



**The 2018-19 Budget:
Governor's Criminal Justice Proposals**

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LAO 

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Executive Summary

Overview. The Governor’s budget proposes a total of \$17.2 billion from various fund sources for judicial and criminal justice programs in 2018-19. This is an increase of \$302 million, or 2 percent, above estimated expenditures for the current year. The budget includes General Fund support for judicial and criminal justice programs of \$13.9 billion in 2018-19, which is an increase of \$270 million, or 2 percent, over the current-year level. In this report, we assess many of the Governor’s budget proposals in the judicial and criminal justice area and recommend various changes. Below, we summarize our major recommendations. We provide a complete listing of our recommendations at the end of the report.

Accommodating Proposition 57 Inmate Population Reductions. In response to the decline in the inmate population resulting from Proposition 57 (2016), the Governor proposes to remove inmates from the two out-of-state prison facilities and place them in a prison operated by the California Department of Corrections and Rehabilitation (CDCR). We recommend that the Legislature instead consider directing CDCR to close the California Rehabilitation Center (CRC) in Norco and remove inmates from one of the two out-of-state facilities. If the Legislature decides to close CRC, we recommend directing the department to provide a detailed closure plan. If the Legislature decides not to close CRC, CDCR should provide a plan for making the necessary infrastructure improvements at the prison.

Ventura Training Facility. The proposed budget provides a total of \$9 million from the General Fund to CDCR, the Department of Forestry and Fire Protection, and the California Conservation Corps to create a new firefighter training program for 80 parolees. According to the administration, the primary purpose of the proposal is to reduce parolee recidivism. We recommend rejection of the proposal because there is little evidence that the plan would be a cost-effective way to achieve the stated goal. Instead, to the extent that the Legislature wanted to prioritize recidivism reduction programs, there are likely to be evidence-based programs that could serve many more individuals and at a lower cost than under the Governor’s proposal.

Inmate Mental Health Programs. We make several recommendations on the Governor’s proposals to increase the number of Mental Health Crisis Beds (MHCBs) and improve CDCR’s overall management of mental health beds. First, we recommend the Legislature provide limited-term funding (rather than ongoing funding as proposed by the Governor) for CDCR to convert 60 existing mental health beds into “flex beds” to potentially use as MHCBs, as the need for MHCBs appears to be temporary. Second, we recommend the Legislature reject the working drawings funding proposed for two MHCB facility projects as current projections suggest that they would not be needed by the time they are in operation. Third, we recommend rejecting the proposed resources for CDCR to take over the mental health projections currently done by a private contractor. Finally, we recommend the Legislature approve the requested staff resources to help CDCR meet court-approved guidelines for transferring patients to mental health beds.

Trial Court Funding Augmentations. The Governor’s budget includes \$123 million to increase general purpose funding for trial court operations—\$75 million allocated based on the Judicial Council’s priorities and \$47.8 million for certain trial courts that are comparatively less well-funded than other courts. In evaluating the Governor’s proposals, we recommend that the Legislature (1) consider the level of funding it wants to provide relative to its other General Fund priorities and (2) allocate any additional funds provided based on its priorities—rather than allowing the Judicial Council to do so. Additionally, given the uncertainty around whether the Judicial Council’s current workload-based funding methodology

accurately estimates trial court needs, we also recommend the Legislature convene a working group to evaluate the methodology.

Trial Court Construction Projects. The Governor's budget proposes to use lease revenue bonds backed from the General Fund—rather than an existing court construction account—to finance the construction of ten trial court projects that are currently on hold or have been indefinitely delayed due to a lack of revenue in the account. We find that this approach does not address key underlying problems with the state's current trial court construction program, such as a lack of resources to pay existing debt service for court construction projects already completed. To address these problems, we recommend that the Legislature eliminate the state's two construction accounts, shift responsibility for funding trial construction projects to the General Fund, and increase legislative oversight of funded projects. This would help ensure that those projects that are legislative priorities and have the greatest needs are funded, rather than being constrained by existing declining revenue sources. To the extent the Legislature would like to maintain the existing court construction system, we recommend modifying the Governor's proposal to address some of the concerns we raise.

CRIMINAL JUSTICE BUDGET OVERVIEW

The primary goal of California’s criminal justice system is to provide public safety by deterring and preventing crime, punishing individuals who commit crime, and reintegrating criminals back into the community. The state’s major criminal justice programs include the court system, the California Department of Corrections and Rehabilitation (CDCR), and the California Department of Justice (DOJ). The Governor’s budget for 2018-19 proposes total expenditures of \$17.2 billion for judicial and criminal justice programs. Below, we describe recent trends in state spending on criminal justice and provide an overview of the major changes in the Governor’s proposed budget for criminal justice programs in 2018-19.

State Expenditure Trends

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

. . . But Has Increased Since Then. Since 2012-13, overall spending on criminal justice programs has steadily increased. This was largely due to additional funding for CDCR and the trial courts. For example, increased CDCR expenditures resulted from (1) increases in employee compensation costs, (2) the activation of a new health care facility, and (3) costs associated with increasing capacity to reduce prison overcrowding. During this same time period, various augmentations were

provided to the trial courts to offset reductions made in prior years and fund specific activities.

Governor’s Budget Proposals

Total Proposed Spending of \$17.2 Billion in 2018-19. As shown in **Figure 2** (see next page), the Governor’s 2018-19 budget includes a total of \$17.2 billion from all fund sources for judicial and criminal justice programs. This is an increase of \$302 million (2 percent) over the revised 2017-18 level of spending. General Fund spending is proposed to be \$13.9 billion in 2018-19, which represents an increase of \$270 million (2 percent) above the revised 2017-18 level. We note that this increase does not include increases in 2018-19 employee compensation costs for these departments, which are budgeted elsewhere. If these cost were included, the increase would be somewhat higher.

Major Budget Proposals. The most significant piece of new spending included in the Governor’s budget relates to various proposals to increase General Fund support for trial courts by a total of \$210 million, including \$75 million to support Judicial

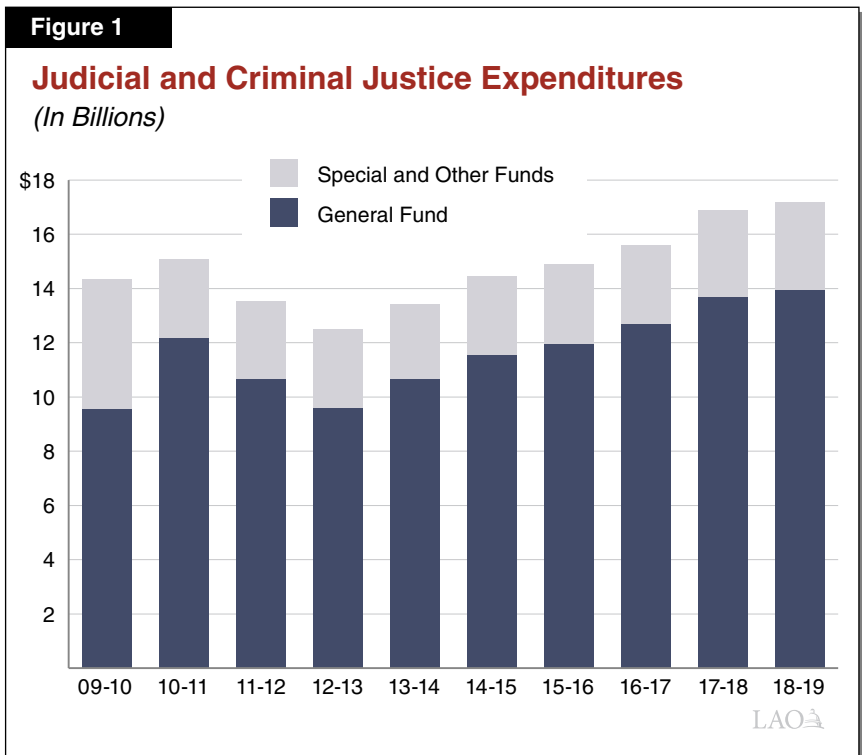


Figure 2

Judicial and Criminal Justice Budget Summary

(Dollars in Millions)

	Actual 2016-17	Estimated 2017-18	Proposed 2018-19	Change From 2017-18	
				Actual	Percent
Department of Corrections and Rehabilitation	\$10,889	\$11,849	\$11,975	\$125	1.1%
General Fund ^a	10,592	11,540	11,661	121	1.1
Special and other funds	297	309	313	4	1.3
Judicial Branch	\$3,522	\$3,675	\$3,864	\$188	5.1%
General Fund	1,702	1,748	1,907	158	9.1
Special and other funds	1,821	1,927	1,957	30	1.6
Department of Justice	\$745	\$927	\$926	-\$1	-0.1%
General Fund	219	238	245	7	2.8
Special and other funds	526	689	681	-8	-1.1
Board of State and Community Corrections	\$201	\$162	\$155	-\$7	-4.4%
General Fund	108	67	49	-18	-26.9
Special and other funds	93	94	105	11	11.6
Other Departments^b	\$225	\$241	\$237	-\$4	-1.6%
General Fund	80	71	72	1	1.9
Special and other funds	145	170	165	-5	-3.1
Totals, All Departments	\$15,583	\$16,854	\$17,156	\$302	1.8%
General Fund	12,701	13,664	13,934	270	2.0
Special and other funds	2,882	3,189	3,222	32	1.0

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

Council priorities and \$48 million to equalize funding across trial courts. In addition, the budget includes various augmentations for other departments. For example, the Governor’s budget proposes a total of \$136 million for infrastructure and equipment at CDCR,

including \$61 million to replace roofs at three prison facilities, \$33 million to replace public safety radio communication systems, and \$20 million to repair damage from leaking roofs.

CROSS CUTTING ISSUE: STATE PENALTY FUND

LAO Bottom Line. The Governor’s proposed expenditure plan for the State Penalty Fund (SPF) generally is consistent with the 2017-18 plan. We recommend, however, that the Legislature review the plan to make sure it reflects its priorities and modify as necessary. As we have indicated in recent years, long-term solutions are needed to the overall assessment, collection, and distribution of fine and fee

revenue to address the ongoing structural problems with the state’s current fine and fee system.

Background

Criminal Fine and Fee Revenue Supports Numerous State and Local Programs. During court proceedings, trial courts typically levy fines and fees upon individuals convicted of criminal offenses (including traffic violations). When such fines and fees are collected,

state law (and county board of supervisor resolutions for certain local charges) dictates a very complex process for the distribution of fine and fee revenue to numerous state and local funds. These funds in turn support numerous state and local programs. For example, such revenue is deposited into the SPF for the support of various programs including training for local law enforcement and victim assistance. State law requires that collected revenue be distributed in a particular priority order, allows distributions to vary by criminal offense or by county, and includes formulas for distributions of certain fines and fees. (For more information about how criminal fines and fees are assessed and distributed, please see our January 2016 report, *Improving California's Criminal Fine and Fee System*.) A total of about \$1.7 billion in fine and fee revenue was distributed to state and local funds in 2015-16. Of this amount, the state received roughly one-half.

Various Actions Taken in Recent Years to Address Declining Criminal Fine and Fee Revenue.

The total amount of fine and fee revenue distributed to state and local governments has declined since 2010-11. As a result, a number of state funds receiving such revenue, including the SPF, have been in operational shortfall for years—meaning annual expenditures exceed annual revenues—and some have become insolvent. Over the past few years, the state has adopted a number of one-time and ongoing solutions to address the shortfalls or insolvency facing some of these funds:

- ***Eliminating SPF Distribution Formulas.*** As part of the 2017-18 budget, the state eliminated existing statutory provisions dictating how revenues deposited into the SPF are distributed to nine other state funds. Instead, specific dollar amounts are now appropriated directly to specific programs in the annual budget based on state priorities.
- ***Shifting Costs.*** In recent years, the state has shifted costs from various funds supported by fine and fee revenue to the General Fund or other funds. Most of these cost shifts were either on a one-time or temporary basis. For example, nearly \$16.5 million in costs were shifted from the Peace Officers Training Fund to the General Fund in 2016-17. More recently, the state authorized DOJ to effectively shift \$15 million in costs from

the DNA Identification Fund in 2017-18 and 2018-19 to two other special funds. However, one such cost shift—specifically the General Fund backfill of the Trial Court Trust Fund, which supports trial court operations—has been provided continuously since 2014-15.

- ***Reducing Expenditures.*** The state has also directed certain departments to reduce expenditures from fine and fee revenue. For example, the Commission on Peace Officer Standards and Training (POST), which receives such revenue to support training for law enforcement, was required to reduce expenditures. In response, the commission took several actions, such as suspending or reducing certain training reimbursements and postponing some workshops. Similarly, as we discuss in more detail later in this report, the reduction in fine and fee revenues has halted certain trial court construction projects.
- ***Increasing Revenue.*** The state has also attempted to increase the amount of fine and fee revenue collected in different ways. For example, the 2017-18 budget provided one-time and ongoing resources for the Franchise Tax Board (FTB) to increase its fine and fee revenue collection activities. (Currently, court and county collection programs can collect fine and fee revenue themselves, as well as contract with FTB or private entities.)

Governor's Proposal

SPF Expenditure Plan. The Governor's budget projects that about \$81 million in criminal fine and fee revenue will be deposited into the SPF in 2018-19—a decline of \$12.6 million (or 13.5 percent) from the revised current-year estimate. (We note that revenue deposited into the SPF has steadily declined since 2008-09 and will have declined by 53 percent by 2018-19.) Of this amount, the administration proposes to allocate \$79.5 million to eight different programs in 2018-19—all of which received SPF funds in the current year. As shown in **Figure 3** (see next page), many of these programs are also supported by other fund sources. Under the Governor's plan, five of the eight programs would receive less SPF support compared to the estimated 2017-18 level. For some of these

Figure 3

Governor’s Proposed State Penalty Fund (SPF) Expenditures for 2018-19

(In Thousands)

Program	2017-18 (Estimated)			2018-19 (Proposed)			Change From 2017-18
	SPF	Other Funds	Total	SPF	Other Funds	Total	Total
Victim Compensation	\$9,100	\$103,656	\$112,756	\$6,534	\$105,867	\$112,401	-\$355
Various OES Victim Programs ^a	11,834	73,377	85,211	8,984	63,649	72,633	-12,578
Peace Officer Standards and Training	47,241	5,287	52,528	43,835	1,959	45,794	-6,734
Standards and Training for Corrections	17,304	100	17,404	15,998	100	16,098	-1,306
CalWRAP	3,277	—	3,277	2,478	—	2,478	-799
DFW employee education and training	450	2,628	3,078	450	2,536	2,986	-92
Bus Driver Training	895	494	1,389	—	1,447	1,447	58
Traumatic Brain Injury	800	314	1,114	800	92	892	-222
Local Public Prosecutors and Public Defenders Training	450	—	450	450	—	450	—
Totals	\$91,351	\$185,856	\$277,207	\$79,529	\$175,650	\$255,179	-\$22,028

^a Includes Victim Witness Assistance Program, Victim Information and Notification Everyday Program, Rape Crisis Program, Homeless Youth and Exploitation Program, and Child Sex Abuse Treatment Program.
 OES = Office of Emergency Services; CalWRAP = California Witness Relocation and Assistance Program; and DFW = Department of Fish and Wildlife.

programs (such as the Victim Compensation Program), funding from other sources are proposed to partially offset the reduction in SPF support. Additionally, the Governor proposes to shift SPF support for the Bus Driving Training Program to the Motor Vehicle Account (MVA). (The MVA supports the state administration and enforcement of laws regulating the operation and registration of vehicles used on public streets and highways.) Finally, we note that the Governor’s budget does not include funding for two programs—the California Violence Intervention and Prevention Grant Program (CalVIP) and Internet Crimes Against Children Program—that received General Fund support in 2017-18 to backfill on a one-time basis the elimination of SPF support for these programs.

LAO Assessment

Proposal Generally Consistent With Prior Year.

The Governor’s proposed SPF expenditure plan reflects priorities that are generally consistent with the expenditure plan for 2017-18. Specifically, the proposed plan does not eliminate SPF support for any programs which received such support in 2017-18 except the Bus Driver Training Program which would be supported by the MVA instead. Additionally, similar to 2017-18, reductions in SPF support for certain programs (such

as for victim compensation) will be offset by increased expenditures from other funds.

Unclear What Impact Proposed Reductions Will Have. The Governor’s proposed expenditure plan does not specify how the programs would accommodate the proposed funding reductions. Rather, the reductions are unallocated and the programs would be given flexibility in how such reductions will be implemented. For example, it is unknown at this time how POST will accommodate its reductions. Accordingly, the programmatic impact of the proposed reductions is unknown.

Legislature May Have Different Priorities. While the Governor’s proposal reflects the administration’s funding priorities, it is likely that the Legislature has different priorities. The Legislature could decide that programs should implement different levels of expenditure reductions. For example, the Legislature could make greater reductions for peace officer or corrections standards and training in order to make funding available to support CalVIP. In addition, the Legislature may want to specify how certain departments implement their reductions in order to ensure that their choices are consistent with legislative priorities.

Structural Problems With Criminal Fine and Fee System Still Remain. The Governor's proposal does not provide a long-term solution to address the structural problems of the state's criminal fine and fee system. As noted above, the amount of criminal fine and fee revenue distributed into state and local funds—such as the SPF—continues to decline. The elimination of formulas dictating SPF allocations in 2017-18 increased the Legislature's control over the use of the revenue and allowed the Legislature to allocate funding based on its priorities. However, numerous other distribution formulas remain—thereby making it difficult for the Legislature to make year-to-year adjustments in spending. Additionally, the level of funding allocated to programs, including those supported by the SPF, still relies on the amount of criminal fine and fee revenue that is available rather than on workload or service level needs. This means that programs that are supported by such revenue, which can fluctuate depending on factors outside of the Legislature's control (such as the number of citations issued and individuals' willingness to pay), will continue to be disproportionately impacted compared to programs that are not supported by this type of revenue. Finally, to the extent that revenue continues to decline, the Legislature will be required to continue to take action to address the operational shortfalls and insolvencies of funds supported by such revenue.

LAO Recommendations

Ensure SPF Expenditure Plan Reflects Legislative Priorities. Although the Governor's proposed SPF expenditure plan is generally consistent with the 2017-18 plan, the Legislature will want to review it to make sure the plan reflects its priorities—particularly given the projected reduction in SPF revenues—and make any necessary adjustments. We recommend the Legislature direct the entities that administer the programs to take specific actions in implementing any reduction in SPF support, in order to ensure that legislative priorities are maintained. For example, the Legislature could require that entities maintain certain types of training provided to local agencies.

Consider Changing Overall Distribution of Fine and Fee Revenue. As we have indicated in recent years, a broader, long-term approach to changing the overall distribution of fine and fee revenue is needed to address the ongoing structural problems with the current system. As initially discussed in our January 2016 report, we continue to recommend that the Legislature (1) eliminate *all* statutory formulas related to fines and fees and (2) require the deposit of nearly all such revenue, except those subject to legal restrictions, into the General Fund for subsequent appropriation in the annual state budget. This would allow the Legislature to maximize control over the use of such revenue and ensure that state and local programs it deems to be priorities are provided the level of funding necessary to meet desired workload and service levels. This would also eliminate the need for the Legislature to continuously identify and implement short-term solutions to address various other such funds supported by this revenue that are currently facing or nearing structural shortfalls or insolvency.

Consider Other Long-Term Solutions to Address Structural Problems. In recent years, we have also identified various key weaknesses and problems with the state's assessment, collection, and distribution of criminal fine and fee revenue, such as a lack of clear fiscal incentives for collection programs to collect debt in a cost-effective manner that maximized the amount collected. To address these deficiencies, we provided a number of recommendations to overhaul and improve the system. For example, we recommended piloting a new collections model to address the lack of clear incentives for collection programs to collect debt in a cost-effective manner, as well as consolidating most fines and fees to address the challenges of distributing revenues accurately. (For more information on our findings and recommendations, please see our January 2016 report, as well as our November 2014 report, *Restructuring the Court-Ordered Debt Collection Process*.)

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

OVERVIEW

The CDCR is responsible for the incarceration of adult felons, including the provision of training, education, and health care services. As of January 10, 2018, CDCR housed about 130,000 adult inmates in the state’s prison system. Most of these inmates are housed in the state’s 35 prisons and 43 conservation camps. About 8,000 inmates are housed in either in-state or out-of-state contracted prisons. The department also supervises and treats about 46,000 adult parolees and is responsible for the apprehension of those parolees who commit parole violations. In addition, 620 juvenile offenders are housed in facilities operated by CDCR’s Division of Juvenile Justice, which includes three facilities and one conservation camp.

Spending Proposed to Increase by \$125 Million in 2018-19. The Governor’s budget proposes total expenditures of \$12 billion (\$11.7 billion General Fund) for CDCR operations in 2018-19. **Figure 4** 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 \$125 million, or about 1 percent, from the estimated 2017-18 spending level. This increase reflects additional funding to (1) replace roofs and address mold damage at various prisons, (2) replace radio communication systems, and (3) pay the debt service for construction

projects. This additional proposed spending is partially offset by various spending reductions, including reduced spending for contract beds. (The proposed \$125 million increase does not include anticipated increases in employee compensation costs in 2018-19.)

TRENDS IN THE ADULT INMATE AND PAROLEE POPULATIONS

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

Background

As shown in **Figure 5**, the average daily inmate population is projected to be 127,400 inmates in 2018-19, a decrease of about 2,900 inmates (2 percent) from the estimated current-year level. Also shown in **Figure 5**, the average daily parolee population is projected to be 49,800 in 2018-19, an increase of about 2,800 parolees (6 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.

Figure 4

Total Expenditures for the California Department of Corrections and Rehabilitation

(Dollars in Millions)

	2016-17 Actual	2017-18 Estimated	2018-19 Proposed	Change From 2017-18	
				Amount	Percent
Prisons	\$9,646	\$10,477	\$10,522	\$45	—
Adult parole	548	620	654	34	5%
Administration	467	504	548	44	9
Juvenile institutions	183	197	201	4	2
Board of Parole Hearings	45	50	50	-1	-2
Totals	\$10,889	\$11,849	\$11,975	\$125	1%

Governor's Proposal

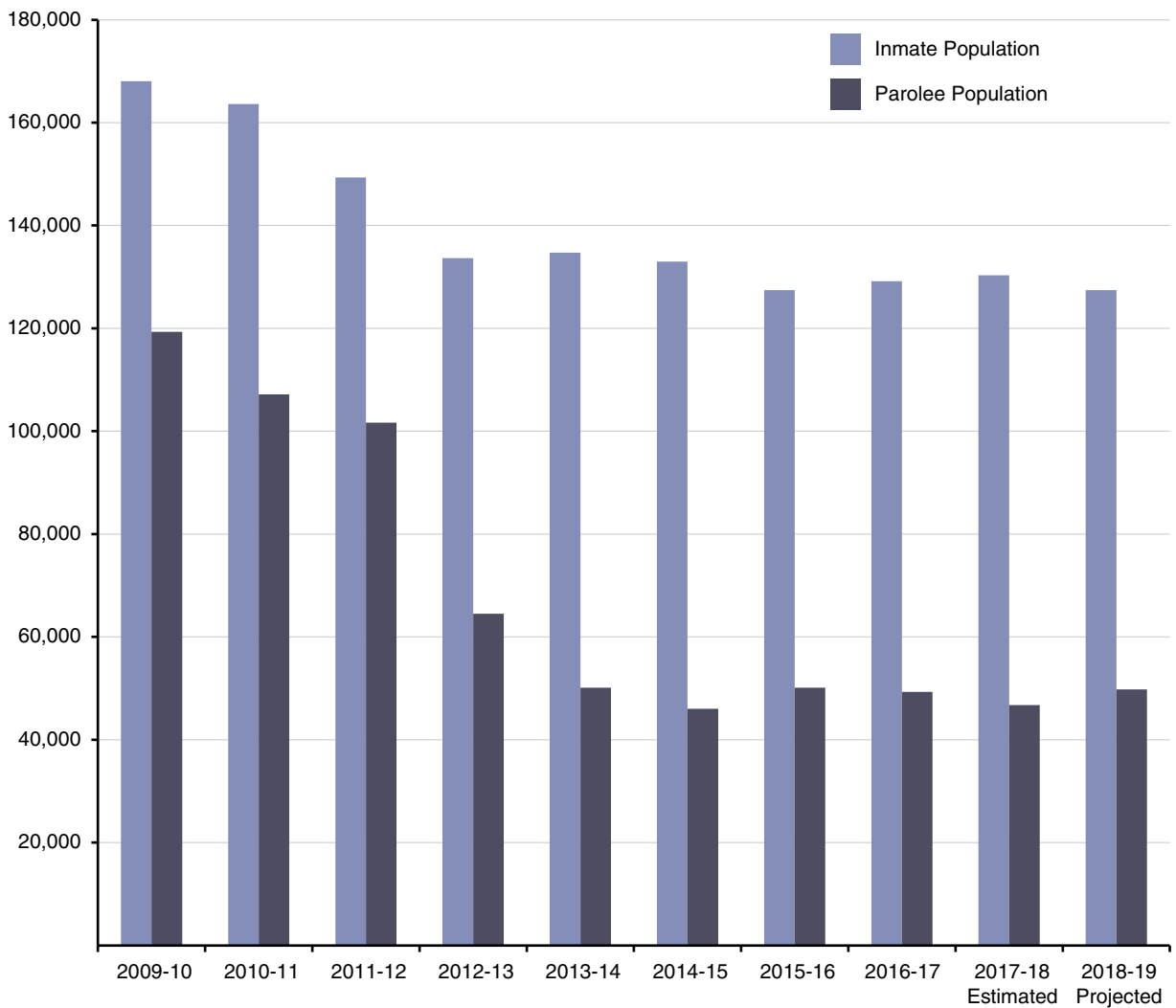
As part of the Governor's January budget proposal each year, the administration requests modifications to CDCR's budget based on projected changes in the inmate and parolee populations in the current and budget years. The administration then adjusts these requests each spring as part of the May Revision based 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 \$39.5 million in the current year and a net increase of \$38.3 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 inmates

Figure 5

Adult Inmate Population Projected to Decline Slightly And Parolee Population Projected to Increase



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housed in state-operated prisons and spending on inmate medical care relative to what was assumed in the *2017-18 Budget Act*. This increase in cost is partially offset by projected savings—such as from the cancellation of a planned expansion of the Male Community Reentry Program to San Francisco. The budget-year net increase in costs is primarily due to a projected increase in the parolee population as a result of Proposition 57 and the activation of additional administrative segregation and mental health housing units. These increased costs are partially offset by savings—such as from a decrease in the use of contract beds.

