



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 21-040*

For business meeting on: July 9, 2021

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**Title**

Judicial Branch Budget: 2022–23 Budget Change Proposals for the Supreme Court, Courts of Appeal, Superior Courts, Judicial Branch Facilities Program, Habeas Corpus Resource Center, and Judicial Council

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

None

**Recommended by**

Judicial Branch Budget Committee  
Hon. David M. Rubin, Chair

**Agenda Item Type**

Action Required

**Effective Date**

July 9, 2021

**Date of Report**

June 14, 2021

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### Executive Summary

To continue responsible reinvestment in the judicial branch allowing for greater access to justice for California's citizens, the Judicial Branch Budget Committee unanimously recommends submitting these 2022–23 budget change proposals to the California Department of Finance.

### Recommendation

The Judicial Branch Budget Committee recommends that the Judicial Council, effective July 9, 2021, approve the following 2022–23 budget change proposals (not in priority order) for submission to the California Department of Finance on September 3, 2021:

1. Proposition 66 Costs in the Courts of Appeal and Habeas Corpus Resource Center—\$15.5 million;
2. Appellate Court Security—\$1.5 million;
3. Courts of Appeal Court-Appointed Counsel Program—\$6.4 million;
4. Self-Help Centers in Trial Courts: Expanding In-Person and Online Resources—\$23.3 million;

5. Criminal Justice Improvements to Increase Services and Efficiencies Related to Substance Use Disorders, Mental Illness, and Sex Offender Registration Termination—\$35.9 million;
6. Trial Court Capital-Outlay Funding: 2022–23 through 2025–26—\$151.7 million;
7. Trial Court and Court of Appeal Deferred Maintenance and Emergency Leak Mitigation—\$102.4 million;
8. Facility Modification Prioritization and Costs—\$68 million;
9. Branchwide Information Technology Modernization—\$40.6 million;
10. Language Access Efforts in California Courts—\$17 million;
11. Additional Legal Services Staff for Public Access Work—\$767,000;
12. Trial Court Workload Formula Gap Funding to 85 percent—\$148.1 million; and
13. Judicial Branch Data and Information Governance—\$11.5 million.

A complete description of these BCPs is provided in the Analysis/Rationale section.

### **Relevant Previous Council Action**

Under California Rules of Court, rule 10.101(b)(3), the Judicial Council must “[d]evelop the budget of the judicial branch based on the priorities established and the needs of the courts.” To that end, the council submits budget change proposals (BCPs) on behalf of the Supreme Court, Courts of Appeal, superior courts, Habeas Corpus Resource Center, Judicial Branch Facilities Program, and Judicial Council to the Department of Finance (DOF). The recommendations in this report are consistent with the council’s past practice under this authority.

In July 2016, the Judicial Council established the Judicial Branch Budget Committee (Budget Committee) to assist the council in exercising its duties under rule 10.101 with respect to the judicial branch budget. The council assigned the committee the responsibility of reviewing budget change proposals for the judicial branch, coordinating these budget change proposals, and ensuring that they are submitted to the council in a timely manner.

### **Analysis/Rationale**

This recommendation is consistent with the purpose of the Budget Committee to assist the Judicial Council in exercising its duties under rule 10.101 with respect to the judicial branch budget. The review and recommendation of BCPs for the judicial branch is one of the primary responsibilities of the Budget Committee.

Following are descriptions and estimated costs of each request shown in the list above:

- ***Proposition 66 Costs in the Courts of Appeal (COA) and Habeas Corpus Resource Center (HCRC).*** Proposes 44.5 positions and \$15.5 million General Fund (\$1.1 million one-time and \$14.4 million ongoing) in 2022–23, growing to 84.5 positions and \$20.2 million ongoing General Fund in 2024–25. This proposal will establish 14.5 new positions and permanent General Fund for the Courts of Appeal to support the new workload and associated costs (including appointed counsel, investigation, records

storage, and technology upgrades) to implement Proposition 66, the Death Penalty Reform and Savings Act of 2016, in the Courts of Appeal.

In addition, the proposal will establish a total of 70.0 positions over the course of three years (30.0 in 2022–23, 20.0 in 2023–24, and 20.0 in 2024–25) for HCRC to support the increased workload as a result of the enactment of Prop. 66. Proposition 66 seeks to (1) expand the pool of qualified counsel for capital habeas corpus appointments, (2) transfer the authority for appointing counsel from the Supreme Court to the superior courts, and (3) reaffirm HCRC’s role as the only statewide entity tasked with accepting new state habeas corpus appointments. The proposal will increase the number of attorneys and support staff employed by HCRC to meet the mandates imposed by Prop. 66 and requires an amendment to Government Code section 68661, which currently authorizes HCRC to employ up to 34 attorneys.

