

The 2021-22 Budget: Trial Court Operations Proposals

Summary

In this report, we first examine the impacts of the novel coronavirus disease 2019 (COVID-19) pandemic and prior-year reductions on trial court operations, as well as identify issues for the Legislature to consider when determining the appropriate level of overall funding in 2021-22. We then analyze three of the Governor's major budget proposals for trial court operations. Below, we summarize some of the key takeaways from the report.

Pandemic and Current-Year Reductions Impacted Trial Court Service Levels. Actions taken in the current year to (1) operate safely during the pandemic (such as delaying cases) and (2) accommodate a net \$126.9 million ongoing General Fund reduction included in the 2020-21 budget (such as furloughs) have impacted trial court operations, costs, and service levels in different ways. Some (such as steps to delay cases) have resulted in case backlogs and reduced service levels, while others (such as use of video-conferencing) have allowed services to be provided remotely.

Ensure Trial Court Funding Levels and Allocations Align With Legislative Priorities. The pandemic will continue to result in reduced trial court service levels (such as backlogs) beyond the budget year, despite various actions taken to minimize the pandemic's impact. At the same time, certain operational improvements have been implemented to increase efficiency or public access to court services. Taking these into account, the Legislature will want to broadly consider the level of service it desires from trial courts relative to its other General Fund priorities when determining how much additional funding to provide, as well as how this funding should be allocated.

Governor's Proposals Not Likely to Lead to Significant Increase in Service Levels. The Governor's 2021-22 budget includes various General Fund proposals for trial court operations—including a \$72.2 million ongoing augmentation to trial court discretionary funding. However, the expiration of \$50 million in one-time funding provided in the current year means that trial courts could need to reduce expenditures by at least a further \$50 million in 2021-22. Accordingly, a large portion of the proposed \$72.2 million would be used to avoid further reductions in service levels.

Provide Partial Funding for Specific Proposals That Promote Equity Pending Analyses Informing Future Legislative Decisions. The Governor's budget includes (1) \$12.3 million General Fund in 2021-22—increasing to \$58.6 million annually by 2024-25—to expand statewide the online adjudication of infraction cases and (2) \$19.1 million ongoing General Fund to extend funding provided for self-help centers. We find that both proposals promote equity, such as by providing important benefits to lower-income individuals. However, in both cases, the Legislature has not received complete evaluations of the proposals required in prior years and is thus unable to fully understand their costs and benefits. Accordingly, we recommend providing the requested funding on a limited-term basis pending the receipt of evaluations to inform future legislative policy and funding decisions.

INTRODUCTION

Governance of Trial Courts. Under the State Constitution and state law, Judicial Council adopts California Rules of Court specifying how the judicial branch will operate. These rules must be consistent with federal and state law and apply to courts statewide. However, these rules can provide courts with some flexibility in implementing them. In the absence of direction from Judicial Council, trial courts have discretion in their operations.

Funding for Trial Court Operations. The state's annual budget typically designates the total amount of funding appropriated for trial court operations. While a portion of this funding must be used for specific programs or purposes (such as court interpreters), a significant portion of the funding is provided with little to no restrictions. Judicial Council is then responsible for allocating funding to individual trial courts. Upon receiving its allocation, each individual trial court has significant flexibility in determining how to use its share of funding. This can result in significant differences in the programs or services offered and the levels of service provided across trial courts.

Funding increases for trial court operations have generally been provided through the approval of

(1) discretionary (or unallocated) funding increases, (2) budget requests for specific purposes (such as increased funding for a new program), and (3) funding for increased trial court health benefit and retirement costs. We note, however, that trial court funding levels are not adjusted for increased salary costs as the Legislature does not review and approve trial court labor agreements in the same manner as state negotiated labor agreements. Such agreements are generally negotiated by the individual trial courts. As a result, compensation cost pressures can differ across courts.

Overview of This Report. This report focuses on those budget proposals included in the Governor's 2021-22 budget that impact trial court operations funding. We first provide information on the impacts of the COVID-19 pandemic and prior-year budget reductions on trial court operations. We then identify various issues for the Legislature to consider when determining the appropriate level and allocation of overall funding for trial court operations. We then provide our assessment and recommendations for three specific trial court budget proposals.

CURRENT STATUS OF TRIAL COURT OPERATIONS

In this section, we discuss two major factors currently affecting trial court operations, costs, and service levels: the COVID-19 pandemic and the reduction in General Fund support for trial courts in 2020-21. Specifically, we describe the actions taken in response to both of these factors and their effects on trial courts.

