



The 2019-20 Budget:
**Analysis of Governor's
Criminal Justice Proposals**

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Executive Summary

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 some of our major recommendations. We provide a complete listing of our recommendations at the end of the report.

Budget Provides \$18 Billion for Criminal Justice Programs

The Governor's 2019-20 budget includes a total of \$18.2 billion from all fund sources for the operation of judicial and criminal justice programs. This is a net increase of \$271 million (1.5 percent) over the revised 2018-19 level of spending. General Fund spending is proposed to be \$14.9 billion in 2019-20, which represents an increase of \$183 million (1 percent) above the revised 2018-19 level.

Budget Includes Numerous Proposals Lacking Key Details

Pretrial Release Grant Program. The Governor's budget proposes \$75 million from the General Fund on a one-time basis for Judicial Council to administer a two-year grant program related to pretrial release. While the proposed program could be worthwhile, the Legislature currently lacks sufficient information to effectively evaluate the proposal and weigh the proposed funding relative to its other General Fund priorities. We recommend that the Legislature direct the administration to provide a well-developed proposal that specifies (1) the primary goals of the program, (2) the specific programs or activities that would be funded, (3) how funding would be allocated, and (4) how funded programs or activities would be evaluated to inform statewide decision-making.

Deferred Maintenance. The budget proposes \$65 million from the General Fund to implement deferred maintenance projects at the judicial branch and the California Department of Corrections and Rehabilitation (CDCR). Unlike the judicial branch, at the time of this analysis CDCR had not provided our office with a list of the specific projects it would prioritize with the proposed funding. Prior to approving the proposed funding for CDCR, we recommend the Legislature require the department to report on what projects it intends to implement to ensure that it will focus on high-priority maintenance activities. We also recommend adoption of reporting requirements to increase oversight of (1) how CDCR and the judicial branch maintain their facilities on an ongoing basis and (2) what deferred maintenance projects are actually implemented with the proposed funding.

Structured Decision-Making Framework for Parole Hearings. The administration proposes \$4.9 million from the General Fund and the implementation of a structured decision-making framework for the Board of Parole Hearings (BPH) to accommodate an increase in parole hearings. While we find the proposed use of a decision-making framework to be promising, BPH has not provided a prototype of the framework or important details on its process for developing, implementing, and evaluating the framework. We recommend that the Legislature require BPH to provide such information, so that it can effectively evaluate this potentially significant policy change.

Compensation for Attorneys Appointed by BPH. The Governor's budget includes \$2.5 million from the General Fund to increase pay for attorneys who represent inmates in parole hearings. While a new attorney pay structure appears needed, the Legislature currently lacks

sufficient information to effectively evaluate the proposal. As such, we recommend that the Legislature require BPH to provide key information this spring about its proposed changes to the attorney pay schedule, including the basis for the proposed pay increase and the new structure of the proposed pay schedule.

New Tattoo Removal Program. The Governor's budget proposes \$2.5 million from the General Fund for CDCR to establish a tattoo removal program that would be available at all state prisons. We find that the proposed program could result in certain benefits, such as better employment prospects for inmates that receive the service. However, the Governor's proposal lacks key pieces of information that makes it very difficult for the Legislature to assess whether the proposed program would be effective and whether the requested funding is appropriate. Accordingly, we recommend that the Legislature direct the department to provide additional information on the proposed program, including how many inmates would be served by the program and how it would be structured and evaluated.

Budget Includes Several Proposals Related to Special Fund Shortfalls

Increased Resources for Peace Officer Training. The Governor's budget proposes a \$34.9 million ongoing General Fund augmentation for the Commission on Peace Officer Standards and Training (POST) to restore and expand programs and services that were cut due to past shortfalls in the criminal fine and fee revenue supporting the program. We recommend the Legislature ensure that any funding provided and the planned expenditure of such funding reflect its priorities. To the extent that the Legislature approves additional funding for POST, we also recommend adopting trailer bill language directing POST to report annually on specific outcome and performance measures that are tied to legislative expectations for the additional funding.

Bureau of Firearms (BOF) Workload. The Governor's budget proposes a series of adjustments related to BOF that are intended to prevent the Dealer's Record of Sale (DROS) Special Account—which is supported by fee revenues—from becoming insolvent and to accommodate additional BOF workload. While the overall proposal is a step in the right direction, it does not fully address the identified problems, and results in some unintended consequences. As such, we recommend an alternative package of adjustments that allocates the funding in a different manner, but addresses the concerns with the Governor's proposal. We also recommend that the Legislature require a report from the Department of Justice and the administration on addressing the ongoing operational shortfalls facing the DROS Special Account and another special fund that supports BOF—the Firearms Safety and Enforcement Special Fund.

Improvement and Modernization Fund (IMF). The budget proposes General Fund resources for the trial court Phoenix financial procurement, and payroll system and the judicial branch's Litigation Management Program, in order to offset existing IMF support for these programs and support increased costs. While the Governor's proposal would help prevent the IMF from becoming insolvent in 2019-20, it is projected to face operational shortfalls and potential insolvency in the future—largely due to a steady decline in criminal fine and fee revenue deposited into the fund. In order to address these concerns, we recommend the Legislature (1) deposit IMF revenues into the General Fund and eliminate the IMF and (2) direct the judicial branch to report on each program currently receiving IMF funding (such as past expenditures and benefits achieved) to help determine what level of funding is appropriate to provide these programs. Given that it will take time to complete this report and for the Legislature to consider the information as part of its budget priorities, we recommend providing one-time General Fund support for these programs.

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 offenders back into the community. The state’s major criminal justice programs include the court system, the California Department of Corrections and Rehabilitation (CDCR), and the California Department of Justice (DOJ). The Governor’s budget for 2019-20 proposes total expenditures of \$18.2 billion for the operations of 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 2019-20.

State Operational Expenditure Trends

Total Spending Declined Between 2010-11 and 2012-13 . . . As shown in **Figure 1**, total state expenditures on the operation of criminal justice programs declined between 2010-11 and 2012-13,

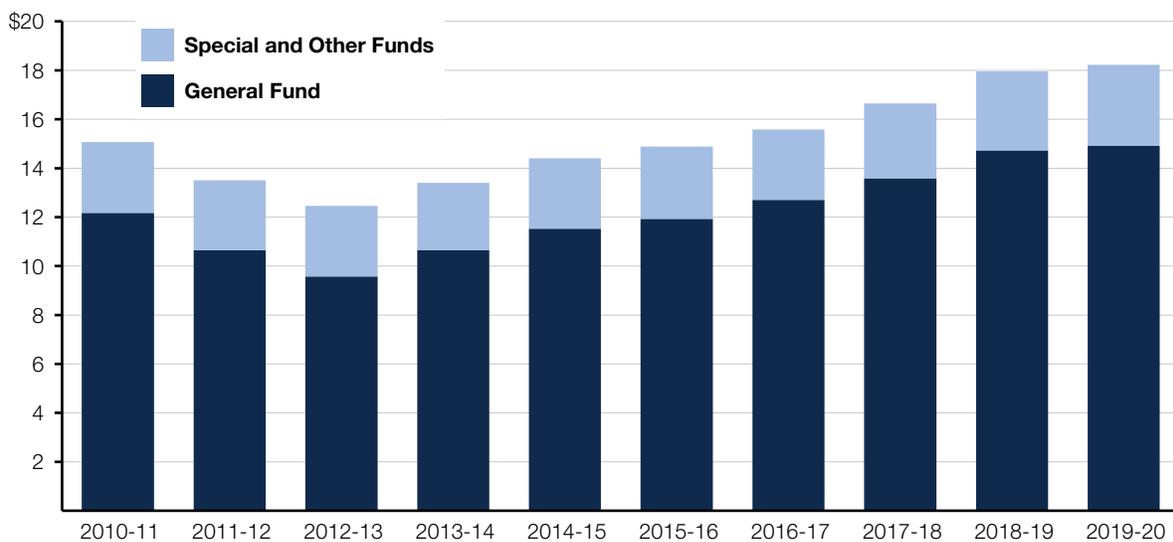
primarily due to two factors. First, in 2011 the state realigned various criminal justice responsibilities to the counties, including the responsibility for certain low-level felony offenders. This realignment reduced state correctional spending. Second, the judicial branch—particularly the trial courts—received significant one-time and ongoing General Fund reductions.

. . . But Has Increased Since Then. However, overall spending for the operational support of criminal justice programs has increased steadily since 2012-13. 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 the department taking responsibility for inpatient psychiatric programs from the Department of State Hospitals. During this same time period, various augmentations were provided to the trial courts to offset reductions made in prior years and to fund specific activities.

Figure 1

Judicial and Criminal Justice Expenditures

(In Billions)



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Governor’s Budget Proposals

Total Proposed Spending of \$18.2 Billion in 2019-20. As shown in **Figure 2**, the Governor’s 2019-20 budget includes a total of \$18.2 billion from all fund sources for the operation of judicial and criminal justice programs (excluding planned capital outlay expenditures). This is a net increase of \$271 million (1.5 percent) over the revised 2018-19 level of spending. General Fund spending is proposed to be \$14.9 billion in 2019-20, which represents an increase of \$183 million (1 percent) above the revised 2018-19 level. We note that this increase does not include increases in 2019-20 employee compensation costs for these departments, which are budgeted elsewhere. If these costs were included, the increase would be somewhat higher.

Major Spending Proposals. The most significant piece of new spending included in the Governor’s budget relates to various proposals to increase General Fund support for the judicial branch by a total of \$217 million, including \$75 million for grants related to pretrial release decision-making, \$60 million for the maintenance of trial court facilities, and \$44 million for the replacement of case management systems and various other information technology (IT) projects. We note that the proposed spending increases are partially offset by decreases in funding, primarily due to the expiration of one-time grant funding provided to the Board of State and Community Corrections (BSCC) in 2018-19.

Figure 2

Judicial and Criminal Justice Budget Summary

(Dollars in Millions)

	Actual 2017-18	Estimated 2018-19	Proposed 2019-20	Change From 2018-19	
				Actual	Percent
Department of Corrections and Rehabilitation	\$11,813	\$12,555	\$12,582	\$28	0.2%
General Fund ^a	11,487	12,239	12,279	40	0.3
Special and other funds	326	315	303	-12	-3.9
Judicial Branch^b	\$3,669	\$3,862	\$4,172	\$310	8.0%
General Fund	1,735	1,911	2,129	217	11.4
Special and other funds	1,934	1,951	2,043	92	4.7
Department of Justice	\$841	\$996	\$1,034	\$39	3.9%
General Fund	235	294	331	37	12.6
Special and other funds	606	702	703	2	0.2
Board of State and Community Corrections	\$93	\$271	\$164	-\$107	-39.5%
General Fund	64	182	66	-115	-63.5
Special and other funds	29	90	98	8	9.3
Other Departments^c	\$235	\$269	\$272	\$2	0.9%
General Fund	68	99	103	4	4.3
Special and other funds	167	170	168	-2	-1.1
Totals, All Departments	\$16,650	\$17,953	\$18,224	\$271	1.5%
General Fund	13,588	14,725	14,908	183	1.2
Special and other funds	3,062	3,228	3,316	88	2.7

^a Does not include revenues to General Fund to offset corrections spending from the federal State Criminal Alien Assistance Program.
^b Includes funds received from local property tax revenue.
^c Includes Office of the Inspector General, Commission on Judicial Performance, Victim Compensation 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.

CROSS-CUTTING ISSUE: DEFERRED MAINTENANCE

The administration proposes \$65 million from the General Fund to implement deferred maintenance projects at the judicial branch and CDCR. Prior to approving the proposed funding for CDCR, we recommend the Legislature require the department to report on what projects it intends to implement to ensure that it will focus on high-priority maintenance activities. We further recommend adoption of reporting requirements that will better enable legislative oversight of (1) how CDCR and the judicial branch maintain their facilities on an ongoing basis and (2) what deferred maintenance projects are actually implemented with the proposed funding.

Background

Recent Budgets Have Provided Funding for Deferred Maintenance Projects. Facilities require routine maintenance, repairs, and replacement of parts to keep them in acceptable condition and to preserve and extend their useful lives. When such maintenance is delayed or does not occur, we refer to this as deferred maintenance. Since 2015-16, annual state budgets have included a combined total of \$1.3 billion—mostly from the General Fund—to address backlogs of deferred maintenance at state facilities—such as prisons, parks, and universities—as well as a few local facilities, such as community colleges. Of this total, \$95 million has been allocated to the judicial branch and \$79 million to CDCR. (In addition, CDCR received \$35 million in 2017-18 and \$72 million in 2018-19 to replace roofs and fix water damage at several facilities.)

Governor’s Proposal

Budget Provides \$65 Million for Deferred Maintenance for Judicial Branch and CDCR. The Governor’s budget proposes \$65 million from the General Fund in 2019-20 for deferred maintenance projects at the judicial branch (\$40 million) and CDCR (\$25 million). (Additionally, the budget includes \$7 million in 2019-20 and \$124 million in 2020-21 for some specific roof and fire alarm

replacement projects at CDCR.) The budget also includes provisional language allowing up to three years—until June 30, 2022—for departments to expend or encumber these funds.

Funding Represents Relatively Small Share of Identified Deferred Maintenance Projects.

The judicial branch and CDCR report \$2.4 billion and \$1 billion, respectively, in total deferred maintenance needs. Identified projects include replacements of major building systems (such as heating, ventilation, and air condition systems), replacements of locking mechanisms on cell doors, and elevator repairs. The Governor’s proposed funding for deferred maintenance in 2019-20 would allow the judicial branch to address roughly 1 percent of its deferred maintenance backlog and CDCR to address roughly 3 percent of its backlog.

LAO Assessment

Properly Maintaining State Facilities Is

Important Practice. The proposed deferred maintenance funding reflects the continuation of an important commitment by the state to tackle its deferred maintenance backlog. The state has invested many billions of dollars to build its infrastructure assets, which play critical roles in the state’s economy and the provision of services to Californians. Moreover, when repairs to key building and infrastructure components are put off, facilities can eventually require more expensive investments, such as emergency repairs (when systems break down), capital improvements (such as major rehabilitation), or replacement. Thus, while deferring regular maintenance lowers costs in the short run, it often results in substantial costs in the long run. For example, failure to implement a relatively inexpensive maintenance project to patch a leaking roof can result in structural damage, mold, and roof replacement projects costing hundreds of thousands of dollars or more.

Judicial Branch Has Identified How It would Prioritize Funding, but Not CDCR.

The judicial branch has provided information specifying which projects it would prioritize for the limited funding provided. Specifically, the judicial branch intends to

prioritize projects based on cost and risk to building occupants, such as repairs to building systems that represent the greatest risk to building occupants. In line with this approach, the judicial branch plans on using the proposed funding to address the highest priority fire alarm systems. The specific projects identified in their request were selected based on the level of risk for occupants, input from building operations staff, and/or issues identified by the Office of the State Fire Marshal.

At the time of this analysis, however, CDCR had not provided our office with a list of the specific deferred maintenance projects it plans to fund with the proposed \$25 million. The absence of a prioritized list of projects makes it impossible for the Legislature to determine whether the proposed funding would go to the projects that it thinks most important. For example, the Legislature may wish to prioritize funding certain types of projects—such as those that address fire, life, and safety issues or reduce future state costs—over other types of projects—such as those that would address aesthetic concerns or occur at facilities the Legislature may no longer consider necessary.

LAO Recommendations

Ensure CDCR Prioritizes Most Important Projects. We recommend that the Legislature use its budget hearings this spring to gather more information from CDCR. First, we recommend that the Legislature require CDCR to report at budget hearings on the approach it is taking to prioritize projects. This would enable the Legislature to ensure that it is comfortable that the department's approach would result in the selection of projects that are consistent with legislative priorities.

Second, we recommend that the Legislature require CDCR to provide a specific list of projects that it plans to undertake with the requested \$25 million in 2019-20. This list is important for the Legislature to have in order to assess whether the specific proposed projects are consistent with its priorities—such as projects that prevent future costs or address fire, life, or safety risks. If the list includes projects that it deems to be of lower priority, we recommend that the Legislature direct CDCR to reprioritize projects or adjust the funding level accordingly. If CDCR fails to

provide a list of proposed projects or is unable to justify its proposed projects to the Legislature's satisfaction, we recommend that the Legislature reject the administration's proposed \$25 million augmentation for CDCR. We note that it should generally not be difficult for CDCR to provide a list of proposed projects since the Department of Finance (DOF) issued a budget letter in July 2018 directing departments to provide prioritized lists of projects by September 2018 in preparation for the 2019-20 budget process. (DOF also provided departments with similar direction in previous years.)

Monitor Accumulation of Deferred Maintenance. We recommend that the Legislature adopt Supplemental Report Language (SRL) requiring that, no later than January 1, 2023, CDCR and the judicial branch identify how their deferred maintenance backlog has changed since 2019. We further recommend that the SRL require that, to the extent a department's backlog has grown in the intervening years, the department shall identify (1) the reasons for the increase and (2) specific steps it plans to take to improve its maintenance practices on an ongoing basis. This is because, if a department experienced a large increase in its backlog, it might suggest that its actual routine maintenance activities are insufficient to keep up with its annual needs and that it should improve its maintenance program to prevent the further accumulation of deferred maintenance. In such cases, it will be important for the Legislature to understand this so it can direct departments to take actions to improve their maintenance programs. Adoption of the following language would be consistent with this recommendation:

Item xxxx-xxx-xxxx. No later than January 1, 2023, [insert department name] shall submit to the fiscal committees of the Legislature and the Legislative Analyst's Office a report identifying the total size of its deferred maintenance backlog as of the 2018-19 fiscal year and September 2022. To the extent that the total size of the deferred maintenance backlog has increased over that period, the department's report shall also identify the reasons for the increase in the size of the backlog and the specific steps the department plans to take to improve its maintenance practices on an ongoing basis.

