



JUDICIAL COUNCIL OF CALIFORNIA

JUDICIAL BRANCH BUDGET
COMMITTEE

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JUDICIAL BRANCH BUDGET COMMITTEE

NOTICE AND AGENDA OF OPEN MEETING

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1) and (e)(1))

THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS

THIS MEETING IS BEING RECORDED

Date: November 4, 2021
Time: 1 p.m. to 2 p.m.
Public Videocast: <https://jcc.granicus.com/player/event/1456>

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Members of the public seeking to make an audio recording of the meeting must submit a written request at least two business days before the meeting. Requests can be e-mailed to JBBC@jud.ca.gov.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the August 13, 2021 open Judicial Branch Budget Committee meeting.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, the public may submit comments for this meeting only in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to JBBC@jud.ca.gov, attention: Angela Cowan. Only written comments received by 1 p.m. on Wednesday, November 3, 2021 will be provided to advisory body members prior to the start of the meeting.

III. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1

\$30 Million One-Time Court Interpreter Employee Incentive Grant Funding

Discussion of the 2021-22 one-time funding included in SB 170.

Presenter(s)/Facilitator(s): Hon. Jonathan B. Conklin, Chair, Trial Court Budget
Advisory Committee

Info 2

\$37 Million in Ongoing Funding for Court Reporters in Family Law and Civil Cases and for Increased Transcript Rates

Discussion of the 2021-22 ongoing funding included in SB 170.

Presenter(s)/Facilitator(s): Hon. Jonathan B. Conklin, Chair, Trial Court Budget
Advisory Committee

IV. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEM 1)

Item 1

Federally Funded Dependency Representation Program: Funding Allocation Methodology for General Fund Supplement to Address Shortfall (Action Required)

Consideration of a Trial Court Budget Advisory Committee recommendation on an allocation methodology for up to \$30 million in support of court-appointed counsel in dependency cases.

Presenter(s)/Facilitator(s): Hon. Jonathan B. Conklin, Chair, Trial Court Budget
Advisory Committee

Ms. Audrey Fancy, Principal Managing Attorney, Judicial
Council Center for Families, Children & the Courts

V. ADJOURNMENT

Adjourn



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MINUTES OF OPEN MEETING

August 13, 2021

12:00 p.m. to 1:00 p.m.

<http://jcc.granicus.com/player/event/1358?>

Advisory Body Members Present: Hon. David. M. Rubin, Chair; Hon. Ann Moorman, Vice Chair; Hon. C. Todd Bottke; Hon. Carin T. Fujisaki, Hon. Brad R. Hill; Hon. Harold W. Hopp; Mr. Kevin Harrigan

Advisory Body Members Absent:

Others Present: Mr. John Wordlaw, Mr. Zlatko Theodorovic, Ms. Fran Mueller; Hon. Jonathan Conklin, Ms. Rebecca Fleming, Ms. Angela Cowan, Ms. Laura Speed, Mr. Doug Kauffroath, Ms. Charlene Depner, Ms. Shelley Curran, Ms. Pella McCormick, Mr. John Larson, Mr. Michael Hersek, Ms. Heather Petit, Mr. Eric Schnurpfeil, Ms. Leah Rose-Goodwin, Ms. Laura Speed, Ms. Brandy Olivera, Ms. Marcela Eggleton,

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:03 p.m. and took roll call.

Approval of Minutes

The advisory body reviewed and approved the minutes of the May 18, 2021 Judicial Branch Budget Committee (Budget Committee) meeting and the May 26, 2021 action by email.

DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-2)

Item 1 - \$60 Million One-Time COVID-Driven Caseload Backlog Funding (Action Required)

Consideration of the 2021-22 one-time trial court allocation recommendation from the Trial Court Budget Advisory Committee (TCBAC) to address backlogs and workload delays resulting from the COVID-19 pandemic.

Presenter(s)/Facilitator(s): Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee
Ms. Leah Rose-Goodwin, Manager, Judicial Council Business Management Services
Ms. Oksana Tuk Senior Analyst, Judicial Council Budget Services

Action: The Budget Committee unanimously approved the following recommendations to allocate the \$60 million one-time COVID-driven caseload backlog funding included in the 2021 Budget Act for consideration at the October 1, 2021 Judicial Council business meeting:

- 1) Approve the updated data-driven methodology that utilizes both filings and dispositions by case type to calculate a clearance rate,
- 2) Allocate half of the funding, \$30 million, in October 2021, based on the most updated filings and clearance data available through March 2021,
- 3) Allocate the second \$30 million in January 2022 based on the most recent filings and clearance data available at the time,
- 4) Adopt, the TCBAC recommendation to include complex case types in the data used for the allocation methodology, in the event there is future COVID-driven caseload backlog funding.

