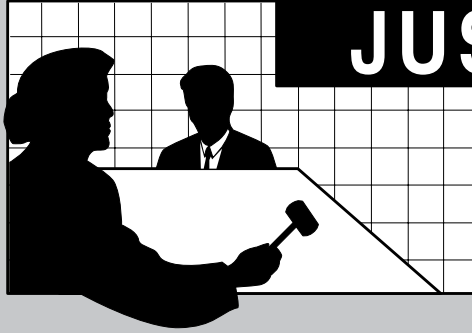


# JUDICIAL & CRIMINAL JUSTICE



**LAO**   
65 YEARS OF SERVICE

2007-08 Analysis



# MAJOR ISSUES

## *Judicial and Criminal Justice*

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### **Governor's Prison Overcrowding Package More Balanced, But Too Big**

- The administration proposes \$9.6 billion (combined General Fund and lease-revenue bonds) as part of a 14-part package of proposals designed primarily to address overcrowding in state prisons and county jails. We find that the package has merit in that it provides a balance between adding new beds and reducing the inmate population. However, we estimate that it would result in a large surplus of state prison capacity and provide the wrong mix of beds. We recommend consideration of an alternative package that would address overcrowding, result in a smaller surplus of prison capacity, and reduce state costs (see page D-52).



### **The California Prison Receivership: An Update**

- The federal court appointment last year of a Receiver to take over the state's prison medical care system is already resulting in a number of actions intended to improve inmate care as well as significant uncertainties regarding the state costs and savings likely to result from his actions. Given this situation, it will be important for the Legislature to carefully review and act upon budget requests submitted on behalf of the Receiver and provide oversight of these major changes in the prison medical system (see page D-82).



### **Enhancing Public Safety Through Parolee Employment**

- A majority of state parolees are not regularly employed. We identify several steps the Legislature could take to increase rates of parolee employment, including better targeting of funding to cost-effective programs, continuing federal funding for

them, looking outside of California for successful approaches, requiring the department to track parolee employment rates, improving contracts for job referral programs, and improving case management by parole agents (see page D-102).



### **Juvenile Population Shift Warranted But Construction Funding Not Justified**

- The budget plan reflects administration proposals to (1) shift some offenders from the state to the local level and (2) enact a new state grant program to build county juvenile facilities. We find that the shift in offenders to the local level could mutually benefit the state, counties, and the offenders and their families. However, we recommend rejection of the \$400 million in bond financing to build as many as 5,000 local juvenile beds, given the current excess of about 4,000 such beds (see page D-147).



### **State Has Inadequately Maintained Its Investment in Prison Infrastructure**

- State prison facilities represent an investment in today's dollars of roughly \$20 billion. Nevertheless, the state faces a growing backlog of special repair work that now exceeds \$200 million, due in part to problems in the way preventative and other maintenance responsibilities are managed and organized. We recommend a series of actions to protect the state's major investment in prison infrastructure (see page D-119).



### **Courthouse Bond Proposal Deserves Close Scrutiny**

- The Governor proposes to place a \$2 billion bond issue on the ballot for courthouse construction and to establish public-private partnerships to leverage additional resources for this purpose. We withhold recommendation on the bond issue pending further review, but recommend rejection of the legislation for the partnerships (see page D-17).



### **An Update on the Implementation of Proposition 69**

- Although the Department of Justice has taken steps to reduce a backlog of samples in the Proposition 69 DNA Program, it faces difficulties in recruiting and retaining staff and an expected increase in samples in 2009 that will likely increase the backlog (see page D-26).

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## *Judicial and Criminal Justice*

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# OVERVIEW

## *Judicial and Criminal Justice*

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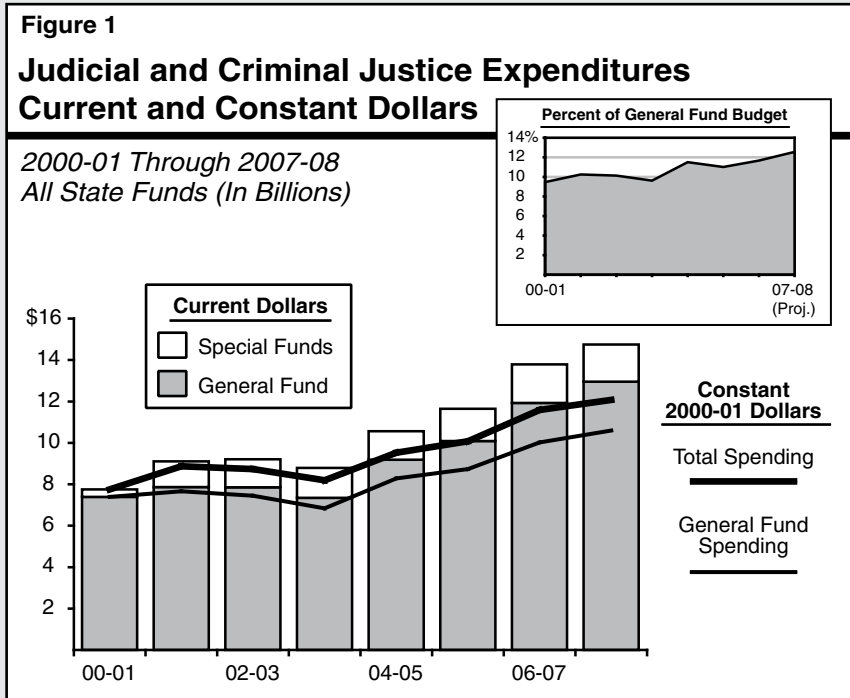
**C**ombined General Fund expenditures for judicial and criminal justice programs are proposed to increase by 8.7 percent in the budget year. This increase in the support budget reflects (1) inflation adjustments for various departments, including the Judicial Branch, (2) projected growth in the adult prison population, (3) costs for implementation of various federal court settlements and orders in the California Department of Corrections and Rehabilitation (CDCR), primarily relating to the improvement of inmate health care, and (4) new and expanded state programs, including CDCR and Department of Justice proposals relating to sex offenders. The capital outlay budget proposes about \$10 billion to construct additional prison and jail space that would be financed mainly with lease-revenue bonds and \$2 billion in general obligation bonds for new courthouses.

## EXPENDITURE PROPOSAL AND TRENDS

**Budget Year.** The budget proposes General Fund expenditures of about \$13 billion for judicial and criminal justice programs, which is almost 13 percent of all General Fund spending. This amount—which includes support for operations, capital outlay, and debt-service for related facilities—represents an increase of about \$1 billion, or 8.7 percent, above the proposed revised level of current-year spending for these programs. Most of the increase in this area is proposed for CDCR. Significant increases are also proposed for the Judicial Branch. General Fund spending for the Department of Justice (DOJ) would remain fairly level under the Governor’s budget proposal.

**Historical Trend.** Figure 1 (see next page) shows expenditures for judicial and criminal justice programs since 2000-01. These expenditures have been reduced to reflect federal funds the state has or is expected to receive to offset the costs of incarceration of undocumented felons. The figure shows that General Fund expenditures for judicial and criminal justice programs are projected to increase by almost \$5.6 billion, or 75 percent,

between 2000-01 and 2007-08, an average annual increase of 8.3 percent. Special funds expenditures for these programs also grew significantly in this period. As a result, combined General Fund and special fund expenditures are estimated to increase almost \$7 billion, or 90 percent, from 2000-01 through 2007-08.



State expenditures increased during this period mostly due to (1) the state's assumption of primary responsibility for funding trial court operations, (2) increased labor costs to operate the state corrections system, and (3) court-ordered expansions and improvements of inmate and ward programs, particularly for health care services. These increases in costs are partly offset by proposals for policy changes in the budget year that would reduce the population of offenders that would otherwise be held in adult and juvenile facilities.

**Adjusting for Inflation.** Figure 1 also displays the spending for these programs adjusted for inflation (constant dollars). On this basis, General Fund expenditures are estimated to increase by 43 percent from 2000-01 through 2007-08. Combined General Fund and special funds expenditures are estimated to increase by 56 percent during this same period when adjusted for inflation.



## SPENDING BY MAJOR PROGRAM

Figure 2 shows expenditures from all sources for the operation of major judicial and criminal justice programs in 2005-06, 2006-07, and as proposed for 2007-08. (Capital outlay and debt-related expenditures from

<b>Figure 2</b>					
<b>Judicial and Criminal Justice Budget Summary</b>					
<i>2005-06 Through 2007-08 (Dollars in Millions)</i>					
	Actual 2005-06	Estimated 2006-07	Proposed 2007-08	Change From 2006-07	
				Amount	Percent
<b>Department of Corrections And Rehabilitation</b>					
General Fund <sup>a</sup>	\$7,625	\$8,958	\$9,569	\$611	6.8%
Special funds	49	88	91	3	3.4
Reimbursements and federal funds	103	124	116	-8	-6.5
<b>Totals</b>	<b>\$7,777</b>	<b>\$9,170</b>	<b>\$9,777</b>	<b>\$607</b>	<b>6.6%</b>
<b>Federal Offset for Undocumented Felons</b>	<b>\$107</b>	<b>\$114</b>	<b>\$114</b>	<b>—</b>	<b>—</b>
<b>Judicial Branch<sup>b</sup></b>					
General Fund	\$1,754	\$2,008	\$2,252	\$244	12.2%
Special funds and reimbursements	825	989	942	-47	-4.8
County contribution	474	499	499	—	—
<b>Totals</b>	<b>\$3,053</b>	<b>\$3,496</b>	<b>\$3,692</b>	<b>\$196</b>	<b>5.6%</b>
<b>Department of Justice</b>					
General Fund	\$327	\$407	\$403	-\$4	-1.0%
Special funds and reimbursements	273	347	381	34	9.8
Federal funds	37	45	41	-4	-8.9
<b>Totals</b>	<b>\$637</b>	<b>\$800</b>	<b>\$825</b>	<b>\$25</b>	<b>3.1%</b>
<b>Criminal Justice Local Assistance</b>	<b>\$126</b>	<b>\$238</b>	<b>\$238</b>	<b>—</b>	<b>—</b>
Totals may not add due to rounding.					
<sup>a</sup> Includes Proposition 98, and excludes capital outlay and debt service.					
<sup>b</sup> Excludes Commission on Judicial Performance and Judges' Retirement System contributions.					

general obligation bonds are not included in Figure 2.) As the figure shows, CDCR accounts for the largest share of total spending in the criminal justice area, followed by the Judicial Branch, DOJ, and certain criminal justice programs budgeted as local assistance.

Spending is proposed to increase in CDCR and the Judicial Branch but essentially remain level in the other two major programs. Under the budget proposal, CDCR would receive the largest dollar increase in General Fund support. The department would also experience the largest percentage increase from all sources relative to its estimated current-year spending. However, the largest percentage increase from the General Fund is proposed for the Judicial Branch, which includes the Trial Court Funding program and the judiciary (the Supreme Court, Courts of Appeal, and Judicial Council).

## MAJOR BUDGET CHANGES

Figure 3 presents the major budget changes for judicial and criminal justice programs. These and other changes are described below. The amounts shown below reflect the General Fund increase proposed for 2007-08 relative to the revised level of spending proposed for 2006-07.

***Population, Inflation, and Technical Budget Adjustments.*** The budget funds projected changes in CDCR inmate and ward populations as well as in the parole populations (a net increase of \$65 million). It provides adjustments for the full-year cost of new or expanded programs that began operation in the current year (\$201 million), inflation increases for operating expenses and equipment (\$63 million), and a reduction in spending to reflect the discontinuation in 2007-08 of one-time spending that will occur in 2006-07 (-\$67 million).

***Corrections Court Orders and Settlements.*** The budget identifies new spending (\$148 million) for the continued rollout of previous federal court orders and settlements affecting CDCR operations. These include *Plata*, relating to inmate medical care (a Receiver was appointed last year by the federal court to manage this care); *Coleman*, relating to mental health care; *Perez*, relating to inmate dental care; *Farrell*, relating to various conditions of confinement within youth correctional facilities; and *Rutherford*, relating to ensuring timely parole hearings for inmates sentenced to life with the possibility of parole.

***New Correctional Programs.*** The budget proposes increased expenditures for CDCR in 2007-08 to implement new programs to tighten the supervision and management of sex offenders, including (1) Proposition 83, the "Jessica's Law" initiative approved by voters in November 2006,

**Figure 3**

### Judicial and Criminal Justice Proposed Major Changes for 2007-08 General Fund

<b>Department of Corrections and Rehabilitation</b>	<b>Requested:</b>	<b>\$9.6 billion</b>	
	<b>Increase:</b>	<b>\$611 million</b>	<b>(+6.8%)</b>

- + \$201 million to reflect full-year cost of programs begun in 2006-07
  - + \$148 million to implement federal court orders and settlements
  - + \$92 million for tighter supervision and management of sex offenders
  - + \$65 million for projected changes in inmate, ward, and parole populations
  - + \$63 million for inflation adjustments for operating expenses and equipment
  - + \$50 million for a new adult probation grant program
  - + \$46 million to improve facility maintenance
  - + \$36 million to improve information technology systems
  - + \$23 million for a statewide effort to upgrade equipment
- 
- \$67 million to reflect discontinuation of one-time funding occurring in 2006-07
  - \$57 million from changes in parole policies, such as discharging low-level offenders
  - \$43 million from shifting some state wards to local facilities

<b>Judicial Branch</b>	<b>Requested:</b>	<b>\$2.3 billion</b>	
	<b>Increase:</b>	<b>\$244 million</b>	<b>(+12.2%)</b>

- + \$130 million for inflation and growth adjustment for trial courts
- + \$48 million to reflect full-year cost of programs begun in 2006-07
- + \$17 million to implement recent legislation to better regulate conservatorships

(2) Chapter 337, Statutes of 2006 (SB 1128, Alquist), and (3) recommendations of a task force on sex offender management issues appointed by the Governor. These increased expenditures totaling \$92 million are in addition to \$30 million from the General Fund proposed to initiate these programs in 2006-07. Under the budget plan, CDCR would also receive funding for a new adult probation grant program (\$50 million), efforts to improve information technology systems (\$36 million), improvements in the maintenance of facilities (\$46 million), and upgraded equipment (\$23 million).

***Policy Changes to Reduce Adult and Juvenile Institution Populations.*** The budget plan assumes that the state will achieve General Fund savings of \$57 million in the CDCR budget for adult offenders primarily from changes in parole policies, such as discharging from parole some offenders who have stayed out of trouble for one year and discharging low-level offenders from prison without putting them on parole at all. Similarly, CDCR's Division of Juvenile Justice (DJJ) is assumed to achieve net savings (-\$43 million) by shifting some wards to facilities operated by local jurisdictions. Specifically, the budget assumes, among other policy changes, that DJJ will stop the intake of female offenders and parole violators who were originally adjudicated for a nonviolent offense and return some offenders to counties. Counties would be provided block grant funds to support the costs of housing and providing services for offenders shifted out of DJJ facilities.

***Judicial Branch Spending.*** The budget proposes several augmentations for the Judicial Branch. These consist of inflation and growth adjustments for trial courts based on the year-to-year change in the State Appropriations Limit (\$130 million) as well as adjustments for the full-year cost of new or expanded programs that began operation in the current year (\$48 million).

***Judicial Branch Policy Changes Proposed in Budget.*** The budget reflects the implementation of various policy changes relating to the Judicial Branch. The budget plan would also implement 2006 legislation (Chapters 492 [SB 1716, Bowen] and Chapter 493 [AB 1363, Jones]) to better protect individuals who are placed into conservatorships because they are not competent to manage their own affairs (\$17 million). In addition, the budget proposes to permanently extend a 20 percent surcharge on criminal fines that was set to expire on July 1, 2007. The proceeds of this surcharge, which are estimated to be \$55 million in the budget year, are deposited in the General Fund and do not directly affect the budget for the Judicial Branch itself.

***Capital Outlay Proposals for Corrections, Courts, and DOJ.*** The administration has included \$10 billion in state funding in the CDCR

capital outlay budget (primarily from lease-revenue bonds) for additional prison construction and jail beds and various improvements to existing prisons. Key components of the capital outlay request include adding bed space and program space at existing prisons (\$2.7 billion), building secure reentry facilities in communities for inmates otherwise held in state prisons (\$1.6 billion), construction of local jails and juvenile facilities (\$4.4 billion matched by \$1.1 billion in local funds), new medical facilities to comply with various federal court orders and settlements (\$1 billion), and a new death row facility at San Quentin (\$268 million). The administration also would address prison capacity issues outside of the capital outlay budget with proposals to shift low-level offenders from state prison to county jails, establish a commission to further review state sentencing laws, transfer 2,260 inmates to facilities in other states, and begin work to contract for 4,350 beds for female offenders in the community.

As part of its capital outlay plans for other agencies, the administration has proposed a \$2 billion general obligation bond issue in 2008 to expand courthouses and announced that it will present the Legislature with a plan by March 2007 for a new \$400 million DNA laboratory that would be operated by DOJ.



# DEPARTMENTAL ISSUES

## *Judicial and Criminal Justice*

### JUDICIAL BRANCH (0250)

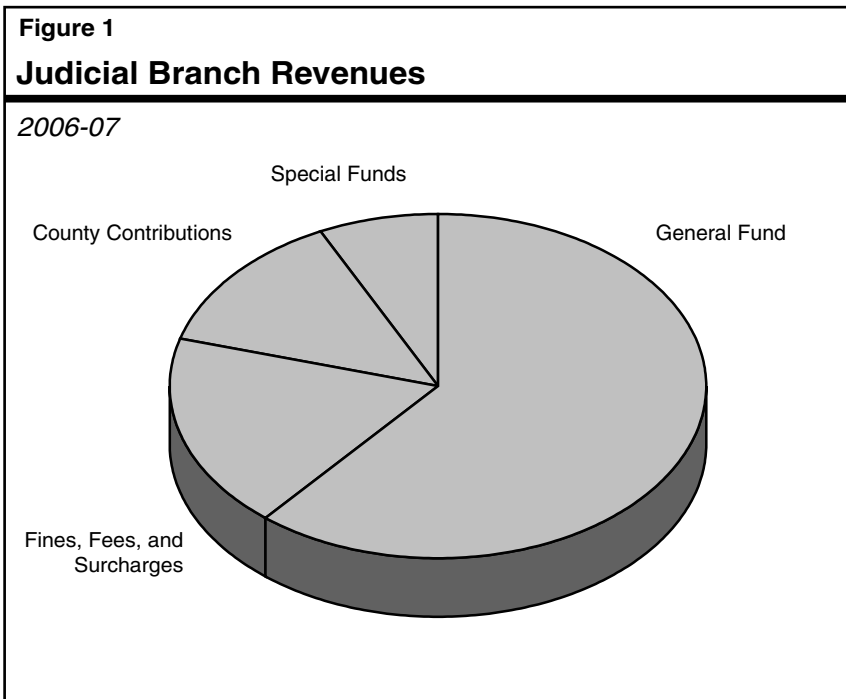
The California Constitution vests the state's judicial power in the Supreme Court, the Courts of Appeal, and the trial courts. The Supreme Court, the six Courts of Appeal, and the Judicial Council of California, which is the administrative body of the judicial system, are entirely state-supported. The Trial Court Funding program provides state funds (above a fixed county share) for support of the trial courts. Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle), shifted fiscal responsibility for the trial courts from the counties to the state. California has 58 trial courts, one in each county.

The Judicial Branch consists of two components: (1) the judiciary program (the Supreme Court, Courts of Appeal, Judicial Council, and the Habeas Corpus Resource Center), and (2) the Trial Court Funding program, which funds local superior courts.

The *2005-06 Budget Act* merged funding for the judiciary and Trial Court Funding programs under a single "Judicial Branch" budget item. It also shifted local assistance funding for a variety of programs, including the Child Support Commissioner program, the Drug Court Projects, and the Equal Access Fund from the Judicial Council budget to the Trial Court Funding budget.

**Budget Proposal.** The Judicial Branch budget proposes total appropriations from all fund sources of approximately \$3.7 billion in 2007-08. This is an increase of \$196 million, or 5.6 percent, above revised current-year expenditures. Total General Fund expenditures are proposed at \$2.3 billion, an increase of about \$244 million, or 12 percent, above current-year expenditures. Total expenditures from special funds and reimbursements are proposed at about \$1.4 billion, a decrease of \$47 million, or 4.8 percent. Approximately 89 percent of total Judicial Branch spending is for the Trial Court Funding program, and the remainder is for the judiciary program.

The overall net increase in the Judicial Branch budget is primarily due to annual adjustments for growth and inflation (\$130 million), adjustments for the cost of new or expanded programs (\$48 million), and increases for the cost of implementing recent legislation to increase oversight of conservators and guardians (\$17 million). Most of this increase is for the Trial Court Funding program. Figure 1 shows the revenue sources for the entire Judicial Branch, while Figure 2 shows proposed expenditures for these two major program areas in the past, current, and budget years.





<b>Figure 2</b>					
<b>Judicial Branch Funding—All Funds</b>					
<i>(Dollars in Millions)</i>					
	Actual 2005-06	Estimated 2006-07	Proposed 2007-08	Change From 2006-07	
				Amount	Percent
<b>Judiciary Program</b>					
Supreme Court	\$41	\$43	\$45	\$2	3.7%
Courts of Appeal	175	191	204	13	6.7
Judicial Council <sup>a</sup>	114	157	164	7	4.7
Habeas Corpus Resource Center	10	13	14	1	7.5
Subtotals	(\$339)	(\$404)	(\$427)	(\$23)	(5.6%)
<b>Trial Court Funding Program<sup>b</sup></b>					
	\$2,714	\$3,092	\$3,265	\$173	5.6%
<b>Totals</b>	<b>\$3,053</b>	<b>\$3,496</b>	<b>\$3,692</b>	<b>\$196</b>	<b>5.6%</b>
<p><sup>a</sup> Includes funding for the Judicial Branch Facility program.</p> <p><sup>b</sup> Includes local assistance funding formerly in the Judiciary program.</p> <p>Detail may not total due to rounding.</p>					

## COURTHOUSE BOND PROPOSAL DESERVES CLOSE SCRUTINY

*We withhold recommendation on the Governor's proposal to place a \$2 billion bond issue on the ballot for courthouse construction pending our further review of this proposal. However, we recommend rejection of the proposed companion legislation to establish public-private partnerships because this specific proposal provides for inadequate legislative control and oversight to govern such arrangements.*

### Background

In 2002, the Legislature approved the Trial Court Facilities Act (TCFA) [Chapter 1082, Statutes of 2002 (SB 1732, Escutia)], which shifted the responsibility for providing court facilities from the counties to the state. Although the state has been responsible for funding trial court operations since 1998, the counties had remained responsible, until the enactment of

TCFA, for providing and maintaining court facilities. The TCFA also required that all superior court facilities transfer to the state by June 30, 2007. Due to various issues that have created delays in this process, the transfer of buildings to the state has occurred at a very slow rate. According to the most recent information available at the time this analysis was prepared, only 17 of 451 county court facilities have transferred to the state.

In addition, the state is responsible for the construction of new court facilities. According to a five-year infrastructure plan developed by the Administrative Office of the Courts (AOC), the courts would require \$9 billion in total funding to replace all courts that AOC deems inadequate. We should note, however, that the administration may have a different assessment of this replacement issue. Its five-year *Infrastructure Plan* will not be available to the Legislature until March 1, 2007. Please see the “Capital Outlay” section of this analysis for more information.

### **Governor’s Budget Proposal**

As part of a new package of infrastructure improvement projects, the administration proposes that the state provide \$2 billion in general obligation bond financing for the construction and renovation of courthouses. A bond issue would be placed on the November 2008 statewide ballot for voter consideration of these projects.

The administration also proposes statutory changes that would authorize the Judicial Council to use existing resources to leverage public-private partnerships for the construction of court facilities. According to administration estimates, these partnerships would provide \$2 billion in additional resources for the courts.

The administration has cited examples of the types of partnerships that it *might* include in its plans. These examples are:

- Exchanging outdated court facilities located on expensive urban property for new court facilities on less expensive property.
- Providing revenue-generating commercial space—such as law offices—in newly constructed court buildings.
- “Design-build-operate” contracts in which the private sector constructs and operates a courthouse in exchange for lease payments.

The proposal also requires the Department of Finance (DOF) to approve all proposed projects and provides 30-day advance notice to the Joint Legislative Budget Committee of any projects to be pursued.

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## Both Components of Courthouse Package Raise Concerns

*Proposal Provides Few Details on Public-Private Partnerships.* Engaging in public-private partnerships could be an effective way for the state to attract additional capital that could be used to develop infrastructure projects and help offset the costs to the state over time of building and operating these facilities. However, the potential benefits of any public-private arrangement are dependent on the specific terms of the agreement established by the state and the private entity. The administration's proposal does not explain which courthouse projects would be funded through public-private partnerships, nor does it detail how the state would "leverage" private capital for these projects. Further, it is unclear what specific criteria would be used to evaluate these potential agreements and determine whether they are preferable to other financing used by the state for capital outlay projects.

The proposal does not provide a full legislative framework that would govern such agreements. Instead, the proposal only provides the Legislature with a 30-day review period in which it could object to a public-private partnership arrangement that has been approved by DOF. In our view, this notice provision by itself provides insufficient legislative control and oversight of potentially complex contract arrangements. Because these types of details and terms could ultimately have a significant effect on the total state costs incurred for developing and operating court facilities, we believe they warrant careful consideration by the Legislature *before* such arrangements are authorized, rather than *after* the administration has reached agreement with a private party.

*Transfer Issue Still Looms.* In addition to the details of public-private partnerships, the Legislature may also wish to consider how any proposed new courthouse projects would fit with ongoing efforts to transfer court buildings from counties to the state. Because so few court facilities have transferred to the state, it is possible that proposals for new facilities could be made for counties where existing facilities have not been transferred to the state. Funding these types of projects from the new bond issue, however, would eliminate the incentive for counties to come to a transfer agreement with the state in a timely manner.

Therefore, if the Legislature does choose to approve such a bond issue, it is important that the state continue to fund only courthouse projects where responsibility for the facility has been transferred to the state. The bond legislation proposed by the administration does not limit the availability of this funding to improve or replace courthouses to those that have been transferred to the state.

## **Analyst's Recommendations**

We withhold recommendation at this time on the Governor's legislative proposal to place a \$2 billion bond issue on the ballot for courthouse construction. However, we recommend that the proposed companion legislation to establish public-private partnerships for courthouse expansion be rejected and AOC be directed to draft new legislative language that would provide a much more specific legislative framework to govern such arrangements if the administration plans to pursue this proposal.

**General Obligation Bond Issue.** Because of the lack of information in support of this proposal, we withhold recommendation at this time on the \$2 billion general obligation bond issue. The proposal, which was submitted to the Legislature on February 1, 2007, warrants further review so that the Legislature can better understand which facilities (in combination with public-private financing) would be built or renovated with this funding and whether this level of expenditures is justified. We will continue to examine these issues and report our further recommendations on this matter at budget hearings.

If the Legislature does choose to approve such a bond issue, we recommend that its implementing legislation be amended to limit the availability of this funding to improving or replacing courthouses that have transferred to the state. As discussed above, allowing bond funds to be used in areas where courthouses have not been transferred to the state could provide a disincentive for counties to follow through on the transfer process.

**Public-Private Partnerships.** We further recommend that the companion legislation providing broad authorization for public-private partnerships for court facilities be rejected because it provides a weak model for legislative control and oversight of these major projects. For example, the current legislative proposal provides only a limited and vague description of the criteria that would be applied by the Judicial Council in deciding when to leverage private capital for a particular project. Moreover, the 30-day notice proposal when public-private partnerships would be implemented provides for only limited legislative participation.

## **NEW COMMITMENT TO LEGAL AID PROGRAM RAISES CONCERNS**

*We recommend rejection of a \$5 million proposal to establish a new three-year pilot program to increase legal representation in civil proceedings because (1) the benefits of the new program are not clear, relative to other potentially less expensive approaches and (2) it would move the state in the direction of a major new funding commitment*

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*it could not easily afford. (Reduce Item 0250-111-0001 and Item 0250-101-0932 by \$5,000,000.)*

## **Background**

***Legal Representation for Low-Income Persons.*** Numerous nonprofit legal aid providers throughout the state assist the poor with various civil legal issues, such as domestic violence and landlord-tenant disputes. The legal aid provided by these programs includes direct legal representation of poor clients who could not otherwise afford an attorney.

In 2003, the most recent year for which complete data are available, California legal aid centers received \$182 million from state, federal, and private sources. The state provides a relatively small portion of the overall funding for legal aid through the Equal Access Fund, which was created by the Legislature in 1999. The Governor's 2007-08 budget plan would provide \$16 million for the Equal Access Fund. These funds are distributed to legal aid agencies through the State Bar's Legal Services Trust Fund Program and are overseen by the Judicial Council.

***Assistance for Self-Represented Litigants.*** The state also operates several programs within the superior courts that do not provide legal representation, but do assist self-represented litigants in properly navigating through the court system. Through the Model Self-Help Program, numerous courts provide basic information about the legal process and help individuals properly fill out legal forms to process their court cases. The Family Law Facilitator and Family Law Information Center programs, which are also operated by the courts, provide assistance to self-represented litigants in divorce, child/spousal support, and custody cases. The budget provides \$13 million in state and federal funds for these programs in 2007-08.

***Proposal Would Expand State Role to Include Legal Representation.*** The Governor's budget includes \$5 million from the General Fund for the Trial Court Funding program to establish an Access to Justice Legal Representation pilot program in three superior courts. The funding would allow AOC, the staff for the Judicial Council, and the trial courts to develop criteria for determining which individuals seeking help in self-help centers are most in need of legal representation. The courts would then pay for the legal services of those individuals who have been determined to be most in need. Under the proposal, legal representation would be provided at state expense through legal aid agencies and private attorneys. This goes beyond the self-help programs now operated by the courts that we have described above.

## **Analyst's Concerns**

Based upon our review and discussions about several aspects of the pilot programs with AOC, we have several concerns about this proposal.

***More Cost-Effective Approaches Available.*** Based upon our analysis, it is unclear how creating this new program would be preferable to other approaches to providing civil legal services to the poor. Under the proposed approach, a significant portion of the funds allocated for the pilot programs would be used to pay administrative costs associated with creating the new program. Specifically, AOC and the courts would use part of the funding to develop their own criteria to determine which individuals are most in need of legal services, then contract with legal aid agencies to provide representation for these individuals. However, given that legal aid agencies often operate with limited resources, they are likely to have already developed their own systems for prioritizing incoming workload.

If the Legislature determines that expansion of civil legal services to the poor is a priority, there are more efficient means to do so. Rather than creating a new program that would incur these administrative costs, we believe a better approach would be to directly provide funding to legal aid agencies. Less state funding would go to administrative costs and more would go directly to providing legal services for the poor.

***Pilot Project Could Lead to Significant Future Costs.*** Our additional and larger concern is that this proposal moves the courts in the direction of providing legal services to unrepresented litigants in civil cases on a statewide basis. Funding affordable legal services for the poor, while a commendable goal, would ultimately be a very expensive new commitment for the state. The Commission on Access to Justice, a group of lawyers, judges, and community leaders appointed by the State Bar and other state agencies, estimated in a 2002 report that an additional \$384 million annually would be needed to provide legal services for all the poor in California. (The cost undoubtedly would be significantly higher now.) This pilot program would move the state in the direction of incurring these additional costs at a time when the state continues to face a persistent structural budget problem.

## **Analyst's Recommendation**

Because it takes an approach that generates unnecessary administrative costs, and undertakes an expensive effort to provide legal services for the poor that could lead to significant future costs, we recommend that the Legislature reject this proposal and reduce General Fund support for Trial Court Funding program budget by \$5 million.

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## ADMINISTRATIVE BUDGET ISSUES

### **Inflationary Adjustments for Court Facility Maintenance Should Be Updated**

*We withhold recommendation on the proposal to provide inflationary cost adjustments for the cost of maintaining court facilities that have been transferred to the state. The request is based on the assumption that 68 additional court facilities will transfer to the state by June 30, 2007. We recommend that, as part of the May Revision, the Administrative Office of the Courts provide updated information on the number of trial court facilities that have transferred to the state as well as county contributions for the maintenance and operation of transferred facilities.*

**Background.** As discussed in our earlier analysis of the Governor's \$2 billion courthouse bond proposal, TCFA provides for the transfer to the state from counties the responsibility for the operation of court facilities. In exchange for the state takeover of this obligation, the counties must provide the state with fixed payments, called county facility payments (CFPs), to help offset the cost of operating and maintaining court facilities. The CFP is based on a court facility's operations and maintenance expenditures from 1995-96 through 1999-00, as adjusted for inflation up to the date of transfer. Any costs for operating and maintaining court facilities above the CFPs made by counties are the responsibility of the state. Statutory changes that were enacted as part of the 2006-07 budget plan provide for increases in state funding for operating and maintaining court facilities in the future. Specifically, beginning two years after the transfer of a facility, inflationary cost adjustments for operations and maintenance are provided in accordance with the State Appropriations Limit (SAL).

The TCFA requires that all court facilities transfer to the state by June 30, 2007. However, since the law was enacted in 2002, only 17 out of 451 facilities had transferred to the state at the time this analysis was prepared.

**Budget Proposal.** The administration proposes a \$399,000 ongoing increase in General Fund spending for the AOC to offset the increased costs of operating and maintaining court facilities in excess of the CFPs received from counties. This proposal includes \$165,000 to account for unfunded utility cost increases and \$264,000 to account for other increases in facility maintenance and operating costs.

**Analyst's Concerns.** We acknowledge that costs for the maintenance and operation of court facilities are likely to increase between the current and budget years. However, we have a technical concern with the specific

way that inflationary adjustments for this purpose were calculated. The request assumes that 68 facilities will transfer to the state by June 30 in addition to the 17 that have already transferred. At this time, however, it is unclear how many of the 68 facilities will actually be transferred by that time.

**Analyst's Recommendation.** Because of the difficulties that exist in creating transfer agreements between the counties and the state, we withhold recommendation on this funding request at this time. The Legislature should direct AOC to report at the time of the May Revision on the transfer status of the 68 projected transfers of facilities to the state. The AOC should also provide updated information on the CFPs expected to be received from counties in 2007-08. At that point, we recommend that the Legislature provide inflationary adjustments that take into account the number of facilities for which transfer agreements have been approved by a county board of supervisors before April 15 and the CFPs expected to be received from counties.

### **Technical Adjustment Recommended for State Appropriations Limit Increases**

*We recommend that the Legislature reduce the increase in the State Appropriations Limit adjustment provided to the Trial Court Funding program by \$584,000 because the calculation of the adjustment uses old data. (Reduce Item 0250-111-0001 and Item 0250-101-0932 by \$584,000.)*

**Background.** According to state law, the Trial Court Funding program is to receive annual adjustments in funding concurrent with the annual increase in SAL. The trial courts receive SAL adjustments for their base-line operations, but these adjustments are to exclude funding provided for judicial officers.

**Analyst's Concerns.** The Governor's budget provides a \$130 million increase to the trial courts for these SAL adjustments. However, in determining the annual increase, AOC did not exclude all salaries of judicial officers from the base as state law provides. Only part of the judicial officer salaries were excluded. As a result, SAL adjustment for the courts is overbudgeted by \$584,000.

**Analyst's Recommendation.** We recommend a reduction in the trial court budget of \$584,000 to correct the technical error in the SAL computation discussed above.



## Server Costs Not Justified

*We withhold recommendation on the proposal to provide \$1.1 million for the replacement of network servers because insufficient justification was provided to the Legislature regarding how the funding request was calculated.*

**Budget Proposal.** The Governor's 2007-08 budget plan provides \$1.1 million in ongoing General Fund support to the Supreme Court and Courts of Appeal to establish a replacement schedule for network servers in 11 different facilities. The Courts of Appeal and Supreme Court currently do not have ongoing funding to replace network servers. At the time this analysis was prepared, AOC had not provided the Legislature with detailed justification as to how the \$1.1 million requested in this proposal was calculated. Absent justification as to how the amount of proposed funding was calculated, we are unable to assess the appropriateness of the funding request. Therefore, we withhold recommendation on this amount pending additional information from AOC.

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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 approximately \$825 million for support of DOJ in the budget year. This amount is approximately \$25 million, or about 3.1 percent, above estimated current-year expenditures. The increase is primarily due to annual adjustments for inflation, as well as various budget change proposals. The requested amount includes \$403 million from the General Fund (a decrease of \$4 million, or 1 percent), \$338 million from special funds, \$41 million from federal funds, and \$43 million from reimbursements.

The budget also includes a proposal to build a new facility in the Sacramento area that would replace the existing DNA lab in Richmond and other facilities in Sacramento. The administration has indicated that more detailed information about this proposal will be released by March 1 as part of the 2007 Five-Year Infrastructure Plan.

## AN UPDATE ON THE IMPLEMENTATION OF PROPOSITION 69

### *Implementing Proposition 69: Progress and Problems*

*Our review of the Proposition 69 DNA program finds that the program is likely to remain dependent on General Fund support, rather than be self-supporting, if all incoming samples were to be processed in a timely basis. In addition, the department faces difficulties in recruiting and retaining staff at the Department of Justice's (DOJs) DNA laboratory to handle its workload. The DOJ has taken steps to reduce a backlog of samples that has accumulated. However, the expected increase in samples in 2009 will likely significantly increase the program's backlog.*

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In November 2004, California voters approved Proposition 69, the DNA Fingerprint, Unsolved Crime, and Innocence Protection Act. Among other changes, the measure increased the number of individuals who were required to have their DNA profiles placed in the state's DNA data bank. In this analysis, we provide background on the establishment of DNA data banks as a law enforcement tool, summarize the measure, provide an update on its implementation, and discuss some issues relating to Proposition 69 that we believe the Legislature may wish to address in the future.

## Background

**DNA Data Banks.** Deoxyribonucleic Acid (DNA) is the genetic material contained in most living organisms, including human beings, that controls the production of substances needed for the organisms' development and life activities. The genetic information contained in DNA can be used, like a chemical fingerprint, to identify and differentiate between individuals. Using DNA evidence, law enforcement agencies and district attorneys have been able to effectively identify, arrest, and convict criminals, as well as to exonerate persons wrongly accused or convicted of a crime.

