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SERVICE

The 2016-17 Budget:
**Governor's Criminal
Justice Proposals**



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LAO 

2016-17 BUDGET

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2016-17 BUDGET

EXECUTIVE SUMMARY

Overview. The Governor's budget proposes a total of \$15.6 billion from various fund sources for judicial and criminal justice programs in 2016-17. This is an increase of \$582 million, or 3.9 percent, above estimated expenditures for the current year. The budget includes General Fund support for judicial and criminal justice programs of \$12.6 billion in 2016-17, which is an increase of \$571 million, or 4.7 percent, over the current-year level. In this report, we assess many of the Governor's budget proposals in the judicial and criminal justice area and recommend various changes. Below, we summarize our major recommendations, and provide a complete listing of our recommendations at the end of the report.

Criminal Fine and Fee Revenue. The Governor's budget includes various proposals to address operational shortfalls in several state funds due to declines in criminal fine and fee revenue. These include expenditure reductions, cost shifts to the General Fund and other funds, and cash flow loans from the General Fund. Given that the various state funds receiving fine and fee revenue have been facing financial difficulty for years, the Legislature has few options beyond approving the Governor's proposed short-term solutions for addressing the operational shortfalls and insolvencies in these state funds in 2016-17. However, to permanently address the recurring problem, we recommend the Legislature implement ongoing, systemic changes to the state's criminal fine and fee system. Specifically, we recommend the Legislature (1) reevaluate the overall structure of the fine and fee system, (2) increase legislative control over the use of criminal fine and fee revenue, and (3) restructure the criminal fine and fee collection process.

Plans for Complying With Court-Ordered Population Cap. In recent years, the state has been under a federal court order to reduce overcrowding in the 34 state prisons operated by the California Department of Corrections and Rehabilitation (CDCR). Chapter 310 of 2013 (SB 105, Steinberg) authorized CDCR to enter into contracts to secure a sufficient amount of inmate housing to meet the court-ordered population cap and to avoid the early release of inmates which might otherwise be necessary to comply with the order. This authority is currently set to expire on December 31, 2016. The administration proposes extending the authority to December 31, 2020. The Governor's budget includes \$259 million from the General Fund to maintain about 9,000 contract beds in 2016-17. In addition, the budget assumes the continued operation of the California Rehabilitation Center (CRC) in Norco, despite the fact that the administration has indicated that closing the facility is a priority.

We recommend that the Legislature approve the administration's requested extension of authority to procure contract beds as it is very likely that the administration will need to continue utilizing contract beds over the next several years in order to maintain compliance with the prison population cap. We also recommend that the Legislature direct the administration to close CRC because its capacity is not necessarily needed to comply with the federal court-ordered prison population cap, and its closure would result in significant ongoing General Fund savings.

Inmate Rehabilitation Proposals. The Governor's budget includes \$10.5 million to expand the availability of rehabilitation programs for long-term offenders. Research shows that rehabilitative programs are most effective when they target offenders who have been assessed as a

moderate-to-high risk to reoffend. However, only a portion of the funding proposed for long-term offenders would support higher-risk offenders, even though many of these offenders are currently not receiving rehabilitative programming. Accordingly, we recommend that the Legislature approve only the portion of the proposal that increases rehabilitative programming opportunities for higher-risk offenders and reject the remainder of the proposal that would exclusively target long-term offenders, which tend to be of low risk.

The budget also proposes \$32 million to expand the Male Community Reentry Program, which houses inmates nearing release in residential facilities and provides them with rehabilitative programming. We recommend the Legislature reject the proposal, as it is unlikely to be the most cost-effective recidivism reduction strategy given that it does not target higher-risk offenders and is very costly.

Trial Courts. The Governor's budget proposes a \$20 million General Fund base augmentation for trial court operations. The administration has not provided sufficient information to justify why the trial courts need this additional funding. For example, it is unclear what specific needs at the trial courts are not currently being met that necessitate an augmentation. Moreover, we note that the Governor's budget already includes \$72 million for workload changes, increased costs, and the expansion of specific services—making it even less clear why the proposed \$20 million in resources is needed for trial court operations. Accordingly, we recommend rejecting the proposal.

County Jail Grants. The Governor's budget proposes one-time funding of \$250 million from the General Fund for jail construction. However, the administration has not provided a detailed analysis regarding the magnitude of either programming or capacity needs or the extent to which the proposed funding would meet these needs. For example, the administration has not provided an estimate of the number of additional jail beds counties need or the amount of additional rehabilitation program or health service space needed that takes into account (1) the impact of Proposition 47 or (2) the extent to which eligible counties have pursued alternatives that could reduce or eliminate the need for state funding. Accordingly, we recommend the Legislature reject the Governor's proposal.

CRIMINAL JUSTICE BUDGET OVERVIEW

The primary goal of California’s criminal justice system is to provide public safety by deterring and preventing crime, punishing individuals who commit crime, and reintegrating criminals back into the community. The state’s major criminal justice programs include the court system, CDCR, and the Department of Justice. The Governor’s budget proposes total expenditures of over \$15 billion for judicial and criminal justice programs. Below, we describe recent trends in state spending on criminal justice and provide an overview of the major changes in the Governor’s proposed budget for criminal justice programs in 2016-17.

State Expenditure Trends

Over the past decade, total state expenditures on criminal justice programs has varied. As shown in Figure 1, criminal justice spending declined between 2010-11 and 2012-13, primarily due to two factors. First, in 2011 the state realigned various criminal justice responsibilities to the counties, including the responsibility for certain low-level felony offenders. This realignment reduced state correctional spending. Second, the judicial branch—particularly the trial courts—received significant one-time and ongoing General Fund reductions.

Since 2012-13, overall state spending on criminal justice programs has increased. This was largely due to additional funding for CDCR and the trial courts. For example, increased CDCR expenditures resulted from (1) increases in employee compensation costs, (2) the activation of a new health care facility, and (3) costs associated with increasing capacity to reduce prison overcrowding. During this same time period, General Fund augmentations were provided to the trial courts to partially offset reductions made in prior years.

Governor’s Budget Proposals

As shown in Figure 2 (see next page), the Governor’s 2016-17 budget includes a total of \$15.6 billion from all fund sources for judicial and criminal justice programs. This is an increase of \$582 million (3.9 percent) over the revised 2015-16 level of spending. General Fund spending is proposed to be \$12.6 billion in 2016-17, which

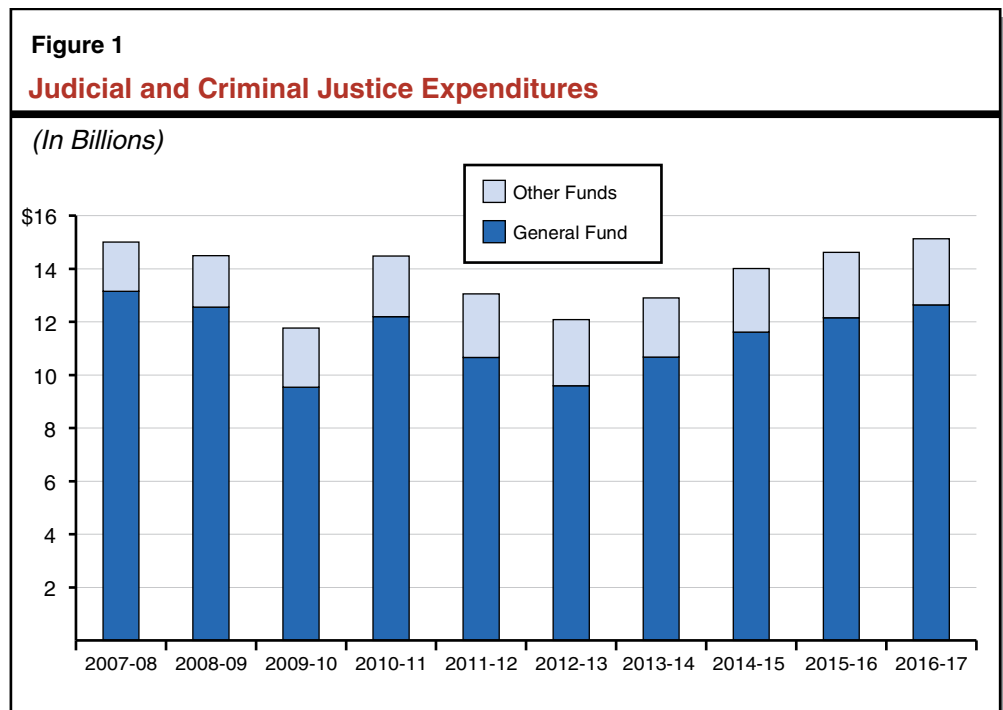


Figure 2**Judicial and Criminal Justice Budget Summary***(Dollars in Millions)*

	Actual 2014-15	Estimated 2015-16	Proposed 2016-17	Change From 2015-16	
				Actual	Percent
Department of Corrections and Rehabilitation	\$10,077	\$10,395	\$10,540	\$145	1.4%
General Fund ^a	9,804	10,097	10,273	176	1.7
Special and other funds	273	299	267	-32	-10.6
Judicial Branch	\$3,229	\$3,429	\$3,604	\$175	5.1%
General Fund	1,404	1,598	1,702	104	6.5
Special and other funds	1,825	1,831	1,902	71	3.9
Department of Justice	\$724	\$804	\$826	\$22	2.7%
General Fund	190	206	217	11	5.4
Special and other funds	535	598	609	11	1.8
Board of State and Community Corrections	\$128	\$185	\$418	\$233	126.3%
General Fund	68	68	329	261	384.6
Special and other funds	59	117	89	-28	-23.9
Other Departments^b	\$220	\$241	\$248	\$7	2.8%
General Fund	62	61	80	19	30.7
Special and other funds	158	180	168	-12	-6.7
Totals, All Departments	\$14,378	\$15,054	\$15,636	\$582	3.9%
General Fund	11,528	12,029	12,601	571	4.7
Special and other funds	2,850	3,025	3,036	10	0.3

^a Does not include revenues to General Fund to offset corrections spending from the federal State Criminal Alien Assistance Program.

^b Includes Office the Inspector General, Commission on Judicial Performance, Victim Compensation and Government Claims Board, Commission on Peace Officer Standards and Training, State Public Defender, funds provided for trial court security, and debt service on general obligation bonds.

Note: Detail may not total due to rounding.

represents an increase of \$571 million (4.7 percent) above the revised 2015-16 level.

Major Budget Proposals. The most significant piece of new spending included in the Governor's budget is a proposal to provide a one-time General Fund augmentation of \$250 million to the Board of State and Community Corrections (BSCC) for jail construction. The BSCC would be responsible for allocating these funds to counties. In addition, the budget includes various augmentations for CDCR and the judicial branch. For example,

the Governor's budget includes (1) \$58 million to expand inmate rehabilitation programs, (2) \$30 million for a new Court Innovation Grant program for trial courts, (3) \$21 million for court workload associated with Proposition 47, and (4) a \$20 million base augmentation for the trial courts. (Please see our recent report, *The 2016-17 Budget: Fiscal Impacts of Proposition 47*, for more detailed information regarding the fiscal impact of Proposition 47.)

CROSS CUTTING ISSUE: CRIMINAL FINE AND FEE REVENUE

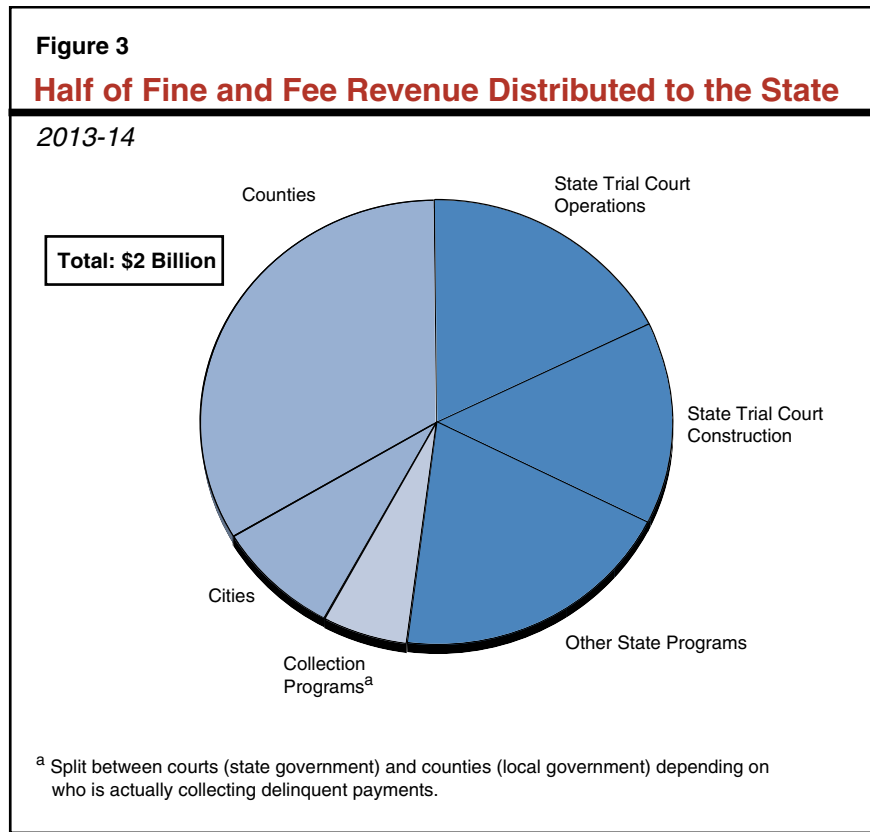
LAO Bottom Line. Given that various state funds receiving criminal fine and fee revenue have been facing financial difficulty for years, the Legislature has few options beyond approving the Governor’s proposed short-term solutions for addressing the operational shortfalls and insolvency in these state funds in 2016-17. However, to permanently address the recurring problem, we recommend the Legislature implement ongoing, systemic changes to the state’s criminal fine and fee system. Specifically, we recommend the Legislature (1) reevaluate the overall structure of the fine and fee system, (2) increase legislative control over the use of criminal fine and fee revenue, and (3) restructure the criminal fine and fee collection process.

both courts and counties—collect payments from individuals and then distribute them to numerous funds to support various state and local government programs and services. State law dictates a very complex process for the distribution of fine and fee revenue. The complexity arises from the numerous statutes that specify (1) the order in which the payments collected from an individual are to be used to satisfy the various fines and fees and (2) how the revenue from each of the individual fines and fees will be distributed among various state and local funds.

Use of Criminal Fine and Fee Revenue. In 2013-14, the total amount of criminal fine and fee revenue distributed to state and local governments totaled nearly \$2 billion. As shown in Figure 3, the

Background

Collection of Criminal Fines and Fees. Upon conviction of a criminal offense (including traffic violations), individuals are typically required by the court to pay various fines and fees as part of their punishment. The total amount owed by an individual consists of a base fine specified in statute for each criminal offense, as well as various additional charges (such as other fines, fees, forfeitures, penalty surcharges, assessments, and restitution orders). Collection programs—operated by



state received a little over \$1 billion (or roughly half) of this revenue. Of this amount, a little less than two-thirds went to support trial court operations and construction. The remainder supported various other state programs, such as victim-witness assistance, peace officer training, and the state’s DNA laboratory. Additionally, in accordance with state law, collection programs received \$114 million (or 6 percent) for certain operational costs related to the collection of delinquent payments. Finally, local governments received the remaining \$820 million (or 42 percent) in distributed revenue. Of this amount, \$657 million (or 80 percent) went to the counties.

Funds Facing Persistent Operational Shortfalls From Declines in Fine and Fee Revenue.

According to available data, the total amount of fine and fee revenue distributed to state and local governments has declined since 2010-11. As a result, a number of state funds receiving such revenue have been in operational shortfall for years—meaning annual expenditures exceed

annual revenues—and some have become insolvent. Figure 4 lists the 11 state funds facing shortfalls, including 6 that are currently insolvent. As shown in the figure, the state has adopted a number of short-term solutions in recent years to help address the shortfalls facing some of these funds. These actions include: (1) requiring programs to make expenditure reductions, (2) generating more revenue, and (3) shifting costs to the General Fund or other state funds.

For example, the Legislature enacted an 18-month traffic amnesty program last year to increase revenues to address the insolvency of two funds—the Peace Officers Training Fund (POTF) and the Corrections Training Fund (CTF). The amnesty program reduces the debt owed for qualifying traffic offenses if individuals pay the reduced amount in full or enroll in a payment plan. All revenues from the program are to be distributed in accordance with state law except for the portion deposited into the State Penalty Fund (SPF). Instead of distributing revenues from the SPF to nine state

Figure 4
Summary of State Funds Facing Shortfalls Related to Declines in Criminal Fine and Fee Revenue

Fund	Short-Term Solutions Proposed or Adopted			
	Reduce Expenditures	Increase Revenues	Shift Costs to General Fund	Shift Costs to Other Funds
Currently Insolvent				
Corrections Training Fund	x	x	—	x
Improvement and Modernization Fund ^a	x	—	x	—
Peace Officers Training Fund	x	x	x	x
Traumatic Brain Injury Fund	—	—	—	x
Trial Court Trust Fund ^a	—	—	x	—
Victim-Witness Assistance Fund	—	—	—	x
Facing Immediate Insolvency				
DNA Identification Fund	x	x	x	—
Driver Training Penalty Assessment Fund	x	—	—	—
Potentially Insolvent in Future				
Immediate and Critical Needs Account ^a	x	—	—	—
Restitution Fund	x	—	—	—
State Court Facilities Construction Fund ^a	—	—	—	—

^a Judicial branch special fund.

funds as required under state law, all revenues from the amnesty program will instead be distributed only to the POTF and CTF.