Impact of Pandemic

Trial Court Services Generally Delayed or Provided Remotely. Since the start of the pandemic in March 2020, the Governor, judicial branch, and trial courts have taken various actions to protect the health of court staff, stakeholders, and members of the public, as well as to address the impact of the COVID-19 pandemic on court

operations. For example, the Governor issued an executive order suspending any state laws that restrict the ability of Judicial Council to authorize or issue emergency orders or emergency Rules of Court in order to modify court processes and procedures in light of the pandemic. Judicial Council adopted various statewide emergency orders and Rules of Court, such as authorizing trial courts to generally require remote judicial hearings and temporarily suspend certain time requirements in civil cases so that such cases could be delayed. Trial courts also took various actions, such as restricting public access to courthouses; amending court procedures for processing cases electronically; and temporarily suspending certain activities, such as jury trials or the collection of

criminal fines and fees. The duration of such actions, and the specific actions taken, vary from court to court.

Actions Impact Trial Court Operations Costs and Service Levels. The actions taken to respond to the pandemic have had three major immediate impacts on trial court operations: (1) reduced service levels, (2) case backlogs and delays, and (3) increased costs. First, some of these actions—such as restricting public access to court facilities—reduced the level of service courts provide. Other actions—particularly steps to delay cases—have resulted in significant backlogs and have delayed access to court services. Second, trial courts have incurred one-time and ongoing costs to operate safely during the pandemic. Some of these increased costs have resulted from changing business practices to improve public access to court services (such as expanding telephone, live chat, and video capacity to interact with members of the public) and to reduce or minimize backlogs and delays. For example, many courts implemented technology (such as video conferencing) to conduct cases remotely so that some cases could move forward despite courtrooms being closed.

Despite the efforts to minimize backlogs and maintain service levels, trial courts are likely to have backlogs and increased costs that persist even after the pandemic ends. For example, social distancing guidelines means that selecting and maintaining a jury for jury trials requires more in-person space, staff, and resources. This means that fewer jury trials can move forward at any given time, if at all, resulting in a backlog that could persist into the future. Additionally, the increased resources needed to move jury trials forward could limit the availability of court resources for other case types or proceedings—potentially resulting in persistent backlogs, delays, and reduced service levels elsewhere.

Impact of Current-Year Budget Reductions

Base Funding for Trial Court Operations Declined by \$126.9 Million. Given the projected condition of the General Fund, the state took various actions to reduce expenditures in the 2020-21 budget. This included an ongoing \$176.9 million reduction in General Fund support for trial court operations. However, the budget also included a \$50 million one-time General Fund augmentation for trial court operations. This funding was provided to help address the backlog of cases that accumulated as a result of the COVID-19 pandemic. As a result, trial courts were only required to reduce operational expenditures by \$126.9 million in 2020-21.

Actions Taken to Reduce Trial Court Operations Expenditures. Given differences in the way trial courts operate, each court took different one-time and ongoing actions to reduce expenditures in the current year. In some cases, these actions have relatively little impact on court service levels. For example, some courts took steps to modify court processes to operate more cost-effectively or used trial court reserves (unspent funding received in prior years) to offset reductions. In other cases, courts reduced service levels, such as by furloughing and reducing staff, reducing public operating hours, and closing courtrooms. Such steps are likely to compound the pandemic-related delays and backlogs. We note that certain case types or proceedings tend to be impacted more heavily than others by these actions. This is because courts generally prioritize cases that address public safety or have due process or statutory requirements (such as criminal cases) over those that do not (such as some civil proceedings).

GOVERNOR'S BUDGET FOR TRIAL COURTS

Total Trial Court Funding Proposed to Increase by Roughly 2 Percent. The Governor's 2021-22 budget proposes about \$4.2 billion from

all state funds (General Fund and special funds) to support the operations of the judicial branch. Of this amount, \$3.1 billion (or 74 percent) will support

the trial courts—an increase of \$57 million (or 1.9 percent) above the revised amount for 2020-21. Of this amount, as shown in **Figure 1**, roughly half is from the General Fund and the other half from various state special funds with revenues from various sources (such as civil filing fees, criminal penalties and fines, and county maintenance-of-effort payments). Relative to the revised 2020-21 level, the Governor’s budget includes a net reduction

in General Fund support of \$94 million in 2021-22. A large portion of this decrease (\$128 million) is due to the courts needing less General Fund resources to backfill reduced fine and fee revenues and the expiration of \$50 million in one-time funding for trial courts to address pandemic-related backlog. As we discuss below, the reduction is partially offset by various General Fund augmentations proposed by the Governor.

Major General Fund Proposals for Trial Court Operations. The Governor’s 2021-22 budget includes various proposals to increase General Fund support for trial court operations totaling \$142.7 million. Specifically, the Governor proposes augmentations for:

- **Discretionary Use (\$72.2 Million).** The Governor’s budget proposes a \$72.2 million ongoing increase in base support for trial

Figure 1

Trial Court Budget Summary—All State Funds^{a,b}
(Dollars in Millions)

	2019-20 Actual	2020-21 Estimated	2021-22 Proposed	Change From 2020-21	
				Amount	Percent
General Fund	\$1,686	\$1,644	\$1,549	-\$94	-5.7%
Special funds	1,545	1,426	1,577	151	10.6
Totals	\$3,231	\$3,069	\$3,126	\$57	1.9%

^a Does not include expenditures from local revenues or trial court reserves.

