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2009-10 Budget Analysis Series

Judicial and Criminal Justice



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EXECUTIVE SUMMARY

In this report, we (1) provide an overview of state spending on judicial and criminal justice programs, (2) analyze the Governor's budget proposals and present our own recommendations to assist the Legislature in balancing the 2009-10 budget, and (3) identify issues that could potentially have a significant impact on future state expenditures.

Overview of Judicial and Criminal Justice Programs and Expenditures

Major State Programs. The primary goal of California's criminal justice system is to provide public safety by deterring and preventing crime, incarcerating individuals who commit crime, and reintegrating criminals back into the community. The major state judicial and criminal justice programs include the California Department of Corrections and Rehabilitation (CDCR) and the Department of Justice (DOJ), as well as the state court system.

Governor Proposes to Reduce Total Expenditures. For 2009-10, the Governor's budget proposes General Fund expenditures of about \$12.3 billion for judicial and criminal justice programs. This is a decrease of about \$786 million, or 6 percent, below the proposed revised level of current-year spending for these programs. Under the budget proposal, General Fund support for CDCR would decrease by about 8 percent, while the budgets for the Judicial Branch and DOJ would increase slightly.

Balancing the 2009-10 Budget

Reducing State Correctional Populations. The Governor's budget includes savings in the hundreds of millions of dollars from reducing adult inmate and parole populations by (1) providing direct discharge (no parole supervision) for certain inmates released from prison, (2) expanding inmate credits, and (3) updating certain property crime thresholds. We assess the Governor's proposal. We also present an alternative package of correctional population proposals that attempts to provide a better balance between the need to achieve budgetary savings and the goal of protecting public safety. Our alternative essentially builds upon the Governor's proposals by modifying the direct discharge proposal and replacing it with earned discharge from parole.

Realigning Certain Criminal Justice Programs. The Governor's budget proposes to shift some funding for some criminal justice programs from the state to the local level. We recommend that the Legislature expand upon this concept, and implement a policy-driven realignment of nearly \$1.4 billion of state responsibilities to counties for juvenile offenders and adults convicted of drug possession crimes.

Creating Greater Efficiencies in Court Operations. We present two proposals that would result in greater efficiencies in the operations of trial courts, as well as help address the state's massive General Fund shortfall. First, we recommend that the Legislature direct the trial courts

to implement electronic court reporting in California courtrooms. We estimate that this change could save the state \$14 million in 2009-10, with the estimated savings possibly exceeding \$100 million on an annual basis when fully implemented. Second, we recommend the Legislature consider utilizing competitive bidding for court security, which could save the state about \$20 million in 2009-10 and in excess of \$100 million annually within a few years.

Other Issues

Federal Receiver's Prison Health Care Construction Program. The federal court-appointed Receiver in the *Plata v. Schwarzenegger* inmate medical care legal case is proposing a health care construction program totaling \$8 billion, which is currently the subject of pending litigation. In this report, we identify several issues regarding the Receiver's program that merit legislative consideration. For example, we note that the need for the 10,000 new health care beds proposed by the Receiver remains uncertain. In addition, the costs identified by the Receiver to operate the proposed new health care facilities would be significant—exceeding \$1 billion annually upon full implementation.

BACKGROUND

The major state judicial and criminal justice programs include support for two departments in the executive branch—CDCR and DOJ—as well as expenditures for the state court system. The state also provides funding to local governments to support public safety activities. For 2009-10, the Governor’s budget proposes General Fund expenditures of \$12.3 billion for judicial and criminal justice programs, which is about 13 percent of all General Fund spending. This amount—which includes support for operations, capital outlay, and debt service for related facilities—represents a decrease of about \$786 million, or 6 percent, below the proposed revised level of current-year spending for these programs.

HISTORICAL SPENDING TRENDS

The spending reductions proposed by the Governor for 2009-10 differ significantly from the historical trend of significant budgetary increases for criminal justice agencies. Figure 1 shows General Fund expenditures for judicial and criminal justice agencies since 2000-01. (These expenditures have been reduced to reflect federal funds the state has or is expected to receive to offset the costs of incarceration of undocumented

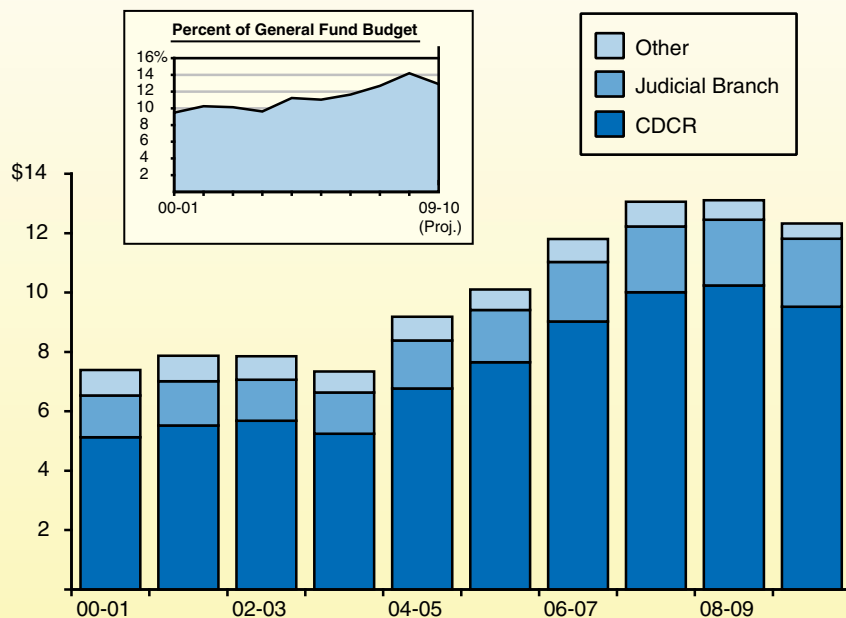
felons.) As shown in the figure, expenditures for judicial and criminal justice agencies are projected to increase by roughly \$5 billion, or 67 percent, between 2000-01 and 2009-10, an average annual increase of 5.8 percent. The single fastest growing agency has been CDCR, which also makes up the largest share of judicial and criminal justice spending.

MAJOR COST FACTORS

General Fund expenditures on judicial and criminal justice programs over the years have been largely driven by (1) employee compensation and inflationary adjustments, (2) adult and juvenile offender population changes, and (3) the creation and expansion of various programs and services.

Figure 1
Judicial and Criminal Justice Expenditures

General Fund (In Billions)

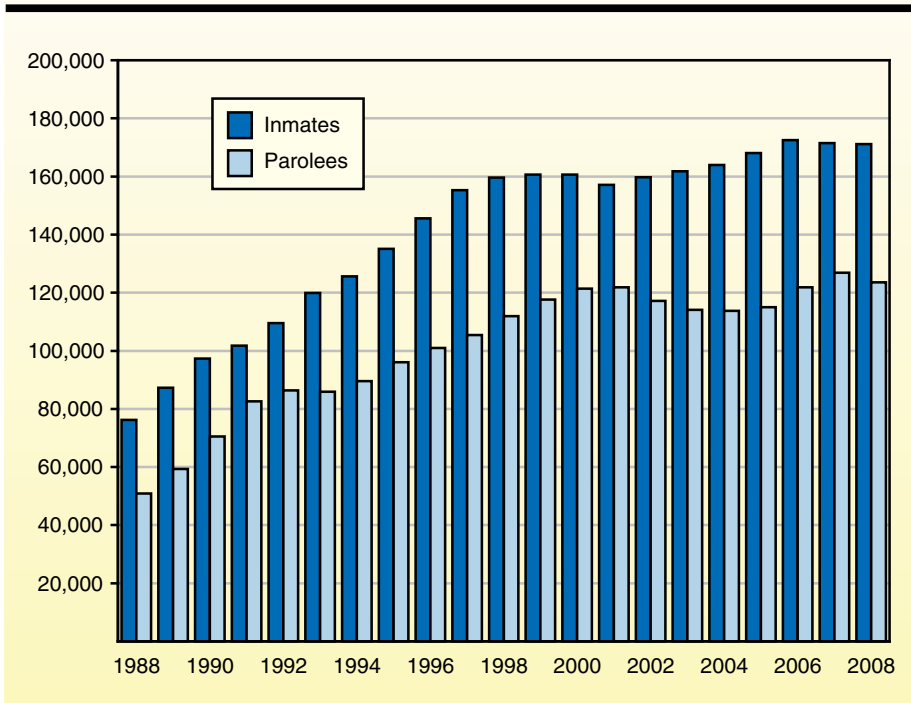


Employee Compensation and Inflation. The costs to operate various judicial and criminal justice programs have been impacted by significant increases in employee compensation levels. In particular, salary increases for Bargaining Unit 6 employees—most of whom are correctional officers—have added more than \$1 billion to the CDCR budget over the past decade. Judiciary and criminal justice costs have also risen with general price increases. For example, inflation increases the costs of supplies and utilities that are purchased by prisons and courts. Under current law, trial courts are to receive an inflationary adjustment each year to their operating budget based upon the State Appropriations Limit (SAL). Since the enactment of this requirement in 2005, trial courts have received over \$400 million for SAL adjustments.

Adult and Juvenile Offender Population. As shown in Figure 2, the prison population has increased by 125 percent (an average of 4 percent annually) over the past 20 years, growing from 76,000 inmates to 171,000 inmates. The parole population has grown at a similar pace over that period. As we discuss later in this report, several factors contribute to changes in the inmate and parole populations, including the number of new admissions sent to prison by criminal courts and the number of parolees returned to prison by the state’s administrative revocation process.

Unlike the adult inmate and parole populations, the number of youthful offenders in state correctional facilities and on parole has decreased significantly in the past decade, particularly in the past year. As of June 30, 2008, 1,897 wards resided in state juvenile facilities and 2,280 youthful offenders were on state parole, which represents decreases of 25 percent and 16 percent, respectively, from the previous year. This recent decline in the juvenile offender population is primarily the result of the enactment of Chapter 175, Statutes of 2007 (SB 81, Committee on Budget and Fiscal Review). Under this statute, non-violent and nonserious offenders are no longer being accepted into state facilities and are instead remaining at the local

Figure 2
Growth in Inmate and Parole Population



level. In accordance with Chapter 175, counties receive state funds from the Youthful Offender Block Grant to provide local supervision and services for juvenile offenders.

New and Expanded Programs. Judicial and criminal justice spending has also increased as a result of the creation and expansion of various programs. For example, a couple hundred million dollars has been added to CDCR's budget in recent years to expand inmate and parolee rehabilitation services, in accordance to legislative priorities. At the same time, federal court orders and settlements affecting CDCR operations have required specific program expansions and improvements. These court cases include:

- *Plata*, relating to inmate medical care (a federal court-appointed Receiver manages this care);
- *Perez*, relating to inmate dental care;
- *Farrell and L.H.*, relating to juveniles within youth correctional facilities and on parole;
- *Coleman*, relating to inmate mental health treatment;
- *Armstrong*, relating to inmates with disabilities;
- *Lugo*, relating to parole hearings for inmates sentenced to life with the possibility of parole; and
- *Valdivia*, relating to revocation of offenders on parole.

From 1998-99 to 2008-09, the above court cases have collectively increased state costs by

over \$1.5 billion. Increased expenditures on judicial and criminal justice programs also reflect the state's assumption of primary responsibility for funding trial court operations.

GOVERNOR'S BUDGET PROPOSAL

Spending by Major Program

Figure 3 (next page) shows expenditures from all sources for the operation of major judicial and criminal justice programs in 2007-08, and as revised and proposed by the Governor for 2008-09 and 2009-10. (Capital outlay and debt-related expenditures from general obligation bonds are not included in the figure.) As the figure shows, CDCR accounts for the largest share of total spending in the criminal justice area, followed by the Judicial Branch, DOJ, and certain criminal justice programs budgeted as local assistance.

General Fund support is proposed to decrease by about 8 percent in CDCR and be eliminated for criminal justice local assistance programs. (As we discuss below, the Governor proposes to shift funding for these local assistance programs from the General Fund to vehicle license fee [VLF] revenue.) Under the budget proposal, General Fund support for CDCR would decrease more, in terms of the dollar amount, than any other judicial or criminal justice budget. While the Governor's budget reduces General Fund support for CDCR and criminal justice local assistance programs, it slightly increases General Fund support for the Judicial Branch (the Supreme Court, Courts of Appeal, Judicial Council, trial courts, and the Habeas Corpus Resource Center) and DOJ.