- ***Appellate Court Security.*** Proposes 7.0 positions and \$1.5 million ongoing General Fund in 2022–23 to support the services provided by the California Highway Patrol Judicial Protection Section (CHP-JPS). The proposal provides ongoing funds and seven essential California Highway Patrol Judicial Protection Section (CHP-JPS) officers to be located at seven single-officer courthouses of the state appellate courts, consisting of the California Supreme Court and the six appellate districts and divisions of the Courts of Appeal. CHP-JPS’s primary mission is to provide security and protection for the California Supreme Court, the California Courts of Appeal, its personnel, and facilities throughout the state.
- ***Courts of Appeal Court-Appointed Counsel Program.*** Proposes \$6.4 million ongoing General Fund in 2022–23 to support the Courts of Appeal Court-Appointed Counsel Program. The request has two components: (1) \$5.1 million ongoing General Fund for a \$12 rate increase for noncapital appeal appointments, fulfilling the constitutional obligation to provide competent legal representation in the Courts of Appeal to indigent clients sentenced to noncapital terms of imprisonment—the last rate increase was \$10 in 2016–17, with no prior rate change since 2007–08; and (2) \$1.3 million for a permanent 7 percent increase in the Project Offices annual contracts to support a 7 percent increase starting in 2022–23 in the noncapital Courts of Appeal Project Offices annual contracts, so they may meet their obligations to ensure justice through competent and qualified defense counsel for indigent defendants. The increased funding will address and support significant increases in the cost of rent, technology enhancements, staff salaries, and health benefits for the annual contracts of the Courts of Appeal’s Court-Appointed Counsel Project Offices. The last contract augmentation was 4.5 percent in 2017–18, with no prior augmentation since 2007–08.

- ***Self-Help Centers in Trial Courts—Expanding In-Person and Online Resources.*** Proposes 6.0 positions and \$23.3 million ongoing General Fund in 2022–23 as the next step in implementing recommendations of the Chief Justice’s Commission on the Future of California’s Court System regarding the 4.3 million Californians who come to court each year without an attorney. Funding will support two key initiatives: (1) expanding Self-Help Centers in courts to address unmet needs; and (2) providing resources for information and collaboration to enable court-based Self-Help Centers to expand into unmet areas of civil law, and increase efficiency and effectiveness by expanding equal, remote, and in-person access to resources for self-represented litigants.
- ***Criminal Justice Improvements to Increase Services and Efficiencies Related to Substance Use Disorders, Mental Illness, and Sex Offender Registration Termination.*** Proposes 6.0 positions and \$35.9 million General Fund (\$16.7 million one-time and \$19.2 million ongoing) in 2022–23, and \$34.2 million annually thereafter to assist trial courts in addressing issues related to mental illness and substance use disorders, and to streamline processing of petitions under the newly formed sex offender registry tiered system. This proposal seeks to support trial court administrative and program costs associated with drug and other collaborative courts. The program aims to increase the number of participants and to increase use of evidence-based practices, which are proven to reduce recidivism to improve participant outcomes. Additionally, the proposal will support trial courts in addressing the increased number of Incompetent to Stand Trial (IST) evaluations. According to an internal survey, local courts are struggling to cope with the increased number of IST evaluation requests. Based on recent trends, costs of these IST evaluations will likely increase. Finally, recent legislation created a tier-based system to the state’s sex offender registry allowing eligible registrants to have their registration terminated after completion of time requirements. An estimated 50,000 requests for registry termination may be filed with the courts, which would result in increased costs for determination hearings, case processing, and necessary IT system upgrades. A majority of the funding will be allocated for the development of drug and other collaborative courts, creating guidance on best practices, and assisting in submission of data to a statewide repository. The funding will also provide for enhanced data tracking and reporting of mental health data and court expenditures, development of a statewide inventory of qualified evaluators accessible by the courts, and a system for ongoing recruitment of evaluators throughout the state. In addition, the funding will give trial courts the resources needed to address the growing demand for court services, including an anticipated increase of petitions for sex offender registry termination.
- ***Trial Court Capital-Outlay Funding: 2022–23 through 2025–26.*** Proposes \$151.7 million one-time General Fund in 2022–23 for initial and/or continuing phases of four trial court capital-outlay projects. This request is consistent with the projects in the Governor’s 2021 Infrastructure Capital Funding Plan presented in the Governor’s Budget

and California Five-Year Infrastructure Plan for 2021–22. This plan proposes funding for projects over the next five fiscal years. For the budget year plus three fiscal years, the plan proposes a four-year total of \$2.052 billion for capital outlay for initial and/or continuing phases of 13 projects. Projects in the Judicial Council’s Capital-Outlay Budget Change Proposals (COBCPs) for fiscal years 2023–24 through 2025–26 would also be consistent with this plan.