Item 2 - \$140 Million Pretrial Funding (Action Required)

Consideration of the 2021-22 one-time and ongoing allocation recommendation from TCBAC for trial courts to contract with probation departments or other county departments for the provision of pretrial monitoring and services.

Presenter(s)/Facilitator(s): Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee
Ms. Deirdre Benedict, Supervising Analyst, Judicial Council Criminal Justice Services

Action: The Budget Committee unanimously approved the TCBAC recommendation for approval of the 2021-22 Pretrial Release allocations as outlined in Attachment C for recommendation to the Judicial Council at its October 1, 2021 business meeting.

Item 3 - \$4.45 Million AB 1058 Reimbursement Authority Increase (Action Required)

Consideration of a recommendation from TCBAC to utilize increased reimbursement authority to cover the increased contract amount with the Department of Child Support Services in support of the AB 1058 Child Support Commissioner (CSC) and Family Law Facilitator (FLF) Programs.

Presenter(s)/Facilitator(s): Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee
Mr. Don Will, Deputy Director, Judicial Council Center for Families, Children, & the Courts
Ms. Anna Maves, Supervising Attorney, Judicial Council Center for Families, Children & the Courts

Action: The Budget Committee unanimously approved the following TCBAC recommendations for the allocation of an additional and ongoing \$4.45 million in base funding for the AB 1058 Child Support Commissioner (CSC) and Family Law Facilitator (FLF) program based on current funding methodologies and approved a technical adjustment to 2021-22 CSC base allocations for consideration at the October 1, 2021 Judicial Council business meeting:

- (1) Allocate additional funding to the CSC program for 2021–22, and a technical adjustment to a small number of courts' base allocation approved by the Judicial Council on July 9, 2021, as set forth in Attachment A.
- (2) Allocate additional funding to the FLF program for 2021–22 as set forth in Attachment B.

- (3) Approve recommendation for 2021–22 AB 1058 program funding for the courts for the total base funding allocations derived from recommendations 1 and 2, and the application of the additional federal drawdown funding, as set forth in Attachment C1 and C2

INFORMATION ONLY ITEMS (NO ACTION REQUIRED ITEMS 1-4)

Info 1 - 2021-22 Budget Update

Update on the enacted 2021-22 judicial branch budget

Presenter(s)/Facilitator(s): Mr. Zlatko Theodorovic, Deputy Director, Judicial Council Budget Services

Action: No action taken

Info 2 – Annual Funding Methodology Subcommittee (FMS) Work Plan Update

Overview of the annual FMS work plan update as approved by TCBAC.

Presenter(s)/Facilitator(s): Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee
Mr. Catrayel Wood, Senior Analyst, Judicial Council Budget Services

Action: No action taken

Info 3 – Trial Court Executive Summary Display

Overview of the 2021-22 allocation summary display for distribution to all 58 trial courts.

Presenter(s)/Facilitator(s): Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee
Ms. Oksana Tuk, Senior Analyst, Judicial Council Budget Services

Action: No action taken

Info 4 – Trial Court Trust Fund Funds Held on Behalf Expenditure Reporting

Overview of the quarterly report to the TCBAC on how funds were expended for trial court projects and planned expenditures that are complete.

Presenter(s)/Facilitator(s): Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee
Mr. Catrayel Wood, Senior Analyst, Judicial Council Budget Services

Action: No action taken

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:11 p.m.

Approved by the advisory body on enter date

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Report to the Judicial Branch Budget Committee

(Action Item)

Title: **Federally Funded Dependency Representation Program: Funding Allocation Methodology for General Fund Supplement to Address Shortfall**

Date: 10/27/2021

Contact: Audrey Fancy, Principal Managing Attorney, Judicial Council Center for Families, Children & the Courts | audrey.fancy@jud.ca.gov | 415-865-7706

Kelly Meehleib, Supervising Analyst, Judicial Council Center for Families, Children & the Courts | kelly.meehleib@jud.ca.gov | 916-263-1693

