for most of the proposed changes. The proposed administrative efficiencies and increased user fees are described in more detail below.

Court-Ordered Debt Collection. Courts (or sometimes counties on behalf of courts) may choose to utilize the state's Tax Intercept Program, operated by the Franchise Tax Board (FTB) with participation by the State Controller's Office (SCO), to intercept tax refunds, lottery winnings, and unclaimed property from individuals who are delinquent in paying fines, fees, assessments, surcharges, or restitution ordered by the court. Current law allows FTB and SCO to require the court to obtain and provide the social security number of a debtor prior to running the intercept. Under the proposed change, courts will no longer be required to provide such social security numbers to FTB. Instead, FTB and SCO (who issues payments from the state) would be required to use their existing legal authority to obtain social security numbers from the Department of Motor Vehicles. This change will reduce court costs associated with attempting to obtain social security numbers from debtors.

Destruction of Marijuana Records. Courts are currently required to destroy all records related to an individual's arrest, charge, and conviction for the possession or transportation of marijuana if there is no subsequent arrest within two years. Under the proposed change, courts would no longer be required to destroy marijuana records related to an infraction violation for the possession of up to 28.5 grams of marijuana, other than concentrated cannabis. This proposed change would reduce staff time and costs associated with the destruction process.

Preliminary Hearing Transcripts. Courts are currently required to purchase preliminary hearing transcripts from certified court reporters and provide them to attorneys in all felony cases. In all other cases, the courts purchase transcripts upon the request of parties. Under the proposed change, courts would only be required to provide preliminary hearing transcripts to attorneys in homicide cases. Transcripts would continue to be provided upon request for all other case types. This change reduces costs as the court will no longer be required to purchase copies of all non-homicide felony cases from the court's certified court reporter, but will only need to purchase them when specifically requested.

Court-Appointed Dependency Counsel. Current law states that parents will not be required to reimburse the court for court-appointed counsel services in dependency cases if (1) such payments would negatively impact the parent's ability to support their child after the family has been reunified or (2) repayment would interfere with an ongoing family reunification process. Designated court staff currently has the authority to waive payment in the first scenario, but are required to file a petition for a court hearing to determine whether payment can be waived in the second scenario. Under the proposed change, staff would be permitted to waive payments under this second scenario, thereby eliminating the need for some court hearings.

Exemplification of a Record. Exemplification involves a triple certification attesting to the authenticity of a copy of a record by the clerk and the presiding judicial officer of the court for use as evidence by a court or other entity outside of California. The fee for this certification is proposed to increase from \$20 to \$50. The cost of a single certification is \$25. The increased fee is estimated to generate \$165,000 in additional revenue.

Copies or Comparisons of Files. The fee for copies of court records is proposed to increase from \$0.50 to \$1 per page, which is estimated to generate an additional \$5.9 million in revenue. Additionally, fees to compare copies of records with the original on file would increase from \$1 to \$2 per page.

Record Searches. Current law requires court users to pay a \$15 fee for any records request that requires more than ten minutes of court time to complete. Typically, courts interpret this to mean that the fee can only be applied when the search for any single record takes more than ten minutes to complete, regardless of the total number of requests made by the requester. Under the Governor's proposal, courts would charge a \$10 administrative fee for each name or file search request. A fee exemption is provided for an individual requesting one search for case records in which he or she are a party.

Small Claims Mailings. The fee charged for mailing a plaintiff's claim to each defendant in a small claims action would increase from \$10 to \$15 to cover the cost of postal rate increases that have occurred over the past few years.

Deferred Entry of Judgment. Courts would be permitted to charge an administrative fee—up to \$500 for a felony and \$300 for a misdemeanor—to cover the court's actual costs of processing a defendant's request for a deferred entry of judgment. This occurs when the court delays entering a judgment on a non-violent drug charge pending the defendant's successful completion of a court-ordered treatment (or diversion) program.

Vehicle Code Administrative Assessment. Courts would be required to impose a \$10 administrative assessment for every conviction of a Vehicle Code violation, not just for subsequent violations as required under current law. This new assessment is estimated to generate \$2.2 million in annual revenue.

Trial by Written Declaration. Currently, defendants charged with a Vehicle Code infraction may choose to contest the charges in writing—a trial by written declaration. Originally implemented to allow individuals living far from the court to contest the charge, courts have discovered that more and more individuals living close to the court have been using this service. If the local violator is unsatisfied with the decision rendered in the trial by declaration process, they may then personally contest the charges in court as if the trial by written declaration never took place. In recognition of the unintended increased workload, courts would be authorized to collect a non-refundable \$50 administrative fee from individuals residing in the county in which a traffic citation was issued to process their request for a trial by written declaration. This new fee is estimated to generate \$3.2 million in annual revenue.

which may also help the trial courts absorb their reduction, is currently underway and is discussed in the nearby box.)

Given the ongoing nature of the prior-year reductions, we recommend that the Legislature focus on options that provide *ongoing* savings or revenues for court operations. Such options include:

- ***Statutory Changes to Reduce Operating Costs.*** The Legislature could make statutory changes that would enable courts to reduce their operating costs. As we discussed above, a few such changes are proposed by the Governor. However, courts indicate a number of other potential changes exist. For example, the Legislature could authorize

implementation or expansion of the use of electronic court reporting, which current law bars in certain case types. We have previously estimated that a complete shift to electronic court reporting could save the state in excess of \$100 million on an annual basis upon full implementation. Alternatively, the Legislature could provide courts flexibility to use electronic court reporting in any case or proceeding where the judge feels it is appropriate. As another example, courts have informed us that under current law, they may only discard death penalty files and exhibits upon the execution of the convicted defendant. Since most individuals on death row die due to

The Trial Court Budget Working Group

Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle), more commonly known as the Lockyer-Isenberg Trial Court Funding Act of 1997, shifted primary financial responsibility for trial court operations from the counties to the state. This legislation sought to: (1) stabilize and simplify trial court funding and (2) promote greater efficiencies and uniformity in trial court operations. As a part of the 2012-13 budget, a working group—consisting of six appointees by the Chief Justice and four appointees by the Governor—was established to evaluate the state’s progress in achieving these goals. Specifically, this group was tasked with (1) conducting a statewide analysis of funding, workload, staffing, and operational standards; (2) evaluating factors affecting a trial court’s ability to provide equal access to justice; (3) identifying cost-efficient operational changes; and (4) increasing funding transparency and accountability. This group conducted its first meeting in November 2012 and is expected to provide a final report to the Judicial Council and Governor by April 2013.

We would note that we have previously offered three recommendations to further the goals of trial court realignment: (1) shifting responsibility for the trial court employee personnel system from the individual trial courts to the state (specifically under the authority of Judicial Council), (2) establishing a comprehensive trial court performance assessment program, and (3) establishing a more efficient division of responsibilities between the Administrative Office of the Courts—the staffing agency for the Judicial Council—and trial courts. Implementation of these changes have the potential to reduce trial courts costs, better prioritize funding among courts, and increase efficiency. (Please see our September 2011 publication, *Completing the Goals of Trial Court Realignment*, for further description of these recommendations.)

natural causes, courts bear the costs to store these files and exhibits into perpetuity. The Legislature could modify current law to allow death penalty files and exhibits to be discarded on the death of the convicted offender, regardless of the cause of death. When evaluating potential statutory changes, the Legislature will want to consider whether there are significant policy ramifications for members of the public and whether they outweigh the potential fiscal benefits from each court efficiency considered.

- Increased Fines or Fees.** The Legislature could also further increase criminal and civil fines and fees. The Legislature has taken this action several times in recent years to fund court facility construction projects and to offset reductions to trial court funding. The frequent increase in fines and fees in recent years has raised concerns that additional increases may suffer from “diminishing returns.” To the extent this were to occur, it could be a signal of reduced access to justice as fewer people are able to or choose to access the civil court process because of the increased costs. As shown in Figure 9, the sum of all revenues generated from recent fee increases are projected to exceed the total

amount originally estimated by the courts. However, revenues for some fee increases are lower than what was projected. This could be an indication that, at least for some fines and fees, additional increases might not result in as much revenue as previously achieved.

- Additional Transfers From Judicial Branch Special Funds.** The Legislature could direct additional transfers from branch special funds—the SCFCF, ICNA, and IMF, in particular—to further assist the trial courts meet their reductions. For example, the SCFCF and ICNA receive a total of about \$425 million in criminal fine and civil filing fee revenues annually for court facility projects. (A portion of these funds are also used for maintenance of court facilities.) However, the consistent transfer of dollars from these three special funds since 2009-10 has greatly reduced their fund balances, leaving limited dollars available for transfer in the short-term. In

Figure 9
Total Revenues From Recent Fee Increases
(Revenues in Millions)

Fee or Penalty	Fee Increase	Initial Revenue Projections	Current Revenue Projections for 2012-13 ^a
Increased in 2010-11			
Summary Judgment Fee	\$300	\$6.2	\$5.6
Telephonic Hearing Fee	\$20	6.0	4.4
First Paper Filing Fee	\$20 or \$40	40.1	33.0
Pro Hac Vice Fee	\$250	0.8	0.6
Parking Citation Penalty	\$3	10.5	21.8
Total New Revenues		\$63.6	\$65.4
Increased in 2012-13			
Jury Deposit Fee	\$150	\$11.7	\$23.7
Motion Fee	\$20	8.3	7.9
First Paper Filing Fee	\$40	21.1	20.8
Will Deposit Fee	\$50	2.2	0.8
Complex Case Fee	\$450	7.1	11.7
Total New Revenues		\$50.4	\$65.0

^a Estimated using partial-year revenues received through November 30, 2012.

addition, while most SCFCF projects are already under construction, the majority of ICNA construction projects are currently in either the site acquisition or design phase. Several of the ICNA projects have been delayed already because of transfers. (A more detailed discussion of ICNA is provided in a later section of this report.) On a one-time or short-term basis, the Legislature could further delay projects not currently under construction and transfer more funds to offset reductions to the trial courts. Alternatively, the Legislature could consider canceling certain courthouse construction projects altogether in order to free up additional revenues for transfer to the trial courts on an ongoing basis. Of course, actions to further delay or cancel construction projects would result in the ongoing use of courthouses with various problems—including insufficient space as well as health, safety, or security concerns.

- **General Fund Restoration.** If the Legislature (1) determines that minimizing the amount of additional impacts of budget cuts on court users is a statewide priority and (2) is unable to attain its desired level of offsetting solutions from all of the other options listed above, the Legislature could consider providing the courts with additional General Fund support. The Legislature could choose an amount of one-time or ongoing General Fund support to provide based on what it felt was necessary to allow the courts to meet a desired level of service. To the extent additional General Fund support is provided, the Legislature will want to ensure that certain legislative priorities are achieved.

LAO Recommendation

We recommend approval of the Governor's proposed trailer bill language to implement administrative efficiencies and increase user fees as they provide trial courts with ongoing fiscal relief. Further, we recommend that the Legislature request that judges, court executives, court employees, and other judicial branch stakeholders identify at budget hearings this spring additional efficiencies that could provide further savings. This could provide the Legislature with additional options that, if adopted, could further offset ongoing General Fund reductions. However, the Legislature may be concerned that the ongoing reductions to the trial courts could have increasingly negative impacts on court users, especially as the amount of ongoing budget reductions that the trial courts must absorb increases in 2014-15. Thus, the Legislature should require the judicial branch to report at budget hearings on how the trial courts plan to implement their remaining ongoing budget reductions and what impacts any operational changes may have upon public access to the courts in the future.

Trial Court Reserves Policy

Background

Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle), allowed Judicial Council to authorize trial courts to establish reserves to hold any unspent funds from prior years. Chapter 850 did not place restrictions on the amount of reserves each court could maintain or how they could be used. As shown in Figure 10, trial courts had \$531 million in reserves at the end of 2011-12. The judicial branch estimates that reserves will decrease to roughly \$125 million by the end of 2012-13. This decline reflects, in large part, the expectation in the 2012-13 budget that courts would use \$385 million of their reserves to offset General Fund reductions.

These reserves consist of funding designated by the court as either restricted or unrestricted. Restricted reserves include (1) funds set aside to fulfill contractual obligations or statutory requirements and (2) funds usable only for specific purposes. Examples of restricted reserves include funds set aside to cover short-term facility lease costs, service contracts, license agreements, and children’s waiting rooms costs. Unrestricted reserves, on the other hand, are funds that are available for any purpose. Unrestricted funds are generally used to avoid cash shortfalls caused by normal revenue or expenditure fluctuations, to make one-time investments in technology or equipment, and to cover unanticipated costs.

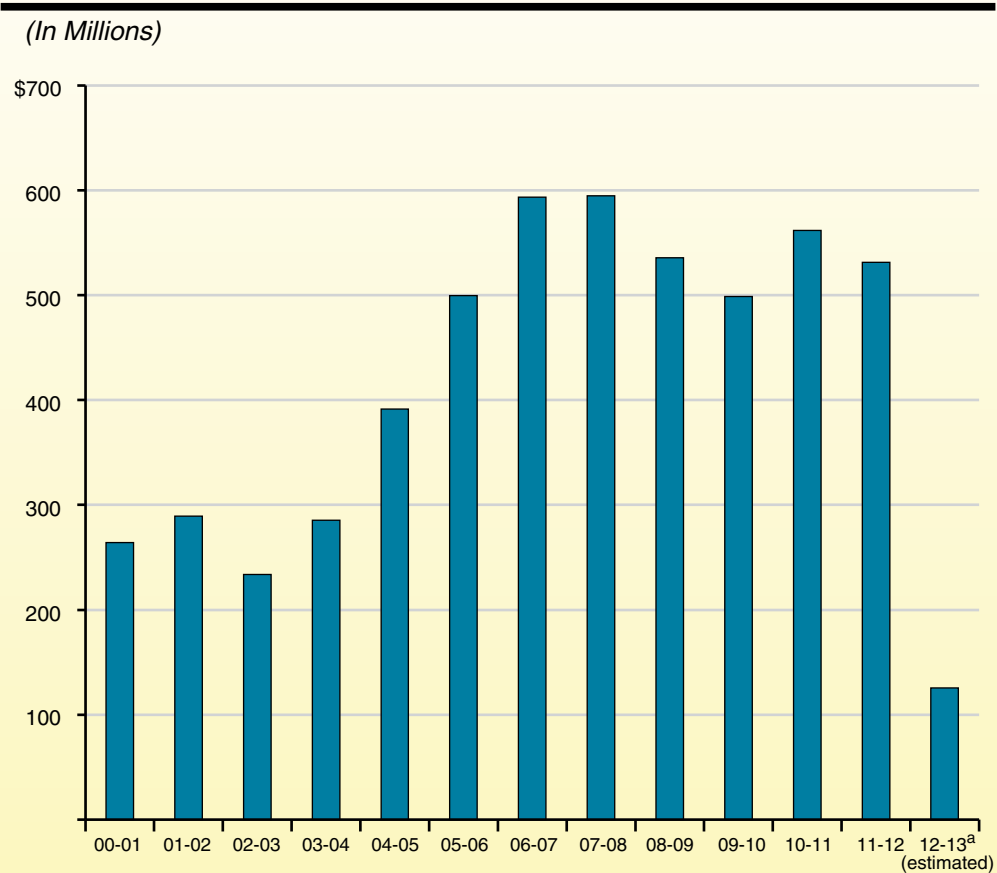
As part of the 2012-13 budget package, the Legislature approved legislation to change the above reserve policy that allows trial courts to retain unlimited reserves. Specifically, beginning in 2014-15, each trial court will only be allowed to retain reserves of up to 1 percent of its prior-year operating budget. The judicial branch estimates that, in total, trial courts will be able to retain up to \$22 million in 2014-15. Additionally, legislation was approved to

establish a statewide trial court reserve, managed by the Judicial Council, beginning in 2012-13. This statewide reserve consists of 2 percent of the total funds appropriated for trial court operations in a given year—\$27.8 million in 2012-13. Trial courts can petition the Judicial Council for an allocation from the statewide reserve to address unforeseen emergencies, unanticipated expenses for existing programs, or unavoidable funding shortfalls. Any unexpended funds in the statewide reserve would be distributed to the trial courts on a prorated basis at the end of each fiscal year.

