

AGENDA
ASSEMBLY BUDGET SUBCOMMITTEE NO. 5
PUBLIC SAFETY

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

MONDAY, MARCH 25, 2019

2:30 P.M. – STATE CAPITOL, ROOM 437

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ITEMS TO BE HEARD

0250 JUDICIAL BRANCH

ISSUE 1: JUDICIAL COUNCIL DISCRETIONARY FUNDING, COURT REPORTERS

The Judicial Council will open this issue with a detailed overview of the \$75 million discretionary funding in the 2018 Budget Act, including how it was allocated, which courts received funding, and how much of the funding was spent on court reporters in family courts.

PANELISTS

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

BACKGROUND

The 2018 Budget Act provided the Judicial Council with \$75 million in discretionary, ongoing funding. Budget bill language that was included expressed the intent of the Legislature that a minimum of \$10 million of this funding was to be used for court reporters in the trial courts on family law matters. On July 5, 2018, the California Supreme Court held, in *Jameson v. Desta*, that litigants who are entitled to fee waivers must be able to obtain a court reporter free of charge. The court further concluded, “[t]he challenged court policy creates the type of restriction of meaningful access to the civil judicial process that the relevant *in forma pauperis* precedents and legislative policy render impermissible. Accordingly, we conclude that...an official court reporter, or other valid means to create an official verbatim record for purposes of appeal, must generally be made available to *in forma pauperis* litigants upon request.”

The top five uses for discretionary funding from responding courts were (56 of 58 courts responded; Alpine and Sierra courts did not respond as they did not receive this funding):

- | | |
|---|-----------|
| 1. Increase staffing via hiring: | 43 courts |
| 2. Increase employee salaries/benefits: | 30 courts |
| 3. Records management/CMS Improvements: | 23 courts |
| 4. Extends service hours/days: | 22 courts |
| 5. Technological Improvements: | 21 courts |

Thirty nine of the responding counties indicated they were fully staffed with court reporters for family law, 13 courts indicated they were not, and 3 courts did not provide sufficient information. Various sized courts indicated difficulties in recruiting court reporters. Some courts that are currently fully staffed expressed uncertainty about their ability to provide sufficient reporters in

family law once more court users become aware of the availability of reporters. The chart below details the distribution of the funding:

Trial Court	Cluster 1 Courts	Non-Sheriff Security 1.96% Increase	Discretionary Funding	Discretionary - - Court Reporters*
Total	\$75,000,000			
Subtotal	\$3,567,327	\$818,056	\$60,614,617	\$10,000,000
Alameda	\$ -	\$62,960	\$2,409,670	\$397,540
Alpine	\$ -	\$ -	\$ -	\$ -
Amador	\$593,910	\$ -	\$ -	\$ -
Butte	\$ -	\$9,255	\$368,227	\$60,749
Calaveras	\$483,502	\$ -	\$ -	\$ -
Colusa	\$64,812	\$ -	\$ -	\$ -
Contra Costa	\$ -	\$ -	\$1,293,725	\$213,434
Del Norte	\$438,565	\$ -	\$ -	\$ -
El Dorado	\$ -	\$ -	\$227,965	\$37,609
Fresno	\$ -	\$ -	\$1,606,958	\$265,110
Glenn	\$185,696	\$194	\$ -	\$ -
Humboldt	\$ -	\$3,324	\$211,869	\$34,954
Imperial	\$ -	\$8,330	\$290,052	\$47,852
Inyo	\$17,282	\$3,698	\$ -	\$ -
Kern	\$ -	\$1,299	\$1,707,398	\$281,681
Kings	\$ -	\$8,359	\$250,900	\$41,393
Lake	\$ -	\$3,893	\$124,535	\$20,545
Lassen	\$291,511	\$5,821	\$ -	\$ -
Los Angeles	\$ -	\$283,197	\$17,498,306	\$2,886,810
Madera	\$ -	\$7,556	\$261,962	\$43,218
Marin	\$ -	\$191	\$381,481	\$62,936
Mariposa	\$172,351	\$ -	\$ -	\$ -
Mendocino	\$ -	\$5,931	\$193,759	\$31,965
Merced	\$ -	\$ -	\$418,210	\$68,995
Modoc	\$148,851	\$16	\$ -	\$ -
Mono	\$149,585	\$479	\$ -	\$ -
Monterey	\$ -	\$17,236	\$628,959	\$103,764
Napa	\$ -	\$5,855	\$242,495	\$40,006
Nevada	\$ -	\$8,587	\$172,512	\$28,461
Orange	\$ -	\$54,161	\$4,452,974	\$734,637
Placer	\$ -	\$ -	\$547,543	\$90,332
Plumas	\$160,602	\$ -	\$ -	\$ -
Riverside	\$ -	\$38,267	\$3,116,194	\$ 514,099
Sacramento	\$ -	\$36,937	\$2,520,412	\$415,809
San Benito	\$ 680,861	\$ -	\$ -	\$ -
San Bernardino	\$ -	\$64,773	\$3,358,586	\$554,088
San Diego	\$ -	\$13,020	\$4,499,529	\$742,318
San Francisco	\$ -	\$ -	\$1,700,119	\$ 280,480
San Joaquin	\$ -	\$5,701	\$1,176,670	\$194,123
San Luis Obispo	\$ -	\$4,788	\$454,105	\$ 74,917
San Mateo	\$ -	\$8,777	\$1,202,779	\$198,431

