



## MAJOR ISSUES

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**%*State Should Monitor Implementation and Impacts of “Three Strikes and You’re Out” Law.*** This law is the most significant change to the state’s criminal justice system in more than a generation. Because of the magnitude of the change, and its potential fiscal and programmatic impacts on the state and local governments, we recommend that the Legislature direct the Judicial Council and Board of Corrections to monitor the implementation and impacts of the measure. (See pages D-11 to D-17.)

**%*Federal Crime Bill Offers Opportunities for State.*** California law enforcement agencies have already begun to receive federal funds under the federal crime bill which was enacted in September 1994. Currently, the Congress is considering major changes to the bill which could alter the amounts of funding available to the state, local governments, and community-based organizations. We recommend the enactment of legislation to establish a state policy direction for use of the funds. (See pages D-18 to D-26.)

**%*Growth in Prison Inmate Population Continues, But Less Than Earlier Forecasts.*** The administration projects that the prison population will increase at an average annual rate of 11 percent, reaching 230,000 inmates by 1999-00. Although significant, these estimates are below earlier forecasts. Even with lower-than-expected growth, overcrowding of the prisons will remain a serious problem. (See page D-31.)

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**%Lawsuits Could Result in Significant Costs.** Recent and pending federal court actions, especially in the area of provisions of inmate medical care, could have significant fiscal effects on the state. The Legislature has already provided millions of dollars in budget augmentations to correct deficiencies in medical care, and the budget proposes another \$19.6 million for 1995-96. Court actions, including the recent case regarding conditions at the Pelican Bay State Prison, could increase costs even further. (See pages D-49 to D-56.)

**%Joint Venture Program Struggling.** Although the program was supposed to provide jobs to thousands of inmates in private industries set up inside the prisons, the program is losing money and employing few inmates. We recommend a number of changes to the program and offer options for the Legislature to improve the program's performance. (See pages D-59 to D-65.)

**%Youth Authority Needs to Take Action to Reduce Overcrowding.** Overcrowding in Youth Authority facilities is expected to reach 165 percent by 1998-99. Such overcrowding makes it difficult to provide rehabilitative services to wards and creates a spiral effect that increases overcrowding even further. We recommend that the Youth Authority take steps to reduce overcrowding and offer a number of options to achieve this goal. (See page D-84.)

**%Improvements Needed in Trial Court Funding Program.** We believe that the administration's proposal to increase state funding of trial courts as part of its state-county restructuring plan has merit. However, lack of concrete performance measures to assess whether trial courts are meeting the goals of the Legislature and recent actions by trial courts to abandon efforts to coordinate their activities as directed by the Legislature, will need to be addressed. (See pages D-102 to D-108.)

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## OVERVIEW

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*Expenditures for judiciary and criminal justice programs are proposed to increase significantly in the budget year. The principal reason for the increase is the Governor's state-county restructuring proposal, which includes major increases in state funding for support of local trial courts. The budget also assumes the receipt of large amounts of federal funds to offset the costs of incarcerating and supervising undocumented felons. In addition, the budget proposes large sums to provide full funding for caseload-driven programs in the Department of Corrections.*

The budget proposes General Fund expenditures of \$5.5 billion for judiciary and criminal justice programs in 1995-96. This is about 13 percent of all General Fund spending. The budget proposal represents an increase of \$1 billion, or 22 percent, above estimated General Fund expenditures in the current year. The Governor's Budget assumes that the state will receive \$422 million in federal funds to offset the costs of incarcerating and supervising undocumented felons in state prison and the Youth Authority. Using the Governor's Budget figures which include this offset, total General Fund expenditures would increase by \$630 million, or 14 percent. The large increase in judiciary and criminal justice program expenditures is primarily due to the proposed increase of \$606 million from the General Fund for state support of trial courts in 1995-96, which is part of the Governor's state-county restructuring plan.

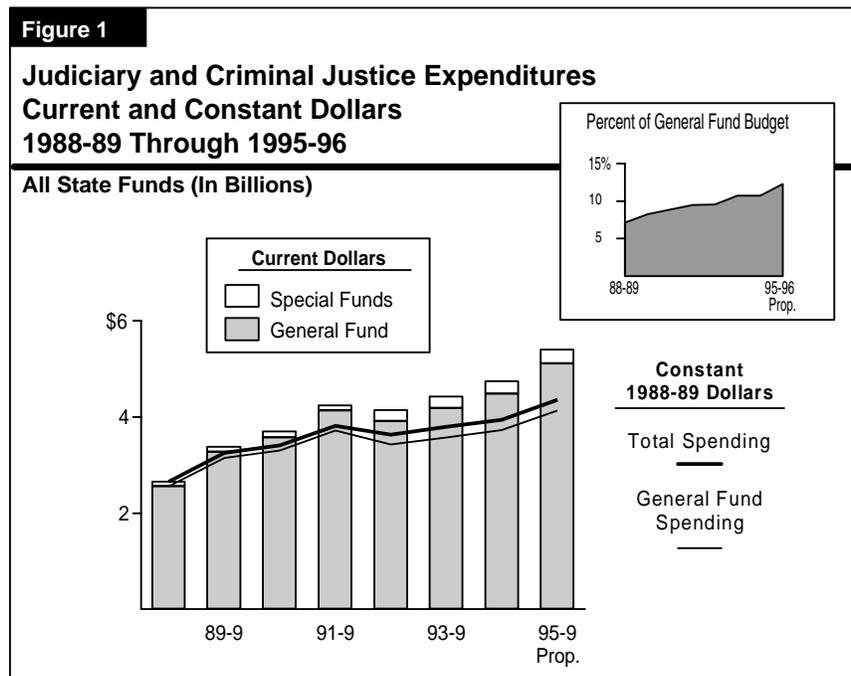
Figure 1 (see next page) shows judiciary and criminal justice expenditures since 1988-89. Figures for 1995-96 reflect the budget's assumption that the state will receive federal funds to offset costs of handling undocumented felons (we discuss this assumption later in this overview). As the figure shows, expenditures from the General Fund have increased by \$2.6

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billion since 1988-89, representing an average annual increase of 10 percent. General Fund expenditures decreased slightly in 1992-93, principally because of a significant shift of support for the Trial Court Funding Program from the General Fund to a special fund.

Figure 1 also displays spending when adjusted for inflation. On this basis, General Fund spending increased by an average of 7 percent annually between 1988-89 and 1995-96. The share of the state's General Fund spending allocated to the judiciary and criminal justice has increased substantially over the same period, increasing from 7.1 percent in 1988-89 to 12 percent in 1995-96.

It should be noted that the federal funds assumed for 1995-96 to cover the state's costs of incarcerating and supervising undocumented offenders are counted as offsets to state expenditures and are not shown in the budgets of the California Department of Corrections (CDC) and the Department of the Youth Authority, or in the Budget Bill. Thus, the Governor's Budget would hold the CDC and Youth Authority budgets harmless should the federal funds not materialize.



## SPENDING BY MAJOR PROGRAMS

Figure 2 shows expenditures for the major judiciary and criminal justice programs in 1993-94, 1994-95, and as proposed for 1995-96. As the figure shows, the CDC accounts for the largest share—about 61 per cent—of total spending in the judiciary and criminal justice area.

<b>Figure 2</b>					
<b>Judiciary and Criminal Justice Budget Summary<sup>a</sup></b>					
<b>1993-94 Through 1995-96</b>					
<b>(Dollars in Millions)</b>					
	Actual	Estimated	Proposed	Changes From	
	1993-94	1994-95	1995-96	1994-95	
				Amount	Percent
<b>Department of Corrections</b>					
General Fund	\$2,669.7	\$2,943.0	\$3,317.4	\$374.4	12.7%
Bond funds	43.9	40.3	16.0	-24.4	-60.4
<b>Totals</b>	<b>\$2,743.6</b>	<b>\$2,983.3</b>	<b>\$3,333.4</b>	<b>\$350.1</b>	<b>11.7%</b>
<b>Department of the Youth Authority</b>					
General Fund	\$356.1	\$361.9	\$357.9	-\$4.0	-1.1%
Bond funds	10.5	13.4	10.8	-2.5	-19.0
<b>Totals</b>	<b>\$366.7</b>	<b>\$375.2</b>	<b>\$368.8</b>	<b>-\$6.5</b>	<b>-1.7%</b>
<b>Trial Court Funding</b>					
General Fund	\$480.2	\$482.7	\$1,099.5	\$616.9	127.8%
Special funds	152.0	141.5	155.5	14.0	9.9
<b>Totals</b>	<b>\$632.2</b>	<b>\$624.2</b>	<b>\$1,255.0</b>	<b>\$630.9</b>	<b>101.1%</b>
<b>Judicial</b>					
General Fund	\$139.1	\$150.6	\$170.6	\$20.1	13.3%
<b>Department of Justice</b>					
General Fund	\$165.8	\$197.7	\$198.3	\$0.6	0.3%
Special funds	47.7	56.6	60.1	3.5	6.2
Federal funds	15.6	16.5	15.9	-0.6	-3.8
<b>Totals</b>	<b>\$229.1</b>	<b>\$270.8</b>	<b>\$274.3</b>	<b>\$3.5</b>	<b>1.3%</b>
<b>Office of Criminal Justice Planning</b>					
General Fund	\$32.1	\$26.2	\$25.2	-\$1.0	-3.8%
Special funds	11.8	17.0	17.8	0.8	4.6
Federal funds	60.6	59.3	59.4	0.1	0.1
<b>Totals</b>	<b>\$104.4</b>	<b>\$102.5</b>	<b>\$102.4</b>	<b>-\$0.1</b>	<b>-0.1%</b>

<sup>a</sup> Details may not add to totals due to rounding.

## MAJOR BUDGET CHANGES

Figure 3 presents the major budget changes resulting in a net increase of \$630 million in General Fund spending for the judiciary and criminal justice.

Generally, the major changes can be categorized as follows:

***The Budget Proposes to Provide Full Funding for Caseload and Certain Other Cost Increases.*** This includes funding for projected inmate population increases of 13 percent in the CDC and ward population increases of 8.4 percent in the Youth Authority (including substantial growth as a result of the “Three Strikes and You’re Out” Law). The budget contains no proposals that would result in any significant reductions in the inmate or ward populations.

In addition, the budget proposes to provide full funding for caseload increases in several other judicial and criminal justice programs, such as the Judicial’s court-appointed counsel program and the Department of Justice (DOJ) correctional law program.

The budget requires most state departments to absorb the full-year costs in 1995-96 of general salary increases that became effective on January 1, 1995. However, the budget provides augmentations for this purpose to many of the judicial and criminal justice programs—such as the Judicial branch, DOJ, and most of the CDC and Youth Authority. This reflects the administration’s policy of providing full funding to departments that provide public safety and 24-hour care services. In addition, the budget includes funds for inflation adjustments and price increases in the CDC—the only General Fund program that includes such augmentations.

***The Budget Proposes a Major Increase in State Funding for Support of Trial Courts as Part of State/County Restructuring Plan.*** This increase—\$631 million (\$606 million General Fund)—is part of a major proposal to provide additional funds to counties in exchange for the counties paying a greater share of costs for various welfare programs (primarily the the AFDC program). In addition, the budget proposes that counties retain approximately \$311 million in revenues from fines, fees, and forfeitures that are currently remitted to the state General Fund under the Trial Court Funding Program.

***The Budget Assumes Receipt of Federal Funds for Incarceration and Parole of Undocumented Immigrants.*** As indicated above, the budget assumes that the state will receive \$422 million in federal funds in

**Figure 3**

**Judiciary and Criminal Justice  
Proposed Major Changes for 1995-96  
All State Funds**

**Department of Corrections** Requested: **\$3.5 billion**  
Increase: **\$413 million (+13.5%)**

- \$136 million for full-year impacts of current-year augmentations
- \$130 million for inmate and parole population changes
- \$81 million for salary and benefit increases
- +** \$30 million for inflation adjustments and price increases
- \$28 million for increased lease revenue bond payments
- \$20 million for additional medical and mental health services for inmates

**-** \$76 million for various limited term and one-time expenditures

**Department of the Youth Authority** Requested: **\$389 million**  
Decrease: **\$6.6 million (-1.7%)**

- \$6.6 million for ward population growth
- +** \$2.5 million for special education services for wards to meet federal and court requirements
- \$14 million one-time assistance to pay overtime costs for Los Angeles County probation officers and for juvenile programs in Sonoma County and City of Vallejo

**Trial Court Funding** Requested: **\$1.3 billion**  
Increase: **\$631 million (+101%)**

- +** \$620 million for state support of trial courts (part of Governor's state/county restructuring proposal)
- \$11 million for increased retirement contributions

1995-96 to offset the state's costs to incarcerate and supervise undocumented immigrants in the CDC and the Youth Authority. This is an increase of \$389 million over the amount the administration assumes will be available in the current state fiscal year from federal appropriations made for federal fiscal year (FFY) 1995. Based on current federal authorizations and appropriations, however, we estimate that the state would receive only about \$245 million in 1995-96.



## CROSSCUTTING ISSUES

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### THE “THREE STRIKES AND YOU'RE OUT” LAW

*On March 7, 1994, Governor Wilson signed into law AB 971 (Ch 12/94, Jones)—referred to as the “Three Strikes and You’re Out” criminal sentencing measure. In November, the voters reaffirmed the measure by overwhelmingly approving Proposition 184, an initiative that is essentially identical to Chapter 12. The measure is the most significant change to the state criminal justice system in more than a generation.*

*In January, we published The “Three Strikes and You're Out” Law—A Preliminary Assessment. This analysis summarizes the findings of that piece, provides more up-to-date data, and recommends that the state closely monitor the implementation and impact of the “Three Strikes” law.*

### CALIFORNIA'S “THREE STRIKES” LAW

The “Three Strikes” law significantly increases the prison sentences of persons convicted of felonies who have been previously convicted of a “violent” or “serious” felony, and limits the ability of these offenders to receive a punishment other than a prison sentence. “Violent” and “serious” felonies are specifically listed in state law. Violent offenses include murder, robbery of a residence in which a deadly or dangerous weapon is used, rape and other sex offenses; serious offenses include the same offenses defined as violent offenses, but also include other crimes such as

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burglary of a residence and assault with intent to commit a robbery or rape.

Chapter 12 and Proposition 184 are virtually identical in their prison sentencing provisions and both measures can be amended by the Legislature with a two-thirds vote.

## **WHAT ARE THE PRELIMINARY IMPACTS OF “THREE STRIKES?”**

*Although the measure has been in effect for less than one year, it is already having significant impacts on the local and state criminal justice systems.*

In assessing the effects of the measure, we reviewed a wide variety of information at the state and local level. We found that most of the data collected during the months since implementation of the law may be reflective of the difficulties of implementation rather than suggestive of the ongoing impact of the measure. The major initial impacts are as follows:

***Thousands of Cases Being Prosecuted.*** There are thousands of offenders being charged under the provisions of “Three Strikes.” As of the end of August 1994 (six months after enactment of the law), there were more than 7,400 second- and third-strike cases filed statewide. More recent data from Los Angeles County—which generally accounts for up to half of the state’s overall criminal justice workload—indicates that, as of the end of November 1994, more than 5,000 second- and third-strike cases have been filed with the courts.

***Fewer Guilty Pleas by Defendants.*** Historically, more than 90 percent of all felony cases statewide are disposed of through plea bargaining. This seems to be changing as defendants are refusing to plea bargain and are taking their cases to jury trial, given the much longer prison sentences they face if convicted of a second- or third-strike offense. Available data indicate that only about 14 percent of all second-strike cases and only about 6 percent of all third-strike cases have been disposed of through plea bargaining.

***Significant Increase in Jury Trials.*** As a result of the drop in plea bargaining in many jurisdictions, prosecutors and public defenders expect a significant increase in the number of jury trials.

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***Increase in Persons Held in County Jail Awaiting Trial.*** The impacts discussed above are having spin-off effects on county jail systems. Because offenders charged under the “Three Strikes” law face significant prison sentences, most counties set bail for second-strike offenders at twice the usual bail amount and refuse bail for third-strike offenders. These bail changes, coupled with more offenders taking their cases to trial, result in more offenders being incarcerated in county jail.

In addition, because third-strike offenders face possible life in prison if convicted, they are considered “high-security” inmates requiring closer supervision and restricted housing arrangements at a greater cost than the general jail population.

***Less Immediate Impact on State Prison Population Than Expected.*** The California Department of Corrections (CDC) estimates that, at least in the short run, the number of inmates sent to prison under the “Three Strikes” law will be less than it originally projected, for three reasons. First, the large backlog of cases awaiting adjudication at the local level has resulted in a slower than anticipated increase in the prison caseload. Second, the department has lowered slightly its projection of felons that, because of “Three Strikes,” would be sent to state prison instead of being sentenced to probation or county jail. Third, the CDC is using more sophisticated techniques to estimate the impact of the “Three Strikes” law than when it assessed the impact of the proposed legislation.

## **What Has Been The Response To the Preliminary Impacts?**

We identified the following responses to the impacts outlined above:

***Backlogs Push Less Serious Cases Out of Courts.*** Because more cases are going to trial, there have been increases in the backlog of cases in the courts. As a result, some district attorneys are prosecuting fewer misdemeanor cases.

A more significant impact of this backlog, however, may be on civil cases where more courts are diverting their resources from hearing civil cases to hearing criminal cases.

***Early Release of Sentenced Offenders From County Jails.*** Currently, the jail population in 28 counties, representing more than 70 percent of the state's total jail beds, are capped by court order. As a consequence of the large numbers of “Three Strikes” offenders awaiting trial, some counties have released more sentenced inmates in order to stay within their court-ordered population caps.

***Increase in Jail Security.*** Persons in county jail awaiting trial under the “Three Strikes” law are considered high security inmates requiring closer

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supervision and restricted housing arrangements. As a result, some counties have modified their inmate security systems to better handle and track second- and third-strike inmates.

*Augmentations to Budgets of Criminal Justice Agencies in Some Counties.* Because of the increase in workload brought about by the "Three Strikes" law, some jurisdictions have augmented the budgets of their criminal justice agencies. For example, in October 1994, the Los Angeles County Board of Supervisors provided emergency budget augmentations of \$10.2 million to its agencies for prosecution, public defense, and detention of persons charged under "Three Strikes."

*Behavioral Responses From Some Judges, Juries, and Victims.* Although not widespread, there is anecdotal evidence that some judges, juries, and victims are responding to the "Three Strikes" law in ways that reduce its effects. For example, there is evidence that some judges are reducing minor felony criminal charges to misdemeanors when a felony conviction under the "Three Strikes" law would require a lengthy prison sentence. In addition, some superior court judges have refused to consider the qualifying prior convictions when sentencing offenders for new offenses, which is inconsistent with the intent of the measure. On January 17, however, the Fourth District Court of Appeals in San Diego ruled that judges may not dismiss prior felony convictions.

Additionally, some juries have refused to convict persons for relatively minor felony offenses which would have resulted in longer prison sentences under the "Three Strikes" law, and some victims of crime have refused to cooperate and testify in such cases.

### **Who Are the Second- and Third-Strike Offenders?**

In reviewing the characteristics of offenders charged and convicted under "Three Strikes" thus far, we found the following:

*Most Offenders Charged With Nonviolent, Nonserious Offenses.* Data we reviewed show that during the first eight months of implementation about 70 percent of all second- and third-strikes are for *nonviolent and nonserious offenses*. The types of offenses cover a very wide range. The largest single category of third-strike charges is burglary (defined as a serious offense), although it accounted for only 12 percent of the total.

*Most Convictions Were for Nonviolent, Nonserious Offenses.* As of the end of January 1995, there were 4,161 persons in state prison for conviction of a second-strike, and 120 offenders convicted of a third-strike. (This small number of third-strike offenders is due to the large number of

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offenders going to trial and the backlog of cases.) Of the offenders convicted of a second-strike, about 775 or approximately 19 percent, were for a violent or serious offense. The remaining approximately 3,300 persons were convicted of a wide variety of lesser offenses, the largest being possession of controlled substances (815 inmates) and petty theft with a prior theft (557 inmates). Data in 106 cases was not available.

Of the third-strike offenders, about 50 of the 120 were convicted of a serious or violent offense. The largest category of offense—with 17 cases—was possession of controlled substances.

### **What About the Impact on Crime?**

The “Three Strikes” measure could result in a reduction in crimes committed by repeat offenders incarcerated for longer periods under its provisions, thus resulting in savings to local and state governments. A RAND Corporation study estimated that the reduction in violent crime as a result of the measure would be substantial.

Although recent data indicate a reduction in the state's crime rate, the reduction probably should not be attributed to the “Three Strikes” legislation, because the state's crime rate had been falling *prior* to the enactment of the law. At this time, it is too early to assess the impact of the measure on overall crime in California.

## **WHAT ARE SOME OF THE IMPLEMENTATION ISSUES?**

The early implementation of the “Three Strikes” legislation indicates that there are a number of issues that the Legislature, Governor, and local officials will need to address in the coming months and years.

*Legal and Technical Issues.* There are a number of legal issues that will need to be resolved, either through legislation or court action. In general, most of these issues are relatively technical in nature. In some cases, resolution of the issue will not have a major impact on the implementation of the measure, while in other cases it will. Many of these issues involve specific cases that are already before the state's Court of Appeals.

Examples of specific issues include:

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The authority of a court to consider a *prior* conviction to be a misdemeanor, instead of a felony thus eliminating application of the “Three Strikes” law for a new offense. This would occur in the case of a “wobbler” offense—a crime that can be considered either a felony or a misdemeanor.

The authority of the judge to ignore a prior strike conviction without a specific request of the district attorney.

Whether a crime committed by a minor can be considered a strike.

***Severe Backlog of Criminal Histories Could Hinder Implementation.*** The California Department of Justice (DOJ) Criminal History System (CHS), lists all offenses for which an individual has been convicted (“conviction file”). Currently, it takes more than one year from the date of conviction before the respective information is entered into the CHS. This backlog could detrimentally affect the implementation of the “Three Strikes” law, especially the ability of prosecutors to obtain accurate information on the background of an offender before charging the offender with a second- or third-strike. We discuss the backlog in our analysis of the DOJ later in this chapter.

## **CONTINUED MONITORING AND PLANNING NEEDED**

***Because of the magnitude of the changes enacted by “Three Strikes” and their potential fiscal and programmatic impacts, we recommend that the Legislature direct the Judicial Council, in cooperation with the state Board of Corrections, to monitor the implementation and impacts of the measure. We recommend that the Council and Board report to the Legislature during budget hearings on a plan for such a monitoring effort.***

As we indicated earlier, much of the information available on the effects of the “Three Strikes” law is preliminary and may reflect implementation difficulties. Several efforts to monitor the impact of the measure on the local level are ongoing. For example, Los Angeles County is developing a data base to compile more comprehensive data on the impact of the measure on that county’s law enforcement system. Similarly, the Board of Corrections and the California State Sheriff’s Association are conducting surveys of counties and plan to publish their analysis in March 1995.

At this time, however, there is no comprehensive statewide effort to monitor the implementation of “Three Strikes” and its impact on both the state and local criminal justice systems. Because the “Three Strikes” law

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is so significant, we believe that a systematic, statewide monitoring effort is essential to ensure that the measure is implemented consistent with the intent of the Legislature and the voters. Monitoring efforts should include collection of data on processing of “Three Strikes” cases by local and state governments, effects on local and state criminal justice systems, responses and strategies employed by local governments to process the “Three Strikes” caseload increases, characteristics of offenders. In addition, the monitoring efforts should seek to assess the impact of the measure on the state's crime rate.

We believe that such an effort should be accomplished by the state departments that work closely with local criminal justice agencies and officials as well as departments that are directly affected by “Three Strikes.” In our view, the Judicial Council, which works closely with the trial courts, and the state Board of Corrections, which works closely with sheriffs and probation departments, are the best candidates to coordinate such a monitoring effort. In fact, the Judicial Council advises that it has recently applied for a grant from the State Justice Institute to study the impacts on the courts. Thus, we recommend that the Judicial Council and the Board of Corrections present a joint plan during budget hearings to establish a monitoring mechanism. The plan should detail how the agencies will accomplish the monitoring efforts listed above, how much such an effort will cost and be financed, and how they will ensure that data and input are provided by the CDC, Office of Criminal Justice Planning, DOJ, trial courts, and local criminal justice officials.

In addition, much planning—particularly on the part of the CDC—is still required. This includes, among other things, developing plans to accommodate the increasing numbers of offenders sentenced to a prison system that is already severely overcrowded and reviewing changes to the security classification and inmate management systems to handle an inmate population with much longer time to serve. We discuss the CDC's planning efforts in our CDC analysis.

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## **THE FEDERAL CRIME BILL: AN UPDATE**

*On September 13, 1994, President Clinton signed the Violent Crime Control and Law Enforcement Act of 1994 (the federal "crime bill"). The bill contained funding authority totaling \$30.2 billion for more than 60 different law enforcement, prison construction, and crime prevention programs over six years. On September 27, 1994, we published a Policy Brief entitled The Federal Crime Bill: What Will it Mean for California? In this Analysis we provide an update on the status of the federal crime bill since the release of our policy brief. In addition, we compare the crime bill with proposed federal legislation, which would amend the crime bill. This proposed legislation is entitled "Taking Back Our Streets Act," that is part of the "Contract With America" package of legislation currently before Congress.*

### **THE FEDERAL CRIME BILL**

*California law enforcement agencies have already received some federal funds from the federal crime bill, although overall the funds appropriated for federal fiscal year (FFY) 1995 are less than the amounts authorized in the bill.*

#### **Background**

The federal crime bill contains a variety of provisions including increasing penalties for federal crimes, adding new federal law enforcement personnel, and most importantly to the state, funding authority for local law enforcement, prison construction, and crime prevention. The bill provides funding authority over a six-year period totaling \$30.2 billion, ending in FFY 2000 (state fiscal year 2000-01). The actual funds available for each year will be determined through the annual federal appropriations process.

Funding, when it is appropriated, will be awarded to states and local governments on either a formula basis or as competitive project grants. Many of the crime bill's grant programs are aimed at the local level—either law enforcement, local government or community-based organizations. For example, local law enforcement agencies will be the primary recipients of the "Cops on the Beat" law enforcement grants, authorized for \$8.8 billion. Most of the crime bill's prevention grant pro-

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grams allow for the direct application by local governments and community-based organizations. State government's major share of the federal grant monies will be for the prison construction grant programs, which are not authorized until FFY 1996. Consequently, these funds will not be available until 1996-97, at the earliest.

### **First Year Appropriations Lower Than Authorized Amounts**

*Appropriations for State and Local Agencies in California.* The crime bill authorized funding for 17 programs for FFY 1995, totaling \$2.9 billion. Federal appropriations for FFY 1995, however, provided funds for only 11 programs (10 for state and local governments and 1 for federal agencies), totaling \$2.3 billion, or about 20 percent less than the amounts authorized for the first year. (Six first-year programs received no funding.) The funding for the new appropriations comes from savings resulting from reductions in federal personnel recommended in the Vice President's National Performance Review.

Figure 4 compares federal authorizations with appropriations for the 10 programs that provide grants to state or local agencies. The figure provides estimates of California's share of these appropriations and the types of agencies which could receive the funds.

In determining California's potential share of federal grant funding, only the amounts for Bryne Memorial Grants (used for local and statewide anti-drug enforcement), Violent Crimes Against Women grants, and incarceration of undocumented felons are relatively exact, because these grants are provided on the basis of a specific formula.

As regards funds for incarcerating undocumented felons, California will receive one-third of the funds, or about \$33 million, appropriated in FFY 1995 for state fiscal year 1994-95. The remaining two-thirds of the FFY 1995 appropriation will be available in state fiscal year 1995-96. At the time this *Analysis* was prepared, the state had not received its \$33 million from the federal government. According to the administration, this is because the federal government wants the state to relinquish its claim for full reimbursement before it will provide the amounts appropriated.

For the other programs, the estimates are based on the total appropriation divided by California's share of the target grant population. Accordingly, the actual amounts received by the state may vary from the estimates shown in Figure 4 (see next page).

