



March 5, 2024

Hon. Thomas J. Umberg
Senator, 34th District
1021 O Street, Suite 6530
Sacramento, California 95814

Dear Senator Umberg:

At the end of December, you requested that we examine the current and future availability of court reporters in the trial courts and provide information no later than March 5, 2024. In addition to any information we deem to be relevant and important, you specifically asked that we provide data and findings in the following key areas:

- Existing policies related to the provision of court reporters across case types and specific proceedings, including how courts are operationally making use of their existing court reporter workforce, the extent to which electronic recording is being utilized because court reporters are not available, and the extent to which there is a lack of record because electronic recording is not permitted by law and a court reporter is not available.
- Existing court reporter levels, the extent to which there is a shortage, and potential factors contributing to a shortage.
- Future availability of court reporters, including the impact of the authorization of voice reporting as a means of producing a verbatim record and trends related to the number of people becoming newly certified.
- Use and impact of the additional ongoing funding provided to increase the number of court reporters in family and civil cases.

LAO Summary. In this letter, we provide background information on court reporting, and information on the current and future overall availability of court reporters in California, as well as their specific availability and use in the trial courts. This includes information on how the availability of court reporters in the trial courts has (1) affected how courts use court reporters and electronic recording, (2) affected the production of records of proceedings, and (3) created operational challenges for the courts. We then provide information on how much is currently spent to support court reporter services as well as how the trial courts have made use of the \$30 million in additional General Fund support provided annually to increase the number of official court reporters in family and civil law proceedings. In addition, we discuss how trial courts are competing with the private sector for court reporters. Finally, we provide key questions for legislative consideration related to the availability of court reporters. To prepare this letter, we evaluated data collected from and/or provided by the Court Reporters Board

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(CRB), Judicial Council, and trial courts, and consulted relevant papers and studies. We also consulted with numerous key stakeholders—notably CRB, trial court administrators, and court reporters—to obtain a diverse range of perspectives and insights.

BACKGROUND

Court Reporters Licensed by State

Court Reporters Create Records of Legal Proceedings. Court reporters create records in court proceedings as well as non-court proceedings (such as depositions). Court reporters can be public employees hired by the courts, private contractors who can be hired individually by the courts or lawyers, or private employees who work for a private firm which can contract with the courts or lawyers to provide services.

Court Reporters Licensed by State to Create Records in Different Ways. State law requires CRB to oversee the court reporter profession. This includes the licensing of court reporters, the registration of all entities offering court reporting services, and the enforcement of related state laws and regulations. Prior to September 2022, court reporters were generally licensed to produce an official verbatim record via a stenographic machine—a specialized keyboard or typewriter used to capture their typed shorthand. These court reporters are generally known as “stenographers.” Chapter 569 of 2022 (AB 156, Committee on Budget) authorized voice writing as an additional valid method of creating such a record beginning September 2022 and authorized CRB to issue licenses for court reporters—known as “voice writers”—who use voice writing. Voice writers make verbatim records by using a machine to capture their verbal dictation of shorthand. Court reporters can also be requested to produce transcripts. This requires them to transcribe the shorthand records they produce into a specific written format that can be read by untrained individuals. Chapter 569 also required that licensees—whether they produced a record via stenography or voice writing—be treated the same by CRB and public employers. This specifically includes prohibiting public employers from providing different compensation purely based on the manner in which the licensee produces the record.

Court Reporters Must Qualify for and Pass a Licensing Examination. To receive a court reporter license, individuals must pass a licensing examination, be over the age of 18, and have a high school education or its equivalent. Individuals may qualify for the examination in various ways, such as successfully completing a court reporting school program or having a license from another state. In a May 2023 Occupational Analysis conducted by the Department of Consumer Affairs (DCA), a survey of select court reporters indicated that 90 percent of licensees qualified for the court reporter licensing examination by completing a course of study through a California recognized court-reporting school. The court reporter licensing examination consists of three parts: (1) a written, computer-based English grammar, punctuation, and vocabulary test; (2) a written, computer-based professional practice test evaluating knowledge of statutory and regulatory requirements as well as key legal and medical terminology; and (3) a practical dictation and transcription test in which individuals must be able to transcribe a ten-minute simulated court proceeding at 200 words per minute and with a minimum 97.5 percent accuracy rate.

Court Reporter Licenses Valid for One Year. Court reporter licenses are valid for one year, require the payment of an annual fee, and indicate whether licensees are certified in stenography and/or voice writing. CRB can suspend or revoke licenses if professional standards are not met as well as reinstate them if appropriate. Licensees who fail to pay their fees for three consecutive years are required to retake the licensing examination. Additionally, licensees are required to notify CRB of any name or address changes within 30 days.

Court Reporters Provide Service to Trial Courts

Records of Court Proceedings Are Important for Due Process. A record in court proceedings is important to ensure due process. For example, a lack of a record can mean that not all parties in a case have the same understanding of what occurred in the proceeding (such as the specific conditions of a restraining order). It can also make it difficult for an appeal to succeed. In addition, a record is often necessary to substantiate a claim of judicial misconduct. This is because, without a record, it can be difficult for the Commission on Judicial Performance—which is responsible for adjudicating claims of judicial misconduct—to investigate and resolve such claims.

Court Reporters Required to Make Records in Certain Court Proceedings. State law mandates court reporters prepare official verbatim records of certain court proceedings. This includes felony and misdemeanor, juvenile delinquency and dependency, and select civil case proceedings. However, even in non-mandated proceedings, trial courts may choose to provide a court reporter if one is available. If the trial courts are unable to (or choose not to) provide court reporters in non-mandated proceedings, litigants are allowed to hire and bring their own private court reporters to make a record of proceedings at their own expense. State law generally requires that court reporters provided by the trial courts be present in person.

Court Reporters Paid for by Courts or Litigants Depending on Various Factors. The trial courts bear the costs for providing court reporters in mandated proceedings and may choose to bear the cost in cases where they elect to provide court reporter in certain non-mandated proceedings. However, for non-mandated civil proceedings, state law generally requires a \$30 fee be charged for proceedings lasting an hour or less and that actual costs generally be charged for proceedings lasting more than an hour. Because the actual cost is charged, the amount paid can vary by court. Despite this general policy, trial courts are required to provide and pay for court reporters in non-mandated civil proceeding for those individuals who request one and are low income enough to qualify for and be granted a fee waiver by the courts (known as Jameson cases). Court reporters separately charge courts (generally in mandated proceedings) and litigants (generally in non-mandated proceedings) for the costs of preparing transcripts.

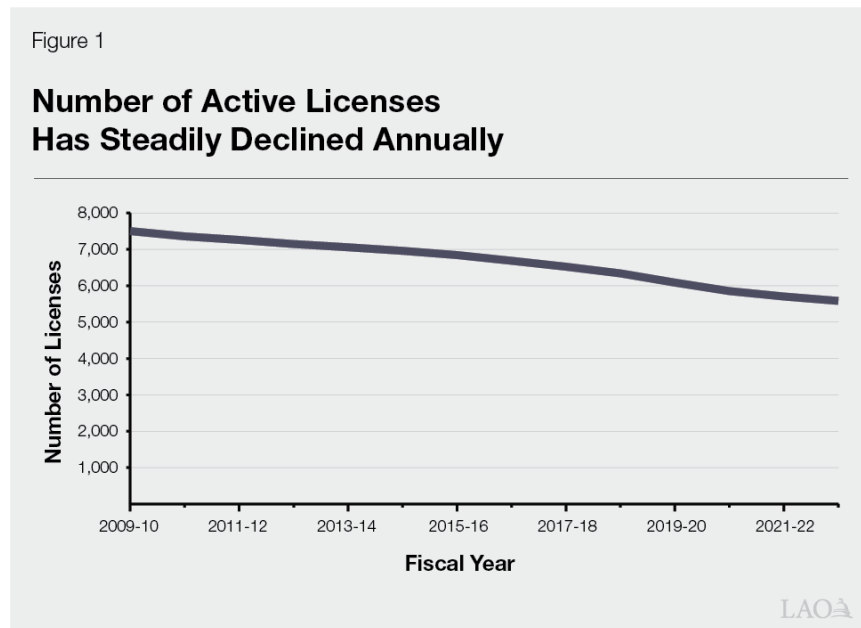
Electronic Recording Used in Lieu of Court Reporters in Certain Proceedings. If a court reporter is not available, state law authorizes trial courts to use electronic recording to make a record in infraction, misdemeanor, limited civil, and Jameson civil case proceedings. When electronic recording is used in lieu of a court reporter, the proceedings are recorded by equipment in the courtroom. Courts may charge a fee to provide a copy of a recording to a litigant—typically to cover the court’s cost of providing the recording. In some cases, electronic

recordings can be used in lieu of a record produced by a court reporter. In other cases, an electronic recording must be transcribed to produce a transcript.

