



# JUDICIAL COUNCIL OF CALIFORNIA

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## REPORT TO THE JUDICIAL COUNCIL

*Item No.: 22-021*

For business meeting on January 21, 2022

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**Title**

Allocations and Reimbursements to Trial Courts: Court Interpreters Program Funding and Allocation Methodology

**Agenda Item Type**

Action Required

**Effective Date**

July 1, 2022

**Rules, Forms, Standards, or Statutes Affected**

None

**Date of Report**

December 14, 2021

**Recommended by**

Trial Court Budget Advisory Committee  
Hon. Jonathan Conklin, Chair  
Ms. Rebecca Fleming, Vice-Chair

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### Executive Summary

The Trial Court Budget Advisory Committee recommends an ongoing, workload-based allocation methodology for Court Interpreters Program funding, including cross assignments, benefit cost changes, and unspent funds effective July 1, 2022.

### Recommendation

The Trial Court Budget Advisory Committee recommends the Judicial Council approve the following, effective July 1, 2022:

1. A proportional allocation methodology based on a three-year average of expenditure data available (2017-18, 2018-19, and 2019-20), up to the Court Interpreters Program appropriation amount effective 2022-23, while the Ad Hoc Interpreter Subcommittee continues review of pandemic impact and reporting data considerations effective in 2023-24;
2. Require courts to return to the Judicial Council all unspent 2021-22, 2022-23 and ongoing Court Interpreter Program-allocated funds, which will first reimburse courts with a shortfall

in each respective year not to exceed the overall appropriation amount, with any remaining funds reverting to the Trial Court Trust Fund as restricted program funding;

3. Allocate staff interpreter benefits dollar-for-dollar to courts reporting cost benefit changes effective 2022-23; and
4. Require receiving courts to offset extraordinary interpreter expenses to courts providing cross-assignments (or “home” courts) and charge the Ad Hoc Interpreter Subcommittee with working with Judicial Council staff on development of a payment/reimbursement method.

This recommendation was presented to the Judicial Branch Budget Committee on December 7, 2021 and approved for consideration by the Judicial Council.

### **Relevant Previous Council Action**

Before 2020–21, the Court Interpreters Program (CIP) fully reimbursed trial courts for all eligible trial court interpreter expenses, and until recently the CIP carried a funding surplus. In recent years, the CIP has been faced with a shortfall, with expenditures exceeding allocations. To address the shortfalls, CIP savings were first used, and then Trial Court Trust Fund (TCTF) unrestricted fund balance was used as approved by the council.

With adoption of the Judicial Council’s *Strategic Plan for Language Access in the California Courts* in 2015, the council has also approved budget change proposals (BCPs) to augment the CIP to support expansion of interpreter services to all case types under the plan. Expenditure increases in the CIP are a result of multiple factors, including wage growth on ratified agreements, expansion of interpreter services to all case types, increases in the number of mandated staff interpreters and mandated contractor use, and merit salary adjustments. The use of savings, BCP augmentations, and TCTF unrestricted fund balance through 2019–20 has allowed courts to cover cost increases and maintain service levels.

At its business meeting on September 21, 2018, the council approved an allocation of unrestricted fund balance from the TCTF on a one-time basis to address an anticipated shortfall in the CIP for 2018–19, not to exceed the estimated \$3.4 million required to cover cost increases and maintain service levels. The council directed staff to continue to monitor CIP funding and to provide regular updates to the Trial Court Budget Advisory Committee (TCBAC) to report any changes, and to incorporate any additional funding after the Governor’s proposed budget was released in January 2019 (see Link A).

At its business meeting on May 17, 2019, the council approved a one-time allocation of unrestricted fund balance from the TCTF in an amount not to exceed \$13.5 million to address the projected 2019–20 shortfall (see Link B).

