

SUBCOMMITTEE NO. 5

Agenda

Senator Maria Elena Durazo, Chair
Senator Shannon Grove
Senator Dave Cortese
Senator Josh Newman



Tuesday, February 8, 2022
9:30 a.m.
State Capitol - Room 4203

Consultant: Nora Brackbill, Ph.D.

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ALL ITEMS HELD OPEN

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ITEMS FOR DISCUSSION

0250 JUDICIAL BRANCH

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

The Lockyer-Isenberg Trial Court Funding Act of 1997 (Assem. Bill 233; Stats. 1997, ch. 850) consolidated the costs of operating California's trial courts at the state level. The act was based on the premise that state funding of court operations was necessary to provide more uniform standards and procedures, economies of scale, structural efficiency, and access for the public.

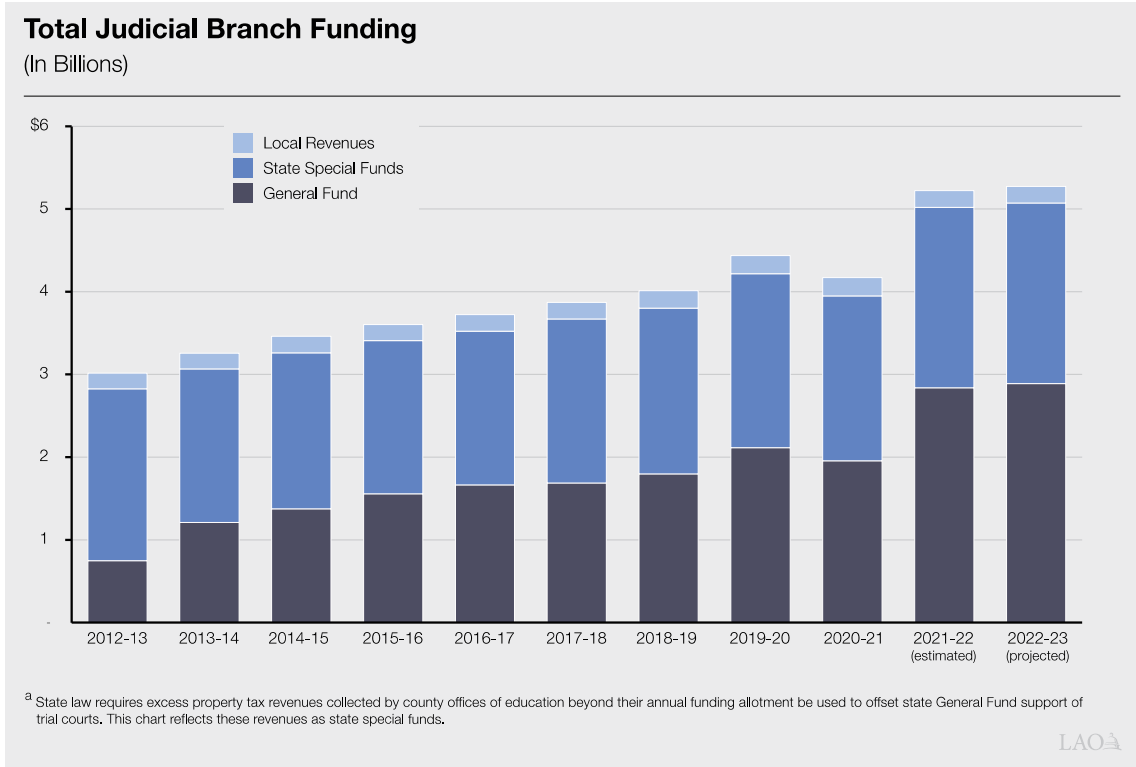
The proposed budget includes total state funding of \$5.1 billion (\$3 billion General Fund) in 2022-23 for the Judicial Branch, of which \$2.8 billion is provided to support trial court operations. This is an increase of \$52 million over the amount for 2021-22.

Judicial Branch Budget Summary—All State Funds

(Dollars in Millions)

	2020-21 Actual	2021-22 Estimated	2022-23 Proposed	Change From 2021-22	
				Amount	Percent
State Trial Courts	\$2,987	\$3,686	\$3,797	\$111	3.0%
Supreme Court	49	54	55	1	1.4
Courts of Appeal	243	268	279	11	4.2
Judicial Council	180	231	295	64	27.7
Judicial Branch Facility Program	473	763	627	-135	-17.7
Habeas Corpus Resource Center	16	19	19	—	0.6
Totals	\$3,948	\$5,021	\$5,072	\$52	1.0%

In addition, the amount of Judicial Branch support coming from the General Fund is increasing.



Source: LAO

Issue 1: Civil Assessment Reduction

Governor’s Budget. The proposed budget includes budget bill and trailer bill language to reduce the Civil Assessment Fee from \$300 to \$150 as of July 1, 2022. It also provides \$50 million in backfill to trial courts, with budget bill language to allow for additional backfill with JLBC notification if necessary.

Background. In infraction, misdemeanor, and felony cases, if someone fails to appear in court or does not pay a fine ordered by the court, the court may levy a civil assessment or order a bench warrant. The civil assessment is a fee of up to \$300 (PEN 1214.1), although in practice many courts assess the full amount. The civil assessment goes into the Trial Court Trust Fund. In fiscal year 2019-20, civil assessments generated \$96.9 million in revenue for California courts.

However, the civil assessment has a disproportionate impact on low-income Californians and people of color, and simple infractions can spiral into long-lasting, highly impactful debt¹. If a person is unable to afford to pay a parking ticket, for example, they are unlikely to be able to afford to pay the civil assessment, which is typically multiple times larger than the base fine. In addition, failures to appear may also be affected by confounding factors like a lack of reliable transportation and childcare, or not receiving a mailed notice due to an unstable housing situation. The assessment also disproportionately impacts people of color, who are overrepresented in the criminal justice system in California and more likely to be stopped for a traffic violation in the first place².

Once imposed, fees are often converted into civil judgments. If an individual fails to repay their debt in full or make payments on time, a county can refer the debt to the state Franchise Tax Board which can intercept tax refunds, levy bank accounts, and garnish wages until paid in full. The state has explored ability-to-pay programs (discussed below), and the court is supposed to vacate the civil assessment in some cases. However, in practice, many people are still being levied the full civil assessment and don’t know about or are unable to access relief programs.

In addition, it is not clear that civil assessments are a useful tool in compelling people to appear in court or pay fines. According to a survey from the Debt Free Justice California, 73 percent of Californians with traffic infractions did not even know there was a fee for missing a deadline to pay or appear in court, indicating that it is not an effective tool. Research suggests that non-punitive measures like text reminders and outreach are also successful in getting people to show up to court and can even lead to higher collections³. In addition, the court can still use wage garnishments and bank levies to collect debt.

San Mateo County Superior Court Lawsuit. On January 27, 2022, the ACLU Foundation of Northern California, the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, Bay Area Legal Aid, and Fenwick & West LLP filed a lawsuit challenging the use of the civil

¹ <https://www.latimes.com/opinion/story/2021-05-20/traffic-tickets-add-on-fee-fines-san-francisco>; <https://lccrsf.org/wp-content/uploads/2021/05/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-2015.pdf>; <https://finesandfeesjusticecenter.org/content/uploads/2022/01/FFJC-Policy-Guidance-Fee-Elimination-1.13.22.pdf>; <https://calmatters.org/commentary/2021/08/california-needs-to-get-rid-of-high-pain-low-gain-court-fees/>

² <https://www.ppic.org/blog/african-americans-are-notably-overrepresented-in-police-stops/>

³ <https://www.courthousenews.com/wp-content/uploads/2018/01/crim-just-report.pdf>

assessment by the San Mateo County Superior Court⁴. The suit is filed on behalf of plaintiff Anthony McCree and the Debt Collective, a debtors' union fighting to eliminate debt. McCree, a 28-year-old Black man, was traveling to a job interview when he was cited for fare evasion on public transit. At the time, Mr. McCree was unhoused. When he missed his payment, the San Mateo Superior Court automatically charged him a \$300 fee. Years later, Mr. McCree received notices from the Court indicating that he owed the court a total of \$860, even though the base fine for fare evasion is \$250 at the maximum⁵.

Ability to Pay. California has also explored ability-to-pay programs, where fines are not eliminated but can be reduced based on an individual's ability to pay. The 2018-19 budget funded a pilot program to facilitate the online adjudication of certain traffic infractions at a minimum of eight courts and allow individuals to request ability-to-pay determinations. The 2021-22 budget made certain components of the pilot program permanent and applicable statewide. While this is helpful, it does require the individual to know about the program and provide the required information. There is concern that individuals who most need fine and fee relief will not know or be able to access the program. In addition, amount of debt eventually collected may not justify the administrative costs associated with these programs and efforts to collect old court-ordered debt.

Staff Comment.

Retroactive reduction and elimination. The proposed trailer bill language reduces the civil assessment moving forward but does not affect civil assessments imposed prior to July 1, 2022. The Legislature may want to consider providing relief to individuals who have already received a civil assessment.

Reduction vs. elimination. The proposed budget includes a reduction, but not an elimination, of the civil assessment. However, a full elimination was considered in the budget last year, and the Legislature may want to consider how this proposal fits into long-term goals of eliminating criminal justice fines and fees.

Staff Recommendation. Hold Open.

⁴ https://www.aclunc.org/sites/default/files/Complaint_and_Exhibits_civil_assessments%5D.pdf; <https://www.courthousenews.com/california-court-sued-for-charging-hidden-tax-on-the-poor/>

⁵ https://lccrsf.org/pressroom_posts/san-mateo-court-sued-for-imposing-unlawful-and-exorbitant-late-fee-used-to-fund-court-system/; see also https://lccrsf.org/wp-content/uploads/2021/05/Demand-Letter-Sac-County-Civ-Assess-Practices-05_26_21-FINAL.pdf

Issue 2: Trial Court Funding

Governor’s Budget. The proposed budget includes the following funding for trial court operations:

- \$84.2 million ongoing General Fund, which represents a 3.8 percent increase to trial court funding to account for inflation.
- \$100 million to promote fiscal equity among trial courts.
- \$39.9 million General Fund in 2022-23 and \$39.1 million going for 23 additional superior court judgeships, to be allocated based on Judicial Council’s 2020 Judicial Needs Assessment⁶. With this funding, all judgeships authorized under law will be funded.
- \$117.8 million ongoing to continue backfilling the Trial Court Trust Fund.
- \$13.4 million ongoing to backfill the estimated loss of revenue for trial courts from the criminal fees that were eliminated by AB 177 (Committee on Budget), Chapter 257, Statutes of 2021.
- \$50 million to backfill civil assessment revenue (discussed in the previous item) and \$40 million to backfill the State Court Facilities Trust Fund (discussed in a later item).

