

# SUBCOMMITTEE NO. 5

# Agenda

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Senator Loni Hancock, Chair  
Senator Joel Anderson  
Senator Jim Beall



**Thursday, March 10, 2016**  
**9:30 a.m. or upon adjournment of session**  
**State Capitol - Room 113**

Consultant: Julie Salley-Gray

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**PROPOSED FOR VOTE ONLY****0250 Judicial Branch**

1. **Trial Court Security (non-sheriff).** The budget proposes \$343,000 General Fund for cost increases related to court security services provide by marshals in the superior courts of Shasta and Trinity counties. The funds are necessary to address increased costs for court-provided (non-sheriff) security to maintain funding at 2010 security levels.

**0820 Department of Justice**

1. **Criminal Justice Reporting (AB 71).** The budget proposes \$374,000 General Fund and four positions to meet the reporting requirements associated with AB 71(Rodriguez, Chapter 462, Statutes of 2015), which requires law enforcement agencies to report to DOJ data on certain use of force incidences.
2. **Bureau of Gambling Control Training.** The budget proposes a \$200,000 appropriation (Gambling Control Fines and Penalties Account) to develop an on-going academy style training program for all levels of employees (both sworn and non-sworn).

## ITEMS TO BE HEARD

### 0820 DEPARTMENT OF JUSTICE

#### Issue 1: Armed Prohibited Persons System (APPS)

**Governor's Budget.** The budget proposes an on-going increase of \$4.7 million in Firearms Safety and Enforcement Special Fund (FS&E) to provide permanent funding for 22 positions for APPS investigations. Currently, all APPS-related activities are funded through the Dealer Record of Sale Special Account (DROS) account. The DROS fund requires an appropriation from the Legislature. The FS&E fund is continuously appropriated. Therefore, if the proposed funding shift is approved, the Department of Justice (DOJ) would not require future legislative authority to expend money deposited in the fund for APPS.

**January 21, 2016 Letter from the Attorney General.** After the release of the Governor's January budget proposal, Attorney General Kamal Harris sent all members of the Legislature a letter requesting an on-going, permanent increase of \$8 million to retain 30 investigator, six supervisory and 12 non-sworn analyst positions within DOJ's Bureau of Firearms that had been authorized on a limited term basis by SB 140, (Leno), Chapter 2, Statutes of 2013.

#### Background

***Firearms in California.*** Under California law, in order to purchase a firearm, an individual must provide a licensed gun dealer with proof of age (21 years for handguns and 18 years for long guns), pass a background check, pay a \$25 fee, and wait for 10 days. In addition, a person purchasing a gun must provide proof that he or she passed the gun safety exam. All firearms must be sold with a locking device. Under certain circumstances, individuals are prohibited from owning or possessing firearms. Generally, a person is prohibited from owning guns if any of the following apply to the individual is on probation or parole or has been:

- Convicted of a felony or of certain misdemeanors.
- Proven to be a danger to himself/herself or others due to a mental illness.
- Been restrained under a protective order or restraining order.
- Convicted of certain crimes as a juvenile and adjudged a ward of the state.

In recent years, there has been a continued and substantial increase in gun purchases, extending through 2013. For example, between calendar year 2012 and calendar year 2013, gun purchases rose by over 15 percent in California. In 2014, the number of sales dipped for the first time since 2007. The table that follows illustrates the annual number of overall purchases of firearms in the state. Despite the dip, gun sales in California have almost tripled over the last decade.

**Firearms in California  
Purchases and Denials**

<b>Year</b>	<b>Hand Guns Purchased</b>	<b>Hand Gun Denials</b>	<b>Long Guns Purchased</b>	<b>Long Gun Denials</b>	<b>Total Guns Purchased</b>	<b>Total Denials</b>
2004	145,335	1,497	169,730	1,828	315,065	3,325
2005	160,990	1,592	183,857	1,878	344,847	3,470
2006	169,629	2,045	205,944	1,689	375,573	3,734
2007	180,190	2,373	190,438	1,926	370,628	4,299
2008	208,312	2,737	216,932	2,201	425,244	4,938
2009	228,368	2,916	255,504	2,221	483,872	5,137
2010	236,086	2,740	262,859	2,286	498,945	5,026
2011	293,429	3,094	307,814	2,764	601,243	5,805
2012	388,006	3,842	429,732	3,682	817,738	7,524
2013	422,030	3,813	538,419	3,680	960,179	7,493
2014	512,174	4,272	418,863	4,297	931,037	8,569

**Firearms Regulation Funding.** Every individual purchasing a firearm in California is required to pay a \$25 assessment. All of the funds go primarily toward supporting firearm safety and regulation within the DOJ. The \$25 total is the sum of three separate state fees:

- \$19 background check fee payable to the DROS account, which currently funds the APPS program.
- \$5 is payable to the FS&E fund.
- \$1 firearm safety device fee is paid to the Firearms Safety Account (FSA).

**Statistics on Gun Violence.** The Centers for Disease Control reports that in 2013, 33,636 people died in firearms-related deaths in the United States. That equates to 10.6 people out of every 100,000. Of those deaths, 11,208 were homicides. According to statistics gathered by the Brady Campaign to Prevent Gun Violence, over 100,000 people a year in the United States are shot. According to the latest United States Department of Justice data, in 2011, about 70 percent of all homicides and eight percent of all nonfatal violent victimizations (rape, sexual assault, robbery and aggravated assault) were committed with a firearm, mainly a handgun. A handgun was used in about seven in ten firearm homicides and about nine in ten nonfatal firearm violent crimes in 2011. In the same year, about 26 percent of robberies and 31 percent of aggravated assaults involved a firearm, such as a handgun, shotgun or rifle.