Major General Fund Proposals

As shown in Figure 4, the Governor’s budget includes major General Fund budget changes for judicial and criminal justice programs relative to the 2008-09 Budget Act. As we discuss below, these changes reflect both General Fund augmentations and reductions to state operations and local assistance.

Proposed Augmentations. The Governor’s budget proposes various General Fund augmentations to judicial and criminal justice programs, including:

- \$159.2 million for the full-year cost of new or expanded CDCR programs that recently began operation, including the statutorily required expansion of the

Youthful Offender Block Grant. (This amount accounts for the expiration of limited-term positions and one-time costs from 2008-09.)

- \$93.2 million to adjust CDCR’s operating budget for inflation.

- \$71.4 million for the full-year cost of 50 new judgeships created in 2007-08 and start-up funding for 50 additional judgeships that would need to be created through new state legislation.

- \$35.7 million to increase CDCR’s base budget for the overtime pay of custody security staff.

- \$25.9 million for compliance with federal court orders and settlements, such as to implement changes in services

Figure 3
Judicial and Criminal Justice Budget Summary

(Dollars in Millions)

	Actual 2007-08	Revised 2008-09 ^a	Proposed 2009-10	Change From 2008-09	
				Amount	Percent
Department of Corrections and Rehabilitation (CDCR)					
General Fund ^b	\$9,910	\$10,096	\$9,265	-\$831	-8.2%
Special funds	72	99	310	211	213.1
Reimbursements and federal funds	113	161	161	—	—
Totals	\$10,095	\$10,356	\$9,736	-\$620	-6.0%
Federal Offset for Undocumented Felons					
	\$111	\$111	\$111	—	—
Judicial Branch^c					
General Fund	\$2,211	\$2,213	\$2,284	\$71	3.2%
Special funds and reimbursements	1,017	1,162	1,057	-105	-9.0
County contributions	499	499	499	—	—
Totals	\$3,727	\$3,874	\$3,840	-\$34	-0.9%
Department of Justice					
General Fund	\$400	\$371	\$381	\$10	2.7%
Special funds and reimbursements	314	381	378	-3	-0.8
Federal funds	36	42	41	-1	-2.4
Totals	\$750	\$794	\$800	\$6	0.8%
Criminal Justice Local Assistance^d					
General Fund	\$291	\$125	—	-\$125	-100.0%
Special funds	—	92	\$359 ^e	267	290.2
Totals	\$291	\$217	\$359	\$142	65.4%

^a Reflects Governor’s proposal for 2008-09.

^b Includes Proposition 98 and excludes capital outlay.

^c Excludes Commission on Judicial Performance and Judges’ Retirement System contributions.

^d Includes only criminal justice local assistance programs in Item 9210.

^e Includes Governor’s proposal to support juvenile probation with special funds in Item 9210, rather than with General Fund in CDCR’s budget.

for inmates with disabilities under the *Armstrong* case and to improve mental health services under the *Coleman* case.

Proposed Reductions. While the Governor’s budget proposes General Fund augmentations, it also proposes significant General Fund reductions to criminal justice programs, including:

- \$188.7 million in 2008-09 and \$501 million in 2009-10 from reducing General Fund support for various local assistance programs, with most of these reductions backfilled with funding from the portion of VLF revenues currently dedicated to Department of Motor Vehicles (DMV) administrative costs.
- \$9.6 million in 2008-09 and \$598.4 million in 2009-10 from reducing adult inmate and parole populations by (1) providing no parole supervision for inmates released from prison who did not have current or prior convictions for violent, serious, or certain sex crimes; (2) expanding inmate credits; and (3) increasing the threshold value for prosecuting property crimes as a felony.

- \$219.5 million from shifting funding for most inmate and parole substance abuse programs from the General Fund to a special fund established with revenues from a proposed increase in the alcohol tax.
- \$180.8 million from an unallocated reduction of 10 percent in the federal court-appointed federal Receiver’s medical services program.
- \$146 million in savings, relative to the administration’s estimated workload budget for the Judicial Branch, as a result of eliminating the SAL adjustment for trial courts (\$32.5 million), making various one-time reductions from 2008-09 ongoing (\$103.5 million), and other budget adjustments (\$10 million).

Figure 4
Governor’s Major General Fund Proposals—
Judiciary and Criminal Justice

(In Millions)

	2008-09	2009-10
Proposed Augmentations		
Support full-year cost of recently implemented CDCR programs	—	\$159.2 ^a
Adjust CDCR operating expenses for inflation	—	93.2
Fund additional judgeships	—	71.4
Increase funding for correctional officer overtime	—	35.7
Comply with correctional court orders and settlements	—	25.9
Proposed Reductions		
Eliminate General Fund support for local assistance programs	-\$188.7	-\$501.0
Implement inmate and parole population reforms	-9.6	-598.4
Shift funding for substance abuse programs to new special fund	—	-219.5
Reduce Receiver’s budget by 10 percent	—	-180.8
Make one-time court reductions from 2008-09 ongoing	—	-113.5 ^b
Eliminate State Appropriations Limit adjustment for trial courts	—	-32.5
Transfer funds from Restitution Fund to General Fund	-30.0	—

^a Includes expansion of the Youthful Offender Block Grant and accounts for the expiration of limited-term positions and one-time costs from 2008-09.

^b Also includes other budget adjustments.

CDCR = California Department of Corrections and Rehabilitation.

- \$30 million in savings from transferring surplus funds from the Restitution Fund to the General Fund.

Capital Outlay Proposals for Corrections and Courts

CDCR Projects. The budget reflects a total of \$4.5 billion in state expenditures for CDCR capital outlay projects. This amount includes (1) \$212 million previously appropriated from the General Fund and \$4.3 billion from lease-revenue bonds for prison construction projects authorized under Chapter 7, Statutes of 2007 (AB 900, Solorio), (2) \$47.8 million in additional General Fund support to continue previously approved projects at existing prison facilities (such as water and wastewater projects and solid cell front conversions) and to begin three new projects, and (3) \$16.6 million in additional lease-revenue bond authority mainly to replace a dormitory for inmates at the California Rehabilitation Center.

Court Projects. The proposed budget reflects a total of about \$194 million in state expenditures for various new and ongoing court projects. This amount includes \$160 million from the State Court Facilities Construction Fund (SCFCF) to (1) continue six previously approved courthouse projects (\$62 million) and (2) acquire sites for 12 new courthouse projects (\$98 million). (In accordance to Chapter 311, Statutes of 2008 [SB 1407, Perata], the new courthouses will be financed with additional SCFCF revenue resulting from court fee and fine increases.) The remaining \$34 million in expenditures from lease-revenue bonds would be used to construct the new Susanville courthouse.

In the next section, we analyze the Governor's budget proposals and present recommendations and options to assist the Legislature in balancing the 2009-10 budget.

BALANCING THE 2009-10 BUDGET

A DECISION MAKING FRAMEWORK FOR REDUCING STATE CORRECTIONAL POPULATIONS

As discussed earlier in this report, one of the principal factors influencing the state's correctional costs is the number of inmates in prison and parolees under state supervision. For 2008-09 and 2009-10, the Governor proposes to generate hundreds of millions of dollars in state savings in corrections by reducing the inmate and parolee populations. Below, we discuss the historical causes of the increased prison population and costs, provide a framework for consid-

ering population reduction options, critique the Governor's proposals, and offer an alternative that we believe could better balance the important trade-offs inherent in any proposal to reduce state correctional populations.

Corrections in a Historical Context—Rising Caseloads and Spending

Significant Prison Growth Driven by Several Factors. As previously noted, the prison population has increased significantly over the past 20 years. The factors contributing to this increase are the (1) number of new admissions sent to prison by criminal courts, (2) amount of

time served by non-lifer inmates, (3) number of inmates in prison with life sentences, (4) number of parolees returned to prison by criminal courts for new felony offenses, and (5) number of parolees returned to prison by the state’s administrative revocation process. As Figure 5 shows, most of these factors have increased significantly between 1987 and 2007.

Based on the above findings, we estimate that about two-thirds of the total increase in the prison population since 1987—67,000 of the 104,000 total inmates—can be attributed to the increase in court admissions, including both new admissions and parole violators returned to prison by the courts. (We explore the reasons for the growth in court admissions in the box on page 13.) The increase in the lifer population has contributed to an additional 26 percent of the population growth. We estimate that the increase in parole violators returned to prison by CDCR and the average time served in prison combined contributed to only about 9 percent of the growth. Figure 6 (next page) summarizes the share of the prison population increase that can be attributed to each of these explanatory factors.

Increases in Inmate Population and Incarceration Costs Drive Prison Expenditures. As previously discussed, General Fund spending on

corrections (including all formerly separate departments that are currently included in CDCR as a result of a 2005 state reorganization of correctional agencies) has significantly increased over time. For instance, from 1987-88 to 2007-08, corrections spending increased from \$1.7 billion to \$10.1 billion, an average annual increase of 9 percent. By comparison, total General Fund spending has grown at a slower average annual rate of 6 percent. As a consequence, spending on corrections takes up about twice as much of the state budget than it did 20 years ago, increasing from 5 percent to 10 percent of total General Fund spending.

The growth in corrections expenditures is in effect a result of (1) having substantially more inmates and parolees in the state correctional system and (2) the increased costs to incarcerate and supervise those offenders. As shown in Figure 7 (next page), the average cost to incarcerate an inmate has more than doubled over the past 20 years from about \$20,000 in 1987-88 to about \$46,000 in 2007-08, an average annual increase of about 4 percent. One of the main reasons for this is the growth in inmate health care costs, which have increased by over \$1.5 billion since 2000 and have been largely due to the outcome of litigation in federal court over inmate

Figure 5
Factors Contributing to Inmate Population Growth

Factor	1987	2007	Change	Average Annual Rate of Change
New admissions	26,649	46,823	20,338	+3%
Average time served (in months)	23.6	23.9	0.3	—
Lifer population ^a	6,789	34,434	27,645	+8
Parole violators returned by the courts	6,390	20,791	14,401	+6
Parole violators returned by CDCR	25,207	71,837	46,630	+5

^a Includes inmates sentenced to life terms with and without the possibility of parole, as well as third-strikers and condemned inmates.

CDCR = California Department of Corrections and Rehabilitation.

health care. Increases in security-related expenses (primarily for correctional officer salaries and benefits) and other incarceration expenses (such as for transportation, reception and diagnosis, education programs, and administration) have also driven up the average incarceration cost. As shown in Figure 7, the average cost to supervise as parolee has also significantly increased.

Reducing Inmate and Parolee Populations Key to Reducing Costs

Since corrections expenditures make up 10 percent of the state’s total General Fund budget, it is reasonable for the Legislature to consider reducing CDCR’s budget to help address the state’s current massive General Fund shortfall.