At its business meeting on September 25, 2020, the council approved the TCBAC’s recommendation for a one-time allocation methodology for 2020–21, not to exceed the 2020 Budget Act appropriation, while the Ad Hoc Interpreter Subcommittee (subcommittee)

continued development of an ongoing workload-based allocation methodology for implementation beginning in 2021–22 (see Link C). The recommended change from a reimbursement to an allocation methodology addresses funding shortfalls previously addressed through the use of now-depleted program savings and unrestricted TCTF fund balance, which is not a viable, ongoing fund source. The council-approved 2020–21 allocation methodology was effective immediately.

At its business meeting on May 21, 2021, the Judicial Council approved the TCBAC’s recommendation for a one-time CIP allocation methodology for 2021-22 to allocate the same \$130.977 million in funding provided to trial courts in 2020–21; to return unspent 2020–21 funds for use in offsetting shortfalls courts experienced in 2020–21; and to revert remaining funds to the TCTF as restricted program funding (see Link D).

The council continues its efforts to secure additional funding through the BCP process, which most recently included over \$9 million in the 2020 Budget Act. That same year, the CIP was initially projected to experience a deficit. However, the impact of the COVID-19 pandemic and related operating changes resulted in expenditures below the appropriation amount allocated to the trial courts, because of longer case-processing times and increased video-remote interpreting (VRI) usage.

### **Analysis/Rationale**

A fundamental goal of the California judicial branch is to provide equal access to justice and to the courts, regardless of an individual’s ability to communicate in English. With over 200 languages spoken in California, court interpreters play a critical role in achieving this goal by accurately interpreting for persons who are limited English proficient (LEP).

Article I, section 14 of the California Constitution was amended in 1974 to provide that “[a] person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.” This provision established a mandate for courts to provide interpreters in criminal matters to all defendants who have limited proficiency in English. The constitutional mandate and subsequent case law have been interpreted to include proceedings related to criminal, misdemeanor, and delinquency matters as well as certain civil matters such as divorce or separation involving a protective order and child custody and visitation proceedings.

Effective January 1, 2015, the enactment of Assembly Bill 1657 (Stats. 2014, ch. 721) through Evidence Code section 756 authorized courts to provide interpreters to all parties in civil matters, regardless of income, and presented a priority and preference order when courts have insufficient resources to provide interpreters for all persons.

Expenditure increases in the CIP required the use of CIP savings, and subsequently TCTF unrestricted fund balance through 2019–20, to fully reimburse court costs and provide courts the opportunity to cover cost increases and maintain service levels. The change from a reimbursement to an allocation methodology, effective 2020–21, recognized the need to address insufficient funding to reimburse trial courts based on actual expenditures. Through the TCBAC,

a one-time approach to allocate the 2020–21 appropriation was developed to ensure timely allocation information and planning opportunities to the courts.

The funding methodology used for current and prior year was an interim approach to allocate available funds to provide the subcommittee additional time to develop an ongoing, workload-based methodology. This approach used available data on projected staff costs (with an added three-year Bureau of Labor statistics average) and actual contractor costs to identify projected need, and then allocated the appropriation on a proportional basis to each court as CIP expenditures have consistently exceeded the annual appropriation provided in the Budget Act.

Due to the lack of available and consistent data in both the Court Interpreter Data Collection System (CIDCS) and court case management systems (CMS) for a more focused workload-based approach, the proposed methodology, effective July 1, 2022, refers to historical spending to identify CIP need by court, applies a three-year average of each court's total eligible CIP expenditures, and then allocates funding on a proportional basis up to the CIP appropriation.

Through subcommittee deliberations, it was determined that the current cross assignment practice of a court receiving interpreter services from another “home” court, and the “home” court paying the costs, needed to be considered. This process change, effective 2022-23, will require that the receiving court reimburses the “home” court for extraordinary costs (i.e., travel costs and mileage). No updates were made to the historical figures used in the allocation methodology as there is no data currently available on historical cross assignment usage. Instead, the recommendation for receiving courts to reimburse “home” courts for interpreter services will be prospective and covered out of each court's recommended allocation amount, with a process to be determined upon approval.