Require Future Reporting of Projects

Completed. In our budget report, *The 2019-20 Budget: Deferred Maintenance*, we recommend that the Legislature adopt additional SRL requiring DOF to report, no later than January 1, 2023, on which deferred maintenance projects all

departments undertook with 2019-20 funds. This would provide greater transparency and accountability of the funds by ensuring that the Legislature has information on what projects were ultimately implemented and that the funds were spent consistent with any legislative directive given.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

OVERVIEW

CDCR is responsible for the incarceration of adult felons, including the provision of training, education, and health care services. As of January 16, 2019, 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 42 conservation camps. About 5,700 inmates are housed in either in-state or out-of-state contracted prisons. The department also supervises and treats about 48,800 adult parolees and is responsible for the apprehension of those parolees who commit parole violations. In addition, 675 juvenile offenders are housed in facilities operated by CDCR's Division of Juvenile Justice (DJJ), which includes three facilities and one conservation camp.

Operational Spending Proposed for 2019-20.

The Governor's budget proposes total expenditures of \$12.6 billion (\$12.3 billion General Fund) for CDCR operations in 2019-20. **Figure 3** shows the total operating expenditures estimated in

the Governor's budget for the past and current years and proposed for the budget year. As the figure indicates, the proposed spending level is an increase of \$28 million, or less than 1 percent, from the estimated 2018-19 spending level. This increase reflects additional funding to (1) address deferred maintenance backlogs, (2) replace vehicles, and (3) support the ongoing preventative maintenance of CDCR facilities. This additional proposed spending is partially offset by various spending reductions, including reduced spending for contract beds. (The proposed \$28 million increase does not include anticipated increases in employee compensation costs in 2019-20 because they are accounted for elsewhere in the budget. These increases are currently budgeted to exceed a couple hundred million dollars.)

Capital Outlay Spending Proposed for

2019-20. The Governor's budget proposes total expenditures of \$148 million (\$93 million General Fund) for CDCR capital outlay projects in 2019-20. This amount includes (1) \$77 million in additional

Figure 3**Total Expenditures for the California Department of Corrections and Rehabilitation***(Dollars in Millions)*

	2017-18 Actual	2018-19 Estimated	2019-20 Proposed	Change From 2018-19	
				Amount	Percent
Adult Institutions	\$10,434	\$11,029	\$11,022	-\$7	—
Adult Parole	637	706	729	23	3%
Administration	500	560	553	-8	-1
Juvenile Institutions	193	208	217	9	4
Board of Parole Hearings	48	51	61	10	19
Totals	\$11,813	\$12,555	\$12,582	\$28	0.2%

General Fund support to continue previously approved projects and to begin one new project at existing CDCR facilities, (2) \$55 million in General Fund lease revenue bonds for various counties to construct or renovate juvenile correctional facilities through a program first authorized by Chapter 175 of 2007 (SB 81, Committee on Budget and Fiscal Review), and (3) \$16 million previously appropriated from the General Fund to support previously approved projects.

TRENDS IN THE ADULT INMATE AND PAROLEE POPULATIONS

We recommend that the Legislature require the administration to account for recent policy changes in its spring inmate and parolee population projections and budget requests at the May Revision. Until such information is provided, we withhold recommendation on the administration’s adult population funding request. In addition, we recommend requiring CDCR to report to the Legislature when it makes future changes to credit policies.

Background

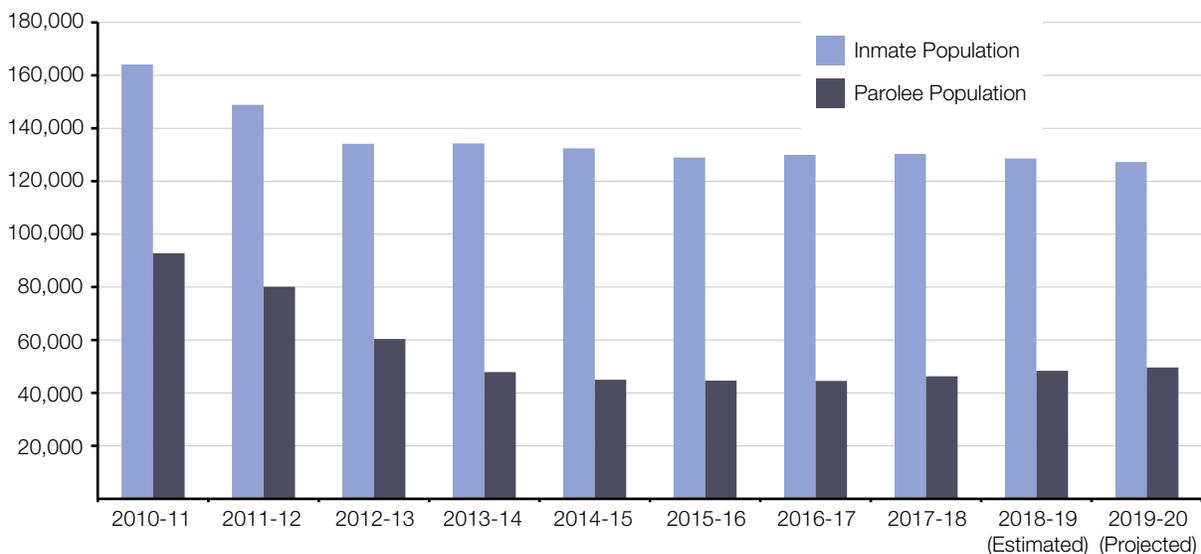
As shown in **Figure 4**, the average daily inmate population is projected to be 127,000 inmates in 2019-20, a decrease of about 1,400 inmates (1 percent) from the estimated current-year level. Also shown in Figure 4, the average daily parolee population is projected to be 50,000 in 2019-20, an increase of about 1,200 parolees (3 percent) from the estimated current-year level. The projected decrease in the inmate population and increase in the parolee population is primarily due to the estimated impact of Proposition 57 (2016), which made certain nonviolent offenders eligible for parole consideration and expanded CDCR’s authority to reduce inmates’ prison terms through credits.

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 inmate and parolee populations in the current and budget years. The administration then adjusts these requests each spring as part of the May Revision based

Figure 4

Adult Inmate Population Projected to Decline Slightly, Parolee Population Projected to Increase Somewhat



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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).

The administration proposes a net increase of \$17.3 million in the current year and a net increase of \$16.4 million in the budget year for adult population-related proposals. The current-year net increase in costs is primarily due to a smaller than anticipated reduction in the use of contract beds, as well as increases in the number of offenders housed in state-operated prisons and on parole relative to what was assumed in the *2018-19 Budget Act*. This increase in cost is partially offset by projected savings, primarily due to a reduction in custody staffing associated with the conversions of various housing units to lower security status. The budget-year net increase in costs is primarily due to a projected increase in the parolee population as a result of Proposition 57. These increased costs are partially offset by savings—such as from a decrease in the use of contract beds.

LAO Assessment

Annual Population-Related Requests Typically Do Not Account for Recent Policy Changes. In the fall and spring of every year, CDCR releases projections of the inmate and parolee populations that are used to make necessary funding adjustments for both the current and budget years. The projections are based on historical trend data and typically do not include the effects of very recent policy changes or those planned for the near future. This is because CDCR often does not have time to adjust projections for these changes or assumes that their effects would be minor. In certain circumstances, however, CDCR has occasionally adjusted its population projections to account for planned policy changes, such when Proposition 57 was implemented in 2017.

Several Policy Changes Currently Being Implemented Are Expected to Impact Correctional Population. In 2019-20, several recent policy changes are anticipated to accelerate the release of certain inmates from prison. For

example, the *2018-19 Budget Act* provided resources for CDCR to refer inmates to courts for possible sentence reduction due to sentencing errors or because of their exceptional behavior while incarcerated. In addition, we recently discovered that CDCR is in the process of using its authority under Proposition 57 to further increase credits inmates earn for participating in rehabilitative and educational activities starting in May 2019. (As we discuss below, the department is not currently required to notify the Legislature when it makes changes to its credit earning policies.) For example, CDCR plans to increase the number of days inmates earn off of their prison sentences for earning a high school diploma from 90 days to 180 days. As a result of these policy changes, the inmate population is expected to decline and the parolee population is expected to temporarily increase. Both of these estimated impacts are not reflected in CDCR's current population projections. Given that the current population projections form the basis of the administration's population-related budget requests, it is possible that the requested level of resources may be more than the department will need.

Lack of Legislative Notification of Credit Changes Makes It Difficult to Account for Potential Population Impacts. Given the authority provided to CDCR under Proposition 57 to reduce inmates' terms by awarding them credits for good behavior or participation in rehabilitative programs, CDCR will likely continue to make changes to credit policies that could significantly impact the inmate and parolee populations and the level of resources necessary to support them. We also note that changes to credits can have implications for sentencing, offender rehabilitation, public safety and other areas of interest to the Legislature. However, CDCR makes credit changes through the regulatory process, which means it is difficult for the Legislature to become aware of the changes in a timely manner. For example, as mentioned above, the Legislature was not directly notified of the department's recent credit changes, despite the fact that these changes could affect the department's resource needs.

LAO Recommendations

Require Population Projections and Budget Requests Account for Recent Policy Changes.

We recommend that the Legislature require the administration to account for the estimated impact of the recent changes to credit policies and CDCR's efforts to propose inmates for resentencing in its spring population projections and budget requests at the May Revision. Accounting for these recent policy changes would help the Legislature avoid approving resources for CDCR that it may ultimately not need. We withhold recommendation on the administration's adult population funding request until the above information is provided.

Require Reporting When CDCR Makes Future Changes to Credits. We also recommend that the Legislature pass statute directing CDCR to report to the relevant fiscal and policy committees of both houses of the Legislature when it makes changes to credit policies in the future. This report should include an explanation of the rationale for the changes and estimates of the impact of the change on the inmate and parolee populations. This requirement would help ensure that the Legislature is aware of changes to credit policies when it considers CDCR resource needs and broader criminal justice policy matters in the future.

BOARD OF PAROLE HEARINGS

Overview

The Board of Parole Hearings (BPH) within CDCR is currently composed of 15 commissioners. Along with deputy commissioners, they consider whether to grant parole to all persons sentenced to state prison under the state's indeterminate sentencing laws, as well as certain determinately sentenced inmates who qualify for parole suitability hearings. (Under indeterminate sentencing, offenders receive a sentence range, such as 25-years-to-life. Under determinate sentencing, offenders receive fixed prison terms with specified release dates.) They also determine (1) whether to impose any special conditions on offenders who are granted parole—such as requiring participation in certain rehabilitative programs—once they are in the community and (2) how long offenders

who are denied parole must wait until their next parole hearing, which can range from 3 to 15 years. In addition, BPH advises the Governor on applications for clemency and approves transfers of foreign-born inmates to their native countries.

The Governor's budget proposes \$61 million (primarily from the General Fund) for BPH operations in 2019-20. This is an increase of \$10 million, or about 19 percent, from the estimated 2018-19 spending level. This increase is primarily due to an increase in the number of hearings that BPH is expecting to hold in 2019-20.

Structured Decision-Making Framework for Parole Hearings

We recommend that the Legislature require the BPH to provide key information about its proposal to implement a structured decision-making framework that guides parole decision makers through the process of weighing information about an inmate. Specifically, we recommend that BPH provide information on the development, usage, and implementation of the framework by April 1, 2019. The board should also provide a prototype of the proposed framework for the Legislature to review. Pending receipt of the above information, we recommend that the Legislature withhold action on the Governor's proposal.

Background. The purpose of a parole hearing is to determine whether an inmate is suitable for release or if he or she currently poses an unreasonable risk of danger to society. The hearing panel, which typically consists of one BPH commissioner and one deputy commissioner, considers many sources of information, including a risk assessment from a psychologist, statements from the inmate and victims, and records of the inmates' behavior while incarcerated. Research indicates that some of the sources of information considered are better predictors of dangerousness than others. For example, risk assessments completed by psychologists are among the best predictors of dangerousness. While BPH regulations outline criteria that tend to indicate suitability for release (such as positive behavior while incarcerated) and unsuitability (such as an unstable social history), there is currently no

prescribed framework that the panel is required to follow in making its decisions in granting parole. However, BPH attempts to ensure accuracy and consistency in decision-making by providing panel members with ongoing training and periodic legal feedback regarding their parole hearing decisions.

Since 2011, BPH has scheduled between 4,000 and 5,300 parole hearings annually. Beginning in 2019-20, however, the board estimates that the number of hearings will increase significantly. This is primarily due to (1) recent legislation—Chapter 475 of 2015 (SB 261, Hancock) and Chapter 675 of 2017 (AB 1308, Stone)—granting parole hearings to offenders who committed crimes in their youth and (2) the requirement that BPH consider granting parole under Proposition 57 to indeterminately sentenced inmates convicted of nonviolent crimes. Specifically, the board estimates that there will be a total of 7,200 parole hearings in 2019-20 and 8,300 hearings in 2020-21. BPH expects its workload to continue to remain high in subsequent years.

Governor’s Proposal. In order to accommodate the anticipated increase in parole hearings, the Governor proposes to:

- **Reduce Staff Time on Hearings by Implementing Structured Decision-Making Framework.** A structured decision-making framework is a tool that consistently and systematically guides parole decision makers through the process of weighing information about an inmate that research demonstrates either aggravates or mitigates the inmate’s risk of future violence. For example, the parole board in Pennsylvania uses a framework that combines the results of several actuarial risk assessments and inmates’ institutional behavior and programming history into a numerical score, yielding a parole recommendation that commissioners can supplement with their qualitative observations. BPH indicates that a structured decision-making framework would reduce the amount of time commissioners and deputy commissioners spend preparing for and participating in hearings. The Governor’s budget assumes that the board

will implement the framework on July 1, 2019. The board indicates that it will receive technical assistance from the National Institute of Corrections (NIC) in implementing the framework. We note that the Governor’s budget does not include additional resources for BPH to develop and implement the framework.

- **Increase Resources to Allow BPH to Conduct Additional Hearings.** BPH expects that implementation of the framework will allow it to process more hearings with existing resources. However, given the large increase in hearings anticipated in 2019-20, BPH indicates that it will still need additional resources to process this workload. As such, the Governor’s budget proposes an increase of \$4.9 million (General Fund) and 13.5 positions in 2019-20. Under the proposal, the level of funding would increase to \$6.3 million in 2020-21 and decline to \$2.1 million in 2021-22 and annually thereafter. According to BPH, these additional resources would allow it to add two parole commissioners, pay for additional support staff, and make IT upgrades.

Proposal Has Merit, but Insufficient Information Provided. Based on existing research, we find the proposed use of a structured decision-making framework to be promising. This is because it could improve public safety if it increases the ability for hearing panels to focus on factors shown to be associated with risk. Furthermore, the proposed framework could improve efficiency, transparency, and consistency of the board’s parole decision-making process. However, BPH has not provided a prototype of the framework or provided important details on its process for developing, implementing, and evaluating the framework. The absence of such information makes it difficult for the Legislature to effectively evaluate this potentially significant policy change.

Specifically, the proposal lacks basic information on the following key questions:

- **What Is the Process for Developing the Framework?** It is unclear how BPH will

develop the decision-making framework. For example, it is unclear what sources of information BPH is using to develop it and when it is expected to be finished.

- **How Will the Framework Be Used?** At this time, it is unclear whether the framework would solely guide commissioners in considering whether to release an inmate or whether it would also assist in their decisions about (1) what conditions to impose on offenders who are released or (2) how long inmates who are not released must wait for their next hearing.
- **How Will the Framework Be Implemented?** While BPH indicates that NIC will provide technical assistance in the implementation of the framework (including site visits from experts), the board has not provided a detailed implementation plan. For example, it is unclear what training will be provided to commissioners and deputy commissioners in how to use the framework or what processes BPH will use to ensure it is ultimately applied consistently as intended.
- **How Will the Framework Be Evaluated?** It is unclear on the extent to which the framework would be evaluated to ensure it is consistent with best-practices, as well as its impact on rates of inmate release and re-offense. In addition, it is uncertain whether BPH will periodically evaluate the framework in the future to ensure it remains consistent with evolving research and best practice on criminal risk factors.

Assuming BPH is able to successfully implement the framework in July 2019, the resources requested to process the increase in hearings appears reasonable. However, if BPH is not able to do so or the framework does not reduce workload at the level assumed under the Governor's proposal, the Legislature may need to provide additional resources to allow BPH to process its full workload in 2019-20. Accordingly, it is important that the Legislature receive a detailed plan for the development and implementation of the framework. In addition, in order to facilitate effective legislative oversight, BPH should provide a prototype of the

framework and detailed information about how it plans to evaluate the framework.

LAO Recommendation. In view of the above, we recommend that the Legislature require BPH to provide key information about the proposed structured decision-making framework (such as in regards to its development, usage, and implementation) by April 1, 2019. The board should also provide a prototype of the proposed framework for the Legislature to review. Pending receipt of the above information, we recommend that the Legislature withhold action on the Governor's proposal.

Compensation for Attorneys Appointed by BPH

We recommend that the Legislature require the administration to provide key information about the proposed changes to the attorney pay schedule by April 1, 2019. Pending receipt of this information, we recommend that the Legislature withhold action on the Governor's proposal. If the administration is unable to provide this information, we recommend rejecting the proposal and directing the administration to provide a revised proposal with adequate information as part of the 2020-21 budget process.

Background. Many inmates cannot afford to hire an attorney to represent them in parole hearings. In these cases, BPH appoints and pays for their attorneys. BPH currently contracts with about 36 attorneys to represent inmates in parole hearings throughout the state, with each attorney handling roughly 150 cases per year on average. As shown in **Figure 5**, BPH currently pays attorneys a flat rate for completing a specific task in the parole hearing process. Depending on the nature of the case, an attorney may not ultimately complete all tasks. For example, inmates have the option to waive their right to a parole hearing for one to five years or to stipulate that they are unsuitable for parole for a minimum of three years. (Inmates do this for a variety of reasons, including potentially being released from prison earlier than if they went to a hearing but were denied parole and required to wait 15 years until their next hearing.) In this example, there would be no hearing and, thus, the

attorney would not receive the \$175 payment. BPH estimates that on average, attorneys receive \$400 per case.

In recent years, BPH indicates that it has had trouble attracting and retaining competent attorneys and has had to reprimand or even discontinue appointing some attorneys for providing inadequate representation to their clients. According to the board, this is because attorney pay has not kept up with the increasing amount of work that attorneys must do on each case—largely due to more requirements related to documenting inmates’ disability accommodation needs. The board also indicates that the current pay structure may discourage stipulations and waivers of parole hearings. This is because attorneys receive a relatively significant increase in compensation if a case proceeds to the hearing stage.