Governor's Proposals

The Governor's budget includes various proposals to address operational shortfalls from declines in criminal fine and fee revenue. The Governor's proposals address all of the funds that are listed as currently insolvent or facing immediate insolvency in Figure 4. (As discussed below, the budget does not address those funds that could potentially become insolvent in the future.) Specifically, the administration proposes the following actions:

- Expenditure Reductions.** The Governor's budget proposes reducing expenditures from CTF by \$490,000 and from the DNA Identification Fund by \$6 million. The budget proposes provisional language to allow the Department of Finance to increase expenditures from the DNA Identification Fund to the extent more revenues are deposited into the fund than currently estimated. Additionally, due to a decline in revenue to the Driver Training Penalty Assessment Fund, the Governor's budget proposes to reduce the amount transferred from the fund to POTF by \$3 million.
- Cost Shifts.** The Governor's budget proposes to shift nearly \$31 million in costs from various funds that receive fine and fee revenue to the General Fund. Specifically, the budget proposes to shift costs of \$13 million from POTF, \$9 million from the Trial Court Trust Fund, and \$9 million from the Improvement and Modernization Fund (IMF). The budget also shifts about \$4 million in costs from the Victim-Witness Assistance Fund and \$360,000 in costs from the Traumatic Brain Injury Fund to other special funds.
- Cash Flow Loans.** The Governor's budget proposes budget bill language to authorize short-term cash flow loans from the General Fund to POTF and CTF related to the 18-month amnesty program enacted last year. These loans are intended to be used to cover revenue shortfalls in the event that there is a delay in the receipt of revenues from the amnesty program. However, if amnesty revenues come in below expectations, these loans could effectively shift additional costs to the General Fund.

LAO Assessment

The Governor's budget takes positive steps towards preventing funds from becoming insolvent due to the decline in criminal fine and fee revenue. However, the budget only includes short-term solutions to address a continuing problem. Without broader changes to the overall fine and fee system, the state will likely need to repeatedly identify and implement short-term solutions in future years.

Governor's Proposals Provide Only Short-Term, Partial Solutions

The Governor's budget only provides short-term solutions to address the ongoing problem of declining fine and fee revenue. For example, the budget proposes shifting nearly \$31 million in costs from various funds to the General Fund—which does not address their ongoing solvency. Moreover, the Governor's proposals only help address some of the state funds that are facing shortfalls or insolvency. The budget does not have proposals for other funds that will be facing shortfalls or insolvency in the future. For example, according to judicial branch estimates, absent any expenditure reductions, the State Court Facilities Construction Fund is estimated to become insolvent in 2022-23 with a projected

deficit of \$29.5 million. This deficit would continue to grow and would reach \$540 million by the end of the judicial branch's forecast period in 2037-38.

Improvements Needed to Overall Fine and Fee System

The key shortcoming of the Governor's proposals is that they fail to address the structural problems with the fine and fee system. These issues are described in two reports on the fine and fee system that we have released over the past couple of years.

In our January 2016 report, *Improving California's Criminal Fine and Fee System*, we identified four major problems with how fines and fees are assessed and distributed. First, we found that the existing system distributes fine and fee revenue based on various statutory formulas, making it difficult for the Legislature to control how such revenue is used. This is because the current formula-based system limits the information available to guide legislative decisions, makes it difficult for the Legislature to reprioritize the use of such revenue, and allows administering entities to maintain significant control over the use of funds. Second, the existing system distributes revenue in a manner that is not generally based on program need—thereby resulting in programs receiving more or less funding than needed. Third, the complexity of the existing system makes it difficult for collection programs to accurately distribute fine and fee revenue. Finally, a lack of complete and accurate data on fine and fee collections and distributions makes it difficult for the Legislature to conduct fiscal oversight.

Additionally, in our November 2014 report, *Restructuring the Court-Ordered Debt Collection Process*, we identified a number of weaknesses in the fine and fee collection process. These weaknesses included a lack of clear fiscal incentives

for programs to collect debt in a cost-effective manner or to maximize the total amount of debt they collect as well as a lack of complete, consistent, and accurate reporting on how programs collect debt to allow for comprehensive evaluations of program performance.

LAO Recommendations

The Governor's proposed short-term solutions address the operational shortfalls and fund insolvency in the near-term. Given that these funds have been facing financial difficulty for years, the Legislature has few options beyond approving the Governor's proposals. However, the proposed budget fails to provide longer-lasting solutions. For example, the administration's approach to addressing the POTF insolvency has forced the Legislature to identify and implement short-term solutions for the fund annually since 2014-15. Thus, we recommend the Legislature focus on addressing the systemic problems with the state's criminal fine and fee system we identified above by taking a number of actions to improve the overall system.

Improve Overall Fine and Fee System. To address the systemic problems with the state's criminal fine and fee system, we recommend that the Legislature improve the state's process for assessing and distributing criminal fine and fee revenue, as outlined in our January 2016 report. Specifically, we recommend:

- **Reevaluating Overall Structure of System.** First, we recommend that the Legislature reevaluate the overall structure of the fine and fee system to ensure the system is consistent with its goals. As part of this process, the Legislature will want to determine the specific goals of the system, whether ability to pay should be incorporated into the system, what should be the consequences for failing to pay, and whether fines and fees should be regularly adjusted.

- ***Increase Legislative Control Over Fine and Fee Revenue.*** Second, we recommend the Legislature increase its control over the use of criminal fine and fee revenue to ensure that its uses are in line with legislative priorities by (1) requiring that most criminal fine and fee revenue be deposited in the state General Fund, (2) consolidating most fines and fees into a single, statewide charge, (3) evaluating the existing programs supported by fine and fee revenues, and (4) mitigating the impacts of potential changes to the fine and fee system on local governments.

To complement these recommended changes to the assessment and distribution of criminal fine and fee revenue, we also recommend that the Legislature restructure the criminal fine and fee collection process by implementing the recommendations outlined in our November 2014 report. In particular, we recommend (1) implementing a pilot program that would provide collection programs with an incentive to maximize the amount of debt they collect in a cost-effective manner and (2) improving data collection and measurements of performance. Such a restructuring would maximize the amount of revenue available for deposit into the General Fund. This would help mitigate any potential impacts from continued or further declines in fine and fee revenue.

Improving System Would Eliminate Need to Repeatedly Identify Short-Term Funding Solutions. Our recommendations for improving the overall structure of the fine and fee system focuses on structural, ongoing changes that eliminate the need to repeatedly identify short-term solutions to address shortfalls and insolvency in funds supported by fines and fees. Instead, the Legislature would provide those programs it believes are statewide priorities with the funding level it believes is necessary to deliver services at a

desired level, irrespective of fluctuations in fine and fee revenue. We provide two examples below.

- ***IMF.*** As discussed above, the Governor proposes shifting about \$9 million in costs from the IMF to the General Fund in order to help the IMF remain solvent. Specifically, these are costs related to the Phoenix project, which is the judicial branch's statewide financial system. Under our recommended changes, the IMF would no longer receive fine and fee revenue based on existing statutory formulas. Instead, these revenues would be deposited in the General Fund. In addition, the Legislature would review the programs currently supported by the IMF to determine whether they merit support relative to other General Fund priorities. Those that are determined to be a priority would receive whatever level of General Fund support the Legislature determined was appropriate. For programs that the Legislature does not feel are a priority for support, it could either (1) eliminate the program or (2) seek alternative fund sources. For example, it could require the trial courts to pay for the Phoenix project from the Trial Court Trust Fund.
- ***POTF and CTF.*** Currently, the Commission on Peace Officers Standards and Training (POST) and the Standards and Training for Local Corrections Program in BSCC receive funding from POTF and CTF respectively. Under our approach, POST and BSCC would no longer be supported by fine and fee revenue. Instead, the Legislature would first determine whether these programs merit General Fund support. To the extent the Legislature decided to fund these programs, it would then direct POST and BSCC to provide it with information to help assess how much General Fund

support is appropriate. For example, the Legislature could direct both programs and their stakeholders (such as local law enforcement) to report on options for

reducing local law enforcement training costs, such as by identifying unnecessary or low-priority training for potential elimination.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Overview

The CDCR is responsible for the incarceration of adult felons, including the provision of training, education, and health care services. As of February 3, 2016, CDCR housed about 127,000 adult inmates in the state’s prison system. Most of these inmates are housed in the state’s 35 prisons and 43 conservation camps. About 9,000 inmates are housed in either in-state or out-of-state contracted prisons. The department also supervises and treats about 44,000 adult parolees and is responsible for the apprehension of those parolees who commit new offenses or parole violations. In addition, about 700 juvenile offenders are housed in facilities operated by CDCR’s Division of Juvenile Justice, which includes three facilities and one conservation camp.

The Governor’s budget proposes total expenditures of \$10.5 billion (\$10.3 billion General Fund) for CDCR operations in 2016-17. Figure 5 shows the total operating expenditures estimated in the Governor’s budget for the current year and proposed for the budget year. As the figure indicates, the proposed spending level is an increase of \$145 million, or about

1 percent, from the revised 2015-16 spending level. This increase reflects higher costs related to (1) various proposals to expand rehabilitation programs (2) debt-service payments on lease revenue bonds issued for prison construction, and (3) inmate population-related adjustments. This additional spending is partially offset by (1) reduced spending for contract beds, (2) savings from the conversion of segregated housing units to general population housing units, and (3) reductions in the parolee population.

Adult Prison Population Projected to Increase Slightly and Parolee Population Projected to Decline

LAO Bottom Line. We withhold recommendation on the administration’s adult population funding request until the May Revision.

Figure 5
Total Expenditures for the California Department of Corrections and Rehabilitation
(Dollars in Millions)

	2014-15 Actual	2015-16 Estimated	2016-17 Proposed	Change From 2015-16	
				Amount	Percent
Prisons	\$8,956	\$9,138	\$9,278	\$140	2%
Adult parole	450	554	554	—	—
Administration	461	473	473	—	—
Juvenile institutions	173	186	188	2	1
Board of Parole Hearings	37	44	48	4	10
Totals	\$10,077	\$10,395	\$10,540	\$145	1%

However, we recommend that the Legislature direct CDCR to provide it with estimates of savings from the delayed activation of the infill facility at R.J. Donovan prison no later than the April 1 so that these adjustments can be incorporated into the department’s budget.

Background

The average daily prison population is projected to be about 128,800 inmates in 2016-17, an increase of about 1,200 inmates (1 percent) from the estimated current-year level. This increase is primarily due to the fact that CDCR is projecting a slight increase in the number of inmates sentenced to prison by the courts. The average daily parole population is projected to be about 42,600 in 2016-17, a decrease of about 1,400 parolees (3 percent) from the estimated current-year level. This decrease is due to a decline in the number of individuals being paroled after being resentenced under Proposition 47.

Governor’s Proposal

As part of the Governor’s January budget proposal each year, the administration requests modifications to CDCR’s budget based on projected changes in the prison and parole populations in the current and budget years. The administration then adjusts these requests each spring as part of the May Revision based on updated projections of these populations. The adjustments are made both on the overall population of offenders and various subpopulations (such

as inmates housed in contract facilities and sex offenders on parole).

As can be seen in Figure 6, the administration proposes a net decrease of \$700,000 in the current year and a net increase of \$14.1 million in the budget year. The current-year net decrease in costs is primarily due to a projected decline in the department’s utilization of contract beds. These savings are mostly offset by costs related to a projected increase in the number of inmates in state operated prisons. The budget-year net increase in costs is largely related to (1) adjustments to health care staff and (2) a projected increase in the number of inmates in state operated prisons. These increases are partly offset by a projected reduction in the utilization of contract beds.

Adjustments Do Not Reflect Delayed Infill Activation

The *2015-16 Budget Act* included \$14.6 million for the activation of a new infill facility at R.J. Donovan prison in San Diego based on an assumption that the facility would be opened in February 2016. The department indicates that due to construction delays the activation will now occur in

Figure 6		
Governor’s Population-Related Proposals		
<i>(Dollars in Millions)</i>		
	2015-16	2016-17
Population Assumptions		
Prison Population— <i>2015-16 Budget Act</i>	129,581	129,581
Prison Population—Governor’s 2016-17 budget	127,681	128,834
Prison Population Adjustments	-1,900	-747
Parole Population Assumptions		
Parole Population— <i>2015-16 Budget Act</i>	45,047	45,047
Parole Population—Governor’s 2016-17 budget	43,960	42,571
Parole Population Adjustments	-1,087	-2,476
Budget Adjustments		
Health care staffing	\$1.0	\$25.6
Inmate related	2.2	15.5
Contract bed	-3.4	-27.1
Other	-0.5	0.1
Proposed Budget Adjustments	-\$0.7	\$14.1

May 2016. This should reduce workload for CDCR in 2015-16 as the department will need the correctional officers that will be assigned to the prison for three fewer months than previously assumed. However, the administration's requested budget for CDCR does not reflect any savings from such workload reductions. We note that the department informs us that it has placed a freeze on hiring custody staff for the facility and that it is currently developing an estimate of the resulting savings.

LAO Recommendation

We withhold recommendation on the administration's adult population funding request until the May Revision. We will continue to monitor CDCR's populations and make recommendations based on the administration's revised population projections and budget adjustments included in the May Revision. However, we recommend that the Legislature direct the department to provide it with estimates of savings from the delayed activation of the infill facility at R.J. Donovan prison no later than the April 1 so that these adjustments can be incorporated into the department's budget.

Plans for Complying With Court-Ordered Population Cap

LAO Bottom Line. We recommend that the Legislature approve the administration's requested extension of authority to procure contract beds as it is very likely that the administration will need to continue utilizing contract beds over the next several years in order to maintain compliance with the prison population cap. We also recommend that the Legislature direct the administration to close the California Rehabilitation Center (CRC) in Norco because its capacity is not necessarily needed to comply with the federal court-ordered prison population cap and its closure would result in significant ongoing General Fund savings.

Background

Federal Court Orders Prison Population Cap. In recent years, the state has been under a federal court order to reduce overcrowding in the 34 state prisons operated by CDCR. Specifically, the court found that prison overcrowding was the primary reason the state was unable to provide inmates with constitutionally adequate health care and ordered the state to reduce its prison population to 137.5 percent of design capacity by February 28, 2016. (Design capacity generally refers to the number of beds CDCR would operate if it housed only one inmate per cell and did not use temporary beds, such as housing inmates in gyms. Inmates housed in contract facilities or fire camps are not counted toward the overcrowding limit. For more information regarding the federal court-ordered population cap, please see our report, *The 2014-15 Budget: Administration's Response to Prison Overcrowding Order*.)

CDCR Has Maintained Buffer to Avoid Exceeding Population Cap. The court also appointed a compliance officer. If the prison population exceeds the population cap at any point in time, the compliance officer is authorized to order the release of the number of inmates required to meet the cap. In order to ensure that such releases do not occur if the prison population increases unexpectedly, CDCR has intentionally reduced the prison population below the court-required cap by thousands of inmates. This gap between the number of inmates CDCR is allowed to house in its 34 prisons and the number it actually houses acts as a "buffer" against the population cap.

Prison Population Currently Below Cap. As of January 2016, the inmate population in the state's prisons was about 900 inmates below the February 2016 cap. However, this buffer is expected to grow substantially with the activation of three new infill facilities that will add about 2,400 beds in the

spring of 2016, capable of holding 3,300 inmates if crowded to 137.5 percent of design capacity. The court has not yet determined how it will count this new capacity towards calculating the prison population cap. For example, it is not clear whether the court would consider the new cap to be 3,300 inmates higher as soon as these facilities are activated, or if it would not do so until these facilities are actually filled with inmates. However, we assume the court will count these beds in the same way it has counted additional capacity from the activation of the California Health Care Facility in Stockton. Accordingly, we assume these 2,400 beds would allow CDCR to house an additional 3,300 inmates in the state's 34 prisons as soon as they are activated. As we discuss below, the Governor's budget projects that the state will maintain compliance with the court-ordered population cap throughout 2016-17.

Administration's Plan to Comply With Prison Population Cap

The Governor's proposed budget for CDCR assumes a total inmate population of about 128,800 in 2016-17 and proposes to house about 112,900 of these inmates in the state's 34 prisons and about 15,900 of these inmates outside of the 34 prisons (such as in contract facilities and fire camps). Given the design capacity of the 34 prisons, the department could house up to 117,000 inmates in state prisons under the court order. Accordingly, the Governor's proposed budget for CDCR would provide sufficient prison capacity to maintain an average buffer of about 4,100 inmates in 2016-17. The administration's plan relies on two key proposals to achieve a buffer of this size: (1) the utilization of contract prison beds and (2) the continued operation of CRC. These proposals are described below.

Proposed Extension of Authority to Procure Contract Bed Capacity. Chapter 310 of 2013

(SB 105, Steinberg) authorized CDCR to enter into contracts to secure a sufficient amount of inmate housing to meet the court-ordered population cap and to avoid the early release of inmates which might otherwise be necessary to comply with the order. This authority is currently set to expire on December 31, 2016. The administration proposes extending the authority to December 31, 2020. The Governor's budget includes \$259 million from the General Fund to maintain about 9,000 contract beds in 2016-17. (This does not include about 2,400 beds at California City prison which is leased from a private provider but staffed and operated by CDCR.) This represents a decrease of about 8 percent from the revised current-year funding level of \$283 million for about 10,000 contract beds. As mentioned above, inmates housed in contract beds are not counted towards the population cap.

