MAJOR ISSUES

Judiciary and Criminal Justice

☑ Prison Inmate Growth Slows

- Although the state's prison inmate population is projected to grow over the next five years, the rate of growth is much slower than in recent years. The reasons include reductions in the number of parolees being returned to prison after failing while on parole and the number of parolees being sent back to prison for new violations of law.
- Even with the lower projections, however, the prison system will run out of bed space by 2001. We recommend that the Legislature take a balanced approach to accommodating future inmate population growth, weighted evenly between adding new prison capacity and enacting policy changes to reduce the expected growth.
- Our review indicates that the projected inmate population for the current and budget years is overbudgeted by a total of $67 million (see pages D-60 to D-69).

☑ Legislature Should Adopt "Containment" Strategy for Adult Sex Offenders

- About half of the 7,300 adult sex offenders now on parole are considered to pose a high risk of committing new sex crimes and other violent acts. Very few of these offenders received any treatment services while in prison to curb their pattern of criminal activity and only a fraction receive intensive supervision on parole.
- We recommend that the Legislature implement a more cost-effective strategy of "containment" of high-risk adult sex offenders. This strategy includes longer and more

intensive supervision of high-risk sex offenders on parole, regular polygraph examinations of sex offenders, and pre- and post-release treatment to help control the behavior of these offenders (see pages D-11 to D-38).

New Youth Authority Fees Achieving Intended Objectives

- Legislation to increase the fees paid by counties for committing less serious offenders to the Youth Authority appears to be having its desired effects. Counties are sending significantly fewer less serious offenders to the Youth Authority. Counties are also moving to increase their menu of local programming options for these offenders.
- We recommend a number of steps to improve the current fee system, including giving counties more input into decisions regarding the length of stay of less serious offenders in the Youth Authority and adjusting the state's fees periodically to account for the effects of inflation.
- We find that the Youth Authority still has an important role to play in the treatment of less serious offenders. We recommend that the Youth Authority report on the feasibility of developing programming targeted to chronic and intractable offenders who are in the less serious categories (see pages D-95 to D-109).

Proposed Budget Not Consistent With Legislative Direction in Several Areas

- The budget proposal does not fully implement several programs as intended by the Legislature. This includes: (1) a 1998 legislative agreement to balance expansion of prison capacity with new programs intended to reduce recidivism rates of offenders on parole (see pages D-69 to D-72); (2) the lack of any proposed expansion for juvenile crime programs (see pages D-81 to D-84); and (3) the proposal to reduce the county share of costs for trial courts by half of the amount required in law (see pages D-118 to D-120).

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Judiciary and Criminal Justice

OVERVIEW

Judiciary and Criminal Justice

Total expenditures for judiciary and criminal justice programs are proposed to increase slightly in the budget year. The principal reasons for the increase are (1) recent legislation that required the state to take on the primary responsibility for funding the trial courts, and (2) continuing, but slower, increases in the state's prison and parole populations. The additional costs are partially offset by federal fund reimbursements for incarceration and supervision of undocumented immigrants which the budget assumes will increase significantly in the budget year. The budget proposes few new programs and does not fully implement a number of programs as directed by the Legislature last year.

The budget proposes total expenditures of $6.6 billion for judiciary and criminal justice programs in 1999-00. This is an increase of $214 million, or 3.4 percent, above estimated current-year spending. The increase is due primarily to increases in the state's costs for supporting the trial courts and the projected increase in the state's prison inmate and parole populations. These increases are partially offset by federal fund support that the budget assumes the state will receive to pay the costs of incarcerating undocumented felons in state prison.

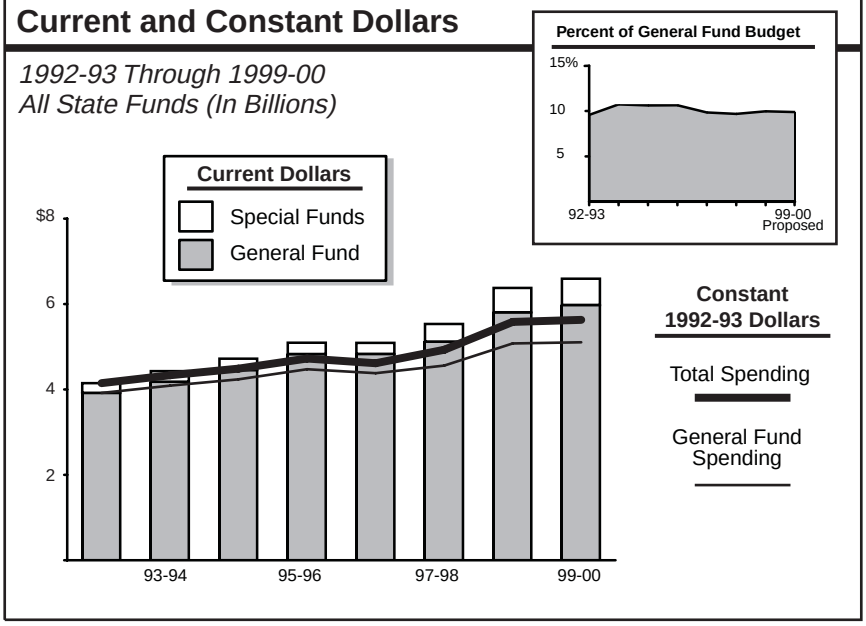
The budget proposes General Fund expenditures of $6 billion for judiciary and criminal justice programs, an increase of $171 million, or 2.9 percent, above estimated General Fund expenditures in the current year.

Figure 1 (see next page) shows expenditures from all state funds for judiciary and criminal justice programs since 1992-93. Expenditures for 1994-95 through 1999-00 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 $2.4 billion since 1992-93, representing an average annual increase of 6.9 percent.

Figure 1

Judiciary and Criminal Justice Expenditures
Current and Constant Dollars

1992-93 Through 1999-00
All State Funds (In Billions)



SPENDING BY MAJOR PROGRAM

Figure 2 shows expenditures for the major judiciary and criminal justice programs in 1997-98, 1998-99, and as proposed for 1999-00. As the figure shows, the California Department of Corrections (CDC) accounts for the largest share of total spending in the criminal justice area.

MAJOR BUDGET CHANGES

Figure 3 (see page 8) presents the major budget changes resulting in a net increase of $214 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 Increases, But Assumes Slower Growth in Caseloads. This includes funding for projected growth in the state's prison, ward, and parole populations. The budget contains no proposals that would result in any significant reduction

Figure 2

Judiciary and Criminal Justice Budget

1997-98 Through 1999-00
(Dollars in Millions)

	Actual 1997-98	Estimated 1998-99	Proposed 1999-00	Change From 1998-99 Amount	Change From 1998-99 Percent
Department of Corrections					
General Fund	$3,621.3	$3,900.4	$4,035.8	$135.4	3.5%
Special funds	41.8	43.3	45.8	2.6	5.9
Reimbursements and federal funds	111.2	80.6	69.3	-11.3	-14.0
Totals	**$3,774.3**	**$4,024.3**	**$4,150.9**	**$126.6**	**3.1%**
Department of the Youth Authority					
General Fund	$329.6	$315.9	$320.4	$4.5	1.4%
Bond funds and special funds	12.9	6.3	2.0	-4.3	-68.2
Reimbursements and federal funds	48.0	66.6	69.5	2.9	4.3
Totals	**$390.5**	**$388.8**	**$391.9**	**$3.1**	**0.8%**
Federal offset for undocumented felons	$241.0	$172.7	$272.7	$100.0	57.9%
Trial Court Funding					
General Fund	$399.2	$699.2	$814.8	$115.6	16.5%
Special funds	278.8	411.4	454.4	43.0	10.5
County contribution	415.9	555.2	504.3	-50.8	-9.2
Totals	**$1,093.9**	**$1,665.8**	**$1,773.6**	**$107.8**	**6.5%**
Judicial					
General Fund	$187.9	$213.2	$237.8	$24.6	11.5%
Other funds and reimbursements	35.8	48.6	51.1	2.5	5.1
Totals	**$223.7**	**$261.8**	**$288.9**	**$27.1**	**10.4%**
Department of Justice					
General Fund	$247.0	$263.8	$237.5	-$26.3	-10.0%
Special funds	73.2	79.9	81.1	1.2	1.5
Federal funds	25.0	36.1	40.7	4.6	12.8
Reimbursements	94.6	104.4	120.9	16.6	15.9
Totals	**$439.8**	**$484.2**	**$480.3**	**-$3.9**	**-0.8%**

Figure 3

Judiciary and Criminal Justice
Proposed Major Changes for 1999-00
All State Funds

Department of Corrections	**Requested:**	**$4.2 billion**	
	Increase:	**$127 million**	**(+3.1%)**

- ✚ $67.3 million for inmate and parole population increases
- ✚ $31.4 million for employee compensation adjustments
- ✚ $43.6 million for various program changes

- ▬ $37.5 million for various one-time expenditures

Trial Court Funding	**Requested:**	**$1.8 billion**	
	Increase:	**$108 million**	**(+6.5%)**

- ✚ $48 million to reduce county share of costs
- ✚ $20 million for salary increases for local court employees
- ✚ $19.2 million for county-provided services charged back to trial courts
- ✚ $10 million to promote improvements and efficiencies in courts

Department of Justice	**Requested:**	**$480 million**	
	Decrease:	**$3.9 million**	**(-0.8%)**

- ✚ $6.9 million for staffing and equipment for lab work on DNA samples
- ✚ $5 million for continued defense in the *Stringfellow* case
- ✚ $4.5 million to share criminal history information with other states
- ✚ $4 million for equipment and vehicle replacement

- ▬ $15.5 million for lab work that would be charged to users
- ▬ $9.2 million for tobacco litigation expenses

in the growth in these populations. However, the budget assumes that the prison inmate population will grow at a significantly slower rate than in recent years, based on the most recent trends. (We discuss inmate population trends in detail in our analysis of CDC later in this chapter.)

The budget does not propose to construct any new state-operated prisons but does propose to move forward with projects authorized last year that would build 1,000 additional prison beds on the grounds of existing prisons (these facilities would not come on-line during the budget year, however). The budget also proposes staffing to contract for an additional 2,000 beds in privately operated detention facilities that were authorized last year.

In addition, the budget proposes to provide full funding for workload increases in other judicial and criminal justice programs, such as the Judicial Council's Court-Appointed Counsel Program and various programs in the Department of Justice (DOJ).

The Budget Assumes a Substantial Increase in Federal Fund Reimbursements for Incarceration and Parole of Undocumented Immigrant Offenders. The budget assumes that the state will receive $273 million in federal funds in 1999-00 to offset the state's costs to incarcerate and supervise undocumented immigrants in CDC and the Department of the Youth Authority. This is an increase of $100 million, or 58 percent, above the administration's estimate of federal funds for the current year. These federal funds are counted as offsets to state expenditures and are not shown in the budgets of CDC and the Youth Authority, or in the budget bill. (We discuss the Governor's budget assumption regarding the projected increase in our analysis of CDC.)

The Budget Is Not Consistent With Provisions of Current Law and Legislative Direction in Several Areas. The Governor's budget proposal does not fully implement several programs as intended by the Legislature. For example, legislation enacted last year reduced the amounts that 38 counties are required to pay the state to support the trial courts beginning in 1999-00, for a savings to counties (and corresponding costs to the General Fund) of $96 million. The Governor's budget, however, makes only half of the required reduction in county contributions, resulting in General Fund savings to the state of $48 million in the budget year. The budget indicates that a budget trailer bill will make the change in law to allow the lower reduction in county contributions. (We discuss this issue in our analysis of Trial Court Funding.)

In addition, the Governor's budget does not fully implement a number of state and local programs enacted in legislation last year that were de-

signed to slow the growth in prison population and assist local criminal justice agencies. Although some of the slow-down in implementation is due to technical reasons, others are the result of policy decisions by the administration. (We discuss these issues in our analyses of CDC and the Board of Corrections.)

The Budget Proposes Relatively Few Significant Program Initiatives. Like the overall budget proposal, the budget for judiciary and criminal justice programs can be characterized as a "workload" budget that provides funds to support workload growth but does not contain many new program initiatives. In addition, many of the program initiatives proposed, such as augmentations for various consumer-oriented legal programs in the DOJ, are relatively small. Other initiatives involve redirection of existing resources or changes in program content, such as the proposed changes in the COPS (Citizens' Option for Public Safety) program which provides funds on a per capita basis to local governments for criminal justice programs (we discuss this program in our analysis of "Local Government Finance" in the General Government Chapter of this *Analysis*). Finally, some initiatives actually result in General Fund savings, such as the proposal to charge fees to state and local agencies that use services provided by DOJ's crime labs which the budget estimates will generate General Fund savings of $15.5 million in the budget year. (We discuss this proposal in our analysis of DOJ.)

CROSSCUTTING ISSUES

Judiciary and Criminal Justice

A "CONTAINMENT" STRATEGY FOR ADULT SEX OFFENDERS ON PAROLE

About half of the 7,300 adult sex offenders now under state parole supervision are considered to pose a high risk of committing new sex crimes and other violent acts. Very few of these offenders have received any treatment while in prison to curb their pattern of criminal activities, and only a fraction receive intensive supervision, treatment, and control after they are released into the community. Two out of three fail on parole by committing new crimes or parole violations. A program to address this public concern by sending such offenders to state mental hospitals is proving costly and is holding relatively few offenders.

In light of these concerns, we recommend the implementation of a more cost-effective strategy of "containment" of high-risk adult sex offenders. The containment strategy includes longer and more intensive supervision of high-risk adult sex offenders released on parole, regular polygraph examinations of sex offenders, and pre- and post-release treatment programs to help control the behavior of habitual sexual offenders.

SEX OFFENDERS IN COMMUNITIES A MAJOR PUBLIC CONCERN

Although felony sex crime rates have declined in California in recent years, the growing presence of adult sex offenders in the community remains a major concern of the Legislature and the public. This concern

has prompted the state to take a number of steps to further the arrest and punishment of such offenders, tighten sex offender registration requirements, and notify the public when such offenders are paroled to their neighborhoods.

The Community Impact of Sex Offenders

Registration Requirement. About 80,000 persons are required by state law to register for life as sex offenders with their local police chief or county sheriff because they were convicted of felony or misdemeanor sex-related crimes such as rape, child molestation, sexual assault, indecent exposure, or possession of pornography.

About 7,300 of the adults subject to registration requirements are under state parole supervision, with about 6,800 of the nearly 15,000 sex offenders now held in state prison released to parole each year.

Reported Sex Crimes on the Decline. The presence of these adult sex offenders in the community, and the risk some pose to public safety, has been a concern to the public and to the Legislature. This remains the case even though the numbers of reported sex crimes and arrests in California for sex crimes have declined in recent years. The number of reported rapes, for example, dropped from 12,700 in 1990 to about 10,200 in 1997—a decrease of almost 20 percent. The number of adults arrested for felony child molestation was about 3,900 in 1990, but in 1997 was 3,200—a decrease of about 17 percent. Significant declines in adult arrests have also been documented during the 1990s for such misdemeanor sex crimes as indecent exposure, annoying children, possession of obscene matter, and lewd conduct.

Many Crimes Unreported. One cause of the continued public concern is that many serious sex crimes are never reported to authorities and thus result in no arrest or punishment of the offender. National data and California criminal justice experts indicate that sex offenders are apprehended for a fraction of the crimes they actually commit. By some estimates, only one in every three to five serious sex offenses are reported to authorities and only 3 percent of such crimes ever result in the apprehension of an offender.

Another cause of concern is the effects of sex crime upon its victims, whom statistics show are overwhelmingly women and children. Academic studies and California Department of Corrections (CDC) data confirm that a single child molester can abuse hundreds of children and that his crimes often go unreported and unpunished over many years.

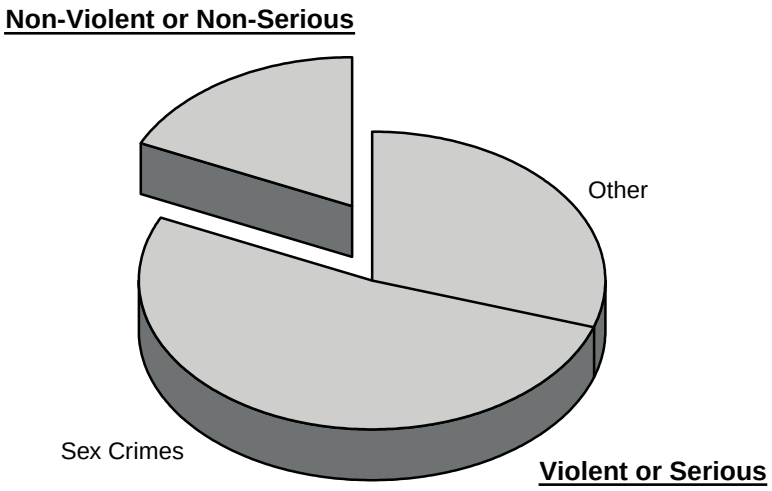
A Different Criminal Profile. Sex offenders can be distinguished from the overall population of adult felons now supervised on parole in a number of significant ways. The CDC statistics indicate:

- As shown in Figure 1, about 80 percent were last sent to prison primarily for committing a violent or serious crime, most commonly a sex-related offense. Only about 30 percent of the parole population as a whole was last sent to prison for a violent or serious felony.

Figure 1

Sex Offender Parole Population by Type of Offense

June 30, 1998



- Adult sex offenders released to parole are, on the whole, an older group. As shown in Figure 2 (see next page), about 66 percent are age 35 or older, while 45 percent of the parole population as a whole is in this age group.
- A higher proportion of the sex offenders released to parole are white. About 38 percent of the supervised parole population of sex offenders is white, 35 percent is Hispanic, and 22 percent is black, as shown in Figure 3 (see next page). The overall parole population is 29 percent white; 40 percent Hispanic; and 26 percent black.
- Very few sex offenders supervised on parole are female. Men constitute 99 percent of the sex offender population on parole, compared with 96 percent of the parole population overall.

Figure 2

Sex Offender Parole Population by Age Group

June 30, 1998

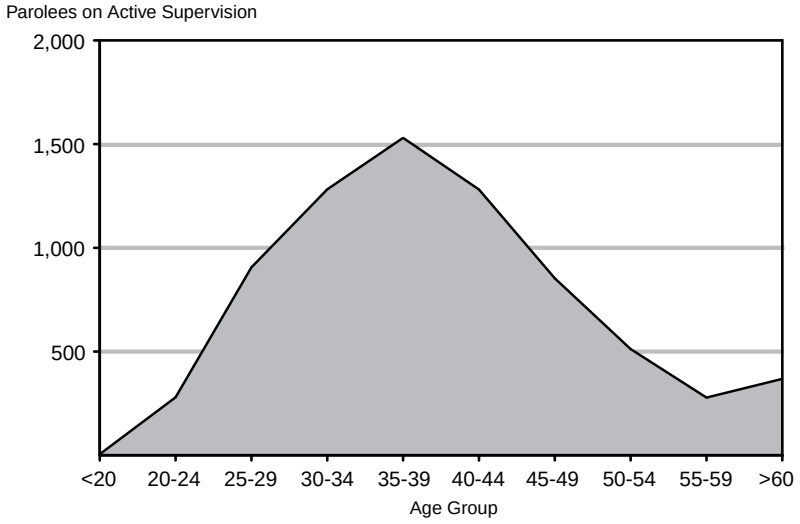
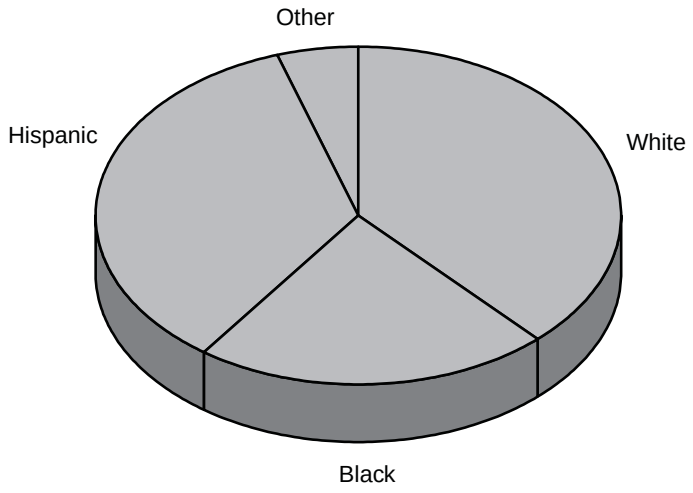


Figure 3

Sex Offender Parole Population by Ethnicity

June 30, 1998



The State's Approach to Dealing With Sex Offenders

The public's concerns about sex offenders has prompted the state to take a number of steps in recent years, sometimes in concert with federal and local law enforcement efforts. The significant actions taken in California are outlined below.

More and Longer Prison Sentences. State laws now provide longer prison terms for certain adult offenders who commit sex crimes or have a criminal history that includes such crimes.

One such measure was the so-called "One-Strike" law (Chapter 14, Statutes of 1994 [SB 26x, Bergeson]), which requires sentences of at least 25 years to life for specified felony sex offenders with a prior sex offense. As of September 30, 1998, 172 one-strike offenders had been imprisoned under its provisions. The annual number of one-strike commitments has been growing and now exceeds 69 per year.

The "Three Strikes and You're Out" law, also enacted in 1994, has significantly affected adult sex offenders. That is because prior felony sex convictions on an offender's record often count as "strikes" that bring a longer sentence for any subsequent felony conviction. As of September 30, 1998, about 1,400 sex offenders had received second- or third-strike sentences.

Due in part to these sentencing laws, the number of offenders sentenced annually to prison for felony sex crimes increased by 27 percent during the 1990s. About 2,600 court-ordered prison admissions per year are now for felony sex offenses. Because the average prison sentences handed down by the courts for felony sex offenses are getting longer, the number of adults held in prison for felony sex crimes has grown even faster and now exceeds 10,000 inmates. In addition, another 5,000 offenders are now being held in prison whose principal commitment offense was not a sex crime, but who nonetheless meet the definition of sex offenders because they committed such an offense in the past.

Parolees who violate the conditions of their parole by committing new sex offenses are being returned to prison more frequently by the Board of Prison Terms (BPT). The annual number of parolees returned to state custody in this way has more than quadrupled during the 1990s, with about 2,600 parolees returned to custody for sex-related parole violations during 1997-98. While BPT revocations of parolees have grown significantly overall, revocations for sex crime-related parole violations have grown even faster. Some categories of offenders, such as those committing incest, are being returned for substantially longer periods of time.

Tighter Registration Requirements. Beginning in 1947, state law has required certain felony and misdemeanor sex offenders (and certain other offenders such as arsonists) to register at least once per year—more often if they change their place of residence—with the local police chief or county sheriff. A series of recent state laws has strengthened the registration requirements and those requirements are being more rigorously enforced.

For example, Chapter 864, Statutes of 1994 (AB 1211, Rainey) now makes it a felony for certain sex offenders to fail to register and mandates incarceration of repeat violators. Other measures have narrowed the time period when sex offenders are required to reregister after moving, required transients to register every 90 days, established preregistration procedures for offenders released from jail or prison, required offenders who change their names to reregister, and required them to provide blood and saliva samples that can be used for DNA matching to solve crimes. The proposed 1999-00 budget requests $3.9 million to collect DNA samples from offenders now held in state prison.

Community Notification Efforts. In conformance with a federal statute known as "Megan's Law," named after a New Jersey child murdered by a sex offender, state and local law enforcement authorities in California have implemented programs to notify residents when a high-risk sex offender is present in their neighborhood.

The state distributes CD-ROM computer discs to local law enforcement agencies and operates a "900" telephone hotline to provide the public with information on the community of residence and zip code of felony sex offenders. The Governor's budget requests $183,000 to update the information on a monthly instead of the present quarterly basis. The state provides detailed information to local law enforcement agencies prior to the release of high-risk sex offenders, and authorizes those agencies to provide specific warnings and information about such offenders to schools and individuals determined to be at risk from their presence in the community.

Sexual Predator Apprehension Teams. The state has established teams of Department of Justice special agents in Sacramento, San Francisco, Fresno, and Los Angeles to investigate and track predatory and habitual sexual offenders. The state also participates with local law enforcement agencies in task forces created in Santa Clara and Los Angeles Counties to focus on the arrest and conviction of persons committing violent sexual assaults. According to the department, its teams of agents have arrested 800 individuals for sex and nonsex felony crimes during its first three years of operation.

"Sexually Violent Predator" (SVP) Law. Following the lead of several other states, California has enacted legislation (Chapters 762 and 763, Statutes of 1995 [AB 888, Rogan and SB 1143, Mountjoy]) providing for the court-ordered civil commitment to state mental hospitals of any offender determined to be a SVP. The commitments are sought for state prison inmates as they approach their scheduled parole dates. We discuss the SVP program in more detail later in this analysis.

In addition, several hundred sex offenders who are prison inmates or parolees are receiving mental health treatment services at state mental hospitals or community-release programs operated by the Department of Mental Health (DMH). We discuss these treatment programs later in this analysis.

Other Actions Targeting Sex Offenders. State law has created self-disclosure requirements and other barriers to the employment of sex offenders at such places as schools, youth programs, and community care facilities. Parolees with a history of sex offenses are now required to disclose their criminal past. One recent measure (Chapter 96, Statutes of 1998 [AB 1646, Battin]) prohibits authorities from placing a child molester who is released on parole within one-quarter mile of an elementary school.

Courts were also authorized under state law (Chapter 596, Statutes of 1996 [AB 3339, Hoge]) to order sex offenders who have assaulted children to undergo medication treatments (so-called "chemical castration") intended to curb their sexual impulses. As of November 1998, only one sex offender had been ordered to submit to this procedure.

The BPT and the CDC are subjecting some sex offenders to electronic monitoring in a pilot project authorized by Chapter 867, Statutes of 1995 (AB 1804, Goldsmith), that requires a report to the Legislature by January 2000.

WEAKNESSES IN THE STATE'S APPROACH

While the state is aggressively apprehending and institutionalizing adult sex offenders, it is doing relatively little to prevent high-risk sex offenders released on parole from committing new crimes. Almost two out of three sex offenders are failing on parole by committing parole violations or new crimes. Efforts to address this concern by sending such offenders to state mental hospitals or back to prison are proving costly and are holding relatively few offenders. Very few sex offenders released on parole received any treatment while in prison to curb their pattern of criminal activity, and only a fraction receive intensive supervision, treatment, and control after they are released on parole into the community.

A Flawed Parole System

In our *Analysis of the 1998-99 Budget Bill* (see page D-11), we concluded that there were major flaws in the state's adult parole system. We raised concerns about the way parolees were supervised and controlled in the community, and the inadequate resources provided for prison and parole programs that could assist offenders in reintegrating safely into the community. In our view, the cycle of parole failure and reincarceration resulting from the state's approach was driving up state costs while compromising public safety.

Our further analysis has identified similar problems in the way the state manages its population of sex offenders. A program intended to divert high-risk sex offenders released from prison into state mental hospitals is proving costly and currently holding relatively few offenders. Supervision and control of the vast majority of such offenders who are released on parole is inadequate. Few adult offenders are participating in pre- or post-release treatment—an approach proven effective in reducing criminal sexual activity—and tools such as polygraph examinations are not available to assist in their treatment and control.

Inadequate Supervision of Parolees

High-Risk Offenders Identified. The CDC has established criteria to help determine whether a sex offender who is being released on parole poses a high risk of committing a new offense. Those criteria include evidence that the offender has an established pattern of deviant sexual behavior. On the basis of these criteria, CDC has estimated that 48 percent of the adult parolees who are required to register as sex offenders—about 3,500 as of June 30, 1998—should be classified as high risk.

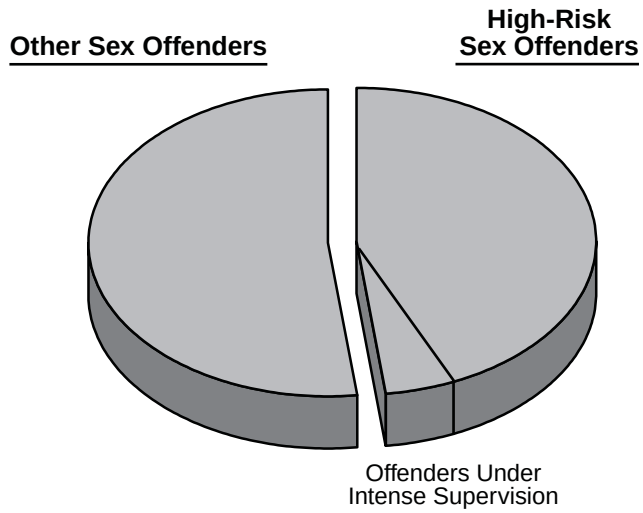
The CDC has established a specialized supervision program for the sex offenders it considers to be high risk. Under this program, each parole agent is assigned 40 high-risk sex offenders to supervise (less than half the average of 82 cases handled by parole agents). High-risk offenders remain on this special, more intense, caseload for two years and may stay on it longer if necessary.

