AGENDA

ASSEMBLY BUDGET SUBCOMMITTEE NO. 5

PUBLIC SAFETY

ASSEMBLYMEMBER NORA CAMPOS, CHAIR

MONDAY, MARCH 28, 2016
2:30 P.M. – CALIFORNIA STATE CAPITOL ROOM 437

VOTE ONLY ITEMS

DISCUSSION ITEMS

VOTE ONLY ITEMS
(ALL VOTE ONLY ITEMS ARE SUBJECT TO FURTHER DISCUSSION WITHOUT NOTICE)

0280 COMMISSION ON JUDICIAL PERFORMANCE

VOTE ONLY ISSUE 1: COMMISSION STAFFING

Request: The Commission on Judicial Performance requests $257,000 (General Fund) and 2.0 permanent positions (1.0 investigating Attorney and 1.0 Secretary) to address the Commission's increasing caseload.

Background: The Commission on Judicial Performance, established in 1960, is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges, pursuant to article VI, section 18 of the California Constitution.

The commission's mandate is to protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system. While the majority of California's judges are committed to maintaining the high standards expected of the judiciary, an effective method of disciplining judges who engage in misconduct is essential to the functioning of our judicial system. Commission proceedings provide a fair and appropriate mechanism to preserve the integrity of the judicial process.

The commission's jurisdiction includes all judges of California's superior courts and the justices of the Court of Appeal and Supreme Court. The commission also has jurisdiction over former judges for conduct prior to retirement or resignation. Additionally, the commission shares authority with the superior courts for the oversight of court commissioners and referees. The Director-Chief Counsel of the commission is designated as the Supreme Court's investigator for complaints involving the judges of the State Bar Court. The commission does not have authority over federal judges, judges pro tem or private judges. In addition to its disciplinary function, the commission is responsible for handling judges' applications for disability retirement.

The commission's authority is limited to investigating allegations of judicial misconduct and, if warranted, imposing discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics. The commission cannot change a decision made by any judicial officer; this is a function of the state's appellate courts. After an investigation, and in some cases a public hearing, the commission may impose sanctions ranging from confidential discipline to removal from office.

Anyone may submit a complaint to the commission.

Over the past 10 years, the Commission's workload has increased steadily. In 2014, the Commission received 1,302 complaints against judges and subordinate judicial officers (SJO's), a 16 percent increase over the 1,120 complaints received in 2005. The Commission conducted 139 investigations of judges and SJO's in 2014, an increase of 78 percent over the 78 investigations conducted in 2005. The number of informal appearances by judges before the Commission to contest discipline more than doubled from four in 2005 to nine in 2014. The number of cases in which discipline was imposed or in which judicial officers retired or resigned during an investigation increased by more than 50 percent, from 29 in 2005 to 45 in 2014.

The Commission has not received authorization or funding for additional staff since 1999- 2000. To stay within budget, the Commission reduced its staff and kept positions vacant. In 2012-13, the Commission's vacant positions were eliminated, reducing the commission's total authorized positions from 27 to 21 (plus a temporary position). In 2015-16 one Trial Counsel position was reestablished, without additional funding. Notwithstanding the rehiring of one Trial Counsel, the Commission has 20 percent fewer staff than it had 15 years ago, while the caseload has grown. The Commission presently has six Investigating Attorneys, down from eight in 1999-2000.

According to the Commission, without an additional position and funding, the increase in the Commission's caseload will result in deleterious consequences. Additionally, over the past decade, the average length of a Commission investigation has increased by six months (from 10.41 months to 16.03 months). As investigations have become more protracted, spanning multiple calendar years, fewer formal proceedings have been brought each year, resulting in a number of serious cases being delayed for hearings.

Staff Recommendation: Approve as budgeted

8140 OFFICE OF THE STATE PUBLIC DEFENDER

VOTE ONLY ISSUE 2: STATE PUBLIC DEFENDER STAFFING

Request: The Office of the State Public Defender (OSPD) requests 7.5 permanent positions and $1.1 million (General Fund) to begin remedying the OSPD's existing inability to accept new appointments in death penalty cases in a timely manner.

Background: The OSPD was created in 1976 to provide indigent criminal defendants their constitutional right to counsel on appeal. The creation of OSPD was a direct response to the need for consistent, high-quality representation of defendants in the state appellate courts. It was envisioned that the OSPD would provide a "counter-weight" to the Attorney General's criminal appeals division. By the early 1980's, OSPD had offices in Los Angeles, San Diego, San Francisco, and Sacramento.

In 1977, California reinstated the death penalty. OSPD immediately began playing a significant role in death penalty appeals by providing qualified appellate counsel to indigent death row inmates. For more than 35 years, OSPD has played a vital role in the administration of capital appeals, a matter of interest not only to its clients, but also to the families of crime victims, the Supreme Court, and the entire criminal justice system.

In the 1990's, California saw an increase in the number of men and women convicted of capital murder and sent to death row by the counties. This increase in death judgments resulted in a growing delay in defendants receiving appointment of counsel, thereby stalling their cases at the first stage of the post-conviction process. For that reason, Governor Wilson directed OSPD to focus primarily on death penalty cases.

Subsequently, in 1998, California's death penalty system was overhauled. By legislative mandate (Govt. Code § 15421), OSPD's primary mission became the representation of indigent death row inmates in their post-conviction appeals. At the same time, the Legislature created the Habeas Corpus Resource Center (HCRC) within the Administrative Office of the Courts to represent indigent death row inmates in their post-conviction habeas corpus proceedings. Thus, the Legislature fashioned an agency-based solution to representing the growing number unrepresented inmates on death row.

In short: OSPD would accept appointments in automatic appeals, HCRC would provide counsel for the habeas corpus proceedings, while the private criminal defense bar would continue to play a significant role in death penalty cases by accepting appointments in cases that OSPD and HCRC could not accept.

These changes - including statutorily changing OSPD's mission to focus primarily on death penalty cases - largely occurred for two related reason: (1) to address the growing delay in appointment of constitutionally mandated appellate counsel; and (2) so that California could obtain the benefit of expedited federal review of death penalty cases by ensuring the timely appointment of counsel for state review. Consequently, OSPD staffing levels were first increased to 127.0 funded positions, and then increased to a total of 132.9 funded positions in 2001. The result of this increase in OSPD's

staffing levels (and the two-agency approach) was dramatic. The backlog of inmates awaiting appointment of appellate counsel in 1997 (170 inmates) was cut in half. Unfortunately, just as OSPD approached the full staffing levels required to meet its mission, the Department saw the first of many dramatic cuts in response to budgetary shortfalls.