Every state requires that individuals convicted of certain crimes have their DNA profiles placed into state-run data banks. However, the specific crimes that require a DNA sample are different in each state. The DNA profiles are also placed into the FBI data bank, known as the Combined DNA Index System (CODIS), which serves as a national repository of DNA profiles of individuals. When law enforcement officers find DNA evidence at the scene of unsolved crimes, the evidence is compared with profiles in the state's DNA data bank to look for potential matches.

In California, Chapter 696, Statutes of 1998 (AB 1332, Murray) required DOJ to maintain an offender DNA database, known as the CAL-DNA data bank. The analysis of DNA samples and uploading of information into the data bank is conducted in the state's DNA Laboratory, located in Richmond. At the time Proposition 69 was adopted, approximately 278,000 profiles had been stored in the data bank. However, at that time, DOJ faced a backlog of 95,094 DNA samples—samples which had been received but had not been uploaded into the DNA data bank.

The backlog resulted in part because of the time-consuming and systematic process DOJ must follow in order to place DNA samples into the data bank. First, the incoming samples are received from the California Department of Corrections and Rehabilitation (CDCR) and local law enforcement agencies. In this part of the process, the incoming samples are logged onto the department's computer system and electronically tracked through a bar code system. Then a process called "reamplification" enables

DOJ staff to develop a DNA profile from a small sample. After the DNA profile has been reviewed for quality control, the profile is uploaded into the state's DNA data bank and CODIS.

## How Proposition 69 Changed State Law

The approval of Proposition 69 made several important changes to the state's DNA program. The major changes are discussed below.

**More Individuals Required to Submit DNA.** Proposition 69 greatly expanded the number of individuals who were required to have their DNA placed in the database. Before Proposition 69 went into effect, California law required adults and juveniles *convicted of serious felonies* to submit a blood sample for the purpose of obtaining a DNA profile of the offender. As Figure 1 shows, under Proposition 69 *all convicted felons* (adults and juveniles), as well as *adults arrested* for certain offenses, are required to submit DNA samples. This change has significantly expanded the number of individuals who are in the state's DNA data bank. Beginning in 2009, the measure also requires that DNA samples be taken from all *adults arrested for any felony offense*.

<b>Figure 1</b>	
<b>Proposition 69 DNA Collection Categories</b>	
<b>Upon Enactment of Measure</b>	
<ul style="list-style-type: none"> <li>• Adults and juveniles convicted of <i>any</i> felony offense.</li> <li>• Adults and juveniles convicted of <i>any</i> sex offense or arson offense, or an attempt to commit any such offense (not just felonies).</li> <li>• Adults <i>arrested</i> for or charged with felony sex offenses, murder, or voluntary manslaughter (or the attempt to commit such an offense).</li> </ul>	
<b>Additionally, Starting in 2009</b>	
<ul style="list-style-type: none"> <li>• Adults <i>arrested</i> for or charged with any felony offense.</li> </ul>	

**System Changed to Buccal Swab Samples.** Previously, DNA was collected by taking blood and saliva samples. Proposition 69 required that DNA samples be obtained through the collection of inner cheek cells, known as buccal swab samples. The switch to buccal swab samples decreased the cost of collecting a sample, primarily because a medical professional is not required; law enforcement and correctional officers can collect the samples with minimal training. Blood samples are requested

by DOJ only when the buccal swab sample is not enough to produce a DNA profile.

***New Fee Created to Offset Costs of Program Expansion.*** In order to offset the increases in costs for DOJ due to the expansion of the DNA program, Proposition 69 levied a criminal penalty of \$1 for every \$10 in fines, penalties, and forfeitures collected by the courts for criminal offenses. This funding is split between the state and the counties, with an increasing share going to the counties over time. Proposition 69 required the counties to collect these fines. The state's portion was to be deposited in the newly created state DNA Identification Fund (the DNA ID Fund). The measure also required the Legislature to loan DOJ \$7 million, which was to be repaid within four years using DNA ID Fund revenues. This was intended to provide funding for DOJ's "start-up" costs associated with the measure.

***Analysis Generally Required Within Six Months.*** If, after six months of receipt by DOJ, certain DNA samples have not been analyzed and uploaded, DOJ is required to contract with public or private labs to ensure the DNA samples are processed in a timely manner.

***Program Contingent on the Availability of Funds.*** Proposition 69 states that the requirements placed on DOJ by the measure are contingent on the availability of funding for the program through the \$1 penalty or through any additional funding appropriated by the Legislature. Nothing in the measure requires the Legislature to provide additional funding for the program, beyond the revenues generated by the \$1 penalty.

## **Program Faces Revenue Shortfall and High Staff Turnover**

The implementation of Proposition 69 so far has posed significant fiscal and operational challenges for DOJ, although the department has made some progress in addressing these problems and has assisted in a rising number of criminal investigations. We provide a more detailed analysis of the status of the program below.

***Revenues Far Below Expectations.*** Revenues to the DNA ID Fund have been consistently lower than expected, primarily due to problems with the collection of fees at the local level. In 2004-05, only \$2 million was transferred to the DNA ID Fund despite estimates by the Department of Finance (DOF) that the state would receive \$5 million. In 2005-06, the DNA ID Fund received a total of \$8 million in revenues, far less than the \$15.9 million assumed in the *2005-06 Budget Act*. The *2006-07 Budget Act* assumed \$17 million in revenues for 2006-07, yet less than \$4 million have been received so far in the first six months of the fiscal year.

Although it is not clear exactly what is causing revenue shortfalls, problems with county collections and the law regarding penalty assessments are seen as significant issues. There is evidence that counties have simply failed to collect the \$1 penalty assessments. According to DOJ, in the 2005 calendar year a number of large counties did not collect any money from the \$1 penalty, a clear sign of problems implementing the new penalty.

However, the complex interactions with other statutes affecting the collection of criminal penalties may also play a role. Currently, there are six different penalty assessments which are added to the base fines that judges may impose on criminals. These revenues are distributed by law to various state and county funds. When an individual does not fully pay the costs of the various fines, fees, and surcharges, a county is required to reimburse the various funds on a priority basis set in law. By law, the DNA ID Fund is low on the list of priorities. This means that in cases when an individual does not fully pay his or her total penalty costs, the DNA ID Fund is not likely to receive any revenues.

**General Fund Costs Due to Revenue Shortfall.** As Figure 2 shows, the Legislature made up for part of the shortfall in revenues by increasing General Fund support for the DNA program. For example, in 2005-06, DOJ would have required \$9.8 million in support from the General Fund to offset the revenue shortfall. However, the Legislature provided \$3.2 million for the DNA program. (In addition, the department's \$7 million loan was forgiven.) Because of reduced revenues for the program, the department was unable to process all of the DNA samples it received for processing from law enforcement agencies in a timely manner.

However, to help address these financial problems, the Legislature and Governor also enacted new legislation directing counties to collect an additional \$1 penalty for every \$10 in fines, penalties, and forfeitures, effective July 2006, to help finance the program. The revenues from this second dollar were allocated entirely to the state for the support of the Proposition 69 program. In anticipation of additional revenues, the 2006-07 budget appropriated \$30.3 million for the DNA program—roughly \$17 million from the DNA ID Fund and \$13 million from the General Fund.

Although this additional penalty is expected to increase revenues to support expansion of the DNA program, the state would likely have to continue to provide a significant amount of funding for its operation from the General Fund if the program is to keep up with its ongoing workload. The department has estimated that DNA ID Fund revenues will reach \$20 million in 2008-09 and remain constant thereafter, well below the \$30 million that the department estimates would be needed to operate the program at current levels in 2008-09. Meanwhile, our analysis indicates that the number of incoming samples will continue to increase,

particularly in 2009 when, as we discuss later in this analysis, all adults arrested for a felony will be required to provide DNA samples. If it chooses to provide sufficient resources for the DNA Program to process all of its incoming samples in a timely manner, the Legislature would probably have to provide the program an additional \$10 million to \$20 million in General Fund annually for every year in the near future.

**Figure 2**

### State Provides Significant General Fund Revenues for DNA Program<sup>a</sup>

(In Millions)

	2004-05	2005-06	2006-07	(Estimated)	
				2007-08	2008-09
DNA ID Fund	\$2.0	\$8.6	\$17.3	\$18.6	\$20.6
General Fund	8.9	3.2	13.0	13.6	9.4
<b>Totals</b>	<b>\$10.9</b>	<b>\$11.8</b>	<b>\$30.3</b>	<b>\$32.2</b>	<b>\$30.0</b>

<sup>a</sup> Does not include revenues to counties from the increased penalty assessment required by Proposition 69.

**Problems Recruiting and Retaining Criminalist Staff.** Another factor contributing to the backlog of DNA workload is the difficulty that DOJ has encountered in hiring and retaining criminalists, the type of staff involved in all aspects of converting buccal swab samples into a DNA profile. Of the 74 positions authorized for the DNA program, 53 are criminalist positions. At the time this analysis was prepared, 21 of these positions (41 percent) remained vacant. In addition, only two of the eight criminalist manager and supervisor positions have been filled.

The department has cited a number of reasons for the high staff vacancy rates. Criminalists employed at the DNA lab must have a bachelor's degree in biology or physical science and are required to have taken certain courses, such as genetics, to qualify for work for the DNA program. Yet, DOJ criminalists are paid much lower salaries than staff employed at local and private labs. For example, a report by the Bureau of State Audits found that in 2004-05 entry-level salaries for criminalists at local county DNA labs were up to 72 percent higher than salaries paid by DOJ. Also, because criminalists spend a significant amount of time on tasks such as data entry, their work is often viewed as tedious. In addition, because criminalists must handle DNA materials, which are considered evidence

and confidential information, applicants for these jobs are subject to an extensive background check, including a criminal check, financial check, and drug test. It is likely that some individuals have accepted other jobs by the time their background checks are completed and they can be offered a position at DOJ.

The high vacancy and turnover rates for criminalists have made it difficult to efficiently operate the DNA lab. The department indicates that it can take up to six months to fully train a criminalist. High turnover has forced the department to spend a significant amount of program resources on training on an ongoing basis.

In response to these problems, DOJ has redirected the salary savings from the many vacant positions to pay overtime and provide additional pay incentives to the criminalists on staff. This approach has helped to increase the productivity of the DNA lab. However, the heavy use of overtime could eventually lead to "burnout" of staff members and higher turnover, thus further increasing the vacancy rate for criminalists.

***The DOJ Making Progress on Backlog.*** In addition to the fiscal issues faced by the DNA program, several other operational issues led to the creation of a significant backlog of 296,000 samples that existed by the end of 2005-06. For example, the CDCR collected samples from prison inmates at a much faster rate than anticipated by DOJ, providing a combined 131,000 samples to DOJ in 2004-05 and 2005-06. Although the total number of samples submitted by CDCR was not much higher than expected, they were received at a much earlier date than anticipated. In addition, local law enforcement agencies provided an additional 312,000 samples in the first two fiscal years. Because of the large workload increase, DOJ was not able to process the samples in a timely manner.

The program was also slowed by the shift from blood samples to buccal swabs samples, which required changes in the DNA lab's techniques for analyzing samples and creating DNA profiles. Because of these problems, as well as the significant revenue shortfalls, samples have not been analyzed within the six-month timeline provided under Proposition 69.

However, DOJ has been taking steps to reduce the backlog by improving its productivity, such as through the use of improved equipment and software and the implementation of a more efficient procedure for analyzing DNA samples. By the end of 2006-07, the department projects that the backlog of DNA samples will be reduced to about 171,000, as shown in Figure 3. DOJ officials expect to further reduce the backlog during the following two years.



**Figure 3****DNA Sample Backlog Has Increased  
But Is Projected to Decline**

	Samples Submitted	Samples Placed In Database	Backlog at End of Fiscal Year
2004-05	128,906	100,309	123,681
2005-06	314,154	141,736	296,099
2006-07 <sup>a</sup>	240,000	365,000	171,099

<sup>a</sup> Estimates.

As Proposition 69 requires, DOJ has also contracted with three private laboratories that have analyzed a total of 210,000 samples. This represents 31 percent of all samples received by the department since 2004-05.

***Increase in Workload Looms in 2009.*** As noted earlier, beginning in the 2009 calendar year, Proposition 69 requires that all adults arrested for a felony offense be required to have their DNA profiles placed on the state's DNA data bank. This will significantly increase the number of samples that will be collected in 2009 and 2010. However, it is now uncertain whether requiring all adult felony arrestees to submit samples will lead to a permanent increase in workload. Since many felony arrestees have either been previously convicted of or arrested for a felony, our analysis indicates that it is likely that, in future years, an increasing number of arrestees will have already provided DNA samples due to a previous arrest or incarceration. Over time, therefore, the number of incoming samples should be much lower than those coming in 2009. However, given the difficulty DOJ has been experiencing in hiring staff, we expect that increases in incoming samples in 2009 will again lead to increases in the backlog.

***DNA Profiles Have Led to "Cold Hits."*** Despite the revenue shortfalls and backlogs experienced by the department, the DNA program has been successful in obtaining cold hits through its data bank. Local law enforcement with DNA evidence from an unsolved crime can scan the DNA data bank to look for potential matches. When a match is found, it is referred to as a cold hit. Since the establishment of the DNA data bank, DOJ has had 3,566 cold hits, which have aided various criminal investigations.

### **Issues for Legislative Consideration**

In light of the significant problems faced so far by DOJ in implementing the Proposition 69 DNA program, the Legislature may wish to consider

some key issues pertaining to the operation of this program in the future. We outline these matters below.

***Improving Revenue Collections.*** The Legislature may wish to consider how it could increase the amount of revenues received by the DNA ID Fund for the support of this program. Specifically, should DNA ID Fund revenues continue to fall short, the Joint Legislative Audit Committee may wish to consider requesting that the Bureau of State Audits investigate the collection and management of the various penalty assessment funds at the county level. Such an investigation could help to determine the cause of this problem and ensure that all revenues owed to the state are being collected and transferred to the DNA ID Fund.

In the past, we have also proposed that local law enforcement agencies pay fees to offset part of the costs of services, such as these, provided by DOJ's crime laboratories. For more information on this option, please see our discussion of the Department of Justice budget in our *Analysis of the 1999-00 Budget Bill*.

However, we do not recommend at this time that the Legislature enact additional criminal penalties, such as the \$1 additional charge established as of this year, as a strategy to increase revenues. Given the numerous penalties already added to court fines, additional penalties could reduce the ability of the individuals subject to such charges to pay them, and possibly result in a net reduction of revenues available to the fund. In addition, an increase in the number of individuals who were unable to pay the fines could reduce revenues for the other state and county funds that depend upon revenues from criminal penalties.

***Providing General Fund Support.*** As discussed earlier, our analysis indicates that the Proposition 69 DNA program is likely to require additional General Fund support on an ongoing basis, particularly during 2008-09 and 2009-10. Given the limited resources available to the state, the Legislature must decide whether providing \$10 million to \$20 million in General Fund support to fund this program is a priority and preferable to providing additional resources to other criminal justice programs (as well as other state programs) that could also benefit from increased funding.

***Staff Recruitment and Retention.*** In order to address the recruitment and retention issues of the DNA Program, and to be prepared for the expected increase in samples coming in 2009, the Legislature may wish to consider establishing additional incentives to attract and retain the criminalist staff members who are critical to its implementation. Conversely, the Legislature could seek to address the issue by requiring the department to further automate the process of analyzing and uploading DNA profiles on the data bank, thereby reducing the number of staff who would otherwise be needed for the program overall.

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The administration proposes several changes to the DNA Program that we discuss below.

## **Proposition 69 Program: The Governor's 2007-08 Budget Plan**

*The Governor's proposal for the DNA Program relies on unrealistic revenue estimates and would inappropriately delegate the Legislature's authority over General Fund resources. We recommend that the Legislature appropriate in the budget the amount of General Fund dollars it is willing to provide to the DNA Program given other competing priorities and strike proposed budget bill language that would inappropriately delegate the authority to increase General Fund spending for the program to the Department of Finance.*

### **Budget Proposal**

**No General Fund Dollars Provided.** The Governor's budget provides no General Fund support for the DNA Program in 2007-08. Instead, the \$32 million estimated to be needed to support the program would be provided entirely from the DNA ID Fund. In so doing, the administration budget plan assumes that DNA ID fund revenues will be significantly higher than previously anticipated for both the current year and the budget year.

**Language Authorizing General Fund Spending.** The proposed 2007-08 Budget Bill contains statutory language granting the DOJ the authority to provide additional General Fund revenues to the DNA Program if penalty revenues fall short of the \$32 million appropriated in the budget. Also, complementary language would allow DOJ to increase appropriation authority for the DNA ID Fund (and reduce General Fund spending by the same magnitude) should revenues be higher than expected. The language in the 2007-08 Budget Bill provides for advance notice to the Legislature before either of these actions could occur.

**New DNA Lab Proposed.** The Governor also proposes to build a new facility in the Sacramento area that would replace the existing DNA lab in Richmond and DOJ's other Sacramento facilities. According to the administration, more details on this proposal will be provided in March as part of the Five-Year Infrastructure Plan.

**DNA Live Scan Project.** The Governor's budget also proposes to appropriate \$2 million from the DNA ID Fund for the implementation of the DNA Live Scan Automation project, which would provide additional resources to streamline the process of inputting offender information into the DNA database. The DNA Live Scan would allow agencies to electronically submit offender information and thumbprints so that staff

at the DNA lab would no longer need to spend time on basic data entry. This would allow DOJ to redirect existing staff to other tasks and speed up the process of analyzing samples. The department has projected that this new technology could be fully operational by July 2008.

### **Proposal Has Unrealistic Estimates and Delegates Legislative Authority**

We have identified two major concerns with the administration's 2007-08 budget proposal, which we discuss below.

***Revenue Estimates Unrealistic.*** The administration budget plan assumes that the existing criminal penalties would generate \$28 million in revenues to the DNA ID Fund in the budget year. We believe this estimate is unrealistically high for several reasons. First, DOJ, as recently as November, estimated revenues of only \$18 million for the fund for the budget year. Moreover, according to DOJ, revenues to the DNA ID Fund in the first six months of 2006-07 have been significantly lower than expected. The state has received \$3.5 million from the first dollar penalty, but only \$234,000 in revenue from the second dollar penalty, which was expected to provide the majority of revenue to the DNA ID Fund. Given these below-average revenues, it appears risky at this time to assume, as does the Governor's budget plan, that annual revenues will be \$10 million above previous estimates.

***Budget Bill Language Inappropriately Delegates Legislative Authority.*** We have concerns about the proposed Budget Bill language that would in effect delegate the Legislature's authority to appropriate state funds to the administration. This language means that, if the amount budgeted for DOJ's Proposition 69 programs from penalty revenues do prove to be unrealistic, that the administration can proceed during the budget year to file notice with the Legislature and then transfer additional General Fund for the support of the program.

We acknowledge that there are appropriate circumstances, such as emergencies, in which the Legislature has chosen to delegate authority to the administration to undertake spending not anticipated in the budget plan. However, we believe these circumstances are much different. In this case, the authority to spend state funds would be delegated for a *discretionary* program that the state is not legally obligated to support from the General Fund. In addition, given the unrealistic estimates of revenues assumed in the 2007-08 budget plan, the expenditures from the General Fund would be highly likely, not an unanticipated event.

We do not have concerns about the proposed Budget Bill language allowing a reduction in General Fund spending in the event that unexpected penalty revenues would provide additional protection for the General Fund. Under the Governor's budget plan, however, this language is essentially meaningless, in that the administration proposes to initially budget no money from the General Fund.

## **Analyst's Recommendations**

**Funding the DNA Program.** The key question for the Legislature to decide, in our view, is the level of support it wishes to provide for the support of Proposition 69 programs, and whether it is willing to subsidize the revenues from criminal penalties that will be available with additional General Fund resources for these law enforcement activities. In making this judgment, we believe it would be more appropriate and fiscally sound to provide funding for DNA program using more realistic penalty revenue estimates than those assumed in the DOJ budget proposal.

We estimate that, if the DNA program were to operate at its current level of service, the Legislature would have to augment the budget plan by \$14 million or more from the General Fund to supplement the revenues we believe are likely to be available in 2007-08 from criminal penalties. Whether this program is a high priority that warrants this commitment of General Fund support is a decision for the Legislature to make. As noted earlier, the Legislature is not required under the terms of Proposition 69 to provide any General Fund support for this program. As we have also noted, other approaches are available, such as fees on counties and audits of county collections of penalties, to obtain additional non-General Fund support for these activities.

**Budget Bill Provisions.** Once it determines the level of General Fund support it is willing to provide for the DNA program, we recommend that the Legislature strike the budget bill language that authorizes DOJ to provide additional General Fund revenues for support if DNA ID revenues are lower than anticipated. The administration could seek separate deficiency funding legislation if it wished to obtain additional funding for the program during the budget year. If such additional funding were not provided, the DOJ would be obligated to operate the program within the resources it was budgeted—just as is the case for most state programs.

**DNA Lab.** We will provide our recommendations regarding the proposal for a new DNA lab after we have had an opportunity to review the administration's proposal this spring.

## ADMINISTRATIVE BUDGET ISSUES

### **Reducing Pay Differentials Could Create Recruitment and Cost Issues**

*We recommend rejection of a proposal to narrow the pay differential between the high-level attorneys and supervisors at the Department of Justice (DOJ) from the existing 5 percent to 2.5 percent. A reduced pay differential could make it more difficult for the state to recruit and retain supervisors and would set a bad precedent that could eventually result in expensive additional pay raises for other state attorneys. (Reduce 0820-001-0001 by \$951,000 and various other DOJ budget items by a combined total of \$755,000.)*

**Current Attorney-Supervisor Pay Differential Is 5 percent.** The DOJ currently employs 444 attorneys under the Deputy Attorney General IV (DAG IV) classification. The DAG IVs are DOJ's most experienced litigators, with a minimum of ten years of experience. On July 1, 2006, DAG IV attorneys on average received pay increases of about 9 percent, placing their base salary range from \$8,486 to \$10,477 per month. The DAG IV attorneys are represented by a labor organization for state attorneys whose memorandum of understanding is scheduled to expire on June 30, 2007, unless a new labor agreement is reached with the state.

As part of the 2006-07 Budget Act, the Legislature approved a request on behalf of DOJ to create a new Supervising Deputy Attorney General (SDAG) classification to serve as supervisors to DAG IV attorneys. To establish an appropriate ratio of supervisors to attorneys, the department converted 100 DAG IV positions and 30 DAG III positions to the new SDAG classification. In order to provide an incentive for attorneys to become supervisors, the department requested that SDAGs be compensated at a rate that provides a 5 percent pay differential above the salary received by DAG IVs. The Legislature approved this request to increase the range of the base salary of SDAGs to be from \$8,909 to \$11,002 per month.

**Proposal Counter to State Policy and Could Further Increase State Costs.** The Governor's budget proposes to increase pay for DAG IVs in order to reduce the pay differential between DAG IVs and SDAGs to 2.5 percent. The administration claims that this is necessary to provide an incentive for the department's most experienced litigators to remain attorneys rather than become supervisors. The budget plan provides \$1.7 million (including \$951,000 from the General Fund) for DOJ to offset the cost of the proposed increase in DAG IV salaries.

However, the proposed 2.5 percent differential runs counter to Department of Personnel Administration (DPA) policy under which base

pay levels for supervisors are generally at least 5 percent above those of the senior rank-and-file employees they supervise. These pay differentials exist in part to provide an incentive for qualified individuals to apply for supervisory positions. We believe the basis of the DPA policy is sound. Narrowing the pay differential between rank-and-file employees and supervisors from 5 percent to 2.5 percent would result in an annual salary difference of \$3,000. We do not believe that such a salary difference would provide a sufficient incentive for rank-and-file employees to take on supervisory roles that require additional work and responsibility. In addition, providing this pay increase for DAG IV attorneys could provide an incentive for attorneys in other state departments to apply for positions in DOJ.

The adoption of this proposal would also set a bad precedent that could eventually require the state to increase pay for senior attorneys and their supervisors across all state agencies. This could create additional costs in the millions of dollars above and beyond the \$1.7 million requested in this proposal.

***Pay Raises Should Occur Through Collective Bargaining Process.*** The Ralph C. Dills Act establishes the procedures for collective bargaining with units representing state civil service personnel. Offers of salary increases to address recruitment and retention and other problems can be discussed at the bargaining table, where the costs of these offers might be offset by financial or other concessions from employee representatives. Under the Dills Act's structure, the bargaining table is the most appropriate place to settle compensation issues. Given that the memorandum of understanding for attorney salaries is set to expire on June 30, 2007, we believe it would be more appropriate to consider the pay raises proposed for DAG IVs through the normal collective bargaining process.

***Analyst's Recommendation.*** We recommend the Legislature reject the proposal to narrow the difference in pay between DAG IVs and their supervisors because it would reduce the incentive for qualified individuals to apply for supervisory positions and could compel the state to provide pay raises for senior attorneys in other state agencies. It also runs contrary to legislative actions in 2006 to approve this pay differential. Moreover, we believe any such pay raises should be established through the give-and-take of the collective bargaining process.

### **Correctional Writs and Appeals Workload Overstated**

***We recommend a reduction in the proposed increase in staffing for federal habeas corpus litigation. Based on our review, the department will need fewer attorneys than requested to address a projected increase in workload. (Reduce Item 0820-001-0001 by \$1.4 million.)***

**Background.** The DOJ's Correctional Writs and Appeals section represents CDCR in court proceedings related to the confinement of state prison inmates. The section primarily represents CDCR in state and federal habeas corpus cases filed by prison inmates. These cases typically include challenges to the denial of parole to "lifer" inmates as well as issues related to parole revocation and conditions of confinement within prisons. The department reports that it has experienced significant increases in habeas corpus workload as a result of the increase in prison inmates and a ruling issued by the U.S. Ninth Circuit Court of Appeals (*Rosas v. Neilsen*) which changed court procedures to make it easier for inmates to file federal habeas corpus appeals.

**Fewer Attorneys Needed.** Citing an increase in workload, the department requests \$4.8 million in General Fund support and 31 positions (14 attorneys and the remainder clerical and paralegal staff) for the Correctional Writs and Appeals section. This would provide the section with a total of 65 positions (including 41 attorneys) to address workload related to habeas corpus cases. However, based on our review of the estimated number of attorney hours required for federal habeas litigation, as well as the current number of attorneys working in the section, the department would only require an additional ten attorneys—four fewer than requested—and related staff to meet the expected workload from federal habeas corpus cases.

**Analyst's Recommendation.** Based on our analysis of the budget request and the projected correctional habeas corpus workload, we recommend reduction of the proposal by nine positions (including four attorneys) for a total General Fund savings of \$1.4 million.

## **Department of Mental Health Workload Estimate Could Change**

*We withhold recommendation on the proposal for a \$517,000 increase in General Fund support for the Department of Justice to respond to statutory changes in state laws for the civil commitment of sexually violent predators (SVPs) because it is based on caseload estimates from the Department of Mental Health (DMH) which are subject to change. We recommend that the proposal be reevaluated when updated estimates of the number of additional SVP commitments are provided by DMH at the time of the May Revision.*

**Background.** Chapter 337, Statutes of 2006 (SB 1128, Alquist), and Proposition 83 (titled "Jessica's Law" by its proponents), an initiative approved by voters in the November 2006 statewide election, enacted a series of changes to state laws affecting sex offenders. Among other provisions, the new laws expanded the eligibility criteria for the civil commitment of certain sex offenders as SVPs to state mental hospitals operated by DMH.

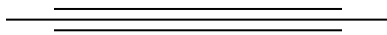


**Budget Proposal.** The 2007-08 budget plan provides a \$517,000 General Fund augmentation to address increased workload for DOJ expected to result from the implementation of Chapter 337. The proposal does not specifically request additional resources to address any additional workload resulting from implementation of Proposition 83. However, we note that requests for additional resources to implement both Chapter 337 and Proposition 83 are included in the DMH budget proposal for 2006-07 and 2007-08.

The DMH currently estimates a 25 percent increase in the number of SVPs housed in DMH facilities as a result of Chapter 337. Based on the DMH caseload projection, the DOJ budget request assumes a 25 percent increase in its workload related to SVPs who are held in state hospitals. Specifically, the DOJ represents DMH in court proceedings when SVPs (as well as other state hospital patients) file complaints with the courts related to their confinement. In anticipation of the projected increase in SVPs, the department has requested 1.3 additional attorney positions to address an anticipated increase in complaints filed by DMH patients.

**LAO Concerns.** Because Chapter 337 took effect only recently, the number of additional SVP commitments that will result from these changes in state SVP laws are unknown. The DMH will provide revised estimates of the number of SVP commitments at the time of the May Revision, based in part on the state's early caseload impacts from the new SVP laws. Thus, additional information will be available later in the budget process to evaluate the resources DOJ would need based upon revised projections about the potential increase in the DMH state hospital population.

**Analyst's Recommendation.** We withhold recommendation on this request at this time because SVP caseload estimates are subject to change, potentially affecting the resources that DOJ might need as a result of an increased population in state mental hospitals. Accordingly, we recommend that this proposal for additional funding for DOJ be reevaluated at the May Revision when new DMH estimates on SVP caseload will be available.



## **DEPARTMENT OF CORRECTIONS AND REHABILITATION (5225)**

Effective July 1, 2005, the California Department of Corrections and Rehabilitation (CDCR) was created pursuant to the Governor's Reorganization Plan 1 of 2005 and Chapter 10, Statutes of 2005 (SB 737, Romero). All departments that previously reported to the Youth and Adult Correctional Agency (YACA) were consolidated into CDCR and include YACA, the California Department of Corrections, Youth Authority, Board of Corrections, Board of Prison Terms, and the Commission on Correctional Peace Officers' Standards and Training.

The CDCR is responsible for the incarceration, training, education, and care of adult felons and nonfelon narcotic addicts, as well as juvenile offenders. The CDCR also supervises and treats adult and juvenile parolees, and is responsible for the apprehension and reincarceration of those parolees who commit new offenses or parole violations. The department also sets minimum standards for the operation of local detention facilities and selection and training of law enforcement personnel, as well as provides local assistance in the form of grants to local governments for crime prevention and reduction programs.

The department operates 33 adult prisons, including 11 reception centers, a central medical facility, a treatment center for narcotic addicts under civil commitment, and a substance abuse facility for incarcerated felons. The CDCR also operates eight juvenile correctional facilities, including three reception centers. In addition, CDCR manages 13 Community Correctional Facilities, 46 adult and juvenile conservation camps, the Richard A. McGee Correctional Training Center, and 192 adult and juvenile parole offices.

## BUDGET OVERVIEW

### Proposed CDCR Operations Budget

The budget proposes total expenditures of \$9.8 billion for CDCR operations in 2007-08 from all fund sources. This is \$607 million, or about 7 percent, above the revised estimate for current-year expenditures. The primary causes of this increase are projected increases in the prison and parole populations, salaries, inmate medical and dental care, and implementation of new laws related to sex offenders. Figure 1 shows the total operating expenditures estimated in the Governor's budget for the current year and proposed for the budget year.

<b>Figure 1</b>				
<b>Total Expenditures for CDCR<sup>a</sup> Programs</b>				
<i>(Dollars in Millions)</i>				
<b>Program</b>	<b>2006-07 (Estimated)</b>	<b>2007-08 (Proposed)</b>	<b>Change</b>	
			<b>Amount</b>	<b>Percent</b>
Administration <sup>b</sup>	\$554	\$650	\$96	17.3%
Juvenile Institution and Parole Operations	531	523	-8	-1.5
Adult Institution and Parole Operations	7,983	8,496	513	6.4
Board of Parole Hearings	103	109	6	5.8
<b>Totals</b>	<b>\$9,170</b>	<b>\$9,777</b>	<b>\$607</b>	<b>6.6%</b>

<sup>a</sup> California Department of Corrections and Rehabilitation.

<sup>b</sup> Includes Corrections Standards Authority, Sentencing Commission, and Community Partnerships programs.

Detail may not total due to rounding.

**General Fund Expenditures.** Proposed General Fund operating expenditures for the budget year total \$9.6 billion, an increase of \$611 million, or 6.8 percent, above the revised current-year estimate.

**Federal Fund Expenditures.** The CDCR operating budget includes \$29 million in federal funds in the budget year. Most of these funds are distributed to local governments for criminal justice programs. In addition, the Governor's budget assumes that the state will receive about \$114 million from the federal government during 2007-08 as partial reimbursement of CDCR's costs (estimated to be about \$900 million in the budget year) for

incarcerating inmates in prison who are illegally in the United States and have committed crimes in California. The federal funds are not included in CDCR's budget display, but instead are scheduled as "offsets" to total state General Fund expenditures.

### Current-Year Operating Deficiency

The department's budget proposes \$139 million in additional General Fund expenditures in the current year compared to the *2006-07 Budget Act*. This amount is slightly lower than recent budget deficiencies for CDCR. In each of the past five years, CDCR received deficiency funding of at least \$180 million, including \$247 million in 2004-05. Figure 2 shows the most significant components of the additional spending estimated for the current year. Each of these proposals is described in more detail below.

<b>Figure 2</b>	
<b>Department of Corrections and Rehabilitation</b>	
<b>2006-07 General Fund Deficiency</b>	
<i>(In Millions)</i>	
<b>Deficiency Item</b>	<b>Amount</b>
Prison health care lawsuits	\$130
Sex offender management	30
Out-of-state housing	10
Offsetting savings	-38
Miscellaneous	6
<b>Total</b>	<b>\$139</b>
Detail may not total due to rounding.	

**Prison Health Care Lawsuits.** The administration requests \$130 million for additional operating costs related to three lawsuits governing the provision of health care services to inmates, including \$60 million to improve the provision of mental health services, \$51 million for medical services, and \$19 million for dental services.

**Sex Offender Management.** The budget identifies \$30 million in costs to implement new state laws related to sex offenders. In 2006, the Legislature enacted several bills, and the voters approved Proposition 83 (commonly

known as “Jessica’s Law”) which among other changes, require monitoring of sex offenders on parole with Global Positioning System technology.

***Out-of-State Housing.*** The budget includes \$10 million to begin housing inmates in contracted facilities in other states. In October 2006, the Governor declared a state of emergency in response to overcrowding in state prisons, and subsequently signed contracts with two companies to secure housing for 2,260 inmates in other states.

***Offsetting Savings.*** The administration identifies current year savings totaling \$38 million from several programs to partially offset the above costs. Most of these savings are from a one-time reduction of \$30 million in the Mentally Ill Offender Crime Reduction program due to delays in issuing these grants. The budget also estimates savings of about \$3 million due to updated projections that state inmate, parole, and juvenile caseloads will be lower in the current year than was assumed in the 2006-07 Budget Act.

## **Capital Outlay Budget Proposal**

The budget includes \$10.1 billion in state funds for capital outlay projects. (The budget also assumes a local match of \$1.1 billion for certain projects.) Of this total, about \$376 million is funded through the General Fund. The remainder is proposed to be funded through lease-revenue bonds. The administration has included about \$10 billion in the CDCR capital outlay budget, primarily from lease-revenue bonds, for additional prison construction and jail beds. The capital outlay budget also proposes an additional \$84 million in projects for improvements at existing prisons.

Key components of the proposal for CDCR include \$2.7 billion to add bed and program space at existing prisons; \$1.6 billion to build secure reentry facilities in communities for inmates otherwise held in state prisons; \$4.4 billion to construct local jails and juvenile facilities; \$1 billion to build new medical facilities to comply with various federal court orders and settlements; and \$268 million in the budget year for a new death row facility at San Quentin. The administration also proposes to address prison capacity issues with proposals outside of the capital outlay budget through sentencing law changes that would shift low-level offenders from state prison to county jails; establishing a commission to further review state sentencing laws; beginning work to contract for 4,350 beds for female offenders in the community; and, as noted above, transferring 2,260 inmates to facilities in other states.

Figure 3 (see next page) displays the administration’s spending proposal for capital outlay projects in CDCR for 2007-08.

**Figure 3****California Department of Corrections and Rehabilitation  
Capital Outlay Budget 2007-08***(In Millions)*

<b>Capital Outlay Project</b>	<b>Amount</b>
Infill housing	\$2,703
Re-entry facilities	1,600
Jail and juvenile capacity	4,400
Prison medical facilities	1,000
Death row (San Quentin state prison)	268
Other projects	84
<b>Total Capital Outlay</b>	<b>\$10,054</b>
<b>Funding Source</b>	
General Fund	\$376
Lease-revenue bonds	9,678
<b>Total, All Funds</b>	<b>\$10,054</b>

Detail may not total due to rounding.

**Department Has Not Provided Reports to Legislature**

*The California Department of Corrections and Rehabilitation has not submitted a number of reports required in association with the 2006-07 Budget Act. The lack of information hinders legislative oversight of state programs. We recommend that the Legislature require the department to report at budget hearings on the status of these reports.*

The 2006-07 Budget Act and the Supplemental Report of the 2006 Budget Act directed CDCR to report on a number of its programs and activities, including the backlog of parole cases for indeterminately sentenced (“lifer”) inmates, its progress in filling correctional officer vacancies, and the implementation of court-ordered juvenile correctional reforms. The Legislature’s purpose in requiring these reports was to exercise legislative oversight by holding the department accountable for its use of funds and staff in achieving statutory objectives and goals. Many of these reports were required to be submitted by January 2007 in order to provide the Legislature with pertinent information as it reviews the department’s 2007-08 budget request. For example, the Legislature required the department to provide department-wide performance measures.

At the time this analysis was prepared, the department had not provided 6 of 12 required reports. Figure 4 lists these reports, their due dates, and the status of those reports at the time we prepared this analysis. We would also note that there are an additional nine departmental reports due to the Legislature prior to the end of the fiscal year. Topics of these future reports include an assessment of current inmate and parole programs, gang management, and telemedicine. The department also failed to provide several legislatively required reports last year, including reports on the Foreign Prison Transfer Program, inmate violence, and efficiencies achieved from the reorganization of CDCR.