**Figure 4**
**Federal Crime Bill  
Funding for State and Local Agencies  
FFY 1995**

(In Millions)

Program	Nationwide		Potential California Share <sup>a</sup>	Potential Recipients
	Authorized	Appropriated		
Community Policing "Cops on the Beat"	\$1,300.0	\$1,300.0	\$80.0	Local
Implementation of the "Brady Bill"	100.0	100.0	—	State
Undocumented Alien Felon Incarceration Grants	130.0	130.0	78.4	State <sup>b</sup>
Boot Camp	— <sup>c</sup>	24.5	2.9	State/local
Byrne Memorial Grants	580.0	450.0	47.4	State
Drug Courts	100.0	29.0	2.9	Local
Violent Crimes Against Women	26.0	26.0	0.5	Local
Ounce of Prevention Grants	1.5	1.5	0.2	Local
Family and Community Endeavor School Grants	37.0	25.9	3.1	Local
National Domestic Violence Hotline	1.0	1.0	NA	Nonprofits
<b>Totals</b>	<b>\$2,275.5</b>	<b>\$2,087.9</b>	<b>\$237.2</b>	

<sup>a</sup> Estimates by the LAO, Department of Finance, and Office of Criminal Justice Planning.  
<sup>b</sup> The state will receive \$33 million in state fiscal year 1994-95.  
<sup>c</sup> Authorizations for this grant are part of the larger prison construction grants.  
NA - Not Applicable

*Appropriations for Federal Agencies in California.* The appropriations for federal law enforcement agencies and for a program to accelerate deportation hearings have been allocated. The federal government reports that it will add 2,365 Immigration and Naturalization Service (INS) employees, of which 598, or 25 percent, will be in California. These personnel will be used for both expediting deportation hearings and for investigating industries that hire undocumented immigrants. This total also includes 200 additional Border Patrol agents for the San Diego region. The federal government also reports that it will add a new fingerprinting technology to improve identification of undocumented immigrants. Currently, the INS relies on names to identify such persons.

### "Cops on the Beat" Funding

The largest appropriation for FFY 1995 is for state and local law enforcement agencies through the "Cops on the Beat" program. The intent of the program is to provide funds to hire police officers and increase

their involvement in the community. The crime bill authorizes the U.S. Attorney General to make grants through this program to state and local governments, and other public and private entities, such as transit districts, school districts, and college police departments.

**Grant Restrictions.** While law enforcement agencies can use some of the funds for equipment and training, the bulk of the grant has to be used for hiring police officers. In addition, the grants are limited to three years, the recipient agency must cover 25 percent of the costs, and the grant is limited to paying no more than \$25,000 per year towards officer salaries and benefits. Because the grants are limited to three years, recipient agencies will have to shoulder the full costs of the newly hired officers after the grant period, or layoff the new officers. There are no federal funds available to offset other criminal justice system costs, such as the costs for courts, jails, and probation, that will result from adding law enforcement personnel.

**California's Share.** As Figure 4 shows, we estimate that California could receive about \$80 million under this program, based on allocations already made to law enforcement agencies and those that are still eligible. In fact, as of January 1995, 40 California law enforcement agencies have received "Cops on the Beat" grants totaling \$28.6 million. These grants are expected to add 303 law enforcement officers. Grants to individual law enforcement agencies varied from \$3 million to the Los Angeles County Sheriff for 33 new officers to three small city police departments (Corning, King City, and Lemoore) of \$75,000 for 1 officer each. Nationwide, \$200 million in grants have been awarded so far.

While California has already received \$28.6 million from this grant program, it is possible that the state will not receive significantly larger shares of future funding allocations. This is because some California law enforcement agencies have decided not to apply for the federal grants—unless they had already planned to add new officers—because of the potential significant costs to local government. For example, the Oakland police department decided that the limit on federal funds of \$25,000 per officer for salaries and benefits is not sufficient to justify hiring officers whose average salaries and benefits total almost \$75,000 a year. Other law enforcement agencies have decided not to apply for grants because they believe there will not be local funding available after the grant expires to support the full costs of new officers.

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## PROPOSED FEDERAL LEGISLATION WOULD SIGNIFICANTLY CHANGE CRIME BILL

*Congress is considering significant changes to the current federal crime bill provisions that would increase the amounts of funding available for state and local law enforcement agencies, while reducing funds for local governments and community-based organizations.*

Legislation has been introduced in Congress to amend the federal crime bill with provisions contained in the "Contract With America." This proposed legislation is entitled the "Taking Back Our Streets Act." The proposed legislation would significantly change many of the provisions of the crime bill enacted in September 1994. The major proposed changes are discussed below.

### Increased Funding and Changes in Grant Requirements

The proposed legislation would modify the law enforcement grant program by increasing the funding authorizations and eliminating certain grant eligibility requirements. Specifically, the proposed legislation increases funding authorizations for law enforcement from \$7.5 billion to \$10 billion, for the period FFY 1996 through FFY 2000. Figure 5 compares the funding authorizations of current law and the proposed legislation.

<b>Figure 5</b>		
<b>Law Enforcement Grants Authorizations</b>		
<b>(In Billions)</b>		
<b>FFY</b>	<b>Current Law<sup>a</sup></b>	<b>Proposed<sup>b</sup></b>
1996	\$1.85	\$2.00
1997	1.95	2.00
1998	1.70	2.00
1999	1.70	2.00
2000	0.27	2.00
<b>Totals</b>	<b>\$7.47</b>	<b>\$10.00</b>

<sup>a</sup> Federal crime bill.  
<sup>b</sup> "Taking Back Our Streets" legislation.

*Note:* Under both current law and proposed legislation, the amount of funding available in each fiscal year is subject to the annual federal appropriations process.

In addition, the proposed legislation eliminates many of the grant limitations contained in the existing crime bill, making the measure essentially a block grant. Specifically, the proposal:

Eliminates requirements that recipients contributed a share of costs.

Expands the purposes for which funds can be used to include support personnel, overtime, equipment, or nonprofit organizations that provide neighborhood “watch” programs.

Eliminates the requirement that funding be used specifically for “community policing.”

Allocates funds to law enforcement agencies based on a violent crime rate in the jurisdiction instead of requiring a grant application.

Eliminates the three-year limit on funding.

We believe that these proposed amendments would lead to a much greater share of grant funds for California law enforcement agencies than under the existing “Cops on the Beat” program because all California law enforcement agencies would receive federal funding. California’s share of the proposed program could be \$1.4 billion through FFY 2000—an increase of at least several hundred million dollars over the amounts authorized in the current law.

### **Prison Construction Grants**

The proposed legislation amends the prison construction grant requirements and funding authorizations. Specifically, the proposed legislation would increase the amounts authorized for prison construction from the federal crime bill’s authorizations of \$7.7 billion to \$10.3 billion, as shown in Figure 6 (see next page). In addition, part of the funding would be available for local jail construction, unlike the existing crime bill. Consequently, this proposed change would benefit California because of the current need to relieve overcrowding in local jail facilities. Currently, 28 county jail systems—accounting for over 70 percent of all of the state’s jail beds—are under court-ordered population caps. California’s share under the proposed legislation could be \$1.5 billion—an increase of a few hundred million dollars over the current law amounts.

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<b>Figure 6</b>		
<b>Prison Construction Grants Authorizations</b>		
<b>(In Billions)</b>		
<b>FFY</b>	<b>Current Law<sup>a</sup></b>	<b>Proposed<sup>b</sup></b>
1996	\$0.75	\$1.00
1997	1.00	1.33
1998	1.90	2.53
1999	2.00	2.66
2000	2.07	2.75
<b>Totals</b>	<b>\$7.72</b>	<b>\$10.27</b>

<sup>a</sup> Federal crime bill.

<sup>b</sup> "Taking Back Our Streets" legislation.

*Note:* Under both current law and proposed legislation, the amount of funding available in each fiscal year is subject to the annual federal appropriations process.

### Crime Prevention Programs

The proposed legislation will eliminate 13 of the crime prevention programs contained in current law—"saving" \$5.0 billion in funding authorizations. The elimination of these programs "pays" for the proposed increases in funding authorizations (\$5.1 billion) for law enforcement and prison construction grants. Elimination of these programs could result in California receiving several hundred million dollars less for crime prevention programs than it might otherwise receive under current law. Figure 7 shows which programs the proposed legislation would eliminate.

### Other Proposed Changes

In addition to changes to the grant programs, the proposed legislation seeks to modify federal law to expedite death penalty appeals at the federal level. Faster appeals might reduce defense and other appellate costs for the State Public Defender, who defends persons who receive the death penalty, and the DOJ which represents the state in appellate court.

The proposed legislation also would amend federal law to greatly restrict the ability of inmates to file lawsuits. Such changes could also result in savings to the state to defend itself against inmate lawsuits. For 1995-96, the budget proposes \$12.6 million for such defense work in the CDC and the DOJ.

<b>Figure 7</b>	
<b>Federal Crime Bill Programs Proposed for Elimination<sup>a</sup></b>	
<b>FFY 1995-2000</b>	
<b>(In Millions)</b>	
<b>Program</b>	<b>Authorization</b>
Local Partnership Program	\$1,620.0
Drug Courts	1,000.0
Family and Community Endeavor	
School Grants	809.9
Crime Prevention Model Intensive Grants	625.5
Local Crime Prevention Block Grants	377.0
National Community Economic Partnership	270.0
Ounce of Prevention Grants	90.0
Community-Based Justice Grants	50.0
Gang Resistance Education & Training	45.0
Assistance for Delinquent and	
At-Risk Youth	36.0
Police Recruitment	24.0
Family Unity Grants	19.8
Capital Improvements for Parks	4.5
<b>Total</b>	<b>\$4,971.7</b>

<sup>a</sup> Proposed for elimination under the "Taking Back Our Streets" legislation.

### Overall Impact on California

The proposed amendments to the federal crime bill will mostly benefit the state and local law enforcement agencies through increased funding for police, jails, and prisons. However, local governments and community-based organizations, and nonlaw enforcement local government agencies lose, if the proposed elimination of crime prevention grants is adopted.

### WHAT SHOULD THE LEGISLATURE DO?

*We recommend the enactment of legislation that establishes California's policy direction to follow as it decides which crime bill funds to apply for, how to use the funds, and what policies it should enact to further the measure's purposes or receive additional federal funds.*

As we noted in our September policy brief, we believe the Legislature and the administration should develop an overall state strategy for implementing the current crime bill in California. Subsequently, the Governor

has issued an executive order designating the Office of Criminal Justice Planning (OCJP) as the state agency responsible for coordinating the state's implementation of the federal crime bill. The OCJP's responsibilities under the executive order include: ensuring that the state receives its "fair share" of federal funding; providing technical assistance to state and local agencies; and working with state agencies to designate the appropriate agencies within California to implement the federal crime bill.

Regardless of the Governor's charge to the OCJP, we believe that our recommendations are still applicable. The same recommendations would also pertain if proposed amendments to the federal crime bill are enacted by the Congress. In particular, we recommend that the legislation specify the following:

***The State Should Only Compete for Project Grants that Augment Existing State Programs.*** The state should not compete with local governments for federal grants in those areas where local governments already have primary responsibility. Rather, it is in the state's best interest to only compete for those project grants that could augment existing state programs, such as prison construction.

***Limit New Law Enforcement Officers to the Local Level.*** We recommend that the legislation ensure that the state will not compete with local agencies for "Cops on the Beat" grants because law enforcement is primarily a local function.

***Estimate the Long-Term Fiscal Consequences of Programs Before Applying for Funding.*** We recommend that the legislation require any proposed initiatives that make use of federal crime bill funding to include estimates of the long-term fiscal consequences on the state of the additional federal funding.

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## DEPARTMENTAL ISSUES

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### DEPARTMENT OF CORRECTIONS (5240)

The California Department of Corrections (CDC) is responsible for the incarceration, training, education, and care of adult felons and nonfelon narcotics addicts. It also supervises and treats parolees released to the community.

By the end of 1995-96, the department will operate 32 institutions, including a central medical facility and a treatment center for narcotic addicts under civil commitment. The CDC system also includes 11 reception centers to process newly committed prisoners, community correctional centers, fire and conservation camps, the Richard A. McGee Correctional Training Center, alternative sentencing programs, and outpatient psychiatric services for parolees and their families.

The budget proposes total expenditures of \$3.5 billion for the CDC in 1995-96. This is \$413 million, or 14 percent, above estimated current-year expenditures. The primary cause of this increase is the growth in the inmate population and the expansion of prison facilities and staff to accommodate that growth. Two new prisons are expected to open in the current year and another two in 1995-96.

Proposed General Fund expenditures for the budget year total \$3.3 billion, an increase of \$374 million, or 13 percent, over total General Fund expenditures in the current year.

The Governor's Budget assumes that the state will receive \$422 million from the federal government during 1995-96 in reimbursement of what

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the administration estimates to be the \$503 million annual cost of incarcerating and supervising parole of felons who are illegally in the United States and have committed crimes in California. The funds are not included in the CDC's budget display, however, but are scheduled as "offsets" to total state General Fund expenditures. (We discuss the administration's assumption later in this analysis.)

## **OVERVIEW OF THE INMATE POPULATION**

### **Who Is in State Prison?**

Figures 8 through 11 illustrate the characteristics of the state's prison population, as of June 30, 1994. As the charts show:

The majority of inmates are incarcerated for nonviolent offenses (Figure 8).

About 65 percent of all inmates were committed to prison from Southern California, with about 38 percent from Los Angeles County alone. The San Francisco Bay Area is the source of about 15 percent of prison commitments and San Diego is the source of 8 percent (Figure 9).

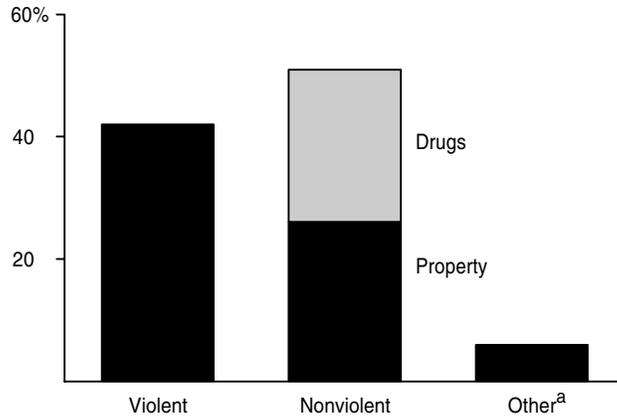
More than 63 percent of all inmates are between 20 and 34 years of age, with the number of inmates falling dramatically starting by the mid-30s (Figure 10).

The prison population is divided relatively evenly among whites, blacks, and Hispanics (Figure 11).

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**Figure 8**

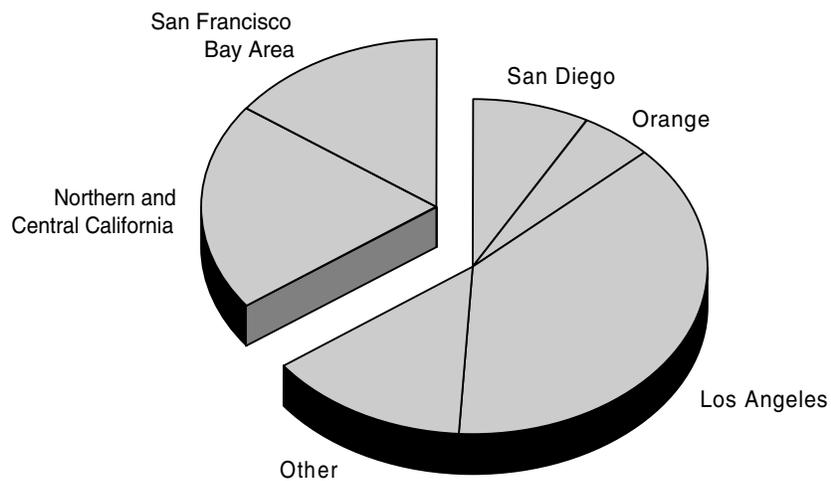
**Prison Population by Type of Offense  
June 30, 1994**



<sup>a</sup> Includes escape, driving under the influence, arson, and possession of a weapon, among others.

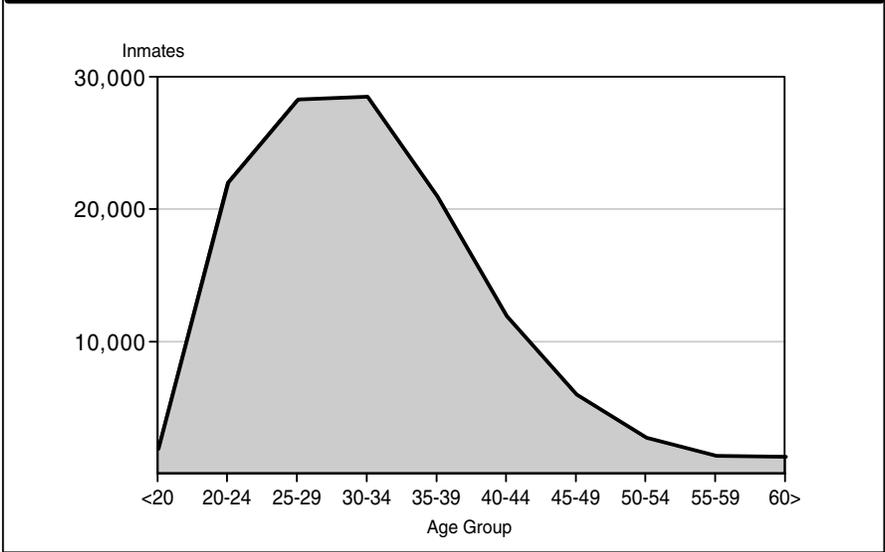
**Figure 9**

**Prison Population by Area of Commitment  
June 30, 1994**



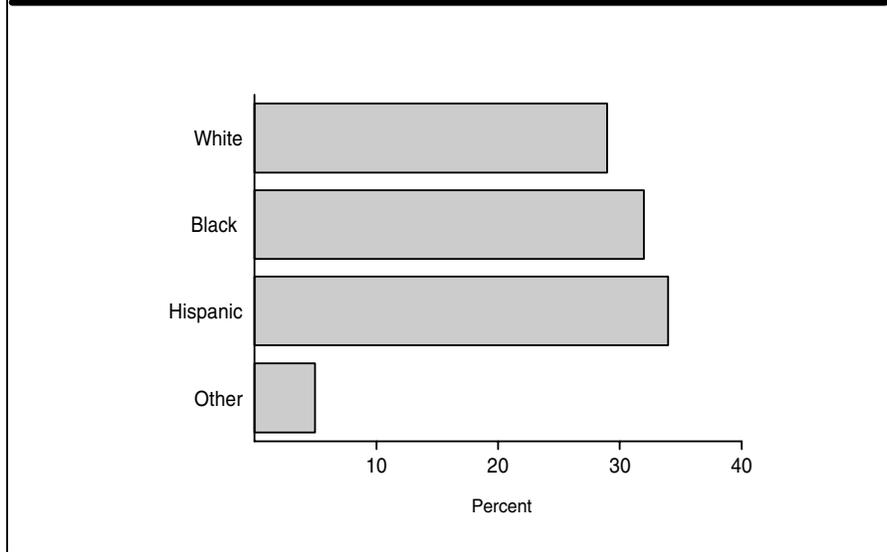
**Figure 10**

**Prison Population by Age Group  
June 30, 1994**



**Figure 11**

**Prison Population by Ethnicity  
June 30, 1994**



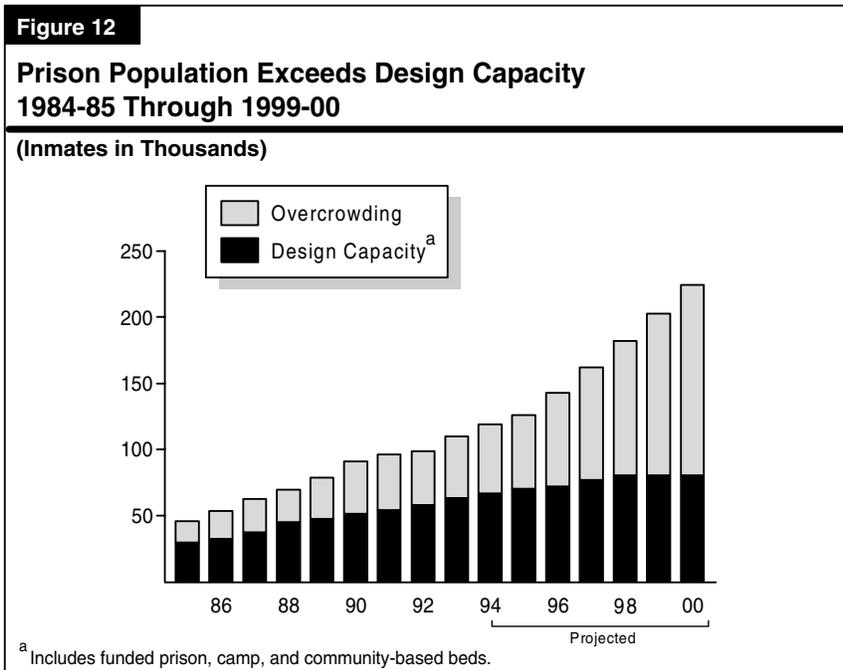
## INMATE AND PAROLE POPULATION MANAGEMENT ISSUES

### Significant Growth in Inmate Population, But Less Than Earlier Forecasts

*The Governor's Budget estimates that the prison population will continue to increase steadily, exceeding 230,000 inmates by the end of the decade. Although this represents an average annual increase of almost 11 percent, the increase is less than the amount projected previously.*

The Governor's Budget assumes that the number of prison inmates will reach 131,700 by June 30, 1995, and increase further to about 148,600 by June 30, 1996, which represents an increase of 5.5 percent in the current year and 13 percent in the budget year. The budget also assumes that the population will increase further over the following four years, reaching more than 230,000 inmates by the end of 1999-2000. This represents an average annual increase of almost 11 percent from 1994-95 through 1999-2000.

Given the current estimate of prison population growth and the scheduled completion of new prison beds, the level of prison overcrowding will worsen by 1999-2000, as shown in Figure 12.



***Change From Prior Projection.*** The CDC projects the inmate and parole populations twice each year. A projection in the fall typically becomes the basis for the Governor's January budget proposal. A second projection in the spring becomes the basis for the May Revision and is typically used when the Legislature enacts the annual budget.

The CDC's fall 1994 projection continues to predict significant increases in the prison population, but the level of growth is below the level described in the spring 1994 projection. Specifically, last spring, the CDC projected that the prison population would increase at an average annual rate of 15 percent, reaching almost 246,000 inmates by the end of 1998-99. This fall the CDC estimated that the average annual increase would be 11 percent, and that the prison population would reach about 211,000 inmates by June 30, 1999, or 35,000 fewer inmates than the previous number. Based on recent trends, which we discuss in greater detail later, the Governor's Budget has dropped the projection even further, to about 209,000.

The downward revision in the CDC's projection is due primarily to two factors. First, the CDC revised downward its estimates of offenders admitted to prison from court, including both new felons admitted to prison and parole violators readmitted to prison following a new criminal conviction. Adjustments of this type are fairly typical from one projection period to the next.

Second, and more importantly, the CDC revised its estimates of the impacts of the "Three Strikes" law downward due to: (1) delays in processing "Three Strikes" offenders through the local criminal justice system, (2) a slightly lower projection of felons who would be sentenced to prison under "Three Strikes" instead of being sentenced to local jails or put on probation, and (3) its use of more sophisticated population estimation techniques (the previous estimate relied on a less sophisticated technique generally used to assess the impact of proposed legislation).

### **Parole Violation Rates Increasing**

*Following several years of steady declines, parole revocation rates have begun to increase, and the CDC projects that this higher rate will continue into the future.*

One factor that offsets the decrease in the estimated rate of new felon admissions to prison from court is the recent increase in the rate of parolees returned to prison for a "technical" parole violation. A violation is considered technical when a parolee is returned to prison by administrative action of the CDC, rather than through a new prison commitment by a court. Typically, an administrative action is taken by the CDC to return

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a parolee to prison when the parolee violates a condition of parole that may not constitute a violation of law or is unlikely to be prosecuted by local officials. On the other hand, a court commitment occurs when a parolee is prosecuted for a new crime. In 1993-94, more than 40,000 parole violators were returned to prison for technical parole violations.

**Background.** Beginning in 1991, the CDC implemented several policies and procedures that contributed to slowing prison population growth. Some parolees arrested for minor offenses were sent to community-based sanctions or treatment programs (such as substance abuse treatment) instead of prison. The issuance of warrants was delayed, giving parole agents more time to locate a parolee and determine whether he was suitable for placement in a treatment program, rather than an immediate return to prison. Also, the grounds for revoking parole were standardized statewide, a change which had the effect of reducing violation rates in some regions of the state.

The changes were an attempt to ensure the successful completion of parole by diverting nonviolent parole violators from short periods of incarceration in costly prison beds to community-based sanctions which attempted to deal with the source of parolee problems. Following implementation of the new policies, the rate at which parolees returned to prison was reduced significantly from a statewide average of approximately 70 percent in 1989 to a low of about 39 percent in 1992-93.

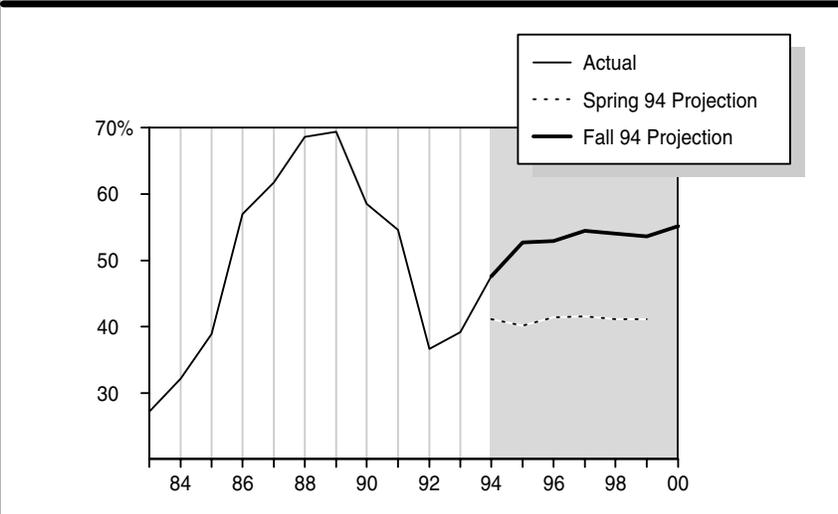
**Rates Have Gone Up.** In 1993-94, however, the rate began to climb again. By the first quarter of 1994-95, it reached about 55 percent. As a consequence, the CDC assumed a much higher parole violation rate in its fall 1994 projections. The CDC now projects that rate will remain at about 55 percent through the end of the decade, as shown in Figure 13 (please see next page).

Although the reasons for the increase are not completely clear, it appears that parole agents sought to revoke a larger portion of parolees because of heightened public attention and awareness of parolees in the community.

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**Figure 13**

**Parole Revocation Rates Climbing  
For Male Parolees  
1983 Through 2000**



**Projections Subject to Significant Uncertainty**

*Recent trends in the inmate and parole populations indicate that the state will experience greater savings in the current year than are anticipated in the Governor's Budget. The May Revision is also likely to reduce the prison population estimate for the budget year, thereby reducing the CDC budget's request. A number of factors make the long-run projections much more uncertain. However, even if the long-range projections are reduced, it is likely that the state's prison system will be severely overcrowded and experience very significant General Fund costs well into the future.*

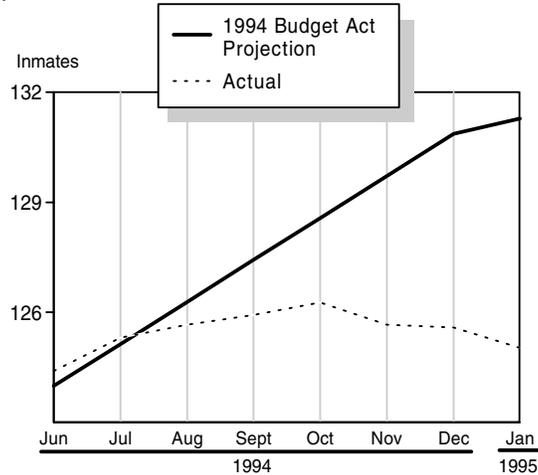
The new projections carry with them significant implications for the current year and beyond. In addition, the projections appear to be subject to significant uncertainty.

**Recent Flat Population Trend Should Reduce Current-Year Costs.** The prison population has essentially remained flat for several months. In fact, as of January 15, 1995, the population was 125,300 inmates—roughly the same number as of July 31, 1994. Figure 14 compares the trend in inmate population growth for 1994-95 to the levels projected last May which were the basis for the 1994 Budget Act.

