



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 23-008*

For business meeting on January 20, 2023

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**Title**

Judicial Council: 2023 Legislative Priorities

**Agenda Item Type**

Action Required

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

None.

**Effective Date**

January 20, 2023

**Recommended by**

Legislation Committee

Hon. Marla O. Anderson, Chair

**Date of Report**

December 16, 2022

**Contact**

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### Executive Summary

Each year, the Judicial Council adopts legislative priorities to further key council objectives in the upcoming legislative year. Last year, the council's legislative priorities focused on implementing efficiencies in the courts, investing in the judicial branch, and expanding remote access to the courts.

The Legislation Committee recommends a similar approach for consideration by the Judicial Council for the 2023 legislative year, including stable and reliable funding to address increased costs and plan for the future, sufficient resources to improve access to the courts that includes remote access, adequate judgeships and judicial officers in counties with the greatest need, availability of verbatim records of court proceedings, and operational efficiencies in the courts.

### Recommendation

The Legislation Committee recommends that the Judicial Council approve the following legislative priorities for 2023:

1. Advocate for the following:

- a. Continued investment in the judicial branch to include stable and reliable funding for courts to address annual cost increases in baseline operations and plan for the future; and
  - b. Sufficient resources to improve physical access to the courts by keeping courts open, to expand access by increasing the ability of court users to conduct branch business online, to strengthen programs and services that have been restored over the past few years, and to continue to implement innovations in programs and services;
2. Continue to seek an adequate number of judgeships and judicial officers in counties with the greatest need;
  3. Continue to promote the availability of verbatim records of court proceedings by working collaboratively to address court reporter shortages and exploring innovations in technology;
  4. Seek legislative authorization, if needed and authorized by the Judicial Council in 2023, for the disposition of unused courthouses in a fair market value transaction, with the proceeds to be directed to the State Court Facilities Construction Fund (the successor fund of the Immediate and Critical Needs Account) established by Senate Bill 1407 (Perata; Stats. 2008, ch. 311) or any other Judicial Council facilities fund authorized by the Legislature;
  5. Continue to sponsor or support legislation to improve judicial branch operational efficiencies, including cost-savings and cost-recovery measures as well as the ability to conduct proceedings, in whole or in part, using remote technology in order to expand safe and reliable access to justice; and
  6. Delegate to the Legislation Committee the authority to take positions or provide comments on behalf of the Judicial Council on proposed legislation (state and federal), administrative rules or regulations, and proposals by other bodies or agencies after evaluating input from council advisory bodies, council staff, and the courts, provided that the input is consistent with the council's established policies and precedents.

### **Relevant Previous Council Action**

The council has taken a variety of actions over the past years related to the above recommendations. A summary of recent key actions in these areas follows.

### **Budget**

In 2009 and 2010, the council adopted as a key legislative priority for the following year advocating to secure sufficient funding for the judicial branch to allow the courts to meet their constitutional and statutory obligations and provide appropriate and necessary services to the public. In 2011, the council adopted as a key legislative priority for 2012 advocating against further budget reductions and for sufficient resources to allow trial courts to be in a position to reopen closed courts and restore critical staffing, programs, and services that were reduced or eliminated in the preceding several years. Another key legislative priority for 2012 was to

advocate for a combination of solutions to restore funding for a portion of the funding eliminated from the branch budget since 2008.

In 2013, the council adopted a key legislative priority of advocating to achieve budget stability for the judicial branch, including advocating against further budget reductions and for sufficient resources to allow courts to be in a position to reopen closed courthouses; restore court facility construction and maintenance projects; and restore critical staff, programs, and services that were reduced or eliminated in the preceding four years.

Annually since 2014, the council has included similar priorities to achieve budget stability for the judicial branch, including advocating for

- sufficient fund balances to allow courts to manage cash flow challenges;
- a method for stable and reliable funding for courts to address annual cost increases in baseline operations;
- sufficient additional resources to allow courts to improve physical access to the courts by keeping courts open and to expand access by increasing the ability of court users to conduct branch business online; and
- restoration of programs and services that were reduced or eliminated in the preceding few years.

