



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 14, 2012

Title

Judicial Council Legislative Priorities: 2013

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected
Amends Code Civ. Proc., § 116.232; Gov.
Code, §§ 12419.10, 70375, 70627, 70628,
70658.6, and 76000; Health & Saf. Code, §
11361.5; Pen. Code, §§ 817, 869, 1001.15,
1001.16, 1305, and 1463.001; Pub. Contract
Code, § 19210; Veh. Code, §§ 40508.6 and
40902; and Welf. & Inst. Code, § 903.45

Effective Date

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Date of Report

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Recommended by

Policy Coordination and Liaison Committee
Hon. Marvin R. Baxter, Chair
Administrative Office of the Courts (AOC)
Office of Governmental Affairs

Executive Summary

Each year, the Judicial Council sponsors legislation to further key council objectives and set its legislative priorities for the upcoming legislative year. For the 2011 and 2012 legislative years, the council's legislative priorities focused mostly, though not entirely, on budget and budget-related items. The Policy Coordination and Liaison Committee recommends a similar approach for the 2013 legislative session, with the following legislative priorities: (1) budget, including advocating against further reductions and for sufficient resources for the judicial branch as well as continuing to advocate for the 17 operational efficiencies, cost savings, and revenue proposals approved for sponsorship in 2012; and (2) the continuing priority of securing new judgeships and ratifying the authority of the council to convert vacant subordinate judicial officer positions to judgeships in eligible courts. These legislative priorities will help ensure that Californians

continue to have access to courts and critical court services, and that the judicial branch can provide some degree of access to justice.

Recommendation

The Policy Coordination and Liaison Committee (PCLC) recommends the following as legislative priorities for the Judicial Council for 2013:

1. Advocate to achieve budget stability for the judicial branch, including advocating against further budget reductions and for sufficient resources to allow courts to be in a position to re-open closed courts and restore critical staff, programs, and services that were reduced or eliminated in the past several years. This advocacy would include continued sponsorship of the 17 proposals for trial court operational efficiencies, cost savings, and new revenue measures approved for sponsorship in April 2012.
2. Sponsor legislation to create the third set of 50 new judgeships to be allocated consistent with the council's most recent Judicial Needs Assessment.
3. Advocate, as is done each year, for legislative ratification of the Judicial Council's authority to convert 16 subordinate judicial officer (SJO) positions in eligible courts to judgeships, and sponsor legislation, similar to Senate Bill 405 in 2011 (Stats. 2011, ch. 705) for legislative ratification of the council's authority to convert up to 10 additional SJO positions to judgeships in fiscal year 2013-2014.

Previous Council Action

The council has taken a variety of actions over the past years related to the above recommendations. Recent key actions in these areas include:

- **Budget:** In December 2011, the council adopted, as a key legislative priority for 2012, advocating for a combination of solutions to restore a portion of the funding eliminated from the branch budget in recent years. The combination of solutions included General Fund restoration, legislation to implement cost savings and efficiencies, new revenues, and the use of existing revenues—all to enable courts to restore services to the public and keep courts open. In December 2009 and December 2010, the council adopted as a key legislative priority for the following year, advocating to secure sufficient funding for the judicial branch to allow courts to meet their constitutional and statutory obligations and provide appropriate and necessary services to the public.
- **Judgeships and SJO conversions:** The council has acted repeatedly in recent years to authorize the sponsorship of legislation to secure the 150 most critically needed judgeships. The most recent action was taken by the council in December 2011, to continue sponsorship of Assembly Bill 1405 (Assem. Judiciary Comm.), to establish the third set of 50 new judgeships. The council also annually directs AOC staff to take action to secure legislative

ratification of 16 SJO conversions to judgeships, as authorized by Government Code section 69615. In December 2011, the council additionally directed staff to pursue legislation to secure ratification of the authority to convert 10 additional vacant SJO positions to judgeships. Such legislation, similar to the efforts for the 16 conversions, must be pursued annually.

Rationale for Recommendation

The mission of the Judicial Council includes providing the leadership for improving the quality and advancing the consistent, independent, impartial, and accessible administration of justice. Among the guiding principles underlying these goals is a commitment to meet the needs of the public, which includes ensuring equal and timely justice, advocating for sufficient and stable resources necessary for the branch to fulfill its mission, expecting high quality throughout the branch, and maintaining accountability to the public.