Issue

The 2021 Budget Act¹ includes up to \$30 million General Fund for court-appointed counsel (CAC) in dependency cases to address a shortfall between what was expected could be claimed from Federal Title IV-E funding and what was able to be claimed once federal guidance on eligible activities for Title IV-E reimbursement was provided. The Judicial Council is required to report to the Legislature by April 1, 2022 on the size of the expected shortfall and the proposed allocation and distribution plan for the additional funds which will then trigger the release of the funds. To complete this requirement, the Trial Court Budget Advisory Committee (TCBAC) is recommending that the Judicial Branch Budget Committee adopt the recommendations set forth

¹ SEC. 6. Item 0250-102-0932 of Section 2.00 of the Budget Act of 2021 reads: “Upon order of the Department of Finance, the Controller shall increase Schedule (1) by up to \$30,000,000 to address any shortfalls in federal reimbursements pursuant to Title IV-E of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.) that supplement funding for court-appointed counsel for children, nonminor dependents, and parents in juvenile court dependency proceedings pursuant to subdivisions (b) and (c) of Section 317 of the Welfare and Institutions Code and paragraph (4) of subdivision (a) of Section 77003 of the Government Code. The Judicial Council shall report by April 1, 2022, to the chairpersons of the committees and appropriate subcommittees that consider the State Budget the following information: (a) the total federal reimbursements invoiced statewide in the first two quarters of the current fiscal year; (b) any projected shortfalls through the end of the current fiscal year as compared to the \$57,000,000 in expected federal reimbursements; and (c) a proposed allocation and distribution of any portion of the \$30,000,000 necessary to address projected shortfalls. The Judicial Council shall work in collaboration with court-appointed dependency counsel providers to ensure timely submission, review, and payment of monthly invoices attributable to the 2021–22 fiscal year so that determination of the statewide total of federal reimbursements and any portion of the funding described in Provision 2 needed to address any remaining shortfall can be made no later than September 30, 2022. Distribution of funds to address any shortfall shall be made by the Judicial Council using the methodology customarily employed to distribute statewide court-appointed dependency counsel funding as described in Provision 1. Any funds described in Provision 2 not encumbered by October 1, 2022, for eligible activities attributable to the 2021–22 fiscal year shall revert to the General Fund.” Senate Bill 129 (Skinner) *Budget Act of 2021* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB129.

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below on how to allocate and distribute the funds and forward those recommendations to the Judicial Council for consideration at its January 21, 2022 business meeting.

Background

The council has taken an active role to ensure funding for CAC in dependency cases is adequate to support high quality representation for parents and children. These efforts have included adoption of a caseload standard and a funding methodology to ensure that available funding is distributed equitably based on workload and regional costs (Link A). Those efforts allowed the council to clearly identify the total amount needed to fully fund adequate representation and to advocate for additional funding.

The Federally Funded Dependency Representation Program (FFDRP) was established in 2019 to support the courts and CAC providers in gaining access to newly available federal funds² to support enhanced legal representation services for families and children in dependency proceedings (Link B). When the program was initiated, Judicial Council Center for Families, Children & the Courts (CFCC) staff worked with the state's Title IV-E administrator, the California Department of Social Services (CDSS), to determine program parameters and anticipated funding availability. Using CDSS' Title IV-E match calculator, it was determined that federal funding had the potential to provide up to an additional \$57 million. That amount was allocated to providers based on their existing share of the total CAC budget, and every provider that was interested in obtaining the additional funds, and had the consent of its superior court, entered into a contract for FFDRP that specified the maximum amount that could be claimed.

When the initial estimate was generated, it was assumed that the bulk of work billed to the CAC program would be eligible for FFDRP matching. This assumption was based on analogizing the work of CAC providers to child welfare social workers. However, in Spring 2021, clarification was received from the Federal Title IV-E agency, the Administration for Children and Families (ACF), indicating that the expansion of Title IV-E claiming to include legal representation should be interpreted more narrowly as an expansion for a specific activity and not to include all the costs of the provider more broadly. Moreover, a number of activities that the council considers within dependency legal representation, such as seeking a restraining order or attending a collaborative court proceeding for a client, were specifically excluded by ACF. It was then apparent that CAC providers could not actually receive the full \$57 million augmentation in federal funding that had been anticipated.

² Title IV-E of the Social Security Act enables states and counties to seek reimbursement from the federal government for eligible foster care related expenditures. Traditionally this has included social workers and their attorneys (typically county counsel). A 2019 revision of the Child Welfare Policy Manual extended the availability of title IV-E match funds to dependency counsel who provide legal representation to children in foster care and their parents.

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To address this gap, the 2021 Budget Act included a provision making up to \$30 million General Fund available to address any shortfall in federal reimbursement for eligible program costs. This budget item was not related to a Judicial Council budget change proposal.

