

FEBRUARY 10, 2021

# The 2021-22 Budget: Department of Justice

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LEGISLATIVE ANALYST'S OFFICE

# Department Budget Overview

## Department of Justice Budget Summary

(Dollars in Millions)

	2019-20 Actual	2020-21 Estimated	2021-22 Proposed	Change From 2020-21	
				Amount	Percent
Legal Services	\$508	\$525	\$562	\$37	7.0%
Law Enforcement	277	272	280	7	2.7
California Justice Information Services	225	240	248	8	3.5
<b>Totals</b>	<b>\$1,010</b>	<b>\$1,037</b>	<b>\$1,090</b>	<b>\$52</b>	<b>5.1%</b>

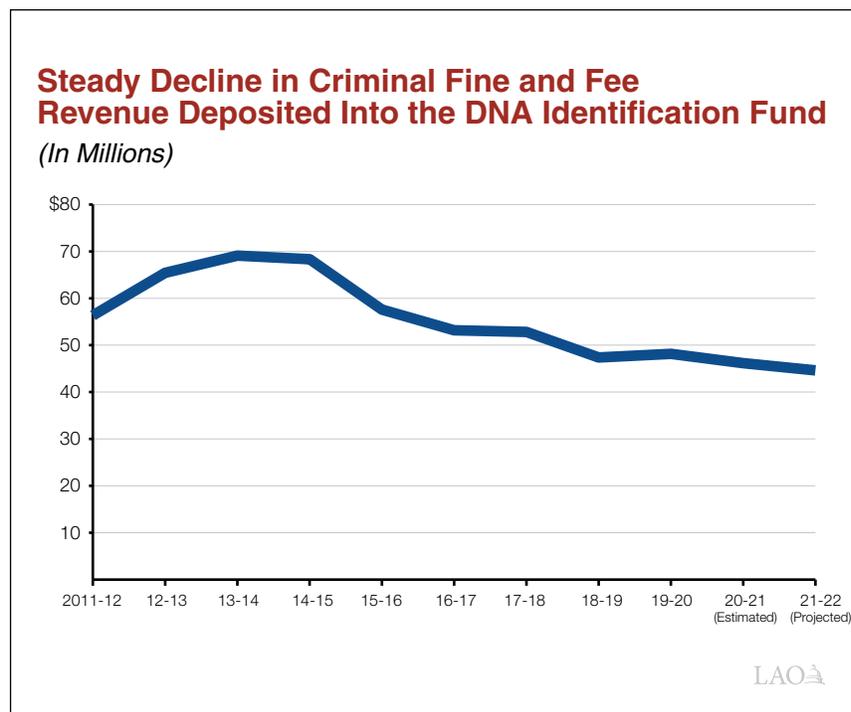
- **Total Proposed Budget.** The Governor’s budget proposes \$1.1 billion to support the operations of the Department of Justice (DOJ) in 2021-22, an increase of \$52 million (or 5.1 percent) over the revised 2020-21 amount. About half of the proposed spending supports the Division of Legal Services.
- **General Fund Support.** Of the total amount proposed for DOJ operations in 2021-22, one-third—\$362 million—is from the General Fund. This is an increase of \$8 million (or 2.4 percent) from the estimated 2020-21 General Fund amount.
- **Proposals Addressed in This Analysis.** In this analysis, we present our assessment of the Governor’s proposals related to the support of forensic services and DOJ legal services for certain state agencies.



# Bureau of Forensic Services

## Background

- **Overview of Bureau of Forensic Services (BFS).** The bureau’s ten regional laboratories provide criminal laboratory services—such as DNA testing and on-site crime scene investigative support—at no charge for local law enforcement and prosecutorial agencies in 46 counties that do not have access to these services. BFS also assists the 12 counties and 8 cities that operate their own laboratories in cases where BFS offers services their laboratories lack. (Local agencies also contract with private or other governmental laboratories for services.) Additionally, BFS operates the state’s DNA laboratory as well as the state’s criminalistics training institute.
- **BFS Funding Sources.** BFS receives support primarily from the DNA Identification Fund (a state fund that receives criminal fine and fee revenue) and the state General Fund. As shown in the figure, the amount of revenue deposited into the DNA Identification Fund has steadily declined since 2013-14. To help address this steady decline and to maintain BFS service levels, the state has provided the fund a General Fund backfill since 2016-17.



# Bureau of Forensic Services

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## Governor's Proposals

- **Ongoing General Fund Backfill.** The Governor's budget proposes \$16 million to backfill a projected decline in criminal fine and fee revenue in the DNA Identification Fund in order to maintain existing service levels in the budget year. Specifically, the budget proposes (1) a \$6 million ongoing General Fund augmentation in 2021-22 (increasing to \$18.3 million annually beginning in 2022-23) and (2) an ongoing redirection of \$10 million General Fund from the California Justice Information Services Division (CJIS). As a result of these proposed actions, the Governor's budget includes \$94 million in total operational support for BFS in 2021-22, nearly the same as the current year. The Governor proposes to backfill the \$10 million redirection from CJIS from another DOJ special fund—the Fingerprint Fees Account (FFA). (FFA cannot directly backfill BFS due to statutory limits on how the funds in FFA can be used.)
- **One-Time Funding for New Consolidated Forensic Laboratory Campus.** The Governor's budget includes \$6.5 million one-time General Fund for the performance criteria phase for a proposed consolidated forensic campus on land leased from the California State University, Sacramento. The campus would consolidate the state's DNA laboratory, the Sacramento regional laboratory, the state's criminalistics training institute, and BFS headquarters into one facility. The estimated total cost of the project is \$435 million.