In FY 2001-02, the OSPD saw 4.0 positions abolished, and the following year (FY 2002-03) OSPD lost another 16.0 positions, including 2.0 attorney positions.

On June 30, 2003, Executive Order D71-03 abolished .09 additional attorney positions. Cuts to staffing levels continued in FY 2003-04, when the OSPD lost another 12.5 positions, including 1.5 attorney positions. Thus, within 5 years of tasking OSPD with handling the State's death row appeals, OSPD saw a reduction of 37.5 authorized positions, of which 12.5 were attorney positions. During this same period, this reduction was exacerbated by a freeze on state hiring from October 2001 until July 2004.

As a result of the financial crisis that began in 2008, OSPD saw additional reductions to its staffing levels. Because OSPD is funded entirely from the General Fund, the "across the board" reductions imposed on General Fund departments in FY 2008-09 and 2009-10 impacted OSPD more severely than many departments that utilize a mix of funding sources. Thus, from FY 2008-09 to FY 2012-13, additional budget balancing legislation resulted in the loss of another 19 authorized positions, including 9.5 attorney positions.

In sum, since Fiscal Year 2001-02, OSPD has lost 59.5 authorized positions (including 22.0 attorney positions), which amounts to a reduction of 50 percent.

The elimination of 22.0 authorized attorney positions over the past 13 years has made it impossible for OSPD to accept new cases each year at a rate sufficient to meet the number of new death judgments generated throughout the state. More specifically, when OSPD had its full complement of funded positions during fiscal years 2000-01 through 2003-04, it accepted an average of 20 new death penalty cases per year. However, as a result of the lost positions detailed above, the OSPD has accepted an average of only 8 new cases per year since fiscal year 2004-05. Consequently, OSPD has been unable to provide constitutionally mandated representation to the increasing number of death row inmates, which has contributed to the significant backlog of unrepresented condemned inmates.

At this time, 59 indigent death row inmates await appointment of appellate counsel. Due to this backlog, unrepresented inmates routinely wait 5 years or more for the appointment of counsel on appeal. During this delay, no work is done on their cases, often resulting in making the subsequent handling of the cases more time-consuming and costly. This delay also undermines the public's confidence in our system of justice because it denies the families of crime victims a timely resolution of capital cases, and it denies inmates who may have been unjustly convicted and/or sentenced to death their right to a timely determination of their appeals.

Staff Recommendation: Approve as budgeted

0250 JUDICIAL BRANCH

VOTE ONLY ISSUE 3: COURT-PROVIDED (NON-SHERIFF) SECURITY

Request: The Judicial Council requests an ongoing (General Fund) augmentation of $343,000 to address increased costs for court-provided (non-sheriff) security to maintain funding at 2010-2011 security levels. Trial courts have not received any funding specifically for increased costs for marshals since the 2011 Public Safety Realignment. The Legislature established an account (Senate Bill 1020, Statutes of 2012, Chapter 40) to address cost increases for county-provided sheriff security. As a result, along with a cost of living adjustment provided in FY 2011-2012, counties have received increases averaging 2.55% a year from FY 2011-2012 to FY 2014-2015 to fund growth in county-provided sheriff security. The projected growth funding level is 2.95% for FY 2015-2016. If similar growth for each year was provided for court-provided security the trial courts would have received a total of $380,000 in growth funding for marshals in this same period.

Background (Provided by the LAO): As part of the 2011–12 budget plan, the Legislature enacted a major shift - or "realignment" - of state criminal justice, mental health, and social services program responsibilities and revenues to local government. This realignment shifted responsibility for funding most trial court security costs (provided by county sheriffs) from the state General Fund to counties. Specifically, the state shifted $496 million in tax revenues to counties to finance these new responsibilities. State law also requires that any revenue from the growth in these tax revenues is to be distributed annually to counties based on percentages specified in statute. Due to this additional revenue, the amount of funding provided to counties to support trial court security has grown since 2011–12 and is expected to reach $559 million in 2016–17, an increase of $63 million (or nearly 13 percent). This additional revenue is distributed among counties based on percentages specified in statute.

The California Constitution requires that the state bear responsibility for any costs related to legislation, regulations, executive orders, or administrative directives that increase the overall costs borne by a local agency for realigned programs or service levels mandated by the 2011 realignment. As part of the annual budget act, the state provided $1 million in additional General Fund support in 2014–15 and $2 million in 2015–16 above the tax revenue provided through the 2011 realignment to provide counties with funding to address increased trial court security costs. Eligibility for these funds was limited to counties experiencing increased trial court security costs resulting from the construction of new courthouses occupied after October 9, 2011 (around the time of implementation of the 2011 realignment). Counties are required to apply to the Department of Finance (DOF) for these funds and only receive funding after meeting certain conditions, including that the county prove that a greater level of service is now required from the county sheriff than was provided at the time of realignment. Of the additional funds provided, DOF allocated $713,000 in 2014–15 and expects to allocate about $1.5 million to qualifying counties in2015–16.

Staff Recommendation: Approve as budgeted

VOTE ONLY ISSUE 4: JUDICIAL COUNCIL STATE OPERATIONS (PHOENIX SYSTEM FUNDING SHIFT)

Request: The Judicial Council requests an ongoing augmentation of $8.7 million General Fund to support the Judicial Council state operations costs related to the Phoenix Financial System (Phoenix). The Phoenix program is a statewide system utilized by the trial courts for financial and human resources management assistance. The State Trial Court Improvement and Modernization Fund (IMF) currently funds a portion of the Phoenix Program, but the continued decline in revenue over the past several years has led to potential solvency issues in the IMF.

Background: The Phoenix Financial System enables the courts to produce a standardized set of monthly, quarterly, and annual financial statements that comply with existing statutes, rules, and regulations and are prepared in accordance with generally accepted accounting principles.

The Phoenix Human Resources System provides a comprehensive information system infrastructure that supports trial court human resources management and payroll needs. Designed for integration with the Phoenix Financial System and first deployed in July 2006, the system offers standardized technology for human resources administration and payroll processing, provides consistent reporting, ensures compliance with state and federal labor laws, collects data at the source, provides central processing, and provides manager and employee self-service functions to the courts.

