

MAJOR ISSUES

Judiciary and Criminal Justice



Growth in Prison Population Has Slowed

- The California Department of Corrections (CDC) projects that the prison population will increase about 6.4 percent annually, reaching 204,000 inmates by June 2002.
- Although the growth continues to be significant, it is substantially less than projected in recent forecasts.
- A principal reason for the change is the slowing of new admissions to prison from the courts, which appears to be closely linked to the drop in crime (see page D-62 to D-65).



The Legislature Needs to Overhaul the Internal Affairs Investigation Process in the CDC

- The CDC has been plagued by serious allegations of misconduct—some unproven and under investigation, others proven in courts and personnel hearings—by some of its correctional personnel. Some of these cases have led to court judgements and settlements which have collectively cost the state millions of dollars.
- Our review found that the internal affairs investigation process is fragmented, duplicative, and ineffective. We recommend steps to improve the process (see page D-13).



Youth Authority Population Expected to Remain Stable

- The Youth Authority's ward and parole populations are expected to remain stable over the next several years.
 - Recently, counties began paying higher fees for committing less serious offenders to the Youth Authority. These fee in-
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creases provide counties with an incentive to treat these youth in the local communities, thereby resulting in lower ward populations (page D-113 to D-119).

Reforms Needed in California’s Juvenile Justice System

- A blue-ribbon task force took a look at the state of juvenile crime and the juvenile justice system and made many recommendations for reform. We recommend that the Legislature enact many of the recommendations and modify others (see page D-24).

Trial Court Funding Consolidation Proposal Makes Sense, But Needs Cost Control Measures

- The Governor’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 all increased costs in the future, the Legislature will need to ensure that there are adequate cost control and performance measures in place (page D-141).

Local Agencies Should Pay for Crime Laboratory Services


- In order to properly align local government’s funding and programmatic responsibilities for investigation and prosecution of criminal cases, we recommend the enactment of legislation requiring law enforcement agencies to pay for the costs of services provided by the Department of Justice’s crime laboratories (page D-174).
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OVERVIEW

Judiciary and Criminal Justice

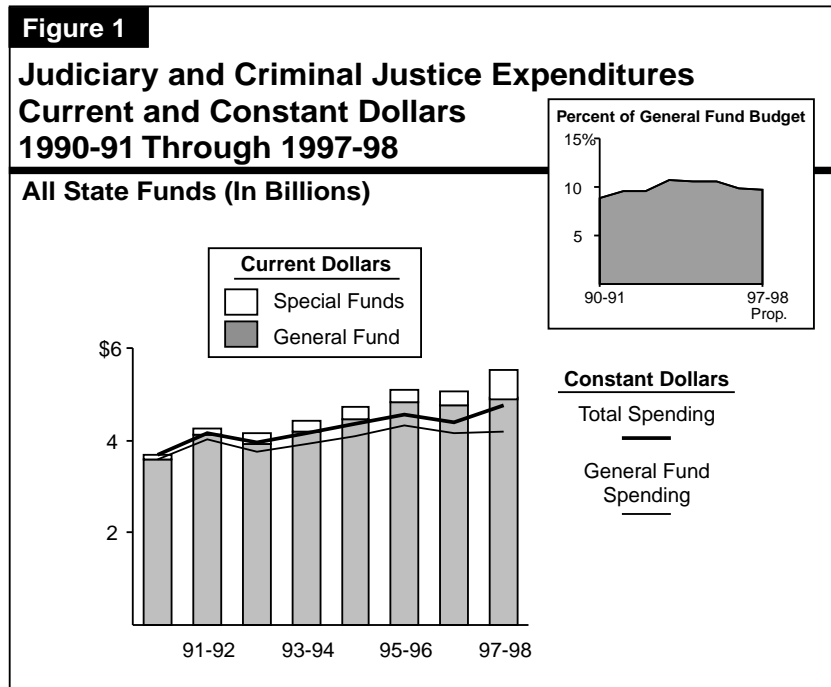
Total expenditures for judiciary and criminal justice programs are proposed to increase significantly in the budget year. The principal reason for the increase is that reimbursements from the federal government to incarcerate undocumented felons are projected to decline in the budget year, necessitating an increase in state funds. In addition, the budget proposes to consolidate the costs of operation of the trial courts at the state level, but proposes relatively few significant new programs or augmentations for the budget year.

The budget proposes total expenditures of \$5.6 billion for judiciary and criminal justice programs in 1997-98. This is an increase of \$517 million, or 10 percent, over estimated current-year spending. This increase is due to a number of factors, including declining federal fund support (and thus increased state costs) to pay the costs of incarcerating undocumented felons in state prison, the projected increase in the state's prison and parole populations, and full-year costs in 1997-98 of programs begun during the current year.

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 \$4.9 billion for judiciary and criminal justice programs, an increase of \$135 million, or 2.8 percent, above estimated General Fund expenditures in the current year. This relatively small increase is misleading because it masks an important funding shift which, when taken into account, results in General Fund expenditures increasing by \$425 million, or 8.9 percent. Specifically, as part of the trial court funding consolidation proposal, the *1997-98 Governor's Budget* proposes to shift about \$291 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.

Figure 1 shows expenditures from all state funds for judiciary and criminal justice programs since 1990-91. Figures for 1994-95 through 1997-98 have been reduced to reflect federal funds the state received or is expected to receive 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 1990-91, representing an average annual increase of 6 percent.



SPENDING BY MAJOR PROGRAM

Figure 2 shows expenditures for the major judiciary and criminal justice programs in 1995-96, 1996-97, and as proposed for 1997-98. As the figure shows, the California Department of Corrections (CDC) accounts for the largest share of total spending in the criminal justice area.

MAJOR BUDGET CHANGES

Figure 3 (see page 8) presents the major budget changes resulting in a net increase of \$517 million in total state spending for judiciary and criminal justice programs. Generally, the major changes can be categorized as follows:

Figure 2**Judiciary and Criminal Justice Budget Summary
1995-96 Through 1997-98****(Dollars in Millions)**

| | Actual 1995-96 | Estimated 1996-97 | Proposed 1997-98 | Change From 1996-97 | |
|---|-------------------|----------------------|---------------------|------------------------|--------------|
| | | | | Amount | Percent |
| Department of Corrections | | | | | |
| General Fund | \$3,211.6 | \$3,453.7 | \$3,705.2 | \$251.5 | 7.3% |
| Special funds | 36.5 | 45.4 | 47.0 | 1.6 | 3.5 |
| Bond funds | 13.1 | 9.0 | — | -9.0 | -100.0 |
| Reimbursements | 54.8 | 115.0 | 79.0 | -36.0 | -31.3 |
| Totals | \$3,316.0 | \$3,623.1 | \$3,831.1 | \$208.1 | 5.7% |
| Department of the Youth Authority | | | | | |
| General Fund | \$393.5 | \$393.7 | \$360.3 | -\$33.4 | -8.5% |
| Special funds | 2.5 | 2.2 | 2.9 | 0.7 | 33.2 |
| Bond funds | 12.8 | 9.7 | 5.2 | -4.6 | -47.1 |
| Reimbursements | 20.2 | 30.1 | 63.8 | 33.7 | 112.2 |
| Totals | \$428.9 | \$435.6 | \$432.1 | -\$3.5 | -0.8% |
| Federal Offset for Undocumented Felons | | | | | |
| Federal funds | \$30.5 | \$441.0 | \$298.7 | -\$142.3 | -32.3% |
| Trial Court Funding^a | | | | | |
| General Fund | \$479.4 | \$488.7 | \$236.9 | -\$251.8 | -51.5% |
| Special funds | 154.1 | 155.5 | 534.2 | 378.7 | 243.6 |
| Totals | \$633.5 | \$644.2 | \$771.1 | \$126.9 | 19.7% |
| Judicial | | | | | |
| General Fund | \$163.9 | \$179.1 | \$196.6 | \$17.5 | 9.8% |
| Special funds and reimbursements | 1.0 | 8.6 | 40.2 | 31.6 | 368.8 |
| Totals | \$164.9 | \$187.7 | \$236.7 | \$49.1 | 26.1% |
| Department of Justice | | | | | |
| General Fund | \$195.6 | \$224.0 | \$220.3 | -\$3.7 | -1.6% |
| Special funds | 76.7 | 78.1 | 78.4 | 0.3 | 0.4 |
| Reimbursements | 79.5 | 89.4 | 88.1 | -1.2 | -1.4 |
| Totals | \$351.8 | \$391.5 | \$386.8 | -\$4.6 | -1.2% |

^a Trial Court Funding figures for 1997-98 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 1997-98
All State Funds**

| | |
|--|---------------------------------|
| Department of Corrections | Requested: \$3.8 Billion |
| Increase: \$208 Million | (+5.7%) |
| <ul style="list-style-type: none"> + \$138 million for full-year cost adjustments + \$56 million for inmate and population increases + \$19 million for increased lease payment bond costs <hr style="width: 20%; margin: 10px auto;"/> <ul style="list-style-type: none"> - \$72 million for various limited-term and one-time expenditures | |
| Department of the Youth Authority | Requested: \$432 Million |
| Decrease: \$3.5 Million | (-0.8%) |
| <ul style="list-style-type: none"> + \$1.4 million to provide full relief staffing for certain institution personnel on their regular days off <hr style="width: 20%; margin: 10px auto;"/> <ul style="list-style-type: none"> - \$0.7 million for ward housing adjustments thereby allowing a reduction in staff | |
| Trial Court Funding | Requested: \$1.7 Billion |
| Increase: \$1 Billion | (+149%) |
| <ul style="list-style-type: none"> + \$978 million for increased state support of trial courts (\$890 million reimbursed by counties and \$88 million from increased court revenues) + \$14 million to provide additional reimbursement to trial court jurors + \$8 million for trial court security projects + \$4 million for creation of 40 new judgeships in the last quarter of 1997-98 | |

The Budget Proposes to Provide Full Funding for Caseload and Certain Other Cost Increases. This includes funding for projected inmate population increases of 5.9 percent in the CDC and ward population increases of about 1.3 percent in the Youth Authority. The budget con-

tains no proposals that would result in any significant reduction in the inmate and ward populations.

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 defense counsel and the Department of Justice's program that handles appeals in criminal cases.

The budget provides an augmentation for the Judicial branch and the CDC for the costs of merit salary adjustments that will be granted in 1997-98, while requiring most other state departments to absorb these costs.

The Budget Proposes to Consolidate and Restructure the Trial Court Funding Program. The budget proposes to consolidate funding for support of trial courts at the state level. The proposal is similar to a proposal contained in the *1996-97 Governor's Budget* which failed passage in the Legislature.

Specifically, the Governor's budget proposes the following:

- The 38 largest counties transmit \$890 million to the state Trial Court Trust Fund for support of the trial courts. (This is the amount that all 58 counties provided for support of the courts in 1994-95.) This amount would be capped and would not change in future years.
- The 20 smallest counties would not transmit money to the state, but the state would pay all of their trial court costs.
- About \$291 million in fine and penalty revenues would be redirected from the General Fund to the Trial Court Trust Fund, which would be used to support the trial courts.
- Court filing fee revenues would be increased by \$88 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 increase the state's General Fund costs by about \$10.7 million. 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 budget also proposes about \$27.3 million in General Fund augmentations for distribution to the trial courts. The most significant of the proposals include \$14 million to reimburse jurors for the costs of their meals, parking, dependent care, and mileage; \$8 million to enhance trial court security; and \$4 million to create an additional 40 trial court judge-ships in the last quarter of 1997-98.

The Budget Assumes that the State Will Receive Less Federal Fund Reimbursements for Incarceration and Parole of Undocumented Immigrants. As indicated above, the budget assumes that the state will receive \$299 million in federal funds in 1997-98 to offset the state's costs to incarcerate and supervise undocumented immigrants in the CDC and the Youth Authority. This is a decrease of \$142 million below the Governor's budget's estimate of the amount the state will receive in the current year (\$441 million). The principal reason for the decrease is that the anticipated current-year reimbursements are artificially high because California will receive the bulk of two federal fiscal year (FFY) appropriations (1996 and 1997) in a single state fiscal year.

Of the current-year amount, \$252 million has already been awarded to California from existing federal appropriations for FFY 96. The administration's estimates of the remaining funds to be received in the current year (\$189 million) is based on its projections of California's share of monies appropriated nationwide in the FFY 97 appropriations, which have not been distributed to states.

For the budget year, the Governor's budget assumes that it will receive the remaining portion of its estimated share of the FFY 97 appropriation (\$63 million), plus an amount (\$236 million) that it anticipates Congress and the President will appropriate for FFY 98.

The Budget Proposes Few New Significant Program Initiatives. The budget proposes relatively few significant new judiciary and criminal justice program initiatives for 1997-98. The most significant proposals include: (1) \$14.9 million in federal funds for the Board of Corrections to distribute to local governments to build or expand local adult and juvenile detention facilities; (2) \$5 million from the General Fund for the CDC to provide substance abuse treatment to about 1,000 inmates at the new California Substance Abuse Treatment Facility and State Prison at Corcoran; (3) \$3.4 million from the General Fund for development of case management and statistical information systems for the Judicial Branch; (4) \$1.9 million from the General Fund (and an additional \$8 million in the capital outlay budget) for implementation of a "disability placement plan" to ensure that all inmates and parolees with disabilities have equal access to CDC programs, consistent with the Americans with Disabilities Act; (5) \$1.4 million from the General Fund (and an identical amount from redirections) for the Youth Authority to provide full relief staffing for senior counselor and group supervisors on their days off.

In addition, the budget proposes to continue a number of new programs and expenditures begun in the current year. These include \$3 million for the Youth Authority's "Young Men as Fathers" program begun as part of the Governor's overall proposal relating to mentoring,

and \$10.7 million in new federal funds under the federal Violence Against Women Act to be allocated by the Office of Criminal Justice Planning to local law enforcement agencies and providers of services to victims of crime.

It should be noted that one major program established by the Legislature in the *1996-97 Budget Act*—the Juvenile Crime Enforcement and Accountability Challenge Grant Program, which will provide \$50 million in grants to counties for programs to combat juvenile crime—was not continued in the Governor’s budget for 1997-98.

CROSSCUTTING ISSUES

Judiciary and Criminal Justice

INTERNAL AFFAIRS INVESTIGATIONS IN THE DEPARTMENT OF CORRECTIONS

The California Department of Corrections (CDC) has been plagued by serious allegations—some unproven and under investigation, others proven in the courts and personnel hearings—that its correctional personnel have used excessive force and, in some cases, deadly violence against inmates at state prisons at Corcoran and Pelican Bay. Some of these cases have led to court judgments and settlements which have collectively cost the state millions of dollars and led to ongoing investigations by law enforcement authorities. In one major legal case that is still pending, a federal court concluded that a weak system of investigation and discipline of CDC personnel was partly to blame for what it termed “a conspicuous pattern of excessive force” against inmates.

In this analysis, we provide an overview of the CDC’s fragmented internal affairs operations and offer recommendations for improvement which we believe will reduce the state’s current vulnerability to litigation and claims for damages in such cases.

DEPARTMENT PLAGUED BY MISCONDUCT ALLEGATIONS

Background

For the last several years, the CDC has attempted to resolve a succession of highly publicized internal affairs cases alleging serious misconduct on the part of its personnel and, in particular, charges that correctional personnel at state prisons at Corcoran and Pelican Bay participated

directly in the injury of inmates or allowed and even encouraged inmates to engage in violence against other inmates. Several cases are currently under investigation by state law enforcement agencies and the Federal Bureau of Investigation.

In a class-action lawsuit (*Madrid v. Gomez*) aimed at remedying a variety of problems at the Pelican Bay State Prison near Crescent City, a federal district court judge ruled that “a conspicuous pattern of excessive force” against inmates had occurred in part because of complaints that CDC personnel were not being held accountable for their misconduct. The court found that while the CDC’s internal affairs investigations unit “goes through the necessary motions, it is invariably a counterfeit investigation with one outcome in mind: to avoid finding officer misconduct as often as possible.” Some CDC labor representatives have voiced the opposite concern—that investigations against them have been poorly and unfairly conducted in order to ensure lower level personnel are subject to punishment but that superiors responsible for alleged wrongdoing are protected from disciplinary action.

Correctional Litigation a Growing Fiscal Issue

In last year’s *Analysis*, we called attention to the growing cost to defend the state correctional system against lawsuits filed by inmates and correctional personnel. Litigation and settlement costs were projected to reach \$35 million in the current year, an increase of 14 percent in two years.

The CDC has taken some significant and positive steps to curtail litigation over cases involving excessive force and inmate injuries. For example, the CDC has clarified the policies governing the discharge of guns by correctional officers, begun videotaping confrontations that take place in cells between the officers and inmates, and taken disciplinary action against officers at both Corcoran and Pelican Bay whom internal investigations concluded were involved in misconduct. The Legislature has supported these efforts by granting the CDC funding requests for additional internal affairs personnel.

Nonetheless, the CDC has acknowledged that its internal affairs system for monitoring, investigating, and disciplining its personnel has been insufficient. In a recent request for more funding for its internal affairs investigations, the CDC stated that problems at the Pelican Bay and Corcoran prisons resulted partly because the department “failed to provide an adequate process for investigating allegations of inappropriate use of force by staff.”

We believe further steps are warranted to reduce the state correctional system's vulnerability to lawsuits which may not be frivolous—in particular, sometimes-costly litigation over allegations of excessive force and wrongful death caused to inmates as a result of misconduct by correctional personnel. To the extent that the state can make changes in its correctional system that deter the types of incidents which prompted these lawsuits, the state could avoid hundreds of thousands and possibly millions of dollars in future expenditures for litigation and settlements. One area which we believe merits attention is the department's internal affairs operations.

PROBLEMS OF THE INTERNAL AFFAIRS SYSTEM

The Current System

The responsibility for investigating, monitoring and auditing an estimated 1,600 internal affairs cases per year is spread between three offices in Sacramento—two within the CDC and one within the Youth and Adult Correctional Agency (YACA)—and small independent investigative units in each of the state's 32 prisons. The offices and their internal affairs responsibilities include:

- **The Law Enforcement and Investigations Unit** located in the CDC headquarters in Sacramento, which directly investigates the most serious internal affairs cases and indirectly oversees the investigation of lesser cases by units at each state prison.
- **Investigative Services Units** located at each of the state's 32 prisons which investigate the less serious internal affairs cases.
- **The CDC Office of Inspector General** located in the CDC headquarters in Sacramento, which conducts quarterly reviews to ensure compliance with court orders to remedy the excessive use of force at Pelican Bay State Prison.
- **The YACA Office of Inspector General** located at the YACA headquarters in Sacramento, which conducts audits of internal affairs investigations conducted by the Investigative Services Units and recommends changes in procedures.

Problems With the Current System

Based upon our discussions with the CDC and outside experts on internal affairs issues, we do not believe that the CDC has an effective and efficient program in place to deter personnel misconduct, to investigate misconduct when it does occur, or to discipline those who violate depart-

mental personnel policies or the law. The CDC's internal affairs operations, in our view, are fragmented, duplicative, and ineffective.

Fragmentation and Duplication. The current system of internal affairs is fragmented resulting in no one office being clearly in charge, confusing the lines of authority and making it difficult to hold anyone accountable for the weaknesses inherent in the existing system. Moreover, each of the involved agencies has other assigned missions which compete with their internal affairs duties. In addition, the functions of the various investigative units sometimes duplicate each other. For example, the YACA Inspector General, the CDC Inspector General, and the Law Enforcement and Investigations Unit all review the quality of the internal affairs investigations conducted by Investigative Services Units at individual prisons.

As a result of the fragmentation of authority, the personnel policies, procedures, and standards followed in investigating internal affairs cases often differ from prison to prison. For example, some institutions grant automatic immunity against criminal prosecution to prison personnel who voluntarily agree to interviews about alleged wrongdoing, thereby creating a potential legal barrier to the prosecution of personnel suspected of criminal actions. We are advised that other institutions have followed differing investigative procedures.

Even where investigative procedures are clearly standardized, compliance with those procedures is sometimes lacking. Audits conducted by the YACA Inspector General have documented failures by CDC internal affairs investigators to follow proper investigative procedures—for example, failing to conduct complete investigations because not all potential corroborating witnesses were interviewed.

Ineffective System. Part of the reason these problems may be occurring is that some CDC staff lack the professional expertise to conduct appropriate internal affairs investigations. Internal affairs investigators generally receive their training on the job from other CDC investigators and are not required to have specialized training and certification qualifying them to handle such cases before they are appointed to internal affairs duties. The CDC has rarely brought in experienced outside experts, such as the state Department of Justice (DOJ), for assistance, even in the most serious cases involving potential charges of criminal activity. (The CDC recently did ask for the assistance of the DOJ to investigate alleged misconduct at Corcoran.)

Another factor that contributes to the ineffectiveness of the system is the complex legal process involved in prosecuting serious cases of alleged wrongdoing by prison staff. In particular, state correctional agencies must rely upon county district attorneys and county grand juries where the

individual prisons are located to pursue internal affairs cases which involve allegations of criminal wrongdoing, creating a potential procedural barrier to the prosecution of prison personnel believed to have broken the law. This is because a district attorney sets the agenda for and length of time that a county grand jury is in session; thus, state prosecutors may have no recourse but to wait, possibly for months, for an opportunity to move forward with an internal affairs case involving alleged criminal activity. As a consequence, prosecutors and investigators of internal affairs cases are deprived of a powerful investigation tool—the option of bringing uncooperative or reluctant witnesses before a grand jury to compel truthful testimony under penalty of perjury.

Rapid Growth in Personnel. Some critics of the existing internal affairs system note that the problems are aggravated by larger personnel issues. For example, because the prison system has grown so rapidly in recent years, many mid-level correctional managers—correctional sergeants and lieutenants—have been promoted quickly through the ranks, gaining relatively little managerial experience. These inexperienced managers may not be adequately trained to supervise the personnel assigned to them and to deter employee misconduct. This situation has made some prisons more vulnerable to personnel misconduct.

Similarly, the CDC has failed to prevent personnel problems before they occur. One approach would be to prevent the hiring of personnel who lack the temperament and psychological stability needed to work in a high-pressure prison environment. Few applicants for correctional officer positions undergo psychological evaluation, despite a legal requirement that all persons hired as peace officers—including state correctional officers—be subject to evaluation by a licensed psychologist with at least five years' experience in the diagnosis and treatment of emotional and mental disorders.

REFORMING THE SYSTEM

We recommend the Legislature take a series of steps to improve the internal affairs investigation process in the CDC, including (1) reorganizing and centralizing internal affairs investigations of correctional personnel under the YACA, (2) directing the DOJ to investigate the most serious cases, (3) maintaining personnel disciplinary authority with the CDC, and (4) improving investigation and prosecution training procedures, as well as correctional personnel training. In order to accomplish these changes we recommend the enactment of legislation and the adoption of supplemental report language.

The CDC's internal affairs operations have become fragmented primarily because responsibilities and resources were added to the various offices incrementally over many years. Until recently, no effort has been made to design a coherent system for handling such matters, even though effective supervision and discipline of personnel is a key to success in any large organization.

Given the proven cases of serious wrongdoing by CDC personnel and the growing cost of correctional litigation, we believe it is time that the internal affairs program be revamped, through administrative changes and legislation, to address its recurrent problems.

Our proposal is based on three key principles:

- Before providing any significant increase in funding and staffing for internal affairs operations, the Legislature should first ensure that existing resources are being used as effectively and efficiently as possible.
- The internal affairs operation should be capable of conducting independent and credible investigations while not undermining the CDC's ability to hold its personnel accountable to management.
- The resulting internal affairs operations should be so effective that it will have a positive impact in holding down state litigation and settlement costs resulting from serious misconduct by CDC personnel.

Accordingly, we propose a number of specific changes that are outlined in Figure 4 and discussed in more detail below.

Put the YACA Inspector General In Charge of Internal Affairs

We propose to consolidate existing internal affairs resources under the YACA Inspector General, who would take charge of the investigation of allegations of wrongdoing by CDC personnel. This involves shifting positions and dollars away from the Law Enforcement and Investigations Unit, the Investigative Services Units at each of the prisons, and a separate Office of Inspector General that exists within CDC, and moving those resources to the YACA Office of Inspector General.

The role of the Inspector General would thus fundamentally change: Instead of just auditing and monitoring how internal affairs investigations were conducted, the Inspector General would become the central, independent agency in charge of conducting such inquiries. As such, it

would centralize the personnel devoted to internal affairs investigations and standardize investigative procedures. We believe such an approach would result in an internal affairs system that is more consistent in its investigation of complaints and more fair in its treatment of personnel.

Figure 4

Recommendations for Reforming Internal Affairs Investigations

| Office | Current Status | | LAO Proposal |
|--|--|---|--|
| | Payroll and Staffing | Role | |
| Law Enforcement and Investigations Unit (CDC headquarters) | \$2.5 million 43 personnel-years | Directly investigates most serious cases. Supervises and audits less serious cases investigated by Investigative Services Units at each prison. | No role in internal affairs cases. Would retain unrelated responsibilities to act as CDC liaison to outside law enforcement and gather intelligence on prison gangs. |
| Investigative Services Unit (each prison) | Estimated \$3 million to \$4.6 million. Estimated 60 to 90 staff. | Investigates less serious internal affairs cases. | No role in internal affairs cases. Would retain unrelated responsibilities to investigate wrongdoings by prison inmates. |
| CDC Office of Inspector General (CDC headquarters) | \$684,000 12 personnel-years | Conducts quarterly reviews to monitor CDC compliance with court orders to remedy excessive use of force at Pelican Bay prison. | No role in internal affairs cases. Office would be abolished. |
| YACA Office of Inspector General (YACA headquarters) | \$140,000 3 personnel-years | Conducts audits of investigative processes of Investigative Services Units and recommends changes in procedures. | New central agency with responsibility for all internal affairs cases; could at its discretion refer some very serious cases to the Department of Justice Bureau of Investigation. |

Some staff and funding would be left behind with the CDC offices that gave up their internal affairs duties to continue the other vital functions they were assigned that are unrelated to internal affairs, such as investigations of wrongdoing by prison inmates, anti-gang intelligence work, and liaison work with outside law enforcement agencies. One agency—the CDC Office of Inspector General—would be disbanded. Its limited responsibilities for financial audits of certain prisons would be shifted to the Department of Finance, and its role in review of inmate medical programs would be shifted to the CDC’s Evaluation and Compliance Division using resources redirected from the CDC’s Health Care Services Division.

Department of Justice Investigations Of the Most Serious Cases

While the YACA Inspector General would be in charge of investigating most internal affairs cases, he should be authorized, pursuant to specified statutory criteria, to refer those cases involving the most serious charges of criminal activity to the state DOJ Bureau of Investigation. This would ensure that DOJ investigators with the most expertise would handle the most serious cases. In addition, having the DOJ investigate serious cases would ensure the independence of an investigation, and that independence may also help deter inappropriate conduct.

The bureau, which is currently engaged in an investigation of alleged illegal activities by CDC personnel at Corcoran, already provides similar services for local law enforcement agencies which lack the resources and expertise to conduct their own internal affairs investigations. If the bureau found evidence of criminal wrongdoing, it would be empowered to prosecute such a case under the authority of the Attorney General. If the bureau determined that no laws were broken, but that CDC personnel rules were violated by a CDC employee, it would report its findings to the YACA Inspector General.

We propose that the bureau be reimbursed for the cost of such investigations by the YACA Inspector General, and that funding be provided annually through the YACA budget for this purpose. We also recommend that the types of cases subject to referral to the bureau be specified clearly in statute. For example, the Legislature may wish to allow the YACA Inspector General to refer to the bureau any case involving a potential felony that could result in a state prison sentence. In the alternative, the Legislature may wish to require referral of all cases involving allegations of serious and violent felonies.

Authority Over Personnel Decisions Should Remain with the CDC

The YACA Inspector General's Office should be authorized to recommend appropriate disciplinary action when it has determined that wrongdoing has occurred. However, we recommend that the authority to actually discipline correctional personnel in response to investigative findings rest with the CDC Director and CDC wardens and not with the YACA Inspector General. In our view, this approach best assures that CDC personnel are held accountable to CDC supervisors. Granting disciplinary authority to the YACA Inspector General, in our view, could undermine the authority and ability of the CDC to manage its workforce.

We also recommend that the YACA Inspector General be empowered to initiate investigations on his own authority, regardless of whether a warden has sought one.

Improve Procedures for Investigation

We recommend that all internal affairs investigators assigned to the YACA Inspector General be required to receive appropriate and comprehensive training, such as that provided by the Commission on Peace Officer Standards and Training (POST), qualifying them for internal affairs duties. This training would ensure competent and consistent investigations and bring the YACA investigators up to the standards of other law enforcement internal affairs units. This requirement should be phased in by a date to be determined by the YACA Inspector General so that ongoing investigations would not be disrupted by a shortage of investigators with the needed certification.

Improve the Prosecution of Cases

We recommend that the Legislature enact a statute granting the Attorney General the power to request that the presiding superior court judge in a county convene a grand jury to examine allegations of criminal wrongdoing by state employees within that county's jurisdiction. We believe the establishment of such a procedure would avoid needless delays in processing a case in the event that local prosecutors have already convened a grand jury. Such a statutory change would also provide internal affairs investigators with a powerful investigatory tool to compel truthful testimony about alleged wrongdoing before a grand jury.

Improve the Quality and Training Of Correctional Personnel

Because the state prison population is projected to grow steadily for at least the next decade, the number of correctional officers and other CDC personnel will have to grow to keep pace. The CDC will probably have little choice but to continue its practice of rapidly promoting many correctional officers to mid-level management positions as the prison system expands. Given this situation, we believe the CDC should provide additional training for correctional officers who move up the ranks to sergeant and lieutenant positions to ensure they have the skills to ensure appropriate employee discipline and to deter employee misconduct.

We also recommend that, beginning with the 1998-99 fiscal year, the CDC require standard psychological screening of *all* applicants for correctional officer positions. It is likely that screening all applicants will result in the selection of more qualified and professional correctional officers who are less likely to become the subject of internal affairs investigations.

We believe most of the resources needed to implement these changes can be obtained by redirecting funding and personnel already provided to the Richard McGee Academy and the Selections and Standards Branch of CDC. It appears likely that once the CDC builds a sufficient pool of trained cadets in the budget year it will not need as much money to select and train academy cadets after 1997-98. At that point, some CDC resources could be redirected to expand training of mid-level managers and to expand psychological screening of correctional officer candidates.

Conclusion

Alternative Models for Reform. While we have outlined our concept for reorganization of CDC internal affairs operations, there are alternative models for reform that the Legislature may wish to consider.

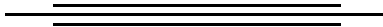
For example, the Legislature may wish to create an independent commission with authority over internal affairs and other operations, such as has been proposed in SB 93 (Ayala). Under the proposal, a five-member Commission on State Prison and Institutional Security would be established with broad authority to order changes in security policies, including the conduct of internal affairs operations. The YACA Inspector General would provide the staff for the commission. We are advised that the CDC is also drafting its own proposal for consolidating internal affairs operations within the CDC rather than with the YACA Inspector General, as we have proposed.

Benefits of LAO Proposal. We believe the proposal we have outlined above provides several potential benefits:

- The plan could be implemented, at least initially, through the redirection and more efficient use of existing resources. We believe that is preferable to adding funding and staffing to a system that is not operating in a cohesive manner or creating yet another office with authority over internal affairs matters.
- Unifying investigatory power in the hands of the YACA Inspector General would restore independence and integrity to an internal affairs process that has lost credibility both within and outside of the CDC without undermining the disciplinary authority over personnel of the CDC director or prison wardens.
- In the long run, we believe our proposal would best help the state avoid or perhaps even reduce the now-growing costs of litigation, judgments and settlements stemming from episodes involving serious misconduct by CDC personnel.

Analyst's Recommendation. Accordingly, we recommend that the Legislature adopt supplemental report language directing the Secretary of the YACA, in consultation with the Director of the CDC and the YACA Inspector General, to draft a plan and timetable for the reorganization of CDC internal affairs operations as outlined above by December 1, 1997. The Secretary also would be directed to examine whether CDC internal affairs operations should be further consolidated with similar functions in the Department of the Youth Authority. We recommend the specific language in our analysis of YACA in the Departmental Issues section of this chapter.

In the interim, we recommend that the Legislature consider legislative changes to the statute which created the YACA Inspector General, Chapter 766, Statutes of 1994 (SB 1462, Maddy), in order to make this position the chief investigator of CDC internal affairs cases. Because it will take time for this proposal to be implemented, we also recommend approval of \$109,000 and one position requested in the CDC budget in the meantime to assist the Law Enforcement and Investigations Unit in handling an increased internal affairs workload.



REFORMING CALIFORNIA'S JUVENILE JUSTICE SYSTEM

The amount of crime committed by juveniles has been increasing and will likely continue to increase in the early part of the next century. Because of concerns about juvenile crime and the ability of the juvenile justice system to handle it, the Legislature created a blue-ribbon task force to look at the issues and make recommendations. The task force's recommendations were recently released and focused in six major areas, ranging from the need for greater juvenile justice system leadership to more delinquency prevention services.

In this piece, we briefly review the state of the juvenile justice system and focus on the recommendations of the task force. We recommend that the Legislature enact many of the task force's recommendations and modify others.

BACKGROUND—CALIFORNIA'S JUVENILE JUSTICE SYSTEM

California's juvenile justice system is actually a multitude of systems, programs, and organizations that are designed to serve both the needs of juvenile offenders and protect public safety. Although called a system, it is not always coordinated or interrelated, mainly because so many different groups and organizations have overlapping and sometimes differing responsibilities for dealing with juvenile offenders.

The juvenile justice system has evolved over the years based on the premise that juveniles are different from adults, and juveniles who commit crimes should be treated differently than adults. Separate courts, detention facilities, rules, procedures, and laws were created for juveniles with the intent to protect their welfare and rehabilitate them, while protecting public safety. Juveniles, like adults, can be charged with a felony, a misdemeanor, or an infraction. Juveniles can also be charged with

offenses unique to the young (these are known as status offenses—such as truancy, curfew violation, and running away).

Characteristics of the System. The juvenile justice system is primarily a local responsibility. County probation departments supervise 97 percent of the state's juvenile offenders; the remaining 3 percent are committed to the Department of the Youth Authority and become a state responsibility. In contrast, almost 20 percent of adult offenders are sent to state prison. In addition to probation departments, county departments of social services, child protective services, mental health, drug and alcohol programs, county offices of education, along with local school districts, all provide services for juvenile offenders. Also, many law enforcement agencies have resources that deal specifically with juveniles and the juvenile justice system.

The agencies that arrest, detain, and incarcerate juveniles are allowed a variety of options for dealing with juveniles, in contrast to the system that deals with adults. For example, for very similar crimes, juveniles can be detained in juvenile or adult facilities, tried in juvenile or adult courts, subjected to juvenile or adult sentences, and be incarcerated only with juveniles or only with adults or a mixture of the two.

Further adding to the complexity of the system are the sometimes contradictory goals of protecting the welfare of the juvenile offender and protecting the public. For example, much discussion has centered around questions of which type of court should have jurisdiction over certain types of juvenile offenders, whether juvenile records should be confidential, and when rehabilitation should give way to punishment.

The State of Juvenile Crime. There is no accurate measure of how many of California's almost four million 10 to 17 year olds (the ages most likely to commit crimes) are actually involved in criminal activities. While there is very limited data on juvenile crime, we are able to use juvenile arrest statistics as a measure of activity.

Based on arrest data, juveniles were responsible for 16 percent of all arrests in 1994 (the most recent year for which data are available), while accounting for just 10 percent of the state's population. Furthermore, juveniles were responsible for 15 percent of all arrests for violent offenses in 1994.

While the juvenile arrest rate for violent crime has increased 63 percent since 1985, the rate has actually declined in the past three years. The decline could be due to a variety of factors. For example, the arrest rate may have declined because fewer juveniles have committed crimes as a consequence of prevention, suppression, and enforcement efforts. On the

other hand, the rate may have decreased because of limited law enforcement resources have resulted in fewer arrests, not fewer crimes.

Regardless of the data, there is a strong public perception that juveniles are responsible for a disproportionate amount of crime. For example, in a 1996 survey, two-thirds of those sampled responded that they believed that youth violence had increased in their communities. The same proportion of respondents also believed that juveniles commit more violent crimes than adults.

Prevention and Intervention Services. There is a continuing debate on what methods and services are best to prevent or intervene with juveniles who are “at-risk” of becoming delinquent or have already committed an offense. Using specific indicators, juvenile justice system professionals believe they can identify those juveniles who, absent intervention, would be at-risk of becoming habitual offenders. How best to prevent juveniles from becoming habitual offenders is still being evaluated. However, there has been much research showing that integrated, multi-disciplinary services appear to help divert juveniles from a life of crime.

Because the juvenile justice system is primarily locally-administered, there is no statewide authority responsible for evaluating what types of programs are effective, how information on the success or failure of programs can be exchanged, and how to ensure that limited resources are used for the appropriate populations and ensure the greatest chance for success.

Juvenile Justice System Data. There is a serious lack of data on most parts of the juvenile justice system. For example, crime statistics only identify how many juveniles are arrested. There is no statewide data on how many juveniles are detained, adjudicated, or incarcerated in California. Furthermore, information is not available on whether a juvenile fares better in juvenile or adult court, or which court of jurisdiction gives “tougher” sentences to juveniles. Similarly, no comprehensive data are available on the prevalence and trends for most risk factors—those factors that indicate that a juvenile is more likely to become delinquent—such as data on school truancy, juvenile weapon possession, or adolescent substance abuse. Finally, the state doesn’t measure the effectiveness of many of its efforts to prevent, suppress, or reduce juvenile crime.

Effects of Demographics and Other Changes. In our May 1995 report entitled *Juvenile Crime—Outlook for California*, we reported that California’s juvenile population is projected to grow over 20 percent through 2004. This increase in the juvenile population has the potential for significant increases in the number of juvenile arrests in the future.

We also identified in that report several other indicators of future growth in juvenile criminality. For example, we reported significant increases in reports of abused, exploited, and abandoned children. In addition, we noted significant school dropout rates among certain young students. Furthermore, recent federal data indicate increases in gang activity, gang-related crimes, and juvenile possession of firearms. Finally, drug testing at three California jails shows significant increases in the number of juveniles who tested positive for drugs at the time they were arrested.

STATE ACTIONS TO ADDRESS JUVENILE JUSTICE PROBLEMS

The state has taken a variety of steps to deal with juvenile crime. In the current year, the state will spend more than \$500 million to support more than 34 different juvenile crime prevention and intervention programs. Many of these programs attempt to address the factors which put youth at risk of committing crimes. In addition, a blue-ribbon task force has just completed a major study of the juvenile justice system and made many recommendations in six major areas. We recommend that the Legislature adopt many of the recommendations and modify others.

Because of continuing concern about juvenile crime and the juvenile justice system's response to crime, the Legislature enacted Chapter 454, Statutes of 1994 (AB 2428, Epple), which established a task force to analyze all aspects of the juvenile justice system, find creative solutions, explore alternatives, and recommend a plan for improvement. The California Task Force to Review Juvenile Crime and the Juvenile Justice Response met for one year to study all aspects of juvenile justice issues. At the end of its deliberations, the task force unanimously concluded that it is important to retain a juvenile justice system separate from the adult court system, but it also concluded that the system needed to be changed.

The task force, in its final report released in December 1996, identified recommendations in six areas for improving of the juvenile justice system. Figure 5 (see page 28) shows these major areas. We discuss each of them below, along with our analysis of the task force recommendations.

Need for Leadership

The task force noted that there is a lack of comprehensive leadership in the state's juvenile justice system. As noted above, juvenile justice is primarily a local activity. As a consequence, there is no state-level entity that monitors, coordinates, or even tracks the juvenile justice system.

Figure 5

**California Task Force to Review Juvenile Crime
and the Juvenile Justice Response
Major Recommendations**

- There is a need for increased local and state level leadership in juvenile justice.
- The state should adopt a “balanced and restorative” approach to juvenile justice reform.
- Juvenile delinquency prevention should be a priority.
- Juvenile court reforms are needed to improve the system.
- There is a need to improve data collection, analysis, and dissemination.
- Funding options need to be explored, developed, and expanded.

The task force recommended that the state create a single state department or agency with responsibility for oversight, planning, development, and coordination of juvenile justice policy and program delivery. In addition, the task force recommended establishment of a state office for the prevention of youth violence.

At the time this analysis was prepared, there have been no actions to create a single state agency for juvenile justice issues.

Analyst’s Recommendation. We concur with the task force that there is a need for better statewide coordination of juvenile justice issues. We do not believe, however, that the state should create a new state agency, especially one with such large and diverse responsibilities. The new agency envisioned by the task force would exercise *state* control over juvenile justice policy. However, the current juvenile justice system, like law enforcement, is primarily a *local* responsibility. We believe that the state should not extend its control to those governmental functions that are primarily local in nature.

