



Completing the Goals of Trial Court Realignment

MAC TAYLOR • LEGISLATIVE ANALYST • SEPTEMBER 28, 2011



AN LAO REPORT

EXECUTIVE SUMMARY

Historically, counties had the primary responsibility for (1) funding the trial courts, (2) constructing and maintaining court facilities, and (3) employing most court employees. However, beginning in 1997, the Legislature adopted a series of statutory changes that shifted or realigned each of these responsibilities from the counties to the state. In enacting these changes, the Legislature sought to create a trial court system that was more uniform in terms of standards, procedures, and performance standards. The Legislature also wanted to maintain a more efficient trial court system through the implementation of cost management and control systems.

In this report, we review the realignment of the trial courts from the counties to the state and assess whether the goals the Legislature set for it have been achieved. In general, our analysis indicates that a number of existing barriers have prevented the trial court realignment from fully achieving the expressed goals and objectives of the Legislature.

By giving individual courts complete control over all employee-related issues, we find that enacted legislation did not go far enough in providing the state sufficient control and oversight over these significant costs. For example, the state and individual trial courts lack complete control over the retirement and health benefits being provided to some court workers, and there are indications that trial courts have not effectively bargained costs in their negotiations with trial court employees.

While other states have implemented comprehensive programs to assess the performance of their trial courts, such as a nationally developed set of assessment measures called CourTools, California's efforts have been limited primarily to a few pilot programs. As a result, there is no comprehensive set of measures for which data is collected on a statewide basis in California and what data is collected is seldom used to hold trial courts accountable.

Based upon our analysis, it is also apparent that the implementation of realignment to date has not ensured an efficient division of responsibilities between the Administrative Office of the Courts (AOC) and individual trial courts to advance the primary goals of the trial court realignment. No analysis has been done to assess whether the current division of responsibilities between the AOC and individual trial courts is cost-efficient, with the result that the state may be missing opportunities to achieve greater efficiencies in trial court operations.

In order to assist the Legislature in eliminating these barriers, we have identified significant opportunities for the state to exercise a greater role in the court system that would help advance the intended goals of realignment. For example, we recommend that the state assume true operational control over many aspects of trial court operations for which it already has financial responsibility, such as trial court employee classifications and benefits. Our proposals would also ensure that a comprehensive trial court performance assessment system is put in place and that there is a more efficient division of responsibilities between AOC and the trial courts. In our view, these changes would complete the original realignment plan begun by the Legislature and achieve improved performance and outcomes for the courts and state taxpayers.

INTRODUCTION

Currently, the state maintains 58 trial court systems, each having jurisdiction over a single county. These courts have trial jurisdiction over all criminal cases (including felonies, misdemeanors, and traffic matters). They also have jurisdiction over all civil cases (including family law, probate, juvenile, and general civil matters). In 2008-09, more than ten million cases were filed in trial courts throughout the state. Historically, counties had the primary responsibility for (1) funding trial courts, (2) constructing and maintaining court facilities, and (3) employing most court employees. However, beginning in 1997, the Legislature adopted a series of statutory changes that shifted or realigned each of these responsibilities from the counties to the state.

In this report, we review the realignment of the trial courts from the counties to the state (including whether the objectives and goals the Legislature set have been achieved) and present recommendations for building upon this realignment to achieve improved outcomes for the trial courts. In preparing this report, we met with judges and administrative staff from different trial courts throughout the state, as well as individuals who were involved in the structuring and implementation of the realignment (such as former members of the Legislature), in order to gain an in-depth understanding on the extent to which the goals of realignment have been met. We also met with numerous representatives from the AOC and analyzed data that they provided to us.

BACKGROUND

What Are Trial Courts?

Under the California Constitution, the state's judicial system is comprised of the Supreme Court, the Courts of Appeal, and the trial courts. Generally, judicial proceedings begin in the trial courts and are subsequently heard by the Courts of Appeal or the Supreme Court only if the decision made at the trial court level is appealed.

Prior to 1994, the state maintained three different types of trial courts—municipal, justice, and superior courts. Municipal and justice courts—which were also referred to as “inferior courts”—had jurisdiction over limited types of cases. These courts generally had jurisdiction over misdemeanors and infractions and most civil lawsuits involving disputes of \$25,000 or less. Decisions made in these particular types of courts could be appealed to superior courts. With the passage of Proposition 191, a state constitutional

amendment approved by the voters in 1994, justice courts were merged into municipal courts. Subsequently, in 1998, Proposition 220, a further constitutional change approved by California voters, authorized the merger of municipal courts with superior courts if a majority of judges in each court within a county voted for such unification. By 2001, all municipal courts were unified with their respective superior courts. As a result, the existing trial courts in each county are often referred to as superior courts.

Realignment of the trial courts from the counties to the state has not changed their basic organization. Below, we describe some of the key entities in the trial court system and their responsibilities.