**Figure 14**

**Recent Trends in Prison Population  
Far Off Projected Levels  
June 1994 Through January 1995**

(In Thousands)



The Governor's Budget assumes that the state will incur General Fund savings of \$7 million in the current year because population growth was less than anticipated. Given that the population is even lower in the current year than projected in the Governor's Budget, we estimate that the state will incur General Fund savings in the current year of millions to tens of millions of dollars beyond the \$7 million estimate.

***Impact of "Three Strikes" on Prison Population Less Than Expected So Far.*** According to the CDC, one of the principal reasons for the slower-than-anticipated growth in the inmate population this year is the large backlog of offenders awaiting adjudication at the local level. The CDC anticipated that, by the end of December 1994, there would be almost 6,000 felons admitted to prison under the "Three Strikes" law. In fact, only about 3,200 were admitted.

As we reported on January 6, 1995 in *The "Three Strikes and You're Out" Law—A Preliminary Assessment*, there are thousands of cases backing up in the local criminal justice system because most offenders are refusing to plead guilty and instead are taking their cases to trial. For example, Los Angeles County anticipates that its number of criminal

trials will increase by 144 percent as a result of “Three Strikes” and Santa Clara expects its number of trials to triple.

Because local criminal justice prosecution, public defense, and court resources are being used to handle additional “Three Strikes” cases going to trial, there are also fewer resources available for non-“Three Strikes” cases—cases involving offenders who if prosecuted would be much more likely to plead guilty and be sent to prison relatively quickly.

It is not clear when the backlog of cases will be cleared. According to the CDC, both Los Angeles and San Diego Counties (which account for about half of prison admissions) expect the backlogs to persist for at least a year.

In addition, it may be possible, especially in the long run, that behavioral changes in the criminal justice system may lessen somewhat the projected growth in the prison population attributable to the “Three Strikes” law. For example, the law may deter some violent and serious criminals, thereby slowing the growth in the prison population. There is also anecdotal evidence that some judges, juries, and victims are responding to the law in ways that reduce somewhat the number of persons that would otherwise be sent to prison under the measure.

However, other factors besides the 1994 “Three Strikes” law may also be coming into play. For example, the shortfall in projected new inmates might be related to major demographic changes, including the decreased number of young adults who as an age group are responsible for a disproportionate number of the crimes which are committed.

***Projections for Budget Year Likely to Be Reduced.*** The Governor's Budget requests \$158 million for the projected increase in the inmate and parole populations for the budget year (we discuss this request below). Given the current trends, we believe that the projected prison population for 1995-96 contained in the Governor's Budget is overstated and is very likely to be reduced at the time of the May Revision. Such a reduction would result in a commensurate reduction in the CDC budget request for 1995-96, probably in the tens of millions of dollars.

***Other Factors Could Change Estimates.*** As we have indicated in previous years, the accuracy of the department's projections, especially in the long run, depends on a number of significant factors, including:

***Changes in Sentencing Law.*** The department's projections assume *no changes in the current law* beyond those enacted through 1994 that would increase sentence lengths. Legislation enacted by the

Legislature and Governor that affects sentence lengths or modifies the number of offenders sentenced to prison could lead to higher or lower rates of inmate population growth.

***Changes in Inmate Education or Work Opportunities.*** Inmates who work or participate in education programs earn credits, thereby reducing the time they spend in prison. To the extent that prison overcrowding or budget reductions reduce the number of work or educational opportunities, the inmate population would increase.

***Changes in Local Government Spending.*** To the extent that local governments devote more or fewer resources to their criminal justice systems, the number of persons arrested, tried, convicted, and admitted to state prison could change.

***Changes in the Policies of Local Prosecuting Agencies.*** Changes in the prosecution patterns of local district attorneys could affect the prison population. For example, if a prosecutor chooses to charge offenders with harsher offenses or refuses to plea bargain, it is likely that the offenders would receive longer sentences which would increase the prison population.

***Changes in the Parole Revocation Policies of the CDC and Board of Prison Terms.*** As we indicated earlier, the rates of parole revocation have changed significantly in recent months. To the extent that the revocation policies of CDC parole agents (who charge offenders with parole violations) and the Board of Prison Terms (which makes the ultimate determination as to whether to revoke an offender's parole and return him to prison), the prison population could increase or decrease.

Changes in any one of these areas could easily result in a higher-than-projected prison growth rate by either increasing the number of inmates admitted to prison or the amount of time those inmates spend in prison. Likewise, an adjustment in the opposite direction could result in a smaller growth rate or even a decline in the inmate population.

***The Bottom Line: Higher Costs, but Less Than Expected.*** As we indicated above, the recent estimates of the prison population have been slightly reduced from the previous estimates and, based on actual experience in the current year, the projections are likely to be reduced further. Even with these adjustments, however, the CDC is likely to continue to experience very significant increases in the number of inmates incarcerated in prison and on parole in the community in the

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long run. Thus, prison overcrowding will continue and, based on current authorizations for new prisons, will likely worsen by the end of the decade, as shown in Figure 12.

As a result of the growth in the inmate population, the CDC's General Fund costs will continue to increase into the budget year and through the end of the decade. Given the current level of overcrowding of approximately 175 percent and the projected growth in the inmate population, the Legislature will need to assess whether to authorize construction of additional prisons, expand alternative inmate housing programs, or reduce the prison population.

### **Inmate and Parole Population Projections Will Be Updated in May**

*We withhold recommendation on the CDC's request for a net increase of \$120 million to fund inmate and parole population growth, pending review of the revised budget proposal and population projections to be included in the May Revision.*

The budget requests a net increase of \$158 million and 1,568 personnel-years to accommodate inmate and parole population changes and increased prison construction lease payments in the budget year. The changes in the inmate and parole populations are shown in Figure 15.

<b>Figure 15</b>				
<b>Department of Corrections Inmate and Parole Populations 1993-94 Through 1995-96<sup>a</sup></b>				
	<b>Actual 1993-94</b>	<b>Estimated 1994-95</b>	<b>Projected 1995-96</b>	<b>Percent Change 1994-95 to 1995-96</b>
Prison inmates	124,813	131,700	148,599	12.8%
Parolees	85,197	91,927	93,410	1.6

<sup>a</sup> Figures are for the last day of the fiscal year shown.

***Inmate Population.*** The budget requests an increase of \$130 million and 1,729 personnel-years to accommodate additional inmates in institutions, fund associated population-driven support costs, and open two new prisons (in Lassen and Monterey Counties). The amount includes \$129 million from the General Fund and \$1.3 million from the Inmate

Welfare Fund and reimbursements. As Figure 15 shows, the total population is projected to increase by 13 percent to about 148,600 inmates during 1995-96. We discuss the department's plan to accommodate this growth in the inmate population in more detail below.

***Parole Population.*** The budget proposes a net General Fund reduction of \$10 million and a reduction of 160 personnel-years in the parole program. This reduction is primarily due to two factors. First, the parole population growth is far less than previously anticipated. Although the CDC's spring 1994 population projections (the basis for the 1994 Budget Act) had estimated that there would be approximately 99,700 parolees by the end of the budget year, the Governor's Budget projection for 1995-96 now estimates that total will be about 93,400, or 6,300 fewer parolees than anticipated previously. Figure 15 shows that the new estimated parole population is expected to increase by 1.6 percent, from 91,900 to 93,400 during the budget year.

Second, the budget assumes that a total of 10,000 parolees who are undocumented immigrants will be removed from the regular parole caseload and that they will be deported by the United States Immigration and Naturalization Service (USINS). This number is actually higher than previously estimated, resulting in a larger than expected reduction in the regular parole caseload with commensurate savings. (We discuss the estimate of undocumented felons in greater detail below.)

***Lease Payments for Prisons.*** The budget also requests an increase of \$28.3 million from the General Fund and \$9.9 million from reimbursements for increased payments and insurance on prisons that were constructed using lease payment bonds. The primary reason for the increase is opening of new prisons in Lassen and Madera Counties. Both were constructed using lease-payment bonds and the bond agreements require the state to begin making payments after the facilities are occupied. The Lassen prison will be completely occupied in September 1995, and the Madera prison in July 1995.

***Projections Will Be Updated.*** As we indicated above, recent trends indicate that the inmate and parole population projections are likely to be reduced substantially when they are updated by the May Revision. A reduction in the projected population for 1995-96 could result in a significant reduction in the amount requested to accommodate inmate and parole population growth. Based on actual population growth to date, we expect the reduction will be in the tens of millions of dollars.

For these reasons, we withhold recommendation on the proposed (1) increase of \$130 million to support inmate population growth and (2) net reduction of \$10 million to support the parole population, pending receipt and review in May of the department's revised estimates.

Our review indicates that the proposed increase for lease payments (\$28.3 million from the General Fund and \$9.9 million from reimbursements) is reasonable and we recommend that it be approved.

### **Inmate Housing Plan Contains Uncertainties**

*We withhold recommendation on the CDC's plan for housing the projected increase in the prison population in the budget year because it contains a number of uncertainties. The plan will be updated as part of the May Revision.*

**Background.** Inmates are admitted and discharged from the CDC virtually every day. In order to accommodate the changes in the inmate population, the department develops a plan several times each year for housing additional inmates. When a new prison is first occupied, the plan usually specifies that the number of inmates housed there will approximate the number for which the facility was designed (generally around 2,000 inmates for most new facilities). The plan also specifies which other institutions will increase their level of overcrowding. The plan includes a specific list of the institutions which will receive additional inmates, the number and security levels of the inmates to be received, and the months in which the inmates will be placed in the facility. The inmate housing plan must remain fluid, primarily because the CDC has very little control as to when it will receive inmates from county jails, and given the high levels of prison overcrowding.

**Inmate Housing Plan for 1995-96.** The Governor's Budget includes an inmate housing plan to accommodate the approximately 17,000 additional inmates that the department expects to receive during 1995-96. The plan calls for the following:

**Activation of New Prisons.** The plan calls for activation of 2,224 beds at the new prison in Lassen County (August 1995) and the same number of beds at the new prison in Monterey County (February 1996). Another 1,024 beds would come on line at the new prison in Madera, which is scheduled to open in the current year. The facilities would be overcrowded by occupying them at 190 percent of "design capacity" within a few months of their opening (the "design capacity" of a prison is generally calculated on the assumption that one inmate will occupy one cell).

**Overcrowding in Existing Prisons.** The plan calls for overcrowding of an additional 7,000 inmates in new and existing facilities.

**Leased County Facilities.** The plan calls for the CDC to contract with San Bernardino and Alameda Counties to house 1,568 state

inmates in two county jails beginning in 1994-95, and another 140 leased jail beds in the budget year.

**Other Leased Facilities.** In addition to the county facilities, the plan calls for the CDC to contract with public or private entities to provide space for an additional 800 beds in community-based facilities. (We discuss this proposal in greater detail later in this analysis.)

**Change in "Missions" of Prisons.** The plan proposes to change the security levels or "missions" of several facilities from their original design in order to accommodate projected security levels of the increased population. This includes converting the prisons in Los Angeles County, Corcoran, Centinela, and Monterey from Level III to Level IV. The plan also proposes to convert the Northern California Women's Facility (NCWF) in Stockton to a prison for male inmates as of October 1995.

**Uncertainty With the Plan.** Our review indicates that there is substantial uncertainty surrounding several parts of the inmate housing plan, some of which may be resolved by the time of the May Revision.

**Uncertain Inmate Population Growth.** Obviously, the inmate housing plan is driven by the number of inmates who are expected to be sent to prison. Given the uncertainty of the projections that we described above, there is substantial uncertainty about the housing plan as well.

**Overcrowding at Unspecified Locations.** The plan to add additional inmates in new and existing prisons includes placing 2,900 inmates in prisons that have yet to be identified.

**Leased Facilities.** The contracting proposals are subject to considerable uncertainty, given past experience. For example, although the CDC proposed contracting with Los Angeles and San Bernardino Counties for jail bed space for the current year, the department is now contracting for fewer beds much later in the year than planned, primarily because of negotiating delays. Similarly, the department has generally encountered difficulty over the years in contracting for private facilities in local communities.

**Change at NCWF Requires Legislation.** The proposal to change NCWF from a female to male facility will require a change in law since the existing law specifies that the NCWF house female inmates.

*Plan Will Be Updated in May.* The inmate housing plan will be updated as part of the May Revision. At that time, the CDC should have a better idea of its projected inmate population, which could result in changes in the plan for overcrowding existing facilities. Similarly, the department should have an updated construction schedule for the two new prisons and better information regarding the potential contracts with counties and other entities for bed space in communities. For these reasons we withhold recommendation.

### **Big Expansion of Community Correctional Facilities Proposed**

*The budget proposes to expand the number of beds available in community correctional facilities over the next two years by 2,492—an increase of about 46 percent. The department’s plan will result in a higher risk level of inmates being placed in community facilities than previously permitted and may cost more on a per-inmate basis than placement in state prisons. Given CDC’s experience, it may also be difficult for the department to obtain contracts for so many new beds within its current schedule.*

*Background.* The CDC contracts with some local governments and private vendors for community-based facilities in which inmates are incarcerated. These facilities—generally referred to as community correctional facilities (CCFs)—provide incarceration on a scale much smaller than state prison. The facilities, which are located throughout the state, generally house inmates for very short periods of time and/or provide special types of treatment or services for the inmates.

Currently, the CDC contracts for about 5,400 beds in these local facilities. The largest share—about 2,700 beds—is in CCFs that are operated by local public entities (usually small cities) to house parole violators. About 1,400 beds are in CCFs operated by private vendors, and another 1,100 beds are in private work-furlough facilities (facilities for inmates with a short time left on their prison sentences where inmates receive assistance in finding jobs and transitioning back into the community). The remaining 200 beds are in private facilities that provide specialized services (such as the Prisoner Mother Program, the Substance Abuse Treatment Unit, and the Alternative Sentencing Program).

Contracted facilities are generally small, housing less than 500 inmates each. They house inmates in conditions that are much less overcrowded than state prisons.

***Budget Proposes Major Expansion of CCFs.*** The budget proposes a major expansion of inmate bed capacity through an “emergency housing plan” to add 20,000 beds primarily through a combination of overcrowding and new construction in existing prisons. The plan is the result of inmate population growth and the lengthy time it would take to construct new prisons. (We discuss the emergency housing plan in detail in our analysis of the CDC’s capital outlay request—please see the Capital Outlay chapter at the end of this *Analysis*.)

As part of the emergency housing plan, the budget proposes to increase the number of beds in CCFs by 2,492—an increase of 46 percent. Of this amount, 2,000 would be added through contracts for four new 500-bed facilities. Eight hundred beds would be occupied in the budget year and the remaining 1,200 in 1996-97. In addition, 492 beds would be added to existing CCFs operated by public entities that are already under contract.

The CDC advises that it will soon release a Request for Proposal (RFP); it has targeted July 1, 1995, to award contracts; and, it expects to have contracts approved by the Department of General Services by September 1, 1995. Activation of the new beds is scheduled for the beginning of the budget year and would be completed in early 1996-97.

While the inmate population has not grown as expected, given the levels of overcrowding, historical patterns of population growth, and the difficulty in obtaining additional prison beds, we believe that the CDC still has a need to obtain additional beds.

We have three additional observations regarding the proposal.

***CCFs Would House Higher-Risk Offenders.*** Historically, the CCFs have housed relatively low-security inmates who have a short period of incarceration. For example, CCFs are currently off-limits for most inmates who committed a violent sexual offense. Under the proposed expansion, the criteria would be relaxed to allow some offenders from higher risk categories—such as sexual offenders—to be placed in the facilities.

***Costs Likely to Be Greater.*** The per-capita costs to keep an inmate in a CCF are generally higher than the per capita costs to keep an inmate in prison. Among the reasons is that a CCF is much smaller and less overcrowded than a CDC institution, and thus cannot operate at the same economies of scale as prisons.

The budget assumes that the per-capita costs of the CCFs will be the same as the per-capita cost of placing an inmate in an overcrowded state prison—about \$11,000. However, the per capita costs of the current CCF is about \$17,000, or about \$6,000 more than it costs to keep an inmate in an overcrowded state prison. The exact per-capita costs of the proposal will depend on the responses to the RFP and the reimbursement rates

negotiated by the CDC. Based on past experience, however, we expect that the costs will be higher than the budgeted amount.

*Can the CDC Obtain so Many New CCFs on its Current Schedule?* It appears that the department can add the 492 beds through expansion of existing CCFs. In fact, these vendors have already expressed interest and some advise that their use permits will permit the expansions to occur.

It is not clear, however, how successful the department will be in adding the 2,000 new beds. It took the CDC a number of years to obtain its existing 5,400 beds. In addition, unlike state prisons, private vendors who wish to obtain the contracts will be subject to location rules, planning, and zoning requirements of local governments. The department's plan to place more risky inmates in these facilities could make local permitting more difficult.

## **ISSUES RELATED TO ILLEGAL IMMIGRATION**

### **Budget's Estimate of Federal Funds Exceeds Current Authorizations and Appropriations**

*The budget assumes that the state will receive \$422 million in federal funds to offset the costs of incarcerating and supervising undocumented felons in California. This amount could be substantially overstated.*

The Governor's Budget assumes that the state will receive \$33 million in the current year and \$422 million in the budget year in federal funds to offset the costs of incarcerating and supervising undocumented felons in state prison and the Youth Authority. These funds are counted as *offsets* to state expenditures and are not shown in the budgets of the CDC and the Youth Authority, or in the Budget Bill. Thus, the Governor's Budget would hold the CDC and Youth Authority budgets harmless should the federal funds not materialize.

*Estimating the State's Costs to Incarcerate and Supervise Undocumented Felons.* The CDC estimates that about 14 percent of the state's inmate and parole populations consist of undocumented felons. Using these figures, the Department of Finance (DOF) estimates that the costs to the state for these offenders will be \$447 million in the current year and \$503 million in the budget year (for the budget year, the amount includes \$468 million for the CDC and \$35 million for the Youth Authority) as shown in Figure 16.

<b>Figure 16</b>		
<b>State Costs for Incarceration and Supervision of Undocumented Felons<sup>a</sup></b>		
<b>(In Millions)</b>		
	<b>1994-95</b>	<b>1995-96</b>
Corrections	\$413	\$468
Youth Authority	34	35
<b>Totals</b>	<b>\$447</b>	<b>\$503</b>

<sup>a</sup> Department of Finance estimates.

The totals include the costs of: (1) housing undocumented offenders in state prison and the Youth Authority, (2) supervising undocumented offenders on CDC and Youth Authority parole, (3) paying for a portion of the debt service for the construction of new prison facilities to house the share of the state's inmate population that is undocumented. In calculating the costs, the DOF relied on data from the CDC and the Youth Authority and from the Urban Institute in Washington, D.C., which released a report in September 1994 on the fiscal impacts of undocumented immigrants in seven states, including California.

Our review indicates that the DOF's methodology for estimating the costs to the state of incarcerating and supervising undocumented felons is reasonable and is based on methodology that is similar to that used by the Urban Institute and the U.S. General Accounting Office (GAO).

**Estimating Federal Funding.** The administration estimate of receipt of federal funds is shown in Figure 17 (please see next page). As the figure shows, the administration assumes that California will receive \$78 million from federal appropriations made in federal fiscal year (FFY) 1995. Of this amount, \$33 million would be available in state fiscal year 1994-95, with the remaining \$45 million available in 1995-96. As regards the FFY 1996 federal appropriation, the administration believes that the state will receive \$377 million which when combined with \$45 million from FFY 1995 will result in a total of \$422 million in 1995-96.

**Administration's Estimate is Higher Than Current Federal Authorizations and Appropriations.** We believe that the administration's assumptions on receipt of federal funds may be high, based on current federal authorizations and appropriations. Although we concur with the administration's estimate that California will likely receive about \$78 million over the two years from the current federal budget appropriations, the federal crime bill authorizes an additional \$300 million appropriation nationwide for FFY 1996. Thus, we believe that, with the carryover from

FFY 1995, California would likely receive a total of about \$245 million in 1995-96, instead of the \$422 million assumed by the administration.

**Figure 17**

**Administration's Assumptions  
on Receipt of Federal Funds  
for Undocumented Felons**

**(In Millions)**

Federal Fiscal Year	State Fiscal Year	
	1994-95	1995-96
1995 <sup>a</sup>	\$33	\$45
1996 <sup>b</sup>	—	377
<b>Totals</b>	<b>\$33</b>	<b>\$422</b>

<sup>a</sup> Based on existing appropriations and disbursement rules.

<sup>b</sup> Based on administration's estimates of costs (\$503 million), adjusted to reflect difference in timing between state and federal fiscal years.

There are three reasons to be cautious about the administration's estimates of federal funds.

First, at the time this *Analysis* was prepared, the state had not even received its \$33 million share from the federal government for the current year. Administration officials advised that the federal government wants the state to relinquish its claim for full reimbursement before it will provide the amounts appropriated. The administration has advised federal officials that it does not intend to do so.

Second, the Congress has made no appropriations for FFY 1996 and will not do so until later this year. Based on previous experiences, it is not uncommon for the Congress to appropriate much less money for state programs than is authorized.

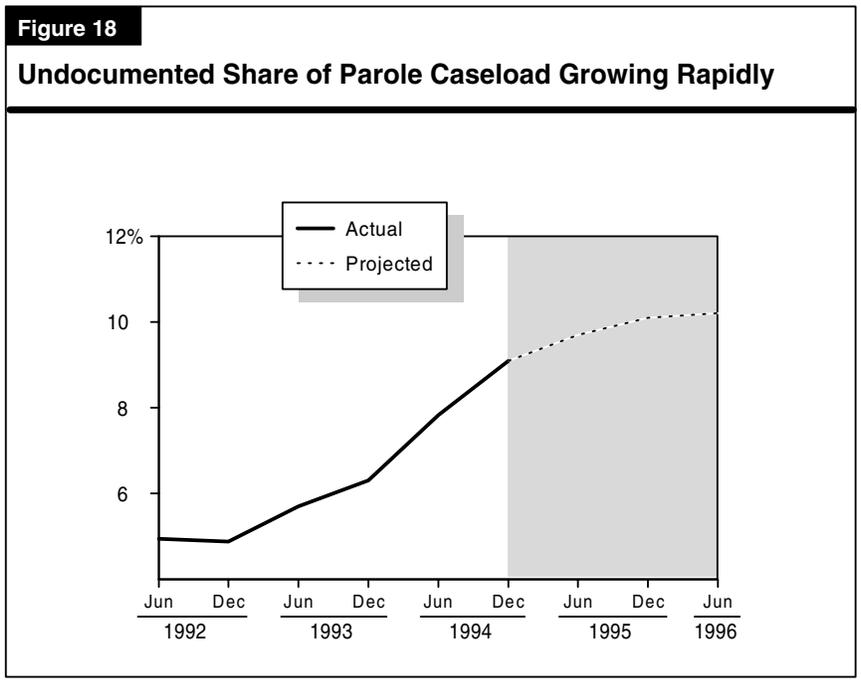
Finally, legislation has been introduced in Congress to amend the federal crime bill with provisions contained in the "Contract With America." Depending on actions on this measure, the Congress could increase or decrease the federal authorization for FFY 1996. (We discuss the proposed federal legislation in our analysis of the federal crime bill earlier in the Crosscutting Issues section of this chapter).

## Number of Undocumented Felon Parolees Growing Rapidly

*We recommend that the CDC report to the Legislature, prior to budget hearings, on the findings of its audit of the caseload of parolees who are subject to deportation.*

**Undocumented Felon Population Growing.** The CDC has estimated that about 4 percent of the inmates incarcerated in the state prison system are undocumented immigrants who are in the United States illegally. The number of inmates classified as undocumented has grown significantly in recent years, although only slightly faster than the prison population as a whole. Thus, the percentage of undocumented inmates has remained fairly stable.

In contrast, the number of paroled undocumented felons being handed over to federal authorities for deportation is rising rapidly. The portion of the parole caseload classified by CDC as “USINS”—the step taken to coordinate their deportation by the United States Immigration and Naturalization Service—is estimated to grow 5 percent over approximately a four-year period, as seen in Figure 18.



As of July 1992, according to CDC data, 4,382 felon parolees had been classified as "USINS" for deportation. That amounted to just under 5 percent of the parolee population. The CDC projects that by the end of the current fiscal year, 9,596 parolees, or 9.7 percent of the total caseload, will be in the "USINS" category. By June 1996, the number is projected to reach 10,285, or 10 percent of the total.

***Why the Numbers Are Growing.*** According to the CDC, two factors may be causing a surge in the number of parolees classified as "USINS." First, more intense efforts by the CDC and federal authorities to identify prison inmates who are illegally in the United States may account for part of the rise; the immigration status of these inmates may have been overlooked in the past. In addition, the higher number of "USINS" parolees may also reflect a real increase in the number of undocumented immigrants in the state's criminal justice system.

***Many Undocumented Felons Never Deported.*** Although the CDC has been directed to ensure that as many undocumented felon inmates as possible are deported upon the completion of their prison terms, many are not deported because of inaction by the INS or other procedural complications in the deportation process. In 1992, the CDC calculated that 63 percent of persons who had an "USINS" classification at the time of their release from prison avoided deportation.

Whether they are actually deported or not, felon parolees judged by the CDC to be deportable are counted somewhere in the parole caseload. Parole cases of those classified "USINS" and deported are "banked" on a caseload in order to ensure that some resources are available if the parolee returns to California. They are assigned a very minimal level of bookkeeping and supervision (500 parolees per parole agent). Those who are not taken into custody upon their parole for deportation by the INS are assigned to regular parole units based upon their county of commitment, and are counted on regular CDC caseloads where they are to receive the same level of supervision as parolees who are U.S. citizens (roughly 53 parolees per agent).

***Deportees May Be Returning With No Supervision.*** It is unclear what proportion of the "USINS" felon parolees who have been handed over to federal authorities for deportation have since returned to the United States or California illegally. According to a previous CDC report, about 19 percent of the parolees released to the INS in 1992 are known to have returned to the United States because of rearrest or contact with parole authorities.

The CDC is currently auditing its entire "USINS" caseload to assess the status of the felon parolees in this category. For example, auditors are cross-checking arrest records and motor vehicle records to see if deported "USINS" parolees have returned to California. According to the CDC, preliminary indications are that 20 percent more deported parolees have

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returned to the state than was previously assumed. If true, this poses a potential threat to public safety, since a sizable number of parolees would be present in the community with virtually no supervision.

*Contradictory Fiscal Effects Seen.* The audit findings could significantly affect the CDC budget, especially if more felon parolees should be counted on the CDC's regular caseload and thus provided a more intense and more expensive level of state supervision. Meanwhile, increasing success in deportation of illegal aliens could result in major savings in parole supervision costs, because it would reduce the population of felon parolees subject to intense supervision.

For these reasons, we recommend that the CDC report to the Legislature, prior to the budget hearings, on the findings of its audit of the "USINS" caseload.

## **INMATE LEGAL AND MEDICAL ISSUES**

### **Legal Challenges to Prison Conditions Could Have Major Fiscal Effect**

*Three federal court lawsuits contending that the CDC has permitted "cruel and unusual punishments" of inmates have already prompted major operational changes in the care and treatment of inmates and significant increases in the CDC budget. As the three pending cases each nears a critical point, it appears that the courts will eventually force the state to spend tens of millions of dollars beyond the sums already budgeted to comply with their rulings.*

The Eighth Amendment to the U.S. Constitution prohibits the infliction of "cruel and unusual punishments." A long line of judicial case law and federal civil rights statutes have established that this prohibition applies to the conditions in state prisons. In some cases, including several major rulings directly involving the CDC, judges have directly ordered changes in the conditions permitted at CDC institutions with the stated goal of eliminating alleged violations of the Eighth Amendment and civil rights statutes.

The proceedings in three major cases now pending are nearing a critical point, and all have resulted in agreements, court orders or recommendations adverse to CDC's initial legal position that no unconstitutional conditions existed.

*Gates v. Gomez.* In this case, plaintiffs claimed that the mental health treatment provided at the California Medical Facility (CMF) at Vacaville—the long-established central hub of the CDC's medical care system—was unconstitutionally deficient in the provision of psychiatric services for inmates.

Rather than litigate the case, the CDC negotiated a consent decree to settle the legal dispute, agreeing to meet federal standards and guidelines for the CMF psychiatric program. Last October, plaintiffs representing the inmates persuaded the judge handling the case to hold CDC officials in contempt of court for their alleged failure to fully implement the consent decree. The department challenged the contempt ruling. In late January 1995, a federal appellate court stayed the contempt citation and ordered an expedited legal process on the contempt-citation issue that could result in a final ruling as soon as this spring.

*Coleman v. Wilson.* In this case, almost the entire CDC mental health delivery system, except for CMF, is under review by the courts to determine if the state has failed to provide the legally required minimum level of psychiatric care and services to inmates with mental illnesses.