Santa Barbara	\$ -	\$20,904	\$738,987	\$121,916
Santa Clara	\$ -	\$ -	\$2,426,818	\$400,368
Santa Cruz	\$ -	\$ -	\$407,951	\$67,302
Shasta	\$ -	\$52,181	\$468,490	\$77,290
Sierra	\$ -	\$ -	\$ -	\$ -
Siskiyou	\$ -	\$ -	\$99,280	\$16,379
Solano	\$ -	\$8,626	\$705,419	\$116,378
Sonoma	\$ -	\$8,717	\$760,183	\$125,413
Stanislaus	\$ -	\$185	\$809,458	\$133,542
Sutter	\$ -	\$4,895	\$177,128	\$29,222
Tehama	\$ -	\$ -	\$139,448	\$23,006
Trinity	\$179,799	\$10,201	\$ -	\$ -
Tulare	\$ -	\$309	\$695,107	\$114,677
Tuolumne	\$ -	\$4,369	\$120,391	\$19,861
Ventura	\$ -	\$30,890	\$1,219,796	\$201,238
Yolo	\$ -	\$11,548	\$372,065	\$61,382
Yuba	\$ -	\$2,626	\$156,202	\$25,770

*these counties were provided funding for court reporters in family law matters but were not required to spend the funding in this matter if for example, they are currently fully staffed. In these situations, courts are allowed to use funding for other needs.

Staff Recommendation: Hold Open.

ISSUE 2: PRE-TRIAL SERVICES FUNDING

The Judicial Council will open this item with an overview of the proposal for a pre-trial services pilot.

PANELISTS

- Judicial Council
- Aaron Johnson, Director, Office of Pre-Trial Services in Santa Clara County
- Department of Finance
- Legislative Analyst's Office

BACKGROUND

Pre-trial services are generally defined as functions and services that are provided after a person is arrested and include: (1) a determination as to whether a person should be released or detained; and, (2) if the person is released, what conditions, if any, should be required. According to a 2015 survey of counties, 46 of 58 counties had some type of pretrial program, with 70 percent being established within the past five years. In some counties, courts collaborate with the Probation Department to manage their pre-trial program. Santa Clara has an independent pre-trial services agency and counties like San Francisco work with the Sheriff's Department who contracts with an external entity. This survey also indicated that at least 49 counties use a type of pretrial risk assessment tool that provides judges with information about the risk of releasing a defendant before trial.

In 2018, SB 10 was signed into law which eliminates money bail in California and replaces it with a process where some individuals may be automatically (certain misdemeanors) released and others could be released based on their level of risk to reoffend and failure to appear in court as determined by a pretrial risk assessment. Based on these assessments, an individual could be: (1) released on their own recognizance but required to adhere to certain conditions of release; (2) detained until a judge can review the case prior to arraignment; or, (3) detained until arraignment (typically within 48 hours of arrest) when a judge would determine whether the individual should be released on his or her own recognizance or detained until trial. On January 16, 2019, the Secretary of State certified that sufficient signatures were collected to qualify a referendum on SB 10 for the November 2020 ballot. This placed the implementation of SB 10 on hold.