However, CDC has established only 15 such specialized caseloads at seven locations around the state. As shown in Figure 4, only 600 of the 3,500 high-risk sex offenders on parole are receiving this more intensive level of scrutiny by parole agents. Most of the others are assigned to so-called "high-control" caseloads, in which one agent handles an average of 55 cases.

Figure 4

Sex Offender Parole Population Caseloads

June 30, 1998



The differences in caseload greatly affect the number of contacts that regularly occur between a parole agent and a sex offender—the primary means of ensuring that a parolee is in compliance with conditions of his parole. The CDC indicates that an offender on a 55-to-1 high-control caseload must be contacted by a parole agent at least once per month, while a parolee on a specialized sex offender caseload of 40 to 1 must be contacted at least three times per month.

Supervision Period. The customary period of parole supervision for most high-risk sex offenders is established in state law as two years, but can be extended by BPT to three years "for good cause." Offenders now receiving life sentences under the One-Strike or Three-Strikes laws will be subject to parole supervision for five years, but none are likely to be released from prison for many years.

Many correctional professionals and experts on deviant sexual criminal behavior agree that a standard two- to three-year period of parole, as has been established in California, is insufficient for high-risk sex offenders. The likelihood that they will commit new crimes, particularly sex offenses, is believed likely to persist for much longer for some individuals, possibly for the rest of their lives. Some child molesters, we are ad-

vised, appear to have a pattern of reoffending within months of their discharge from parole, even though they may have stayed out of trouble during their entire parole period. Notably, other states, such as Colorado and Arizona, are subjecting selected groups of adult sex offenders to at least a minimal level of community supervision for the rest of their lives in an effort to deter future criminal behavior.

Few Offenders Receive Treatment

Control, Not a Cure. Correctional professionals and experts on deviant sexual criminal behavior are in general agreement that no treatment program can "cure" a person with criminal sexual tendencies. However, there is a growing body of academic evidence suggesting that some therapies, often referred to as "cognitive-behavioral treatment" or "relapse prevention," can enable some high-risk sex offenders in prison or on parole to learn how to curb their impulses to commit further criminal acts.

Experts on this subject indicate that, to be effective, such programs must (1) be tailored especially for sex offenders, (2) be structured to progress through multiple phases, (3) address individual problems such as addiction to drugs or alcohol that may be related to their pattern of criminal behavior, (4) be of sufficient duration and intensity to be effective, and (5) have a strong "aftercare" component to ensure there is not a return to criminality after their release to the community. Medication treatments that can reduce the intensity of an offender's sexual impulses are used in conjunction with relapse-prevention therapy for particular cases. (Informed consent and medical protocols have been used in these instances.)

Sex offender treatment programs containing some of these elements have been implemented for California's sex offenders in the past, but are rarely available now for either prison inmates or parolees. This is the case even if an offender's criminal record was deemed so serious that it resulted in his referral to DMH for evaluation as an SVP. In cases when a sex offender does not receive an SVP commitment, he ordinarily would be subject to intensive supervision in the community but probably will not participate in a specialized sex offender treatment program.

The Sex Offender Treatment and Evaluation Project (SOTEP) Program. The DMH operated a relapse prevention program known as SOTEP from 1985 through 1995. The CDC inmate volunteers were transferred to the state mental hospital at Atascadero for 18 months to two years for sex offender treatment, with one year of aftercare following their release on parole.

Some groups of adult offenders participating in SOTEP evidenced lower rates of committing new sex crimes after their release to the community, although in most cases the degree of improvement was not statistically significant. The DMH evaluators of the program believe SOTEP might have proven more effective if the treatment program were of a longer duration, if more emphasis had been placed on practicing offender self-control techniques and less on individualized therapy, and if the aftercare component had stronger parole supervision and treatment.

The Legislature approved a 1995 measure to extend the SOTEP program for three more years, but it was vetoed by the Governor. The administration said it rejected the continuation of SOTEP because it was "no substitute" for a program for civil commitment of SVPs. Although the Governor's proposal to establish a SVP program was later approved, authority to continue SOTEP was never restored.

Parole Outpatient Clinics. A minimal level of mental health services continues to be provided by CDC for sex offenders through its four Parole Outpatient Clinics (POCs), which are focused on evaluation, counseling, and treatment of parolees with serious mental disorders. The CDC's practice is to refer all parolees subject to sex offender registration requirements to a POC, regardless of their mental condition. This is the case even though only a fraction of such offenders—as few as 10 percent, according to experts on sex offenders—have a diagnosed serious mental disorder such as schizophrenia. At any given time, more than 5,100 sex offenders are on a POC caseload.

We are advised by CDC that few of the sex offenders sent to the POCs are receiving the type or intensity of specialized treatment provided in successful relapse prevention programs. Following an initial psychiatric evaluation at a POC, most are in contact with its clinical staff only about once every 90 days. That compares with relapse prevention programs providing a minimum of at least several hours of programmed counseling and therapy *every week.* We discuss a better approach to this use of POC resources later in this analysis.

The DMH Programs. The only comprehensive programming remaining for California adult sex offenders occurs within the state mental hospital system and within the Conditional Release Program (CONREP), its post-release aftercare program. As of June 30, 1998, 352 forensic patients were being held in state mental hospitals as a result of rape or child molestation charges. (Some were inmates or parolees previously incarcerated by CDC, while others were sent to the hospitals directly by the courts and were never held in prison.) Another 123 forensic patients

originally held as a result of rape or child molestation charges have been released to the community and are now participating in CONREP.

The more intensive services provided through CONREP have been proven effective in reducing recidivism of sex offenders. A DMH evaluation indicated that sex offenders who received treatment in the state mental hospitals and subsequently in CONREP have a very low reoffense rate—less than 4 percent annually. However, except for SVP commitments, access to such programs is limited to sex offenders with serious mental disorders.

Even as California has been scaling back its sex offender treatment programs, such as SOTEP, a number of other states have been expanding such programs for their prison inmates and parolees. Relapse prevention programs have proven successful in reducing the rate of sexual reoffending of sex offenders in the States of Alaska, Washington, Arizona, and Oregon, as well as in Canada.

Polygraph Controls Absent

Technology Has Multiple Uses. In a number of other states, but not in California except on an experimental basis, polygraph examinations are increasingly being used to improve the treatment and control of adult sex offenders. A 1992 nationwide survey indicated that 25 percent of treatment programs for adult male sex offenders involved use of the polygraph. The examinations have proven useful chiefly because sex offenders, as a group, often have strong motivations to lie about their past and current behavior.

Clinicians in prison or parole sex offender treatment programs use the examinations as a tool to confront offenders who deny their history of assaultive sexual behavior. The threat of a polygraph prompts many offenders to disclose past criminal activity. One Colorado study documented how a group of 97 sex offenders initially admitted to a combined total of 227 victims. Faced with a polygraph examination of their criminal history, the same group of offenders subsequently admitted to more than 10,000 victims. Once a pattern of criminal history has been divulged, treatment providers can use that information to break down an offender's denial of culpability and convince the offender that he or she will be held accountable for future criminal activity.

Parole authorities can use such disclosures about past sexual misconduct to determine whether a parolee should be classified as a high-risk sex offender who should be subjected to closer scrutiny. The polygraph examinations also may help authorities determine whether special conditions of parole should be imposed on a particular offender. For example, if an examination prompted admissions that children from a certain age

group was a favorite target of the offender for sexual assault, the parole conditions could specify that an offender avoid particular locations where such a victim group was often present.

Checking on Parole Compliance. After an offender has been released on parole, continued regular polygraph examinations—usually twice per year—can be used to help evaluate whether a sex offender is continuing to comply with conditions of parole and avoiding criminal activity. While an offender's failure of a lie-detector test is not used as grounds for criminal prosecution or revocation, such a result may alert authorities to investigate, confirm, and punish ongoing criminal behavior.

Some states, including Texas, Arizona, and Colorado, have developed or are now developing written protocols that govern the way polygraph examinations are used for "forensic" (that is, for criminal justice-related) purposes. Some states have established regulatory standards or credentialing requirements for the individuals or firms conducting forensic polygraph examinations.

Last year, the state Department of Justice received funding to hire forensic polygraph examiners to assist local law enforcement authorities in the apprehension and prosecution of sex offenders. Except on an experimental basis, however, California authorities have not relied upon the polygraph for either the treatment or control of sex offenders.

Few Held by Costly SVP Program

Three-Year-Old Effort. The state began its program to seek the court-ordered civil commitment of SVPs to state mental hospitals in January 1996. The SVP commitment effort is similar in some respects to a civil commitment program for mentally disordered sex offenders (MDSOs) struck down by the courts and then repealed from state law in 1981. (Some MDSOs remain under the jurisdiction of the DMH.)

The SVP program was ruled constitutional last month by the California Supreme Court. The program targets prison inmates nearing release to parole who have been convicted of a violent sexual offense against two or more victims and who have a diagnosed mental disorder increasing the likelihood that they will engage in sexually violent criminal behavior.

The CDC and BPT work together to screen inmates to determine if they meet the criteria set forth in the SVP law. Those cases are referred to DMH for an evaluation to see if the inmate's mental condition fits additional criteria set out in the law for commitment. If a county district attorney or county counsel then decides to seek an SVP civil commitment, and

a judge issues such an order after a civil trial, male offenders are sent to Atascadero State Hospital and female offenders to Patton State Hospital for treatment for at least two years. Further two-year commitments may be sought indefinitely until the offender is deemed to no longer pose a danger and is released to community supervision.

Few Commitments to Date. So far, the program is resulting in significant state costs but relatively few state hospital commitments of SVPs. As shown in Figure 5, DMH, district attorneys, and the courts have determined that many sex offenders referred for commitments fail to meet the criteria set forth in the SVP law at every stage in the process.

As of the beginning of October 1998, CDC and BPT had screened the records of more than 24,000 sex offenders and referred about 2,300 cases to DMH for evaluation. As of that same date, only 129 of these sex offenders had been committed to state mental hospitals as SVPs with another 494 cases in process by DMH, prosecutors, and the courts. If present trends hold, only 335 of those 24,000 sex offenders screened by CDC and BPT—or less than 2 percent of the original total—would eventually end up being sent to Atascadero or Patton with a SVP commitment.

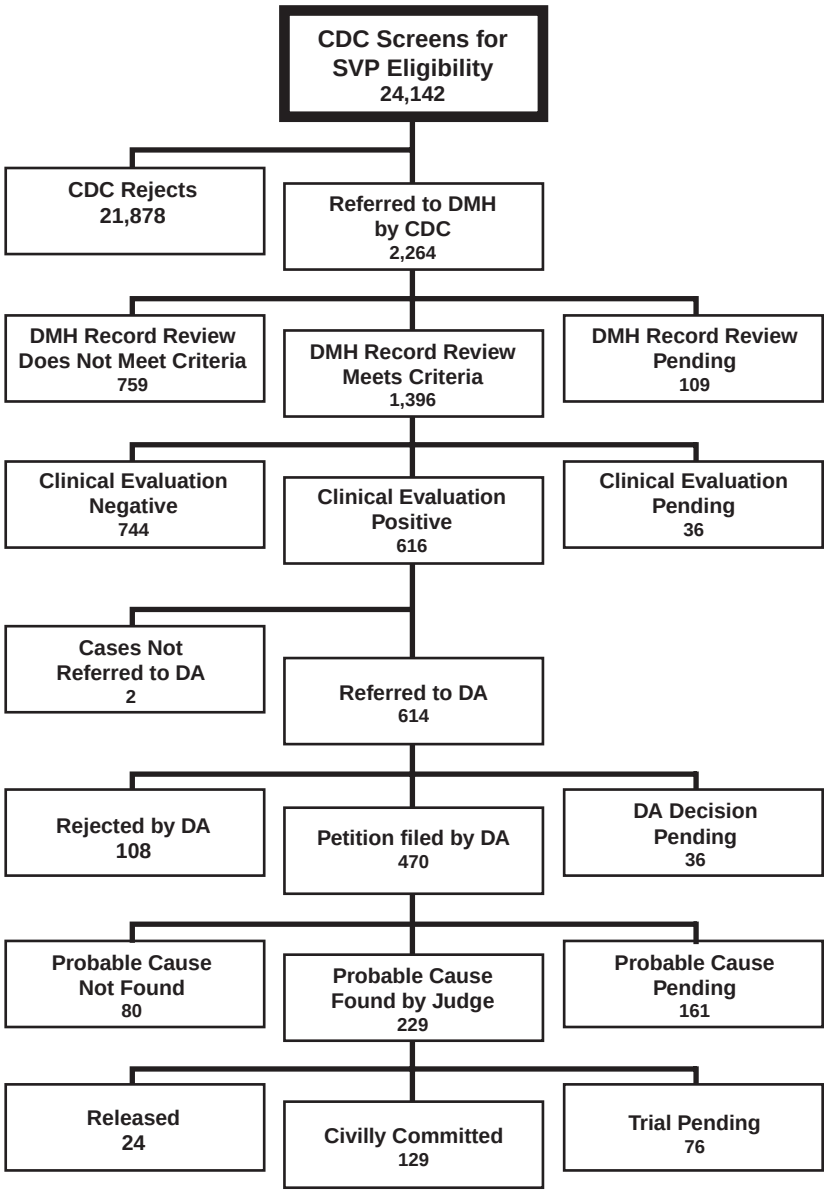
Program Costs Growing. Meanwhile, the support and capital outlay costs of the SVP program are growing significantly. That is partly because the cost to the state of holding and treating one SVP at Atascadero or Patton is estimated to be about $107,000 annually, much more than the $21,000 per year cost of incarceration in a state prison. Because the SVP law mandates local government participation in the SVP commitment process, it is anticipated that the state will owe tens of millions of dollars to counties for the cost of adjudication of hundreds of SVP cases. We estimate that by June 2000, the state will have spent a cumulative total of $214 million for state and local government activities related to SVPs. These costs—averaging more than $450,000 per person—include facilities to hold persons committed by the courts as SVPs, as well as those held in mental hospitals and county jails while their cases are evaluated and adjudicated.

We anticipate that the annual cost to the state for the SVP program is likely to grow further as local government agencies file claims against the state for reimbursement of their costs and as the state adds needed space to the mental hospital system. The DMH has already received about $5.5 million in initial funding and is requesting $16 million more in 1999-00 to plan and design a $300 million high-security facility dedicated to the treatment of 1,500 SVPs. That is equal to the cost of building a new state prison that could house 5,000 offenders. (Our analysis and recommendations regarding this project are discussed in our DMH analysis in the Capital Outlay chapter of our *Analysis*.)

Figure 5

The Sexually Violent Predator Program

As of October 1998



Our analysis indicates that DMH has been significantly overbudgeted for the costs of evaluating inmates referred for potential commitments as SVPs. This issue and our recommendations are discussed in our DMH analysis in the Health and Social Services chapter.

SVP Candidates Paroled to Community. Adult sex offenders who are not committed under the SVP program are released on parole, sometimes without providing complete documentation to parole agents of the factors which led to their consideration for commitment to a state mental hospital. We are advised by BPT that CDC does not always prepare an investigative report documenting these factors. Moreover, DMH does not ordinarily provide reports on the outcomes of its evaluation of candidates for SVP commitment to CDC's parole division. Both the BPT and the CDC parole division believe this information could help identify additional high-risk sex offenders, ensure that those who are identified are subjected to appropriate conditions of parole, and assist in their successful treatment in the community.

The BPT had sought to continue to hold some of these offenders in prison by declaring them seriously mentally disordered and revoking their parole. But in July 1998, a state appellate court determined that the practice of revoking someone's parole before they had ever been released on parole was illegal. The court decision resulted in the release of 118 sex offenders to parole, with 34 since arrested and returned to custody for parole violations.

A Failing Approach

Recidivism Rate High. Lacking effective programs to curb their criminal behavior, as well as inadequate supervision and control in the community, many sex offenders are committing new crimes and violating parole and subsequently being returned to state prison. Because of these and other concerns, the BPT has advised us that it intends to develop new guidelines for the management of sex offenders.

According to CDC data, 850 sex offenders on parole were returned to prison during 1997-98 with a conviction by a court for a new crime, while another 4,335 were returned to state custody by BPT for parole violations. This means that almost two out of three sex offenders annually are failing on parole, resulting in additional crime and contributing to the steady growth in state costs to build and operate additional prison space.

The adult parole population as a whole has a somewhat higher parole failure rate than sex offenders. However, sex offenders are almost nine times more likely to return to prison for a parole violation involving a sex

crime-related offense. Many had failed to comply with sex offender registration requirements. However, others were returned for rape, child molestation, and other crimes.

Links to Substance-Abuse Addiction. Correctional experts, academic studies, and CDC data on sex offenders have all documented a strong relationship between the offender's criminal activity and substance-abuse addiction. As of June 30, 1998, 709 of the California adult sex offenders under parole supervision last went to prison for a drug- or alcohol-related crime—almost as many as the 781 who had last served time in prison for rape. For sex offenders on parole, substance abuse remains a leading factor in their return to prison for parole violations. About 28 percent have been revoked for parole violations such as illegal drug possession, use, sales, or driving under the influence.

LAO RECOMMENDATION: "CONTAINMENT" OF HIGH-RISK SEX OFFENDERS

We recommend the implementation of a strategy of "containment" of California's population of high-risk adult sex offenders. The containment strategy includes longer and more intensive supervision of high-risk sex offenders released on parole, regular polygraph examinations of sex offenders, and pre- and post-release treatment programs to help control the behavior of habitual sexual offenders. We believe this promising approach would result in an increase in state expenditures in the short run amounting to about $9 million annually. We believe that a state investment in such a strategy would yield significant benefits, including net savings to the state in the long term, potentially ranging into the tens of millions of dollars, as well as an improvement in public safety.

The Containment Model

A Promising Approach. The National Institute of Justice, a research arm of the U.S. Department of Justice, sponsored a nationwide survey in 1994 of the way different states managed their populations of adult sex offenders. Based upon this research, Colorado public safety officials have proposed and are now implementing what they have termed a "containment" approach that incorporates the most effective methods now being practiced across the country.

This approach is intended to "contain" or prevent a sex offender who has been released on parole from committing new sex crimes. Conceptually, the sex offender is placed in the middle of a triangle of supervision

surrounded by (1) the parole agent, (2) a treatment provider, and (3) a forensic polygraph examiner. The approach emphasizes collaboration among these three parties, making the safety of the community and past sex crime victims a high priority, and calls for individualized case management of sex offenders that addresses the specific supervision, treatment, and controls needed to reintegrate them safely in the community.

Based upon our discussions with prison and parole experts here and in other states, as well as our review of academic research into effective sex offender programs, we believe the containment approach is promising. For example, Maricopa County, Arizona, has had a containment approach similar to Colorado's since 1986. This approach has proven to be highly effective in preventing sex offenders who have been released to the community on probation from committing new sexual assaults. A study determined that only 1.6 percent of 1,700 offenders participating in the program from April 1993 through April 1998 were committed for new sex crimes. Maricopa County found that such offenders ordinarily are recommitted for sex crimes at a rate of about 14 percent.

The Next Logical Step. Last year, the Legislature approved, but the Governor vetoed, legislation (SB 2116, Schiff) authorizing a three-year pilot program in one California county to implement a similar program for sex offenders released on state parole. However, California authorities have already experimented extensively with several key elements of containment, including relapse prevention treatment programs, forensic polygraph examinations, and intense supervision of high-risk sex offenders. A parole unit in Redding in Shasta County has tested several elements of a containment approach with positive results, including below-normal recidivism of its high-risk sex offenders.

Thus, we believe the logical and appropriate next step is for the state to expand these pilot efforts into a comprehensive and more cost-effective system of containment for California's population of high-risk adult sex offenders. We offer specific recommendations below, which are summarized in Figure 6, to ensure that such an approach is properly tailored to fit California's criminal justice and correctional systems.

Figure 6

Proposed Program for Containment of Sex Offenders

- ***Intense supervision*** for offenders released to parole.
- More ***background information*** for parole agents.
- ***Longer period of supervision*** for offenders posing the greatest risk.
- ***Specialized treatment*** programs.
- Voluntary ***medication treatments*** for selected offenders.
- Pilot program of ***in-prison treatment*** for high-risk offenders.
- Regular ***polygraph*** examinations.

Intensify Supervision

Focus on High-Risk Sex Offenders. We recommend the adoption of legislation directing the CDC to establish more intensive and specialized supervision caseloads for adult sex offenders it determines to pose a high risk of committing new crimes. In effect, the 40 to 1 caseloads now established for 600 such offenders would be extended to as many as possible of the other 2,900 offenders that CDC has concluded pose a significant risk to the community but now receive less intensive supervision.

Consistent with a recommendation our office offered to the Legislature last year, we recommend that the cost of intensifying high-risk sex offender caseloads be offset by eliminating or shortening the period of active supervision of other adult parolees who are not violent offenders or sex offenders, and who have been determined through a classification process to pose little risk to public safety. We are advised that, if this new classification system were implemented, an estimated 6,700 parolees—roughly 6 percent of the parole population—would be considered suitable for alternatives such as direct discharge or minimum parole terms.

At the direction of the Legislature, CDC is nearing completion of a statistically validated parole classification system that will systematically identify such low-risk parolees. We recommend that these adult parolees be moved—either immediately upon their release to parole or after an abbreviated period of trouble-free supervision—to "banked" caseloads. The offenders on banked caseloads would not be required to be in regular contact with parole agents. However, these offenders would retain their status as parolees, making them subject to immediate search for contraband without court warrants and subject to revocation for any violation of their conditions of parole.

In order to minimize disruption to the parole workforce that could result from removing some offenders from parole agent caseloads, we recommend that these changes be phased in over a two-year period.

We further recommend that DMH and CDC report to the Legislature by April 1, 1999, regarding the funding, personnel, and statutory authorization needed, if any, to ensure that background reports on offenders referred for commitment as SVPs, but who are able to avoid such a commitment to a state mental hospital, are prepared on a timely basis and made available to the parole agents who must supervise them in the community.

Provide Longer Supervision for Certain Offenders

Modify Statutory Limits Selectively. We recommend that state law be changed to establish a longer period of parole for the most dangerous adult sex offenders. Studies of sexually deviant criminal offenders provide strong evidence that a longer period of parole is needed to protect the public. Longer parole periods may result in some additional offenders being returned to custody for parole violations, but the pressure of extended supervision would likely prevent some of them from committing new crimes and being returned for long prison terms.

Accordingly, we specifically recommend that repeat sex offenders sentenced under the One-Strike law to 25 years to life (who in many cases caused great bodily injury, used a firearm, or harmed multiple victims during their crime) be subject to lifetime parole instead of the five years provided under current law. The CDC data show that the persons receiving one-strike sentences are younger and far more likely to commit violent crimes, including sex crimes, than other sex offenders.

The CDC would retain authority to determine the appropriate level of supervision needed for any adult sex offender. For example, if such an

offender had performed well on parole for ten years, CDC would be authorized to move the offender to a banked caseload.

Based on our review of research and discussions with correctional professionals, we further recommend that offenders sentenced to state prison for the most serious felony sex crimes, particularly child molestation and rape, be subject to a five-year parole period rather than the three years now provided by law. All of these changes would take effect for offenders committing crimes after this change in the law and would not be applied to offenders now incarcerated in state prison.

Create Specialized Parole Treatment Programs

Establish Relapse Prevention in the Field. We recommend that the Legislature provide statutory authority and funding to CDC beginning in 1999-00 to establish specialized sex offender treatment programs. These programs would be based on the relapse prevention model for high-risk offenders who have been released on parole. The treatment programs would be targeted at the same group of offenders receiving more intense supervision by parole agents and would include referral to specialized services, such as substance-abuse treatment, for offenders needing such assistance.

In addition, medication treatments would be provided for selected offenders as determined by medical protocols to control their behavior. Unless ordered by a court, the medication treatment would be voluntary and provided with the consent of the sex offender.

A framework for the operation of such a program would be outlined in accompanying legislation. In order to make it easier for CDC to provide treatment services throughout the entire state parole system, we recommend that they be provided primarily through contracts with private vendors with the established expertise and credentials for conducting specialized sex offender treatment in a group setting. We recommend against providing these services by hiring additional state staff at the existing POCs because they lack the structure to successfully implement such a specialized new program, and because we believe POCs should instead focus on improving treatment of seriously mentally disordered offenders.

Under this approach, some high-risk sex offenders would participate in group-counseling sessions run by contract providers and some in sessions conducted by parole agents. Parole agents would receive training on how to run the sessions and to ensure they can work effectively with contract providers.

In order to strengthen the personal commitment of sex offenders to these treatment programs, we recommend the authorizing statute permit CDC to collect at least nominal fees from offenders to partly offset the cost of the treatment services. This practice has been implemented successfully in other states offering such programs to parolees. As discussed above, CDC would also be provided budgetary authority to spend these reimbursements.

End Unwarranted POC Referrals. Additionally, we recommend that CDC be directed through budget bill or statutory language to end the practice of referring certain sex offenders to the POCs. These sex offenders are those who do not have a diagnosed serious mental disorder or who do not exhibit signs of serious mental illness after being released to parole. This will avoid duplication with the sex offender treatment services provided to high-risk sex offenders, while doing away altogether with the provision of mental health services to low-risk sex offenders who neither need nor currently receive much assistance from the POCs.

We further recommend that the cessation of these referrals not lead to a reduction of POC staffing and resources, but instead to expanded and more intensive POC services for the seriously mentally disordered parolees remaining on its caseload. The POC system, which has received no significant funding increases during the 1990s, is currently so understaffed that there is only one clinician for every 143 parolees.

Start an In-Prison Treatment Program

Begin Pilot Project for Adult Offenders. We recommend that the Legislature provide General Fund resources beginning in 1999-00 to convert existing prison space to a 500-bed pilot program to provide sex offender treatment under the relapse prevention model in a state prison. This could be accomplished by transferring sex offenders incarcerated at various prisons to one location. We further recommend the enactment of a statute specifying a framework for the operation and evaluation of the pilot program. This should include specifications that the program be established in a separate prison yard segregated to the maximum extent that is practical from nonsex offenders. The measure would specify that admissions to treatment be targeted at adult sex offenders who (1) are within two years of being released on parole, (2) have been subject to a clinical assessment and a review of their criminal history indicating a high risk of committing new sex offenses, and (3) may be amenable to treatment based on clinical assessment.

The program would be implemented primarily through contracts with private vendors with appropriate professional credentials and experience in forensic sex offender treatment, using an appropriate mix of medical and nonmedical staff. Individualized treatment for substance-abuse addiction, anger management, and other risk factors would be provided as warranted. Medication treatments would be provided with the informed consent of an inmate according to medical protocols. Consistent with existing law, inmates who participate could earn credits to reduce their time served in prison (in most cases, by no more than 15 percent of their total sentence).

Sex offenders who demonstrated significant progress during treatment in a clinical reassessment would not be subject to referral by the CDC director for civil commitment as an SVP. However, upon parole, all such participants in the pilot program would initially be placed on a specialized, intensive parole caseload for high-risk sex offenders.

Require an Evaluation. Because the state has yet to demonstrate it can run a cost-effective in-prison sex offender treatment program, we recommend only a pilot program be established at this time. If the CDC program proved successful, it could be expanded later to include additional high-risk sex offenders. We recommend that DMH be directed to conduct an independent evaluation of the CDC program to determine if it is operating effectively, is having a positive clinical effect on sex offenders, and is cost-effective for the state.

Facilitate Use of Polygraph Examinations

Outline Specific Purposes in Statute. We recommend that the Legislature provide statutory authority and funding to CDC to incorporate the use of polygraph examinations as part of the treatment programs we have proposed. While we are advised that use of the polygraph for these purposes is already permissible under state law, we recommend that state law be amended to specify that CDC polygraph examinations would be used for specified purposes. These purposes are to facilitate sex offender treatment, ensure the appropriate classification of parolees, fashion the establishment of appropriate parole conditions, and determine ongoing compliance with those parole conditions and state law.

Limit CDC's Use of Polygraphy. Our recommended statute on polygraph usage would not authorize CDC to use polygraph examinations for the purpose of forcing adult sex offenders in prison or on parole to confess specific details of their past sex crimes. We believe such an approach would prove counterproductive because it would stifle the disclosure of

harmful sexual activity by offenders—often the therapeutic key to making them confront and alter their patterns of illegal behavior. These polygraph-induced disclosures could provide critical information to parole authorities to prevent future victimization of women and children by rapists and child molesters.

The polygraph examinations would not be conducted in a fashion intended to elicit detailed confessions of past criminal activity constituting sufficient evidence for prosecution of additional sex crimes. It is possible that a particular inmate or parolee could volunteer such specific information during a polygraph examination. In that event, existing state law (which we do not propose to change) requires clinical professionals, including those providing sex offender treatment, to report to law enforcement authorities their knowledge of any specific admissions by offenders of illegal sexual activity. But inmates and parolees who avoided making specific incriminating statements would not be subject to prosecution for additional crimes based on the outcome of their polygraph examination.