OVERALL AVAILABILITY OF COURT REPORTERS IN CALIFORNIA

Current Availability of Court Reporters Declining and Geographically Concentrated

Number of Licensed Court Reporters Declining. The number of court reporters with active licenses has steadily declined over the last 14 years. As shown in Figure 1, the number of court reporters with active licenses declined from 7,503 licenses in 2009-10 to 5,584 licenses in 2022-23—a decline of 1,919 licenses (26 percent). Of the 5,584 active licensees in 2022-23, 4,752 (85 percent) reported being in state and 832 (15 percent) reported being out of the state or out of the country. (The number of active in state licensees is particularly relevant as state law generally requires that court reporters provided by the trial courts be present in person.) We would also note that the number of active licensees reporting being out of the state or out of the country has increased in recent years. Specifically, 188 more active licensees reported being out of state or out of the county in 2022-23 than in 2019-20—an increase of 29 percent.



Many Existing Court Reporters Could Be Approaching Retirement. In examining court reporter licensee data as of January 2024, there were 5,444 active court reporter licensees—of which 4,618 were in state and 826 were out of the state or out of the country. As shown in Figure 2 on the next page, about two-thirds of active in-state licensees (3,115 individuals) received their initial license prior to 2001—more than 23 years ago. Additionally, the number of licensees receiving their initial license in recent years has declined. This suggests that the existing court reporter licensee population is generally older and that a major share of them could be eligible for retirement in the near future. Further supporting this conclusion, the data reflected

about 990 delinquent or expired licenses as of January 2024. As shown in Figure 3, 86 percent of these licensees (851 individuals) received their initial license prior to 2001. This suggests that it is possible that many of the individuals who allowed their license to become expired or go delinquent did so due to retirement. Finally, the DCA May 2023 Occupational Analysis indicated that about 40 percent of court reporter survey respondents self-reported being ten years or less from retirement.

Figure 2

Two-Thirds of Active In-State Licenses Started Prior to 2001

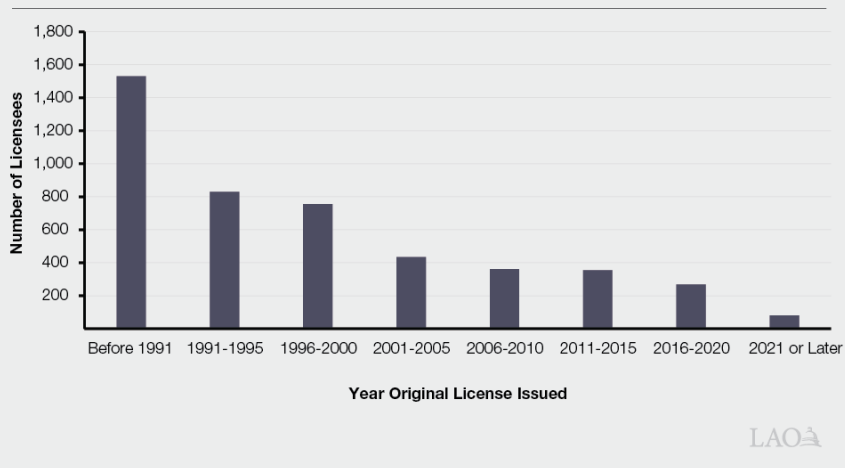
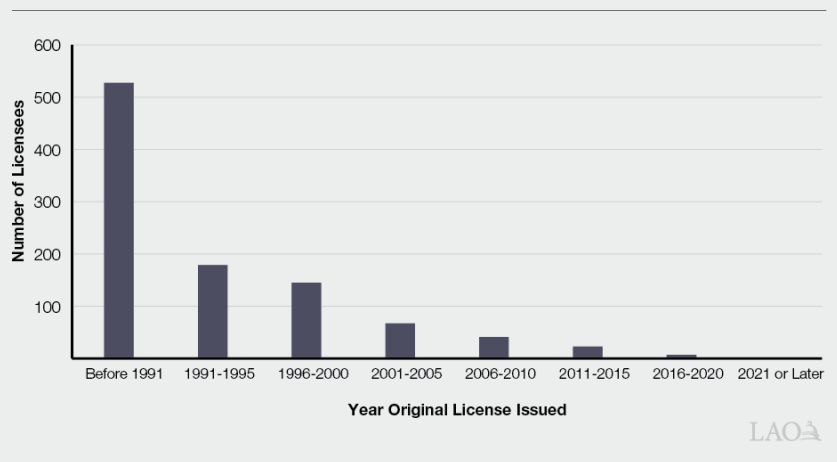


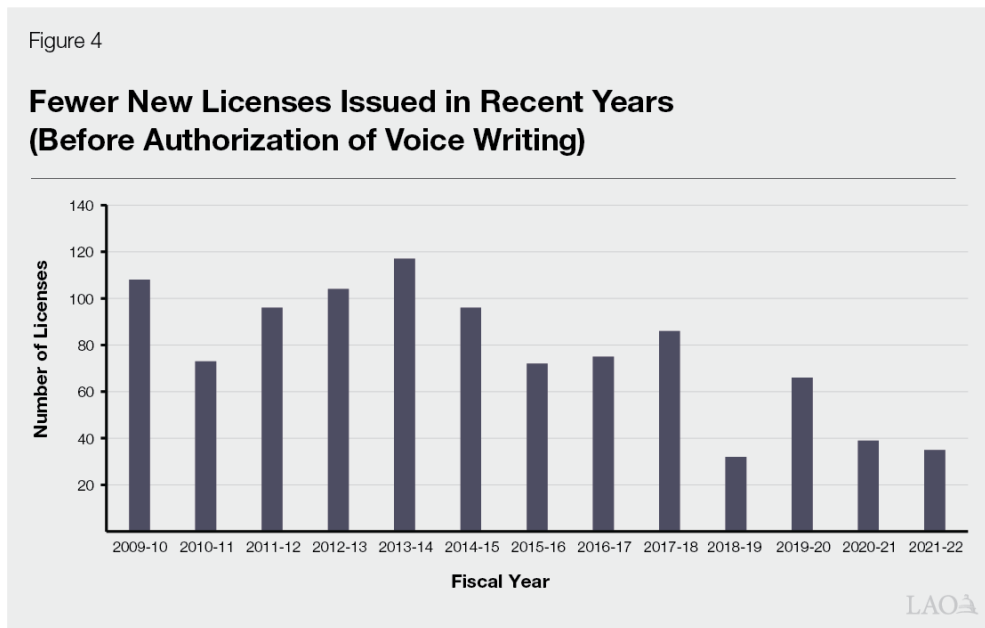
Figure 3

Over Four-Fifths of Delinquent or Expired Licenses First Issued Before 2001



New Licenses Generally Decreasing in Years Before the Authorization of Voice Writing.