Background.

Funding Trial Court Operations. The state’s annual budget typically designates the total amount of funding available to fund trial court operations. While a portion of this funding is provided for specific programs or purposes (such as court interpreters), a significant portion of the funding is provided on a discretionary basis with little to no restrictions on its use. Judicial Council—the policymaking and governing body of the judicial branch—is responsible for allocating the discretionary funding to individual trial courts. Upon receiving its allocation, each individual trial court has significant flexibility in determining how its share of discretionary funding from the state is used. This can result in significant differences in the programs or services offered and the level of service provided across trial courts. For example, some trial courts may choose to use a greater proportion of their funding to provide increases in employee compensation than other courts.

In recent years, increased funding for trial court operations has generally been provided through the approval of (1) budget requests for specific priorities (such as increased funding to implement enacted legislation and funding to promote fiscal equity), (2) discretionary (or unallocated) funding increases, and (3) funding to support cost increases to maintain existing service levels (such as funding for increased trial court health benefit and retirement costs).

Workload Formula. Since 2013, the judicial branch has used a formula—known as the “workload formula”—to calculate how much funding each individual trial court should receive based on its

⁶ https://www.courts.ca.gov/documents/2020_Update_of_the_Judicial_Needs_Assessment.pdf

workload as measured by various factors, including the number and type of filings each court receives. This amount is known as a court's workload formula identified need. The formula then calculates the level of funding each trial court actually received as a percentage of its workload formula identified need. This amount is known as the court's funding ratio. At the end of 2021-22, individual trial court funding ratios are estimated to range from 73 percent to over 100 percent of their workload formula identified need—with the statewide average funding ratio being about 80 percent.

Judicial Council has adopted certain rules related to the workload formula to determine how to allocate discretionary funding increases provided in the annual state budget. While these rules have changed over the years, since 2018-19, increased discretionary funding provided in the state budget is first allocated to the 15 smallest trial courts to ensure they receive 100 percent of their workload formula identified needs. Up to 50 percent of the remaining funding is then allocated to courts below the statewide average funding ratio. The remaining amount is then allocated to all trial courts generally based on workload.

State and Judicial Branch Took Various Actions to Address Pandemic-Related Impacts. Since the start of the COVID-19 pandemic, the state and the judicial branch have taken various actions to protect the health of court staff, stakeholders, and members of the public, as well as to address pandemic-related impacts on trial court operations. Some of these actions included restricting physical access to court facilities, temporarily suspending court activities, and authorizing remote proceedings to allow cases to move forward.

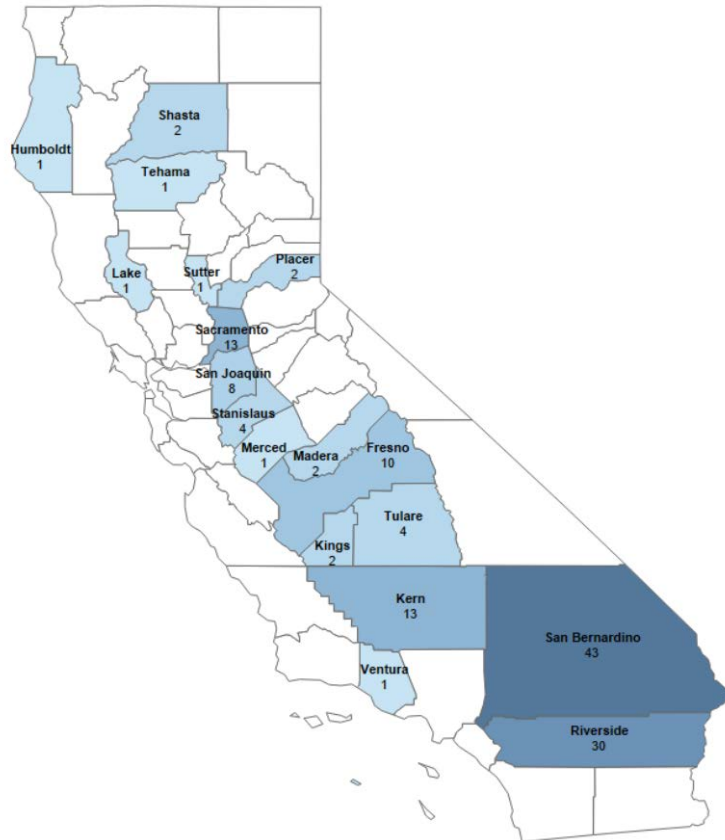
The actions taken to respond to the pandemic have generally had three major impacts on trial court operations: (1) reduced service levels; (2) case backlogs and delays; and (3) increased one-time and ongoing costs, such as from changing business practices to implement technology for remote proceedings. These impacts on individual trial courts differ due to various factors, including the specific actions taken during the pandemic. For example, some courts may have larger backlogs or increased costs due to a lack of space to conduct jury trials while appropriately socially distancing. The state and the judicial branch have taken various actions to address such impacts. For example, the 2021-22 budget included \$90 million one-time General Fund to address case backlogs—with \$30 million specifically for certain criminal case backlogs and \$60 million for backlogs across all case types.

Judgeships. California assesses the need for judicial officers in the superior courts using a weighted caseload methodology. The case weights are estimates of how long different types of cases take judicial officers to process. These are set based on a time study conducted in late 2018 in which over 900 judicial officers in 19 courts participated. The need for judicial officers is based on three-year average filing numbers. According to the most recent Judicial Needs Assessment from the Judicial Council, 18 courts need new judgeships, with a total need of 139 judges (see table below)⁷. In addition, there are currently 23 authorized judicial positions that are unfunded. JCC will prioritize judgeships based on both absolute and relative need (columns C and D below). According to this assessment, the judgeships would go to: San Bernardino (6), Riverside (4), Kern (2), Sacramento (2), Fresno (2), San Joaquin, Stanislaus, Tulare, Kings, Madera, Sutter, and Placer.

⁷ https://www.courts.ca.gov/documents/2020_Update_of_the_Judicial_Needs_Assessment.pdf

Court	A Authorized and Funded Judicial Positions	B 2020 Assessed Judicial Need	C Number of Judgeships Needed* (B – A)	D Percentage Judicial Need Over AJP (C / A)
Tehama	4.3	5.8	1	23%
Lake	4.7	5.9	1	21%
Sutter	5.3	7.1	1	19%
Humboldt	8.0	9.7	1	13%
Merced	13.0	14.9	1	8%
Ventura	34.0	35.9	1	3%
Madera	9.3	11.8	2	22%
Kings	9.6	12.1	2	21%
Shasta	13.0	15.3	2	15%
Placer	14.5	17.1	2	14%
Tulare	24.0	28.1	4	17%
Stanislaus	25.0	29.4	4	16%
San Joaquin	34.5	42.5	8	23%
Fresno	51.0	61.9	10	20%
Kern	45.0	58.9	13	29%
Sacramento	75.5	89.0	13	17%
Riverside	85.0	115.8	30	35%
San Bernardino	94.0	137.7	43	46%
Total			139	

* Rounded down to the nearest whole number.



Source: Judicial Council’s *The Need for New Judgeships in the Superior Courts: 2020 Update of the Judicial Needs Assessment*. Judicial positions needed by court (top) and judicial positions needed across the state (bottom).

LAO Comments on Fiscal Equity Funding.

Unclear How Judicial Council Would Allocate Funding. At the time of this analysis, it is unclear how the proposed augmentation would be allocated to the trial courts. This is because while the Governor's proposal requires the funding be used to address fiscal equity, it would give Judicial Council discretion in allocating these funds and it is unclear how they would do so at this time. This makes it very difficult for the Legislature to assess how the funds will promote fiscal equity among the trial courts and if it is consistent with legislative priorities.

Different Ways to Promote Fiscal Equity Among Individual Trial Courts. We note that promoting fiscal equity is a goal with merit as it promotes equal access to justice across the state. To accomplish this, there are different ways to do so depending on the specific equity-related goals the Legislature has (for example, narrowing the gap in funding between the trial courts with the highest and lowest trial court funding ratios or bringing all courts up to a minimum funding ratio) and how quickly that goal is to be reached. These decisions, in turn, dictate how much funding is needed as well as the number of courts that will receive funding and the specific amount of funding each court will receive. One example is to specify an equity goal, separate from the workload formula allocation rules discussed above. For example, the Legislature could specify that the funding be used to bring all courts up to the statewide average funding ratio (similar to how a \$47.8 million ongoing General Fund augmentation was allocated in the 2018-19 budget package). This would require funding less than the \$100 million proposed by the Governor. Alternatively, the Legislature could require the funding be used to ensure that no courts have a funding ratio below a certain level. For example, the \$100 million could be sufficient to bring all courts up to an estimated 84.5 percent of their workload formula identified need. Under these approaches, only a subset of trial courts would receive funding but there would be greater improvements in fiscal equity as the range of funding differences between trial courts would be narrowed more quickly. Another example would be to allocate the funding using workload formula allocation rules. While up to half of the funding would be allocated to courts below the statewide average funding ratio, all courts would receive some portion of the funding. Under this approach, all courts would benefit from additional funding, though courts below the statewide average funding ratio would receive a greater share of the funding. Since all courts would be receiving some funding, this approach would slow improvements in fiscal equity among the trial courts.

Other Priorities Could Be Considered. The Legislature could also determine that other funding priorities are more important. In particular, to the extent the pandemic continues to impact court operations and delay court proceedings, it may want to prioritize funding to address backlogs and delays in the short term in order to minimize impacts on court users. For example, social distancing guidelines could mean that selecting and maintaining a jury for jury trials requires more in-person space, staff, and resources, which in turn could result in fewer jury trials moving forward at any given time, resulting in backlogs. Funding could be targeted to address such impacts—such as leasing space or hiring temporary staff. Examples of other priorities outside the pandemic could include prioritizing funding for technology modernization as well as physical or remote infrastructure to help ensure that individuals have similar access—physical, remote, or electronic—across all trial courts.

LAO Recommendation on Fiscal Equity Funding.