There are several court cases pending in the federal and state courts, challenging the use of bail related to pretrial releases. For example, the state Court of Appeal ordered a new bail hearing for a specific individual—who was unable to pay the bail set by a judge and remained detained prior to his trial—as it found that the rules used to set his original bail were unconstitutional. The Court of Appeal also ruled that a judge must consider this individual's ability to pay bail as well

as consider alternatives to bail that could ensure public safety, or that he returns to court as ordered. This case is currently pending review at the California Supreme Court.

Proposed Funding

The Governor's budget includes \$75 million to the Judicial Council to fund the implementation, operation, or evaluation of programs or efforts in 8 to 10 courts related to pretrial decision-making. Funds may be used for the support of activities associated with the validation of the use of risk assessment tools on local populations, exchange of pretrial risk assessment information between the courts and county probation departments, data exchanges among the courts and county probation departments prior to arraignment, contracts between the courts and county probation departments to conduct pretrial risk assessments, judicial officer release and detention decision-making prior to arraignment, court reminders, and other projects related to pretrial decision-making that enhance public safety, appearance in court, and the efficient and fair administration of justice. In selecting its pilot courts, the Judicial Council may seek a diversity in court size, location, court case management systems, and other appropriate factors. According to the judicial branch, the Pretrial Reform and Operations Workgroup would develop recommendations for allocating this funding.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO provides the following analysis and recommendations:

Lack of Detail on Proposed Grant Program. The Legislature currently lacks sufficient information to effectively evaluate the proposal and weigh the proposed funding relative to its other General Fund priorities. This is because it is unclear: (1) what specific goals the program is intended to achieve; (2) whether the eligible projects that could be funded are aligned with these goals; (3) how the proposed funding would be allocated; and, (4) how the funded projects would be evaluated to inform future budgetary and policy decisions. In order to ensure that the proposed funding will be used in an accountable and effective manner, the Governor's proposal should answer the following questions:

- ***What Are the Primary Goals of the Program?*** Specifying the primary goals of a proposed program helps ensure that the program is structured in a manner capable of achieving those goals. For example, if the goal of the program is to determine whether particular pretrial tools or methods are more effective than others, it could make more sense to pilot particular tools or methods at a variety of courts that could be compared against one another—a structure that is different from the proposed program.
- ***What Program or Activities Would Be Supported?*** Clearly specifying the number and type of programs or activities that will be funded would help ensure that Legislative priorities and expectations are met. The LAO notes that identifying the specific activities that would be supported helps ensure that any new grant funding will not be used to: (1)

duplicate projects that have already been funded and evaluated (such as those supported by RRF funds); and, (2) support programs that implement provisions of SB 10, which is prohibited given that the measure is currently subject to a referendum.

- ***How Would Funding Be Allocated?*** Clearly specifying the methodology and criteria used to allocate funding will help the Legislature ensure that funding is distributed in a fair and transparent manner that meets legislative priorities. It will also be important to ensure that funding is allocated to a sufficient number of courts as well as a mix of courts based on size and other factors, in order to ensure that the results can be generalized statewide. The LAO notes that under the Administration's proposal, nearly all such decisions would be made by Judicial Council—providing the Legislature with little input to ensure funding is used in a manner consistent with its priorities.
- ***How Would Programs or Activities Be Evaluated?*** Clearly specifying: (1) how funded programs and activities would be evaluated; and, (2) the specific information that programs would be expected to collect would help the Legislature ensure that funded projects or activities are evaluated in a manner that can generate information to inform statewide decision-making. As such, it is important to identify specific outcome or performance measures that would be collected (such as the number of people served and the ability of a risk assessment tool to accurately measure risk of committing another offense or to appear in court). It is also important to clearly specify how certain measures should be defined in order to ensure programs collect information consistently.

LAO Recommendations. *Direct Administration and Judicial Council to Provide Well-Developed Proposal.* In view of the above, the LAO recommends that the Legislature direct the Administration and Judicial Council to provide a well-developed proposal regarding the proposed grant program by April 15, 2019. Specifically, the proposal should specify: (1) the primary goals of the proposed program; (2) the specific programs or activities that would be funded and how they are aligned with the goals; (3) how funding would be allocated; and, (4) how funded programs or activities would be evaluated to inform statewide decision-making.

