MAJOR ISSUES

Judiciary and Criminal Justice



Growth in Prison Population Continues

- The Department of Corrections projects that the prison population will increase by about 5.8 percent annually, reaching about 213,000 inmates by June 2003. The state will run out of room to house inmates by early 2000 unless prison space is made available or measures are taken to reduce growth.
- The administration proposes to accommodate the growth by constructing new prisons, overcrowding prisons, and contracting for 15,000 beds in private prisons. Although there is merit to adding capacity to the prison system, we recommend that it be balanced with changes to reduce the inmate population growth rate (see pages D-68 to D-76).



Legislature Should Reform Adult Parole System

- A major contributor to the growth in the prison population is the large number of parolees being returned to prison for a parole violation. Although once on the decline, the number of parole violators is on the rise again.
- We recommend an approach to reforming the parole system that should improve public safety, reduce prison overcrowding, and save the state money by breaking the cycle of parole failure and reincarceration (see pages D-11 to D-33).



The Federal Government Is Playing an Increasing Role in California Law Enforcement

 Recently the federal government has become more involved in local law enforcement—by funding law enforcement programs (sometimes with strings attached) and increasing the resources and roles of federal law enforcement agencies.

- Local law enforcement agencies in California have received about \$500 million in federal funds in recent years; the largest amount was used to hire more than 3,000 new police officers.
- In view of the increased federal role, the Legislature needs to evaluate proposed state-funded law enforcement increases in the context of expanded federal funds and consider linkages with federal programs in order to maximize both federal and state funding (see pages D-34 to D-42).



New Fees Have Changed How Counties Use Youth Authority

- Effective in 1997, counties were charged higher fees for commitments of juvenile offenders to the Youth Authority. The fees were designed to provide incentives to counties to treat less serious offenders in local programs and to invest in prevention programs in order to reduce juvenile delinquency.
- Initial data for the first year show the fees are having the intended impacts. There has been a significant decrease in new Youth Authority commitments in those categories of wards for which counties must pay higher fees.
- Counties are developing local alternatives to Youth Authority, in part because of the fees. The state has provided county probation departments with \$374 million (for 1997-98 and 1998-99) in federal Temporary Assistance for Needy Families funds, which will assist them in developing these alternatives and offset the costs of the fees (see pages D-99 to D-101).



Governance and Accountability—Key Issues for Trial Court Funding

- The budget implements the new restructuring of Trial Court Funding, which will substantially increase costs to the state to support the trial courts while saving the counties money.
- Because the state will be responsible for all future costs of the trial courts, the Legislature will need to ensure that the state has adequate control over court operations and expenditures and that courts are held accountable for their operational and financial decisions (see pages D-111 to D-115).

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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 reasons for the increase are (1) recent legislation that requires the state to pay for a much larger share of the costs of the trial courts; (2) continuing increases in the state's prison and parole populations; and (3) declining reimbursements from the federal government to incarcerate undocumented felons, necessitating an increase in state funds. Other than implementation of the new trial court funding legislation, the budget proposes relatively few significant new programs or augmentations in the budget year.

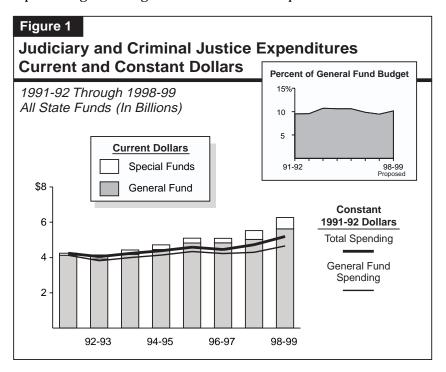
The budget proposes total expenditures of \$6.3 billion for judiciary and criminal justice programs in 1998-99. This is an increase of \$741 million, or 13 percent, over estimated current-year spending. This increase is due to a number of factors, including implementation of recent legislation requiring the state to take over a larger share of financial responsibility for trial courts from the counties, the projected increase in the state's prison inmate and parole populations, and declining federal fund support (and thus increased state costs) to pay the costs of incarcerating undocumented felons in state prison.

As part of the new trial court funding mechanism, counties will transmit \$605 million to the state that will, 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 \$5.6 billion for judiciary and criminal justice programs, an increase of \$600 million, or 12 percent, above estimated General Fund expenditures in the current year. This increase is somewhat misleading because it masks a funding shift which, when taken into account, results in General Fund expenditures increasing by about \$691 million, or 14 percent. Specifically, as part of the trial court funding legislation, about \$91 million in revenues will be

shifted from the General Fund to the Trial Court Trust Fund in 1998-99 and, in turn, expended from this fund rather than the General Fund.

Figure 1 shows expenditures from all state funds for judiciary and criminal justice programs since 1991-92. Expenditures for 1994-95 through 1998-99 have been reduced to reflect federal funds the state received or is expected to receive to offset the costs of incarceration and parole of undocumented felons. As Figure 1 shows, total expenditures for judiciary and criminal justice programs have increased by \$2 billion since 1991-92, representing an average annual increase of 5.7 percent.



SPENDING BY MAJOR PROGRAM

Figure 2 shows expenditures for the major judiciary and criminal justice programs in 1996-97, 1997-98, and as proposed for 1998-99. As the figure shows, the California Department of Corrections (CDC) accounts for the largest share of total spending in the criminal justice area.

Figure 2

Judiciary and Criminal Justice Budget Summary

1996-97 Through 1998-99 (Dollars in Millions)

	Actual	Estimated Proposed		Change From 1997-98	
	1996-97	1997-98	Proposed 1998-99	Amount	Percent
Department of Corrections					
General Fund	\$3,427.5	\$3,640.3	\$3,902.0	\$261.7	7.2%
Special funds	38.0	45.1	45.5	0.4	0.9
Bond funds	6.3	_	_	_	_
Reimbursements and federal funds	97.3	137.2	71.3	-65.9	-48.0
Totals	\$3,569.0	\$3,822.6	\$4,018.8	\$196.3	5.1%
Department of the Youth Authority					
General Fund	\$391.6	\$328.4	\$312.1	-\$16.2	-4.9%
Special funds	0.7	1.2	1.2	0.0	0.2
Bond funds	14.6	15.0	1.4	-13.5	-90.4
Reimbursements and federal funds	31.0	51.1	64.9	13.8	27.1
Totals	\$437.8	\$395.7	\$379.7	-\$15.9	-4.0%
Offset for undocumented felons (federal funds)	\$435.9	\$330.1	\$286.5	-\$43.6	-13.2%
Trial Court Funding					
General Fund	\$483.4	\$360.1	\$656.0	\$295.9	82.2%
Special funds	142.1	356.2	492.2	136.0	38.2
County contribution	_	890.0	605.5	-284.5	-32.0
Totals	\$625.5	\$1,606.3	\$1,753.7	\$147.4	9.2%
Judicial					
General Fund	\$177.3	\$189.2	\$216.7	\$27.4	14.5%
Other funds and	5.0	44.4	40.0	4.0	44.0
reimbursements	5.6	41.4	46.0	4.6	11.2
Totals	\$182.9	\$230.6	\$262.7	\$32.0	13.9%
Department of Justice					
General Fund	\$212.6	\$254.5	\$245.7	-\$8.8	-3.4%
Special funds	58.2	80.2	79.1	-1.2	-1.4
Federal funds	18.0	32.4	32.5	_	_
Reimbursements	90.1	103.7	105.1	1.3	1.3
Totals	\$379.0	\$470.9	\$462.3	-\$8.6	-1.8%

MAJOR BUDGET CHANGES

Figure 3 presents the major budget changes resulting in a net increase of \$741 million in total state spending for judiciary and criminal justice programs. Generally, the major changes can be categorized as follows:

The Budget Proposes to Provide Full Funding for Caseload and Certain Other Cost Increases. This includes funding for projected inmate population increases of 6 percent in the CDC. The budget contains no proposals that would result in any significant reduction in the growth in the inmate population. The budget requests \$9.1 million to contract for 5,000 beds of a total 15,000-bed expansion of private correctional facilities.

In addition, the budget proposes to provide full funding for caseload increases in other judicial and criminal justice programs, such as the Judicial's court-appointed defense counsel program and the Commission on Peace Officer Standards and Training local law enforcement training reimbursement program.

The budget provides an augmentation for the CDC for the costs of merit salary adjustments that will be granted in 1998-99, while requiring most other state departments to absorb these costs.

The Budget Proposes to Fully Implement the New Restructuring of the Trial Court Funding Program. The budget proposes to restructure funding for the trial courts pursuant to provisions of Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle). The budget includes \$1.8 billion for support of the Trial Court Funding Program in 1998-99. These changes will result in increased General Fund costs of about \$350 million in the budget year, including the following:

- \$274 million to make up for a reduced share of county contributions.
- \$62 million to backfill for a loss of fine and penalty revenues that cities previously remitted to the state for support of the trial courts.
- \$10.7 million for the state to pay 100 percent of the costs of courts in the 20 smallest counties.
- \$4.3 million to backfill for five counties that currently remit more revenues to the state than they receive in state trial court support.

Figure 3

Judiciary and Criminal Justice Proposed Major Changes for 1998-99 All State Funds

Department of Corrections

Requested: \$4 Billion

Increase: \$196 Million (+5.1%)

- **★** \$116 million for inmate and parole population increases
- ◆ \$74 million for full-year cost adjustments
- **+** \$24 million for merit salary adjustments
- \$43 million for various limited-term and one-time expenditures

Requested: \$1.8 Billion

Increase: \$147 Million (+9.2%)

- ◆ \$50 million to promote improvements and efficiencies in court operations
- **★** \$29.6 million for courthouse security projects
- + \$13.2 million for 40 new judgeships authorized in 1997
- ♣ \$7.8 million for civil and criminal case workload increases
- + \$6.6 million for court interpreter workload increases
- **★** \$6 million for court-appointed counsel for juvenile dependency cases

Requested: \$463 Million
Department of Justice

Decrease: \$8.3 Million (-1.8%)

- ♣ \$6 million to support two major litigation efforts (tobacco and Stringfellow)
- ◆ \$5 million for new gang violence prevention and witness protection programs
- ◆ \$4.2 million to establish the Division of Gambling Control and Gambling Control Board
- \$21.1 million for reductions in costs for local government mandate payments
- \$10.5 million for various limited term and one-time expenditures

In addition, the budget includes the following for trial courts:

- \$50 million from the General Fund to promote improvements and efficiencies in court operations through improved technology, legal research, education and training, and retention of experienced judges.
- \$50 million from the General Fund for growth in court costs as well as other priorities of the trial courts, such as increased security services (\$29.6 million).
- \$13.2 million from the General Fund to pay for 40 new judgeships authorized in 1997.

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 \$287 million in federal funds in 1998-99 to offset the state's costs to incarcerate and supervise undocumented immigrants in the CDC and the Department of the Youth Authority. This is a decrease of \$43.6 million below the Governor's budget estimate of the amount the state will receive in the current year (\$330 million). The principal reason for the decrease is that, in the 1997-98 Budget Act, the Legislature chose to shift \$54 million in federal funds for prison construction to offset incarceration costs of undocumented felons, as permitted on a one-time basis under federal law for federal fiscal year 1997. Up to \$27 million in additional federal funds could be shifted to the General Fund for this purpose.

The Budget Proposes Relatively Few New Significant Program Initiatives. The budget proposes relatively few significant new judiciary and criminal justice program initiatives in 1998-99. Among the changes are: (1) an increase of \$3.9 million in federal funds to the Department of Justice for a new effort to combat methamphetamine, (2) a General Fund increase of \$12 million for the Board of Corrections to expand the Community Law Enforcement and Recovery (CLEAR) Demonstration Project to fight gang crime in Los Angeles, and (3) a federal funds increase of \$12.4 million to the Board of Corrections for distribution to local governments to build or rehabilitate jails and juvenile detention facilities.

CROSSCUTTING ISSUES

Judiciary and Criminal Justice

REFORMING CALIFORNIA'S ADULT PAROLE SYSTEM

With more than 100,000 offenders now under state supervision, the California Department of Corrections' parole operations play a pivotal role in reintegrating offenders back into the community. For some offenders released from prison, supervision by the state's force of parole agents is a successful bridge between incarceration and a productive, crime-free life in the community. For a growing number of others, parole has become the "back door" into the state prison system. Tens of thousands of parolees each year are being released unprepared for a return to society, then committing violations of their conditions of parole that soon lead to their return to prison by the Board of Prison Terms. In order to break this cycle of parole failure and reincarceration, we recommend changes in the system of supervision, control, and sanction of parolees that we believe will lead to improved public safety, less prison overcrowding, and significant state savings.

BACKGROUND

What Is Parole?

Reintegration of Offenders Into Society. Parole is the state system for supervising an adult felon or a civil addict for a period of time after the offender has completed his or her term in prison. The purpose of parole is to ensure the successful reintegration of offenders back into the com-

munity. Toward that end, the parole system administered by the California Department of Corrections' (CDC's) Parole and Community Services Division supervises parolees in the community and provides educational, vocational, psychiatric, substance abuse treatment, and personal counseling services to parolees. The Board of Prison Terms (BPT) determines whether certain offenders with life terms can be released on parole, and has the authority to suspend and revoke the parole of any parolee for violations of law or parole rules.

Unlike probation, which is an *alternative* to a period of incarceration, supervision on state parole is an *additional sanction* beyond a period of confinement in a state prison. While probation programs are operated by county authorities, the parole system is staffed and operated by state government personnel. In California, unlike some other states, a prison sentence is not reduced by any amount of time that an offender is placed on state parole.

How Does the Parole System Work?

The Term of Parole. The parole system has changed significantly since the implementation of the state's Determinate Sentencing Law beginning in 1977. Before 1977, offenders who were sent to state prison received indeterminate sentences, and were not released to parole until they had completed a minimum term determined by the sentencing judge and parole authorities determined that they were suitable for release.

Under the current determinate sentencing law, many offenders are now sentenced by law to *set* prison terms (they can receive credits to shorten their time in prison if they participate in work or education programs). Once an offender has served his sentence, he must be released from prison to a set period of time on parole and no review is conducted to determine in advance if the inmate is suitable for release. Most of these offenders are subject to a three-year term of parole, but can be discharged from parole status after one year if they have committed no parole violations or no new crimes while in the community. However, the average time served on parole is 19.5 months, because so many offenders fail on parole and are subsequently required to be under supervision for two or three years.

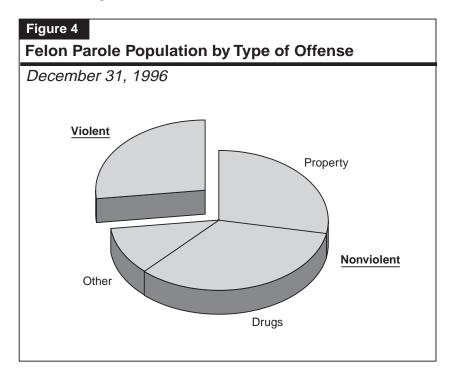
Certain very serious crimes, such as murder or rape, as well as some offenders incarcerated under the "Three Strikes and You're Out" and the "10-20-Life" sentencing laws, continue to receive indeterminate sentences and thus remain subject to a review of parole suitability before release. These offenders are few in number in the parole system. Murderers who receive and serve a life sentence, and are subsequently released on parole,

are subject to being in parole status for the rest of their lives. Felons receiving a life sentence for an offense other than murder are subject to supervision in the community for five years.

State law permits the BPT to discharge an eligible offender from state prison and avoid parole altogether for "good cause," but this occurred in only 42 cases in 1996-97. By law, a parolee must generally be released to the county that was the offender's last legal residence before commitment to prison. Some limited exceptions to the rule are permitted.

Who Is on Parole? According to CDC, 105,449 offenders were supervised on parole in California as of the end of 1997. Of this total, 102,201 were felons and 3,248 were participants in the Civil Addict Program.

According to the most recently available demographic data, about 90 percent of the parole population is male. About 57 percent of the parole population is age 20 through 34. About 40 percent of parolees are Hispanic, 29 percent are white, and 27 percent are black. As shown below in Figure 4, almost three-fourths of the parole population was originally committed to prison for a nonviolent offense.



Parole Conditions. Both CDC and BPT have adopted written regulations and policies that guide the operation of the parole system. State law is generally silent on the issue of how the parole system is to be administered, leaving many decisions to the discretion of the two agencies. For example, state law provides that CDC shall establish "conditions of parole" and that the BPT shall establish "guidelines" regarding those conditions. The law states that the conditions imposed on an offender may include restitution to a crime victim, psychological counseling, compliance with orders to protect battered spouses, abstinence from alcoholic beverages, and, for offenders paroled by BPT, tuberculosis tests. But state law otherwise leaves it to the CDC and BPT to specify what the conditions and the guidelines shall actually be.

The basic conditions of parole imposed on all parolees are to report immediately to their assigned parole agent upon release from prison and as directed by the agent; to immediately report any address or employment change; to obey all parole agent instructions; to carry no weapons, including guns and knives with long blades; and to not commit crimes.

Parolees convicted of specified sex offenses, drug sales, or arson must register with a local police or county sheriff's office. In addition, special conditions of parole (and sometimes more than one) have been imposed on many parolees. For example, nearly 81,000 parolees, or 71 percent, of the total parole population (including parolees taken into state custody for parole violations and those who have fled from parole) have been required to submit to regular drug-testing. Almost 25,000 have been directed to abstain from drinking alcoholic beverages, and more than 12,000 have been required to participate in psychiatric treatment.

Most parole violations involve criminal conduct. Some parolees who commit new crimes are prosecuted for the criminal offense in the courts and sentenced to a new prison term. However, prosecutors often decide not to prosecute parolees for new offenses either because a lack of evidence would make a court prosecution difficult or because the prison sentence resulting from court prosecution would not be much longer than the penalty that could be imposed by the BPT for a parole violation. Thus, many parole violations involve the commitment of crimes.

Sanctions for Violation of Parole Conditions. Parolees who violate their conditions of parole may, at the discretion of BPT, be suspended from parole and returned to prison for up to one year. (Murderers are the exception, and may be returned for an unspecified period of time longer than one year.) The time spent in prison is not credited toward the period of parole service.

State law requires parole agents to report to BPT within two days any parolee in its highest risk classification level who fails to promptly report for supervision after release from prison, and requires BPT to suspend the parole status of that parolee. Otherwise, state law does not specify when and if parole violators must be reported to BPT, and the law does not specify what actions BPT shall take against a parole violator.

The BPT has adopted regulations requiring that the CDC parole division report to it, among other matters, any parolee who is involved in violent or serious crimes, who had a gun or long-bladed knife, or who has fled from parole for more than 30 days. The BPT regulations also state that any parolee who served prison time for a violent or serious offense must be reported to BPT for "any criminal conduct," language that BPT is now interpreting to include failure of a drug test by these parolees.

Most parole violators returned to prison by BPT are eligible to participate in work and education programs that can reduce the time they must serve in prison.

Supervision of Parolees. State law does not specify exactly how CDC's parole division is to supervise and provide services to parolees. The parole division has a total staff of about 2,200, including about 1,264 parole agents, deployed in 118 parole offices and four clinics. The work of supervising more than 100,000 parolees is assigned and divided among agents within four established geographic regions in accordance with a longstanding agreement with the labor organization representing parole agents.

The parole division has classified parolees into four major groups—High Control, High Services, Control Services, and Minimum Services, which are described in more detail in Figure 5 (see next page). Each parolee classification has been assigned points based upon the purported degree of difficulty and risk of supervising the parolees in that group. High Control and High Services cases are assigned three points, Control Services cases are two points, and Minimum Services cases are one point. Each parole agent is to carry a caseload of 168 points. Thus, a single agent's caseload might include 40 High Control cases (120 points), 20 Control Services cases (40 points), and eight Minimum Services cases (eight points) totaling 168 points.

Parole agents regularly conduct on-site visits to the homes and workplaces of the parolees on their caseload and carry out other follow-up contacts by telephone. The agents also assist parolees in obtaining welfare and other benefits to which they are entitled, refer them to job training and educational programs, and meet with the families of parolees.

Figure 5								
Present Classification of Parolees by CDC								
High Control Cases	Parolees engaged in or suspected of criminal activities, or who have a high risk of reinvolvement with criminal gangs, violent or sexual offenses, or large-scale drug trafficking.							
High Services Cases	Parolees requiring significant support to meet their psychological, physical, or medical needs.							
Control Services Cases	Parolees who pose a medium risk of reinvolvement in criminal activities, and who require moderate amounts of control and services to continue on parole successfully.							
Minimum Services Cases	Parolees who pose little or no risk to the community and have infrequent or low needs for services.							

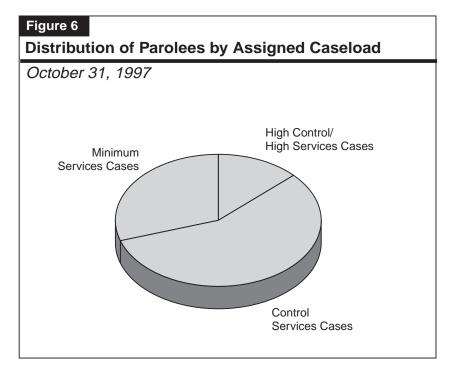
As Figure 6 indicates, only about 13 percent of parolees under active supervision by the parole division are High Control or High Services cases. About 57 percent are Control Services cases and 30 percent are Minimum Services cases.

Although certain information about a prospective parolee is prepared by a correctional counselor, the final classification of parolees rests with parole supervisors in the field. The process is not as elaborate or sophisticated as it once was. For example, the needs of a prospective parolee for substance abuse treatment or other support services are no longer weighed heavily in the classification process. As a result, parolees who might be appropriate for a High Services assignment often end up in lower classifications. Later in this analysis, we will discuss ongoing efforts to improve the parolee classification system.

Parolee Assistance. Just as the classification of parolees occurs in the field, the assignment of those parolees to support services and programs is a decision made by parole agents. According to CDC estimates, 10 percent of parolees are homeless, half are illiterate, 70 to 80 percent are unemployed, and as many as 85 percent have a substance abuse problem.

Several general types of assistance are provided to parolees:

Casework Services. This includes direct cash assistance, such as
payment of a night's stay in a motel for a homeless parolee or the
bus fare to get a parolee to a psychiatric clinic appointment.



- Contract Services. The parole division contracts with various nonprofit vendors to provide housing, counseling, substance abuse
 treatment, computerized literacy centers, job placement services,
 and short-term housing for parolees. Included in this general category of assistance are the division's Preventing Parolee Failure
 Programs and the Bay Area Services Network. These programs
 provide a range of services intended to successfully reintegrate
 parolees into the community and prevent their return to prison as
 parole violators.
- **Parole Outpatient Clinics.** Parole agents may refer parolees exhibiting possible mental health problems for evaluation and treatment at one of four clinics run by the division. Some parolees suffering from mental illness while in prison must regularly visit the clinics as a condition of their parole.

The parole division operates other specialized programs targeting high-risk sex offenders, parolees with a history of domestic violence, and parolees suffering from AIDS or infected with the AIDS-related virus.

Parole Operations Budget. The 1998-99 budget proposes that the parole division be provided about \$246 million for the direct cost of CDC

parole supervision and parole services (not including administration), an increase of about \$10 million, or 4.2 percent, above estimated current-year expenditures. The average annual cost of supervising each parolee is \$2,159. The 1998-99 budget includes an augmentation of \$4.9 million for additional staffing to supervise an increased parole caseload; a \$1.3 million request for an additional 23 positions to process parole revocation cases; \$457,000 for a new computer system to track revocation cases; and \$486,000 to move forward with a computer project to share files on parolees with local law enforcement authorities.

The BPT budget request for 1998-99 is \$13.4 million.

WHAT TRENDS ARE EVIDENT IN THE PAROLE SYSTEM?

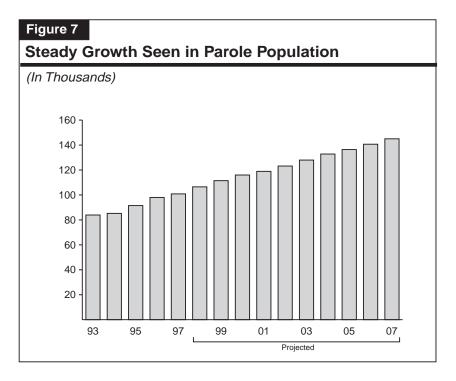
State Parole Caseload Growing Steadily

The number of parolees released from prison each year has been growing steadily and, along with it, the total population of parolees under state supervision. The significant growth in total parole caseloads has greatly increased the caseloads per parole agent.

One-Fourth Increase in Caseload in Five Years. During 1996-97, almost 118,000 offenders were released from state prison on parole. This annual movement of felons and civil addicts onto the parole caseload represents a 25 percent increase during the last five years. The trend is expected to continue: CDC projects that parole releases will exceed 128,000 in the current year, reach almost 134,000 during 1998-99, and grow to 175,000 during 2006-07 (the latest year for which CDC has released projections).

Because more inmates are being released from prison to parole supervision than are being released from parole supervision, the caseload is building. This trend is shown in Figure 7. As of June 30, 1997, California was supervising 100,828 parolees. That number is anticipated to reach 106,503 by the end of the current year and 111,426 by the end of 1998-99. By the end of 2006-07, it is projected to reach 145,000, almost a 50 percent increase over the next ten years.

Actions of BPT a Contributing Factor. The primary reason for the growth in state parole caseloads is the significantly larger number of offenders mandated to serve time in state prison under California's determinate sentencing law. Under the determinate sentencing system, more prison inmates inevitably and eventually lead to more offenders released from prison to parole.



One less significant, but contributing, factor is that BPT is only rarely exercising its discretion under state law to allow low-risk offenders to leave prison without going on parole, a practice known as "direct discharge." The BPT terminated the practice of reviewing the records of inmates who might be candidates for direct discharge in 1992 after state legislation made the practice discretionary rather than mandatory. The BPT advises that it ceased such reviews because it had legal discretion to do so and because few prison inmates had met its criteria for direct discharge in the past.

The BPT is also adding to the parole caseload by keeping parolees who have been punished for parole violations under state supervision for longer periods of time after they are released again into the community. During 1995-96, BPT went along with CDC parole division recommendations to discharge offenders from parole status about half the time. During 1996-97, BPT went along with a discharge recommendation only 39 percent of the time. Thus, a parolee who might have spent 18 months under state parole supervision now could remain on the parole caseload for the maximum three years.

Impact on Agents. The number of parole agents has not kept pace with this caseload growth. In the 1970s, one parole agent was ordinarily as-

signed to supervise 45 parolees. The ratio now is effectively one agent for every 80 parolees. A study conducted for BPT concluded that the workload changes have significantly diminished the quality of parole supervision, as evidenced by the reduced number of monthly contacts between agents and parolees. Although the parole division has the option available of placing low-risk parolees on a "banked caseload" (that is, unsupervised), thus allowing more intense supervision of the remaining caseload, it has chosen to do this only for undocumented aliens who have been deported from the United States upon their release on parole.

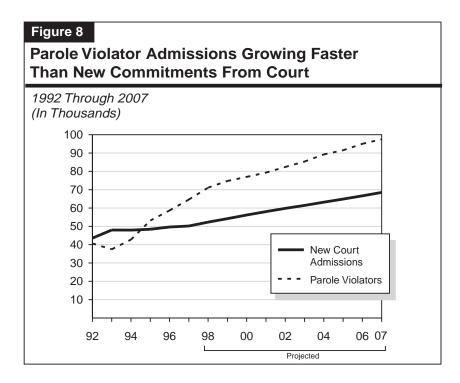
Many Parolees Returning to Prison

Once a trend on the decline, the number of parolees being returned to state prison through the "back door" for parole violations is rising and is aggravating already severe overcrowding in state prisons. The number of parole violators in prison has tripled in the last decade.

Return-to-Custody Rate Rising. After they are released on parole, many offenders are returned to prison custody by the BPT for violating the terms of their parole. In 1988, about 68 felon parolees were returned to prison for a parole violation for every 100 persons in the parole population—constituting a "return-to-custody" (RTC) rate of 68 percent. By 1993, the RTC rate had dropped to about 39 percent. That trend has been in reverse ever since, and in recent months the RTC rate has averaged nearly 60 percent.

As can be seen in Figure 8, the number of parolees entering the prison system through the "back door"—return to custody by the BPT for parole violations—is now larger than the number of new admissions to prison by the courts. The RTC admissions are projected to continue to outpace new admissions from court at least through the next decade.

Although parole violators stay in prison an average of just 5.3 months, the surge in RTC admissions to prison nonetheless means that a growing share of prison space must be used to house parole violators. From 1988 through 1993, the proportion of prison beds taken by parole violators had dropped from 15.8 percent to 10.9 percent. In the current fiscal year, however, returned-to-custody parolees constitute about 17 percent of the prison population. Over the last decade, the number of parole violators in state prison has more than tripled from about 8,000 to more than 26,000 today. The number of beds needed to house parole violators would be even higher except for the relatively short time they may be returned to custody.



Parolees Also Returning With New Terms. A significant number of parolees are being convicted in the courts for new crimes and sentenced to a new prison term. In the current year, about 19,000 additional felons and civil addicts on parole will be sent back to prison by the courts.

As of June 30, 1997, this group of parolees, known as Parole Violators With New Terms (WNTs) numbered almost 37,000. The number of WNTs held in state prison has increased by about 10,000 over the last five years. This increase, while significant, has been in line with the overall growth in the state prison population. As a result, the share of the prison population consisting of parolees with new court commitments has remained relatively stable since 1990 at about 24 percent.

Inmates released from CDC are failing on parole, either through parole violations or new court commitments that return them to prison, at a rate far higher than in any other state, according to a new study by the National Council on Crime and Delinquency.

Impact on Prison System. This growth in the RTC prison population, coming as it has at a time when prison facilities are severely overcrowded, has made it more difficult for CDC to operate the prison system. Many parole violators are housed in reception centers, among the most

overcrowded correctional facilities in the state, while they await BPT hearings to revoke their parole and return them to prison. The CDC also is incurring significant costs to process and classify large numbers of parolees who, because they are held for parole violations, usually spend no more than four to five months in the prison system. These problems will intensify in the year 2000 when, according to CDC projections, the prison system will exhaust all available space to house inmates.

BPT Policies Are Driving Up Return Rates

The higher return-to-custody rate of parolees, and their larger numbers in the state prison system, are closely associated with the Board of Prison Terms' policy decisions to punish parole violators with prison time more frequently and for longer periods of time.

Changes in Revocation Policies. When RTC rates of parolees were declining, CDC partly attributed the trend to its standardization of the procedures used in the field by parole agents to determine which parole violators should be returned to custody. The CDC found, for example, that an offender failing a drug test in one parole unit might be continued on parole, but that a parolee with a similar criminal record committing the identical parole violation in another unit would be returned to custody. In response to this lack of standardization, the CDC made it a standard practice to put more emphasis on keeping in the community parole violators who had not committed new and serious crimes rather than returning them to prison.

Through a series of changes in its regulations and policies, BPT is now playing a significant role in increasing the RTC rate by sending parole violators to prison more frequently than before, and by sending them there for longer periods of time.

Over the last few years, BPT began implementing new policies and regulations significantly broadening the list of parole violations the CDC parole division is required to report, thereby exposing more parolees to BPT decisions to return them to prison. Previously, CDC parole agents often allowed a parole violator who had failed a drug test to continue on parole if he agreed to participate in a substance abuse program. The new BPT rules provide, instead, that such parole violations must be reported to BPT if the parolee had originally been sent to prison for a serious crime, such as a residential burglary. In most such cases, BPT is returning the parole violator to prison rather than allowing him to continue on parole under a treatment program.