FFDRP Funding to Date

The council entered into a contract with the CDSS to administer the FFDRP funds in 2019, and providers were able to begin submitting retroactive invoices for 2019-20. In that initial year, approximately \$26 million was paid out to 61 dependency representation providers in 29 courts. Adapting a new system of invoicing and documentation to meet state and federal requirements imposed a significant new workload on providers that needed to present a record to support their eligible workload and expenses and submit detailed proof of expenditures and payments to receive the matching funds. CFCC staff were active in reviewing and seeking clarification or additional documentation for invoices to ensure they would meet all requirements and pass any future audit. In addition, as a result of these burdens, a number of providers opted to invoice the work for the retroactive period in a more limited fashion. As a result, the \$26 million that was paid out was significantly less than the \$49 million maximum that had been budgeted for 2019-20.

For 2020-21, there are 65 providers in 31 courts currently invoicing for FFDRP under contracts that would allow a maximum of just under \$54 million to be claimed. Because CFCC staff were awaiting guidance from the Federal ACF on the precise scope of eligible activities, invoicing for 2020-21 was delayed. Most of those issues have now been resolved, and providers are in the process of submitting invoices for both fiscal year 2020-21 and 2021-22. Based on the invoices received, it is estimated that providers will be able to receive approximately \$37 to \$45 million, leaving a gap of approximately \$8 to \$16 million. In 2021-22, additional providers may join the program, so a final total FFDRP contract amount is not yet available. It is expected to be similar to 2020-21, such that, the shortfall will be less than the \$30 million available through this allocation.

Funding Methodology

CFCC staff have consulted with dependency legal representation providers as required by the budget language and met with the FMS ad hoc subcommittee to develop TCBAC's recommendations for allocating and distributing the funds for the shortfall in the current year and for future fiscal years. Because the funds were provided to address the shortfall between what California estimated it could claim from Title IV-E and what is able to be claimed, the methodology assumes that only those providers that have an FFDRP contract would be eligible for funding.

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To ensure that the report to the Legislature is accurate, it is recommended that providers that are not currently in an FFDRP contract that wish to join the program submit a notice of intent to do so by December 31, 2021 to be eligible for funding in the 2021-22 cycle. The other proposed eligibility requirement would be that each provider submit an invoice for every month under the contract or provide an explanation for the extenuating circumstances that resulted in no invoice being submitted for a given month. This requirement is included to demonstrate that the program is making every effort to maximize the drawdown of federal funds and will rely on the supplemental funding only to address the shortfall resulting from federal restrictions on eligible activities for reimbursement. TCBAC considered requiring a minimum threshold for billing into FFDRP but concluded that the program is too recent to determine a fair and equitable level for such a threshold. Instead, TCBAC recommends that staff use the current year to gather information on how the distribution of the shortfall funding impacts providers and make recommendations on improvements for future years as needed.

Because the funds were intended to address the shortfall, and the total gap is expected to be less than \$30 million, funding should be provided to each eligible provider to bridge the full difference between their FFDRP contract and the amount that the provider was able to claim via FFDRP. If this shortfall exceeds \$30 million, it is proposed that each provider get their proportional share of the \$30 million based on their contract share of total FFDRP funding up to their full contract amount. Because the report to the Legislature is due in April 2022, TCBAC recommends that the shortfall funding be distributed in a lump sum at the end of 2021-22. For future fiscal years, these distributions would be made on a quarterly basis to ease cash flow and provide flexibility for providers that may not participate for an entire fiscal year.

Recommendation

1. Approve the allocation and distribution methodology for 2021-22 which funds all providers with FFDRP contracts for the full amount of the shortfall between their contract and total billing in one lump sum payment, provided that they submit invoices for each month of the contract or demonstrate extenuating circumstances preventing them from invoicing;
2. Revise this approach for future years to make the payments on a quarterly basis;
3. Approve a proportional allocation approach with each provider receiving their share of the \$30 million based on their contract share of total FFDRP funding up to their full contract amount if the shortfall exceeds \$30 million; and
4. Direct CFCC staff to monitor FFDRP invoicing to ensure that this allocation methodology is maximizing the drawdown of Federal Title IV-E funds.

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Attachments and Links

Link A: Judicial Council report (September 3, 2020),

<https://jcc.legistar.com/View.ashx?M=F&ID=8766467&GUID=17E19209-5AA7-4382-B7A7-257AAEE206F2>.

Link B: FFDRP Information Page, <https://www.courts.ca.gov/43441.htm>.