

HEARING POSTPONED

ASSEMBLY BUDGET SUBCOMMITTEE NO. 5 ON PUBLIC SAFETY

ASSEMBLYMEMBER SHIRLEY N. WEBER, PH.D., CHAIR

~~MONDAY, MARCH 16, 2020~~
~~2:30 P.M. — STATE CAPITOL, ROOM 437~~

ITEMS TO BE HEARD		
ITEM	DESCRIPTION	PAGE
	GOVERNOR'S OFFICE	1
ISSUE 1	PROBATION REFORM PROPOSAL	1
0250	JUDICIAL BRANCH	11
ISSUE 2	OVERVIEW OF JUDICIAL BRANCH BUDGET	11
ISSUE 3	ACCESS TO JUSTICE	13
ISSUE 4	COURT NAVIGATORS	14
ISSUE 5	LANGUAGE ACCESS IMPLEMENTATION	17
8140	STATE PUBLIC DEFENDER	19
ISSUE 6	INDIGENT DEFENSE AND COMPLEX DEATH PENALTY CASES	19

ITEMS TO BE HEARD

GOVERNOR'S OFFICE

ISSUE 1: PROBATION REFORM PROPOSAL

The Department of Finance will provide an overview of the probation reform proposal in the Governor's budget and the associated proposed funding.

PANELISTS

- Department of Finance
- Legislative Analyst's Office
- Brian Richart, President of Chief Probation Officers of California and Chief of El Dorado County Probation
- David Muhammad, National Institute for Criminal Justice Reform and former Chief Probation Officer of Alameda County
- Brendon Woods, Public Defender, Alameda County

BACKGROUND

Crime in California. The Department of Justice's (DOJ) 2018 report on Crime in California noted the following downward trends:

- The adult total arrest rate decreased 0.1 percent, while the juvenile total arrest rate decreased by 17.9 percent. From 2017 to 2018, the total felony arrest rate decreased 1.7 percent and the total misdemeanor arrest rate decreased 0.6 percent.
- The violent crime rate decreased 1.5 percent from the previous year. The homicide rate decreased by 4.3 percent.
- From the previous year, the property crime rate decreased 5.1 percent, the robbery rate decreased 4.5 percent, the motor vehicle theft rate decreased 8.3 percent, and burglary and total larceny-theft rates decreased 7.3 and 3.7 percent, respectively.
- From 2017 to 2018, the forgery, checks, access cards offense arrest rate decreased 12.2 percent.

The DOJ also reported the following regarding probation in 2018:

- The total number of adults on active probation was 209,763, its lowest since 1984.
- From 2017 to 2018, there was a 12.9 percent decrease in the total rate of adults placed on probation and a 2.0 percent increase in the total rate of adults removed from probation.

- From 2017 to 2018, there was a 12.8 percent decrease in the rate of adults placed on probation for a felony offense, and a 13.4 percent decrease in the rate of adults placed on probation for a misdemeanor offense.

As is the case in other parts of the criminal justice system, African Americans are overrepresented among people under probation supervision. In a Multi-County Study (MCS) conducted by the Public Policy Institute, it showed that despite making up only 7.9 percent of the population in the MCS counties, African Americans make up 22.9 percent of new probation cases from October 2011 to October 2015. In contrast, Asian Americans make up only 2.9 percent of the probation population, though they comprise 16.0 percent of the overall population in the MCS counties. The shares of Latinos and whites in the probation population are similar to their shares in the overall population.¹

California Performance Incentives Act (SB 678). SB 678 was enacted to incentivize counties to reduce the rate at which they sent felony probationers to state prison—known as the felony probation failure rate. Under SB 678, counties received a portion of the state correctional savings that resulted from reductions in the felony probation failure rate. Chapter 26 of 2015 (SB 85) updated the formula to award counties for reductions in the rate at which the other felony supervision populations—individuals on PRCS and mandatory supervision—are sent to prison. Accordingly, this gave counties the incentive to reduce the overall felony supervision failure rate, rather than just the felony probation failure rate. Chapter 26 also adjusted the SB 678 funding formula to reduce the volatility of the funding awarded to counties. Under Chapter 26, counties receive funding based on the following three components:

1. **Funding for Reducing Felony Supervision Failure Rate Below Prior Year.** This compares a county's most recent annual felony supervision failure rate with the rate from the previous year. If the failure rate is lower than the previous year, the county receives 35 percent of the estimated state correctional savings associated with that reduction. This is intended to incentivize counties to continue to reduce the felony supervision failure rate each year.
2. **Funding for Reducing Felony Supervision Failure Rate Below Baseline.** This compares a county's felony supervision failure rate to a statewide baseline felony supervision failure rate of 7.9 percent. Depending on how the county's rate compares to the baseline, the county will receive between 40 percent and 100 percent of the highest payment they received between 2011-12 and 2014-15. This is intended to: (1) incentivize counties to reach a rate that is below the baseline; and, (2) ensure that a county that is already below the baseline will continue to receive funding even if it is not able to further reduce its rate.