^b State law requires excess property tax revenues collected by county offices of education beyond their annual funding allotment be used to offset state General Fund support of trial courts. This chart reflects these revenues as special funds—\$93.3 million in 2019-20 and \$103.9 million in 2020-21 and 2021-22.

court operations. (We note the proposed budget also includes \$118.3 million General Fund to backfill a decline in fine and fee revenue supporting trial court operations in order to maintain current overall funding levels.)

- **Specific Programs (\$31.4 Million).** The Governor’s budget includes \$12.3 million (growing to \$58.4 million annually by 2024-25) for a program to provide the online adjudication of infractions statewide and \$19.1 million to make permanent one-time funding that was previously provided for self-help centers.
- **Health Benefits and Retirement Costs (\$39.1 Million).** The Governor’s budget includes \$39.1 million for increased trial court health benefit and retirement costs.

EVALUATING OVERALL FUNDING FOR TRIAL COURT FUNDING

The Governor’s proposed budget reflects his priorities for the trial courts and represents one way of allocating additional funds to the courts. However, the Legislature may have somewhat different priorities. For example, the Legislature might desire a higher level of service than would be supported under the Governor’s proposal, which could involve providing more General Fund resources than proposed. Below, we identify

various issues that the Legislature will want to consider when making funding decisions for the trial courts.

Ensure Funding Levels and Allocations Align With Legislative Priorities. In determining how much additional funding to provide for trial court operations, we recommend the Legislature broadly consider the level of service it desires from the trial courts relative to its other General Fund priorities,

while keeping the state's projected operating deficit in mind. In defining the level of service it expects, the Legislature can specify expectations regarding cost-effectiveness or delays (such as limitations on acceptable backlogs) as well as equity (such as legal assistance in certain civil cases). The Legislature will then want to consider how that funding should be allocated to the trial courts in a way that best ensures its priorities and desired court service levels are achieved.

The Legislature has various options it can consider to ensure trial courts receive the funding necessary to provide the level of service it desires. For example, given the impacts on trial court operations resulting from the pandemic and ongoing budget reductions, the Legislature could determine that preventing further reductions in service levels or growth of backlogs are the highest priority. To achieve this priority, the Legislature could consider redirecting to trial court operations, on a one-time or ongoing basis, \$52.4 million proposed by the Governor for trial court facility maintenance, utilities, and leases. (These monies are not reflected in the trial court operations budget because trial court facility monies are generally administered by the Judicial Council Facility Program.) We note that, under this option, the most immediate facility needs would still be met if the Legislature approved the limited-term funding proposed by the Governor for deferred maintenance (\$28.5 million in 2020-21) and facility modifications (\$18.9 million in 2021-22 and \$48.8 million in 2022-23). Another alternative to increase trial court operations funding would be to not approve the Governor's proposed expansion of specific programs—such as the online adjudication of infractions proposal—and instead provide the money for trial courts to use at their discretion.

After identifying the funding necessary to support the service level it desires, the Legislature should consider how much discretion to give trial courts over the use of the funding it provides. Limiting discretion can ensure that funding is used consistently with legislative expectations. For example, the Legislature could set aside funding specifically to address pandemic-related backlogs—similar to the one-time funding provided in the 2020-21 budget. This ensures that funding is

used for addressing impacts directly related to the pandemic as opposed to other actions that could be prioritized by individual trial courts, such as ending employee furloughs. The Legislature could further specify that a certain amount of money be provided specifically to address court proceedings that must occur in person—such as to temporarily lease additional space and hire staff to conduct jury trials safely—to ensure that these types of proceedings have priority.

Governor's Discretionary Funding Increase Likely to Have Little Impact on Service Levels.

As discussed above, the 2020-21 budget included a \$176.9 million ongoing General Fund reduction to trial court operations that was offset by a one-time \$50 million General Fund augmentation. Trial courts took various actions to address the net reduction—some of which had the effect of reducing service levels (such as increasing backlogs). Expiration of this one-time offset means that trial courts would need to reduce expenditures by at least a further \$50 million in 2021-22. (We note that trial courts may need to address more than this \$50 million to the extent they took one-time actions—such as the use of reserves—to address the ongoing reduction in the current year.) As a result, this means that a large portion of the proposed \$72.2 million augmentation will likely be used to avoid further budget-related reductions in services—rather than increase service levels substantially.

Certain Operational Improvements Identified in Pandemic.