STAFF COMMENTS

Historically, pre-trial detention practices have disproportionately impacted low-income people and people of color. Statistics indicate that individuals who are detained pre-trial have worse outcomes, including, being more likely to be convicted of their accused offense, receive longer sentences, and are more likely to take plea deals regardless of their guilt or innocence. For those individuals whose charges get dropped or otherwise are exonerated, they must face the collateral consequences of pre-trial detention, including, but not limited to, loss of employment, child custody implications, loss of housing, and negative impacts on physical and mental health. Pre-trial services and associated policies, if done well, can assist in addressing some of these issues to facilitate the safe release of individuals pending the outcomes of their cases.

Staff acknowledges the complicated timing of this proposal as SB 10's implementation is suspended pending the resolution of the referendum. Nevertheless, an investment in pre-trial services can address some of the inequities and inefficiencies of current pre-trial practices. If the referendum does not succeed, the state must be in a position to implement the mandates of SB 10 immediately. In addition, the implementation of SB 10 was assessed in the "low hundreds of millions of dollars" making this pilot critical in helping to determine how best to direct future resources to implement the law. Considering these circumstances, the lack of detail in the Judicial Council's pilot proposal is concerning for a number of reasons. The pilot, as proposed, does not include any trailer bill language, and is general in its intent, providing the Legislature with very little information as to the design, details, and purpose of the pilot. In addition, staff notes the following:

- The justification of the funding amount and the number of pilot counties is unclear.
- The proposal limits pre-trial services providers to probation departments which limits the Legislature's ability to assess different approaches to determine the best path forward. Further, there are counties that currently work with different agency partners, including probation, the sheriff, and independent pre-trial services agencies and SB 10 does not require any one specific department or agency to provide pre-trial services to allow for flexibility. The limitation to probation in the proposal is both contrary to current county practices and runs counter to the intent of SB 10.
- It is unclear as to what data will be collected and how it will be collected in a manner that will inform the Legislature as to the impact of the different pre-trial services and the implementation and use of risk assessment. The sharing of data between the courts and probation also requires a careful approach, as information collected as a result of pre-trial assessments and services should not be used in the prosecution of individuals.
- It is unclear as to what approach will be taken in regards to risk assessment tools. Will each county be allowed to adopt a different risk assessment tool or will they be required to use a single tool? If counties are allowed to use any risk assessment tool, how will data on the impacts of that particular tool be collected? There are concerns that risk assessment tools may carry inherent racial bias and it is unknown how such a bias could or would be corrected without a uniform way to collect the data if a large number of tools are utilized.

Considering these concerns and others mentioned by the Legislative Analyst's Office, the Legislature may wish to adopt trailer bill language to provide more guidance to design a pilot that will provide a sufficient amount of data and information for the Legislature to make future investments in pre-trial services.

Staff Recommendation: Hold Open.

ISSUE 3: DEFERRED MAINTENANCE

The Judicial Council will provide an overview of the deferred maintenance proposal.

PANELISTS

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

BACKGROUND

The Judicial Council's (JC) Office of Facilities Services administers a portfolio of 470 facilities which house the Supreme Court, Courts of Appeal, Superior Courts, the Habeas Corpus Resource Center, and the JC. The portfolio includes a variety of building types: courthouses, jails, offices, parking structures and parking lots. The current deferred maintenance backlog is \$2.8 billion.

For 2018-19, the JC was provided an allocation of \$65 million, \$40 million from the State Court Facilities Construction Fund (SCFCF) and \$25 million from the Immediate and Critical Need Account, to be used for facilities modifications in trial courts only. Facility modifications range from major repairs to renovations and system lifecycle replacements. This funding is ongoing at the current level until 2024-25 when the total amount funded from the SCFCF will reduce to \$25 million for a total of \$50 million. In addition, the Judicial Council received one-time \$45 million General Fund in 2016-17 and \$50 million General Fund in 2018-19 to address deferred maintenance needs in the trial courts.

Proposed Funding

The Governor's budget includes a one-time General Fund augmentation of \$40 million to address deferred maintenance in the trial courts and appellate courts. The funds will support fire alarms systems repair and replacement.

LEGISLATIVE ANALYST'S OFFICE (LAO)

The LAO recommends that the Legislature adopt Supplemental Report Language (SRL) requiring that, no later than January 1, 2023, the judicial branch identifies how their deferred maintenance backlog has changed since 2019. The LAO further recommends that the SRL require that, to the extent the department's backlog has grown in the intervening years, the department shall identify: (1) the reasons for the increase; and, (2) specific steps it plans to take to improve its maintenance practices on an ongoing basis.