Budget

The council has spent considerable time over the past several years discussing the impacts of budget cuts on the branch, redirecting resources to provide much-needed support to trial court operations, advocating for new revenues and other permanent solutions, and looking inward at cost savings and efficiencies that could be implemented to allow the courts to serve the public effectively with fewer resources. The branch has sustained tremendous budget reductions in the past several years. Attached is a chart presented to the council at the July 27, 2012, council meeting detailing the recent history of trial court budget reductions and how those reductions were allocated to the trial courts. The branch does not and cannot expect to be restored to pre-2008 funding levels, but at the same time, we cannot sustain additional reductions. As of October 3, 2012, 35 of California's 58 counties have notified the Judicial Council, pursuant to Government Code section 68106, of a reduction in court clerk hours, and/or the closure of clerks' offices, courtrooms, and courthouses. This reduction affects 60 percent of the counties in California and 88 percent of the state's population. (See <http://www.courts.ca.gov/12973.htm> for specific notices.) These reductions in hours and services are implemented to address fiscal constraints courts are facing. These posted notifications represent only a small sampling of reductions in services courts have had to implement, as notifications are not required or provided to alert the council or public about staff reductions or reductions in self-help services, alternative dispute resolution, phone answering hours, or other services courts previously viewed as vital to ensure access to justice.

In April 2012, the Judicial Council approved for sponsorship 17 legislative proposals for trial court operational efficiencies, cost savings, and new revenue. A document describing those proposals and their fiscal impacts is attached. A brief history of how those proposals were developed may be useful:

Proposals for efficiencies, costs savings, and new revenue were initially solicited from presiding judges and court executive officers. Submissions were received and initially compiled by the AOC Finance staff. The proposals were forwarded to the Office of Governmental Affairs to

coordinate the next steps. The chairs of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee each appointed 7 members for a 14-person PJ/CEO Trial Court Efficiencies Working Group. The matrix of proposals was revised and circulated to the group. Additional proposals were added as they were received, from whomever they were received. The working group met three times by conference call, reviewing each of the proposals submitted. The working group recommended that roughly one-half of those proposals be forwarded for consideration for Judicial Council sponsorship.

In the meantime, at the direction of the chair of the Executive and Planning Committee and the chair of PCLC, the chairs of most of the council's subject matter advisory committees, the Open Courts Coalition, and the president of the California Judges Association were asked to designate members to participate on an Ad Hoc Advisory Committee on Court Efficiencies, Cost Savings, and New Revenue. The ad hoc committee was created to ensure that all of the proposals could be acted on timely, while retaining for the council the benefit of the expertise of the various advisory committees. The Ad Hoc Advisory Committee met by conference call four times to review the proposals recommended by the PJ/CEO Trial Court Efficiencies Working Group. The advisory committee further winnowed the proposals for recommendation to the PCLC for council sponsorship. This process resulted in 24 proposals for statutory change being forwarded to PCLC for consideration for council sponsorship. PCLC, under the authority expressly delegated to it for these purposes in December 2011, approved 17 of those proposals for council sponsorship.

Judgeships and SJO conversions

In 2005, the Judicial Council sponsored Senate Bill 56 (Dunn; Stats. 2006, ch. 390), which authorized the first 50 of the most critically needed 150 judgeships. Full funding was provided in the 2007 Budget Act, and judges were appointed to each of the 50 judgeships created by SB 56.

In 2007 the council sought and secured the second set of 50 new judgeships. (Assem. Bill 159 [Jones]; Stats. 2007, ch. 722). Initially, funding for the second set of new judgeships would have allowed appointments to begin in June 2008. Because of budget constraints, the funding was delayed until July 2009. This allowed the state to move the fiscal impact from FY 2007–2008 to FY 2009–2010. The Governor included funding for the second set of judgeships in the proposed 2009 Budget Act, but the funding ultimately was made subject to what has been called the “federal stimulus trigger.” This trigger was “pulled” and the funding for the new judgeships and the various other items made contingent on the trigger were not provided. Funding for this second set of judgeships was also not provided in the 2010 Budget Act.

In 2008, the council sponsored Senate Bill 1150 (Corbett) to secure the third set of new judgeships. With the delay of the funding for the second set of judgeships and the state's worsening fiscal condition, SB 1150 was held in the Senate Appropriations Committee. At its October 25, 2008, meeting, the council approved the 2008 update of the Judicial Needs Assessment. At the same time, the council confirmed the need for the Legislature to create the third set of 50 judgeships, completing the initial request for 150 new judgeships, based on the

allocation list approved by the Judicial Council in 2007. The council therefore sponsored SB 377 (Corbett) in 2009 to authorize the third set of judgeships to become effective when funding was provided for that purpose. That legislation was also held in the Senate Appropriations Committee.

On October 29, 2010, the council received the 2010 update of the Judicial Needs Assessment, which concluded that, counting the 50 judgeships authorized but not yet funded, California had a shortage of 330 judgeships, a 14 percent shortfall. Without including the unfunded positions, the net need for new judgeships would increase to 380, a 16.2 percent shortfall in total judicial positions as compared against need. As a result, in 2011 and 2012, the council sponsored AB 1405 to establish the third set of 50 judgeships. Even though the legislation did not direct that funding be provided for those positions, the state's continuing fiscal crisis and the fact that the second set of 50 judgeships had yet to be appointed due to lack of funding resulted in AB 1405 not moving forward.