- ***Trial Court Judges.*** Trial court judges are primarily responsible for the day-to-day operations of trial courts, including the

adoption of local court rules. Such rules typically cover a wide range of issues—from how cases are managed to how presiding judges are selected. The presiding judge of each trial court is responsible for leading the court by overseeing the assignment of cases, managing its budget, and establishing various trial court policies and procedures.

- **Court Executive Officers.** Court executive officers, who are selected based on procedures adopted by each trial court, generally carry out and oversee much of the non-judicial administrative and operational duties of the trial courts (such as human resources, budgeting and accounting, and managing the flow of cases through the court system).
- **Judicial Council.** The Judicial Council—which is primarily made up of judges—consists of 21 voting members and, currently, 10 advisory members. The council is responsible for making statewide rules for trial courts and recommendations to the Governor and Legislature for improving court operations. The Chief Justice of the Supreme Court serves as chair of the Judicial Council. Following realignment, the council became responsible for court facilities and the allocation of funds to trial courts.
- **AOC.** The AOC is responsible for carrying out the administrative responsibilities of the Judicial Council. For example, AOC staff helps develop the budget requests for the statewide trial court system and oversee the construction of trial court facilities. In addition, AOC provides various services to the courts, including financial, human

resources, and legal support. The Director of AOC is appointed by the Judicial Council.

- **Legislature and Governor.** The Legislature and the Governor are responsible for enacting statutes that establish judge-ships—with the Governor responsible for filling judicial vacancies—and making budgetary decisions regarding the overall funding level for the trial courts. In addition, the court rules adopted by the Judicial Council must comply with state law, which often specify how trial courts shall operate.

What Is Realignment?

Several times over the last 20 years, the Legislature has sought to achieve notable policy improvements by reviewing state-local program responsibilities and taking action to realign or shift program and funding responsibility to the level of government likely to achieve the best outcomes. For example, in 1991, the Legislature shifted state mental health responsibilities to counties, giving counties a reliable funding stream and the authority to develop innovative and less costly approaches to providing services. More recently, as part of the 2011-12 budget, the Legislature shifted responsibility for low-level offenders, parole violators, and parolees from the state to counties. This realignment package also provided funding for the provision of court security directly to local sheriff's offices rather than being appropriated in the annual state budget to the trial courts. While the implementation of realignment proposals has been complex, the net result of some of these changes is that California state and local governments have improved their ability to implement programs successfully. Below, we discuss how the Legislature realigned various responsibilities related to the trial courts from counties to the state.

Realignment of the Trial Courts

For many years, trial courts were essentially county entities. Counties were primarily responsible for financing the operations of the trial courts and counties employed nearly all individuals working in the trial courts. As such, individuals working in trial courts were classified as county rather than state employees, meaning that counties were responsible for all aspects of each court’s personnel system, including establishing employment policies and carrying out collective bargaining with individuals working in the courts. In addition, counties built, owned, and maintained trial court facilities. However, in 1997, the state began taking significant steps towards shifting some responsibilities for the trial courts from counties to the state. The three major pieces of legislation that authorized the realignment of responsibility for the trial courts to the state are summarized in Figure 1 and discussed in the sections that follow.

State Assumes Primary Responsibility for Funding Trial Courts

In 1997, the Legislature passed and the Governor signed into law Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle), commonly referred to as the Lockyer-Isenberg Trial Court Funding Act of 1997. This measure implemented the Legislature’s goal of shifting primary

responsibility for trial court funding from the counties to the state. Under the measure, individual trial court budgets would no longer depend on fiscal decisions made by the counties. Specifically, the measure had these features:

- **Transfer of Responsibility for Trial Courts to State Budget.** Chapter 850 gave the Legislature the authority to appropriate all of the funding for trial courts in the annual state budget. Previously, the Legislature only appropriated state General Fund support and fine and penalty revenue, but not funds provided by counties. In addition, the Judicial Council was given the authority to allocate appropriated funds to individual trial courts. The expectation was that the state would support any future increases in the costs to operate trial courts.
- **Fiscal Relief to Counties.** Although Chapter 850 required counties to continue to provide some financial support for trial courts operations, their payments to the state for this purpose were initially based on the amount of funding they provided to the courts in 1994-95. These payments generally were not adjusted to reflect increases in court costs that had occurred due to inflation or increased

Figure 1
Major Trial Court Realignment Legislation

Legislation	Description
Lockyer-Isenberg Trial Court Funding Act of 1997. Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle)	Transferred financial responsibility for trial courts (above a fixed county share) from the counties to the state.
Trial Court Employment Protection and Governance Act. Chapter 1010, Statutes of 2000 (SB 2140, Burton)	Classified most individuals working in the trial courts as court employees.
Trial Court Facilities Act of 2002. Chapter 1082, Statutes of 2002 (SB 1732, Escutia)	Initiated the transfer of ownership and responsibility of trial court facilities from the counties to the state.

workload. Chapter 850, as well as subsequent legislation, included provisions that significantly reduced many of these county payments.