Staff Recommendation: Hold Open.

ISSUE 4: VARIOUS BUDGET CHANGE PROPOSALS

The Judicial Council will provide an overview of its various budget proposals.

PANELISTS

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

BACKGROUND

Litigation Management Program. The Judicial Council manages litigation management services and provides for the defense and indemnification of all judicial branch entities, their bench officers, and employees.

Phoenix Roadmap. The Phoenix Program manages the financial and procurement system and processes for the 58 trial courts and the payroll system and processes for 13 trial courts. A significant benefit to the courts that use the Phoenix payroll system is the inherent integration of the Phoenix Financial System, which allows for payroll results to be automatically posted to financial ledgers with internal references to the payroll system and makes reconciliation analysis more efficient and accurate.

Improvement and Modernization Fund (IMF). Chapter 41 of 2012 (SB 102) merged the Judicial Administration Efficiency and Modernization Fund with the Trial Court Improvement Fund into the new IMF. The IMF retained all sources of revenue associated with the two prior funds, such as fines and fees from criminal cases and generally maintained the various transfers that were required of the two funds. While the Legislature appropriates a total amount of funding from the IMF in the annual state budget, the Judicial Council generally has even more discretion in how the funds are allocated to specific projects and activities than previously. Except for a couple requirements (such as the requirement that a certain portion of the fine and fee revenue be used for the development of automated administrative systems), none of the statutory purposes that applied to the two previous funds (such as to improve legal research through the use of technology) currently apply to the IMF. The judicial branch is only required to provide an annual report to the Legislature on the expenditures from the IMF.

Proposed Funding

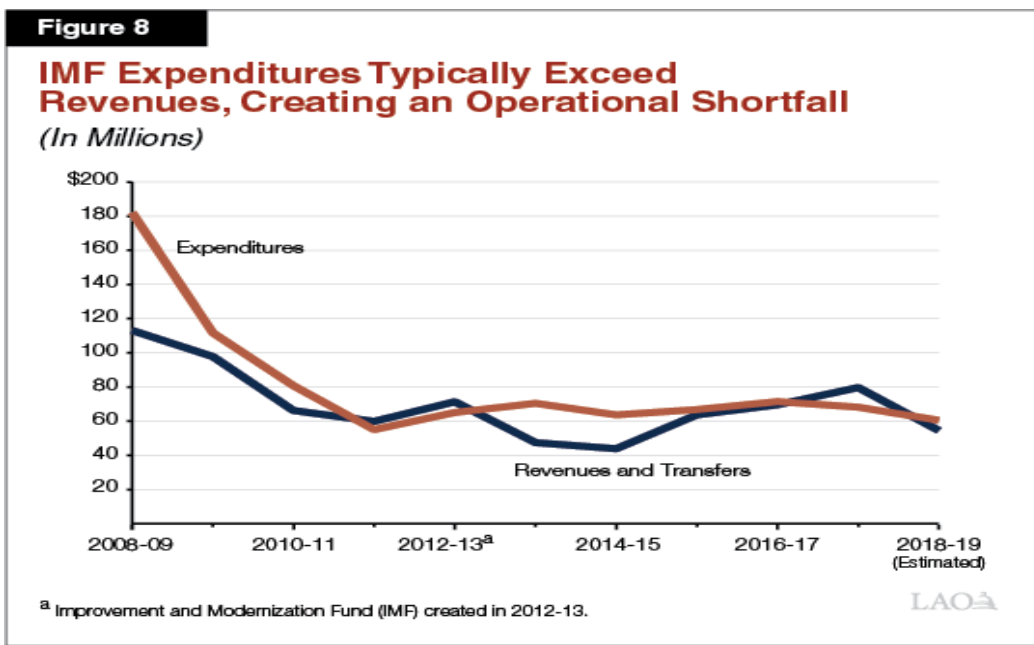
Litigation Management Program. The Governor's budget includes an ongoing augmentation of \$5.6 million General Fund, beginning in 2019-20, to support the defense and indemnity of all judicial branch entities. The proposed amount consists of \$5.2 million to offset existing IMF support for the program and \$449,000 related to increased litigation costs.