At the October 26, 2012, council meeting, the council received a report on the 2012 update of the Judicial Needs Assessment. That report shows that there remains a significant, critical need for new judgeships in the superior courts. Despite a modest decline in the assessed judicial need in 2012, the report notes the number of new judgeships needed is 13 percent greater than the number of authorized judicial positions (specifically identifying a need for 264 additional judgeships). When judgeships that were authorized but never funded under AB 159 are factored into the equation, the statewide need for new judgeships rises to 314, or almost 16 percent. Although the state's fiscal condition remains dire and funding has not yet been provided for the second set of judgeships, PCLC recommends that the council once again sponsor legislation to seek to establish the third set of 50 judgeships.

Existing law allows the Judicial Council to convert a total of 162 subordinate judicial officer positions, upon vacancy, to judgeships. The statute caps at 16 the number that may be converted each fiscal year and requires the council to seek legislative ratification to exercise its authority to convert positions in any given year. For the past five years, that legislative ratification took the form of language included in the annual budget act.

The council converted the maximum 16 positions in FYs 2007–2008, 2008–2009, 2009–2010, 2010–2011, and 2011–2012. As of October 9, 2012, four positions have been converted for fiscal year 2012–2013, leaving only 74 of the total 162 positions still needing to be converted. PCLC recommends that the council approve seeking legislative ratification for conversion of 16 subordinate judicial officer positions, upon vacancy, in FY 2013–2014.

Additionally, legislation enacted in 2010 (AB 2763; Stats. 2010, ch. 690) to expedite conversions authorizes up to 10 additional conversions per year, if the conversion results in a judge being assigned to a family or juvenile law assignment previously presided over by an SJO. This legislation requires that the ratification for these additional 10 positions be secured through legislation that is separate from the budget act. In 2011, the council sponsored SB 405 (Stats.

2011, ch. 705) to secure legislative ratification of these additional SJO conversions for FY 2011–2012. Four additional conversions occurred as a result of that authorization. That ratification must be sought each year in legislation separate from the budget process. PCLC recommends that the council once again sponsor legislation to accomplish these additional conversions.

Comments, Alternatives Considered, and Policy Implications

In light of the continuing fiscal climate facing the state and the importance of focusing branch efforts almost singularly on the budget, PCLC considered not recommending seeking the third set of judgeships. The lack of judicial resources, however, is continuing to significantly impair the ability to deliver justice, and failure to move forward will only further deny Californians access to justice. Although the impact has not been quantified, the lack of judicial resources and reduced access to the civil justice system is hurting California’s economy, causing businesses to leave the state to find a place where their civil disputes can be addressed in a reasonable time.

Implementation Requirements, Costs, and Operational Impacts

Adoption of these legislative priorities will allow AOC staff to advocate for stable funding for the branch and additional resources or cost savings associated with the efficiencies proposals.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations support many of the council’s strategic plan goals, including Goal I, Access, Fairness, and Diversity, by seeking to secure funding to provide access to the courts for all Californians; Goal II, Independence and Accountability, by seeking to secure sufficient judicial branch resources to ensure accessible, safe, efficient, and effective services to the public; and Goal IV, Quality of Justice and Service to the Public, by seeking funding to continue critical programs to meet the needs of court users.

Attachments

1. Efficiencies Proposals Approved for Judicial Council Sponsorship in 2012, at pages 7–28
2. Attachment A: Trial Court Budget Reductions, as presented at the July 27 Judicial Council meeting, at page 29

Judicial Council–Sponsored Initiatives for Court Efficiencies, Cost Savings, and New Revenue

1. Increase the fee for exemplification of a record

Description of the Proposal

This proposal would increase the fee from \$20 to \$50 for exemplification of a record or other paper on file with the court. The proposed fee increase is justified because such requests involve more special handling than certifications (which have a \$25 fee), since these matters require signatures from both the clerk of the court and the judicial officer. This proposal will help courts recover their actual costs in performing this service.

Statutory Change

Government Code section 70628 would be amended to read:

70628. For an exemplification of a record or other paper on file, the fee is ~~twenty dollars (\$20)~~ fifty dollars (\$50) in addition to the charges allowed for copying or comparing each page of the record or other paper.

Fiscal Impact

Averaging the remittances from the trial courts for the last three fiscal years for exemplifications, staff determined that 5,489 remittance fees were paid annually. If that number remains constant, this increase would yield \$164,660.

2. Deferral of audits for compliance with Public Contract Code until funding provided

Description of the Proposal

Effective October 1, 2010, judicial branch entities were required by statute enacted as part of a budget trailer bill to comply, generally, with the Public Contract Code. Public Contract Code section 19210 requires all branch entities to be audited by the Bureau of State Audits for compliance with the Public Contract Code requirements. The audits will begin with six trial courts, to be commenced by December 15, 2012. By December 15, 2013, the Bureau of State Audits is directed to commence audits for the remainder of the trial courts, ensuring that every court is audited at least once every four years. Audits of the AOC and other judicial branch entities are required to be performed by December 15, 2013, and every other year thereafter. The statute makes the judicial branch entities subject to the audit responsible for the reasonable and necessary costs incurred by the Bureau of State Audits in conducting these audits. This proposal would defer the audit requirement until such time as funding is provided for this purpose.