As discussed above, trial courts have taken various actions to change existing business practices to operate during the pandemic. Some of these actions can assist trial courts to operate more cost-effectively on an ongoing basis, including after the end of the pandemic. For example, the use of video-conferencing can assist courts to maximize the use of court interpreters who may be needed at multiple court facilities by eliminating the need for the court to pay for them to physically travel between locations. Similarly, trial courts also took actions that could expand public access to court services on an ongoing basis. For example, the use of video-conferencing can help individuals avoid having to take significant time off of work or travel long distances in order to seek court services. However, a number of these actions

have been authorized only on an emergency basis. Accordingly, trial courts will no longer be able to maintain them once the emergency authorizations expire following the end of the pandemic. The Legislature could consider whether to change state law to provide ongoing authorization for these actions as this could help maintain or improve overall trial court service levels.

Pandemic Will Impact Trial Operation Service Levels Beyond the Budget Year. The pandemic will continue to result in reduced trial court service levels (such as increasing backlogs), both during and after the pandemic, despite the various actions taken to minimize the pandemic's impact. It is uncertain how long it would take to fully address the final backlog of cases and return to normal processing times and service levels in all case types. In light of this, additional funding to mitigate the effects of the pandemic (such as

to lease additional space and staff to conduct socially distanced jury trials) could be needed after the end of the pandemic to prevent, or minimize, longer-term impacts on trial court operations and service levels.

Merits of Proposals to Provide Funding for Specific Programs. To assist the Legislature in considering funding for the specific proposals included in the Governor's 2021-22 budget, we provide our assessment and recommendations for three specific proposals that impact trial court operations. Specifically, in the remainder of this report, we analyze the Governor's proposals to (1) expand statewide the online adjudication of infraction cases, (2) extend funding provided for self-help centers, and (3) leave unchanged the county office of education offset of trial court General Fund support.

ONLINE ADJUDICATION OF INFRACTIONS

Background

Resolution of Traffic Cases. Individuals charged with traffic infractions or misdemeanors can resolve their cases in various ways. For example, an individual can choose not to contest a violation and submit payment to acknowledge conviction of the alleged offense, such as by paying a traffic ticket. Alternatively, the individual charged with a traffic infraction can choose to contest the violation before the court, such as through an in-person trial or in writing (referred to as a "trial by written declaration.") If the individual is dissatisfied with the decision rendered by the court under this process, he or she can contest the charges in court, with the court deciding the case as if the trial by written declaration never took place.

Criminal Fines and Fees. Upon conviction of a criminal offense (including traffic cases), a trial court typically levies fines and fees upon the convicted individual. As part of the determination of the total amount owed, individuals may request the court consider their ability to pay. Judges can reduce or waive certain fines and fees or provide an alternative sentence (such as community service).

Individuals who plead guilty or are convicted and required to pay fines and fees must either provide full payment immediately or set up installment payments with the court or county collection program. If the individual does not pay on time, the amount owed becomes delinquent. State law then authorizes collection programs to use a variety of tools or sanctions (such as wage garnishments) to motivate individuals to pay their debt. In order for a collection program to halt collection sanctions placed on a particular individual, the individual must pay the total amount owed, reestablish installment payments, or have the court adjust the total amount owed based on his or her ability to pay. Collected revenues are distributed to state and local funds that support various programs, including five special funds that support the judicial branch—the Trial Court Trust Fund (TCTF), the State Trial Court Improvement and Modernization Fund (IMF), the State Court Facilities Construction Fund (SCFCF), the Immediate and Critical Needs Account (ICNA), and the Court Facilities Trust Fund (CFTF).

Pilot Program Established in 2018-19 Budget. The 2018-19 budget package authorized a pilot

program through January 1, 2023 to facilitate online adjudication of certain aspects of traffic infractions at a minimum of eight courts and allow individuals to request ability-to-pay determinations. Under the requirements of the pilot program, an online adjudication tool was required to be developed that would (1) recommend a reduction of at least 50 percent of the total amount of criminal fines and fees due for low-income individuals and (2) offer at least three of five additional functionalities—such as allowing individuals to request an online trial, a date to appear in court, or a continuance. Individuals’ low-income status is verified in various ways, including based on information they enter into the tool. The legislation requires the judicial branch to provide an evaluation of the pilot program no later than June 30, 2022. The 2018-19 budget provided the judicial branch with \$3.4 million General Fund (declining to \$1.4 million annually beginning in 2019-20) to implement and operate the pilot program. As of November 2020, six courts offered the online ability-to-pay component of the pilot tool. A seventh court began offering this component in January 2021. Additional functionality, such as online trials, will be forthcoming beginning in spring 2021.

Governor’s Proposal

The Governor’s budget proposes a total of eight positions and a \$12.3 million General Fund augmentation in 2021-22 (increasing to \$58.4 million ongoing annually beginning by 2024-25) for the online adjudication of infractions statewide. The budget also proposes to backfill the expected reduction in fine and fee revenue and to eliminate the existing pilot. **Figure 2** summarizes the multiyear fiscal impact of the Governor’s proposals.