- ***Significant Fiscal Autonomy for Trial Courts.*** Although the state would have greater responsibility for funding trial courts, the legislation left individual courts the responsibility for their day-to-day operations, such as the allocation of funding within their own budgets. The legislation also allowed the Judicial Council to authorize trial courts to keep and carry over unexpended funds from one fiscal year to the next. Currently, the Judicial Council has authorized all of the trial courts in the state to do so. At the beginning of 2010-11, trial courts had over \$300 million in unexpended funds that were not restricted by future contractual or statutory obligations.
- ***Task Forces to Address Employee and Facilities Issues.*** Chapter 850 did not directly address whether individuals working in the trial courts would continue to be county employees or if they would transition to a new employee status. In addition, the legislation did not specify who would be responsible for the construction and maintenance of trial court facilities. The management of both personnel and facilities continued to be county responsibilities. However, the legislation did establish a Task Force on Trial Court Employees and a Task Force on Court Facilities to make recommendations for addressing these issues under a state-funded system.

Main Goals: Stabilization and Simplification of Trial Court Funding. Chapter 850 was intended mainly to provide a mechanism that would ensure adequate funding levels for trial courts and thereby ensure equal access to justice across the state. During the years preceding its enactment, some trial courts had been on the verge of closing or laying off employees due to a lack of financial resources. For example, in 1995-96 and 1996-97 the Legislature provided supplemental funding to prevent the closure of some trial courts. The Legislature declared in Chapter 850 that the funding of trial court operations should be a state function because “such funding is necessary to provide uniform standards and procedures, economies of scale, and structural efficiency and simplification.” The Legislature said funding these courts was primarily the state’s responsibility because “the overwhelming business of the trial courts is to interpret and enforce provisions of state law and to resolve disputes among the people of the State of California.”

Another stated goal of realigning trial court funding from the counties to the state was to simplify the “bifurcated funding structure” that observers contended overly complicated financial planning for the courts. The trial court for each county previously had to participate in both that county’s budget process as well as the state budget process. This made budgetary planning more difficult—particularly in counties that operated on a different fiscal year than the state. Chapter 850 removed trial courts from county budget deliberations as funding for these courts primarily became the state’s responsibility.

Other Goals: Greater Efficiencies and Uniformity in Trial Court Operations. In adopting Chapter 850, the Legislature also outlined other goals it hoped to achieve from the state’s

assumption of funding responsibility for the trial courts. These stated goals included:

- More uniform standards and procedures for the operation of the courts.
- The development and implementation of comprehensive budget procedures and performance standards.
- Achievement of structural simplification, economies of scale, and efficiencies in trial court operations.
- Increased access to the courts for the citizens of California.

While Chapter 850 increased the state’s responsibility for the funding of trial courts, it maintained individual trial courts’ primary responsibility for their day-to-day operations (such as funding allocations, processing of cases, trial court management, and hiring of personnel).

Subsequent Legislative Action Authorized Automated Funding Increases for Trial Courts.

Following the enactment of Chapter 850, trial courts submitted individual budget requests to the Judicial Council. Those requests approved by

the Judicial Council were consolidated into budget change proposals that were then submitted to the Department of Finance (DOF). Upon approval by DOF, the requests were presented to the Legislature as part of the Governor’s annual budget proposal.

However, the above process was replaced beginning in 2005-06 with the enactment of legislation authorizing an automated annual increase in trial court funding based on the State Appropriations Limit (SAL) growth factor—rather than based on annual budget requests reviewed and approved by the Legislature. (Please see the nearby box for a more detailed discussion of the SAL adjustment.) As a result, a portion of the total trial court budget was increased each year by a percentage equal to the SAL growth rate. Under this revised funding process, the Judicial Council allocated most of the additional funding provided by the SAL adjustment to individual trial courts based on their share of the total trial court budget. Some of the SAL funding, however, was allocated to those courts that were identified as “under-resourced” based on a methodology developed by AOC that compared the amount of personnel a court would need to address the cases filed at the

What Is the State Appropriations Limit (SAL)?

The SAL was established in the State Constitution in 1979 by Proposition 4, and later amended by Propositions 98 (1988) and Proposition 111 (1990). The purpose of the SAL is to provide a limit on annual state and local government spending from tax revenues. Every year, the SAL is adjusted to account for changes in the cost-of-living (the percent change in the state’s per-capita personal income) and population (the weighted average of growth in California’s civilian population and K-14 average daily attendance). Although written into law as a statewide limit, the SAL growth factor has also been used to provide annual budget adjustments for some state entities. For example, growth in the Legislature’s overall budget is limited annually to the increase in the SAL.