As discussed above, the three principal drivers of corrections cost increases over the past 20 years are inmate health care, employee compensation for security staff, and prison and parole populations. Of these three factors, reductions to the prison and parole populations have the most potential to achieve large-scale budget savings. For example, reductions to inmate health care expenditures would be difficult to realize given the requirements of various federal court orders and settlements. Therefore, while we recommend that the Legislature consider all options available to reduce corrections costs (including employee compensation costs), we believe that reductions to the inmate and parole populations (such as those proposed by the

Figure 6
Growth in Court Admissions Drove Two-Thirds of Increased Prison Population

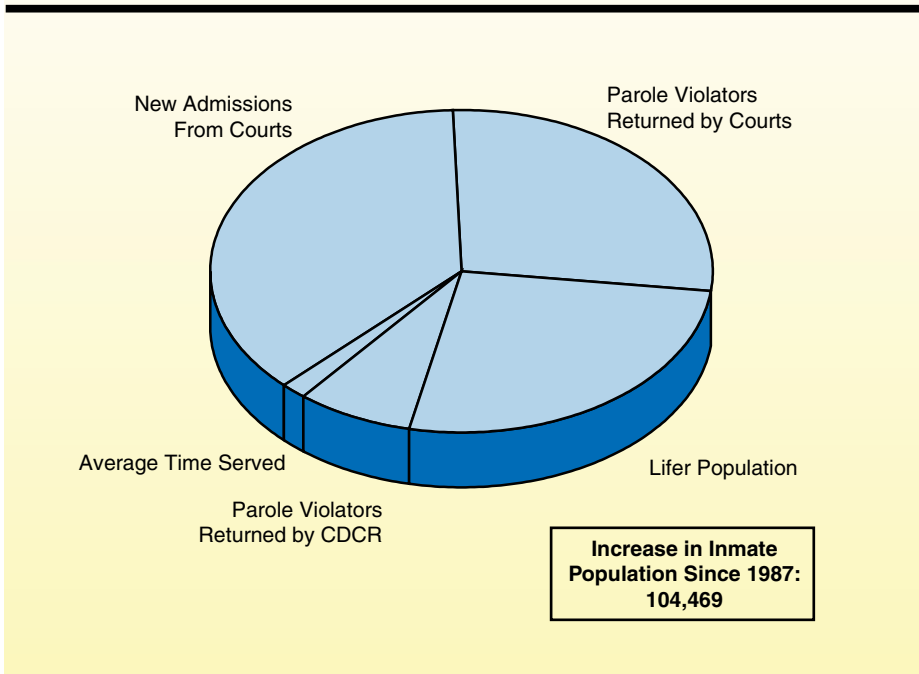


Figure 7
Substantial Increase in Average Inmate and Parolee Costs

(Dollars in Millions)

	Average Costs		Average Annual Change
	1987-88	2007-08	
Inmates	\$19,531	\$46,068	+4%
Security	10,208	20,676	+4
Health care	2,005	11,956	+9
Other operations	7,318	13,435	+3
Parolees	3,690	6,308	+3

Why Did Court Admissions Increase?

The increase in new admissions and parolees charged with a new offense could be due to a variety of reasons, such as changes in the general population, crime rates, or law enforcement and prosecution practices.

Not Demographics or Crimes. Our analysis indicates, however, that changes in population and crime rates do not explain much if any of the growth in the number of admissions from the courts. Between 1987 and 2007, California's population of ages 15 through 44—the age cohort with the highest risk for incarceration—grew by an average of less than 1 percent annually, which is a pace much slower than the growth in prison admissions. Moreover, the number of crimes committed actually decreased over the past two decades. Specifically, the total number of reported violent crimes (homicide, rape, robbery, and aggravated assault) and property crimes (burglary, motor vehicle theft, and grand theft) *decreased* by an average of about 1 percent annually over the past two decades.

Law Enforcement and Prosecution Help Explain the Trend. So, what does explain the increase in court admissions? Arrest and prosecution data tell at least part of the story. As shown in the figure below, despite declining crime rates, the number of adult felony arrests has remained relatively stable over the past two decades. However, the number of felony charges filed, convictions achieved, and prison sentences ordered by the courts have significantly increased during the same time period. These outcomes suggest that law enforcement has increased the percent of felony crimes resulting in arrests. In addition, prosecutors have increased the proportion of (1) arrests resulting in prosecution, (2) charges resulting in a conviction, and (3) convictions resulting in a prison sentence. As a consequence, a felony arrest is almost twice as likely to result in a prison sentence than it was two decades ago.

Proportion of Arrests Resulting in A Prison Term Has Increased

Adult Felony Outcomes	1987	2007	Percentage Change In Factor
Arrests	423,000	457,000	+8%
Charges filed	197,000	280,000	+42
Convictions	154,000	231,000	+50
Prison sentences ^a	33,000	68,000	+106
Percent of Arrests Resulting in Prison	8%	15%	+91%

^a Includes both new admissions and parole violators returned by the courts.

Governor) have the most potential for significant General Fund savings in both the short- and the long-term. (As discussed in the nearby box, federal courts are currently considering whether to order a reduction in California's inmate population to reduce overcrowding as a means to provide a constitutionally adequate level of inmate medical care.)

Criteria for Evaluating Population Reduction

Options. In general, the Legislature can choose from a number of policy options to reduce the state's prison and parole populations and to generate General Fund savings. As with any type of budget cut—whether in corrections or another state program—we recommend that the Legislature carefully weigh the trade-offs inherent in the various options to reduce state correctional populations. Each option carries different benefits, particularly in regard to the magnitude of state

savings that can be achieved, as well as differing potential negative consequences or challenges to implementing the reduction. Below is a brief discussion of the five primary criteria we think the Legislature should consider when evaluating various population reduction options:

- **Budget Savings.** What is the magnitude of savings that will be achieved? To what extent is the actual level of savings dependent on changes to department operations? How quickly will the savings level be achieved?
- **Public Safety.** How will the option affect public safety? Can any negative impacts to public safety be mitigated by the use of evidence-based correctional practices, such as risk assessments, community-based sanctions, and substance abuse and other

Federal Courts Could Order Inmate Population Reduction

The federal courts concluded in the case of *Plata v. Schwarzenegger* that California prisons have historically provided a constitutionally inadequate level of medical care to inmates. Consequently, the courts have ordered the state to make a number of improvements, and more recently appointed a Receiver to take over management of the state's inmate medical system. Subsequently, federal court rulings created a three-judge panel to determine whether prison overcrowding is the principal reason for inadequate medical care. If the panel makes this finding, it could order the state to reduce its inmate population by tens of thousands of inmates. If the judicial panel issues such an order (and the decision is sustained by appellate courts upon hearing any appeals), it is unclear how much discretion the Legislature would have to direct how these reductions would be achieved. It is possible that such decisions would be left to the courts or the administration. One advantage of the Legislature taking steps now to reduce the inmate population is that it could preempt the need for the three-judge panel to make a population reduction order on its own without legislative input. The Legislature may be in a better position to ensure that any population reductions are achieved in a way that reflects its policy choices about the mix of offenders released or diverted from prison beds and how these offenders are supervised in the community.

treatment programs? Will the option help to reduce recidivism rates of offenders?

- **Prison Overcrowding.** To what extent will the option reduce prison overcrowding? To what extent does the particular population reduction option result in ancillary benefits, such as avoiding the need to build additional prison bed capacity? To what extent does a particular option facilitate improved prison operations for inmate health care services and other programs?
- **Ease of Implementation.** Does the option require only simple actions (like statutory changes) or something more complicated (like implementing a new program)? Will savings be delayed because of implementation requirements, such as to conduct reviews of inmates' case files or to lay off state workers?
- **Shift of Responsibilities to Local Governments.** Will the option increase local costs to incarcerate more offenders in county jails or supervise offenders on county probation? What impact will the option have on jail overcrowding? Will the option affect local law enforcement or court-related workload?

There are unlikely to be any options to reduce the state corrections populations that produce only positive benefits with no trade-offs. In other words, there are no "perfect" solutions. Instead, we recommend that the Legislature review various options with an eye towards identifying those options that (1) best meet legislative policy goals, including achieving state savings and assuring public safety, and (2) mitigate the potential negative trade-offs.

Three General Strategies for Reducing State Corrections Populations. We would categorize the available policy options for reducing inmate and parole populations into three general strategies:

- Reducing prison admissions from the criminal courts.
- Reducing the amount of time inmates serve when sent to prison.
- Reducing parole caseloads and returns to prison.

Figure 8 lists the various specific population reduction options within each of the above

Figure 8

Strategies and Options to Reduce State Corrections Populations

Reducing Court Admissions	Reducing Inmate Time Served	Reducing Parole Caseloads and Returns to Prison
<ul style="list-style-type: none"> • Make certain offenses ineligible for prison. • Change property crime thresholds. • Divert offenders from prison to community-based sanctions and treatment programs. 	<ul style="list-style-type: none"> • Reduce sentences for certain crimes. • Release certain inmates from prison early. • Increase amount of release credits inmates can earn. • Reduce prison time served by parole violators. 	<ul style="list-style-type: none"> • Implement programs to reduce reoffending. • Make certain parole violations and/or parolees ineligible for return to prison. • Divert parole violators to community-based sanctions and treatment programs. • Discharge certain parolees early.

general strategies, which we describe in detail below.

Strategy 1: Reducing Prison Admissions From Criminal Courts

In general, reducing prison admissions from the courts has the potential for the greatest state savings. This is because for each person not sent to prison, the state saves the costs to (1) incarcerate that individual for their crime (an average of two years), (2) supervise that offender on parole for three years, and (3) incarcerate the offender if he is returned to prison on a parole violation. As a consequence, each person diverted from state prison saves the state an average of at least \$100,000 over several years.

Make Certain Offenses Ineligible for Prison.

One specific option for reducing court admissions is to change sentencing laws to make certain crimes ineligible for state prison. For example, as we discussed in our *Analysis of the 2008-09 Budget Bill* (pages D-112 through D-117), the Legislature could change “wobblers” to misdemeanors. Wobblers are crimes that current law allows to be prosecuted in the criminal courts as either felonies or misdemeanors. These include a variety of property and drug offenses, such as vehicle theft, forgery and fraud, and drug possession. Currently, there are about 28,000 inmates who are in state prison for wobbler offenses. Changing these crimes to misdemeanors—making them ineligible for prison—would save the state approximately \$750 million annually in both incarceration and parole costs. The offenders would instead be incarcerated in local jails and/or supervised by county probation departments, mitigating the effect on public safety. (As discussed later in this report, we propose changing drug possession and select other crimes

to misdemeanors and realigning the affected offenders to local jail and probation. Counties would be provided additional resources to supervise these offenders and provide them with intensive substance abuse treatment services.)

Although changing wobblers to misdemeanors would be relatively simple to implement through only statutory changes, this option would shift a large number of offenders to the county correctional system. Moreover, this particular option could increase jail overcrowding and already-sizable adult probation caseloads. Such burdens could be lessened by changing only *select* wobblers to misdemeanors, thereby reducing the number of offenders affected (as well as the level of state savings), or by identifying a funding source to help offset the new county correctional costs. Another potential trade-off is that the sentencing change would reduce the incarceration time, and thus the severity of punishment, for the affected offenders compared to current law. This is because the maximum jail sentence for a misdemeanor is one year, which is about six months less than the actual time these offenders would serve in prison on average.

Change Property Crime Thresholds. Current law uses dollar thresholds to distinguish between some crimes and assign penalties accordingly. For example, a theft is considered petty theft (a misdemeanor not eligible for punishment with a state prison sentence) when the value of the property taken does not exceed \$400. Otherwise the theft is considered grand theft—a felony potentially punishable with prison. For some crimes, the dollar threshold has not been updated in a number of years. One option to reduce the prison population would be to update these thresholds for inflation, which would in turn reduce the number of offenders eligible for

felony-level penalties. The actual level of savings from this option is unknown but could potentially be in the tens of millions of dollars annually within a couple of years. Updating property crime thresholds would be relatively simple to implement, requiring only a statutory change. The affected offenders—probably no more than a couple thousand—would be incarcerated and supervised by local correctional agencies.

Divert Offenders to Community-Based Programs. Another option is to expand the availability of local community-based punishment and treatment programs and require the courts to divert certain offenders to these programs. These programs could include intensive probation supervision, substance abuse and mental health treatment, and day reporting centers. Proposition 36 (enacted by the voters in November 2000) and drug courts (now a discretionary choice for judges during sentencing) are two examples of this type of approach that are currently being used. If, for example, 10 percent of total court admissions were diverted to community-based programs, the state inmate population would be reduced by about 13,000 offenders, saving the state more than \$300 million annually. Ideally, the offenders would be diverted to programs that are evaluated and proven to be effective at reducing recidivism, thereby having a positive effect on public safety.

There are, however, a couple of trade-offs with this option. First, the affected offenders would be supervised in the community instead of incarcerated in state prison and, thus, county corrections costs would be likely to increase. In addition, some of the affected offenders could potentially commit new crimes while in the community and jeopardize public safety. Such impacts could be mitigated by targeting only

lower-risk felons who would otherwise go to prison. It would take significant financial investments—offsetting, perhaps, one-third or more of the total savings—to expand the availability of community-based programs. These activities would likely also delay the date when savings could be achieved.