LAO Recommendation

We withhold recommendation on the administration's adult population funding request until the May Revision. We will continue to monitor CDCR's populations and make recommendations based on the administration's revised population projections and budget adjustments included in the May Revision.

ACCOMMODATING INMATE POPULATION REDUCTIONS RESULTING FROM PROPOSITION 57

LAO Bottom Line. In order to accommodate the anticipated decline in the inmate population due to Proposition 57, we recommend that the Legislature consider directing CDCR to close the California Rehabilitation Center (CRC) in Norco and remove inmates from the contract facility in Mississippi—rather than closing all out-of-state contract facilities as proposed by the Governor. If the Legislature decides to close CRC, we recommend directing CDCR to provide a detailed plan on the closure. If the Legislature decides not to close CRC, CDCR should provide it with a plan for making the necessary infrastructure improvements at the prison.

Background

Federal Court Orders Prison Population Cap. In recent years, the state has been under a federal court order to reduce overcrowding in the 34 state prisons operated by CDCR. Specifically, the court found that prison overcrowding was the primary reason the state was unable to provide inmates with constitutionally adequate health care and ordered the state to reduce

the population of the 34 prisons to below 137.5 percent of their design capacity. (Design capacity generally refers to the number of beds CDCR would operate if it housed only one inmate per cell and did not use temporary beds, such as housing inmates in gyms.) The court also appointed a compliance officer. If the prison population exceeds the population cap at any point in time, the compliance officer is authorized to order the release of the number of inmates required to meet the cap. To ensure that such releases do not occur if the prison population increases unexpectedly, CDCR houses about 2,000 fewer inmates than is allowed under the cap as a “buffer.”

Various Changes Have Allowed State to Comply With Population Cap. In order to comply with the court order, the state has taken a number of actions in recent years. These actions include (1) housing inmates in contract prison facilities (discussed in greater detail below), (2) constructing additional prison capacity, and (3) reducing the inmate population by implementing several policy changes, such as the 2011 realignment, which required that certain lower-level felons serve their incarceration terms in county jail rather than state prison.

Contract Prisons Currently Used to Avoid Exceeding Population Cap. CDCR relies on contract facilities to maintain compliance with the court order. As of January 10, 2018, CDCR housed about 4,300 inmates in two out-of-state contract facilities—about 1,300 inmates in Tutwiler, Mississippi and about 3,000 inmates in Eloy, Arizona. CDCR also housed about 4,100 inmates in several contract facilities located in California.

Inmate Population Projected to Decline Due to Proposition 57. Approved by the voters in November 2016, Proposition 57 (1) made certain nonviolent offenders eligible to be considered for release after serving a portion of their sentence, (2) expanded CDCR's authority to reduce inmates' prison terms through credits earned for good behavior and participation in rehabilitation programs, and (3) required that judges decide whether juveniles should be tried in adult court. The administration expects these changes to reduce the average daily inmate population by about 2,900 in 2018-19, growing to a roughly 5,000 inmate reduction by 2020-21 relative to its current level. (For more information on the implementation of Proposition 57, please see our report, *The 2017-18 Budget: Implementation of Proposition 57*.)

Governor's Proposals

The Governor proposes to accommodate the anticipated decline in the inmate population due to Proposition 57 by removing inmates from the contract facility in Mississippi by June 2018 and from the Arizona facility by fall 2019. These inmates would be moved to CDCR-operated prisons to fill beds that are vacated as the overall population declines. Accordingly, the proposed budget includes a \$68 million reduction in spending on out-of-state contract facilities in 2018-19 relative to the revised 2017-18 level.

LAO Assessment

Alternative to Closing All Out-of-State Contract Facilities Is to Close a State Prison. We agree with the administration that CDCR is likely to experience a decline of roughly 5,000 inmates over the next few years. The Governor proposes to accommodate this population decline by closing all out-of-state contract facilities. The estimated inmate decline, however, presents the Legislature with the opportunity to consider alternative ways to accommodate the population reductions caused by Proposition 57 that could result in a greater reduction in state costs and still keep a buffer of about 2,000 inmates below the cap. Specifically, the state could instead close a state prison since California's prisons typically house between 2,000 and 5,000 inmates—a similar magnitude to the population reductions expected as a result of Proposition 57.

Possible Prison to Close Is CRC Due to Its Costly Repair Needs. In 2012, the administration's plan for reorganizing CDCR following the 2011 realignment of adult offenders called for the closure of CRC by 2015, due to its age and deteriorating infrastructure. At the time, CDCR estimated that fully addressing all of the facility's maintenance needs could cost over \$100 million. However, the facility remained open because the administration later determined that CRC's capacity was needed to comply with the population cap. (CRC has a design capacity of about 2,500—allowing the state to house 3,400 inmates at the overcrowding limit of 137.5 percent—and currently houses about 2,600 inmates.)

As part of the *2015-16 Budget Act*, the Legislature required the administration to provide an updated comprehensive plan for the state prison system,

including a permanent solution to the decaying infrastructure at CRC. The administration's plan stated that closing CRC is a priority but that the capacity will be needed for the next few years in order to maintain compliance with the prison population cap. While the 2016-17 budget included \$6 million for special repairs at CRC to address some of the prison's most critical infrastructure needs (such as improvements to electrical and plumbing systems), the administration has not presented a plan for the significant improvements that are still necessary, including health care facility improvements that have been made at other prisons at the request of the federal Receiver.

Closing CRC and Removing Fewer Inmates From Contract Facilities Could Result in Significant Savings. Given the expected decline in the inmate population as a result of Proposition 57, we estimate that the state could close CRC and still make a significant reduction in out-of-state contract beds by closing the Mississippi contract facility. (The state would need to maintain the Arizona contract.) We estimate that closing CRC and the Mississippi contract facility would eventually result in ongoing net savings of roughly \$100 million annually relative to the Governor's plan. This is because the department saves about \$30,000 annually per inmate removed from a contract facility while it saves roughly \$70,000 annually per inmate when it closes a state prison. (The higher per inmate costs of state-run facilities are due to a variety of factors including contractors' lower employee compensation costs and CDCR's practice of not putting inmates with high health care needs—who are relatively expensive—into contract facilities.) Moreover, if the state closed CRC, it would avoid the cost of renovating the prison and constructing updated medical facilities. Currently, CDCR estimates it would require over \$200 million to fully address the infrastructure needs at CRC, though it is not clear when this cost would be incurred.

We note that it would likely take at least a year before CRC could be closed. As such, the above savings would likely not be realized until at least 2019-20 or later. In addition, it is possible that closing CRC could actually increase costs somewhat relative to the Governor's proposal during the period when CRC is being closed. This is because until CRC is fully closed, the department would experience less savings from removing inmates from CRC than from contract

facilities. The precise fiscal effect of closing CRC in the short term is unknown and would depend primarily on (1) how the court adjusts the prison population cap during the time that CRC is being shut down and (2) how quickly the department is able to achieve operational savings at CRC as it reduces the prison's population. However, we estimate that this short-term reduction in savings relative to the Governor's plan would be unlikely to exceed the low tens of millions for a couple of years.

LAO Recommendation

In view of the significant ongoing savings that could result from closing CRC rather than the Arizona contract facility, we recommend that the Legislature consider directing CDCR to close CRC. If the Legislature decides to close CRC, we recommend requiring CDCR to provide a detailed plan on the closure. If the Legislature decides not to close CRC, CDCR should provide a plan for making the necessary infrastructure improvements at the prison.

PAROLE STAFFING PROPOSALS

LAO Bottom Line. We recommend the department utilize a budgeting methodology that is based on specific staffing ratios, as well as takes into account the size and composition of the parolee population, to annually adjust the total number and type of positions needed each year to operate the state's parole system—not just for direct-supervision positions as is currently the case. We recommend that the Legislature require CDCR to report at budget hearings on a timeline for incorporating support staff into its annual staffing adjustments. Pending such a report from the department and the availability of updated parolee projections that could change the level of positions needed, we withhold recommendation on the proposed staffing requests until the May Revision.

Background

Parolees Receive Different Levels of Supervision Based on Classification. CDCR's Division of Adult Parole Operations (DAPO) classifies parolees into different classifications depending on the level of supervision they require, which is based on various factors such as their criminal history. As a result, the caseload of a parole agent primarily depends on the

classification of the parolees supervised by the agent. For example, parole agents who supervise general felons typically have a caseload of around 55 parolees, while parole agents who supervise high-risk sex offenders have a caseload of around 20 parolees.

Direct-Supervision Positions Are Annually Adjusted Based on Parolee Population. For most types of direct-supervision positions (such as parole agents and their supervisors), the department annually requests the level of funding and positions required to ensure that each classification of parolees receives appropriate levels of supervision, rehabilitation programs, and mental health treatment. The level requested is based on a budgeting methodology that utilizes specific staffing ratios and takes into account the size and composition of the parolee population. An increase in the parolee population would require additional positions and funding, and a decline in the population would result in a need for less resources compared to the previous year. For example, if the number of high-risk sex offender parolees is estimated to increase by 20, the staffing ratios would indicate that one additional parole agent is needed for the coming year. Increases in the number of parole agents in turn result in the need for other positions based on certain ratios—such as one additional supervisor for every eight additional parole agents. Increases in the parolee population also generate the need for operating expenses and equipment, such as a GPS monitoring device that each additional high-risk sex offender parolee is required to wear.

Support Positions Not Annually Adjusted Based on Parolee Population. In order to assist the work that parole agents do in the field, DAPO employs various support positions that do not involve the direct supervision of parolees—such as human resources analysts, some office technicians, and sign-language interpreters. Some of these positions are located at headquarters in Sacramento, while others are located across DAPO's 50 field offices. Similar to most other parole positions, the need for support positions is driven by changes in the parolee population. For example, if the parolee population increases, there would be a greater need for human resource analysts to process a potential increase in the number of workers' compensation claims resulting from the additional parole agents hired to supervise parolees. Conversely, if the parolee population declines, CDCR would need

fewer human resource analysts to process workers' compensation claims. In other words, these positions are in effect based on ratios similar to direct-supervision positions. We note, however, that the department makes requests for support positions on an ad-hoc basis rather than annually adjusting these positions for changes in the parolee population like it does for its positions that involve the direct supervision of parolees.

Parolee Population Expected to Increase Temporarily Due to Proposition 57. As we discussed earlier in this report, the average daily parolee population is projected to increase to 49,800 in 2018-19, an increase of about 2,800 parolees (6 percent) from 2017-18. The population is expected to continue increasing until it reaches a peak of 51,000 parolees in 2019-20. This increase is largely driven by Proposition 57. However, this increase is expected to be temporary and the parolee population is expected to decline by 1,000 (or 2 percent) from 2019-20 to 2021-22.

Governor's Proposal

The Governor's budget proposes a \$23 million General Fund augmentation and 94 additional direct-supervision positions due to the projected increase in the parolee population in 2018-19. The budget also proposes a \$2.3 million General Fund augmentation and 23 additional support positions. This reflects a 4 percent increase in the number of these positions from the current-year level. The proposed support positions include analysts, a sign-language interpreter, and office technicians. According to the department, these positions are necessary to account for increased workload related to the additional direct-supervision staff proposed for 2018-19, as well as workload associated with direct-supervision positions provided in prior years.

LAO Assessment

Staffing Requested for 2018-19 Seems Appropriate. As discussed above, the department's budgeting methodology for direct-supervision and support positions are in effect based on staffing ratios that take into account the projected size of the parolee population for 2018-19. Accordingly, we find that the requested direct-supervision and support positions are appropriate based on the estimated parolee population for 2018-19 at this time. We note, however,

this estimate could change in May based on updated projections of the parolee population.

Requested Support Positions Will Not Be Adjusted Annually in Future Years. While the budgeting methodology for the proposed support positions takes into account the projected size of the parolee population in 2018-19, it would not be annually adjusted as would be the case for the requested direct-supervision positions. If these positions were adjusted on an annual basis, similar to the direct-supervision positions, it would lead to a more complete accounting of the need for them.

LAO Recommendations

In view of the above, we recommend the department utilize a budgeting methodology that is based on specific staffing ratios, and takes into account the size and composition of the parolee population, to annually adjust the total number and type of positions needed each year—not just for direct-supervision positions. We recommend that the Legislature require the department to report at budget hearings on a timeline for incorporating support staff into the annual parole staffing adjustment. Pending such a report from the department and the availability of updated parolee projections that could change the level of positions needed, we withhold recommendation on the proposed staffing requests until the May Revision.

WAGE INCREASES FOR INMATE WORKERS ASSIGNED TO FACILITY MAINTENANCE JOBS

LAO Bottom Line. The Governor's budget proposes a \$1.8 million General Fund augmentation for CDCR to increase wages for facility maintenance inmate workers to equal those provided by other employment programs available to inmates, with the intention that this would allow the department to hire sufficient inmate workers to reduce its maintenance backlog. We find that additional information is needed in order for the Legislature to assess the potential effectiveness of the proposal and whether other actions are needed to fully address CDCR's maintenance backlog. As such, we recommend that the Legislature direct the administration to report during budget hearings on specified information (such as how it plans to fill its vacant civil service positions who also perform

maintenance work) and withhold action on the Governor's proposal until it receives this information.

Background

Employment Opportunities for Inmates. Inmates have various opportunities for employment while incarcerated. Generally, inmate jobs fall into three categories:

- California Prison Industry Authority (CalPIA).** CalPIA is a semiautonomous state agency that provides work assignments and vocational training to inmates and is funded primarily through the sale of the goods and services produced by these inmates. Many of these goods are purchased by state agencies. CalPIA has the capacity to employ about 7,800 inmate workers across 34 prisons who earn between \$0.35 and \$1.00 per hour. However, it reports that roughly 30 percent of these positions are currently vacant. While in CalPIA positions, inmates can participate in pre-apprenticeship programs and gain certification in various career fields, making them more qualified to be hired for apprenticeships or other entry-level positions upon release. When inmates complete these training programs, they generally earn credits that reduce the amount of time they must serve in prison. For example, inmates who complete CalPIA's dental technician training program earn four weeks off of their sentence.
- Inmate Ward Labor (IWL) Program.** CDCR's IWL program hires inmates to work on capital outlay and repair projects at its prisons. These inmates are employed by IWL for the duration of a particular project and learn various skills, such as roofing or building foundation pads, depending on the nature of the project. When working for IWL, inmates earn between \$0.35 and \$1.00 per hour. In addition, some IWL inmate workers participate in IWL's pre-apprenticeship program through which they earn seven weeks off of their prison sentence. About 1,300 inmates and wards participated in IWL projects in 2017.
- Other Inmate Jobs.** CDCR employs inmates to support prison operations in various ways, including cleaning and maintaining facilities, providing clerical support, and grounds keeping.

These inmates earn between \$0.08 and \$0.37 per hour and generally do not receive credits or participate in formalized training programs through their job. Inmate workers assigned to facility maintenance jobs work under the supervision of civil service tradespersons on the maintenance of prisons' mechanical, electrical, and plumbing systems. Facility maintenance inmate workers use many of the same skills as some inmate workers in IWL and CalPIA positions.

CDCR Reports Backlog in Prison Maintenance.

CDCR employs civil service tradespersons—such as plumbers, electricians, and carpenters—along with facility maintenance inmate workers to maintain its prisons. The department reports that it currently has a backlog in maintenance work orders and that CDCR's Office of Audits and Court Compliance and the Department of Public Health have repeatedly cited CDCR for noncompliance with preventative maintenance policies.

The department argues that the above backlog is primarily due to two factors. First, the department indicates that there is a lack of inmate workers to help complete the maintenance work on a routine basis. Specifically, the department reports that 656 of its 2,834 (23 percent) inmate positions in facility maintenance are currently vacant. Moreover, CDCR believes that the higher wages, credit earning opportunities, and formalized training programs offered by CalPIA and IWL for often similar types of work attract inmates away from facility maintenance jobs. Second, CDCR indicates that it has been unable to hire sufficient numbers of civil service facility maintenance workers. In 2016-17, the department reported that it had nearly \$19 million in savings from civil service facility maintenance vacancies.

Governor's Proposal

The Governor proposes a \$1.8 million General Fund augmentation in 2018-19 for CDCR to increase wages for facility maintenance inmate workers to equal those received by CalPIA and IWL inmate workers—specifically from between \$0.08 and \$0.37 per hour to between \$0.35 and \$1.00 per hour. CDCR expects that the proposed wage increase would attract inmates who would otherwise have chosen CalPIA or IWL jobs

to facility maintenance jobs and allow it to reduce its maintenance backlog.

LAO Assessment

Proposal May Not Effectively Attract Inmates Away From CalPIA and IWL. Under the Governor’s proposal, facility maintenance inmate workers would receive the same wages as CalPIA and IWL workers. However, CalPIA and IWL workers would continue to have access to other benefits—such as credits and pre-apprenticeship programs—that facility maintenance workers would not. Accordingly, it seems reasonable that many inmates would still choose CalPIA and IWL jobs rather than facility maintenance jobs. Moreover, the incentive that would be created by the proposed pay increase could be reduced if CalPIA subsequently chose to raise its wages. We also note that if the proposal only results in a few additional facility maintenance inmate workers, the department would be paying all facility maintenance inmate workers—including existing ones who choose to work at current wage levels—more for a relatively modest impact on the size of the prison maintenance workforce.

If Effective, Wage Increase Could Generate Other Costs and Concerns. If the proposed wage increase is effective in attracting inmates to facility maintenance jobs—as intended by the administration—the department expects that the number of inmates in IWL and CalPIA positions would decline. This could have a number of potentially unintended consequences. Specifically, a reduction in inmate labor available to CalPIA and IWL could:

- Increase capital outlay costs to the extent that CDCR needs to hire additional contractors to complete capital outlay projects that would have otherwise relied on IWL inmate workers.
- Reduce the amount of goods and services produced by CalPIA, which could result in CDCR and other state departments needing to purchase goods from other suppliers at a higher cost.
- Increase the prison population to the extent that a reduction in the number of inmates participating in IWL and CalPIA training programs reduces the amount of credits these inmates earn, thereby increasing the amount of time they spend in prison.
- Potentially increase recidivism rates to the extent that participation in IWL and CalPIA training programs is more effective at reducing recidivism than facility maintenance jobs, given that the pre-apprenticeships these programs offer potentially make inmates more employable upon release

Proposal May Not Increase Available Inmate Labor Pool. While attracting inmates away from CalPIA and IWL to facility maintenance jobs (as proposed by the administration) could be one way to help ensure that there are enough inmate workers to complete routine maintenance work, it is not the only way. For example, it is possible that the proposed increase in wages could prompt inmates who are not currently employed in CalPIA or IWL but who have skills in relevant trades to seek out facility maintenance jobs. That is, the wage increase would expand the overall labor pool of workers. However, CalPIA vacancies suggest that this would be unlikely to occur. This is because despite offering a pay rate identical to the one proposed by the department for facility maintenance inmate workers (along with other nonpay benefits), CalPIA has a vacancy rate of roughly 30 percent. This suggests that most or all of the inmates who are eligible and willing to work at CalPIA’s pay rate are already doing so. Accordingly, it appears likely that the Governor’s proposal would not be effective in expanding the labor pool.

Proposal Does Not Address Shortage in Civil Service Maintenance Staff. As discussed above, CDCR indicates its current maintenance backlog is partly due to the difficulty of hiring civil service maintenance workers. Since the Governor’s proposal does not address this issue, the extent to which the proposal would effectively reduce CDCR’s maintenance backlog is uncertain. For example, if the majority of the backlog is caused by a lack of civil service workers, then the proposed wage increase for inmate workers would not have more than a modest impact on the backlog. Furthermore, it is unclear how the department plans to use savings from civil service maintenance vacancies and whether a portion of the savings could be used to pay for the proposed inmate wage increase.

LAO Recommendation

In view of the above concerns, we recommend that the Legislature require the department to report at budget hearings on the following information: (1) why it thinks that the proposed wage increase would result in fewer facility maintenance inmate worker vacancies; (2) how it plans to mitigate potential unintended consequences of the proposal, including increased capital outlay costs, a higher prison population, and increased recidivism rates; (3) the number of civil service maintenance worker vacancies; (4) how CDCR has spent the savings resulting from those vacancies in recent years and whether a portion of such savings could be used to increase inmate worker pay; and (5) what steps it is taking to address the civil service staffing shortage, such as increasing advertising or using contractors. This information would help the Legislature assess the potential effectiveness of the Governor's proposal and whether other actions—beyond those proposed by the Governor—are needed to effectively help reduce CDCR's maintenance backlog. Accordingly, we recommend that the Legislature withhold action on the Governor's proposal until it receives the above information.

VIDEO SURVEILLANCE AT CALIFORNIA STATE PRISON, SACRAMENTO

LAO Bottom Line. We recommend that the Legislature withhold action on the Governor's proposal to implement video surveillance in certain housing units at California State Prison, Sacramento (SAC) until the evaluation of the video surveillance system at High Desert State Prison (HDSP) is completed this spring. In addition, we recommend that the Legislature direct CDCR to report at spring budget hearings on other strategies it is developing to address the concerns about staff misconduct at SAC.

Background

Restricted Housing for Inmates With Mental Illness. CDCR uses restricted housing units to temporarily house inmates who have committed a serious violation or whose presence in a less restricted environment poses a threat to themselves, others, or the integrity of an investigation. In general, Security

Housing Units (SHU) are used for longer-term restricted housing placements, while Administrative Segregation Units (ASU) are used for shorter-term placements. While in these units, inmates' freedom of movement and interaction with other inmates is substantially restricted.

When Enhanced Outpatient Program (EOP) inmates—those diagnosed with serious mental disorders but do not require inpatient treatment—receive SHU terms, they are housed in a Psychiatric Services Unit (PSU). (About 6 percent of the inmate population is part of EOP and, thus, must be housed separately from the general inmate population.) A PSU is intended to provide EOP services to inmate-patients in a maximum security setting. Similarly, EOP inmates requiring short-term segregation are placed in ASUs designated to provide EOP care known as ASU-EOPs.

Alleged Staff Misconduct at SAC. In 1995, a federal court ruled in a case now referred to as *Coleman v. Brown* that CDCR was not providing constitutionally adequate mental health care to its inmates. As a result, the court appointed a Special Master to monitor and report on CDCR's progress towards improving mental health care. In fall 2016, a Special Master monitoring team documented numerous allegations of officer misconduct by EOP inmates in restricted housing at SAC. The allegations included physical abuse, denial of food, verbal abuse, tampering with mail and property, inappropriate response to suicide attempts or ideation, and retaliation for reporting misconduct.

The monitoring team recommended that CDCR install surveillance cameras in all PSUs or place body cameras on all custody officers who work in these units. According to the team, these measures should reduce the use of excessive force, help resolve allegations of excessive force, and increase officer accountability. The monitoring team also recommended that CDCR screen staff for their suitability to work with the PSU population and provide them with additional training focused on mental health issues and crisis intervention.

Video Surveillance at CDCR Institutions. The 2017-18 Budget Act provided \$11.7 million for CDCR to implement comprehensive video surveillance at HDSP and Central California Women's Facility (CCWF). The administration expects these surveillance systems to provide objective evidence with which to investigate inmate allegations against staff, reduce inmate misconduct, and reduce attempted suicides.

Researchers at the University of California, Irvine are currently conducting an evaluation of video surveillance on one yard at HDSP. Among other metrics, the researchers are monitoring inmate complaints against staff, use-of-force incidences, inmate misconduct, and suicide attempts. The evaluation findings are expected to be released in spring 2018. Several of CDCR's other prisons currently have video surveillance with varying degrees of institutional coverage. For example, both the California City Correctional Facility and the California Health Care Facility have video coverage of all facilities, yards, and housing units.

Governor's Proposal

The Governor's budget proposes \$1.5 million from the General Fund on a one-time basis in 2018-19 for CDCR to purchase an audio/video surveillance system for the PSU and ASU-EOP at SAC. Under the proposal, \$177,000 would be needed annually beginning in 2019-20 to operate and maintain the equipment. Similar to the systems at HDSP and CCWF, CDCR expects the proposed cameras to provide objective evidence with which to investigate inmate allegations against staff, reduce violent incidents, and reduce attempted suicides.

Premature to Expand Video Surveillance Before Evaluation Complete

While video surveillance at SAC could prove to be a worthwhile investment, we find it premature to expand its use at additional prisons until the evaluation of video surveillance at HDSP is completed this spring. The results of the evaluation could shed light on whether video surveillance can be effective at addressing the issues identified at SAC, since many similar issues have been identified at HDSP. In the meantime, the department should focus on developing other strategies to address the concerns at SAC, such as ensuring that staff in these units are adequately trained to work with inmate-patients as was recommended by the monitoring team.