Budget Assumes Continuing Operation of CRC. The administration's plan for reorganizing CDCR following the 2011 realignment of adult offenders called for the closure of CRC by 2015, due to its age and deteriorating infrastructure. However, Chapter 310 authorized the continued operation of CRC because it was determined that the capacity would be needed to comply with the population cap. The prison has a design capacity of about 2,500 (allowing the state to house 3,400 inmates at the overcrowding limit of 137.5 percent) and currently houses about 2,900 inmates. As part of the *2015-16 Budget Act*, the Legislature required the administration to provide an updated comprehensive plan for the state prison system, including a permanent solution to the decaying infrastructure at CRC. The administration's plan states that closing CRC is a priority but that the capacity will be needed for the next few years in order to maintain compliance with the prison population cap. The Governor's budget includes \$6 million for special repairs at CRC to address some of the prison's most critical infrastructure

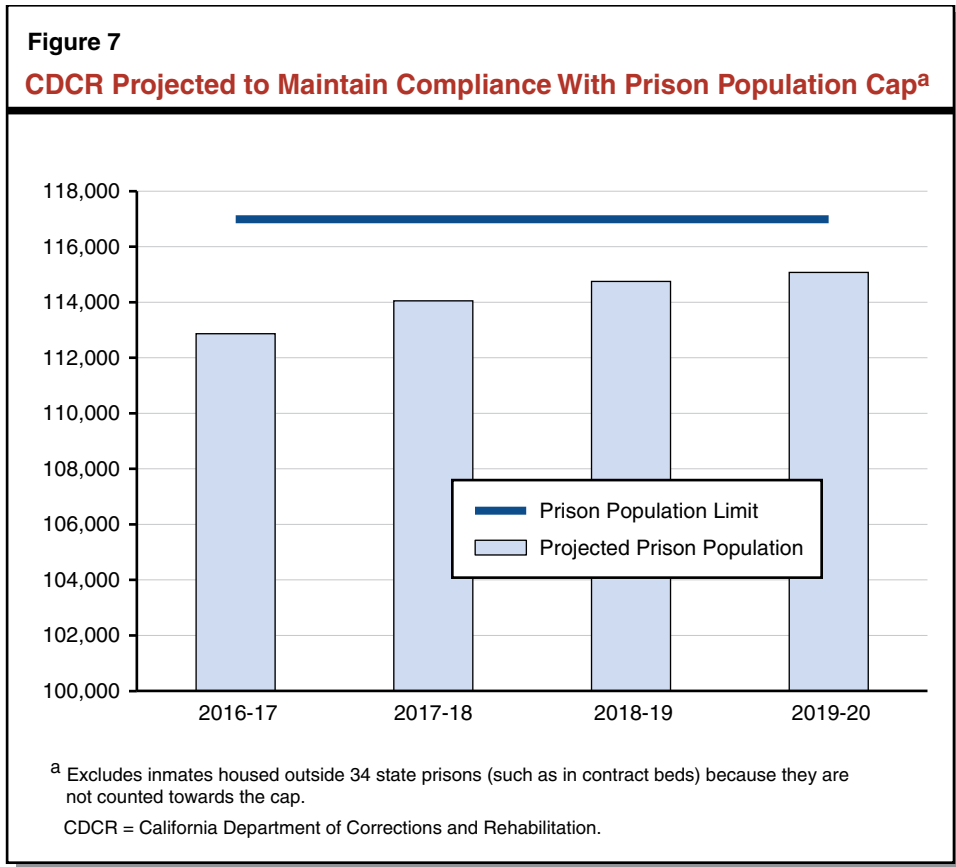
needs (such as improvements to electrical and plumbing systems).

LAO Assessment

Our analysis indicates that the administration’s plan would likely maintain compliance with the prison population cap for the next several years. However, we find that the plan (1) provides more prison capacity than necessary and (2) does not provide a permanent solution for the decaying infrastructure at CRC, as required by the Legislature.

Plan Would Likely Result in Ongoing Compliance With Population Cap. As shown in Figure 7, the administration’s plan would maintain compliance through 2019-20 under CDCR’s current population projections. This assumes that the department maintains the same level of contract bed capacity in future years as in 2016-17.

Administration Has Not Provided Permanent Plan for CRC. In our view, a permanent solution for CRC would require either (1) a timeline for closing the institution or (2) a comprehensive list of the major infrastructure deficiencies at the prison, a timeline for completing the projects needed to remedy such deficiencies to keep the prison open, and the estimated cost of doing so. The administration has provided neither. Moreover, the administration’s proposal for special repair funding for CRC appears to be wholly insufficient to meet the needs of the institution. The amount of funding needed to fully address infrastructure needs at CRC is unknown but we estimate that it could be a couple hundred million dollars. Assuming lease revenue bonds are used to finance these costs, we estimate the state would incur around \$15 million annually in debt-service payments. As such, the \$6 million proposed by the administration for



special repairs at CRC is only a small fraction of the true need and represents little more than a partial, temporary solution to the problem.

Administration’s Plan Would Result in Excessive, Costly Buffer. As discussed above, the administration’s proposed budget for CDCR in 2016-17 would maintain an average buffer of about 4,100 inmates in 2016-17. We acknowledge that some buffer is needed to avoid violating

the court order if the inmate population increases unexpectedly. However, based on our analysis of historical population fluctuations, we find that the administration could maintain a much smaller buffer—about 2,250 inmates—without substantially increasing the risk of violating the prison population cap. We note that CDCR has previously indicated that it believes a buffer in the range of 2,000 to 2,500 would be an appropriate ongoing level.

Accordingly, it appears that CDCR could reduce its prison capacity in 2016-17 by almost a couple thousand beds. It could do so by either (1) reducing its utilization of contract beds or (2) reducing capacity within its 34 prisons, such as by closing housing units or an entire prison. Maintaining the buffer at the level proposed by the administration would come at a significant cost relative to alternative approaches. This is because the department saves about \$18,000 annually by taking an inmate out of a contract bed and placing the inmate in one of the state’s prisons. Alternatively, the state could achieve even greater savings—as much as \$59,000 annually per inmate—by consolidating these inmate reductions and closing an entire state prison.

LAO Recommendation

Approve Extension of Contract Bed Authority.

We recommend that the Legislature approve the administration’s requested extension of authority to procure contract beds. It is very likely that the administration will need to continue utilizing contract beds over the next several years in order to maintain compliance with the prison population cap.

Reduce Prison Capacity by Closing CRC.

We recommend that the Legislature direct CDCR to reduce its prison capacity in order to achieve a reduced buffer of 2,250 in 2016-17. We further recommend that the Legislature direct the department to achieve this capacity reduction by closing CRC. As shown in Figure 8, we estimate this approach would eventually achieve net savings of roughly \$131 million annually relative to the Governor’s proposed approach. These savings are achieved primarily from reduced costs to operate CRC but also include reduced debt service from avoided capital outlay costs that we estimate would need to be invested in order to keep CRC open permanently. These savings would be somewhat offset by increased costs for contract beds needed to replace a portion of the capacity lost from the closure of CRC. We also recommend that the Legislature reject the Governor’s proposed augmentation of \$6 million for special repairs at CRC as these repairs would be unnecessary if CRC is closed.

We note that it would likely take at least a year before CRC could be closed. As such, the above savings would likely not be realized until at least 2017-18. In addition, it is possible that closing CRC could actually increase costs somewhat during the period when CRC is being closed. This is because

Figure 8
Closing CRC Would Save \$131 Million Relative to Governor’s Approach

2017-18 Fiscal Year (Dollars in Millions)

	Governor’s Approach	LAO Recommendation
Status of CRC	Open	Closed
Contract beds	10,300	11,852
Surplus prison capacity (or “buffer”) ^a	4,123	2,250
Annual Savings Relative to Governor’s Plan	—	\$131

^a Assumes administration maintains 2016-17 buffer.
 CRC = California Rehabilitation Center.

the department may need to replace some of the lost capacity from closing CRC by increasing its use of contract beds. The precise fiscal effect of closing CRC in the short term is unknown and would depend primarily on (1) how the court adjusts the prison population cap during the time that CRC is being shut down and (2) how quickly the department is able to achieve operational savings at CRC as it reduces the prison's population. At most, we estimate that closing CRC could result in increased costs in the low tens of millions of dollars in 2016-17. In the long term, CDCR would likely need to procure additional contract beds because it is projecting that the inmate population will increase by a couple thousand by 2019-20. We also note that to the extent the Legislature prioritizes reducing contract beds over closing CRC, it could still achieve a portion of the above savings—about \$33 million in 2016-17 relative to the Governor's approach—by directing the department to reduce its buffer to 2,250 inmates by reducing its use of contract beds.

Drug Interdiction

LAO Bottom Line. We recommend that the Legislature, approve the extension of random drug testing for one additional year because the program has allowed CDCR to identify more inmates using illegal drugs, but reject the remainder of the Governor's proposal to extend the pilot drug interdiction program due to the lack of conclusive evidence at this time regarding program effectiveness.

Background

Two-Year Pilot Program Initiated in 2014-15. The Legislature provided CDCR with \$5.2 million (General Fund) in both 2014-15 and 2015-16 to implement a two-year pilot program intended to reduce the amount of drugs and contraband in state prisons. Of this amount, \$750,000 annually was used

for random drug testing of 10 percent of inmates per month at all 34 state prisons and the California City prison, which are all operated by CDCR. (We note that CDCR had redirected resources in 2013-14 to begin random drug testing 10 percent of the inmate population each month beginning January 2014. As such, the department had already established a baseline of drug usage prior to the start of the pilot.) The remaining amount was used to implement enhanced interdiction strategies at 11 institutions, with 8 prisons receiving a "moderate" level of interdiction and 3 prisons receiving an "intensive" level. According to CDCR, each of the moderate institutions received the following: (1) at least two (and in some cases three) canine drug detection teams; (2) two ion scanners to detect drugs possessed by inmates, staff, or visitors; (3) X-ray machines for scanning inmate mail, packages, and property as well as the property of staff and visitors entering the prison; and (4) one drug interdiction officer. In addition to the above resources, each of the intensive institutions received: (1) one additional canine team, (2) one additional ion scanner, (3) one full body scanner at each entrance and one full body X-ray scanner for inmates, and (4) video cameras to surveil inmate visiting rooms. In 2015, the Legislature passed legislation requiring the department to evaluate the pilot drug testing and interdiction program within two years of its implementation.

Governor's Proposal

Increased Funding to Extend and Expand Pilot Program. The Governor's budget for 2016-17 requests \$7.9 million in one-time funding from the General Fund and 51 positions to extend the enhanced drug interdiction pilot program for an additional year, as well as expand the level of services provided through the pilot program. According to CDCR, the continuation of the existing pilot program for one more year would allow the department to collect additional data to

analyze its effectiveness. In addition, CDCR intends to expand certain interdiction efforts to (1) increase the frequency of random screening of staff and visitors at intensive interdiction prisons and (2) lease three additional full body X-ray machines to screen visitors. The department states that these additional resources are necessary to assess the efficacy of increased screening.

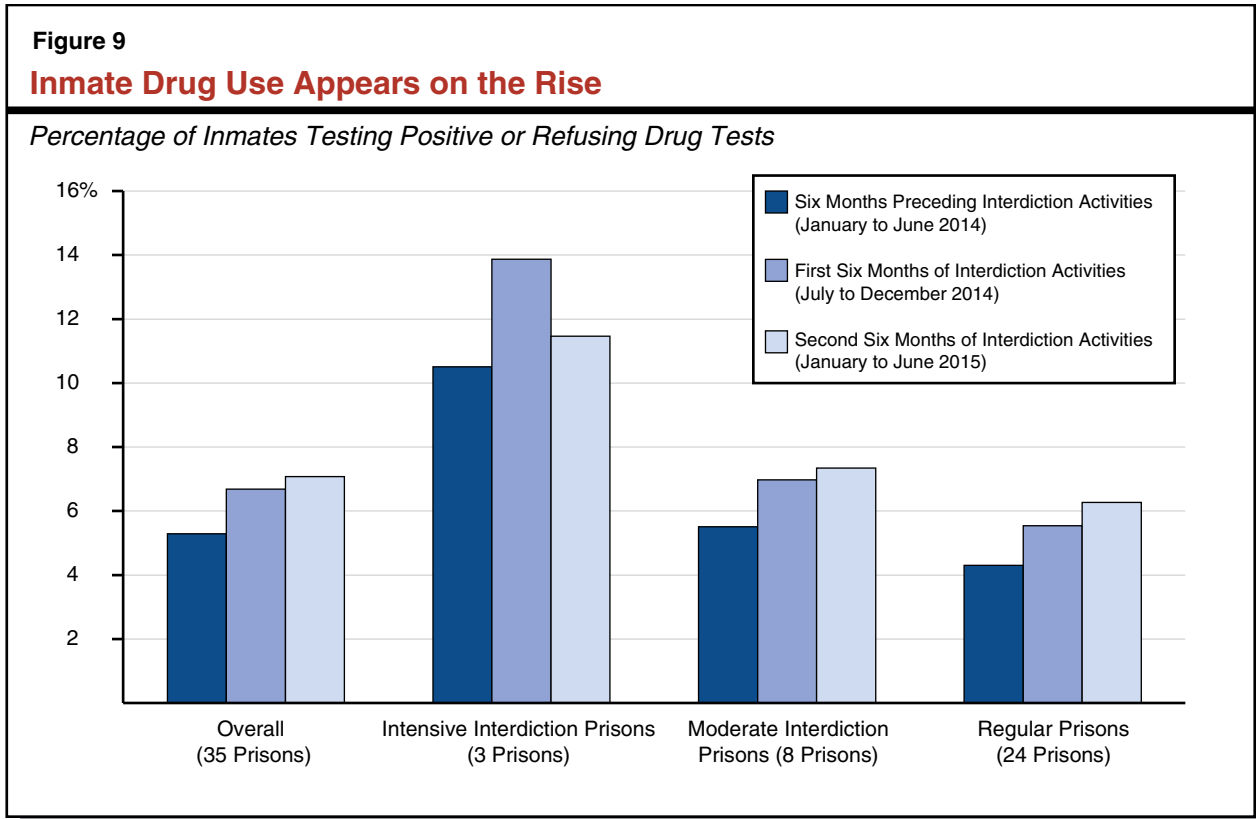
The department has indicated that it intends to issue a preliminary evaluation report on the pilot program but has not provided an estimate of when that report will be released. In addition, the department intends to issue a final evaluation report in the spring of 2017.

LAO Assessment

Interdiction Efforts Do Not Appear to Be Effective. According to CDCR, the goals of its drug interdiction efforts are to (1) reduce inmate drug use and (2) increase institutional security in various ways, such as by reducing inmate violence

and lockdowns associated with the prison drug trade. Although a comprehensive analysis of the pilot program is not yet available, preliminary data suggest the pilot has not achieved the desired outcomes. Specifically, the data suggests:

- ***Drug Use Appears on the Rise.*** As shown in Figure 9, data provided by CDCR indicate that the overall statewide percentage of positive and refused tests increased from 5.3 percent in the six months preceding the implementation of the interdiction strategies to 6.7 percent in the first six months of the pilot. (Refused tests are likely an indication that an inmate has been using drugs.) The largest increase occurred at the prisons which received the most intensive interdiction. The percent of positive or refused tests also increased in the second six months of the pilot overall at prisons receiving moderate interdiction resources. While there was a decline at intensive prisons between the first and



second six month period of the pilot, the percent of positive or refused tests still remained above that of the six months preceding the pilot.

- Institutional Security Improvements May Not Be Attributable to Interdiction Efforts.*** Data provided by CDCR indicate that the number of violent incidents in prison (such as assaults on staff and other inmates) declined by about 4 percent from 2013-14 to 2014-15 (the first year of the drug interdiction pilot). However, as shown in Figure 10, most of this decline occurred in prisons *without* enhanced interdiction. Prisons which were part of the pilot actually saw an *increase* in violence. In addition, data provided by CDCR indicate that lockdowns decreased overall from 2013-14 to 2014-15 but that the decline in prisons without enhanced interdiction (45 percent) was greater than the decline in prisons with enhanced interdiction (36 percent).

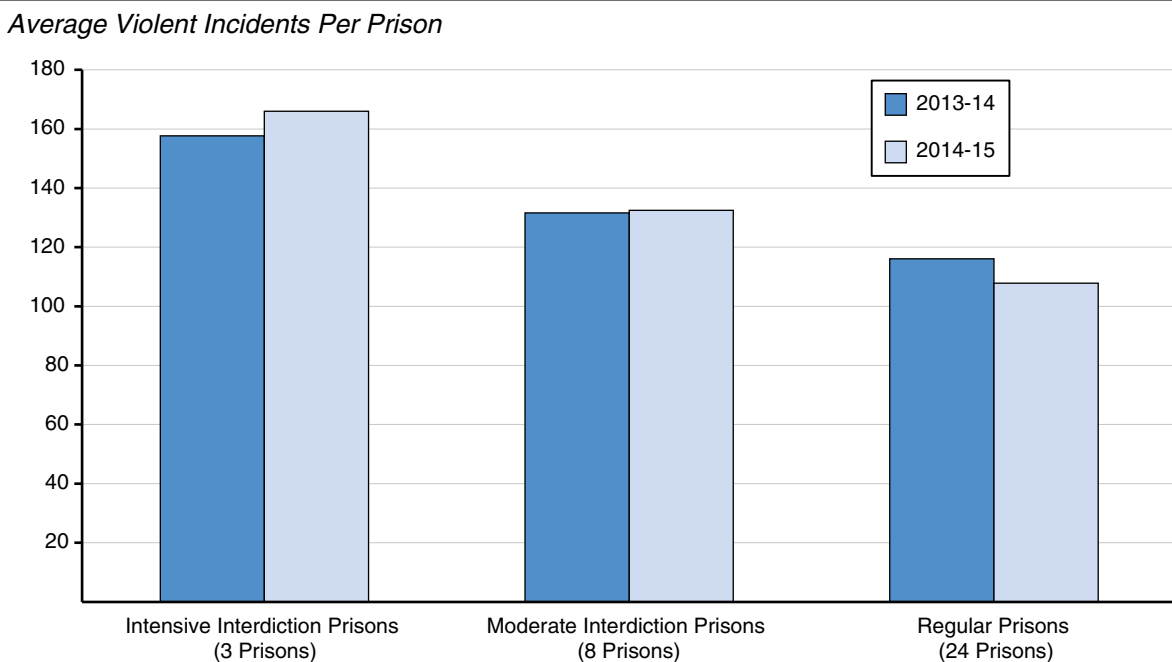
Drug Testing Appears to Have Some Benefit.

Data provided by CDCR suggest that random drug testing has increased the rate at which the department is identifying inmates who are using illegal drugs. This increased rate of identification should allow the department to better target inmates who are in need of substance abuse treatment. In addition, it is possible that the random drug testing is deterring some inmates from using drugs. However, further analysis is needed to determine whether this is the case.