¹ https://www.ppic.org/wp-content/uploads/r_0817vnr.pdf

3. **Funding to Guarantee \$200,000 Minimum Award.** This guarantees that each county receives at least \$200,000. If the first two components total less than this amount, the county's award is increased to \$200,000.

Counties can only use SB 678 funding to provide supervision and rehabilitation services for individuals on felony supervision. Examples of how this funding could be used include electronic monitoring and evidence-based rehabilitation programs, such as cognitive behavioral treatment. In addition, counties are required to evaluate the effectiveness of their programs and practices and can use the funding to pay for these evaluations.

Proposed Funding

The Governor's budget for 2020-21 requests various proposals totaling \$71 million General Fund (declining to \$11 million annually by 2024-25) and budget trailer legislation that would: (1) modify the SB 678 funding formula; (2) require increased supervision of certain misdemeanor probationers and provide limited-term funding to support this supervision; and, (3) reduce the length of time individuals would be on felony and misdemeanor probation. The total funding proposed is \$254 million over four years and \$11 million of that amount is ongoing.

LEGISLATIVE ANALYST'S OFFICE (LAO)

LAO's analysis of proposed changes to SB 678:

Modification to SB 678 Funding Formula (\$11 Million). The Governor proposes budget trailer legislation to modify the SB 678 funding formula in an effort to further reduce the volatility in the funding that the program provides to counties. Under the Governor's proposal, counties would no longer receive funding based on their felony supervision failure rate. Instead, counties would receive a set amount each year equal to the highest award they received between 2017-18 and 2019-20. To fund this change, the Administration is proposing \$11 million from the General Fund on an ongoing basis.

However, the amount a county receives could be reduced in the future if the county increases the number of people on community supervision they send to prison in multiple years. Specifically, counties would receive warnings if there is an increase in the total number of individuals on felony supervision who are sent to prison in a given year that exceeds the county's baseline amount by ten individuals or 24 percent (whichever is greater). The baseline for each county would be equal to the average number of individuals on felony supervision who were sent to prison between 2016 and 2018. A county's funding in a given year would be reduced to 50 percent of its prior year award if the county had received two or more warnings in the three preceding years. However, as is currently the case, counties would be guaranteed at least

\$200,000 in funding. The Administration is also proposing to broaden the allowable uses of SB 678 funds to include services and supervision for misdemeanor probationers.

Proposal to Address SB 678 Volatility Is Unnecessary and Could Create Unintended Consequences. As discussed earlier, the Governor proposes to reduce the volatility in the SB 678 funding that is provided to counties. However, we find that the fluctuations in SB 678 funding are generally relatively small compared to the total budgets for county probation departments. On average, the difference between the minimum and maximum award counties received over the last three years was less than \$400,000, or about 1 percent of the average probation department budget in 2017-18 (the most recent data available).

Moreover, we find that that Administration's proposal to change the SB 678 funding formula is problematic and can result in unintended consequences. Specifically, we find the following:

- ***Proposal Could Actually Increase Volatility and Harm Future Performance.*** Under the Governor's proposal, counties would be penalized and receive less funding if they increase the total number of individuals on felony supervision who are sent to prison over multiple years and receive two or more warnings. Such counties could actually experience more volatility once penalized. This could make it difficult for a county to recover once its funding has been cut. For example, if a county receives two warnings in the three most recent years, it would only receive 50 percent of its prior-year award. If the county then received another penalty in the following year, its funding would be reduced by another 50 percent. As a result, if a county received multiple penalties in a row, its funding could eventually be reduced to the minimum of \$200,000. This means the proposed changes could actually increase rather than reduce volatility in SB 678 funding. Moreover, the proposed penalties could reduce the availability of resources for counties to pursue evidence-based practices. As a result, not only would funding levels be highly volatile, the funding structure could undermine future performance if reduced resources lead to counties providing fewer services.
- ***Proposal Undermines Incentive to Reduce Prison Population.*** The current formula for SB 678 incentivizes counties to continue to reduce the prison population by reducing the felony supervision failure rate. In contrast, under the proposed approach, counties would only be incentivized to keep the number of individuals sent to prison low enough to avoid a warning. Removing the incentive for further reductions would undermine the legislative intent of SB 678.
- ***Number of Supervised Individuals Could Distort Penalties and Rewards.*** The proposed formula would be based on the number of individuals on felony supervision who are sent to prison rather than on changes to the felony supervision failure rate. This means that counties that have an increase in the number of individuals on felony

supervision could potentially be penalized for maintaining or even improving their felony supervision rate. It could also mean that counties whose felony supervision populations decline could have an increase in the felony supervision failure rate without being penalized.