LAO Recommendation

We recommend that the Legislature withhold action on the Governor's proposal to implement video surveillance at the PSU and ASU-EOP at SAC until the evaluation report on the surveillance system at HDSP is available in spring. In order to ensure

that the evaluation report is available to inform the Legislature's deliberations on the 2018-19 budget, we also recommend that the Legislature require the administration to provide it with the results of the HDSP evaluation prior to the May Revision. We further recommend requiring CDCR to report at spring budget hearings on other strategies it is developing to address the concerns at SAC, such as ensuring that staff are adequately trained to work with inmates in the PSU and ASU-EOP units.

VENTURA TRAINING CENTER

LAO Bottom Line. We recommend that the Legislature reject the Governor's proposal to convert the existing Ventura conservation camp for inmates into a new Ventura Training Center that would provide a firefighter training and certification program for parolees. We find that the proposed program is unlikely to be the most cost-effective approach to reduce recidivism. To the extent that reducing recidivism is a high priority for the Legislature, it could redirect some or all of the proposed funding to support evidence-based rehabilitative programming for offenders in prison and when they are released from prison. Similarly, the Legislature could explore if other options are available to provide the California Conservation Corps (CCC) corpsmembers training opportunities, to the extent it is interested in doing so.

Background

Offender Rehabilitation Programs Intended to Reduce Recidivism. Research has shown that certain criminal risk factors are particularly significant in influencing whether or not individuals commit new crimes following their release from prison (known as recidivating). For example, individuals who have low performance, involvement, and satisfaction with school and/or work are more likely to recidivate than individuals who do not exhibit these characteristics. Research also shows that rehabilitation programs (such as substance use disorder treatment and employment preparation) can be designed to address specific criminal risk factors. For example, employment counseling programs can help reduce or eliminate the criminal risk resulting from an offender's low involvement in work. In addition, research suggests that programs are most effective in reducing recidivism when they are targeted at

individuals who have a high risk of recidivating due to factors that could be addressed with rehabilitation programs. (For more information on the key criminal risk factors and principles for reducing recidivism, please see our recent report, *Improving In-Prison Rehabilitation Programs*.)

State Provides Various Rehabilitation Programs to Parolees. Prior to an inmate's release from prison, CDCR generally uses assessments to determine how likely the inmate is to recidivate as well as what criminal risk factors he or she has. The department uses this information to target many of its rehabilitation programs once the inmate is released and supervised by state parole agents in the community. The 2017-18 budget included \$215 million to support various parolee rehabilitation programs. One such program is the Specialized Treatment for Optimized Programming (STOP), which provides a range of services, such as substance use disorder treatment, anger management training, and employment services to parolees. To be eligible for STOP, parolees must have a moderate to high risk of reoffending and be identified as having a criminal risk factor that can be addressed by services available through the program.

Multiple Agencies Have Professional Firefighter Crews. The California Department of Forestry and Fire Protection (CalFire) employs over 7,000 firefighters each year during fire season. Of those, about 1,700 are seasonal firefighters, classified as "Firefighter I," CalFire's entry-level firefighter classification. A Firefighter I is a temporary employee who is hired only for the duration of the "fire season"—the period of time when fires are most likely to occur at the greatest intensity. Individuals are usually hired in April, May, or June—as CalFire increases staffing for the fire season—and work for up to nine months, depending on the duration and intensity of the season. More experienced firefighters can apply to become a Firefighter II—a permanent employee. Both types of firefighters typically staff "engine crews," which are made up of a fire engine and three to four firefighters, as well as an engine operator.

Federal and local agencies also operate fire crews. Some larger local agencies, such as the Los Angeles County Fire Department, provide their own wildfire protection. However, many agencies mostly respond to structure fires rather than wildfires. In addition, the

U.S. Forest Service employs roughly 10,000 firefighters for fire protection in national forests.

State Conservation Camps Provide Inmate Firefighter Hand Crews. While in prison, certain inmates have the opportunity to serve as inmate firefighters as part of a hand crew and live in a conservation camp jointly operated by CDCR and CalFire (rather than remain in a prison facility). (Hand crews are usually made up of 17 firefighters that cut "fire lines"—gaps where all fire fuel and vegetation is removed—with chain saws and hand tools.) Inmates qualify for camps if CDCR has determined they (1) can be safely housed in a low-security environment, (2) can work outside a secure perimeter under relatively low supervision, and (3) are medically fit for conservation camp work. CDCR makes this determination generally based on various factors, including the nature of the crimes inmates are convicted of, their behavior while in prison, and the time they have left to serve on their sentence. CDCR provides correctional staff at each camp who are responsible for the supervision, care and discipline of inmates. CalFire maintains the camp, supervises the work of the inmate fire crews, and is responsible for inmate custody while they are working. Currently, CalFire maintains 39 conservation camps statewide that have the capacity to house more than 4,300 offenders. (One of these camps houses juvenile offenders.) As of January 10, 2018, there were about 3,500 adult inmates housed in conservation camps. Each camp costs roughly \$2.4 million to operate annually, or about half a million dollars per hand crew.

Inmates on hand crews receive basic training that consists of a week of classroom training and a week of field training that covers wildland fire safety and attack, hand tool use, teamwork, and crew expectations. Once assigned to a fire crew, inmates continue to receive training in things like cardiopulmonary resuscitation and emergency response, with some progressing to more responsible positions on the crew, such as a chainsaw operator.

CCC Provides Fire Crews and Support. The CCC maintains seven fire crews that are staffed by corpsmembers and typically train and operate under the supervision of CalFire Fire Captains. While assigned to wildfires, the crews are utilized primarily to construct fire lines. Fire crews also may assist fire engine crews and work after a fire is contained to extinguish any remaining hot spots. After a fire is completely

extinguished, crews are used for post-fire restoration work such as reseeded. According to CalFire, each crew costs about \$1 million to operate annually.

Governor's Proposal

Establish Ventura Training Center to Provide Firefighter Training and Certification for Parolees.

The Governor proposes to convert the existing Ventura conservation camp for inmates into a new Ventura Training Center that would provide a firefighter training and certification program for parolees. (The inmate firefighter hand crews currently based at the Ventura conservation camp would be relocated to other state conservation camps.) Upon full implementation, the program would accommodate 80 parolees, selecting in most cases from those who had served as inmate firefighters in a conservation camp prior to their release from prison and were nominated for the program by CalFire and CDCR staff.

Parolees would be enrolled in the program for a total of 18 months. According to the administration, program participants would be paid and receive (1) 3 months of classroom instruction in basic forestry and firefighting, (2) 3 months of industry-recognized firefighting training and certification (while also being available to support fire suppression and resource management efforts as needed), and (3) 12 months of full-time assignment as part of an engine crew. The administration indicates that upon completion of the program, participants would have the experience and certifications to apply for entry-level firefighting jobs with local, state, and federal firefighting agencies. The administration proposes to contract with a nonprofit organization to provide participating parolees with life skills training, reentry and counseling services, and job placement assistance to help them maximize their scoring capabilities in hiring processes and assist them with other challenges related to reentry. Participants would also have access to high school courses through CCC's existing contract with the John Muir Charter School.

Allow Some CCC Corpsmembers to Participate in Selected Trainings. In addition to parolees, the program would allow up to 20 CCC corpsmembers at a time to participate in select trainings and certification opportunities to be identified by CCC and CalFire. The amount of time the corpsmembers would spend at the training center could vary from a week up to a month or more. The administration reports that corpsmembers

at the training center would be housed separately from parolees but could participate in trainings together with them.

Provide Funding to Operate Program. The Governor requests \$7.7 million from the General Fund and 12.4 positions in 2018-19 to implement and operate the program. Under the proposal, \$6.3 million from the General Fund and 12.4 positions would be needed to operate the program in 2019-20 and annually thereafter. The \$7.7 million proposed for 2018-19 would be allocated as follows:

- ***CalFire (\$2 Million).*** These resources would allow CalFire to purchase equipment and training materials for trainees, make facility repairs, and hire 24-hour site security services.
- ***CDCR (\$2.1 Million).*** These resources would be used by CDCR to provide 1.4 parole agents to supervise parolees at the new Ventura Training Center and six other staff—including a groundskeeper, custodian, and cooks—to operate the training center. In addition, CDCR would receive funds to contract with a nonprofit organization to provide case management and other services to participants.
- ***CCC (\$3.5 Million).*** The bulk of these resources would be used to pay the salaries of parolee participants in the program, which are estimated to be \$2.2 million annually. Under the proposal, CCC would provide payroll services for the parolees in the program. (The CCC has a payroll system that is designed to meet the needs of a short-term, non-civil service workforce.) The CCC also requests five positions to perform payroll functions and to provide supervision of corpsmembers while they are at the training center.

Make Infrastructure Improvements. In addition, the budget includes \$1.1 million from the General Fund in 2018-19 to develop preliminary plans for renovating the existing conservation camp to meet the needs of the proposed program. Specifically, these renovations would (1) replace and upgrade existing facilities (such as the staff barracks and equipment storage facilities), (2) add privacy to showers and bathrooms in existing dormitories, (3) construct a separate dormitory for female participants, (4) construct additional administrative and classroom space, and (5) build a

gym for staff. The proposed renovations are expected to cost a total of \$18.9 million.

Recidivism Reduction Is Primary Goal. The administration indicates that the primary goal of the proposed program is to reduce recidivism by helping ex-offenders gain employment as firefighters. However, the proposal also suggests that because trainees would be available to assist with emergency response, the program could potentially increase firefighting resources.

LAO Assessment

While providing additional resources to reduce recidivism could be a worthwhile investment, we find that the Governor's proposal raises several concerns. Specifically, we find that the proposal (1) is not evidence based; (2) would not target high-risk, high-need individuals; (3) would be unlikely to lead to employment for participants; (4) would likely not be cost-effective; and (5) includes resources that are not fully justified. We also find that providing additional training to CCC members could be achieved in other ways.

Not Evidence Based. Research shows that rehabilitation programs that are evidence based are most likely to be effective at reducing recidivism. To be evidence based, a program must be modeled after a program that has undergone rigorous evaluations showing that it reduces recidivism. However, the administration has not provided examples of any other firefighter training programs that have been found to reduce recidivism. Accordingly, it is unclear whether the proposed intervention model has ever been found to be effective elsewhere. Furthermore, the administration is not proposing a feasibility study, pilot, or sufficiently rigorous evaluation plan for the program. As a result, it is unclear how the administration would know if the proposed program were successful once it was implemented.

Not Targeted to High-Risk, High-Need Parolees. As discussed above, research suggests that rehabilitation programs are most likely to be successful when targeted at high-risk, high-need individuals. However, the administration plans to primarily recruit parolees who served as inmate firefighters in a conservation camp prior to their release from prison. These parolees tend to be of low risk to the community and have demonstrated a willingness and ability to work hard. Although CDCR does not separately track

recidivism rates for inmates released from conservation camps, we expect that these inmates would be among the least likely in CDCR to recidivate. Moreover, the administration indicates that conservation camp inmates would be nominated by CalFire and CDCR staff for the program based on their nonviolent behavior and conformance to rules while incarcerated. This further suggests that program participants would already have relatively low risks of recidivism and low needs for rehabilitative programming. Accordingly, we find that the proposed target population is both inconsistent with best practices and with CDCR's own efforts to target rehabilitation programs to high-risk, high-need offenders.

Unlikely to Lead to Employment. The administration indicates it has not performed any type of labor market analysis or survey to determine potential demand for graduates of the program. We note, however, that seeking employment as a CalFire firefighter is very competitive. While CalFire was not able to provide information on the ratio of applicants to position openings in time for our analysis, some news outlets have reported only a few percent of applicants being hired. The minimum qualifications for a Firefighter I require a candidate to be at least 18 years old and have a high school diploma or its equivalent. However, the department indicates that many applicants are returning Firefighter I's who have previous experience working as seasonal firefighters and many have an Emergency Medical Technician certification (which is extremely difficult for a convicted felon to obtain). Parolees would likely have difficulty competing with such applicants. Moreover, the California Department of Human Resources requires the firefighter hiring process to be competitive—meaning the department does not have the authority to directly hire those who complete the program. While it is possible that program participants could apply for firefighter positions with local and federal agencies, the availability of such positions statewide is unknown. However, the information on specific agencies that is available suggests that firefighter hiring at the local level is equally competitive, if not more so. For example, a RAND Corporation study found that the Los Angeles Fire Department had upwards of 13,000 applicants for fewer than 100 jobs in 2013.

Unlikely to Be Cost-Effective. We also find that it is highly unlikely that the proposed program would be

the most cost-effective way to reduce recidivism. This is because the level of funding proposed to operate the program on an ongoing basis appears quite expensive relative to other rehabilitation programs. Specifically, the proposed program would cost \$6.3 million annually to operate, or about \$80,000 per parolee. However, research suggests that there are a variety of programs—such as substance use disorder treatment and academic education—that could reduce recidivism at a much lower cost. For example, with the \$6.3 million requested by the Governor, we estimate for illustrative purposes that CDCR could instead provide cognitive behavioral therapy—treatment that costs about \$1,200 per inmate and has been shown elsewhere to reduce recidivism—to over 5,200 inmates annually—nearly 100 times the number that would be treated annually under the proposal. In view of the above, there are likely more cost-effective ways to reduce recidivism than the Governor's proposal.

This concern is compounded by the fact that the administration is proposing to make a large capital investment at the Ventura conservation camp to renovate and construct facilities to meet the specific needs of the proposed program. This is a substantial up-front cost, particularly for a program that appears unlikely to be effective and has not been tested through a pilot or feasibility study. (We note that expansion of other rehabilitative programs also can involve capital investments.)

Various Resources Requested Have Not Been Fully Justified. At the time of this analysis, the administration was not able to provide sufficient justification for some of the workload resources being requested. For example, the role of and need for the additional parole agents proposed are unclear. On the one hand, if these parole agents would provide specialized services or a higher level of supervision for the 80 parolees at the Ventura Training Center, then the department might need some additional staffing. On the other hand, if these parole agents would provide essentially the same supervision and services as the general parolee population receives, then it is unclear why the additional parole agents are needed. The Governor's budget includes funding for CDCR to supervise the entire projected parole population for 2018-19, which includes the 80 parolee participants.

In addition, it is unclear why CCC requires five additional staff if its main responsibility would be to provide pay and benefits to 80 program participants. Furthermore, the program is expected to accept its first participants on October 1, 2018, yet the proposed capital outlay project—which the administration argues is necessary to operate the program—is not expected to be completed until May 2022. The administration indicates that it plans to gradually ramp up the program population and utilize existing facilities and temporary structures until the renovations are complete. However, it has not provided a timeline for the planned rollout, nor has it provided adequate justification for why it needs to fully staff the program before it will be running at full capacity.

Other Options Available to Provide CCC Corpsmembers Training Opportunities. The CCC has a long-established relationship with CalFire and actively collaborates with CalFire to train fire crews. The CCC and CalFire could identify other options to allow additional corpsmembers to participate in select trainings and certification opportunities in the absence of the Ventura Training Center. This could include holding such trainings at CalFire facilities or at residential centers that serve as a hub for CCC training activities. Another possibility is to increase corpsmember options to access firefighter-related training provided by community colleges.

LAO Recommendation

In view of the above concerns, we recommend that the Legislature reject the Governor's proposal to convert the existing Ventura conservation camp for inmates into a new Ventura Training Center that would provide a firefighter training and certification program for parolees. The Legislature could instead redirect some or all of the proposed funding to support evidence-based rehabilitative programming for offenders in prison and when they are released from prison. (For more information on evidence-based programs and the need to improve CDCR's existing programs, please see our recent report *Improving In-Prison Rehabilitation Programs*.) Similarly, the Legislature could explore other options that are available to provide CCC corpsmembers training opportunities, to the extent it is interested in doing so.

INNOVATIVE PROGRAMMING GRANTS

LAO Bottom Line. The Governor’s budget proposes \$4 million in ongoing funding to support the Innovative Programming Grants program, which is currently funded with limited-term funding that will partly expire at the end of the current year. In contrast to prior funding for the program, the Governor proposes to focus most of the proposed funds on reducing recidivism. We find that the Governor’s approach is a step in the right direction, but recommend the Legislature allocate all of the proposed funding towards reducing recidivism. In addition, we recommend that the Legislature direct the department to focus its scoring methodology for awarding funds on recidivism reduction.

Background

The Innovative Programming Grants program, which is administered by CDCR, allocates grants to nonprofit organizations to support volunteer-run programs in prisons. The types of services provided by the programs vary—from prison gardening programs to education programs. Since the program was established in 2014-15, the program’s goals, structure, and funding level and source have changed. At its inception, the primary goal of the program was to increase the number of volunteer-run programs at prisons with relatively few of these programs. However, more recently, the program has primarily focused on rehabilitating offenders by helping them understand and address the harm they have done (also referred to as “restorative justice” or “offender responsibility” programs).

In each year since 2014-15, the level of funding for the program has fluctuated—from a low of \$2.5 million to a high of \$8.5 million—with an average of \$5.6 million over the period. We also note that the funding provided to the program has been on a limited-term basis (meaning the department had to request additional funding for the program when the limited-term funding expired). To date, the department has allocated \$22.5 million in program grants to nonprofit organizations. The fund source used to support the program each year has also changed. For the current year, the 2017-18 budget included \$8.5 million in limited-term funding from the General Fund for the program—\$5.5 million that will expire at

the end of the current year and \$3 million at the end of the 2018-19 budget year.

Governor’s Proposal

Provide Ongoing Funding. The Governor’s budget proposes \$4 million in ongoing funding from the Inmate Welfare Fund (IWF) to support the Innovative Programming Grants program. (The IWF receives proceeds from the operation of inmate canteens and hobby shops, which is used to provide various goods and services that benefit inmates.) We note that the IWF has been used in the past to support the program. The Governor’s proposal would bring the total level of funding for the program to \$7 million in 2018-19, with \$3 million being one-time in nature.

Change Program Goals to Primarily Focus Funds on Reducing Recidivism. The Governor proposes to allocate the proposed \$4 million from IWF in a different manner than in prior years, though the grants would continue to support volunteer-run programs. (We note that the one time \$3 million in General Fund for the program would continue to be allocated under the current process.) Specifically, the administration states that 65 percent (or \$2.6 million) of the proposed \$4 million would be allocated to “promising-practice programs” based on known factors of effective programming that are associated with reducing recidivism. According to CDCR, it is currently working with a consultant to develop a scoring methodology to guide the approval of applicants and awarding of these funds. The remaining 35 percent (\$1.4 million) of the proposed funds would be allocated to “practice-based programs.” Under the proposal, these would be programs that CDCR believes have a positive impact, which may or may not include elements associated with reducing recidivism. Grant recipients would receive funding for three years, but could apply for a subsequent grant after the three years.

LAO Assessment

Focusing on Reducing Recidivism Is a Step in the Right Direction . . . As discussed earlier, the goals of the Innovative Programming Grants have evolved over the years, which has made it difficult to assess and compare the different activities that have been funded. Moreover, prior program goals have been too broad, which in some cases can make it difficult to prioritize limited resources. We find that the

Governor's approach of primarily focusing the program on the goal of reducing recidivism is a step in the right direction in having a specific goal for the program. Moreover, if programs are successful at reducing recidivism, they not only can reduce crime but also can result in various fiscal benefits to the state, such as reduced incarceration costs. (For more information on the benefits of reducing recidivism and rehabilitation programs, please see our recent report, *Improving In-Prison Rehabilitation Programs*.)

. . . But Proposal Not Fully Structured to Effectively Reduce Recidivism. As discussed above, 35 percent of the IWF funding proposed by the Governor would be allocated to programs that may or may not include elements associated with recidivism reduction. As such, it is possible that programs receiving these funds would have no effect on the recidivism rate of the inmates they serve. In addition, while 65 percent of the proposed funds are intended to reduce recidivism, until the department finalizes its methodology for scoring grant applicants, the extent to which recidivism reduction will be prioritized in the selection process remains uncertain. We also note there is no requirement under the Governor's proposal that grant recipients report on the effectiveness of the their program at reducing recidivism, which will make difficult to determine whether to fund the program in subsequent years.

LAO Recommendation

Modify Governor's Proposal to Better Ensure Funds Reduce Recidivism. In view of the above, we recommend that the Legislature modify the Governor's proposal in two ways:

- **Allocate All Funds to Programs Likely to Reduce Recidivism.** Rather than only allocating 65 percent of the funds to programs that are most likely to reduce recidivism, we recommend allocating all of the proposed funding this way. This would ensure that all the proposed funding is targeted to reducing recidivism.
- **Require Scoring Methodology to Focus on Recidivism Reduction.** In order to ensure that the department's scoring methodology for awarding funds adequately focuses on programs' potential to reduce recidivism, we recommend the Legislature direct the department to focus the

methodology on recidivism reduction. In other words, a program's ability—based on the specific activities that would be funded—to reduce the recidivism rates of participating inmates should be the primary factor of consideration. Similarly, we recommend the Legislature direct the department to award subsequent grants based on the extent to which programs actually reduced recidivism with their previous grant funding.

INMATE MENTAL HEALTH PROGRAMS

LAO Bottom Line. We make several recommendations on the Governor's proposals to increase mental health bed capacity and improve how CDCR manages such beds. First, we recommend the Legislature provide limited-term funding (rather than ongoing funding as proposed by the Governor) for CDCR to operate 60 mental health "flex beds", as the need for additional Mental Health Crisis Beds (MHCBs) appears to be temporary. Second, we recommend the Legislature reject the construction of two MHCB facility projects, as current projections suggest that they would not be needed by the time they are in operation. Third, we recommend rejecting the proposed resources for CDCR to take over the mental health projections currently done by a private contractor. Finally, we recommend the Legislature approve the requested staff resources to help the department meet court-approved guidelines for transferring patients to mental health beds.

Background

Overview of Inmate Mental Health Programs. About one-third of CDCR inmates participate in an in-prison mental health program. The care given to these inmates is subject to the oversight of a Special Master appointed as part of the *Coleman v. Brown* case. (In 1995, a federal court ruled in the *Coleman* case that CDCR was not providing constitutionally adequate mental health care.) Typically, these inmates can be treated in an outpatient setting, meaning they live in a prison housing unit and receive regular mental health treatment but do not require 24-hour care. However, under certain circumstances, some inmates may require more intensive inpatient treatment. For example, if inmates

are suffering from severe symptoms of a serious mental health disorder that cannot be managed by an outpatient program, they are generally sent to MHCBS, which provide short-term housing and 24-hour care for inmates. If the inmate's condition is stabilized in an MHCBS, the inmate is generally sent back to his or her prison housing unit. If the inmate's condition requires longer-term, 24-hour care, the inmate may be admitted to an inpatient psychiatric program. Inpatient psychiatric programs provide intensive 24-hour care with the goal of preparing the inmate to return to an outpatient program. The department determines how many of these beds to operate based on mental health projections completed by a private contractor—McManis Consulting—using a methodology approved by the federal court. (The 2017-18 budget includes \$150,000 for this contract.) These projections are used to develop a bed needs study that compares the department's mental health bed capacity with its current and projected mental health populations. The department expects to spend around \$690 million on various inmate mental health programs in 2017-18. Below, we discuss both MHCBS and inpatient psychiatric programs in greater detail.

MHCBS. Due to their immediate need for treatment, inmates identified as needing MHCBS are supposed to be transferred to these beds within 24 hours. If a bed is not available, alternative accommodations must be found, such as placing the inmate on suicide watch. Under CDCR regulations that have been approved by the *Coleman* court, inmates are not supposed to stay in MHCBS for more than ten days. Currently, there are 427 MHCBS for male inmates and 22 MHCBS for female inmates. The annual cost of providing treatment for patients in one of these beds is around \$345,000. Due to the limited number of such beds located throughout the state, there is currently a waitlist for these beds. By the end of 2016-17, there were 46 inmates on the waiting list for an MHCBS according to the most recent bed needs study.

Inpatient Psychiatric Programs. Inpatient psychiatric programs are operated in both state prisons and state hospitals. There are a total of 1,621 inpatient psychiatric beds, with most located in prisons and operated by CDCR. The staffing requirements for these beds are lower than for MHCBS. We note that, prior to July 2017, the Department of State Hospitals (DSH) was responsible for operating the vast majority of the

inpatient psychiatric beds. By the end of 2016-17, there were 115 inmates on the waitlist for an inpatient psychiatric program bed. There are two types of inpatient psychiatric program beds:

- **Intermediate Care Facilities (ICFs).** ICFs provide longer-term treatment for inmates who require treatment beyond what is provided in CDCR outpatient programs. Inmates with lower security concerns are placed in low-custody ICFs, which are in dorms, while inmates with higher security concerns are placed in high-custody ICFs, which are in cells. There are 784 ICF beds in state prisons, 700 of which are high-custody ICF beds. In addition, there are 306 low-custody ICF beds in DSH-Atascadero. Each ICF bed in a state prison costs around \$216,000 annually to operate, while each low-custody ICF bed in a state hospital costs around \$218,000 annually. Patients are supposed to be transferred to an ICF program within 30 days of referral.
- **Acute Psychiatric Programs (APPs).** APPs provide shorter-term, intensive treatment for inmates who show signs of a major mental illness or higher level symptoms of a chronic mental illness. Patients are supposed to be transferred to an APP within 72 hours of the referral, but no more than ten days after the referral. Currently, there are 372 APP beds, all of which are in state prisons. The annual cost of operating one of these beds is \$216,000.