Beginning in 1999, DOJ Bureau of Firearms began to study some of California's high-profile shootings in an effort to determine if there were remedial measures that could be enacted to curtail instances of gang violence and other similar violent events. The study found that many of the offending individuals were law-abiding citizens when they purchased the firearms, and were subsequently prohibited from gun ownership due to the reasons listed above. At the time of the study, DOJ lacked the capacity to determine whether or not an individual who had legally purchased a firearm, and subsequently became prohibited from such ownership, was still in possession of a firearm.

In addition, even if such a determination could have been made, the DOJ lacked the authority to retrieve that weapon from the prohibited person.

In 2001, the Legislature created the Prohibited Armed Persons File to ensure otherwise prohibited persons do not continue to possess firearms (SB 950 (Brulte), Chapter 944, Statutes of 2001). SB 950 provided DOJ with the authority to cross-reference their database of individuals who own handguns with their database listing of prohibited individuals. The 2002 Budget Act included General Fund support of \$1.0 million for DOJ to develop the Armed Prohibited Persons System (APPS). The database was complete in November 2006, with continued funding to support the program provided from the General Fund. Further legislation, SB 819 (Leno) Chapter 743, Statutes of 2011, allowed the department to utilize funds within the Dealers Record of Sale Account (DRoS) for firearm enforcement and regulatory activities related to the Armed Prohibited Persons System.

SB 950 also mandated that DOJ provide investigative assistance to local law enforcement agencies to better insure the investigation of individuals who continue to possess firearms despite being prohibited from doing so. (Penal Code § 30010) DOJ states that its special agents have trained approximately 500 sworn local law enforcement officials in 196 police departments and 35 sheriff's departments on how to use the database during firearms investigations. The department states it has also conducted 50 training sessions on how to use the vehicle-mounted California Law Enforcement Telecommunications System terminals to access the database.

Local law enforcement agencies are provided monthly information regarding the armed and prohibited persons in the agency's jurisdiction. Given this access, once the armed and prohibited person is identified, DOJ and local agencies could coordinate to confiscate the weapons. However, at the present time, many agencies are relying on assistance from DOJ's criminal intelligence specialists and special agents to work APPS cases. When local agencies do confiscate weapons, they are required to send DOJ a notice so that the individual can be removed from the list.

In 2013, the Legislature, in coordination with DOJ, determined that there was a significant workload resource gap. At that time, it was estimated that approximately 2,600 offenders were added to the APPS list annually, creating a significant backlog in the number of investigations. According to DOJ, each special agent is capable of conducting 100 APPS investigations over a one-year period. During fiscal year 2012-13, the Bureau of Firearms had authority for 21 agents. Therefore, the bureau was capable of conducting roughly 2,100 investigations on an annual basis with that special agent authority, which would add 500 possible armed and prohibited persons to the backlog each year. The DOJ's Bureau of Firearms workload history is provided below.

**Armed Prohibited Persons  
Workload History**

Fiscal Year	Armed and Prohibited Persons Identified	APPS Investigations Processed
2007-08	8,044	1,620
2008-09	11,997	1,590
2009-10	15,812	1,763
2010-11	17,606	1,700
2011-12	18,668	1,716
2012-13	21,252	2,772
2013-14	22,780	4,156
2014-15	17,479	7,573

To address the workload resources required to both reduce the growing backlog, and actively investigate incoming cases in a timely fashion, the Legislature passed SB 140, (Leno), Chapter 2, Statutes of 2013. SB 140 provided DOJ with \$24 million from the Dealer's Record of Sale (DROS) account in order to increase regulatory and enforcement capacity within DOJ's Bureau of Firearms. The resources financed in SB 140 were provided on a three-year limited-term basis, which, according to the DOJ, was adequate time to significantly reduce or eliminate the overall number of armed and prohibited persons in the backlog. Ongoing cases could be managed with resources within DOJ's Bureau of Firearms. Additionally, the measure included reporting requirements due annually to the Joint Legislative Budget Committee.

During the 2015 budget hearing process last spring, the Legislature expressed concern that half-way through the three years, the department had spent 40 percent of the \$24 million, and the backlog had only been reduced by approximately 3,770. In addition, the Bureau of Firearms had hired 45 agents, as of the date of their update, but had only retained 18 agents. Of the agents that left the bureau, the vast majority went to other agent positions in DOJ. It is unclear what caused this staff retention issue, whether it was due to the fact that the new positions were limited-term or that more senior agents were permitted to transfer. As a result, some SB 140 funding that was intended to directly address the APPS backlog was instead used to conduct background checks, provide training and to equip newly hired who agents subsequently left the bureau.

**2015 Budget Actions.** The 2015 Budget Act provided DOJ's Bureau of Firearms with 22 additional permanent positions dedicated to APPS investigations and required that they be funded utilizing existing resources. In addition, supplemental reporting language required DOJ to provide the Legislature, no later than January 10, 2016, an update on the department's progress on addressing the backlog in the APPS program and hiring and retaining investigators in the firearms bureau.

**DOJ APPS Backlog Supplemental Report.** *The Senate Bill 140 Supplemental Report of the 2015-16 Budget Package* submitted by DOJ notes that as of December 31, 2015, the department had addressed a combined total of 33,264 prohibited persons in the APPS database since July 1, 2013. However, as of the end of December 2015, 12,691 people remained of the 21,249 person backlog identified on January 1, 2014. DOJ has committed to eliminating the entire backlog by December 2016. However, given their current pace, it is unclear how they will achieve that goal in the next 11 months.