LAO Recommendation: *Reject Proposal to Stabilize SB 678 Funding.* We recommend that the Legislature reject the Governor's proposed statutory changes to SB 678 and \$11 million augmentation to support these changes. We find that the Governor's proposal is unnecessary as the current volatility in SB 678 funding appears to be relatively low. In addition, we find that the proposed changes to the formula could have a number of unintended consequences, such as increasing the volatility of the funding counties receive and reducing their incentive to keep felony probationers out of prison.

LAO's analysis of misdemeanor probation supervision and funding proposal

The Governor's budget includes increased General Fund support over a four-year period—\$60 million annually in 2020-21 through 2022-23, and \$30 million in 2023-24—for county probation departments to increase the level of supervision provided to individuals on misdemeanor probation for certain offenses. The funding is intended to support the required increase in supervision for four years. After the four-year period, counties would continue to be required to provide increased supervision to the specified misdemeanor probationers but would need to use their own funds to do so. Due to the Governor's proposed change in the allowable uses of SB 678 funds mentioned above, counties could choose to use that funding to pay for these costs.

Proposed Increase in Misdemeanor Probation Supervision Problematic... The Administration states that requiring counties to supervise certain misdemeanor probationers and providing limited-term funding for misdemeanor supervision and services would reduce the number of misdemeanor probationers who eventually end up in prison. However, the following aspects of the proposal make it unlikely that this would occur:

- ***Funding Provided Irrespective of Success.*** Unlike the current SB 678 funding formula for individuals on felony supervision, the proposed resources for misdemeanor probation would not be based on the extent to which counties reduce the number of individuals who are sent to prison. Instead, counties would receive these funds irrespective of whether they reduce prison commitments.
- ***Lack of Incentive for Counties to Actually Increase Service Levels.*** While the Administration intends to increase services for individuals on misdemeanor probation, it is not clear that counties would actually increase such services. This is because the proposal only requires the supervision of certain individuals on misdemeanor probation

but does not require counties to provide additional services. We note that counties currently have the authority to provide services to misdemeanor probationers. If counties thought this was an effective use of their funding, they would likely already be providing these services.

- ***Could Prevent Counties From Using Resources in More Effective Ways.*** Research suggests that the most effective way to reduce recidivism is to concentrate resources on individuals with a high risk to reoffend and a high need for services. However, the proposal's supervision requirement would be based on the individual's offense rather than the individual's risk of reoffending or need for services. As a result, the proposal could result in resources being unnecessarily spent on misdemeanor probationers that are low risk and/or low need instead of allowing those resources to be used in ways that could be more effective at reducing recidivism.

...and More Effective Alternative Exists. We find that expanding the current SB 678 funding formula to award counties for reducing the rate at which misdemeanor probationers are sent to prison is a better approach to reducing the number of such individuals in prison relative to the Governor's proposal. First, unlike the Administration's approach, it would give counties an ongoing fiscal incentive to reduce the number of misdemeanor probationers sent to prison. Second, it would also give counties the flexibility to focus supervision and services on the misdemeanor probationers they have identified as having the highest risks and needs rather than requiring counties to focus on individuals on probation supervision for specific offenses. This could ultimately help reduce the state's prison population and create state savings, that would be partially shared with the counties responsible for creating it.

LAO Recommendation: *Reject Misdemeanor Probation Proposal and Instead Expand SB 678.* We recommend that the Legislature reject the Governor's proposal to require counties to supervise individuals on probation for certain misdemeanor offenses, given that it appears unlikely that the proposal would effectively prevent misdemeanor probationers from going to prison. Instead, we recommend the Legislature expand the current SB 678 funding formula to reward counties for keeping misdemeanor probationers out of prison. We find that this would be more likely to reduce the number of misdemeanor probationers who are sent to prison. We note that if the Legislature chose to expand SB 678 to include misdemeanor probationers, it could consider providing counties with some initial funding to assist in the expansion of evidence-based practices and services for this population. For example, the Legislature could redirect the \$60 million for misdemeanor supervision proposed by the Governor in 2020-21, or a different amount, for this purpose on a limited-term basis. This would allow counties to create evidence-based services for misdemeanor probationers that would help prevent them from being sent to prison. As a result, counties would receive a portion of the resulting state savings to maintain and expand such services.