The department also operates 85 beds for women and condemned inmates in state prisons that can be operated as either ICF or APP beds, including a 45-bed facility for women at the California Institution for Women in Corona. Due to the specific inmate groups these programs serve, the annual cost of operating these beds is higher than the above beds at \$301,000 per bed.

Patient Referral Process. Once a referral is made by clinical staff at one of CDCR's facilities for an inmate to enter an MHCBS or inpatient psychiatric program bed or be transferred out of an MHCBS or inpatient psychiatric program bed, the department's Health Care Placement and Oversight Program (HCPPOP) staff review the inmate's file to determine whether the referral is appropriate and identify the least restrictive housing environment that can safely house the inmate. In 2017,

HCPOP was responsible for reviewing 19,000 referrals. Currently, HCPOP has five limited-term positions and \$900,000 to conduct these reviews, which are scheduled to expire on July 1, 2018. These positions are located at CDCR headquarters so that they can oversee all health care-related patient movement.

Once HCPOP determines the appropriate housing location from a security perspective, CDCR's inpatient reporting unit (IRU) can decide to conduct a clinical assessment of the housing assignment. In addition, the IRU can also review the appropriateness of a patient's current housing assignment to determine if the patient should be moved. The IRU selects which referrals and patient bed assignments to review based on clinical factors, such as how long patients have been in their current mental health bed. Currently, the department has two limited-term positions at headquarters and \$400,000 to conduct these reviews, which are set to expire at the end of 2017-18. These two psychologists review around a total of 1,440 housing assignments annually.

Recent Court Order. In April 2017, the *Coleman* court issued an order that stated CDCR had an insufficient number of MHCBS and that the department needed to eliminate delays in transferring patients to MHCBS, as well as ICF and APP beds. The court ordered that monetary sanctions of \$1,000 per day be applied for every patient whose placement exceeds court-approved timelines. To address these issues, the 2017-18 budget package activated 70 ICF beds at the California Medical Facility (CMF) in Vacaville and shifted responsibility of most inpatient psychiatric programs from DSH to CDCR, with the intent that these actions would reduce transfer times.

Governor's Proposals

The Governor's budget for 2018-19 includes various proposals—totaling \$27.1 million (General Fund)—to increase the number of mental health beds available and improve CDCR's management of such beds. Specifically, the Governor proposes to:

- **Activate 60 Flex Beds (\$9.5 Million).** The budget includes 55 positions and \$9.5 million to convert 60 high-custody ICF beds at CMF and the California Health Care Facility in Stockton into flex beds. (While the proposal would increase the number of available MHCBS, it would not

increase the total number of mental health beds for inmates.) According to the department, these beds would be staffed in a manner that allows them to flex between being used as high-custody ICF beds, APP beds, or MHCBS. Since MHCBS have higher staffing requirements than inpatient psychiatric program beds, the requested funds would add enough staff to the 60 existing ICF beds so that they are always staffed like MHCBS and, thus, can be used to meet multiple bed needs.

- **Fund Working Drawings for MHCB Construction Projects (\$7 Million).** The budget includes \$7 million to fund the working drawings stage of projects to construct MHCB facilities at Richard J. Donovan Correctional Facility in San Diego and the California Institution for Men in Chino. These projects would add an additional 100 MHCBS for male inmates. The total cost of these two projects is expected to be \$111 million and would be completed by June 2021.
- **Increase HCPOP Staff (\$1.3 Million).** The budget includes \$1.3 million for HCPOP to (1) continue the five existing, limited-term positions on an ongoing basis and (2) add three new permanent positions. According to the administration, this would allow HCPOP to review referrals for appropriate housing assignments more quickly and better manage the mental health patient movement process.
- **Require CDCR Conduct Mental Health Projections (\$1.2 Million).** The budget includes an increase of nine positions and \$1.2 million for CDCR's Office of Research to use the court-approved methodology to conduct mental health population projections, rather than McManis Consulting. (This would be in addition to the \$150,000 currently provided to McManis Consulting.) According to the administration, moving the mental health projections from the contractor to CDCR would demonstrate to the court that the department can do these projections internally. The department states that it needs approval from the federal court, which it is in the process of seeking, to be able to do its own projections. CDCR indicates that the current contract with McManis Consulting is likely necessary through the end of 2020-21 to allow

the department to develop its own projections in accordance to the court-approved methodology.

- Increase IRU Staff (\$1.1 Million).** The department requests \$1.1 million for IRU to (1) continue the two existing, limited-term psychologists on an ongoing basis and (2) add four additional psychologists. According to the administration, this would allow additional clinical reviews of referrals to take place and reduce the number of MHCB patients that remain in the beds beyond the ten-day limit established by the court.

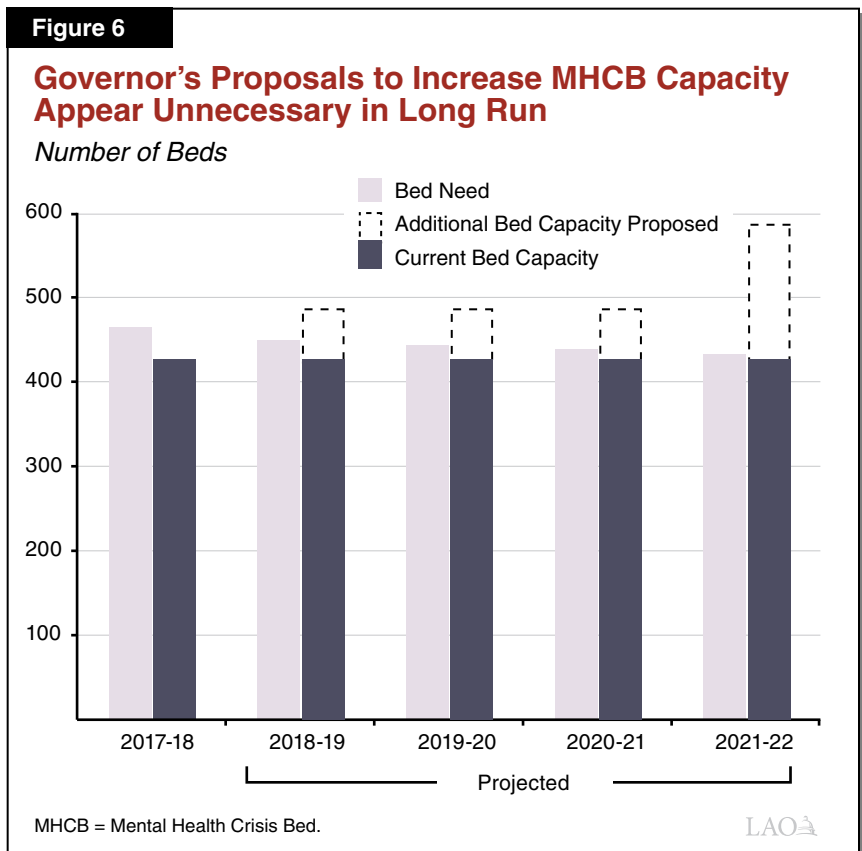
LAO Assessment

Additional MHCB Capacity Appears Unnecessary in Long Run. Figure 6 summarizes (1) the projected need for MHCBs over the next few years based on the most recent mental health bed study, (2) the number of beds currently available to meet these projected needs, and (3) the additional beds proposed by the Governor. As shown in the figure, the need for MHCBs is projected to exceed the current number of MHCBs available over the next several years. However, the projected need is estimated to decline in the long run, likely in part due to the implementation of Proposition 57. Specifically, the number of MHCBs needed is projected to decline from 464 beds in 2018-19 to 433 beds in 2021-22.

Moreover, while the Governor’s proposals to expand MHCB capacity would help meet the projected MHCB need in the short run, they would provide significantly more beds than necessary—particularly by 2021-22 when the two MHCB construction projects are completed. As shown in the figure, if the proposals were approved, CDCR would be staffing about 150 more MHCBs than necessary in 2021-22 based on current projections—resulting in tens of millions of dollars in unnecessary annual staffing costs and over \$100 million in unneeded construction costs.

We note that the above projections do not account for any reduction in the need for these beds resulting from the additional IRU and HCPOP staff proposed. As we discuss below, we find that the additional staff could help transfer patients in and out of beds more quickly and reduce the need for MHCBs. This suggests that the actual need for these beds could even be lower than current projections show. We note that when the Legislature approved funding in the 2017-18 budget to complete preliminary plans for the MHCB construction projects, it did not have the mental health population projections that included estimates of how Proposition 57 would impact the need for these beds.

Need for Additional Research Staff Not Fully Justified. As previously indicated, at the time of this analysis, the department had not received court approval for it to take over the responsibility for the mental health projections from the contractor. We also note that it is currently uncertain whether it is required that CDCR take over responsibility for the projections in order for the state to remove itself from federal court oversight. Moreover, the department has not provided any information indicating that it could provide more reliable or comprehensive projections than a private



contractor, which is notable given that the proposed staffing resources are eight times (or \$1 million) more expensive than the current contract. We are also unaware of any problems identified by the department regarding the current projections.

Additional IRU and HCPOP Staff Could Help Expedite Review Process. According to the department, part of the reason it has difficulty moving patients in and out of MHCBS and inpatient psychiatric program beds is because it does not have enough IRU and HCPOP staff to review housing assignments. The additional staff proposed could help facilitate the movement of patients to the appropriate mental health program as quickly as possible, which would reduce the ongoing need for MHCBS and inpatient psychiatric program beds. As a result, the request for these staff appear justified.

LAO Recommendations

Adopt Modified Governor's Flex Bed Proposal. The Governor's flex bed proposal makes sense because it addresses the immediate and short-term need for additional MHCBS. However, since the need for flex beds is estimated to be short-term in nature, we recommend providing funds for the 60 flex beds on a four-year, limited-term basis. This would allow the department to address the near-term need for MHCBS—as well as any unexpected increases—until the need for these additional beds is projected to be eliminated. We also recommend that the Legislature approve supplemental reporting language requiring the department to report annually starting on January 10, 2019 for the next four years on how frequently the flex beds were used as MHCBS, ICF beds, or APP beds. This would provide the Legislature with the information it would need to determine whether to maintain flex beds on an ongoing basis. If there is still an MHCBS waitlist after limited-term funding expires, the Legislature could consider providing funding to continue to operate these beds as necessary. To the extent that the additional funding to operate these beds as flex beds expires, these beds would continue to operate as ICF beds.

Reject MHCBS Facility Construction. Since the updated mental health projections no longer show a need for these beds by the time they would be completed in 2021, we recommend the Legislature reject the funding proposed for working drawings.

To the extent additional MHCBS are necessary in the future, we recommend that the Legislature direct the department to address this need with additional flex beds rather than costly construction projects.

Reject Proposed Research Staff. We recommend that the Legislature reject the proposed nine positions and \$1.2 million for CDCR's Office of Research to assume responsibility for conducting mental health projections, as the proposed resources have not been fully justified. However, to the extent that the court orders the state to complete the projections with its own staff, the Legislature could consider a request for resources at that time.

Approve Proposed IRU and HCPOP Staffing Resources. Most of the staffing requested for the IRU and HCPOP replace existing limited-term staff that are necessary to continue to meet court-approved guidelines for transferring patients to MHCBS and inpatient psychiatric programs. The additional staff requested for these units would allow CDCR to manage referrals more quickly, which would further reduce the need for costly MHCBS and inpatient psychiatric program beds. Accordingly, we recommend that the Legislature approve the requested staffing resources.

DENTAL EQUIPMENT REPLACEMENT AND REPAIR

LAO Bottom Line. We recommend that the Legislature modify the Governor's proposal to replace dental equipment by reducing the requested amount by \$150,000 annually to account for CDCR's anticipated savings in equipment repair.

Background

CDCR operates 153 dental clinics that provide services to inmates. In total, these clinics contain over 1,100 pieces of major dental equipment, including x-ray machines, dental chairs, and autoclaves to sterilize instruments. While the department currently spends about \$1 million annually to repair this equipment, it reports that it does not have sufficient funding in its base budget to routinely replace equipment. As such, when the equipment becomes inoperable and unrepairable, CDCR looks for savings in other areas of its budget that can be redirected to purchase replacement equipment. For example, in each of the last few years, the department has redirected about

\$1 million in savings—primarily from vacancies in mental health staffing—to replace equipment that has become inoperable and unrepairable. Because it does not routinely replace old equipment, the department reports that a significant portion of its equipment is past its expected service life and over 100 pieces of equipment are in immediate need of replacement. When dental equipment breaks, CDCR indicates that clinics may have to stop providing services until the equipment can be repaired or replaced. Accordingly, inmates either receive delayed treatment or must be escorted to a clinic at another facility, which can cause security concerns.

Governor's Proposal

The Governor's budget proposes \$3.5 million from the General Fund in 2018-19 to replace equipment in immediate need of replacement and \$2.5 million from the General Fund in 2019-20 and annually thereafter to replace about 140 pieces of equipment annually. According to the department, having newer dental equipment that is less prone to breakage will reduce interruptions in dental service.

Proposal Does Not Account for Savings in Dental Equipment Repair

While the Governor's proposal would allow the department to replace dental equipment that is in immediate need of repair on a regular basis, we find that the proposal does not account for savings in equipment repair costs. This is because CDCR reports that having newer equipment will result in less equipment breakage, which, in turn, would save about \$150,000 annually in equipment repairs. However, the Governor's budget does not include such a reduction in funding.

LAO Recommendation

We recommend that the Legislature modify the Governor's proposal by reducing the amount requested by \$150,000 to account for CDCR's anticipated savings in equipment repair.

HEALTH CARE VEHICLES

LAO Bottom Line. Given that the department has demonstrated a need for new vehicles that transport inmates to health care, court, and other appointments,

we recommend that the Legislature approve the Governor's proposal to provide \$17.5 million from the General Fund on a one-time basis to purchase 338 vehicles. However, we also recommend that the Legislature direct the department to report at budget hearings on whether it would be able to repurpose some of the vehicles proposed for replacement rather than dispose of or auction them (as proposed by the Governor) to meet its other transportation needs.

Background

CDCR Uses Vehicles for Various Purposes. CDCR has 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, parolee supervision, construction support, and institution perimeter security. For example, the department often transports inmates to off-site appointments in buses, vans, sport utility vehicles, and sedans. CDCR reports that over 1,100 (15 percent) of its vehicles are prioritized for transporting inmates to health care appointments. Although these vehicles are often used for other purposes—such as transporting inmates to court—when not being used for health care purposes, the department commonly refers to them as “health care vehicles.” CDCR staff and inmate workers generally maintain the department's vehicles, but they are sometimes sent out for more complex repairs.

CDCR Ranks Vehicles by Priority for Replacement. In order to help determine which of its vehicles are in need of replacement, the department ranks the vehicles based on a scoring system. Specifically, for each of its vehicles, CDCR assigns a numerical score based on the vehicle's age, mileage, and condition, with a higher score denoting a higher priority for replacement. If the vehicle is used for taking inmates to health care appointments, the department assigns additional points. CDCR considers the top ranked 2,209 vehicles (29 percent of the total vehicles) to be high priority for replacement, 291 of which are designated as health care vehicles.

Governor's Proposal

The Governor's budget proposes \$17.5 million from the General Fund on a one-time basis in 2018-19 to purchase 338 vehicles that are used for transporting

inmates to health care and other appointments (such as attending court). Specifically, the budget proposes:

- \$14.6 million to replace 291 existing health care vehicles ranked highest in CDCR's replacement priority order. According to CDCR, it intends to either dispose of or sell at the state auction the vehicles proposed for replacement.
- \$2.9 million for 47 additional health care vehicles—thereby increasing the size of the department's vehicle fleet.

The department indicates that it is prioritizing the replacement and addition of vehicles used to transport inmates to attend health care and other appointments over vehicles used for other purposes, such as construction, grounds keeping, or perimeter security. This is due to the more serious consequences of delays or cancelations in inmate health care appointments or court appearances resulting from unavailable or unreliable vehicles. Specifically, CDCR reports that over 1,000 inmate court or health care transports (2 percent) of the estimated 44,000 inmate transports that occurred between July 2016 and January 2017 were delayed, canceled, rescheduled, or required outside ambulance assistance due to the lack of a vehicle.

LAO Assessment

Addressing Vehicle Needs Appears Reasonable.

Based on data provided by the department on the condition of its vehicle fleet and the negative impact of not having sufficient vehicles available, we do not have major concerns with the Governor's proposal. Focusing the resources on health care vehicles seems reasonable given the importance of getting inmates to appointments in a timely manner and the condition of the department's health care vehicles. For example, the department reports that 47 of its health care vehicles are in junk condition (not roadworthy and not repair worthy) and 206 are in poor condition (reparable mechanical issues and major body/interior damage). All of these vehicles would be replaced under the Governor's proposal. The remaining 38 health care vehicles proposed for replacement are assessed as being in fair or good condition but are ranked high for replacement due to their excessive age or mileage. In addition, because health care vehicles are often used to transport inmates for other purposes (such as taking inmates to court), these new health care vehicles

could help address the department's other inmate transportation needs.

Not Repurposing 291 Health Care Vehicles Appears Unnecessarily Wasteful.

As previously indicated, the department intends to dispose of or sell at state auction the 291 health care vehicles proposed for replacement. However, given that the department has some vehicles (not designated for health care purposes) that are likely in worse condition than these 291 vehicles, the department could potentially generate an improvement in the condition of its non-health care fleet if it were able to repurpose some of these 291 vehicles and instead dispose of other vehicles that are in even worse condition. For example, according to data provided by the department, the proposal would replace a 9-year-old van that is in poor condition and is designated as a health care vehicle, but not replace a 40-year-old van (used for non-health care purposes) that is in junk condition. Alternatively, the department could purchase a new van as a health care vehicle, redesignate the 9-year-old van as a non-health care vehicle, and dispose of the 40-year-old van.

LAO Recommendation

We find that the Governor's proposal to provide \$17.5 million for CDCR to purchase new health care vehicles merits legislative consideration, given the condition of the department's vehicle fleet and the negative impact of not having sufficient vehicles available to transport inmates. However, we recommend that the Legislature direct the department to report at budget hearings on the extent to which it could repurpose any of the 291 vehicles that it intends to auction or dispose of after they are replaced with new vehicles, as this would allow these vehicles to be used for other purposes and improve the condition of its non-health care fleet.

ELECTRONIC HEALTH RECORD SYSTEM

LAO Bottom Line. We recommend the Legislature approve the Governor's proposed funding increases for the Electronic Health Record System (EHRS). However, we also recommend budget bill language that requires the department to use funding intended to purchase additional user licenses throughout the year only for this purpose.

Background

The EHRS was designed to provide a single electronic medical record for every inmate, which would be accessible to staff at all institutions, rather than having to continuously transfer paper files amongst staff (both within and across institutions) or maintain duplicate files. In 2012, the Receiver contracted with Cerner Corporation (Cerner) to develop the EHRS. The project was initially estimated to cost \$182 million and be completed by June 2017. The 2016-17 budget included funding to expand the EHRS to include dental and mental health records and address shortcomings that the Receiver identified with the initial plan for the EHRS (such as the need for additional equipment). These changes more than doubled the total cost of the project to \$386 million and delayed the project's completion until December 2019.

In order for an individual CDCR staff member to access the system, a "registered user" license must be purchased for that person. Currently, the state maintains 12,000 registered user licenses for EHRS. In addition, in order for staff members to access the system simultaneously, a "concurrent user" (CCU) license must be purchased monthly for each person seeking access simultaneously. While the Receiver's budget for 2017-18 includes around \$4 million for 2,600 CCUs, the contract was amended in December 2017 to allow CDCR to purchase as many as 3,400 additional CCUs—for a total of 6,000. An augmentation was not requested at that time for these additional CCUs. To the extent that CDCR needs these additional CCUs, it would purchase them from Cerner in blocks of 200 CCUs.

Governor's Proposal

The Governor's budget proposes \$8.3 million from the General Fund in 2018-19 for the EHRS. (Under the Governor's proposal, this amount would decline to \$7.1 million annually beginning in 2019-20.) Specifically the Governor proposes to:

- **Increase Number of CCU Licenses (\$5.9 Million).** The administration requests \$5.9 million to increase the number of CCUs from 6,000 to 6,600 in 2018-19 and requests more resources to fund that number of CCUs. This amount includes \$1.1 million in one-time costs for additional remote hosting space and \$4.8 million

for the ongoing costs of these licenses. Under the Governor's proposal, the number of CCUs would increase to 7,100 in 2019-20. Each license costs \$110 per month. This increase in CCUs reflects the need for dental and mental health staff to have access to the system.

- **Increase System Responsiveness to Disaster Recovery (\$1.2 Million).** The proposal includes \$1.2 million that would be paid to Cerner annually to decrease the time it would take Cerner to restore the system to operation in the event of a disaster from 30 days to no more than 72 hours.
- **Increase Number of Registered User Licenses (\$600,000).** The administration is proposing \$600,000 to increase the number of registered user licenses from 12,000 to 18,000, primarily for dental and mental health staff.
- **Replace Dictation Software (\$300,000).** The current dictation software, which allows the EHRS to automatically transcribe speech into text, will no longer be supported by Cerner. Accordingly, CDCR requests \$300,000 annually to update and operate a new dictation software that will be supported by the vendor.
- **Provide Training (\$250,000).** The administration proposes \$250,000 to provide ongoing training to 167 staff members.

The above adjustments would increase the total project costs to \$406 million, an increase of \$19.6 million (5 percent) above the most recent cost estimate for the project.

LAO Assessment

Most of the Increases Appear Justified. In order to expand the EHRS, such as to include dental and mental health records, and address various issues (such as giving physicians the ability to dictate medical notes into EHRS) as intended by the Legislature, many of the proposed expenditures appear necessary. For example, replacing the dictation software with a different software that will be supported by the vendor appears to be more cost-effective compared to hiring staff to input physicians' notes into the EHRS or having relatively costly physicians type notes into the EHRS instead of seeing additional patients.

Need for Some Additional CCUs Also Appears Justified . . . At the time of this analysis, the

department has rolled out the EHRS to all institutions and the system has been in full operation for about three months. The department is currently using around 5,900 CCUs—3,300 more than it is currently funded for in the 2017-18 budget. CDCR plans to add 700 additional users between now and the end of 2018-19. This partly reflects having dental staff using the EHRS at all institutions by October 2018.

... But Entire Funding Amount Not Likely Necessary. Since the department purchases CCUs as it needs them, it may not purchase all 6,600 CCUs in 2018-19. To the extent the department purchased some of these licenses for only part of the year, the Receiver would have more funding than necessary to cover its need for CCUs. Under the Governor's proposal, the department would be able to redirect any funds not used for licenses to other inmate health care purposes.

LAO Recommendation

Adopt Budget Bill Language to Restrict Use of Funds. We recommend the Legislature approve the Governor's proposal as the increases are necessary to fully implement the EHRS the Legislature has previously approved. However, we also recommend the Legislature adopt budget bill language specifying that the proposed \$5.9 million for CCUs can only be used to purchase these additional licenses as they are needed and any remaining funding must be reverted to the General Fund. This would increase legislative oversight of the funds and ensure that they are used for its intended purpose as approved by the Legislature.

MEDICATION ROOM PROJECTS

LAO Bottom Line. The Governor's proposal includes funding to create additional medication rooms in various housing units at 14 prisons. In order for the Legislature to fully assess the Governor's proposed projects and determine the extent to which they are necessary, we recommend it require CDCR to report at budget hearings on its medication room needs that takes into account the completion of the medication rooms previously approved by the Legislature. Pending receipt and review of this information, we recommend the Legislature withhold action on the Governor's proposed projects. However, we find that the proposed medication rooms specific to general population

units that previously served Security Housing Unit (SHU) inmates appear necessary and recommend the Legislature direct CDCR to submit a separate proposal specifically for these for this specific set of projects that it could consider prior to receipt of the above information.

Background

Medication Rooms. Every housing unit within a prison has to have access to a medication room to ensure that necessary medication is provided to inmates. Most medications are distributed by licensed vocational nurses (LVNs) to inmates from pill windows at various locations throughout the prison. These spaces are known as medication distribution rooms (MDRs). Most general population inmates leave their housing unit to get their medication from an MDR that serves multiple housing units. In many cases, inmates line up outside to receive their medication from an MDR. Some inmates, however, receive their medication from MDRs that are located within their housing unit. For example, inmates in the enhanced outpatient program (EOP)—which is the highest level of outpatient mental health care that CDCR offers—have MDRs located within their housing unit. This is to ensure that their mental health condition does not interfere with their ability to access medication.

In addition, some inmates need to have an LVN deliver medication directly to their cell because of security or health reasons. This includes inmates in restricted housing, which are units that temporarily house inmates who have committed a serious violation or whose presence in a less restricted environment poses a threat to themselves or others. In general, SHUs are used for longer-term restricted housing placements, while Administrative Segregation Units (ASUs) are used for shorter-term placements. While in these units, inmates' freedom of movement and interaction with other inmates is substantially restricted. For these restricted housing units, LVNs prepare medications in a medication preparation room (MPR) and then go to individual inmates' cells with a cart that holds the medications being distributed. Given that each prison typically serves multiple types of inmates at different housing units throughout the facility, many prisons have various types of medication rooms.

Medication Room Improvements. Since being appointed by the federal court to take control over the

direct management of the state's prison medical care system from CDCR, the Receiver has identified various shortcomings with the department's medication rooms. For example, the Receiver found that various prisons did not have the appropriate types of medication rooms for certain types of inmates they house. For example, some prisons with EOP units lacked in-unit MDRs. The Receiver also found that some prisons have medication rooms that force inmates to wait in line outside without adequate protection from inclement weather. As a result, since 2007-08 the Legislature has approved \$52.2 million for capital projects to improve the medication rooms at 22 prisons. All of these projects are expected to be completed by May 2019.