Statutory Change

Public Contract Code section 19210 would be amended to read:

19210. (a) Commencing not earlier than July 1, 2011, and not later than December 15, 2012, the State Auditor shall establish a pilot program to audit six trial courts. That entity shall select the trial courts using the following criteria:

- (1) Two trial courts selected from counties with a population of 200,000 or less.

(2) Two trial courts selected from counties with a population greater than 200,000 and less than 750,000.

(3) Two trial courts selected from counties with a population of 750,000 or greater.

The audits shall assess the implementation of this part by the judicial branch.

(b) Based on the results of the pilot program audits described in subdivision (a), the State Auditor shall, on or before December 15, 2013, commence an audit of the trial courts, provided that every trial court is audited in the manner prescribed by this section at least once every four years. The audits shall assess the implementation of this part by the judicial branch. The audits required by this paragraph shall be in addition to any audit regularly conducted pursuant to any other provision of law.

(c) Notwithstanding Section 10231.5 of the Government Code, the State Auditor shall compile the trial court audit findings and report the results of these audits to the Legislature, the Judicial Council, and the Department of Finance no later than April 1 of each year. An audit report shall not be considered final until the audited entity is provided a reasonable opportunity to respond and the response is included with, or incorporated into, the report.

(d) The reasonable and necessary contracted cost of the audits conducted pursuant to this section shall be paid from funds of the local trial court being audited.

(e) (1) On or before December 15, 2013, and biennially thereafter, the State Auditor shall perform an audit of the Administrative Office of the Courts, the Habeas Corpus Resource Center, and the appellate courts to assess their implementation of this part.

(2) The State Auditor shall provide a copy of the final audit report of the Administrative Office of the Courts to the Legislature, the Judicial Council, and the Department of Finance upon issuance. An audit report shall not be considered final until the audited entity is provided a reasonable opportunity to respond and the response is included with, or incorporated into, the report.

(3) Any reasonable and necessary contracted costs incurred by the auditing entity pursuant to this subdivision shall be reimbursed by the Administrative Office of the Courts.

(f) The State Auditor shall conduct the audits required pursuant to this section in accordance with Chapter 6.5 (commencing with Section 8543) of Division 1 of Title 2 of the Government Code.

(g) If the State Auditor is selected as the auditing entity pursuant to subdivision (j) of Section 77206 of the Government Code, then the State Auditor may combine the results of any audit of a trial court conducted pursuant to that section with an audit of the same trial court conducted pursuant to this section. The State Auditor may also combine the results of an audit of the Administrative Office of the Courts pursuant to Section 77206 of the Government Code with the results of an audit of the Administrative Office of the Courts pursuant to this section.

(h) A report submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(i) The requirements of subdivisions (a)–(h) of this section shall be suspended until such time as an appropriation is made expressly for this purpose.

Fiscal Impact

The Bureau of State Audits estimated the cost for the pilot program—audits of two large, two medium, and two small courts—at \$1.2 million. Extrapolating from that, the cost of auditing all 58 courts would be more than \$8 million over the four-year audit cycle. Importantly, in providing the \$1.2 million estimate, the Bureau of State Audits indicated that costs would likely

increase over their initial projection. Costs for the appellate courts, AOC, and HCRC are not included in this estimate.

3. Improved tools for collection of court-ordered debt

Description of the Proposal

This proposal would prohibit the Franchise Tax Board (FTB) and the State Controller from conditioning submission of court-ordered debt to the Tax Intercept Program on the court or county providing the defendant's social security number (SSN). Currently, a court or county collecting court-ordered debt must submit the defendant's social security number when submitting a case to the intercept program, which allows the intercept of taxes, lottery winnings, and unclaimed property. FTB has authority to get social security numbers from the Department of Motor Vehicles. The courts have no such authority. Therefore, if the court does not have the SSN, the court loses out on this valuable collection tool. This proposal would additionally require the FTB and Controller, if necessary to confirm the identity of a person before offsetting a tax refund, for example, to use the authority it has to obtain a social security number from the Department of Motor Vehicles.

Statutory Change

Government Code section 12419.10 would be amended to read:

12419.10. (a)(1) The Controller shall, to the extent feasible, offset any amount overdue and unpaid for a fine, penalty, assessment, bail, vehicle parking penalty, or court-ordered reimbursement for court-related services, from a person or entity, against any amount owing the person or entity by a state agency on a claim for a refund from the Franchise Tax Board under the Personal Income Tax Law or the Bank and Corporation Tax Law, from winnings in the California State Lottery, or a cash payment of a claim for unclaimed property held by the state. Standards and procedures for submission of requests for offsets shall be as prescribed by the Controller. Neither the Controller nor the Franchise Tax Board shall condition a request for offset on submission of a person's social security number. Whenever insufficient funds are available to satisfy an offset request, the Controller, after first applying the amounts available to any amount due a state agency, may allocate the balance among any other requests for offset.