Strategy 2: Reducing the Time Served by Prison Inmates

Another strategy for the Legislature to consider is reducing the amount of time inmates serve in prison for their offenses. Such a strategy would reduce the prison population and place the affected offenders in the community under state parole supervision sooner than would occur under current law. Under the current revocation process, parole agents would have the option to send these offenders back to prison, which would help mitigate the potential public safety impact of this strategy. In addition, there is little conclusive evidence that the length of time someone serves in prison affects his recidivism rate. However, it is certainly true that early release means that the affected offenders would be in a position to commit crimes that they could not commit if they remained incarcerated. Finally, these options would have little direct impact on local governments because there would be no direct shift of responsibilities from the state to county probation or jails.

Reduce Sentences for Certain Crimes. One option for reducing time served in prison is to change current sentencing laws. For most felonies, current law provides criminal court judges with a choice of three prison terms—the sentencing triad. For example, first-degree burglary is punishable by two, four, or six years in prison, and the judge can choose which of these sen-

tences is most appropriate given the circumstances of the crime and offender's criminal history. In addition, current law provides for a number of sentence enhancements—additional time that can be added to an offender's sentence—based on such factors as prior offenses or possession of a weapon during the commission of the crime. The "Three Strikes and You're Out" law is one example of a sentence enhancement. The Legislature could choose to reduce the triad sentences for certain crimes, or it could reduce or eliminate particular sentence enhancements. The reduction in the prison population and commensurate savings level would depend on the specific statutory changes made, but savings could certainly reach hundreds of millions of dollars annually.

The ease of implementing this option, as well as when the savings would be achieved, would depend on how the option was adopted. Specifically, if the option was adopted on a *retroactive* basis—meaning it would apply to existing inmates as well as future convicts—it would generate savings more quickly because current inmates would be released earlier than they otherwise would. However, such a retroactive policy would be somewhat difficult to implement because release dates would have to be recalculated, either by resentencing offenders in court or by CDCR recalculating these dates. On the other hand, if the option was adopted on a strictly *prospective* basis—meaning the reduced sentences would only apply to those convicted after implementation of the law change—it would be much easier to implement because the release dates of existing offenders would not need to be recalculated. However, a prospective policy of reducing state prison sentences would delay any budget savings.

Release Certain Inmates Early. Another option is to release selected inmates from prison

early. For example, the Governor proposed last year to release all inmates with no history of serious, violent, or sex offenses from prison 20 months early. This proposal, which was not adopted, would have reduced the prison population by 26,000 inmates and saved the state over \$500 million annually when fully implemented. Early release can be targeted towards particular types of inmates—based on factors like age, infirmity, or offense history. In crafting an early release policy, the Legislature also can adjust the periods of time by which sentences are reduced. For example, it could allow specified inmates to be released one day early or months in advance. The reduction in the state prison population and the state savings achieved would depend on the specific eligibility criteria and how early the inmates were released.

A major concern with releasing inmates early is that they could very well commit crimes while in the community when they otherwise would be in prison. While this possibility can never be eliminated, one way to reduce the possibility is to make the individual offender's risk level the primary criteria for releasing offenders early. The CDCR currently uses a validated risk assessment tool to determine the likelihood that an offender will commit new offenses after being released from prison. The department's assessments have found that roughly 30 percent of inmates released are of low risk to reoffend, 40 percent are of moderate risk, and 30 percent are of high risk.

Increase the Early Release Credits That Inmates Can Earn. Most inmates are eligible to earn credits towards reducing time off of their sentence, such as by participating in a prison work assignment or education program and refraining from disciplinary problems. Most inmates earn "day-for-day" credits, one day off

their sentence for each day that they participate in work or a program. In order to achieve budgetary savings, the Legislature could increase the amount of credits inmates are eligible to earn. One current example of increased credit-earning is that inmates who work in the state's fire camps currently earn twice the usual credits. The level of savings that could be achieved from increasing credits for other inmates would depend on how many inmates were eligible for the credits and the additional amount of credits these inmates could earn. This option would require some effort by CDCR to implement because it would have to change the way that the department calculates these credits, which is already a complicated task.

Reduce Time Served by Parole Violators.

About 70,000 parole violators are returned to prison through an administrative process by CDCR parole agents and the Board of Parole Hearings (BPH) each year, serving an average of about four months. A policy to reduce this prison time by one month, for example, could reduce the inmate population by about 5,000 inmates and save the state over \$100 million annually. However, this option could be difficult to implement. Currently, BPH deputy commissioners have broad discretion for determining appropriate revocation sentences. So, legislative action designed to reduce the revocation time served would probably require standardizing in statute the period of time that offenders are returned to prison for various parole violations.

Strategy 3: Reducing Parole Caseloads And Returns to Prison

As discussed above, about 70,000 parolees are returned to state prison by BPH each year, with another 20,000 parolees returned by the

courts for new felony convictions. Consequently, at any given time, there are about 60,000 inmates in prison for a parole violation—20,000 who were returned by BPH and 40,000 returned by the courts. Therefore, strategies to reduce the number of parole violators returned to prison can have a significant impact on reducing the state's prison population and associated costs. In addition, reducing parole returnees can yield ancillary fiscal benefits to the state. These are related to reducing the number of parole revocation hearings, processing of inmates in and out of prisons at reception centers, and local assistance payments to county jails for holding parole violators awaiting their hearings.

Implement Programs to Reduce Reoffending.

According to the research, a variety of in-prison and community-based programs have been found to be effective at reducing the likelihood that offenders will commit new offenses when back in the community. These include substance abuse and mental health treatment, education, and employment training programs. The research also finds that many of these programs are cost-effective, meaning that the savings achieved through reduced reincarceration and other factors are greater overall than the cost to implement the program. While the Legislature has invested significant additional funding for rehabilitation programs in recent years, CDCR still does not have sufficient program capacity to provide these programs to all inmates and parolees who would benefit from them. Therefore, the Legislature could choose to expand these programs (or to make other changes designed to make them work more effectively). The key benefit of this option is that it is designed to improve public safety by reducing rates of reoffending.

The impact of this option on the prison population and costs would depend on the number and types of programs expanded. Research shows that even the most effective correctional programs will not eliminate all reoffending. In fact, a 10 percent reduction in reoffending is often considered a notable achievement for such programs. A 10 percent reduction in parolee returns to prison would reduce the inmate population by about 6,000 inmates and reduce state incarceration costs by about \$150 million annually. However, most of these savings would be offset by the costs to implement and expand the programs. In addition, expanding these types of programs would take time and, especially in prison settings, could be difficult given current overcrowded conditions at many prison facilities. Locating acceptable sites for parole programs in the community can also be challenging. There-

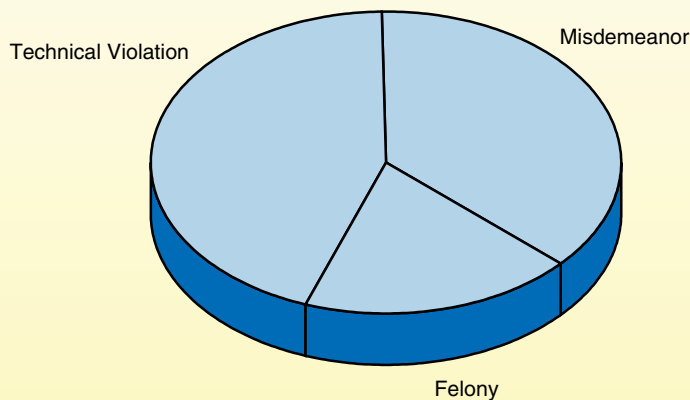
fore, significant savings would be unlikely in the first few years, though savings in the longer term are certainly achievable if the programs are well-designed and implemented.

Make Certain Parole Violations Ineligible for Prison. As shown in Figure 9, about 44 percent of the 72,000 parolees returned to prison for parole violations in 2007 had a technical violation as their principal offense (such as for failing a drug test or not attending a required meeting). Another 37 percent were returned primarily for misdemeanors, and 19 percent were returned primarily for new felonies. One option to reduce state costs would be to prohibit parole returns for certain types of less serious violations. For example, prohibiting returns for technical and misdemeanor violations could reduce the state prison population by about 16,000 inmates and save the state \$400 million annually.

The most significant trade-off with this option is the potential impact on public safety. Though the affected offenders would remain under state parole supervision, they would receive no prison or jail sanction for their violation. Moreover, this option does not account for the fact that, while the new violation is a potentially low-level technical or misdemeanor violation, the offender may have a more serious and violent criminal history

Figure 9

Most Parole Violators Returned by CDCR for Technical Violations and Misdemeanors



that nonetheless makes him a risk to public safety if retained in the community. One approach for mitigating these public safety concerns would be to only allow parole violators who are evaluated as low-risk for violence or to reoffend to remain in the community when a less serious parole violation has occurred. In addition, this option could be implemented in conjunction with another option we discuss below to ensure that those offenders who are no longer eligible for a prison return for their violation are diverted to community-based sanctions and treatment programs.

Divert Parole Violators to Community-Based Programs. Just as the courts could divert certain new felons to community-based sanction and treatment programs, CDCR could divert parole violators to such programs. In fact, as part of the 2008-09 budget package, the Governor directed the department to implement the Parole Violations Decision Making Instrument (PVDMI), a system designed to guide parole agents in determining whether a parole violator should be directed to community-based programs (rather than returned to prison). However, the 2008-09 budget did not include additional funding to expand the availability of such programs, making it unclear whether significant savings can be achieved at this time from implementation of the PVDMI. The Legislature could choose to invest in additional community-based programs. If they were successful at diverting 25 percent of parole violators from prison, for example, the prison population would decline by 5,000 inmates and state incarceration costs would decline by about \$125 million annually. However, a third or more of these savings would be offset by the costs to implement the new community-based programs. The exact costs would depend on the number and types of programs implemented.

Expanding community-based programs for parole violators would likely take a couple of years to implement if developed statewide on a large scale. Therefore, the estimated total savings would likely not be achieved in the first couple years. The other trade-off with this option is that some of the affected offenders could commit additional offenses while in the community. However, such an outcome could be avoided somewhat if certain high-risk and violent offenders were deemed ineligible for diversion.

Discharge Certain Parolees Early. Nearly all inmates are placed on parole supervision after they are released from prison, with most serving a standard three-year parole term. Under current law, parolees are eligible to be discharged from parole as early as one year after release if they have not been returned to prison for a parole violation and their parole officer recommends early discharge. One option would be to allow parolees to be discharged even earlier than after one year. Qualification for early discharge could be based on the offense history or risk level of the parolee. The policy could also be based on whether the parolee meets certain criteria associated with successful community reintegration (such as steady employment, stable housing, and no evidence of drug use)—a concept referred to as *earned discharge*. Early and earned discharge would reduce the parole population, and to a lesser extent would reduce the inmate population because there would be fewer parolees eligible for revocation to state prison. The level of potential savings from implementing early discharge could reach a few hundred million dollars annually, depending upon which parolees were eligible and how much the time that they were required to serve on parole was reduced.

The primary trade-off with this option is the potential impact on public safety. Affected offenders would no longer be under state supervision, and if they committed new offenses, they would not be eligible for return to prison through the state’s revocation process. However, they could still be convicted in court for any new crimes. In addition, early discharge would take some additional effort by CDCR staff to implement. That is because the department would need to identify which inmates met the criteria for early discharge and verify that they meet any relevant criteria before discharging them. (In our *2008-09 Budget: Perspectives and Issues* publication, we proposed the realignment of parole to counties. Our proposal has many of the same state benefits as early discharge but provides better public safety outcomes by keeping the offenders under local probation supervision. We continue to recommend consideration of this approach.)

Governor’s Budget Includes Three Population Reduction Proposals

Summary of the Governor’s Proposals. The Governor’s budget includes three proposals intended to reduce the inmate and parole populations and generate combined savings that would reach \$800 million annually at full implementation (2010-11). Figure 10 shows the savings level for the three proposals, as well as other related savings from implementing the proposals.

The population reduction proposals

included in the Governor’s 2009-10 budget plan are identical to those the administration proposed as part of the November and December special sessions to address the serious state budget shortfall. In total, this set of proposals would reduce the state corrections populations by about 16,000 inmates and 66,000 parolees at full implementation. We describe each of the Governor’s proposals below.