LAO Recommendation: *Reject Proposal to Reduce Probation Terms.* We recommend that the Legislature reject the Governor’s proposal to reduce probation terms by limiting them to two years and instituting mandatory early discharge. We are seriously concerned that these changes could have unintended consequences, such as increasing the number of individuals who are sentenced to jail or prison rather than probation.

STAFF COMMENTS

The 2018 DOJ statistics on crime trends referenced above indicate a general decline in the crime categories noted above as well as the lowest number of individuals on probation since 1984. Despite concerns raised by criminal justice reform opponents, data shows that measures championed by the Legislature and ballot initiatives passed by a significant majority of Californians, improved public safety outcomes. Additionally, a 2018 Probation Governance study from Los Angeles County included a recommendation to shorten the length of supervision of individuals who follow the conditions of their supervision, as research indicates there are diminishing returns to supervision after fifteen months. The study further concluded that shortening supervision periods for lower to moderate risk clients who comply with the terms of their supervision will reduce caseloads and allow more focused supervision on higher risk clients.

While current law allows for a term of five years for felony probation, the vast majority of counties already assign three year terms. Staff notes that the proposal to reduce maximum felony probation terms to two years is in line with best practices and follows other states that have made reductions in probation supervision, including Georgia, Michigan, and Alabama. Reducing felony probation terms will decrease caseloads and encourage resources on the front end of probation terms—when individuals are more likely to recidivate. In addition, the earned discharge provision is also in line with similar reforms and expansions that at least 18 other states have taken².

In contrast, staff notes that proposed changes to increasing misdemeanor probation for certain offenses may have unintended consequences. This includes net widening of the criminal justice system, leading to an increase in incarceration and an exacerbation of existing racial disparities. According to the Administration, this provision of the proposal is in response to the number of individuals with prior terms of misdemeanor convictions being admitted to prison. The Administration indicates that requiring the supervision of misdemeanor probationers would reduce the likelihood that such individuals end up in prison. Staff is unaware of any research or study that concludes misdemeanor probation is an indicator that increases the likelihood a

² The Pew Charitable Trusts, “35 States Reform Criminal Justice Through Justice Reinvestment.” (2018) Found at: <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2018/07/35-states-reform-criminal-justice-policies-through-justice-reinvestment>

person will end up in prison, compared to known and substantiated indicators, such as socio-economic status, education, history of mental health and/or substance use, and policing. The proposed increase in formal misdemeanor probation impacts the following misdemeanor categories:

1. Penal Code 29805: prohibitions on firearm access
2. Penal Code 459.5, 473, 476, 490.2, 666: petty theft, including shoplifting of under \$950 and forgery of less than \$950
3. Penal Code 273.5: domestic violence
4. Penal Code 290: sexual assault

In addition, the proposed trailer bill language includes the following broad provision in Section 1203.1 aa(2):

“The court may refer a person convicted of any other misdemeanor to probation supervision pursuant to this section.”

This provision of the proposed trailer bill is concerning as it technically allows the formal probation of virtually *any* misdemeanor. According to the DOJ’s most recent arrest statistics, there were a total of 784,245 misdemeanor arrests in 2018.³ Research evaluating the impact of intensive supervision on individuals deemed high risk has shown no difference in offending⁴. In other words, individuals that had more restrictive supervision, more office contacts, home visits, and drug screenings did not yield better outcomes.⁵ This held true for a variety of crimes, including non-violent, property, and drug offenses. Rather, those on intensive supervision were charged with technical violations and were incarcerated at significantly higher rates.⁶ In addition, staff notes that the proposal does not guarantee an improvement or increase in services provided to individuals under formal misdemeanor probation.

The Administration has stated that placing individuals on formal misdemeanor probation allows for the individuals to be connected with more services. Staff notes that while the trailer bill language and proposed resources would provide additional supervision, there is nothing to indicate that additional services would actually be provided and even if they were, what those services would be and how they would reduce misdemeanor reoffense. Also, the availability and quality of services is inconsistent across California’s 58 counties. It is unclear as to how counties will provide services to the addition of tens of thousands of individuals on formalized misdemeanor probation annually. Formal probation for misdemeanors will likely lead to more cases going to trial, increasing costs to the courts.