Following several years of steady increases in operational and facility funding, the current year budget (Budget Act of 2022) is the largest ongoing budget in branch history and reflects the tireless work by the Chief Justice to secure adequate, stable, and sustainable funding.

For the first time, trial court statewide average funding will exceed 92 percent of the estimated workload need. This is a remarkable achievement resulting from the steady increases made since fiscal year 2012–13 when trial courts were funded at just 55 percent of workload need.

Comparing more recently, this current budget marks a significant improvement over the fiscal year 2020–21 average funding level of 74.3 percent as the courts faced the COVID-19 pandemic.

The current year budget provides a total of \$1.2 billion in new operational and facility funding for the judicial branch and addresses core structural funding issues including trial court workload, equity, operational cost increases, and civil assessments. These funding issues have been long-standing priorities of the Chief Justice, the Judicial Council, and the courts in support of improved access to justice for the public. Additionally, with these critical ongoing investments comes increased accountability reporting to the Legislature on various trial court operational and budgetary metrics.

Other significant items funded in the current year budget include additional funding for branchwide technology modernization, data governance, 23 new judgeships, dependency counsel, legal aid programs, additional facilities maintenance/modifications, and new courthouse construction.

### Judgeships and SJO conversions

Government Code section 69614(c)(1) and (3) requires the Judicial Council to provide an update to the Legislature and Governor every even-numbered year on the factually determined need for new judgeships in the California superior courts and to report on the conversion of certain subordinate judicial officer (SJO) positions to judgeships.

Based on the 2022 Judicial Needs Assessment, 17 courts need new judgeships, for a total need of 98 full-time equivalent judicial officers statewide.

#### 2022 Judicial Needs Assessment

Court	Authorized and Funded Judicial Positions*	2022 Assessed Judicial Need	Number of Judgeships Needed† (B – A)	Percentage Judicial Need Over AJP (C / A)
Tehama	4.3	5.6	1	23%
Lake	4.7	5.5	1	21%
Humboldt	8.0	9.3	1	13%
Shasta	13.0	14.9	1	8%
Orange	144.0	145.3	1	1%
Madera	10.3	12.3	2	19%
Kings	10.6	13.0	2	19%
Placer	15.5	17.5	2	13%
Merced	13.0	15.1	2	15%
Stanislaus	26.0	28.1	2	8%
Tulare	25.0	28.6	3	12%
Sacramento	77.5	82.2	4	5%
San Joaquin	35.5	41.8	6	17%
Fresno	53.0	60.0	7	13%
Kern	47.0	58.8	11	23%
Riverside	89.0	111.7	22	25%
San Bernardino	100.0	130.5	30	30%
<b>Total</b>			<b>98</b>	

The Judicial Council has sponsored numerous bills to authorize and fund additional judgeships. In 2005, the council sponsored Senate Bill 56 (Dunn; Stats. 2006, ch. 390), which authorized the first 50 of the 150 critically needed judgeships. Full funding was provided in the Budget Act of 2007, and judges were appointed to each of the 50 judgeships created by SB 56.

In 2007, the council secured the second set of 50 new judgeships (Assem. Bill 159 [Jones]; Stats. 2007, ch. 722), with funding to have allowed appointments to begin in June 2008. However, because of budget constraints, the funding was delayed until July 2009, allowing the state to move the fiscal impact from fiscal year (FY) 2007–08 to FY 2009–10. The Governor included funding for the second set of judgeships in the proposed Budget Act of 2009, but the funding ultimately was made subject to what was called the “federal stimulus trigger.” This trigger was “pulled,” and the funding for the new judgeships and various other unrelated items made contingent on the trigger (a specified threshold of federal stimulus funding) was not provided.

Almost every year from 2005 to 2022, the Judicial Council has sponsored one or more bills to authorize funding for new judgeships (see the table below).