Last June, a federal magistrate found that inadequate mental health care for inmates was prevalent and the result of “deliberate indifference” by the CDC to the Eighth Amendment ban on cruel and unusual punishments. The magistrate proposed major revisions in the statewide system by which inmates with mental illnesses are screened and treated, as well as the implementation of new standards for mental health care staffing and record-keeping for such patients by the CDC. The magistrate has also recommended the appointment of a special master to implement the eventual court order. The CDC has objected to the magistrate's proposals. A federal court judge has yet to act upon the magistrate's recommendation; a court ruling could come as soon as this spring.

*Madrid v. Gomez.* This case, like the *Gates* case, centers on allegations of unconstitutional conditions at a single institution rather than in the entire state prison system. The *Madrid* plaintiffs contended, among other things, that inmates at the five-year-old Pelican Bay State Prison near Crescent City are illegally subjected to excessive use of violent force by correctional officers; that general medical and mental health care systems there are inadequate; and that the use of a special Security Housing Unit (SHU) which almost totally isolates the inmates confined there constitutes cruel and unusual punishments.

A January 1995 ruling handed down by the federal district court judge handling the *Madrid* case permitted the SHU to remain in operation as long as inmates with serious medical problems likely to be aggravated by such isolation were no longer so confined. The judge also ruled that inmates were subjected to excessive violence and received poor medical and mental health care.

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The judge appointed a special master who was directed to return to the court in 120 days with a plan to remedy the conditions at Pelican Bay that were deemed unconstitutional. Although the CDC has reserved the right to appeal part or all of the judge's ruling, the department's lawyers say they intend to confer with the special master in an effort to work out a plan that could resolve the case.

*Fiscal Impact of Litigation Unclear.* The exact effect of the three as-yet unresolved legal cases on the CDC budget is unknown but probably will be costly.

The CDC has cited these legal challenges as justification for major expenditure increases for its medical care, mental health, computer database, and recordkeeping functions.

The Legislature has already provided millions of dollars in budget augmentations in recent years to address deficiencies cited by the CDC. However, it now appears unlikely that these planned expenditures and operational changes in the CDC will completely satisfy the issues cited in these court cases and the plans to be formulated by special masters.

Full compliance with the court decisions could eventually cost tens of millions of dollars beyond the amounts now being budgeted for this purpose. For example, the magistrate's recommendation in the *Coleman* case suggested that the CDC would require staffing of 732 positions by the end of 1996-97 to provide an adequate level of mental health treatment for the entire prison system. Yet the CDC indicates that the three-phase plan now under way to improve mental health care would result in 478 positions at a cost of \$36.6 million. (We discuss this plan in greater detail below.) The cost figure could escalate rapidly were the courts to insist on a higher level of care.

### **Budget Proposes Second Year Funding of New Health Care Delivery System**

*We recommend approval of \$19.6 million from the General Fund and 284 positions for the second phase of the CDC's new health care delivery system. The plan has one more phase requiring an additional \$9 million before it is complete in 1996-97. Future costs may be higher, however, for several reasons.*

The budget requests \$19.6 million and 284 positions to implement the second phase of a three-year plan to upgrade its health care delivery system for inmates in response to ongoing litigation. The request for 1995-96 includes costs and staffing for administration, additional laboratory and pharmacy costs, introduction of a new anti-psychotic drug therapy, therapeutic dietary services, and management information systems. The new system upgrades inmate access to both medical and mental health services. The CDC will spend approximately \$8.1 million and add 117 new positions in the current year for the first phase of implementation. The final year of the project (1996-97) is estimated to cost \$9 million and add an additional 77 positions.

In addition to the operations costs associated with the new system, the CDC is requesting \$2.7 million in capital outlay for design and plans for modifications at five prisons to meet licensing and other facilities-related requirements of the service delivery plan. In 1996-97, the CDC estimates that it will need an additional \$12.1 million for capital outlay, which includes construction at five institutions and design work for a further seven institutions. In 1997-98, the CDC estimates that a final \$19.6 million will be needed to complete work at seven institutions. These estimates do not include medical-related construction costs for future new prisons.

Consequently, as Figure 19 shows, the total costs for implementing the operational components of the new delivery system will be \$36.7 million over the three-year period, and more than \$30 million annually thereafter. An additional \$34.4 million will be needed for one-time capital outlay.

<b>Figure 19</b>		
<b>Costs of Health Care Services Delivery System 1994-95 Through 1997-98</b>		
<b>(Dollars in Millions)</b>		
<b>Year</b>	<b>Operations</b>	<b>Capital Outlay</b>
1994-95	\$8.1	—
1995-96	19.6	\$2.7
1996-97	9.0	12.1
1997-98	—	19.6
<b>Totals</b>	<b>\$36.7</b>	<b>\$34.4</b>

**Background.** In 1991, partly as a result of litigation, the CDC contracted with the Western Consortium for Public Health to develop a mental health services delivery system. The result was a final report, *The Mental Health Services Delivery System*, which made recommendations for a comprehensive health services delivery system that includes both medical and mental health services. The report, issued in February 1993, included plans for staffing, building, remodeling, and a model for a continuum of care, especially for mentally disordered inmates.

**Continuum of Care Model for Mental Health Services.** The concept of a continuum of care emphasizes early intervention, symptom management, and stabilization. The treatment focuses on housing the individual in the least restrictive environment possible and reintegrating the individual back into regular inmate programs to the maximum extent possible. This approach is designed to provide reasonable access to care and a mechanism for cost containment, in that housing inmate patients in the least restrictive environment is generally also the least costly option. Figure 20 (please see next page) provides an overview of the proposed continuum of care model for CDC's provision of mental health services.

**Services Will Be Limited to Severely Mentally Disordered Inmates.** The CDC plans to limit the provision of mental health services to only those inmates with *severe mental disorders*. Other categories of inmates, such as sex offenders, substance abusers, the developmentally disabled, and those with moderate personality disorders, would not receive specialized services unless they also manifest severe mental disorders. The CDC will measure severity of the mental illness by evaluating the functional impairment of the inmate. Only those inmates exhibiting symptoms and behaviors that require intervention will receive services. Any inmate that exhibits severe behaviors will receive care services.

The report estimates that 11 percent of males and 15 percent of female inmates have serious functional impairments and will need some type of service during their incarceration. A further 9 percent of male and female inmates will exhibit moderate impairment. These inmates will also need services. Consequently, one in five male inmates and one in four female inmates will have need of mental health services sometime during their imprisonment.

**Centralized Provision of All Medical Services.** The report criticized the CDC's method of providing mental health services in a centralized form. Prior to the implementation of this plan, mentally disordered inmates were transferred to one of three institutions, or to a Department of Mental Health (DMH) hospital on contract with the CDC. As a consequence, inmates were transferred to more expensive placements when a different type of intervention might have kept the inmate in a less costly placement.

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<b>Figure 20</b>	
<b>Department of Corrections</b>	
<b>Mental Health Continuum of Care Model</b>	
<b>Level of Care</b>	<b>Description</b>
Screening at Reception Centers	Inmates screened for mental health problems. Approximately 29 percent of inmates screened will need a follow-up evaluation.
Follow-Up Evaluation	Evaluations performed by clinicians at the reception centers.
Crisis Care	Crisis intervention available in all institutions. Crisis care includes assessment and diagnosis, triage, and referral to the appropriate level of care. Most care will be provided on an outpatient basis.
Mental Health Inpatient Crisis Care	Provides short term (less than ten days) aggressive interventions aimed at symptom reduction and stabilization. Care provided at five institutions.
Inpatient Hospital Care	Inmates who do not respond to crisis intervention transferred to a DMH hospital. These hospitalizations will average 45 to 60 days.
Enhanced Outpatient Program (EOP)	Provides sheltered living environment within institutions. Seriously disordered inmates receive up to a full day of therapeutic programming. Inmates who are able will be “mainstreamed” into general population programs appropriate to their custody level.
Mental Health Correctional Clinical Case Management System (CCCMS)	Each institution will have case managers to provide monitoring and treatment. Services would include psychotropic medication, therapy, and case management.
Pre-Release and Parolee Services	Plan calls for preparing seriously mentally ill inmates for their return to the community and for the provision of maintenance services while on parole.

*Phase 2: Implementing the Health System Service Areas.* In order to implement the continuum of care model and eliminate the problems associated with a centralized method of providing mental health services, the CDC plans, as part of its second phase, to implement a health care “cluster” approach to medical and mental health service areas. The CDC's institutions will be grouped into 17 geographical or medical service areas, ranging from a single institution (Pelican Bay) to geographically contiguous areas, such as the medical service area serving the prisons in Coalinga, Avenal, and Corcoran. In addition, the institutions will be grouped into mental health service areas to provide continuum of care

services. Each service area will have "hub" institutions to provide an Enhanced Outpatient Program (EOP) and a licensed medical care facility.

Currently, inmates receive health service in unlicensed infirmaries, licensed CDC hospitals, or in community hospitals. This system results in higher costs because there is no intermediate level of care for inmates who need more services than are offered in an infirmary, but do not need acute hospital care. The CDC will attempt to address this problem in the second phase implementation by expanding the availability of sub-acute medical and mental health facilities. Specifically, the CDC will seek licensing for Correctional Treatment Centers (CTC) at 13 institutions. (The CTC is a new category of licensed health care facility.) The CTCs will be licensed to provide 24-hour care, but at less cost than hospitals. In addition, since the CTCs will be part of institutions, security costs will be lower. The CTCs will be in addition to the four already licensed hospitals. Each service area will have a CTC or hospital.

***Meeting Licensing Requirements.*** The new CTC licensing requirements do not go into effect until December 1995. The department proposes to delay hiring staff that will be needed to meet licensing requirements until that time. To be licensed, CTCs must meet specific staffing requirements. For example, the CTC must be able to demonstrate that it has nursing staff to provide at least 2.5 hours of care for each patient and that a nurse is available 24 hours a day. The licensing requirements also specify that patients receive therapeutic meals that are reviewed by a dietician. As a consequence, CTCs will not be able to use "mainline" institution food services. There also are equipment and facilities requirements for licensure.

***Costs Could Be Greater.*** The CDC reports that it will require an additional \$9 million in 1996-97 (for the system's third phase) and \$34.4 million for capital outlay to complete the implementation of its plan. Our review indicates that there could be further costs for two reasons.

First, there may be additional staffing and facilities costs to meet licensing requirements for the new CTCs. Second, the CDC's new health care system may not be acceptable to the courts, thereby necessitating additional expenditures.

***Analyst's Recommendation.*** We believe that the department's budget year proposal is reasonable. Thus, we recommend approval of \$19.6 million and 284 positions for the department's implementation of the second phase of its new health care delivery system. However, we note that the proposal has significant future costs. Licensing and court-related actions could result in costs that are even higher than the department's projections for completing the new system.

### **Adequate Framework Not In Place to Support Utilization Review Positions**

*We recommend the reduction of 19 positions (18.1 personnel-years) for health care utilization review nurses because the department has not established a quality management system or completed standards for scope of services.*

The budget requests 19 new registered nurse (RN) positions, one position for each of 19 institutions, to perform medical utilization reviews. The budget does not request additional funding for the positions, but instead proposes to pay for the new positions from "savings" that would be realized from utilization reviews. We estimate that the department would have to generate almost \$1 million in savings to defray the costs of the new positions.

***What Is Utilization Review?*** Medical services utilization reviews are intended to ensure quality of health services and control costs. Large health maintenance organizations, both private and public, use such reviews. For example, California's Medi-Cal program has both automated and health care professional utilization reviews.

Generally, utilization review consists of health care professionals (Medi-Cal uses RNs, physicians, and pharmacists) who evaluate whether certain medical procedures, tests, drug treatments, and elective surgeries are necessary for the patient and are part of the scope of services that the system provides. Integral to a utilization review system are two elements. First, the system must fully define what services it will provide, known as scope of benefits or services. For example, because the CDC provides emergency and basic medical care for inmates, these services would be part of the CDC's scope of services. In addition, the system must evaluate what services it will not provide. For example, the CDC would not be required to provide, in most instances, cosmetic surgery. The scope of services also identifies among alternative procedures which is the most cost-effective.

The second element of utilization review is a system for prior authorization. Prior authorization review requires that a health provider (for example, the physician, laboratory, pharmacy, or hospital) obtain approval prior to providing certain services (for example, tests, drugs, or

procedures). If the service is medically necessary, as defined in the system's scope of services, it is approved. If not, then payment for the service is not approved.

*The Department Does Not Have the Systems in Place for Utilization Review.* Currently, the CDC does not have a centralized quality assurance system. Such a system would allow the department to monitor the provision of medical services, the associated costs, and evaluate whether the services are medically necessary within the scope of authorized services.

The CDC has not completed nor has it identified when it will complete its scope of services nor developed utilization standards and guidelines. Of equal importance, the department does not have a formalized prior authorization process, although it proposes developing Medical Authorization Review committees at individual prisons.

*Analyst's Recommendation.* Because the CDC does not have the basic framework for utilization review, we believe that the proposal is premature and recommend that the 19 proposed positions be deleted.

### **Department Should Use CMAC to Negotiate for Better Rates on Contracted Medical Care**

*We recommend the enactment of legislation to allow the CDC to contract with the California Medical Assistance Commission (CMAC) to negotiate contracts for inmate medical services. We further recommend that the CDC and the CMAC report to the Legislature, prior to budget hearings, on an estimate of savings that can be realized from using CMAC.*

*Background.* Some of the department's inmate medical services are provided through contracts with community providers. The department contracts with local hospitals, laboratories, pharmaceutical companies, medical equipment suppliers, and specialist health care providers to provide services that are not available within departmental infirmaries and hospitals. The department's budget for contract medical services for 1995-96 is proposed at \$88 million.

*Departmental Contract Negotiations.* The CDC's Health Care Services Division has begun negotiating contract rates with various providers. The division has contracted with six hospitals that provide inpatient care and other services for approximately 49 percent of the CDC's annual inpatient hospital volume. The department reports that savings realized from these negotiations offset other contract medical costs that have increased in the current year.

*Department Should Utilize Services of CMAC.* In last year's *Analysis*, we recommended that the department consider contracting with the California Medical Assistance Commission (CMAC) to negotiate its con-

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tracts for hospital and related services. The CMAC negotiates contracts on behalf of the state with hospitals, county health systems, and health care plans that provide services to Medi-Cal recipients. Many of the agencies that CMAC contracts with also provide services to CDC inmates. The CMAC has many years of experience in contract negotiations, and more importantly, its Medi-Cal contracting experience allows it to negotiate with knowledge of the most favorable rates that many hospitals will accept. The Legislature adopted Budget Act language in the 1994 Budget Act directing the CMAC to provide the department with assistance in negotiating contracts, and reduced the CDC budget for 1994-95 by \$3 million to account for expected contract savings.

The CDC has not contracted with CMAC because, according to the CDC, the CDC's contract rates are not confidential (as are Medi-Cal contract rates). Although not required, confidentiality of rates would improve the ability of negotiators to obtain the most favorable rates from competitive contractors. When contractors know what the department pays one contractor it is difficult to negotiate lower rates. The CDC sponsored legislation last year that would have resolved this issue, but it was not enacted. As a consequence, the DOF has restored the \$3 million to the CDC's current year budget and included it in the department's baseline budget for 1995-96.

***Analyst's Recommendation.*** We continue to believe that the CMAC has the ability to more effectively negotiate favorable contract rates than negotiators for the CDC. In addition, we question whether the department's proposed legislation to allow confidentiality in the rates is *required* in order for the CMAC to negotiate on behalf of the CDC. In order to address CDC's concerns, however, we recommend the enactment of legislation that removes any obstacles for the CMAC to negotiate for the department.

We also continue to believe that the department could incur significant General Fund savings from using CMAC. Thus, we recommend that the CDC and the CMAC report to the Legislature, prior to budget hearings, on the amount of savings that may be realized in the budget year resulting from CMAC negotiating on behalf of the CDC.

## THE JOINT VENTURE PROGRAM

### What is the Joint Venture Program?

In November 1990, California voters approved Proposition 139, an initiative constitutional amendment and statute establishing the Joint Venture Program authorizing state prison and county jail officials to contract with private entities, businesses, and others for inmate labor. Among its provisions, the measure:

Directed the Director of Corrections to establish Joint Venture enterprises for the employment of inmates.

Required that inmate wages be comparable to non-inmates for similar work.

Authorized a tax credit to Joint Venture employers equal to 10 percent of each inmate employee's wages.

Made inmate wages subject to deductions for taxes, prison "room and board," restitution to crime victims, and support of the inmate's family.

Authorized lease of property on prison grounds at or below market rates in order to set up work programs.

Supporters of the initiative argued that teaming with the private sector to bring new businesses to prison grounds would benefit the state financially and result in many more inmates contributing a portion of their wages to pay for their own room and board. Initiative supporters also contended that inmates, whose participation in the Joint Venture Program is voluntary, would also benefit by gaining work experience, learning a work ethic, and gaining job skills that would prevent their return to a life of crime upon their release from prison.

To date, no county has established a Joint Venture enterprise. However, the state prison system began hosting Joint Venture enterprises in July 1991. The voter-mandated program is now in its fourth year of operation.

### Has the Joint Venture Program Been Successful?

*The Joint Venture Program is operating at an annual loss to the General Fund, largely because so few private companies have chosen to establish enterprises. The program has provided some benefits, such as "room and board" repayments to the General Fund and the withholding of state and federal income taxes from inmate pay. Only a fraction of the prison inmate population is involved in Joint Venture businesses and there is little information available as to whether they are gaining job*

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*skills that will make them more employable upon their release or less likely to return to prison.*

We found that the Joint Venture Program has generally not been successful at meeting many of the original goals of the program. Although the program provides valuable jobs for inmates and a number of financial benefits to society, the program has been losing money.

***Few Inmates, Companies Participating.*** The program has not been successful at increasing the number of enterprises and jobs offered to inmates. The Joint Venture Program currently has 12 businesses in operation with a combined workforce of 196 inmates. Thus, only one-tenth of 1 percent of the state's 125,000 inmates are employed by a Joint Venture enterprise—far from the thousands of inmates that had been envisioned by proponents of the ballot measure.

The size of the inmate workforce has fluctuated significantly. One year ago, program administrators reported, the program reached a peak of 240 inmates. The payroll total subsequently slipped to about 140. Participation has since rebounded to 196 as of January 1995.

***Program Operates at General Fund Loss.*** The Joint Venture Program continues to operate at a financial loss to the state's General Fund. Financial data provided by the CDC indicates that the program currently has a net annual cost to the General Fund of about \$180,000. This is primarily because the number of inmates participating is so small.

The annual administrative cost of the program is about \$520,000. The program returns about \$200,000 to the General Fund each year in "room and board" support for inmates and another \$20,000 in state taxes withheld from inmate pay. About \$120,000 in rent is also paid annually to the General Fund for the use by businesses of correctional facilities.

Since, on average, about 192 inmates are participating in the program, this amounts to a short-term annual loss of about \$900 per inmate.

The administrative costs for Joint Venture are higher than were anticipated when the initiative was approved by the voters. At that time, they were estimated to be \$1,700 per inmate, comparable to an existing Youth Authority's joint venture program. The CDC Joint Venture Program now has administrative costs averaging about \$2,700 per inmate. The CDC's costs are higher due to the limited number of inmates participating in the program.

**Program Provides Other Benefits.** The calculations above of *short-term* costs and benefits to the General Fund do not take into account other benefits the program generates for other parties, nor possible beneficial *long-term* effects upon the General Fund. These benefits are more indirect and some accrue to entities other than the state.

Calculations based upon financial data supplied by Joint Venture administrators point up these benefits:

About \$200,000 per year is being deducted from the paychecks of inmates and set aside for restitution to crime victims.

Aside from state tax receipts, another \$150,000 a year is deducted from inmate payroll to pay other taxes, mainly for the federal government.

About \$145,000 per year is deducted from paychecks for the support of inmate families. These payments could potentially reduce dependence on California's welfare system.

Of the roughly \$1.2 million in gross wages being paid to inmates, about \$140,000 per year is placed in mandatory savings accounts and \$200,000 per year in voluntary trust accounts. This money could help inmates make an easier transition back into society after they are released from prison.

**Program Provides Inmate Jobs to Reduce Time Spent in Prison.** Inmates who participate in a work or educational program can earn credits to reduce the time they spend in prison by as much as one-half. Inmates who participate in the Joint Venture Program become eligible for these credits. In the long-run, these work credits could result in a General Fund savings of several thousands of dollars annually for each participating inmate. These savings are not realized unless and until an inmate completes his sentence, and it is not known how many inmates have left prison earlier than they would otherwise because of work credits earned in the Joint Venture Program. (These savings will diminish somewhat as a new state law restricting work credits for newly committed violent offenders takes effect.)

**Program Has Hidden Costs.** Not all costs of the program by the state are reflected in the program's operating budget:

Three years ago, the Joint Venture Program received \$60,000 in prison construction bond funds for capital improvements to help launch prison enterprises. The program and its private enterprises have not been required to repay this money.

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Each state prison has been assigned a Joint Venture coordinator to work with any on-site businesses and to assist in the marketing of their prison to prospective new ventures. The CDC has not determined the cost of the staff time devoted by these personnel.

Proposition 139 provides tax credits to employers who hire inmates for prison ventures. The CDC has not estimated the cost to the taxpayers of the tax revenue lost because of the tax credit, although officials believe technical limitations on eligibility have held the revenue loss to a minimum. Franchise Tax Board data for 1993 (the most recent year available) is incomplete, but so far shows very little use of the tax credit. Federal tax credits are also available to Joint Venture employers; the extent of their use and cost is also unknown.

***Effect on Inmates Unclear.*** As described above, one argument in support of the initiative was that the biggest potential savings could come from better enabling inmates to become self-supporting after their release by equipping them with marketable job skills taught by the state's Joint Venture partners from the private sector. However, it is not known whether inmates who have participated in the Joint Venture program have a lower rate of recidivism after they are released from prison.

It is known that few inmate workers have stayed with their Joint Venture employers after their release. This is, in part, because current law requires inmates to be paroled back to the county from which they were sentenced. Employers might not have enterprises in the same county.

***Improved Program Performance May Be Forthcoming.*** Despite the prior difficulties, CDC officials are projecting that the Joint Venture Program will add eight new companies and 221 inmate employees to the program by the end of the 1995-96 fiscal year. Contracts for these new employers are signed or pending.

The CDC estimates that these additional companies and workers would allow the Joint Venture Program to generate more money for the General Fund each year than it expends. That break-even point will be reached when between 225 to 300 inmate employees are working for active Joint Venture enterprises, according to the CDC, because administrative costs are expected to remain level. However, past predictions of growth in the number of Joint Venture jobs and enterprises have not always been realized.

## How Can The Program Be Improved?

*Administrators of the CDC program have encountered a series of obstacles which have hindered the smooth integration of private-sector businesses into the sometimes hostile prison environment. We recommend a number of changes to the program and offer several options for the Legislature to consider that may improve the program's performance.*

**Obstacles to the Program.** A series of obstacles have thwarted expansion of the Joint Venture program:

Many employers are said to be afraid of operating in a prison environment or, after signing up for the program, have left after becoming frustrated with the unexpected costs of security and the restrictions upon when and how they could operate their enterprises.

Joint Venture program administrators have encountered troubles in marketing the program to prospective business partners. For example, the Legislature last year approved the hiring of a full-time marketing professional. The position remains unfilled, and may be vacant until next year, because of the difficulties involved in creating a civil service classification for the new post. A half-time contract employee now provides marketing expertise.

Some projects have fallen through because prisons lacked space or the proper facilities to operate on-site prison factories or lacked enough eligible inmates to participate in the work program.

Some employers have found it difficult to qualify for the state tax break offered to entice new participants, and some were displeased by the discovery that participating inmates are eligible to collect unemployment benefits from their accounts following their release from prison.

**What Can the Legislature and Administration Do to Improve the Program?** We found that there are a number of steps that the Legislature and administration can take that could improve the performance of the program. Some of these changes can be enacted in the Budget Bill and some will require legislation (Proposition 139 permits the Legislature to amend the statutory provisions of measure to further the measure's purposes, with a two-thirds vote of each house). In addition, we believe that there are a number of steps that should be considered for the long-term that may be beneficial.

The changes include the following:

***Contract for Marketing Specialist.*** Improved marketing of the program could lead to expansion. Thus, we believe that the present part-time Joint Venture consultant should be replaced with a full-time contract consultant with established professional credentials and experience in marketing. We recommend that the Legislature delete the marketing position and convert the funds for the position for contractual services.

***Modify the Parole Placement Rules.*** Current law allows the CDC to make an exception in regard to the return of an inmate to the county from which he was committed. We recommend that the Legislature direct the CDC to revise its parole rules to make it easier for an inmate to be paroled to another county if a Joint Venture employer agrees to employ the parolee at a job site outside the county from which the inmate was committed.

***Consider Earmarking Contributions.*** Joint Venture officials believe that the program could be improved by earmarking some of the “room and board” payments that currently go the General Fund for program-related capital outlay projects, or to provide incentives to correctional facilities to help make such enterprises successful. Although such a move would reduce revenues to the General Fund, it could be a valuable investment that might help expand the program so that more inmates participate. Program administrators believe it would also give wardens stronger incentive to assist Joint Ventures at their prisons.

***Consider Changes in Unemployment Benefits.*** In order to address the concerns raised by some potential employers, the Legislature should consider changing the provisions of law that allow inmates to collect unemployment benefits on the basis of their prison employment. Program officials advise that they have already proposed legislation (SB 103, Hurtt) that makes this change.

***Consider Joint Venture Facilities in Design of New Prisons.*** Although the state should not assume the duty of building Joint Venture prison factories, we believe that the Legislature should direct the CDC to design new prisons with adequate space set aside for sites for privately built Joint Venture enterprises. In addition, the Legislature should direct the CDC to ensure that designs at existing facilities that are modified accommodate new opportunities to set up Joint Venture enterprises.

*Study the Effects of Program on Inmate Recidivism.* Given that there is so little information about the effect of the program on inmate recidivism, we recommend that the Legislature direct the CDC to compare the rates of recidivism among participants with similar inmates in the prison population.

In the long run, if Joint Venture continues to operate at a loss to the General Fund, the Legislature may want to consider more fundamental changes to the program. For example, we believe that the successful joint venture programs in other states are also worth examination, such as a program in Oregon in which the state created an independent nonprofit agency with greater autonomy to strike agreements with private business partners. Similarly, the Legislature may want to consider consolidating the Joint Venture Program with the existing Prison Industry Authority (PIA).

## ADMINISTRATIVE ISSUES

### No Basis for Inflation Adjustment

*We recommend deletion of a proposed inflation adjustment for the cost of operating expenses and equipment, resulting in a General Fund savings of \$30.5 million, because we find no analytical basis for granting an adjustment to the CDC that has been denied other state agencies.*

The Governor's Budget for 1995-96 proposes a General Fund increase of \$30.5 million to offset the effects of inflation on the department's costs of general operating expenses and equipment. The CDC is the *only* department proposed to receive a General Fund increase to compensate for the effects of inflation. The increase is based on the assumption that inflation during 1995-96, as reflected in the California Consumer Price Index (CCPI), will raise prices by 3.5 percent.

Given the state's serious fiscal constraints, we can find no analytical basis for granting such an inflation adjustment to the CDC at a time when other departments and agencies must forego similar increases. Thus, we recommend that the augmentation be deleted.

Should the Legislature decide to grant the inflation adjustment to the CDC, however, our review indicates that the proposed price increase is too high. Specifically, prices are projected to increase about 3 percent in 1995-96, not 3.5 percent as stated by the CDC. If the smaller percentage figure were used, the CDC price increase would cost \$4.4 million less.

## **Efforts to Implement “Three Strikes” Not Detailed in Spending Plan**

*We withhold recommendation on \$10 million from the General Fund for implementation of the “Three Strikes and You’re Out” law, pending receipt of updated inmate population projections at the time of the May Revision, and additional information about how the money would be used.*

*Three-Part Plan for “Three Strikes.”* Last year, in response to the enactment of the “Three Strikes” legislation (Ch 12/94, AB 971, Jones), the administration requested and received a three-part, \$10 million General Fund augmentation in the 1994 Budget Act to help the CDC prepare to implement the new law. The 1995-96 *Governor’s Budget* includes the \$10 million in the CDC’s permanent funding base.