As of fall 1993, about 65 percent of parolees apprehended for alleged parole violations were returned to custody by BPT and 35 percent were continued on parole. As of fall 1997, however, about 90 percent of the parolees were being returned to custody by BPT and 10 percent were being continued in parole.

Revocation Terms Have Grown. As can be seen in Figure 9, BPT has increased the length of time parole violators are sentenced to stay in prison by 23 percent since 1990. The increases were across the board, but the largest proportional increases in prison time were imposed on the least serious parole violation offenses—those involving violation of parole rules but not a crime, or those involving nonviolent property crimes such as petty theft or receiving stolen property. For example, the period of time assessed for being drunk in public increased from 5.3 months to seven months—a difference of more than 30 percent.

Figure 9

Examples of How BPT Has
Increased Parole Revocation Terms

	Average (In Months)		Increase			
Category of Parole Violation	1990	1998	In Penalty			
Returns to custody for noncriminal activities	4.5	F.0	0.4.40/			
	4.5	5.6	24.4%			
Violations of parole reporting rules	4.0	5.3	32.5			
Parolee had access to weapon	7.4	8.3	12.2			
Returns to custody for criminal activities						
Type 1 crimes (least serious)	4.8	6.6	37.5%			
Drug use	4.4	5.5	25.0			
Drug possession	5.1	7.1	39.2			
Type 2 crimes (more serious)	7.8	9.7	24.4%			
Burglary	8.5	10.7	25.9			
Theft and forgery	7.8	9.9	26.9			
Drug sales/trafficking	9.0	10.9	21.1			
Weapons possession	7.8	10.0	28.2			
Type 3 crimes (most serious)	10.2	11.2	9.8%			
Homicide	11.7	11.9	1.7			
Robbery	11.3	11.8	4.4			
Rape and sexual assaults	11.1	11.6	4.5			
Major driving violations	9.9	10.9	10.1			
Average term for all parole violations	6.9	8.5	23.2%			

The disproportionate increases in terms for lesser crimes appear to be due in part to the one-year limit on the time parole violators can be returned to prison. The BPT has urged a change in state law so that parolees could be returned to custody for longer than one year.

Substance Abuse Fueling Parolee Returns

The wave of parole violators filling state prisons is closely associated with an epidemic of substance abuse among this population of offenders. However, pre-release and post-release programs and assistance are often not available to help many parolees break their addiction to alcohol and drugs. Nor is there sufficient assistance for homeless, illiterate, or mentally ill parolees.

Almost Half of RTCs Involve Drug Charges. The failure of so many parolees to complete their supervision period without a violation of parole is closely associated with an epidemic of substance abuse among this population of offenders. According to BPT records, drug violations played a role in the return to custody of 31,640, or 48 percent, of the 65,396 parolees returned to custody during 1996.

Partly as a result of BPT policies, the number of parole violators returned to prison each year for drug possession has doubled since 1990. The number returned to custody for use of illegal drugs has gone up about 46 percent, while those returned for drug sales or trafficking has also doubled. Drug-related parole violations also were frequently a factor in return-to-custody cases involving other types of charges. For example, about one-third of the 3,000 parolees returned to custody for first- or second-degree burglary also violated conditions of parole that they avoid illegal drug use.

Drug Testing but Little Drug Treatment. The prevalence of drug charges for parolees returned to custody is consistent with CDC estimates that 85 percent of the parole population has some form of substance abuse problem. The parole division conducts 130,000 drug tests per year of parolees to enforce its parole conditions requiring abstinence.

Funding for drug testing is automatically increased each time CDC receives additional funding for parole caseload increases. However, the staffing and money available to assist parolees with substance abuse and other problems has remained level in recent years. Last year, CDC reduced funding by 40 percent for contracts with various nonprofit organizations, many of which offered substance abuse counseling programs to parolees, in order to free up money to hire additional parole agents. As a result, only about 12 percent of the CDC budget for parole operations

is for assistance and services for parolees, while 88 percent is spent on parole supervision.

We have been advised by CDC that virtually all of its programs to assist parolees reintegrate back into the community—from substance abuse treatment networks to the Parole Outpatient Clinics—are underfunded, understaffed, and have insufficient space for parolees. The situation often leaves parole agents and the BPT with no alternative but to return to custody a mentally ill or drug-addicted parole violator who might otherwise be considered appropriate for placement in a residential treatment or other assistance program.

Other CDC programs that could assist in the transition from prison to community also appear to have insufficient resources. An estimated 8 percent of inmates receive any formal pre-release program before their release, and few who do participate in such programs receive any cognitive-skills training aimed at changing criminal attitudes and life-styles. The number of correctional reentry beds, where an offender may spend his last few months in custody preparing for release to the community, has not expanded significantly beyond the 1,300 available since the early 1980s.

Program Expansion Could Lower RTC Rate. The effectiveness of some of these programs has not been evaluated. But there is strong evidence that expansion of substance abuse and other services for parolees could reduce RTC rates.

The CDC partly attributes the decline in RTC rates in the early 1990s to the establishment of its Preventing Parolee Failure (PPF) programs. Parole units which have PPF programs continue to have RTC rates that are generally lower than units without the programs, according to CDC data. Providing parole agents an alternative to revocation of some parolees resulted in a net state savings of \$74 million from 1991-92 through 1995-96, according to CDC.

The savings resulted primarily because the parole division was able to refer 31,000 fewer parole violators to BPT for return to custody. If PPF were discontinued and these referrals to BPT were resumed, the prison system would have needed about 11,000 more beds during that period—roughly the equivalent of two more prisons.

There is evidence that expanding other parolee programming could also lower RTC rates. The CDC examined why RTC rates in its Los Angeles County parole region were so much lower than for its other three parole regions. It concluded that the difference was mainly the result of the commitment by parole agents and management to developing and implementing alternative punishment programs when appropriate for parolees, instead of a return to custody, when parole violations occur.

Present Parole System Costly to State

By our estimate, the cost to the state of supervising the expanding caseload of parolees and for incarcerating a larger caseload of parolees returned to state custody has more than doubled state costs during the 1990s to \$1.8 billion.

Fiscal Impact of the Present System. By our estimate, the cost of supervising parolees and of incarcerating offenders who have failed on parole has almost doubled during the 1990s, going from about \$925 million in 1990-91 to \$1.8 billion for parole-related funding in the 1998-99 budget.

Relatively little of the overall cost increase is directly related to the cost of parole operations. The direct cost of CDC parole operations (not including administration) has gone from \$158 million in 1990-91 to the \$246 million proposed in the 1998-99 budget, an increase of about \$88 million, or 55 percent. The BPT budget for parole hearings has also increased by about \$1 million since 1990-91 to about \$13.7 million.

The major additional costs of the present parole system are primarily for incarcerating offenders who have failed on parole. We estimate that the cost of housing parole violators returned to custody by BPT have doubled from \$290 million per year in 1990-91 to \$590 million in 1998-99. The cost in housing parolees returned by the courts with new terms has doubled from about \$450 million in 1990-91 to almost \$920 million in 1998-99.

Finally, costs for local assistance payments to county governments who temporarily hold parole violators are also increasing. These expenditures were \$14.5 million in 1990-91. About \$18 million has been requested in the 1998-99 budget for local assistance.

AN APPROACH TO REFORMING THE PAROLE SYSTEM

We recommend changes in the state's system for the supervision, control, and sanction of parolees that we believe will lead to improved public safety, less prison overcrowding, and significant state savings by breaking the cycle of parole failure and reincarceration.

Higher Costs and Operating Problems

Continuation of the state's current approach to parole supervision and return-to-custody of parole violators would be difficult for the state to sustain because of both the costs and difficulties in accommodating continued growth in parole and prison caseloads. This is especially the case because the space needed to house inmates has not kept pace with the significant increases in the prison population nor have other strategies been implemented to accommodate or reduce the large numbers of additional inmates that are projected to come to CDC.

Based on CDC's inmate and parole population projections, we estimate that the cost of *supervising* parolees would increase by more than \$60 million, and thus would exceed \$300 million annually, by the year 2006-07. The cost of *incarcerating* parole violators returned to custody by BPT as well as those returned to prison by the courts would increase by \$800 million, and would exceed \$2.3 billion annually during 2006-07.

Because the state will exhaust all available prison space sometime during the year 2000, the state also would face the challenge of accommodating 34,700 more parolees in prison between now and June 2007. This is the equivalent of about seven prisons and would result in one-time capital outlay costs of about \$1.8 billion for parolees returned to custody by BPT and the courts. The space required for the offenders who have failed while on parole would be in addition to the space needed to accommodate the projected growth in offenders classified as new admissions from the courts.

Time for a New Approach

Because of these fiscal and operational concerns, we recommend the Legislature consider new approaches to the supervision, control, and sanction of parolees. Our approach incorporates some proposals advocated in the past by CDC, BPT, the California Correctional Peace Officers Association, the 1990 Blue Ribbon Commission on Inmate Population Management, criminal justice experts, legislators, and our office. It also incorporates parole reform strategies that have been used with some success in other states, notably Illinois and South Carolina, and expands upon programs that CDC itself has implemented. In offering this proposal, we recognize the significant contribution to public safety that is inherent in operating a cost-effective system of state supervision by parole agents. Our proposed approach centers on the concept of viewing the parole population as three distinct segments and employing differing strategies and tactics for monitoring and controlling each of these three groups. We also propose that CDC and BPT be given a broader and more

flexible array of sanctions, in addition to reincarceration, with which to respond to parole violations.

New Classification System

We recommend that a new parole supervision strategy be based upon a new classification system of parolees now under development by the Department of Corrections. Staffing and other resources would be shifted from low-risk parolees to those requiring tighter supervision and greater assistance to make a successful transition into the community.

Differing Strategies for Differing Groups of Parolees. We assume the three groups would be similar in concept, but would not conform exactly, to the existing CDC classification of parolees into High Control, High Services, Control Services, and Minimum Services cases. With the assistance of the University of California, Los Angeles, and at the direction of the Legislature, CDC is now in the process of revising and testing a new classification system for parolees that would be more effective in determining which parolees present the greatest risk of committing new crimes or parole violations and better determine what services parolees need to reintegrate successfully into the community.

The CDC has studied a sample of 1,927 parolees released in 1994 to determine which factors best predict success or failure on parole. It found that the following factors were closely associated with being a high risk on parole: the parolee's number of prior arrests, the parolee's number of prior failures on parole, membership in a gang, being under age 25 at release, the parolee's first felony or first arrest was at a young age, and having a Level IV classification while in prison. On this basis, CDC has indicated in a preliminary report that 14 percent of the parole population poses a very low risk to public safety and that only 8 percent of parolees pose a high risk to public safety.

We recommend that these classification criteria be used to better focus its parole supervision resources to redirect staff and program funding now devoted to parolees who pose a low risk to the community to parolees who pose a greater risk to public safety.

Once the new classification criteria are finally developed, we recommend that the classification process be centralized, or at least highly automated, to minimize the significant variation from parole unit to parole unit in classification of parolees that has occurred in the past.

We propose the following approach for supervising and controlling California parolees:

Low-Risk Parolees. This group of parolees would be placed on a "banked caseload," meaning that they would not be on the regular caseloads of parole agents but would remain legally subject to parole conditions and subject to warrantless searches by authorities. (About 13,500 undocumented aliens who will be deported from the United States upon their parole from state prison are already on banked caseloads.) Six months before the end of their prison terms, Low-Risk Parolees would be placed in an expanded system of community reentry programs, where they would receive cognitive-skills training and other services designed to change their criminal aptitudes and lifestyles. After their release from reentry programs, they could voluntarily receive services and assistance from the parole division to the extent that it was available. Elimination of thousands of such cases from active supervision would free staff positions and funding to do a better job of supervising and controlling higher-risk parolees.

One alternative that we suggested in our May 1997 report on accommodating the growing prison inmate population would be to place Low-Risk Parolees under county supervision, with reimbursement by the state at a standard rate such as \$1,000 per year. Under such an arrangement, a county-supervised parolee who violated his conditions of parole would be subject to county sanctions and would not return to state prison.

Medium-Risk Parolees. Under our approach, this group of parolees would remain on parole division caseloads for budgeting purposes. However, many of these parolees would not be subject to traditional supervision by a single parole agent. Instead, in parole units in urban areas where it would be practical, many such parolees would receive mandatory assignments to so-called day-reporting centers, where parolees would check in regularly with a team of parole agents and receive job placement assistance, cognitive-skills training, and other assistance from contract vendors and/or CDC staff. Others would receive mandatory assignment to drug treatment networks and other components of expanded and improved Preventing Parolee Failure programs.

Medium-risk parolees who completed six months of supervision without a parole violation would be placed on a banked caseload to save on staffing and funding that could be used to augment parolee services. The additional cost of program expansion would be at least partially offset by savings achieved by ending traditional parole supervision for many parolees. In rural parole units, where programs and services may not be available or cost-effective, parolees would be supervised in the traditional way by parole agents.

High-Risk Parolees. All members of this group, particularly sex offenders with high recidivism rates, would be subject to much more intense supervision by parole agents. High-risk parolees would be subject to mandatory assignment to the Psychiatric Outpatient Clinics, substance abuse treatment, and other programs. The additional staffing needed to allow this higher level of supervision would be possible because fewer parole agents would be used to monitor parolees in the lower-risk groups. We anticipate that this more intense level of supervision would improve public safety by ensuring that the most dangerous offenders released to parole are watched more closely by parole agents.

We recognize that a transition to this new approach would be a major effort and would take several years to accomplish. Depending upon how it was implemented, the program expansions and realignment of parole staff we propose might result in an increase of state expenditures for the CDC parole division. However, the new parole system we recommend could make the state eligible for federal assistance. Under a proposed new federal program pending before Congress, California could receive an estimated \$8 million to \$14 million annually that could be used to establish alternative punishment programs for parolees who fail drug tests. Moreover, in the long run, we believe our approach is virtually certain to result in significant net savings overall in the CDC budget by slowing the now-rapid growth in costs for incarcerating parole violators.

Restructure Sanctions for Parole Violators

We recommend that the state's system for imposing sanctions on parole violators be restructured to allow alternative forms of punishment for lesser violations by parolees who pose less risk to the safety of the public. Our recommended strategies also include imposition of supervision fees on some parolees, citing parolees with a low flight risk for alleged parole violations, and restoring authority over sanctions to the Department of Corrections' parole division and individual parole agents.

More Punishment Options Needed. No matter how parolee services are improved, some parolees belonging to all three of the groups described above are certain to commit violations of their conditions of parole. Accordingly, we recommend the enactment of state legislation providing the CDC and BPT with a broader and more flexible array of sanctions with which to respond to parole violations. Parolees posing a significant risk to public safety should be returned to prison for their parole violations. However, both agencies need better choices than the "all or nothing" option of returning a parole violator to custody in the large number of cases where the violation did not involve a violent, serious, or dangerous

act and the parole violator is not from the High-Risk Parolee group. Specifically, we propose the following changes to the parole system:

Alternative Punishment of Parole Violators. Chapter 41, Statutes of 1994 (AB 99x, Rainey) authorized various alternative punishment options for judges to consider in sentencing offenders convicted of new crimes. We propose the enactment of a parallel statute authorizing similar punishment options for both the CDC parole division and BPT for appropriate Medium-Risk or Low-Risk Parolees. These options would include home detention, electronic monitoring, community work crew assignments, work-furlough programs, and day-reporting centers. The BPT would be specifically authorized to commit parole violators to alternative punishment programs in lieu of revocation, and to return to custody parolees who did not fulfill the conditions of that alternative punishment commitment.

Supervision Fees. We propose that the list of alternative punishment options include the imposition of so-called "supervision fees" paid by parolees who have the financial resources to help defray some of the cost of parole services they receive at day-reporting centers.

Citations for Some Parole Violators. We recommend that, in cases where a return to custody is being sought in response to an alleged parole violation (as compared to a new crime), parolees who are a low flight risk be temporarily released with a citation until their case is heard by BPT or otherwise resolved. A parolee's failure to appear as ordered for a subsequent meeting with BPT to resolve the case would be a new crime subject to more than a one-year prison term allowed for revocation offenses. Only Low- or Medium-Risk Parolees whose parole violation was not violent or serious, or whose violation did not involve possession, control, use of, or access to any weapon, would be eligible for the "cite-and-release" option. This option could reduce state incarceration costs. Parole violators accused of relatively minor parole violations are sometimes held in prison reception centers for weeks or months before their cases are resolved by BPT.

Restore Parole Division Authority. We recommend the enactment of a new statutory framework, in place of existing regulations, establishing what parole violations must be reported to BPT and leaving the reporting of all remaining cases to the discretion of the parole division. This statutory framework would return to parole division professionals the discretion to determine whether to report a parole violation. Reporting violations to BPT would remain mandatory if a High-Risk Parolee was involved, if the parole violation was violent or serious, or if it involved possession, control, use of, or access to any weapon.

We are concerned that the BPT has gone beyond its appropriate role of passing judgment on allegations of parole violations, and has now impinged upon decision-making that more properly should rest with the CDC regarding the prosecution of parole violators.

Parole authorities have voiced concern, for example, that some parolees who had failed one drug test, but who had otherwise behaved well on parole, secured employment, and established stable family relationships, were being returned to prison by BPT. If the decision had been left to the parole division, it might have continued such an offender on parole and directed the offender to a substance abuse counseling program, keeping the employment and family relationships intact and improving the parolee's chances of resuming a successful parole.

But new BPT rules mandate that such parole violations always be reported by the parole division if the parolee had originally been sent to prison for a serious crime, such as residential burglary. Once these cases are reported to BPT, the board is frequently returning such offenders to prison and rejecting parole division recommendations that these offenders be kept on parole. In our view, public safety is generally best served by allowing the professional parole agent who best knows the parolee to weigh the benefit of returning a violator to prison against the possibility that the violator will conclude parole successfully.

We would additionally provide the CDC parole division the authority to determine when parolees should be discharged. The exception would be parolees returned to custody for parole violations involving violent or serious crimes or weapons as described above.

In our view, these proposals further public safety and allow parole agents to make professional judgments about the severity of parole violations.

Restore Authority to Parole Agents. We recommend the enactment of legislation prohibiting parole agents from being disciplined in a personnel action *solely* on the basis that a parolee under an agent's supervision had committed a new crime. We believe that a parolee, and not his parole agent, should be held responsible and accountable for the commission of new crimes. This change would help ensure that supervision and revocation decisions are based upon the professional judgments of parole agents rather than fear of retaliation if the parolee later commits a new crime. Agents would remain subject to discipline for negligence or failure to carry out their assigned duties.

Recommended Budget Actions

We recommend several revisions to the 1998-99 budget request for the Department of Corrections' parole division as first steps toward implementation of our recommended approach to reform the parole system.

Interim Budget Actions Proposed. We recommend the following actions in regard to the 1998-99 CDC parole division budget:

- Augment Preventing Parolee Failure Program. Augment the CDC budget by \$2.8 million to initiate the expansion of the Preventing Parolee Failure program to parole units now lacking such services. The full-year cost of the expansion in 1999-00 would likely be \$15 million. But, based on CDC's prior experience, expansion of the programs would likely save the state \$30 million to \$40 million in incarceration costs annually by reducing return-to-custody rates. The CDC should also be directed to modify its budget formula for parole caseload increases to incorporate additional funding for Preventing Parolee Failure and other similar programs which have been demonstrated to be cost-effective and to enhance public safety.
- Redirect Funds to Parole Services. Delete a \$1.3 million augmentation for additional parole staff to process the paperwork for a growing workload of parole revocation cases. We believe that a more cost-effective approach would be to reduce the workload by expanding the Preventing Parolee Failure program or other parole services. Rather than adding processing staff, we believe a better strategy is to provide funding for strategies that will reduce the workload and also reduce parole violations.
- Separately Identify Services for Parolees. Establish separate items
 in the budget within the CDC parole division that reserve specific
 amounts of funding for case supervision, casework services, Preventing Parolee Failure programs, Psychiatric Outpatient Clinics,
 and other specialized programs. This technical budgeting change
 would ensure that funding for parolee services is not cut and
 shifted to other purposes without prior legislative approval, as
 occurred last year.

These actions, in our view, constitute interim steps the Legislature may wish to consider to implement our proposed reform of the state parole system.

THE INCREASING ROLE OF THE FEDERAL GOVERNMENT IN CALIFORNIA LAW ENFORCEMENT

SUMMARY

Traditionally, state and local governments have been responsible for law enforcement with the federal government playing a relatively minor role. Recently, the federal government has become much more involved in law enforcement at the local level—by providing billions of dollars to state and local law enforcement programs and by increasing the resources and roles of federal law enforcement agencies. We believe that the Legislature needs to take these changes into consideration as it considers how much state money to provide to state and local law enforcement programs. The Legislature also needs to closely monitor federal juvenile justice legislation under consideration by Congress. Finally, the Legislature should hold hearings and request that federal law enforcement officials present information on how California will be affected by the changing role of federal law enforcement.

BIG INCREASE IN FEDERAL FUNDS FOR LAW ENFORCEMENT

The Federal Crime Bill

On September 13, 1994, President Clinton signed the Violent Crime Control and Law Enforcement Act of 1994 (the federal "crime bill"). This was the first major crime legislation at the federal level since 1968. This legislation, together with subsequent appropriations and policy initiatives, has changed significantly the federal government's role in federal, state, and local law enforcement. There are two primary changes and they have implications for state and local government in California.

First, the federal government has provided billions of dollars of new assistance to law enforcement agencies, especially local government agencies, in some cases with strings attached to the funding. This has occurred at a time when the federal government has reduced funding for many other programs. Prior to 1994, with the exception of some anti-drug initiatives, the federal government provided little funding for state and local law enforcement. This was because law enforcement was generally viewed as a state and local responsibility. Because of the conditions placed on the receipt of federal funds, the federal government has greatly increased its ability to influence state and local law enforcement policies.

Second, the crime bill provided new missions to federal law enforcement agencies. Specifically, the bill moved federal law enforcement agencies into enforcing drug and other violent crime laws. Traditionally, local law enforcement agencies were responsible for this type of law enforcement.

Federal Assistance for Local Law Enforcement

The crime bill authorized over \$30 billion for new crime programs over a six-year period, ending in federal fiscal year 2000 (FFY 00) (California's fiscal year 2000-01). The actual funds available are determined through the annual federal appropriations process. Half way through the six-year period of this bill, Congress has not appropriated as much funding as the bill authorized, but it has increased funding each year. Local law enforcement agencies have been the primary beneficiaries of the new funding.

California law enforcement agencies—especially local agencies—have received significant new resources as a consequence of the federal crime bill. These funds directly benefit local law enforcement agencies, but have allowed the federal government to influence local policing strategies and policies. Between FFY 95 and FFY 97, California's local law enforcement agencies had received almost \$500 million in funding that was not available before passage of the 1994 federal crime bill. Virtually every county and major local law enforcement agency has received funding. The most significant programs funded under the crime bill are the "Cops on the Beat" program, the local law enforcement block grants, and the Byrne Memorial Grants.

"Cops on the Beat" COPS Program. The federal government changed its involvement with local law enforcement when it enacted the Community Oriented Policing Services (COPS) program. This program has provided almost \$4 billion to local law enforcement agencies. The program provides funding to local governments to hire police officers if they adopt "community-oriented policing tactics." According to the National Insti-

tute of Justice, there are many definitions of community-oriented policing, but they all have one element in common: a change from reactive policing to a proactive approach of police working with citizens and other community and governmental agencies based on the concept of shared responsibility for community security. In order to receive the funds, local law enforcement agencies had to meet specific criteria. Funds are awarded on a competitive basis.

Between FFY 95 and FFY 97, California law enforcement agencies have received almost \$343 million through the COPS program. The recipient agencies report hiring more than 3,000 new officers using the grant funds. To qualify for these funds, local law enforcement agencies had to adopt new tactics for local policing, based on the federal model. The declines in California's crime and arrest rates are probably due, in part, to the addition of the new law enforcement personnel, and the introduction of new policing methods.

Local Law Enforcement Block Grants. This program provides grants to local governments to reduce crime and improve public safety. The funds are allocated based on a formula that takes into consideration the populations served by local law enforcement agencies. Funds are for law enforcement agencies and the majority of the grants have been used for officer salaries, overtime, and the purchase of equipment.

In FFY 97, 376 California law enforcement agencies in 53 counties received almost \$72 million in block grant funds. The grant amounts ranged in size from \$10,391 for the Lassen County Sheriff's Department to \$17.7 million for the Los Angeles Police Department. There were 11 California law enforcement agencies that received grants of \$1 million or more.

Byrne Memorial Grants to States. These anti-drug abuse grants to local law enforcement agencies are one of the only local assistance programs funded prior to 1994. These funds are for anti-drug enforcement and primarily fund multijurisdictional narcotics task forces. California has traditionally received in excess of 10 percent of whatever funds are appropriated, and local law enforcement agencies in each county receive some share of these funds. The 1998 appropriations bill provides \$551 million for the Byrne Grant program. Grant recipients in each of California's 58 counties currently receive Byrne Grant monies, through the Anti-Drug Abuse programs. For FFY 98, California should receive almost \$50 million.

Federal Support for Correctional Facilities

In addition to providing funds to local law enforcement to fight crime, the crime bill has allocated significant funding for prison and jail construction. In order to qualify for these funds, the states and local governments have had to conform to federal sentencing requirements. In general, the federal government required that the state increase the time served in prison for violent offenders. California has enacted sentencing provisions consistent with the federal requirements.

California has already received more than \$100 million through this program. The bulk of these funds have been allocated to counties to be used for local jails and juvenile detention facilities. California is potentially eligible to receive several hundred million dollars more before 2001.

States have also received assistance for housing undocumented aliens in state prisons. The Governor's budget assumes that the state will receive about \$286 million in 1998-99 from this program. These funds will offset part of California's costs of incarcerating undocumented aliens in state prisons. In addition, California counties, especially those with large incarcerated populations of undocumented offenders, have received substantial amounts.

FFY 98 Crime Bill Funding

For FFY 98, the federal appropriations bill provides \$5.3 billion for the federal crime bill and other criminal justice programs. This is \$20.8 million above the President's budget request and \$734 million above the amounts provided in the prior fiscal year. The majority of this increase is for assistance to state and local law enforcement agencies to address juvenile crime, domestic violence and local crime fighting needs, and for reimbursement to states for the incarceration of criminal aliens.

Of the \$5.3 billion appropriation, \$4.8 billion is for state and local law enforcement assistance. The funding will be provided for a wide variety of programs, including several programs that will benefit California. We show the major programs in Figure 10 (see next page).

New Juvenile Justice Initiatives. The 1998 appropriations bill was approved based on an understanding that there is bipartisan and presidential support for the new Juvenile Crime Control and Delinquency Prevention Act of 1997 (Juvenile Crime Act), which provides authorizations for juvenile crime prevention funding. This legislation has passed the House and is currently awaiting action in the Senate. The appropriations bill provides \$226 million for block grants, juvenile delinquency

programs, research, technical assistance, and training. These amounts will not be available until the authorizing legislation is enacted by the Senate and signed by the President.

rigure 10
Selected Federal Crime Bill Programs FFY 98 Appropriation and California Share

Program	Nationwide	California's Share
Community Oriented Policing Services	\$1,400.0	a
Community Oriented Policing Services		
Unobligated Balances	100.0	\$21.7
Local Law Enforcement Block Grants	523.0	72.0
Federal Prison Construction Grants	517.0	50.0
Violence Against Women Act	305.5	11.0
Juvenile Programs (various grants)	226.3	_a
Grants to Encourage Arrest Policies	56.7	8.0
National Criminal Background Check System	45.0	5.5
Substance Abuse Treatment for State Prisoners	63.0	4.6
DNA Identification State Grants	10.0	1.5
Weed and Seed program	40.0	_a
Victims of Child Abuse Act	7.0	2.5
Totals	\$3,293.5	\$176.8

The final version of the Juvenile Crime Act could place new requirements on the state and local governments in order to receive the funding. Currently, the bill requires the states to change their laws regarding how juveniles are treated in court in order to receive funding. Essentially, the bill would require that more juvenile offenders be prosecuted in adult court. Consequently, the measure would require different prosecution policies than those currently in effect in California.

THE INCREASED PRESENCE IN CALIFORNIA OF FEDERAL LAW ENFORCEMENT

In addition to providing additional money for state and local law enforcement, the federal government has significantly increased funding for its own law enforcement agencies, including more than 1,000 new federal agents assigned to California.

The federal government has also expanded its jurisdictions into areas such as enforcement of narcotic laws that have traditionally been the sole responsibility of local law enforcement agencies. Additionally, the federal government has designated the Federal Bureau of Investigation (FBI) as the lead federal law enforcement agency, in essence, creating a national agency with expanded responsibilities that may overlap local responsibilities.

The 1998 federal appropriations bill includes various augmentations for the FBI, the Drug Enforcement Agency (DEA), and the U.S. Justice Department. These augmentations are for new personnel, mainly to enforce drug laws. The Congress identified California and the Southwest region as a recipient of many of the funding augmentations. Expansion of the federal law enforcement presence has the potential for benefiting California law enforcement by adding resources. But it also could allow federal agencies to set law enforcement priorities, priorities that had been set in the past by the state and local governments.

FBI and DEA. Prior to 1995, the FBI had limited jurisdiction and resources committed to drug-related crime, and fewer resources committed to violent crimes, which have historically been the responsibility of the states and local governments. Since 1995, the role of the FBI has changed significantly, having established a "de facto" merger with the DEA, to attack drug and violent crime. The FBI budget has increased 47 percent since 1995, an increase of almost \$1 billion. Much of this increase is in the area of new personnel for increased federal law enforcement.

FFY 98 Appropriations

The 1998 appropriations bill provides \$2.8 billion for the FBI for FFY 98. This amount is \$150 million above the appropriation for the prior year. In addition to the FBI, the 1998 appropriations bill provides total budget authority of \$1.2 billion for the DEA. The appropriation provides an overall increase of \$134 million over the prior-year appropriation. Figure 11 (see next page) shows that recent appropriations will result in more than 1,000 new FBI and DEA agents assigned to California.

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FFY 98 New Federal Law Enforcement Agents for California

(Dollars in Millions)		
Program	Funds	New Agents in California
Adjustments to FBI base	\$60.0	300
FBI Southwest Border Initiative	36.0	146
FBI Counterterrorism	38.8	167
DEA Southwest Border Initiative ^a	93.6	304
DEA Methamphetamine Initiative ^a	13.4	84
Totals	\$241.8	1,001
a Includes FFY 97 increases.		

WHAT ARE THE IMPLICATIONS OF THESE CHANGES?

The changes undertaken by the federal government have a number of implications for California. On one hand, increasing federal financial support for law enforcement programs permits state and local law enforcement agencies to expand their efforts relatively cheaply, at least as long as the federal funds are available. In addition, increased resources for federal law enforcement agencies, such as the FBI and DEA, can have a positive impact on crimefighting. This is because federal agents can move across jurisdictions and have access to federal resources in other states. In addition, bringing in federal law enforcement to fight crime that would otherwise be a state and local responsibility can result in state and local government savings to the extent that offenders are charged, prosecuted, and incarcerated under federal law.

On the other hand, changing state and local policy in order to qualify for additional federal funds may not always be in the state's best interest. In addition, increasing the role of federal agencies could lead to those agencies setting priorities for how law enforcement resources are used and what types of criminals are pursued.

As a consequence of increased federal funds and changes in federal law enforcement priorities, we recommend the Legislature take the following actions.