**Figure 4**

### California Department of Corrections and Rehabilitation Status of Legislatively Required Reports

Report Topic	Due Date	Status
<b>Administration</b>		
Information technology study	Before expenditure of funds	Received
Performance measures in budget display	1/10/07	Received
Performance measures supplemental report	1/10/07	Not received
<b>Adult Institutions and Parole</b>		
Dental staffing study	Before expenditure of funds	Received
Correctional officer recruitment	9/1/06	Not received
Recidivism Reduction Strategies	9/1/06	Received
Protective vests—first report	10/1/06	Not received
Protective vests—second report	1/1/07	Received
<i>Perez</i> implementation	10/1/06	Not received
Lifer hearings backlog	1/10/07	Not received
Custody assistants	1/10/07	Not received
<b>Juvenile Corrections</b>		
<i>Farrell</i> remedial plan implementation	9/15/06	Received

**Analyst Recommendation.** It is important that the Legislature have a means of obtaining information it deems necessary to make policy and budget decisions. Therefore, we recommend that the Legislature require CDCR to report at budget hearings on the status of any reports not yet provided, as well as the reasons for the delays.

## ADULT CORRECTIONS

### WHO IS IN PRISON?

There were 172,508 inmates in the prison population as of June 30, 2006. About 93 percent of the population is male. Other demographics of the inmate population include the following:

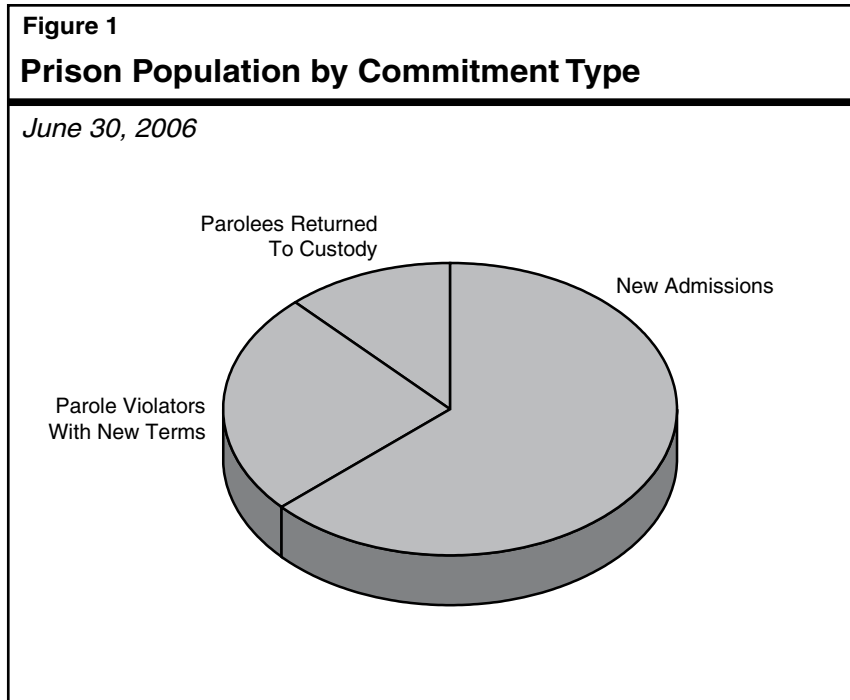
- About 50 percent of inmates are incarcerated for nonviolent offenses.
- About 62 percent of all inmates were committed to prison from Southern California, with about 33 percent from Los Angeles County alone and 8 percent from San Diego County. The San Francisco Bay Area is the source of about 12 percent of prison commitments.
- About 46 percent of all inmates are between 20 and 34 years of age, with the number of inmates falling dramatically starting at age 50.
- The prison population is divided relatively evenly among whites, blacks, and Hispanics.
- About 63 percent of the inmates are new admissions from the courts, 25 percent are offenders returned by the courts for a new offense while on parole status, and 12 percent are parolees returned to prison by administrative actions for violation of their conditions of parole (see Figure 1).

### INMATE AND PAROLE POPULATION MANAGEMENT ISSUES

#### **Inmate Population Projected to Increase**

The California Department of Corrections and Rehabilitation (CDCR) is projecting the inmate and parolee populations to increase in the current and budget years, though more slowly than what was assumed in the *2006-07 Budget Act*.





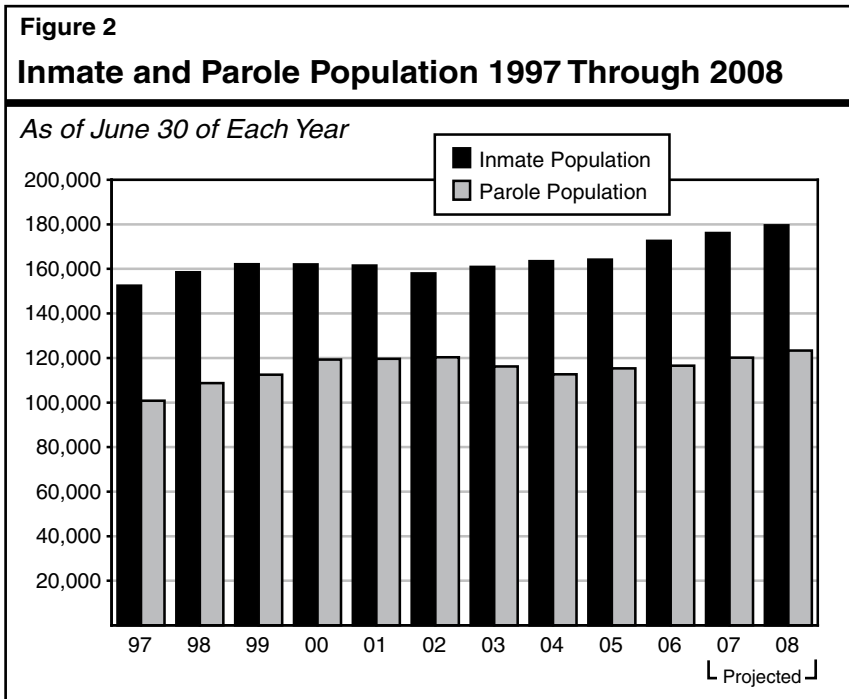
***Inmate Population Increase.*** As of June 30, 2006, CDCR housed 172,508 inmates in prisons, fire and conservation camps, and community correctional facilities. The CDCR forecasts the inmate population will increase to 179,558 by June 30, 2008, a projected two-year increase of 7,050 inmates, or about 4 percent, compared to the beginning of the current fiscal year. The projected increase in the inmate population is the result of a recent trend of increasing admissions to prison from county courts, as well as more parole violators returned to prison through the state's administrative returns process. Figure 2 (see next page) shows the year-end inmate and parole populations for the period 1997 through 2008.

***Parole Population Increase.*** As of June 30, 2006, CDCR supervised 116,563 persons on parole. As shown in Figure 2, CDCR projects the parolee population to increase to 123,336 by the end of the budget year, an increase of 6,773, or 6 percent. This increase is primarily a result of the increase in the number of inmates released to parole after serving their prison sentence.

***Fiscal Implications of Population Changes.*** The CDCR is requesting additional funds of about \$7 million in the current year, growing to \$79 million in the budget year. This reflects the additional costs for out-of-state beds, partially offset by savings from slower population growth than assumed in the *2006-07 Budget Act*.

**Housing the Projected Growth in Inmate Population.** The Governor's budget proposes an inmate housing plan to accommodate the additional inmates that CDCR expects to receive by the end of the budget year. The plan has the following major elements:

- **Out-of-State Beds.** The department's housing plan includes the establishment of 2,260 beds contracted with facilities in other states. State inmates began filling those beds in late 2006. As of January 31, 2007, CDCR had transferred about 350 inmates to out-of-state facilities.
- **Overcrowding of Existing Prison Space.** The housing plan assumes that, by the end of the budget year, an additional 4,060 inmates would be placed in gymnasiums, dayrooms, and dorms in CDCR prisons. This is intended to be temporary housing.
- **Loss of Pitchess Contracted Beds.** In 2006, Los Angeles County chose to end its contract to house 1,300 state parole violators in its Pitchess Detention Center effective February 2007. Offsetting this decrease in capacity, CDCR proposes to increase contracted capacity at other facilities in California by 1,580 beds.



**Potential Risks to Accuracy of Projections.** As we have indicated in past years, the accuracy of the department's latest projections remains dependent upon a number of factors, changes to any of which could result in significantly higher or lower populations. These factors include sentencing law, crime rates, and local criminal justice practices. For example, these projections do not take into account a recent U.S. Supreme Court decision in *Cunningham v. California* ordering the state to change its procedures under which courts can increase the length of sentences for crimes involving aggravating circumstances. At this time, it is unclear how this ruling will affect prison terms for current and future inmates. This is because the Supreme Court sent the case back to a lower court to determine how to implement the decision.

### **Caseload Will Likely Require Further Adjustment**

*We withhold recommendation on the 2007-08 budget request for caseload funding pending receipt of the May Revision because recent data indicate that the population is trending lower than the department's projections. We recommend that the administration provide, as part of its updated spring population projections, an estimate of the impact of the Governor's policy proposals on the inmate population. We will continue to monitor the caseload and recommend further changes, if necessary, following review of the May Revision.*

**Inmate Population Relatively Level.** The fall 2006 projections anticipated that the inmate population would grow by about 500 inmates during the first half of 2006-07. Instead, the inmate population stayed relatively level over the past six months. However, the parole population was about 2,400 higher at the midpoint of 2006-07 than what the fall projections anticipated. The CDCR will issue updated population projections in spring 2006 that form the basis of its May Revision proposal. At that time, we will review whether adjustments to CDCR's funding for inmate and parole caseloads are warranted.

**Budget Does Not Reflect Population Impact of Governor's Policy Proposals.** The department's budget includes budget-year policy changes to reduce the parole population. (See our discussion of the Governor's prison capacity proposals later in this chapter.) Should the Legislature choose to enact these changes, there would likely be a reduction in the prison population compared to what would occur in the absence of these policy changes. That is because the discharge of offenders from parole would also eliminate the possibility of administrative return to prison for parole violations. The Governor's budget does not include any estimate of the likely impact of the proposed changes on the prison population and the associated fiscal effects.

Similarly, the budget plan does not reflect the Governor's budget proposal (discussed in more detail in our analysis of the "Department of Alcohol and Drug Programs" in the Health and Social Services chapter) to reduce funding for Proposition 36 allocations to counties. Because Proposition 36, an initiative approved by voters in 2000, provides for offenders to receive drug treatment in lieu of their incarceration in prison or jail, the proposed reduction in spending for this program could begin to increase the prison population during the budget year.

We recommend that the department provide estimates of the impacts of the Governor's policy changes for adult parole and for reductions in Proposition 36 funding as part of the May Revision process.

*Analyst's Recommendation.* We withhold recommendation on the 2007-08 caseload funding request, though we recommend that the department adjust its request to reflect the likely impact of population adjustments proposed in the Governor's budget. We will continue to monitor CDCR population, and make recommendations as appropriate at the time of the May Revision.

## **GOVERNOR'S PRISON OVERCROWDING PACKAGE IS MORE BALANCED BUT TOO BIG**

*The Governor requests \$9.6 billion (combined General Fund and lease-revenue bonds) for a 14-part package of proposals designed primarily to address overcrowding in state prisons and county jails. While the package offered by the administration has merit, we have a number of concerns, in particular that the package would result in a large surplus of state prison capacity and provide the wrong mix of beds. We recommend that the Legislature consider an alternative package that would also address overcrowding but result in a more limited surplus of prison beds and reduce capital outlay costs relative to the Governor's proposal by \$2.1 billion. (Reduce Item 5225-001-0001 by \$146 million and Item 5225-002-0001 by \$23 million.)*

### **Background**

#### **Inmates Housed by Security Levels**

When inmates are sent to state prison, they are assessed during the intake process at reception centers. One of the assessments done is to determine the appropriate security level at which they can be housed, based primarily on the likelihood that they will attempt to escape, commit violence, or otherwise break prison rules while incarcerated. Based on factors such as length of prison sentence, criminal history, and behavior during prior time in prison, inmates are assigned a classification level ranging

from Level I (minimum security) to Level IV (maximum security). After receiving their security classification and undergoing other assessments at the reception center, inmates are generally transferred to other prisons matching their security classification. Female offenders are all assigned to the same prisons regardless of security classification.

### Current Prison Overcrowding

*Ten Percent of Inmates Housed in Gyms and Dayrooms.* As of December 31, 2006, the California Department of Corrections and Rehabilitation (CDCR) was estimated to have 173,100 inmates in the state prison system, based on CDCR's fall 2006 population projections. However, as shown in Figure 3, the department only operates or contracts for a total of 156,500 permanent bed capacity (not including out-of-state beds, discussed in more detail later), resulting in a shortfall of about 16,600 prison beds relative to the inmate population. The most significant bed shortfalls are for Level I, II, and IV inmates, as well as at reception centers. As a result of the bed deficits, CDCR houses about 10 percent of the inmate population in temporary beds, such as in dayrooms and gyms. In addition, many inmates are housed in facilities designed for different security levels. For example, there are currently about 6,000 high security (Level IV) inmates housed in beds designed for Level III inmates.

<b>Figure 3</b>			
<b>State Prisons Overcrowded</b>			
<i>(December 31, 2006)</i>			
<b>Security Housing Type</b>	<b>Inmates<sup>a</sup></b>	<b>Permanent Capacity<sup>b</sup></b>	<b>Surplus/Deficit(-)</b>
<b>Men</b>			
Level I	30,537	23,013	-7,524
Level II	42,359	35,122	-7,237
Level III	34,065	42,451	8,386
Level IV	26,895	20,571	-6,324
Reception Center	24,413	20,063	-4,350
Special <sup>c</sup>	3,070	3,927	857
<b>Totals, Men</b>	<b>(161,339)</b>	<b>(145,147)</b>	<b>(-16,192)</b>
<b>Women</b>	11,761	11,356	-405
<b>Totals, All Housing</b>	<b>173,100</b>	<b>156,503</b>	<b>-16,597</b>

<sup>a</sup> Based on department's fall 2006 population projections.

<sup>b</sup> Includes prison and contracted capacity.

<sup>c</sup> Includes Security Housing Unit and Protective Housing Unit.

## What Do Prison Experts Mean by “Overcrowding?”

Discussions about overcrowding in California prisons are frequently complicated by the use of various similar sounding terms. We define a few of these terms below and describe how we use them in our analysis of the Governor’s proposals to address overcrowding.

**Design Capacity.** Design capacity refers to the number of beds the department would operate if it housed only one inmate per cell and did not double-bunk in dormitories. The department identifies its design capacity as about 83,600 in state prisons (not including 7,500 community contracted bed capacity). Double-ceiling and double-bunking of inmates in cells and dormitories is standard practice—with some exceptions—in prisons nationally. For this reason, we do not rely on design capacity figures in our analysis of the department’s bed capacity.

**Permanent Capacity.** “Permanent capacity” refers to the number of beds the California Department of Corrections and Rehabilitation (CDCR) would have if it used double-ceiling and double-bunking in all facilities when it was reasonably able to do so given the dangerousness of the inmates housed in those facilities and the size of the cells. As shown in Figure 3, the department reports that its permanent capacity is about 156,500 beds.

**Temporary Housing.** Because the department does not have permanent capacity for all inmates, CDCR utilizes “temporary housing.” This typically involves housing inmates in space not originally designed for housing, such as gyms and dayrooms. As shown in the figure, the department currently houses about 16,600 inmates in temporary beds. The CDCR reports that it will exhaust its supply of temporary beds by spring 2008.

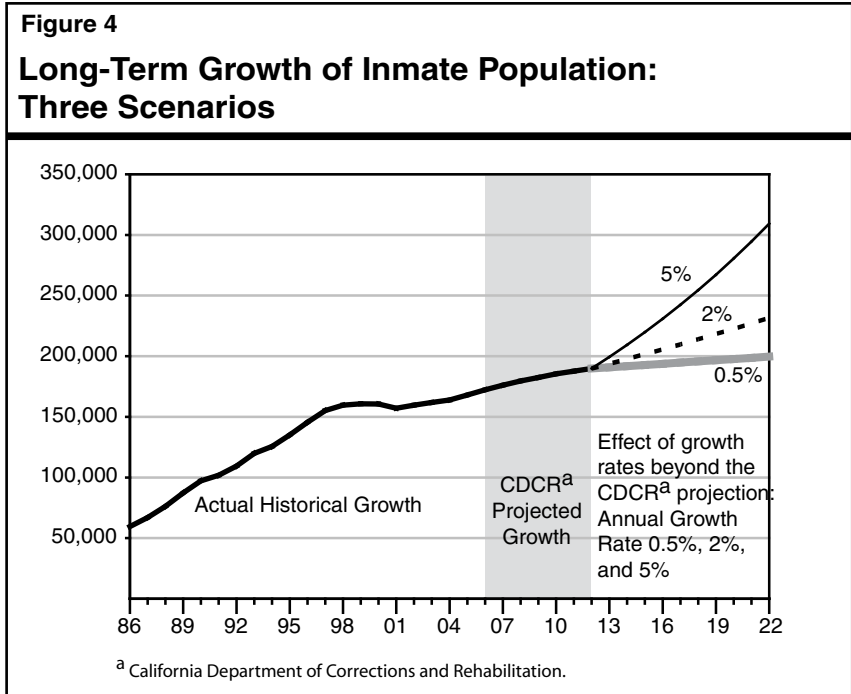
**Overcrowding.** For purposes of this analysis, overcrowding refers to the use of temporary housing due to having more inmates than permanent capacity available.

**Consequences of Overcrowding.** Based on our discussions with department administrators, significant overcrowding has both operational and fiscal consequences. Overcrowding and the use of temporary beds create security concerns, particularly for medium- and high-security inmates. Gyms and dayrooms are not designed to provide security coverage as well as in permanent housing units, and overcrowding can contribute to inmate

unrest, disturbances, and assaults. This can result in additional state costs for medical treatment, workers' compensation, and staff overtime. In addition, overcrowding can limit the ability of prisons to provide rehabilitative, health care, and other types of programs because prisons were not designed with sufficient space to provide these services to the increased population. The difficulty in providing inmate programs and services is exacerbated by the use of program space to house inmates. Also, to the extent that inmate unrest is caused by overcrowding, rehabilitation programs and other services can be disrupted by the resulting lockdowns.

### Inmate Population Projected to Grow, Exacerbating Overcrowded Conditions

*Historical Inmate Population Growth.* Over the past 20 years, the state inmate population has grown at an average annual rate of 5 percent, increasing from 59,000 inmates in 1986 to 173,000 inmates in 2006. As shown in Figure 4, the overall increase in the inmate population over the past 20 years includes more rapid growth between 1986 and 1998 (9 percent average annual growth), a period of no net growth between 1998 and 2002, and a period of moderate growth between 2002 and 2006 (2 percent average annual growth).



***What Factors Have Driven the Growth in the Inmate Population?***

Several factors have contributed to the overall change in the inmate population over the past 20 years. These factors include growth in California's adult population of an average of 2 percent annually over the past 20 years. In addition, the proportion of the total California population incarcerated in state prison increased over the past 20 years from 220 state inmates for every 100,000 Californians in 1986 to about 460 state inmates out of every 100,000 Californians in 2006. This increase in the incarceration rate coincided with a 41 percent decline in the state's crime rate but was driven mainly by changes in sentencing laws that increased penalties for many offenses, as well as an increase in the number of parole violators returned to prison via the administrative parole revocation process.

***How Much Will the Inmate Population Grow in the Future?*** As shown in Figure 4, CDCR projects the state prison population to grow to about 190,000 by June 30, 2012, about 17,000 more inmates than the current population. This represents projected average annual growth of about 2 percent annually, consistent with the level of growth that has actually occurred over the past four years, although a significantly lower rate than the trend over the past 20 years.

It is also important to consider what level of inmate population growth may occur beyond CDCR's five-year projection period, particularly because it can take several years of planning to construct new prison capacity. The failure of the state to anticipate and respond to the amount of inmate population growth in the past (either by adding capacity or taking actions to reduce the inmate population) is a key factor contributing to the current levels of overcrowding. Figure 4 shows how the inmate population would grow under three alternative scenarios during the ten-year period from 2012 to 2022—after the end of CDCR's projections. These three scenarios assume average annual growth rates of (1) 0.5 percent—a conservative estimate based on the projected rate of growth of the California population of men ages 18 through 44, (2) 2 percent—a moderate rate of growth mirroring recent inmate population growth, and (3) 5 percent—a more rapid rate of growth consistent with the actual population growth experienced during the past 20 years. These scenarios calculate a range of possible inmate populations by 2022 of between 200,000 and 309,000 inmates.

Which scenario (if any) will actually play out is difficult to predict. Long range forecasts such as these are particularly subject to error. The actual prison population growth will be affected by a number of factors, including demographics, changes to sentencing laws, crime rates, law enforcement and judicial practices, and the performance of the economy. It will be important for the Legislature to monitor inmate population change on an ongoing basis and take steps to minimize dangerous overcrowding conditions.



**Prison Capacity Nearly Exhausted.** As discussed above, the department is currently operating with a significant level of overcrowding. The CDCR reports that it expects to exhaust both its permanent and temporary capacity by spring 2008 based on its most recent population projections. (It is worth noting that the current inmate population is somewhat lower than anticipated in these projections. Should this trend continue, it would take CDCR longer to exhaust its total capacity.) Under the most conservative of the three scenarios discussed above, the state would be short of permanent capacity by 43,000 beds in 2022 (not counting temporary beds). If the state's prison population were to resume growth at the rate seen during the past 20 years, CDCR's permanent capacity would be short by almost 153,000 beds. Figure 5 shows the projected bed shortfall under the three scenarios previously discussed.

**Figure 5**

### **Prison Bed Shortfalls in 2022 Under Various Inmate Growth Scenarios**

<b>Growth Scenarios<sup>a</sup></b>	<b>Projected Population In 2022</b>	<b>Bed Shortfall Compared to Current Permanent Capacity</b>
0.5%	199,600	43,100
2.0	231,500	75,000
5.0	309,400	152,900

<sup>a</sup> Average annual rates from 2012 through 2022.

## **Administration's New Package to Address Overcrowding**

*The administration has presented the Legislature with a 14-part package to address prison as well as county jail overcrowding. In all, the Governor's package provides \$9.6 billion in the 2007-08 budget plan for these purposes.*

**Four Main Types of Proposals.** The Governor has presented the Legislature with a new proposal to address prison and jail overcrowding that differs in some respects from the package he offered during last summer's special session. The new package has 14 components that fall into four general categories. These are policy changes that would (1) increase state prison bed capacity, (2) reduce the state prison population, (3) provide additional funds for the local government criminal justice system, and (4) implement various other policy proposals related to prison overcrowding.

In all, the budget plan includes \$9.6 billion for these proposals. However, at the time this analysis was prepared, the legislation that would be necessary to enact some of the proposals had not yet been introduced in the Legislature. The components of the Governor's proposals are summarized in Figure 6 and discussed in more detail below.

***State Prison Capacity Expansion.*** The administration proposes \$4.9 billion in lease-revenue bond authority and \$15 million General Fund in 2007-08 to expand the capacity of the prison system by 28,000 to 30,000 beds (plus an unknown number of medical beds). This includes proposals to build new facilities at existing prisons, reentry facilities, and medical facilities. These proposals also include the use of out-of-state facilities and an expansion of community facilities for female offenders.

***State Prison Population Reduction.*** The Governor proposes to change sentencing law so that certain low-level offenders would be housed in county jails rather than state prisons. The budget also proposes to eliminate provisions of current law which permit the housing of county inmates in state prison for diagnostic purposes, as well as change parole discharge policies to reduce or eliminate the parole terms served by some low-level offenders. In sum, the administration estimates that these policy changes would reduce the prison population by about 25,000 inmates when fully implemented. The administration estimates General Fund savings of \$57 million in the budget year, which would grow in 2008-09 and succeeding years.

***Additional Funding for Local Criminal Justice System.*** The Governor proposes \$4.4 billion in lease-revenue bonds—requiring \$1.1 billion in matching funds from counties—to construct 50,000 beds at the local level. This total includes 45,000 jail beds proposed for adult offenders and 5,000 beds in juvenile halls and camps. In addition, the budget proposes \$50 million in the budget year (growing to \$100 million in 2008-09) for a new grant program targeted for supervision and treatment programs for adult probationers ages 18 to 25. We discuss the proposed funding for juvenile capacity and the new probation grant program in separate analyses later in this chapter.

***Other Changes Related to Prison Capacity and Overcrowding.*** The budget plan proposes \$629 million for other projects, such as \$268 million (including \$117 million for increased project costs) to complete construction of the new death row facility at the San Quentin state prison (referred to as the Condemned Inmate Complex [CIC]), \$303 million to improve infrastructure systems at existing facilities, \$58 million to build a new correctional officer training academy in Southern California, and \$457,000 to create a sentencing commission.

**Figure 6**  
**Governor's Proposals to Address Prison Overcrowding**

(Dollars in Millions)

Component of Proposal	Number of Beds at Full Implementation	Fiscal Impact	
		Capital Outlay <sup>a</sup>	2007-08 State Operations
<b>State Prison Capacity Expansion</b>			
Infill housing	16,238	\$2,342	—
Reentry facilities	5,000-7,000	1,600	—
Female Community Rehabilitation Facilities	4,350	—	\$2
Out-of-state transfers	2,260	—	13
Health care facilities set-aside	Unknown	1,000	—
Subtotals	(27,848—29,848 <sup>b</sup> )	(\$4,942)	(\$15)
<b>State Prison Population Reduction</b>			
Eliminate diagnostic services for counties	205	—	-\$4
Changes to parole discharge policies	—	—	-53
Shift of adult offenders to jail	25,000	—	—
Subtotals	(25,205)	—	(-\$57)
<b>Local Jails and Probation</b>			
Jail beds for adult offenders <sup>c</sup>	45,000	\$4,000	—
Adult probation grants	—	—	\$50
Subtotals	(45,000)	(\$4,000)	(\$50)
<b>Other Components of the Proposals</b>			
Infrastructure improvements for infill housing	—	\$303	—
Condemned Inmate Complex	—	268	—
Southern California training academy	—	58	—
Sentencing commission	—	—	< \$1
Subtotals	—	(\$326)	(\$303)
<b>Total Costs of Proposals</b>		<b>\$9,268</b>	<b>\$311</b>

<sup>a</sup> Multiyear funding, primarily from lease-revenue bonds.  
<sup>b</sup> Does not include health care facilities.  
<sup>c</sup> Does not include \$400 million for juvenile facilities. Governor's proposal assumes additional \$1.1 billion match from local governments for adult and juvenile beds.

## **How Do the Governor's Proposals Work Overall as a Package?**

*We find that the Governor's package of proposals to address overcrowding in the state prison system has merit overall, in that it provides a more balanced approach than the proposal presented to the Legislature in last summer's special session. However, we have identified several concerns pertaining to how the package fits together as a whole. The Governor's proposals, if adopted in their entirety, would result in a dramatic surplus of prison beds, provide the wrong mix of beds, increase local jail overcrowding in the short-term, and generate operational costs that have not been fully identified in the plan. As the Legislature reviews the Governor's package, it should consider not just how many and what types of beds are built, but whether they would be available on a timely basis to relieve overcrowding.*

There are sound fiscal and policy reasons to support the Governor's overall approach to addressing the prison capacity issue, as well as reasons to be concerned about the way his package of proposals fits together as a whole. We discuss our overall assessment of his approach below.

### **Proposal Has Some Benefits**

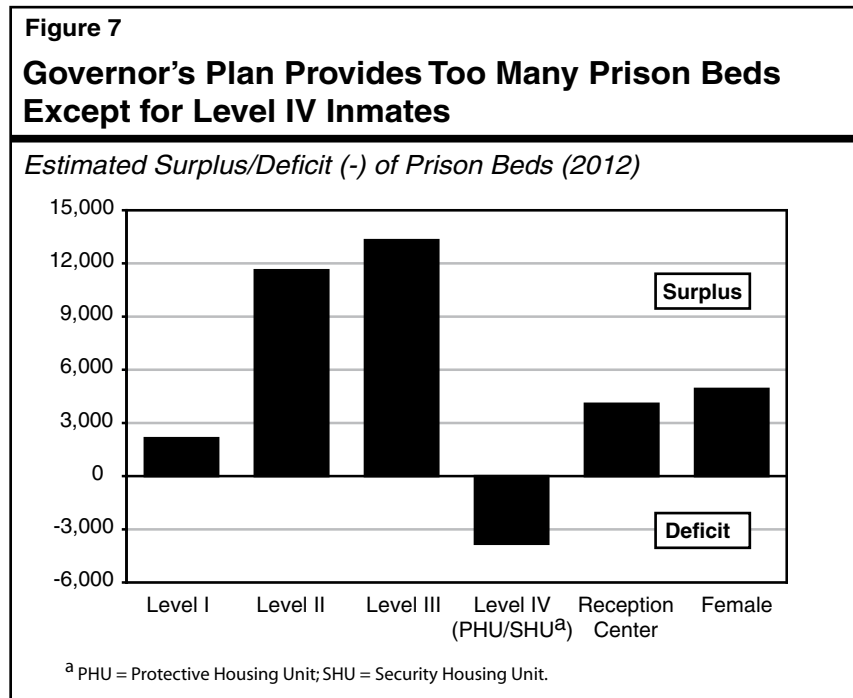
The administration's package of proposals has merit, in that it attempts to address the *current* overcrowding problem as well as the anticipated *future* growth in the inmate population. In so doing, it could improve prison safety, increase inmate access to rehabilitation programs and health care services, and help lower rates of recidivism. While the package would result in significant additional costs to accommodate additional inmates, it also would likely result in partially offsetting state savings and some avoidance of future increases in costs in prison and parole operations.

In June 2006, the Governor called a special session of the Legislature, proposing \$6 billion in capital outlay expenditures to build a total of 44,000 prison beds. The administration's current set of proposals is a more balanced one than was proposed as part of the special session, in that the current proposals include components which would both increase prison capacity as well as reduce the inmate population. In the past, our office has similarly recommended that the Legislature take such a balanced approach to addressing inmate population growth and overcrowding.

### **Proposal Would Result in Large Surplus of Prison Beds**

While it makes sense to provide some beds beyond those needed immediately, our analysis indicates that the Governor's package goes

much too far in providing for future growth. Specifically, we estimate that adoption of his package of proposals in its entirety—including both components that would increase state capacity and others that would reduce the prison population—would result in a significant surplus of permanent prison capacity. The administration’s package of proposals would increase permanent state prison capacity to about 189,000 and reduce the inmate population to about 157,000, resulting in a total surplus of about 32,000 beds by 2012 when fully implemented. Figure 7 shows this total surplus of beds broken out by security levels. This total surplus equates to roughly six empty prisons that, if present prison population growth trends continued, would probably take between 8 and 11 years beyond 2012 to fill. In our view, it would not be wise to use state resources to build excessive prison capacity which is likely to remain unused for such a long period.



### Plan Provides Wrong Mix of Beds

While the Governor’s package of proposals would provide a surplus of beds, it contains, in our view, the wrong mix of beds when the plan is compared with the security level of inmates now held in the prison system as well as the number of inmates projected to be housed at each security level in the future.

Based on our estimates of these factors, as shown in Figure 7, the Governor's plan would result in a surplus of 25,000 medium-security beds (Levels II and III). To a lesser extent, the proposal results in more reception center, Level I, and female capacity than would be needed.

However, we estimate that the Governor's plan would also result in a deficit of beds for inmates who require the highest security beds (Level IV). Housing inmates with higher security levels in facilities intended for lower-level inmates without any proposed modifications to the housing units could eventually pose a significant security problem.

### **Future Operating Costs for Facilities Not Identified**

While the 2007-08 budget plan provides for the capital outlay costs associated with the Governor's prison capacity package, the administration has not provided estimates of the operational costs for several of the proposals. This information gap could make it more difficult for the Legislature to assess the overall approach proposed by the administration for addressing the prison capacity and overcrowding problem.

**Additional Prison Facilities.** Specifically, the proposals for infill housing, reentry beds, and female community facilities would all result in significant additional state operational costs for activating new facilities, particularly for establishing the initial compliment of custody and administrative staff that have not been identified. The additional state cost to operate these new facilities would probably amount to several hundred million dollars annually.

Moreover, the reentry and female facilities would likely be more costly to operate than typical state prison beds because of the more intense concentration of rehabilitation programs proposed for these facilities. The additional state costs for these additional rehabilitation services would depend on the amount and type of programs provided, but would likely be in the several tens of millions of dollars to the low hundreds of millions of dollars annually once fully implemented.

**New Training Academy.** Similarly, the department has not identified the operational costs for the proposed Southern California training academy. These are likely to be in the tens of millions of dollars annually, depending primarily on the size of the academy.

**Possible Subsidies to Counties for Jail Operations.** As discussed later, the administration has indicated that it is considering providing subsidies to counties to help them accommodate more offenders in additional county jail beds financed by the package. However, the administration proposal does not clearly indicate whether and to what extent the state would provide such funding to counties. Conceivably, the cost

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of such subsidies to counties could amount to hundreds of millions of dollars annually.

### **Timing of Overcrowding Relief Important for Legislature to Consider**

It is important that the Legislature carefully consider proposals that will help to relieve overcrowding in the short term, particularly during the next one to three years, during which time CDCR is likely to exhaust its total capacity. Our analysis finds that the Governor's package does address the immediate threat of short-term loss of total prison capacity. Specifically, the Governor's proposals for out-of-state beds, changes in parole discharge policies, and shifting inmates to local jails would significantly reduce inmate overcrowding in the first couple of years even before any significant construction could be completed. This short-term relief to overcrowding is also important because three federal court judges overseeing the provision of health care services to inmates are considering motions by plaintiffs seeking court-ordered remedies to overcrowding. This could include the imposition of a cap on the CDCR prison population.

However, there are some significant timing issues for the Legislature to consider relating to the administration plan. The proposal for sentencing law changes that would have the effect of shifting inmates to local jails is proposed to go into effect in July 2008. Part of the basis for the administration proposal to build additional jail space is to help counties to accommodate the effect of this change in sentencing laws—moving offenders from the state to the local level. However, we believe it is unlikely that a significant amount of new jail capacity could be built by that time. In fact, most of this additional jail capacity could take years longer to construct.

### **Analyst's Recommendations: Reduce Overbuilding and Provide the Right Mix of Beds**

*As the Legislature considers the overall approach to addressing the prison overcrowding problem, we recommend that it consider an alternative strategy that would avoid the creation of an excessive surplus of prison beds and provide a more appropriate mix of beds. We further recommend that the Legislature direct the administration to provide it with estimates of the future operating costs for some of the major components of its plan.*

*Consider Alternative Approach.* Taking into account our concerns about some aspects of the Governor's prison capacity package, as well as some of its strengths, we recommend that the Legislature consider an alternative package of proposals.

The most significant modifications we recommend to the Governor's approach are these:

- Approve infill projects, and related infrastructure improvements, only for Level IV and reception center beds.
- Adopt the new parole discharge policies proposed by the administration, but with technical budgetary changes recognizing reduced institution populations.
- Halt the increasingly costly death row project at San Quentin and direct the remaining project funds instead to build high-security capacity elsewhere in the prison system.
- Redirect savings from other recommendations to convert some existing Level III facilities to Level IV.
- Modify the Governor's proposed sentencing law changes so that offenders who committed a more limited list of low-level crimes would be guilty of a misdemeanor rather than a felony offense likely to result in a jail sentence.
- Appropriate only those capital outlay funds necessary in the budget year to begin building the reentry facilities.

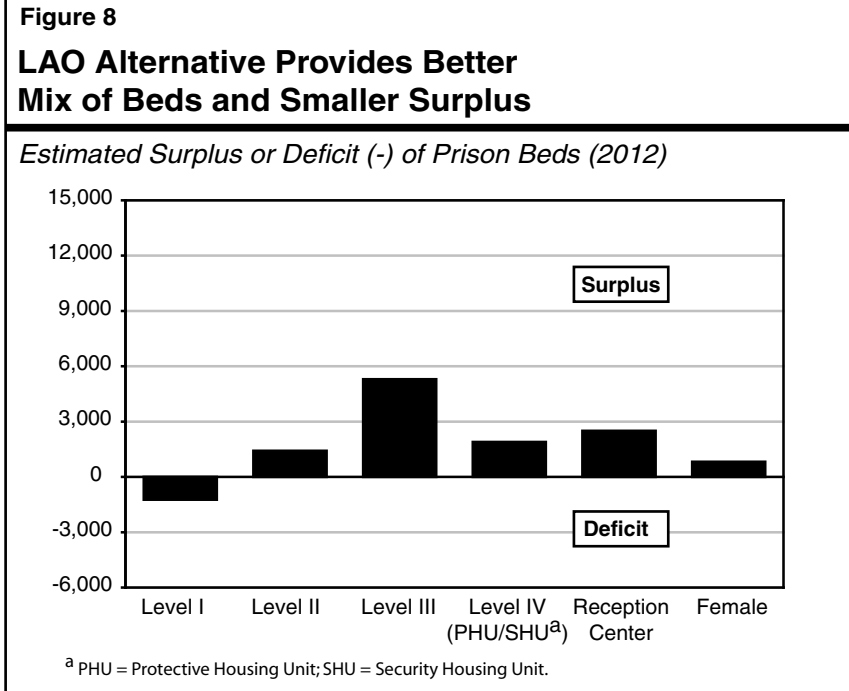
We discuss the rationale for each of these individual alternatives in more detail later in this analysis.

***LAO Alternative Has Advantages.*** Based upon our analysis of the Governor's proposals, we believe our alternative prison capacity package would reduce the current levels of overcrowding; reduce surplus prison capacity in the Governor's plan; ensure sufficient capacity in the prison system where it is needed, particularly for Level IV inmates; and reduce state operational and capital outlay costs relative to the Governor's proposal. Some of its specific advantages are outlined below:

- ***Smaller Surplus of Beds.*** We estimate that our proposal would result in permanent prison capacity of about 175,000 beds and an inmate population of 164,000 by 2012. (Inmate populations levels are reduced due to policy and sentencing changes.) This is a net surplus of only about 11,000 beds by 2012, a reduction of about two-thirds compared to the 32,000-bed surplus that would result under the Governor's plan. The bed surplus in our plan would provide some flexibility to manage the inmate population should it grow faster than projected or if it took longer than expected to site and activate reentry and other facilities. It would be important for the Legislature to monitor the inmate population and capacity on an ongoing basis to prevent severe overcrowding in the long term, particularly in light of our findings that even moderate growth



in the inmate population would result in tens of thousands more inmates by 2022. Another benefit of our plan is that room would remain for infill housing should capacity need to be added relatively quickly in the future. Figure 8 illustrates the estimated result of our recommendations on prison bed surpluses and deficits by security level.



