



MAJOR ISSUES

| *Federal Crime Bill Offers Opportunities for California.* California law enforcement agencies have already received federal crime bill grant awards exceeding \$100 million to fund almost 1,300 new law enforcement personnel. Congress is considering legislation which would make changes in crime bill funding, which if enacted would result in significant modifications to the amounts and uses of these funds to California in the future. (See page D-13.)

| *Growth in Prison Population Will Exhaust Available Housing.* The Department of Corrections projects that the prison population will increase at an average annual rate of about 10 percent over the next several years, exhausting all available bed space in the prison system by mid-1998 and reaching about 232,000 inmates by June 2001. The population increases are driven in part by the return of parole violators to prison and persons receiving longer prison terms under the "Three Strikes and You're Out" sentencing law. (See page D-28.)

| *Aging Prison Inmates Will Cost State Millions.* Prison inmates age 60 and over are expected to increase from about 1 percent of the prison population to about 8 percent over the next two decades. Because older inmates tend to have more medical problems, the "graying" of the prison population will be costly to the state. We offer several alternative types of punishment for these older offenders that could save the state money while not sacrificing public safety. (See page D-44.)

■ ***Prison Inmate Medical Costs Continue to Escalate.*** The state has already spent almost \$30 million to upgrade the prison system inmate health care delivery program. The budget requests \$22.5 million for additional upgrades in the budget year—about 60 percent more than expected a year ago. Additional costs for more upgrades in future years are likely. (See page D-64.)

■ ***Youth Authority Population Expected to Remain Stable.*** In contrast to the Department of Corrections, the Youth Authority's population is expected to remain stable over the next several years. However, this assumes that legislation will be enacted transferring responsibility for some offenders from the Youth Authority to the Department of Corrections. (See page D-84.)

■ ***Trial Court Funding Consolidation Proposal Needs Stronger Cost Control Measures.*** We believe that the administration's proposal to consolidate funding responsibility for support of the trial courts at the state level has merit. However, because county costs will be capped with the state picking up 100 percent of the increased costs in the future, the Legislature needs to ensure that the state will have greater involvement and control over trial court expenditures. (See page D-112.)

■ ***Criminal History and Fingerprint Backlogs Continue.*** The Department of Justice's systems for keeping information on criminal histories of offenders and the fingerprint records of prison inmates have substantial backlogs. This can have detrimental effects on the abilities of state and local law enforcement agencies to do their jobs. Although the department has goals for reducing these backlogs, it will take more than one year to achieve them. (See page D-138.)






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OVERVIEW

Total expenditures for judiciary and criminal justice programs are proposed to increase significantly in the budget year. The principal reason for the increase is the projected increase in the state's prison population. In addition, the budget proposes to consolidate the costs of operation of the trial courts at the state level, and assumes the receipt of large amounts of federal funds to offset the costs of incarcerating and supervising undocumented felons.

The budget proposes total expenditures of \$5.3 billion for judiciary and criminal justice programs in 1996-97. This is an increase of \$462 million, or 9.5 percent, over estimated current-year spending. This increase is primarily due to the projected increase in the state's prison population. The budget also proposes to consolidate funding for operation of the trial courts at the state level. As part of this proposal, counties would transmit \$890 million to the state that would, in turn, be appropriated to the courts in the Budget Bill (these funds are not counted in the expenditure figures).

The budget proposes General Fund expenditures of \$4.7 billion for judiciary and criminal justice programs, which is about 10 percent of all General Fund spending. This amount represents an increase of \$68 million, or about 1.5 percent, above estimated General Fund expenditures in the current year. This relatively small increase is misleading because it masks two important funding shifts which when taken into account result in General Fund expenditures increasing by \$412 million, or 8.5 percent. First, as part of the trial court funding consolidation proposal, the Governor's Budget proposes to shift about \$298 million in General Fund revenues to the Trial Court Trust Fund and, in turn, expend this amount from this fund rather than the General Fund. Sec-

ond, the Governor's Budget assumes that the state will receive \$324 million in federal funds to offset the costs of incarcerating and supervising undocumented felons in state prison and the Department of the Youth Authority.

Figure 1 shows expenditures from all state funds for judiciary and criminal justice programs since 1989-90. Figures for 1994-95 through 1996-97 have been reduced to reflect the budget's assumption that the state will receive federal funds to offset costs of handling undocumented felons. As Figure 1 shows, total expenditures for judiciary and criminal justice programs have increased by \$1.9 billion since 1989-90, representing an average annual increase of 6.7 percent.

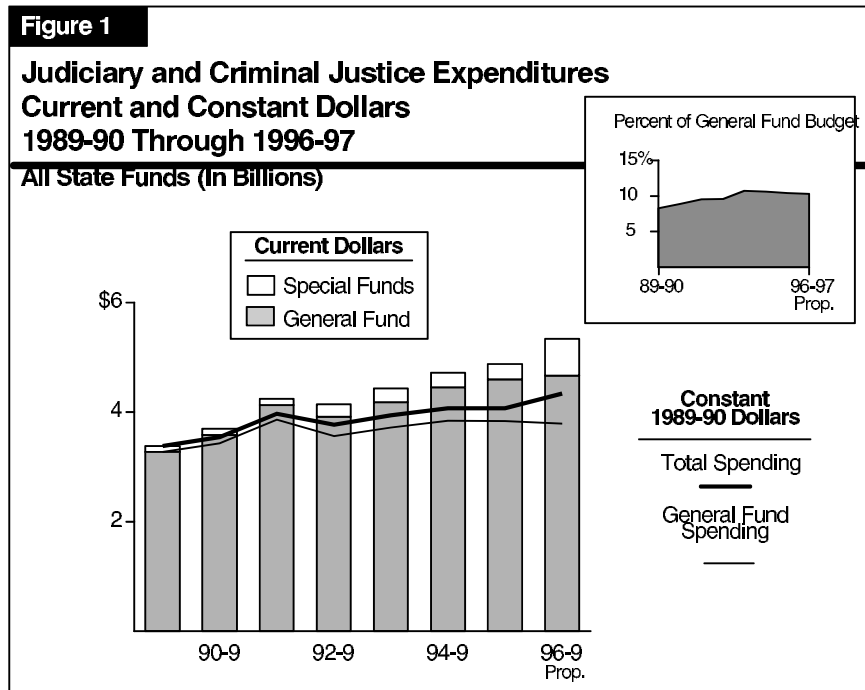


Figure 1 also displays spending when adjusted for inflation. On this basis, total spending increased an average of 3.6 percent annually between 1989-90 and 1996-97. The share of the state's General Fund spending allocated to the judiciary and criminal justice has increased from 8.3 percent in 1989-90 to 10 percent in 1996-97.

It should be noted that, like last year, the federal funds assumed for 1996-97 to cover the state's costs of incarcerating and supervising undocumented offenders are counted as offsets to state expenditures and

are not shown in the budgets of the California Department of Corrections (CDC) and the Youth Authority, or in the Budget Bill. Thus, the Governor's Budget would hold the CDC and the Youth Authority budgets harmless should the federal funds not materialize.

SPENDING BY MAJOR PROGRAMS

Figure 2 (see page 8) shows expenditures for the major judiciary and criminal justice programs in 1994-95, 1995-96, and as proposed for 1996-97. As the figure shows, the CDC accounts for the largest share of total spending in the criminal justice area.

MAJOR BUDGET CHANGES

Figure 3 (see page 9) presents the major budget changes resulting in a net increase of \$462 million in total state spending for the judiciary and criminal justice. Generally, the major changes can be categorized as follows:

The Budget Proposes to Provide Full Funding for Caseload and Certain Other Cost Increases. This includes funding for projected inmate population increases of 12 percent in the CDC and ward population decreases of about 2.7 percent in the Youth Authority. The budget contains no proposals that would result in any significant reduction in the total inmate and ward population. The budget assumes the enactment of legislation to shift new "M cases" (state prisoners age 18 and over serving their sentences at the Youth Authority) to the CDC. (The budget reduces the Youth Authority's budget to reflect the change but does not include a corresponding increase in the CDC's budget.)

In addition, the budget proposes to provide full funding for caseload increases in several other judicial and criminal justice programs. These include the Judicial's court-appointed counsel program and the Department of Justice's (DOJ) program that handles appeals in criminal cases.

The budget provides augmentations to the CDC and the Judicial branch for the costs of merit salary adjustments that will be granted in 1996-97, while requiring most other state departments to absorb these costs. In addition, the budget includes funds for inflation adjustments and price increases in the CDC. The only other state agencies to receive funds for General Fund inflation adjustments were the University of California, the California State University, the Franchise Tax Board, and the Trade and Commerce Agency's foreign trade offices.

Figure 2**Judiciary and Criminal Justice Budget Summary^a
1994-95 Through 1996-97****(Dollars in Millions)**


	Actual 1994-95	Estimated 1995-96	Proposed 1996-97	Changes From 1995-96	
				Amount	Percent
Department of Corrections					
General Fund	\$2,902.2	\$3,253.4	\$3,602.7	\$349.4	10.7%
Bond funds	34.9	15.8	17.2	1.3	8.4
Totals	\$2,937.2	\$3,269.2	\$3,619.9	\$350.7	10.7%
Department of the Youth Authority					
General Fund	\$359.5	\$389.6	\$369.9	-\$19.7	-5.0%
Bond funds	14.9	11.0	7.2	-3.8	-34.9
Totals	\$374.4	\$400.6	\$377.1	-\$23.5	-5.9%
Trial Court Funding^b					
General Fund	\$482.8	\$507.9	\$215.2	-\$292.7	-57.6%
Special funds	155.0	155.5	544.6	389.1	250.2
Totals	\$637.8	\$633.4	\$759.8	\$96.4	14.5%
Judicial					
General Fund	\$152.5	\$173.0	\$183.3	\$10.3	5.9%
Department of Justice					
General Fund	\$198.2	\$198.8	\$211.6	\$12.8	6.4%
Special funds	55.2	62.0	59.1	-2.9	-4.7
Federal funds	16.4	18.9	15.4	-3.6	-18.8
Totals	\$269.8	\$279.8	\$286.0	\$6.3	2.2%
Office of Criminal Justice Planning					
General Fund	\$26.1	\$28.4	\$30.9	\$2.5	8.9%
Special funds	17.0	17.2	17.5	0.3	1.7
Federal funds	58.3	76.2	74.9	-1.2	-1.6
Totals	\$101.3	\$121.8	\$123.4	\$1.6	1.3%


^a Details may not add to totals due to rounding.^b Trial Court Funding figures for 1996-97 do not include \$890 million in proposed contributions by counties that would be appropriated to trial courts in the Budget Bill.

Figure 3



**Judiciary and Criminal Justice
Proposed Major Changes for 1996-97
All State Funds**

Department of Corrections Requested: \$3.8 billion
Increase: \$360 million (+10.5%)


- \$243 million for inmate and parole population increases
- \$100 million for full-year impacts of current-year expenditures
-  • \$36 million for merit salary increases and retirement contribution rate changes
- \$29 million for medical and mental health services for inmates
- \$22 million for inflation adjustments and price increases

-
-  • \$71 million for various limited-term and one-time expenditures

Department of the Youth Authority Requested: \$436 million
Increase: \$5.6 million (+1.3%)

-  • \$6.1 million for gang intervention program grants to counties for mentoring programs
-
- \$38 million shifted from General Fund to reimbursements from counties due to increased fees for placement of offenders in the Youth Authority (\$7.5 million in the current year)
 -  • \$1.7 million for ward and parole population reductions (including changes to law to transfer some offenders to state prison)

Trial Court Funding Requested: \$1.6 billion
Increase: \$986 million (+149%)

- \$981 million for increased state support of trial courts (\$890 million reimbursed by counties and \$91 million from increased filing fee revenues)
-  • \$3.4 million for “Three Strikes Relief Team”—30 retired judges to handle backlog of “Three Strikes” criminal cases
- \$2 million for creation of 20 new judgeships in last quarter

The Budget Proposes to Consolidate and Restructure the Trial Court Funding Program. Currently, the state funds about 37 percent of the costs of trial courts from the General Fund and the Trial Court Trust Fund and the counties provide the remaining 63 percent. The Governor's Budget proposes the following:

- Counties transmit annually \$890 million to the state Trial Court Trust Fund for support of the trial courts. (This is the amount the counties provided for support of the courts in 1994-95.) This amount would be capped and would not change in future years.
- Redirect from the General Fund to the Trial Court Trust Fund about \$298 million in revenues, which would be used to support the trial courts.
- Increase court filing fee revenues by \$91 million, which would be used to provide additional state support for the courts.

In the budget year, the net effect of these changes is to essentially hold the state's General Fund costs of the trial courts to the same level as in the current year. In future years, however, the state's costs would increase since the state would be completely responsible for funding growth in trial court costs. The changes will require legislation.

The budget also proposes \$3.4 million from the General Fund to establish a "Three Strikes Relief Team" of 30 retired trial court judges to handle a backlog of "Three Strikes" felony cases. It also includes an additional \$2 million from the General Fund to support 20 new trial court judgeships, which the budget assumes would be established in the last quarter of 1996-97.

The Budget Assumes Receipt of Federal Funds for Incarceration and Parole of Undocumented Immigrants. As indicated above, the budget assumes that the state will receive \$324 million in federal funds in 1996-97 to offset the state's costs to incarcerate and supervise undocumented immigrants in the CDC and the Youth Authority. This is an increase of \$46 million over the Governor's Budget's estimate of the amount the state will receive in the current year. Of the current-year amount, \$45 million is available from existing federal appropriations for federal fiscal year (FFY) 1995. The administration's estimates of the remaining funds are based on appropriations contained in the FFY 96 State, Commerce, and Justice appropriations bill, which the President recently vetoed, and its projections for FFY 97 appropriations. (We discuss issues regarding federal funds in greater detail in "Crosscutting Issues" later in this chapter of the *Analysis*.)

The Budget Proposes a Number of New Program Initiatives and Augmentations. The budget proposes funding for a number of new

program initiatives. For example, \$6.1 million is proposed in the Youth Authority and Office of Criminal Justice Planning (OCJP) for several new programs relating to intervention with juvenile gangs. In addition, the budget proposes \$3 million to expand to counties the Youth Authority's "Young Men as Fathers" program as part of the Governor's overall proposal relating to mentoring (other parts of this proposal are included in the budgets of health and welfare departments).

The budget also proposes significant augmentations for continuation or expansion of existing programs, such as upgrades of inmate health care services (\$29 million), continuation of development and implementation of the major new CDC information system (\$14 million), expansion of the DOJ's Statewide Integrated Narcotics System (SINS) (\$5 million), and upgrades to the DOJ's forensic laboratories (\$2.9 million).



CROSSCUTTING ISSUES

FEDERAL CRIME BILL FUNDING FOR CALIFORNIA

On September 13, 1994, President Clinton signed the Violent Crime Control and Law Enforcement Act of 1994 (the federal "crime bill"). The bill contained funding authority totaling \$30.2 billion for more than 60 different law enforcement, prison construction, and crime prevention programs over six years. On September 27, 1994, we published a policy brief entitled The Federal Crime Bill: What Will it Mean for California?

In this Analysis, we provide an update on the status of the implementation of the federal crime bill since the release of our policy brief. In addition, we compare the crime bill with the changes to its provisions contained in the recent federal appropriations bill passed by the Congress. Although the President vetoed the appropriations bill, it seems likely that many of its provisions will eventually be enacted because in his veto message he identified only limited concerns with its provisions. The enactment of this bill, or one with similar provisions, would result in significant changes in the amounts and uses of federal funds provided to California for crime programs. The Legislature, in turn, will need to reflect its priorities in appropriating these funds.

CALIFORNIA RECEIVES NEW FEDERAL FUNDS

California law enforcement agencies have already received federal crime bill grant awards exceeding \$100 million to fund almost 1,300 new law enforcement personnel. In addition, counties have received

almost \$3 million for planning, renovation, or construction of corrections “boot camps.” California has also received federal funds for the costs of incarcerating undocumented felons.

Background

The federal crime bill contained a variety of provisions including, increased penalties for federal crimes, additional federal law enforcement personnel, and most importantly to the state, funding authority for local law enforcement, prison construction, and crime prevention. The bill provides funding authority totaling \$30.2 billion over a six-year period, ending in federal fiscal year (FFY) 2000 (state fiscal year 2000-2001). The actual funding levels for each year will be determined through the annual federal appropriations process.

Funding is awarded to states and local governments on either a formula basis or through a competitive application process to receive project grants. Many of the current crime bill's grant programs are aimed at the local level. For example, local law enforcement agencies are the primary recipients of the “Cops on the Beat” law enforcement grants, authorized for \$8.8 billion (we discuss the “Cops on the Beat” program later in this *Analysis*). Most of the crime bill's prevention grant funds can be applied for directly by local governments and community-based organizations. The major share of federal grant monies going to state government will be for prison construction grant programs, which are authorized starting in FFY 96. Consequently, these funds will not be available until the FFY 96 appropriations process is complete.

State's Lead Agency. In 1995, the Governor designated, by executive order, the Office of Criminal Justice Planning (OCJP) as the state agency responsible for coordinating the state's implementation of the federal crime bill. The OCJP's responsibilities under the executive order include: (1) working with state agencies to ensure the receipt of a “fair share” of federal funding; (2) recommending policies and procedures to the Governor to ensure the state receives its fair share of funding; (3) providing technical assistance to state and local agencies to compete for funds; (4) working with state agencies to designate the appropriate agencies within California to implement the federal crime bill; and (5) reporting to the Governor. The 1995 Budget Act required that the OCJP report to the Legislature by January 10, 1996 on the amount of federal funds available for 1996-97 under the crime bill and the administration's proposed uses for these funds.

The OCJP advised the Legislature on January 9, 1996 that it needed an extension of the deadline. Because the federal appropriations process for FFY 96 is not yet complete, the OCJP indicated that it did not have

sufficient information to determine the amount of funds the state would receive in 1996-97 and thus could not describe how the administration proposed the federal funds to be used.

Federal Appropriations for 1995 Were Lower Than Authorized

The crime bill authorized funding for 17 programs for FFY 95, totaling \$2.9 billion. Federal appropriations for FFY 95, however, provided funds for only 11 programs (ten state and local programs and one for federal agencies), totaling \$2.3 billion, or about 20 percent less than the amounts authorized for the first year.

Figure 4 compares federal authorizations with appropriations for the *ten* programs that provide grants to state or local agencies. The figure shows the amounts that California agencies were awarded, and which types of agencies benefited.

Figure 4				
Federal Crime Bill Funding For State and Local Agencies FFY 1995				
(In Millions)				
Program^a	Nationwide		California Share^a	Potential Recipients
	Authorized	Appropriated		
Community Policing "Cops on the Beat"	\$1,300.0	\$1,300.0	\$101.8	Local
Implementation of the "Brady Bill"	100.0	100.0	—	State
Undocumented Alien Felon Incarceration Grants	130.0	130.0	78.4	State ^b
Boot Camp	— ^c	24.5	2.9	State/local
Byrne Memorial Grants	580.0	450.0	47.4	State
Drug Courts	100.0	29.0	1.9	Local
Violent Crimes Against Women	26.0	26.0	0.5	Local
Ounce of Prevention Grants Family and Community	1.5	1.5	0.2	Local
Endeavor School Grants	37.0	25.9	3.1	Local
National Domestic Violence Hotline	1.0	1.0	NA	Nonprofits
Totals	\$2,275.5	\$2,087.9	\$236.2	

^a Includes only crime bill programs that received FFY 1995 appropriation.
^b Data from the United States Department of Justice and the Office of Criminal Justice Planning.
^c Authorizations for this grant are part of the larger prison construction grants.
 NA- Not Applicable

The amounts shown for California for Byrne Memorial Grants (used to fund local and statewide anti-drug enforcement), Violence Against Women grants, and costs for incarceration of undocumented felons were determined on the basis of a specific formula. The amounts shown for “boot camp” programs, which were awarded on a competitive basis, were granted to eight counties in August 1995. The awards range from \$30,099 to Orange County for planning to \$1.9 million to Fresno County for construction of a boot camp.

The amounts shown for the “Cops on the Beat” program are three-year awards, reflecting the total amount of money the grantee agencies will receive over three years. For the remaining programs, we relied on federal information for the amounts of grant funding received by California.

California's “Cops On the Beat” Share

As Figure 4 shows, the largest appropriation for FFY 95 is for federal assistance for state and local law enforcement agencies through the “Cops on the Beat” program. The intent of the program is to provide funding to hire police officers and increase their involvement in the community. The crime bill authorizes the United States Attorney General to make grants to states and local governments, and other public and private entities, such as transit districts, school districts, and college police departments.

Grant Restrictions. Under the grant requirements, law enforcement agencies can use some funds for equipment and training but the bulk of the grant has to be used for hiring police officers. In addition, the grants are limited to three years; the recipient agency must provide a 25 percent funding match; and the grant is limited to paying no more than \$25,000 per year towards officer salaries and benefits.

Because the grants are limited to three years, recipient agencies will have to shoulder the full costs of the newly hired officers after the grant period, or eliminate the positions. There are no federal funds available to directly offset the other criminal justice system costs, which are likely to arise as a result of adding street-level law enforcement officers. These additional costs would include courts, jails, and probation.

California's Share. As of January 1996, 361 California law enforcement agencies had received federal “Cops on the Beat” grants. Grant recipients include 313 police departments, 43 county sheriffs' departments, 4 tribal police agencies, and 1 transit district. The grants total \$101.8 million (to be dispersed over three years), and will add an estimated 1,295 law enforcement officers. In addition, the local agencies

who were awarded grants will have to spend at least \$25 million during the grant period to meet their share of cost requirements.

Grants to individual law enforcement agencies varied from the largest—totaling \$3.7 million to the Los Angeles County Sheriff for 49 new officers—to a number of small city police departments which received grants of \$75,000 for one officer each.

Although California law enforcement agencies have benefited from this grant program, we believe that the state is unlikely to receive as large a share of further funding allocations. This is because many of the California law enforcement agencies that have received funds had already decided to add more officers before the funds became available. Those who had not already made such a decision are not likely to see the potential additional federal funds as sufficient incentive to incur a large share of costs or future full costs. Furthermore, one-third of all of California's eligible law enforcement agencies (three-quarters of all sheriffs' departments) have already received grants.

Has the “Cops on the Beat” Program Had an Impact? It is still too early to measure the benefits of this federal program. Evaluators will have to determine if the agencies that received grants would have added new personnel regardless of the program. In addition, program evaluators will have to determine if adding new personnel for “community policing” is the most effective use of additional law enforcement resources.

However, we can make some preliminary observations on the impact of the program in California. Over one-third of eligible California agencies have received grants and have added new personnel. However, the number of new law enforcement officers added represents an increase of less than 2 percent of the total existing sworn officers statewide. For some small agencies, the addition of a single officer can have a significant impact but for a large agency, such as the Los Angeles Sheriff's Department, the added deputies constitute an increase of less than 1 percent of its sworn officers.

Furthermore, although the program provides California with more than \$100 million over the next three years, the amount is a fraction of the total annual expenditures for law enforcement agencies in California—more than \$6 billion in 1993-94.

PENDING FEDERAL LEGISLATION COULD SIGNIFICANTLY CHANGE CALIFORNIA'S SHARE OF FUNDS

Congress passed, but the President vetoed, an appropriations bill that would significantly change current crime bill provisions. The bill changes how local law enforcement grants are distributed and eliminates many crime prevention programs contained in the crime bill.

In December 1995, the Congress sent to the President H.R. 2076, the FFY 96 appropriations bill for the federal Departments of Commerce, Justice, and State. This bill is one of the 13 appropriations bills that, when enacted, constitute the federal budget. Contained in this appropriations bill were not only monies for a variety of programs authorized in the crime bill, but also several significant changes to the provisions of the crime bill. The President vetoed H.R. 2076 on December 19, 1995.

Presidential Veto Message. In his veto message, President Clinton noted that he found the proposals related to a new law enforcement block grant program (described below) unacceptable, because it “would not guarantee a single new police officer.” He stated that he would not sign an appropriations bill that did not continue the “Cops on the Beat” program as a discretionary grant program as previously authorized.

In late January 1996, the Congress passed, and the President signed, legislation that provides funding for the federal government, including justice programs, through March 15, 1996. The funding for crime bill programs is limited to 75 percent of FFY 95 levels and no new grant awards are allowed. This legislation provides no funding for prison construction. This measure is temporary and the Congress and President will still need to agree to a plan that funds justice programs for the remainder of FFY 96.

Because the President's objections to the changes in the crime bill provisions were relatively specific and limited, we believe that many of the proposed changes are likely to be enacted eventually, especially those related to prison construction and funding for incarcerating undocumented felons. These changes could be part of H.R. 2076 or incorporated into other appropriations legislation for FFY 96. The following sections describe the changes contained in H.R. 2076 and their potential impact on California. We also describe areas where the Governor's Budget for 1996-97 proposes funding that is similar to that contained in the pending federal bill.

Proposed Funding and Changes in Grants

For FFY 96, the crime bill contained authorizations for \$4.3 billion in grants to states and local agencies. In contrast, H.R. 2076 would appropriate approximately \$3.8 billion for state and local criminal justice programs for FFY 96. Part of the difference between the amount authorized in the crime bill and the amount appropriated in H.R. 2076 stems from changes in funding priorities. In addition, H.R. 2076 appropriates funding for some programs that were not part of the original crime bill. We estimate that the state's share of these appropriations could total more than \$780 million for FFY 96, if H.R. 2076 is enacted. Below we discuss the differences between the crime bill and H.R. 2076 regarding support for local law enforcement, prisons, incarceration for undocumented immigrants, and prevention programs.

Local Law Enforcement Block Grants

The H.R. 2076 would eliminate the “Cops on the Beat” program established by the crime bill and would replace it with a program that was proposed in the “Contract with America.”

Amount of Funding. Based on the appropriation contained in H.R. 2076, California's share of block grant funding would total over \$320 million for FFY 96. This amount is significantly higher than what California could expect under the current crime bill. (As we indicated earlier, California law enforcement agencies have already been awarded more than \$100 million under the current crime bill covering a three-year period, and are unlikely to receive significantly more.) Based on the proposed authorizations in H.R. 2076 for FFY 97 through FFY 2000, California would receive an additional \$1.2 billion from this program, if it is enacted and is fully funded in each year.

Allocation of Funds. One of the major differences between the crime bill and H.R. 2076 is the way in which funds for local law enforcement would be allocated. Under the crime bill, funds would be awarded based on a competitive application process, available only to agencies who meet specific requirements. Under H.R. 2076, however, funds would be disbursed to states and, in turn, local law enforcement agencies, based on an allocation formula. Thus, H.R. 2076 would authorize payments to every qualified “unit of local government,” instead of limiting grants to local agencies that compete for grants. Based on the definitions contained in H.R. 2076, counties in California are likely to be the designated unit of government and each would probably receive a grant. These funds could be used by all law enforcement agencies within the county, including city police departments.

Each state's share of funding under H.R. 2076 would be based on its ratio of violent crime compared to the nation as a whole so that states with higher rates of crime are targeted to receive more funds. Funding within the state would be allocated proportionately based on population.

To qualify for funding, the county government would have to form a local advisory board that includes representatives from local police, sheriffs, prosecutors, courts, public schools, and community groups. The local advisory board would prepare an application and “non-binding” recommendations for the use of block grants.

Use of Funds. The crime bill and H.R. 2076 not only distribute law enforcement funds differently, but the uses of the funds differ between the two measures. While law enforcement agencies can use some of the funds under the crime bill for equipment and training, the bulk of the grant has to be used for hiring police officers. By contrast, H.R. 2076 provides that funds can be used for:

- Hiring, training, and employing law enforcement officers *and* support personnel.
- Paying overtime.
- Procuring equipment, technology, and other needed material.
- Enhancing security measures around schools or high crime areas.
- Establishing and supporting drug courts.
- Establishing intervention, cooperative task forces, multi-jurisdictional task forces, or other programs for reducing crime or juvenile delinquency.

Maintenance-of-Effort and Matching Requirements. The H.R. 2076 contains a maintenance-of-effort (MOE) requirement that law enforcement expenditures remain at 90 percent of previous years' expenditures. In addition, H.R. 2076 requires that local governments provide a 10 percent match. The crime bill's MOE provision requires that the number of law enforcement officers added must be maintained through the grant period. It also requires that recipients of funds provide a 25 percent match.

Governor's Proposal for Local Law Enforcement. The Governor's Budget proposes a program to provide additional funding for local law enforcement. The “Citizens' Option for Public Safety” (COPS) proposal would allow taxpayers to designate 1 percent of their personal income tax liability be directed for local law enforcement. The budget estimates that this proposal could yield up to \$150 million annually of additional

funding for local law enforcement. The Governor's proposal does not indicate how his proposal might interact with the federal proposals. For example, could the state monies be used to meet the federal matching requirement? (We discuss the COPS proposal in detail in *The 1996-97 Budget: Perspectives and Issues*.)

Prison Construction Grants

Amount of Funds. The federal crime bill authorized \$7.7 billion for prison construction while H.R. 2076 would authorize \$10.3 billion. For FFY 96, H.R. 2076 would appropriate \$997.5 million for prison construction nationwide. Figure 5 compares the amounts for prison construction authorized in the crime bill and in H.R. 2076. In addition, the figure shows our estimate of California's share of funding if the maximum amount of funds authorized by H.R. 2076 were appropriated. As the figure shows, we estimate that the state could receive about \$80 million in FFY 96 under H.R. 2076. Under the crime bill, we estimate the state would have received about \$65 million. The Governor's Budget assumes that the state will receive \$27 million in federal funds for this purpose in 1996-97. (Please see the Capital Outlay chapter in this *Analysis*.)

Figure 5			
Prison Construction Grants Authorizations			
(In Billions)			
FFY	Current Law^a	H.R. 2076	
		Nationwide	California
1996	\$0.75	\$1.00	\$0.08
1997	1.00	1.33	0.15
1998	1.90	2.53	0.28
1999	2.00	2.66	0.30
2000	2.07	2.75	0.31
Totals	\$7.72	\$10.27	\$1.12

^a Federal crime bill.

Note: Under both current law and proposed legislation, the amount of funding available in each fiscal year is subject to the annual federal appropriations process.

Allocation of Funds. The H.R. 2076 contains a specific formula for allocating funding for prison construction. Of the monies appropriated, one-third would be allocated to states without "Truth-In-Sentencing" laws (laws that require that violent inmates must serve at least 85 per-

cent of their sentence) and the remaining two-thirds would be allocated to states with such laws. The crime bill did not specifically identify the allocation formula for states. California has a truth-in-sentencing law and would qualify for participation in the larger “pot” of funding authorized in the measure. The President, in his veto message, did not identify any problems with these provisions.

Use of Funds. The H.R. 2076, unlike the crime bill, allows up to 15 percent of a state's prison construction grant amounts to be made available for *local* jail construction. Although this could set up competition for federal funds between the state and counties, the changes could be beneficial to counties because of the need to relieve overcrowding in county jail facilities. Currently, 28 county jail systems—accounting for over 70 percent of all of statewide jail beds—are under court-ordered population caps. Thus, these jails frequently must release offenders prior to the end of their jail sentence in order to meet court requirements.

The H.R. 2076, unlike the crime bill, also specifies that funding can be used to build or expand “temporary” facilities, such as the state's proposed \$133 million emergency bed program at the Department of Corrections (CDC). Finally, H.R. 2076 includes provisions allowing states to construct facilities to house juvenile offenders. Such funds could be used by the Department of the Youth Authority to fund its requested construction of 1,450 new beds to accommodate overcrowding.

Matching Requirements. In contrast to current provisions, H.R. 2076 would reduce the state match from 25 percent to 10 percent. California's match would decrease from \$20 million to about \$8 million.

Governor's Prison Construction Proposals. The administration is proposing bond measures for the construction of state prisons (\$1.9 billion) and beds for wards at the Youth Authority (\$150 million). In addition, the administration is putting forth proposals for the construction of local juvenile facilities (\$150 million). The administration has not identified what impact enactment of H.R. 2076, or similar legislation, would have on its proposals.

Funding for Incarceration of Undocumented Felons

The H.R. 2076 includes an appropriation of \$500 million in FFY 96 for the costs of incarcerating undocumented immigrant felons. Based on prior allocations, California's share of this appropriation should be approximately \$310 million. The bill also authorizes payments for incarcerating undocumented felons for FFY 97 through FFY 2000 of up to

\$650 million in each year. The actual amounts provided to the state would depend on the annual federal appropriations process.

It is important to note that local governments, in addition to states, would be allowed under H.R. 2076 to claim part of the state's total share of funds for local incarceration costs. Because California's county jails house a significant number of undocumented immigrants, it is unknown how much of California's share of this appropriation would go to defray the CDC's and the Youth Authority's costs, and how much would be available for counties. The President's veto message does not identify any problems with the funding contained in H.R. 2076 for incarcerating undocumented immigrants. (We discuss federal funding for undocumented felons in our analysis of the CDC in this chapter of the *Analysis*.)

Crime Prevention Programs and Other Changes

The H.R. 2076 would eliminate 13 of the crime prevention programs contained in current law—reducing federal funding authorizations by \$900 million for FFY 96 through FFY 2000. The elimination of these programs “pays” for the proposed increases for law enforcement and prison construction grants. Elimination of these programs could result in California receiving several hundreds of millions of dollars less than it might otherwise receive under current law. Figure 6 (see page 24) shows which programs H.R. 2076 would eliminate.

The President noted in his veto message that H.R. 2076 “unwisely abandons crime prevention efforts.” The message specifically notes the elimination of drug courts funding. Whether the President will ultimately refuse to sign any bill that eliminates these programs is unknown.

Other Proposed Changes. In addition to changes to grant programs, H.R. 2076 would amend federal law, significantly restricting the ability of inmates to file lawsuits. Most inmate lawsuits are filed in federal court under provisions of federal law. This results in significant costs to the state. For example, for 1996-97, the CDC and the Department of Justice have budgeted over \$12 million to defend the state against lawsuits filed by inmates.

Overall Impact on California

The H.R. 2076, as passed by Congress, would significantly benefit local law enforcement agencies. Specifically, the measure would result in significantly more monies to California for local law enforcement than would be available through the “Cops on the Beat” program. In

addition, local governments might also benefit if jail construction funds and funding for housing undocumented immigrants become available. Further, the state would, under H.R. 2076, receive significant funding for prison construction and the incarceration of undocumented felons. However, local governments and community-based organizations, and nonlaw enforcement local government agencies could lose, if the proposed elimination of crime prevention grants is adopted.

Figure 6
**Federal Crime Bill Programs Proposed for Elimination^a
FFY 1996-2000**

(In Millions)

Program	Authorization ^b	Estimated California Share
Local Partnership Program	\$1,620.0	\$200.0
Drug Courts	1,000.0	120.0
Family and Community Endeavor School Grants	809.9	80.0
Crime Prevention Model Intensive Grants	625.5	40.0
Local Crime Prevention Block Grants	377.0	56.0
National Community Economic Partnership	270.0	—
Ounce of Prevention Grants	90.0	10.0
Community-Based Justice Grants	50.0	5.0
Gang Resistance Education & Training	45.0	4.0
Assistance for Delinquent and At-Risk Youth	36.0	4.0
Police Recruitment	24.0	2.0
Family Unity Grants	19.8	2.0
Capital Improvements for Parks	4.5	0.4
Totals	\$4,971.7	\$523.4

^a Proposed for elimination under the H.R. 2076 legislation.