Ensure Funding Reflects Legislative Priorities. We recommend the Legislature ensure the amount of funding provided, as well as how the funding is allocated, reflects its funding priorities for trial court operations. This can include specifying how funding must be allocated to improve fiscal equity among trial courts (as proposed by the Governor) or addressing other priorities. In particular, the Legislature could provide some, or all, of the requested funding to address pandemic-related impacts in 2022-23 in order to minimize impacts (such as backlogs or delays) on courts users statewide. This could help address equity in terms of public access to the courts and how quickly cases can be resolved. To provide assistance with this, the Legislature could direct the judicial branch to report in budget hearings on pandemic-related impacts on court operations and identify where the greatest needs are. In future years, the funding could be allocated to ensure that all trial courts have at least 84.5 percent of their workload formula identified need. While this would mean that only a subset of trial courts received funding, it would narrow the fiscal inequity among trial courts more quickly.

Staff Recommendation. Hold Open.

Issue 3: Various Facilities and Capital Outlay Proposals

Governor’s Budget. The proposed budget includes:

- \$40 million one-time to backfill the State Court Facilities Construction Fund (SCFCF) and maintain existing service levels. The SCFCF, which covers a range of costs including facility modifications, repairs, and debt service, has a structural deficit due to a decline in fine and fee revenues.
- \$15.4 million ongoing for critical building repairs in the trial courts.
- \$263 million in construction projects, including \$132 million in General Fund for five new trial court projects, and \$3.9 million General Fund and \$127.2 million in lease revenue bond authority to continue three previously approved projects.

Background.

Judicial Branch Facility Needs. The judicial branch currently manages around 450 facilities across all 58 counties. Its facility program is responsible for various activities including maintaining these facilities, managing leases, and constructing new courthouses to replace outdated facilities. In a November 2019 assessment of its facilities, the judicial branch identified a need for a total of 80 construction projects—56 new buildings and 24 renovations—totaling \$13.2 billion. These projects were categorized into five groups—and ranked within each group—in the following descending priority order: 18 immediate need projects (\$2.3 billion), 29 critical need projects (\$7.9 billion), 15 high need projects (\$1.3 billion), 9 medium need projects (\$1.6 billion), and 9 low need projects (\$100 million). Additionally, in August 2021, the judicial branch identified 22,743 deferred maintenance projects totaling \$5 billion.

Construction Account Insolvent. State law authorizes Judicial Council to construct trial court facilities and established a special fund, the SCFCF, to support the judicial branch’s court facility-related projects. (We note a second construction account was consolidated into the SCFCF as part of the 2021-22 budget.) Specifically, state law increased certain criminal and civil fines and fees and deposited the revenues into the SCFCF to finance trial court construction and other facility-related expenses. The amount of revenue deposited has steadily declined over time, largely due to declining criminal fine and fee revenue. This has resulted in SCFCF expenditures—including debt service, facility modifications, and trial court operations—routinely exceeding revenues. (Currently, a total of \$55.5 million is redirected annually from the SCFCF to support trial court operations. Such transfers were initially implemented to mitigate the impacts of budget reductions on trial court operations.) To support this level of spending, the judicial branch has been expending funds from the SCFCF fund balance. As a result, the SCFCF faces insolvency in 2022-23.

New Construction Supported by General Fund. Given the insolvency of the SCFCF, the 2021-22 budget shifted support for the construction of any future courthouses to the General Fund. The 2021-22 budget also included funding to start the construction or renovation of six of the highest ranked immediate need projects identified in Judicial Council’s 2019 reassessment of facilities.

The judicial branch is requesting funding for the capital outlay projects listed below. All of these are categorized as immediate need projects. According to JCC’s Five Year Infrastructure Plan, work will begin on critical need projects in 2024-25.

\$263 Million Proposed by Governor for Trial Court Construction Projects

(In Millions)

Construction Project	General Fund	Lease Revenue Bond Authority
New Projects		
New Santa Clarita Courthouse	\$53.1	—
New San Luis Obispo Courthouse	29.2	—
New Solano Hall of Justice	21.4	—
New Fresno Courthouse	21.2	—
New Quincy Courthouse	7.1	—
Subtotals	(\$131.8)	(—)
Previously Approved Projects		
New Ukiah Courthouse	—	\$127.2
Butte Juvenile Hall Addition and Renovation	\$3.2	—
San Bernardino Juvenile Dependency Courthouse Addition and Renovation	0.7	—
Subtotals	(\$3.9)	(\$127.2)
Totals	\$135.8	\$127.2

Source: LAO.

The status of projects funded starting in fiscal year 2018-19 is listed below. There are 15 active capital outlay projects being managed by the facilities program.

Tab	Project Name	City	Courtrooms	Square feet	Current Phase	Phase % Complete	Approved Project Budget	Forecast Project Completion
1	New Yreka Courthouse	Yreka	5	67,459	Completed	100%	\$ 77,186,179	6/2/2021
2	New Sonora Courthouse	Sonora	5	60,800	Completed	100%	\$ 71,316,000	10/15/2021
3	New Redding Courthouse	Redding	14	166,887	Construction	83%	\$ 184,753,394	6/22/2022
4	New El Centro Courthouse	El Centro	4	46,810	Construction	65%	\$ 67,096,000	6/29/2022
5	Renovations and Addition to Willows Historic Courthouse	Willows	3	41,867	Construction	48%	\$ 58,423,967	8/3/2022
6	Neveda City Study	Neveda City	6	NA	Study	27%	\$ 972,000	9/30/2022
7	LA Master Plan Study	Los Angeles	NA	NA	Study	27%	\$ 2,347,000	5/7/2023
8	New Sacramento Courthouse	Sacramento	53	543,437	Construction	23%	\$ 514,792,000	11/15/2023
9	New Santa Rosa Courthouse	Santa Rosa	15	167,147	Construction	11%	\$ 204,803,000	12/13/2023
10	New Indio Juvenile and Family Courthouse	Indio	5	53,047	Construction	1%	\$ 80,873,800	2/16/2024
11	Menifee Justice Center	Menifee	9	85,010	Construction	3%	\$ 95,253,100	3/21/2024
12	Butte County Juvenile Hall Addition & Renovation	Oroville	1	610	Preliminary Plans	5%	\$ 3,384,899	11/30/2024
13	New Modesto Courthouse	Modesto	27	309,284	Construction	1%	\$ 345,355,000	12/12/2024
14	San Bernardino Juvenile Dependency Courthouse Addition & Renovation	San Bernardino	2	5,000	Acquisition	29%	\$ 8,981,910	12/21/2024
15	New Lakeport Courthouse	Lakeport	4	46,000	Performance Criteria	60%	\$ 73,134,139	9/22/2025
16	New Ukiah Courthouse	Mendocino	7	82,000	Performance Criteria	15%	\$ 118,125,538	11/2/2026
17	New Fort Ord Courthouse	Monterey	7	83,000	Acquisition	15%	\$ 154,255,918	4/6/2028

LAO Comment.

Insolvency Requires Ongoing General Fund Resources. As noted above, the SCFCF faces insolvency in 2022-23. The Governor’s proposed one-time SCFCF backfill would only address the insolvency in the budget year—effectively leaving the SCFCF with a zero fund balance. SCFCF revenues are estimated to be around \$200 million and expenditures to be around \$425 million in 2022-23. While both amounts are estimated to decline slightly in the future, this trend continues into future years—which means that ongoing General Fund resources will be needed to backfill the difference in revenues in order for the state to meet financing payments for completed projects as well as other obligations. As shown in Figure 6, absent any changes in expenditures, this could mean that at least \$200 million would be needed annually for nearly a decade. The amount would then decline as the state ends debt service payments on completed construction projects.

LAO Recommendation.

Shift Full Responsibility for Trial Court Construction to the General Fund. In order to permanently address the insolvency of the SCFCF, we recommend the Legislature shift full responsibility for trial court construction to the General Fund. This includes (1) shifting all financing obligations for completed projects to the General Fund, (2) appropriating \$160 million General Fund annually (declining to \$145 million in 2024-25) to support all non-construction-related expenditures currently supported by the SCFCF, and (3) depositing all SCFCF revenues into the General Fund to partially offset the shifted costs. This approach would ensure that all construction-related obligations are fully accounted for and considered when evaluating the state’s overall fiscal condition and determining General Fund priorities. It would also maintain existing levels of support for all non-construction-related expenditures—such as facility modification projects and trial court operations. Finally, it allows the Legislature to fund future trial court construction projects based on its priorities.

Appropriate Funding for Facility Modification and Construction Based on General Fund Priorities. Regardless of whether the Legislature adopts the recommendation to shift full responsibility for trial court construction to the General Fund, we recommend the Legislature appropriate funding for facility modification projects and construction based on its General Fund priorities. While the Governor’s proposals are generally reasonable, the judicial branch has identified significant facility needs. If a priority, the Legislature could consider additional one-time funding—such as for facility modification projects or deferred maintenance. We note that such spending is excludable under the state appropriations limit (SAL). (The California Constitution imposes a limit on the amount of revenue the state can appropriate each year. The state can exclude certain spending—such as on capital outlay projects, as well as for certain kinds of emergency spending—from the SAL calculation.)

Staff Recommendation. Hold Open.

Issue 4: Branchwide IT Modernization

Governor’s Budget. The proposed budget includes \$34.5 million and 27 positions in 2022-23 growing to \$40.3 million and 50 positions in 2024-25 and ongoing to support and expand the branch’s modernization efforts. This includes:

- \$6.2 million for a new Judicial Branch Information Security Office.
- \$3.1 million for modernization of the Appellate and Supreme Courts, which have not been included in previous modernization funding.
- \$4.2 million for ongoing support and maintenance for modernization of Trial Courts.
- \$14.1 million for branch-wide modernization initiatives.
- \$12.5 million to fund court-specific modernization projects.