#### Judicial Council–Sponsored Legislation to Authorize or Fund Additional Judgeships

Year	Bill No.	Author	Purpose	Result
2008	SB 1150	Corbett	Authorize third set of new judgeships	Held in Senate Appropriations Committee
2009	SB 377	Corbett	Authorize third set of new judgeships	Held in Senate Appropriations Committee
2011, 2012	AB 1405	Committee on Judiciary	Authorize third set of new judgeships	Did not move forward
2014	SB 1190	Jackson	Authorize third set of new judgeships*	Held in Senate Appropriations Committee
2015	SB 229	Roth	Fund 12 of 50 previously authorized judgeships <sup>†</sup>	Vetoed by Governor Brown
2016	SB 1023	Committee on Judiciary	Fund 12 of 50 previously authorized judgeships <sup>†</sup>	Held in Senate Appropriations Committee
2016	AB 2341	Obernolte	Reallocate judgeships <sup>‡</sup>	Held in Senate Appropriations Committee
2017	SB 38	Roth	Authorize judgeships	Held in Assembly Appropriations Committee
2017	SB 39	Roth	Reallocate judgeships	Held in Senate Appropriations Committee
2017	AB 414	Medina	Reallocate judgeships	Did not move forward
2019	SB 16	Roth	Fund 25 of 50 previously authorized judgeships**	Held in Senate Appropriations Committee

\* SB 1190 also sought to secure funding for the second set of 50 new judgeships approved in 2007 but not yet funded.

† SB 229 sought to appropriate \$5 million for the funding.

‡ Specifically, AB 2341 sought to reallocate up to five vacant judgeships from courts with more authorized judgeships than their assessed judicial need to courts with fewer judgeships than their assessed judicial need. The allocation of the vacant judgeships would be based on a methodology approved by the Judicial Council and under criteria contained in Government Code section 69614(b).

\*\* Although SB 16 was held in the Senate Appropriations Committee, that same year the Budget Act of 2019 (Assem. Bill 74; Stats. 2019, ch. 23) provided \$30.4 million in funding for 25 judgeships, leaving unfunded the remaining 23 of the 50 judgeships authorized in 2007 (Assem. Bill 159 [Jones]; Stats. 2007, ch. 722).

**Additional Judgeships Authorized and Funded in the Budget Act**

Year	Bill No.	Author	Purpose	Result
2017	AB 103	Committee on Budget	Reallocate vacant judgeships (2 each from Alameda and Santa Clara Counties) to Riverside and San Bernardino Counties	Signed by the Governor (Stats. 2017, ch. 17)
2018	SB 847	Committee on Budget & Fiscal Review	Budget trailer bill: Added 2 new judgeships to the Superior Court of Riverside County, added 1 new justice to the Fourth Appellate District, Div. 2 (Riverside/San Bernardino)	Signed by the Governor (Stats. 2018, ch. 45)
2018	SB 840	Committee on Budget & Fiscal Review	Budget Act of 2018, appropriated \$2.9 million for 2 new judgeships in the Superior Court of Riverside County, appropriated \$1.2 million for the new justice and staff in the Fourth Appellate District authorized in the budget trailer bill (SB 847)	Signed by the Governor (Stats. 2018, ch. 29)
2019	AB 74	Ting	Budget Act of 2019, appropriated \$30.4 million for 25 previously unfunded judgeships	Signed by the Governor (Stats. 2019, ch. 23)
2022	SB 154	Skinner	Budget Act of 2022, appropriated \$39.1 million for the remaining 23 previously unfunded judgeships*	Signed by the Governor (Stats. 2022, ch. 43)

\* This action fully funds the last remaining unfunded judgeships from the second set of 50 new judgeships (Assem. Bill 159 [Jones]; Stats. 2007, ch. 722).

With regard to subordinate judicial officer conversions, existing law allows the Judicial Council to convert a total of 162 SJO positions, upon vacancy, to judgeships. The statute caps the number that may be converted each year at 16 and requires the council to seek legislative ratification to exercise its authority to convert positions in any given year. For the past five years, that legislative ratification took the form of language included in the annual Budget Act. The council converted the maximum 16 positions in each fiscal year from 2006–07 through 2010–2011; 20 in FY 2011–12;<sup>1</sup> 13 in FY 2012–13; 11 in FY 2013–14; 9 in FY 2014–15; 11 in FY 2015–16; 6 in

<sup>1</sup> The total number of conversions in fiscal year 2011–12 exceeded 16 because of the enactment of Senate Bill 405 (Stats. 2011, ch. 705), which increased the number of allowable conversions in specific circumstances for that fiscal year.

both FY 2016–17 and FY 2017–18; 15 in FY 2018–19; one in FY 2019–20, and one in FY 2020–21. There have not been any conversions in fiscal year 2021–22 as of December 1, 2022.