Evaluate Proposed State-Funded Law Enforcement Increases in Context of Expanded Federal Funds. California law enforcement agencies have received significant amounts of federal funding since 1994. The

Legislature needs to take these new funds into account when considering whether to fund or expand existing state assistance programs to local law enforcement or to add new programs.

For example, local law enforcement agencies in California have received (1) \$72 million in the current year through federal law enforcement block grants, (2) \$372 million to date in federal COPS funding, and (3) over \$50 million in Bryne Memorial Grants. All of the agencies that have received federal funds also have received funding from the state's COPS program, which has provided \$75 million from the General Fund annually for the past two years. The budget proposes to continue the state's COPS program in 1998-99. The Legislature needs to evaluate any new proposals that would increase resources for these agencies and whether state funds for law enforcement can be reduced or redirected to other parts of the criminal justice system that have not received new federal monies.

Consider Linkages With Federal Priorities. The Legislature should review the state COPS program and other state law enforcement assistance programs to determine how these funds fit with federal program revenues. The Legislature may wish to direct how state monies should be used, for example towards meeting local matches or share of costs for federal funds. In this way, the Legislature can maximize both federal and state funding.

Impacts on Law Enforcement Missions. The state will also need to evaluate the impact of changing federal law enforcement missions. For example, as the federal government increases its resources committed to fighting drugs on the southwest border, the Legislature might wish to direct the state Department of Justice to identify how its efforts in the same area will take advantage of these new resources and how it will ensure that state efforts do not overlap federal initiatives. The Legislature should consider a statewide strategy that integrates federal efforts with state and local efforts. In that way, overlap can be minimized and those areas where federal funds are expended, can be left to federal agencies.

Monitor Future Changes. The Legislature also needs to monitor proposed federal reforms, especially those related to the federal juvenile justice legislation that is being considered in the Senate, and evaluate whether new federal funds justify changes, if any, in the state's juvenile justice system. Many recent state juvenile justice efforts have resulted in an increasing emphasis on the prevention of juvenile crime and reducing juvenile recidivism. Adoption of major new federal policies such as those currently being considered in Washington, could be inconsistent with recent state and local efforts. We believe the Legislature should make

decisions on juvenile justice policies on their merits, not in hopes of increasing federal funds.

Legislature Should Hold Hearings. Finally, we believe that the Legislature should hold hearings and request that federal law enforcement officials present information, on how new federal law enforcement initiatives will affect California. Special emphasis needs to be placed on understanding the relationships between the federal law enforcement, especially the FBI, to local law enforcement, so that the state can be sure that law enforcement priorities are set by state and local officials, not federal officials. In addition, understanding federal plans can help the Legislature evaluate how the state will change its own programs to ensure that monies are not wasted, but that the state maintains appropriate control of state and local law enforcement policy.

THE BACKLOG OF DEATH PENALTY APPEALS: AN UPDATE

In response to the growing number of inmates on death row awaiting appointment of defense counsel, the Legislature changed the process for appointing legal representation for these inmates and increased the resources for the appeals process. Over the long term, these changes should help to reduce the backlog of death penalty appeals. However, in the short term, these changes will probably not significantly reduce the backlog.

To ensure that these changes effectively implement the legislation's intent, the Legislature should ensure that adequate training programs and management infrastructure are implemented by the appropriate agencies. We recommend that the Office of the State Public Defender report at budget hearings on its development of attorney training programs and implementation of automated case management systems and attorney workload standards. In addition, we recommend that the Legislature adopt supplemental report language directing the newly created California Habeas Resource Center to provide the same information.

Background

The state's death penalty law requires that an inmate's case be automatically appealed to the California 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 one through either (1) the Court-Appointed Counsel (CAC) program, (2) the Office of the State Public Defender (OSPD), or (3) in the future, the newly created California Habeas Resource Center (CHRC). Currently, it can take up to ten years to process an automatic appeal in the Supreme Court, although recent changes including the implementation of new appointment procedures, should shorten the process in the future.

If the death penalty sentence is affirmed by the Supreme Court, the inmate can continue his or her appeal with habeas corpus claims in state

and federal court. 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. These claims can include ineffective assistance of counsel or failure of the district attorney to disclose certain evidence.

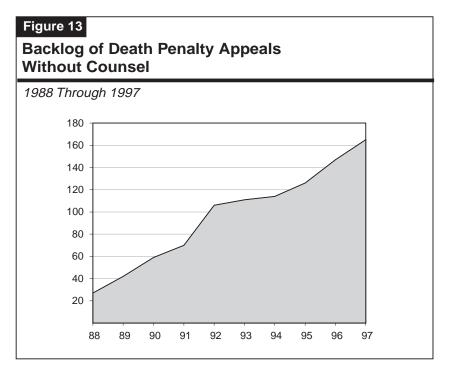
The Backlog of Death Penalty Cases Continues to Grow. As we reported last year, there has been considerable delay—generally three to four years—in appointing appellate counsel for indigent criminal defendants sentenced to the death penalty. Figure 12 shows that as of December 1997, there were 493 inmates under a death sentence awaiting appeal of their cases in state and federal courts. There are 315 direct appeal cases pending before the California Supreme Court. Appellate attorneys have been appointed to 150 of these cases. The remaining 165 cases are awaiting appointment of an attorney, an increase of 18 cases from a year ago. The backlog of inmates who are 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 judgments per month, while defense counsel has been appointed for approximately two capital cases per month. Figure 13 shows how the backlog has increased over the last ten years.

Figure 12	
Status of Cases of Inmates Under Death Sentences	
As of December 31, 1997	
Total inmates under death sentences ^a	400
Sentences affirmed by California Supreme Court, now appealed in federal courts	493 185
Direct appeals pending before California Supreme Court Cases with attorneys Cases without attorneys	315 (150) (165)
a Includes seven inmates who have death sentence cases from two different cases.	

Legislation Adopted to Reduce Backlog of Death Penalty Appeals

This past fall, the Legislature and Governor enacted Chapter 869, Statutes of 1997 (SB 513, Lockyer), which changed the process for appoint-

ing counsel to death penalty appeals cases and provided for the creation of the CHRC. The principal process change was the implementation of a dual track for pursuing legal appeals whereby the OSPD was expanded and made responsible for handling direct appeals, and the newly created CHRC is responsible for the state and federal habeas corpus proceedings. Private attorneys, who currently handle the majority of capital cases, will continue to handle either direct appeal cases or habeas corpus proceedings.



Budget Includes Funding Increases for Capital Appeal Process. Figure 14 (see next page) shows the proposed budgets for various state agencies that have roles in the capital appellate process. As indicated in the figure, the budget proposes a total of \$34.7 million for these programs, which is a 56 percent increase since 1996-97. The amounts shown in the figure underestimate the total state costs for the capital appeals process because they do not include attorney staffing for the Supreme Court and certain prosecution expenditures for the Department of Justice (DOJ). We discuss the proposed funding levels below.

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Proposed Funding for Death Penalty Appeal Process

(Dollars in Millions)

	1996-97	Estimated 1997-98	Proposed 1998-99	Percent Change From 1996-97
State Public Defender	\$8.6	\$10.1	\$11.2	30.9%
Supreme Court (Court- Appointed Counsel Program)	6.6	8.7	11.3	72.3
California Habeas Resource Center	_	2.0	2.8	_
Department of Justice ^a	7.1	8.2	9.3	30.8
Totals	\$22.3	\$29.1	\$34.6	55.7%
a Includes only costs for attorneys.				

Role of the Office of State Public Defender Increased. Currently, there are about 42 attorneys at OSPD who are handling about 25 cases on direct appeal and about 25 state habeas proceedings. By the end of 1997-98, the number of attorneys handling cases at the OSPD will increase by 18, or 42 percent. The OSPD will continue working on all of its current cases. In the future, however, it will only take direct appeal cases from the current backlog of unrepresented cases; it will not handle new habeas corpus proceedings in either state or federal courts.

In the current year, OSPD received \$1.5 million in one-time funding to recruit personnel for its new attorney positions and to develop and implement a new training program. The budget proposes full-year funding of \$2.7 million for these additional positions, which will provide funding for a total of 60 attorneys handling death penalty appeals. As can be seen in Figure 14, this represents an increase of 31 percent in the budget for the OSPD since 1996-97. Previously, the budget for OSPD had actually decreased 15 percent from 1990-91 through 1996-97.

Creation of the California Habeas Resource Center. Chapter 869 also created the CHRC within the Judicial Council. The new agency will be responsible for representing death penalty cases in habeas corpus proceedings in both the state and federal courts and providing assistance to private counsel representing such cases. Chapter 869 provides that a five-member board of directors for the CHRC be appointed by February 1, 1998. The board members will be attorneys selected by each of the five regional appellate projects, which are nonprofit corporations that recruit,

supervise, and train attorneys who handle appellate cases. The board members, who must be confirmed by the Senate, will be responsible for selecting the executive director of the organization, whose minimum qualifications are the same as those of the State Public Defender.

Figure 14 shows the current- and budget-year proposals for CHRC. Similar to OSPD, a one-time \$2 million appropriation was made in the current year for initial start up costs of the CHRC. It is expected that many of the 60 proposed positions (30 attorneys) in the CHRC will be phased in throughout the current- and budget-years. Consequently, the proposed budget includes \$2.8 million for partial-year staffing and administrative costs for the CHRC. The full-year costs are expected to be \$3.8 million.

Court-Appointed Counsel Program Growth. In recent years, the Supreme Court has come to rely on the CAC, in lieu of the OSPD, to represent most of the inmates on death row. About 100 private attorneys are currently serving as court-appointed counsel in about 125 of the 150 direct appeals cases for which counsel have been appointed. Currently, these private counsel also generally handle the state habeas corpus proceedings for those cases in which they handle the automatic direct appeal. Under the new dual track system, private attorneys will handle either the direct appeal or the habeas proceeding, but not both, for any new cases assigned to them.

Figure 14 shows that total expenditures for the CAC program are projected at \$11.3 million in the budget year, which is a 72 percent increase from expenditures in 1996-97. This increase is primarily attributable to an increase in the hourly rate paid to private attorneys representing capital appellants, from \$98 per hour to \$125 per hour, as well as projected caseload increases in the current and budget years. For further discussion of this issue, see Judicial (Item 0250) later in this chapter.

Increases for the Department of Justice. As with regular criminal appeals, the DOJ represents the People of California in capital appeals in state and federal court. As indicated in Figure 14, the attorney costs for handling such cases at the DOJ have increased by 31 percent since 1996-97. This amount includes only the costs for attorneys at the DOJ and does not include funds expended for consultants and experts, costs for investigating habeas claims, and transcript costs and filing fees in the federal courts, because these other costs are not categorized separately from other criminal appeals workload. The proposed increase for the budget year includes \$1 million for additional attorneys and support staff to handle anticipated workload impacts from the reforms in the appointment of counsel, including the expansion of the OSPD and the creation of CHRC.

Continuing Legislative Oversight Needed

We recommend that the Office of the State Public Defender report at budget hearings on its development of attorney training programs and the implementation of automated case management systems and attorney workload standards. In addition, we recommend that the Legislature adopt supplemental report language directing the newly created California Habeas Resource Center to provide the same information.

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, and law enforcement and criminal justice officials who prosecuted the original case.

Recent legislation such as Chapter 1086, Statutes of 1996 (AB 195, Morrow), which set new time lines for certification of the trial court record, and the reforms in Chapter 869 discussed above, together with recent federal reforms, should in the long run shorten the time required for the appellate process. However, despite these changes, the current backlog of inmates without defense counsel will probably not be reduced significantly in the short term, primarily because it is likely to take time to fill positions and train new attorneys at the OSPD and the newly created CHRC.

Adequate Training Programs Needed. Historically, there have not been many attorneys who performed this type of specialized practice. The cases are frequently very long, complex, and generally unattractive. In addition, many attorneys do not meet the Judicial Council's current minimum qualifications for appointment to such cases, and most qualified attorneys can only handle one case at a time. The current 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. The Judicial Council is revising the standards and new standards are expected to be approved by this spring. It is not known how many attorneys in California meet the current minimum qualifications or whether the number will substantially change with the revised standards.

Given that there are currently only about 150 attorneys statewide handling capital appeal cases, both the OSPD and CHRC will need to spend time recruiting and training new attorneys for this workload. The OSPD reports that while there have been a large number of attorneys who have applied for the new attorney positions, virtually all of the candidates fail to meet the current eligibility requirements for lead counsel on death penalty cases. For example, OSPD indicates that it has received few applications from private attorneys currently handling cases in California. It is likely that most new attorneys hired by OSPD and CHRC will require several years of training to meet the minimum qualifications for appointment as lead counsel. Because the new minimum qualifications will probably contain similar provisions requiring appellate court experience, it is likely that any training program developed at OSPD and CHRC will require attorneys to accept noncapital criminal appeal cases for up to two or three years in order to qualify as lead counsel in capital cases.

Adequate Management Infrastructure Needed. In order to ensure that the expansion of the OSPD and the creation of the CHRC are successful, it will be important that an adequate management infrastructure is established. For example, neither agency currently has an automated case tracking system in place. For the OSPD, the increasing number of attorneys will make it difficult to track the department's caseload without an automated case tracking system. In addition, since the OSPD will only be assigned to new direct appeal cases, it will need to develop and refine attorney workload standards. The implementation of an automated case tracking system will provide OSPD with new data on attorney workload hours which will assist it in developing and refining benchmarks and standards for attorney workload. The OSPD expects that a new system will be implemented this spring.

The executive director of the CHRC will not likely be selected until this spring, so it is currently unknown when plans for management infrastructure at CHRC will be established.

Analyst's Recommendation. Due to the recent changes to the capital appellate process and the related problems of recruitment and training of attorneys, we recommend that OSPD report at budget hearings on its ability to recruit attorneys and implement training programs, as well as report on the implementation of automated case tracking systems and attorney workload standards. Additionally, we recommend that the Legislature direct the CHRC to report on their ability to recruit attorneys and implement an adequate management infrastructure as part of its annual report to the Legislature, as required by Chapter 869. Specifically, we recommend adoption of the following supplemental report language:

The California Habeas Resource Center should provide information to the Legislature as part of its annual report as to its ability to fill authorized attorney positions. It should also provide information on the implementation of new training programs, including the number of participating attorneys, the types of training provided for both new and experienced attorneys, and proposed measures for evaluating the program. In addition, it should report on the implementation of automated case management systems and the development of attorney workload standards.

CALIFORNIA'S LITIGATION AGAINST THE TOBACCO COMPANIES

On June 12, 1997, the State of California filed suit against the major tobacco companies, seeking billions of dollars in damages to recover costs of state-paid medical care for tobacco-related illnesses and violations of state laws. In this piece, we (1) review the state's suit against the companies, (2) outline the tentative "global settlement" reached among a number of state attorneys general and the tobacco companies that is presently under consideration by Congress and the President, (3) examine the implications for California if the global settlement is agreed to or rejected by Congress and the President, and (4) outline some of the unanswered questions that the state may face in the future.

CALIFORNIA SUES THE TOBACCO COMPANIES

Legislation Clears Way for Lawsuit

Chapter 25, Statutes of 1997 (AB 1603, Bustamante), was enacted in June 1997 to remove any legal barriers to the Attorney General filing suit against tobacco companies to recover state paid medical costs of treating smoking-related illnesses. Until enactment of Chapter 25, the Attorney General had declined to join other state attorneys general who had filed civil lawsuits against the tobacco companies, asserting that a clarification of the state's product liability statutes was necessary before such actions could be filed.

Prior to June, California law provided immunity to a manufacturer or seller in a product liability action if (1) the product is inherently unsafe and is known to be unsafe by the ordinary consumer and (2) the product is a common consumer product intended for personal consumption such as sugar, castor oil, alcohol, tobacco, and butter. Chapter 25 clarified the product liability immunity statute, declaring that immunity of manufacturers and sellers from product liability actions does not apply to actions brought by *public entities* to recover state-paid tobacco-related costs.

In August and September, the Legislature and Governor enacted complementary legislation which essentially made it possible for *individuals* to sue tobacco companies for product liability. Specifically, Chapter 570, Statutes of 1997 (SB 67, Kopp), removed tobacco from the list of products immune from product liability actions. The measure provided that it is the intent of the Legislature that there is no impediment to individuals suing for tobacco-related personal injury, wrongful death, or other tort claims, or others who have suffered or been injured by tobacco products.

What Is the State Alleging?

On June 12, 1997, the Attorney General filed a lawsuit in the Sacramento Superior Court containing four causes of action:

Recovery of Tobacco-Related Medi-Cal Expenditures. The state is seeking to recover the cost of health care services provided to Medi-Cal beneficiaries who suffer from illnesses caused by using tobacco products. The suit seeks to recoup the costs of such care over the past three years, in accordance with statutes of limitation in state law.

Violations of California's Anti-Trust Laws. The state's complaint alleges that the tobacco firms (1) conspired to not develop or market safer cigarettes and tobacco products and (2) conspired to not compete on the basis of relative product safety.

Violations of California's Consumer Protection Laws. These laws prohibit unfair competition, which is defined as deceptive, unlawful, and unfair business practices. The complaint alleges that tobacco companies violated these laws by: (1) making misrepresentations and deceptive statements to sell their products, (2) targeting minors to buy cigarettes, (3) manipulating levels of nicotine in their cigarettes without adequate disclosure, and (4) improperly suppressing evidence about the health consequences of the product.

Violations of California's False Claims Act. The state alleges that the tobacco companies improperly concealed certain documents and records which would otherwise have been available to inform California authorities of the companies' wrongdoings.

In August, the state filed an amended complaint in which punitive damages were added as another remedy being sought.

What Is the State Asking For?

Through the lawsuit, the state is seeking (1) recovery of Medi-Cal expenditures, (2) assessment of civil penalties, (3) recovery of reasonable

attorney fees, and (4) other equitable relief, including forcing payment from profits, punitive damages, and injunctive relief designed to end unfair business practices. The state has not determined a total amount that is being sought in the suit, although the Department of Justice (DOJ) has estimated the amount to be in the billions of dollars.

As regards Medi-Cal costs, the total recovery is estimated to be between \$1 billion and \$2 billion over three years. This amount is based in part on Department of Health Services' (DHS) estimates that, during 1995-96, the Medi-Cal program paid out more than \$433 million to health care providers for the treatment of tobacco-related illnesses. The amount that the state would ultimately receive would depend on whether the federal government shares in the recovery in the same proportion that it shares in the costs of this program.

The suit also seeks civil penalties in excess of \$500 million for anti-trust and consumer protection violations. Other penalties such as punitive damages and forcing payment from profits have the potential to be much greater than the Medi-Cal recoveries and the civil penalties, and would be determined by the court.

In addition to financial penalties, the suit seeks other relief, as determined appropriate by the court. This relief could be to end anti-competitive behavior or unfair business practices. Examples could include banning certain types of advertising that were deemed deceitful or targeted at minors.

Implications of Other State Settlements

California is not the only state to file suit against the tobacco companies. Thirty-nine other states, many local governments, and numerous individuals have suits pending against the tobacco industry. (In fact, only ten states—Alabama, Delaware, Kentucky, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, Virginia, and Wyoming—have not filed suit.) Currently, the tobacco companies have entered into settlement agreements with three states: Mississippi in July 1997, Florida in August 1997, and Texas in January 1998. Each of these settlement agreements has been entered into while the start of the trial was imminent. In Minnesota, the trial is scheduled to start in mid- to late January. Currently, it is not clear that Minnesota and the tobacco companies will reach a settlement.

The monetary provisions of the settlement agreements for the three states that have settled with the tobacco companies have been very large: \$3.6 billion for Mississippi, \$11.3 billion for Florida, and \$15.3 billion for

Texas, each paid over 25 years. Other nonmonetary provisions from the three settlement agreements include elimination of billboards and transit advertising, including the elimination of advertisements in stadiums and arenas and near schools, and the prohibition of the sale of cigarettes from vending machines except in adult-only locations.

Up to now, the strategy of the tobacco companies appears to be to settle cases just prior to the commencement of the trial. This may be because the tobacco companies are favoring a "global settlement" that the 40 states reached and is being debated in Congress. We discuss the global settlement in more detail below.

Funding to Pursue the Litigation

Attorney General Handling State's Case. In California, the Attorney General is handling the lawsuit on behalf of the state. Most other states that have sued the tobacco companies have contracted with private counsel to represent that state's case. Most of these contracts provide that the outside counsels' fees will be a fixed percentage of the state's total recovery on top of their actual expenses. Thus, these states may not be providing much direct state-funded support for the litigation efforts. Generally, however, these contracts provide that the attorney fees will range from 10 percent to 25 percent of the total recovery, which totals \$100 million to \$250 million for every \$1 billion recovered. In Texas, a lawsuit has been filed to prevent private attorneys from collecting 15 percent, or \$2.3 billion, of the proposed \$15.3 billion state tobacco settlement. In the other two states that have settled, Mississippi and Florida, the amount of the attorney fees in the final settlement was characterized as "reasonable attorney fees." The court in each state has not yet determined the amount of attorney fees.

Current Year. In the current year, the DOJ received a deficiency allocation of \$11.4 million (\$6.6 million from the General Fund, \$4 million in reimbursements from DHS, and \$736,000 from the False Claims Account) to pursue the case. This amount includes funds for 93 positions (including 26 attorneys), expert consultation and testimony, independent studies, and deposition-related costs. The DOJ anticipated significant workload related to discovery, based on the experience in other states where the tobacco companies have pursued a strategy that requires a case-by-case review of Medicaid records when determining their responsibility for medical costs.

The DHS received a current-year deficiency allocation of \$10 million (\$5 million from the General Fund and \$5 million from federal funds) and 21 positions, which will be used principally to respond to anticipated

discovery requests from the tobacco industry. The amount supports personnel and other expenses for DHS's Office of Legal Services and Payment Systems Division, and the reimbursements to the DOJ. It also provides for several external contracts with Electronic Data Systems and managed care contractors to identify and produce reports, claims, and supporting documents from Medi-Cal files needed to comply with the anticipated tobacco industry requests.

Budget Year. The Governor's budget proposes continuing these expenditures to support the litigation effort. Specifically, the DOJ budget proposes a total of \$13.9 million (\$8.1 million from the General Fund, \$4.9 million in reimbursements from DHS, and \$912,000 from the False Claims Account), and a total of 121 positions. The DHS budget proposes \$10.9 million (50 percent General Fund and 50 percent federal funds) and a total of 21 positions.

What Is the Status of the Case?

California's case is in the early stages, with a trial date set for sometime during the summer of 2000. The state filed its complaint in the Sacramento Superior Court on June 12, 1997, and filed an amended complaint on August 29, 1997 in which punitive damages, among other things, were added to the remedy being sought. In November, the major tobacco companies filed a demurrer (a response claiming insufficient grounds to justify legal action) to the Medi-Cal and false claims causes of action and a motion to strike the state's request for punitive damages. A hearing on the demurrer is scheduled for February 27, 1998.

Starting January 1, 1998, discovery in the action may be commenced by either side. During discovery, the state (particularly DHS) expects to be asked to locate and produce millions of state documents relating to any damage which the state claims it has incurred as a result of tobacco use. Additionally, the state will seek to obtain documents from the tobacco companies that have already been made available to other states, as well as evidence specifically relating to California.

THE "GLOBAL SETTLEMENT"

As indicated earlier, 40 states are suing the tobacco companies. The attorneys general for the states entered into a proposed agreement with the tobacco companies which is referred to as the "global settlement."

What Is the Global Settlement? On June 20, 1997, the tobacco industry, 17 class action plaintiffs, and most of the 40 state attorneys general suing

the industry (including California's) announced a tentative agreement on how to settle the various tobacco suits pending across the country. The terms of the global settlement agreement include the following:

- Payments of \$368.5 billion over 25 years.
- Agreements on the Food and Drug Administration's authority to regulate tobacco products.
- A ban on outdoor tobacco advertising and an elimination of certain types of advertisements (such as cartoon characters).
- Financial penalties unless underage tobacco use significantly declines.
- Disclosures on previous and future laboratory research related to health effects or safety of tobacco products.

In exchange, the settlement calls for Congress and the President to enact laws that would essentially halt much of the current litigation against the tobacco industry, including the states' cases, and enact certain restrictions on future litigation against the industry, including no punitive damages, no class actions, and an annual cap on damage payments.

The global settlement has not yet been enacted by Congress. President Clinton has announced general support for the settlement and legislation which would build on the global settlement as it now exists, as well as provisions which would stress the reduction in youth smoking.

The global settlement and possible federal legislation will be considered by Congress later this year. At this time, it is difficult to predict either when or if the global settlement will be enacted. Absent an agreement on the global settlement, the DOJ is continuing to pursue the lawsuit in state court and is preparing for trial.

What Will Happen if the Global Settlement Is Approved? If the global settlement is approved, it would supercede the individual state settlements. California's lawsuit against the tobacco companies would be deemed "legislatively settled."

California could expect its share of the \$368 billion settlement. No agreement has been reached as to the distribution of the \$368 billion among the states. However, it is possible that California's portion of the global settlement would be at least \$20 billion over 25 years. The nonmonetary provisions of the settlement would apply in California.

What Will Happen if the Global Settlement Is Rejected? If the global settlement is rejected, the DOJ will continue to litigate the matter in state

court and seek judgments on the four causes of action detailed above. It is not likely that there would be any potential for settlement in the case prior to the trial date in the summer of 2000. Further, the tobacco companies might change their strategy, preferring to go to trial rather than settle the case, in an attempt to limit future tobacco industry liabilities.

WHAT ARE THE QUESTIONS FOR THE STATE?

It could be months or years before California's lawsuit is resolved either through the global settlement or continued legal action. There are numerous questions yet to be answered and, after they are answered, there are likely to be many policy issues facing the Legislature. Given the high degree of uncertainty and the enormity of the fiscal issues involved, it will be important for the Legislature to closely monitor the situation.

The most immediate question is whether Congress and the President will approve the global settlement. To the extent that it is approved, follow-up questions include the following:

- What kind of formula would be used to distribute the settlement monies among the states?
- What would be the timing for states to begin to receive funds from the settlement?
- Would Congress and the President require that some of the settlement monies go to the federal government to cover the federal share of the costs of Medicaid (Medi-Cal in California)?
- How much flexibility would the state have in spending the settlement monies? Would the state be required to spend money in specific ways or for specific programs, such as children's health care or programs to reduce tobacco sales to minors?
- Would the tobacco companies have sufficient funds to pay off a settlement of nearly \$400 billion over 25 years, especially if other settlement-funded programs designed to reduce smoking are successful and reduce tobacco sales and, thus, reduce revenues to tobacco companies?

If the global settlement is not approved, California will presumably continue with its current lawsuits, which are not likely to be resolved for several years.

DEPARTMENTAL ISSUES

Judiciary and Criminal Justice

YOUTH AND ADULT CORRECTIONAL AGENCY (0550)

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. Also within the agency is the Commission on Correctional Peace Officer Standards and Training (CPOST), which was established to develop curriculum and monitor the training of state correctional officers and cadets.

The budget proposed for the agency in 1998-99 is \$2.6 million, an increase of \$1 million, or 64 percent, over projected current-year expenditures. The budget proposes funding increases to create a permanent staff for CPOST and to increase the number of investigators and support staff allocated to the Office of Inspector General.

Internal Affairs Responsibilities Should Shift to Inspector General

We recommend the consolidation of internal affairs operations of the California Department of Corrections and the Department of the Youth Authority with the Youth and Adult Correctional Agency Office of Inspector General. Accordingly, we propose that \$5.2 million and 83 positions proposed for internal affairs operations at the Departments of Corrections and the Youth Authority, including an additional \$2.6 million and 34 positions sought in the 1998-99 budget, be transferred to the Youth and Adult Correctional Agency Inspector General. We also recommend legislation be enacted to conform the statutory duties of the Inspector General to this plan, and further recommend that detailed reports on internal affairs operations be provided to the Legislature.

In our 1997-98 Analysis of the Budget Bill (page D-13), we provided an analysis of the California Department of Corrections' (CDC's) fragmented internal affairs operation and offered recommendations for improvement which we believed would reduce the state's vulnerability to litigation and claims for damages in such cases. We proposed, among other changes, that existing CDC internal affairs operations be consolidated under the YACA Inspector General. We further proposed 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.

Fragmented Resources. In our 1997-98 Analysis, we noted that internal affairs operations had become fragmented primarily because responsibilities and resources were added to the various offices incrementally over many years. Consolidation of all internal affairs operations within the YACA Inspector General, we believe, would eliminate duplicative and low-priority operations and result in the more effective use of state funds for this important function. For example, the YACA Inspector General could cease its involvement in auditing how CDC conducted its internal affairs investigations, and instead use its investigative resources to handle the heavy workload of complaints about alleged misconduct by correctional personnel.

Our proposal was initially approved by the budget conference committee, but was removed from the final version of the *1997-98 Budget Act* as a result of negotiations with the administration. The administration preferred a plan by CDC to reorganize internal affairs operations within CDC without any transfer of authority or positions from CDC to the YACA Inspector General. Legislation now pending in the Senate (AB 271, Villaraigosa) would, among other provisions, consolidate internal affairs cases with the YACA Inspector General as we have proposed.

During last year's budget deliberations, the Legislature did approve legislation (SB 386, Peace) to require the new CDC internal affairs office to provide the Legislature with a detailed annual report on its activities and accomplishments. However, the measure was vetoed by the Governor. In his veto message, the Governor objected to the amount of work he believed the SB 386 reporting requirement would generate, but said he was "directing CDC to provide summary data to the Legislature regarding the outcome of internal affairs investigations."

Budget Plan Would Expand Three Internal Affairs Operations. The Governor's 1998-99 budget proposal would almost double, from 52 to 92.4, the collective number of personnel assigned to internal affairs operations by CDC, Youth Authority, and YACA. The full annual operating cost of establishing these additional positions is about \$3.4 million. Figure 15 summarizes the budget requests submitted for the three agencies for the 1998-99 fiscal year.

Figure 15					
Internal Affairs Funding and Staffing					
(Dollars in Mi	llions)				
		1998-99			
	1997-98	Additional Requested		Tota	al
Department	Positions Costs	Positions	Costs	Positions	Cost

	1997-98		Additional Requested		Total	
Department	Positions	Costs	Positions	Costs	Positions	Costs
YACA ^a CDC ^a	3.0	\$0.3	6.4	\$0.8	9.4	\$1.0
CDC ^a	46.0	3.2	30.0	1.5 ^b	76.0	4.7
Youth Authority	3.0	0.2	4.0	0.3	7.0	0.5
Totals	52.0	\$3.7	40.4	\$2.6	92.4	\$6.2

YACA: Youth and Adult Correctional Agency; CDC: California Department of Corrections. Full-year cost is \$2.3 million.

Based upon our review of the workload computations presented by each of these state agencies, we believe the additional staffing levels are justified. However, we remain concerned that the addition of staffing to three separate entities will be needlessly more costly, and result in a less effective investigatory operation overall, than if their internal affairs activities were consolidated under the YACA Inspector General.

We believe a consolidated internal affairs operation run by the YACA Inspector General, including a system of regional offices such as the CDC internal affairs unit has already established, would reduce travel costs for investigators, reduce other administrative overhead expenditures, and allow for the more effective distribution of investigative assignments. Placing such operations under the control of one central authority would also result in more consistency in investigative procedures and more effective deployment of staff to police a vast statewide system of prisons, juvenile institutions, and parole offices. For example, the expansion of the Youth Authority's internal affairs unit proposed in the 1998-99 budget would leave the department with a total of seven staff to investigate all allegations of misconduct by employees at 11 institutions and 16 parole offices.