As noted above, the report also required DOJ to address concerns raised by the Legislature surrounding the high turnover and vacancy rate among agents in the firearms bureau. The department notes that they continue to have vacancies but have taken steps to retain agents, including instituting a 24-month transfer freeze for new agents. The department currently has 73 agent positions dedicated to APPS enforcement. As of July 1, 2015, 57 of the 73 positions were filled. However, rather than making progress in filling vacant positions, by December 31, 2015, there were a total of 75 agents positions dedicated to APPS but only 54 of them were filled, leaving 21 vacancies.

Despite on-going challenges associated with eliminating the APPS backlog and retaining agents, the department notes that between July 1, 2013 and October 31, 2015, approximately 18,608 cases had been closed at an average cost of \$775 per case. In addition, during the same reporting period (July 1, 2013 through December 31, 2015) the firearms bureau recovered 9,732 firearms, almost 950,000 rounds of ammunition, 6,425 magazines, and 9,475 large capacity magazines.

**California State Auditor Report.** In addition to concerns raised by the Legislature, on July 9, 2015, the State Auditor released a follow-up report to an audit of the APPS program conducted in 2013. Along with other concerns raised in that report, the most recent auditor report noted little or no progress in reducing the backlogs in DOJ's processing queues—the daily queue and a historical queue—noted in the State Auditor's 2013 report. Specifically:

- During late 2012 and early 2013, DOJ had a backlog of more than 1,200 matches pending initial review in its daily queue—a queue that contains the daily events from courts and mental health facilities that indicate a match and could trigger firearm ownership prohibition. Because a backlog in this queue means that DOJ is not reviewing these daily events promptly, the auditor recommended that DOJ establish a goal of no more than 400 to 600 cases in the daily queue. In the most recent audit, the auditor found that DOJ's daily queue during the first quarter of 2015 was over 3,600 cases—six times higher than its revised ceiling of 600 cases. Just as it did during the previous audit, DOJ cites its need to redirect staff to another Bureau of Firearms priority, which has a statutory deadline, as the reason for the continuing backlog. The auditor believes that if DOJ had a statutory deadline on the initial processing of the matches in the APPS database, it would encourage DOJ to avoid redirecting APPS unit staff. The chief of the bureau believes that seven days is a reasonable time frame to complete an initial review of matches.
- DOJ is unlikely to complete its review of events in the historical queue by its December 2016 goal, set forth in the October 2013 audit report. The former assistant bureau chief explained that the backlog in DOJ's historical queue consists of persons who registered an assault weapon since 1989 or acquired a firearm since 1996 and who have not yet been reviewed for prohibiting events since DOJ implemented the APPS database in November 2006. In the previous report, the auditor reported that as of July 2013, DOJ's historical backlog was nearly 380,000 persons; now as of April 2015, its historical backlog was still over 257,000 potentially prohibited persons. Based on DOJ's annual averages of reviewing the historical backlog since 2010, the auditor estimates that DOJ will not complete its review of the historical backlog until 2018, based on DOJ's most productive year. Based on its current pace of completion, the review would not be complete until 2022. The longer it takes DOJ to review the records in historical backlog, the longer armed prohibited persons keep their firearms, which increases the risk to public safety.

In response to the report, DOJ stated:

*APPS grows by approximately 3,000 persons per year, but California local law enforcement does not have sufficient resources to proactively locate and contact armed and prohibited persons. To address this problem, Attorney General Harris sponsored Senate Bill 819 in 2011 to fund increased enforcement efforts. After its enactment, Attorney General Harris ordered a series of sweeps that successfully took firearms out of the possession of persons prohibited due to their criminal histories or mental health. After the success of these sweeps, Attorney General Harris sought and received additional resources from the Legislature in July 2013, via Senate Bill 140, to hire 36 additional agents for the APPS program. This has enabled the DOJ to conduct 13,313 APPS investigations from July 1, 2013, to May 30, 2015, and reduced the APPS subject backlog from an estimated 28,000 subjects (if not for the additional resources acquired via SB 140) to 15,797 APPS subjects as of June 19, 2015. That is a net reduction of more than 12,000 subjects.*

*DOJ is committed to eliminating the APPS historical backlog by December 2016. As previously indicated, the DOJ has continued to monitor and respond to workload fluctuations impacting APPS processing. Additionally, the DOJ did establish realistic goals to complete the backlog by December 31, 2016. However, the unforeseen loss of analytical staff, and the continued high level of firearms sales have forced the DOJ to redirect staff to meet the legislative time frames associated with completing background checks on firearm purchases in California. The DOJ agrees with this recommendation and is currently in the process of implementing a strategy to temporarily redirect staff from other areas of the department to assist with the historical backlog and for adding analytical staffing resources to the BOF to meet workload demands, thereby eliminating the need to redirect staff away from the goal of eliminating the APPS historical backlog by December 31, 2016.*

In addition to the above response to the auditor's follow-up report, DOJ provided an update in its recent SB 140 Supplemental Report. As of January 1, 2016, the historical backlog had been reduced to 122,566.

**Firearms and Domestic Violence Education and Intervention Project.** Domestic violence involving firearms is a serious problem in California. Most intimate partner homicides involve firearms. Among women in shelters in California, one third come from homes where firearms are kept, and two thirds of those women report that their partner has used a firearm against them. Since 1999, California has prohibited the possession of firearms by persons subject to domestic violence restraining orders. Research suggests that such a prohibition may be effective, but it has never been systematically enforced.