Ensure Participation in Examinations. We further recommend that state law be changed to clarify the consequences that would be faced by sex offenders who refused to submit to polygraph examinations for the specific purposes such as treatment outlined above. Specifically, we recommend that state law be amended to specify that the CDC Director could punish an incarcerated offender participating in a sex offender treatment program with the loss of previously earned work and education credits upon that offender's refusal to submit to a polygraph examination. We further propose to amend state law to clarify that the refusal of a sex offender on parole to submit to such an examination could constitute grounds for the parole revocation and reincarceration of that offender by the BPT.

Establish Professional Standards. Finally, we recommend that CDC be directed to establish clear professional standards of work experience or accreditation for any persons or firms hired by the state for forensic polygraph work. The CDC should also be directed to establish written protocols that parole agents, treatment providers, and polygraph examiners must follow whenever polygraph examinations are used.

Short-Term Fiscal Effect

Treatment and Supervision Costs. Our proposal would shift the deployment of parole agents from low-risk offenders to high-risk sex offenders at no additional state cost. Thus, the short-term costs primarily

result from the establishment of prison and parole treatment programs as well as the use of forensic polygraph examinations and medication treatments.

Based upon programs established in other state prison systems and the California Department of the Youth Authority, we estimate that the operation of a 500-bed pilot program at an existing prison could cost about $3.8 million annually at full implementation, not counting unknown costs for DMH evaluation, medication treatments, polygraph, and any capital outlay needed for supplemental program space at the facility selected for the program.

We anticipate that the cost per offender of providing specialized sex offender treatment services would be significantly lower for parolees, based in part upon the Redding parole unit that experimented with a containment approach. We estimate the full statewide cost to operate such a program at about $4 million annually. If the department charged sex offenders going to contract-provider counseling sessions a nominal fee, these costs could be partly offset by about $400,000 in fee revenues. Thus, the net cost to the state would be about $3.6 million annually at full implementation. The cost of medication treatments for selected sex offenders who consented to the procedure is unknown, but could amount to hundreds of thousands of dollars annually. We estimate that the use of polygraph examinations as we have proposed would eventually cost $900,000 annually.

We estimate that the overall cost of implementing a containment approach with both in-prison and parole programs would be less than $4.5 million in 1999-00, increasing to about $9 million in 2000-01. Our plan also generates short-term savings by removing sex offenders who are not seriously mentally ill from POC caseloads, but our plan redirects those staff resources toward improved services for mentally ill parolees.

Long-Term Fiscal Effect

Longer Parole Period. Lengthening the statutory period of parole for adult sex offenders would eventually increase the costs of supervision. We estimate that the fiscal impact would not be significant until at least six years after such a change were enacted. If longer parole terms were the rule for all sex offender parolees under supervision today, the state would be spending about $10 million more annually.

Lengthening the period of parole supervision could also result in additional sex offenders being returned to state custody for parole violations. These offenders are not subject to parole revocation following their

discharge from parole. Under the LAO proposal, many of them would now be subject to such sanctions for an additional two years of parole supervision and, in the case of one-strike felons, for a lifetime period of supervision. This would increase CDC's operating costs.

Our projected costs for the supervision and treatment of sex offenders released on parole could also increase in the future to the extent that the use of polygraph examinations results in the identification by CDC of a larger number of high-risk sex offenders. This could be the case, for example, for a sex offender who admitted during an in-prison polygraph examination to numerous sex crimes victims for which he had never been prosecuted. Such an individual might have been placed on a regular parole caseload in the past, but under our approach would now go into a containment program involving more intense and more costly parole supervision and treatment. In-prison treatment costs for adult sex offenders could also grow if the pilot program we recommend proved to be clinically effective as well as cost-effective.

Net Savings Likely. Our analysis also indicates, however, that the short-term and long-term costs to the state outlined above would be more than offset by other factors.

First, we anticipate that retaining these high-risk sex offenders on parole for longer periods of time under a containment approach would likely result in fewer recommitments to prison for new crimes or for parole violations. Other states and CDC's own Redding parole unit experiment have demonstrated significant reductions in recidivism as a result of tighter supervision and effective treatment of high-risk adult sex offenders.

Given the longer prison terms now facing repeat sex offenders, there could be significant dividends from keeping more sex offenders safely in the community on parole. Every adult sex offender the state prevented from committing a new crime, and then being returned to prison with a one-strike or three-strikes sentence, would save the state as much as $500,000 on prison operations and construction costs over the long term. If a containment strategy were able to prevent just 100 sex offenders from receiving a new, lengthy prison commitments of the type mandated by these sentencing laws, the state would save more than $50 million in the long term.

The state would also achieve significant savings to the unknown extent that sex offenders who demonstrated progress during in-prison treatment programs were diverted from SVP evaluations, adjudication, and civil commitment and aftercare in the CONREP program.

These savings could also be considerable. As we noted above, SVP program costs are likely to rise further as more cases are processed and more commitments are completed to the state mental hospital system. The annual treatment cost of one SVP has been estimated at about $107,000. Cases must be retried if a commitment is to be continued beyond the original two-year period, creating additional state and local costs. Then, once an SVP is released from treatment, state law mandates that they be placed in the CONREP community aftercare program. The CONREP has average annual cost per patient of $21,000, with the average costs for supervising SVPs likely to be much higher. The SVPs released to CONREP will likely remain under this intense supervision for at least three to five years.

Finally, to the unknown extent that a containment program is successful in preventing additional violent sex offenses, the state and local governments would have lower criminal justice system costs and lower costs for providing medical, counseling, and other assistance to crime victims.

These factors are the basis of our conclusion that effective implementation of a containment approach for high-risk adult sex offenders would result in net state savings in the long run, potentially in the range of tens of millions of dollars annually.

Conclusion

An Investment in Crime Prevention. Based upon our analysis, we are concerned that the way the state currently manages its adult parole population of high-risk sex offenders does not represent a cost-effective "purchase" of public safety using the taxpayer dollars that are available.

After three years of effort, the increasingly costly SVP program has resulted in the civil commitment of about 129 offenders. Meanwhile, thousands of high-risk sex offenders are being paroled to the community each year without intensive supervision and treatment, with a resulting high incidence of recidivism for parole violations and new crimes, even though this situation could be improved at a comparatively modest cost.

Benefits of a Containment Strategy. Figure 7 (see next page) summarizes the benefits of our recommended approach. We believe the investment of additional state funds in a containment strategy for sex offenders would result in significant net state savings. Additionally, we are convinced that the change in approach we propose is also warranted based on the beneficial impact its effective implementation would have on public safety.

Figure 7

Benefits of the LAO Containment Approach

- ***Improved public safety*** including a reduction in new crimes and parole violations by sex offenders on parole.
- ***Better use of state parole resources*** with more intense efforts for a longer period of time to supervise high-risk offenders and less focus on low-risk offenders.
- ***More and better information*** for parole agents to identify the sex offenders who pose the greatest risk to the public and impose appropriate conditions of parole to reduce such risks.
- ***Better use of Parole Outpatient Clinic resources*** with more focus on the assessment and management of seriously mentally ill offenders.
- ***Significant long-term net savings to the state and local government*** potentially in the tens of millions of dollars annually, due primarily to lower costs for the prison and mental hospital systems, the criminal justice system, and for assistance to crime victims.

Our plan does not contemplate the elimination of the SVP program. Rather it calls for a shift in strategy toward the cost-effective treatment of high-risk sex offenders *before* they complete their prison terms instead of their treatment in state mental hospitals *after* completion of their prison sentences at five times the cost. Our approach incorporates longer and more intensive parole supervision, continued treatment, and forensic polygraph examinations to control the thousands of high-risk offenders who will continue to be released into the community despite the SVP program.

THE TOBACCO SETTLEMENT

The attorneys general of most states and the major U.S. tobacco companies have agreed to settle more than 40 pending lawsuits brought by states against the tobacco industry. In exchange for dropping their lawsuits and agreeing not to sue in the future, the states will receive billions of dollars in payments from the tobacco companies and the companies will restrict their marketing activities and establish new efforts to curb tobacco consumption.

The settlement is projected to result in payments to California of $25 billion through 2025, which will be split equally between the state and local governments. The* 1999-00 Governor's Budget *assumes the receipt of $562 million in the budget year, which is equivalent to the first two payments to the state.

Although the settlement does not require action by the Legislature, we recommend that the Legislature (1) recognize the uncertainties surrounding the amount of funds the state will receive, especially in the long run, and not dedicate the settlement monies to support specific new ongoing programs, (2) consider the settlement revenues that will accrue to local governments when considering future local government fiscal relief, and (3) monitor new national antitobacco programs in order to complement existing state efforts.

Summary of the Settlement

On November 16, 1998, the attorneys general of eight states (including California) and the nation's four major tobacco companies agreed to settle more than 40 pending lawsuits brought by states against the tobacco industry. The settlement agreement calls for financial payments to the states, the creation of a national foundation to develop an antismoking advertising and education program, and the establishment of certain advertising restrictions to benefit public health. Figure 1 (see next page) summarizes the key features of the agreement, many of which are discussed in more detail below.

Figure 1

Key Features of the Tobacco Settlement

- ***Payments to States.*** Requires the tobacco manufacturers to make payments to the states in perpetuity, with the payments totaling an estimated $206 billion through 2025.
- ***National Foundation.*** Creates an industry-funded foundation whose primary purpose will be to develop an advertising and education program to counter tobacco use.
- ***Advertising Restrictions.*** Places advertising restrictions on tobacco manufacturers, including bans on cartoons, targeting of youth, outdoor advertising, and apparel and merchandise with brand name logos.
- ***Corporate Sponsorships of Events.*** Restricts tobacco companies to one brand name sponsorship per year.
- ***Tobacco Company Affiliated Organizations.*** Disbands the Tobacco Institute and regulates new trade organizations.
- ***Limit on Lobbying.*** Prohibits the tobacco manufacturers and their lobbyists from opposing proposed laws intended to limit youth access and use of tobacco products.
- ***Access to Documents.*** Requires the tobacco companies to open a website which includes all documents produced in smoking and health-related lawsuits.

How Many States Are Part of the Agreement? Nationally, the attorneys general of 46 states and various territories have now signed on to the settlement proposal. The remaining four states—Florida, Minnesota, Mississippi, and Texas—had previously settled their cases with the tobacco industry.

What Companies Are Part of the Agreement? The four major tobacco companies that negotiated the agreement are Brown & Williamson To-

bacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, and R.J. Reynolds Tobacco Company. These four manufacturers account for more than 95 percent of the total sales of cigarettes nationally. Since the release of the settlement, most of the remaining smaller tobacco manufacturers have joined the agreement, so that the market share of the participating tobacco companies accounts for about 99.7 percent of total national sales.

Does the Settlement Require Validation? Under the terms of the settlement proposal, the courts in each participating state must approve the agreement. The settlement does not require that any explicit action be taken by the state legislatures. As we discuss later, however, the Legislature may wish to consider several actions related to the settlement.

In California, on December 9, 1998, the settlement agreement was approved by the San Diego Superior Court, where the state's case was being litigated. The settlement will become final in California if there are no appeals within 60 days of the court's decision. California was the nineteenth state whose court has approved the agreement. So far no court in any other state has rejected the settlement.

Monetary Provisions of the Settlement

The settlement agreement requires the tobacco companies to make payments to the states *in perpetuity*, with the payments totaling an estimated $206 billion through 2025 nationally. These funds will be divided among the states based on allocation percentages negotiated by the attorneys general. These allocation percentages are based on a variety of factors such as population and cigarette sales within the state. These state allocation percentages will not change over time. In order to pay for the settlement, the tobacco companies have raised the price per pack of cigarettes by 45 cents.

How Much Money Will California Get? California is projected to receive an estimated $25 billion through 2025, or about 12.8 percent of the total monies allocated for the states—the highest percentage of any of the states participating in the agreement. While the average annual payment to California is estimated to be approximately $925 million, as can be seen in Figure 2 (see next page), the estimated amount of funding per year changes considerably over time. California's share of the 1998 payment is estimated to be $306 million and there is no scheduled payment in 1999 under the terms of the settlement. New York has the next highest allocation percentage, an amount that is very close to California's allocation percentage.

Figure 2

Estimated Annual Tobacco Settlement Payments to California

1998 Through 2025
(In Millions)

Year	State	Local[a]	Total
1998	$153	$153	$306
1999	—	—	—
2000	409	409	818
2001	442	442	884
2002	531	531	1,061
2003	536	536	1,071
2004 through 2007[b]	447	447	894
2008 through 2017[b]	456	456	912
2018 through 2025[b]	511	511	1,022
Totals	**$12,503**	**$12,503**	**$25,007**

[a] Includes all counties and the Cities of Los Angeles, San Diego, San Francisco, and San Jose.
[b] Each year.

Who Gets the Money? Several California jurisdictions, including Los Angeles County and the City and County of San Francisco, had filed their own lawsuits against the tobacco companies. On August 5, 1998, the Attorney General entered into a Memorandum of Understanding (MOU) with the local governments to coordinate their lawsuits with the state's suit and provide for the allocation of any monies recovered. The terms of the MOU include an even, 50-50, split of the financial recovery between the state and the local governments that sign onto the deal. Thus, the estimated $25 billion to be allocated pursuant to the tobacco settlement would be split between the state and local governments with each receiving $12.5 billion.

The local share will be further split between the counties and specified cities. Under the terms of the MOU, the state's 58 counties will receive 90 percent of the local share, or $11.25 billion. These monies will be distributed to the counties based on population. The remaining 10 percent, or $1.25 billion, will be split equally among four specified cities—Los Angeles, San Diego, San Francisco, and San Jose. The MOU limits the recovery to these cities who could have filed an independent lawsuit pursuant to a specific provision of the Business and Professions Code.

Assuming that all of the local governments join in the settlement, we estimate that Los Angeles County will receive the largest amount of money—about $151 million by June 30, 2000 and $3.4 billion through 2025. (For our estimates for the individual counties and cities, please see Appendix 1 in our recent report, *The Tobacco Settlement: What Will It Mean for California?*)

Local governments do not automatically receive the funds unless they join the settlement and agree to its terms. To the extent that a county or city chooses not to participate, the monies that they could have otherwise received would be redistributed to the state and local governments.

What Does the Governor's Budget Assume? The *1999-00 Governor's Budget* assumes the receipt of $562 million to the state's General Fund in 1999-00—the state's share of the 1998 payment ($153 million) and 2000 payment ($409 million).

How Can the Money Be Spent? The tobacco settlement agreement places *no restrictions* on the use of the monies by the states. Similarly, California's MOU with local governments contains no restrictions.

Many of the state and local lawsuits (including California's) had sought recovery from the tobacco companies of the tobacco-related health care costs (such as Medi-Cal) incurred by states and local governments. The settlement agreement and California's MOU with the local governments do not specify that any of the financial payments by the companies are to reimburse state and local governments for such costs.

Absent specific action by the Legislature, the funds received by the state from the settlement would be deposited into the General Fund. Because the money is not a proceed of taxes, it would not be counted as revenues for purposes of calculating the minimum guarantee under Proposition 98.

Does the Settlement Money Count Towards the VLF Trigger? As part of the 1998-99 budget package, the Legislature and Governor agreed to certain cuts in the state's vehicle license fee (VLF) in future years if specified revenue forecasts (or "triggers") are reached. We believe that the additional General Fund revenues from the tobacco settlement would be counted toward the triggers. Based on our most recent revenue projections, however, revenues from the settlement would *not* be enough by themselves to pull a trigger and generate an additional cut in the VLF. However, the settlement monies would bring General Fund revenues *closer* to the levels that would activate the trigger and, if revenues increase beyond current projected levels, could result in an additional VLF cut in the future.

When Will the Money Be Available? The settlement agreement sets forth a payment and distribution schedule for the monies to the states. The tobacco companies will make payments into an escrow account. However, none of the money would be distributed to the states from the escrow account until there is a "final approval" of the agreement.

"Final approval" is defined in the agreement as the earlier of (1) June 30, 2000 or (2) when 80 percent of the states, representing 80 percent of the allocated distribution, obtain approval of their consent decrees and all challenges and appeals are heard by their state courts. Currently, it is unknown when final approval will be achieved, but it is likely that it will occur before June 30, 2000 (within the state's 1999-00 fiscal year). As part of the settlement, the tobacco companies will make a total of $12 billion in "up-front" payments. The first payment of $2.4 billion was paid to the escrow account by the end of 1998. Additional up-front payments of $2.4 billion will be made each January in 2000, 2001, 2002, and 2003. Annual payments will begin on April 15, 2000.

Uncertainties Regarding the Amount of Money California Will Receive

Our review finds that there are a number of factors that could have an impact on the amount of dollars available to California, especially in the long run. Most of these uncertainties would result in the state receiving less money than projected or receiving money with restricted uses, although two of the uncertainties could actually result in the state receiving more money.

Actions of the Federal Government That Could Offset Payments. The agreement has provisions to reduce the payments to the states in the event that the federal government takes certain specified actions against the tobacco companies by November 30, 2002. Specifically, if the Congress enacts legislation that provides for payments by the tobacco manufacturers (whether by settlement payment, tax, or other means), which the federal government then makes available to the states for health-related, tobacco-related, or for unrestricted purposes, the tobacco companies could offset their payments to the states by that amount. Under this scenario, the state might receive the same overall amount of money it would have otherwise received, but with the federal government setting the priorities or with significant strings attached. Neither the Congress nor the President have announced any intention to take such actions at this time; nevertheless, such actions remain a possibility in the future.

Actions of the Federal Government to Seek Reimbursement for Health Care Costs. The federal government shares with the states the costs of the Medicaid Program (Medi-Cal in California). Although the settlement with the states is not based on reimbursing states for costs of treating tobacco-related illnesses under Medicaid, federal law generally *requires* federal agencies to seek reimbursements for the federal share of any Medicaid costs. As a consequence, it is possible that the federal government could seek reimbursement for its tobacco-related Medicaid costs, either by seeking a share of the states' settlement funds or by taking legal action against tobacco companies in federal court. To the extent that federal authorities are successful in obtaining part of the settlement funds, this would reduce the amount of funds retained by the states. In addition, to the extent that a federal court action results in a large payout by the tobacco companies to the federal government, the companies may become less solvent and less able to make the payments to the states as specified in the states' settlement.

Federal authorities have recently indicated their intention to sue the tobacco companies, but have not indicated whether they plan to seek a share of the states' settlement monies. However, in response to a previously proposed settlement, they had indicated that they would seek a share of the funds.

Drop in Cigarette Sales. The settlement agreement contains provisions that allow the tobacco companies to decrease the amount they pay to the states if the nationwide sales of cigarettes decrease. Specifically, each year the amount of the payment to the states will be adjusted based on the volume of cigarettes shipped within the U.S. for sale. To the extent that this volume drops, the payments to states will decrease over time. The tobacco companies have raised their price per pack by 45 cents in order to pay for the settlement. To the extent that the increase in the price per pack reduces the amount of cigarettes consumed, the payments to the states would decrease over time.

This volume adjustment is based on *nationwide* sales, not just sales within California. This could minimize any negative financial impact on California since tobacco sales are more likely to decline faster in California than in the rest of the country due to (1) the additional 50 cents per pack tax placed on cigarettes beginning on January 1, 1999 as a result of Proposition 10 (discussed in greater detail below), and (2) the existing antismoking campaign that already exists in California that is funded from Proposition 99 monies.

Lawsuits by Nonparticipating Local Governments. If a local government does not join in the settlement but rather continues with a lawsuit

against the tobacco companies, the local government would not receive any funds from the settlement. The share that they would be eligible for under the terms of the MOU would be divided by the state and the other participating local governments. However, any award, judgment, or settlement won by a nonparticipating local government would be offset against tobacco companies' payments to the entire state. At this time, based on informal discussions with local governments, it seems likely that most, if not all, local governments in California will participate in the state settlement.

Tobacco Company Bankruptcy. The tobacco settlement was entered into with the U.S. manufacturing subsidiaries of the tobacco companies. As a consequence, the *parent companies* are not responsible for payments to the states should one of the subsidiaries go bankrupt. Bankruptcy by one or more of the tobacco manufacturers is a possibility given that the manufacturers still face potential lawsuits from individuals and class actions. For example, there is currently a class action case in Florida against the tobacco manufacturers seeking $200 billion.

Should one or more of the tobacco companies declare bankruptcy, the amount of money going to the states could decrease significantly. The remaining companies would not be responsible for paying the obligation of the bankrupt companies.

Reduction in Market Share of Settling Companies. Over time, the payments of the participating manufacturers can decrease if they lose market share to nonparticipating manufacturers. Under the terms of the agreement, the states can protect themselves against a reduction in payments by passing a "model statute" included in the agreement that would require nonparticipating manufacturers to put funds into escrow accounts for 25 years equivalent to the amounts paid by the participating manufacturers.

This possibility of reduced payments due to a decline in market share is probably not a major concern. This is because, as indicated earlier, most of the smaller tobacco manufacturers have now agreed to the deal. Under the terms of the deal, the public health provisions of the agreement will apply to these companies. Should their market share increase to a specified level, they will become responsible for making payments corresponding to those due by the original participating companies. States would not receive any additional monies, but the shares paid by individual companies would change.

Increased Payments From the "Strategic Contribution." From 2008 through 2017, the tobacco companies will provide a "strategic contribu-

tion" of $861 million per year to the states in excess of the other payments. How these funds are allocated among the states will be determined by a panel committee of three former attorneys general. The criteria for the allocation of the strategic contribution will take into account each state's contribution to the litigation. California was a relatively late entrant among states to the litigation, which may hurt the state's chances of receiving a significant portion of the strategic contribution. However, the fact that the California Attorney General was one of the eight attorneys general that negotiated the agreement and the sheer size of the state's case against the companies may offset any disadvantage.

Increases Due to Inflation Adjustments. The payments made by the tobacco companies will increase above the currently estimated amounts due to an inflation adjustment. The future tobacco payments will be adjusted annually by 3 percent or the national Consumer Price Index (CPI), whichever is greater. Thus, to the extent that the volume of cigarettes shipped within the U.S. does not decrease, the total payments to the states will increase.

Legal Implications of the Settlement

The tobacco settlement agreement likely brings to a close various state and local government litigation against the tobacco companies and has a number of legal implications.

What Happens to the State's Case as a Result of the Settlement? On June 12, 1997, the California Attorney General filed a lawsuit against the major tobacco companies in the Sacramento Superior Court containing four causes of action, as shown in Figure 3 (see next page). By the time of the settlement agreement, two of the causes of action had already been dismissed by the court and two others were yet to be addressed by the court.

Upon approval of the consent decree in the state court, the state's case against the tobacco companies will be considered settled. As previously indicated, the San Diego Superior Court approved the consent decree on December 9, 1998 and the settlement becomes final 60 days later unless the court order is challenged during that period. The settlement agreement generally releases the signing tobacco companies from any future lawsuits by the state and local governments that participate in the settlement.

How Is the Settlement Different From a Resolution Resulting From a Trial? It is difficult to say with a high level of certainty how a trial on California's lawsuit against the tobacco companies would have ended. It seems unlikely, however, that a court would have ordered provisions related to public health that the tobacco companies subsequently agreed

to in the settlement (for example, restrictions on advertising and corporate sponsorship). It is not clear whether the monetary provisions provided in the settlement agreement are greater than the state would have obtained if it had won its case in court. However, because the companies have *agreed* to the settlement, it is likely that money will flow to the state more quickly and easily since the companies would likely have appealed a court decision.

Figure 3

What California Alleged in Its Lawsuit Against the Tobacco Companies

☑ ***Recovery of Tobacco-Related Medi-Cal Expenditures.*** The state sought reimbursement for health care services provided over the past three years to Medi-Cal beneficiaries who suffer from illnesses caused by tobacco products. This allegation was previously dismissed by the court.

☑ ***Violations of State Antitrust Laws.*** 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. This allegation was awaiting action by the court.

☑ ***Violations of State Consumer Protection Laws.*** Tobacco firms conducted deceptive, unlawful, and unfair business practices by (1) making misrepresentations and deceptive statements to sell their products, (2) targeting minors to buy cigarettes, (3) manipulating levels of nicotine without adequate disclosure, and (4) improperly suppressing evidence about the health impacts of the product. This allegation was awaiting action by the court.

☑ ***Violations of State False Claims Act.*** Tobacco firms improperly sealed certain documents and records which would otherwise have been available to inform California authorities of the companies' wrongdoings. This allegation was previously dismissed by the court.

Can Californians File Lawsuits as Individuals or in Class Action Lawsuits Against the Tobacco Companies? While the settlement places restrictions on future lawsuits by governmental entities, lawsuits by individuals and classes of individuals against the tobacco companies could still go forward.

How Will the Settlement Be Enforced? The agreement provides the state courts with jurisdiction over implementing and enforcing the settlement. The state or the tobacco companies may apply to the court to enforce the terms of the agreement. If the court issues an order enforcing the agreement and a party violates that order, the court may order monetary, civil contempt, or criminal sanctions to enforce compliance.

On March 31, 1999, the tobacco manufacturers will pay $50 million which will be used to assist the states in enforcing and implementing the agreement and to investigate and litigate potential violations of state tobacco laws. Additionally, the National Association of Attorneys General will receive $150,000 per year until 2007 for oversight costs associated with monitoring potential conflicting court interpretations involving the settlement, and assisting states with inspection and discovery activities conducted to enforce the settlement.

Public Health Provisions of the Settlement

The settlement includes a number of provisions agreed to by the tobacco companies that are designed to reduce smoking and thus improve public health. Figure 4 (see next page) summarizes the major public health-related provisions of the agreement.

It is unknown how effective these provisions will be. It should be noted, however, that some of the efforts that will be established as a result of the settlement, such as advertising and education programs to combat smoking, already exist in California and are supported with Proposition 99 funds.

Differences Between the Settlement and Previous Agreements

The current agreement is the culmination of efforts to settle state lawsuits against the tobacco companies that have been ongoing for several years.

The 1997 "Global Settlement." In mid-1997, the attorneys general of 40 states and the companies worked out the so-called "global settlement" agreement. Under this agreement, the companies would have made

Figure 4

Major Provisions Related to Public Health

☑ **Restrictions on Advertising**

- Bans use of ***cartoon characters*** in advertising.
- Prohibits ***targeting youth*** in advertising, promotions, or marketing.
- Bans outdoor advertising including billboards, and placards in arenas, stadiums, shopping malls, and video game arcades.
- Limits size of ***advertising outside retail establishments*** to 14 square feet.
- Bans ***transit*** advertising.

☑ **Restrictions on Product Placement and Sponsorship**

- Bans distribution and ***sale of apparel and merchandise*** with brand name logos, beginning July 1, 1999.
- Bans payments to promote ***tobacco products in movies, television shows, theater*** productions, live or recorded music performances, and videos and video games.
- Prohibits brand name ***sponsorship of team sports*** events or events with a significant youth audience.
- Limits tobacco companies to ***one brand name sponsorship per year*** (after current contracts expire).
- Bans tobacco ***brand names for stadiums and arenas.***

☑ **New National Foundation to Combat Smoking**

- Establishes foundation to develop ***programs*** to combat teen smoking and educate consumers about tobacco-related diseases.
- Industry will pay total of ***$1.45 billion*** for national public education campaign for tobacco control and ***$25 million per year*** to study programs to reduce teen smoking.

☑ **Other Restrictions**

- Disbands certain ***organizations affiliated with tobacco industry.***
- Prohibits tobacco firms from ***opposing proposed laws which are intended to limit youth access*** to tobacco products.
- Prohibits the industry from making any ***material misrepresentations regarding the health consequences*** of smoking.

major monetary payments to the states. These payments would be in exchange for certain enactment of laws by Congress which would have essentially halted much of the litigation against the tobacco industry and

placed certain restrictions on future litigation against the industry, including no punitive damages, no class actions, and an annual cap on damage payments. Although federal legislation was introduced to enact the global settlement, as well as legislation that went far beyond that settlement, Congress did not pass any legislation. The current multistate settlement requires no legislative action by Congress.

The current settlement does not provide for payments as large as the global settlement. The global settlement proposed $368 billion over 25 years in payments to the states as opposed to the current agreement which is $206 billion over 25 years.

From a public health standpoint, probably the most significant policy difference between the two settlements is that the global settlement would have changed current federal law to allow the U.S. Food and Drug Administration (FDA) to regulate tobacco. In addition, the global settlement contained somewhat broader restrictions on the content of tobacco company advertising than the current settlement, although the current agreement contains broader restrictions on the placement of advertising. The global settlement contained so-called "look-back" provisions that would have penalized tobacco companies if youth smoking did not decline over time. However, only the current settlement includes establishment of a national foundation to study youth smoking and fund antismoking advertising.