Additionally, legislation enacted in 2010 (Assem. Bill 2763; Stats. 2010, ch. 690) expedites conversions by authorizing up to 10 additional conversions per year if the conversion results in a judge’s being assigned to a family or juvenile law assignment previously presided over by an SJO. This legislation requires that the ratification for these additional 10 positions be secured through legislation separate from the annual budget act. Since 2011, the Judicial Council has sponsored the following legislation to secure ratification of these additional SJO conversions:

Senate Bill 405 (Stats. 2011, ch. 705)	Assembly Bill 1519 (Stats. 2015, ch. 416)
Assembly Bill 1403 (Stats. 2013, ch. 510)	Assembly Bill 2882 (Stats. 2016, ch. 474)
Assembly Bill 2745 (Stats. 2014, ch. 311)	Assembly Bill 1692 (Stats. 2017, ch. 330)

In total, 157 of the 162 SJO positions have been converted; only 5 remain.

### **Disposition of vacant courthouses**

In December 2015, the Judicial Council approved sponsorship of a proposal to authorize the disposition of the San Pedro Courthouse as nonsurplus property, with proceeds of its sale to be placed in the Immediate and Critical Needs Account (ICNA) of the State Court Facilities Construction Fund.

In February 2016, the Judicial Council authorized and approved the sale of the Corning Courthouse to Tehama County and the Chico Courthouse to Butte County in fair market value transactions, with proceeds from those sales treated in the same manner as in the final form of legislative authorization for disposition of the San Pedro Courthouse. The Judicial Council sponsored the legislation authorizing disposition of the San Pedro Courthouse (Assem. Bill 1900 [Jones-Sawyer]; Stats. 2016, ch. 510, codified at Gov. Code, § 70395).

In December 2016, the Judicial Council authorized and approved the sale of the Clovis, Firebaugh, and Reedley Courthouses in Fresno County and the Avenal and Corcoran Courthouses in Kings County as nonsurplus properties, with proceeds from those sales directed to ICNA. The Judicial Council sponsored Senate Bill 403 (Canella; Stats. 2017, ch. 358) authorizing the sale of the Avenal, Chico, Clovis, Corcoran, Corning, Firebaugh, and Reedley Courthouses.

Most recently, the Judicial Council authorized the sale of the West Los Angeles Courthouse and the Mental Health Courthouse in Los Angeles, with proceeds from those sales directed to ICNA. The authorizing legislation, Assembly Bill 2309 (Bloom; Stats. 2018, ch. 536), was signed by the Governor on September 19, 2018.

## **Efficiencies**

To address the budget crisis faced by the branch, in April 2012 the Judicial Council approved for sponsorship 17 legislative proposals for trial court operational efficiencies, cost recovery, and new revenue. An additional 6 efficiency proposals were approved for sponsorship in April 2013. Several noncontroversial and relatively minor measures were successfully enacted into law, while several remaining efficiencies were rejected by the Legislature,<sup>2</sup> including one seeking to eliminate the requirement that courts destroy infraction records relating to possession or transport of marijuana.<sup>3</sup> The Budget Act of 2019 included \$13.901 million in FY 2019–20 and \$2.929 million in FY 2020–21 to support the increased workload for the trial courts as a result of the enactment of Assembly Bill 1793 (Stats. 2018, ch. 993), which requires sentence modification of past cannabis conviction cases under the Control, Regulate, and Tax Adult Use of Marijuana Act of 2016, also known as Proposition 64.

Rule 10.12(a) of the California Rules of Court authorizes the Legislation Committee to act for the council by:

- (1) Taking a position on behalf of the council on pending legislative bills, after evaluating input from the council advisory bodies and Judicial Council staff, and any other input received from the courts, provided that the position is consistent with the council’s established policies and precedents;
- (2) Making recommendations to the council on all proposals for council-sponsored legislation and on an annual legislative agenda after evaluating input from council advisory bodies and Judicial Council staff, and any other input received from the courts; and
- (3) Representing the council’s position before the Legislature and other bodies or agencies and acting as liaison with other governmental entities, the bar, the media, the judiciary, and the public regarding council-sponsored legislation, pending legislative bills, and the council’s legislative positions and agendas.