(2) Any request for an offset for a vehicle parking penalty shall be submitted within three years of the date the penalty was incurred. This three year maximum term for refund offsets for parking tickets applies to requests submitted to the Controller on or after January 1, 2004.

(b) Once an offset request for a vehicle parking penalty is made, a local agency may not accrue additional interest charges, collection charges, penalties, or other charges on or after the date that the offset request is made. Payment of an offset request for a vehicle parking penalty shall be made on the condition that it constitutes full and final payment of that offset.

(c) The Controller shall deduct and retain from any amount offset in favor of a city or county an amount sufficient to reimburse the Controller, the Franchise Tax Board, the California State Lottery, and the Department of Motor Vehicles for their administrative costs of processing the offset payment.

(d) When necessary to confirm the identity of a person before making an offset, an authorized agency shall obtain a social security number from the Department of Motor Vehicles, as authorized by section 1653.5(f) of the Vehicle Code. Notwithstanding Chapter 3.5 (commencing

with Section 6250) of Division 7 of Title 1, or any other provision of law, the social security number of any person obtained pursuant to Section 4150, 4150.2, or 12800 of the Vehicle Code is not a public record and shall only be provided by the Department of Motor Vehicles to an authorized agency for the sole purpose of making an offset pursuant to this section for any unpaid vehicle parking penalty or any unpaid fine, penalty, assessment, or bail of which the Department of Motor Vehicles has been notified pursuant to subdivision (a) of Section 40509 of the Vehicle Code or Section 1803 of the Vehicle Code, responding to information requests from the Franchise Tax Board for the purpose of tax administration, and responding to requests for information from an agency, operating pursuant to and carrying out the provisions of, Part A (Aid to Families with Dependent Children), or Part D (Child Support and Establishment of Paternity) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. As used in this section, “authorized agency” means the Controller, the Franchise Tax Board, or the California Lottery Commission.

Fiscal Impact

We were not able to estimate the amount of additional collections attributable to this proposal, or how much of that would be distributed to the branch. Courts note, however, that collectors spend a considerable amount of time trying to ascertain social security numbers, and if this activity no longer needs to occur, that would increase the available time to engage in more fruitful collection activities, further increasing collections of court-ordered debt.

4. Deposit of collections of court-ordered debt

Description of Proposal

Current law directs that fines, fees and penalties imposed upon conviction of a crime be deposited in the county treasury. The court then must provide instructions to the county on how the monies get distributed. Under current law, the county may enter into an agreement with the court to provide that the court is responsible for the collection of court-ordered debt. Many courts have assumed this responsibility. Where the court is collecting the debt, the statutory requirement to put the revenue in the county treasury, and for the court to then provide the county information on how to distribute the funds, may not make sense. This proposal would allow courts to deposit fines, fees, and penalties imposed upon conviction of a crime and collected by the courts in the court’s bank account rather than the county treasury. This will give courts the benefit of the ability to hold the money in their possession and collect interest pending the court’s distribution of the revenue and avoid unnecessary transactions. Funds collected by counties will continue to be deposited into the county treasury and be distributed by the county.

Statutory Change

Section 1463.001 of the Penal Code would be amended to read:

Except as otherwise provided in this section, all fines and forfeitures imposed and collected for crimes other than parking offenses resulting from a filing in a court shall as soon as practicable after receipt thereof, be deposited with the county treasurer, and each month the total fines and forfeitures which have accumulated within the past month shall be distributed, as follows:

- (a) The state penalties, county penalties, special penalties, service charges, and penalty allocations shall be transferred to the proper funds as required by law.
- (b) The base fines shall be distributed as follows:

(1) Any base fines which are subject to specific distribution under any other section shall be distributed to the specified funds of the state or local agency.

(2) Base fines resulting from county arrest not included in paragraph (1), shall be transferred into the proper funds of the county.

(3) Base fines resulting from city arrests not included in paragraph (1), an amount equal to the applicable county percentages set forth in Section 1463.002, as modified by Section 1463.28, shall be transferred into the proper funds of the county. Until July 1, 1998, the remainder of base fines resulting from city arrests shall be divided between each city and county, with 50 percent deposited to the county's general fund, and 50 percent deposited to the treasury of the appropriate city, and thereafter the remainder of base fines resulting from city arrests shall be deposited to the treasury of the appropriate city.

(4) In a county that had an agreement as of March 22, 1977, that provides for city fines and forfeitures to accrue to the county in exchange for sales tax receipts, base fines resulting from city arrests not included in paragraph (1) shall be deposited into the proper funds of the county.

(c) Notwithstanding any other provision of law, each superior court may elect to deposit the fines and forfeitures that it collects into its Trial Court Operations Fund, instead of depositing the total amount with the county treasury, if the superior court distributes the fines and forfeitures as provided in subdivision (a).