Governor’s Proposal

The Governor’s budget maintains the new reserve policy enacted as part of the 2012-13 budget. The administration also states that it plans

Figure 10
Total Trial Court Reserves Since 2000-01



^a Based on trial court estimates reported January 2013.

to propose budget trailer legislation designed to assist the judicial branch manage monthly trial court cash flows effectively in the absence of individual court reserves. As discussed above, the Governor's budget also assumes that trial courts will utilize \$200 million in reserves in 2013-14 to help offset ongoing General Fund reductions.

LAO Assessment

Assumption of Available Reserves May Be Overstated. As mentioned earlier, the trial courts currently estimate that approximately \$125 million in reserves will be available at the end of 2012-13 for use in the budget year. This is less than the \$200 million that the Governor assumes will be available to offset ongoing General Fund reductions to the trial courts. In addition, the majority of the \$125 million in projected reserves is expected to be restricted leaving only about \$51 million of unrestricted funds available for discretionary uses. To the extent trial courts have less in available reserves than the \$200 million the Governor's budget plan assumes, courts would likely have to take additional actions to accommodate the reduction. Since these estimates are being made midway through the current fiscal year, the final amount of reserves available for use may be significantly higher or lower than the branch's current estimates depending on what operational actions trial courts take over the latter half of the year.

Reserves Cap Has Presented Unintended Challenges. The Legislature enacted the new reserves policy to ensure greater consistency with state departments and agencies, which generally are not authorized to retain reserves. However, the ability to retain unlimited reserves provided trial courts with a great deal of financial autonomy in the past. Thus, the limitation of reserves to 1 percent of prior-year operating budgets, as well as the withholding of trial court operation funding

to create a 2 percent statewide reserve, presents a number of unintended challenges which require new judicial branch policies and procedures. Some of these may also require statutory changes. These issues include:

- ***Cash Shortfalls.*** Trial courts receive allocations from the state on a monthly basis, which sometimes is not enough cash to cover all operating expenses in a given month. Courts currently use their reserves to cover this gap in funding to pay all of their bills on time and avoid cash shortfalls. In addition, the courts often use their reserves to ensure that certain court programs can continue to operate even when there are delays in federal or other reimbursements for those programs. For example, federal reimbursements for child support commissioners and facilitators are often delayed by up to a year or longer, but courts are able to use their reserves to ensure that this program continues to operate. The potential for cash shortfalls is exacerbated by the requirement that the branch maintain a 2 percent statewide reserve. Each court will receive a monthly state allocation that is 2 percent smaller than what they would otherwise receive, thereby reducing the size of the local reserve they are allowed to keep.
- ***Payroll Requirements.*** Courts may process their own employee payroll or utilize a third-party vendor, such as the county personnel agency or a private company. These third-party vendors often require the court to maintain the equivalent of one or more months of court employee salaries in reserves to ensure that the court has sufficient funds to reimburse the county. This single reserve requirement can exceed

10 percent of a court's annual budget amount, which is well in excess of the 1 percent limit that will go into effect under current law. Without an exemption of these funds from the new reserves limit, courts may have difficulty making employee payroll on a monthly basis or may no longer be able to use the third party vendor.

- **Restricted Funds.** As discussed previously, restricted reserves are funds constrained by statute, contract, or use for a specific purpose. As such, they are often not easily accessible for alternative uses by the courts. The new reserve policy does not exempt restricted funds from this 1 percent cap. Consequently, courts will have fewer unrestricted funds available for discretionary uses and may be forced to break existing contracts to reduce their reserves to meet the 1 percent cap. In some courts, obligations in restricted reserves may actually exceed the court's cap.
- **Projects Traditionally Funded Using Reserves.** Historically, trial courts have used their reserves to fund certain projects and have not had to have these projects approved by the Judicial Council or the Legislature. For example, courts have built up reserves to purchase expensive technology or other services, often designed to help the court operate more efficiently, support additional workload, or provide the public with greater access to court services. Past projects include replacing or updating their case management systems as well as document management, collections, electronic filing, and electronic access technologies. Additionally, some courts report using their reserves to support other unique

programs or practices. For example, the Shasta superior court uses its reserve to pay the salaries of their collections staff, who collect court-ordered debt for itself as well as a number of smaller trial courts, thereby minimizing the costs of collections for itself and all of its partners. The current reserve policy limits the ability for courts to save and plan over time for similar projects and programs in the same ways. Instead, the Legislature and judicial branch will likely need to establish new processes for prioritizing and funding those projects determined to be of greatest value to the state.

LAO Recommendation

Our understanding is that the administration's proposed budget trailer legislation related to reserves will address some of the challenges discussed above. At the time of this analysis, however, the administration's proposed legislation was not available. Therefore, we withhold recommendation pending the provision of this language. After the administration has provided its proposed language to the Legislature, we will review it at that time and advise the Legislature on the degree to which it addresses the issues outlined above.

Transfer of \$200 Million in Court Construction Funds to the General Fund

Background. Chapter 311, Statutes of 2008 (SB 1407, Perata), authorized increases in criminal and civil fines and fees to finance up to \$5 billion in trial court construction projects. (These funds may also be used for other facility-related expenses such as maintenance and modification of existing courthouses.) The revenue from the fines and fees are deposited in ICNA established by

Chapter 311. In accordance with the legislation, the Judicial Council selected 39 construction projects deemed to be of “immediate” or “critical” need for replacement—often because of structural, safety, or capacity shortcomings of the existing facilities—that would be funded from ICNA. This account receives roughly \$300 million annually in revenue.

Governor’s Proposal. Recent budgets have transferred or loaned hundreds of millions of dollars from ICNA to help address the state’s fiscal problems. The Governor’s budget proposes a new one-time \$200 million transfer from ICNA to the General Fund. The budget also reflects the ongoing transfer of \$50 million from ICNA to support trial court operations as initially authorized as part of the 2012-13 budget. Additionally, the Governor proposes to delay from 2013-14 to 2015-16 the repayment of a \$90 million loan that was made from ICNA to the General Fund in 2011-12. As we discuss below, repeated transfers and loans from ICNA have greatly decreased the availability of funds for construction projects.

Figure 11 summarizes the amount of ICNA revenues, expenditures, transfers, and loans that have occurred each year since the account was

established and are proposed by the Governor for 2013-14. Under the Governor’s proposal, over two-thirds—a total of \$1.1 billion—of all ICNA revenues over the period shown will have been transferred or loaned to offset reductions to trial courts or General Fund shortfalls by the end of 2013-14. (During this same time period, nearly \$550 million will have also been transferred or loaned for similar purposes from another construction account—the SCFCF.) As shown in the figure, the budget assumes that the judicial branch will spend \$110 million from ICNA on projects and other facility-related expenses in 2013-14, leaving a projected fund balance of \$14 million at the end of the budget year.

Projects to be Delayed Unspecified. Prior to the release of the Governor’s budget, the Judicial Council delayed eight ICNA-funded projects and directed all remaining projects to meet project-specific cost-reduction goals to address the drop in available funds in 2012-13. (As we discuss in the next section, the Judicial Council chose to delay four additional projects in 2012-13 in order to fund the service payments associated with the construction of a new courthouse in Long

Figure 11

Nearly Two-Thirds of ICNA Funds Transferred or Loaned by 2013-14

(In Millions)

	2008-09	2009-10	2010-11	2011-12	2012-13 Estimated	2013-14 Proposed
Adjusted beginning balance	—	\$197	\$258	\$406	\$61	\$73
Revenues	\$94	304	330	305	301	300
Total Resources	\$94	\$501	\$588	\$710	\$362	\$374
Expenditures	—	\$129	\$145	\$106	\$49	\$110
Transfers and Loans						
Trial court operations transfers	—	25	73	143	240	50
General Fund transfers	—	—	—	310	—	200
General Fund loans	—	—	—	90	—	—
Subtotals, Transfers and Loans	(—)	(\$25)	(\$73)	(\$543)	(\$240)	(\$250)
Total Expenditures, Transfers, and Loans	—	\$154	\$219	\$649	\$289	\$360
Fund Balance	\$94	\$347	\$370	\$61	\$73	\$14

ICNA = Immediate and Critical Needs Account.

Beach from ICNA.)

The council made its decision based on an evaluation of all projects using several operational and economic criteria.

Figure 12 summarizes the current status of all court construction projects that are planned to be funded from ICNA.

As a result of the Governor's proposed transfer of \$200 million from ICNA to the General Fund, fewer projects are likely to be able to proceed in the budget year than the Judicial Council previously planned. In fact, the administration states that the transfer will likely delay most or all construction projects by at least a year, except for those projects scheduled to complete bond sales by the end of the current year (these will proceed as planned). The Judicial Council is responsible for determining specifically which projects to delay, and will base this decision on the recommendations of its Court Facilities Working Group Advisory Committee. At this time, the courts have not identified which projects will be delayed, what

Figure 12

ICNA Projects—Status and Current Estimated Project Cost

As of January 2013 (In Millions)

Project	Current Estimated Project Cost	Priority Need
Beginning Construction in 2013		
\$799		
Alameda—East County Courthouse	110	Critical
Butte—North Butte County Courthouse	65	Immediate
Kings—Hanford Courthouse	124	Critical
San Joaquin—Juvenile Justice Center	4	Immediate
Santa Clara—Family Justice Center	234	Critical
Solano—Fairfield Old Solano Courthouse	28	Immediate
Sutter—Yuba City Courthouse	72	Immediate
Yolo—Woodland Courthouse	162	Immediate
Preconstruction Activities		
\$2,398		
El Dorado—Placerville Courthouse	91	Critical
Glenn—Willows Courthouse	46	Critical
Imperial—El Centro Family Courthouse	60	Immediate
Inyo—Inyo County Courthouse	34	Critical
Lake—Lakeport Courthouse	56	Immediate
Los Angeles—Eastlake Juvenile Courthouse	90	Critical
Los Angeles—Mental Health Courthouse	84	Critical
Mendocino—Ukiah Courthouse	122	Critical
Merced—Los Banos Courthouse	32	Immediate
Riverside—Hemet Courthouse	119	Immediate
Riverside—Indio Juvenile and Family Courthouse	66	Immediate
San Diego—Central San Diego Courthouse	620	Critical
Santa Barbara—Criminal Courthouse	132	Immediate
Shasta—Redding Courthouse	171	Immediate
Siskiyou—Yreka Courthouse	78	Critical
Sonoma—Santa Rosa Criminal Courthouse	179	Immediate
Stanislaus—Modesto Courthouse	277	Immediate
Tehama—Red Bluff Courthouse	72	Immediate
Tuolumne—Sonora Courthouse	69	Critical
Indefinitely Delayed		
\$1,178		
Fresno—County Courthouse	113	Immediate
Kern—Delano Courthouse	42	Immediate
Kern—Mojave Courthouse	44	Immediate
Los Angeles—Glendale Courthouse	127	Immediate
Los Angeles—Lancaster Courthouse ^a	—	Immediate
Los Angeles—Santa Clarita Courthouse	64	Immediate
Los Angeles—Southeast Los Angeles Courthouse	126	Immediate
Monterey—South Monterey County Courthouse	49	Immediate
Nevada—Nevada City Courthouse	103	Critical
Placer—Tahoe Area Courthouse	23	Immediate
Plumas—Quincy Courthouse	35	Critical
Sacramento—Criminal Courthouse	452	Immediate
Total, All ICNA Projects	\$4,375	

^a The original construction project has been cancelled, and the Judicial Council is now considering whether to modify the current facility.

ICNA = Immediate and Critical Needs Account.

criteria will be used to prioritize projects, or when these decisions will be made.

LAO Recommendation. We recommend approval of the Governor's proposal to transfer \$200 million from ICNA to the General Fund because of the fiscal benefit it provides the state. We acknowledge, however, that this transfer will likely mean additional delays in court construction projects intended to be funded through ICNA. Therefore, we also recommend that the judicial branch report at budget hearings this spring on (1) which projects will be delayed, (2) how they plan to prioritize further delays, and (3) whether the need or scope of currently proposed ICNA projects have changed due to changes in trial court operations that were implemented to address budget reductions (such as the consolidation of existing courthouses). Such information will help ensure that the judicial branch's construction plans are consistent with legislative priorities.

Long Beach Courthouse Lease Payment

Background. The 2007-08 Budget Act directed the Administrative Office of the Courts (AOC), the agency that staffs the Judicial Council, to gather information regarding the possible use of a public-private partnership (P3) for the construction of a new facility to replace the existing courthouse in Long Beach. In December 2010, AOC entered into a P3 contract that required a private developer to finance, design, and build a new Long Beach courthouse, as well as to operate and maintain the facility over a 35-year period. At the end of this period, the judicial branch will own the facility. In exchange, the contract requires AOC to make annual service payments (also known as service fees) totaling \$2.3 billion over the period. The actual amount of the annual service payment will

vary each year primarily due to inflation, as well as other factors. These payments commence upon occupancy of the Long Beach courthouse, which is currently estimated to occur in September 2013.