## **Policy implications**

The mission of the Judicial Council includes providing leadership for improving the quality of justice and advancing the consistent, independent, impartial, and accessible administration of justice. Among the guiding principles underlying this mission is a commitment to meet the needs of the public, which includes reinvestment in our justice system to preserve and improve access to justice, which Californians expect and deserve.

Further, Chief Justice Tani G. Cantil-Sakauye has proposed a framework to increase public access to the courts. Her vision, entitled Access 3D, combines strategies from the courts—actions that will ensure greater public access—with a reasonable reliance on funds reinvested

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<sup>2</sup> See Attachment A for a list of efficiency and cost-recovery measures approved and rejected by the Legislature.

<sup>3</sup> Health & Saf. Code, § 11361.5.



into the judicial branch. Access 3D is a multidimensional approach to ensuring that Californians have access to the justice system they demand and deserve. The three dimensions of access are improved physical access, by keeping courts open and operating during hours that benefit the public; increased remote access, by increasing the ability of court users to conduct branch business online; and enhanced equal access, by serving people of all languages, abilities, and needs, reflecting California’s diversity. The proposed 2023 legislative priorities continue to support the goals of Access 3D.

**Comments**

This proposal did not circulate for public comment.

**Alternatives considered**

No alternatives were considered.

**Fiscal and Operational Impacts**

The public expects and deserves access to California’s courts. Providing timely access to high-quality justice is the cornerstone of Access 3D. The key to the success of Access 3D is a robust reinvestment in the courts. Adoption of the proposed legislative priorities will allow Judicial Council staff to support the goals of Access 3D.

The recommendations support many of the council’s strategic plan goals, including Goal I, Access, Fairness, and Diversity, by seeking to secure funding to provide access to the courts for all Californians and being responsive to the state’s cultural and ethnic diversity; Goal II, Independence and Accountability, by seeking to secure sufficient judicial branch resources to ensure accessible, safe, efficient, and effective services to the public; and Goal IV, Quality of Justice and Service to the Public, by seeking funding to continue critical programs to meet the needs of court users.

**Attachments and Links**

1. Attachment A: *Efficiencies and Cost-Recovery Proposals Approved or Rejected by the Legislature*

## **Efficiencies and Cost-Recovery Proposals Approved or Rejected by the Legislature**

### **Approved by the Legislature**

*Senate Bill 75 (Stats. 2013, ch. 31)*, a trailer bill of the Budget Act of 2013, includes the following efficiency/cost-recovery proposals:

- Increase the statutory fee from \$10 to \$15 for a clerk to mail service of a claim and order on a defendant in small claims actions.
- Prohibit the Franchise Tax Board and the State Controller from conditioning submission of court-ordered debt to the Tax Intercept Program on the court's or county's providing the defendant's social security number, while still allowing the social security number to be released if the Franchise Tax Board believes it would be necessary to provide accurate information.
- Increase the fee from \$20 to \$50 for exemplification of a record or other paper on file with the court.
- Modify the process for evaluating the ability of a parent or guardian to reimburse the court for the cost of court-appointed counsel in dependency matters.

*Assembly Bill 619 (Stats. 2013, ch. 452)* revised the formula for assessing interest and penalties for delinquent payments to the State Court Facilities Construction Fund to conform to the existing statute governing interest and penalties for late payments to the Trial Court Trust Fund by using the Local Agency Investment Fund rate.

*Assembly Bill 648 (Stats. 2013, ch. 454)* clarified language from the prior year that created a new \$30 fee for court reporters in civil proceedings lasting one hour or less.

*Assembly Bill 1004 (Stats. 2013, ch. 460)* allowed magistrates' signatures on arrest warrants to be in the form of digital signatures.

*Assembly Bill 1293 (Stats. 2013, ch. 382)* established a new \$40 probate fee for filing a request for special notice in certain proceedings.

*Assembly Bill 1352 (Stats. 2013, ch. 274)* streamlined court records retention provisions.

