

**TO: AB1058 FUNDING ALLOCATION JOINT SUBCOMMITTEE**  
**RE: PUBLIC COMMENT for meeting on January 19, 2018**

Thank you for allowing written public comment. I am an AB1058 Commissioner currently sitting in San Francisco. Although I have been a judicial officer for a bit longer, I have been involved in the AB1058 program essentially from its inception in 1997, spending my first 3 years in a small county (Marin) and then moving to a larger county (SF) in 2000. I am also a statewide trainer for the bench on DCSS' certified child support guideline calculator, and have for many years been a co-presenter for providing orientation for New Commissioners assigned to do AB1058 (Title IV-D) work. I was one of three Commissioners that worked with the state DCSS during the development of their statewide computer system (CSE), providing input on the needs and processes on the court side statewide, and I have also been on the joint DCSS/JC Judicial Stakeholders Committee for many years, providing input on statewide issues.

I have previously written to this Joint Sub-Committee with comments, which included both suggestions and concerns relating to the AB1058 program and its unique needs. It is extremely important to me that those who are going to be making decisions about funding allocations truly understand that the AB1058 program is a very unique one. It is a **grant** program. And unlike general trial court funding, a **grant funded program** carries with it a number of grant requirements. In 2016, the same year this Joint Sub-Committee was formed, I co-wrote an Article (two-part series) with a colleague that discussed the AB1058 program, and the importance of funding to the program's success. I have attached a copy of the 2-part series Article here, and truly hope that you take the time to read it – especially **Part II**.

The majority of the “work” done in an AB1058 assignment has less to do with how many “cases” are open than what happens to open cases, and how they are handled procedurally or operationally on both “sides” – the court side and the LCSA (Local Child Support Agency) side. It is primarily a motion-driven program, with the nature and types of pleadings or motions filed heavily dependent upon the operations and needs of an institutional actor – LCSAs – bringing work to the court. In addition, while courts are not at all required to meet federal performance measures, the state DCSS, working through the LCSA's, are required to do so. This can, in turn, create substantial differences in the workload brought to the court, even where counties have a similar number of “open” DCSS cases. And this is true, without even taking into consideration *other* unique operational differences within DCSS' statewide system (e.g. where they have ability to “transfer” thousands of cases for case management on the LCSA side from one county to a completely different county in another part of the state, and which, in turn, can affect the workload brought to the courts).

I can go on and point out many other crucial differences, and concerns, some of which I have put in past public comments (please review them if you can). I also believe it would be helpful to examine some data and trends relating to the type and amount of work (motions, etc.) brought to the courts, including analyzing some of the statistics that affect the federal performance measures – which drives LCSAs' operations – to truly understand the how this federally funded program “works” and what impacts can occur if the grant is not administered in a way that is tailored to the program's needs. Failure to take into account these differences for this unique federal grant program puts the program's success in jeopardy. A more unique solution than allocation based upon a similar general trial court funding “approved methodology” is going to be necessary to administer the grant in a manner that is attuned to the requirements of the grant itself.

Thank you. These comments are my own, based on 20 years of experience in the program, and not on behalf of any organization.

*Rebecca Wightman, Commissioner*  
*Superior Court – San Francisco*



Commr. Jeri Hamlin  
Tehama Superior Court



Commr. Rebecca Wightman  
San Francisco Superior Court

## The Importance Of AB 1058 Funding... Critical To The Success Of Families

*[Editor's note: Due to its importance to all trials courts, the authors chose to write a two-part series. Part I provides background information surrounding the creation of a statewide child support program that is supported by federal grant funding, and discusses recent budget woes. Part two will explore in more detail the unique aspects of the program and its evolution, as well as potential program impacts when revising funding allocations to each of the counties' grants.]*

The Judicial Council is presently considering a revision to the amount of AB 1058 monies sent to each county's trial courts, commencing fiscal year 2017-2018. The financial impact on each court, especially for counties that may lose monies, may not only cause a negative and profound immediate effect upon the ability of California's families to have reasonable access to the courts to establish and receive much needed child support, but may very well be detrimental to the program overall. Why is that? It's complicated, but is in large part tied to the structure of the grant program – and how it has evolved over the past almost two decades. But first, a primer:

What's "AB 1058" about anyway?

### Historical Background

In 1997, the Federal government created through Title IV-D of the Social Security Act, a child support program to be co-administered in each state. In California, statutory implementation of this program was set forth in Assembly Bill AB 1058. Hence, the program is interchangeably

referred to as the Title IV-D program or the AB 1058 program. It was designed to improve the process of establishment and enforcement of child support quickly and efficiently for families in California. Administrative implementation of the program occurs through the state Department of Child Support Services (DCSS), with each county or region having a Local Child Support Agency (LCSA) that reports to DCSS. LCSAs can initiate court cases to establish paternity, support, modify support and conduct a wide range of enforcement activity. They can also—unlike any other government entity—literally “step into” existing family law court cases and litigate the same issues, including enforcement activity.