Governor's Proposal. The Governor's budget proposes using \$34.8 million from ICNA to fund the first annual service payment for the Long Beach courthouse in 2013-14. Since occupancy of the new courthouse will not begin until September 2013, this payment reflects only partial-year occupancy of the facility. So, an additional \$19.4 million is requested from ICNA for 2014-15 to make a full-year service payment of \$54.2 million. In subsequent years, the judicial branch will have to submit budget requests to fund any growth in service payments.

Permissible Use of ICNA Funds. While the P3 contract between AOC and the Long Beach courthouse developer requires annual service payments by AOC, neither the contract nor statute specifies a particular funding source for these payments. Statute clearly permits the use of ICNA funds for service payments, and using this special fund rather than the General Fund to pay these costs provides the Legislature with additional General Fund resources to support other state priorities. The Long Beach courthouse project, however, was not originally on the list of projects the judicial branch planned to be funded from ICNA. Instead, the branch had assumed that the project would be funded from the General Fund. Therefore, the plan to use ICNA funds for these service payments, combined with reduced ICNA fund balances as previously discussed, resulted in a Judicial Council decision to indefinitely delay four court construction projects (the Fresno County, Southeast Los Angeles, Nevada City, and Sacramento Criminal courthouses).

LAO Recommendation. We recommend approval of the Governor’s proposal to use ICNA funds for service payments for the Long

Beach courthouse. This proposal benefits the General Fund by tens of millions of dollars per year (potentially for the next 35 years), and it is a permissible use of ICNA funds.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Overview

The CDCR is responsible for the incarceration of adult felons, including the provision of training, education, and health care services. As of January 9, 2013, CDCR housed about 133,000 adult inmates in the state’s prison system. Most of these inmates are housed in the state’s 33 prisons and 42 conservation camps. Approximately 9,600 inmates are housed in either in-state or out-of-state contracted prisons. The CDCR also supervises and treats about 58,000 adult parolees and is responsible for the apprehension of those parolees who commit new offenses or parole violations.

In addition, about 800 juvenile offenders are housed in facilities operated by CDCR’s DJJ, which includes three facilities and one conservation camp. Prior to January 1, 2013, CDCR also supervised juvenile parolees. County probation departments,

however, now have responsibility for supervising all juvenile offenders released from DJJ.

The Governor’s budget proposes total expenditures of \$9 billion (\$8.7 billion General Fund) for CDCR operations in 2013-14. Figure 13 shows the total operating expenditures estimated in the Governor’s budget for the current year and proposed for the budget year. As the figure indicates, spending is virtually flat between the two years.

The department’s budget includes increased spending related to higher employee compensation costs caused by the expiration of the Personal Leave Program, the activation of new prison health care facilities, the expansion of inmate rehabilitation programs, and increased use of in-state contract beds for inmates. This additional spending is partially offset by proposed budget reductions, primarily related to additional savings from the

Figure 13

Total Expenditures for the California Department of Corrections and Rehabilitation

(Dollars in Millions)

	2011-12 Actual	2012-13 Estimated	2013-14 Proposed	Change From 2012-13	
				Amount	Percent
Prisons	\$7,817	\$7,612	\$7,791	\$179	2.4%
Adult parole	767	628	537	-91	-14.5
Administration	449	442	409	-33	-7.5
Juvenile institutions and parole	231	179	186	7	3.8
Board of Parole Hearings	85	71	42	-29	-40.7
Corrections Standards Authority ^a	71	—	—	—	—
Totals	\$9,421	\$8,932	\$8,965	\$33	0.4%

^a The Corrections Standards Authority is now a separate department known as the Board of State and Community Corrections.

2011 realignment of adult offenders to counties. These budget reductions include operational savings associated with reduced state prison and parole populations, as well as decreased use of out-of-state contract beds for inmates. These changes are consistent with the administration's 2012 plan (commonly referred to as the "blueprint") to reorganize various aspects of CDCR's operations, facilities, and budget in response to the effects of the 2011 realignment.

Adult Prison and Parole Populations Decline Projected to Slow in Coming Years

Background. The average daily prison population is projected to be about 129,000 inmates in 2013-14, a decline of roughly 3,600 inmates (3 percent) from the estimated current-year level. This decline is largely due to the 2011 realignment of lower-level felons from state to local responsibility. Although decreasing, the projected inmate population for 2013-14 is still about 3,200 inmates *higher* than was projected by CDCR in spring 2012. According to the department, this is due in part to higher-than-expected admissions to state prison. In addition, CDCR reports that more individuals on Post Release Community Supervision (PRCS) were convicted of new crimes and returned to prison than was originally projected. (As part of the 2011 realignment, individuals who do not have a current conviction for a serious or violent offense are generally supervised by counties on PRCS after serving their prison sentence, rather than by state parole agents.) The CDCR's projections also show that the decline in the prison population is expected to slow down in the coming years and actually increase within a few years.

The average daily parole population is projected to be about 43,000 parolees in the budget year, a decline of about 15,000 parolees (25 percent)

from the estimated current-year level. This decline is also largely a result of the 2011 realignment, which shifted from the state to the counties the responsibility for supervising certain offenders following their release from prison. The average daily population projected for 2013-14 is about 4,500 parolees *lower* than was initially projected by the department in spring 2012. According to CDCR, this is due to more parolees being discharged from supervision than expected in the first six months of 2012. In addition, CDCR projections show that the decline in the parole population is expected to slow down and even increase in coming years.

Governor's Proposal. As part of the Governor's January budget proposal each year, the administration requests modifications to CDCR's budget based on projected changes in the prison and parole populations in the current and budget years. The administration then adjusts these requests each spring as part of the May Revision based on updated projections of these populations. The adjustments are made both on the overall population of offenders and various subpopulations (such as mentally ill inmates and sex offenders on parole). As can be seen in Figure 14, the administration proposes a net reduction of \$14.6 million in the current year and a net increase of \$2.3 million in the budget year.

The current-year net reduction in costs is primarily due to savings from the larger than expected decline in the 2012-13 parolee population, as well as a delay in the activation of a 50-bed mental health crisis unit at California Men's Colony in San Luis Obispo. These savings are partially offset by increased inmate costs due to the higher-than-expected inmate population and inmates returning from out-of-state contract beds. (The savings from reducing the number of out-of-state beds—totaling \$84 million in the current year—are largely accounted for elsewhere in the Governor's budget for CDCR.)

The budget-year net increase in costs is largely related to the higher-than-expected inmate population and back payments to counties for housing CDCR offenders (primarily parole violators) in jail in prior years. These costs are partially offset by the larger-than-expected decline in the parole population, as well as savings from a decline in certain populations of inmates needing mental health care.

Population Budget Request Generally Reasonable but Requires Current-Year

Adjustment. In general, the administration’s projections of the prison and parole population appear to be accurate based on recent trends, and the associated budget adjustments are generally reasonable. We find, however, that one component of the administration’s funding request—specifically related to the provision of treatment services for sex offenders—is over-budgeted in the current year by about \$15 million and requires greater transparency on an ongoing basis.

Prior to their release, parolees who are registered sex offenders are given risk assessments, and those classified as sufficiently high risk are placed on High Risk Sex Offender (HRSO) caseloads. These parolees are subject to more intensive supervision by parole agents and are required to participate in sex offender treatment programs. Specifically, HRSOs are required to receive relapse prevention therapy and undergo polygraph examinations, consistent with the sex offender containment model. This model is designed to both decrease the likelihood that these

parolees will commit new sex offenses and increase the probability that new offenses are detected. The department relies on contractors to provide the treatment services to HRSOs. The department, however, has historically been unable to enter into a sufficient number of contracts to fully serve its HRSO population.

The Governor’s budget proposal includes enough funding to provide treatment to an average of about 3,300 HRSOs in 2012-13 and 4,100 HRSOs in 2013-14. The CDCR, however, estimates that it will only be able to serve an average of about 1,100 HRSOs in the current year because of past problems securing contracts with treatment providers. The department expects to have resolved these problems by the end of the current year. Accordingly, we estimate that the department is over-budgeted for these services by \$15 million in 2012-13. The department informs us that these current-year savings may be needed to offset shortfalls elsewhere in its budget, specifically related to positions that had full-year funding eliminated in the 2012-13 budget but that were not actually eliminated until October 2012. At the time of this analysis, CDCR could not identify a specific

Figure 14
Governor’s Population-Related Proposals

(Dollars in Millions)

	2012-13	2013-14
Population Assumptions		
Prison population <i>2012-13 Budget Act</i>	129,461	125,434
Prison population <i>2013-14 Governor’s Budget</i>	132,223	128,605
Prison Population Adjustments	2,762	3,171
Parole population <i>2012-13 Budget Act</i>	66,753	47,417
Parole population <i>2013-14 Governor’s Budget</i>	57,640	42,958
Parole Population Adjustments	-9,113	-4,459
Budget Adjustments		
Inmate related adjustments	\$13.9	\$12.0
Jail contract reimbursements	—	8.9
Health care facility activations	-7.4	5.0
Parolee related adjustments	-21.1	-23.5
Proposed Budget Adjustments	-\$14.6	\$2.3

dollar amount associated with this potential current-year shortfall.

Lack of Transparency for Parolee Sex Offender Program. For the budget year, CDCR informs us that it may be unable to fill all of the 4,100 treatment slots assumed in the Governor’s budget with HRSOs. This is because, at any given time, roughly one-third of HRSOs are unable to participate in the program because they are in county jail pending new criminal charges, have been revoked due to violations of their parole, or are at large. To the extent that CDCR has more treatment slots funded than HRSOs to participate in them at any given time, CDCR plans to use these funds to provide non-high risk sex offenders (non-HRSOs) treatment. In so doing, the department argues that it will be closer to compliance with Chapter 218, Statutes of 2009 (AB 1844, Fletcher)—also known as Chelsea’s Law—which requires that all sex offenders on parole be provided with sex offender treatment.

While Chapter 218 does require CDCR to provide treatment to both HRSOs and non-HRSOs, the department’s plans raise several concerns. First, the request for sex offender treatment funding does not provide any estimate of the number of HRSOs versus non-HRSOs that will be served, making it difficult for the Legislature to understand and evaluate the department’s actual operational plans. Second, even though the department is only likely to have treatment slots available for a portion of the state’s non-HRSO parole population, it has not identified how it will prioritize which non-HRSOs will be placed in these programs. Third, it is not clear what type of treatment CDCR is providing to non-HRSOs, how effective the approach being used is, or whether it is the most cost-effective way to manage low-risk sex offenders. We are informed that CDCR is currently running a pilot program in Fresno in which non-HRSOs are being provided with sex offender treatment. The results of the

pilot are not available at this time—something the department should provide to the Legislature before expanding the program.

LAO Recommendations. We withhold recommendation on the administration’s adult population funding request until the May Revision. We will continue to monitor CDCR’s populations, and make recommendations based on the administration’s revised population projections and budget adjustments included in the May Revision. We recommend, however, that the Legislature direct the department to make adjustments as part of the May Revision to reflect the correct number of treatment slots that will be available in the current year, as well as distinguish between the number of HRSO and non-HRSO parolees that will be in treatment programs. We also recommend that the Legislature direct the department to report at budget hearings on the provision of sex offender treatment to non-HRSOs. In particular, the department should report on (1) whether the treatment modality used for non-HRSOs is appropriate and (2) how the department will prioritize which non-HRSOs will be placed into treatment. If the department’s responses are satisfactory to the Legislature, we recommend that it direct the department to separately delineate funding for HRSO and non-HRSO treatment in subsequent budget proposals.

Governor Requests Modification of Population Limit

Realignment Projected to Be Insufficient to Comply With Population Limit. In 2009, a federal three-judge panel declared that overcrowding in the state’s prison system was the primary reason that CDCR was unable to provide inmates with constitutionally adequate health care. The court ruled that in order for CDCR to provide such care, overcrowding would have to be reduced. Specifically, the court ruled that by June 2013 the

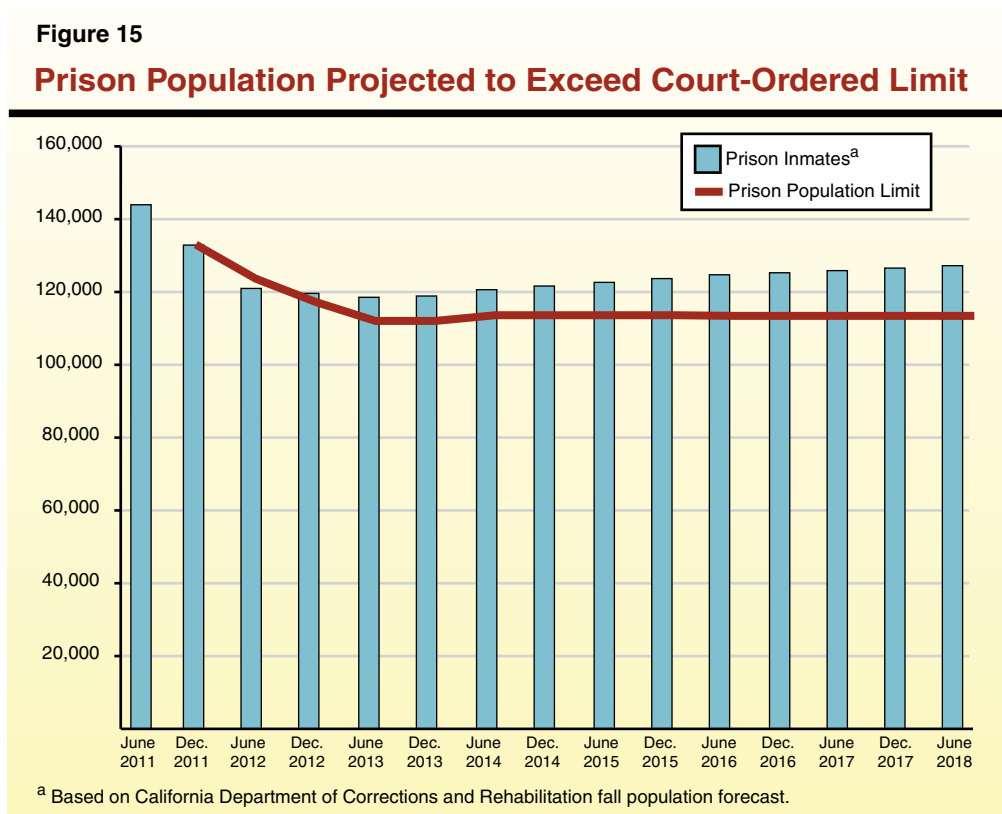
state must reduce the inmate population to no more than 137.5 percent of the “design capacity” in the 33 prisons operated by CDCR. (As we discuss below, the court recently extended the date for meeting this limit to December 2013.) Design capacity generally refers to the number of beds CDCR would operate if it housed only one inmate per cell and did not use temporary beds, such as housing inmates in gyms. Inmates housed in contract facilities or fire camps are not counted toward the overcrowding limit. In May 2011, the U.S. Supreme Court upheld the three-judge panel’s ruling. Under the population cap imposed by the federal court, the state would need to reduce the number of inmates housed in its 33 state prisons by about 34,000 inmates relative to the prison population at the time of the ruling.