As shown in Figure 4, the number of new licenses issued by CRB has generally declined in recent years. It is important to note, however, that this data does not reflect the time period after the authorization of voice writing in September 2022. The number of new licenses issued has fluctuated between 2009-10 and 2021-22—ranging from a high of 117 licenses in 2013-14 to a low of 32 licenses in 2018-19. In the two years just prior to the authorization of voice writing, there were relatively few new licenses. Specifically, there were 39 new licenses in 2020-21 and 35 new licenses in 2021-22, which could reflect the impacts of the COVID-19 pandemic.

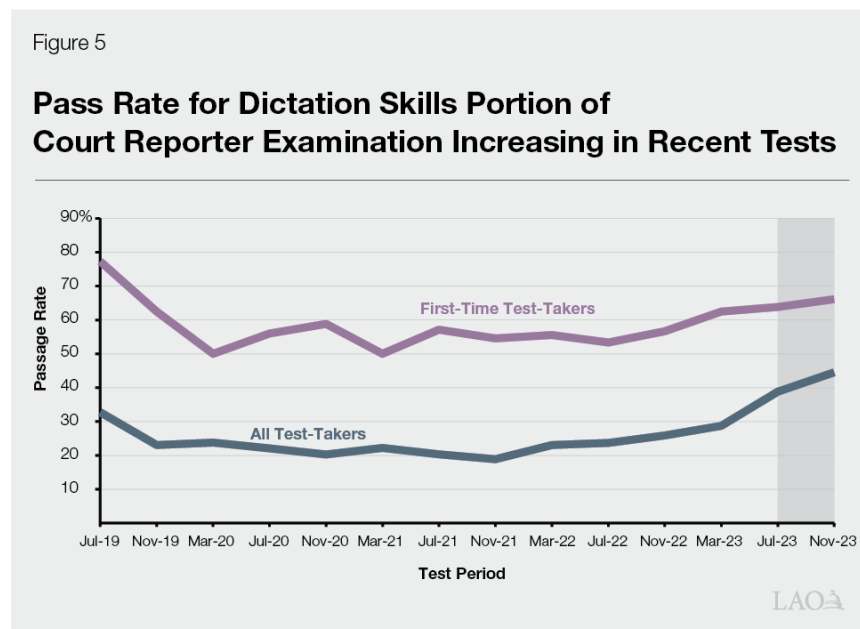


Court Reporters Geographically Concentrated. As of January 2024, active licensees are physically located in 54 out of the state’s 58 counties. Consistent with the state’s overall population distribution, licensees tend to be geographically concentrated in certain counties. Specifically, out of the 4,618 in-state active licensees, nearly 38 percent were located in two counties—1,101 licensees (24 percent) in Los Angeles County and 654 licensees in Orange County (14 percent). Another ten counties had between 100 to 355 active licensees each—representing about 39 percent of the active licensee population. In total, this means that a little more than three-quarters of the active in-state licensees are located in 12 counties. This is notable as court reporters provided by the courts are generally required to appear in person at court facilities. As such, certain courts may have more difficulty than others in meeting their need.

Future Availability of Court Reporters May Increase Due to Voice Writing

Voice Writing Could Increase Licensing Examination Passage Rates. As voice writing was authorized as a valid method for producing a record only in September 2022, there is currently limited data to assess its impact. However, there are some early promising signs that voice writing could help increase the number of individuals passing the licensing examination. In conversations with stakeholders, our understanding is that the dictation skills portion of the licensing examination is easier to pass for voice writers than stenographers. This is because

individuals generally speak naturally at a faster rate than they can type, which can make it easier for voice writers to complete their court reporting school programs and meet the minimum speed and accuracy thresholds to pass the dictation portion of the exam. As shown in Figure 5, the overall pass rate for the dictation skills portion of the court reporter examination has increased in the two most recent tests offered in July and November 2023—the first two months in which voice writers from court reporting school programs took the test. Specifically, the pass rate for all test-takers increased from 29 percent in the March 2023 test to 45 percent in the November 2023 test. The idea that the overall higher passage rates in July and November 2023 are potentially due to the high passage rates of voice writers is supported by data on dictation skills test results for those coming out of a court reporter school program. Specifically, in looking at the July 2023 results, voice writers (all first-time test-takers) averaged a pass rate of 50 percent and stenographers averaged a pass rate of 23 percent. Similarly, in looking at the November 2023 results, voice writers averaged a pass rate of 73 percent and stenographers averaged a pass rate of 13 percent.



Voice Writing Could Increase Number of Individuals Pursuing Court Reporting Careers.

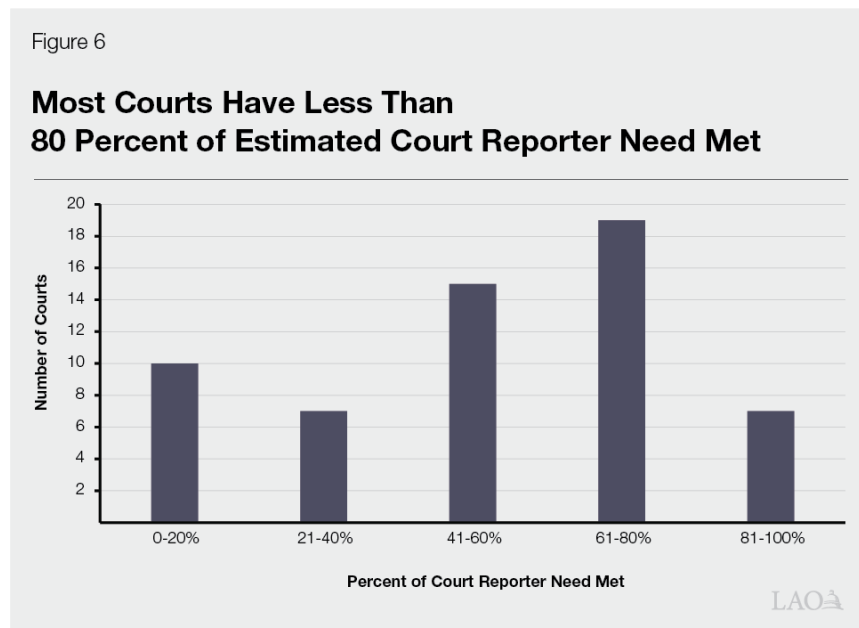
In conversations with stakeholders, the seemingly higher pass rate for voice writers and the shorter time needed to complete court reporting school programs for voice writers could result in more people seeking to become court reporters. (As mentioned above, most individuals qualify for the court reporting licensing examination by completing a school program.) Stakeholders shared that court reporting schools have begun offering voice writing programs and indicated that at least some schools now have wait lists of students. Supporting this perspective, since the authorization of voice writing in September 2022, four out of eight registered California reporting schools have had voice writing students from their programs taking the dictation portion of the court reporter examination. Additionally, as of January 2024, CRB reports 30 individuals being licensed as voice writers and 4 being licensed as both stenographers and voice writers. In addition, with shorter program lengths and higher passage rates for voice

writing, it could be fiscally beneficial for more schools to offer voice writing or for schools to offer more slots or classes in voice writing as more students can be processed at a lower cost compared to stenography. As such, the authorization of voice writing could help increase the total number of active court reporter licensees in the near future.