In our 1993 report on sorting out state and local responsibilities, *Making Government Make Sense*, we noted that the state should seek to maximize the separation of state and local duties to ensure that state and local systems of government worked most effectively. Establishing a single agency could take away local agency accountability for system performance and reduce local flexibility for meeting local problems. Often, what works in one part of the state may not be an appropriate solution in another part of the state. A single state agency for juvenile justice might take from local agencies the flexibility and responsibility for local solutions to local problems.

As an alternative to assuming state control of the juvenile justice system, we believe that the state should aid local governments with better coordination and information sharing. Rather than creating a new state agency, the Legislature should consider designating an existing department, such as the Department of the Youth Authority or the Board of Corrections, as the lead state agency for juvenile justice program information-sharing, providing technical assistance to local agencies, and coordinating state juvenile justice funding. This new juvenile justice coordinating effort would work with local agencies to share information and coordinate services, but would not assume local responsibility for the operation of the juvenile justice system.

Balanced and Restorative Justice

The task force recommended that the state embrace the concept of “balanced and restorative justice” as a guiding philosophy for juvenile justice. Balanced and restorative justice is a relatively new concept that essentially changes the goal of the justice system. The current goal of the criminal justice system is to punish those convicted of crimes. Furthermore, the existing system arrests, tries, convicts, and incarcerates an offender on behalf of the state. Court sanctions are based on the crime, and the needs of the victim, community, and offender are generally not part of the judicial decision-making process.

In contrast, the balanced and restorative approach shifts the emphasis to balance the need for punishment with the need to restore the victim and community. The approach clearly identifies punishments for offenders, but goes beyond simple punishment. In practice, an offender is not only punished, but must take actions to “restore” the victim and the community. Therefore, this system does not rely simply on incarceration for punishment, but also requires restitution, community service, and offender education. Each sanction is tied to restoring the community. For example, in jurisdictions that use this model, an offender must meet with the victim of his or her offense to determine how best to make restitution

and for the offender to understand the impact of his or her crime on the victim. Furthermore, the victim will be allowed to recommend where the offender might perform community service, such as maintenance work at the victim's favorite park

In addition, the balanced and restorative approach recognizes that the community also has a level of responsibility. This responsibility is to ensure that the offender leaves the justice system more capable of productive participation in society than when he or she entered the system. Consequently, the offender will be punished, but also will receive services in the community (such as education or substance abuse treatment) that will enable him or her to find alternatives to criminality.

In order to implement balanced and restorative justice, the task force recommended changing state law to specify that the balanced and restorative approach be the goal of the juvenile justice system. In addition, the task force recommended that the state provide technical assistance to local agencies to implement the new philosophy.

The Youth Authority has attempted to incorporate some of the precepts of balanced restorative justice into its mission. For example, the Youth Authority's budget includes funds for community service programs for its parolees. The goal of these programs would be to "restore" the communities where parolees committed their criminal offenses through unpaid labor.

Analyst's Recommendation. We recommend that the Legislature consider changes to existing statutes that would allow counties, local entities, and the courts to change the emphasis of the juvenile justice system to the balanced and restorative approach. We believe that the implementation of this approach has the potential for making the juvenile justice system more effective. Offenders who would be required to restore their community through restitution and community service are more likely to understand the consequences of their criminal acts and less likely to re-offend. Furthermore, the system attempts to ensure that offenders get the services they need to become productive members of the community. In addition, the approach works to ensure that victims of crime and the community as a whole have a greater voice in the justice system.

In order to implement such an approach, the Legislature should establish a lead agency to provide technical assistance and training. The Legislature could make the provision of technical assistance for balanced and restorative justice one of the responsibilities of the juvenile justice coordinating effort we discussed above. Alternatively, the Legislature might decide to contract with one of the private nonprofit organizations in the state that provide these services.

Juvenile Delinquency Prevention

The task force made a variety of recommendations related to prevention and intervention programs. The task force identified family, individual, community, and societal risk factors that contribute to juvenile crime, and made recommendations for prevention programs that would address these risk factors. The task force did not, however, recommend criteria that prevention programs should meet. In addition to reviewing prevention models, the task force recommended that legislation be enacted that eliminates specific statutory barriers to the sharing of information among agencies that serve juvenile offenders and their families.

The Legislature and the administration have acknowledged the importance of prevention efforts for the juvenile justice system. In fact, the current-year budget includes more than \$500 million to support 34 different programs in eight departments. Some of these programs provide general types of prevention services to wide and diverse target populations. For example, the Department of Alcohol and Drug Program's "Friday Night Live" program, provides funds for peer programs to keep teenagers from using alcohol or drugs. Some of the programs target specific risk factors, such as the Department of Social Services' Child Abuse Prevention Program. Other programs are specifically aimed at juvenile offenders. For example, the Repeat Offender Prevention Program in the Board of Corrections provides funds to counties to establish integrated services for first-time juvenile offenders.

Criteria for Prevention Programs. We believe that, to be successful, prevention programs should have certain elements. A prevention program should have:

- **Detailed Prevention Goals.** The program goals should specifically identify the risk factor or behavior that will be addressed. The goals should be both achievable and measurable.
 - **Target the Program Population.** The program should also identify the population that will be served. Identifying a specific population with specific needs, allows resources to be targeted.
 - **Allow for Flexibility in Implementation.** Recognizing that juvenile offenders have many differing problems, and that each community is different, allowing for program flexibility will promote local solutions to local problems.
 - **Maximize Available Resources With Integrated Services.** To ensure the most economical provision of services, programs should require multi-agency participation and provide integrated services. Without this type of approach, agencies might needlessly duplicate
-

expensive services or fail to maximize other sources of funds, such as federal funds.

- ***Evaluating Program Performance.*** Each program should have a mechanism to measure whether it is accomplishing its goals. The evaluation should show the performance of the program and document successes (and failures) and allow for information sharing.

Some of the prevention programs established in the current year have these attributes. For example, the Juvenile Crime Enforcement and Accountability Challenge Grant Program administered by the Board of Corrections—a \$50 million one-time local assistance program established by Chapter 133, Statutes of 1996 (SB 1760, Lockyer)—meets these criteria. The grant program identifies the population that should be served and requires an integrated, multi-disciplinary approach to serving the target populations. The program allows each county to develop its own local solutions for serving targeted populations. In addition, the counties identify how they will determine whether the program works or not and will complete periodic evaluations of the program. The Board of Corrections will also evaluate the program during and at the end of the grant period.

Analyst's Recommendation. We strongly agree with the task force's conclusions about the need for prevention programs for juvenile offenders. However, we believe that successful prevention programs must meet the criteria outlined above. As a consequence, we recommend that the Legislature use these criteria as it reviews proposed new prevention programs. If an individual program does not meet the criteria, the Legislature should reject the proposal. The Legislature should also apply these criteria to a review of existing programs. Further, as noted above, the Legislature should ensure that the lessons learned from these programs are shared. This can be accomplished by the state agency that would be responsible for coordination of juvenile justice issues.

Furthermore, the Legislature may wish to consider continuing or augmenting funds for certain programs that meet the prevention program criteria, but may not be fully funded. For example, the Board of Corrections will be evaluating requests from counties and awarding funds for the Juvenile Crime Enforcement and Accountability Challenge Grant program in the spring. The Governor's budget does not propose to continue the program in 1997-98. If the Board of Corrections identifies meritorious applications that exceed the available funds, the Legislature might consider continuing this program with sufficient funding to fully fund these applications.

Juvenile Court Reforms

The task force made several recommendations in the area for juvenile court reform. The task force recommended approaches for ensuring first-time offenders would be adjudicated expeditiously and would receive appropriate punishment. Currently, many first-time offenders are not adjudicated and are not punished because resources in the system are reserved for more serious or habitual offenders. The recommendations recognize that research has shown that “swift and certain” punishment for these offenders is one of the most effective ways to reduce chronic delinquency. The recommendations include streamlined and informal systems for ensuring that all juvenile offenders receive swift, certain, and appropriate discipline.

The task force also made a series of procedural recommendations to improve the court process for adjudicating serious and violent juvenile offenders. These include recommendations for streamlining hearing processes, clarifying processes for selecting judges, and assuring that victims are represented in the court process. The task force also recommended that parents be mandated to attend court hearings and that they be sanctioned if they fail to appear.

Juvenile or Adult Sanctions. The task force did not make a recommendation on a model for when juveniles should be tried as adults and receive adult punishments. The question of how best to handle young offenders who commit serious offenses is a difficult one. On one hand, there is public belief that the current juvenile court system is too lenient on juvenile offenders. For those who hold this position, the most effective remedy is to have serious and violent juvenile offenders tried in the adult criminal courts (often referred to as “remanded” or “waived” to adult court). Advocates of this approach differ on how best to accomplish this, some placing discretion with prosecutors for deciding when a juvenile is sent to adult court and others believing that decisions should be mandated in statute. There is also a great deal of debate over the age at which a juvenile offender should be sent to the adult court. Current law allows minors as young as 14 to be tried as an adult.

On the other side of the debate, some advocates believe that these offenders, even those who commit heinous crimes, are nevertheless still juveniles with special needs that can only be addressed in the juvenile court. Even among those who take this position, many believe that there are some types of offenders who should be transferred to the adult system. Those who favor keeping most minors in the juvenile justice system seek to ensure that in any “fitness” hearing—a proceeding where the juvenile court makes a determination that an offender is not fit for the juvenile court—the prosecutor has the burden of proving the juvenile is

not fit for juvenile court and should be remanded into the adult court system.

Complicating this debate is the lack of data on what type of system works best. It is not known how many minors are tried as adults in California, nor, more importantly, we do not know the disposition of their cases. We do not know if juvenile offenders receive harsher sentences in adult court or if transferring juvenile offenders to adult court has a deterrent effect. Research from other states shows that juveniles tried in adult court tended to receive *more lenient* treatment than did a comparable group of youths in juvenile court. This more lenient treatment may be due to the offender's age (and its effect on a jury). It may also be attributable to the fact that juvenile offenders, as a consequence of their age, do not have long criminal conviction records, and the severity of adult sentences is often based on prior criminal record. Because of this lack of data, the task force did not make a recommendation on the best model for dealing with serious and violent juvenile offenders.

Analyst's Recommendation. We recommend that the Legislature adopt the task force recommendations for improving judicial proceedings, especially the task force recommendations for ensuring expeditious adjudications for first-time offenders. We also agree with the task force recommendation for recognizing the needs of victims in the court process. We note that these concerns can be addressed through changes in court procedures and through the adoption of the balanced and restorative justice approach.

To address the question of which court is the most appropriate one for dealing with serious and violent juvenile offenders, we recommend that the Legislature consider adopting the concept of "blended jurisdiction." This concept keeps responsibility for the juvenile in the juvenile courts, but extends to the youth who has committed serious and violent crimes many of the procedural guarantees found in adult courts, such as jury trials. With blended jurisdiction, the juvenile court could impose both a juvenile and adult sanction on juvenile offenders who are convicted of committing serious or violent crimes. The adult sentence for a juvenile offender would be "stayed" until the offender successfully completed all of his or her juvenile sentence (incarceration and parole), and for a period afterwards. If, at any time during this period the juvenile committed another offense, the original adult sentence would be imposed, allowing for immediate incarceration in state prison. In this way, the juvenile could utilize all rehabilitative programs available to juvenile offenders, while at the same time being subject to the more severe adult sentence if the offender commits a subsequent offense. Legislation introduced in 1996, SB 2126 (Marks), contained these elements of a blended system.

Data Collection, Analysis, And Dissemination

The task force identified many juvenile justice system data deficiencies. As noted above, there is virtually no comprehensive, statewide data on most aspects of the juvenile justice system. The task force recommended that the state Department of Justice (DOJ) reinstate data collection for juvenile criminal justice statistics and that systems be developed to track offenders in both the juvenile and adult justice systems.

The Legislature has already addressed one of the task force's recommendations. Chapter 803, Statutes of 1995 (AB 488, Baca) requires that the DOJ reinstate its systems for collecting and reporting juvenile justice statistical data. According to the DOJ, the first statewide reports from the system will be available in August 1998. In addition, for the current year, the Legislature appropriated \$300,000 to the Youth Authority to contract for a study of the long-range needs for juvenile justice system data collection. The contractor will be required to look at all aspects of data availability and collection for the juvenile justice system. The contractor will look at both the criminal justice systems, such as arrest and court disposition data systems, but also review other non-criminal systems, such as educational and social services systems. The contractor will provide a long-range plan for addressing the data deficiencies it identifies.

Analyst's Recommendation. We recommend that the Legislature defer any further action in this area until the long-range plan is completed.

Juvenile Justice System Funding

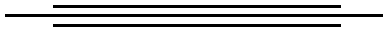
The task force reported that the state's juvenile justice system suffers from serious financial problems at every level. The task force found that funding for juvenile justice programs is fragmented. The fragmentation is the result of several different agencies serving juvenile offenders, which often do not coordinate funding for services. Many persons testifying before the task force noted that there are chronic and severe resource shortages in local programs, especially in county probation departments. The task force reported that the most troubling aspect of juvenile justice funding was the absence of any coordinated, statewide plan to ensure that funds were made available in a balanced manner for all elements of the juvenile justice system—prevention, intervention, suppression, enforcement, and incarceration—resulting in disproportionate spending in some areas, such as incarceration programs, with less funding for other areas, such as prevention programs.

The task force recommended reorganization of financing for juvenile justice, including consolidating funding through a single state agency for

juvenile justice. The task force recommended that funding decisions be made based on caseload distribution, and that policymakers pursue a realignment of funding to ensure that an optimum balance is reached for all components of the juvenile justice system.

As noted above, the state has made a significant investment in juvenile justice programs. Several of the new state-level initiatives (such as the Challenge Grant program) require recipients to fully leverage other sources of funds and develop local resources to maintain the new programs when state funding declines. In addition, many counties have been investigating methods for using disparate funding sources to provide integrated services. For example, in Ventura County, departments that serve the same juvenile caseloads, such as probation, social services and mental health, pool funding to maximize all sources of funds, including federal funds. However, there is no system by which counties that have found new ways to maximize the use of funds can share this knowledge with other counties. Furthermore, various county agencies have identified statutory and regulatory barriers to using various funding sources to provide integrated services. For example, there are statutory and licensing barriers that prevent counties from developing privately operated facilities for juvenile offenders. As a consequence, counties lose the ability to develop alternatives to placements in the Youth Authority.

Analyst's Recommendation. Because so many juvenile offenders need a variety of services to prevent continued criminality, the Legislature should encourage the provision of integrated services using a multiagency approach (such as that used in Ventura County). Such an approach would ensure that existing resources are maximized. To facilitate this type of approach, we recommend that the Legislature designate the state juvenile justice coordinating agency described earlier as responsible for identifying and coordinating information on juvenile justice funding. The agency could take the lead in identifying funding sources and working with local agencies to maximize all types of funding for juvenile offenders. Furthermore, we recommend that the Legislature consider removing any barriers to maximizing juvenile justice funding.



CALIFORNIA'S JAILS AND JUVENILE DETENTION FACILITIES

Changes in California's population, increasing numbers of persons arrested for crimes, and changes in law have had significant impacts on local correctional facilities for adult and juvenile offenders. While the number of jail beds in California has more than doubled since 1980, many of those arrested for crimes are never booked into jail and thousands of offenders are released after serving only a fraction of their jail sentence because of a lack of space. The state's juvenile detention facilities have remained virtually unchanged over the past 30 years, even though the types of juvenile offenders have become more violent and the number of offenders has increased. In this section, we summarize the state of California's jails and juvenile facilities.

California's 58 counties are responsible for detaining, in secure facilities, both juveniles and adults who (1) have been arrested for a crime and are awaiting trials or court decisions, or (2) are serving time for committing a crime. Adult offenders are housed in county jail facilities. Jail facilities are generally the responsibility of the county sheriff. Juveniles are housed in juvenile halls or other county detention facilities, such as ranches and camps. County juvenile detention facilities are generally the responsibility of the county's Chief Probation Officer. These adult and juvenile local detention facilities are literally the "front door" of the state's criminal justice system.

The state's Board of Corrections oversees the operations of jails. It does this by setting jail standards, inspecting facilities biennially, establishing staff training standards, and administering jail bond construction funds. In addition, the board maintains data on the state's jails. The board also sets standards for, and inspects, local juvenile facilities.

California's Jails

The state's 460 jails are operated by county sheriffs (except in Napa and Santa Clara Counties, where county corrections departments, responsible to the board of supervisors, operate the jails). In addition, some city

police departments operate jails. However, state regulation provides that police department jails are for holding prisoners for less than 48 hours. Incarceration of presentenced and sentenced jail inmates is a county responsibility. In 1993-94 (the most recent data available), counties reported that jail expenditures totaled \$1.2 billion. Almost all of these costs are borne by counties. However, in the current year, county sheriffs received \$12.5 million from the General Fund to support their jail operations. Figure 6 shows some basic characteristics of the state's jail system.

Figure 6

California's Jails

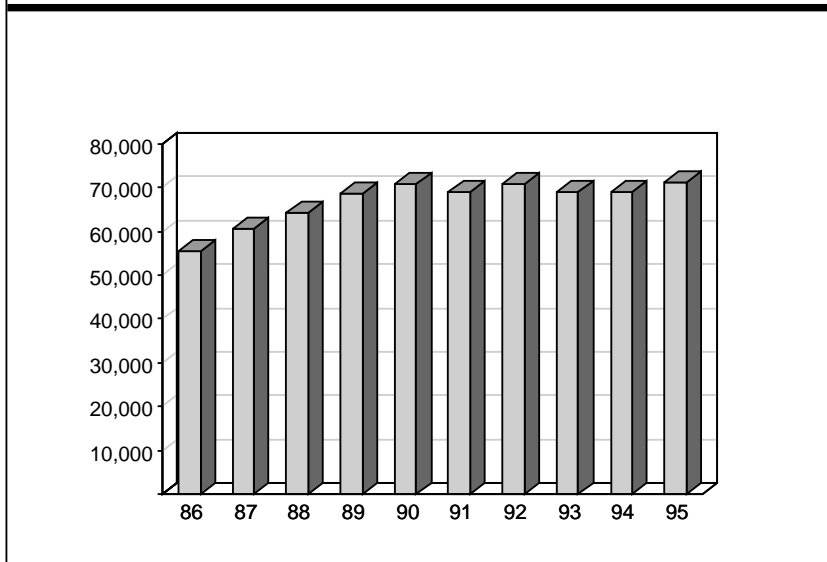
- 1.3 million people booked into California jails in 1996.
- Average daily population of jails in 1996 was 72,473 individuals.
- Capacity of the state's jails was 66,358, resulting in overcrowding of 109 percent.
- 70 percent of inmates are being held on felony charges.
- 59 percent of inmates are awaiting trial or sentencing; the remaining 41 percent are sentenced.
- 27 counties, accounting for 74 percent of all jail beds, are under court imposed population limits.
- By the year 2000, the average daily population is expected to be 102,247, with a capacity of 68,982 beds, resulting in overcrowding of 148 percent.

In 1980, there were almost 32,000 jail beds statewide. However, by 1996, after the largest capital outlay program for county jails in the United States, the number of beds increased to just over 66,000. This building program was largely funded by \$1.5 billion from five state general obligation bonds passed throughout the 1980s. Monies generated from the bond issues have been used to construct more than 27,000 new jail beds. To qualify for state bond monies, counties were required to pay 25 percent of the costs of new construction. The Board of Corrections reports, however, that local governments actually paid about 50 percent of all costs. A 1996 bond measure (Proposition 205), that would have provided \$350 million for local jails, was defeated by the voters in the November election.

How Many People Are in Jail? Almost 1.3 million adults, more than 104,000 per month, were booked into jail in 1996. On any given day the state's jails house between 70,000 and 75,000 adults either awaiting trial, court decision, or who have been sentenced. More than 70 percent of jail inmates are being held for, or have been convicted of, felonies. Almost two-thirds of the jail population is awaiting trial or sentencing; the remaining inmates are serving sentences (generally less than one year). Figure 7 shows the growth in average daily jail population for the past ten years.

Figure 7

Average Daily Jail Population 1986 to 1995



California jails account for 15 percent of the nation's total jail population, and the state's average daily population exceeds the total average daily populations for all jails in the Northeastern states (including New York and Pennsylvania).

Jails Are Overcrowded. All of the state's jail facilities have experienced increased population and almost all of them have reported overcrowding. Much of this growth, prior to 1994, can be attributed to a variety of factors. Among these factors are (1) growth in the state's population, (2) increases in the number of individuals arrested for crimes, and (3) reduced capacity of certain other county facilities, most notably, county institutions for the mentally ill and substance abusers.

In 27 counties with overcrowded conditions, the federal courts have imposed limits on the number of people who can be held at any one time. Jails in these counties account for more than 70 percent of the state's total jail beds. For these counties, jail administrators have to release inmates to reduce population, whenever population exceeds the cap, or face monetary or other sanctions. As a result, inmates who would have been held for longer periods of time, either awaiting trial or to complete a sentence, are often released early.

Impact of “Three Strikes.” The implementation of the “Three Strikes and You’re Out” law has contributed to jail overcrowding. In 1996, there were approximately 6,500 “second- and third-strikers,” or 8.8 percent of the total jail population, awaiting trial. These inmates have had several effects on jails. Because persons charged with a strike are more likely to contest their cases in court rather than accept a plea bargain, they tend to stay in jail longer awaiting a trial, which has lengthened the average stay of inmates in jail. Additionally, because “strikers” stay in jail longer awaiting trial, there is a larger percentage of nonsentenced versus sentenced inmates held in jail. Longer lengths of stay and increasing numbers of nonsentenced inmates result in a smaller pool of inmates that can be released to meet population caps.

The second- and third-strike inmates require higher levels of security than average inmates, primarily because of the longer sentences these inmates are facing. For example, a person arrested for felony petty theft might spend three to six months in jail as a minimum security inmate. However, under the provisions of the “Three Strikes” law, the same inmate when charged as a “striker” could face 25 years to life. In this instance, the inmate would be reclassified as a maximum security inmate because the inmate poses a greater escape risk. Figure 8 shows the security classification of jail inmates for 1996.

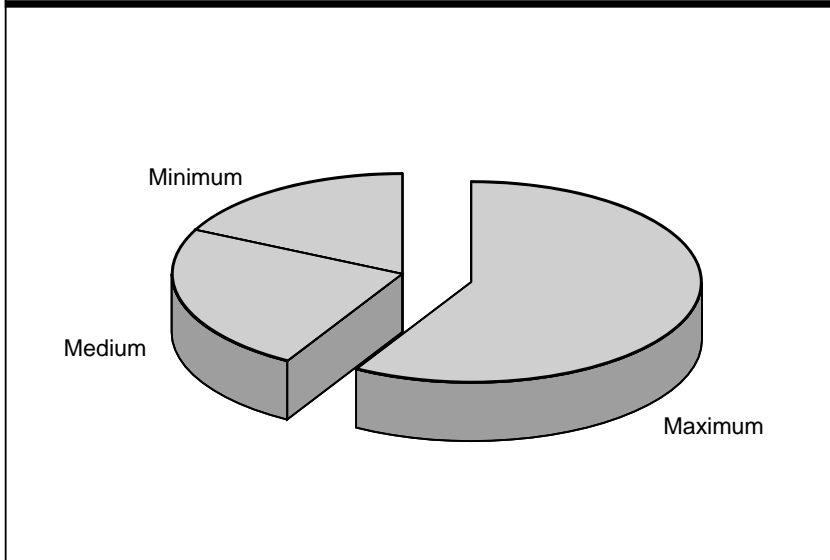
The Board of Corrections reports that the capacity of the state’s jails has decreased by up to 2,000 beds because of the changes in security needs. These beds are rated for lower security inmates (for example, these facilities could be easy to escape from without extensive modification), and cannot be used for higher-risk inmates, such as the “strikers” awaiting trial.

Large Numbers of Inmates Being Released Early. As a result of jail overcrowding, many inmates are released earlier from jail than they would be otherwise. About one third of all people arrested and booked in the state are released early because of a lack of jail space. Each month 29,000 inmates are released early from California jails—7,000 who are awaiting trial and 22,000 before the completion of their sentence. Some

jails report that sentenced inmates will serve less than 20 percent of their sentences because of overcrowding.

Figure 8

**Security Classification of Jail Inmates
1996**



Many Offenders Never Get to Jail. In addition to early releases, many jails report that they no longer accept certain types of offenders. For example, most large counties no longer accept bookings of persons arrested for misdemeanors, such as prostitutes, public inebriates, and vandals. These individuals, who in the past would have been booked and held in county jails, are now “cited and released” by law enforcement officials. The inmates released before trial and those cited and released are required to appear before court. If they fail to appear the court issues an arrest warrant. As of September 30, 1996, in more than 2.6 million cases (10 percent of them felonies), an individual who was never booked, or had been released early from jail, never showed up for court.

The Future for Jails. The Board of Corrections estimates that, in order to house all those persons who are being released early, counties would need by the year 2000 to construct jail facilities containing an additional 30,000 beds, which would cost several billion dollars to construct. If these facilities are not constructed, or other alternatives developed, larger numbers of inmates will be released early or will never be booked into

jail. In addition, there will be a continuing need to improve the security levels of existing facilities, in order to safely house inmates.

Finally, we expect that there will also be increasing numbers of mentally ill and substance abusing inmates as part of the jail populations. These types of inmates place significant and specialized demands on jail facilities. Federal drug utilization data show that in Los Angeles, San Diego, and Santa Clara Counties between 52 percent and 73 percent of all arrestees test positive for some illegal drug, regardless of offense. Those under the influence of drugs present important management problems for jail administrators.

There is no data on the number of mentally ill inmates in jail, but jail administrators in several of the largest jurisdictions have estimated that up to 10 percent of those arrested have some mental problem. Many jails, such as the Sacramento County Jail, have fully staffed mental health hospitals as part of the jail. These needs and the needs of sick inmates will also put pressures on California's jails in the future.

County Juvenile Detention Facilities

Juvenile offenders in counties are subject to a "continuum of care" where services are provided by county probation departments and other county and private agencies for prevention, intervention, supervision, and detention. Statewide there are more than 50,000 juvenile offenders under the supervision of probation departments. The offenders are supervised in their homes or in other placements, such as group homes or foster care homes, or are detained in juvenile halls, ranches, or camps. Juvenile halls, ranches, and camps, serve the same detention function for juveniles as jails do for adults. In 1993-94 (the most recent data available), statewide probation costs for adults and juveniles were \$811 million, with the majority of these costs being borne by the county. We do not know how much counties spend for local juvenile detention facilities. Figure 9 provides some basic information about the state's juvenile halls and ranches and camps.

Juvenile Halls. Juvenile offenders, after being arrested, are detained in local juvenile halls, usually for short stays. While in the hall, juvenile offenders go to school and participate in various recreational and other programs. Juveniles placed in juvenile halls usually are awaiting court action. Many of these youths are being detained for very serious or violent offenses. Figure 10 shows the types of offenses of juveniles detained in 1995.

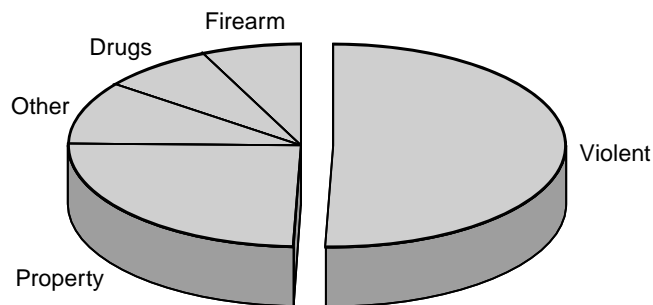
Figure 9

California's Local Juvenile Detention Facilities

- ✓ 47 juvenile halls operated by 43 counties.
- ✓ Juvenile halls house more than 6,400 juvenile offenders.
- ✓ Juvenile offenders held for violent offenses account for 50 percent of juvenile hall population.
- ✓ Ranches and camps in 25 counties.
- ✓ Ranches and camps house more than 4,000 juvenile offenders.
- ✓ Juvenile offenders held for violent offenses account for 35 percent of ranches and camps population.

Figure 10

**Offenses of Juveniles Detained
In Juvenile Halls
1995**



Almost all of the halls report overcrowding. The overcrowding is due primarily to the growth in the number of juvenile offenders. Juveniles who are awaiting trial as adults, are also detained in juvenile halls. Because of federal law, juveniles under most circumstances cannot be held in adult jail. The federal law requires that juvenile offenders cannot come in “sight or sound” contact with an adult criminal offender. Consequently, only a very small number of jails has the ability to house juveniles—ten counties with only 138 beds in 1995.

Juvenile offenders awaiting trial in adult court can stay in a juvenile hall for months and sometimes years. In contrast, the average juvenile offender awaiting a hearing before the juvenile court is detained for less than a month. At the main juvenile hall in Los Angeles, an average of up to 200 juveniles out of a total of 750 are offenders awaiting trial in adult court for murder or other serious or violent crimes. Some smaller counties report that the majority of their beds at any time are occupied by these types of offenders.

Because of overcrowding, many counties report that their juvenile halls will not accept many juveniles who have been arrested. Police agencies, when they arrest a juvenile, bring the offender to the juvenile hall. However, the probation department makes the decision to book and detain the juvenile offender. If the hall is full with violent offenders or with those awaiting trial in adult court, the arrested juvenile is not booked because no space is available. When the juvenile offender is not booked, he or she is released to the custody of parents and returned to the community. In some counties, a juvenile might be arrested several times for property offenses, such as burglary or car theft, before he or she is actually booked into juvenile hall.

Juvenile Ranches and Camps. 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 at the discretion of each county.

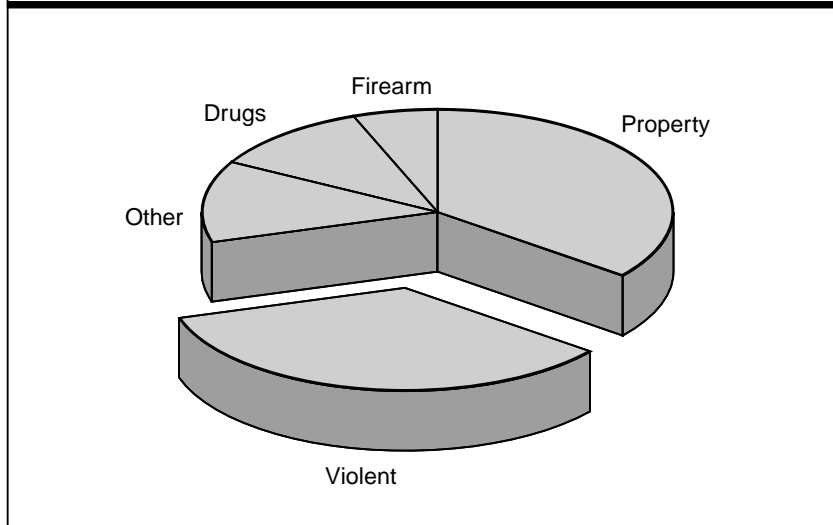
Figure 11 shows, by type of offense, the juveniles detained in 1995.

While placed in a ranch or camp, the offender receives a variety of rehabilitative services and attends school. Several county ranches and camps offer specialized programs such as “boot camps,” sports camps, and conservation camps. Generally, a ranch or camp placement is the county’s last placement option before an offender is committed to the Youth Authority. However, counties report that they do not have enough space for all offenders whom they wish to place in a ranch or camp. Recently, counties have received both federal and state funds to support

their local juvenile facilities. (We discuss this issue later in this chapter in our analysis of the Youth Authority.)

Figure 11

**Offenses of Juveniles Detained
In County Ranches and Camps
1995**



Other Placement Options. In addition to juvenile halls, ranches and camps, county probation departments use a variety of other placement options. For example, juvenile offenders can be placed in foster care or group homes if they otherwise meet the eligibility requirements for these programs. Counties also use nonresidential placements, such as day treatment centers. A day treatment center is a nonresidential placement where a probationer must report at a specified hour—usually in the early morning—and stay at the center until the evening. At the center the probationer receives schooling, counseling, and other services. In addition, the probationer is supervised for the entire time while at the center.

State Support for Juvenile Facilities. In 1988 and 1990, the voters approved a total of \$100 million in general obligation bonds (Propositions 86 and 147) for renovating, constructing, and acquiring new juvenile facilities. In November 1996, a bond measure (Proposition 205) that would have provided \$350 million for local juvenile facility construction was defeated by the voters. In addition, the state has provided General Fund support for local ranches and camps. This subsidy, allocated based on the number of available beds in each county, totaled \$32.7 million in

the current year and is proposed for the budget year. Furthermore, the Governor's welfare reform proposal includes \$139 million in federal funds for county probation departments to provide services to eligible juvenile offenders. We discuss this proposal in our analysis of the Youth Authority budget.

The Future for Local Juvenile Detention Facilities. The need for services and space for juvenile offenders is expected to increase in future years. In 1995, juveniles age 11 to 17, the population of juveniles most likely to commit crimes, was 11 percent of the state's population, but accounted for 16 percent of all arrests. California's juvenile population is expected to increase 33 percent by 2004. An increase in the juvenile population has the potential for a significant increase in the number of juvenile arrests. However, because of overcrowding, juvenile arrests do not always result in the juvenile being detained.

We also expect that the number of juvenile offenders who are mentally ill or substance abusers will likely increase. For example, probation departments report that, because there are limited county mental health resources available for adolescents, there has been a significant increase in the number of offenders who are mentally ill. Often juvenile halls are the only place in a county where juveniles can be securely detained. As a consequence, a mentally ill or suicidal juvenile is placed in a hall because it is the only place that his or her safety can be guaranteed.

In addition, large numbers of juvenile arrestees are also substance abusers. Federal data on Los Angeles, San Diego, and Santa Clara counties estimate that between 35 percent and 58 percent of all juveniles arrested tested positive for some type of illegal drug.

A March 1995 assessment of California's juvenile halls, ranches, and camps conducted for the Youth Authority identified the need for over \$350 million to upgrade and develop new juvenile facilities through the year 2000. This assessment noted that, like adult violent inmates, violent juvenile offenders require higher levels of security. Increases in the number of juvenile offenders held for violent offenders, might actually lead to a decrease in the number of state's juvenile beds because of increasing security needs. This would occur because violent offenders need closer supervision, and with existing staff resources, county probation departments would not be able to supervise as many beds. In addition, because of changing fiscal incentives that could reduce county use of the Youth Authority, counties may decide to develop new local alternative placements. There has been no estimate or assessment undertaken to evaluate the state's needs for nonresidential placement options.

Conclusion

The state's local detention facilities are overcrowded and will probably become more crowded as the century draws to an end. As a consequence of overcrowding, many offenders are being released early, either before they have been to court or after they have been sentenced. Sentenced adult inmates serve only a fraction of their sentence in many counties. Each month over 28,000 inmates are released for no other reason than the lack of space in jails.

In addition, because of the lack of jail and juvenile hall space, many offenders who are arrested are never incarcerated. While we do not have data on the number of adults who have been arrested but not booked because of a lack of space, we do know that there are over 2.6 million unserved misdemeanor and felony warrants for those who failed to appear before court. We do not know how many juvenile arrestees are never booked into juvenile halls, but are allowed to return—unpunished—to their community.

We estimate that costs for upgrading and building sufficient new adult and juvenile space could cost in the billions, although some stop-gap measures can be used to partially ameliorate the problems. In our Capital Outlay chapter of this *Analysis*, we recommend that the Legislature earmark federal prison construction funds for improving existing jail and juvenile facility security. In addition, we note that part or all of the state's monies from these federal grants can be used for construction of new local juvenile facilities. Finally, counties should be encouraged to develop alternatives to incarceration. Day reporting programs for both adult and juvenile offenders are less costly to operate and also provides a higher level of supervision than regular community supervision. County programs that prevent and intervene for the mentally ill and substance abusers could also reduce demand on both adult and juvenile facilities.



THE BACKLOG OF DEATH PENALTY APPEALS

The large number of inmates on death row who are awaiting appointment of defense counsel raises questions about 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. Although the Legislature considered several bills last year that were designed to reduce the backlog, the budget proposes no comprehensive strategy to reduce the backlog of these appointments in 1997-98. The Legislature will need to consider factors of cost, efficiency, and quality of legal representation when considering alternative solutions for this growing problem.

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 sentence of death. For those inmates who cannot afford an attorney (which is most inmates), the Supreme Court appoints either a private attorney through the Court-Appointed Counsel (CAC) program or the State Public Defender (SPD) to represent the inmate. It can take up to ten years to process an automatic appeal in the California Supreme Court, although recent changes in the requirements for certifying a court record may shorten the process. Figure 12 shows the major events in the direct appellate process in capital cases and their approximate duration. If the death penalty sentence is affirmed by the Supreme Court, the inmate can continue his or her appeals with habeas corpus claims in state and federal court.

As the figure shows, there is a considerable delay—generally three to four years—in appointing appellate counsel. One result of this lengthy appellate process has been a substantial increase in the number of inmates on death row. Figure 13 shows that there are currently 464 inmates

on death row awaiting appeal of their cases in state and federal courts. Of these inmates, 285 have direct appeal cases pending before the California Supreme Court. Appellate attorneys have been appointed to 138 of these cases. The remaining 147 inmates are awaiting appointment of an attorney.

| Figure 12 | |
|--|----------------------|
| Estimated Time to Process Death Penalty Appeal In California Supreme Court | |
| Event | Duration |
| Entry of formal death judgment in Superior Court | Process begins |
| Receipt of judgment of death in Supreme Court | 2 to 3 weeks |
| Appointment of appellate counsel | 3 to 4 years |
| Certification of the record in Superior Court and filing of the record in the Supreme Court ^a | 1 to 5 years |
| Filing of appellant's opening brief | 6 to 24 months |
| Filing of respondent's brief by the Attorney General | 6 to 14 months |
| Preparation of memorandum and oral argument before the Supreme Court | 6 to 18 months |
| Supreme Court opinion | up to 90 days |
| Total time | 6 to 15 years |

Source: Judicial Council of California.
^a Recent legislation sets new guidelines which could shorten this process.

| Figure 13 | |
|---|-------|
| Status of Cases of Inmates on Death Row January 1, 1997 | |
| Total inmates on Death Row | 464 |
| Sentences affirmed by California Supreme Court, Now appeal in federal courts | 175 |
| Sentences reversed, awaiting retrial | 4 |
| Direct appeals pending before California Supreme Court | 285 |
| Cases with attorneys | (138) |
| Cases without attorneys | (147) |

In recent years, the Supreme Court has come to rely on the CAC, in lieu of the SPD, to represent most of the inmates on death row. About 100 private attorneys are currently serving as court-appointed counsel in 116 of the 138 direct appeals cases for which counsel has been appointed. These private counsel also generally handle the state habeas corpus proceedings for those cases in which they handle the automatic direct appeal. Habeas corpus claims concern issues of whether the defendant received a fair trial. These claims often include matters which are not necessarily reflected in any of the trial court records, and require independent investigation. Examples include claims of ineffective assistance of counsel and failure of the district attorney to disclose certain evidence. Habeas corpus claims are filed in both the state and federal court. Generally, a new attorney is appointed by the federal courts for a federal habeas corpus claim.

Currently, the SPD plays a much smaller role in the process than private attorneys. The SPD has taken appointments in approximately 12 new direct appeals cases since 1992 and is currently handling only about 25 cases on direct appeal. This is due in large part to budget reductions experienced by the SPD, totaling about 15 percent since 1990-91.

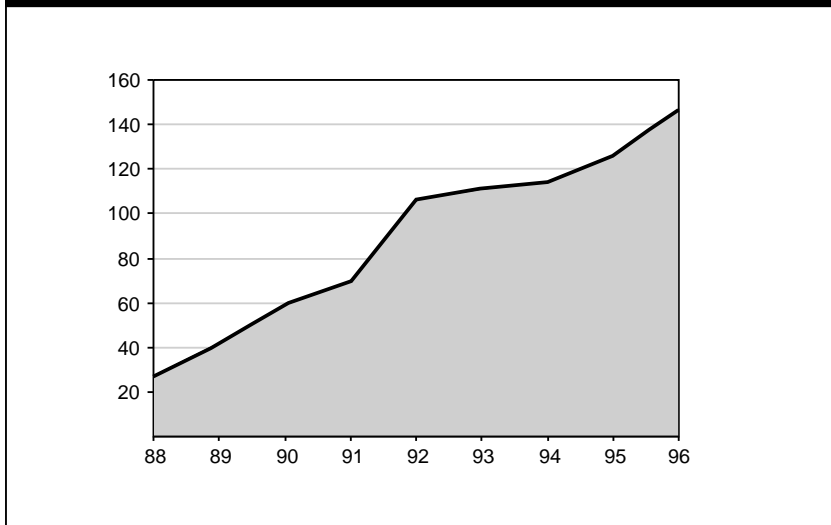
MAJOR BACKLOG OF DEATH PENALTY CASES WITHOUT ATTORNEYS

Our review indicates that there is a significant backlog of capital punishment cases in which no counsel has been appointed. As of January 1997, 147 inmates, or 52 percent of the 285 inmates on death row that have an automatic appeal of their sentences pending before the Supreme Court, were awaiting appointment of counsel. The backlog of inmates who were without defense counsel has increased substantially since 1989, when there were only 27 awaiting counsel. In recent years there has been an average of three new death penalty judgements per month, while defense counsel has been appointed for approximately two capital cases per month. Figure 14 shows how the backlog of cases has increased over the past nine years.