Governor's Proposal

The Governor's budget proposes \$3.3 million from the General Fund to fund preliminary plans to add or modify medication rooms at 14 prisons. The total cost of these 14 projects is \$38.6 million and the projects are expected to be completed by November 2022. Each of these projects is comprised of multiple subprojects that addresses the medication room needs at a particular housing unit within a prison. Specifically, these subprojects fall into two categories:

- **Additional MDRs.** Nine prisons have subprojects to construct additional MDRs. Seven of these prisons are requesting MDRs for units that were recently converted to serve EOP inmates and did not have MDRs inside them. The remaining two prisons have housing units that were recently designated to serve general population inmates and need MDRs. Previously, these two units served SHU inmates that received medication that was prepared in an MPR.
- **Additional MPRs.** Nine prisons have subprojects to construct additional MPRs. Eight of these prisons have ASU units that do not have MPRs. According to the department, these eight projects should have been included in the initial funding provided in 2007-08, but were unintentionally omitted. The remaining prison requires an additional MPR due the high number of patients that receive mental health medications.

LAO Assessment

Need for Additional Medication Rooms Remains Unclear. At the time of this analysis, CDCR was not able to provide information on the total number of inmates that will be served once all of the 22 medication room projects that were previously approved by the Legislature are completed. The absence of such information makes it difficult to determine the extent to which the Governor's proposed projects are necessary. For example, it might be possible for the EOP inmates in units that would receive MDRs to be moved to units that already have or will have appropriate MDRs when the current projects are complete, assuming there are not factors—such as security or health concerns—that would make such a move challenging.

Even if the department can show that not all inmates can be served after the previously approved projects are completed in 2019, it is unclear whether all of the proposed projects will be necessary by the time they could be completed in 2022. This is because the department's current projections show that by the time these projects are completed, some of the inmate populations they are intended to serve will have declined. For example, CDCR projects that the EOP population will decline by around 400 inmates (5 percent) between 2017 and 2022. This suggests that the additional medication rooms proposed by the Governor to serve EOP inmates may not be necessary in a few years. It is also possible that the need for other proposed projects targeted at specific types of inmates—such as SHU or ASU inmates—could decline by the time they are completed, particularly since the overall inmate population is expected to decline by a few thousand over this time period. Whether all of these projects are necessary after this decline will also depend on various factors, such as the housing security level of the inmates that remain in CDCR. Without knowing how many and what type of inmates will be served with the previously approved medication rooms, it is difficult for the Legislature to assess how many of the proposed projects will continue to be necessary by 2022. We acknowledge, however, that the subprojects to construct MDRs for inmates housed at units previously used to house SHU inmates will be necessary as long as there are general population inmates in these housing units.

LAO Recommendations

Require CDCR to Report Complete Medication Room Needs. In view of the above, we recommend that the Legislature require CDCR to report at spring budget hearings on its medication room needs. This information should include (1) how many inmates the department will be able to serve with previously approved medication rooms both overall and in each category of inmates that requires a particular type of room, (2) whether overall inmate population projections and projections for each category of inmates that requires a particular type of medication room support the need for all of the proposed projects after accounting for housing security levels and other factors, and (3) the department's plan for moving inmates to maximize the use of currently approved medication rooms. This information would allow the Legislature to fully assess the Governor's proposed projects and determine the extent to which they are necessary. We recommend that the Legislature withhold action on the Governor's proposal pending receipt and review of the above information.

Request Specific Proposal for MDRs for Housing Units Previously Serving SHU Inmates. However, as discussed above, we find that the subprojects to construct MDRs for general population inmates housed in units that previously housed SHU inmates are necessary. Accordingly, we recommend the Legislature direct the department to submit a separate proposal for this specific set of projects that the Legislature could consider prior to receiving the above information on the department's overall medication room needs.

GOVERNOR'S JUVENILE JUSTICE REFORM PROPOSAL

LAO Bottom Line. Given that research suggests that youths generally have better outcomes when they remain in juvenile court and/or are housed in juvenile facilities rather than prison, we recommend that the Legislature approve the Governor's proposed statutory changes to allow older youths as well as more adult court youths to be housed in the Division of Juvenile Justice (DJJ). However, given that the actual effectiveness of these proposals is uncertain, we recommend approving them on a limited-term basis and require DJJ to conduct specified evaluations. In addition, we recommend that Legislature modify

the Governor's proposed changes to DJJ's age of jurisdiction to avoid an unintended consequence of having some youths spending up to two years longer in DJJ than they otherwise would.

Background

Youths in Juvenile Court. All youths who are accused of a crime that occurred before they turned 18 years of age and appear in court start in juvenile courts. (As we discuss below, however, some youths can be transferred from juvenile court to adult courts under certain circumstances.) Juvenile court proceedings are different than adult court proceedings. For example, juvenile court judges do not sentence a youth to a set term in prison or jail. Instead, the judge determines the appropriate placement and rehabilitative treatment (such as drug treatment) for the youth, based on factors such as the youth's offense and criminal history. About 41,000 youth cases were conducted in juvenile court in 2016 according to DOJ. Counties are generally responsible for the juvenile court youths, some of whom are placed in county juvenile facilities. If the judge finds that the youth committed certain significant crimes listed in statute (such as murder, robbery, and certain sex offenses), the judge can place the youth in state juvenile facilities operated by DJJ. Very few youths are placed in DJJ by the juvenile courts. For example, only 183 youths were sent to DJJ by juvenile courts in 2016—less than 1 percent of the cases heard in juvenile court. As of December 2017, DJJ housed about 560 juvenile court youths.

Youths committed to DJJ from the juvenile court do not have a set term. Instead, these youths are generally released from DJJ (1) when the Board of Juvenile Hearings (BJH) determines that they can be released safely back into the community or (2) just prior to their 23rd birthday—whichever occurs first. This is because, since 2012, statute has limited DJJ's jurisdiction to youths who are 23 years of age or younger. Prior to 2012, the age of jurisdiction for DJJ was set at 25. Once youths are placed in DJJ, they are housed in living units based on their behavior and rehabilitative needs. State law requires that counties generally pay \$24,000 annually for each youth committed by the juvenile court to DJJ to help offset a portion of DJJ's total cost. Youths who are released from DJJ are generally supervised in the community by county probation officers.

Youths in Adult Court. Prosecutors who accuse youths of (1) committing certain significant crimes listed in state law (such as murder, robbery, and certain sex offenses) when they were age 14 or 15 or (2) committing a felony when they were age 16 or 17 can seek to have these youths' cases transferred to adult court. Juvenile court judges decide whether a case will be transferred to adult court in a proceeding known as a transfer hearing. In transfer hearings, judges base their decision on various factors, including a report prepared by county probation officers on the youth's behavioral patterns and social history and whether the youth can be adequately rehabilitated before he or she must be released from a juvenile facility.

The transfer hearing process was established by Proposition 57. Prior to Proposition 57, some youths would have their cases heard in adult court without approval from a juvenile court judge. While relatively few youths were sent to adult court before Proposition 57—566 youths in 2015—the measure is expected to result in this occurring even less frequently. For example, DOJ reports that 160 (or 27 percent) fewer youths were sent to adult court in 2016 (after the passage of Proposition 57) than in 2015. This number of youths sent to adult court could decline further given that Proposition 57 was in effect for only a small portion of 2016.

Adult Court Commitments to DJJ. Youths convicted in adult court when they are under 18 years of age are typically held in a DJJ facility for the first portion of their sentences. These youths are sent to DJJ either on the order of the adult court that convicted them or at the discretion of CDCR. When these youths turn age 18, they are generally transferred to state prison. However, if their sentences are short enough that they are able to complete their terms before turning age 21, they can serve their entire sentences in DJJ. These youths are housed in living units based on their behavior and rehabilitative needs, similar to youths committed to DJJ by juvenile courts. The state pays the entire cost of housing youths in DJJ who were convicted in adult court. After completing their sentences, these youths are generally supervised in the community by state parole agents. As of December 2017, DJJ housed about 70 adult court youths.

Youths in Prison. Youths who are transferred to state prison—whether from DJJ or immediately after their conviction in adult court—are typically treated

similarly to adult inmates. However, since 2015-16, youths who are 22 years of age or younger who are in prison and have no record of in-custody misconduct in the last year may volunteer to become part of the Youthful Offender Program. These youths are generally housed in a lower-security facility than they otherwise would be, receive priority for placement into CDCR rehabilitation programs, and have access to some youth-specific programs (such as a mentorship program). Youths can remain in this program until they reach 25 years of age. However, the department indicates that the majority of youths admitted into prison either are ineligible or do not choose to volunteer for the program. Since the program was implemented in July 2015, about 1,700 youths have been part of the program. (At the time of this analysis, CDCR was unable to provide the number of youths currently in the program.)

Implementation of Farrell Settlement. In 2003, a lawsuit, *Farrell v. Allen*, was filed against the state, alleging that it failed to provide adequate care and effective treatment programs to youths housed in DJJ. In 2004, the state entered into a consent decree in the *Farrell* case and agreed to develop and implement remedial plans related to nearly every aspect of DJJ operations. The overarching goal of these plans was to move DJJ toward adopting a “rehabilitative model” of care and treatment. In February 2016, the lawsuit was terminated after the court overseeing the case found that DJJ had sufficiently complied with the requirements of the remedial plans.

Cost of DJJ. Because of the much higher levels of staffing, DJJ is significantly more costly than state prison. For example, the added cost of housing an offender in DJJ is around \$80,000 annually, depending on which living unit the youth is assigned. In contrast, housing an inmate in a contract bed costs the state about \$30,000 annually.

Governor's Proposal

The administration is proposing budget trailer legislation that would make several changes to allow older youths as well as more adult court youths to be housed in DJJ. According to the administration, research and case law suggest that youths in this age range are less culpable for their crimes than adults, and that youths who spend time in prison have worse outcomes than those who remain in juvenile facilities.

In recognition of this research, the administration proposes to (1) reduce the number of youths who are transferred to adult court and (2) increase the number of adult court youths who can be housed in DJJ.

Specifically, the administration proposes to:

- **Increase DJJ Age of Jurisdiction for Juvenile Court Commitments to 25.** Under the administration's proposal, youths committed to DJJ from juvenile court could generally remain in DJJ until just before their 25th birthday (rather than their 23rd birthday) unless released by BJH before then. According to the administration, this change is intended to reduce the number of youths transferred to adult court. This is because juvenile court judges would be less likely to transfer a youth to adult court if DJJ has more time to rehabilitate the youth than under current law. Since the proposed change could result in some juvenile court youths spending up to two additional years in DJJ, counties would not be required to pay for the portion of time any youths are housed in DJJ beyond their 23rd birthday under the Governor's proposal. The administration projects that this change would result in 15 additional youths being housed in DJJ by 2020-21.
- **Increase DJJ Eligibility Age for Adult Court Youths to 25.** Under the administration's proposal, youths convicted in adult court but committed to DJJ would be allowed to spend their entire term in DJJ if they can complete their sentences before their 25th birthday (rather than their 21st birthday). Youths who could not complete their sentences by this time would continue to be transferred to prison when they turn 18 years of age. (We note that this change would retroactively apply to such youths who are already in DJJ.) According to the administration, this change is intended to reduce the number of youths who spend time in adult prison and increase their access to DJJ programs. The administration projects that this change would result in 25 additional youths being housed in DJJ by 2020-21.
- **Implement Young Adult Offender Pilot Program.** The administration proposes a young adult offender pilot program that would provide

CDCR greater ability to place adult court youths in DJJ. Under the proposal, the department would be permanently authorized to place up to 76 youths in two DJJ living units who (1) were convicted in adult court, (2) committed crimes before their 18th birthday, (3) were adjudicated between age 18 and 21, and (4) could complete their sentences before their 25th birthday. To the extent space is available, similar youths who committed their crime after age 18 could also be placed by CDCR into the program. One of the living units would be activated in July 2018 and the other unit in January 2019. The administration indicates that CDCR's Office of Research would track youths who participate in the program to help evaluate the program's effects.

In total, the above changes are estimated to increase the DJJ population by 49 youths in the budget year, growing to 114 by 2020-21. To accommodate this increase, The Governor's budget proposes \$3.8 million (General Fund) and 25.6 positions in 2018-19, increasing to \$9.2 million and 67.8 position annually beginning in 2020-21. Some of these ongoing resources would be used to activate the living units associated with the young adult offender pilot program. In addition, DJJ would activate two additional living units to house youths affected by the other proposed eligibility changes—one in July 2019 and another in July 2020.

LAO Assessment

Proposal Could Benefit Some Juvenile Court Youths, but Could Negatively Affect Others. As mentioned above, the administration's proposal is partially due to research suggesting that youths who are transferred to adult court commit more crimes upon release than those who remain in juvenile court. For example, a review of available research in 2007 concluded that transfers to the adult criminal justice system typically increase (rather than decrease) rates of crime among transferred youths. Moreover, youths who are convicted in adult court can spend much longer periods of time incarcerated than those who remain in juvenile court. For example, juvenile court youths released from DJJ in 2015 spent an average of around three years in DJJ, while adult court youths who had been sent directly to prison spent an average of about nine years in prison. Accordingly, despite the

greater annual cost of housing youths in DJJ, the total cost of housing youths from juvenile court can be lower than if they were convicted in adult court because of the shorter amount of time they serve overall.

However, the Governor's proposal could also result in some youths spending up to two years longer in DJJ than they otherwise would have—specifically, those juvenile court youths who would be released from DJJ just prior to their 23rd birthday under current law. This is because all youths who reach 23 years of age without being released by BJH could remain in DJJ until they reach age 25. This is potentially problematic because research suggests that keeping a youth in treatment programs for a longer period of time than required on average does not appear to increase the effectiveness of the programs. Given that this would also increase the costs of housing these youths, it is unlikely to be a cost-effective way to reduce recidivism.

Reducing Adult Court Youths' Prison Time Could Reduce Recidivism, but Is Costly. The administration's proposals to allow more adult court youths to be housed in DJJ could result in better outcomes for these youths. For example, a study carried out in California using data from the mid-1990's suggests that youths convicted in adult court but housed in juvenile facilities had lower rates of recidivism when compared to youths convicted in adult court but housed in prison. However, the costs to house these youths in DJJ would be much higher than housing them in prison.

Lack of Evaluation of DJJ Raises Concerns. In response to the *Farrell* settlement, DJJ has improved its operations in various ways. In particular, some of its rehabilitation programs appear to be based on programs that research has shown to be effective elsewhere. However, DJJ does not currently evaluate whether its programs actually operate in the same manner as the programs they are based on because it does not conduct reviews of its programs known as "fidelity assessments." Although DJJ is planning to begin fidelity assessments in 2018-19, until these assessments are complete and show that DJJ is implementing its programs appropriately, its programs cannot be considered evidence based. This raises concerns because research shows that evidence-based programs are more likely to be cost-effective at reducing recidivism.

In addition, DJJ has not completed an evaluation of the actual effect of its programs on youth. While DJJ is in the process of contracting for such an evaluation, this evaluation will not be released until the end of 2019-20. Accordingly, it remains unclear how effective DJJ's program will be at rehabilitating additional youths that would be sent to DJJ under the Governor's proposal.

We also note that the administration is proposing ongoing funding for the proposed young adult offender pilot program. Given that the purpose of a pilot is to test the effectiveness of a particular program to then determine whether it merits continuation or expansion, it is uncertain why ongoing funding is being proposed for this program. In addition, while the administration indicates the CDCR Office of Research would track the youths involved in the program, it does not have plans for an independent evaluation of the cost-effectiveness of the program. Without such an evaluation, it will be difficult for the Legislature to assess whether the pilot program is a cost-effective approach to rehabilitating these youths.

LAO Recommendations

Approve Proposals With Sunset Date. Given that research suggests that youths generally have better outcomes when they remain in juvenile court and/or are housed in juvenile facilities rather than prison, the Governor's proposed statutory changes have merit. However, given that the effectiveness of these proposals depends on how effective DJJ's programs are—about which there is some question—we recommend that the Legislature approve these policy changes (with some modification to the proposal to increase DJJ's age of jurisdiction for juvenile court youths discussed below) for a fixed time period—such as seven years. This would allow sufficient time for the proposed changes to be implemented and for the Legislature to determine whether they should continue.

Require Evaluations. In order to ensure that the Legislature has sufficient information to assess whether the proposed young adult offender pilot program should continue to be funded after it sunsets, we also recommend that the Legislature require DJJ to contract for an independent evaluation to assess the cost-effectiveness of the program. This evaluation shall be completed by January 10, 2025, with a final evaluation report provided to the Legislature. We estimate that the evaluation would likely cost a couple

hundred thousand dollars. We also recommend DJJ provide the outcomes of its fidelity assessments as they become available, as well as the current evaluation that is expected to be complete by the end of 2019-20. These reports would allow the Legislature to monitor DJJ's overall rehabilitation programs and provide some insight into the merit of the proposed age of jurisdiction changes.

Modify Governor's Proposal Age of Jurisdiction Proposal. Given that returning DJJ's age of jurisdiction to 25 could potentially reduce recidivism and lower costs for youths who would otherwise be transferred to adult court, we find that this change merits legislative approval. However, because keeping some of these

youths for a longer period of time may have little effect and could increase costs, we recommend modifying the Governor's proposal. Specifically, we recommend that the Legislature provide juvenile court judges who are conducting transfer hearings the discretion to allow a youth to remain in DJJ up to the age of 25 in cases where a judge determines that not doing so would necessitate that the youth be transferred to adult court. This would provide an alternative to sending such youth to adult court without resulting in other juvenile court youths remaining in DJJ beyond their 23rd birthday unnecessarily. We note that this would also likely reduce the cost of the administration's proposal somewhat, though the precise amount would depend on how judges used this proposed discretion.

JUDICIAL BRANCH

OVERVIEW

Judicial Branch Budget. The judicial branch is responsible for the interpretation of law, the protection of individuals' rights, the orderly settlement of all legal disputes, and the adjudication of accusations of legal violations. The branch consists of statewide courts (the Supreme Court and Courts of Appeal), trial courts in each of the state's 58 counties, and statewide entities of the branch (the Judicial Council, 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 7 shows total funding for the judicial branch from 2013-14 through 2018-19. Total funding for the judicial branch has steadily increased and is proposed to reach \$4 billion in 2018-19.

As shown in Figure 8 (see next page), the Governor's budget

proposes about \$3.9 billion from all state funds (General Fund and state special funds) to support the judicial branch in 2018-19, an increase of \$188 million, or 5.1 percent, above the revised amount for 2017-18. (These totals do not include expenditures from local revenues or trial court reserves.) Of the total

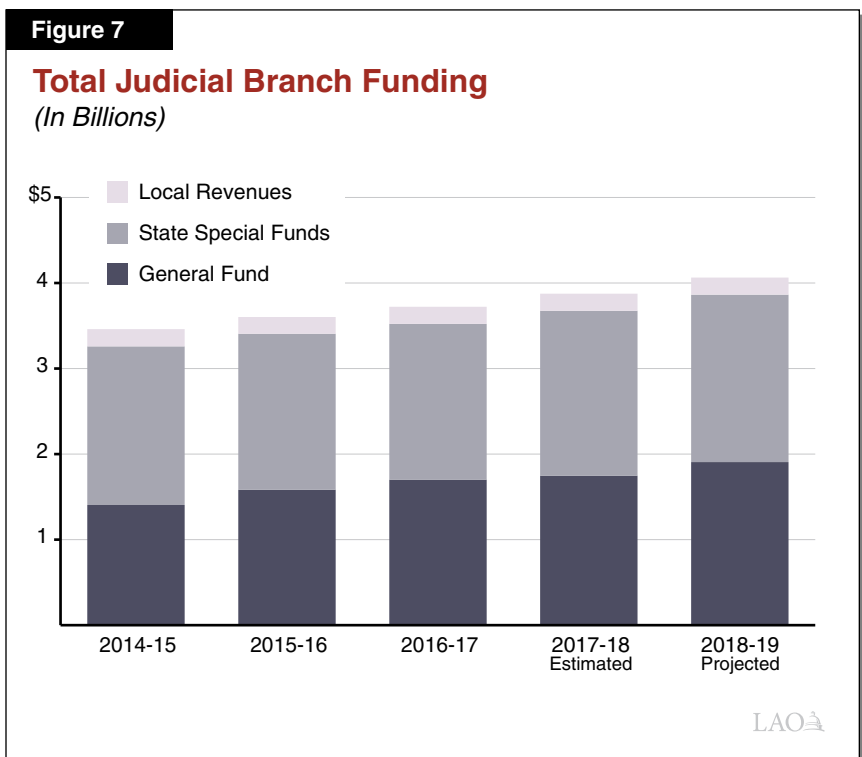


Figure 8

Judicial Branch Budget Summary—All State Funds

(Dollars in Millions)

	2016-17 Actual	2017-18 Estimated	2018-19 Proposed	Change From 2017-18	
				Amount	Percent
State Trial Courts	\$2,727	\$2,742	\$2,943	\$201	7.3%
Supreme Court	45	50	51	—	0.7
Courts of Appeal	223	242	243	—	0.1
Judicial Council	127	146	149	3	1.8
Judicial Branch Facility Program	386	478	462	-16	-3.3
Habeas Corpus Resource Center	15	17	17	—	0.4
Totals	\$3,522	\$3,675	\$3,864	\$188	5.1%

amount proposed for the judicial branch in 2018-19, \$1.9 billion is from the General Fund—47 percent of the total judicial branch budget. This is a net increase of \$158 million, or 9.1 percent, from the 2017-18 amount. This increase reflects various proposals to increase General Fund support for trial courts by a total of \$210 million—nearly all of which is ongoing. This amount includes:

- \$75.0 million for allocation to trial courts by the Judicial Council based on its priorities.
- \$47.8 million for allocation to certain trial courts that are comparatively underfunded relative to other trial courts as determined by the Judicial Council.
- \$34.1 million to backfill a further decline in fine and fee revenue to the Trial Court Trust Fund. This increases the total General Fund backfill in 2018-19 to \$89.1 million, which has been provided annually since 2014-15.
- \$25.9 million for increased trial court health benefit and retirement costs.
- \$27.2 million for various programs, such as self-help services and a pilot program for the online adjudication of certain traffic violations.

This additional spending is partially offset by various reductions, such as the expiration of one-time funding in the current year and other technical adjustments.

AUGMENTATIONS TO GENERAL PURPOSE FUNDING FOR TRIAL COURT OPERATIONS

LAO Bottom Line. The Governor’s budget includes \$123 million to increase general purpose funding for trial court operations—\$75 million allocated based on the Judicial Council’s priorities and \$47.8 million for certain trial courts that are comparatively less well-funded than other courts. In evaluating the Governor’s proposals, we recommend that the Legislature (1) consider the level of funding it wants to provide relative to its other General Fund priorities and (2) allocate any additional funds provided based on its priorities rather than allowing the Judicial Council to do so. Additionally, given the uncertainty around whether the Judicial Council’s current workload-based funding methodology accurately estimates trial court needs, we also recommend the Legislature convene a working group to evaluate the methodology.

Background

Funding Trial Court Operations. The state’s annual budget typically designates the total amount of funding appropriated to fund trial court operations. While a portion of this funding must be used for specific programs or purposes (such as court interpreters), a significant portion of the funding is provided with little to no restrictions. The Judicial Council—the policymaking and governing body of the judicial branch—is then responsible for allocating funding to individual trial courts. Upon receiving its allocation, each individual trial court has significant flexibility in determining how

its share of funding is used. This can result in significant differences in the programs or services offered and the level of service provided across trial courts. For example, some trial courts may choose to use a greater proportion of their funding to provide increases in employee compensation than other courts.

Following the realignment of fiscal responsibility for trial courts from the counties to the state in 1997, the judicial branch received funding augmentations for trial court operations by submitting budget requests as part of the annual state budget process, similar to most state departments. However, from 2005-06 to 2007-08, trial courts received a formula-driven automated annual increase in funding. As part of the 2009-10 budget package, this automatic increase was eliminated on a permanent basis, along with other automatic cost-of-living adjustments provided to certain state departments. Since then, funding increases for trial court operations have generally been provided through the approval of (1) budget requests for specific purposes (such as increased funding for workload resulting from voter-approved initiatives), (2) discretionary (or unallocated) funding increases, and (3) funding for increased trial court health benefit and retirement costs. We note, however, that trial court funding levels are not adjusted for increased salary costs as the Legislature does not review and approve trial court labor agreements in the same manner as state negotiated labor agreements.

Workload Allocation Funding Methodology (WAFM). In April 2013, the Judicial Council approved a new method it developed for allocating funds appropriated for trial court operations in the annual state budget. This new methodology—known as WAFM—is intended to distribute funding based on workload instead of the historic “pro rata” approach, which generally distributed funding based on the historic share of statewide allocations received by each trial court. This was because the pro rata approach generally preserved funding inequities between trial courts.

To begin with, the WAFM formula employs the Resource Allocation Study (RAS) developed by the Judicial Council, which estimates the number of personnel needed for each court primarily based on the number of filings for various case types and the amount of time it takes staff to process such a filing. Each court’s estimated staffing need is then converted

to a cost estimate using various assumptions and is combined with various other cost factors not captured in the RAS model (such as jury costs) to determine the total estimated workload-driven costs for each trial court. This total, which may be further adjusted (such as a funding floor for the smallest courts), is the amount the judicial branch believes is needed to fully operate each trial court.