³ While information related to the final dispositions for felonies are available in the “2018 Crime in California” report provided by the Department of Justice, final dispositions of misdemeanors are not.

⁴ Hyatt, Jordan M., Geoffrey C. Barnes.” An Experimental Evaluation of the Impact of Intensive Supervision on the Recidivism of High Risk Probationers.” November 12, 2014.

⁵ Id.

⁶ Id.

In addition, the Administration has expressed that supervision and services will be prioritized based on high risk of reoffending, but there is no requirement in the proposed trailer bill for probation departments to provide risk/needs assessments. Rather, the trailer bill language identifies broad categories of misdemeanor offenses that require formal probation, regardless of the risk level of the individual. For example, approximately 61,000 individuals were arrested in 2018 for misdemeanor petty theft offenses. If the conviction rate for felonies is similar to that of misdemeanors, this would result in nearly 40,000 individuals placed on formal misdemeanor probation for petty theft alone—a significant caseload increase with no consideration of actual risk. Additionally, nearly 2/3 of the arrests for petty theft are of people of color. African-Americans make up less than 6% of the total state population but more than 20% of the misdemeanor arrests for petty theft.

The Subcommittee is in receipt of letters from a number of stakeholders regarding the Governor's proposed trailer bill. The feedback is summarized below:

1. Probation supervision is not an effective way to connect justice system involved individuals with treatment and services.
2. Reducing length of probation terms to two years is an effective policy based in research and likely to produce better outcomes and significant cost savings.
3. Mandatory increased supervision of misdemeanants outlined in 1203.1aa would lead to harmful net widening without improving public safety. Stakeholders state that formal supervision and felony consequences for offenses like petty theft, forgery, and shoplifting are a significant overreach. As such, they ask that 12031.aa(1)(B) and (2)(a) be removed which would still allow the formal supervision of the following misdemeanor offenses:
 - a. Penal Code 29805: Possession of a firearm by someone previously convicted of a misdemeanor.
 - b. Penal Code 273.5: Domestic violence.
 - c. Penal Code 290: Sex offenses.
4. The proposal should incentivize greater collaboration with community based organizations and require that a portion of the proposed funds be used for community based services.
5. Stakeholders recommend adding the following provisions to the proposed trailer bill:
 - a. Eliminate incarceration as a penalty for all misdemeanants on any technical violations of supervision.
 - b. Allow for individuals on felony supervision who are assessed a low risk to not be formally supervised.
 - c. Make changes to the proposed trailer bill to remove any incentive to “stack charges” to reach a maximum term in any case, resulting in overcharging.

- d. The proposed trailer bill provision that allows judges to “refer a person convicted of any other misdemeanor to probation supervision” other than the ones enumerated is troubling and should be removed.
6. Reporting on implementation in section 1232 of the proposed trailer bill is helpful and should include clarifying language that every county should submit a report to the state on the enumerated items.
7. The earned discharge section proposed in section 1203.33 of the proposed trailer bill is aligned with best practices and puts California on par with other states with similar policies like Louisiana and Georgia. To strengthen this provision, the following recommendations are made:
 - For misdemeanants on supervision, if the individual has complied with the enumerated requirements, their discharge should be automatic.
 - For felony supervision, if these individuals have complied with their enumerated requirements, their discharge should be presumptive and probation would have to provide a clear and convincing argument as to why supervision should continue.

Staff Recommendation: Hold Open.

0250 JUDICIAL BRANCH

ISSUE 2: OVERVIEW OF JUDICIAL BRANCH BUDGET

The Judicial Council will provide an overview of the Judicial Branch's proposed budget for 2020-21.

PANELISTS

- Judicial Council
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

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, trial courts and statewide entities of the branch including the 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. Total funding for the judicial branch has steadily increased in the last few years.

Judicial Branch Budget Summary—All State Funds

(Dollars in Millions)

	2018-19 Actual	2019-20 Estimated	2020-21 Proposed	Change From 2019-20	
				Amount	Percent
State Trial Courts	\$2,922	\$3,267	\$3,362	\$95	2.9%
Supreme Court	49	53	54	1	1.3
Courts of Appeal	228	259	260	1	0.4
Judicial Council	141	186	184	-2	-1.0
Judicial Branch Facility Program	445	548	490	-58	-10.6
Habeas Corpus Resource Center	16	17	18	—	2.5
Totals	\$3,801	\$4,330	\$4,367	\$37	0.9%

Proposed Funding

The Governor's Budget proposes a total of \$4.6 billion (General Fund and special funds) in support for the judicial branch in 2020-21, an increase of \$37 million above the revised amount for 2019-20. Specifically, the proposed budget includes the following:

- \$177.9 million ongoing General Fund to the trial courts.
- \$61.7 million ongoing General Fund, an overall increase of 3 percent in funding to address inflationary pressures to provide existing level of services in the courts.
- \$45.9 million for trial court operations to be allocated by the Judicial Council to promote fiscal equity among the trial courts.
- \$35.1 million ongoing General Fund in 2020-21 for trial court employee health benefit and retirement costs.
- \$35.2 million General Fund to continue backfilling the Trial Court Trust Fund for the decline of revenues expected in 2020-21.