Background. Over the last seven years, the Judicial Branch has focused significant time and resources building and implementing a comprehensive plan to modernize the Judicial Branch. The guiding documents for the modernization effort are the Judicial Council approved Strategic Plan for Technology and Tactical Plan for Technology. The focus of those plans has been to align the branch with the Chief Justice’s vision for Access 3D, introduced in 2013, to expand physical, remote, and equal access, by enhancing our existing court services and creating new digital court services. Priorities include enhancing remote appearance technology, digitizing court records, implementing case management systems, expanding cloud services, and improving digital services such as e-filing and notification systems. The key guiding documents are outlined below:

- *Governance and Funding Model.* This document provides broad guidance on the judicial branch’s vision and principles related to technology and lays out the process for the approval and oversight of projects. Specifically, this includes specifying criteria for assessing statewide versus local projects; the roles and responsibilities of all key stakeholders (such as specific Judicial Council committees, as well as individual courts); and processes by which projects are identified, justified, approved, and monitored.
- *Strategic Plan.* This document provides the judicial branch’s strategic goals, objectives, and metrics to measure success of technology projects over a four-year period. The 2019-22 Strategic Plan identifies three guiding principles: access, reliability, and innovation. Based on these principles, the plan specifies four key goals: (1) promoting the digital court, (2) innovating through the technology community, (3) advancing technology security and infrastructure, and (4) promoting rule and legislative changes that impact the use of technology. Each goal has prioritized objectives. For example, ensuring secure, reliable, and sufficient data network connectivity throughout the judicial branch is the first of six objectives to meet the goal of advancing technology security and infrastructure.
- *Tactical Plan.* This document provides the individual steps or areas of focus identified by the judicial branch to achieve Strategic Plan goals over a two-year period. The 2021-22 Tactical Plan lays out 18 specific areas of focus tied to the goals in the Strategic Plan. For example, case management system migration and deployment is one area of focus to address the goal of promoting the digital court. The Tactical Plan then lays out specific goals and objectives within each area of focus. For example, an identified goal and

objective related to the case management system migration and deployment area of focus is to continue implementation of new systems for all case types across the branch.

- *California Courts Connected Framework.* This document provides a framework to help individual courts assess their progress in meeting the goals identified in the Strategic Plan and the Tactical Plan. This allows courts to identify their existing technology capacities as well as potential areas of need. According to the judicial branch, a July 2021 inventory assessing court needs using this framework resulted in the identification of 201 projects—totaling to \$43.6 million—across 20 technology categories (such as technology infrastructure).

Using the above documents in concert with one another helps Judicial Council identify and prioritize the judicial branch's technology needs. It also helps Judicial Council identify those specific projects where funding needs to be requested through the annual state budget process. Finally, following its approval of projects, Judicial Council generally receives regular updates to monitor the use of funding and ensure that the intended outcomes are reached.

Previous Resources. The JCC has been provided a total of \$149.4 million in one-time funding over the last seven years, which has enabled the branch to begin implementing many new modernization initiatives required to achieve Access 3D. The 2020-21 and 2021-22 budgets each included \$25 million for projects to modernize trial court operations that were selected by Judicial Council. The 2020-21 funding went towards both court-specific and branch-wide projects related to remote appearance technology (\$6.5 million), cloud solutions (\$5 million), digital services (\$3.3 million), digitizing documents (\$2.2 million), digital ecosystems (\$1.6 million), virtual customer service (\$1.5 million), and data governance (\$1.5 million), among others. Each trial court received at least \$40,000 for modernization projects in 2020-21.

As part of the 2021-22 funding, JCC established the California Courts Connected framework and asked courts to complete a technology inventory to assist courts in modernizing their courts and help identify and prioritize projects. 201 projects totaling \$43.6 million were requested by the trial courts. The most common project categories were courthouse (38 requests), electronic records management (37), infrastructure (24), case management systems (16), cyber security (15), and remote appearances (13). In addition, the state of implementation varies significantly across the state. Some courts need assistance with basic connectivity and infrastructure, many are working on implementing core systems including case management systems and electronic records management, and others are working on enhanced services.

Details of proposed resources. The Judicial Branch is asking for ongoing resources to address these outstanding projects and future needs, and sustain the modernization program in the long-term. In addition, the previous funding has focused on the trial courts and has not included the Courts of Appeals or the Supreme Court. Specifically, this request includes five initiatives:

1. *Implementation of the Judicial Branch Information Security Office* – \$6.2 million. Current statewide systems do not monitor the Judicial Branch's networks for suspicious activity or cyberattacks. This funding will create a centralized office for cybersecurity to support the

Trial, Appellate, and Supreme Courts, and the JCC, in cooperation with the California Office of Information Security.

2. *Modernization of Appellate and Supreme Courts* – \$3.1 million. Previous funding for trial court modernization did not include the Courts of Appeals or the Supreme Court. This funding will help those courts update their case management, e-filing, and other digital services, as well as upgrade general IT and software systems.
3. *Modernization of Trial Courts* – \$4.175 million. This funding would provide ongoing resources including staffing and IT support to allow courts to maintain their technology initiatives.
4. *Judicial Branch Modernization Initiatives* – \$14.1 million. This funding will help fund branch-wide initiatives such as Voice to Text Translation, Live Chat, and other self-help digital services, as well as software licenses, other language access and remote appearance support, and electronic access to court records and other digital services, among other projects.
5. *Modernization Program Annual Project Allocation* – \$12.5 million. This funding will allow JCC to continue to provide funding for specific projects identified by courts in their technology inventories. This would include projects at the Trial, Appellate and Supreme Courts. Projects range from basic infrastructure to core systems including case management and electronic record systems to enhancements and other new digital services.

The Judicial Council plans to continue to track the progress of courts, including the status of core programs such as case management systems (CMS) and electronic records management (ERM). Currently, 45 percent of courts have fully implemented and 51 percent have partially implemented CMS, and 5 percent have fully implemented and 83 percent have partially implemented ERM.

Electronic Filing for Restraining Orders. In addition to the above resources, the proposed budget includes \$2.6 million General Fund in 2022-23 and \$1.7 million in 2023-24 and ongoing to implement, support, and maintain electronic filing interfaces for domestic violence restraining orders (DVRO), domestic temporary restraining orders (TRO), and gun violence restraining orders (GVRO) at all trial courts. AB 887, Chapter 681, Statutes of 2021 and SB 538, Chapter 686, Statutes of 2021 require courts to accept electronic submissions of those restraining orders. However, as described above, many courts do not have fully implemented CMS or ERM. By the date these bills take effect, the Judicial Council expects 28 courts to lack the capability to accept these filings online. Therefore, JCC will use this funding to implement a central electronic delivery portal that the courts could use to satisfy the requirements of AB 887 and SB 538.

Expected outcomes of branch wide Modernization program:

Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Implementation of Core Solutions						
CMS	45 Courts	58 courts	60 Courts	62 Courts	64 Courts	65 Courts
Digital Court Records	10% digitized	15% digitized	20% digitized	25% digitized	30% digitized	35% digitized
Public Partner Services						
Web Solutions-enhanced ADA and Mobile accessibility	15 Courts	25 Courts	35 Courts	45 Courts	55 Courts	65 Courts
Remote Payments	TBD					
Notification Systems	5 courts	10 courts	15 courts	20 courts	25 courts	30 courts
Remote Records and Search (State Index)	3 courts	5 courts	10 courts	15 courts	20 courts	25 courts
Electronic Filing (one case type)	25 courts	35 courts	45 courts	58 courts	Remaining court upgrades	
Remote Appearance	10% courtrooms	20% courtrooms	30% courtrooms	40% courtrooms	50% courtrooms	60% courtrooms
Online Dispute Resolution	1 court	3 courts	5 courts	8 courts	12 courts	15 courts

Source: DOF

LAO Comments.

Two Proposals Appear Reasonable. Two of the Governor’s proposals appear reasonable. First, the proposal for a new Judicial Branch Information Security Office seems reasonable. Court operations are increasingly reliant on technology to operate effectively. Additionally, the courts receive, access, and process information that can be confidential or private. Accordingly, it is reasonable for the judicial branch to have an office dedicated to addressing information security issues across the state, particularly since this minimizes the need for such expertise at each individual court.

Second, the proposal requesting direct allocations to and related staffing for the state courts and trial courts seems reasonable. The requested funding would provide individual courts with a small amount of annual resources that could help address more routine and/or smaller modernization efforts. These allocations recognize that each court’s modernization needs may not be the same. Additionally, the funding provides a certain amount of flexibility to individual courts to adjust to address the most immediate needs as they arise (such as sudden equipment failure). The staffing would also provide the state courts with sufficient capacity and expertise to oversee the effective completion of modernization projects.

Judicial Branch Modernization Program Reduces Legislative Oversight, but Could Have Some Benefits as Well. The proposed Judicial Branch Modernization Program reduces legislative

oversight of technology projects. This is because it lacks the same oversight mechanisms that exist when funding is allocated by the Legislature to specific projects through the annual budget process. Allocating funding through the budget process to specific projects or providing limited-term funding for specified purposes allows the Legislature to ensure that funded projects are of high priority and reflect statewide policies and priorities for court processes and procedures. This approach also allows the Legislature to assess whether each budget request accurately identifies a problem or need and presents a cost-effective solution, clear outcome expectations, complete and accurate costs, a comprehensive and reasonable implementation plan, and clear metrics to monitor the implementation of the solution. In addition, this approach allows the Legislature to take certain steps—such as requiring a project be piloted first, approving only partial funding, or requiring the reporting of certain information on a regular basis—to ensure it has sufficient oversight of projects. Such steps can be tailored specifically to individual projects.

As proposed by the Governor, this level of oversight would not occur over the projects that would be funded through the proposed Judicial Branch Modernization program. This is because Judicial Council would have full discretion to allocate funding to branchwide projects and court-specific projects based on its priorities. While Judicial Council has developed a fairly robust process for identifying, approving, and conducting oversight of technology projects, those processes do not generally allow for legislative oversight or input unless the request is submitted for consideration through the budget process. We note that the level of annual funding proposed by the Governor for the new program would likely result in most of the funded projects being smaller in scope. However, because this funding is ongoing, it could enable the funding of multiyear projects—including projects whose total costs could reach into the millions of dollars.

While the specific structure of the Governor’s proposal raises concerns, we acknowledge that there are a few advantages to providing some amount of discretionary funding for branchwide modernization projects selected by Judicial Council during the course of a fiscal year. For example, such an approach would give Judicial Council the flexibility to respond quickly as needs arise across the branch. We note that the discretion provided to Judicial Council to allocate \$25 million in modernization funding in 2020-21 likely helped courts more rapidly change their business practices to operate during the pandemic. Additionally, such an approach could eliminate the need for the Legislature to consider budget requests each year for relatively small technology projects.

LAO Recommendations.

Approve Proposals for New Judicial Branch Information Security Office (\$3.7 Million) and Direct Allocations to State and Trial Courts (\$7.3 Million). We recommend the Legislature approve the proposals for the new Judicial Branch Information Security Office as well as the direct allocations to the state and trial courts. As discussed above, the Judicial Branch Information Security Office would address an important judicial branch information security need while the direct allocations to the state and trial courts would provide a small amount of ongoing, flexible funding for technology modernization efforts at each individual court based on their needs.