LAO Recommendations

Approve Temporary Extension of Drug Testing. We recommend that the Legislature approve the portion of this request—\$750,000 from the General Fund—associated with continuing the random drug testing for one additional year. The drug testing program appears to have increased the rate at which CDCR is identifying inmates who use illegal drugs. In addition, the collection

Figure 10
Violent Incidences on the Rise at Pilot Prisons



of additional drug test results should help the department to assess whether the removal of drug interdiction resources, as we recommend below, affects the rate of drug use in prisons. Based on the result of the department's final evaluation, the Legislature could determine whether to permanently extend the drug testing program.

Reject Remainder of Proposal to Extend Drug Interdiction Pilot Program. We recommend that the Legislature reject the remainder of the Governor's proposal to extend and expand the drug interdiction pilot program. Extending the program now would be premature given that (1) preliminary data suggest that it is not achieving its intended outcomes and (2) CDCR has not yet fully evaluated its effectiveness. We also recommend that the Legislature direct the department to accelerate its timeline for evaluating the program so that it is completed in time to inform legislative deliberations on the 2017-18 budget, such as whether any of the interdiction strategies should be permanently adopted.

Housing Unit Conversions

LAO Bottom Line. We recommend that the Legislature reject the administration's proposal for \$5.8 million to fund increased staffing for CDCR's Investigative Services Unit (ISU) from savings related to segregated housing unit conversions. This is because the proposal lacks sufficient workload justification, particularly in light of recent declines in other ISU workload.

Background

Segregated Housing Units. CDCR currently operates different types of celled segregated housing units that are used to hold inmates separate from the general prison population. These segregated housing units include:

- **Administrative Segregation Units (ASUs).** ASUs are intended to be temporary

placements for inmates who, for a variety of reasons, constitute a threat to the security of the institution or the safety of staff and inmates. Typically, ASUs house inmates who participate in prison violence or commit other offenses in prison.

- **Security Housing Units (SHUs).** SHUs are used to house for an extended period inmates who CDCR considers to be the greatest threat to the safety and security of the institution. Historically, department regulations have allowed two types of inmates to be housed in SHUs: (1) inmates sentenced to determinate SHU terms for committing serious offenses in prison (such as assault or possession of a weapon) and (2) inmates sentenced to indeterminate SHU terms because they have been identified as prison gang members. (As discussed below, changes were recently made to CDCR's regulations as a result of a legal settlement.)

Segregated housing units are typically more expensive to operate than general population housing units. This is because, unlike the general population, inmates in segregated housing units receive their meals and medication in their cells, which requires additional staff. In addition, custody staff are required to escort inmates in segregated housing when they are temporarily removed from their cells, such as for a medical appointment.

In 2015, CDCR settled a class action lawsuit, known as *Ashker v. Brown*, related to the department's use of segregated housing. The terms of the settlement include significant changes to many aspects of CDCR's segregated housing unit policies. For example, inmates can no longer be placed in the SHU simply because they are gang members. Instead, inmates can only be placed in the SHU if they are convicted of one of the specified SHU-eligible offenses following a

disciplinary due process hearing. In addition, the department will no longer impose indeterminate SHU sentences. The department has also made changes to allow inmates to transition from segregated housing (including SHUs and ASUs) to the general population more quickly than before.

Investigative Services Unit. The CDCR currently operates an ISU consisting of 263 correctional officer positions located across the 35 state-operated prisons. Correctional officers who are assigned to the ISU receive specialized training in investigation practices. These staff are responsible for various investigative functions such as monitoring the activities of prison gangs and investigating assaults on inmates and staff.

Governor's Proposal

The Governor's budget proposes to reduce General Fund support for CDCR by \$16 million in 2015-16 and by \$28 million in 2016-17 to account for savings from a reduction in the number of inmates housed in segregated housing units. According to the department, the policy changes it is implementing pursuant to the *Ashker* settlement will reduce the number of inmates held in ASUs and SHUs, allowing it to convert several of these units to less expensive general population housing units. For example, CDCR estimates that the number of inmates held in SHUs could decline by around 1,000, or about one-third of the current population.

In addition, the administration proposes \$5.8 million to increase the number of staff in the ISU, which would offset the above 2016-17 savings. The redirected funding would support the addition of 48 correctional officers to the ISU, an increase of 18 percent. According to the administration, these positions are needed to handle workload from an anticipated increase in gang activity related to the new segregated housing policies required by the *Ashker* settlement. Specifically, the department plans to use the additional positions to monitor

the activities of gang members released to the general population. The department is requesting 22 of the proposed positions be approved on a two-year, limited-term basis because it has not yet determined the exact amount of ongoing workload associated with the segregated housing policy changes.

Need for Additional ISU Staff Not Justified

Proposed ISU Staffing Increase Lacks Detailed Workload Analysis. While we acknowledge that the new segregated housing policies may drive some increased workload for the ISU, the department has not established a clear nexus between the policy changes and the increased workload. In particular, the department has been unable to provide a detailed analysis which indicates the specific workload increases that will result from the policy changes and how it was determined that 48 is the correct number of staff to handle this increased workload. Without this information it is difficult for the Legislature to assess the need for the requested positions.

Other Factors Have Impacted ISU Workload in Recent Years. There are a variety of factors that drive workload for the ISU, such as the number of violent incidences occurring in the prisons. It appears that a couple of these key factors have declined in recent years. First, the number of inmates in CDCR-operated prisons has decreased from about 124,000 in 2012-13 to a projected level of about 117,000 in 2015-16. Second, the number of assaults on inmates and staff has decreased from about 8,500 in 2012-13 to about 1,200 in 2014-15. Accordingly, the ISU now has fewer inmates to monitor and fewer assaults to investigate relative to 2012-13. Despite these developments, correctional officer staffing for the ISU has actually *increased* slightly from 253 officers in 2012-13 to 263 officers in 2014-15. This raises the question of whether any increased workload for the ISU resulting

from segregated housing policy is offset by other workload decreases in recent years—meaning that potential workload increases could be accommodated with existing resources.

LAO Recommendation

We recommend that the Legislature reject the administration’s proposal for \$5.8 million to fund increased staffing for the ISU because the proposal lacks sufficient workload justification, particularly in light of recent declines in other ISU workload.

Alternative Custody Programs

LAO Bottom Line. We recommend that the Legislature withhold action on the Governor’s proposal to reduce the length of the alternative custody programs pending additional information to determine whether the proposed change is warranted.

Background

As we discuss below, CDCR currently maintains two programs for certain inmates to serve the remainder of their sentence in an alternative custody setting—the Alternative Custody Program (ACP) and the Enhanced Alternative Custody Program (EACP).

ACP. Chapter 644 of 2010 (SB 1266, Lieu) created the ACP to allow certain inmates to be released from prison early and serve the remainder of their sentences in the community in a private residence or residential treatment facility under the supervision of a state parole agent. The program was initially intended to serve (1) female inmates, (2) pregnant inmates, and (3) inmates who were primary caretakers of dependent children prior to their incarceration. Eligibility was limited to inmates who (1) had no current or prior serious or violent crimes, (2) had no current or prior registerable sex offenses, (3) had not been assessed as posing a high risk to

commit a violent crime, and (4) had not attempted to escape from custody within the last ten years. The Legislature enacted subsequent legislation which (1) excluded male inmates from the program and (2) amended the criminal history eligibility requirements. Specifically, Chapter 41 of 2012 (SB 1021, Committee on Budget and Fiscal Review) allowed female inmates with *prior* serious or violent crimes to participate in the program. (Inmates with current offenses for such crimes were still excluded.) Statute does not specify how much of their sentence inmates must complete in order to be eligible for ACP, but CDCR’s current regulations require that program participants must be within two years of their scheduled release date.

EACP. In 2014, a federal court ordered CDCR to expand the ACP in order to reduce prison overcrowding. In response, the department created the EACP. The EACP is similar to the ACP except that (1) inmates who have a current serious or violent offense are eligible and (2) participants are required to reside in one of three designated residential treatment facilities located in San Diego, Sante Fe Springs, and Bakersfield.

In 2015, a federal court found that the state was unlawfully discriminating against male inmates by excluding them from the ACP and ordered CDCR to make male inmates eligible for the program. This court order did not apply to the EACP.

Governor’s Proposal

The Governor’s budget includes three proposals related to the department’s alternative custody programs:

- **Expand EACP.** The Governor’s budget proposes a \$390,000 General Fund augmentation to expand female participation in EACP by 72 beds (36 beds at each of the existing facilities in San Diego and Sante Fe Springs). This would expand the total program capacity to 311.

- **Extend ACP Eligibility to Male Offenders.** The Governor's budget proposes \$3.3 million from the General Fund and 20 positions in 2015-16 to extend eligibility for the ACP to male inmates. Under the proposal, these levels would increase to \$6 million and 40 positions beginning in 2016-17. According to the administration these resources are needed to (1) review applications from inmates to determine eligibility, (2) develop rehabilitation plans for eligible inmates, and (3) notify stakeholders (such as local law enforcement and victims) when inmates are scheduled for early release.
- **Reduce Program Duration From Two Years to One.** The administration also proposes to reduce the length of time inmates can participate in both the ACP and EACP from within two years of their scheduled release date to within one year from being released.

LAO Assessment

Proposals to Expand EACP and ACP Align With Court Orders . . . The Governor's proposals to expand the EACP and allow male inmates to participate in the ACP appear to be aligned with recent court orders. For example, as discussed above, the federal court recently ordered CDCR to make male inmates eligible for the ACP.

. . . But Proposed Reduction in Program Length Not Justified. CDCR has not provided a rationale for why the alternative custody programs would operate more effectively as one-year programs rather than as two-year programs. Nor has the department fully evaluated the potential impact on the female alternative custody programs that would occur from the reduction in length. For example, the administration has been unable to provide data on the average time that female

offenders currently spend in the alternative custody programs and how many female inmates could be affected by the change. Without the above information it is difficult for the Legislature to determine whether a reduction in the length of the alternative custody programs is appropriate.

LAO Recommendation

Withhold Action. In view of the above, we recommend that the Legislature withhold action on the Governor's proposal to reduce the length of the alternative custody programs pending additional information to determine whether the proposed change is warranted. Accordingly, we also recommend that the Legislature direct the department to report at budget hearings on (1) why it believes the male ACP would operate more effectively as a one-year program and (2) its assessment of the impact of reducing the program length on female offenders.

While we find that the Governor's proposal to expand the ACP and the EACP are aligned with recent court decisions, we recommend the Legislature hold off on approving the expansion pending resolution on the proposed change to program duration as a different level of funding may be required if program length is not reduced to one year. As part of the above report, CDCR should also provide information on the fiscal effects (relative to the Governor's budget) of maintaining the current length of the program at two years.

Programs and Services for Long-Term Offenders

LAO Bottom Line. We recommend that the Legislature approve a portion of the proposal that increases rehabilitative programming opportunities for higher-risk offenders and reject the remainder of the proposal that would exclusively target long-term offenders. Research suggests that programs targeting higher-risk offenders are likely

to achieve better outcomes than those targeting long-term offenders.

Background

Long-term offenders are individuals who have been sentenced to a life term in prison with the possibility of parole, with the Board of Parole Hearings (BPH) making the determination whether parole is ultimately granted. As a result of an increase in the rate at which BPH grants parole in recent years, the number of long-term offenders granted parole increased from 541 in 2009 to 902 in 2014. According to the department, due to the nature of their commitment offenses, long-term offenders spend a significant amount of time in prison and thus may have challenges adjusting to life outside of prison. In order to alleviate these challenges, CDCR has established rehabilitative programs that specifically target long-term offenders:

- **Long-Term Offender Program (LTOP).** The LTOP provides rehabilitative programming (such as substance use disorder treatment, anger management, and employment readiness) on a voluntary basis to long-term offenders at three state prisons—Central California Women’s Facility in Chowchilla, California Men’s Colony in San Luis Obispo, and California State Prison, Solano.
- **Offender Mentorship Certification Program (OMCP).** The OMCP trains long-term offenders as substance use disorder counselors while they are incarcerated. Upon graduation from the training program, participants are employed by CDCR to deliver counseling services to their fellow inmates. There are currently two sessions offered annually, allowing up to 64 offenders to be certified as mentors each year.

In addition, CDCR offers various other rehabilitative programs that are generally available to inmates and parolees, including long-term offenders. The current year budget allocates about \$450 million for these programs, which include education, substance use disorder treatment, and cognitive behavioral therapy. As we discuss below, the Governor proposes expanding some of these programs including:

- **Parole Service Centers (PSCs).** PSCs are located throughout the state and provide residency, employment, and other support services to parolees. The CDCR currently has 136 beds in PSCs dedicated to long-term offenders. The current-year budget for PSCs is \$12 million.
- **Transitions Program.** The Transitions Program utilizes contract providers to provide various life and job skills training to help offenders transition back into their communities. Under the program, which is located at 13 prisons, all inmates—including long-term offenders—are eligible to participate if they (1) have been assessed as a moderate-to-high risk to reoffend, (2) have been assessed as having a moderate-to-high need for employment training services, and (3) have between five weeks and six months left on their sentence. The current-year budget for the Transitions Program is \$3.2 million.
- **Community College Programs.** Chapter 695 of 2014 (SB 1391, Hancock) required CDCR to enter into an interagency agreement with California Community Colleges to expand community college courses offered in prisons. Under this program, CDCR provides classroom space and equipment, while the community colleges provide staff, faculty, and volunteers to teach the courses. There are currently 14 community colleges

offering courses to around 7,500 inmates. According to CDCR, 38 percent of inmates currently enrolled in the college programs are long-term offenders.

Governor’s Proposal

The Governor’s budget for 2016-17 proposes a \$10.5 million General Fund augmentation for CDCR to expand the availability of programs for long-term offenders. The proposed augmentation would increase to \$13.5 million in 2017-18 and \$16.2 million in 2018-19, as shown in Figure 11. The proposal includes both the expansion of existing programs and the establishment of new programs for long-term offenders. As we discuss below, while some of the programs specifically target long-term offenders, other programs target a broader range of offenders. The proposed \$10.5 million increase in 2016-17 would be allocated for the following programs:

- **LTOP (\$3.4 Million).** The budget proposes \$3.4 million to expand the LTOP to a fourth prison yet to be determined. Of this amount, \$2.1 million is one-time funding for the installation of modular space for the program and \$1.3 million would support ongoing administrative costs.
- **PSCs (\$3.1 Million).** The budget proposes \$3.1 million to double the number of PSC

beds dedicated to long-term offenders—from 136 beds to 272 beds.

- **Transitions Program (\$3.1 Million).** The budget proposes \$3.1 million to expand the Transitions Program to the remaining 21 state prisons that currently do not offer the program. In addition, the department proposes to terminate its existing contracts and instead hire 53 civil service teachers to deliver services. According to CDCR, this modification would help prisons address challenges they have faced procuring contract providers for the program.
- **Community College Programs (\$480,000).** The budget proposes \$480,000 to support overtime for custody staff to monitor inmates participating in community college courses.
- **OMCP (\$423,000).** The budget proposes \$423,000 to double the number of (1) annual OMCP training sessions from two to four and (2) potential annual program graduates from 64 to 128.

As shown in the figure, the proposed \$10.5 million augmentation would increase in 2017-18 and 2018-19. Part of this increase would support the establishment of a new Transitional Housing Program for long-term offenders while they are on parole. The requested funding would

allow CDCR to contract for residency and rehabilitative services for 400 long-term offenders upon full implementation.

LAO Assessment

Targeting Higher-Risk Offenders Yields Greater Public Safety Benefits.

Research shows that

Figure 11
Governor’s Long-Term Offender Proposal

(In Millions)

Program	2016-17	2017-18	2018-19
Long-Term Offender Program	\$3.4	\$1.3	\$1.3
Parole Service Centers	3.1	3.1	3.1
Transitions Program	3.1	3.1	3.1
Community College Program	0.5	0.5	0.5
Offender Mentor Certification Program	0.4	0.4	0.4
Transitional Housing Program	—	5.1	7.8
Totals	\$10.5	\$13.5	\$16.2

programs designed to reduce recidivism are most effective when they target offenders who have been assessed as a moderate-to-high risk to reoffend. This is because lower-risk offenders are much less likely to reoffend irrespective of whether they receive programming, resulting in little public safety benefits. Long-term offenders are typically considered lower-risk offenders compared to the general population. This is because they are (1) subject to an exhaustive review by BPH and are not granted release if they are deemed to pose a high risk to reoffend and (2) are on average older than most inmates who are released. Research has demonstrated that as offenders age they become less likely to commit crimes.

Only Portion of Proposed Funding Targets Higher-Risk Offenders. Since most of the increased funding proposed by the Governor would support programs that specifically target long-term offenders—which tend to be of lower risk—only a small portion of the funds would be available to help support higher-risk offenders. Specifically, we find that three of the programs proposed for augmentation would increase programming opportunities for higher-risk offenders. These include: (1) the expansion of the OMCP, (2) the expansion and modification of the Transitions Program, and (3) custody overtime needed to support community college programs. We also note that these programs incorporate best practices that have been demonstrated through research to be cost-effective strategies for reducing recidivism, such as targeting rehabilitative needs including substance abuse treatment and job training. While the OMCP trains only long-term offenders as counselors, it increases programming opportunities for other inmates because the counselors are employed by CDCR to deliver substance abuse treatment disorder counseling to their peers.

Many Higher-Risk Offenders Not Currently Receiving Needed Treatment. Currently, many inmates who have been assessed as a moderate-to-high risk to reoffend do not receive rehabilitative programming. For example, in 2014-15, 44 percent of such offenders were released without having any of their rehabilitative needs met, despite having been assessed as having a need for programming. This is in large part due to limited resources. Given that most of the Governor’s proposal targets long-term offenders, it will do little to meet the needs of higher-risk offenders.