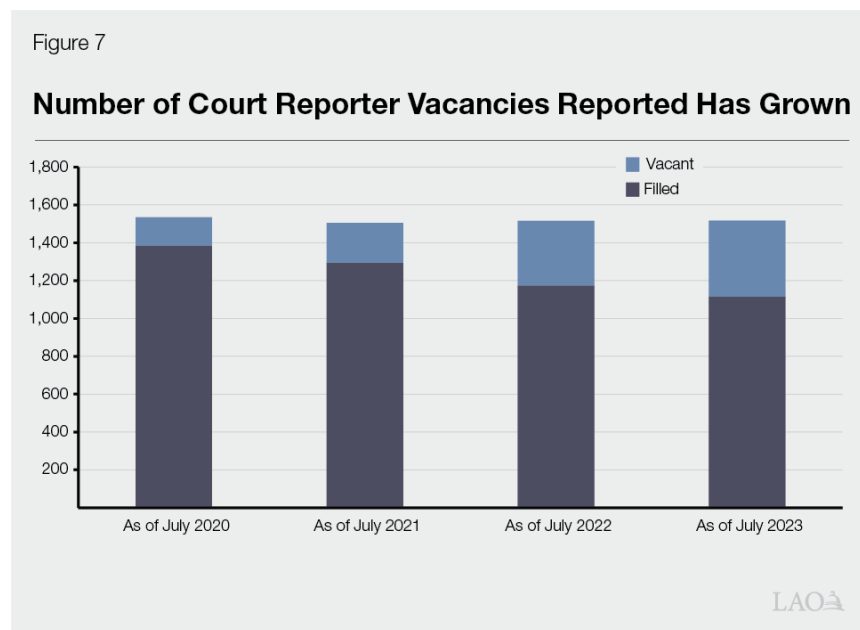
AVAILABILITY OF COURT REPORTERS IN CALIFORNIA TRIAL COURTS

Number of Court Reporters Below Reported Need and Declining

Actual Number of Court Reporters Less Than Need Identified by Judicial Branch. Using 2022-23 data, the judicial branch indicates that 1,865.5 full-time equivalent (FTE) court reporter staff would be needed for trial courts to provide court reporters in all proceedings—except for infractions, misdemeanors, and limited civil proceedings in which electronic recording is authorized. (For the purposes of counting FTEs, two half-time employees are counted as one FTE.) This estimate was reached by assuming the courts would need 1.25 FTE court reporters for each judicial officer. The trial courts also report that about 1,164 FTE positions (69 percent) were filled in 2022-23—which leaves 691 FTE positions (37 percent) that the judicial branch estimates would need to be filled to provide court reporters in all proceedings where electronic recording is not authorized. (We note that this difference may actually be greater. After comparing conversations with certain court administrators with data, we believe that some FTE positions reported as filled may not actually be regularly filled. This is because some FTE positions may have been reported as filled despite court reporters having retired or being out on the leave for part or most of the year.) The specific need, however, varies by court. For example, the Kings court reports having filled FTEs sufficient to meet only 15 percent of its estimated need. In contrast, the San Mateo court reports having filled FTEs sufficient to meet 84 percent of its estimated need. As shown in Figure 6, most courts currently have less than 80 percent of their estimated need met.



Increased Vacancies at Courts. Through a survey we administered with nearly all trial courts responding, trial courts have reported a marked increase in the number of court reporter FTE vacancies they are experiencing. (We would note trial courts, in contrast to state agencies, have greater flexibility in the creation and elimination of positions. Trial courts individually may also treat position counts differently. As such, the actual number of vacancies could be higher or lower than reported.) As shown in Figure 7, court reporter FTE vacancies have increased from 152 FTE positions as of July 2020 (a 10 percent vacancy rate) to 400 FTE positions as of July 2023 (a 25 percent vacancy rate). This is despite increased efforts by trial courts to actively recruit new court reporters—including by offering significant compensation-related benefits beginning in 2022-23. (These benefits, which are partially or fully supported by \$30 million in dedicated annual state funding, are discussed in more detail later in this letter.)



Departures Not Offset Despite Increased Hiring. While nearly all trial courts responded to the survey we administered, not all courts were able to provide the data we requested related to new hires and departures. The data received, however, indicate that the number of court reporter FTEs leaving courts has not been offset by increased FTE hiring numbers. Trial courts reported roughly between 150 to 200 departures each year between 2020-21 and 2022-23. In contrast, trial courts reported hiring 71 new FTEs in 2020-21, which increased to 104 new FTEs in 2022-23. However, as shown in Figure 8 on the next page, these new hires were not sufficient to replace the departures—leading to a net loss of court reporter FTE positions—consistent with the increased vacancies described above. The number of courts actively recruiting for new court reporter employees also increased from 29 courts in 2020-21 to 42 courts in 2022-23—an increase of 45 percent. Courts indicated that some common reasons for departures included retirement, going into the private market, and resignation.

Figure 8

New Hires Unable to Offset Departures

	2020-21	2021-22	2022-23
Departures (FTE)	152	200	149
New hires (FTE)	71	88	104
Net loss (FTE)	81	111	45
Number of courts who actively recruited for new court reporters	29	39	42

FTE = full-time equivalent.

Courts Starting to Hire Voice Writers. To date, seven courts have reported hiring voice writers. In examining data from courts that were able to provide hiring data, about 9.3 FTE out of 60.5 FTE new hires (15 percent) were voice writers. In addition, about 80 percent of trial courts expressed no preference between court reporters creating a record via stenography versus voice writing. The remainder who expressed a preference for stenography generally indicated that, for most of them, the preference was due to a current lack of familiarity with voice writing. It seems as if this can be easily overcome by demonstrations and education to make courts more knowledgeable and confident in voice writing. This suggests the authorization of voice writing could have a positive impact in helping the trial courts address their identified court reporter need.

Current Availability of Court Reporters Has Impacted Courts in Various Ways

Availability of Court Reporters Has Affected How Courts Assign Court Reporters to Proceedings. Existing trial court policies for use of court reporters varies by court based on operational and budgetary choices, as well as on the overall availability of court reporter employees and private court reporters. In the past, when court reporter availability was sufficient, our understanding was that court reporters were generally assigned to a specific courtroom or judge. Over time, due to the decline in the availability of court reporters at the trial courts, this policy has changed. Now, some courts assign their court reporters to specific courthouse locations, courtrooms, or calendars. Other courts place their court reporters in a pool by case type or location and assign them out as needed. Still other courts have some court reporters that are designated as “floaters” who are available to be assigned to any proceeding or location as needed. Courts may also use a combination of these methods. For example, a court may assign court reporters to criminal and juvenile courtrooms as those generally have mandated proceedings and pool court reporters available for civil cases to assign them out for specific proceedings that may need to be covered. Court reporters who finish their assignment earlier than expected may then be assigned to another courtroom. Finally, trial courts may contract with a private firm or hire private court reporter contractors to cover vacancies, scheduled or unscheduled court reporter absences, and unexpected demand for court reporter services.

Availability of Court Reports Has Limited the Types of Proceedings Court Reporters Are Provided in. The availability of court reporters in each trial court also shapes what types of proceedings a court reporter may be provided for. All trial courts typically provide court reporters in felony and juvenile proceedings as mandated by law. While court reporters are also generally

mandated in misdemeanor proceedings, some courts use electronic recording in these proceedings when a court reporter is not available as allowed by law (this is discussed in greater detail below). Courts generally do not provide court reporters in infraction cases. There are more significant differences in civil case types—including general civil, family, probate, and mental health proceedings. While a select number of civil proceedings are required to be covered by a court reporter, trial courts have more discretion in whether other civil proceedings are covered. This leads to more significant differences between trial courts. For example, courts differ in whether court reporters are provided in restraining order proceedings and conservatorship proceedings. However, over time, courts have slowly withdrawn court reporters from various civil proceedings. For example, the Santa Cruz court stopped regularly providing court reporters in probate cases in 2018, in Department of Child Support Services proceedings in 2021, and civil and family restraining orders in 2023. Most courts currently do not provide court reporters in non-mandated civil proceedings, but may attempt to do so if court reporter resources are available. For example, one court reported attempting to ensure a court reporter was available to cover domestic violence restraining order proceedings after the court ensured that all mandated proceedings were covered.

Availability of Court Reporters Has Resulted in Courts Using More Electronic Recording.