Modify Proposed Judicial Branch Modernization Program to Ensure Appropriate Legislative Oversight (\$23.5 Million). To the extent that providing some discretionary funding for branchwide modernization projects to be selected by Judicial Council is a legislative priority, we recommend

that the Legislature modify the proposed Judicial Branch Modernization Program to increase legislative oversight. Specifically, we recommend the Legislature specify limits on the types of projects that can be funded or set a total per-project cost limit on projects that can be funded. This would limit the number or types of projects that could be pursued without legislative oversight through the annual state budget process. We also recommend requiring annual reporting from Judicial Council on what projects are expected to receive funding through the program each year and how program funds were actually used in the prior year. This would allow the Legislature to conduct regular oversight of the program, provide input prior to allocation of program funds, and identify areas where legislative action could be merited. Depending on the specific modifications made to the Governor’s proposal, the Legislature will want to adjust the amount of funding accordingly.

Staff Recommendation. Hold Open.



Issue 5: Judicial Branch Data and Information Governance

Governor’s Budget. The Judicial Council of California (JCC) requests 11.0 positions and \$15 million General Fund in 2022- 23 and \$3.75 million General Fund ongoing beginning in 2023-24 to establish and implement branch data and information governance and expand the technology platform needed to improve and expand Judicial Branch data access, use, and sharing.

Background.

JCC is required to collect and compile a significant amount of data from the courts, which is used to make policy decisions and distribute judgeships and workload-based funding. Currently, JCC maintains several separate databases, including jury and case management datasets maintained as part of the Judicial Branch Statistical Information System (JBSIS), and financial information stored in Phoenix. JBSIS requires the courts to submit monthly reports, and any changes to the data collected require significant recoding both at the branchwide and individual court levels. In addition, the information stored in JBSIS is not very detailed, and the Judicial Branch often relies on surveys to collect more specific data about the courts, which is a time-consuming process.

The 2019-20 Budget included \$4.7 million one-time for a statewide data management platform pilot, which integrates court workload and other JBSIS data with appellate case management system data and with data from the pretrial pilot program, the statewide index project, and the statewide ability to pay program. The JCC anticipates that additional data could also be integrated into this system, including jury management and self-help service data. Additional resources from the modernization funding described in the previous item were used to help implement data governance and trainings at individual courts, and JCC anticipates similar funding will be needed at all courts moving forward.

However, there are no dedicated, ongoing resources for data governance and analytics at the branch level. In addition, the significant modernization efforts described in the previous item will improve the ability to collect information from individual courts. This funding will allow Judicial Council to establish and maintain a new, unified data system for tracking the data provided by the courts.

Staff Recommendation. Hold Open.

Issue 6: Remote Access to Court Proceedings (AB 716)

Governor’s Budget. The Judicial Council of California (JCC) requests four positions and \$33.2 million General Fund in FY 2022-2023 and FY 2023-2024, and a total of four positions and \$1,632,000 ongoing funding to implement, support and maintain remote access to courtroom proceedings as required by AB 716 (Bennett), Chapter 526, Statutes of 2021. These one-time funds over two years will be used to upgrade courtroom audio and video solutions to allow for remote access to all courtroom proceedings through the use of internet or telephonic access.

Background. Throughout the pandemic, courts worked to improve their audio and visual systems to allow for remote proceedings. However, many courtrooms, especially older ones, lack the fundamental infrastructure to enable for modern audio-visual systems and integration with remote technologies like Zoom. One of the major issues in these old courtrooms is sound quality – remote participants are not able to clearly hear the sound from all of the in-person participants. In addition, many systems lack more advanced features like digital evidence sharing.

With the use of the one-time trial court modernization money, the Judicial Council and trial courts have been able to begin to upgrade some of the courtrooms to enable this patchwork of solutions allowing for remote access. In FY 2020-2021, 500 or approximately 25 percent of the 2030 courtrooms were retrofitted to include remote appearance technology to provide basic remote appearance proceedings. Note many courtroom retrofits only provided the basic ability to allow proceedings; however, the courtrooms still require retrofitting to allow full remote access to justice – for example integrated digital evidence sharing.

The Judicial Council also invested in branchwide Zoom licenses for courts to utilize over the next three years, which includes a free ‘call-in’ phone line for courtroom proceedings. These initial investments totaled \$6,476,000. However, these enhancements do not address the ability to optimally hear and see all participants in a proceeding. This one-time funding was only enough to provide a patchwork of solutions that provides basic access, but it is inconsistent across the state. AB 716 also requires all courts to provide remote access to courtroom proceedings either by audio or telephonic means.

This request addresses the courtrooms with the most critical needs for audio and video system upgrades, specifically focusing on courthouses that are 20+ years and older. Other courtrooms will need to be upgraded over time as their equipment ages, but these are the most critical needs today. Many of these courthouse’s analog audio and video solutions are 30 years or older and have no capability to integrating into the modern digital solutions. As of March 2021, 1775 courtrooms (more than 85 percent of the state’s 2030 courtrooms) within the state are older than 20 years and have had minimal upgrades to courtroom technology. Based on initial estimates, the Judicial Council estimates it will cost an average of \$35,000 per courtroom.

Staff Comment. Some courts charge fees for some remote appearance services. It is not clear if any courts are charging fees for any of the remote appearance technology implemented during or due to the pandemic, but the Legislature should consider an explicit prohibition.

Staff Recommendation. Hold Open.

Issue 7: Court of Appeals Appointed Counsel

Governor’s Budget. The Judicial Council of California (JCC) requests \$8.3 million ongoing General Fund in 2022-23 to support the Courts of Appeal Court Appointed Counsel Program. This total amount includes \$6.4 million ongoing General Fund for a \$15 rate increase for non-capital appeal appointments, and \$1.9 million for a permanent 10.5 percent increase in the Project Offices annual contracts.

Background. California’s Court-Appointed Counsel Program fulfills the constitutional mandate of providing adequate representation for indigent appellants in the Courts of Appeal in non-capital cases (capital cases are typically handled by the State Public Defender). The objectives of California’s appellate court-appointed counsel system are to: (1) ensure the right of indigent clients to receive the effective assistance of appointed appellate counsel as guaranteed them by the U.S. Constitution; and (2) provide the Courts of Appeal with useful briefings and arguments that allow the Courts to perform their functions effectively and efficiently.

Each district of the California Courts of Appeal contracts with a Court Appointed Counsel Project Office to manage the court-appointed counsel system in that district and to perform quality control functions. Each Project Office oversees a panel of attorneys who receive appointments in that district. The Project Offices are responsible for work with the panel attorneys to ensure that effective legal assistance is provided. The contracts between the Courts of Appeal and the Project Offices require each Project Office to supervise and assist appointed counsel, so that the People of California can satisfy their obligation of providing competent legal representation to indigent clients in California’s Courts of Appeal and, when appropriate, the Supreme Court.

Retention Challenges. The overall number of panel attorneys is at 751, down from 927 in 2013. The Administration reports that several more qualified attorneys have left for more lucrative contracts, and that they are not retaining junior attorneys (“assisted attorneys”) long enough for them to gain experience and become more qualified senior attorneys (“independent attorneys”). On average, it takes an attorney four to five years to move to an independent appointment status. Many of the senior attorneys will also be retiring soon.

Proposal Details.

This request reflects a 10.5 percent increase in 2022-23 in amounts budgeted for the Project Offices, so they may meet their obligations to ensure justice through competent and qualified defense counsel for indigent defendants. This funding will be used to fund cost increases for rent, employer health benefit costs, and training, and other service costs that have been cut due to a lack of funding. The 2017-18 Budget Act provided a \$786,000 General Fund increase for the Project Offices. Prior to 2017-18 the Project Offices had not received an increase to their contracts since 2007-08. The 2017-18 increase provided funding that may be used to address only three of the ten years of increased costs for contractual services, causing structural underfunding to remain.

The request also includes a \$15 increase in the hourly appointment rate for the statewide panel attorneys. From 1989 to 1995, the hourly rate for all appointed cases was \$65 per hour. In 1995 a second tier was added at \$75 per hour to differentiate compensation in assisted and independent cases. A third tier at \$85 per hour was added in 1998 for the most serious and complex matters.

Effective October 1, 2005, the rates increased by \$5 per hour; a \$10 per hour increase was put in place July 1, 2006; and one final \$5 per hour increase effective July 1, 2007. That same rate that was in place until July 1, 2016, when there was a \$10 increase. The Judicial Council is requesting a \$15 per hour increase to raise these 2016 rates to \$110, \$120, and \$130 per hour, respectively. Even with the approval of this requested rate increase of \$15 per hour, the statewide panel attorneys' highest hourly compensation rate (\$130 per hour) is under the Department of General Services 2020-21 Price Book of \$170 per hour for external legal advice.

Staff Recommendation. Hold Open.

7870 CALIFORNIA VICTIM COMPENSATION BOARD (CALVCB)**Issue 8: Victim Services Consolidation**

Victim services are currently spread across four state departments with most grants and programs residing in the Victim's Compensation Board (CalVCB) and the Office of Emergency Services (OES). The other two entities are the California Department of Corrections and Rehabilitation (which handles restitution collection and notification) and the Department of Justice (victim assistance and information services).

OES combines federal and state funding to support more than 1,200 projects providing victim services throughout the state, and in 2018-19, OES administered \$486.5 million in grant funds. Likewise, VCB also combines federal and state funding—from fines and restitution orders paid by offenders convicted of traffic infractions, misdemeanors, or felonies—to offer compensation directly to, or on behalf of, victims and survivors who are injured or threatened with injury. Most recently, VCB approved more than 32,000 applications and provided more than \$47 million in compensation for crime-related expenses, including income and support loss, medical and dental care, funeral and burial expenses, and other losses not reimbursable from another source. More details on the VCB process are provided later in this item.

In 2015, the LAO published a report titled “Improving State Programs for Victims of Crime.”⁸ This report highlighted the fragmentation of victim services across the state, including a lack of coordination between OES and CalVCB. The report pointed out that this could also result in the state missing out on federal matching funds. The report recommended shifting all victim services to CalVCB and restructuring the board membership.

The 2018-19 Budget Act required the VCB and OES to work together to develop options and a recommendation for combining the state's victims programs under one organization, with the goal of providing one central place for victims and their families to obtain information and access services. A Consolidation Working Group was convened to complete the report and provide recommendations for consolidating the victims' programs. The report was released in October 2018⁹. The 2019-20 budget directed the Administration to develop a plan to consolidate the victim programs housed at OES and CalVCB within a new state department under the Government Operations Agency, and to identify victims programs in other departments that could be combined. The consolidation proposal was intended to be included in the 2020-21 Budget.