Settlements With the Four Other States. As indicated earlier, four states (Florida, Minnesota, Mississippi, and Texas) all have previously settled their cases against the tobacco companies with conditions and provisions similar to those of the current settlement. The amount of money projected for California under the current settlement, on a per capita basis, is similar to the amounts projected for Florida and Texas. However in Mississippi, which was the first state to file a lawsuit, and in Minnesota, which settled just prior to the end of the trial, the per capita amounts were much greater than for California in the current multistate agreement.

Relationship of the Settlement to Proposition 10

Proposition 10, enacted by the voters in the November 1998 election, created the California Children and Families First Program. This program will fund early childhood development programs from revenues generated by increases in the state excise tax on cigarettes and other tobacco products. The measure increases the excise tax on cigarettes by 50 cents

per pack beginning January 1, 1999, bringing the total state excise tax to 87 cents per pack. The measure also will increase the excise tax on other types of tobacco products (such as cigars, chewing tobacco, pipe tobacco, and snuff) beginning July 1, 1999.

Although both the tobacco agreement and Proposition 10 will generate substantial additional revenues to the state and local governments in California, their similarities end there, as shown in Figure 5. The major difference between the two is that Proposition 10 revenues can only be used for specified purposes allocated by local commissions, whereas there are no restrictions on the use of the tobacco settlement monies by the state or local governments. (For additional information on Proposition 10, please see our recent report *Proposition 10: How Does It Work and What Role Should the Legislature Play in Its Implementation?*)

Figure 5

Comparison of Tobacco Settlement and Proposition 10

	Tobacco Settlement	Proposition 10
Revenue	$800 million to $1 billion annually, split 50-50 between state and local governments	$690 million in 1999-00 declining slightly in subsequent years[a]
Use of funds	No restrictions	Restricted to child development programs
Projected revenue	Significant uncertainty, especially in the long run	Likely to decline slowly
Control of funds	State and locally elected officials	County-appointed commission and state commission
How funds generated	Payments from tobacco companies (passed on to consumer)	New state tax on tobacco products
Effective date	1999-00	January 1, 1999

[a] Legislative Analyst's Office estimate.

What Should the Legislature Do?

As indicated previously, the agreement does not require any action by the Legislature in order to take effect. However, the agreement raises a number of issues that the Legislature will need to consider.

Recognize Funding Uncertainties in the Long Run. Despite the uncertainties outlined above, we believe that it is relatively certain that the state will receive the projected amounts of revenues from the settlement at least in the short run (the next three years or so). However, several of the uncertainties, such as potential declines in smoking and future actions of the federal government, make the long-term funding levels much more questionable.

Given the long-term uncertainties about the revenues, we recommend that the Legislature refrain from dedicating the tobacco settlement monies to support specific new ongoing programs. Rather, we believe that it would be more fiscally prudent to reexamine the settlement projections regularly and continue to deposit the money in the General Fund without specific earmarking for a particular program. Should the Legislature wish to establish new programs, such programs should *compete* for revenues from the General Fund with all other legislative priorities. Our recommended approach is consistent with the Governor's 1999-00 budget proposal.

Recognize Benefit to Local Governments. Since the property tax shifts of the early 1990s, the Legislature has taken many actions to bolster the fiscal condition of California's local governments. For example, the Legislature has acted to provide cities and counties: Proposition 172 sales tax revenues, relief from trial court funding reform, and programs to support local law enforcement. Combined, these revenues offset more than 60 percent of the ongoing revenue loss due to the property tax shift. For 1998-99, we estimate that the "net harm" to local governments associated with the property tax shift is about $1.4 billion.

As shown in Figure 2, the tobacco settlement is expected to provide to local governments $153 million in the first year, rising to about $500 million annually within a few years. In the case of some California cities and counties, these settlement revenues will restore (or improve) the locality's fiscal condition relative to the locality's fiscal condition prior to the property tax shifts. Other cities and counties, while still benefiting significantly from the cigarette settlement, will not find that these settlement revenues fully "make up" the fiscal hole caused by the property tax shift. As the Legislature contemplates proposals for local fiscal relief in the future, we recommend that the Legislature keep in mind these additional financial resources provided through the settlement.

Monitor New National Antitobacco Programs in Order to Complement Existing State Programs. The settlement establishes a national foundation to combat smoking and includes a total of $1.45 billion in payments from the tobacco companies for establishment of a national

tobacco control public education campaign and $25 million per year to study programs to reduce teen smoking. It is not clear how these monies will be used at this time. However, it seems likely that such efforts could complement or supplement the state's existing efforts to curb tobacco consumption. For this reason, it will be important for the administration and the Legislature to closely monitor implementation of these provisions of the settlement and make adjustments to the state's programs as necessary.

Consider Adopting the Model Legislation Included in the Settlement. The settlement agreement includes model legislation that would protect the payments made to the state from decreasing as a result of loss of market share or entry into the market by new tobacco companies. In view of this fiscal issue, we believe that the Legislature may want to consider enacting the model legislation.

Conclusion. The tobacco settlement will result in significant additional resources to California's state and local governments. As the Legislature debates its approach toward utilizing these funds, it is critical that the uncertainties surrounding the level of funds the state will receive in the future be taken into account.

DEPARTMENTAL ISSUES

Judiciary and Criminal Justice

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 12 reception centers to process newly committed prisoners, 16 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.

BUDGET PROPOSAL

Expenditure Growth to Slow. The budget proposes total expenditures of $4.2 billion for the CDC in 1999-00. This is $127 million, or 3.1 percent, above the revised estimate for current-year expenditures. The primary cause of this increase is the growth in the inmate population and the related expansion of state prison staff. Under the budget plan, the CDC workforce would grow by about 1,500 personnel-years, or 3.5 percent, above the projected 1998-99 staffing level. This projected 1999-00 growth in the CDC workforce compares with anticipated growth of about 3,700 personnel-years, or 9 percent, during 1998-99.

The budget includes $37 million to reflect the additional full-year cost of staff and new programs added during the current year, with most of that sum for custody staff needed to activate additional prison beds.

The 1999-00 budget proposal for CDC represents a significant slowdown in the growth of its expenditures. The CDC expenditures have not grown by a smaller dollar amount since 1983-84, except for 1992-93—a year when the state faced an unusually large revenue shortfall and CDC spending actually decreased slightly. The CDC expenditures have not otherwise grown this slowly on a percentage basis since 1967-68, when they went up 3 percent. As discussed below, the proposed slowdown in correctional spending is associated with a slowing in the growth in the inmate population and related growth in CDC staffing.

General Fund Expenditures. Proposed General Fund expenditures for the budget year total $4 billion, an increase of about $135 million, or 3.5 percent, above the revised estimate for current-year General Fund expenditures.

The General Fund contribution to the proposed budget would grow slightly more than the CDC budget overall. One major reason is a decline in the availability of bond funds to partly offset CDC costs. In prior years, bond funds that were no longer needed for completed prison construction projects were used to offset the ongoing payments provided in the budget to pay off lease-payment bonds. For 1999-00, bond reimbursements are budgeted at about $68 million, a decline of about $11 million, or 14 percent, below current-year expenditures. Because the state has nearly exhausted these surplus bond funds, larger General Fund appropriations to CDC are now required to pay off these bonds.

Federal Fund Expenditures. The Governor's budget assumes that the state will receive $273 million from the federal government during 1999-00 as partial reimbursement of CDC's cost (estimated to be $557 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. That is $100 million more than would likely be received under current appropriations, and assumes that the federal government will significantly increase its spending for these purposes. The federal funds are not included in CDC's budget display, but instead are scheduled as "offsets" to total state General Fund expenditures. We discuss this assumption in more detail later in this analysis.

OVERVIEW OF THE INMATE POPULATION

Who Is in Prison?

Figures 1 through 5 illustrate the characteristics of the state's prison population, which was 158,207 as of June 30, 1998. The charts show:

- About 58 percent of inmates are incarcerated for nonviolent offenses (Figure 1).
- About 67 percent of all inmates were committed to prison from Southern California, with about 36 percent from Los Angeles County alone and 8 percent from San Diego County. The San Francisco Bay Area is the source of about 13 percent of prison commitments (Figure 2 on page 58).
- More than 53 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 3 on page 58).
- The prison population is divided relatively evenly among whites, blacks, and Hispanics (Figure 4 on page 59).
- About 58 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 18 percent are parolees returned to prison by administrative actions for violation of their conditions of parole (Figure 5 on page 59).

Figure 1

Prison Population by Type of Offense

June 30, 1998

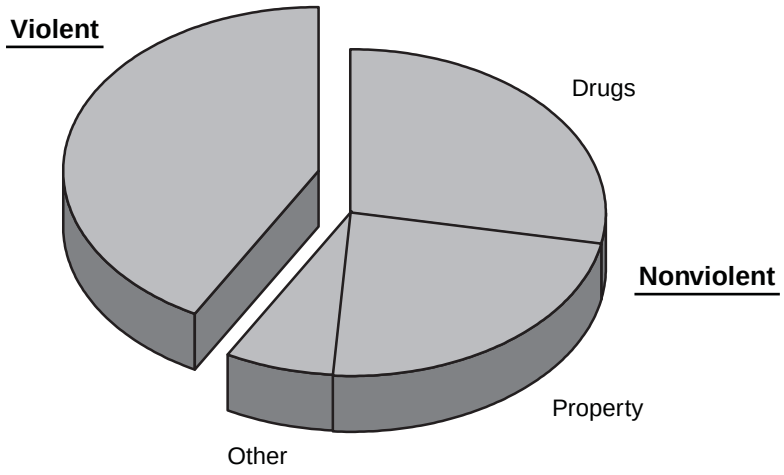


Figure 2

Prison Population by Area of Commitment

June 30, 1998

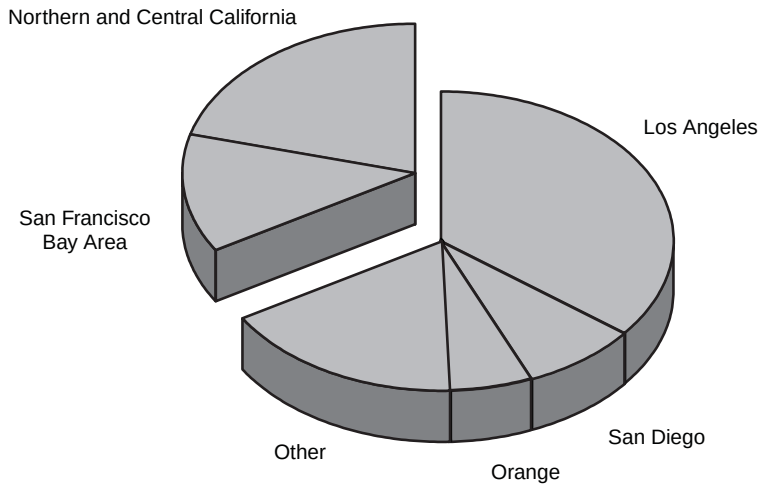


Figure 3

Prison Population by Age Group

June 30, 1998

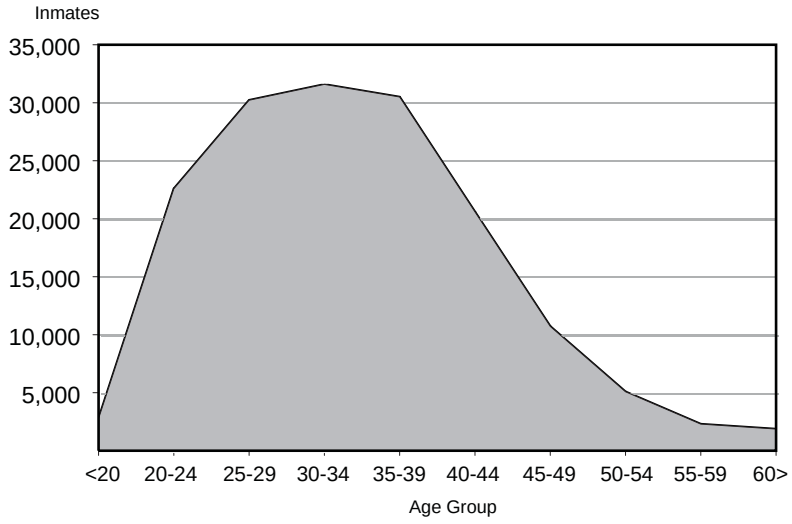


Figure 4

Prison Population by Ethnicity

June 30, 1998

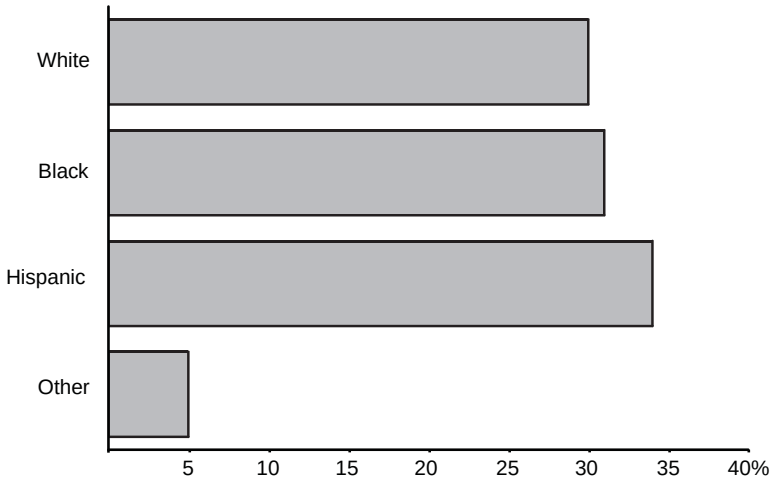
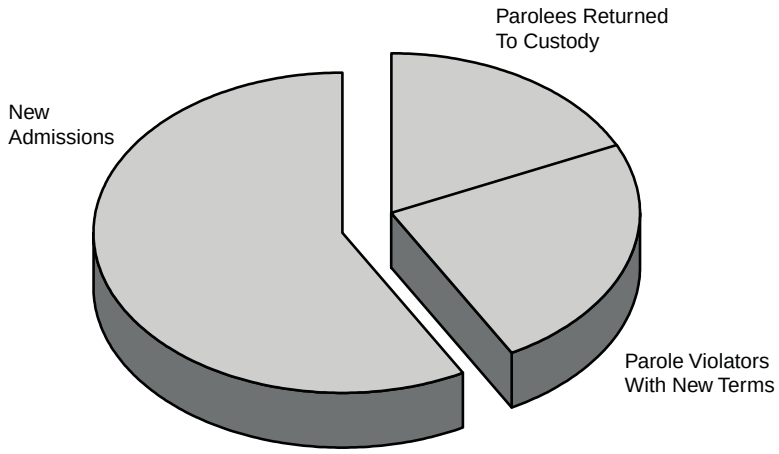


Figure 5

Prison Population by Commitment Type

June 30, 1998



INMATE AND PAROLE POPULATION MANAGEMENT ISSUES

Projected Inmate Population Growth Slowing

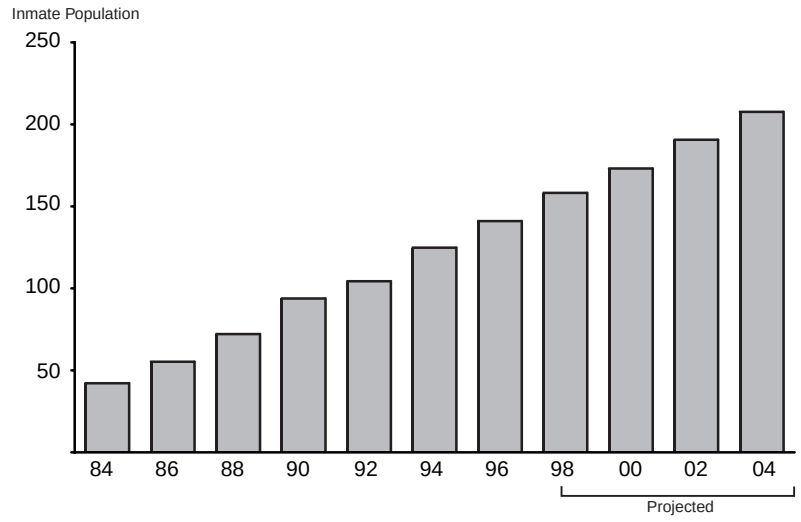
The Department of Corrections projects that the prison population will increase over the next five years, reaching a total of almost 208,000 inmates by June 2004. This represents a slower rate of growth than the department has experienced in the 1990s. Recent trends indicate, however, that the growth rate will be even slower than the new projections would suggest.

Inmate Population Growth. As of June 30, 1998, the CDC housed 158,207 inmates in prisons, fire and conservation camps, and community correctional facilities. Based on the fall 1998 population forecast prepared by the CDC, the inmate count would reach about 165,400 by June 30, 1999, and increase further to 173,100 by June 30, 2000. These figures represent an annual population increase of 4.5 percent in the current year and 4.7 percent in the budget year. As can be seen in Figure 6, this continues an upward trend in the prison population that has been evident since the early 1980s.

Figure 6

Inmate Population Growth Projected to Continue

1984 Through 2004
(In Thousands)



The CDC projections assume that the population will increase further over the following four years, reaching 208,000 inmates by June 30, 2004. This represents an average annual population increase of about 3.9 percent over the six-year period from 1997-98 through 2003-04.

Parole Population Growth. As of June 30, 1998, the CDC supervised 108,750 persons on parole. The fall 1998 projections assume that the parole population will be 114,700 as of June 30, 1999, and will increase to 120,300 by June 30, 2000. These figures assume a parole population increase of 5.5 percent in the current year and 4.8 percent in the budget year.

The fall 1998 projections also assume that the population will increase further over the following four years, reaching a total of 135,200 parolees by June 30, 2004. This represents an average annual population increase of about 3.7 percent.

Change From Prior Projections. The fall 1998 projection of the inmate population has decreased significantly from the prior CDC forecast (spring 1998). The new fall 1998 forecast for June 30, 1999 is about 4,700 inmates lower than the spring forecast—roughly equal to the number of inmates housed in one prison. As can been seen in Figure 7, the differences between the spring 1998 and fall 1998 inmate projections at first widen over the next several years, but narrow again in the long run.

Figure 7

Total Inmate Population
Recent CDC Projections

June 30 Population[a]	Projection as of: Spring 1998	Fall 1998	Difference
1999	170,101	165,395	-4,706
2004	214,223	207,620	-6,603
2007	244,583	240,779	-3,804

[a] For selected years.

As regards the parole population, the fall 1998 projection reflects a significant increase relative to the prior, spring 1998 CDC forecast. The new fall 1998 forecast for June 30, 1999 is about 3,500 parolees higher than the spring forecast. As can been seen in Figure 8 (see next page), the

differences between the spring 1998 and fall 1998 parole projections at first widen over the next several years, but narrow again in the long run.

Figure 8

Total Parole Population
Recent CDC Projections

June 30 Population[a]	Projection as of: Spring 1998	Fall 1998	Difference
1999	111,227	114,720	+3,493
2004	127,025	135,203	+8,178
2007	137,270	142,971	+5,701

[a] For selected years.

Why the Forecasts Have Changed. According to CDC, the lower projections in the prison population, along with the higher projections in the parole population, are primarily due to evidence that fewer parolees are failing while on parole in the community. Fewer are being returned to state prison through an administrative process of the Board of Prison Terms for violation of their conditions of parole. In addition, fewer are being sent back to prison by the courts for new violations of law than had been assumed for the spring 1998 forecast.

That has the effect both of holding down growth in the prison population and bolstering the size of the parole population. In modifying its population projections, CDC did not offer any explanation why fewer parolees are being returned to state custody.

Potential Risks to Accuracy of Projections. As we have indicated in past years, the accuracy of the department's latest projections remain dependent upon a number of other 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.
- ***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.

- ***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.

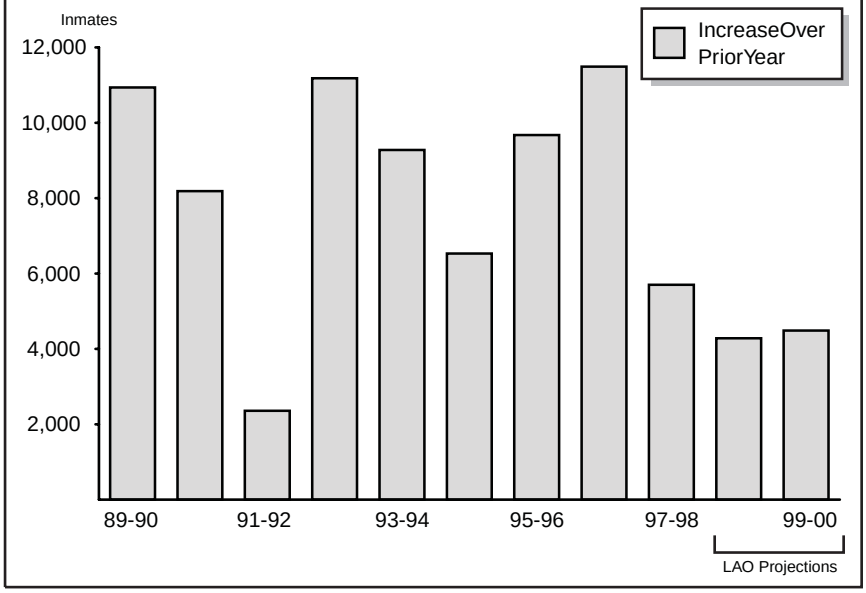
Significant further changes in any of these areas could easily result in a prison growth rate higher or lower than contained in CDC's projections.

Current 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 1998 projections. The CDC had *overestimated* the number of inmates who would be incarcerated as of mid-January 1999, by almost 2,900. As of that same date, the fall 1998 projections *underestimated* the number of parolees being supervised on parole by almost 1,000.

During the first half of 1998-99, the prison population grew at the lowest rate in many years—about 1,700 inmates, or 1 percent, on an annual basis. As can be seen in Figure 9, it has not been unusual in recent

Figure 9

CDC Growth Has Slowed Recently



years for the CDC system to absorb growth of 11,000 inmates annually. The growth rate has not been this low since 1991-92, a period when CDC aggressively expanded parole services and standardized its handling of parole violations with the result that parole revocation rates dropped.

Part of the reason that prison growth has slowed may be due to changes in the pattern of decision-making by parole authorities regarding when misconduct by a parolee constitutes grounds for revocation and reincarceration of an offender for a parole violation and when alternative types of sanctions are deemed appropriate. Administrative changes in such decision-making have had a significant impact on prison population levels in the past. In the early 1990s, for example, CDC administrators established more consistent decision-making in such matters and the parole revocation rate declined significantly.

Part of the reason may also be a $5.5 million expansion of parolee services, such as substance-abuse counseling and short-term residential shelters, approved last year by the Legislature and the Governor. We recommended such an increase in services in the belief that it would result in more offenders paroling safely into the community and fewer returned to state custody for new crimes or parole violations. Notably, when CDC eliminated about $5 million in these parole services in 1997, the rate of parole failure increased significantly and the state experienced an unexpected surge in its prison population. The restoration of these funds may also be contributing to the decline in the parole failure rate.

Budget Modified to Reflect Trend. The Governor's January budget proposal for CDC is ordinarily based upon CDC projections released the previous fall. However, that is not the case for the proposed 1999-00 CDC budget. In preparing the budget, the Department of Finance made fiscal adjustments to reflect the growing discrepancy between the fall 1998 projections and actual inmate and parole population counts.

Specifically, the budget plan assumes that the population held in state prisons will average 489 fewer inmates than projected during 1998-99 and 1,453 fewer inmates than projected during 1999-00. Relatively minor adjustments were also made to the parole population. Because of these inmate and parole population adjustments, the budget assumes that about $5.3 million less in funding will be spent for prison operations during 1998-99 than if the budget plan were based strictly on CDC's fall 1998 projections. Similarly, the adjustments mean that about $16.5 million less in funding was budgeted for prison operations during 1999-00 than if the budget plan were based strictly on CDC's population figures.

Caseload Funding Requires Further Adjustment

We recommend that the 1999-00 budget request for inmate and parole population growth be reduced by $29.7 million because prison population growth continues to lag below California Department of Corrections (CDC) projections. We further recommend that the budget request for correctional officer cadet training and inmate mental health services be reduced by $3.6 million to account for the slower pace of population growth.

As regards the current year, we believe that CDC population expenditures will be $33.9 million less than budgeted. Further changes to the CDC budget for the current and budget years should be considered following review of the May Revision. (Reduce Item 5240-001-0001 by $33.4 million.)

As we indicated earlier, CDC's fall 1998 population projections appear to have overestimated the number of inmates who are being incarcerated and understated the number of parolees under supervision. The Governor's budget, as submitted, adjusts CDC's fall 1998 projections to reflect the slower growth rate. However, we believe that if current trends hold, the adjustments made by the Governor's budget will be insufficient. Our estimates of the CDC inmate population, which take into account more recent trends, are shown in Figure 10.

Figure 10

Inmate Population Projections[a]

	1998-99	1999-00
California Department of Corrections	161,879	168,934
Department of Finance[b]	161,390	167,481
Legislative Analyst's Office	158,592	164,572

[a] Average daily population.
[b] Reflected in *1999-00 Governor's Budget.*

Current-Year Effect. Based on the population data available at the time we prepared this analysis, we estimate that the average daily population of the prison system in 1998-99 will be about 2,400 inmates below the number assumed in the Governor's budget plan. We further estimate that the average daily parole population will be about 1,000 higher than had been assumed. We estimate that the net effect of these two changes would be a savings in the current year of $29.7 million.

Budget-Year Effect. We anticipate that this fiscal trend will carry over into 1999-00. Based on available population counts, we estimate that the average daily prison population in the budget year will be almost 2,500 fewer inmates below the number assumed in the proposed budget. We further estimate that the average daily parole population will be about 2,000 higher than had been assumed in the budget plan. Based on these calculations, we believe that CDC is overbudgeted for growth in its inmate and parole caseloads by $29.7 million.

The CDC will issue updated population projections in spring 1999 that form the basis of the May Revision. At that time, we will review whether further adjustments to CDC's funding for inmate and parole caseloads are warranted.

Effect on Other CDC Expenditures. If current inmate population trends hold, the CDC would need to train fewer new correctional officers to staff its prisons. It also would not need to increase its budget for services to mentally ill inmates by as much as the Governor's budget plan provides. Funding for both items is tied to inmate population levels.

We estimate that budget request for correctional officer cadet training should be reduced by $3.3 million, and the budget request for mental health services for inmates by $341,000, to be consistent with recent population trends. The Legislature should also assume that the CDC will spend $4 million less on cadet training and $167,000 less on mental health services for inmates in 1998-99.

Analyst's Recommendation. In summary, we recommend that the 1999-00 CDC budget be reduced by $29.7 million from the General Fund to reflect slower CDC inmate population growth. Additionally, the CDC budget for cadet training and inmate mental health services should be reduced by $3.6 million because of slower growth in the inmate population. The current-year budget is also likely to reflect savings of about $33.9 million due to slower CDC caseload growth. We recommend that the Legislature consider making further CDC caseload adjustments at the time of the May Revision.

Inmate Housing Plan Relies on Overcrowding

We withhold recommendation on the Department of Corrections' (CDC's) plan for housing the projected increase in the prison population because the slowdown in the rate of inmate population growth has made elements of the plan obsolete. We anticipate that the CDC will revise the plan at the time of the May Revision.

Prison Overcrowding to Continue. The Governor's housing plan provides for the continued overcrowding of day rooms, gyms, and housing units at various existing prisons. However, many specific prison bed activation proposals included in the plan are unlikely to occur because of the slowing in the rate of prison population growth, rendering many of its elements obsolete.

The housing plan assumes the state will move ahead with projects authorized by the Legislature last year to build 1,000 administrative segregation beds for high-risk inmates on the grounds of the existing state prisons. It also seeks staffing and funding to contract for an additional 2,000 beds with private vendors. The Governor's budget does not propose to construct any new state-operated prisons.

Analyst's Recommendation. Because the inmate population is running below the fall 1998 projections upon which the CDC housing plan was based, it is likely that it will change significantly 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.

Implications of the Population Projections

The state continues to face a major challenge to accommodate the steadily growing population of prison inmates, but recent projections indicate that it will have some additional time to prepare to meet that challenge. We recommend the state undertake further efforts this year to accommodate future growth in the inmate population using a balanced approach weighted almost evenly between adding new prison capacity and enacting policy changes that would reduce the expected population.

System Nearing Long-Term Capacity. Despite the recent slow-down in inmate population growth, the prison system is approaching its long-term housing capacity of 175,000 inmates (including additional capacity for 4,000 inmates approved in September 1998). By long-term housing capacity, we mean that most of the general inmate population is housed two per cell with double-bunking in dormitories and gymnasiums. This capacity does not include about 7,200 beds—triple bunks in prison dormitories and gymnasiums and double bunks on dayroom floors in celled housing units—that the department does use now but considers to be a "high-security risk" and thus not a viable long-term housing alternative.