The availability of court reporters has resulted in more courts turning to electronic recording to create records in misdemeanor and limited civil (including eviction cases that fall within the threshold) proceedings. Electronic recordings may also be used in other civil proceedings, such as those subject to a Jameson request or at the direction of the court. For example, the Presiding Judge in the Ventura court issued an administrative order in February 2023 specifying that (1) court reporters will no longer be provided in family law contempt proceedings given the lack of available court reporters and (2) electronic recording was authorized to create the record instead as such proceedings were quasi-criminal in nature.

Limited Data on Extent to Which Availability of Court Reporters Affects Whether Records Are Created. Due to technological constraints, trial courts generally had some difficulty providing comprehensive information on the number of proceedings (1) in which records were created in 2022-23, (2) that were statutorily required to have a record made, (3) in which a record was made because it was requested by one of the participants, (4) in which electronic recording is being utilized because court reporters are not available, and (5) in which there is a lack of record because electronic recording is not permitted by law and a court reporter is not available. About two-thirds of the trial courts were able to provide some data, but with varying levels of completeness. Based on this data, the trial courts reported:

- 5.1 million proceedings across all case types in 2022-23 had a record created. Of this amount, 2.1 million were made via electronic recording—1.9 million in criminal proceedings, about 350 in juvenile proceedings, and about 185,100 in civil proceedings. The remaining 3 million records were made by a court reporter—2.2 million in criminal proceedings, about 390,300 in juvenile proceedings, and about 409,500 in civil proceedings.
- 1.6 million proceedings across all case types in 2022-23 had no record created. This consisted of about 717,700 criminal proceedings (of which about 60 percent were infraction proceedings), nearly 22,700 juvenile proceedings (of which about

89 percent were dependency proceedings), and about 864,100 civil proceedings lacking records. For the civil proceedings lacking records, the most common proceedings lacking records were unlimited civil proceedings (44 percent), non-child support family law proceedings (33 percent), and probate proceedings (14 percent).

Availability of Court Reporters Has Created Operational Challenges. As noted above, the judicial branch estimates that only 62 percent of total court reporter need was met in 2022-23. However, the estimated need differs significantly by court. Based on data provided by trial courts, as well as conversations with stakeholders, the diminished availability of court reporter employees and private court reporters has presented the following key operational challenges:

- ***Staff Time and Resources Being Used to Manage Court Reporter Coverage.*** Trial courts frequently need to spend staff time and resources placing calls to find private court reporters to cover planned and unplanned absences as well as any increased demand (such as if more criminal cases than expected are going to trial). They also must routinely spend staff time assigning court reporters to different courtrooms multiple times in a day. For example, a court reporter covering a calendar which ends before noon may then get assigned to another courtroom to provide coverage on another calendar or a particular case. Similarly, staff must spend time facilitating the presence of private court reporters hired by attorneys and litigants to cover specific cases. For example, when multiple private court reporters are present in a single courtroom for a particular calendar, court staff must dedicate time to scheduling the proceeding to accommodate them (such as to ensure that they can be physically or remotely present to make a record of the proceedings).
- ***Delays and Changes to Court Schedules and Calendars.*** Courts also can be forced to adjust schedules and calendars to account for the availability of court reporters. This can include starting a calendar later as well as delaying or continuing cases. Courts indicate that Jameson cases are examples of key cases that may get continued or delayed if court reporters are not available.
- ***Competition Between Courts for Court Reporters.*** The decline in court reporter employees has led to courts competing with one another to hire court reporters. Our understanding from conversations with stakeholders is that this has prompted differences in the amount of benefits (such as signing bonuses) offered to incentivize court reporters to be employed directly by the trial courts (which we discuss in more detail below) as well as the total compensation packages offered by trial courts. Additionally, key stakeholders indicated that the rates paid to private court reporters to provide coverage have also increased over time. Since private court reporters are able to choose whether they accept a particular assignment or not, differences in the amounts courts are willing to pay can also result in courts competing with one another for private court reporter services. In conversations with stakeholders, it appears that court reporters are generally aware of the compensation offered by courts—as well as how courts generally use and treat their court reporters.

- Pay for Non-Court Reporting Positions.** Based on conversations with stakeholders, certain court administrators are considering how court reporter compensation compares to compensation for other positions within the court (such as managers or information technology administrators). Some concern was expressed that increases in court reporter compensation caused by competition for court reporters could result in their pay exceeding those of managers and other professional classifications. This could put pressure on administrators to increase compensation for those positions—and thus overall operational costs.

TRIAL COURT SPENDING ON COURT REPORTERS

Amount Spent by Trial Courts to Support Court Reporter Services

More Than \$200 Million in Estimated Court Reporter Expenditures Annually. The judicial branch estimates that more than \$200 million is spent annually on court reporters or to create a record in trial court proceedings. (This does not include the \$30 million provided annually beginning in 2021-22 to increase court reporters in family and civil cases, which are discussed later in this letter.) As shown in Figure 9, an estimated \$237 million was spent on such services. Of this amount, \$214 million was estimated to be spent on court reporter services—\$209 million budgeted for court employees and \$5 million actually spent on private contract services. (Due to information technology system constraints, the judicial branch was not able to provide data on the specific amount actually spent on court employees.) The remaining \$23 million was spent on transcript costs as well as costs related to electronic recording. Between 2020-21 and 2022-23, the amount spent on court employees has decreased, while the amount spent on contract services as well as transcripts and electronic recording has increased.

Figure 9

Estimated Amount Spent on Court Reporters and Creating a Record^a

(In Millions)

	2020-21	2021-22	2022-23
Court employees (budgeted)	\$227.1	\$221.8	\$209.1
Contract services (actuals)	2.8	3.8	5.1
Subtotals	(\$229.9)	(\$225.6)	(\$214.1)
Transcripts and electronic recording (actuals)	\$12.7	\$18.0	\$22.6
Subtotals	(\$12.7)	(\$18.0)	(\$22.6)
Totals	\$242.7	\$243.5	\$236.8

^a Does not include expenditures of \$30 million provided annually to increase court reporters in family and civil cases beginning in 2021-22.

Fees Authorized Only Offset a Portion of Civil Court Reporter Expenses. State law authorizes \$30 of certain civil filing fees be set aside as an incentive for courts to provide court reporters in civil proceedings. This funding is only available to trial courts who actually provide such services. (We note that Judicial Council has the authority to use these revenues to help support trial court operations.) Additionally, as noted above, state law generally requires a

\$30 fee be charged for proceedings lasting an hour or less and that actual costs generally be charged for proceedings lasting more than an hour in non-mandated civil proceedings. As shown in Figure 10, nearly \$22 million in fee revenue was collected from the authorized fees. Of this amount, \$18 million came from the share of filing fees set aside as an incentive to provide court reporter services in civil cases. The remaining \$4 million came from fees charged for non-mandated civil proceedings lasting less than one hour (\$2 million) and those lasting more than one hour (\$2 million). The judicial branch estimates that \$80 million was spent on providing court reporter services in civil proceedings generally in 2022-23. (We note that, because trial courts do not track court reporter time by individual case type, the judicial branch estimates that about 37.5 percent of court reporter time is spent on civil proceedings. This percentage was then applied to the total amount spent on court reporter services.) Accordingly, if this full \$22 million in fee revenue was used to offset court reporter costs in civil proceedings, it left a net cost of \$59 million to be supported by trial court operational funding.