However, the proposal was not included, and plans for consolidation have been complicated by the onset of the pandemic. There are significant logistical challenges in consolidating the entities, as well as the need to avoid negative impacts to those who receive funding and services to support victims and their families. However, the coordination of the state's delivery of victim services are necessary to ensure that the limited resources allocated for these programs are done so efficiently.

This is an informational item to hear an update from the Administration on victim services and plans for consolidation.

⁸ <https://lao.ca.gov/Publications/Detail/3215>

⁹ <https://victims.ca.gov/uploads/2021/02/FinalConsolidationReport.pdf>

Background.

CalVCB. California created the nation’s first victim compensation program in 1965. The Department of Social Welfare administered the program until the Board of Control took responsibility in 1967. In 2001, the state renamed the Board of Control the “Victim Compensation and Government Claims Board” (VCGCB) to reflect its increasing roles and responsibilities more accurately. VCGCB oversaw the California Victim Compensation Program, the Revenue Recovery Program and the Government Claims Program. In 2016, the Department of General Services assumed responsibility for the Government Claims Program. The state renamed VCGCB the California Victim Compensation Board. CalVCB is a three-member board comprised of the Secretary of the Government Operations Agency, the State Controller, and a public member appointed by the Governor. Board members set policy for the organization and make decisions on matters, including appeals for victim compensation and claims of persons erroneously convicted of felonies. CalVCB administers the Victim Compensation Program which utilizes a reimbursement model for certain expenses to victims who have suffered physical, or the threat of physical injury, related to violent crime. CalVCB also administers the Restitution Recovery Program, the Good Samaritan Program and the Missing Children Reward Program.

Funding for the Victim Compensation Program (in millions)

Fund Source	2018-19	2019-20	2020-21	2021-22	2022-23
Restitution Fund	85.764	88.727	54.996	56.334	51.655
General Fund	0.134	0.138	23.636	40.94	47.175
Safe Neighborhoods and Schools Fund (Proposition 47)	6.413	7.596	10.15	11.583	14.696
Federal Funds	17.599	17.283	17.783	24.82	31.804
Reimbursements	0	0.543	0.951	0	0
Total	109.91	114.287	107.516	133.677	145.33

Source: LAO

Process for Application. Applicants may apply online, use a paper application, or seek assistance at a County Victim Witness Assistance Center. CalVCB’s website also indicates that advocates are available to help applicants to complete an application, find emergency shelter, file a temporary restraining order, and find other resources.

Eligible applicants are:

- CA residents, even if the crime occurred out of state
- Non-residents who are victimized in California
- Specific members of the victim’s family or person in close relationship to the victim
- Any individual who assumes the obligation of paying a deceased victim’s medical, burial, or crime scene clean up expenses

Applications must be filed within seven years of the crime, seven years after the direct victim turns 18, or seven years from when the crime could have been discovered, whichever is later. If the application is based on specified crimes involving sex with a minor, the applicant may file at any time prior to their 28th birthday. Application extensions may be granted under certain circumstances if a “late filing consideration” form is submitted with their application. These

circumstances are; (1) the prosecutor recommends the extension based on the applicant’s cooperation with law enforcement and the prosecutor to catch and prosecute the accused; (2) the victim or derivative victim experiences additional pecuniary loss during the prosecution or in the punishment of the accused; or, (3) a delay in reporting due to the nature of the crime. Recommendations to approve or deny a claim is generally made within 90 days of receiving the application.

The types of expenses that applicants may apply for are:

- Crime scene clean up
- Funeral and burial expenses
- Home or vehicle modifications for victims who became disabled
- Income loss
- Medical and dental treatment
- Mental health services
- Relocation
- Residential Security

Currently, CalVCB provides materials in 13 languages as required by state law. They have in-house Spanish speakers and have contracts with interpretation and translation service providers. CalVCB’s website is also integrated with Google Translate so that each page can be automatically translated.

During the COVID-19 pandemic, CalVCB worked to improve its digital outreach, updated and translated publications that are mailed to organizations that assist victims/survivors. In May of 2021, CalVCB overhauled its website to create an easier interface that is also accessible on mobile devices. They also worked with law enforcement agencies and victim witness centers to provide resources to victims/survivors. CalVCB assesses the efficacy of these efforts based on the number of contacts made and the resulting application trends. At this time, CalVCB has not used any user surveys to collect feedback from applicants who utilize the website and other services provided by the board.

Compensation Claims from 2018-2021. This table provide historical data on application claims processed by the CalVCB.

	2018	2019	2020	2021
Claims Received	53,400	54,491	43,337	39,718
Total Payments	\$61,570,330.34	\$61,814,544.52	\$55,138,750.74	\$47,226,240.02
Claims Allowed	51,881	47,097	42,393	32,649
Claims Denied	5,046	4,208	5,857	5,180

Source: Cal VCB. All claims are paid from the Restitution Fund.

Of the claims that were denied, the following table indicates the reasons for denial.

	2018	2019	2020	2021
Total Claims Denied	5,046	4,208	5,857	5,180
Claims Denied, By Reason (Claims may be denied for multiple reasons)				
Not a Covered Crime	2,021	1,761	2,107	1,736
Lack of Preponderance of Evidence	2,843	2,379	3,429	3,196
Involvement	934	735	745	713
Lack of Cooperation with Board	443	376	444	294
Lack of Cooperation with Law Enforcement	905	662	579	461
Doesn't Meet Residency Requirements	64	81	71	42
Late Application	216	166	133	120

Source: CalVCB

It can take weeks or months for CalVCB to approve and process a claim. In 2021, it took 32 days on average to approve a claim. The time it takes CalVCB to then process the claim depends on the category of the claim, with the slowest being 62 days on average to process is income/support loss claims.

LAO Comment.

Victim Program Consolidation Not in the Budget. As part of the 2019-20 budget package, the Governor and Legislature agreed in concept to consolidate the victim services programs currently operated by CalVCB and the Governor's Office of Emergency Services (OES) into a new victim services department under the Government Operations Agency. In order to allow the administration time to work out the details of the consolidation, the implementation of the new department was deferred until the 2020-21 budget when the administration agreed to bring forward

a detailed proposal. However, the administration did not submit the proposal for consideration as part of the 2020-21 budget, citing the onset of the COVID-19 pandemic and OES's workload related to pandemic response as the reason for delaying the proposal. Notably, the pandemic did not prevent the administration, however, from proposing to increase OES's responsibilities by transferring the Seismic Safety Commission to it as part of the 2020-21 budget.

The agreement to consolidate the programs under a new department was the result of multiple years of interest from the Legislature and legislative staff in making this change. For example, a 2015 report by our office found inefficiencies and missed opportunities with the current structure of the programs being housed in two different departments. In our report, we recommended moving victim programs out of OES and consolidating them with CalVCB's programs. The same concerns that lead to our findings and recommendations in 2015 generally continue to apply today.

Given the agreement between the Legislature and the administration as part of the 2019-20 budget, we want to highlight the continued absence of a proposal to create a new victims department that would consolidate the programs currently managed by OES and CalVCB. The Legislature may want to consider asking the administration for an update on when the agreed upon consolidation plan will be provided for the Legislature's review.

Staff Comment. In addition to the challenge of consolidation, there are several challenges that victims face while trying to receive assistance. These include:

- It often takes weeks or months to get a claim approved, and then additional time to get reimbursed. This leaves victims with significant financial burdens in the immediate aftermath of the crime.
- California is one of only eight states that denies victim compensation to people based on past conviction or their status on probation or parole.
- Claims typically require the victims to cooperate with law enforcement and file police reports. California allows alternatives to police reports for certain victims/survivors (typically human trafficking, domestic violence, sexual assault) but not all victims/survivors. The federal VOCA Fix Act, which passed in July of 2021, clarified that states are not required under federal rules to deny victims/survivors compensation for noncooperation with law enforcement, providing the opportunity for states to change their policies. Some states, like Hawaii and Vermont have already removed their cooperation requirement. Illinois changed its policy such that if a victim/survivor seeks medical care, this alone qualifies as cooperation.

In addition, the ongoing solvency of the Restitution Fund is a concern as it is currently funded by fine and fee revenue, which is declining.

Staff Recommendation. This is an information item, and no action is needed.

Issue 9: Erroneous Conviction Proposals

Governor's Budget. The proposed budget includes:

- \$535,000 General Fund and 2 positions in 2022-23 and \$471,000 in 2023-24 and ongoing to meet the anticipated workload pursuant to SB 446 (Glazer), Chapter 490, Statutes of 2021, which changes existing procedures related to wrongful conviction compensation claims and shifts the burden on the state to prove that the claimant is not entitled to compensation in specified cases.
- \$7 million General Fund in 2022-23 and ongoing and statutory changes to make payments to erroneous conviction claims that are approved pursuant to Penal Code sections 4900 et seq. This proposal also includes provisional language that authorizes the Director of Finance to augment the appropriation if funds are insufficient to cover claims.

Background. People who are falsely imprisoned on felony charges, and are later exonerated, are entitled to \$140 per day incarcerated. These claims are handled by CalVCB, and must be filed no earlier than 60 days and no later than ten years after the exoneration. Each claim requires a response from the Attorney General (AG) within 60 days. If the AG opposes the claim, there is an informal hearing. CalVCB determines the outcome, although they are bound by the facts established in the relevant legal proceedings. No hearings are necessary for individuals who have obtained a declaration of factual innocence from a court. Currently, CalVCB has one attorney working part-time on these claims.

Prior to SB 446, the burden of proof in these hearings was on the claimant. They had to meet a higher legal standard (preponderance of the evidence) than for the court reversal of their conviction (reasonable doubt). SB 446 changes existing procedures related to wrongful conviction compensation claims and shifts the burden on the state to prove that the claimant is not entitled to compensation in specified cases. Specifically, the Attorney General, who responds to these claims, must provide clear and convincing evidence in the hearing that the claimant committed the crime.

Due to this shift, CalVCB expects the workload to more than triple. CalVCB expects the number of claims to increase, as SB 446 makes it more favorable to seek the claim in a CalVCB hearing, rather than through a finding of factual innocence in a court or not filing a claim at all. In addition, the administrative hearings will become longer and more complex as the AG seeks to present evidence to meet the new burden of proof.

In addition, CalVCB estimates that if this law had been in place over the past three years, CalVCB may have been compelled to grant an additional \$3.7 million in compensation, increasing the average annual appropriation by \$1.23 million. CalVCB expects to pay out \$5.67 million dollars in the current fiscal year. Based on their estimates, if SB 446 had been in effect, they would have had to pay out \$6.9 million. Over the past three fiscal years, CalVCB has approved 17 claims at a total appropriation of \$14.2 million, an average of \$4.3 million per year. In the 2021 Legislative Session, appropriations have been made for five claims with a sixth claim pending in the Legislature, at a total of \$6.84 million. However, these historical numbers do not account for the potential impacts of SB 446.