*Senate Bill 378 (Stats. 2013, ch. 150)* provided that an electronically digitized copy of an official record of conviction is admissible to prove a prior criminal act.

*Senate Bill 843 (Stats. 2016, ch. 33)*, commencing January 1, 2017, and until January 1, 2021, granted a defendant six peremptory challenges in a criminal case if the offense charged is punishable with a maximum term of imprisonment of one year or less, and reduced the number

of peremptory challenges that may be exercised separately by a defendant who is jointly tried from four to two in cases in which the maximum term of imprisonment is one year or less. Required the Judicial Council to conduct a study and, on or before January 1, 2020, submit a report to the Legislature on the reduction in the number of peremptory challenges.

*Assembly Bill 2232 (Stats. 2016, ch. 74)* corrected drafting errors in the rules governing retention of court files regarding certain misdemeanor traffic offenses.

### **Rejected by the Legislature**

- ***Administrative assessment for maintaining records of convictions under the Vehicle Code.*** Clarify that courts are required to impose the \$10 administrative assessment for *each conviction* of a violation of the Vehicle Code, not just upon a “subsequent” violation.
- ***Audits.*** Defer required audits until trial courts and the Judicial Council receive specified funding to cover the cost of the audits.
- ***Bail bond reinstatement.*** Authorize courts to charge a \$65 administrative fee to reinstate a bail bond after it has been revoked.
- ***Collections.*** Allow courts to retain and distribute collections rather than transferring collected funds to county treasuries with distribution instructions.
- ***Court costs for deferred entry of judgment.*** Clarify that the court can recoup its costs in processing a request or application for diversion or deferred entry of judgment.
- ***Court reporter requirement in nonmandated case types (Sen. Bill 1313; 2014 [Nielsen]).*** Repeal Government Code sections 70045.1, 70045.2, 70045.4, 70045.75, 70045.77, 70045.8, 70045.10, 70046.4, 70050.6, 70056.7, 70059.8, 70059.9, and 70063 to eliminate the unfunded mandate that the enumerated courts (Butte, El Dorado, Lake, Mendocino, Merced, Modoc, Mono, Monterey, Nevada, San Luis Obispo, Solano, Tehama, Trinity, and Tuolumne Counties) use court reporters in specified nonmandated case types.
- ***Destruction of records relating to possession or transportation of marijuana.*** Eliminate the requirement that courts destroy infraction records relating to possession or transport of marijuana.
- ***File search fee for commercial purposes.*** Allow courts to charge a \$10 fee to commercial enterprises, except media outlets that use the information for media purposes, for any file, name, or information search request.

- ***Marijuana possession infractions.*** Amend Penal Code section 1000(a) to exclude marijuana possession, per Health and Safety Code section 11357(b), from eligibility for deferred entry of judgment.
- ***Notice of mediation.*** Amend Family Code section 3176 to eliminate the requirement for service by certified, return receipt requested, postage-prepaid mail for notice of mediation, and clarify that the court is responsible for sending the notice.
- ***Notice of subsequent DUI.*** Repeal Vehicle Code section 23622(c) to eliminate the court's responsibility to provide notification of a subsequent DUI to courts that previously convicted the defendant of a DUI.
- ***Penalty assessments.*** Revise and redirect the \$7 penalty assessment from court construction funds to the State Court Facilities Construction Fund.
- ***Preliminary hearing transcripts.*** Clarify that preliminary hearing transcripts must be produced only when a defendant is held to answer the charge of homicide.
- ***Sentencing report deadlines (Assem. Bill 1214; 2015 [Achadjian]/Assem. Bill 2129; 2016 [Lackey]).*** Amend Penal Code section 1203 to require courts to find good cause before continuing a sentencing hearing for failure by the probation department to provide a sentencing report by the required deadlines.
- ***Trial by written declaration (Assem. Bill 2871; 2016 [Oberholte]).*** Eliminate the trial de novo option when the defendant in a Vehicle Code violation has not prevailed on his or her trial by written declaration.
- ***Monetary sanctions against jurors (Assem. Bill 2101; 2016 [Gordon]).*** Amend Code of Civil Procedure section 177.6 to add jurors to the list of persons subject to sanctions.