In 2006, the California Department of Justice began work with San Mateo County and Butte County on pilot programs of systematic enforcement of the firearms prohibition. The initiative sought to identify persons owning or possessing firearms among respondents to domestic violence restraining orders and recover or otherwise dispose of their firearms as quickly as possible. San Mateo County implemented its initiative in May 2007; Butte County followed in April 2008. Both pilot programs ended in June 2010.

Teams of two detectives in each county reviewed all domestic violence restraining orders issued in their counties. To determine whether respondents were linked to firearms, detectives checked records in the state's Automated Firearm System (AFS) and other databases and reviewed the documents accompanying every order. Reports from petitioners were enhanced by a firearm identification form used by both teams. When firearm involvement was known or suspected, the teams often interviewed protected parties to gather additional information.

According to the evaluation of the pilot, "Considered alone, recovering firearms from restraining order respondents was associated with substantial and statistically significant decreases in overall risk of arrest in San Mateo County and a comparable, though non-significant, decrease in risk of arrest for violent and firearm-related crimes other than domestic violence. This is a particularly promising finding given the large increase in risk among respondents who had multiple prior arrests, a characteristic shared by nearly 85 percent of respondents who had been linked to firearms in both counties."<sup>1</sup>

**Questions for the Department of Justice.** DOJ should be prepared to address the following questions:

1. In 2013, the legislature appropriated \$24 million to the Department of Justice to reduce the backlog in the Armed Prohibited Persons System (APPS). How much of the \$24 million has been spent? Please describe how these funds were spent.
2. Over \$18 million has been spent of the \$24 million appropriation. What was the backlog in the APPS in July of 2013? What is the current backlog?
3. The Department of Justice has had a difficult time retaining agents to handle the APPS cases. In fact, in the January 1, 2016 Supplemental report, the Department stated "At the start of Fiscal Year 2014-2015 there were 78 agent positions, 55 which were filled. During this timeframe: 28 agents were hired; 19 agents transferred to another bureau with the Department; three agents retired; two agents returned to their prior employer; and two agents promoted." The number of transfers appears to be drastically reduced in 2015-2016, what caused this reduction? Why did the department not take action to limit transfers prior to legislative involvement?
4. After much discussion last year, the legislature requested that the Department of Justice consider sending letters to individuals on the APPS. According to the January 2016 Supplemental Report, the department stated that it has sent out 55 letters in December. How many cases have been closed as a result of these letters? Are there plans to expand the letter program? The January 2016 Supplemental Report states that the department has determined that it will not send letters to individuals who are prohibited because of a felony, violent misdemeanor, mental health adjudication or domestic violence restraining order, is this still the department's position?

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<sup>1</sup> "Firearms and Domestic Violence Education and Intervention Project Final Report of Process and Outcomes." Violence Prevention Research Program, School of Medicine, University of California, Davis and Center for Gun Policy and Research, Bloomberg School of Public Health, Johns Hopkins University. April 2012 (Revised October 2012).

5. Please describe the Firearms and Domestic Violence Education and Intervention Project and its outcomes.
6. Given the pilot project in San Mateo and Butte counties, and your partnerships with other state and local law enforcement through task forces committed to combating gang activity and drug trafficking, why hasn't DOJ expanded on those efforts in the area of APPS and gun trafficking?

### Staff Comments

***Create an Incentive for Local Law Enforcement Agencies to Collect Firearms.*** Given the success of the San Mateo and Butte counties pilot project, the committee may wish to consider creating an incentive program designed to provide an incentive payment equal to the APPS average cost per investigation for every new APPS case resulting from a domestic violence restraining order, gun violence restraining order or mental health prohibition that is closed at the local level.

***Seek Assistance from Other Statewide Entities.*** Given the on-going struggle of DOJ to fill investigative positions in their firearms bureau and to process the APPS backlog and assess new cases, the Legislature may want to consider creating a partnership between DOJ and other state-wide law enforcement entities, like the California Highway Patrol (CHP), to investigate prohibited persons and firearms trafficking cases, and retrieve prohibited firearms and ammunition. DOJ currently focuses on a geographic region of the state for its APPS investigations, rather than prioritizing new cases throughout the state that may be easier to resolve. The CHP has officers stationed widely throughout the state. This partnership may allow the state to prioritize cases based on time in the system, rather than geographic region, thus resolving cases more quickly.

***Prohibit the Transferring of Resources From One Program Area to Another.*** One problem raised during discussions surrounding DOJ's efforts to investigate firearms, and in the auditor's follow-up report, is that the department appears to shift or loan both sworn and non-sworn staff among their various bureaus and programs in order to increase the number of investigations in one area versus another area. The Legislature may wish to restructure the DOJ budget to prohibit or restrict the movement of personnel and funding from one area to another.

***Should DOJ Increase the DROS Fee?*** Under current law, the DROS fund is intended to provide DOJ with the funding necessary for all firearms-related regulatory and enforcement activities related to the sale, purchase, possession, loan or transfer of firearms. Should the fee prove insufficient, DOJ has the authority to increase the fee at a rate not to exceed the Consumer Price Index (CPI). (Penal Code § 28225) The Legislature may wish to suggest that DOJ increase the DROS fee, rather than authorizing use of the FS&E fund for APPS-related activities. Should the CPI prove to be an inadequate increase, DOJ may wish to propose a statutory change allowing them to increase the fee beyond the CPI.