According to the Judicial Council, it often takes three to four years before counsel is appointed to appeal an inmate's sentence. The Supreme Court's capital appeals monitor indicates that currently appointments are being made in cases where the death sentence 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.

Figure 14

**Backlog of Death Penalty Appeals
Without Counsel
1988 Through 1996**



Backlog Worsens in the Current Year. The Judicial Council has indicated that only 2 appointments were made between June and December 1996. The council indicates that private attorneys did not take on new cases primarily due to issues concerning the possibility that the hourly rate for new appointments might increase from \$95 per hour to \$125 per hour (it actually increased from \$95 per hour to \$98 per hour). In the meantime, the backlog of cases awaiting appointment of counsel increased from approximately 128 last June to 147 as of January 1997.

STEPS TAKEN TO ATTRACT MORE PRIVATE ATTORNEYS

The Judicial Council and the Legislature have taken steps to attract more private attorneys to accept capital appeal appointments. Specifically, the payment process has been streamlined and the rates paid to attorneys handling such cases have increased.

CAC Offers Fixed Fee Option. In January 1994, in an attempt to recruit additional private counsel, the Judicial Council was authorized to pay attorneys based on either an hourly rate or a fixed-fee basis. The fixed fee option allows for six lump-sum payments to attorneys once certain milestones of the direct appeal are attained, such as record certification or

filing of the appellant's opening brief. The lump sum payments to attorneys have totaled between \$87,700 and \$232,100 per case depending on the length of the case record and the complexity of the case. Payments above \$232,000 must be approved by the court.

The Judicial Council has indicated that the fixed fee option provides appointed counsel with greater predictability regarding compensation and significantly reduces administrative paperwork. According to the Judicial Council, since this option was made available, most new cases with appointed counsel are being handled on a fixed fee basis. In addition, 30 attorneys appointed prior to January 1994 have converted to the fixed fee option.

Attorney Pay Rates Have Increased. In 1995-96 the rate paid to attorneys performing services in capital cases was increased from \$75 per hour to \$95 per hour. The *1996-97 Budget Act* increased the rate to \$98 per hour. The Governor's Budget proposes to increase the rate to \$125 per hour in the budget year. The Judicial Council has not performed a formal analysis to determine whether increasing the hourly pay has resulted in more attorneys handling these cases. However, the capital appeals monitor reported that for 1995-96, appointments increased from the recent average of two per month to three per month. While this appointment rate was not enough to reduce the backlog, it is significant in that it was enough to keep pace with the new incoming cases.

Further analysis of the impacts of the above changes will be important in determining a method to reduce the backlog of cases. The Judicial Council is preparing a report on the efficiency and effectiveness of the court appointed counsel program in the Supreme Court and the courts of appeal which should be available prior to budget hearings.

Budget For SPD Has Decreased. Prior to 1989, the SPD handled death penalty appeals in the Supreme Court and other appellate cases in the courts of appeal. However, since 1989 the SPD has focused its resources only on capital appeal cases. Since 1990-91, the budget for the SPD has decreased by 15 percent. Over this period, the total number of cases handled by the SPD has varied between 40 to 65 cases. Additionally, the office is no longer taking new cases in the federal courts, and currently has only one case pending in the federal courts. The budget request for 1997-98 does not propose an increase above current-year estimated expenditures and contains no proposals for the SPD to handle additional workload.

Legislative Solutions Considered Last Year

Three bills were introduced last session (one of which was enacted) as vehicles for the Governor's proposal to make significant changes in the handling of death penalty appeals. The proposed changes included procedural changes for the appeal process and changes in the process for appointing counsel.

Procedural Changes. Chapter 1086, Statutes of 1996 (AB 195, Morrow), sets forth new statutory guidelines for the trial court record certification process. Trial court records in death penalty cases are often longer than 10,000 pages and can reach 90,000 pages. As Figure 1 shows, currently the process of correction and certification of the record can take up to five years. The changes are intended to expedite the record certification process by setting specific time lines for the completion and correction of the record soon after completion of the trial.

Attorney Appointment Process. Two other bills, which were not enacted, would have changed the manner in which counsel are appointed for indigent persons convicted and sentenced to death. These changes would have made the California appointment process similar to the Florida process. Under the proposal, there would have been two separate entities, one for state and federal habeas corpus claims and the other for direct appeals. Senate Bill 1533 (Calderon) would have created a new state agency, the Office of Post Conviction Counsel. The primary responsibility for the office would have been to handle both state and federal habeas petitions, as is done by the Capital Collateral Representative's Office in Florida.

A companion bill, AB 2008 (K. Murray) provided that the primary responsibilities for the SPD would be for automatic appeals of death penalty cases. The intent of this legislation was to expand the SPD's responsibilities to eventually handle all the direct capital appeals so that the hiring of private counsel would no longer be necessary. The proposal included provisions for the SPD to begin a training program for attorneys and also increased pay for private attorneys taking new appointments to \$125 per hour. Under the bill, private counsel would have continued to take cases in order to help reduce the growing backlog of cases. The Governor vetoed AB 2008 because SB 1553 was not enacted by the Legislature.

WHAT CAN THE LEGISLATURE DO?

Several potential options are available to the Legislature for reforming the capital appellate process in order to reduce the backlog of inmates on death row without legal representation. Issues concerning the availability of qualified counsel and the cost efficiency of the current appellate services will be important for the Legislature to consider.

The Legislature has been concerned about the backlog of inmates on death row without legal representation. Without an attorney, which is guaranteed by the Constitution, an inmate's appeal to the Supreme Court—which is required under the state's death penalty law—cannot go forward. The current delays in appointing attorneys to these cases place serious burdens on many parties—the inmates, the families of victims, the Attorney General (who handles the appeal for the state), and law enforcement and criminal justice officials who prosecuted the original case.

Reducing the backlog of cases without legal representation will not be easy. This is because the size of the backlog is large. Given that there are only 132 attorneys currently handling these cases statewide, the Legislature should consider options which may attract more attorneys to take cases. This could prove difficult, however, because many attorneys will not meet the Judicial Council's minimum qualifications and most qualified attorneys can only handle one case at a time. In addition, the cases are frequently very long, complex, and generally unattractive. Below we discuss various options available to the Legislature in addressing this backlog.

Changing Minimum Qualifications. The Judicial Council has established minimum qualifications for attorneys appointed to death penalty cases. These qualifications include the following: (1) active practice of law for four years in California state courts or equivalent experience; (2) attendance at three approved appellate training programs, including one program concerning the death penalty; (3) completion of seven appellate cases, one of which involves a homicide; and (4) submission of two appellant's opening briefs written by the applicant, one of which involves a homicide case, for review by the court. It is not known how many attorneys in California meet the minimum qualifications.

One option available to the Legislature for increasing the pool of available attorneys is to lower the minimum qualifications required of attorneys to handle death penalty cases. Although it may be possible to attract more attorneys this way, such changes could also affect the quality of attorney services provided. We note that one reason that the Supreme Court took over the appointment process in 1992 was because of concern regarding the quality of representation that was being provided.

Increase the Pay for Attorneys. Another option available to the Legislature is to increase the pay rate for attorneys in order to attract more qualified attorneys. The Governor's budget includes a proposal to increase the rate that attorneys are paid from \$98 per hour to \$125 per hour. No formal analysis of previous pay rate changes has been performed, so it is not clear what the impact of such a change is likely to be. However, we note that the Judicial Council indicates that the proposed rate will be comparable to the rate paid to attorneys for such cases in federal court.

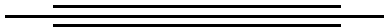
Expand the SPD and CAC. Assuming that enough qualified attorneys can be found, the Legislature could expand one or both of the current SPD and CAC programs. In order to consider this option, the Legislature may want to compare the two programs. Currently, information is not available which compares the cost, efficiency, or quality of service between the programs. In 1988, the Little Hoover Commission reviewed the operation and performance of the SPD. At that time, the commission attempted to calculate a comparative average cost per case and a comparative cost per hour of attorney's time between the SPD and private appointed counsel, but was unable to obtain adequate data to make either calculation.

Before expanding one or both programs, we recommend that the Legislature obtain more information on the comparability of cost and efficiency of the two programs and expand the program that is most cost-effective. The Legislature could direct the Bureau of State Audits to perform a management audit of the two programs to identify an average cost per case and an average cost per hour of attorney time for the two programs. Assessing differences in quality between the two programs will be more difficult, however.

In addition, before expanding an existing program, it would be important to ensure that the program has adequate workload standards and management infrastructure to make an expansion successful. For example, the SPD currently has no workload standards for attorneys. In addition, the SPD is just at the beginning stages of implementing an automated caseload tracking system in the budget year.

Move Some or All Appellate Functions to New State Agency. Another alternative would be to consider having a new state agency take over part of the appellate function. This would be similar to the concept in last year's SB 1533, in which a new Office of Post Conviction Counsel would handle state and federal habeas petitions. Similar issues to those affecting the CAC and SPD—that is the number of qualified attorneys and the need for adequate workload standards and management infrastructure—would need to be addressed in order to make sure that a new entity could manage the caseload effectively.

Conclusion: As we indicated earlier, the budget does not contain any proposals to reduce the backlog of inmates on death row without attorneys. There are several options that the Legislature could consider if it wishes to address this problem, including changes in qualifications and pay of attorneys, expansion of existing programs, and creation of new state entities. It is not clear, however, that any option will reduce the backlog in the near term.



DEPARTMENTAL ISSUES

Judiciary and Criminal Justice

YOUTH AND ADULT CORRECTIONAL AGENCY (0550)

The Secretary of the Youth and Adult Correctional Agency (YACA) is responsible for overseeing and coordinating the activities of the following departments:

- Department of Corrections.
- Department of the Youth Authority.
- Board of Prison Terms.
- Youthful Offender Parole Board.
- Board of Corrections.
- Prison Industry Authority.
- Narcotic Addict Evaluation Authority (paroling authority for the Civil Addict Program).

The agency is responsible for coordinating budget and policy direction for these departments and boards. The Office of Inspector General within the agency provides oversight of internal affairs investigations conducted within the juvenile and adult prison systems.

The budget proposed for the agency in 1997-98 is \$1.3 million, the same level of expenditures as estimated for the current year.

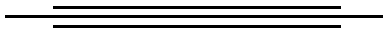
Internal Affairs Responsibilities Should Shift to Inspector General

We recommend the adoption of supplemental report language directing the Secretary of the Youth and Adult Correctional Agency (YACA) to submit a plan to the Legislature by December 1, 1997, to (1) reorganize and centralize internal affairs operations relating to California Department of Corrections personnel within the office of the YACA Inspector General, and (2) examine whether the operations should be further consolidated with similar functions in the Department of the Youth Authority.

In the Crosscutting Issues section of this chapter of the *Analysis*, we provide an analysis of the CDC's fragmented internal affairs operation and offer recommendations for improvement which we believe will reduce the state's current vulnerability to litigation and claims for damages in such cases. We propose, among other changes, that existing CDC internal affairs resources be consolidated under the YACA Inspector General. We further propose that the mission of the Inspector General be fundamentally changed from one of auditing and monitoring how internal affairs investigations are conducted to becoming the central, independent agency in charge of conducting such inquiries.

A detailed explanation of our proposal is provided in the Crosscutting Issues section of the *Analysis*. Consistent with that proposal, we recommend adoption of the following supplemental report language:

The Secretary of the Youth and Adult Correctional Agency (YACA) shall submit a plan to the Legislature by December 1, 1997, to reorganize and centralize internal affairs operations relating to Department of Corrections personnel within the office of the YACA Inspector General. It is the intent of the Legislature that the Secretary examine whether California Department of Corrections internal affairs operations should be further consolidated with similar functions in the Department of the Youth Authority.



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.

The department now operates 32 institutions, including a central medical facility and a treatment center for narcotic addicts under civil commitment. The CDC system also includes 11 reception centers to process newly committed prisoners, 52 community correctional centers, 38 fire and conservation camps, the Richard A. McGee Correctional Training Center, alternative sentencing programs, 119 parole offices, and outpatient psychiatric services for parolees and their families.

The budget proposes total expenditures of \$3.8 billion for the CDC in 1997-98. This is \$208 million, or 5.7 percent, above the revised estimate for current year expenditures. The primary cause of this increase is the growth in the inmate population and the expansion of prison facilities and staff to accommodate that growth. The Governor's budget proposal for 1997-98 provides for the activation of the state's 33rd state prison (which includes a substance abuse treatment facility), four new community correctional facilities, the leasing of additional county jail beds for state inmates, and the completion of a program to build emergency overcrowding beds on the grounds of existing institutions (\$56 million). The CDC budget has also been adjusted to reflect the full-year cost of staffing added during the current year (\$138 million).

Proposed General Fund expenditures for the budget year total \$3.7 billion, an increase of about \$250 million, or 7.3 percent, over the revised estimate for current year General Fund expenditures.

The Governor's budget assumes that the state will receive about \$299 million from the federal government during 1996-97 as partial reimbursement of the \$518 million annual 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.

OVERVIEW OF THE INMATE POPULATION

Who Is In Prison?

Figures 15 through 18 illustrate the characteristics of the state's prison population, which was about 141,000 as of June 30, 1996. The charts show:

- About 59 percent of inmates are incarcerated for nonviolent offenses (Figure 15).
- About 66 percent of all inmates were 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 14 percent of prison commitments (Figure 16).
- More than 58 percent of all inmates are between 20 and 34 years of age, with the number of inmates falling dramatically starting by the early 40s (Figure 17).
- The prison population is divided relatively evenly among whites, African-Americans and Hispanics (Figure 18 on page 62).

Figure 15

Prison Population by Type of Offense June 30, 1996

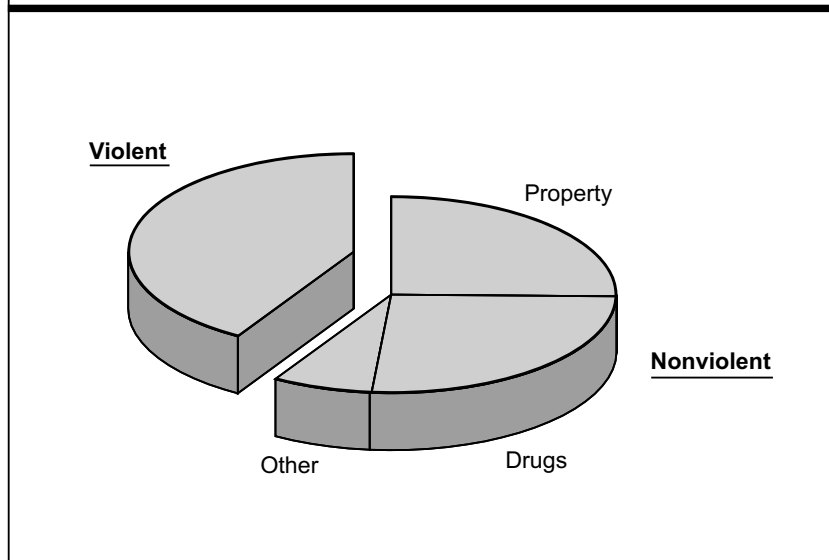


Figure 16

**Prison Population by Area of Commitment
June 30, 1996**

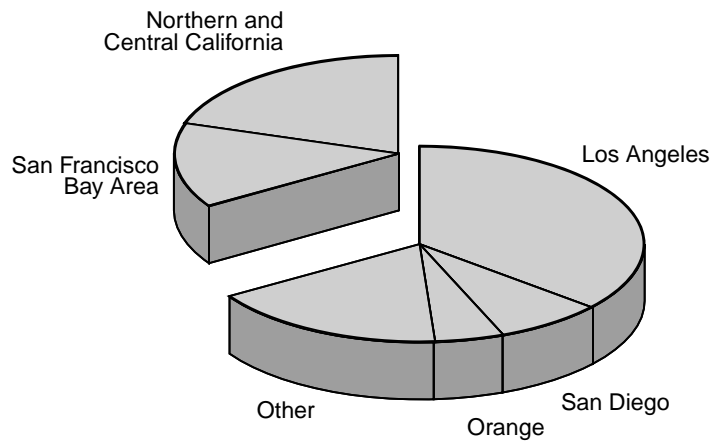
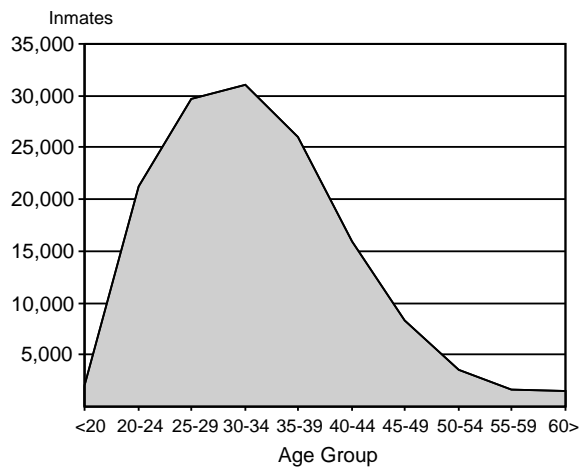
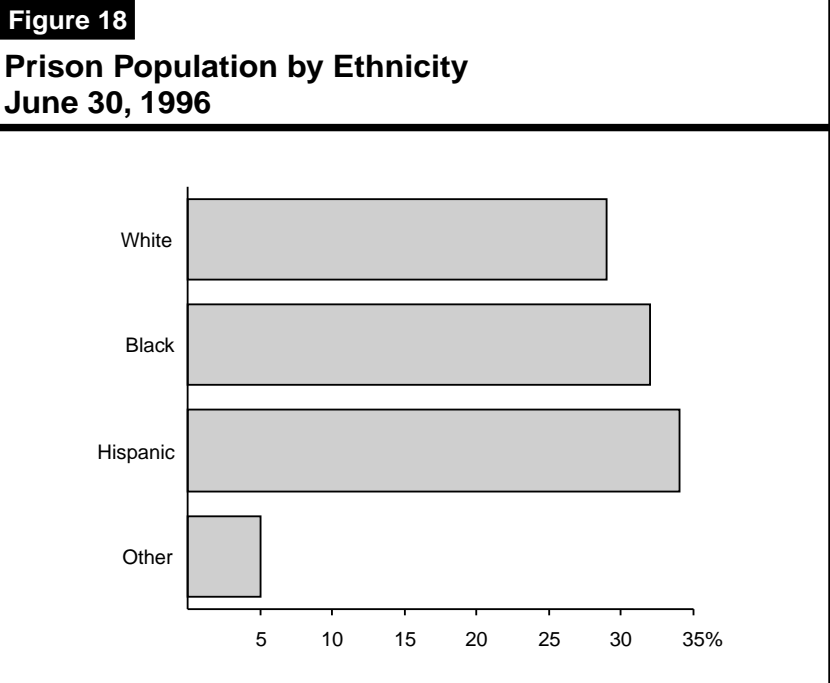


Figure 17

**Prison Population by Age Group
June 30, 1996**





INMATE AND PAROLE POPULATION MANAGEMENT ISSUES

Inmate Population Growth Slows

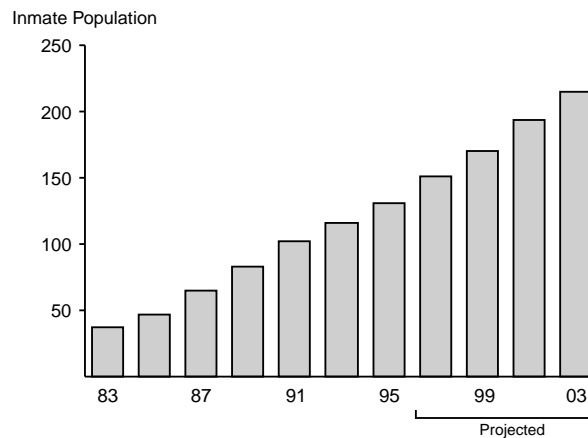
The Department of Corrections (CDC) projects that the prison population will increase significantly over the next five years, reaching a total of 204,215 inmates by June 2002. Although the projected growth is significant and accommodating this level of population growth would pose a significant challenge for the CDC, the projections are substantially lower than recent long-term population forecasts.

As of June 30, 1996, the CDC housed 141,017 inmates in prisons, fire and conservation camps, and community correctional facilities. Based on the fall 1996 population forecast prepared by the CDC, the Governor's budget assumes that the inmate count will reach 150,970 by June 30, 1997, and increase further to 159,823 by June 30, 1998. These figures represent an annual population increase of 7 percent in the current year and 5.9 percent in the budget year. As can be seen in Figure 19, this continues an upward trend in the prison population that has persisted since the early 1980s.

Figure 19

Inmate Population Has Grown Steadily Since the Early 1980s 1983 Through 2003

(In Thousands)



The budget also assumes that the population will increase further over the following four years, reaching 204,215 inmates by June 30, 2002. This represents an average annual population increase of about 6.4 percent over the six-year period from 1995-96 through 2001-02.

Change from Prior Projection. The fall 1996 projection (the basis for the Governor's budget) has decreased significantly from the prior forecast released by the CDC for spring 1996 upon which the 1996 Budget Act was generally based. If the spring 1996 forecast proved correct, 4,200 more inmates would be in CDC custody as of June 30, 1997, than under the new fall 1996 forecast. Figure 20 (see page 64) compares the two most recent projections.

The differences between the spring 1996 and fall 1996 projections are magnified in the long run. Under the spring 1996 forecast, the inmate population would reach nearly 287,000 by June 2005. The fall 1996 projection is that the state prison system will have 238,000 inmates as of that same date. Although some changes in CDC forecasts are inevitable, the latest round of revisions are unusually large and have prompted the CDC to initiate consultation with outside statistical experts to reexamine its projections methodology.

Figure 20

**Department of Corrections
Projected Prison Inmate Population
1995-96 Through 2001-02**

| Year ^a | Spring 1996 | Governor's Budget | Difference |
|-------------------|----------------------|-------------------|------------|
| 1995-96 | 143,170 ^b | 141,017 | 2,153 |
| 1996-97 | 158,684 | 150,970 | 7,714 |
| 1997-98 | 172,694 | 159,823 | 12,871 |
| 1998-99 | 188,038 | 170,344 | 17,694 |
| 1999-00 | 203,593 | 181,734 | 21,859 |
| 2000-01 | 219,795 | 193,094 | 26,701 |
| 2001-02 | 236,514 | 204,215 | 32,299 |

^a Population as of June 30 each year.
^b Actual data.

We discuss the specific reasons for the changes in CDC's inmate population projections later in this analysis.

Parole Population Growth. As of June 30, 1996, the CDC supervised 98,013 persons on parole. The Governor's budget assumes that the parole population will be 103,382 as of June 30, 1997, and will increase to 109,282 by June 30, 1998. These figures assume a parole population increase of 5.5 percent in the current year and 5.7 percent in the budget year.

The budget also assumes that the population will increase further over the following four years, reaching a total of 128,787 parolees by June 30, 2002. This represents an average annual population increase of about 4.7 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 activity of participants in the local criminal justice system that affect the number of persons arrested, charged, tried, convicted, and ultimately admitted to prison.
- Changes in CDC and Board of Prison Term 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.

Inmate Count Running Below Projections. The actual CDC inmate count has already varied significantly from the CDC's fall 1996 projections. As of mid-January 1997, the CDC had overestimated the number of inmates who would be incarcerated by almost 2,000. Halfway through 1996-97, the CDC also had underestimated the number of parolees being supervised on parole by about 700. We discuss the fiscal ramifications of these population trends later in this analysis.

Long-Term Impact on CDC Budgets. The major increases in the prison population can be expected to result in significant increases in the CDC budget that, in the long run, are likely to outpace overall state revenue increases.

We have estimated how the CDC budget is likely to grow between now and the 2005-06 fiscal year if, as under the current practice, both prison and parole caseload were fully funded and no other significant policy changes were made in CDC programs. The result is that the CDC operations budget (excluding capital outlay and debt service costs) would grow to nearly \$6.2 billion by 2005-06. Thus, the CDC budget would grow at an average annual rate of about 7.5 percent, compared with an annual 5 percent to 5.5 percent growth in revenues that would occur for the state General Fund under a moderate economic growth outlook during that same ten-year period.

Why Have the Inmate Population Projections Changed?

The principal reasons for the significant changes to the inmate population projections include changes in the estimates of the length of term served by some offenders and, more importantly, general slowing of new admissions to prison from court. The slowing in new admissions appears to be closely linked to the drop in crime in the state.

The fall 1996 forecast represents a significant departure from the prior forecast released by the CDC in the spring. According to the CDC, two main reasons explain the lower projections: a change in the assumptions regarding the prison terms received by "second-strikers," and, more importantly, slower new admissions to prison from court.

Shorter Terms Than Anticipated for “Second-Strikers.” First, some offenders sent to prison under the 1994 “Three Strikes and You’re Out” law are receiving shorter prison terms than anticipated. The CDC had previously assumed that offenders who were sentenced under the Three Strikes law, and who had only one violent or serious crime on their record (often referred to as “second-strikers”), would have to serve an average sentence of eight years in state prison. Based on sentence data it has collected, the CDC now estimates that each second-striker will get a prison term of about six years because of the way judges are exercising their discretion in sentencing decisions.

New Admissions to Prison Moderating. Second, the courts are sending fewer newly convicted felons to state prison than had been predicted earlier. Although the number of parolees sent to state prison for parole violations has generally been in line with projections until recently, commitments to prison of persons with new felony offenses are running below expectations. The rate of growth has moderated significantly since the 1980s, when increases on the order of 15 percent annually occurred regularly. During the 1990s, the growth rate had usually been less than 5 percent. The CDC now projects that the moderation in the growth rate of new admissions will continue and result in significantly fewer inmates being in prison in 1996-97 than it had previously forecast for that period. Recent trends indicate that the number of parolees returned to prison by the courts is also lagging below CDC projections.

Changing Mix of Admissions. In addition to revisions in the *total number* of new admissions, the *mix* of offenders being sent to state prison has also been changing. For example, offenders whose primary commitment offense was a violent or serious crime dropped from 35 percent of new admissions in 1992 to 30 percent in 1995. Meanwhile inmates who committed a drug-related crime increased from 32 percent to 36 percent over the same period.

The changing mix of offenders also translates into a slower pace of growth for the prison population than would otherwise have occurred. This is because inmates committed for violent and serious crimes serve prison sentences that are almost twice as long, on average, as inmates committed for drug-related or nonserious property crimes. The prison system is getting a smaller share of inmates with long sentences and a larger share of inmates with short sentences. This adds up to a net reduction in the length of prison time that must be served by new admissions than would otherwise be the case.

Why Have Admissions to Prisons Dropped So Significantly? It is difficult to pinpoint with any precision the reasons for the drop in admissions to prison. However, a review of statistics charting the levels of

criminal activity and activity in the criminal justice system suggests that it is the direct result of an overall decrease in adult felony crime and especially violent and serious crime.

Crime is Down. The overall number of crimes reported to the Department of Justice (DOJ) by the state's law enforcement agencies has been dropping. The number of reported crimes in the six major categories (homicide, rape, robbery, assault, burglary, and motor vehicle theft) has decreased from 1,073,613 in 1991 to 938,922 in 1996, a 13 percent drop over the last four years. Because the state's overall population has continued to climb while the number of reported crimes has fallen, crime "rates" have dropped significantly as well. The data reported by DOJ on California's falling crime rates is consistent with data collected by the FBI for California and the nation. It is also consistent with national surveys of the public conducted by the federal government to gauge the number of persons nationally who have become victims of crime, regardless of whether the crime was reported to authorities.

Less Crime Does Not Automatically Mean Fewer Prisoners. Because only a small fraction of crimes committed in California result in the arrest, prosecution, conviction, and sentencing of the offenders to state prison, it is possible that a downturn in the number of crimes committed would not result in a decline in the number of persons admitted to prison. For example, prosecutors might bring felony charges against the same number of robbers as before, but dismiss fewer cases of persons arrested for robbery.

Because of the uncertain relationship between crime and incarceration rates, we analyzed the level of activities at each procedural step in the criminal justice system. We found that the drop in crime was consistent with reductions at each step in the criminal justice system. Specifically, we identified a drop-off in the numbers of arrests, complaints sought against offenders, felony cases prosecuted, felony convictions, and sentences to prison.

Reasons for the Falloff in Crime. If the slower growth in new admissions to prison appears to be closely linked to a decline in crime, it is important to understand why crime itself has declined. The issue is of obvious importance: If the underlying causes of the trend can be determined, the state might be able to tailor strategies to continue the trend and thus have an impact on the prison population. Or, if the factors leading to less crime involved matters outside of state control, policymakers would at least be in a better position to know whether the trend would continue.

Although we know of no comprehensive or conclusive study that has been published by either criminal justice agencies or criminologists that has determined why crime has declined in California in recent years, our analysis suggests that the following factors have played a role in the drop in crime:

- **Demographic Shifts.** In the late 1980s, when crime was on the upswing, the population of 18- to 49-year-olds (the age of most incarcerated felons) grew rapidly. In the 1990s, at the same time crime has moderated, the growth rate of this age group has slowed significantly. This demographic shift is most important as it relates to the crimes of robbery and burglary—the offenses most represented in the CDC—because these crimes tend to be committed by young men. The falloff in crime has not been as great for drug offenses, which tend to be committed by an older and growing segment of the population.
- **Incapacitation and Deterrent Effects of Crime Legislation.** There is some evidence to suggest that crime is dropping because the state has locked up larger numbers of offenders and thereby prevented them from committing additional crimes. There is also some, albeit weaker, evidence that the state’s incarceration of so many additional felons for longer periods of time has deterred some individuals who are “out on the street” from committing new crimes.
- **Improved Economy.** Some experts believe that the greater availability of jobs has deterred criminal activity and enabled would-be offenders to instead become law-abiding workers. This seems especially true for crimes that have a financial aspect, such as robbery and burglary. In fact, the improvement in the state’s economy appears to be reasonably in sync with the decline in crime that began in 1992.
- **Community-Oriented Policing.** Some law enforcement authorities are focusing a larger share of resources on so-called community-oriented policing and other strategies intended to prevent and deter crime rather than maximize the number of arrests.
- **Decline in Drug Seizures.** A decline in the usage of “crack” and other forms of cocaine, as evidenced by the fall in cocaine drug seizures since 1992, may have stemmed the number of robberies and other crimes committed by addicts to gain money to purchase illegal drugs.

We believe the questions about the relationship between crime and incarceration, as well as the causes of the falloff in crime, are important

issues for further review. We note that the trends in California are also evident in other states and may involve factors that are not unique to this state.

Projections to Be Updated by May

We withhold recommendation on the California Department of Correction's (CDC's) request for \$56 million to fund additional inmate and parole population growth, pending review of the revised budget proposal and population projections to be included in the May Revision. We also note that the CDC has not yet complied with legislative direction to restructure its budget requests for parole caseload adjustments.

The budget requests an increase of \$56 million and 427 personnel-years above the estimated current year funding level to accommodate the growth in the inmate and parole populations projected by the CDC.

Projections Will Be Updated. As we indicated earlier, recent trends indicate that the population projections released by the CDC last fall have *overestimated* the number of inmates who are being incarcerated. As of mid-January 1997 the total CDC inmate population count was running about 2,000 below projections.

Meanwhile, CDC's fall projections appear to have somewhat *underestimated* the number being supervised on parole. Halfway through the fiscal year, the parole count was about 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 CDC funding requested in the current and budget years. We would expect the reduction to be in the tens of millions of dollars.

Department Must Restructure Parole Funding Requests. *The Supplemental Report of the 1996-97 Budget Act* directed the CDC to restructure the parole staffing ratios that are the basis of its requests for changes in expenditure authority so that they are consistent with the actual parole staffing practices of the department.

As we noted in last year's *Analysis of the CDC budget*, parole agents now typically supervise caseloads of 80 to 90 parolees. However, requests by the CDC for additional state funds to keep pace with an increasing

number of parolees have not been based on these staffing ratios. Instead, the CDC has 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 supplemental report language specified that the CDC was to submit the revised parole staffing ratios to the Legislature by December 1, 1996, and that these new ratios were to be the basis of its 1997-98 funding request.

The purpose of the supplemental report language was to ensure that, as the Legislature considered future CDC budget increases, it could sort out what funding was being requested to accommodate changes in caseload and what funding was being requested to intensify the existing level of parole supervision.

When this analysis was prepared, the CDC had not yet complied with the supplemental report language. The new parole staffing ratios had not been submitted to the Legislature. Moreover, the Governor's budget applies the same 53.2 to 1 ratio of parolees to parole agents that it has been using in the past. We are advised by the CDC that it is in the process of addressing the supplemental report language requirements, but have received no indication when that effort will be completed. Thus, the funding requested in the Governor's budget for regular parole caseload increases is overstated.

Analyst's Recommendation. For these reasons, we withhold recommendation on the request for \$56 million above the funding level provided in the *1996-97 Budget Act* to support the inmate and parole population pending receipt and review in May of the CDC's revised estimates and pending the CDC's compliance with the supplemental report language on restructuring its requests for parole caseload adjustments.

Inmate Housing Plan Calls for New Prison, Leased Facilities, and More Overcrowding

We withhold recommendation on the California Department of Corrections's plan for housing the projected increase in the prison population because of continued uncertainties about the inmate population projection.

Inmate Housing Plan for 1997-98. The Governor's budget includes an inmate housing plan to accommodate the additional 8,853 inmates that the CDC expects to receive during 1997-98. The plan has the following major elements:

- ***New Prison.*** The CDC would occupy a new state prison adjacent to the existing Corcoran facility located in Kings County. The new

facility includes a Substance Abuse Treatment Facility that is discussed in greater detail later in this analysis. During 1997-98, the new prison would accept about 5,140 inmates.

- **Community Correctional Facilities.** The CDC would occupy 2,000 community correctional facility beds at privately built and operated prisons for Level II (medium-security) offenders. Activation of these beds was supposed to have begun in the current year, but the schedule has slipped and they are now projected to open during the budget year.
- **Emergency Beds.** The CDC would activate 600 emergency beds authorized for construction in the *1995-96 Budget Act*, nearly completing this 16,500-bed program to build dormitories and other new inmate housing on the grounds of existing prisons.
- **Overcrowding of Existing Prison Space.** The housing plan assumes that, during the budget year, an additional 2,000 inmates would be placed in gymnasiums, dayrooms, and other accommodations at CDC institutions that are intended to be temporary. This additional overcrowding of existing facilities would be partly offset when 1,100 beds become available in newly constructed prison space during the budget year.

Leased Jail Beds Omitted from Housing Plan. The CDC plans to lease about 1,400 jail beds from Los Angeles County at the Peter Pitchess Detention Center to hold state parole violators who are awaiting hearings on the revocation of parole and return to state prison. The housing plan specifies that the CDC would occupy the first 900 beds at Pitchess during the current year. However, due to an apparent technical error, the housing plan does not include an additional 500 Pitchess beds that it proposes to activate during the budget year. The CDC is expected to revise its housing plan this spring to include the additional jail beds and to indicate, if necessary, how 500 other beds would be eliminated from its housing plan. That housing plan also is expected to take into account recent changes in the proposal timetable for occupying the Pitchess jail beds. The issue is discussed in more detail below.

Population Will Exceed Available Prison Space. The housing plan is based upon CDC projections that the prison system will run out of space to house additional inmates early in the year 2000 if new prison facilities are not made available by that date.

The CDC estimates that when all funded prisons are completed in the budget year, the system capacity will be about 146,000. This capacity total does not include an additional 30,000 beds available on a temporary basis in such locations gymnasiums and dayrooms. Thus, the maximum capac-

ity of the prison system of about 176,000 would be exceeded by approximately January 2000 if the CDC projections prove correct. However, as we have noted earlier, the inmate population is not growing as quickly as the CDC had projected. The CDC intends to update its housing plan at the time of the May revision to take the more recent inmate population trend into account. It now appears that the CDC will exceed its capacity in the middle of the year 2000 instead of January.

Court Intervention Could Make Housing Plan Obsolete. If new prison beds are not built or the shortage of prison space relieved in some other fashion by the time the state runs out of beds in the year 2000, CDC officials and others have predicted that the federal courts may 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, CDC's housing plan would immediately become obsolete.)

Analyst's Recommendation. Because the inmate population is running well below the fall 1996 projections of the CDC, it is likely that the housing plan will change significantly by the May Revision. Thus, we withhold recommendation on the plan at this time pending receipt of the CDC's revised prison inmate population projections and the updated housing plan provided in the May Revision.

Legal Clarification in Community Correctional Facility Plan Needed

We withhold recommendation on the request for \$29.9 million to contract for 2,000 additional medium-security beds at community correctional facilities pending the resolution of legal problems that could delay activation of these beds. In the interim, we recommend that the California Department of Corrections (CDC) provide the Legislature with additional justification for the number of CDC personnel it proposes at new and existing community facilities. The Legislature should also carefully consider how the construction of such facilities should be financed in the future.

The Governor's budget includes \$29.9 million from the General Fund to lease 2,000 community correctional facility beds from private vendors. The plan to contract for these beds, which will be established as four separate 500-bed facilities, had been approved by the Legislature as part of the *1996-97 Budget Act*. However, repeated delays in the bidding and contracting process have delayed their activation until 1997-98.

The CDC housing plan assumes that the 2,000 beds for which contracts are pending would begin to be activated starting in October 1997. That is

in conflict with the level of funding provided in the Governor's budget, which assumes that activation of the new beds would commence in August 1997. Thus, the budget request should be reduced to reflect the revised schedule.

Legal Issues May Result in More Schedule Delays. However, even the October timetable is now in doubt because of significant and unresolved legal questions raised by the state Department of Justice as to the legality of the CDC's proposed contracts with the private vendors who won the bids. The Attorney General has questioned a provision under which the state would pledge to make payments to fully cover the cost of the construction of the private facilities within the ten-year term of the contract. The Attorney General contends this may violate a state constitutional requirement (Article XVI, Section 1) that no major state debts be incurred absent a statewide public vote.

Although we are advised that the courts have recognized certain exceptions to this requirement, such as the issuance of lease-payment bonds, the Attorney General notes that such exceptions have been done to build state-owned facilities—not facilities that would remain in the possession of a private vendor. In consultation with the Attorney General and other state officials, the CDC is now examining whether it can renegotiate the terms of the contracts to avoid any conflict with state law. They are also attempting to determine whether state statutes could and should be changed, in keeping with the California Constitution, to permit the type of financing arrangements contemplated in the pending lease contracts.

If the CDC is not able to quickly resolve the legal questions holding up the pending contracts, it is likely that the CDC housing plan will need to be further revised and the funding requested in the Governor's budget further reduced to reflect a revised timetable for activating community correctional facility beds.

Privatization Effort Has Merit. We concur with the CDC's efforts to resolve these legal questions in order to carry out a privatization proposal that we believe has merit. Based upon our analysis of the pending contracts, the state would obtain *medium-security* community correctional facilities at a rate that is less expensive than existing community correctional facilities initially established for *minimum-security* inmates. Moreover, even after the additional costs of CDC medical and security staffing have been taken into account, the community correctional facilities would be less costly to the state than an equivalent number of beds in a state prison housing a similar inmate population.

Another provision in the community correctional facility proposal makes the transaction even more financially beneficial to the state. The pending contracts require that all inmates at the new community correctional facilities receive work or education programming. This provides inmates with an opportunity to earn credits to reduce the length of their prison stays, thereby eventually lowering state incarceration costs. Many inmates held at regular prison institutions are eligible for work and education programs but are idle because the CDC does not have enough assignments available for them.

Thus, we believe that even though the state has experienced slower than expected inmate population growth, the proposal to establish the 2,000 new beds should proceed if legally permissible.

The CDC Staffing of Community Facilities Is Excessive. About \$25.6 million of the \$29.9 million requested in the budget year for operating the community correctional facilities consists of direct payments to the private operators of the facilities. The remaining \$4.3 million would cover the cost to the CDC to provide medical services for inmates housed at the private facilities and for CDC security staff to supervise community correctional facility operations. The CDC security staff would administer the inmate discipline system, control the awarding of work and education credits to inmates, and perform other duties.

We believe the funding proposed for medical services is reasonable but believe that the 42 positions proposed in the budget for security purposes are excessive considering that 302 private custody staff would also be assigned to the community correctional facilities. The budget proposal would result in an overall level of custody staffing (six inmates for each custody staff position) that is much more intense than for prisons with comparable inmates (about nine inmates for each custody staff position). We recommend that the CDC report at budget hearings regarding (1) the personnel assigned to such facilities, (2) their projected workload, and (3) the justification for the intense level of staffing at new and existing community correctional facilities.