Governor’s Proposal. In view of the concerns expressed about the current attorney pay schedule and its impact on the ability of the board to attract and retain competent attorneys, the Governor proposes to budget BPH at \$750 per hearing, rather than \$400 per hearing as is the current practice. Accordingly, the Governor’s budget proposes a \$2.5 million General Fund augmentation for BPH in 2019-20. In addition, BPH proposes to restructure the attorney pay schedule, modify its attorney recruitment process, provide additional attorney training, and increase attorney expectations.

New Pay Structure Appears Needed, but Proposal Lacks Key Details. We find that problems cited by BPH regarding the current attorney pay schedule could potentially result in serious consequences—particularly if inmates lack appropriate representation in parole hearings. First, to the extent that poor representation results in fewer inmates being granted parole or in inmates being given longer denial periods, inmates could spend more time in prison—at higher state cost—than otherwise. Second, to the extent that the current pay structure discourages stipulations and

Figure 5

Board of Parole Hearings Attorney Pay Structure

As of February 1, 2019

Task	Payment
Appointment to a case	\$25
Review case information, document inmate disability needs, conduct legal research	50
Review inmate’s file	75
Interview inmate	75
Appear at parole hearing	175
Appear at full board meeting ^a	100
Prepare written submission for full board meeting	50

^a Cases only go to full board meetings in rare circumstances, such as if there is disagreement among the hearing panel about whether or not to grant parole.

waivers, it could generate unnecessary hearings—an unnecessary use of state resources—and/or result in inmates having to wait longer until their next parole hearing than they would have if they had waived their right to a hearing or stipulated that they were unsuitable for parole.

We note, however, that the Legislature currently lacks sufficient information to effectively evaluate the Governor’s proposal. This is because the proposal lacks basic information on the following key questions:

- **What Is the Basis for the Proposed \$750 Payment?** At the time of this analysis, BPH was unable to provide a workload study—or other form of adequate explanation—to justify the proposed \$750 per case for attorney pay. Without this information, the Legislature cannot assess whether the proposed \$750 per hearing is the appropriate amount to attract and retain high quality attorneys.
- **What Is the Structure of the New Pay Schedule?** BPH has not provided the proposed pay structure. Accordingly, it is unclear whether the new schedule would appropriately incentivize attorneys to provide adequate representation to inmates.
- **What Changes to Attorney Recruitment, Training and Expectations Are Proposed?** BPH has not provided specific details about the planned changes to attorney recruitment, training and expectations. Furthermore, it is unclear how BPH would identify and respond

to attorneys who do not meet the new expectations. As such, it is unclear whether implementation of these changes will be effective, as well as whether the board will require additional resources to implement them.

LAO Recommendation. In view of the above concerns, we recommend that the Legislature require the administration to provide the key information about the proposed changes to the attorney pay schedule by April 1, 2019. Pending receipt of this information, we recommend that the Legislature withhold action on the Governor's proposal. If the administration is unable to provide this information, we recommend rejecting the proposal and directing the administration to provide a revised proposal with adequate information as part of the 2020-21 budget process.

INMATE LITERACY

While the Governor's proposal to establish a literacy mentorship program could improve inmate literacy, its actual effectiveness at improving literacy and educational attainment is unclear. Accordingly, we recommend that the Legislature approve the proposed program as a three-year pilot—rather than as an ongoing program as proposed by the Governor. Due to potential unintended consequences of mandating criminal personality therapy for all inmate mentors, we also recommend that the Legislature direct the administration to require that inmate mentors complete criminal personality therapy only if they have a moderate or high need for such therapy.

Background

Education and Literacy Are Core Parts of CDCR's Rehabilitation Focus. Under current state law, CDCR is required to improve inmate literacy and educational attainment. Improving inmate literacy and educational attainment is important because research shows that education programs, when appropriately implemented, are a cost-effective method of reducing recidivism. Moreover, it is often necessary for inmates to

improve their literacy in order to be able to effectively participate in other rehabilitation programs while in prison, such as vocational or cognitive behavioral therapy programs.

The *2018-19 Budget Act* provided about \$154 million (mostly from the General Fund) to CDCR for various inmate academic education programs. Some of these programs include literacy education that is provided in different settings. For example, classroom-based literacy education consists of classes of up to 27 inmates who meet for roughly 16 hours a week. Under this program, an instructor can work with up to 54 inmates. The department also operates the Voluntary Education Program, which is designed to supplement classroom based education or to provide access to education when a classroom based option is not available. An instructor in this program can work with up to 120 inmate students—offering in-person support at least twice a week but with no hourly attendance requirements. In addition, CDCR provides technology based education such as computer software designed to help develop basic literacy. As of December 2018, the above academic education programs served about 26,000 inmate literacy students daily.

Despite Efforts, Inmate Literacy and Educational Attainment Remain Low. The department measures inmate literacy and educational attainment by administering the Test for Adult Basic Education (TABE) to inmates. An inmate's score on the test indicates the grade level at which they are able to read and is used to help prioritize inmates for placement in education programs. The department has a statutory responsibility to focus on improving the reading ability of inmates to at least a 9th grade level. However, as of December 2018, about 53,000—or 47 percent—of inmates read below the 9th grade level. Given that the existing literacy programs support 26,000 inmates, there are likely tens of thousands of inmates reading below the 9th grade level who are not receiving literacy instruction. This could be attributed to a variety of reasons. For example, the department indicates that some inmates have assignments (such as jobs within the prison) that conflict with class schedules.

Governor's Proposal

Provide Funding to Establish New Literacy Mentorship Program. The Governor's budget proposes \$5.5 million from the General Fund in 2019-20—decreasing to \$5.4 million in 2020-21 and annually thereafter—for CDCR to implement an inmate literacy mentorship program. This amount includes (1) \$4.3 million to support 35 permanent academic instructors (one per prison) to create, maintain, and facilitate the program and (2) \$1.1 million to compensate the inmates who participate in the program as mentors.

Utilize Inmate Mentors to Tutor Other Inmates. CDCR expects the proposed mentor program to improve literacy levels by increasing access to literacy education, leading to higher TABE scores and high school diplomas/ equivalencies. Under the proposed program, each instructor would train 20 inmate literacy mentors beginning in July 2019. Each inmate mentor would then provide literacy tutoring to up to 20 inmate students. According to the department, this approach would essentially increase the reach of the instructors to 400 inmate students. In addition, CDCR indicates that inmate mentors would have the flexibility to provide tutoring at various locations and times, which could improve access for inmates who may not otherwise attend literacy programs due to conflicting assignments or work opportunities.

Require Inmate Mentors to Participate in Training Program. Inmate mentors would complete a three part training program, including an internship component. In addition, prior to or as part of training, inmate mentors would be required to complete criminal personality therapy—regardless of whether they have been assessed to have a moderate or high need for the therapy. Following the completion of the training, inmate mentors would be offered a full-time work assignment (six hours a day) paying \$0.85 to \$1.00 per hour to mentor inmate students seeking to improve their literacy.

LAO Assessment

Program Could Improve Literacy but Actual Effectiveness Remains Unclear. We find that the

Governor's proposal merits legislative consideration as it could be a relatively low-cost way of expanding literacy education to additional inmates. However, students would only receive an average of 90 minutes of support from inmate mentors per week. While this would likely be higher than the Voluntary Education Program, it is far lower than the roughly 16 hours of instruction offered in the traditional classroom model. Furthermore, it is unclear how effective inmate mentors would be at improving inmate students' literacy and educational attainment relative to instructors. This is because there is little research available regarding the effectiveness of similar inmate mentor programs. These factors raise questions about whether the effect of this program would be large enough to justify its costs.

Program Would Benefit Inmates Beyond the Impact on Literacy. In addition to any improvements in literacy, inmates who receive tutoring services would receive rehabilitative achievement credits for the time they spend with inmate mentors. We estimate that such inmates could earn an average of roughly a couple weeks of credit annually through the program. Inmate mentors would also benefit from the program. Over the course of the required mentorship training, inmate mentors could earn up to six weeks of milestone completion credits and an additional 90-day educational merit credit. We also note that the proposed pay rate for inmate mentors of \$0.85 to \$1.00 per hour is competitive with the high end of the pay scale for other inmate work opportunities, such as those offered through the California Prison Industry Authority (CalPIA).

Requiring All Mentors to Take Criminal Personality Therapy Could Have Unintended Consequences. In 2017-18, about 41 percent, or about 44,000, of assessed offenders were found to have a moderate to high need for criminal personality therapy. This suggests that many of the inmate mentors could have a low need for the therapy but would nevertheless be required to receive such therapy under the Governor's proposal. This is problematic for two reasons. First, requiring such therapy for prospective mentors who do not have a moderate to high need would increase the time it takes to train them, and as a

result, delay when inmate students could begin receiving literacy tutoring. Second, there could be unintended consequences depending on how potential inmate mentors are prioritized for therapy. For example, if the mentors are prioritized over other inmates, it could prevent offenders with a greater need for the therapy from being able to enroll in it. This is especially problematic given that, as of June 2018, CDCR only had the capacity to provide criminal personality therapy to 9,840 offenders, or about 28 percent of those who have a moderate to high assessed need.

Funding Does Not Account for Training.

As mentioned above, the proposal includes \$1.1 million to provide a full year of pay to inmate mentors beginning in July 2019. However, based on the proposed training plan, it would take a minimum of eight months, or at least until March 2020, before an inmate completed training and began receiving wages—suggesting that no more than \$367,000 in inmate mentor wages would be needed in the first year of implementation.

LAO Recommendations

Approve Proposed Program on a Pilot

Basis. Given that it is unclear how effective inmate mentors would be at improving literacy and educational attainment, we recommend that the Legislature approve the proposed inmate literacy mentorship program as a three-year pilot—rather than as an ongoing program as proposed by the Governor. Specifically, we recommend that the Legislature approve \$700,000 in 2019-20, \$800,000 in 2020-21 and 2021-22, and five instructors on a three-year, limited-term basis. This would allow the department to implement an inmate literacy mentorship pilot with up to 100 inmate mentors and 2,000 students across five different prisons. (We note that this level of resources would account for the time it takes to train inmate mentors before they are paid.)

We also recommend that the Legislature direct the administration to select participating prisons that would reflect the larger system, particularly in regards to security levels and missions. In addition, we recommend that the Legislature require CDCR to report by January 10, 2022 on the effect that the program has on inmate students’

TABE scores relative to similar inmates who are enrolled in traditional education programs, as well as those who lack access to traditional educational programs. This would help the Legislature determine whether the program’s effects on inmate literacy and educational attainment is large enough to justify funding the program on an ongoing basis in the future.

Remove Criminal Personality Therapy Requirement Unless Mentors Have Moderate to High Need. Due to the potential negative impacts of mandating criminal personality therapy for inmate mentors, we recommend that the Legislature direct the administration to require that inmate mentors who participate in the pilot complete criminal personality therapy only if they have a moderate or high need for the therapy.

TATTOO REMOVAL PROGRAM

We recommend that the Legislature direct the administration to provide additional information regarding the Governor’s proposed tattoo removal program by April 1, 2019, in order for the Legislature to effectively evaluate the proposal. Specifically, the administration should report on (1) who would be eligible for the program, (2) how many inmates are anticipated to need or want the service, (3) how eligible and interested inmates would be prioritized, (4) how the service would be delivered, and (5) how the program would be evaluated. If the administration is not able to provide sufficient information, we would recommend the Legislature reject the proposal.

Governor’s Proposal

The Governor’s budget proposes a \$2.5 million General Fund augmentation in 2019-20 for CDCR to establish a tattoo removal program that would be available at all state prisons. CDCR estimates that the proposed level of funding would be sufficient to remove the tattoos of 4,300 inmates annually (about 3 percent of the average daily inmate population). According to the administration, it is proposing a tattoo removal program for two reasons. First, research suggests that certain tattoos, particularly those that are hard to cover up

and/or indicate a gang affiliation, are associated with an increased risk of recidivism and could make it difficult for inmates to find employment following their release from prison. Second, the administration intends to assist inmates who are leaving gangs but still have gang-related tattoos. If such inmates had their tattoos removed, the administration believes that they would be less likely to rejoin their gangs or be victimized than otherwise would be the case.

We note that as of 2018, the CalPIA—a semiautonomous state agency that provides work assignments and vocational training to inmates—provides tattoo removal services for some of its female inmate workers. In addition, the DJJ within CDCR offers tattoo removal services to the youth in its facilities using two state-owned machines. Tattoo removal is provided upon request, however, DJJ prioritizes which youth will receive the service based on the date the youth is expected to return to the community.

Proposal Lacks Key Information

A tattoo removal program could result in certain benefits—such as better employment prospects for inmates that receive the service and reduced recidivism. However, the Governor’s proposal lacks key pieces of information, which makes it very difficult for the Legislature to assess whether the proposed program would be effective and whether the requested funding is appropriate or if a different amount is necessary.

Specifically, the Governor’s proposal lacks basic information on the following aspects of the proposed program:

- **Who Would Be Eligible.** The administration has not been able to specify the pool of inmates who would be eligible for the program. For example, it is not clear if the program would be limited to inmates with tattoos that are hard to cover up and/or indicate a gang affiliation or if all inmates with a tattoo would be eligible. We also note that removing a tattoo is a lengthy process that could take several months to a year to complete. It is unclear if the program would be limited to inmates who are far enough from release to complete the tattoo removal process. In not, some inmates could be released from prison with only having their tattoos partially removed.
- **How Many Eligible Inmates Want Tattoos Removed.** Once eligibility criteria has been established, it remains unclear how many eligible inmates would in fact want their tattoos removed and whether this amount is more or less than the 4,300 inmates the administration estimates it could serve annually with the requested funding. Without this information, it is difficult for the Legislature to determine whether the proposed \$2.5 million is the right amount to support the program.
- **How Eligible Inmates Who Want the Service Would Be Prioritized.** To the extent more eligible inmates are interested in having their tattoos removed annually than resources allow, it is unclear how the department would prioritize certain inmates over others. For example, it is unclear whether CDCR would prioritize inmates with gang-related tattoos, and/or if other factors—such as time left before release—would be considered. Not knowing how the department would select inmates from among those eligible for the program, makes it difficult to assess whether the program’s resources would be targeted appropriately.
- **How Service Would Be Delivered.** At this time, there is limited information available on how the program’s service would be delivered to inmates. For example, it is not clear if CDCR would use state staff or private contractors to remove tattoos. It is also unclear if the department plans to maintain tattoo removal equipment at each prison or if it plans to use mobile equipment to provide services at multiple facilities. We note that the CalPIA’s tattoo removal program is a contracted mobile service while the DJJ program uses state-owned machines located at two of its three facilities. The structure of the proposed program could significantly impact the upfront or ongoing costs of the program. For example, if CDCR chooses to

purchase equipment, as DJJ did, then there would likely be higher upfront costs that would decline somewhat in future years.

- ***How the Program Would Be Evaluated.***

It also unclear whether or how the program would be evaluated for its effectiveness.

Without an evaluation, it would be difficult for the Legislature to assess whether this program should continue or be modified in the future.

While the Governor's proposal currently lacks the above information needed for the Legislature to effectively assess its merits and viability, our understanding is that the administration is in the process of restructuring the proposal and plans to provide additional details about the proposed program this spring.

LAO Recommendations

In view of the above, we recommend that the Legislature direct the administration to provide additional information regarding the proposed tattoo removal program. Specifically, the administration should report on (1) the criteria that will be used to determine inmate eligibility, (2) the estimated number of eligible inmates who would be interested in removing their tattoos (including the assumptions behind this estimate), (3) how eligible and interested inmates would be prioritized if sufficient resources are unavailable, (4) how the tattoo removal service would be delivered, and (5) a plan for how it would evaluate the cost-effectiveness of the program at reducing recidivism. In order to ensure that the Legislature has sufficient time to consider the above information in its budget deliberations, we recommend that the administration provide the information by April 1, 2019. To the extent that the administration is not able to provide information on the key aspects of its proposal by that time, we would recommend the Legislature reject the proposal.

DJJ PARTNERSHIP WITH CALIFORNIA VOLUNTEERS

We recommend that the Legislature direct the administration to provide detailed justification for the \$2 million in ongoing

General Fund support proposed to implement a new mentorship program for juvenile offenders. Until such information is provided by the administration, we recommend that the Legislature withhold action on the Governor's proposal. To the extent that the administration is unable to justify the level of funding requested—specifically the funding for training, travel, supervision, and administration costs—we recommend the Legislature only approve \$667,000 from the General Fund for three years to align with the AmeriCorps grant process and be consistent with the potential level of need currently identified by DJJ.

Background

Honorable Discharge. Chapter 683 of 2017 (SB 625, Atkins), reestablished an honorable discharge process for former wards of DJJ. (The previous honorable discharge process was effectively eliminated when responsibility for supervising DJJ parolees was shifted—or realigned—from the state to county probation departments in 2010.) Under this process, the Board of Juvenile Hearings—which also determines when wards are released from DJJ—has the authority to grant honorable discharge to former DJJ wards who have demonstrated their ability to refrain from criminal behavior and initiate a successful transition to adulthood. To qualify for honorable discharge, former wards must wait at least 18 months from their discharge from DJJ custody and must have completed any required periods of probation supervision. Individuals can petition for honorable discharge regardless of whether they were released from DJJ custody prior to or following the reestablishment of honorable discharge. In 2018, the board only received six complete applications and only awarded three honorable discharges.

The state offers honorable discharges to youth for several reasons. These include recognizing and rewarding youth who have avoided reoffending, removing barriers to a youth's successful integration into society, and providing an incentive for youth to participate in treatment and training while placed in DJJ. In addition, receiving an honorable discharge can be used as evidence of

rehabilitation, which is one of the requirements for sealing a juvenile adjudication—meaning the case would be deemed to have never occurred and access to the records would generally be restricted.

AmeriCorps. AmeriCorps is a national service program that provides year-long volunteering opportunities to address critical community needs. AmeriCorps volunteers can receive a small living allowance while in the program. Upon completion of the program, volunteers are eligible to receive a monetary Segal AmeriCorps Education Award from the federal government, which can be used to pay for higher education expenses or help pay off qualified student loans. In addition, AmeriCorps provides grants to support volunteer programs administered by states or other entities.