~~(e)(d)~~ Each superior court and county shall keep a record of its deposits to its treasury and its transmittals to each city treasury pursuant to this section.

~~(d)(e)~~ The distribution specified in subdivision (b) applies to all funds subject thereto distributed on or after July 1, 1992, regardless of whether the court has elected to allocate and distribute funds pursuant to Section 1464.8.

~~(e)(f)~~ Any amounts remitted to the county or the court from amounts collected by the Franchise Tax Board upon referral by a county pursuant to Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code shall be allocated pursuant to this section.

Fiscal Impact

Unknown.

5. Copy fees and comparison fees

Description of the Proposal

This proposal would increase the fee imposed for copies of court records from 50 cents per page to \$1 per page, and would also increase the fee for comparing a copy with an original in the court's file from \$1 to \$2 per page. These fees have not been raised for many years while the costs to the court for materials and labor continue to rise.

Statutory Change

Government Code section 70627 would be amended to read:

70627. The fees collected under this section shall be distributed to the court in which they were collected.

(a) The clerk of the court shall charge ~~fifty cents (\$0.50)~~ one dollar (\$1) per page to cover the cost of preparing copies of any record, proceeding, or paper on file in the clerk's office.

(b) For comparing with the original on file in the office of the clerk of any court, the copy of any paper, record, or proceeding prepared by another and presented for the clerk's certificate, the fee is ~~one dollar (\$1)~~ two dollars (\$2) per page, in addition to the fee for the certificate.

(c) *[Amendments to subdivision (c) are described below in proposal 6.]*

Fiscal Impact

Examining the most recent three years' remittances under Government Code section 70627(a) (totaling between \$5.8 million and \$6 million), AOC staff determined there are an average of 11,884,769 pages copied each year statewide. Increasing the cost of copies by 50 cents will result in additional annual revenue estimated at \$5,942,385. The estimated revenue for increasing the comparison fee is \$13,000 annually.

6. Search fees

Description of the Proposal

Current law provides a \$15 fee for a search for records or files when the search requires more than 10 minutes of court clerk time. Courts have noted for the last several years that allowing the fee only for searches requiring more than 10 minutes has proven troublesome in practice. It is common practice for data miners and others to request a large number of files at once. Can the court charge at all, for example, if each file takes less than 10 minutes to retrieve? Is the court's time being properly compensated if the court may only assess one \$15 fee when the requester is asking for 50 or more files? These questions have caused considerable confusion. This proposal would clearly address those questions and more properly account for labor costs involved in retrieving files, especially when there are requests by data miners for large numbers of files.

Statutory Change

Government Code section 70627(c) would be amended to read:

(c) The fee for a search of records or files conducted by a court employee ~~that requires more than 10 minutes~~ is ~~fifteen dollars (\$15)~~ is ten dollars (\$10) for each ~~search name, file, or other information~~ for which a search is requested. This fee shall not be charged when a person requests one search for records of a case in which that person is a party, but if the party requests more than one search at a time, \$10 shall be charged for each search after the first search.

Fiscal Impact

The amount of revenue this proposal will bring in is impossible to estimate. However, it will better account for court costs in retrieving files, which was the intent of the fee.

7. Fee for clerk mailing service of a claim and order on defendant in small claims actions

Description of the Proposal

This proposal would increase the statutory fee from \$10 to \$15 for a clerk mailing service of a claim and order on a defendant in small claims actions. The proposed \$5 increase in the fee amount is necessary to address increases in postal rates for restricted service and the court costs associated with performing this service. Courts estimate that the increases in postal rates, along with the associated labor costs, exceed the \$10 the court is authorized to collect as reimbursement for this service. As a result, the courts are losing revenue with every transaction.

Statutory Change

Code of Civil Procedure section 116.232 would be amended to read:

116.232. A fee of ~~ten~~ fifteen dollars (~~\$10~~) (\$15) shall be charged and collected from the plaintiff for each defendant to whom the court clerk mails a copy of the claim under Section 116.340. This fee shall be distributed to the court in which it was collected.

Fiscal Impact

Revenue derived from collection of the \$10 fee over the last four years has ranged from \$406,515 to \$467,196. This proposal would result in increased revenue of approximately \$200,000.

8. Funding for court facility maintenance

Description of Proposal

Current law provides that \$7 of a \$10 additional penalty imposed on criminal offenses shall be reduced when all facilities transfer or bonded indebtedness is paid off by the amount that had previously gone to the local courthouse construction fund. In some counties those contingencies have occurred, and the penalty has therefore already been reduced. This proposal would restore the full \$7 of every \$10, but direct the amount that previously went to the local courthouse construction fund instead to the State Court Facilities Trust Fund for maintenance costs of court facilities.

Statutory Change:

Section 76000 of the Government Code would be amended to read:

76000. (a)(1) ~~Except as otherwise provided elsewhere in this section, i~~In each county there shall be levied an additional penalty in the amount of seven dollars (\$7) for every ten dollars (\$10), or part of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code.