The program is primarily federally funded (two-thirds federal grant, one-third state general fund, aka “base funding”). Trial courts can also request to participate in “Federal Drawdown Funds,” which if granted, brings two federal dollars to the court for every dollar the trial court itself puts in from its own trial court budget. Each state must meet federally imposed performance-based standards. Failure to maintain these minimum performance standards jeopardizes the continued receipt of federal funding for the program.

Funding for each county was originally allocated based upon a 1997 Family and Juvenile Law Advisory Committee report presented to the Judicial Council that looked at active caseload, minimum staffing levels, county-provided information and

estimates on hearing workload, county requested needs, and other factors.

The program was set up such that each year thereafter, trial courts submitted annual funding requests. A mid-year reallocation process was set up for counties that did not spend all of their funding, with any monies not spent by the end of each fiscal year being swept back to the state's general fund.

In addition, from the very beginning it was deemed important for smaller counties to have a minimum flooring of funding notwithstanding active case numbers given the need to attract and retain experienced Commissioners<sup>1</sup>, and the importance of maintaining a basic infrastructure to implement and run a child support court. Some smaller counties have turned to sharing Commissioners, but the disproportionate salary expenses and the hard costs of infrastructure in running an AB 1058 program in each county, remain problematic to smaller courts.

### Budget Woes

So why is this an issue now? Unfortunately, federal funding has been flat-lined at \$55 million since 2008 due to federal budget woes. Labor costs, supplies, etc. have obviously continued to rise. The mid-year allocation process helps, but even though it was recently changed to occur sooner, it remains a cumbersome process and some funding always goes unused<sup>2</sup>. This has been a barrier to DCSS successfully getting additional overall funding that all agree is so greatly needed. “Federal drawdown” options also help somewhat, but the lack of any

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federal grant funding increase, along with the state judicial branch's budget woes, have left trial courts struggling in all counties to continue to provide adequate child support court services.

As a result, this program and its funding methodologies have come under scrutiny, and counties find themselves pitted against each other to grapple for funds at the expense of their sister counties. Grant funding changes for many, especially smaller counties, can easily jeopardize their ability to successfully implement the AB 1058 program itself, as well as continue providing access to justice for child support litigants. Changing the current grant funding – which has evolved over the years – also creates a real risk that a greater number of counties and courts (and therefore California as a whole) will be unable to comply with the minimum federal performance standards required for continued federal funding.

In 2015, the Judicial Council created an AB 1058 Funding Allocation Joint Subcommittee ("2015 Joint Subcommittee") to study the program's funding allocation methodology. It was comprised of members from three different Advisory Committees: Family & Juvenile Law, Trial Court Budget and Workload Assessment<sup>3</sup>. Due to the unique complexities of administering the

AB 1058 program, it became evident that simply determining the total number of California child support case filings in a fiscal year, and dividing the \$55 million in funds pro rata between the counties based upon their percentage of these case filings, was too simplistic a methodology for reallocation of funds. The 2015 Joint Subcommittee, realizing the need to better understand the program's complexities, as well as the need to work with DCSS as it was conducting its own LCSA program funding methodology assessment, reported back to Judicial Council early this year seeking additional time to receive further information.

In February, 2016, the Judicial Council voted to appoint a 2016 Joint Subcommittee to develop a workload-based funding methodology to begin implementation no later than FY 2017-2018. The 2016 Joint Subcommittee was also tasked to coordinate with DCSS on their current review of funding allocations for local child support agencies, and to continue its work to determine accurate and complete workload numbers to include in a funding methodology for both child support commissioners and family law facilitators. Toward this goal, the Judicial Council directed that a subject-matter expert group be established,

comprised of both commissioners and facilitators to provide input and expertise to the joint subcommittee. A report back to Judicial Council for their findings and recommendations has been set for this December.

What is REALLY at stake here? Stay tuned for Part 2 in the next issue of *The Bench*. ☪

*About the authors: Jeri Hamlin is currently the President of the California Court Commissioners Association, and the AB 1058 Commissioner for the counties of Tehama, Glenn, Colusa and Plumas. Rebecca Wightman is currently the AB 1058 Commissioner for San Francisco County, was CCCA's 2015 Commissioner of the Year recipient; and a member of the AB 1058 DCSS/JC Judicial Stakeholders Committee.*

#### Endnotes:

- 1 Judges by law are not allowed to hear cases where DCSS is involved except under exceptional circumstances. (Fam. C §§4251(a), 4252(b)(7); CRC, Rule 5.305)
- 2 Approximately one million dollars each year is left on the table and swept.
- 3 Individual judges and CEOs comprised the majority of over 15 initial members, with only one AB 1058 Commissioner and one family law facilitator, along with the state DCSS Director.