CaliforniaVolunteers. CaliforniaVolunteers is a non-profit entity housed within the Governor's Office of Planning and Research. It administers \$40 million annually in federal AmeriCorps grants in support of programs in California such as programs aimed at disaster preparedness and recovery, connecting homeless individuals to resources, and providing assistance at self-help legal centers.

Governor's Proposal

Establish Mentorship Program to Increase Honorable Discharges. The administration proposes to create a mentorship program utilizing 40 half-time AmeriCorps volunteers to help increase the number of former DJJ wards who receive honorable discharge. Under the proposal, the AmeriCorps volunteers would coach and mentor youth currently or formerly housed in DJJ in an attempt to increase the youths' ability to receive honorable discharges by (1) helping them navigate the honorable discharge process and (2) encouraging them to utilize reentry resources provided by community-based nonprofit and public organizations, such as case management, job skills training, and referrals to other rehabilitative resources and opportunities.

The AmeriCorps volunteers would be chosen from applicants with prior involvement in the criminal justice system, either in the form of a juvenile adjudication or adult incarceration. The volunteers would receive training to improve skills relevant to their positions including leadership,

motivational interviewing, and life coaching certifications. Upon completing their terms of service, volunteers would be eligible for Segal AmeriCorps Education Awards of about \$3,000.

Provide Funding for Partnership With CaliforniaVolunteers to Support Program.

The Governor's budget for 2019-20 proposes \$2 million from the General Fund to implement the proposed mentorship program on an ongoing basis. In addition, CaliforniaVolunteers has set aside \$900,000 in federal AmeriCorps grant funds to be spent over three years (from 2019-20 through 2021-22) to support the program. We note that after 2021-22, the availability of AmeriCorps funding for the program—and the program's AmeriCorps affiliation—would depend on the grant being renewed by AmeriCorps for another three years.

The proposed funding would provide living allowances of \$14,815 to the 40 half-time AmeriCorps volunteers at a total annual cost of about \$600,000. According to the administration, any remaining funding—roughly \$1.7 million per year, or 74 percent of available funds—would support training, travel, supervision, and administration costs.

LAO Assessment

Proposed Mentorship Program Could Have Merit . . . The Governor's proposal could increase honorable discharges and improve outcomes to the extent that it effectively expands outreach to youth, facilitates connections between youth and reentry services, and provides peer mentorship. Accordingly, we find that the proposal merits legislative consideration.

. . . But Proposed Funding Not Fully Justified. The administration has not fully justified the need for the proposed \$2 million in annual General Fund support—both in terms of the amount and the ongoing nature of the funding. Specifically, the administration has not provided detailed workload justification for the \$1.7 million that would support training, travel, supervision, and administration. We note that the proposed funding set aside for these costs would amount to \$42,500 per volunteer. By comparison, the living allowance that each volunteer would receive is only \$14,815. Moreover,

DJJ states that in order to implement the program, it may only need \$667,000 per year in General Fund rather than the proposed amount of \$2 million.

We also note that the Governor's proposal to provide ongoing funding assumes that the federal AmeriCorps grant will be renewed after the grant's three-year cycle ends in 2021-22. Given the uncertainty on whether the grant will in fact be renewed, it would make more sense to provide General Fund support on a three-year basis to track with the time frame of the AmeriCorps grant. The administration states that it may revise the amount requested in the spring budget process once it has a better understanding of the workload and necessary funding.

LAO Recommendations

We recommend that the Legislature direct the administration to provide detailed justification for the \$2 million in ongoing General Fund support proposed for the new mentorship program. Until such information is provided by the administration, we recommend that the Legislature withhold action on the Governor's proposal. To the extent that the administration is unable to justify the level of funding requested—specifically the funding for training, travel, supervision, and administration costs—we recommend the Legislature only approve \$667,000 from the General Fund for three years to align with the AmeriCorps grant process and be consistent with the potential level of need currently identified by DJJ.

VEHICLE REPLACEMENT SCHEDULE

We recommend that the Legislature direct CDCR to estimate the maintenance, repair, and fuel savings as well as the increase in auction revenue that it would generate by implementing the proposed vehicle replacement program so that the department's overall budget can be adjusted to account for these savings. If the department is able to demonstrate that these savings would occur, we recommend approving the requested funds in a separate budget item to prevent them from being redirected for other purposes.

Background

CDCR Uses Vehicles for Various Purposes.

CDCR owns nearly 7,700 vehicles of varying types (ranging from golf carts to farming equipment) that are used for a variety of purposes, including inmate transportation (both within and outside of prison grounds), fire protection, construction support, and institution perimeter security. CDCR staff and inmate workers generally maintain the department's vehicles. However, they are sometimes sent out for more complex repairs.

Department of General Services (DGS) Sets Vehicle Replacement Thresholds. DGS sets policy for and approves all state vehicle purchases. Specifically, DGS sets replacement thresholds for different types of vehicles that, if met, make a vehicle eligible for replacement. For example, a sedan that either has over 65,000 miles or is older than six years is eligible for replacement. In determining the vehicle replacement thresholds, DGS hired a consultant in 2016 to estimate the age and mileage levels at which it is more cost-effective to replace various types of vehicles rather than repair them, based on actual data on state vehicle price, operational cost, and resale value. By replacing vehicles according to these thresholds, DGS expects that departments would minimize the total costs of the state's vehicle fleet. Currently 5,500 of CDCR's 7,700 vehicles exceed DGS's thresholds for replacement.

CDCR Does Not Have Ongoing Funding Specifically for Vehicle Replacement. CDCR's baseline budget does not include ongoing funding dedicated to vehicle replacement. The Legislature has on occasion provided one-time funding for the department to purchase vehicles. For example, the 2018-19 budget provided CDCR with \$17.5 million in one-time General Fund support to replace 338 vehicles that are used for transporting inmates to health care and other appointments. Historically, the department has also used some of the funding it has budgeted for major equipment purchases—currently set at \$8 million—to purchase vehicles, as well as redirected funding originally intended for other purposes. In addition, when CDCR replaces a vehicle, the old vehicle is sold at auction, with revenue generated—typically in the low hundreds of thousands of dollars annually—used to offset

the costs of future vehicle purchases. In total, CDCR spent roughly \$15 million per year on vehicle purchases between 2013-14 and 2017-18.

Governor's Proposal

Proposes Ongoing Funding to Establish Vehicle Replacement Program. The Governor's budget proposes \$24 million from the General Fund and four positions in 2019-20 and ongoing for CDCR to establish a vehicle replacement program. In addition, the Governor proposes to permanently redirect the \$8 million that CDCR currently dedicates to major equipment purchases to be spent solely on vehicles, bringing the total annual funding for the vehicle replacement program to \$32 million. The amount of vehicles purchased in each year would depend on the actual types of vehicles being replaced, as some vehicle types cost significantly more than others.

Anticipates Cost Savings Would Result From Proposed Program. The department plans to use this funding to replace every vehicle roughly every seven years—generally consistent with the replacement thresholds set by DGS. According to CDCR, this replacement schedule would result in cost savings on vehicle maintenance, repair, and fuel, as well as an increase in the resale value of replaced vehicles. CDCR also notes that improving the overall condition of its vehicle fleet would help reduce the department's risk of having difficulty performing key functions—such as transporting inmates between facilities—due to vehicle malfunctions.

LAO Assessment

More Frequent Replacement of Vehicles Appears Reasonable but Proposal Does Not Account for Anticipated Savings. Given that CDCR's vehicle fleet generally appears to be quite old and in relatively poor condition, as well as the negative impact of not having reliable vehicles available, we find that the overall goal of the Governor's proposal appears reasonable. As mentioned above, the department expects that the

proposal would reduce the amount it spends on vehicle maintenance, repair, and fuel, and increase the resale value of the replaced vehicles. However, the proposal does not account for any of the expected savings.

Proposed Funding Could Be Redirected to Other Purposes. The administration proposes to increase CDCR's overall administrative budget to account for the requested vehicle replacement funding without requiring that the department actually spend this funding on vehicles. As such, the department could redirect the \$32 million for vehicle replacement to other administrative purposes without any legislative oversight provided. To the extent CDCR redirects this funding, the costs to maintain the existing fleet would increase, which would run counter to the purpose of the Governor's proposal.

LAO Recommendations

Require CDCR to Estimate Savings and Reduce Budget Accordingly. In view of the above, we recommend that the Legislature direct CDCR to estimate the maintenance, repair, and fuel savings, as well as the increase in auction revenue from the sale of the replaced vehicles, that it indicates would be generated by implementing the proposed vehicle replacement program, and provide such estimates by April 1, 2019. After CDCR provides a reasonable savings estimate, we recommend the Legislature reduce its budget by this amount. This would allow the Legislature to consider the available savings in the context of its overall General Fund priorities.

Approve Proposed Funding but Restrict Its Use. After the department is able to demonstrate that the proposal would result in savings as described above, we would recommend that the Legislature approve the requested \$32 million for vehicle replacement. However, we would recommend that the Legislature budget the funds in a separate appropriation to prevent them from being redirected for other purposes.

JUDICIAL BRANCH

OVERVIEW

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, the Judicial Council 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 6 shows total operational funding for the judicial branch from 2015-16 through 2019-20. Total funding for the judicial branch has steadily increased and is proposed to exceed \$4 billion in 2019-20.

As shown in Figure 7, the Governor’s budget proposes about \$4.2 billion from all state funds (General Fund and state special funds) to support the operations of the judicial branch in 2019-20, an increase of \$310 million, or 8 percent, above the revised amount for 2018-19. (These totals do not include expenditures from local revenues or trial court reserves.) This increase reflects various proposals to increase spending, particularly for the support of trial courts. The major proposals include:

- \$75 million in one-time General Fund support to Judicial Council for a grant program to fund the implementation, operation, or evaluation of programs

or efforts in 8 to10 courts related to pretrial decision-making.

- \$60.1 million in General Fund support (\$40 million on a one-time basis) for the maintenance of trial court facilities.
- \$44.2 million in General Fund support (mostly on a one-time basis) for the replacement of case management systems and various other IT projects.

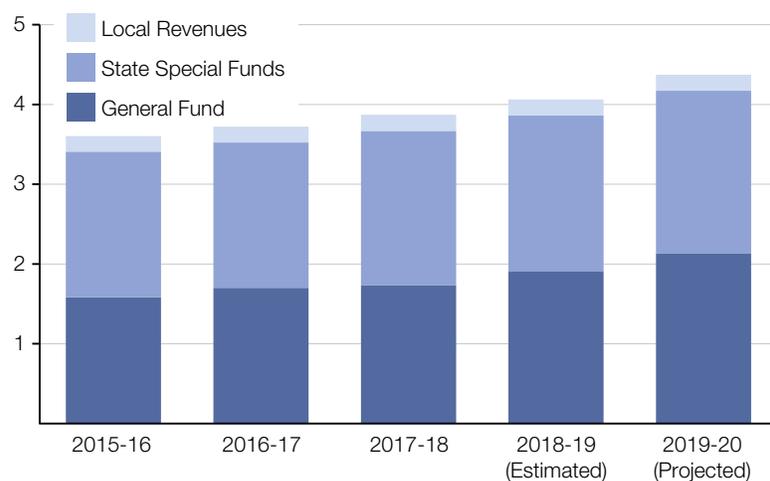
Of the total \$4.2 billion in state funding proposed for judicial branch operations in 2019-20, \$2.1 billion is from the General Fund—nearly half of the total judicial branch budget. This is a net increase of \$217 million, or 11.4 percent, from the 2018-19 amount.

PRETRIAL RELEASE GRANT PROGRAM

We recommend the Legislature direct the administration and Judicial Council to provide a well-developed proposal by April 15, 2019 on the request for \$75 million in one-time General

Figure 6

Total Judicial Branch Funding (In Billions)



LAO

Figure 7**Judicial Branch Operational Budget Summary—All State Funds***(Dollars in Millions)*

	2017-18 Actual	2018-19 Estimated	2019-20 Proposed	Change From 2018-19	
				Amount	Percent
State Trial Courts	\$2,755	\$2,945	\$3,156	\$211	7.2%
Supreme Court	48	51	52	1	1.1
Courts of Appeal	235	246	247	1	0.6
Judicial Council	136	153	172	19	12.3
Judicial Branch Facility Program	478	450	528	78	17.4
Habeas Corpus Resource Center	16	17	17	—	0.4
Totals	\$3,669	\$3,862	\$4,172	\$310	8.0%

Fund support for a two-year pretrial release grant program. Specifically, the proposal should specify (1) the primary goals of the proposed program, (2) the specific programs or activities that would be funded and how they are aligned with the goals, (3) how funding would be allocated, and (4) how funded programs or activities would be evaluated to inform statewide decision-making. This would help the Legislature effectively evaluate whether the proposed program meets its priorities. Pending receipt and review of the above information, we withhold recommendation on the Governor's proposed pretrial grant program. To the extent that the administration and the Judicial Council are unable to provide a more well-developed proposal, we would recommend the Legislature reject the proposed program.

Background

Overview of Pretrial Release. Pretrial release generally refers to an arrested individual being released from jail prior to their trial. A common way that this occurs is by requiring individuals to pay bail. This is intended to give them an incentive to return to court. Existing federal and state law generally guarantees individuals the right to reasonable bail before trial. State law generally requires that individuals be granted release on bail except under specified circumstances, such as if an individual is charged with a felony and there is a substantial likelihood that the person's release would result in great bodily harm to others. Existing state law also requires that the trial court in each

county annually adopt a uniform, countywide bail schedule. The bail schedule generally specifies the amount of bail an individual must pay to be released based on his or her alleged offense. In setting or denying bail, state law requires judges consider various factors. These factors include the seriousness of the charged offense, the individual's prior criminal history, the likelihood of appearing at trial, and the safety of the victim or witnesses of the alleged crime.

Existing state law also authorizes arrested individuals to be released "on their own recognizance"—that is, without bail—and specifies the conditions under which such releases may take place. While individuals released on their own recognizance are not required to pay bail, they generally are required to adhere to certain conditions (such as agreeing to appear in court or wear a monitoring device). In certain counties, trial courts use information from outside agencies to determine whether to release individuals on their own recognizance. For example, probation staff in some counties use a pretrial risk assessment tool to collect information from arrested individuals to assess their likelihood of failing to appear in court or committing another crime. The tool then helps generate a recommendation on whether individuals should be released on their own recognizance. This information can be used by judges to inform their final decisions on whether individuals should be released on their own recognizance.

Recent Efforts to Change Pretrial Release. In recent years, significant concerns have been raised by criminal justice stakeholders, civil rights

organizations, and others related to how pretrial release is determined. Specifically, questions have been raised about the fairness of individuals remaining in custody pretrial solely because they cannot afford bail. Additionally, questions have been raised about whether pretrial risk assessment tools accurately identify those individuals who are likely to fail to appear in court or represent a risk to public safety and whether they have built-in implicit biases against certain categories of individuals. These concerns have led to a variety of efforts to change the pretrial release decision-making process. These efforts include the following:

- **Statewide Judicial Branch Initiatives.** In 2016, the Chief Justice convened the Pretrial Detention Reform Workgroup to study current pretrial release and detention practices and provide recommendations for potential reforms. This workgroup issued a report in October 2017 with ten recommendations, including implementing a risk-based pretrial assessment and supervision system to replace the current monetary bail system. In January 2019, the Chief Justice convened a Pretrial Reform and Operations Workgroup to review the progress of pretrial reforms and identify next steps to continue reform efforts.
- **Individual Trial Court Initiatives.** A number of individual trial courts and/or their county criminal justice partners have implemented various pretrial programs and pilots. According to a 2015 survey of counties, 46 of 58 counties had some type of pretrial program, with 70 percent being established within the past five years. Some counties—such as San Francisco, Riverside, and Santa Cruz—have had pretrial programs for many years. This survey also indicated that at least 49 counties use a type of pretrial risk assessment tool that provides judges with information about the risk of releasing a defendant before trial.
- **Recidivism Reduction Fund (RRF) Pretrial Pilots.** The 2014-15 and 2015-16 budgets appropriated a total of \$16.3 million from the RRF for a competitive grant program to support projects known to reduce offender

recidivism, including the use of risk and needs assessments and the use of evidence-based practices. (The RRF was supported by one-time savings resulting from the underutilization of funding provided to CDCR in 2013-14 for contract prison beds.) We note that \$5.7 million was allocated specifically to support 11 pretrial pilot projects. Nine of these projects indicate that they are continuing to operate even after the RRF grant program ended. Judicial Council is required to submit a report in 2019 on the outcomes of the funded projects, including their effectiveness and impact on public safety and offender outcomes.

- **Chapter 244 of 2018 (SB 10, Hertzberg).** Senate Bill 10 eliminates money bail in California and replaces it with a process in which individuals would be released on their own recognizance. While some arrested individuals would be released automatically (predominantly for certain misdemeanors), others would be released based on their level of risk to reoffend and fail to appear in court as determined by a pretrial risk assessment. Based on these assessments, an individual could be (1) released on their own recognizance but required to adhere to certain conditions of release, (2) detained until a judge can review the case prior to arraignment, or (3) detained until arraignment (typically within 48 hours of arrest) when a judge would determine whether the individual should be released on his or her own recognizance or detained until trial. On January 16, 2019, the Secretary of State certified that sufficient signatures were collected to qualify a referendum on SB 10 for the November 2020 ballot. This placed the implementation of SB 10 on hold.
- **Pending Court Cases.** There are several court cases pending in the federal and state courts challenging the use of bail related to pretrial releases. For example, the state Court of Appeal ordered a new bail hearing for a specific individual—who was unable to pay the bail set by a judge and remained detained prior to his trial—as it found that

the rules used to set his original bail were unconstitutional. The Court of Appeal also ruled that a judge must consider this individual's ability to pay bail as well as consider alternatives to bail that could ensure public safety or that he returns to court as ordered. This case is currently pending review at the California Supreme Court.