When the spring 1998 projections were released, CDC expected the inmate population to reach the long-term capacity level in mid-2000. The

new fall projections, together with the most recent population trends, indicate that this will not occur until at least a year later.

Progress in Addressing the Problem. Recent actions taken by the Legislature and the Governor (and not yet reflected in CDC's population projections) will likely cause the date the system reaches long-term capacity to slip even further. A $177 million legislative package signed into law by the Governor on September 14, 1998, will add almost 4,000 beds to the prison system (half in state-operated prison facilities and half through contracts for inmate bed space with private-sector vendors).

Moreover, the legislative package, together with an additional $13 million provided through the *1998-99 Budget Act*, expands state and local programs designed to slow the rate of growth in the inmate population. (Issues pertaining to the way in which the Governor's budget plan implements the legislative package are discussed later in this analysis.) We estimate that, if fully implemented over the next six years, these new or expanded programs would reduce the need for additional prison space by at least 5,000 beds. There are some indications that they may already have played a role in slowing inmate population growth. The restoration of casework services money has enabled parole agents to provide parolees with programs and services that will keep some offenders safely in the community instead of returning them to prison.

We believe the recent actions taken by the Legislature and Governor will benefit the state by holding down future state incarceration costs while improving public safety. However, we do not believe that this package by itself will be sufficient to address the entire *long-term* prison capacity problem facing the state. After taking the effect of this package into account, we estimate that the state would run out of bed space by as soon as 2001 and would need additional space for as many as 27,000 inmates by June 30, 2004. That is the equivalent of five to six state-operated prisons carrying a one-time construction cost of $1.6 billion and annual ongoing operational costs of more than $500 million.

Take a Balanced Approach. Given the significant amount of overcrowding in the prison system now and the CDC projections of many more inmates to come, we recommend that the Legislature and administration undertake further efforts in 1999 to accommodate future growth in the inmate population. In our view, such efforts should emphasize a balanced approach, weighted almost evenly between adding new prison capacity and enacting policy changes that would reduce the expected inmate population growth. We offered such an approach in our May 1997 report, *Addressing the State's Long-Term Inmate Population Growth.* The

package enacted in 1998 was consistent with the principles outlined in that report, but additional steps will be needed.

Such a balanced approach should include measures that will reduce the need for additional prison beds—such as restructuring the state parole system, reform of state sentencing laws, and the expansion and improvement of existing academic, vocational, and Prison Industry Authority programs. This approach should also include measures that expand prison capacity—by constructing additional new state-run prisons, adding more beds to the grounds of some existing prisons, and/or contracting for more community correctional facility beds with vendors. We believe this balanced approach toward addressing the prison capacity problem will prove cost-effective and will minimize the risks to public safety.

A more detailed discussion of some of these options can be found in our May 1997 report on prison capacity issues; our April 1996 report, *Reforming the Prison Industry Authority;* and in the Judiciary and Criminal Justice Section of the *1998-99 Analysis of the Budget Bill.* An additional option for addressing the prison capacity issue by reducing the recidivism of high-risk sex offenders is discussed in the Crosscutting Issues section of this chapter.

CORRECTIONAL PROGRAM ISSUES

Full Implementation of Agreement Would Require Additional Funding

Largely because of the state's fiscal constraints, the Governor's budget plan does not completely implement a 1998 legislative agreement to balance expansion of prison capacity with new programs intended to reduce high recidivism rates of offenders released on parole. We recommend that the Legislature consider a $9.5 million augmentation for certain programs to more completely fulfill the 1998 agreement, and offer recommendations on related issues.

Budget Only Partially Consistent With Legislative Direction. During its 1998 session, the Legislature reached agreement on a balanced package of measures intended to increase the long-term housing capacity of the state prison system as well as cost-effective expansions of state and local programs designed to slow the rate of growth of the prison population. The key measures relating to adult corrections were Chapter 500 (SB 491, Brulte), Chapter 502 (SB 2108, Vasconcellos), and Chapter 526 (AB 2321, Knox). Other provisions were contained in the *1998-99 Budget Act*.

As described in Figure 11, the Governor's budget does not fully implement all elements of that package on the original timetable and at the ultimate program service levels that were contemplated in the agreement.

Figure 11

Budget Plan Modifies the 1998 Corrections Agreement

Program	Legislation 1998-99	Governor's Budget Plan 1998-99	Governor's Budget Plan 1999-00	LAO Analysis of Modifications
In-prison drug treatment and community aftercare expansion	$10 million	$6.1 million	$26.4 million	More gradual phase-in of new beds appears justified
Preventing Parolee Crime Program expansion	$3 million	$1.6 million	$1.8 million	Fails to expand literacy labs, multiservice centers, or substance abuse networks
Prerelease program expansion	$1 million	$500,000	$1 million	Phase-in of new program appears justified
Offender job placement services expansion	$1 million	$769,000	$1 million	Phase-in of new program appears justified
Pilot programs for women offenders	$6 million	$3 million	$5.9 million	Assists fewer offenders and provides less job training than was proposed
Parole casework services funding restoration	$5.5 million	$5.5 million	$5.5 million	Full implementation on original proposed schedule
Work and education program expansion	$2.5 million	$2.5 million	$5 million	Full implementation on original proposed schedule

Our review found that some of the reductions in spending levels and the slower phase-in of the new programs are for valid, technical reasons. For example, the budget plan does not include funding for computerized literacy laboratories for parolees because a Feasibility Study Report (FSR) ordinarily required for such information technology projects was not ready at the time the budget plan was prepared.

Other reductions in the Governor's budget reflect decisions to slow down or reduce the program to a level at odds with the 1998 legislative agreement. For example, although CDC was prepared to carry out a $3 million expansion of the Preventing Parolee Crime program in 1998-99, about half of the $3 million legislative appropriation is left unspent until 1999-00 and the expenditures would top out at $1.8 million in 1999-00. Moreover, the CDC budget does not comply with last year's supplemental report language requiring automatic adjustments to the Preventing Parolee Crime program that keep pace with growth in the parole caseload.

We would note that the Governor's budget provides for the full expansion of prison capacity approved in the 1998 legislative agreement, although with some changes in timing and funding sources.

Reinvestment of Some Savings Should Be Considered. We believe it is important that the legislative agreement be fulfilled to the maximum extent feasible, taking into account appropriate technical limitations on the timing and use of the funds and the state's fiscal constraints. Accordingly, we recommend that the Legislature consider reinvesting a portion of the population-related spending reduction we identified in the CDC budget to more completely fulfill the 1998 legislative agreement. Such an approach is in keeping with the Legislature's policy decision to address the challenge posed by existing prison overcrowding and limitations on the state's long-term housing capacity.

We also suggest some specific improvements in the way the appropriated funds are used and address other related issues. Our analysis indicates that these programs are likely to result in savings on prison operations and construction, greater than their costs. Our specific proposals are discussed below.

- ***Preventing Parolee Crime.*** We recommend the Legislature consider a $6.8 million augmentation, including $3.2 million for residential multiservice centers, $3 million for substance abuse treatment networks, and $250,000 for ongoing evaluation of the programs. We recommend that the Legislature consider a $650,000 augmentation for computerized literacy labs only if the FSR for this program has been approved by the time of budget hearings. In the event these augmentations are approved, about $300,000 of the $6.8 million augmentation should be reflected in the budget plan as coming from automatic parole caseload adjustments, consistent with previously adopted supplemental report language.

- ***Prerelease Programs.*** We propose no augmentation, but instead recommend that the Legislature direct that $750,000 of the $1 million augmentation for prerelease programs be spent in conjunction with a new Offender Employment Continuum program scheduled to commence operation in October 1999. The CDC proposes to use the $750,000 for a modest expansion of the existing three-week inmate prerelease classes. We believe a better approach would be to target these resources to establish longer and more intensive prerelease programs relying more heavily on a cognitive-skills model, an approach researchers believe to be successful in changing the behavior of offenders. The inmates receiving the services would be the same ones selected for the five Offender Employment Continuum pilot programs, which are designed to provide job placement and job development services after their release on parole. We believe pairing stronger prerelease programs with strong post-release job assistance is worth a test.

- ***Women Offender Pilot Projects.*** We recommend that the Legislature consider a $2.7 million augmentation for the three pilot projects. Together with funding already allocated to establish additional community residential aftercare for women offenders, this sum would be sufficient to expand the number of participants from the 426 in the budget plan to 750 annually. The augmentation would also provide the resources needed to implement work experience programs to strengthen the job placement programs already contemplated.

We further recommend that state law be changed so that offenders with a recent drug-related felony conviction, including many of the women who will be participating in the pilot programs described above, are eligible for welfare services such as drug treatment, child care, and education (but not cash grants).

We do not propose at this time to fund this program under the state's welfare program, known as CalWORKS (California Work Opportunity and Responsibility to Kids). However, this change would permit almost all of the state's expenditures for the female offenders program to be counted toward the CalWORKs maintenance-of-effort (MOE) requirement, giving the state additional flexibility on its use of General Fund resources. (The implications of counting these expenditures toward the state's CalWORKS MOE are discussed in the Health and Welfare chapter of this *Analysis.*) We also believe the statutory change is an appropriate public policy that would help reduce the welfare dependency of the families of women offenders.

Determine Caseload for Disabled Inmates Before Funding Special Programs

We recommend approval of $1.8 million requested to screen the prison inmate population to identify offenders who are developmentally disabled. However, we recommend denial at this time of $3.5 million requested to provide specialized programs for developmentally disabled inmates because their number and location in the prison system is unknown and because a plan to provide these services is still being negotiated as part of a lawsuit. (Reduce Item 5240-001-0001 by $3.5 million.)

Request Tied to Pending Court Case. The budget includes $5.3 million to establish a new program to screen, identify, track, and provide specialized services for prison inmates with various developmental disabilities—such as mental retardation, cerebral palsy, epilepsy, and autism. The new program would operate in as many as 12 different state prisons and require a workforce of 116 personnel-years.

The request is prompted by efforts to resolve a pending federal class-action lawsuit filed by developmentally disabled inmates who contended that they were discriminated against on the basis of their mental impairment. The legal parties have agreed to a process by which CDC and legal representatives of the inmates are negotiating a remedial plan to identify and address the needs of developmentally disabled inmates. The CDC indicates that funding for the proposed program is needed if the state is to settle the case and avoid prolonged litigation and the imposition by the court of a more costly solution than would result from a negotiated settlement.

No Agreement on Plans. We are advised that, despite ongoing negotiations between the parties, strong disagreements remain over many elements of the state's proposed remedial plan. Among the most significant disputes is the state's proposal to establish specialized services for more severely developmentally disabled inmates at a number of different prisons. The CDC indicates that this approach is necessary to "mainstream" these offenders into prison programs and to ensure security. The plaintiffs in the case contend it would be more efficient and more effective to cluster such inmates together at fewer locations and, in the process, protect them from being victimized by nondisabled inmates.

As is customary in such legal negotiations, CDC's remedial plan has been undergoing changes. The CDC budget request is based on the assumption that 12 prisons would provide services. A subsequent plan submitted to plaintiffs indicates that such services would actually be available at 14 prisons, and we are advised that yet another plan still

under development could propose a ten-prison plan. Further changes appear likely as negotiations proceed.

Complicating the negotiating process is the fact that the state does not know how many developmentally disabled offenders it has in prison, how many have a severe disability requiring more extensive services, the makeup of this group according to their security classification, or their program needs. That information almost certainly cannot be determined with accuracy until the state undertakes efforts to screen and identify developmentally disabled offenders.

That makes it impossible to know what the ultimate cost would be of the program being proposed by CDC. The CDC says the number of developmentally disabled inmates is probably between 2 percent and 10 percent of the general prison population—in other words, somewhere between 3,000 and 16,000 inmates. Knowing the actual prevalence, in our view, is critical to the design of an efficient and effective program to meet the needs of this specialized population.

Analyst's Recommendation. For these reasons, we recommend that the Legislature approve the $1.8 million requested in the budget year to screen and identify inmates in its prison population but recommend denial at this time of the $3.8 million sought for implementation of specialized services.

In our view, this approach would demonstrate the state's good-faith intention to reach a negotiated agreement on a remedial plan and permit CDC to move forward immediately with the screening and identification efforts that are needed first to design an appropriate program. The CDC could reinstate its request for additional funding to implement services for this group of inmates once a remedial plan has been negotiated and the prevalence of this group in the prison population can be estimated with greater accuracy.

No Legal Authority Cited for Holding Mentally Ill Parolees

We recommend approval of $1.4 million and 2.8 personnel-years requested to provide community housing, more intensive counseling and treatment, and electronic monitoring of mentally ill offenders released on parole. However, we recommend denial of $3.6 million requested to hold parolees in secure private psychiatric facilities costing from $230 to $460 per day because it is unclear who the department would hold in these facilities and what legal authority it has to do so. (Reduce Item 5240-001-0001 by $3.6 million.)

Background. About 16,600 inmates are now receiving mental health services within the prison system, and another 8,000 parolees under active state supervision are receiving such services from Parole Outpatient Clinics. State law authorizes the courts in various civil and criminal proceedings to order mentally ill and dangerous offenders, including inmates nearing their parole release dates deemed to be Sexually Violent Predators (SVPs) or Mentally Disordered Offenders (MDOs), to be involuntarily committed to state mental hospitals for treatment. State law also authorizes the use of electronic monitoring devices to track the location of offenders released on parole.

In the past, the Board of Prison Terms (BPT) sometimes ordered prison inmates who were nearing their parole release dates to continue to be held in state prison for up to another year on the grounds that they needed psychiatric treatment. However, in July 1998, a state appellate court ruled that this practice was illegal absent any conduct by the inmate indicating that his mental health has deteriorated to the point he is likely to commit further criminal acts. The court found that BPT lacked any statutory authority for such actions, and that other legal remedies were available, such as the SVP or MDO law, to protect the public from mentally ill and dangerous offenders.

As a result of this so-called Whitley ruling (formally known as *Terhune v. Superior Court of Contra Costa County*), the state was forced to release a number of offenders, while others are again being held because they committed parole violations resulting in their return to prison or because they received a court-ordered commitment to a state mental hospital.

New Proposal for Mentally Ill Offenders. The budget requests $5 million and 2.8 personnel-years for a new program involving parolees with psychiatric problems.

The CDC request includes about $3.6 million to contract with private secure psychiatric facilities at rates between $230 and $460 per day for mental health treatment for 80 parolees, who it has indicated would be placed there involuntarily as a condition of their parole. The CDC has advised us that parolees selected for placement in these beds would be those who, while mentally ill, are nonetheless ineligible for court-ordered commitments to state mental hospitals and also ineligible for revocation of their parole on psychiatric grounds.

The request also includes about $1 million to place 57 parolees in nonsecure community residential facilities, about $200,000 to contract for the electronic monitoring of parolees in the community, and about $180,000 for additional staffing for Parole Outpatient Clinics to provide

more intensive counseling and treatment of an unspecified number of parolees.

Concerns About the Proposal. We are concerned about the portion of the CDC request relating to holding parolees involuntarily in secure private psychiatric facilities, for two primary reasons.

- The CDC has no clear, established criteria at this time for determining which parolees out of the thousands released from prison each year with mental disorders would be subject to such involuntary commitments. Because the parole population subject to such commitments has not been clearly defined, the CDC has not sufficiently justified its estimate of the caseload of parolees who would be eligible for such commitments each year. Thus, the Legislature has no way to know if the $3.6 million requested for this purpose is an excessive or insufficient amount of funds.

- The CDC cites no statutory authority for such involuntary commitments in the documentation supporting its budget request. The CDC did assert in its documentation that the funding was being requested "to comply with the . . . Whitley decision" and that CDC "must comply with the court order." In fact, the Whitley court decision does not require the CDC to establish any new commitment process and could be interpreted as prohibiting just such an effort. At the time this analysis was prepared, we were unaware of any pending legislation to authorize such actions by the CDC.

We do not object to other provisions of the budget request providing housing, electronic monitoring, and more intensive treatment at community clinics for mentally ill offenders.

Analyst's Recommendation. For these reasons, we recommend approval of $1.4 million and 2.8 personnel-years for housing, electronic monitoring, and treatment services for mentally ill offenders, but recommend denial of the $3.6 million funding request for holding parolees involuntarily in secured housing due to the lack of clear criteria for determining who is subject to such commitments and CDC's failure to cite statutory authority for making such a commitment without the approval of a court.

CORRECTIONAL ADMINISTRATION ISSUES

Various Proposals Need Modification

We recommend a reduction of $16.3 million requested in the Department of Corrections (CDC) budget for leased jail beds, institutional staffing, and training proposals for correctional officers. We withhold recommendation on $6.5 million for the Correctional Management Information System information technology project because key project activities have fallen behind schedule. We also withhold recommendation on $1 million sought for contracting for community correctional facility beds because no information supporting this specific expenditure request had been provided to the Legislature. We recommend that the Legislature initiate an audit of prison personnel management policies and practices. Also, we recommend that CDC update the Legislature at budget hearings regarding the status of several overdue reports on various correctional issues. (Reduce Item 5240-001-0001 by $16.3 million.)

The proposed 1999-00 CDC budget includes funding relating to jail beds leased from Los Angeles County, correctional officer training, the Correctional Management Information System (CMIS) information technology project, community correctional facility beds, and prison staff overtime. Also, prior budget acts have included budget bill and supplemental report language mandating reports to the Legislature on various correctional issues.

Analyst's Recommendation. We withhold recommendation on various budget requests for which CDC has not provided sufficient justification. We further recommend deletion or a reduction of funding for other proposed expenditures that we have found are not justified, and offer other recommendations as outlined below:

- ***Pitchess Jail Lease.*** We recommend a reduction of $7.4 million in the CDC budget for the leasing of jail beds from Los Angeles County for holding CDC parole violators. The CDC budget includes sufficient funding for 1,400 beds at the Peter Pitchess Detention Center and other Los Angeles County jails, but the department is actually using only 1,000 to 1,100 beds at any given time. We anticipate that as much as $7.4 million in surplus funding for unused Pitchess contract beds will also revert to the General Fund at the end of the current year, making these resources available for expenditure by the state in 1999-00.

- ***Training for Correctional Officers.*** We recommend the deletion of $5 million included in the budget for unspecified training propos-

als for correctional officers. We make this recommendation because at the time this analysis was prepared, the Legislature had received no information regarding the purpose of this budget augmentation or its justification.

- ***The CMIS Project Review.*** We withhold recommendation on $6.5 million ($5.3 million General Fund and $1.3 million in special funds) for CMIS and related information technology projects. Although the Legislature last year approved a request for $311,000 and five staff positions to expedite CMIS, approval of a new FSR for the project is now nine months behind schedule. We recommend that the Departments of Corrections and Information Technology report at budget hearings on the present status of CMIS, as well as changes in the scope of the project and the intended procurement process. We further recommend that CDC account for its use of the augmentation that was supposed to expedite the project during the current fiscal year.

- ***Community Correctional Facilities.*** We withhold recommendation on $1 million requested for contracting for 2,000 community correctional facility beds during the budget year. We recognize that the Legislature has authorized these beds as part of a 1998 legislative agreement on new correctional programs and capacity. However, at the time of our analysis, we had received no information supporting this specific expenditure request. We also recommend a General Fund reduction of $3.9 million requested for institution staffing related to the deferral of activation of these beds until 2000-01. We are advised by CDC that these funds were requested in error.

- ***Management of Institution Personnel.*** The CDC has been experiencing significant problems in properly managing its prison personnel. Overtime costs increased to $149 million in 1997-98, a $25 million jump in one year. The department faces new and rigorous labor-contract constraints on its use of permanent intermittent employees. As of January 1998, 15 percent of correctional officer positions were vacant, three times the customary vacancy rate for civil service personnel. In light of these problems, we recommend that the Legislature direct the Bureau of State Audits, in consultation with the Department of Personnel Administration, to review the personnel management policies and practices at a sample of state prisons and recommend what changes, if any, are warranted to (1) hold down state overtime and other personnel costs, (2) comply with state civil service laws and professional personnel

management practices, and (3) ensure good management-employee relations.

- ***Overdue CDC Reports.*** We recommend that the CDC report at budget hearings regarding the status of several reports mandated by budget bill and supplemental report language, but not yet released to the Legislature at the time this analysis was prepared. In particular, CDC should update the Legislature at the time of budget hearings regarding these reports: (1) the expansion of inmate work and education programs (due December 1, 1998); (2) participation of offenders released on parole in federal programs (due December 1, 1998); (3) classification of parolees (due December 1, 1998); and (4) the feasibility of using Ballington Plaza in Los Angeles for a women's correctional program (due December 1, 1998). The CDC has notified the Legislature that several of the overdue reports will be completed by a specific later date, in no case later than April 1, 1999.

Federal Funds Assumption Is Risky

The Governor's budget assumes that the state will receive $273 million in federal funds to cover the state's costs of incarcerating and supervising undocumented immigrants. This is about $100 million, or 58 percent, more than the budget assumes the state will receive in the current year. The funds are not counted in the budget bill, but are counted as offsets to state General Fund spending. Our review indicates that the assumption for a large increase in reimbursements is highly risky.

As indicated in the Overview at the beginning of this chapter, the budget assumes that the state will receive $273 in federal funds in 1999-00 to offset the state's costs to incarcerate and supervise undocumented immigrants in CDC and the Department of the Youth Authority. This is about $100 million, or 58 percent, more than the administration estimates that the state will receive in the current year.

These federal funds are counted as offsets to state expenditures and are not shown in the budgets of CDC and the Youth Authority, or in the budget bill. Thus, the Governor's budget would hold CDC and the Youth Authority budgets harmless should the federal funds not materialize.

State's Share Has Been Declining. California has received the largest share of federal funds since the federal government began reimbursing the states five years ago for incarcerating undocumented immigrants. However, the state's share has gradually declined since federal fiscal year (FFY) 1996 when the state received more than 50 percent of the funds, to

less than 30 percent in the last federal allocation. This drop in the state's share is due, in part, to federal decisions to make local governments eligible for reimbursement. Also, California's share has probably declined as other states have improved their capabilities to identify the pool of offenders for whom they can request reimbursement. (California was well-prepared to identify the pool when the federal government began the reimbursement program.)

Budget Assumption Is Risky. Although we believe that the state has an excellent case to claim more money from the federal government to cover the costs of incarcerating and supervising undocumented offenders (the state estimates that its costs exceed $500 million a year), we believe that the Governor's budget assumption that the state will receive $273 million in reimbursements in the budget year is highly risky for two reasons.

First, even if Congress appropriates more money, it is likely that the state's share will continue to decline as more jurisdictions throughout the nation improve their claiming abilities and apply for reimbursement.

Second, and more importantly, in order to achieve the additional $100 million, Congress would have to appropriate significantly more for the program than it has in the past. By our calculations, even if California continued to receive the same share of funds it received in the most recent allocation, Congress would have to roughly double its FFY 2000 appropriation for the program to more than $1 billion in order for there to be enough money to meet the Governor's budget assumption. We note that the President's budget proposal for FFY 2000, which was released in early February, requests less than the amount appropriated by Congress for the past two FFYs.

BOARD OF CORRECTIONS (5430)

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

The budget proposes expenditures of $144 million in 1999-00 ($71 million from the General Fund). This is about $74.8 million, or 108 percent, more than estimated current-year expenditures. The increase is due to (1) the implementing of several law enforcement and juvenile justice local assistance grant programs authorized by the Legislature last year and (2) providing state and federal prison construction funds to jails and local juvenile detention facilities

Board Responsibilities Have Increased Dramatically

The Board of Corrections has been assigned responsibility for distributing almost $200 million in local assistance funds in the current and budget years. These funds are for grants for juvenile crime programs, grants to counties to reduce the population of mentally ill offenders in the jails, and grants to counties for jail construction and juvenile facility construction and renovation. The board is requesting 10.1 positions in the current year and 13.1 positions in the budget year to administer these grants. The Governor's budget does not propose funds to expand the programs in the budget year, contrary to statements of legislative intent included in the measure that established and funded several of the programs.

The proposed 1999-00 budget for the board is more than double its expected expenditures for the current year, and the current year expendi-

tures are estimated to be 72 percent higher than in 1997-98. This dramatic rate of increase reflects the significant increases in responsibilities which the board has absorbed in recent years. The majority of these new funds have been appropriated to the board to distribute to counties for a variety of new grant programs related to juvenile justice and local correctional facility construction, renovation, and management.

Juvenile Justice Grant Programs. The board is currently administering two juvenile justice grant programs—the Repeat Offender Prevention Program (ROPP) and the Juvenile Crime Enforcement and Accountability Challenge Grant—which distribute state funds to county probation departments for juvenile justice-related demonstration programs. The ROPP program was initiated in the *1996-97 Budget Act* with an appropriation of $3.3 million dollars for seven counties (Fresno, Humboldt, Los Angeles, Orange, San Diego, San Mateo, and Solano). The program is based on research conducted by the Orange County probation department indicating that a significant proportion of juvenile crime is committed by a chronic 8 percent of the offender population. Each of the projects funded by this program is aimed at identifying and intervening with this population at an early stage (at the beginning or before the onset of their offending). The 1997-98 and 1998-99 budgets provided additional funds to continue the program until 2001 ($3.4 million and $3.8 million, respectively), and the 1998-99 budget added the City and County of San Francisco as a grantee. The board is requesting a partial position in the current and budget years to handle the workload associated with the addition of San Francisco and the extension of the program

The Juvenile Challenge Grant program was established by Chapter 133, Statutes of 1996 (SB 1760, Lockyer) with an initial *1996-97 Budget Act* appropriation of $50 million to fund a five-year program cycle. This first round of funds was distributed to 14 counties to fund 29 different community-based demonstration programs targeting juvenile offenders. The programs were selected through a competitive process in which 52 counties applied. In 1998-99, the Challenge Grant program received an additional $60 million which will be distributed again on a competitive basis very similar to that employed for the first round. The board has requested position authority for three positions in the current year, and 3.9 positions in the budget year to administer this program. The positions would be supported by the funds already appropriated to the board for administration of the grants.

The *1999-00 Governor's Budget* includes no additional funds for the Challenge Grants. However, Chapter 325, Statutes of 1998 (AB 2261, Aguiar) expressed the Legislature's intent to appropriate at least an addi-

tional $25 million annually to the program through 2001-02. During the first round of Challenge Grant funding, the board received proposals requesting over $137 million for the available pool of $50 million. The board anticipates that the demand for Challenge Grant funds will again far outstrip the $60 million currently available. Awards for the second round of the Challenge Grants will be made in May 1999.

Both of these programs require that the recipient counties undertake a rigorous quantitative evaluation designed to measure the outcomes of the various programs. The final report for the first round of the Challenge Grant program is due to the Legislature by March 1, 2001, and the final report on the ROPP is due on December 31, 2001. The findings of these reports will be important as the Legislature considers the proper role for the state in funding juvenile justice programs.

Mentally Ill Offender Crime Reduction Grant Program . The Mentally Ill Offender Crime Reduction Grant program is designed as a demonstration grant project to aid counties in finding new collaborative strategies for more effectively responding to the mentally ill offenders who cycle through already overcrowded county jails. Chapter 501, Statutes of 1998 (SB 1485, Rosenthal) created the program, and requires the board to develop an evaluation design that will assess the effect of the program on crime reduction, overcrowding in jails, and local criminal justice costs.

Chapter 502, Statutes of 1998 (SB 2108, Vasconcellos) appropriated $27 million for the program, and Chapter 501 expressed the Legislature's intent to appropriate an additional $25 million for the program in the budget year. However, the Governor's budget does not include any additional funds for this program.

The distribution of the grant funds will be on a competitive basis, and includes a planning grant process that allows counties to receive funds in order to assess their needs and develop programming proposals. Because 45 counties applied for and received initial small planning grants and at least two others appear likely to apply for demonstration grants, it is likely that the demand for the demonstration grant funds will outstrip the $23.7 million currently available. Grant awards for this program will be made in May 1999. The board is requesting one position in the current and budget years to administer this program.

Violent Offender Incarceration/Truth-in-Sentencing Grant. The Violent Offender Incarceration/Truth-in-Sentencing (VOI/TIS) Grant Program is a federally funded program that distributes money to states to construct or upgrade state and local correctional facilities. Under this program, states can spend up to 15 percent of their grant for local adult

or juvenile facility construction. However, if the state declares that there are exigent circumstances, a state can use up to the entire amount for local juvenile facility construction.