More Funding Requests Likely to Follow. The YACA, Youth Authority, and CDC have all indicated that the proposed 1998-99 expansion of internal affairs operations will still collectively leave them with 58 fewer investigators than they contend are justified on a workload basis to carry out their responsibilities. Thus, we anticipate that some or all of the three state agencies will submit budget requests in future years for further additions to their internal affairs funding and staffing. In our view, the creation now of a unified internal affairs operation that is more efficient and well-organized than the present fragmented structure may help the state avoid, or at least reduce, these anticipated further requests for additional investigative staffing and funding.

Meanwhile, the Legislature is not receiving detailed information about the effectiveness of the current, increasingly costly internal affairs operations at CDC because the legislation containing a reporting requirement was vetoed by the Governor. Nor has the Legislature, to our knowledge, received the summary data about the CDC unit mentioned by the Governor in his veto message.

Analyst's Recommendation. For these reasons, we recommend that the YACA Office of Inspector General be made the central, independent agency in charge of conducting internal affairs investigations of personnel employed by CDC, Youth Authority, and other YACA agencies, such as the Board of Prison Terms and the Prison Industry Authority.

In keeping with this reorganization of responsibilities, we recommend that \$4.7 million and 76 positions proposed in the 1998-99 budget for CDC internal affairs operations, as well as \$479,000 and seven positions provided for such duties at the Youth Authority, be transferred and added to the \$1 million and 9.4 positions provided in the budget for the YACA Office of Inspector General. We also propose the enactment of legislation to conform the statutory mission of the Inspector General to this modified role.

Finally, we recommend that the Legislature adopt supplemental report language directing the YACA Office of Inspector General to provide the Legislature with the information it needs to assess the effectiveness and productivity of the internal affairs unit. The report would be due by December 1, 1998. We believe the reporting requirement would not be burdensome and is fiscally prudent, given the significant increases in staffing and funding sought by the administration for this activity.

Accordingly, we recommend adoption of the following language:

The Youth and Adult Correctional Agency Inspector General shall report to the Legislature by December 1, 1998, concerning its conduct of internal affairs investigations during the prior fiscal year including, but not limited to, the following information: the number of requests for investigations received by the Inspector General from each agency within its investigative jurisdiction; the number of investigations initiated by the Inspector General on his or her own authority; the total number of investigations pending; the total number of investigations referred to the California Department of Justice or any other state, federal, or local law enforcement agency; the number of investigations completed by the Inspector General overall, and for each agency within its investigative jurisdiction; and a summary of the results of the investigations it has completed, including the number of investigations resulting in criminal prosecution, the number resulting in disciplinary action against the subject of an investigation, and the number of investigations resulting in neither prosecution nor disciplinary actions.

DEPARTMENT OF CORRECTIONS (5240)

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

The department now operates 33 institutions, including a central medical facility, a treatment center for narcotic addicts under civil commitment, and a substance abuse treatment facility for incarcerated felons. The CDC system also includes 11 reception centers to process newly committed prisoners, 12 community correctional facilities, 38 fire and conservation camps, the Richard A. McGee Correctional Training Center, 33 community reentry and restitution programs, 130 parole offices, and 4 outpatient psychiatric services clinics.

Total Expenditures. The budget proposes total expenditures of \$4 billion for the CDC in 1998-99. This is \$196 million, or 5.1 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 state prison facilities and staff. The Governor's budget proposal for 1998-99 provides for bringing a new state prison in Corcoran to its full capacity; the occupation of 1,200 new dormitory beds at Avenal State Prison; overcrowding of day rooms, gyms, and housing units at various existing prisons; and contracting with public or private vendors for another 5,480 community correctional facility beds. The CDC budget also includes \$74 million to reflect the additional full-year cost of staff added during the current year.

General Fund Expenditures. Proposed General Fund expenditures for the budget year total \$3.9 billion, an increase of about \$262 million, or 7.2 percent, over the revised estimate for current-year General Fund expenditures. Thus, the General Fund contribution to the proposed budget would grow significantly more than the CDC budget overall.

Bond Reimbursements Declining. In prior years, bond funds that were no longer needed for completed prison construction projects comprised

most of CDC's reimbursements. The bond funds were used to offset the ongoing payments provided in the budget to pay off lease-payment bonds. For 1998-99, bond reimbursements are budgeted at \$71 million, a decline of \$65.9 million, or 48 percent, below current-year expenditures. Because the state has nearly exhausted these surplus bond funds, the amount of reimbursements available is shrinking and larger General Fund appropriations to CDC are required to pay off these bonds.

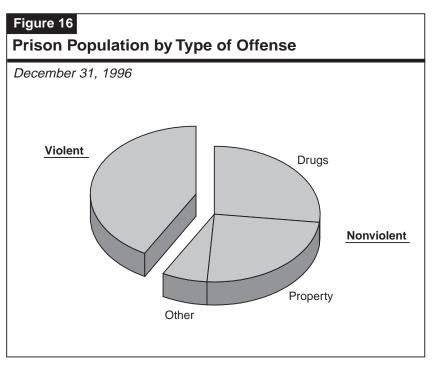
Federal Funds. The Governor's budget assumes that the state will receive \$286 million from the federal government during 1998-99 as partial reimbursement of CDC's cost (estimated to be \$571 million in the budget year) of incarcerating and supervising felons on parole who are illegally in the United States and have committed crimes in California. The funds are not included in CDC's budget display, but instead are scheduled as "offsets" to total state General Fund expenditures.

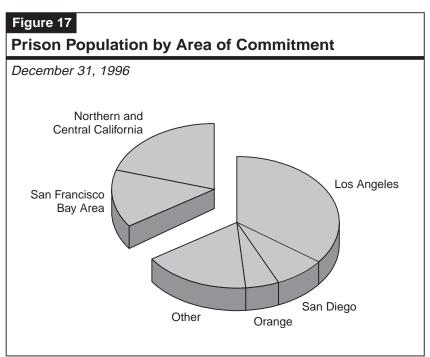
OVERVIEW OF THE INMATE POPULATION

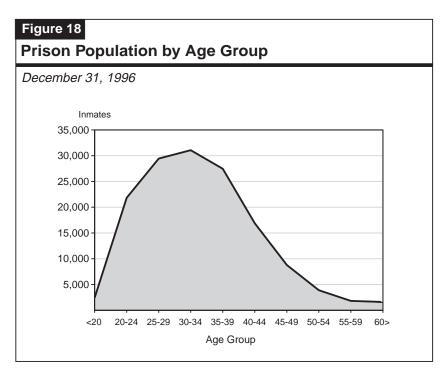
Who Is in Prison?

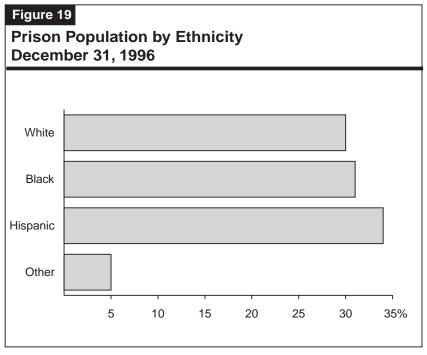
Figures 16 through 20 (see pages 66 through 68) illustrate the characteristics of the state's prison population, which was 145,565 as of December 31, 1996. The charts show:

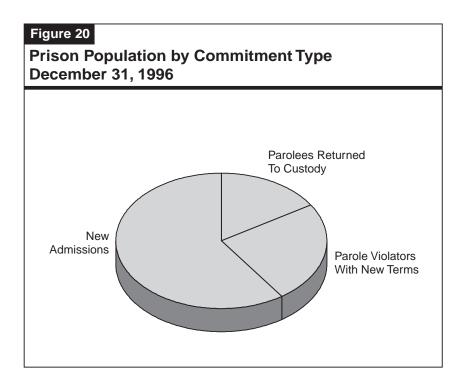
- About 58 percent of inmates are incarcerated for nonviolent offenses (Figure 16).
- About 65 percent of all inmates were committed to prison from Southern California, with about 35 percent from Los Angeles County alone and 8 percent from San Diego County. The San Francisco Bay Area is the source of about 14 percent of prison commitments (Figure 17).
- More than 57 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 18).
- The prison population is divided relatively evenly among whites, blacks, and Hispanics (Figure 19).
- About 59 percent of the inmates are new admissions from the courts, 24 percent are offenders returned by the courts for a new offense while on parole status, and 16 percent are parolees returned to prison by administrative actions for violation of their conditions of parole (Figure 20).











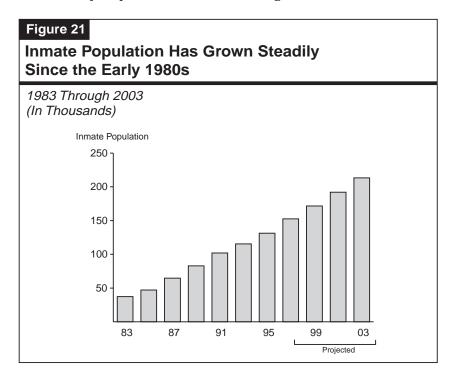
INMATE AND PAROLE POPULATION MANAGEMENT ISSUES

Inmate Population Growth Continues

The Department of Corrections projects that the prison population will increase significantly over the next five years, reaching a total of 213,420 inmates by June 2003. The projections are somewhat higher than recent long-term population forecasts.

As of June 30, 1997, the CDC housed 152,506 inmates in prisons, fire and conservation camps, and community correctional facilities. Based on the fall 1997 population forecast prepared by the CDC, the Governor's budget assumes that the inmate count will reach 161,912 by June 30, 1998, and increase further to 171,610 by June 30, 1999. These figures represent an annual population increase of 6.2 percent in the current year and 6 percent in the budget year. As can be seen in Figure 21, this continues an upward trend in the prison population that has been evident since the early 1980s.

The budget also assumes that the population will increase further over the following four years, reaching 213,420 inmates by June 30, 2003. This represents an average annual population increase of about 5.8 percent over the six-year period from 1996-97 through 2002-03.



Change From Prior Projection. The fall 1997 projection has increased significantly from the prior CDC forecast (spring 1997) that was the basis for the *1997-98 Budget Act*. The new fall 1997 forecast for June 30, 1998 is about 3,000 inmates higher than the spring forecast.

The differences between the spring 1997 and fall 1997 projections are somewhat larger in the long run. Under the earlier forecast, the inmate population would exceed 242,000 by June 2006. The fall 1997 projection is that the state prison system will have more than 247,000 inmates as of that same date. This upward revision amounts to enough additional inmates to fill an entire prison. We would note, however, that some changes in CDC forecasts are inevitable and the latest round of revisions are relatively small—about a 2 percent increase over a nine-year period.

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, 1997, the CDC supervised 100,828 persons on parole. The Governor's budget assumes that the pa-

role population will be 106,503 as of June 30, 1998, and will increase to 111,426 by June 30, 1999. These figures assume a parole population increase of 5.6 percent in the current year and 4.6 percent in the budget year.

The budget also assumes that the population will increase further over the following four years, reaching a total of 127,912 parolees by June 30, 2003. This represents an average annual population increase of about 4 percent.

Why the Forecast Has Changed. According to the CDC, two main trends explain the higher projections in prison population.

- First, parole violators are being returned to state prison through an administrative process for violation of their conditions of parole more frequently than had previously been the case.
- Second, parolees who are being sent back to prison by the courts for new violations of law are serving somewhat longer sentences than anticipated.

The first trend is more significant than the second in terms of its effect on the number of offenders in the prison population. It is closely associated with several policy changes recently instituted by CDC and the Board of Prison Terms (BPT), which has the authority to suspend or revoke parole.

Specifically, the CDC significantly reduced parolee services such as substance-abuse counseling and short-term residential shelters so that it could spend more money to hire additional parole agents. The reductions in services meant that the BPT is more likely to send parole violators back to prison, in part because no alternative program placements are available.

Meanwhile, BPT established and began the enforcement of new regulations requiring CDC parole agents to report parolees with a serious crime on their record who failed testing for substance abuse. Reporting this specific group of offenders to the BPT previously was discretionary for parole officers, but now is mandatory. The end result is that a larger number of parolees were reported to BPT for these parole violations. The BPT then returned a large proportion of the parolees reported to them to prison.

We discuss these parole system issues in more detail in the Crosscutting Issues section earlier in this chapter.

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 adopted by the Legislature and the Governor or through the initiative process. Specifically, the latest CDC forecast does not take into account the longer prison terms that will be imposed on criminals convicted under the state's newly enacted "10-20-Life" sentencing law (Chapter 503, Statutes of 1997 [AB 4, Bordonaro]) because the measure was not enacted until September 1997. The CDC has estimated that the new law—which requires progressively longer prison terms in cases in which a felon was armed with a gun, discharged the gun in the commission of a crime, or harmed a victim with a gun—will add more than 5,000 inmates to the prison system within a decade of its passage.
- Changes in the operation of inmate education and work programs and prison rules affecting the credits inmates can earn to reduce their time in prison. For example, a measure pending on the June 1998 ballot would eliminate work credits for second degree murderers, potentially lengthening their prison stays.
- Changes in the local criminal justice system can affect the number of persons arrested, charged, tried, convicted, and ultimately admitted to prison. A continued trend of lower crime rates, especially for violent crimes, could cause growth in the inmate population to fall below the latest CDC projections.
- Changes in CDC and BPT policies and practices affecting the number of parolees returned to prison for parole violations. For example, the BPT is enacting regulations which would result in harsher punishment for parolees who violate their conditions of parole by associating with criminal street gangs, potentially increasing the number of violators returned to prison.

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

Inmate Count Running Below Projections. At the time this analysis was prepared, the actual CDC inmate count had already varied significantly from CDC's fall 1997 projections. The CDC had overestimated the number of inmates who would be incarcerated as of late December 1997 (the mid-point of the 1997-98 fiscal year) by almost 1,700. Halfway through the fiscal year, the CDC also had underestimated the number of

parolees being supervised on parole by about 370. We discuss the fiscal ramifications of these population trends later in this analysis.

Long-Term Impact on CDC Expenditures. We have estimated how the CDC budget is likely to grow between now and 2006-07 if, as under the current practice, both prison and parole caseloads 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 reach almost \$6.6 billion by the end of that period. Thus, the CDC budget (currently 7 percent of the General Fund budget) would grow at an average annual rate of about 8.7 percent, compared with an annual 5 percent to 6 percent growth in revenues that would occur for the state General Fund under a moderate economic growth outlook during that same ten-year period. In addition to these additional costs for the support of the prison system, accommodating these inmates in new state prisons would require one-time capital outlay costs of more than \$3.2 billion for 13 prisons.

Projections to Be Updated by May

We withhold recommendation on the Department of Corrections' request for \$116 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.

Using CDC's fall 1997 projections, the budget requests an increase of \$116 million above the funding level provided in the *1997-98 Budget Act* to accommodate the growth in the inmate and parole populations.

Projections Will Be Updated. As we indicated earlier, recent trends indicate that CDC's fall population projections have somewhat overestimated the number of inmates who are being incarcerated. As of late December 1997, the total CDC inmate population count was running about 1,700 below projections.

If the current trend holds, there would be 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 it is more costly to house an inmate than to supervise a parolee, the net effect of these caseload changes is likely to be a significant reduction in CDC's funding request for the current and budget years. In this event, we would expect the reduction to be in the low tens of millions of dollars.

Analyst's Recommendation. For these reasons, we withhold recommendation on the request for \$116 million above the funding level pro-

vided in the *1997-98 Budget Act* to support the inmate and parole population pending receipt and review in May of CDC's revised estimates.

Inmate Housing Plan Calls for Contracts For Leased Facilities and More Overcrowding

We withhold recommendation on the Department of Corrections' plan for housing the projected increase in the prison population because of continued uncertainties about the inmate population projection. We also recommend a reduction of \$9.3 million to reflect a one-month delay in the activation of 2,000 new community correctional facility beds and to eliminate duplicate funding for the housing of women inmates. (Reduce Item 5240-001-0001 by \$9.3 million.)

Inmate Housing Plan for 1998-99. The Governor's budget includes an inmate housing plan to accommodate an additional 9,770 inmates, slightly more than the 9,698 additional inmates CDC expects to receive during 1998-99. The housing plan includes the following proposals:

- *Fill New Prison.* The CDC would complete the occupation of a new state prison and Substance Abuse Treatment Facility that is located adjacent to the existing facility located at Corcoran in Kings County. The facility, opened in August 1997, is expected to house 5,295 inmates by June 30, 1998. During 1998-99, the new prison would accept about 1,410 more inmates, bringing the total inmate population to 6,705 and making the new facility the largest in the entire state prison system.
- Activate Avenal Prison Dormitories. During 1998-99, CDC would activate 1,200 dormitory beds constructed for Level II (medium-security) inmates that were originally scheduled to open during the current year. Activation of the beds was postponed in response to an unallocated cut to the CDC budget.
- Private Community Correctional Facilities. The housing plan assumes that 480 additional inmates will be accommodated at 2,000 new community correctional facility beds operated by private vendors that opened in January 1998, and that a net gain of 25 beds will result from contracting with vendors for correctional reentry center beds.
- Overcrowding of Existing Prison Space. The housing plan assumes
 that an additional 6,655 inmates would be placed in gymnasiums,
 day rooms, and other locations at CDC institutions that are intended to be temporary.

Contract Beds Omitted From Housing Plan. The housing plan submitted by the CDC does not reflect an additional 2,000 beds for housing inmates that are funded in the 1998-99 budget proposal and are scheduled to be activated during the budget year.

The CDC plans to contract for 15,000 community correctional facility beds at publicly or privately built and operated prisons over several years for Level I (low-security) and Level II (medium-security) offenders. The budget proposal assumes that the first 2,000 of these new beds would be activated in June 1999.

Funding Should Be Adjusted. We anticipate that CDC will adjust its housing plan at the time of the May Revision to account for these 2,000 beds and to reflect any changes in inmate population trends.

Nonetheless, we believe the CDC budget should be reduced by \$9 million to reflect the likelihood, as well as the desirability, that activation of the first 2,000 community correctional facility beds be delayed until 1999-00. This would result in no more than a one-month delay in the schedule for activation of these beds. We believe the funding reduction is justified for several reasons:

- The present CDC schedule for bringing additional community correctional facility beds on line appears ambitious, given that the most recent community correctional facility expansion faced repeated delays and took almost a year longer than initially planned.
- A delay of funding until 1999-00 will provide an opportunity to base the funding for new contract beds upon the actual per-diem rates bid by vendors rather than upon estimates. The CDC budget request assumes that vendors will be paid a basic rate of \$44 per day per inmate, yet CDC recently acquired 2,000 beds at a rate of about \$40 per day. Achieving the lower rate could eventually save the state \$8 million per year. To ensure that these projects are not over-budgeted, and to avoid encouraging private vendors to increase their contract rates, it is in the state's interest to hold off on any allocation of funding for the contracts during 1998-99.
- Finally, assuming CDC's inmate population projections are correct, the 2,000 contract beds proposed to come on line in June 1999 will not be needed until sometime during 1999-00. As we noted previously, the CDC housing plan that was recently submitted to the Legislature does not include the contract beds, yet accommodates the projected prison population. The CDC plan accommodates the projected inmate population growth in June 1999 through over-

crowding of existing prison facilities. Thus, no shortage of housing will result if the beds are delayed for one month.

If the Legislature chooses to proceed with additional contract beds, authorization language proposed in the Budget Bill should be sufficient to allow CDC to do so.

Double-Budgeting of Beds for Women Inmates. The budget also includes \$1.1 million to activate a new facility in Santa Fe Springs in Los Angeles County in December 1998 for pregnant and parenting women. The first of four such facilities authorized under Chapter 63, Statutes of 1994 (SB 519, Presley), it would provide substance abuse treatment and other services for 45 women offenders and also house as many as 30 of their children. However, as with the contract beds discussed above, these new beds are not included within the CDC's housing plan.

We believe the CDC budget can be further reduced to reflect double-budgeting for pregnant and parenting women. Specifically, the administration proposes to activate the new 45-bed facility for such women, but has not adjusted the budget downward to reflect the fact that these offenders would no longer be housed in regular prison beds. This adjustment would reduce the CDC budget by about \$300,000.

Analyst's Recommendation. Because the inmate population is running below the fall 1997 projections of CDC, it is likely that the housing plan will change by the May Revision. Thus, we withhold recommendation on the plan at this time pending receipt of CDC's revised prison inmate population projections and the updated housing plan provided in the May Revision. We also recommend a \$9.3 million reduction in the CDC budget to reflect a delay in activation of the proposed contract beds and duplicate budgeting for some women inmates.

Population Forecast Has Implications for the Long Term

The administration has proposed to add new community correctional facility beds, four new prisons, and additional cells on the grounds of existing prisons to address the significant shortage of prison space facing the state beginning in the year 2000. We believe there is merit in adding some space to the prison system but recommend that expansion of prison capacity be balanced with policy changes that reduce the inmate population growth rate.

Population Will Soon Exceed Available Prison Space. The administration's housing plan would accommodate the number of additional offenders projected to be sent to state prison during 1998-99. However, CDC

projections indicate that the prison system will run out of space to house additional inmates early in the year 2000 if additional prison space is not made available by then. At that point, based on CDC projections, the inmate population would reach the capacity of the state prison system (two inmates per cell and double-bunking in dormitories and gymnasiums).

The Governor has proposed to address the shortage of inmate space by (1) building four additional state prisons housing 20,237 inmates, (2) building 1,900 high security administrative segregation beds on the grounds of existing prisons, and (3) contracting with public or private vendors for 15,000 beds in community correctional facilities.

As we discussed in our May 1997 report, *Addressing the State's Long-Term Inmate Population Growth*, we believe there is merit in adding to the capacity of the prison system through the construction and leasing of beds, but also recommend that the expansion of prison capacity be balanced with policy changes that reduce the inmate population growth rate. Options for slowing the growth rate include requiring certain nonviolent offenders to be punished at the local level, expanding certain programs aimed at reducing recidivism, and changing the time certain prisoners spend in prison. We discuss this issue in greater detail in the Capital Outlay chapter later in this *Analysis* (see Chapter H).

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 because it is likely that the activation of overcrowding beds would not occur.

SUBSTANCE ABUSE TREATMENT ISSUES

Legislation Needed to Encourage Expansion of Civil Addict Program

We recommend the enactment of legislation to encourage additional court-ordered commitments of narcotic-addicted offenders to the Civil Addict Program as part of a cost-effective strategy to reduce rising state incarceration costs. The legislation would (1) restore the system of credits that were eliminated for these offenders and (2) ensure that offenders who

are eligible for the Civil Addict Program are identified by county probation officers.

Program Operating Since 1961. 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 1998, CDC held about 2,700 civil addicts. About 1,600 male addicts and 500 female addicts are housed at the California Rehabilitation Center (CRC) at Norco, another 400 are at a community correctional facility at Adelanto, and the remainder (about 130) are scattered in small numbers among other state prisons. The CRC facility is not used exclusively for the Civil Addict Program: another 2,900 adult felons, primarily male offenders, are also housed there. The population of the Civil Addict Program has declined significantly since 1994, when CDC housed nearly 4,000 civil addicts.

As we discussed in last year's analysis of the CDC budget, the decline was largely related to the enactment of the "Three Strikes and You're Out" sentencing law, which precluded offenders with a serious offense on their record, such as residential burglary, from commitment to the Civil Addict Program.

Major Impact on State Costs. The decline in the program resulting from 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 longer prison time served by offenders who would otherwise be eligible for the Civil Addict Program will add tens of millions of dollars annually to state prison operation costs within five years. It would also eventually generate one-time capital outlay costs in the low hundreds of millions of dollars.

Legislative Actions. Last year, based upon information indicating that recent reforms in the Civil Addict Program had made it cost-effective, the Legislature took two steps intended to address the decline in the program caseload.

First, the Legislature adopted budget bill language directing the Judicial Council to inform all trial judges of the statutory provisions that call for the placement of eligible drug- and alcohol-addicted offenders in the program. The Judicial Council was to report on this effort to the Legisla-

ture by December 1, 1997. At the time this analysis was prepared, the required report had not been received by the Legislature.

Second, the Legislature adopted supplemental report language directing CDC to report on the feasibility and cost of providing substance abuse treatment programming for all offenders housed at CRC, not just those assigned to the Civil Addict Program. That report was due February 1, 1998, and thus was pending as this analysis was prepared.

Further Improvements Possible. Other steps could be taken by the Legislature to bolster the number of offenders participating in the program.

The pool of program participants could be enlarged by restoring the system of credits that civil addicts used to be able to earn to reduce the time they must spend in confinement. An August 1995 California Supreme Court ruling struck down these credits, holding that a 1980 statute allowing them was overridden by a 1983 statute revising the credit system for all state prison inmates. In some cases, the absence of credits appears to be a deterrent to participation in the program: an offender might be faced with the possibility that, without the credits, he or she could spend longer in confinement under the Civil Addict Program than by serving a regular prison sentence. The budget committees of both houses of the Legislature voted last year to restore the credits, but the measure affecting the credits was not included in the final legislative package to enact the budget.

We have also concluded that judges would more frequently assign offenders to the Civil Addict Program if county probation officers advised them that an offender was eligible for such a commitment. Existing law and California court rules specify that probation officers shall provide sentencing reports to judges that examine, among other matters, the "habit of temperance" of offenders as well as their "record of substance abuse." Probation officers are already required to summarize the defendant's prior criminal record, which contains all the information needed to determine whether an offender with a substance abuse problem meets the legal criteria for the Civil Addict Program. However, probation officers are under no obligation to report on the eligibility of offenders for a Civil Addict Program commitment.

Analyst's Recommendation. For the reasons discussed above, and consistent with our recommendation from last year, we recommend the adoption of a statute restoring 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. We also believe it is reasonable that

civil addicts and felons incarcerated together at the CRC be treated alike in the allowance of credits.

We also recommend the enactment of legislation to require that county probation officer sentencing reports determine whether an offender is eligible for commitment to the program. This would impose a mandate upon local government that would be reimbursable by state government. We do not believe the mandate would be costly, however, because probation officers are already mandated by law to gather the information necessary for such determinations. We believe any costs would be outweighed by the state savings on incarceration that would result from commitment of offenders to the Civil Addict Program instead of longer prison terms. Placing more offenders in the program is also likely to reduce the incidence of crime committed by addicts upon their release from prison. Left untreated, these offenders would be more likely to continue to abuse illegal drugs and alcohol and return to a life of crime.

Redirect Drug Interdiction Funds To Expansion of Drug Treatment

We recommend denial of a request for \$1.1 million and 15 positions for two pilot projects to attempt to halt the flow of illegal drugs into prisons with canine units and electronic devices. Because the proposal is flawed in several respects, the funds for new experimental programs should be redirected toward further expansion of proven in-prison substance abuse treatment programs.

Two Pilot Projects. The CDC budget includes \$1.1 million and 15 positions to implement an experimental program to deter the infiltration of illegal drugs into state prisons. The budget proposes the creation of an internal Drug Reduction Task Force charged with overseeing pilot projects at two prisons, each of two years' duration, aimed at deterring the flow of illegal drugs into prison facilities. Canine units and electronic scanning equipment capable of detecting the presence of drugs would be established at the prisons. Inmates would be subjected to random drug testing, and prison visitors would be monitored with closed-circuit cameras in visiting rooms in an attempt to halt drug trafficking.

We agree that drug trafficking is prevalent at a number of correctional institutions. But we believe the proposal is flawed in several respects:

 Both canine units and electronic scanning devices have been tested for drug interdiction for several years at the CRC at Norco. Rather than conduct additional tests, CDC should evaluate the impact of the test it has already conducted at CRC and report on its effectiveness in deterring drug trafficking at that facility.

- Although the proposal would subject inmates and prison visitors
 to tighter screening for illegal drugs, the proposal apparently does
 not subject prison staff to such screening. Prison officials acknowledge that contraband illegal drugs smuggled by some staff members is contributing significantly to the prison drug problem. Such
 screening and random drug testing of staff at the two selected
 prisons may not be possible without the agreement of employee
 groups, and is not included in the CDC drug interdiction proposal
 we have reviewed.
- Rather than experiment with other approaches, CDC has a scientifically validated in-prison treatment program at the prison in San Diego which significantly reduced the addiction of inmates as well as the rate of inmate recidivism. In our view, further expansion of such programs would be a more cost-effective strategy in curbing the prevalence of illegal drugs in prison and reducing inmate recidivism than an interdiction strategy.

Analyst's Recommendation. For these reasons, we recommend the denial of a request for \$1.1 million and 15 positions requested for the experimental projects, and the redirection of the funds to initiate the further expansion of in-prison substance abuse treatment programs using the proven substance abuse treatment approach.

We believe CDC already has adequate administrative resources to create an internal Drug Reduction Task Force that could evaluate the effectiveness of the ongoing efforts at CRC to interdict illegal drugs and recommend any necessary CDC policy changes to reduce drug trafficking on prison grounds.

CORRECTIONAL PROGRAM ISSUES

Study of Inmate Academic and Work Programs Should Be Broadened

We recommend that a proposed review of the effectiveness of the Department of Corrections' inmate academic and work programs be broadened to allow a more comprehensive study of recidivism by inmates who have participated in the programs in the past. The broader study, which may cost more than the \$500,000 requested in the budget, should

be funded entirely using surplus cash held by the Prison Industry Authority and not from the General Fund. (Reduce Item 5240-001-0001 by \$500,000 and establish a new Item 5240-011-0678 in the same amount.)

Examination of Programs Sought. Of the 148,000 inmates held by CDC as of May 1997, about 82,000 participated in (1) academic and vocational education programs and (2) work programs including Prison Industry Authority (PIA), Joint Venture, and various work assignments within the prisons. However, with the exception of a study of the Joint Venture program commissioned by the Legislature, CDC has not examined what impact these programs have had on providing inmates with marketable job skills or reducing inmate recidivism rates. Since an average of 70 percent of inmates paroling from state prison return within a year of release with either a parole violation or a new court conviction, the effectiveness of CDC's programs has been unclear.

The CDC has requested \$500,000 from the General Fund to begin a three-year statewide study to evaluate the effectiveness of CDC's academic education, vocational education, PIA, and Joint Venture programs. The study, to be conducted by an outside consultant, would interview parole agents, inmates, employers, and state agencies providing educational and job placement assistance.

LAO Concerns About the Study. Given the high recidivism rate of CDC parolees, we believe the proposed study is warranted but too limited in scope. In addition to conducting the interviews, we believe that the study should include a statistical analysis based upon a review of a random sample of inmate files that would examine whether participation by inmates in the current academic education, vocational education, and PIA programs has any impact on recidivism. A sample of files for similar inmates who did not participate in work or education programs would also be examined. We believe this information would complement the information collected through consultant interviews.

Broadening the scope of the study may add to its cost, but that evaluation would be a worthwhile state investment given that more than \$180 million is proposed in the 1998-99 CDC budget for academic education, vocational education, and inmate employment. The proposed evaluation could provide CDC and the Legislature with the information needed to determine how particular education and work programs within the 33 state prisons could be reformed or, if warranted, abandoned.

The study also should be accomplished without additional General Fund resources. As of June 31, 1997, the PIA had \$23.3 million in cash—an increase in cash of \$12.5 million over the prior year—and long-term debt of about \$1 million. In our view, using a small part of that cash reserve to

fund the three-year study would have no impact on PIA operations. Using PIA funds would also be appropriate because the study would directly involve a review of PIA operations and also lead to improvements in academic and vocational education programs that often help prepare inmates for subsequent PIA assignments.