- **Early Discharge.** The Governor proposes direct discharge (no parole) for all inmates released from prison who have no current or prior serious, violent, or sex offenses. This proposal would be responsible for a majority of the estimated reduction in the inmate and parole populations under the Governor’s plan.
- **Credit-Earning Enhancements.** The Governor also proposes to allow inmates to earn additional credits that would reduce the time they would otherwise serve in prison. Most of the estimated savings would result from two specific changes: (1) allowing many inmates to earn the same level of credits while in local jails, awaiting transfer to state prison, that they

Figure 10
Savings From Governor’s Population Reduction Proposals
(In Millions)

Proposal	2008-09	2009-10	2010-11
Early discharge	\$19.9	\$206.2	\$407.1
Credit-earning enhancements	7.8	104.4	104.4
Update property crime thresholds	—	51.3	51.3
Ancillary savings	20.4	279.0	208.0
Implementation and other costs	(38.4)	(42.5)	(42.5)
Totals	\$9.6	\$598.4	\$800.3

can already earn in state prison (one day of credit for each day served) and (2) allowing many inmates to earn additional credits for completing rehabilitation programs, including academic or vocational education and substance abuse treatment.

- **Update Property Crime Thresholds.** The administration proposes to update certain property crime thresholds for inflation. Under this proposal, many property crime thresholds would more than double. For example, the threshold for grand theft would increase from \$400 to \$950.
- **Ancillary Savings.** The Governor's budget plan identifies other areas of the department's budget that could be reduced if the inmate and parole populations were reduced substantially. This includes savings for revocation hearings, local assistance payments to county jails, and various community-based programs for parolees.
- **Implementation and Other Costs.** The administration identified about \$7 million in ongoing costs for the department to implement the above changes, particularly to do the casework necessary to recalculate release dates and identify which inmates are eligible for early discharge. The proposed budget also includes adjustments to take into account actions already scored in the department's budget, such as savings related to the implementation of the PVDMI, so as not to double-count the savings.

Proposals and Estimated Savings Seem Reasonable. We find that the administration's estimates of the savings that could be achieved from these proposals are reasonable, although the actual savings would depend on various factors. These factors include (1) the number of discharged offenders who commit new crimes for which they are sent to prison, (2) the number who are no longer eligible for state prison because the value of their property offense no longer meets the statutory threshold, and (3) the number who successfully complete prison programs. The administration's estimated savings for the current and budget year assume implementation by February 1, 2009. The administration has acknowledged that actual savings would be reduced in the short-term if implementation was delayed.

The Governor's proposed package of reforms generally provides a reasonable starting point for the Legislature to consider making correctional population reductions a part of its approach to balancing the state budget. For example, the proposed increase in credit-earning would result in only a modest reduction in time served for most inmates. In addition, the program completion credits may actually help reduce the likelihood that offenders commit new crimes after release by providing an incentive for them to participate in programs that are linked to reduced recidivism. Our analysis also indicates that the change in the property crime thresholds would result in only a small shift of property offenders from state prison to the local corrections system.

Direct Discharge Proposal Raises Concerns. The Governor's early discharge proposal to release tens of thousands of offenders from prison without any community supervision (either through state parole or county probation) raises

some concerns because of its potential impact on public safety. Moreover, as now proposed by the administration, the release of particular offenders would not be based upon any assessment of their risk to reoffend. In order to help alleviate some of these public safety concerns, we propose below an alternative package for the Legislature to consider.

LAO’s Alternative Proposals for Correctional Population Reduction

In developing an alternative package of correctional population proposals, we attempt a better balance between the need to achieve budgetary savings and the goal of also protecting public safety. Our alternative essentially builds upon the Governor’s proposals by modifying the direct discharge proposal and replacing it with an earned discharge strategy. We believe earned discharge would provide a better balance with public safety by tying the discharge of offenders

from parole to factors such as their risk to reoffend and actual behavior in the community. Our alternative would retain the Governor’s proposals to enhance credit-earning and changing the thresholds for various property crimes. Our alternative package results in roughly the same magnitude of savings as the Governor’s plan when fully implemented.

The primary trade-off of implementing earned discharge instead of direct discharge is that our approach would achieve less state savings than the Governor’s budget proposal. Our alternative makes up for this loss of savings by including three additional policy changes: (1) changing petty theft with a prior, currently a wobbler, to a misdemeanor, (2) expanding the use of alternative community-based sanctions for parole violators, and (3) allowing early release (by two months) for those inmates who are evaluated as being low-risk to reoffend and who have no current or prior serious, violent, or sex offenses.

Figure 11 summarizes the components of our alternative package.

LAO Alternative Has Several Advantages. At full implementation, we estimate our alternative package would reduce the prison population by about 23,000 inmates, and save the state about the same amount as the Governor’s plan (\$800 million). (Over time, it is possible that the total savings could be even greater as the department modifies other

Figure 11
LAO Alternative Package of Population Reduction Options

(Dollars in Millions)

	Reductions at Full Implementation	
	Inmate Population	State Savings
Modifying Governor’s Proposals		
Earned discharge	5,185	\$169
Enhanced credit earning	2,868	104
Property crime thresholds	2,778	51
Ancillary savings	—	280
Implementation/other costs	—	-43
Additional Options to Reach Total Savings		
Alternative sanctions	6,534	\$91
Wobbler to misdemeanor ^a	4,253	117
Early release	1,502	36
Totals	23,120	\$805

^a Petty theft with a prior.

areas of its operations to take into account the decrease in the prison population.) Most of these savings could begin to be realized immediately or within a few months. Only the implementation of alternative sanction programs would take more time in order to expand the availability of these programs. The level of savings that would be achieved in 2009-10 would depend on when the policies are implemented. A later implementation date would reduce budget-year savings because of the time it takes to change department policies and procedures, as well as to eliminate the affected staff positions. For example, we estimate that about one-half of the potential \$800 million savings could be achieved in 2009-10 if the proposals were implemented by March 1, 2009. Implementation on July 1, 2009, on the other hand, would reduce budget-year savings, possibly to as little as one-third of the total savings achievable at full implementation.

Importantly, our proposed alternative would minimize the risk to public safety by focusing on lower-level offenders, utilizing risk assessments, and expanding the use of best practices like alternative sanctions and earned discharge. Finally, we estimate that this plan would have only minimal direct impact on local governments. Although the change of petty theft with a prior to a misdemeanor would shift about 4,400 inmates (and about 5,600 parolees) to the local corrections system, this would represent only a 2 percent increase in the local corrections population.

While we think the above package has advantages compared to the Governor's proposals, it is certainly not the only set of options available to the Legislature. So, the Legislature could certainly remove, replace, or modify any of these components to reflect its own choices about the

trade-offs between achieving state savings and protecting the safety of the public, as well as consideration of the other criteria.

Impacts on Prison Facilities From Reducing the Inmate Population

We would note that before the Legislature adopts any policies designed to reduce the inmate population, it should require CDCR to present a plan during budget hearings that would identify how it would implement these reductions. The plan should take into consideration how the projected reduction in the inmate population would be spread among inmates in reception centers, prisons of various security levels, and female prisons. Further, the plan should present how the administration would prioritize the reduction of different types of beds, such as those in gyms and dayrooms, contracted facilities, and reception centers. This plan should also assess the extent to which population reductions would eventually delay or eliminate the future need to construct prison facilities. This above plan would help the Legislature evaluate the full impact of significant population reductions on both operational and capital costs.

REALIGNING CERTAIN CRIMINAL JUSTICE PROGRAMS

Governor's Fund Shift Proposal. The Governor's 2009-10 budget proposes to shift the funding for four local public safety programs from the General Fund to VLF. These programs include the Citizens' Option for Public Safety program (COPS), the Juvenile Justice Crime Prevention Act, local detention facility subventions (booking fees), and juvenile probation grants. Local governments would collectively receive \$359 million of VLF—resources currently allocated to DMV.

The DMV, in turn, would increase the annual vehicle registration fee by \$12 to offset this revenue shift. The administration indicates that this proposal would provide stable, but somewhat reduced, ongoing support for the local public safety programs and \$359 million of annual General Fund savings.

LAO Realignment Proposal. Our review indicates that the administration’s proposal could serve as a starting point for a policy-driven realignment of state-local criminal justice responsibilities. Under this realignment, the Legislature could reduce annual state expenditures by nearly \$1.4 billion, improve services for juvenile and adult offenders, and provide a more reliable reimbursement stream to local governments for mandates. The funding source for our proposed criminal justice realignment is the VLF: \$359 million shifted from the DMV, as proposed by the Governor, and an additional \$1.1 billion raised by increasing the VLF rate to 1 percent. These revenues would be deposited into a new criminal justice realignment fund and allocated to three accounts:

- **Juvenile Offender Account—\$765 Million.** Under realignment, counties would have full program authority and the corresponding financial responsibility for juvenile offender programs. Counties could use the resources in this account for the juvenile offender programs and services that they determine work best in their communities. Counties would be financially responsible for reimbursing the Division of Juvenile Facilities (DJF), the formal name of the state agency frequently called the Division of Juvenile Justice, for any county youths placed in DJF facilities.
- **Adult Offender Account—\$638 Million.** Under realignment, responsibility

for punishment and treatment of certain adult offenders with substance abuse problems would shift to counties. Counties could use the resources in this account to place these individuals in jails or residential treatment facilities, or to supervise them in the community while they attend substance abuse treatment programs. Cities would receive a dedicated portion of the funds in this account under the existing COPS program.

- **Mandate Payment Account—\$103 Million.** Funds in this account would provide local governments with a steady stream of revenues to reimburse them for long-overdue mandate claims. Cities and counties also would receive a “per peace officer” reimbursement for one mandate—the Peace Officer Procedural Bill of Rights (POBOR). This simple POBOR payment methodology would replace the current complicated and highly contentious reimbursement for POBOR.

For further details regarding our realignment proposal, please see our *Criminal Justice Realignment* report published as part of our *2009-10 Budget Analysis Series*.

CREATING GREATER EFFICIENCIES IN COURT OPERATIONS

Below, we present two proposals that would result in greater efficiencies in the operations of trial courts, as well as help to address the state’s massive General Fund shortfall. Specifically, we recommend that the Legislature consider

- (1) implementing electronic court reporting and
- (2) utilizing competitive bidding for court security.

Implement Electronic Court Reporting

Under current law, trial courts use certified shorthand reporters to create and transcribe the official record of most court proceedings. The prepared transcripts are effectively “owned” by the court reporters and must be purchased by the court. However, as we discussed in our *Analysis of the 2008-09 Budget Bill* (please see page D-42), electronic court reporting systems involving audio and/or video devices could be used instead of shorthand reporters to record the statements and testimony delivered in the courtroom. The actual recordings created during the proceeding could be used in a manner similar to a transcript, and the sales of these recordings could generate additional revenue for the court.

Currently, many state and federal courts—including the U.S. Supreme Court, the California Courts of Appeal, and the California Supreme Court—use electronic methods for recording court proceedings. Moreover, electronic court reporting was demonstrated to be cost-effective in a multiyear pilot study carried out in California courts between 1991 and 1994. The study found significant savings of \$28,000 per courtroom per year in using audio reporting, and \$42,000 per courtroom per year using video, as compared to using a court reporter. In addition to saving a substantial amount of funding, a switch to electronic court reporting would also help address a persistent problem faced by the courts—the short supply of certified shorthand reporters.

In view of the above, we recommend the Legislature direct the trial courts to implement electronic court reporting in California courtrooms. In order to allow an appropriate transition to the use of this technology, we propose that 20 percent of the state’s courtrooms be switched to electronic reporting each year until the phase

in is complete. After factoring in the estimated one-time costs for audio and video equipment and adjusting the results of the above study for inflation, we estimate that the state could save about \$13 million in savings in 2009-10. Upon full implementation, the estimated savings could exceed \$100 million on an annual basis.

Utilize Competitive Bidding For Court Security

Current law requires trial courts to contract with their local sheriff’s offices for court security. Courts thus have little opportunity to influence either the level of security provided or the salaries of security officers. Accordingly, county sheriffs have little incentive to contain costs of the security provided, and the courts have no recourse to ensure that they do. Total security costs have increased from about \$263 million in 1999-00 to about \$496 million in 2007-08, for an average annual increase of 8 percent. While most of these costs are funded each year from the General Fund, a small portion is funded with revenue collected from a \$20 court security fee paid by individuals convicted of a criminal offense (including all non-parking traffic violations).