Governor's Proposal

The Governor's 2019-20 budget proposes a one-time \$75 million General Fund augmentation for Judicial Council to administer a two-year grant program related to pretrial release. Under the proposed program, funding would be allocated to eight to ten courts for the implementation, operation, or evaluation of pretrial decision-making programs or efforts. According to the administration, eligible projects include those related to:

- Validating that risk assessment tools are appropriate for use on local populations.
- Establishing exchanges of pretrial risk assessment information between courts and county probation departments.
- Establishing data exchanges among the courts and county probation departments prior to arraignment.
- Establishing contracts between the courts and county probation departments to conduct pretrial risk assessments.
- Supporting judicial officer release and detention decision-making prior to arraignment.
- Creating reminders for individuals to appear in court.
- Utilizing other projects related to pretrial decision-making that enhance public safety, the likelihood of appearance in court, and the efficient and fair administration of justice.

According to the judicial branch, the Pretrial Reform and Operations Workgroup would develop recommendations for allocating the above funding. Under the Governor's proposal, 10 percent of the funds could be used by the Judicial Council to implement and evaluate the funded programs,

including identifying potential bias in pretrial risk assessment tools.

LAO Assessment

Lack of Detail on Proposed Grant Program.

While it is possible that the Governor's proposed grant program could be worthwhile, the Legislature currently lacks sufficient information to effectively evaluate the proposal and weigh the proposed funding relative to its other General Fund priorities. This is because it is unclear (1) what specific goals the program is intended to achieve, (2) whether the eligible projects that could be funded are aligned with these goals, (3) how the proposed funding would be allocated, and (4) how the funded projects would be evaluated to inform future budgetary and policy decisions.

Well-Developed Proposal Should Include Certain Key Information. In contrast, a well-developed proposal should include certain key pieces of information in order to ensure that the proposed funding will be used in an accountable and effective manner. Specifically, the Governor's proposal should answer the following questions:

- ***What Are the Primary Goals of the Program?*** Specifying the primary goals of a proposed program helps ensure that the program is structured in a manner capable of achieving those goals. For example, if the goal of the program is to determine whether particular pretrial tools or methods are more effective than others, it could make more sense to pilot particular tools or methods at a variety of courts that could be compared against one another—a structure that is different from the proposed program.
- ***What Program or Activities Would Be Supported?*** Clearly specifying the number and type of programs or activities that will be funded would help ensure that legislative priorities and expectations are met. We note that identifying the specific activities that would be supported helps ensure that any new grant funding will not be used to (1) duplicate projects that have already been funded and evaluated (such as those supported by RRF funds) and (2) support

programs that implement provisions of SB 10, which is prohibited given that the measure is currently subject to a referendum.

- ***How Would Funding Be Allocated?*** Clearly specifying the methodology and criteria used to allocate funding will help the Legislature ensure that funding is distributed in a fair and transparent manner that meets legislative priorities. It will also be important to ensure that funding is allocated to a sufficient number of courts as well as a mix of courts based on size and other factors, in order to ensure that the results can be generalized statewide. We note that under the administration's proposal, nearly all such decisions would be made by Judicial Council—providing the Legislature with little input to ensure funding is used in a manner consistent with its priorities.
- ***How Would Programs or Activities Be Evaluated?*** Clearly specifying (1) how funded programs and activities would be evaluated and (2) the specific information that programs would be expected to collect would help the Legislature ensure that funded projects or activities are evaluated in a manner that can generate information to inform statewide decision-making. As such, it is important to identify specific outcome or performance measures that would be collected (such as the number of people served and the ability of a risk assessment tool to accurately measure risk of committing another offense or to appear in court). It is also important to clearly specify how certain measures should be defined in order to ensure programs collect information consistently.

LAO Recommendations

Direct Administration and Judicial Council to Provide Well-Developed Proposal. In view of the above, we recommend that the Legislature direct the administration and Judicial Council to provide a more well-developed proposal regarding the proposed grant program by April 15, 2019. Specifically, the proposal should specify (1) the primary goals of the proposed program, (2) the specific programs or activities that would be

funded and how they are aligned with the goals, (3) how funding would be allocated, and (4) how funded programs or activities would be evaluated to inform statewide decision-making. This would help the Legislature effectively evaluate whether the proposed program is aligned with its priorities.

Withhold Recommendation Pending Additional Information. Pending receipt and review of the above information, we withhold recommendation on the Governor's proposed pretrial grant program. To the extent that the administration and the Judicial Council are unable to provide a more well-developed proposal, we would recommend the Legislature reject the proposed program.

IMPROVEMENT AND MODERNIZATION FUND

While the Governor's proposal would help prevent the State Trial Court Improvement and Modernization Fund (IMF) from becoming insolvent in 2019-20, it does not provide a long-term solution to address the fund's projected operational shortfalls and potential insolvency after 2019-20. In order to address these concerns, as well increase legislative oversight over the programs that have been funded from the IMF, we recommend an alternative approach to the Governor's proposal. Specifically, we recommend (1) depositing IMF revenues into the General Fund and eliminating the IMF, (2) directing the judicial branch to report on each program currently receiving IMF funding (such as past expenditure and benefits achieved), and (3) appropriating one-time funding in 2019-20 for these programs while the aforementioned assessment is being completed.

Background

Two Separate Judicial Branch Funds. In 1997, the state took significant steps towards shifting responsibility for trial courts from counties to the state. For example, Chapter 850 of 1997 (AB 233, Escutia and Pringle) transferred financial responsibility for trial courts (above a fixed county share) to the state. Chapter 850 also established the following two special funds to

benefit trial courts, which as we discuss later, were consolidated in 2012.

- **Judicial Administration Efficiency and Modernization Fund.** The purpose of this fund was to promote projects designed to increase access, efficiency, and effectiveness of the trial courts. Such projects included judicial or court staff education programs, technological improvements, incentives to retain experienced judges, and improvements in legal research (such as through the use of technology). The fund received monies primarily from a General Fund transfer to the judicial branch. This fund received about \$38.7 million annually from the General Fund from 2008-09 through 2011-12 (when the fund was merged with the Trial Court Improvement Fund, as discussed below.) We note that some of these funds were redirected to help offset reductions to the trial courts in 2010-11 and 2011-12.
- **Trial Court Improvement Fund.** The purpose of this fund was to support various projects approved by the Judicial Council. The fund received monies from (1) fine and fee revenue from criminal cases and (2) a transfer of 1 percent of the amount appropriated to support court operations from the Trial Court Trust Fund (TCTF). (The TCTF provides most of the funding to support trial court operations.) While the Judicial Council had significant flexibility regarding the expenditures of monies in the fund, some of the monies were restricted for specified uses. For example, a portion of the fine and fee revenues had to be used for the development of automated administrative systems (such as accounting, data collection, or case processing systems). State law also required that some of the monies from the Trial Court Improvement Fund be redirected back for allocations to trial courts for court operations.

While the Legislature would appropriate a set amount of funding from the Judicial Administration Efficiency and Modernization Fund and the Trial Court Improvement Fund each year in the annual budget, Judicial Council was responsible for

approving and allocating monies to specific projects or programs. Accordingly, the Legislature's role in determining how the funds were used was limited.

Two Funds Merged Into IMF. Chapter 41 of 2012 (SB 102, Committee on Budget and Fiscal Review) merged the Judicial Administration Efficiency and Modernization Fund with the Trial Court Improvement Fund into the new IMF. While there are some differences between the IMF and the previous two funds, there are many similarities.

- **Revenues.** The IMF retained all sources of revenue associated with the two prior funds, such as fines and fees from criminal cases.
- **Fund Transfers.** As discussed above, various monies were required to be transferred into and out of the two funds. The IMF generally maintained these various transfers. For example, the IMF is required to annually transfer a portion of its revenues to the TCTF. We note that the \$38.7 million initially transferred from the General Fund to the Judicial Administration Efficiency and Modernization Fund was subsequently transferred to the IMF each year through 2014-15.
- **Expenditures.** While the Legislature appropriates a total amount of funding from the IMF in the annual state budget, the Judicial Council generally has even more discretion in how the funds are allocated to specific projects and activities than previously. Except for a couple requirements (such as the requirement that a certain portion of the fine and fee revenue be used for the development of automated administrative systems), none of the statutory purposes that applied to the two previous funds (such as to improve legal research through the use of technology) currently apply to the IMF. The judicial branch is only required to provide an annual report to the Legislature on the expenditures from the IMF.

IMF Struggles to Remain Solvent

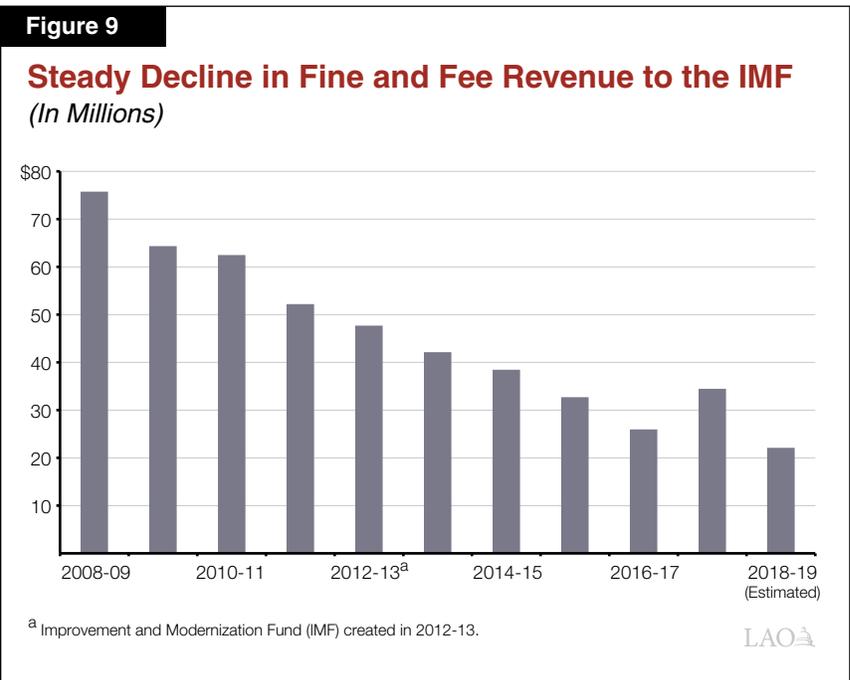
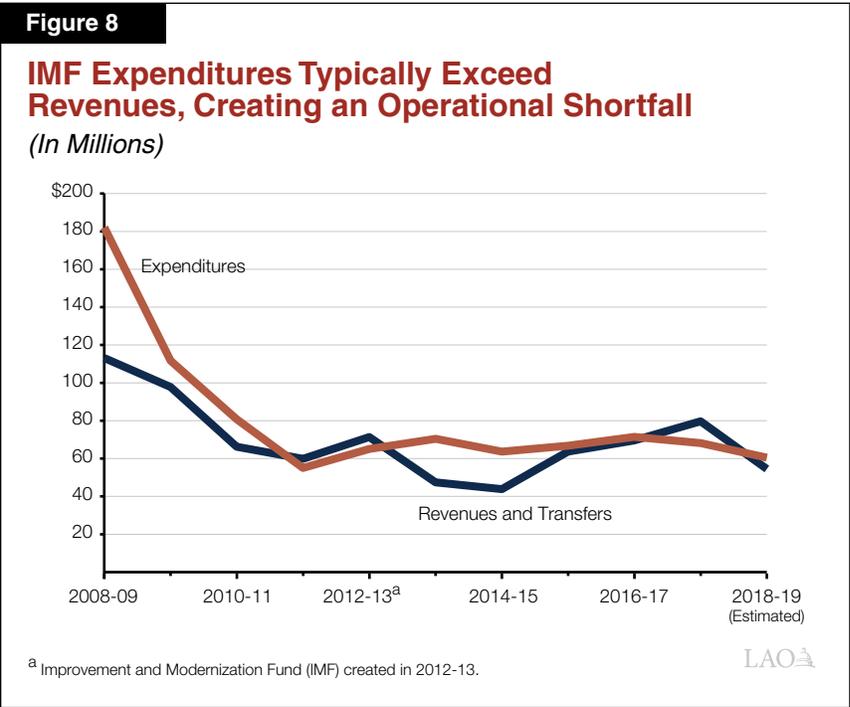
Persistent Operational Shortfalls. Prior to the establishment of the IMF in 2012-13, the combined revenues and transfers of the two prior

funds generally did not cover their expenditures, as shown in **Figure 8**. Upon the consolidation of the two funds into the IMF in 2012-13, these shortfalls continued, steadily reducing the IMF’s fund balance. For example, in 2018-19, the IMF is estimated to have combined revenues and transfers of \$54.5 million and expenditures of \$60.4 million. As we discuss below, these shortfalls in the IMF result from (1) declines in fine and fee revenue deposited into the IMF and (2) spending decisions made by Judicial Council.

Decline in Fine and Fee Revenue. When partial payments are collected from an individual for criminal fines and fees levied by the courts, state law specifies the order in which the partial payments are to be allocated to various state and local funds. In cases where full payment is not made, funds that are a lower priority (such as the IMF) receive less revenue than those funds that are a higher priority (such as victim restitution or reimbursement for certain collection activities).

As shown in **Figure 9**, fine and fee revenues deposited into the IMF and its predecessor have steadily declined from \$76 million in 2008-09 to an estimated \$22 million in 2018-19—a drop of 71 percent. The specific causes of this decline may be due to two reasons. First, there may have been a reduction in collections of the fine and fee revenues allocated to the IMF. For example, law enforcement could be writing fewer tickets for traffic violations or judges may be waiving more fines and fees—thereby reducing the amount of debt available for collection. Second, even if

the total amount of fine and fee collections had remained the same, state and local funds that are a higher priority in the distribution of fine and fee payments may have been receiving an increased share of the revenue compared to the IMF.



Judicial Council Authorized More Expenditures Than Available Revenues. As discussed above, state law authorizes Judicial Council to allocate funds from the IMF, as well as its predecessor funds, to specific projects and programs with very little legislative oversight. Once annual revenue into the IMF began declining, the Judicial Council struggled to reduce expenditures to match the amount of available resources. Although the council took some steps to address the operational shortfalls by eliminating or reducing certain projects, or shifting projects to other fund sources, it continued to authorize funding for projects and services in excess of available resources. In 2008-09, about \$155 million was spent to support over 90 one-time and ongoing projects or services. In contrast, the judicial branch estimates the IMF will support about 40 one-time and ongoing projects or services in 2018-19. These projects and services vary widely, but include support for self-help centers, training, telecommunications support, and various IT services.

State Actions Taken to Address Operational Shortfalls

The persistent operational shortfalls of the fund also led the state to act beginning in 2015-16. First, the Legislature increased revenue available in the IMF in 2015-16 by terminating an annual ongoing \$20 million transfer from the IMF to the TCTF. (This transfer was first approved as part of the 2011-12 budget package to help offset trial court budget reductions.) Second, various budget proposals have been approved to help shift some or all funding for certain programs and systems from the IMF to the General Fund. In addition, the Legislature provided General Fund support to pay for the expansion of some programs and systems that otherwise would have been paid by the IMF if sufficient resources were available. For example, the 2015-16 budget included \$5.5 million in ongoing General Fund support to expand the judicial branch's Local Area Network/Wide Area Network telecommunications network infrastructure program to include the final four courts that did not participate in the network at that time.

Governor's Proposal

The Governor's 2019-20 budget proposes a total of \$13.3 million in General Fund support for expenditures for two activities currently supported by both the IMF and the General Fund. Specially, the administration proposes to (1) upgrade an IT system and (2) address increased litigation costs. Additionally, the administration proposes to shift some existing IMF expenditures on these two activities to help prevent the IMF from becoming insolvent.

- **Phoenix System (\$7.7 Million).** The administration proposes to increase ongoing General Fund support for the Phoenix enterprise resource and management system by \$7.7 million—from \$8.7 million (first provided in 2016-17) to \$16.4 million. (Phoenix is the financial, procurement, and payroll system used by the trial courts.) This amount consists of (1) \$3.2 million to offset existing IMF support for the system and (2) \$4.5 million for increased system upgrade costs. (Because the cost of the proposed upgrades is estimated to decline over time, the \$4.5 million for upgrades would fall to \$1.2 million in 2020-21 and \$720,000 in 2021-22 and annually thereafter under the Governor's proposal.) This proposal would effectively eliminate IMF support of the Phoenix system.
- **Litigation Management Program (\$5.6 Million).** The Governor's budget proposes a \$5.6 million General Fund augmentation for the Litigation Management Program, which provides services to judicial branch entities. This amount consists of (1) \$5.2 million to offset existing IMF support for the program and (2) \$449,000 related to increased litigation costs.

LAO Assessment

Proposal Helps Prevent IMF Insolvency in 2019-20. We find the administration's proposal to be reasonable as the identified programs are necessary for judicial branch operations and the requested amounts appear justified on a workload

basis. Additionally, the administration's proposal also helps prevent the IMF from becoming insolvent in the budget year.

But Operational Shortfalls Projected to Remain With Possible Insolvency in 2020-21.

However, absent any additional actions, the IMF is projected to continue to face operational shortfalls in the coming years—a structural problem that has remained unaddressed for years and is expected to remain. Specifically, the judicial branch is projecting a \$6 million operational shortfall in 2018-19 and a \$8.6 million operational shortfall in 2019-20. Moreover, the IMF fund balance is projected to be depleted at the end of the 2019-20 under the Governor's proposal, which would result in the IMF becoming insolvent in 2020-21, unless further changes—such as expenditure reductions—are made.

Lack of Legislative Oversight Over IMF Programs and Systems. The Legislature generally lacks oversight of the IMF programs and systems as they are informed only after expenditures are made. This is problematic as this makes it difficult for the Legislature to ensure that its priorities are met regarding which programs and systems are funded and how much funding is provided. For example, the Legislature may determine that certain programs are less important and should bear a larger share of any reductions needed for the IMF to avoid operational shortfalls.

LAO Recommendations

While the Governor's proposal would help prevent the IMF from becoming insolvent in 2019-20, it does not provide a long-term solution to address the fund's projected operational shortfalls and potential insolvency after 2019-20. In order to address these concerns, as well increase legislative oversight over the programs that have been funded from the IMF, we recommend below an alternative approach to the Governor's proposal. Specifically, we recommend the Legislature (1) deposit IMF revenues into the General Fund and eliminate the IMF, (2) direct the judicial branch to report on each program currently receiving IMF funding (such as past expenditure and benefits achieved), and (3) appropriate one-time funding in 2019-20 for these programs while the aforementioned

assessment is being completed. (We note that these recommendations are consistent with the recommendations included in our January 2016 report *Improving California's Criminal Fine and Fee System*.)