Staff Recommendation: Hold Open.

ISSUE 3: ACCESS TO JUSTICE

Assemblymember Mark Stone, chair of the Assembly Judiciary Committee, will provide an overview of priorities identified by the Assembly Judiciary Committee for this Subcommittee's consideration.

BACKGROUND

The Assembly Judiciary Committee has identified a number of priorities for consideration in this year's budget discussions including the following:

1. Require courts to provide greater oversight of probate court conservatorships by requiring compliance with AB 1363 (Jones), Chap. 493, Stats. 2006. As a result of cuts to the courts' budgets, courts were exempted from court conservatorship oversight requirements until funding was made available. Since that time, the state has provided increased funding to the courts to address historical cuts, some of which could be used for courts to comply with oversight and protections for vulnerable senior citizens subject to probate court conservatorships.
2. Include additional accountability measures for courts and the Judicial Council with respect to additional funding provided by the Legislature to better understand the impact of resources and how the general public (and court users) are served by these investments.
3. Increase and enhance the quantity and quality of support for unrepresented litigants; which includes understanding how many litigants are unrepresented, how many use self-help centers, the availability of court reporters, etc.

Staff Recommendation: Hold Open.

ISSUE 4: COURT NAVIGATORS

The Judicial Council will provide an overview of the budget proposal regarding the Court Navigator Program.

PANELISTS

- Judicial Council
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

According to the Judicial Council, more than 4.3 million Californians go to court without a lawyer every year. Since the Judicial Council's adoption of The Statewide Action Plan for Serving Self Represented Litigants in 2004, a system of services has developed for court-based Self-Help Centers, online self-help legal and procedural information, and other resources to facilitate the efficient processing of cases involving self-represented litigants. The 2018 Budget Act included funding of \$19.1 million to expand the services provided by Self-Help Centers. Currently, Self-Help Centers in every court provide legal information to help self-represented litigants work through the legal requirements to progress with their cases, explain legal terms, processes, and procedures, and assist with paperwork and forms completion. Under attorney supervision, Self-Help Centers conduct workshops to inform litigants about court procedures in a range of case types and legal actions. Funding for an online Self-Help Portal provided in the 2018 Budget Act is adding digital services to branch websites.

According to the Judicial Council, the success of Justicecorps in seven courts in California demonstrates the potential for non-legal assistance as a helpful adjunct to legal assistance. Local courts and colleges partner to train students to provide non-legal assistance, in Self-Help Centers. Justicecorps members offer information, referrals and assistance in workshops and with forms. Evaluation of this program found that litigants served by Justicecorps members had a better general understanding of the procedures in their cases, the steps to complete during their visits, and subsequent steps in their cases. Although Justicecorps demonstrates the usefulness of non-legal assistance, the Justicecorps delivery model poses challenges for adoption as a stable court service statewide because fellows work part time during the school year and their term of work is typically one year.

Proposed Funding

The Governor's Budget requests 2.5 positions and \$8.1 million General Fund in 2020-21 and \$15.5 million annually thereafter to establish and implement a Court Navigator Program in the trial courts. Implementation of the program in the courts will be phased in over two years.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO provides the following analysis and recommendations:

Some of the Proposed Services Already Offered. Some of the services that would be provided by the proposed court navigators are already provided by some self-help centers. For example, nearly all self-help centers provide assistance with form completion in some manner. Moreover, some self-help centers also provide various types of non-legal assistance, such as offering certain workshops, ensuring litigants know where to go after leaving the center, and accompanying litigants to courtrooms.

Self-help centers generally have flexibility in the services they provide, the type and number of staff they hire, and the manner in which they provide services. As such, to the extent (1) these services are a high priority for a particular trial court and (2) court navigators were believed to be the best way to provide them, a trial court could support such services within existing resources. We note that the increased funding provided to self-help centers in 2018-19 could be used to implement or expand such services in the near term. To the extent these services are not already being provided, it is likely because they are not high priorities for individual trial courts.