In addressing VRI, it was determined that adjustments to the methodology would not be made. The goal is to provide courts with a defined allocation amount for planning purposes and VRI efficiencies are still being assessed and analyzed.

A new consideration was made as to anticipated increases in the cost of benefits (i.e., health and retirement) for interpreters. Currently, these cost changes are tracked separately for non-interpreter and interpreter staff. The non-interpreter cost changes are adjusted to each court dollar-for-dollar, while the interpreter cost change adjustment was included in the appropriation amount and then allocated to courts based on the reimbursement or allocation methodology in place at that time. Effective 2022-23, the recommendation is to treat these cost changes consistent with non-interpreter employees and provide courts their increases in the cost of benefits for interpreters going forward.

Finally, the same approach of courts returning unspent funds has been included in this methodology recommendation. Returned, unspent funds will be used for reallocation, as needed, for courts that incur shortfalls; however, courts will be responsible for interpreter costs out of their operating budgets should the reallocation amount be insufficient to cover the shortfalls.

Attachment A provides details on the recommended methodology as if applied to the current year's allocations.

### **Policy implications**

The approach to collect unspent 2021-22, 2022-23 and ongoing CIP-allocated funds, which will first reimburse courts with shortfalls in each respective year not to exceed the overall appropriation amount, with any remaining funds reverting to the TCTF as restricted program funding, could allow the program to experience a reserve for future planning purposes.

An ongoing, workload-based methodology will help trial courts plan because they will know in advance how much funding will be available to provide interpreter services to LEP court users. The recommended allocation methodology not to exceed the current appropriation amount will maintain the careful consideration required by courts, including cost-saving measures, that will help to preserve current interpreter service levels.

This recommended approach is a starting point for the methodology and would need to be fine-tuned to take into consideration the impact of the COVID-19 pandemic and courts' current usable CMS data and reporting capabilities. These data points can assist in more clearly defining interpreter need by court and can provide for future funding requests as needed. A recommendation will be prepared for consideration as needed beginning 2023–24 and ongoing.

### **Comments**

Public comment was not received for this item.

### **Alternatives considered**

Consideration was made in relation to the data used for developing this methodology, with court filings identified as a potential option. However, because filings data is not available at this time that distinguishes which cases included an interpreter, the recommendation was made to utilize actual, prior year's expenditures.

In addition, consideration was made in relation to funding courts that experience a shortfall using current year CIP savings. There was deliberation concerning whether courts should be funded using savings that exceeded the current year appropriation amount, and it was determined that the use of savings should not exceed the appropriation in an effort to encourage courts to work within their allocations and utilize efficiencies accordingly. Should a court need additional funding beyond CIP savings available in the same fiscal year, the court can make a request to use overall CIP savings for committee and council consideration.

### **Fiscal and Operational Impacts**

Some courts may not need the full allocation amount in 2022–23; other courts' CIP expenditures may exceed the allocated funding amounts. Judicial Council staff will continue monitoring usage and working with courts to support cost-saving measures, including appropriate use of technology to provide interpreter services and reduce costs.

## Attachments and Links

1. Attachment A: 2022–23 Allocation Methodology by Court
2. Link A: Judicial Council meeting minutes of September 21, 2018, at <https://jcc.legistar.com/View.ashx?M=M&ID=559788&GUID=1AF2481A-79EE-44AD-A8E6-1D5F9E02CC7A>
3. Link B: Judicial Council meeting minutes of May 17, 2019, at <https://jcc.legistar.com/View.ashx?M=M&ID=640297&GUID=9C71CADA-D8FB-4AA9-A887-0260DB284273>
4. Link C: Judicial Council meeting minutes of September 25, 2020, at <https://jcc.legistar.com/View.ashx?M=M&ID=711584&GUID=760102E7-3D1B-4C00-9CA8-0A7AA617BF8B>
5. Link D: Judicial Council meeting minutes of May 21, 2021, at <https://jcc.legistar.com/View.ashx?M=M&ID=803678&GUID=183ADEA3-1A53-4ED1-9E95-A43E3C390D21>