## Save the Date

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3rd District Court of Appeal*

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*Presented by: The California Judicial Council, The State Bar of California Council on Access & Fairness, The California Judges Association*



Commr. Jeri Hamlin  
Tehama Superior Court

## The Importance Of AB 1058 Funding To Families And Program Success (Part II)



Commr. Rebecca Wightman  
San Francisco Superior Court

*In the last issue of The Bench, we wrote generally about the creation of the statewide child support system with specialized child support courts (aka AB1058 courts or Title IV-D courts). The truly unique aspects of this program and why funding allocation issues are so important to all courts, as well as to the success of the entire program statewide, are addressed here.*

### Unique Aspects of an AB1058 Program

**C**hild support cases are paper intensive and very dynamic, with parents' employment status, income, insurance, family composition, location (parents and minors), custody, and visitation, among other things, changing often over the life of a case. Case workloads can last well beyond the 18 years of a child's minority, with enforcement activities ongoing until arrears are fully paid. DCSS also provides services, and files cases, on behalf of other states and countries.

Further, California's population is highly transient, with parents often moving between counties, to other states and countries. DCSS cases move constantly between counties, and beyond. Despite current overall number of active statewide DCSS cases (1.106 million FY 2015) being fairly similar to what they were almost 20 years ago (1.157 million FY 1997), numbers within counties have shifted—dramatically in some cases. For example, LA has just a slightly higher number of cases than when the program started, while case numbers in Sacramento and San Bernardino have steadily increased, more than doubling during that same time.<sup>1</sup> They have also

increased in some smaller counties and decreased in others.

Additionally, unlike any other program, federal grant funding requires each state's program to perform at certain minimum levels in five areas, called "performance measures."<sup>2</sup> DCSS expects each county's LCSA to strive to meet and improve these measures.<sup>3</sup> Because the counties' respective performances vary, the LCSAs are driven to work on improving their performance measures. This often translates into very different types and amount of work brought to the courts for the same number of cases, e.g., one LCSA may focus more on modifications, or bring more enforcement actions to court if lagging in a particular performance measure, while another LCSA aggressively reduces litigation by obtaining more stipulations.

### Traditional funding methodologies may no longer be a good fit—the funding “problem” needs better solutions

The AB1058 program has had almost 20 years to develop operationally. In that time, some counties have become more efficient than others, and found ways to carry their workload. E-filing, for example, has helped reduce the cost of case processing. A number of courts have streamlined work-flows, prepare orders in court, and developed specialized calendars, among other things, working collaboratively with their family law facilitator's office and LCSA.

This has been extremely beneficial to the overall program, and has helped create “right-sized” orders, reduce defaults, get money to families faster, and improve the state's overall performance.<sup>4</sup> It also helps explain why some courts are able to process DCSS cases with comparatively fewer Commissioners handling more cases with less staff. Many differences between the courts have emerged, rendering the concept of an “average” case, including time and cost to process, no longer reliable.<sup>5</sup> *Identifying and capitalizing on these efficiencies makes more sense than simply re-distributing monies based on active case numbers.*

Also over the last two decades, courts have annually submitted funding allocation requests, and had the opportunity to participate in mid-year reallocation of funds unspent or returned by other courts. Some counties have repeatedly turned back monies to the point where their base funding has consistently been adjusted downwards – “self-adjusting” even below the original minimum floor. Others have always requested greater allocations, yet intermittently and/or regularly leave money on the table.

The evolving historical spending requests and spending patterns of the courts should be analyzed. They are a good illustration of the highly unique nature of the program, and also show why relying upon traditional funding methodologies, whether WAFM (workload allocation funding methodology), or an averaged snapshot of DCSS active cases by county, does not accurately

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capture the true workload of AB1058 Commissioners, family law facilitators or support staff.<sup>6</sup> Indeed, use of such a traditional methodology for such a unique program – even with “adjustments” for cost of living and minimum funding floors – may actually be detrimental to the program overall: as it will cause many more counties to lose funding (with a limited number gaining funding), rendering them unable to meet the needs of their population, adversely affecting their performance measures, and in some instances, re-distributing money to counties that historically really don’t really need it.