LAO Recommendations

Approve Proposed Expansion of Programming for Higher-Risk Offenders. We recommend that the Legislature approve the portion of the proposal—totaling \$4 million—that would expand rehabilitative programming opportunities for higher-risk offenders that are consistent with programs shown to be cost-effective methods for reducing recidivism. Specifically, we recommend providing the requested funding to support (1) the expansion of the OMCP, (2) the expansion and modification of the Transitions Program, and (3) custody overtime needed to operate community college programs.

Reject Remainder of Proposal. We recommend that the Legislature reject the remainder of the Governor’s proposal to expand programs for long-term offenders. While we acknowledge that these programs may provide some benefit to long-term offenders, research suggests that the department could achieve greater benefits to public safety by instead targeting higher-risk offenders. To the extent that the Legislature is interested in further expanding rehabilitative programming, we recommend that it direct the department to come back with a proposal that targets higher-risk offenders and reduces the number of such offenders

who are released from prison without receiving any programming targeted toward their identified needs.

Male Community Reentry Program

LAO Bottom Line. We recommend that the Legislature reject the Governor’s proposed \$32 million General Fund augmentation for the Male Community Reentry Program (MCRP), as it is unlikely to be the most cost-effective recidivism reduction strategy given that it (1) does not target higher-risk offenders and (2) it is very costly. To the extent that the Legislature wants to expand rehabilitative programming, we recommend directing the department to come back with a proposal that focuses on meeting the rehabilitative needs of higher-risk offenders.

Background

The *2014-15 Budget Act* included \$20 million in one-time funding from the Recidivism Reduction Fund (RRF) for CDCR to establish the MCRP. (The RRF was supported by savings resulting from the underutilization of funding provided in 2013-14 for contract beds.) Under the MCRP, CDCR contracts with residential facilities in the community to provide rehabilitative programming (such as educational services, substance use disorder treatment, job training, and computer skills workshops) to male inmates who are within 120 days of completing their sentence. The program is voluntary and generally admits inmates on a first-come, first-serve basis if they meet certain criteria (such as not posing an escape risk). Currently, CDCR contracts with three facilities—one each in Los Angeles, Kern, and Butte Counties—to provide a total of 220 beds at an average annual cost of about \$58,000 per bed (including contract and administrative costs).

Governor’s Proposal

The Governor’s budget proposes \$32 million (General Fund) in 2016-17 and \$34 million in 2017-18 to expand the MCRP. The 2016-17 appropriation includes \$20 million to support existing contracts and \$12 million to expand the program. The proposed augmentation would allow CDCR to contract with four additional facilities—three in Los Angeles County and one in San Diego County—to provide an additional 460 beds. In addition, CDCR proposes to increase the amount of time participants can spend in the program from 120 days to 180 days. According to the department, this will help increase the amount of treatment received in the program and expand the pool of eligible participants.

Proposal Unlikely to Be Most Cost-Effective Approach for Reducing Recidivism

The MCRP is a relatively new program and its effectiveness at reducing recidivism has not been evaluated. However, given that the current program does not target higher-risk offenders and is relatively expensive, we find that the program is unlikely to be the most cost-effective approach to reduce recidivism.

Program Does Not Target Higher-Risk Offenders. As discussed earlier in this report, research has shown that rehabilitative programs are generally more effective at reducing recidivism if they target offenders who have been assessed as having a moderate-to-high risk to reoffend. However, CDCR does not target higher-risk offenders for admission to the MCRP and instead admits inmates into the program on a first-come, first-serve basis regardless of their risk level. Data provided by the department indicate that over one-fifth of MCRP participants are considered low risk. This suggests the program is not being operated in a manner that would maximize reductions in recidivism. The fact that a significant

proportion of the MCRP capacity is being used for low-risk offenders is particularly concerning given that many higher-risk offenders are being released from prison without having any of their rehabilitative needs met.

Program Is Very Costly. Even if the MCRP were shown to be effective in terms of reducing recidivism, it is a relatively expensive program. Research suggests that there are a variety of programs—such as substance use disorder treatment and academic education—that could reduce recidivism at a much lower cost. Accordingly, it appears unlikely that the MCRP is the most cost-effective approach for reducing recidivism.

LAO Recommendation

Reject Funding Proposed for MCRP. We recommend that the Legislature reject the administration's proposed funding for the MCRP. The program is unlikely to be the most cost-effective approach to reduce recidivism given that it (1) currently does not target higher-risk offenders and (2) is very costly. To the extent the Legislature is interested in further expanding rehabilitative programming, we recommend that it direct the department to come back with a proposal that targets higher-risk offenders.

Federal Receiver for Inmate Medical Services

Overview

Receiver Appointed to Improve Medical Care. In 2006, after finding the state failed to provide a constitutional level of medical care to prison inmates, the federal court in the *Plata v. Brown* case appointed a Receiver to take control over the direct management of the state's prison medical care delivery system from CDCR. In order for CDCR to regain control over the direct management of the state's prison medical care delivery system, the state

must demonstrate that it can provide a sustainable constitutional level of care.

Process for Delegating Responsibility to State. In March 2015, the *Plata* court issued an order outlining the process for transitioning responsibility for inmate medical care back to the state. Under the order, responsibility for each institution, as well as overall statewide management of inmate medical care, must be delegated back to the state. The court indicates that, once these separate delegations have occurred and CDCR has been able to maintain the quality of care for one year, the Receivership would end.

The federal court order outlines a specific process for delegating care at each institution back to the state. Specifically, each institution must first be inspected by the Office of the Inspector General (OIG) to determine whether the institution is delivering an adequate level of care. The Receiver then uses the results of the OIG inspection—regardless of whether the OIG declared the institution adequate or inadequate—along with other health care indicators, including those published on each institution's Health Care Services Dashboard, to determine whether the level of care is sufficient to be delegated back to CDCR. To date, the OIG has completed inspections for nine institutions and has found six to be adequate. As of February 1, 2016, the Receiver has only delegated care at Folsom State Prison back to CDCR. The Receiver is currently in the process of determining whether to delegate care at the five institutions that have been found adequate by the OIG. In addition, the Receiver could also delegate care at the three prisons deemed inadequate by the OIG if care has been found to have improved. The OIG plans to complete medical inspections for the remaining institutions by the end of 2016. The process for delegating the responsibility for headquarters functions related to medical care (such as procurement of medical vehicles) does not

require an OIG inspection. Under the court order, the Receiver only has to determine that CDCR can adequately carry out these functions.

Supervisory Staffing Model for Correctional Medical Care

LAO Bottom Line. We recommend that the Legislature reject the Governor’s proposal to provide a \$6 million augmentation in 2016-17 to provide for a separate executive management team at each institution, as such separate teams do not appear to be necessary in order to deliver a constitutional level of care.

Background. Insufficient health care staffing has been one of the factors that the court in the *Plata* case found to be contributing to unconstitutional levels of care. To address this problem, the Medical Classification Staffing Model, which established standardized staffing ratios for health care providers, was adopted by the state in 2014-15. While this model accounted for all classifications involved in the direct care of patients, it did not specify requirements for supervisory staff. While most institutions have their own health care executive management teams, there are eight sister institutions—four pairs of prisons that are very near to one another—that share health care executive management teams.

Governor’s Proposal. The Governor’s budget proposes a General Fund augmentation of \$6 million and 33 additional positions in 2016-17—which would increase to \$7 million beginning in 2017-18—to allow each of the eight sister institutions to have its own executive management team. According to the Receiver, this would help ensure that these institutions provide an constitutionally adequate level of care.

Need for Each Institution to Have Own Executive Management Team Not Justified. While we recognize the need to transition control of inmate medical care back to the state in a timely

manner, our analysis indicates that the need for each of the eight sister institutions to have its own executive management team has not been justified. For example, three of the four sister institutions that have completed OIG inspections have been found to be delivering an adequate level of care. While the remaining four institutions have yet to complete audits, it appears likely that some will be found adequate by the OIG based on the performance data available through the Health Care Services Dashboard. For example, Chuckawalla Valley State Prison (CVSP), which has already been inspected and found to be delivering an adequate level of care, shares an executive management team with Ironwood State Prison (ISP), which has not been inspected. Both CVSP and ISP were near or above the statewide averages for each metric used in the Health Care Services Dashboard, suggesting that ISP will likely be found to be delivering an adequate level of care when it is inspected. We acknowledge that an adequate designation from the OIG is not sufficient to guarantee that care at an institution will be delegated back to CDCR. However, it is a strong indicator that delegation could occur and that care is being delivered appropriately. As a result, it appears that the sister institutions can deliver an adequate level of care while sharing executive management teams.

Approval of the Executive Management Team Proposal Is Premature. In 2016, the Receiver will likely have made determinations about whether to delegate care for several of the sister institutions, including those that have already been found to be delivering adequate care by the OIG. Until such inspections and determinations are completed, approving a new supervisory staffing model appears premature. This is because the outcomes of these activities will allow the Legislature to assess whether requiring each institution to have its own executive management team is necessary.

LAO Recommendation. We recommend that the Legislature reject the Governor’s request to provide a \$6 million augmentation in 2016-17 to allow for a separate executive management team at each institution as there is not sufficient justification that each institution needs its own team to provide a constitutional level of care. Depending on the outcomes of the upcoming OIG inspections and the Receiver’s reviews to determine whether to delegate care at certain institutions back to the state, the Legislature could consider a more targeted request as part of the 2017-18 budget.

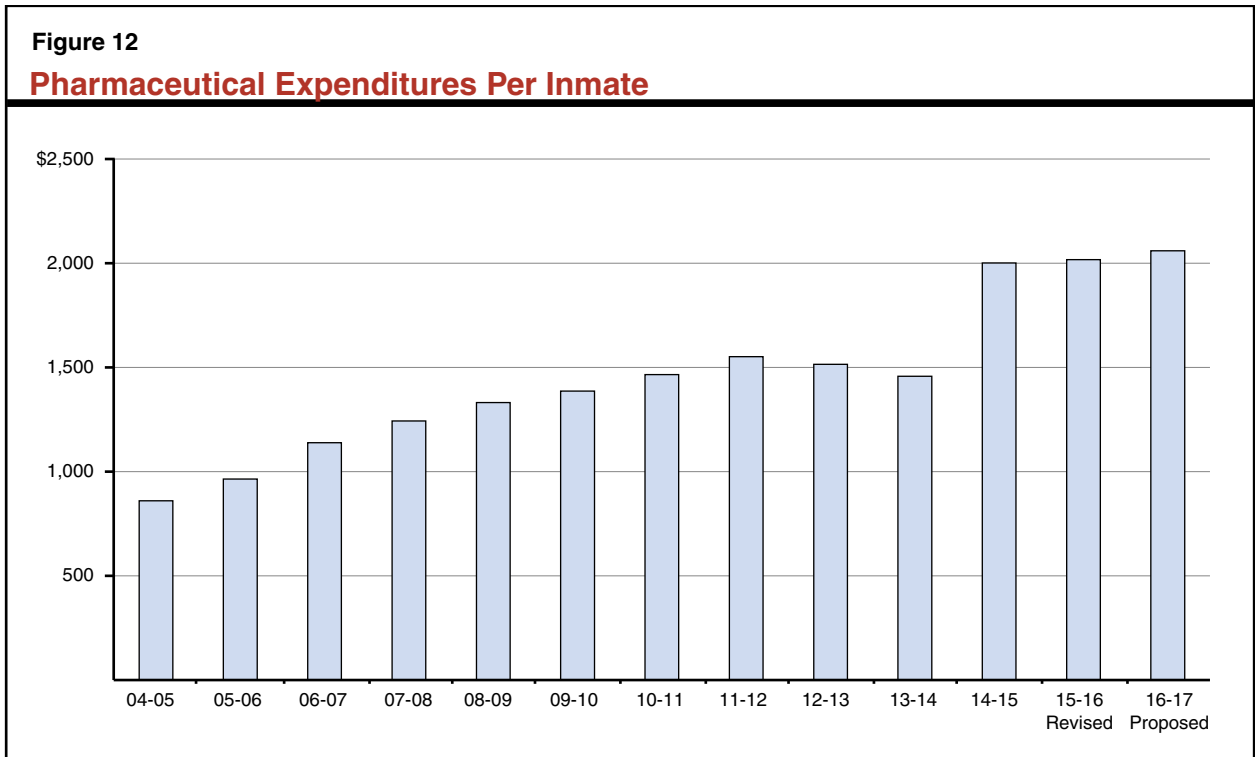
Augmentation for Inmate Pharmaceuticals

LAO Bottom Line. We recommend that the Legislature approve increases to the inmate pharmaceutical budget based on estimated projections for the pharmaceutical Consumer Price Index (CPI) in 2015-16 and 2016-17, rather than based on past-year changes as proposed by the Governor. In order to determine the appropriate adjustments, we recommend the Legislature require

the Receiver to provide additional information before taking action.

Background. The Receiver’s office is currently responsible for providing medical pharmaceuticals prescribed by physicians under his management, as well as psychiatric and dental medications prescribed by psychiatrists and dentists managed by CDCR. From 2004-05 through 2014-15, the inmate pharmaceutical budget increased from \$136 million to \$236 million. (The pharmaceutical budget reflects only the cost of pharmaceuticals and not the cost of medication distribution or management.) As shown in Figure 12, the level of spending on pharmaceuticals per inmate has also increased over this time period, increasing from \$860 in 2004-05 to \$2,000 by 2014-15—an increase of over 130 percent.

Increases in the inmate pharmaceutical budget can occur for several reasons, such as additional inmates needing prescription drugs and increases in the rate at which inmates are prescribed drugs. Moreover, we note that pharmaceutical costs



generally rise at a faster pace than inflation. For example, from 2013-14 to 2014-15, pharmaceutical costs increased 4.9 percent compared to an overall 1.5 percent increase in consumer prices. In addition, the introduction of new drugs can have a significant impact on overall pharmaceutical costs. For example, the Receiver spent \$58 million on drugs for Hepatitis C in 2014-15, most of which was related to newly developed drugs capable of curing the disease. These newly developed Hepatitis C drugs can cost around \$85,000 per treatment regimen. This was the single most important factor in the large increase in expenditures per inmate illustrated in the above figure. Recognizing the uncertainty associated with pharmaceutical cost growth, the size and acuity of the patient population, and the potential cost savings of various programmatic changes initiated by the Receiver, the Legislature has provided only limited-term augmentations (typically for one to three years) to support inmate pharmaceutical costs. For example, the enacted 2013-14 budget included a total of \$178 million for inmate pharmaceuticals. Of this amount, \$51 million was provided on a limited-term basis.

Governor's Proposal—Current Year. The Governor's revised budget for 2015-16 reflects a total of \$239.6 million in General Fund support for the Receiver's inmate pharmaceutical budget. This is a net increase of \$20 million, or 9 percent, from the *2015-16 Budget Act*, based on the following adjustments:

- An \$8 million increase based on an estimated 4.9 percent increase in the price of these drugs. This 4.9 percent increase is equivalent to the percent change in the CPI for pharmaceuticals from 2013-14 to 2014-15. The Receiver proposes to temporarily use past-year changes in the pharmaceutical CPI to adjust the pharmaceutical budget in future

years, until a more reliable estimate can be established to account for changes in patient population and acuity levels.

- A \$12 million net increase to account for various other changes in pharmaceutical spending, such as costs associated with integrating pharmaceuticals into the Electronic Health Records System (EHRS).

Governor's Proposal—Budget Year. The Governor's budget for 2016-17 proposes to spend \$246.4 million from the General Fund for inmate pharmaceuticals. This is a net increase of \$6.8 million, or 3 percent from the proposed revised level of current-year spending, resulting from the following adjustments:

- A \$7.9 million increase to account for general increases in the price of pharmaceuticals, based on a 4.9 percent increase in the pharmaceutical CPI from 2013-14 to 2014-15.
- A \$1.1 million decrease largely related to savings from the integration of pharmaceutical management with the EHRS referenced above.

Using Projections Rather Than Past Expenditures Would Improve CPI-Based Approach.

An independently verified source to determine how pharmaceutical prices have changed, or are likely to change, in the future is an appropriate method to use when determining whether adjustments in the pharmaceutical budget are necessary. Accordingly, using the pharmaceutical CPI for estimating *future* increases in pharmaceutical costs seems reasonable. However, as indicated above, the Receiver proposes using *past*-year changes in the pharmaceutical CPI to estimate *future*-year changes, rather than relying on available projections of how the pharmaceutical CPI is actually expected to change. Using pharmaceutical CPI projections is preferable as it may account for changes in the market that are

not reflected in the past-year values of the index. For example, pharmaceutical CPI projections for 2015-16 and 2016-17 are lower than the 4.9 percent growth assumed by the Receiver. Specifically, projections of the pharmaceutical CPI suggest that prices will only increase by 3.8 percent in 2015-16 and by 3.3 percent in 2016-17. Accordingly, these projections suggest that the pharmaceutical budget requires \$1.7 million less than proposed by the Governor in 2015-16 and \$4.3 million less in 2016-17.

LAO Recommendation. In view of the above, we recommend that the Legislature approve increases to the inmate pharmaceutical budget based on projections for the pharmaceutical CPI in 2015-16 and 2016-17. However, in order to determine the appropriate adjustments, we recommend the Legislature hold off on taking such action until the Receiver provides additional information. Specifically, the Receiver should provide by April 1 (1) an updated estimate of current-year monthly pharmaceutical expenditures and (2) an updated estimate of the pharmaceutical CPI for the remainder of the current-year and the budget-year based on the most recent projections available.

Ironwood State Prison Maintenance Staff

LAO Bottom Line. We recommend that the Legislature reduce the Governor's proposal to provide \$524,000 for maintenance of the new

central chiller system at Ironwood State Prison (ISP) by \$275,000 to reflect savings available from eliminating maintenance on the pre-existing cooling system.

Background. The *2014-15 Budget Act* included \$145 million from the Public Buildings Construction Fund to (1) install a central chiller heating, ventilation, and air conditioning (HVAC) unit at ISP and (2) repair damages to roofs and other infrastructure caused by the failure of the existing swamp cooler system, which had been in a state of disrepair for several years.