Over time, the SAL grows roughly in line with the state’s economy. Its growth rate can also fluctuate substantially from year to year, depending on numerous economic factors. Between 2005-06 and 2010-11, the SAL growth factor averaged 3.6 percent, but varied from a high of 6.6 percent in 2005-06 to a low of -1.8 percent in 2010-11.

court with the court's resources for hiring these personnel.

From 2005-06 through 2007-08, additional funding was provided to the trial courts in the annual state budget based on the SAL adjustment. However, due to the state's dire fiscal condition, SAL-adjusted funding has not been provided in each of the past three years. Legislation enacted as part of the 2009-10 budget package eliminated the automatic application of various cost-of-living increases—including the SAL adjustment for the trial courts.

State Establishes Trial Court Employee Personnel System

Another significant part of the realignment of trial courts to the state was the enactment of Chapter 1010, Statutes of 2000 (SB 2140, Burton), commonly referred to as the Trial Court Employment Protection and Governance Act. Prior to the enactment of this legislation, individuals working in trial courts were considered county employees. As discussed above, this is because the counties were responsible for all employee issues (such as the determination of retirement benefits and labor relations). As required by Chapter 850, the Task Force on Trial Court Employees reviewed and made recommendations as to whether trial court workers should remain county employees, become regular state employees, or maintain some other employee status. The Task Force recommended that these workers become "trial court employees" managed by individual trial courts.

Chapter 1010 largely implemented this and other recommendations of the Task Force. As a result, the courts made these specific changes:

- ***Establishment of a New Trial Court Employee Designation.*** Chapter 1010 stated that anyone whose salary is paid

from the trial court budget and who may be hired, supervised, disciplined, or terminated by the trial court would be considered a trial court employee rather than a county or state employee. (Currently, employees of the Supreme Court, the Appellate Courts, and AOC are classified as state employees.)

- ***Shift of Personnel Policy Decisions to Trial Courts.*** The legislation required the trial courts to develop policies on job classification, hiring, promotion, transfer, and employee protection (such as employee rights in disciplinary and layoff processes) under specified conditions subject to some minimum standards (such as the requirement that employee protection policies include a system of progressive discipline).
- ***No Change in Employee Pay, Benefits, and Representation.*** Although employees at trial courts would no longer be considered county employees, Chapter 1010 required that trial court employees' pay and benefits remain unchanged until any labor agreements that existed with the counties at that time expired. At that point, individual trial courts could negotiate new salary and benefit agreements. However, not all aspects of employee benefits are subject to negotiation. This is because existing state law requires trial courts to participate in county retirement benefit programs. In addition, some courts have elected to participate in county-run health benefit programs. As a result, certain aspects of such benefit plans are determined by the county, not the state or the courts. The act

also allowed the unions which represented the workers when they were deemed county employees to continue to represent them as trial court employees.

Main Goals: Clarification of Employee Status, Local Control, and Maintenance of Existing Compensation. In adopting Chapter 1010, the Legislature sought to clarify the status of individuals working in the trial courts. This is because after the state took over primary responsibility for funding trial courts, there was confusion among the courts and counties as to whether individuals working in the trial courts were still classified as county employees. In addition, the legislation sought to ensure that trial courts had local control over their day-to-day operations, which it did by giving virtually all employee-related responsibilities to individual trial courts. Finally, Chapter 1010 aimed to protect and maintain—to the extent possible—the pay and benefits that court employees were receiving from the counties in order to minimize disruption.

State Assumes Responsibility of Trial Court Facilities

Although the state assumed responsibility for funding the *operations* of trial courts in 1997, the state did not begin to take over the responsibility for and ownership of trial court *facilities* from counties until 2002 with the enactment of Chapter 1082, Statutes of 2002 (SB 1732, Escutia). This legislation, commonly referred to as the Trial Court Facilities Act of 2002, sought to implement the recommendations of the Task Force on Court Facilities to transition facilities from county to state control. In contrast to the Legislature's decision to decentralize control of court employees to individual trial courts, Chapter 1082 realigned responsibility for facilities to a statewide entity, the Judicial Council. The legislation had these key components:

- **Transfer of Responsibility for Trial Court Facilities.** The legislation authorized the transfer of title and all management responsibility for most court facilities from the counties to the state by June 30, 2007. (Exceptions were allowed for certain buildings—particularly those for which use was shared by the county and the court, as well as those of historical value to the counties. These could remain under county ownership.) Chapter 1082 required the Judicial Council and the California State Association of Counties to establish a process for transferring facilities on a building-by-building basis. Moreover, the Judicial Council—not individual trial courts—was given the primary responsibility for the provision of court facilities, as well as the authority to own and construct future court facilities. The Judicial Council has since assumed responsibility from the counties for all trial court facilities.
- **Required County Facility Payment.** Although the state would assume responsibility for trial court facilities, the legislation required counties to make annual payments into a newly created Court Facilities Trust Fund based on the amount the county had historically spent on the maintenance and operation of the transferred facilities. The state would be responsible for all operation and maintenance costs above the fixed county payment.
- **Established State Court Facility Construction Fund (SCFCF).** In order to support the improvement of existing court facilities and the construction of new facilities, the legislation increased fines and fees. The resulting revenue is deposited into the newly established SCFCF. These funds

were used to finance \$1.5 billion in lease-revenue bonds to support 13 trial court facility projects.