Staff Recommendation: Approve as budgeted

VOTE ONLY ISSUE 5: APPELLATE COURT-APPOINTED COUNSEL

Request: The Judicial Council requests $4.3 million General Fund to support a $10 per hour increase for Court Appointed Counsel (CAC) panel attorneys.

Background: In 1963, Douglas v. California (372 U.S. 353) held that the federal Constitution guarantees an indigent defendant convicted of a felony the right to a court-appointed attorney for the initial appeal. Twenty-two years later, in 1985, the Court clarified in Evitts v. Lucey (469 U.S. 387), that the guarantee of court-appointed counsel requires that counsel be competent.

In order to be appointed by a Court of Appeal, a panel attorney must be qualified to represent indigent individuals during the appeal process and be affiliated with an appellate project. The panel attorneys are paid hourly for performance of certain defined tasks. Statewide, there are currently 890 attorneys serving on the six appellate panels, and many of them are available to serve on multiple panels. The Court of Appeal in each district can appoint an attorney from the list of panel attorneys for the appellate project in its jurisdiction. In 1997, the Appellate Indigent Defense Oversight Advisory Committee (AIDOAC), under the leadership of Justice Gary Strankman, produced a Report on the Efficiency and Effectiveness of the Court Appointed Counsel Program (accessible at http://cdm16254.contentdm.oclc.org/cdm/ref/collection/p178601 ccp2/id/561). The report identified multiple challenges unique to appellate indigent defense, which were identified as disincentives to work on the panel. These challenges included:

- Appellate work requires a unique combination of sophisticated skills in the areas of writing, legal research, analysis, and advocacy;
- The area of criminal law is one of the fastest-changing areas of law, requiring the continual review of new legal opinions as well as an up-to-date knowledge of both initiatives and statutes;
- Appellate indigent defense presents a number of unique circumstances that tend to affect morale negatively;
- Relatively low remuneration compared to other areas of the law; and
- Low success rate (i.e., a high affirmance rate of lower court decisions); and isolation associate with solo practices.

Currently, there is a three-tier rate system of $85/$95/$105 per hour for compensation for the attorneys who are appointed from the panel. Attorneys working on an assisted basis (with greater support from the appellate projects) are paid $85 per hour. Attorneys working on an independent basis receive $95 per hour. Attorneys working on an independent basis on the most complex cases (i.e., murders, sexually violent crimes, and convictions with a sentence of life without parole) receive $105 per hour. The hourly compensation rate paid by the Courts of Appeal for this type of work is relatively low when compared to other areas of the legal profession. From 1989 to 1995, the hourly rate for all appointed cases was $65 per hour. In 1995, a second tier was added $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. The next series of rate adjustment did not take place until October 1, 2005, when the rates increased by $5 per hour; followed by a $10 per hour increase in place July 1, 2006, and one final $5 per hour increase effective July 1, 2007. That same 2007 rate that is still in place today has seen its purchasing ability eroded by more than 12 percent due to inflation. Had the rates kept pace with inflation, the $85/$95/$105 rates set in 2007 would have risen to $100/$111/$123 in 2015. The Judicial Council is requesting a $10 per hour increase to raise these 2007 rates to $95/$105/$115 per hour.

Staff Recommendation: Approve as budgeted

VOTE ONLY ISSUE 6: INFORMATION SYSTEMS CONTROL ENHANCEMENTS

Request: The Judicial Council requests $3.2 million (in 2016-17) and $1.9 million (ongoing) to strengthen information technology security controls and enhance the reliability of Judicial Branch data. Specifically, the funds requested would be used for the following information technology related items:

1) **Audit and Accountability** - the implementation of user access auditing tools within the courts;
2) **Risk Assessment** - the establishment of annual information systems risk assessments;
3) **Contingency Planning** - the implementation of information technology disaster recovery infrastructure and capabilities within the Judicial Council;
4) **Security Program Management** - the implementation of a formalized information security program within the Judicial Council; and
5) **Media Protection** - the preparation for the implementation of a data classification program within the Judicial Council. This request includes three full-time employees to support information technology security and disaster recovery programs within the Judicial Council

Background: The increasing frequency of information technology security breaches in both public and private sector organizations has demonstrated a need for the Judicial Council to review its ability to protect itself from compromise, and should a breach or infrastructure outage occur, to be able to recover effectively and in a timely manner. Focus is needed both within the Judicial Council, and in the Judicial Council's ability to more effectively assist the courts in these areas.

The National Institute of Standards and Technology (NIST), part of the U.S. Department of Commerce, provides standards, guidelines and other useful security-related information which organizations can use to assess their security posture, and to implement or strengthen controls to improve their security posture. Among these offerings is Special Publication 800-53, which provides specific guidance in a broad range of areas including security management, access controls, configuration management, contingency planning, incident response, and more. The Judicial Council has reviewed NIST's Special Publication 800-53, and has identified the five critical areas where investment is critical. These five areas are "Audit and Accountability", "Risk Assessment", "Contingency Planning", "Security Program Management", and "Media Protection".

Staff Recommendation: Approve as budgeted

DISCUSSION ITEMS

0280 COMMISSION ON JUDICIAL PERFORMANCE

DISCUSSION ISSUE 1: OVERVIEW OF COMPLAINT PROCESS

The Commission on Judicial Performance will open this issue with an overview of the Judicial misconduct complaint process.

PANELISTS

- Commission on Judicial Performance
- Kathleen Russell, Executive Director, Center for Judicial Excellence
- Barbara Kauffman, attorney, Center for Judicial Excellence
- Rama Diop, Litigant, Center for Judicial Excellence
- Tamir Sukkary, Advocate
- Joseph Sweeney is CourtReform LLC
- Public Comment

BACKGROUND

The Authority of the Commission on Judicial Performance

The Commission on Judicial Performance is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges (pursuant to article VI, section 18 of the California Constitution). Its jurisdiction includes all active California judges. The commission also has authority to impose certain discipline on former judges, and the commission has shared authority with local courts over court commissioners and referees. In addition, the Director-Chief Counsel of the commission is designated as the Supreme Court's investigator for complaints involving State Bar Court judges. The commission does not have authority over temporary judges (also called judges pro tem) or private judges. In addition to its disciplinary functions, the commission is responsible for handling judges' applications for disability retirement.

Confidentiality

Under the California Constitution and the commission's rules, complaints to the commission and commission investigations are confidential. The commission ordinarily cannot confirm or deny that a complaint has been received or that an investigation is

under way. Persons contacted by the commission during an investigation are advised regarding the confidentiality requirements. After the commission orders formal proceedings, the charges and all subsequently filed documents are made available for public inspection. Any hearing on the charges is also public.