^b Crime bill.

WHAT SHOULD THE LEGISLATURE DO?

We recommend that the Legislature establish its funding priorities for the use of federal crime bill funds in 1996-97. We also recommend the Department of Finance report during budget hearings on the status of the federal appropriations for crime programs. In addition, we recommend the adoption of Budget Bill language directing the Office of Criminal Justice Planning to report on the state plans for use of the funds. Further, we recommend that the Legislature consider the relationship between H.R. 2076, or similar legislation, and the administration's proposals for local law enforcement and prison construction.

Status of Federal Funding. At the time this analysis was prepared, federal appropriations to fund state criminal justice programs in the budget year had not been enacted. In addition, Congress had passed, and the President had vetoed, H.R. 2076, which would make significant changes in the federal crime bill. Given the current uncertainty regarding these federal funds, we recommend that the Department of Finance report at budget hearings on the status of the federal appropriations for crime programs.

Planning for California's Share of Crime Funding. As we noted in our September 1994 policy brief, we believe the Legislature and the administration should have an overall state strategy for implementing the crime bill and using any subsequent appropriations in California. This is especially true if H.R. 2076, or a similar measure, is enacted.

Specifically, we recommend that the Legislature take the following steps:

- **Depending on the Resolution of Federal Appropriations for Crime Bill Funds, Establish its Priorities for the Rest of Funds in 1996-97.** This can be accomplished in the Budget Bill or in any separate legislation.
 - **Enact Budget Bill Language Requiring the OCJP to Report on the State's Receipt and Use of Federal Crime Funds.** We recommend continuation of the provision included in the 1995 Budget Act requiring the OCJP to report on federal crime program funding in the budget year and beyond. Specifically, it should identify: (1) the amount of federal funds that will be available for crime programs from the appropriations bill, (2) the program purposes for which the 1997-98 Governor's Budget proposes to appropriate federal funds, (3) the state agencies that have applied or intend to apply for federal funding, and (4) the extent to which state funds in the budget year or subsequent years would be affected by applying for federal funds, such as providing a state match of funds or requiring state funding when federal grant funding has been depleted or discontinued.
 - **Consider the Impact of Federal Appropriations as it Reviews the Administration's Proposals for State and Local Correctional Facility Construction Bonds.** In our analysis of the CDC capital outlay budget (see the Capital Outlay chapter of this *Analysis*), we recommend that the CDC provide, prior to budget hearings, a specific proposal for spending any federal funds it receives for construction purposes. In addition, the Legislature should consider whether federal funds should be used for specific Youth
-

Authority construction projects and whether local jails should receive a share of the funds, if permitted by federal law.

- ***Consider the Impact of Federal Funding on the Governor's Public Safety Program Proposals.*** We recommend that the Legislature consider the potential impact of the receipt of federal local law enforcement funds on local governments as it considers the administration's proposal to allow taxpayers to designate 1 percent of their income taxes to local law enforcement.



DEPARTMENTAL ISSUES

DEPARTMENT OF CORRECTIONS (5240)

The California Department of Corrections (CDC) is responsible for the incarceration, training, education, and care of adult felons and nonfelon narcotics addicts. It also supervises and treats parolees released to the community.

By the end of 1996-97, the department will operate 33 institutions, including a central medical facility and a treatment center for narcotics addicts under civil commitment. The CDC system also includes 11 reception centers to process newly committed prisoners, 52 community correctional centers, 39 fire and conservation camps, the Richard A. McGee Correctional Training Center, alternative sentencing programs, and outpatient psychiatric services for parolees and their families.

The budget proposes total expenditures of \$3.8 billion for the CDC in 1996-97. This is \$360 million, or 11 percent, above estimated current-year expenditures. The primary reason for this increase is the growth in the inmate population and the expansion of prison facilities and staff to accommodate that growth. Two new prisons have already opened in the current year, while occupation of a third is scheduled to begin in May 1996 and be completed in the budget year.

Proposed General Fund expenditures for the budget year total \$3.6 billion, an increase of \$349 million, or 11 percent, over total General Fund expenditures in the current year.

The Governor's Budget assumes that the state will receive \$324 million from the federal government during 1996-97 as partial reimburse-

ment of the cost of incarcerating and supervising felons on parole who are illegally in the United States and have committed crimes in California. The funds are not included in the CDC's budget display, but instead are scheduled as "offsets" to total state General Fund expenditures. (We discuss the administration's assumption later in this analysis.)

OVERVIEW OF THE INMATE POPULATION

Who Is in Prison?

Figures 7 through 10 illustrate the characteristics of the state's prison population, as of June 30, 1995. As the charts show:

- About 58 percent of inmates are incarcerated for nonviolent offenses (Figure 7).
- About 65 percent of all inmates are committed to prison from southern California, with about 36 percent from Los Angeles County alone and 8 percent from San Diego County. The San Francisco Bay Area is the source of about 15 percent of prison commitments (Figure 8). The proportion of inmates from Los Angeles County is significantly larger than the county's share of the overall state population, while the San Francisco Bay Area is underrepresented compared to the region's population.
- More than 61 percent of all inmates are between 20 and 34 years of age, with the age distribution falling dramatically starting by the mid-30s (Figure 9, see page 30).
- The prison population is divided relatively evenly among whites, blacks, and Hispanics (Figure 10, see page 30).

INMATE AND PAROLE POPULATION MANAGEMENT ISSUES

Inmate Population Trends

The Department of Corrections projects that the prison population will increase significantly over the next five years, reaching a total of 232,386 inmates by June 2001 and exhausting all available bed space in the prison system by mid-1998. The population increases are driven in part by the return of parole violators and persons receiving longer prison terms under the "Three Strikes and You're Out" sentencing law.

As of June 30, 1995, the CDC housed 131,342 inmates in prisons, fire and conservation camps, and community correctional facilities. Based

Figure 7

**Prison Population by Type of Offense
June 30, 1995**

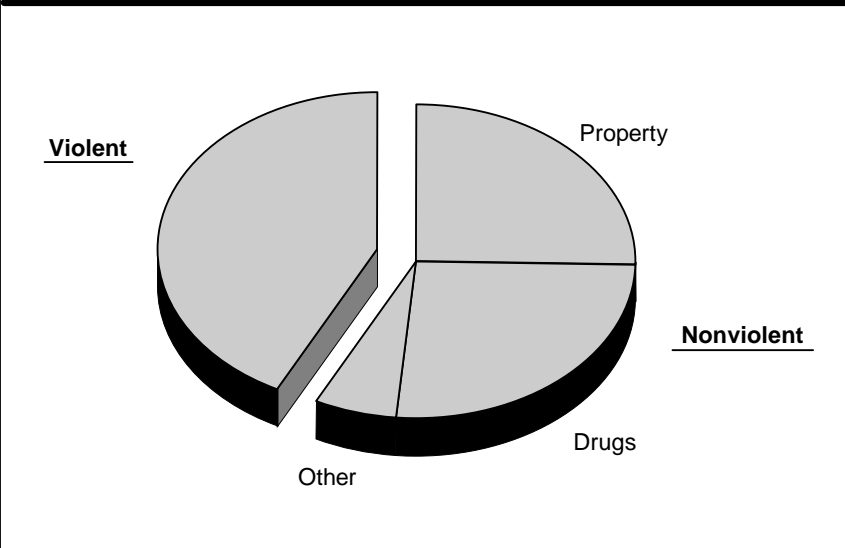


Figure 8

**Prison Population by Area of Commitment
June 30, 1995**

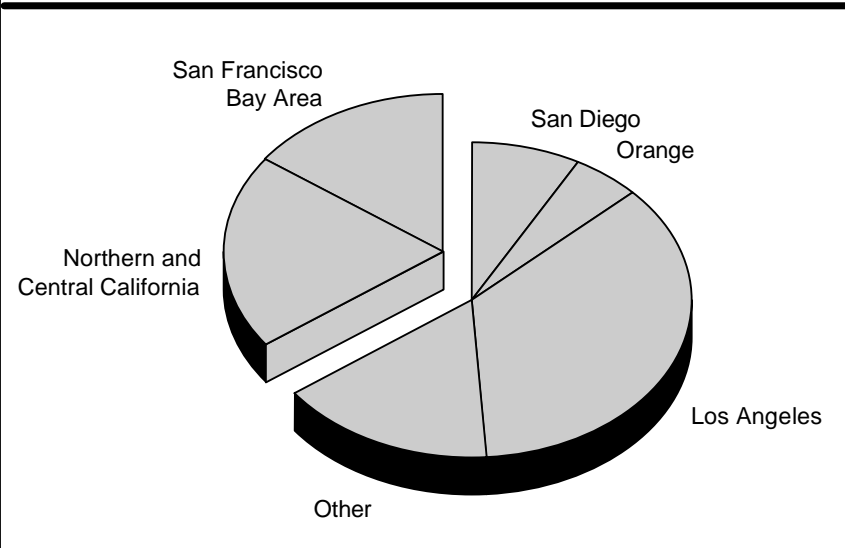


Figure 9

**Prison Population by Age Group
June 30, 1995**

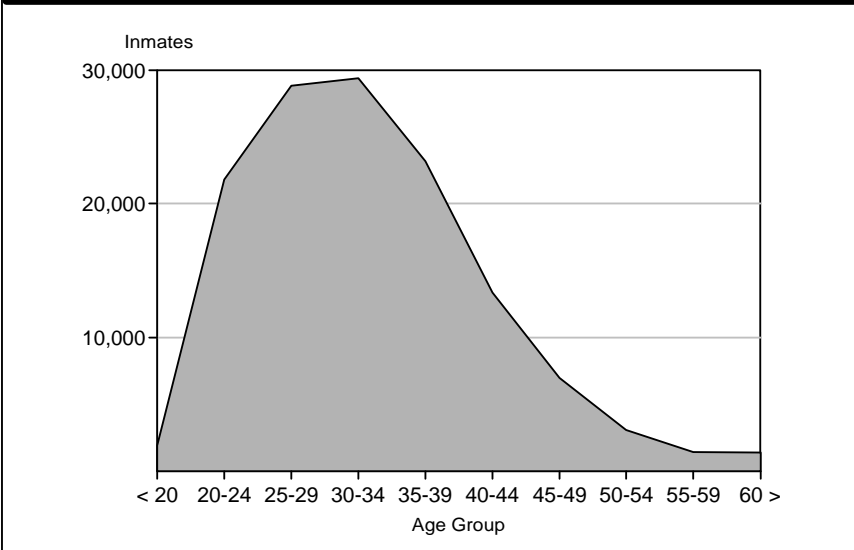
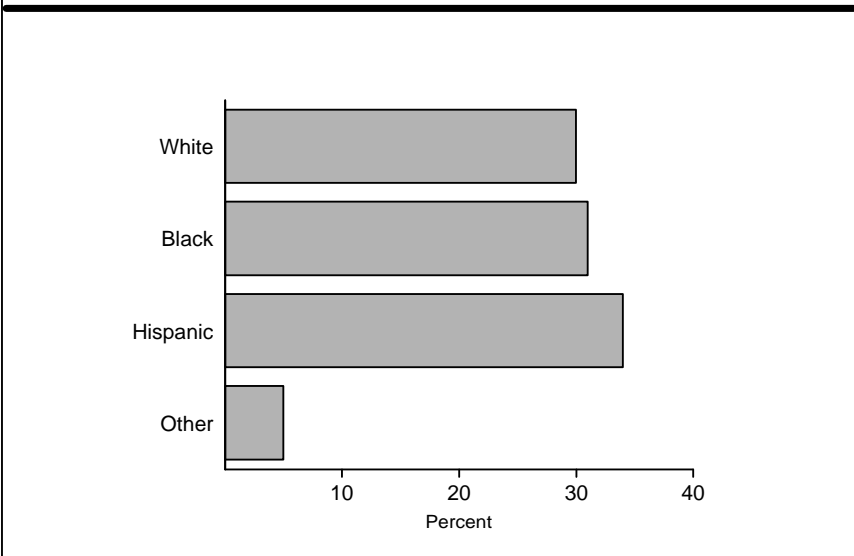
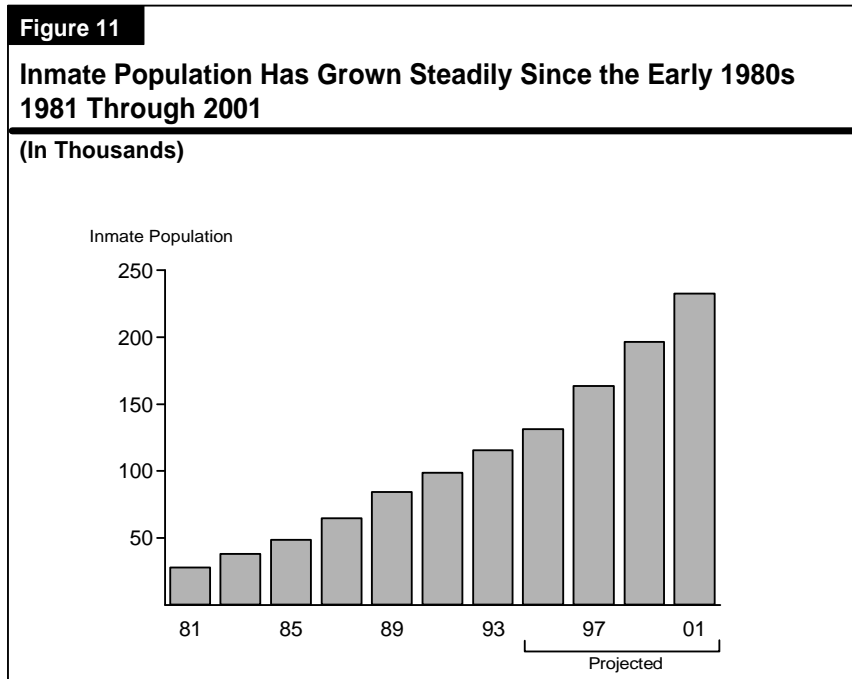


Figure 10

**Prison Population by Ethnicity
June 30, 1995**



on the fall 1995 population forecast prepared by the CDC, the Governor's Budget assumes that the inmate count will reach 146,390 by June 30, 1996, and increase further to 163,695 by June 30, 1997. These figures represent an annual population increase of 11.5 percent in the current year and 11.8 percent in the budget year. As can be seen in Figure 11, this continues an upward trend in the prison population that has persisted since the early 1980s.



The budget also assumes that the population will increase further over the following four years, reaching more than 232,386 inmates by June 30, 2001. This represents an average annual population increase of about 10 percent over the six-year period from 1994-95 through 2000-2001.

This represents a turnaround from the trend experienced in the late 1980s, during which the rate of growth in the prison system was decreasing. By 1993-94, the annual growth rate was less than 5 percent. Correctional officials believe that the return to a higher annual growth rate is due largely to the effects of laws mandating prison sentences for certain offender populations and lengthening prison terms for those offenders who are sent to prison. According to the CDC projections, the

rapid growth rate will be sustained through June 2005, at which point the prison population would reach 305,935.

Change from Prior Projection. The CDC's fall 1995 projection is somewhat higher than the spring 1995 forecast upon which the 1995 Budget Act was based. The fall 1995 forecast is about 3,800 inmates higher as of June 30, 1996 than the spring 1995 forecast. The differences between the spring and fall 1995 projections are relatively minor. Much larger adjustments in forecasts have been made by the CDC during the past several years.

Population Will Exceed Available Prison Space. Based upon these projections, the inmate population will reach 179,737 by June 30, 1998. As a result, the CDC will run out of space to house additional inmates in mid-1998 if new prison facilities are not made available by that date.

The CDC estimates that when all funded prisons are completed in 1997-98, the system capacity will be about 147,000. This capacity total does not include an additional 30,000 beds available on a temporary basis in such locations as gymnasiums and dayrooms. After accounting for these beds, the maximum capacity of the prison system (177,000) would be exceeded in 1998, if the CDC projections prove correct.

Parole Violators Fueling Population Growth. The 127,800 felons projected to be admitted to the prison system in 1996-97 belong to one of three categories: (1) offenders committed by the courts for a new criminal conviction who are not parolees (referred to as "new admits"), (2) parolees committed by the courts for conviction of a new crime, and (3) parolees returned to prison under an administrative hearing process for a violation of a condition of their parole.

The CDC's latest forecast assumes that the number of offenders admitted to prison in all three of these categories will continue to grow. During 1996-97, the budget assumes that the CDC will receive 52,540 new admits, 20,819 parole violators with new terms, and 54,112 parole violators returned administratively. The latter category of parole violators with administrative returns has grown so rapidly in recent years that it has surpassed admissions of felons committed with new terms.

The CDC projections assume that, throughout the five-year projection period, about 51 percent of male felon parolees will be returned to prison administratively for parole violations. That is consistent with the revocation rate experienced by the CDC during the first half of 1995.

"Three Strikes" Admissions Projected. The CDC's forecast assumes that the "Three Strikes and You're Out" law enacted in 1994 will continue to have a major impact in increasing the prison population. Under the law, offenders convicted of a felony, and who have one prior violent

or serious felony on their record, face a doubling of their prison term. Offenders with two violent or serious priors on their record, and who are convicted of a new felony, face a prison term of 25 years to life imprisonment.

The CDC forecast for 1996-97 assumes that 9,628 offenders—roughly 800 per month or one of every eight offenders sent to prison by the courts—will be committed to prison under the “Three Strikes” law. “Three Strikes” admissions are expected to exceed 13,100 annually by 2000-2001. The impact of these admissions is magnified because offenders sentenced under the “Three Strikes” law will receive much longer prison sentences than offenders who were convicted of the same crimes in the past.

Parole Population Growth. As of June 30, 1995, the CDC supervised 91,456 persons on parole. The Governor's Budget assumes that the parole population will be 92,930 as of June 30, 1996, and will increase to 94,524 by June 30, 1997. These figures assume a parole population increase of 1.6 percent in the current year and 1.7 percent in the budget year.

The budget also assumes that the population will increase further over the following four years, reaching a total of 113,744 parolees by June 30, 2001. This represents an average annual population increase of about 3.7 percent.

Potential Risks to Accuracy of Projections. As we have indicated in past years, the accuracy of the department's projections depends on a number of significant factors. Among the factors that could cause population figures to vary from the projections are:

- Changes in sentencing laws and the criminal justice system enacted by the Legislature and the Governor or through the initiative process.
 - Changes in the operation of inmate education and work programs that could affect the credits inmates can earn to reduce their time in prison.
 - Changes in the level of criminal activity that affect the number persons arrested, charged, tried, convicted, and ultimately admitted to prison.
 - Changes in the CDC's and Board of Prison Terms' (BPT's) policies and practices affecting the number of parolees returned to prison for parole violations.
-

Significant change in any of these areas could easily result in a prison growth rate higher or lower than contained in the CDC's projections.

The projections are also at risk because of the uncertainty as to whether the space available in the prison system will keep pace with the projected inmate population growth. As noted above, the prison population is expected to surpass the number of available beds in 1998. If new prison beds are not built or the shortage of prison space relieved in some other fashion by that time, CDC officials and others have predicted that the federal courts will intervene to cap the prison population at an unknown level, much the same way they have imposed population caps on many of California's county jail systems. If the federal courts were to intervene in this fashion, the CDC's projections would become obsolete.

Higher Caseloads Mean Bigger CDC Budgets. Absent such action by the federal courts, the major increases in the prison population can be expected to result in significant increases in the CDC budget that are likely to outpace overall state spending increases.

We have estimated how the CDC budget is likely to grow between now and 2000-2001 if, as under the current practice, both prison and parole caseload were fully funded and no other significant policy changes were made in the CDC programs. As seen in Figure 12, the CDC budget would grow to nearly \$5 billion by 2000-2001. If, instead, the CDC budget were to be constrained to grow no faster than overall General Fund revenues, the department would have to absorb reductions amounting to hundreds of millions of dollars annually.

Figure 12			
The CDC Budget Growth Will Outpace General Fund Growth			
(In Millions)			
Fiscal Year	CDC Budget		
	Based on Caseload^a	Based on Revenue Growth^b	Difference to Reductions
1995-96	\$3,253	\$3,253	—
1996-97	3,603	3,442	\$161
1997-98	3,801	3,665	136
1998-99	4,094	3,849	245
1999-00	4,497	4,041	456
2000-01	4,913	4,243	670

^a Growth based only on caseload increases.

^b Growth based on overall increase in General Fund revenue.

Projections to Be Updated in May

We withhold recommendation on the Department of Corrections' request for \$243 million to fund inmate and parole population growth, pending review of the revised budget proposal and population projections to be included in the May Revision.

The budget requests an increase of \$243 million and 2,761 personnel-years to accommodate the inmate and parole populations projected by the CDC as described above. The amount includes \$241 million from the General Fund, \$2.7 million from the Inmate Welfare Fund, and a reduction of \$840,000 in reimbursements.

Nearly all of the budget request—more than \$242 million of the total—relates to the projected increase in the inmate population. The money would be used to accommodate additional inmates in existing institutions, fund associated population-driven support costs, complete the activation of three new prisons which will open in the current year, and occupy almost 9,000 beds provided under the emergency housing program approved in the 1995 Budget Act. About \$745,000 of the requested additional funding stems from projected increases in the parole population.

The CDC has also requested and been granted \$46.2 million in increased spending authority in the current year primarily to account for a 3,400-inmate increase in the average daily population of the prison system. The budget proposal assumes that this addition to the CDC's funding base would carry over into 1996-97.

Projections Will Be Updated. Recent trends indicate that the population projections released by the CDC in fall 1995 have somewhat *overestimated* the number of inmates who are being incarcerated. For example, 1,200 fewer "Three Strike" offenders were sent to prison than anticipated in July through December 1995. Also, recent CDC data indicate that the rate at which parolees are being returned to prison for parole violations has dropped significantly below projections; by December 1995, the return to custody rate was 45 percent, well below the projected 51 percent rate projected for that month. Thus, as of early January 1996, the overall CDC inmate population count was running about 3,000 below the fall projections.

Meanwhile, the CDC's fall 1995 projections appear to have somewhat *underestimated* the number being supervised on parole. As of December 31, 1995, the parole count was about 1,700 above what had been projected, a direct result of a trend in which releases of inmates from prison exceeded expectations.

If these trends hold, they could result in a significant reduction in the amount requested to accommodate inmate population growth and a smaller, but still significant, increase to accommodate larger parole caseloads. Because the cost of incarcerating an inmate is much higher than the cost of parole supervision, the net effect of these caseload discrepancies is likely to be a significant reduction in the amount of CDC funding requested in the current and budget years. We would expect the reduction to be in the tens of millions of dollars.

The fall 1995 projections also need to be updated to reflect changes in criminal justice policies enacted or proposed by the Legislature and the Governor. For example, the Governor's Budget proposes to transfer 750 Department of the Youth Authority wards who are age 18 and over (so called "M cases") to CDC facilities; this addition of 750 inmates, which depends on pending legislation, is not included in the fall 1995 population forecast. Legislation enacted in 1995 to crack down on parole violators and to use civil court procedures to return sexually violent predators to prison also is not reflected in the latest CDC forecast.

For these reasons, we withhold recommendation on the proposed \$243 million and 2,761 personnel-years requested to support the inmate and parole population pending receipt and review in May of the CDC's revised estimates.

The Inmate Housing Plan Contains Uncertainties

We withhold recommendation on the Department of Corrections' plan for housing the projected increase in the prison population because part of the plan is obsolete and there a number of policy questions and uncertainties about the proposal. The plan will be updated as a part of the May Revision.

Inmate Housing Plan for 1996-97. The Governor's Budget includes an inmate housing plan to accommodate the 17,300 additional inmates that the CDC expects to receive during 1996-97. The plan calls for:

- ***New Prisons.*** The CDC would complete occupancy of three new prisons which will have opened and begun accepting inmates during the current year: Valley State Prison for Women near Chowchilla, High Desert State Prison near Susanville, and Salinas Valley State Prison near Soledad. During 1996-97, these three facilities combined would take in an additional 4,200 inmates.
 - ***Emergency Beds.*** The CDC would activate about 8,900 additional beds at previously existing state prisons, including new dormitories and bunking of dayrooms and gymnasiums. The emergency bed projects were authorized in the 1995 Budget Act.
-

- **Leased Jail Beds.** The CDC would lease about 2,900 existing jail beds in Los Angeles County. The first 800 beds at the downtown Los Angeles jail would be occupied beginning in the current year and would continue to be used in the budget year. Another 2,100 beds at the county's Mira Loma facility would be added during the budget year.
- **Community Correctional Facilities.** The CDC would occupy an additional 2,000 community correctional facility beds at private prisons built under state contract. Also, another 77 beds would be added to the existing community correctional facility at Baker.

Policy Questions and Uncertainties. Our analysis indicates that part of the housing plan's schedule is obsolete and that there is uncertainty about several implementation issues. The CDC housing plan also raises some significant policy questions that should be reviewed by the Legislature. These issues are discussed below.

Community Correctional Facilities Schedule Has Slowed. The CDC housing plan assumes that all 2,000 community correctional facility beds would be activated between February and June 1997. Since the housing plan was drafted, however, the CDC has revised the timetable for private vendors bidding for the contracts to provide these beds. The revised timetable specifies that the first beds would be occupied in mid-June 1997 and would all be occupied by September 1997. The CDC has advised us that a four-month delay in activating these facilities will be reflected in a revised housing plan that will be issued as part of the May Revision. Even this relatively short delay could create problems for the CDC because of its shortage of space to house its ever-increasing inmate population.

The delay in the availability of these beds stems largely from the CDC's failure to meet its original schedule for putting the projects out for bid to private vendors. Instead of issuing bid documents in February 1995, the bidding process did not get under way until October 1995. The CDC had initially hoped to shorten the bidding and construction process and occupy all of the new beds by the end of 1996-97. However, as the bid process began, would-be bidders complained that the time allowed for them to prepare and submit bids was too brief. This prompted the CDC to stretch out its timetable for occupying the community correctional facility beds. The new timetable gives bidders additional time to respond to the state's offer of the projects.

While the new timetable is more achievable, we still question whether it is realistic. In the past, similar community correctional facility projects have generated significant community controversy and opposition that has led to delays. As we noted in last year's *Analysis*, we

believe the CDC's decision to allow inmates with a somewhat higher security level to occupy these community beds is reasonable. However, the change in the criteria for inmate eligibility increases the potential for community opposition and delays.

Moreover, in order for the Legislature to evaluate the plan, the May Revision should address the following issues: (1) the cost projections assumed for these beds, (2) the cost-effectiveness of providing only limited inmate medical care at the private prison sites, and (3) the CDC's decision to exclude public agencies from the bidding process.

Leased Jail Beds Agreements Uncertain. We have been advised by the CDC that negotiations to lease the jail beds the CDC intends to occupy in Los Angeles have not been completed. Thus, we have no basis to evaluate the leasing plan or the cost-effectiveness of this element of the housing plan.

Any such lease agreement must by law meet the test set forth in the 1995 Budget Act. The Budget Act mandates that such a contract shall not reimburse counties more than the average amount it costs the state to provide the same services in comparable state institutions exclusive of one-time and capital outlay costs. (This requirement is proposed for continuation in the 1996-97 Budget Bill.)

In addition to this legal test, we believe the Legislature should consider (1) the security level of the inmates who would be housed at the jail, (2) what CDC staffing, transportation, overhead and other state costs will be incurred in connection with occupation of the jail beds, (3) the opportunity for state inmates to earn work and education credits to reduce their time in incarceration, (4) the intended duration of the lease arrangements, and (5) the impact of leasing jail beds on the state's capital outlay requirements for new prison construction.

Plan Proposes to Put Low-Security Inmates in Higher-Security Housing. The housing plan would continue a significant mismatch between the security risk posed by inmates and the security level of the prison facilities in which they are to be housed. This mismatch would worsen by the end of 1996-97.

For example, the housing plan indicates that, as of June 30, 1997, the CDC will have 8,500 more Level I inmates—those posing the least security risk—than it will have Level I prison beds.

The CDC data indicate that more than 11,000 Level I inmates are currently being housed in Level II facilities, where the level of supervision and security is more intense and thus more expensive. That is possible because the CDC has a surplus of Level II beds. As of June 30, 1997, the state will have 8,800 more Level II beds than it will have Level II inmates.

Some placements of Level I inmates in higher-level beds are clearly warranted as a result of inmate work assignments, psychological problems, convictions for specific crimes, and other factors. But the magnitude of the mismatch in inmates and their housing raises questions as to (1) the cost-effectiveness of housing so many Level I inmates in Level II beds, where security costs are generally higher, (2) whether the prison system has been and will in the future construct prison beds that fit the security level of its projected population, and (3) whether inmates are being properly classified. Because the security costs for Level II facilities are generally higher than for Level I facilities, the mismatch in housing and inmates has potentially significant fiscal ramifications.

Plan Dependent on Several Program Changes. The CDC's housing plan does not yet resolve several significant issues relating to correctional programs that could affect the aggregate number of inmates it must incarcerate as well as the specific way those inmates would be housed within the prison system.

For example, the budget assumes enactment of legislation that would transfer to the CDC 750 offenders age 18 and over (known as "M cases") who would otherwise be incarcerated in the Youth Authority. The housing plan does not account for this additional population, nor indicate whether this younger group of inmates would be housed in one particular facility. The potential legal requirement that some "M case" inmates receive special education might make it cost-effective for the CDC to group at least some of them in one institution.

The housing plan also provides no beds for released inmates returned to state custody under a new program for the civil commitment of so-called sexually violent predators.

Given these policy issues and uncertainties, we withhold recommendation on the CDC housing plan, pending receipt of additional information about its various components and its updating by the CDC for the May Revision.

What Happened to the Recommendations Of the Blue Ribbon Commission?

During the past five years, the state has made modest progress toward implementing the reforms advocated by the Blue Ribbon Commission on Inmate Population Management. Given the continued inmate population pressures—state prisons have gained 47,000 inmates since the report's release in January 1990—we believe many of the recommendations which have yet to be implemented remain relevant and worthy of consideration by the Legislature.

Background. Chapter 1255, Statutes of 1987 (SB 279, Presley), established the California Blue Ribbon Commission on Inmate Population Management to “reexamine traditional correctional housing approaches and to study other possible methods of housing the state's prison population.” The 25-member panel had a number of ex officio members as well as appointees by the Governor, the Senate Rules Committee, the Speaker of the Assembly, and the California Judges Association. The membership included the heads of the state's criminal justice and correctional departments, judges, local criminal justice and law enforcement officials, academic experts and researchers, and representatives of the business community.

The commission released its final report containing 38 recommendations on January 29, 1990.

Commission Recommended Major, Fundamental Changes. The panel made a number of important findings and recommendations. The commission's predominant conclusion was that “the criminal justice system of California is out of balance and will remain so unless the entire state and local criminal justice system is addressed from prevention through discharge of jurisdiction.” The report recommended that additional punishment options be expanded to reduce prison overcrowding while protecting public safety.

Only Modest Progress on Implementing Commission's Recommendations. Our analysis indicates that there has been only modest progress in implementing the recommendations, as shown in Figure 13.

What follows is a summary of the major findings and recommendations of the commission and the actions taken to date to implement them.

Enact Community Corrections Act

- **Commission Recommendation:** The Legislature should enact a Community Corrections Act to provide state funds to local governments through grants and contracts to significantly expand community-based intermediate punishment options for short-term prison commitments, parole violators, and some offenders who would otherwise be sentenced to county jail.
 - **Status:** The Legislature enacted two general community corrections measures in 1992, but both were vetoed by the Governor. In 1994, the Legislature enacted and the Governor signed AB 99x (Rainey). Its implementation, however, is dependent on yet-unspecified future funding. The Legislature is currently considering two additional community corrections measures, SB 760 (Lockyer) and AB 126 (Rainey).
-

Figure 13 Status of Recommendations of the 1990 Blue Ribbon Commission Inmate Population Management	
Recommendation	Implementation Status
Enact Community Corrections Act	Two measures enacted in 1992, but vetoed. Measure enacted in 1994, but implementation dependent on future funding. Two major proposals currently before the Legislature.
Expand intermediate sanctions for parole violators	Several community-based treatment programs (such as drug treatment) established for parolees that have helped reduce number of parole violators.
Establish parole revocation guidelines	Procedures established to improve parole decision-making.
Establish Sentencing Law Revision Commission	No action.
Establish Corrections Coordinating Council	Ad-hoc group established, but modest progress toward commission's goals and recommendations.
Prioritize inmate employment	Small number of inmates participating in private sector employment program; employment in Prison Industry Authority stagnate.
Eliminate delay in processing of civil and criminal cases in court	Several efforts adopted (such as Trial Court Delay Reduction Program) to reduce court backlog. "Three Strikes" measure has now increased backlog, however.
Mandate local governments to provide sites for correctional facilities	No action.

Develop Substance Abuse Treatment for Offenders

- **Commission Recommendation:** State and local correctional agencies should implement a state and local corrections substance abuse strategy to deal with substance abusing offenders while under correctional supervision.
- **Status:** The CDC and the Legislature have established a couple of additional treatment programs for inmates and provided funding for community-based treatment for parolees. The Legislature authorized construction of a new 1,000-bed prison devoted to drug treatment for inmates, which is under construction.

Expand Intermediate Sanctions for Parole Violators

- **Commission Recommendation:** State and local correctional agencies should significantly expand intermediate sanctions options for parole violators through the regular state budget process.
- **Status:** The CDC has significantly expanded community-based networks and treatment opportunities for parolees (such as drug treatment, homeless programs, literacy labs, and employment counseling), which have—at various periods—helped to reduce the number of parole violators. In addition, SB 760 and AB 126, which are currently under consideration, would provide additional punishment options for parole violators.

Establish Parole Revocation Guidelines

- **Commission Recommendation:** State correctional agencies should establish clear guidelines governing criteria for parole decisions.
- **Status:** The CDC and the BPT implemented procedures to improve parole decision-making which, along with other efforts, have generally reduced parole revocation rates.

Establish Sentencing Law Review Commission

- **Commission Recommendation:** A commission representing all segments of criminal justice system should review and make recommendations to the Governor and the Legislature regarding adult and juvenile sentencing issues.
- **Status:** No such commission has been created.

Establish Corrections Coordinating Council

- **Commission Recommendation:** State and local correctional agencies should establish a council to develop strategies for inmate population management and construction.
- **Status:** The California Corrections Executive Council, an ad-hoc organization of top management of state and local correctional officials, has been established, but has made only modest progress toward the specific goals and recommendations outlined by the Blue Ribbon Commission.

Prioritize Inmate Employment

- **Commission Recommendation:** High priority should be placed on inmate employment, and the CDC should acquire legislative authorization to allow private sector involvement in prison-based businesses.
-

- **Status:** The voters enacted Proposition 139 in November 1990, which established the Joint Venture Program to allow private businesses to employ inmates and operate on prison grounds. Only about 200 inmates currently participate in the program and no other significant efforts have been implemented to put a priority on inmate employment. In fact, inmate employment in the Prison Industry Authority has stagnated in recent years.