Largely in order to comply with this ruling, the state enacted the 2011 realignment legislation to reduce its prison population. Realignment has significantly reduced the state’s prison population.

We estimate that by the court’s current deadline of December 2013, the population in the state’s prisons will be about 25,000 inmates lower than it was prior to realignment. As can be seen in Figure 15, however, this reduction is not projected to be sufficient to meet the court-ordered population limit. (Changes in the population limit reflect

intermediate population limits approved by the court, as well as planned changes to CDCR’s design capacity, including the activation of new health care facilities in Stockton, the closure of the California Rehabilitation Center in Norco, and the construction of new housing units at two existing prisons.)

Administration Requests Court Modify Prison Population Limit. In October 2012, the federal three-judge panel ordered the state to present a plan for how it would further reduce the state’s prison population to comply with the limit either by the original deadline of June 2013, or by December 2013. On January 7, 2013 the administration released its response to the court. The administration requested that the court modify or vacate its population reduction order altogether. According to the administration, prison health care has improved and now meets constitutional requirements.



To support its claim, the administration cited the improved scores on audits of the state's inmate medical care program conducted by the Office of the Inspector General. These audits rate an individual prison's inmate medical care services on a scale ranging from 0 percent to 100 percent, with a score of 85 percent or more being considered "high adherence" to medical standards. The administration noted that audits of 20 of the state's 33 prisons yielded an average audit score of 86 percent. We note, however, that in addition to an audit score of 85 percent or higher for each prison, the criteria of constitutional care established by the court also requires the prisons to receive a satisfactory subjective review of health care conditions by court experts. At the time of this report, the results of subjective reviews carried out to date have not been submitted to the court. As a result, no prison has satisfied both of the above objectives to date.

The administration also noted in its response to the court that neither the Receiver (who operates much of the state's prison medical care system for the federal courts) nor the Special Master (who oversees the state's prison mental health care system for the federal courts) currently cite overcrowding as an obstacle to achieving constitutional care. We note, however, that both the Receiver and Special Master have since publicly disputed the administration's contention that the quality of medical and mental health care has improved to constitutional levels, and the Receiver has stated that overcrowding is still a significant obstacle to delivering such care.

In response to the federal court's order to provide a plan on how the state would reach the population limit, the administration provided two plans to reach the population limit specified by the court. The first plan would reach the population limit by the original deadline of June

2013, while the second plan would reach it by December 2013.

Subsequently, on January 8, 2013, Governor Brown cancelled an emergency order related to prison overcrowding that was originally issued by Governor Schwarzenegger in 2006. The order authorized the administration to contract for out-of-state beds to help address prison overcrowding. Citing steps the state has taken to reduce prison overcrowding, Governor Brown terminated the emergency proclamation and plans to eliminate the use of such beds by July 2016. This step is consistent with the administration's blueprint to eventually eliminate the use of out-of-state beds. Since inmates in out-of-state contract beds are not counted toward the court-ordered population limit, phasing out the use of these beds will increase the number of inmates housed in in-state prisons. Although less use of out-of-state beds reduces state operational costs, eliminating the use of these beds will make it more difficult for the administration to comply with the current court-ordered population limit. This could be particularly problematic if the court ultimately requires the state to comply with the limit as these beds may take time to reacquire.

On January 29, 2013, the three-judge panel issued an order in response to the administration's request to vacate or modify its order. While the court did not issue judgment on whether to vacate the population limit, it did extend the deadline for meeting the limit from June 2013 to December 2013. It also ordered the administration to continue working towards meeting the limit in December but did not order the administration to take any specific actions to do so.

Court Ruling on Population Limit May Not Be Final Prior to 2013-14. It could take months or longer for the federal court to decide whether to end or modify the prison population limit currently in place, as has been requested by the Governor.

For example, it took more than a year for the U.S. Supreme Court to uphold the first ruling by a federal court to institute the prison limit in California. If, however, the federal courts do ultimately require the state to reduce its prison population to meet the existing or a modified cap, the Legislature will want to craft a population reduction plan to ensure that any plan that is implemented is consistent with legislative priorities. For example, the Legislature could enact further sentencing changes, expand sentence credits, or authorize the use of additional contract beds. Any plan to reduce the inmate population further would have budgetary impacts (costs and savings), with the exact amount depending on the specific changes included in the plan.

Senate Bill 678 Formula Should Be Modified

Background

Individuals convicted of felonies can receive various sentences depending on their current offense, their offense history, and the discretion used by the judge. Typically, judges place individuals convicted of a felony on county probation in lieu of sending them to state prison. While on probation, offenders are required to meet certain terms of their supervision, which can include avoidance of criminal activity, drug testing, community service, and participation in treatment programs. If a felony probationer violates the terms of his supervision, the judge can elect to revoke the probation sentence and send the offender to state prison for the original felony offense. A felony probationer can also be sent to state prison if convicted of a new prison-eligible offense (generally a serious or violent felony) while on probation.

Legislation Provided Fiscal Incentive for Improved Probation Outcomes. Chapter 608, Statutes of 2009 (SB 678, Leno), now generally referred to as “SB 678,” was enacted to improve outcomes for adult felony probationers by giving

counties a fiscal incentive to reduce the number of felony probationers that fail on probation and are sent to state prison. Specifically, SB 678 provides counties a share of the state prison and parole savings that occurs when fewer felony probation failures are sent to state prison. Under SB 678, counties are required to reinvest this funding in evidence-based probation supervision and treatment practices. Funding for SB 678 grants was first provided to counties in the 2011-12 budget based on the number of probationers counties diverted from state prison in 2010. In 2011, the state estimated that SB 678 reduced the prison population by more than 9,500 inmates, resulting in state savings of \$278 million, with \$139 million distributed to county probation departments as award grants in the 2012-13 budget. These amounts are based on total state savings of \$29,000 for each felony probationer diverted from state prison.

Under SB 678, the state annually determines the amount of savings generated from fewer probation failures being sent to prison and sets aside half of the total savings to fund grants to counties responsible for diverting probationers from prison. Each county’s share of the SB 678 funds is based on the number of probationers it diverts from prison. As can be seen in Figure 16 (see next page), the number of felony probationers diverted from prison in a given year is estimated by comparing the rate at which those on felony probation were sent to prison in that year (the failure-to-prison rate) with the rate at which felony probationers were sent to prison in the comparison years of 2006, 2007, and 2008 (the “baseline” failure-to-prison rate). If the number actually sent to prison in a given year is less than the number expected from the baseline failure-to-prison rate, the county is entitled to a portion of savings it created for the state. The specific share of the state savings that each county receives is determined by its performance relative to the statewide average

failure-to-prison rate. If a county’s failure-to-prison rate is above the statewide average by less than 25 percent, it is designated a “tier one” county and receives 45 percent of the savings it created for the state. A county whose failure-to-prison rate is more than 25 percent above the statewide average is designated as a “tier two” county, and receives 40 percent of the state’s savings. (Counties with very low failure-to-prison rates are designated as “high performance” counties and are eligible to receive SB 678 grants through a somewhat different formula.)

SB 678 Grants Affected by 2011 Realignment.

The 2011 realignment significantly reduced the number of felony offenders eligible for prison. Specifically, an individual convicted of a felony now can generally only be sent to state prison if he or she has a current or prior serious, violent, or sex offense. Otherwise convicted felons remain under county jurisdiction. These individuals are commonly referred to as lower-level offenders. Prior to realignment, lower-level offenders on

felony probation could be sent to state prison for violating the terms of their supervision. Following realignment, these lower-level offenders can only be sent to state prison if they are convicted of a new prison-eligible crime, such as a serious, violent, or sex offense. As a result, counties are sending significantly fewer felony probationers to state prison. This artificially decreases a county’s failure-to-prison rates under SB 678 because, after realignment, counties are sending fewer probationers to state prison.

Governor’s Proposal

The Governor’s budget provides \$36 million for SB 678 grants in 2013-14, which is a reduction of \$103 million compared to the estimated amount for 2012-13. This change is due to three factors.

- **Revised Methodology to Account for 2011 Realignment.** The administration proposes revising the SB 678 formula to account for the 2011 realignment. (Because

award grants are made in the year after felony probationers were diverted from prison, the 2013-14 grant amount is the first year significantly affected by realignment.) To address the problems created by the 2011 realignment artificially lowering county failure-to-prison rates, the administration proposes to recalculate each county’s baseline failure-to-prison rate to what it would have been had realignment been in effect in the baseline years. Due to data limitations,

Figure 16
Examples of Current SB 678 Grant Calculation For a Hypothetical County

2012-13	
Step One: Baseline Failure-to-Prison Rate	
Average felony probation population (2006 through 2008)	10,000
Average probation failures to prison (2006 through 2008)	700
Baseline failure-to-prison rate (2006 through 2008)	7%
Step Two: Felony Probationers Diverted From Prison	
Felony probation population (2011)	10,000
Felony probation failures to prison (2011)	600
County failure-to-prison rate (2011)	6%
Probationers diverted from prison (2011)	100
Step Three: Savings Estimate	
Annual state savings per probationer diverted	\$29,000
Total savings created by county	\$2,900,000
2011 Statewide failure-to-prison rate	5%
Tier designation	Tier 1
Percent of state savings included in grant	45%
Total SB 678 Grant to County	\$1,305,000

however, the administration cannot simply identify the number of probation failures who would have been eligible for prison under realignment. Consequently, the administration's adjustment to the SB 678 calculation for 2013-14 assumes that the percentage of felony probation failures that would have been eligible for prison in the baseline years is the same as the percentage eligible for prison in 2012.

- Revised Methodology for County Tier Designation.** Second, the administration proposes revising the way counties are assigned to tiers based on their performance. As discussed above, under current law, a county is designated a tier one or tier two county based on how its failure-to-prison rate compares with the statewide average failure-to-prison rate. The administration proposes that instead, each county's failure-to-prison rate be combined with its failure-to-jail rate to create an overall failure rate. It proposes that each county's overall failure rate be compared with the statewide overall failure rate to determine whether a county is eligible for a tier one or tier two award.
- Revised Estimate of State Cost to House Inmates.** Finally, the administration proposes to revise the SB 678 grant amount that would be sent to counties for each probationer diverted from prison. As mentioned above, it was previously assumed that the state saved about \$29,000 per year in prison and parole costs for each felony probationer diverted from prison. The administration proposes to significantly reduce this savings amount based on recent changes in the way CDCR staffs its prisons. The CDCR has changed

from using a ratio-based staffing system—where decreases in the inmate population directly resulted in staffing reductions—to a new standardized staffing model. Under this new model, each prison's staffing levels remain mostly fixed unless there are significant enough changes in the inmate population to justify opening or closing new housing units. Accordingly, under this new model, reductions in the state's prison population—such as those that occur due to SB 678—result in less savings for the state. Specifically, the administration estimates that each probationer diverted from prison will save the state about \$10,000 per year.

LAO Assessment

Governor's Proposal Raises Several Issues. In large part, we concur with the intent behind the administration's revisions. Specifically, we agree that going forward the SB 678 baseline should be adjusted to reflect what the failure rate would have been if realignment had been in place in the baseline years, as this is the best way to assess how effective county felony probation practices are following realignment. In addition, we agree that the grant amount needs to be adjusted to reflect changes in CDCR's budget due to standardized staffing, as this changes the amount the state saves when felony probationers are diverted from prison. We have several concerns, however, with the way the administration proposes to accomplish these goals. Specifically, we are concerned that (1) the methodology used to adjust the baseline failure-to-prison rate relies on a flawed assumption; (2) the methodology used to determine each county's tier grant does not provide appropriate incentives to reduce probation failures to prison because it reflects both failure-to-prison and jail rates, rather than just failure to prison; (3) the revised savings

estimate does not fully capture the amount saved by the state; and (4) counties may not be receiving funding for all the felony probationers they diverted from prison.

Proposed Methodology Based on Flawed Assumption. First, we find that the administration's methodology relies on a flawed assumption to recalculate each county's baseline failure rate, which could result in erroneous grant amounts to counties. As discussed, the proposed methodology would use each county's 2012 probation failure to prison rate as a proxy for the rate at which serious, violent, and sex offenders (those still eligible for prison after realignment) were sent to prison during the baseline years of 2006 through 2008. However, the rate at which these offenders went to prison prior to the implementation of SB 678 in each county could have actually been significantly higher or lower. Consequently, under the administration's proposed formula, a county could receive a grant amount that is either larger or smaller than what it deserved based on actual changes in performance.

This potential to miscalculate each county's performance grant amount could be exacerbated by another feature of the administration's proposed methodology. Specifically, the administration plans to *annually* adjust the baseline failure rate utilizing this flawed assumption. This would mean that if a county's probation failure-to-prison rate gets progressively better, the baseline against which it is compared also gets progressively better, making it more difficult for the county to qualify for as large of a grant based on past performance. Likewise, if a county's probation failure-to-prison rate gets progressively worse, the baseline against which it is compared also gets progressively worse, making it easier for the county to qualify for a larger grant.

Ideally, the baseline failure rate could be adjusted using CDCR records of felony probationers admitted to prison in 2006 through

2008. This data could be combined with CDCR's records of these individuals' offense histories so that the offenders that would have been ineligible for prison under realignment could be removed from the baseline failure rate. We are informed, however, that this data can be unreliable for determining the precise number of felony probationers that failed while being supervised by a given county. We note that this same challenge faced the state when the original SB 678 baseline failure rates were established. At that time, the AOC, in consultation with county probation departments, used a comparison of CDCR and county records to establish a reliable baseline failure rate for each county, rather than resorting to estimates, as is proposed by the administration.

Proposed Methodology Does Not Provide Appropriate Incentives. A second issue we identify with the administration's proposed methodology is that it is problematic to establish each county's tier grants based both on the failure-to-jail *and* failure-to-prison rates, rather than based solely on the failure-to-prison rate. By including each county's failure-to-jail rate, the proposed formula is not maximizing the incentive counties have to reduce the number of felony probationers sent to prison. This is because the comparison rewards counties even if their success was achieved by reducing felony probation failures-to-jail—an outcome that does not directly benefit the state and is inconsistent with SB 678. As such, revising the grant formula in this fashion would require a change in statute, because current law specifies that each county's tier or high performance designation be based specifically on its probation failure-to-prison rate.