Delay in capital-outlay funding postpones advancement of the Judicial Council’s five-year infrastructure plan for trial court facilities. This plan determines the funding priority for projects from the council’s Statewide List of Trial Court Capital-Outlay Projects. These needed projects replace or renovate deficient facilities statewide.

- ***Trial Court and Court of Appeal Deferred Maintenance and Emergency Leak Mitigation.*** Proposes 3.0 positions and \$102.4 million (\$1.8 million one-time, and \$100.6 million ongoing) General Fund in 2022–23 to support deferred maintenance projects for trial courts and the Courts of Appeal, and to implement water leak detection equipment and software that will quickly identify emergency water leaks and support water conservation measures. The ongoing funding for deferred maintenance is requested to ensure planned, reliable progress in addressing the backlog of \$4.1 billion in deferred maintenance. These projects require staff oversight. The lack of regular and ongoing funding makes it difficult to manage oversight capacity efficiently. The proposed planned, reliable approach to addressing the deferred maintenance projects is more cost-effective. The additional request for one-time funding for water leak detection equipment and software will prevent emergency flooding situations from turning into costly events through early detection. The equipment and software will be installed in an estimated 160 courthouses in the Judicial Council portfolio. The system’s ongoing tracking of water usage provides real-time notification of water usage spikes that may be related to an emergency leak resulting from deferred maintenance or failure of a building system component, or human sabotage. This will allow proactive identification of water leaks, conservation of water resources, and mitigation of more extensive damage to facilities.
- ***Facility Modification Prioritization and Costs.*** Proposes \$68 million including \$35 million ongoing General Fund and \$7.0 million State Court Facilities Construction Fund reimbursement authority to address facility modifications, and \$26 million General Fund over the next three fiscal years to support a planned facility modification to the San Diego Hall of Justice. The annual facility modification budget funds only the most critical building system lifecycle replacements or renovations of major building systems such as HVAC, vertical transportation, and electrical equipment. The cost of repairs and replacements under the facility modification program has increased correspondingly with the economy; however, no adjustments have been made to the budget appropriation since 2014. The reduced purchasing power of this funding forces the Judicial Council to

operate on a run-to-failure mode for many building systems. Failure of building systems results in emergency events, creating higher building maintenance and repair costs, and posing the risk of court closures. Additional funding for the program provides for longevity of the state's assets, extending the useful life of building systems, and replacing aged systems in a timely manner to reduce system failure rates. In addition, this proposal includes funding to cover the state's share of modernizations to the county-owned San Diego Hall of Justice. The Hall of Justice is a shared occupancy building that is managed by the County of San Diego given their majority-occupancy level. The Judicial Council has a contractual obligation to pay for the state's share of this project, but has no available financial resources due to the size, scope, and potential negative fiscal impact to the overall facility modification program. The project is planned over three fiscal years and will require a total of \$26 million, with \$13 million in 2022–23, \$7 million in 2023–24, and \$6 million in 2024–25.

- ***Branchwide Information Technology Modernization:*** Proposes 49.0 positions and \$40.6 million General Funds in 2022–23, and \$40.0 million General Funds ongoing for branchwide information technology modernization initiatives. Over the last fiscal year, the judicial branch has created and formalized the Judicial Branch Modernization program, led by the work from ITAC and the Judicial Council Technology Committee. The modernization program includes initiatives such as information security enhancements, trial court system upgrades, expansion of remote technology, updating to next-generation application and user solutions, implementation of branch digital services, updating and enhancing critical infrastructure, and expanding staff resources to implement and manage the various initiatives associated with the modernization program.
- ***Language Access Efforts in the California Courts.*** Proposes 3.0 positions and \$17 million ongoing General Fund in 2022–23 to support the efforts of the Strategic Plan for Language Access in the California Courts, by funding trial courts for language access services and supporting improvements to the Court Interpreter Data Collection System (CIDCS).