Unclear Whether Proposed Activities Are Priority for Court Users. While court navigator services could provide some benefit to court users, it is unclear whether the specific activities proposed are priorities for court users. For example, to the extent more resources were available for self-help services, court users could prefer legal assistance with completing certain forms—which cannot be offered by a court navigator—over receiving directions or courtroom accompaniment.

Evaluation of Existing Funding for Self-Help Centers Currently in Progress. The 2018-19 budget package required the judicial branch to conduct a cost-benefit analysis of self-help center services by November 2020. This analysis will determine which methods of delivering services (such as one-on-one services or workshops) are most cost-effective and in what case types. This analysis is particularly important as some services proposed to be offered by court navigators are already offered in some self-help centers and should already be part of this analysis. The cost-benefit analysis will help the Legislature determine what level of funding is merited and where funding should be targeted to maximize state benefit. In particular, the

analysis could identify where gaps in services exist and whether court navigators would be the most effective way to address those gaps. Until the above evaluation is completed, it is premature to provide additional funding for self-help services.

Impact of Other Self-Help Related Services Remains Unclear. As discussed above, increased funding has been provided to other self-help related services that could reduce the overall unmet need for self-help services, including those that would be provided by court navigators. However, these services may not be captured in the pending cost-benefit analysis of services provided by self-help centers. For example, the new self-help web portal could enable litigants to successfully complete simpler or more common forms outside of the courthouse—reducing the need for self-help assistance in this area. Such a reduction raises questions about the potential need for court navigators, as this type of activity is one of the responsibilities that court navigators would be responsible for. However, at this time, the impact of these recently funded services on self-help services need is unknown.

LAO Recommendation: Reject Proposal. In light of above concerns, we recommend that the Legislature reject the Governor's proposal to provide \$8.1 million General Fund in 2020-21 to establish a Court Navigator Program in trial courts.

Staff Recommendation: Hold Open.

ISSUE 5: LANGUAGE ACCESS IMPLEMENTATION

The Judicial Council will provide an overview of the Language Access Implementation proposal.

PANELISTS

- Judicial Council
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

Over 200 languages are spoken in the California court and more than 1,900 certified and registered court interpreters are on the Judicial Council's Master List. In 2015-16, there were 1,382,062 statewide interpretations (the total interpretations in Spanish were approximately 1.25 million, and total other-than-Spanish interpretations were approximately 126,000).

The 2016 Budget Act provided \$7 million in additional, ongoing funds to support language access and the 2017 Budget provided \$352,000 for the Video Remote Interpreting (VRI) Pilot Project, which allowed the Judicial Council to undertake a successful VRI pilot in 2018. Approximately \$116.7 million was allocated to trial courts in 2018-19 to support services of court interpreters and interpreter coordinators. The 2019 Budget Act converted onetime funding of \$4 million included in the 2018 Budget Act to ongoing and included an additional \$9.6 million ongoing. The 2019-20 appropriation for the Court Interpreter Program is \$120.7 million. As of June 2019, all courts indicated that they were able to provide interpreters in all eight civil case type priorities. The languages provided, and the estimated interpreter coverage for each priority, vary by court. According to the Judicial Council, additional funding provided in prior years has helped courts to expand interpreter services in civil matters but will not solve a forecasted funding deficiency in the Court Interpreters Program due to increased costs in criminal cases. Based on current projections, expenditures will exceed the appropriation by approximately \$8 million in 2020-21.

Proposed Funding

The Governor's Budget requests 3 positions and \$8.9 million General Fund in 2020-21 and \$8.5 million annually thereafter to support the ongoing efforts of the Strategic Plan for Language Access in the California Courts, by reimbursing trial courts for language access services and funding Video Remote Interpreting equipment for the trial courts for an estimated 15 courthouses.

STAFF COMMENTS

The Subcommittee is in receipt of comments from the California Federation of Interpreters regarding this budget proposal. They recommend the following for the video remote interpreting (VRI) aspect of the proposal:

1. VRI is used *only* when the Limited English Proficient (LEP) individual provides informed and voluntary consent to waive right to an in-person interpreter. If an LEP individual does not consent, good cause would exist to waive time limits.
2. VRI is not used for minors, nor persons with cognitive impairments or mental illness.
3. VRI is not used for a language for which the county has interpreter employees or access to live interpreter services, including employee interpreters through the cross-assignment system pursuant to Government Code section 71810.
4. VRI is used only in the case of the unavailability of a certified/registered in-person interpreter.
5. VRI is not utilized in the same courthouse or county jurisdiction in which the VRI provider installation is based. Instead, VRI is used only *intra-county* to fill gaps in language access.
6. VRI is only used with certified or registered interpreters, unless sufficient showing is made pursuant to Government Code section 71802.
7. VRI is only used for brief, routine, non-complex matters, non-evidentiary hearings and a showing is made that the court did not have sufficient notice and time, as well as prove it had done its due diligence to secure a live interpreter in the language pair needed.
8. VRI may originate only from within a courthouse to a courthouse in another county jurisdiction. It cannot originate from a private home, business, or other unsecured location not controlled by the court.
9. Appropriate steps are taken to protect attorney-client privileges, including having dedicated communication channels allowing for non-public conversations between an attorney and her/his client.
10. Priority is given to the use of consecutive interpretation and not simultaneous interpretation.

Staff Recommendation: Hold Open.

8140 STATE PUBLIC DEFENDER

ISSUE 6: INDIGENT DEFENSE AND COMPLEX DEATH PENALTY CASES

The State Public Defender's Office will provide an overview of the two budget change proposals pertaining to indigent defense and complex death penalty cases.

PANELISTS

- State Public Defender
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

Indigent Defense. The California Legislature created the Office of the State Public Defender (OSPD) in 1976 without any direct trial-related responsibilities. OSPD had the ability to work with counties in the provision of services to trial-level defendants upon county request. However, OSPD only worked with counties until it was substantially defunded in the 1980s. In the late 1990s, OSPD was restructured to focus primarily on the death penalty. In this proposal, OSPD requests to expand its mission to provide county support for indigent defense by providing specialized training assistance, while maintaining the responsibility to handle post-conviction death penalty cases. OSPD would also be able to provide adequate trial-level defense to low-income defendants with the provision of training and support to indigent service providers on behalf of counties. Supportive training is particularly important for service providers in rural areas, where there is less ability to take advantage of training provided in more populated areas and fewer institutional resources. Under-resourced counties, especially those with small offices and those without established offices, have a need for concrete assistance and support. Small public defender organizations do not have the ability to serve clients in some complex cases requiring specialized knowledge and skills because they do not have enough staff and the issues only rarely come up. OSPD's Training and Technical Assistance Unit will provide under-resourced counties access to training and specialized attorneys and support/investigative staff with subject matter expertise in targeted areas.

Complex Death Penalty Cases. Since 1997, OSPD has taken over hundreds of capital cases on appeal and has trained a legal and support staff expert in all aspects of capital litigation. There have been recent changes to the death penalty, including the requirement to litigate new data-intensive claims relating to the unconstitutionality of the death penalty under California's Constitution. Appointment of qualified counsel for indigent individuals on death row is mandated by the federal and state constitutions, and securing such counsel for this litigation is solely the responsibility of state government. If counsel's duties are untimely or inadequately performed,

the federal courts may remand a case to the California Supreme Court, causing significant delay and increased expense to the State. Failure to appoint counsel on appeal may result in the denial of an indigent defendant's constitutional rights, which in turn may result in the federal court interceding on behalf of the defendant. As of August 1, 2019, all but 24 individuals have appellate counsel and it now takes about three years for counsel to be appointed. Today, OSPD is appellate counsel for over 100 men and women on death row, and will continue to both represent them on their individual appeals and to take cases to reduce the backlog. Despite the reduction of the appellate backlog, there remains a shortage of competent attorneys available to represent individuals sentenced to death. Death row defendants, including many OSPD clients, wait decades for the appointment of habeas counsel, who then are significantly hindered in providing adequate representation, including the prompt investigation, fact-finding, and discovery required for effective habeas corpus proceedings, due to that extreme passage of time. To this date, there are over 360 individuals without such habeas counsel and some have waited as long as 25 years.

Proposed Funding

Indigent Defense. The Governor's Budget requests 18 positions and \$4 million General Fund in 2020-21 and \$3.5 million annually thereafter for a Training and Technical Assistance Unit within the Office of the State Public Defender to provide specialized training and high-level assistance to attorneys providing trial-level indigent criminal defense services on behalf of California counties

Complex Death Penalty Cases. The Governor's Budget requests 5 positions and \$978,000 General Fund in 2020-21, and \$627,000 annually thereafter, to the Office of the State Public Defender to address the increased workload requirements related to complex death penalty cases.

Staff Recommendation: Hold Open.

This agenda and other publications are available on the Assembly Budget Committee's website at: <https://abgt.assembly.ca.gov/sub5hearingagendas>. You may contact the Committee at (916) 319-2099. This agenda was prepared by Jennifer Kim.