Expand Online Adjudication Tool Statewide (\$4.4 Million).

The Governor’s budget requires Judicial Council to (1) develop an online adjudication tool for all infraction violations (not just traffic infractions) that would include an ability-to-pay component and (2) make the tool available statewide by June 30, 2024. While

trial courts could choose whether to make use of the full online tool, all courts would be required to offer the ability-to-pay component of the tool by June 30, 2024. Courts that choose to implement all components of the tool would potentially be able to offer defendants the ability to handle most, and possibly all, aspects of their infractions online through the tool. Under this proposal, the tool would be implemented in an additional 10 courts in 2021-22, 21 courts in 2022-23, and the last 20 courts in 2023-24. The Governor’s budget proposes \$4.4 million in 2021-22, declining to \$2.7 million annually beginning in 2024-25, to support this expansion.

Backfill Expected Reduction in Fine and Fee Revenue (\$7.9 Million). Given that the online adjudication tool allows individuals to more easily seek reductions in the total amount of criminal fines and fees that they are assessed, the amount of criminal fine and fee revenue collected is expected to decline on an ongoing basis. To address this decline, the Governor’s budget proposes an ongoing General Fund backfill for reductions in revenues deposited into the TCTF, IMF, SCFCF, ICNA, and CFTF. (We note that the Governor’s budget includes a separate proposal to consolidate the SCFCF and ICNA that we discuss in a separate publication.) The proposed budget also includes provisional language authorizing the Department of Finance (DOF) to determine how the backfill is distributed among these judicial branch special funds based on their proportional share of the reduction in revenues. The Governor’s budget estimates that the backfill for all the funds will total \$7.9 million in 2020-21 and will reach \$55.8 million in 2024-25. Under the proposal, the exact of amount of this backfill would be adjusted annually

Figure 2
Governor’s Online Adjudication Proposal
(In Millions)

	2021-22	2022-23	2023-24	2024-25 and Ongoing
Expanding pilot program statewide	\$4.4	\$6.2	\$6.4	\$2.7
Backfill of reductions in criminal fine and fee revenue	7.9	18.9	40.7	55.8
Totals	\$12.3	\$25.1	\$47.0	\$58.4

to address whatever the actual loss in revenue is determined to be.

Eliminates Pilot Program and Other Provisions. The Governor's proposal also includes budget trailer legislation eliminating the pilot program established in 2018-19 and making certain components of the pilot program permanent, such as requirements related to the ability-to-pay

determinations and to online trials for those trial courts that choose to offer them. We also note that, under the language, an evaluation of the pilot program activities would no longer be required. (As we discuss in the nearby box, the proposed legislation also authorizes the trial courts to conduct all infraction proceedings remotely, upon

Authorization of Remote Infraction Proceedings

Governor Proposes Remote Adjudication of Infraction Proceedings. The Governor proposes budget trailer language authorizing the trial courts to conduct all infraction proceedings remotely (including arraignments and trials), upon consent of the defendant. The authorization means courts would not be limited to offering the remote adjudication of infractions through the online tool developed by Judicial Council alone. Instead, courts could conduct infraction proceedings using other remote adjudication methods, such as video conferencing. While some courts could be conducting some proceedings remotely on an emergency basis due to the pandemic, the proposal would extend this authorization beyond the end of the pandemic.

Proposal Can Promote Equity and Increase Access to Courts. The Governor's proposal can promote equity and increase public access to the courts. This is because it would provide individuals—such as those who are unable to travel to the court due to their income, work schedule, health, or location—with greater accesses to court services (such as choosing to contest a violation). The requirement for a defendant's consent would allow those who want to still participate in person to do so. Additionally, we note that infractions generally account for slightly more than 60 percent of court filings, which means that a significant number of people would potentially be able to benefit.

Impacts on Trial Court Operations Uncertain. The impact of conducting infraction proceedings remotely on trial court operations and costs is uncertain for a couple reasons. First, it is unclear how many courts will make use of this authorization and how they would use it. Moreover, it is unclear what the net effect on court workload and costs would be. On the one hand, costs and workload could increase. For example, the convenience of remote proceedings could result in more individuals choosing to interact with the court in a manner that requires more resources (such as by contesting a violation rather than simply paying for the fines and fees for the infraction). On the other hand, it is possible that remote infraction proceedings could create efficiencies. For example, trial courts may be able to process cases more quickly. The net impact of such effects is uncertain.