- Better Mix of Beds.** As Figure 9 (see next page) shows, our alternative provides a more appropriate mix of beds than the Governor's package of proposals. It would likely generate a surplus (rather than the deficit provided in the Governor's plan) of Level IV beds, where overcrowding poses the greatest security risks. Under our approach, there would also be much lower surpluses of medium-security (Level II and III) beds, compared to the Governor's proposal. Based on our estimates, our plan would result in a deficit—although a much smaller one than currently exists—of Level I beds. However, these low-security offenders could be housed safely in the surplus capacity of Level II or III beds.

**Figure 9**  
**Comparison of Prison Beds Administration Versus LAO Proposals**

	Bed Surplus (+) or Deficit (-)	
	Administration	LAO
Level I	2,100	-1,200
Level II	11,600	1,400
Level III	13,300	5,300
Level IV <sup>a</sup>	-3,800	1,900
Reception center	4,100	2,500
Female	4,900	800
<b>Totals</b>	<b>32,300</b>	<b>10,700</b>

<sup>a</sup> Includes Security Housing Unit and Protective Housing Unit.

**Lower State Costs.** Our proposals would cost much less than the Governor's package. Were the Legislature to adopt all of our recommendations—as well as to approve the projects for which we are withholding any recommendation pending the Legislature's receipt of additional information—the state would save about \$189 million General Fund in the budget year (including recommended modifications to the adult probation grant proposal discussed in the "Local Assistance Programs" analysis later in this chapter). In addition, capital outlay costs would be reduced by about \$2.1 billion due to reduced infill construction and cancellation of the CIC project. This would result in average General Fund savings of approximately \$150 million for debt service annually, though the exact amount would depend on the timing of bond sales and interest rates. Figure 10 displays the amount of savings generated from each component of our alternative.

**Obtain Information on Operating Impacts.** We recommend that the Legislature direct the administration to provide it with estimates of the future operating costs for some of the major components of its plan. Absent this information, it will be difficult for the Legislature to fully assess the fiscal implications for the state of the new facilities proposed in the Governor's prison capacity plan.

**Figure 10**  
**Fiscal Impact of LAO Option**  
**Compared to Governor's Package**

(In Millions)

Changes Made Under LAO Alternative	Capital Outlay	2007-08 State Operations
Infill housing and infrastructure for only Level IV and reception centers	-\$1,967	—
Technical changes to parole discharge and diagnostic policies	—	-\$169
Redirect existing death row funding to build Level IV beds <sup>a</sup>	-117	—
Make probation grant a pilot program, divert some savings to Proposition 36 <sup>b</sup>	—	-20
Convert 5,000 Level III beds to Level IV	5	—
Make select low-level crimes misdemeanors <sup>c</sup>	—	—
Preliminary plans only for reentry <sup>d</sup>	—	—
<b>Total</b>	<b>-\$2,079</b>	<b>-\$189</b>

a Assumes creation of Level IV beds to house condemned and maximum security inmates.  
b Recommendation discussed in "Local Assistance Programs" analysis.  
c General Fund savings generated in out-years.  
d Assumes total project costs are \$1.6 billion as originally proposed.

## **The Governor's Capacity Package: A Look at the Details**

*In addition to assessing how the Governor's proposals fit together as a package, the Legislature should carefully consider a number of key issues relating to each of the specific components of the plan.*

Based upon our review of each of the Governor's proposals, we find that many have merit and fit into our alternative approach, at least to some degree. However, we raise concerns about various aspects of the proposals and have identified ways to modify and improve them. We examine the Governor's proposal to provide \$50 million for a new adult probation grant program in the "Local Assistance Programs" analysis of CDCR, and comment on the proposal for \$1 billion in lease-revenue financing for medical facilities as part of our analysis of the California Prison Receivership later in our analysis of "Adult Corrections." We discuss our findings and recommendations in regard to each of the remaining proposals below.

## Infill Housing and Infrastructure Improvements at Existing Prisons

*We recommend that the funding proposed for infill housing projects be reduced by \$1.7 billion, and funding for related infrastructure be reduced by \$225 million, to limit the projects to Level IV and reception center beds.*

*Proposals.* As shown in Figure 6 earlier, the Governor's plan includes \$2.3 billion in lease-revenue bonds to construct additional housing units at existing facilities to create capacity for an additional 16,238 inmates of varying security levels, primarily for Level I and II male inmates. Figure 11 shows the proposed housing total by security level. The department requests an additional \$303 million from the General Fund in 2007-08 to improve the infrastructure at those facilities—such as water and sewer systems—in order to support a larger population of inmates. Proposed trailer bill language also permits the conversion of the Northern California Women's Facility (NCWF) to a reception center or reentry facility for men. Currently, NCWF is being used as a satellite training academy.

<b>Security Level</b>	<b>Number of Beds</b>
Level I and II	10,420
Level III	2,223
Level IV	1,505
Reception center	2,090
<b>Total</b>	<b>16,238</b>

*Revised Fiscal Estimates Recently Provided.* On February 8, 2007, we received revised cost estimates for these projects, totaling about \$107 million less than originally proposed. At the time this analysis was prepared, we were continuing to review the revised proposal.

*Approve Only Level IV and Reception Center Infill Beds.* Consistent with our alternative prison capacity package, we recommend approval of a reduced level of funding (\$600 million, a reduction of \$1.7 billion) to construct only the Level IV and reception center infill housing. We further recommend approval of a reduced level of funding (\$78 million, a reduction of \$225 million) for the infrastructure improvement projects related to the Level IV and reception center infill housing. We recommend

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rejection of the infill and infrastructure proposals related to Level I, II, and III beds because, in our view, these beds will not be needed by 2012 if the Legislature approves the proposals related to parole discharge and the shift of inmates to jails. The department should also report at budget hearings regarding the basis for its revised cost estimates for infill and infrastructure projects. We will adjust our savings estimates based on further review of the revised fiscal detail supporting these proposals.

## **Reentry Facilities**

*We withhold recommendation on the funding requested to build reentry facilities so that the California Department of Corrections and Rehabilitation can provide the Legislature with key fiscal and operational details regarding these proposed new facilities.*

*Proposal.* The Governor proposes \$1.6 billion in lease-revenue bonds (or, alternatively, lease-purchase authority for projects) to create secure reentry facilities for an estimated 5,000 to 7,000 inmates. The reentry facilities would be smaller than other prisons in California which average about 5,000 inmates each and would be located near urban communities to which many inmates return after release from prison. Inmates housed in reentry facilities would be those serving the final months of their prison sentence prior to release or short-term parole violators. The facilities would provide inmates with services such as education, substance abuse, and job training to prepare them for successful reentry into the community.

*Important Details Lacking.* Research studies suggest that the establishment of reentry beds could benefit public safety by providing rehabilitation and other programs to assist inmates before they are released to the community. However, at the time this analysis was prepared, the department had not provided important fiscal and operational details regarding the proposal, such as specific facility locations, the length of stay and risk classification of inmates, the specific reentry programs that would be provided or required, or how the relatively expensive construction costs for these beds (\$229,000 to \$320,000 per bed) were estimated.

*Modify Reentry Proposal Based on Additional Information.* We withhold recommendation on this proposal until the department provides more information to the Legislature about these projects, including (1) the basis for its construction cost estimate, (2) the characteristics of their inmate population, (3) their proposed programs, and (4) the communities that have expressed interest in accepting a reentry facility. Based on this information, the Legislature can make a more informed decision about whether the proposals match the priorities of the state.

Should the Legislature decide to approve such projects, we recommend that it authorize only the General Fund resources sufficient for preliminary plans in order to provide oversight over these projects, given that they are not fully developed at this time. We estimate these costs to be about \$45 million. The Legislature should also consider whether parolees who have been returned to custody for parole violations might be the best population to place in these facilities. Parole violators as a group typically have a high need for services that could be provided in reentry centers, such as substance abuse treatment, education and vocational training, and employment services. Diverting parole violators from reception centers could also reduce the significant levels of overcrowding in those prison facilities.

### **Female Rehabilitative Community Correctional Centers**

*We recommend approval of the Governor's request for \$1.7 million in the budget year, but recommend that these funds be redirected to planning expanded programs for female parolees. We further recommend that the Legislature authorize only the community female beds needed each year to prevent overcrowding of female facilities.*

**Proposal.** The budget includes \$1.7 million and 14 positions to begin the planning and procurement process to contract with private or nonprofit organizations to house 4,350 additional female offenders in community facilities by June 2009. The facilities would be required to provide rehabilitation programs—such as education and substance abuse treatment—to address the specific rehabilitative needs of female offenders.

**Gender-Specific Approach Has Merit but Would Create Big Surplus of Female Beds.** The department's proposal appears to be consistent with research that recommends that corrections departments develop gender-specific policies, procedures, and programs designed specifically to address criminality of females. However, we are concerned that this proposal, along with other changes proposed by the Governor, would result in a surplus of 5,000 beds for female offenders, due particularly to the proposals to reduce the number of low-level offenders incarcerated in prison.

**Activate Female Beds Only as Capacity Is Needed; Redirect Funding.** The Legislature should provide resources to CDCR to activate only the number of female community beds needed to avoid creating a surplus of female beds. Our alternative prison capacity package assumes activation of no new female community rehabilitation beds by 2012 because the proposals to reduce prison population (parole discharge and shifting inmates to jails) will sufficiently reduce overcrowding in female prisons without a need for additional capacity. Nevertheless, we recommend that the Legislature direct CDCR to use the funding and positions requested

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in the budget year to expand community programs for female parolees in need of treatment and services. For example, the department currently contracts for the Female Offender Treatment and Employment Program (FOTEP), which has been found by researchers to significantly reduce recidivism rates of participants. (For more information on FOTEP and other parole programs, see our analysis of parolee employment programs later in the “Adult Corrections” analysis.)

### **Out-of-State Transfers**

*We withhold recommendation on the proposal for additional funding to house state inmates in prison facilities in other states. The budget request is overstated because transfers of inmates are well behind schedule and is likely to be adjusted at the May Revision.*

*Proposal.* The budget includes \$10 million in the current year and \$13 million in the budget year to transfer and house 2,260 inmates to prison facilities in three other states (Arizona, Oklahoma, and Tennessee). These figures reflect the additional cost for these beds above the amount the department would normally be budgeted for housing these offenders in state prison. Thus, the full cost of these contracts is \$31 million in the current year and \$60 million in the budget year. Most of these costs are based on the contracted rate of \$63 per inmate per day, estimated transportation costs of about \$900 per inmate flown to these facilities, and 64 new positions at CDCR primarily to administer these contracts and coordinate the transportation of inmates.

*The CDCR Behind Schedule on Transfers.* The Governor’s budget assumes that all 2,260 out-of-state beds will be filled by February 2007. However, it has already fallen behind that schedule. As of January 31, 2007, CDCR had transferred only about 350 inmates. As a result of these delays, the department’s budget is likely over-funded for the activation of out-of-state beds. The department identifies legal challenges as the primary reason for falling behind schedule.

*Withhold Recommendation until May Revision.* We withhold recommendation until the May Revision, at which time the department will update its estimated costs to house inmates in out-of-state facilities as part of the normal population budgeting process.

### **Elimination of Diagnostic Services for Counties**

*We recommend that the Legislature approve but further reduce the California Department of Corrections and Rehabilitation budget by 43 positions to reflect technical adjustments to a proposal to end diagnostic referrals of convicted offenders to state prison.*

**Proposal.** The Governor proposes to eliminate provisions of current state law allowing courts to send convicted felons to state prison for up to 90 days for diagnostic evaluation and treatment before they are sentenced. Under current law, CDCR is responsible in such cases for providing the court its diagnosis and a recommendation regarding the disposition of the inmate's case at no cost to counties. The department projects this change to reduce the inmate population by 205 inmates in the budget year, resulting in savings of \$4.2 million.

**Proposal Does Not Reduce Positions.** The administration proposes to reduce funding for CDCR based on the assumption that the inmate population will decline by about 200 inmates but does not adjust the number or classification of staff positions relating to housing and diagnosing this population.

**Proposal Requires Technical Adjustments.** We recommend that the Legislature approve this proposal to reduce state costs but with a further technical reduction of 43 positions.

## Changes to Parole Discharge Policies

*We recommend approval of the Governor's proposal to provide for (1) direct discharge from prison (no parole term) and (2) early discharge from parole for certain offenders. We recommend a further reduction to the California Department of Corrections and Rehabilitation's budget of \$169 million to reflect the projected reduction to the inmate population resulting from the adoption of this policy proposal.*

**Proposal.** The Governor proposes two changes to state law regarding the discharge of parolees from state supervision, resulting in combined state savings of \$52.5 million in the budget year from a reduction in the parole population.

The first proposal is to provide for direct discharge from prison—no parole term served—for inmates with a record of no current or prior serious or violent crimes or sex offenses requiring registration. (We are advised that trailer bill language to implement this proposal is being revised to reflect this approach.) The second change would mandate the discharge from parole supervision for certain parolees who have served 12 consecutive months without revocation or placement in an in-custody program (or who have received other sanctions in lieu of revocation) for a violation of parole. This second change would apply only to parolees whose most recent term in prison, as well as any prior terms, were for offenses that were not serious or violent or sex offenses requiring registration. The administration indicates that these parole changes for low-level offenders would bring California's parole practices more in line with those of other states.



Both of the administration's proposals would go into effect at the beginning of the budget year. The department estimates the first change in statute would reduce the parole population by 22,300 parolees, and the second by about 4,400, in the budget year. These estimated savings would grow in the subsequent years.

***Proposal Does Not Include Prison Savings.*** The department's budget proposal does not recognize the full savings that would be likely to result from these policy changes. First, the budget proposal does not recognize that these proposals would be likely to reduce the prison population. That is because a reduction in the parole caseload would mean that fewer parolees would be returned to prison for parole violations. The department has estimated that these changes in parole rules would reduce the prison population by about 8,100 inmates (for prison savings of \$164 million) in the budget year, growing to 11,400 inmates (for prison savings of \$230 million) in 2009-10. However, CDCR did not include these savings in its budget.

The savings assumed in the budget plan from these proposals are also understated because they are based on current-year estimates of costs rather than updated budget-year estimates. We also note that the department's proposal does not reduce parole division positions to reflect the assumed significant reduction in the parole population.

***Reduce Budget by Additional \$169 Million.*** We recommend approval of the administration budget proposal and related legislation to discharge certain offenders from parole. We believe it offers a reasonable trade-off of significant budget savings at relatively little risk to public safety and would make California's parole policies more consistent with those of other states. However, we recommend that the Legislature adopt further reductions in the CDCR budget amounting to about \$169 million and 2,266 positions to recognize the additional related savings on prison costs and the fewer number of parole agents and other positions that would be needed as parole caseloads declined. Our recommendation for additional savings includes technical adjustments using the full budget-year cost for inmates and parolees.

## **Shift of Adult Offenders to Jail**

***The Legislature should consider modifying the administration's proposal to change sentencing laws to shift low-level offenders out of the state prison system in order to reduce the potential fiscal and operational impacts on county jail systems.***

***Proposal.*** The Governor proposes to change sentencing law to require that certain offenders sentenced to prison under current law would instead

be housed in county jails. Specifically, beginning July 1, 2008, offenders who (1) are convicted of specified felony offenses punishable by prison, (2) are sentenced to three years or less, and (3) have no prior convictions for serious or violent crimes or a sex offense requiring registration would serve their sentence in jail instead of state prison. Under current law, offenders convicted of the felony crimes specified in this proposal can receive prison terms of 16 months, 2, or 3 years. The specific prison term given depends on the circumstances of the crime and the criminal history of the offender. Under the Governor's proposal, these inmates would be sentenced to jail for "not more than three years." Probation—and in some cases misdemeanor jail terms and fines—would still be sentencing options.

The CDCR estimates this proposal would shift approximately 25,000 inmates from the state to local corrections systems, saving the state approximately \$500 million annually once fully implemented. Figure 12 shows the list of crimes specified under this proposal, CDCR's estimate of the number of offenders affected, and the average time served (including jail time served prior to being sent to prison) for these crimes by all state inmates under current law.

**Figure 12**

**List of Crimes Proposed for Shift to County Jails**

Crime	Estimated Inmate Population	
	Shifted to Jails at Full Implementation	Average Time Served <sup>a</sup> (In Months)
Drug possession for sale <sup>b</sup>	6,300	25
Drug possession	6,200	17
Vehicle theft	3,100	17
Petty theft with a prior	2,000	18
Receiving stolen property	1,900	15
Driving under the influence	1,400	17
Forgery/fraud	1,400	17
Grand theft	1,300	17
Hashish possession	700	12
Other property crimes	300	15
<b>Total</b>	<b>24,600</b>	

<sup>a</sup> Includes inmates who would be excluded from shift based on offense history.

<sup>b</sup> Includes sales of controlled substance and marijuana.

***Funding Policy for Counties Unclear.*** The shift of low-level state inmates to jails would benefit the state by relatively quickly reducing prison overcrowding as well as prison operating costs. The budget proposal states that the administration recognizes that this approach could result in additional operating costs for counties, and indicates that it will work with counties to address these costs. However, the administration proposal does not actually budget any funding for local operations and does not clearly indicate whether it intends to do so in the future. (The administration does propose funding to build additional jail facilities, although, as we discuss later in this analysis, few such improvements are likely to be completed by the time these changes in sentencing law would take effect.)

A number of counties are now subject to court-ordered or self-imposed inmate population limits on their jail operations that are resulting on a regular basis in the early release of offenders from jail. Absent additional funding from either the state or counties for the support of jail operations, as well as the construction of additional jail capacity, it is likely that the Governor's proposal would result in (1) additional overcrowding of jails and/or (2) additional early releases of some offenders from jails.

Also, it is important to note that the new sentencing structure providing felony terms of not more than three years provides broader sentencing discretion than prison sentences under current law, which are limited to 16 months, 2, or 3 years. It is unclear whether this discretion might lead to longer or shorter sentences on average than those received under current law.

In addition, it is important to consider whether the proposed legislation to accomplish this shift contains any provisions that could result in a local government mandate that would require reimbursement by the state. Current state law generally exempts changes in criminal penalties from mandate consideration.

***Jail Impacts of Sentencing Law Change Could Be Reduced.*** The Legislature may wish to consider whether it wishes to commit the significant additional funding that would be needed (for jail operations as well as jail construction) for counties to house the group of offenders affected by the Governor's proposal. Each state dollar committed to this purpose would in effect reduce the savings otherwise achieved by removing these offenders from the state prison system.

Our alternative proposal is to change the definition of some of the proposed crimes from felonies to misdemeanors to reduce the fiscal and operational impacts on county jail systems. (Our proposal excludes the categories of drug possession for sale and driving under the influence from consideration for reclassification because these crimes appear to be more serious than the others proposed by the administration.) Under our

alternative, offenders would serve a maximum of one year in county jail, less time than the maximum of three years proposed by the Governor. We note, however, that, in many cases, the time served under our proposed changes in sentencing law would be only a few months below the average terms actually being served in prison by most of these offenders under current law. We intend that our proposal constitute a change in criminal penalties that would not be considered a reimbursable state mandate under current state law.

In considering this proposal, the Legislature may also wish to consider staggering the implementation of these sentencing changes in order to phase in the impact to the county jails. This would delay the relief for overcrowding in the state prison system but would make it easier for county jail systems to absorb the new population as they activated new jail facilities, if they choose to do so.

### **Local Jail Expansion**

*We recommend that the Legislature conduct hearings to resolve key policy, operational and fiscal issues pertaining to the proposal for state assistance to build 45,000 new county jail beds.*

*Proposal.* The administration proposes \$4 billion in lease-revenue bonds for the construction of 45,000 local jail beds to address existing overcrowding at jails, as well as to provide additional jail capacity to accommodate the Governor's proposal to shift certain inmates to county jails (discussed earlier). (An additional \$400 million in bond funding would be provided for the construction of as many as 5,000 juvenile beds.) Local governments would be required to provide up to 25 percent in matching funds in order to access the state funds, totaling \$1 billion for adult jail beds, bringing the total state and county resources available for adult jail bed capacity potentially to \$5 billion.

*Important Questions Need to Be Addressed.* We discuss the proposal for additional juvenile beds in more detail in the the "Juvenile Justice" analysis later in this chapter. The proposal for additional adult jail beds raises a number of key policy, operational and fiscal questions for the Legislature to consider as we discuss later.

First, in general, what role should the state have in the building of jails, which is traditionally a local responsibility? The state has provided some jail construction funding in the past, but jail construction has generally been funded by local governments. Given the state's current fiscal constraints, it is important to consider whether such projects are a state priority and the level of local matching funds that should be required to obtain state assistance.

The proposed changes in sentencing laws that would shift part of the prison inmate population to jails in our view does justify some level of state help in constructing some additional beds. However, the timing of these two policy proposals is out of sync. The inmate shift would begin July 1, 2008, but it would likely take much longer than that for counties to complete the application and construction process necessary to build new jails beds. We note, therefore, that fewer beds, and lesser state assistance, would be needed under our proposed alternative version of these sentencing law changes. Our approach, which reverts these lower-level crimes to misdemeanors carrying shorter jail sentences than felonies, would lessen the need for additional jail beds and the impacts on jail operations.

A second concern is that, while law enforcement agencies have indicated that they support proposals for a large state-funded jail construction project, the administration has not provided the Legislature with its own independent analysis justifying 45,000 additional jail beds for adults. Nor has it provided evidence that the counties would have the funding available—about \$1 billion a year—to operate them.

We also note that the administration has not provided any justification for its estimated cost of \$5 billion for the jail beds. It is, therefore, unclear whether this level of funding (including the county match) would actually provide more or less funding than is needed to build the 45,000 beds that have been proposed.

***Hearings Needed to Gather More Information.*** We believe the provision of some state assistance to counties is reasonable, given the part of the proposal that would shift some adult offenders from the state to the local level. However, we withhold recommendation on the \$4 billion proposal at this time. We recommend that the Legislature conduct hearings to obtain additional information to determine whether, and to what extent, it wishes to provide state resources for construction of additional county jail beds. Specifically, the Legislature should request information from the administration, counties, and other stakeholders regarding the appropriate level of local match, the number of beds needed to relieve local jail overcrowding, actual costs to construct jail facilities, the capacity and interest of counties to operate additional jail space of this magnitude, and the coordination of this proposal with the proposed shift of prison inmates to jails.

## **Condemned Inmate Complex at San Quentin**

***We recommend canceling the condemned housing project at San Quentin and using the remaining funding authorized for this expensive project to build additional prison capacity for condemned and maximum-security inmates at a lower cost per bed elsewhere.***

**Proposal.** The budget requests an additional \$117 million to complete the construction of a new death row facility, known as the Condemned Inmate Complex (CIC), at the state prison at San Quentin. These new costs are due primarily to inflation and other increases in site construction costs. It is now estimated that, when finally completed, the project will cost \$337 million. According to CDCR, it has spent about \$15 million to date on the CIC project, leaving \$205 million in funding appropriated for the project available for our alternative approach. The CIC would have 768 cells, providing capacity for a total of 1,152 male inmates on death row. As of September 2006, there were 640 male inmates on death row.

**Costs for CIC Escalate Significantly but Do Not Add System Capacity.** While the Legislature has previously authorized the CIC project, important aspects of the project have changed, which we believe warrant reconsideration of the merits of the project. The estimated increase in construction costs of \$117 million represents a 53 percent increase in estimated costs since 2003 despite the fact that the department reduced the size of the project by 25 percent in 2005. At the revised project cost estimate, each CIC bed would cost almost \$300,000 to construct, more than twice the cost of other high-security beds. These higher costs are primarily due to the location of the project. In particular, engineering requirements are more challenging at San Quentin because of the instability of the soil. Also, labor and materials are more expensive in the Bay Area than other potential sites for such a facility.

Moreover, this high level of expenditure may not add to overall prison system capacity. We are advised that the state agreed in the project's Environmental Impact Report (EIR) to a restriction on the total number of inmates that can be housed at the San Quentin state prison (6,558). Consequently, even though the construction of CIC would allow the state to vacate the existing cells housing death row inmates, this agreement might prevent CDCR from using all of those cells to increase the prison's overall capacity.

**Cancel CIC and Build Death Row Capacity Elsewhere.** We recommend canceling the CIC project and using the remaining funding already authorized for this expensive project to build additional prison capacity at a lower cost per bed elsewhere. This could include (1) building a new death row complex at an existing prison or at a new site or (2) constructing new Level IV capacity and moving condemned inmates to Level IV housing.

Using the funds currently designated for CIC to build Level IV beds for both Level IV and death row inmates at another location would have significant benefits. The state could use these funds to obtain additional beds for both condemned inmates and Level IV inmates. As we have shown earlier (Figure 7), the Governor's plan does not resolve the current deficit

of Level IV beds. Based on our discussions with correctional experts, housing condemned inmates in Level IV facilities would be safe for staff and inmates if properly designed and staffed. In fact, one option would be to house condemned inmates with the Level IV population in a single facility. At least one other state, Missouri, takes this approach.

Our proposed approach would also allow CDCR to house its current and future condemned inmate population. The current death row housing unit could house other groups of inmates without violating the EIR, thereby adding more than 600 beds to CDCR's total capacity. Given the age and design of the condemned cells at San Quentin, these beds are probably best-suited for lower security inmates, and could help address the significant statewide shortage of Level I and II beds.

### **New Training Academy**

*We withhold recommendation on the Southern California academy proposal pending the Legislature's receipt of additional information on its construction and operational costs and the need for this facility.*

**Proposal.** The proposal includes \$58 million to construct a new training facility in Southern California for correctional officers and other personnel. (On February 8, 2007, CDCR provided a revised estimate of \$135 million for this proposal. At the time this analysis was prepared, we were continuing to review this proposal.) Currently, the state operates one primary correctional officer academy in Galt, as well as two satellite academies in Stockton and Susanville. According to the department, the activation of a new training academy would allow them to close the satellite academy in Stockton.

***A Southern Academy Could Make Sense, but Proposal Lacks Detail.*** The department has experienced high vacancy rates for correctional officers and other staff positions in recent years. According to a December 2006 report from the State Controller's Office, 2,200 correctional officer positions were vacant, up by about 500 from the same time last year. In addition, the department had an additional 700 vacancies in sergeant, lieutenant, and parole agent positions. High vacancy rates for these positions present significant fiscal and operational problems for the department and result in payment of additional overtime at a significant cost to the state.

According to the department, having its primary academy in Galt often makes it difficult for CDCR to recruit cadets from Southern California who may be unable or unwilling to move and be away from their families for the 16-week academy. Therefore, having an academy in Southern California could help the department recruit more officers and fill its vacancies.

While this proposal has merit, the department has not provided the Legislature with important details about the project. For example, the department has not identified how it estimated the proposed construction costs of \$58 million (revised to \$135 million). The cost of operating the new facility has not been identified, nor has CDCR indicated how many additional cadets would be trained annually in the new academy. Finally, the department has not identified the expected reduction in vacancy rates resulting from the expansion. We note that the Legislature approved \$58 million in the 2006-07 budget to expand training capacity at Galt.

***Withhold Recommendation Pending Additional Information.*** We withhold recommendation on the Southern California academy proposal pending additional information from CDCR regarding construction and operational costs, as well as more detailed information supporting the operational need for this facility.

## **Sentencing Commission**

***Should the Legislature decide to create a sentencing commission, it will be important that the enabling legislation provides for an independent agency, with balanced membership, that is appropriately staffed for the significant workload involved.***

***Proposal.*** The Governor proposes to establish a permanent state sentencing commission within CDCR in 2007-08. The commission would review and annually make recommendations on sentencing guidelines, provide analysis on the impacts of any proposed legislation affecting sentencing laws, and become the state's clearinghouse for sentencing data. The proposed trailer bill language directs the commission to review the proposed changes to parole discharge policies by October 2007.

The commission would be comprised of the Attorney General, the Secretary of CDCR, and 15 members appointed by the Governor representing the Legislature, law enforcement, victims, labor, and other groups. The Governor proposes \$457,000 and four positions in the 2007-08 budget for the operation of the commission.

***Sentencing Commission Has Merit, but Details Lacking.*** The creation of a sentencing commission in California has merit. The state's sentencing laws are complex, and changes in them could have wide-ranging impacts on state and local criminal justice agencies. Many other states have taken a similar approach, and California does not currently have an agency that carries out these activities.

Some additional information is needed by the Legislature in order to evaluate this specific budget proposal. This budget requests four positions—an executive director, researcher, analyst, and office technician—to



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staff the commission. One concern is whether four positions would be sufficient given the heavy workload that is proposed to be assigned to them. According to the department, sentencing commissions in other states with similar responsibilities have average staff sizes of about six or seven.

The Legislature may also wish to consider the independence of the commission and the balance of its membership. As currently proposed, the commission would not be an independent body, but a division of CDCR, which would likely be directly impacted by many of the commission's recommendations. As currently proposed, the Governor would appoint members to the sentencing commission. Legislative confirmation would not be required.

Our analysis also finds a discrepancy between this proposal and the administration's parole discharge policies. Specifically, the sentencing commission's report making recommendations about the discharge policies is due October 1, 2007, but the discharge policies would go into effect July 1, 2007.

***Ensuring That the Commission Is Independent, Balanced, and Appropriately Staffed.*** Should the Legislature decide to create a sentencing commission, it will be important that enabling legislation provides for an independent agency with balanced membership. It could do so by creating the sentencing commission outside of CDCR, perhaps as an independent department as was done with the Office of the Inspector General. The Legislature could ensure more independence and balance to the commission by requiring Senate confirmation of commissioners and ensuring that the membership of the commission, as detailed in legislation, reflects the broad range of stakeholders in the criminal justice system. A balanced membership is more likely to lead to recognition and acceptance of commission recommendations by the many stakeholders across the state.

We further recommend that the Legislature require the administration to provide justification for its request for positions and funding to support the commission to ensure that these resources are sufficient.

## **Conclusion**

Our analysis indicates that prison overcrowding is a significant short- and long-term problem today—one that will only grow worse absent significant actions by the Legislature and the administration. The Legislature has many approaches from which to choose, but, ultimately, we recommend that it adopt a balanced approach that includes proposals both to increase state prison capacity as well as to slow population growth. (For a listing of additional options to expand prison capacity or reduce the inmate population, see our publication, *California's Criminal Justice System*:

*A Primer.*) As the Legislature develops this balanced approach, it will be important to take steps that (1) reduce overcrowding today and in the near future but without overbuilding unnecessary capacity, (2) minimize the risk to public and institutional safety by ensuring that there is sufficient prison capacity for the highest security offenders, and (3) minimize the impact on the General Fund.

## THE CALIFORNIA PRISON RECEIVERSHIP: AN UPDATE

*The federal court appointment last year of a Receiver to take over the state's prison medical care system is already resulting in a number of actions intended to improve inmate care. There are uncertainties regarding the costs and savings likely to result from the actions of the Receiver, but the net effect is likely to be significant increases in state spending. So far, the Legislature has received only limited information about the fiscal implications of the changes in the medical system that the Receiver is pursuing. We discuss (1) our recommendations regarding various budget requests submitted to the Legislature relating to the actions of the Receiver and (2) key Legislative oversight considerations for the inmate medical system.*

### Background

*Court Appoints Receiver to Fix "Broken" System.* In April 2001, a class-action lawsuit, now known as *Plata v. Schwarzenegger*, was filed in federal court contending that the state was in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution by providing inadequate medical care to prison inmates. The court has ruled in the case that the state's prison medical care system "is broken beyond repair" and is so deficient that it results in the unnecessary suffering and death of inmates. Specifically, the court found, among other problems, that the California Department of Corrections and Rehabilitation (CDCR) medical system is poorly managed, provides inadequate access to care for sick inmates, has deteriorating facilities and disorganized medical record systems, and lacks sufficient qualified physicians, nurses, and administrators to deliver medical services.

The state agreed in 2002 to take a series of actions to settle the case, with the result that an estimated \$194 million has been added to the state budget from 2002-03 through 2006-07 to address the problems identified in inmate medical care. However, on the basis of further review of the performance of the medical system, the court found that CDCR had failed to comply with a series of its orders since 2002 to improve the inmate medical care system. The court concluded that on average one inmate a week had

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died and that many more had been injured by the lack of reliable access to quality medical care.

In February 2006, the court appointed a Receiver to take over the direct management and operation of the prison medical health care delivery system from the state and to develop a remedial plan, to be presented to the court by November 2006, for a new medical system that would improve medical care for inmates. The plan is to include a proposed timeline for implementing the new medical system and a set of “metrics” by which to evaluate the Receiver’s progress and success in upgrading inmate patient care. While the remedial plan is being developed, the court order directs the Receiver to implement short-term measures to improve medical care and to begin to restructure the health care delivery system. Although the Receiver’s appointment is deemed “temporary,” he has stated his belief that it is likely it will be many years before control of medical services programs reverts to the state.

***Scope of Receiver’s Authority.*** The *Plata* federal court ruled that the Receiver has the authority to “determine the annual CDCR medical health care budgets,” and specifically grants him the authority to spend money to implement changes in medical care. The court requires the state to pay “all costs incurred in the implementation of the policies, plans, and decisions of the Receiver.” The Receiver was granted the authority to hire and fire staff and contractors, to acquire and dispose of property, to develop information technology systems, and to seek waiver by the court of any state or contractual requirements that are impeding his progress in improving the inmate health care system. (The text box on the next page discusses how court-appointed receivers differ from special masters.)

The court order directs other state agencies—specifically the Department of Personnel Administration (DPA), the State Personnel Board (SPB), the Department of Finance (DOF), and the Department of General Services—to “fully cooperate” with requests from the Receiver for assistance in carrying out his duties or be subject to contempt proceedings before the court.

While the *Plata* Receiver has authority over the general *medical* care of inmates, including primary and acute care and treatment of chronic health conditions such as asthma, the federal court order does not provide the Receiver authority over *mental health or dental care* for adults or *any aspect of health care* for juveniles. That is because these areas of health care are separate CDCR operations that are the subject of other federal court cases. (See Figure 13 on page 85 for a summary of the other major class-action cases affecting CDCR health care.) However, because of the overlapping issues in these cases, such as the joint need for new facilities and improved clinician staffing, the Receiver and parties in the other cases are attempting to coordinate their actions.

## **How Receivers and Special Masters Differ**

A Receiver, such as the one appointed by the court in the *Plata* case, differs from special masters that have been approved in other legal cases affecting the California Department of Corrections and Rehabilitation (CDCR). A Receiver has direct executive authority, and acts in place of the Secretary of CDCR in regard to the management of the medical care system. We are aware of only a few federal court rulings involving prison systems that have involved the appointment of a receiver. They include a 1979 federal court order that made the Governor of Alabama the receiver of that state's prison system and the 1995 federal court appointment of a receiver for the Washington DC jails.

Special masters, such as the one appointed in a separate legal case known as *Coleman v. Schwarzenegger* involving improvements in inmate mental health care, are a more common remedy in such cases. Special masters monitor the compliance activities of other parties (in this case, CDCR). They lack, however, direct executive authority and must rely on the federal courts to order changes when they discover problems in compliance with court orders.

Court-ordered interventions in prison operations are subject to constraints in federal law under the Prison Litigation Reform Act (PLRA). The PLRA, among its other provisions, states that court orders to address prison conditions "shall extend no further than is necessary to correct the violation" and "shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system." Also, PLRA specifies that federal law does not authorize the courts to order the construction of prisons or to raise taxes to remedy problems.

## **Where Are We Now?**

### ***A Status Report on the Receiver's Actions***

A nonprofit corporation, called the California Prison Health Care Receivership Corporation, has been created as a vehicle for operating and staffing the Receiver's operation. A November 2006 report to the court listed 20 direct employees of the Receiver and 6 contract staff who were working for the corporation. The report identified a widening array of short-term actions which have been taken to improve inmate patient care.

**Figure 13****Major Class-Action Cases Affecting CDCR Health Care**

All of the following legal cases pertaining to the California Department of Corrections and Rehabilitation (CDCR) health care are active and involve ongoing compliance and monitoring activities under the jurisdiction of the federal courts:

- **Plata v. Schwarzenegger.** Filed in 2001, the *Plata* case contends the state failed to meet U.S. constitutional standards for medical care for inmates in the California prison system. The state and plaintiffs agreed to settle the case in 2002, with the state agreeing to remedial actions. But, the federal court appointed a Receiver in February 2006 to take direct control of the prison medical system after finding that CDCR had failed to comply with prior court orders to improve inmate patient care.
- **Coleman v. Schwarzenegger.** The *Coleman* case, filed in 1992, involves allegations that the state prison system provided constitutionally inadequate psychiatric care for inmates. A federal court found the state to be in violation of federal constitutional standards for inmate medical care and established a special master in 1995 to monitor state efforts to remedy the problems. The state implemented a series of remedial actions, which are still continuing.
- **Perez v. Tilton.** The *Perez* case, filed in 2005, contends that CDCR provides inadequate dental care to prison inmates. The lawsuit was filed concurrently with a settlement agreement between the state and the plaintiffs. The agreement requires the state to phase in new policies and procedures statewide over six years to improve the quality of dental care and access to care for inmates.
- **Farrell v. Tilton.** In 2003, plaintiffs in the *Farrell* case filed suit contending that the state provided inadequate care and ineffective treatment to wards held in state juvenile institutions. This case involved a number of different issues relating to high levels of violence in juvenile facilities, wards with disabilities, and other matters, but also included allegations of problems in medical care and mental health care. The state entered into a consent decree to settle the case in 2004 and agreed to develop and implement improvements in six areas, including changes in health care and mental health treatment.

*How the Medical System Is Changing.* The actions taken to date by the Receiver to revamp CDCR's medical services system are summarized in Figure 14 (see next page). They include efforts to improve contracting with medical providers, create a new system for managing pharmaceuticals provided for inmates, increase pay to help fill vacant medical positions, and modify the staffing classifications used to provide medical services. The Receiver has also focused on testing a number of new approaches for

improving inmate medical care at the San Quentin prison that include these and additional components.