Deposit IMF Revenues Into the General Fund and Eliminate IMF. Nearly all of the revenue deposited into the IMF, other than General Fund monies, is from criminal fine and fee revenue. Depositing all of the criminal fine and fee revenue into the General Fund achieves three major benefits. First, the amount of funding provided to support IMF programs would no longer be dependent on the amount of criminal fine and fee revenue collected. This allows the judicial branch and administration to base the level of support it requests for programs currently funded by the IMF on their operational needs rather than the amount of revenue that happens to be available. Second, this allows the Legislature to determine how much funding to allocate to these programs based on its overall priorities. Finally, given that the IMF is likely to continue to face operational shortfalls, this would eliminate the need to identify solutions annually to address such shortfalls and avoid IMF insolvency.

Direct the Judicial Branch to Report on All Programs Currently Receiving IMF Funding. To assist in its budget deliberations, the Legislature would need to acquire information on how IMF funding is currently being used. As such, we recommend the Legislature direct the judicial branch to provide a report by December 1, 2019 on each of the programs and systems currently supported by the IMF, including information on past expenditures and the benefits achieved. This would provide the Legislature with the necessary information to evaluate the need for each program and system and its cost-effectiveness relative to all of the other state programs currently supported by the General Fund. It would also help the Legislature determine what level of funding, if any, is appropriate to provide these programs and systems. This recommendation, in addition to the prior recommendation, would greatly increase legislative oversight over these programs and systems.

Appropriate One-Time Funding for Programs Receiving IMF Support in 2019-20. Given

that it will take time for the judicial branch to complete the above report and for the Legislature to consider the information as part of its General Fund budget priorities, we recommend that the Legislature provide one-time General Fund support in the budget year to the programs that would be shifted from the IMF to the General Fund under our proposal. This would prevent any disruption to currently supported IMF programs while the Legislature evaluates them and considers any funding adjustments as part of its deliberations on the 2020-21 budget.

COUNTY OFFICE OF EDUCATION OFFSET OF TRIAL COURT GENERAL FUND SUPPORT

We recommend the Legislature adjust the trial court offset in 2019-20 upward to account for property tax growth in 2018-19. Our preliminary estimates indicate that the upward adjustment is \$18 million, but updated data will be available in the spring to further refine this estimate. This would provide the Legislature with additional General Fund resources above the level assumed in the Governor's budget.

Background

County Offices of Education (COEs). Each of California's 58 counties has a COE. COEs oversee the budgets and academic plans of school districts within their jurisdictions, operate certain alternative schools, and provide various optional services to school districts. A primary source of funding for COEs is the Local Control Funding Formula (LCFF). Each COE's annual LCFF allotment is determined by formula.

Some COEs Collect "Excess Property Tax" Revenue. A COE's annual LCFF allotment is supported first with local property tax revenue, with the remainder covered by state Proposition 98 (1988) General Fund. Some COEs do not receive state support because they collect enough property tax revenue in a given year to cover their entire LCFF allotment. In virtually all of these cases, the COEs collect *more* in property tax revenue than their LCFF allotment. The amount collected above

the LCFF allotment is known as excess property tax. Because the amount of property tax revenue collected can change from year to year, the amount of excess property tax also can change from year to year.

Offset of General Fund Support for Trial Courts. State law requires that any excess property tax revenues collected by COEs beyond their LCFF allotments be used to offset state General Fund support of trial courts. The transfer occurs at the direction of DOF and the State Controller's Office the year after the taxes are collected. For example, excess property taxes collected in 2017-18 offset the state's General Fund support of trial courts in 2018-19.

Governor's Proposal

The Governor's budget estimates that the amount of excess property tax revenue available in 2019-20 will not increase over the 2018-19 level of \$63 million.

LAO Assessment

Underestimate of Revenue Available for Offset. Our preliminary analysis of property tax growth projects higher levels of excess property tax revenues available to offset General Fund support of trial courts than assumed in the Governor's budget. Specifically, we estimate that \$81 million in excess property tax revenues will be available in 11 counties in 2018-19. This is \$18 million above the Governor's estimate. We estimate the annual excess tax revenue will continue to increase and will exceed \$100 million by 2020-21.

LAO Recommendation

Adjust Offset to Reflect Availability of Additional General Fund Resources. We recommend the Legislature adjust the trial court offset in 2019-20 upward to account for property tax growth in 2018-19. This would provide the Legislature with additional General Fund resources above the level assumed in the Governor's budget. Our preliminary estimates indicate that the offset should be adjusted upward by \$18 million, but note that updated data will be available in the spring to further refine this estimate. We will provide updated numbers at that time.

DEPARTMENT OF JUSTICE

OVERVIEW

Under the direction of the Attorney General, DOJ provides legal services to state and local entities, brings lawsuits to enforce public rights, and carries out various law enforcement activities. The DOJ also collects criminal justice statistics from local authorities; manages the statewide criminal history database; and conducts background checks required for firearm purchase, licensing, and other purposes. In addition, the department provides various services to local law enforcement agencies, including providing forensic services to local law enforcement agencies in jurisdictions without their own crime laboratories.

As shown in **Figure 10**, the Governor’s budget proposes roughly \$1 billion to support DOJ operations in 2019-20, an increase of \$39 million, or 4 percent, over the revised amount for 2018-19. About half of the proposed spending supports the department’s Division of Legal Services, while the remainder supports the Division of Law Enforcement and the California Justice Information Systems Division. Of the total amount proposed for DOJ operations in 2019-20, nearly one-third—\$331 million—is from the General Fund. This is an increase of \$37 million, or 13 percent, from the estimated 2018-19 amount. This increase reflects various proposals to provide additional General Fund support, most notably for (1) the state’s forensic laboratories, (2) the continued implementation of the state’s new tiered sex

offender registry, (3) the recovery of firearms from persons who are prohibited from owning them, and (4) the establishment of new human trafficking investigative teams.

BUREAU OF FIREARMS WORKLOAD

The Governor’s 2019-20 budget proposes a series of budget adjustments related to the Bureau of Firearms (BOF), including the Armed and Prohibited Persons System (APPS) investigation teams. While the proposal helps prevent the Dealer’s Record of Sale (DROS) Special Account from becoming insolvent and accommodate increased workload related to a backlog of APPS cases, BOF licensing and administrative workload, and recent legislation, components of it appear unjustified, do not fully address identified problems, and result in unintended consequences. As such, we recommend an alternative package of adjustments that allocates the funding in a different manner. We also recommend that the Legislature direct DOJ and the administration to report on potential solutions to address the ongoing operational shortfalls facing the DROS Special Account and the Firearms Safety and Enforcement (FS&E) Special Fund, as well as require DOJ to annually report on key metrics related to APPS investigation teams.

Figure 10

Total Operational Expenditures for the Department of Justice

(Dollars in Millions)

	2017-18 Actual	2018-19 Estimated	2019-20 Proposed	Change From 2018-19	
				Amount	Percent
Legal Services	\$437	\$507	\$517	\$10	2.0%
Law Enforcement	216	274	289	15	5.4
California Justice Information Services	188	214	228	14	6.4
Totals	\$841	\$996	\$1,034	\$39	3.9%

Background

BOF Regulates and Enforces State Firearm and Ammunition Laws. BOF within DOJ is primarily responsible for the regulation and enforcement of the state's firearm and ammunition laws. This includes conducting background checks for individuals seeking to purchase firearms, licensing firearm and ammunition vendors, conducting vendor compliance investigations, ensuring lawful possession of firearms and ammunition, and administering various other firearm and ammunition programs. BOF engages in various activities related to these responsibilities. For example, BOF has APPS investigation teams who are primarily responsible for investigating the illegal purchase or possession of firearm and ammunition, as well as seizing them from individuals who are prohibited from owning or possessing them. In 2018-19, BOF received \$36.2 million from several special funds to support its various activities.

BOF Generally Supported by Fee Revenue Since 2012-13. State law authorizes DOJ to charge various fees related to firearms and ammunition that are deposited into one of several state special funds to support BOF programs and activities. For example, an individual purchasing a firearm currently pays fees totaling \$25—a \$19 fee deposited into the DROS Special Account, a \$5 fee into the FS&E Special Fund, and a \$1 fee into the Firearm Safety Account. State law also authorizes DOJ to administratively increase some of these fees to account for inflation as long as the fee does not exceed DOJ's regulatory and enforcement costs. (DOJ last administratively increased the \$19 fee deposited into the DROS Special Account in 2004.) We note that of the \$36.2 million in special funds provided to BOF in 2018-19 budget, nearly \$12 million was for the support of the APPS investigation teams. This includes \$5.8 million from the DROS Special Account and \$5.5 million from the FS&E Special Fund.

DROS Special Account and FS&E Special Fund in Operational Shortfall. Currently, both the DROS Special Account and the FS&E Special Fund are experiencing operational shortfalls as the expenditures from these funds exceed their revenues. For example, about \$20.6 million in

revenues is estimated to be deposited into the DROS Special Account in 2018-19 to support about \$24 million in expenditures. Similarly, about \$7.7 million in revenue is estimated to be deposited into the FS&E Special Fund in 2018-19 to support about \$11.3 million in expenditures. In order to address these shortfalls in the current year, each fund will draw from its fund balance (or unspent funds) that has accumulated in prior years. (When the fund balance has been used up, the special fund will become insolvent.) The DROS Special Account has experienced operational shortfalls since 2012-13, while the FS&E Special Fund began experiencing operational shortfalls in 2017-18.

Governor's Proposal

The Governor's 2019-20 budget proposes a series of budget adjustments related to BOF, including APPS investigation teams. Collectively, these adjustments result in an increase of \$16.9 million in General Fund support and a net \$798,000 increase from the DROS Special Account. According to the administration, the various adjustments are intended to prevent the DROS special account from becoming insolvent in the budget year and accommodate increased workload related to a backlog of APPS cases, BOF licensing and administrative workload, and recent legislation. The specific adjustments proposed in the Governor's budget include:

- ***Funding Adjustments for APPS***

Investigation Teams. The Governor's budget proposes to change the mix and level of funding for APPS investigation teams. Specifically, the budget proposes to allocate \$16.9 million from the General Fund and eliminate existing DROS Special Account funding of \$5.8 million. According to the administration, \$5.6 million of the proposed General Fund support is intended to support 26 new positions to allow APPS investigation teams to address a backlog of cases and the remainder is to backfill the reduction from the DROS Special Account. Under the proposal, APPS investigation teams would continue to receive \$5.5 million from the FS&E Special Fund—bringing total funding in 2019-20 to

\$22.4 million (increase of \$11.1 million from 2017-18).

- **Funding Adjustments for Other BOF Workload.** The Governor's budget proposes a \$6.9 million increase in DROS support (declining to \$6.4 million in 2020-21 and annually thereafter) and 43 new positions to address increased licensing and administrative workload in BOF. However, the budget also includes an unallocated reduction in DROS Special Account support of \$5.5 million related to other BOF workload.
- **Funding to Implement Recent Legislation.** The Governor's budget also proposes a \$5.2 million increase from the DROS Special Account (declining to \$2.7 million in 2020-21 and \$1.7 million in 2021-22 and annually thereafter) to implement four pieces of recently-enacted legislation. Nearly all of this funding would support DOJ's internal data center responsible for modifying and maintaining databases used by BOF.

LAO Assessment

Special Funds Avoid Insolvency, but Operational Shortfalls Remain. Absent the administration's proposals, it is likely that the DROS Special Account would have become insolvent in the budget year. This is because the fund would have lacked sufficient resources to address increased costs related to implementing new legislation or increases in existing BOF workload. However, while the administration's proposals help avoid this insolvency, they do not address the ongoing operational shortfalls in the DROS Special Account. Moreover, the administration's proposals do not address the ongoing operational shortfall facing the FS&E Special Fund.

More Funding Provided to Support APPS Investigation Teams Than Justified. As discussed above, the administration's budget proposals provide a total of \$22.4 million to support the workload of APPS investigation teams. However, DOJ has only requested and provided sufficient justification that \$16.9 million is needed on an ongoing basis to support existing APPS workload as well as to continue addressing the backlog of cases.

Uncertain Impact of Additional Funding for APPS Investigations in Long Run. Since the early 2000s, DOJ has requested additional resources to decrease a backlog of APPS cases awaiting investigation. For example, Chapter 2 of 2013 (SB 140, Leno) appropriated \$24 million from the DROS Special Account to DOJ in order to address the APPS backlog. While significant progress has been made, the backlog still remains. Specifically, as of January 2019, the department reports that the backlog was at about 9,400 cases.

DOJ is currently projecting that the backlog may increase due to other new legislation or mandates resulting in an increase in new APPS cases added annually. For example, beginning July 1, 2019, DOJ will need to confirm whether an individual seeking to purchase ammunition is authorized to do so. In the process of doing so, it is likely that DOJ will identify additional cases requiring APPS investigations. DOJ anticipates that this could then generate additional APPS workload such that the APPS backlog increases despite the additional resources. However, the actual magnitude of such a potential increase is uncertain.

If APPS workload does not increase as anticipated, it is possible that the proposed 26 new positions would help DOJ nearly eliminate the existing APPS backlog in several years. According to DOJ, it would then use these resources to take on investigations it currently leaves unaddressed (such as complex cases) or increase its other enforcement duties (such as increasing attendance at gun shows). While additional resources in either of these scenarios seem appropriate, the *actual* impact of these additional resources in the long run is uncertain.

Impact of Reduction in DROS Special Fund Support for Other BOF Workload Unclear. As discussed above, the Governor's budget includes a \$5.5 million reduction in DROS Special Account funding support for BOF workload not related to APPS investigation teams. At the time of this analysis, the administration and DOJ had not provided information on which BOF programs would be reduced. As such, the impacts of the proposed reduction is unclear.

DROS Special Fund Augmentations Generally Seem Reasonable. We find that the request of \$12.1 million from the DROS Special Account to support increases in existing BOF licensing and administration workload and to support the implementation of new legislation generally seems reasonable based on the workload data and other information provided by the department.

LAO Recommendations

Adopt Alternative to Administration’s Budget Proposals. While the Governor’s proposal helps prevent the DROS Special Account from becoming insolvent and accommodate increased workload related to a backlog of APPS cases, BOF licensing and administrative workload, and recent legislation, components of it appear unjustified, do not fully address identified problems, and result in unintended consequences. In recognition of this, we recommend below an alternative package of adjustments to Governor’s proposal. Our proposal does not change the total amount of funding provided or fund sources it is provided from. However, it allocates the funding in a different manner that, along with our other recommendations below, addresses the concerns we identified with the Governor’s plan. Additionally, our alternative plan—similar to the Governor’s proposal—helps the DROS Special Account avoid insolvency. The key components of our alternative include:

- ***Funding Adjustments for APPS Investigation Teams.*** We recommend the Legislature provide \$16.9 million from the General Fund (declining to \$16 million in 2020-21 and ongoing) to support existing and increased APPS workload. We also recommend approval of the 26 new positions requested to continue addressing the backlog. This provides DOJ with the level of resources that there is workload justification for. We also recommend eliminating existing DROS Special Account support of \$5.8 million and FS&E Special Fund support of \$5.5 million for APPS investigation teams, which would both be backfilled with the above General Fund support. Under our alternative, APPS investigation teams would be fully funded from the General Fund.

- ***Funding Adjustments for Other BOF Workload.*** We recommend the Legislature provide \$12.1 million to support BOF’s increased licensing and administrative workload (\$6.9 million) and the implementation of recent legislation (\$5.2 million). In order to support most of these increased costs, we recommend the Legislature appropriate the freed up \$11.3 million resulting from our above recommendation—\$5.8 million from the DROS Special Account and \$5.5 million from the F&SE Special Fund—to support this other BOF workload. The remaining \$798,000 would be supported by an augmentation in funding from the DROS Special Account.

Similar to the Governor’s proposal, our alternative would result in an increase of \$16.9 million in General Fund support and a net \$798,000 increase from the DROS Special Account. Unlike the Governor’s proposal, however, our alternative plan does not include an unallocated reduction to BOF.

Direct DOJ and Administration Report on Solutions to Address Operational Shortfalls. We recommend the Legislature direct DOJ and the administration to submit a report no later than December 15, 2019 on potential solutions to address the ongoing operational shortfalls facing the DROS Special Account and the FS&E Special Fund. These potential solutions can include changing business processes, one-time investments to improve efficiency, increasing firearm-related fees—such as directing DOJ to administratively increase the DROS fee to account for inflation—and/or statutory or regulatory changes. The Legislature can use this report to determine what steps should be taken to ensure that BOF receives sufficient funding from the appropriate fund sources to address legislatively desired service levels. For example, BOF workload has been completely supported by fee revenue deposited into its special funds since 2012-13. The Legislature could decide to increase fee levels to maintain existing practices of fully covering BOF costs through fee revenue rather than providing General Fund support.

Require APPS Reporting. We recommend the Legislature approve budget trailer legislation directing DOJ to report on key metrics it already reports on (such as the number of APPS cases addressed annually), given that the backlog of APPS cases pending investigation is expected to remain for at least the next few years and could potentially increase. (Although existing state law requires DOJ to submit annual reports to the Joint Legislative Budget Committee on key metrics related to the APPS backlog, the requirement is scheduled to end on March 1, 2019.) This could help the Legislature continue to conduct oversight over the reduction of the APPS backlog and of any additional funding provided to reduce the backlog. Additionally, we recommend that the reporting language specify that once the backlog is eliminated, DOJ should begin reporting on the new or expanded activities the APPS investigation teams engage in. This could help the Legislature determine the extent to which ongoing resource levels should be adjusted in the future.

NEW TIERED SEX OFFENDER REGISTRATION SYSTEM

We recommend the Legislature approve the Governor's proposal to provide \$46 million in additional General Fund support over three years for DOJ to implement a new tiered sex offender registry. However, in order to facilitate regular legislative oversight over the project, we also recommend the Legislature adopt budget trailer bill legislation directing the department to provide an annual written progress report on key metrics (such as changes to project costs or deadlines for project milestones).