Implementation of WAFM. In 2013-14, the Judicial Council began to implement a five-year plan to phase in the use of WAFM for allocating general purpose funding to the trial courts. Under this plan, a greater percentage of appropriated funds was allocated through WAFM annually instead of through the historic pro rata methodology. When funding is allocated under WAFM, the share each court receives is based on its workload costs as estimated by WAFM. In addition, the Judicial Council decided to allocate any augmentations that were provided in the state budget for trial court operations and not designated for a specific purpose (meaning general purpose funding) through WAFM, and shift an equivalent amount of funding that would have otherwise been allocated under the historic pro rata method into the WAFM allocation methodology. This further increased the proportion of funding allocated through WAFM. In 2017-18, two-thirds of total general purpose funding for trial courts is estimated to be allocated under WAFM.

Recent Changes to WAFM. In January 2018, the Judicial Council approved significant changes to how future funding will be allocated through WAFM, beginning in 2018-19. According to the Judicial Council, two of the major changes are intended to stabilize funding allocations while attempting to equalize funding and to increase funding predictability. First, in years where increased funding is provided by the state, the funding would be first allocated to the 15 smallest trial courts to ensure that they received 100 percent of their WAFM-identified costs. Up to 50 percent of the remaining augmentation would be allocated to courts below the statewide average funding ratio (calculated as the ratio of actual funding appropriated to total costs calculated by WAFM). The remaining amount would then be allocated to all trial courts based on WAFM.

Second, in the first year in which there are no general purpose funding augmentations provided for trial court operations, allocations would generally remain the same. However, in the second year in which

no increased funding is provided, up to 1 percent of funding allocated to trial courts that are more than 2 percent above the statewide average funding ratio could be reallocated to those courts that are more than 2 percent below the statewide average funding ratio.

Governor's Proposal

The Governor's 2018-19 budget proposes a \$123 million General Fund augmentation to general purpose funding for trial court operations. The Governor proposes to allocate the proposed augmentation in the following two ways:

- **Based on Judicial Council Priorities (\$75 Million).** The administration proposes \$75 million for the trial courts that would be allocated by the Judicial Council based on its priorities. The administration states that it anticipates that the Judicial Council will rely on recommendations made by the Commission on the Future of California's Court System to improve the accessibility and efficiency of court operations. The administration also states that it expects the Judicial Council to report on any anticipated outcomes.
- **Equalize Trial Court Funding Levels (\$47.8 Million).** The administration proposes to allocate \$47.8 million to those courts—identified by WAFM—whose actual funding levels are below the statewide average funding ratio (calculated as the ratio of actual funding received to total costs calculated by WAFM) of 76.9 percent. In other words, the actual funding levels for these courts are less than 76.9 percent of their total WAFM-identified costs. The proposed augmentation for these courts would bring them to the statewide average funding ratio—bypassing the Judicial Council's newly revised WAFM allocation methodology. Trial courts receiving this funding would have complete flexibility in how to use these funds.

LAO Assessment

Unclear How Judicial Council Would Allocate Proposed \$75 Million. At the time of this analysis, it is unclear how \$75 million of the proposed augmentation would be allocated to trial courts. This is because the Governor's proposal would give the Judicial Council

complete discretion and maximum flexibility in allocating these funds. For example, it could decide to allocate the funds under the newly revised WAFM allocation methodology. Allocation through WAFM would mean that individual trial courts have flexibility in how they use their funding—likely resulting in different impacts across trial courts. Some trial courts could use a portion of these funds to address increased cost pressures—such as increased salary costs for existing employees or contractors—in order to maintain existing levels of service. Trial courts that are better at constraining such costs would have more funding available to improve or increase access to court services instead. Additionally, trial courts may also use funds for varying purposes, which may or may not align with legislative priorities.

It is also possible that the Judicial Council would allocate some or all of the funds based on the recommendations of the Commission on the Future of California's Court System, as anticipated (but not required by the administration). However, the costs and benefits of implementing each recommendation are unknown. Accordingly, it is unclear how many or what recommendations could be implemented with the proposed funds. Additionally, the Legislature may want to weigh in on the specific recommendations that are implemented and how they are implemented. The Judicial Council could also decide to allocate funding for other trial court purposes, which could include expanding existing services or programs or establishing new services or programs, which may or may not be aligned with legislative priorities.

Different Ways to Equalize Funding for Individual Trial Courts. There are different ways to equalize funding among trial courts depending on the intended goal and how quickly that goal is to be reached, which in turn dictates how much funding is needed. The Governor's proposal reflects one example of how this could be done by setting an equalization goal of the WAFM statewide average ratio of 76.9 percent and providing a \$47.8 million augmentation in general purpose funding solely for the 30 courts currently below this target. (We note that updated data indicates that the current statewide ratio has changed and is now 78.6 percent and that \$52.5 million would be needed to meet this target.) As discussed earlier, the newly revised WAFM methodology includes a somewhat similar equalization goal as proposed by the Governor when new general purpose funding is provided for trial

courts. However, equalization would occur through WAFM by allocating approximately half of any new funding specifically to those courts that are below the statewide average. Under this approach, it would take potentially more funding to reach the statewide average than under the Governor's proposal as a portion of the funding would be distributed to courts that are above the statewide average. The Legislature could consider other means of providing equalization funding that draw from both the Governor's and the Judicial Council's approaches.

We also note that equalization can occur when existing funding is redistributed among trial courts—rather than providing new funding. For example, in the second year in which no new funding is provided, the Judicial Council's newly revised WAFM allocation plan redistributes up to 1 percent of existing funding from courts more than 2 percent above the statewide average to courts 2 percent below the statewide average. The Legislature could choose a different redistribution method, such as increasing the amount to be redistributed or requiring redistribution annually regardless of whether new funding is provided. To the extent that the Legislature is interested in equalizing trial court funding, it will want to determine what it believes is an appropriate goal, how to achieve this goal (which may or may not include additional funding), and how quickly it would like to reach the goal.

Unclear Whether WAFM Accurately Identifies Trial Court Funding Needs. While the development of WAFM was an important first step by the judicial branch to ensure that funding is allocated equitably based on workload, it is unclear whether WAFM accurately identifies trial court funding needs. This is because it is uncertain whether WAFM's underlying assumptions and adjustments appropriately measure and calculate individual trial court need. For example, although WAFM includes adjustments to address salary differentials across trial courts, it is unclear whether such adjustments should be made or how they should be made. Similarly, it is unclear whether WAFM appropriately differentiates between costs that are unaffected by changes in filings (fixed costs) and costs that change based on changes in filings (or marginal costs). This differentiation is important since WAFM is based on the number of filings each court receives. Thus, accurately differentiating between these costs helps ensure that funding needs are not overestimated

or underestimated. Additionally, in determining trial court costs WAFM makes certain assumptions regarding desired service levels (such as how and what services are provided or how long it should take to process filings), which may or may not reflect the desired service levels of the Legislature.

LAO Recommendations

Provide Funding in 2018-19 Based on Legislative Priorities. In evaluating the Governor's proposals for \$123 million in increased general purpose funding for trial courts, we recommend the Legislature first consider the level of funding it wants to provide trial courts relative to its other General Fund priorities—which could be higher or lower than the Governor's proposed level. Second, we recommend the Legislature allocate any additional funds provided based on its priorities. This would generally be consistent with how the Legislature has allocated funds to trial courts in recent years. As discussed above, under the Governor's proposal, \$75 million of the proposed increase would be allocated at the discretion of the Judicial Council, which may or may not be aligned to the Legislature's priorities.

We find that there are a number of potential priorities for increased trial court funding that the Legislature could consider. For example, the Legislature could consider providing funding that is based on a cost-of-living or inflationary adjustment in recognition that the costs for maintaining service levels will naturally increase from year to year. We estimate this could range from the low to mid-tens of millions of dollars, depending on how the Legislature chose to calculate the adjustment. Similar to the Governor, the Legislature could consider providing funding to equalize funding among trial courts based on a goal it deems appropriate. The Legislature could also allocate funds to support specific programs or services. As we discuss later in this report, the Governor has a separate proposal to provide increased funding for self-help centers.

Establish Working Group to Evaluate WAFM as Budgeting and Allocation Methodology. Given the uncertainty around whether WAFM accurately estimates trial court needs raised above, we believe further study is necessary. One way to assess the various issues raised above is for the Legislature to direct our office to jointly work with the Department of Finance (DOF)

to evaluate WAFM—with technical assistance from the judicial branch as necessary—and offer potential recommendations for change by November 1, 2019. The intended outcome would be a workload-based model that can be used for both estimating trial court needs and allocating trial court operations funding in the future. Ideally, the model could be adjusted over time to account for new workload, changed processes, or increased efficiency. An accurate formula would provide a clear understanding of how much funding is needed to meet specific workload or service levels. This would also help the Legislature determine the appropriate level of total funding for trial courts each year and how such funding should be allocated (or reallocated) to ensure that all trial courts meet legislatively desired service levels.

AUGMENTATION FOR SELF-HELP CENTERS

LAO Bottom Line. We recommend the Legislature direct the Judicial Council to conduct an independent comprehensive cost-benefit analysis of self-help services by November 2020, which would then allow the Legislature to determine what level of funding for these services is merited, where the funding should be targeted to maximize state benefits, and whether funding allocations need to be adjusted elsewhere to account for savings created by self-help services. Until this analysis is completed, it seems reasonable to provide some level of additional funding on a limited basis through 2020-21 to self-help centers in the interim since they are reportedly turning away individuals seeking assistance. The exact amount to provide, which could be higher or lower than the amount proposed by the Governor, will depend on the Legislature's priorities for overall General Fund spending, self-help services, and other court programs. We also recommend approving the proposed budget bill language specifying how much is to be spent on self-help services annually and that unexpended funds will revert to the General Fund as these provisions will help ensure that such funding is used accountably.

Background

Services for Self-Represented Individuals.

Self-represented individuals refers to those who choose to access certain court services without the assistance

of legal counsel—typically related to civil matters. This is generally because the individuals cannot afford to hire legal representation. Given their lack of familiarity with statutory requirements and court procedures (such as what forms must be filled out or their legal obligations in the potential case), self-represented individuals can be at a legal disadvantage. In addition, trial court staff tend to spend significantly more time processing a self-represented filing than one with legal representation. For example, incomplete or inaccurate paperwork can lead to having to file paperwork repeatedly, to continue or delay cases, or to generate additional hearings. To help self-represented individuals access the court system, the judicial branch offers or partners with other legal stakeholders (such as county law libraries or the State Bar) to provide various programs or services, including self-help centers.

Services Provided by Self-Help Centers. Each of California's trial courts operates a self-help center which serves as a central location for self-represented individuals to educate themselves and seek assistance with navigating court procedures. Attorneys and other trained personnel who staff the centers provide services in a variety of ways (such as through one-on-one discussions, courtroom assistance, workshops, and referrals to other legal resources) for a wide range of issue areas. As shown in **Figure 9**, the Judicial Council reports that self-help centers most commonly offer assistance with family law issues. For example, nearly all self-help centers provide marital dissolution, child custody, and spousal support services. In providing services, an individual self-help center may utilize certain resources and services provided by the Judicial Council on a statewide basis, such as electronic document assembly programs that populate court forms based on self-represented individuals' answers to certain questions. We note self-help centers could also utilize self-help services provided by other governmental, nonprofit, or private organizations as well.

Funding for Self-Help Centers. Funding for individual self-help centers can come from a variety of sources. The judicial branch currently allocates \$11.2 million annually for self-help services which are used to support self-help centers—\$6.2 million from the Trial Court Trust Fund (TCTF) and \$5 million from the Improvement and Modernization Fund (IMF). These funds are allocated to individual centers using a formula

based on the population of the county where the center is located. Additionally, an individual trial court may choose to allocate some of its general purpose funding to support its self-help center. Self-help centers can also sometimes receive funding from other state funds (including filing fee revenues), federal funds, and interest income from attorney trust accounts—typically for providing assistance in specific issue areas within the self-help center. For example, the state receives federal funding for self-help assistance related to child support and certain other family law issues.

We also note that the 2016-17 budget provided \$25 million on a one-time basis from the General Fund for a Court Innovations Grant Program to provide grants on a competitive basis to support court programs and practices that promote innovation, modernization, and efficiency. The Judicial Council allocated about \$4.5 million of these funds to support self-help projects that it believed were innovative or could improve the efficient delivery of services at ten courts. These projects are currently in progress.

Governor’s Proposal

The Governor’s budget for 2018-19 proposes a \$19.1 million General Fund augmentation to expand services at self-help centers, such as for additional attorneys and paralegals to provide assistance. These funds would be transferred to the TCTF, increasing the total amount provided from the TCTF to support self-help centers from \$6.2 million to \$25.3 million. In total, the Governor’s proposal would increase the total amount specifically for such centers from \$11.2 million to \$30.3 million, which includes the \$5 million provided annually from the IMF.

According to the administration, the proposed augmentation provides the judicial branch with approximately one-third of the \$62 million the judicial branch believes is needed to fully address self-help center needs. These funds would be distributed in the same manner as the current funding of \$11.2 million. Additionally, the Governor proposes budget bill language (1) specifying that a total of \$30.3 million is dedicated for self-help services from the TCTF and the IMF and (2) requiring that any unexpended funds revert to the General Fund. The administration indicates that the proposed language is to ensure that a total of \$30.3 million is spent on self-help centers and that none of the funding is redirected by the courts for other purposes.

LAO Assessment

Potentially Significant Overall Impact on Access to Court Services, but Impacts on Individual Courts Could Vary. Given that the Governor’s proposal would more than double the current funding provided to self-help centers, the proposal could significantly increase self-represented individuals’ access to court services, particularly given that trial courts report not being able to provide services to all individuals who visit self-help centers. However, the exact magnitude of the impact would depend primarily on how individual trial courts use the additional funding. As discussed previously, trial courts have flexibility over how they use self-help center funds. This means that trial courts will generally differ in where and how they would use any additional funding. For example, some courts may choose to spend a greater proportion of their resources to begin providing services in new issue areas, while others may choose to spend more resources to expand

Figure 9

Self-Help Centers Provide Services in Different Issue Areas

Issue Area	Number of Centers
Marital dissolution	57
Child support	55
Custody/visitation	55
Guardianship	55
Parentage	55
Spousal/partner support	54
Domestic violence	53
Name change	53
Civil harassment	51
Landlord/tenant	44
Small claims	44
Other family law	43
Elder abuse	41
Adoption	38
Limited civil debt collection	37
Other civil law	31
Conservatorship	27
Consumer services	26
Expungements	26
Traffic	10
Foreclosures	6

the availability of services currently provided. This could result in different outcomes by trial court, such as the number of people served and the benefit generated for state court operations.

Potential State Fiscal Benefit Uncertain. This increased service level to self-represented individuals could potentially generate state fiscal benefit according to a limited-scope cost benefit analysis carried out in 2009 by a private contractor using data from six trial courts. This analysis estimated that self-help services generally resulted in net state savings from avoiding at least one hearing and reducing court staff time needed to review and process filings for each case in which self-help services were provided. However, the analysis acknowledged that it was not a comprehensive cost-benefit analysis of the self-help programs at the six trial courts and that it was limited in various ways. For example, the analysis drew conclusions from data provided by six trial courts, which (1) did not gather the same information and (2) gathered data specific to the particular benefits they felt their programs were producing. This makes it difficult to apply the findings of this study statewide to all courts. Thus, while it is possible that self-help services could result in net state benefit, it is uncertain whether such benefit will *actually* be realized and to what extent.

Proposed Language Would Increase Legislative Oversight. The Governor's proposed budget bill language would increase legislative oversight over the use of self-help funding as it would require that a certain level of funding is spent annually on self-help services from both the TCTF and IMF. Additionally, the language proposes to revert unexpended funds to the General Fund which would likely provide incentive for the judicial branch to fully expend all funds allocated to support self-help centers as the funds would not be able to be redirected for other purposes.

LAO Recommendations

Direct Judicial Council to Conduct Comprehensive Cost-Benefit Analysis. We recommend the Legislature adopt budget trailer legislation directing the Judicial Council to conduct an independent comprehensive cost-benefit analysis of self-help services and provide a report on its findings by November 2020. The Legislature could also authorize the Judicial Council to deduct the costs of such an analysis from the total amount provided for self-help

centers. Such costs should not exceed a few hundred thousand dollars annually. A comprehensive analysis is necessary to objectively assess all costs and benefits of self-help services as well as determine which methods of delivering self-help (such as one-on-one services or workshops) are most cost-effective and in which issue areas. For example, such a study could determine that one-on-one services are most cost-effective in guardianship or probate cases while workshops are most cost-effective in marital dissolution cases. This information would then allow the Legislature to determine what level of funding is merited, where the funding should be targeted to maximize state benefit, and whether funding allocations need to be adjusted elsewhere to account for savings created by self-help services.

Provide Funding Based on Legislative Priorities. Until our recommended comprehensive cost-benefit analysis is completed, it is difficult to determine what level of additional funding is warranted and what specific self-help services should be funded (both in terms of additional and existing funding). Given that such an analysis would not be available until November 2020, it seems reasonable to provide some level of additional funding to self-help centers in the interim since they are reportedly turning away individuals seeking assistance. However, we recommend that any additional funding provided be on a limited-term basis through 2020-21—the year in which we recommend that Legislature direct the Judicial Council submit a completed cost-benefit analysis report. The Legislature could then use the findings of the report to determine the total level of funding it would like to provide and how such funding should be used to maximize its impact. Additionally, the Legislature would also likely have the results of the self-help projects funded by the one-time Court Innovations Grant Program. This could provide the Legislature with helpful information on potentially innovative ideas.

The exact amount to provide for self-help services, which could be higher or lower than the amount proposed by the Governor, would depend on the Legislature's priorities for overall General Fund spending, self-help services, and other court programs. The Legislature will also want to consider how it would like additional funding for self-help centers to be used. As part of this process, we recommend the Legislature consider the following questions:

- **Should Funding Be Targeted to Particular Issue Areas?** The Legislature will want to determine whether it wants to target funding to specific issue areas to ensure that a certain level of service (such as the number of people served) is achieved. For example, the Legislature could decide to increase the number of individuals who could receive assistance in landlord/tenant or conservatorship issues.
- **How Can Funding Be Used to Maximize Impact?** The Legislature will want to consider whether the funding can be used in particular ways to maximize the number of individuals served. For example, the Legislature could direct a portion of the funding to the Judicial Council for the creation of materials (such as document assembly programs or interactive guides) that can be used statewide and therefore potentially assist more individuals. Alternatively, the Legislature can require that a certain amount of funding be used for workshops or other alternatives to one-on-one assistance that also service more self-represented individuals.
- **Should Innovation and Efficiency Be Incentivized?** The Legislature will want to consider whether to incentivize innovative or efficient practices so that any augmentation provided by the Legislature would increase service levels as much as possible. For example, similar to the Court Innovations Grant Program, the Legislature could choose to allocate some, or all, of the funding on a competitive basis to encourage trial courts to deliver self-help services in innovative and efficient ways that could potentially be duplicated by other courts.

Approve Budget Bill Language. We recommend that the Legislature approve the proposed budget bill language (adjusted for the actual amount provided) as it would ensure that any funding the Legislature decided to provide for self-help services could only be used for that purpose. This increases the Legislature's ability to ensure that such funding is used accountably.

ONLINE TRAFFIC ADJUDICATION PILOT

LAO Bottom Line. The Governor's budget proposes seven positions and \$3.4 million from the General Fund—\$2 million on a one-time basis and \$1.4 million

on an ongoing basis—for the Judicial Council to administer a pilot program to develop and test different activities related to the online adjudication of certain traffic infractions. We recommend that the Legislature approve the proposed funding, but provide the requested \$1.4 million on a four-year, limited-term basis (through 2021-22), in order to allow the Legislature to assess the extent to which the different activities should be expanded, if at all, on a statewide basis. We also recommend modifying the proposed budget trailer legislation to require that each of the proposed online activities be offered at multiple courts and to require the Judicial Council to submit an evaluation report at the end of the pilot.

Background

Resolution of Traffic Cases. Individuals charged with traffic infractions or misdemeanors can resolve their case in various ways. For example, an individual can choose not to contest a violation and submit payment to acknowledge conviction of the alleged offense, such as by paying a traffic ticket. Alternatively, the individual can choose to contest the violation before the court, such as through a trial. Additionally, an individual charged with a traffic infraction can choose to contest the charges in writing (referred to as a "trial by written declaration"). If the individual is dissatisfied with the decision rendered by the court under this process, he or she can contest the charges in court, with the court deciding the case as if the trial by written declaration never took place.

Criminal Fine and Fees. Upon conviction of a criminal offense (including traffic cases), trial courts typically levy fines and fees upon the convicted individual. As part of the determination of the total amount owed, individuals may request the court consider their ability to pay. Judges can reduce or waive certain fines and fees or provide an alternative sentence (such as community service in lieu of payment). Individuals who plead guilty or are convicted and required to pay fines and fees must either provide full payment immediately or set up installment payment plans with the court or county collection program. If the individual does not pay on time, the amount owed becomes delinquent. State law then authorizes collection programs to use a variety of tools or sanctions (such as wage garnishments) to motivate individuals to pay their debt. In order for a collections program to halt collection sanctions placed

on a particular individual, the individual must pay the total amount owed, reestablish installment payments, or have the court adjust the total amount owed based on his or her ability to pay. Collected revenues support various state and local programs.

Governor's Proposal

The Governor's budget for 2018-19 proposes seven positions and \$3.4 million from the General Fund—\$2 million on a one-time basis and \$1.4 million on an ongoing basis—for the Judicial Council to administer a pilot program to develop and test different activities related to the online adjudication of certain traffic infractions at eight trial courts. The one-time funding would be used for the development of online interfaces and integration with trial court case management and other systems, while the ongoing funding and requested positions would provide ongoing support and oversight of the program. Some of these activities that would be tested include allowing individuals charged with certain traffic infractions to request a continuance, conduct a trial to contest charges rather than appear in court or through a trial by written declaration, and request the court consider their ability to pay fines and fees. (We note that the Judicial Council received a federal grant to partially offset the cost of the ability-to-pay determination component.) To the extent a court offers all of the activities seeking to be tested and a particular individual utilizes all of them, a traffic violation would be adjudicated completely online. However, under the Governor's proposed budget trailer legislation, participating courts would not be required to actually offer more than one of these activities and would be prohibited from requiring defendants to engage in any of the online activities offered.

Under the proposed budget trailer legislation, the pilot courts may authorize court staff to make the ability-to-pay determinations with the consent of the defendant. However, defendants can request judicial review of any decision made by court staff within ten days of the decision. Pilot courts that offer the trials online would still be required to make trials by written declaration available to defendants. However, in either case, the defendant would not be permitted to contest the charges in court if dissatisfied with the decision made in the original trial—a departure from existing law for trials by written declaration. Finally, the Judicial Council is required to report to the Legislature no later than December 31, 2021 on the implementation of the pilot.

LAO Assessment

Proposed Pilot Appears Reasonable Given Potential Benefits. According to the administration, the intent of the pilot is to increase public access to the courts, streamline traffic court procedures, minimize processing times for traffic filings, and more fairly determine the amount of fines and fees owed for traffic infractions. Given these potential benefits, we find that the concept of the administration's proposed pilot merits legislative consideration. We also note that a greater use of the ability-to-pay in determining the amount of criminal fines and fees that individuals owe could increase the likelihood that such fines and fees are actually paid—increasing the total amount of fine and fee revenue available for distribution to state and local governments. Moreover, to the extent that individuals shift to online adjudication instead of appearing in courts, court costs could be reduced to the extent that online adjudication requires less court resources.

Premature to Request Ongoing Resources for a Pilot. The purpose of a pilot program is to test the impact of providing a particular activity on a limited-term basis, in order to identify any implementation challenges and determine whether the activity should be implemented on a larger scale and on an ongoing basis. Accordingly, until the proposed online adjudication pilot is implemented and evaluated, it is premature to provide it ongoing funding as proposed by the Governor.

Extent to Which Activities Will Be Tested Online Remains Uncertain. As discussed above, pilot courts would not be required to test all of the various activities which could be offered online, let alone more than one activity. As a result, it is uncertain whether all of the activities would be tested under the Governor's proposal. In addition, it is uncertain the extent to which certain activities would be tested at more than one court. This can be important because trial courts have different practices, case management systems, and users which can impact the costs and benefits of the activity. For example, a particular activity may benefit certain courts and court users more. To the extent that not all of the activities are tested and only one court tests a certain activity, it will be difficult for the Legislature to determine at the conclusion of the pilot on whether it should be expanded statewide.

No Requirement to Evaluate Pilot. While the Judicial Council would be required to report on the implementation of the online adjudication pilot, it would not be required to conduct an evaluation. Additionally, the proposed budget trailer legislation does not require the Judicial Council to include any specific information in its implementation report, such as how frequently individuals receive adjustments and by what amount or impacts on court resources. The absence of a formal evaluation of the costs, benefits, and effectiveness of the pilot would likely make it difficult for the Legislature to fully assess the pilot after it is completed and determine whether it should be continued and expanded.

LAO Recommendations

Approve Requested Funding, but on Limited-Term Basis. As previously discussed, the Governor's proposal provides the Judicial Council with \$2 million from the General Fund on a one-time basis as well as \$1.4 million annually from the General Fund on an ongoing basis to support seven new positions. We recommend that the Legislature approve the request, but only provide the \$1.4 million on a four-year limited term basis through 2021-22. This would provide sufficient time for the pilot to operate for a meaningful period and allow the state to assess the pilot. It would also ensure sufficient time to collect the necessary information, as individuals making use of online adjudication may take months to pay the amount they owe or to default on what they owe.