Issue for Legislative Consideration. The Legislature may want to consider the Governor's proposal as it can promote equity and increase public access to court services. However, we note there is no requirement to collect data or evaluate the effects of conducting infractions through methods other than the online tool under the Governor's proposal. As such, if authorization to use such methods is approved, we recommend the Legislature direct the judicial branch to submit an evaluation or report on such methods. This would be in addition to the evaluation specific to the online tool we separately recommend in the Online Adjudication of Infractions section of this report. An evaluation of the other methods courts might choose to adjudicate infractions proceedings remotely would inform future legislative policy and fiscal decisions (such as whether this authority should be expanded to other case types or proceedings).

consent of the defendant, including with methods other than the online tool.)

Assessment

Ability-to-Pay Component Provides Meaningful Assistance to Lower-Income Individuals and Promotes Equity. As of November 2020, six courts offered the online ability-to-pay component of the pilot tool. A seventh court began offering this component in January 2021. The judicial branch reports that a total of nearly 11,000 requests were submitted (with nearly 77 percent approved) by 6,865 litigants between April 2019 and October 2020 across five out of six courts. (Data from the sixth court was not reported.) Around half of these litigants reported that they received public benefits and 87 percent reported incomes below the federal poverty level. These submitted requests resulted in a few million dollars in reduced fines and fees, with the average amount owed per request being cut nearly in half. The high approval rate, and associated reduction in the level of criminal fines and fees owed, demonstrates that the ability-to-pay component provides meaningful financial assistance to lower-income individuals who may struggle to meet basic needs. Accordingly, this component also promotes equity as it seeks to minimize the disproportionate impact existing criminal fine and fee levels can have upon lower-income individuals.

Full Impacts of Tool Still Uncertain, Which Could Increase Costs. Various components of the tool are still in the process of being finalized and implemented. For example, online trials will not begin to be tested and implemented in any of the courts until spring 2021. The impacts of these additional components are currently unknown and could increase the total costs associated with the proposal. For example, the option for online trials could increase the number of individuals who make use of the tool to contest violations (and seek reductions in the total amount owed) by making access to the courts easier. This, in turn, could increase the amount of General Fund backfill required.

Additionally, we note that the total net impact of this tool on court operations and costs is unknown. For example, the tool could increase overall court

workload and costs if its convenience results in more people contesting violations or seeking fine and fee reductions. However, the tool also could reduce overall workload and costs if it is a more efficient way for the court to deal with these requests than otherwise would have occurred in person.

Premature to Expand Statewide. As indicated above, existing state law requires the judicial branch to complete an evaluation of the pilot program by June 30, 2022. The purpose of the pilot is to determine the overall costs, effectiveness, and impacts of the specified pilot activities. Such information is intended to inform future policy and funding decisions by the Legislature regarding online adjudication and ability-to-pay determinations, including the trade-offs of certain choices. For example, the Legislature may want to consider whether a higher criminal fine and fee reduction for low-income individuals (as compared to the 50 percent minimum under the pilot program) would be more appropriate or whether to specify minimum reductions for additional categories of individuals (such as those who may not currently meet the low-income definition). Without the results of the pilot, the Legislature would be unable to fully understand the costs and benefits of such choices. As such, it is premature to cancel the pilot and expand the online adjudication tool statewide as proposed by the Governor.

Recommendations

Reject Budget Trailer Legislation. We recommend the Legislature reject the proposed budget trailer legislation that would cancel the pilot and expand the existing online adjudication tool statewide. More complete data is necessary to accurately determine the impact of the various activities being tested in the pilot program that is currently in progress. The forthcoming evaluation of the pilot would allow the Legislature to assess the effectiveness and impacts of specific pilot activities, which will better inform future legislative policy and funding decisions.

Only Approve Funding Requested for 2021-22. To the extent the Legislature is interested in providing more lower-income individuals with access to the tool and its ability-to-pay component,

we recommend the Legislature only provide \$12.3 million (the amount requested for 2021-22) in order to support the proposed expansion of the tool to ten additional courts in the budget year. This action would avoid delay in providing more lower-income individuals with financial relief and promoting increased equity while the currently required evaluation is being completed. Moreover, providing funding only for the budget year would prevent the program from automatically continuing to expand in subsequent years before the Legislature has the opportunity to determine what

changes, if any, need to be made after receiving the evaluation.

Approve Provisional Language.

We recommend the Legislature approve the proposed provisional language authorizing DOF to determine the distribution of the General Fund backfill revenues among the various judicial branch special funds impacted by this proposal. This is a technical adjustment that ensures that the revenue deposited into each special fund is commensurate with the revenue loss due to this proposal.

SELF-HELP CENTER FUNDING

Background

Services for Self-Represented Individuals.

Self-represented individuals refers to those who choose to access certain court services without the assistance of legal counsel—typically related to civil matters. This is generally because the individuals cannot afford to hire legal representation. Given their lack of familiarity with statutory requirements and court procedures (such as what forms must be filled out or their legal obligations in the potential case), self-represented individuals can be at a legal disadvantage. In addition, trial court staff tend to spend significantly more time processing a self-represented filing than one with legal representation. For example, a self-represented litigant who files incomplete or inaccurate paperwork can lead to the litigant having to file paperwork repeatedly, the court having to continue or delay cases, or the court needing to schedule additional hearings. To help self-represented individuals access the court system, the judicial branch offers or partners with other legal stakeholders (such as county law libraries or the State Bar) to provide various services and programs—such as legal aid and in-person self-help centers.