**Figure 14**

### **Summary of Key Actions to Date Taken by the Prison Medical Care Receiver**

- **Nonprofit Corporation.** Established the California Prison Health Care Receivership Corporation, a nonprofit entity, and hired employees and contract staff for its operation.
- **Pharmacy.** Commissioned an audit of correctional pharmaceutical services and awarded a contract to a vendor to improve and manage pharmacy operations. In so doing, the Receiver also halted a previously approved \$22 million information technology project to track the medication of inmates but has a new effort under way to do so.
- **Contracts With Community Providers.** Paid outstanding invoices (at one point, amounting to \$100 million) owed to contract medical providers in the community, renewed expiring agreements with providers for such services, and awarded a contract for a new electronic contract management system.
- **Salaries.** Increased the range of salaries for various clinicians, and implemented salary increases for nurses, pharmacists, and other clinicians for the purpose of reducing the number of vacant positions.
- **New Positions and Reclassifications.** Established 300 new correctional licensed vocational nurse positions to take the place of medical technical assistants who have both medical and custody duties, as well as various other new and reclassified positions in the medical system.
- **Shifts in Management Authority.** Assumed direct, day-to-day management of some components of the California Department of Corrections and Rehabilitation medical system, including physician and nursing operations.
- **Plata Compliance Unit.** Created a Plata Compliance Unit that reports directly to the Receiver that carries out medical recruitment and hiring, certain personnel functions, medical staff investigations and discipline, and processing of medical contracts.
- **San Quentin Pilot Programs.** Implemented pilot projects at San Quentin state prison intended to improve the availability of staffing, medical supplies, and equipment; medical record-keeping; the process for screening and placement of inmates needing medical services; and the maintenance and cleanliness of medical care facilities.
- **New Facilities Planning.** Initiated planning for new medical facilities, including up to 5,000 medical and 5,000 mental health beds, a 50-bed treatment center at San Quentin, and a pharmaceutical distribution facility.

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In some cases, the Receiver has implemented changes through direction to CDCR medical system managers. In other cases, such as physician and nursing care, he has indicated that he has assumed direct day-to-day control of medical and nonmedical functions, with CDCR staff reporting directly to his office. The Receiver has also expedited the implementation of his orders by using authority provided by the federal court in the *Plata* case to waive or deem his operations not subject to state laws and regulations relating to civil service, salary-setting, competitive bidding of contracts, and the development of information technology projects.

***Capital Outlay Projects Being Planned.*** The Receiver is still developing plans, outlined in his regular progress reports to the court, for projects to obtain or build new medical facilities of various types. The most important of these involves the direction the Receiver has given to CDCR staff to develop and submit a plan to site, design, and construct up to 10,000 “health care beds”—5,000 medical beds related to the *Plata* case and 5,000 mental health beds relating to the *Coleman* case—within three to five years at up to seven sites across the state (six state prisons and one former youth institution site). At the time this analysis was prepared, neither the Receiver nor the court had determined exactly what type of medical beds and facilities would be constructed, including how many, if any, of the additional beds for inmates would be licensed medical beds. (However, CDCR did release a plan in late January with an as yet undetermined cost to add more than 4,000 mental health beds to respond to court orders in the *Coleman* case.

In addition, the Receiver is proposing to build a 50-bed correctional treatment center at San Quentin, estimated to cost about \$140 million, that would also provide new space for mental health and dental care practitioners. He also has stated his intention to obtain 500 additional “step down” beds in the short term (either on the grounds of state prisons or in the community, such as in hospital buildings that have closed) for recovering inmates who could be shifted out of more expensive acute care medical beds. A new facility for the centralized distribution of pharmaceuticals is also planned. To help carry out such projects, the Receiver has proposed to establish a new health care capital outlay unit—estimated by CDCR to require 130 new staff positions as well as additional funding for contracts for environmental and project management services.

***Remedial Plan Delayed.*** The federal court had initially set a deadline of 180 to 210 days (in other words, October to November 2006) for the Receiver to submit his remedial plan, time line, and metrics to the court. However, the Receiver requested and was granted an extension of time by the court, citing, among other factors, the complexity and magnitude of the task of devising a new approach to medical care for prison inmates. Under the revised process that was approved by the court in December,

the Receiver is to present a “first proposed” remedial plan and proposed metrics to the court by May 15, 2007, with a “revised” plan to be submitted to the court by November 15, 2007.

## ***The 2007-08 Budget Proposal for Plata Activities***

The Governor’s budget would provide a combined amount of about \$152 million in operating funds from the General Fund for CDCR and other state agencies to implement and respond to the actions of the *Plata* Receiver and federal court in 2007-08. In addition, the budget plan proposes \$1 billion in lease-revenue bonds for capital outlay projects to carry out decisions relating to *Plata* and the other legal cases affecting inmate health care. Below, we discuss the budget actions taken as part of the enactment of the *2006-07 Budget Act* in response to the appointment of the *Plata* Receiver, and then describe the additional expenditures for these activities proposed in the Governor’s 2007-08 spending plan.

### **Funding Provided for Receiver in 2006-07**

The *2006-07 Budget Act* established a separate item in the CDCR budget (5225-002-0001) for health care services programs for inmates. This includes the medical care services programs subject directly to the control of the Receiver as well as mental health and dental care services that continue to be administered by CDCR with some direction from the federal courts. The budget act provided about \$1.5 billion from the General Fund for these programs, including the separate scheduling of \$100 million in an unallocated reserve to support new initiatives undertaken by the Receiver.

Statutory language in the budget act authorizes the DOF to transfer funds out of the \$100 million unallocated reserve for purposes determined by the Receiver, including to departments other than CDCR. These funds are available for both support and capital outlay purposes. The language requires that notice be provided by DOF to the fiscal committees of the Legislature within ten days of any transfers of funds from the unallocated reserve. Also, immediate notice is to be provided if DOF determines that the \$1.5 billion provided in the budget item is being spent at a rate that would expend the resources before the end of the fiscal year. As shown on Figure 15, various actions of the Receiver and the federal court orders in the *Plata* case had resulted in the transfer of about \$50 million from the reserve at the time this analysis was prepared.



## Figure 15 Funding Transfers by Receiver

*Transfers Requested August 2006 Through January 2007  
(In Millions)*

Purpose of Transfers	Transfer Total
Increase medical staff salaries (not including physicians).	\$24.7
Establish 300 new positions for prison licensed vocational nurses.	12.3
Fund software and related services for new health care contracts tracking system.	5.7
Establish 41 new positions for San Quentin prison pilot projects to improve inmate care.	3.0
Replenish fund to support Receiver staff and expenses.	3.1
Establish 16 registered nurse positions at Correctional Training Facility.	1.2
Establish staff counsel and locksmith positions at San Quentin.	0.2
<b>Total</b>	<b>\$50.3</b>

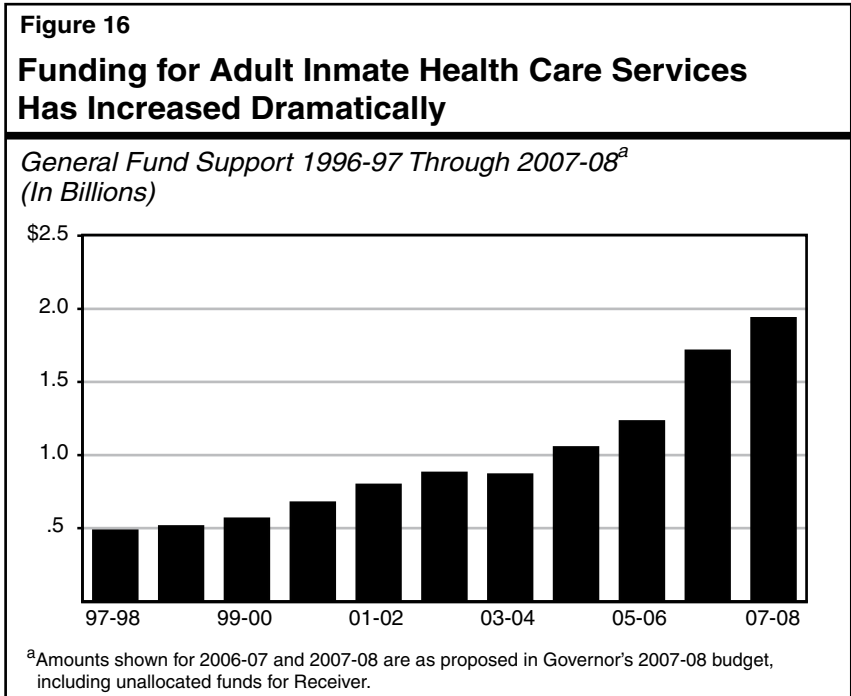
Detail may not total due to rounding.

### 2007-08 Budget Plan Requests Relating to the *Plata* Case

The 2007-08 budget plan goes beyond setting aside funding to directly implement the orders of the *Plata* Receiver and federal court. It also sets aside funding for other efforts to respond to their actions, such as increasing salaries for medical clinicians in other state departments so they do not shift to CDCR to obtain higher pay. Below, we describe the requests included for additional funding in the budget plan for CDCR as well as for several other state agencies. These include a revised plan for 2006-07 and a new plan for 2007-08.

***Additional Funding for CDCR in 2006-07.*** The budget plan proposes a new appropriation from the General Fund to replace the \$50 million transferred out of the unallocated reserve for initiatives by the Receiver. (We discuss some fiscal issues relating to the use of this reserve later in the analysis.) This would bring the total resources available to the Receiver in 2006-07 to \$150 million. In addition, about \$1.3 million in additional funding is proposed in the current year to bring the salaries for various medical clinicians in CDCR's Division of Juvenile Justice (DJJ) to the levels ordered in the *Plata* case for adult clinicians to prevent them from leaving DJJ for higher salaries.

**2007-08 Funding Requests for CDCR.** The Governor's budget proposes to spend \$1.9 billion General Fund in 2007-08 for health care services, including the components controlled by the Receiver as well as mental health and dental care for adult inmates. This amounts to an overall increase of about \$222 million, or 13 percent, over the revised proposed current-year level of spending for these programs. This continues a trend of significant increases in health costs for CDCR in recent years, as shown in Figure 16. (Adult inmate health care costs would have quadrupled over ten years if the funding level proposed in the budget is enacted. The DOF has estimated that about \$194 million in costs were added to the health care system just as a result of decisions made in the *Plata* case before the appointment of the Receiver.) A substantial part of the proposed increase in spending for 2007-08 is due to augmentations for mental health and dental care operations, but most of the increase is for medical care services under the direction of the Receiver.



The CDCR budget identifies proposals totaling about \$131 million that are related directly to the actions of the Receiver and the court in the *Plata* case. These proposals are summarized in Figure 17.

First, the budget plan proposes to carry forward the \$50 million increase in the unallocated reserve for new initiatives by the Receiver that is proposed for 2006-07 (keeping the total funding provided for this purpose at \$150 million). The spending plan would also provide about an additional \$50 million to reflect the cost in the budget year of various actions begun in the current year by the Receiver and the court to improve patient care. Also, about \$31 million is included in the budget plan to pay for pay raises ordered by the *Plata* court for various medical clinicians, and to provide commensurate pay raises for DJJ clinicians. The budget does not propose any changes in the level of spending provided for pharmaceuticals and contract medical services for CDCR inmates.

**Figure 17**  
**2007-08 Operating Budget Proposals**  
**Related to the *Plata* Case**

(In Millions)

	General Fund Cost
<b>California Department of Corrections and Rehabilitation (CDCR)</b>	
Increase unallocated funding reserve to \$150 million	\$50.0
Cost in 2007-08 of <i>Plata</i> actions to date in 2006-07	49.7
Pay raises for CDCR medical clinicians	31.1
Subtotal for CDCR	\$130.8
<b>Other State Agencies</b>	
<b>Department of Personnel Administration</b>	
Item 9800, augmentation for employee compensation <sup>a</sup>	\$20.8
Administrative workload related to receivership <sup>b</sup>	0.2
<b>State Personnel Board</b>	
Administrative workload related to receivership <sup>b</sup>	\$0.2
<b>Department of Finance</b>	
Administration coordinator on CDCR litigation issues	\$0.1
Subtotal for Other State Agencies	\$21.3
<b>Total Augmentations to Operating Budget</b>	<b>\$152.1</b>
<sup>a</sup> Affects Departments of Mental Health, Veterans Affairs, and Developmental Services.	
<sup>b</sup> Supported with reimbursements from the General Fund in the CDCR budget.	

In addition, the 2007-08 budget plan proposes \$1 billion for capital outlay projects to improve medical facilities in response to litigation, including the *Plata* and *Coleman* cases. The budget plan does not identify any specific projects at this time related to the *Plata* case, but assumes that any projects authorized would be funded entirely with lease-revenue bonds. The budget plan also does not reflect the recent administration proposal to add more than 4,000 mental health beds.

**2007-08 Funding Requests for Other Departments.** As shown in Figure 17, the budget plan includes about \$21 million from the General Fund related to the actions of the Receiver involving other state agencies and budget items. These include additional funding for DOF, SPB, DPA, Department of Mental Health (DMH), Department of Veterans Affairs (DVA), and Department of Developmental Services (DDS). (The DMH, DVA, and DDS funding is reflected in Item 9800 of the *2007-08 Budget Bill* for augmentations of employee compensation.) These augmentations are for (1) state administrative staff to help implement decisions of the Receiver and (2) salary raises to bring medical clinician pay in other agencies closer to the salaries provided for CDCR medical clinicians due to the *Plata* case to prevent them from leaving their agencies to go to CDCR.

## **State Faces Significant Fiscal Uncertainties Over Plata Actions**

Our analysis indicates that the Legislature faces significant uncertainties regarding the costs and savings likely to result from the Receiver's past and future actions. Only limited fiscal information about the costs of implementing many aspects of the Receiver's plans are now available to the Legislature. This information gap could pose a challenge for the Legislature as it attempts to fund these costs in the forthcoming budget plan.

Several examples discussed below demonstrate the fiscal uncertainties faced by the Legislature. Specifically, we discuss fiscal issues pertaining to the Receiver's own operation, the submission of budget proposals, the sufficiency of and expenditures from the Receiver's reserve fund, and auditing of expenditures. We also discuss our analysis of the likely fiscal impacts on the Receiver's decisions on CDCR and other state agencies as a result of his recent actions and proposed future projects. This includes how the net fiscal "bottom line" will be affected by savings resulting from his decision, as well as the remedial plan he is now drafting to improve inmate medical services.

**Data Available on Receiver Staffing but Not Other Activities.** As directed by the *Plata* federal court, some specific fiscal information about the costs of the Receiver's own operation has been reported in court documents. The reports to the court indicate, for example, that the annual

budget for the Receiver was initially set at about \$8.4 million for 2006-07 and that he is paying some compensation rates significantly higher than for comparable state administrative positions and state contracts. Figure 18 provides a summary of the compensation rates reported to the court by the Receiver. (The totals do not include additional compensation payments valued at 30 percent of their salary made in lieu of a benefits package still under development.) The Receiver has advised the court that this level of compensation is necessary to attract staff members with the knowledge and capabilities to revamp inmate correctional medical services.

**Figure 18**

### **Compensation Rates for Receiver Employees and Contract Staff<sup>a</sup>**

<b>Employees</b>	<b>Compensation</b>
Receiver	\$500,000
Chief Medical Officer	350,000
Chief Medical Information Officer	275,000
Chief Financial Officer	275,000
Chief Information Officer	275,000
Acting Health Care Project Officer	187,678
Director of Communications	180,000
Staff Attorneys (2)	150,000 <sup>b</sup>
Special Assistant to the Receiver	101,000
Inmate Patient Relations Manager	93,600
Project Coordinator	80,000
Administrative Assistant (2)	50,000 <sup>b</sup>
Administrative Aide	37,500
Staff Aide	35,000
Director, Custody Support Services	125/hour
Construction Analyst	75/hour
Custody Support Services Specialist (2)	75/hour <sup>b</sup>
<b>Contract Staff</b>	
Chief of Staff	\$250/hour
Medical Consultant	200/hour
Nursing Consultant	200/hour
Legal Consultant	100/hour
Financial Consultant	75/hour
Special Assistant	75/hour
<sup>a</sup>	Does not include additional compensation payments valued at 30 percent of salary while a benefits package is under development.
<sup>b</sup>	Amount per person.

***Budget Proposals Not Submitted Directly.*** Although the federal court order establishing the Receiver grants him budgetary authority, he has not directly submitted a specific budget request to the Legislature or Governor for 2007-08 for CDCR medical services. (He has indicated he will eventually begin to directly prepare and submit his own budget requests.) Therefore, the specific funding requests presented in the 2007-08 budget plan represent the administration's request for resources on behalf of the *Plata* Receiver. The DOF indicates that the 2007-08 budget requests are based upon DOF staff conversations with the Receiver and the Receiver's reports to the courts about his intentions.

***Sufficiency of Reserve Fund.*** While notice has been provided to the Legislature after the fact about the transfers of funding from the Receiver's reserve fund for new initiatives, the Receiver could not advise us at the time this analysis was prepared whether the \$100 million unallocated reserve would be more or less funding than he would need in 2006-07. Early in the fiscal year, the Receiver had reported to the court that the \$100 million set aside in the reserve might prove insufficient, but more recently he indicated that less than the full \$100 million might be used. Some additional expenditures beyond the \$50 million transferred so far are likely. Notably, salary increases authorized in October 2006 at the request of the Receiver for prison physicians could potentially cost the state tens of millions of dollars in 2006-07 (and thereafter). Likewise, the Receiver has recently approved a \$5 million per year contract (plus additional bonuses for good performance) for pharmacy management services that will require a funds transfer during 2006-07. Because of this and other potential costs, the administration has proposed (as we noted earlier) to increase the unallocated reserve fund total in 2006-07 to \$150 million.

***Expenditures of Transferred Funds.*** Little information has been made available to the Legislature on an ongoing basis regarding what expenditures of funds have actually occurred *after* they have been transferred out of the unallocated reserve. For example, about \$12 million was transferred at the request of the Receiver to establish 300 new prison licensed vocational nurses effective September 2006. However, several months later, none of the positions had been filled, making it unclear what portion of the \$12 million transfer will actually be spent in 2006-07.

***Potential Fiscal Impacts on Departmental Operations.*** It is also not clear at this time what fiscal impacts are occurring on a day-to-day basis as CDCR carries out the directions of the Receiver. These potential fiscal impacts include both expenditures of funds that could exceed the department's budget act appropriation from the Legislature as well as the redirection of existing CDCR resources that could eventually result in new budget requests to the Legislature.

For example, the Receiver has regularly given orders to officials at particular prisons he has visited to immediately remedy a lack of medical supplies or equipment. These directives could eventually result in aggregate expenditures by CDCR in excess of the amounts budgeted by the Legislature for these purposes. Because the Receiver is not required to estimate or report these fiscal effects to DOF, it will be difficult for DOF to track such additional spending and to promptly advise the Legislature in advance of overspending as required by statutory language in the *2006-07 Budget Act*.

Another potential fiscal impact relates to actions taken by the Receiver to redirect CDCR staff with other assignments to work on his projects to improve inmate medical care. One such example is his creation of a Plata Compliance Unit using various CDCR administrative staff. If such actions continue, it is likely to eventually lead to departmental requests for new and additional staff resources to replace the staff he is using.

***Fiscal Impacts of Future Projects.*** The reports of the Receiver to the court about his forthcoming projects often lack fiscal detail, sometimes characterizing fiscal impacts only on a broad order of magnitude and not estimating their cost at all. A full estimate of costs has not been reported to the court, for example, in regard to proposals he is developing to (1) establish a new 130-person CDCR unit to build new medical facilities, (2) construct up to 5,000 medical beds as well as another 5,000 mental health beds, (3) build a new medical center at San Quentin prison, and (4) acquire or build a pharmacy distribution facility. Nonetheless, we are advised by the administration that the Legislature will be requested to authorize at least some of these proposals within a limited period of time (reportedly by spring 2007, in the case of the new San Quentin building) upon their submission for funding.

***“Domino Effect” on Other State Health Care Programs.*** As noted earlier, the budget plan includes funding in 2006-07 and 2007-08 for a series of salary adjustments for medical clinicians working at DJJ as well as other state departments. We anticipate that the actions of the *Plata* court will continue to have a domino effect. By this term, we mean that, as the *Plata* case has resulted in higher salaries for CDCR’s medical clinicians, administrators of other CDCR health care programs as well as those of health care programs operated by other state agencies such as DMH are likely to seek increases in compensation to prevent their staff from moving to CDCR medical services to obtain higher pay. Our recent review of state personnel data shows persistently high rates of vacancies continue for medical services staff at CDCR. This suggests that the Receiver may eventually order additional increases in clinician pay. Any such actions by the Receiver are likely to affect staff salaries elsewhere within CDCR, as well as at DMH, DDS, DVA, and other state agencies.

***Auditing of Expenditures.*** At the time it established the Receivership, the *Plata* court required independent annual audits of the expenditures of the Receiver. At the time this analysis was prepared, the Receiver was still working out a plan with the Office of the Inspector General (OIG) to conduct these audits. Recent discussions suggest that the audit will be limited to the direct operations of the office of the Receiver. The court did not require that expenditures of the CDCR medical care system managed by the Receiver be subject to such audits.

***Some Savings Likely, but Not Reflected in Budget Plan.*** The Receiver has estimated that the state could achieve savings in the high tens of millions of dollars annually due to the implementation of his various efforts to improve inmate medical care. We agree with the Receiver's conclusion that some significant state savings are likely to occur as a result of the types of improvements he is planning for the inmate medical system. Expenditures for nursing registries to backfill for vacant positions should decline, for example, as salary increases attract more nurses to jobs at state prisons.

However, the 2007-08 budget plan submitted by the Governor does not contain adjustments to reflect any of the savings that the Receiver estimates will result in pharmacy operations or in contracting with community providers for medical services. The Receiver has recently advised us of his intention to redirect any current- or budget-year savings to finance other efforts by his office to improve inmate medical care.

In any event, the estimates of savings that the Receiver has reported to the court appear in some cases to be overstated. For example, the Receiver has reported to the court that the shift now in progress from medical technical assistants (MTAs) to nurses at prisons will result in \$39 million in state savings annually because nurses are paid lesser salaries and benefits. However, that level of savings assumes that 100 percent of all proposed new nursing positions are filled, an unlikely outcome despite the increases in nursing salaries he has implemented. His savings estimate also does not take into account the increase in custody staff that will probably be required to replace the custody functions previously handled by MTA positions that are now being abolished.

***Remedial Plan Key to Better Understanding Fiscal and Programmatic Impacts.*** The overall level of resources to provide in the 2007-08 budget for inmate medical services and related capital outlay will be difficult for the Legislature to assess until the Receiver has completed the specific remedial plan required by the court to remedy problems in the state's system of inmate health care. The State Constitution directs the Legislature to pass a budget plan by June. The delay in the completion of the remedial plan means that it now may not become available until May 2007, with revisions possible until November 2007. The Legislature, thus,



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is likely to have to make decisions about how much funding to appropriate for inmate medical services in 2007-08 before the costs and metrics included in the remedial plan have been fully assessed and before the plans themselves have been finalized.

As discussed earlier, a key component of the remedial plan required by the *Plata* court is the metrics that are to be proposed by the Receiver to measure the quality of inmate medical services and the improvement in that care as a result of changes that are made in the medical care system. After the state initially entered a settlement of the *Plata* case (prior to the appointment of the Receiver), the state, independent court medical experts, and the plaintiff's counsel together developed a detailed audit instrument that was to be used to assess the compliance by the state, on a prison-by-prison basis, with court orders to improve inmate care.

A prison was to be deemed to be in "substantial compliance" if it scored 85 percent on two separate audits using this instrument. All state prisons were to have been found in substantial compliance before the court case could be resolved.

In his regular reports to the court, such as on the San Quentin pilot projects, the Receiver has discussed the steps he has taken to improve inmate patient care, such as clearing up a backlog of referrals of inmates to specialty care. However, the Receiver has not reported to the court any specific metrics on the outcomes for inmate health care at San Quentin. Nor has he yet indicated whether the previously developed audit instrument, or new measures that have yet to be developed, will be the basis he proposes the court apply to measure inmate health care outcomes.

***The Bottom Line: Net Increase in State Costs Likely Through 2011-12.*** In November 2006, the Legislative Analyst's Office published its projections of state revenues and spending for 2006-07 through 2011-12 in our annual report, *California's Fiscal Outlook*. The report included our estimate that CDCR would incur a net increase in costs of about \$1.2 billion annually by 2011-12 in support of prison operations and lease-revenue debt payments related to ongoing litigation in the federal courts over prison health.

Our projections took into account several legal cases related to inmate health care, including the *Plata* case. They further reflected our estimates of the savings likely to result from changes in the inmate health care system as well as increased costs for medical staff salaries, anticipated new information technology projects, and capital outlay for new medical facilities that will be required by the courts. Although we did not separately project the costs of each pending legal case, a large segment of the increase in expenditures that was assumed in our forecast is related to the *Plata* case.

We will update our estimate of these costs and savings after the Receiver has announced his remedial plan and more is known about the specific projects and actions he intends to implement.

The Receiver has indicated that he concurs that there will be a net increase in costs for state operations and capital outlay after expected savings have been taken into account.

## **Analyst's Recommendations**

*We recommend that, to the extent that it is practical, the Legislature apply its standard budgetary processes to carefully review and act upon each support and capital outlay budget request submitted to it in behalf of the Receiver. Based on our reviews, we make specific recommendations on various budget requests relating to actions of the Receiver. In addition, we discuss the Legislature's key oversight and reform role in prison medical care.*

If spending increases of the magnitude we have estimated do result from *Plata* and the other court cases related to improving inmate health care, the Legislature faces difficult budgetary choices in the future. Increased spending on the activities mandated by the Receiver and various federal court cases could leave less funding available for the support of other state programs. This would particularly be problematic if the state is unable to address its ongoing structural operating deficit or if that deficit unexpectedly worsens sometime in the future due to an economic downturn.

The \$222 million (13 percent) increase in General Fund spending proposed in the 2007-08 budget plan for inmate health care, including the medical services under the direction of the Receiver, thus warrants careful consideration by the Legislature. Below, we discuss our recommended overall approach to the budget requests submitted on behalf of the Receiver, present our specific recommendations in regard to the 2007-08 budget request, and outline the key role that the Legislature could play in oversight and further reform of the inmate medical system.

## **Reconciling the Roles of the Receiver and the Legislature**

The Receiver and the federal courts are continuing to independently and actively exercise their authority over CDCR's medical services programs to bring inmate health care up to federal constitutional standards. Nevertheless, the Legislature continues to bear the responsibility under the State Constitution to appropriate funds and to enact an annual state budget to support a variety of state programs, including CDCR. Under these circumstances, one key question is how the Legislature can and

should reconcile its state constitutional role with the legal authority and actions of the Receiver and the federal courts in the *Plata* case in budgeting resources in 2007-08 for correctional medical services at CDCR. This question is particularly important given the Receiver's view that his appointment may continue for many years.

Based on our discussions with the Receiver and other state officials, we believe it is possible and desirable for the Legislature and the Receiver to exercise their respective responsibilities under a cooperative and mutually respectful approach that will strengthen fiscal controls over medical services programs as well as improve the quality of care provided to prison inmates.

Accordingly, we recommend that, to the extent that it is practical, the Legislature apply its standard budgetary processes to carefully review and act upon each support and capital outlay budget request submitted to it. Specifically, if the Legislature believes that a particular budget proposal submitted by the administration on behalf of the Receiver is overbudgeted or overstaffed on a workload or other technical basis, we believe that it should act to modify the proposed expenditures within Item 5225-002-0001 of the budget bill. In our view, the Legislature should also make appropriate adjustments in the future where additional costs likely to result from a budget proposal have not been recognized in a budget request, or where unrecognized savings are found.

## **LAO Recommendations on 2007-08 Budget Proposals**

*Support Budget Proposals.* Our recommendations in regard to the various 2007-08 operating budget proposals related to the *Plata* case are as follows:

- *CDCR Pay Raises.* We recommend approval of the nearly \$30 million provided in the CDCR budget to implement the pay raises for clinicians that have been implemented at the direction of the Receiver. We believe the amount of funding provided in the budget plan is based on a reasonable estimate of these costs.
- *Pay Adjustments for Other State Agencies.* We recommend approval of the \$21 million proposed in Item 9800 of the budget bill to help DMH and other state agencies operating medical programs to keep the salaries of their medical clinicians more in line with those of CDCR staff. We believe the amounts provided in the budget plan are a reasonable estimate of these costs, and that it makes sense to minimize the disruption that could be caused by a shift of clinicians from their medical program to CDCR. These funds would assist DMH, for example, in its efforts to hire ad-

ditional staff to comply with a federal consent decree to remedy civil rights violations in state mental hospitals.

- **Administrative Workload.** We recommend adoption of the proposals in the Governor's budget (as shown in Figure 17) to provide additional administrative resources to DPA, DOF, and SPB related to their workload resulting from the actions of the Receiver.
- **Unallocated Reserve.** We withhold recommendation at this time on the \$50 million in additional funding requested to bolster the Receiver's unallocated reserve fund to \$150 million for the budget year. Further information on the Receiver's remedial plan may be available in May.
- **Ongoing Costs of Receiver's 2006-07 Actions.** We withhold recommendation on the budget plan proposal to add \$50 million to the CDCR budget for the ongoing costs in 2007-08 of initiatives begun by the Receiver and the *Plata* court in 2006-07. We agree in concept with the proposal for making such adjustments. Between now and the end of 2006-07, however, the Receiver has indicated that he is likely to launch additional initiatives using the reserve funding available to him. This could increase the amount of funding needed beyond the amount reflected in the budget plan. On the other hand, it is not clear whether all of the funds that have been transferred from the current year, such as those for 300 new nurses, will actually be spent. Further information may be available at the time of the May Revision to appropriately adjust this budget request.

**Capital Outlay for Medical Facilities.** We withhold recommendation on the budget request for \$1 billion in lease-revenue bond funding because no specific capital outlay projects related to the Receiver have been submitted to the Legislature for its review. The \$1 billion included in the budget plan by the administration is essentially a placeholder amount until further decisions regarding new facilities have been made in the *Plata*, *Perez*, and *Coleman* court cases regarding health care facilities. (More detailed estimates of the costs of the 4,000 additional proposed mental health beds are expected this spring.) Once that has occurred, and more specific proposals are forthcoming, we recommend that the Legislature review the justification presented for the facilities and determine whether the proposals are consistent with federal law (in particular, the PLRA), the Receiver's remedial plan, and the orders of the federal courts.

Following this review, we recommend that the Legislature include in the state spending plan only the resources actually needed in the budget year for capital projects to move ahead in a timely manner. In many cases,

a construction project that takes several years to build would only require funding for site acquisition or preliminary planning. That approach would allow the Legislature to fully review the projects prior to providing funding for the working drawing and construction phases. This approach could require direct General Fund appropriations to initiate projects in 2007-08. In future years, the Legislature could authorize the financing of the latter phases of these facilities projects with lease-revenue bonds, as proposed by the administration.

Finally, we note that the actual cost of constructing new health facilities required as a result of actions of the Receiver in the *Plata* case and the other court cases is likely to be much higher than the \$1 billion placeholder amount in the Governor's budget. Our November projections estimated the collective cost of such projects at \$4.6 billion by 2011-12.

### **Legislature Has a Key Oversight and Reform Role In Prison Medical Care**

Separate and aside from the efforts of the Receiver, the Legislature has a key role in overseeing and furthering reform of CDCR's medical operations.

Specifically, we recommend that the Legislature conduct hearings on the draft plan proposed by the Receiver for improving the inmate health care system when it is available—possibly in May 2007. We believe such hearings could help the Legislature to better understand the fiscal and operational implications of the plan on CDCR and other state agencies, as well as the metrics recommended by the Receiver to measure improvements in inmate medical care. Also, if the audit plan worked out by OIG and the Receiver remains limited to the Receiver's own operations, we recommend that the Legislature request that the Receiver and the federal court agree to a broader audit of the CDCR medical care operations to provide greater financial and program accountability.

In addition, the Legislature may wish to build on its prior efforts to expand the cost-effective use of telemedicine for prison inmates. As we discussed in last year's *Analysis of the 2006-07 Budget Bill*, expansion of the telemedicine program has the potential to enhance public safety, generate cost savings, and improve inmates' access to care. Similarly, the Legislature may also wish to explore the opportunities for establishing a new electronic medical record system and to introduce other new technology, which if carefully designed and implemented, could both reduce state costs and improve inmate patient care.

## ENHANCING PUBLIC SAFETY BY INCREASING PAROLEE EMPLOYMENT

*Correctional experts frequently identify stable housing, sobriety, and employment as key factors in a parolee's success once he or she has been released to the community. In recent years, the Legislature and administration have expanded programs to address the problems of homelessness and substance abuse among offenders. However, less attention has been given to the problem of parolee unemployment. In this analysis, we (1) focus on this problem, (2) identify shortcomings of current programs, and (3) recommend actions the Legislature can take to increase parolee employment. (Reduce Item 5225-001-0001 by \$3.4 million. Increase Item 5225-001-0995 by \$3.4 million.)*

### **Importance of Parolee Employment**

*Most Parolees Are Unemployed.* In California and nationwide, there is ample research evidence that parolees have difficulty finding and maintaining stable employment. Studies of California parolees have found that from 20 percent to 40 percent of parolees are fully or frequently employed. At any given time, this means that approximately 70,000 to 100,000 parolees do not have regular employment. This stands in stark contrast to other research findings that about four-fifths of inmates have had some employment prior to their admission to prison. Importantly, even when parolees do get a job, they tend to receive significantly lower wages than similar workers who have not been incarcerated. Some studies estimate this wage differential for comparable work at about 10 percent to 20 percent.

Researchers have identified several reasons why parolees tend to have low employment rates. These include: (1) low education and employment skills before entering prison; (2) erosion of job skills while incarcerated; (3) limited participation in prison job skills and vocational programs; (4) stigma among employers who are reluctant to hire known offenders; (5) laws and licensing requirements that exclude ex-felons from employment in certain professions, such as real estate, nursing, and education; and (6) concentration of parolees within neighborhoods with high rates of unemployment and relatively few available jobs.

*Parolee Unemployment a Costly Problem.* New criminal offenses committed by unemployed parolees come at a high cost to the state correctional system as well as to society as a whole. In 2005, there were 81,000 cases in which a parolee was returned to prison. (This number includes some parolees with jobs, although probably most were unemployed at the time of their return. Also, because it is possible for a parolee to return to

prison more than once in a year, the number of individual parolees who were returned to prison would be lower than 81,000.)

Most of these parole returns were accomplished through administrative actions by parole agents and the state Board of Parole Hearings (BPH), although one-quarter were returned by the actions of the courts upon their conviction for a new crime. Inmates who are returned to prison by their parole agents and BPH can spend up to a year in prison, at an average cost of more than \$40,000 annually, although many are incarcerated for a few months at a time. Parolees who are convicted in criminal courts for new offenses spend an average of two years in prison. It costs the state approximately \$2 billion annually to incarcerate offenders returned to prison by administrative revocations and the courts.

A number of other costs as well as some revenue losses accrue to taxpayers, victims, and families when parolees fail to gain employment and commit new offenses. These include law enforcement costs to investigate crimes, apprehend offenders, incarcerate offenders in a local jail, and prosecute the offenses. Other costs include health care expenses for victims of crime, loss of tax revenues while offenders are incarcerated or unemployed, public assistance payments, damage to and loss of property, loss of earnings, as well as pain and suffering of victims and families.

Parolee unemployment and reincarceration can also negatively impact the families and children of offenders. Recent survey data indicate that the reported primary source of income for almost one-third of California parolees is support from family and friends. This is a larger number than those reporting employment as their primary income source. In addition, incarceration of parolees frequently results in placement of their children in foster care. Recent studies, for example, estimate that about 13 percent of all felony arrests involve a custodial parent of minor-age children.

***The Keys to Parolee Employment.*** Research evidence indicates that stable employment is an important key to successful reentry of offenders released from prison back into the community. Research consistently finds that a parolee who finds and maintains a steady job—and who also has stable housing and avoids substance abuse—is more likely to avoid subsequent offenses and to successfully complete his term on parole. Steady work provides income, activity, and stability which can reduce a parolee’s likelihood of committing new offenses. This view is echoed in research surveys of parolees—90 percent of whom reported in one study that employment is critical to their ability to stay out of prison—as well as our own discussions with parole agents and administrators.

The research literature not only identifies that employment is important to the success of parolees, but also identifies the keys to ensuring

stable employment for parolees. We briefly discuss each of these key success factors below.

- ***Pre-Release Planning and Preparation.*** Prior to his or her release to parole, it is beneficial to identify the skills and deficiencies of an inmate and implement a plan to assist them in preparing for employment after release. This can include plans to improve literacy, professional skills, as well as more general job-related skills, such as interviewing for jobs.
- ***Skills Development.*** Time that an inmate spends while incarcerated is time which can be used to make the inmate more employable through participation in education, vocational, and life-skills classes. This skills development can also begin, or be continued, after an inmate is released to parole.
- ***Job Placement Services.*** After an inmate is released to parole, he or she frequently needs assistance in finding employers in his area who will hire parolees with a particular set of skills and training.
- ***Focus on Job Retention.*** Some research has found that parolees have difficulty maintaining employment once hired. In response, some programs are providing follow-up services and incentives to support and encourage parolees to maintain employment.

## ***Current Employment-Related Programs***

The California Department of Corrections and Rehabilitation (CDCR) administers several programs to assist parolees in obtaining employment. Some of these programs—such as education and vocational programs—are in-prison programs designed to increase employment-related skills of inmates prior to release. Other programs involve pre-release planning and transitional programs for offenders prior to and immediately following their release to the community. The remaining programs are for parolees, and include, for example, employment referral programs. In all, we estimate that these employment-related programs, which are summarized in Figure 19 and described in more detail later, provide assistance to an estimated 144,000 participants annually. (As we discuss below, some offenders may have participated in more than one program during the period.) The availability, as well as intensity, of these programs varies across the state.