In 1998, the Legislature enacted Chapter 339 (AB 2793, Migden) which declared exigent circumstances, awarded all of the 1998-99 VOI/TIS funds to counties for adult jail and juvenile detention facility construction, and announced the Legislature's intent to distribute the 1999-00 VOI/TIS funds in the same manner—15 percent for jail construction, and 85 percent for juvenile facility construction. However, the Governor's budget does not include any proposal to expend the 1999-00 federal funds. The board estimates that by 2002, the counties will need to spend an additional $735 million for local adult and juvenile facilities. The board will award the 1998-99 funds in May 1999. The budget includes three positions in the current year and 3.9 positions in the budget year to administer these funds.

Juvenile Hall/Camp Restoration Program. Because the need to restore and maintain existing juvenile facilities is at least as great as the need to expand existing bed capacity, the Legislature enacted Chapter 499, Statutes of 1998 (AB 2796, Wright). This measure appropriated $100 million in General Fund monies to support renovation, reconstruction, and deferred maintenance for juvenile halls and camps. The board will distribute these funds on a competitive basis in conjunction with the federal VOI/TIS funds available for juvenile facilities. Funds for this program are also expected to be awarded in May 1999. The board is requesting three positions in the current year and 3.9 positions in the budget year to administer these funds.

BOARD OF PRISON TERMS (5440)

The Board of Prison Terms (BPT) is composed of nine members appointed by the Governor and confirmed by the Senate for terms of four years. The BPT considers parole release for all persons sentenced to state prison under the indeterminate sentencing laws. The BPT may also suspend or revoke the parole of any prisoner under its jurisdiction who has violated parole. In addition, the BPT advises the Governor on applications for clemency and helps screen prison inmates who are scheduled for parole to determine if they are sexually violent predators subject to potential civil commitment.

The proposed *1999-00 Governor's Budget* for the support of the BPT is $15.5 million from the General Fund. This is an increase of $778,000, or 5.3 percent, above estimated expenditures for the current year. The proposed current- and budget-year increases are primarily the result of the steadily increasing workload for hearing cases of parole violators and indeterminately sentenced prison inmates. In addition, the budget requests additional staff and contract funding related to expansion of the state Mentally Disordered Offender (MDO) program. This program commits prison inmates who are seriously mentally ill to state mental hospitals (we discuss this proposal below).

Rate Increases for Evaluators Should Be Rejected

We recommend approval of the Board of Prison Terms (BPT) request for $520,000 for two new staff positions and additional contract funding related to expansion of a state program to commit mentally disordered offenders nearing the end of their prison terms to state mental hospitals. However, we recommend reducing by $100,000 the funding proposed for rate increases to private psychiatrists and psychologists paid to evaluate these offenders because BPT's concern that it is being outbid for these services by the Department of Mental Health (DMH) is better addressed

by granting part of the BPT rate increase, but also lowering DMH's rates to equal the new BPT rates.

We further recommend that DMH report at budget hearings on where and how DMH will hold the additional mentally disordered offenders resulting from this expansion of the commitment process. (Reduce Item 5440-001-0001 by $100,000 and reduce Item 4440-001-0001 by $137,000.)

The BPT Role in Commitment Process. The MDO program was established by Chapters 1418 and 1419, Statutes of 1985 (SB 1054, Lockyer and SB 1296, McCorquodale) to commit mentally ill prison inmates to state mental hospitals. To be deemed an MDO, an inmate must have committed one of a number of specified violent crimes, be nearing release on parole, have a severe mental disorder, and pose a substantial danger of causing physical harm to others if released to the community. Also, in order to be committed as an MDO, the offender must have been receiving mental health treatment in state prison for at least 90 days in the year prior to his or her anticipated release date.

State law provides that BPT must certify that an inmate being considered for an MDO commitment meets the necessary criteria. The BPT schedules and coordinates the evaluation of such offenders by psychiatrists or psychologists representing DMH and the California Department of Corrections (CDC). If the DMH and CDC evaluators disagree about whether an inmate is eligible for an MDO commitment, state law requires BPT to solicit the opinion of two other, independent evaluators to resolve the matter. Both must concur in an MDO commitment if it is to proceed; otherwise, the offender would likely be released on parole.

MDO Workload Increasing. The BPT has requested a General Fund augmentation of $620,000 to hire a staff psychiatrist and office technician and for additional contract funding to help address an increase in its projected MDO workload. In response to recent court decisions, many more inmates are now receiving ongoing mental health treatment at CDC institutions, with the result that the number of offenders approaching their release dates and potentially eligible for MDO commitments is growing significantly. Accordingly, CDC and DMH also propose to increase their efforts to commit more such offenders to state mental hospitals as MDOs instead of permitting their release to the community on parole.

The BPT has requested the two new positions to coordinate this expansion of MDO-related activities. It has also requested the contract funding necessary for it to address the resulting increase in its evaluation and hearing caseload.

Proposed Rates Should Be Reduced. Our analysis of DMH data documenting recent MDO caseload trends demonstrates that the $177,000 sought for the additional staffing and $125,000 sought for increases in its hearing and evaluation workload are justified. However, we have concluded that an additional $318,000 sought by BPT to increase the rate it pays psychiatrists and psychologists to conduct MDO evaluations is not justified and should be reduced by $100,000.

The BPT based its request on the increasing difficulty it has experienced in finding clinical professionals to conduct its evaluations. According to BPT, this difficulty stems from the fact that the psychiatrists and psychologists who have been performing this type of work have been offered higher rates for similar work by DMH. The BPT noted that, while it has been paying a flat rate of $320 per MDO evaluation, DMH has been paying $614 for MDO evaluations and paying an average of $1,500 for evaluation of offenders being considered for commitments under the Sexually Violent Predator program. The BPT has requested funding sufficient to raise its rates to $568 per evaluation to reduce the rate disparity.

The BPT's concerns about the disparity in rates appears to be valid. However, we believe a better approach to reducing the gap would be to increase the rate BPT pays for MDO evaluations to $490 (an increase of more than 50 percent), and to reduce DMH rates to $490. This change would restore BPT's basic rates to the $400 level they were at until a 1993 budget cut, and additionally provide the same $90 allowance for travel and court-appearance time received by DMH contractors. This approach would reduce the BPT budget request by $100,000 and permit a further $137,000 reduction in the DMH budget. Our recommendation to reduce the DMH rates paid for MDO evaluations is discussed in our analysis of the DMH budget in the Health and Social Services chapter of this *Analysis*.

No Plan for Holding Additional MDOs. We are also concerned that, while both the BPT and DMH are requesting additional funding to expand the MDO commitment process, the DMH budget does not provide additional funding to hold and provide treatment for the additional MDOs that would result from this proposed expansion of commitment efforts. We believe it would be unwise for the Legislature to provide additional funding for the processing of MDO cases unless there is funding and an acceptable plan for holding and treating these offenders.

Accordingly, in our analysis of DMH (please see the Health and Social Services chapter), we recommend that DMH report at budget hearings on its caseload estimates for mentally disordered offenders, along with projected support and capital outlay costs associated with the growing number of MDO referrals.

Analyst's Recommendation. For these reasons, we recommend approval of a $520,000 augmentation for BPT for MDO-related positions and contract evaluations, with a reduction of $100,000 from its original budget request. We also recommend that DMH report at budget hearings regarding the operating and any capital outlay costs relating to the proposed expansion of the MDOs in the state mental hospital system and its plan for holding and providing treatment for these additional offenders.

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 four conservation camps. In addition, the department supervises parolees through 16 offices located throughout the state.

The budget proposes total expenditures of $392 million for the Youth Authority in 1999-00. This is $3.1 million, or about 1 percent, more than current-year expenditures. General Fund expenditures are proposed to total $320 million in the budget year, an increase of $4.5 million, or 1.4 percent, above expenditures in 1998-99. The department's proposed General Fund expenditures include $36.6 million in Proposition 98 educational funds. The Youth Authority also estimates that it will receive about $68 million in reimbursements in 1999-00. These reimbursements primarily come from the fees that counties pay for the wards they send to the Youth Authority.

The primary reason for the slight increase in General Fund spending for the budget year is that $15 million of a $25 million appropriation provided to the department in Chapter 499, Statutes of 1998 (AB 2796, Wright) for allocation to nonprofit organizations for youth shelters is proposed to be expended in the budget year.

Approximately 72 percent of the total funds requested for the department is for operation of the department's institutions and camps and 16 percent is for parole and community services. The remaining 12 percent of total funds is for the Youth Authority's education program.

WARD POPULATION

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. As of December 1998, 94 percent of the institutional population was committed by the juvenile courts. 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, 1998, 5 percent of the institutional population were juveniles committed by criminal courts.

- ***Corrections Inmates.*** This segment of the Youth Authority population—2 percent of the population in December 1998—is comprised of inmates from the Department of Corrections (CDC). These inmates are referred to as "M cases" because the letter M is used as part of their Youth Authority identification number. These individuals were under the age of 18 when they were committed to the 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, Statutes of 1996 (AB 3369, Bordonaro) restricts future "M cases" to only those CDC inmates who are under the age of 18 at the time of sentencing. The new law requires that "M cases" be transferred to the CDC at age 18, unless their earliest possible release date comes before their 21st birthday.

- ***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.

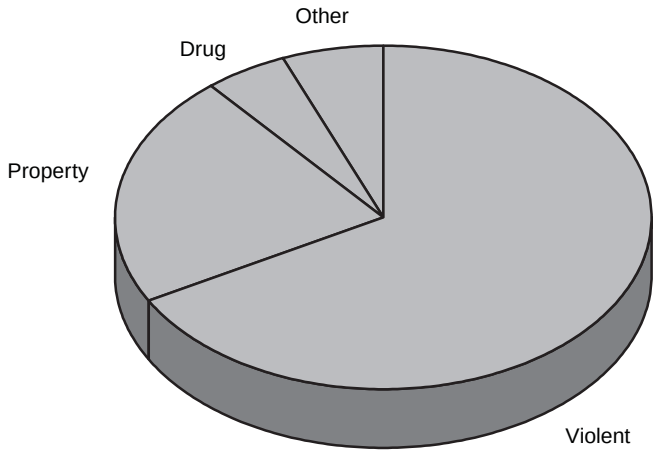
Characteristics of the Youth Authority Wards. Wards in Youth Authority institutions are predominately male, 19 years old on average, and come primarily from southern California, with 34 percent coming from Los Angeles County. Hispanics make up the largest racial and ethnic group in Youth Authority institutions, accounting for 49 percent of the total population. African Americans make up 29 percent of the population, whites are 14 percent, and Asians and others are approximately 8 percent.

Most Wards Committed for Violent Offenses. Figure 1 shows the Youth Authority population by type of offense.

Figure 1

Youth Authority Population By Commitment Offense

1998



As of December 1998, 67 percent of the wards housed in departmental institutions were committed for a violent offense, such as homicide, robbery, assault, and various sex offenses.

In contrast, only 42 percent of the CDC's population has been incarcerated for violent offenses. The number of wards incarcerated for property offenses, such as burglary and auto theft, was 22 percent of the total population. The number of wards incarcerated for drug offenses was 5 percent in 1998, and the remaining 6 percent was incarcerated for various other offenses. We believe that the percentage of wards that are incarcerated for violent offenses will probably increase in future years. This is because the state has implemented a sliding fee schedule that provides the counties with an incentive to commit more serious offenders to the Youth Authority while retaining the less serious offenders at the local level. Specifically, counties are charged higher fees for less serious offenders committed to the Youth Authority and lower fees for more serious offenders (we describe this later in this analysis).

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 an increase in violent offender commitments, the average length of stay for a ward in an institution is increasing. For example, the Youth Authority estimates that on average, wards who are first paroled in 1998-99 will have spent 31.3 months in a Youth Authority institution compared to 23.6 months for a ward paroled in 1993-94. This trend is expected to continue; the Youth Authority projects that the length of stay for first parolees in 2002-03 will be 32.3 months, a 3 percent increase.

The longer lengths of stay are explained in part by the fact that wards committed by the juvenile court serve "indeterminate" periods of incarceration, rather than a specified period of incarceration. Wards receive a parole consideration date when they are first admitted to the Youth Authority, based on their commitment offense. Time can be added or reduced by the Youthful Offender Parole Board (YOPB), 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. However, as we point out in our analysis of the YOPB, not all of the increase can be attributed to a change in the population mix, as less serious offenders are experiencing even sharper increases in their lengths of stay than more serious offenders.

Ward Population Continues to Decline

The Youth Authority's institutional population continued to decrease in the current year and it is projected to decline further over the next several years until June 2001, at which point it will start to increase. The Youth Authority's forecast is to have 7,510 wards at the end of the budget year and 7,880 wards in 2002-03.

Youth Authority parole populations are expected to decline in the budget year to about 5,060 parolees, and will continue to decrease to about 4,865 parolees by the end of 2002-03. The decline is due to fewer Youth Authority admissions and longer lengths of stay for those wards who are currently incarcerated.

The Youth Authority's September 1998 ward population projections (which form the basis for the *1999-00 Governor's Budget*) estimate that the number of wards and inmates housed in the Youth Authority will decrease by 397, or 5 percent, by the end of 1998-99, compared to 1997-98. A primary reason for this decline in population is the implementation of Chapter 195 which transferred CDC inmates housed at the Youth Authority back to the CDC. In addition, implementation of Chapter 6, Statutes of 1996 (SB 681, Hurtt) increased the fees that counties pay the state for placement of juvenile offenders in the Youth Authority. The new fees went into effect January 1, 1997, and have had an impact on Youth Authority commitments (we discuss the effect of this legislation in more detail below).

For the budget year through 2002-03, the Youth Authority projects that its population will decline and then grow slightly, reaching just under 8,000 incarcerated wards on June 30, 2003. These estimates are significantly lower than the projections made by the Youth Authority in the spring of 1998 (which was the basis for the enacted 1998-99 budget) and appear to fully reflect the effects of the fee increase discussed below.

While the Youth Authority is experiencing a significant decline in the number of parolees it supervises in the current year, it does not expect a further significant decline in the budget year. Parole populations will decline by only 40 cases, or less than 1 percent, in the budget year. The number of parolees will continue to decline slowly through 2003. Figure 2 (see next page) shows the Youth Authority's institutional and parolee populations from 1997-98 through 2002-03.

Ward and Parolee Population Projections Will Be Updated in May

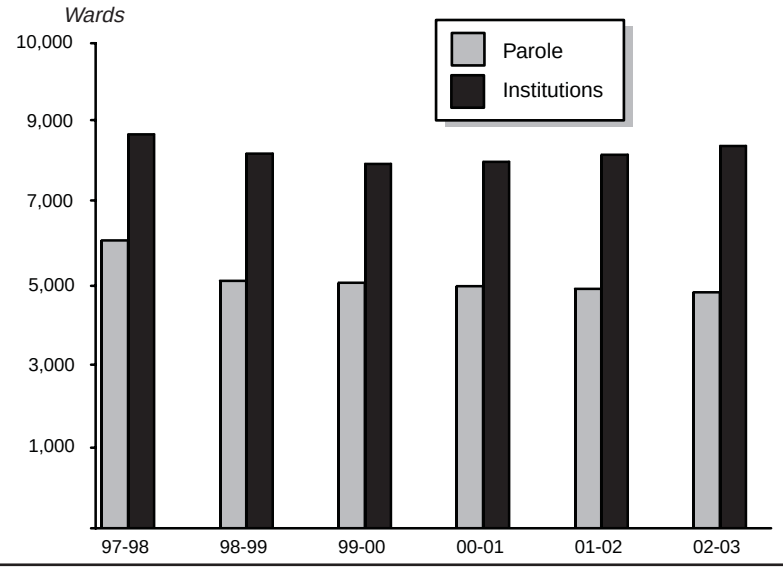
We withhold recommendation on a net $1.4 million decrease from the General Fund based on projected ward and parolee population changes, pending receipt of the revised budget proposal and population projections to be contained in the May Revision.

Ward and Parolee Population in the Budget Year. The Youth Authority population is projected to decrease by 215 wards, or 5 percent, from the end of the current year to the end of the budget year. The budget proposes a net decrease of $1.4 million from the General Fund reflecting this decrease in the Youth Authority population. The dollar decrease is relatively modest because the Youth Authority has decided not to close any housing units in response to the projected drop in population. In fact, the budget requests a small net increase in the number of security personnel staffing the institutions.

Figure 2

Youth Authority Institutions and Parole Populations

1997-98 Through 2002-03



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. To the extent that population decline is greater than currently assumed, it could necessitate closing a housing unit or one of the department's 16 parole offices, which would result in substantially greater savings.

In recent years, Youth Authority projections have tended to be somewhat higher than the actual population, leading to downward revisions for the future projected population. For example, the projection of the June 30, 1999 institutional population projection dropped from 8,315 in the fall 1997 projections to 7,830 in the spring 1998 projections, and currently stands at 7,510.

These decreases appear to be partly caused by the changes in Youth Authority fees. While these changes appear to have stabilized, there is sufficient uncertainty to warrant withholding recommendation on the budget changes associated with the population size pending receipt and analysis of the revised budget proposal.

YOUTH AUTHORITY FEES CHARGED TO COUNTIES

Legislation that took effect in 1997 to substantially increase the fees paid by counties for committing less serious offenders to the Youth Authority appears to be having its desired effects. Admissions in less serious offense categories are down significantly, and counties are moving to increase their menu of local programming options for these offenders. County efforts in this direction have been aided by the availability of over $700 million in state and federal funds for juvenile probation programs. As a result of these successes, we recommend that the state maintain the sliding scale structure.

In this section, we review the 1997 legislation that increased fees paid by counties for commitments to the Youth Authority. We begin by describing the fee changes and outline steps taken to provide additional funding to counties for juvenile justice programs. We then discuss the effects of the fee changes on both the Youth Authority and the counties. This information is based on our review of data and discussions with Youth Authority staff and county probation departments. We follow this with our conclusion about the effects of the fee reforms and several recommendations to the Legislature based on our findings.

Legislation Increased Fees Counties Pay for the Youth Authority

Effective January 1, 1997, counties are charged new and higher fees for their commitments of juvenile offenders to the Youth Authority. These fees were enacted by Chapter 6.

Prior to the enactment of Chapter 6, counties paid a monthly fee of $25 for each offender sent to the Youth Authority. That fee was set in 1961, and was increased to $150 by Chapter 6 in order to take account of inflationary cost increases to the Youth Authority. In addition, Chapter 6 established a new "sliding scale" fee structure which requires counties to pay a percentage of the per capita monthly cost of wards with less serious offenses who are committed to the Youth Authority.

Sliding Scale Fees Based on Type of Offender. The sliding scale fees are determined by the YOPB based on the category that a ward is assigned to at his initial parole board hearing. The board assigns each juvenile committed to the jurisdiction of the Youth Authority a category number—from I to VII—based on the seriousness of his commitment offense. Because most juveniles are committed on the basis of their entire records, this number would correspond to the most serious offense in their re-

cords, not necessarily their most recent offense. Generally, offenses in categories I through IV are considered the most serious, while categories V through VII are less serious. Figure 3 provides typical examples of the offenses in each category.

Figure 3

Youth Authority Wards— Categories and Typical Offenses

Ward Category	Typical Offenses	Baseline PCD[a]	Monthly Charge to County
I	Murder, torture, kidnapping resulting in death	7 years	$150
II	Voluntary manslaughter, child molestation, kidnapping[b]	4 years	150
III	Rape/sexual assault[b], carjacking	3 years	150
IV	Armed robbery[b], arson[b], drug selling offenses	2 years	150
V	Assault with a deadly weapon[b], robbery[b], residential burglary[b], sexual battery	18 months	1,300
VI	Carrying a concealed firearm, commercial burglary, battery[b], all felonies not contained in categories I-V	1 year	1,950
VII	Technical parole violations, all offenses not contained in categories I-VI (for example, misdemeanors)	1 year or less	2,600

[a] Parole consideration date.

[b] If offense results in substantial injury then it would fall into the more serious adjacent category (for example, rape is generally a category III offense, but a rape with substantial injury is a category II offense).

Commitments of wards in categories I through IV are billed the $150 monthly fee. Category V commitments are billed to the counties at 50 percent of per capita cost ($1,300 per month), category VI at 75 percent ($1,950 per month), and category VII commitments are billed the full cost of the commitment ($2,600 per month).

Legislation Enacted in 1998 Caps the Fees. This fee structure was modified somewhat by Chapter 632, Statutes of 1998 (SB 2055, Costa) which froze the per capita costs on which the sliding scale fees are based at the levels in effect on January 1, 1997 ($31,200 per year). This legislation was enacted in response to county concerns about rapidly increasing per

capita costs as a consequence of recent declines in the Youth Authority population (the smaller the ward population, the greater the per capita costs of the Youth Authority). This legislation ensures that counties will not pay higher fees simply because the population decline resulting from the implementation of the sliding scale generates higher per capita costs. However, as a result of this legislation, the Youth Authority's reimbursements from the counties will be continually smaller than the state's actual costs, as both inflation and a declining population lead to increases in per capita costs.

Intent of Sliding Scale Legislation. The sliding scale legislation was intended to provide counties with a fiscal incentive to utilize and develop more locally-based programs for less serious juvenile offenders, and to reduce their dependence on costly Youth Authority commitments. Prior to the passage of the legislation, counties had a strong fiscal incentive to send offenders to the Youth Authority because they only paid a nominal $25 monthly fee per ward. As a result, Youth Authority commitments, while often more expensive than other sanction and treatment options, were far less expensive from the counties' perspective.

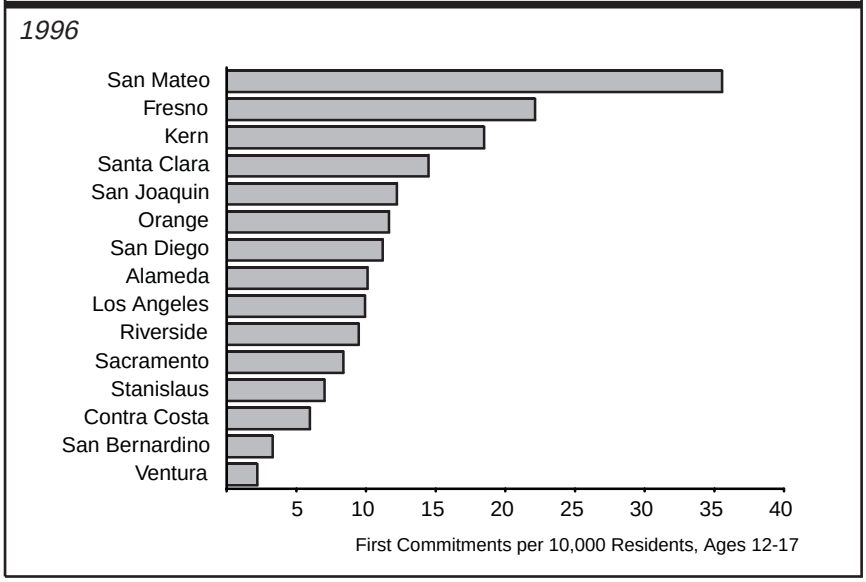
While some counties developed their own locally based programs despite these incentives, other counties appeared to be over-relying on Youth Authority commitments. This disparate usage of the Youth Authority was reflected in the widely ranging first admission rates across counties. Figure 4 (see next page) shows the 1996 first admission rates to the Youth Authority for the 15 counties with the largest populations aged 12 through 17 years (the population from which first admissions generally are drawn). The figure shows the large disparities among counties in the use of the Youth Authority that existed prior to the legislation.

The problems with the prior fee structure were threefold. First, a large body of research on juvenile justice programs suggests that most juvenile offenders can and should be handled in locally based programs. In part, this is because locally based programs can work more closely with the offender, his family, and the community. Second, these locally based programs tend to be less expensive than a Youth Authority commitment, which meant that state funding was encouraging counties to use a more expensive as well as less effective sanctioning option for many offenders. Finally, taxpayers in those counties with lower admissions rates for less serious offenders were paying not only for their own locally based options, but also for a share of the costs created by those other counties with higher Youth Authority admissions rates. In response to these shortcomings, the Legislature acted to align the fiscal incentives faced by counties

with more cost-effective policies, thereby encouraging counties to invest in preventive and early intervention strategies.

Figure 4

County Commitment Rates to Youth Authority Vary Widely Prior to Fee Change



New State and Federal Funds Ease the Transition Costs of the Fee Changes. Since the sliding-scale legislation took effect, the Legislature has appropriated over $700 million for various county-based juvenile justice initiatives. These new funds do not directly address the increased fees, but they do help mitigate the financial burden by supplementing existing resources for developing local alternative programs to the Youth Authority. These include:

- ***Temporary Assistance for Needy Families (TANF).*** The Legislature has provided over $370 million in federal TANF funds for county probation departments, $65 million of which is earmarked for probation camps and ranches. The rest of the funds are available on a block grant basis to county probation departments to support a wide range of activities from basic prevention to various kinds of residential placement options. These funds represent an expansion of monies previously available to counties under the prior Aid to Families with Dependent Children (AFDC) program. (The AFDC program was subsequently replaced by the CalWORKS

[California Work Opportunity and Responsibility to Kids] program.) Under the prior AFDC program, these funds were claimed by county probation departments under federal Title IV-A (emergency assistance program) from 1993 to September 1995. Subsequently, the federal government notified the counties that juvenile offenders would no longer be eligible for these funds. When the CalWORKS program was implemented, the state decided to reallocate funds from its federal block grant to the counties. This reallocation was at a higher level than under the Title IV-A program. The Governor's budget proposes $200 million for this purpose in 1999-00, the same level as in the current year.

- ***Juvenile Detention Facility Funds.*** The Legislature has provided $221 million in state and federal funds to the Board of Corrections for construction and renovation of county juvenile detention facilities. This amount is comprised of $121 million in federal Violent Offender/Truth-in Sentencing Grant money for county juvenile detention facilities and another $100 million from the General Fund for juvenile facility renovation, construction, and deferred maintenance. In addition, Chapter 339, Statutes of 1998 (AB 2793, Migden), expresses the Legislature's intent to provide 85 percent of federal fiscal year 1999 Violent Offender funds to the counties for juvenile facilities. While this allocation has not yet been made, it is expected to be about the same as the $80 million 1998-99 award. However, the proposed Governor's budget includes no appropriation of the 1999 federal funds.

- ***Challenge Grants.*** The Legislature has provided $110 million to the Board of Corrections for the Juvenile Crime Enforcement and Accountability Challenge Grant Program. The first $50 million of this money was appropriated in 1996 and awarded to 14 counties on a competitive basis to support innovative juvenile justice strategies. In 1998, another $60 million was appropriated to further expand this program. These grant funds will be awarded later this spring. Counties can apply for Challenge Grant funds for a wide array of programs, but first they must convene a juvenile justice coordinating council and undertake a local planning process in order to accurately identify the service gaps in their existing juvenile justice system. As a result, counties are able to receive funds for the programs that address their own identified greatest needs. Chapter 325, Statutes of 1998 (AB 2261, Aguiar) stated the Legislature's intent to appropriate at least $25 million annually through 2001-02 for the program. The Governor's budget, however, does

not include any additional funds for this program in the budget year.

- ***Repeat Offender Prevention Program (ROPP).*** The Legislature provided $11 million dollars to the Board of Corrections for the ROPP. The purpose of this program is to support county efforts to identify and treat youth at risk of becoming chronic juvenile offenders before they become serious offenders. The ROPP is a pilot program that is being implemented in eight counties, and is scheduled to be completed in 2001.

Thus, while counties have been faced with new costs as a result of the sliding scale reform, these costs—estimated to have cost the counties less than $100 million dollars since the reform took effect—are far outweighed by the new state and federal funds that have been available to them.

Fees Have Changed Profile Of Youth Authority Wards

Admissions in the Least Serious Offender Categories Have Declined Significantly. In the two years since the sliding scale fee took effect, it has significantly reduced the numbers of first admissions to the Youth Authority. Overall, first admissions in 1997 were 30 percent lower than in 1996. Admissions data for 1998 continue the 1997 trends. These trends seem likely to continue into the future.

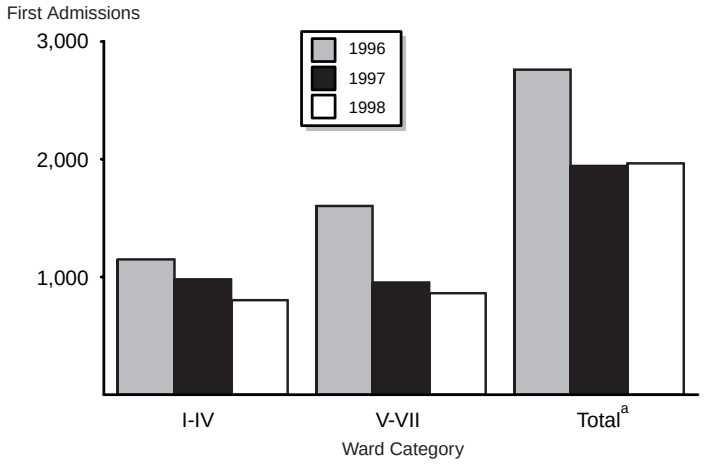
Not only have overall admissions declined, but admissions for the least serious offenders have dropped significantly. As Figure 5 shows, first admissions for the more serious offenses declined by 15 percent, while admissions in the less serious offense categories declined by 41 percent. This change suggests that counties have responded to the sliding scale fees, but have not been deterred by the increase in the monthly fee from committing more serious offenders when appropriate.