Main Goal: Ensure More Efficient Operation of Court Facilities. In adopting the Trial Court Facilities Act, the stated intent of the Legislature was to ensure the entity responsible for using trial court facilities and determining the amount and type of space needed—the state—would also be responsible for building and maintaining the facilities. Specifically, the Legislature concluded that “uniting responsibility for operations and facilities increases the likelihood that operational costs will be considered when facility decisions are made, and enhances the economical, efficient, and effective court operations.”

Expanded Role of Judicial Council and AOC

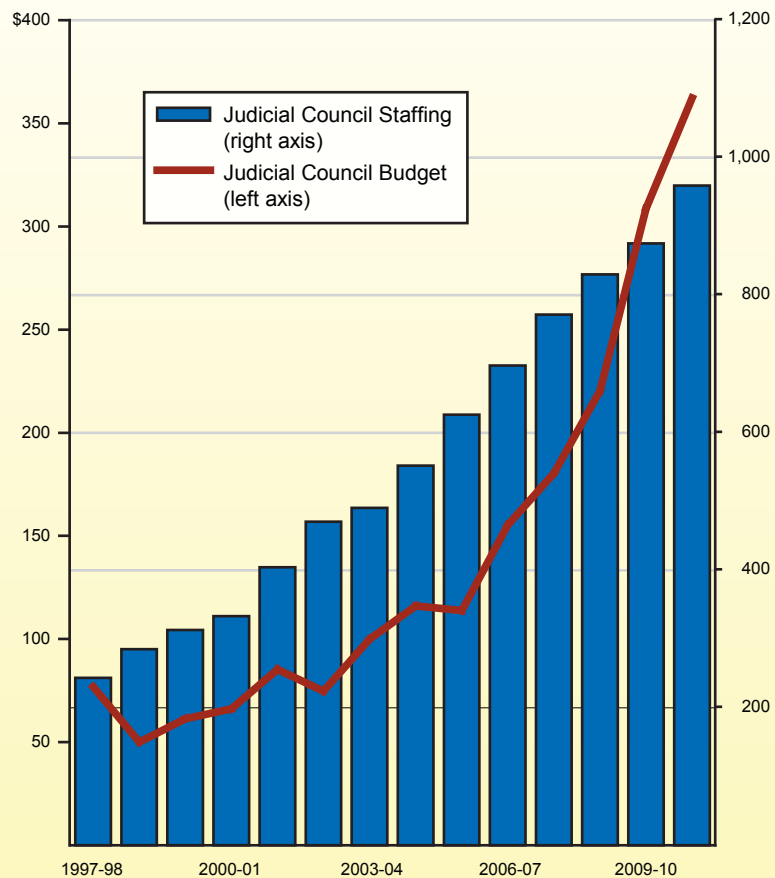
As indicated above, the various pieces of realignment legislation required the Judicial Council, through the AOC, to take on budgetary, administrative, and facility-related duties for the trial courts. For example, the Judicial Council became responsible for allocating funds to each trial court.

In addition, AOC took on the duty of providing certain fiscal management, human resources, and building-related services to various courts.

As a result of the expanded role of AOC, the budget of the Judicial Council has significantly increased since trial court realignment. As shown in Figure 2, the Judicial Council’s budget has quadrupled from \$77 million in 1997-98 to \$362 million in 2010-11. Similarly, the number of positions in AOC has more than tripled from 244 in 1997-98 to 960 in 2010-11.

Figure 2
Rapid Growth in Judicial Council Budget and Staffing

(Dollars in Millions)



REALIGNMENT GOALS NOT YET FULLY ACHIEVED

As discussed above, the Legislature had some important goals in mind when it realigned trial courts to the state. For example, the Legislature sought to create a trial court system that was more uniform in terms of standards, procedures, and access to justice. The Legislature also wanted to maintain a more efficient court system through the implementation of cost management and control systems, and budget procedures and performance standards. Based on our review, we find that the package of legislation approved by the Legislature to shift most aspects of the trial court system to the state was a step in the right direction towards meeting these goals. However, by giving individual courts complete control over all employee-related issues, we find that enacted legislation did not go far enough in providing the state sufficient control and oversight, as well as ensuring greater coordination between AOC and individual trial courts, to advance the primary goals of the trial court realignment. Thus, as we discuss below, the realignment of the trial courts to the state has been incomplete. We outline these concerns below.

