



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on November 30, 2018

Title	Agenda Item Type
Judicial Council: 2019 Legislative Priorities	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	November 30, 2018
Recommended by	Date of Report
Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair	November 9, 2018
	Contact
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Executive Summary

Each year, the Judicial Council authorizes sponsorship of legislation to further key council objectives and establishes priorities for the upcoming legislative year. In past years, the council's legislative priorities have focused on implementing efficiencies in the courts, investing in the judicial branch, and securing critically needed judgeships. The Policy Coordination and Liaison Committee (PCLC) recommends to the Judicial Council a similar approach for the 2019 legislative year.

Recommendation

The Policy Coordination and Liaison Committee recommends that the Judicial Council approve the following legislative priorities in 2019:

1. Advocate for (a) continued investment in the judicial branch to include a method for stable and reliable funding for courts to address annual cost increases in baseline operations and plan for the future, and for (b) sufficient additional 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, and to restore programs and services that were reduced over the past few years;

2. Increase the number of judgeships and judicial officers in superior courts with the greatest need by:
 - Seeking funding for 10 of the 48¹ authorized but unfunded judgeships, to be allocated to the courts with the greatest need based on the most recently approved Judicial Needs Assessment;
 - Seeking funding for one additional justice in the Court of Appeal, Fourth Appellate District, Division 2 (Inyo, Riverside, and San Bernardino Counties); and
 - Advocating for legislative ratification of the Judicial Council’s authority to convert 16 subordinate judicial officer (SJO) positions to judgeships in eligible courts, and sponsoring legislation for legislative ratification of the council’s authority to convert up to 10 additional SJO positions to judgeships, in eligible courts, if the conversion will result in an additional judge sitting in a family or juvenile law assignment that was previously presided over by an SJO;
3. Seek legislative authorization, if needed, for the disposition as authorized by the Judicial Council of unused courthouses in 2019 in a fair market value transaction, with the proceeds to be directed to the Immediate and Critical Needs Account (ICNA) of the State Court Facilities Construction Fund established by Senate Bill 1407 (Perata; Stats, 2008, ch. 311) or any other Judicial Council facilities fund authorized by the Legislature;
4. Continue to sponsor or support legislation to improve judicial branch operational efficiencies, including cost savings and cost recovery measures;
5. Advocate for legislation to implement the recommendations of the Commission on the Future of California’s Court System, as recommended by the Judicial Council and its advisory bodies;
6. Advocate for legislation to implement pretrial detention reform; and
7. Delegate to PCLC the authority to take positions or provide comments on behalf of the Judicial Council on proposed legislation (state and federal) and administrative rules or regulations, 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 description of recent key actions in these areas follows.

¹ Senate Bill 847 (Stats. 2018, ch. 45) provided two judgeships to the Superior Court of California, County of Riverside. Leaving 48 of the authorized, but unfunded judgeships. SB 847 also added 1 new justice in the Court of Appeal, Fourth Appellate District, Division Two.

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 December 2011, the council adopted as a key legislative priority for 2012 advocating against further budget reductions and for sufficient resources to allow counties 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 provide funding restorations 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 (1) sufficient fund balances to allow courts to manage cash flow challenges; (2) a method for stable and reliable funding for courts to address annual cost increases in baseline operations; and (3) sufficient additional resources to allow courts 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, and to restore programs and services that were reduced or eliminated in the preceding few years.

Judgeships and SJO conversions

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 2007 Budget Act, 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 2009 Budget Act, but the funding ultimately was made subject to what has been called the “federal stimulus trigger.” This trigger was “pulled,” and the funding for the new judgeships and the various other items made contingent on the trigger was not provided.

Almost every year since then, 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 [†]	Vetoed by Governor Brown
2016	SB 1023	Committee on Judiciary	Fund 12 of 50 previously authorized judgeships [†]	Held in Senate Appropriations Committee
2016	AB 2341	Obernolte	Reallocate judgeships [‡]	Held in Senate Appropriations Committee
2017	SB 39	Roth	Reallocate judgeships	Stalled in legislative process
2017	AB 414	Medina	Reallocate judgeships	Stalled in legislative process

* 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 council and under criteria contained in Government Code section 69614(b).

Each new judgeship costs approximately \$1.6 million (with an 8.87 full-time equivalent [FTE] staff complement)² ongoing.

With regard to subordinate judicial officer conversions, existing law allows the Judicial Council to convert a total of 162 subordinate judicial officer 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 2007 through 2012; 13 in FY 2012–13; 11 in 2013–14; 9 in 2014–15; 11 in 2015–16; and 6 in both 2016–17 and 2017–18. So far in FY 2018–19, 5 positions have been converted.

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

² Staff complement that is needed to support a new judgeship using the Resource Assessment Study model. That model suggests that 8.87 FTE are needed to provide both direct and indirect support of the judicial officer. The 12 judgeships previously sought in Senate Bills 1023 (2016) and 229 (2015) included funding for only 3.0 FTE.

through legislation separate from the budget. Since 2011, the Judicial Council has sponsored legislation to secure legislative 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, 145 SJO positions have been converted, leaving only 17 of the total 162 positions that remain to be converted.

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 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), which authorizes 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,³ including one seeking to

³ See Attachment B for a list of efficiency and cost-recovery measures approved and rejected by the Legislature.

eliminate the requirement that courts destroy infraction records relating to possession or transport of marijuana.⁴ With the passage of Proposition 64 in November 2016, this requirement has become increasingly burdensome on the trial courts.