RECOMMENDED METHODOLOGY EFFECTIVE 2022 - 23

Court	Total Reimbursed Expenditures <sup>1</sup>			3-Year Average D (Avg. A, B, C)	% of Total E (D / Total D)
	2017-18	2018-19	2019-20 <sup>2</sup>		
	A	B	C		
Alameda	\$ 4,994,709	\$ 5,491,760	\$ 5,360,994	\$ 5,282,488	4.414%
Alpine	1,426	2,336	-	1,254	0.001%
Amador	24,773	64,824	56,206	48,601	0.041%
Butte	227,263	210,505	197,038	211,602	0.177%
Calaveras	26,354	60,955	74,633	53,981	0.045%
Colusa	97,888	124,806	134,759	119,151	0.100%
Contra Costa	2,637,825	3,333,363	3,182,989	3,051,392	2.550%
Del Norte	49,298	61,063	53,349	54,570	0.046%
El Dorado	246,609	249,962	207,363	234,645	0.196%
Fresno	2,017,712	2,383,506	2,131,639	2,177,619	1.820%
Glenn	95,045	130,134	114,266	113,148	0.095%
Humboldt	175,045	229,942	184,169	196,385	0.164%
Imperial	508,413	569,293	580,832	552,846	0.462%
Inyo	45,097	72,353	79,793	65,748	0.055%
Kern	3,224,330	3,646,134	3,957,861	3,609,441	3.016%
Kings	467,843	470,995	544,340	494,392	0.413%
Lake	91,889	114,989	134,433	113,770	0.095%
Lassen	43,511	48,414	54,935	48,953	0.041%
Los Angeles	35,688,712	38,540,226	39,032,884	37,753,941	31.547%
Madera	557,225	592,718	578,204	576,049	0.481%
Marin	558,335	691,846	667,907	639,363	0.534%
Mariposa	32,342	41,374	21,901	31,872	0.027%
Mendocino	359,279	376,616	418,321	384,739	0.321%
Merced	966,879	1,056,300	1,089,640	1,037,606	0.867%
Modoc	5,305	7,201	3,510	5,338	0.004%
Mono	43,654	48,056	55,533	49,081	0.041%
Monterey	1,146,230	1,292,899	1,409,995	1,283,041	1.072%
Napa	661,583	679,987	699,487	680,352	0.569%
Nevada	73,370	73,507	67,586	71,488	0.060%
Orange	10,886,950	10,734,638	10,058,682	10,560,090	8.824%
Placer	486,303	549,588	477,053	504,315	0.421%
Plumas	6,460	15,036	11,446	10,980	0.009%
Riverside	5,314,665	5,301,396	6,130,551	5,582,204	4.664%
Sacramento	4,083,870	4,345,704	4,336,528	4,255,367	3.556%
San Benito	106,006	116,488	99,671	107,388	0.090%
San Bernardino	5,653,715	6,074,705	6,157,161	5,961,860	4.982%
San Diego	5,924,143	6,024,074	6,178,018	6,042,078	5.049%
San Francisco	3,372,792	3,840,708	3,771,960	3,661,820	3.060%
San Joaquin	1,746,143	1,810,602	1,689,788	1,748,844	1.461%
San Luis Obispo	688,397	814,806	954,270	819,158	0.684%
San Mateo	2,318,537	2,591,358	2,666,320	2,525,405	2.110%
Santa Barbara	1,914,515	2,136,538	2,043,928	2,031,660	1.698%
Santa Clara	7,056,941	7,289,792	5,846,426	6,731,053	5.624%
Santa Cruz	820,068	911,406	993,481	908,318	0.759%
Shasta	318,164	365,959	353,929	346,017	0.289%
Sierra	4,997	371	-	1,789	0.001%
Siskiyou	58,183	52,207	45,377	51,923	0.043%
Solano	604,941	675,939	664,477	648,452	0.542%
Sonoma	1,172,567	1,538,376	1,772,234	1,494,393	1.249%
Stanislaus	1,341,709	1,552,478	1,483,286	1,459,158	1.219%
Sutter	274,046	344,883	297,890	305,606	0.255%
Tehama	169,600	189,229	178,745	179,191	0.150%
Trinity	52,512	49,184	70,962	57,553	0.048%
Tulare	1,780,095	1,733,140	1,587,507	1,700,247	1.421%
Tuolumne	50,913	61,415	51,198	54,509	0.046%
Ventura	2,001,836	2,067,841	1,987,149	2,018,942	1.687%
Yolo	836,195	943,340	902,632	894,056	0.747%
Yuba	68,737	75,057	64,094	69,296	0.058%
<b>Total</b>	<b>\$ 114,181,943</b>	<b>\$ 122,872,321</b>	<b>\$ 121,969,330</b>	<b>\$ 119,674,531</b>	<b>100.0%</b>