Review and Investigation of Complaints

At commission meetings, which occur approximately every seven weeks, the commission decides upon the action to take with respect to each new complaint. When a complaint states facts, if true and not otherwise explained, would be misconduct, the commission orders an investigation in the matter. Investigations may include interviewing witnesses, reviewing court records and other documents, and observing the judge while court is in session. Unless evidence is uncovered which establishes that the complaint lacks merit, the judge is asked to comment on the allegations.

Close Without Discipline

Many of the complaints received by the commission do not involve judicial misconduct. For example, a judge's error in a decision or ruling does not ordinarily constitute judicial misconduct. Appeal may be the only remedy for such an error, or there may be no remedy. Cases that, on their face, do not allege judicial misconduct, are closed by the commission after initial review. If, after an investigation, the allegations are found to be untrue or unprovable, the commission will close the case without any disciplinary action against the judge. When cases are closed without discipline, the person who lodged the complaint is notified that the commission has found no basis for action against the judge or has determined not to proceed further in the matter.

Disciplinary Action the Commission Can Take

The following sanctions are available under California law:

- Advisory Letter
- Private Admonishment
- Public Admonishment
- Public Censure
- Removal from Office / Involuntary Retirement

Private Discipline

After an investigation and an opportunity for comment by the judge, if the commission determines that improper conduct occurred but the misconduct was relatively minor, the commission may issue an advisory letter to the judge. In an advisory letter, the commission advises caution or expresses disapproval of the judge's conduct.

When more serious misconduct is found, the commission may issue a private admonishment. A private admonishment consists of a notice sent to the judge containing a description of the improper conduct and the conclusions reached by the commission.

Advisory letters and private admonishments are confidential. The commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the discipline that has been imposed. However, the commission's rules provide that upon completion of an investigation or proceeding, the person who lodged the complaint will be advised either that the commission has closed the matter or that appropriate corrective action has been taken. The California Constitution also provides that, upon request of the governor of any state, the President of the United States, or the Commission on Judicial Appointments, the commission will provide the requesting authority with the text of any private admonishment or advisory letter issued to a judge who is under consideration for a judicial appointment.

Public Discipline

In cases involving more serious misconduct, the commission may issue a public admonishment or a public censure. This can occur after a hearing or without a hearing if the judge consents. The nature and impact of the misconduct generally determine the level of discipline. Both public admonishments and public censures consist of notices that describe a judge's improper conduct and state the findings made by the commission; public censure is a more severe sanction than a public admonishment. Each notice is sent to the judge and made available to the complainant, the press and the general public. In cases in which the conduct of a former judge warrants public censure, the commission also may bar the judge from receiving assignments from any California state court.

In the most serious cases, the commission may determine, following a hearing, to remove a judge from office. Typically, these cases involve persistent and pervasive misconduct. In cases in which a judge is no longer capable of performing judicial duties, the commission may determine – again, following a hearing – to involuntarily retire the judge from office.

Review

A judge may petition the Supreme Court to review an admonishment, public censure, removal or involuntary retirement determination. A judge may petition the Supreme Court for a writ of mandate to challenge an advisory letter.

Procedures Relating to Subordinate Judicial Officers

The constitutional provisions governing the commission's role in the oversight and discipline of court commissioners and referees expressly provide that the commission's jurisdiction is discretionary. Each superior court retains initial jurisdiction to discipline subordinate judicial officers or to dismiss them from its employment and also has exclusive authority to respond to complaints about conduct problems outside the commission's constitutional jurisdiction. Since the local court's role is primary, the commission's rules require that complaints about subordinate judicial officers first be made to the local court.

Complaints about subordinate judicial officers come before the commission in a number of ways. First, when a local court completes its disposition of a complaint, the

complainant has the right to seek review by the commission. When closing the complaint, the court is required to advise the complainant to seek such review within 30 days. Second, a local court must notify the commission when it disciplines a subordinate judicial officer for conduct that, if alleged against a judge, would be within the jurisdiction of the commission. Third, a local court must notify the commission if a subordinate judicial officer resigns while a preliminary or formal investigation is pending concerning conduct that, if alleged against a judge, would be within the jurisdiction of the commission, or under circumstances that would lead a reasonable person to conclude that the resignation was due, at least in part, to a complaint or allegation of misconduct. Lastly, the commission may investigate or adjudicate a complaint against a subordinate judicial officer at the request of a local court.

When a matter comes to the commission after disposition by a local court, the commission may commence an investigation of the subordinate judicial officer if it appears that the court has abused its discretion by failing to investigate sufficiently, by failing to impose discipline, or by imposing insufficient discipline. When a court commissioner or referee has resigned while an investigation is pending or has been terminated by the local court, the commission may commence an investigation to determine whether to conduct a hearing concerning the individual's fitness to serve as a subordinate judicial officer. To facilitate the commission's review of complaints and discipline involving subordinate judicial officers, the California Rules of Court require superior courts to adopt procedures to ensure that complaints are handled consistently and that adequate records are maintained. Upon request by the commission, the superior court must make its records concerning a complaint available to the commission.

The Constitution requires the commission to exercise its disciplinary authority over subordinate judicial officers using the same standards specified in the Constitution for judges. Thus, the rules and procedures that govern investigations and formal proceedings concerning judges also apply to matters involving subordinate judicial officers. In addition to other disciplinary sanctions, the Constitution provides that a person found unfit to serve as a subordinate judicial officer after a hearing before the commission shall not be eligible to serve as a subordinate judicial officer. The Constitution also provides for discretionary review of commission determinations upon petition by the subordinate judicial officer to the California Supreme Court.

Staff Recommendation: Withhold Action

0250 JUDICIAL BRANCH

DISCUSSION ISSUE 2: JUDICIAL BRANCH BUDGET OVERVIEW

The Judicial Council will open this issue with a brief overview of the Branch's proposed budget and additional budget priorities.