Last year, the Department of Finance (DOF) said the \$10 million was needed because of projections that the increased sentences called for under the “Three Strikes” law would double the state prison population within six to seven years. The DOF advised that such growth would “present a myriad of policy, management, and logistical issues which the department must begin to address immediately.” Three categories of expenditures were proposed to address these issues:

\$7.2 million from the General Fund to assist in “the hiring of thousands of correctional officers in a short time-frame.” The money was split between the Richard A. McGee Correctional Training Center and administrative divisions responsible for conducting background investigations and other hiring-related duties.

\$1.5 million from the General Fund and \$664,000 in bond funds to “address vital management and policy matters” directly associated with handling an increased inmate population.

\$1.3 million from the General Fund to modify the CDC computer system used to calculate the release dates of inmates, as well as to address other automation needs relating to the implementation of “Three Strikes.” In addition to generally lengthening sentences for repeat offenders, the measure also restricted the credits inmates may earn through work or education to speed their release.

The CDC has begun to implement the new law. The number of cadets attending the McGee academy is slated to increase from 2,200 to 3,400 in the current year and to 3,900 in 1995-96. A Feasibility Study Report (FSR) outlining the computer project has been approved by the Office of Information Technology (OIT). The department has also drafted an Emergency Bed Program to provide space for about 20,000 additional inmates. (We discuss the program in greater detail in the Capital Outlay section of this *Analysis*.)

**No Specific Plan for Budget Year.** The CDC was unable to provide information as to how much of the \$10 million provided for “Three Strikes” implementation will actually be spent by the end of the current year. It appears that a considerable portion of the funds will go unused. Many of the newly established positions—including the entire 12-person “Three Strikes Planning Branch”—remained vacant as of February 1995 because of civil service hiring procedures and other delaying factors.

In addition, the Governor's Budget also does not specify what the CDC plans to accomplish with the \$10 million during 1995-96. CDC officials indicate that they may examine the present system of classifying inmates for assignment to prisons, and may also study a large-scale reorganization of the department into regional units.

Some of the costs that would be permanently added to the CDC's funding base under the budget plan may actually be *one-time* expenditures which should eventually be discontinued upon their completion. For example, the CDC's FSR indicates that the project to modify computer programs to calculate inmate release dates will be largely completed by January 1, 1996, except for a follow-up evaluation, which is to be completed by January 1, 1997. However, such an offset is not yet reflected in the Governor's Budget.

**Shortfall in Inmate Projections.** As discussed previously in this analysis, the number of offenders being committed to state prison has fallen short of the CDC's projections, at least in the short term. The changing situation calls into question whether the CDC will actually need to hire “thousands of correctional officers” in the short-term, as was to be accomplished with the \$7.2 million of the augmentation. Notably, the 1995-96 Governor's Budget proposes to add fewer new personnel to the CDC than are to be added in the current year.

Should the lull in inmate population growth persist, it could provide the CDC sufficient time to steadily build up its force of correctional officers without having to spend additional funds to increase its personnel and training capacity.

Accordingly, we withhold recommendation on the \$10 million proposed for “Three Strikes” implementation during 1995-96, pending receipt of updated inmate population projections at the time of the May Revision, and additional information about what projects would be accomplished with the budget-year augmentation.

## **Proposed Implementation of Federal Law Raises Questions**

*We withhold recommendation on \$1 million and 10.8 positions requested to implement the federal Americans with Disabilities Act (ADA), pending a report at budget hearings from the CDC and the Department of Finance that clarifies how the proposed funding would be used, and the overall approach that the state plans to take regarding implementation of the ADA.*

The budget requests \$1 million from the General Fund and 10.8 positions to implement requirements of the federal ADA within the CDC.

**Background.** The ADA, a major civil rights statute that took effect in 1992, prohibits discrimination against persons with disabilities. The measure requires employers to provide “reasonable accommodation” to disabled persons in employment and in the provision of services to persons who come into contact with the employer.

The CDC believes that the fiscal impact of the ADA on the department could be very large because no qualified individuals—not only staff but also inmates and visitors—may be excluded from participation in or denied the services, programs, or activities provided by the department. The CDC advises that the impact of the ADA on law enforcement agencies is especially difficult and unclear.

The CDC advises that it has begun to implement only a few ADA requirements. In addition, the CDC advises that several lawsuits have been filed against the department charging it with violations of the ADA, including one class action lawsuit on behalf of inmates.

Although we acknowledge that the implementation of the ADA will have a workload impact on the CDC, we have three concerns about the proposal.

**Budget Proposal is Not Clear.** First, we found a number of internal inconsistencies in the department's request. For example, the proposed \$1 million appears to be based on the department adding 10.8 Associate Government Program Analyst (AGPA) positions at a cost of \$595,000, plus \$405,000 for consulting services. However, other portions of the request indicate that the funds will be used to support a different staffing complement that also includes a staff services manager, correctional counselors, and a staff attorney. The supporting documents also appear to call for a much higher level of activity related to ADA implementation than the proposal would support. Given these inconsistencies, we

believe that the CDC should clarify how the funds will actually be used and whether the funding addresses the problems identified.

*Statewide Implications Unclear.* The proposal raised a number of questions regarding the impact of the ADA upon other state agencies (especially other law enforcement agencies, such as the Youth Authority and Department of Justice) and the overall approach that the state proposes to take regarding implementation. No other major state law enforcement agency has proposed additional funding for implementation of the ADA, and very few non-law enforcement agencies have done so. Given that the measure, especially its employment provisions, could have a fiscal effect on all state agencies, we believe that the administration needs to explain its overall approach to implementation. The administration should indicate how it will prioritize requests for ADA compliance projects and its intended timetable for statewide compliance with the ADA.

*Analyst's Recommendation.* For the reasons state above, we withhold recommendation on the request, pending a report at the time of budget hearings from the CDC and the DOF, that clarifies the following: (1) how the proposed funding would be used and how it would meet the specific requirements imposed by the ADA upon the CDC; and (2) the overall approach that the administration plans to take regarding implementation of the ADA, including the timetable for compliance, an estimate of the cost to the state, and the method of prioritizing compliance projects. Given that several state agencies are or should be involved in the implementation of the ADA, we suggest that the CDC and DOF also seek advice from the Departments of Rehabilitation, Personnel Administration, and General Services, as well as from other state law enforcement agencies.

### **The Civil Addict Program: An Update**

*We recommend that the CDC report to the Legislature, prior to budget hearings, on the status of its current efforts to enhance the Civil Addict Program, its plans for use of the \$1 million augmentation in 1995-96, its plans and goals for future enhancements, and its plans for evaluation of the impacts of the enhancements on program outcomes.*

The Civil Addict Program (CAP) provides substance abuse rehabilitation for persons who are identified by the court as narcotic addicts. In recent years a number of concerns have been raised about the success of the program. In the *Analysis of the 1993-94 Budget Bill*, we concluded that the program has failed to achieve its goals and recommended that it be abolished.

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Recognizing the problems associated with the program, the Legislature appropriated \$1 million in the 1994 Budget Act to enhance the services provided by the program. The 1995 Budget Bill continues that funding.

**Background.** The CAP was first established by the Legislature in 1961 and modified over the years for the purpose of providing rehabilitative treatment for drug offenders who are addicted or in danger of becoming addicted to narcotics. The program accepts both male and female offenders. Currently, there are about 4,000 civil addicts in state prison (primarily at the California Rehabilitation Center [CRC] at Norco), and about 4,100 additional civil addicts under supervision in the community.

Individuals must satisfy a rigorous set of criteria before being committed to the program by the court. Because the use of drugs alone does not constitute a drug addiction, not all drug offenders are eligible for commitment to the program. In most cases, commitment to the program is in lieu of prosecution for a criminal offense. During the first phase of the program, all civil addicts are required to complete a one-month long, 120-hour educational program. It is the intent of the Legislature that this treatment program not be considered punitive.

**Concerns Regarding the Lack of Sufficient Treatment Provided by the Program.** Over the years, the CDC has redirected resources and changed priorities in such a way that the program's original treatment level has been substantially diluted. In our 1993 review, we found that, with the exception of the original 120-hour educational program, the CDC does not provide *any* additional programming specifically designed or targeted for substance abuse treatment, and, even then, only half of the 120 hours were truly dedicated to substance abuse education; the other hours simply consisted of physical exercise.

**RAND Corporation Report Confirms Problems.** The administration has indicated previously that it had substantial concerns as well, prompting the Youth and Adult Correctional Agency to contract with the RAND Corporation for a detailed analysis of the program. The RAND report, which was released in June 1994, confirmed many of the earlier criticisms of the program, calling it "clearly inadequate." Among a number of findings, RAND determined that the program meets few of the criteria required for an effective prison drug treatment program. Although the program was originally based on a therapeutic community model of drug treatment, the report found that the program has been so diluted that it was no longer based on any particular model. Many experts, RAND found, no longer believed that it could even be rightfully called a "treatment" program. The report also noted that participants interviewed by RAND indicated that drugs are easily available within the institution.

RAND recommended that if the CDC wants to reinstate a model civil-addict program, it should undertake the following: (1) develop a theoretical or conceptual framework for the program; (2) establish stronger lead-

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ership and accountability for the performance of the program; and (3) conduct a regular evaluation of the program, particularly as to the impact of changes in the operation, as well as to the cost implications of treatment of civil addicts versus regular felon commitments to the CDC.

*What is the Status of the Program Enhancements?* The CDC issued a report that specifies a number of goals for improving to the program and created a CAP Enhancement Committee to monitor the progress of implementing the improvements. According to documents provided by the CDC, the committee has established short-term goals for program enhancements and plans for the expenditure of the \$1 million augmentation. These include:

Establishment of a program administrator position to oversee the program and be responsible for specialized substance abuse training for staff.

Establishment of an intensive, six-month therapeutic community in the women's unit for 80 female offenders.

Establishment of three new psychiatric social worker positions to provide programming services.

Development of a plan to ensure certification and training of all instructors and correctional counselors involved with the program.

Upgrading and replacing drug-testing equipment to reduce the availability of illegal drugs within CRC.

Development of a plan to separate housing for civil addicts from the regular CRC felon population.

Development of new substance-abuse curriculums for newly committed addicts and addicts who returned to the program because of recurring drug problems.

Expansion of community treatment services in the Los Angeles and Fresno areas.

Preparation of a revision to the conditions under which addicts may be released from the program.

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*LAO Assessment.* Our review indicates that the CDC has taken a number of positive first steps on the road to improving the program, many of them consistent with the findings of the RAND report. We note, however, that as of January 26, 1995, only about \$112,000 of the \$1 million current-year augmentation had actually been expended or encumbered. In addition, some of the suggestions included in the RAND report have yet to be acted upon.

Given the history of problems with the program, and the past redirection of resources away from the program, we believe that it is important for the Legislature to carefully monitor the department's progress. For this reason, we recommend that the CDC report to the Legislature, prior to budget hearings, on the status of its current enhancement efforts, its plans for use of the \$1 million augmentation in 1995-96, its plans and goals for future enhancements, and its plans for evaluation of the impacts of the enhancements on program outcomes.

### **Assuring Effective Implementation of the Correctional Management Information System**

*We recommend that the department advise the Legislature, at the time of budget hearings, on the status of its efforts to award a contract to a consultant to assure the quality of the initial phase of the Correctional Management Information System, and the specific role the consultant will perform.*

The budget includes \$12.7 million from the General Fund to continue the CDC's primary information technology (IT) project—the Correctional Management Information System (CMIS). Initiated in 1992, the CMIS is intended to provide the department a single automated system that would maintain comprehensive information about offenders and support various departmental activities.

Funds proposed in the budget will be allocated to the first of five planned stages for this new system, as follows:

Phase I—Automating offender information.

Phase II—Parole information network.

Phase III—Health management information system.

Phase IV—Enhanced offender information processing capability.

Phase V—Administrative management information.

*Automating Offender Information.* Currently, the majority of an offender's prison record is maintained in a paper file known as the Central File (C-File). The C-File is normally stored at the institution where the offender is incarcerated. When a prisoner is transferred manually from

one institution to another, the inmate's C-File has to be processed and transferred through as many as four different sections within the prison, requiring a significant amount of time. These files are critical for making management decisions such as offender releases or transfers, disciplinary activities, or job assignments. Any error in these types of decisions could place both staff and inmates in physical danger. Because there is only one C-File for an inmate, problems occur when more than one staff member needs the file or when the file is missing.

Although the CDC currently has an automated data system for tracking offender information, this system is outdated and cannot be expanded to meet the growing inmate population. The current system is also inefficient since it is unable to record and track the type of information necessary for the department to carry out its responsibilities.

**CMIS Not Unlike Other Major IT Projects.** Although the CMIS project is unique to the department, it is not unlike most other major IT projects in terms of the challenge inherent in the effort to implement a major automation system. Like many other state projects, CMIS has had some false starts, has experienced cost increases and schedule delays, and benefit estimates have been recalculated. Figure 21 displays significant changes in the CMIS project since its inception.

<b>Figure 21</b>				
<b>CMIS Project History</b>				
<b>(Dollars in Millions)</b>				
<b>Event</b>	<b>Date</b>	<b>Project Cost</b>	<b>Benefits</b>	<b>Planned Completion</b>
Feasibility Study	1/92	\$54.5	\$66.7	6/95
Special Project Report	12/93	60.6	33.3	6/95
Special Project Report	12/93	60.6	38.2	8/96
Special Project Report	8/94	118.4	106.0	6/97
Special Project Report	12/94	95.8	93.6	6/97

**Assuring a Quality Product.** In our June 1994 report *Information Technology: An Important Tool For a More Effective Government*, we discussed problems state agencies face when trying to implement IT solutions, and recommended several approaches which we believe can help to assure a successful project. One approach is to contract for expert assistance when departmental technical staff do not have the specialized skills to meet a specific need. In that regard, the department has allocated \$1.5 million of CMIS project funds to pay for the services of a consultant hired to perform specified tasks to assure the quality of the products delivered by the primary vendor (selected in December 1994) to develop Phase I of the

CMIS. This concept—also known as independent verification and validation—has been employed by the federal government to assure the success of complex technology projects.

*Will CMIS be a Model?* Performing independent verification and validation calls for a specialized set of skills which are employed continually throughout the project development cycle to ensure that any problems are identified, assessed and resolved. Although some vendors who implement major IT projects may possess such skills, it is more desirable to have this task performed by an independent consultant, as history has shown that both primary contractors and state managers have in many instances made decisions which have effectively ignored fundamental project problems. Therefore, we believe that the department's current effort to acquire an independent quality assurance consultant is a step in the right direction. Also, we believe that this approach could serve as a model for several other major state IT projects which are currently experiencing difficulties, as noted in other sections of this *Analysis*.

The CDC plans to award the contract for the quality assurance contractor on February 28, 1995, which is significant because the primary contractor is scheduled to begin work on March 1. Given the importance of the CMIS project, and the potential that quality assurance consultants can play with regard to other state IT projects, we recommend that the department advise the Legislature, at the time of budget hearings, as to the status of its effort to hire a quality assurance contractor, and the specific role the contractor will play to help assure the success of the CMIS project.

## **BOARD OF PRISON TERMS (5440)**

The Board of Prison Terms (BPT) is composed of nine members appointed by the Governor and confirmed by the Senate for terms of four years. The BPT considers parole release for all persons sentenced to state prison under the indeterminate sentencing laws. The BPT may also suspend or revoke the parole of any prisoner under its jurisdiction who has violated parole. In addition, the BPT advises the Governor on applications for clemency.

The proposed 1995-96 Governor's Budget for the support of the BPT is \$10.4 million from the General Fund. This is an increase of \$2.5 million, or 31 percent, over the estimated expenditures for the current year. The proposed increase is primarily the result of the restoration to the BPT of parole revocation authority over determinately sentenced adult offenders previously carried out by the Department of Corrections (we discuss this change below).

### **Budget Restores Parole Revocation Function to the BPT**

Chapter 695, Statutes of 1992 (SB 97, Torres) transferred parole revocation authority for felons sentenced under the Determinate Sentence Law to the California Department of Corrections (CDC), while maintaining parole revocation authority for Indeterminate Sentence Law felons and Mentally Disordered Offenders with the BPT.

In the course of the 1992 change of duties, BPT transferred \$5.4 million and 57 positions to the CDC. After other changes to the BPT budget had been taken into account, the 1993-94 budget for the BPT was reduced to \$4.5 million.

Legislation enacted last year (Ch 53x/94, SB 32x, Kopp) returned this authority to the BPT, effective December 1, 1994. The transition is being accomplished under the terms of an interagency agreement between the CDC and the BPT. The agreement provided 61.7 positions and \$3.3 million in the current year so that the BPT could reassume its responsibilities for the last seven months of the current year.

The Governor's Budget for 1995-96 would complete the transition by providing a full year's funding of \$5.7 million and 61.7 positions to the

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BPT on a permanent basis. Information provided by the BPT indicates that the amount of dollars and the number of positions shifted by the budget plan accurately reflects the amount of resources the CDC had committed to this function. This takes into account budgetary adjustments made to this program while it was under the auspices of the CDC, as well as a budget-year request by the BPT to create two new support positions to provide help with clerical work and correspondence.

### **Budget Insufficient to Cope With Steadily Growing Caseloads**

*We recommend that the BPT report to the Legislature, prior to budget hearings, how it intends to reduce its backlogs of parole revocation cases and investigations of inmate requests for international transfers through more efficient management of cases or other means.*

The BPT caseload has grown significantly in three areas: parole revocation cases, staff investigations of death penalty cases, and staff review of applications for international transfers of prisoners.

**Revocation Hearings.** According to statistical data provided by the BPT, the total number of parole revocation proceedings handled by the board through either administrative screening or hearings is expected to increase from 208,372 in 1993-94, to 230,873 in 1994-95, and to 242,711 in 1995-96. That amounts to a 16 percent increase in workload over a two-year timespan, including a 14 percent increase in the number of parole revocation hearings.

At the same time that caseload is increasing, the BPT is taking more time to conduct parole revocation hearings. During the month of September 1994, according to BPT figures, it took an average of 47.2 days for the agency to conduct a hearing on a parole case following the incarceration of an inmate for an alleged parole violation. The wait is almost 10 percent longer (four days), on average, than was reported one year ago. In one parole region in the state (Region III in Southern California), the wait for a hearing averaged 52.6 days in September 1994. By November, the delays were averaging 60 days.

State law generally requires that such hearings be conducted within 45 days, and court decisions have imposed a 30-day limit in some areas of Northern California. The BPT data indicate that the time requirements are being exceeded in all four regions of the state. The Governor's Budget, as submitted, would not resolve the backlog problem.

**Foreign Prisoner Transfer.** The BPT has been granted authority to review, and if it deems appropriate, approve the request of an inmate of foreign origin confined in a state prison to serve out the remainder of his sentence in his home country. In an effort to reduce state prison costs, Ch 416/94 (SB 1744, McCorquodale), directed the CDC to inform all present inmates, and thereafter all newly arrived inmates, of their opportunity to volunteer for international transfer. The notification process must be repeated each year.

The CDC's implementation of the new law has greatly increased the BPT workload for reviewing international transfer applications. According to BPT figures, 61 such applications were investigated during 1993-94. Largely as a result of the SB 1744 notification requirements, about 400 applications have already been received by the BPT in the current year.

The BPT projects that it will ultimately receive about 880 such applications from the initial notification of CDC's inmate population, not counting additional applications likely to result as more inmates are informed of their right to apply for international transfer.

The Governor's Budget includes a request for a \$65,000 augmentation and one new position to handle the already sizable backlog of international transfer requests. This action alone appears unlikely to resolve the backlog problem. By BPT's own calculations, without additional staff support, it will take the new staff member between 3.3 years and 4.4 years to process the first wave of applications, not counting many others which are certain to follow as the CDC carries out the notification requirements.

**Death Penalty Cases.** At the request of the Governor, BPT staff investigates cases in which the death penalty has been affirmed by the California Supreme Court. The purpose of each inquiry is to provide the Governor with information regarding the case and the inmate in the event that the Governor receives a request for clemency or reprieve.

The BPT reported that its staff completed only two such investigations involving 240 hours of investigative staff time during 1993-94. The board projects that, in both the current year and again during the budget year, it will have devoted 4,080 hours to 34 death penalty cases—a 17-fold increase in workload for this one activity. Board staff indicates that the number of death penalty investigations is escalating because many offenders sentenced to death are nearing the end of the appeals process.

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The proposed Governor's Budget attempts to address this problem by reassigning a BPT investigator to this workload who had been diverted to other duties.

*More Information Needed.* The backlogs at the BPT could have significant ramifications. For example, the board's failure to abide by deadlines for hearing parole revocations could invite legal challenges. Moreover, expeditious processing of international transfer cases could save the state \$400,000 in annual General Fund costs for incarcerating prisoners of foreign origin, according to BPT calculations, even if transfers continue to be approved at the present rate (only one of every 30 applications has been approved over the past five years).

The BPT advises that it intends to cope with some of the increased workload by providing only what the board has termed "mandated and essential" services, using more efficient computer technology, and consolidating hearing schedules for parole revocation cases. But the BPT has also stated its intention to seek additional funding and positions to respond to the increase in its workload later in the 1995-96 budget process.

Given the implications of these workload backlogs, we recommend that the BPT provide a plan to the Legislature, prior to budget hearings, specifying procedural changes and any other steps necessary to reduce its backlog of parole revocation cases and investigations of inmate requests for international transfers.

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## DEPARTMENT OF THE YOUTH AUTHORITY (5460)

The Department of the Youth Authority is responsible for the protection of society from the criminal and delinquent behavior of young people (generally ages 12 to 24, average age 19). The department operates training and treatment programs that seek to educate, correct, and rehabilitate youthful offenders rather than punish them. The department operates 11 institutions, including 2 reception centers/clinics, and 6 conservation camps. In addition, the department supervises parolees through 17 offices located throughout the state.

The budget proposes total expenditures of \$389 million for the Youth Authority in 1995-96. This is \$6.6 million, or 1.7 percent, below current year expenditures. Expenditures from the General Fund total \$358 million in the budget year, a decrease of \$4 million, or 1.1 percent, below expenditures in 1994-95. The department's proposed General Fund expenditures include \$42.6 million in Proposition 98 educational funds. Approximately 86 percent of the total amount requested is for operations of the department's institutions and camps. The remaining 14 percent is for parole and community services.

The primary reason for the decrease in General Fund spending for the budget year is the elimination of \$14.4 million included in the current-year budget for state payment of probation officer overtime in Los Angeles County (\$14 million) and delinquency prevention programs in Sonoma County and the City of Vallejo (\$400,000).

### **Projected Ward Population Shows Faster Growth Than Previous Estimates**

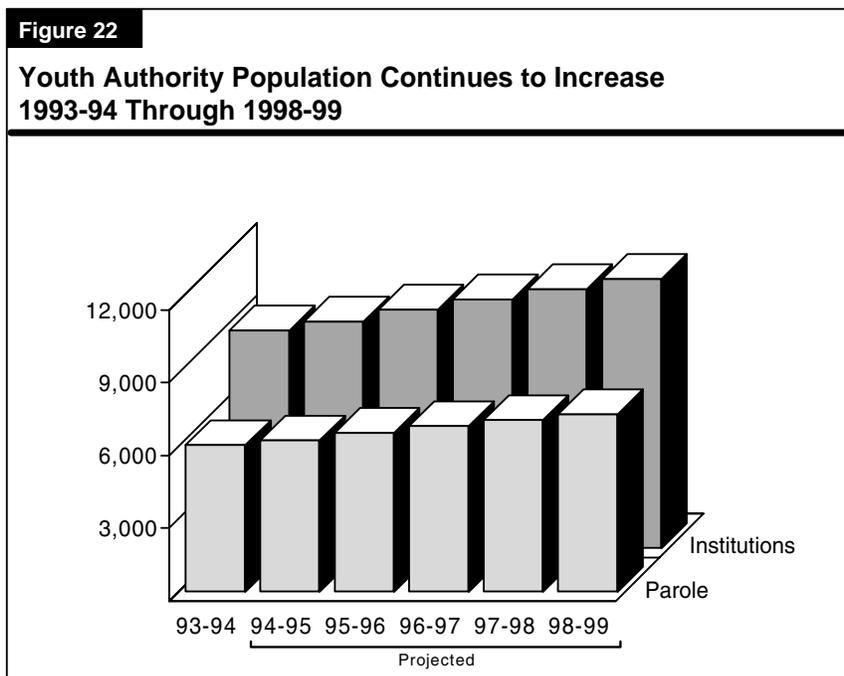
*The Youth Authority projects that its institutional population will continue to grow to over 9,300 in the budget year and to over 11,100 at the end of 1998-99. Also, Youth Authority parole populations are expected to increase to over 6,500 parolees in the budget year and to over 7,000 parolees by the end of 1998-99.*

The Youth Authority's fall 1994 ward population projections (which form the basis for the 1995-96 *Governor's Budget*) estimate that the number

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of wards housed in the Youth Authority will grow at an average annual rate of 4.3 percent over the next five years (through 1998-99), reaching just over 11,100 incarcerated wards on June 30, 1999.

The Youth Authority also projects commensurate increases in the number of parolees it supervises. The department expects that its parolee population will grow at an average annual rate of 3.9 percent through 1998-99. Figure 22 shows the Youth Authority's institutional and parolee populations from 1993-94 through 1998-99.



**Who Is In the Youth Authority?** There are several ways that an individual can be committed to the Youth Authority's institution and camp population, including:

**Juvenile Court Admissions.** The largest number of first admissions to the Youth Authority are made by juvenile courts. On June 30, 1994, 78 percent of the institutional population was committed by the juvenile court.

**Criminal Court Commitments.** These courts send juveniles who were tried and convicted as adults to the Youth Authority. On June 30, 1994, 7 percent of the institutional population were juveniles committed by criminal courts.

**Corrections Inmates.** This large segment of the Youth Authority population—16 percent of the population in June 1994—is comprised of inmates from the California Department of Corrections (CDC). These inmates are referred to as “M cases” because the letter M is used as part of their Youth Authority identification number. These individuals were under the age of 21 when they were committed to the CDC after a felony conviction in criminal court. Subsequently, they are ordered by the court to be transferred to the Youth Authority to serve all or part of their incarceration time.

**Parole Violators.** These are parolees who violate a condition of parole and are returned to the Youth Authority. In addition, some parolees are recommitted to the Youth Authority if they commit a new offense while on parole.

The Youth Authority continues to experience growth for each of these types of commitment and recently enacted legislation will affect those trends.

**Recent Legislation Affects Youth Authority Population.** Five recently enacted bills will affect the Youth Authority's institution population in future years. Three of the bills change penalties for juveniles, while the other two affect the status of juveniles housed at the Youth Authority. These bills are described in Figure 23 (please see next page).

When fully implemented, this legislation will result in 105 fewer admissions to the Youth Authority annually (instead they will be sent to the CDC). Another 175 annual admissions will still be sent to the Youth Authority, but as CDC “M cases” instead of as juvenile court commitments, and will be subject to a different set of release criteria.

**Characteristics of the Youth Authority Wards.** Wards in Youth Authority institutions are predominately male, are 19 years old on average, and come primarily from southern California. Almost 40 percent of all institutional population is committed from Los Angeles County. Hispanics make up the largest racial and ethnic group in Youth Authority institutions, accounting for 44 percent of the total population. African Americans make up over 32 percent of the population, whites are 15 percent, and Asians are approximately 5 percent.