Revised Savings Estimate Understates Actual Savings. Third, the administration's estimate of the state savings that occurs when a probation failure is prevented—about \$10,000 per offender per year—does not include any parole savings. Estimating the amount of parole savings is difficult

under realignment because some offenders eligible for prison are released to county supervision (commonly referred to as PRCS) rather than state parole. However, since some offenders will still be eligible for parole following their release, the revised SB 678 calculation should include some estimate of parole-related savings.

The administration's state savings estimate based on its new standardized staffing model may also underestimate the true amount of prison savings created for the state under SB 678. This is because when many offenders are diverted from prison, the state avoids the cost of opening new housing facilities for inmates through activating new housing units, contracting for prison beds, or constructing new prisons. This can cost significantly more than \$10,000 per offender. Estimating how much more is difficult, however, because the state's cost would be contingent on various factors—such as the amount of excess capacity that is available to the state and what alternatives would have been utilized.

Proposal Does Not Provide Full Funding for Past Success. Fourth, an unintended consequence of the Governor's revised methodology is that it leaves a gap in funding to counties related to certain lower-level offenders. Specifically, under the proposal, counties would receive no funding—from SB 678 or from realignment funding—for lower-level probationers who had been successfully diverted from prison by SB 678 in the first half of 2010 (when the legislation was first implemented). The Governor's proposal would, appropriately, ensure counties do not get funding twice for the same lower-level offenders diverted from prison by both SB 678 and realignment. However, realignment funding was calculated based on the number of lower-level offenders in the state's prisons in mid-2010—*after* felony probationers had already begun to be diverted from prison due to SB 678. Therefore, counties would receive no funding

from either SB 678 or realignment for lower-level offenders successfully diverted by SB 678 in the first half of 2010. We estimate the number of offenders affected is probably around 1,000 to 2,000 probationers.

Whether to reimburse counties for this population is a policy choice for the Legislature to make. On the one hand, given that these offenders are generally ineligible for prison, a grant to reimburse counties for them would be unlikely to significantly reduce the number of these offenders coming to state prison. On the other hand, such a grant would help counties maintain programs that diverted similar offenders from prison, which would help sustain or expand state savings. We estimate that reimbursing counties for this population could cost the state about \$10 million to \$20 million annually relative to the Governor's proposed budget for 2013-14.

LAO Recommendation

In view of the above concerns, we recommend that the Legislature modify certain aspects of the Governor's proposal. First, we recommend that the Legislature direct AOC and CDCR to work with county probation departments to accurately calculate for each county a baseline failure-to-prison rate based on those offenders who would have been eligible for prison under realignment. In addition, we recommend that the formula for designating which SB 678 tiers counties fall into continue to be based on failure-to-prison rates rather than overall failure rates, as proposed by the administration. We also recommend that the grant amounts include parole-related savings. The Legislature should also consider whether grants should include a share of the potential prison savings achieved from not needing to open new housing facilities. Finally, as discussed above, it will be important for the Legislature to determine—both from a policy and budgetary

perspective—whether it wants to provide funding to counties for lower-level offenders diverted by SB 678 in the first half of 2010.

In summary, taking steps to address the various problems we identified with the Governor’s proposal will help ensure that counties have the appropriate fiscal incentive and funding to maintain and improve probation outcomes and reduce future state costs on an ongoing basis, as intended in SB 678.

New Medical Staffing Methodology

Background. In 2006, after finding that the state had failed to provide adequate medical care to prison inmates, the federal court in the *Plata v. Brown* case appointed a Receiver to take over the direct management and operation of the state’s prison medical care delivery system from CDCR. In 2012, the Receiver’s office informed us that it was developing a new staffing methodology for inmate medical services. According to the Receiver, the new methodology will allocate staff among prisons based on the amount and types of medical services provided at each location. As such, prisons with more inmates with medical needs and higher medical acuity levels will be allocated more medical staff than other prisons. The Receiver expects the methodology to significantly reduce the overall number of prison medical staff and result in significant savings.

In order to monitor the Receiver’s progress in implementing the new staffing methodology, the *2012-13 Budget Act* required the Receiver to report on the methodology not later than 30 days following its approval by the Department of Finance (DOF). Specifically, the Receiver is required to submit to the Legislature a report that includes (1) data on the overall number of staff allocated to each of the state’s prisons both prior to and following the implementation of the revised methodology, (2) a

detailed description of the methodology used to develop the revised staffing packages, and (3) the estimated savings or costs resulting from the revised methodology.

Governor’s Proposal. The Governor’s 2013-14 budget proposes a total of \$1.4 billion in General Fund support for the Receiver’s inmate medical care program. This includes a \$22 million reduction to account for reduced workload resulting from the 2011 realignment of lower-level offenders. (This is in addition to a \$100 million reduction for realignment in the 2012-13 budget.) At the time of this report, the Receiver’s office was unable to provide a specific plan for achieving these savings, but indicated that part of the savings will be achieved through the implementation of the new staffing plan for inmate medical services.

Receiver Implementing New Methodology, but Report to Legislature Not Forthcoming. The Receiver informs us that he is currently in the process of implementing the new staffing methodology and that over 800 positions will be eliminated in early 2013 as part of this effort. Beyond that, the Receiver has not provided any additional details on the methodology. The Receiver also informs us that he does not intend to report to the Legislature (as required by the *2012-13 Budget Act*) on the staffing methodology at this time because it has not been formally submitted to nor approved by DOF. According to the Receiver, the effect of the staffing changes on inmate medical care will be monitored over the next year and if there are no significant negative impacts, a formal budget request will be submitted to DOF in 2014-15.

The Receiver’s approach of seeking legislative approval of the staffing methodology *after* implementing it is contrary to the normal state process and circumvents the Legislature’s authority to review and approve the proposed changes. The normal state process requires departments to submit major proposed staffing and budgetary

changes for legislative review and approval *prior* to implementation so that the Legislature can ensure the changes are consistent with its priorities and will result in an appropriate expenditure of state funds. If the Receiver does not report on the new staffing plan until after it is fully implemented, it will be too late for the Legislature to take different actions if it determines that elements of the new staffing methodology are inconsistent with its priorities or will not achieve a level of savings necessary for the Receiver to meet his current- and budget-year reductions.

LAO Recommendation. For the above reasons, we recommend that the Receiver report at budget hearings on the implementation of the new methodology, including the specific items required in the *2012-13 Budget Act*. This will provide the Legislature with the opportunity to review the Receiver's changes and ensure that those changes meet legislative and budgetary priorities.

Extension of Nursing Positions for Medication Distribution

Background. In 2010-11, the Legislature approved 237 permanent nursing positions in prisons to distribute medication to inmates in a more efficient manner, including 70 positions initially approved for other purposes that were later redirected to medication distribution. Subsequently, the 2012-13 budget provided an additional 211 positions on a two-year limited termed basis, for a total of 448 nursing positions related to medication distribution.

At the time the above positions were requested, the Receiver's office indicated that the additional nursing positions were needed to reduce the use of overtime and registry nurses, which generally are more expensive than using department staff. The Receiver reported that it spent about \$51 million in 2009-10 on overtime and registry for nurses responsible for distributing medications to inmates

and that providing additional positions would result in overtime and registry savings that would more than offset the cost of the new positions. According to the Receiver, reducing the reliance on registry staff can also improve the quality of care provided to inmates. This is because registry staff is generally less familiar with CDCR processes and procedures than state employees and is less likely to be invested in meeting performance standards due to their temporary status.

The 211 positions approved in 2011-12 were limited to a two-year term for a couple of reasons. First, the Receiver was still gathering data to determine whether the nurses hired in 2010-11 were reducing the use of overtime and registry nurses. Second, the ongoing need for nursing staff had not been determined because the Receiver was implementing several operational changes with the potential to effect both the overall number of medication distribution nurses needed statewide and how these nurses are allocated among the state's prisons. These changes included the activation of new medical facilities (such as the California Health Care Facility [CHCF] and the Dewitt Annex in Stockton) and the consolidation of "medically complex" inmates—those with chronic medical treatment needs—at certain prisons with more medical clinic space and staff (often referred to as medical care "hubs").

Governor's Proposal. The Governor's budget for 2013-14 proposes to make the 211 temporary nursing positions permanent at an annual cost of \$15 million to the General Fund. According to the Receiver, the additional positions have reduced the use of overtime and registry nurses and should be continued on a permanent basis to avoid future increases in the usage of such staff. In addition, the Receiver indicates that the additional positions have improved the quality of medical care provided to inmates.

Unclear Whether General Fund Savings Achieved. Based on data provided by the Receiver, the annual usage of overtime and registry nurses for medication distribution has declined by \$32 million between 2009-10 (the year before additional nurses were approved) and 2011-12. This level of savings is equal to the \$32 million in annual costs for all of the new nursing positions added. We note, however, that the overtime and registry may decline further in 2012-13 because the Receiver did not hire all of the 211 positions until about halfway through 2011-12 and thus had to continue using overtime and registry to provide coverage for vacant positions. Thus, while the positions have not yet resulted in net savings, such savings could occur if filling the remaining positions results in additional reductions in overtime and registry costs.

Future Need of Positions Remains Unclear. The Receiver's ongoing medication distribution workload, and thus the future need for the 211 nursing positions, remains unclear. However, data provided by the Receiver indicates that the medication distribution workload is declining. Between May 2009 and the first quarter of the 2012-13 fiscal year, the number of medications distributed to inmates by nursing staff declined about 20 percent (from 84,000 to 67,000 per month). The declining workload appears to be driven primarily by two factors. First, the number of prescriptions written per inmate has decreased from 3.9 in June 2009 to 3.7 in December 2012. Second, the prison population decreased by about 31,000 inmates over the same period. This includes a decline of about 2,000 mentally ill inmates who generally receive more medications than other inmates. As a result, changes in the mentally ill inmate population have a relatively greater impact on medication distribution workload. While it is unclear whether the number of prescriptions per inmate will continue to decline, CDCR is

projecting a slight decline in the prison population in 2013-14 (including a decline in the mentally ill inmate population), which would further reduce medication distribution workload. If the department is required to reduce its inmate population further to comply with the three-judge panel order, the reduction in medication distribution workload could be even more significant.

In addition to the declining workload, several of the Receiver's major initiatives that could potentially impact the need for medication distribution nurses remain incomplete. For example, the CHCF and Dewitt facilities are not scheduled to be fully activated until December 2013 and May 2014, respectively. In addition, the Receiver reports that the consolidation of medically complex inmates at medical hubs is only about halfway complete and will not be finished for a couple of years. These changes will involve the transfer of thousands of medically complex inmates, many of whom require multiple medications, throughout the prison system. As the Receiver reallocates nursing staff among prisons to deliver medication to these inmates, there may be opportunities for the Receiver to achieve efficiencies that would decrease the overall staffing need. Thus, until these operational changes are complete it will be difficult to determine what effect they might have on the ongoing need for the 211 nursing positions.

According to the Receiver's office, the reduction in workload to date has not been accompanied by a commensurate reduction in staffing. This is because of the way the office has allocated staff among prisons and among yards within prisons. Specifically, the Receiver utilizes a tiered staffing system for medication management positions that assumes, for example, there only needs to be one nurse to serve between 1 and 75 inmates requiring medications on a particular prison

yard while two staff are needed to serve 76 to 150 inmate patients. Therefore, a decline from 50 to 25 inmates receiving medication on a yard would not change the number of nursing positions required. Moreover, the Receiver claims that in the future the new staffing methodology (as mentioned earlier in this report) will make annual adjustments to nursing staff levels to account for reductions in the inmate population and future operational changes. However, it is impossible to evaluate this claim because the Receiver has not provided any details on the new staffing methodology. As mentioned earlier, the methodology has yet to be approved by the Legislature or DOF.

Quality of Care Likely Improved. The Receiver's claim that the additional nursing positions has increased the quality of care delivered to inmates (such as by reducing instances where inmates are administered incorrect medications or inaccurate medications doses) probably has merit, and high reliance on overtime and registry could lead to more medication administration errors. For example, nurses working overtime could be more prone to lapses in judgment due to fatigue from working long hours. Registry nurses in general are probably less familiar with state processes than state employees, which could make them more likely to make procedural errors. The Receiver's office has provided some limited data showing improvements in quantitative assessments of how well prisons are adhering to medication distribution protocols. Based on periodic inspections by the OIG, the most recent reviews at nine selected prisons showed that scores related to medication distribution improved by an average of 21 percentage points.

LAO Recommendation. We withhold recommendation on the administration's proposal to make the 211 nursing positions for medication distribution permanent until the Receiver has reported on the staffing methodology

he is currently in the process of implementing. Medication management workload has declined by 20 percent since 2009, and further decreases in workload are likely as the prison population continues to decline and the Receiver implements various other changes that should result in greater efficiencies. Despite the past and anticipated declines in workload, the Receiver has been unable to identify any staffing reductions and now proposes to make the current staffing levels permanent. We acknowledge that the quality of inmate care has likely improved in part because of the additional nursing positions added since 2010-11. However, in our view, it is reasonable to expect that further declines in workload could be accompanied with staffing reductions without compromising the quality of care. The Receiver is currently implementing a staffing methodology to reallocate medical staff, including nurses for medication distribution. Until the Receiver reports on the new methodology—including how it will modify medication management staffing and make future adjustments for workload changes—it is unclear how many of the 211 nursing positions are needed on an ongoing basis.

Juvenile Population Adjustments

Background. In preparing the proposed budget for DJJ, the administration typically relies on projections of the ward population prepared by CDCR. These projections inform the level of staffing and other expenditures that will be required in the current and budget years to supervise and provide services to DJJ wards. The department prepares these projections twice a year. The fall projections inform the administration's January budget proposal. The spring projections are used to adjust the proposed budget for the May Revision.

Figure 17 shows the actual average daily population in DJJ facilities for the past five years, as well as the department’s most recent population projections through the end of 2016-17. As shown in the figure, the DJJ ward population has declined in recent years due mostly to various legislative changes (such as limiting the types of offenses eligible for DJJ commitment) and a decline in juvenile crime. The department projects that the average daily population in DJJ will continue to decline in coming years, from 835 wards in 2012-13 to 734 in 2013-14 and 676 wards in 2016-17.

Governor’s Proposal. The Governor’s budget provides a total of \$186 million, including \$173 million from the General Fund, for DJJ in 2013-14. The budget reflects General Fund reductions of \$3.1 million in 2012-13 and \$2.2 million in 2013-14 due to projected decreases in the ward population. Specifically, the Governor’s budget assumes a current-year population of 871

wards and a budget-year population of 913 wards, a reduction in both years compared to the population of 992 wards assumed in the *2012-13 Budget Act*.