Prior Disparities in Youth Authority Usage Have Diminished Significantly. The new fees have also resulted in a more even distribution among counties of first admission rates for less serious offenders (categories V through VII). An examination of the first admissions rate in Figure 6 illustrates these changes in the 15 counties with the largest juvenile populations. This change ensures that those counties that continue to rely heavily on the Youth Authority are paying a greater share of the costs incurred as a result of those commitments.

Figure 5

First Admissions Significantly Decline In Less Serious Offense Categories

1996 Through 1998

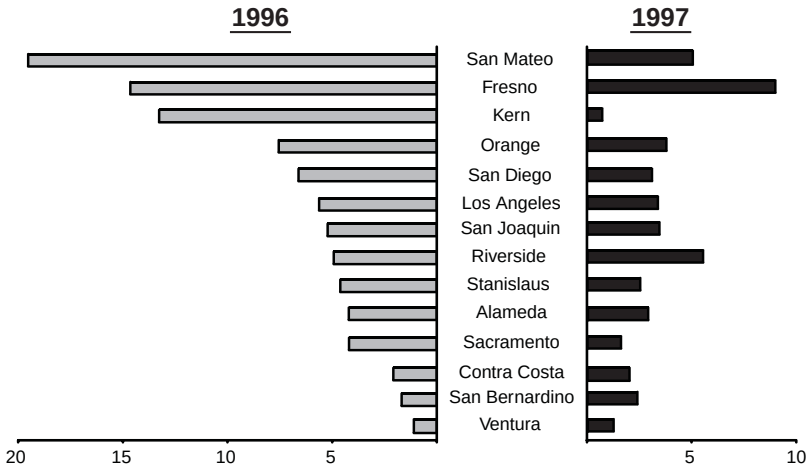


[a] The 1998 total includes some first admissions who have not yet been assigned a category.

Figure 6

First Commitment Rates in Most Counties Drop In Less Serious Offense Categories

1996 and 1997



Changing Admissions Patterns Have Resulted in a More Violent Youth Authority Population. These changes in the patterns of first admissions have also led to a significant change in the mix of offenders going into the Youth Authority. In 1996, the most serious offenders (categories I through IV) made up 42 percent of the first admissions, while in 1997 they represented 51 percent of first admissions, despite the fact that their numbers dropped in absolute terms by 15 percent. Because offenders in these categories are likely to have much longer stays in the Youth Authority, their proportion of the overall population tends to be significantly greater than their proportion of first admissions. Thus, at the end of 1998, 63 percent of the wards in institutions had committed more serious offenses (categories I through IV), and 37 percent had committed less serious offenses (categories V through VII).

Changes in Population Characteristics Highlight Need for New and Expanded Programming. In the *Supplemental Report of 1997-98 Budget Act,* the Legislature directed the Youth Authority to review its needs for treatment and programs for wards. In response to this requirement, the Youth Authority submitted to the Legislature a report on its program and treatment needs in the face of "an increasingly violent youthful offender population." This report described the changing character of the wards served and described the existing needs in this population that were going unmet. This report focused on the new security and programming needs that have arisen as the Youth Authority population has become more violent and more emotionally disturbed.

In our view, however, the Youth Authority has not considered how it can change its programming for *less serious offenders* in order to better serve the needs of counties as they face the new demands of the sliding scale legislation. These new programming challenges are discussed in detail below.

Counties Have Responded to New Fees in Variety of Ways

Significant Changes in Some Counties, But Not Others. Figure 6 shows that most counties have reduced their admission rates in the less serious categories in response to the sliding scale reform, but only a few have done so dramatically. The effects on the counties range from fairly insignificant in counties such as Contra Costa, to more moderate reductions in Alameda, San Joaquin, Los Angeles, and Fresno, to truly dramatic reductions in counties such as Kern, Santa Clara, and San Mateo.

The main issue raised by these reductions is how these counties are dealing with the wards who are no longer being sent to the Youth Authority and whether the counties are providing appropriate alternative services to them. For the most part, we found that counties are adopting fairly similar strategies. These include expansion or creation of boot camp or ranch programs and implementation of programs inside juvenile halls for offenders already adjudicated by the juvenile court (traditionally juvenile halls are used solely for short-term detention of offenders awaiting adjudication). There are a number of out-of-state placements that counties might have used in lieu of a Youth Authority commitment, but the recent controversies surrounding these placements, as well as the new licensing requirements imposed by Chapter 311, Statutes of 1998 (SB 933, Thompson), have made these options less viable.

Counties Frustrated by Certain Intractable, Less Serious Offenders. The programs implemented by the counties are filling the gaps for a large share of chronic delinquents. However, counties find themselves frustrated by the persistence of a small subset of less serious offenders who do not respond to county programs. Many counties are opting to send these "intractable" offenders through the same county program two or three times despite failure, rather than face the costs of a Youth Authority commitment. They have indicated particular concern about this approach because they fear it will lessen the effectiveness of the sanction for first-time participants.

Some counties have opted to separate these program failures from the other offenders, while other counties have shifted them into juvenile hall-based programs in order to impress upon them the consequences of program failure. In either case, it is clear that many counties are frustrated in their attempts to adequately sanction and treat these chronic and intractable delinquents.

Counties Are Expanding Their Prevention and Early Intervention Activities. Despite these difficulties, most counties we spoke to understood the underlying policy rationale that motivated the change in the fees, and are in the process of implementing new prevention and early intervention strategies. In fact, the fees served as an incentive for the counties to increase their array of locally available programming, particularly at the front end of the system. The state funds available from TANF, the Challenge Grants, and ROPP are aiding the counties in these prevention and intervention efforts. The benefits of these efforts are still a few years away, but counties are optimistic that they will help them reduce their dependence on the Youth Authority as a sanctioning option.

Conclusion: Sliding Scale Legislation Is Achieving Its Intended Objectives

The sliding scale legislation was intended to achieve two primary objectives: (1) reduce the over-reliance by counties on the Youth Authority for less serious juvenile offenders and (2) encourage counties to create a fuller spectrum of locally available programming to meet the needs of juvenile offenders. Available data demonstrate that the first objective has been met. Counties are being significantly more judicious in their use of the Youth Authority as a placement option for wards of the juvenile court. Although it is premature to declare the second objective a success as well, it is clear that many counties are responding to the change by creating new local program options.

On the whole, we believe that these trends are positive, as local programming is likely to be more effective and less expensive than a Youth Authority commitment for less serious offenders. Moreover, because their offense histories do not involve serious violent crimes, these wards are not likely to pose a serious threat to public safety if kept within the community.

Given these positive developments, we do not recommend any fundamental changes to the structure of the sliding scale legislation itself, as it appears to be a success. In the analysis below, however, we make several recommendations that we believe would maximize the benefits that the sliding scale legislation was designed to produce.

Target Future State Juvenile Justice Funds

To the extent that the Legislature chooses to continue to provide funding to counties for new or expanded juvenile justice programs, we recommend that the funds be awarded on a competitive basis and modeled after the Challenge Grant program.

As we indicated earlier, the Legislature has provided a substantial amount of funding to counties for juvenile justice programs since enactment of the sliding scale fees. To the extent that the Legislature continues to provide funding to county probation departments or other juvenile justice agencies and service providers, we believe that it should use the Challenge Grants as a model. This would include requiring that counties first undergo a planning process to reach a consensus on where the service gaps are, and include some kind of evaluation component to ensure accountability and cost-effectiveness.

Similarly, allocating funds on a competitive basis rewards counties for excellence in program design and insures a higher level of commitment to the program from the participating agencies. For these reasons we recommend that each of these elements—planning, evaluation, and competitive allocation—be included as requirements for any new juvenile justice funds provided by the state.

Counties Should Have Input Into Length of Stay Decisions

We recommend enactment of legislation to modify the process by which parole consideration dates are established for Youth Authority wards with less serious offenses (categories V though VII). Specifically, the process should be modified in order to permit counties to have a greater say in the length of stay of wards that they send to the Youth Authority.

Under current law, once a young offender is accepted by the Youth Authority as a new admission, he becomes a ward of the department, and all decisions regarding length of stay, parole, and parole revocation are within the sole jurisdiction of the YOPB (see our analysis of the YOPB later in this chapter for a more detailed discussion of this process).

This method of determining length of stay may be appropriate for wards where the state is bearing almost all of the costs. However, it is less appropriate for wards in categories V through VII where counties are paying 50 percent or more of the cost to house the ward. This issue takes on particular importance given the large disparities that apparently exist between what the counties and the YOPB view as appropriate periods of secure confinement for these less serious offenders. For example, as discussed in our analysis of the YOPB, parole consideration dates (PCDs) for less serious offenders in the Youth Authority ranged from 19 months for Category V to 13 months for Category VII. By contrast, most counties are implementing programs for these offenders that are generally six to nine months in duration.

Counties Should Have Greater Say in Length of Stay. Because the counties are now paying a large share of the costs for these wards and given that the wards will likely return to the county from which they were committed when paroled, we believe that the counties should have some role in determining the optimal length of stay for the wards.

For these reasons, we recommend the enactment of legislation to modify the process by which PCDs are established. There are a number of different alternatives that the Legislature could choose from, including:

- ***Require That the Juvenile Court, Rather Than the YOPB, Set the Initial PCD.*** One option is for the juvenile court, instead of the YOPB, to decide the PCD. The juvenile court offers advantages over the YOPB in that it would already be familiar with the ward's file, and would likely be more responsive to the concerns of the county, while still exercising independent discretion. The main disadvantage with this approach is that the juvenile court would not have access to the lengthy assessment information that is compiled by the Youth Authority staff before each ward's initial hearing before the board.

- ***Require a Juvenile Court or County Probation Department Recommendation.*** This alternative would have the YOPB continue in its current role, but would allow counties to have more input. For example, counties could recommend an initial PCD to the board and the board would have the discretion to deviate up or down by a fixed amount set in statute. The main advantage of this approach is that it would preserve the input of the Youth Authority, while still allowing counties some control. The primary weakness of this approach is that it would result in a duplication of effort by the board and the county.

- ***Allow the Juvenile Court or the County Probation Department to Make a Recommendation to the YOPB.*** This alternative would allow, but not require, the court or county to make a nonbinding recommendation to the YOPB as to the appropriate PCD. Under this approach the status quo would be largely maintained except that counties would have the option of having their concerns heard by the board.

These alternatives are intended to be suggestive, and only take into account the initial PCD decision. Subsequent decisions that are currently made by the board could be left with it or county input could again be sought in a manner similar to those recommended above.

Fees Should Be Regularly Adjusted To Account for Effects of Inflation

We recommend the enactment of legislation to adjust the sliding scale fees periodically to account for the effects of inflation.

As discussed above, Chapter 632 capped the sliding scale fees charged to counties at the January 1, 1997 level. It makes sense to protect counties from facing higher sliding scale fees simply because the Youth Authority population is dropping as the natural and intended consequence of the

fee change. However, we believe that this 1997 base rate should be periodically adjusted to account for the effects of inflation. Likewise, the $150 fee needs periodic adjustment so that the state is not in the position of making such a radical upward adjustment as was the case in 1996 when the $25 fee set in 1961 was adjusted for inflation.

As a result, we recommend the enactment of legislation to require the Youth Authority to make an inflationary adjustment of the 1997 per capita sliding scale fees, and the $150 monthly fee set by Chapter 6 periodically, at least every three years, based on changes in the Consumer Price Index.

Youth Authority Needs to Develop Targeted Programming for Certain Less Serious Offenders

We recommend that the Legislature adopt supplemental report language directing the Youth Authority to report on the feasibility of developing programming targeted to chronic and intractable offenders in the less serious categories.

The Youth Authority Has a Role to Play With Some Less Serious Offenders. When the sliding scale reform was implemented, the intent was not to eliminate all offenders in categories V to VII from the Youth Authority, but rather to provide counties with more neutral cost incentives when choosing the proper treatment for these offenders. The recent significant declines in first admissions in these categories appear to be driven by two primary factors: the creation at the local level of new program options for these offenders and a new reluctance to use the Youth Authority for any of these offenders based on the high costs. Discussions with county probation departments make it clear that even with the creation of new programs, there are certain offenders in the less serious categories that they would have sent to the Youth Authority but for the high cost burden. The offenses committed by these offenders are generally property crimes or nonserious assaults, but they are persistent, and the juveniles appear to be unresponsive to the programming made available by the counties.

Shorter Institutional Stays Are Needed With More Services Delivered on Parole. In recent years, the Youth Authority has focused significant attention on the growing proportion of its population who pose a greater threat to staff security and also demand more intensive treatment services. The risk to public safety posed by these wards is significant, such that an extended stay at the Youth Authority which includes a wide array

of programming is necessary to meet the demands of public safety as well as the rehabilitative needs of these wards.

For the chronic and intractable delinquents discussed above, however, institutional confinement time is not required primarily to protect the public, but rather to provide structure and accountability for the offender. As a result, institutional confinement time for these offenders should be limited to the time necessary to achieve this objective. At present, the average PCD for these offenders is more than 17 months, while the programs that they are failing at the county level are generally about six months in duration. This 11-month difference appears unnecessarily large, especially given the fact that a Youth Authority commitment of any duration is a more severe and punitive sanction than spending time in a county ranch or camp.

The YOPB is currently responsible for making all decisions on length of stay. One way to encourage it to reduce the length of commitments for these less serious, intractable offenders would be to provide shorter-term institutional programming directly addressed to their needs. Because the counties are opting to use six- to nine-month locally based secure programs, we recommend that the Youth Authority examine the feasibility of providing institutional programming in a similar time frame. We recognize that a six- to nine-month period would not be sufficient to address all of the needs of most of these wards, but many of the issues that require more time, such as substance abuse and academic and vocational skills, could be provided in a community setting under the supervision of Youth Authority parole.

Youth Authority Can Fill a "Market Niche." Clearly there will be wards for whom this intermediate approach is not sufficient, but at present there is a gap in the continuum of graduated sanctions available to most counties that the Youth Authority is in the position to bridge. The next few years present an opportunity for experimentation with such programs because declining populations within Youth Authority institutions and more notably on parole, will create some slack in existing resources that can be used to get pilot programs off the ground. Moreover, if such programs prove effective, they will allow the Youth Authority to more efficiently meet the needs of the greater number of wards expected to enter the juvenile justice system early in the next century.

What Are the Impacts on Counties? These programming changes would also help to ease the cost pressures on counties in a number of ways. Most directly, limiting the confinement time for many of the wards in the less serious categories to six to nine months would reduce the sliding scale fee costs that counties are currently facing. In addition,

providing a more cost-effective secure treatment option would relieve the current pressure on counties to recycle offenders through their existing programs despite repeated failure. Counties would prefer to avoid recycling offenders because it diminishes the effect of the local sanction for the offenders who fail as well as the other offenders who see that there is no enhanced penalty as a consequence of program failure. Finally, if the Youth Authority is a more cost-effective treatment option, counties will have less incentive to invest their resources in construction and operation of locally based Youth Authority-style facilities and programs for this group of offenders.

Analyst's Recommendation. We recommend that the Legislature adopt supplemental report language directing the Youth Authority to report on the feasibility of implementing a six- to nine-month institutional program for offenders in categories V through VII, with an intensive parole aftercare component. The report should identify the likely substantive content of such a program, as well as the changes in existing practice and procedures that would be required for implementation to occur. If the Youth Authority concludes that such a program is not feasible, it should report on what steps can be taken to reduce the duration of institutionally based programming for these offenders. We recommend that the report be submitted by December 1, 1999 in order for its findings to be incorporated into the *2000-01 Governor's Budget*. The following language is consistent with this recommendation.

> The Department of the Youth Authority shall report to the Legislature by December 1, 1999 on the feasibility of implementing a six- to nine-month institutional program for offenders in Youthful Offender Parole Board categories V through VII. The report shall include, but not be limited to: (1) an identification of the core institutional services and programming that less serious offenders require, as well as those that can be effectively delivered on parole; (2) one or more proposals to deliver those services in a sequence that minimizes required institutional time and maximizes the value of aftercare on parole; (3) an estimate of the costs per ward to deliver such programming and any changes in current procedures that would be necessary to implement the programming; and (4) an evaluation of the advantages and disadvantages of adopting the programming which includes discussions of the effects on the rehabilitation of the ward and public safety as well as the cost-effectiveness of the proposal relative to current practice.

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. In addition, the board has hearing officers, known as board representatives.

A board member or representative reviews the proposed Youth Authority program proposed for every ward when they enter the custody of the Youth Authority. At this initial review, the board sets a parole consideration date (PCD) based on the ward's commitment offense. The PCD is the date when the board will review and determine whether a ward is fit to be paroled. Subsequent to the initial review, the board reviews ward progress annually or if the ward commits an infraction in the institution. For certain infractions, board members can add time to the ward's stay in the Youth Authority. The board also determines 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 1999-00 which is essentially the same level of expenditures as was provided in the current year.

The YOPB Decisions Regarding Parole Consideration Dates Need Review

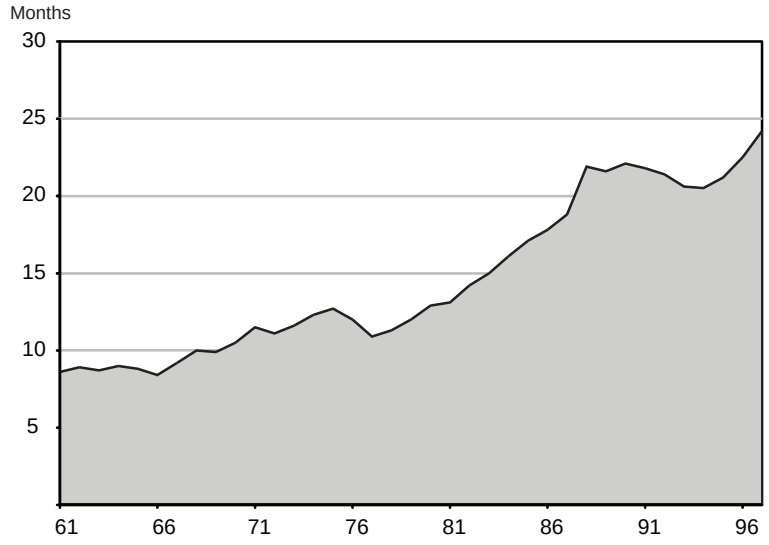
We recommend the adoption of supplemental report language directing the board to report semiannually on the justification for initial parole consideration dates that exceed the guidelines set forth in Title 15 of the Administrative Code.

Youth Authority Length of Stay Is Steadily Increasing. The average length of stay for offenders in the Youth Authority has been steadily rising over time since the data began to be collected in 1961, as shown in Figure 1.

Figure 1

Average Length of Youth Authority Stay Increasing

1961 Through 1997



One of the key reasons for this rise has been a steady increase in the average PCD assigned to wards by the YOPB at the initial hearings. Given that the Youth Authority is receiving more serious and violent offenders, it would stand to reason that the average PCD would increase because the board's PCD guidelines generally require a longer term of commitment for these offenders. However, our review found that the PCDs for the *less serious* offenders have been increasing much faster than those for more serious offenders.

For example, in 1993, the average PCD set by the YOPB for first commitments in categories I through IV (the more serious offenses) was 31.7 months, while the average for categories V through VII (the less serious offenses) was 14.4 months. By 1997, the average PCD for the more serious offenders had risen only 1.2 percent to 32.1 months, while the average for the less serious offenders had risen 19 percent to 17.1 months. Because categorical assignment is based on objective criteria which have changed little since 1993, offenders in each category should be quite comparable over time.

The Board Often Exceeds Its Own Guidelines. In attempting to gain a better understanding of the increasing length of stay, particularly for the

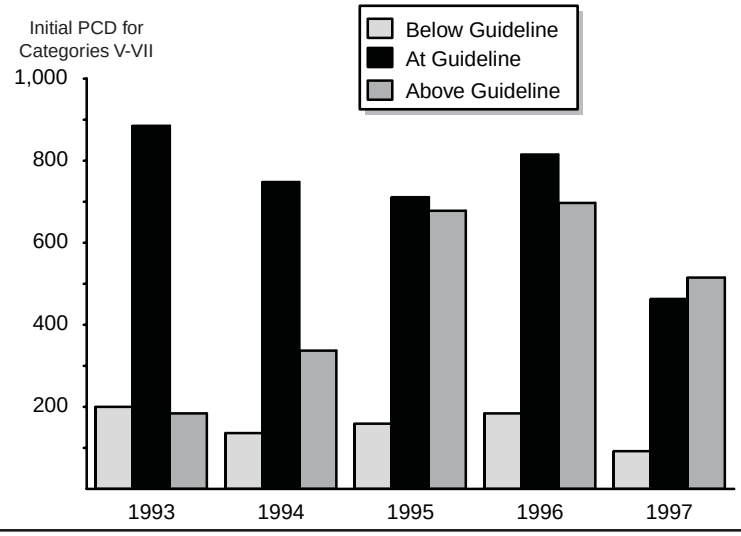
less serious offenders, we reviewed the distribution of PCDs compared to the board's PCD guidelines. These guidelines are set by the board as presumptive PCDs that the board believes are generally appropriate for each offense category, recognizing that special circumstances may call for shorter or longer lengths of stays. They are contained in Title 15 of the State Administrative Code (for examples of the offenses included in each category, see the Youth Authority analysis earlier in this chapter).

Our review found that in the past few years the board has consistently set PCDs that exceed its own guidelines, as shown in Figure 2. In 1993, 70 percent of wards in categories V through VII received PCDs at the guideline level, 14 percent were above the guideline, and 16 percent were below the guideline. By 1997, the percentage of wards at or below the guideline had shrunk to 43 percent and 9 percent respectively, while the proportion of wards receiving PCDs above the guideline more than tripled to become 48 percent of the total.

Figure 2

Initial Parole Consideration Dates Increasingly Exceed Guidelines

1993 Through 1997



Given that the board itself established these guidelines as appropriate for the offense categories, we would expect that absent compelling reasons their determinations should on average fall within guidelines.

Longer Stays in Youth Authority Increase County and State Costs. Longer stays are more expensive than shorter ones and therefore lead to higher costs per ward and higher costs for the Youth Authority overall. Legislation that took effect in January 1997 increased costs charged to counties for offenders committed to the Youth Authority, with the highest costs charged for the less serious offenders. Thus, the higher costs per ward committed to the Youth Authority not only cost the state General Fund more, but also the counties. (For further discussion on the recent change in fees charged to counties, please see our analysis of the Youth Authority earlier in this section.)

Counties Are Duplicating Youth Authority Services to Avoid Longer Stays. For the counties, these longer stays and higher costs provide a fiscal incentive to create Youth Authority-style programs and facilities on a local level, but with shorter periods of confinement. For example, for category V offenders in the Youth Authority, counties only pay half of the cost, but these offenders had an average parole consideration date of 19.1 months. This means that if counties can keep their per capita costs similar to those of the Youth Authority, we estimate that it is almost $10,000 cheaper to house offenders in a six-month county program than to send them to the Youth Authority.

Although such actions by counties may make fiscal sense to the counties and are within their discretion, we do not believe that the intent of the recent fee changes was to encourage counties to recreate the Youth Authority on the local level, but rather to use the Youth Authority for those wards truly requiring secure confinement, and to create local alternatives for less dangerous wards.

Analyst's Recommendation. To address these deviations from the guidelines, we recommend that supplemental report language be adopted to direct the board to strive to keep the average PCD within the guidelines, and to report semiannually on the justification for initial PCDs set in excess of the guideline. Similar language was included in the *1988-89 Supplemental Report* and it led to a significant, if temporary, decline in the number of PCDs set above the guidelines. The following language is consistent with this recommendation.

> It is the intent of the Legislature that the Youthful Offender Parole Board (YOPB) establish parole consideration dates at all initial appearances that, on average, do not exceed the prescribed parole consideration date intervals as established in Title 15 of the California Administrative Code. The YOPB shall report to the Legislature on November 1, 1999 and April 1, 2000, regarding justification for establishment of parole consideration date intervals that exceed the prescribed interval contained in Title 15 of the Administrative Code.

There are additional actions that can be taken to fully address the issues raised by increasing the length of stay for less serious offenders. One response would be to allow counties to have some input into the various decisions regarding length of stay for the wards they send to the Youth Authority. Another alternative would be for the Youth Authority to develop programming for less serious offenders that is geared towards shorter stays. Both of these options are discussed in greater detail in our analysis of the Youth Authority.

TRIAL COURT FUNDING (0450)

The Trial Court Funding item provides state funds for support of the state's superior and municipal courts. The budget proposes total expenditures in 1999-00 of $1.8 billion for support of the Trial Court Funding Program. This is $108 million, or 6.5 percent, greater than estimated current-year expenditures. Figure 1 shows proposed expenditures for the trial courts in the past, current, and budget years. The figures for 1997-98 are somewhat misleading because the Trial Court Funding restructuring took effect halfway through that year and the expenditures shown do not fully account for funding provided by the counties for courts in that year.

Figure 1

Trial Court Funding Program

1997-98 Through 1999-00
(All Funds, In Millions)

	Actual[a] 1997-98	Estimated 1998-99	Proposed 1999-00
Trial court operations	$950.1	$1,509.6	$1,572.9
Court interpreters	36.6	42.1	44.6
Superior court judges salaries	88.7	94.7	142.2
Assigned judges	18.5	19.4	14.0
Totals	**$1,093.9**	**$1,665.8**	**$1,773.6**

[a] Display represents half-year effect of trial court funding restructuring. Actual expenditures totaled $1.6 billion.

Trial Court Funding Restructuring

The Legislature adopted Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle)—the Lockyer-Isenberg Trial Court Funding Act of 1997—which resulted in (1) a major change in the way funding is pro-

vided 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 this legislation are shown in Figure 2.

Figure 2

Major Features of Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle) Trial Court Consolidation Plan

- ***County Costs Reduced and Capped.*** Established a cap on county contribution for support of the trial courts roughly equivalent to 1994-95 funding provided by the counties.
- ***Twenty Smallest Counties.*** State pays 100 percent of court costs beginning in 1998-99.
- ***Future Cost Increases.*** State funds entirely.
- ***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 and courts retain any growth in revenues.
- ***Revenue to Cities.*** Cities keep all fine and penalty revenues.
- ***Court Filing Fees.*** Increased to generate additional revenues ($43.1 million 1997-98 and $86.2 million in 1998-99).

While the provisions of Chapter 850 became effective in 1997-98, many of the General Fund costs did not take effect until the current year. Consistent with the intent of Chapter 850, the state has accepted responsibility for growth in trial court costs. As a result, state General Fund costs have increased substantially and costs to the counties have decreased. Figure 3 shows the costs to the state General Fund and counties in 1997-98, 1998-99, and as proposed for the budget year.

Figure 3

Trial Court Funding Program—Comparison of State General Fund and County Contribution

1997-98 Through 1999-00
(In Millions)

	Actual 1997-98	Estimated 1998-99	Proposed 1999-00
General Fund	$399.2	$699.2	$814.8
County contribution	856.7	555.2	504.3

Budget Request. The budget proposes a number of augmentations for support of the trial courts in 1999-00. The major proposals include the following:

- $48.3 million to backfill for partial reductions in county contributions to the state for support of trial courts as specified in recent legislation (we discuss this proposal in more detail below).
- $20 million for salary increases for trial court employees that were negotiated previously between the counties and court employees.
- $19.2 million to pay for various services (such as information technology) that were previously provided to the courts by the counties.
- $9.1 million for various trial court administrative management positions, including accountants, human resources personnel, and legal research assistants.
- $1.8 million for increased civil and criminal case workloads.
- $1.8 million for increased court interpreter workload.
- $1.2 million to assist courts with reforms to the juror systems.
- $1 million for staffing for drug court programs.
- $300,000 for court security, including costs of overtime, training, and maintenance of security equipment.

Like all monies appropriated for support of the trial courts, the augmentations outlined above would be distributed to individual trial courts based on decisions of the Judicial Council. Thus, it is not possible at this time to determine which specific courts would receive the funds.

Budget Not Consistent With Law to Reduce County Costs

The Governor's budget proposes to reduce the county share of costs for support of trial courts, but not by as much as required under current law. The proposal results in a savings to the state (and corresponding costs to counties) of $48.3 million.

Under Chapter 850, the state pays for all costs of supporting the trial courts in the 20 smallest counties and the remaining 38 counties pay the state a specified amount for support, which is capped.

In September 1998, the Legislature enacted Chapter 1017, Statutes of 1998 (AB 2788, Thomson), which further reduced the amount that the remaining 38 counties must contribute beginning in the budget year. Specifically, Chapter 1017 requires the state to pay for all the costs of the next smallest 18 counties and reduced the contribution of the largest 20 counties by 10 percent. This change would have increased state General Fund costs by $96.6 million beginning in 1999-00, and resulted in fiscal relief to counties of the same amount.