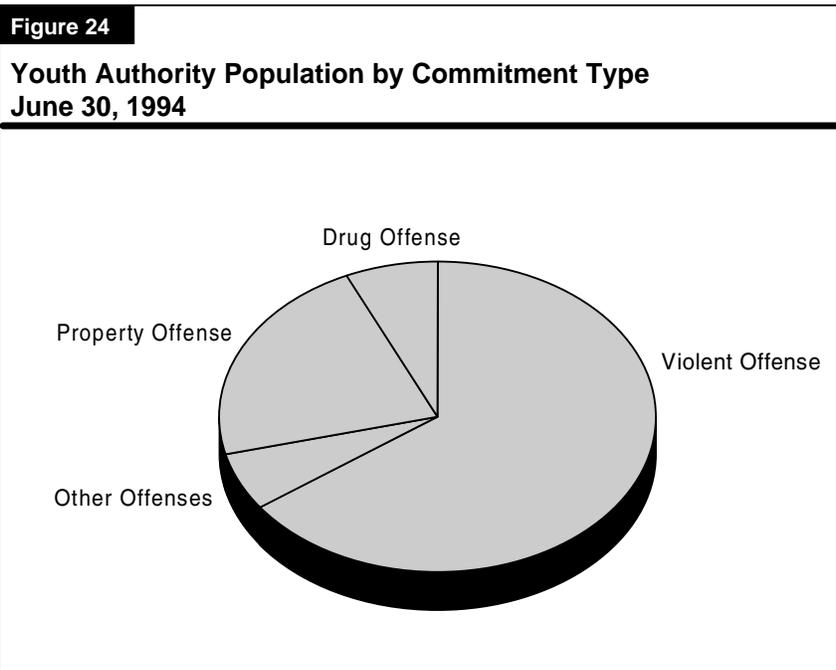
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**Figure 23**

**Recently Enacted Legislation  
Affecting the Youth Authority**

- Ch 12/94 (AB 971, Jones)  
Estimated that 30 inmates will be sent to the CDC each year who otherwise would have been placed in the Youth Authority.
- Ch 452/94 (SB 1539, McCorquodale)  
Prohibits commitment to the Youth Authority of persons convicted in criminal court who are adults when sentenced.  
Estimated to affect 45 cases annually. These individuals will be sentenced to the CDC but transferred to the Youth Authority as "M cases."
- Ch 453/94 (AB 560, Peace)  
Lowers the age from 16 to 14 when a juvenile can be tried in criminal court for murder.  
Estimated to affect 45 juveniles annually.  
Although tried as adults, they will still be housed in the Youth Authority until at least age 16, and then transferred to the CDC.
- Ch 15x/94 (SB 23x, Leonard)  
Prohibits commitment to the Youth Authority of any minor convicted in criminal court whose sentence exceeds Youth Authority jurisdiction.  
Prohibits transfer to the CDC of any juvenile under the age of 16.  
Estimated that 85 individuals will be affected annually, but will remain at the Youth Authority as "M cases."
- Ch 713/94 (AB 2716, Katz)  
Limits sentence reduction credits to 15 percent for inmates convicted of violent offense.  
Will affect 50 percent of its criminal court and "M case" population.  
Will increase length of stay and cause some inmates to be sent to the CDC.

In 1994, over 65 percent of the wards housed in department institutions were committed for a violent offense, such as homicide, robbery, and assault. In contrast, the number of wards incarcerated for property offenses, such as burglary and auto theft, was 22 percent of the total population. The number of wards incarcerated for drug offenses was just under 7 percent in 1994. Figure 24 shows the population of the Youth Authority by type of offense.



Wards committed to the Youth Authority because of violent offenses serve longer periods of incarceration than offenders committed because of property or drug offenses. As a result of the increases in commitments for violent offenses, the Youth Authority estimates that average time until parole for all wards has increased to 19.4 months for new admissions, compared to 18.7 months in 1993-94. The average amount of time before parole for wards in 1989-90, was 17.9 months.

**Ward and Parolee Population**  
**Projections Will Be Updated in May**

*We withhold recommendation on \$3.3 million requested from the General Fund to accommodate the projected ward and parolee population changes, pending receipt and analysis of the revised budget proposal*

*and population projections to be contained in the May Revision.*

**Ward and Parolee Population.** The Youth Authority population is projected to reach 9,361 at the end of the budget year, an increase of 276 wards, or 3 percent, over the current-year estimate of 9,085. The budget requests an increase of \$3.3 million (\$2.2 million from the General Fund and \$1.1 million from Proposition 98) to accommodate this increase.

The parole population is projected to be 6,106 by June 30, 1995, a decrease of 461 parolees, 7 percent, less than June 30, 1994.

**Action on Ward and Parolee Caseloads Should Await May Revision.** The department will submit a revised budget proposal as part of the May Revision that will reflect more current population projections. These revised projections could affect the department's request for funding.

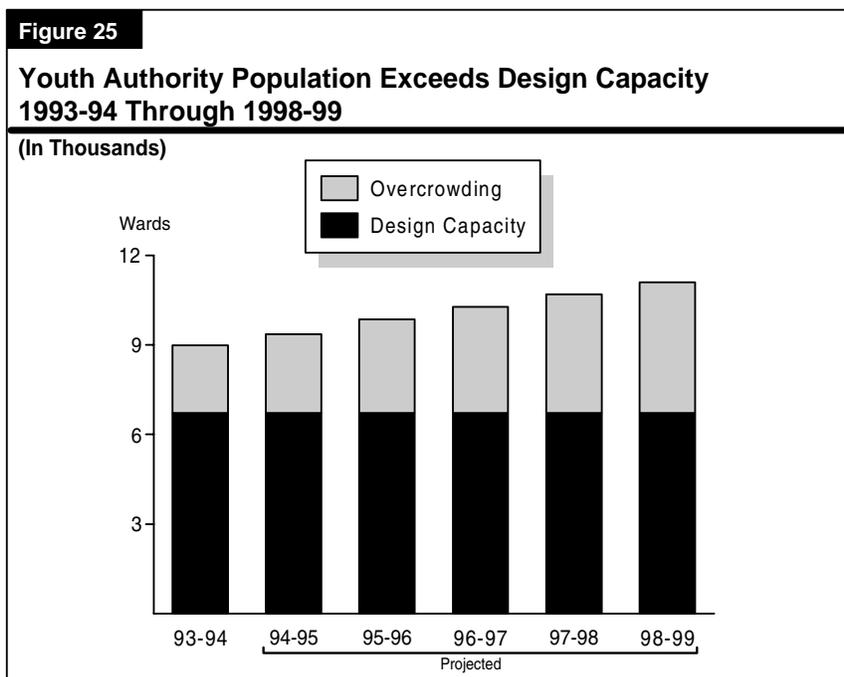
For example, as we note below, the institutional population for the current year has been 3 to 8 percent higher than expected. This is due primarily to longer lengths of stay. We believe this trend will likely continue, resulting in an upward adjustment in the budget. Furthermore, other factors may increase the Youth Authority population. For example, the Governor proposes to transfer to the counties full funding responsibility for the 5,000 county probationers currently placed in foster care homes. Because counties pay only \$25 per offender per month that they place in the Youth Authority, while paying significantly more if they place them in foster care, the counties may decide to send these offenders to the Youth Authority. (We discuss this issue later in this *Analysis*.)

Consequently, we withhold recommendation on \$3.3 million requested to support ward and parolee population changes, pending receipt and analysis of the revised budget proposal.

### **Youth Authority Overcrowding Leads to Longer Lengths of Stay and Worse Overcrowding**

*We recommend that the Youth Authority report during budget hearings on what actions it will take to alleviate institutional overcrowding. Specifically, the Youth Authority should report on a range of options, including whether (1) it should stop accepting nonviolent, nonserious offenders; (2) restrict programming to juvenile court committed wards; (3) eliminate programming for wards over the age of 18; and (4) provide a lower-level of programming for inmates or wards serving long sentences.*

**Background.** Two factors are driving the Youth Authority's population growth. The first is the growth of the state's juvenile population, which generally means more juvenile offenders and increased placements in the Youth Authority. The second is increasing lengths of stay for wards in the Youth Authority. Figure 25 shows the projected populations for Youth Authority institutions compared to design capacity. Youth Authority overcrowding is expected to increase from 147 percent in the budget year to over 165 percent by the end of 1998-99. Since July 1994, department overcrowding has increased faster than budgeted levels.



The increase in the length of stay for wards is due to several factors, including (1) the increasing severity of ward commitment offenses and (2) the *effects* of overcrowding which create a spiral effect that leads to further overcrowding. This latter factor occurs because overcrowding often limits the access of wards to programs (which they must have before they are allowed to be paroled) thereby resulting in a longer institutional stay, which exacerbates overcrowding. The Youth Authority reports that it has difficulty providing ward access to programming when overcrowding goes above 130 percent.

***What Can the Youth Authority Do?*** There are both long- and short-term options for reducing overcrowding and its effects. As a long-term solution, the Youth Authority is proposing to add 1,950 new beds, adding both new living units to existing facilities and converting a military installation for Youth Authority use. Even if the proposed buildings are authorized, it will take at least three years after approval to complete these new facilities. We believe that there are steps the Youth Authority can take in the short-term to reduce overcrowding. We discuss these options below.

***Charge Counties More for Placements in Order to Change Incentives.*** As we noted in last year's *Analysis*, counties decide which offenders are sent to the Youth Authority, but only pay a negligible amount—\$25 per offender per month—to the state to house offenders. The Youth Authority's costs of housing wards averages \$2,675 per month. Consequently, there is an incentive for the county to send offenders to the state instead of providing placements within the county. As a result, some counties send a disproportionate share of less serious offenders to the Youth Authority in comparison to other counties.

We have recommended that the Legislature require counties to pay all or part of the costs of incarceration for less serious offenders in order to provide a financial incentive to counties to deal with these offenders in their communities.

***Refuse Nonviolent, Nonserious Offenders.*** Current law only requires the department to accept wards if it has adequate facilities to provide care.

When a ward is sent to the Youth Authority, the Youth Offender Parole Board (YOPB) assigns the ward a category number from one to seven based on the seriousness of the commitment offense. Generally, wards in categories one through four are considered the most serious offenders, while categories five through seven are less serious.

The Youth Authority could establish a policy that would refuse commitments in the less serious categories because counties can handle such cases locally while more serious offenders can benefit more from the department's programs. The Youth Authority could also refuse those who would be committed for six months or less, because this is not long enough for Youth Authority programming to be completed.

If category six and seven offenders, a total 1,125 wards in December 1994, were removed from the Youth Authority's population, overcrowding would be reduced from 147 percent to 129 percent by the end of the budget year. This population reduction would also result in savings of over \$12 million. Counties that attempt to send offenders to the department and are refused, could "buy" secure beds from other counties to

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house the offenders.

***Reduce Programming for Inmates or Wards Serving Long Sentences.*** When a ward or inmate is admitted to the Youth Authority he or she receives a plan for rehabilitative programs, training, and education whether they will be incarcerated for six months or 25 years to life. For example, juveniles who are sentenced to life imprisonment for committing murder currently have access not just to regular and special education, but also to specialized services, such as substance abuse programs. While we are not suggesting that these offenders receive no programming, they should not receive *all* of the services the department has to offer, especially in their early years of incarceration, when their return to the community is decades away. Instead, programming could be targeted to meet current needs.

***Limit Programming for Older Wards.*** As of December 1994, over 64 percent of the juvenile court committed population in the Youth Authority was age 18 or older. We believe that priority for programming should be given to younger wards. Thus, we question whether the same criteria for the completion of programming should apply to older wards, especially if the completion of the programming extends the ward's stay or deprives a younger ward from completing the same program.

***Transfer "M Cases."*** In last year's *Analysis*, we recommended that the Youth Authority transfer all "M cases" age 18 or older to the CDC because incarceration of these inmates is inconsistent with the department's mission of rehabilitating *juvenile* offenders. We determined that this transfer would result in significant savings because the cost of housing an inmate at the CDC is less than the Youth Authority, primarily because of programming costs. The Youth Authority could reduce its overcrowding by reducing or eliminating all programming for this population. This action would free up resources for younger offenders and reduce the cost of housing these inmates.

***Analyst's Recommendation.*** Given the Youth Authority's current overcrowding, we recommend that the department report during budget hearings on what actions it will take to reduce overcrowding. Specifically, the Youth Authority should include a review of the following: (1) refusing to accept nonviolent, nonserious offenders; (2) restricting programming to juvenile court-committed wards; (3) limiting programming for wards over the age of 18 and CDC inmates ("M cases"); and (4) providing a lower-level of programming for inmates and wards serving long sentences.

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## **Governor's Proposed Realignment of Foster Care Could Lead To More Youth Authority Placements**

*If the Legislature adopts the Governor's proposed realignment of foster care, we recommend that legislation be enacted to make the fees charged to counties for Youth Authority placement similar to the costs of group home placements, in order to ensure that commitments to the Youth Authority are based on treatment needs rather than fiscal incentives.*

**Background.** Placement of juvenile offenders in a foster care or group home setting is one of the placement options available to county probation departments. There are currently 5,000 probationers placed in foster care; 80 percent male and 20 percent female, average age 16. Of these placements, 85 percent are in group homes, which cost an average of \$3,100 per month, and the remaining 15 percent are in foster care homes, which cost an average of \$1,200 per month. Under the current funding structure, the state pays 40 percent of the costs of the foster care placement for non-federal cases (no Aid to Families with Dependent Children [AFDC] eligibility) and the county pays 60 percent. For AFDC placements, the ratio is 20 percent state-funded, 30 percent county-funded, and 50 percent federally-funded.

**The Governor's Proposal.** The Governor is proposing to realign state-county program responsibilities and fiscal arrangements for a variety of social service programs, including foster care. Specifically, the Governor proposes to turn over full financial and program responsibility for foster family homes and group homes to the counties. (We review the Governor's proposal in detail in our companion document, *The 1995-96 Budget: Perspectives and Issues.*)

**Counties Would Have a Greater Fiscal Incentive to Place Probationers in the Youth Authority.** Under the Governor's proposal, the state's share of cost for foster care placements would be eliminated, and the county share increased significantly. Counties would not be required to maintain juveniles in these foster care placements. Counties could decide, for example, to transfer these probationers to the Youth Authority, since such a transfer would benefit the county. This is because the county would avoid the costs of the foster care placement and because the Youth Authority placement would only cost the county \$25 per month.

**A Transfer Could Have Significant Cost Impact On the State.** Even a shift of 1 percent of the probation foster care placements (50 placements) could result in General Fund costs of over \$1 million to the Youth Authority. The addition of new wards would further exacerbate the department's overcrowding problems. Since details of the Governor's proposal are still

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being developed, there is an opportunity for the incentive structure to be adjusted to alleviate this outcome.

*Analyst's Recommendation.* Because the Governor's proposal could have a significant effect on the Youth Authority's institutional population, we recommend that, if the proposal is adopted, legislation be enacted requiring the Youth Authority to charge counties fees similar to the costs of group home placements. This should ensure that commitments to the Youth Authority are based on treatment needs rather than fiscal incentives.

### **The Youth Authority Needs To Measure The Success of Its Rehabilitation Programs**

*The Youth Authority was required to report to the Legislature on how it would measure the effectiveness of its programming. At the time this Analysis was written, the report had not been submitted.*

*Background.* As we reported in last year's *Analysis*, the Youth Authority offers a wide variety of education and specialized programs. Over 85 percent of wards are involved in either academic or vocational education programs. In addition, almost 25 percent of all wards participate in a specialized program. Figure 26 (please see next page) shows the types of rehabilitative programs the Youth Authority offers wards.

During budget hearings last year, the Legislature adopted supplemental report language that required the department to report to the Legislature by December 1, 1994, on the systems required to evaluate the performance of its rehabilitation programs. That report has not been completed and it is not clear when it will be available.

*How Successful are the Youth Authority's Programs?* Measuring success of individual programs is difficult, but using an overall measure, such as success on parole, could be useful to systemically measure programs. The Youth Authority tracks wards through their first two years of parole to determine success or failure. A parole is considered successful if the parolee commits no violations of the conditions of parole and no new criminal offenses. A 1994 report on wards paroled in 1991, shows that almost 47 percent successfully complete the first two years of parole. Of the 53 percent that did not complete parole, 48 percent violated conditions of their parole and 52 percent committed a new crime (the majority of these individuals are sent to CDC prison or county jail). The department does not currently use the data on the types of programs the parolees have completed to develop information on whether the programs contributed to a successful completion of parole.

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**Figure 26**

**Department of the Youth Authority  
Rehabilitative Programs**

Program	Program Description
<b>Academic education</b>	General elementary and high school studies, leading to diploma or GED.
<b>Special education</b>	Assessment and identification, classes for the learning disabled, and students with limited or no English.
<b>Vocational education</b>	Vocational training in 30 skills; some wards are enrolled in both academic and vocational programs.
<b>Intensive treatment programs</b>	Treatment of wards needing psychiatric services.
<b>Special counseling programs</b>	Treatment for wards who are assaultive, suicidal, or sex offenders.
<b>Substance abuse treatment programs</b>	Six to eight month formal alcohol and drug treatment programs.
<b>Drug treatment program (for parole violators)</b>	Ninety-day program for parolees who fail drug testing, but do not warrant return to an institution.
<b>Sex offender treatment "Continuum of Care"</b>	Twenty-month institutional program followed by intensive parole for high-risk sex offenders.
<b>LEAD "Boot Camp"</b>	Four month "military-style" shock incarceration program for nonviolent offenders, followed by intensive parole supervision.

*The Department Needs to Evaluate Programs.* Because the Youth Authority does not evaluate the performance of all its programs to develop information on which programs or combinations of programs are most likely to lead to a ward's successful reintegration into the community, it cannot concentrate resources on successful programs and limit or eliminate programs with little or no efficacy. This type of information would not only be beneficial to the Youth Authority but would be of use to the rest of the state's juvenile justice system, especially to counties that also operate facilities for incarcerating offenders.

Following review of the yet-to-be completed report, we believe that the Legislature should consider requiring the Youth Authority to evaluate the performance of its rehabilitation programs.

## **More Funds Proposed to Meet Special Education Requirements**

*The Youth Authority is requesting an additional \$2.5 million (Proposition 98 funds) for special education services. This funding is requested to meet the requirements of the judgement against the department in the Nick O. v. Terhune lawsuit.*

**Background.** In 1989, both the federal and State Departments of Education found the Youth Authority to be out of compliance with federal and state special education requirements. In general, these requirements provide that the state undertake certain identification (referral and assessment), education planning, and placement activities. In 1989, the Youth Law Center (YLC), a nonprofit organization in San Francisco, sued the department (*Nick O. v. Terhune*) for noncompliance in the special education program, paralleling the findings of the federal and state agencies.

The lawsuit against the department, in addition to the reports of the state and federal government reviews, noted that the primary areas of department noncompliance were (1) processing wards who are referred for special education in a timely manner, (2) completion of the appropriate assessments within time frames prescribed by law, and (3) provision of services in accordance with the ward's Individualized Education Plan.

In 1990, the Youth Authority entered into a "stipulated judgment" to resolve the lawsuit in which the department agreed to provide the federally required services. The Youth Authority agreed to compliance monitoring by the YLC, through 1995, and specified that failure of the department to achieve compliance would be grounds for extending the order and for additional relief.

**Funding to Bring the Department Into Compliance.** In order to bring the Youth Authority into compliance, significant additional resources have been approved. For 1994-95, \$2 million in General Fund monies was appropriated for special education needs assessments and evaluations at the Youth Authority's reception centers. The Youth Authority is requesting \$2.5 million (Proposition 98 funds) for the budget year to fund the increasing population of wards with special education needs.

**New Funds Would Be Used for Meeting the Needs of Wards On Waiting Lists.** The Youth Authority proposes to fund an additional 56 positions, based on the population of wards needing special education services. The need for new positions is a consequence of determining that the population of wards needing special education services is larger than expected. The identification of these wards was completed through a multi-year assessment and evaluation program, and the addition of as-

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assessment staff at the department's reception centers. The addition of this staff appears warranted based on caseload and the number of wards on waiting lists for services, almost 800 in December 1994.

*New Lawsuit Monitoring Report Due in March.* The YLC staff who are monitoring the Youth Authority's compliance with the provisions of the *Nick O. v. Terhune* stipulated judgment, plan to review the department's progress in implementing new special education programs in February, and report on the progress in March.

### **Youth Authority Should Seek Federal Funds for Some Parole Services**

*We recommend that the Youth Authority report to the Legislature during budget hearings on its efforts to obtain federal Title IV-A funding to provide services to eligible parolees.*

California will receive over \$100 million in federal Title IV-A funds in the budget year that can be used to provide services to minors. Currently, county probation departments are using a portion of these funds to provide a variety of services for juvenile offenders. For example, the funds are used for substance abuse treatment, group home, ranch and camp placements, and specialized counseling. The Department of Social Services is the lead state agency responsible for administering the program in California. The funds are available based on meeting certain federal eligibility criteria. Eligibility is restricted to children and their families and funds cannot be used for incarceration costs.

*Youth Authority Parolees Could Qualify for Funding.* We believe that some parolees, under the age of 18, meet the eligibility criteria for these funds. The Youth Authority could use the funding to provide parole services, including group home placements. At any time during the year, the Youth Authority has between 400 and 500 parolees who are under age 18, and could meet program eligibility criteria. Currently, the state spends between \$1.8 and \$2.2 million for services for these younger parolees. Federal funding could defray some of these costs and could benefit the General Fund.

For this reason, we recommend that the Youth Authority report to the Legislature during budget hearings, on its efforts to obtain this funding.

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## **Inspection of Local Juvenile Facilities Should be Transferred**

*We recommend the enactment of legislation to transfer responsibility for the inspection of local juvenile facilities from the Youth Authority to the Board of Corrections.*

**Background.** Prior to 1992, state law required the Youth Authority to establish minimum standards for juvenile correctional facilities. These facilities, operated by county probation departments, include juvenile halls, homes, ranches, and camps that are used to confine juvenile offenders for more than 24 hours. In addition, state law required the Youth Authority to inspect all such facilities annually. The inspection consisted of reviewing the health, safety, and security of facilities, an evaluation of staffing, and staff training.

**1992-93 Budget Reductions.** As part of the 1992-93 budget negotiations, the Legislature enacted Ch 695/92 (SB 97, Torres), which eliminated the statutory requirement that the Youth Authority inspect county facilities. In addition, Chapter 695 required counties to certify that their facilities met minimum standards. As a result of Chapter 695, the Legislature reduced \$800,000 from the Youth Authority's 1992-93 budget and eliminated or redirected more than 20 positions. According to the Youth Authority, 2 positions remain for setting minimum standards for local facilities.

**No Funds in Budget to Restart Inspections.** Chapter 695 sunsets on July 1, 1995. Consequently, the Youth Authority will be required to resume inspections starting in the budget year. However, the budget does not propose any new staff or monies to conduct these inspections. If the Youth Authority were to resume inspections at the same level provided prior to 1992-93, we estimate that the 1995-96 budget would have to be augmented by at least \$900,000 from the General Fund.

**The Board of Corrections Could Inspect for Less.** The Board of Corrections is responsible for establishing minimum standards and inspecting all local jail and adult correctional facilities in the state. In addition, the board, through its State Training Center, establishes and provides training to jail staff and to county probation officers and local juvenile facility custodial staff. Among its other members, the board's members include the Director of the Youth Authority and a county chief probation officer. Last year during budget hearings, the board reported that it could take over responsibility for establishing standards and for inspecting juvenile facilities for approximately \$300,000 annually. The board's estimate for inspections is less than the Youth Authority's because the board already has trained field staff working in counties conducting jail inspections and

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also because the board suggests inspecting juvenile facilities biennially (as it does for jails), instead of annually.

*Analyst's Recommendation.* Given these considerations, we recommend the enactment of legislation that transfers responsibility for oversight of local juvenile facilities to the Board of Corrections.

## TRIAL COURT FUNDING (0450)

The Trial Court Funding Program, enacted by Ch 945/88 (SB 612, Presley), the Brown-Presley Trial Court Funding Act, requires the state to assume primary responsibility for funding the operations of the trial courts in counties that choose to participate in the program. Chapter 90, Statutes of 1991 (AB 1297, Isenberg), the Trial Court Realignment and Efficiency Act of 1991, significantly modified the program and specifies the Legislature's intent to increase state support for trial court operations 5 percent per year, from 50 percent in 1991-92 to a maximum of 70 percent in 1995-96.

The budget proposes total expenditures of \$1.3 billion for support of the Trial Court Funding Program and assumes that all 58 counties will participate in 1995-96. The amount requested is \$631 million above estimated current-year expenditures, or roughly a two-fold increase. This significant increase is due to the Governor's proposal to provide additional state funds to support trial courts as part of his state and county restructuring proposal (we discuss the proposal in more detail below). The program is supported by appropriations of \$1.1 billion from the General Fund and \$156 million from the Trial Court Trust Fund.

### OVERVIEW OF TRIAL COURT FUNDING

There are two components of the program: (1) Trial Court Funding (Item 0450) and (2) Contributions to Judges' Retirement Fund (Item 0390). Figure 27 (see next page) shows proposed expenditures for support of the trial courts in the past, current, and budget years.

As Figure 27 shows, the budget proposes total expenditures of \$1.2 billion for support of Trial Court Funding (Item 0450). This is \$618 million, or 108 percent, above estimated current-year expenditures. The budget also proposes \$54.8 million for Contributions to Judges' Retirement Fund, an increase of \$11.4 million, or 26 percent, over the current year amount.

*Functional Budget Funding.* Based on recommendations from the Judicial Council, the 1994-95 Governor's Budget provided, for the first time, state funding for trial court operations based on the major functions of court operations. The 1995-96 Governor's Budget continues state

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and county funding for trial court operations based on functional budget funding.

**Figure 27**

**State Costs  
Trial Court Funding Program  
1993-94 Through 1995-96**

(Dollars in Millions)

	Actual 1993-94	Estimated 1994-95	Proposed 1995-96
<b>Trial Court Funding (Item 0450)</b>			
Functional budget funding <sup>a</sup>	\$504.4	\$492.9	\$1,099.2
Salaries for superior court judges <sup>b</sup>	77.1	77.7	88.9
Assigned judges program	10.0	10.0	12.1
State mandated local programs	4.6	0.1	—
Subtotals	(\$596.1)	(\$580.7)	(\$1,200.2)
<b>Judges' Retirement Fund (Item 0390)</b>	\$36.1	\$43.4	\$54.8
<b>Totals</b>	<b>\$632.2</b>	<b>\$624.1</b>	<b>\$1,255.0</b>

<sup>a</sup> Includes trial court funding block grants in 1993-94.

<sup>b</sup> Previously listed under Item 0420 in the Governor's Budget.

Figure 28 shows the total state and local expenditures for trial courts for the current and budget year, by functional category.

As Figure 28 shows, total expenditures for 1995-96 are expected to increase \$53.4 million, or 3.2 percent, over estimated current-year expenditures. In addition, the figure shows that expenditures for some functions are expected to significantly increase, such as Jury Services, Collection Enhancements, and Dispute Resolution Programs. The significant increases in some functions are partially the result of the redistribution of costs previously contained in "Staff and Other Operating Expenses" and "Indirect Costs" to more closely align expenditures with the appropriate programmatic functions. Other significant increases, such as the increase in Jury Services costs, are the result of Judicial Council policy decisions.

*Assigned Judges Program.* The State Constitution provides the Chief Justice of the California Supreme Court with the authority to assign active and retired judges to hear cases in trial courts on a temporary basis. These assignments are generally made due to illness or disqualification of permanent judges, judicial vacancies, or court calendar congestion. The budget proposes total expenditures of \$12.1 million. This amount is

\$2.1 million, or 21 percent, above estimated current-year expenditures. The Judicial Council, which oversees the program, indicates that the increase is primarily the result of (1) increased demand for judicial assistance, in part due to the enactment of the "Three Strikes and You're Out" law (Ch 12/94, AB 971, Jones) and (2) cost-of-living increases.

**Figure 28**

**Total State and County Expenditures  
Trial Court Operations  
1994-95 and 1995-96**

(Dollars in Millions)

<b>Trial Court Functions</b>	<b>1994-95</b>	<b>1995-96</b>	<b>Percent Change From 1994-95</b>
Judicial Officers	\$180.4	\$185.6	2.8%
Jury Services	21.5	40.1	86.4
Verbatim Reporting	136.7	147.4	7.8
Interpreters	33.8	37.5	10.9
Collection Enhancements	28.5	35.3	23.5
Dispute Resolution Programs	28.2	34.9	23.8
Court Appointed Counsel	37.5	38.1	1.6
Court Security	198.6	217.0	9.3
Information Technology	137.8	156.3	13.5
Staff and Other Operating Expenses	749.9	720.3	-4.0
Indirect Costs	119.7	113.7	-5.0
<b>Totals</b>	<b>\$1,672.6</b>	<b>\$1,726.0</b>	<b>3.2%</b>

*Judicial Council Continues to Work with the State Controller's Office to Refine Expenditures.* The Supplemental Report of the 1994 Budget Act requires the Judicial Council to work with the State Controller's Office (SCO) to refine expenditure reporting and standardize accounting guidelines for trial courts. The Trial Court Budget Commission (TCBC) indicates that it has met regularly with representatives of the SCO and, as a result, has developed several suggested changes to refine expenditure reporting and accounting guidelines. The TCBC indicates that it has not yet completed its work, however.

### **Court Changes in 1994-95**

Two measures were enacted in 1994 that will have impacts on the organization and operations of the state's trial courts.