Eliminate Delay in Processing of Civil and Criminal Cases in Courts

- **Commission Recommendation:** The Judicial Council should recommend strategies to make courts more effective and eliminate unnecessary delay in processing, trial, and disposition of civil and criminal cases.
- **Status:** The Legislature and the courts have authorized and implemented a number of efforts (most notably the Trial Court Delay Reduction Program) which have significantly reduced the backlog of cases. The “Three-Strikes and You're Out” measure has reversed that trend in many jurisdictions, however.

Mandate Local Governments to Provide Sites for Correctional Facilities

- **Commission Recommendation:** Local governments should be mandated to provide sites in communities for correctional facilities within every major urban area in numbers proportionate to the number of offenders incarcerated from that area.
- **Status:** No action has been taken on this recommendation.

Conclusion. While we do not necessarily endorse all of the commission's recommendations, our review found substantial justification for many of the recommendations. In fact, we believe that, had they been enacted, the recommended changes would likely have reduced the growth in the prison population and the associated costs of the CDC.

We believe the proposals continue to warrant serious consideration by the Legislature. That is because, as we have indicated previously, we believe it would be difficult and expensive for the state to attempt to accommodate the significant inmate population growth projected for the CDC for the coming decade and beyond in the same manner as it has in the past.

In addition to the commission's findings, the Legislature may again wish to reconsider other options we have offered in the past to slow the growth in the prison population. We are in the process of updating our projections of the budgetary savings and bed space that could result from enactment of these proposals, which primarily involve changes in

sentencing laws that would prioritize use of available prison space for violent, serious, and career criminals. These options include:

- Releasing inmates from prison one month early.
- Eliminating short-term commitments to prison (perhaps those with less than three months to serve) and having offenders instead go directly to parole supervision.
- Increasing the credits certain inmates, such as those involved in fighting forest fires, can earn to reduce their time in prison.
- Leaving offenders in county custody instead of confining them in state prison for certain nonviolent and nonserious crimes, such as marijuana offenses, vehicle theft, grand theft, and petty theft with a prior theft.
- Eliminate parole supervision for offenders who are released after serving time in prison for nonviolent crimes.

We expect to have updated estimates for the potential impact of these options at the time of budget hearings.

THE “GRAYING” OF THE CDC

While inmates age 60 and over now represent only about 1 percent of the state prison population, their numbers are forecast to grow significantly and could exceed 47,600, or an increase of almost 8 percent, two decades from now. Because older inmates tend to have more significant medical problems, the “graying” of the CDC population could be costly to the state. We believe that the state could achieve significant correctional savings in the long run, while not sacrificing public safety, by identifying and providing the fast-growing population of aging inmates with alternative forms of punishment or parole outside of a traditional prison setting. This approach would free up prison cells for violent, serious, and career criminals still in their prime crime-committing years.

A Major Demographic Shift

Median Age of Inmates Is Rising. Currently, the median age of the CDC inmates is about 31 years, having increased from age 28 between 1983 and 1992. Although a three-year change in the median age may seem numerically small, it represents an 11 percent increase in the age of the population and is a significant demographic shift in less than a decade's time.

Inmates age 60 and over (referred to hereafter as over-60) now number about 1,300, or about 1 percent of the total inmate population. However, the CDC is forecasting that this segment of the inmate population will grow significantly during the coming two decades. Specifically, the CDC forecasts that the number of inmates in this age category will exceed 47,600 by the year 2024. In other words, the over-60 inmate population will grow 34 times over.

As can be seen in Figure 14, the over-60 segment will increase faster than the overall prison population. By the year 2024, the over-60 segment will constitute just under 8 percent of the total prison population, compared to the 1.1 percent share it represents today. Meanwhile, the share of the population that is under age 30 will shrink, going from the present level of 40 percent to about 25 percent in the year 2024.

Figure 14
The Aging of the Inmate Population

Fiscal Year Ending June 30	Percentage of Total Inmate Population 60 and Over	Number of Inmates		Annual Percentage Growth of Inmates	
		60 and Over	All Ages	60 and Over	All Ages
1990	1.0%	883	90,371	—	—
1995	1.1	1,364	127,089	54.5%	40.6%
2000	1.4	3,045	210,502	123.2	65.6
2005	1.8	5,536	301,474	81.8	43.2
2010	2.6	10,227	390,136	84.7	29.4
2015	3.9	18,555	470,029	81.4	20.5
2020	6.0	32,524	543,753	75.3	15.7
2024	7.9	47,647	602,792	46.5	10.9

Note: Figures based on the California Department of Corrections' fall 1995 projections.

Why the Prison Population Is Aging. There are two primary reasons for this major demographic shift in the prison population. The first factor is that the aging of the prison population simply reflects the aging of the citizenry as a whole. The so-called “baby boom” generation is getting older, and so are the criminals of the baby boom generation.

The second and probably more significant factor in the aging of the inmate population is the revision of sentencing laws providing longer terms, and in some cases life terms, for career criminals and those who commit violent and serious offenses. The “Three Strikes and You’re Out” law enacted by the Legislature and the Governor in March 1994 (and later ratified by California voters) has already resulted in 25-years-

to-life sentences for more than 1,100 offenders. About 100 more “third strike” offenders per month are coming in with equally long sentences. And “Three Strikes” and other violent and serious offenders will be serving a much larger proportion of their sentences than was previously the case. Some inmates who once were eligible to reduce their time in prison by as much as 50 percent through participation in work and education programs will henceforth be eligible only to reduce their prison time by 15 percent to 20 percent.

The decision to incarcerate more offenders, and to keep them much longer, adds up to a much larger population of over-60 inmates in the long run.

Most Aging Inmates Committed Violent Crimes. About 75 percent of the over-60 inmates are violent and serious felons who are typically sentenced for such crimes as murder and lewd acts with children. The other 25 percent are serving time for nonviolent and nonserious crimes, typically drug possession, drug possession for sale, and driving under the influence of alcohol.

The proportion of those committed for nonviolent and nonserious crimes is likely to increase over time. According to the CDC data, about 60 percent of the offenders who so far have received third-strike 25-years-to-life sentences under the “Three Strikes” law have been committed for nonviolent and nonserious offenses.

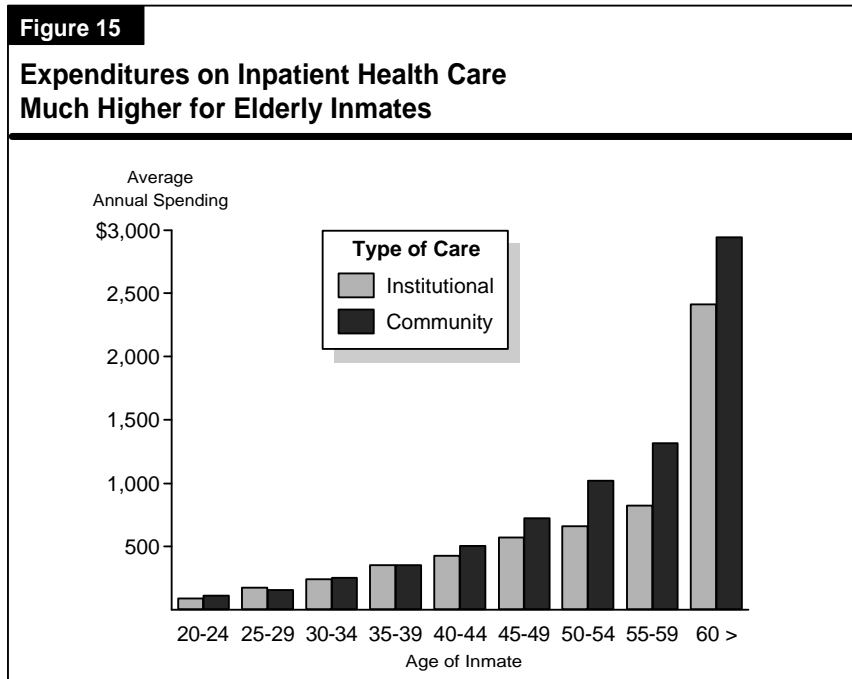
The Costs of an Aging Prison Population

Medical Problems Will Drive Costs Up. Academic experts and the CDC have concluded that the graying of the CDC inmate population will result in large cost increases for the prison system. That is primarily because older inmates tend to be sicker inmates who require medical treatment more frequently, and often at a greater expense, than their younger counterparts.

Because special security details are needed to escort prisoners on medical visits to outside community hospitals, sick and aging inmates also increase security costs. One day's transportation and stay at a hospital by an inmate may result in \$500 to \$2,000 worth of staffing and transportation expenses.

Estimating the Extra Cost of Aging Inmates. Estimates vary as to exactly how much more costly these older inmates will be. Based upon a review of inmate medical-care usage data, and recognizing that estimating these costs is difficult because of inadequate information, we estimate that aging inmates annually cost the prison system an average of \$46,869—or more than double the typical cost for an inmate. Of this

total, the additional medical and related security costs associated with aging inmates are \$24,984. Our figures were derived from historical hospital care cost and usage data provided by the CDC and budget data for inpatient and outpatient care. Figure 15 depicts how much more costly it is to provide inpatient care for aging inmates both at prison hospitals and community hospitals outside of prison. The figure does not include outpatient care and health-related security costs.



At present, virtually none of the state's medical and support costs are reimbursed by either inmates or the federal government. While some inmates pay a small co-payment for medical services, the fee defrays only a small share of their medical costs. Also, inmates are ineligible for Medicare, the California Medical Assistance Program (Medi-Cal), veterans benefits, and other federally supported benefit programs while they are incarcerated in state prison.

The Issues: Public Safety and Prison Costs

Studies Show Lower Likelihood of Recidivism. In the past, our office has presented the Legislature with a series of options for reducing the costs of imprisoning and supervising on parole certain low-risk or

short-term offenders in order to prioritize the use of CDC prison space and parole supervision for high-risk or long-term offenders. Given prior academic studies concluding that aging inmates—even those committed for violent crimes—generally pose a relatively low risk of committing new crimes upon their release from prison, we believe the Legislature should also consider development of a plan to identify a significant population of aging inmates who pose a low risk of committing new crimes. By providing these aging inmates with alternative forms of punishment or parole outside of a traditional prison setting, the state could free up prison space for violent, serious, and career criminals.

In our view, the public safety risks inherent in the transfer of aging inmates to nontraditional custodial arrangements are lower than the risks posed to public safety of having less prison space available for younger and more dangerous criminals.

Options for Addressing the Problem of Aging Inmate Costs

We believe several options exist for responding to the impending boom in the population of aging inmates. A list of options, and a few comments on the apparent advantages and disadvantages of each, follows. Each estimate assumes existing federal law.

Conversion of Existing State and County Facilities to Geriatric Prisons. Declining patient populations are likely to result in the closure of some state mental hospitals, state centers for the developmentally disabled, and county medical facilities. For example, the 1996-97 Governor's Budget Summary proposes the closure of Camarillo Developmental Center and State Hospital. Some of these facilities may be capable of being modified to hold aging inmates who do not pose a significant security risk. Some might be suitable for privatization efforts.

- ***Advantages:*** By freeing up prison space taken up by aging inmates, conversion of other state facilities could help avoid some of the very significant capital outlay costs (about \$50,000 per bed, on average) of building hundreds of new state prison beds.
- ***Disadvantages:*** The state would not save much money, if any, on prison operating costs, because aging inmates shifted to the state facilities would still require state support. (Some Medi-Cal costs might be covered, however, in a privatized facility.) The state would probably continue to pay all security, health, and support costs for most of these inmates, even if the facilities were not designated as state prisons. The state could also incur some capital outlay costs for conversion of existing facilities to this new purpose.

Broadening of “Compassionate Release” Parole. Existing laws permit the courts to release on parole any prison inmate upon the recommendation of either the CDC or the BPT. In the past, however, the CDC and the BPT have only rarely initiated the so-called “compassionate release” on parole of aging and very sick inmates.

In 1995, the Legislature approved AB 1408 (Villaraigosa) intended to broaden the use of compassionate release for inmates deemed to be “permanently and totally physically incapacitated” as well as terminally ill inmates within six months of death. This measure was vetoed by the Governor, who objected that the bill removed the BPT from the compassionate release process for certain inmates convicted of violent crimes.

The state could expand on the concept contained in AB 1408 and establish a procedure for the early release of aging inmates deemed to pose a low risk to public safety. The Legislature could limit any such releases and placement on parole to aging inmates who were committed for nonviolent and nonserious offenses and who had spent a certain amount of time (for example, ten years) in prison.

- **Advantages:** In addition to capital outlay savings, such a plan would probably initially remove about 200 to 300 inmates from state prison at a net savings (after parole supervision costs were counted) of \$8.9 million to \$13.4 million annually to the CDC budget. Much larger CDC operational savings could be achieved if fewer limits were imposed on eligibility for release. Even with strict eligibility limits, the savings to the CDC budget would grow considerably over time. By 2024, such a release program could divert roughly 12,000 inmates a year from CDC prisons at a net savings to the CDC budget (after counting parole supervision costs) of \$530 million annually. These estimates assume that only nonviolent and nonserious offenders would be diverted in this fashion.
 - **Disadvantages:** Because every recommendation for such a release would be subject to approval by a court, judges may be unwilling to release this population of aging inmates and the actual savings realized could be significantly reduced. Also, the projected savings to the CDC budget could be somewhat offset by higher costs to other state programs to the unknown extent that the parolees would become eligible after release from prison for Medi-Cal, the Supplemental Security Income/State Supplementary Program (SSI/SSP), and other public assistance programs partly funded by the state. County governments would similarly face costs from General Assistance and indigent health care. We believe the state would still receive an overall net fiscal benefit from expansion of such releases.
-

Establish a Home Detention Program for Aging Inmates. Instead of paroling aging inmates, the state also has the option of officially maintaining them in CDC custody but assigning them to home detention under electronic monitoring. The program could conceivably include the home of an inmate's family, group homes, or nursing homes dedicated to serving the medical and other needs of this inmate population. The Legislature could target the same limited population that might otherwise be considered for an expanded compassionate release program.

- ***Advantages:*** Implementation would not require parole of an inmate or the approval of judges, making the diversion of a significant number of inmates from prison more likely to be realized than under a compassionate release program. If about 200 to 300 aging inmates were deemed eligible, the initial net savings to the CDC budget (after counting electronic monitoring costs) would be about \$8.4 million to \$12.6 million annually. By the year 2024, such a home detention program could divert roughly 12,000 nonviolent and nonserious offenders a year from the CDC at a net savings to the CDC budget (after counting electronic monitoring costs) of about \$500 million annually. Some of the cost of providing financial support and medical services would be shifted to the federal government, because many inmates in home detention are likely to be eligible for federal assistance through Medicare, SSI-SSP, Medi-Cal, the Veterans Administration, and the In-Home Supportive Services Program. Figure 16 presents four examples of how the diversion of an inmate to home detention and electronic monitoring could reduce state incarceration costs.
- ***Disadvantages:*** As Figure 16 also shows, the projected savings to the CDC budget could be somewhat offset by higher costs to the unknown extent that the inmates in home confinement would become eligible for Medi-Cal, SSI/SSP, and other public assistance programs that are also partly funded by the state, as well as county-funded General Assistance and indigent health care. The state would also incur additional costs for supervising home confinement and electronic monitoring. However, we believe the state would still receive an overall net savings from a home detention program for aging inmates.

Establish Aging Inmates as a Target Population for Realignment Legislation. One option the Legislature might consider is to define aging inmates as a candidate population for transfer to county custody under either of the criminal justice realignment measures (SB 760 and AB 126) now being discussed by a conference committee or any other similar measure that may be considered. Both bills would implement

the concept of diverting state funding to counties, either by state-county contracts or by shifting a portion of the state sales tax base to counties, in concert with a commensurate redirection of nonviolent and nonserious offenders from state to county custody.

Figure 16				
Home Detention of Aging Inmates				
Examples of State Savings				
Annual Fiscal Impact	Aging Inmate Eligible for:			
	SSI/SSP; Medi-Cal Benefits^a	SSI/SSP; Medi-Cal Long-Term Care^b	Veterans Pension; U.S. Veterans Health Care^c	General Assistance and Indigent Care^d
Savings				
Incarceration	\$46,869	\$46,869	\$46,869	\$46,869
Costs (offset to state savings)				
Electronic monitoring/home detention ^e	\$4,745	\$4,745	\$4,745	\$4,745
Benefits	3,732	12,528	—	—
Totals, state costs	\$8,477	\$17,273	\$4,745	\$4,745
Net annual state savings	\$38,392	\$29,596	\$42,124	\$42,124

^a Medical services only, excluding long-term care.
^b Medical services including long-term care.
^c Costs to federal government.
^d Costs to counties.
^e Average \$13 per day.

- **Advantages:** Unknown major additional savings could be achieved by this approach beyond the amounts already contemplated under the two bills to the extent that the Legislature permitted the transfer to counties of aging inmates not now part of the SB 760 or AB 126 target populations. For example, SB 760 and AB 126 in their present forms are generally limited to offenders sentenced to more than two to three years in prison. The Legislature might consider adding to the transfer program those inmates serving longer prison terms for nonviolent and nonserious crimes if they are over 60.

- **Disadvantages:** The same cost factors that make it attractive for the state to transfer aging inmates out of the state prison may make this option unattractive to county governments. At present, both SB 760 and AB 126 contain provisions authorizing sheriffs to block the transfer of undesired state inmates to their custody, and it is quite possible they would exercise that authority to avoid these costs.

Conclusion

Of these four options, we believe that home detention of aging inmates is the most promising alternative. Compared to the other options, we believe it would be more easily implemented, pose the least threat to public safety, and provide substantial fiscal benefits to the state.

As it evaluates these options, we recommend that the Legislature focus for now on diverting aging offenders whose commitment offense was nonviolent and nonserious. This is because the 1994 federal anti-crime bill made potentially millions of dollars in federal prison construction grants to states such as California contingent upon federal “Truth In Sentencing” standards. Unless federal law is changed on this point, the state might be at some risk of losing its eligibility for federal funds if it changed its sentencing practices to release many over-60 inmates who had been committed for violent crimes.

We would also note that this situation could soon change. At the time this analysis was prepared, legislation pending before Congress would exempt from the “Truth In Sentencing” standards the release of “geriatric prisoners.” If this measure is enacted, consideration could be given to diversion of violent and serious offenders from traditional prison cells.

CORRECTIONAL PROGRAMS

Implementation of Sexually Violent Predator Program Is Flawed

We withhold recommendation on \$10.4 million requested from the General Fund for civil commitment of sexually violent predators released from prison until the Department of Corrections and other state agencies responsible for operation of the program resolve significant implementation issues. (We also withhold recommendation on \$22 million requested by the Department of Mental Health and \$800,000 requested by the Board of Prison Terms for the program—a total of \$33.2 million.)

What Is the Sexually Violent Predator Program? The Governor's Budget proposes to provide three state agencies—the CDC, the Department of Mental Health (DMH), and the BPT—with a combined total of \$17.7 million in the current year and \$33.2 million in the budget year to implement the Sexually Violent Predator (SVP) program enacted last year by the Legislature and the Governor as Ch 762/95 (SB 1143, Mountjoy) and Ch 763/95 (AB 888, Rogan).

Under the SVP program, effective January 1, 1996, an inmate who has completed a prison term for certain sex-related offenses, who meets other specified criteria, and who would otherwise be released on parole can instead be committed, under provisions of civil rather than criminal law, to state custody for two additional years at a time for treatment of his or her mental disorder.

The civil commitment process begins with the screening of inmates by the CDC and the BPT to see if they appear to meet the criteria for commitment. In general, these criteria are that (1) the inmate has been convicted and sentenced to prison for a specified sexually violent crime, such as rape or child molestation; (2) the inmate's crime involved two or more victims; (3) the inmate's criminal acts involved efforts to promote a relationship with and then victimize a stranger; (4) the inmate has a diagnosed mental disorder; and (5) the inmate is a danger to the health and safety of others because of the risk he or she will engage in sexually violent criminal behavior.

If the CDC determines that an inmate may be a SVP, it refers the case to the DMH, which is charged with evaluating whether the inmate is appropriate for commitment. If the DMH determines that an inmate is a SVP who should be committed to state custody, it refers the case to the county counsel or the district attorney in the county which originally sent the inmate to prison. The county counsel or district attorney then seeks a civil court order committing the inmate to state custody for two years as a SVP. If, at the end of the two-year period, the person in state custody still qualifies as a SVP, authorities can seek another two-year commitment from the court.

The funding and personnel-years that would be budgeted for each agency, and the role of each agency in the SVP program, is shown in Figure 17 (see page 54).

What Is the Status of the Program? Although the law took effect at the beginning of the year, authorities are already screening, evaluating, and seeking civil commitments of SVPs by redirecting existing resources. In December 1995, the Director of Finance advised the Legislature of his intention to increase current-year expenditure authority for the three state agencies by \$17.7 million for implementation of the SVP

program. Based upon a review of the joint proposal by the three agencies, the Chairman of the Joint Legislative Budget Committee recommended that the additional funding not be approved until significant problems with the proposal had been resolved. The Chairman indicated that, because time was of the essence in implementing the new program, the administration should continue to redirect funds to begin the implementation and could resubmit a deficiency request when the problems were resolved. As of this analysis, the Director of Finance has not taken final action regarding the \$17.7 million funding proposal. We anticipate that the three state agencies will probably present a revised proposal for current-year expenditure authority for the SVP program.

Figure 17			
Sexually Violent Predator (SVP) Program			
1996-97			
(Dollars in Millions)			
Department	Funding Request	Personnel-Years Requested	Role in SVP Program
Corrections (CDC)	\$10.4	195.0	Screen and refer inmates to the DMH for evaluation; transport inmates and parolees; lease and guard unidentified 210-bed facility to house and treat SVP civil commitments.
Board of Prison Terms (BPT)	0.8	6.6	Assist the CDC in screening of inmates for the SVP program; process and conduct hearings for temporary holds of SVP-candidate inmates.
Mental Health (DMH)	22.0	369.5	Evaluate SVP candidates referred from CDC; house and assess inmates placed on 45-day temporary hold at 30-bed unit at Atascadero State Hospital; petition counties to obtain civil commitment of SVPs; house and treat those civilly committed at unidentified 210-bed facility.
Totals	\$33.2	571.1	

A legal challenge to the constitutionality of the program has been filed by an inmate whom the state is seeking to commit to its custody as a SVP and remains pending. Such a court challenge has occurred to a similar law in the State of Washington, resulting in a court-ordered freeze in that program.

Analyst's Concerns. Our review of the state agencies' SVP proposal found several significant problems in the proposed implementation of the program that we believe need to be remedied by the DMH, the BPT, and the CDC before their 1996-97 budgets can be approved. We are concerned about the budget request primarily because (1) the involved state agencies used conflicting caseload estimates in developing their implementation plan, (2) the requests for funding are greatly in excess of prior estimates of the cost of the measure presented to the Legislature just four months ago, (3) the administration has not indicated how it will provide facilities to house and treat the number of SVPs that the state agencies intend to commit to state custody, and (4) the implementation plan appears to be inconsistent with the law.

Our concerns about the implementation of the SVP program are detailed below.

Caseload Assumptions Conflict. The three state agencies have each based their expenditure plans on differing assumptions as to the number of state prison inmates who would be screened, evaluated, adjudicated, and committed as SVPs. Even different divisions within the CDC relied upon different caseload assumptions in the drafting of their expenditure requests. It would be premature to approve the budget request until the three state agencies are in agreement as to the likely workload that would be generated by the program and their spending requests have been adjusted to reflect this workload.

Program Much More Costly Than Anticipated. The caseload figures presented by the state agencies for the SVP program are significantly higher—more than seven times higher, according to the DMH—than the estimates prepared while Chapter 762 and Chapter 763 were being considered by the Legislature. These variations in caseload are significant because the cost of holding and treating each SVP would be high. The 210-bed treatment center proposed for SVPs would cost more than \$112,000 per bed annually to operate. That compares to the \$21,885 average annual cost of housing offenders in state prison, as well as the \$57,000 to \$138,000 per bed average annual cost of holding and treating various categories of criminal offenders in state mental hospitals.

State agency officials indicate that the higher caseload figures upon which the budget request is based reflect the state's initial results of screening inmate populations for potential SVP referrals. Nonetheless, the magnitude of the changes in the caseload and cost figures, and the fact that they came to light so soon after the passage of the measure, cause us to have significant concerns as to whether the estimates upon which this budget request is based are reliable.

It would be premature to approve the budget for this program until the state agencies have provided the Legislature with a full written reconciliation of the discrepancies in caseload and cost figures.

No Housing Plan Provided. None of the three departments charged with implementing the SVP program have presented a workable and realistic plan detailing how and where persons who receive a civil commitment as a SVP would be housed and treated. The same applies for inmates ready to be released on parole whom the agencies propose to temporarily hold in state custody while they are being evaluated and eventually committed under the law as SVPs. In both cases, the state agencies involved have contemplated an approach to implementation of the program that would apparently result in far more civil commitments of SVPs than there are beds available to house and treat them. For example, the DMH has suggested that 30 beds at the Atascadero State Hospital could be made available for those inmates who are about to be paroled but are placed on 45-day temporary holds, pending determination as a SVP. However, state agency officials have advised us that those beds would probably be filled to capacity by persons on *temporary* holds by February 1996. No additional beds for this population have been identified.

Likewise, the state agencies proposed to house inmates who are declared SVPs by the courts in an unidentified leased private facility or, possibly later, at the Camarillo State Hospital. However, the state agencies have not yet presented the Legislature with a SVP housing plan indicating when those treatment beds would be available, how they would be phased in to keep pace with SVP commitments, or the capital outlay funding needed to provide the secure facilities necessary for a SVP population.

For example, the DMH had advised us that the population of SVPs would ultimately be expected to reach 400, well beyond the 210 beds now proposed to house them. The 1996-97 Governor's Budget indicates, however, that the population would actually be even greater, and would approach 650 by mid-1997. The state agencies have not indicated how this shortage of beds would be addressed in the budget year and ensuing years, nor the cost of housing this larger population of SVPs.

It is also unclear from the budget request what other programs for the treatment of mental illnesses of inmates, if any, would lose beds at Atascadero and other state mental hospitals in order to accommodate inmates committed to state custody as SVPs. For example, displacement of mental hospital beds for the treatment of mentally ill inmates *before* their release from prison in order to free up more beds for SVPs *after* their release from prison would have important ramifications for state

spending levels, public safety, and the state's legal position in pending lawsuits over the provision of mental health treatment services for inmates.

At least initially, the state may need to consider alternatives to the SVP process, such as employing other means—intensive parole supervision, electronic monitoring, and home detention—to protect the public from felons who could potentially be designated SVPs but for whom the state lacks bed space. Based on the advice from the Legislative Counsel's Office, we believe Chapters 762 and 763 provide the Director of the CDC with discretion to manage the number of SVP screenings to ensure that the state does not generate more civil commitments than it has the capacity to house and provide treatment services.

Implementation Plans Inconsistent With the Law. Based upon the advice we have received from the Legislative Counsel's Office, part of the proposed implementation plan appears to be inconsistent with the new law. Chapter 762 and Chapter 763 state that SVPs are to be confined “. . . in a secure facility designated by the Department of Mental Health . . .” that also “. . . shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.” Yet, the three state agencies propose to implement the program by placing persons whom the courts determine to be SVPs, as well as those temporarily held for a SVP determination, in state mental hospitals, not state prisons. The administration has advised us that it will propose legislation to amend the law to delete the requirement that SVPs be held at state prisons. Until such time as the law is changed, the proposal contained in this funding request appears to be at odds with the requirements of the law.

Conclusion. For all of these reasons, we withhold recommendation on the \$10.4 million requested by the CDC, as well as \$22 million by the DMH and \$800,000 by the BPT, for a total of \$33.2 million, to implement the SVP program and recommend that the three state agencies report at the time of budget hearings on the steps they intend to take to resolve these issues.

Success of Preventing Parolee Failure Program Is Still Unclear

The Department of Corrections has yet to complete its evaluation of a series of pilot projects initiated four years ago, known collectively as the Preventing Parolee Failure program, to help parolees reenter society and not return to a life of crime. We recommend the adoption of supplemental report language directing the department to complete studies on recidivism and cost-effectiveness of the pilots and report to the

Legislature whether the pilots should be discontinued, modified and tested further, or expanded to serve a larger statewide parolee population.

Program Launched Four Years Ago. In 1991, the CDC acted on its own initiative to internally redirect funding to a series of projects to help inmates released from prison or parole succeed in the community. Subsequently, the Legislature approved what is known as the Preventing Parolee Failure (PPF) program. The CDC now spends about \$9 million annually on the pilot projects, which include five multiservice centers to house homeless parolees, nine computer learning centers offering literacy training and job placement services at 74 parole offices, and two networks of residential and outpatient drug treatment services for parolees. The ultimate goal of the program is to reduce parolee recidivism.

Mixed Results/Inadequate Evaluations. So far, evaluations of the PPF pilots have shown mixed results. For example, the literacy program documented strong and seemingly cost-effective gains in inmate reading and math abilities. However, the evaluation of two job placement pilot programs indicated that only 13 percent of the parolees assisted remained at their jobs six months after they were placed in the position. No attempt was made initially to measure the impact some pilot programs are having on recidivism rates. However, the CDC recently advised us of its intention to further evaluate the PPF pilots and their impact on recidivism. We believe this decision is appropriate.

Evaluations Should Be Completed and Conclusions Acted Upon. Given the more than \$40 million in funding that has been expended on the pilot programs since 1991-92, we believe it is time for the CDC to complete those studies now in progress, determine whether each pilot was a success or failure, and to apply the lessons learned from the experimental programs. In our view, programs that have demonstrated their cost-effectiveness by reducing recidivism should be expanded to all appropriate inmate and parolee population groups. Programs which have not proven their cost-effectiveness after such a lengthy testing period should be terminated or modified and tested further. It is inappropriate, in our view, to continue pilot programs in perpetuity without reaching a conclusion as to their merit and acting on the information gained from the experiments.

Analyst's Recommendation. For these reasons, we recommend the adoption of the following supplemental report language directing the CDC to complete the evaluations:

The Department of Corrections shall (1) complete studies of the recidivism rates and cost-effectiveness of the Preventing Parolee Failure pilot

programs in a timely fashion and (2) present a report for the Joint Legislative Budget Committee and the Legislature's fiscal committees by April 1, 1997, outlining its recommendations as to whether each pilot project should be discontinued, modified and tested further, or expanded to serve a larger statewide parolee population. The report should estimate the increases or reductions in department funding and personnel that would be necessary to accomplish each of its recommendations.

Substance Abuse Treatment Facility Needs Aftercare Plan

We recommend the adoption of supplemental report language directing the Department of Corrections to provide the Legislature with a plan by April 1, 1997, which will ensure that a complete and effective aftercare drug rehabilitation program will be available as necessary for all inmates who participate in the Substance Abuse Treatment Facility program at Corcoran.

Chapter 585, Statutes of 1993 (Costa, AB 10) authorized the construction of a 1,000 bed, \$100 million Substance Abuse Treatment Facility (SATF) alongside a traditional 2,600-cell prison for inmates of various security levels at Corcoran. The CDC has begun construction of the new prison complex and is scheduled to begin occupying the SATF as well as the adjacent conventional prison in July 1997. The CDC believes the SATF is likely to be successful in rehabilitating offenders whose drug addictions are closely linked to their pattern of criminal conduct.

Aftercare Will Be Critical. Aftercare services for persons following their release from the SATF, which would range from Alcoholics Anonymous meetings to more intensive treatment in a residential rehabilitation facility, are a critical component of the proposed program. The CDC plan is to have aftercare service provided by the same private vendors who will be hired to operate drug treatment programs within the SATF. While the department's efforts to establish the SATF at Corcoran are on track, we believe the Legislature needs stronger assurances before the SATF opens that aftercare services will be available to complete the drug rehabilitation process after the offenders are paroled from the SATF. An ongoing CDC drug rehabilitation pilot program at the Richard J. Donovan Correctional Facility in San Diego County has demonstrated that in-prison drug rehabilitation programs can dramatically reduce recidivism—especially so if aftercare services are available to parolees. As a result, the pilot program has enabled the state to avoid the significant costs for incarcerating repeat offenders.

Such aftercare services were readily available to the parolees assigned to the Donovan prison program. Many were paroled to the San

Diego area and continued treatment after their release from prison at a 40-bed aftercare residential facility within the county, operated by a private vendor.

We believe the CDC should provide the Legislature with assurances before the SATF program begins that similar strong linkages will be created between the SATF and the aftercare services provided by the two private vendors which will be hired to provide drug treatment services. The CDC should indicate, for example, whether SATF participation will be limited to drug-addicted inmates from certain selected communities in which the necessary aftercare programs will be available. If SATF were to take in inmates from all over the state, it is not clear how appropriate aftercare could be available or provided in many disparate locations in a cost-effective manner.

Although the evidence is strong that the SATF and aftercare programs will be cost-effective, we would note that the costs and resulting savings will not occur until 1997-98, when the drug treatment program commences.

Analyst's Recommendation. Accordingly, we recommend the Legislature adopt the following supplemental report language:

The Department of Corrections shall provide the Legislature's fiscal committees with a plan by April 1, 1997, that will ensure that an effective aftercare drug rehabilitation program will be implemented and available as necessary for all inmates who participate in the Substance Abuse Treatment Facility program at Corcoran.

McGee Academy/San Joaquin Delta College Agreement Should Be Terminated

We recommend the adoption of Budget Bill language prohibiting the Department of Corrections and its Richard A. McGee Training Academy from renewing their existing agreement with San Joaquin Delta College under which the college is claiming state categorical funding. We also recommend Budget Bill language prohibiting the academy from entering into any new agreement with Delta College or any other community college unless it already has been reviewed and approved in writing by the Departments of General Services and Finance.

Since 1989, San Joaquin Delta College and the CDC's Richard A. McGee Training Academy for correctional personnel have maintained agreements under which correctional officer cadets receive about nine associate degree credits for basic training they receive at the academy. Although the academy instructors are paid by the CDC, the college counts the cadets as part of its enrollment and on this basis claimed

\$2.2 million in state categorical funding in 1994-95. During this same period, the college reported spending just \$427,000 on behalf of the academy program, leaving the college with a \$1.8 million profit in state funding with no compensating state benefit. The agreement would maintain these terms through 1995-96.

We detail our concerns about this agreement, along with additional recommendations for addressing our concerns about it, in our analysis of the community colleges budget. (Please see the Higher Education section of this *Analysis*.) In summary, we believe the agreement abuses the state funding system for community colleges, may be illegal, and permits the academy to improperly circumvent the state budget process to augment its funding. Thus, we believe the academy should be prohibited from renewing the agreement when it expires on June 30, 1996. We recommend Budget Bill language directing the CDC to take such action.