Governor's Proposal. The Governor's budget proposes \$524,000 from the General Fund for five stationary engineer positions to maintain the new central chiller HVAC system at ISP.

Savings Available to Offset HVAC Maintenance Costs. According to previous estimates by CDCR, the department has spent about \$275,000 annually to maintain the existing swamp cooler system at ISP. These costs will go away with the installation of the new central chiller HVAC unit. However, the department's request does not reflect that these savings would be available to offset the cost of the maintenance of the new central chiller system.

LAO Recommendation. In view of the above, we recommend that the Legislature reduce the Governor's request by \$275,000 to reflect the offsetting maintenance savings from removing the swamp cooler system.

JUDICIAL BRANCH

Overview

Judicial Branch Budget. The judicial branch is responsible for the interpretation of law, the protection of individuals' rights, the orderly settlement of all legal disputes, and the adjudication

of accusations of legal violations. The branch consists of statewide courts (the Supreme Court and Courts of Appeal), trial courts in each of the state's 58 counties, and statewide entities of the branch (the Judicial Council, Judicial Branch Facility Program, and the Habeas Corpus Resource

Center). The branch receives revenues from several funding sources including the state General Fund, civil filing fees, criminal penalties and fines, county maintenance-of-effort payments, and federal grants.

Figure 13 shows total funding for the judicial branch from 2012-13 through 2016-17. Total funding for the judicial branch has steadily increased since 2012-13—the most recent year in which the judicial branch received a significant reduction in General Fund support—and is proposed to increase in 2016-17 to \$3.8 billion. Of the total budget proposed for the judicial branch in 2016-17, about \$1.7 billion is from the General Fund—nearly 45 percent of the total judicial branch budget. This is a net increase of \$104 million, or 6.5 percent, from the 2015-16 amount.

As shown in Figure 14, the Governor’s budget proposes \$3.6 billion from all state funds to support the judicial branch in 2016-17, an increase of \$175 million, or 5 percent, above the revised

amount for 2015-16. (These totals do not include expenditures from local revenues or trial court reserves.)

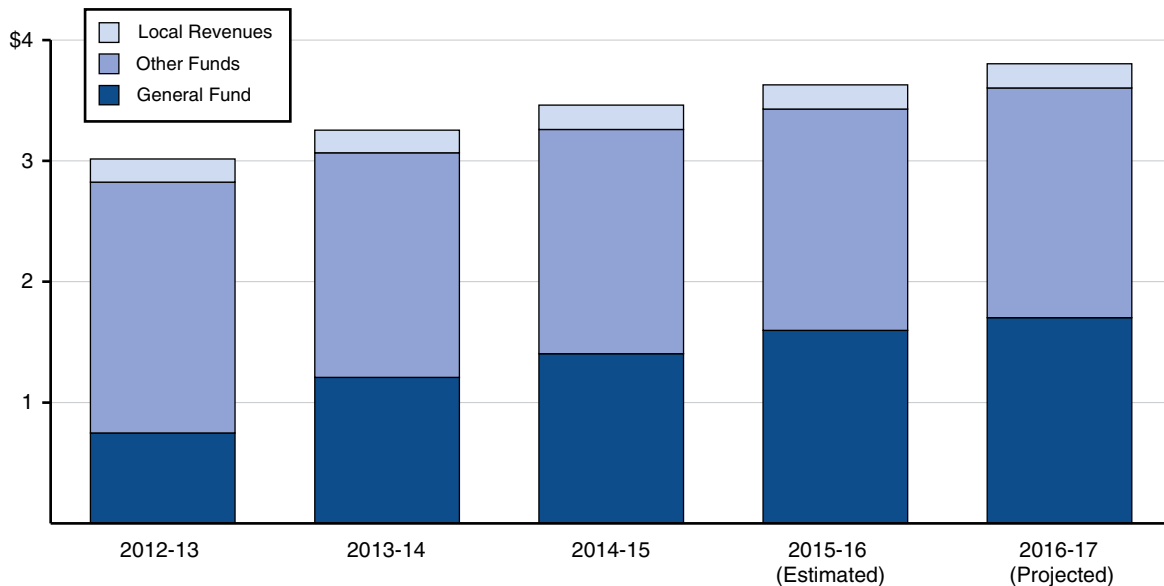
\$20 Million Augmentation for Trial Court Operations

LAO Bottom Line. We recommend that the Legislature reject the Governor’s proposal to provide a \$20 million General Fund base augmentation for trial court operations, due to insufficient justification for the augmentation, particularly given that the proposed budget already provides additional funding to support increased workload and costs to trial courts.

Background. Since 2013-14, the Legislature has provided trial courts with General Fund base augmentations for their operations totaling \$236 million—\$60 million in 2013-14, \$86 million in 2014-15, and \$90 million in 2015-16. The amounts provided in 2014-15 and 2015-16 were part of a two-year funding plan approved by

Figure 13
Total Judicial Branch Funding

(In Billions)



the Legislature to provide the trial courts with a 5 percent increase in operations funding each year. The trial courts generally had full discretion in how they used these augmentations.

Governor’s Proposal. The Governor’s budget includes a total of \$72 million in additional funding to support identified workload and cost increases to the judicial branch. Specifically, this includes funding for (1) workload changes (such as related to the implementation of Proposition 47), (2) increased costs (such as increased trial court health benefit and retirement costs), and (3) the expansion of specific services (such as expanding court interpreter services). In addition, the Governor’s budget proposes a \$20 million (or 1 percent) General Fund base augmentation for trial court operations. Similar to prior years, trial courts would have full discretion in the use of these funds.

Insufficient Justification for Augmentation. The administration has not provided sufficient information to justify why the trial courts need the proposed \$20 million augmentation. For example, it is unclear what specific needs at the trial courts are not currently being met that necessitate an augmentation. Thus, it is difficult for the Legislature to determine whether the proposed \$20 million increase is too much or too little for

meeting the identified needs that it believes merits funding. Moreover, it is unknown what needs were met by most of the additional funds provided in recent years, which makes it even more difficult to determine what unmet needs the courts continue to have and how these needs align with legislative priorities.

Proposed Budget Already Accounts for Increased Workload and Costs. To the extent that the proposed \$20 million augmentation is intended to support increased workload and costs, as we noted above, the Governor’s budget already includes a number of proposals to provide additional funding to support identified workload and cost increases for the trial courts. Given these proposed funding increases, it is even less clear why the proposed \$20 million in resources is needed for trial court operations.

Recommend Rejecting Proposed Augmentation. Absent sufficient information to justify the proposed \$20 million augmentation, we recommend that the Legislature reject the Governor’s proposal.

New Court Innovations Grant Program

LAO Bottom Line. We recommend that the Legislature withhold action on the Governor’s

Figure 14
Judicial Branch Budget Summary—All State Funds^a

(Dollars in Millions)

	2014-15 Actual	2015-16 Estimated	2016-17 Proposed	Change From 2015-16	
				Amount	Percent
State Trial Courts	\$2,538	\$2,675	\$2,805	\$130	4.9%
Supreme Court	43	47	46	—	-0.2
Courts of Appeal	211	219	225	6	2.5
Judicial Council	134	134	133	-1	-0.8
Judicial Branch Facility Program	320	370	410	40	10.8
Habeas Corpus Resource Center	13	15	15	—	3.4
Totals	\$3,260	\$3,459	\$3,634	\$175	5.1%

^a Does not include offset of trial court expenditures from excess local property taxes.

proposal to provide \$30 million in one-time funding from the General Fund for trial and appellate court innovation, modernization, and efficiency projects, pending additional information from the administration and judicial branch (such as the specific programs and services that would be funded). To the extent that such information is not provided, we recommend the Legislature reject the proposal.

Governor's Proposal. The Governor's budget proposes \$30 million in one-time General Fund support to create a new Court Innovations Grant Program. The proposed program, which would be developed and administered by Judicial Council, would provide grants on a competitive basis to support trial and appellate court programs and practices that promote innovation, modernization, and efficiency. Grants would be two to three years in duration and could be awarded up until 2019-20. Grant funds could be encumbered through 2019-20, after which any unexpended funds would revert to the state General Fund.

According to the administration, courts would be required to describe how grant funds are to be used to support the development of sustainable, ongoing programs and practices that can be adopted and replicated by other courts. Participating programs will also be required to provide measurable results, outcomes, or benefits to demonstrate the impact of the program on the court and the public. Finally, Judicial Council would be required to provide the Department of Finance and the Joint Legislative Budget Committee with annual reports on the grant program beginning on September 30, 2017.

Proposal Lacks Key Information. The Governor's proposal to promote innovation and efficiency projects in trial and appellate courts has merit as such projects can ultimately generate savings or improve access to court services. However, the proposal provides very little information on what programs and services

would be funded, why they are needed, how much funding is needed to support them, and which courts will pilot these programs and services. The administration has also not provided specific information on how the programs and services to be funded compare to previously tested or implemented projects, as well as what specific performance outcomes would be measured to determine program effectiveness. The lack of key information about the proposal generally reflects the fact that Judicial Council would have significant discretion over the types of programs and services that would receive funding. For example, the administration's proposal provides little guidance on how grants should be awarded—thereby allowing Judicial Council to decide whether certain types of applicants have priority and what metrics should be used to evaluate applications.

This lack of detail makes it difficult for the Legislature to determine whether the Governor's proposal is the appropriate level of funding for those projects that are aligned with legislative priorities. Additionally, because the proposal lacks details that would specify and standardize how performance outcomes would be measured, the Legislature may have difficulty comparing the programs and services that are funded to determine which provide the greatest benefit to courts or members of the public. Moreover, the lack of detail makes it difficult to determine the extent to which these programs could be duplicated across the state. This is particularly problematic if the judicial branch decides to seek ongoing funding for such programs or services in the future.

Recommend Withholding Action on Proposed Augmentation. We recommend the Legislature withhold action on the Governor's proposal to provide \$30 million for a new Court Innovations Grant Program, pending additional information from the administration and the judicial branch. Specifically, we recommend the Legislature require

the administration and the judicial branch to report by April 1 on the following: (1) which specific programs and services would be funded, (2) why they are needed, (3) how much funding is needed to support each service and program, (4) which courts would pilot each service and program, (5) what specific performance outcomes would be measured to determine program effectiveness, and (6) how the judicial branch would determine whether these programs and services can be implemented across the state. Based on this information, the Legislature would be able to determine which programs it would like to specifically fund on a pilot basis. To the extent that such information is not provided, we recommend the Legislature reject the proposal.

Judicial Branch Facility Construction Proposals

LAO Bottom Line. We recommend that the Legislature withhold action on the Governor's proposal for increased spending from the Immediate and Critical Needs Account (ICNA) for court construction projects pending a report from Judicial Council in budget hearings on how it would ensure monies would be available to fully fund the proposed projects. We also recommend the Legislature adopt supplemental reporting language requiring the Judicial Council to submit a plan by January 10, 2017 for addressing the long-term solvency of ICNA within existing financial resources.

Background

Immediate and Critical Needs Account. Chapter 311 of 2008 (SB 1407, Perata) authorized increases in criminal and civil fines and fees to finance up to \$5 billion in trial court construction projects and other facility-related expenses such as modifications of existing courthouses. The revenue from the fines and fees are deposited into

ICNA, established by Chapter 311. The measure also specified that the Judicial Council was also prohibited from approving projects that could not be fully financed with the revenue from fines and fees.

In accordance with the legislation, the Judicial Council selected 41 construction projects to be funded from ICNA that were deemed to be of "immediate" or "critical" need for replacement, generally due to the structural, safety, or capacity shortcomings of the existing facilities. As shown in Figure 15 (see next page), due to significant reductions in the total amount of revenue available in ICNA, the Judicial Council chose to cancel 4 projects (replacing 2 with renovation projects) and indefinitely delay 11 projects until sufficient resources are available. Of the remaining 26 projects, 10 projects have completed construction or are currently in construction. Another eight projects are authorized to begin construction pending the sale of lease revenue bonds or are seeking authority to enter into the construction phase. The remaining eight projects are currently in the middle of preconstruction activities, such as project design. The construction of the above projects will generally be paid for through lease revenue bonds with the debt-service payments coming from ICNA. ICNA currently receives roughly \$250 million in revenue annually. (We would note that annual funding to ICNA has declined over the past few years due to reductions in criminal and civil fines and fees.) The fund currently supports about \$230 million in various commitments on an annual basis. These include: (1) roughly \$100 million in debt-service costs on previously approved projects, (2) \$25 million for facility modification projects, (3) \$50 million for trial court operations to mitigate the impact of prior-year budget reductions, and (4) roughly \$55 million for service payments for the Long Beach courthouse, which grow annually and result from financing the courthouse through a public-private partnership.

Figure 15

Status of ICNA Projects

As of January 2016

<p>Canceled (4 Projects)</p> <p>Los Angeles—Lancaster Courthouse^a Los Angeles—Mental Health Courthouse^b Alpine—Markleeville Courthouse Sierra—Downieville Courthouse</p>	<p>Complete (6 Projects)</p> <p>Butte—North Butte County (Chico) Courthouse Kings—Hanford Courthouse San Joaquin—Juvenile Justice Center Solano—Fairfield Old Solano Courthouse Sutter—Yuba City Courthouse Yolo—Woodland Courthouse</p>
<p>Indefinitely Delayed (11 Projects)</p> <p>Fresno—County Courthouse Kern—Delano Courthouse Kern—Mojave Courthouse Los Angeles—Glendale Courthouse Los Angeles—Santa Clarita Courthouse Los Angeles—Southeast Los Angeles Courthouse Monterey—South Monterey County Courthouse Nevada—Nevada City Courthouse Placer—Tahoe Area Courthouse Plumas—Quincy Courthouse Sacramento—Criminal Courthouse^c</p>	<p>In Construction (4 Projects)</p> <p>Alameda—East County Courthouse Merced—Los Banos Courthouse San Diego—Central San Diego Courthouse Santa Clara—Family Justice Center</p>
	<p>Authorized to Begin Construction Pending Lease Revenue Bond Sale (4 Projects)</p> <p>Glenn—Willows Courthouse Lake—Lakeport Courthouse Siskiyou—Yreka Courthouse Tehama—Red Bluff Courthouse</p>
	<p>Requesting Authority to Enter Construction Phase (4 Projects)</p> <p>Imperial—El Centro Family Courthouse Riverside—Indio Juvenile and Family Courthouse Shasta—Redding Courthouse Tuolumne—Sonora Courthouse</p>
	<p>In Preconstruction Activities (5 Projects)</p> <p>El Dorado—Placerville Courthouse Inyo—Inyo County Courthouse Los Angeles—Eastlake Juvenile Courthouse Santa Barbara—Criminal Courthouse Sonoma—Santa Rosa Criminal Courthouse</p>
	<p>Requesting Funding for Additional Preconstruction Activities (3 Projects)</p> <p>Mendocino—Ukiah Courthouse Riverside—Mid County Civil Courthouse Stanislaus—Modesto Courthouse</p>

^a Original construction project has been cancelled, and 2016-17 budget proposes a facility modification project instead.

^b Original construction project has been cancelled, but was replaced with a renovation of another existing courthouse to house this facility.

^c One-time funding provided to complete certain preconstruction activities only.

ICNA = Immediate and Critical Needs Account.

Governor's Proposal

The Governor's budget includes a number of court construction proposals totaling \$305 million. First, the Governor's budget proposes a one-time \$3.5 million augmentation from ICNA for facility modification projects at the Antonovich Antelope Valley Courthouse (\$3.2 million) and the McCourtney Juvenile Justice Center (\$300,000) in Los Angeles County. Second, the budget also proposes \$301 million for seven other court construction projects. This amount consists of (1) \$230 million in lease revenue bond authority for the construction of three previously approved projects (with approximately \$19 million in annual debt service to be paid from ICNA), (2) \$42 million in lease revenue bond authority (with about \$3.5 million in annual debt service to be paid from ICNA) and nearly \$2 million from ICNA for construction activities for one previously approved project, and (3) \$27 million from ICNA for design activities for three previously approved projects.

LAO Assessment

Governor's Proposal Would Likely Result in ICNA Becoming Insolvent. The Governor's proposal for \$272 million in lease revenue bond authority to finance four previously approved projects commits the state to providing approximately \$23 million in annual debt-service payments for about 20 years after construction is complete. This would be in addition to the roughly \$230 million in current annual expenditures, as discussed above. (The Governor's proposal would also result in \$29 million in one-time preconstruction costs to ICNA.) Given that ICNA only receives about \$250 million in revenue annually, approval of these new projects would likely result in annual operating deficits in the near future. Give the current ICNA fund balance and assuming no further projects were allowed to

proceed, we estimate ICNA would be insolvent in about 15 years.

Additional Future Projects Would Speed Up ICNA Insolvency. According to judicial branch estimates, if all projects that are not currently canceled or indefinitely delayed completed construction as planned (including the above projects proposed by the Governor), the ICNA operating deficit would increase further, reaching nearly \$100 million by 2037-38. Under this scenario, ICNA would become insolvent even earlier—by 2023-24.

LAO Recommendations

Withhold Action on Governor's Proposals for Increased ICNA Spending. Given that the Governor's proposals would likely result in ICNA becoming insolvent in about 15 years, we recommend that the Legislature direct Judicial Council to report at budget hearings this spring on how it plans to ensure monies would be available to fully fund the debt service of the proposed projects. Pending its receipt and review of this report, we recommend the Legislature withhold action on the Governor's proposals.

Direct Judicial Council to Submit a Plan Regarding Additional Future Projects. The judicial branch has eight courthouse projects not included in the Governor's proposals that will require construction funding in the future. Because Judicial Council should be matching expenditures to revenues available in ICNA under state law, we recommend the Legislature adopt supplemental reporting language requiring the Judicial Council to submit a plan by January 10, 2017 for addressing the long-term solvency of ICNA within existing financial resources. Such a plan could include alternative financing agreements (such as partnering with counties to finance facilities), delaying projects, reducing expenditures

on construction projects, or reducing expenditures on facility modification projects. The Legislature could then use this plan to help determine what

additional projects, if any, should move forward when the projects seek additional funding in future budgets.