***In-Prison Academic and Vocational Programs.*** The primary employment-related programs available in prisons are academic education and vocational training. These programs are designed to provide inmates with literacy and professional skills which can assist them in jobs after release. In



addition, the Prison Industries Authority (PIA) provides work assignments to inmates to produce goods sold mainly to government agencies. The PIA is a self-funded program covering its costs from the sale of its goods and services rather than from a General Fund appropriation. Inmates working in some PIA industries can earn a vocational certification.

**Figure 19****Employment Programs: Budget and Participants***(Dollars in Millions)*

<b>Programs</b>	<b>2006-07 Program Budget<sup>a</sup></b>	<b>Annual Number Of Participants</b>
<b>Institution</b>	<b>\$138.5</b>	<b>27,600</b>
Academic education <sup>b</sup>	93.9	12,300
Vocational training	44.6	9,400
Prison Industry Authority	—	5,900
<b>Pre-Release</b>	<b>\$9.8</b>	<b>13,300</b>
Pre-release education	8.7	10,900
Offender Employment Continuum	1.1	2,400
<b>Transitional</b>	<b>\$23.9</b>	<b>82,400</b>
Parole Planning and Placement	14.9	33,500
Parole and Community Team	9.0	48,900
<b>Parole</b>	<b>\$60.5</b>	<b>20,900</b>
Parole Service Center	22.3	4,100
Residential Multi-Service Center	18.0	1,400
Female Offender Treatment and Employment Program	13.2	900
Computerized Literacy Learning Center	3.0	3,000
Parolee Job Program	2.2	6,600
Parolee Employment Program	1.8	4,900
<b>Total All Programs<sup>c</sup></b>	<b>\$232.7</b>	<b>144,200</b>

<sup>a</sup> All funds.

<sup>b</sup> The budget for academic education also includes administrative costs for vocational programs.

<sup>c</sup> Offenders can participate in multiple programs in a year.

**Pre-Release Programs.** The department offers some classes for inmates, in the months prior to release, that are intended mainly to provide them some of the key skills needed (such as job interviewing) to enter the world of work as well as realistic expectations about the job market for parolees. One pre-release program is operated by the department's education office. Another in-prison program, known as the Offender Employment Continuum (OEC), is operated by the parole division. The OEC used to include a post-release employment component. However, this component of the program was eliminated by CDCR due to the anticipated loss of federal funding, as discussed later in this analysis.

**Transitional Programs.** In 2006, the department began utilizing a new system to assess the risk and needs of parolees prior to their release from prison. The program is known as Parole Planning and Placement (PPP). The purpose of the PPP program is to identify (1) the appropriate level of supervision for the parolee and (2) the types and level of services the parolee will benefit from once released, such as housing assistance, anger management counseling, or job referrals. Parole agents are responsible for using the information provided by the risk and needs assessment to help make appropriate referrals to jobs and other programs and to provide other assistance to parolees once they have been released to the community. The PPP program also provides social workers in parole offices to assist those parolees identified as having the highest need for services and assistance.

Another transitional program operated by CDCR requires many parolees to attend a Parole and Community Team (PACT) meeting, typically within a month after release from prison. Local service providers, including those that can help parolees secure employment, are usually present at these meetings, providing an opportunity for parolees to connect with those services shortly after release from prison.

**Parole Programs.** The CDCR offers two job referral programs for unemployed parolees. The Parolee Employment Program (PEP) and the Parolee Job Program (PJP) refer parolees to local organizations or the state Employment Development Department (EDD), respectively, for job assistance. The department also operates Computerized Literacy Learning Centers (CLLCs) in parole offices throughout the state to assist parolees achieve a sixth-grade reading proficiency level that would make them more employable. Finally, the department offers several residential programs for parolees in which job preparation is frequently one component. These include (1) Residential Multi-Service Centers (RMSCs) for homeless parolees, (2) Parole Service Centers (PSCs) which are typically used for parole violators, and (3) the Female Offender Treatment and Employment Program (FOTEP) for female parolees with substance abuse problems.

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## **Budget Proposes General Fund to Replace Federal Funds**

The Federal Workforce Investment Act (WIA) provides states with federal funding for job-related programs. Most of these funds are designated for specific programs. The remainder are discretionary funds that can be used for other state employment related programs. A share of these discretionary WIA funds are currently the sole source of funding for four parolee employment programs (PJP, PEP, OEC, and CLLC), as well as a significant part of the funding of FOTEP. A total of \$9.7 million in WIA funding was allocated for these programs in 2005-06.

According to the department, the administration will reduce the majority of CDCR's WIA funding over the next five years and replace it with General Fund, beginning in 2007-08. In the current year, the five employment-related CDCR programs are expected to receive about \$9 million, reflecting a 7 percent decrease from the prior year. The WIA funding is proposed to decrease to about \$2 million by 2010-11—a 77 percent reduction below the initial funding level. The Governor proposes \$3.4 million General Fund in the budget year to replace WIA, growing to \$7.5 million in 2010-11. We discuss our recommendations related to this proposal later in this analysis.

## **Shortcomings of Current Programs**

Currently, employment-related programs operated by CDCR are beset by a number of problems. In particular, and as summarized in Figure 20 (see next page), there are shortcomings related to the current capacity of programs, limited program evaluation, problems with the mix of programs available, a lack of incentives in PJP, and weakness in casework management.

### **Capacity of Existing Programs Too Limited**

*Small Segment of Inmate Population Reached.* Our analysis indicates that the current set of CDCR employment-related programs reach only a small segment of the inmate and parole populations. For example, the CDCR now administers about 28,000 academic and vocational education program slots for inmates (including PIA). Thus, these programs are available to only about 16 percent of the inmate population, despite estimates that two-thirds of inmates cannot read at a high-school level and evidence that most will be unemployed following their release from prison.

Similarly, pre-release program slots, including OEC, are available to about 1,000 inmates at any given time. Because these programs are short in duration—usually taking a month or less to complete—the program

has an estimated capacity of about 13,000 inmates annually. With about 120,000 inmates released from prison each year, this means that pre-release programs can be offered to no more than one in ten inmates prior to their release into the community.

Capacity in parole programs is also limited. The two parolee job referral programs (PEP and PJP) we discussed earlier provide job training and assistance to about 12,000 parolees annually, resulting in about 4,000 job placements annually. In addition, the state has about 2,000 RMSC, PSC, and FOTEP beds statewide, providing housing and other services to about 6,000 parolees annually. In 2004-05 (the most recent year for which complete data are available), the CLLCs served only about 3,000 inmates statewide in literacy labs. In summary, these parole programs provide job-related services to about 21,000 parolees annually, despite the estimates we cited earlier of a total population of 70,000 to 100,000 unemployed parolees.

Importantly, even our estimate of 21,000 parolees being served by various employment-related programs is likely an overestimate. That is because (1) some program capacity is not filled because the state has not secured contracts for hundreds of the budgeted residential beds and (2) parolees frequently participate in multiple programs. It is also important to note that many parole programs are only available in certain regions of the state, leaving parolees in some communities without many of these resources.

**Figure 20**

**Shortcomings of Current Parolee Employment-Related Programs**

- ✓ Capacity of existing programs too limited.
- ✓ Evaluation limitations hamper strategic approach.
- ✓ “Mix” of programs to reduce unemployment not most cost-effective.
- ✓ Funding structure of Parolee Job Program does not provide incentives for good performance.
- ✓ Department could improve casework.

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## Evaluation Limitations Hamper Strategic Approach

*Available Data Shows Promising Results.* Some of the programs have been evaluated for their impacts on recidivism rates and employment outcomes. As regards recidivism rates, some available data indicate that existing CDCR employment-related programs are effective in reducing recidivism of individual offenders. For example, university researchers under contract to CDCR have completed evaluations of CLLC, OEC, PEP, RMSC, and FOTEP with promising results, including prison return rates as much as 16 percent lower for program participants compared to nonparticipants. An assessment of the employment outcomes of the WIA-funded in-prison and parole programs is also required by federal authorities. This is accomplished using data collected with assistance by EDD. These outcomes again are promising, with almost one-half of the participants in CLLC, OEC, PEP, PJP, and FOTEP succeeding in obtaining employment, and almost 70 percent of this group of parolees maintaining employment for at least the next three subsequent quarters.

These results are generally consistent with the findings in national research literature for employment-related programs similar to the ones utilized in California. For example, an analysis of the existing literature on various types of inmate and parole programs conducted by the Washington State Institute for Public Policy found that in-prison vocational training reduces returns to prison by 13 percent, and that in-prison academic education and job-referral programs for parolees each reduce returns by about 5 percent.

*Data Limitations Affect Program Implementation.* While the above data is certainly promising, our analysis indicates that its significance is somewhat limited by a couple of important factors. First, no program evaluations have been done at all for several CDCR programs, including PACT and PSC. Second, two of the programs that have been evaluated—OEC and PEP—have changed significantly since some of the evaluations were completed, suggesting that the prior evaluations of their results may no longer be relevant. Specifically, the OEC no longer has a post-release program component, and PEP (formerly called Jobs Plus) utilized different contract providers and some differences in contract requirements. Third, the database used by the state to track employment outcomes of CLLC, OEC, PEP, and PJP aggregates the data such that outcomes cannot be distinguished for each of these different programs. This means it is not possible to determine if some of these programs are more effective than others at providing employment. Fourth, the value of the evaluations was limited somewhat by their design. Specifically, the authors of the reports acknowledge the possibility of a bias in the results because program participants were not randomly assigned to the programs. It is thus possible

that the parolees selected for inclusion in the study were those more likely to succeed anyway in obtaining employment and staying out of prison.

***Limited Data Management Impedes Performance Evaluation.*** We are also concerned that CDCR does not consistently track parolee employment on an ongoing basis and use this data to evaluate the performance of employment-related programs and parole operations as a whole.

The department currently uses a parolee database called CalParole to collect certain information about parolees, including their criminal history, residence, and employment. However, parole agents report that the employment status of parolees is not always kept current in the CalParole database, typically because this administrative work is a low priority for agents as compared to their other work and responsibilities. Moreover, parole administrators report that they do not regularly review the parolee employment data in the CalParole system because they are concerned with the reliability of the data that has been entered.

The end result of these problems is that the department is unable to use CalParole or any other system to evaluate how well it is doing at keeping parolees employed in various parts of the state—information that would potentially allow it to make more strategic decisions about where to more effectively target its limited employment program resources.

### **“Mix” of Programs to Reduce Unemployment Not Most Cost-Effective**

***Most Programs Generate Net State Savings.*** The limited amount of capacity in employment-related inmate and parole programs reflects in part the limited funding dedicated to these purposes at a time of continued state fiscal problems. Given these limitations, it is important that program dollars be used in the most cost-effective way possible.

With this in mind, we have estimated the net benefit of CDCR’s employment-related programs to the state. Specifically, we compared the state’s cost to provide these programs to the savings that occur from reduced recidivism and reincarceration. Figure 21 shows the results of our analysis. The net benefit numbers represent the net savings (positive numbers) or costs (negative numbers) per program participant.

In reviewing our cost-benefit analysis, two factors are particularly important to note. First, we reiterate the point made above that the recidivism reduction benefits achieved by some CDCR programs may be overstated to the extent that the research results were biased because participants were not randomly assigned to the programs. Second, our analysis may nonetheless understate total savings from these programs because we estimated only savings to the state criminal justice system from

**Figure 21**  
**LAO Cost and Benefit Comparison**  
**Of Employment Programs**

<b>Programs</b>	<b>Estimated Cost Per Participant</b>	<b>Recidivism Reduction From Program After One Year</b>	<b>Net State Benefit (Positive Number Reflects Net Savings)</b>
<b>Institution</b>			
Prison Industry Authority	\$33,500 <sup>a</sup>	8% <sup>b</sup>	\$9,300
Vocational training	4,700	13 <sup>b</sup>	7,300
Academic education	7,600	5 <sup>b</sup>	100
<b>Pre-Release</b>			
Offender Employment Continuum	\$500	16% <sup>c</sup>	\$8,100
Pre-release education	800	N/A	N/A
<b>Transitional</b>			
Parole Planning and Placement	\$400	N/A	N/A
Parole and Community Team	200	N/A	N/A
<b>Parole</b>			
Parolee Employment Program (formerly JobsPlus)	\$400	15% <sup>c</sup>	\$7,700
Computerized Literacy Learning Center	1,000	10 <sup>c</sup>	4,400
Parolee Job Program	300	5 <sup>b</sup>	2,400
Residential Multi-Service Center	12,800	12 <sup>c</sup>	-6,300
Female Offender Treatment and Employment Program	14,700	12 <sup>d</sup>	-8,200
Parole Service Center	5,400	N/A	N/A
<sup>a</sup> PIA costs are offset by revenues generated from the sale of its goods. <sup>b</sup> Based on national literature for similar programs. California Department of Corrections and Rehabilitation programs not directly evaluated. <sup>c</sup> Based on evaluation conducted by researchers from California State University, San Marcos. <sup>d</sup> Based on evaluation conducted by researchers from the University of California, Los Angeles. N/A=Data not available.			

reduced reoffending. Our calculations do not attempt to include savings that occur for other agencies, groups, and individuals that are affected by reductions in crime, including local criminal justice agencies, health care systems, and crime victims and their families. We would note that some national research of correctional programs that includes estimates

of these benefits is consistent with our findings that vocational education, academic education, prison industries, and community employment and job training programs all yield significant net savings, ranging from net savings per participant of \$4,400 for community job programs to \$13,700 for in-prison vocational training.

***Funding Not Targeted to Most Cost-Effective Programs.*** Based on our analysis, we find that the most cost-effective programs are not the ones now receiving the most funding. For example, among institution programs, our calculations suggest that vocational programs yield significantly more net savings than academic education. (We note that the net benefit of academic education is somewhat understated because it includes administrative costs for other education programs, including vocational training and pre-release education.) However, the state spends twice as much for academic education as vocational training programs.

Our analysis finds that PIA programs generate the greatest net savings to the state. These savings are primarily the product of the reduced recidivism generated, as well as the fact that PIA is a self-funded program requiring no direct state funding for its operations.

The parole programs that appear to generate the greatest net benefit are the two job referral programs (PEP and PJP) and CLLC. Yet, these three programs receive a combined total of \$7 million annually, far less than the \$54 million invested in the three residential programs (FOTEP, PSC, and RMSC). Moreover, funding for RMSC and PSC has expanded in recent years, while funding for PEP and PJP has declined.

***Current Approach Limits Program Participation.*** These findings suggest that the state is investing the majority of its employment program resources in a less than efficient manner. The state is more heavily invested in the more expensive programs, yet these programs do not yield sufficiently better outcomes that would make them more cost-effective. The state has not invested as much in less expensive and comparatively more cost-beneficial programs. As a result, fewer inmates and parolees are able to receive employment-related training and services than could be bought, and the state is potentially facing higher return to prison rates than it would if it were more invested in the more cost-beneficial programs.

It should be noted that these findings do not necessarily imply that the Legislature should eliminate or reduce funding for programs that yield lower net savings, such as academic education, FOTEP, and RMSC. These programs provide services to inmates and parolees with specific needs that the other programs may not be able to provide. For example, academic education programs are important because inmates often cannot participate in vocational training without having achieved minimum levels of academic proficiency. Also, residential programs such as FOTEP



and RMSC provide parolees with a broader array of services—such as substance abuse treatment—than do parole job referral programs.

However, the data displayed above do raise important questions about the funding levels allocated within CDCR for employment-related programs. These data also suggest that future increases in funding should be prioritized for those programs that are shown to be the most cost-effective and that maximize the number of parolees who would benefit from such an investment of state resources. Finally, our analysis of this data reinforces the need for the state to obtain quality evaluations of its existing employment-related programs in order to better understand which ones are the most cost-effective. For example, we would note that the state is investing \$56 million in programs—PSC, PPP, PACT, and pre-release education—with no evaluations of their effectiveness.

### **Funding Structure of PJP Does Not Provide Incentives for Good Performance**

*Link Pay to Performance.* The PJP job referral program we discussed earlier is administered through an interagency agreement between CDCR and EDD. The EDD job specialists make job referrals for parolees in return for payments under the interagency agreement from CDCR. However, the payments to EDD for PJP job referral services are not contingent on EDD achieving success in the employment outcomes for parolees participating in this program.

In contrast, the payments made by CDCR under its other main job referral program—PEP—are tied to the performance of the program in its provision of employment services. The agencies that operate PEP programs are partly reimbursed by the state at a set rate for providing employment workshops and job referral services. But the majority of PEP payments to job placement agencies are based on their actual performance in placing parolees in jobs and their retention of that job for at least 20 days. This arrangement provides a significant incentive for PEP agencies to maximize these positive outcomes. No such incentive exists for PJP programs under its current payment structure.

### **Department Could Improve Casework**

*Agent's Responsibility Not Clear.* While CDCR operates a number of employment-related programs, their limited capacity and their unavailability in many parole regions means that much of the responsibility for job assistance to parolees falls upon parole agents. Yet, CDCR policy—the department's regulations and operations manual—are both largely silent

on a parole agent's case management responsibility in assisting a parolee to find and maintain employment.

For example, department policy does not specify whether parolees are to be required to obtain employment, or the appropriate response by agents when a parolee assigned to their caseload is unemployed. This lack of a clear written policy suggests, and conversations with department officials and employees confirm, that individual parole agents differ greatly in their level of involvement and extent of the assistance that they provide to unemployed parolees.

*Inventories of Employers Not Kept Consistently.* In addition, department policies do not require parole offices to maintain inventories of local employers in various professions who are known to be willing to hire parolees. Instead, some individual agents keep their own separate lists of such employers which (1) are not likely to be comprehensive and (2) could be lost to the office when agents retire or transfer to other parole units. This inconsistent approach to case management makes it more likely that some parolees will not receive sufficient assistance in obtaining and retaining employment that could reduce their odds of returning to crime and state prison.

## **Opportunities Exist to Increase Parolee Employment**

*Our analysis indicates that there are several steps the Legislature should take to increase rates of parolee employment, thereby improving public safety and generating state savings through the reduced incarceration of parole violators. These steps focus on continuing federal funding for these programs, targeting funding to cost-effective programs, looking outside of California for successful approaches, requiring the department to track parolee employment rates, improving the contracts for parole referral programs, and improving policies and procedures.*

## **Reject Proposal to Replace WIA Funds With General Fund**

We recommend that the Legislature reject the administration's proposal to reduce federal WIA funds for parolee employment programs by \$3.4 million and increase General Fund expenditures by the same amount in the budget year. As we discuss in our analysis of EDD in the "General Government" chapter, we have concerns with the administration's proposal to use WIA funds to establish new regional collaborative programs for which there is insufficient justification. Based on our cost-benefit comparison, we believe these federal funds would be better utilized for parolee-employment programs that reduce recidivism. Therefore, we recommend

reducing General Fund expenditures by \$3.4 million and increasing WIA funding in this item by the same amount.

### **Target Funding to Most Cost-Effective Programs**

Investment in effective parolee employment programs is likely to yield some long-term savings from reduced incarceration. However, given the state's current fiscal condition, it may not be practical to increase funding to expand the capacity of these programs in the short term. Therefore, in its deliberations on the 2007-08 budget, the Legislature should target the limited dollars already designated for employment programs in the most effective way possible. Relatively more funding should be allocated to the programs like job referral and vocational education which yield the greatest net benefit. Enhancing these programs would allow the state to achieve the greatest benefit for its investment in programs by targeting funding to those programs that can both reach a greater number of offenders and reduce recidivism more for each dollar invested.

Existing funds already budgeted for parole programs can be reallocated to expand such preferred programs without disrupting the programs already operating in the field. This is possible in part because CDCR has not been able to expend all of the resources now budgeted for RMSC and PSC beds. According to the department, as of January 2007, there were about 370 beds funded for these two programs which had still not been implemented. This equates to approximately \$8.5 million in unused funding annually that should be used to expand other programs.

The difficulties that CDCR has encountered in contracting for residential beds mean that even more resources could be redirected in the future to other, more cost-effective approaches to employment assistance. The Governor's "Recidivism Reduction Strategies" program, which was approved by the Legislature as part of the 2006-07 budget plan, had assumed that the \$1.6 million budgeted for RMSC beds in 2006-07 would grow to \$22.3 million in 2008-09. A portion of these anticipated future augmentations should be used instead for programs with better cost benefit results. Specifically, we recommend these future resources be directed toward in-prison academic and vocational education, as well as PJP, PEP, and CLLC.

We would also note that there may be opportunities to increase the net benefits of some programs by improving program design and implementation. For example, while studies have found that FOTEP significantly reduces recidivism rates for program participants overall, it is a much less successful program for female offenders with diagnosed mental health problems. This suggests that FOTEP outcomes—and, hence, its net ben-

efit—could be improved by directing these offenders to other programs and services, or possibly by adding a mental health component to FOTEP.

### **Consider Other Employment Assistance Models**

Should the Legislature decide to increase funding for parolee employment programs—in the longer term, for example, when state finances have improved—it should consider new approaches in addition to the expansion of the state's existing programs.

One such alternative we believe is worth considering is the assignment of a social worker to each state parole office. The duties of the social worker would include assisting parole agents in the identification of the services already available in the community to assist parolees with unemployment, homelessness, substance abuse, and other issues. We estimate that an appropriation of about \$15 million from the General Fund would be sufficient to add a social worker to all parole offices. Given the lack of evaluation data available, as well as the costs of this approach, the Legislature should consider a first step of testing a pilot project using this approach in a limited number of urban and rural offices.

Several states have developed other successful models for increasing parolee employment, thereby reducing returns to prison by parolees. This includes programs by which the state directly provides jobs and job training to parolees for a specified period after release from prison and until they transition into private employment. Jobs for parolees include maintenance and repair, grounds-keeping, and minor construction. In California, a similar approach could be piloted and include assistance prior to release with applying for these types of jobs in state and local governments. Other states have partnered with businesses and labor unions to provide training in prisons so that those inmates can work for those businesses or in that profession after their release to the community. For example, PIA could expand its recent efforts to create private business partnerships and connect inmates with employers who will hire them after release from prison. (For more information on a similar proposal by our office, see our 1996 report, *Reforming the Prison Industry Authority*.)

### **Require Department to Track Employment and Program Outcomes**

The CDCR reports that it has begun gathering additional data on the impact of its programs, particularly related to recidivism rates of program participants. This data should be provided to the Legislature for oversight purposes and to allow the Legislature to make more informed funding decisions about these programs at budget hearings.

In addition, the Legislature should direct CDCR to begin to more effectively track parolee employment and employment rates using the CalParole database already in operation. Tracking parolee employment more closely would allow the department to better assess the effectiveness of its employment-related programs and to compare the performance of different parole offices in regard to this important component of parole casework. The regular collection and reporting of this employment data would also provide the Legislature with a means to assess the magnitude of the unemployment problem, which types of parolees are at the highest risk of being unemployed, and which parole units within the state have highest rates of parolee unemployment. With such data, resources to address the parolee unemployment problem could be better targeted to where they are needed most. Of particular importance, CDCR should begin tracking and evaluating those programs for which no outcome data are available—PSC, PPP, PACT, and pre-release education.

Specifically, we recommend that the Legislature adopt Supplemental Report Language (SRL) directing CDCR to report (1) recidivism rates of individual participants in employment-related programs, and (2) parolee unemployment rates by parole unit using its existing CalParole system. We include proposed SRL below.

### **Improve Funding Process for Job Referral Programs**

We recommend that the Legislature direct CDCR to make two key changes to its job referral contracts to make them more effective. First, the department's contract with EDD should be restructured to make part of the payments contingent on the successful placement of parolees in jobs, similar to the way the PEP contracts are currently structured.

Second, we recommend that the Legislature direct that both the PJP and PEP contracts be modified by CDCR to provide stronger financial incentives for the retention of parolees in those jobs. The current PEP contracts tie part of the contract payments to evidence that a parolee has been retained in employment for 20 days. We believe a more appropriate retention standard for PEP would be 90 days. As noted earlier, the current PJP contracts include no incentives at all for retention. We recommend the same 90-day retention standard be established for PJP.

Our analysis suggests that adding such incentives to CDCR's job referral contracts would encourage its job referral agencies to increase follow-up services and support for parolees in new jobs—efforts which research shows is important to encourage parolees to maintain their employment and path to success. We include proposed SRL below.

## The CDCR Should Improve Policies and Procedures

In order to improve its case management for unemployed parolees, the Legislature should direct CDCR to modify its policies and procedures regarding parolee employment. The CDCR should clarify its policies that parole agents are responsible for assisting parolees with employment placements; referring parolees to jobs; encouraging parolees to retain their jobs; and imposing sanctions, when appropriate, on able-bodied parolees who fail to attempt to obtain work. In addition, the department should be directed to require all parole offices to create and maintain a central catalog of local employers that can serve as a resource for agents and parolees. This new duty could be assigned to the social workers we have proposed be tested as a pilot program in some parole units should the Legislature decide to fund such an approach. Improvement of CDCR's policies and procedures will result in better case management and reduce the likelihood of reoffending and the return of parolees to prison. We recommend the Legislature approve SRL directing the department to make these changes. The SRL proposed in this analysis is listed below.

*Item 5225-001-0001—California Department of Corrections and Rehabilitation.* The California Department of Corrections and Rehabilitation (CDCR) shall take steps to improve the likelihood that parolees will obtain and maintain employment. In order to accomplish this objective, CDCR shall (1) begin collecting employment and recidivism data for parolees statewide and by parole unit, including offenders participating in employment-related programs; (2) modify its contracts for job referral services so that a portion of the payments would be contingent on successful job placements, as well as job retention for at least 90 days; (3) update its policies and procedures to specify the responsibilities of parole agents in supporting the goal of parolee employment, as well as require all parole offices to maintain an up-to-date inventory of local employers who are willing to hire parolees; and (4) no later than March 1, 2008, provide to the Legislature a report identifying the progress made in implementing these changes and the employment and recidivism data described above.

## Conclusion

In future years, the Legislature may wish to further augment the budgets for CDCR employment-related programs in order to further close the gap between unemployed parolees and program capacity. However, before such augmentations are made, it is important that the department be able to demonstrate that it can fully utilize the resources it has to implement programs, as well as have more data demonstrating the effectiveness of its employment-related programs. If able to demonstrate the ability to implement successful programs, the department could then better justify additional program resources.

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## THE STATE HAS INADEQUATELY MAINTAINED ITS MAJOR INVESTMENT IN PRISON INFRASTRUCTURE

*The capital facilities of the adult prisons operated by the California Department of Corrections and Rehabilitation (CDCR) represent an investment in today's dollars of as much as \$20 billion. Despite having made this significant investment, the state faces a growing backlog of special repair work that now exceeds \$200 million. This is partly the result of an aging prison infrastructure and sustained high levels of overcrowding of facilities but also due to the way that CDCR has managed and organized the responsibilities of keeping its adult institutions in good repair. We recommend a series of actions by the Legislature to ensure that the state's major investment in adult prison infrastructure is protected.*

### Background

**Infrastructure.** The CDCR is responsible for 33 adult institutions, 8 youth facilities, 43 fire camps, and 5 prisoner-mother facilities, which together total more than 40 million square feet of building space. These institutions are very diverse in age, size, and mission. The adult institutions vary from the more than 150-year old San Quentin prison to the Kern Valley State Prison maximum-security facility (at Delano), activated in 2005. This CDCR infrastructure represents a significant state investment. The adult facilities alone, which are the focus of this analysis, would cost as much as \$20 billion by our estimate to fully construct new today.

**Importance of Maintenance.** Maintenance is a key component of management of the state's physical assets, including its adult prison infrastructure. Asset management specialists agree that the proper maintenance of infrastructure can delay the cost of replacement by prolonging the use of valuable assets. Maintenance can also minimize the cost of potentially more costly repairs.

Since prisons are 24-hour institutions, interruptions to facilities systems must often be fixed immediately before they pose a danger to health or safety. For example, a broken boiler can prevent the distribution of warm water at the institution—affecting kitchen operations, laundry service, or restroom facilities—and lead to a potential health hazard.

The value of maintenance thus is not only in protecting physical assets but also in allowing the functions of those assets to continue uninterrupted. Such interruptions constitute a major public safety concern. In some cases, the very security of facilities and their ability to house thousands of in-

mates in highly overcrowded settings could be put at risk by breakdowns in key building systems.

Nevertheless, even with proper maintenance practices, system breakdowns become more likely as infrastructure wears out or becomes obsolete. As such, the investment in maintenance required to ensure reliable use of the infrastructure normally increases over time.

**Several Types of Facility Expenditures.** The CDCR divides its expenditures on facilities into several categories that are detailed in Figure 22, including several distinct types of maintenance work, special repairs, and capital outlay. As shown in the figure, one key category of maintenance that prolongs the useful life of assets is preventative maintenance.

**Figure 22**

**Types of Expenditures on Facilities**

Preventative maintenance	Maintenance performed on a predetermined schedule that prolongs the use and capacity of a facility.
Corrective maintenance	Small-scale maintenance not done on a regular basis resulting from a breakdown of equipment.
Deferred maintenance	Maintenance resulting from not conducting preventative or corrective maintenance that is needed to bring a capital asset from sub-par conditions to needed service levels.
Special repairs	Large-scale corrective maintenance that is undertaken when a system fails.
Minor capital outlay	Projects under \$400,000 that increase the capacity of the facility.
Major capital outlay	Projects over \$400,000 that increase the capacity of the facility.

**Maintenance Funding.** As shown in Figure 23, CDCR now receives multiple and different types of maintenance funding for adult facilities amounting to roughly \$220 million in the current year. The funding for preventative, corrective and deferred maintenance is budgeted as an “allocation for maintenance” and distributed among institutions by CDCR headquarters. The funds for special repairs are provided in a separate



appropriation that is also distributed to institutions by headquarters. Staff positions for the maintenance and operation of prison facilities, and the funding to support them, generally remain stable from year to year unless changes are made through the budget process. A schedule of proposed purchases of new equipment for prison facilities is also prepared each year as part of the CDCR budget plan. Major and minor capital outlay funds are not discussed in this analysis, or included in the figure, because those funds are for new projects, not for the maintenance or repair of existing infrastructure.

<b>Figure 23</b>	
<b>Budget for Adult Prison Maintenance and Repairs</b>	
<i>(In Millions)</i>	
<b>2006-07</b>	
Plant operation positions	\$141
Allocations for maintenance <sup>a</sup>	36
Equipment	23
Special repairs <sup>b</sup>	21
<b>Totals</b>	<b>\$221</b>
<sup>a</sup> Actual expenditures can be less than allocations.	
<sup>b</sup> Includes one-time \$11 million increase to address backlog.	

**Governor’s Budget Proposal.** The 2007-08 budget proposes a \$46 million General Fund augmentation for support of various types of facility maintenance activities at CDCR. This includes \$12 million for special repairs, which is a \$1 million increase over the amount provided in 2006-07.

The administration indicates that it would use these additional resources to, among other actions, improve the maintenance of transformers, generators and other high-voltage devices; establish an ongoing maintenance program for roofing; repair and replace roads and parking lots; and perform other critical deferred maintenance work. The funding would be used to improve maintenance at both adult and juvenile facilities, although most of the money would go for the much larger system of adult prisons. A summary of the various components of the administration plan is provided in Figure 24 (see next page).

**Figure 24**  
**Proposed Budget Augmentations**  
**For Facility Maintenance and Repairs**

(In Millions)

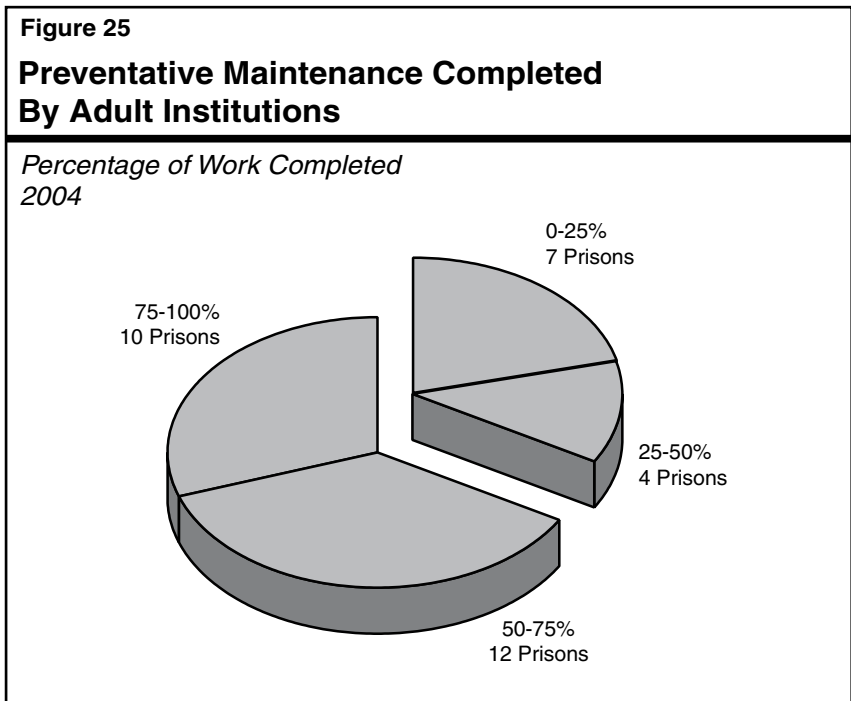
Program Component	General Fund
Continue and modestly increase 2006-07 augmentation for special repairs	\$12.0
Expand state inventory of parts and materials	10.0
Complete preventative maintenance and minor repairs on roofs	6.4
Increase preventative maintenance of transformers, generators, and other electrical systems	6.0
Create three regional teams to maintain heating, ventilation and air conditioning systems	5.9
Provide ongoing support for maintenance of electric fences	3.1
Establish pilot program to improve roads and parking lots on the grounds of state facilities	1.6
Improve maintenance of fire alarms and fire suppression systems	1.0
<b>Total</b>	<b>\$46.0</b>

### State Prison Facility Maintenance Lagging

For this analysis, we examined available data on CDCR adult institution maintenance, interviewed institution facilities operations staff, spoke with headquarters staff, visited adult institutions, and reviewed existing literature on asset management. The CDCR staff advised us that comparable data are not now available on the status of maintenance activities at its juvenile facilities, although anecdotal information and site visits to these facilities suggest the same issues regarding facility maintenance are a concern that warrants future review.

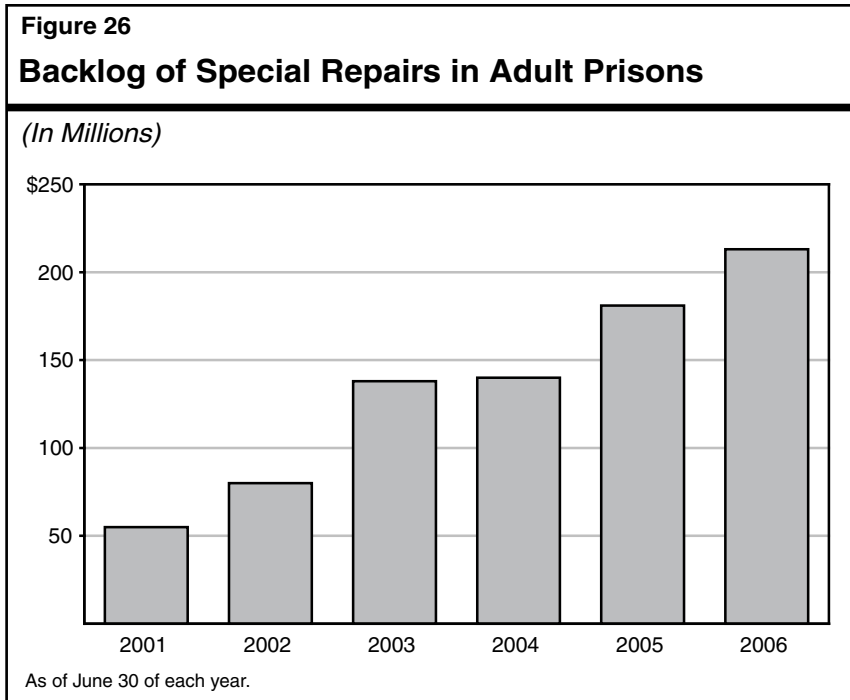
*Prisons Historically Poorly Maintained.* The data indicate that CDCR has handled its corrective maintenance workload fairly well, with adult institutions having completed about 90 percent of such work during 2004-05 (the most recent year for which there is complete data). However, CDCR data show that various other types of maintenance projects, especially preventative maintenance, are not being completed in a timely manner. For example, statewide during 2004-05, adult institutions did not complete 40 percent of their identified preventative maintenance work. On a prison-by-prison basis, about one-third of adult institutions completed

50 percent or less of their preventative maintenance during 2004-05, as shown in Figure 25.



***Ramifications of Poor Maintenance.*** The state's failure to perform preventative maintenance is becoming a liability for CDCR as small problems grow and require more costly special repairs. For example, by not completing preventative maintenance that might have fixed the small leak on a roof, some CDCR institutions have suffered water damage to their buildings. The CDCR's inability to complete preventative maintenance is contributing to more systems breakdowns. Eventually such breakdowns become special repairs, which are large-scale and more expensive replacements or repairs that are necessary for the continued operation of a facility.

Data we have reviewed indicate that CDCR's adult institutions currently have a combined backlog of more than \$213 million in special repairs. This is the amount of funding that would be required to complete all currently identified special repair projects needed to ensure the health and safety of facilities. As shown in Figure 26 (see next page), the special repair backlog has grown by nearly \$160 million over the most recent six-year period. As a result, the estimated cost of addressing the backlog has grown at an average annual rate of 37 percent (about \$32 million per year) during this period.



Our analysis indicates that the CDCR's current baseline budget of \$10 million for special repair projects in adult facilities is not enough to address the new projects and reduce the backlog built up over the years. With the current level of funding, the backlog would be likely to grow in 2007-08 and beyond.

### Special Factors Aggravating CDCR Maintenance Workload

The CDCR's backlog of maintenance and repair work is partly the result of certain special factors. These include an aging prison infrastructure, sustained high levels of overcrowding facilities, and additional wear and tear on facilities from destructive acts by some inmates.