Lack of State Control Over Trial Court Employee Personnel System

Given that the trial courts are now the financial responsibility of the state, it is essential that the state have sufficient control over the operations of the trial courts to also effectively control their costs. However, the realignment legislation gave control over most employee issues to individual trial courts. Thus, there is currently an inherent conflict in the existing structure and governance of the state trial court system in that the state has full responsibility for paying employee-related costs but does not have full control over these costs.

This is particularly problematic in that effective management of personnel is fundamental to the sound and efficient operation of the trial court system, a key goal of the realignment.

As discussed above, individual trial courts—rather than the state—are deemed to be the employer of most of the individuals who work in the trial courts. Accordingly, the salaries and benefits for trial court employees are determined as a result of separate and independent negotiations between individual trial courts (primarily trial court judges and court executive officers) and local labor organizations, rather than through state negotiations with a statewide entity such as the Department of Personnel Administration (DPA). In addition, unlike memoranda of understanding negotiated with state employee bargaining groups, agreements negotiated with trial court employees are not subject to ratification by the Legislature.

Moreover, as discussed earlier in this report, trial court employees have continued to participate in individual county retirement benefit programs and—to a certain extent—county health benefit programs (including health insurance, dental insurance, and long-term disability). As a result, both the state and individual trial courts lack complete control over the level of these benefits provided to trial court employees and, more importantly, the costs that must be paid to provide those benefits. For example, trial courts are unable to change some of the terms of county-controlled benefit plans in their negotiations with labor organizations.

In addition, our preliminary analysis suggests that trial courts may not have effectively contained costs in their negotiations with trial court employees. For example, the average salary of trial

court employees increased about 55 percent from 2001-02 to 2010-11 (from about \$40,000 to \$62,000), according to the most recent data available. In contrast, the average salaries of both executive branch employees and state judicial employees have increased by about half that rate. Moreover, although existing state law authorizes trial courts to negotiate the level of retirement contributions paid by their employees, only 31 of the 58 trial courts require any of their employees to make such contributions. In contrast, executive branch employees are generally required to contribute 8 percent to 10 percent of their salary towards these costs.

Inadequate State Oversight Over Trial Court Performance

As noted above, the Legislature's stated goals of the realignment of the trial courts from the counties to the state included both an increase in the efficiency of the court system and improved access to the courts for Californians. In order to ensure programs operate in the most effective manner, however, it is critical that the level of government responsible for a particular program exercise sufficient oversight to ensure accountability for achieving good outcomes. An effective way to exercise such oversight is through the implementation of performance assessment programs.

CourTools Performance Assessment Program

The CourTools program is a performance assessment program developed by the National Center for State Courts, an independent, nonprofit organization established to improve court systems. Under this program, data on court performance is collected in a variety of ways such as through surveys of court stakeholders and reviews of case filings based on a series of measurements. The measurements include:

- Scored assessments of employee satisfaction and the accessibility, fairness, and equality of the trial courts.
- Data related to a court's ability to resolve cases in a timely manner.
- The ability of courts to carry out key activities like document retrieval, debt collection, and jury selection.
- The average cost of processing each type of case.

The National Center for State Courts and California's Administrative Office of the Courts concluded in a joint October 2007 report that the various CourTools measurements "generate useful information to manage cases in a controlled efficient manner and to contribute to the enhancement of procedural fairness." The report also concluded that the measurements "identify where current operations are successful in meeting desired goals as well as opportunities for improvement." Moreover, both the Conference of Chief Justices and the national Conference of State Court Administrators adopted a resolution that recommended that states "develop and test a balanced set of performance measures using the CourTools." Both Utah and Massachusetts have implemented the complete CourTools performance measurement program statewide, while other states—including Arizona and Minnesota—have implemented the complete program in multiple courts.

For example, both Utah and Massachusetts have implemented comprehensive trial court performance assessment programs based on a program developed by the National Center for State Courts, known as CourTools. The CourTools program measures court performance in ten different areas such as satisfaction of stakeholders and a court's ability to carry out various tasks. (Please see the box on page 13 for additional information about the CourTools program.)

Although California's AOC endorsed the use of CourTools years ago, comprehensive performance measurement and assessment as envisioned in the trial court realignment legislation has been implemented in California's trial courts only on a very limited basis. For example, since the realignment of the trial courts to the state, the CourTools program was piloted in four trial courts on a limited-term basis, and implemented to a certain extent in a few other courts. In addition, the AOC has initiated some efforts (not involving CourTools) to collect statewide information related to certain measures of trial court performance, such as the time it takes a court to process its caseload.

Although these various efforts are a step in the right direction of meeting the realignment goals of increased efficiency and improved access, they have two primary shortcomings.