Services Provided by Self-Help Centers.

Each of California's trial courts operates a self-help center which serves as a central location for self-represented individuals to educate themselves and seek assistance with navigating court

procedures. Attorneys and other trained personnel who staff the centers provide services in a variety of ways (such as through one-on-one discussions, courtroom assistance, workshops, and referrals to other legal resources). This assistance is provided for issue areas ranging from divorce and child custody to small claims issues. In providing services, an individual self-help center leverages its own resources but may also utilize certain statewide resources and services provided by Judicial Council, such as electronic document assembly programs that populate court forms based on self-represented individuals' answers to certain questions. We note that self-help centers could also utilize self-help services provided by other governmental, nonprofit, or private organizations as well.

Increased Funding for Self-Represented Litigants in Recent Budgets. The 2018-19 budget provided \$19.1 million General Fund annually for three years to supplement \$11.2 million in existing support from the TCTF (\$6.2 million) and IMF (\$5 million). This increased the total annual direct funding for self-help centers to \$30.3 million through 2020-21. These funds are allocated to individual centers using a formula based on the population of the county where the center is located. Self-help centers also can receive funding from other sources, such as trial court operation dollars and federal funds.

In addition to the funding provided directly for self-help centers, the state also has funded other programs separately in recent years to assist self-represented individuals. For example, the 2018-19 budget also included \$3.2 million General Fund in 2018-19, declining to \$709,000 annually beginning in 2020-21, for the judicial branch to design, build, and maintain an e-services web portal for self-represented individuals. This web portal will allow self-represented litigants to research, complete and file forms electronically, and track their cases online through a user account. Interactive instructional tools and chat functions built into the system would provide litigants with assistance in completing forms, addressing questions, or prompting next steps.

Legislature Required Judicial Branch Complete a Cost-Benefit Analysis. The 2018-19 budget required Judicial Council conduct by November 2020 a cost-benefit analysis of self-help services that assessed the costs and benefits of each method by which self-help services are provided, including the impacts of such services on trial court operations, and how cost-effectiveness may vary across case types by delivery method. This analysis was required by the Legislature so that it could determine what level of ongoing funding to provide for self-help services and how to most effectively target such funding.

Governor's Proposal

The Governor's 2021-22 budget proposes to provide a \$19.1 million ongoing General Fund augmentation for self-help centers. This augmentation would maintain direct funding for self-help centers at \$30.3 million—the level it has been at since 2018-19. Absent this proposal, funding for self-help centers would decrease to \$11.2 million beginning in 2021-22.

Assessment

Funding Increased Service Levels and Helps Promote Equity. The judicial branch reports that the additional funding provided beginning in 2018-19 substantially increased the services provided by self-help centers. Specifically, the numbers of individuals served increased from 444,000 to just over 1 million. The funding was

used to nearly double the number of self-help staff, invest in technology, increase self-help locations and hours of operation, and increase services to individuals with limited English proficiency. It was also used to allow more individuals to be served in certain case types (such as eviction and other civil case types) and to provide services in new or expanded ways (such as adding workshops, increasing use of document assembly programs, and expanding remote access to services). We note that a number of courts have shifted to providing self-help services remotely in light of restrictions on public access to court facilities due to the COVID-19 pandemic.

Self-help centers generally provide services to lower-income individuals who are unable to afford legal representation. Such individuals generally are seeking the assistance of self-help centers to address issues affecting their basic needs, such as avoiding eviction or seeking child custody orders. Absent such assistance, it can be difficult for self-represented individuals to successfully seek resolution through the courts. For example, it can be difficult for self-represented litigants to successfully obtain modifications to child custody orders without assistance. However, with the assistance provided by self-help centers, such individuals have a greater opportunity to successfully resolve their cases. As such, funding self-help services can promote greater equity.

Cost-Benefit Analysis Incomplete. As noted above, the 2018-19 budget required Judicial Council to conduct a cost-benefit analysis of self-help services. This analysis was required by the Legislature to objectively assess all costs and benefits of such services, as well as determine which methods of delivering self-help (such as one-on-one services or workshops) are most cost-effective and in which case types. For example, such a study could determine that one-on-one services are most cost-effective in guardianship or probate cases while workshops are most cost-effective in marital dissolution cases. This information would then allow the Legislature to determine what level of funding is merited, where the funding should be targeted to maximize state benefit, and whether funding allocations need to be

adjusted elsewhere to account for savings created by self-help services.