Figure 10

About One-Quarter of Civil Court Reporter Costs Offset by Fee Revenue

(In Millions)

	2020-21	2021-22	2022-23
Estimated Offsetting Fee Revenue for Court Reporters in Civil Proceedings			
Share of certain civil filing fees	\$16.7	\$16.0	\$17.5
Proceedings lasting more than one hour	2.1	2.0	1.9
Proceedings lasting less than one hour	3.7	3.3	2.1
Subtotals	(\$22.5)	(\$21.3)	(\$21.5)
Civil Costs Not Offset by Fees			
Estimated costs of court reporters in civil cases	\$86.2	\$84.6	\$80.3
Estimated offsetting revenue	22.5	21.3	21.5
Net Cost	\$63.7	\$63.3	\$58.8

Impact of Dedicated Funding for Increasing Court Reporters in Family and Civil Proceedings

State Provided Funding to Increase Court Reporters in Family and Civil Law Proceedings.

Beginning in 2021-22, the state budget has annually included \$30 million from the General Fund to be allocated by Judicial Council to the trial courts to increase the number of court reporters in family and civil law proceedings. The budget prohibits the funding from supplanting existing monies used to support court reporter services in such cases and required any unspent monies revert to the General Fund. Judicial Council allocated the funding to individual trial courts proportionately based on the level of judicial workload in noncriminal cases, but ensured that the smallest courts received a minimum of \$25,000 in order to be able to support a 0.25 FTE court reporter position.

Amount Reverted Initially High, but Now Declining. As shown in Figure 11 on the next page, only \$1.1 million of this allocation (4 percent) was spent in 2021-22—resulting in the reversion of \$28.9 million (96 percent). In conversations with stakeholders, the lack of expenditures seems attributable to differences in the interpretation of budget bill language specifying how the monies could be used. The 2022-23 budget package included amended

budget bill language to provide greater clarification on how this dedicated \$30 million could be used. (This language is also included in the 2023-24 budget and in the proposed 2024-25 budget.) Under the amended language, trial courts are specifically authorized to use the money for recruitment and retention, filling existing vacancies, converting part-time positions to full-time positions, increasing salary schedules, and providing signing and retention bonuses in order to compete with the private market. As shown in Figure 11, the amount spent increased substantially to \$20.3 million of the allocation (68 percent) in 2022-23—resulting in the reversion of \$9.7 million (32 percent). Additionally, the number of courts making expenditures using this money increased from 8 courts in 2021-22 to 44 courts in 2022-23. Through the first half of 2023-24, 26 courts have already reported using a share of this funding.

Figure 11

Amount of Dedicated \$30 Million Spent and Reverted

	2021-22	2022-23	2023-24 (Through December 2023)
Number of courts making expenditures	8	44	26
Budget allocation	\$30,000,000	\$30,000,000	\$30,000,000
Expenditures	1,125,140	20,282,279	3,634,589
Amount Reverted	\$28,874,860	\$9,717,721	—

Amounts Spent on Similar Categories of Benefits. As shown in Figure 12, trial courts spent their monies in similar categories. In 2021-22, the most common expenditures were to increase existing employee salaries and to fill existing vacancies. In 2022-23, retention bonuses were the most common expenditure area.

Figure 12

Amount of \$30 Million Spent by Area^a

Category of Spending	2021-22	2022-23
Increasing Existing Employee Salaries	\$278,661	\$5,048,287
Filling Existing Vacancies	976,523	3,920,621
Retention Bonuses	—	8,446,147
Signing Bonuses	7,000	499,803
Recruiting	18,878	346,966
Converting Part-Time Positions to Full-Time	—	—
Other	48,021	2,264,632
Totals	\$1,329,083	\$20,526,456

^a Totals differ from those reported in Figure 11 as this reflects self-reported data reported by individual trial courts.

Specific Benefits Offered Vary by Court. As shown in Figure 13 on the next page, a number of courts are offering benefits in areas in which the \$30 million in dedicated funding can be spent. However, based on their needs, the local market for court reporters, and various other local factors (such as the cost of living), these offerings can look very different. For example, the Los Angeles court offered an up to \$50,000 signing bonus for a new full-time court reporter employee (with a specified amount payable after every six months) that remained employed for two years in

2023-24. This bonus is limited to the first 20 new FTE hires since it was first offered. In contrast, the Humboldt court offered a \$10,000 signing bonus paid in four equal installments over the first year of employment. Similarly, courts are offering various benefits based on their needs—which are captured in the “Other” category. Common expenditures in this area include finders/referral fees; professional, equipment, and technology stipends; tuition reimbursement for court reporting school; increased rates or services from private contractors; and other costs.

Figure 13

Estimated Number of Courts Offering Benefits by Area^a

Category of Spending	2021-22	2022-23	2023-24 (Estimated)
Increasing Existing Employee Salaries	4	24	19
Filling Existing Vacancies	8	14	13
Retention Bonuses	—	28	17
Signing Bonuses	1	21	19
Recruiting	4	14	15
Converting Part-Time Positions to Full-Time	—	—	1
Other	4	26	24

^a Reflects the number of courts who reported offering benefits in these areas.

Amount Reverted by Court Varied in 2022-23. As shown in Figure 14 on the next page, the amount reverted by each trial court varied in 2022-23. Approximately 64 percent (37 trial courts) reverted more than 40 percent of their share of the \$30 million dedicated allocation. Various factors could account for why courts may have spent more or less of their allocation. For example, expenditures could have been delayed due to the need to obtain union approval to offer a particular benefit (such as to increase existing court employee salaries). In addition, whether costs are incurred from offering certain benefits (such as a signing bonus or court reporting school tuition reimbursement) depends on whether court reporters or others respond to the benefit. For example, a court that offers a signing or referral bonus will not incur expenditures if no one chooses to apply to become a court reporter at that court.

Allocation Benefited Mostly Existing Employees. In examining data provided by those courts who were able to report this level of data, it appears that the dedicated \$30 million allocation—when spent—benefited significantly more existing court reporter employees than new hires, as shown in Figure 15 on the next page. For example, over 90 percent of the employees (996 FTEs) benefitted in 2022-23 were existing employees. Some of the benefits offered—such as increasing salaries for existing employees, retention bonuses, and longevity bonuses—are specifically targeted to existing court reporter employees. Delaying their departure helps prevent trial court need for court reporters from growing worse. However, the benefits offered to existing employees to encourage them to stay also likely benefit some employees who had no intention of leaving, meaning a portion of such expenditures do not directly increase the availability of court reporters. Other benefits offered—such as signing bonuses or increasing the starting salary for court reporters—are more targeted towards new hires. Such new hires can help reduce the number of court reporter vacancies at a court—directly increasing the availability of court reporters.

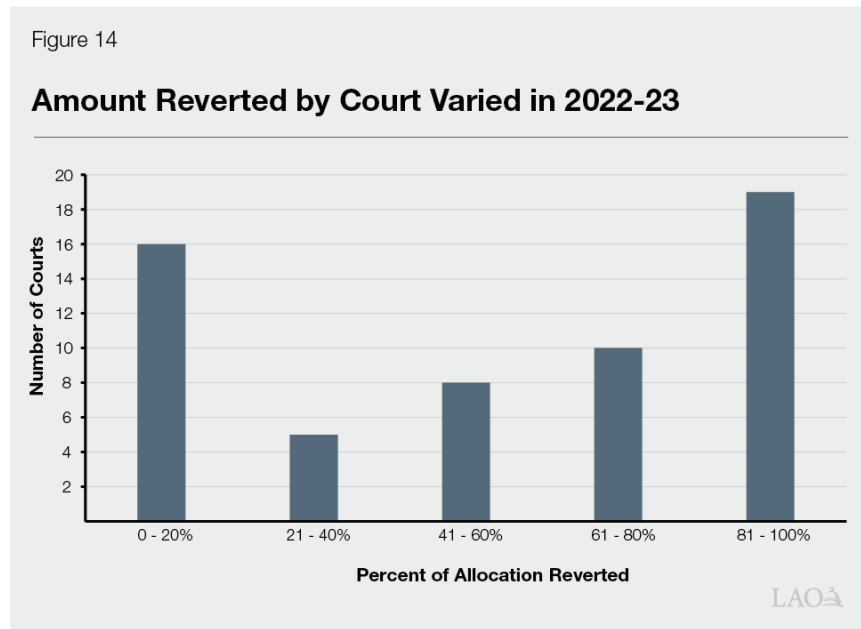


Figure 15

More Existing Employees Benefited From \$30 Million Dedicated Funding

	2021-22	2022-23	2023-24
Number of Full-Time Equivalent Positions			
Existing employees	185	996	871
New hires	27	82	54
Totals	212	1,079	926