***Remove Continuous Appropriations.*** As noted above, the DROS fund requires an appropriation from the Legislature for all expenditures; the other two firearms-related funds do not. Allowing other branches of government to spend funds without legislative authority or appropriation potentially erodes the Legislature's constitutional authority to establish policy priorities and funding levels for the state. It has been a long-standing policy among the fiscal committees in both houses to limit or prohibit continuous appropriations. The Legislature may wish to consider removing the continuous

appropriations from both the FS&E fund and the FSA fund, regardless of the Legislature's decision on the APPS funding proposal.

*Establish a Deadline for Reviewing New Cases.* The State Auditor has recommended that the Legislature require DOJ complete an initial review of cases in the daily queue within seven days and periodically reassess whether DOJ can complete these reviews more quickly. The auditor believes that this would ensure that DOJ fairly balances competing responsibilities and avoids redirecting APPS unit staff to conduct Dealers' Record of Sale background checks.

**Issue 2: Fraud and Elder Abuse Enforcement Enhancement**

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

**Background.** Federal law requires that state attorneys general investigate allegations of Medicaid (Medi-Cal in California) fraud and complaints of abuse and neglect of patients in facilities paid by federal Medicaid funding. In 1978, the Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA) was created in the Attorney General's office. On average, the bureau opens 1,000 criminal investigations each year and they currently have approximately 231 backlogged cases.

**Legislative Analyst's Office.** The LAO has expressed concern over the on-going nature of the request. They recommend that the Legislature provide DOJ with \$7.8 million on a one-time basis from the Federal Trust Fund and the False Claims Act Fund to support 35 positions to eliminate an existing backlog largely related to abuse and neglect cases. However, as of this time, there is insufficient information to justify the need for these resources on an ongoing basis, as proposed by the Governor.

**Questions for the Department of Justice.** DOJ should be prepared to address the following questions:

1. One of DOJ's major justifications for ongoing resources is that the number of Medi-Cal beneficiaries has almost doubled, resulting in increased DOJ Medi-Cal fraud workload. However, DOJ is only responsible for fraud committed by providers (Department of Health Care Services is responsible for fraud committed by beneficiaries). As a result, an increase in beneficiaries doesn't necessarily increase DOJ workload. Why would an increase in the number of Medi-Cal beneficiaries increase DOJ workload? Has the number of Medi-Cal providers increased?
2. The bulk of BMFEA workload appears to involve elderly abuse and neglect cases. However, the justification in the BCP focuses more heavily on Medi-Cal provider fraud. How much ongoing workload can be attributed to abuse and neglect cases versus provider fraud cases?

**Issue 3: Major League Sporting Event Raffles Program**

**Governor's Budget.** The proposed budget requests a three-year limited-term General Fund increase of \$335,000 beginning in 2016-17 and two positions to address the workload related to the implementation of the Major League Sporting Event Raffles Program.

**Background.** Chapter 509, Statutes of 2015 (SB 549, Hall) authorizes a professional sports organization to conduct a 50/50 raffle for the purpose of directly supporting a specified beneficial or charitable purpose in California, or financially supporting another private, nonprofit, eligible organization. These types of charitable raffles are raffles in which 50 percent of the proceeds go to the winner, and 50 percent of the proceeds go to the local charities designated by the professional sports team for that particular event.

**Legislative Analyst's Office (LAO).** The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

**0250 JUDICIAL BRANCH**

**Background.** The judicial branch is responsible for the interpretation of law, the protection of individual rights, the orderly settlement of all legal disputes, and the adjudication of accusations of legal violations. The branch consists of statewide courts (the Supreme Court and Courts of Appeal), trial courts in each of the state's 58 counties, and statewide entities of the branch (the Judicial Council, Judicial Branch Facility Program, and the Habeas Corpus Resource Center). The branch receives revenue from several funding sources, including the state General Fund, civil filing fees, criminal penalties and fines, county maintenance-of-effort payments, and federal grants.

Due to the state's fiscal situation, the judicial branch, like most areas of state and local government, received a series of General Fund reductions from 2008-09 through 2012-13. Many of these General Fund reductions were offset by increased funding from alternative sources, such as special fund transfers and fee increases. A number of these offsets were one-time solutions, such as the use of trial court reserves and, for the most part, those options have been exhausted. In addition, trial courts partially accommodated their ongoing reductions by implementing operational actions, such as leaving vacancies open, closing courtrooms and courthouses, and reducing clerk office hours. Some of these operational actions resulted in reduced access to court services, longer wait times, and increased backlogs in court workload.

**Key Legislation**

AB 233 (Escutia and Pringle), Chapter 850, Statutes of 1997, enacted the Lockyer-Isenberg Trial Court Funding Act of 1997, to provide a stable and consistent funding source for the trial courts. Beginning in 1997-98, consolidation of the costs of operation of the trial courts was implemented at the state level, with the exception of facility, revenue collection, and local judicial benefit costs. This implementation capped the counties' general purpose revenue contributions to trial court costs at a revised 1994-95 level. The county contributions become part of the Trial Court Trust Fund, which supports all trial court operations. Fine and penalty revenue collected by each county is retained or distributed in accordance with statute.