PANELISTS

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

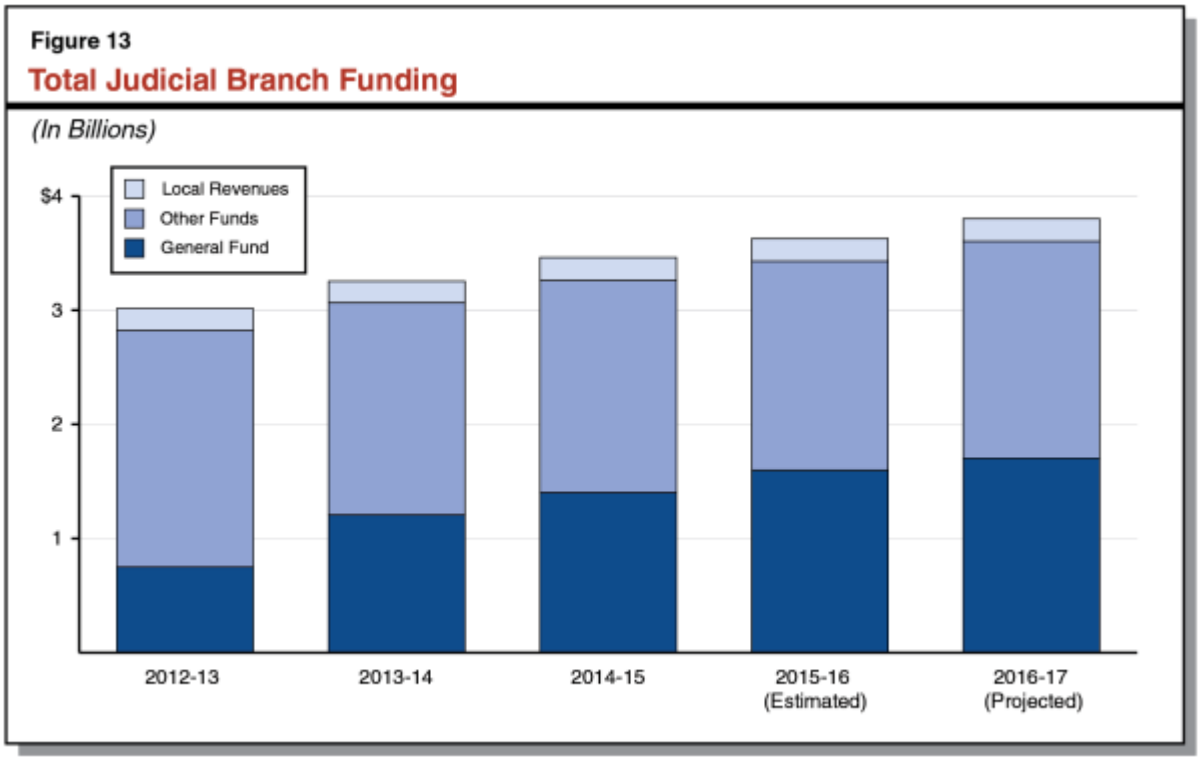
BACKGROUND (PROVIDED BY LAO)

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 (the Judicial Council, Judicial Branch Facility Program, and the Habeas Corpus Resource Center). The branch receives revenues 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 Governor's proposed 2016–2017 budget includes $146.3 million in new funding for the judicial branch. The proposed new funding would be allocated for a variety of purposes including innovation grants, language access expansion in civil proceedings, support of trial court operations, new workload associated with Proposition 47 implementation, and Trial Court Trust Fund revenue shortfall backfill.

The proposed budget continues to fund costs the courts cannot control (e.g. rent increases, employee health care and retirement cost increases, information systems and cyber security costs, and increased court security costs) and backfill declining revenues to avoid further reductions in court services. The Administration also proposes to reallocate up to five vacant superior court judgeships (see discussion below under new judgeships). The Judicial Council will work with the Administration and Legislature to implement the reallocations and mitigate any potential impacts to trial court operations.

Figure 13 (next page) shows total funding for the judicial branch from 2012-13 through 2016–17. Total funding for the judicial branch has steadily increased since 2012–13, the most recent year in which the judicial branch received a significant reduction in General Fund support and is proposed to increase in 2016–17 to $3.8 billion. Of the total budget proposed for the judicial branch in 2016–17, about $1.7 billion is from the General Fund, nearly 45 percent of the total judicial branch budget. This is a net increase of $104 million, or 6.5 percent, from the 2015–16 amount.



As shown in Figure 14 (below), the Governor's budget proposes $3.6 billion from all state funds to support the judicial branch in 2016–17, an increase of $175 million, or 5 percent, above the revised amount for 2015–16. (These totals do not include expenditures from local revenues or trial court reserves.)

Figure 14 *(Dollars in Millions)*

	2014–15 Actual	2015–16 Estimated	2016–17 Proposed	Change From 2015–16	
				Amount	Percent
State Trial Courts	$2,538	$2,675	$2,805	$130	4.9%
Supreme Court	43	47	46	—	–0.2
Courts of Appeal	211	219	225	6	2.5
Judicial Council	134	134	133	–1	–0.8
Judicial Branch Facility Program	320	370	410	40	10.8
Habeas Corpus Resource Center	13	15	15	—	3.4
Totals	**$3,260**	**$3,459**	**$3,634**	**$175**	**5.1%**

[a]Does not include offset of trial court expenditures from excess local property taxes.

Staff Recommendation: No Recommendation, Overview Item

DISCUSSION ISSUE 3: $20 MILLION AUGMENTATION FOR TRIAL COURTS (DISCRETIONARY)

The Judicial Council will open this issue with a brief overview of the Branch's proposal to augment Trial Court Operations funding by $20 million.

PANELISTS

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

BACKGROUND

The Governor's budget includes a $20 million (General Fund) augmentation for discretionary uses within the realm of trial court operations.

STAFF COMMENTS

To date, the Judicial Council and/or the Governor's Administration has not provided the Legislature with any detail on how the proposed funding increase will be allocated, expended, or how the requested funding level was determined. Thus, it is unclear whether this level of funding is appropriate. Further, absent the aforementioned details, the Legislature is unable to fully determine whether the requested allocation is consistent with Legislative priorities.

LAO ASSESSMENT AND RECOMMENDATION

LAO Assessment:

The administration has not provided sufficient information to justify why the trial courts need the proposed $20 million augmentation. For example, it is unclear what specific needs at the trial courts are not currently being met that necessitates an augmentation. Thus, it is difficult for the Legislature to determine whether the proposed $20 million increase is too much or too little for meeting the identified needs that it believes merits funding. Moreover, it is unknown what needs were met by most of the additional funds provided in recent years, which makes it even more difficult to determine what unmet needs the courts continue to have and how these needs align with legislative priorities.