Background

Existing Sex Offender Registration System. Currently, individuals convicted of certain sex offenses are required to register with their local law enforcement agency. These offenders generally must update their information with their local law enforcement agency annually and inform law enforcement when they move. DOJ maintains a statewide database of registered sex offenders. Depending on the convictions of these offenders,

DOJ is required to make some information about them (such as their home addresses) publicly available through the California Megan's Law website. Certain sex offenders, however, are able to apply for exclusions from the website. Sex offenders who are required to register generally must do so for life.

New Tiered Sex Offender Registration System in 2021. Chapter 541 of 2017 (SB 384, Wiener and Anderson) requires that the above sex offender registration system be changed to a tiered system beginning January 1, 2021. Under Chapter 541, individuals convicted of specified sex offenses will generally be required to register for at least 5 years, 10 years, 20 years, or life depending on various factors (such as whether they are adults or juveniles, their conviction, and assessed risk to reoffend). Beginning July 1, 2021, registrants could petition to be removed from the registry under various circumstances, such as if they have been on the registry for the minimum required time. Finally, Chapter 541 changes the criteria for offenders who are eligible to apply for exclusion from the California Megan's Law website. DOJ currently estimates that the total cost to implement these changes is around \$67 million. The 2018-19 budget provided a one-time \$10 million General Fund augmentation and 25 positions to DOJ for initial planning and implementation costs for this project.

DOJ estimates that there are currently 104,000 sex offender registrants that will need to be assigned to the new tiered categories along with an average of 5,000 new registrants annually. Additionally, DOJ estimates that approximately 2,610 registrants are no longer eligible for exclusion from the public website and will need to be notified accordingly.

Governor's Proposal

The Governor's budget proposes \$46 million from the General Fund over three years (\$17.2 million in 2019-20, \$15.7 million in 2020-21, and \$13.2 million in 2021-22) to modify the existing sex offender registry system to comply with requirements of Chapter 541. As shown in **Figure 11**, DOJ is requesting a total of 88 positions in 2019-20, 136 positions in 2020-21, and 86 positions in 2021-22—including both

Figure 11

Summary of Approved or Requested Resources for New Tiered Sex Offender Registry

(Dollars in Millions)

Fiscal Year	Funding (In Millions)	Supported Positions		
		Permanent	Limited Term	Total
Approved				
2018-19	\$10.0	23	2	25
Requested				
2019-20	\$17.2	37	51	88
2020-21	15.7	37	99	136
2021-22	13.2	38	48	86

the project, we also recommend the Legislature adopt budget trailer legislation directing DOJ to provide an annual written progress report on key metrics to help monitor the development and implementation of the new sex offender registration system. Specifically, at minimum, we recommend the Legislature direct DOJ to report on the tasks completed, changes to projects costs or deadlines for project milestones, challenges or delays that have emerged, and issues or risks that may result in project schedule or budget changes. This

permanent and limited-term positions. According to DOJ, it anticipates requesting resources for after 2021-22 in the future.

information would help the Legislature ensure that the project remains on schedule and on budget.

Project Could Benefit From Regular Legislative Oversight

We find that the level of resources being requested by DOJ to meet the requirements of Chapter 541 appear justified on a workload basis. However, given the magnitude of DOJ’s estimated costs to implement the new sex offender registration system, we find that regular legislative oversight of the department’s progress would help ensure that the resources provided are being used efficiently and that the department is on track to meet the 2021 implementation date. For example, regular oversight would allow the Legislature to identify any potential delays or challenges and inquire how DOJ plans to address them. The Legislature can then determine what action, if any, it may need to take to ensure the project remains on schedule and to limit cost increases.

DISPOSITIONS AND CRIMINAL HISTORY UPDATE WORKLOAD

We recommend the Legislature provide the requested \$203,000 for DOJ to process additional criminal history record updates on a two-year, limited-term basis—rather than on an ongoing basis as proposed by the Governor. This would allow DOJ to track the total amount of workload generated by legislation enacted in 2018 and request additional resources as needed in two years based on actual workload.

Background

Criminal History Records. State law requires DOJ to maintain the state’s databases of criminal history records. For each individual arrested, state law requires law enforcement agencies, the state courts, and detention facilities to submit certain specified information to DOJ’s databases. Such information includes the individual’s name, date of birth, and fingerprints, as well as the charges filed, disposition of cases, sentence received, and date of release. DOJ also serves as the state’s single point of contact for the exchange of criminal history records with the federal government. Finally, state law authorizes DOJ to provide certain federal and state criminal history information to designated entities (such as peace officers, courts, and county

LAO Recommendations

We find that the Governor’s proposal to provide DOJ with \$46 million in additional General Fund support for use over three years to support the implementation of a new tiered sex offender registry appears justified on a workload basis and necessary to meet the statutory time frames enacted by the Legislature. Accordingly, we recommend approval of the proposal. However, in order to facilitate regular legislative oversight over

child welfare agency personnel) and/or under specified circumstances (such as if the information is being used for licensing or employment purposes).

Governor's Proposal

The Governor's 2019-20 budget includes \$203,000 from the General Fund (declining to \$188,000 in 2020-21 and annually thereafter) to support two positions to process an estimated increase in criminal history record updates related to increased dispositions resulting from the following four pieces of legislation enacted in 2018:

- **Chapter 523 of 2018 (AB 865, Levine).** Chapter 523 authorizes members of the U.S military sentenced for a felony conviction prior to January 1, 2015 who may be suffering from a certain condition (such as post-traumatic stress disorder or substance abuse) to petition the court for a recall of their sentences.
- **Chapter 653 of 2018 (AB 2599, Holden).** Chapter 653 requires that a detention facility provide arrestees, upon their request, with the necessary forms to apply to have their arrest sealed. It also requires the facility post a sign informing arrestees that individuals arrested, but not convicted, may petition the court to have their arrest and related records sealed.
- **Chapter 1001 of 2018 (AB 2942, Ting).** Chapter 1001 authorizes a court to recall and resentence a defendant upon the recommendation of the district attorney of the county in which the defendant was sentenced.
- **Chapter 1015 of 2018 (SB 1437, Skinner and Anderson).** Chapter 1015 narrows the circumstances under which individuals can be convicted of murder, including by changing the felony murder rule, which formerly allowed certain individuals who were not the actual killer to be charged with murder. Chapter 1015 also provides a process for certain individuals convicted of murder prior to its implementation to file a petition with the court to vacate their convictions and be resentenced on any remaining counts under certain conditions.

Uncertain Ongoing Funding Needed

At this time, the workload associated with the four pieces of legislation enacted in 2018 appear to be either limited-term in nature or uncertain given that it would depend on how certain individuals respond to the legislation. For example, the additional workload resulting from resentences occurring in the implementation of Chapter 1015 would likely not be ongoing in nature. This is because the resentencing under the legislation only applies to those offenders who were convicted prior to its implementation. We also note that such offenders have a strong incentive to seek resentencing in order to potentially serve shorter sentences—thereby filing resentencing requests that generate increased workload in the near-term. Additionally, the actual number of district attorneys that would recommend the recall and resentence of defendants under Chapter 1001 is uncertain. This makes it difficult to estimate the number of cases that would be filed and adjudicated by the courts, and thus requiring DOJ to update its criminal history records.

LAO Recommendation

Provide Two-Year, Limited-Term Funding.

In view of the above, we recommend that the Legislature approve the requested \$203,000 for DOJ to process additional criminal history record updates on a two-year, limited-term basis—rather than on an ongoing basis as proposed by the Governor. This would allow DOJ to track the total amount of workload generated by the four pieces of legislation enacted in 2018 and request additional resources as needed in two years based on actual workload.

NEW AND EXPANDED CRIMES WORKLOAD

We recommend the Legislature reject the Governor's proposal to provide \$145,000 (General Fund) for DOJ to update and publish its statewide master code tables, as well as to coordinate with criminal justice agencies on the use of these tables. The department has been unable to provide sufficient justification for the requested resources, as well as explain why the statewide lists could not be updated within existing resources.

Background

Statewide Master Code Tables. As discussed in the previous section, state law requires DOJ to maintain the state's databases of criminal history records. It also requires law enforcement agencies, the state courts, and detention facilities to submit certain specified information to DOJ for each individual arrested. To assist these entities with their reporting requirements, DOJ prepares lists—known as statewide master code tables—of all crimes for which individuals can be arrested or cited. DOJ routinely updates these tables to reflect changes in law.

Governor's Proposal

The Governor's 2019-20 budget proposes \$145,000 from the General Fund (declining to \$136,000 in 2020-21 and annually thereafter) to support one new position for DOJ to update and publish the statewide master code tables. These tables would be updated to reflect 25 bills enacted by the Legislature in 2018 that either create new criminal offenses or expand the parameters of existing criminal offenses. Additionally, the requested position would coordinate with criminal justice agencies regarding the use of these tables and requirements for the submission of data.

Lack of Justification for Requested Resources

At the time of this analysis, DOJ has been unable to provide sufficient justification for the requested resources, as well as explain why the statewide lists could not be updated within existing resources. We recognize that the Legislature regularly enacts legislation that create new crimes or expand the parameters of existing crimes and, thus, require DOJ to update the statewide lists. However, we find that the lists should generally need to be updated only once a year and existing staff who are currently doing this work should be able to do it for the recently-enacted bills. It is also unclear how much additional work conducting outreach and coordinating with law enforcement agencies would require.

LAO Recommendation

Reject Requested Funding. In view of the above concerns, we recommend that the Legislature reject the Governor's proposal to provide \$145,000 (General Fund) for DOJ to update and publish its statewide master code tables, as well as to coordinate with criminal justice agencies on the use of these tables.

CALIFORNIA CONSUMER PRIVACY ACT OF 2018

We recommend the Legislature authorize a \$4.7 million loan—\$1.8 million from the General Fund and \$2.9 million from the Unfair Competition Law Fund—to the Consumer Privacy Fund in 2019-20, rather than as a direct appropriation from these two fund sources as proposed by the Governor. This loan would ensure that DOJ has sufficient resources to implement the California Consumer Privacy Act of 2018, as well as comply with legislative intent that costs be supported by the penalty revenues deposited into the Consumer Privacy Fund.

Background

California Consumer Privacy Act of 2018. Beginning January 1, 2020, Chapter 55 of 2018 (AB 375, Chau and Hertzberg) and Chapter 735 of 2018 (SB 112, Dodd)—also known as the California Consumer Privacy Act of 2018—impose various requirements related to the collection, use, and protection of consumer data collected by certain businesses (such as those with annual gross revenues of more than \$25 million). These requirements include providing consumers with the right to request that a business disclose the categories and specific pieces of personal information collected about them and delete such information, as well as direct a business not to sell such information. Additionally, the act tasks DOJ with (1) developing regulations related to these requirements, (2) providing guidance to businesses on how to comply with these requirements, and (3) pursuing civil actions against businesses who fail to correct any alleged violations within 30 days.

Consumer Privacy Fund. The California Consumer Privacy Act of 2018 created the Consumer Privacy Fund to receive civil penalties assessed for violations of the act. The act further specifies the intent that these penalty revenues fully offset costs incurred by the state courts and DOJ related to implementing and enforcing the act. Moreover, the act prohibits the use of the revenue for any other purpose until after these costs are fully offset.

Governor’s Proposal

The Governor’s budget for 2019-20 proposes \$4.7 million—\$1.8 million from the General Fund and \$2.9 million from the Unfair Competition Law (UCL) Fund—to support 23 positions for DOJ to implement the California Consumer Privacy Act of 2018. (The UCL Fund receives penalty revenues from civil actions initiated against entities that violate the state’s consumer protections laws to gain an unfair competitive advantage.) This amount would decline to \$4.5 million in 2020-21 and annually thereafter—\$1.7 million General Fund and \$2.8 million UCL Fund. (This decline reflects the expiration of one-time initial start-up costs for these positions.)

Fund Source Not Appropriate

We find that the level of resources being requested by DOJ to implement the California Consumer Privacy Act of 2018 appear reasonable given the increased workload. However, we find that the proposal to use the General Fund and UCL Fund to support the workload on an ongoing basis is not aligned with the act. This is because the act specifically created the Consumer Privacy Fund to fully offset DOJ’s costs to implement and enforce its provisions. We recognize, however, that DOJ will incur some start-up costs—such as those related to developing regulations or beginning to pursue civil actions for violations of the act—prior to the deposit of penalty revenues into the Consumer Privacy Fund. As such, funding from other fund sources will be needed on a *temporary* basis to support the department’s workload.

LAO Recommendation

In view of the above, we recommend that the Legislature authorize a \$4.7 million loan to the

Consumer Fund in 2019-20—\$1.8 million from the General Fund and \$2.9 million from the UCL Fund—rather than as a direct appropriation as proposed by the Governor. This loan would ensure that DOJ has enough resources to begin implementation of the California Consumer Privacy Act of 2018, as well as comply with legislative intent that costs be supported by the penalty revenues deposited into the Consumer Privacy Fund. We note that additional loans could be needed until sufficient penalty revenues begin to be deposited into the Consumer Privacy Fund.

Additionally, this approach would help the Legislature conduct oversight of the act’s implementation. This is because, to the extent that insufficient penalty revenues are deposited to support ongoing DOJ costs and/or to repay the loan, the Legislature could consider making changes to the California Consumer Privacy Act of 2018 (such as increasing the amount of civil penalty that can be pursued for violations).

CALIFORNIA INTERNET CONSUMER PROTECTION AND NET NEUTRALITY ACT OF 2018

We recommend that the Legislature adopt budget bill language specifying that DOJ could only spend the proposed \$1.8 million to enforce the California Internet Consumer Protection and Net Neutrality Act of 2018 if all court prohibitions preventing its implementation or enforcement have expired.

Background

Federal Communications Commission (FCC). The FCC is an independent federal agency tasked with the regulation of interstate and international communications by radio, television, wire, satellite, and cable in the United States. In 2015, the FCC approved rules related to net neutrality—the principle that Internet service providers treat all Internet data the same regardless of its source. These rules prohibited providers from (1) blocking lawful content or applications, (2) slowing down specific applications or services (known as “throttling”), and (3) accepting fees to directly or indirectly favor some data traffic over others (known

as “paid prioritization”). In 2017, the FCC reversed these net neutrality rules.

Chapter 976 of 2018 (SB 822, Wiener and De Leon). Chapter 976—known as the California Internet Consumer Protection and Net Neutrality Act of 2018—establishes net neutrality requirements in California. In particular, it prohibits Internet service providers that provide broadband Internet access service from (1) blocking lawful content or applications, (2) throttling applications or services, and (3) engaging in paid prioritization. It also requires providers to publicly disclose certain information to ensure that consumers are able to make informed choices regarding the use of their services.

Net Neutrality Litigation. Litigation is currently pending challenging the FCC’s 2017 decision to reverse net neutrality rules as well as Chapter 976. These cases include:

- **Multistate and Stakeholder Suit Against FCC and U.S.** California, other states, and various stakeholders (such as Mozilla Corporation) filed suit against the FCC and the U.S. challenging the agency’s 2017 decision to reverse net neutrality rules. This case is currently pending in a federal court of appeals.
- **U.S. Suit Against California.** The U.S. filed suit against California challenging the constitutionality of Chapter 976. Specifically, the U.S. argues that federal law—specifically the FCC decision—preempts state law (Chapter 976). This case is currently pending in a federal district court.
- **Industry Stakeholder Suit Against California.** The American Cable Association and other industry stakeholders filed suit against California challenging the constitutionality of Chapter 976. Specifically, they argue that (1) federal law preempts Chapter 976 and (2) Chapter 976 regulates commerce outside of California. This case is currently pending in a federal district court.

In October 2018, California entered into an agreement with the plaintiffs in the two suits filed against the state. Under the agreement, both lawsuits would be stayed (or placed on hold) until the federal court of appeals issues its opinion on

the multistate case against the FCC and U.S. or the U.S. Supreme Court issues a final decision on the case—whichever is later. In exchange, California agreed to not enforce Chapter 976 until either (1) 30 days after the October 2018 stay expires if plaintiffs in the two cases against California do not request a new stay within that time period or (2) 30 days after a judge makes a decision if they request a new stay within that time period. We note that further stays on the enforcement of Chapter 976 could potentially be sought.

Governor’s Proposal

The Governor’s 2019-20 budget proposes \$1.8 million from UCL to support nine new positions for DOJ to enforce Chapter 976. This workload would include receiving complaints, investigating potential violations, and prosecuting cases.

Pending Litigation Could Prevent Chapter 976 Enforcement

We find that requested resources for DOJ to implement and enforce Chapter 976 appear justified on workload basis. However, it is unclear whether the October 2018 stay on Chapter 976 will expire in 2019-20. Oral argument in the multistate case against the FCC and U.S. is currently scheduled for February 2019. As such, it is possible that the stay could expire during the budget year. However, it is also possible that the stay is in place beyond the budget year. This could happen if, for example, the Supreme Court takes time to issue a decision or if subsequent stays are issued in the two cases against California. Under such circumstances, DOJ would not need the proposed resources to implement Chapter 976 in 2019-20 and thus would not need the resources proposed by the Governor.

LAO Recommendation

Adopt Budget Bill Language Limiting When Funds Could Be Used. In view of the above, we recommend that the Legislature modify the Governor’s proposal by adopting budget bill language specifying that DOJ could only spend the proposed \$1.8 million to enforce Chapter 976 if all court prohibitions preventing its implementation or enforcement have expired.

LOCAL PUBLIC SAFETY

INCREASED RESOURCES FOR PEACE OFFICER TRAINING

The Governor's budget proposes a \$34.9 million ongoing General Fund augmentation for the Commission on Peace Officer Standards and Training (POST). We recommend the Legislature ensure that any funding provided and the planned expenditure of such funding reflect its priorities. Additionally, to the extent that the Legislature approves additional funding for POST, we recommend it adopt trailer bill language directing POST to report annually on specific outcome and performance measures that are tied to legislative expectations for the additional funding. This would help the Legislature evaluate the impact of any new funding provided and make decisions on appropriate funding and service levels in the future.