Even small cuts, especially to the smaller counties that already have difficulty in meeting their minimum infrastructure costs to administer the program, can often have a greater negative impact on access to court issues, a drop in services, and consequently a drop in money going to families. And if the funding methodology is tied similarly to the family law facilitators program, the impact can be even greater for smaller, rural counties. This will negatively affect the federally imposed performance standards in multiple counties, and consequently affect the entire state’s program.<sup>7</sup>

Now is the perfect opportunity to develop and strengthen good program practices, and help all counties achieve greater efficiencies. As noted, DCSS is currently doing their own funding reallocation evaluation, decidedly **not** focusing on just active case numbers, but on a variety of other metrics they are able to pull from their statewide system (e.g. number of motions, default rates, case types, how long it takes to get a filed court order, etc.), broken down county-by-county. The latter approach better captures the

true need and workload of each county’s child support program while focusing on program improvements. As DCSS reallocates its own LCSA funding, this will inescapably have a *corresponding* effect on the amount of work LCSAs bring to their respective courts. Thus, DCSS’s study, and its determination of reallocation of funding on the LCSA side, is crucial to adopting a fair and accurate funding methodology for courts.

In summary, tackling funding allocation issues are always difficult. Finding the right balance of the relevant and varied factors required to ensure successful implementation of the program in all 58 counties is a tall order. A program as unique as AB1058 deserves a funding approach that addresses the needs and requirements of this very important federally funded grant. The families of California are counting on it.

**Note:** Detailed information on the last proposal and recommendations considered by the Judicial Council in February 2016, can be found at: <http://tinyurl.com/zzs2fxq>

A report on the progress of the Joint Sub-Committee re: AB1058 Funding Allocation is due to the Judicial Council in December of this year.

*[Authors’ correction: In Part I’s article in the last volume, it was noted that implementation of a any new funding methodology was to begin in FY 2017-18; the correct date is FY 2018-19.]*

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**FY 2013-14 full time equivalent position and Commissioner to support staff allocation**

COURT	# of FTE CSC (Comm).	# of FTE CSC Support Staff	Support Per 1.0 CSC	DCSS Caseload FY 13-14
Los Angeles	4.0	53.1	13.27	249,046
San Bernardino	2.3	24.3	10.56	101,109
Riverside	.3	13.5	45.00	71,605
San Diego	3.0	17.4	5.8	66,431
Sacramento	1.7	10.7	6.29	70,017
Orange	2.5	18.45	7.38	60,881

**Endnotes:**

- Active DCSS cases between 1997- 2015: LA has fluctuated, increasing over 100,000—up to 358,422 in 2007—but declining ever since—down to 233,647 in FY 2015; Sacramento and San Bernardino have steadily increased over that time with Sacramento going from 35,237 (’97) to 79,866, and San Bernardino going from 41,584 (’97) to 99,287 in FY 2015.
- 1) Paternity Establishment; 2) Percent of Cases with a Support Order; 3) Current Collections; 4) Arrears Collection; and 5) Cost Effectiveness.
- California as a state does relatively fine in most of the measures, but ranks near the bottom on cost effectiveness. The reasons are complex, but in large part due to vastly different program implementations: a number of other states have either a non-judicial system and/or require all support payments—even private cases—be counted in their collections process, thereby increasing their performance statistics. In California, cases where the parties are paid directly are not counted or serviced by DCSS; leaving DCSS with harder to collect cases and all welfare cases.
- For example, San Francisco has managed to reduce its default rate from approximately 60% down to 20%, after working collaboratively with their LCSA. It has been shown that cases where orders are established by default do not perform as well in terms of payment to the families. A number of counties have – too many, quite frankly – have regularly reported default rates in excess of 50%, some over 60%, and even up to 80% (LA). Here is one area where limited targeted funding may very well help. Rather than fund a county to help process defaults, funding should be directed to those counties that could use help to reduce the number of defaults. E-filing is another example where targeted shifting of funds should be done: helping to bring all counties up to such functionality will help the statewide program, not just one county at the expense of another.
- Indeed, no reliable data exists on what it costs a court to process a DCSS case.
- A comparison of full-time equivalent (FTE) number of Commissioners to Support Staff show vast differences. SEE SIDE CHART. The initial 1997 report by the Family & Juvenile Law Advisory Committee to the Judicial Council, which established some minimum standards, indicated a support staff of 7-FTE staff to one FTE Commissioner. Initial funding allocation was based on this formula, yet in looking at the six largest counties, the ratio now varies greatly, despite the fact that a number of these counties had relatively similar DCSS “caseload” numbers that year. All caseloads in those counties have gone down since then, except for Sacramento.
- If only relatively minimal changes are made to the proposed recommendation put forth by TCBC (the Trial Court Budget Advisory Committee) in the last Judicial Council report, it would have drastic consequences, with an anticipated approximately 40 counties to receive less funding.