Analyst's Recommendation. For these reasons, we recommend that the scope of the study be expanded as we have proposed, and that the review of inmate programs be funded not from the General Fund but through the establishment of a new budget item transferring the necessary funds from the PIA. This recommendation would result in General Fund savings of \$500,000. We recommend that CDC report at budget hearings on the likely cost of a more comprehensive examination of correctional academic and work programs. The budget item providing funding from the PIA surplus should be established initially at \$500,000 and modified later to reflect the full cost of the broader study we recommend.

Correctional Administration Issues

We withhold recommendation on \$75.8 million requested in the Department of Corrections budget for leased jail beds, local assistance, cadet training, buses, classification workload, and various administrative functions of the prison system. We further recommend a reduction of \$11.7 million requested by the department relating to a pending labor agreement and auditing work. Finally, we recommend the adoption of specified budget bill and statutory changes, and reports to the Legislature at budget hearings on specific topics as proposed below. (Reduce Item 5240-001-0001 by \$11.7 million.)

Funding Sought for Administration and Other Operations. The proposed 1998-99 CDC budget includes funding relating to leased jail beds, local assistance, personnel supervision and training, auditing and accounting functions, information technology, and other administrative operations and issues.

Analyst's Recommendation. We withhold recommendation on various budget requests for which we have not yet received sufficient justification from CDC. We further recommend a reduction in other budget items requested by CDC, the adoption of specified budget bill language and statutory changes, and reports to the Legislature at budget hearings on specific topics as proposed below:

 Leased Jail Beds. We withhold recommendation on \$26.7 million to continue to lease 1,400 beds primarily for parole violators at the Peter Pitchess Detention Center in Los Angeles County, pending

- a review of the first year's implementation of the contract. At the time this analysis was prepared, we had not received sufficient information from the CDC to support this expenditure request.
- Local Assistance. We withhold recommendation on \$18.2 million requested to reimburse county governments for the cost of holding parolees who have been arrested or held in local jails for violation of their conditions of parole. At the time this analysis was prepared, we had not received sufficient information from the CDC to support this expenditure request. We also recommend that state law (Penal Code Section 4016.5) be amended to prohibit the practice by which Los Angeles County has billed the state as much as \$755 per day to treat state inmates held in county jails in so-called "pill wards" in which parolees receive services such as medications or wheelchairs but no hospital or medical treatment. An audit by the State Controller provides evidence that the state is being billed millions of dollars annually for "pill ward" stays by parole violators.
- Academy Staffing. We withhold recommendation on the \$15.4 million requested for academy operations because the number of cadets trained each year is closely related to growth in the inmate population. We recommend that the budget be appropriately adjusted at the time of the May Revision when CDC's spring 1998 projections of inmate population growth will be available and the number of cadets to be trained can be determined.
- Correctional Management Information System (CMIS) Project. We withhold recommendation regarding the \$13.4 million sought to continue CMIS, a critical information technology project that commenced in 1992 to provide the department a computer-based system to maintain comprehensive information about offenders and to support related departmental activities. At the time this analysis was prepared, we had not received sufficient information from the CDC to support this expenditure request. Because of ongoing delays in the project and the cancellation of a contract last year with the project vendor, we recommend CDC report at budget hearings regarding the status of the litigation and any settlement talks, provide the Legislature with an updated timetable for advancement of the project, and account for how it is using the funds budgeted for the project during the current year.
- Proposed Labor Agreement. We recommend deletion of the \$10.9 million to implement a proposed memorandum of understanding (MOU) between the state and the labor organization

representing correctional officers and parole agents. For the provisions of the MOU to take legal effect, the proposed agreement must be approved in a bill passed by the Legislature and signed by the Governor. At the time this analysis was prepared, the proposed MOU had not been enacted into law. Without prejudice to the merits of the proposed MOU, we recommend the deletion of the funds from the budget. We believe the funding necessary to carry out the agreement could, and in this case should, be included in the legislation to ratify the MOU.

Expansion of CDC Audits. The 1998-99 budget proposal includes a net increase of \$301,000 and four positions to consolidate audits of CDC institutions within the Department of Finance (DOF). The budget also provides an additional \$1.5 million and 23 positions, primarily for two units within CDC—one within the Administrative Services Division and the other within the CDC Office of Inspector General (OIG)—to conduct audits of the department's programs and vendors. We recommend approval of the DOF request. We recommend approval of the \$1.5 million sought by CDC for additional auditing work, but also recommend that an \$800,000 reduction be made to eliminate the OIG. This recommendation is contingent upon the adoption of budget bill language requiring a consolidation of CDC auditing operations within the Administrative Services Division and abolishing OIG. We recommend that OIG's existing functions be transferred to other CDC units and to the Youth and Adult Correctional Agency (YACA) Inspector General. We see no justification for CDC to continue operating two auditing units. Specifically, we recommend the following budget bill language:

The California Department of Corrections (CDC) shall reorganize its auditing activities into one consolidated auditing unit within the Administrative Services Division by January 1, 1999, and by that date shall also abolish the CDC Office of Inspector General and transfer its responsibilities to other CDC units or the Youth and Adult Correctional Agency Office of Inspector General by means to be determined by the Director of Corrections.

• Classification Unit Staffing. We withhold recommendation on the \$1.2 million and 17 positions sought to expand the Classification Services Unit pending the completion by CDC of a report due May 1, 1998, on the development of a new model classification and reclassification system. We believe a decision on this funding request should be tied to continued progress by CDC in developing, testing, and implementing a new classification system that could

potentially result in significant state savings on prison operations and construction.

• *Inmate Bus Costs Rising.* The CDC budget requests two buses for the transportation of inmates costing \$450,000 each. In 1995-96, the same buses were priced at about \$300,000. At the time this analysis was prepared, we had not received sufficient information from the CDC to support this expenditure request. Thus, we withhold recommendation on the \$900,000 request pending justification of the 50 percent cost increase.

Interim Steps Recommended to Reform State Parole System

We recommend a \$2.8 million augmentation to initiate expansion of the Preventing Parolee Failure program, offset by deletion of \$1.3 million requested for more staff to process parole revocation paperwork, and other changes to the CDC parole division budget. (Augment Item 5240-001-0001 by net increase of \$1.5 million.)

In the Crosscutting Issues section of this chapter, we provide an analysis of the present parole system operated by CDC and BPT. We also recommend changes in the system of supervision, control, and sanction of parolees that we believe will lead to improved public safety, less prison overcrowding, and significant state savings.

In that analysis, we specifically recommend a series of changes to the CDC parole division budget, including:

- An augmentation of the CDC budget by \$2.8 million to initiate the
 expansion of the Preventing Parolee Failure program or other
 parole services, and modification of formulas to incorporate additional funding for the program in future budget requests for increased parole caseloads.
- Deletion of \$1.3 million requested for additional parole staff to process the paperwork for a growing workload of parole revocation cases.
- Establishment of separate items within the parole division budget for case supervision, casework services, Preventing Parolee Failure, Psychiatric Outpatient Clinics, and other specialized parole programs.

A detailed explanation of our proposals is provided in the Crosscutting Issues section of the *Analysis*.

CDC Required to Submit Reports on Major Correctional Policy Issues

Several reports by the Department of Corrections on significant correctional policy issues are due or scheduled for release later in the budget process. The reports could affect legislative decisions about department expenditures.

Several Studies in Progress. The 1997-98 Budget Act and accompanying Supplemental Report of the 1997 Budget Act directed the CDC to submit several reports to the Legislature by specified dates. These reports may be relevant to the Legislature's review of the 1998-99 CDC budget. The required reports and their specified due dates are as follows:

- Prison Weights. The CDC was to report by December 1, 1997, on
 the inventory of exercise weights at each institution, and the
 weights removed from each institution since January 1, 1995. The
 CDC also is to report the reason that any weights remain in an
 institution, the department policy regarding the use of weights by
 inmates, and the purpose for the continuing presence of weights
 in the institutional setting.
- *Civil Addict Program.* The CDC is to report by February 1, 1998, regarding the feasibility of providing drug treatment programming to all civil addicts and felons incarcerated at the California Rehabilitation Center at Norco and, if this is deemed feasible, the staffing, funding, and timetable necessary to accomplish this change. We discuss this issue in more detail in our analysis of the Civil Addict Program (earlier in this analysis).
- *Inmate Pay Telephones.* The CDC is to report to the Legislature by February 1, 1998 regarding the cost-benefit and impact on prison security of expanding the access of inmates to pay telephones located at its institutions.
- Inmate Classification. The CDC is to report to the Legislature by May 1, 1998 regarding its progress in preparing to modify its inmate classification system. The CDC is to draft new model classification procedures, estimate how the new model would affect the distribution of inmates within the prison system, and develop a proposal to test how the new system would affect state costs and prison security.
- Standard Cost Items. The CDC is required to submit a preliminary report by January 1, 1998, and a final report by July 1, 1998, regarding its budgeting methods for standard cost items, including employee salary and benefit expenses, equipment, and other operat-

ing expenses. (The CDC anticipates that any revisions in its standard costing methods will be incorporated into its budget request for 1999-00.)

Parole Staffing. The CDC is to report by March 1, 1998 on the
appropriate level of staffing for its parole program, taking into
account public safety needs, requirements specified in statute or
regulation, and any collective bargaining agreements. We have
been advised by CDC that the study was placed on hold because
of unspecified budget reductions and will not be submitted to the
Legislature until March 15, 2000.

We will review these reports upon their receipt from CDC and advise the Legislature at the time of budget hearings if the information provided in them warrants any further legislative action.

MEDICAL ISSUES

Contract Medical Adjustment Not Needed

We recommend a General Fund reduction of \$809,000 for contract medical services because the additional funds are not needed. (Reduce Item 5240-001-0001 by \$809,000.)

The budget requests \$64 million from the General Fund for contract medical services for inmates in the budget year, which is an increase of \$809,000, or about 1.3 percent, over the current-year amount. The additional funds would become part of the department's baseline budget.

These expenditures are for a variety of medical services provided by contractors, such as hospitals, medical specialists, and laboratories. The proposal would increase the per inmate cost for new inmates coming to prison in 1998-99. Specifically, the new inmate population would be budgeted at \$524 per inmate for contract medical services, while the base inmate population would remain at the current \$422 per inmate.

Savings Offset Costs. The Health Care Services Division (HCSD) uses contract clinical staff when it cannot fill authorized positions. For example, HCSD has almost 100 authorized psychiatrist positions for its institutions. However, on average, only 75 percent of these positions are filled. Thus, in order to meet the need for psychiatrists, HCSD uses contract psychiatrists. Under these circumstances, the division's contract medical expenditures increase, while it has savings due to vacancies in its authorized psychiatrist positions. In addition, HCSD has implemented a series of other cost-reducing programs, such as utilization review positions that

save money by ensuring the lowest cost or only needed services are provided. The HCSD has reported savings from vacancies, and from its other initiatives in the current and recent years. We believe that these savings will continue and will be sufficient to cover increased contract medical expenditures.

For these reasons, we do not believe the request is justified and recommend that it be rejected. (Reduce Item 5240-001-0001 by \$809,000.)

Mentally III Population Higher Than Expected

New prevalence data show that more inmates are seriously mentally ill than had originally been assumed in developing the Department of Corrections' mental health delivery system. In addition, almost twice as many inmates need Enhanced Outpatient Services than was expected in the department's original plan.

The department's HCSD budget request includes \$3.3 million for changes in staffing in its mental health services delivery system. The bulk of the request is the addition of new staff to provide services to seriously mentally ill inmates. The department has found that more inmates are seriously mentally ill than originally assumed and has based its request on these new figures.

Prevalence of Mental Illness Among Inmates. The CDC has implemented systems at its reception centers to determine whether an inmate is mentally ill and whether that illness requires treatment. The department began its reception center program based on the assumption that 7.9 percent of new inmates would require mental health services as a consequence of screening. Based on actual data, the prevalence rate of serious mental illness in new admissions has averaged about 9 percent. The higher prevalence rate translates into an increase of approximately 14 percent over earlier projections when the system was implemented. As of June 1997, the CDC had 13,340 inmates who were diagnosed as seriously mentally ill.

The department provides mental health treatment through case management services to the majority of the inmates determined to be seriously mentally ill. Inmates in case management receive regular psychotropic and other medications and are under the supervision of psychiatric staff, yet remain in the regular inmate population, housed in living units with inmates who do not need mental health services. In June 1997, 10,149 inmates were receiving case management services.

Enhanced Outpatient Program Needs Double. The department provides mental health services to inmates with greater treatment needs, or

who need a protective environment, through the Enhanced Outpatient Programs (EOPs). The EOPs generally are established as separate living units where inmates needing this level of care can be supervised, receive therapy and treatment, and remain segregated from the general population. These living units are not overcrowded at the same rate as the general population living units; the EOPs are 150 percent of capacity instead of 190 percent for the general prison population.

Data show that more inmates need EOPs than had originally been projected. The development of the EOPs was based on estimates of approximately 8 percent of seriously mentally ill inmate population needing these services. However, actual experience has shown that over 15 percent of the mentally ill population needs to be housed in EOPs, almost double the original CDC projections. In June 1997, there were 2,068 inmates housed in EOPs.

Conclusion. The HCSD's request for additional mental health staff is justified based on the actual prevalence of mental illness in the CDC inmate population and we recommend approval. Based on actual experience, more inmates are seriously mentally ill than had been originally projected, over 9 percent of the state's entire prison population.

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, administering jail bond and federal construction funds, establishing staff training standards, and reimbursing local law enforcement agencies for the costs of training. 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 juvenile justice grant programs.

The budget proposes expenditures of \$80.5 million in 1998-99, including \$34.1 million from the General Fund. This is about \$30.2 million, or 60 percent, more than estimated current-year expenditures. The General Fund increase is due to implementation of law enforcement and juvenile justice local assistance grant programs. The budget also includes an additional \$23.3 million in federal funds for distribution to local governments for construction and expansion of jails and juvenile detention facilities.

No Justification for Increase In Demonstration Project

We recommend deletion of \$12.8 million requested from the General Fund for the Community Law Enforcement and Recovery Demonstration Project in Los Angeles because the administration has not justified the augmentation above the funding level provided in the legislation which created the demonstration project. Furthermore, Los Angeles local law enforcement agencies have received federal and state funds that can be used for expansion of the program. (Reduce Item 5430-102-0001 by \$12.8 million.)

The budget requests \$14 million from the General Fund for the secondyear funding of the Community Law Enforcement and Recovery (CLEAR) Demonstration Project in Los Angeles. The CLEAR project was established by Chapter 506, Statutes of 1997 (AB 853, Hertzberg) as a twoyear demonstration project to allow the City of Los Angeles and Los Angeles County to attack criminal gang activities. The CLEAR project is designed to draw upon resources from various law enforcement agencies to share gang intelligence and develop coordinated responses to gang problem areas. After two years, Chapter 506 requires an independent evaluation of the impact of the program on homicides, violent crime, and other gang activities in the targeted areas.

Chapter 506 appropriated \$1.2 million from the General Fund for the demonstration project. Monies could be used for law enforcement officer salaries or overtime, equipment, and training. The funds were specifically allocated to five agencies and for the establishment of a gang intervention coordinator position. The Board of Corrections is the state agency responsible for disbursing project monies. Figure 22 shows the distribution of the funds.

Figure 22	
CLEAR Demonstration Project 1997-98 Funding	
(In Thousands)	
Los Angeles Agency	Amount
Los Angeles County Sheriff Los Angeles City Police Department Los Angeles County District Attorney Los Angeles County Probation Department	\$300 248 169 142
Los Angeles City Attorney Gang Intervention Coordinator	141 200

The budget requests second-year funding of \$14 million, almost twelve times the amount appropriated in Chapter 506.

Analyst's Concerns. In our view, demonstration projects should not be expanded without specific justification and a plan for the use of the funds. In addition, whenever a substantial increase in funding is requested for a new program, we believe that it is important for the Legislature to have information as to how funds previously provided have been used. We believe that this proposal fails on both counts.

First, the administration has provided no justification for the significant increase requested for the program. In addition, the administration has not specified how any of the \$14 million would be distributed among

the local agencies specified in Chapter 506 nor has the administration provided any information on specifically how the funds will be spent.

Second, the Board of Corrections was able to provide only minimal information about how the funds provided in Chapter 506 are being used. According to the board, the only information available comes from the Los Angeles County Sheriff's Office, which indicates that the office has used its allocations to hire two gang homicide investigators and two deputies. The Legislature has no other information about the use of the money by the other law enforcement agencies.

For these reasons, we recommend that the requested increase be denied

Los Angeles Law Enforcement Agencies Have Other Funding Sources Available. It should be noted that Los Angeles law enforcement agencies have recently received substantial increases in federal and state funding that could be used to support the CLEAR project, if that is a priority of the agencies. Specifically, in 1997, the Los Angeles Sheriff's Office received \$3.7 million and the Los Angeles Police Department received \$17.7 million from the federal Local Law Enforcement Block Grant Program. The grant to the police department was one of the largest in the nation. Both of these agencies will receive approximately the same amounts in 1998. The federal grant allows funds to be used for programs like the CLEAR project.

In addition to federal grant funds, the city and county have received funding under the state's Citizens' Option for Public Safety (COPS) program. In the current year, the sheriff's office received \$2.3 million, the police department received \$8.5 million, and the district attorney received \$3.6 million from this program. The budget proposes continued funding for the COPS program and each of these agencies should receive about the same amount of funding in 1998-99. These funds can also be used for the CLEAR project. Consequently, if these Los Angeles law enforcement agencies see this project as worthy of additional funding they could use the additional federal and state funds to support the project.

Conclusion. We recommend that the requested augmentation for the program be denied because of the lack of justification for the increase and the lack of information about the use of the current-year funds. The law enforcement agencies involved have access to other state and federal funding sources that they could use to expand this project. This recommendation will leave the program with second-year funding for the two-

year program that is equivalent to the amount appropriated by the Legislature in Chapter 506. (Reduce Item 5430-102-0001 by \$12.8 million.)

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 \$380 million for the Youth Authority in 1998-99. This is \$15.9 million, or about 4 percent, less than current-year expenditures. General Fund expenditures are proposed to total \$312 million in the budget year, a decrease of \$16.2 million, or 4.9 percent, below expenditures in 1997-98. The department's proposed General Fund expenditures include \$41.7 million in Proposition 98 educational funds.

The primary reason for the decrease in General Fund spending for the budget year is the decline in ward and parolee populations. In addition, the introduction of fee increases to counties are reflected as reimbursements and are included in the budget. The Youth Authority estimates that it will receive about \$63 million in reimbursements in 1998-99.

Approximately 74 percent of the total funds requested for the department is for operation of the department's institutions and camps and 12 percent is for parole and community services. The remaining 14 percent of total funds is for the Youth Authority's education program.

Ward Population Continues to Decline

The number of wards at the Youth Authority decreased significantly in the current year and is projected to continue to decrease over the next several years until June 2001, when it is projected to increase slightly. The population decrease between 1996-97 and the budget year is the result of

legislation transferring some offenders from the Youth Authority to the Department of Corrections and the introduction of new and higher fees charged to counties for Youth Authority commitments. The Youth Authority parole populations are expected to decline in the budget year and continue to decrease through 2002. The decline is due to fewer Youth Authority admissions and longer lengths of stay for those wards who are currently incarcerated.

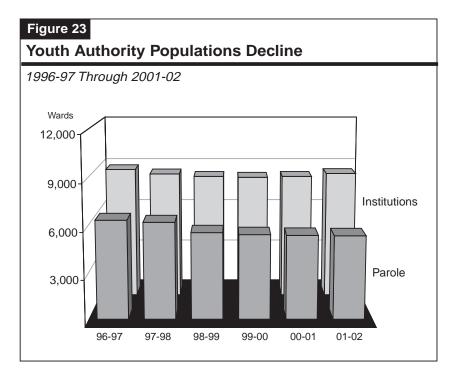
Ward and Parole Trend. The Youth Authority's September 1997 ward population projections (which form the basis for the 1998-99 Governor's Budget) estimate that the number of wards and inmates housed in the Youth Authority will decrease by 830 (or 9 percent) by the end of 1998-99, compared to 1997-98. 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 CDC. In addition, 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. In response to these fees, which went into effect January 1, 1997, counties have reduced their Youth Authority commitments (we discuss the effect of this legislation below).

For the budget year through 2001-02, the Youth Authority projects that its population will decline and then grow slightly, reaching just over 8,500 incarcerated wards on June 30, 2002. These estimates, however, do not assume the full effect of the increased fees charged to counties for juvenile offenders they send to the Youth Authority. Based on experience to date, the effect of the fees is likely to reduce the ward population.

The Youth Authority also projects a significant decline in the number of parolees it supervises. It expects that parole populations will decline by 660 cases, almost 12 percent, in the budget year. The number of parolees will continue to decline through 2002. Figure 23 (see next page) shows the Youth Authority's institutional and parolee populations from 1996-97 through 2001-02.

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 December 31, 1997, 93 percent of the institutional population was committed by the juvenile court. Juvenile court commitments include offenders who have committed both misdemeanors and felonies.



- *Criminal Court Commitments.* These courts send juveniles who were tried and convicted as adults to the Youth Authority. On December 31, 1997, 7 percent of the institutional population were juveniles committed by criminal courts. These commitments include inmates from CDC who are referred to as "M cases" because the letter M is used as part of their Youth Authority identification number. (We discuss these cases 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" Transfers Significantly Reduced Youth Authority Population. "M cases" are offenders under the age of 18 when they were committed to CDC after a felony conviction in criminal court. 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 CDC at age 18, unless their earliest possible release date comes before their 21st birthday.

Implementation of Chapter 195 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 1,200 inmates, over 12 percent of the Youth Authority's institutional population, being transferred to state prison. In addition, the Youth Authority assumes that the new legislation will result in an average of 500 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, the "M case" population will drop from a total of 1,471 at the end of 1995-96, to about 230 inmates at the end of 2001-02, a drop of more than 84 percent. Similar reductions will be seen in the Youth Authority parole caseloads of "M cases," which will decline from 872 at the end of 1996-97, to no cases in the budget year.

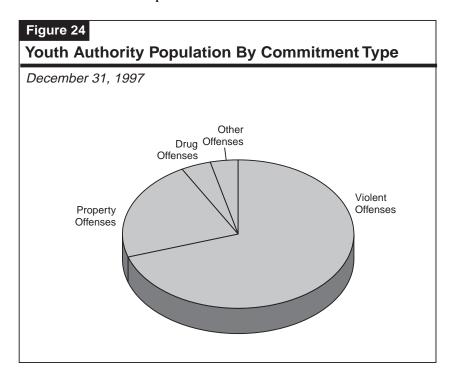
Characteristics of the Youth Authority Wards. Wards in Youth Authority institutions are predominately male, 19 years old on average, and come primarily from southern California, with 34 percent coming from Los Angeles County. Hispanics make up the largest racial and ethnic group in Youth Authority institutions, accounting for 48 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 7 percent.

Most Wards Committed for Violent Offenses. Figure 24 (see next page) shows the Youth Authority population by type of offense.

On December 31, 1997, 69 percent of the wards housed in Youth Authority 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 counties are charged fees when they commit less serious offenders to the Youth Authority. In contrast, only 42 percent of CDC's population has been incarcerated for violent offenses. The number of wards incarcerated for property offenses, such as burglary and auto theft, was 22 percent of the total population. The number of wards incarcerated for drug offenses was just under 5 percent in 1997.

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 about 28 months for new admissions in 1997-98, compared to about 18 months in 1989-90. This trend is expected to continue; the Youth Author-

ity projects that the length of stay for new admissions in 2001-02 will be almost 31 months, a 10 percent increase.



The longer lengths of stay are explained in part by the fact that wards committed by the juvenile courts 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 an \$11 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 830 wards, or 9 percent, by the end of the budget year. The budget proposes a decrease of \$11 million reflecting this decrease in the Youth Authority population.

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, the Governor is proposing to increase the allocation of Federal Temporary Assistance for Needy Families (TANF) funds from \$174 million in the current year to \$200 million in the budget year to provide services for juvenile offenders housed in county facilities. When counties received federal funds for service programs in prior years, admission rates to the Youth Authority decreased. Consequently, increasing 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 \$11 million decrease reflecting anticipated ward and parolee population changes, pending receipt and analysis of the revised budget proposal.

Fees Have Changed How Counties Use the Youth Authority

Effective January 1, 1997, counties were charged new and higher fees for certain commitments of juvenile offenders to the Youth Authority. Initial data for the first year show a significant decrease in new Youth Authority commitments, especially in those categories of wards for whom counties must pay higher fees. Whether this decline will continue is unknown. Consequently, we withhold recommendation on \$43 million in fee reimbursements from the counties, pending receipt of the revised population estimates at the time of the May Revision.

Chapter 6 increased the fees that counties pay the state for placement of juvenile offenders in the Youth Authority. Specifically, Chapter 6 increased the existing monthly fees and established a new sliding fee. The new fees went into effect January 1, 1997. The introduction of these new fees appears to have resulted in a significant reduction in the number of youth committed by the counties to the Youth Authority. Specifically, county juvenile court commitments declined by 25 percent between 1996, the year before introduction of the fees, and 1997, the first year after enactment of the fees. In the long term, new fees will also impact Youth Authority parole services.

Increased Monthly Fees. Prior to the enactment of Chapter 6, 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 about \$33,000 per offender. According to the Youth Authority, counties were billed \$12.4 million for these fees, for all commitments from January through November 1997.

While overall Youth Authority commitments declined by 25 percent between 1996 and 1997, the decline in those categories where counties pay just the new monthly fee, as opposed to the "sliding scale fee," was 5 percent. The payment of the increased fees has resulted in a higher cost to counties, and has had a modest effect in reducing the number of these commitments to the Youth Authority.

"Sliding Scale Fee." 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 to provide incentives for counties to treat less serious offenders in local programs and, more importantly, invest in prevention and early intervention programs in order to reduce delinquency.

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. For the period of January through November 1997, counties were billed \$5 million for sliding scale commitments.

Commitment data suggest that the new sliding fees have had the desired impacts. The 1997 commitments of wards who are in categories 5, 6, and 7 declined almost 40 percent when compared to 1996. Commitments of category 7 wards, for whom counties paid full cost, decreased by 52 percent. There were only 26 commitments in this category to the Youth Authority in 1997.

We believe that as a result of the new sliding fee, counties will continue to have a fiscal incentive to use less costly local options rather than the Youth Authority, especially for the least serious offenders, where the county would pay most of the cost of commitment. Several counties have informed us that in response to the new fees they have developed local alternatives to Youth Authority placements. These new placement options include the creation of new ranch and camp beds and the use of other nonresidential options, such as day-treatment centers, for less serious offenders. As we describe below, counties have received significant new federal funds for creating services for these types of offenders. The budget proposes to further increase these funds.

Reimbursements Could Be Overstated. If counties continue to send fewer offenders, especially the less serious offenders, to the Youth Authority, the department's populations will decline more than projected. This would result in the amount of reimbursements from counties being less than what the Youth Authority projects. As a consequence, we withhold recommendation on the Youth Authority's proposed \$43 million in reimbursements, pending receipt and review of the Youth Authority's revised population estimates at the time of the May Revision.

TANF Funds Increasing For Probation Departments

In the current year, counties received \$174 million in federal Temporary Assistance for Needy Families (TANF) funds for probation services for juvenile offenders. This will increase to \$200 million in the budget year as a result of an additional \$26 million in TANF funds. These funds appear to offset any increased county costs of new fees and allow for the creation of appropriate placements for offenders that previously would have been sent to the Youth Authority.

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. County probation departments also use a variety of other placement options. For example, juvenile offenders can be placed in foster care or group homes, or in nonresidential 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.

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. Subsequently, the federal government approved federal Title IV-A (emergency assistance) funding on an interim basis for such services for juveniles. 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, Congress enacted federal welfare reform which established a federal block grant for providing financial assistance to needy children and their parents. Under the block grant, the state can use a portion of these funds for juvenile probationers.

In response to federal welfare reform, the California Legislature established the California Work Opportunity and Responsibility to Kids (CalWORKs) program in 1997. The CalWORKS law specifically provided that TANF funds could be used to provide probation services to juvenile offenders. In the current year, counties received \$141 million in TANF block grant funds for juvenile offenders under the care of probation departments. In addition, counties with ranches and camps received an additional \$33 million in TANF funds for support of these juvenile facilities. Consequently, a total of \$174 million in TANF was allocated to county probation departments.

Increasing TANF Aid to County Juvenile Detention Facilities. The budget includes an augmentation of TANF funds for county probation departments to address increased caseload. Specifically, the budget proposes \$167 million, an increase of \$26 million, or 18 percent, above the current-year amount. The budget also continues the \$33 million from TANF for counties with juvenile ranches and camps. As a result, the budget proposes allocating \$200 million from TANF to county probation departments to provide services to juvenile offenders.

Impact of Federal Funds on Local Placements. There is no statewide data available on how county probation departments have used the TANF monies in the current year. However, some county probation departments have reported that they have increased programming for juvenile offenders at the local level, thus allowing them to avoid Youth Authority commitments. Other counties report that some of the new TANF funds have been substituted for existing county discretionary funds spent on probation services and therefore have not resulted in increased probation funding.

As a result of the TANF funds, counties have a source of funds to either defray whatever costs they might incur as a consequence of the new Youth Authority fees or develop alternatives to Youth Authority placements. Furthermore, the significant amount of funding available under the TANF probation grants should allow counties to continue to decrease there reliance on placements in the Youth Authority and accordingly, reduce future sliding scale fee costs. Notwithstanding the overall decrease in Youth Authority placements, the allocation of \$200 million to counties for juvenile offenders is substantially more than the estimated \$43 million that counties will reimburse the state for Youth Authority placements.

As Parole Populations Decrease, How Will the Youth Authority Supervise Wards in the Community?

We recommend that the Legislature adopt supplemental report language directing the Youth Authority to report on how it will address projected declines in the parole populations, including an assessment of alternative models for providing parole services.

The Youth Authority parole population is projected to decrease by 14 percent through 2001-02. The decrease is the result of a variety of reasons. Fewer commitments and the elimination of Youth Authority parole supervision of CDC inmates—resulting from the "M case" transfers—will cause part of the decrease in parole populations. In addition, due to the implementation of sliding scale fees, there has been almost a 40 percent drop in commitments of less serious offenders (categories 5, 6, and 7). As a consequence, there will be fewer parolees released into the community for parole supervision in the near future.

The Youth Authority budgets for parole services and agents based on parole populations. The caseload ratios for determining the number of parole agents, and parole offices and services, are generally based on the number of wards paroled. The anticipated decrease in the number of parolees will result in a significant reduction in the number of parole agents and might also require closing parole offices. Although there may be fewer parolees in the future, they will still continue to be geographically dispersed throughout the state.

New Models Should Be Considered. Declining parole caseloads raise questions about the number of parole agents and parole offices that will be needed in the future. Typically, as caseloads decline, the department would have to reduce the number of agents and possibly close or consolidate some offices. This could have a negative impact as parole agents will have to cover a larger geographic area and spend less time supervising parolees. This could both reduce public safety and the chances of parolees' success in the community.

We believe that these caseload reductions may require the department to deliver parole services differently than it does under its existing model. For example, if the Youth Authority needs to reduce staff, but also needs to ensure that geographically dispersed parolees are properly supervised, it might consider developing cooperative arrangements with either CDC parole or county probation departments. Such arrangements would recognize that the majority of Youth Authority parolees are adults when they leave the institutions and return to the community. For those that require supervision, but only need limited parole services, local law enforcement agencies or existing law enforcement task forces might be another alternative for parolee monitoring. For younger parolees or those that need specific services when they return to the community, such as sex offenders, gang members, or those with serious mental illness, the Youth Authority might consider developing purchase of service agreements with community-based organizations. Regardless of the model selected, it is important that the Youth Authority begin evaluating alternatives that take into account declining parole caseloads and also determine how best to protect the public.