Governor Proposes Security Fee Increase and Cost Standards. According to the Judicial Council, trial courts currently have a funding shortfall of about \$27 million relative to their security costs. In order to address this shortfall, the administration proposes to increase the court security fee from \$20 to \$27 in order to raise an additional \$27 million annually for these purposes. (Since the security fee was established in 2003, it has not been adjusted to account for increases in court security costs.)

In addition, the administration proposes statutory changes requiring the Judicial Council

to establish statewide standards for security costs and services by July 1, 2010. The intent is for the Judicial Council to adopt standards that would in effect limit court security expenditures. For example, the proposed language specifies that county sheriff's offices would be reimbursed based on average staffing costs as opposed to actual costs, thereby ending the existing incentive for sheriffs to use high-cost deputies for court security assignments.

LAO Alternative. The administration's proposals to address court security costs have merit. The proposed statutory changes would help the courts gain greater control of rapidly escalating security costs, and the additional revenues from the proposed court security fee increase would help to offset costs that might otherwise be borne by the General Fund for these functions. However, in considering the steadily growing cost of court security, the Legislature could also consider an alternative to the establishment of court security cost standards that we believe would result in substantially greater state savings in the long run.

Specifically, instead of adopting new court cost standards, the Legislature could direct the courts to contract on a competitive basis with both public and private security providers and, thus, achieve greater efficiencies and General Fund savings. As we discussed in our *Analysis of the 2008-09 Budget Bill* (please see page D-45), establishing a competitive bidding process would provide a strong incentive for whichever public agency or private firm that won the bid to provide security in the most cost-effective manner possible. Courts would be able to select among the proposals offered to them by different security providers, thus allowing them to select the level of security that best meets their needs.

Depending upon when and how this change was implemented, we estimate that the state could save about \$20 million in 2009-10 and in excess of \$100 million annually within a few years.

REQUIRE STATE AND LOCAL AGENCIES TO PAY FOR LABORATORY SERVICES

The DOJ's Bureau of Forensic Services (BFS) operates 11 full-service criminalistic laboratories throughout the state. These laboratories provide some state and many local agencies with analysis of various types of physical evidence and controlled substances, as well as analysis of materials found at crime scenes. Although existing law permits the department to charge fees for such services, they are generally provided at no charge and instead funded from the General Fund. The Governor's budget proposes that about \$51 million in General Fund support be provided to BFS in 2009-10, including \$43 million for laboratory operations.

As we discussed most recently in our *Analysis of the 2008-09 Budget Bill* (see page D-62), by requiring BFS to charge state and local law enforcement agencies lab fees, the Legislature could reduce General Fund support for BFS due to (1) the creation of new revenue and (2) a reduction that is likely to result in the number of cases processed by the labs. For example, requiring the payment of laboratory fees would provide an incentive for law enforcement agencies to ration their use of state laboratory services by sending only high-priority cases to the state or by using other available entities (such as the Federal Bureau of Investigation and law enforcement agencies in nearby jurisdictions) to assist with testing.

In view of the above, we continue to recommend that the Legislature reduce General Fund support for DOJ by requiring that BFS charge

state and local agencies for the forensic services they provide. Because developing physical evidence through laboratory analysis is part of local law enforcement responsibility for investigating and prosecuting crimes, we believe that the costs for these particular services should be borne by the counties and cities. Upon full implementation of our proposal, the state could realize savings of as much as \$43 million annually, depending on the level of adjustments made to the budgets of other state agencies to account for fees they would pay BFS for laboratory services. We also recommend that any resulting fee structure be designed to effectively capture laboratory costs while still accommodating small agencies dealing with expensive and complex investigations.

FUNDING FOR CORRECTIONAL AND COURT FACILITIES

Use Existing Available Funding to Support CDCR Projects

Infrastructure Prospects (\$10.9 Million). The Governor's budget proposes a total of \$10.9 million in additional General Fund support to continue three previously approved infrastructure projects. These projects involve water and wastewater improvements at Mule Creek State Prison (\$5 million), the Sierra Conservation Center (\$4.9 million), and at the California Rehabilitation Center (\$959,000).

Our analysis indicates that these three projects could be supported with funds already appropriated from the General Fund in Chapter 7, Statutes of 2007 (AB 900, Solorio). Specifically, AB 900 appropriated \$300 million from the General Fund to address sewage, water, electrical, and other types of infrastructure problems at existing prisons to enable them to handle additional

prison capacity. As of October 2008, CDCR has spent only \$46.1 million of that \$300 million, thus leaving a balance of \$253.9 million available to support additional infrastructure projects. Accordingly, we recommend that the Legislature delete the proposed \$10.9 million General Fund appropriation for the above projects and instead fund these projects from the AB 900 General Fund appropriation.

Reentry Site Evaluations (\$5 Million). Assembly Bill 900 also provided \$2.6 billion in lease-revenue bond authority for the construction of "secure reentry facilities." (These are to be secure facilities of up to 500 beds each for inmates within one year of being released or re-released from custody prior to parole into a community.) A number of counties have identified potential sites for locating reentry facilities. The Governor's 2009-10 budget plan provides \$5 million from the General Fund to CDCR to evaluate whether the identified sites are appropriate for construction and to acquire real estate purchase options for the sites.

Similar to our proposal above, we recommend that the Legislature fund these efforts with the AB 900 General Fund appropriation and thereby achieve \$5 million in General Fund savings.

Transfer Funds From SCFCF to Achieve General Fund Savings

The SCFCF, which consists of revenue from various court fees and fines, is the primary funding source for the renovation and replacement of court facilities. For example, the fund was identified as the source of funding for the acquisition, preliminary plans, and working drawings for eight courthouse projects that have been approved by the Legislature. The construction of these projects will be financed with lease-revenue bonds, with

the debt incurred on these bonds paid for from the SCFCF.

As of July 2008, the SCFCF contained a balance of about \$327 million. Based on our analysis of the amount of funds needed to pay the construction debt on the above projects and to support other activities, we believe that the Legislature could use a portion of the \$327 million fund balance to achieve General Fund savings on a one-time basis without delaying planned projects. Specifically, we recommend that the Legislature transfer \$40 million from SCFCF to the General Fund. Our analysis indicates that a fund shift of this magnitude would not affect any legislatively approved courthouse projects.

MODIFYING THE GOVERNOR’S OTHER GENERAL FUND PROPOSALS

In this section, we analyze other major General Fund proposals included in the Governor’s budget for judicial and criminal justice programs and offer recommendations and alternatives to

these proposals in order to assist the Legislature in addressing the state’s massive budget shortfall. We summarize our recommendations in Figure 12 and discuss them in detail below.

Inflation Adjustment Not Warranted In Current Economic Climate

The CDCR’s budget includes a \$93.2 million General Fund augmentation (\$99.7 million all funds) to accommodate a projected increase in costs for goods and services purchased by the department due to inflation. The administration’s estimate assumed that inflation would be 3.2 percent in the budget year. However, more recent projections estimate that inflation will be less than 1 percent in the budget year. Given this nominal projected growth rate, as well as the size of the state’s budget shortfall, we recommend that the Legislature reject the proposed inflationary increase for CDCR to achieve state savings in the amounts cited above. (This is consistent with our recommendation to the Legislature that it reject inflation adjustments included in all other state department budgets.)

Overtime Request Not Fully Justified

The Governor’s budget provides a General Fund augmentation of about \$36 million to CDCR to pay for overtime costs for correctional officers, sergeants, and lieutenants. According to the department, the requested amount would cover the estimated ad-

Figure 12
Summary of LAO Recommended Reductions to Governor’s Other General Fund Proposals

(In Millions)

LAO Recommendation	2009-10
California Department of Corrections and Rehabilitation (CDCR)	
Reject proposal to adjust CDCR’s operating budget for inflation	\$93.2
Reject proposal to increase funding for correctional officer overtime	35.7
Increase federal Workforce Investment Act funding for parolee employment programs	7.2
Withhold action on proposed adjustments to CDCR’s budget for caseload changes until May Revision	—
Reject proposal to shift funding for substance abuse programs from the General Fund to new special fund	—
Judicial Branch	
Delay additional judgeships for at least a year	\$71.4
Department of Justice	
Reject proposal to fund additional positions in the Correctional Writs and Appeals section	\$4.5
Total Reductions	\$212.0

ditional costs related to salary increases provided to these staff since 2000-01. The department argues that its base budget for overtime has remained unchanged over that period, despite a 34 percent base salary increase for these correctional staff. Therefore, CDCR's budget is unable to purchase as many hours of overtime as it could in prior years. So, this request would allow CDCR to purchase an equivalent amount of overtime as in 2000-01.

Inadequate Justification—No Estimate of Actual Resource Need. The department's basic methodology for calculating its request provides a generally reasonable accounting of its loss of buying power for overtime. However, it does not address a more fundamental question: How much funding for overtime does the department really need? The answer to such a question depends on factors such as vacancy rates, utilization of sick leave and vacation, and frequency of operational activities that drive overtime costs (such as for medical transportation of inmates to outside medical facilities). The department's request does not factor in any of these issues.

Not a True Accounting of Base Funding. The department's budget proposal identifies a base level of funding for overtime of \$104.3 million. However, this does not include about \$49 million in additional overtime funding provided by the Legislature since 2004-05 for activities such as medical

guarding and staffing of administrative segregation housing units. The department's total overtime budget for all staff classifications is actually about \$159 million. In addition, the 2004-05 Budget Act included a \$100 million augmentation to CDCR's budget to support an additional 1,239 correctional officers who would be used as relief officers to fill positions that become vacant as a result of sick leave, vacation, and other leaves. The department argued at the time this augmentation was considered by the Legislature that these additional positions would reduce the reliance on overtime.

Despite Additional Resources Provided, Excessive Spending on Overtime Continues. In 2007-08, CDCR spent about \$656 million dollars for overtime (all classifications). About 84 percent (\$551 million) of this spending went for department security-related staff, such as correctional officers, sergeants, and lieutenants, who make up just over half of the department's total positions. Figure 13 shows the department's overtime expenditures for 2007-08 by classification.

Figure 13
Corrections Overtime Spending
By Classification

2007-08
(In Millions)

Classifications	Overtime Spending
Correctional officer, correctional counselor, parole agent	\$456.6
Correctional sergeant and lieutenant, correctional counselor II, parole agent II and III	94.5
Registered nurse	36.2
Licensed vocational nurse, dental assistant, pharmacy technician	16.2
All others	52.8
Total	\$656.3
Existing CDCR overtime budget	-\$158.5
Projected CDCR Overtime Deficit	\$497.8

CDCR = California Department of Corrections and Rehabilitation.

Department Unable to Explain Cause of Excessive Overtime Costs. As shown in Figure 13, the actual CDCR spending level for overtime exceeds the department's base funding level by almost a half billion dollars. However, the department has been unable to identify the key causes for this excessive spending. Although the department reports that it has an automated system in place to track overtime usage and its causes, inconsistencies in how the information has been recorded at each institution make the data unreliable.

Historically, the department's vacancy rate was seen as a key contributor to overtime costs because prison administrators frequently rely on overtime to backfill vacant positions. Over the past couple of years, however, CDCR has been able to considerably reduce its vacancy rate for rank and file security personnel—particularly correctional officers—from about 11 percent in 2005-06 to 6 percent in 2007-08. Despite this sharp reduction in the vacancy rate, the total amount of overtime used by these employees *increased* by 6 percent over the same time period. Consequently, correctional officers (and other rank and file security staff) make an average of about \$16,000 per year in overtime pay.

Based on our discussions with the department, various factors contribute to high overtime usage. These factors include leave utilization rates and the frequency of medical transports and guarding. We were also informed that “shift swapping” is common practice in the prisons. This refers to instances when two employees arrange to exchange shifts so that each employee works a double-shift one day while getting another day off. Both employees earn overtime pay for the additional eight hours worked on their double-shifts (though the total hours worked dur-

ing the week remain 40 for each employee). The department was unable to quantify how much shift-swapping costs the state each year.