Appropriation \$ 103,545,000 \$ 108,873,000 \$ 120,599,000

<sup>1</sup> Included mandated and non-mandated costs.

<sup>2</sup> Includes 4 months of the pandemic.

SCENARIO BASED ON CURRENT YEAR INFORMATION

Allocation of Approp. Before Benefit Changes	2020-21 Current Year Benefit Cost Changes	2021 Budget Act Benefit Cost Changes	2021-22 Current Year Benefit Cost Changes	Total Allocation
F (E * \$130.977m)	G	H	I	J (SUM F-I)
\$ 5,781,384	\$ (31,753)	\$ 21,056	TBD	\$ 5,770,686
1,372	-	-	TBD	1,372
53,191	-	-	TBD	53,191
231,587	-	-	TBD	231,587
59,079	-	-	TBD	59,079
130,404	-	-	TBD	130,404
3,339,576	(5,361)	258	TBD	3,334,473
59,724	-	-	TBD	59,724
256,805	(1)	-	TBD	256,804
2,383,281	25,336	(19,190)	TBD	2,389,427
123,834	-	-	TBD	123,834
214,933	-	-	TBD	214,933
605,059	3,523	3,214	TBD	611,796
71,957	-	-	TBD	71,957
3,950,329	44,695	8,468	TBD	4,003,492
541,085	138	280	TBD	541,502
124,515	-	-	TBD	124,515
53,577	-	-	TBD	53,577
41,319,551	(15,121)	484,332	TBD	41,788,762
630,453	2,028	8,169	TBD	640,650
699,746	(6,767)	1,310	TBD	694,288
34,883	-	-	TBD	34,883
421,075	6,076	3,324	TBD	430,475
1,135,602	4,898	4,079	TBD	1,144,579
5,843	-	-	TBD	5,843
53,717	-	-	TBD	53,717
1,404,216	(20,051)	3,424	TBD	1,387,590
744,607	5,754	(1,787)	TBD	748,574
78,239	-	-	TBD	78,239
11,557,421	17,209	177,499	TBD	11,752,129
551,944	783	2,516	TBD	555,243
12,017	-	-	TBD	12,017
6,109,406	38,120	96,219	TBD	6,243,745
4,657,259	(18,546)	34,552	TBD	4,673,265
117,530	-	-	TBD	117,530
6,524,919	(13,967)	97,882	TBD	6,608,833
6,612,713	(3,488)	52,160	TBD	6,661,385
4,007,655	(20,239)	20,908	TBD	4,008,323
1,914,011	6,991	17,270	TBD	1,938,272
896,522	-	9,158	TBD	905,680
2,763,913	630	8,163	TBD	2,772,706
2,223,537	3,838	18,965	TBD	2,246,340
7,366,757	-	2,557	TBD	7,369,314
994,103	3,109	4,039	TBD	1,001,250
378,696	-	-	TBD	378,696
1,958	-	-	TBD	1,958
56,826	-	-	TBD	56,826
709,694	177	853	TBD	710,725
1,635,528	-	13,196	TBD	1,648,724
1,596,965	11,061	2,949	TBD	1,610,975
334,469	-	-	TBD	334,469
196,115	2,373	1,333	TBD	199,821
62,988	-	-	TBD	62,988
1,860,825	286	2,674	TBD	1,863,785
59,656	-	-	TBD	59,656
2,209,618	(2,491)	4,393	TBD	2,211,519
978,493	2,702	(4,247)	TBD	976,949
75,841	1,691	-	TBD	77,532
<b>\$ 130,977,000</b>	<b>\$ 43,632</b>	<b>\$ 1,079,979</b>	<b>\$ -</b>	<b>\$ 132,100,611</b>