Future Privatization at Stake. In our view, the resolution of the pending legal issues described above could be critical not only to the contracts for the 2,000 beds contained in the housing plan, but also to efforts under discussion in the Legislature to further privatize the prison system. We believe the Legislature should carefully consider how community correctional facilities are financed in the future.

The Legislature may wish to consider alternatives to the present approach by which the vendor provides the capital for construction of new beds and recovers the cost through regular contract payments from the

state (a financing approach known as amortization). For example, the state could directly finance the construction of community correctional facility beds while contracting with private firms to operate the new facilities. This approach would provide the state with assurances that it would retain the community correctional facility beds it has added to the prison system. The state would be free to regularly rebid the contract for operation of a facility at regular intervals without any loss of its capacity to house state inmates—an advantage that could help hold down their operating cost over time.

However, this approach also has its disadvantages: The state, rather than a private vendor, would have to directly appropriate the funding to construct additional facilities. Moreover, a private vendor would have less incentive to properly maintain a prison facility if it was essentially a state tenant rather than the owner of the facility.

Analyst's Recommendation. We withhold recommendation on the proposed \$29.9 million in funding to activate the community correctional facilities. We will monitor CDC's efforts to resolve the legal issues surrounding the new facilities and anticipate that the department will revise its housing plan in the May Revision to take into account any delays caused by legal problems. We also believe the Legislature should carefully consider how privatized prisons should be financed in the future.

Uncertainties Regarding Leased County Jail Bed Proposal

We withhold recommendation on \$30.1 million requested to place 1,400 state prison inmates in jail beds leased from Los Angeles County, pending further review of the request and receipt of revised prison inmate population projections.

The Governor's budget includes \$30.1 million to lease 1,400 beds at the Peter Pitchess Detention Center in Los Angeles County to house parole violators who are awaiting parole revocation hearings. As discussed earlier in this analysis, the CDC plans to begin using the county jail for this purpose commencing March 1, 1997, to house 900 inmates there by the end of the current year. Although more jail beds are not included yet in the CDC housing plan, the budget provides funding for an additional 500 jail beds that would be used for state inmates during the budget year. (The pending contract with Los Angeles County provides a somewhat different timetable.)

Jail Lease Must Meet Budget Act Requirements. We would also note that any jail lease agreement must by law meet the test set forth in the *1996-97 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.

Fiscal Analysis of Pitchess Proposal. We have reviewed the Pitchess jail lease proposal and have concluded at the time this analysis was completed that it raises several significant fiscal and policy issues that should be considered by the Legislature.

The CDC has not provided the Legislature with fiscal analysis of the proposed lease. Based on our fiscal analysis of the terms of the proposed contract with Los Angeles County, it appears that it would be more expensive to the state to house 1,400 parole violators at Pitchess than under the present arrangements. The state now holds these parole violators at the California Institution for Men (CIM) at Chino and in various Los Angeles County jails under an ongoing local assistance program.

We estimate that the state will incur \$10.6 million in additional housing costs per year for the same number of parole violators, as described below.

The CDC is proposing to shift to Pitchess about 900 parole violators now housed in the reception center at CIM where we currently incur costs of about \$31 per day. (The low cost to house inmates at CIM is due to the high level of overcrowding at the facility.) The CDC also proposes to shift to the Pitchess jail parole violators now housed in various Los Angeles County jails under the local assistance beds program at a state cost of \$51.40 per day. The Pitchess proposal—including both direct lease payments to Los Angeles County (\$51.62 per bed) and ancillary CDC staffing and operational expenditures (\$7.38 per bed)—would result in a total state cost of \$59 per day.

The proposed lease agreement for Pitchess does provide one significant fiscal benefit to the state that would partly offset these housing costs. The state could save as much as \$2 million annually by requiring the county to pay any medical costs of the 1,400 parole violators placed in county custody. Thus, accounting for these savings, we estimate that the state would experience a net cost of \$8.6 million annually in the short term.

This benefit to the state would be greater except for another provision in the proposed contract which authorizes the county to deny admission to Pitchess of any parole violator requiring inpatient medical care. Thus, the county would only be liable to pay the medical costs of parole violators who become sick *after* they are sent to Pitchess. Because the vast majority of parole violators will spend only a few weeks at Pitchess before they are either sent to prison or released, the provision of the contract

allowing Los Angeles County to screen out sick inmates will reduce the potential medical savings the state would otherwise enjoy.

Long-Term Impact of Leasing Proposal. We have also examined the long-term fiscal consequences of the Pitchess plan. If the state does not contract for the Pitchess beds, it will run out of space for parole violators more quickly. The Pitchess contract would probably allow the state to avoid building 1,400 more beds in the future and thus save about \$5 million a year in debt-service costs. Even considering added debt-service costs, it would still be at least \$3.6 million less expensive per year to *not* contract for the Pitchess beds and instead build 1,400 more reception center beds.

Need for Beds in Budget Year Not Clear. It is not clear that the CDC needs to acquire any jail beds during the budget year. The CDC's revised housing plan for the current year indicates that, as it adds beds at the Pitchess jail, it intends to simultaneously reduce state prison overcrowding by deactivating 1,372 beds at existing CDC institutions.

The CDC currently estimates that the state has sufficient prison space overall to last until January 2000. Moreover, the current inmate count is running about 2,000 inmates below the latest CDC projections, meaning that the date when the state runs out of beds will probably be even later.

Potential Benefits of Proposal. Leasing of the Pitchess beds could produce several important offsetting benefits. The proposal would relieve the overcrowding pressure on the CIM reception center, making the prison safer for both inmates and staff. It also would produce the savings in local assistance medical costs and future facility construction costs as described above. Finally, adoption of the proposal would help provide Los Angeles County with the resources to help support the downtown Twin Towers jail complex which opened in early February 1997.

Analyst's Recommendation. For these reasons, we withhold recommendation on the proposed \$30.1 million for the lease of the Pitchess beds until the Legislature has reviewed the significant fiscal and policy issues raised by the proposal and until the CDC releases its revised projections of the inmate population in the spring.

SUBSTANCE ABUSE TREATMENT ISSUES

The Governor's budget proposes \$17.4 million in expenditures for programs administered by the CDC Office of Substance Abuse Programs (OSAP) which provides a variety of substance abuse treatment programming and services for prison inmates and parolees. This represents an increase of about \$4.6 million, or about 36 percent, over projected current-

year expenditures. This sum does not include other substance abuse programs administered directly by various CDC institutions, such as some elements of the Civil Addict Program established at the California Rehabilitation Center at Norco. A summary of OSAP expenditures is provided in Figure 21 below.

| Figure 21 | |
|---|---------------------------------|
| Department of Corrections Substance Abuse Programs^a | |
| (Dollars in Thousands) | |
| Program | Proposed Expenditure |
| Institutional Programs | |
| Amity-Richard J. Donovan Correctional Facility | \$1,080 |
| “Forever Free”—California Institution for Women | 1,083 |
| Walden House—California Rehabilitation Center | 450 |
| California Substance Abuse Treatment Facility - Corcoran | 4,459 |
| Parolee Service Networks | |
| Bay Area Services Network | \$5,818 |
| Los Angeles Prison Project Network | 1,578 |
| San Diego Parolee Partnership Network | 1,500 |
| Fresno County Central Valley Network | 120 |
| Administrative Expenditures | |
| Office of Substance Abuse Programs administration costs | \$500 |
| Research and evaluation—UCLA | 400 |
| Training and technical assistance—UC San Diego | 161 |
| Department of Alcohol and Drug Programs network administration costs | 288 |
| Total | \$17,437 |

^a Programs operated directly by the Office of Substance Abuse Programs. Does include programs operated directly by various Department of Corrections institutions (such as Civil Addict Program) or parole offices.

In this analysis, we review several of the ongoing and proposed substance abuse budget proposals and provide our recommendations for addressing some of the major pending policy issues relating to substance abuse programming.

The Civil Addict Program: An Update

We recommend that the Legislature adopt budget bill language directing the California Department of Corrections (CDC) to shift staffing and funding at the California Rehabilitation Center (CRC) at Norco previously provided for the Civil Addict Program to drug treatment of general population inmates at the same prison. These resources are no longer being used for the program because of a decline in the civil addict population. We also recommend the adoption of supplemental report language directing CDC to study the feasibility, funding, staffing, and timetable necessary to convert the entire CRC to a drug rehabilitation center for civil addicts and felons. Finally, we recommend a statutory change that would provide a greater incentive for offenders to participate in the Civil Addict Program, thereby potentially reducing state prison costs.

The Civil Addict Program provides substance abuse rehabilitation for persons who are identified by the court as narcotic addicts and who meet detailed criteria established in state law. In most cases, commitment to the program is in lieu of prosecution for a criminal offense. The program, which was established by the Legislature in 1961, accepts both male and female offenders.

As of early January 1997, CDC held about 2,600 civil addicts. About 1,600 male addicts and 600 female addicts are housed at the California Rehabilitation Center (CRC) at Norco, and another 400 were held at a community correctional facility at Adelanto. The CRC also houses the offices of the Narcotics Evaluation Control Authority, a panel which determines which addicts may be placed on outpatient status (in effect, released on parole) and whether outpatients who violate terms of their release must be returned to the CRC for further incarceration and treatment. The CRC facility is not used exclusively for the Civil Addict Program: another 2,600 adult felons, primarily male offenders, are also housed there.

Rehabilitation Program Has Improved. Following a review of the program four years ago, we had recommended the abolition of the Civil Addict Program. At the time, we had determined that the CDC had redirected resources and changed priorities in such a way that the program's original treatment level had been substantially diluted. Many hours of program activity consisted simply of physical exercise rather than substance abuse treatment, and illegal drug trafficking at the facility had become a significant problem. A subsequent detailed analysis of the program by the RAND Corporation, performed under contract with the Youth and Adult Correctional Agency, confirmed earlier criticisms of the program, calling it "clearly inadequate."

In response to these criticisms, the Legislature augmented the program by \$1 million in the *1994-95 Budget Act*. The increased funding level has been continued in the base budget in subsequent and is proposed again in the 1997-98 Governor's budget. The CDC has used these resources to expand educational components of the program and establish group counseling sessions with inmates. A selected group of civil addicts has also participated in more intensive counseling under a therapeutic community model that has proven cost-effective in rehabilitating long-term drug addicts. The \$1 million augmentation has also been used to improve training of teachers, substance abuse counselors, and custody staff, and to strengthen efforts to reduce drug trafficking within the CRC.

Based on our visit to the CRC and extensive discussions with CDC officials, we believe that the CDC has made significant progress toward reforming the Civil Addict Program. The CDC has been carrying out the program it presented to the Legislature for the use of these additional funds and the state appears to be receiving a good return on its \$1 million investment.

Civil Addict Population Has Declined Sharply. As of June 30, 1994, the CDC had housed nearly 4,000 civil addicts, of which about 3,200 were held at the CRC. As of January 1997, these numbers dropped to 2,600 and 2,200 inmates, respectively. Thus, the overall population of civil addicts in the state prison system has dropped by more than one-third during the last two and a half years. The number of civil addicts held at the CRC has likewise dropped by almost one-third, while the number of general population inmates—felons who are not participating in the Civil Addict Program—has increased more than 50 percent to 2,600.

Based upon our review of CDC admissions and population data, and our discussion of the situation with correctional and law enforcement authorities, we believe the sharp decline in the civil addict population is primarily the result of the enactment of the "Three Strikes and You're Out" law in 1994. In addition to mandating longer prison terms for many repeat offenders, the "Three Strikes" law contains a provision prohibiting the commitment of repeat offenders to the CRC under the Civil Addict Program. Thus, offenders who might previously have been sent to the CRC as civil addicts now are being excluded because their criminal records made them ineligible for the program.

Strong evidence of the "Three Strikes" link can be found in the abrupt decline in new admissions of civil addicts to the prison system. During the year leading up to legislative enactment of the "Three Strikes" law (May 1993 to April 1994), 245 civil addicts per month were being received by the CDC. The commitment rate has dropped each year since enactment of "Three Strikes." More recent data indicates that civil addicts were

being admitted to the prison system at the rate of only 129 per month, little more than half the original rate of civil addict admissions. If that trend were to hold, the number of civil addict new admissions will have dropped by 1,400 annually compared to the pre-"Three Strikes" period.

A second reason the civil addict population may be declining is an August 1995 California Supreme Court ruling striking down the good-conduct credits that civil addicts used to be able to earn to reduce the time they must spend in confinement. The court held that a 1980 statute granting the credits to civil addicts was overridden by a 1983 statute revising the credit system for all state prison inmates. Because the choice of being committed to the Civil Addict Program is essentially voluntary for inmates, the ruling has raised the concern that some offenders might be deterred from participating in the program. This is because an offender might be faced with the possibility that, without good-conduct credits, he or she could spend longer in confinement under the civil addict program than by serving a regular prison sentence.

This situation may also have been indirectly aggravated by the enactment of the "Three Strikes" law, according to Civil Addict Program officials. A backlog of pending "Three Strikes" felony trials in some counties has delayed judicial hearings on civil addict commitments, program officials indicated. Offenders who might be eligible for civil commitment may have already served so much time in jail by the time their case finally comes before a judge that they may no longer be willing to consider a civil addict commitment. They may prefer to plead guilty to a felony knowing they will be sentenced to a relatively short prison stay rather than be committed as a civil addict for an undetermined period of time.

Program Improvements Reducing Civil Addict Numbers. Not all of the reduction in the number of civil addicts in state prisons is due to the enactment of the "Three Strikes" law and the court ruling on good-conduct credits. Part of the reduction also appears to be due to recent program improvements that have reduced the number of civil addicts returned to prison for parole violations and new criminal convictions.

Before improvements were made to the Civil Addict Program, the number of civil addict parolees sent back to state prison while on parole equaled 63 percent of the total civil addict parole population. As of September 1996, the return to custody rate for this population of civil addicts has dropped to 52 percent. Because the return-to-custody rate has improved, we estimate that about 440 fewer civil addicts per year are being returned to state prison than would otherwise have been the case.

This figure may understate the full impact of program improvements on the CDC prison population. It is possible that, in addition to curbing the return of parole violators, improvements in the program have also reduced the number of narcotic addicts sent back to prison by the courts for new crimes. The CDC has indicated that, based upon its review of its new admissions data, it believes that is the case.

Although other factors may also be involved, we believe that recent program improvements are probably the principal cause of the recent reduction in the return-to-custody rate of civil addicts. Other CDC substance abuse programs, particularly those employing the therapeutic community model, have demonstrated significant reductions in inmate recidivism. It seems likely that the ongoing transition by the Civil Addict Program toward this model would achieve similar results.

The drop in the return-to-custody rate of civil addicts suggests that the \$1 million augmentation in the program has been cost-effective. We estimate that this factor will reduce the population of civil addicts held in the state prison system by at least 133. That means the state is achieving annual savings of at least \$1.7 million and will eventually avoid a one-time expenditures of at least \$7 million to build additional prison space.

Population Decline Raises Policy Concerns. In our view, the significant drop in the civil addict population raises several fiscal and policy issues.

First, the downward population trend in the program means that 1,400 fewer offenders are receiving drug rehabilitation programming than was the case two and a half years ago. Drug-addicted offenders released on parole without the benefit of substance abuse treatment are more likely to commit new crimes. Some will be caught and punished for those crimes with a return to prison, adding to state correctional costs and the ranks of crime victims.

We are also concerned that the changing population mix at the CRC could undercut the efforts to reform and improve the effectiveness of the Civil Addict Program. We have been advised by correctional authorities that felons incarcerated at the CRC, particularly those with a history in drug trafficking, view the presence of the civil addict population there as a prime potential market for illegal drugs smuggled into the institution. Although the CDC has made progress in curbing illegal drug trafficking at the CRC, authorities acknowledge that it remains a serious problem. In our view, the drug trafficking problem could be exacerbated by the decline in the civil addict population and the commensurate growth in the felon population.

Finally, we are concerned that the shift of offenders from the Civil Addict Program to regular prison sentences as a result of the "Three Strikes" law is significantly adding to state prison costs. That is because an offender sentenced under the "Three Strikes" law would typically stay in prison almost five times as long as an offender sent to prison as a civil addict. We estimate that the shift of inmates from the Civil Addict Program to "Three Strikes" prison sentences will add tens of millions of dollars annually to state prison operations costs within five years and eventually generate one-time capital outlay costs in the low hundreds of millions of dollars to provide prison space for thousands of additional offenders.

Expand Services to Other Inmates at CRC. Although the population of civil addicts housed at CRC has dropped significantly since 1994, the CDC has made no significant changes in the level of staffing requested in the *1997-98 Governor's Budget* for the facility. In effect, the budget requested for the CRC provides for staffing and funding sufficient to provide drug treatment programming for a population of 1,000 more civil addicts than it is actually projected to receive.

Thus, the Legislature may wish to consider the option of reducing the staffing and funding that has been proposed for the CRC to reflect the one-third reduction in the Civil Addict Program caseload. However, we believe the state would save more money in the long run if CDC were instead directed to shift the funding and resources previously used for civil addicts to provide comparable drug treatment programming for felons housed at CRC who are not in the Civil Addict Program. In effect, about 1,000 general population felons would take the place of the 1,000 civil addicts who previously received drug treatment at CRC but are no longer sent there. The savings to the state in correctional costs resulting from reducing the recidivism rate of drug-addicted felons through drug treatment programming would, in our view, exceed the savings that could be achieved by cutting the budget of the CRC. We believe this approach would also help to offset the additional prison costs that have resulted as the "Three Strikes" law diminishes the Civil Addict Program.

Accordingly, we recommend adoption of the following budget bill language:

The Department of Corrections shall use staffing and funding at the California Rehabilitation Center at Norco previously provided for the Civil Addict Program, but which is no longer being used for the program because of a decline in the civil addict population, to provide substance abuse treatment of general population inmates at the prison so that the total combined population of civil addict and felon offenders receiving drug treatment services at Norco at any time is at least 3,200.

Consider Converting CRC to Substance Abuse Rehabilitation Center.

We also recommend the adoption of supplemental report language directing the CDC to study the conversion of the entire CRC to a drug rehabilitation center for civil addicts and felons.

As we indicated earlier, the division of the CRC between civil addicts and a regular felon population has made the facility more difficult to manage by encouraging drug trafficking. We believe these security problems could be lessened considerably if the mission of the CRC were to provide drug treatment to all offenders sent there—civil addicts and felons. Because there may be significant costs to provide necessary space for programs if the entire CRC is converted, we recommend that the CDC submit a feasibility study of such a proposal by December 1, 1997.

Specifically, we recommend the following supplemental report language:

It is the intent of the Legislature that the California Department of Corrections provide a report to the Legislature by December 1, 1997, as to the feasibility of providing drug treatment programming to all civil addicts and felons incarcerated at the California Rehabilitation Center at Norco, and, if deemed feasible, the staffing, funding and timetable necessary to accomplish this change.

Change in Law Needed. Finally, we recommend adoption of a statute restoring good-conduct credits to civil addicts. To the extent that such a legal change prompts some offenders to agree to participate in the Civil Addict Program instead of accepting a regular prison sentence, the state could save on correctional costs and there will be fewer drug-addicted offenders committing crimes and adding to the state's prison population. We also believe it is reasonable that civil addicts and felons incarcerated together at the CRC be treated alike in the allowance of good-conduct credits.

Corcoran Treatment Facility Scheduled to Open in Budget Year

We recommend approval of \$3.6 million and two personnel-years requested to commence operation of a 1,478-bed Substance Abuse Treatment Facility (SATF) at a second new state prison near Corcoran. However, we withhold recommendation on an additional \$1 million included in the Governor's budget for the new program pending the release by the California Department of Corrections of a report to the Legislature due in April 1997 on the provision of aftercare services for inmates released from the SATF. We also withhold recommendation on \$400,000 provided for the first phase of evaluation of the program pending a report by the CDC at budget hearings as to the feasibility of redirecting up to half of those funds for additional residential aftercare services.

September Opening Scheduled. Chapter 585, Statutes of 1993 (AB 10, Costa) authorized the construction of a 1,000-bed SATF as part of a new prison at Corcoran. Construction of the facility is scheduled to be completed in August 1997 and the SATF facilities will open in September. Because of severe overcrowding within the prison system, the CDC plans to eventually overcrowd the new Corcoran SATF to provide housing and treatment services for 1,478 inmates.

In keeping with legislative direction, the new facility will provide intensive drug treatment programs based on the therapeutic community model discussed previously in our review of the Civil Addict Program. We have reviewed the CDC's proposal for start-up of the in-prison component of the program and believe the funding level requested is appropriate.

Legislature Should Review Report on Aftercare Services. The *Supplemental Report of the 1996-97 Budget Act* directed the CDC to prepare a plan for legislative review by April 1, 1997, on the services for inmates when they are paroled to the community after completion of their prison terms. This requirement stemmed from legislative concern that aftercare services are a critical element of the program's success. A recent study of a pilot substance abuse treatment program at a state prison in San Diego demonstrated that the recidivism rate of offenders paroled to the community dropped dramatically if they received effective aftercare assistance.

We are advised that the plan has been completed and is under review by the CDC. Pending its review and release, we withhold recommendation on \$1 million provided in the CDC budget for the aftercare component of the funding requested for the Corcoran program.

Long-Term Program Evaluation. The Corcoran proposal also contains \$400,000 to pay for the first installment of a five-year, \$2 million evaluation of the effectiveness of the Corcoran SATF program. Because the new Corcoran facility differs, in some respects, from other in-prison substance abuse programs operated by the CDC, we believe providing funding for a long-term evaluation of the program is appropriate. However, we are concerned about the five-year, \$2 million cost of the evaluation, and believe it may be appropriate to redirect up half to of the money so that a larger number of offenders released from the SATF on parole may receive residential aftercare services. Among the options we believe could reduce evaluation costs are obtaining matching research grants or additional federal funds, modifying the scope of the evaluation, or ensuring that any evaluation contracts are issued through a competitive process. Redirection of the funds would likely permit up to an additional 90 beds to be provided for residential treatment services for SATF parolees. We

note that the President's proposed budget for federal fiscal year 1998 would double federal funding for drug treatment of state prisoners.

Analyst's Recommendation. For these reasons, we recommend approval of \$3.6 million and two personnel-years to commence operation of the SATF but withhold recommendation on an additional \$1 million pending release of the aftercare services plan. We also withhold recommendation on the first \$400,000 provided for evaluation of the program pending a report by the CDC at budget hearings as to the feasibility of redirecting up to half of those funds for additional residential aftercare services.

Effectiveness of Parolee Services Networks Remains in Question

We withhold recommendation on \$8.1 million provided in the Governor's budget for continuation of the Preventing Parolee Failure program pending receipt of a report from the California Department of Corrections due in April 1997 as to its effectiveness.

Projects Intended to Reduce Recidivism. In 1991, the CDC began a series of pilot projects, known as the Preventing Parolee Failure program, that were intended to reduce parolee recidivism. The pilot projects included multiservice centers to house homeless parolees, computer learning centers offering literacy training, job placement services, and two networks of residential and outpatient drug treatment services the Los Angeles Prison Project Network and the San Diego Parolee Partnership Network.

The *Supplemental Report of the 1996-97 Budget Act* directed the CDC to complete its ongoing studies of the cost-effectiveness of the now six-year-old pilot programs and report to the Legislature which programs should be discontinued, which should be expanded, and which should be modified and retested. The report to the Legislature is due April 1, 1997.

Bay Area Services Network Study Indicates Program Was Not Cost-Effective. Although it is not one of the Preventing Parolee Failure (PPF) pilot projects, the CDC recently released a cost-benefit study of the Bay Area Services Network (BASN), which is similar in concept to the PPF substance abuse networks in Los Angeles and San Diego. The BASN study concluded that the BASN was not cost-effective. Specifically, the evaluation found that the BASN cost \$5.5 million a year for drug treatment services for parolees, but saved the state only about \$1.5 million in incarceration costs by reducing recidivism.

Nonetheless, the CDC believes continuation of the BASN is justified. The CDC points out that the study was based on preliminary outcome results from offenders who entered the BASN during 1991-92. The CDC

contends the early data are not representative of subsequent program results. They emphasize that the program has been revised to provide longer periods of residential treatment for at least some parolees, a change likely to improve the performance of the BASN. The CDC has also indicated that another independent cost-benefit study of the program by the RAND Corporation reflecting the current BASN program is under way, with preliminary results scheduled for release early next year. In the meantime, the CDC is preparing to issue a request for proposals to continue BASN services for about 565 parolees in the Bay Area.

We agree with the CDC that it would be premature to terminate the BASN program on the basis of the recent study, but believe that continuation of the program should be reviewed next year after the preliminary results of the new RAND study have been released. In the interim, we do not yet have sufficient information on the PPF programs, including its two parolee drug networks, to determine whether funding for the pilot projects should be continued. We anticipate that the CDC report to the Legislature on the pilot programs will assist the Legislature in assessing whether the PPF programs merit continued funding.

Analyst's Recommendation. For these reasons, we withhold recommendation on \$8.1 million provided in the Governor's budget for continuation of the PPF program pending receipt of the April report on its effectiveness.

CORRECTIONAL PROGRAMS

Prison Industry Authority Surplus Should be Redirected

The Prison Industry Authority (PIA), the semi-autonomous unit that operates correctional work programs, has improved its financial operations to the point that it is virtually debt-free and recently had more than a \$26 million cash reserve. Because the state has received little direct financial return for its \$93 million investment to date in PIA enterprises, we recommend that a portion of the surplus be transferred to other Department of Corrections (CDC) programs in concert with efforts to reform CDC correctional work programs.

The PIA Fiscal Condition Has Improved. In April 1996, our office published *Reforming the Prison Industry Authority*, a report which analyzed the performance of the 14-year-old correctional industry program, and recommended its privatization as an independent, nonprofit, tax-exempt organization modeled after the Prison Rehabilitative Industries and Diversified Enterprises Inc. of Florida.

During our review of the PIA's performance, we determined that the Authority had measurably improved its financial position. More recent financial statements released by the PIA confirms that this is still the case. As of June 30, 1996, the PIA list of assets includes more than \$26 million in cash (including cash temporarily borrowed from the PIA by the Pooled Money Investment Account).

Moreover, the PIA is now comparatively debt-free. Five years ago, the PIA had \$22 million in long-term debt on its books, but that figure stood at \$1.2 million as of June 30, 1996, and since that date additional debt payments have reduced the total further.

Little Direct Financial Return to State. At the time the PIA was created, it received a transfer of state assets valued at \$17.7 million. The state has since provided another \$93 million in buildings and equipment to the Authority but received little direct financial return on that investment. Had the state invested the \$93 million in the Pooled Money Investment Account instead of the PIA, it could have earned a significant financial return exceeding \$46 million. State law provides for the transfer of surplus PIA funds to the state General Fund, but the PIA reported that it has never executed such a transfer of funds since its creation.

The state has received some financial benefit through short-term borrowing of the PIA's cash surplus. For example, the state had borrowed \$15.4 million interest-free from the PIA as of June 30, 1996, permitting the state to avoid the cost of obtaining additional funds it needs from other sources. However, the overall financial return received by the state to date for its investment in the PIA appears inadequate.

For these reasons we believe a shift of part of the PIA's current surplus of cash is justified, as provided in law.

Alternatives Available to the Legislature. We recommend that the Legislature take into account whether it wishes to restructure the PIA before it determines the amount of surplus cash to be shifted to other purposes. We believe that, were the PIA to be privatized, as we have proposed, and thus given greater operational flexibility, as much as \$14 million of the cash reserves could be shifted from the PIA to other purposes. If the PIA is not restructured and thus has less operational flexibility, we believe a lesser shift, perhaps as much as \$8 million, could be considered. (The amount of cash reserves actually available for transfer may change significantly in coming months depending on the ongoing financial performance and financial practices of the PIA.)

Given those considerations, we offer three options for addressing the cash surplus issue:

- **Transform the PIA to a Nonprofit Corporation.** The Legislature could adopt our legislative proposal to transform the PIA into a nonprofit organization. That would potentially allow the transfer of \$14 million in surplus cash. In our April 1996 policy brief, we proposed that the CDC be directed to draft a plan to use the surplus to expand other inmate work and education programs not operated by the PIA. The amount of investment required to create each PIA job is relatively high. Our proposal, which may require enactment of a state Constitutional amendment, would enable many more work and education assignments to be created than if the surplus funds were left with the PIA.
- **Consolidate With Joint Venture Program.** A second option now being considered in the Legislature is to make no structural change in the PIA's structure but to use an undetermined amount of the PIA surplus as start-up capital for creation of a new nonprofit work program along the lines of the Florida model. This new program could be consolidated with the existing CDC Joint Venture program.
- **Transfer Cash to General Fund.** Finally, the Legislature might decide to make no changes in the CDC work and education programs but simply transfer a portion of the PIA cash surplus to the General Fund, where it could be used for funding other programs it deems to be a higher priority.

Analyst's Recommendation. As we stated in our April 1996 report, we believe basic reform of the PIA is long overdue, and continue to recommend adoption of a privatization plan that would permit as much as a \$14 million shift of surplus PIA cash to expand other CDC work and education programs or to the General Fund. However, we believe all the options outlined in this analysis are reasonable and viable alternatives that would benefit the state.

Administration Should Update Legislature On Special Education Issue

The Youth and Adult Correctional Agency and the California Department of Corrections should report at the time of budget hearings on the status of their pending efforts in Congress to amend federal law to specify that California is not required to implement a costly new program providing special education services for inmates in adult correctional facilities. At that time, the State Department of Education should update the Legislature on the threat by federal authorities to cut off more than \$332 million in federal funding to public schools if the state does not implement a special education program for inmates.

Last year, the CDC requested \$1.6 million and 24 personnel-years to complete planning and commence implementation of a special education program for adult prison inmates. The CDC indicated that it had submitted the funding request because of the threat of legal or administrative action against the state for its failure to comply with a federal mandate that special education services be provided to all eligible inmates under age 22.

Because of its concerns over the potential cost, appropriateness, and effectiveness of such a program in an adult prison setting, the Legislature appropriated \$207,000 to continue program planning but did not appropriate funds for implementation. The Legislature adopted supplemental report language directing the CDC to submit its plan for the provision of special education services to the Legislature by January 10, 1997. The supplemental report language also stated legislative intent that the Governor's Office seek an amendment to pending legislation in Congress that would specify that special education programs would not be mandated in adult prison facilities.

Program Planning Has Started. Since enactment of the *1996-97 Budget Act*, the CDC has moved forward with planning, but not implementation, of the special education program. We have been advised that completion of the special education plan has been delayed until April 1 in order to permit further analysis of potential program implementation costs.

We believe this brief delay is warranted in light of the significant potential cost of such a program to the state. Initially, the CDC estimated that the cost of the program at full implementation would be \$4.3 million. As a result of further planning work, the CDC now believes the full cost of the program could be double or triple that sum. We are particularly concerned about the CDC's proposal for the program because we can find no significant evidence that special education programs initiated in other states in adult prisons have been cost-effective.

Threat of Federal Funding Cutoff. The administration has indicated that efforts are under way to amend federal law, as the Legislature has proposed, to remove any potential threat of a federal mandate to implement such a program. Meanwhile, the U.S. Department of Education has found the State of California to be out of compliance with federal rules requiring that all eligible persons under age 22, including adult prison inmates, have access to special education services. The federal finding makes the state subject to a cutoff of more than \$332 million in special education funding for California public schools.

As a result, the State Department of Education and the CDC are now seeking to enter a compliance agreement with federal authorities that

would permit special education funding for California schools to continue uninterrupted while the state moves ahead over a three-year period to implement a special education program for all eligible inmates at CDC institutions.

Analyst's Recommendation. In light of the significant potential cost of implementing a special education program at the CDC, and the threat of a loss of federal funding if it does not do so, we recommend that the Youth and Adult Correctional Agency and the CDC report at the time of budget hearings on the efforts in Congress to resolve the issue through a change in federal law. At that time, the State Department of Education should update the Legislature on the threat of a federal funding cutoff to California public schools.

Cost-Benefit Study Examining "Boot Camp" Program Overdue

We withhold recommendation on \$2.4 million and 49 personnel-years for the Alternative Sentencing Program at San Quentin State Prison because statutory authority for the program expires January 1998 and the California Department of Corrections has not released a report due in October 1996 providing an independent analysis of the so-called "boot camp" program's costs and benefits.

Chapter 1063, Statutes of 1992 (SB 1124, Presley) authorized the CDC to establish a pilot program at San Quentin State Prison to place 176 nonviolent offenders at a time in a short-term "shock incarceration program" or "boot camp" at state prison followed by intensive supervision of the offenders on parole.

The Alternative Sentencing Program (ASP), as it is formally titled, is one of about 40 boot camps around the country. The CDC pilot program provides intensive military-style drills, physical training, and intensive counseling and education during a 120-day period, which is generally shorter than the sentence these offenders might otherwise serve. Upon release from prison, ASP parolees initially live in a community correctional facility in Oakland or Los Angeles, then transition into work and housing with the assistance of parole staff.

Chapter 1063 mandated an independent evaluation of the program, which has been conducted by the RAND Corporation. The RAND report was submitted to the CDC last fall, but the CDC has not complied with the statutory deadline for its release to the Legislature by October 1, 1996. We have been advised by the CDC that it has not released the report because it is still reviewing its language.

Although the program will expire at the end of 1997 unless it is extended by the Legislature, the Governor's budget provides funding for the continuation of the ASP through at least June 30, 1998. We intend to review the pending report in order to provide the Legislature with a recommendation as to whether the program, and its funding in the budget, should be continued. We would note that research on similar programs in other states has documented savings from the shortening of prison commitments of offenders in such programs, but little impact upon the rate of recidivism of the offenders.

Analyst's Recommendation. For these reasons, we withhold recommendation on the funding and personnel provided for the program and recommend that the CDC provide the Legislature with the overdue report before budget hearings.

MEDICAL ISSUES

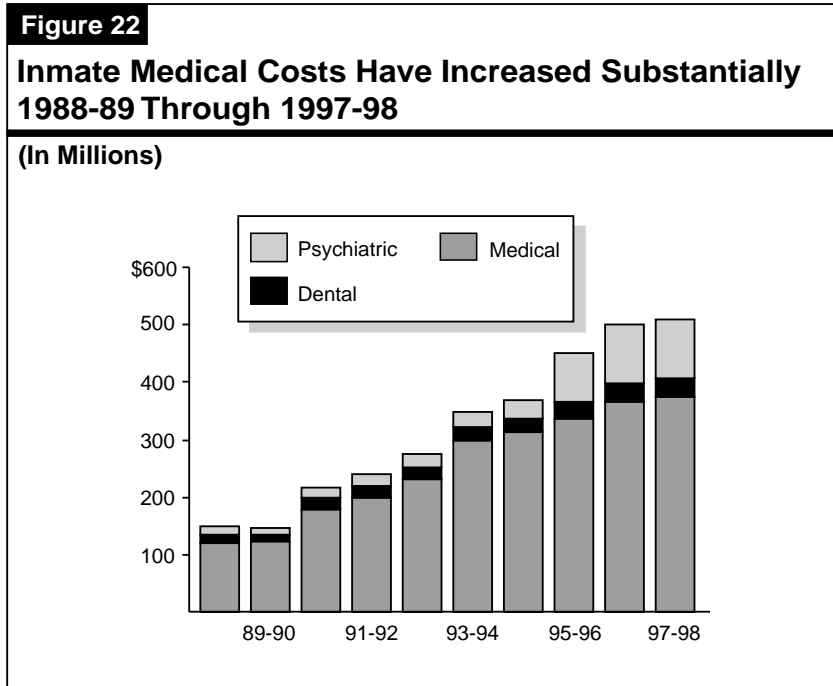
Health Care Delivery System Needs Evaluation Component

We recommend that the California Department of Corrections prepare a plan prior to legislative budget hearings that shows how it will evaluate its provision of medical, dental, and psychiatric services for inmates and the implementation of its health care delivery system. The plan should identify the resources necessary to evaluate (1) the cost-effectiveness of the delivery system and systems for which all other medical services are provided, (2) the impact of continuing litigation on medical costs, and (3) the potential for improvement of, and 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 which was established in statute for facilities which provide subacute, 24-hour medical treatment for inmates.

The new delivery system is intended not only to improve inmate medical and mental health services, but also to find more cost-effective means to provide these services. Between 1988-89 and the proposed 1997-98 budget, the CDC's annual budget for medical, dental and mental

health services has increased almost fourfold, to \$508 million. During the same timeframe, in contrast, the CDC inmate population has just doubled. Figure 22 shows the growth of CDC medical costs. A central concept behind the new system was that better service delivery and management would result in lower medical costs.



The Legislature has already approved all three phases of the new system. Costs for the phases were \$8.1 million for 1994-95 and \$19.6 million for 1995-96. Additionally, as we reported in last year's *Analysis*, costs for the third phase, which is being implemented in the current year, were higher than planned. When the Legislature initially approved implementation of the delivery system, the CDC reported that phase three would be the last phase, and that it was projected to cost \$9 million. However, the CDC requested, and the Legislature approved, \$22.5 million to implement the third phase of the system in the current year. The department advises that implementation of many parts of the new system will extend beyond the current year.

Status of Implementing the New System. The department is still implementing many of the elements of its health care delivery system. To improve its delivery of mental health services, the department established a graduated system of decentralized mental health care, providing mental

health services based on the severity of an inmate's mental illness. We briefly describe the status of each element of the mental health component of the system below. (We also describe the department's capital outlay requests in our chapter on capital outlay.)

- **Reception Center Screening.** The CDC has implemented systems at its reception centers to determine whether the inmate is mentally ill and whether that illness requires treatment. The department is still developing data on the prevalence of mental illness in new admissions.
- **Correctional Clinical Case Management.** The department provides mental health treatment to inmates in the regular inmate population through case management. The department indicates that most of the staff necessary for providing these case management services have been hired or will be hired in the current year.
- **Enhanced Outpatient Program.** The department provides mental health services to inmates with greater treatment needs, or who need a protective environment, in Enhanced Outpatient Programs (EOPs). The department will activate all 13 of these EOPs in the current year. Because the EOPs are still being implemented we do not have data on the utilization of these programs.
- **Inpatient Crisis Care.** The department has developed "crisis-care" beds, in its inpatient medical facilities for inmates requiring short-term acute care because of psychotic or other breakdowns. These beds will be fully activated in the current year.
- **Department of Mental Health Contract Beds.** The CDC moves inmates whose illness is so severe as to necessitate long-term care to the Department of Mental Health. Because the activation of the entire mental health system is not complete we do not know what impact it will have on admissions to the Department of Mental Health's state hospitals.

Medical System Implementation. In addition to its mental health system, the CDC has implemented a series of changes to how it provides medical services. Many of those changes are still being implemented. For example, the department is in the process of seeking licensure for its 15 CTCs. Only one CTC has been licensed—at Pleasant Valley State Prison (Fresno County)—and in December 1996, the CDC informed us that 15 percent of the needed staff positions for the other CTCs remained unfilled. In addition to needing to fully staff these facilities to meet licensing requirements, significant capital outlay expenditures of \$46 million are estimated to build or renovate facilities at 12 institutions.

Areas of Concern. It is too early to determine whether CDC's new medical and mental health systems are working as intended because most of the systems are still being implemented. Implementation of the new health care delivery system has been a major undertaking that has significantly changed how medical and mental health services are provided to inmates. The CDC indicates that many of the components of the new system will take time to implement.

In addition to system implementation, there are other areas of potential concern related to the new CDC systems:

- **Litigation.** The department's medical services, including mental health, for male and female inmates continue to be the subject of litigation in the federal courts. None of the courts reviewing CDC efforts have completed their review of any part of the new delivery system. If any of the courts find that the system does not meet minimum levels of care, then the CDC could be forced to embark on significant and possibly costly changes to its system.
 - **Inmate Population Increases.** The department has indicated that its original plans for implementation did not account for growth in the inmate population. It cannot be determined at this point whether the system can grow "incrementally" to meet the needs of future population growth or if major changes would be needed with growth.
 - **Recruitment and Retention of Staff.** Successful implementation of the delivery system is predicated on being able to hire specialized clinicians and health care workers in diverse parts of the state. Because some of the CDC's prison locations are remote, the department has had difficulty in hiring certain types of needed staff. Consequently, if CDC cannot hire adequate staff, then it might have to re-think the distribution of medical resources.
 - **The CTC Licensure.** As we indicated above, only one of the CDC's 15 proposed CTCs has been licensed. Until licensing is well underway, we will not know whether the department's plans for staff, equipment, or capital outlay are sufficient for final licensure. If not, then there might be the need to consolidate facilities, or provide additional resources to obtain licensure.
 - **Limited Utilization Data.** There are large gaps in the utilization data needed to evaluate the success of the new systems. For example, the CDC is still developing data on the prevalence of mental illness in its institutional population.
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- **No Savings Estimated.** At this time, we believe that the department's medical budget potentially overstates the costs of providing medical and mental health services. 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. However, as part of its budget request, CDC is asking for a baseline increase of almost \$1 million for contract medical services. The baseline adjustment means that the CDC will be paying more, rather than less, for contract medical services, even with the implementation of its new systems. Furthermore, there should be additional savings as the department makes better use of its own facilities which are generally 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 department uses its own medical facilities, it should see significant savings in medical guarding costs.