# Bureau of Forensic Services

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## Assessment

- **Proposal Addresses DNA Identification Fund Revenue Decline.** The Governor’s backfill proposal would address the decline in revenue deposited into the DNA Identification Fund and maintain current BFS service levels.
- **However, Unclear if FFA Redirection Is Sustainable.** FFA generally receives revenues from fees charged for employment- or licensing-related background checks. FFA revenues are projected to decline. Specifically, revenues in 2019-20, 2020-21, and 2021-22 are estimated to be nearly 25 percent lower than 2018-19 levels. This could be due to the pandemic reducing the number of people seeking background checks. If revenues do not sufficiently increase, FFA may become insolvent in 2022-23. Thus, it is unclear whether it is sustainable to redirect FFA funds to the DNA Identification Fund on an ongoing basis as proposed.
- **BFS Provides Certain Local Governments Substantial Benefits.** A large share of BFS resources are dedicated to providing forensic services to local law enforcement and prosecutorial agencies, which are predominantly responsible for collecting and submitting forensic evidence for testing and using the evidence to pursue criminal convictions. However, certain counties and cities benefit significantly more than others. Specifically, BFS effectively subsidizes agencies in 46 counties that generally do not use any of their own resources for criminal laboratory services.
- **Local Governments Lack Incentive to Use BFS Services Cost-Effectively.** Since BFS does not charge for its services, local agencies lack incentive to prioritize what forensic evidence is collected and submitted for testing. Submissions are generally only limited by BFS’s overall capacity and funding. In contrast, the 12 counties and 8 cities that support their own labs—and those agencies that pay to use private laboratories—have greater incentive to carefully prioritize what evidence should be tested and how quickly it should be done.



# Bureau of Forensic Services

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## Recommendations

### ▶ **Approve Governor's Proposed Backfills for Two Years**

- We recommend the Legislature approve the Governor's proposed backfill proposal, but only for two years to ensure FFA can provide the level of support proposed on an ongoing basis. This would also support BFS until the new funding framework discussed below can be implemented.

### ▶ **Require Local Governments to Partially Support BFS Beginning in 2023-24**

- Given the substantial benefit that local agencies receive from BFS services, we recommend the Legislature take steps to require local agencies to partially support BFS beginning in 2023-24. Agencies would be required to pay for a portion of services they receive, providing greater incentive to prioritize workload submitted to DOJ. The delayed implementation date provides time for DOJ to calculate each agency's share of costs and to allow agencies to adapt to the new funding framework.



## Bureau of Forensic Services

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### ▶ **Require DOJ Develop Plan for Calculating Local Government's Share of BFS Support**

- We recommend the Legislature direct DOJ to submit a plan for calculating each local agency's share of the BFS services it uses—including operating and facility costs—and report on this plan no later than October 1, 2022 to allow for its consideration as part of the 2023-24 budget.
- We recommend the Legislature provide guidance on the development of this plan. This includes requiring that at least half of BFS operating revenues come from local agencies, in order to generally reduce the need for the General Fund to support BFS costs on an ongoing basis.
- DOJ would have flexibility to develop the specifics of the plan after consulting with stakeholders. For example, DOJ could require local agencies to pay more or less based on various factors—such as the specific type of forensic service sought, the speed of the service, or the size of the agency.

### ▶ **Consider Facility Proposal After Implementing New Funding Structure**

- We recommend the Legislature reject the Governor's facility proposal until the new funding framework is implemented. The new framework would incentivize local agencies to find the most cost-effective way to obtain laboratory services. This could impact the volume and type of cases sent to BFS, which could then require BFS to modify the amount or type of services it provides or how it provides such services. Changes to BFS's overall workload or organization could change its need for the proposed consolidated forensic science laboratory campus.



# Legal Services for Small Clients

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## Background

- DOJ provides legal services to various state agencies and generally bills them on an hourly basis for the services. State agencies generally pay for these costs from their own budgets which can consist of General Fund and/or special fund dollars, such as licensing fee revenue.
- However, around 20 state agencies that generally require less than 1,000 hours of legal services annually are not billed. Instead, the annual budget typically sets aside \$1.5 million from the General Fund to support DOJ legal services for these “small clients.”

## Governor’s Proposal

- The Governor’s budget for 2021-22 proposes a \$4 million General Fund augmentation per year for three years to support increased legal services for small clients. This is largely because additional services have been necessary due to the pandemic (such as legal advice on implementing emergency orders or changing policies in light of the pandemic).



## Legal Services for Small Clients

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### Assessment

- **Request for 2021-22 Reasonable...** DOJ has provided justification that legal services costs for small clients have increased in recent years, and that pandemic-related workload is a major contributor to the increase in the past year. It is reasonable to assume that higher levels of service will be similarly needed in 2021-22 when the state will still be addressing the impacts from the pandemic.
- **...But Need After 2021-22 Potentially Lower.** DOJ legal workload for small clients is likely to decline as the pandemic subsides—potentially toward the end of 2021-22. However, DOJ was observing an increase in such legal workload for a few years prior to the pandemic and absorbing the associated costs. Specifically, in recent years, DOJ provided around a couple million dollars more in legal services to small clients than it was budgeted for. This means that some portion of the proposed increase could be needed on an ongoing basis in the future, though it is likely to be lower than the \$4 million proposed by the Governor.

### Recommendation

- **Approve Governor's Funding Proposal for Only 2021-22.** We recommend the Legislature approve the Governor's proposal, but only for one year. This provides DOJ with sufficient resources to meet increased legal services need during the pandemic, but allows the Legislature to reassess what level of ongoing funding is appropriate beginning in 2022-23.