AB 1732 (Escutia), Chapter 1082, Statutes of 2002, enacted the Trial Court Facilities Act of 2002, which provided a process for transferring the responsibility for court facilities from the counties to the state, by July 1, 2007. It also established several new revenue sources, which went into effect on January 1, 2003. These revenues are deposited into the State Court Facilities Construction Fund (SCFCF) for the purpose of funding the construction and maintenance of court facilities throughout the state. As facilities were transferred to the state, counties began to contribute revenues for operation and maintenance of court facilities, based upon historical expenditures.

SB 1407 (Perata), Chapter 311, Statutes of 2008, authorized various fees, penalties and assessments, which were to be deposited into the Immediate and Critical Needs Account (ICNA) to support the construction, renovation, and operation of court facilities. In addition, the bill authorized the issuance of up to \$5 billion in lease-revenue bonds.

SB 1021 (Committee on Budget and Fiscal Review), Chapter 41, Statutes of 2012, altered the administration of trial court reserves by limiting the amount of the reserves individual courts could carry from year to year to one percent of their funding and establishing a statewide reserve for trial courts, which is limited to two percent of total trial court funding.

In enacting these changes, the Legislature sought to create a trial court system that was more uniform in terms of standards, procedures, and performance. The Legislature also wanted to maintain a more efficient trial court system through the implementation of cost management and control systems.

**Budget Overview.** The Governor's proposed budget includes \$3.6 billion (\$1.7 billion General Fund and \$1.9 billion in other funds) in 2016-17 for the judicial branch. Of that amount, \$2.8 billion is provided to support trial court operations. The following table displays three-year expenditures and positions for the judicial branch; as presented in the Governor's budget.

(Dollars in thousands)

<b>Program</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>
Supreme Court	\$43,363	\$46,519	\$46,438
Courts of Appeal	211,101	219,274	224,784
Judicial Council	134,104	134,203	133,173
Judicial Branch Facilities Program	320,469	369,788	409,904
State Trial Court Funding	2,537,897	2,674,738	2,804,693
Habeas Corpus Resource Center	12,819	14,525	15,015
Offset from Local Property Tax Revenue	-30,000	-30,000	-30,000
<b>Total</b>	<b>\$3,228,997</b>	<b>\$3,429,047</b>	<b>\$3,604,007</b>
<b>Positions</b>	<b>1752.2</b>	<b>1714.0</b>	<b>1,717.0</b>

**Issue 1: Trial Court Augmentation and On-Going Trial Court Shortfall**

**Governor's Budget.** The Governor's proposed 2016–2017 budget provides approximately \$4 billion for the judicial branch and includes \$146.3 million in new funding. The proposed new funding would be allocated for innovation grants, language access expansion in civil proceedings, workload associated with Proposition 47 implementation, Trial Court Trust Fund revenue shortfall backfill, and court construction projects.

The \$4 billion budget proposal for the judicial branch includes \$1.7 billion in General Fund, representing 1.4 percent of all General Fund spending. The judicial branch represents 2.1 percent of total state funds of \$170.7 billion. Approximately 77 percent of the branch's operational budget is allocated to the trial courts.

**Prior Budget Actions.** Over the last several years, the Legislature has included augmentations in the trial court budget in an attempt to begin reducing the funding shortfall and to ensure that the gap does not continue to grow.

In the 2014-15 budget, the Legislature approved an increase of \$60 million General Fund for trial court funding, for a total General Fund increase of \$160 million. Specifically, the budget included a five percent increase in state trial court operations, for a total increase of \$86.3 million. In addition, the budget provided an increase of \$42.8 million General Fund to reflect increased health benefit and retirement adjustment costs for trial court employees. Finally, the Legislature authorized a General Fund increase of \$30.9 million to account for an estimated shortfall in the Trial Court Revenue Trust Fund.

In 2015-16 the state's overall trial court budget provides an increase of \$168 million, or 9.7 percent, from the 2014-15 amount. This augmentation included \$90.6 million General Fund in on-going additional funding to support trial court operations; \$42.7 million General Fund for increases in trial court employee benefit costs; and \$35.3 million General Fund to backfill reductions in fine and penalty revenue in 2015-16. In addition, the budget:

- **Trial Court Trust Fund Revenue Shortfall.** Provided additional \$15.5 million General Fund to cover the revenue shortfall in the trial court budget. This brought the total General Fund transfer for the shortfall to \$66.2 million.
- **Dependency Counsel.** Increased funding for dependency court attorneys in 2015-16 and on-going by \$11 million in General Fund. In addition, the budget shifted all dependency counsel funding to a separate item within the trial courts budget to insure that it remains dedicated to funding attorneys who represent children and their parents in the dependency court system.

**Trial Court Funding Reductions and Offsets  
(Dollars in Millions)**

Source: Legislative Analyst's Office, 2016

<b>Trial Court Reductions</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17 (proposed)</b>
One-time reduction	-\$418	\$0	\$0	\$0	\$0
Ongoing reductions (ongoing)	-\$724	-\$664	-\$577	-\$486	-\$466
<b>Total</b>	<b>-\$1,142</b>	<b>-\$664</b>	<b>-\$577</b>	<b>-\$486</b>	<b>-\$466</b>
<b>Funding Offsets</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17 (proposed)</b>
Transfer from other funds	\$401	\$107	\$107	\$93	\$93
Trial court reserves	\$385	\$200	\$0	\$0	\$0
Increased fines and fees	\$121	\$121	\$121	\$121	\$121
Statewide programmatic changes	\$21	\$21	\$21	\$21	\$21
<b>Total</b>	<b>\$928</b>	<b>\$449</b>	<b>\$249</b>	<b>\$235</b>	<b>\$235</b>
<b>Total Trial Court Reductions</b>	<b>-\$214</b>	<b>-\$215</b>	<b>-\$328</b>	<b>-\$251</b>	<b>-\$231</b>

**Budget impact on children in the child welfare system.** When a child is removed from his or her home because of physical, emotional, or sexual abuse, the state of California assumes the role of a legal parent and local child welfare agencies are entrusted with the care and custody of these children. County child welfare works in partnership with the courts, attorneys, care providers, and others to meet desired outcomes of safety, permanency, and well-being for foster children. Through the dependency court, critical decisions are made regarding the child's life and future – i.e., whether the child will return to his or her parents, whether the child will be placed with siblings, and what services the child will receive.