The department has not indicated how it plans to evaluate its system to determine whether each component part is effective in achieving stated goals. In addition, there is no plan for evaluating the cost-effectiveness of the new system. For example, there are no plans for examining whether the current structure for providing decentralized EOP services is the most effective and efficient way to provide this service. The EOPs are located throughout the state, each serving a group or cluster of prisons. If inmates are placed for very long periods of time in EOPs, or spend their entire period of confinement in an EOP, then there is no real need to have the program decentralized. If EOP usage is long-term, then it might be more efficient to convert one or two facilities for EOP services. The CDC does not have complete data on EOP utilization yet, and will not until the program is fully implemented. However, the department is requesting significant capital outlay monies for its EOPs, even though the EOP system has not been fully implemented or evaluated.

Analyst's Recommendation. Given the uncertainties and information gaps outlined above, we believe that the CDC needs to begin to evaluate its medical care program. Thus, we recommend that the CDC prepare a plan prior to legislative budget hearings that shows how it will evaluate its provision of medical, dental, and psychiatric services for inmates and the implementation of its health care delivery system. The plan should identify the resources necessary to evaluate the (1) the cost-effectiveness of the delivery system and systems for which all other medical services are provided, (2) the impact of continuing litigation on medical costs, and

(3) the potential for improvement of, and savings from the implementation of the health care delivery system.

No Data on New Treatment Protocol

We recommend the reduction of \$2 million budgeted for Interferon treatments, and associated medical tests, for inmates with hepatitis B and C because the California Department of Corrections has not provided reports to the Legislature showing that these funds have been used for their stated purpose and because we do not have needed data to recommend continuation of the program. (Reduce Item 5240-001-0001 by \$2 million.)

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.

Last Year’s Budget Proposal. The department requested an augmentation of \$2 million from the General Fund for drug therapy and related tests for treating inmates with hepatitis B or C for the current year. The Legislature approved funds to provide Interferon therapy and associated medical tests. However, because the department did not have data to show how many inmates would receive this treatment, the Legislature specified that the \$2 million could only be used for the proposed purpose, and that unused monies would revert to the General Fund. The Legislature also directed the CDC to report by December 31, 1996 on the number of inmates receiving Interferon treatment and the costs of providing the treatment.

Legislative Oversight Ignored. The department has not provided the Legislature with the required report nor has it provided any data showing how the funds have been used. The department has not completed the required report and indicates that no report is forthcoming. At the time of its request, the department had no estimate of the number of infected inmates in the current population or whether infection is spreading. Thus, one year after proposing \$2 million for the program, the department has provided the Legislature with no information with which to validate its cost-effectiveness. The department’s medical request for the budget year is \$374 million. If inmates require Interferon therapy, then the cost could

be borne through these funds. For these reasons, we recommend that the proposed funds be deleted for a General Fund savings of \$2 million.

ADMINISTRATION ISSUES

Correctional Management Information System Project Problems May Affect Budget

We withhold recommendation on \$14 million requested to continue implementation of the Correctional Management Information System, pending our review of the California Department of Corrections' reassessment of this project, scheduled to occur prior to April 1, 1997.

The budget includes \$14 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.

Automation Effort is Driven by Need and Anticipated Benefits. The purpose of this major information technology investment is to improve prison operations and departmental administration, primarily through replacing unwieldy and labor-intensive manual processes with a new, computer-based system. In addition to various management benefits which should result from the CMIS project, the department anticipates that operational efficiencies will generate substantial savings in staff time. The CDC estimates total benefits from phase one—the automation of offender-related information—at slightly less than phase one project costs (\$93.6 million in benefits, \$95.8 million in costs). The department estimates net ongoing savings of \$24.5 million once phase one is in a full production mode.

Issue of Contractor Performance Remains Unresolved. Approximately one year ago, the department determined that the system design provided by the contractor hired to design and implement phase one of CMIS was unacceptable. Although work on the project has continued since then, the department and the contractor have been engaged in a dispute over contractor performance; that is, what the department believes the contractor is obligated contractually to provide, versus what

the contractor claims is required. According to the CDC, the matter is currently the subject of "privileged settlement negotiations" intended to provide a just resolution of the issues.

Department Is Doing the Right Thing. A frequent criticism of state information technology projects is that they have too often been conducted in the absence of well-written contracts and effective state management of both contracts and projects. In some cases, the state has allowed a contractor to escape contractual obligations and, in effect, to simply walk away (for example, the ill-fated Department of Motor Vehicles project which was terminated in 1994 after a state expenditure of about \$50 million). Regarding the CMIS, however, not only has the department apparently held firm in terms of attempting to hold the contractor responsible for fulfilling contractual obligations, but the department has also employed outside technical project experts to monitor both the state's and the contractor's performance in order to help ensure project success.

According to the CDC, the state has paid only \$2 million to the contractor, although the contractor has expended many millions of dollars on the project so far. The reason that relatively little has been paid is the result of contract terms which provide for payment only when a required product is delivered and accepted. Moreover, the CDC advises that the contract provides for a hold-back of 50 percent of the contract amount. In other words, \$20 million (one-half the contract amount) will be held back and paid only when the entire project has been completed and accepted by the CDC. Finally, the department notes that the contract includes a \$10 million letter of credit which would become the property of the state should the contractor be found in default and the contract therefore terminated. Given the steps the CDC has taken to protect the public interest, we believe that the department's approach to managing this complex project is sound and can be a model for other state agencies. In short, we believe that the department is doing the right thing, even though the project has not proceeded on schedule.

Special Project Report Anticipated. Until the settlement negotiations currently underway have been completed, it is not possible to determine the department's budget requirements for this project in either the current year or the budget year. In fact, the department advises that it will submit, before April 1, 1997, a special project report (SPR) detailing its assessment of changes in project costs and schedule. This report will serve as the basis for determining the budget requirements for the CMIS project. State policy requires that a SPR be provided to the Legislature at the same time that it is provided to the Department of Finance and the Department of Information Technology for their review and approval. Following review of the SPR, it will be important to determine whether, as a result

of the current negotiations between the state and the contractor, the state has agreed to any contract modifications which would have the effect of reducing the project's scope, and therefore, its schedule, costs, and benefits.

Analyst's Recommendation. As a result of the uncertainties surrounding this project, we withhold recommendation on \$14 million requested to continue implementation of phase one of the CMIS, pending our review of the CDC' reassessment of this project, scheduled to occur prior to April 1, 1997.

Cadet Staffing Level May Need Adjustment

We withhold recommendation on \$20.3 million requested from the General Fund for correctional officer cadet training pending the receipt of updated projections at the time of the May Revision of the prison population and the number of new correctional officers needed by the prison system.

The 1997-98 Governor's Budget requests \$20.3 million for salaries for correctional officers and other operating expenditures of the Richard A. McGee Correctional Training Center at Galt. The budgeted request would provide sufficient funds for enrolling seven classes of 460 correctional officer cadets in the academy, or a total of 3,220 cadets, during the budget year. This is the same amount of funding and assumes the same number of cadets as in the 1996 Budget Act.

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 mid-January 1997, the number of inmates in the prison system was about 2,000 below projections. If this trend were to hold, the CDC would not need to train as many correctional officer cadets during 1997-98 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.

Analyst's Recommendation. For these reasons, we withhold recommendation on the \$20.3 million requested for Academy cadet payroll and operations.

Planning and Construction Division Running Out of Projects

We withhold recommendation on \$23.8 million and 272 positions requested in the Governor's budget for support of the Planning and Construction Division pending legislative deliberations and our further

review of the capital outlay projects proposed by the California Department of Corrections. If the Legislature and the Governor fail to reach agreement on prison construction and repair projects, the division's support budget should be reduced accordingly.

The Governor's budget requests \$23.8 million and 272 positions (including some positions deliberately left temporarily unfunded) for the Planning and Construction Division, and proposes to further shift financial support of the division from bond funds to the General Fund and anticipated federal funds.

The support budget for the division would be reorganized and 15.5 staff positions temporarily left unfunded because of the completion of authorized prison construction. However, the proposal retains staff related to the Governor's proposal to fund planning and design activities involving six additional state prisons and various ongoing construction and repair project at existing prison facilities.

Division Workload Uncertain. Because the Legislature and Governor have not reached agreement during the last three years on any proposals for new prison construction, the workload of the Planning and Construction Division will drop significantly by the budget year. The construction of the new Corcoran state prison and emergency beds will be largely completed early in the budget year.

The Governor's budget proposes \$360 million in capital outlay spending for the CDC for various projects at existing prisons and to start work on six new prisons. In our analysis of the proposed capital outlay budget for the CDC (please see the Capital Outlay chapter in this *Analysis*), we recommend the deletion of some projects at existing prisons and recommend the funding of others, but withhold recommendation for now on the funding requested in the budget year for new prisons, pending review of the updated inmate population projections at the time of the May Revision.

We are advised by the CDC that, were the Legislature to reject the Governor's proposal for six new prisons, the Planning and Construction Division and other related CDC functions would be overbudgeted by 27 personnel-years and \$6.5 million. Thus, we believe it is inappropriate to determine the overall level of funding that will be provided to the division until the Legislature has determined what capital outlay projects should be included in the budget. This approach will ensure that division operations are budgeted at a level to support the department's construction plan and are not overbudgeted. We do have specific proposals to offer at this time regarding the CDC's funding requests related to inmate

payphones and administration of Federal Crime Act funds, which we discuss below.

Analyst's Recommendation. Accordingly, we withhold recommendation on the \$23.8 million requested for support of the Planning and Construction Division pending legislative deliberations and our further review of the capital outlay projects proposed for the budget year. Should the Legislature and Governor not reach agreement on prison construction and repair projects, there would be no reason to support the division at the level requested, and thus the division's budget should be reduced accordingly.

Federal Crime Act Positions Not Justified

We recommend deletion of \$186,000 for three new positions to administer Federal Crime Act funds because of a lack of justification. (Reduce Item 5240-001-0001 by \$19,000 and reduce Item 5240-005-0890 by \$167,000.)

The Governor's budget proposes to spend \$186,000—90 percent of that sum from federal funds with the balance from the General Fund—to establish one new position each in the Planning and Construction Division, the Evaluation, Compliance and Information Systems Division, and the Administrative Services Division to administer anticipated Federal Crime Act funds and to help lobby for additional funding.

In our view, the CDC has not provided sufficient justification for these new administrative positions, because existing resources could be redirected to these purposes. We believe that the use of the Federal Crime Act funds should be used for administration of specific correctional facility construction projects, not more general administrative activities. For these reasons, we recommend that the request be denied.

Disability Placement Plan for Inmates Proposed

We withhold recommendation on \$1.9 million requested from the General Fund to coordinate programs for inmates with physical disabilities pending legislative deliberations and our further review of related capital outlay projects to retrofit prison facilities for inmates with disabilities.

The Governor's budget requests \$1.9 million and 36 personnel-years as part of an overall \$13.2 million Disability Placement Plan proposed by the CDC in response to ongoing litigation (*Armstrong v. Wilson*) over the applicability of the Americans with Disabilities Act (ADA) to the correctional system. Although the CDC intends to contest a federal district

court ruling that the requirements of the ADA apply to prison inmates, the department has prepared a Disability Placement Plan which it believes is justified under more general U.S. Constitutional requirements guaranteeing appropriate treatment of prison inmates.

The plan provides 6.5 personnel-years for a centralized unit (called the Institution Standards and Operations Section) to coordinate implementation of the Disability Placement Plan; 9 personnel-years for additional correctional officers assigned to transportation of disabled inmates statewide; 20 teachers and physical therapists to provide direct services for disabled inmates; and funding to contract for sign-language interpreters for hearing-impaired inmates.

We discuss the related proposal to retrofit prison facilities for disabled inmates in the Capital Outlay chapter of this *Analysis*. In that chapter, we propose some modifications to the plan intended to reduce the capital outlay cost, including some changes that would eliminate retrofitting work at prison reception centers, and withhold recommendation on other elements of the capital outlay proposal pending further review of its merit.

Operations, Capital Outlay Should Be in Sync. The Governor's budget for CDC operations assumes that all of its capital outlay requests are approved as submitted. Thus, we believe funding for Disability Placement Plan operations should be revised in accordance with forthcoming legislative decisions about the capital outlay proposal. If the Legislature reduces or modifies the capital outlay proposal, it would also be appropriate to modify some elements of the proposed support budget.

Accordingly, we withhold recommendation on the \$1.9 million requested for operational support of the Disability Placement Program pending legislative deliberations and our further review of the capital outlay projects.

Pay Telephone Installation Proposal Should Be Placed on Hold

We withhold recommendation on \$137,000 requested from the General Fund to install new pay telephones at California Department of Corrections institutions and to install recording and monitoring equipment at conservation camps. That is because it is not yet clear whether new pay telephones will be installed during the budget year. In any event, we believe additional state funding to install telephone monitoring equipment at fire and conservation camps is not warranted.

The 1996 Budget Act provided the CDC with \$264,000 and the Department of General Services (DGS) with \$250,000 to procure inmate pay telephone services, as well as other communications services, for the CDC. The *Supplemental Report of the 1996 Budget Act* directed the CDC and the DGS to jointly report to the Legislature within 30 days of its completion of their plan to procure the inmate pay telephone services under a marketing approach that will maximize state revenues.

The Governor's budget requests another \$137,000 from the General Fund and two personnel-years for the CDC Planning and Construction Division to assist in the anticipated installation of new pay telephones at CDC institutions. The funding would additionally be used to help install equipment in CDC fire and conservation camps, similar to that now provided in regular prisons, to monitor inmate telephone conversations.

Pay Telephone Bidding May Be Postponed. At the time this analysis was prepared, the CDC and the DGS had not completed nor released to the Legislature their marketing plan for pay telephone services. However, the departments have indicated that they are considering a one-year extension of two existing contracts due to expire in August 1997 rather than rebidding the contracts at this time. (We discuss the significant fiscal ramifications of this approach in our analysis of the DGS—please see the General Government chapter.) If the contracts are extended, new pay telephones might not be installed during the budget year.

The CDC also intends to use about one-fourth of the requested staff time to assist in the installation of equipment to monitor conversations on pay telephones at the state's 38 fire and conservation camps. Given the small amount of revenue the state receives from camp pay telephones—about \$330,000 annually—we do not believe additional state resources for this effort are warranted. Although the camps hold about 4,000 mostly low-level offenders at any given time, the CDC could point to only one case in which an escape of an inmate was known to have been facilitated by use of a telephone. If providing such equipment is a high CDC priority, the department can accomplish the work through the redirection of its existing resources.

Analyst's Recommendation. For these reasons, we withhold recommendation on the request for funding to assist in the installation of inmate pay telephones until we can determine whether such installations will actually occur during the budget year. In any event, we believe any funding related to setting up monitoring equipment at camps should be provided through the redirection of the CDC's existing resources rather than the requested funding increase.

Technical Error on Term-Limited Positions

We recommend a General Fund reduction of \$660,000 to eliminate 17 limited-term positions that will expire at the end of the current year. (Reduce Item 5240-001-0001 by \$660,000.)

In the *1995-96 Budget Act*, the Legislature approved 17 positions for a two-year limited-term period for planning activities associated with the enactment of the "Three Strikes and You're Out" law. The funding and positions were to be eliminated automatically at the end of 1996-97. The Governor's budget proposal for 1997-98 inadvertently retains the funding and positions, but does not request either that the positions be extended or be made permanent.

We recommend that the \$660,000 and 17 positions be deleted in accordance with the *1995-96 Budget Act*.

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BOARD OF CORRECTIONS (5430)

The state's Board of Corrections oversees the operations of the state's 460 local jails by establishing jail standards, inspecting facilities biennially, establishing staff training standards, and administering jail bond construction funds. In addition, the board maintains data on the state's jails. The board also sets standards for, and inspects, local juvenile detention facilities. The board is also responsible for the administration of two juvenile justice grant programs.

The budget proposes expenditures of \$57.2 million in 1997-98, including \$28.1 million from the General fund. This is about \$26.9 million, or 88 percent, more than estimated current expenditures. The increase is due to implementation of the juvenile justice local assistance grant programs and a new program to provide federal prison construction funds to jails and local juvenile detention facilities (we discuss this new program below).

No Proposal for Administrative Costs of Federal Prison Construction Grant Program

We recommend that the Board of Corrections submit a plan to the Legislature, prior to budget hearings, for its administrative costs related to the federal prison construction grant program.

Federal Funds for Local Correctional Facilities. The 1994 Federal Crime Bill authorized \$10.3 billion over five years as grants to states for programs to construct prisons, incarcerate criminal aliens, pay for tribal land incarceration, and provide support for federal prisoners in nonfederal institutions. The purpose of the federal grants is to increase a state's capacity to house violent offenders. The funds may be used to build or expand correctional facilities. The federal law provides that up to 15 percent of a state's award can be distributed to local governments for expanding or improving jails or juvenile facilities.

California has already received \$60.5 million of the funds appropriated for federal fiscal year 1996, and the administration anticipates that the state will receive a total of almost \$420 million over the five-year program. Of this total, the administration proposes to allocate \$62 million to the Board of Corrections to distribute as grants to counties for local correctional facilities through 2001-02.

No Plan for Administration of Funds. The budget proposes a first installment of \$15.1 million for 1997-98, which includes \$14.9 million in grants and \$202,000 for support of the board to administer this program. However, the board has not submitted a plan to the Legislature for expending its administrative funds. Consequently, although the budget includes \$202,000 for the board to administer this program, the Legislature does not have any backup detail to support this expenditure.

In our review of the administration's overall proposal for use of the federal prison funds (please see the Capital Outlay chapter in this *Analysis*), we recommend an alternative allocation plan for the federal funds in which the share for local facilities would be slightly larger in 1997-98. Whether the Legislature ultimately adopts the Governor's proposal or our plan, the board will need a level of administrative support. Thus, we recommend that the board submit to the Legislature, prior to budget hearings, its plan for administering the federal prison construction funds.



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 and helps screen prison inmates who are scheduled for parole to determine if they are sexually violent predators subject to potential civil commitment.

The proposed *1997-98 Governor's Budget* for the support of the BPT is \$13.1 million from the General Fund. This is an increase of \$794,000, or 6.5 percent, above estimated expenditures for the current year. The current-year amount includes a deficiency allocation of \$557,000 for unbudgeted workload increases in the current year, which is carried into the base budget for 1997-98, bringing the total increase relative to the *1996-97 Budget Act* to \$1.4 million. The proposed current and budget year increases are primarily the result of the steadily increasing workload for hearing cases of parole violators and indeterminately sentenced prison inmates and a request to restore funding for a program to transfer state prisoners who are foreigners back to their home countries.

Workload Adjustments Overstated Due to Technical Error

We recommend a General Fund reduction of \$148,000 and 1.4 personnel-years due to technical errors in the funding request that overstate the funding and personnel needed for the Board of Prison Terms to carry out its work. (Reduce Item 5440-001-0001 by \$148,000.)

The Governor's budget includes an additional \$1.3 million and 14.2 personnel-years to enable the BPT to process an increasing number of parole cases and investigations. The BPT projects that it will have to increase the number of hearings it conducts for inmates with life sen-

tences who are requesting release on parole. The BPT also projects that it will handle an increased number of cases of parolees taken into custody by the California Department of Corrections (CDC) parole agents for violation of parole conditions to determine whether they should be returned to prison.

The number of investigations conducted by the BPT is also projected to rise. Among other matters, 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. The BPT also investigates applications to the Governor for pardons.

Request for Funding and Positions Overstated. We have reviewed a series of six proposals contained in the Governor's budget that would provide \$1.3 million in additional funding and 14.2 personnel-years in 1997-98 based on projected increases in the BPT workload. Based on our analysis of these proposals, we believe an additional \$1.2 million in funding and 12.8 personnel-years is justified.

Our review found that the balance of the request—\$148,000 and 1.4 personnel-years—is not justified for two technical reasons. First, we found a problem with the way the Board of Prison Terms calculated the projected growth in its workload that overstates the size of the workload increase anticipated by the BPT. Second, there is no evidence to support the BPT's assumption that a new CDC program to capture parole absconders would increase its hearing caseload. Specifically, recent CDC data indicate that the total number of parole violators being returned to state custody is less than projected. Correction of these two technical problems would reduce the BPT's funding request by \$148,000 and 1.4 personnel-years.

Analyst's Recommendation. For these reasons, we recommend the approval of \$1.2 million and 12.8 personnel-years to accommodate a projected increase in the BPT workload, but recommend denial of another \$148,000 and 1.4 personnel-years proposed in the Governor's budget that has not been justified at this time.

Backlog Reporting Requirements Not Met

We recommend the adoption of supplemental report language that continues a 1996-97 requirement that the Board of Prison Terms provide regular reports to the Legislature on its backlog of hearings and investigations in light of its continuing backlog problems and its failure to comply with the legislative reporting requirement for the current year.

In our *Analysis of the 1995-96 Budget Bill*, and again last year, we called attention to data indicating that the BPT was failing to keep up with its

caseload of hearings and investigations. As we pointed out, there are specific time limits established in statute and by court decisions 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 backlog of death penalty investigations also poses a potentially serious problem. We have been advised by the BPT that given this backlog, 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.

Because of its concerns about the backlog, the Legislature last year directed the BPT to provide monthly reports on the size of these backlogs commencing July 1, 1996, and continuing each month afterward through June 1, 1997. These reports were intended to enable the Legislature to monitor the BPT's progress in resolving the backlog problems, as the BPT assured the Legislature it would. However, at the time this *Analysis* was prepared, the BPT has not complied with the reporting requirement.

Analyst's Recommendation. Because the BPT has advised us that the backlogs remain and, in some cases, are growing, we believe that quarterly reports should be required during 1997-98. Thus, we recommend the adoption of the following Supplemental Report language:

It is the intent of the Legislature that commencing July 1, 1997, and continuing each quarter afterward through June 30, 1998, the Board of Prison Terms shall provide the Joint Legislative Budget Committee and the fiscal committees of the Legislature with the following information: (1) the average number of days statewide and within each of the state's four parole regions it has taken the Board to dispose of a parole revocation case after receipt; (2) the number of death penalty investigations pending before the Board; and (3) the number of pardon investigations pending before the Board.

Foreign Prisoner Transfer Program Not Effective

We recommend rejection of \$65,000 and one personnel-year requested for continuation of the Foreign Prisoner Transfer program because of its disappointing results. We also recommend the enactment of legislation that would halt further efforts by the California Department of Corrections and the Board of Prison Terms to seek and process applications for such transfers until such time as new international transfer treaties have been negotiated and approved. We recommend that the legislation permit the transfer of inmates whose applications have already been approved by the state. (Reduce Item 5440-001-0001 by \$65,000.)

The BPT has been granted authority to review, and if it deems appropriate, to approve the request of an inmate of foreign origin confined in a state prison to serve out the remainder of his or her sentence in his or her home country. In an effort to reduce state prison costs, Chapter 416, Statutes of 1994 (SB 1744, McCorquodale), directed the CDC to inform all present inmates, and thereafter all newly arrived inmates, of their opportunity to volunteer for international transfer.

Program Not Effective. As of September 30, 1995, the CDC had notified more than 39,000 inmates of their right to apply for foreign transfers. The notification process has prompted more than 869 inmates to file applications with the BPT. From 1990 to August 1996, however, only 11 inmates have actually been transferred to other countries. Various procedural problems in the program and the requirement that both the inmate and the home country agree to such transfers have contributed to the disappointing results.

For these reasons, the *1996-97 Budget Act* provided that funding for the program would automatically be discontinued at the end of the current year, in effect giving the BPT one more year to demonstrate the effectiveness of the Foreign Prisoner Transfer program. The BPT has advised us that only four state inmates were actually transferred to other countries between January and August 1996. In our view, the completion of so few transfers does not justify the continuation of the program. Although all of the data is not available, we believe that the costs and staff time spent by the BPT, the CDC, and the Department of Justice over the last six years to seek out thousands of transfer applications and to process hundreds of them has exceeded any minor savings that have been achieved in state incarceration costs.

We would note that H.R. 3610, federal legislation enacted on September 30, 1996, that includes provisions on immigration reform, includes language in which the Congress advises the President to renegotiate the international treaties under which foreign prisoner transfers are authorized in order to expedite additional transfers. Until such time that these treaties are renegotiated to allow transfers to occur more easily, we believe continuation of the state's Foreign Prisoner Transfer program is not justified.

Analyst's Recommendation. For these reasons, we recommend that the request for \$65,000 and one staff position for continuation of the Foreign Prisoner Transfer program be denied. We also recommend the enactment of legislation that would halt further efforts by the CDC and the BPT to seek and process applications for such transfers until such time as international treaties on foreign transfer have been renegotiated and approved.

We are advised by the BPT that 29 state inmates have received state transfer approval, but lack the further approval of the federal government and other countries necessary for a transfer to occur. For this reason, we recommend that the proposed legislation authorize the BPT to proceed with any transfers which already have state approval. Because these cases have already been processed by the BPT, we believe the further handling of these state-approved transfers would not be costly to the state.

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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 \$432 million for the Youth Authority in 1997-98. This is \$3.5 million, or about 1 percent, less than current-year expenditures. General Fund expenditures are proposed to total \$360 million in the budget year, a decrease of \$33.4 million, or 8.5 percent, below expenditures in 1996-97. The department's proposed General Fund expenditures include \$43.4 million in Proposition 98 educational funds.

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

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.

Ward Population Remains Stable

The Department of the Youth Authority institutional population decreased significantly in the current year and it's projected to remain fairly stable over the next several years, growing from 9,545 in the budget year to 10,145 in 2000-01. The significant population decrease in 1996-97 was a consequence of legislation transferring custody of some offenders from the Youth Authority to the Department of Corrections. Also, Youth

Authority parole populations are expected to decline in the budget year to about 6,295 parolees, but will increase to about 6,800 parolees by the end of 2000-01.

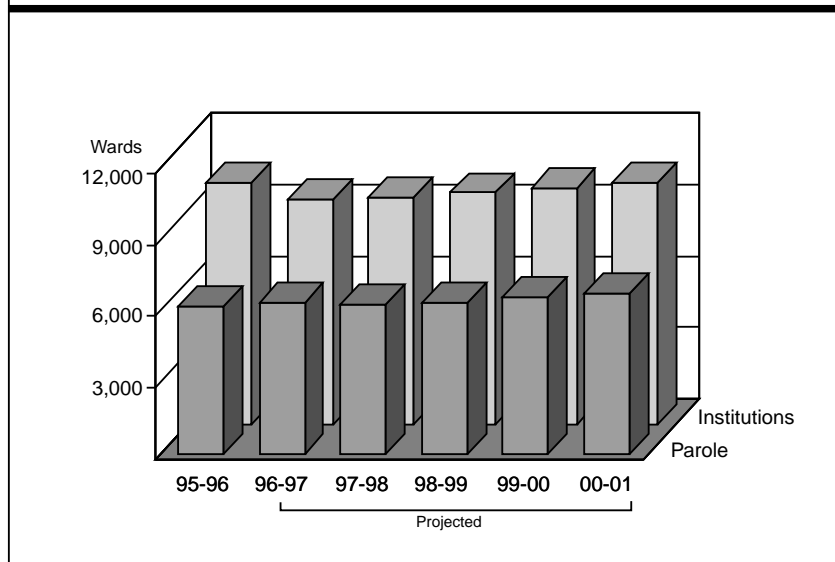
The Youth Authority's December 1996 ward population projections (which form the basis for the 1997-98 Governor's Budget) estimate that the number of wards and inmates housed in the Youth Authority will decrease by almost 800 (7.3 percent) by the end of 1996-97, compared to 1995-96. This decline in population is the result of the implementation of Chapter 195, Statutes of 1996 (AB 3369, Bordonaro), which transferred Department of Corrections' (CDC) inmates, housed at the Youth Authority, back to the CDC (we discuss the effect of this legislation below).

For the budget year through 2000-01, the Youth Authority projects that its population will remain relatively stable, growing at an average annual rate of less than 2 percent, reaching just over 10,100 incarcerated wards on June 30, 2001. These estimates, however, assume that the implementation of increased fees to counties for juvenile offenders sent to the Youth Authority will not have an effect on ward population (we discuss this change below).

The Youth Authority also projects little change in the number of parolees it supervises. Figure 23 shows the Youth Authority's institutional and parolee populations from 1995-96 through 2000-01.

Figure 23

**Youth Authority Populations Remain Stable
1995-96 Through 2000-01**



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:

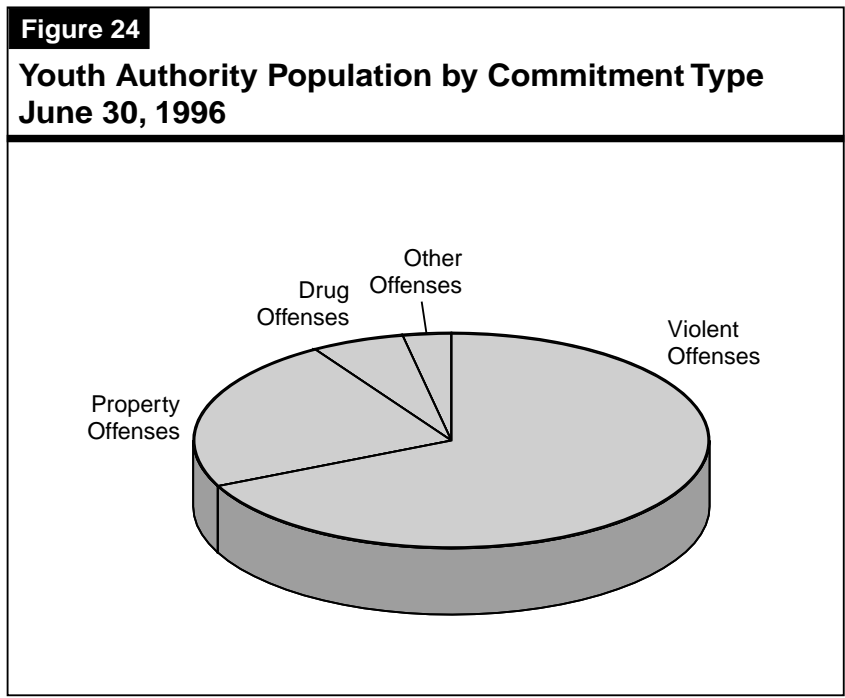
- **Juvenile Court Admissions.** The largest number of first-time admissions to the Youth Authority are made by juvenile courts. On June 30, 1996, 82 percent of the institutional population was committed by the juvenile court. Juvenile court commitments include offenders who have committed both misdemeanors and felonies.
- **Criminal Court Commitments.** These courts send juveniles who were tried and convicted as adults to the Youth Authority. On June 30, 1996, 5 percent of the institutional population were juveniles committed by criminal courts. Legislation enacted in 1994 (Chapter 452, Statutes of 1994 [SB 1539, McCorquodale]) limited the court's ability to directly commit juveniles to the Youth Authority. The Youth Authority estimates that only 45 juveniles will be committed from these courts in 1996, 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 June 1996—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 have been ordered by the court to be transferred to the Youth Authority to serve all or part of their incarceration time. Prior to July 22, 1996, these inmates could have remained in the Youth Authority until they reached the age of 25. Chapter 195 restricts future “M cases” to only those CDC inmates who are under the age of 18 at the time of sentencing. The new law requires that “M cases” be transferred to the CDC at age 18, unless their earliest possible release date comes before their 21st birthday. We discuss “M cases” and their impact on the 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.

“M Cases” Transfer Significantly Reduces Youth Authority Population. Implementation of Chapter 195 has had a significant impact on the Youth Authority's institutional population and will affect the population for some time. Specifically, the new law has resulted in more than 800

inmates, over 7 percent of the Youth Authority's institutional population, being transferred to state prison in the current year. In addition, the Youth Authority assumes that the new legislation will result in an average of 600 fewer new admissions annually between 1997-98 and 2000-01 compared to projections made prior to the enactment of Chapter 195. As a consequence of the provisions of Chapter 195, "M case" population will drop from a total of 1,471 at the end of 1995-96, to about 250 inmates at the end of 2000-01, a drop of more than 83 percent. Similar reductions will be seen in the Youth Authority parole caseloads of "M cases," which will decline from 979 at the end of 1995-96, to no cases by 2000-01.

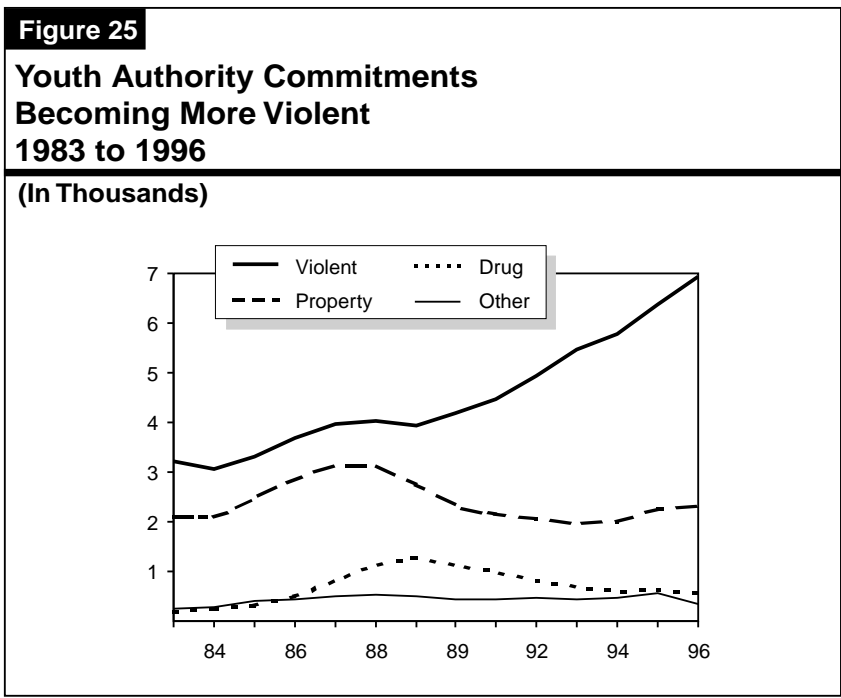
Characteristics of the Youth Authority Wards. Wards in Youth Authority institutions are predominately male, 19 years old on average, and come primarily from southern California, with 34 percent coming from Los Angeles County. Hispanics make up the largest racial and ethnic group in Youth Authority institutions, 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. Figure 24 shows the Youth Authority population by type of offense.



In 1996, 69 percent of the wards housed in departmental institutions were committed for a violent offense, such as homicide, robbery, assault, and various sex offenses. We believe that the percentage of wards that are incarcerated for violent offenses will probably increase in future years because of new fees charged to counties for certain less serious offenders committed to the Youth Authority (we describe this below). 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 25 percent of the total population. The number of wards incarcerated for drug offenses was just under 6 percent in 1996.

Figure 25 shows the trends in offender populations at the Youth Authority by type of offense.



Average Period of Incarceration Is Increasing. 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 27.4 months for new admissions in 1996-97, compared to 17.9 months in

1989-90. This trend is expected to continue; the Youth Authority projects that the length of stay for new admissions in 2000-01 will be 28.8 months.

The longer lengths of stay 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 most 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.

As the Youth Authority population changes, so that the number of wards committed for violent offenses makes up a larger share of the total population, the length of stay will become a significant factor in calculating population growth.

Ward and Parolee Population Projections Will Be Updated in May

We withhold recommendation on a \$4.4 million decrease from the General Fund based on projected ward and parolee population changes, pending 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 by the end of the budget year. This reduction is principally the consequence of transferring “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 330 wards, or 3 percent, below the estimate adopted in the *1996-97 Budget Act*. The budget requests a decrease of \$4.4 million (\$3.5 million from the General Fund and \$1.1 million from Proposition 98) below the *1996-97 Budget Act* level as a result of these reductions in caseloads.

Action on Ward and Parolee Caseloads Should Await 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 below, full implementation of new fees for Youth Authority commitments could result in both different types of wards committed from counties, and fewer commitments.

Furthermore, other factors may affect the Youth Authority population. For example, as part of his welfare reform plan, the Governor is proposing to allocate \$141 million in of federal funds to counties for juvenile offenders housed in county facilities. When counties had received federal funds for these programs in prior years, admission rates to the Youth Authority decreased. Consequently, the subvention of these funds to county probation departments may result in fewer juveniles being sent to the Youth Authority. (We discuss this issue below.)

Given these uncertainties, we withhold recommendation on the proposed \$4.4 million decrease reflecting anticipated ward and parole population changes, pending receipt and analysis of the revised budget proposal.

Reimbursement Fees Could Be Overstated

In 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 took effect January 1, 1997. Thus, there is no data available to evaluate the impact of the new fees on the Youth Authority population. Consequently, we withhold recommendation on \$47 million in reimbursements, the amount anticipated in the Governor's Budget pending receipt of the revised population estimates at the time of the May Revision.

Chapter 6, Statutes of 1996 (SB 681, Hurtt) increased the fees that counties pay the state for placement of juvenile offenders in the Youth Authority. The new fees went into effect January 1, 1997.

Increased Monthly Fees. Prior to the enactment of this legislation, counties paid the state \$25 each month (\$300 annually) for each offender sent to the Youth Authority. The \$25 monthly fee was set in 1961, and had 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 new fee is still substantially below the Youth Authority's average annual cost of \$31,200 per offender.

"Sliding Fee Scale." 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. Chapter 6 enacted a "sliding scale fee" for offenders sent by counties to the Youth Authority. In general, the fee was designed as an incentive for counties to treat less serious offenders locally while sending more serious offend-

ers to the Youth Authority. Under this legislation, counties 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 pay the regular \$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-operated facilities often spend less than six months in these facilities.

Little Data on the Impact of New Fees. The budget assumes that the new fees will generate revenues (shown as reimbursements in the Youth Authority's budget) of \$12 million in the current year and \$47 million in the budget year. However, these estimates assume that counties will make no changes to their commitment practices. Both the Youth Authority's population projections and its estimates of reimbursements from counties are based on counties continuing to send the same number of offenders to the Youth Authority, and for the same reasons as they had prior to enactment of the new fees.

The Youth Authority informs us that it does not have any data that would allow it to modify its models for projecting new admissions because there is no historical data on the impact on commitment practices of raising fees.

Nevertheless, we believe that counties will have a fiscal incentive to use less costly local options rather than the Youth Authority, especially for those wards (the least serious offenders) where the county would pay most of the cost of commitment (up to \$31,000 annually). In 1996, for the 2,273 new admissions for which the YOPB category is known, 1,340 of the admissions, or 59 percent, would have been subject to the "sliding scale" fees. More than 31 percent of these commitments would have been subject to a fee of \$1,950 per month after January 1, 1997, rather than the \$25 per month the counties were paying in 1996. For each of these offenders, the county had the option of placing the offender in a local placement rather than committing the ward to the Youth Authority.

Several counties have informed us that they are developing local alternatives to Youth Authority placements. These new placement options include the creation of new ranch and camp beds and the use of other non-residential options, such as day-treatment centers, for less serious offenders. In addition, counties have indicated that they are evaluating whether some more serious offenders, who are currently placed in local facilities, should be sent the Youth Authority. Consequently, because of the increased fees, counties could significantly change how they use Youth Authority commitments, both for the types of wards that

are committed—potentially sending more serious offenders rather than less serious offenders—and the number of wards that are committed.

Need to Monitor Implementation of 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 county would not be subject to a sliding fee if it sent that individual to the Youth Authority. 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. 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.

Reimbursements Could Be Overstated. If counties choose to send fewer less serious offenders to the Youth Authority to save the costs of the new “sliding scale fees,” Youth Authority populations could decline. In which case, the amount of reimbursements from counties will be less than the Youth Authority projects. As a consequence, we withhold recommendation on the Youth Authority’s proposed \$47 million in reimbursements, pending receipt and review of the Youth Authority’s revised population estimates that will be provided at the time of the May Revision.

State Subsidy for Local Ranches and Camps Should be Reassessed

We withhold recommendation on \$32.7 million from the General Fund for county ranches and camps pending legislative review of the Governor’s welfare reform proposal to allocate \$141 million for local juvenile services, including ranches and camps. We also recommend that the Youth Authority submit, prior to budget hearings, a plan that identifies additional methods for allocating the \$32.7 million based on alternative types of placements.

Background. Most county probation departments can place juvenile offenders in local juvenile halls, usually for short stays, or in county ranches and camps, usually for stays of four to six months. There are currently throughout the state, more than 6,300 juvenile hall beds in 43 counties. In addition, there are more than 4,000 county ranch/camp beds in 25 counties. Juveniles placed in juvenile halls usually are awaiting

court action. Many of these youths are being detained for very serious or violent offenses.