Proposed Budget Already Accounts for Increased Workload and Costs.

To the extent that the proposed $20 million augmentation is intended to support increased workload and costs, as we noted above, the Governor's budget already includes a number of proposals to provide additional funding to support identified workload and cost increases for the trial courts. Given these proposed funding increases, it is even less clear why the proposed $20 million in resources is needed for trial court operations.

LAO Recommendation:

The LAO recommends Rejecting Proposed Augmentation. Absent sufficient information to justify the proposed $20 million augmentation, we recommend that the Legislature reject the Governor's proposal.

Staff Recommendation: Reject proposal and direct the Judicial Council to provide the Subcommittee with a comprehensive allocation and expenditure plan that addresses the concerns listed above as soon as possible to allow for further consideration.

DISCUSSION ISSUE 4: COURT INNOVATION GRANT PROGRAM

The Judicial Council will open this issue with a brief overview of the Branch's request for a one-time General Fund augmentation of $30 million in support of a new Court Innovation Grant Program intended to identify and promote improvements, efficiencies, and access to justice.

PANELISTS

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

BACKGROUND (PROVIDED BY LAO)

The proposed program, which would be developed and administered by the Judicial Council, would provide grants on a competitive basis to support trial and appellate court programs and practices that promote innovation, modernization, and efficiency. Grants would be two to three years in duration and could be awarded up until 2019–20. Grant funds could be encumbered through 2019–20, after which any unexpended funds would revert to the state General Fund.

According to the administration, courts would be required to describe how grant funds are to be used to support the development of sustainable, ongoing programs and practices that can be adopted and replicated by other courts. Participating programs will also be required to provide measurable results, outcomes, or benefits to demonstrate the impact of the program on the court and the public. Finally, Judicial Council would be required to provide the Department of Finance and the Joint Legislative Budget Committee with annual reports on the grant program beginning on September 30, 2017.

LAO ASSESSMENT AND RECOMMENDATION

LAO Assessment:

The Governor’s proposal to promote innovation and efficiency projects in trial and appellate courts has merit as such projects can ultimately generate savings or improve access to court services. However, the proposal provides very little information on what programs and services would be funded, why they are needed, how much funding is needed to support them, and which courts will pilot these programs and services. The administration has also not provided specific information on how the programs and services to be funded compare to previously tested or implemented projects, as well as

what specific performance outcomes would be measured to determine program effectiveness. The lack of key information about the proposal generally reflects the fact that Judicial Council would have significant discretion over the types of programs and services that would receive funding. For example, the administration's proposal provides little guidance on how grants should be awarded, thereby allowing Judicial Council to decide whether certain types of applicants have priority and what metrics should be used to evaluate applications.

This lack of detail makes it difficult for the Legislature to determine whether the Governor's proposal is the appropriate level of funding for those projects that are aligned with legislative priorities. Additionally, because the proposal lacks details that would specify and standardize how performance outcomes would be measured, the Legislature may have difficulty comparing the programs and services that are funded to determine which provide the greatest benefit to courts or members of the public. Moreover, the lack of detail makes it difficult to determine the extent to which these programs could be duplicated across the state. This is particularly problematic if the judicial branch decides to seek ongoing funding for such programs or services in the future.

LAO Recommendation:

We recommend the Legislature withhold action on the Governor's proposal to provide $30 million for a new Court Innovations Grant Program, pending additional information from the administration and the judicial branch. Specifically, we recommend the Legislature require the administration and the judicial branch to report by April 1 on the following: (1) which specific programs and services would be funded, (2) why they are needed, (3) how much funding is needed to support each service and program, (4) which courts would pilot each service and program, (5) what specific performance outcomes would be measured to determine program effectiveness, and (6) how the judicial branch would determine whether these programs and services can be implemented across the state. Based on this information, the Legislature would be able to determine which programs it would like to specifically fund on a pilot basis. To the extent that such information is not provided, we recommend the Legislature reject the proposal.

Staff Recommendation: Adopt LAO's Recommendation

DISCUSSION ISSUE 5: EQUAL ACCESS FUND

The Judicial Council will open this issue with a brief overview of the Branch's Equal Access Fund Program.

PANELISTS

- Judicial Council
- Jessie Kornberg, Executive Director, Bet Tzedek Legal Services
- Department of Finance
- Legislative Analyst's Office
- Public Comment

BACKGROUND

By creating the Equal Access Fund in 1999, the Legislature made an important contribution towards achieving equal justice in California. The fund helps the most vulnerable Californians when they face critical, life-changing legal issues affecting their basic needs, their safety, and their security, issues such as elder abuse, domestic violence, family support, housing, or access to needed health care. In recognizing the need and establishing the Equal Access Fund under the Judicial Council, the California Legislature joined 37 other states in providing funds to address the need for civil legal aid. The Equal Access Fund, and its effective use by legal aid providers working with local courts, has helped California become a national leader in ensuring equal access to justice in its courts.

The Equal Access Fund provides a crucial supplement to other public and private funds available in California for the 99 nonprofit legal aid providers striving to meet the civil legal needs of the low-income, the elderly, and people with disabilities. Ninety percent of the Equal Access Fund grants to providers go directly to free civil legal services for these clients. The remaining 10 percent support court-based self-help centers run by legal aid providers in partnership with local courts. Although the total available funding falls far short of the need found by the recent Path to Equal Justice report, thousands of low-income Californians who would otherwise have gone unassisted have received legal help since 1999 because of the Equal Access Fund.

The Governor’s budget contains a total of approximately $16 million ($10.6 million General Fund and $5.5 million special fund). Legal aid services providers argue that their funding remains unchanged despite significant increases in the number of clients who need their services. Providers further note that California, once 10th in the nation in state funding for legal services, has fallen to 22nd in the nation.

Staff Recommendation: Withhold Action

DISCUSSION ISSUE 6: DEPENDENCY COUNSEL

The Judicial Council will open this issue with a brief overview of the Dependency Counsel Program.

PANELISTS

- Leslie Starr Heimov, Esq., CWLS Executive Director, Children's Law Center of California
- Zoe Larson, Expectant and Parenting Youth Consultant
- Judicial Council
- Department of Finance
- Legislative Analyst's Office
- Public Comment

BACKGROUND

When a child is removed from his/ her home because of serious physical, emotional or sexual abuse, the state of California assumes the role of a legal parent. Through the Dependency Court, the state makes decisions that have huge implications on the child's life and future – i.e. whether the child will ever return to her parents, if she will be placed with her siblings, where and with whom she will live, and what services she will receive.