DEPARTMENT OF JUSTICE

Overview

Under the direction of the Attorney General, the Department of Justice (DOJ) provides legal services to state and local entities, brings lawsuits to enforce public rights, and carries out various law enforcement activities. For example, DOJ provides legal support to the various boards and bureaus of the Department of Consumer Affairs (DCA) for formal discipline proceedings against licensees and investigates health provider Medi-Cal fraud and elder abuse complaints. The DOJ also collects criminal justice statistics from local authorities; manages the statewide criminal history database; and conducts background checks required for employment, licensing, and other purposes.

Fraud and Elder Abuse Enforcement Enhancement

LAO Bottom Line. We recommend that the Legislature provide DOJ with \$7.8 million on a one-time basis from the Federal Trust Fund and the False Claims Act Fund to support 35 positions to eliminate an existing backlog largely related to abuse and neglect cases. However, as of this time, there is insufficient information to justify the need for these resources on an ongoing basis, as proposed by the Governor.

Background

Medi-Cal Program. In California, the Department of Health Care Services (DHCS) administers the state's Medicaid program (known as Medi-Cal). As a joint federal-state program, federal funds are available to the state

for the provision of health care services for most low-income persons. Until recently, Medi-Cal eligibility was mainly restricted to low-income families with children, seniors and persons with disabilities, and pregnant women. As part of the federal Patient Protection and Affordable Care Act, beginning January 1, 2014, the state expanded Medi-Cal eligibility to include additional low-income populations—primarily childless adults who did not previously qualify for the program.

DOJ Bureau of Medi-Cal Fraud and Elder Abuse. Federal law generally requires states operating Medicaid programs to establish fraud control units tasked with the investigation and prosecution of fraud in the state's Medicaid program. Such units must also review complaints of abuse or neglect of patients (such as the elderly) in health care facilities and room and board facilities. The federal government pays 75 percent of the total cost to support the operations of such fraud units up to a certain limit. The state pays the remaining portion.

The Bureau of Medi-Cal Fraud and Elder Abuse within DOJ serves as California's Medicaid fraud control unit. Under state law, the bureau is generally responsible for fraud investigations and prosecutions related to providers (such as billing fraud and prescription drug diversion schemes), as well as abuse or neglect complaints. The bureau currently receives \$36.7 million in funding—\$27.5 million in federal funds and \$9.2 million in state funds—to handle this workload. This funding supports 205 positions across five satellite offices—located in Sacramento, Burbank, San Diego, Laguna Woods, and West

Covina. In 2014-15, the bureau received a total of 3,382 cases—2,938 related to abuse or neglect and 444 related to fraud. According to DOJ, the bureau currently has a backlog of approximately 230 cases that have been opened, but have not been assigned to an investigator. Of this amount, 93 percent are related to abuse or neglect cases with the balance being related to provider fraud. DHCS handles investigations of fraud committed by beneficiaries of the Medi-Cal program.

Governor's Proposal

The Governor's budget proposes a \$7.8 million augmentation (\$5.9 million in federal funds and \$2 million from the False Claims Act Fund), to support 35 additional positions for the bureau, as well as to lease office space for the establishment of three satellite offices in Fresno, Riverside, and San Francisco. The requested positions include: 18 special agents, 6 investigative auditors, 5 deputy attorney generals, 3 legal secretaries, 2 staff information systems analysts, and 1 office technician. DOJ plans to use the proposed resources to first eliminate the above backlog of cases beginning in 2016-17. On an ongoing basis, the proposed resources would be used to address an anticipated increase in workload associated with an increasing elderly population and the Medi-Cal eligibility expansion. The department also intends to expand its abilities to investigate and prosecute fraud, such as by expanding its role in fraud related to managed care providers and using data-mining to identify patterns of fraudulent activity.

LAO Assessment

Resources to Address Backlog Appear Justified, but Ongoing Need Unclear. As indicated above, the proposed 35 positions are based on the level of resources DOJ believes is necessary to address the 230 case backlog in 2016-17. Since most of the backlog consists of abuse or neglect cases involving

the health and safety of individuals, we find that the request for positions in the budget year is reasonable. However, the department has not provided sufficient information to justify these positions on an ongoing basis after the backlog is eliminated. For example, it is unclear exactly how much additional abuse and neglect workload will be generated from an increasing elderly population. In addition, a major reason for expanding the bureau's capacity to pursue Medi-Cal fraud cases is to generate a financial return for the state (such as from the recovery of money paid to fraudulent providers). However, the department has not provided information on the return the state can expect from the activities that would be supported by the ongoing funding. This information is critical because the Legislature will want to ensure that the returns justify the ongoing resources dedicated to them.

LAO Recommendations

Provide One-Time Funding. We recommend that the Legislature provide DOJ with the 35 requested positions and funding for the bureau on a one-time basis to address the existing backlog of cases that are largely related to abuse or neglect. However, at this time, there is a lack of sufficient information to justify the ongoing need for these positions. To the extent that DOJ is able to provide the Legislature with information on (1) the extent to which abuse and neglect cases will increase and (2) the return the state can expect from expanding its capacity to pursue Medi-Cal fraud, the Legislature can consider a request for ongoing funding in the future.

Public Protection and Consumer Protection Enforcement Initiative

LAO Bottom Line. We recommend that the Legislature reject the Governor's proposal to provide \$1.4 million in ongoing funding from the

Legal Services Revolving Fund and seven positions for DOJ to reduce the average number of days to adjudication for DCA formal discipline cases, because (1) average days to adjudication would likely decline without additional positions and (2) issues unrelated to staffing could be causing delays. We also recommend that the Legislature adopt supplemental reporting language requiring DOJ to report on strategies for preparing cases for adjudication in a timely manner.

Background

Enforcement of Consumer Protection Laws.

The DCA is responsible for promoting consumer protection while supporting a fair and competitive marketplace. Currently, DCA consists of roughly 40 boards and bureaus—such as the Medical Board of California and the California Bureau of Real Estate—that are responsible for regulating various professions. One of DCA’s primary responsibilities is the enforcement of consumer protection laws by disciplining licensees. The enforcement process can vary for each of DCA’s boards and bureaus, but generally includes three steps: intake, investigation, and formal discipline. First, at the intake step, the board or bureau receives a complaint against a licensee and assigns the case to an investigator. Second, at the investigation step, the board or bureau collects facts and determines whether sufficient evidence exists to pursue an action and, if so, what type of action (formal discipline or a lesser action such as a citation and fine). Finally, if it is determined that there is sufficient evidence to pursue formal discipline, the board or bureau will refer such cases to DOJ for prosecution. DOJ can resolve these cases in various ways—such as declining to prosecute the case or settling the case on behalf of the board or bureau. DOJ can also schedule the case for a hearing before an administrative law judge at the Office of Administrative Hearings (OAH) within the

Department of General Services. Cases are resolved when the board or bureau adopts a decision on the case.

DCA Initiates Improvements to Enforcement Process. In 2010, DCA proposed a plan, known as the Consumer Protection Enforcement Initiative (CPEI), to address problems it believed limited the ability of its boards to resolve complaints in a timely manner. For example, some boards took an average of three years to complete the enforcement process. The CPEI proposed restructuring the enforcement process by making administrative improvements (such as delegating subpoena authority to board and bureau staff). In addition, the plan called for increased staff and fiscal resources, and potential statutory changes. As part of CPEI, DCA and its boards and bureaus set performance targets for the average number of days to complete each of the three main steps of the enforcement process. While targets for individual steps may vary by board and bureau, the formal target for the entire process is set uniformly at 540 days (or 18 months). In recent years, many boards and bureaus have not been meeting the 18-month target. For example, roughly two-thirds of boards and bureaus exceeded the target in 2013-14. Of this amount, roughly 58 percent exceeded the target by more than 200 days. Enforcement delays sometimes last for years and allow licensees to continue working despite outstanding complaints, which can compromise consumer protection.

DOJ Provided Additional Positions in 2015-16 for Increased Enforcement Workload. The 2015-16 budget includes a \$2.8 million augmentation from the Legal Services Revolving Fund, as well as nine deputy attorney general and six legal secretary positions, for DOJ to address increased workload related to formal discipline. This brought the total DOJ budget related to the formal discipline step to roughly \$30 million and 117 positions—including

90 deputy attorney general positions. (We note that DCA boards and bureaus reimburse DOJ for its costs through deposits into the Legal Services Revolving Fund.) At the time of this analysis, three of the nine deputy attorney general positions provided in the 2015-16 budget remained unfilled.

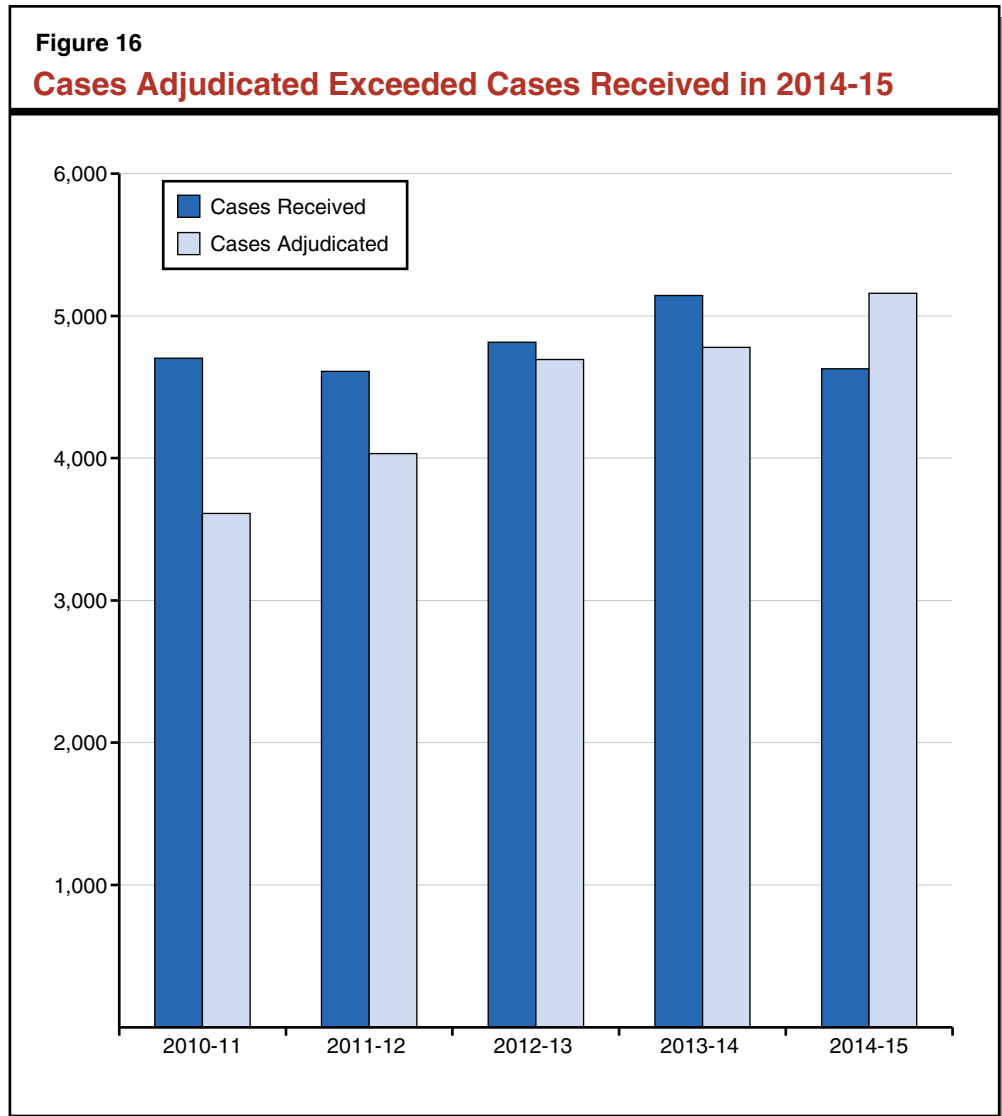
Governor’s Proposal

As noted above, many DCA boards and bureaus have not been meeting the 18-month target for completing all three steps of the enforcement process. The Governor’s 2016-17 budget seeks to take steps towards meeting this goal by attempting to speed up the third step of the process—the formal discipline step. Specifically, the Governor’s budget proposes a \$1.4 million augmentation from the Legal Services Revolving Fund, as well as five deputy attorney general and two legal secretary positions for DOJ, to reduce the average number of days it takes to bring a case to adjudication. (Time to adjudication is measured as the time from when DOJ receives the case to when DOJ resolves the case such as by declining prosecution, the board or bureau settles the case,

or the OAH hearing is complete.) The Governor’s budget also proposes increased expenditure authority for DCA to reimburse DOJ.

LAO Assessment

Average Days to Adjudication Would Likely Decline Without Additional Positions. Even without receiving additional positions in 2016-17, we estimate that the average number of days to adjudication would likely decline for two reasons. First, as shown in Figure 16, DOJ receives cases (also known as “opening the case”) each year that add to its existing workload. At the same time, DOJ brings a certain number of cases to adjudication



each year (also known as “closing the case”). In years where the number of cases received exceeds the number of cases adjudicated, these cases take longer to resolve, increasing DOJ’s average days to adjudication. However, in 2014-15, DOJ received fewer cases than it adjudicated—thereby allowing DOJ to begin to reduce the total number of unresolved cases. This likely reduced average days to adjudication. Second, the number of cases received annually has remained relatively constant. Assuming that DOJ attorneys each handle the same number of cases, the additional positions provided in 2015-16 should allow DOJ to adjudicate even more cases—particularly after the three vacant positions are filled. This would further reduce the total number of unresolved cases and average days to adjudication.

Issues Unrelated to Staffing Could Be Delaying Overall Enforcement Process. The Governor’s proposal seeks to meet the 18-month goal for the overall enforcement process by speeding up the formal discipline step—that is, by providing DOJ with greater resources to bring cases to adjudication more quickly. We note, however, that DCA and some of its boards, OAH, and DOJ have identified a number of other possible reasons unrelated to DOJ staffing for the failure to meet the 18-month goal. For example, some DCA boards indicated that difficulties in obtaining information necessary to complete investigations often caused delays in completing the second step of the enforcement process in a timely manner. Departments involved in the process also noted that DOJ sometimes receives incomplete cases from DCA and that there are often delays regarding the scheduling of hearings by OAH, both of which impact the average time it takes to complete the formal discipline step. In addition, DOJ reported certain challenges in settling some cases because it lacks clear guidance on the specific settlement terms that will be acceptable to DCA’s boards and

bureaus, which can delay the enforcement process. Accordingly, the additional positions for DOJ in the Governor’s budget may not address key factors contributing to delays in the overall enforcement process.

LAO Recommendations

Reject Governor’s Proposal. In view of the above, we recommend that the Legislature not approve the proposed \$1.4 million augmentation from the Legal Services Revolving Fund and seven additional positions at this time. Providing such resources is premature given that (1) DOJ’s average number of days to adjudication would likely decline even without additional positions and (2) there appears to be other factors unrelated to DOJ staffing that could be preventing departments from meeting the 18-month goal for completing the overall enforcement process.

Require DOJ to Report on Workload Strategy. In order to increase legislative oversight of DOJ’s handling of the formal discipline step, we recommend that the Legislature adopt supplemental reporting language requiring DOJ to evaluate its workload and provide a plan by January 10, 2017 for preparing cases for adjudication in a more timely manner. Specifically, this report should identify (1) the causes of delays in DOJ workload (such as the number of cases returned annually to specific boards/bureaus due to incompleteness), (2) strategies for addressing these delays (which could include improved processes with DCA boards/bureaus or within DOJ), and (3) trade-offs associated with each strategy (such as the need for additional resources). The Legislature will want to consider this report, along with similar information it currently requires from DCA and OAH, to begin identifying the specific causes of delay in the enforcement process and potential solutions to address these delays.

LOCAL PUBLIC SAFETY

County Jail Grants

LAO Bottom Line. We recommend that the Legislature reject the Governor’s proposal to provide \$250 million in one-time funding from the General Fund for jail construction, due to the lack of a detailed analysis from the administration regarding the need for additional state jail funding.

Background

2011 Realignment. As part of the 2011-12 budget package, the state enacted legislation to realign to counties the responsibility for certain felony offenders. For example, certain lower-level felony offenders with no current or prior serious, sex, or violent crimes are no longer eligible for prison and now serve their sentences in the county jail, in the community under the supervision of county probation departments, or a combination of the two. These changes increased the number of inmates coming to county jail. The average statewide jail population increased from about 70,000 in 2011 to about 82,000 in 2014.

In addition, the 2011 realignment changed the type of offenders in jail. Prior to realignment, jails generally held defendants awaiting trial or arraignment and individuals sentenced to serve less than one year in jail. After realignment, however, certain felony offenders began serving all or a portion of their sentence in county jail, rather than in state prison—typically for more than a year.

Since existing jails were not generally designed to house long-term offenders, the longer sentences resulting from realignment create challenges for counties. For example, jails often have only limited space for rehabilitative programs that serve long-term offenders. Jails also often have limited medical facilities to effectively treat long-term inmates with health problems, which can

frequently result in inmates being transported to local medical facilities at a significant cost.

Recent Funding Provided for Jail

Construction. Given the impact of the 2011 realignment on jails, the state has provided in recent years a total of \$2.2 billion in lease revenue bonds to fund the construction and modernization of county jails. Specifically, the state has provided:

- \$1.2 billion in lease revenue bonds authorized by Chapter 7 of 2007 (AB 900, Solorio) to increase housing capacity by adding over 9,000 beds to county jails.
- \$500 million in lease revenue bonds authorized by Chapter 42 of 2012 (SB 1022, Committee on Budget and Fiscal Review) to primarily increase program and health care space in jails. Funds could also be used to add housing capacity.
- \$500 million in lease revenue bonds authorized by Chapter 37 of 2014 (SB 863, Committee on Budget and Fiscal Review) for the same purpose as Chapter 42.