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

County probation departments use a variety of other placement options in addition to juvenile halls, ranches, and camps. For example, juvenile offenders can be placed in foster care or group homes. Counties also use non-residential placements, such as day treatment centers. Probationers placed in these settings must report at a certain hour—usually in the early morning—and stay at the center until the evening. While at the center, the probationers receive schooling, counseling, and other services. In addition, the probationers are supervised for the entire time while at the center.

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 who receive services in juvenile halls, ranches and camps, or other probation services. Subsequently, the federal government approved federal Title IV-A (emergency assistance) funding on an interim basis. All 58 counties were authorized to receive a share of Title IV-A funding for these juveniles. In September 1995, however, the federal government notified the state that juvenile offenders would no longer be eligible for these federal funds.

In August 1996, the Congress enacted federal welfare reform legislation. That legislation established a federal block grant for providing financial assistance to needy children and their parents. Under the block grant, the state can use these funds for youths in juvenile facilities. The Governor's budget proposes to provide \$141 million from the block grant to counties for support of their juvenile facilities.

State Aid to County Juvenile Detention Facilities. In the *1993-94 Budget Act*, the Legislature appropriated \$33 million from the General Fund to support county ranches and camps. This funding was not continued in 1994-95 in part because of the substantial increase in the amounts of federal funds available to counties under Title IV-A. However, when the federal government informed probation departments that these funds would no longer be available after January 1996, the Legislature enacted Chapter 7, Statutes of 1996 (AB 1483, Villaraigosa), which provided \$32.7 million in 1995-96 and in the current year for counties with camps

and ranches. The Governor's Budget requests the same amount for 1997-98.

The Youth Authority administers this subsidy. These funds are allocated to counties based on the number of ranch and camp beds that each county has as a proportion of the state total. Counties do not receive funding for any other type of placement under this subsidy.

Impact of Federal Funds on Local Placements. When the counties were receiving federal funds (Title IV-A) for their juvenile facilities, it appears that their use of the Youth Authority declined. For example, consider Los Angeles County that accounts for the largest share of the Youth Authority's new admissions. In 1993-94, the first year federal funds were available, Los Angeles' admission rate to the Youth Authority was about one-third less than in the prior year. In 1994-95, its admission rate again declined, presumably because wards were receiving services in the county rather than being placed in the Youth Authority. With the elimination of federal funding in 1996, the county's admission rate began to rise. The admission rates for many other counties parallel the experience of Los Angeles, declining when federal funds were available, and increasing after the elimination of the funding.

Analyst's Recommendation. We withhold recommendation on the continuation of the state subsidy for county-run ranches and camps for juvenile offenders pending legislative action on the Governor's welfare reform proposal. If the plan is approved, county probation departments will receive an additional \$141 million for local juvenile services, that they have not been eligible to receive since January 1996. The Legislature also should consider whether it wishes to continue the state subsidy for county ranches and camps. If the Legislature decides to discontinue the subsidy in light of the provision of federal funds to probation departments, there would be General Fund savings of \$32.7 million.

If the Legislature wishes to continue this subsidy, these funds could be part of any deliberations on fiscal relief to local governments. Since these funds are meant to ensure that counties have resources for keeping juvenile offenders in the county rather than committing them to the Youth Authority, we recommend that these funds not be restricted to just ranch and camp beds. Rather, the funds should be made available to any county that develops local placement options that allow for fewer Youth Authority commitments. For example, many non-residential placement options, such as day treatment centers, could allow counties to keep juvenile offenders at the local level. Counties should be able to use this state subsidy for any option that allows avoidance of a Youth Authority placement. Consequently, we recommend that the Youth Authority submit a

plan prior to budget hearings that identifies the options for allocating this local assistance to counties based on alternative types of placements.

How Will the Youth Authority Rehabilitate Wards As Its Population Changes?

We recommend that the Legislature adopt supplemental report language directing the Youth Authority to complete a needs assessment to determine what types of rehabilitation programs and services will be needed as its population changes.

Background. As indicated above, the Youth Authority projects that its population will remain fairly stable over the next several years. Nevertheless, the *composition* of the Youth Authority's institutional population will likely change significantly in the next few years because of changes in the types of juveniles counties will send to the Youth Authority, new federal funds, and changing demographics. It is likely that the population will be more violent, younger, and will have longer lengths of stay.

In last year's *Analysis*, we noted that access to appropriate rehabilitative programs is one of the ways the Youth Authority can reduce overcrowding and reduce ward length of stays. Based on this conclusion, the Legislature augmented the Youth Authority budget by \$1 million to provide new programming aimed at reducing ward length of stay. For the budget year, the Youth Authority is proposing a variety of new program initiatives, in addition to its existing rehabilitative programs. In this section, we discuss these existing and new rehabilitation programs.

Rehabilitation Programs. The department, in addition to incarcerating wards, operates a variety of programs and services in its institutions whose goals are to treat, train, and generally "rehabilitate" youthful offenders.

More than 90 percent of all wards are enrolled in either academic or vocational education programs. In addition, 26 percent of all wards participate in one of the Youth Authority's specialized programs. Figure 26 shows the department's programs.

Evaluating Rehabilitation Programs. As we reported in our *1995-96 Analysis*, the Youth Authority does not systematically evaluate its rehabilitative programs to determine whether they are effective. While many of its *new* programs have evaluation and research components, many of its older programs do not. Consequently, the Youth Authority cannot determine whether an individual program, or combination of programs, contributes to ward success on parole. The Youth Authority has, however, taken steps to begin addressing this concern.

Figure 26

Department of the Youth Authority Rehabilitative Programs

| Program | Program Description |
|---|---|
| Academic education | General elementary and high school studies, leading to diploma or GED. |
| Special education | Assessment and identification, classes for the learning disabled, and students with limited or no English. |
| Vocational education | Vocational training in 30 skills; some wards are enrolled in both academic and vocational programs. |
| Intensive treatment programs | Treatment of wards needing psychiatric services. |
| Special counseling programs | Treatment for wards who are assaultive, suicidal, or sex offenders. |
| Substance abuse treatment programs | Six to eight month formal alcohol and drug treatment programs. |
| Drug treatment program (for parole violators) | Ninety-day program for parolees who fail drug testing, but do not warrant return to an institution. |
| Sex offender treatment "Continuum of Care" | Twenty-month institutional program followed by intensive parole for high-risk sex offenders. |
| LEAD "Boot Camp" | Four month "military-style" shock incarceration program for nonviolent offenders, followed by intensive parole supervision. |
| "Young Men as Fathers" | Teaches parenting skills to wards who have children. |
| Pre-Release Transition Program | Pre-parole program for wards at the National Guard's Camp Roberts where they participate in work programs <i>outside the institution</i> in order to prepare for re-entry into their community. |
| Electronically Enhanced Parole Release Program | Early release program for less serious offenders who are monitored using electronic "anklets." |

As part of its 1997-98 budget request, the Youth Authority is requesting authority to use Lottery funds to initiate evaluations of its educational programs. Specifically, the Youth Authority proposes to add staff to its research division and to contract with specialized consultants to develop an education program evaluation plan and to start evaluating its aca-

demic programs. The Youth Authority reports that it will evaluate its programs using traditional educational performance measures, such as ward performance in classes, and will add plans to evaluate the effect of educational programs on ward success on parole. The Youth Authority does not, however, track wards who complete vocational programs prior to parole, to determine whether they subsequently obtain employment in the field in which they were trained.

The Youth Authority has evaluation components for several of its other programs. For example, wards identified as needing substance abuse treatment are transferred to a formal program near the end of their confinement. The Youth Authority tracks ward behavior, including monitoring for substance abuse, for 24 months after parole. The department operates two sex offender treatment programs. These programs track performance of program “graduates.” The LEAD (leadership, esteem, ability, and discipline) “Boot Camp” program, in its fourth year, is also being evaluated.

New Programs Proposed for 1997-98. The Youth Authority is proposing several new programs for rehabilitating wards. These programs have evaluation components. Three of the programs are part of a request to extend the \$1 million augmentation made by the Legislature last year. The new programs include:

- ***Specialized Counseling Program for Female Wards—47 Beds.*** The department proposes to create a second Specialized Counseling Program (SCP) for females at the Ventura School. The program will treat females who are violent offenders, are suicidal, have self-destructive tendencies, or are victims of abuse. It will double the number of SCP beds for females and will reduce length of stay for wards on waiting lists.
- ***Specialized Counseling Program for Wards—55 beds.*** The department proposes to create a second SCP at the Heman G. Stark Youth Training School (YTS). The program will treat male wards who are unstable, suffer from depression, or are suicidal. This program will have a public service component in which wards receive treatment but will also participate in work assignments. There are currently more than 400 wards awaiting placement in a SCP. These wards will not be paroled until they receive SCP services.
- ***“Impact of Crime On Victims” Classes—Nine New Instructors.*** The department proposes to add new instructors for a 90-hour class that teaches wards the impact of their criminal behavior on victims and society. The instructors would add classes at YTS and

the Fred C. Nelles School. There are over 200 wards on waiting lists for these classes. These wards will not be paroled without completing this class.

- **Education Transition Coordinators—Three Positions.** The department proposes these coordinators at three institutions to identify wards who are likely to have the greatest difficulty in sustaining an education program after they leave Youth Authority institutions. The coordinators will work with wards ready to parole back to the community and ensure that they transition successfully back into the community. The Youth Authority plans to evaluate this program based on its success in reducing parole failures.
- **Community Service for Parolees—Add Program to Four Parole Offices.** Parolees will be required to complete a fixed number of hours of community service as a condition of their parole. The Youth Authority intends for the program to instruct parolees on proper work ethic and to ensure that these offenders “restore” the communities where they committed their offenses.

Meeting the Needs of a Changing Population. As we noted above, the Youth Authority population has changed in the past several years. In 1986, 38 percent of the Youth Authority’s wards had been committed for a violent offense. By 1996, almost 70 percent of the Youth Authority population were committed for violent crimes. The number of new wards committed for serious sex offenses has increased, as has the number of wards who have been identified as having mental or substance abuse problems. Most wards today have low academic scores and many have significant special education needs. Few wards enter the Youth Authority with job skills.

While the Youth Authority’s population has changed significantly, and is likely to continue to do so in the future, the Youth Authority has not updated its *Treatment Needs Assessment* since January 1991. This report provides a projection of the Youth Authority’s needs for specialized programs. It identifies program needs for intensive treatment, specialized counseling, sex offenders, and substance abuse.

Expanded Assessment Needed. We believe that the Youth Authority needs to update its *Treatment Needs Assessment*. The new assessment should evaluate the needs for *all* of its rehabilitation programs. The Youth Authority should also review each program to determine if the program will continue to be effective in light of changes in its population. The Youth Authority should also identify its capital outlay needs for most effectively providing needed programs.

In addition to projected program needs, the Youth Authority should ensure that it has in place systems for tracking the success of those who complete the department's various programs. With this data, the Youth Authority would be able to determine if certain programs, or combinations of programs, lead to successful parole outcomes. By measuring which programs yield the best results, the department can concentrate its limited resources more effectively.

Analyst's Recommendation. We recommend that the Legislature approve the Youth Authority's request for the continuation of the current-year program augmentations of \$1 million. In addition, we recommend approval of the new Youth Authority initiatives for 1997-98 for improving the delivery of programs and for evaluating its programs.

We also recommend that the Legislature adopt supplemental report language directing the Youth Authority to complete a needs assessment to determine what types of rehabilitation programs and services will be needed as its population changes.

Specifically, we recommend the following language:

The Department of the Youth Authority shall, using existing resources, complete a *Treatment Needs Assessment* that identifies what programs are needed for its institutional and parole populations. In addition, the assessment should identify the systems required to evaluate the effectiveness of its rehabilitation programs and what measures it will use to determine the effectiveness of individual programs and/or combinations of programs on parole outcomes. The department shall complete the assessment and transmit copies to the Joint Legislative Budget Committee and the Legislature's fiscal committees by March 1, 1998.

**Young Men as Fathers Program:
No Performance Data Available Yet**

We recommend approval of \$3 million requested to continue funding for the Young Men as Fathers local assistance grant program. Because the program has not yet demonstrated success, we recommend that the Legislature direct the Departments of the Youth Authority and Finance through supplemental report language not to include this amount in the base budget for 1998-99.

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.

Background. 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.

No Data On Local Program Performance. The Youth Authority is requesting \$3 million for local assistance funding to continue its Young Men as Fathers/Mentoring grant program in 1997-98. The Legislature approved \$3 million for this program in the current year. The Youth Authority awarded the first grants in December 1996. Counties began implementing the new programs on January 1, 1997. Because this program is still being implemented, the Youth Authority has no data on the number of participants, the effectiveness of the classes, or the ultimate impact of the classes on young fathers

Funds for the program will be used by 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. The program will serve youth in juvenile halls, county ranches or camps, alternative schools, or under community supervision of probation departments. As directed by the Legislature, the Youth Authority required that grantees incur a share of cost of at least 10 percent. The Youth Authority reports that the successful applicants proposed matches ranging from 10 to 34 percent of program costs as part of their proposals. Twenty-six counties received grants, ranging from \$728,747 in Los Angeles County to \$25,392 in Tulare County.

The Youth Authority is requesting that annual funding for these grant programs be built into its baseline budget for local assistance even though the programs have not been implemented nor have they demonstrated success. The Youth Authority indicates that grantees, when their programs are fully implemented, will have four groups of students per year, with the first group beginning in January 1997. Consequently, data on this program will not be available during the current year, and only limited data will be available in the budget year. The Youth Authority reports that it will evaluate each grantee during the grant period. Nevertheless, it will be some time before the success or failure of these grants can be measured. Therefore, placing these funds into the Youth Authority's baseline budget is premature.

Analyst's Recommendation. For these reasons, we recommend that the Legislature direct the Youth Authority and Department of Finance not to add funding for this grant program into the Youth Authority's baseline budget.

The following supplemental report language is consistent with this recommendation:

It is the intent of the Legislature that the Youth Authority's local assistance baseline budget not include the Young Men As Fathers local assistance grant program. This program shall be justified in the annual budget process.

Continued Oversight Needed For Tattoo Removal Program

We recommend that the Legislature adopt Budget Bill language to limit the use of funds for tattoo removal because we do not yet have data on the costs or success of the program. 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 continuation of \$550,000 from the General Fund 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.

The Legislature approved \$550,000 for the current year for a program to provide tattoo removal for wards who meet specified criteria. Because of uncertainties about how much of the money would be spent in the current year, the Legislature adopted budget bill language restricting the use of the money and directed the department to provide the Legislature with a status report on the program by December 1, 1996.

Program Still Being Implemented. The Youth Authority is in the process of implementing this new program. The Youth Authority originally planned to contract with private dermatologists to provide tattoo removal services. However, because of security concerns related to transporting a number of wards into the community for these services, the Youth Authority requested bids for services to be provided at Youth Authority institutions. There were no bidders.

Based on the lack of response, the Youth Authority purchased necessary laser-removal equipment for three facilities—the Ventura School, YTS, and the Northern California Youth Center (which has four institutions at one location in Stockton)—and has contracted with dermatologists to perform these services at the Youth Authority facilities. At the time of the Youth Authority's status report to the Legislature, actual tattoo removals had not begun. As a consequence, there is no data on the number of removals or the costs of the removals at this time.

Analyst's Recommendation. Since the Youth Authority does not yet have data on the number of wards who have requested removal of tattoos, and consequently the costs of this program, we recommend that the Legislature adopt the following budget bill language limiting the use of these funds. This language was incorporated by the Legislature into the current year budget act.

Of the funds appropriated in this item, \$550,000 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 by December 1, 1997, 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.

Hazardous Material and Deferred Maintenance Expenditures Need Annual Review

We recommend approval of \$1.5 million requested for the Youth Authority's hazardous materials and deferred maintenance programs. Because these types of requests should be reviewed annually we recommend that the Legislature direct the Departments of the Youth Authority and Finance through supplemental report language not to include this amount in the base budget for 1998-99.

The budget requests \$1.5 million from the General Fund for the Youth Authority's hazardous materials and waste program (\$360,000) and deferred maintenance program for its facilities (\$1.1 million). The request proposes to build these expenditures into the Youth Authority's baseline budget thereby continuing this funding level in future years.

Our review indicates that both proposals are justified. The Youth Authority has received approval for funding of its hazardous materials and waste program in prior years. The funding is used for hazardous materials abatement and waste disposal. The expenditures include clean-up costs and monies for disposal fees and permits. Prior to funding these activities, the Youth Authority had been fined for improper handling of hazardous materials.

In 1993, the Legislature directed the Youth Authority to develop a deferred maintenance plan. This plan identified more than \$51 million in deferred maintenance projects at Youth Authority facilities. In prior years, both of these programs had funding from bonds.

These Programs Should Not Be Included In the Base Budget. Although we believe that these requests are justified, adding the additional funding into the Youth Authority's baseline budget would mean that it has the same level of funding to use for these programs each year. We do not believe that these types of expenditures should be included in the baseline. Instead, these types of expenditures should be justified each year. Justifying major hazardous material abatement projects and deferred maintenance proposals each year is standard budget practice and, we believe, provides the Legislature a better opportunity to perform oversight of the Youth Authority's annual budget. Furthermore, because the request is from the General Fund, the Legislature might want to evaluate the Youth Authority's requests annually in relation to all other requests from other departments for similar programs. While the annual Youth Authority proposal might be justified, other department's needs might have a higher priority for General Fund expenditures.

Analyst's Recommendation. For these reasons, we recommend that the Legislature direct the Youth Authority and Department of Finance not to add funding for this grant program into the Youth Authority's baseline budget.

This could be accomplished by adopting supplemental report language:

It is the intent of the Legislature that the Youth Authority's budget not include funding for hazardous waste and material program and deferred maintenance program. These programs shall be justified in the annual budget process.

New Construction Staff Not Needed

We recommend deletion of \$233,000 requested from the Federal Trust Fund for staff to plan and manage proposed new Youth Authority construction projects, because we find the proposed construction projects funded with federal prison construction funding are not justified. (Reduce Item 5460-005-0890 by \$233,000.)

The Governor's budget requests \$233,000 in federal funds to add staff to plan and manage new construction of Youth Authority facilities. The administration is proposing construction of 350 new Youth Authority beds at various institutions using monies from federal prison construction grants. These projects are more fully described in our review of the Youth Authority capital outlay requests (please see the Capital Outlay chapter of this *Analysis*).

The state has a variety of options for the use of federal prison construction funds. We describe in detail the options for using these funds and

our recommendations for how they should be used earlier in the *Analysis* (please see the Capital Outlay chapter). In our analysis of the federal construction options, we conclude that new construction needs for the Youth Authority, with the exception of a 50-bed ITP at its Southern Reception Center/Clinic, are a lower priority than other state and local needs. Consequently, if our recommendations are adopted, there would be no need for new staff at the Youth Authority and, therefore, we would recommend deletion of these funds.



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 the state's support for trial courts by 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. Assuming, as the budget does, that fine and forfeiture funds are transferred to the courts in the current year, the state will pay about 41 percent of the costs of trial courts and the counties pay the remaining 59 percent.)

The budget proposes total expenditures of \$1.7 billion for support of the Trial Court Funding Program. This is \$48 million, or 3 percent, greater than estimated current-year expenditures. The program, as represented in the Governor's budget, is supported by appropriations from the Trial Court Trust Fund, which include:

- \$890 million transferred by the counties.
- \$292 million in fine and penalty revenues.
- \$243 million in court fees.
- \$237 million from the General Fund.

Budget Does Not Accurately Reflect Administration's Proposal. The budget overstates the administration's estimate of revenues to the Trial Court Trust Fund by a total of \$21.2 million, as reflected in the trial court consolidation trailer bill. First, the General Fund appropriation is overestimated by \$7.5 million because the budget assumes transfer of certain traffic violator fees to cities that was not enacted in the current year. Second, the county contribution portion of the trust fund (\$890 million) is overstated by \$10.7 million because it does not take into account the administration's proposal for the state to require no contribution from the 20 smallest counties. In addition, the budget overestimates the fine and

forfeiture revenues (\$291 million) by \$3 million due to a technical adjustment.

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 27 shows proposed expenditures for the trial courts in the past, current, and budget years. We discuss the elements of Item 0450 below.

| Figure 27 | | | |
|--|---------------------------|------------------------------|-----------------------------|
| Trial Court Funding Program 1995-96 Through 1997-98 | | | |
| (In Millions) | | | |
| | Actual 1995-96 | Estimated 1996-97 | Proposed 1997-98 |
| Trial Court Funding (Item 0450) | | | |
| Trial court operations | \$1,531.5 | \$1,601.7 | \$1,641.5 |
| Assigned judges program | 12.7 | 18.3 | 19.6 |
| Subtotals | (\$1,544.2) | (\$1,620.0) | (\$1,661.1) |
| Judges' Retirement Fund (Item 0390) | | | |
| | \$55.7 | \$52.7 | \$59.6 |
| Totals | \$1,599.9 | \$1,672.7^a | \$1,720.7 |

Source: Governor's budget.
^a Preliminary information from Judicial Council indicates expenditures of \$1.5 billion, instead of \$1.7 billion.

Courts Request More Than Budget Proposes. Under current law, the Trial Court Budget Commission (TCBC) reviews the budget requests submitted by the trial courts. The trial courts made requests to the TCBC for 1997-98 that totaled about \$1.9 billion. The TCBC reduced those requests to \$1.8 billion, which is the amount it presented to the administration as its proposed Trial Court Funding budget for 1997-98. However, the Governor's Budget reduced the amount requested by the TCBC by an additional \$146 million, or 8 percent.

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 difference is primarily due to the fact that many counties have not provided the level of

funding that was anticipated in the *1996-97 Budget Act*. Additionally, we note that actual expenditures for trial court functions in 1995-96 are \$194 million lower than indicated in the Governor's budget.

Figure 28 shows actual expenditures for the trial courts in 1995-96 by various functional categories.

| Figure 28 | | | |
|---|---------------------------------------|------------------------------|-----------------------------|
| Total State and County Expenditures Trial Court Operations 1995-96 Through 1997-98 | | | |
| (In Millions) | | | |
| Trial Court Functions | Actual^a 1995-96 | Estimated 1996-97 | Proposed 1997-98 |
| Judicial officers | \$185.5 | \$190.1 | \$193.6 |
| Jury services | 39.5 | 42.9 | 56.9 |
| Verbatim reporting | 137.1 | 140.7 | 142.2 |
| Interpreters | 36.6 | 36.1 | 36.1 |
| Collection enhancements | 28.9 | — | — |
| Dispute resolution programs | 26.3 | 34.1 | 34.1 |
| Court-appointed counsel | 46.3 | 39.1 | 39.1 |
| Court security | 225.3 | 239.0 | 248.5 |
| Information technology | 108.3 | 158.2 | 158.2 |
| Staff and other operating expenses | 667.0 | 676.7 | 690.9 |
| Indirect costs | 30.8 | 44.6 | 41.8 |
| Totals | \$1,531.5 | \$1,601.7 | \$1,641.5 |

^a Differs from amount shown in Governor's budget.

Current-Year Funding Shortfall Affecting Some Courts

As a result of the failure of Assembly Bill 2553 (Isenberg), the implementing legislation for last year's consolidation of trial court funding, the Judicial Council has indicated that a number of trial courts are projecting funding shortfalls in the current year. We recommend that the Judicial Council advise the Legislature during budget hearings on the status of the current-year funding issues.

Last Year's Trial Court Restructuring Proposal Failed Passage. The 1996-97 Governor's Budget proposed to consolidate the costs of operating the trial courts at the state level. This proposal was contained in AB 2553 (Isenberg) which failed passage. As a result, there is less state money

available for support of the trial courts in the current year than anticipated in the *1996-97 Budget Act*.

Shortfall in the Current-Year Budget. Historically, counties have remitted fine and forfeiture revenues (estimated to be \$291 million in the current year) to the state General Fund to offset the state’s costs of supporting the trial courts. Assembly Bill 2553 would have deposited fine revenues into the Trial Court Trust Fund (rather than the General Fund) for allocation to the counties. The *1996-97 Budget Act* assumed the enactment of AB 2553 and appropriated an equivalent amount of fine revenues from the trust fund for the Trial Court Funding Program. Because of the failure to enact AB 2553, however, the fine revenues continued to be deposited into the General Fund, and there is no appropriation authority for the expenditure of these receipts.

This situation has led to a current-year shortfall of approximately \$291 million for the budgets of the trial courts. In addition to this loss of fine revenues, AB 2553 contained provisions to increase court fees by an estimated \$90 million in the current year. As a consequence of the failure of AB 2553, the trial courts will have to reduce their budgets by \$90 million in the current year, or the counties will have to make up the difference.

Judicial Council Responses to Trial Court Funding Shortfall. In response to the decreased amount of state funding, the Judicial Council has accelerated the release of General Fund monies to the counties for support of the trial courts. Specifically, in October 1996, the Judicial Council distributed all of the remaining General Fund appropriation for the year except for two dollars per county to be distributed in the last two quarters. In addition, the council has provided advances totaling \$1.7 million for statewide automation projects to the 19 courts most reliant on state funding. Figure 29 shows the 19 counties deemed most reliant on state funding by the Judicial Council.

| Figure 29 | | | |
|--|------------------------|---------------------|---------------------|
| Trial Court Funding | | | |
| Counties Considered Most Reliant on State Funding | | | |
| Alpine ^a | Madera | Mono | Siskiyou |
| Colusa ^a | Mariposa | Monterey | Sutter ^a |
| Glenn ^a | Mendocino ^a | Nevada ^a | Yolo ^a |
| Imperial | Merced ^a | San Benito | Yuba ^a |
| Inyo ^a | Modoc ^a | Sierra ^a | |

^a Among the 16 counties that the Judicial Council indicated will deplete funding by the end of February 1997.

Judicial Council Indicates That Some Courts May Close Operations.

The Judicial Council has recently projected that there are 16 courts that will deplete all of their funding by the end of February 1997. Most of these are smaller courts, and all are more than 50 percent dependent on state funds for their budgets. They include 12 of the 19 counties that received advances from the amount budgeted for automation projects (shown in Figure 3), plus four other counties (Humboldt, Lassen, Plumas, and Tulare).

Legislative Solution Pending. Assembly Bill 86 (Pringle), SB 9 (Lockyer), and SB 37 (Johannessen) are three trial court funding bills currently pending before the Legislature. The Department of Finance has indicated that AB 86 will be the trailer bill which will carry the Governor's trial court funding proposals for the budget year. Both AB 86 and SB 9 currently have provisions to appropriate the fine and forfeiture revenues from the General Fund to the Trial Court Trust Fund. For the current year, SB 21 (Lockyer) would appropriate the fine and forfeiture revenues (\$291 million) to provide funding for the trial courts in the current year.

Legislature Provided Emergency Funding Last Year. 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 and the Orange County Superior Court commenced actions to compel their respective counties to provide additional funds. Those actions were discontinued with the passage of Chapter 42, Statutes of 1996 (SB 99, Kopp) which provided \$26.3 million to meet the critical needs of the courts in 1995-96 fiscal year. The Judicial Council has indicated that the courts in Orange and Lassen Counties have begun similar proceedings for the current year.

Judicial Council Should Continue to Update the Legislature on Current-Year Funding Issues. Because of the significant implications of the shortfall, we recommend that the Judicial Council report to the Legislature during budget hearings on the status of current-year funding issues.

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 coordi-

nating 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 thereby reducing the number of judicial and administrative structures to one per county. *Judicial coordination* employs cross-assignment of superior and municipal court judges to handle backlogs. Thus, a superior court judge could be assigned to handle municipal court cases and vice versa. *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.

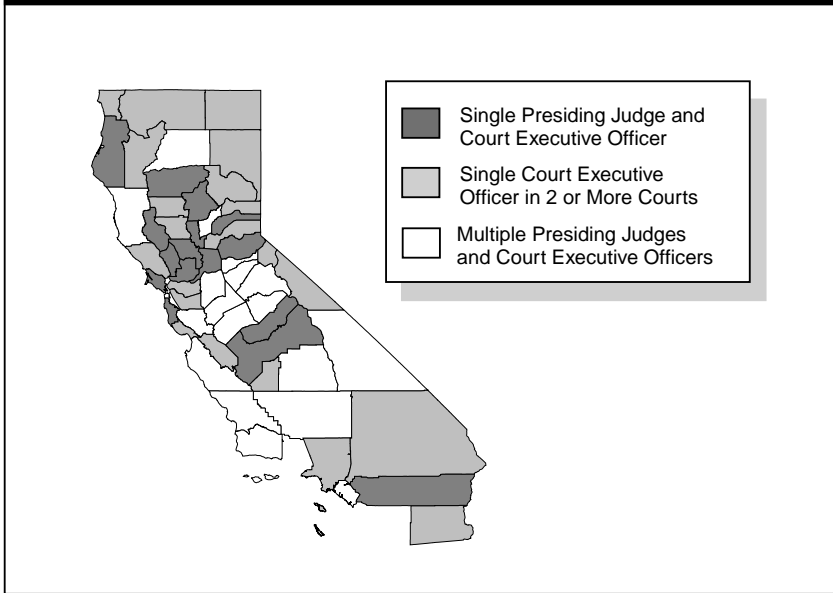
Geographical factors can pose particular problems, particularly in large counties. To address this issue, the Judicial Council has approved regional coordination plans which would allow two or more groups of courts within a county to coordinate their operations. This approach reduces the overall number of judicial and administrative structures, but would allow more than one per county. San Diego, Los Angeles, and Orange counties have each pursued this approach.

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 few coordination efforts implemented.

The Judicial Council has indicated that one good measure of the degree of coordination in the courts is to consider whether the courts have consolidated to the point where there is one presiding judge for the county and whether there is one executive officer for the courts of a county. Using this measure, Figure 30 (see page 140) shows the extent of court coordination in California. Courts that tend to be the most coordinated will have one presiding judge and one court executive officer. Those courts that have made some progress in implementing coordination will have a single court executive officer for all the courts in the county, or for at least two of the courts in the county. Those courts that are the least coordinated will have multiple presiding judges and multiple court executive officers. The figure shows that progress towards coordination has been made in the courts of some counties. However, six years after the Legislature directed courts to coordinate, there are still 19

Figure 30

Degree of Court Coordination by County



will assess the implementation progress of the elements of the plans for each court.

The next coordination plan, for 1997-98 and 1998-99 is required by statute to be submitted to the Judicial Council by March 1997. The Judicial Council has indicated that it will ask for an extension to July 1997 so that it can finish its implementation review process prior to the submission of the new plans. The extension should allow the review process to aid courts in drafting their new plans.

What Can the Legislature Do to Further Coordination? Courts that coordinate to the greatest extent possible benefit from greater efficiency and flexibility in the assignment of trial court judges, which reduces the need to create new judgeships in the future to handle increasing workload. Additionally, coordination leads to greater efficiencies in court administration, such as improving the management of court records, and reduces general court administrative costs.

The Legislature has made efforts to ensure that courts continue with coordination efforts. For example, the Legislature enacted SCA 4 (Locker), which would permit superior and municipal courts with a county to fully consolidate their operations if approved by a majority of the superior court judges and municipal court judges in the county. If the judges vote to consolidate the courts, the municipal courts of the county would be abolished and all municipal court judges and employees would become superior court judges and employees.

If the state takes over funding for the courts, as the Governor proposes, it will be important for the Legislature to continue to provide incentives for courts to coordinate and consolidate their operations. There are a number of ways that the Legislature could do this. For example, the Legislature could create new judgeships only in those courts that have coordinated to the greatest extent possible. Additionally, the Legislature could ensure that the distribution of funds to courts contain incentives for courts to coordinate, and that the new programs are funded and established first in those courts that are achieving the efficiencies through coordination. Later in this analysis, we discuss some of these methods for ensuring that the courts pursue coordination.

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, requiring no contribution from the 20 smallest counties, capping the contribution from the other counties, and making the state responsible for future funding increases.

The budget proposes to consolidate the costs of operating trial courts at the state level, thereby redefining the financial responsibility of the state and the counties in the operation of the trial courts. Figure 31 summarizes the major provisions of the plan. The Governor's plan is similar to last year's plan which failed passage in the Legislature.

Figure 31

Major Features of the Trial Court Funding Consolidation Proposal

- Establishes a cap on the county contribution from 38 largest counties—\$879 million.
- State pays 100 percent cost of the 20 smallest counties.
- State funds future court cost increases.
- Counties would transfer \$288 million in fine and penalty revenues to the Trial Court Trust Fund, rather than the General Fund.
- Increases court filing fees to generate an additional \$88 million.
- Counties fund all costs for court facilities, local judicial benefits, and revenue collection activities.

County Contributions Capped. Under the proposal, the county contribution from the largest 38 counties for Trial Court Funding would be capped at \$879 million. This amount is roughly equal to the level of funding provided by these 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.

Small County Buy-Out. Under the proposal, the state would pay for 100 percent of the costs of supporting the courts in the 20 smallest counties (based on population). Figure 32 lists these counties.

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.

| Figure 32 | |
|---|------------|
| Trial Court Funding Counties Proposed for No County Contribution | |
| Alpine | Modoc |
| Amador | Mono |
| Calaveras | Plumas |
| Colusa | San Benito |
| Del Norte | Sierra |
| Glenn | Siskiyou |
| Inyo | Tehama |
| Lake | Trinity |
| Lassen | Tuolumne |
| Mariposa | Yuba |

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, \$288 million in fine and penalty revenue instead would go annually to the Trial Court Trust Fund.

Increases in Court Filing Fees. Court fee revenues are estimated to be \$156 million in 1997-98 and are deposited into the Trial Court Trust Fund. Under the proposal, certain court filing fees would be established or increased to generate an additional \$88 million, which would be remitted to the Trial Court Trust Fund. Figure 33 (see page 146) shows the proposed increases and new fees, along with the Judicial Council's estimate of the additional revenues which would be generated by these changes.

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.

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 the costs of court facilities.

Figure 33

**Trial Court Funding
Proposed Court Fee Changes**

- **Increase civil filing fees** from \$182 to \$185 in superior court cases and from \$80 to \$90 in municipal court cases (annual revenue: \$6.7 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 \$23 (annual revenue: \$7.2 million).
- **Establish new fees for filing an amended complaint** or cross-complaint, or amendment to a complaint or cross-complaint, of \$75 in superior court and \$45 in municipal court (annual revenue: \$11.1 million).
- **Increase small claims filing fees** to \$20 for the first 12 filings per year and \$35 for any additional filings (annual revenue: \$2.2 million).
- **Retain jury fee deposits** if the proceeding is dismissed or the trial by jury is waived after deposit of the fees (annual revenue: \$5 million).
- **Recovery of previously waived filing fees** when litigant receives a monetary settlement (annual revenue: \$1 million).
- **Increase all miscellaneous clerk fees** by 50 percent (annual revenue: \$52.6 million).
- **Standardize photocopy fee** at \$1 per page (annual revenue: \$1.5 million).
- **Increase fees for family conciliation court** from \$15 to \$20 (annual revenue: \$430,000).
- **Total annual revenue: \$88 million.**

- 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 sign-off from courts on the use of courthouse construction funds.
- Establish a task force on trial court employees to examine and recommend an appropriate system of employment and governance for trial court employees by June 1, 1999.

- Establish a task force on trial court facilities to investigate the options and make recommendations by July 1, 2001 for funding trial court facility maintenance, improvements, and expansion, including making recommendations regarding the specific responsibilities of each entity of government.

State Funding Makes Sense, But Cost Controls Needed

As we indicated in last year's Analysis, 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. As we indicated last year, we concur with the administration that the state should assume primary financial responsibility for the trial courts. There are several reasons for this. First, 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.

Second, the current system largely separates control and financial responsibility for the courts, with the state determining court workload while the counties are primarily responsible for funding the costs. 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.

Finally, we 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 relatively minor. However, because county costs would be capped, all additional future costs

would be borne by the state. Thus, we expect state expenditures will grow in the following years, especially if the Legislature establishes new judgeships or new court-related programs. For example, the budget requests \$4 million from the General Fund to establish 40 new judgeships in the last quarter of 1997-98. An additional \$12 million, all borne by the state, would be required for 1998-99 to provide full-year funding for these proposed judgeships. Similarly, the budget requests \$14 million from the General Fund to fund a number of jury reforms for the second half of 1997-98. Full year costs for these reforms in 1998-99 would be \$28 million.

Based on historical experience, we estimate that the trial court operational budget could increase by \$30 million to \$80 million annually. This amount could increase if the Legislature authorizes additional new judgeships or new programs. The state would be solely responsible for funding this increase. In the budget year, the state's General Fund share of the proposed increase in funding is supplemented by a proposal to increase court 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.

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 bring about operational efficiencies and control trial court expenditures. This becomes especially important if the Legislature wishes to create new trial court judgeships or new court-related programs in the coming years, which could increase trial court operating costs substantially.

For example, last year, we outlined several issues with regard to governance of trial court employees. We noted that the proposal did not link the management and the funding of court personnel. The absence of such a link would allow the counties to continue to set salary and benefit levels for court employees, but would make the state responsible for funding 100 percent of any increase in personnel costs. Last year, we recommended that the Legislature ensure linkages between control and financial responsibility for trial court employees. The Governor's proposal establishes a task force on court employees charged with reviewing and

making recommendations with regard to a system of governance for trial court employees by June 1, 1999. We believe that this approach is an appropriate first step with regard to that issue. We outline several additional issues related to cost control below.

BUDGET ISSUES

Judicial Council Needs to Further Define Performance Measures

We recommend that the Legislature adopt supplemental report language directing the Judicial Council to report on the development and use of performance measures for trial courts. The performance measures should assess progress toward meeting specific organizational 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. In January 1996, the Judicial Council submitted a report to the Legislature regarding performance criteria for the trial courts. The report noted that the development of output based performance criteria is evolutionary in nature. As initial performance measures, the report cited the use of cross-court comparisons such as average cost ratios that have been developed to assist in the Council's budget review process. Specifically, each court's expenditures are compared to these statewide average costs for similar sized courts, and budget requests that deviate significantly are reduced with a request for further justification. In addition the report notes that minimum standards for certain court functions such as jury administration and court security have been developed.

Benchmarks Don't Measure Achievement of Goals. The purpose of performance measures is to measure progress toward meeting specific organizational goals. The purpose of the average cost ratios is to provide "benchmarks" for courts to self-assess their performance.

Our review indicates, however, that these benchmarks do not constitute performance measures because they can not be used to assess movement toward clearly defined goals. While cross-court comparisons can be helpful, it is important that the Judicial Council implement performance measures that are oriented to measure outputs, efficiency, and effectiveness. One example would be for the Judicial Council to implement standards for the tracking processing, and resolution of criminal caseloads, similar to those implemented for civil caseloads as a result of the 1990 Trial Court Delay Reduction Act. Such standards would result in measures of outputs which would be relevant to the Judicial Council goals for

ensuring access to justice, and providing expedited and timely justice. We note that several courts, including those in San Diego and Los Angeles, have had success in significantly reducing criminal backlogs as a result of implementation of such measures locally.

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 Judicial Council. 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 Legislature direct the Judicial Council to report to the Legislature on its progress in defining and implementing performance measures that assess specific output, efficiency, and effectiveness in ways that can be verified quantitatively, and will allow for cross-court comparisons.

Specifically, we recommend the following supplemental report language:

It is the intent of the Legislature that the Judicial Council report to the Joint Legislative Budget Committee and the Legislature's fiscal committees, by January 1, 1998, on the development and implementation of trial court performance measures that assess specific outputs, can be quantitatively measured, and provide cross-court comparisons of specific organizational output, including trial court efficiency efforts.

Budgeting Practices Overstate Trial Court Costs

The Judicial Council's current budgeting practices overstate the budget for the trial courts. We recommend adoption of supplemental report language directing the Judicial Council to implement a new method for budgeting personnel services in the trial courts and to revise baseline restoration practices.

Approved Budgets Differ Significantly From Actual Expenditures. The budgets approved by the Judicial Council for the trial courts have been significantly higher than the actual expenditures of the courts. As Figure 34 shows, the council-approved budgets have been about 12 percent higher than actual expenditures for the courts. Some of this difference can be attributed to the inability of the counties to fund their share of the budgets of the courts at the levels approved by the council. However, some of the difference can be attributed to the budgeting practices of the Judicial Council. As the state contemplates taking over primary responsibility for the funding of the courts, it will be important that the Legislature ensures that the budgets approved by the Judicial Council more accurately reflect the actual expenditures for the courts.

Figure 34

**Trial Court Funding
Operations Budget
1994-95 Through 1996-97**

(Dollars in Thousands)

| | Trial Court Budget | | Percent Differences |
|----------------------|---------------------------|---------------------|---------------------|
| | Judicial Council Approved | Actual Expenditures | |
| 1994-95 ^a | \$1,673 | \$1,497 | 11.8% |
| 1995-96 ^a | 1,726 | 1,531 | 12.7 |
| 1996-97 ^b | 1,727 | 1,551 | 11.3 |

^a Actual.
^b Estimated.