**Proposition 191.** Proposition 191 (SCA 7, Dills), passed by the voters at the November 1994 election, amended the California Constitution to consolidate the state's 37 justice courts into the municipal courts. Prior to the passage of Proposition 191, justice courts judges had the same jurisdictional authority as municipal court judges to preside over misdemeanors and infractions and most civil lawsuits involving disputes of \$25,000 or less. The only difference between justice and municipal courts was the number of persons residing within the jurisdictional boundaries of the court. Municipal court districts contained populations of more than 40,000, while justice court districts contained populations of 40,000 or less.

When justice courts were first established, it was believed that the judges would serve only on a part-time basis because the smaller districts would generate much less court workload.

However, all justice courts were required to provide the same levels of service to the public as municipal courts. In addition, most justice court judges were required to take assignments in other courts when their own workload did not fully support their judicial positions. As a result, the passage of Proposition 191 will probably not have a significant fiscal impact.

**Chapter 308, Statutes of 1994 (AB 2544, Isenberg).** Chapter 308 changes the Trial Court Funding Program. Among its provisions, the measure:

Eliminates county contributions for superior and municipal court judges' salaries (the state now pays the entire cost).

Provides that counties fund only those functions that are not supported by state funding.

Provides municipal court judges with the same health and insurance benefits provided to superior court judges.

Provides that certain fine, fee, and forfeiture revenues remain with the county, rather than be transferred to the state.

Requires the Judicial Council to adopt rules governing trial court fiscal management.

Restricts a court's authority to require county officials to appropriate funds for trial court operations.

Expresses the Legislature's intent to require more careful identification of the costs of services provided by county government for trial courts.

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Chapter 308 clarifies the funding responsibilities for both the state and counties and provides counties relief from the responsibility to fund some trial court costs. In addition, the measure simplifies the funding management of certain trial court operations. We believe the measure provides additional direction for funding trial court operations between the state and counties.

## **BUDGET ISSUES**

### **Budget Commission Allocates Funds for First Time**

*The Trial Court Budget Commission (TCBC) allocated and reallocated funds among trial courts for the first time in the current year. Workload and fiscal pressures may result in greater reallocation of funds by the TCBC in the budget year.*

Chapter 158, Statutes of 1993 (AB 392, Isenberg), authorizes the TCBC to (1) review budget requests from trial courts, (2) allocate and reallocate trial court funding monies among the various courts, and (3) at the request of the presiding judge of a trial court, conduct a review of the court's funding to determine whether it is adequate for the court to discharge its responsibilities.

*TCBC Reallocates Funds to Butte County in Current Year.* Chapter 158 authorizes the TCBC to reallocate funds among trial courts during the year in order to ensure equal access of citizens to trial courts. Only one such reallocation has occurred thus far. Because of its poor fiscal condition, Butte County requested a current-year augmentation of \$91,000 in order to restore court service levels to previous levels. Since 1993, the courts in Butte County have only operated four days per week and the public has had access to court services only 25 hours per week. The TCBC approved the request in January 1995 and redirected the funds from unanticipated surpluses in the Trial Court Trust Fund.

*TCBC Reduces Requested Amounts for Budget Year.* This year marks the first year that the trial courts submitted their budgets to the TCBC for review and inclusion in the Governor's Budget. The total amount requested by trial courts for 1995-96 was approximately \$1.9 billion. This amount is \$177 million, or roughly 10 percent, above estimated current-year expenditures. During the budget review process, the TCBC reduced the total requested amount by \$313 million. However, appeals by trial courts restored \$137 million of the suggested reductions for a net reduction of \$176 million below the requested amounts.

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*Workload and Fiscal Situation May Result in Pressure to Reallocate Funds in Budget Year.* A number of factors could result in the TCBC deciding to reallocate funds in the budget year. There are two particular factors worth note.

First, there are preliminary indications that the “Three Strikes and You’re Out” law is having a significant impact on the workload of the courts in some counties. This is primarily because many defendants under the “Three Strikes” law are refusing to plead guilty to felony charges and are instead requesting that their cases be taken to a jury trial. An increase in jury trials increases workloads and costs of the trial courts. The most dramatic increases in jury trials appear to be occurring in some of the state’s largest counties—Los Angeles, San Diego, and Santa Clara. To the extent that this trend continues, there may be pressure on the TCBC to augment funding for some courts through its reallocation mechanism.

Second, the financial problems and recent filing for bankruptcy of Orange County could add pressure. The Orange County municipal courts had already reduced their expenditures by \$2.4 million in the current year prior to the bankruptcy and indicate that further reductions are likely to substantially reduce trial court services in the county. These service reductions could take the form of reduced hours courts are open to the public, elimination of previously-adopted salary increases, and elimination of various contractual obligations and information technology programs.

### **Judicial Policy Allows Trial Courts to Redirect Funds**

*The Judicial Council policy authorizes trial courts to redirect funds within their budgets without notifying the Legislature and with minimum oversight by the TCBC. This policy allows trial courts to redirect funds without regard for legislative and judicial funding priorities.*

The TCBC has approved a policy which allows individual courts to redirect funds among programs within their budgets. The policy requires only that the individual court report to the TCBC by August 1 of the succeeding fiscal year of the *aggregate* amount redirected within the court’s budget. As a result, the reports will not specifically identify the amounts or the programs in which the redirections occur.

*Aggregate Expenditure Reporting Provides Only Limited Information.* In our view, courts need the ability to redirect funds to meet unforeseen needs. However, we believe that the reporting arrangements that require reporting of only aggregate redirections may not (1) provide the TCBC with adequate information with which to develop the subsequent budgets

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or to hold courts accountable for the management of their finances and (2) ensure that the priorities for funding established by the Judicial Council and the Legislature are being met.

For example, the budget includes an increase of 86 percent for the Jury Services function. The Judicial Council indicates that this large increase is the result of its new policy that allows trial courts to receive funding for jurors' fees for the entire period that persons are eligible for jury service. However, courts continue to have significant discretion in how they pay juror fees and many may not change their policies to conform to the new Judicial Council policy. Thus, those courts that do not change their policies may have large surpluses in the Jury Services function which they can use for other purposes. Without more detailed information on how the courts redirect those funds, the TCBC may overbudget this function when it develops its 1996-97 budget request. In addition, it would not be possible for the Judicial Council to determine whether individual courts have, in fact, changed their jury fee policies as the council permitted.

Given the State's significant fiscal role in funding trial court operations (which would more than double if the Governor's realignment proposal is adopted), we are concerned that this policy allows the courts to redirect funds without regard for legislative and judicial funding priorities.

### **Management of Judicial Payroll Responsibilities Should Be Consolidated**

*We recommend the enactment of legislation to consolidate the management of judges' payrolls within the State Controller's Office.*

Prior to enactment of Ch 308/94, counties were required to provide a small portion of each superior court judge's salary, based on the county's population. Chapter 308 eliminates that requirement and requires the state to pay the entire cost of judges' salaries.

*Administration of Judicial Salary Program Should Be Consolidated.* Although judges salaries are paid entirely by the state, the management responsibilities for payrolls is split between the state and counties. For example, under current law, municipal court judges are paid from county payrolls; however, superior court judges are paid from either (1) the state payroll, (2) county payroll, or (3) state and county payrolls. The State Controller is the state agent that manages the payroll for most superior court judges, as well as all state employees.

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Given that the Controller already has a very large payroll operation and is currently responsible for handling the payroll of many judges, we believe it would be more efficient for the state to assume the full management responsibility for paying the salaries for all municipal and superior court judges. Thus, we recommend the enactment of legislation to consolidate the payment of judicial salaries under the State Controller.

### **Judicial Council Needs to Further Define Performance Measures**

*We recommend that the Legislature adopt supplemental report language directing the Judicial Council to develop trial court performance measures so that they assess progress toward meeting specific output goals and permit cross-court comparisons.*

The *Supplemental Language Report of the 1994 Budget Act* directed the Judicial Council to develop specific trial court performance measures to be used in developing the 1995-96 budget proposal. The council indicates that in response to this directive, the TCBC developed “performance measures” that it used in evaluating individual trial court budget requests to be included in the total 1995-96 trial court budget proposal. Information provided by the council indicates that the measures they used were essentially the average costs for most court functions. Specifically, each court’s expenditures were compared to these average costs and requests that deviated significantly were reduced or denied with a request for further justification.

***Performance Standards Don’t Measure Outputs.*** In addition, the Judicial Council recently adopted “performance standards” for individual trial courts. The purpose of these standards was to provide the courts with a tool by which to self-assess their performance. Our review indicates, however, that the performance *standards* do not constitute performance *measures*. This is because standards do not lend themselves to quantifiable measurement. Performance measures, on the other hand, measure progress toward meeting specific organizational outputs or goals.

***Analyst’s Recommendation.*** We believe that the use of the average cost comparisons to develop the proposed budget was a good first step by the TCBC. However, in the long run, we do not believe that the use of average cost comparisons, or the use of performance standards, is adequate for developing future trial court budgets or assessing progress of courts in meeting the goals specified by the Legislature. Thus, we recommend that the Legislature direct the Judicial Council to develop trial court performance measures that will specifically assess progress toward out-

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puts, can be verified quantitatively, and will allow for cross-court comparisons of expenditures and staffing levels.

Specifically, we recommend the following supplemental report language:

The Judicial Council shall develop trial court performance measures that assess progress toward specific outputs, can be quantitatively measured, and provide cross-court comparisons of functional expenditures and staffing levels, including trial court efficiency efforts.

## STATE-COUNTY RESTRUCTURING PROPOSAL

### Governor's Major Restructuring Proposal

*The Governor's state-county restructuring proposal as it relates to the trial courts has merit. However, the Legislature will need to consider how the various components of the restructuring proposal are linked, and be aware of issues related to future funding and cost containment.*

The budget proposes a major shift of program responsibilities and funding from the state to the counties. The budget proposes to shift approximately \$1.9 billion in state costs for various social service programs to counties, including giving counties a larger share of the non-federal costs of the AFDC Program. These costs would be partially offset by increased county resources amounting to \$1.6 billion, including \$928 million related to trial court funding. The shift would result in a net savings to the state (and cost to the counties) of \$241 million.

With respect to court funding, the budget proposes that the state pay 70 percent of the costs of local courts, an increase of 208 percent. In addition, the budget proposes that counties retain fine, fee, and forfeiture revenues (estimated to be \$311 million in the budget year) that are currently remitted to the state by counties and cities.

The Governor's Budget indicates that the state should assume the major share of funding trial courts because of the compelling statewide interest in promoting the uniform application of justice, and because trial court operations are governed by state statutes and regulations.

*State Funding for Trial Courts Makes Programmatic Sense.* We concur with the administration that the state should assume financial responsibility for the trial courts. In our view, the state should assume responsibility for truly statewide functions, in order to ensure adequate service levels. Ensuring and improving citizens' access to justice through the courts is such a statewide interest.

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In addition, we concur with the administration that trial court operations are governed primarily by state law and regulations; judges are appointed by the Governor, and supervised and disciplined by the Judicial Council; and judges salaries are set by the Legislature. We also note, however, that there is a strong linkage between the workload of the courts and the activities of local government officials, particularly in the area of criminal caseloads (criminal cases are brought to the courts by local law enforcement officials).

*All of the Components of the Restructuring Proposal Need to be Considered Together.* It will be important for the Legislature to consider how the various components of the Governor's restructuring proposal interact and the extent to which they further the goal of improving state and county operations (for a full discussion of the restructuring proposal, please see our companion document, *The 1995-96 Budget: Perspectives and Issues*).

Although there is merit in having the state provide a significant share of costs of the trial courts, we have identified a couple of concerns with this part of the administration's proposal. For example, it is not clear whether the administration intends to increase the state's share of funding in subsequent years for trial courts.

In addition, although the TCBC has begun to exercise more control over individual trial court budgets, we remain concerned that increased state funding for the trial courts, without greater state involvement and control over trial court expenditures, will create a new source of uncontrollable costs in the state budget.

### **Restructuring Proposal Does Not Provide Allocation Schedule**

*The budget does not propose a specific plan for allocating state funding for trial court operations among the counties, but rather indicates that the administration will negotiate the allocation methodology. Thus, it is not possible at this time to determine how funding would be distributed to individual courts or to precisely evaluate the Governor's overall restructuring proposal on a county-by-county basis.*

As we indicated earlier, the TCBC is responsible for allocating state funding among the trial courts. Although the Budget Bill, as proposed, reflects continuation of this arrangement, the administration indicates that it will hold discussions with the TCBC and the Judicial Council regarding the ultimate scope of the state's responsibilities for supporting trial courts and the method for allocating state funds based on those

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responsibilities. Thus, it is unclear how the total trial court funding amount would be allocated among the individual courts and counties.

*Expenditures for Programs are Mismatched.* Our review of programmatic costs for both trial court operations and AFDC indicates that the resources that would be transferred to counties and the new expenditures that counties would incur are very dissimilar and that the net results of the financial shift will likely create significant disparities between the winners and losers (see our discussion in *The 1995-96 Budget: Perspectives and Issues*). To the extent that state funds are diverted from trial court funding in a county to mitigate the adverse impact of the county's higher AFDC costs, the state will fund less than the proposed amount of trial court operations.

### **State Funding for Collection Enhancements Should Be Eliminated**

*If the Legislature decides to return the state's share of court-related fine and penalty revenues to the counties, as proposed in the Governor's restructuring plan, we recommend that the Legislature delete state funding for the "Collection Enhancement" function in trial court funding (General Fund savings of \$35.3 million) because return of the revenues should provide sufficient incentives to counties to enhance their collection efforts.*

The budget proposes total expenditures of \$35.3 million to fund the "Collection Enhancement" function within the Trial Court Funding Program. This expenditure supports local programs that improve the collection of fines and penalties assessed by trial courts upon a defendant's conviction of certain offenses, such as traffic violations. A significant portion of the amount collected is currently remitted to the state's General Fund by counties.

The Governor's restructuring plan proposes to return the state's share of local trial court-related fine and penalty revenues (about \$311 million) to counties. If these revenues are retained by counties, the financial benefits they receive should provide sufficient incentives for the counties to enhance their collection efforts. Thus, if the Legislature adopts this aspect of the Governor's restructuring proposal, we recommend that the Legislature eliminate state funding of the "Collection Enhancement" function within Trial Court Funding, for a General Fund savings of \$35.3 million in 1995-96.

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## **TRIAL COURT COORDINATION ISSUES**

### **Coordination and Unification Efforts Start to Fall Apart**

*A number of trial courts have begun to retreat from their efforts to coordinate their operations with other courts. In the event that the state funds a significant share of the total statewide trial court costs, this departure could increase state expenditures for trial court operations.*

**Background.** The Trial Court Realignment and Efficiency Act of 1991 (Ch 90/91, AB 1297, Isenberg) requires all trial courts to implement certain efficiencies, and maximize the use of judicial resources in order to achieve statewide cost reductions such as (1) cross-assignment of judges to hear any type of case, (2) use subordinate judicial officers to try matters, and (3) merge court support staff within a county or across counties.

The degree to which individual trial courts have achieved coordination varies significantly throughout the state. By 1994, most courts had coordinated many of their administrative operations and some counties, such as Napa, Riverside, and Ventura, had fully coordinated their judicial operations.

**Coordination Saved Money.** According to the TCBC, the coordination of trial court resources had the desired effect and resulted in statewide savings of approximately \$87 million in 1992-93 alone. And there is some evidence to suggest that court efficiencies have been achieved. For example, between 1991-92 and 1994-95, trial court costs increased an average of 5 percent per year following the enactment of Ch 90/91, as opposed to the roughly 11 percent annual increase during the preceding four years.

**Some Courts Abandon Coordination.** Last year, the Legislature considered, but did not enact, SCA 3 (Lockyer), which would have fully unified trial courts by eliminating all jurisdictional distinctions between superior, municipal, and justice courts. The Legislature did not place SCA 3 on the November 1994 ballot. Subsequently, a number of courts began to abandon their coordination efforts. The most notable courts are in Los Angeles County and San Francisco. In some cases, judges indicated that they were pulling out of coordination arrangements because of the failure of SCA 3.

**Dismantling Coordination Has Cost Implications for the State.** The move by some courts to abandon coordination efforts has fiscal implications for the state. This is because, absent coordination, it is likely that trial court expenditure growth rates are likely to increase, especially in light of the workload impacts imposed by the "Three Strikes" law on trial courts. Los Angeles County alone estimates that the breakdown of coordination efforts will increase the costs for superior court operations by

\$4 million to \$6 million in the current year. To the extent that the state funds a larger share of the total statewide costs in the future, as proposed in the Governor's restructuring plan, the costs of supporting courts that abandon coordination will become a greater fiscal burden on the state.

### **Judicial Council Moves to Require Trial Court Coordination**

*The Judicial Council has taken a positive step toward furthering coordination of judicial and administrative resources in the trial courts. Given the decentralized nature of the trial courts, however, it will be important for the Council and Legislature to closely monitor implementation of the coordination requirements.*

Although trial court coordination requirements have existed in statute since 1991, courts have enjoyed sufficient flexibility to develop and implement their own plans and guidelines to coordinate certain functions or operations. As a result, there has been no standard by which to measure the statewide coordination efforts of trial courts.

*Specific Requirements and Timelines Adopted.* On January 25, 1995, the Judicial Council unanimously approved recommendations from its Select Coordination Implementation Committee that include the following:

All trial courts within a county must create an oversight committee with the responsibility for court coordinated activities.

All trial courts within a county must coordinate judicial activities and integrate all direct support and information services to maximize the efficient use of resources and increase service to the public.

The Judicial Council will adopt performance standards for trial courts to be used for self-assessment and peer review.

Legislation will be recommended to provide for the coordinated use of subordinate judicial officers and permit municipal court sessions at any court location in the county.

In addition, the council adopted a timeline that requires trial courts within each county to complete certain coordination activities by a specific date. These include coordinating the judicial activities and support services of the county's courts by July 1, 1996, and submitting a unified budget for all trial courts within the county and establishing unified financial management and budget procedures, beginning in 1997-98.

Although some counties already have achieved some or all of the goals

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listed above, the Judicial Council has set, for the first time, specific implementation requirements by which to direct trial court coordination throughout California.

*Council's Efforts Are Positive Step.* As we have indicated previously, coordination of trial court operations has helped control trial court expenditures and improve court efficiency. Thus, we believe that the council deserves credit for its recent actions to further those efforts. Given the decentralized nature of the trial courts, however, it will be important for the Council and the Legislature to closely monitor implementation of these requirements.

## JUDICIAL (0250)

The California Constitution vests the state's judicial power in the Supreme Court, the courts of appeal, and the superior and municipal courts. The Supreme Court and the six courts of appeal are entirely state-supported. Under the Trial Court Funding Program, the state also provides a significant amount of funding for the trial courts in participating counties, while the counties bear the remainder of the costs. (For more information on the Trial Court Funding Program, please see Item 0450 in this *Analysis*.) The judicial budget includes support for the Supreme Court, Courts of Appeal, Judicial Council, and the Commission on Judicial Performance.

**Significant Changes In 1994-95.** Two significant changes occurred in the judiciary during 1994-95. First, Proposition 191, passed by the voters in the November election, consolidates the state's 37 justice courts into the municipal courts (we discuss this in more detail in Item 0450 in this *Analysis*). Second, the 1994 Budget Act significantly increased funding for the Commission on Judicial Performance, and Proposition 190, passed by the voters in the November election, significantly changes the commission's composition, authority, and disciplinary process. (We discuss the changes to the commission in more detail below.)

**Proposed Budget.** The budget proposes total appropriations of \$171 million (almost all of it from the General Fund) for support of judicial functions in 1995-96. This is an increase of \$19.9 million, or 13 percent, above estimated current-year expenditures. The increase is primarily due to requests for caseload and rate increases for court-appointed counsel services (\$5.6 million), increased staffing to legislatively-approved levels (\$3.8 million), full-year costs of employee salary increases that became effective January 1, 1995 (\$2.3 million), higher costs for operation of judicial facilities (\$1.5 million), merit salary increases for employees (\$1 million), and expansion and relocation of three appellate courts (\$1 million).

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## **Proposed Increase in Court-Appointed Counsel Program Not Justified**

*We recommend a General Fund reduction of \$5.7 million for the Appointed-Counsel Program because the requested amount is not justified on a cost and workload basis. (Reduce Item 0250-001-001 by \$5.7 million.)*

The Appointed Counsel Program uses private attorneys working under the supervision of nonprofit organizations to provide appellate defense services for indigent persons. The budget requests \$45.3 million from the General Fund for the appointed counsel programs for the Supreme Court (\$6 million) and the courts of appeal (\$39.3 million) in 1995-96. This is an increase of \$5.6 million, or 14 percent, above estimated current-year expenditures for the programs. Specifically, the budget requests \$3.8 million to increase the rates paid for private attorney appointments and \$1.8 million for increases in caseload.

*Proposed Increase In Court-Appointed Counsel Not Necessary.* The budget includes almost a 13 percent rate increase for contracts with private attorneys providing appellate defense services and the nonprofit organizations supervising their work. The Judicial Council indicates that the rates paid to private attorneys and supervising organizations have not changed since 1989 when rates were increased 30 percent to reflect increases in the cost of living. Increasing the reimbursement rates for court-appointed attorneys could be justified if there were a shortage of lawyers to take the cases, suggesting that the state's rates were not competitive with the private sector. However, the Judicial Council indicates that there are 1,600 private attorneys currently appointed or available for appointment in the program, with essentially no backlog of pending appeals.

In addition, employment and salary data obtained from various law schools and state and national attorney organizations indicate average attorney earnings have not increased but actually *decreased* about 1 percent since 1989. The decrease in the average attorney earnings since 1989 can be partially attributed to (1) a surplus supply of attorneys in the labor market and (2) a decrease in the demand for attorney services.

Rates paid for contractual services, such as appointed counsel, are determined by market factors. As a result, we believe that the proposed increase is not justified and the state has an opportunity to take advantage of the current market situation for legal services. Thus, we recommend that the request for a rate increase be denied, for a savings of \$3.8 million.

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***Revised Workload Projections Should Reduce Costs.*** The Judicial Council uses data from the immediate past year to project changes in budget-year caseloads and expenditures.

At the time the budget proposal was prepared, the data showing the total number of private counsel appointments for the courts of appeal for 1993-94 were unavailable to the Judicial Council. Based on the limited data available, the Judicial Council budgeted for 9,032 counsel appointments in 1995-96. However, based on more recent information, the Judicial Council has revised downward its projections for private counsel appointments for 1995-96. The Council's current projection is for a total of 8,342 counsel appointments. The revised projections should eliminate the need for the augmentation, and in fact reduce the baseline expenditures slightly resulting in a savings of \$1.9 million.

***Analyst's Recommendation.*** Based on the above factors, we recommend that the amount proposed for court appointed counsel be reduced by \$5.7 million.

### **Additional Data Needed to Support Request for Appellate Staff**

***We withhold recommendation on the proposed increase of \$1.3 million and 14.5 positions for appellate court staff, pending receipt and review of additional information.***

The budget proposes an increase of \$1.3 million from the General Fund and 14.5 positions to handle workload within the courts of appeal. Specifically, the proposal requests 7.5 central staff attorney positions, 5 secretary/administrator positions, and 2 court clerk positions.

Last year, the Judicial Council requested \$1.1 million and 17.5 positions to handle workload within the courts of appeal in 1994-95. The Legislature reduced the request to \$438,000 and 8 positions, in part because the Judicial Council planned to submit a strategic plan that would provide an updated assessment of workload staffing needs. The Judicial Council has submitted that plan which is the basis for its proposed increase of 14.5 positions to handle projected workload within the courts of appeal.

***Judicial Council's Plan Is Incomplete.*** The Judicial Council's 1994-95 Strategic Plan contained recommendations for addressing workload problems within the courts of appeal. The list of recommendations includes (1) a request for funding 7.5 central staff positions denied in the Judicial's 1994-95 proposed budget, and (2) a proposal to reallocate 3 existing central staff attorney positions within the courts of appeal.

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Our review of the plan shows the council's assessment of the workload problems within the courts of appeal is incomplete in several respects. Specifically, the plan does not:

Evaluate whether the workload standards developed in the late 1970s are appropriate measurements for assessing current workloads and productivity.

Assess the impact of the reallocation of existing attorney resources on the courts' workload.

Assess the impact of new computer technology or changes in appellate court procedures on workload.

Assess the impact on workload of clearly defining staff attorneys' duties.

*Additional Information Needed.* We withhold recommendation on the budget proposal, pending receipt and review of the additional information discussed above.

### **Insurance Benefits Could be Administered by State Controller**

*We withhold recommendation on \$131,000 from the General Fund and 2 positions requested to administer health and life insurance benefits for municipal court judges pending receipt of additional information from the Judicial Council and the State Controller.*

The budget proposes a General Fund increase of \$131,000 and 2 positions to administer health and life insurance benefits for municipal court judges.

Chapter 308, Statutes of 1994 (AB 2544, Isenberg) requires the state to provide the same state health benefits to municipal court judges that it provides to superior court judges. In addition, Ch 879/94 (SB 65, McCorquodale) requires that the state provide the same life insurance benefits to municipal court judges that it provides to superior court judges. Currently, the Public Employees' Retirement System and the Judges' Retirement System have agreed to enroll active and retired municipal court judges in the state health benefit plans, pending adoption of the budget proposal for the Judicial Council to handle this workload.

Based on our discussions with benefit administrators, we conclude that it is unlikely that the Judicial Council can provide insurance services for 650 municipal court judges in 58 counties with the requested level of staff.

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*State Controller's Office (SCO) Provides Similar Administrative Services.* Currently, the SCO administers state benefits, such as health, dental, vision, and life insurance, for all 778 superior court judges. As a result, the SCO has staff and an administrative structure in place to coordinate and oversee judges' insurance benefits. In addition, the SCO has developed the expertise required to negotiate benefit contracts with insurance carriers on behalf of judges. Finally, negotiating insurance rates on behalf of all 1,428 trial court judges (778 superior court judges and 650 municipal court judges) by a single agency could provide additional savings and efficiencies for the state.

*Analyst's Recommendation.* Based on the above, we withhold recommendation pending additional information from the Judicial Council and the SCO on the costs of having the SCO carry out this responsibility.

### **Record Storage Should Be Funded From Facilities Operations Expenditure Surplus**

*We recommend a General Fund reduction of \$126,000 for records storage because costs can be absorbed from within existing facilities operations expenditures. (Reduce Item 0250-001-001 by \$126,000.)*

The budget requests \$17.4 million from the General Fund for facilities operations, including \$126,000 for records storage space for the Supreme Court and Judicial Council. The Judicial Council indicates that the Supreme Court and the council currently utilize storage space in the state building located at 350 McAllister in San Francisco at no cost. The Judicial Council has been notified by the Department of General Services that it must relocate its records because the building is to undergo seismic renovation.

Our review indicates that the council's actual expenditures for facilities operations have consistently fallen below budgeted amounts in recent years. For example, actual expenditures for facilities operations were \$340,462 below the amounts budgeted for 1992-93 and \$895,665 below the budgeted amounts for 1993-94.

Based on the above information, we believe that the Judicial Council has sufficient funds within its facilities operations budget to accommodate increases in expenditures for records storage. Thus, we recommend a General Fund reduction of \$126,000 in the Judicial budget.

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## **Commission on Judicial Performance Is Significantly Changed**

*Augmentations provided in the 1994 Budget Act allowed the commission to handle more citizen complaints against judges. In addition, the commission is currently modifying its policies to implement changes enacted in Proposition 190.*

The Commission on Judicial Performance is a constitutionally established independent state agency that handles complaints involving judicial misconduct and disability of state judges. Specifically, the commission's primary duty is to investigate charges of willful misconduct in office, persistent failure or inability to perform the duties of a judge, conduct prejudicial to the administration of justice, or other improper actions or dereliction of duty.

The budget proposes total expenditures for the commission of \$2.9 million in 1995-96. This amount is \$531,000, or 22 percent, above estimated current-year expenditures. The commission indicates that the request primarily provides for (1) increased staffing to legislatively-approved levels (\$214,000), (2) increased costs resulting from Proposition 190 (\$129,000), and (3) increased facilities costs (\$50,000).

**Current-Year Augmentation.** The 1994 Budget Act increased General Fund appropriations for commission operations by \$1 million, or 71 percent, in order to improve the commission's ability to receive and investigate complaints, report to the Legislature on the nature and disposition of investigations, and increase the public's awareness of the commission's activities and responsibilities. The commission established additional attorney positions to handle intake and investigation of complaints. Information provided by the commission indicates that, although recruiting started soon after the 1994 Budget Act was enacted, the first attorney position was not filled until October 1994 and all positions were not filled until January 1995.