Full Impacts of Benefits Offered by Courts Still Unclear. The full impacts of the benefits supported by the \$30 million in dedicated funding are still unclear. This is because the trial courts only began making use of this funding in a significant way in 2022-23 with 44 courts making expenditures. In addition, trial courts have been adapting what is being offered based on the responses they receive. For example, certain courts increased the amount they offered for certain benefits—such as bonuses and stipends—in order to attract more applicants and potential hires. As such, the impacts of these modified benefits may not yet be fully realized. Additionally, in conversations with stakeholders, the trial courts have also offered or are considering offering new types of benefits to potentially attract more court reporters. For example, we have heard that some courts are authorizing part-time court reporter positions and may be considering partnerships to help court reporter students (in particular voice writers) successfully complete their programs and pass the licensing examination. Some of these changes—such as authorizing part-time court reporter positions—may have limited fiscal costs but could have meaningful impact on court reporters. However, the full impacts of the benefits—some of which may be novel or creative—may not be observed until they are fully implemented and tested.

TRIAL COURTS COMPETING WITH PRIVATE SECTOR FOR COURT REPORTERS

Active In-State Licensees Exceed Trial Court Need

In 2022-23, California had 4,752 active, in-state, licensed court reporters. From a May 2023 DCA occupational analysis of court reporters, 41 percent of surveyed court reporters reported that their primary work environment was the court—roughly 1,948 individuals. In the same year, the judicial branch estimated 1,866 FTE court reporters would be needed to provide court reporters in all proceedings except infraction, misdemeanor, and limited civil proceedings and that 1,164 FTEs were currently providing service. While multiple individuals can comprise a single FTE, this gap suggests that there are a number of court reporters who predominantly provide service to the courts but are choosing not to be directly employed by the trial courts. This would include private court reporters who the courts contract with to provide services when court reporter employees are unavailable. Additionally, there are a number of licensees who are choosing to be employed by the private market and not work for the court system. In combination, this suggests trial courts could be having difficulty competing with the private market to procure court reporter services—thereby causing some of the operational difficulties including competition between trial courts, described above.

Three Key Factors Impacting Trial Court Ability to Compete With Private Sector

In conversations with various stakeholders, we identified three key factors that seem to be impacting trial courts' ability to compete with the private sector to attract court reporter employees. This then also creates competition between courts. We discuss each factor in more detail below.

Perception of Higher Compensation in Private Sector. There is a perception that compensation in the private sector is greater than in the trial courts as private court reporters—particularly those who are hired by attorneys—are able to charge desired rates by case or proceedings. We have heard, for example, that this can result in a couple of thousand dollars being charged per day or even half-day. However, we note that it is difficult to fully compare compensation for trial courts' court reporter employees with those in the private market. Court reporter employees generally receive, in addition to their salary, health and other benefits, as well as retirement or pension benefits which are guaranteed for being available during a set period of time regardless of whether their services are needed. In contrast, while private court reporters are free to charge the rate they desire, they generally do not receive the same level of health, retirement, and other benefits as court reporter employees. Additionally, they are not paid if they do not work, sometimes including in cases where they have reserved time for a trial that does not occur (such as due to the case being settled at the last minute). (We note, however, that some private court reporters have negotiated cancellation charges to help partially offset such losses in compensation.) This means the rates that private court reporters charge must cover their benefits as well as time that is spent not being employed. As such, private court reporters have less stable income and work hours. Thus, while private court reporters may earn more per day they are working, some may ultimately be compensated less over the course of a year.

Accordingly, it difficult to assess whether the full compensation provided to court reporter employees is higher or lower than that earned by private court reporters.

Perception of Better Working Conditions in Private Sector. From conversations with stakeholders, working conditions are another key factor impacting whether court reporters choose to be court reporter employees at the trial courts or private court reporters. Court reporters hired by the court generally work for the entire business day physically in courtrooms. A number are no longer assigned to the same courtroom and/or judge and, as a result, are constantly moving between courtrooms—or even entire facilities (such as driving from one courthouse to another in a day)—as directed by court administration. They also generally do not have a choice in what proceedings they are assigned to create a record for. Busy calendars can also lead to court reporter employees having to keep up with the quick pace and length of the calendar. For example, stakeholders have expressed that court reporter employees new to the industry sometimes struggle to keep up. Some court reporter employees are also effectively required to prepare transcripts outside of their normal working hours because they are in court for most of the day. As noted above, court reporters separately charge for the preparation of transcripts meaning that some court administrators view this as work that should not be done during the business day, which is compensated via the court reporter’s salary. In combination, stakeholders have indicated that this can make the work environment very stressful as well as physically and mentally draining. In contrast, private court reporters have much more flexibility in their working conditions. Most notably, private court reporters are able to pick and choose which courts they work in and what cases or proceedings they are willing to cover. This provides significant flexibility to determine how many hours they work, including the amount of time spent in the courtroom. Additionally, private court reporters are able to provide services remotely—which allows them to work at more courts and provides them with flexibility to maximize their working time that otherwise would be spent on travel. If they must be present in person, they are able to negotiate travel expenses as well. In combination, stakeholders indicate that this flexibility allows private court reporters to create the work environment they desire. Moreover, higher levels of autonomy can generally boost overall morale. As such, stakeholders indicated that this flexibility was of great enough importance that the trade-off of less guaranteed income and potentially less net total compensation in working was deemed worthwhile.

Trial Court Recruitment and Retention Activities Could Be Insufficient. It is unclear whether current trial court activities are sufficient to recruit (and retain) new court reporters in the trial courts. The trial courts need to be proactive at ensuring there is steady supply of court reporters willing to work for them as they are a major employer of court reporters and require them to provide litigants with due process in court proceedings. However, it appears that many licensed court reporters are currently unwilling to work for the trial courts. This is evidenced by the fact that the number of active in-state court reporter licenses exceeds trial court need yet the trial courts continue to indicate they have an unmet need. While the trial courts have recently become more actively engaged by offering the benefits discussed above, data suggest this seems to have had limited impact on bringing new hires to the courts in the short run. For example, the reported number of court reporter employees departing has continued to outpace the number being hired. As such, the trial courts may need to consider expanded or improved recruiting activities. For example, some sort of collaboration with schools or new hires to guarantee

employment or provide real-life practical experience could be utilized to recruit people to go to court reporting school as well as to increase the likelihood new court reporters succeed in the trial courts and choose to remain employed there. Similarly, targeted recruiting activities—such as by conducting a survey of what benefits or working conditions would be attractive enough for private court reporters to choose to become and remain public employees—would provide helpful insight to inform how trial court compensation or working conditions may need to be adjusted to recruit more individuals. Absent these increased targeted recruitment efforts, it will likely be difficult for trial courts to meaningfully compete with the private market for court reporter services and ensure their needs are met on an ongoing basis

KEY QUESTIONS FOR LEGISLATIVE CONSIDERATION

The data and information provided in conversation with stakeholders suggest that the trial courts are having difficulty obtaining and maintaining a sufficient number of court reporters. More importantly, this means that courts are also having difficulty providing a record in all of the proceedings that could benefit from it. Below, we provide eight key questions that would be important for the Legislature to answer when determining what action(s) should be taken should the Legislature decide to address these issues.