Background

POST Operates Various Programs. POST is responsible for setting minimum selection and training standards for California law enforcement, developing and running law enforcement training programs, improving law enforcement management practices, and reimbursing local law enforcement for training. In order to meet its responsibilities, the different divisions and bureaus within POST operate various programs. Some of these program include (1) developing and maintaining basic training programs (such as the Regular Basic Academy Course); (2) researching, developing, and offering videos, simulator training, and other courses; (3) issuing professional certificates to recognize training or experience achievements; and (4) overseeing and managing law enforcement training instructors and ensuring the quality of delivery.

Funding for POST. Prior to 2017-18, the primary fund source for POST had been the Peace Officers' Training Fund, which received revenue

from monies collected from certain criminal fines and fees levied by trial courts and has seen been eliminated. Currently, POST is partially funded from the State Penalty Fund (SPF), which also receives revenue criminal fines and fees. Due to a significant decline in fine and fee revenue in recent years, funding for POST was reduced beginning in 2009-10. In recognition of this decline, General Fund support has been provided to POST on a one-time basis in recent years. For example, \$3.2 million in POST costs were shifted to the General Fund in 2014-15 on a one-time basis.

The revised 2018-19 budget includes a total of \$75 million for POST. This includes \$48 million from SPF, \$25 million in one-time General Fund support, and \$2 million in reimbursements. The General Fund amount includes (1) \$15 million for use of force and de-escalation training, (2) \$5 million for crisis mental health training, and (3) \$5 million to provide competitive grants for innovative trainings or procedures that could reduce officer-involved shootings.

Governor's Proposal

The Governor's budget proposes a total of \$81.4 million to support POST in 2019-20—which is a 8.6 percent increase above the revised 2018-19 level. This includes a proposed \$34.9 million ongoing General Fund augmentation—\$14.9 million to restore POST's baseline funding to the 2013-14 level and \$20 million in additional funding above that level—a 63 percent increase in ongoing funding for POST.

Figure 12 summarizes how POST plans to use the proposed \$34.9 million General Fund augmentation. As shown in the figure, POST would use some of the funds to restore programs or services that had been previously eliminated due to a decline in the amount of fine and fee revenue available to support POST. For example, POST proposes \$1 million to restore the Quality Assurance Program and \$8 million to reinstate "backfill" salary payments for certain

courses. (Backfill generally refers to providing law enforcement agencies with funds for the cost of using overtime to temporarily cover the shift of an officer who is attending training.) POST indicates that not all courses that were previously eligible for backfill would automatically become reeligible, with priority for backfill reinstatement given to courses related to certain core skills. We note that POST plans to pilot new types of reimbursements that focus on providing training at the regional level. For example, POST is considering providing block grants to provide trainings targeted at specific regions. POST hopes that this change would make training more readily available to more officers in certain geographic areas (such as rural counties) and provide training in a more cost-effective manner (such as by reducing reimbursable costs associated with travel).

LAO Assessment

Governor’s Proposal Reflects One Approach to Funding POST . . . POST’s expenditure plan is one way to use the proposed ongoing funding. In developing the plan, POST evaluated nearly all of its programs and identified those areas it believed merited additional funding to maximize the number of officers trained and the impact of training. For example, POST plans to restore some trainings for supervisory law enforcement officers in order to ensure that first-line supervisors are able to appropriately manage, supervise, and mentor the officers reporting to them, as these supervisors are key to creating change and ensuring consistency. We also note that POST is currently in the process of examining individual programs and courses to ensure consistent treatment (such as reimbursing similar classes consistently) and to focus on areas of greatest statutory or regulatory importance.

Figure 12

Planned Use of Proposed 2019-20 General Fund Augmentation for POST

(In Millions)

Purpose	Amount
POST Administration	
Replace and modernize technological equipment.	\$3.2
Support increased workload, improve existing databases, and develop new course materials.	1.5
Subtotal	(\$4.7)
Training and Ensuring Quality of Training	
Update training curriculum for legacy courses.	\$1.5
Restore Quality Assurance Program—auditing consistency and delivery quality of POST-certified classes.	1.0
Restore the Instructor Development Institute.	1.0
Expand Supervisory Leadership Institute.	0.5
Develop four scenarios annually for Force Option Simulators.	0.5
Develop two additional online videos annually related to new legislative mandates.	0.2
Support various other training purposes.	1.0
Subtotal	(\$5.7)
Local Assistance and Reimbursement Funding	
Reinstate “backfill” salary payments (costs of overtime to temporarily backfill the shift of a training attendee).	\$8.0
Increase number of reimbursable hours and reimbursement rate for regular basic academy courses.	7.5
Reinstate reimbursement plans for certain classes and implement new reimbursement plans.	7.0
Increase in stipends for increased “behind the wheel” emergency vehicle operations instruction.	2.0
Subtotal	(\$24.5)
Total	\$34.9
POST = Commission on Peace Officer Standards and Training.	

. . . But Legislature Could Provide Different Funding Level and Allocate Funds in Other Ways. However, POST's expenditure plan is simply one way additional funding for POST can be used. The Legislature will want to consider its overall expectations for POST in terms of desired service levels and outcomes, and ensure that POST has sufficient resources to meet these expectations. As discussed above, POST received \$20 million in one-time General Fund support in the current year for the delivery of use of force, de-escalation, or crisis mental health training. Under the proposed expenditure plan, however, it is unclear how much of the increased funding would generally be used for these specific purposes. This is concerning because these training activities were identified as legislative priorities in 2018-19. The Legislature could decide that it would like funding to be spent on specific issue areas—which would be consistent with recent actions—or that certain programs or services should be prioritized over others (such as expanding the availability of online classes or videos).

Funding Should Be Tied to Specific Outcome and Performance Reporting. To the extent that additional ongoing funding is provided to POST, it is important that there be clear and specified outcome and performance measures in regards to the uses of the funding. Such information would allow the Legislature to identify the intended expectations for the funding provided and monitor the actual impacts to make sure they are aligned with the identified expectations. We note that under the administration's plan, it is unknown what specific outcomes and performance is expected. For example, it is unknown how many additional law enforcement are expected to participate in training as a result of the proposed increase in reimbursement levels. The collection of outcome and performance measures would also help the state identify and compare where new funding had the greatest desired impact and what would be the most cost-effective investments going forward. This would be important in helping the Legislature to determine whether additional funding is needed or if the allocation of existing funding should be modified.

LAO Recommendations

Ensure Funding and Expenditure Plan Reflects Legislative Priorities. We recommend the Legislature ensure that any provided funding as well as any expenditure plans for this funding reflect its priorities. The Legislature can accomplish this in various ways ranging from specifying exactly how funding must be used—such as for use of force trainings—or for certain purposes—such as for regional trainings to more minor modifications to the proposed expenditure plan.

Require Reporting on Specific Outcome and Performance Measures. To the extent that the Legislature approves additional funding for POST, we recommend that it adopt trailer bill language directing POST to report annually on specific outcome and performance measures that are tied to legislative expectations for the additional funding. For example, if the additional funding is provided for training, POST should collect and report information on the number of officers trained, how training was delivered, and the cost per training attendee, as well as the effect of specific trainings on officers' job performance. To the extent that it takes time to begin collecting information on certain performance measures, the Legislature can direct POST to report on how it plans on acquiring or measuring that information in the near-term until the information becomes available for annual reporting. Such reporting would help the Legislature evaluate the impact of any new funding provided, as well as make decisions on appropriate funding and service levels in the future.

CALIFORNIA VIOLENCE INTERVENTION AND PREVENTION PROGRAM

Given that the California Violence Intervention and Prevention (CalVIP) Program has been a legislative priority in recent years and that it appears to generally direct funds toward evidence-based strategies, we recommend providing the proposed \$9 million for the program. However, in view of a pending March 2020 report on the overall effectiveness of CalVIP, we find that it is premature to

approve the \$9 million on an ongoing basis as proposed by the Governor. As such, we recommend approving it on a one-time basis. This would allow BSCC to maintain existing service levels until the report is completed and the Legislature has had an opportunity to assess whether it wants to modify the program based on the report's findings.

Background

The CalVIP is a competitive grant program, administered by BSCC, which provides funding to cities and community-based organizations for violence prevention work. Grant recipients may receive up to \$500,000 over a two-year period and must meet a funding match requirement. (We note that there is a \$1 million set-aside for the city of Los Angeles.) Preference is given to applicants who (1) are from areas that are disproportionately affected by violence and (2) propose to fund activities that have been found to be effective in reducing violence. For example, the city of San Bernardino received funding in 2018 to support its implementation of Operation Ceasefire—a policing program that intensively targets gun violence and was found to significantly reduce youth homicides in Boston. CalVIP applicants are required to develop clearly defined, measureable objectives and, if funded, are required to report to BSCC on their progress in achieving those objectives.

The Legislature established CalVIP in 2017 and provided BSCC \$9.5 million in one-time General Fund support in the 2017-18 budget to fund the program's first cohort of grantees starting in May 2018, which includes ten cities and ten community-based organizations. The state provided \$9 million in one-time General Fund support in 2018-19 to fund a second grantee cohort, which includes eight cities and seven community-based organizations. For each cohort funded, BSCC is required to submit a report to the Legislature on the overall effectiveness of CalVIP. BSCC currently anticipates producing its first report in March 2020.

Governor's Proposal

The Governor's budget for 2019-20 proposes to provide \$9 million in ongoing funding to BSCC for the CalVIP program.

Upcoming Evaluation Should Inform Future Program and Funding Needs

As mentioned above, BSCC is expected to provide a report to the Legislature on the overall effectiveness of CalVIP in March 2020, which would be during the Legislature's deliberations on the 2020-21 budget. This report should provide information to inform decisions about whether the program should continue (either on a short-term or ongoing basis), how much funding to provide the program, and whether changes to the program's structure and requirements are needed. For example, if the report finds that CalVIP is highly effective in reducing violence, the Legislature may decide to expand the program beyond its current level of funding. Moreover, the report will provide a full accounting of the types of activities and organizations that were funded in the first grantee cohort. Reviewing this information could lead the Legislature to narrow or expand program eligibility to more effectively meet the program's goals.

LAO Recommendations

Given that the CalVIP program has been a legislative priority in recent years and that it appears to generally direct funds toward evidence-based strategies, we recommend providing the proposed \$9 million for the program in 2019-20. However, in view of the pending March 2020 report on the overall effectiveness of CalVIP, we find that it is premature to approve the \$9 million on an ongoing basis as proposed by the Governor. As such, we recommend approving it on a one-time basis. This would allow BSCC to maintain existing service levels until the report is completed and the Legislature has had an opportunity to assess whether it wants to modify the program based on the report's findings.

SUMMARY OF RECOMMENDATIONS

Issue	Governor's Proposal	LAO Recommendation
Cross Cutting Issue		
Deferred Maintenance	\$65 million (General Fund) on a one-time basis for deferred maintenance projects at the judicial branch and the California Department of Corrections and Rehabilitation (CDCR).	Require CDCR to report in budget hearings on what projects it intends to implement. Adopt reporting requirements to better enable legislative oversight of (1) how CDCR and the judicial branch maintain their facilities on an ongoing basis and (2) what deferred maintenance projects are actually implemented with the proposed funding.
CDCR		
Trends in the adult inmate and parolee populations	\$16.4 million (primarily General Fund) for various adjustments associated with prison and parole caseload changes.	Require CDCR to account for the estimated impact of recent policy changes in its spring population projections and budget requests at the May Revision. Withhold recommendation on funding request pending receipt of this information. Require CDCR to report on the rationale for and estimated population impacts of future changes to inmate credit earning policies.
Structured decision-making framework for parole hearings	\$4.9 million in 2019-20 (\$2.1 million ongoing) from the General Fund and implementation of a structured decision-making framework for parole hearings to accommodate an increase in the number of hearings.	Withhold action on proposed resources to accommodate an increase in parole hearings pending receipt of key information about the proposed structured decision-making framework.
Compensation for attorneys appointed by the Board of Parole Hearings (BPH)	\$2.5 million (General Fund) to increase pay for attorneys who represent inmates in parole hearings.	Withhold action on proposal to increase attorney pay pending receipt of key information about BPH's proposed changes to attorney pay schedule. Reject proposal if such information is not provided by April 1, 2019.
Inmate literacy	\$5.5 million in 2019-20 (\$5.4 million ongoing) from the General Fund to implement a statewide inmate literacy mentorship program with a requirement that inmate mentors who participate complete criminal personality therapy.	Approve proposed program as a three-year pilot. Require that inmate mentors who participate in the pilot complete criminal personality therapy only if they have a moderate or high need for it.
Tattoo removal program	\$2.5 million (General Fund) to establish a statewide tattoo removal program.	Direct administration to report on how many inmates would be served and how the program would be structured and evaluated. Withhold recommendation pending receipt of this information. Reject proposal if administration is not able to provide sufficient information by April 1, 2019.
Division of Juvenile Justice partnership with California Volunteers	\$2 million (General Fund) to establish a new mentorship program with half-time volunteers who would serve as mentors to current and former wards with the goal of increasing honorable discharges.	Withhold action pending receipt of detailed justification for the proposed \$2 million. Approve only \$667,000, if the administration is unable to justify the proposed \$2 million.
Vehicle replacement schedule	\$24 million (General Fund) to establish a vehicle replacement program.	Direct CDCR to provide an estimate of the savings that it indicates would be generated by implementing the proposal by April 1, 2019. Reduce CDCR's budget by this amount and approve requested funds for vehicle replacement in a separate budget item.

(Continued)

Issue	Governor's Proposal	LAO Recommendation
Judicial Branch		
<p>Pretrial release grant program</p>	<p>\$75 million (General Fund) on a one-time basis to administer a two-year grant program related to pretrial release. Funding to be allocated by judicial branch to eight to ten courts for the implementation, operation, or evaluation of pretrial decision-making programs or efforts.</p>	<p>Direct administration and Judicial Council to provide a well-developed proposal by April 15, 2019 for the proposed program. Proposal should specify (1) the primary goals of the proposed program, (2) the specific programs or activities that would be funded, (3) how funding would be allocated, and (4) how funded programs or activities would be evaluated. Withhold recommendation pending receipt of this information. Reject proposal to the extent this information is not provided.</p>
<p>Improvement and Modernization Fund (IMF)</p>	<p>\$13.3 million in 2019-20 (\$9.5 million ongoing) from the General Fund to support the trial court Phoenix financial procurement, and payroll system and the Litigation Management Program in order to offset \$8.4 million in existing IMF support for these programs and to support \$4.9 million in increased costs.</p>	<p>Deposit IMF revenues into the General Fund and eliminate the IMF. Direct judicial branch to report on each program currently receiving IMF funding. Appropriate one-time funding for these programs while assessment is being completed.</p>
<p>County Office of Education offset of trial court General Fund support</p>	<p>Estimates that the amount of excess property tax revenue available to offset General Fund support for trial courts will not increase above the 2018-19 level of \$63 million.</p>	<p>Adjust trial court offset in 2019-20 upward to account for property tax growth in 2018-19. Preliminary estimates indicate an \$18 million adjustment, but updated data will be available in the spring to further refine the estimate.</p>
Department of Justice (DOJ)		
<p>Bureau of Firearms (BOF) workload</p>	<p>\$16.9 million (General Fund) and a net \$798,000 increase from the Dealers' Record of Sale (DROS) Special Account in 2019-20 that result from various budget adjustments intended to prevent the DROS Special Account from becoming insolvent and accommodate projected BOF workload.</p>	<p>Approve an alternative package of adjustments that allocates the funding in a different manner that would also prevent the DROS Special Account from becoming insolvent and accommodate projected BOF workload, but addresses concerns identified with the Governor's proposal. Require DOJ and administration to report on potential solutions to address the ongoing operational shortfalls facing the DROS Special Account and the Firearms Safety and Enforcement Special Fund.</p>
<p>New tiered sex offender registration system</p>	<p>\$46 million (General Fund) over three years to implement new tiered sex offender registry.</p>	<p>Approve proposal, but adopt budget trailer bill legislation requiring an annual written progress report on key metrics (such as changes to project costs or deadlines for project milestones).</p>
<p>Dispositions and criminal history update workload</p>	<p>\$203,000 in 2019-20 (\$188,000 ongoing) from the General Fund to process additional criminal history record updates related to the implementation of four pieces of recently enacted legislation.</p>	<p>Provide funding on a two-year, limited-term basis to allow for the tracking of the total amount of workload generated. Additional resources could be requested as needed in two years based on actual workload data.</p>
<p>New and expanded crimes workload</p>	<p>\$145,000 in 2019-20 (\$136,000 ongoing) from the General Fund for DOJ to update and publish its statewide master code tables as well as to coordinate with criminal justice agencies on the use of these tables.</p>	<p>Reject proposal due to a lack of sufficient justification for why the statewide lists could not be updated within existing resources.</p>
<p>(Continued)</p>		

Issue	Governor's Proposal	LAO Recommendation
California Consumer Privacy Act of 2018	\$1.8 million (\$1.7 million ongoing) from the General Fund and \$2.9 million (\$2.8 million ongoing) from the Unfair Competition Law (UCL) Fund in 2019-20 to implement the California Consumer Privacy Act of 2018.	Authorize a \$4.7 million loan—\$1.8 million (General Fund) and \$2.9 million (UCL Fund)—to the Consumer Privacy Fund in 2019-20 to ensure DOJ has sufficient resources to implement the act, as well as comply with legislative intent that such costs be supported by penalty revenues in the Consumer Privacy Fund.
California Internet Consumer Protection and Net Neutrality Act of 2018	\$1.8 million (UCL Fund) to implement the California Internet Consumer Protection and Net Neutrality Act of 2018.	Approve proposal, but adopt budget bill language specifying resources could only be used to enforce the act if all court prohibitions preventing its implementation or enforcement have expired.
Local Public Safety		
Increased resources for peace officer training	\$34.9 million (General Fund) for the Commission on Peace Officer Standards and Training (POST) to address increased workload, restore certain previously eliminated programs or services, and expand or increase certain programs or services.	Ensure any funding provided and the planned expenditure of such funding reflects legislative priorities. Adopt trailer bill language directing POST to report annually on specific outcome and performance measures that are tied to legislative expectations for any additional funding provided.
California Violence Intervention and Prevention Program	\$9 million (General Fund) for the Board of State and Community Corrections to provide grants to support local violence prevention efforts.	Provide funding on a one-time basis to maintain existing service levels and allow the Legislature to consider the results of a pending March 2020 report on the overall effectiveness of the program.

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