Governor's Budget Proposes to Reduce County Buyout. The Governor's budget proposes that the state not fully implement the provisions of Chapter 1017, but rather reduce the additional buyout by half. In other words, the 18 counties that would have had their contributions eliminated in the budget year would instead have their contributions reduced by 50 percent, and the 20 counties that were to have their contributions reduced by 10 percent would instead realize a 5 percent reduction. The administration indicates that it will propose a budget trailer bill to make the necessary statutory changes. The *1999-00 Governor's Budget Summary* indicates that the change is a postponement of full implementation. It is not clear, however, whether the postponement will be for just one year or longer.

Effect of the Proposal. This proposal would result in savings to the state of $48.3 million and costs to the counties of the same amount. The administration indicates that it has proposed this smaller buyout due to the fiscal problem of the state budget.

Figures 4 shows the costs to the 38 counties resulting from the Governor's proposal.

Figure 4

Governor's Trial Court Funding Proposal Costs to Counties[a]

(In Thousands)

Contributions Reduced by 50 Percent Instead of Eliminated			
Butte	$1,093	Napa	$1,192
El Dorado	1,230	Nevada	308
Humboldt	901	Placer	905
Imperial	921	San Luis Obispo	2,255
Kings	820	Santa Cruz	2,196
Madera	568	Shasta	1,127
Marin	2,422	Sutter	208
Mendocino	780	Tulare	2,556
Merced	1,235	Yolo	1,182
Contributions Reduced by 5 Percent Instead of 10 Percent			
Alameda	$1,251	San Diego	$2,416
Contra Costa	665	San Francisco	1,072
Fresno	623	San Joaquin	364
Kern	513	San Mateo	677
Los Angeles	9,741	Santa Barbara	376
Monterey	251	Santa Clara	1,594
Orange	2,158	Solano	347
Riverside	992	Sonoma	342
Sacramento	1,152	Stanislaus	195
San Bernardino	1,124	Ventura	541

[a] Costs in excess of current-law requirements.

Shortfall in Court Filing Fees

We recommend that the Judicial Council report at budget hearings on the status of the current-year shortfall in civil filing fee revenues and on its proposed solutions to address the shortfall in the current and budget years.

One source of funding for support of the trial courts is revenues generated from court filing fees that are deposited into the state's Trial Court Trust Fund. Historically, the budget has assumed that the amount of revenues collected from these fees was about $150 million annually. As

a result of enactment of Chapter 850, certain court filing fees were raised. The Judicial Council estimated that the fee increases would generate additional revenues of $44 million in 1997-98 and $88 million each in the current and budget years.

However, there have been significant shortfalls in the amount of court filing fee revenues collected in the last several years. The Judicial Council has indicated that this has occurred due to (1) a decline in civil filings and (2) inaccurate revenue projections for the new filing fees. In 1997-98, the Judicial Council received a General Fund deficiency of $19 million to backfill the shortfall in civil filing fee revenues.

Significant Current-Year Shortfall. In the current year, the Judicial Council is projecting an $86 million shortfall in civil filing fees. The budget includes a current-year General Fund deficiency allocation of $43 million to compensate for half of the shortfall. In its deficiency request, the Judicial Council indicated that it would make up the remaining $43 million from savings. The Judicial Council has indicated that it is exploring several options to generate these savings including (1) using current-year Trial Court Funding monies that the Judicial Council had set aside in a reserve, (2) reducing allocations to the courts for the remainder of the current year, and (3) using projected growth in fine and forfeiture revenues.

Proposed Budget Assumes Increased Revenues. The proposed budget makes permanent the current-year $43 million General Fund backfill, but assumes that the remaining $43 million shortfall will be covered in the budget year through increased revenues. Given the recent history of filing fee revenues, we believe that it is unlikely that an additional $43 million will be generated from the existing court fees. According to Judicial Council, it is considering several options to make up for this continued shortfall, including additional increases in court fees through legislation, reductions in allocations to courts, and additional General Fund appropriations.

Analyst's Recommendation. It is not clear how the Judicial Council will generate savings in the current year to offset the shortfall in civil filing fees. Additionally, we believe that it is likely that the shortfall will continue in the budget year. Therefore, we recommend that the Judicial Council report at budget hearings on the status of the current-year shortfall and on its proposed solutions for the addressing the shortfall in the current and budget years.

Trial Courts Face Year 2000 Computer Problems

We recommend that the Judicial Council provide an update during budget hearings on the status of efforts by the trial courts to address Year 2000 computer problems, including how these efforts will be funded.

Surveys Indicate Serious Year 2000 (Y2K) Problems in Trial Courts. According to the Administrative Office of the Courts (AOC), many trial courts are experiencing difficulties in their efforts to prepare their computer systems to accommodate the year 2000 change. Based on surveys of the courts, the AOC estimates that the courts will need an additional $19.8 million statewide to correct, or "remediate," their computer problems. According to the AOC, $14.9 million of this amount is needed to address especially serious problems which, if not remediated, will result in courts having to use manual processing to perform critical functions and may lead to case processing backlogs that will seriously impair court operations.

As we point out in our analysis of the Department of Information Technology (DOIT) in the General Government Chapter of this *Analysis*, many state agencies are also facing Y2K difficulties. It is difficult to assess the severity of the problems in the trial courts compared to state agencies, however, because the information technology activities of the trial courts are not subject to review by DOIT.

No Funding Proposed. The Trial Court Funding budget does not include funding in the current or budget years specifically targeted for Y2K remediation. The AOC indicates that it had anticipated using portions of the Judicial Administration Modernization and Efficiency Fund (JAMEF) in the current year to address some information technology issues, such as Y2K remediation. However, no funds for JAMEF were included in the *1998-99 Budget Act* (We discuss the JAMEF proposal for the budget year below).

Analyst's Recommendation. Given the potentially critical nature of the Y2K problems that the trial courts are facing, we recommend that the Judicial Council provide an update to the Legislature during budget hearings regarding the status of remediation efforts, including how these remediation efforts will be funded.

Information Technology Problems Should Be First Priority for Modernization Fund

We recommend budget bill language directing the Judicial Council to prioritize spending from the Judicial Administration Efficiency and Modernization Fund for information technology projects related to Year 2000 remediation efforts and for those courts with greatest information technology needs.

Chapter 850 created the JAEMF and specified that monies from this fund may be expended by the Judicial Council 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.

The budget requests $10 million for the JAEMF for various programs in the trial courts. Specifically, the budget requests:

- $4.3 million for technology projects.
- $2.9 million for education of judges and court administrators.
- $1.2 million for trial court administrative personnel.
- $875,000 for litigation and claims management, to support coordination of the trial courts' responses to lawsuits and claims.
- $800,000 for improving legal research.

Fund Proposes Several Duplicative Expenditures. Our review indicates that several of the program requests that the Judicial Council is seeking from the JAEMF duplicate other requests that have been proposed elsewhere in the budget.

First, the Judicial Council is proposing to improve legal research by implementing a pilot program for law clerks with funds from the JAEMF. However, the budget also includes a separate request of $5.1 million for new legal research positions in the trial courts. Our review indicates that the functions of the law clerks included in the JAEMF proposal are virtually the same as the other legal research positions that are being requested.

Second, the Judicial Council is requesting $1.2 million to provide one-time administrative personnel to the trial courts. While the request does not specify the specific services to be provided by these positions, we note

that the Judicial Council has also separately requested $4 million for new administrative personnel in the trial courts to perform accounting, management, and human resource functions.

Finally, the Judicial Council is proposing $875,000 to support coordination of the trial courts' responses to lawsuits and claims. According to the Judicial Council, the objective of the proposal is to establish coordinated, cost-effective management of litigation affecting the trial courts. However, the local assistance budget within the Judicial Council budget requests $300,000 for positions to provide litigation claims management. That request is intended to provide coordinated legal representation statewide and to provide coordinated management of litigation in the trial courts.

Courts Face Technology Problems. As noted above, the AOC has indicated that the trial courts are facing some critical Y2K remediation problems in the current year. Some of these remediation problems will continue into the budget year and will likely require additional funding. Additionally, we note that there are other information technology issues that the trial courts will continue to face. One such issue is the wide differences in the levels of technology available to the trial courts across the state. While some courts are well automated, others do not have access to some of the most basic or up-to-date computer technology to help them manage their workloads.

Analyst's Recommendation. In view of the above, we believe that it makes sense to prioritize funding from the JAEMF for information technology projects. Thus, we recommend that the Legislature adopt budget bill language directing the Judicial Council to prioritize monies provided in the budget year from the JAEMF for information technology projects for courts with Y2K remediation problems, and to assist those courts with the greatest information technology needs.

Specifically, we recommend the following budget bill language:

> The Judicial Council shall prioritize allocations from the Judicial Administration Efficiency and Modernization Fund to give priority to funding information technology projects (1) related to Year 2000 remediation efforts and (2) in those courts with the greatest information technology needs.

Drug Court Request Is Duplicative

We recommend a General Fund reduction of $1 million for drug court staffing because funding for these positions should be requested through the existing Drug Court Partnership Program. (Reduce Item 0450-101-0932 by $1 million and Item 0450-111-0001 by the same amount.)

Legislature Created New Program to Support Drug Courts. Chapter 1007, Statutes of 1998 (SB 1587, Alpert) established the Drug Court Partnership Program to assess the cost-effectiveness of drug courts. The measure established a competitive grant program to which local drug court programs can submit multiagency grant requests that identify the resources and strategies needed for effective drug court programs. The partnership program is administered by the Department of Alcohol and Drug Programs (DADP) with the collaboration of the Judicial Council. The program is funded with $4 million from the General Fund in the current year. The DADP is currently preparing the grant guidelines for applications in the current year and expects to release the award notifications in May 1999.

Chapter 1007 expressed the Legislature's intent to provide $8 million annually for the program for four years, and the *1999-00 Governor's Budget* requests $8 million in DADP's budget.

Trial Court Funding Request Is Duplicative. The budget requests $1 million in the Trial Court Funding budget to fund staffing costs for five local drug court programs. However, funding for staffing for drug courts is also available through the DADP's Drug Court Partnership Program.

The Legislature created the partnership program on a four-year limited-term basis to allow for the evaluation of the cost-effectiveness of drug court programs. We believe that the courts which need staffing for drug courts should apply for these positions through the competitive grant process available through the partnership program. For this reason, we recommend that the funding for these positions be deleted, for a General Fund savings of $1 million.

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 (above a fixed county share) 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 $289 million for support of these judicial functions in 1999-00. This is an increase of $27.1 million, or 10 percent, above estimated current-year expenditures. Total General Fund expenditures are proposed at $238 million, an increase of $24.6 million, or 12 percent above current-year expenditures.

The increase in the Judicial budget is primarily due to requests for: (1) caseload increases for the Court-Appointed Counsel (CAC) Program and full-year implementation costs for the California Habeas Resource Center ($10.1 million), (2) increased staffing and related program costs for workload increases in the courts of appeal ($4.1 million), (3) increased salary funding for the Supreme Court and the courts of appeal ($3.3 million), (4) increased facilities expenditures ($26.9 million), and (5) new programs and operations support in the Administrative Office of the Courts (AOC) ($2.7 million). We discuss some of these proposals below.

Uncertainties About CAC Program for Capital Cases

Because of uncertainties about the funding needs for the Court-Appointed Counsel (CAC) Program, we recommend that the Legislature adopt budget bill language to restrict the use of funding provided to CAC so that any savings would revert to the General Fund.

The budget requests $13 million for the CAC Program in the Supreme Court. This is $1.6 million, or 14 percent, above estimated current-year expenditures. The increase is requested to support projected caseload growth in the program.

The CAC Program hires private attorneys to provide appellate defense services for indigent persons in death penalty and other cases. The Supreme Court is responsible for appointment of attorneys to handle death penalty cases. Appointments are made to private attorneys, the Office of the State Public Defender (OSPD), and the newly created California Habeas Resource Center (CHRC).

Uncertainties in Caseload Projections. Historically, the caseload for capital appeals cases has been difficult to project because of the relatively small number of cases and wide variation in the amount of time required for each case. In previous years, the projected expenditures have differed significantly from subsequent actual expenditures. For the current year, the Judicial Council is projecting that expenditures will be $360,000 less than the amount appropriated.

Recent Changes Create More Uncertainty. 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, (2) separate appointments for the direct appeals to the Supreme Court and habeas corpus proceedings, and (3) increased training and outreach efforts to attract and retain qualified counsel. These changes have already taken place, but their impacts on projected expenditures are unknown.

Analyst's Recommendation. We believe that it is possible that the amount requested could be substantially lower or higher than what will be needed. To the extent that the amount is too low, the Judicial Council can seek a deficiency allocation during the budget year. To the extent that it is too high, we think that savings should be captured and returned to the General Fund, rather than permitting savings to be redirected to other unbudgeted activities. Thus, we recommend that the Legislature adopt budget bill language which would restrict the use of these funds to the CAC Program only and provide that any savings revert to the General Fund.

Specifically, we recommend the following budget bill language:

> The funds appropriated by this item include an augmentation of $1,575,000 for the Court-Appointed Counsel (CAC) Program of the California Supreme Court. It is the intent of the Legislature that these funds are only used for the CAC Program. Any funds not used for this purpose shall revert to the General Fund.

Permanent Appellate Project Increase Premature

We recommend that the Legislature deny the Judicial Council's request to make permanent funding for the Supreme Court Appellate Project because the proposal is premature.

Budget Proposes to Make Limited-Term Funding Permanent. The California Appellate Project (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. In the *1998-99 Budget Act*, the Legislature approved on a two-year limited-term basis, an increase of $498,000 to the contract for the CAP-SF, representing a 24 percent increase over the prior-year contract. These increased funds were for 1998-99 and 1999-00. Between 1994-95 and 1997-98, the cost of the contract increased at an average annual rate of 6 percent. The Judicial Council is requesting that the current-year increase be made permanent.

Legislation Should Limit Workload. The Legislature enacted Chapter 869, Statutes of 1997 (SB 513, Lockyer) which 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.

The legislative changes will limit the types of cases for which CAP-SF will provide assistance. Historically, CAP-SF has provided assistance to attorneys for both direct appeal cases and habeas corpus proceedings. 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 CHRC indicates that it will begin taking appointments to habeas cases in January 1999, and will begin providing training and assistance for private attorneys in the budget year. The CAP-SF will continue to provide assistance in habeas proceedings for which counsel is already appointed; however for new cases, it will only provide assistance for direct appeals.

Permanent Funding Request Is Premature at This Time. The Legislature included limited-term funding in the *1998-99 Budget Act* that will not expire until the end of the 1999-00 because of uncertainties surrounding the workload of CAP-SF and the newly created CHRC. Given that the changes in the process as a result of Chapter 869 are still occurring, and that funding is already set to continue in the budget year, we believe that it is not appropriate to make funding permanent at this time. Rather, we believe that the Judicial Council should justify the continued increase in funding for 2000-01 and beyond in next year's budget process. Thus, we recommend that the request be denied.

Salary Adjustments Not Justified

We recommend a General Fund reduction of $3.3 million for appellate court compensation because the augmentation has not been justified. (Reduce Item 0250-001-0001 by $3.3 million.)

The budget requests funding of $3.3 million for the Supreme Court and the courts of appeal to (1) reduce the required salary savings rate from 4 percent to 2 percent ($2 million) and (2) to fund salary adjustments and extend salary ranges for certain classifications ($1.3 million).

Budget Requests Reduction in Salary Savings Rate. All state agencies experience savings in their personnel services budgets based on staff vacancies that occur throughout the year. These savings are generated because it takes time to fill newly authorized positions, and there is often a lag from the time that one person leaves an existing position and another person is hired as a replacement. This accrued savings is referred to as "salary savings." Generally, state agencies have salary savings rates of between 5 and 10 percent, based on the historical vacancy rate of the particular agency.

In the current year, the budgets for the Supreme Court and the courts of appeal assume a salary savings rate of 4 percent. The budget requests a General Fund augmentation of $2 million in order to reduce the salary savings rate from 4 percent to 2 percent of salaries for authorized positions. We note that the 4 percent salary savings is already low compared to most state agencies. Additionally, our review indicates that the recent vacancy rates for the Supreme Court and the courts of appeal have been between 4 and 8 percent. Given this historical rate, and the fact that the required salary savings rate is already low, we believe that the request to reduce the rate to 2 percent is not justified.

Salary Adjustments and Extended Salary Ranges. The budget requests $1.3 million to fund salary adjustments and extended salary ranges for certain judicial staff classifications. The Judicial Council indicates that the increases are needed because the Supreme Court and the courts of appeal are generally located in high-cost labor markets and must compete with the trial courts and other local government bodies for the same labor pool.

The Judicial Council conducted a classification and compensation study in 1997 and 1998 comparing judicial branch salaries with salaries for other public sector employees in the Bay Area. As a result of the study, the Judicial Council changed the salary ranges for the deputy clerk and secretarial classifications effective January 1, 1999. Although the Judicial Council indicates that the costs for this change were funded

within the Judicial budget in the current year, it requests a General Fund augmentation of $686,000 to cover the costs in the budget year. In addition, the Judicial Council has approved an additional 5 percent step in the salary ranges effective July, 1, 1999. The budget-year cost for this change is $606,000, with additional costs in future years.

We do not believe that the Judicial Council has submitted a compelling reason for the Legislature to approve the request for $1.3 million for salary adjustments.

Unlike most state agencies, the Judicial Council is not required to seek approval from the Department of Personnel Administration (DPA) or the State Personnel Board (SPB) prior to making these types of salary adjustments. Generally, when state agencies are granted an increase in the salary range it is because they have *demonstrated* recruitment and retention problems. We believe that the recent vacancy rates for positions in the Supreme Court and the courts of appeal do not indicate that they have serious problems with recruitment and retention of staff. The vacancy rates for the Supreme Court and the courts of appeal are lower than those of other state agencies located in the Bay Area. For example, the vacancy rate for the Public Utilities Commission was recently 14 percent, and vacancy rates for the Administrative Office of the Courts have ranged from 9 percent to 20 percent in recent years.

Further, when agencies apply for approval for salary adjustments to DPA or SPB, the agency must be able to demonstrate that it has the necessary resources to fund any increase from within its *existing budget*. In the current year, the Judicial Council indicates that it will pay for these increases by redirecting resources. However, in the budget year, it is requesting additional resources for these adjustments. We believe that the judicial branch should be held to these same standards as other state agencies. We note that the total increase for these salary adjustments is 0.7 percent of the budget for the Supreme Court and the courts of appeal, and therefore they should have the flexibility to provide these adjustments within their existing budget.

In summary, we recommend that the proposal be deleted for a General Fund savings of $3.3 million.

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.

Budget Proposal

The budget proposes total expenditures of $480 million for support of the DOJ in the budget year. This amount is $3.9 million, or about 1 percent, less than estimated current-year expenditures. The requested amount includes $238 million from the General Fund (a decrease of $26.3 million, or 10 percent), $81.1 million from special funds, $40.7 million from federal funds, and $121 million from reimbursements.

Division of Law Enforcement. The Governor's budget proposes $125 million for support of programs in the Division of Law Enforcement. Most of the major budget changes proposed for the division concern the Bureau of Forensic Services (BFS), which operates 11 regional crime labs and a special DNA lab in Berkeley. The department is requesting $4.8 million to begin a two-year effort to eliminate the backlog of DNA samples that need to be tested (we describe this proposal in more detail below). The budget also includes $2.3 million to replace or upgrade existing forensic lab equipment. In addition, the budget proposes to begin charging local and state agencies for the forensic services it provides in the state crime labs. This proposal results in a General Fund reduction (and corresponding increase in reimbursements) of $16 million (we discuss this proposal below). The budget also includes $2.4 million in federal funds to continue and expand the California Methamphetamine Strategy program, an $18 million-program targeting methamphetamine producers that is funded entirely by the federal government.

Division of Criminal Justice Information Services (CJIS). The budget proposes expenditures of $128 million for programs in the CJIS. This amount includes a number of new federally funded initiatives. These

initiatives are to improve and support ongoing activities in maintaining criminal history information, creating a national sex offender registry, and supporting narcotics-related intelligence activities conducted in coordination with local law enforcement agencies. In addition, the budget requests $3.5 million from the Fingerprint Fees Account and $419,000 from the General Fund to implement the provisions of Chapter 311, Statutes of 1998 (SB 933, Thompson), which requires the DOJ to provide state and federal criminal history checks for foster care providers and their employees.

Legal Divisions. The budget proposes $87.3 million for the Civil Law Division. Major changes proposed for the budget year include: (1) a reduction of $9.2 million for workload associated with the state's litigation against the tobacco companies, (2) an increase of $5.1 million to continue defense of the state in the *Stringfellow* case, and (3) an increase of $1 million to enhance enforcement of false claims actions.

The budget requests $79.8 million for the Criminal Law Division. The major change in this division is an increase of $1.5 million to support investigation and prosecution of elder abuse cases involving Medi-Cal patients.

For the Public Rights Division, the budget proposes $35.5 million. The amount includes: (1) an increase of $773,000 for civil rights enforcement, (2) an increase of $734,000 for consumer law enforcement, and (3) a General Fund increase of $778,000 (shifted from reimbursements) for the Natural Resources Section.

Additional Funding for DNA Lab Would Eliminate Backlog in Two Years

The budget proposes $4.9 million from the General Fund for one-time equipment purchases and 25 additional two-year limited positions in order to eliminate the existing backlog of violent offenders whose DNA samples require profiling in two years. We recommend that the Legislature maintain an oversight role over this program by adopting supplemental report language directing the department to report on its progress.

In recent years, we have pointed out that the DOJ has had a significant backlog of DNA samples from violent offenders. In this section, we review the department's 1999-00 budget proposal which is designed to eliminate this backlog in two years.

Background. The DOJ is required to analyze DNA samples from most convicted felony sex and violent offenders. In addition, Chapter 696, Statutes of 1998 (AB 1332, Murray) required DOJ to maintain a database (CAL-DNA) of their profiles. At present, the DOJ DNA lab has analyzed 45,000 DNA samples and maintains a database of 35,000 profiles. Most of these samples were drawn from sex offenders—considered the highest priority for DNA testing. However, DOJ also possesses 55,000 samples from violent felony offenders that it has been unable to analyze given its existing resources. In addition, the department needs to reanalyze 45,000 samples that have been profiled in order to conform with the new national standard which the FBI has established as a requirement for participation in its national DNA offender database. Participation in this database is essential to California if it is to take full advantage of the investigative benefits of DNA evidence.

Budget Request. In order to address these two issues—the backlog and the reanalysis—DOJ is planning to implement a new process for DNA analysis and profiling that will allow it to significantly reduce the time it takes to complete the tests, while improving on certain aspects of its procedures. In order to maximize the benefits of this more efficient testing, DOJ is requesting $4.8 million from the General Fund and 25 two-year limited-term positions so that it can eliminate the 55,000 sample backlog and convert the sex offender samples to the new national standard within two years. Absent the additional funding, DOJ estimates that it would take ten years to eliminate the backlog and five years to convert the existing sex offender file to the new standard. These delays would seriously weaken the value of the DNA database to law enforcement because the likelihood of finding a match between a DNA sample found at a crime scene and a DNA offender database is not great until there is a substantial collection of offender profiles.

Request Is Justified. Given the power of DNA testing to solve violent crimes, we believe that the elimination of this backlog is an important law enforcement objective and warrants this short-term investment. The proposed increase in funding for equipment and personnel should be sufficient to allow the DNA lab during the next two years to eliminate the existing backlog, convert existing samples, and keep pace with legislative requirements.

Because of the importance of this issue, however, we believe that the Legislature should be kept informed of the department's progress in reducing the backlog and converting the existing samples. We therefore recommend the adoption of supplemental report language requiring the

department to report to the Legislature on its progress on these issues. The following language is consistent with this recommendation:

> The Department of Justice shall report to the Legislature on December 1, 1999 on its progress in eliminating the backlog of offender samples requiring DNA profiling and converting the existing database to meet federal requirements.

Crime Lab Fee Proposal Is Sound Policy; Implementation Details to Be Worked Out

The Governor's budget calls for charging state and local agencies for the services provided by the Department of Justices' (DOJ's) crime laboratories. We support the underlying objective of this proposal, but recognize that the change would require enactment of legislation and the resolution of several implementation issues. As a result, we recommend that the DOJ and the Department of Finance provide the Legislature with the details of the proposal and a revised estimate of savings prior to budget hearings.

Background. The DOJ operates ten regional criminalistic laboratories throughout the state. These laboratories provide analysis of various types of physical evidence and controlled substances, as well as analysis of materials found at crime scenes. In addition, the department operates a state DNA laboratory in Berkeley that is responsible for maintaining the CAL-DNA database which contains profiles of DNA collected from certain violent and sex offenders. This lab also undertakes DNA testing for investigative and prosecutorial purposes.

While the DOJ labs provide services to state agencies, they primarily serve local law enforcement agencies in jurisdictions without their own crime labs. These local agencies are found in 43 counties representing 25 percent of the state's population. The remaining jurisdictions maintain their own forensic labs at their own expense and are generally ineligible for state forensic lab services.

Governor's Budget Would Require State and Local Agencies to Pay for Services. Except for blood alcohol testing, services undertaken by the DOJ crime labs for state and local agencies are currently provided at no charge. The labs began requiring reimbursement for blood alcohol testing in 1977, and these fees are paid from the penalties collected for driving under the influence (DUI) convictions. The Governor's budget proposes to charge local agencies and non-General Fund state agencies (such as the California Highway Patrol and the Departments of Motor Vehicles and Insurance) for the services provided by the state labs. As a consequence,

the budget includes a General Fund reduction of $15.5 million and an increase in reimbursements of $16 million (the additional $500,000 would come from fees for expanded trace evidence services that the department has proposed for the budget year).

Local Governments and State Agencies Should Pay for Their Lab Services. We have recommended in the past that the Legislature authorize the change in fee structure proposed by the Governor's budget, most recently in the *Analysis of the 1997-98 Budget Bill.* Because developing physical evidence through laboratory analysis is part of the responsibility of local governments for investigating and prosecuting crimes, we believe that the costs for these services should be borne by the counties and cities. Such a funding alignment appears even more appropriate when it is noted that 19 local law enforcement agencies—county sheriffs, district attorneys, or city police—have undertaken this responsibility by operating their own crime laboratories at their own expense. We can find no analytical basis for providing these services at no cost to the agencies currently served by the state while denying this subsidy to those agencies with their own labs. Similarly, state agencies should be required to reimburse the department for forensic services, just as they would be required to reimburse the department for legal services.

Transition to a Reimbursement Based System Will Raise Implementation Issues. While we concur with the administration that a shift in funding to reimbursements is preferable to the status quo, legislation will need to be enacted to provide for this change and it should address several issues in order for the new system to work effectively, including:

- ***Mitigating Unusually High Costs for Complex Investigations***. Some cases processed by the labs involve significant amounts of physical evidence that require weeks of analysis and testing. This is particularly true of investigations involving firearms, blood, semen, hairs, fibers, and other trace evidence. If local agencies were to be billed for the costs associated with each case, the investigation of some serious crimes could create a fiscal hardship for smaller agencies to support. In order to ensure that such crimes continue to be investigated, some mechanism should be provided to mitigate these costs for smaller agencies.

- ***Ensuring That the Labs Are Financially Protected From Lags in Payment or Nonpayment of Fees.*** If the labs are to be funded by reimbursements, they must have a mechanism to ensure full and timely payment of these fees. As fee requirements are expanded, BFS must either have the authority to refuse services to agencies

that do not pay their fees, or to receive payment out of some other state allocation of funds to the local jurisdiction.

- ***Establishing an Appropriate Fee Schedule for Charging State and Local Agencies.*** Determining the appropriate basis for allocating the costs of lab services can be challenging for some forensic services. For example, the costs of criminalistics analysis can vary widely depending on the case, such that a flat-fee schedule would probably be inappropriate. As a result, it will be necessary to undertake a review of the services provided by the labs and the costs associated with them in order to determine the appropriate fees.

- ***Revised Estimate of Reimbursements.*** The Governor's budget proposes that the DOJ begin collecting fees July 1, 1999. Because the details of the proposal are not yet available, it is likely that some delay in implementation will occur. As a result, a revised estimate of reimbursements should be provided.

Analyst's Recommendation. We recommend that the Governor's proposal to charge for lab services be approved. However, at the time this analysis was prepared, there were few details available on the proposed legislation to implement the proposal. For this reason, we recommend that DOJ and the Department of Finance provide the Legislature, prior to budget hearings, with the details of the proposed legislation, including its plan to resolve the issues we have raised, and provide a more accurate estimate of the General Fund savings that this change would generate in the budget year.

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