Proposed DJJ Population and Funding Likely Too High. We identify two concerns with the Governor’s budget proposal for DJJ. First, the proposed budget assumes higher DJJ populations than recent projections indicate will likely occur in both the current and budget years. Specifically, the budget proposal reflects a population of 871 wards in 2012-13, which is 36 wards more than CDCR’s most recent projections. For 2013-14, the budget assumes a population of 913, which is 179 wards more than the department projected.

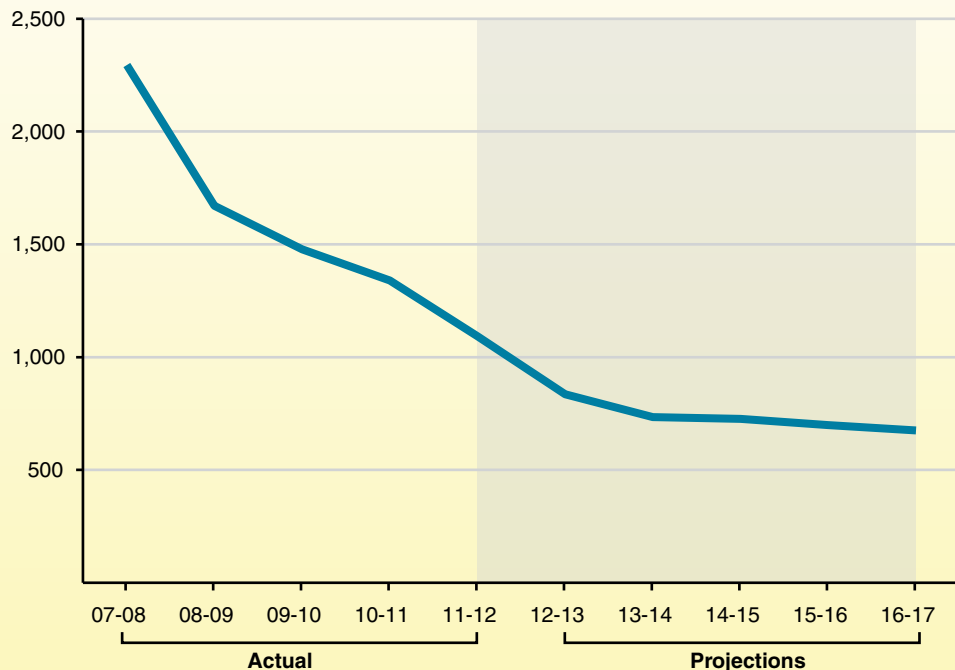
The administration states that the reason for including higher-than-projected population assumptions in the budget is that it expects DJJ admissions from counties to begin increasing in coming months. The administration suggests that many county officials mistakenly believe that

the fee charged to counties for sending most offenders to DJJ is higher than it actually is. Although the 2011-12 budget included an increase in the DJJ commitment fee from an average of about \$6,100 to \$125,000 for most wards, the increased amount was never collected and was eliminated as part of the 2012-13 budget.

Figure 17

Division of Juvenile Justice Population Continues to Decline

Average Daily Ward Population



The 2012-13 budget did, however, increase the fee to \$24,000 for most wards. The administration suggests that DJJ admissions will increase as counties receive clarification about the actual amount of the fee. According to the administration, the higher population assumptions in the budget proposal reflect this effect, which was not incorporated into CDCR's fall projections.

While we find some anecdotal evidence of confusion among county officials, the likely effect of this confusion on the DJJ population is difficult to quantify, and likely does not warrant as large a deviation from the department's fall projections as that assumed in the Governor's budget. To the contrary, CDCR's projections have, as of February 2013, accurately predicted the average current-year population within one percent. As such, we believe the Governor's budget likely overestimates the DJJ population in both the current and budget years, and therefore understates the likely savings from staff reductions by a couple million dollars in both years. The exact amount of savings would depend in large part on when different housing units could be deactivated.

Second, we find that the budget proposal does not fully account for non-staff related expenses associated with the reduced population. Specifically, while the budget reflects savings from a reduction in positions, it does not appear to take into account savings from the lower costs of food, clothing, pharmaceuticals, contract medical services, or certain other expenditures directly resulting from a smaller ward population. Based on DJJ's reported expenditures for 2011-12, these costs amount to about \$6,000 per ward each year. Based on the department's fall projections, this translates into an additional General Fund savings of about \$1 million in 2012-13 and \$2 million in 2013-14.

LAO Recommendation. In view of the above concerns, we recommend that the Legislature withhold action on the Governor's DJJ population

request until the May Revision. At that time, we will evaluate the administration's revised population proposal to ensure that it (1) is consistent with the latest population trends, and (2) fully incorporates reductions in non-staff expenditures directly resulting from the decreasing ward population.

Capital Outlay

DeWitt Annex Project

Background. The DeWitt Annex in Stockton is a former state youth correctional facility being renovated to house adult offenders. The facility is scheduled to be open in March 2014. The facility is sited adjacent to the CHCF, which is also currently under construction. While CHCF is designed to provide long-term care to seriously ill inmates, the DeWitt Annex would be used to house inmates who have less serious conditions but still require regular medical and mental health treatment. According to CDCR, many of the inmates housed at DeWitt will require frequent medical appointments and treatment services that will be provided at CHCF. In addition, many of CHCF's inmate workers will be housed at DeWitt. Though adjacent, the original designs for CHCF and DeWitt included separate electric fences for each facility.

Governor's Proposal. The proposed budget for 2013-14 includes \$16.2 million and 135.4 positions for the activation of the DeWitt Annex, which would increase to \$36.6 million and 333.5 positions upon full implementation by 2014-15. This reflects costs related to administrative, security, health care, and support staff, as well as the equipment and supplies necessary to operate the facility.

Recent Scope Change Would Result in Reduced Operating Costs. On January 17, 2013 (after release of the Governor's budget), CDCR requested that the scope for the DeWitt project be modified. Specifically, the department requested an

additional \$4.3 million to connect the electric fence planned for the DeWitt Annex with the electric fence being constructed at CHCF, resulting in a single electric fence rather than separate fences. According to the department, installing a single fence around both facilities would permit a more efficient movement of inmates and staff between the facilities. This is because inmates and staff moving between facilities would not have to go through as many security check points, and inmates generally would not have to be placed in restraints and escorted by as many officers. Consequently, the department estimates that the single electric fence will eliminate the need for nine positions at DeWitt. Thus, relative to the Governor's budget, eliminating these positions will create \$403,000 in General Fund savings in 2013-14 and \$967,000 in annual savings once the DeWitt Annex is fully operational.

LAO Recommendation. We recommend that the Legislature adjust the budget request for the DeWitt Annex to recognize the savings created by building a single electrified fence. Specifically, we recommend the Legislature reduce CDCR's proposed budget for 2013-14 by 3.8 positions and \$403,000.

Mule Creek State Prison Staircase

Background. The central control building at Mule Creek State Prison in Ione houses a main control room with an adjacent roof access room. The main control room is the central storage and distribution point for lethal weapons, while the roof access room is used by some staff to reach the roof or their posts. When reaching the roof through the access room, staff must use a steeply angled "ship's ladder," which poses safety risks. This is because staff could fall off the ladder, including while carrying weapons or tools. Since 2000, CDCR reports that several employees have been injured while using the ladder.

Governor's Proposal. The Governor's budget proposes using \$600,000 in general obligation bond funds remaining in the 1988 Prison Construction Fund to construct an enclosed 20-step staircase that would provide safer access to the roof from the main control room. The proposed project would be completed under CDCR's Inmate Ward Labor program. Thus, inmate workers will do much of the fabrication and installation work on the project under the supervision of CDCR employees and privately-contracted laborers. The project is estimated to take work days to complete.

Project Cost Likely Overstated. Of the \$600,000 in funding proposed for the project, about \$347,000 is for labor costs and \$253,000 is for materials and other expenses. Many of these costs—especially the labor costs—are directly the result of the project's total estimated timeline. This includes an assumption that the staircase and its protective security fencing will take 110 work days—almost half a year—to install after they are fabricated. To date, the department has not provided our office with information demonstrating why such a significant amount of installation time is necessary.

LAO Recommendation. While we acknowledge that an alternative access to the roof is needed to replace the potentially unsafe ship's ladder, we recommend that the Legislature withhold action on the project at this time and require CDCR to report at budget hearings this spring on why the project cannot be completed in a more timely fashion and at a lower cost.

Eliminate AB 900 General Fund Appropriation

Background. Chapter 7, Statutes of 2007 (AB 900, Solorio), among other changes, authorized \$6.5 billion for prison construction and improvement initiatives intended to relieve overcrowding in state prisons. Of this amount, \$6.2 billion was lease-revenue bond authority

for the construction of additional prison beds—including new “infill” facilities built at existing prisons—and health care improvement projects. The balance was a \$300 million appropriation from the General Fund to renovate, improve, or expand sewage, water, and other types of infrastructure capacity at existing prison facilities. In subsequent years, the allowable uses of the General Fund appropriation were expanded in statute to include, for example, the design or construction of prison dental and medication distribution improvements.

Subsequent legislation also exempted projects funded by the General Fund appropriation from the state’s traditional capital outlay approval process that requires the Legislature to approve funding for capital projects as part of its annual budget deliberations. Instead, CDCR was only required to provide the Joint Legislative Budget Committee (JLBC) with a notification when the department intended to use the General Fund appropriation for a project. The CDCR had to provide this notification at least 30 days prior to submitting the project’s scope to the State Public Works Board (SPWB) for initial approval. If JLBC did not raise concerns with the project, it was deemed approved by the Legislature. Similarly, CDCR was required to provide preliminary plans to JLBC 45 days in advance of submitting them to SPWB. These two processes were put in place to expedite the approval process for these types of projects, given the state’s overcrowded prisons and the potential for sewage, water, and other infrastructure systems to become more overloaded with the construction of the new infill facilities originally included in the AB 900 construction plan. Budget trailer legislation that was part of the 2012-13 budget package further expedited this approval process. Generally, current law now only requires CDCR to notify the JLBC simultaneously with (rather than in advance of) the department’s submission of one of these projects to SPWB for

approval. In addition, current law does not require CDCR to wait to find out whether JLBC has any concerns with the project before moving forward with a project funded by the AB 900 General Fund appropriation.

As previously indicated, CDCR released a reorganization plan in response to the effects of the 2011 realignment of adult offenders. This report included a proposal—later approved by the Legislature—to eliminate \$4.1 billion of the lease-revenue bond authority remaining for AB 900 projects. The General Fund appropriation amount, however, was not modified.

Governor’s Proposal. Currently, about \$110 million of the original \$300 million General Fund appropriation in AB 900 remains unspent. The Governor’s budget proposes to spend about \$10 million of this amount in 2013-14, but has not identified what specific projects the funds will be spent on.

General Fund Appropriation Unnecessary and Limits Legislative Oversight. We find that there remains little justification for the expedited approval process for CDCR infrastructure and other projects that can be funded from the continuation of the AB 900 General Fund appropriation. The primary reasons for providing the expedited process—significant prison overcrowding, the need to accommodate additional infill construction, and the need to fund dental and medication distribution improvements—no longer exist. In addition, the current review process for these projects effectively eliminates the Legislature’s ability to conduct oversight of them. Finally, restricting the use of the General Fund appropriation to CDCR limits the Legislature’s budgetary flexibility.

Since the passage of AB 900, there has been a dramatic decline in the state’s prison population largely caused by the 2011 realignment, which shifted responsibility for housing various offenders

from the state to the counties. The state's prison population is expected to be about 128,000 by the end of 2013-14—about 44,000 inmates less than the prison population when AB 900 was enacted in 2007. In addition, the funding for the dental, medication distribution, and infrastructure improvements needed to support the construction projects that CDCR is moving forward with has already been approved.

Moreover, exempting projects funded by the AB 900 General Fund appropriation from the state's traditional capital project approval process largely removes the Legislature's ability to conduct oversight of the projects. In a normal capital outlay approval process, the Legislature reviews and approves a project at multiple stages, which allows the Legislature to conduct oversight of a project and even terminate it if there are problems or if the project no longer meets legislative priorities. Under

current law, however, the Legislature does not have such oversight opportunities for projects funded from the AB 900 appropriation. Also, by restricting the use of the appropriation to CDCR, current law further limits the ability of the Legislature to use these funds for other, potentially more critical priorities that may exist on a statewide basis.

LAO Recommendation. In view of the above, we recommend that the Legislature adopt trailer bill legislation to revert the remaining \$110 million from the AB 900 General Fund appropriation to the state General Fund. This will effectively result in having CDCR's infrastructure projects being subject to the state's traditional capital outlay approval process. This will increase legislative oversight of CDCR's infrastructure improvement projects and allow the Legislature to determine the use of the funds currently in the AB 900 General Fund appropriation based on its own priorities.

BOARD OF STATE AND COMMUNITY CORRECTIONS

Overview

Chapter 36, Statutes of 2011 (SB 92, Committee on Budget and Fiscal Review), established the BSCC, effective July 1, 2012. From 2005 through 2012, BSCC was the Correction Standards Authority, a division of CDCR. Prior to that it was the Board of Corrections, an independent state department. The BSCC is responsible for administering various criminal justice grant programs and ensuring compliance with state and federal standards in the operation of local correctional facilities. It is also responsible for providing technical assistance to local authorities and collecting data related to the outcomes of criminal justice policies and practices.

As shown in Figure 18, the Governor's budget includes \$129 million from all funds for BSCC in 2013-14, a decrease of about \$4.5 million (3 percent)

from the revised estimate of 2012-13 expenditures. This net reduction is due mostly to expected reductions in federal grant funding that BSCC administers. The budget includes \$44 million in General Fund support for BSCC in 2013-14, an increase of about \$3 million (7 percent) over the current year, due mostly to a proposed increase in law enforcement grants to cities. The budget proposes 80.8 positions for 2013-14, an increase of 10.5 over the current year.

Technical Assistance and Data Collection

In creating BSCC, the Legislature added two responsibilities to the board's core mission:

- (1) assisting local entities to adopt best practices to improve criminal justice outcomes and
- (2) collecting and analyzing data related to criminal

justice outcomes in the state. While adding to its mission, the Legislature did not specifically lay out in statute BSCC’s responsibilities, largely leaving it to the board to craft its own operational plan for meeting the statutory objectives.

Governor’s Proposal

The Governor’s budget proposes an additional nine positions for BSCC, including two administrative support positions, two positions to support additional workload from a recently approved jail construction funding program, and five research positions to establish a new research unit. These positions are estimated to cost a total of about \$870,000 and are proposed to be funded by redirecting existing funds within BSCC’s budget, thereby resulting in no additional cost in the budget year.