Given the impact of these decisions, having a competent and dedicated attorney is critical. The child's attorney is the one person in the system with the sole responsibility of advocating for that child's protection, safety, and physical and emotional well-being. This role is unlike any other practice of law. Serving dually as Guardian Ad Litem (pursuant to the Child Abuse Prevention and Treatment Act) and attorney, the duties of a child's attorney are vast and go well beyond the courtroom. The attorney must advocate in all court proceedings, and also ascertain and advance the needs of the minor outside of the legal proceedings.

For example, an overwhelming number of youth in foster care are at risk of or have already become victim to sexual exploitation and trafficking. Because of the unique and confidential relationship between a child and her attorney, often times the child's attorney is the sole individual aware of these desperate circumstances. The attorney is tasked with advocating in court for desperately needed resources and/or working outside of court to access appropriate placements and intervention services.

Similarly, when youths in the child welfare system have unmet special education needs, are denied essential benefits or become involved with the juvenile justice system, their dependency attorneys step in to fight for them, providing the court or relevant agency with critical perspective, historical information and more.

The significance of this advocacy cannot be understated. A 2008 study from Chapin Hall Center for Children found that children with effective counsel were moved to permanency at about twice the rate of unrepresented children. A 2010 study found better court outcomes for Los Angeles County "crossover youth" (those who are dually involved in the Dependency and Delinquency Courts) when the youth had the involvement of Children's Law Center attorneys.

Currently, the state provides a total of nearly $115 million for the support of such court-ordered dependency counsel. This amount includes an ongoing $11 million General Fund augmentation that was provided in 2015-16 to reduce dependency counsel caseloads. The judicial branch is currently in the process of phasing in a new methodology for allocating funds based on dependency counsel caseload instead of historical expenditure levels.

Today's Caseload Crisis

Unfortunately, the duties of children's attorneys and the protections they offer California's most vulnerable youth are rendered meaningless without reasonable caseloads. According to the National Association of Counsel for Children, a full-time child's attorney should represent no more than 100 clients at one time. This is the same standard recommended by the U.S. Department of Health and Human Services, as well as the American Bar Association. In 2008, a California specific study concluded that the basic caseload standard where the attorney is supported by a social work investigator is a maximum of 188 child clients, while the optimal standard is 77.

In 2006, a federal court in Atlanta ruled that high caseloads violated children's constitutional right to zealous and effective legal representation. The average caseloads for children's attorneys in Atlanta were reduced from 500 to 90. Several states, including Massachusetts, New York, Arkansas and Wyoming now have strict caseload standards.

Caseloads in California continue to be high. California's court appointed counsel in 32 counties are not resourced to meet the basic caseload standard of 188 clients per lawyer. Of those counties, 15 are so under-resourced that caseloads are more than double that of the basic standard.

California's abused and neglected children deserve better. With such high caseloads, there is simply no way to provide appropriate and effective advocacy. The following examples represent the "on the ground" impact of unreasonable caseloads:

- Attorneys are forced to adopt a triage approach to representing children – responding to crisis after crisis rather than taking a proactive approach to representation.

- Without time for meaningful contact with clients and supportive adults, attorneys are not able to conduct necessary independent investigation to identify educational, mental health, and other needs to advocate for appropriate intervention services.

- Long hours and the frustration of not being able to do more lead to high turnover, which results in less stability for children and less experienced attorneys.

Proposed Solution

As stated in the Judicial Branch's Budget Priorities Document: "A $22 million increase for court-appointed dependency attorneys for parents and neglected children is needed to reduce caseloads from the current ratio of 225 clients per attorney to 188. Parents and children involved in court dependency proceedings rely on specially trained dependency attorneys to provide representation at every stage of the dependency case to approximately 154,900 parents and children as required by Welfare and Institutions Code §317. This funding augmentation will increase the courts' ability to process cases more timely, promote fully informed judicial decisions, speed family reunification and permanent placement, and limit families' reentry into dependency, leading to net overall savings for both the trial courts and county child welfare agencies. An update to the funding and caseload ratio projections will be provided with the release of the 2016-17 May Revision."

Staff Recommendation: Withhold Action on this Item

DISCUSSION ISSUE 7: LANGUAGE ACCESS

The Judicial Council will open this issue with a brief overview of the Branch's Language Access Program.

PANELISTS

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

BACKGROUND

Access to the courts for all Californians is critical to ensure the legitimacy of our system of justice and the trust and confidence of Californians in our courts. Without meaningful language access, Californians who speak limited English are denied access to the very laws created to protect them.

California is home to the most diverse population in the country. There are approximately seven million Limited English Proficient (LEP) residents and potential court users speaking more than 200 languages and dispersed over a vast geographic area. According to data recently released by the US Census Bureau, 44% of Californians age five and over speak a language other than English at home. That percentage rises to 54% in the Los Angeles metropolitan area. The most commonly spoken languages vary widely both within and among counties; indigenous languages have become more common and also more visible, particularly in rural areas; and the influx of new immigrants brings with it newly emerging languages throughout the state. This richly diverse and dynamic population is one of our greatest assets, and a significant driver of the state's economic and social growth and progress. It also means that the state's institutions, including the judicial branch, must continually adapt to meet the needs of its constituents, and it means that this language barrier is not going away. Californians continue to face significant obstacles to meaningful access to our justice system. The California courts also face unique challenges every day, particularly in courtrooms with high volume calendars in which the vast majority of litigants are self-represented (such as traffic, family law, and small claims, where parties must represent themselves). Courts must confront these challenges with limited resources, having endured severe budget cuts during the past several years that have significantly interfered with their ability to maintain adequate levels of service. Although some funding has been restored to the courts, the branch is not funded to the level required to be able to provide all the services Californians need and expect in the resolution of their legal disputes.

While the provision of comprehensive language access across our system of justice will undoubtedly require additional resources and funding, the branch also understands that fundamental and systemic changes in our approach to language access, at the

statewide and local levels, are both necessary and feasible. The Chief Justice recognized that developing a comprehensive statewide language access plan was a critical first step in addressing the needs of the state's LEP population in a more systematic fashion. On January 22, 2015, the Judicial Council approved a comprehensive Strategic Plan for Language Access in the California Courts, which includes 8 strategic goals and 75 detailed recommendations to be completed in three distinct phases. The Judicial Council's Language Access Plan Implementation Task Force (Task Force), chaired by Supreme Court Associate Justice Mariano Florentino-Cuellar, advises the Chief Justice and Judicial Council on implementation of the recommendations. The Task Force will establish the necessary systems for monitoring compliance with the plan. The Task Force's charge is to turn the Language Access Plan (LAP) into a practical roadmap for courts by creating an implementation plan for full implementation in all 58 trial courts.