(2) This additional penalty shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code. These moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code. Except as provided in subdivision (e), ~~the~~ county treasurer shall deposit those amounts specified by the board of supervisors by resolution in one or more of the funds established pursuant to this chapter. However, deposits to these funds shall continue through whatever period of time is necessary to repay any borrowings made by the county on or before January 1, 1991, to pay for construction provided for in this chapter.

(3) * * *

(b)-(d) * * *

(e) ~~The seven-dollar (\$7) additional penalty authorized by subdivision (a) shall be reduced in each county by the additional penalty amount assessed by the county for the local courthouse construction fund established by Section 76100 as of January 1, 1998, when the money in that fund is transferred to the state under Section 70402. The amount each county shall charge as an additional penalty under this section shall be as follows: After money in the local courthouse construction fund established by Section 76100 is transferred to the state under Section 70402, the amount of the seven dollar (\$7) additional penalty authorized by subdivision (a) that is set~~

forth in the chart below shall be transmitted to the State Court Facilities Trust Fund to be used for maintenance of court facilities.

Alameda	<u>\$1.65</u>	\$5.00	Marin	<u>\$0.00</u>	\$5.00	San Luis Obispo	<u>\$2.00</u>	\$5.00
Alpine	<u>\$0.00</u>	\$5.00	Mariposa	<u>\$0.00</u>	\$2.50	San Mateo	<u>\$2.25</u>	\$4.75
Amador	<u>\$2.00</u>	\$5.00	Mendocino	<u>\$0.00</u>	\$7.00	Santa Barbara	<u>\$2.52</u>	\$3.50
Butte	<u>\$0.00</u>	\$7.00	Merced	<u>\$2.25</u>	\$4.75	Santa Clara	<u>\$1.50</u>	\$5.50
Calaveras	<u>\$4.00</u>	\$3.00	Modoc	<u>\$0.00</u>	\$3.50	Santa Cruz	<u>\$0.00</u>	\$7.00
Colusa	<u>\$0.66</u>	\$6.00	Mono	<u>\$2.09</u>	\$4.00	Shasta	<u>\$3.50</u>	\$3.50
Contra Costa	<u>\$1.72</u>	\$5.00	Monterey	<u>\$2.00</u>	\$5.00	Sierra	<u>\$0.00</u>	\$7.00
Del Norte	<u>\$0.00</u>	\$7.00	Napa	<u>\$4.00</u>	\$3.00	Siskiyou	<u>\$1.98</u>	\$5.00
El Dorado	<u>\$2.00</u>	\$5.00	Nevada	<u>\$2.25</u>	\$4.75	Solano	<u>\$2.00</u>	\$5.00
Fresno	<u>\$0.00</u>	\$7.00	Orange	<u>\$1.61</u>	\$5.29	Sonoma	<u>\$1.97</u>	\$5.00
Glenn	<u>\$3.00</u>	\$4.00	Placer	<u>\$2.25</u>	\$4.75	Stanislaus	<u>\$2.00</u>	\$5.00
Humboldt	<u>\$1.82</u>	\$5.00	Plumas	<u>\$0.00</u>	\$7.00	Sutter	<u>\$1.00</u>	\$6.00
Imperial	<u>\$1.00</u>	\$6.00	Riverside	<u>\$2.03</u>	\$4.60	Tehama	<u>\$0.00</u>	\$7.00
Inyo	<u>\$3.00</u>	\$4.00	Sacramento	<u>\$2.00</u>	\$5.00	Trinity	<u>\$0.00</u>	\$4.50
Kern	<u>\$0.00</u>	\$7.00	San Benito	<u>\$1.85</u>	\$5.00	Tulare	<u>\$2.00</u>	\$5.00
Kings	<u>\$0.00</u>	\$7.00	San Bernardino	<u>\$1.95</u>	\$5.00	Tuolumne	<u>\$0.00</u>	\$7.00
Lake	<u>\$0.00</u>	\$7.00	San Diego	<u>\$0.00</u>	\$7.00	Ventura	<u>\$1.69</u>	\$5.00
Lassen	<u>\$1.69</u>	\$2.00	San Francisco	<u>\$0.01</u>	\$6.99	Yolo	<u>\$0.00</u>	\$7.00
Los Angeles	<u>\$2.00</u>	\$5.00	San Joaquin	<u>\$3.25</u>	\$3.75	Yuba	<u>\$4.00</u>	\$3.00
Madera	<u>\$0.00</u>	\$7.00						

Section 70375 of the Government Code would be amended to read:

70375. (a) This article shall take effect on January 1, 2003, and the fund, penalty, and fee assessment established by this article shall become operative on January 1, 2003, except as otherwise provided in this article.