Workload History

Workload Measure	PY – 4	PY – 3	PY – 2	PY-1	PY	CY
Erroneous Conviction Payout	\$4,666,000	\$6,941,000	\$92,000	\$3,447,000	\$5,087,000	\$5,676,000

Currently, each approved claim requires CalVCB to make a recommendation to the Legislature to make an appropriation to pay out the claim. The appropriation is included in a claims bill that must pass through the legislative process, meaning the claimant usually doesn't receive the funds until summer or fall. If a claim is made in fall, they will not receive funds until the next fall. The requested \$7 million would be used to pay out these claims immediately.

Staff Recommendation. Hold Open.

Issue 10: Federal Appropriation and Benefit Limit Adjustment

Governor's Budget. CalVCB requests \$7 million Federal Trust Fund in 2022-23 and ongoing to reflect the Federal Victims of Crime Act reimbursement rate increase from 60 percent to 75 percent. The additional federal funding will be used, in part, to support an increase in benefit limits for crime scene cleanup costs (\$1,000 to \$1,700), funeral/burial costs (\$7,500 to \$12,800), and relocation claims (\$2,000 to \$3,400) to adjust for inflation since these limits were set in the early 2000's.

Background. CalVCB's primary funding source consists of revenue from restitution fines and orders, fees and penalty assessments levied on persons convicted of crimes in California. In addition, CalVCB receives an annual grant from the federal Victims of Crime Act, which reimburses state compensation programs by matching a percentage of the annual amount paid to reimburse crime victims for losses they incur as a result of violent crime. The change to the VOCA formula results in an estimated \$7 million per year additional reimbursement for CalVCB.

Over the last three years, CalVCB has processed an average of 49,180 applications per year and provided \$57.7 million in compensation to victims annually. There is a per claim statutory maximum of \$70,000, and over the last five years CalVCB has awarded less than 1% of all claims at the maximum level. The additional federal funding will be used, in part, to support an increase in benefit limits for the following: crime scene cleanup costs (\$1,000 to \$1,700), funeral/burial costs (\$7,500 to \$12,800), and relocation claims (\$2,000 to \$3,400) to adjust for inflation since these limits were set in the early 2000's.

- *Crime Scene Clean-up Costs from \$1,000 to \$1,700:* This benefit limitation was established 20 years ago and CalVCB receives approximately 40 requests for crime scene cleanup annually. CalVCB estimates that 36 percent of claims will reach this limit, compared to 50 percent of claims under the old limit.
- *Funeral/Burial Costs from \$7,500 to \$12,800:* The funeral and burial benefit was added in 1974 and the limit has not been increased since 2003. An average of 1,900 applicants per year received funeral/burial reimbursement. In California, the average cost for funerals/burials is approximately \$12,000. CalVCB estimates that 8 percent of claims will reach this limit, compared to 34 percent of claims under the old limit.
- *Relocation Claims from \$2,000 to \$3,400:* This benefit, which has not been changed since the year 2000, pays for moving costs such as the first and last month's rent, security, and pet deposits, moving trucks, temporary housing, utility deposits, etc. CalVCB estimates that 11 percent of claims will reach this limit, compared to 48 percent of claims under the old limit.

Those benefit limits had not been adjusted since they were established approximately 20 years ago. The funeral/burial and relocation limits are frequently cited by advocates as insufficient to meet the needs of victims. The only other benefits with statutory limitations were residential security (currently at \$1,000 and vehicle modifications currently at \$30,000) which have not been the source of many claims or feedback regarding additional needs. Over the last three years, there

have been less than 40 total vehicle modification claims and less than a quarter of those with unmet needs. In the same timeframe, there have been only 3,500 residential security claims with a little over a quarter of those with unmet needs. The following table summarizes the unmet need due to these statutory limitations and overall \$70,000 lifetime benefit maximum across all benefit types.

Total Unmet Needs Due to Benefit Caps, By Category				
	2018	2019	2020	2021
<i>Crime Scene Cleanup</i>	\$99,420.66	\$25,779.45	\$91,660.12	\$47,645.77
Dental	\$0.00	\$0.00	\$94,456.00	\$103,611.75
<i>Funeral/Burial</i>	\$2,981,932.68	\$2,940,356.44	\$4,134,788.14	\$6,582,997.55
Home Modification	\$0.00	\$0.00	\$0.00	\$80,000.00
Medical	\$214,801.41	\$1,128,654.10	\$833,425.57	\$1,531,422.39
Mental Health	\$344,249.50	\$860,537.78	\$1,199,048.91	\$988,868.98
Rehabilitation	\$0.00	\$0.00	\$0.00	\$0.00
<i>Relocation</i>	\$2,591,083.69	\$3,243,571.62	\$3,775,319.82	\$5,250,386.70
Residential Security	\$191,237.86	\$265,188.77	\$372,177.69	\$397,916.85
Vehicle Purchase/Mod	\$134,764.40	\$217,892.78	\$347,610.19	\$194,388.38
Total Unmet Needs	\$6,557,490.20	\$8,681,980.94	\$10,848,486.44	\$15,177,238.37

Source: CalVCB

Staff Recommendation. Hold Open.

8120 COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING (POST)

POST is an 18-member commission responsible for overseeing standards and training for certain California peace officers, including city police and county sheriff's deputies. Specifically, POST is responsible for setting minimum selection and training standards, developing and running law enforcement training programs, improving law enforcement management practices, and reimbursing local law enforcement for training. About 600 law enforcement agencies employing roughly 90,000 peace officers participate in POST's programs and abide by the commission's minimum standards.

The Governor's January budget proposes a total of \$110.2 million to operate POST in 2022-23, including \$63 million from the General Fund, with most of the remainder coming from criminal fines and fees. This amount represents an increase of \$23.3 million (27 percent) from the revised 2021-22 level. The budget proposes a total of 263 positions for POST in 2022-23, an increase of 127 positions (93 percent) above the revised 2021-22 level. The proposed increase in resources is largely related to the two proposals described below.

Issue 11: Peace Officer Certification (SB 2)

Governor's Budget. The Commission on Peace Officer Standards and Training (POST) requests \$22.7 million General Fund in 2022-23, \$20.6 million in 2023-24 and ongoing, and 127 positions to support implementation of SB 2 (Bradford and Atkins), Chapter 409, Statutes of 2021, which makes significant reforms to increase peace officer accountability and creates a process by which peace officer certification can be suspended or revoked in instances of misconduct.

Specifically, the Governor's budget proposes the following:

- ***Additional Staffing (\$19.5 Million).*** The proposed budget includes 127 positions to staff the Peace Officer Standards and Accountability Division and provide POST with increased administrative staff. The positions for the new division include 51 decertification staff, 20 certification staff, 14 legal staff, 16 intake and disposition staff, 4 support staff, and a Deputy Director position to oversee the new division. The additional administrative staff include six human resources positions, six information technology positions, five positions for accounting and procurement, and four positions for communications and Public Records Act requests. In addition, the budget includes certain one-time and ongoing operating expenses to support these positions such as travel costs, startup equipment, storage for confidential information, and training.
- ***Allegation Intake Software System (\$2 Million).*** The budget includes \$2 million one time and \$900,000 ongoing for POST to procure a software system to facilitate and manage the intake of allegations of serious misconduct submitted by law enforcement agencies, which will likely include lengthy supporting documentation, such as documents related to internal investigations. (We note that POST has already developed a system for accepting allegations of serious misconduct from the public.)

- ***Lease Costs (\$1 Million)***. The budget includes \$1 million ongoing for POST to lease additional office space to accommodate the expanded workforce.
- ***Peace Officer Standards Accountability Advisory Board Costs (\$179,000)***. The budget includes \$158,000 ongoing and \$21,000 one time to support the new Standards and Accountability Advisory Board for costs such as travel, per diem, and training for the board members.

Background.

Most peace officers are required to receive a basic certificate from POST when they have completed basic training, passed a background check, and completed a probationary period, among other requirements. Prior to the enactment of SB 2, POST lacked the authority to suspend or revoke an officer's basic certificate. SB 2 establishes a process for POST to suspend or permanently revoke a peace officer's basic certificate for serious misconduct.

Under SB 2, POST must receive and review event reports and allegations from agencies employing peace officers and from members of the public. POST can also independently review allegations it becomes aware of in other ways, such as through the media. POST anticipates receiving hundreds of reports weekly, amounting to thousands of reports and investigations needed annually. SB 2 requires POST to establish the Peace Officer Standards Accountability Division (Division) within the Commission to review serious misconduct investigations conducted by law enforcement agencies, conduct follow up investigations if necessary, and make findings on matters that may lead to grounds for suspension or revocation of an individual's peace officer certification

For cases in which the division recommends decertification and the officer agrees with the recommendation, the case ends and the officer's certificate or proof of eligibility is suspended or revoked. If the officer contests a decertification recommendation, the case is referred to a new nine-member board within POST—the Peace Officer Standards Accountability Advisory Board. (The members of the new board will be appointed by the Governor and Legislature.) If the board determines decertification is warranted, the case is referred to the full 18-member POST commission, who will then vote whether to decertify the officer. If the commission votes for decertification, the case is referred to an administrative law judge who will render the final decision.

LAO Comments.

Resources for Certain Aspects of SB 2 Implementation Not Requested. The proposal does not include the staffing necessary to address workload associated with the one-time surge in reports expected for allegations of serious misconduct occurring prior to January 1, 2023. This is because POST indicates that its workload estimates and staffing requests are based on assumptions only about ongoing workload. Moreover, POST has not provided estimates of the expected size of this one-time surge in workload. The Governor's proposal also does not include staffing for the one-time certification workload to issue proof of eligibility certificates to officers who do not have a basic certificate, including approximately 4,400 officers who are still in the probationary period with their employing agency and 2,000 reserve officers who do not have a basic certificate.

Without resources for this workload, it will be difficult for POST to fully implement the decertification program as envisioned by the Legislature, which could result in individuals who have engaged in serious misconduct serving as peace officers longer than they otherwise would.