Analyst's Recommendation. We recommend that the Legislature adopt supplemental report language directing the Youth Authority to report on how it will address the declining parole population in the next several years. The report should evaluate alternative models that are cost-effective in providing parole services and supervising parolees in the community. We recommend that the report be submitted by September 1, 1998 in order for its findings to be incorporated into the 1999-00 Governor's Budget. The following language is consistent with this recommendation.

The Department of the Youth Authority shall report to the Joint Legislative Budget Committee and the Legislature's fiscal committees by September 1, 1998, on its plans to address the declining parole populations. The report shall include, but not be limited to: (1) an estimate of parolee populations through 2002-03, including information on the characteristics of the pro-

jected population, the geographic location of the population, and a description of what special services might be needed (such as services for mentally ill parolees); (2) its estimate of how the decline in population will result in reductions in the number of parole agents and whether the reductions will necessitate the consolidation or closure of parole offices; (3) a description of alternative cost-effective models for providing parole services; and (4) its plan for implementing new models, with its estimates of new resources, and the redirection of existing resources.

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

We recommend that the Youth Authority report, during budget hearings, on the results of its treatment needs assessment. This report on Youth Authority program needs is due March 1, 1998. The report will show what rehabilitative programs are needed as the Youth Authority population changes.

In last year's *Analysis*, we recommended that the Youth Authority update its Treatment Needs Assessment. In response to that recommendation, the Legislature adopted 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. The report is due March 1, 1998. As indicated above, 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. It is likely that the population will be more violent, younger, and will have longer lengths of stay.

The new assessment will evaluate the needs for all of the Youth Authority's rehabilitation 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.

The Youth Authority should be prepared to discuss the results of its needs assessment at budget hearings and make recommendations for improvements and evaluation of its rehabilitative programs at that time.

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 data on the costs and success of the program are limited.

Budget Proposal. The Youth Authority is requesting continuation of \$109,000 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 \$100,000 for the current year for this program to provide tattoo removal for wards who meet specified criteria. In addition, the 1997-98 Budget Act and Chapter 907, Statutes of 1997 (SB 526, Hayden) provide for the use of Youth Authority laser tattoo removal equipment to be used by community organizations for tattoo removals of probationers.

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 laser-removal equipment for three institutions and has contracted with dermatologists to perform these services. Both wards and probationers from communities near Youth Authority facilities have had tattoos removed in 1997.

Data on the tattoo removal program indicate that, between July 1, 1997 and December 31, 1997, 182 wards had received 230 treatments. Only 18 tattoos had been completely removed. The total costs for all of these treatments was \$28,674.

Even if the Youth Authority continued to treat the same number of wards in the second half of the current year, it will not fully expend the \$100,000 appropriation for this program. Furthermore, data from the first six months of the program shows that the average total cost per treatment was \$158. The budget year request is based on an average cost of \$200 per treatment.

Analyst's Recommendation. Since the Youth Authority has only limited data on the number of wards that will receive tattoo removals and because costs appear to be lower than expected, we recommend that the Legislature adopt the following budget bill language limiting the use of these funds.

Of the funds appropriated in this item, \$109,000 is for voluntary tattoo removal. Any funds not used for this purpose shall revert to the General Fund.

Internal Affairs Positions Should Be Transferred to the Agency's Inspector General

We recommend that internal affairs activities of the Youth Authority and the Department of Corrections be consolidated in the Youth and Adult Correctional Agency (YACA). Consequently, we recommend that the Legislature deny the budget request for \$274,000 from the General Fund to add four additional internal affairs investigators. These positions, along with existing internal affairs staff (\$479,000 and three positions), should be transferred to YACA.

The budget requests \$274,000 and four lieutenant positions for internal affairs investigations. The Youth Authority currently has three investigators, and the request would substantially expand the internal affairs component for the department. Recent events at various Youth Authority institutions indicate a need for increasing internal affairs investigation activities, for criminal investigations of allegations against staff, and to investigate criminal acts of wards. A recent evaluation of a Youth Authority internal affairs investigation by YACA's Inspector General identified many weaknesses in the current Youth Authority program.

While the requested increase in internal affairs positions may be justified on a workload basis, we are recommending denial of the Youth Authority request and instead recommend consolidation of internal affairs activities in the YACA Inspector General's Office. We believe that consolidation will result in more effective and consistent use of investigatory resources. Thus, we recommend that the Legislature deny the requested augmentation and instead place the new positions in the YACA budget. In addition, we recommend that \$479,000 and three positions currently in the Youth Authority's base budget be transferred to YACA. (Please see YACA analysis earlier in this chapter.)

Youthful Offender Parole Board (5450)

The Youthful Offender Parole Board (YOPB) is the paroling authority for all juveniles committed by the juvenile court to the Department of the Youth Authority. The YOPB is composed of seven members appointed by the Governor.

A board member or a hearing officer, known as a board representative, reviews the Youth Authority program proposed for each ward as the ward enters custody. At this initial review, the board sets a parole consideration date based on the ward's commitment offense. Subsequent to the initial review, the board reviews the ward's progress annually, or if the ward commits an infraction in the institution. For certain infractions, the board may add time to the ward's date for parole consideration. The board determines when a ward will be paroled and decides whether parole violators will be returned to the Youth Authority.

The budget proposes total expenditures of \$3.3 million from the General Fund for the YOPB in 1998-99. This is \$12,000, or less than 1 percent, more than current-year expenditures. The increase is for the costs of implementing the new collective bargaining agreement.

Ward and Parolee Population **Declines Should Result in Savings**

We withhold recommendation on the board's \$3.3 million budget pending receipt and analysis of the revised budget proposal and population projections to be contained in the May Revision.

The Youth Authority's ward and parole populations have decreased significantly in recent years and are projected to decrease even more by the end of the budget year. Specifically, the ward population has dropped from a high of 10,114 wards as of June 30, 1996 to 8,452 as of December 31, 1997, a decrease of 16 percent. The Youth Authority projects that the ward population will decrease further to 8,315 wards by June 30, 1999. The parole population for June 30, 1998 is projected to be 6,120, declining to 5,465 by June 30, 1999.

These reductions are principally the consequence of recent changes in law that (1) required certain offenders to be housed in state prison rather than the Youth Authority and (2) raised fees that counties pay to the state when placing offenders in the Youth Authority, thus providing incentives to counties to treat more youthful offenders locally.

Our review of the Youth Authority's population projections indicates that it may decline even beyond the department's estimates for both the current and budget years. For example, on January 7, 1998, the Youth Authority population was 8,419, however, the Youth Authority had projected that it would be 8,520 as of that date.

As the Youth Authority population decreases, the workload of the YOPB also will decline. For example, there would be less of a need for initial and annual reviews of wards and fewer wards would be paroled. However, the YOPB's 1998-99 budget request has not been adjusted downward to account for these decreases. Given the potential of continued decreases in Youth Authority populations, and the commensurate decline in YOPB workload, we withhold on the YOPB budget pending receipt and analysis of the revised ward and parole population projections to be submitted with the May Revision.

TRIAL COURT FUNDING (0450)

Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle), enacted the Lockyer-Isenberg Trial Court Funding Act of 1997. This measure made major changes in the state's financial responsibility for support of the trial courts (superior and municipal courts). The measure, which takes full effect in the budget year, supercedes a previous measure that had established a different funding responsibility—the Trial Court Realignment and Efficiency Act of 1991 (Chapter 90, Statutes of 1991 [AB 1297, Isenberg]).

The budget proposes total expenditures in 1998-99 of \$1.8 billion for support of the Trial Court Funding Program. This is \$147 million, or 9.2 percent, greater than estimated current-year expenditures.

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

- \$606 million transferred from the General Fund to the Trust Fund.
- \$605 million transferred by the counties.
- \$225 million in fine and penalty revenues.
- \$244 million in court fees.

In addition to these amounts, the budget proposes \$50 million from the General Fund for the new Judicial Administration Efficiency and Modernization Fund, \$24 million from the Trial Court Improvement Fund, and \$1.4 million for the Family Court Trust Fund. The revenues to the Improvement Fund and Family Court Trust Fund come from court fines.

There are two components of funding for the trial courts: (1) Trial Court Funding (Item 0450) and (2) Contributions to the Judges' Retirement Fund (Item 0390). Figure 25 shows proposed expenditures for the trial courts in the past, current, and budget years. We discuss the elements of Item 0450 below.

Figure 25			
Trial Court Funding Program			
1996-97 Through 1998-99			
	Actual 1996-97	Estimated 1997-98	Proposed 1998-99
Trial Court Funding (Item 0450)			
Trial court operations	\$1,554.8	\$1,568.5	\$1,642.3
Assigned judges program	16.3	19.4	19.4
Judicial Efficiency and Modernization	_	_	50.0
Trial Court Improvement	_	17.8	40.6
Family Court Trust		0.7	1.4
Subtotals	\$1,571.1	\$1,606.4	\$1,753.7
Judges' Retirement Fund (Item 0390)	\$52.8	\$60.4	\$85.7
Totals	\$1,623.9	\$1,666.8	\$1,839.4

TRIAL COURT FUNDING RESTRUCTURING

In September 1997, the Legislature adopted Chapter 850—the Lockyer-Isenberg Trial Court Funding Act of 1997—which resulted in (1) a major change in the way funding is provided to trial courts, (2) major new fiscal responsibility for the state, and (3) significant fiscal relief to local governments (especially counties).

The major elements of the consolidation plan are shown in Figure 26 (see next page) and are described in more detail below. While the provisions of Chapter 850 became effective in the current year, many of the General Fund costs take effect in 1998-99.

County Costs for Courts Capped. Under the new funding arrangement, county costs for support of the courts are \$890 million in the current year (roughly equivalent to the amount they paid in 1994-95). The amount is reduced to \$605 million in 1998-99 and capped at that amount in future years. As a result, in 1998-99, counties will experience savings of \$285 million in the amount of their contribution to the trial courts. This amount includes savings resulting from the state increasing its share of every county's court costs to at least 58 percent (\$274 million), and paying for all court costs of the 20 smallest counties (\$10.7 million). Figure 27 (see page 113) lists these 20 smallest counties (based on population) for whom the state will pay 100 percent of the costs of supporting the courts.

Figure 26

Major Features of Chapter 850, Statutes of 1997 Trial Court Consolidation Plan



County Costs Reduced and Capped. Establishes a cap on county contribution for support of the trial courts:

- \$890 million in 1997-98 (roughly equivalent to amounts expended in 1994-95).
- Reduced to \$605 million in 1998-99.
- Reduction in 1998-99 results in savings to counties of \$274 million and corresponding costs to state.



Twenty Smallest Counties. State pays 100 percent of court costs beginning in 1998-99 (state costs/county savings: \$10.7 million).



Future Cost Increases. State funds entirely (estimated annual cost: \$30 million to \$80 million).



Fine and Penalty Revenues. Counties transfer these revenues to the Trial Court Trust Fund (rather than the General Fund) equivalent to amount transferred in 1994-95; counties retain any growth in revenues.



Revenue to Cities. Cities keep all fine and penalty revenues (for citations issued within city limits) that are currently remitted to the state, beginning in 1998-99 (revenue gain to cities: \$61.9 million). State General Fund makes up the loss.



"Donor Counties." State provides additional funds to five counties that currently remit more in revenue to the state than they receive for support of courts (state costs/county savings of \$4.3 million 1998-99).



Court Filing Fees. Increased to generate additional revenues (\$43.1 million 1997-98 and \$86.2 million in 1998-99).



New Funds. New Judicial Administration Efficiency and Modernization Fund to be expended to promote improvements and efficiencies in court operations (\$50 million 1998-99).

Figure 27					
Trial Court Funding Counties That Will Make No County Contribution					
Alpine	Glenn	Modoc	Siskiyou		
Amador	Inyo	Mono	Tehama		
Calaveras	Lake	Plumas	Trinity		
Colusa	Lassen	San Benito	Tuolumne		
Del Norte	Mariposa	Sierra	Yuba		

State Responsible for Future Cost Increases. Because the costs to counties is capped, the state will be responsible for all future growth in trial court costs, including costs resulting from workload increases, inflation adjustments, and new programs. Based on historical experience, we estimate that the annual increases will probably be in the range of \$30 million to \$80 million. For 1998-99, the budget proposes \$50 million for growth and new programs, in addition to \$13.2 million for partial-year funding of 40 new judgeships that will be established in the budget year (the new judgeships will cost \$16 million on a full-year basis).

Change in Fine and Penalty Remittances. Historically, counties and cities remitted fines and penalties to the state General Fund to offset the state's cost of operating the trial courts. Beginning in 1998-99, counties will remit to the Trial Court Trust Fund (rather than the General Fund) an amount of fines and penalties equivalent to the amount they remitted in 1994-95. Thus, counties will be able to retain any growth in fine and penalty revenues. In addition, beginning in 1998-99, cities retain all of their fine and penalty revenues and the state will make up the revenue loss (about \$62 million) from the General Fund.

"Donor Counties" Adjustments. Beginning in 1998-99, the state will ensure that no county submits more in fine and penalty revenues to the state than it receives from the state for trial court support. This will result in costs to the state of \$4.3 million, and savings to the affected counties (currently: Placer, Riverside, San Joaquin, San Mateo, and Ventura) of a like amount.

New Civil Court Filing Fees. The Legislature approved increases for court filing fees to generate additional revenue to support the courts

through the Trial Court Trust Fund. The increase will result in additional revenues of \$43 million in the current year and \$86 million in 1998-99.

New Fund to Initiate Court Improvements. The measure created a new Judicial Administration Efficiency and Modernization Fund (JAEMF). The fund, which would be administered by the Judicial Council, would be used to promote improved access, efficiency, and effectiveness in trial courts that have unified their operations to the fullest extent permitted by law. The budget proposes \$50 million from JAEMF.

New Funding Arrangement Provides Significant Fiscal Relief to Counties and Cities

The shift in fiscal responsibilities and some of the other changes contained in the trial court funding restructuring measure will provide significant fiscal relief to local governments in 1998-99 and annually thereafter.

As a result of the restructuring plan the state is providing significant fiscal relief to counties and cities. For 1998-99, the state is providing fiscal relief of approximately \$351 million to counties and cities including:

- \$285 million in reduced trial court funding contributions for counties (and no contributions from the 20 smallest counties).
- \$62 million for returning 100 percent of city traffic fine and penalty remittances to cities.
- \$4 million for reduced fine remittances from certain counties.

In addition, counties and cities should receive even more relief because of the provisions that allow them to retain any growth in fine and penalty revenues.

For the future, the measure should result in substantial long-term savings to counties because of the provisions of the measure that cap their contributions for support of the trial courts in perpetuity.

Continuing Challenges of Governance and Accountability

Due to the potentially significant cost increases for the Trial Court Funding Program in the future, it will be important for the Legislature to continue to closely monitor issues of trial court governance and accountability. Although consolidation of trial court funding was an important step in creating a statewide, unified judicial system, there are several issues related to governance and accountability that the Legislature will want to continue to monitor.

As we have previously indicated, the proposal will likely result in significant cost increases to the state in future years. 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. The state's General Fund share of the increase in court operations is supplemented by an increase in court filing fees—\$43 million in the current year (half-year increase) and \$86 million in the budget year. While increasing court-related fees to support the trial courts is an option that the Legislature could continue to use in the future, it is likely that future funding increases will need to be provided primarily from the General Fund.

For this reason, it will be important for the state to ensure that the issues of *governance*—making certain that the state has control over trial court operations and expenditures—and *accountability*—making sure that trial courts are responsible for their operational and financial decisions—make sense in the new system. 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. The steps that will need to be taken include developing a new structure to govern trial court personnel that provides greater state oversight and management of personnel costs, a budgeting process based on programmatic and performance outcomes rather than court functions, and a funding allocation system that encourages courts to coordinate and become more efficient. As we discuss below, the Judicial Council is currently in the process of developing a number of these new structures and processes.

Task Forces Created to Study Personnel and Facilities Issues

Chapter 850 establishes task forces to study two important issues: governance and responsibility for court personnel and court facilities. While the final reports for these task forces will not be submitted to the Legislature for several years, the task forces will begin their work in the current year.

Previously, we have outlined several issues with regard to governance of trial court employees and responsibility for court facilities. For example, we noted that the consolidation does not link the management and the funding of court personnel. The absence of such a link allows the counties to continue to set salary and benefit levels for court employees, but makes the state responsible for funding 100 percent of any increase in personnel costs. For the budget year, locally negotiated cost-of-living adjustments (COLAs) for court employees will amount to approximately \$30 million.

Task Forces to Begin Studies in the Current Year. Chapter 850 established two task forces to examine and make recommendations to the Legislature on two significant areas regarding the change in state and local responsibility for funding the courts.

First, the measure established a task force on trial court employees to recommend an appropriate personnel structure for employees, including examining whether personnel should be court employees, county employees, or state employees. The task force on court employees will submit an interim report by January 20, 1999, and its final report to the Legislature, including recommendations with regard to a system of governance for trial court employees by June 1, 1999. The task force will be meeting and establishing operating procedures in early 1998. The proposed Judicial budget includes \$736,000 from the General Fund to support the activities of the task force in 1998-99.

Second, the measure also establishes a task force on court facilities in order to make recommendations on court facility maintenance, improvements, and expansion. The task force will reexamine the specific responsibilities of the state and local government for these facilities. The task force on court facilities shall submit three interim reports by July 1, 1999, July 1, 2000, and January 1, 2001, and its final report to the Legislature by July 1, 2001. The proposed Judicial budget includes \$1.5 million for an evaluation of court facilities across the state and to support the work of the task force on court facilities in the budget year.

Judicial Council Is Changing Budget Development Process

The Judicial Council is proposing changes to the current budget development process in order to create a process designed to retain local management of the trial courts while increasing accountability and focusing on outcomes. We believe that the proposed changes are important steps in the right direction.

The Judicial Council has indicated that it will be substantially changing the way that it develops the budgets for Trial Court Funding. Currently, the Trial Court Budget Commission (TCBC) is responsible for reviewing the budget requests from the trial courts and making recommendations on the budgets to the Judicial Council. Under the current process, the budgets for the trial courts are reviewed on the basis of ten identified court functions which include:

- · Judicial Officers.
- · Jury Services.
- Verbatim Reporting.
- Interpreters.
- Dispute Resolution Programs.
- Court-Appointed Counsel.
- Court Security.
- Information Technology.
- Staff and Other Operating Expenses.
- · Indirect Costs.

This process was used to develop the 1998-99 budget proposal. Specifically, the Judicial Council and the TCBC reviewed budget requests from the trial courts for expenses by function and compared the function costs among courts of similar size.

The budget is based on augmentations to certain functions (such as information technology), rather than programs (such as child mediation services). We have identified a number of problems with this approach in the past. The functional method does not tie funding to performance measures. Additionally, some functional categories are so broad that they cannot be used to meaningfully monitor expenditures. For example, more than one-third of the total expenditures falls into a single function: staff and other operation expenses.

Council Is Changing Budget Process. The Judicial Council is in the process of changing the rules by which it reviews and approves the budgets for the trial courts. The proposed changes are intended to respond to concerns raised by both the Legislature and from within the judicial branch. The Judicial Council has proposed new rules which would change the composition, selection, and duties of the TCBC. Specifically, the Judicial Council is proposing to (1) use outcome measures as perfor-

mance standards; (2) budget by program, rather than historic budget based on the various court functions; and (3) develop new criteria for the distribution of trial court funds. Additionally, the Judicial Council is proposing to reduce the number of members on the TCBC and include trial court executives and administrators as voting participants.

We believe that the changes being contemplated by the Judicial Council make sense. While the Judicial Council is still addressing the issues of developing criteria for allocation of funds and deciding how the new budget development process will work, we think that it is making steps in the right direction.

BUDGET ISSUES

Budget Proposes \$50 Million for Growth

We recommend that the Legislature adopt supplemental report language directing the Judicial Council to report on its criteria and allocation of \$50 million in growth funds among the trial courts in 1998-99.

The proposed budget for Trial Court Funding includes \$50 million for growth and judicial branch priorities, including:

- \$29.6 million for courthouse security.
- \$5.1 million for criminal caseload growth.
- \$2.7 million for civil caseload growth.
- \$6.6 million for court interpreter services.
- \$6 million for court-appointed counsel in juvenile dependency cases.

According to the Judicial Council, these requests represent the highest priorities as determined by a review of all the requests from the trial courts.

Due to the current process for budgeting in the trial courts, it is not known how the requested increase will be allocated among the trial courts or exactly what the funds will provide. In previous years, the Judicial Council would have allocated all state-provided funds based on an allocation formula with each court receiving a percentage based on historical factors such as size of the county and perceived county fiscal health. This year the Judicial Council will be developing new allocation criteria.

Thus, we recommend that the Legislature adopt supplemental report language directing the Judicial Council to report on how the funding for growth is allocated to the trial courts.

Specifically, we recommend the following supplemental report language:

The Judicial Council shall report to the Joint Legislative Budget Committee and the Legislature's fiscal committees, by November 1, 1998, on the development of criteria for allocation of the proposed \$50 million in funds for growth, and identify the allocation by court.

Budget Proposes \$50 Million For New Judicial Improvement Fund

We recommend the Judicial Council report, prior to budget hearings, on the development of criteria for allocating funds from the Judicial Administration Efficiency and Modernization Fund (JAEMF), including information on the types of programs that will be funded through the JAEMF.

Chapter 850 created the JAEMF and directed that the fund may be expended to promote improved access, efficiency, and effectiveness in trial courts that have unified to the fullest extent permitted by law. As indicated earlier, the budget proposes \$50 million be transferred from the General Fund to the JAEMF in the budget year.

Chapter 850 specifies that moneys from this fund may be expended to promote improved access, efficiency, and effectiveness in trial courts that have unified to the fullest extent permitted by law. Examples cited in Chapter 850 as the types of projects that may be funded by the JAEMF include education and training for judicial officers and court administrators, technology improvements in the trial courts, incentives to retain experienced judges, and improved law clerk staffing in the courts.

Allocation Criteria Not Determined. The Judicial Council has not yet determined the specific criteria by which the money from the JAEMF will be allocated to local courts. The Council indicates that the likely criteria will include such factors as whether a proposal could be replicated in other jurisdictions and the cost-benefit of the proposal. In addition, recipients would likely have to complete follow-up reports on the use of the funds.

Because the criteria are not established it is not known what specific projects this money will fund. The following exemplifies the types of programs that the Judicial Council indicates it will fund:

- Expanded travel payments and expenses for assigned judges to allow increased judicial officer training.
- Scholarship funds to support training for court professional staff.
- Development and implementation of a trial court case management system for courts in the 10 or 20 smallest jurisdictions.
- Upgrading desktop computers for court employees.
- Sabbaticals for judges.
- · Increased judicial benefits.
- Creation of law clerk positions in the trial courts.

Given the discretion that the Judicial Council has with allocating funds from the JAEMF, the development of criteria for allocating the JAEMF is important. We are concerned about some of the examples provided by the council because they could require *ongoing* funding commitments from the state, such as increasing judicial benefits and creating law clerk positions. We believe that the fund should be used to purchase one-time services, such as upgrades in information technology, which are likely to increase long-run efficiency and result in cost-savings, rather than require additional annual funding allocations.

Analyst's Recommendation. For these reasons, we recommend the Judicial Council report prior to budget hearings on the development of criteria for allocating funds from the JAEMF, including providing more information on the types of programs that will be funded from this source.

Three Strikes Relief Teams Were Supposed to Be Limited Term

We recommend a General Fund reduction of \$3.5 million to eliminate the Three Strikes Relief Teams which will expire at the end of the current year. (Reduce Item 0450-101-0932 by \$3.5 million and Item 0450-111-0001 by the same amount.)

In the 1996-97 Budget Act, the Legislature approved an augmentation of \$3.5 million from the General Fund for "Three Strikes Relief Teams" made up of assigned judges who assist trial courts with backlogs of criminal cases brought about by enactment of the "Three Strikes and You're Out" law. We have several concerns with the proposal. First, the 1996-97 Budget Act specifies that the funding was to be limited to two years, and was supposed to be eliminated automatically at the end of 1997-98. Our review indicates that the Governor's budget proposal for 1998-99 retains

the funding, but does not request that the relief teams be continued temporarily or made permanent.

Second, since the teams were approved, the number of "Three Strikes" cases has stabilized statewide, reducing the need for the relief teams. Finally, the Legislature created 61 new judgeships in the past two years (we discuss the creation of 40 of these new judgeships below), which should relieve the workload in the future.

For these reasons, we recommend that funding for the teams be deleted, for a General Fund savings of \$3.5 million.

New Trial Court Judgeships

We recommend the enactment of budget bill language ensuring that any funds not used for the new judgeships be reverted to the General Fund.

Chapter 858, Statutes of 1997 (AB 420, Baca) established 40 new trial court judgeships in the budget year. The judgeships are to be allocated to specific superior and municipal courts throughout the state based on findings in a report on judgeship needs to be submitted by the Judicial Council. The report is to consider such factors as court workload and efforts to coordinate or unify court operations in order to improve efficiency and reduce the need for additional judgeships.

Chapter 858 provides that the Governor could appoint the new judges in 1998-99 following an appropriation by the Legislature to pay for the judgeships in the Budget Act. The budget proposes that appropriation—\$13.2 million for partial-year funding of the proposed judgeships. We estimate that the full-year costs of 40 new judgeships and associated staff would be about \$16 million.

The Judicial Council has released its analysis of the 40 new judgeships to meet the highest critical need. The council's report ranked the 40 judgeships in priority order; Figure 28 (see next page) summarizes the courts that would receive new judgeships under the priority rankings. As the figure shows, the 40 new judgeships would be distributed across 16 counties.

The needs assessment that the Judicial Council performed consisted of two primary components: (1) an evaluation of quantitative and qualitative information, including workload indicators and time standards for processing of civil and criminal cases, and (2) a review to determine whether the court had received approval of its two-year court coordination plan for 1997-98 and 1998-99.

Figure 28 Trial Court Funding Proposed New Judgeships

Court Name	Number of Judges
Alameda Superior	3
Butte Consolidated	1
Contra Costa Coordinated	1
Fresno Consolidated	2
Los Angeles Superior	10
Orange Superior	3
South Orange Municipal	1
Riverside Consolidated	2
Sacramento Consolidated	4
San Bernardino Consolidated	4
San Diego Superior	3
San Francisco Superior	1
San Joaquin Superior	1
San Luis Obispo Superior	1
Sonoma Consolidated	1
Ventura Coordinated	1
Yolo Consolidated	1
Total	40

Not all the courts listed in Figure 28 with the highest need have an approved two-year coordination plan. Specifically, the courts in Los Angeles County (ten proposed judgeships) and Orange County (four proposed judgeships) do not have approved plans. The proposed judgeships for these two courts were included on a provisional basis, provided the courts submit clarification of issues raised regarding their proposed coordination plans by the end of March.

Analyst's Recommendation. Because it could be some time before persons are appointed to the new judgeships, we believe that the Legislature should adopt budget bill language to ensure that the funds appropriated for new judgeship are used only for those purposes and that any unused funds should revert to the General Fund.

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

Any funds included in this item for support of new trial court judgeships that are not used for that purpose shall revert to the General Fund.

Trial Court Coordination Efforts Continue

The Judicial Council has made positive steps toward furthering the coordination of judicial and administrative resources in the trial courts. A constitutional amendment will be before the voters in June 1998 that, if approved, could result in more court consolidation and coordination. Given the state's new financial responsibility for trial courts and the potential savings resulting from coordination, we believe that it will be important for the council and the Legislature to continue to monitor implementation of the coordination requirements.

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 in cases. 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.

Although trial court coordination requirements have existed in statute since 1991, courts were given considerable independence in coordinating their operations. No standards existed by which to measure the statewide coordination efforts of trial courts until 1995.

Progress Towards Implementation of Coordination Plans. The courts are required to submit biannual coordination plans for approval by the Judicial Council. The deadlines for submitting coordination plans for 1997-98 and 1998-99 were delayed so that the council could perform a complete review of the status of implementation of coordination plans. By the end of February, the Judicial Council will release a review which will provide a county-by-county assessment of the level of coordination and the status of the implementation of coordination plans within the courts. The report will be based on reviews of court coordination plans, on-site visits to courts, and other available documentation.

Level of Coordination Has Increased. In our discussion with the Judicial Council and with administrators from around the state, we found that although the level of coordination among courts still varies substantially,

in the last year many courts have made significant changes to become more coordinated. For example, in many counties administrative operations of the courts have been completely or partially merged. In other counties, there is substantial judicial coordination through cross-assignment. For several counties, all operations (judicial and administrative) have been totally consolidated. In a few counties there have been few coordination efforts implemented.

A number of factors appear to have resulted in the reported increase in coordination including: (1) the enactment of the trial court funding consolidation plan, (2) incentives provided by the Legislature, such as provisions of Chapter 858 which specified that coordination would be among the factors considered in establishment of the 40 new judgeships, and (3) the strong support for coordination by the Chief Justice on his tour of courts in every county.

Constitutional Amendment Could Result in More Court Consolidation. In 1996, the Legislature enacted SCA 4 (Lockyer), which will be before the voters on the June 1998 ballot. This measure would permit superior and municipal courts within 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.

More Incentives Needed. Now that the state has taken over primary responsibility for funding the courts, it is 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 judgeships in the future 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.

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 support for the superior and municipal courts. (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 \$263 million for support of these judicial functions in 1998-99. This is an increase of \$32 million, or 14 percent, above estimated current-year expenditures. Total General Fund expenditures are proposed at \$217 million, an increase of \$27.4 million, or 14 percent above current-year expenditures.

The increase in the Judicial budget is primarily due to requests for: (1) caseload and rate increases for the Court-Appointed Counsel (CAC) Program and creation of the California Habeas Research Center (CHRC) (\$10 million), (2) judiciary facility relocation and cost increases (\$7.8 million), and (3) new programs in the Judicial Council and Administrative Office of the Courts (AOC) (\$6.9 million). We discuss some of these proposals below.

Uncertainties About CAC Program for Capital Cases

We withhold recommendation on \$1.4 million from the General Fund for the Court-Appointed Counsel Program in the Supreme Court, pending receipt and review of updated expenditure and caseload projections at the time of the May Revision.

The budget requests \$6.7 million for the CAC Program in the Supreme Court. This an increase of \$1.4 million, or 21 percent, over current-year expenditures. According to the Judicial Council, the increase is needed to

The CAC Program hires private attorneys for indigents to provide appellate defense services in death penalty and other cases. There are currently about 100 private attorneys serving as court-appointed counsel in about 125 death penalty cases that are on direct appeal before the Supreme Court. In addition to these private attorneys, the Office of the State Public Defender (OSPD) and the newly created CHRC also handle death penalty appeals cases. (We discuss the expansion of the role of OSPD and the creation of CHRC in more detail in the Crosscutting Issues section earlier in this chapter.)

Uncertainties in Projected Expenditures. Historically, the expenditures for this program have been difficult to project. In previous years, the projected expenditures have been significantly different from actual expenditures. For example, in December 1996, the Judicial Council sought a deficiency of \$954,000. By the end of the fiscal year, however, the program had savings of nearly \$300,000.

Recent Changes in the Program Make Estimating Even More Difficult. The Judicial Council is anticipating that additional appointments of private counsel will be made in the budget year as a result of (1) an increase in the rate paid to attorneys from \$98 per hour to \$125 per hour, and (2) separate appointments for the direct appeal of death penalty cases and habeas corpus proceedings. Both of these changes took place in the current year. However, the Judicial Council had little information on the impact of these changes when it was developing its expenditure projections for 1998-99.