- Lack of Complete Set of Comparative Statewide Data.*** Currently, there is no comprehensive set of measurements for which data is collected on a statewide basis. For example, there is no way currently to compare the performance of courts that have used CourTools measurements to that of trial courts in the rest of the state. In addition, the limited statewide data that has been collected by AOC only focuses on a narrow aspect of a court's performance (such as a trial court's ability to process cases in a timely manner). As a result, it
- remains difficult to identify underperforming courts and best practices.
- Lack of Accountability.*** The limited data collected to assess the performance of trial courts is very seldom used to hold trial courts accountable. This is because the existing performance measurements do not have established benchmarks that courts are required to meet. For example, the California Rules of Court (a set of requirements adopted by Judicial Council to which courts must adhere) identify standards related to various aspects of trial court operations (such as access to justice). However, these standards (1) are not defined in a detailed way that allows for objective measurement and assessment to see if trial courts are meeting them and (2) do not specify consequences for courts that fail to meet them.

Little to Suggest Responsibilities Are Efficiently Divided Between AOC and the Trial Courts

As previously mentioned, one of the goals of trial court realignment was to ensure structural efficiency and simplification by having a more unified court system. Prior to the realignment of the trial courts to the state, many of the services that courts rely on for their daily operations (such as human resource management and janitorial services) were generally carried out by county employees on behalf of each individual court. Staff in AOC's headquarters office usually were not involved in such matters. Following the enactment of the realignment legislation, each court was allowed to decide whether it would continue to be responsible for a given service or if it would rely on AOC for that service. As a result, the assignment of these responsibilities was not done in a systematic

way across all courts to ensure maximum efficiency. For example, while seven courts rely on AOC to process payroll, the other 51 counties either contract with a private provider or contract with their respective counties for such payroll services.

At this time, no analysis has been done to assess whether the current division of responsibilities is cost-efficient. Thus, it is not known if the state is missing opportunities for achieving greater efficiencies in trial court operations. For example,

to the extent that AOC is able to provide certain services at lower cost on a statewide basis due to economies of scale, trial courts that fail to take advantage of their services are not as efficient as they would otherwise be. Conversely, in certain cases, it may be more effective and efficient for individual courts to provide a certain service, rather than AOC. However, without additional information, the state does not have the ability to identify opportunities for greater efficiencies.

RECOMMENDATIONS TO ENHANCE AND COMPLETE THE REALIGNMENT OF THE TRIAL COURTS

In this report, we have reviewed the realignment of the trial courts from the counties to the state and identified a number of existing barriers that have prevented it from fully achieving the expressed goals and objectives of the Legislature. Based on our review and findings, we have identified significant opportunities for the state to exercise a greater role in the court system that would help advance the intended goals of realignment. While our recommendations, which are summarized in Figure 3 and discussed in detail below, generally provide for a greater state role in the trial court system, individual trial courts would continue to maintain control over many of the day-to-day operations (such as processing of cases and hiring of employees). Thus, they would operate similarly to other state agencies and would retain the independence envisioned in the realignment legislation.

Shift Responsibility for Trial Court Employee Personnel System to the State

As previously mentioned, one key aspect

of realignment remains problematic—the state’s lack of sufficient authority over the personnel who are the key to the efficient and effective operation of the trial court system. Accordingly, we recommend that the Legislature adopt legislation to realign full responsibility for the trial court employment system to the state—similar to the way the Legislature shifted the full responsibility of trial court facilities to the state.

Under our proposal, Judicial Council, with the assistance of AOC, would assume essentially the same types of responsibilities for trial court employees that the Governor, DPA, and the State Personnel Board (SPB) carry out for state employees in the executive branch. (While SPB’s

Figure 3

LAO Recommendations to Enhance and Complete Trial Court Realignment

- ✓ Shift Responsibility for Trial Court Employee Personnel System to the State.
- ✓ Establish a Comprehensive Trial Court Performance Assessment Program.
- ✓ Establish a More Efficient Division of Responsibilities Between the Administrative Office of the Courts and Trial Courts.

responsibilities include administering civil service examinations, establishing job classifications, and disciplinary policies, DPA is generally responsible for all other personnel management functions, such as collective bargaining.) For example, the Judicial Council would be responsible for creating a uniform employee classification system and for determining the number and type of employees who would perform duties at each trial court. (We note that under our approach, individual trial courts would retain authority over which individuals they would hire or promote to these positions.) In addition, the Judicial Council would be responsible for proposing uniform, statutory personnel rules for the Legislature to adopt for all trial courts (such as rules governing the procedures for employee discipline, and whether seniority would be taken into account in any future lay-off decisions). They would also be responsible for transitioning all trial court employees from county-administered benefits systems to one that is administered by the state in order to give the state full control over employee benefits.