Fundamental to California's LAP is the principle that the plan's implementation will be adequately funded so the expansion of language access services will take place without impairing other court services. The annual funding dedicated for language access is Program 0150037, which provides funding for court interpreter services. The funding for interpreter services has historically been limited primarily to constitutionally-mandated cases, including criminal cases and juvenile matters. Current funding is not sufficient to support growth and expansion of interpreter services into domestic violence, family law, guardianship and conservatorship, small claims, unlawful detainers and other civil matters. This augmentation will allow the courts to continue to provide court interpreter services in civil matters, and assure all 58 trial courts that increased funding for expanded court interpreter services for limited English proficient court users in civil is available.

Federal Compliance - On August 16, 2010, the US Department of Justice (DOJ) issued a letter clarifying the requirement that courts receiving federal financial assistance must provide meaningful access to LEP persons in order to comply with federal law. According to the 2010 DOJ letter to all state chief justices and court administrators, courts that receive federal funding must provide interpreters, free of charge, in all court proceedings to avoid violating civil rights laws. The DOJ had previously provided guidance documents that emphasize that applicable civil rights law requires courts receiving federal financial assistance to provide meaningful access to all civil, criminal or administrative hearings, at no charge to LEP individuals. They further explain that such access: should be extended to LEP parties and other LEP individuals whose presence or participation is appropriate to the court proceedings, should be provided in court programs and activities outside of the courtroom, and should include language services for communication between LEP individuals and court appointed or court managed service providers. While recognizing budget concerns and constraints on the part of state and local courts, the August 2010 memorandum to state court administrators bluntly stated: Fiscal pressures, however, do not provide an exemption from civil rights requirements.

In February 2011, the US DOJ initiated an investigation of the Los Angeles Superior Court and the Judicial Council of California. The investigation was prompted by a December 2010 complaint filed by the Legal Aid Foundation of Los Angeles on behalf of

two litigants who were not provided with Korean interpreters for their court hearings. The complaint alleges that in failing to provide the interpreters, the courts violated Title VI of the federal Civil Rights Act of 1964, which prohibits national origin discrimination. These cases, according to the complaint, "are just two examples of many LAFLA (Legal Aid Foundation of Los Angeles) clients who have been denied access to the courts based on their limited-English proficiency." In a letter dated May 22, 2013, the DOJ summarized the observations they had made during the course of their investigation, identified four major areas of concern, and issued eight recommendations for steps toward compliance with Title VI and DOJ's Title VI implementing regulations. Key among their findings and recommendations were the following:

1. Title VI requires interpreter services in court proceedings be provided free of charge and requires interpreters in all court proceedings, not merely criminal and juvenile matters.
2. LEP litigants must be provided interpreting services from competent interpreters and not family or friends.
3. The Judicial Council should consider efficiencies and practices that can improve and increase language services in proceedings and operations, including appropriately utilizing technology such as video remote interpreting.
4. The Judicial Council should arrange for translation of fee waiver forms into the most common languages.

The Judicial Council and Los Angeles Superior Court both have been working collaboratively with DOJ toward voluntary compliance, without the need for legal action to be taken. DOJ monitored the drafting of the LAP with great interest, and continues to monitor implementation closely. Failure to take meaningful steps to implement the plan will likely lead to action by the US DOJ which might result in a less measured implementation strategy.

Constitutional and Statutory Direction - Effective January 1, 2015, Evidence Code section 756 and Government Code section 68092.1 were added, setting forth the joint commitment of the legislative and judicial branches of government to carry out • the goal of providing interpreters to all parties who require one, regardless of case type and level of income. The Evidence Code section provides that "[t]o the extent required by other state or federal laws, the Judicial Council shall reimburse courts for court interpreter services provided in civil actions and proceedings to any party who is present in court and who does not proficiently speak or understand the English language for the purpose of interpreting the proceedings in a language the party understands, and assisting communications between the party, his or her attorney, and the court." The code then sets forth a case type priority order for the provision of interpreters "if sufficient funds are not appropriated to provide an interpreter to every party that meets the standard of eligibility." Additionally, Article 1, §14 of the California Constitution provides for the right to an interpreter in criminal matters; Code of Civil Procedure §116.550(a) and (d) discuss the right to an interpreter in small claims; and Evidence Code §§ 752, 730, 731(a) & (c) speak to the right of witnesses to have interpreters.

Staff Recommendation: Approve request clarifying that funds must be used for in-person interpreters.

DISCUSSION ISSUE 8: PROPOSITION 47 WORKLOAD

The Judicial Council will open this issue with a brief overview of the requests for $21.4 million in 2016-17 to address increased court workload associated with voter approved Proposition 47 (the Safe Neighborhoods and Schools Act).

PANELISTS

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

BACKGROUND

California voters approved Proposition 47 in November 2014. The law reduced most possessory drug offenses and thefts of property valued under $950 to straight misdemeanors; created a process for individuals currently serving sentences for these offenses to petition the courts for resentencing; and, created a process for individuals who have completed sentences for these offenses to apply to the courts to have these crimes reclassified as misdemeanors. This resulted in a temporary but significant workload increase for the courts.

In FY 2015-16, Judicial Council staff estimated that a total of $34.5 million was needed for the courts to process Proposition 47 relief requests over two fiscal years. This estimate was based on the amount of court time needed to process the cases (1.8 million minutes). The state budget included an augmentation of $26.9 million in FY 2015-2016 to address this estimated need. Proposition 47 data now suggest that the original estimate may have been too low.

As of June 30, 2015, the courts received over 165,000 petitions for relief under Proposition 47. Based on that information, the Judicial Council estimates that the courts will receive approximately 248,000 petitions for Proposition 47 relief by June 30, 2017. Approximately 2,492,400 minutes of court time will be needed to process the petitions, resulting in a need for a total augmentation of $48.3, of which $21.4 million is requested in FY 2016-17.

Staff Recommendation: Withhold action and direct the Judicial Council and the LAO to reconcile their calculation differences and report back to the Subcommittee by May 1, 2016.