By the time of the May Revision, the Judicial Council should be able to provide additional analysis on the impact of these changes on the projected expenditures for the budget year. For this reason, we withhold recommendation on the proposed \$1.4 million increase pending receipt and analysis of updated expenditure and caseload information at the time of the May revise.

Appellate Project Increase Not Justified

We recommend a General Fund reduction of \$498,000 for the Supreme Court Appellate Project because the proposed increase is not justified on a workload basis. (Reduce Item 0250-001-0001 by \$498,000.)

The California Appellate Project, San Francisco (CAP-SF) is a nonprofit corporation which contracts with the Supreme Court to provide assistance to private counsel who are appointed to capital appellate cases. Histori-

cally, the CAP-SF has provided assistance to attorneys for both direct appeal death penalty cases and habeas corpus proceedings. The budget requests \$2.1 million for the CAP-SF contract in 1998-99, an increase of \$498,000, or 24 percent, over the current-year contract amount. According to the Judicial Council, the increase is needed because of an increase in workload. Between 1994-95 and the current year, the cost of the contract has increased at an average annual rate of 6 percent.

Legislation Limits Workload. Chapter 869, Statutes of 1997 (SB 513, Lockyer), which was enacted in September 1997, created the CHRC, expanded the role of the OSPD, and changed the process for appointing counsel in capital appeal cases. Under these changes, the CHRC will be responsible for handling habeas corpus proceedings, as well as providing assistance to private attorneys appointed to handle habeas proceedings. (We discuss these changes in further detail in the Crosscutting Issues section earlier in this chapter.)

As a result of these legislative changes, we believe that the types and numbers of cases for which CAP-SF provides assistance will be limited. Specifically, with the establishment of the CHRC, the duties of CAP-SF will change to focus primarily on assistance to private counsel in direct appeals. (The CAP-SF, however, will continue to provide assistance in habeas corpus proceedings for which counsel is *already* appointed.)

Based on our review, we conclude that CAP-SF will not be experiencing a workload increase, particularly given the changes made by Chapter 869. Given the changes, we recommend that the proposal be denied, for a General Fund savings of \$498,000. Further, we note that the CAP-SF contract may need to be reduced in future years as the CHRC becomes fully operational and reduces the workload of CAP-SF.

Attorneys to Review PUC Matters Overbudgeted

We recommend a General Fund reduction of \$472,000 and five attorney positions requested for review of Public Utilities Commission matters because the request is overbudgeted. (Reduce Item 0250-001-0001 by \$472,000.)

The budget requests \$567,000 from the General Fund and six attorney positions to conduct reviews of Public Utilities Commission (PUC) matters in the courts of appeal. Chapter 855, Statutes of 1996 (SB 1322, Calderon), authorizes appellate court review of certain adjudicatory decisions made by the PUC (prior to Chapter 855, these cases went directly to the Supreme Court). The legislation allows parties to petition for

a writ of review in the courts of appeal. Due to this increase in workload, the appellate courts are requesting one additional writ attorney in each of the appellate districts.

The PUC estimates that as a result of the statutory changes, it will receive 180 applications for hearings per year, leading to an estimated 125 filings with the courts of appeal. Our review indicates that annual workload for writ attorneys in 1996-97 was 342 writs of review per attorney. Based on this workload, we believe that only one new writ attorney position is justified. We believe that this position can be established in the district with the largest workload and can provide assistance to writ attorneys in the other districts from a central location. Thus, we recommend a reduction of \$472,000 and five attorney positions.

Temporary Law Clerks Program Should Be Limited Term

The Judicial Council has requested \$947,000 in temporary help funds for a Temporary Law Clerks Program in the appellate courts. We believe that the proposal has merit, but should be limited to two years in order to evaluate its effectiveness. In addition, because of the high cost of the proposal in the second year, we recommend that the Judicial Council reevaluate the second-year component and submit an amended proposal to the Legislature prior to budget hearings.

The budget proposes \$947,000 in temporary help funds in order to establish the equivalent of 21 research attorneys to create a law clerk program in the courts of appeal. The Judicial Council is proposing the clerkship program in order to reduce the backlog of cases in the courts of appeal.

The program would create two-year clerkship positions in the courts of appeal. For the first two years, law clerks would work in the Fourth District Court of Appeals, Divisions 2 and 3, and the Fifth District Court of Appeals. After that time, the program would be rotated to other courts. The clerks would be initially hired as research attorneys in the first year and promoted to senior attorney positions in the second year.

The program is proposed to begin in October 1998 and the Judicial Council is proposing that the funding be permanent. The Judicial Council indicates that the use of the program will provide a basis for assessment of the value of the program for application in other districts.

Analyst's Recommendation. We believe that there is merit to a program to use law clerks to help reduce backlogs in certain appellate districts. However, before the program becomes permanent, we believe that

an evaluation of the program should be performed to assess its value. Therefore, we recommend that the funding be established as two-year limited term, rather than permanent. For 2000-01, the Judicial Council can request funding the program based on an evaluation of the effectiveness of the program during a two-year pilot phase.

We are concerned, however, with the high cost of the proposal in the second year due to the proposed salary increase for the positions. Specifically, the positions would be initially hired as research attorneys for a monthly salary of \$3,694. After 12 months, the monthly salary is proposed to increase to \$6,380 (a 73 percent increase), which is equivalent to a Senior Attorney IV position. These are not career positions that the Judicial Council is proposing, but rather clerkship positions for recent law school graduates. A clerkship in the courts of appeal should attract top quality law school graduates in the same way that a clerkship in the federal courts does without the need for a 73 percent salary increase after a single year of experience. We believe that the Judicial Council should reevaluate this part of the request and submit an amended proposal, prior to budget hearings, to reduce the second-year costs of the program.

Conference Center Support Unit Should Be Funded From Savings

We recommend a General Fund reduction of \$132,000 proposed for new positions at an expanded conference center in the new Civic Center location because savings are available to support the request. (Reduce Item 0250-001-0001 by \$132,000.)

The budget proposes \$132,000 and four positions to provide maintenance and administrative services for an expanded and consolidated conference center (the "Judicial Center") within the new Judicial Council facility in San Francisco, which the council is scheduled to occupy in January 1999. The proposed positions are requested to provide a variety of services for the center, including (1) janitorial and facility maintenance, (2) operation of audio-visual equipment, and (3) general supervision of clerical and mailing activities. The center will be used primarily to hold meetings for the Judicial Council and its committees and administrative staff, and for training of appellate and trial court judges. The Judicial Council estimates that 500 meetings, seminars, and education classes will be held annually at the center.

Judicial Center Positions Should Be Funded From Savings. The Judicial Council indicates that approximately 90 percent of its current seminars, conferences, and meetings are held off site in hotels and conference centers. Approval of the new center should result in savings to the council

from reduced conference room rental and service charges as a consequence of having the meetings on-site in the new San Francisco location rather than in hotels across the state. We believe that these savings should be used to fund the maintenance and administrative positions for the new center. We thus recommend that the request for \$132,000 be denied. We note that for 1999-00, once the Judicial Center is fully operational, further baseline budget redirections may be needed in order to account for other savings resulting from having a consolidated conference center.

Trial Court Grant and Management System Requests Are Not Appropriate

We recommend a General Fund reduction of \$430,000 and two positions for the proposed Trial Court Coordination Assistance Grant Program and for the development of a Trial Court Case Management System because these programs should be funded through the allocation of funds from the Trial Court Funding budget item. (Reduce Item 0250-001-0001 by \$430,000.)

The budget proposes \$430,000 and two positions within the budget of the Judicial Council for the proposed Trial Court Coordination Assistance Grant Program and for the development and implementation of a Trial Court Case Management System. Neither of these requests is appropriate because they propose General Fund money in the Judicial budget to support programs that should be funded through the Trial Court Funding Program. The specific proposals are discussed below.

Trial Court Coordination Assistance. The budget requests \$125,000 on a permanent basis to provide "mini-grants" of up to \$25,000 per court to assist trial courts in their efforts to implement trial court coordination. We recommend denial of this request because it is more appropriate to fund this program through the Trial Court Funding budget item. The Judicial Council has provided assistance to the courts in this area for a number of years with regional workshops, technical assistance, and some grant funds. This program should be funded through either (1) the proposed Judicial Administration Efficiency and Modernization Fund (budgeted at \$50 million in 1998-99), (2) the Trial Court Improvement Fund (budgeted at \$40 million), or (3) funds available in the Trial Court Trust Fund, all of which the Judicial Council has authority to allocate to local courts.

Trial Court Case Management System. The budget proposes \$305,000 and two positions to begin initial development of a state-sponsored automated trial court case management system in approximately ten small- to medium-sized counties. We recommend denial of this request because it is also more appropriately funded from the Trial Court Funding Program.

Within the Trial Court Funding Program, the Legislature has created the Trial Court Improvement Fund, from which monies are allocated by the Judicial Council for, among other things, automated record keeping system improvements. The Judicial Council indicates that previously these ten counties received \$671,000 from the Trial Court Funding Program to begin defining system requirements or to procure a new system. We believe that the proposal should continue to be funded from the Trial Court Funding budget item. If the trial courts want to contract with Judicial Council to provide this service, the Judicial Council should be reimbursed by these courts from their Trial Court Funding allocation, rather than granting new funds from the General Fund.

Current Budget Display Understates Assistance to the Trial Courts

We recommend that, prior to budget hearings, the Judicial Council report to the Legislature on the amount of local assistance funding provided to the trial courts through the Judicial budget item. We further recommend that the Legislature transfer local assistance funding located in the Judicial budget into the budget item for Trial Court Funding.

As indicated above, the Judicial budget includes support for the Supreme Court, the courts of appeal, and the Judicial Council. The AOC, which is within the Judicial Council budget, provides administrative support and services for all the courts in California, including the trial courts.

Given the increasing role of the state in the funding of the trial courts in the last few years, and with the enactment of the Lockyer-Isenberg Trial Court Funding Act, (Chapter 850, Statutes of 1997 [AB 233, Escutia and Pringle]), the AOC has significantly increased its role in providing assistance to the trial courts. In response to the increase in demand for support services by the trial courts, the Legislature has approved increases for the AOC budget so that it can provide additional assistance. As a result, the budget proposes a 120 percent increase (30 percent General Fund) for the Judicial Council and the AOC since 1996-97.

Our preliminary review indicates that there are substantial amounts budgeted within the AOC for financial assistance to the state's trial courts. For example, the budget proposes (1) \$39.6 million from reimbursements for a trial court commissioner system to handle child support enforcement cases, (2) \$2.5 million for grants to trial courts to establish drug courts, and (3) \$1.5 million for the Court-Appointed Special Advocate (CASA) grant program. All of these programs provide direct assistance to local trial courts. In addition, there is a Trial Court Services Division within the

AOC with a budget of approximately \$5 million and 45 positions, which provides support services to the trial courts.

The current budget presentation does not allow for appropriate legislative oversight and accountability because it does not identify the local assistance funds provided to the trial courts through the Judicial budget item. Thus, it is difficult for the Legislature to determine how much assistance is being provided to the local trial courts.

Analyst's Recommendation. We believe that state funding for the trial courts should be budgeted in one item in the annual Budget Act so that the Legislature can see how much it is providing for trial courts and weigh competing priorities for state funding. We recommend that, prior to budget hearings, the Judicial Council report the amount of local assistance funding included in the Judicial budget item. Further, we recommend that this amount be transferred to and scheduled in the Trial Court Funding budget item, or at a minimum, be placed in a local assistance program item within the Judicial budget.

High Personnel Vacancy Rate Raises Questions

We recommend a General Fund reduction of \$887,000 in the budget year for personnel services in order to better reflect the actual hiring practices of the Judicial Council. In addition, we recommend that, prior to budget hearings, the Judicial Council prepare a staffing plan that identifies vacant positions at the Administrative Office of the Courts and proposes to fill or eliminate those vacant positions. (Reduce Item 0250-001-0001 by \$887,000.)

The budget for the Judicial Council and in particular the AOC has been growing very rapidly in recent years. The budget requests a total of 334 positions, an increase of 38 positions, or 12 percent, over the number of authorized positions for the AOC in the current year.

Judicial Council Has Difficulties Filling Positions. The Judicial Council has reported difficulties in filling new positions. In the 1997-98 Budget Act, the Legislature authorized 26 new positions for the AOC, all budgeted for the full year. As of January 15, only 11 of these new positions had been filled and two were filled with employees who were converted from temporary help. The Judicial Council indicates that it has had difficulties in hiring new positions due to (1) difficulties in matching job requirements with applicant qualifications, (2) the high cost of living in San Francisco, and (3) difficulties competing with the salaries and health benefit packages offered in many trial courts.

As indicated above, the budget requests 38 additional positions for the AOC in 1998-99, all budgeted as full-year positions, not including the 60 positions for the newly created CHRC. Given the potentially large number of authorized positions that the Judicial Council will be attempting to fill, and given that the difficulties indicated above are likely to continue into the budget year, we believe that Legislature should only provide half-year funding for the new positions. Half-year funding would more accurately reflect actual salary and benefits expenditure patterns from the last several years. For example, as of January 1998, the Judicial Council has filled less than half of its new positions for 1997-98. Additionally, in 1996-97, most of the new positions approved in the prior budget were vacant for more than six months.

High Position Vacancy Rates. Our review indicates that for the past several years, the position vacancy rates for the AOC have been high. The Governor's budget indicates that the vacancy rate for the AOC was 20 percent in 1995-96 and 22 percent in 1996-97, the last two years for which actual data is available.

In recent years, it has not been unusual for state agencies to keep large numbers of positions vacant in order to generate savings to pay for merit salary adjustments or make up for unallocated budget cuts. However, the Judicial Council has rarely been the subject of an unallocated reduction and, until 1997-98, had routinely had its requests for merit salary adjustments funded. In fact, we note that the Legislature provided \$7.1 million for additional personnel services funding in 1995-96 and 1996-97. Specifically, in 1995-96, the Legislature provided \$987,000 for merit salary adjustments covering 1994-95 and 1995-96, \$3.8 million to bring the number of staff to the legislatively approved level, and \$665,000 for compensation adjustments associated with a Judicial branch staff reclassification study. In 1996-97, the Legislature provided \$903,000 for merit salary adjustments, \$208,000 to bring staffing to legislatively approved levels, and \$499,000 to complete the Judicial branch reclassification.

It does not appear that the high vacancy rates in 1995-96 and 1996-97 were necessarily anomalies. Looking at the period from 1990-91 through 1995-96, we found that actual expenditures for personnel services were about 13 percent below budgeted levels.

The vacancy situation for the budget year is unclear, given that the council anticipates transferring \$1.2 million from the AOC's operating expense budget to pay for merit salary adjustments. However, our review indicates that if the previous vacancy rates continued into the budget year, the council's personnel services budget would likely have savings of at least several million dollars.

Implications. There are two implications from these high vacancy rates. First, as discussed above, the Legislature has approved requests by the Judicial Council intended to bring staffing up to legislatively approved levels and to fund position upgrades. The AOC, however, is still holding large numbers of positions vacant. This raises questions about the effectiveness of the previous augmentations.

Second, if the council is able to effectively operate its programs with large numbers of vacant positions, it raises questions about the need for the positions and, more importantly, whether funds budgeted for personnel services are being used for purposes not approved by the Legislature. For example, in 1996-97, the Judicial Council reported generating \$2.5 million in savings, in large part by keeping positions vacant, in order to place funds in an architectural revolving fund to defray some of the anticipated costs of moving to the new San Francisco location in January 1999. Although these expenditures may be legitimate, they were never reviewed or approved by the Legislature.

Analyst's Recommendation. We recommend that the Legislature reduce the budget request by \$887,000 by funding the proposed *new* positions at the AOC for a half year rather than a full year to better reflect actual hiring practices at the AOC.

In addition, we recommend that, prior to budget hearings, the Judicial Council prepare a staffing plan that identifies vacant positions, and proposes to fill or eliminate them.

Appellate Court Security Was Supposed to Be Limited Term

We recommend a General Fund reduction of \$692,000 to eliminate an augmentation for the appellate court security program which will expire at the end of the current year. (Reduce Item 0250-001-0001 by \$692,000.)

In the 1996-97 Budget Act, the Legislature approved an augmentation of \$692,000 from the General Fund to the appellate courts for security for a two-year limited-term period. In addition, the Legislature approved supplemental report language requesting a report on the implementation of the security program and its effectiveness. The report was due by January 31, 1997.

The Governor's budget includes funding to continue to support the security program, but it contains no specific proposal or justification for the program beyond the period specifically approved by the Legislature in 1996. In addition, the required report on the implementation and effectiveness of the program, which was due more than a year ago, has not been provided to the Legislature.

We recommend that the \$692,000 be deleted in accordance with the 1996-97 Budget Act.

Rent Request Overbudgeted

We recommend a General Fund reduction of \$6.5 million requested for rent because the request is overbudgeted. (Reduce Item 0250-001-0001 by \$6.5 million.)

During the budget year, new court facilities will be completed in San Francisco and Riverside. In San Francisco, the Supreme Court, the First Appellate District, and the AOC will move into the renovated Civic Center building; and the Fourth Appellate District, Division Two, will move from San Bernardino to Riverside. The budget includes funds to pay for rent increases for these facilities. The proposed rent payments include the costs of debt-service payments on the bonds that were used to finance the construction and renovation of the buildings.

According to the Department of General Services, however, the rents for those two buildings in the budget year will not include the debt-service payments on the bonds. This will lower the rents for these buildings to include only the costs for operations and maintenance. As a consequence, the rents for these facilities will be \$6.5 million less than the amount budgeted. For this reason, we recommend these funds be deleted from the budget.

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 \$463 million for support of the DOJ in the budget year. This amount is \$8.3 million, or 1.8 percent, less than estimated current-year expenditures. The requested amount includes \$246 million from the General Fund (a decrease of \$8.8 million, or 3.4 percent), \$79.3 million from special funds, \$32.5 million from federal funds, and \$105 million from reimbursements.

The decrease is due to a reduction of \$20 million for state-mandated local programs that are displayed in the DOJ budget, although the DOJ has no administrative responsibilities for these programs. If the statemandated local programs were not displayed in the DOJ budget, the requested amount would actually reflect an increase of \$11.6 million, or 2.7 percent.

LEGAL DIVISIONS

Uncertainties Surrounding Flood Litigation

We recommend that the Legislature approve the funding requested to defend the state's interests in litigation resulting from the 1997 floods. We further recommend the adoption of budget bill language limiting the use of these funds to this purpose.

The DOJ is requesting \$774,000 from the General Fund and 18 two-year limited-term positions (including eight attorneys) to defend the state and, in particular, the state Reclamation Board and the Department of Water Resources, in anticipation of litigation arising from the January 1997 floods. Generally, litigation would not begin until after claims are filed

with and reviewed by the Board of Control. The board is still in the process of reviewing claims.

The DOJ anticipates that the state is most likely to be sued in areas where "project" levees failed. "Project" levees are levees which were originally constructed by the U.S. Army Corps of Engineers on easements acquired by the state. Once constructed, the levees were turned over to reclamation districts for operation and maintenance. The state's legal responsibility for the levees is unresolved.

Potential State Liability From January 1997 Floods. The 1997 floods created extensive property damage in a number of counties. Preliminary damage reports estimated that property damage totaled \$1.5 billion to \$2 billion. Given the extent of damage from the floods and the uncertainty of the state's responsibility for the project levees, the DOJ is estimating that a number of lawsuits will be filed against the state and state agencies. In order for property owners to pursue claims against the state, generally they must first file claims with the Board of Control within six months of property damage.

The DOJ reports that there are 287 claims filed at the Board of Control involving approximately 600 claimants. The Board of Control is in the process of reviewing an additional 50 claims on behalf of an unknown number of claimants. The DOJ indicates that two lawsuits filed by a large number of plaintiffs have already arisen as a result of the breach of the Feather River levee in Yuba County. The DOJ advises that other complaints may be filed shortly.

Issues From 1986 Flood Litigation Still Pending. Two cases stemming from the 1986 floods are still being decided in the appellate courts. The cases, Akins v. State, et al. and the Consolidated Yuba County Linda action are both constitutional questions involving inverse condemnation actions and issues of public entity liability for floods. The outcomes of these two cases affect not only the liability of the state in these cases, but also the potential liability of the state for claims surrounding the 1997 floods, as well as any future floods. Rulings in favor of the state in Akins and Consolidated Yuba County Linda could limit the state's liability in such inverse condemnation suits, while adverse rulings could significantly expand the state's potential for liability in such cases.

Other Uncertainties. There are also uncertainties involving the number of additional lawsuits that may be filed and how much workload the cases will require. Because the review process at the Board of Control is still underway, it is not clear how many lawsuits will ultimately be filed. The number of Board of Control claims that have been filed to date was not as great as the DOJ had anticipated last year. This could indicate that

there may be less litigation that will be filed against the state than was originally anticipated. Additionally, the DOJ notes that the two pending cases concerning the 1997 floods have been drafted to emphasize theories of recovery based on standard tort law rather than on constitutional inverse condemnation theories. While the outcomes of these standard tort cases will not depend upon the constitutional issues being litigated in the 1986 actions, these types of cases may be less complicated to defend.

Analyst's Recommendation. It appears that, if the number of lawsuits materializes and the size of the suits is as great as DOJ anticipates, the state's financial exposure could be significant. However, it appears that there is substantial uncertainty about the number and complexity of the cases, especially until the two cases from the 1986 litigation are resolved. Because of these uncertainties, we recommend that the Legislature adopt budget bill language limiting the use of the flood litigation funds so that it can be sure that these funds are spent for that purpose.

Specifically, we recommend the following budget bill language:

Of the amount appropriated in this item, \$774,000 is for defense of the state in cases arising from the 1997 floods. Any funds not used for this purpose shall revert to the General Fund.

DIVISION OF LAW ENFORCEMENT

Major New Effort to Combat Methamphetamine Depends on Federal Action

We withhold recommendation on the department's request for \$18 million from federal funds for implementation of the California Methamphetamine Strategy pending receipt of a report from the Department of Justice, prior to budget hearings, of its plans for hiring staff, how it will integrate the new program with existing activities, contingency plans in the event funds are one-time only, and addressing increased state costs resulting from toxic clean up. Finally, the department should report on the status of its federal fiscal year 1998 grant request for the federal funds, the mechanism for fund disbursement, and a schedule of when funds will likely be available.

The budget proposes a total of \$18 million in federal funds for 1998-99 to implement the California Methamphetamine Strategy (CALMS) for the enforcement of laws dealing with the illegal manufacture of methamphetamine. This is an increase of \$3.9 million from current-year funding for

this program. Since 1996-97, expenditures for methamphetamine enforcement activities will have increased 250 percent. For 1998-99, DOJ plans to add 138 new positions, including nine supervisors and 73 special agents.

Background. The illegal use of methamphetamine in California is growing at a significant rate. Unlike many other illicit drugs which are imported into the state, most illegal methamphetamine is manufactured in California clandestine labs. In 1994, 533 of the 809 clandestine labs seized nationwide were in California. So much illegal methamphetamine is manufactured in California that the federal Drug Enforcement Agency (DEA) has identified the state as "source country" for the drug.

The manufacture of methamphetamine requires a number of specific chemicals, known as precursors. Some of these precursor chemicals are part of the finished drug—such as ephedrine—others are needed for the production or "cooking" process, such as freon. Most of these ingredients are available from legitimate dealers or are smuggled in from Mexico. Both the apparatus used in the manufacture of methamphetamine as well as the by-products of the process are very toxic and are usually abandoned after the drug has been made.

The DOJ's Current Methamphetamine Program. In California, the DOJ is the lead agency assisting local law enforcement in seizing clandestine labs. The DOJ's special agents assigned to the Clandestine Lab Enforcement Program (CLEP) were responsible for seizing more than 850 labs in 1997. The department's Bureau of Narcotics Enforcement (BNE) is responsible for state-level narcotics enforcement and has 80 special agents and supervisors whose primary responsibility is methamphetamine enforcement. This is approximately 25 percent of BNE's total number of special agents and supervisors.

Clandestine Lab Clean Up. In addition to the costs associated with BNE's methamphetamine enforcement activities, the toxicity of illegal labs requires costly, specialized clean up. The Department of Toxic Substance Control (DTSC) assumed responsibility for the clean-up of toxic wastes at clandestine labs in 1994-95. Initially, the DTSC's expenditures for clean ups was \$3 million. In the current year, clean up costs have increased to \$8 million from the General Fund. The department is requesting an additional \$800,000, or a 10 percent increase, for 1998-99.

New Federal Funding for Methamphetamine Enforcement. The federal 1998 Commerce, Justice, and State Appropriations Bill appropriated \$18.2 million specifically to California's BNE for methamphetamine enforcement. The appropriations bill specified that funds were in support of "additional law enforcement officers, intelligence gathering and forensic capabilities, training and community outreach programs."

Although the funds are specifically appropriated to BNE in the federal bill, California will still be required to apply for this grant, although no specific requirements for the award of the grant had been finalized at the time this analysis was prepared. It is not known whether these funds will be ongoing or are one-time only.

The DOJ's Plan for the Federal Funds. The DOJ plans to significantly increase its enforcement efforts with the new federal money. While it will continue CLEP, its new activities will emphasize other types of enforcement. The DOJ's proposal for using the new federal funds assumes multiyear funding of CALMS. The proposal includes expenditures in five areas:

- Law Enforcement. The BNE plans to target precursor chemical sources, major traffickers, and methamphetamine organizations. The DOJ will continue to investigate clandestine labs, but will concentrate on other enforcement activities. This component of DOJ's proposal includes 101 new positions, 72 of which are proposed supervisory and special agents.
- *Intelligence*. Using precursor sale information and intelligence gathered at lab sites, this component will analyze data to identify chemical sources or multiple labs that appear to involve the same criminal organization. Data will be provided to methamphetamine enforcement task forces and strike teams. This component proposes ten new positions, mainly criminal intelligence specialists.
- Forensics. The Bureau of Forensic Services would add 13 staff and
 appropriate equipment to enhance its ability to provide forensic
 evidence and investigatory leads related to methamphetamine
 investigations. The proposal includes consultant contracts to develop new technologies for investigations.
- *Training/Safety.* Training and safety equipment would be developed for DOJ agents and staff and for other local law enforcement agencies. Nine positions are associated with this component.
- Prevention/Education. This component will be responsible for increasing public awareness through public service announcements and other media, and by creating materials for schools and community based organizations. The plan includes 12 positions for this component.

In addition to new staff, DOJ intends to use the federal money to purchase a variety of new equipment, including four aircraft and equipment

for field investigations that will allow chemical and latent fingerprint analyses at crime scenes. Finally, some of the federal funds will be used for overtime and the costs of storing toxic evidence.

Concerns About the CALMS Proposal. The DOJ proposal meets the criteria established in the federal appropriations bill. Additionally, the plan appears to deal with several areas of methamphetamine enforcement that have not been previously addressed. However, at the time this analysis was prepared, the federal office that will review the DOJ grant proposal had not established grant criteria or established when funding will be available. Consequently, at this time we do not know whether any part of the DOJ proposal will have to be revised to meet federal concerns.

The heavy emphasis on hiring special agents raises questions for the Legislature. If federal funding for this program is not continued next year, the state would be liable for the costs of the new agents or will have to terminate much of the proposed CALMS program. Further, in addition to the costs for the special agents, there are significant administrative costs associated with selecting and hiring agents because the agents receive extensive, and expensive, training through DOJ academies. While the federal CALMS funding would defray these costs if it becomes a multiyear program, there would not be sufficient funding to pay for new special agents if new monies are not appropriated for federal fiscal year 1999 (FFY 99). If no new funds are appropriated, DOJ will have only the remaining funds from its FFY 98 allocation (\$3.9 million) in the budget year.

The DOJ informs us that it intends to begin its selection process for new agents in the current year. However, it will not hire new agents or begin academies for CALMS special agents before the budget year. Generally, DOJ trains new agents in academies with 25 agent trainees in each class. According to DOJ, it will not begin the second academy for new agents until after federal budget deliberations are concluded for FFY 99, thus allowing DOJ to forgo hiring more agents and running other academies if funding is not appropriated for another year. In this circumstance, the agents already hired would fill other DOJ departmental vacancies, instead of adding the new methamphetamine enforcement teams. If funding is included in next year's federal budget (FFY 99), DOJ would proceed with hiring, under the belief that the state is reasonably assured that funding will be multiyear.

Finally, there is no proposal for increased funds for toxics clean up that might result from increased enforcement activities. The proposed increase in DOJ's methamphetamine enforcement budget is bound to have an impact on toxic clean up activities, even if the DOJ proposes new enforce-

ment strategies that do not emphasize targeting clandestine labs. The DOJ informs us that the DEA received an appropriation of \$2 million to aid states in the costs of toxic clean up. This money would pay for between 50 and 100 percent of the costs of labs seized by task forces with federal participation. Although California may expect to receive the bulk of these funds, this sum may not defray much of the potential new state clean up costs.

Analyst's Recommendation. Given the uncertainties concerning continued federal funding outlined above, we withhold recommendation on the DOJ's proposed use of \$18 million in federal funds for methamphetamine enforcement activities, pending review of DOJ plans for the program if continued federal funding is not provided. The DOJ should inform the Legislature, prior to budget hearings, of its plans for: (1) hiring staff, especially new special agents; (2) how it will integrate the new program with existing methamphetamine enforcement activities; (3) its contingency plans for the new program in the event funds are one-time only, limited to just two more years, or if the program is ongoing; and (4) how it plans to address increased state costs resulting from toxic clean up of clandestine labs. Furthermore, the DOJ should report on the status of its grant request for these federal funds, the mechanism for fund disbursement, and a schedule of when funds will be available.

New Witness Protection Program Needs Strict Accountability

We recommend that the amount requested for the California Witness Protection Program be reduced to the current-year level. (Reduce Item 0820-101-0214 by \$2 million.)

We further recommend that the Legislature adopt budget bill language that establishes funding limits on the new California Witness Protection Program and requires the Bureau of State Audits to annually audit claims to ensure strict accountability for program funds.

The budget proposes \$5 million from the Restitution Fund to support the California Witness Protection Program in the DOJ's Bureau of Investigation (BI). The program was created by Chapter 507, Statutes of 1997 (AB 856, Herztberg). The goal of the program is to protect witnesses and their families, friends, or associates who are endangered due to ongoing or anticipated testimony, whether or not formal legal proceedings have been filed. Witnesses testifying in gang, organized crime, or narcotics trafficking cases are to be given highest priority for protection. Chapter 507 contained an appropriation of \$3 million for the current year. The BI will reimburse district attorneys' offices on a case-by-case basis for the costs

of protection; temporary, semi-permanent, or permanent relocation of witnesses; and other expenses.

Program Criteria. The bill provides that district attorneys are responsible for the determination of who is eligible for the program and what are allowable expenses. Witnesses must agree to testify and comply with all orders of the court in order to qualify under this program. Under program criteria, convicted felons, parolees, probationers, and illegal aliens would also be eligible for a variety of different expenses. While the program requires that emphasis be given to witnesses in gang, organized crime, and narcotics cases, district attorneys can also receive funds for any other case where the district attorney determines that there is "a high degree of risk to the witness."

The program will pay for armed protection of witnesses, physical relocation of the witness and his or her family, living expenses, new identity documents, and the transportation and storage of personal items. Figure 29 (see next page) shows the amounts of costs that would be reimbursed under this program.