Future Agreements Should Be Reviewed. We also recommend Budget Bill language prohibiting the academy from entering into any new agreement with Delta College or any other community college unless it already has been reviewed and approved in writing by the Department of General Services (DGS) and the Department of Finance (DOF). We have been advised by academy officials that the existing agreement between the academy and the college district was not subject to the approval process customarily required for other state contracts. Because of the major fiscal impact documented in this case, we believe such procedures are necessary to protect the state from costly and unwise agreements.

Analyst's Recommendation. For these reasons, we recommend adoption of the following Budget Bill language:

The Department of Corrections and the Richard A. McGee Training Academy are prohibited from renewing their existing agreement with San Joaquin Delta College by which the college provides community college credit to academy cadets. In addition, the Department of Corrections and the academy shall be prohibited from approving any new agreements with any community college unless they already have been reviewed and approved in writing by the Departments of General Services and Finance.

Americans with Disabilities Act Compliance

The Governor's Budget proposes \$643,000 for the Department of Corrections to comply with the federal Americans with Disabilities Act mandates that public agencies provide "reasonable accommodation" for individuals with disabilities. A similar proposal was specifically rejected by the Legislature last year.

The Americans with Disabilities Act (ADA) which took effect in 1992, requires, among other things, that public agencies provide “reasonable accommodation” for disabled persons affected by governmental programs. The CDC is concerned that it is not in compliance with the ADA and thus is vulnerable to litigation by individuals asserting its noncompliance. We have been advised that seven employees have already filed ADA-related suits alleging illegal discriminatory activity by the CDC.

Last year, the CDC requested \$1 million to move forward with an ADA compliance program, but the request was rejected by the Legislature. The Governor's Budget requests \$643,000 and 4.9 personnel-years in staffing for a program to move CDC personnel policies closer toward compliance with the federal law.

As we advised the Legislature last year during budget hearings, we believe the CDC funding request is warranted because of the serious, and potentially costly, legal threat. However, the Legislature may wish to review this issue further, because approval of the \$643,000 would constitute a significant change from the position taken last year by the Legislature to reject funding for ADA compliance activities.

Special Education Proposal Raises Policy Issues

We withhold recommendation on \$1.6 million requested to develop a special education program for inmates age 22 and under, pending a report from the Department of Corrections at budget hearings on several significant policy questions regarding the funding level and funding source of this new program.

An Issue of Federal Compliance. Although the CDC provides various academic and vocational education services for inmates, it does not operate a special education program for inmates with disabilities as specified under a 1975 federal law, the Individuals with Disabilities Education Act (IDEA). We are advised that federal authorities as well as the state Department of Education have determined that the CDC has failed to comply with both federal and state law by not providing special education programs for eligible inmates under age 22 (older inmates are not eligible). Because some other states, as well as the Youth Authority, have been ordered by courts to implement special education programs, the CDC's legal office has concluded that the CDC is similarly vulnerable to a legal challenge.

Budget Request. The Governor's Budget requests \$1.6 million and 24 personnel-years to develop and begin implementation of a special education program to meet both federal and state legal requirements. The activities carried out during 1996-97 would include the development of

screening procedures to identify and search for inmates eligible for special education, the establishment of at least six special education centers within the prison system, and the development of the instructional program and the services that would be provided to inmates.

The CDC has estimated that development of the program could be largely completed in 1996-97 and that full implementation of instructional services for all eligible inmates could be completed in 1998-99. The CDC estimates that about 1,071 inmates would be eligible for the special education program if it were operating today. According to the CDC, the program would eventually cost \$4.3 million annually and require 94 personnel-years in staffing.

Program Needs Legislative Review. We believe the CDC's proposal raises several significant policy issues that the Legislature should consider that could affect the funding provided for development of the program:

- **Funding Source.** The CDC's proposal to develop a special education program would not be funded from General Fund revenues allocated by Proposition 98 for education purposes. However, the CDC has indicated an interest in obtaining a Proposition 98 allocation for implementation of the program. The Legislature should consider whether the allocation of Proposition 98 funding to the CDC is appropriate and the ramifications of this approach for other educational programs which now receive funding under Proposition 98.
 - **Inmate Eligibility.** The new CDC program would apparently provide special education services to inmates regardless of their commitment offense and regardless of the length of their prison term, and then terminate special education services as soon as they reach age 22. The Legislature may wish to impose some policy limits on eligibility and consider under what circumstances, if any, these services should be continued for inmates age 22 and older.
 - **Eventual Program Costs May Be Understated.** The CDC's preliminary estimate that the new program would cost about \$4.3 million annually is based on the assumption that about 11 percent of the inmates under age 22 would be eligible for special education instruction and services, roughly the same percentage as the California kindergarten through 12th-grade school system. Given the nature of the prison inmate population, we believe there is a significant chance that a much higher proportion of the under age 22 inmate population would be eligible. The number of eligible inmates would also increase if the Legislature approves the
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Governor's proposal to transfer new "M cases" over the age of 18 from the Youth Authority to the CDC. Thus, the special education program may be much more costly than the CDC has indicated.

We withhold recommendation and recommend that the CDC address these policy issues at the time of budget hearings.

MEDICAL ISSUES

Costs for Third Phase of Health Care Delivery System Higher Than Planned

We withhold recommendation on the Department of Corrections' request for \$22.5 million from the General Fund and 319 positions for the third phase of its health care delivery system, pending a report during budget hearings on (1) the total costs of the delivery system for the budget and future years (including the new phase), (2) the impact of continuing litigation on medical costs, and (3) the potential savings from the implementation of the health care delivery system.

Background. In 1991, partly as the result of litigation, the CDC contracted with the Western Consortium for Public Health to develop a mental health services delivery system. The result was a report which made recommendations for a comprehensive health services delivery system for both medical and mental health care. Based on this report, the department developed a three-phase plan to provide mental health services and medical care to inmates. The health care delivery system also included plans for licensing the CDC facilities as Correctional Treatment Centers (CTC), a new licensing category of facilities which provide subacute, 24-hour medical treatment for inmates.

The Legislature has already approved the first two phases of the system. Costs for the two phases were \$8.1 million and \$19.6 million, respectively.

Third Phase Costs Higher Than Planned. Last year, when the Legislature approved the second phase of the delivery system, the CDC reported that phase three would be the last phase, and that it was projected to cost \$9 million and add 77 new positions. However, the budget requests \$22.5 million and 319 positions to implement the third phase of the system in 1996-97. This request is \$13.5 million more than originally planned. Moreover, the department advises that there will probably be a need for at least one more phase in 1997-98, adding more costs and staff.

Reasons for Higher Costs. The department indicates that there are several reasons for its higher estimates for phase three:

- **Litigation.** The department had anticipated shifting clinical staff positions from its large mental health program at the California Medical Facility (CMF) to other facilities. These positions were part of the department's efforts to provide decentralized mental health services at 18 other institutions. However, the CDC cannot move staff from the CMF because of ongoing litigation in federal court. Rather, the department proposes adding 113 limited-term positions to provide services on a decentralized basis.
- **Inmate Population Increases.** The department indicates that its original plans for phase three implementation did not account for growth in the inmate population.
- **Custody Staff.** According to the CDC, its original estimates for phase three did not include costs for custody staff associated with its new medical and mental health programs. The department has added 73 positions for custody staff to its phase three request.

Our review indicates that, while these factors are reasonable, each one of them should have been anticipated in the department's original estimates. The CDC has been under federal court scrutiny for a number of years, the CDC population has been increasing steadily, and the need for custody staff for new facilities should be part of the CDC's planning process.

An Additional Phase Will Be Needed. The department's budget request also indicates that a fourth phase will be needed to complete implementation of the health care delivery system. The new phase will activate the correctional treatment centers and mental health treatment programs at San Quentin State Prison and the California Institution for Women.

No Savings Estimated. At this time, we believe that the department's estimates potentially overstate the costs of its medical and mental health proposal. This is because the department's request does not estimate any anticipated savings from the implementation of the new health care delivery system. For example, as the department activates medical and mental health facilities within its institutions, there should be savings from the decreased use of outside contract medical providers. Furthermore, there should be additional savings as the department makes better use of its own facilities which are less expensive than community facilities. In addition, the CDC incurs overtime costs for custody staff whenever it sends an inmate to a community provider. As the depart-

ment uses its own medical facilities, it should see significant savings in medical guarding costs.

Analyst's Recommendation. We withhold recommendation on the department's request for the third phase of its health care delivery system, pending a report at the time of budget hearings on (1) the total costs of the delivery system for the budget and future years (including the new phase), (2) the impact of continuing litigation on medical costs, and (3) the potential savings from the implementation of the health care delivery system are being reported.

Baseline Adjustment for Contract Medical Budget Is Not Justified

We recommend a General Fund reduction of \$3.2 million for contract medical services because the Department of Corrections has not justified the request for additional funds. (Reduce Item 5240-001-0001 by \$3.2 million.)

The department is requesting \$65 million for contract medical services in the budget year, which is an increase of \$3.2 million, or 5 percent, over the current-year amount. The additional funds would become part of the department's baseline budget. These expenditures are for a variety of medical services provided by contractors, such as hospitals, medical specialists, and laboratories. The proposed baseline adjustment would add about \$21 per inmate for the budget year.

Contract Costs Should Be Decreasing. The department has implemented a variety of initiatives to reduce medical costs for inmates, including developing CDC medical facilities to replace utilization of contract facilities in the community. Reducing the use of outside hospitals is a priority for the CDC because the costs of community hospital stays make up 60 percent of contract medical costs. The department appears to have been successful in reducing outside hospital use. For example, between 1992-93 and 1994-95, the total number of days that inmates were inpatients in community hospitals decreased 28 percent. During the same period, the use of CDC hospitals increased almost 10 percent and the use of CDC infirmaries increased almost 7 percent.

The activation of the CDC's mental health care system has also reduced reliance on the DMH contract beds. In 1992-93, the number of the DMH patient days was 212,939. By 1994-95, the use of the DMH beds declined 10 percent to 190,903 patient days. We believe that, as the department activates additional mental health program beds as planned, the need for the DMH beds should decline even further.

Contract Negotiation. The CDC, with support from the California Medical Assistance Commission (CMAC), has also been negotiating the contract rates it pays community hospitals. Between 1993-94 and 1994-95, the average cost of a community hospital stay decreased 16 percent to \$2,333 per day. As the department negotiates more of its contracts, the rates are likely to decline further. The CMAC has recommended that the department centralize and automate its claims processing system. In addition, CMAC has noted that many community hospitals have excess capacity and would be willing to cooperate with the CDC to develop “custody units.” Implementation of these recommendations could lead to even further savings.

Increased Utilization of CDC Facilities. Currently, the CDC's own acute care hospital beds are underutilized. The CDC staffs its facilities based on 80 percent occupancy, but 1993-94 data show that facilities were at 71 percent occupancy. Since the average cost of a CDC hospital stay is \$434 per day—a fraction of the \$2,333 cost per day in a community hospital—the department could realize savings by maximizing the use of its own facilities.

Other Cost Containment Programs. Last year the Legislature approved the CDC's request for utilization review staff. Utilization review staff will be responsible for tracking contract medical costs and ensuring that cost effective care is provided. Full implementation of the utilization review program should lead to further savings. (We describe the status of these positions below.)

Analyst's Recommendation. We believe that the department's efforts to reduce contract medical costs should result in further savings and eliminate the need for the augmentation. However, the department's estimates of medical costs have not been fully adjusted to reflect the savings likely to result from the efforts to reduce contract medical costs. We believe that the proposed augmentation is not justified and we recommend that it be deleted, for a General Fund savings of \$3.2 million.

Quality Assurance Positions Should Be Limited to Two Years

We recommend that the 13 positions requested for the Department of Corrections quality assurance/risk reduction program be established as two-year limited-term positions because the proposed quality assurance program is new and the department does not have data to justify the positions on a permanent basis.

The budget requests 13 new positions to establish a quality assurance and risk reduction program. These positions would be responsible for reviewing health utilization and outcomes in order to assure that the department's "standards of care" are met and to reduce medical costs. In addition, the staff would review inmate medical lawsuits to determine if changes in department medical practices are warranted. The budget does not request additional funding for these positions, but instead would use "savings" that would be realized from the reviews. The department would have to generate almost \$1 million in savings to defray the costs of these positions.

Current Utilization Review Activities. The department is developing a system for utilization review at its institutions. Last year, the Legislature approved 19 utilization review nurse positions in the 1995 Budget Act. These nurses, using the department's "Standards of Medical Care," are expected to review medical procedures to ensure that they are authorized, appropriate, and cost-effective. These are two-year limited-term positions. As of January 1996, the department has filled seven of the 19 positions, anticipating that all positions will be filled in March 1996. Because the department is still developing guidelines for the utilization review program, it does not have any data on its review efforts.

The department's current request would expand its utilization review efforts to include outcome and peer reviews. Utilization reviews concentrate on whether services are authorized and appropriate. Outcome and peer reviews augment utilization reviews, in that, these reviews evaluate the effectiveness of treatment and identify substandard staff and care. The proposed staff would review current treatment protocols to determine if they are effective and recommend changes to reduce costs.

Analyst's Recommendation. Because the department has not completed its utilization review program and, consequently, has no data on workload, we recommend that the proposed 13 new positions be two-year limited term. This would allow the Legislature and administration to evaluate the program's effectiveness before considering whether to make the positions permanent.

Costs for Proposed Treatment Protocol Are Unknown

We recommend the enactment of Budget Bill language specifying that funds appropriated for Interferon treatments for inmates with hepatitis B and C be used only for that purpose because the Department of Corrections does not have adequate data to estimate the number of inmates needing this treatment. We further recommend that the Legisla-

ture also adopt supplemental report language directing the department to report on the number of inmates receiving Interferon treatment and the costs of providing the treatment.

Background. Hepatitis B and C are viruses of the blood. Individuals contract the disease through blood transfusions, needle exchange (from intravenous drug use or tattooing), and sexual activity with infected partners.

An infected person may show no, or limited symptoms. However, when these diseases become “acute” or “chronic,” liver cancer or liver failure can result. The department notes that treating chronic and acute cases is costly, but has no direct data on the number of inmates who currently are being treated for conditions related to viral hepatitis. The department estimates that the level of infection among incoming inmates ranges from 35 percent to 55 percent.

Budget Proposal. The department is requesting \$2 million from the General Fund for drug therapy and related tests for treating inmates with hepatitis B or C. Currently, the department treats only the symptoms related to liver dysfunction, but does not treat the actual disease. However, the department is requesting funds for using Interferon therapy. Interferon is the only known treatment for chronic hepatitis B and C. If Interferon treatment is successful, the CDC would avoid the long-term cost associated with treating inmates for liver cancer or failure. Determining if a patient is amenable to Interferon treatment requires a liver biopsy. The drug treatment, for those found to be amenable, lasts six months. This treatment is widely used and accepted under the state's Medi-Cal program. The department advises us that failure to provide medical care that is commensurate with community standards, exposes the department to potentially costly litigation.

Based on the level of infection in new inmates, the department estimates that approximately 2,000 inmates entering state prison in 1996-97 will need liver biopsies and that of these inmates, more than 600 will be amenable to Interferon treatment. The \$2 million requested would cover the annual costs for biopsies and for the drug treatment. The department, however, has no estimate of the number of infected inmates in the current population or whether infection is spreading.

Analyst's Recommendation. Because the department has very limited data on the actual number of inmates that would be treated with Interferon, we recommend the Legislature enact the following Budget Bill language limiting the use of funding for Interferon treatments. This will ensure that funds not needed for this specific purpose will not be diverted to other, unbudgeted activities.

Specifically, we recommend adoption of the following Budget Bill language:

Of the funds appropriated in this Item, \$2,046,000 is available for Interferon treatment, and related tests, for inmates infected with hepatitis B and C. Any funds not used for these purposes shall revert to the General Fund.

We also recommend that the Legislature adopt the following supplemental report language directing the department to report on the number of inmates receiving Interferon treatment and the costs of providing the treatment.

The Department of Corrections shall submit a report to the Joint Legislative Budget Committee and the Legislature's fiscal committees by December 31, 1996, on (1) the number of inmates that have been identified as having chronic hepatitis B and C, (2) the number of liver biopsies performed and the costs associated with the biopsies, and (3) the number of inmates receiving Interferon treatment.

ADMINISTRATION ISSUES

Inflation Adjustment Proposed

The Governor's Budget provides \$22 million from the General Fund to the Department of Corrections for inflation adjustments for operating expenses and equipment purchased during 1996-97. The department is one of only five state agencies receiving such a price increase adjustment.

Five Agencies Would Receive Adjustment. The 1996-97 Governor's Budget proposes \$22 million from the General Fund to offset the effects of inflation on the CDC's costs of general operating expenses and equipment. This increase is based on the assumption that inflation during 1996-97 will raise the prices that the department pays for goods and equipment by 2.6 percent. The 1996-97 budget also provides inflation increases of different percentage amounts to the University of California (3 percent), the California State University system (2.6 percent), the Franchise Tax Board (2 percent), and the Trade and Commerce Agency's foreign trade offices (4.5 percent).

We would note that, last year, the 1995-96 Governor's Budget proposed \$30.5 million for an inflation adjustment for the CDC but provided no similar adjustment for any other state agency. At the time, we recommended denial of the funding because we could find no analytical basis for providing the CDC with an adjustment denied to all other departments. The Legislature subsequently rejected the CDC funding request.

This year, because the CDC is not the sole agency for which a General Fund increase is being sought, we do not have a basis to recommend denial of the CDC's proposal, which would help it maintain its purchasing power for goods and services. However, the Legislature may wish to consider its own general policy regarding which state agencies are eligible to receive inflation adjustments, and in what amounts, for the budget year and beyond.

Pay Telephones Could Generate More Revenues

We withhold recommendation on \$264,000 requested by the Department of Corrections for the procurement of prison telecommunications systems and services and recommend that the Departments of Corrections and General Services jointly report at the time of budget hearings as to how the state will maximize General Fund revenues from pay telephones located at state prisons.

Funding Sought By Two Agencies. The CDC has requested \$264,000 in bond funds and 2.9 personnel-years for staffing to assist the DGS's Telecommunications Division in the procurement of several master contracts for telecommunications systems, including a new contract for pay telephone services used by inmates. The DGS has separately requested \$451,000 and 2.8 personnel-years to continue and expand its ongoing Payphone Management Program Unit.

State May Be Missing Out on Revenues. Under a program managed primarily by the DGS, the state receives commissions from vendors who operate pay telephones at state facilities, including prisons. The commission revenues are deposited in the General Fund. At present, about \$10 million per year is generated for the General Fund from prison pay phones, or about 86 percent of all state pay phone revenues. According to the CDC, the state receives about 22 percent to 32 percent of gross pay phone revenues under its contracts. We are concerned that the state has not maximized its opportunity for significant additional revenues. Published reports and our own discussions with correctional officials elsewhere indicate that other state and local correctional agencies have received much more advantageous pay phone contracts than California. For example, Kentucky correctional system officials advise that they signed a contract with the same vendor that provides pay phone services to California providing that state with 55 percent of the gross revenues. If it were feasible for California to win comparable contract terms today—and that is not a certainty—we estimate that prison pay phones would be generating at least twice as much per year for the General Fund.

State Renewing Old Contract Terms. We are also concerned that the timetable for procurement of pay phone services proposed by the CDC will not be complete until mid-1997. As a result, the state may be foregoing the receipt of tens of millions of dollars in additional prison pay phone revenues.

According to the CDC, the mid-1997 timetable was established in order to ensure new services are under contract by August 1997, when the present prison pay phone contracts are scheduled to expire. However, the CDC and the DGS had the option of terminating the existing contracts in August 1996 rather than letting them run to completion in August 1997. Because the CDC and the DGS were unprepared to rebid the prison pay phone contracts this year, the departments chose instead to let the existing contracts run another full year without any change in terms.

Accordingly, we withhold recommendation on both departments' requests for telecommunications procurement funding and recommend that the CDC and the DGS report at the time of budget hearings as to how they intend to maximize future General Fund revenues from pay telephones located at state prisons. We also discuss this issue in our analysis of the DGS budget. (Please see the State Administration chapter in this *Analysis*.)

Local Assistance Costs Ballooning

We withhold recommendation on \$14.7 million requested from the General Fund to reimburse counties for detaining parolees held in county jails for violation of parole conditions. We recommend that action on this item be delayed, pending an audit of reimbursement payments to Los Angeles County, as well as the receipt of information as to the cause of a projected doubling in local assistance costs and recommendations for curbing these costs.

Parolee Jail Costs Escalating. The state reimburses counties for their cost of temporarily incarcerating parolees in county jails who are held on the grounds that they violated the condition of their parole. The 1996-97 Governor's Budget provides \$14.7 million from the General Fund to reimburse counties for these costs. However, the CDC has advised us that it anticipates revising its funding request for local assistance at the time of the May Revision. According to the CDC, the annual cost of the program could double to \$30 million.

The department advises that audited and unaudited claims for local assistance exceed the amount provided for this purpose in the current year—also \$14.7 million—by another \$15.4 million. (A final claims

figure will not be calculated until all claims have been reviewed further. Funding to pay these claims will be requested at a future date.) The CDC officials have indicated that they do not now know the cause of this significant increase in claims for local assistance.

Audit of Los Angeles Claims. The CDC has indicated that its funding request for local assistance may be revised to take into account the findings of an audit now being conducted by the State Controller's Office of 1993-94 reimbursements paid to Los Angeles County. Preliminary audit findings indicate that the county over billed the state during that period by millions of dollars. If the preliminary audit findings are affirmed when the final audit is released this spring, the results may substantially affect the total claims paid by the state in the current and budget year.

Thus, we recommend the Legislature delay action on the \$14.7 million requested for local assistance until the Los Angeles County audit is completed. We also recommend that the CDC report at the time of budget hearings as to the cause of the significant increase in local assistance claims and its recommendations for curbing these costs.

Parole Staffing Ratios Need Revision

We recommend the adoption of Budget Bill language directing the Department of Corrections to restructure the parole staffing ratios upon which budget requests of the Parole and Community Services Division are based to more accurately reflect the caseloads actually assigned to parole agents.

Parole Staffing Ratios Have Grown. In recent years, the CDC's Parole and Community Services Division has experienced significant budget reductions. For example, in 1992-93, as the state faced a \$7.5 billion budget shortfall, the Legislature and the Governor agreed to reduce the division's budget by \$32 million with the understanding that part of the reduction would result in significantly increased caseloads for parole agents and other division staff. Since that time, the division has experienced additional reductions in its funding due to unallocated cuts in the CDC budget.

We are advised by the CDC that, primarily as a result of these prior funding reductions, parole agents now typically supervise caseloads of 80 to 90 parolees. Workloads in this range have also been specified in collective bargaining agreements between the state and the labor organization representing parole agents. (The last agreement has expired but its provisions continue to be enforced while negotiations continue.) However, requests by the CDC for additional state funds to keep pace

with the increasing number of parolees have not been based on these higher staffing ratios. Instead, the CDC budget requests have sought sufficient funding to provide one new agent for each additional 53.2 parolees—a much more intense level of supervision than is now the standard. The CDC officials believe the application of the 53.2 to 1 ratio in its budget requests is appropriate and necessary to ensure sufficient funding is available to the division to keep pace with other costs of parole services, such as rent increases for its parole offices, casework services, and overtime.

Fiscal Accountability at Issue. We are concerned that the formula upon which the budget is based makes it difficult for the Legislature to assess the validity of the CDC's spending requests or hold the department accountable. That is because the present formula makes it difficult for the Legislature to determine whether the CDC's funding requests simply accommodate an increased parole population or, instead, constitute a policy change by intensifying the supervision of its parolees. The CDC may be correct in asserting that insufficient funding is being provided to meet other operational costs. If so, the division's budget requests should be restructured to propose the resources needed for these support functions.

Budget Requests Should Be Restructured. For these reasons, we recommend that the Legislature direct the CDC to restructure the division's parole staffing ratios so that they are consistent with the division's *actual* staffing practices. The CDC could propose parole ratios explicitly intended to intensify supervision if the fiscal impact were identified separately and justification is provided for more intense parole supervision. We believe it would also be appropriate for the CDC to review its funding formulas to ensure that, as its parole caseload grows, the resources for office rent, casework services, overtime, and other operational costs also grow appropriately. Finally, we recommend that the revised parole staffing ratios and funding formula apply to spending requests received for 1997-98 and afterward.

To accomplish this change in the CDC's budgeting process, we recommend the adoption of Budget Bill language directing the CDC to submit the revised parole ratios and funding formula to the DOF and the Legislature for review by December 1, 1996, and directing the CDC to use the revised staffing ratios in the calculation of its budget requests beginning in 1997-98.

Specifically, we recommend the following language:

The Department of Corrections shall restructure the parole staffing ratios that are the basis of its requests for changes in expenditure authority for 1997-98 and thereafter to be consistent with the actual parole staffing

practices of the Parole and Community Services Division. The department may also propose parole ratios explicitly intended to intensify parole if the fiscal impact were identified separately and justification provided for more intense parole supervision. The department may also review and adjust the formula on which it bases its requests for changes in expenditure authority to ensure that the funding provided for office rent, case-work services, overtime, and other operational costs increases or decreases appropriately with changes in the division's parole caseload. The department shall submit the revised parole staffing ratios calculated under this provision, along with any other proposed changes it proposes for its funding formula, to the Joint Legislative Budget Committee and the Legislature's fiscal committees by December 1, 1996. This restructuring of parole staffing ratios and any proposed changes in the funding formula should not result in any significant change in the expenditure authority provided to the division under the 1996 Budget Act.

Information Needed on Spending Reductions

We recommend that the Department of Corrections and the Department of Finance report at the time of budget hearings as to the measures the Department of Corrections will take to reduce its funding base by \$22 million, as required by the 1995 Budget Act, and the programmatic effects of the reduction.

Unclear How Department Will Cut Required Amount. Control Sections 3.75 and 3.90 of the Budget Act of 1995 directed the DOF to allocate a total of \$45 million in cuts to state agencies during the current fiscal year. The DOF allocated the required spending reductions last August, including a \$22 million reduction to the CDC.

The Governor's Budget confirms that the CDC's expenditures in the current year have been reduced by \$22 million, and proposes to carry forward this reduction in the CDC's funding base into 1996-97. The schedule of changes in authorized positions in the Governor's Budget specifies reductions amounting to \$13.3 million and 50.9 personnel-years, but does not indicate how the remaining \$8.7 million in spending reductions would be achieved. We are advised that, as of this analysis, the DOF and the CDC have not reached final agreement on the means by which the additional reductions allocated to the CDC would be achieved.

Accordingly, we recommend that the CDC and the DOF report at the time of budget hearings regarding the specific measures the CDC will take to reduce its funding base by \$22 million and the programmatic effects of the reduction.

Correctional Management Information System Project May Be Overbudgeted

We withhold recommendation on \$16 million requested to continue implementation of phase one of the Correctional Management Information System, pending a review of the Department of Corrections' assessment of recent schedule changes and the effect of these changes on 1996-97 budget request.

The budget includes \$16 million from the General Fund to continue implementation of the CDC's primary information technology project—the Correctional Management Information System (CMIS). The project, begun in 1992, is intended to provide the department a computer-based system to maintain comprehensive information about offenders and support-related departmental activities. There are five phases comprising the CMIS project: (1) automating offender-related information, (2) establishing a parolee information network, (3) developing an inmate health care management information system, (4) automating other offender-related management functions, and (5) automating administrative management functions.

Need and Anticipated Benefits Drive Automation Effort. The purpose of this project is to improve prison operations and departmental administration. It is designed to replace critical, but costly and unwieldy manual operations, such as those associated with maintenance of an offender's prison record, which is currently a paper file. In addition to various management benefits which should result from new computer-based support systems, the department anticipates that operational efficiencies will generate substantial savings in staff time. Total benefits from phase one—the automation of offender-related information—are estimated to be slightly less than total phase one project costs (\$93.6 million in benefits, \$95.8 million in costs). Approximately one-half of the anticipated benefits (\$46.7 million) would be direct cost savings. The remainder (\$46.9 million) would be in the form of cost avoidance.

Recent Schedule Slippage May Delay Project. The contractor hired to develop and implement phase one of the CMIS project has recently advised the department that not all tasks will be completed in accordance with the schedule specified in the contract. Department staff were evaluating the extent and impact of the delay at the time this *Analysis* was prepared, but anticipated that the delays would probably defer project completion until 1997-98. As the contractor is paid only upon completion of a task, the delay will likely reduce the need for funding in the budget year because all tasks which are budgeted will not have been completed. The amount of excess funds could be in the \$9 million range, but cannot be verified until the department has completed its

assessment. Consequently, we withhold recommendation on \$16 million requested to continue implementation of phase one of the CMIS project, pending review of the department's assessment of the delay.

“Success Partner” Proving Valuable. In last year's *Analysis*, we noted that the CDC had hired a consultant to independently verify and validate the achievements of the project. This consists of monitoring the system development activities of both the CDC and the contractor hired to develop and implement phase one of the CMIS. The objective of independent verification and validation is to ensure a project's success by identifying problems early and verifying that they have been corrected, as well as validating that products delivered by the primary contractor meet the department's specifications. The CDC refers to the independent contractor as its “success partner.”

We have supported this concept because history has shown that both primary contractors and state managers of various state projects have made decisions which have ignored fundamental project problems. While the cost of the independent contractor is significant—the CDC will pay up to \$1.5 million for this service—we believe that paying up front to ensure project success is better than paying even more later to try to salvage a project that does not meet expectations or having to terminate the project at a cost of many millions of dollars.

Department staff associated with the CMIS project have stated that the services provided by the independent contractor have proven to be extremely valuable. They note that the independent contractor has identified project development activities needing corrections, as well as needed corrections with respect to work performed by the primary contractor. As noted in last year's *Analysis*, we believe that the CDC's use of an independent verification and validation contractor to assure the success of an information technology project merits consideration as a model for other critical or complex state information technology projects. We discuss this concept further in our discussion of information technology in the State Administration chapter of this *Analysis*.

Cadet Staffing Level May Need Adjustment

We withhold recommendation on \$21.1 million requested from the General Fund for correctional officer cadet training, pending receipt of updated prison population projections and updated projections of the need for new correctional officers at the time of the May Revision.

The 1996-97 Governor's Budget requests \$21.1 million for salaries for correctional officer cadets and operating expenses for the Richard A. McGee Correctional Training Center at Galt. The budgeted request

would provide sufficient funds for enrolling seven classes of 480 students in the academy, or a total of 3,360 cadets, during the budget year. This is the same amount of funding and assumes the same number of cadets as in the 1995 Budget Act. However, data provided by the CDC indicate that the number of cadets being trained are fewer than anticipated. In fact, the current-year budget for cadet training has since been reduced by \$1.4 million on the assumption that 233 fewer cadets will be enrolled at the academy than expected.

Cadet Needs Affected By Prison Population. The number of correctional officer cadets who are trained each year at the academy is closely related to the size of the inmate population (although that is not the only factor involved). As of early January 1996, the number of inmates in the prison system was about 3,000 below projections. If this trend were to hold, the CDC would not need to train as many correctional officer cadets during 1996-97 and the budget for cadet training could be reduced accordingly. The CDC will update its population estimate for both the current and the budget year this spring.

For these reasons, we withhold recommendation on the \$21.1 million requested for correctional cadet training pending receipt of updated prison population projections and updated projections of the need for new correctional officers at the time of the May Revision.

BOARD OF PRISON TERMS (5440)

The Board of Prison Terms (BPT) is composed of nine members appointed by the Governor and confirmed by the Senate for terms of four years. The BPT considers parole release for all persons sentenced to state prison under the indeterminate sentencing laws. The BPT may also suspend or revoke the parole of any prisoner under its jurisdiction who has violated parole. In addition, the BPT advises the Governor on applications for clemency.

The 1996-97 Governor's Budget proposes \$11.8 million from the General Fund for support of the BPT. This is an increase of \$898,000, or 8.2 percent, above the estimated expenditures for the current year. The proposed increase is primarily the result of the BPT's role in a new program for the civil commitment of persons deemed to be sexually violent predators (SVPs), as well as the steadily increasing workload for hearing cases of parole violators and indeterminately sentenced prison inmates.

Implementation Problems With the Sexually Violent Predators Program

We withhold recommendation on \$813,000 requested for the Sexually Violent Predators program until the Board of Prison Terms and other state agencies responsible for operation of the program resolve a number of significant implementation issues.

Last year, the Legislature and Governor enacted Ch 762/95 (SB 1143, Mountjoy) and Ch 763/95 (AB 888, Rogan), which created the SVP program. Under the program, an inmate who has completed a prison term for certain sex-related offenses, who meets other specified criteria, and who otherwise would be released on parole, would instead be committed under provisions of civil law to state custody for an additional two years at a time. During this time, the inmate would receive treatment for his or her mental disorder. The Governor's Budget provides seven positions and \$813,000 to the BPT during 1996-97 for investigations, hearings, and other administrative activities to help determine whether inmates who are being considered for parole are SVPs subject to civil commitment under the program.

We have reviewed the implementation proposal for this program submitted by the BPT and two other implementing agencies, the California Department of Corrections (CDC) and the Department of Mental Health. That review found significant issues with the proposed implementation plan. The issues include (1) the state agencies' use of conflicting caseload estimates in their implementation plan, (2) a significant discrepancy between the funding requested in the budget and prior estimates of the cost of the measure presented to the Legislature just four months ago, (3) the failure of the state agencies to indicate how they will provide facilities to house and treat the numbers of SVPs they intend to commit to state custody, and (4) inconsistencies between the implementation proposal and the bills which enacted the program. We detail those concerns in our analysis of the CDC budget.

Pending resolution of those concerns, we withhold recommendation on the BPT's funding request for implementation of this program.

Increase in Parole Cases Should Be Reviewed Later in Year

We withhold recommendation on \$506,000 requested to handle projected increases in the parole hearing workload, pending receipt of updated caseload estimates at the time of the May Revision.

The Governor's Budget includes \$506,000 and 5.5 positions to enable the BPT to process a larger number of parole cases. This increase is primarily due to two factors. The BPT projects that the number of inmates with life sentences who are eligible for parole hearings will increase during the budget year. The BPT also projects that it will handle an increased number of parole revocation cases as the number of parolees taken into custody for violation of parole conditions increases.

Our review indicates that the request provides an appropriate amount of funding and positions to accommodate the projected caseload increases. However, those projections are based on the CDC's fall 1995 forecasts of its prison and parole populations. The CDC forecast will be revised this spring and, given recent trends, is likely to include significant changes in the projection of the offender populations upon which the BPT funding request is based. For example, the CDC inmate population is running about 3,000 below the fall 1995 forecast, while the count of CDC parolees is about 1,700 above estimated levels for this time. Meanwhile, the proportion of parolees being returned to prison for parole violations dropped from 59 percent in August 1995 to 45 percent in December 1995. If this trend continues, it could potentially drive down the BPT's parole hearing caseload, and thus reduce the amount of funds needed in the budget year.

We believe it would be appropriate to reassess the BPT's request for these caseload adjustments at the time of the May Revision and base a final allocation of funding on the revised population forecasts released by the CDC this spring. Accordingly, we withhold recommendation, pending receipt of updated caseload projections in May.