Implementation of Phoenix Roadmap. The Governor’s budget includes \$7.7 million General Fund and 4 positions in 2019-20, \$4.4 million in 2020-21, and \$3.9 million in 2021-22 and ongoing to maintain/upgrade the Phoenix enterprise resource management system. This proposal shifts \$3.2 million from IMF to GF.

LEGISLATIVE ANALYST’S OFFICE (LAO)

The LAO offers the following analysis regarding the IMF:

Persistent Operational Shortfalls. Prior to the establishment of the IMF in 2012-13, the combined revenues and transfers of the two prior funds generally did not cover their expenditures, as shown in Figure 8. Upon the consolidation of the two funds into the IMF in 2012-13, these shortfalls continued, steadily reducing the IMF’s fund balance. These shortfalls in the IMF result from: (1) declines in fine and fee revenue deposited into the IMF; and, (2) spending decisions made by Judicial Council.



Judicial Council Authorized More Expenditures Than Available Revenues. Once annual revenue into the IMF began declining, the Judicial Council struggled to reduce expenditures to match the amount of available resources. Although the council took some steps to address the operational shortfalls by eliminating or reducing certain projects, or shifting projects to other fund sources, it continued to authorize funding for projects and services in excess of available resources.

LAO Recommendations

While the Governor's proposal would help prevent the IMF from becoming insolvent in 2019-20, it does not provide a long-term solution to address the fund's projected operational shortfalls and potential insolvency after 2019-20. In order to address these concerns, as well increase legislative oversight over the programs that have been funded from the IMF, the LAO recommends an alternative approach to the Governor's proposal. Specifically, the LAO recommends to the Legislature:

- 1) Deposit IMF revenues into the General Fund and eliminate the IMF;
- 2) Direct the judicial branch to report on each program currently receiving IMF funding (such as past expenditure and benefits achieved); and,
- 3) Appropriate one-time funding in 2019-20 for these programs while the aforementioned assessment is being completed.

Staff Recommendation: Hold Open.

ISSUE 5: DEPENDENCY COUNSEL AND EQUAL ACCESS FUND

Advocacy organizations will speak to the proposal to increase resources for Dependency Counsel and the Equal Access Fund.

PANELISTS

- Leslie Starr Heimov, Executive Director, Children’s Law Center of California
- Gary Smith, Executive Director, Legal Services of Northern California

BACKGROUND

Dependency Counsel. Current law provides that the juvenile court will provide court appointed counsel to all children in dependency proceedings, absent a finding that a particular child will not benefit from the appointment. The court also provides counsel for indigent legal guardians where children have been placed out of the home, or for whom out of home placement is recommended. The Judicial Council has determined that approximately \$207 million annually is needed to fully fund dependency counsel based on a 2008 study which translates to 141 clients per full time equivalent attorney to achieve the base level standard of performance. A maximum caseload of 77 clients was identified as necessary for an optimal, or best practice, standard of performance. The National Association of Counsel for Children, the American Bar Association, and the U.S. Department of Health and Human Services’ Children’s Bureau recommend a caseload of 100 clients.

Equal Access Fund. The Equal Access Fund (EAF) provides funding for local legal aid organizations in order to provide direct legal services to low income Californians in civil matters, including domestic violence restraining orders, custody and visitation issues in family court, children in foster care, and landlord/tenant disputes. The table below details the allocations for the EAF in the last few budget cycles:

EAF Fund Source	2015-16	2016-17	2017-18	2018-19 (a)	2019-20 (proposed)
General Fund (ongoing)	\$10,392,000	\$10,392,000	\$10,392,000	\$20,392,000	\$20,392,000
General Fund (one-time)		\$5,000,000	\$10,000,000		
Trial Court Trust Fund -- Portion of Civil Filing Fees	\$5,482,000	\$5,482,000	\$5,482,000	\$5,482,000	\$5,482,000
Total	\$15,874,000	\$20,874,000	\$25,874,000	\$25,874,000	\$25,874,000

Proposed Funding

Dependency Counsel: The Governor's budget includes an augmentation of \$20 million General Fund in 2019-20 and ongoing to support court appointed dependency counsel workload needs. This augmentation increases the total funding for dependency counsel to \$156.7 million which represents 76 percent of the \$207 million funding identified by the Judicial Council to reduce caseloads to 141 clients per attorney.

Equal Access Fund: The Governor's budget includes \$20 million General Fund and \$5.5 million Trial Court Trust Fund to support the Equal Access Fund.

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.