

# 1996·ANNUAL·REPORT



*Judicial Council Report  
to the Governor and the Legislature*

# JUDICIAL·COUNCIL OF·CALIFORNIA

# TRIAL COURT FUNDING



*Following another year of deepening financial crisis for the California trial courts, Governor Pete Wilson on January 10, 1996, delivered his budget message to the state Legislature. It included a proposal to dramatically alter the funding structure for trial court operations, a proposal the Judicial Council voted to support, in concept. The Legislature is expected to take action on the proposal—Assembly Bill No. 2553—in August 1996.*

*The current method of sharing funding responsibility between the state and the counties has produced much uncertainty on the part of both entities concerning their financial obligations. It also has made it impossible for the trial courts to engage in long-term planning and has limited the Judicial Council's ability to allocate resources to the courts. The consequences for the public are that disparities in access to justice are increasing from county to county.*

*Under the Governor's proposal, the state would assume responsibility for funding the trial court operations, ending the current ineffectual system under which the state provides one-third of the funding for state courts and the other two-thirds is provided by often financially strapped counties. As a result of this current funding scheme, Californians are not assured of equal access to justice, because service depends on the financial health of the county in which they reside. The Governor's proposal promotes fiscal responsibility and accountability by the trial courts and will result in the improved management of scarce resources in a more efficient and effective manner.*

*The Judicial Council's Task Force on Trial Court Funding concluded that the Governor's Proposed Budget for fiscal year 1996–97 provides a simplified budgeting process that would allow the trial courts a measure of independence and accountability that is not achievable under the current funding structure.*

## Emergency Court Funding Approved

In August 1995, the Judicial Council directed three advisory committees to hold a joint meeting for the purpose of studying the crisis in court funding. A total of 23 counties applied for supplemental funding, ranging in amounts from \$9,000 to \$8 million. In addition, a series of three surveys of the trial courts enabled the council to identify the unmet critical funding needs of the trial courts and by that process to document, to the satisfaction of the Governor and the Legislature, the need for an additional \$25 million in state funding. That amount was matched by the counties to provide total additional funding of \$50 million for trial court operations for fiscal 1995-96. As a result, the trial courts completed fiscal year 1995-96 with no court closures, spending deficits, or pending legal actions against their counties.

## Task Force on Trial Court Funding

Following submission of his historic budget proposal, the Governor requested interested organizations, including the counties and the Judicial Council, to provide feedback on the proposal in order to address questions and concerns and to develop a consensus on the details of a proposal that could be presented to the Legislature. In response, the Judicial Council formed the Task Force on Trial Court Funding, which was charged by the Chief Justice to survey the trial courts, to assess the survey responses and identify issues raised by the courts relative to the Governor's proposal, to review suggestions and alternatives presented by the trial courts, and to make specific recommendations on the best approach to address those issues the trial courts deemed integral to the Governor's proposal.

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***The Governor's Proposed Budget for fiscal year 1996-97 provides a simplified budgeting process that gives the state responsibility for funding trial court operations. This system would allow the trial courts a measure of independence and accountability that is not achievable under the current funding structure.***

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### **Recommendations to implement Governor's proposal**

The Task Force on Trial Court Funding recommended that the Judicial Council continue to support in concept the Governor's Proposed Budget for fiscal year 1996-97 based upon inclusion of the recommendations listed below that identify implementation actions needed to meet the key needs of the trial courts for the foreseeable future.

#### *Survey conducted*

As an initial measure, the Administrative Office of the Courts (AOC) surveyed all trial courts on February 8, 1996. The results were reviewed at the first meeting of the task force on February 21, 1996. An interim report to the Judicial Council was presented in February 1996 and distributed to the courts as well as other interested parties and groups with an invitation to comment.

The task force developed additional recommendations, which the Judicial Council considered at its March meeting and approved in concept, as with the earlier recommendations. An updated interim report of the task force was again disseminated to the courts and to interested parties for review and further comment. The task force completed its work in April.

During this process, input was received from the State Bar, the California Judges Association, the California State Association of Counties and from individual trial courts and associations of trial courts throughout California.