The judicial branch submitted a report at the beginning of January 2021 to comply with this requirement, but the report is incomplete as it does not constitute a cost-benefit analysis. The report includes helpful information and reflects extensive staff efforts to collect outcome data across delivery methods, solicit input from stakeholders (such as court users and court staff), and identify benefits and challenges. However, the final pieces of a cost-benefit analysis—specifically (1) calculating the monetary value of identified benefits, (2) identifying the corresponding costs, and (3) identifying the net benefit of the various self-help delivery methods by case type—are not included in the report. Without this important information, it is difficult for the Legislature to determine what level of funding is warranted and how such funding should be used to maximize its impact.

Recommendations

Direct Judicial Council to Use External Researcher to Complete Cost-Benefit Analysis.

We recommend the Legislature adopt budget trailer legislation directing Judicial Council to contract with an external researcher to complete a cost-benefit analysis of self-help services, as well as to provide recommendations on how funding can be allocated by delivery method and case type to maximize the benefit to members of the public and to the court. This report should be due to the Legislature no later than November 30, 2022 in order to inform legislative decisions on self-help funding for the 2023-24 budget. (This complements the recommendation below that funding only be provided through 2022-23.) We anticipate that the external researcher will be able to make use of

the data and information collected by the judicial branch to prepare its submitted report, but may need to supplement this information. As such, we anticipate that costs should not exceed a couple hundred thousand dollars. We find that this cost could be absorbed by the judicial branch within its existing resources.

Provide Funding for Two Years. In order to prevent a reduction in self-help services pending the completion of the above cost-benefit analysis and help maintain the equity-related benefits of the previously provided funding, we recommend the Legislature approve the Governor’s proposed funding for self-help centers, but only on a two-year, limited-term basis. Moreover, we would note that such services are arguably more important during the COVID-19 pandemic. For example, more individuals may no longer be able to afford legal representation or assistance.

Consider Provisional Language Prioritizing Use of Funding. The Legislature may want to consider adopting provisional language to specify its priorities for the use of self-help center funding. As mentioned above, a number of self-help centers have pivoted in response to the pandemic to provide more services remotely rather than in person in court facilities. The Legislature could specify that a minimum portion of the funding must be used to provide services remotely (such as by using video conferencing or screen-sharing technologies) in order to increase the ways members of the public can access the courts. While this is particularly important during the pandemic when in-person public access to the court may be limited, it could also be beneficial to maintain on an ongoing basis for certain court users—such as those who would need to travel far distances to visit the court—under normal circumstances.

COUNTY OFFICE OF EDUCATION OFFSET OF TRIAL COURT GENERAL FUND SUPPORT

Background

County Offices of Education (COEs). Each of California’s 58 counties has a COE. COEs oversee

the budgets and academic plans of school districts within their jurisdictions, operate certain alternative schools, and provide various optional services to

school districts. A primary source of funding for COEs is the Local Control Funding Formula (LCFF). Each COE's annual LCFF allotment is determined by formula.

Some COEs Collect "Excess Property Tax" Revenue. A COE's annual LCFF allotment is supported first with local property tax revenue, with the remainder covered by state Proposition 98 General Fund. Some COEs collect *more* in property tax revenue than their LCFF allotment. The amount collected above the LCFF allotment is known as excess property tax. Because the amount of property tax revenue collected can change from year to year, the amount of excess property tax also can change from year to year.

Offset of General Fund Support for Trial Courts. State law requires that any excess property tax revenues collected by COEs beyond their LCFF allotments be used to offset state General Fund support of trial courts. The transfer occurs at the direction of DOF and the State Controller's Office the year after the taxes are collected. For example, excess property taxes collected in 2019-20 offset the state's General Fund support of trial courts in 2020-21.

Governor's Proposal

The Governor's budget estimates that the amount of excess property tax revenue available in 2021-22 will not increase over the 2020-21 level of \$104 million.

Assessment

Underestimate of Revenue Available for Offset. Our preliminary analysis of property tax growth projects higher levels of excess property tax revenues available to offset General Fund support of trial courts than assumed in the Governor's budget. Specifically, we estimate that \$134 million in excess property tax revenues will be available in 11 counties in 2020-21. This is \$30 million over the Governor's estimate. We estimate the annual excess tax revenue will continue to increase and will exceed \$200 million in 2024-25.

Recommendations

Adjust Offset to Free Up Additional General Fund Resources. We recommend the Legislature adjust the trial court offset in 2021-22 upward to account for property tax growth in 2020-21. This would provide the Legislature with additional General Fund resources above the level assumed in the Governor's budget to meet its priorities, which could include providing additional support for trial court operations. Our preliminary estimates indicate that the offset should be adjusted upward by \$30 million, but note that updated data will be available in the spring to further refine this estimate. We will provide updated numbers at that time.

LAO PUBLICATIONS

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

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