The BPT Faces Persistent Backlog Of Hearings and Investigations

The Board of Prison Terms continues to struggle to reduce a significant backlog of parole hearings and investigations. We recommend that the board report at budget hearings on its progress in dealing with the backlog problems.

Revocation Hearings. In our *Analysis of the 1995-96 Budget Bill*, we called attention to data indicating that the BPT was failing to keep up with its caseload of hearings for parole violators. As we pointed out, there are specific time limits established in statute and by court decision for the board to conduct parole revocation hearings. Failure to meet the hearing deadlines increases the risk of court action to release parole violators whose revocation cases have not been heard by the BPT in a timely fashion.

The BPT assured the Legislature last year that it would address the problem, and has advised that its appointment in July and October 1995 of two new associate chief deputy commissioners will help streamline the calendaring of parole hearings and ease the backlog. Between February and October 1995 (the latest data available), the BPT has been able to reduce the average time it takes to conduct parole revocation hearings within two of its four regions of the state. However, during that same time period, the average time for a hearing has lengthened in the other two regions. Thus, the *statewide* average wait for a revocation hearing was reduced only slightly between February and October 1995 (from an average wait of 45.3 days to an average of 45.2 days), and many hearings are still being held after the legally required deadlines.

Investigations. Last year, we also called attention to the backlog of investigations conducted by the BPT personnel. Recent data indicate that these backlogs are growing. For example, the BPT conducts investigations of death penalty cases in order to provide readily available information to the Governor in the event of applications for executive clemency. Despite a growing backlog of 130 pending death penalty investigations, the BPT anticipates that it will complete none of them in 1995-96 and only 29 in 1996-97. The BPT has advised us that, should the Governor receive a clemency request for a convicted murderer whose investigation is incomplete, the result could be a delay of a scheduled execution.

Likewise, the BPT investigates applications to the Governor for pardons. Although the BPT anticipates completing 230 pardon investigations during 1995-96, the backlog is projected to grow during the current year from 242 to about 350 cases.

Last year, the Legislature appropriated \$65,000 for an additional BPT staff investigator, which the BPT indicated would be used to address the death penalty and pardon backlogs. The BPT had indicated that providing a staff member for the Foreign Prisoner Transfer program, which we discuss further below, would free an investigator to return to full-time work on the death penalty and pardon investigations. In its latest budget request, however, the BPT has advised us that staff assigned to handle death penalty and pardon investigations are again being diverted to other purposes.

Given the implications of these workload backlogs, we recommend that the BPT report at budget hearings on its progress in dealing with the problem.

Little Fiscal Savings So Far From Foreign Inmate Transfers

We recommend that a one-year limit be placed on \$65,000 in funding provided in the Board of Prison Terms' budget for the Foreign Prisoner Transfer program. We also recommend that the Legislature next year consider suspending or repealing the 1994 legislation which expanded the program should it fail to achieve the intended annual cost-savings by the end of the 1996-97 fiscal year.

The BPT has authority to review and to approve the request of an inmate from a foreign country confined in a state prison to serve out the remainder of his sentence in his or her home country. In an effort to encourage more inmates to seek a transfer to their home country, and thus reduce state prison costs, the Legislature and Governor enacted Ch 416/94 (SB 1744, McCorquodale), which directed the CDC to inform all present inmates, and thereafter all newly arrived inmates, of their opportunity to volunteer for international transfer. Last year, the BPT estimated that the program would save the state \$433,000 annually in incarceration costs.

As of September 30, 1995, the CDC had notified 39,182 inmates of their right to apply for foreign transfers. The notification process has prompted 649 inmates to file applications with the BPT. Although 25 inmates have received tentative or final state approval to transfer to their homelands, only three inmates have actually been transferred to other countries.

Fiscal Implications. As a result, the Foreign Prisoner Transfer program has not yet generated the \$433,000 in annual savings to the General Fund that the BPT had projected. The diversion of just three inmates means that the state will save, at most, \$65,000—or about the amount of funding that was provided to the BPT to investigate these cases. We would note that an unknown additional amount of BPT and CDC funding and staff resources beyond the \$65,000 we identify above have been redirected to help implement the expanded Foreign Prisoner Transfer program.

The BPT now advises that it will achieve these annual savings beginning in 1996-97.

Why So Few Transfers? The reason for these limited results vary. The BPT has rejected some foreign transfer applications on the grounds that the inmate involved did not meet the criteria required by international treaties or because the inmate was deemed to pose too great a risk to public safety. Some inmates withdrew their transfer requests and others completed their prison sentences and were paroled before their applications could be processed.

Analyst's Recommendation. Given the disappointing fiscal results to date, we recommend that the program be given just one more year to demonstrate its cost-effectiveness. If most of the 25 inmates whose transfers have been approved by the state actually end up transferring to other countries, the savings achieved could yet prove significant.

Accordingly, we recommend that the funding and personnel allocated to the BPT for the Foreign Prisoner Transfer program be provided on a limited-item basis in the budget year. We would also recommend that the Legislature next year consider suspending or repealing the 1994 legislation which significantly expanded the program if it fails to achieve the level of savings projected by the BPT.

DEPARTMENT OF THE YOUTH AUTHORITY (5460)

The Department of the Youth Authority is responsible for the protection of society from the criminal and delinquent behavior of young people (generally ages 12 to 24, average age 19). The department operates training and treatment programs that seek to educate, correct, and rehabilitate youthful offenders rather than punish them. The department operates 11 institutions, including two reception centers/clinics, and six conservation camps. In addition, the department supervises parolees through 16 offices located throughout the state.

The budget proposes total expenditures of \$436 million for the Youth Authority in 1996-97. This is \$5.6 million, or 1.3 percent, more than current-year expenditures. General Fund expenditures total \$370 million in the budget year, a decrease of \$19.7 million, or 5 percent, below expenditures in 1995-96. The department's proposed General Fund expenditures include \$45.7 million in Proposition 98 educational funds.

Approximately 80 percent of the total funds requested for the department is for operation of the department's institutions and camps and 10 percent is for parole and community services. The remaining 10 percent of total funds is for local assistance to counties.

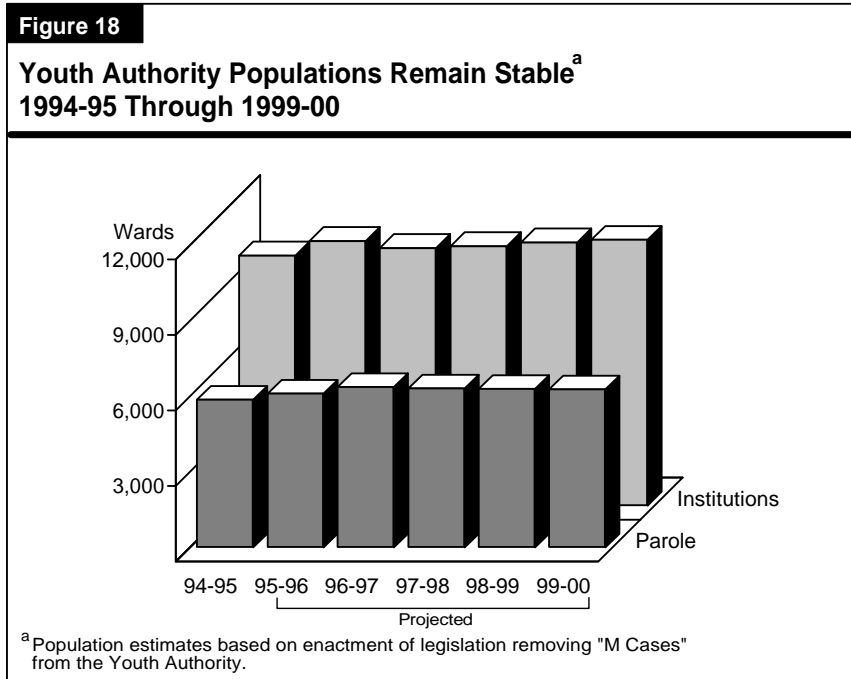
The primary reason for the decrease in General Fund spending for the budget year is the proposed introduction of fee increases to counties; the increases are reflected as reimbursements and are included in both the current-year and proposed budget.

Ward Population Would Remain Stable If Proposed Legislation Is Adopted

The Department of the Youth Authority projects that its institutional population will remain fairly stable over the next several years, growing to 10,500 in the budget year and remaining at approximately that level through 1999-2000. This assumes, however, that legislation will be enacted to transfer custody of some offenders from the Youth Authority to the Department of Corrections. If the legislation is not enacted, the population would grow to almost 12,700 in 1999-2000. Also, Youth Authority parole populations are expected to increase to about 6,100 parolees in the budget year and to about 6,200 parolees by the end of 1999-2000.

The Youth Authority's fall 1995 ward population projections (which form the basis for the 1996-97 Governor's Budget) estimate that the number of wards housed in the Youth Authority will remain relatively stable, growing at an average annual rate of less than 1 percent over the next five years (through 1999-2000), reaching just over 10,500 incarcerated wards on June 30, 2000. These estimates, however, assume the enactment of legislation that would transfer responsibility for some offenders from the Youth Authority to the Department of Corrections (CDC) (the change is discussed below). If the proposed legislation is not enacted, the Youth Authority's population would increase almost 30 percent to about 12,700 wards by 1999-2000. The growth would be driven primarily by projected increases in the state's juvenile population.

The Youth Authority also projects little change in the number of parolees it supervises. Figure 18 shows the Youth Authority's institutional and parolee populations from 1994-95 through 1999-2000.



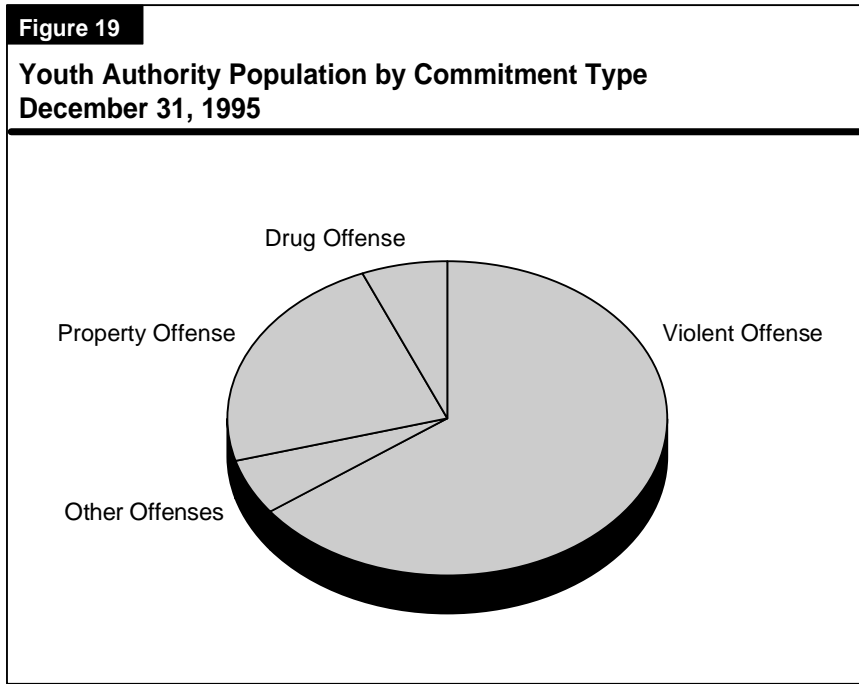
Who Is in the Youth Authority? There are several ways that an individual can be committed to the Youth Authority's institution and camp population, including:

- **Juvenile Court Admissions.** The largest number of first admissions to the Youth Authority are made by juvenile courts. On December 31, 1995, 81 percent of the institutional population was committed by the juvenile court. Juvenile court commitments include offenders who have committed both misdemeanors and felonies.
- **Criminal Court Commitments.** These courts send juveniles who were tried and convicted as adults to the Youth Authority. On December 31, 1995, 6 percent of the institutional population were juveniles committed by criminal courts. Recent legislation (Ch 452/94 [SB 1539, McCorquodale]) has limited the court's ability to directly commit juveniles to the Youth Authority. The Youth Authority estimates that only 67 juveniles will be committed from these courts in 1995-96, compared to more than 200 juveniles committed by these courts in 1994-95.
- **Corrections Inmates.** This segment of the Youth Authority population—13 percent of the population in December 1995—is comprised of inmates from the CDC. These inmates are referred to as “M cases” because the letter M is used as part of their Youth Authority identification number. These individuals were under the age of 21 when they were committed to the CDC after a felony conviction in criminal court. Subsequently, they are ordered by the court to be transferred to the Youth Authority to serve all or part of their incarceration time. These inmates can remain in the Youth Authority until they reach the age of 25. We discuss “M cases” and their impact on Youth Authority population in greater detail below.
- **Parole Violators.** These are parolees who violate a condition of parole and are returned to the Youth Authority. In addition, some parolees are recommitted to the Youth Authority if they commit a new offense while on parole.

Budget Assumes Enactment of Legislation. The Youth Authority expects that legislation proposed by the administration will significantly reduce the number of “M cases” housed at the Youth Authority. Specifically, the Youth Authority assumes that legislation will be enacted that will transfer responsibility for all new “M cases,” age 18 or older, to state prison. “M cases” who are under age 18, would still be sent to the Youth Authority and transferred to the CDC when they turn 18. Consequently, the number of new “M case” admissions to the Youth Authority in the budget year and future years will decline significantly. We discuss the proposed legislation in greater detail below.

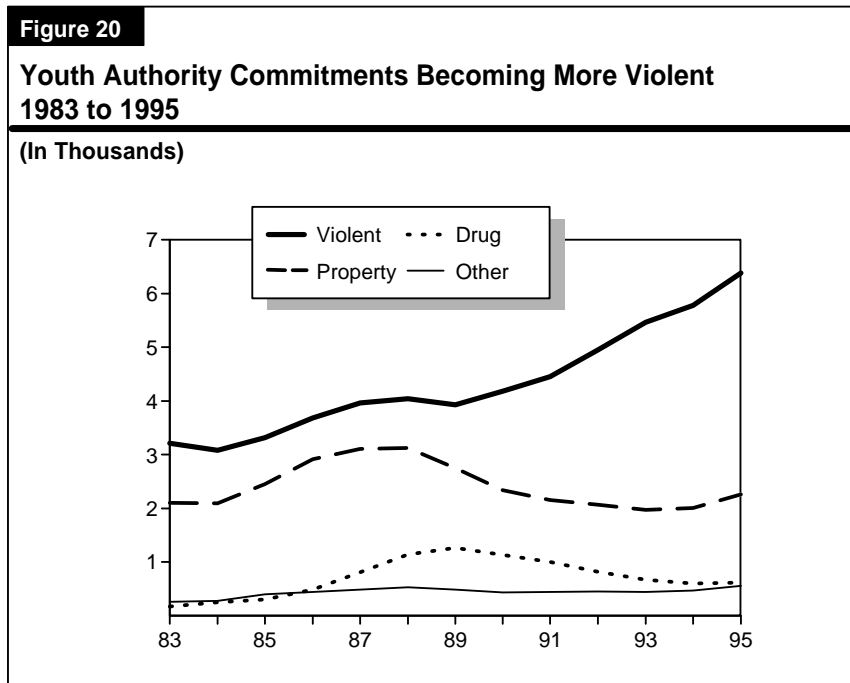
Characteristics of the Youth Authority Wards. Wards in Youth Authority institutions are predominately male, 19 years old on average, and come primarily from southern California, with 34 percent coming from Los Angeles County. Hispanics make up the largest racial and ethnic group in Youth Authority institutions, accounting for 46 percent of the total population. African Americans make up almost 30 percent of the population, whites are 15 percent, and Asians and others are approximately 9 percent.

Most Wards Committed for Violent Offenses. In 1995, 65 percent of the wards housed in departmental institutions were committed for a violent offense, such as homicide, robbery, and assault. In contrast, only 42 percent of the CDC's population has been incarcerated for violent offenses. The number of wards incarcerated for property offenses, such as burglary and auto theft, was 22 percent of the total population. The number of wards incarcerated for drug offenses was just under 7 percent in 1995. Figure 19 shows the population of the Youth Authority by type of offense.



Violent Offender Population Has Increased. The Youth Authority has seen substantial increases in its violent offender population. Since 1983, the institutional population of violent offenders has increased almost

50 percent, or at an average annual rate of over 5 percent. On December 31, 1995, the Youth Authority housed 1,288 murderers, or about 13 percent of the total institutional population. Of these wards, about 78 percent were committed by juvenile courts. The remaining 22 percent had been sentenced in criminal court. Figure 20 shows the trends in offender populations at the Youth Authority.



Average Incarceration. Wards committed to the Youth Authority for violent offenses serve longer periods of incarceration than offenders committed for property or drug offenses. Because of the increase in violent offender commitments, the average length of stay for a ward in an institution will increase. For example, the Youth Authority estimates that the average time until parole consideration for all wards is 24.9 months for new admissions in 1995-96, compared to 22.7 months in 1994-95, and 17.9 months in 1989-90.

Wards Tend to Have Longer Periods of Incarceration When Committed by Juvenile Court. For almost all types of offenses—except murder and rape—wards committed to the Youth Authority by juvenile courts are incarcerated for longer periods than if they had been sentenced to the CDC by criminal courts under laws that apply to adults. As Figure 21 shows, juvenile court commitments serve longer periods than

inmates at the CDC. The extra time served ranges from over 75 percent more time for grand theft to over 7 percent more time for first degree burglary. Juveniles convicted as adults and given CDC sentences, but because of their age are sent to the Youth Authority, serve the average CDC term, not the average Youth Authority term.

Figure 21

**Time Served for Selected Offenses
Youth Authority and the CDC**

(In Months)

Offense	Youth Authority ^a	CDC ^b
Manslaughter	49.6	41.6
Robbery	37.3	27.5
Assault with deadly weapon	35.0	22.2
Child molestation	38.3	34.7
Burglary (first degree)	28.5	26.5
Burglary (second degree)	13.4	11.6
Grand theft	20.0	11.4
Arson	23.1	18.3
Possession for sale	22.3	16.6

^a Wards committed to Youth Authority by juvenile courts.
^b Inmates.

The longer sentences are explained in part by the fact that wards committed by the juvenile court serve “indeterminate” periods of incarceration, rather than a specified period of incarceration. Wards receive a parole consideration date when they are first admitted to the Youth Authority, based on their commitment offense. Time can be added, or reduced by the Youthful Offender Parole Board, based on the ward’s behavior and whether the ward has completed rehabilitation programs. In contrast, juveniles and adults sentenced in criminal court serve “determinate” sentences—generally a fixed number of years—that can be reduced by “work” credits and time served prior to sentencing.

**Ward and Parolee Population
Projections Will Be Updated in May**

We withhold recommendation on a \$1.6 million decrease from the General Fund based on projected ward and parolee population changes, pending enactment of proposed legislation and receipt and analysis of the revised budget proposal and population projections to be contained in the May Revision.

Ward and Parolee Population in the Budget Year. The Youth Authority population is projected to decrease at the end of the budget year. This reduction is principally the consequence of assumed enactment of legislation that would divert “M cases” age 18 and older from the Youth Authority to the CDC. This action is expected to reduce the Youth Authority’s population by 240 wards, or 2 percent, below the current-year estimate. The budget requests a decrease of \$1.6 million (\$1.1 million from the General Fund and \$520,000 from Proposition 98) as a result of this reduction in caseload.

The parole population is projected to be 6,225 by June 30, 1997, a decrease of 110 parolees, or 2 percent less than June 30, 1996.

Action on Ward and Parolee Caseloads Should Await Actions by the Legislature and the May Revision. The department will submit a revised budget proposal as part of the May Revision that will reflect more current population projections. These revised projections could affect the department’s request for funding.

For example, as we note above, the institutional population for the budget year could be up to 7 percent higher if the Youth Authority must continue to house “M cases.” If proposed legislation is not enacted, Youth Authority populations will increase, resulting in an upward adjustment in the budget.

Furthermore, other factors may increase the Youth Authority population. For example, the loss of federal funding for juvenile offenders housed in county facilities, could result in some counties closing a significant number of local juvenile facilities. The closure of local facilities limits judicial placement options, which could mean that more juveniles are sent to the Youth Authority. (We discuss this issue below.)

Given these uncertainties, we withhold recommendation on the proposed \$1.6 million decrease reflecting anticipated ward and parolee population changes, pending receipt and analysis of the revised budget proposal.

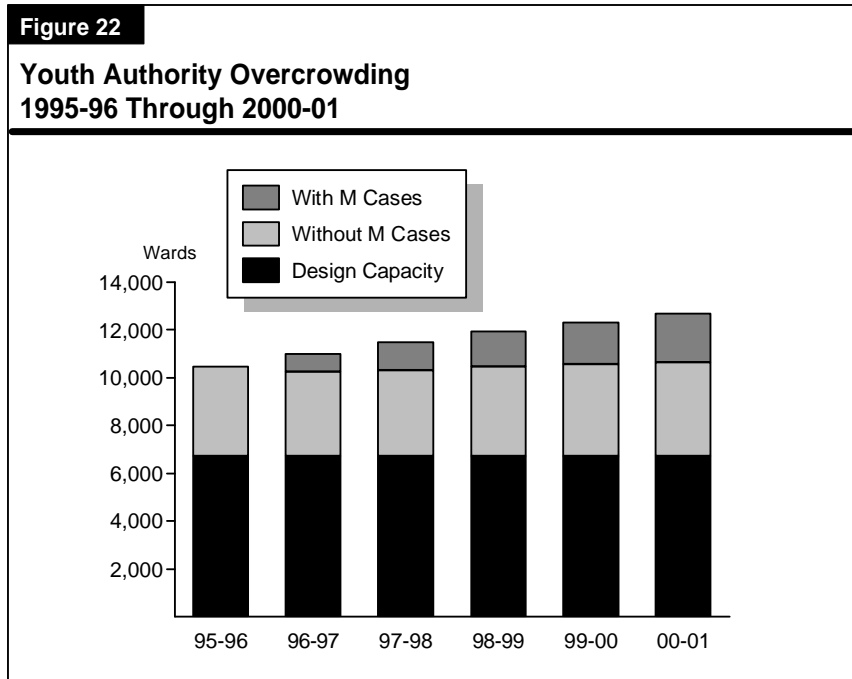
Legislation to Transfer “M Cases” Should Be Enacted

We recommend enactment of legislation proposed by the administration to transfer the custody of “M cases” from the Department of the Youth Authority to the California Department of Corrections because incarceration of these inmates in the Youth Authority is inconsistent with the department’s mission.

The budget proposes enactment of legislation that will have an impact on the Youth Authority's population. Specifically, the budget proposes legislation to transfer responsibility for housing "M cases" to the CDC.

The administration is proposing to eliminate "M case" placements in the Youth Authority of any inmates age 18 or older, and requiring the transfer of inmates to state prison when they reach the age of 18, beginning July 1, 1996. The Youth Authority has prepared its budget and population estimates assuming enactment of these changes. It is estimated that when this change is fully implemented there will be net state savings of about \$2.1 million annually, consisting of savings to the Youth Authority of more than \$5 million, partially offset by costs to the CDC of about \$2.9 million.

The transfer would also lead to a significant reduction in overcrowding in the Youth Authority facilities—from a projected 189 percent in 2000-2001 to 158 percent. Figure 22 shows Youth Authority overcrowding with and without "M cases."



"M Cases" Inconsistent with the Youth Authority's Mission. We recommend that the Governor's proposed legislation be enacted. In the

Analysis of the 1994-95 Budget Bill, we recommended enactment of legislation to transfer all “M cases” age 18 or older to the CDC because incarceration of these inmates in the Youth Authority is inconsistent with the department’s mission of rehabilitating *juvenile* offenders. For example, most of the Youth Authority’s wards are enrolled in education or specialized rehabilitative programs. In contrast, most “M cases” do not participate in these programs due to their relatively older age or failure to meet placement requirements.

New Fees to Counties for Youth Authority Placements

In late January 1996, the Legislature enacted, and the Governor signed, legislation to increase the fees that counties pay to the state for commitment of juvenile offenders to the Department of the Youth Authority. The new fees will take effect almost one year later than the date assumed in the Governor’s Budget. As a consequence, the state will receive about \$35 million less in revenues over the current and budget years than the amount anticipated in the Governor’s Budget.

The Governor’s Budget proposed the enactment of legislation to increase the fees that counties pay the state for placement of juvenile offenders in the Youth Authority. The Legislature enacted the new fees in Ch 6/96 (SB 681, Hurtt) on January 30, 1996, and the Governor signed the bill on February 1, 1996.

Increased Monthly Fees. Currently, counties pay the state \$25 each month (\$300 annually) for each offender sent to the Youth Authority. The \$25 monthly fee was set in 1961, and has not been adjusted since then. Chapter 6 increased the fee to \$150 per offender per month, or \$1,800 annually per offender, to account for the effects of inflation since 1961. Although a significant increase, the proposed fee is still substantially below the Youth Authority’s average annual cost of \$31,200 per offender.

“Sliding Fee Scale.” In addition, the Governor’s Budget proposed, and Chapter 6 enacted, a “sliding fee scale” for offenders sent by counties to the Youth Authority. When a ward is sent to the Youth Authority, the Youthful Offender Parole Board assigns the ward a category number—from 1 to 7—based on the seriousness of the commitment offense. Generally, wards in categories 1 through 4 are considered the most serious offenders, while categories 5 through 7 are less serious. Under this legislation, counties would pay 100 percent of the costs of wards in category 7 (the least serious offense category), 75 percent of the costs for wards in category 6, and 50 percent of the costs for wards in category 5. Counties would pay the proposed \$150 per month fee for

all other commitments. Wards in categories 5, 6, and 7 generally spend less than 18 months in Youth Authority institutions. Similar types of offenders who are placed in county-run facilities often spend less than six months in the facilities.

Later Implementation Will Cost State. The budget assumed enactment of legislation making these two fees effective on *February 1, 1996*. Consequently, the Youth Authority's 1996-97 budget proposal incorporated these changes for both the current and the budget years. The budget assumed that the fees would have generated combined revenues (shown as reimbursements in the Youth Authority's budget) of \$7.5 million in the current year and \$37.8 million in the budget year. However, Chapter 6 provides that the new fees will not become effective until *January 1, 1997*, or 11 months later than the budget anticipated.

As a consequence, the state will receive none of the anticipated current-year revenues and only about \$10 million in the budget year, or a total of \$35.3 million less than was anticipated over the two fiscal years.

The Youth Authority and Legislature Will Need to Monitor Implementation of New Sliding Scale Fees. We believe that care must be taken to ensure that counties do not modify their criminal charging patterns in order to avoid the sliding scale fees. This is an area where counties have substantial discretion. For example, offenders who commit certain types of robbery would be subject to a fee. But, if the district attorney decided that the possession of a knife by the offender (whether it was used in the crime or not), made the offense armed robbery or assault with a deadly weapon, instead of simple robbery, then the ward would not be subject to a fee. Under such a scenario, not only would the county avoid the additional costs of the Youth Authority placement, but it could result in additional state costs. This is because the ward would likely be incarcerated in the Youth Authority for a longer period of time than he or she would otherwise. For these reasons it will be important for the Youth Authority and the Legislature to closely monitor the commitment patterns of counties following the implementation of the sliding scale fees.

Overcrowding Likely to Continue and May Worsen

We recommend that the Department of the Youth Authority report during budget hearings on what actions it will take to alleviate institutional overcrowding. Specifically, the Youth Authority should report on a range of options, including whether (1) it should stop accepting

nonviolent, nonserious offenders, (2) reduce the level of programming for offenders serving long sentences, and (3) limit programming for wards over the age of 18.

Background. The Youth Authority institutions are currently overcrowded and will likely remain so in the coming years. Three elements drive the Youth Authority's institutional overcrowding:

- ***Growth of the State's Juvenile Population.*** We estimate that California's juvenile population between the ages of 11 and 17 (the juveniles most likely to commit crime) will increase over 30 percent by 2004. An increase of this magnitude will probably lead to higher levels of juvenile crime and commensurate increases in Youth Authority commitments.
- ***The Rate of Admissions from Each County.*** As admission rates have fluctuated in the past, the Youth Authority population has also changed. If admissions rates from the counties increase in the future, there would be an increase in the institutional population.
- ***Lengths of Stay.*** The average length of stay for juvenile court commitments in the Youth Authority is projected to increase from 26.1 months in the current year to 30 months by 1999-2000. A significant part of the projected increase in the average length of stay is due to the effects of overcrowding. When institutions are overcrowded, wards have less access to programs which they must have before they are allowed to be paroled, thereby resulting in a longer institutional stay.

The Governor's proposal to transfer responsibility for "M cases" from the Youth Authority to the CDC will allow the Youth Authority populations to remain at about 155 percent to 160 percent through 2000. In the absence of this change, overcrowding will increase.

Other Actions Are Needed to Reduce Overcrowding. While we support the administration's "M cases" proposal, we believe this action by itself is insufficient to fully address the problem of overcrowding and that further actions are necessary. Reducing overcrowding would benefit the state by allowing wards better access to rehabilitative programs. To the extent that these programs are successful, they would lead to lower recidivism and greater public safety. In addition, overall Youth Authority costs would be held in check as average lengths of stay decline.

What Can the Youth Authority Do? There are both long- and short-term options for reducing overcrowding and its effects. As a long-term solution, the Youth Authority is proposing to add 1,450 new beds by

adding new living units and associated program space to existing institutions. The funding for these new beds will be included in the Governor's November 1996 bond proposal. Completion of these proposed new beds would result in overcrowding decreasing to under 130 percent by 2001 (assuming the "M case" legislation is also enacted). But, even if the building proposal is adopted, it will take at least three years after approval of the proposed construction bonds to complete these new facilities. Furthermore, adding new living units does not necessarily address the problem of providing required programming for wards. In fact, in the Capital Outlay chapter of this *Analysis*, we recommend that the Legislature not approve the proposed expansion because we believe that the Youth Authority does not need additional living units. We indicate that an alternative proposal to build new *programming* space that might be needed may warrant the Legislature's consideration.

We believe that there are other steps the Youth Authority can take in the short-term to reduce overcrowding:

- ***Refuse Nonviolent, Nonserious Offenders.*** In general, the Youth Authority has limited ability to refuse commitments. The Youth Authority Director, however, could be authorized to refuse commitments of wards who fall in the less serious offense categories or who would be committed for six months or less. Counties could handle such cases locally while more serious offenders who could benefit more from the department's programs could be sent to the state. If less serious and shorter-term offenders were removed from the Youth Authority's population, overcrowding could be reduced from over 155 percent to 134 percent by the end of the budget year. This population reduction would also result in General Fund savings of over \$18 million.
 - ***Reduce Programming for Inmates or Wards Serving Long Sentences.*** Under current law, when a ward or inmate is admitted to the Youth Authority he or she receives a plan for rehabilitative programs, training, and education regardless of the amount of time he or she is likely to serve. The Youth Authority could reduce the amount of programming provided to wards who are going to serve relatively long sentences. As a consequence, the Youth Authority could give service priority to the wards who will be paroled much earlier. While we are not suggesting that these offenders receive no programming, they should not receive *all* of the services the department has to offer, especially in their early years of incarceration, when their return to the community is decades away. Instead, programming could be targeted to meet their current needs.
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- **Limit Programming for Older Wards.** Over 65 percent of the juvenile court-committed population in the Youth Authority is age 18 or older. We believe that priority for programming should be given to younger wards who may benefit more from such services. Applying the same programming criteria to older wards is questionable, especially if the completion of the programming deprives a younger ward from completing the same program.

Analyst's Recommendation. Given the Youth Authority's current and projected overcrowding, even in light of the proposed transfer of "M cases", the department should report during budget hearings on what actions it will take to reduce overcrowding. Specifically, the Youth Authority should include a review of the following: (1) statutory or regulatory changes that are necessary in order not to accept nonviolent, nonserious offenders; (2) restrict programming to juvenile court-committed wards; (3) limit programming for wards over the age of 18; and (4) provide a lower level of programming for inmates and wards serving long sentences.

Loss of Federal Funds for Local Juvenile Services Could Lead to Increased Youth Authority Placements

We recommend that the Department of the Youth Authority report during budget hearings on (1) the status of federal funding for local juvenile probation services, (2) the impact county camp and ranch closures would have on Youth Authority populations, (3) the impact the closures would have on other state programs, and (4) whether the provision of \$33 million in state funds for ranches and camps will avert major closures.

Background. Placement of juvenile offenders in local juvenile halls, usually for short stays, and in county ranches and camps, usually for stays of four to six months, are placement options available to most county probation departments. While there are currently more than 6,300 juvenile hall beds and more than 3,900 county ranch/camp beds, there is currently a statewide shortage of bed space. Juveniles placed in juvenile halls usually are awaiting court action. Many of these youths are being detained for very serious or violent offenses. In many counties juveniles arrested for property offenses are not detained in juvenile halls, due to the current space shortage.

Ranch and camp beds are placements for offenders whose cases have been adjudicated in court. Juveniles who have been adjudicated for very serious offenses, such as murder, can be placed in camps. While placed in a ranch or camp, the offender receives a variety of rehabilitative

programming and attends school. Recently, counties have received both federal and state funds to support their local juvenile facilities.

Federal Funds for Local Juvenile Offenders. In 1993, Los Angeles County, on behalf of California counties with ranches and camps, sought federal funding for juveniles that receive services in juvenile halls, ranches and camps, or other probation services. Subsequently, the federal government approved federal Title IVA (emergency assistance) funding on an interim basis. All 58 counties were authorized to receive a share of Title IVA funding for these juveniles. The anticipated Title IVA funding for 1995-96 was \$162 million.

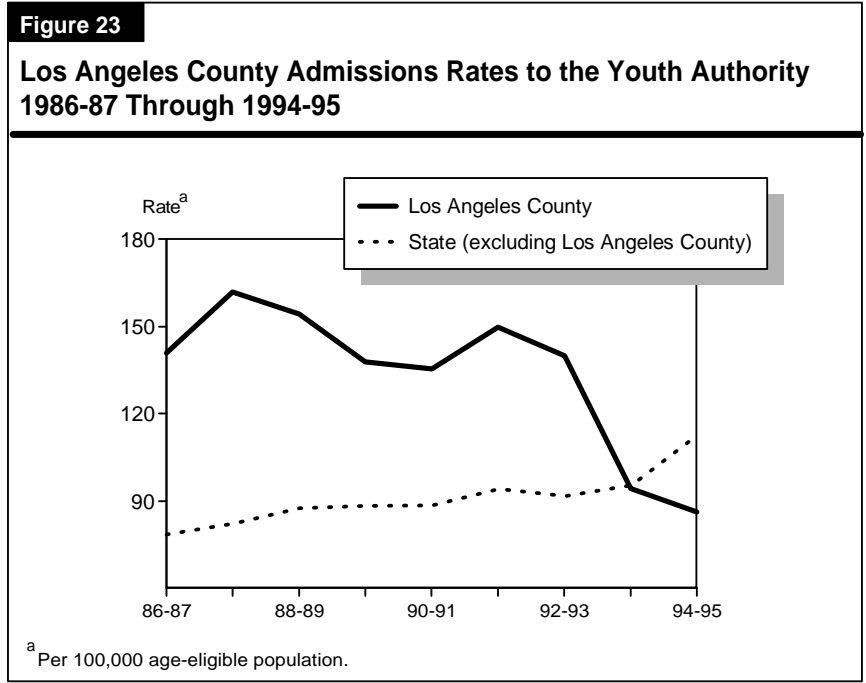
In September 1995, the federal government notified the state that, starting January 1996, juvenile offenders would no longer be eligible for these funds. In other action, the Congress, as part of overall welfare reforms, would have included emergency assistance funding as part of state block grants. These reforms have been vetoed by the President.