Every child in the dependency court system is assigned his or her own attorney who represents that child's interests. Budget reductions over the years have increased the caseloads of children's attorneys. Children's attorneys represent, on average 250 clients per year, far above the recommended optimal standard of 77 clients and maximum of 188 clients per attorney. Inadequate funding can impede services to children and families and may result in delays in court hearings, all of which undermines county child welfare's efforts for improved outcomes for children, such as reunifying children with their families, placing children with siblings, and finding a permanent home through adoption or guardianship.

For several years, the Legislature has worked to increase funding for dependency counsel but has remained largely unsuccessful. In the 2015-16 budget, the Legislature included \$11 million General

Fund augmentation to reduce the overall funding need from \$33 million to \$22 million. In addition, the Legislature shifted dependency counsel funding into its own budget item to ensure that those funds would remain dedicated to dependency counsel and could not be shifted to other funding priorities.

At the urging of the Administration, the Judicial Council was asked to develop a new funding methodology to determine the appropriate caseload and funding level for dependency attorneys. In addition, the Judicial Council was asked to begin redistributing funding among the courts to create a more equitable attorney-client caseload ratio throughout the different courts. The Judicial Council has completed the first phase of a three phase redistribution process.

**Budget Impact on legal aid services.** The Equal Access Fund (EAF) supports approximately 100 legal aid non-profits providing critical assistance to low-income Californians throughout the state. The EAF was established in 1999 with a \$10 million on-going General Fund appropriation, in subsequent years the EAF also began to receive a portion of court filing fees. The Governor's budget contains a total of approximately \$16 million (\$10.6 million General Fund and \$5.5 million special fund). Legal aid services providers argue that their funding remains unchanged despite significant increases in the number of clients who need their services. Providers further note that California was 10<sup>th</sup> in the nation in state funding for legal services but has now fallen to 22<sup>nd</sup> in the nation. They further note that the state of New York provides \$85 million per year for their legal aid programs.

Dependency attorneys and legal aid services providers are just two of many groups in recent years that have expressed concern that reductions in court funding has significantly reduced Californians' access to justice. In addition to concerns from these entities, across the state courthouses and courtrooms have been closed and hours have been reduced due to a lack of funding. The latest data available shows that between October 19, 2010 and April 2014, the Judicial Council had received notice of the following reductions:

- 51 courthouses closed.
- 205 courtrooms closed.
- 30 courts with reduced public service hours.
- 37 courts with reduced self-help/family law facilitator services.

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

**Questions for the Administration.** The Judicial Council and the Administration should be prepared to address the following questions:

1. Please explain how the Administration arrived at the \$20 million base augmentation figure.

2. The reallocation of funding for dependency counsel contained in last year's budget was approved with the assumption that increased funding would likely be provided to help mitigate the cuts to courts that had previously invested heavily in their dependency counsel funding. Does the Judicial Council intend to continue with the reallocation despite the lack of additional funding?
  
3. If available, please provide an update on the number of courthouses and court rooms closed and the number of courts that continue to have reduced hours.

**Issue 2: Court Innovations Grant Program**

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

According to the Administration, courts would be required to describe how grant funds are to be used to support the development of sustainable, ongoing programs and practices that can be adopted and replicated by other courts. Participating programs will also be required to provide measurable results, outcomes, or benefits to demonstrate the impact of the program on the court and the public.

**Legislative Analyst’s Office (LAO).** The LAO recommends that the Legislature withhold action on the Governor’s proposal to provide \$30 million in one–time funding from the General Fund for trial and appellate court innovation, modernization, and efficiency projects, pending additional information from the Administration and judicial branch (such as the specific programs and services that would be funded). To the extent that such information is not provided, the LAO recommends the Legislature reject the proposal.

**Questions for the Administration.** The Administration and the Judicial Council should be prepared to address the following questions:

1. Please provide some specific examples of the projects envisioned under this grant program. What is the estimated savings associated with the proposals?

**Issue 3: Rate Increase for Appellate Attorneys**

**Governor's Budget.** The Governor's budget includes an on-going augmentation of \$4.3 million General Fund to provide a \$10 per hour rate increase for panel attorneys appointed by the Courts of Appeal.

**Background.** Under the United States Constitution, indigent defendants convicted of felony crimes have a right to a court-appointed attorney for the initial appeal of their convictions. These appeals court appointed attorneys are paid hourly for their duties. Statewide there are currently 890 attorneys have been appointed by the court of appeal to represent indigent defendants. Currently, these attorneys are paid between \$85 and \$105 per hour for their work. The Judicial Council believes that a \$10 per hour increase is necessary in order to attract and recruit new attorneys and retain experienced attorneys.