Due to an anticipated increase of interpreter services, increased costs in mandated cases, and the use of independent contractors, the additional funding for the Court Interpreter Program will provide trial courts reimbursement for increased expenditure costs. Funding will also support purchasing and implementing a new cloud-based software platform for the outdated CIDCS, as well as adding staff that can assess and execute system improvements. These improvements include more consistent and accurate data collection, ease of integration with other databases, interpreter compliance validation, payment and registration capability for interpreters, and development of a new court interpreter scheduling system for in-person and remote interpreting assignment functionality that will benefit the California courts, court interpreters, and the public.

- ***Additional Legal Services Staff for Public Access Work.*** Proposes 4.0 positions and \$767,000 ongoing General Fund to address the rapidly increasing volume of work related to requests for legal guidance and support with public access requirements for judicial branch records and proceedings. The additional employees are needed to ensure timely, consistent, and high-quality legal services for an escalating number of public access–related projects, which include: rule 10.500 and Public Access to Judicial Administrative Records (PAJAR); constitutional issues, challenges, and litigation regarding access to court proceedings and records; emergence of remote proceedings and related public access issues; Trial Courts Records Manual maintenance; data governance; open meeting rule (10.75); and copyright issues. The Judicial Council public access work is growing in both frequency and complexity, and impacts every judicial branch client and the work of other Judicial Council offices. Current Legal Services staffing is insufficient to meet the demand.
- ***Trial Court Workload Formula Gap Funding to 85 Percent.*** Proposes \$148.1 million General Fund in 2022–23 and ongoing to fund all trial courts to at least 85 percent of their Workload Formula need. Sufficient funding is needed by the trial courts to continue to provide core services and ensure equal access to justice across California. This request would bring all trial courts in the state to at least 85 percent of their measured workload need and align with judicial branch priorities and goals of equity, fairness, and parity.
- ***Judicial Branch Data and Information Governance.*** Proposes 10.0 positions and \$11.5 million General Fund in 2022–23, and \$7.5 million annually thereafter to establish and implement branch data and information governance needed to improve and expand judicial branch data access, use, and sharing. This proposal aligns with investment in branch technological infrastructure to modernize data management protocols and platforms by employing technological advances in data warehousing, compilation, and data analytics and information-sharing. The proposal will fund (1) Judicial Council headcount for IT infrastructure, data analytics support, and data stewardship; (2) additional technology needed to enhance data management and reporting; and (3) new phases of work following investments made with funding received in 2019–20 and 2021–22 for information technology modernization and data analytics (both of which were one-time funding allocations). The proposal will result in a sustainable data program to address the data needs of the branch, requests for court data, and planning required to deliver services to the people of California and measure their effectiveness.

As the costs associated with each proposal have been estimated based on a high-level concept, the costs may change as the estimates are refined prior to submission to the DOF.

The Budget Committee opted not to recommend a priority for the BCPs because they pared down the list to the highest-priority requests allowing greater flexibility to the Chief Justice and the Administrative Director in conjunction with budget advocacy efforts.

### **Policy implications**

During the 2022–23 BCP review process, other needs within the judicial branch were identified but not recommended for submission. Although these proposals were worthy, the Budget Committee pared down the recommended submissions to only those proposals that represent the branch’s most critical needs. The committee looks forward to reviewing the omitted BCPs for possible future submission.

### **Comments**

These items were not circulated for public comment; however, meetings considering BCP concepts were open to the public and written public comments were accepted. Written public comment was received for the Budget Committee meeting held on March 11, 2021. No written public comment was received for the Budget Committee meeting held on May 18, 2021. At both meetings, BCP concepts were considered and final decisions were made at the latter meeting.

### **Alternatives considered**

The Budget Committee was presented with a list of 27 BCP concepts, which represented funding needs requested by various judicial branch advisory committees and other requesting entities. The Budget Committee had the option to choose to approve any number of these requests—in any priority order—to move forward to develop into BCPs for submission.

The recommended list represents the result of various rounds of deliberation by the Budget Committee and reflects decisions made based on information from Judicial Council staff, including updated 2021–22 budget information that showed an improved revenue forecast, an estimated General Fund budget surplus, additional funding for the branch, and an estimated \$25 billion in federal funds coming to California. This list provides for a budget package that acknowledges that there are multiple competing priorities for state resources, while balancing advocacy for judicial branch needs that will increase access to justice in an efficient and forward-thinking manner.

### **Fiscal and Operational Impacts**

The operational and fiscal impacts to implement the recommendation are minimal.

### **Attachments and Links**

None.