***Aging Prison Infrastructure.*** As discussed earlier, as buildings age, the maintenance required to keep them in routine operation increases. Plumbing, electrical wiring, and other building systems degrade with age, requiring repairs or replacement. More than one-third of CDCR's adult institutions are over 40 years old, with some much older than that. Only 3 of the state's 33 adult institutions are less than 10 years old. Notably, most large-scale equipment, such as heating, ventilation and air-conditioning systems, and boilers, only have an approximate life span of 20 years.

Many of these aging structures are degraded beyond the normal wear and tear that would be expected due to factors such as poor maintenance or a failure to replace worn-out equipment.

***Prison Overcrowding.*** We are advised by correctional authorities that sustained high levels of inmate overcrowding of prisons is creating additional stress on key infrastructure systems, such as water mains, sewer lines, and electrical grids. The older institutions were built to a capacity of one inmate per cell, but currently regularly house two inmates per cell. Even newer facilities designed for two persons to a cell are also housing more inmates than anticipated in such spaces as gyms and dayrooms. This situation puts stress on the plumbing and other infrastructure. For example, sewage flows in some cases have exceeded the original design capacity of treatment and collection systems.

***Deliberate Destruction by Inmates.*** An added problem for CDCR is that some inmates are willfully destructive of their surroundings. Incidents such as blankets stuffed into toilet pipes are a daily occurrence in prisons and take up a significant amount of maintenance worker staff time.

## **Responsibilities for Maintenance Not Well-Managed or Well-Organized**

Our analysis has found significant problems in the way that CDCR has organized and managed its responsibilities of keeping its adult institutions in good repair. These problems are aggravating the maintenance and repair problems we have identified above, contributing to a lack of preventative maintenance and the growing backlog of special repairs of its facilities.

***Prisons Not Provided Guidance.*** Under the present system, with the exception of certain centralized duties such as maintenance of electric fences, each adult correctional institution is responsible for its own maintenance. Headquarters provides an allotment of funds to institutions for maintenance purposes, such as purchasing parts and service contracts. The warden at each correctional institution determines the use of that allotment, and facilities operations staff located at the institutions independently decide what maintenance work they will actually carry out each day. As a consequence, CDCR headquarters has in the past had no ongoing role in prioritizing the maintenance work accomplished by the institutions or in ensuring that high-priority tasks are completed.

Our analysis indicates that the lack of policy guidance from headquarters to the prisons is problematic. Clear statewide policies on protecting the state's prison infrastructure have often been lacking. For example, individual prisons are not being provided guidance regarding when they

should make a one-time investment to *replace* worn out equipment rather than repeatedly *repairing* equipment, potentially at a higher cost in funding and staff overtime.

***Preventative Maintenance Not Well-Tracked or Coordinated.*** The state has an information technology (IT) system in place to track preventative maintenance at its adult facilities. However, our analysis indicates that, due mainly to a lack of staff, the IT system has not been used as effectively as it could be to minimize state maintenance and repair costs and to better coordinate such work.

The Statewide Automated Preventive Maintenance System (SAPMS) tracks the preventative maintenance schedules for every type of regular maintenance activity at each of the adult facilities. For example, institutional staff can use SAPMS to help determine what equipment is due for preventative maintenance during a given month. After a preventative maintenance item is completed, the institution's maintenance staff members are to enter completed work orders into SAPMS to log the completion of that work. This data is then to be available for analysis for systemwide failures and increasingly frequent breakdowns of equipment.

However, we are advised by CDCR that headquarters currently does not have specialized staff fully trained to analyze the maintenance data generated by SAPMS in order to identify efficiencies and help improve maintenance practices. For example, by tracking data from all of the prisons, patterns of maintenance work and neglect could be detected by headquarters staff. If such analysis was being conducted, a systems failure occurring in multiple prisons could be spotted and dealt with on a systemwide basis.

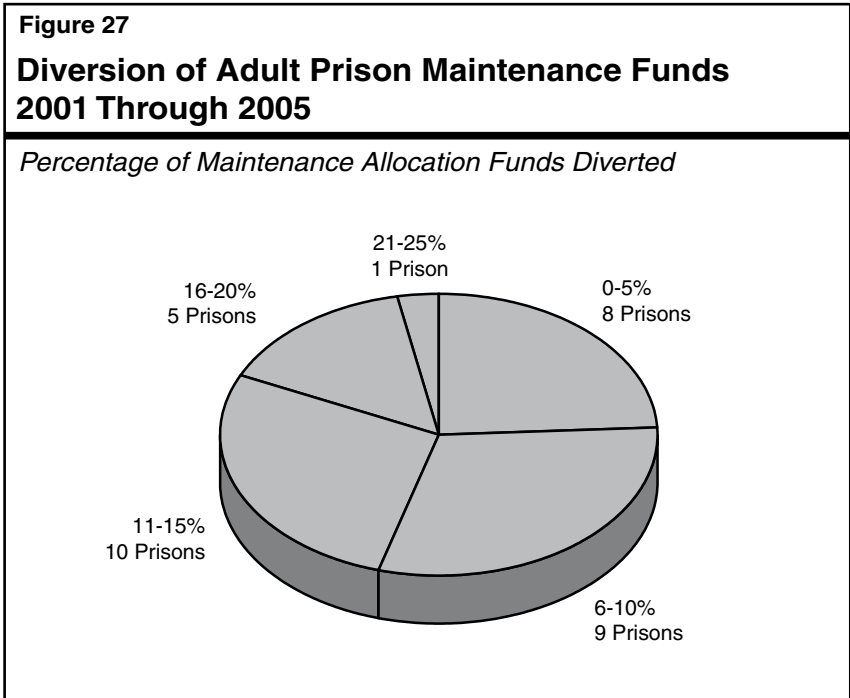
Despite having an IT system that tracks preventive maintenance, CDCR does not maintain a list of equipment needing replacement. Thus, CDCR is failing to use the IT it has to minimize repair work (and the inefficient use of state resources) by tracking worn-out equipment that should be replaced rather than repaired.

***Headquarters Authority Fragmented.*** As shown in Figure 23??, the CDCR budget provides funding for operating expenses related to prison maintenance, equipment, special repairs, and salaries for maintenance employees. All together, these funds totaled approximately \$220 million in 2006-07. However, different management units within CDCR administer various components of the funding. For example, the Adult Support Division determines allocations for maintenance, while the Office of Facilities Management makes funding decisions about large special repair projects. The division of control over key asset management issues among multiple branches within CDCR has made communication and decision making

about the best overall approaches to repair and replacement of facilities more difficult.

This fragmentation of authority within headquarters over the allocation of these funds undermines CDCR's effective use of these state resources. Our analysis indicates that it has thwarted the implementation of a long-term maintenance strategy that makes smart trade-offs between investments in maintenance and repairs and the best use of staff time for these functions. This division of responsibility among multiple CDCR branches could create conflicts in asset management strategy and its execution as each branch develops its own approach.

**Some Maintenance Funds Being Redirected to Other Purposes.** Despite the growing backlog of special repairs, CDCR data indicate that many of the adult institutions are not spending all of their maintenance funds on maintenance. As shown in Figure 27, on average from 2001 through 2005, 16 institutions diverted more than 10 percent (roughly \$4 million annually) of the budget allocations made to them specifically for operating expenses related to maintenance to nonmaintenance items. In addition, similar diversions of resources are occurring for equipment funding. Specifically, from 2000 through 2004, 22 of the 33 adult institutions diverted more than 15 percent of their equipment budgets to nonequipment expenses.



In the short run, these redirected resources are being used as a stopgap for the support of other prison operations. In discussions with department staff, we were advised that wardens sometimes view maintenance expenditures as discretionary and use maintenance funds to cover other expenses they view as more critical. However, the long-term impact of this practice is a growing backlog of maintenance and repairs.

***Wardens Have Little Training or Incentive for Performing Maintenance Work.*** Currently, the warden at each institution is the state official chiefly responsible for maintaining the institution. However, each warden has a wide range of responsibilities from ensuring public safety to providing education programs to the inmates, with the result that maintenance of infrastructure is but one of many competing concerns. Wardens vary in their experience in maintenance or facilities operations, and some are involved only in a limited way in the maintenance process. Wardens are generally not evaluated based on their maintenance of their facilities. Our analysis suggests that these factors have contributed to an environment in which maintenance frequently has been a lower priority than other demands for prison resources.

***Institution Funding Based on Outdated Allocation Formula.*** As noted earlier, the maintenance allotment is intended to pay for parts and contracts for preventative, corrective and deferred maintenance work. Headquarters annually determines the maintenance allotment that adult institutions will receive using a formula that is based primarily on a prison's historical allocation. (The formula subtracts any one-time special repair project funding an institution received in the prior years, and adds one-time funding for any new special repair projects.) The basic formula does not take into account the age of the facility, its physical size, its mission, or the number of inmates it houses. In our view, this formula is outdated and does not allocate resources across the system in a way that ensures that they are used in the facilities where they are needed the most.

For example, from 2000 through 2005, based on CDCR's historical funding formula, Pleasant Valley State Prison received an average maintenance allocation of \$0.83 per square foot of facility space, while the Centinella State Prison received an average of \$1.47 per square foot. This particular disparity is occurring even though the two prisons are both housing approximately the same number of maximum-security inmates, were constructed one year apart, and have nearly the same square footage of facility space. Notably, the Department of General Services, which manages more facility space than CDCR, does take into account such factors as age, mission, and size of facilities in allocating funding for maintenance.

***Staffing Not Available for Preventative Maintenance Work.*** Each adult facility is allocated both general maintenance staff and specialized



trade workers, such as locksmiths and electricians, to operate and maintain the state's correctional infrastructure. In addition to the specialized trade workers who focus on only a limited number of projects, some maintenance workers are devoted to specific tasks that make them unavailable for other preventative or emergency maintenance. At some facilities, for example, the need for maintenance specialists for such complex tasks as water purification leaves relatively few maintenance workers available for general preventative maintenance.

Yet, it is the general maintenance workers who are chiefly responsible for accomplishing preventative maintenance tasks as well as for responding to emergency and urgent corrective maintenance demands. Those problems requiring an immediate response appear to be "crowding out" preventative maintenance work at some facilities. For example, during 2004 the staff at adult prisons responded to more than 313,000 emergency and corrective repair requests, which constituted 55 percent of all maintenance work accomplished in that year. Our analysis indicates that maintenance staff is also limited in its effectiveness by security, internal paperwork, and cumbersome parts-ordering procedures.

Our analysis indicates that the complement of plant maintenance and operations staff workers established for individual institutions is not consistent with or based upon any objective measure of their maintenance and repair needs, such as their size, age, or the mission of their facility. Moreover, as part of the redirection of resources occurring at some prisons, some institutions have purposefully held plant maintenance and operations positions vacant in order to redirect the salary from those positions to pay for the overtime pay for other, nonmaintenance, positions as well as other prison costs. As a consequence of this and other factors, the overall vacancy rate for these positions in CDCR is currently 12 percent.

***Use of Inmate Labor Limited.*** Currently, institutions are permitted to use minimum-security inmates for maintenance work. This program was intended to allow institutions to expand their maintenance workforce at a relatively minor cost and to provide inmates with job training and good work habits that would make them less likely to return to crime after their eventual release from prison.

However, our analysis indicates that there are practical limits on this strategy. Inmates are not permitted to work on any maintenance that would bring them into contact with the facility's security system. Frequently, inmates have no prior experience or training in plumbing or electrical work that is needed for maintenance projects. In addition, the practice of CDCR in implementing current labor agreements is to require a staff trade worker to supervise inmate maintenance workers at all times. Lockdown of prisons during security incidents, along with mandatory searches before and after

work shifts to ensure tools or building materials are not stolen for use as weapons, limit the time inmate laborers are available on the job.

*Some Efforts Underway Address Maintenance Problems.* Notably, we are advised by CDCR that some new initiatives are beginning to attempt to improve its management of the maintenance and special repair functions. Among these efforts:

- The department is establishing a Maintenance Services Branch within the Office of Facilities Management to improve coordination of maintenance of CDCR facilities, such as by more fully using SAPMS (previously discussed) to track maintenance activities. The department is currently proposing to staff the office (which now has four employees) through the redirection of existing positions.
- The department intends to contract with a private firm to conduct a comprehensive assessment of the condition of its facilities and to estimate the level of funding needed by the CDCR system for deferred, preventative, and corrective maintenance.

## **Analyst's Recommendations**

*Adjust Governor's Request for Additional Funding.* In the aggregate, the proposed \$46 million augmentation in base funding for maintenance proposed in the 2007-08 budget plan amounts to roughly a 20 percent increase above current levels for the combined budget for maintenance and repair work (shown in Figure 23). Our analysis indicates that, on the whole, the administration proposal to increase the amount of state resources devoted for support of maintenance activities has merit given the estimated \$20 billion value of just its adult facilities and the rapidly growing backlog of special repair projects.

For these reasons, we recommend approval of the augmentation, but with a \$4 million reduction to reflect our rough estimate of the amount of funding already being provided to CDCR for maintenance that has been diverted each year by prison managers to other purposes. We believe it is appropriate for CDCR to use the spending budgeted in the past for maintenance before receiving additional money for this same purpose.

*Additional Funding Should Await Demonstration of Reforms.* Even with this additional level of funding, the special repairs backlog would be likely to continue to grow in 2007-08. It is also possible that the base level of funding provided for preventative maintenance may warrant adjustments in the future. However, we believe that before CDCR considers seeking further augmentations for these purposes, it should first demonstrate improvement in the way it manages and organizes its maintenance and

special repairs responsibilities. We also believe that there are a number of additional actions it can take to ensure that this situation improves. We discuss a number of such approaches below.

***Ensure Maintenance Funding Is Used for Maintenance.*** The Legislature should modify the CDCR budget to appropriate funding for prison maintenance as a separately scheduled item within the main support budget line item for CDCR, or adopt budget bill language allocating a specified amount of the department's operating expenses and equipment funding (often referred to as OE&E) for maintenance. Either one of these changes would help to ensure that maintenance funds are spent for needed maintenance purposes, while still allowing CDCR to redirect funds to address unanticipated critical problems. Such new protections on maintenance funds could be put in place temporarily for a few years to test whether they improve CDCR's performance in this area.

***Improve Allocations Formula for Institutions.*** The Legislature should direct CDCR to revise the formula used by headquarters officials for allocating maintenance funding to individual prisons to account for such factors such as the age, mission, and inmate population of each institution. Such changes would help to ensure that more appropriate allocations are made to institutions. We would note that the department has advised us that it intends to allocate much of the new budget resources using a revised approach based on an assessment of prison maintenance needs. However, the department is not now proposing to change the outdated way base allocations of maintenance funds are allocated.

***Improve Accountability for Maintenance at Prisons.*** The Legislature should modify state law to require that management audits conducted of wardens include an evaluation of the performance of wardens in the maintenance of the facilities they are managing. Existing law should require that audit findings in this area (positive or negative) be discussed in the published audit report. To ensure that resources are available for this additional auditing workload, and for other reasons, we concur in a proposal in the Governor's budget plan to increase the budget of the Office of the Inspector General by \$1.7 million at no cost to the General Fund through a redirection of funding previously allocated to CDCR.

To improve accountability for prison maintenance, the Legislature should also direct CDCR to modify the official duty statement of the Associate Warden of Business Services (AWBSs) at each prison to make these state officers responsible for overseeing the maintenance budget. While the AWBSs would continue to be under the supervision of the warden at their assigned facility, they should be directed to report regularly in a standardized format to headquarters on maintenance budget spending and be responsible for budget expenditures in this area.

***Reduce Fragmentation and Strengthen Headquarters Decision Making.*** As we noted earlier, different units within CDCR headquarters are responsible for a variety of maintenance-related activities. The administration's recent creation of a new branch to manage facilities maintenance is a good first step to solve organizational problems in this area. We propose that this fragmentation of duties be further reduced by moving the responsibility for the allocation of all maintenance funds from the Adult Support Division to the Office of Facilities Management. Under this arrangement, the staff responsible for dividing maintenance allotment funding among institutions would be the same staff responsible for funding special repair projects. Combining responsibility in this way would make it more likely that the department would consider the best approach in each case for prolonging the use of correctional assets.

In the past, the maintenance policy direction provided by headquarters to the institutions has been weak. The Office of Facilities Management (and its new maintenance branch) should begin to set policies on maintenance and repairs for the institutions. It could set benchmarks to assess the performance of institutions in this area, and require the development of a comprehensive plan to address the backlog of special repairs.

Under our approach, the responsibility for day-to-day maintenance decisions would remain at the institutional level while a stronger and better organized headquarters unit provides policy guidance to institutions on maintenance priorities and strategies. In addition, the Legislature should ensure that CDCR follows through on efforts to upgrade the SAPMS system and provide training to field staff so it can be used more effectively to track the progress that the institutions are making on addressing their preventative maintenance workload.

***Address Maintenance Staffing Problems.*** Given the persistent problems in staffing of maintenance and repair functions within the prisons, the Legislature should direct CDCR to take steps to reduce the number of vacant staff positions. Specifically, the department should be directed to attempt to reduce the current 12 percent vacancy rate for maintenance employees to 9 percent by the end of 2007-08. We believe this 25 percent reduction in vacancies is an achievable first step toward resolving these staffing problems.

The administration is proposing to increase its use of inmate labor to handle some of the additional workload that would result from the proposed 2007-08 budget augmentation. However, our analysis suggests it faces difficult barriers in doing so. Accordingly, we recommend that the department be directed to develop strategies that would help to expand the inmate maintenance labor force. For example, CDCR could examine expanding the training of inmates who could assist in maintenance work

and making changes in lockdown policies so that more low-security inmate trainees would be available to assist in repairs. The administration, in negotiating future collective-bargaining agreements, should revisit the current practice of requiring trade workers to supervise inmate laborers at all times. Specifically, we recommend that future agreements provide greater flexibility in the use of inmate day labor in cases where doing so would not jeopardize prison security.

Finally, should CDCR prove unable to expand the internal staffing resources to address the maintenance workload, it should explore the legal, operational, and security ramifications of contracting out more prison maintenance work. We believe contracting out additional maintenance work particularly makes sense in the current situation where there is a large, but potentially temporary, backlog of special repairs work.

***Juvenile Correctional Facilities.*** Currently, CDCR does not track the performance of maintenance at juvenile justice facilities. The Legislature should direct CDCR to develop a strategy for incorporating its juvenile correctional facilities into the SAPMS tracking system.

***Progress Report.*** We recommend the adoption of Supplemental Report Language requiring CDCR to include in any future budget request addressing the maintenance and special repair issues the following additional information:

- An update on the changes being made to the headquarters organizational structure and use of information technology systems, such as SAPMS, for dealing with maintenance issues, including at juvenile facilities.
- A description of any new policies on maintenance adopted by headquarters to provide guidance to institutions.
- The status of implementation of a new formula for the allocation of maintenance funds, including an assessment of its initial impact on the funding allocations provided to each institution, the amount of maintenance work completed at the institutions, and any other significant effects on prison operations due to this change.
- The department's progress in meeting the goal we have proposed of filling at least part of the large number of vacant staff positions needed for preventative maintenance activities. The CDCR should also report on efforts to expand the inmate labor workforce and its use of contracting with outside firms to accomplish additional maintenance and repair work, including any legal, security, or operational barriers it had encountered to this approach.

- A comprehensive plan for addressing the backlog of special repairs, and its progress in carrying out that plan.
- Documentation of the amount of maintenance completed by institutions, with a comparison to the work completed during each of the prior three years.

In our view, this information would help the Legislature to assess whether CDCR has improved its maintenance operations and to then subsequently determine if any further changes are needed.

## **SEX OFFENDER PROPOSALS GENERALLY CONSISTENT WITH NEW LAWS, BUT MORE DETAIL REQUIRED**

*The Governor's budget includes two proposals related to the management of sex offenders under parole supervision. We provide background on the state's current practices for supervising sex offenders who are released to the community on parole, discuss recent changes in state law that are changing these practices, and outline and comment upon the administration's efforts to implement these new laws as well as other proposed changes in the management of this group of offenders.*

### **Background**

*Sex Offenders in Prison and on Parole.* State law requires offenders convicted of specified sex offenses to register their residence with local law enforcement. As of June 30, 2006, about 22,300 offenders who would otherwise be required to register for sex offenses were in prison while 9,200 who had been released to the community were under parole supervision. Of the sex offender registrants on parole, the California Department of Corrections and Rehabilitation (CDCR) estimates that about 3,300 are high-risk sex offenders (HRSOs) who require more intensive supervision based on their criminal history.

*Sexual Assault Felony Enforcement Teams.* Chapter 1090, Statutes of 2002 (AB 1858, Hollingsworth), authorized the creation of Sexual Assault Felony Enforcement (SAFE) teams as partnerships between local, state, and federal law enforcement agencies. The purpose of SAFE teams is to (1) proactively monitor habitual sexual offenders (defined in state law as offenders who have committed multiple specified sex offenses), (2) enforce sex offender registration requirements, and (3) collect data to determine if proactive law enforcement is effective at reducing violent sexual assault offenses. Based on our conversations with CDCR, state parole agents do

not formally participate in SAFE teams, although they are occasionally involved in these activities.

**Global Positioning System Technology.** According to the department, about 850 of the HRSOs are supervised using Global Positioning System (GPS) technology, in which HRSOs are required to have an electronic monitoring device on their person at all times. Different types of GPS technology are used for this purpose by parole and probation offices. "Active" GPS units provide nearly instantaneous information on the location of a monitored parolee. "Passive" GPS, on the other hand, provides information to parole agents on the location of monitored parolees less frequently, usually a couple of times a day. Active GPS units are more expensive than passive units.

**Recent Changes to State Laws Regarding Sex Offenders.** The Legislature and voters enacted several new laws related to sex offenders in 2006. We describe a few of the major new measures below.

- **Chapter 336, Statutes of 2006 (SB 1178, Speier).** Chapter 336 requires all sex registrants to undergo a risk assessment. Sex offender registrants found to be at high risk to reoffend would be subject to electronic monitoring.
- **Chapter 337, Statutes of 2006 (SB 1128, Alquist).** Among other things, Chapter 337 requires longer prison sentences for certain sex offenders, risk assessment for all sex offender registrants, expanded criteria by which a sex offender can be committed to a state mental hospital under the Sexually Violent Predator (SVP) law, and the creation of a pilot program to provide sex offender treatment for HRSOs while they are in prison, subject to the appropriation of funds.
- **Proposition 83: "Jessica's Law."** Proposition 83 (titled Jessica's Law by its proponents) was passed by voters in November 2006. It requires longer prison sentences for certain sex offenders, GPS monitoring for felony sex offenders for life, restrictions on where sex offender registrants can live, and changes to the SVP law expanding the criteria by which an offender can be committed to a state mental hospital for an indeterminate period.
- **Chapter 338, Statutes of 2006 (AB 1015, Chu).** Chapter 338 creates the Sex Offender Management Board within CDCR to assess the department's current sex offender management practices and provide recommendations to the Legislature on ways to improve current management practices.

**HRSO Task Force.** In May 2006, the Governor issued an executive order creating the HRSO Task Force that was assigned to provide the

administration and Legislature with recommendations for improving CDCR policies related to the supervision and placement of HRSOs in local communities. In August 2006, the task force issued its findings and ten recommendations. These recommendations include (1) using procedures to uniformly assess the risk to the public posed by individual sex offenders; (2) providing in-prison sex offender treatment for HRSOs; (3) notifying victims, law enforcement agencies, and communities prior to the release of HRSOs from prison; and (4) supervising HRSO parolees using the “containment model” approach. The containment model involves supervision by specially trained agents, treatment, polygraph testing, and advocacy for victims of sex offenders.

### **Governor’s Budget Proposals**

The Governor’s 2007-08 budget includes two proposals related to the supervision and treatment of sex offenders. The first proposal, referred to in the budget plan as a sex offender management package, consists of a series of funding requests to implement the new state laws discussed above. The second proposal is designed to implement the recommendations of the High Risk Sex Offender Task Force. In total, these two proposals request about \$30 million from the General Fund in the current year, growing to almost \$123 million in the budget year. Figure 28 summarizes both proposals, which we discuss in more detail to follow.

*Sex Offender Management.* The CDCR budget plan requests about \$30 million and 180 positions in the current year, growing to \$77 million and 311 positions in the budget year, to implement the new laws related to sex offenders. The four components of this proposal are described below.

- *GPS Supervision and Smaller Parole Caseloads.* The department proposes to supervise all sex offender registrants on parole using GPS technology. The budget request includes funding to monitor all HRSOs with active GPS units and all other sex registrants on parole with passive GPS technology. Additionally, the department requests additional parole agents to supervise sex offenders on reduced caseloads in order to allow agents to supervise these parolees more closely, as well as monitor GPS data on a daily basis. The department proposes to establish parole agent caseloads of 20 HRSOs per parole agent, as well as 40 non-HRSO sex registrants per parole agent. Currently, HRSOs not supervised with GPS are on 40 registrants-to-1 agent caseload, and non-HRSOs are on 70 to-1 caseloads.
- *Risk Assessments of Parolees.* The CDCR requests funding to conduct risk assessments of all sex offender registrants prior to



release from prison, as well as twice annually while under parole supervision. These evaluations will be used to identify which parolees should be designated as HRSOs. The department’s request also includes funding to provide risk-assessment training to all parole agents.

- **Processing of SVP Cases.** Chapter 337 and Jessica’s Law expand the criteria for an offender to be found to be an SVP. Consequently, CDCR requests additional resources to review the criminal history of more inmates nearing their release from prison to determine which meet the new SVP eligibility criteria.
- **Sex Offender Management Board.** This proposal includes three staff positions for the newly established Sex Offender Management Board.

<b>Figure 28</b>		
<b>Governor's Budget Proposals Related to Sex Offenders</b>		
<i>(In Millions)</i>		
<b>Component</b>	<b>2006-07</b>	<b>2007-08</b>
<b>Sex Offender Management</b>		
Active GPS monitoring <sup>a</sup>	\$15.5	\$35.2
Passive GPS monitoring <sup>a</sup>	8.8	33.4
Risk assessments of parolees	1.8	4.1
Processing of SVP <sup>b</sup> cases	4.3	4.0
Sex Offender Management Board	—	0.6
Subtotals	(\$30.4)	(\$77.3)
<b>High Risk Sex Offender Task Force</b>		
Sex offender treatment for parolees	—	\$42.7
Polygraph testing	—	1.7
Parole agent training	—	0.6
Parole agents for SAFE <sup>b</sup> teams	—	0.4
Data and contract management	—	0.2
Subtotal	—	(\$45.6)
<b>Totals, Both Components</b>	<b>\$30.4</b>	<b>\$122.9</b>
<sup>a</sup> Includes findings for smaller parole caseloads. <sup>b</sup> SVP: Sexually Violent Predators; SAFE: Sexual Assault Felony Enforcement. Detail may not total due to rounding.		

We also note that the budget for the Department of Mental Health (DMH) includes \$28 million General Fund in the current year and \$25 million General Fund in the budget year over the revised current-year budget request to phase in changes in the SVP commitment laws. In particular, the law will increase the number of inmates eligible for commitment to state mental hospitals, thereby requiring DMH to screen, evaluate, and ultimately house more SVPs than under prior law.

**Implementation of Task Force Proposals.** The CDCR budget includes \$46 million and six new staff positions in the budget year to implement recommendations of the High Risk Sex Offender Task Force. This proposal has the following five components:

- **Sex Offender Treatment for Parolees.** The department requests resources to contract for sex offender treatment for HRSOs. The department proposes to require these offenders to participate in individual therapy once per month and group therapy twice per week.
- **Polygraph Testing.** The department proposes to contract for twice annual polygraph testing of HRSOs. Polygraph testing is designed to assist treatment providers and parole agents by eliciting more honest information that facilitates treatment, ensures the appropriate classification of parolees, assists in the establishment of appropriate parole conditions, and determines ongoing compliance with those parole conditions and state law.
- **Parole Agent Training.** This proposal includes funding on an ongoing basis to train all parole agents on the containment model for the supervision of HRSOs.
- **Assignment of Parole Agents to SAFE Teams.** The CDCR requests four new parole agent positions to act as liaisons between the department and SAFE teams in each of the department's four parole regions. According to the department, these agents will perform such duties as (1) assisting SAFE team investigations by sharing data, (2) participating in SAFE team efforts to apprehend sex offenders who have failed to register with local law enforcement, and (3) acting as the department's liaison to victims and victim's advocacy groups.
- **Data and Contract Management Positions.** The proposal includes two additional positions in headquarters to oversee, coordinate, and otherwise manage (1) parolee sex offender data and (2) the state's contracts for treatment, polygraph testing, and GPS equipment.

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## LAO Assessment of the Governor's Proposals

We find that the administration's proposals are largely consistent with new state laws, as well as recommendations of the HRSO Task Force and our office. However, we also find that the proposal for implementing new laws in this area does not include a plan for rollout of GPS monitoring and is overbudgeted, as discussed in more detail below.

***Proposals Generally Consistent With New Laws.*** We find that the administration's proposals meet the requirements of the new sex offender laws enacted by the Legislature and voters. This includes proposals related to expanding the SVP criteria, monitoring all parolee sex registrants with GPS technology, conducting risk assessments, and creating the Sex Offender Management Board.

We also note that the recommendations of the HRSO Task Force are largely consistent with previous recommendations by our office to implement the containment model approach to managing the sex offender population on parole. (See "A 'Containment' Strategy for Adult Sex Offenders on Parole" in the *Analysis of the 1999-00 Budget Bill*.) At that time, we concluded that the containment model offered a cost-effective way to supervise sex offenders on parole and reduce the likelihood that these offenders would commit new offenses or parole violations and return to prison.

***Funding Not Included for Some Components.*** This proposal does not include funding for two provisions in the newly enacted laws. Chapter 337 provides for the establishment and operation of a pilot program to test an in-prison sex offender treatment program subject to the availability of funds. The Legislature previously approved one-time funding of \$50,000 in the current year to study sex offender treatment programs nationwide and design such a program for CDCR. Our analysis indicates that the establishment of in-prison treatment could improve the outcomes of participating offenders after release to parole, as well as reduce the likelihood that some will be committed to state mental hospitals under the SVP law. Implementation of a successful program could thus significantly reduce state costs in the long term. Nevertheless, no funding is provided to implement the pilot program in the Governor's 2007-08 budget plan.

In addition, the department has not requested any resources to implement the residency restrictions required under Jessica's Law. Specifically, Jessica's Law bars any person required to register as a sex offender from living within 2,000 feet (about two-fifths of a mile) of any school or park. Based on our conversations with the department, it is still developing its implementation plan. It is unclear at this time whether this plan will require any additional funding to implement this provision of Proposition 83.

**No Implementation Plan for Rollout of GPS Tracking.** The department's budget request assumes that all GPS devices will be acquired and all new parole agents will be hired by July 1, 2007. However, based on our conversations with the department, it is unlikely that the department will be able to implement GPS monitoring for 9,200 parolees in the budgeted timeframe, primarily because of the time necessary to hire and train parole agents and supervisors who will be supervising the sex offender population. The CDCR has informed our office that it is currently in the process of developing an implementation plan for GPS monitoring.

**Technical Adjustments Needed.** Based on our review of the details of the Sex Offender Management proposal, we find that the following components of the proposal are overbudgeted.

- **Parole Office Space.** The department is requesting \$9.8 million in the budget year to provide office space for the additional 157 parole agents that will need to be hired to monitor sex offenders wearing GPS devices. However, the administration's budget also includes a policy change to require early discharge from parole supervision for some low-level offenders. We estimate that this latter proposal would reduce the number of parole agents by about 381 in the budget year. Therefore, should the Legislature approve the administration's discharge policy proposal, it should reject the requested funding for additional parole office space.
- **Active GPS.** The department is requesting a total of 102 new parole agents to supervise the HRSO population on GPS. However, we calculate that the department will only require on a workload basis an additional 71 positions for this purpose, resulting in the request being overbudgeted by \$3.2 million. In addition, CDCR's budget request assumes that the cost for GPS units will increase by \$4 per day (36 percent) since the current year, yet provides no justification for this level of increase. Consequently, we find that this component of the request is overbudgeted by \$3.1 million.
- **Risk Assessments.** The department is requesting \$1.6 million and 21 positions to conduct risk assessments of sex offenders prior to release from prison. The CDCR's request does not include any workload estimate to justify this level of expenditures. We estimate that the actual resources required are two positions and \$154,000.

## LAO Recommendations

*We recommend approval of the proposal to establish the containment model approach to managing the sex offender population on parole*

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*consistent with recommendations of the High Risk Sex Offender Task Force. We withhold recommendation on the administration's sex offender management proposal because the administration has not provided its implementation plan for Global Positioning System monitoring. Should the Legislature ultimately approve funding for the sex offender management request, we recommend reductions of \$18 million related to various technical adjustments.*

Below, we offer our recommendations regarding the Governor's package of proposals to implement the HRSO Task Force proposals as well as to implement recent changes in state law in this area. We also offer our recommendation in regard to one aspect of the recent legislation that is not addressed in the Governor's budget package.

***Approve Proposal to Implement Task Force Recommendations.*** We recommend that the Legislature approve the requested funding to implement the HRSO Task Force recommendations based on our previous findings that the containment model approach is a cost-effective way to supervise sex offenders on parole.

***Implementation of New Laws Requires a Realistic Plan.*** We withhold recommendation on the sex offender management components of the administration budget proposal because the department has not completed an implementation plan for the rollout of GPS monitoring. Moreover, CDCR is unlikely to be able to implement its expanded GPS program by July 1, 2007, as the budget request assumes. Based on these findings, we believe it would make sense for the Legislature to require the department to provide a more realistic implementation plan and to reduce CDCR's budget request accordingly.

Should the Legislature approve funding to implement new sex offender laws, we recommend total reductions of \$18 million in the budget year related to the various technical adjustments described above.

***Use Part of Savings for In-Prison Treatment Pilot Program.*** In our past analysis on the supervision and management of sex offenders on parole, we recommended—as did the HRSO Task Force—the creation of a pilot treatment program for sex offenders in prison. We estimate that a pilot program for a few hundred inmates would cost as much as several million dollars annually when fully implemented but could, if successful, significantly reduce state costs in the long term for the reincarceration of sex offenders and for the commitment of SVPs to state hospitals. Accordingly, we recommend that the Legislature use a portion of the savings from the technical adjustments to the sex offender management request to create an in-prison sex offender treatment program.

## OTHER CORRECTIONAL PROGRAM ISSUES

### Action on Three Health Proposals Would Be Premature

*We withhold recommendation on capital outlay proposals for new mental health beds and a support proposal for increases in compensation for dental clinicians because pending federal court decisions could result in significant modifications of these proposals.*

**Budget Proposal.** The Governor's 2007-08 budget plan includes a number of new proposals related to compliance with federal court orders and settlement agreements relating to the health care of state inmates. Among these proposals are the following budget requests:

- About \$3.6 million for preliminary plans for 50 mental health crisis beds at the California Men's Colony (CMC). The project, which has an estimated total project cost for all phases of about \$56 million, and a cost of more than \$1.1 million per bed, relates to implementation of a settlement in *Coleman v. Schwarzenegger* over the adequacy of mental health services provided to inmates.
- \$426,000 for facility improvement to allow the temporary establishment of ten psychiatric service unit beds at the California Institution for Women (CIW). This proposal, with a total estimated cost of \$4.5 million, is also related to the *Coleman* case.
- About \$19 million in the current year and \$58 million in the budget year to increase salaries for various dental clinicians. This proposal is to help implement the settlement of *Perez v. Tilton* regarding the adequacy of dental services provided to inmates.

**Action on Proposals Premature.** Without prejudice to the possible merit of these proposals, we believe legislative action on them is premature until the federal courts have issued further orders in the *Coleman* and *Perez* cases.

In the *Coleman* case, a federal court decision is pending regarding how many additional new mental health beds should be built in the adult prison system as well as their locations. A proposed mental health bed plan released by the California Department of Corrections and Rehabilitation (CDCR) in late January proposed the establishment of more than 4,000 new beds, including new beds at CMC and CIW. (Although CDCR has not provided the Legislature with estimates of the overall cost of this effort, the more than \$1.1 million per bed cost of the CMC project suggests this would be a very expensive undertaking.) However, the court had not yet acted on the CDCR plan at the time this analysis was prepared.

In the *Perez* case, the court has been considering whether to order increases in compensation for dental staff at the prisons in order to address persistent difficulties in recruiting and retaining such clinicians. However, the court had not acted at the time we reviewed this budget request. The administration has indicated the request is meant to be a placeholder until final court action has been taken, at which time it intends to adjust the level of funding that has been requested for this purpose.

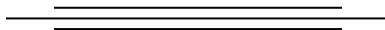
Once further court decisions have been issued in both of these cases, the 2007-08 budget requests related to these health care issues could require significant adjustments.

*Analyst's Recommendation.* We withhold recommendation on these proposals at this time and will comment once the federal courts have taken further actions in these cases.

### **Additional Costs as Prison Pay Surges**

*We find that several factors have caused or are likely to cause employee compensation costs in the California Department of Corrections and Rehabilitation to increase significantly. These factors include (1) pay and benefit increases for correctional officers under a now-expired labor agreement (including a recent binding arbitration decision raising correctional officers' compensation retroactively to 2005-06) and (2) federal court orders increasing pay for clinicians and staff of the prison health care system. Negotiations on a new correctional officer agreement continue.*

We discuss the issues surrounding pay increases for employees of the California Department of Corrections and Rehabilitation in the Employee Compensation section of the "General Government" chapter.



## JUVENILE JUSTICE

### WHO IS IN THE DIVISION OF JUVENILE JUSTICE?

There are several ways that an individual can be committed to the Division of Juvenile Justice's (DJJ's) institution and camp populations, including:

- **Juvenile Court Admissions.** Most first-time admissions to DJJ are made by juvenile courts. As of September 30, 2006, almost 96 percent of the institutional population was committed by the juvenile courts and included offenders who have committed both misdemeanors and felonies.
- **Criminal Court Commitments.** As of September 30, 2006, about 4 percent of the DJJ institutional population had been initially committed by criminal courts. This includes juveniles committed directly to DJJ after being tried and convicted as adults. It also includes youthful offenders committed to the California Department of Corrections and Rehabilitation's (CDCR's) Adult Division but housed at a DJJ facility. These inmates are referred to as "M cases" because the letter M is used as part of their DJJ identification number. Current law requires that M cases be transferred to state prison at age 18, unless their earliest possible release date comes before they reach age 21.
- **Parole Violators.** These are parolees who violate a condition of parole and are returned to a DJJ facility. In addition, some parolees are recommitted to a facility if they commit a new offense while on parole.