These jail construction grants are administered by the Board of State and Community Corrections (BSCC). For each of the above funding allocations, Figure 17 (see next page) shows the amount that has been awarded at this time to each county. As shown in the figure, jail capacity is expected to increase by a total of about 10,600 beds. We note that some projects are intended to construct or modify health care and program space rather than add bed capacity.

Governor Proposes Additional \$250 Million for County Jails

The Governor’s budget for 2016-17 proposes one-time funding of \$250 million from the General Fund for jail construction. According to

Figure 17**Overview of State-Funded Jail Projects***(Dollars in Millions)*

County	Award Amounts			Total	Additional Beds
	AB 900	Chapter 42 ^a	Chapter 37 ^b		
Alameda	—	—	\$54	\$54	—
Amador	—	—	17	17	40
Butte	—	—	40	40	38
Calaveras	\$26	—	—	26	95
Colusa	—	—	20	20	4
Fresno	—	\$79	—	79	—
Humboldt	—	—	20	20	44
Imperial	33	—	—	33	228
Kern	100	—	—	100	790
Kings	33	20	—	53	276
Lake	—	20	—	20	79
Los Angeles	100	—	—	100	1,604
Madera	31	—	—	31	145
Merced	—	—	40	40	30
Monterey	80	—	—	80	576
Napa	—	13	3	16	72
Orange	100	80	—	180	896
Placer	—	—	—	10	—
Riverside	100	—	—	100	897
Sacramento	—	80	—	80	26
San Benito	15	—	—	15	60
San Bernardino	100	—	—	100	1,368
San Diego	100	—	—	100	842
San Francisco	—	—	80	80	—
San Luis Obispo	25	—	—	25	155
Santa Barbara	80	39	—	119	576
Santa Clara	—	—	80	80	18
Santa Cruz	—	25	—	25	—
Shasta	—	20	—	20	64
Siskiyou	27	—	—	27	150
Solano	62	23	—	85	362
Sonoma	—	—	40	40	72
Stanislaus	80	40	—	120	456
Sutter	10	—	—	10	42
Tehama	—	—	—	16	64
Trinity	—	—	20	20	19
Tulare	60	33	—	93	414
Tuolumne ^c	13	20	—	33	—
Ventura	—	—	27	27	64
Yolo	36	—	31	67	10
Yuba	—	—	20	20	12
Totals	\$1,211	\$493	\$492	\$2,220	10,588

^a Chapter 42 of 2012 (SB 1022, Committee on Budget and Fiscal Review).^b Chapter 37 of 2014 (SB 863, Committee on Budget and Fiscal Review).^c Data on the number of beds was unavailable at the time of this analysis.

the administration, the proposed funds would be awarded to counties that have either (1) not received any of the above \$2.2 billion or (2) received less funding than they requested. As shown in Figure 18, there are 20 counties eligible to receive funding under this criteria. The administration has indicated that the funds are primarily intended to increase program and health care space and would be distributed in a manner similar to the funds awarded pursuant to Chapter 42 and Chapter 37. Under the proposal, counties would be subject to a 10 percent match requirement, except that small counties (populations of 200,000 or less) would be subject to a 5 percent match requirement.

Proposal Lacks Adequate Assessment of Need

The administration has not provided a detailed analysis regarding the magnitude of either programming or capacity needs and the extent to which the Governor’s proposal would meet these needs. For example, the administration has not provided an estimate of the number of additional jail beds counties need or the amount of additional rehabilitation program or health service space needed. As we discuss below, such an analysis should take into account (1) the impact of Proposition 47 (approved by the voters in November 2014) on jail workload and (2) the extent to which eligible counties have pursued alternatives that could reduce or eliminate the need for state funding.

Impact of Proposition 47. According to the administration, the proposed \$250 million is needed in part to address continued demands on local jail infrastructure created by the 2011 realignment of low-level felony offenders. While realignment created a need for modifications to jail infrastructure, the administration has not provided an analysis of any unmet needs and how these needs have been mitigated by Proposition 47, which reduced the penalties for

certain non-violent, nonserious drug and property crimes. Since offenders convicted of such offenses are now receiving shorter jail terms than they otherwise would have, the proposition has reduced the workload for county jails. For example, the average statewide jail population decreased from about 83,000 inmates in the period from July to September of 2014 to about 73,000 inmates in the period from January to March 2015.

Whether Eligible Counties Have Pursued Alternatives. In addition, the administration has not provided an assessment of whether the counties it has identified as eligible for jail construction funding have pursued alternatives that could reduce or eliminate the need for state funding. In particular, it is unclear whether these counties have:

- **Maximized Alternatives to Increasing Jail Space.** Counties have significant influence over the size of their jail populations. Specifically, counties can use various tools to reduce jail populations, such as probation, alternatives to

Figure 18
Counties Eligible for Proposed Jail Funding

Received No Prior Funding	Received Only Partial Funding
Alpine	Placer
Contra Costa	Tehama
Del Norte	Ventura
El Dorado	
Glenn	
Inyo	
Lassen	
Marin	
Mariposa	
Mendocino	
Modoc	
Mono	
Nevada	
Plumas	
San Joaquin	
San Mateo	
Sierra	

incarceration, rehabilitation programs, flash incarceration, and aggressive pretrial release. Counties can also take other steps, such as contracting for jail space in other county jails. Counties that have not employed such tools may not necessarily need state funds for jail construction to address their jail capacity needs.

- ***Planned to Make Effective Use of Program Space.*** Some counties have indicated a need for funding to build facilities that would be used to provide programming. The Legislature will want to ensure that such space would be used to deliver programs that have been demonstrated to be effective.
- ***Identified Local Funding Sources.*** In addition, it is unclear to what extent counties have attempted to identify local funding sources to address their jail construction needs.

The absence of such analysis makes it more difficult for the Legislature to assess what infrastructure needs counties lack and whether the proposed \$250 million in the Governor's budget for jail construction is needed, or if a different amount would be appropriate.

LAO Recommendation

Reject Proposed Jail Funding. While it is possible that there may be some need for additional state funding for county jail construction, the administration has not been able to provide a detailed assessment of the current need. Absent such justification, we recommend that the Legislature reject the Governor's proposal to provide \$250 million from the General Fund for jail construction.

City Law Enforcement Grants

LAO Bottom Line. We find that the Governor's proposal to provide \$26 million from the General

Fund on a one-time basis to extend the local law enforcement grant program for another year lacks sufficient justification and, thus, recommend its rejection.

Background

Providing police services is one of the primary functions of local governments. In 2011-12, the most recent year of data available, cities spent a total of about \$9.5 billion statewide to provide police services to California's 482 cities. Most of these funds come from local sources, such as local taxes and fees.

As part of the 2012-13 budget, the Governor proposed and the Legislature approved a three-year grant program (from 2012-13 through 2014-15) to provide state General Fund support to city law enforcement, primarily police. The funds were initially approved at \$24 million each year, then were increased to \$27.5 million in 2013-14, and again to \$40 million in 2014-15.

The *2015-16 Budget Act* included funding to extend the local law enforcement grant program for one additional year, as well as targeted the funding for specific purposes. Specifically, the budget provided \$26 million from the General Fund on a one-time basis for the program in 2015-16. This amount includes \$20 million to increase positive outcomes between city police and the homeless, persons with mental health needs, and high-risk youth. Agencies are required to provide data on their use of force in order to receive funding. The remaining \$6 million is for strengthening the relationship between communities and law enforcement. The BSCC is responsible for determining recipients of grants to strengthen relationships between communities and law enforcement. According to the administration, the BSCC is currently determining what measures will be required to be reported to the state to assess the effectiveness of the program.

Governor's Proposal

The Governor's budget proposes \$26 million from the General Fund on a one-time basis to extend the local law enforcement grant program for yet another year. According to the administration, the grants for improving police relations with the homeless, those with mental health needs, and at-risk youth would be provided to law enforcement agencies under an allocation formula determined by the California Police Chiefs Association based on county rates of mental illness and homelessness. Under the Governor's proposal, law enforcement agencies would not be required to report on their use of the funds. The Governor also proposes to eliminate the current requirement that law enforcement agencies report on their use of force in order to receive grants.

Proposal Lacks Sufficient Justification

The Governor's proposal to provide \$26 million to extend the law enforcement grants for an additional year lacks justification for the following reasons:

- **Program Outcomes Not Clearly Defined.** The administration has not provided any plan for assessing whether the programs are effective at achieving their intended goals. For example, it is unclear what outcome measures would be used to determine whether the grants have strengthened the relationship between communities and law enforcement.
- **Raises Questions of State Role in Local Policing.** The proposed state funding is a tiny fraction of total city police spending. Given that local policing has historically been a local function, it's not clear what role the state is serving by intervening in this way.

LAO Recommendation

Reject Proposed Funding. In view of the above, we recommend that the Legislature reject the Governor's proposal to provide \$26 million in local law enforcement grants in 2016-17.

Trial Court Security

LAO Bottom Line. We recommend that the Legislature reject the Governor's proposal to provide a \$700,000 General Fund augmentation for counties for increased trial court security costs resulting from the reallocation of vacant judgeships, due to a lack of justification that the proposed funding is needed.

Background

2011 Realignment of Trial Court Security. As part of the 2011-12 budget plan, the Legislature enacted a major shift—or “realignment”—of state criminal justice, mental health, and social services program responsibilities and revenues to local government. This realignment shifted responsibility for funding most trial court security costs (provided by county sheriffs) from the state General Fund to counties. Specifically, the state shifted \$496 million in tax revenues to counties to finance these new responsibilities. State law also requires that any revenue from the growth in these tax revenues is to be distributed annually to counties based on percentages specified in statute. Due to this additional revenue, the amount of funding provided to counties to support trial court security has grown since 2011-12 and is expected to reach \$559 million in 2016-17—an increase of \$63 million (or nearly 13 percent). This additional revenue is distributed among counties based on percentages specified in statute.

Additional General Fund Recently Appropriated for Greater Levels of Trial Court Security. The California Constitution requires

that the state bear responsibility for any costs related to legislation, regulations, executive orders, or administrative directives that increase the overall costs borne by a local agency for realigned programs or service levels mandated by the 2011 realignment. As part of the annual budget act, the state provided \$1 million in additional General Fund support in 2014-15 and \$2 million in 2015-16—above the tax revenue provided through the 2011 realignment—to provide counties with funding to address increased trial court security costs. Eligibility for these funds was limited to counties experiencing increased trial court security costs resulting from the construction of new courthouses occupied after October 9, 2011 (around the time of implementation of the 2011 realignment). Counties are required to apply to the Department of Finance (DOF) for these funds and only receive funding after meeting certain conditions—including that the county prove that a greater level of service is now required from the county sheriff than was provided at the time of realignment. Of the additional funds provided, DOF allocated \$713,000 in 2014-15 and expects to allocate about \$1.5 million to qualifying counties in 2015-16.

Governor's Proposal

The Governor's budget for 2016-17 includes \$5 million in General Fund support for increased trial court security costs resulting from the construction of new courthouses, an increased amount from what has been provided in each of the past two fiscal years. The budget also proposes a \$700,000 General Fund augmentation to counties for increased trial court security levels resulting from a separate proposal to reallocate up to five

existing vacant trial court judgeships and their staffing complements to trial courts with greatest judicial need. At this time, the administration has not identified which trial courts will gain or lose judgeships. The administration plans to work with the Judicial Council on how to implement this proposal and intends to propose trailer bill legislation regarding the reallocation of the judgeships.

Lack of Justification for Additional Funding

Absent information on which courts will be losing or receiving judgeships, it is difficult for the Legislature to determine whether trial court security levels are actually increasing. For example, certain trial courts only use sheriff-provided security in a limited number of case types—such as criminal cases. To the extent such a court receives a judgeship and assigns the judge to hear non-criminal cases, the sheriff is not providing an increased level of service that requires increased funding. In addition, counties with trial courts that are losing judgeships may be experiencing reduced costs from lower court security service levels. However, rather than shifting the resulting savings to counties receiving judgeships, counties losing judgeships under the Governor's proposal will maintain their funding.

LAO Recommendation

Reject Proposed Augmentation. In view of the above, the administration has not shown that additional resources are needed. Accordingly, we recommend that the Legislature reject the Governor's proposal for a \$700,000 General Fund augmentation for increased trial court security needs.

SUMMARY OF LAO RECOMMENDATIONS

Issue	Governor's Proposal	LAO Recommendation
Cross Cutting Issue		
Criminal fine and fee revenue	Various proposals including expenditure reductions, cost shifts to the General Fund as well as other funds, and cash flow loans from the General Fund, to address operational shortfalls and insolvency in various state funds due to declines in criminal fine and fee revenue.	Approve proposals given the lack of other available solutions in the short term. Implement structural changes to criminal fine and fee system to permanently address problem by reevaluating the overall structure of the system, increasing legislative control over the use of its revenue, and restructuring the collection process.
California Department of Corrections and Rehabilitation (CDCR)		
Adult prison and parole populations	Increase of \$14.1 million (General Fund) for various adjustments associated with prison and parole caseload changes.	Withhold recommendation until May Revise and direct CDCR to provide an estimate of savings from the delayed activation of the infill facility at R.J. Donovan prison so that it can be incorporated into the budget.
Plans for complying with court-ordered population cap	Proposes extension of authority to procure contract beds.	Approve extension of authority to procure contract beds but direct CDCR to close the California Rehabilitation Center in Norco as the capacity is not necessarily needed to comply with the population cap.
Drug interdiction	Increase of \$7.9 million (General Fund) to extend for one additional year an existing inmate drug testing and drug interdiction pilot program.	Approve \$750,000 for drug testing but reject remainder of proposal due to the lack of conclusive evidence at this time regarding program effectiveness.
Housing unit conversions	Increase of \$5.8 million (General Fund) to fund increased staffing for CDCR's Investigative Services Unit (ISU) from savings related to segregated housing unit conversions.	Reject proposal given insufficient justification, particularly in light of recent declines in other ISU workload.
Alternative custody programs	Increase of \$3.7 million (General Fund) to expand alternative custody programs. Reduce the length of time inmates can participate in the programs from two years to one.	Withhold action on the proposal to reduce the length of time inmates can participate pending additional information to determine whether the change is warranted.
Programs and services for long-term offenders	Increase of \$10.5 million (General Fund) to expand availability of programs for long-term offenders.	Approve \$4 million for proposed expansion of programming benefitting higher-risk offenders. Reject the remainder of the proposal to expand services for long-term offenders as research suggests that programs targeting higher-risk offenders are likely to achieve better outcomes.
Male Community Reentry Program (MCRP)	Increase of \$32 million (General Fund) to support existing MCRP and expand the program to four additional facilities.	Reject proposal given that MCRP is unlikely to be the most cost-effective approach to reduce recidivism.
Supervisory staffing model for correctional medical care	Increase of \$6 million (General Fund) to allow for separate executive management teams at each state prison.	Reject proposal given insufficient justification that adequate levels of care cannot be provided by shared executive management teams.

(Continued)

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Issue	Governor's Proposal	LAO Recommendation
Augmentation for inmate pharmaceuticals	Increase of \$6.8 million (General Fund) to account for increased expenditures for inmate pharmaceuticals, partially based on using the past-year changes in the pharmaceutical Consumer Price Index (CPI) to estimate expenditures in the budget year.	Approve increases to the inmate pharmaceutical budget based on pharmaceutical CPI projections rather than past-year changes. Direct Receiver to provide additional information on pharmaceutical expenditures and prices.
Ironwood State Prison maintenance staff	Increase of \$524,000 (General Fund) for maintenance of the new central chiller system at Ironwood State Prison.	Reduce proposal by \$275,000 to reflect savings available from eliminating maintenance on the pre-existing cooling system.
Judicial Branch		
\$20 million augmentation for trial court operations	Increase of \$20 million (General Fund) to support trial court operations.	Reject proposal given insufficient justification particularly since proposed budget already accounts for increased workload and costs.
New court innovations grant program	Increase of \$30 million (General Fund) on a one-time basis to provide grants to support trial and appellate court innovation, modernization, or efficiency programs or services.	Withhold action pending additional information on the program from the administration and judicial branch.
Judicial branch facility construction proposals	Increase of \$33 million (Immediate and Critical Needs Account [ICNA]) on a one-time basis for facility modification projects as well as design and construction activities for four previously approved projects. Lease revenue bond authority of \$272 million for the construction of four previously approved projects.	Withhold action on increased spending from ICNA pending a report from Judicial Council on how it would ensure monies would be available to fully fund the proposed projects. Adopt supplemental reporting language directing Judicial Council to develop plan for long-term solvency of ICNA.
Department of Justice (DOJ)		
Fraud and elder abuse enforcement enhancement	Increase of \$7.8 million (Federal Trust Fund and False Claims Act Fund) to eliminate backlog consisting largely of abuses and neglect cases, address an anticipated increase in abuse and Medi-Cal fraud workload, and expand DOJ abilities to prosecute Medi-Cal fraud.	Approve funding on a one-time basis to eliminate existing backlog. Insufficient justification for ongoing funding.
Public protection and consumer protection enforcement initiative	Increase of \$1.4 million (Legal Services Revolving Fund) to reduce the average number of days needed to bring Department of Consumer Affairs formal discipline cases to adjudication.	Reject proposal as average number of days to adjudication would likely decline without additional positions and issues unrelated to staffing could be causing delays. Recommend requiring DOJ to report on strategies for preparing cases for adjudication in a timely manner.
Local Public Safety		
County jail grants	Increase of \$250 million (General Fund) in one-time funding for jail construction.	Reject proposal due to the lack of a detailed analysis from the administration regarding the need for additional state jail funding.
City law enforcement grants	Increase of \$26 million (General Fund) in one-time funding to extend the local law enforcement grant program.	Reject proposal given lack of sufficient justification.
Trial court security	Increase of \$700,000 (General Fund) for counties to provide trial court security related to a separate proposal to reallocate up to five existing vacant trial court judgeships.	Reject proposal due to lack of justification that the proposed funding is needed.

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