In addition, the Judicial Council (in consultation with representatives of the trial courts) would be responsible for negotiating with trial court employee unions, which would need to be reorganized to represent employees within the newly developed statewide employee classification system. Although these negotiations would create additional workload for AOC, we note that AOC currently maintains a staff of several professional labor negotiators that provide assistance to individual courts when requested. Additional labor negotiators could be hired at AOC with some of the savings derived from funds currently spent by individual trial courts on labor negotiations. As with other state collective bargaining agreements, under our proposed approach any labor agreements negotiated with trial court employees would need to be ratified by the Legislature.

The benefits from these changes could be significant. Our proposed shift of the employee personnel system from individual trial courts to the Judicial Council would give the state needed control over employee issues and would further advance the Legislature's ability to achieve the expressed realignment goal of greater uniformity in the operation of the trial court system. For instance, requiring the Judicial Council to be responsible for collective bargaining would ensure that such negotiations take statewide fiscal concerns into full account. It would reduce the number of separate labor negotiations that were conducted, which could also result in budgetary savings. In addition, the establishment of uniform personnel rules and standards would help create the structural efficiency and simplification envisioned in the trial court realignment legislation. Our proposed approach of vesting control over the personnel system with the Judicial Council, rather than assigning these duties to an executive branch agency such as DPA, would appropriately protect the state constitutional independence and authority of the judicial branch.

Establish a Comprehensive Trial Court Performance Assessment Program

Recent efforts by California's courts have fallen short in fulfilling the goals of realignment pertaining to the use of performance measures. For example, there is currently no comprehensive set of measurements for which data is collected on a statewide basis regarding trial court operations. Consequently, we recommend that the Legislature take steps towards establishing a comprehensive performance assessment program for the trial courts, in order to allow the state to more effectively manage its trial court system.

First, we recommend that the Legislature specify in statute the specific performance measurements it believes are most important and

require the Judicial Council to collect data on each measurement from individual trial courts on an annual basis. In determining the specific performance measurements, we believe that it will first be important for the Legislature to solicit input from the Judicial Council. Thus, we recommend the Judicial Council report to the Legislature by a specified date—say, March 1, 2013—on its recommendations regarding appropriate measurements. In preparing this report, the Judicial Council should examine the measurements currently used by federal courts and other state courts.

After the Legislature adopts specific performance measurements for the trial courts in statute, and after data on these measurements has been collected and reported by the Judicial Council for at least two years, we recommend that the Legislature establish a system for holding individual courts accountable for their performance relative to those standards. Such an accountability system would involve the establishment of (1) a specific benchmark that the courts would be expected to meet for each measurement and (2) steps that would be taken should the court fail to meet the benchmark over time (such as by requiring a court that fails meet a benchmark to adopt the practices of those courts that were successful in meeting the same performance benchmark).

CONCLUSION

In realigning the responsibility of the trial courts from the counties to the state, the Legislature sought to create a trial court system that would be more uniform in terms of standards, procedures, and access to justice. The Legislature also wanted to create a more efficient court system through the implementation of cost management and control systems, budget procedures, and performance standards. However, our analysis indicates that a number of existing barriers have

Establish a More Efficient Division of Responsibilities Between AOC and Trial Courts

As indicated above, there is little evidence that the current division of responsibilities between AOC and the trial courts is efficient. This is because AOC does not collect information on the types of services that each trial court provides and how that compares to the services it provides to courts. Thus, we recommend that the Legislature adopt statutory changes that direct AOC to provide the Legislature with an inventory of the specific services that are provided by each trial court and those that it provides, including the cost of providing each service. The Judicial Council should then report its recommendations for assigning each service to the entity able to deliver the service with the greatest efficiency. Such information would help the Legislature consider statutory changes to help clarify the responsibilities of AOC and the trial courts as well as any necessary budget adjustments to reflect these changes, which would likely result in budgetary savings. We find that efficiently dividing the roles and responsibilities of AOC and the trial courts will help achieve the economies of scale from having a unified, state-run trial court system.

prevented the trial court realignment from fully achieving the expressed goals and objectives of the Legislature. In effect, critical components of the realignment of the trial courts from the counties to the state remain undone.

Given the massive investment that the state has made in establishing a state-run trial court system, we believe that the Legislature should seek to eliminate these barriers and provide the state with greater control and responsibility over trial

AN LAO REPORT

courts, rather than undo the realignment of the trial courts. As we have shown, there are important steps the Legislature could take to build upon its past efforts. For example, we recommend that the state assume true operational control over many critical aspects of trial court operations for which it already has financial responsibility,

such as trial court employee classifications and benefits. Our proposals would also ensure that a comprehensive trial court performance assessment system is put in place and that there is a more efficient division of responsibilities between AOC and the trial courts.

AN LAO REPORT

LAO Publications

This report was prepared by Drew Soderborg, and reviewed by Anthony Simbol. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

To request publications call (916) 445-4656. This report and others, as well as an E-mail subscription service, are available on the LAO's website at www.lao.ca.gov. The LAO is located at 925 L Street, Suite 1000, Sacramento, CA 95814.