Based on data provided to us by the State Controller's Office, overtime usage varies considerably among prisons. Per prison spending for correctional officer overtime in 2007-08 ranged from \$6 million at Mule Creek State Prison to \$22 million at the California Institution for Men. Some of this variation might reasonably be explained by vacancy rates and the differing missions of specific prison facilities. However, our analysis found that the great variation in the use of overtime remained even when controlling for these factors. For example, Chuckawalla Valley State Prison (CVSP) and Avenal State Prison (ASP) are both lower-security institutions that had about 30 vacant correctional officer positions in March 2008. However, overtime spending for correctional officers was more than twice as much at ASP (\$14.5 million) than at CVSP (\$6.7 million). This type of variation suggests that other factors, such as how prison administrators manage their staffs and budget may play a significant role in overtime expenditures.

Legislature Not Provided a Plan for Cost Control. The department's request for additional overtime funding does not include a plan for how it will more effectively control and manage its overtime costs on an ongoing basis. We believe that such a plan is critical given the excessive costs, lack of adequate data tracking, and unexplained variation in spending among prisons. Without better cost management, it is unclear that excessive overtime spending will be restrained in the future.

LAO Recommendation—Reject the Request Due to Lack of Justification. Given the lack of justification and the absence of a cost control

plan, we recommend that the Legislature reject CDCR’s \$36 million overtime proposal. The state’s budget shortfall also makes it difficult to accommodate a General Fund augmentation of this magnitude, particularly when the department has been able to accommodate increased overtime costs in recent years, primarily through savings from department vacancies and reduced program operations. Although our recommendation would mean that some vacancies will go unfilled and certain programs will be scaled back, we find that approving the budget request provides no incentive for CDCR to manage or control its overtime spending. Finally, we would note that if the Legislature approves proposals to significantly reduce the inmate population (such as those proposed by the Governor), the resulting reduction in staff levels may lessen the department’s need for additional overtime resources.

LAO Recommendation—Require Report on Overtime Usage and Cost Controls. Over the years, the Legislature has expressed concerns about CDCR’s excessive overtime costs. However, as discussed above, the department has been unable to provide adequate information regarding the actual magnitude of and primary reasons for these costs. In order to assist the Leg-

islature in addressing the department’s overtime needs, we recommend that the Legislature adopt supplemental report language requiring CDCR to provide a report identifying (1) the extent to which different factors drive overtime costs, (2) an estimate of the department’s actual need for overtime funding, and (3) a plan for how it will control overtime expenditures in the future.

Inmate and Parolee Population Adjustments Will Require Further Review

Caseload Projections Adjusted From Spring.

The Governor’s 2009-10 budget proposal is based on CDCR’s fall 2008 caseload projections. These projections, which reflect revisions to previous projections issued by the department, are summarized in Figure 14. (These are “baseline” projections and do not account for population changes that would occur if, for example, the Legislature approves the Governor’s proposals to significantly reduce the inmate and parole populations.)

Revised Projections Result in Current-Year Costs and Budget-Year Savings. The Governor’s budget includes a net increase of \$27 million in the current year and a net budget-year reduction of \$9 million (all funds), largely related to

**Figure 14
Adult and Juvenile Caseload Projections**

	2008-09			2009-10	
	Budgeted Population ^a	Fall 2008 Projection ^a	Change From 2008-09 Budget	Fall 2008 Projection ^a	Change From 2008-09 Budget
Adult inmates	169,704	170,421	717	170,020	316
Adult parolees	121,576	120,661	-915	117,603	-3,973
Juvenile wards	1,756 ^b	1,717	-39	1,551	-205
Juvenile parolees	1,979	2,096	117	1,744	-235

^a Population figures for adult offenders are as of June 30 of that year. Population figures for juvenile offenders are average daily population.

^b Reflects unallocated budget reduction of \$7.8 million due to lower-than-projected ward population (equivalent of 30 wards).

the projected changes in the adult and juvenile offender caseloads. The department’s caseload-related request also includes funding adjustments related to other housing and supervision related activities, such as the use of contracted facilities. Figure 15 summarizes the funding adjustments included in the Governor’s budget for caseload-related changes.

Actual Adult Populations Trending Higher Than Projected. Over the first six months of the current fiscal year, the adult inmate population has averaged about 700 inmates higher than the current projections. The adult parole population has averaged about 300 parolees higher than projected over the same period. If these trends hold for the remainder of the fiscal year, it would result in additional annual costs of about \$17 million.

Aspects of the Caseload Request May Be Overstated. The department’s total caseload budget request is comprised of 35 separate adjustments. At the time this analysis was prepared, we found that three of these adjustments appear to be overstated.

First, the department requests \$9.4 million in the current and budget years for staff overtime costs at administrative segregation units. However, the department has been unable to provide sufficient justification for why administrative segregation costs have increased. Moreover, the Office of the Inspector General recently released a report finding that CDCR may be overutilizing administrative segregation. The Inspector General estimates that this practice unnecessarily costs the state about \$11 million annually.

Second, CDCR’s request appears to overstate the number of adult sex offenders supervised on parole, potentially by more than 1,000 parolees. We estimate that correcting for the actual parolee sex offender caseload could reduce the department’s budget in each of the current and budget years by about \$13 million, after accounting for costs associated with intensive supervision, Global Positioning Satellite tracking, and community treatment.

Third, CDCR is requesting \$11.5 million and 279 positions in the budget year to accommodate increases in the population of inmates requiring mental health care. While the department is requesting these positions in order to comply with federal court orders in the *Coleman v. Schwarzenegger* legal case, we note that, as of November 2008, the department had nearly 1,000 vacancies in its mental health program. As a result, CDCR proposes to phase in the 279 new positions over the

Figure 15
Summary of CDCR Population Budget Request Changes

(In Millions)

	2008-09	2009-10
Adult Offenders		
State institutions	\$66.0	\$21.3
Board of Parole Hearings	0.8	6.7
Parole services	0.8	0.4
Inmate health care	0.2	12.2
Local assistance	—	15.2
Parole supervision	-18.3	-29.1
Contracted facilities	-25.2	-9.5
Subtotals	(\$24.2)	(\$17.1)
Juvenile Offenders		
DJJ facilities	\$1.8	-\$26.8
DJJ parole	1.1	0.6
Subtotals	(\$2.8)	(\$26.1)
Totals	\$27.0	-\$9.0

CDCR = California Department of Corrections and Rehabilitation;
DJJ = Department of Juvenile Justice.
Detail may not total due to rounding.

next fiscal year. However, it is still unclear at this time if the department could realistically fill these new positions in addition to its 1,000 existing vacancies by June 30, 2010. Moreover, it is unclear how this particular request relates to a separate CDCR budget proposal to fund 135 additional mental health positions at the California Medical Facility at Vacaville. (The department has indicated that it plans to reconcile the two proposals in time for the May Revision.)

At the time of the May Revision, the department will issue updated population projections for the current and budget years, as well as revise its caseload funding request. This could include changes to its funding requests related to administrative segregation, sex offenders on parole, and the mental health program. Therefore, we recommend that the Legislature withhold action on CDCR's caseload request until the May Revision. We will continue to monitor the department's caseload and recommend any changes, if necessary, following our review of the May Revision.

Department Made Little Progress Developing New Budgeting Process. As we discussed in our *Analysis of the 2008-09 Budget Bill* (please see page D-92), CDCR's current process for budgeting caseload changes suffers from several problems. Specifically, the current process is an ineffective approach to identifying the actual budgetary needs of the department, is an inefficient use of department staff time, and fails to provide a transparent budget document for legislative review.

As part of the *2008-09 Budget Act*, the Legislature approved provisional language requiring CDCR to develop a new caseload funding methodology for legislative consideration by January 10, 2009. While the department expresses ongoing support for improving its methodology, it did

not meet the legislative requirement. Moreover, the department indicates that it will not be able to present a new methodology to the Legislature before the end of the current fiscal year. This is primarily because the position assigned to this project remains vacant. We recommend that the Legislature require CDCR to report at budget hearings on its efforts to date in developing an improved caseload budgeting process. We further recommend that the Legislature adopt budget bill language requiring CDCR to improve its budgeting process in the budget year.

Utilize More Federal Funds for Parolee Employment Programs

The CDCR currently operates various employment training and referral programs for adult parolees at a total cost of about \$35 million in the current year. Of this amount, \$9.5 million is funded from federal Workforce Investment Act (WIA) funds. The remainder is funded from the General Fund. For the budget year, the Governor's budget proposes to reduce the amount of WIA funds for parolee employment programs to \$2.3 million in order to augment selected workplace training programs. These proposed actions result in a General Fund cost of \$7.2 million. Given the state's severe fiscal condition, we recommend that the Legislature restore the \$7.2 million in federal WIA funds to CDCR parolee employment programs in the budget year. This redirection will result in an equal amount of General Fund savings.

Substance Abuse Program Fund Shift Provides No Fiscal Benefit

The administration proposes to raise the excise tax on alcoholic beverages by a "nickel-

a-drink” to generate an estimated \$585 million annually in new revenues. Under the administration’s budget plan, these new revenues would be deposited into the General Fund and then would subsequently be transferred into a newly created special fund called the Drug and Alcohol Prevention and Treatment Fund (DAPTF). These funds would be used for the support of alcohol and drug treatment programs administered by the state (and currently paid by the General Fund). Specifically, those programs are administered by the Department of Alcohol and Drug Programs (\$312 million), CDCR (\$219 million), and the Department of Social Services (\$54 million). The funding provided from the DAPTF to CDCR would support existing substance abuse treatment programs for inmates and parolees.

We have several concerns with the administration’s proposal to create a new special fund for drug and alcohol treatment programs. In particular, the proposal limits the Legislature’s ability to set fiscal priorities by dedicating the General Fund revenues from the proposed alcohol tax increase to a specific fund for a specific purpose. Our analysis indicates that this would provide no fiscal benefit and only serve to restrict legislative discretion over the budget. Therefore, we recommend that the Legislature reject the administration’s proposed fund shift as well as the creation of the DAPTF.

Delay Appointment of Additional Judgeships

Budget Plan Adds 100 Judges. Chapter 390, Statutes of 2006 (SB 56, Dunn) and Chapter 722, Statutes of 2007 (AB 159, Jones), authorized 100 new judgeships over a two-year period—2006-07 and 2007-08—based on a workload study undertaken on behalf of the court system

earlier this decade. Fifty judges were to be appointed in the last month of each fiscal year and were to be budgeted accordingly. While the first 50 judgeships established in 2006-07 have been funded, the enacted 2008-09 budget did not provide any funding for the second 50 judgeships that were originally to be established in 2007-08. In view of the state’s General Fund shortfall, the 2008-09 budget plan provided for a one-year delay in the appointment of the second round of 50 judges.

For 2009-10, the Governor’s budget proposes a total of \$71.4 million in General Fund support for (1) the full-year cost of the 50 judgeships that were originally supposed to be established in 2007-08 and (2) the establishment of 50 additional judgeships that would require new legislative authorization. The budget plan further assumes that the Governor will appoint 50 judges on July 1, 2009 and 50 more on June 1, 2010, and budgets these positions accordingly.

Delay Would Create Savings. In view of the state’s massive General Fund shortfall, we recommend that the Legislature again delay the creation of new judgeships for at least a year and thereby achieve \$71.4 million in savings in 2009-10. We note that, even if the Legislature approved all of the funding requested in the budget plan to establish new judgeships on the timetable that is proposed, many of the judgeships would remain unfilled in 2009-10, based on the rate at which the Governor has appointed judges in the past.

Other Means Available to Mitigate Workload Needs. The trial courts have provided some analysis that justifies the establishment of new judgeships on a workload basis. However, we believe delays in the creation of these judgeships must be considered given the state’s financial

condition. In order to accommodate any increases that occur in judicial workload, the Legislature could direct the courts to examine what changes could be made in court operations (including any statutory changes that the Legislature could make to reduce court workload or increase court efficiency). The Legislature should specifically direct the courts to explore and report at budget hearings on these potential strategies:

- ***Use of Video Conferencing Technology.*** Currently, workload in the trial courts varies greatly across the state. In Alpine County, for example, there were 468 filings per judicial position, while in Riverside County there were 6,618 filings per judicial position. Video conferencing equipment in California's courts would enable judges from courts with less workload to hear cases in courts with a much higher workload in a more cost-effective and efficient manner.
- ***Existing Assigned Judges Program (AJP).*** Currently, the Chief Justice of the California Supreme Court can issue temporary judicial assignment orders to active or retired judges and justices to allow them to hear cases as part of AJP. At this time, there are about 385 retired judges currently serving on such assignments. Our analysis indicates that AJP allows the courts to manage increased workload at a much lower cost than the creation of new judgeships.