At the April 22 meeting, the members of the task force voted, without dissent, to recommend the following necessary elements for the successful implementation of the Governor's proposal:

- Funding should be requested that meets the actual Trial Court Budget Commission/Judicial Council budget request of 1.727 billion for fiscal year 1996-97, which is \$120 million dollars above the Governor's budget proposal. (The TCBC-approved budget is based upon its determination of the needs of the trial courts. The TCBC process considers issues of accountability, minimum standards, performance issues, etc., in producing an approved budget for the trial courts.)
- The status quo with respect to employee status should be maintained (i.e., employees remain county/court employees). As with several of the recommendations of the task force, this one reflects the consensus that a single, stable source of funding of the kind proposed by the Governor should not be accompanied by an overly centralized organizational structure for California's trial courts. Rather, by drawing on recent experiences in the private sector, advantageous features of decentralization should be retained to provide maximum flexibility to the trial courts at the local level. The single state source of funding model proposed by the Governor creates a new dynamic in the area of collective bargaining with employees who will remain employees of the local courts. An extensive study of this problem was made by a subcommittee formed within the task force. The task force approved these recommendations.

- The TCBC budget-review process should be used to ensure local input and to preserve the flexibility and control of operations at the local court level. The TCBC budget-

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***Irrespective of the sources of funding, the statute must reflect an unequivocal state responsibility to provide a stable system for funding the operations of the trial courts.***

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evaluation criteria and process should be retained and refined to provide a single budgetary process. Statutory authority, California Rules of Court, and TCBC policies should be evaluated and assessed.

- Courts and counties should be allowed to continue to collaborate so that the ultimate goal of efficient collections is realized. Courts have a strong interest in ensuring that courts and counties continue to collaborate so that both goals of efficient collection and enforcement of court orders are achieved. Court collections can be transferred from court to county by mutual agreement. To ensure compliance with orders, trial courts must retain ultimate authority to determine where collections will be made.
- The Trial Court Budget Commission allocation process should be utilized to provide mechanisms for emergency and mid-year changes in funding. Current policy, which allows a court to transfer funds among functional categories as necessary during a given fiscal year, should be retained. Following a transfer at the local level between functional budgeting categories, a review of those actions will take place through the TCBC process. Policies, rules of court, and statutory authority will be evaluated and assessed.
- Courts should be authorized to negotiate with either the county or

outside vendors for non-direct administrative support and for the purchase of equipment, supplies, and services heretofore provided solely by the county. The courts, in any case, should have the option to continue to use county services. The counties should receive fair compensation for services rendered, provided, however, that increases in charges by counties for services and supplies shall not exceed that charged for comparable services and supplies to departments of that county. In-county services offered to county departments should also be offered to the courts.

- It should be ensured that services provided and costs absorbed by a county, which have not been charged back to the courts as of January 1, 1996, will continue to be provided and absorbed at no less than the level provided in fiscal year 1995-96 and without charge to the courts.
- Irrespective of the sources of funding, the statute must reflect an unequivocal state responsibility to provide a stable system for funding the operations of the trial courts. (Note: The task force has considered alternate proposals on which

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***The creation of a "three-strikes team" should be supported to deal with significant increases in criminal case activity as outlined in the Governor's proposal. The task force recognizes that additional long-term solutions must be identified and implemented.***

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the judicial branch of government should take a position. These concern the sources of revenue for funding

court operations and the proportionate share to be provided by those sources. The task force also observed that the estimates of the revenues to be generated by the proposed fee increases are only estimates. It is the assessment of the task force that, in addressing the Governor's proposal, the judicial branch should be concerned principally with the development of a statutory structure that clearly identifies the state's responsibility to provide for stable, reliable, adequate funding for trial court operations.)

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***Local trial court authority and control over personnel, expenditures, and individual court operations should be retained.***

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- The Governor's proposed authorization of 21 new judgeships should be supported. This element of the Governor's proposal does not, however, resolve present deficiencies in the number of authorized judicial positions. Future judgeship needs should be determined based only on workload analysis.
- The creation of a "three-strikes team" should be supported to deal with significant increases in criminal case activity as outlined in the Governor's proposal. The task force recognizes that additional long-term solutions must be identified and implemented.
- Local trial court authority and control over personnel, expenditures, and individual court operations should be retained.
- A process for courts to deal with the impact of new laws or policies (state or county) should be provided. Fiscal notes (prepared by the LAO or the AOC) identifying operational costs that would result from adoption of proposed legislation should be required. The statute should build in recognition of the responsibility for adequate

funding which will address the impact of actions at the state and local levels on the operations costs for the trial courts. Statutes should embrace the concept that the state will be responsible to fully fund newly mandated operations costs (i.e., the equivalent of the Sen. Bill No. 90 process which provides counties with the assurance that new state mandates will be funded), and that a similar mechanism should be devised providing for additional county responsibility to the extent that counties mandate additional court operations costs by their actions.