Is the Availability of Court Reporters in Trial Courts a Limited-Term or Long-Term Problem? The Legislature will need to decide whether the difficulty the trial courts are having to hire and retain sufficient court reporters is a limited-term or long-term problem. Given that voice writing has just been authorized, its full impact on the overall court reporter licensee population has yet to be realized. However, there are promising signs that voice writing may both increase overall court reporter licensees as well as court reporter availability in the trial courts. If the Legislature believes that there will be more court reporters in the near future, it can focus its actions on more immediate term fixes to address trial court difficulty in the short run. For example, the Legislature could temporarily authorize the use of electronic recording in more case types for a couple of years or temporarily allow for court reporters to appear remotely to increase their availability (as they would not need to travel between court locations). However, if the Legislature determines this is a longer-term issue (such as if it believes there will always be a robust and competitive private market), more structural changes in how trial courts employ and/or use court reporters may be necessary.

What Methods of Making a Record Should Be Permissible? The Legislature will need to decide what methods of making an official record should be permissible. This includes whether a record can be made by electronic recording, a court reporter provided by the court, or a private court reporter employed by an attorney or litigant. Under current law, electronic recording is limited to certain proceedings—though some courts have expanded its use in critical proceedings to ensure due process given the lack of available court reporter resources. Allowing for its expansion could help reduce the need to for court reporter services by the trial courts and increase the number of records that are made in the short run (such as if the expansion was granted for a short, defined period) or in the long run (such as if the expansion was indefinite). Expansion of electronic recording could also help improve due process and equity. This is because in the absence of a court reporter, a record will not be made unless an attorney or litigant

pays for their own court reporter. This means individuals who cannot afford a court reporter could end up lacking a record of their case, making it harder for them to appeal or to substantiate a claim before the Commission on Judicial Performance related to judicial misconduct. It could also reduce overall trial court operational costs as electronic recording generally has lower ongoing costs to operate and generate records. This is a notable benefit given the state's budget problem.

Should Court Reporters Be Allowed to Appear Remotely? State law has authorized the ability for judicial proceedings to be conducted remotely—including ones which involve court reporters. However, under existing law, court reporters provided by the courts are generally required to be present in the courtroom. In contrast, private court reporters contracted by the court, attorneys, or litigants may appear remotely. The Legislature may want to consider the trade-offs of having a court reporter being physically present in a courtroom versus being present remotely while creating the record. These trade-offs may differ by case type or proceeding. If there is not a substantial difference, allowing trial courts to use their court reporter employees remotely could free up more of their court reporters' time (such as by minimizing the need to travel), improve overall court operational efficiency, and improve working conditions for some court reporters. This could help improve recruitment and retention.

Should Court Reporter Resources Be Pooled Between Courts? Currently, individual courts hire court reporter employees and private court reporters to cover cases in their respective county. The ease of finding such coverage varies by court based on their geographic location and other factors. As such, the Legislature could review whether the pooling of court reporters between courts, such as regionally or statewide—would be appropriate. For example, the Legislature could determine that it would be appropriate to maintain a regional or statewide pool of court reporters to temporarily fill in for court reporter vacancies or absences (in a manner similar to the assigned judges program). This could help reduce or even eliminate the need for individual trial courts to constantly seek private court reporters to fill any coverage gaps. The Legislature could also consider even going further by pooling all court reporters statewide and allowing them to cover cases remotely on a regular basis rather than just to cover temporary vacancies. We note that doing so would minimize the competition between courts for court reporters. It could also provide greater flexibility to incorporate court reporter desires related to the number of hours worked and/or the types of proceedings they individually cover. However, this would likely require significant negotiations with unions as contracts with court reporters are currently established on a court-by-court basis.

Should the Courts Work With Court Reporting Schools or Others to Improve Recruitment and Retention? Because the courts are a major employer of court reporters in the state, the Legislature could consider whether there is a need for the courts to work more closely with court reporting schools, court reporters, or others (such as high schools) to recruit, train, and prepare people to work successfully in a trial court setting. This could include a stipend and/or tuition reimbursement offered while individuals are in school or training or after they have worked in the court for a certain number of years (similar to a loan repayment program). It could also include allowing court reporting students to intern in the courts, such as by practicing making

records and getting feedback from existing court reporters. Given the state's budget condition, however, new state funding to support such options is unlikely to be available in the near term.

How Many Court Reporters Do Trial Courts Need? As noted above, the judicial branch provided its estimated need for court reporter services assuming 1.25 FTE court reporters are needed per judicial officer, excluding the case types for which electronic recording is authorized. However, decisions made by the Legislature could change how many court reporters are needed. For example, the Legislature could (1) choose to expand electronic recording to certain case types (decreasing the need for court reporters), (2) match the number of court reporters to number of courtrooms in which court reporters are now necessary (which would be less than the 1.25 FTE per judicial officer), and (3) utilize a statewide pool of court reporters to cover for any temporary vacancies or absences. This would have the effect of reducing the number of court reporters needed by the trial courts. Depending on the specific choices made by the Legislature, more or less court reporter FTEs could be needed by the trial courts.

How Should Court Reporters Be Funded? The Legislature will want to consider how it wants to fund court reporters moving forward. Currently, support for court reporters is generally included as part of the funding for overall trial court operations. This means that funding can be used for other costs based on the priorities and needs of individual trial courts. If the Legislature determines that court reporter funding is of a high enough priority to segregate it to ensure it can only be used for that purpose, the Legislature could consider making it a specific line item in the budget. This would be similar to funding provided for court-ordered dependency counsel and court interpreters. We note that taking this step would be necessary if the Legislature chose to pool court reporter resources statewide. The Legislature could also consider the extent to which fees are used to support court reporter services. If higher fees are charged and more revenue is collected, it could help offset any increased costs from other changes intended to increase the availability of court reporters (like new recruitment programs). Alternatively, it could help reduce the General Fund cost of court reporting services, a notable benefit given the state's budget problem. The Legislature could also consider other changes, such as reducing or standardizing the fees charged, which could make access to court records more equitable. This could be difficult if the loss in fee revenue was backfilled with General Fund support given the state's budget condition, however. Finally, the Legislature may want to consider whether it makes sense to expand the use of the \$30 million originally provided to increase court reporters in family and civil proceedings to all proceedings. This is because trial courts will need to prioritize coverage in mandated proceedings first.

How Can Government Compete With the Private Market? The Legislature will want to consider the extent to which it is willing to compete with the private market and what actions it would like to take to do so. It may be difficult for the state to compete with the hourly or daily pay rate offered in the private market. As such, the Legislature could instead consider whether there are changes that could be made to working conditions to make court employment more attractive. For example, this could include allowing remote appearance, offering part-time employment, or allowing court reporters to work on transcripts during the business day. To address competition between courts, as well as the private market, the Legislature could also consider whether to standardize compensation either statewide or in regions of the state. For

example, judges across the state generally receive the same compensation. The Legislature could also consider the extent to which private court reporters hired by attorneys or litigants are permitted to make records in courts. Restricting access to the courts could encourage more private court reporters—particularly those that are already primarily working with the courts as private contractors—to become court reporter employees. However, it would require that the state take steps to ensure it attracts sufficient employees to no longer need to rely on private court reporters. This could include taking some of the steps we describe above, such as allowing remote appearance, increased work flexibility, or other options to improve working conditions. While it could also include increasing compensation, this could be difficult given the state's budget condition. Alternatively, the state could reduce its need for court reporters by authorizing more proceedings to be covered with electronic reporting. If the Legislature is not willing to take such steps, restricting private court reporter access to the trial court could worsen the problem if more court reporters depart and there is no access to court reporters.

We hope you find this information helpful. If you have any questions or would like to further discuss this issue, please contact Anita Lee of my staff at Anita.Lee@lao.ca.gov or (916) 319-8321.

Sincerely,



Gabriel Petek
Legislative Analyst