To be reimbursed, the district attorney is required to simply submit a letter claiming reimbursement and certify that expenses are allowable. In contrast, most other local assistance programs have audit requirements to ensure that funds are properly spent and funds accounted for. This program has no audit requirement.

Based on the allowable expense schedule, the costs of temporary relocation would range from \$3,300 to \$6,380 for 29 days, not including those expenses that would be reimbursed on a case-by-case basis. For semipermanent and permanent relocations, the allowable cost would range from a low of \$1,450 for 30 days to \$5,325 for a maximum allowable amount for three months. The costs would be higher when the costs of protection, moving, storage, or other costs are added. Based on these allowable amounts, the \$3 million appropriation in Chapter 507 should fund protection of between 450 and 2,000 witnesses. The budget request would fund a total of 850 to 3,400 witnesses.

Concerns About the Request. We have several concerns with the program. First, it is unclear how much money will be needed to support the program in the budget year. Given that this is a new program, there are no historical data to rely upon in estimating the number of persons who will use the program in 1998-99. Given these uncertainties, we know of no reason that the Legislature should appropriate more than \$3 million for the program in 1998-99—the same amount contained in Chapter 507 for the current year.

Figure 29

Allowable Expenditures Under the DOJ California Witness Protection Program

Program Expense	Allowable Amounts ^a
Armed protection	Not limited.District attorneys must pay 50 percent of costs.
Temporary relocation (30 days or less)	 \$79-\$135 per day for lodging. \$30-\$80 per day for food allowance. \$5 per day for incidental expenses.
Local protection (at witness' residence)	\$79-\$135 per day for lodging.\$30-\$80 per day for food allowance.
Semi-permanent relocation (30 days or more)	 \$950 per month lodging. \$250-\$575 per month food allowance. \$150 per month utilities. \$100 per month for incidental expenses. Health care costs.
Permanent relocation (not to exceed three months)	 \$950 per month lodging. \$250-\$575 per month food allowance. \$150 per month utilities. \$100 per month for incidental expenses. Health care costs.
New identity (witness, family, friends, and associates)	All costs upon Bureau of Investigation (BI) approval.
Transportation	• 24 cents per mile.
Moving or storage of personal goods	All costs upon BI approval.
a Range in costs based on number of family or	friends included in the household.

Second, we believe that the program does not have sufficient safeguards. For example, there are almost no limits on the total amounts of claims that can be made by district attorneys. As we indicated earlier, a district attorney need only submit a letter claiming reimbursement. No auditing of the claims is required. Thus, there are limited safeguards in place to ensure that program funds are being accounted for properly, and that the funds are used for the program's intended purpose.

Finally, Chapter 507 provides the program with an open-ended funding source. This is because Chapter 507 provides that any balances in the Restitution Fund not needed to support the Victims of Crime Program (a program that compensates victims for their losses), along with a prudent reserve, shall be available for the witness protection program. The Governor's budget estimates that the fund will have a surplus of about \$22.8 million in the budget year.

Analyst's Recommendation. For these reasons we recommend that the Legislature take three actions. First, we recommend that the total funding be reduced to the same level as the current year, for a savings of \$2 million. (Reduce Item 0820-101-0214 by \$2 million.)

Second, because of the high degree of uncertainty regarding expenditures for the program in the budget year, we recommend that the Legislature adopt budget bill language specifying that moneys not spent for the program in 1998-99 shall revert to the Restitution Fund. Specifically, we recommend the proposed budget bill language be modified as follows (Item 0820-101-0214):

The funds appropriated in Schedule (a) are for allocation in support of the California Witness Protection Program, pursuant to Chapter 507, Statutes of 1997. Any funds not expended for this specific purpose shall revert to the Restitution Fund.

Third, in order to ensure oversight and accountability for claims under the program, we recommend that the Legislature direct the Bureau of State Audits to audit the claims annually and to make recommendations to ensure there are appropriate safeguards. Specifically, we recommend the following budget bill language (Item 0820-001-0214):

The Bureau of State Audits shall audit each claim submitted for payment under the California Witness Protection Program. The claim audits shall ensure that all criteria for program eligibility are met and shall report to the Legislature by January 1, 1999, and annually thereafter, on the results of its audits. The bureau shall also recommend changes to criteria for the program in order to ensure accountability as part of its annual report to the Legislature.

Legislation Needed to Effectively Implement Foreign Prosecution Program

We recommend the enactment of legislation to (1) designate the Department of Justice 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 department to inform all local law enforcement agencies and district attorneys of the program and how the department 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 law 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 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 1998-99 budget, the DOJ is requesting \$321,000 from the General Fund to expand the Foreign Prosecution Program. (This proposal is identical to a proposal made last year that was deleted from the 1997-98 Budget Bill at the time of the Public Employees' Retirement System [PERS] repayment.) 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 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 and other international authorities have a single point of contact for prosecutions. Using the DOJ as the lead state agency for these prosecutions would enhance coordination 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 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 department 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 unusable 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 reopen "old and cold" homicides; applying the new forensic techniques to stored physical evidence. (This proposal is identical to a proposal from last year that was deleted by the Legislature in order to generate additional funds to make the PERS repayment.) 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 December 31, 1999, 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 reopened 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.

Equipment and Vehicle Replacement Should Not Be Included in Base Budget

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

The budget requests \$2.4 million from the General Fund for equipment replacement for the DOJ's criminalistic laboratories (\$1.1 million) and for replacement of vehicles used in the Division of Law Enforcement (\$1.3 million). The request proposes to build these expenditures into the DOJ's baseline budget to fund additional equipment and vehicle purchases in future years.

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

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

For the past two years, the DOJ has made similar requests and they have been approved. However, these requests were not placed in the base budget. For lab equipment, the Legislature approved funding for two years. The Division of Law Enforcement vehicle purchases were approved in both years; however, during last year's final budget negotiations, the augmentation was eliminated. This highlights the fact that the Legislature should have the flexibility of reviewing these requests annually to ensure that limited General Fund dollars go to the state's highest priorities. For these reasons, we recommend that the Legislature direct the DOJ and the Department of Finance not to add the funding for equipment and vehicle replacement to the DOJ's baseline budget.

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

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

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

The Department of Justice 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 department submit a plan to the fiscal committees prior to budget hearings on what redirections or augmentations would be necessary to reduce the violent offender DNA backlogs, as well as what it believes is an acceptable backlog.

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 the California Department of Corrections (CDC). By maintaining a data bank 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 data bank containing DNA samples from convicted sex offenders and other violent offenders, as well as DNA profiles of evidence obtained from unsolved sex crimes.

The 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 6x 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 and complete analysis of 41,000 offenders. 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 January 1998, there remains a backlog of over 55,000 of these samples to be analyzed. The DOJ does not have a plan for reducing this backlog.

Analyst's Recommendation. We recommend that the DOJ submit a plan to the fiscal committees prior to budget hearings on what redirections or augmentations, and possible funding sources, would be required to reduce backlogs in analyzing DNA samples of other violent offenders. Further, the plan should identify an acceptable backlog level for this testing program.

DIVISION OF CRIMINAL JUSTICE INFORMATION SERVICES

Live Scan Fingerprinting for School Employees Still Being Implemented

We withhold recommendation on \$4 million from the Fingerprint Fees Account for placement of 100 live scan electronic fingerprint terminals statewide, pending finalization of the Division of Criminal Justice Information Services' plan for placing the new machines.

The Division of Criminal Justice Information Services (CJIS) is implementing new legislation (Chapter 588, Statutes of 1997 [AB 1610, Ortiz] and Chapter 589, Statutes of 1997 [AB 1612, Alby]) that requires that all school employees and applicants must undergo criminal background checks. The DOJ estimates that the new legislation will add over 239,000 new fingerprints which must be checked. While the persons being fingerprinted would pay for the costs through fees, the increased demand on the system could slow down DOJ responses. Recognizing this potential, the Legislature also appropriated funds to purchase and place live scan electronic fingerprint terminals at 100 locations throughout the state to facilitate all of the new requests for fingerprints.

The budget requests \$4 million from the Fingerprint Fees Account to pay for the processing of the new volume of fingerprints. The request appears justified, however, the DOJ is still in the process of identifying where the new live scan devices will be located. The DOJ informed us that these locations will be identified shortly and installation will begin in March 1998. The DOJ estimates that installation will not be complete for four to six months. Consequently, we have not been able to review the DOJ's plans for implementation or its plans for where the terminals will be located.

Analyst's Recommendation. We withhold recommendation on this request, pending receipt and review of DOJ's plan for installation of the new live scan terminals.

Criminal History Backlogs Reduced

The Department of Justice has virtually eliminated its backlogs of criminal history disposition files for felonies and convictions, and inmate fingerprints. The only remaining backlog remains for misdemeanor dispositions and records of no conviction.

Under current law, the DOJ is required to maintain a number of criminal justice information systems for law enforcement agencies. The DOJ's

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).

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 been reduced.

Conviction File Backlogs for Felonies and Firearms Crimes Eliminated. As we reported last year, 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. As of January 1998, there is no backlog for these records.

The CJIS reports that the total number of other types of documents awaiting processing, such as misdemeanor convictions and records of no conviction, was about 152,000 documents in January 1998. In contrast, at this time last year, there were almost 825,000 documents awaiting processing.

Backlog of CDC Fingerprints Eliminated. The CJIS reports that it has eliminated its backlog of CDC inmate fingerprints, but notes that over 20,000 records need to be returned to CDC as a consequence of problems with the records. Last year, the backlog for inmate fingerprint record checks was 18 months. There were 200,000 CDC inmate fingerprint documents awaiting processing as of December 1996.

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, and acting as the grant agency for providing state-administered local assistance.

The budget proposes total expenditures for this office of \$177 million in 1998-99, including \$36.6 million from the General Fund. The total budget is about \$13.2 million, or about 6.9 percent, less than estimated current-year expenditures. The General Fund budget is essentially the same as the current year. The decrease in the total budget is due primarily to net reductions in federal grant programs.

Augmentation for Surplus Military Equipment Program Not Justified

We recommend deletion of \$144,000 from the General Fund and two positions proposed for the California Counter-Drug Procurement Program because the augmentation has not been justified on a workload basis. (Reduce Item 8100-001-0001 by \$144,000.)

Background. The National Defense Authorization Act permits local law enforcement agencies to procure excess federal military property (generally equipment and bulk fuel) at no cost. On May 24, 1996, the Governor identified the OCJP as the state agency responsible for administering the program. Currently, a criminal justice specialist and a management services technician provide staff support for the program, at an annual cost of approximately \$110,000 from the General Fund. In addition to its own staff, the OCJP indicates that National Guard staff also assist this program.

According to the OCJP, the program has facilitated the transfer of \$37 million of equipment to 268 local law enforcement agencies within California.

Budget Proposal. The budget proposes an augmentation of \$144,000 from the General Fund and two additional positions, thereby doubling OCJP's staff and expenditures for this program. The office indicates that the increase is necessary because changes in federal law will allow the number of eligible local law enforcement agencies in California to grow from 268 to 644. The belief is that there will be a corresponding increase in workload.

Limited Value Added by Office's Program. The OCJP has not provided any documentation showing that the additional eligible agencies will use the program and thereby increase the OCJP workload. Furthermore, based on our review of the existing program, we conclude that OCJP's role is relatively limited. Specifically, the agency seeking the surplus property must do virtually all of the work to identify whether and where excess equipment is available. Once located, the local law enforcement agency, working with local Defense Reutilization Marketing Offices, obtains the necessary forms and prepares all of the paperwork. The OCJP is merely a "pass-through" organization. The OCJP simply reviews the local law enforcement agency justification letter, forwards the documents to the Defense Logistics Agency, and records the federal action.

Analyst's Recommendation. Because OCJP has not shown that the addition of newly eligible local law enforcement agencies will add to current program workload, we recommend denial of OCJP's budget request.

Some Monitoring, But No Evaluation In the OCJP Monitoring and Evaluation Branch

We recommend deletion of \$305,000 from the General Fund to eliminate the Office of Criminal Justice Planning's (OCJP) Monitoring and Program Evaluation Branch, because the branch has not, and has no plans to evaluate the effectiveness of the OCJP program.

Background. The OCJP administers grants totaling over \$175 million, including more than \$113 million in federal monies. The grants go to local law enforcement agencies, district attorneys, rape and domestic violence crisis centers, local victim/witness programs, and a variety of community-based organizations. These grants pay for services, salaries, and operating expenses.

Compliance Review Versus Evaluation. Each OCJP grant generally requires that the grantee provide data on the use of funds and requires financial audits. The OCJP grant specialist who awards the grant is also responsible for monitoring compliance with grant requirements. Auditors review financial expenditures. These types of reviews and audits measure an agency's compliance with grant requirements and regulations. The purpose of the financial audits is to ensure that grant funds are used for allowable expenses, but rarely do such audits determine whether the program being funded was effective.

As opposed to compliance reviews, a program evaluation is designed to determine (1) if grant objectives were achieved, (2) whether each of the elements of a grantee's program did or did not work, (3) whether funds expended were done so efficiently and obtained the best value, (4) whether the grantees succeeded in addressing the problem the grant was intended to solve, and (5) whether any of the lessons learned in the implementation of the grantee's program should be shared with other agencies facing similar problems.

Federal and State Emphasis on Program Evaluation. Federal grants to OCJP generally allow up to 5 percent of the total grant amount to be used for administrative expenses, including monitoring, evaluations, and audits. California has never used all of the amounts available for administrative expenses, preferring instead to increase grants to local agencies. While this policy does provide more funding to local agencies, it deprives federal, state, and local agencies from knowing whether grant funds were being used effectively and that lessons learned were being shared. The federal government, in its annual appropriations process and in directives from the federal Department of Justice, continues to emphasize the importance of evaluation of criminal justice programs. A recent major National Institute of Justice review of criminal justice programs noted the need for greater program evaluation, and recommended that 10 percent of every federal grant be set aside for evaluation.

The Legislature has also highlighted the need of determining which programs work and which do not. Almost every new prevention or criminal justice pilot program enacted in the last two years has required an evaluation component. With a proper evaluation, the state can be assured that funds are effectively used and that programs whose effectiveness is proven can be replicated statewide.

Little Program Evaluation From OCJP. The OCJP established a monitoring and program evaluation branch in 1996, with six positions and an annual operating budget of \$305,000.

We requested information on the branch's activities and the status of its evaluations. Since its establishment, the branch has contracted with academic institutions to produce feasibility studies on developing process measures for several federal grants. Currently, OCJP has \$2 million in ongoing consultant contracts to primarily fund studies on whether measures can be developed to assess OCJP programs.

The work products produced so far, at a cost of over \$958,500, have been research surveys and "concept proposals" for "outcome and impact evaluations." In addition, the OCJP informs us that it has conducted some training.

Thus, after significant expenditures, the OCJP has not evaluated any grantee programs nor does it seem to have any plans to do so in the near future. In response to our questions about its future evaluation workplan, the branch informed us that its projects are "essentially process-focused and involve substantial research, planning, conceptualization, consultation and resource development. As a result, production of final products is not the primary focus of branch activities."

Conclusion. We recognize the importance of program evaluations in order to determine which programs work and which do not. Additionally, the importance of evaluation has been stressed at both the federal and state levels. The OCJP evaluation branch, however, is not evaluating grant programs and does not appear to be moving toward completing any reviews. This is not the result of insufficient resources, since the federal government allows a portion of its grant funds to be spent on evaluations.

Consequently, we recommend deletion of \$305,000 proposed to support the monitoring and program evaluation branch. Our recommendation will not put in jeopardy any federal funds. In addition, ongoing contracts will not be affected because the branch is merely monitoring the contracts; the monitoring of contracts can be absorbed in OCJP's grant administration program.

FINDINGS AND RECOMMENDATIONS

Judiciary and Criminal Justice

Analysis Page

Crosscutting Issues

Reforming California's Adult Parole System

- 1. **Caseloads Growing Steadily.** Annual releases of D-18 parolees to state supervision, and the parole caseload, have grown significantly and have resulted in a greater workload for parole agents.
- 2. **Many Parolees Returning to Prison.** The number of parolees returning to prison is rising and aggravating already severe overcrowding in correctional facilities.
- 3. **Board of Prison Terms' Policies Driving Up Return** D-22 **Rates.** The parole board is increasing return-to-custody rates of parolees back to prison more frequently and for longer periods of time.
- 4. **Substance Abuse Fueling Parolee Returns.** An epidemic of substance abuse is prompting the return to custody of many parolees, yet few of them are receiving treatment or other program assistance to control their addiction.
- 5. **Fiscal Impact of the Present Parole System.** The present parole policies have been costly to the state.

- 6. **New Parolee Classification System.** Recommend that a new parole supervision strategy be based, if possible, on revised classification system now under development.
- 7. **More Punishment Options Needed.** Recommend that sanctions for parole violators be restructured to allow alternative forms of punishment for lesser violations by parolees posing little risk to public safety.
- 8. **Interim Budget Actions.** Recommend modifications to CDC parole division budget to begin implementing our recommended approach to reform the parole system.

The Increasing Role of the Federal Government In California Law Enforcement

- 9. **Changing Federal Role.** Recently, the federal government has become much more involved in law enforcement because of the additional funding provided to state and local law enforcement programs and increased resources and program changes made to federal law enforcement agencies.
- 10. Legislature Should Hold Hearings. Recommend that the Legislature hold hearings and request that federal law enforcement officials present information on how California will be affected by changing federal law enforcement priorities and increased federal presence in California. Also recommend that Legislature review proposed state-funded program increases in context of new federal funds, consider linkages with federal priorities, and monitor proposed federal juvenile justice reforms.

The Backlog of Death Penalty Appeals: An Update

- 11. Legislature Adopted Strategy to Reduce Backlog of Death Penalty Appeals. The Legislature took steps in 1997 to reduce the backlog of death penalty appeals, including expanding the role of the Office of the State Public Defender (OSPD), creating the California Habeas Resource Center (CHRC), and increasing hourly rates for private attorneys.
- 12. **Continuing Oversight Needed.** Recommend that OSPD report at budget hearings on the development of attorney training programs and the implementation of automated case management systems and attorney workload standards. Additionally, we recommend that CHRC, as part of its annual report to the Legislature, provide the same information.

California's Litigation Against the Tobacco Companies

13. California Sues the Tobacco Companies. The state sued the major tobacco companies in June 1997, seeking billions of dollars in damages for medical care for tobacco-related illness and violations of state law. It may be months or years before the case is resolved.

Youth and Adult Correctional Agency

14. Consolidate Internal Affairs Operations. Recommend legislation be enacted to centralize investigations of correctional employee misconduct with the Office of Inspector General and shift \$6.2 million and 92.4 positions to the office from the Departments of Corrections and the Youth Authority.

Department of Corrections

Inmate and Parole Population Management Issues

- 15. **Inmate and Parole Population Trends.** The Gover-D-68 nor's budget assumes that the prison population will increase significantly during the next five years at a rate that would have a significant impact on state expenditures.
- D-72 16. **Budget Adjustments for Caseload Growth.** Withhold recommendation on the request of the California Department of Corrections (CDC) for \$116 million to fund inmate and parole population increases, pending review of the revised budget proposal and population projections to be included in the May Revision.
- D-73 17. 1998-99 Inmate Housing Plan. Reduce Item **5240-001-0001 by \$9.3 Million**. Withhold recommendation on the CDC plan for housing the projected increase in the prison population because of continued uncertainties about the inmate population projection, and recommend reduction reflecting a delay in contract beds and duplicate budgeting for some women inmates.
- 18. Population Forecast Has Implications for the Long D-75 **Term.** The administration has proposed to add new community correctional facility beds, four new prisons, and additional cells on the grounds of existing prisons to address the significant shortage of prison space facing the state beginning in the year 2000. We believe there is merit in adding some space to the

prison system but recommend that expansion of prison capacity be balanced with policy changes that reduce the inmate population growth rate.

Substance Abuse Treatment Issues

- 19. **Civil Addict Program Expansion.** Recommend legislation to encourage increase in the number of offenders participating in the program by restoring credits that reduce their time in prison and ensuring that more eligible offenders are identified.
- 20. **Redirect Drug Interdiction Funds.** Recommend denial of flawed plan to spend \$1.1 million on experimental drug interdiction effort and redirection of the funds to expand proven in-prison drug treatment programs.

Correctional Program Issues

- 21. Inmate Academic and Work Programs. Reduce Item 5240-001-0001 by \$500,000 and Establish New Item 5240-011-0678 in the Same Amount. Recommend broadening proposed review of inmate academic and work programs and funding study with surplus cash held by the Prison Industry Authority.
- 22. Funding for Administration and Other Operations.
 Reduce Item 5240-001-0001 by \$11.7 Million. Withhold recommendation on \$75.8 million for leased jail beds, local assistance, cadet training, buses, classification workload, and various administrative functions.
 Recommend reductions related to a pending labor agreement and auditing work.

- 23. **Reforming the Parole System. Augment Item 5240**-**001-0001 by \$1.5 Million.** Recommend augmentation and redirection of \$1.3 million proposed to process parole violation workload, to expand Preventing Parolee Failure program.
- 24. **Reports Due to Legislature.** Several reports by the CDC on significant correctional policy issues are due or scheduled for release later in the budget process.

Medical Issues

- 25. Contract Medical Budget Adjustment Not Needed. D-87 Reduce Item 5240-001-0001 by \$809,000. Recommend reduction because augmentation is not needed.
- 26. Mentally Ill Population Higher Than Expected. New prevalence data show that more inmates are seriously mentally ill than had been assumed in developing mental health delivery system. Almost twice as many inmates need Enhanced Outpatient Services than was expected in department's original plan.

Board of Corrections

27. Community Law Enforcement and Recovery Demonstration Project. Reduce Item 5430-102-0001 by \$12.8 Million. Recommend reduction because expansion of project has not been justified.

Department of the Youth Authority

28. **Ward Population Continues to Decline**. The Youth Authority's institutional population decreased signifi-

cantly again in the current year and it is projected to continue to decrease over the next several years until June 2001, and then increase slightly, changing from 8,315 wards at the end of the budget year to 8,520 wards in 2001-02. Also, Youth Authority parole populations are expected to decline in the budget year to about 5,625 parolees, and continuing to decrease to about 5,425 parolees by the end of 2001-02.

- 29. Ward and Parolee Population Projections Will Be
 Updated in May. Withhold recommendation on a
 \$11 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.
- 30. Fees Have Changed How Counties Use the Youth Authority. Legislation to increase the fees that counties pay to the state for commitment of juvenile offenders to the Youth Authority took effect January 1, 1997. Initial data, based on the first year of fees, show a significant decrease in new Youth Authority commitments, especially in those categories of wards for whom counties must pay higher fees.
- 31. Temporary Assistance for Needy Families Funds for D-101 Probation Departments to Increase. The budget will augment the Temporary Assistance for Needy Families subsidy for county probation department by \$26 million to address increasing caseloads. These funds appear to offset any increased county costs of fees and allow for the creation of appropriate placements for offenders that previously would have been sent to the Youth Authority.

- 32. **Supervising Parolees in the Community.** Decreases D-103 in Youth Authority new commitments, changes in the types of wards committed, and ward length of stay in institutions will result in significant parole population decreases in future years. The Youth Authority should begin considering new models for handling decreasing caseloads.
- 33. **Rehabilitation Programs.** A report on Youth Author- D-105 ity program needs is due March 1, 1998. The report will show what rehabilitative programs are needed as the Youth Authority population changes. Recommend department report on results of assessment.
- 34. Continued Oversight Needed for Tattoo Removal D-105 **Program.** Recommend that the Legislature adopt budget bill language to limit the use of funds for tattoo removal because data on the costs or success of the program is limited.
- 35. Internal Affairs Positions Should Be Consolidated D-107 in Inspector General's Office. Recommend denial of the budget request for \$274,000 from the General Fund to add four additional internal affairs investigators and that the Legislature consolidate internal affairs investigations in the Youth and Adult Correctional Agency.

Youthful Offender Parole Board

36. Changes in Youthful Offender Parole Board Work- D-108 load to Be Updated in May. Withhold recommendation on budget request, pending new Department of the Youth Authority population projections in May.

Trial Court Funding

- 37. **Trial Court Funding Restructuring.** The new trial D-114 court funding restructuring measure will result in major new fiscal responsibility for the state, and significant fiscal relief to local governments.
- 38. Continuing Challenges of Governance and Accountability. Due to potentially significant cost increases for the Trial Court Funding Program in the future, it will be important for the Legislature to continue to monitor issues of governance and accountability.
- 39. Task Forces Created to Study Personnel and Facilities Issues. Two task forces are required to study the important issues of court personnel governance and responsibility for court facilities. While the final reports for these task forces will not be submitted to the Legislature for several years, the task forces will begin their work in the current year.
- 40. Council Is Changing Budget Development Process. D-116
 The Judicial Council is proposing changes in the budget development process designed to retain local management of the trial courts while increasing accountability and focusing on outcomes.
- 41. **Budget Proposes \$50 Million for Growth.** Recommend that the Legislature adopt supplemental report language directing the Judicial Council to report on how these funds are allocated among the trial courts.
- 42. **Budget Proposes \$50 Million for New Judicial Im-** D-119 **provement Fund.** Recommend that the Judicial Council report prior to budget hearings on the develop-

ment of criteria for allocating monies from the fund, including information on the types of programs that will be funded.

- 43. Three Strikes Relief Teams Were Supposed to Be D-120 Limited Term. Reduce Item 0450-101-0932 by \$3.5 Million and Item 0450-111-0001 by the Same Amount. Recommend a General Fund reduction of \$3.5 million to eliminate funding for relief teams which will expire at the end of the current year.
- 44. **New Trial Court Judgeships**. Recommend the enactment of budget bill language ensuring that any funds not used for the new judgeships be reverted to the General Fund.
- 45. **Trial Court Coordination Efforts Continue**. The D-123 Judicial Council has made positive steps toward furthering the coordination of judicial and administrative resources in the trial courts. Given the state's new financial responsibility for trial courts and the potential savings resulting from coordination, we believe that it will be important for the council and the Legislature to continue to monitor implementation of the coordination requirements.

Judicial

46. Uncertainties About Court-Appointed Counsel Program for Capital Cases. Withhold recommendation on \$1.4 million from the General Fund for the Court-Appointed Counsel Program in the Supreme Court, pending receipt and review of updated caseload projections at the time of the May Revision.

- 47. **Appellate Project Increase Not Justified. Reduce** D-126 **Item 0250-001-0001 by \$498,000**. Recommend a General Fund reduction for the Supreme Court Appellate Project because the proposed increase lacks justification.
- 48. Attorneys to Review Public Utilities Commission D-127 Matters Overbudgeted. Reduce Item 0250-001-0001 by \$472,000. Recommend reduction of five attorney positions requested for review of Public Utilities Commission matters because the request is overbudgeted on a workload basis.
- 49. **Temporary Law Clerks Program Should Be Limited**Term. Proposal is meritorious, but should be limited to two years in order to evaluate its effectiveness. In addition, because of the high cost of the proposal in the second year, the Judicial Council should reevaluate the second-year component and submit an amended proposal to the Legislature prior to budget hearings.
- 50. Conference Center Support Unit Should Be Funded D-129 From Savings. Reduce Item 0250-001-0001 by \$132,000. Recommend reduction requested for expanded conference center in the new Civic Center location because proposal can be funded from savings.
- 51. Trial Court Coordination Assistance Grant and D-130 Management System Requests Are Not Appropriate. Reduce Item 0250-001-0001 by \$430,000. Recommend reduction because these programs should be funded through the allocation of funds from the Trial Court Funding budget item.

- 52. Current Budget Display Understates Assistance to D-131 the Trial Courts. Recommend that, prior to budget hearings, the Judicial Council report to the Legislature on the amount of local assistance to the trial courts in the Judicial budget item. Further recommend that the Legislature transfer local assistance funding located in the Judicial budget into the budget item for Trial Court Funding.
- 53. Personnel Services Issues. Reduce Item D-132 0250-001-0001 by \$887,000. Recommend reduction for personnel services in order to better reflect the hiring practices of the Judicial Council. In addition, recommend that prior to budget hearings, the Judicial Council prepare a staffing plan regarding positions for the Administrative Office of the Courts, which identifies vacant positions, and propose to fill or eliminate those vacant positions.
- 54. Appellate Court Security Was Supposed to Be Limited Term. Reduce Item 0250-001-0001 by \$692,000.

 Recommend reduction to eliminate the augmented appellate court security program which will expire at the end of the current year.
- 55. Rent Request Overbudgeted. Reduce Item D-135 0250-001-0001 by \$6.5 Million. Recommend reduction requested because the funds will not be needed in the budget year.

Department of Justice

Legal Divisions

56. **Uncertainties Surrounding 1997 Flood Litigation.** D-136 Recommend budget bill language to ensure that funds are used for specified purposes.

Division of Law Enforcement

- Federal Actions. Withhold recommendation on request for \$18 million for implementation of the California Methamphetamine Strategy pending receipt of a report, prior to budget hearings, on how the Department of Justice (DOJ) will adjust for any change in federal funding, the status of its grant request for these federal funds, the mechanism for fund disbursement, and a schedule of when funds will be available.
- 58. New Witness Protection Program Needs Strict Accountability. Reduce Item 0820-101-0214 by \$2 Million. Recommend amount requested for new program be reduced to the current-year level. Further recommend that the Legislature adopt budget bill language that establishes funding limits on program and requiring the Bureau of State Audits to annually audit claims to ensure strict accountability for program funds.
- 59. Legislation Needed for Foreign Prosecution Program. Recommend the enactment of legislation to (1) designate DOJ as the lead agency for all interactions with foreign governments and (2) direct the department to inform all local law enforcement agen-

cies and district attorneys of the program and how the department might aid in prosecutions.

- 60. Oversight Needed for Unsolved Homicide Investigations Program. Recommend adoption of budget bill language specifying that the funds appropriated for the pilot project be used only for that purpose. Further recommend adoption of supplemental report language directing the department to report on the costs and results of the pilot program.
- 61. Equipment and Vehicle Replacement Should Not D-149 Be Included in Base Budget. Recommend approval of \$2.4 million requested for laboratory equipment and vehicle replacement, but recommend that the Legislature direct the Departments of Justice and Finance not to include the amount in the baseline budget.
- 62. Backlog of Sex Offender DNA Tests Reduced, But D-150 Backlog Persists in Violent Offenders Tests. The DOJ has significantly reduced its backlogs in its sex offender DNA testing, but still has a substantial backlog of violent offender samples awaiting analysis. Recommend that the department submit a plan prior to budget hearings on what augmentations or redirections would be needed to reduce violent offender DNA backlogs, as well the department's view on an acceptable ongoing backlog.

Division of Criminal Justice Information Services

63. Live Scan Fingerprinting for School Employees Still D-152

Being Implemented. Withhold recommendation on

\$4 million from the Fingerprint Fees Account for

placement of 100 live scan electronic fingerprint terminals statewide, pending finalization of the plan for placing the new machines.

64. **Criminal History Backlogs Reduced.** The DOJ has D-152 virtually eliminated its backlogs of criminal history disposition files for felonies and convictions, and inmate fingerprints. The only remaining backlog remains for misdemeanor dispositions and records of no conviction.

Office of Criminal Justice Planning

- 65. Augmentation for Surplus Military Equipment Program Not Justified. Reduce Item 8100-001-0001 by \$144,000. Recommend reduction because request is not justified on a workload basis.
- 66. Eliminate Program Evaluation Branch. Reduce Item B100-001-0001 by \$305,000. Recommend elimination of Monitoring and Program Evaluation Branch, because the branch has not, and has no plans, to evaluate the effectiveness of Office of Criminal Justice Planning programs.

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1998-99	Analysis