State Aid to County Juvenile Detention Facilities. In the 1993 Budget Act, the Legislature appropriated \$33 million from the General Fund to support county ranches and camps. However, this funding was deleted in 1994-95, primarily because of the substantial increase in the amounts of federal funds available to counties under Title IVA.

Chapter 7, Statutes of 1996 (AB 1483, Villaraigosa), which was enacted by the Legislature on January 30, 1996 and signed by the Governor on February 2, 1996, provides \$32.7 million in the current year for counties with camps and ranches. The Governor's Budget proposes the same amount for 1996-97 in the Budget Bill. In addition, the Governor is also proposing that the administration ensure that, if federal block grants for welfare reform are approved, probation services that previously received Title IVA funds would continue to be fully funded. Adoption of the Governor's proposal and appropriation of state funds to counties with ranches and camps could partially offset the loss of federal funds.

Los Angeles County Juvenile Facilities. Los Angeles County's juvenile offender placement decisions can substantially impact the state. Although Los Angeles accounts for over 34 percent of the Youth Authority's new admissions, most county juvenile offenders are kept in the county rather than being placed in the Youth Authority. The Los Angeles County probation department reports that over 40 percent of its juvenile offenders are placed in local camps. Los Angeles County accounts for 43 percent of the state's total county ranch and camp beds. As a consequence, the county was the largest recipient of Title IVA federal funding, over \$50 million in 1995-96. The county's share of camp funds from Chapter 7 will probably be about \$17 million.

In contrast, only 6 percent of Los Angeles' juvenile offenders are placed in the Youth Authority. In fact, the level of new admissions from Los Angeles has declined in recent years, as shown in Figure 23. For 1994-95, Los Angeles' admission rate was 24 percent less than the rest of the state.



The county reports that the loss of federal monies would result in the closure of the majority of its camps as early as February 1996. Whether receipt of funding under Chapter 7 will keep the camps open is unknown.

Camp Closures Could Lead to Higher State Costs. Several counties, in addition to Los Angeles, are reporting that as a consequence of the loss of federal funding they will close camp beds. Our analysis indicates that closure of county camps and ranches could result in large increases in ward population and, in turn, increase General Fund costs substantially. If the level of Youth Authority admissions from Los Angeles County increased because of camp closures to just the rate of the rest of the state, it could result in an extra 225 juvenile admissions annually, at an additional cost of at least \$6.8 million. More likely, however, of the approximately 5,700 annual Los Angeles camp placements, a much higher number would be sent to the Youth Authority, if no county

alternative were available. The Governor's Budget and the Youth Authority's ward and parole population projections do not account for any reductions in county programs.

Potential Increase in Foster Care Caseloads and Costs. The closure of county camps and ranches could result in increased Aid to Families with Dependent Children (AFDC) Foster Care costs. Recent information from Los Angeles County indicates an increasing use of foster care group homes and family homes as placement options. It is reasonable to expect that this choice of placement would extend to any county where camp facilities are closed due to the loss of federal funding. In California, a group home placement costs an average of about \$3,000 per month and a family home foster care placement averages \$550 per month although these costs could be higher for probationers. The state pays a share of costs for these placements depending on whether the youth is eligible for AFDC. Significant increases in the number of these placements could result in added state costs totaling in the tens of millions of dollars annually.

Analyst's Recommendation. Given this situation, we recommend that the Youth Authority report during budget hearings on (1) the status of federal funding for local juvenile probation services, (2) the impact camp closures will have on Youth Authority populations, (3) the impact camp closures would have on other state programs, and (4) whether the provision of \$33 million in state funds for ranches and camps will avert major closures.

Proposed Youth Authority Local Assistance Programs Should Require Local Match

We recommend that the Legislature direct the Department of the Youth Authority to incorporate share of cost or local match requirements into its proposed local assistance programs. Such requirements would leverage additional funds thereby allowing more local agencies to participate in the programs and increasing the number of juveniles served.

Governor's Initiatives. The Youth Authority budget proposes funding for programs that are part of two larger administration initiatives.

- **"Mentoring of At-Risk Youth."** The Governor's Budget includes \$15 million to expand the California Mentor Initiative, with the goal of linking 250,000 mentors with one million at-risk youths by the year 2000. These expenditures include \$7 million within the Department of Community Services and Development, \$5 million within the Office of Child Development and Education
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for the California Academic Volunteer and Mentor Corps, and \$3 million for the Youth Authority to expand the Young Men as Fathers program, as described below.

- **“Cracking the Culture of Gangs.”** In addition to a variety of proposed law changes, the Governor's Budget proposes adding \$3.1 million for expanding anti-gang programs of the Youth Authority and \$3 million for two gang-related programs of the Office of Criminal Justice Planning (OCJP).

Young Men as Fathers/Preparing for Positive Parenting Programs.

The Youth Authority estimates that more than 23 percent of its institutional population are fathers and many more wards will become parents when they leave the Youth Authority. In 1993, under a federal grant, the Youth Authority established parenting programs that focus on the needs of incarcerated males—the Young Men as Fathers program and the Preparing for Positive Parenting program.

The Young Men as Fathers program consists of a 60-hour curriculum in Youth Authority institutions, taught by specially trained teachers and augmented by guest speakers from the community. The program teaches wards about the responsibilities of being a parent and includes information on child development, communication, family planning, domestic violence, and other important parenting elements. As of June 1995, 768 wards had participated in this program. Of these participants, 62 percent were fathers and an additional 6 percent had pregnant wives or girlfriends.

The Preparing for Positive Parenting program is available to parolees. The program consists of ten two-hour classes taught by parenting educators. As of December 1995, there were 138 participants in the program, 86 who had graduated. Of the graduates, 56 percent were fathers and a further 9 percent had pregnant wives or girlfriends.

Testing of the wards who have completed these programs shows significant increases in both the knowledge of good parenting practices and in self-esteem.

Gang Violence Reduction Project. The Youth Authority operates a Gang Violence Reduction Project (GVRP) in the unincorporated area of East Los Angeles. The GVRP is staffed by both Youth Authority parole agents and community youth resource specialists—former gang members who live in the community where they serve. The GVRP meets with local gangs and mediates feuds. In addition, the GVRP staff provide gang intelligence to local law enforcement agencies. The staff also conducts extensive gang prevention activities in the community.

While this program has not been formally evaluated, local law enforcement agencies, the county office of education, and a variety of civic and community groups have attested to the effectiveness of the GVRP in reducing gang activities in their service area. Our review of the program showed that the GVRP staff were responsible for reductions of gang violence in schools.

Expanding the Youth Authority Programs to Local Agencies. The Youth Authority is requesting \$3 million for local assistance funding to expand the Young Men as Fathers/Preparing for Positive Parenting programs to county probation departments. The Youth Authority would distribute grant funding on a competitive basis to counties to pay instructor's salaries, provide instructional materials, arrange family activities for program participants and their children, and develop mentoring programs for minors who are fathers or father-figures. Funds would be available to adapt the Youth Authority programs for use in juvenile halls, county ranches or camps, alternative schools, or probation offices.

As noted above, there are almost 8,000 beds in county-run juvenile detention facilities. Furthermore, at any one time, over 50,000 juveniles are under some form of probation supervision. It is unknown how many of these juveniles are also fathers, but it is reasonable to assume a large number of these individuals are already fathers or might become fathers.

The Youth Authority assumes in its request that between 50 and 60 grants will be awarded, evenly divided between northern and southern California. A typical program would consist of four training sessions a year; including 60 hours of instruction, one family event, and a mentor component. In estimating the local costs of the programs, the costs for instructors is the largest component—estimated to be almost 80 percent of the cost.

In addition to the parenting programs, the Youth Authority is requesting \$656,000 (\$552,000 in one-time costs and \$104,000 in ongoing costs) to fund two more GVRP projects. The Youth Authority anticipates that grantees will be selected using a competitive process. The grantees will not have to use Youth Authority staff, but must use the GVRP model.

Local Match Could Leverage More Grants. The Youth Authority assumes that its grant amounts would fund the majority of costs of each county's parenting and GVRP programs. However, we believe that requiring counties to provide a share of costs or some other match of funds would leverage additional funds, thereby allowing more local agencies to participate in these programs. Moreover, it would show the commitment of the local agency to maintaining the program.

We believe that these matches could be relatively easily provided. For example, county offices of education already have staff and access to classrooms at each of California's juvenile halls, ranches, and camps. Consequently, if a county office of education provided at least the partial cost of an instructor for the parenting program, the amount of grant funds needed by each county could be reduced.

The GVRP model also lends itself to a local share of cost or match. First, because the model uses peace officers to mitigate gang violence (parole agents in the current GVRP), local agencies could provide sworn personnel to enlarge the reach of the program. The GVRP model also relies on community resources. Again, requiring a specific level of community participation could expand the effectiveness of the program. We would also note that the OCJP gang violence suppression grants have a 10 percent local match requirement.

For these reasons, we recommend that the Legislature direct the Youth Authority to require a local share of cost or local match for these programs.

Oversight Needed for Tattoo Removal Proposal

We recommend that the Legislature adopt Budget Bill language to limit the use of funds for tattoo removal. We also recommend that the Legislature adopt supplemental report language to require the Youth Authority to report on the costs and scope of its tattoo removal program.

The Youth Authority is requesting \$800,000 for ward tattoo removals. Tattoos are used to show gang membership. Oftentimes, tattoos are placed on the hands, face, or visible areas of the neck. If a ward seeks to leave the gang "lifestyle," a tattoo often makes it difficult to find a job or reenter society. Therefore, the Youth Authority is requesting funding for tattoo removal.

Since 1994, 35 wards have had tattoos removed by volunteer physicians. The Youth Authority's proposed program would contract with physicians to pay for tattoo removals. The department estimates that roughly half of its wards who are gang members have visible tattoos—about 4,500—and that about one-third of these wards will volunteer for removal. The estimate assumes it will cost about \$600 for each removal.

Since the Youth Authority has never attempted a program on this scale, it is difficult to estimate the number of wards who will request removal of tattoos, and consequently the costs of the program. For this

reason, we recommend that the Legislature adopt the following Budget Bill language to limit the use of the requested funds:

Of the funds appropriated in this item, \$800,000 is for voluntary tattoo removal. Any funds not used for this purpose shall revert to the General Fund.

In addition, we recommend the adoption of the following supplemental report language directing the Youth Authority to report on the new program.

The Department of the Youth Authority shall report to the Legislature on December 1, 1996, on (1) the number of wards that have received tattoo removals and (2) the total costs of the program and the average cost of each removal.

TRIAL COURT FUNDING (0450)

The Trial Court Funding Program requires the state to assume primary responsibility for funding the operations of the trial courts in counties that choose to participate in the program. The Trial Court Realignment and Efficiency Act of 1991, expressed the Legislature's intent to increase state support for trial court operations 5 percent per year, from 50 percent in 1991-92 to a maximum of 70 percent in 1995-96. (State support has not approached these levels; currently, the state pays about 37 percent of the costs of trial courts and the counties pay the remaining 63 percent.)

The budget proposes to change the responsibilities of the counties and the state with respect to funding the trial courts. The budget proposes total expenditures of \$1.6 billion for support of the Trial Court Funding Program. This is \$143 million, or 8 percent, less than estimated current-year expenditures.

The program is supported by appropriations from the Trial Court Trust Fund, which include:

- \$890 million transferred by the counties.
- \$298 million in fine and penalty revenues.
- \$246 million in court fees.
- \$160 million from the General Fund.

OVERVIEW OF TRIAL COURT FUNDING

There are two components of the program: (1) Trial Court Funding (Item 0450) and (2) Contributions to the Judges Retirement Fund (Item 0390). Figure 24 shows proposed expenditures for the trial courts in the past, current, and budget years.

We discuss Contributions to the Judges' Retirement Fund (Item 0390) in detail in the State Administration chapter of this *Analysis*. We discuss the remaining elements below.

Budget Proposes Decreased Funding. Since 1994-95 state and county expenditures for trial court operations have been based on the major functions that courts provide (such as verbatim reporting and court

interpreter services). Figure 25 shows the total state and county expenditures for trial courts for the current and budget year, by functional category.

Figure 24			
Trial Court Funding Program 1994-95 Through 1996-97			
(Dollars in Millions)			
	Actual 1994-95	Estimated 1995-96	Proposed 1996-97
Trial Court Funding (Item 0450)			
Functional budget funding	\$1,507.6	\$1,726.1	\$1,576.7
Assigned judges program	13.3	12.1	18.3
Subtotals	(\$1,520.9)	(\$1,738.2)	(\$1,595.0)
Judges' Retirement Fund (Item 0390)	\$43.7	\$54.8	\$54.8
Totals	\$1,564.6	\$1,793.0	\$1,649.8

Figure 25				
Total State and County Expenditures Trial Court Operations 1994-95 Through 1996-97				
(Dollars in Millions)				
Trial Court Functions	Actual^a 1994-95	Estimated 1995-96	Proposed 1996-97	Percent Change From 1995-96
Judicial Officers	\$181.0	\$185.6	\$190.1	2.5%
Jury Services	21.7	40.1	42.9	7.2
Verbatim Reporting	124.9	147.4	140.7	-4.5
Interpreters	33.2	37.5	36.1	-3.8
Collection Enhancements	22.7	35.3	—	—
Dispute Resolution Programs	20.6	34.9	34.1	-2.3
Court-Appointed Counsel	42.4	38.1	38.0	-0.4
Court Security	175.0	217.0	215.6	-0.7
Information Technology	107.3	156.3	158.0	1.1
Staff and Other Operating Expenses	671.3	720.2	676.5	-6.1
Indirect Costs	96.8	113.7	44.6	-60.8
Totals	\$1,496.9	\$1,726.1	\$1,576.7	-8.7%

^a Differs from Governor's Budget to reflect actual expenditures reported by Judicial Council.

The primary reason for the \$143 million decrease in expenditures proposed for 1996-97 results from various modifications to expenditure categories shown in Figure 25. Several items have been removed from the functional budget categories in the budget year and thus are no longer considered trial court costs. In the last two functions, "Other Operating Expenses" and "Indirect Costs," costs for court building alterations, minor remodeling, and utilities have been excluded from the totals, and account for much of the decrease for these two functions. "Revenue Collections" has also been excluded for 1996-97. Excluding these costs as part of the state trial court budget means that they will become the responsibilities of the counties.

It should be noted that preliminary information obtained from the Judicial Council indicates that the total expenditures for trial court functions will be approximately \$1.5 billion for the current year, rather than the \$1.7 billion shown in the Governor's Budget. This is due primarily to the fact that many counties have not provided the level of funding that was anticipated in the 1995 Budget Act.

Courts Request More Than Budget Proposes. Under current law, the Trial Court Budget Commission (TCBC) reviews the budget requests from trial courts, and allocates and reallocates trial court funding monies among the various courts. The trial courts made requests to the TCBC for 1996-97 that totaled about \$1.9 billion. The TCBC reduced those requests to \$1.7 billion, which is the amount it presented to the administration as its proposed Trial Court Funding budget for 1996-97. However, the Governor's Budget reduced the amount requested by the TCBC by an additional \$120 million, or 7 percent.

Trial Court Coordination Update

The Judicial Council has made positive steps toward furthering the coordination of judicial and administrative resources in the trial courts. Given the decentralized nature of the courts, it will be important for the council and the Legislature to continue to closely monitor implementation of the coordination requirements.

Trial court coordination requirements have existed in statute since 1991. However, courts were given considerable independence in coordinating their operations. As a result, no standards existed by which to measure the statewide coordination efforts of trial courts until 1995.

What Is Coordination? The goal of trial court coordination is to increase the efficiency of court operations, thereby improving the service to the public. Coordination efforts have focused on coordinating the judicial and administrative functions of the courts (superior and

municipal) in a county. *Judicial coordination* employs cross-assignment of superior and municipal court judges to handle backlogs and overflows of cases. *Administrative coordination* consists of merging the administrative operations of the courts within counties. Examples include the provision of jury services by one office for all the courts within a county, or having one budget staff for all the courts within a county.

Level of Coordination Varies. Currently, the level of coordination among courts varies substantially. For example, in some counties administrative operations of the courts have been completely or partially merged. In other counties, there is substantial judicial coordination through cross-assignment. For a few counties, all operations (judicial and administrative) have been totally consolidated. Finally, in some counties there have been almost no coordination measures implemented.

Specific Requirements and Timeliness Adopted. On January 25, 1995, the Judicial Council unanimously agreed to require all trial courts within a county to coordinate judicial activities and integrate all direct support and information services. In addition, the council required the trial courts to complete certain coordination activities by specific dates. These included coordinating the judicial activities and support services of the county's courts by July 1, 1996, and submitting a unified budget for all trial courts within the county and establishing unified financial management procedures beginning in 1997-98. The Judicial Council's new implementation schedule allows for better monitoring of the progress towards coordination.

First Two-Year Coordination Plans Submitted to Judicial Council. Trial courts are required to submit to the Judicial Council every two years a county coordination plan. The plans for 1995-96 through 1996-97 were due to the council by November 1, 1995. Plans were submitted by 54 counties and reviewed by the council. Of the 54 coordination plans reviewed, 21 were accepted by the Judicial Council on January 24, 1996. Plans disapproved by the council must be revised and resubmitted.

The Judicial Council advises that it does not have up-to-date information on the current progress of the trial court coordination efforts in the individual courts. The council also advises that it intends to gather more specific information and make it available to the Legislature in the near future.

New Law Could Make Court Unification Easier. Chapter 963, Statutes of 1995 (SB 162, Lockyer) established a new procedure that could accelerate existing efforts of the judiciary to consolidate and unify the trial courts. Specifically, the measure provides that upon the vacancy of a municipal court judgeship, the Governor may convert the

judgeship to a superior court judgeship, as long as there is at least one remaining municipal court judgeship in the county. To the extent that these newly created superior court judgeships handle both municipal and superior court cases, the measure would further unification. However, according to the Judicial Council, the Governor has given no indication that he plans to use his authority to convert any judgeships at this time.

Current-Year Funding Issues Create Tension Between Courts and Counties

Requests by the Judicial Council and the state's two largest superior courts for additional funds in the current year could have a significant impact on the relationships between the courts, the state, and the counties. We recommend that the Judicial Council report to the Legislature during budget hearings on the status of current-year funding issues.

The Judicial Council has indicated that a number of trial courts are projecting funding shortfalls in the current year. Several strategies have been developed by the Judicial Council and several of the trial courts to pursue additional funding for the current year.

Judicial Council Applies for Current-Year Deficiency. In October 1995, the Judicial Council filed a deficiency request with the Department of Finance (DOF) on behalf of the trial courts for an amount up to \$592 million—the difference between the state share of support initially proposed in the Governor's 1995-96 Budget and the amount finally approved by the Legislature and the Governor. The amount proposed in the Governor's Budget had assumed the enactment of a state-county realignment proposal that was ultimately rejected. That proposal would have increased trial court operational costs for the state in exchange for increased social services expenditures by counties. The DOF has not acted on the deficiency request.

At a January 24, 1996 meeting, the Judicial Council approved a recommendation to seek an additional appropriation of \$85 million for the current year in order to meet the “critical needs” of the trial courts. Thus, we expect that the Judicial Council will amend its October request for deficiency funding.

Some Courts Threaten to Sue Counties for Additional Funding. State law provides a procedure for trial courts to seek additional funds from counties if budgeted funds are insufficient to meet the needs of the court. In late 1995, the Los Angeles Superior Court commenced an action to compel Los Angeles County to provide additional funds. In its

discussion with the county, the court has reduced its original request of \$41.4 million to \$26.3 million. The superior court also is requesting this same amount from the state as part of the Judicial Council's \$85 million request to meet the critical needs mentioned above

According to the Judicial Council, the Orange County Superior Court has also sought funds pursuant to state law. In January, the court indicated to the Judicial Council that it is requesting an additional \$31.7 million from the county in the current year.

Judicial Council Should Provide an Update. We believe that the actions of the Judicial Council and the state's two largest superior courts has significant implications for the current relationships between the courts, the state, and the counties. For this reason, we recommend that the Judicial Council report to the Legislature during budget hearings on the status of current-year funding issues.

TRIAL COURT FUNDING CONSOLIDATION PROPOSAL

The Governor's Proposal

The Governor's Budget proposes to consolidate the costs of operating the trial courts at the state level, capping the county contribution, and making the state responsible for future funding increases.

The budget proposes to consolidate the costs of operations of the trial courts at the state level. The plan redefines the financial responsibility of the state and the county in relation to the operations of the trial courts. Figure 26 (see page 110) summarizes the major provisions of the plan.

County Contributions Capped. Under the proposal, the county contribution for Trial Court Funding is capped at \$890 million. This amount is roughly equal to the level of funding provided by the counties in 1994-95 for support of trial court operations. This county contribution, which would not increase over time, would be deposited into the Trial Court Trust Fund and appropriated in the Budget Bill.

State Responsible for Funding Future Increases. With the county contribution capped, the state would be responsible for funding all *future* cost increases for trial courts, including costs associated with salary increases, new judgeships, and implementation of new programs.

Fines and Penalties No Longer Remitted to the General Fund. Under current law, certain fines and penalties collected by the courts are remitted to the General Fund to offset the state's General Fund cost of the Trial Court Funding Program. Under the Governor's proposal,

Figure 26

Major Features of the Trial Court Funding Consolidation Proposal

- Establishes a cap on the county contribution for trial court operations at \$890 million, an amount equal to their 1994-95 contribution to the trial courts.
- Provides that the state is responsible for funding future increases in the Trial Court Funding Program.
- Eliminates the requirement that local fines and penalties be remitted to the state General Fund. Instead, counties would transfer \$294 million in fine and penalty revenues to the Trial Court Trust Fund—the amount of fines and penalties remitted by the counties to the General Fund in 1994-95.
- Proposes that one-third of all growth in monies collected for fines and penalties above the 1994-95 level be diverted to the Trial Court Trust Fund. The remaining two-thirds would be split between the counties and the cities.
- Proposes an increase of court filing fees to generate an additional \$91 million, which would be remitted to the Trial Court Trust Fund.
- Eliminates costs for court facilities, local judicial benefits, and revenue collection activities from the trial court budget; these items would be fully funded by the counties.

\$294 million in fine and penalty revenue instead would go annually to the Trial Court Trust Fund. This reflects the amount that was remitted by the counties to the state General Fund in 1994-95. Future increases in recovered fine and penalty revenue—projected at \$12 million in the budget year—would be divided evenly between the counties, the cities, and the Trial Court Trust Fund.

Increases in Court Filing Fees. Court fee revenues are estimated to be \$156 million in 1995-96 and are deposited into the Trial Court Trust Fund. Under the proposal, certain court filing fees would be increased to generate an additional \$91 million, which would be remitted to the Trial Court Trust Fund.

The proposed fee changes include:

- Increase civil filing fees from \$182 to \$185 in superior court and from \$80 to \$85 in municipal court (annual revenue: \$4.8 million).
- Increase filing fee for any notice of motion, or other paper requiring a hearing, or opposition to a motion or paper requiring a hearing, from \$14 to \$40 (annual revenue: \$20.8 million).
- Establish new fees for filing an amended complaint or cross-complaint, or amendment to a complaint or cross-complaint, of \$91 in superior court and \$40 in municipal court (annual revenue: \$20 million).
- Recovery of previously waived filing fees when litigant receives a monetary settlement (annual revenue: \$5.5 million).
- Increase all miscellaneous clerk fees by 50 percent (annual revenue: \$40 million).

Redefinition of Operating Costs. The proposal eliminates the costs of facilities, local judicial benefits beyond the state-funded salary and benefits, and revenue collection activities from the trial court operational budget. These items would be fully funded by the counties.

Several Other Proposed Statutory Changes. In addition, the Governor's proposal contains the following changes as part of the consolidation plan:

- Limit the ability of trial courts to seek additional funds from counties if budgeted funds are insufficient to meet the needs of the court. Under the plan, courts could only seek county funds for costs of court facilities.
 - Allow trial courts the authority to contract for goods and services.
-

- Require that all funds be deposited into the Trial Court Trust Fund.
- Require counties to obtain court sign-off on the use of courthouse construction funds.

The administration advises that it will seek legislation to make all of the proposed changes.

State Funding Makes Sense, But Cost Controls Needed

The administration's consolidation proposal has merit. However, the Legislature will need to consider issues related to future funding and cost containment, which if not addressed, would result in significant future cost increases to the state.

Judicial Functions Should Be Considered "Statewide" Functions. We concur with the administration that the state should assume primary financial responsibility for the trial courts. This is because the state has an interest in ensuring and improving statewide access to justice through the courts. The current trial court funding system can result in widely differing levels of support for the courts depending on county fiscal capacity and budget priorities.

Current System Separates Control and Financial Responsibility. In addition, the current system of funding the trial courts creates a separation of control and funding responsibility. The Legislature and the Governor control, to a large extent, the workload and the rules governing the courts and, in some cases, the types and number of court employees. The state also controls the number of judges, which has a substantial impact on the overall costs of the courts.

This is not to say that local government officials do not affect the workload of the courts. Particularly in the area of criminal justice, the police and district attorneys exercise a certain amount of discretion in determining who to arrest and which cases to prosecute. Nevertheless, we believe that on balance, the state is the primary determinate of court workload.

Linking Funding Responsibility and Accountability. We also concur with the administration that the divided funding responsibility that currently exists for the trial courts limits the authority, and consequently, the accountability of all the parties involved. Any new system for the funding of the trial courts must provide clear accountability and increased flexibility for the management of the courts.

Budget Year Impacts and Beyond. The net impact of the consolidation on the state General Fund for the budget year is minor. However, we expect that the plan's impact on state expenditures will grow in the following years, especially if the Legislature establishes new judgeships. Based on historical experience, we estimate that the trial court operational budget could increase by \$30 million to \$80 million annually. The state will be solely responsible for funding this increase. In the budget year, the state's share of the proposed increase in funding is relatively small and will be covered by the increase in fees. While this option will continue to exist in the future, it is likely that future funding increases will need to be provided primarily from the General Fund.

Proposal Creates Challenges, Opportunities. Although we believe that the proposal is an important step in creating a statewide, unified judicial system, we have identified several concerns with the current consolidation proposal which the administration and the Legislature should address.

As we indicated, the proposal will likely result in significant cost increases to the state in future years. Thus, it will be important for the state to ensure that the issues of governance and control make sense in the new system, enabling the state to have greater involvement and control over trial court expenditures. We recommend that the Legislature ensure that the mechanisms for improved governance are in place to be able to control trial court expenditures and to bring about operational efficiencies. This becomes especially important if the Legislature wishes to create new trial court judgeships in the coming years, which could increase trial court operating costs substantially. We outline several issues related to cost control and governance below.

Judicial Council Needs to Further Define Performance Measures

We recommend that the Judicial Council report to the Legislature during budget hearings on its progress in defining and implementing performance measures that assess progress toward meeting specific goals and permit cross-court comparisons.

In linking fiscal responsibility and accountability, it will be important for the Legislature to establish performance expectations for the courts. The 1995 Budget Act directed the Judicial Council to develop specific trial court performance measures to use in developing future budget proposals. The Judicial Council indicates that its report will be available in February.

The Judicial Council and the TCBC have previously developed performance standards and minimum-service levels that it used in evaluating individual trial court budget requests. Information provided by the Council indicates that the standards consisted primarily of statewide average costs for most court functions. Specifically, each court's expenditures were compared to these statewide average costs and budget requests that deviated significantly were reduced or denied with a request for further justification.

Performance Standards Don't Measure Achievement of Goals. The purpose of performance measures is to measure progress toward meeting specific organizational goals. The purpose of the standards previously used by the courts was to provide "benchmarks" for courts to self-assess their performance. Our review indicates, however, that these standards do not constitute measures because they can not be used to assess movement toward clearly defined goals. In February 1996, the Judicial Council will be reporting on the feasibility of developing performance measures and the use of these measures in the development of the budget proposals.

Analyst's Recommendation. We believe that the use of the average cost comparisons to assist in budget development was a good first step by the TCBC. However, in the long run, we do not believe that the use of average cost comparisons is adequate for developing future trial court budgets or assessing progress of courts in meeting the goals specified by the Judicial Council and the Legislature. Accordingly, we recommend that the Judicial Council report to the Legislature during budget hearings on its progress in defining and implementing performance measures.

Proposal Does Not Have Mechanism for Controlling Costs of Trial Court Personnel

In order to create a statewide court system and to ensure linkages between control and financial responsibility, we recommend the enactment of legislation that, at a minimum, requires the Judicial Council to begin establishing trial court employee classifications as well as a statutory timetable to convert trial court employees to state employees in the long run.

In addition to the judges, trial courts employ thousands of nonjudicial personnel (such as administrators, attorneys, and clerical staff) to operate the court system. In fact, funding for these employees is the single largest expense in the trial courts. Under the proposed consolidation, the state will be responsible for issues of funding of these personnel.

Proposal Does Not Link the Management and Funding of Court Personnel. The Governor's consolidation plan does not link management and control of court employees with funding. The absence of this link essentially allows the counties to set the state's funding priorities. For example, while the counties would continue to set salary and benefit levels for court employees, the state would fund 100 percent of any increase in these costs.

Options for Improved Governance. The Legislature will need to consider a variety of options, both long-term and short-term, in order to provide an appropriate system of governance for court employees. The options include:

- Maintaining local management and funding for court employees. The counties' total contribution (\$890 million) could be divided between salaries and operating expenses in 1996-97. The salary contribution in subsequent years could increase with whatever increases in salaries for employees the counties wish to provide. The contribution cap would be raised accordingly, but the amount for operating expenses would remain at the 1996-97 level.
- Establishing a system whereby court employees would be given increases at the same level as state employees. Counties would have the option of funding any additional amount at their own expense. Thus, the cost to the counties could increase above the \$890 million transferred annually to the state.
- A phase-in schedule to reclassify employees, over time, as state employees. All new employees would be given state classifications.

In the long-term, as the state takes over primary funding for the courts, we believe that it is desirable for all court employees to become state employees in order to ensure that the funding and the management of court employees are properly linked.

We recognize that this will be a complicated undertaking with significant long-term ramifications. In the short run it will also require much work on the part of the Judicial Council, in terms of reclassifying county employees subject to state classifications and converting employees from local retirement programs to state programs. Currently, there are vast differences between the counties in terms of classifications, pay scales, and retirement systems. Nonetheless, among the things that the Legislation should consider, is a timetable for reclassification and conversion of employees to the state system over the long run.

Analyst's Recommendation. In order to create a truly statewide court system and to control cost increases for trial courts that the state will be responsible for, we recommend the enactment of legislation requiring the Judicial Council to begin establishing trial court employee classifications as well as a statutory timetable to convert trial court employees to state employees in the long run.

Changes Needed in Consolidation Proposal's Definitions of Trial Court Operational Costs

In order to better match funding responsibilities with program spending controls, we recommend that the Legislature eliminate the court-appointed counsel function from the Trial Court Funding Program.

The consolidation proposal shifts responsibilities for certain functions between the counties and the state and further defines trial court operational costs. Under the consolidation plan, costs for facilities, local judicial benefits, and revenue collection activities are removed from trial court operational costs and are considered solely county responsibilities. Our review indicates that funding for the court-appointed counsel function should also be excluded from the trial court operational costs because under the Governor's proposal it would result in inappropriate incentives.

Court-Appointed Counsel Should Be Financial Responsibility of Counties. Counties are generally responsible for providing counsel for indigent defendants. Currently, the services of the county public defender's office are supplemented by the Court-Appointed Counsel Program in the courts. When the public defender's office is unavailable to take on cases, the court appoints counsel through this program to defend indigents. Actual statewide expenditures for this program were \$42.4 million in 1994-95 and are projected to be \$38 million in 1996-97.

The costs for public defenders are considered a county cost and their workloads in many ways are dependent on the actions of other local law enforcement agencies, including the district attorney. By making this a state-funded function, the consolidation proposal establishes an incentive for counties to shift costs to the state. Under the Governor's proposal, there would be few incentives for counties to continue funding the public defender's office if they know that they can pass on that office's costs to the state through increases in the Court-Appointed Counsel Program. While the state may want to continue to subsidize county responsibilities for indigent defense, the Legislature should provide another mechanism outside of trial court funding to do so.

Analyst's Recommendation. Given the above, we recommend that the Legislature eliminate the court-appointed counsel function from the Trial Court Funding Program.

Shortfall in Trial Court Trust Fund Revenues Could Result in General Fund Costs

Historically, revenues from court fees have fallen significantly below projected levels. Under the consolidation plan, to the extent that these revenues fall below projected levels, the state will incur increased General Fund costs.

The Governor's Budget proposes to significantly change the structure of the Trial Court Trust Fund by directing that, in addition to filing fees, all county and state General Fund contributions for trial court functions be deposited in and appropriated from the trust fund.

Fee revenues in the trust fund are derived from services provided to the public by the court (such as filing fees and court reporter fees). As a result, there is a connection between the cost of the service and the revenues remitted to the state for support of trial court operations. As we indicated above, the consolidation plan proposes to establish and increase certain fees in the budget year that would increase revenues by a projected \$91 million, or 42 percent.

Revenues Fall Short of Projections. Historically, revenues remitted to the fund have not met projected amounts, which reflects a general pattern of overestimating revenues. In 1992-93, the projections were about 18 percent higher than actual remittances and the 1993-94 projections were 16 percent higher than actuals. The 1995 Budget Act projects \$156 million in revenues from fees. Data from the State Controller shows that through December 1995, remittances are 17 percent lower than the same period in 1994-95.

Potential General Fund Impact. Since county contributions are capped under the consolidation proposal, any shortfalls in fee revenues for the trust fund may have to be made up by increased appropriations from the state's General Fund. Thus, if the revenue projections for these fees do not meet expectations, or the necessary legislation for the fee increases does not pass, additional funds from the General Fund will be needed to support the trial courts.

BUDGET ISSUES

New Judgeships Not Justified

We recommend a General Fund reduction of \$2 million proposed for 20 new judgeships because the positions have not been justified on a workload basis. However, if the Legislature decides to establish new judgeships in separate legislation, we recommend that it limit the judgeships only to those courts that have fully coordinated or consolidated their operations.

The budget proposes \$2 million to support 20 new trial court judgeships beginning in the last quarter of 1996-97. The requested amount would pay for the salaries and benefits of judgeships, as well as the related support staff and operating expenses and equipment. Annual funding for the following years will be about \$8 million. Separate legislation is required to establish the judgeships.