\$ 130,977,000

CURRENT ALLOCATION INFORMATION

Court	2020-21	2020-21	2021-22
	Interim Proxy <sup>3</sup>	Allocation <sup>3</sup>	Allocation <sup>4</sup>
	K	L	M
Alameda	\$ 5,592,314	\$ 5,371,012	\$ 5,371,012
Alpine	2,593	2,490	2,490
Amador	71,947	69,100	69,100
Butte	537,620	516,345	516,345
Calaveras	75,023	72,054	72,054
Colusa	121,085	116,293	116,293
Contra Costa	3,151,013	3,026,319	3,026,319
Del Norte	67,773	65,091	65,091
El Dorado	306,114	294,001	294,001
Fresno	2,502,964	2,403,915	2,403,915
Glenn	120,494	115,726	115,726
Humboldt	298,465	286,654	286,654
Imperial	709,930	681,836	681,836
Inyo	81,386	78,166	78,166
Kern	3,960,639	3,803,906	3,803,906
Kings	584,030	560,918	560,918
Lake	127,593	122,544	122,544
Lassen	25,196	24,199	24,199
Los Angeles	44,226,256	42,476,106	42,476,106
Madera	893,625	858,262	858,262
Marin	836,604	803,498	803,498
Mariposa	45,920	44,103	44,103
Mendocino	273,595	262,768	262,768
Merced	1,420,816	1,364,591	1,364,591
Modoc	7,992	7,675	7,675
Mono	79,204	76,069	76,069
Monterey	1,739,629	1,670,788	1,670,788
Napa	711,931	683,758	683,758
Nevada	59,056	56,719	56,719
Orange	11,074,021	10,635,793	10,635,793
Placer	708,353	680,321	680,321
Plumas	7,939	7,625	7,625
Riverside	6,568,050	6,308,135	6,308,135
Sacramento	4,551,589	4,371,471	4,371,471
San Benito	129,288	124,171	124,171
San Bernardino	5,694,815	5,469,456	5,469,456
San Diego	6,693,831	6,428,939	6,428,939
San Francisco	4,146,658	3,982,564	3,982,564
San Joaquin	1,945,076	1,868,104	1,868,104
San Luis Obispo	726,452	697,704	697,704
San Mateo	4,000,365	3,842,060	3,842,060
Santa Barbara	2,090,634	2,007,902	2,007,902
Santa Clara	7,268,113	6,980,494	6,980,494
Santa Cruz	1,027,797	987,125	987,125
Shasta	518,049	497,548	497,548
Sierra	412	396	396
Siskiyou	57,944	55,651	55,651
Solano	761,559	731,422	731,422
Sonoma	1,921,932	1,845,876	1,845,876
Stanislaus	1,699,230	1,631,987	1,631,987
Sutter	305,544	293,453	293,453
Tehama	149,509	143,593	143,593
Trinity	26,337	25,295	25,295
Tulare	2,385,366	2,290,970	2,290,970
Tuolumne	45,301	43,508	43,508
Ventura	2,166,128	2,080,409	2,080,409
Yolo	1,012,921	972,837	972,837
Yuba	59,645	57,285	57,285
<b>Total</b>	<b>\$ 136,373,665</b>	<b>\$ 130,977,000</b>	<b>\$ 130,977,000</b>

<sup>3</sup> Based on prior, one-time allocation approved by council.

<sup>4</sup> Actual 2021-22 appropriation amount is \$132.145m.