Require Each Activity Be Tested at Multiple Courts. To ensure that the Legislature has sufficient data to assess the impact of each activity that is proposed to be available online, we recommend the Legislature modify the proposed budget trailer legislation to require that each activity be tested at a minimum of three courts. This would help ensure that each activity is tested on courts with different processes, systems, and court users—which could impact the costs and benefits of each activity. Additionally, the Legislature could consider requiring all activities be implemented at a minimum of two courts in order to measure the overall impact of all of the activities, which would mean that the entire traffic violation was resolved online. This would help determine whether there are any unexpected implementation challenges as well as the benefit of fully adjudicating traffic infractions online.

Require Judicial Council Submit an Evaluation Report. We recommend the Legislature modify the proposed budget trailer legislation to require the Judicial Council to evaluate the proposed pilot and submit a report to the Legislature by December 31, 2021 on its findings. Specifically, this evaluation should clearly compare and contrast the pilot program with the existing system. This should include an assessment of the costs and benefits of the program to court users by their income levels, as well as each of the individual courts. The evaluation should also include an assessment of how the pilot impacts the total amount of criminal fines and fees assessed, the rate at which individuals complete or stop making payments, and the overall impact on the amount of revenue collected for distribution to state and local governments. Finally, the evaluation report should identify any unexpected obstacles or challenges as well as suggestions for improvement. Our proposed evaluation would allow the Legislature to determine whether to expand the pilot program statewide, as well as whether it should be modified before such an expansion.

COUNTY OFFICE OF EDUCATION OFFSET OF TRIAL COURT GENERAL FUND SUPPORT

LAO Bottom Line. We recommend the Legislature adjust the trial court offset in 2018-19 upward to account for property tax growth in 2017-18. Our preliminary estimates indicate that the upward adjustment is approximately \$6 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 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 2016-17 offset the state's General Fund support of trial courts in 2017-18.

Governor's Proposal

The Governor's budget estimates that the amount of excess property tax revenue available in 2018-19 will not increase over the 2017-18 level of \$48 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. Specifically, we estimate that \$54 million in excess property tax revenues will be available in eight counties in 2017-18. This is \$6 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 2018-19 upward to account for property tax growth in 2017-18. 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 \$6 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.

TRIAL COURT CONSTRUCTION PROJECTS

LAO Bottom Line. The Governor's 2018-19 budget proposes to use lease revenue bonds backed from the General Fund—rather than an existing court construction account—to finance the construction of ten trial court projects that are currently on hold or have been indefinitely delayed due to a lack of revenue in the account. While the Governor's proposal would allow the projects to proceed to construction, it does not address key underlying problems with the state's current trial court construction system—such as a lack of resources to pay existing debt service for court construction projects already completed. As such, we recommend the Legislature consider an alternative approach to trial court construction. Our recommended approach would generally overhaul the existing system by eliminating the state's two construction accounts, shifting responsibility for funding trial construction projects to the General Fund, and increasing legislative oversight of funded projects. This would help ensure that those projects that are legislative priorities and have the greatest needs are funded, rather than being constrained by existing declining revenue sources. To the extent the Legislature would like to maintain the existing court construction system, we recommend modifying the Governor's proposal to address some of the concerns we raised about the proposal.

Background

Trial Court Construction Supported by Two Special Fund Accounts. Chapter 1082 of 2002 (SB 1732, Escutia)—also known as the Trial Court Facilities Act of 2002—shifted ownership and responsibility for maintenance of nearly all trial court facilities from the counties to the state. This legislation also gave the Judicial Council the authority to construct future trial court facilities—including authority to establish priorities to assess proposed projects, select projects to recommend for funding, and select from a range of construction delivery methods. The state has supported trial court construction through the following two accounts:

- State Court Facilities Construction Fund (SCFCF).** Senate Bill 1732 increased certain criminal and civil fines and fees and required that the revenues be deposited in SCFCF to finance trial court construction projects and other facility-related expenses. (SCFCF also receives some miscellaneous revenues.) The legislation directed the Judicial Council to annually recommend trial court projects to be funded from SCFCF. Subsequent statute enacted in 2007 prohibited the Judicial Council from committing to any additional expenditures above the amount appropriated in the *2007-08 Budget Act* to ensure that sufficient funding would be available to finance already approved projects. Additional expenditures would only be permitted if SCFCF received additional funds capable of supporting new expenditures.
- Immediate and Critical Needs Account (ICNA).** Chapter 311 of 2008 (SB 1407, Perata) subsequently increased certain criminal and civil fines and fees for deposit into a new court construction account—ICNA. (ICNA also receives some miscellaneous revenues.) Senate Bill 1407 authorized the use of ICNA to finance up to \$5 billion in trial court construction projects and other facility-related expenses, such as the modification of courthouses. It also gave the Judicial Council the responsibility for selecting the specific courthouses that it determined were of “immediate” or “critical” priority need for replacement, generally due to the structural, safety, or capacity shortcomings of the facilities. However, SB 1407 prohibited the Judicial Council from approving projects that could not be fully financed with the fine and fee revenue deposited into ICNA. In total, the Judicial Council initially approved 41 ICNA projects.

\$1.4 Billion Redirected From Construction Accounts Since 2009-10. As shown in **Figure 10**, a total of nearly \$1.4 billion has been transferred from SCFCF (\$222 million)

and ICNA (\$1.2 billion) to other funds since 2009-10. Of the amount, \$550 million (or 39 percent) was transferred to the General Fund with the remaining \$848 million (or 61 percent) transferred to the TCTF, which supports trial court operations. Currently, a total of \$55.5 million is redirected annually from these accounts to the TCTF. These redirections were generally made during the fiscal downturn and were intended to reduce pressures on the General Fund or to offset reductions made to trial court operations. Additionally, both SCFCF and ICNA loaned a total of \$440 million to the General Fund. Of this amount, only a \$90 million loan from ICNA remains and is currently expected to be repaid in 2021-22.

Decline in Revenue Deposited Into Construction Accounts. In addition to funds being transferred and loaned from SCFCF and ICNA, the amount of revenue deposited into both accounts has declined steadily for roughly the past ten years. As shown in **Figure 11** (see next page), it is currently estimated that SCFCF will receive total revenues of \$78 million in 2018-19—a decline of about \$65 million (or 46 percent) since peak revenues in 2008-09. Similarly, ICNA revenues are projected to be nearly \$195 million in 2018-19—a decline of \$135 million (or 41 percent) since peak revenues in 2010-11.

All Planned SCFCF Projects Completed. At this time, the judicial branch has completed the construction of all of the 14 trial court construction

Figure 10
Transfers From SCFCF and ICNA
(In Millions)

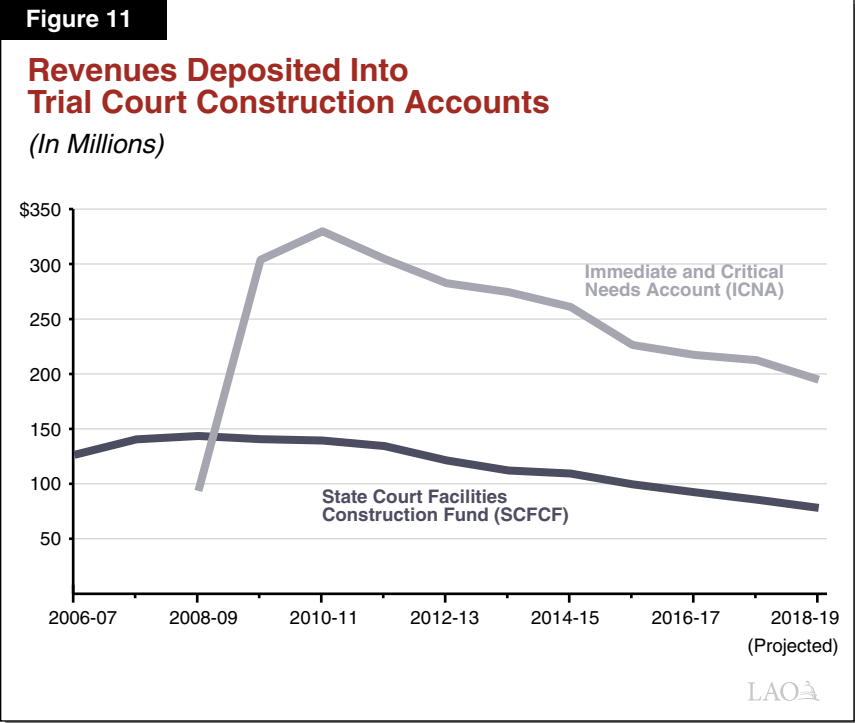
	SCFCF ^a	ICNA ^b	Total
2009-10	\$40.0	—	\$40.0
2010-11	25.0	\$73.4	98.4
2011-12	70.0	453.3	523.3
2012-13	59.5	240.0	299.5
2013-14	5.5	250.0	255.5
2014-15	5.5	10.0	15.5
2015-16	5.5	50.0	55.5
2016-17	5.5	50.0	55.5
2017-18 (estimated)	5.5	50.0	55.5
Totals	\$221.9	\$1,176.7	\$1,398.6

^a All transfers to the Trial Court Trust Fund (TCTF) except \$40 million in 2009-10 which was transferred to the General Fund.
^b All transfers to TCTF except \$310.3 million in 2011-12 and \$200 million in 2013-14 which were transferred to the General Fund.
 SCFCF = State Court Facilities Construction Fund and ICNA = Immediate and Critical Needs Account.

projects financed by SCFCF. **Figure 12** lists the specific SCFCF projects. The last projected to be completed was the Stockton courthouse in the spring of 2017.

Not Enough Funding to Complete All Planned ICNA Projects. At the time of this analysis, only 12 of the planned ICNA-financed projects have been completed. (An alternative financing method was used to construct the Long Beach courthouse—which was not one of the original ICNA selected projects. The service payments for this courthouse are being paid from ICNA and is thus considered the 12th completed ICNA project.) However, as shown in **Figure 13**, the Judicial Council took action in 2012-13 to indefinitely delay 11 projects in response to the significant transfers from ICNA to the General Fund and the TCTF—meaning these were never initiated. In addition, 16 ICNA projects that had been initiated were put on hold in 2016-17 due to the lack of available revenues. The Judicial Council also canceled three ICNA projects.

Not Enough Funds to Support Current Obligations. The continued decline in fine and fee revenues deposited into SCFCF and ICNA, as well as prior-year transfers from the accounts, make it difficult to address existing commitments in both funds (such as debt service for completed courthouses and funding for facility modification projects). For 2017-18, SCFCF is estimated to have about \$146 million in various ongoing funding commitments—significantly higher than the \$86 million in projected revenue. These commitments include: (1) \$57 million in debt service costs for completed projects (which grows to \$82 million in 2018-19 due to the completion of a project), (2) \$40 million for facility modification projects, (3) \$38.3 million to support judicial branch facility-related personnel costs and operating expenses, and (4) \$5.5 million for trial court operations. The fund has supported spending above annual revenue by drawing down the fund balance that accumulated in prior years.



Similarly, for 2017-18, ICNA is estimated to have nearly \$225 million in various ongoing funding commitments, which is higher than the account's projected annual revenue of \$212 million. These commitments include: (1) \$95 million in debt service costs on previously approved projects, (2) \$25 million for facility modification projects, (3) \$50 million for trial

Figure 12
Summary of SCFCF Trial Court Construction Projects

Completed Projects (14 Projects)
Calaveras—San Andreas Courthouse
Contra Costa—Arnason (Pittsburg) Justice Center
Fresno—Sisk Courthouse
Fresno—Juvenile Justice Delinquency Court
Lassen—Susanville Hall of Justice
Madera—New Madera Courthouse
Merced—Merced County Courthouse
Mono—Mammoth Lakes Courthouse
Plumas/Sierra—Plumas/Sierra Regional Courthouse
Riverside—Banning Justice Center
San Benito—Hollister Courthouse
San Bernardino—San Bernardino Justice Center
San Joaquin—New Stockton Courthouse
Tulare—South County (Porterville) Justice Center

SCFCF = State Court Facilities Construction Fund.

court operations to mitigate the impact of prior-year budget reductions, and (4) \$55 million for service payments for the Long Beach courthouse, which grows annually. Like the SCFCF, ICNA has supported spending above annual revenue by drawing down the fund balance that accumulated in prior years. Absent any changes in future expenditures, both SCFCF and ICNA are currently projected to become insolvent in the next few years.

Governor's Proposal

The Governor's 2018-19 budget proposes a new fund source to support trial court construction projects.

Specifically, the administration proposes to use lease revenue bonds backed from the General Fund—rather than ICNA—to finance the construction of ten trial court projects totaling about \$1.3 billion by 2019-20. These ten projects were originally planned to have been funded from ICNA—nine were placed on hold and one was indefinitely delayed (but received one-time resources for pre-construction activities) due to the decline in ICNA revenues. As shown in **Figure 14** (see next page), the budget proposes selling \$343 million in lease-revenue bonds to finance the construction of five projects in 2018-19 and another \$972 million to finance the construction of another five projects in 2019-20. The annual debt service on these bonds is

Figure 13

Summary of ICNA Trial Court Construction Projects

Completed Projects (12 Projects)

- Alameda—New East County (Dublin) Courthouse
- Butte—North Butte County (Chico) Courthouse
- Los Angeles—Deukmejian (Long Beach) Courthouse^a
- Kings—New Hanford Courthouse
- Merced—Los Banos Courthouse
- San Diego—New San Diego Courthouse
- San Joaquin—Juvenile Justice Center Renovation
- Santa Clara—Family Justice Center
- Solano—Old Solano County Courthouse Renovation
- Sutter—New Yuba City Courthouse
- Tehama—New Red Bluff Courthouse
- Yolo—New Woodland Courthouse

Projects Canceled (3 Projects)

- Los Angeles—Lancaster Courthouse^c
- Alpine—Markleeville Courthouse
- Sierra—Downieville Courthouse

Projects On Hold (16 Projects)

- El Dorado—New Placerville Courthouse
- Glenn—Renovation and Addition to Willows Courthouse
- Imperial—New El Centro Courthouse
- Inyo—New Bishop Courthouse
- Lake—New Lakeport Courthouse
- Los Angeles—New Eastlake Courthouse
- Los Angeles—New Mental Health Courthouse (Hollywood Courthouse)^b
- Mendocino—New Ukiah Courthouse
- Riverside—New Indio Juvenile and Family Courthouse
- Riverside—New Mid-County Civil Courthouse
- Santa Barbara—New Santa Barbara Courthouse
- Shasta—New Redding Courthouse
- Siskiyou—New Yreka Courthouse
- Sonoma—New Santa Rosa Criminal Courthouse
- Stanislaus—New Modesto Courthouse
- Tuolumne—New Sonora Courthouse

Projects Indefinitely Delayed (11 Projects)

- Fresno—County Courthouse
- Kern—Delano Courthouse
- Kern—Mojave Courthouse
- Los Angeles—Glendale Courthouse
- Los Angeles—Santa Clarita Courthouse
- Los Angeles—Southeast Los Angeles Courthouse
- Monterey—South Monterey County Courthouse
- Nevada—Nevada City Courthouse
- Placer—Tahoe Area Courthouse
- Plumas—Quincy Courthouse
- Sacramento—New Sacramento County Courthouse^d

^a Project was financed as a public-private partnership. However, ICNA is now paying the financing payments related to this project.

^b Original construction project was canceled, but was replaced with a renovation of an existing courthouse to house this facility.

^c Original construction project was canceled, but was included as a facility modification project in 2016-17.

^d One-time funding was provided to complete pre-construction activities only.

ICNA = Immediate and Critical Needs Account.

estimated to total about \$102 million annually for nearly 25 years. Additionally, the Governor’s budget proposes \$32.2 million from ICNA for three projects to complete pre-construction design activities so that they can move into construction in 2019-20. According to the administration, the proposal (1) recognizes that revenue deposits into SCFCF and ICNA are lower than originally expected and are insufficient to support further projects in the near future and (2) seeks to fund those projects that are closest to construction.

LAO Assessment

Administration’s Proposal Effectively Backfills Transfers From Construction Accounts. As discussed previously, \$1.4 billion has been transferred from the two construction accounts to support the General Fund and trial court operations since 2009-10. The Governor’s proposal to finance about \$1.3 billion in lease-revenue bonds—to be repaid from the General Fund—effectively backfills the \$1.4 billion that was previously transferred from the construction accounts and could have financed additional trial court projects. Because these transferred funds were originally intended for facility-related purposes, the Governor’s proposal is reasonable.

Unclear Whether Proposed Projects Are of Highest Priority. While the ten projects that the Governor proposes to fund represent those projects closest to construction, it is unclear whether they are the highest priority for funding at this time, for several

reasons. First, as discussed previously, SB 1732 and SB 1407 delegated significant authority to the Judicial Council to determine the priorities for court construction and select specific projects based on its priorities. It is unclear whether the same projects would have been selected for funding had the Legislature been involved in the assessment and selection of projects, particularly given the limited resources available in ICNA. Second, these ten proposed projects were first assessed and selected by the Judicial Council nearly a decade ago. Accordingly, it is unclear whether other trial court projects currently on hold—such as the Los Angeles mental health courthouse—or projects that were not previously selected would be a greater priority if a reassessment were done. For example, other facilities may have deteriorated at a faster rate than those currently proposed for funding. Finally, the Judicial Council reports about \$1.6 billion in deferred maintenance needs at trial court facilities. Providing some funding for this purpose could potentially be a higher priority if it extends the length of time that existing court facilities could continue to be used.

Does Not Provide Long-Term Solution for Trial Court Construction. The administration’s proposal does not provide a long-term solution for the trial court construction program. This is because the proposal does not address three key problems that exist with the current approach to trial court construction:

- **Continued Decline in Fine and Fee Revenue Deposited Into ICNA and SCFCF.** The major

Figure 14

Trial Court Construction Projects Funded by Administration’s Proposal

(In Millions)

Courthouse Project	Construction		Estimated Debt Service	
	2018-19	2019-20	Annual	Total
Glenn—Renovation and Addition to Willows Courthouse		\$38.3	\$3.2	\$75.9
Imperial—New El Centro Courthouse	\$41.9		3.4	80.9
Riverside—New Indio Juvenile and Family Courthouse	45.3		3.5	83.7
Riverside—New Mid-County Civil Courthouse		75.8	6.1	146.2
Sacramento—New Sacramento County Courthouse		459.8	32.5	780.7
Shasta—New Redding Courthouse	138.8		11.2	267.7
Siskiyou—New Yreka Courthouse	59.2		4.6	109.3
Sonoma—New Santa Rosa Criminal Courthouse		160.7	12.9	310.1
Stanislaus—New Modesto Courthouse		237.2	20.0	479.5
Tuolumne—New Sonora Courthouse	57.7		4.6	111.4
Totals	\$343.0	\$971.9	\$101.9	\$2,445.4

sources of revenue to ICNA and SCFCF—civil and criminal fines and fees—is problematic. This is because, on net, this type of revenue has steadily declined over the past ten years and may continue to decline due to factors outside of the Legislature’s control (such as the number of tickets written or the number of civil cases filed). Thus, it will likely be difficult for these accounts to fully meet existing expenditure obligations or to finance any additional projects in the near future.

- ***Insufficient Revenue to Pay Existing Debt Service for Completed Projects.*** As discussed above, absent any changes in revenues or existing ongoing expenditures, both funds are projected in the near future to lack sufficient revenue to pay existing debt service for the completed projects. This means that additional General Fund resources—potentially ranging from about \$90 million to \$140 million annually for about 15 years—will likely be required to pay for this debt service. Such a General Fund obligation was not anticipated by the Legislature when it established SCFCF and ICNA to fully pay for the approved construction projects, as well as approved budget requests for these projects. The Governor’s proposal not only does not address this problem, but it also increases the potential burden on the General Fund by proposing to fund ten additional projects.
- ***No Long-Term Plan for Funding Future Construction Projects, Including Those on Hold.*** At this time, the administration has not provided a long-term plan for funding future construction projects, including those ICNA projects currently on hold or indefinitely delayed. For example, the administration has not specified whether it also intends to fund the other seven ICNA projects currently on hold—with an estimated annual debt service of \$38 million for nearly 25 years—from the General Fund in the future, or if the projects will continue to be on hold until sufficient revenues become available in ICNA.

LAO Recommendations

Recommend Alternative System for Court

Construction. While the Governor’s proposal would allow ten specific projects to proceed to construction

by effectively backfilling the transfers from SCFCF and ICNA, it does not address key underlying problems with the state’s current trial court construction system as discussed above. In order to effectively address these issues we recommend that the Legislature consider an alternative approach to trial court construction. Our recommended approach would generally overhaul the existing system by eliminating the two construction accounts, shifting full responsibility for funding trial construction projects to the General Fund, and increasing legislative input on funded projects.

The key features of our proposed approach include:

- ***Shift Funding Responsibility for Trial Court Construction to the General Fund.*** Given the instability of the civil and criminal fine and fee revenue deposited into SCFCF and ICNA, we recommend that all current and any future trial court construction projects be funded from the General Fund. This would help ensure that the number of projects approved and completed is determined by the Legislature rather than the amount of revenue available in SCFCF and ICNA. It also would help ensure that the Legislature is fully informed of the potential impact on the General Fund before approving any projects. Additionally, this shift would help ensure that existing debt obligations are addressed. However, this would now require trial court projects to compete with other General Fund priorities—which could mean that no projects move forward in certain years.
- ***Shift SCFCF and ICNA Revenues to General Fund.*** To partially offset the costs of the debt service shifted to the General Fund, we recommend the Legislature change state law to deposit criminal and civil fines and fees, as well as any other revenue, that would otherwise have been deposited into the SCFCF and ICNA, into the General Fund. We note that, due to legal limitations on the way the revenues can be used, the civil fee revenue may need to be deposited into the TCTF for the support of trial court operations with a corresponding reduction in the total amount of General Fund support transferred to the TCTF.
- ***Shift Nonconstruction Related ICNA and SCFCF Expenditures to General Fund.*** In

view of our recommendation to shift all SCFCF and ICNA revenues into the General Fund, we also recommend the Legislature appropriate \$159 million annually from the General Fund to maintain funding levels for the nonconstruction related purposes which currently receive support from SCFCF and/or ICNA. Specifically, we recommend appropriating: (1) \$65 million for facility modification projects, (2) \$55.5 million for the support of trial court operations, and (3) \$38.6 million to support judicial branch facility-related personnel costs and operating expenses. (We note that the amount appropriated for facility modification projects would decrease to \$50 million beginning in 2024-25 due to the expiration of an SCFCF budget augmentation request that was approved as part of the 2014-15 budget.)

- **Appropriate Funding for Construction Projects Based on Legislative Priorities.** Under our alternative approach, the Legislature would determine which specific projects to fund based on its priorities, which may or may not include any of the projects proposed by the Governor. To help the Legislature in its deliberations, we recommend that the Judicial Council be required to reassess trial court facility needs, as project needs may have changed since its last assessment more than a decade ago. This could potentially result in a different list of projects than currently proposed by the judicial branch. The Legislature could also direct the judicial branch to include certain factors it believes should be considered, such as how much longer the building could potentially last without violating health standards.

Overall, our recommended approach to court construction would provide a long-term solution to the problems facing the current system. Specifically, the number of trial court construction projects would no longer be constrained by the construction accounts' unstable funding sources and would be based on legislative priorities. Additionally, the Legislature would be fully aware of the total amount of General Fund needed before approving a project—rather than being unexpectedly required to provide General Fund backfills due to declines in fine and fee revenue.

Modify Governor's Proposal to Address Some Key Issues if Existing System Is Maintained. To the extent the Legislature would like to maintain the existing court construction system, we recommend modifying the Governor's proposal to address some of the concerns we raised about the proposal. While these proposed modifications would not provide a long-term solution for all of the issues facing the construction program, they would provide some ongoing improvements. Specifically, we would recommend the Legislature:

- **Consolidate SCFCF and ICNA.** We find that there is no rationale for needing to maintain two separate trial court construction accounts. With both accounts currently projected to become insolvent in the next few years, monitoring a single account makes it easier to track how much total revenue is available to meet existing obligations and how much General Fund would likely be needed to backfill the decline in revenue. Consolidating the two accounts also would ensure that no new projects move forward unless there is sufficient overall revenue to support them—potentially reducing any General Fund backfill needed in the future. However, this action would not address the overall instability of the fine and fee revenue source.
- **Appropriate Funding for Trial Court Operations From General Fund Rather Than Construction Accounts.** We recommend the Legislature terminate the current court construction transfers to support trial court operations—\$5.5 million from SCFCF and \$50 million from ICNA—and instead appropriate \$55.5 million from the General Fund for trial court operations. Revenues deposited into the construction accounts were originally intended for facility-related purposes and were then diverted away due to the recession. Given that the recession is over, it makes sense that construction revenues are no longer used for non-facility related purposes. This action would increase the amount of revenue available for existing facility-related expenditures and would likely delay when General Fund resources are necessary to cover these funds' existing obligations. While this action would maintain trial court operation funding levels, it would increase the overall amount of General Fund support to trial courts.