In June 1995, the Judicial Council released a report on the judgeship needs of the trial courts and recommended that 61 new judgeship positions be established. The report ranked the 61 judgeships positions by court, based on the severity of need. The budget proposes to fund the first 20 judgeships on the list. Figure 27 shows the courts in which the new judgeships would be established.

As the figure shows, two judgeships would be established in each of three courts (Solano Superior, San Bernardino Consolidated, and Orange Superior), and one judge would be established in each of the other courts. The figure actually shows 21 judgeships because the Judicial Council's report showed a tie for the twentieth-ranked position. The Judicial Council has not indicated in which of these two courts it proposes to establish the twentieth judgeship.

Judgeship Needs Determined by “Qualitative” Rather Than Quantitative Data. The Judicial Council originally intended to develop a simulation model based on quantitative data from the individual courts in order to determine which courts were in need of new judgeships. Due to limitations in the available data, the Judicial Council advises that it decided not to use the simulation model, and instead based its recommendations on “qualitative reports” submitted by the courts and statistical information reported to the Council. The primary sources of information that were reviewed included: (1) five-year case filing trend reports, (2) the number of existing judicial positions, (3) the extent of judicial coordination among courts in the county, and (4) the extent of temporary judicial positions in the court.

Our review indicates that the proposal is not justified on a workload basis for several reasons.

Figure 27

Proposed New Judgeships

Priority Ranking ^a	Court
1	North Kern Municipal
1	South Kern Municipal
3	Livermore-Pleasanton-Dublin Municipal (Alameda County)
3	Santa Maria Municipal (Santa Barbara County)
5	Butte Superior
5	Imperial Superior
7	Imperial Municipal
7	Placer Superior
7	Solano Superior ^b
10	San Bernardino Consolidated ^b
11	Citrus Municipal (Los Angeles County)
11	Shasta Consolidated
13	Riverside Consolidated
14	Contra Costa Superior
14	Orange Superior ^b
14	Solano Superior ^b
17	San Bernardino Consolidated ^b
18	Sacramento Consolidated
19	Stanislaus Superior
20	Orange Superior ^{a b}
20	San Joaquin Superior ^a

^a As determined by Judicial Council's 1995 Report on Statewide Judgeship Needs.

^b One of two judgeships proposed for this court.

Request for New Judgeships Does Not Consider Workload Impacts of Other Budget Proposals. Our review indicates the proposal does not take into account two other budget proposals that will provide additional judicial resources and relieve workload in the trial courts, thus eliminating the need for new positions.

First, the budget proposes a new program that would establish 50 new court commissioner positions dedicated specifically to the establishment of child support paternity and support orders. Funding for this proposal—\$19 million—is included in the Judicial budget (discussed in this chapter).

Second, the proposal does not account for the 51 percent increase proposed for the Assigned Judges Program, which includes the addition of 30 retired judges to form a “Three Strikes Relief Team.” These judges would be specially trained and assigned to courts across the state to help courts handle second- and third-strike cases.

Proposal Not Adequately Tied to Coordination. Current law requires trial courts to implement various efficiency procedures in order to maximize the use of judicial resources. These procedures include cross-assignment of judges between municipal and superior courts in order to hear any type of case, use of subordinate judicial officers to try matters, and merging court support staff within a county. Our review indicates that most of the judgeships are proposed for courts that have not coordinated or consolidated their operations to the fullest possible extent. If they had done so, their need for additional judgeships would probably diminish. (We discuss the state of court coordination in greater detail above.)

Proposal Does Not Consider Transferring Positions From Other Courts. Finally, we believe that the proposal does not account for judgeships in courts throughout the state that may not have sufficient workload to justify their current number of judicial positions. We believe that it may be possible, whenever positions become vacant, to permanently transfer positions from courts with insufficient workload to those where the needs are greatest, thus increasing the efficiency and reducing the costs of the trial court system.

Analyst's Recommendation. Based on the above, we believe that the request for 20 additional judgeships should not be approved at this time. We recommend that the Legislature direct the Judicial Council to rework the judgeship needs model to account for the proposed increases in assigned judges and commissioners, fully account for the impacts of court consolidation and coordination, and consider transferring judgeships in courts where workload does not support the current number of positions whenever the positions become vacant.

Should the Legislature decide that it wishes to establish some number of additional judgeships in separate legislation, however, we recommend that none be established in courts that have not fully consolidated or coordinated their operations.

Distribution of Trial Court Funding Should Be Based on Incentives

The proposed budget does not contain a formula for allocating funds to the trial courts. We recommend adoption of Budget Bill language directing the Trial Court Budget Commission and the Judicial Council to implement an allocation formula which includes incentives for trial courts to implement efficiencies and cost containment measures.

The Judicial Council has the authority to distribute state funds to local trial courts. In the proposed budget, local funds provided by the counties would be transferred to the Trial Court Trust Fund for allocation by the TCBC, subject to approval of the Judicial Council. The Governor's Budget does not contain a distribution formula. Thus, it is uncertain how the funds will be distributed to the various trial courts.

Judicial Council Must Rework Distribution Formula. The Judicial Council and the TCBC allocate state funding to the courts. The current methodology used by the TCBC and the Judicial Council distributes the funds based roughly on the same percentage received in the prior year. In allocating funds, the Judicial Council does not account for issues of critical need, operational efficiency, or incentives for cost containment.

The budget proposes that the TCBC be responsible for distributing *all* funds appropriated by the legislation to the Trial Court Trust Fund in the Budget Bill. The Legislature and the Judicial Council should take steps to ensure that the TCBC has the authority to distribute all funds (including the county contribution portion) as it deems necessary.

Incentives Needed to Ensure Efficiency and Cost Containment. As we indicated earlier, a wide disparity exists among individual courts with regard to implementation of efficiency and cost containment measures. In our view, the best way to achieve implementation of efficiencies is to establish a system of incentives to reward courts that implement efficiencies, and create disincentives for trial courts that have not adopted efficiencies. Such a system of incentives could be implemented through the TCBC and the Judicial Council's allocation of funds from the Trial Court Trust Fund. For example, the Council could allocate funds based on performance criteria, or could provide additional funds so that courts could establish automated accounting and case tracking system. Conversely, the Legislature could direct the Judicial Council to withhold expenditures for the Assigned Judges Program in courts that do not coordinate judicial calendars or cross-assign judges, or not increase jury administrative allocations for trial courts that do not have coordinated jury selection procedures.

In our view, using an incentive system to control costs will become even more important in future years when, if the Governor's consolidation proposal is adopted, the state's costs for support of trial courts will increase substantially.

Analyst's Recommendation. In order to assure that efficiencies and cost containment measures are fully implemented by the trial courts, we recommend that the Legislature amend the proposed Budget Bill language in Item 0450-101-0932 (Provision 1) by adding:

The Trial Court Budget Commission and the Judicial Council shall implement allocation criteria that include incentives for courts to implement court efficiency measures. The council shall advise the Legislature by October 1, 1996, on how it has incorporated the incentives for efficiencies into its allocation criteria.

JUDICIAL (0250)

The California Constitution vests the state's judicial power in the Supreme Court, the courts of appeal, and the superior and municipal courts. The Supreme Court and the six courts of appeal are entirely state-supported. Under the Trial Court Funding Program, the state also provides a significant amount of funding for the trial courts in participating counties, while the counties bear the remainder of the costs (for more information on the Trial Court Funding Program, please see Item 0450 in this *Analysis*).

Proposition 190, approved by the voters in the November 1994 general election, significantly changed the operations of the Commission on Judicial Performance and required that the commission's budget be separate from the budget of any other state agency or court. Consequently, the budget for the commission, previously included in Budget Bill Item 0250, is now separately appropriated in Item 0280.

Proposed Budget. The judicial budget includes support for the Supreme Court, the courts of appeal, and the Judicial Council. The budget proposes total appropriations of \$198 million for support of these judicial functions in 1996-97. This is an increase of \$29.6 million, or 18 percent, above estimated current-year expenditures. Total General Fund expenditures are proposed at \$178 million, an increase of \$10 million, or 6 percent.

The increase in the Judicial budget is primarily due to requests for (1) a new child support enforcement court program (\$19 million in reimbursements from the Department of Social Services), (2) caseload and rate increases for court-appointed counsel services (\$6.3 million from the General Fund), (3) higher costs for operation of judicial facilities (\$2.2 million), (4) salary increases for employees (\$1.7 million), and (5) new appellate judgeships (\$1.2 million). We discuss some of these proposals below.

Additional Appellate Justice Positions Overbudgeted

We recommend that the number of proposed new appellate court justices be reduced from five to three based on projected workload. We further recommend the enactment of Budget Bill language making the funds appropriated for the three appellate court justice positions contingent upon enactment of legislation to create the positions. (Reduce Item 0250-001-0001 by \$498,000.)

The budget proposes an increase of \$1.2 million from the General Fund to support five new appellate court justices and related support staff, beginning January 1997. Specifically, the proposal requests \$512,000 for salaries and benefits for the five new appellate justices, and \$735,000 for ten research attorneys and five secretaries to support the justices. (This staffing complement of research attorneys and secretaries is consistent with the existing courts of appeal staffing standards when adding justice positions.) The annual full-year General Fund cost for the proposal would be about \$2 million.

Enactment of legislation is required to establish the new justice positions. The budget assumes that one additional justice will be established in each of the following courts of appeal:

- Second District, Division Seven (Los Angeles).
- Second District, Division Six (Ventura).
- Fourth District, Division Three (Santa Ana).
- Fourth District, Division Two (San Bernardino).
- Fourth District, Division One (San Diego).

These new justices would raise the total number of statewide appellate justices to 93. The number of appellate court justices was last increased in 1987, from 77 to 88.

Judicial Counsel Working Group Recommends Three Additional Appellate Court Justices. In January 1995, the Judicial Council released its "Appellate Court Resources Analysis" which examined the need for additional judicial positions in the appellate courts. The report reviewed the workload in the appellate court system and concluded that there was a need for three additional justices in the courts of appeal. It recommended that three new positions be created, one each in Santa Ana, Los Angeles, and Ventura.

Legislation (SB 874, Calderon; and AB 1818, W. Brown) was introduced to authorize the three additional appellate court justices recommended by the Judicial Council. Senate Bill 874 is currently on the Assembly Inactive File and AB 1818 is in the Senate Appropriations Committee.

Insufficient Justification for Two Additional Justices. The Judicial Council's 1995 analysis did not recommend new justices for the Fourth District courts in San Bernardino or San Diego. In addition, our analysis of the workload in the Fourth District courts indicates that the two additional justices are not justified. Although the number of appeals cases being reviewed in the San Diego court increased during 1994-95,

it appears that the increase was primarily in certain types of appeals which require substantially less work than other appeals. The additional justice requested for San Bernardino would bring the ratio of justices-to-cases below the level recommended by the appellate working group. In addition, the San Bernardino court also has the assistance of a senior judge whose position was not reflected in the workload calculations.

Analyst's Recommendation. Based on the above findings, we recommend the enactment of legislation that establishes three, not five, new appellate justices. This would reduce the budget request to \$748,000, for a General Fund savings of \$498,000.

In addition, we believe that the Legislature should adopt Budget Bill language to ensure that the funds appropriated in the budget for justice positions are not spent unless the legislation is ultimately enacted to establish them. This would prevent the Judicial Council from using the funds for other, unbudgeted purposes.

Specifically, we recommend the adoption of the following Budget Bill language:

Funds included in this item for support of new appellate court justices and support staff shall only be available if legislation is enacted to establish the new justice positions, and funds not used for this specific purpose shall revert to the General Fund.

Proposed Increase in Court Security For the Appellate Courts Not Justified

We recommend a General Fund reduction of \$700,000 for court security in the appellate courts because the requested amount is not justified on a workload basis. (Reduce Item 0250-001-0001 by \$700,000.)

Currently, the California Highway Patrol (CHP) provides uniformed officers to attend oral argument sessions in the courts of appeal. The CHP also provides general security services for all state buildings and occupants, including the courts. The courts supplement this level of security by contracting with a private security firm that provides unarmed security for all nine court facilities statewide.

Budget Proposal. The budget requests \$2.6 million from the General Fund in 1996-97 for security services in the Judicial Branch. This is an increase of \$700,000, or 35 percent, above estimated current-year expenditures for court security. The additional funds would allow the CHP to set up a Bureau of Court Security and provide a uniformed officer to oversee security functions at each appellate location during

operational hours. The proposal would support 20 positions and five vehicles to perform and supervise security at the nine appellate courts.

Proposed Increase in Court Security Not Justified. Our review indicates that the proposed increase is not justified on a workload basis. For example, there have been no indications of security problems in the appellate courts, according to the Judicial Council. The council indicates that there have been no reports of security incidents or threats at any courts of appeal facility in at least the last three years. In addition to the CHP providing general security to the court facilities and the security during oral arguments, a private security contract also provides for 37.5 security personnel at courts of appeal facilities statewide. Furthermore, the courts of appeal currently have electronic key-card access, video surveillance, and weapons detection capabilities to augment their security needs.

Based on the above factors, we recommend that the amount proposed for court security be reduced by \$700,000.

Funds for Relocation Not Needed

We recommend a General Fund reduction of \$1.2 million requested for relocation of court staff because the funds will not be needed. (Reduce Item 0250-001-0001 by \$1.2 million).

The budget requests \$1.2 million from the General Fund for the costs of relocating appellate court staff currently housed in the Library and Courts Building in Sacramento. The Judicial Council indicates that the relocation is necessary in order to seismically retrofit the building in the budget year. However, according to the State Architect, the current retrofit plan will not require the court to relocate. This is because the current plans are to retrofit the library portion of the building which should not affect the areas of the building where the courts and personnel are located. For this reason, we recommend that funds for the relocation be deleted.

Additional Data Needed for Proposed Increase in Court-Appointed Counsel Program

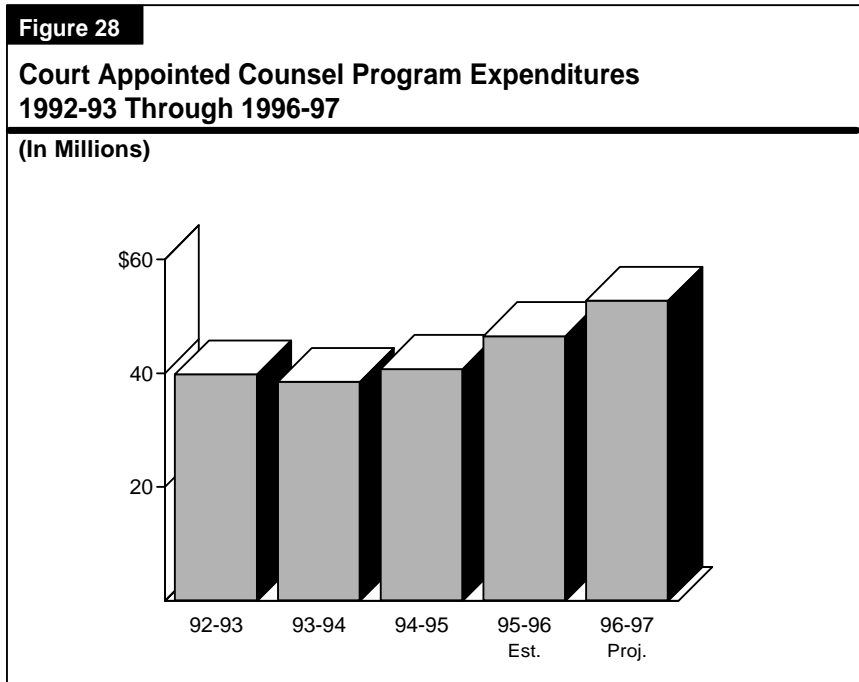
We withhold recommendation on the proposed increase of \$6.3 million for the Court-Appointed Counsel Program, pending receipt and analysis of more updated data on caseload and expenditure trends in the program.

The Court-Appointed Counsel Program uses private attorneys working under supervision of five regional appellate projects. The

projects are nonprofit organizations that provide appellate defense services for indigent persons. These projects recruit attorneys to take on cases, supervise and train attorneys that are handling cases, and process reimbursement claims that the attorneys submit.

The budget proposes \$52.7 million from the General Fund for the Court-Appointed Counsel Program in 1996-97 consisting of the Supreme Court (\$6.8 million) and the courts of appeal (\$45.9 million). A deficiency augmentation of \$4.5 million (13 percent over baseline) was authorized for the courts of appeals portion of the program in the current year due to unanticipated increases in workload. The budget proposes to continue that funding level into the budget year and requests an additional \$6.3 million, or 13 percent, for the appointed counsel program.

The Program's Budget Has Been Growing Significantly. Since 1993-94, expenditures for the Court-Appointed Counsel Program have increased 37 percent, as shown in Figure 28. This program now accounts for 30 percent of the General Fund dollars for the Judicial Branch budget. The primary reason for the growth has been the increases in the number of appeals filed, combined with the increasing complexity of those cases.



Courts of Appeal Caseload Model Recently Revised. In recent years, projected and actual expenditures for the program have fluctuated widely, primarily because the projections were not able to account for the increasing complexity of the cases entering the system. These problems led to the current-year deficiency of \$4.5 million.

The Judicial Council recently revised its caseload model to more accurately project workload for court-appointed counsel in the courts of appeal. The Judicial Council now uses the number and the size of reimbursement claims filed by attorneys to project workload and fiscal impact.

The reimbursement claim data used for this model has been collected since January 1994. As a result, there is still only limited information with which to project workload trends using the new model, or to test its reliability for projecting expenditures over time. The budget request is based on actual expenditures through June 1995. Additional information comparing projected and actual expenditures would help assess the reliability of the model.

In addition, the Judicial Council has not developed a model that can project caseload growth in court-appointed counsel for the Supreme Court, or that can link the caseload growth with anticipated expenditures. No caseload projections have been made for the budget year for this program, and estimated current-year expenditures are 31 percent higher than for the past year.

Analyst's Recommendation. Given the significant increase in expenditures requested for the Court-Appointed Counsel Program, we believe that the Judicial Council should provide more updated data (through at least December 1995) before the Legislature appropriates funds for the program. At the same time, the council should develop a model to project caseload and expenditure growth for court-appointed counsel services provided to the Supreme Court. For these reasons, we withhold recommendation on \$6.2 million requested for the program, pending receipt and analysis of the additional information.

Budget Does Not Address Backlog of Death Penalty Cases Pending Without Counsel

We recommend that the Judicial Council, in conjunction with the State Public Defender, report during budget hearings on the efforts to improve the number and timeliness of appointments of counsel for inmates on death row, including the council's recent efforts designed to increase appointments.

Background. The state's death penalty law requires that an inmate's case be automatically appealed to the Supreme Court after the trial court renders a judgment. For inmates who cannot afford an attorney, the Supreme Court appoints either a private attorney through the Court-Appointed Counsel Program or the State Public Defender (SPD) to represent the inmate.

The Supreme Court has come to rely on the Court-Appointed Counsel Program to represent most of the inmates on death row. About 95 private attorneys are currently serving as court-appointed counsel in 110 appeals cases before the court. On the other hand, the SPD has taken only ten new capital appeals cases in the past two years and is currently handling 41 cases (this is due in large part to budget reductions experienced by the SPD, totaling about 15 percent since 1990-91).

Major Backlog of Death Penalty Cases Without Attorneys. Our review indicates that there is a significant backlog of capital punishment cases in which no counsel has been appointed. As of December 1995, 128 inmates, or 48 percent of all inmates on death row that have an automatic appeal of their sentences pending before the Supreme Court, were awaiting appointment of counsel. According to the Judicial Council, three to four years often elapse after a death penalty judgment is rendered in the trial courts before counsel are appointed to appeal an inmate's sentence. Currently, appointments are being made in cases where the judgement of death was rendered in 1992. This delay in appointing counsel is due in part to the lack of private attorneys who are willing and qualified to accept such cases and the limited resources of the SPD.

Steps Taken to Attract More Attorneys Unclear. The Judicial Council and the Legislature have taken steps to attract more private attorneys to accept capital appeal appointments. In 1995-96 the rate paid to attorneys performing services in capital cases was increased from \$75 to \$95 per hour. Our review indicates that it is too early to assess the impact of this hourly pay increase on increasing the number of appointments.

Also, in January 1994, appointed counsels were given the option of receiving payments based on either an hourly rate or a fixed amount depending on the length of the case record and complexity of the case. The Judicial Council reports that it will examine this new payment method in 1996-97 and the findings will be used to make recommendations for the 1997-98 budget. Analysis of the impacts of the changes will be important in determining a method to reduce the backlog of cases.

No Plan for Addressing Backlog in the Budget. The budget proposes for 1996-97 an increase of \$354,000 to fund caseload growth and increased costs of court-appointed counsel in the Supreme Court. This amount assumes that the caseload growth will be about 4 percent, or about two private attorney appointments per month. However, the number of inmates with automatic death penalty appeals has been increasing at a rate of about three per month. If this rate of increase continues in the budget year, the backlog of inmates on death row without attorneys is likely to worsen.

The large number of inmates on death row who are awaiting appointment of counsel raises questions about both the effectiveness of the Court-Appointed Counsel Program and the process by which the state provides legal representation for indigent criminal defendants. Without an attorney, an inmate's appeal to the Supreme Court—which is required under the state's death penalty law—cannot go forward. Such delays place serious burdens on many parties—the inmates, the families of victims, the Attorney General (who handles the appeal for the state), and the law enforcement and criminal justice officials who prosecuted the original case. Although there are probably numerous reasons for the backlog of appointments, the budget contains no proposal or strategy to reduce the backlog.

Analyst's Recommendation. We recommend that the Judicial Council, in conjunction with the SPD, report during budget hearings on efforts to improve the appointment of counsel for inmates on death row and reduce the backlog of cases without counsel. The report should include the council's analysis of the impacts of recent changes designed to increase appointments.

Consistency Needed for Rankings of Attorneys and Cases in Appellate Projects

We recommend that the Legislature adopt supplemental report language directing the Judicial Council to develop a system for ensuring consistency in the rankings for attorneys and cases handled by the appellate projects.

Background. As we indicated earlier, five regional appellate projects provide counsel for noncapital cases, in the courts of appeal. These appellate projects have several functions: (1) appointing private attorneys to perform the actual representation, (2) ensuring adequacy of representation by providing training and assistance, and (3) handling compensation claims. Private attorneys who are assigned to noncapital cases are chosen from a “panel” of attorneys who have made themselves available for appellate work.

Measures Taken to Retain More Experienced Appellate Counsel on the Panels. Recognizing that the program lacked experienced attorneys, the Legislature increased funding for the Court-Appointed Counsel Program in the 1995 Budget Act in order to make the pay more attractive for attorneys. With the additional funding, the appellate projects increased the hourly rate from \$65 to \$75 paid to attorneys assigned on an independent basis and who handle appeals of murder cases and life imprisonment without parole cases. Our review indicates that it is too early to assess the effectiveness of the pay increase in retaining experienced counsel.

Budget Requests Funds to Expand Higher Rates to More Attorneys. The budget requests \$971,000 to further expand the types of cases in which the \$75 per hour rate would be paid. Specifically, the new rate would apply to all jury cases (not just murder and life without parole cases) with records in excess of 1,000 pages which are assigned on an independent basis. The Judicial Council's Appellate Indigent Defense Oversight Advisory Committee will make recommendations in early 1996 as to expanding the categories for the higher pay rate. It is not known at this time what criteria the committee will recommend for increasing the pay scale.

No Consistent System of Rankings Exists. The projects use two sets of rankings to manage their attorneys and caseloads. One set of rankings relates to the attorneys themselves. The other set relates to the complexity of individual cases.

The attorneys are ranked by experience on a scale of 1 to 5, with the 4 and 5 rankings assigned to the most experienced counsels, who are able to accept appointments on an "independent" basis with little supervision. While there are approximately 1,600 panel attorneys statewide, only 135 of these attorneys are considered the most experienced counsels (ranks 4 or 5). In addition to ranking attorneys, each appellate project ranks cases based on complexity on a scale of 1 to 4. Both the rankings of attorneys and cases are not based on similar standards, however, but rather on individual assessments by each project. The standards used by the projects to rank attorneys and cases varies. Attorneys may have a ranking of 3 in one project but a 4 in another, and similarly a case may get a ranking of 4 in one project but may have been assessed as a 3 in another project.

Statewide Consistency in Rankings Would Be Useful. Our review indicates that more consistency in assessing attorney qualifications and case complexity would be useful to the Judicial Council in administering the appointed counsel program. First, a more consistent application of the standards for assessing attorney qualifications will make it easier for

attorneys to seek appointments from more than one appellate project. With more consistent rankings, attorneys can take cases from different projects and help ensure that more attorneys are available to take cases.

Second, consistency will allow the Judicial Council to better assess the quality of the recruitment and training functions performed by each of the projects, thereby permitting better comparisons of the performance of the five projects. For these reasons, we recommend the adoption of the following language:

The Judicial Council shall develop consistency standards for measuring the experience and qualifications of private attorneys handling indigent defense appeals, and for measuring the complexity of cases received by the Court-Appointed Counsel Program. The council shall also use the standards and rankings to develop an incentive system to retain experienced attorneys in the program. The council shall report to the Legislature's fiscal committees by January 1, 1997 regarding the implementation of the standards and the incentive system.

Uncertainties About Proposed Child Support Enforcement System

We withhold recommendation on the \$19 million in reimbursements from the Department of Social Services for support of a new child support enforcement system, pending receipt of additional information in an implementation plan.

The budget proposes \$19 million in reimbursements from the Department of Social Services (DSS) for implementation of a new child support enforcement system in the state's trial courts. Under the new system, court commissions would be dedicated specifically to the establishment of child support paternity and support orders. The proposal assumes enactment of pending legislation (AB 1058, Speier). The reimbursements would support 50 new court commissioners and five administrative positions, beginning January 1, 1997.

In our analysis of the DSS (please see the Health and Welfare chapter of this *Analysis*), we note that the administration has not provided sufficient information to justify the need for 50 commissioners in 1996-97. Therefore, we withhold recommendation on the funds requested in the DSS budget pending further justification from the department and the Judicial Council. Accordingly, we withhold recommendation on the requested reimbursements in the Judicial budget as well. We withhold recommendation pending receipt of an implementation plan that shows (1) when each county will make the transition to the commissioner-based system and (2) the number of commissioners needed in each county or group of counties.

DEPARTMENT OF JUSTICE (0820)

Under the direction of the Attorney General, the Department of Justice (DOJ) enforces state laws, provides legal services to state and local agencies, and provides support services to local law enforcement agencies.

The budget proposes total expenditures of \$374 million for support of the DOJ in the budget year. This amount is \$4.9 million, or 1.3 percent, more than estimated current-year expenditures. The requested amount includes \$212 million (an increase of \$12.8 million, or 6.4 percent) from the General Fund, \$59.7 million from special funds, \$16.7 million from federal funds, and \$85.8 million from reimbursements. In the legal divisions, the budget proposes funding increases for the Criminal Law Division (\$6.4 million), and the Civil Law Division (\$2 million). The budget also proposes a net increase of \$852,000 for the Division of Law Enforcement (DLE), as well as decreases totaling \$4.3 million in other programs.

Budget Provides Funding for Salary Increases

The budget proposes \$3.3 million from the General Fund to fund salary increases granted to state employees in January 1995. Most other state agencies were required to absorb these costs. The Legislature denied a similar request from the Department of Justice in enacting the 1995 Budget Act.

The Governor's Budget requires most General Fund departments to absorb the costs in 1996-97 of the last general salary increases (GSI) granted to state employees on January 1, 1995. Consistent with actions taken by the Legislature in the 1995 and 1996 Budget Acts, the budget provides augmentations to fund the GSI for specified law enforcement agencies, departments that provide 24-hour care services, and revenue-producing agencies. However, the budget makes an exception by proposing \$3.3 million from the General Fund to cover the costs of the GSI in all DOJ divisions, including the non-law enforcement divisions.

The DOJ Holds Positions Vacant. Effective January 1, 1995, the DOJ advises that it implemented an 18-month internal hiring freeze to offset the impact of the GSI. The department estimates that without funding in the budget year, it will have to continue to hold positions vacant in order to generate funds to cover the costs of the GSI.

Legislature Deleted Funds in 1995 Budget Act. The budget's proposal to fund the DOJ's GSI costs is inconsistent with actions previously taken by the Legislature. The 1995-96 Governor's Budget proposed \$5.8 million (\$3.3 million from the General Fund) to cover the costs of the GSI for all DOJ divisions. Subsequently, these funds were deleted by the Legislature in the 1995 Budget Act.

CORRECTIONAL LAW ISSUES

Legal Bill for State's Correctional System Increasing

The state's legal costs for the operation of its correctional system are now projected to be about \$35 million in the budget year, primarily driven upward in recent years by a wave of lawsuits filed by inmates and employees of the Department of Corrections.

State An Active Litigant. The Department of Corrections (CDC), which oversees the state prison system, with 135,000 inmates and 38,500 employees, is one of the most active litigants among state departments. During 1994-95, inmates filed 907 civil rights lawsuits and departmental employees filed another 80 cases relating to discrimination and other claims. Additional legal work includes responding to class-action cases filed by inmates and disputes with state contractors who provide services to the department. The responsibility for defending the state correctional system is shared primarily by three parties—the CDC, the DOJ, and private attorneys under state contract. The DOJ also represents the Youth Authority, the Board of Prison Terms, and the Youthful Offender Parole Board.

Correctional Legal Costs Significant. State expenditures for correctional legal costs, along with the payments for settlements and judgments, are significant and are projected to go higher, as shown in Figure 29. The combined cost of legal representation and payments of settlements and judgments was about \$30 million in 1994-95. By 1996-97, these costs are projected to be \$35 million, an increase of more than 14 percent in two years.

These figures do not include the administrative costs to the courts for prison-related litigation, which are funded jointly by the state and county governments. Additionally, these figures mostly represent the costs to the CDC and the DOJ for CDC-related suits, which are more significant than for the other agencies of the correctional system.

Figure 29				
Costs to Defend State Against Correctional Lawsuits 1994-95 Through 1996-97				
(Dollars in Millions)				
Department	Actual 1994-95	Estimated 1995-96	Proposed 1996-97	
			Amount 1996-97	Percent Change from 1994-95
Corrections				
Legal Affairs Division	\$2.1	\$2.7	\$3.0	40.9%
External contracts	10.9	11.1	11.3	3.0
Settlements and judgments	8.2	8.0	8.5	3.2
Subtotals	(\$21.3)	(\$21.8)	(\$22.8)	6.9%
Justice^a				
Correctional Law Section	\$8.4	\$9.6	\$11.4	35.0%
Tort and Condemnation Section ^b	0.9	0.9	0.9	—
Subtotals	(\$9.3)	(\$10.5)	(\$12.3)	31.6%
Totals	\$30.6	\$32.2	\$35.0	\$14.4%

^a Does not include costs related to employee lawsuits.

^b Costs for inmate tort cases.

Note: Details may not add to totals due to rounding.

Why Are Legal Costs Rising? One factor for the increase in legal costs is that over time, the number of suits being filed has grown significantly. The number of suits filed by prison inmates increased from 207 in 1986-87 to 907 in 1994-95. Information provided to our office suggests that the number of employee discrimination suits filed by CDC employees has increased from 27 in 1993-94 to 83 in 1994-95. As the number of cases grows, the costs of defending the state increases as well. For example, expenditures for the Correctional Law Section of the DOJ increased by 42 percent between 1992-93 and 1994-95.

Another factor in the rising legal costs has been the increase in costs for judgments and settlements against the state. The CDC has projected that the cost of judgments and settlements in the current year will be \$8 million. However, these figures may be understated, given the trend thus far in 1995-96. Little more than halfway through the fiscal year, more than \$6.2 million in payments have been made to satisfy court orders or legal settlements. The CDC projects that the costs of judgments and settlements will increase to \$8.5 million in 1996-97.

Implementation and Effectiveness of Efforts to Curb Inmate Lawsuits in Question

We recommend that the Department of Justice and the Department of Corrections report to the Legislature during budget hearings regarding (1) the implementation and effectiveness of the \$3 inmate filing fee and “vexatious” litigant laws, and (2) other recommendations for reducing the costs of inmate lawsuits against the state.

The Legislature and the Governor have enacted legislation designed to help control the costs of lawsuits filed by inmates against the state. Our review found that the implementation and effectiveness of these steps is unclear.

A \$3 Filing Fee Not Fully Implemented. Chapter 555, Statutes of 1994 (SB 1260, Presley) required that a \$3 filing fee be collected by the CDC from inmates initiating civil lawsuits. Although the fee is relatively small, advocates of the fee believe that it could have a significant deterrent effect on inmate litigation. So far, however, the CDC has been unable to provide data on the number of inmates who have paid the fee, how much money is being collected, and its impact on the number of inmate lawsuits. Also, we have been advised that the fee is only being applied to inmates filing lawsuits in state courts and not those filing lawsuits in the federal courts. However, only about 10 percent of the total number of inmate lawsuits are filed in state court, and the other 90 percent are filed in federal court.

Only One Inmate Deemed “Vexatious.” California law allows courts to declare as “vexatious litigants” persons who are deemed to have filed frivolous lawsuits and unmeritorious actions in state courts to be declared as “vexatious litigants.” Persons found to be vexatious litigants must obtain approval from a judge before filing suits. Because some inmates file many frivolous and unmeritorious actions, implementation of the vexatious litigant statute against these inmates might result in significant savings in state litigation costs. However, it is not clear to what extent this option is being pursued by the CDC and the DOJ. During 1994-95, only one inmate was deemed a vexatious litigant. So far in the current year, no inmates have been named as vexatious litigants.

Analyst’s Recommendation. Although the \$3 filing fee and the vexatious litigant laws were enacted to help contain increasing state legal costs, it is unclear whether they have been fully implemented or achieved the desired results. Accordingly, we recommend that the DOJ and the CDC report at the budget hearings regarding the implementation and the effectiveness of the filing fee and the vexatious litigant laws.

In addition, we believe that the two departments may have additional ideas as to how to improve the state's effectiveness at reducing the costs of inmate lawsuits. We recommend that the DOJ and the CDC report on these recommendations as well.

Correctional Law Request May Be Overbudgeted For Civil Cases

We withhold recommendation on \$620,000 from the General Fund, and 7.9 positions for the Correctional Law Section, pending receipt of updated caseload projections in the May Revision.

The budget requests an additional \$620,000 from the General Fund and 7.9 positions for the department's Correctional Law Section within the Criminal Law Division for workload increases for civil lawsuits brought against the state by prison inmates (non-class-action cases). The request assumes increased workload resulting from growth in the state's prison population during the budget year. The DOJ projects for the budget year that the section will handle an additional 191 lawsuits (over actual 1994-95), based on projections of increased inmate population.

Information provided by the CDC indicates that the inmate population is not increasing as projected last fall. The CDC will update its inmate population projections this spring.

Given that the DOJ's request is based on the projected growth in the CDC's inmate population, we withhold recommendation on the DOJ's request pending receipt of updated CDC population projections during the May Revision.