- It should be ensured that costs for construction and renovation of "court facilities" will remain a county responsibility. (Note: Court facilities include, without limitation, all rooms, chambers, and buildings necessary for the discharge of court judicial, administrative, and clerical business along with ancillary facilities (e.g., jury assembly and deliberation facilities and in-court detention facilities). A line of demarcation must be drawn between responsibility for repair as distinguished from maintenance. The line of demarcation should be drawn at the point where costs are *not* identified under California Rules of Court, rule 810, as approved costs. Counties should be required to pay those "non-810" costs.)
- It should be provided that with respect to defense and indemnification for claims and suits, the state will undertake to defend, indemnify, and hold harmless judges against liability claims and in general civil actions, whether in state or federal court; while the counties shall remain responsible to defend, indemnify, and hold harmless court staff (including subordinate bench officers) against liability claims and in general civil actions, whether in state or federal court, consistent with the employee status recommendations noted above. The responsibility to provide legal assistance to the courts, heretofore borne by the county counsel offices in the respective counties (e.g., responding to peti-

tions for writs of mandate to the court of appeal, preparation of affidavits in connection with Code Civ. Proc., § 170.1 challenges), should remain with the counties.

- Government Code section 68108, which provides that counties may schedule furlough days for the courts, should be repealed.
- It should be provided, prospectively, that a fixed share for penalty assessments which accrue to counties shall be deposited into the county court construction fund and shall not be subject to diversion by county government for non-court construction purposes.
- The statute must provide that counties shall remain responsible for all "non-810" costs associated with the operation of the justice system.

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***The Task Force recommended that the Judicial Council continue to support the Governor's Proposed Budget for fiscal year 1996-97 in concept based upon inclusion of recommendations that identify implementation actions needed to meet the key needs of the trial courts for the foreseeable future.***

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## Other Budget Actions

- In 1995, the council adopted the TCBC recommendation that requires trial courts to report transfer of state funds among budget categories on a quarterly basis, allowing local courts to adjust to local needs while guaranteeing tracking of state funds.
- Fiscal year 1994-95 marked the third year of the initial three-year trial court coordination implementation plan mandated by the Trial Court Realignment and Efficiency Act of 1991. The total cumulative savings for this three-year period (fiscal year 1992-93 to 1994-95) was \$241,757,807, surpassing the mandated goal by \$169,848,202. While it is not possible to attribute all these savings to coordination efforts, it can be reasonably stated that a large portion of these savings can be linked to the coordination of trial court resources.
- The 1995-96 Budget Act provides that the Judicial Council report to the Legislature regarding the feasibility of developing trial court performance criteria. The criteria would help assess progress toward specific outputs, measure quantitatively, and provide cross-court comparisons of functional expenditures and staff levels, including efficiency efforts. The TCBC developed performance criteria and applied them in developing the 1996-97 TCBC-approved budget that was adopted by the council. The criteria have evolved and continue to evolve as the judiciary gains experience and responsibility in management of the trial court budget process. The council's report on the criteria was submitted to the Legislature in March 1996.

## Initial Minimum Standards for Trial Court Operations

The Judicial Council adopted Initial Minimum Standards for Trial Court Operations, as recommended by the Trial Court Budget Commission (TCBC). Government Code section 68502.5 requires the council to establish minimum standards for the operation and staffing of all trial courts that are modeled on court operations using all reasonable and available measures to increase court efficiency and coordination. The TCBC must use these standards in preparing its recommended annual allocation schedule of trial court funds. The allocation schedule must ensure that all trial courts receive funding for the minimum operating and staffing standards before funding operating and staffing requests above the minimum standards.

Minimum standards were developed for many of the following 10 areas of court operations: judicial officers, jury services, verbatim reporting, interpreters, court collections, alternative dispute resolution programs, court-appointed counsel, court security, court technology, and all other costs. These initial standards continue to be developed and refined.

Besides adopting the minimum standards, the council voted to:

- Use the standards as guidelines when evaluating fiscal year 1996-97 proposed trial court budgets;
- Fully apply the standards for the fiscal year 1997-98 budget development process, assuming adequate state trial court funding is appropriated;
- Annually review the standards to address modifications and changing trial court needs; and
- For application to the fiscal year 1997-98 budget development process, apply the Oversight Task Force's definition for "minimum" ("Minimum, as applied to the operating, staffing, and funding standards, refers to having the capability to comply with all requirements of the Constitution and all statutes, rules of court, and standards of judicial administration in a timely, equal, and cost effective manner"); require courts to explain increases to minimum service levels; give courts the discretion to decide whether to augment their budgets in order to achieve the stated minimum service level in any given function; and require courts to continue to monitor actual expenditures and transfers among functional budget categories and indicate whether or not they were able to achieve minimum service levels for which they were funded (if not, courts should be required to provide an explanation).