**Characteristics of Wards.** Wards in DJJ institutions are generally between the ages of 12 and 24, with an average age of 19½. Males comprise more than 95 percent of the ward population. Latinos make up the largest ethnic group in DJJ institutions, accounting for 51 percent of the total population. African-Americans make up 31 percent of the population, whites are 13 percent, and Asians and others are about 5 percent.

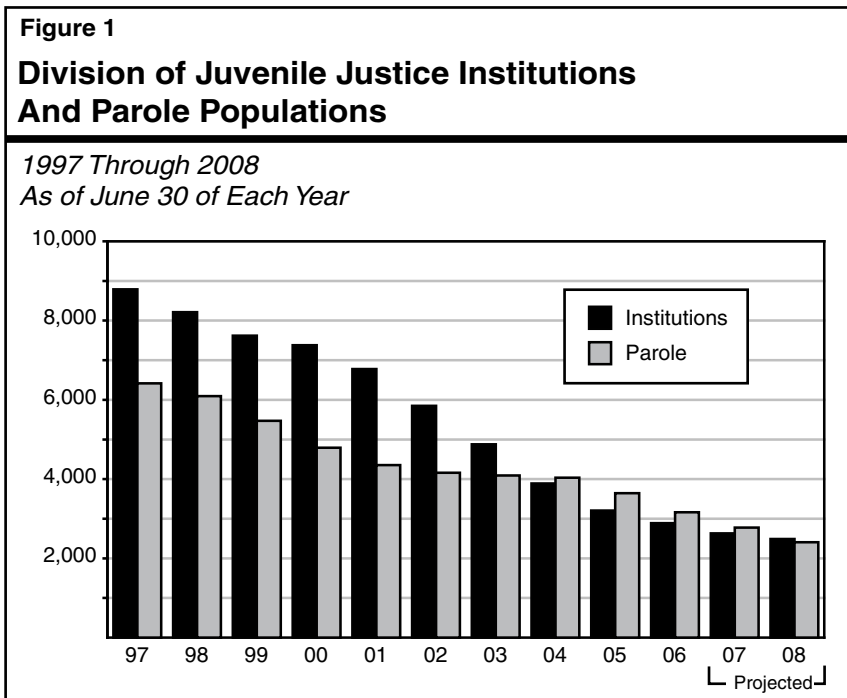


## POPULATION ISSUES

### Institutional Population May Be Overstated

*The caseload projection for the Division of Juvenile Justice institutions appears to be overstated when compared to recent ward population data. Accordingly, we withhold recommendation on the 2007-08 budget request for caseload funding pending receipt of any further proposed institutional and parole population adjustments at the May Revision.*

**Juvenile Institution Population Decrease.** As of June 30, 2006, 2,887 wards resided in DJJ facilities. The department forecasts the ward population will decrease to 2,490 wards by June 30, 2008, a projected two-year decrease of 397 wards, or about 14 percent, compared to the beginning of the current fiscal year. The projected decrease is the result of a continuing trend of declining admissions to youth correctional facilities. The declining admissions are primarily the result of fewer juvenile court commitments to state facilities. These baseline projections do not reflect an administration proposal, discussed later in this analysis, for policy changes that would result in significant further reductions in the ward population. Figure 1 shows the year-end ward and parole populations for the period 1997 through 2008.



**Juvenile Parole Population Decrease.** As of June 30, 2006, CDCR supervised 3,162 youthful offenders on parole. The department forecasts the parole population will decrease to 2,405 by June 30, 2008, a projected two-year decrease of 757 parolees, or 24 percent. The projected decrease is the result of a continuing trend of declining admissions to youth correctional facilities. As Figure 1 shows, while the parole population is now slightly greater than the institution population, the administration's budget plan assumes that the institution population will slightly exceed the number of juveniles on parole caseloads by the end of 2007-08. The significant continued decline in the numbers of wards under parole supervision is primarily a result of the declining rate of new admissions into DJJ youth correctional facilities.

**Fiscal and Housing Implications of Population Changes.** At the time the Governor's budget plan for DJJ operations was prepared, the decline in the ward institutional and parole populations had been tracking fairly closely to the level assumed in the *2006-07 Budget Act*. However, DJJ has encountered some delays in implementing certain changes in the way it houses juvenile offenders required by a legal settlement in what is known as the *Farrell* case. As a result, the state will spend less on these improvements than expected in the current year. The 2007-08 budget proposes a General Fund reduction (not including Proposition 98 adjustments) of \$10.5 million in the current year to reflect these changes.

The funding proposed in 2007-08 for population adjustments reflects the continued decline in institutional and parole populations, but also increased costs for *Farrell* compliance. As a result, the budget proposes a net increase in General Fund support (again, exclusive of Proposition 98 adjustments) of \$5.8 million in the budget year.

**Some Variance in Recent Numbers From Budget Plan Assumptions.** As previously noted, at the time the DJJ budget for 2007-08 was prepared, institutional populations were tracking fairly closely to the numbers assumed in the *2006-07 Budget Act*. More recent data, however, indicate that the number of wards in DJJ institutions is more than 100 below the previously budgeted level. If this trend holds, it means that DJJ may be overbudgeted from the General Fund by as much as \$10 million in the current year and by as much as \$20 million the budget year.

Because this trend has occurred only recently, however, we believe it is premature to recommend a specific further population adjustment for DJJ institutions at this time. It is possible the trend could change significantly between now and the May Revision, when the administration will update the budget to reflect any further institutional and ward population adjustments that are warranted.

*Analyst's Recommendation.* Because the changes in caseload noted above are relatively recent, we withhold recommendation on the caseload funding request pending receipt of the May Revision. We will continue to monitor the DJJ population and make recommendations for further budget adjustments as appropriate at the time of the May Revision.

## **POPULATION SHIFT WARRANTED, BUT CONSTRUCTION FUNDING NOT JUSTIFIED**

*The 2007-08 budget plan for the Division of Juvenile Justice reflects the administration's proposals to (1) shift some offenders from the state to the local level and (2) enact a new state grant program to build county juvenile facilities. In this analysis, we provide background on the respective state and local roles in the juvenile justice system, describe the proposed policy changes, and comment on the approach the Legislature may wish to take concerning these matters. We recommend approval of the shift in offenders now housed in state facilities to the local level, but recommend disapproval of the new facilities program.*

### **Background**

*Counties Play Major Role in Juvenile Justice System.* Generally, the juvenile justice system is a local responsibility. Following the arrest of a juvenile, the law enforcement officer has the discretion to release the juvenile to his or her parents, or to take the suspect to juvenile hall and refer the case to the county probation department. Juvenile court judges generally take into account the recommendations of probation department staff in deciding whether to make the offender a ward of the court and, ultimately, determine the appropriate placement and treatment for the juvenile based on such factors as the juvenile's offense, prior record, criminal sophistication, and the county's capacity to provide treatment. Judges declare the juvenile a ward almost two-thirds of the time.

Most wards are placed under the supervision of the county probation department. These youth are typically placed in a county facility for treatment (such as juvenile hall or camp) or supervised at home. Other wards are placed in foster care or a group home. A small number of wards (under 2 percent annually), generally constituting the state's most serious and chronic juvenile offenders, are committed to DJJ and become a state responsibility.

The construction and renovation of local juvenile halls and camps have also generally been a county responsibility. The Corrections Standards

Authority (CSA), an agency within CDCR, does administer federal and state grant programs to help renovate local juvenile institutions. In the past, CSA's predecessor agency, then known as the Board of Corrections, has administered bond funds for juvenile facility improvements. The CSA reports that it has allocated about \$450 million in local assistance, including about \$280 million in federal funds and \$172 million in state funds, since 1997 to build and renovate juvenile halls and camps. However, as of 2007, all available federal and state funding has been appropriated and allocated.

## **Governor's Budget Proposals**

The 2007-08 budget plan reflects two major changes in state policy in regard to the incarceration of juvenile offenders. First, beginning July 2007, the state would stop accepting and would return certain populations of juvenile offenders now held in DJJ institutions to the local level. Also, the state would provide a new block grant program to offset county costs resulting from this change. Second, the state would provide \$400 million in lease-revenue bond financing (to be matched with \$100 million in local funding) to build as many as 5,000 new beds for juvenile facilities. We outline these proposals in more detail below.

**Shift of Juvenile Justice Population.** The Governor's budget plan assumes net General Fund savings to the state of about \$43 million in 2007-08, growing to about \$97 million annually, from the enactment of proposed legislation and budgetary changes to shift certain juvenile offenders now held in DJJ institutions to the local level.

Specifically, the administration assumes that the state will achieve savings by housing about 1,338 fewer juvenile offenders in DJJ facilities by the end of 2007-08, reducing the population of state facilities by roughly one-half. Certain groups of lower-level offenders (parole violators whose original offense was a nonviolent offense and nonviolent male offenders generally under age 21) and all female offenders would move to the county level. There, counties could either hold them in juvenile halls or camps or provide programs for them in the community. State law would be modified to permit the state to (1) stop the intake of some of these groups of offenders into DJJ as of July 2007, and (2) "recall" to the county some of these offenders now held in DJJ facilities. The recall would be completed by June 2008.

The budget plan assumes additional savings from the discontinuation and legislative repeal of a recently enacted program (the Juvenile Justice Community Reentry Challenge Grant Program) to assist offenders in their reentry from institutions into the community.

The repealed reentry program would be replaced with a new and larger block grant program, providing allocations to counties that are intended to more than offset the costs to counties of keeping custody or taking custody of juvenile offenders previously held by DJJ. The block grant funds—the equivalent of \$94,000 per offender, per year—would be allocated to counties in perpetuity for assuming responsibility for additional offenders. The budget proposes \$53 million in funding for 2007-08 for the counties to handle the affected juveniles. The administration estimates that this amount would grow in 2008-09 to nearly \$100 million once the shift of this population to local authorities had been completed. The state would conduct audits to ensure that the funds were used by counties for incarceration or the provision of services for juvenile offenders.

A summary of these proposals, the administration’s estimate of the net savings to the state from these changes, and our own net savings estimate are shown in Figure 2.

**Figure 2**  
**Proposal for Juvenile Population Shift**  
**Estimated to Result in Net State Savings in 2007-08**

*(In Millions)*

Proposal	Administration Estimate	LAO Estimate	Difference
Institutional savings from shifting juvenile offenders from Department of Juvenile Justice facilities to local level	-\$86.2	-\$107.2	-\$21.0
Repeal Juvenile Justice Community Reentry Challenge Grant Program	-10.0	-10.0	—
Establish new block grant program for incarceration or services for juvenile offenders	53.3	53.3	—
Savings on parole caseloads from shifting offenders from state jurisdiction to local level	—	-2.8	-2.8
<b>Net fiscal impact</b>	<b>-\$42.9</b>	<b>-\$66.7</b>	<b>-\$23.8</b>

***New Juvenile Facility Grant Program.*** The administration proposes \$400 million in lease-revenue bond financing, to be matched by up to \$100 million from counties, for the construction and renovation of as many as 5,000 juvenile beds. The juvenile facilities proposal is one component of a larger proposal that would also provide an additional \$4 billion in bond financing for the construction of county jails for adult offenders.

The legislation to implement this proposal provides CDCR the authority to administer the new jail and juvenile facility grant program and develop regulations defining the grant requirements, which are to be similar to those CSA has used for past federal and state grant programs.

## **Moving Juvenile Offenders Back to Their Community**

*Our analysis indicates that a proposal to shift roughly one-half of the current Division of Juvenile Justice institution population to local juvenile facilities and programs, along with block grant funding to offset the related additional costs for counties, is fundamentally sound but warrants technical adjustments to reflect the full state savings that would result from this change.*

Below, we provide our assessment of the administration's proposal to move some offenders from DJJ institutions to the local level, and our recommendations to the Legislature to address some technical and policy issues relating to the plan.

**Population Shift Proposal Fundamentally Sound.** Our analysis indicates that the policy change proposed by the administration is fundamentally sound and offers the potential to leave the state, counties, and juvenile offenders and their families better off than they are now. We outlined a similar approach in *The 2004-05 Budget: Perspectives and Issues* (page 93).

*The state* could benefit significantly from the shift because it would help contain the rapidly escalating costs of complying with the *Farrell* settlement agreement and reduce the operational challenges of hiring and retaining correctional and clinician staff to provide services for wards. Such a large population shift should lead to the closure of some of its aging and outdated juvenile correctional institutions. As a result, the state could avoid part of the large investment that would be otherwise needed to maintain, repair, and eventually replace these facilities. Some current institutional sites could also be used for other high-priority state programs or sold to private parties for a significant one-time gain in state revenues.

*Counties* could also experience a net financial gain by receiving more financial resources in the new block grant program than the costs they would probably incur by becoming responsible for the additional population of offenders. While we are advised that up-to-date data on the average county costs for juvenile offender facilities and programs is unavailable, it is likely that, in most jurisdictions, their costs are below the \$94,000 per ward grant proposed by the administration. Moreover, because they would receive these resources in perpetuity, counties would continue to receive a stable funding base, even as current trends show the number

of juvenile felony arrests and number of juveniles in county facilities is declining. Because the administration has not presented the Legislature with legislation to implement this aspect of its proposal, many details pertaining to this new local assistance program are unclear. However, in concept, the block grant approach offered by the administration appears to provide flexibility to counties to divert some of these offenders to alternative sanctions programs in the community that could be far less costly than incarceration.

*Juvenile offenders and their families* could gain from this new approach to the extent that the additional state funding provided to counties is devoted to improving supervision and treatment services for offenders, potentially preventing their continued involvement with the criminal justice system. Also, because these offenders would now be held in institutions within their home community, there should be greater opportunities to maintain or strengthen relationships with their families and local organizations that could provide them assistance when they are released back into the community.

***Some Significant Issues Warrant Consideration.*** While we believe the proposal to shift low-level and female offenders from DJJ facilities is achievable and good criminal justice policy, we believe some significant issues related to this proposal warrant consideration by the Legislature.

- ***State Savings Understated.*** The administration's estimate of savings discussed above is based (with appropriate adjustments to reflect the lower risk and short time served by the population being shifted to counties) on an out-of-date, lower estimate of the annual cost per ward. Moreover, the budget proposal does not take into account modest savings from a reduction in the parole caseload due to this policy change, and overstated the costs of contracting out to obtain beds for female offenders. Taking all of these factors into account, we believe the net savings to the General Fund achieved by this change in 2007-08, as shown in Figure 2, are understated by about \$24 million.
- ***DJJ Staff Positions Not Reduced.*** While the budget proposal presented by the administration adjusts the level of funding provided for the state's operation of youth facilities, it does not include any reduction in the staff positions that are supported with that funding. The administration is proposing that no adjustment in positions be made in 2007-08 budget deliberations because it has not yet identified which specific DJJ juvenile facilities it intends to close.
- ***No Facility Closure Plan Available for Legislature.*** The administration is proposing to identify by June 30, 2007 DJJ facilities

that would be closed, and to begin by January 1, 2008, to implement the closure of facilities that would not be needed due to the decrease in the population of its institutions. However, given the June 2007 constitutional deadline for the Legislature to pass a state budget plan for the next fiscal year, this timetable means that the Legislature might not have any information on the likely extent of facility closures or the specific facilities that would be closed at the time it acted on this proposal.

- ***Other CDCR Budget Requests Inconsistent With Plan.*** Some other budget requests included in the 2007-08 CDCR budget proposal are inconsistent with the proposal to shift juvenile offenders from the state to the local level. For example, the administration is proposing to spend \$3.5 million for new equipment for DJJ facilities. Another \$12 million is proposed for special repair projects at a mix of adult and juvenile facilities. It is likely that not all of these equipment purchases will be needed if some DJJ facilities are closed, and it may not make sense to make some special repairs at juvenile facilities that are going to be closed.
- ***Major Implications for Farrell Remedial Plans.*** The 2007-08 budget plan does not adjust various technical and policy budget proposals to implement six remedial plans that resolve problems found in the *Farrell* litigation (discussed earlier). For example, the budget requests \$980,000 for additional staff positions to create a Specialized Treatment Facility at the N.A. Chaderjian Youth Correctional Facility along with funding for a contract to study (among other issues) why lower-level juvenile offenders are sent to DJJ. These budget items may warrant changes in light of the proposal to actually shift low-level offenders out of DJJ and may also require discussions with the *Farrell* court and its experts to ensure that the state remains in compliance with the state's settlement of the case.
- ***Data on County Costs Will Be Forthcoming.*** At the time this analysis was prepared, the administration was not able to provide up-to-date data regarding the actual costs to counties of operating juvenile institutions and programs. That makes it more difficult for the Legislature to assess whether the \$94,000 per offender block grant is the appropriate amount of funding. We are advised that a survey of counties regarding these costs is now being developed by a statewide probation association, but that survey data have not yet actually been collected.
- ***Statutory Framework Missing for New Local Assistance Program.*** While the administration has submitted to the Legislature



proposed trailer bill that would divert female and low-level offenders to the local level, it has not submitted to the Legislature any proposed legislation to implement the new juvenile justice grant program for counties. A statutory framework is needed that specifies how funding for this new program can be used and how it would change over time.

- ***Juvenile Parole Shift Could Be Considered.*** As noted above, the proposed changes to shift certain juvenile offenders to local jurisdiction would significantly reduce the DJJ parole caseload. Given that the total statewide parole population is already projected to be fairly small by the end of 2007-08—about 2,400 offenders—it may no longer be practical or cost-effective for the state to attempt to provide parole services for such a relatively small population of offenders. It may make more sense to shift the supervision of juvenile offenders released from DJJ facilities from state parole agents to county probation officers.

## **Analyst's Recommendations**

***Approve Population Shift Plan.*** Because we believe the juvenile institutional population shift proposed by the administration is fundamentally sound policy, we recommend its approval by the Legislature with some modifications. Specifically, we recommend that the net savings from this change be adjusted to more accurately reflect the cost per bed of operating DJJ institutions and to take into account the savings that will also result from a reduction in parole caseload. We estimate these additional savings to be about \$24 million. We recommend that the Legislature direct DJJ to provide a revised estimate of these additional savings at the time of the May Revision that also takes into account updated information on the number of offenders in DJJ institutions that would be shifted to the jurisdiction of counties.

***Obtain Information on Facilities and Staffing Changes.*** We recommend that DJJ report at budget hearings its preliminary findings regarding the facilities it is likely to close due to the shift of juvenile offenders to the local level. We further recommend the adoption of trailer bill language directing the administration to provide the Legislature with a DJJ facility closure plan at least 30 days in advance of a proposed timetable when closures are to begin. This would provide the Legislature with an opportunity to understand and comment upon on the administration's proposed approach before any decisions have been finalized. The trailer bill language should also direct the administration to provide, at the same time, an accounting of proposed staffing changes in DJJ facilities to reflect the shift of the juvenile population to the local level.

***Adjust Other Inconsistent Budget Requests.*** We recommend that the Legislature direct the administration to report at budget hearings regarding the adjustments needed to make other CDCR budget requests, such as those for additional maintenance and special repairs funding and implementation of the *Farrell* remedial plans, consistent with the population shift proposal.

***Review Level of Block Grant Allocations.*** The Legislature should review, and appropriately adjust, the level of state funding proposed to be allocated to counties for the new block grant program to reflect the costs to counties of providing such services. The administration should independently assess the validity of the survey of these costs that is now being prepared and, if it has concerns about the overall accuracy of the survey results, report its own estimate of these costs to the Legislature. In our view, the state should provide a block grant funding level that (1) is sufficient to offset county costs, (2) provides a financial incentive for counties to concur in this shift of offenders, and (3) maximizes the potential savings to the state General Fund from these changes.

***Establish Legislative Framework for New Local Grants.*** The Legislature should direct the administration to submit a statutory framework for the proposed juvenile justice grant program. The framework should, among other provisions, clearly identify the permitted use of the funds, establish that the funds are subject to audit, make clear the penalties for their misallocation, and indicate how the level of funding for these grants would be determined in future years.

***Consider Shifting Parole Functions to Probation Departments.*** We recommend that DJJ report at budget hearings on the feasibility and advisability of (1) discontinuing its parole supervision of offenders released from DJJ institutions and (2) shifting an appropriate level of state funding to counties to fully offset the cost of their absorbing supervision of these offenders into county probation operations. The department should be asked to comment on both the fiscal and operational implications of such a change.

## **Creating a New Juvenile Facilities State Grant Program**

***An administration proposal to provide \$400 million in lease-revenue bond funding to build as many as 5,000 local juvenile beds is not justified given the current surplus of 4,000 such beds statewide.***

In this section, we discuss our concerns about the administration's proposal to provide \$400 million in state lease-revenue bonds to build additional capacity in county juvenile halls and camps.

## Justification Not Provided for 5,000 Beds

Our main concern about the proposal for \$400 million (matched by up to \$100 million locally) is that the administration has not provided the Legislature with justification for its proposal for as many as 5,000 beds with an assumed cost of \$100,000 per bed.

*No Independent Validation of Need.* The administration has indicated that it has based its proposal on the estimates of local law enforcement organizations advocating for additional funding for this purpose (as well as new adult jails). Administration officials have confirmed, however, that they have not independently validated either the number of beds or the cost of providing them.

*Current Surplus of Juvenile Beds.* Notably, data we have reviewed indicates that the county juvenile justice system currently has a surplus of beds in both juvenile halls and camps. This is because, while counties have constructed additional local capacity in juvenile facilities in recent years with aid from state and federal grants, the number of juvenile arrests, bookings for crimes, and population in both state and county juvenile facilities has been dropping.

According to CSA, various state and federally supported projects to add capacity were estimated to bring the total county juvenile hall and camp beds to just under 15,000 by 2007. That is well above the estimated average daily population of these facilities of about 11,000 offenders. In other words, these facilities typically have a combined surplus of 4,000 beds, calling into question why 5,000 more beds are needed at this time. While this surplus of beds would temporarily be reduced to some extent by the proposed shift of an estimated 1,338 low-level offenders to the county level, the surplus would be likely to start to grow again if current trends continue.

*Counties Have Alternatives to New Facilities.* We acknowledge that while the counties have a surplus of beds on a statewide basis, there may be some aging facilities in particular counties that require replacement or renovation. There may also be specialized space required for mental health treatment and female offenders.

Our analysis indicates that these costs could be minimized in at least some cases to the extent that counties contracted among themselves to “sell” their surplus beds to others in their region lacking bed space or those needing specialized treatment centers for some offenders. Moreover, if the number of juvenile offenders held at the local level continues to drop in keeping with ongoing trends, many counties would have “room” to convert surplus housing space to treatment space at costs that would probably be significantly below the \$100,000 per bed assumed in the Governor’s budget

proposal. Finally, there are indications, such as California's relatively high rate of incarcerating juveniles compared to other states, that counties are not fully using alternatives to institutions for lower-level offenders. This includes, for example, day-reporting centers, which could be much less costly for counties to establish and operate than new facilities. Such alternatives would clear out rooms for offenders who must be incarcerated.

### **Analyst's Recommendation**

We recommend that the Legislature reject the Governor's proposal for \$400 million in lease-revenue bond financing for juvenile facilities because the administration has failed to provide justification for this significant new commitment of state funding.

As noted above, the juvenile justice system is generally a county responsibility, and counties are thus the agencies primarily responsible for providing the facilities necessary to carry out these duties. In our view, state funding should only be provided where there is a demonstrated critical need for additional beds that counties cannot address on their own. However, on a statewide basis, counties currently have a surplus of 4,000 juvenile beds overall, due in part to recent state funding of new juvenile facilities. Particular counties with a need for beds or specialized treatment space have options other than building additional space. Under these circumstances, we believe the Governor's proposal should not be approved.

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## LOCAL ASSISTANCE PROGRAMS

### NEW PROBATION PROGRAM FUNDING SHOULD BE REDUCED AND REDIRECTED

*The budget plan proposes to create a new \$50 million program, that would eventually grow to \$100 million, intended to improve supervision and treatment services for probationers age 18 to 25. We recommend that this new program be scaled back to a \$5 million pilot project and that \$25 million of the remaining funding be shifted to expand Proposition 36 programs. This approach would more likely achieve the intended goal of reducing inmate and jail populations. It also would result in a net General Fund savings of \$20 million relative to the Governor's budget plan. (Reduce Item 5225-101-0001 by \$45 million.)*

#### Background

*New Probation Program Proposed.* The administration has proposed to establish a program in 2007-08 that would provide grants to county probation offices. The grants would fund improved services and increased supervision of 18- to 25-year old offenders. The administration has included this new grant program as part of a larger package of proposals intended to address high levels of overcrowding in the state prison system as well as county jails. The administration says the new program for 18- to 25-year olds would be modeled on the Juvenile Justice Crime Prevention Act (JJCPA) programs targeted at younger offenders. Like JJCPA, the new program, called the California Adult Probation Accountability and Rehabilitation Act (CAPARA), would be administered by the Correctional Standards Authority (CSA) within the Department of Corrections and Rehabilitation (CDCR).

According to the administration, the funding for CAPARA would generally be provided according to the population of each county, with each county receiving at least \$100,000. Local probation departments which volunteered to participate in the program would have to submit

an “action plan” subject to CSA review and approval, use a validated risk assessment tool to target supervision and needs of offenders, and use services and programs, such as drug treatment, to address the needs of their probationers.

The Governor proposes \$50 million from the General Fund for this local assistance program in 2007-08. Total funding would grow to \$100 million in 2008-09.

### **Analyst’s Concerns: Too Much Program, Too Soon**

We agree that there is some merit in examining whether targeting the 18- to 25-year olds for improved probation services could reduce their numbers in state prison and county jails. But, based upon our analysis, we have a number of concerns about the specific proposal presented by the administration.

- ***Some Aspects of Proposal Vague.*** The administration’s proposal would provide a flexible source of funding to counties to experiment with new strategies to prevent young adults from continuing their participation in criminal activity. However, based on our review of the trailer bill language proposed for this new program, it is unclear (1) how the services provided under the program would differ from those already provided to this age group as well as older probationers, and (2) how specifically it would help to relieve prison or jail overcrowding, which is supposed to be the general purpose of the new state grant program. For example, the trailer bill language allows funding to be used for the “incapacitation” of offenders, which could include jailing them—thus working at cross purposes with the stated intent.
- ***Program Funding Level Not Justified.*** The administration has provided no information to justify the specific funding level proposed for this program for 2007-08 or 2008-09. Lacking basic information, such as an assessment of the funding required by county probation agencies to provide services and supervision for this population, it is hard for the Legislature to assess whether the proposed funding is at the right level, even if it determines that the overall approach is worthwhile.
- ***Large Investment in Untested Programs.*** The Legislature made a large-scale investment in JCCPA programs based on evidence that similar programs targeted at juvenile offenders had been successful in other states. There is some evidence that JCCPA has reduced criminal involvement and resulted in other positive outcomes for juveniles who have participated in them. However, the administration cannot point to any programs similar to CA-

PARA which have demonstrated success with the 18- to 25-year old group targeted for the new program. What worked well for JCCPA might not work as well for the older offenders targeted for participation in CAPARA.

- ***No Detail Provided for Proposed Administrative Funding.*** The budget proposal places all \$50 million in a CDCR local assistance item, and states that \$275,000 of the funding would be set aside for CSA's administrative costs. In order to justify these administrative resources, we believe it would be more appropriate for the administration to provide the Legislature with fiscal detail indicating the specific staffing complement and operating expenses and equipment that CSA would need to operate the new grant program. Also, we believe any administrative funding provided by the Legislature for CAPARA should be budgeted in the state operations item, not within the CDCR local assistance item.

## **Analyst's Recommendations**

We recommend that the Governor's proposed new adult probation program be scaled back and part of the remaining funding shifted to another program more likely to achieve the intended goal of reducing inmate and jail populations. This approach would also result in some General Fund savings relative to the Governor's budget plan.

***Fund Only a Pilot Program.*** Given the concerns cited above, we recommend that the Legislature set aside no more than \$5 million to test CAPARA in a limited number of counties. This funding would be awarded on a competitive basis to the best "action plans" submitted by counties that (1) documented how they would differ from the services already provided for this target group in their county, and (2) focused on specific strategies that would be likely to reduce state prison and county jail populations. Consistent with this approach, CSA and DOF would be directed to develop legislation to implement a pilot program, including the administrative and support funding and staffing such a new program would require.

Our recommendation is based on our conclusion that, while such a new program may have merit, it makes sense to invest a much more limited amount of funding to test the concept before the Legislature commits full funding for it on a statewide basis. If the pilot program proved to be successful and cost-effective in reducing prison and jail populations, as suggested by the administration, the Legislature could consider providing expanded funding in the future.

***Shift Some Remaining Funding to Proposition 36.*** We recommend that \$25 million of the funding proposed for CAPARA be redirected to

the budget for the Department of Alcohol and Drug Programs (DADP) to reverse a funding cut proposed by the administration in Proposition 36 programs. This initiative measure, approved by voters in November 2000, changed state law so that certain adult offenders who use or possess illegal drugs are sentenced to probation supervision and drug treatment rather than being sentenced to prison or jail. Under our proposal, sufficient funds would be provided in the DADP budget to maintain Proposition 36 expenditures at \$145 million annually—the same level of support provided for them from the General Fund in 2006-07.

The administration does not count on its proposal resulting in any reduction in the prison population based on our review of its prison and jail capacity package. In contrast, independent academic evaluations of Proposition 36 and our own separate review of prison data since its enactment in 2000 have confirmed that the measure has held down growth in the prison and jail population, and resulted in fiscal savings beyond its costs. Last year, we estimated that General Fund savings to the state on prison and parole costs were almost \$300 million in 2004-05. After accounting for the state's contribution that year of \$120 million for support of Proposition 36 program, the state achieved net savings that year of about \$180 million.

Accordingly, we recommend redirecting \$25 million of the new funding proposed by the administration for CAPARA into existing Proposition 36 programs. We believe this approach would likely result in some improvement in probation supervision of county offenders, given that support of probation operations is an allowable use of Proposition 36 funding. Moreover, our approach would ensure that most of the money is used for substance abuse treatment services, a strategy that independent evaluations indicate would be likely to reduce prison and jail populations.

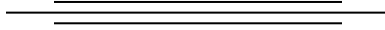
In response to findings in the academic studies referenced above that found some weaknesses in Proposition 36, the Legislature and Governor last year enacted Chapter 63, Statutes of 2006 (SB 1137, Ducheny) to make various improvements in the initiative. One of the changes was to permit short-term incarceration of an individual who had failed to comply with the treatment plan ordered by a judge. However, the statute has not been implemented due to a pending court challenge of the measure.

If the legal challenge to Chapter 63 has not been resolved by the May Revision, the Legislature may wish to consider placing policy changes it wishes to link to the provision of Proposition 36 funding on the statewide ballot in 2008. A prior legal opinion issued by the Office of Legislative Counsel indicated that voter approval would likely be needed for some proposed changes in Proposition 36 to go into effect. (For additional discus-



sion of Proposition 36 issues, please see our analysis of the DADP budget in the “Health and Social Services” chapter of this *Analysis*.)

Under our approach of using \$5 million for the pilot project and \$25 million for the Proposition 36 program, the state would achieve \$20 million in General Fund savings relative to the Governor’s 2007-08 budget plan.





# FINDINGS AND RECOMMENDATIONS

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### Judicial Branch

- D-17     ■     **Courthouse Bond Proposal Deserves Close Scrutiny.** Withhold recommendation on the Governor’s proposal to place a \$2 billion bond issue on the ballot for courthouse construction. Recommend rejection of the proposed companion legislation to establish public-private partnerships for courthouse expansion and that the Judicial Council be directed to draft new legislative language that would provide a much more specific legislative framework to govern such arrangements.
- D-20     ■     **Access to Justice Pilot Program Creates Unnecessary Administrative Costs. Reduce Item 0250-111-0001 and Item 0250-101-0932 by \$5,000,000.** Recommend rejection of the Access to Justice pilot program because the benefits of the new program are not clear and it would move the state in the direction of a major new funding commitment it could not easily afford.
- D-23     ■     **Inflationary Increases on County Facility Payments.** Withhold recommendation on adding inflationary increases to county facility payments because the request provides adjustments for an additional 68 courthouses that have not yet been transferred to the state.

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- D-24 ■ **State Appropriations Limit Increases. Reduce Item 0250-111-0001 and Item 0250-101-0932 by \$584,000.** Recommend reduction of State Appropriation Limit (SAL) increase provided to the trial courts by because it includes adjustments for judicial officer salaries that are supposed to be excluded from SAL calculations.
- D-25 ■ **Server Costs Not Justified.** Withhold recommendation on \$1.1 million in ongoing funding requested for replacement of network servers. The proposal does not provide sufficient information to justify the request.

**Department of Justice**

- D-26 ■ **An Update on the Implementation of Proposition 69.** Recommend that the Legislature appropriate in the budget the amount of General Fund dollars it is willing to provide to subsidize criminal penalty revenues available to the DNA Program and strike proposed budget bill language that would inappropriately delegate the authority to increase General Fund spending for the program to the Department of Finance.
- D-38 ■ **Reducing Pay Differentials Could Create Recruitment and Cost Issues. Reduce 0820-001-0001 by \$951,000 and Various Other DOJ Budget Items by a Combined Total of \$755,000.** Recommend rejection of the proposal to reduce the pay differential between the high-level attorneys and supervisors because it could lead to recruitment and retention issues for supervisors and could require additional pay raises for other state attorneys.
- D-39 ■ **Correctional Writs and Appeals Workload Overstated. Reduce Item 0820-001-0001 by \$1.4 Million.** Recommend reduction of the proposed increase in staffing for federal habeas corpus litigation because our analysis indicates that the department will need fewer attorneys than requested to address their workload increase.

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- D-40 ■ **Department of Mental Health Workload Estimate Could Change.** Withhold recommendation on the request related to Chapter 337, Statutes of 2006 (SB 1128, Alquist), pending updated estimates of the number of additional commitments of Sexually Violent Predators provided by the Department of Mental Health in the May Revision.

## Department of Corrections and Rehabilitation

- D-46 ■ **Department Has Not Provided Reports to Legislature.** Recommend that the Legislature require the department to report at budget hearings on the status of various reports required in association with the *2006-07 Budget Act*, but not yet received by the Legislature.

## Adult Corrections

- D-51 ■ **Adult Inmate and Parole Caseload Will Likely Require Further Adjustment.** Withhold recommendation on the 2007-08 budget request for caseload funding pending receipt of the May Revision. Recommend that the department provide, as part of its spring population projections, an estimate of the impact on the inmate population of the administration's proposed parole-related policy proposals and reductions in Proposition 36 funding.
- D-52 ■ **Governor's Prison Overcrowding Package Is More Balanced But Too Big. Reduce Item 5225-001-0001 by \$146 million and Item 5225-002-0001 by \$23 million.** The Governor proposes \$9.6 billion (combined General Fund and lease-revenue bonds) primarily to address overcrowding in state prisons and county jails. We recommend that the Legislature consider an alternative package that would also address overcrowding but result in a more limited surplus of prison beds and reduce capital outlay costs relative to the Governor's proposal by \$2.1 billion.

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- D-82 ■ **The California Prison Receivership: An Update.** The Legislature faces great uncertainties over the extent of costs and savings resulting from actions of the Receiver appointed last year to take over the inmate medical care system. We discuss various budget request relating to the actions of the Receiver and key legislative oversight considerations for the inmate medical system.
- D-102 ■ **Enhancing Public Safety by Reducing Parolee Unemployment. Reduce Item 5225-001-0001 by \$3.4 million. Increase Item 5225-001-0995 by \$3.4 million.** Estimates are that a majority of state parolees are not regularly employed, a factor which research has shown to be linked to offending. We identify several steps the Legislature should take to increase rates of parolee employment, including targeting funding to cost-effective programs, continuing federal funding, looking outside of California for successful approaches, requiring the department to track parolee employment rates, improving the contracts for parole referral programs, and improving case management.
- D-119 ■ **Inadequate Maintenance of Prison Facilities.** The state faces a growing and costly backlog of special repair work due in part to the way the California Department of Corrections and Rehabilitation has managed and organized the responsibilities for keeping prison in good repair. Recommend adjustments to an administration proposal to increase spending for these purposes by \$46 million, as well as further actions by the Legislature to protect the state's major investment in correctional infrastructure.
- D-134 ■ **Sex Offender Proposals Generally Consistent With New Laws, but More Detail Required.** Recommend approval of the Governor's High Risk Sex Offender Task Force proposals, but withhold recommendation on the requests related to implementing new sex offender laws. We further recommend technical reductions of \$18 million if the proposal relating to new laws is approved, with a share of these savings used to create an in-prison sex offender treatment pilot program.

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- D-142 ■ **Action on Three Health Proposals Would Be Premature.** Withhold recommendation on capital outlay proposals for new mental health beds, as well as a support proposal for increases in compensation for dental clinicians, because pending federal court decisions could result in significant modifications of these proposals.

**Juvenile Justice**

- D-145 ■ **Institutional Population May Be Overstated.** Withhold recommendation on the 2007-08 budget request for caseload funding pending receipt of any further proposed institutional and parole population adjustments at the May Revision.
- D-147 ■ **Population Shift Warranted But Construction Funding Not Justified.** Recommend approval of a proposal to shift roughly one-half of the current Division of Juvenile Justice institution population to local juvenile facilities and programs, along with block grant funding to offset the related additional costs for counties. Recommend disapproval of a second proposal to provide \$400 million in lease-revenue bond funding to build as many as 5,000 local juvenile beds.

**Local Assistance Programs**

- D-157 ■ **Funding for New Probation Program Should Be Reduced and Redirected. Reduce Item 5225-101-0001 by \$45 Million.** Recommend that the Governor's proposed new adult probation program be scaled back and part of the remaining funding be shifted to expand Proposition 36 programs more likely to achieve the intended goal of reducing inmate and jail populations.