Discovery Workload Request Should Be Supported by Reimbursements

We recommend a General Fund reduction of \$288,000 and a corresponding increase in reimbursements for discovery workload for the Correctional Law Section because funds for this workload should be provided by the Department of Corrections. (Reduce Item 0820-001-0001 by \$288,000 and increase reimbursements by the same amount.)

The budget requests \$288,000 from the General Fund and 3.3 positions to handle discovery litigation and representation on behalf of the CDC.

Discovery Workload to Be Transferred to the DOJ. The CDC and correctional personnel are regularly served with subpoenas that require the production of records or attendance in court. Legal representation

of the subpoenaed parties in these discovery matters is necessary in order to protect against disclosure of security-sensitive information. The CDC is currently handling these cases through in-house counsel or occasional referrals to outside counsel. The budget assumes that the entire workload of 35 cases per month will be transferred to the DOJ in 1996-97. The DOJ reports that the CDC does not have adequate administrative and clerical support to provide for this litigation function, and is experiencing difficulty with self-representation in this area.

The DOJ Requests General Fund Allocation. The DOJ is requesting a General Fund appropriation of \$288,000 for this increased workload because the CDC maintains that it does not have funds specifically allocated in its budget for this function. We recommend that the proposed appropriation be deleted. By relinquishing the discovery workload, the CDC will realize savings which it should use to reimburse the DOJ for its increased costs of assuming the discovery workload. We would note that the CDC has been allocating staff and resources to handle this function out of its current budget. Furthermore, the CDC can identify the number of such cases handled by house counsel and the number of personnel hours required to perform this function.

Analyst's Recommendation. For these reasons, we recommend that the Legislature delete the requested funds and require the DOJ to negotiate an inter-agency agreement with the CDC to obtain reimbursement for this workload transfer.

DIVISION OF LAW ENFORCEMENT

Criminal History and Fingerprint Backlogs Continue

We recommend that the Department of Justice report to the Legislature during budget hearings on: (1) the status of the backlog in the conviction history files within the Criminal History System; (2) the status of backlogs in processing Department of Corrections' inmate fingerprints; and, (3) the proposed redirections to reduce the backlog in the current and budget years. We further recommend that the Legislature adopt supplemental report language directing the department to report on December 31, 1996 on the status of the backlogs.

Under current law, the DOJ is required to maintain a number of criminal justice information systems for law enforcement agencies. The DOJ's Bureau of Criminal Identification and Information (BCI&I) processes a variety of documents from local law enforcement agencies,

the courts, and the California Department of Corrections, which form the basis for these information systems. The BCI&I maintains the Criminal History System (CHS), which contains two information files: arrests and convictions. The arrest file lists the specific offenses for which an individual has been arrested; the conviction file lists all offenses for which an individual has been convicted.

In addition, the BCI&I receives, examines, and stores fingerprints in one of the largest automated fingerprint systems in the world. The BCI&I fingerprint system (known as CAL-ID) stores fingerprint data on all persons who have been convicted of a crime in California. The system is used for criminal investigations and for establishing whether arrestees, CDC inmates, or applicants for jobs (such as teachers and child care workers) have criminal records.

Previous Backlogs of Conviction Files. In last year's *Analysis*, we reported that the DOJ had significant backlogs in its conviction file which exceeded one year. In other words, at that time, it took more than one year from the date of conviction before the information was entered into the conviction file and was available for use by law enforcement agencies. The DOJ redirected staff and other resources to address this backlog. The DOJ indicated that its goal was to ensure that the backlog of criminal conviction histories was reduced to 30 days by January 1, 1996.

Conviction File Backlog Worsens. While the BCI&I has taken a series of steps to reduce the inventory of documents awaiting entry into the appropriate files, the BCI&I reports that the backlog in its processing of conviction histories and has increased to 18 months. The BCI&I reports that, in January 1996, more than 1.2 million convictions remained unrecorded—almost 130,000 of these documents were for individuals convicted of felonies or crimes where a firearm was used. The BCI&I reports that it will not reduce this backlog to its goal of 30 days until *June 30, 1997*, the end of the budget year. The department points out that the backlog has been exacerbated by the fact that criminal documents increased 24 percent during the period July through December 1995 compared to the same period in 1994.

As we reported in last year's *Analysis*, the backlog of conviction histories could be detrimental to implementing the "Three Strikes" law, especially the ability of prosecutors to obtain accurate information on the background of an offender before charging a second- or third-strike. In addition, jail administrators need to have accurate data on offenders' prior convictions when deciding what level of security is needed in housing the offender. For example, an arrestee might be booked into jail for a nonserious, nonviolent offense, but this offense might be the

offender's third-strike, which could result in a sentence of 25 years to life. In this instance, the offender generally needs much higher security and could pose a risk to jail staff if not properly housed.

Actions to Reduce the Impact of Conviction File Backlogs. The BCI&I recognizes the importance of timely information on individuals convicted of felonies or firearm-related offenses. Consequently, it has concentrated its efforts on identifying these records and processing them first. The BCI&I projects that the number of documents awaiting processing in June 1996 will total almost one million records, down 27 percent over a six-month period. Within this total, the number of documents for felony and firearm convictions is expected to decrease by 57 percent, over the same period. Even with this decline, however, a four to five month backlog for these records will remain. The BCI&I projects that it will reach a 30-day turnaround time for these records by June 1997.

Backlogs of CDC Fingerprints. The department also has had a significant backlog of fingerprints to process. The BCI&I reports that it has reduced its backlog for processing CDC inmate fingerprints from three years in November 1995 to two years in January 1996. Nevertheless, since the average amount of time served by CDC inmates is 17 months, a two-year backlog means that the CDC gets information for many inmates after they have been released. Fingerprint checks of inmates ensure that the inmate's identity and criminal history are verified. Verifying an inmate's criminal history could be an important element for determining the security classification of the inmate. The BCI&I projects it will reach a 30-day turnaround for processing inmate fingerprint records by June 1997.

Analyst's Recommendation. Based on our review, we conclude that the DOJ is better targeting its resources to reduce criminal history backlogs, especially for felonies and firearm-related crimes. However, we believe that the department needs to ensure that it continues its efforts to reduce criminal history and fingerprint backlogs. Given the importance of this issue, we believe the DOJ should advise the Legislature during budget hearings on (1) the status of the backlog in the conviction history files within the Criminal History System; (2) the status of backlogs in processing CDC inmate fingerprints; and, (3) the proposed redirections to reduce the backlogs in the current and budget years.

In addition, in order for the Legislature to maintain oversight and ensure that the DOJ continues to make progress in reducing these backlogs in the budget year, we recommend the adoption of the following supplemental report language:

The Department of Justice shall report to the legislative fiscal committees on December 31, 1996 on the status of the backlogs in the processing of the conviction history files and the Department of Corrections' inmate fingerprints.

Significant Backlog of Sex Offender DNA Tests

We recommend that the Department of Justice report to the Legislature during budget hearings on: (1) the status of the backlog of DNA tests of sexual offenders and (2) the status of the automation of the DNA analysis system. We further recommend that the Legislature adopt supplemental report language directing the department to report on December 31, 1996 on the status of the backlog.

DNA identification, also known as "genetic fingerprinting," can use specimens left at a crime scene to identify an offender by disclosing a number of identifying characteristics. The DOJ operates a DNA laboratory in Berkeley that examines DNA samples and serves as a DNA databank of convicted sex offenders and other violent criminals. In addition, the lab is responsible for storing samples of DNA evidence obtained from unsolved crimes.

The DOJ is charged with the responsibility of providing law enforcement agencies with complete files of information on habitual sexual offenders. According to the DOJ, the laboratory's highest priority is the DNA analysis of samples from sexual offenders who are released from the CDC.

DNA Testing Backlogs. We reported in our *Analysis of the 1994-95 Budget Bill*, that there was a serious backlog of DNA samples awaiting analysis. Legislation enacted in 1994, Ch 6x/94 (SB 12x, Thompson), appropriated \$2 million from the General Fund to the department to reduce the backlog of DNA tests. This funding was used to automate the DNA testing equipment. However, as of January 1996, significant backlogs persisted. Although, the DOJ's databank currently holds 4,500 sex offender profiles, 25,829 sex offender samples still await analysis. There are an additional 68,265 samples, related to crime scenes or obtained from other types of offenders, that also are awaiting analysis. The DOJ projects that it will receive an additional 4,000 convicted sex offender samples in 1996.

The DOJ has automated its DNA analysis equipment, and staff completed training on the equipment in January 1996. The DOJ reports that the offender backlog will be eliminated by June 1997. Because the new automated procedures have just been activated, we do not have sufficient data to evaluate the accuracy of the DOJ's projected completion date.

Analyst's Recommendation. Given this situation, we recommend that the DOJ report to the Legislature during budget hearings on: (1) the status of the backlog of DNA tests of sexual offenders and (2) the status of the automation of the DNA analysis system.

In addition, in order for the Legislature to maintain oversight and ensure that the DOJ continues to make progress in reducing these backlogs in the budget year, we recommend the adoption of the following supplemental report language:

The Department of Justice shall report to the legislative fiscal committees on December 31, 1996 on (1) the status of the backlog of DNA tests of sexual offenders and (2) the status of the automation of the DNA analysis system.

Illegal Manufacture of Methamphetamine Becoming Major Problem in State

The illegal manufacture of methamphetamine is becoming a serious problem in California, costing the state millions of dollars annually for enforcement of drug laws and clean-up of clandestine laboratories. In order to defray the state's increasing costs for enforcement and cleanup, the Legislature may wish to consider imposing a targeted excise tax on the retail sale of precursor chemicals used in the illegal manufacture of methamphetamine.

The budget proposes a total of \$12 million (\$9.4 million from the General Fund) in the DOJ and Department of Toxic Substances Control (DTSC) related to the enforcement of laws dealing with the illegal manufacture of methamphetamine. This is an increase of about 25 percent over current-year expenditures.

Our review indicates that the proposed augmentations are justified, particularly in light of the growing problem of methamphetamine manufacturing in California. In this analysis, we review that growth, the state's programs to curb the growth, and suggest a new funding source that the Legislature may wish to consider to offset the state's costs of enforcement and clean-up of methamphetamine by targeting the illegal manufacturers of such drugs.

Background. The illegal use of methamphetamine is growing at an alarming rate. Data from hospital emergency rooms and from medical examiners have shown significant increases in methamphetamine-related hospital admissions and deaths. In 1994, California hospital emergency rooms reported up to 90 percent increases in the number of admissions related to the illicit use of methamphetamine. From 1991 to 1994, the number of deaths attributed to methamphetamine increased

by 144 percent in San Francisco and by 113 percent in Los Angeles. An estimated 4 million persons in the United States have abused methamphetamine at least once.

Illegal Manufacture of Methamphetamine. Unlike many other illicit drugs which are imported into the state, most illegal methamphetamine is manufactured in California clandestine labs. In 1994, 533 of the 809, or 66 percent, of clandestine labs seized nationwide, were in California. So much illegal methamphetamine is manufactured in California, that the federal Drug Enforcement Agency (DEA) has identified the state as “source country” for the drug.

According to the DOJ and the DEA, the illegal manufacture of the drug used to be the domain of “outlaw biker” organized crime groups, such as the Hell's Angels. However, polydrug organizations, originating in Mexico, have taken over both production and distribution of the drug. These organizations distribute methamphetamine using their existing distribution systems for heroin, marijuana, and cocaine. Because the “street” costs of the drug have declined, it is assumed that there is significantly more of the drug available than in recent years.

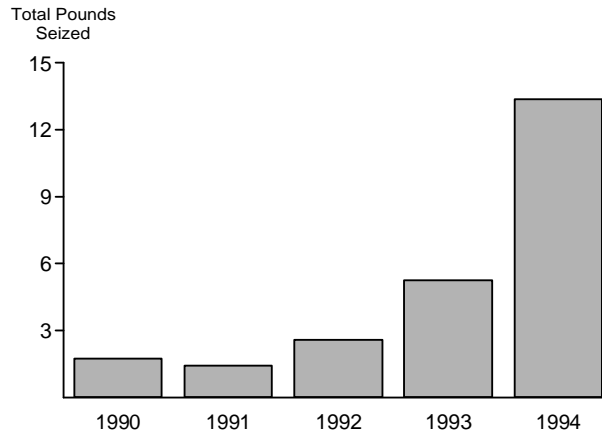
Precursor Chemicals. The manufacture of methamphetamine requires specific chemicals, known as precursors. Some of these precursor chemicals are part of the finished drug—such as ephedrine—others are needed for the production or “cooking” process, such as freon. Almost all of the chemicals used to manufacture the drug are toxic. In addition, the process of cooking the drug is both toxic and very dangerous. Both the apparatus used in the manufacture of methamphetamine as well as the byproducts of the process are very toxic and are usually abandoned after the drug has been made.

The DOJ, through its Precursor Compliance Program, tracks the sale of precursor chemicals and laboratory equipment. Under both federal and state law, businesses selling precursors must register, and then report the sales of the chemicals to the DOJ. Generally, the businesses must report sales in excess of certain amounts or when the purchaser uses cash. According to the DOJ, these types of purchasers rarely have legitimate uses for the chemicals. This registration data is part of a DOJ automated tracking system and is used for criminal investigations.

The DOJ's Clandestine Lab Program. In California, the DOJ is the lead agency assisting local law enforcement in seizing clandestine labs. The DOJ's special agents assigned to the Clandestine Lab Enforcement Program (CLEP) were responsible for seizing 419 of the 533 labs in California. Figure 30 shows the amounts of methamphetamine seized by CLEP from 1990 through 1994.

Figure 30**Seizures of Methamphetamine Are Increasing
1990 Through 1994**

(In Thousands)



Budget Proposes Increase in Funding for Methamphetamine Enforcement. The state takes the lead in methamphetamine enforcement because manufacturers of the drug often move from jurisdiction to jurisdiction, making detection and apprehension difficult for local law enforcement. In addition, the seizure of a clandestine lab requires significant training and protective equipment because of the toxic chemicals associated with the production of the drug. The CLEP expenditures for 1995-96 are estimated to be \$4.4 million. The DOJ has requested authority to expand CLEP in the budget year to address a backlog of cases. Currently 72 agents are assigned to the program. The Governor's Budget requests an augmentation of \$2.7 million from the General Fund for 15 new agents and other staff, such as an industrial hygienist, to expand enforcement activities. The DOJ reports that it had over 1,100 backlogged investigations in 1995.

Clandestine Lab Clean-Up. The DTSC assumed responsibility for the clean-up of toxic wastes at clandestine labs in 1994-95. The responsibility for cleanups was transferred from the DOJ to the DTSC by Ch 55x/94 (SB 47x, Calderon). In 1994-95, the DTSC's expenditures for cleanups was \$3 million, and the average cost to clean up a clandestine lab site was about \$7,000. Because the DOJ is planning to expand its CLEP program, the DTSC is requesting an augmentation of

\$1.6 million from the General Fund to address the projected increase in lab seizures that would result from the expansion of CLEP. With this requested increase, the total DTSC costs of clean-up of clandestine labs would increase to \$4.6 million annually.

An Excise Tax Could Defray the Costs of Enforcement and Clean-up.

Given the growing problem caused by methamphetamine manufacturing and the increased costs to the state, the Legislature may wish to explore legislation to generate additional funds to defray the state's costs by targeting illegal manufacturers of the drug.

Unlike most other situations involving the illicit drug trade, the manufacturers of illegal methamphetamine, through their purchases of precursor chemicals, can be identified. The DOJ currently uses the registration data it collects on precursor sales to develop information on manufacturers for criminal investigations. The same system that requires registration and reporting of precursor chemical sales, could also be used to fund enforcement and clean-up costs.

Specifically, the Legislature could enact an excise tax on the *retail sale* of the precursor chemicals. The DOJ reports thousands of tons of chemicals are sold annually by retail sellers of these products. The department does not have data on the precise dollar value of such sales but estimates they total in the millions of dollars annually. According to the DEA, most legitimate users of precursor chemicals purchase the chemicals at the *wholesale* level, thus a tax at the retail level would not affect these users. This is an important distinction because the purpose of the tax would be to defray state costs for enforcement and cleanup by targeting illegal manufacturers. Furthermore, because retail sellers must already register with the DOJ (there are 32 registrants currently) the tax collection process would be relatively easy to establish. The enactment of an excise tax—at the point of retail sale—for precursor chemicals could generate revenues to defray the state's General Fund costs. In constructing such a tax at the retail level, a provision could be included so as to allow any buyer who could document a legitimate reason to purchase these chemicals to be exempt from the tax.

**Equipment and Vehicle Replacement
Should Not Be Included in Base Budget**

We recommend approval of \$2.4 million requested for laboratory equipment and vehicle replacement, but recommend that the Legislature direct the Departments of Justice and Finance through supplemental report language not to include the amount in the baseline budget.

The budget requests \$2.4 million from the General Fund for equipment replacement for the DOJ's criminalistic laboratories (\$1.2 million) and for replacement of vehicles used in the Division of Law Enforcement (\$1.2 million). The request proposes to build these expenditures into the DOJ's baseline budget to fund additional equipment and vehicle purchases in future years.

Our review indicates that both proposals for equipment and vehicle replacement are justified. The DOJ advises that the laboratory equipment, which is used for forensic testing of crime scene evidence, controlled substances, and blood alcohol samples, has outlived its useful life and is either inoperable or requires extensive and expensive repairs. In addition, the DOJ advises that the vehicles requested for replacement, which are used by special agents and staff in investigations, narcotics enforcement, and forensic services, have exceeded 100,000 miles in usage.

Equipment Replacement Should Not Be Included in Base Budget. Although we believe that the request is justified, adding the additional funding to the department's baseline budget would mean that the DOJ would have the same level of funding to use for equipment and vehicle replacement each year. We do not believe that major equipment purchases such as those proposed should be included in the baseline. Instead, equipment purchases should be "zero-based" and justified each year. Justifying major equipment purchases each year has always been standard budget practice and, we believe, provides the Legislature with a better opportunity to perform oversight of the DOJ's annual budget.

For these reasons, we recommend that the Legislature direct the DOJ and the Department of Finance not to add the funding for equipment and vehicle replacement to the DOJ's baseline budget.

This could be accomplished by adopting the following supplemental report language:

It is the intent of the Legislature that the Department of Justice's baseline budget not include an increase for laboratory equipment and vehicle replacement. Equipment replacement shall be justified in the annual budget process.

Request for Lab Bond Funds Unclear

We recommend that the Legislature obtain clarification from the Attorney General regarding the relationship and the long-term fiscal impact of the proposed forensic laboratory equipment upgrades and his recent proposal for the state to issue lease-payment bonds to replace laboratories.

The Attorney General recently indicated that he would seek legislation to enact a \$32 million lease-payment bond that would allow the DOJ to replace a number of criminalistics laboratories. Our review indicates that it is not clear how the budget request of \$1.2 million from the General Fund for laboratory equipment replacement and other lab upgrades relates to the Attorney General's bond proposal. Moreover, the use of lease-payment bonds would have a long-term effect on the department's support budget as payments are made to retire the bond. For these reasons, the Legislature should ask the DOJ to clarify the relationship between the two proposals and their long-term fiscal and programmatic effects, either in budget hearings or on hearings that may eventually be held on the bond proposal.

LIST OF FINDINGS AND RECOMMENDATIONS

	Analysis Page
Crosscutting Issues	
<i>Federal Crime Bill Funding for California</i>	
1. California Receives New Federal Funds. California law enforcement agencies have received several grant awards to fund almost 1,300 new law enforcement personnel. Counties have received almost \$3 million for "boot camps," and the state has received funds to cover the costs of incarcerating undocumented felons.	D-13
2. Pending Federal Legislation Could Change State's Share of Crime Bill Funds. Congress passed, but the President vetoed, an appropriations bill (H.R. 2076) that would significantly change current crime bill provisions, including modifications to the way local law enforcement grants are distributed and the elimination of many crime prevention programs included in the crime bill.	D-18
3. Additional Information and Consideration Needed. Recommend that Legislature establish its 1996-97 priorities for use of federal crime bill funds. Recommend that the Department of Finance report during budget hearings on status of federal appropriations for crime programs. Further recommend that Office of Criminal Justice Planning report on plans for state's share of crime funding. Recommend that Legislature consider relationship between H.R. 2076 and administration's budget proposals for local law enforcement and prison construction.	D-24
Department of Corrections	
<i>Inmate and Parole Population Management Issues</i>	
4. Inmate and Parole Population Trends. The Governor's Budget assumes that the prison population will increase significantly over the next five years at a rate that would exceed the beds available in the prison system by early 1998.	D-28
5. Budget Adjustments for Caseload Growth. Withhold recommendation on the Department of Corrections' (CDC's) request for \$243 million to fund inmate and parole population growth, pending review of the revised budget proposal and population projections to be included in the May Revision.	D-35

	Analysis Page
6. 1996-97 Inmate Housing Plan. Withhold recommendation on the CDC's plan for housing the projected increase in the prison population because of policy questions and uncertainties about the proposal. The plan will be updated as a part of the May Revision.	D-36
7. Modest Progress Toward Reforming Inmate Population Management. The state has made modest progress toward implementing the reforms advocated in 1990 by the Blue Ribbon Commission on Inmate Population Management. Many of the recommendations which are unfulfilled remain relevant and worthy of discussion by the Legislature.	D-39
<i>The "Graying" of the CDC</i>	
8. Ageing Inmates Will Cost State. Inmates age 60 and over now represent only 1 percent of the state's prison population, but their number is forecast to grow significantly and could prove expensive to the state due to their high medical costs. The state could achieve significant correctional savings in the long run, while not sacrificing greater public safety, by providing aging inmates with alternative forms of punishment or parole outside of a traditional prison setting.	D-44
<i>Correctional Programs</i>	
9. Sexually Violent Predators. Withhold recommendation on \$10.4 million requested from the General Fund for the CDC, as well as \$22 million by the Department of Mental Health and \$800,000 by the Board of Prison Terms (a total of \$33.2 million) for civil commitment of sexually violent predators released from prison until the CDC and other state agencies responsible for operation of the program resolve significant implementation issues.	D-52
10. Preventing Parolee Failure. The CDC has yet to carry out a complete evaluation of a series of pilot projects initiated four years ago to help parolees reenter society and not return to a life of crime. Recommend the adoption of Budget Bill language to conclude the experimental programs.	D-57
11. Substance Abuse Treatment Facility. Recommend the adoption of supplemental report language directing the CDC to provide the Legislature with a plan by April 1, 1997, that will ensure that a complete and effective aftercare drug rehabilitation program will be available as necessary for all inmates who participate in the Substance Abuse Treatment Facility program at Corcoran.	D-59

	Analysis Page
12. McGee Training Academy. Recommend the adoption of Budget Bill language prohibiting the CDC and the Richard A. McGee Training Academy from renewing their existing agreement with San Joaquin Delta College, and prohibiting any new agreements with any community college without advance approval of the Department of General Services (DGS) and the Department of Finance (DOF).	D-60
13. Americans with Disabilities Act Compliance. The Governor's Budget would appropriate \$643,000 to the CDC to comply with federal Americans with Disabilities Act mandates that public agencies provide "reasonable accommodation" for individuals with disabilities.	D-61
14. Special Education Proposal Raises Policy Issues. Withhold recommendation on \$1.6 million requested to develop a special education program for inmates under age 22 and recommend that the CDC report at budget hearings on significant policy questions regarding the funding level and funding source of the program.	D-62
Medical Issues	
15. Costs for Third Phase of Health Care Delivery System Higher Than Planned. Withhold recommendation on the department's request for \$22.5 million from the General Fund and 319 positions for the third phase of its health care delivery system. The department's request is higher than originally reported and appears to anticipate much higher costs for future years with no related savings.	D-64
16. Contract Medical Services Augmentation Not Justified. Reduce Item 5240-001-0001 by \$3.2 million. Recommend reduction because department's efforts to reduce contract medical costs should result in savings.	D-66
17. Quality Assurance Positions Should Be Limited Term. Recommend that the 13 positions requested for the department's quality assurance/risk reduction program be established on a two-year limited term basis because the proposed quality assurance program is new and the department does not have data to justify the positions on a permanent basis.	D-67
18. Costs for Proposed Treatment Protocol Unknown. Recommend the enactment of (1) Budget Bill language specifying limits on the use of funds for Interferon treatments	D-68

for inmates with hepatitis B and C, and (2) supplemental report language directing the department to report on the number of inmates receiving Interferon treatment and the costs of providing the treatment.

Administration Issues

19. **Price Increase.** The Governor's Budget provides \$22 million from the General Fund to the CDC for inflation adjustments for operating expenses and equipment purchased during 1996-97. The department is one of only five state agencies receiving a price increase adjustment. D-70
20. **Pay Telephone Procurement.** Withhold recommendation on funding requested for the procurement of prison telecommunications systems and services and recommend that the CDC and the DGS jointly report at the time of budget hearings as to how the state will maximize General Fund revenues from pay telephones located at state prisons. D-71
21. **Local Assistance.** Withhold recommendation on \$14.7 million requested to reimburse counties for detaining parolees held for violation of parole conditions. Recommend that action on this item be delayed pending an audit of local assistance payments to Los Angeles County as well as the receipt of information as to the cause of a projected doubling in local assistance costs and recommendations for curbing these costs. D-72
22. **Parole Staffing Ratios.** Recommend the adoption of Budget Bill Language directing the CDC to restructure the parole staffing ratios upon which budget requests of the Parole and Community Services Division are based to accurately reflect the caseloads actually assigned to parole agents. D-73
23. **Information on Spending Reductions.** Recommend that the CDC and the DOF report at budget hearings as to the specific measures the CDC will take to reduce its funding base by \$22 million in order to comply with control sections in the 1995 Budget Act, and the programmatic effects of the reduction. D-75
24. **Correctional Management Information System Project.** Withhold recommendation on \$16 million requested to continue implementation of phase one of the Correctional Management Information System, pending a review of the department's assessment of recent schedule changes and the effect of these changes on 1996-97 budget request. D-76
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| 25. Cadet Staffing Adjustments. Withhold recommendation on \$21.1 million requested from the General Fund for correctional officer cadet training, pending receipt of updated prison population projections and updated projections of the need for new correctional officers at the time of the May Revision. | D-77 |

Board of Prison Terms

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| 26. Sexually Violent Predators Program. Withhold recommendation on \$813,000 for the Sexually Violent Predator program until the Board of Prison Terms (BPT) and other state agencies involved in the program resolve a number of significant implementation issues. | D-79 |
| 27. Parole Caseload Should Be Reviewed Later in Year. Withhold recommendation on \$506,000 requested to accommodate projected increases in the parole hearing workload pending receipt of updated caseload estimates at the time of the May Revision. | D-80 |
| 28. BPT Faces Hearings and Investigations Backlog. The BPT continues to struggle to reduce a significant backlog of parole hearings and investigations. Recommend that the BPT report at budget hearings on its progress in dealing with the backlog problems. | D-81 |
| 29. Little Savings So Far From Foreign Inmate Transfers. Recommend that a one-year limit be placed on funding for the Foreign Prisoner Transfer program and that the Legislature next year consider suspending or ending its legislative mandate if it fails to achieve more than the meager cost-savings generated so far. | D-82 |

Department of the Youth Authority

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| 30. Ward Population Would Remain Stable if Proposed Legislation Is Enacted. The department projects that population will remain stable over the next several years. This assumes legislation will be enacted transferring responsibility of some offenders from the Department of the Youth Authority to the California Department of Corrections (CDC). | D-84 |
| 31. Ward and Parolee Populations Will Be Updated in May. Withhold recommendation on \$1.6 million, pending analysis of the May Revision. | D-89 |

	Analysis Page
32. Proposed Legislation to Transfer “M Cases” Should be Enacted. Recommend enactment of proposed legislation to transfer responsibility for “M cases” to the CDC.	D-90
33. New County Fees Will Generate Less Revenues Because of Implementation Date. Recent legislation to increase fees counties pay to the state for commitment of juvenile offenders to the Youth Authority will take effect later than anticipated in the Governor's Budget. As a consequence, the state will receive about \$35 million less in revenues over the current and budget years.	D-92
34. Overcrowding Likely to Continue and May Worsen Recommend that the Youth Authority report during budget hearings on actions to alleviate overcrowding.	D-93
35. Loss of Federal Funds for Local Juvenile Services Could Lead to Increased Youth Authority Placements. Recommend that the Youth Authority report during budget hearings on status of federal actions and the impact that the loss of federal funds might have on department placements.	D-96
36. Proposed Local Assistance Programs Should Require Local Match. Recommend that the Legislature direct the Youth Authority to require share of cost or local match requirement for two proposed local assistance programs in order to leverage additional funds, thereby allowing more local agencies to participate.	D-99
37. Oversight Needed for Tattoo Removal Proposal. Recommend Budget Bill language limiting the use of funds and supplemental report language requiring report from the Youth Authority on its proposed tattoo removal program in order to provide adequate oversight of the new program.	D-102

Trial Court Funding

Overview

38. Trial Court Coordination Update. The Judicial Council has made positive steps toward furthering coordination. Given the decentralized nature of the courts, it will be important for the Legislature and the council to continue to closely monitor the implementation of coordination.	D-106
39. Current-Year Funding Issues Create Tension Between Courts and Counties. Recommend that Judicial Council report during budget hearings on the status of current-year funding issues.	D-108

	Analysis Page
<i>Trial Court Funding Consolidation Proposal</i>	
40. The Governor's Proposal. Budget proposes to consolidate the costs of the operations of trial courts at the state level. The proposal caps the county contribution and makes the state responsible for future increases in funding.	D-109
41. State Funding Makes Sense, but Cost Controls Needed. The consolidation proposal has merit. However, the Legislature will need to consider issues related to future funding and cost containment not addressed in the proposal.	D-112
42. Judicial Council Needs to Further Define Performance Measures. Recommend that the Judicial Council report during budget hearings on the development of trial court performance measures that assess progress towards meeting specific output goals.	D-113
43. Proposal Does Not Have Mechanism for Controlling Costs of Trial Court Personnel. Recommend enactment of legislation that, at a minimum, requires the Judicial Council to begin establishing trial court employee classifications as well as a statutory timetable to convert trial court employees to state employees in the long run.	D-114
44. Proposal's Definition of Trial Court Operational Costs Needs Changes. Recommend that court-appointed counsel function be eliminated from trial court operations to ensure that funding responsibilities match program spending controls.	D-116
45. Shortfall in Trial Court Trust Fund Revenues. Revenues from court fees have fallen significantly below projected levels. Under the consolidation plan, to the extent that these revenues fall below projected levels, the state will have to increase funding for the courts from the General Fund.	D-117
<i>Budget Issues</i>	
46. New Judgeships Not Justified. Reduce Item 0450-111-0001 by \$2 million. Recommend reduction for 20 new judgeships because the positions have not been justified on a workload basis. Further recommend that new judgeships be limited to court that have fully coordinated or consolidated their operations.	D-118
47. Distribution of Trial Court Funding Should Be Based on Incentives. We recommend adoption of Budget Bill language directing the Judicial Council to implement an allocation	D-121

formula which includes incentives for all courts to implement efficiencies and cost containment measures.

Judicial

48. **Appellate Justice Positions Overbudgeted. Reduce Item 0250-001-0001 by \$498,000.** Recommend reducing the number of new justice positions from five to three based on projected workload. Further recommend Budget Bill language to provide that funds for support of the three justices be tied to legislation to create the positions. D-123
49. **Court Security Proposal. Reduce Item 0250-001-0001 by \$700,000.** Recommend reduction because request is not justified on a workload basis. D-125
50. **Relocation Funds. Reduce Item 0250-001-0001 by \$1.2 Million.** Recommend reduction because funds are not needed. D-126
51. **Data Needed to Support Proposed Increase.** Withhold recommendation on \$6.3 million requested for program, pending receipt and analysis of more updated data on caseload and expenditure trends in program. D-126
52. **Backlog of Death Penalty Cases.** Recommend that Judicial Council and State Public Defender report during budget hearings on efforts to improve appointments of counsel for inmates on death row. D-128
53. **Standards Needed for Attorneys and Cases.** Recommend adoption of supplemental report language directing the Judicial Council to develop a system for ensuring consistency in the rankings for attorneys and cases handled by appellate projects. D-130
54. **New Child Support Enforcement System.** Withhold recommendation on \$19 million in reimbursements from the Department of Social Services for a new child support enforcement system, pending receipt of additional information in an implementation plan. D-132

Department of Justice

55. **Budget Provides Funding for Salary Increases.** Budget proposes \$3.3 million to fund general salary increases that other state agencies were required to absorb. A similar request was denied by the Legislature in the 1995 Budget Act. D-133
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Correctional Law Issues

56. **Legal Bill for Correctional System Is Increasing.** The state's legal costs for defending inmate lawsuits and torts, paying settlements and judgments, and defending employee discrimination suits of correctional employees will increase to about \$35 million in the budget year. D-134
57. **Implementation and Effectiveness of Efforts to Curb Inmate Lawsuits in Question.** Recommend that the Department of Justice (DOJ) and the Department of Corrections (CDC) report during budget hearings on (1) implementation and effectiveness of the \$3 filing fee and the vexatious litigant laws and (2) other recommendations for reducing the costs of inmate lawsuits against the state. D-136
58. **Correctional Law Request May Be Overbudgeted for Civil Cases.** Withhold recommendation on \$620,000 requested for the program, pending receipt of updated caseload projections. D-137
59. **Discovery Workload Should Be Supported from Reimbursements. Reduce Item 0820-001-0001 by \$288,000 and Increase Reimbursements by Same Amount.** Recommend reimbursement because funds for this workload are included in the budget for the CDC. D-137

Division of Law Enforcement

60. **Criminal History and Fingerprint Backlogs Continue.** Recommend that the DOJ report during budget hearings on the status of the backlog in the conviction history files, inmate fingerprints, the proposed redirections to reduce the backlogs. Recommend that the Legislature adopt supplemental report language directing the department report on December 31, 1996 on the status of the backlogs. D-138
61. **Significant Backlog of Sex Offender DNA Tests.** Recommend that the DOJ report during budget hearings on the status of the backlog of DNA tests of sexual offenders and the status of the automation of the DNA analysis system. Recommend that the Legislature adopt supplemental report language directing the department to report on December 31, 1996 on the status of the backlog. D-141
62. **Illegal Manufacture of Methamphetamine Becoming Major Problem in State.** Illegal manufacture of methamphetamine is becoming a serious problem, costing the state millions of dollars annually for enforcement of drug laws and clean-up of D-142

clandestine laboratories. The Legislature may wish to consider imposing a targeted excise tax to defray the state's increasing costs for enforcement and cleanup.

63. **Equipment and Vehicle Replacement Should Not Be Included in Base Budget.** Recommend that the Legislature direct the DOJ and Department of Finance through supplemental report language not to include the amount requested for laboratory equipment and vehicle replacement in the DOJ's baseline budget. D-145
64. **Request for Lab Bond Funds Unclear.** Recommend that the Legislature obtain clarification from the Attorney General regarding the relationship and the long-term fiscal impact of the proposed forensic laboratory equipment upgrades and his recent proposal for the state to issue lease-payment bonds to replace laboratories. D-146
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