According to the administration, the two proposed administrative positions would provide support to the board that was previously provided by CDCR prior to BSCC becoming a separate state entity. According to the board, the new research unit would be tasked with revising BSCC’s correctional surveys, managing the collection of data, as well as developing and carrying out a research agenda. The BSCC also plans to utilize these researchers to help develop a web-based reporting system for counties to submit correctional data, as well as an online dashboard to make the data more readily available

to the public. The Governor’s budget does not include provisional language that is in the 2012-13 Budget Act which requires BSCC to report quarterly to the Legislature on its workload, staffing, and progress toward fulfilling its new data and technical assistance-related responsibilities.

LAO Assessment of BSCC’s Technical Assistance and Data Collection Efforts

The additional positions proposed in the Governor’s budget, specifically those that would form the new research unit, are designed to help BSCC fulfill its new missions. Below, we assess BSCC’s progress to date at fulfilling its technical assistance and data collection missions and suggest how the board might improve. Specifically, we believe more needs to be done in order to (1) provide proactive technical assistance to local officials, (2) improve data collection in the near term, and (3) develop a longer-term data collection strategy that allows policymakers and stakeholders to meaningfully evaluate the outcomes of criminal justice policies and programs.

Proactive Technical Assistance Still Needed.

The Legislature gave BSCC the mission of providing technical assistance to counties with the goal of encouraging evidence-based programs that improve criminal justice outcomes cost-effectively. Based on reports from BSCC and our conversations with county stakeholders, BSCC has not yet

Figure 18

Total Expenditures for Board of State and Community Corrections

(Dollars in Millions)

	2012-13	2013-14	Change From 2012-13	
	Estimated	Proposed	Amount	Percent
Administration, research, and program support	\$2.7	\$4.0	\$1.3	49.2%
Corrections planning and grant programs	105.1	99.7	-5.2	-5.2
Local facility standards, operations and construction	3.7	3.4	-0.4	-9.9
Standards and training for local corrections	22.1	22.1	—	—
Totals	\$133.7	\$129.2	-\$4.5	-3.4%

played an active role in facilitating the adoption of evidence-based programs. Instead, the board plans to respond to requests for assistance from local agencies as requests arise. However, we believe more is required in order to fulfill the Legislature's intent when giving BSCC its technical assistance mission, which was to proactively encourage and facilitate the adoption of evidence-based practices across the state.

Conducting proactive outreach and training for county stakeholders would help encourage the adoption of promising programs. This might include, for example, organizing presentations for local officials about new research and program models. In addition, BSCC could help identify successful program models and regularly update a compilation of the relevant literature in an online clearinghouse that could be accessed by local program administrators and the public. For example, the Office of Justice Programs in the U.S. DOJ maintains a web site that presents research-based evaluations of different criminal justice programs from across the country. The BSCC could provide a similar resource tailored toward the specific needs of California's counties by focusing on research in California or by identifying how to adapt program models from other states to the specific requirements of California's laws and regulations.

In addition to encouraging the adoption of evidence-based programs, ensuring proper implementation is also critical to achieving successful outcomes. County officials looking to implement new programs typically consult their counterparts in other jurisdictions—both in California and other states—to learn how new programs are implemented and evaluated. A key challenge, however, is adapting these programs to fit within different organizations in different communities with varied needs and priorities. We have heard from several experts who emphasize

the importance of proper implementation to the success of a new program, especially when the program represents a significant change in strategy for the organization implementing it. The BSCC could assist local agencies to successfully implement programs in various ways. This could include conducting training sessions for local agencies, such as on how to conduct risk assessments objectively or match program participants with appropriate services. The BSCC could also provide on-site assistance in implementing new programs. For example, BSCC field representatives could work with a county trying to establish a pretrial release program to more effectively manage its jail population while reducing the public safety risk to the community. The BSCC could also assist county agencies who want to evaluate the effectiveness of their existing programs. This could include, for example, training counties on how to conduct fidelity assessments—evaluations that determine how well a program is adhering to its best practices guidelines—in order to ensure program effectiveness. In many cases, it may not be necessary for BSCC to carry out all of these duties directly, but it could instead provide counties with information about which researchers, practitioners, and universities offer those services in California.

Near-Term Data Collection Strategy Limited.

Currently, BSCC distributes monthly and quarterly jail surveys to sheriffs, who report various statistics about their inmate populations—such as the number of inmates who are awaiting sentencing, receive medication, or are housed under contract with the federal government. In early 2012, BSCC released an addendum to its monthly jail survey, which was designed to collect additional information related to the implementation of 2011 realignment. The addendum includes questions on the number of realigned felons sentenced to jail, offenders on PRCS who were sentenced to jail for

committing new crimes, and state parolees who were booked into jail for technical violations. The BSCC recently issued a short-term strategic plan that identifies some data collection goals including refining this survey to provide some additional information. The BSCC also plans to create an online dashboard to make the survey results accessible to the public.

While expanding the survey and making data available online are positive steps, BSCC could make further progress in its data collection efforts. We note, for example, that, while BSCC's existing survey data provide some useful, basic statistics about jail populations, the data are otherwise incomplete. The surveys do not collect much information on local agencies' outcomes, such as completion rates for treatment programs or offender recidivism rates. In addition, the survey addendum related to realignment is limited because it does not collect the full range of caseload information that would help to assess realignment's effects. For example, the survey records the number of PRCS offenders who are sentenced or booked in jail each month due to a violation or new crime, but it does not include the average daily population of PRCS offenders in jail, making it difficult to assess how much additional pressure PRCS offenders are putting on jail overcrowding or resources. We also find that BSCC's current strategic plan is limited because it does not identify what changes to its existing surveys it plans to make, nor does it identify specific research questions it thinks should be prioritized to evaluate the impacts of realignment or other state and local corrections programs. So, it is unclear where BSCC will focus its research efforts in the near term.

The Governor's proposal to establish a research unit at BSCC is a positive step toward meeting its data mission in statute. The requested positions should be valuable in helping BSCC address some of the above concerns, such as the need to create

a research plan and improve its current data collection efforts.

Longer-Term Data Collection Strategy Needed to Overcome Challenges. We are also concerned that BSCC has not yet developed a longer-term plan to fulfill its data collection mission. Developing a longer-term data collection strategy could promote better public safety by ensuring that policymakers have useful information they need to make decisions about programs, policies, and funding priorities. Importantly, however, BSCC's role in data collection should be focused, in particular, on providing *local* accountability. To the extent that useful information is available to local stakeholders—corrections managers, county elected officials, local media, and the public—local governments can be held accountable for their outcomes and expenditures. Because decisions about how to manage most corrections populations are inherently local decisions, the focus of accountability should be local. For this reason, the role of BSCC in the long term should not principally be to collect data for the sake of informing the state of what is happening locally. Instead, the role of BSCC should be to facilitate local accountability, such as by providing transparency and uniformity in how local entities report outcomes. Of course, a focus on local data and accountability can benefit state policymakers as well, by providing them more detailed information about how policies enacted at the state level are being implemented at the local level.

Data-Collecting Challenges. There will likely be a number challenges in BSCC fulfilling a longer-term data collection mission.

- ***Collecting Data on a Consistent Basis.*** First, data are currently collected in different ways, using different definitions, and with varying levels of completeness, across a multitude of county and state agencies. An example of this variation is

that agencies frequently measure offender recidivism in different ways, depending, for example, on what length of time they track offenders, whether they count rearrest or reconviction as recidivism, and whether they continue to track offenders after they are discharged from supervision. Many of these agencies, even within a single county, also use different methods of recording these data—ranging from sophisticated computer case management systems to paper files—making the sharing of information more difficult. For example, a probation department often will not know when former probationers have been rearrested or reconvicted, making it difficult to measure the longer-term recidivism outcomes of people on their caseloads.

- ***Lack of Good Outcome Data.*** Second, much of the data reported by local agencies focuses on caseloads rather than outcomes. For example, state agencies collect data on the number of jail inmates and probationers under local jurisdiction, but local agencies rarely report to the state on outcome data such as the rate at which probationers successfully complete probation or fail drug treatment or other programs. Because sharing information between agencies can be challenging, as described above, it is often difficult for local agencies to integrate outcome data with caseload or program data. Consequently, state and local policymakers often are left with only limited information about the effectiveness of their programs.
- ***Lack of Individual-Level Data.*** Third, most data currently collected by state agencies are aggregate—rather than

individual—level data. For example, BSCC’s jail survey collects the total number of jail inmates in custody on an average day, but does not collect information about specific inmates. While aggregate-level data can provide useful information about trends, they are insufficient to evaluate the effects of specific programs because they do not allow one to distinguish between the impact of the program versus the effects of other factors. For example, if a local program administrator wanted to compare the effectiveness of their county’s substance abuse treatment program with a similar program in a neighboring county, it would not be sufficient to simply compare the aggregate recidivism rates of the two programs. Even if one program had a significantly higher recidivism rate than the other, looking only at the aggregate recidivism rate would not tell you whether other factors—such as the criminal record, substance abuse history, or other characteristics of the program participants—accounted for the difference in recidivism.

Ultimately, providing local and state policymakers with the type of data that would allow meaningful evaluation and comparison of the outcomes of different programs and policies will require significant effort. Ideally, the data collection processes used by state and local agencies would ensure uniformity across the state, easy transfer of data between agencies, accurate recording of offenders’ outcomes, and access to individual-level data. This could include deployment of a statewide case management system, though such an endeavor would take years to complete and likely be very expensive. (For more discussion about BSCC’s potential role in facilitating local accountability through data collection efforts, see our February

2012 publication, *The 2012-13 Budget: The 2011 Realignment of Adult Offenders—An Update*.)

LAO Recommendations

We offer several recommendations to help ensure BSCC's progress in fulfilling its new mission to provide technical assistance and collect the necessary data to evaluate criminal justice policies and practices.

Technical Assistance Plan. We recommend that the Legislature direct BSCC to submit, by January 1, 2014, a technical assistance plan that includes (1) a description of specific educational programs, training sessions, outreach visits, and on-site technical assistance that BSCC will provide to local governments, as well as a timeline for when these services will be available; and (2) a timeline for creating and maintaining an online clearinghouse that would make literature related to implementing evidence-based criminal justice programs available to state and local practitioners.

Report on Near-Term Data Collection Strategy. We recommend that the Legislature approve the Governor's proposal for additional staffing in BSCC. In particular, we find the additional research staff proposed would help ensure that BSCC has qualified staff to pursue its data collection mission. We further recommend that BSCC report at budget hearings on its near-term data collection plan, including how the board plans to utilize its new research unit and what specific changes it plans to make to its data collection instruments.

Longer-Term Data Working Group. We recommend directing BSCC to convene a working group to identify a data and accountability system that is as comprehensive, uniform, and accessible as is reasonable given limited state and local resources. This would include (1) identifying the key outcomes and other measures that all counties should collect, (2) clearly defining these measures

to ensure that all counties collect them uniformly, and (3) developing a process for counties to report the data and for BSCC to make the data available to the public. This should include exploring the feasibility of developing a more comprehensive statewide case management system, including determining the overall costs, potential funding sources, implementation challenges, and the potential fiscal and programmatic benefits to counties. The working group should include representatives from state and local criminal justice agencies, the Legislature, the courts, state agencies with information technology expertise, and the research community. We also recommend the Legislature adopt budget bill language directing the working group to prepare a report detailing its findings by no later than December 1, 2014.

Expansion of Grants to City Police

Background. California's 481 cities are responsible for providing police services within their borders. In total, cities spent about \$9.6 billion in 2010-11 on police-related operational costs. While most cities operate their own police departments, about 150 cities contract with their county sheriffs to provide police protection.

As part of the 2012-13 budget package, the Legislature approved \$20 million annually from the General Fund for three years to provide grants to city police departments. The purpose of these grants is to help mitigate the effects of local budget reductions on police services caused by the recent economic decline. The *2012-13 Budget Act* includes provisional language specifying that grant funding shall be allocated to city police departments as determined by BSCC in consultation with DOF.

Governor's Proposal. The Governor's proposed budget for BSCC includes a \$7.5 million General Fund augmentation to the police grant program, bringing total funding to \$27.5 million

in 2013-14 and 2014-15. (The budget also reflects a current-year request to transfer \$4 million from Item 9840 to BSCC to augment this program.) The administration also proposes budget bill language to (1) allocate funds to cities (rather than city police departments) to be used for law enforcement purposes and (2) give DOF (rather than BSCC) the responsibility for allocating the funds.

According to DOF, the primary purpose of the requested \$7.5 million augmentation in the budget year is to provide additional financial assistance to cities. In addition, the administration suggests that, because the 2012-13 budget specifically allocates funds to city police departments, cities that contract for police services in lieu of operating their own departments have been inadvertently excluded from receiving any share of the grant funds. The proposed budget bill language to allocate funds to cities (rather than city police departments) would clarify that all cities are eligible to receive a share of the funds. The administration states that the proposed augmentation would allow grants to be provided to more cities, including those without their own police departments, without reducing the level of funding to current grant recipients.

Augmentation Not Justified and Unnecessary to Address Administration's Concerns. We identify two concerns with the administration's proposed augmentation. First, while the administration cites continued constraints on city budgets caused by the economic decline as the primary reason for the proposal, it has not provided a rationale for why an augmentation of the proposed amount is appropriate. Moreover, the Governor's proposal would not necessarily allocate funds to cities based on their level of economic hardship or recent reductions to police services. While the administration's rationale for establishing the grant program was unrelated to 2011 realignment, its current-year allocation was based on counties' projected share of realigned parolees, not on an

evaluation of need or hardship. In addition, these grants could be used by cities to supplant current police funding, which would simply shift a funding burden to the state without necessarily increasing the level of police services.

Second, we find that an augmentation is not necessary to ensure that current grant recipients receive the same share of the \$20 million total grant amount in 2012-13 and 2013-14 even if eligibility were expanded to contracting cities. This is because BSCC appears to have found a way to ensure that most of these cities are eligible to receive a share of the funds in the current year. Specifically, BSCC determined that it could provide the funding to a designated police department in each county, which would then allocate the funds to other cities in that county, including those cities that contract with county sheriffs for police services. Therefore, an augmentation is not necessary to ensure that both types of cities—those with and those without their own police departments—can receive funding in 2012-13 and 2013-14. (We note, however, that there are two cities—Loyalton and Portola—that would be newly eligible to receive grants in 2013-14, but because their counties do not contain any police departments to act as a grant recipient in the current year, they cannot receive any funding in 2012-13. The total expenditures on police services in 2010-11 by these cities was less than \$200,000 combined.)