Futures Commission Recommendations

In July 2014, Chief Justice Tani G. Cantil-Sakauye established the Commission on the Future of California's Court System. The commission was tasked with making recommendations about how court operations could be improved and streamlined. The commission released its final recommendations on April 26, 2017. In May 2017, Chief Justice Cantil-Sakauye directed immediate Judicial Council action on several of the recommendations:

- *Civil adjudication of minor traffic infractions:* The Chief Justice appointed the Futures Traffic Working Group to collaborate with the Judicial Council's Traffic Advisory Committee, Civil and Small Claims Advisory Committee, Advisory Committee on Providing Access and Fairness, and Criminal Law Advisory Committee to develop for Judicial Council consideration a proposal to implement and evaluate a civil model for adjudication of minor vehicle infractions.
- *Revision of civil case tiers and streamlined civil procedures:* The Civil and Small Claims Advisory Committee is directed to assess and make recommendations to the Judicial Council on advancing a legislative proposal for increasing the maximum jurisdictional dollar amounts for limited civil cases to \$50,000, creating a new intermediate civil case track with a maximum jurisdictional dollar amount of \$250,000, and streamlining methods for litigating and managing all types of civil cases.
- *Assistance for self-represented litigants:* The Advisory Committee on Providing Access and Fairness is directed to develop a proposal for Judicial Council consideration of the structure, content, and resource requirements for an education program to aid the growing number of self-represented litigants (SRLs) in small claims and civil cases where SRLs are most common.
- *Expansion of technology in the courts:* The Judicial Council's Information Technology Advisory Committee is directed to consider, for presentation to the Judicial Council, the feasibility of and resource requirements for developing and implementing a pilot project to allow remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings. Further, the committee is directed to explore available technologies and make recommendations to the Judicial Council on the potential for a pilot project using voice-to-text language interpretation services at court filing and service counters and in self-help centers. Finally, the committee is directed to explore and make

⁴ Health & Saf. Code, § 11361.5.

recommendations to the council on the potential for a pilot project using intelligent chat technology to provide information and self-help services.

Delegation of authority

California Rules of Court, rule 10.12(a),⁵ authorizes PCLC 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.

(Cal. Rules of Court, rule 10.12(a).)

Analysis/Rationale

The mission of the Judicial Council includes providing leadership for improving the quality 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 avoid further reductions and to preserve access to justice, which Californians expect and deserve.

Further, the Chief Justice 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 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

⁵ See www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_12.

- Enhanced equal access, by serving people of all languages, abilities, and needs, reflecting California's diversity.

The proposed 2019 legislative priorities continue to support the goals of Access 3D.

Judgeships and SJO conversions

In recent years, the council has sponsored legislation to secure the 150 most critically needed judgeships. To be most effective, PCLC recommends that the council commit to advocating for funding of new judgeships and to ratifying the authority of the council to convert vacant subordinate judicial officer positions to judgeships in eligible courts.

Disposition of vacant courthouses

Under existing law, disposition of a court facility requires authorizing legislation. The proposed legislation requires the proceeds of the sales to be deposited into the Immediate and Critical Needs Account, which funds the most critical judicial branch facilities projects.

Efficiencies and continued sponsorship

The judicial branch is working to identify measures that will save time and resources and better serve the public. As a result, courts have implemented dozens of programs, projects, efforts, and new ideas across California to make courts more efficient in a time of sharply reduced budgets. The Judicial Council will continue to seek out, sponsor, and support legislation that provides operational efficiencies and cost recovery for the judicial branch.

Recommendations of the Commission on the Future of California's Court System

On May 17, 2017, the Chief Justice directed the Judicial Council to take immediate action on the commission's listed recommendations (see bulleted list under Relevant Previous Council Action). Pending the final evaluation and review from the assigned advisory bodies, the Judicial Council should be prepared to quickly bring any necessary statutory amendments to the Legislature to effectively implement the recommendations.

Delegation of authority

The council has delegated to PCLC the authority to act on already introduced legislation. However, administrative bodies or commissions often ask for comments on legislative proposals not yet in the formal legislative process or on proposed rules and regulations that may affect the branch. PCLC is in the most appropriate position to analyze and take positions on these actions. The process for taking a position on pending legislation or a proposed regulation is the same as for pending legislation: staff would work with the advisory bodies for feedback on a recommended position and then bring the proposal to PCLC for a final determination. Delegating this authority will allow PCLC to be nimble in responding to these proposals and will ensure that the council position is presented in a timely manner.

Alternatives considered

The council has sponsored legislation in recent years to secure the most critically needed judgeships. In previous years, the council considered whether to request the needed judgeships in phases, as outlined below:

- Seek funding for 12 of the remaining 48 unfunded judgeships, assigned to the courts with the greatest need based on the most recently approved Judicial Needs Assessment.
- Consider not pursuing funding for the year. The lack of judicial resources, however, has continued to significantly impair the ability to deliver justice, and failure to move forward would only further deny Californians access to justice.
- Continue recent requests and pursue funding for the 48 judgeships already authorized. This was the highest-cost option and was not successful with the Legislature or the Governor.
- Request funding over multiple years, as follows:
 - Request the funding of new judgeships over two years.
 - Request the funding over three years, with 10 the first year, 15 the second year, and 23 the third year. This was the recommended option.
 - Request the funding over five years, with 10 judgeships funded each year for four years, and 8 in the final year.

No alternatives were considered for the remaining recommendations.

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; 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 mailing service of a claim and order on a defendant in small claims actions.
- Prohibit the Franchise Tax Board (FTB) 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 FTB 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, grants 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 reduces 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. Requires 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, 70045.6, 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, Kern, 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.