POST Faces Significant SB 2 Implementation Challenges. POST will likely face significant challenges implementing SB 2, primarily due to the fact that the commission's staffing will need to roughly double by January 1, 2023—only six months after receiving funding in the budget if the Governor's proposal is approved. This challenge is compounded by the fact that POST will first need to fill the requested human resources positions before having the capacity to scale up the hiring of a large number of staff, particularly staff for classifications it does not currently employ (such as the attorneys who will handle the cases when an officer contests a decertification). In addition, POST's current office space is insufficient to accommodate the proposed expansion in its workforce and POST has been informed by the Department of General Services that it will likely take a year or more to secure additional office space. It is unclear how POST will accommodate the increase in its staff in the meantime. Lastly, POST will need to procure an allegation intake software system to receive reports from law enforcement agencies and have the system operational by January 1, 2023. While it is feasible that POST can address these challenges, the Legislature will want to understand POST's implementation plans and any contingency plans that POST has to ensure it implements the SB 2 program on time. Effective implementation in the early stages of the program will be important for instilling public trust in the program and meeting program goals in a timely manner.

LAO Recommendation.

Direct POST to Present Revised Proposal in Spring. We recommend that the Legislature direct POST to submit an updated proposal in the spring that addresses the above concerns. Specifically, the proposal should provide additional workload estimates on the number of reports POST anticipates receiving related to alleged serious misconduct occurring before January 1, 2023 and how POST plans to accommodate this one-time surge in workload, as well as the one-time workload to issue proof of eligibility certificates. Lastly, the revised proposal should include a plan for addressing the implementation challenges we have identified, such as how POST will hire sufficient staff and house them in its existing office space to implement SB 2 in a timely manner.

Issue 12: Officer Wellness Funding

Governor's Budget. The Governor's budget proposes \$5 million one-time from the General Fund available over three years for POST to develop a law enforcement officer wellness program. The proposal identifies various categories of wellness the program would seek to improve, including individual officer wellness, organizational wellness, and community wellness. The proposal also identifies numerous potential wellness activities that might be developed or conducted with the requested funds, such as creating a podcast, holding workshops, improving training, developing videos, and other activities.

Background. In recent years, greater attention has been placed on the wellness of first responders such as peace officers. The job requirements of a peace officer can be physically, mentally, and emotionally taxing. This is because officers can face dangerous situations, work late night shifts, and have repeat exposure to violent situations. The overall wellness of officers is important for their ability to effectively carry out their duties, such as responding to and deescalating dangerous situations. For example, studies have noted significant rates of Post Traumatic Stress Disorder (PTSD) among peace officers with at least one study finding a correlation between PTSD and excessive use of force.

POST began the development of an officer and organizational wellness initiative in earnest in March of 2020. At that time, POST developed an internal working group of practitioners and interested parties to assist in the development of a wellness collaborative. This group began the process of identifying the status of officer and organizational wellness programs in the state, where any gaps existed, and the role POST should take in supporting those programs. In November 2020, POST conducted a survey available to all peace officers and public safety dispatchers to solicit feedback about the current state of wellness initiatives as law enforcement agencies and to further assist in identifying how POST could support initiatives.

The results of the survey were used during subsequent wellness workshops hosted by POST, where a wide range of stakeholders were invited to provide feedback about current and future needs in officer and organizational wellness. These experts included clinicians serving directly with or under contract with California law enforcement agencies, agency representatives with expertise in the development and implementation of sustainable wellness programs, legal representatives with expertise in agency and labor issues relevant to wellness programs, and agency personnel who have been personally impacted by the availability, or lack of availability, of wellness programs. The feedback received from the internal collaborative, the survey, and the wellness workshops inform the current project proposal.

While the funding is limited-term in nature, POST indicates that it intends the effect to be ongoing through the development of permanent resources (such as the podcast), training to help agencies set up ongoing local or regional wellness programs, and the implementation of officer wellness in peace officer training. POST plans to provide training to at least 100 agencies over the three-year funding period. In addition, POST plans to use university and research partners in both the development and evaluation of the program.

POST anticipates using the funding as follows:

- Year 1- \$1,250,000 for initial development of academy programs, identification of multi-media vendors and development, identification of subject matter experts in agency wellness integration, and for the first series of agency wellness workshops.
- Year 2- \$1,550,000 for the development of academy wellness instructors, completion of the wellness podcast series, identification and evaluation of university and research partner organizations, and the continuation of agency wellness workshops.
- Year 3- \$2,200,000 for the continuation of agency wellness workshops, development of multimedia resources for officer and organizational wellness, the development and implementation of research and evaluation programs with the university and research partners, and the dissemination of best practices and evidence-based programs to all law enforcement agencies throughout the state.

LAO Comments.

Key Questions About Proposal Remain Unanswered. While the general concept of improving officer wellness has merit, the administration has not been able to provide detailed information about the proposal at this time to determine whether the proposed program would in fact improve officer wellness. Specifically, the administration has been unable to adequately respond to the following key questions:

- *What Are the Primary Goals of the Program?* While it is clear the program is intended to improve officer wellness, the more specific, primary goals of the program remain unclear. For example, POST has not provided information on the type of wellness—mental, physical, or emotional—the program is intended to improve.
- *What Problem Would the Program Solve?* POST has not identified what the highest-priority needs for improving officer wellness are or whether there are gaps in existing wellness programs offered by law enforcement agencies that it is attempting to fill.
- *What Activities Would Be Funded?* While the proposal identifies numerous potential activities, it is unclear whether the proposal would fund all of the listed activities or just some of them and how much funding would be allocated to each.
- *What Outcomes Are Expected?* POST has not described the outcomes it expects to achieve, such as the number of officers that it will reach or the number of trainings it intends to offer.
- *How Will SB 2 Implementation Affect the Program?* As discussed above, POST faces considerable SB 2 implementation challenges, including the need to roughly double its workforce by January 1, 2023. It is unclear how POST will be able to effectively implement SB 2 and the officer wellness program simultaneously.

We note that POST staff have indicated that many of the above questions cannot be answered until the program is more fully developed, which they indicate will take about 12 months. However, without answers to these questions, it is difficult for the Legislature to evaluate the merits of the proposal.

LAO Recommendation.

Direct POST to Provide Key Details Regarding Proposal. While the proposed program could have some merit, given the significant unanswered questions about the proposal, it is difficult at this time to assess whether it would be effective at improving officer wellness. Accordingly, we recommend that the Legislature direct the administration to provide sufficient details about how the program would be implemented. Until such information is provided, we recommend the Legislature withhold action on the Governor's proposal. If such information is provided demonstrating that the program is consistent with legislative priorities, would be likely to improve officer wellness, and would not interfere with the timely implementation of the SB 2 decertification program, we would recommend the Legislature approve the proposal. Otherwise, we would recommend the Legislature reject the proposal without prejudice to allow POST to more fully develop a proposal to improve officer wellness for consideration as part of the 2023-24 budget.

Staff Recommendation. Hold Open.

8140 OFFICE OF THE STATE PUBLIC DEFENDER (OSPD)**Issue 13: Support General Workload**

Governor’s Budget. The proposed budget includes \$442,000 ongoing General Fund and 3.5 positions to manage OSPD’s increased workload.

Background. The State Public Defender requires these positions to fulfill its statutory responsibilities to provide effective representation of individuals sentenced to death and to carry out its new mandate to provide training and technical assistance to defenders across California.

The Office of the State Public Defender (OSPD) is a long-established criminal appellate agency with a new mission to assist the counties in the provision of constitutionally mandated public defense services. OSPD was established in 1976 to provide appellate representation to indigent defendants across the state. With the rise in death penalty sentences, in 1997, OSPD began to focus primarily on death penalty appeals. For the past 25 years, OSPD attorneys have largely represented men and women sentenced to death on the appeal of their convictions in the California Supreme Court. OSPD took a few cases from the courts of appeal. OSPD appellate attorneys continue to represent over 100 people in fulfillment of that responsibility.

Since 2016, OSPD has taken a larger state-wide role in death penalty defense and has assumed responsibilities for litigating issues that affect multiple death penalty cases across the state. This new cross-case role required OSPD to collect and synthesize data regarding systemwide application of the death penalty as it relates to mental health issues, race and ethnicity, poverty, and geography. Additionally, OSPD has assisted other state entities, for example, the Committee on the Revision of the Penal Code, in its assessment of the problems of the administration of the death penalty. The OSPD appellate attorneys have also taken an active role in assisting trial counsel in capital cases in litigating targeted issues at trial. OSPD also occasionally acts as expert in area of criminal legislation.

In 2020, OSPD an additional mandate from the Legislature. OSPD now has the responsibility to train and offer technical assistance to county level public defenders and other private attorneys representing the indigent. (Cal. Gov. Code, §§ 15420-21.) In response to that legislative mandate, OSPD has created a new division, the Indigent Defense Improvement Division (IDID), which has the responsibility for implementing the new legislative mandate. This fiscal year, the IDID is hiring staff and is in the process of refining its mission.

As part of the new mandate OSPD also assumed responsibilities for assisting the Board of State and Community Corrections (BSCC) in administering two grant programs. The first is a pilot program of \$10 million dollars to small and medium size counties with public defender offices for the purposes improving defense in those counties (Budget Act of 2020). The second is a \$150 million program to be administered over three years for the workload costs of public in every county in the State associated with four ameliorative criminal defense statutes, Penal Code sections 1170(d)(1), 1473.7, 3051, and 1170.95. (Budget Act of 2021, section 189.) These funds can go to defense for public defender offices, alternative public defender offices, and other alternative offices providing indigent criminal defense service.

Additionally, the OSPD appellate unit has taken on responsibilities for supporting and training county individuals in the area of three new pieces of legislation, AB 3070 (a bill which limits the ability of the prosecution to exercise certain kinds of jury challenges against disadvantaged groups), AB 2542 (the “Racial Justice Act” which prohibits discrimination against racial, national and ethnic groups, in charging and sentencing, and SB 1437 (a bill that makes radically redefined who could be held accountable for the crime of murder, and providing a mechanism for people convicted of murder to challenge their conviction in the trial court.) The appellate unit now has an active amicus program in the California Supreme Court and the courts of appeal.

Currently, OSPD does not have sufficient staff to support the administrative/human resource, information technology, and business services related work needed to assure that OSPD is able to fulfill its statutory mandate effectively.

OSPD is requesting \$442,000 ongoing General Fund and 3.5 positions (1.5 Associate Governmental Program Analysts (AGPA), 1.0 Associate Personnel Analyst (APA), and 1.0 Information Technology Specialist I (ITS I)) to effectively manage OSPD’s increased workload due to an increased staff and additional responsibilities. The State Public Defender requires these positions to fulfill its statutory responsibilities to provide effective representation of individuals sentenced to death and to carry out its new mandate to provide training and technical assistance to defenders across California.

Staff Recommendation. Hold Open.