Our review of data provided by the commission indicates that new attorney-hires increased the number of intake complaints processed by the commission by 17 percent and increased the number of investigations by 9.4 percent. In addition, the commission indicates that 14 formal proceedings are currently pending, as opposed to 6 proceedings at the end of 1993.

**Proposition 190.** Prior to the passage of Proposition 190, the commission was composed of nine members including five judges appointed by the California Supreme Court, two members of the State Bar of California appointed by the Bar's governing body, and two public members appointed by the Governor and approved by the California Senate. Com-

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plaints and investigations were handled on a confidential basis and, in most cases, disciplinary actions could only be made public if the disciplined judge consented.

Proposition 190, passed by the voters at the November 8, 1994 election, significantly changed the commission's composition, authority, and disciplinary process. Specifically the proposition:

Increased the total membership of the commission from nine to eleven members and increased the number of public members so that they are a majority.

Provided that, when the commission begins formal disciplinary proceedings against a judge, the charges and all subsequent papers and proceedings shall be open to the public.

Permitted the commission, rather than the Supreme Court, to retire or remove a judge, or to censure a judge or former judge. Such actions could be reviewed by the Supreme Court.

Required the commission to provide, upon request of the Governor, the President of the United States, or the California Commission on Judicial Appointments, confidential information on disciplinary actions taken against a judge who is an applicant for another judicial appointment.

Because of the proposition's recent passage, the commission is in the process of changing its policies and procedures to reflect the substantial changes to its operations.

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## DEPARTMENT OF JUSTICE (0820)

Under the direction of the Attorney General, the Department of Justice (DOJ) enforces state laws, provides legal services to state and local agencies, and provides support services to local law enforcement agencies.

The budget proposes total expenditures of \$358 million for support of the DOJ in the budget year. This amount is \$4.3 million, or 1.2 percent, more than estimated current-year expenditures. The requested amount includes \$198 million from the General Fund, \$61.3 million from special funds, \$16.6 million from federal funds, and \$81.3 from reimbursements. The budget proposes funding increases for all legal divisions, with the most significant increases for the Civil Law Division (\$2.8 million) and Criminal Law Division (\$2.6 million). The budget also proposes a decrease of \$834,000 for the Division of Law Enforcement (DLE). We discuss these requests later in this analysis.

*Budget Provides Funding for Salary Increases.* The Governor's Budget requires most General Fund departments to absorb the full-year costs in 1995-96 of the general salary increase granted to state employees on January 1, 1995. The budget provides these salary funds only for specified state law enforcement agencies (such as the Department of Corrections), departments that provide 24-hour care services (such as the Department of Mental Health), and revenue-producing agencies (such as the Franchise Tax Board). However, the budget makes an exception for the DOJ because it includes \$5.8 million (\$3.3 million from the General Fund, \$1.2 million from special funds, and \$1.3 million from reimbursements) to cover the costs of the salary increase in *all* DOJ divisions, including the non-law enforcement divisions.

### LEGAL DIVISIONS

#### Correctional Law Request May Be Overbudgeted

*We withhold recommendation on \$1.1 million from the General Fund and 10.2 positions for the Correctional Law Section, pending receipt of (1) updated workload information and (2) the case disposition criteria.*

The budget requests a total of \$10.4 million for support of the Correctional Law Section within the Criminal Law Division for 1995-96. This amount includes an increase of \$1.1 million from the General Fund to

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support ten attorney, legal analyst, and clerical positions. The request is based upon anticipated workload growth resulting from growth in the state's prison population in the budget year.

***Correctional Law Workload Will Change as Inmate Population Changes.*** The DOJ indicates that the vast majority of the Correctional Law workload is derived from civil suits filed by state prison inmates. Data provided by the DOJ show there are about 8.1 civil suits filed per 1,000 inmates. Although the DOJ expects that the rate of cases to remain constant in 1995-96, the DOJ expects to handle an additional 101 civil suits in the budget year, based on the California Department of Corrections's (CDC) projected increase in the prison inmate population.

***CDC Uncertain About Inmate Population Projection.*** Information provided by the CDC indicates that the growth in inmate population has not increased as rapidly as originally projected. When the May Revision for the 1994-95 budget was submitted in May 1994, the CDC projected an 11 percent increase in inmate population for 1994-95. Recent data provided by the CDC show that the inmate population has increased less than 1 percent during the first 6 months of the current year. In addition, the CDC indicates that there is significant uncertainty regarding the growth in the inmate population in 1995-96, in part because of uncertainties regarding the impact of the new "Three Strikes and You're Out" law (Ch 12/94, AB 971, Jones). The inmate population projections will be updated at the time of the May Revision. (We discuss the inmate population in our analysis of the CDC earlier in this chapter.)

***Criteria for Case Disposition Still Needed.*** Both the DOJ and the CDC handle correctional law cases (including civil lawsuits filed by inmates), although the DOJ has primary responsibility. The DOJ has not provided the Legislature with the criteria by which to evaluate the disposition of certain lawsuits by the DOJ and the CDC, as was required by last year's supplemental language. We believe that this information is still needed so that the Legislature can evaluate whether the projected increase in correctional law cases can be handled better by the DOJ or the CDC.

***Analyst's Recommendation.*** Given that the DOJ's request is based on the projected growth in the CDC's inmate population, and that the DOJ has not provided the Legislature with the criteria with which to evaluate case disposition, we withhold recommendation on the DOJ's request, pending (1) receipt of updated CDC population projections during the May Revision and (2) receipt of the criteria required in the 1994 Supplemental Language Report.

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## **Health, Education, and Welfare Legal Workload Overbudgeted**

*We recommend a General Fund reduction of \$420,000 and 4.9 positions for legal workload in the Health, Education, and Welfare Section because the requested amount is overbudgeted. (Reduce Item 0820-001-001 by \$420,000.)*

The budget proposes a General Fund increase of \$420,000 and 4.9 positions to handle additional workload in the Health, Education, and Welfare (HEW) section within the Civil Law Division. The DOJ indicates that the augmentation will support additional workload associated with defending the state in litigation associated with Proposition 187. Proposition 187, which was passed by the voters at the November 1994 election, prohibits state and local governments from providing publicly-funded education, health care, welfare benefits, or social services to any person not verified to be a United States citizen or a person legally admitted to the United States.

*Reports Show Historic Pattern of Overbudgeting for HEW Attorneys.* The DOJ provides attorney services for General Fund-supported agencies through appropriations from the General Fund and through reimbursements for special fund-supported agencies. The DOJ maintains a variety of management reports to assess workloads within its various units. One such report shows the number of attorney hours budgeted and the number of attorney hours provided for General Fund agencies within the HEW.

Our review of this report shows that DOJ has not fully utilized its allocation of attorney hours for discretionary workload within the HEW section since 1989-90. As a result, we believe that an increase in attorney positions and General Fund support is not justified and we recommend that the request be denied.

## **Legislature Should Consider Alternatives To Provision of Legal Services to State Departments**

*We recommend that the Attorney General report to the Legislature prior to budget hearings on the criteria to use when assessing the types of legal matters currently handled by the DOJ that could be managed by client departments.*

*Background.* Under current law, the Attorney General generally has charge of all legal matters in which the state has an interest. The DOJ, through its Civil Law Division, provides legal services to most state agencies in civil disputes. Generally, funding for these services is pro-

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vided to the DOJ through General Fund appropriations for General Fund-supported departments and through reimbursements for special fund-supported departments. In addition, current law allows state agencies, with the consent of the Attorney General, to employ "in-house" counsel in order to handle certain legal matters.

The DOJ develops its budget each year based on an estimate of the number of hours of legal work it will provide to both General Fund and special fund client departments. The budget assumes a reimbursement rate for 1995-96 of \$98 per hour for DOJ attorney services, \$52 per hour for DOJ paralegal services, and \$60 per hour for DOJ analyst services.

*DOJ Has Discretion in Accepting Cases.* Current law provides the Attorney General some discretion in the types of cases that he handles. For example, in 1990 the Civil Law Division stopped representing General Fund-supported departments in adverse actions against employees, and in 1992 the division stopped handling employment discrimination matters for most state agencies. As a consequence, state departments had to handle these cases with either in-house counsel or retain outside private counsel. Because these services were centralized within the DOJ, some state agencies had little or no experience in handling these matters and had to expend additional resources in order to hire in-house counsel or retain outside private counsel. With the exception of cases involving conflicts of interest, the DOJ still retains the discretion to provide legal services to General Fund-supported agencies whether or not the agency has used its total allocation of legal hours.

*Expenditures Have Significantly Increased.* Total expenditures for the Civil Law Division have increased significantly since 1985-86. Specifically, expenditures for the division have increased from \$27.3 million in 1985-86 to \$61.6 million in 1995-96, an average annual increase of 8.5 percent. In addition, the number of positions within the division increased from 224 to 369 over the same period. The majority of the increase has occurred in *reimbursable* work from special fund-support agencies. In order to offset General Fund reductions to the DOJ, the division also has begun seeking increased reimbursement authority for certain legal services provided to *General Fund*-supported agencies.

*Significant Portion of Civil Law Division Workload Is Pretrial Preparation and Administrative Hearings.* The DOJ indicates that trial litigation expertise is its primary advantage over in-house counsel employed by departments. In addition, the DOJ indicates that handling pretrial preparation and administrative hearings typically requires less expertise and training than trial litigation. However, a growing portion of the Civil Law Division workload involves handling pretrial preparation and administrative hearings for state departments. The DOJ indicates that cur-

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rently approximately 70 percent of the division's workload involves pretrial preparation and administrative hearings.

*Flexibility Could Provide Cost Savings to State Agencies and Efficiencies for DOJ.* We think that centralized provision of legal services by the DOJ has generally served the state well. Based on surveys and discussions with state departments, however, we found that some relatively *simple* legal matters, such as pretrial preparation, administrative hearings, and routine cases, could potentially be handled more efficiently and less expensively by client departments than by the DOJ. For example, the CDC indicates that it has on a regular basis retained outside private counsel at a rate of \$65 per hour to handle some of the more routine civil matters and with a faster response time than the DOJ.

Making client departments responsible for some of their routine cases may not only benefit the client departments, but also allow the DOJ to concentrate its efforts on trial litigation and on the larger, more complex cases that have broader implications for the state. Currently, however, state departments cannot make use of additional in-house counsel or outside counsel without the specific consent of the Attorney General. We do not suggest delegating all legal workload to departments, but rather a small portion that is relatively simple. For example, work that requires less than 100 attorney-hours in pre-trial or pre-hearing preparation or less than 100 attorney-hours in post-pleading case work, could be delegated to departments.

In order for the Legislature to consider this issue, we recommend that the Attorney General provide the Legislature with information, prior to budget hearings, on the criteria to use when assessing the types of legal matters currently handled by the DOJ that could be managed by client agencies.

## **DIVISION OF LAW ENFORCEMENT**

### **Backlog of Criminal Conviction Histories Exceeds One Year**

*We recommend that the DOJ report to the Legislature during budget hearings on (1) the current status of the backlog in the conviction history files within the Criminal History System and (2) the proposed redirections to reduce the backlog in the current and budget years.*

Under current law, the DOJ is required to maintain a number of criminal justice information systems for law enforcement agencies, including district attorneys. One of the DOJ systems is the Criminal History System

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(CHS), which contains two information files: arrests and convictions. The arrest file lists the specific offenses for which an individual has been arrested; the conviction file lists all offenses for which the individual has been convicted. Although both files have had significant backlogs, information provided by the DOJ indicates that the department has made significant progress in reducing the arrest file backlog. The arrest backlog now stands at less than 30 days, a level achieved six months ahead of schedule.

The backlog for the conviction file, however, *exceeds one year*. That means that, currently, it takes more than one year from the date of conviction before the information is entered into the CHS.

***Implication of the Conviction File Backlog.*** The backlog of conviction histories could detrimentally affect the implementation of the "Three Strikes" law, especially the ability of prosecutors to obtain accurate information on the background of an offender before charging the offender with a second- or third-strike. For example, with a one-year backlog, it is possible for an individual to be convicted of a qualifying "Three Strike" offense, complete his or her sentence, and be standing trial for another offense without the district attorney having knowledge of the prior conviction. As a result, some defendants could elude proper prosecution and sentencing under the measure.

In addition, inaccurate conviction histories could adversely affect the CDC and county sheriffs. This is because both the CDC and sheriffs rely on the conviction history system for information with which to determine the security classification of a prisoner, which determines the type of correctional facility in which the offender will be incarcerated. For example, the CDC may determine that an inmate who is currently incarcerated for petty theft be housed in a minimum security facility, when the offender's prior history of convictions for violent offenses would suggest that he be housed instead in a medium or maximum security facility.

***DOJ's Plan to Reduce Conviction File Backlog.*** The department indicates that it is redirecting about \$600,000 from internal resources in the current year to (1) ensure the current number of conviction histories received by the department does not increase the backlog and (2) reduce the backlog in the conviction history file. In addition, the department indicates that it plans to redirect internal resources in the budget year to continue reducing the backlog and has set a goal to reduce the backlog of conviction histories to 30 days by January 1, 1996.

***Analyst's Recommendation.*** Given the importance of this issue, we believe that the DOJ should advise the Legislature during budget hearings on (1) the current status of the backlog and (2) the proposed

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redirections and the potential impact of the redirections on other programs.

### **Court Action Delays Need for Positions to Implement Proposition 187**

*We recommend a General Fund reduction of \$238,000 and 5.5 positions because the request to collect information on undocumented persons who receive publicly supported services is premature given a recent court action. (Reduce Item 0820-001-001 by \$238,000.)*

The budget requests \$238,000 from the General Fund for workload increases for the Bureau of Criminal Identification and Information to collect information required by Proposition 187.

*DOJ Must Collect and Maintain Records.* Proposition 187, passed by the voters at the November 1994 election, requires state and local agencies to report suspected illegal immigrants to the U. S. Immigration and Naturalization Service and specific state officials, including the California Attorney General. Among other requirements, the Attorney General must receive and maintain this information.

*State Barred From Implementation.* The state has been barred by both the federal and state courts from implementing most of the provisions of Proposition 187. Temporary restraining orders prohibit local agencies from collecting and the DOJ from receiving information regarding the apparent legal status of persons receiving public-supported services. The DOJ indicates that it may take several years to litigate the various legal challenges to the proposition and, as a result, cannot estimate when the proposition could become effective.

*Analyst's Recommendation.* Given the actions of the courts, we believe that DOJ's request is premature and recommend that it be denied. If the legal issues are resolved during the budget year and the temporary restraining orders are lifted, the department can request deficiency funding, as appropriate, through Section 27.00 of the Budget Act.

### **New Programs Being Implemented**

*The DOJ is in the process of implementing the new Violent Weapon Suppression and Sexual Predator Programs. It is too early, however, to assess the performance of the programs.*

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The budget proposes to continue funding for two major new law enforcement programs that were initiated in 1994-95: the Violent Weapon Suppression Program and the Sexual Predator Program.

***Violent Weapon Suppression Program.*** The 1994 Budget Act provided \$3.8 million from the General Fund and 33 positions for this program. The Governor's Budget proposes to maintain this level of funding in 1995-96. The program targets violent parolees and probationers suspected of criminal activity involving the illegal possession of firearms. Under the program, state and local law enforcement agencies investigate persons with a history of violence who are suspected of using or trafficking in illegal firearms.

Preliminary information indicates that the program has achieved some successes, such as apprehending 290 criminals and seizing 235 firearms, including 18 firearms that had been stolen. However, because of the program's recent inception, the DOJ indicates that it has not had the opportunity to adequately assess the program's overall performance.

***Sexual Predator Program.*** The budget requests \$7.3 million from the General Fund and 86 positions for the Sexual Predator Program. The program was established and funded in the current year by Ch 6x/94 (SB 12x, Thompson). The program coordinates efforts among three bureaus within the DLE. Specifically, the program includes:

Violent Crime Information Network and System, which shares sexual assault and child abduction information with local enforcement agencies.

Sexual Habitual Offender Program, which monitors the most violent and repeat sexual offenders.

Sex Registration System, which contains physical descriptions, address, and criminal history information on persons required by law to register as sex offenders.

Sexual Assault Task Force, which assists local law enforcement agencies in the investigation and apprehension of sexual offenders.

CAL-DNA Offender Identification Data Bank, which analyzes and stores DNA information of persons convicted of sexual offenses.

Supervised Release File, which provides law enforcement agencies with parole, probation, career criminal, arson, and sexual registration information.

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The DOJ indicates that the three bureau components are working together and that positions for support of the program are being filled. The DOJ indicates that it is too early to assess the program's performance.

### **Legislative Direction Has Not Been Followed**

*The DOJ has not complied with several directives of the Legislature contained in the Supplemental Report of the 1994 Budget Act.*

The *Supplemental Report of the 1994 Budget Act* specified the Legislature's intent that the DOJ take a number of specific actions. At the time this *Analysis* was prepared, the DOJ had not completed *any* of these specified activities and it is not clear whether there is a plan to do so in the near future. The specific requirements include the following:

*Criteria for Evaluating the Dispositions of Certain Cases.* The supplemental report required the DOJ to provide the Legislature with a list of appropriate criteria by which to evaluate the disposition of certain lawsuits by both the DOJ and the CDC, by October 1, 1994.

*Roster of Private Counsel.* The report required the Attorney General to establish a roster of outside counsel and billing rates for state agencies that have been authorized by the Attorney General to obtain private counsel.

*Criminal Law Division Workload.* The report required the DOJ to provide the Legislature by January 1, 1995 with (1) an explanation of the methodology used in formulating its requests for budget augmentations for the Criminal Law Division or (2) work with the Legislative Analyst's Office and the Department of Finance to develop an annual report that provides sufficient information for those agencies to adequately assess the productivity and workload of the Criminal Law Division.

*Statewide Information on "Hate Crimes."* The report required the DOJ to report to the Legislature by December 31, 1994 on the statewide prevalence of violent crimes motivated by the victim's race, ethnicity, religion, sexual orientation, or disability.

*Law Enforcement Telecommunication Policy.* The report required the DOJ to provide direct access to the California Law Enforcement Telecommunications System (CLETS) for any authorized local law enforcement agency, provided the agency is willing to pay the costs of direct access and maintenance of its telecommunications lines and system and has fulfilled its contractual obligations to the CLETS terminal provider within its county. The DOJ advises that the CLETS policy was not changed because the DOJ did not have the authority to make the change since the

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CLETS policy is established by an advisory board comprised of representatives of state and local agencies.

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# LIST OF FINDINGS AND RECOMMENDATIONS

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## Crosscutting Issues

### *The “Three Strikes and You're Out” Law*

1. **Significant Impacts Already Seen.** Although the law has been in effect for less than a year, it is already having significant effects on the criminal justice system. D-12
2. **Monitoring and Planning Needed.** Recommend that the Legislature direct the Judicial Council and Board of Corrections to monitor implementation and impacts of "Three Strikes" law. D-16

### *The Federal Crime Bill: An Update*

3. **Law Enforcement Agencies Receive Federal Funds.** Forty California law enforcement agencies have received federal funds under the federal crime bill. Overall, however, federal funds appropriated were less than authorized amounts. D-18
4. **Significant Changes to Federal Crime Bill May be Forthcoming.** Congress is considering changes that could alter the amounts of funding available to the state, local governments, and community-based organizations. D-22
5. **California Needs a Policy Direction.** Recommend enactment of legislation to establish a policy for use of federal crime bill funds. D-25

## Department of Corrections

### *Inmate and Parole Population Management Issues*

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	<b>Analysis Page</b>
6. <b>Growth in Inmate Population Less Than Earlier Forecasts.</b> The Governor's Budget projects that the number of inmates will grow steadily through the end of the decade but at a slower rate than had been expected.	D-31
7. <b>Parole Violation Rates On the Rise.</b> Following several years of declines, parole revocation rates are rising and the budget assumes the higher revocation rate will continue.	D-32
8. <b>Severe Overcrowding of Prisons to Continue.</b> Although short-term trends indicate that the growth in prison population has slowed, overcrowding of the state's existing prison system and increasing General Fund costs for incarceration are likely well into the future.	D-34
9. <b>Inmate and Parole Population Growth.</b> Withhold recommendation on \$120 million for population growth, pending receipt of revised inmate population estimates in May Revision.	D-38
10. <b>Inmate Housing Plan Contains Uncertainties.</b> Withhold recommendation on the CDC's inmate housing plan until it is updated as part of the May Revision.	D-40
11. <b>Major Expansion of Community Correctional Facilities.</b> Department's plan will result in a higher security level of inmates being placed in community facilities. Facilities may cost more than placement in state prisons. Given past experience, it may be difficult for the department to obtain contracts for so many new beds within its current schedule.	D-42

***Issues Related to Illegal Immigration***

12. <b>Budget Assumes Receipt of Federal Funds.</b> The budget's estimate that the state will receive \$422 million to offset the costs of incarcerating and supervising undocumented felons in California may be too high.	D-44
13. <b>Number of Paroled Felons Classified as Illegal Aliens and Slated for INS Deportation Growing Rapidly.</b> That trend, plus indications that deportees are illegal returning to California, could significantly affect the budget for pa-	D-47

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role supervision.	
<b><i>Inmate Legal and Medical Issues</i></b>	
14. <b>Federal Court Lawsuits Over Inmate Conditions Could Result in Significant Costs.</b> The courts will probably force the state to spend tens of millions of dollars more to improve medical care, mental health treatment, and improve conditions for inmates in other ways.	D-49
15. <b>Second Year Funding for New Health Care Program.</b> Recommend approval of \$19.6 million for the second phase of the new health care delivery system. Future costs may be higher than expected.	D-51
16. <b>Health Care Utilization Review Positions.</b> Recommend deletion of 19 nurse positions because department has not established a quality management system or standards for scope of services.	D-56
17. <b>Use CMAC to Negotiate Better Rates for Health Care.</b> Recommend enactment of legislation to allow CMAC to negotiate on behalf of the CDC for contracts for inmate medical services.	D-57
<b><i>The Joint Venture Program</i></b>	
18. <b>Joint Venture Program is Operating at a Loss to the General Fund.</b> Few companies have established enterprises and small fraction of inmates involved in program.	D-59
19. <b>Improving Joint Venture Program.</b> Recommend several program changes and options to improve program's performance.	D-63
<b><i>Administrative Issues</i></b>	
20. <b>Inflation Adjustment Not Justified. Reduce Item 5240-001-001 by \$30.5 Million.</b> No policy basis for granting price increase to CDC but not for other state agencies and departments.	D-65
21. <b>Planning for Implementation of "Three Strikes" Law.</b>	D-66

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Withhold recommendation on \$10 million, pending receipt of additional information.	
22. <b>Implementation of Federal Law Raises Questions.</b> Withhold recommendation on \$1 million and 10.8 positions requested to implement the federal Americans with Disabilities Act (ADA), pending receipt of additional information.	D-68
23. <b>Civil Addict Program.</b> Recommend that the CDC report prior to budget hearings, on the status of its current program enhancement efforts.	D-69
24. <b>Quality Assurance Consultant.</b> Recommend department advise Legislature as to status of contract and role consultant will perform regarding the CMIS computer project.	D-72

### **Board of Prison Terms**

25. <b>Backlog of Parole Revocation and Foreign Inmate Transfer Cases.</b> Recommend that the BPT report to the Legislature, prior to budget hearings, on how it intends to eliminate workload backlogs.	D-76
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### **Department of the Youth Authority.**

26. <b>Ward Population Projections Show Faster Growth.</b> The department projects that the institutional population will increase to more than 11,100 at the end of 1998-99.	D-79
27. <b>Ward and Parolee Population Projects Will Be Updated in May.</b> Withhold recommendation on \$3.3 million, pending analysis of the May revision.	D-83
28. <b>Institution Overcrowding Leads to Longer Lengths of Stay and Even More Overcrowding.</b> Recommend that Youth Authority report during budget hearings on actions to alleviate institution overcrowding.	D-84
29. <b>Realignment of Foster Care Could Lead to More Youth Authority Placements.</b> If the Legislature adopts the Gover-	D-88

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nor's proposal, legislation should be enacted raising fees for placements in the Youth Authority.	
30. <b>Youth Authority Should Measure Success of Rehabilitation Programs.</b> Department has not submitted report on effectiveness of rehabilitation programs.	D-89
31. <b>Special Education Requirements.</b> The Youth Authority is requesting an additional \$2.5 million (Proposition 98 funds) for special education services.	D-91
32. <b>Federal Funds for Some Parole Services.</b> Recommend that Youth Authority report during budget hearings on efforts to obtain federal Title IV-A funding.	D-92
33. <b>Local Juvenile Facility Inspections Should Be Transferred.</b> Recommend enactment of legislation transferring responsibility for inspection of local juvenile facilities from Youth Authority to Board of Corrections.	D-93

## **Trial Court Funding**

### ***Budget Issues***

34. <b>Budget Commission Allocates Funds.</b> The Trial Court Budget Commission (TCBC) allocated and recollected funds to trial courts for the first time in 1994-95. Workload and fiscal pressure may result in greater reallocations in 1995-96.	D-99
35. <b>Redirection of Funds.</b> Judicial Council policy permits trial courts to redirect funds without notification to the Legislature and minimal oversight by the TCBC.	D-100
36. <b>Payroll Responsibilities Should Be Consolidated.</b> Recommend enactment of legislation to consolidate management of judges' payrolls within State Controller's Office.	D-101
37. <b>Performance Measures.</b> Recommend adoption of supplemental report language requiring Judicial Council to develop better performance measures.	D-102

***State-County Restructuring Proposal***

38. **Trial Court Restructuring Proposal Makes Programmatic Sense.** Although it has merit, proposal should be considered as part of entire restructuring package. D-103
39. **No Allocation Formula.** The budget does not include a specific plan for allocation of trial court funding among individual courts or counties. D-104
40. **Collection Enhancement Funding Should Be Eliminated.** If the Legislature returns court-related fine revenues to counties, it should reduce trial court funding by \$35.3 million because return of revenues is sufficient collection incentive. D-105

***Trial Court Coordination Issues***

41. **Coordination Begins to Fall Apart.** Several trial courts have begun to retreat from coordination efforts, which has fiscal implications for the state. D-106
42. **Judicial Council Moves to Require Coordination.** Council's efforts are positive step, but Council and Legislature will need to monitor progress. D-107

**Judicial**

43. **Court-Appointed Counsel Request Not Justified. Reduce Item 0250-001-001 by \$5.7 Million.** Recommend reduction because rate increase and caseload growth proposals not justified. D-110
44. **Additional Information Needed for Appellate Staff Request.** Withhold recommendation on \$1.3 million and 14.5 positions for appellate staffing, pending review of additional information. D-111
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	<b>Analysis Page</b>
45. <b>Controller Administer Municipal Court Judges Insurance Benefits.</b> Withhold recommendation on \$131,000 and 2 positions, pending receipt of additional information on costs to have the State Controller's Office perform this duty.	D-112
46. <b>Record Storage Costs Not Justified. Reduce Item 0250-001-001 by \$126,000.</b> Recommend reduction because costs can be absorbed.	D-113
47. <b>Changes at the Commission on Judicial Performance.</b> Augmentations provided in 1994 Budget Act have allowed commission to handle more complaints. Policies are being developed to implement Proposition 190.	D-114

## **Department of Justice**

### ***Legal Divisions***

48. <b>Correctional Law Request May Be Overbudgeted.</b> Withhold recommendation on \$1.1 mil and 10.2 positions, pending receipt of additional information.	D-116
49. <b>Health, Education, and Welfare Legal Workload Overbudgeted. Reduce Item 0820-001-001 by \$420,000.</b> Recommend reduction due to overbudgeting.	D-118
50. <b>Alternatives to Provision of Legal Services to State Departments.</b> Recommend that Attorney General report to Legislature prior to budget hearings on types of legal matters that could be handled by client departments.	D-118

### ***Division of Law Enforcement***

51. <b>Backlog of Criminal Conviction Histories Exceeds One Year.</b> Recommend that the DOJ report during budget hearings on status of backlog.	D-120
52. <b>Court Delays Need for Proposition 187 Positions. Reduce Item 0820-001-001 by \$238,000.</b> Recommend reduction of 5.5 positions because request is premature.	D-122

	<b>Analysis Page</b>
53. <b>New Programs Being Implemented.</b> DOJ is implementing the new Violent Weapon Suppression and Sexual Predator Programs. It is too early to assess program performance.	D-122
54. <b>Legislative Direction Not Followed.</b> The department has not complied with several directives contained in the Supplemental Report of the 1994 Budget Act.	D-124