Salaries for Trial Courts Overbudgeted. Currently, when the Judicial Council develops the trial court budgets for salaries and wages it does so by budgeting all vacant and filled positions at the top step. This is inconsistent with standard budget practices at the state level, and overstates the amount needed for salaries and wages for the trial courts. This is because not all authorized positions are filled at any one time. Additionally, when filling a vacant position, it is typically done at the entry level. At this time we do not have an estimate of the extent to which the personnel services for the courts are overbudgeted. However, given that the trial courts employ thousands of non-judicial personnel, and that funding for employees is the single largest expense in the trial courts, the amount is probably significant.

“Baseline Restoration Process” Overstates Budgets of the Trial Courts. In 1995, the Judicial Council instituted a “baseline restoration process” in the development of budgets for the trial courts. This process allows the approved baseline budget for each functional expenditure category (such as jury services and court security) of the court to be the higher of (1) the actual prior year expenditures or (2) the previous year’s baseline budget that had been approved by the council.

As a consequence of the Council’s practice, the baseline budgets for each court continue to be higher than actual expenditures. Specifically, the budget approved by the Judicial Council has always been higher than actual expenditures, because the counties have never funded the courts to the level assumed in the state budget.

Analyst’s Recommendation. In order to more accurately budget court costs, we recommend that the Legislature direct the Judicial Council to

revise its current budgeting practices. Specifically, we recommend that the Legislature adopt the following supplemental report language:

It is the intent of the Legislature that the Judicial Council shall implement a new method for budgeting personnel services. The council shall budget personnel services costs based on the actual salary levels of court employees, that accounts for salary savings, and that budgets all new positions at the bottom step. In addition, the Judicial Council shall eliminate the current baseline restoration process. The council shall advise the Joint Legislative Budget Committee and the Legislature's fiscal committees by November 1, 1997, on how it has incorporated the new methods into the budgeting process for the trial courts.

Distribution of Trial Court Funding Should Be Based on Incentives

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

Fund's appropriated by the budget act are distributed by the Judicial Council. The Governor's budget, however, does not contain a distribution formula. Thus, it is uncertain how the funds will be distributed to the various trial courts. In the past, the Judicial Council has distributed funds to the courts based roughly on the same percentage that they received in the prior year. In determining the amount of funds to be allocated to individual courts, the Judicial Council does not account for issues of critical need, operational efficiency, or incentives for cost containment.

Budget Act Directed Judicial Council to Implement Allocation Criteria. The 1996-97 Budget Act directed the Judicial Council to allocate funds under the program using criteria that included incentives for courts to implement efficiency measures. Due to the failure of AB 2553 and the funding shortfall in the current year, the Judicial Council used its historical allocation formula for distributing state funds to the courts rather than developing new criteria using incentives, as directed by the Legislature.

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 by the TCBC and the Judicial Council through the allocation of funds to the courts. For

example, the Council could allocate funds based on performance criteria. In addition, it could provide new funds for projects which it believes would enhance court efficiency, for example, automated accounting and case tracking systems. 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 implement efficiency measures and 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 language in the *1997-98 Budget Bill* (Item 0450-101-0932—Provision 3) by adding:

The Judicial Council shall implement an allocation criteria that includes incentives for courts to implement court efficiency measures and control costs. The council shall advise the Legislature by October 1, 1997, on how it has incorporated the incentives into its allocation criteria.

NEW PROGRAMS PROPOSALS AND AUGMENTATIONS

New Judgeships Not Justified

We recommend a General Fund reduction of \$4 million proposed for 40 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. (Reduce Item 0450-101-0932 by \$4 million.)

The budget proposes \$4 million to support 40 new trial court judgeships beginning in the last quarter of 1997-98. The requested amount would pay for the salaries and benefits of new judgeships, as well as the related support staff and operating expenses and equipment. Annual costs for the following years will be about \$16 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. In response, the Legislature approved funding of \$2 million for 21 new judgeships starting the last quarter of 1996-97. (The budget requests \$8 million to pay the full-year cost for these new judgeships in 1997-98.) The Judicial Council indicates that a similar evaluation process was performed and has proposed \$4 million for 40 new judgeships to be authorized for the last quarter of 1997-98. Figure 35 shows the courts in which the 40 new judgeships would be established.

As the figure shows, the 40 new judgeships would be distributed across 16 counties, with several judgeships established for some of the larger counties. Specifically, the proposal requests multiple judgeships in the following counties: seven judgeships in Los Angeles; five each in Orange, San Bernardino, and San Diego; four in Sacramento; three in Riverside; and two each in Alameda and Fresno.

We have the following concerns with the Council's proposal.

Simulation Model Delayed Again. Originally, the Judicial Council 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. The project began in 1989 and was intended to develop a computer simulation model to assess the judgeship needs for all the courts. Implementation of the model has been substantially delayed, and we understand that the Judicial Council recently granted a two year extension for the development of the project, until November 1998.

Last year, the Judicial Council indicated that due to data limitations it had decided not to use the simulation model in proposing 21 new judgeships, 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 used 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.

The Judicial Council indicated that the approach used last year was only intended to be an interim measure intended to identify the most critical needs among the trial courts. Last year, when the Legislature was considering the request for 21 new judgeships, the Judicial Council advised that significant progress was being made on the simulation model and that it anticipated implementation of the model soon. This year, however, the Judicial Council used its interim approach again and is now proposing 40 new positions.

Figure 35

**Trial Court Funding
Proposed New Judgeships**

| Priority Ranking | Court |
|------------------|---|
| 1 | East Kern Municipal |
| 2 | South Orange Municipal |
| 3 | Butte Consolidated |
| 4 | San Bernardino Consolidated |
| 5 | North County Municipal (San Diego County) |
| 6 | San Joaquin Superior |
| 7 | Sacramento Consolidated |
| 8 | San Diego Superior |
| 9 | San Bernardino Consolidated |
| 10 | Sonoma Consolidated |
| 11 | Orange Superior |
| 12 | Alameda Superior |
| 13 | San Diego Superior |
| 14 | Sacramento Consolidated |
| 15 | Contra Costa Superior |
| 16 | Fresno Consolidated |
| 17 | Riverside Consolidated |
| 18 | San Bernardino Consolidated |
| 19 | Orange Superior |
| 20 | San Diego Superior |
| 21 | Ventura Consolidated |
| 22 | Los Angeles Superior |
| 23 | Sacramento Consolidated |
| 24 | Riverside Consolidated |
| 25 | Los Angeles Superior |
| 26 | San Bernardino Consolidated |
| 27 | Los Angeles Superior |
| 28 | Alameda Superior |
| 29 | San Francisco Superior |
| 30 | Orange Superior |
| 31 | San Diego Superior |
| 32 | Fresno Consolidated |
| 33 | Los Angeles Superior |
| 34 | Los Angeles Superior |
| 35 | Los Angeles Superior |
| 36 | Sacramento Consolidated |
| 37 | Riverside Consolidated |
| 38 | San Bernardino Consolidated |
| 39 | Los Angeles Superior |
| 40 | Orange Superior |

Given that the Legislature has funded the simulation model for eight years in order to assess judgeship needs, we recommend that no new judgeships be authorized prior to completion and implementation of the model. We believe that the simulation model approach has merit, and that the Judicial Council has had ample time to implement it.

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 (such as, commissions) to hear matters, and merging court support staff within a county. Our review indicates that many of the proposed judgeships are for courts that have not coordinated or consolidated their operations to the fullest possible extent, and in some instances the courts have made almost no efforts to coordinate. If they had done so, their need for additional judgeships would probably diminish. We further note that the Judicial Council does not have current information on the status of implementation of coordination plans in all of the courts, and will be completing a review of courts in July 1997. We recommend that no new judgeships be authorized pending the results of the review, and that if new judgeships are authorized that they are only for courts that have coordinated their staffs and activities to the greatest extent possible.

Proposal Does Not Consider Transferring Judgeships 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. We believe that it is 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. We believe that the simulation model will facilitate identifying those courts that do not have sufficient workload to justify their current number of judicial positions.

Analyst's Recommendation. Based on the above, we believe that the request for \$4 million and 40 additional judgeships should not be approved at this time. We recommend that the Legislature direct the Judicial Council to complete the judgeship needs computer simulation model 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 position's not be established in courts that have not fully consolidated or coordinated their operations.

Assigned Judge Program Augmentation Not Justified

We recommend a General Fund reduction of \$1.2 million requested for the assigned judges program because the request is not justified on a workload basis. (Reduce Item 0450-101-0932 by \$1.2 million).

The budget requests an additional \$1.2 million for anticipated growth in the number of municipal court judges accepting assignments to hear cases in superior courts in the budget year. A municipal court judge who serves on assignment in a superior court is eligible to be paid the difference between the superior court salary and the judge's municipal court salary, or approximately an additional \$26 per day. This differential is charged to the Assigned Judges Program budget.

The Judicial Council notes that the total pay differential cost has been increasing from \$750,000 in 1995-96 to an estimated \$1.1 million in the current year. As a consequence of further coordination efforts and anticipated increases in cross-assignment of judges, the Judicial Council is requesting an additional \$1.2 million, or an increase of 107 percent in the budget year.

Budget for Assigned Judge Program Recently Increased. The 1996-97 Budget Act increased funding for the Assigned Judge Program by \$6.2 million, or 51 percent. Of this amount, \$3.5 million was intended to fund "Three Strikes Relief Teams" to assist courts with increased workload as a result of second- and third-strike cases. The remainder of the increase (\$2.7 million) was intended to fund growth in the number of assigned judges, and cross-assigned judges expected as a result of increased coordination.

Increased Workload Not Justified. As indicated, the proposal would increase differential cost funding by 107 percent. Our analysis indicates that the Judicial Council has not justified this level of augmentation. We recognize that some level of increase may be necessary for the program, but we do not believe that the Council has justified the proposed increase, especially given the increases approved in the current year. In fact, with the proposed increase, the program could fund every municipal court judge in the state to handle superior court matters for nearly three days of every week. Thus, we recommend reduction of \$1.2 million for the Assigned Judge Program.

Concerns With Statewide Jury System Improvements Request

We recommend that the Legislature not adopt the budget proposals related to jury compensation and reimbursement, but instead authorize a series of compensation and reimbursement pilot projects in the jury reform legislation that the Legislature will consider.

Background. In May 1996, the Judicial Council released the final report of the Blue Ribbon Commission on Jury System Improvement. The commission's report concludes that the jury system is in crisis, and that the crisis manifests itself in public dissatisfaction with the current structure and operation of the jury system. The Judicial Council further notes that jury participation across the state is low, and that courts must cope with jury service apathy and declining interest and desire to serve by the public.

The report outlines more than 50 recommendations for improving the jury system covering a wide range of topics, including jury management and selection, and the jury's deliberative function. Specific fiscal recommendations in the report include increasing juror fees from the current \$5 per day to \$40 per day, implementing a system of tax credits to employers who pay jurors their regular salaries during service, fully reimbursing juror mileage and parking, and reimbursing jurors for costs of care of their dependents.

Senate Bill 14 (Calderon) contains many of the recommendations from the Blue Ribbon Commission's report, including the fiscal recommendations.

Budget Request. The budget requests \$14 million from the General Fund to provide half-year funding for the following increased reimbursements for jury service: (1) increase in juror mileage reimbursement rate (\$500,000), (2) reimburse juror parking (\$3.5 million), (3) reimburse juror child and dependent care expenses (\$3 million), and (4) reimburse juror meal expenses (\$7 million). The full-year cost of the proposals in 1998-99 would be \$28 million.

Budget Proposal Differs From Blue Ribbon Commission Report. The budget request differs from the Blue Ribbon report in its request for reimbursement of juror mileage and juror meals. The Blue Ribbon report recommends increasing juror mileage reimbursement to 28 cents per mile for travel to and from the court. The budget requests 28 cents per mile for trips over 50 miles one way. The Judicial Council anticipates that 50-mile one-way trips will occur in primarily rural areas. We note that the 28 cent per mile figure was chosen because the judicial branch reimburses its employees at 27½ cents per mile. (In our analysis of the judicial budget

later in this chapter, we recommend that this rate be lowered to 24 cents per mile to match the Board of Control's maximum mileage reimbursement for state employees.)

The budget also requests \$7 million to reimburse jurors for meal expenses. This amount is based on the Board of Control approved per diem allowance for lunch. We note that there is no recommendation in the commissions report regarding reimbursement for juror meal expenses. The Judicial Council has indicated that this budget proposal was developed as an alternative to increasing juror compensation to \$40 per day of service.

Budget Proposal Is Flawed. We concur with the commission's conclusion that changes are needed in the state's jury system in order to reduce dissatisfaction and ensure public confidence. In addition, we acknowledge that some changes will likely cost money. We believe, however, that the approach taken by the Judicial Council in its budget proposal is flawed in a number of respects.

First, we note that there are many different options for meeting the goals set out by the commission and that these options should be considered in comprehensive manner, not in a piecemeal fashion. The Legislature should consider the *entire package* of jury reforms instead of appropriating funds to implement a few specific reforms. We note that there are many different options for providing juror compensation. For example, the Legislature could decide to increase compensation to jurors across the board, which would eliminate the need to reimburse the costs of meals or reduce the need to reimburse dependent care expenses.

Second, the budget proposal assumes enactment of the commission's recommendation that the state move to a "one-day, one-trial" system in which persons called for jury service would report to court for one day and, unless empaneled that day, would be dismissed. The commission recommended that persons dismissed after only one day not be compensated. We believe that such a proposal has merit, however, currently, most courts do not operate such a system, and would probably face significant difficulties in establishing such a system in the short-run. To the extent that the courts could not implement such a system, or the Legislature adopted a different assumption, the amount of money needed for reimbursements could be significantly greater than what is proposed.

Third, we believe that the fiscal and administrative implications of some elements of the request have not been adequately considered. For example, the amount proposed to reimburse jurors statewide for dependent care expenses (\$6 million annually when fully implemented) has not been adequately justified, and could be higher. In addition, it is likely that

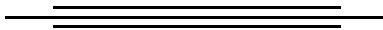
individual courts will have administrative difficulties establishing programs to reimburse jurors for such expenses. For example, courts may have difficulties verifying whether jurors actually incur dependant care expenses.

Finally, the proposals have no evaluative components. We believe that it is essential to evaluate whether any fiscal reforms of the jury system meet the ultimate goals: to increase public satisfaction, reduce jury service apathy, and increase the ability of courts to seat juries.

Analyst's Recommendation. For these reasons we recommend that the Legislature not approve the budget proposals. Instead, we recommend that any legislation to implement some or all of the commission's recommendations authorize a series of pilot projects to test various reforms. Specifically, we suggest that pilot projects be established in counties of various size (urban, suburban, rural) using different jury compensation and reimbursement schemes. For example, pilot projects could be established in which jurors are compensated at various amounts (say, \$30 to \$50 per day), provided full or partial reimbursement for child care expenses, and provided full, round-trip mileage reimbursement. The proposals included in the Governor's budget could be tested as one possible approach. In addition, because we believe that the "one-day, one-trial" concept makes sense, we suggest that pilot projects only established in those courts that first develop a "one-day, one-trial" system.

Each of the pilot projects should be evaluated over a period of at least one year, and the results could provide the Legislature with information on which approaches best meet the goals, as well as provide better information on the full costs and potential benefits associated with each reform. The Legislature could then use this information to make statewide changes in follow-up legislation.

Finally, should the Legislature decide to increase the mileage reimbursement rate paid to jurors, we recommend that the rate be set at 24 cents per mile rather than the requested 28 cents per mile to conform to the Board of Control travel reimbursement rates paid to state employees.



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 our analysis of the program earlier in this chapter).

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 \$237 million for support of these judicial functions in 1997-98. This is an increase of \$49 million, or 26 percent, above estimated current-year expenditures. Total General Fund expenditures are proposed at \$197 million, an increase of \$17.5 million, or 9.8 percent.

The increase in the judicial budget is primarily due to requests for (1) expansion of the child support enforcement court program (\$30 million in reimbursements from the Department of Social Services), (2) caseload and rate increases for court appointed counsel services (\$7.5 million from the General Fund), (3) new programs in the Judicial Council and Administrative Office of the Courts (\$6 million), and (4) court technology improvements (\$3.4 million). We discuss some of these proposals below.

Court Appointed Counsel Budget Overstated

We recommend a General Fund reduction of \$954,000 requested for the court appointed counsel program in the Supreme Court because the requested amount is overbudgeted (Reduce Item 0250-001-0001 by \$954,000).

The budget proposes \$56 million from the General Fund for the Court Appointed Counsel Program in 1997-98 for the Supreme Court (\$10.4 million) and the courts of appeal (\$45.4 million). This is an increase of \$7.5 million, or 16 percent, over the current-year amount. (For more information on the court appointed counsel program please see the cross-cutting issue on death penalty appeals earlier in this chapter).

In the current year, the Judicial Council proposed a deficiency augmentation of \$954,000 for increased costs related to projected caseload growth in the program in the Supreme Court. The budget proposes to continue this augmentation in 1997-98. However, updated expenditure data indicate that the amount originally appropriated for the program in the Supreme Court is likely to actually exceed anticipated expenditures in the current year, thus eliminating the need for the current year deficiency and the augmentation to the base budget for 1997-98. For this reason, we recommend that the \$954,000 be deleted from this program.

Additional Data Needed for Proposed Rate Increase In Court Appointed Counsel Program

We withhold recommendation on the proposed increase of \$3 million for rate increases for the Court Appointed Counsel Program, pending receipt and analysis of a report for improving the efficiency and effectiveness of the appointed counsel program.

The Court Appointed Counsel Program hires private attorneys to provide appellate defense services for indigent persons. These attorneys work under the supervision of five regional appellate projects. The projects, which are nonprofit corporations, recruit attorneys to take on cases, supervise and train attorneys who are handling cases, and process reimbursement claims submitted by the attorneys.

Program's Budget Has Been Growing Significantly. Since 1993-94, expenditures for the Court Appointed Counsel Program have increased 45 percent, or at an average annual rate of 9.8 percent. This program now accounts for 28 percent of the Judicial Branch's General Fund budget. The primary reasons for the growth have been the increases in the number of appeals filed, combined with the increasing complexity of those cases, and increases in rates paid to attorneys under the program.

Rates Paid to Private Attorneys Have Been Increasing. Since 1994-95, there have been several increases in the rates paid to attorneys who handle appeals cases in the courts of appeal and in the Supreme Court. Figure 36 shows the current and proposed rates for the various types of cases.

Figure 36

**Court Appointed Counsel Program
Hourly Rates for Attorneys
Handling Cases On Appeal**

| Type of Case | 1996-97 | Proposed 1997-98 | Percent Increase Over 1996-97 |
|--|---------|---------------------|-------------------------------------|
| Courts of Appeal | | | |
| Any case with assistance | \$65 | \$65 | — |
| Cases without assistance: | | | |
| • Non-death penalty murder | 75 | 85 | 13% |
| • Sentence of life without the possibility of parole | 75 | 85 | 13 |
| • Multiple sex crimes | 75 | 85 | 13 |
| • Court record in excess of 3,000 pages | 75 | 85 | 13 |
| All other cases | 65 | 70 | 8 |
| Supreme Court | | | |
| Death penalty | \$98 | \$125 | 28% |

In the courts of appeal, the basic rate for cases where assistance and supervision is provided to the attorney is \$65 per hour. A somewhat higher rate of \$75 per hour is paid for the following complex cases where the attorney works “independently” (without assistance and supervision): (1) non-death penalty murder, (2) sentences of life without the possibility of parole, (3) multiple sex crimes, and (4) cases with court records in excess of 3,000 pages.

For attorneys handling death penalty appeal cases, the pay rate was increased from \$75 per hour to \$95 per hour in 1995-96. In the current year, the Legislature authorized an increase to \$98 per hour to equalize the rate paid to private defense attorneys with the reimbursement rate charged by the Attorney General’s Office which prosecutes such cases.

Proposal for 1997-98. The base rate for those attorneys who require assistance and supervision would remain at \$65 per hour. However, in order to retain the most experienced attorneys, the budget proposes to increase the rates paid to attorneys who work independently. The rate paid to such attorneys handling more complex cases (non-death penalty murder, etc.) would increase to \$85 per hour. The rate for all other cases

worked independently by an attorney would be increased to \$70 per hour.

In addition, the budget proposes to increase the rate for new capital case appointments from \$98 per hour to \$125 per hour.

Additional Information Needed. The 1996-97 Budget Act required the Judicial Council to submit a report to the Legislature with recommendations for improving the efficiency and effectiveness of the appointed counsel program. We believe that the Legislature should examine the Council's recommendations prior to approving another rate increase. Thus, we withhold recommendation on the proposed rate increases pending receipt and analysis of the Judicial Council report, and an analysis of the impact of past rate changes on the program. The report is expected to be released by the Judicial Council before the end of February.

Funding for Merit Salary Adjustments Not Justified

We recommend a General Fund reduction of \$322,000 requested to fund merit salary adjustments (MSAs) in the budget year because we find no analytical basis for granting an adjustment for the judicial branch that has been denied other state departments, and because the judicial branch's existing budget should provide the flexibility to fund MSAs internally. (Reduce Item 0250-001-0001 by \$322,000.)

The budget proposes \$322,000 from the General Fund to fund the costs of MSAs of 5 percent for eligible judicial employees in 1997-98. Other than the judicial branch, the only other General Fund departments with MSAs proposed in the budget are the Franchise Tax Board and the Board of Equalization (which are considered General Fund revenue-generating departments), and the Department of Corrections.

We recommend that this augmentation be deleted for two reasons. First, we can find no analytical basis for augmenting the judicial budget for MSAs at a time when other departments and agencies must absorb the costs within their budgets.

Second, salary savings may be underestimated for the budget year, which will give the judiciary flexibility in funding its MSAs internally. The budget proposes a salary savings rate that averages 3.5 percent for the judiciary. An analysis of the actual salary savings for the judiciary from the 1990-91 through 1995-96 indicates that the salary savings rate was nearly 7 percent. To the extent that actual salary expenditures continue this historical trend, the proposed budget for salaries is overbudgeted by up to \$2.4 million. The judiciary could use these funds to support their MSAs.

For these reasons, we recommend a General Fund reduction of \$322,000.

Proposed Request for Document Management System Is Premature

We recommend a General Fund reduction of \$500,000 requested for a document management system because the funding for the project will not be needed in the budget year. (Reduce Item 0250-001-0001 by \$500,000.)

The budget requests \$500,000 to begin implementation of a new, computer-based appellate court document management system in 1997-98. Specifically, the proposal requests funding to purchase equipment, software, and contract consulting services to begin putting into place a system that would enable the appellate courts to process appellate case files electronically. The system would be installed in all six appellate court districts with implementation phased-in beginning with the First District Court of Appeals in 1997-98. The system would be implemented in the other districts in subsequent years.

The Judicial Council indicates that hundreds of thousands of dollars are spent statewide annually on storing and handling inactive court records. In response to the need for improved records management, the council contracted for an appellate records management feasibility study that was completed in November 1996. The feasibility study report (FSR) indicated that the current manual processing system is labor intensive and time consuming.

We acknowledge the importance of court record modernization and concur that this is an area that would likely benefit from improved uses of technology. However, for the reasons discussed below, we believe that statewide implementation in 1997-98 is premature.

Request for Funding Premature Pending Results of Pilot Projects. The Judicial Council indicates that in the current year, consistent with recommendations in the FSR, it will establish a series of pilot programs that will result in the development of a request for proposal (RFP) by September 1997 for procurement and installation of document management equipment in 1997-98.

We concur with this pilot project approach. However, we believe that the proposed funding for system implementation in the budget year is premature. Until the pilot programs have been completed and evaluated, the Legislature will not have adequate information to assess the full costs and potential savings of the new program.

In addition, such pilots will help to answer questions which were not addressed by the FSR. Specifically, the FSR did not identify a specific method of implementation nor did it quantify the costs and benefits associated with the implementation of the project.

Analyst's Recommendation. For these reasons, we believe that the funding request for the implementation of the project is premature, and we recommend a reduction of \$500,000.

Several Judicial Branch Program Requests Lack Justification

We recommend a General Fund reduction of \$1.3 million and 7.5 positions requested for various judicial branch programs because of the lack of justification. (Reduce Item 0250-001-0001 by \$1.3 million.)

The budget proposes \$6 million and 31.5 positions generally related to the expanded use of information technology, judicial branch infrastructure, and trial court outreach and assistance. Although many of the requests have merit, we recommend reductions to several requests due primarily to insufficient justification for the proposals. The specific issues are highlighted below.

- **Technical Support Center Expansion.** The budget requests \$144,000 and two positions to implement a software user-support center within the information technology unit. We recommend that this request be reduced by \$72,000 and one position because the volume of workload that will be handled by this group has not been justified.
- **Human Resources Information Systems Analyst.** The budget requests \$77,000 and one limited-term position to implement PeopleSoft, an automated human resources management system that was purchased by the Judicial Council in 1992. The Council is currently a member of a task force which is developing a conceptual design of how the state should be approaching its human resources management system needs. The product of this effort will be a plan to assist in setting the proper direction for future system development efforts. We believe that this request is premature until the conceptual design for such systems is developed. (For further analysis on this issue, please see the Department of Information Technology in our General Government chapter.)
- **Outside Counsel.** The budget requests \$200,000 for outside counsel expenditures in litigation arising from the conduct of judicial branch employees. The examples of litigation offered by the coun-

cil to justify this request involved local trial courts. We believe such costs should be paid from the budgets of individual courts in the trial court funding budget.

- **Research and Planning Staff Attorneys.** The budget requests \$273,000 and three attorney positions for the Research and Planning Unit. Based on our review of projected workload, we conclude that only two new positions are justified, and thus we recommend a reduction of \$91,000 and one position.
- **Editor.** We recommend denial of the requested editor position and \$53,000 due to a lack of workload justification.
- **Organizational Development and Training.** We recommend denial of \$132,000 requested for professional development training for judicial branch employees because the Judicial Council has not justified the need for additional funds for training.
- **Community Outreach Program.** The budget requests \$109,000 and one position to fund a Community Outreach Program. We recommend denial of the request because the goals and the planning for the outreach program have not been adequately defined.
- **Pro Bono and Self-Help Services.** The proposal requests \$378,000 and 1.5 positions to provide technical assistance to aid courts in establishing programs to assist unrepresented litigants. Since the types of assistance contemplated by the proposal are available from private sources at no cost to the courts, we recommend this request be denied.

In addition to the concerns expressed above regarding new programs, we have concerns about three other requests:

- **Facility Operations.** The budget requests \$65,000 to increase the maintenance budget for each appellate court building from \$15,000 to \$20,000 annually. The request is based on actual expenditures in 1995-96. Although maintenance of state facilities is important, we believe that this request is not justified because many of the expenditures in 1995-96 were for one-time costs such as minor alterations that should not be built into the base budget.
 - **Human Resources Analyst.** The budget requests two-year limited term funding and \$72,000 for a human resources analyst in the Fourth Appellate District (San Diego, San Bernardino, Santa Ana). We recommend denial of this request on a workload basis because recent increases in the human resources bureau of the Administrative Office of the Courts render an additional position at the Courts of Appeal unnecessary.
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- **Travel Costs Over Budgeted.** The baseline budget for the Judiciary includes \$1.2 million for in-state travel. A portion of these funds are expended to reimburse judicial branch employees for mileage expenses incurred during the course of their work. The Council advises that it reimburses employees 27.5 cents per mile, which is 3.5 cents per mile greater than the maximum mileage reimbursement rate approved by the Board of Control. We know of no reason that the judicial branch should reimburse employees at a higher rate than all other state employees. The Judicial Council estimated that the total reimbursements for mileage is approximately \$100,000. Thus, we recommend a \$15,000 to bring the reimbursement rate in line with Board of Control rules.

In summary, we recommend a total reduction of \$1.3 million and 7.5 positions.

Judicial Council Lacks Operating Expense Schedule

We recommend the adoption of supplemental report language directing the Judicial Council to develop a Supplementary Schedule of Operating Expenses (Schedule 11) for submission with its 1998-99 budget request.

During the course of reviewing the Council's budget we discovered that, unlike most departments and agencies of state government, it does not submit a Supplementary Schedule of Operating Expenses and Equipment (Schedule 11) along with its annual budget request.

This schedule, which details how much money the department has budgeted for basic operating expenses, such as travel, facilities operations, training, consulting services, and equipment, provides valuable information for the Legislature to review proposed expenditures. Although the judiciary is a separate branch of government, we believe that the Legislature needs this information, especially in light of the fact that the Judicial Council is requesting a substantial increase (26 percent) in its budget and a large number of new programs. For this reason, we recommend that the Legislature adopt supplemental report language directing the Judicial Council to complete such a schedule as part of its 1998-99 budget proposal. Specifically, we recommend the following language:

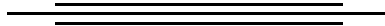
It is the intent of the Legislature that the Judicial Council prepare and submit a standard Supplementary Schedule of Operating Expenses and Equipment (Schedule 11) along with its 1998-99 budget proposal.

Uncertainties About Proposed Child Support Court Commissioner System

We withhold recommendation on the \$37.5 million in reimbursements from the Department of Social Services for support of a new child support court commissioner system, pending completion of caseload and staffing standards by the Judicial Council.

The budget proposes \$37.5 million in reimbursements from the Department of Social Services (DSS) for implementation of a new child support court commissioner system in the state's trial courts. This is an increase of \$30 million over estimated expenditures in the current year. Under the new system, court commissions would be dedicated specifically to the establishment of child support paternity and support orders. The reimbursements would support 50 new court commissioners and support staff, child support information and assistance centers, and five administrative positions at the Judicial Council.

In our analysis of the DSS (please see the Health and Social Services chapter of this *Analysis*), we note that the Judicial Council staff is developing caseload and staffing standards for the commissioners and support staff. The standards, which are expected to be completed in April, should provide better information on the number of commissioners required statewide, and the projected costs per commissioner. Thus, we withhold recommendation on the funds requested in the DSS budget and the requested reimbursements in the judicial budget pending the development of caseload and staffing standards for the commissioners and support staff.



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 \$387 million for support of the DOJ in the budget year. This amount is \$4.6 million, or 1.2 percent, less than estimated current-year expenditures. The requested amount includes \$220 million from the General Fund (a decrease of \$3.7 million, or 1.6 percent), \$63 million from special funds, \$15.3 million from federal funds, and \$88.1 million from reimbursements. The total budget for the DOJ is decreasing primarily due to the number of limited term programs that are expiring and other baseline adjustments that total \$25.8 million. The budget seeks an additional \$21.2 million for workload and program changes.

In the legal divisions, the budget proposes funding increases for the Criminal Law Division (\$2 million), the Public Rights Division (\$381,000) and the Civil Law Division (\$209,000). The budget also proposes a net increase of \$1.5 for the Division of Law Enforcement (DLE), as well as decreases totaling \$7.5 million for State Mandated local programs, such as reporting requirements that are no longer mandated due to legislation that has expired.

LEGAL DIVISIONS

Correctional Law Request Not Justified

We recommend reduction of \$585,000 from the General Fund and 6.6 positions for the Correctional Law Section because the request is not justified on a workload basis. (Reduce Item 0820-001-0001 by \$585,000 and 6.6 positions.)

The budget requests \$11.6 million for the department's Correctional Law Section within the Criminal Law Division. This amount includes an

increase of \$585,000 from the General Fund and 6.6 positions 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 211 lawsuits (over the actual 1995-96 level), based on projections of increased inmate population.

Recent Steps to Curb Inmate Lawsuits. In last year's *Analysis*, we called attention to the growing cost to defend the state correctional system against lawsuits filed by inmates and correctional personnel. Litigation and settlement costs were projected to reach \$35 million in the current year, an increase of 14 percent in two years.

The rising number of lawsuits against prison systems in California and in other states has prompted the Legislature and Congress to take steps to deter inmates from filing frivolous suits in both state and federal courts. For example, the Legislature enacted measures last year designed to deter inmates from filing lawsuits by (1) strengthening the collection of court filing fees charged to inmates who file civil suits in state courts (Chapter 886, Statutes of 1996 [AB 2563, Goldsmith]) and (2) revoking credits that inmates can earn to reduce their time in prison if they file frivolous cases (Chapter 852, Statutes of 1996 [AB 881, Rogan]).

In April 1996, the President signed into law the Prison Litigation Reform Act (PLRA), which affects inmate filings in federal courts. The PLRA provides that (1) inmate litigants must pay court filing fees (previously fees were waived), (2) courts must pre-screen all inmate suits before ordering a hearing, (3) inmates must exhaust all administrative remedies before filing a case, (4) judges may revoke a prisoner's good-behavior credits for filing a frivolous suits, and (5) proof of physical injury must be established before inmates can seek money damages for mental or emotional distress.

Proposal Not Justified. We recommend that the proposed increase be deleted because it is not justified on a workload basis. First, the DOJ has indicated that in recent months, the new fees in federal courts have had a deterrent effect of reducing the numbers of new individual civil rights actions being filed by inmates. However, the workload assumptions do not account for this effect.

Second, The overall number of lawsuits filed per inmate has been dropping over the last couple of years. For example, it dropped from 8.1 per 1,000 inmates in 1993-94, to 7.1 per 1,000 in 1994-95, to 6.5 in 1995-96—the latest year for which actual data are available. However, the budget request assumes that the rate will increase to the 1994-95 level (7.1

per 1,000). We see no justification for this assumption. Further, the DOJ assumes that the total number of new lawsuits filed for the current year will be 1,062. As of the end of December 1996, however, only 286 new lawsuits had been filed. If this pace continues, the current year base would be overstated by half.

Finally, we note that the state prison population is currently substantially below the levels projected in the Governor's budget. Although it is too early to determine whether this trend will continue in 1997-98, it seems unlikely that the population will increase to the levels originally assumed in the budget, which were the basis for the DOJ's projected workload.

Analyst's Recommendation. For these reasons, we recommend that the request for \$585,000 and 6.6 positions be denied.

Alternative Funding Source Available For Domestic Violence Prosecution

The Department of Justice's budget request includes \$3.5 million from the General Fund for continuation of a program to assist district attorneys in the prosecution of spousal abuse and domestic violence cases. The Legislature may wish to use new federal funds from the federal Violence Against Women Act to support this program, thereby saving the General Fund.

Chapter 140, Statutes of 1994 (AB 167, B. Friedman) created the Battered Women Protection Act of 1994. The measure established a variety of programs, including a spousal abuser prosecution program within the DOJ. The *1994-95* and *1995-96 Budget Acts* appropriated \$3.5 million each year to the DOJ for district attorneys to prosecute domestic violence cases under the program. While the statutory authority for the program terminated at the end of 1995-96, the program was funded again in the *1996-97 Budget Act*. The DOJ's budget requests \$3.5 million from the General Fund to continue this program in 1997-98.

While this particular program for local prosecutors was placed in the DOJ, the state has other similar programs administered by the Office of Criminal Justice Planning (OCJP). For example, the OCJP is responsible for grant programs for domestic violence, rape crisis, and battered women.

Because of its responsibility as the state's primary federal criminal justice grant agency, the OCJP will also administer the federal Violence Against Women Act (VAWA) grants. The state has received VAWA grant awards of \$10.5 million for the current year and \$10.7 million for the

budget year. These grant monies can be used for a variety of local assistance purposes that reduce the incidence and effects of violence against women. The grant requires that at least 25 percent of the total state award must be used for improving prosecution efforts. We believe that the program established in Chapter 140 would be eligible for VAWA funding.

Thus, the Legislature may wish to consider using federal funds for this program. We estimate that VAWA monies totaling at least \$2.7 million each year for the current year and the budget year are available to support prosecution programs like the ones proposed for funding in the DOJ. The Legislature could use part of this federal funds to offset the state's General Fund expenditures of \$3.5 million.

We discuss the VAWA program in more detail in our analysis of the OCJP later in this chapter.

DIVISIONS OF LAW ENFORCEMENT AND CRIMINAL JUSTICE INFORMATION SERVICES

Criminal History Backlogs Reduced, But Some Persist

The Department of Justice (DOJ) has significantly reduced its backlogs of criminal history disposition files and inmate fingerprints. We recommend that the DOJ submit a plan to the fiscal committees prior to budget hearings on how it will ensure that criminal history backlogs are eliminated by the target date of July 1997 and how it will ensure that backlogs do not reoccur in the budget and future years.

Under current law, the DOJ is required to maintain a number of criminal justice information systems for law enforcement agencies. The DOJ's Division of Criminal Justice Information Services (CJIS) processes a variety of documents from local law enforcement agencies, the courts, and the CDC. The CJIS receives, examines, and stores fingerprints in one of the largest automated fingerprint systems in the world, larger than that of the Federal Bureau of Investigation. The CJIS fingerprint system (CAL-ID) stores fingerprint data on all those 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.

In addition, CJIS maintains the state's criminal history systems, including the automated files that record arrests and dispositions. The arrest file lists the specific offenses for which an individual has been arrested; the

disposition file lists all offenses for which an individual has been convicted (or any other court disposition).

Previous Backlogs. In our *Analysis of the 1995-96 Budget Bill*, we reported that the DOJ had backlogs of up to one year in recording disposition data. In last year's *Analysis*, we pointed out that the backlog had grown to more than 18 months. Consequently, it was taking more than a year and a half after the conviction had occurred before that information was entered into the DOJ's systems for use by law enforcement agencies and the courts.

As we reported in last year's *Analysis*, a 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.

As we discuss below, the CJIS has reduced its criminal history backlogs, but significant backlogs continue in its processing of the California Department of Corrections (CDC) inmate fingerprints.

Conviction File Backlogs for Felonies and Firearms Crimes Significantly Reduced. We reported in last year's *Analysis* that the DOJ had taken a series of steps to reduce the inventory of backlogged documents. The DOJ indicated that its goal was to ensure that the backlog of criminal conviction histories for individuals convicted of felonies or crimes where a firearm was used, be reduced to 30 days by January 1, 1997. Consequently, it concentrated its efforts on identifying and processing these records first. In December 1995, there were more than 129,000 of these types of dispositions awaiting processing. However, the CJIS reports that, as of December 1996, the number of documents for felony and firearm convictions has been reduced to 30,000 records, which it considers a normal inventory.

The CJIS reports that the total number of other types of documents awaiting processing, such as misdemeanor convictions and records of no conviction, is about 825,000 documents. In contrast, at this time last year, there were almost 1.3 million such documents awaiting processing. The CJIS projects that it will reach a 30-day turnaround time for these records by July 1997, or about 7 months behind its target date.

Backlog of CDC Fingerprints Reduced, But Still Substantial. The CJIS reports that it has reduced its backlog for processing CDC inmate fingerprints from three years in November 1995, to 18 months in December 1996. Nevertheless, since the average amount of time served in prison by

CDC inmates is 16 months, an 18-month 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 is verified, which are important elements for determining the security classification of the inmate. There were 200,000 CDC inmate fingerprint documents awaiting processing as of December 1996. The CJIS projects it will reach a 30 day turnaround for processing inmate fingerprint records by July 1997.

Analyst's Recommendation. We believe that the DOJ deserves credit for making substantial progress in reducing its backlogs of criminal histories and CDC fingerprints. However, given the importance of ensuring that the state's criminal history information is current and usable by law enforcement agencies, the CDC, and the courts, we recommend that the DOJ submit a plan to the fiscal committees prior to budget hearings on how it will meet its target dates for reducing backlogs and ensure that criminal history and CDC fingerprint backlogs are eliminated by July 1997. The plan should also identify how the department will ensure that backlogs do not reoccur in the budget and future years. In addition, the DOJ should provide the Legislature with: (1) the status of the backlog in the disposition history files within the Criminal History System and (2) the status of CDC inmate fingerprints.

Backlog of Sex Offender DNA Tests Reduced, But Backlog Persists in Violent Offenders Tests

The Department of Justice (DOJ) has significantly reduced its backlogs in its sex offender DNA testing, but still has a substantial backlog of violent offender samples awaiting analysis. We recommend that the DOJ submit a plan to the fiscal committees prior to budget hearings on how it will ensure that sex offender DNA backlogs are eliminated by the target date of July 1997, how it will reduce backlogs in analyzing DNA samples of violent offenders and how it will ensure that backlogs do not reoccur in the budget and future years.

The DNA identification method, also known as "genetic fingerprinting," uses specimens left at a crime scene to identify an offender. The DOJ operates a DNA laboratory in Berkeley for the examination of DNA samples; the laboratory also serves as a repository of DNA records of convicted sex offenders and other violent criminals. In addition, the laboratory 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. Consequently, the laboratory's highest priority is the DNA

analysis of samples from sexual offenders who are released from CDC. By maintaining a databank with DNA profiles of these convicted sex offenders, DOJ can greatly increase the likelihood of apprehending and convicting offenders if they commit a new crime. Chapter 6x, Statutes of 1994 (SB 12x, Thompson), appropriated almost \$2 million for a databank containing DNA samples from convicted sex offenders and other violent offenders, and DNA profiles of evidence obtained from unsolved sex crimes.