**Judicial Council Request.** As noted above, the Governor's budget requests funding for a rate increase for the appellate attorneys. The Judicial Council, however, has raised concerns about the adequacy of funding for the appellate projects. These organizations manage the court-appointed counsel system in that district and perform quality control functions. The projects are responsible for working with the panel attorney to ensure effective assistance is provided, reviewing claims for payment for the work performed by the panel attorneys to ensure consistency and controls over the expenditure of public money, and training attorneys to provide competent legal counsel.

The Judicial Council requests a \$2.2 million increase for California's six Appellate Projects to allow them to continue providing competent representation in criminal and juvenile cases in the Courts of Appeal and death penalty cases in the Supreme Court (\$1.4 million combined for the five Court of Appeal appellate projects working on non-death penalty cases, \$800,000 for the Supreme Court appellate project working on death penalty cases). The council notes, "The Appellate Projects are critical to ensuring that we satisfy the constitutional guarantee that indigent defendants convicted of a felony have competent counsel."

The council further argues, "Virtually all of the funding for the Appellate Projects comes from the contracts they have with the Courts of Appeal. While the costs of rent, employee benefits, mandatory professional and fiduciary insurance, the need for improved technology, and all other costs of doing business have increased substantially, the amount of funding available for these projects has not increased since FY 2007-08. Absent additional funding, the projects have indicated they will no longer be able to continue providing the same level of services, oversight, and support for the panel attorneys and the courts."

**Legislative Analyst's Office (LAO).** The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

**Questions for the Administration.** The Judicial Council and the Administration should be prepared to address the following questions:

1. Given the wide variety of needs, including dependency counsel and legal aid services funding shortages, how did you determine that an increase in funding for appellate attorneys was the most critical need at this time?
2. Why didn't the Administration believe an augmentation was necessary for the appellate projects but that one was warranted for the appellate attorneys?

**Issue 4: Language Access**

**Governor's Budget.** The Governor's budget includes an on-going General Fund augmentation of \$7 million to expand language interpreter services to all civil proceedings.

**Background.** On January 22, 2015, the Judicial Council approved a comprehensive *Strategic Plan for Language Access in the California Courts*, which includes eight strategic goals and 75 detailed recommendations to be completed in three distinct phases." Fundamental to the plan is the principle that the plan's implementation will be adequately funded so the expansion of language access services will take place without impairing other court services. The Judicial Council created Language Access Plan Implementation Task Force charged with turning the Language Access Plan (LAP) into a practical roadmap for courts by creating an implementation plan for full implementation in all 58 trial courts.

The annual funding for court interpreter services has historically been limited primarily to constitutionally-mandated cases, including criminal cases and juvenile matters. Current funding is not sufficient to support growth and expansion of interpreter services into domestic violence, family law, guardianship and conservatorship, small claims, unlawful detainers and other civil matters. This augmentation will allow the courts to continue to provide court interpreter services in civil matters, and assure all 58 trial courts that increased funding for expanded court interpreter services for limited English proficient court users in civil is available.

**Legislative Analyst's Office (LAO).** The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

**8140 OFFICE OF THE STATE PUBLIC DEFENDER****Issue 1: Defense Services for Condemned Inmates**

**Governor's Budget.** The budget proposal requests \$1.05 million and 7.5 permanent positions (4.5 attorneys, 1 legal analyst, 1 association information systems analyst, and 1 staff services analyst) to address a delay in the office's ability to accept new appointments in death penalty cases.

**Background.** The California Legislature created the Office of the State Public Defender (OSPD) in 1976 to represent indigent criminal defendants on appeal. The office was formed in response to the need for consistent, high-quality representation of defendants in the state appellate courts. Over the years, the mission of the agency has changed. At the time, it was envisioned that OSPD would provide a counter-weight to the Attorney General's criminal appeals division. In the 1990s OSPD shifted its resources to focus primarily on post-conviction appellate representation in death penalty cases. In 1998, OSPD's primary statutory mission became the representation of indigent death row inmates in their post-conviction appeals.

Over the past decade, OSPD lost 50 percent of their staff due to budget reductions. OSPD notes that this reduction has made it impossible for them to accept appointments in death penalty appeals in a timely manner. The office further notes that this will not fully address their current backlog, but it is a first step.

Currently, 59 death row inmates await the appointment of appellate court counsel. According to OSPD, it generally takes at least five years for an inmate to receive appellate court counsel.

**Legislative Analyst's Office (LAO).** The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.

**0280 COMMISSION ON JUDICIAL PERFORMANCE****Issue 1: Increased Workload**

**Governor's Budget.** The budget proposal requests \$257,000 General Fund for one investigative attorney and one staff secretary.

**Background.** The Commission on Judicial Performance (CJP) is an independent, constitutionally-created body that was established in 1960. CJP is responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges. The commission's jurisdiction includes all active judges and justices of California's superior courts, Courts of Appeal and Supreme Court, and former judges for conduct prior to retirement or resignation.

**Justification.** Over the past 10 years, CJP's workload has increased. In 2014, CJP received 1,302 complaints against judges and subordinate judicial officers, a 16 percent increase over the 1,120 complaints received in 2005. The commission conducted 139 investigations in 2014, which constitutes a 78 percent increase over the investigations conducted in 2005. CJP has not received authorization or funding for additional staff since 1999-2000. CJP notes that over the past decade, investigations have taken considerably longer. The average length of an investigation is now over 16 months, as opposed to 10 months a decade ago. The increased length of the investigations have resulted in fewer formal proceedings, resulting in a number of serious cases being backed up for hearings.

**Legislative Analyst's Office (LAO).** The LAO did not raise any concerns with this proposal in their analysis of the Governor's budget.