We recognize that expanding the use of videoconferencing and AJP would require increased state funding, but each approach would be significantly less expensive than creating additional judgeships.

Reject DOJ Writs and Appeals Request

The Correctional Writs and Appeals (CWA) section within DOJ is responsible for representing the state in cases in which prison inmates and parolees challenge various decisions made by the Governor, BPH, and CDCR. The majority of the section's workload involves so-called "habeas corpus" petitions in which inmates seek their release from prison facilities in which they are confined. The section also handles other types of cases that arise while the inmate is incarcerated, such as petitions to deem inmates incapable of making health care decisions for themselves so that they can be administered drugs against their will to improve their mental health.

Governor's Budget Proposes Staffing Increase. The CWA section has experienced an increase in workload since 2006. The 2007–08 budget authorized about 23 positions and \$3.6 million in additional General Fund support for the section to address these workload concerns. Based on the department's projections that the section will continue to see an increasing number of habeas corpus challenges, the Governor's budget for 2009–10 requests an additional 26 positions for the section, including 13 Deputy Attorney General positions costing \$4.5 million from the General Fund.

Workload Projections Appear Overstated. Based on historical workload growth, the department's projections assume that there will be a 25 percent increase in CWA cases in 2008-09 and 2009-10. However, our analysis of workload data provided by the department for the past few years, as well as more recent data from the first six months of 2008-09, suggests that the CWA workload will likely only increase between 10 percent and 17 percent.

Pending Actions Could Reduce Workload.

In addition, we note that several pending actions could reduce future CWA workload. As discussed earlier in this report, a federal three-judge panel could order prison populations to be reduced by thousands of inmates at some point in the near future. Moreover, the Governor's budget plan includes various correctional reforms that would significantly reduce the state's inmate and parolee populations. Such population changes would likely reduce the number of habeas corpus cases filed with DOJ's CWA section.

Implementation of Proposition 9 Could Also Reduce Workload. The CWA is also responsible for representing the state in cases in which inmates sentenced to life with the possibility of parole file a habeas corpus petition in court challenging the decisions made by BPH at their parole consideration hearings. The passage of

Proposition 9 (approved by the voters in November 2008), however, will likely reduce this aspect of CWA's workload. This is because Proposition 9 extends the time (from between 1 and 5 years to between 3 and 15 years) that individuals with a life sentence who are denied parole must generally wait for another parole consideration hearing. As a result, there will be fewer parole hearings held each year, and thus likely fewer habeas corpus appeals made in response to the rulings at such hearings.

LAO Recommendation. In view of the above, we have concluded that the department's budget request is not adequately justified on a workload basis at this time. Accordingly, we recommend that the Legislature reject the budget request to provide 26 additional positions and \$4.5 million to DOJ.

OTHER ISSUES

FEDERAL RECEIVER'S PRISON HEALTH CARE CONSTRUCTION PROGRAM

Background

The federal-court appointed Receiver in the *Plata v. Schwarzenegger* inmate medical care legal case is proposing a health care construction program totaling \$8 billion. The key components of the program include:

- ***Building New Medical Prisons (\$6 Billion).*** The Receiver is requesting \$6 billion to build seven new stand-alone medical prisons on the grounds of existing prisons or other state-owned property. The Receiver indicates that these facilities are necessary in order to accommodate the needs of 10,000 inmates his office

has identified as requiring long-term care (one-half of whom have primarily medical needs, while the other one-half have primarily mental health needs).

- ***Improving Existing Medical Facilities (\$1 Billion).*** In addition, the Receiver is requesting \$1 billion to renovate, upgrade, and expand the existing medical space at 32 state prisons.
- ***Building Other Health-Related Facilities (\$1 Billion).*** The Receiver is also requesting \$1 billion mainly to build new dental facilities as part of the *Perez* court case regarding inmate dental care.

Pending Litigation on Receiver's Proposal. Although most of the above improvements were

included at the Receiver's request in a 2008-09 budget proposal, the Legislature did not approve them. As a result, the Receiver's construction plan is currently the subject of pending federal court litigation initiated by the Receiver to obtain funding for these projects from the state. This past fall, the *Plata* federal court ordered the state to determine a method for transferring to the Receiver \$250 million that was already appropriated from the General Fund. These funds are from the original \$300 million that had been appropriated in AB 900 for a different purpose than proposed by the Receiver—specifically, for infrastructure improvements on the grounds of existing state prisons.

The state, which has contested the Receiver's request, was later granted an emergency motion by the Ninth U.S. Circuit Court of Appeals to stay the federal district court's order pending appeal. The Ninth Circuit is scheduled to hear arguments regarding this matter on February 12.

No Construction Funding in Governor's Budget. The Governor's proposed budget for 2009-10 does not include funding specifically to support the Receiver's health care construction program. (As discussed earlier in this report, the proposed budget does include a \$180.1 million unallocated reduction to the Receiver's operating budget for medical services.)

Issues for Legislative Consideration

Last spring, we conducted an analysis of the Receiver's health care construction program and identified a series of issues for legislative consideration. In general, we found that the Receiver did not provide the Legislature with the basic information ordinarily required to justify capital outlay projects of this magnitude.

Since we completed that analysis, the Receiver has made progress in addressing some of these concerns. For instance, the Receiver released a revised facility plan in November 2008, that identified the number of staff needed (by function and classification) to operate each new health care facility. It is important for the Legislature to understand whether the additional space proposed for the new facilities is appropriately sized for the staff and whether the staffing complement proposed by the Receiver is reasonable.

Despite the Receiver's recent efforts to provide greater detail on operational and fiscal components of his construction program, several issues remain unresolved and merit consideration by the Legislature as it considers future proposals related to the Receiver's program. We summarize these issues in Figure 16 and discuss them below.

Need for 10,000 New Beds Remains Uncertain. The Receiver proposes that 5,000 beds at the stand-alone facilities be developed for chronically ill inmates with medical needs, while another 5,000 beds be built for inmates who

Figure 16

Receiver's Health Care Construction Program—Issues For Legislative Consideration

- ✓ Need for 10,000 new beds remains uncertain.
- ✓ Cost estimates for new facilities remain high.
- ✓ Costs to operate new facilities are significant.
- ✓ Existing funding not used.
- ✓ No formal security assessment by CDCR.
- ✓ Programming needs at facilities undetermined.

primarily have mental health needs. Our analysis indicates that the proposal for 10,000 beds has not been fully justified for the following reasons:

- **Bed Count Based on Outdated Projections.** The proposed 10,000 beds are based upon CDCR's spring 2007 inmate population projections for 2012. However, the most recent projections by CDCR for fall 2008 for that same date indicate that the projected population is now 19,000 lower than when the Receiver's plan was developed almost two years ago. While all out-year projections are subject to uncertainty, this significant reduction in the projected population means that the 10,000 bed assumption should be reevaluated.
- **Pending Actions Could Affect Size of Inmate Population.** As discussed earlier in this report, several pending actions could significantly reduce the state's inmate population. First, the Governor's budget includes various correctional reforms that would reduce the state's average daily prison population by about 16,000 inmates. In addition, a federal three-judge panel—created to decide if overcrowding in the prison system is delaying efforts to improve inmate medical services and mental health care—could order the state to reduce its inmate population by tens of thousands of inmates.
- **Number of Medical Beds Not Supported by Clinical Data.** The 5,000 medical beds identified by the Receiver is based on a medical-bed census and of a sample drawn from general population

housing units at 9 of the state's 33 prison facilities. This sample was used to estimate the number of inmates who could be placed in various levels of care (such as in high acuity medical beds). Thus, the medical bed needs are not based on a clinically identified population.

- **More Mental Health Beds Included Than Proposed to Coleman Court.** Although the Receiver's plan would provide 5,000 new beds for mentally ill inmates, the July 2008 bed plan pending before the *Coleman* court, which is addressing inmate mental health care issues, calls for the development of only 4,422 beds. That means that the Receiver's plans include 578 more beds (at a cost of \$350 million) than would be needed by the year 2017 if the plan now before the *Coleman* court is adopted.

Cost Estimates for New Facilities Remain High. The cost estimates for the Receiver's proposed new prison medical facilities remain significantly higher than we believe is justified, due mainly to the inclusion of excessive "soft costs" and contingencies. In addition to the so-called "hard costs" of construction materials for new buildings, all capital outlay projects also incur what are often termed soft costs for such non-construction purposes as architectural and engineering fees, management fees, and inspection fees. Typically, capital outlay projects are also budgeted for certain contingencies and escalations in order to address unanticipated changes in costs, such as price increases in materials. Our analysis indicates that the soft costs and contingencies built into the Receiver's preliminary estimates for the new prison medical facilities are over bud-

geted. These costs total about \$2.5 billion—the equivalent of about 70 percent of the \$3.5 billion in hard construction costs estimated for them. Under the standards generally used by industry experts and the Department of General Services, the soft costs and contingencies would ordinarily be much lower for such projects—roughly one-half. The final designs for the new facilities are still under development. Thus, the final assignment of soft costs and contingencies for each project has not occurred. As the designs for the proposed facilities are finalized, we will review assigned soft costs and contingencies and advise the Legislature whether they remain excessive.

Costs to Operate New Facilities Are Significant. The Receiver has recently provided information indicating that the annual operating costs (including personnel costs and equipment costs) for the seven new stand-alone medical prisons would be about \$1.4 billion. According to the Receiver, it would cost \$753 million to operate five of the facilities (each with 1,320 inmate patients and a staff of 1,372) and an additional \$637 million to operate the remaining two facilities (each with an average of 1,734 inmates and a staff of 2,634). At the time of our analysis, the Receiver's staff had prepared preliminary estimates indicating that the operating costs for the *new* facilities should be partly offset with as much as \$200 million in savings from having fewer inmates in *existing* facilities. However, this still leaves a very significant potential fiscal impact on CDCR operating costs. Thus, we believe it is important for the Legislature to carefully consider the Receiver's construction package in the context of the future costs to the state to operate the proposed facilities. To the extent that lease-revenue bonds are used to support the Receiver's construction program, the debt service for these

bonds would also be paid from the General Fund and should be considered by the Legislature.

Existing Funding Not Used. If the Legislature decides to fund all or a portion of the Receiver's \$8 billion construction program, we suggest it consider taking advantage of a significant sum of funding that is already available to finance the construction of new medical facilities. Specifically, Chapter 7, discussed above, authorized the issuance of \$1.1 billion in lease-revenue bonds to construct medical, dental, and mental health treatment or housing for inmates, including facility needs driven by settlements and court orders of several federal court cases. Of that \$1.1 billion, CDCR has developed plans to spend about \$257 million on various medical and mental health facilities, leaving \$886 million in lease-revenue bond financing potentially available for the Receiver's construction projects. Our analysis indicates that this level of funding would be sufficient for the Receiver to build one new medical facility and several improvement projects at existing prisons.

No Formal Security Assessment by CDCR. The Receiver contends that the facilities will be operated in a safe and secure manner. The Receiver has retained his own experts on security in his facility planning. Although current CDCR staff have been invited to provide advice and input regarding the planning of the Receiver's health care facilities, they have not completed a formal review of various security-design issues. Given that the department would eventually be responsible for managing the facilities once the Receivership ends, it is important that CDCR security experts carefully and objectively assess the design and security plans for the facilities, and that this formal and independent assessment be provided to the Legislature for its consideration.

Programming Needs at Facilities Undetermined. Although the Receiver's revised draft facility plan (dated November 2008) included an estimate of the number of staff needed at each facility and the location of these staff, it did not specify the type, level, and frequency of services that these staff would provide to inmate patients at the facilities. Detailed information about these matters is necessary for the Legislature to better understand the health care services that would be delivered at these facilities, and to determine the appropriate complement of staff that should be provided at them.

Conclusion

At the time we prepared this analysis, litigation over the Receiver's efforts to secure funding for his proposed \$8 billion prison medical facility construction program remained pending. We will continue to monitor these events as well as the information that the Receiver releases to the Legislature and the public pertaining to his construction plans.

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