DNA Backlogs for Sex Offenders Have Been Reduced. In last year's *Analysis*, we reported that the DNA laboratory has had a continuing backlog of samples awaiting analysis. The funds provided in Chapter 6 were used to automate the system for DNA tests. As a result of this automation, the DOJ was able to reduce its backlog of samples awaiting analysis from almost 26,000 in January 1996 to 13,900 samples in December 1996. The DOJ reports that it will eliminate the sex offender backlog by June 30, 1997. All of these samples are now part of a searchable DNA database that allows the DOJ and other law enforcement agencies to use samples from new crimes and identify suspects from the database, in a manner similar to identifying offenders from latent fingerprints.

Backlogs Persist in Processing Other Violent Offender Samples. In addition to processing the DNA of certain sex offenders, the DOJ is responsible for analyzing and placing DNA profiles of other violent offenders into its DNA database. Based on data provided by the DOJ in December 1996, there remains a backlog of over 55,000 of these samples to be analyzed. The DOJ does not have a goal for reducing this backlog.

Analyst's Recommendation. We recommend that the DOJ submit a plan to the fiscal committees prior to budget hearings on how it will ensure that DNA backlogs for sex offenders are eliminated by its target date of June 30, 1997 and how it will ensure that backlogs do not reoccur in the budget and future years. In addition, the DOJ should provide the Legislature with its plan for reducing backlogs in analyzing DNA samples of other violent offenders.

Local Agencies Should Pay for the Services They Receive From DOJ's Crime Laboratories

We recommend enactment of legislation requiring law enforcement agencies to pay for the costs of services provided by the DOJ's crime laboratories. Fees for these services should represent the cost of the service, and both state and local law enforcement agencies should pay the costs.

Background. The DOJ operates ten regional criminalistic laboratories throughout the state. These laboratories provide analysis of various types of physical evidence and controlled substances. In addition, they assist local law enforcement agencies, when requested, in processing and analyzing crime scene evidence, including clandestine drug laboratories. Figure 37 shows the number and types of services provided by the DOJ laboratories.

Figure 37

**Department of Justice
Tests Processed by Criminalistic Laboratories**

| Test | 1990-91 | 1991-92 | 1992-93 | 1993-94 | 1994-95 | 1995-96 |
|-----------------------|----------------|----------------|----------------|---------------|---------------|---------------|
| Criminal | 2,858 | 3,011 | 2,678 | 2,516 | 2,429 | 2,533 |
| Controlled substances | 17,124 | 17,648 | 20,394 | 22,721 | 27,786 | 22,493 |
| Clandestine lab | 353 | 497 | 498 | 396 | 520 | 814 |
| Blood alcohol | 105,121 | 97,228 | 82,191 | 71,081 | 61,648 | 68,013 |
| Totals | 125,456 | 118,384 | 105,761 | 96,714 | 92,383 | 93,853 |

As the figure shows, tests for controlled substances have grown at an annual rate of more than 11 percent since 1990-91, notwithstanding a slight reduction in growth in 1995-96. Tests of blood alcohol decreased significantly—more than 35 percent between 1990-91 and 1995-96. This decline is primarily because the DOJ began charging local agencies for the costs of these tests. In 1992-93 when fees were established, the number of tests declined 29 percent, with many local agencies contracting with other laboratories for their blood alcohol testing. By contracting with other providers who charged less than the state, these agencies were able to reduce their costs for these types of tests.

In addition to the regional laboratories, the department also operates a state DNA laboratory in Berkeley for analyzing DNA samples from sex and violent offenders. This laboratory also maintains a DNA database, similar to the state's fingerprint database, for aiding law enforcement agencies in identifying suspects. The department also operates an institute for training criminalists from throughout the state.

State Provides Free Service to Locals and Other State Agencies. The department's crime laboratories provide analyses and investigative services to state departments such as the California Highway Patrol and the DOJ's Bureau of Narcotic Enforcement. The vast majority of the laborato-

ries workload, however, is providing services to *local* law enforcement agencies. With the exception of fees paid for blood alcohol analyses, state and local agencies receive all other services at no charge. In the current year, we estimate that these services will cost the state about \$16 million from the General Fund.

Local Governments Should Fund Local Responsibilities. In California, local governments generally are responsible for law enforcement, including investigating and prosecuting crimes. Part of that responsibility includes developing physical evidence, some of which requires laboratory analysis and testing services. Because these services are integral to the overall law enforcement responsibility of local governments, these costs reasonably should be borne by the counties and cities. We believe that this would appropriately align local government's funding and programmatic responsibilities for investigation and prosecution activities.

We note that 20 local law enforcement agencies—county sheriffs, district attorneys, or city police departments—have taken this step by operating and funding their own crime laboratories. These entities have chosen to make an investment in facilities and services in order to meet their law enforcement needs. These laboratories do not provide all of the tests available from the DOJ laboratories, but all provide the most common services, such as controlled substances testing.

We recognize that our recommendation would result in additional costs to those local governments that currently receive free laboratory services from the state. We would note, however, that there are funding sources available to local government. First, under existing law, counties have the authority to establish special funding sources from criminal fine revenues to cover the costs for crime laboratory work. (In fact, Sacramento County used this funding source to build its recently completed crime laboratory.) Second, the *1996-97 Budget Act* appropriated \$100 million to local governments for law enforcement activities. Of this amount, \$87.5 million was provided to police, sheriffs, and district attorneys which could be used for their laboratory costs. The Governor's budget proposes to continue that same level of funding in 1997-98. (We discuss this proposal in *The 1997-98 Budget: Perspectives and Issues*).

Finally, we note that local governments have several options for obtaining these laboratory services, some of which may be less costly and more effective than obtaining the services from the state. For example, they could contract with other local agencies' laboratories or contract with private sector laboratories.

State Agencies Should Also Pay for Services. In addition to local law enforcement, state law enforcement agencies, such as the California

Highway Patrol, the Department of Parks and Recreation, and DOJ's Bureau of Narcotics Enforcement, use the services of the BFS laboratories. In our view, these entities should also reimburse the DOJ for services. The reimbursements could be structured in a similar way to the method used by the DOJ to allocate attorney services to state departments. Most of these agencies receive either special funds or federal funds for their law enforcement operations. Requiring reimbursements from these agencies would reflect the true costs of providing law enforcement services and would allow for funding sources other than the General Fund, such as federal anti-drug program monies, to be used for DOJ laboratory services.

Analyst's Recommendation. For these reasons, we recommend that legislation be enacted to require that the DOJ charge state and local agencies for the costs of laboratory services. As an alternative, if the Legislature does not want to charge state and local agencies for all of the costs associated with laboratory services or wishes to phase-in the charges over time, it may require users to pay some portion of the costs.

State Should Consider Alternatives To Its Regional Laboratory System

We recommend that the Department of Justice provide a report to the fiscal committees prior to budget hearings on alternative methods of providing criminalistic laboratory services. The report should review alternatives that would address the potential reduction in the demand for state services as a consequence of implementing fees for laboratory services, and that would eliminate the need for costly laboratory replacement and renovation.

Rationale for Regional Laboratories. The DOJ's current system for providing laboratory services relies on a system of regional laboratories. Only the DOJ's DNA laboratory provides statewide services. This system was appropriate when the laboratory system was developed, when transportation of evidence was more difficult and access to certain parts of the state was limited. However, many of those constraints no longer exist. The entire state is easily served by courier and other services that greatly reduce the amount of time necessary to transport materials from one end of the state to the other. In addition, methods for preserving evidence and other samples have improved.

State of the Regional Laboratories. As we note in our capital outlay review of DOJ construction projects (please see the Capital Outlay chapter of this *Analysis*), the DOJ is proposing to replace four of its regional criminalistics laboratories. The estimated total cost of replacing these laboratories is \$21.7 million. The DOJ has indicated that it wishes to replace two other laboratories in the future.

According to the DOJ, many of its regional laboratories are housed in crowded or substandard spaces. In addition, the DOJ advises that, because of the poor facilities, there are increased chances for inaccurate test results and consequent improper court outcomes, as well as the possible loss of accreditation. The DOJ is seeking to rectify the problems with its regional laboratories by building new regional laboratories to replace the existing ones.

Declining Demand for Services. We believe that, requiring reimbursement for state-provided services, as we recommend above, will create a competitive environment in which local and state agencies would choose among a variety of options for obtaining laboratory services, based on their particular needs and the costs of the various services. While it is not possible to estimate with precision how each agency would obtain its services, it is clear that the state's workload would likely decline as some entities choose options other than to use the state laboratories. As we indicated earlier, when the state began charging for blood alcohol tests, local agency usage of the DOJ laboratories declined 29 percent in the first year after the fees were established.

DOJ Should Consider Alternatives for Providing Laboratory Services. The DOJ has not proposed any alternatives to its proposal of replacing its six laboratories. For example, the DOJ has not considered consolidation of its laboratories or reducing the number of laboratories. A reduced number, or a single consolidated laboratory, could offer all criminalistic services. Agencies throughout the state that would choose to use the DOJ's services would send materials to these laboratories. The DOJ could begin its consolidation efforts by closing those laboratories that it believes are substandard or most in need of replacement. The workload, along with necessary equipment and staff, for these laboratories could be transferred to other existing laboratories.

Alternatively, the DOJ might establish separate specialized laboratories that offer only certain types of services, such as ballistics, controlled substances testing, or serology tests. In this scenario, the DOJ would realize savings, because it would not have to provide expensive, specialized scientific equipment at every laboratory. In addition, with specialized laboratories, expertise among staff would be concentrated providing better service for all DOJ laboratory users. It was for these reasons that the state consolidated its DNA analysis at its Berkeley laboratory.

If the DOJ begins considering now how it can most effectively provide services, it could avoid a piecemeal approach to reducing services if demand decreases. Moreover, by considering alternate ways of providing laboratory services—especially if those alternatives reduced the DOJ's

costs—the state might provide improved services at lower fees to both local and state agencies.

Analyst's Recommendation. We recommend that the DOJ provide a report to the fiscal committees prior to budget hearings on alternative methods of providing criminalistic laboratory services. The plan should review alternatives that would address the potential reduction in the demand for state services as a consequence of implementing fees for laboratory services and that would eliminate the need for costly laboratory replacement. Even if the Legislature does not approve fees for DOJ laboratory services, we believe that a report would allow the DOJ to explore options that could potentially result in more effective service and lower costs to the state.

Relocation of Modesto Laboratory Should Await Legislative Action

We withhold recommendation on \$281,000 from the General Fund, pending legislative action on our recommendations concerning fees for services, laboratory consolidation, and DOJ capital outlay requests.

The DOJ is requesting \$281,000 for the budget year and for 1998-99, to defray the costs of temporarily relocating its Modesto laboratory. The laboratory is currently located at the Yosemite Community College. The college has informed the DOJ that it must move its laboratory off of the campus by August 1997. The requested funds will pay to relocate the laboratory to a temporary site, pending the construction of a permanent laboratory. The DOJ, in its capital outlay request (please see the Capital Outlay chapter of this *Analysis*), has requested funding to build a new laboratory.

As noted above, we believe that the Legislature should direct the DOJ to establish fees for services and consider consolidating its forensic laboratories. Consequently, we withhold recommendation on this proposal, pending the Legislature's decision on these issues.

Legislation Needed to Effectively Implement Foreign Prosecution Program

We recommend the enactment of legislation to (1) designate the Department of Justice (DOJ) as the lead agency for all interactions with foreign governments related to the prosecution of those committing crimes in California who have fled to their home countries and (2) direct the DOJ to inform all law enforcement agencies and district attorneys of the program and how the DOJ might aid in prosecutions.

Background. The laws of the Republic of Mexico allow for the prosecution in Mexico of Mexican citizens who commit violent crimes in the United States and flee to Mexico. Mexican law allows for the prosecution of any of its citizens providing, that the individual can be located in Mexico, it can be proved that the individual has not been tried in the United States, and the crime for which the individual is being prosecuted is also a crime in Mexico. Consequently, when a Mexican national commits an offense in California, flees to Mexico, and his or her location in Mexico is known, California law enforcement representatives can go directly to the Mexican Federal Prosecutor and file a complaint. Based on these complaints, Mexican authorities will apprehend, prosecute, and if convicted, incarcerate the individual in a Mexican prison. Although Mexican prosecution under its Federal Penal Code allows for prosecution of all major crimes, the law has been used almost exclusively for homicides.

Since 1975, the DOJ has authorized special agents to enter the Republic of Mexico and file foreign prosecution cases for state and local law enforcement agencies. The program, known as the Foreign Prosecution Program, currently operates out of the DOJ's San Diego field office. Since 1981, 39 fugitives from California have been apprehended, tried, and convicted in Mexico. The cases came from more than 25 different law enforcement agencies. All of the cases involved homicide, except for a 1996 case involving a serious sexual offense.

In addition to the DOJ program, the San Diego County District Attorney's Office and the Los Angeles Police Department also have full-time staff assigned to foreign prosecution efforts.

The DOJ Plans to Expand Its Program. As part of its 1997-98 budget, the DOJ is requesting \$321,000 from the General Fund to expand the Foreign Prosecution Program. Currently, two agents are assigned to the program full-time. These agents investigate an average of 30 cases a year, the majority of which are referred to the program by local law enforcement agencies throughout the state. The DOJ request is to add two more agents and a full-time document translator to the program. The DOJ estimates that it can more than double the number of cases it investigates and also increase the number of complaints it files in Mexico. The DOJ has informed us that it will also use the new personnel to seek similar foreign prosecutions for citizens of other countries where the native countries allow it.

We recommend that the Legislature approve the request. All of the costs of prosecution (except for filing the complaint with Mexican authorities) and incarceration of felons are borne by the Republic of Mexico. In addition, the average sentence for those convicted under the current

program has been 25 years, thus, saving the state potential incarceration costs. In those instances where a suspect has fled to Mexico, and does not return, use of the program is the only way that the offender can be brought to justice.

Legislation Needed to Designate DOJ as the Lead for State. While there is no need for legislation to implement this program, we believe that legislation is needed to ensure the most *effective* use of foreign prosecution. The legislation we are recommending should contain two features.

First, the DOJ should be designated as the lead agency for all foreign prosecutions thereby ensuring that Mexican authorities have a single point of contact for prosecutions. Using the DOJ as the lead state agency for these prosecutions would enhance coordination of efforts between the Mexican government and California law enforcement agencies.

Second, the legislation should require that the DOJ provide information and guidance on the scope and uses of foreign prosecution to California prosecutors and law enforcement agencies. By providing such instruction, local law enforcement agencies will be able to more effectively use the program.

Oversight Needed for Unsolved Homicide Investigations

We recommend adoption of budget bill language specifying that the funds appropriated for the pilot project for solving unsolved homicides be used only for that purpose because the Department of Justice (DOJ) does not have adequate data to estimate the number of investigations that it will conduct. We further recommend that the Legislature adopt supplemental report language directing the DOJ to report on the costs and results of the pilot program.

Background. Local law enforcement agencies commit significant resources to solving homicides. Investigators work with both physical evidence obtained from the crime scene and exhaust all witness “leads.” When the physical evidence and leads have been fully investigated, but the homicide remains unsolved, the case is placed in an inactive status and evidence collected is stored indefinitely. The DOJ reports that there are more than 8,000 unsolved homicides in California. Inactive homicide cases are known as “old and cold” cases. Currently, the DOJ will aid local law enforcement agencies with active cases, by providing crime scene analysis, forensic laboratory tests, and other investigation requests.

In recent years, there have been a number of technological advances in forensic science. For example, latent fingerprints that had previously

been unuseable can now be made visible with new laser-assisted techniques. In addition, the DOJ's DNA database now contains a large number of records for known sex offenders. Consequently, old serological evidence can now be tested for DNA and matched against known offenders. Finally, the DOJ has developed an automated system for the examination and identification of recovered firearm evidence. All of these techniques and databases have only been available in the past two years. Consequently, the new techniques could be applied to the unsolved homicide cases in order to develop new leads and possibly solve the cases.

The DOJ Proposal. The DOJ is requesting \$266,000 from the General Fund to form a two-year pilot team of forensic specialists that would identify and re-open "old and cold" homicides; applying the new forensic techniques to stored physical evidence. The team would consist of a special agent, a senior criminalist, and a latent fingerprint analyst. The team would select inactive homicide cases from various law enforcement agencies in Northern California.

The DOJ does not currently investigate these homicides. As a result, it does not have data on the number of cases that will be examined and investigated. In addition, the DOJ has informed us, that since this is a new program, it has not yet developed a system for tracking and reporting the results of its proposed pilot program.

Analyst's Recommendation. We recommend approval of this proposal because of the DOJ's statewide jurisdiction and because it is responsible for maintaining the state-level databases that will be used for examining inactive cases. However, because the DOJ does not have data on the number of cases that will be investigated and has not developed a system for tracking the progress of the pilot project, we recommend that the Legislature adopt budget bill language limiting the use of these funds. In that way, the Legislature can ensure that the funds are used for these investigations.

Specifically, we recommend the adoption of the following budget bill language:

Of the funds appropriated in this item, \$266,000 is available for the Northern California pilot program for investigating inactive homicide cases. Any funds not used for this purpose shall revert to the General Fund.

We also recommend that the Legislature adopt the following supplemental report language reporting on the number of cases investigated, the results of the investigations, which law enforcement agencies received services, and the cost of conducting each investigation:

The Department of Justice shall submit a report to the Joint Legislative Budget Committee and the Legislature's fiscal committees by June 30, 1998, on the unsolved homicide pilot. The report should include the following information: (1) the number of cases selected for review; (2) the number of cases re-opened and investigated; (3) the results of the investigations; (4) the original law enforcement agency responsible for the investigated cases; and, (5) the costs of each investigation.

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OFFICE OF CRIMINAL JUSTICE PLANNING (8100)

The Office of Criminal Justice Planning (OCJP) provides financial and technical assistance to state agencies, local governments, and the private sector for criminal justice programs, such as crime prevention, victim and witness services, law enforcement, and juvenile justice. The OCJP has primary responsibility for the administration of federal criminal justice and victims grant programs, acting as the grant agency for providing state-administered local assistance.

The budget proposes expenditures for this office of \$158 million in 1997-98, including \$36.1 million from the General fund. This is about \$309,000, or about 0.2 percent, more than estimated current expenditures. The increase is due to increases in federal grant programs.

New Federal Grant Program

California will receive \$10.5 million in the current year and \$10.7 million in the budget year in federal funds for the Violence Against Women Act grant program. The purposes of these funds are to strengthen law enforcement and prosecution of violent crimes against women, and to develop and strengthen services for women who are victims of violent crimes. The Office of Criminal Justice Planning has established a spending plan for the current-year monies. The Legislature has substantial discretion as to how it wishes to spend these new funds in the current and budget years.

Background. As part of the Federal crime bill, Congress and the President established the Violence Against Women Act (VAWA). The VAWA program was established to assist states, Indian tribal groups, and local governments to develop and strengthen law enforcement and prosecution of violent crimes against women, and to develop and strengthen services for women who are victims of violent crimes.

The administration estimates expenditures of \$10.5 million in the current year and \$10.7 million in the budget year in federal VAWA funds.

The Department of Finance requested authority to expend \$10.5 million in the current year pursuant to Section 28.00. However, the Chair of the Joint Legislative Budget Committee suggested that the director not authorize the current-year expenditures until the OCJP's expenditure plan had been reviewed by the budget subcommittees.

VAWA Program Options. The Legislature has significant flexibility within broad categories to spend the VAWA funds. The VAWA specifies that 25 percent of the grant be allocated to law enforcement, 25 percent to prosecution, and 25 percent to victims services. The remaining 25 percent can be allocated on a discretionary basis. As a consequence, approximately \$2.8 million annually will be available for each category of spending. Because the state has already received two years of appropriations, there is \$5.6 million available for each category of funding at present. The funds can be used for developing training, providing training, developing new law enforcement and prosecution techniques, data collection, communications, information technology, and creating or expanding appropriate services. Grant recipients must provide a 25 percent match that can be cash or in-kind services. The state must ensure that funds are distributed equitably throughout the state, with emphasis on distribution to "underserved areas."

Current- and Budget-Year Expenditure Plans. An OCJP task force developed a spending plan for the current year that allocated funds for one-time projects, such as the creation of new types of training or consulting contracts. In addition, the plan called for local assistance contracts that would provide multiyear funding for different types of services. No spending plan has been developed for the budget year.

While we found no analytical basis for recommending against any of the task force's proposals, we note that the task force priorities may differ from those of the Legislature. In addition, the task force has not developed a spending plan for the budget year. Federal funds are available throughout the grant period, and must be committed in the year of the appropriation. Consequently, the deadline for allocating the current year appropriation is September 30, 1997 and budget year funds have to be committed before September 30, 1998.

It is important to note that the state is likely to continue to receive at least \$10 million annually under the program through 2001-02. The Legislature has substantial discretion on how it wishes to spend these funds.

Few Cases Prosecuted Under Statutory Rape Prosecution Program

Preliminary data from the Statutory Rape Vertical Prosecution program, which distributes \$8.4 million to district attorneys to prosecute statutory rape cases, indicate that there have been very small numbers of prosecutions but relatively high costs under the program. The Office of Criminal Justice Planning will submit a final evaluation report of the program in January 1998.

Background. In 1995, as part of his initiative to reduce teenage pregnancy, the Governor initiated and the Legislature established the Statutory Rape Vertical Prosecution (SRVP) program. Generally, prosecution of any rapist, including statutory rapists, is a local responsibility. Under current law, local prosecutors have the authority to prosecute statutory rape cases at their discretion. The SRVP program provides financial support to prosecutors so that a single prosecutor, or team of prosecutors, is responsible for a case from referral to conviction. This type of prosecutorial model has been used with success for major narcotics vendors and habitual violent offenders.

The SRVP program is intended to identify and prosecute those adult males who commit statutory rape in cases where a minor female becomes pregnant. The father is identified by social services agencies from birth certificate data. According to the OCJP, the program is intended to "send a clear message that such behavior is criminal and will be prosecuted to the full extent of the law."

Budget Proposal. The 1995-96 Budget Act appropriated \$2.4 million from the General Fund for the initiation of a 16-county pilot project for vertical prosecution of statutory rapists. Each county was awarded \$150,000 to establish a program. The pilot began December 1, 1995. The 1996-97 Budget Act appropriated \$8.4 million from the General Fund and expanded the program to all 58 counties. The OCJP is requesting the same amount to continue the program in the budget year.

First Evaluation Report Submitted. Last year, the Legislature adopted supplemental report language directing OCJP to provide an evaluation of the program to the Legislature on January 1, 1997, and January 1, 1998. A report was submitted to the Legislature in January 1997, detailing the program activities in the pilot counties through October 31, 1996.

Pilot Program Resulted in Small Number of Convictions. We have reviewed the data on the initial pilot program during the period in which pilot counties each received \$150,000 for prosecutorial efforts. Although the data represented only a seven-month period (from December 1, 1995

through June 30, 1996), it appears that the program has resulted in a relatively small number of convictions.

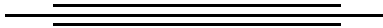
Data from the period show that 1,267 cases were referred to county prosecutors. Prosecutors filed charges in 512 of the cases and prosecuted 304 individuals (about 24 percent of all referrals). Some counties had much lower rates of prosecution. For example, Los Angeles County prosecutors received 149 referrals, but prosecuted only 8 cases. San Bernardino County prosecutors received 223 referrals, but prosecuted only 9 cases.

For those cases that the pilot counties prosecuted, there were 197 convictions (6 of the cases went to trial, the remaining 191 cases were resolved with a plea bargain). Only two of the cases in Los Angeles County and five in San Bernardino County resulted in a convictions.

High Program Costs. Although expenditures in the pilot counties resulted in a relatively limited number of cases filed and convictions, the costs for the prosecution of these cases were significant. For the period we reviewed, the average cost of prosecution was \$7,900. However, if the cost per conviction is evaluated, the average cost was \$12,200 per conviction. The range of cost per conviction among the counties was from \$5,400 to \$75,000.

No Program Measures. With the exception of tracking referrals, charges filed, prosecutions, and dispositions, there has not been an attempt to determine if the prosecution efforts have resulted in the behavioral changes desired.

Conclusion. Given the small number of prosecutions and the relatively high costs of the program, it is not clear whether the SRVP program is cost-effective. Thus, it will be especially important for the Legislature to examine the final evaluation report which OCJP is required to submit on January 1, 1998, to determine whether to continue or modify the program. Should the Legislature conclude that the program is not cost-effective, it may wish to use the \$8.4 million allocated for the program for some other program designed to prevent teenage pregnancy



FINDINGS AND RECOMMENDATIONS

Judiciary and Criminal Justice

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Crosscutting Issues

Internal Affairs Investigations In the Department of Corrections

1. **Problems with Internal Affairs Process.** The California Department of Corrections has been plagued by serious allegations of correctional personnel misconduct, some of which have been proven in court. Some cases have lead to court judgments and settlements which have cost the state millions of dollars. One central problem with the current internal affairs operation is that it is too fragmented. D-13
2. **Reforming Internal Affairs Operations.** Recommend a series of steps to reorganize and centralize internal affairs investigations of misconduct by correctional personnel. D-17

Reforming California's Juvenile Justice System

3. **Implementing Task Force Recommendations.** Recommend that the Legislature enact many of the recommendations of the California Task Force to Review Juvenile Crime and the Juvenile Justice Response, and modify other recommendations of the task force. D-24

California's Jails and Juvenile Detention Facilities

4. **Overcrowded Local Detention Facilities.** Increasing state population, increasing numbers of persons arrested for crimes, and changes in law have had significant impacts on local correctional facilities for adults and juveniles. Because of lack of space, many persons arrested are never booked into jail and thousands of offenders are released before completing their jail sentences. Although the number of juvenile offenders has increased and the offenders have become more violent, local juvenile detention facilities have remained unchanged over the D-37
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past 30 years. Upgrading local correctional facilities will cost billions of dollars.

The Backlog of Death Penalty Appeals

5. **Growing Backlog of Death Penalty Appeals.** About 49 percent of all inmates on death row were awaiting appointment of counsel. D-48
6. **Steps Taken to Attract More Private Attorneys.** The Judicial Council and the Legislature have taken steps to attract more private attorneys to accept death penalty appeal appointments, including streamlining the payment process and increasing rates paid to attorneys. D-51
7. **Issues for Legislative Consideration.** There are several options for reforming the capital appellate process to reduce the backlog of death penalty cases. Issues concerning the availability of qualified counsel, the costs and efficiency of the process, and quality of appellate services will be important for the Legislature to consider. D-54

Youth and Adult Correctional Agency

8. **Shift Department of Corrections' Internal Affairs Responsibilities to Agency.** Recommend adoption of supplemental report language directing the Secretary of the Youth and Adult Correctional Agency (YACA) to submit a plan to the Legislature by December 1, 1997, to reorganize and centralize internal affairs operations to the Office of the YACA Inspector General. D-58

Department of Corrections

Inmate and Parole Population Management Issues

9. **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 2000. D-62
 10. **Cause of Slower Inmate Population Growth.** The slowing in new admissions to state prisons appears to be closely linked to the drop in crime in the state. D-65
 11. **Budget Adjustments for Caseload Growth.** We withhold recommendation on the California Department of Correction's (CDC's) request for \$56 million to fund inmate and parole pop- D-69
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| ulation growth, pending review of the revised budget proposal and population projections to be included in the May Revision. | |
| 12. 1997-98 Inmate Housing Plan Calls for New Prison, Leased Facilities, and Overcrowding. Withhold recommendation on the California Department of Correction's (CDC's) plan for housing the projected increase in the prison population because of continued uncertainties about the prison population projections. | D-70 |
| 13. Legal Clarification Needed on Community Correctional Facility Plan. Withhold recommendation on \$29.9 million requested to contract for 2,000 community correctional facility beds pending resolution of legal problems that could delay their activation. Recommend that the CDC report at budget hearings on the justification for the number of personnel it proposes to place in community correctional facilities. | D-72 |
| 14. Uncertainties Regarding Leased County Jail Bed Plan. Withhold recommendation on \$30.1 million requested to place 1,400 state prison inmates in jail beds leased from Los Angeles County, because of uncertainty regarding growth in the prison population and concerns about the cost of the proposal. | D-75 |
| <i>Substance Abuse Treatment Issues</i> | |
| 15. Update on Civil Addict Program. Recommend the adoption of budget bill language directing the CDC to shift staffing and funding previously provided for drug treatment of civil addicts at the Norco state prison to drug treatment of felons. Recommend supplemental report language directing CDC to study the feasibility, funding, and timetable necessary to convert the entire Norco facility to a drug rehabilitation center, and adoption of statutory changes on good-conduct credits to encourage participation in the Civil Addict Program. | D-79 |
| 16. New Substance Abuse Treatment Facility Set to Open. Recommend approval of \$4 million for the in-prison component of a substance abuse treatment program at the new Corcoran prison but withhold recommendation on \$1 million for aftercare service pending release of a plan for parolee aftercare services. | D-84 |
| 17. Effectiveness of Parolee Service Networks Uncertain. Withhold recommendation on \$8.1 million provided in the Governor's budget for continuation of the Preventing Parolee Failure program pending receipt of the April report on the effectiveness | D-86 |

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| of drug networks and other pilot programs to reduce parolee recidivism. | |
| <i>Correctional Programs</i> | |
| 18. Redirect Prison Industry Authority (PIA) Surplus. Recommend that a portion of the PIA's significant cash surplus be transferred to other CDC programs or the General Fund in concert with efforts to reform correctional work programs. | D-87 |
| 19. Status of Special Education Program and Cutoff of Federal Funds. Recommend that the Youth and Adult Correctional Agency and the CDC report at budget hearings on the status of efforts to remove a federal mandate for special education in adult prisons. Also recommend that the State Department of Education report on threat of \$332 million cutoff of federal funding to public schools if special education services are not initiated for state prison inmates. | D-89 |
| 20. "Boot Camp" Program Evaluation Overdue. Withhold recommend on \$2.4 million to continue the Alternative Sentencing Program at San Quentin because an independent cost-benefit study due in October 1996 has not yet been released by the CDC. | D-91 |
| <i>Medical Issues</i> | |
| 21. Health Care Delivery Needs Evaluation Component Recommend that the Legislature direct CDC to develop a system for evaluating the cost effectiveness of its medical and mental health care delivery system. | D-92 |
| 22. No Data On New Treatment Protocol. Reduce Item 5240-001-0001 by \$2 million. Recommend reduction because the CDC has not provided the Legislature with a report showing that funds for Interferon treatment and related medical tests for inmate with hepatitis B and C were used for stated purposes. | D-97 |
| <i>Administration Issues</i> | |
| 23. Correctional Management Information System (CMIS) Problems. Withhold recommendation on \$14 million for continued implementation of CMIS, pending review of department's reassessment of project. | D-98 |
| 24. Cadet Staffing Levels May Need Adjustment. Withhold recommendation on \$20.3 million requested from the General | D-100 |

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| Fund for correctional officer cadet training pending receipt of updated projections of the number of new correctional officers needed. | |
| 25. Planning and Construction Division Running Out of Projects. Withhold recommendation on \$23.8 million and 272 positions for division, pending legislative deliberations and further review of proposed capital outlay projects. | D-100 |
| 26. Federal Crime Act Positions Not Justified. Reduce Item 5240-001-0001 by \$19,000 and Reduce Item 5240-005-0890 by \$167,000. Recommend deletion of three proposed positions to administer Federal Crime Act funds because of lack of justification. | D-102 |
| 27. Proposed Disability Placement Plan for Inmates. Withhold recommendation on \$1.9 million requested to coordinate programs for inmates with physical disabilities, pending legislative deliberation and further review of related capital outlay projects. | D-102 |
| 28. Inmate Pay Telephone Installation Should Be Put on Hold. Withhold recommendation on \$137,000 requested from the General Fund to help install new inmate pay telephones at CDC institutions because it is not yet clear whether installations will occur in the budget year. | D-103 |
| 29. Technical Error on Limited-Term Positions. Reduce Item 5240-001-0001 by \$660,000. Recommend deletion to eliminate 17 limited-term positions scheduled to expire at the end of the current year. | D-105 |

Board of Corrections

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| 30. No Proposal for Administrative Costs of Grant Program. Recommend that the Board of Corrections submit to the Legislature, prior to budget hearings, a plan for its administrative costs related to the federal prison construction grant program. | D-106 |
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Board of Prison Terms

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| 31. Technical Error in Caseload Adjustments. Reduce Item 5440-001-0001 by \$239,000. Recommend reduction of request for workload adjustments due to technical errors in the request. | D-108 |
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| 32. Failure to Provide Reports to Legislature on Backlog. Recommend supplemental report language to require quarterly reports on backlog problems during budget year. | D-109 |
| 33. Foreign Prisoner Transfer Program is Ineffective. Reduce Item 5440-001-0001 by \$65,000. Recommend program be discontinued because of disappointing results and propose legislation to halt further such efforts until international treaties are renegotiated. | D-110 |

Department of the Youth Authority

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| 34. Ward Population Remains Stable. After a large decrease in Youth Authority population after the transfer of CDC inmates, institution and parole populations remain stable through 2000-01. | D-113 |
| 35. Ward and Parolee Populations Updated in May. Withhold recommendation on \$4.4 million decrease, pending new population projections in May. | D-118 |
| 36. Reimbursements From Counties Could Be Overstated. Withhold recommendation on proposed reimbursements pending receipt and review of revised population estimates at time of May Revision. | D-119 |
| 37. State Subsidy for Local Ranches and Camps Should Be Reassessed. Withhold recommendation on \$32.7 million in General Fund for local assistance, pending review of the Governor's welfare reform plan for reinstating \$141 million of funding for local juvenile facilities. Recommend that the Youth Authority prepare plan for alternative allocation method for the subsidy. | D-121 |
| 38. New Treatment Needs Assessment Needed. Recommend adoption of supplemental report language directing the Youth Authority to complete a needs assessment for future program needs recognizing its changing population. | D-124 |
| 39. Young Men As Fathers Program: No Performance Data Yet. Recommend approval of \$3 million for the continuation of the Young Men as Fathers local grant program, but direct the Youth Authority and the Department of Finance not include the amount in the base budget because the program has not yet demonstrated success. | D-128 |
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| 40. Continued Oversight of Tattoo Removal Program Needed. Recommend Budget Bill language restricting use of funds and reporting requirement for the program because data is not available on the costs or success of the program. | D-130 |
| 41. Hazardous Material and Deferred Maintenance Expenditures Need Annual Review. Recommend approval of \$1.5 million in requests but direct the Youth Authority and the Department of Finance not include the amount in the base budget because these types of requests should be reviewed annually. | D-131 |
| 42. New Construction Staff. Reduce Item 5460-005-0890 by \$233,000. Recommend deletion of staff for new construction projects because projects not justified. | D-132 |

Trial Court Funding Overview

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| 43. Current-Year Funding Shortfall Affecting Some Counties. The Judicial Council has indicated that a number of courts are projecting shortfalls in the current year. Recommend that the Judicial Council advise the Legislature during budget hearings on the status of current-year funding issues. | D-136 |
| 44. Trial Court Coordination Update. The Judicial Council has made positive steps toward furthering coordination. It will be important for the Legislature and the council to continue to closely monitor the implementation of coordination. | D-138 |

Trial Court Funding Consolidation Proposal

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| 45. The Governor's Proposal. Budget proposes to consolidate the costs of the operations of trial courts at the state level. Proposal caps the contribution from the largest 38 counties, requires no contribution from the 20 smallest counties, and makes the state responsible for future increases in funding. | D-141 |
| 46. 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-145 |

Budget Issues

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| 47. Judicial Council Needs to Further Define Performance Measures. Recommend adoption of supplemental report language directing the Judicial Council to report on the development and use of performance measures that assess progress toward meeting specific output goals. | D-147 |
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| 48. Judicial Council Needs to Better Define Baseline Budget of the Trial Courts. Recommend adoption of supplemental report language directing the Judicial Council to implement new standards for budgeting personnel services and to revise baseline restoration practices. | D-148 |
| 49. Distribution of Trial Court Funding Should Be Based on Incentives. Recommend adoption of Budget Bill language directing the Judicial Council to implement an allocation formula which includes incentives for all courts to implement efficiencies and cost containment measures. | D-150 |
| <i>New Programs and Augmentations</i> | |
| 50. New Judgeships Not Justified. Reduce Item 0450-101-0932 by \$4 Million. Recommend reduction of 40 new judgeships because the positions have not been justified on a workload basis. Further recommend that new judgeships be limited to courts that have fully coordinated or consolidated operations. | D-151 |
| 51. Assigned Judge Program Augmentation Not Justified. Reduce Item 0450-101-0932 by \$1.2 Million. Recommend reduction because request is not justified on a workload basis. | D-155 |
| 52. Jury System Compensation and Reimbursement Requests. Recommend the Legislature not adopt proposals, but instead adopt a series of pilot projects as part of jury reform legislation. | D-156 |
| Judicial | |
| 53. Court Appointed Counsel Budget Overstated. Reduce Item 0250-001-0001 by \$954,000. Recommend reduction because the requested amount is overbudgeted. | D-159 |
| 54. Additional Data Needed for Proposed Rate Increase in Court Appointed Counsel Program. Withhold recommendation on \$3 million requested for rate increases pending receipt and analysis of a report on the efficiency and effectiveness of the appointed counsel program. | D-160 |
| 55. Funding for Merit Salary Adjustments Not Justified. Reduce Item 0250-001-0001 by \$322,000. Recommend reduction because there is no analytical basis for granting an adjustment for the judicial branch that has been denied to other state departments, and because the judicial branch's existing budget should provide the flexibility to fund MSAs internally. | D-162 |

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| 56. Proposed Request for Document Management System is Premature. Reduce Item 0250-001-0001 by \$500,000. Recommend reduction because we believe that funding for the project will not be needed in the budget year. | D-163 |
| 57. Reductions in Judicial Branch Program Requests. Reduce Item 0250-001-0001 by \$1.3 million. Recommend reductions for various proposed requests because of insufficient justification. | D-164 |
| 58. Operating Expense Schedule. Recommend adoption of supplemental report language directing Judicial Council to submit a schedule of operating expenses and equipment along with its 1998-99 budget proposal. | D-166 |
| 59. Uncertainties About Proposed Child Support Court Commissioner System. Withhold recommendation on \$37.5 million in reimbursements from the Department of Social Services for a new child support court commissioner system pending completion of caseload and staffing standards to be completed by the Judicial Council. | D-167 |

Department of Justice

Legal Divisions

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| 60. Correctional Law Request Not Justified. Reduce Item 0820-001-0001 by \$585,000 and 6.6 positions. Recommend reduction because the request is not justified on a workload basis. | D-168 |
| 61. Legislature Should Consider Use of Federal Funds for Domestic Violence Prosecution Program. Budget requests \$3.5 million from the General Fund to continue program. New federal funds could be used to support program instead. | D-170 |

Divisions of Law Enforcement and Criminal Justice Information Services

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| 62. Criminal History Backlogs Reduced. Recommend that the Department of Justice (DOJ) prepare a plan on how it will ensure that backlogs are fully eliminated and do not re-occur. | D-171 |
| 63. Sex Offender DNA Backlogs Reduced. Recommend that the DOJ prepare a plan on how it will ensure that backlogs are fully eliminated and do not re-occur. | D-173 |
| 64. State and Local Agencies Should Pay for DOJ Laboratory Services. Recommend legislation to charge fees to state and local agencies that use DOJ's forensic laboratories. | D-174 |

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| 65. Alternatives to Regional Laboratories Should Be Considered. Recommend that DOJ submit a report on alternative methods of providing laboratory services. | D-177 |
| 66. Relocation of Modesto Laboratory. Withhold recommendation on DOJ request for funds to relocate the laboratory pending legislative action on our recommendation regarding fees for services, laboratory consolidation, and DOJ capital outlay requests. | D-179 |
| 67. Legislation Needed for Foreign Prosecution Program. Recommend legislation to make DOJ lead agency for foreign prosecutions and require that DOJ train local agencies on the use of foreign prosecution. | D-179 |
| 68. Oversight Needed for Unsolved Homicide Pilot. Recommend budget bill and supplemental report language to ensure that pilot project funds are used for specified purposes and the effectiveness of the pilot is evaluated. | D-181 |

Office of Criminal Justice Planning

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| 69. New Federal Violence Against Women Act Program. The state will receive \$10.5 million in the current year and \$10.7 million in the budget year in federal funds for the new program. The Legislature has substantial discretion as to how it wishes to spend the funds. | D-184 |
| 70. Few Cases Prosecuted Under Statutory Rape Prosecution Program. Preliminary data from the Statutory Rape Prosecution program indicates that there have been very small numbers of prosecutions but relatively high costs under the program. The Office of Criminal Justice Planning will submit a final program evaluation in January 1998. | D-186 |
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