LAO Recommendations. In light of these concerns, we recommend that the Legislature reject the Governor's proposal to augment the police grants program by \$7.5 million. We do, however, recommend approval of the proposed budget bill language clarifying that all cities, including those that contract for police services, are eligible to receive a share of the grant funds. While we have no specific concerns with the proposal to shift from BSCC to DOF responsibility for allocating the grants, we recommend that the Legislature

adopt budget bill language requiring DOF to report its allocation schedule and methodology to the Legislature.

Update on Jail Construction Funding Program

Background. Since 2007, the Legislature has approved two measures authorizing a total of \$1.7 billion in lease-revenue bonds to fund the construction and modification of county jails. Assembly Bill 900 provided \$1.2 billion to help counties address jail overcrowding. Chapter 42, Statutes of 2012 (SB 1022, Committee on Budget and Fiscal Review), authorized an additional \$500 million to help counties construct and modify jails to accommodate longer-term inmates who would be shifted to county responsibility under the 2011 realignment of lower-level offenders. The BSCC is responsible for managing the jail construction funding program authorized by these measures, which includes developing requests for proposals, rating applications, awarding and administering funds, and overseeing compliance with the conditions of the awards. The SPWB is tasked with issuing the bonds, as well as approving and overseeing the scope and cost of approved projects.

Assembly Bill 900, as amended by subsequent legislation, authorized funding in two phases. Under the first phase, AB 900 required counties applying for a grant to fund at least 25 percent of the construction project's costs. In deciding which counties would be awarded funding under the first phase, the bill required the state to give preference to those counties that agreed to help site a state reentry facility or provide mental health treatment to former parolees. (The Legislature later eliminated funding for the construction of state reentry facilities, and counties who received awards

were not required to fulfill this requirement.) Counties receiving funds under the second phase of AB 900 must provide a 10 percent match, and preference for awards was given to counties who committed the most inmates to state prison in 2010. Counties applying for jail construction funding under Chapter 42 will have to provide a 10 percent match, and awards will be given to counties who are determined by BSCC to be the most prepared to successfully proceed with their projects in a timely manner. Under both AB 900 and Chapter 42, counties with populations of less than 200,000 can request an exemption from the statutorily required match.

All AB 900 Projects Are Approved. Figure 19 (see next page) provides an overview of the status of jail construction projects. As indicated in the figure, BSCC has approved 22 jail construction projects under the first two phases of AB 900 to date. The BSCC estimates that these projects will construct a total of about 10,900 jail beds, as well as make facility improvements at existing jails. Some of these jail construction projects will replace existing facilities.

Of the 22 AB 900 projects approved by BSCC, 1 has been completed, 4 are under construction, 4 have been approved by SPWB but are not yet under construction, and 13 have not yet been approved by SPWB. The first project—in Madera County—was completed in February 2013. The BSCC has not yet released its request for project proposals for Chapter 42 projects. The BSCC estimates that it will approve county proposals in July 2013. Based on the number of beds that will be constructed with the second phase of AB 900 funding, we estimate that the Chapter 42 projects will construct about 3,800 beds, though this will depend on the specific proposals that BSCC approves.

DEPARTMENT OF JUSTICE

Overview

The California DOJ, under the direction of the Attorney General, provides legal services to state entities, brings lawsuits to enforce public rights, and carries out various law enforcement activities. The DOJ also collects criminal justice

statistics from local authorities; manages the statewide criminal history database; and conducts background checks required for employment, licensing, and other purposes.

As shown in Figure 20, the Governor’s budget for 2013-14 proposes \$754 million from

all funds to support the three main divisions at DOJ—Legal Services, Law Enforcement, and California Justice Information Services. This amount is \$27 million, or nearly 4 percent, above the revised estimated expenditures for 2012-13. Of the total budget proposed for DOJ in 2013-14, \$174 million is from the General Fund. This is an increase of \$7.5 million, or nearly 5 percent, from the 2012-13 level. The proposed increase in DOJ’s total budget primarily is due to the expiration of one-time employee compensation reductions from 2012-13, the transfer of additional gambling oversight responsibilities to DOJ, and increased workload related to firearms eligibility background checks.

Figure 19
Overview of State-Funded Jail Construction Projects

(Dollars in Millions)

County	Award Amount	Beds to Be Constructed	Estimated Completion Date
AB 900^a (Phase I)			
Madera	\$30	144	February 2013
Calaveras	26	160	May 2013
San Bernardino	100	1,368	August 2013
Solano	62	362	April 2014
San Diego	100	1,270	2016
San Luis Obispo	25	198	2016
Amador	23	165	TBD
San Joaquin	80	1,280	TBD
Subtotals	(\$446)	(4,947)	
AB 900 (Phase II)			
Kings	\$33	252	April 2016
Stanislaus	80	456	December 2016
Santa Barbara	80	376	February 2018
Imperial	33	232	TBD
Kern	100	790	TBD
Los Angeles	100	1,024	TBD
Madera	3	1	TBD
Monterey	36	288	TBD
Orange	100	512	TBD
Riverside	100	1,250	TBD
San Benito	15	60	TBD
Siskiyou	24	150	TBD
Sutter	10	42	TBD
Tulare	60	514	TBD
Subtotals	(\$774)	(5,947)	
Chapter 42^b			
TBD	\$500	3,800 ^c	TBD
Totals	\$1,720	14,694	

^a Chapter 7, Statutes of 2007 (AB 900, Solorio).

^b Chapter 42, Statutes of 2012 (SB 1022, Committee on Budget and Fiscal Review).

^c Estimate based on average cost per bed of AB 900 Phase II. Actual number will depend on specific proposals approved by Board of State and Community Corrections.

Figure 20**Total Expenditures for the Department of Justice***(Dollars in Millions)*

	Actual 2011-12	Estimated 2012-13	Proposed 2013-14	Change From 2012-13	
				Amount	Percent
Legal Services	\$372	\$398	\$409	\$11	2.8%
Law Enforcement	188	191	200	9	4.7
California Justice Information Services	142	156	162	6	3.8
Subtotals	(\$702)	(\$745)	(\$771)	(\$26)	(3.5%)
Offsets from legal settlements	-\$116	-\$18	-\$17	\$1	7.0%
Totals	\$586	\$727	\$754	\$27	3.7%

Status Update on Reorganization of Gambling Oversight

Background. Chapter 867, Statutes of 1997 (SB 8, Lockyer), more commonly known as the Gambling Control Act, created the California Gambling Control Commission (CGCC) and the Bureau of Gambling Control (BGC) within DOJ to jointly regulate gambling within the state. These two agencies currently share oversight of approximately 89 cardrooms and 60 tribal casinos in California. (Tribal sovereignty—or the authority of tribes to govern themselves—limits state regulation and oversight of tribal casinos to enforcement of the tribal compacts negotiated between a tribe and the state.) Currently, CGCC (1) develops gambling regulations, (2) administers all gambling funds, (3) ensures compliance with tribal compacts, and (4) processes and issues gambling licenses and registrations. The BGC, on the other hand, (1) enforces gambling regulations, (2) conducts investigations and background checks of all individuals involved in gaming activities, (3) approves cardroom games and game rules, and (4) monitors the use of gaming at charity fundraising events.

The Governor's Reorganization Plan Number 2, enacted in 2012-13, modified how CGCC and BGC share oversight responsibilities of state gambling activities. Specifically, the reorganization plan

transfers most CGCC compliance and licensing activities to BGC by July 1, 2013. The expectation was that the consolidation of compliance, licensing, investigations, and enforcement activities all within DOJ would promote more efficient and effective processes. Figure 21 (see next page) shows the regulatory responsibilities of CGCC and DOJ under the reorganization, as well as identifies which of those functions have transitioned from CGCC to DOJ.

Governor's Proposal. In order to implement the above reorganization, the Governor proposes increasing DOJ's budget by \$4.8 million from the Gambling Control Fund and the Special Distribution Fund, and reducing CGCC's budget by \$5.4 million from these fund sources. Under the proposal, 33 positions would be transferred from CGCC to BGC. An additional six positions would be eliminated at CGCC. Most of the positions proposed for transfer are compliance and licensing auditors or analysts. The Governor's budget also includes \$244,000 in one-time expenditures for DOJ to move personnel and equipment from the commission to the bureau.

Reorganization Progressing as Planned. The CGCC and BGC are currently in the process of organizing working groups to transition compliance and licensing responsibilities, personnel, and equipment. These working groups will oversee various activities to fully implement

the reorganization including (1) changes to gambling regulations, (2) developing new license and registration forms, (3) educating cardrooms and tribal personnel of new processes, and (4) establishing new processes and expectations between the commission and the bureau. Both agencies expect to fully complete the transition of responsibilities by the end of the current year, as scheduled in the enacted 2012-13 reorganization plan.

LAO Recommendation. We recommend approval of the Governor’s budget proposal, which is consistent with, and necessary to implement, the reorganization plan enacted in 2012-13. However, since this reorganization still requires numerous activities to be completed, we also recommend the Legislature direct BGC and CGCC to report at budget hearings on their implementation progress as well as any obstacles to a successful transition that may arise.

Figure 21
Summary of Major Gambling Oversight Responsibilities

Effective July 1, 2013

Responsibility	Cardrooms	Tribal Gaming
Regulations		
Develop and maintain gambling regulations	CGCC	CGCC ^a
Licensing		
Issue, revoke, or deny licenses or registrations	CGCC	CGCC ^b
Receive and process license and registration applications and fees	DOJ ^c	DOJ ^{b,c}
Conduct background investigations of gambling owners, employees, and vendors	DOJ	DOJ ^b
Review financial transactions impacting gambling establishment ownership	DOJ ^c	N/A
Compliance & Enforcement		
Administer gambling funds	DOJ ^c	CGCC
Verify accuracy of tribal contributions to state funds	N/A	DOJ ^c
Determine tribal eligibility for distributions of gambling revenue	N/A	DOJ ^c
Test electronic gaming devices	N/A	DOJ ^c
Approve games and changes in game rules	DOJ	N/A
Monitor and conduct investigations of gambling operations	DOJ	DOJ

^a The CGCC adopts some uniform statewide tribal gaming regulations. Tribal compacts authorize tribal gaming agencies to adopt and enforce regulations specific to their casinos.

^b Tribal gaming agencies issue licenses and conduct background investigations of tribal gaming employees. The CGCC issues “findings of suitability” based on inquiries or investigations by DOJ.

^c Responsibilities shifting from CGCC to DOJ under the reorganization.
CGCC = California Gambling Control Commission and DOJ = Department of Justice.

SUMMARY OF LAO RECOMMENDATIONS

Issue	Governor's Proposal	LAO Recommendation
Judicial Branch		
Prior-year court reductions	Restore current-year General Fund reduction of \$418 million and adopt trailer bill language to implement 11 efficiency and fee proposals.	Approve proposals. Efficiency and fee proposals should provide trial courts with ongoing fiscal relief. Request that court stakeholders identify additional efficiencies that could provide additional savings.
Trial court reserves	Adopt trailer bill language (not available at the time of this analysis) to address cash flow issues resulting from previously adopted policy to cap trial court reserves.	Withhold until trailer bill language is available.
Court construction transfer	Transfer \$200 million from ICNA to General Fund on one-time basis.	Approve proposal. Provides \$200 million benefit to General Fund. Direct branch to report at budget hearings on how it will prioritize court construction projects in 2013-14.
Long Beach service payment	Use ICNA to fund Long Beach service payments of \$34.8 million in 2013-14, growing in out-years.	Approve proposal. Provides tens of millions of dollars in General Fund benefit for next 35 years and is appropriate use of ICNA.
California Department of Corrections and Rehabilitation		
Adult prison and parole populations	Reduce by \$1.7 million (primarily General Fund) for various adjustments associated with prison and parole caseload changes.	Withhold until May Revision. Technical adjustments may be necessary at that time. Direct department to report at budget hearings on current plans to provide mandated sex offender treatment services to parolees.
Formula for probation incentive grants	Change funding formula for performance grant program to account for realignment and reduce grants by \$103 million.	Modify proposal in several ways to more accurately calculate grant amounts and ensure counties have appropriate fiscal incentives and funding to maintain and improve probation outcomes.
Medical staffing methodology	No proposal. Current-year budget included language requiring Receiver to report on efforts to change its staffing methodology.	Receiver should report at budget hearings on implementation of new staffing methodology.
Medication distribution	Make permanent \$15 million for 211 limited-term nursing positions for distribution of medication to inmates.	Withhold until the Receiver has reported on his staffing methodology and how expected declines in workload will affect number of positions needed in future years.
Juvenile population	Reduce by \$2.2 million (primarily General Fund) for various adjustments associated with juvenile caseloads.	Withhold until May Revision. Technical adjustments may be necessary based on actual population trends which, to date, are lower than budget assumes. Should more accurately reflect reductions in non-staff expenditures directly resulting from decreasing ward population.
DeWitt Annex activation	Increase by \$16.2 million and 135 positions (growing to \$36.6 million and 334 positions) for the activation of DeWitt Annex, adjacent to California Health Care Facility.	Reduce by \$403,000 and 3.8 positions to account for operational impact of recent change to create single electric fence, rather than two separate fences, around these facilities.
Mule Creek State Prison staircase	Replace unsafe staircase at cost of \$600,000 (general obligation bonds).	Withhold action on project and require CDCR to report at budget hearings on schedule and cost estimates.
AB 900 General Fund appropriation	Use \$10 million from AB 900 General Fund appropriation for unspecified prison infrastructure projects.	Revert total remaining appropriation (about \$110 million) to General Fund. Original justification for appropriation—severe overcrowding—no longer exists, and current process limits legislative oversight.

(Continued)

2013-14 BUDGET

Issue	Governor's Proposal	LAO Recommendation
Board of State and Community Corrections		
Technical assistance and data collection	Add nine positions, including five positions to establish a research unit. Positions will be funded by redirecting existing funds within board's budget.	Approve positions. Require board to report on its plans to fulfill its legislative missions related to technical assistance and data collection. Direct board to create working group to identify long-term data collection and accountability strategy for the state.
Police grants	Augment current grants by \$7.5 million (General Fund) to provide additional assistance to cities. Adopt budget language to modify distribution process.	Reject proposal due to lack of justification. Approve proposed changes to budget bill language to clarify that all cities are eligible to be recipients of grant.
Department of Justice (DOJ)		
Gambling reorganization	Increase by \$4.8 million and reduce CGCC by \$5.4 million (from two special funds) to implement reorganization of gambling oversight.	Approve proposal. Consistent with shift in responsibilities authorized in Governor's Reorganization Plan adopted last year. Direct DOJ and CGCC to report at budget hearings on implementation progress and obstacles.
<p>ICNA = Immediate and Critical Needs Account and CGCC = California Gambling Control Commission.</p>		

2013-14 BUDGET

2013-14 BUDGET

2013-14 BUDGET

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