- **Provide New Construction Account With \$102 Million General Fund Annually for 25 Years.** As noted above, the Governor's proposal effectively backfills funds that were transferred from the construction accounts that could have been used to construct new projects. As such, we recommend transferring from the General Fund to a consolidated construction account an amount equal to the amount included in the Governor's proposal—\$102 million annually for 25 years—but require the Judicial Council to ensure that all existing debt service obligations (and other nonconstruction facility-related obligations) are addressed before using the revenue to finance any new projects. At minimum, this action—combined with the other recommendations—would likely ensure that the construction account remains solvent to the extent that fine and fee revenue does not continue to decline significantly. However, while existing debt obligations would be met, it is unclear on the extent to which new trial court projects (such as those proposed by the Governor) would be able to be financed in the near future.
- **Direct Judicial Branch to Submit Long-Term Fund Condition Statement With Each Construction Funding Request.** In order to ensure that the Legislature has sufficient information to determine whether a proposed project should begin or continue to move forward, we recommend the Legislature direct the judicial branch to submit a long-term fund condition statement for the construction account with each construction funding request. This action would require the judicial branch to demonstrate that the fund has sufficient revenues to meet all existing obligations in addition to the new requested project.
- **Direct Judicial Council to Reassess Trial Court Facility Needs.** A reassessment of trial court facility needs would help the Judicial Council determine whether the proposed projects have the greatest needs under the judicial branch's existing system for assessing needs. This updated assessment could also be considered by the Legislature when determining whether to approve subsequent construction budget requests.

CALIFORNIA 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 employment, 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. The Governor's 2018-19 budget proposes a total of \$926 million to support DOJ—roughly the same amount as the revised 2017-18 spending level. Of the total amount proposed, \$245 million is from the General Fund.

ANTITRUST WORKLOAD

LAO Bottom Line. We recommend that the Legislature not approve the Governor's multiyear plan to expand DOJ's Antitrust Law Section by 23 positions over the next several years. Rather, we recommend the Legislature only approve the nine additional positions and \$1.8 million proposed for 2018-19, given the uncertainty about (1) whether there is sufficient workload to justify the remaining 14 positions and (2) the ability of these positions to generate sufficient revenue to support themselves. We also recommend the Legislature direct DOJ to submit a report by December 1, 2020 on certain fiscal and performance measures (such as number of cases pursued and litigated as well as the amount of monetary recoveries generated) to monitor the impact of these provided positions.

Background

DOJ's Antitrust Law Section is responsible for maintaining a competitive business environment in California by ensuring businesses comply with federal and state antitrust laws. The section's major activities include investigations and litigation around business mergers and acquisitions as well as anticompetitive behavior (such as price-fixing). Cases that are litigated can result in injunctive relief (where a party is directed to act or not act in particular manner), monetary awards, or monetary settlements. In 2017-18, the section received \$8.4 million in funding—\$4.7 million (56 percent) from the General Fund, \$2.6 million (31 percent) from the Attorney General Antitrust Account, and \$1.1 million (13 percent) from the Unfair Competition Law Fund. (The latter two special funds generally receive revenues from litigation settlements or awards.) This funding currently supports approximately 25 positions in San Francisco and Los Angeles.

Governor's Proposal

The Governor's budget for 2018-19 proposes a three-year plan for providing an additional 23 positions and \$4.5 million on an ongoing basis to the Antitrust Law Section by 2020-21. Specifically, the plan proposes nine positions and \$1.8 million (Attorney General Antitrust Account) in 2018-19 to expand the section's capacity to pursue cases. Under the Governor's proposal, this increases by an additional nine positions and \$1.7 million in 2019-20 and by an additional five positions and \$1 million in 2020-21. Upon full implementation, the plan would double the staffing of the Antitrust Law Section. The administration and the department indicate that these resources are needed to reduce the workload of its existing attorneys to more manageable levels as well as expand the section's capacity to take on more cases.

LAO Assessment

Additional Resources Needed to Address Increased Workload. The Antitrust Law Section's staffing levels have remained constant since 2013-14. However, the section reports that workload has increased to the point that its deputy attorney generals are each working, on average, approximately 20 percent more hours than normal. It has also resulted in DOJ not taking cases that the section believes

should have been pursued as well as backlogging some cases. However, the exact number of cases that the section would have otherwise pursued is unknown. Finally, DOJ anticipates that various factors, such as vacancies at the federal antitrust agencies and a reported increase in merger activity, could result in more cases for the state to pursue. As such, an increase in resources for the section could allow the state to better address anticompetitive business behavior and/or obtain additional monetary awards or settlements.

Total Level of Additional Workload Unclear.

While some additional resources appear reasonable, the total level of additional workload facing the section is unclear. For example, it is unclear how many new cases—beyond those which the section currently lacks resources to take—should be pursued. It is also unclear how many additional cases will actually be pursued due to factors such as the inaction by the federal antitrust agencies or an increase in merger activity. In addition, the total number positions needed to process the workload is unclear as the type and complexity of the cases DOJ would pursue is not known.

Unclear Whether Sufficient Resources Will Be Available to Support Requested Positions.

It is also unclear whether all of the requested positions will generate enough revenue for the Attorney General Antitrust Account to support themselves. According to DOJ, only 20 percent to 25 percent of investigated cases currently turn into litigation with the potential to generate revenue for the Attorney General Antitrust Account. First, it is unclear how this percentage could change with the requested resources. This percentage could either decrease or increase depending on the specific cases DOJ chooses to pursue. For example, this percentage could go down if DOJ decides to pursue cases it would otherwise have decided not to pursue based on its estimates of potential success. On the other hand, this percentage could go up to the extent DOJ pursues cases that it believes has merit, but are not pursued currently only due to a lack of resources. Second, other factors—such as the types of cases pursued and the remedies sought in such actions—can also impact the amount of revenue generated. For example, cases that seek injunctive relief can benefit California consumers and businesses but may not generate monetary recoveries that can support the section's positions. Additionally, the impacts of the additional positions may not be quickly realized. This is

because some of the section's cases can take years to resolve, which could delay the receipt of any monetary awards or settlements. To the extent the positions cannot support themselves, the state may either need to identify alternative sources of funding (such as the General Fund) or eliminate the positions in the future.

LAO Recommendation

Provide Funding for Only Nine Positions. We recommend the Legislature only provide DOJ with the first year of resources requested by the Governor's budget—specifically the nine positions and \$1.8 million to support increased Antitrust Law Section activities in 2018-19. These additional resources could generate state benefit, particularly since the section is currently not pursuing some cases which it believes have merit. Additionally, to ensure that sufficient resources are available on an ongoing basis to support these positions, we recommend the Legislature direct DOJ to submit a report by December 1, 2020 on certain fiscal and performance measures (such as number of cases pursued and litigated as well as the amount of monetary recoveries generated) to monitor the impact of these provided positions.

However, the uncertainty in the total level of additional workload and whether the requested positions will be able to support themselves makes it difficult to justify the remaining positions proposed by the Governor. To the extent that DOJ is able to (1) demonstrate the impact of the nine additional positions requested for 2018-19 and (2) provide more definitive estimates of additional workload, the Legislature could consider a request for additional positions and funding in the future.

CARDROOM-RELATED LICENSING

LAO Bottom Line. We recommend that the Legislature provide \$1.6 million from the Gambling Control Fund on a one-time basis in 2018-19 to support 12 positions previously provided for cardroom-related licensing investigations for one additional year, rather than on an ongoing basis as proposed by the Governor. This would allow DOJ to continue to reduce the backlog of cardroom-related license investigations and collect additional workload data. The additional workload data would allow the

Legislature to determine the appropriate level of ongoing resources needed in 2019-20.

Background

Bureau of Gambling Control. The Bureau of Gambling Control within DOJ and the California Gambling Control Commission jointly regulate the state's gambling industry—which currently includes 88 cardrooms and 62 tribal casinos. The bureau has investigation, compliance, and enforcement responsibilities, while the commission has policymaking, licensing, and adjudication responsibilities. In 2017-18, the bureau received \$32 million to support its workload. Of the total, 43 percent comes from the Gambling Control Fund—which receives revenue from the cardroom industry—and the remainder from tribal gaming revenues.

Cardroom-Related Licensing Responsibilities. State law generally requires businesses, business owners, and employees who operate, work, or benefit from gaming activities to be licensed. Businesses or individuals submit applications to either obtain a license or renew a license, along with a processing fee, to the bureau. The bureau is then responsible for conducting background investigations and making recommendations to the commission on whether licenses should be approved, renewed, or denied. The length of time it takes to conduct such investigations depends on the type of license. For example, the investigations related to business owner license applications can be significantly more extensive than for a regular cardroom employee. These investigations include various inquiries, such as a criminal background check and a review of financial statements. The Cardroom Gaming Unit within the bureau is responsible for the bureau's cardroom-related licensing responsibilities.

Limited-Term Resources Provided in Recent Years. When the bureau was first created in 1998, the Cardroom Gaming Unit was provided with 20 permanent analytical positions. Over time, a backlog of background investigation cases developed and steadily increased. As shown in **Figure 15** (see next page), the unit was provided additional positions and funding on a limited-term basis in both 2015-16 and 2016-17 to help reduce the backlog—specifically, 12 analytical positions in 2015-16 for three years and 20 additional analytical positions in 2016-17 for three

Figure 15

Summary of Existing Analytical Positions for Cardroom-Related Workload

	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Permanent positions	20	20	20	20	20	20
2015-16 limited term positions	—	12	12	12	—	—
2016-17 limited term positions	—	—	20	20	20	—
Totals	20	32	52	52	40	20

years from the Gambling Control Fund. As the figure shows, the limited-term positions will begin to expire in the budget year.

Governor’s Proposal

The Governor’s budget for 2018-19 proposes \$1.6 million from the Gambling Control Fund to continue on an ongoing basis the 12 limited-term positions that are set to expire at the end of the current year. The administration and department indicate that resources are needed on an ongoing basis to continue reducing the backlog and prevent it from growing.

LAO Assessment

Backlog Is Declining, but Still Remains. The additional resources provided by the Legislature in recent years has helped reduce the backlog from 2,696 cases at the beginning of 2015-16 to 1,991 cases through the end of 2016-17. However, given current workload estimates, a backlog is likely to continue through 2018-19 because it is unlikely that the unit will be able to close all incoming cases as well as address the backlog in 2017-18.

Full Impact of Limited-Term Resources Unclear. The full impact of all of the limited-term resources provided by the Legislature is currently unclear. As shown in **Figure 16**, this is because 2017-18 is the first year in which nearly all 32 analytical positions provided on a limited-term basis were filled. Moreover, given the complexity of some of the background investigations,

it generally takes analysts months before they become fully proficient at processing background investigations. As such, workload metrics collected at the end of 2017-18 will be a much more accurate representation of the full impact of all of the limited-term positions.

Difficult to Determine Appropriate Level of Ongoing Resources. Given the uncertainty of the full-impact of the recently-provided limited-term positions, it is difficult to determine the appropriate level of ongoing resources needed to (1) eliminate the backlog and (2) prevent the creation of an extensive backlog. DOJ projects that approximately 50 analysts will close 5,561 cases in 2017-18, which means each analyst closes an average of 111 cases. However, analysts historically have closed a much larger number of cases on average annually. This suggests that the total number of cases closed in 2017-18 should be higher—potentially by several hundred. To the extent this occurs, DOJ would clear the backlog more quickly than it currently projects. It is unclear why DOJ projects that, on average, its analysts will close fewer cases. Additionally, workload data collected in 2017-18 (particularly the actual number of total cases closed) will be helpful to determine how many of the total additional limited-term analysts are needed to process ongoing workload and avoid a backlog. If analysts close cases in 2017-18 at a rate similar to their historic ones, it is possible that not all of the 12 requested positions will be needed on an ongoing basis.

LAO Recommendation

Provide One-Year Limited-Term Funding. We recommend that the Legislature provide \$1.6 million from the Gambling Control Fund to support the 12 positions provided in 2015-16 for one additional year, rather than on an ongoing basis as proposed by the Governor. This would allow DOJ to

Figure 16

Number of Filled Limited-Term Positions by Fiscal Year

	2015-16	2016-17	2017-18
Approved positions	12	32	32
Filled positions	8	15	30
Percent of positions filled	67%	47%	94%

continue to reduce the backlog and collect additional workload data. Under our recommendation, all of the Cardroom Gaming Unit’s limited-term positions will expire at the end of 2018-19. During budget deliberations for the 2019-20 budget, the additional workload data will allow the Legislature to determine the appropriate level of ongoing resources needed.

PROPOSITION 63 IMPLEMENTATION

LAO Bottom Line. We recommend that the Legislature adopt budget trailer legislation requiring DOJ to report annually by January 1 on its Proposition 63 workload from the prior-fiscal year. Such information would help the Legislature conduct oversight to ensure that Proposition 63 fee revenues are used appropriately and that the fee levels are sufficient.

Overview of Proposition 63

Proposition 63, which was approved by voters in November 2016 and amended by Chapter 55 of 2016 (SB 1235, de León), made various changes to state firearm and ammunition laws, including changing how the state regulates the sale of ammunition. Specifically, beginning July 1, 2019, Proposition 63—as amended by Chapter 55—requires licensed ammunition dealers to check with DOJ at the time of purchase that individuals seeking to purchase ammunition are not prohibited from purchasing it. DOJ is authorized to charge such individuals up to \$1 per transaction. These transaction fees are then required to be deposited into the newly created Ammunition Safety and Enforcement Special Fund. The measure then authorizes that such fee revenue be continuously appropriated for the implementation, operation, and enforcement of the ammunition sales regulations. Finally, Proposition 63

authorized a \$25 million General Fund loan for start-up costs.

DOJ Implementation of Proposition 63

In April 2017, an Executive Order authorized the \$25 million General Fund loan to the Ammunition Safety and Enforcement Special Fund. Because this fund is continuously appropriated, DOJ did not need to seek legislative approval to increase its position or budgetary authority to begin using the funds. DOJ used these resources to hire staff, engage consultants, and purchase necessary equipment and supplies (such as hardware and software to support the ammunition transactions). As shown in **Figure 17**, DOJ estimates that the \$25 million will be exhausted by the end of 2018-19. In total, DOJ estimates that 55 positions will have been established to address the ammunition sale-related workload. These resources will be allocated to its Division of Law Enforcement, which is predominantly responsible for processing requests as well as its California Justice Information Services Division, which is predominantly responsible for updating and maintaining DOJ databases.

LAO Assessment

Continuous Appropriation Could Make Oversight Difficult. Given the continuous appropriation of the Ammunition Safety and Enforcement Special Fund, DOJ is not required to submit requests through the state’s normal budget process for changes in position or budget authority. Such requests typically provide the Legislature with information on how effectively the program operates and why additional resources are necessary. Accordingly, this lack of information regarding DOJ’s Proposition 63 workload could make it difficult for the Legislature to ensure that (1) the

Figure 17

Ammunition-Sale Related Expenditures and Positions

(Dollars in Thousands)

	2016-17	2017-18 (Estimated)	2018-19 (Estimated)	Three-Year Total
Division of Law Enforcement	\$30	\$1,523	\$4,398	\$5,951
California Justice Information Services Division	1,189	11,164	6,697	19,049
Total Expenditures	\$1,219	\$12,686	\$11,095	\$25,000
Positions	6	29	55	

proposition is being implemented as intended by the voters, (2) resources are being used cost-effectively, and (3) sufficient resources are available to meet legislatively desired service levels.

Beginning in 2019-20, such oversight will be particularly important as (1) the General Fund loan will likely be exhausted and (2) DOJ will now be charging ammunition purchasers the authorized transaction fee. Such fees will need to generate sufficient revenue to fully support DOJ activities and begin to repay the \$25 million General Fund loan. However, it is currently uncertain how much revenue will be generated and whether DOJ costs will exceed collected revenues.

LAO Recommendation

Require Annual Reporting on Proposition 63 Workload. We recommend that the Legislature adopt budget trailer legislation requiring DOJ to report annually by January 1 on its Proposition 63 workload from the prior-fiscal year. Such information should include both fiscal and outcome measures. For example, we suggest the Legislature direct DOJ report on the number of

positions used to support Proposition 63 workload, ongoing versus one-time expenditures, the number of ammunition transactions that occur on a quarterly or monthly basis, the number of customer service related inquiries received, and the number of transactions that are approved or rejected. Enacting such requirements in 2018-19 would provide DOJ with sufficient time to ensure that its systems are capable of collecting such information by July 1, 2019. This information would help the Legislature conduct oversight to ensure that collected fee revenues are used appropriately and that the fee levels are set to meet legislatively desired service levels. For example, the Legislature could determine that it may need to authorize a higher fee to cover DOJ administrative and enforcement costs. Additionally, we recommend that the Legislature direct DOJ to report on any unexpected obstacles or challenges that emerge as it implements these ammunition sale requirements as well as recommendations to address them. Such information could help the Legislature decide whether legislative action—such as clarifying statute—is needed.

SUMMARY OF RECOMMENDATIONS

Issue	Governor's Proposal	LAO Recommendation
Cross Cutting Issue		
State Penalty Fund	\$79.5 million from the State Penalty Fund (SPF) to support eight different programs. Shift support for the Bus Driver Training Program from the SPF to the Motor Vehicle Account.	Review proposed SPF expenditure plan to ensure it reflects legislative priorities and modify as necessary. Consider long-term solutions to address structural problems with state's current criminal fine and fee system.
California Department of Corrections and Rehabilitation (CDCR)		
Adult prison and parole population	\$38.3 million (primarily General Fund) for various adjustments associated with prison and parole caseload changes.	Withhold recommendation until May Revision.
Accommodating inmate population reductions resulting from Proposition 57	\$68 million (General Fund) reduction from removing inmates from the two out-of-state prison facilities by fall 2019.	Consider directing CDCR to close the California Rehabilitation Center (CRC) in Norco and one out-of-state contract facility to achieve an estimated additional \$100 million in savings relative to the Governor's proposal. Otherwise, direct CDCR to provide plan for making necessary infrastructure improvements at CRC.
Parole staffing proposals	\$23 million (General Fund) for direct-supervision positions due to the projected increase in the parolee population, and \$2.3 million (General Fund) for support positions that are necessary to account for increases in the number of direct-supervision parole staff.	Direct CDCR to utilize a budgeting methodology that is based on specific staffing ratios, and takes into account the size and composition of the parolee population, to annually adjust the total number and type of positions needed—not just for direct-supervision positions. Require CDCR to provide an implementation timeline at budget hearings. Withhold recommendation on proposed staffing increases until May Revision pending receipt of report and updated parolee population projections.
Wage increases for inmate workers assigned to facility maintenance	\$1.8 million (General Fund) to increase wages for facility maintenance inmate workers to allow CDCR to hire sufficient inmate workers to reduce its facility maintenance backlog.	Withhold action and direct the administration to report in budget hearings on specified information that is needed to assess the potential effectiveness of the proposal and whether other actions are needed to fully address the maintenance backlog.
Video surveillance at California State Prison, Sacramento (SAC)	\$1.5 million in 2018-19 (\$177,000 ongoing) from the General Fund to install an audio/video surveillance system in certain housing units at SAC to address concerns about staff misconduct.	Withhold action until the evaluation of the video surveillance system at High Desert State Prison is completed this spring. Direct CDCR to report at budget hearings on other strategies it is developing to address concerns at SAC.
Ventura Training Center	\$8.8 million in 2018-19 (\$6.3 million ongoing) for three departments—and capital outlay out-year costs of \$18 million—from the General Fund to convert the existing Ventura conservation camp for inmates to a new firefighter training center for parolees.	Reject proposal because program is unlikely to be the most cost-effective approach to reduce recidivism or increase parolee employment, requested resources have not been fully justified, and other options exist for California Conservation Corps training.

(Continued)

Issue	Governor’s Proposal	LAO Recommendation
Innovative programming grants	\$4 million (Inmate Welfare Fund) ongoing for the Innovative Programming Grant program. Of this amount, 65 percent would be targeted at recidivism reduction.	Allocate all proposed funds towards recidivism reduction and direct department to focus scoring methodology for awarding funds on recidivism reduction.
Inmate mental health programs	\$27.1 million in 2018-19 (\$18.8 million ongoing) from the General Fund to (1) activate mental health flex beds, (2) fund working drawings for Mental Health Crisis Bed (MHCB) construction projects, (3) allow CDCR to take over projections of the mental health population, and (4) increase staffing to help CDCR transfer patients to mental health beds consistent with court-approved guidelines.	Provide limited-term funding instead of ongoing funding for proposed flex beds, as the need for such beds appears temporary. Reject working drawings funding as projects would not be needed in the future. Reject proposed resources for CDCR to take over mental health projections. Approve proposal to help department meet court-approved guidelines.
Dental equipment replacement and repair	\$3.5 million in 2018-19 (\$2.5 million ongoing) from the General Fund to replace dental equipment in immediate need of replacement, as well as about 140 additional pieces of dental equipment annually.	Reduce requested amount by \$150,000 annually to account for anticipated dental equipment repair savings.
Health care vehicles	\$17.5 million (General Fund) on a one-time basis to purchase 338 vehicles that are used for transporting inmates to health care and other appointments.	Approve vehicle purchases and direct CDCR to report at budget hearings on whether it could repurpose some of the vehicles proposed for replacement rather than dispose of or auction them.
Electronic Health Record System (EHRS)	\$8.3 million in 2018-19 (\$7.1 million ongoing) from the General Fund to make various changes to the EHRS including the purchase of additional user licenses.	Approve Governor’s proposal, but adopt budget bill language requiring CDCR to use funding to purchase additional user licenses for only this purpose.
Medication room projects	\$3.3 million (General Fund) for preliminary plans to add or modify medication rooms at 14 prisons.	Require CDCR to report at budget hearings on its medication room needs. Direct CDCR to submit a separate proposal for medication rooms proposed for general population units that were previously security housing units, as these particular medication rooms appear necessary.
Governor’s juvenile justice reform proposal	\$3.8 million from the General Fund and statutory changes to increase the Division of Juvenile Justice (DJJ) age of jurisdiction, allow more adult court youths to be placed in DJJ facilities, and start a young adult offender pilot program for certain adult court youths.	Approve statutory changes on a limited-term basis and require DJJ to conduct specified evaluations. Modify proposed change to DJJ age of jurisdiction to avoid an unintended consequence of having some youths spending up to two years longer in DJJ.
Judicial Branch		
Augmentations to general purpose funding for trial court operations	\$123 million (General Fund) for trial court operations—\$75 million allocated based on the Judicial Council’s priorities and \$47.8 million for certain trial courts that are comparatively less well-funded than other courts.	Consider the appropriate level of funding to provide to trial courts relative to other General Fund priorities. Allocate any additional funds provided based on legislative priorities—rather than allowing the Judicial Council to do so. Convene a working group to evaluate the Judicial Council’s current workload-based funding methodology.

(Continued)

Issue	Governor's Proposal	LAO Recommendation
Augmentation for self-help centers	Increase of \$19.1 million (General Fund) to expand services at self-help centers. Budget bill language specifying that a total of \$30.3 million is dedicated for self-help services and requiring the reversion of unexpended funds to the General Fund.	Direct the Judicial Council to conduct an independent comprehensive cost-benefit analysis of self-help services by November 2020. Provide limited-term funding through 2020-21 based on legislative priorities for overall General Fund spending, self-help services, and other court programs. Approve proposed budget bill language.
Online traffic adjudication pilot	\$3.4 million (\$1.4 million ongoing) from the General Fund for the Judicial Council to administer a pilot program to develop and test different activities related to the online adjudication of certain traffic infractions. Budget trailer legislation specifying implementation requirements and authorizing certain actions.	Approve proposed funding, but provide the requested \$1.4 million on a four-year limited term basis. Modify the proposed budget trailer legislation to require that each of the proposed online activities be offered at multiple courts and to require the Judicial Council submit an evaluation report at the end of the pilot.
County Office of Education offset of trial court General Fund support	Estimates that the amount of excess property tax revenue available to offset General Fund support for trial courts will not increase above the 2017-18 level of \$48 million.	Adjust trial court offset in 2018-19 upward to account for property tax growth in 2017-18. Preliminary estimates indicate a \$6 million adjustment, but updated data will be available in the spring to further refine the estimate.
Trial court construction proposals	\$1.3 billion in lease revenue bonds in 2018-19 and 2019-20—backed by the General Fund—for the construction of ten projects which would have otherwise been financed by the Immediate and Critical Needs Account (ICNA). \$32.3 million from ICNA for three projects to complete pre-construction design activities so they can move into construction in 2019-20.	Consider overhauling existing trial court construction system to address key underlying problems by eliminating the state's two construction accounts, shifting project funding responsibility to the General Fund, and increasing legislative oversight of funded projects. Alternatively, modify Governor's proposal to address some key problems if Legislature would like to maintain existing system.
California Department of Justice (DOJ)		
Antitrust workload	\$1.8 million from the Attorney General Antitrust Account (which increases over the next two fiscal years) to reduce the antitrust workload of existing attorneys to more manageable levels as well as to expand DOJ capacity to take on more cases.	Reject multiyear plan. Approve only \$1.8 million on an ongoing basis given the uncertainty about whether there is sufficient workload to justify all requested resources and the ability of the requested positions to generate sufficient revenue to support themselves.
Cardroom-related licensing	\$1.6 million (Gambling Control Fund) to provide ongoing support for limited-term positions set to expire in 2018-19, in order to continue reducing the cardroom-related licensing backlog and to prevent it from growing.	Approve \$1.6 million on a one-time basis in 2018-19 to allow DOJ to continue reducing the licensing backlog and collect workload data. Determine appropriate level of ongoing resources in 2019-20.
Proposition 63 implementation	No proposal as DOJ used its authority to spend funds from the continuously appropriated Ammunition Safety and Enforcement Special Fund to implement the provisions of Proposition 63 (2016).	Adopt budget trailer legislation requiring DOJ to report annually by January 1 on its Proposition 63 workload from the prior fiscal year to help Legislature conduct oversight that fee revenues are used appropriately and that fee levels are sufficient.

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