(b) The authority for all of the following shall expire proportionally on the June 30th following the date of transfer of responsibility for facilities from the county to the Judicial Council, except so long as money is needed to pay for construction provided for in those sections and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council:

~~(1) An additional penalty for a local courthouse construction fund established pursuant to Section 76100.~~

~~(2) A filing fee surcharge in the County of Riverside established pursuant to Section 70622.~~

~~(3)~~(2) A filing fee surcharge in the County of San Bernardino established pursuant to Section 70624.

~~(4)(3)~~ A filing fee surcharge in the City and County of San Francisco established pursuant to Section 70625.

(c) For purposes of subdivision (c), the term “proportionally” means that proportion of the fee or surcharge that shall expire upon the transfer of responsibility for a facility that is the same proportion as the square footage that facility bears to the total square footage of court facilities in that county.

Fiscal Impact

Averaging the reported amount of revenues received for three fiscal years from 2008–2009 to 2010–2011, and excluding facilities for which there remains bonded indebtedness, this proposal will result in an addition \$1.4 million.

9. Destruction of records relating to possession or transportation of marijuana

Description of Proposal

This proposal would eliminate the requirement that courts destroy records relating to conviction, or arrest if there was no conviction, for possession or transport of marijuana. Under the existing requirement, “destruction” is to be accomplished by “permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. ...” It is incredibly burdensome to separately mask these individual items in the court’s docket. Eliminating this requirement will save significant court time.

Statutory Change

Health and Safety Code section 11361.5 would be repealed:

~~11361.5. (a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.~~

~~—(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:~~

~~—(1) Any violation of Section 11357 or a statutory predecessor thereof.~~

~~—(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.~~

~~—(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.~~

~~—(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.~~

~~—Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty seven dollars and fifty cents (\$37.50). The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.~~

~~—The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars (\$10). Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.~~

~~—(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.~~

~~—(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.~~

Fiscal Impact

Based on data provided by the San Diego and Shasta courts, this proposal could result in a savings to courts ranging from \$548,029 to \$2,192,113. These courts provided data on the number of non-traffic misdemeanor and non-traffic infraction cases in their courts that would be impacted by the proposal. Using these numbers, it was established that 5.63 percent of infraction cases and 27.5 percent of misdemeanor cases statewide would be impacted. Assuming 225 records could be destroyed per hour in infraction cases (based on information from San Diego) and destruction of these records in misdemeanor cases taking 15 minutes, and using the average statewide hourly clerk salary, the total savings was calculated. To account for the limited sources of data (2 courts), the low range calculation of costs savings for not using clerk time to destroy these records was divided by 2, and the high estimate was multiplied by 2.

10. Digital signatures on arrest warrants

Description of Proposal

This proposal would allow for digital signatures on arrest warrants. The law was amended in 2010 to allow digital signatures on search warrants, but arrest warrants were not included. This proposal would conform the procedures for arrest warrants with those for search warrants.

Statutory Change

Penal Code section 817 would be amended to read:

817. (a)–(b) ***

(c) In lieu of the written declaration required in subdivision (b), the magistrate may take an oral statement under oath under one either of the following conditions:

(1) The oath shall be taken under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be the declaration for the purposes of this section. The recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative, the sworn oral statement may be recorded by a certified court reporter who shall certify the transcript of the statement, after which the magistrate receiving it shall certify the transcript, which shall be filed with the clerk of the court.

(2) The oath is made using telephone and facsimile transmission equipment, or made using telephone and electronic mail, or telephone and computer server, as follows under all of the following conditions:

(A) The oath is made during a telephone conversation with the magistrate, after which the declarant shall sign his or her declaration in support of the warrant of probable cause for arrest. The declarant's signature shall be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate. The proposed warrant and all supporting declarations and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment, ~~or~~ electronic mail, or computer server.

(B) The magistrate shall confirm with the declarant the receipt of the warrant and the supporting declarations and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the declarant's signature, ~~or~~ digital signature, or electronic signature is acknowledged as genuine.

(C) If the magistrate decides to issue the warrant, he or she shall:

~~(i) Cause the warrant, supporting declarations, and attachments, to be printed if received by~~

~~electronic mail.~~

~~(ii)~~ (i) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate.

~~(iii)~~ (ii) Note on the warrant the exact date and time of the issuance of the warrant.

~~(iv)~~ (iii) Indicate on the warrant that the oath of the declarant was administered orally over the telephone. The completed warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, ~~or via~~ electronic mail, or computer server the signed warrant to the declarant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the declarant to write the words "duplicate original" on the copy of the completed warrant transmitted to the declarant and this document shall be deemed to be a duplicate original warrant.

Fiscal Impact

This proposal will create efficiencies for judicial officers in the processing of arrest warrants. Other efficiencies and related cost savings would be minimal.

11. Preliminary hearing transcripts

Description of Proposal

This proposal would clarify that preliminary hearing transcripts *must* be produced only when a defendant is held to answer the charge of homicide. In all other cases, transcripts would be produced upon request. This amendment would be consistent with the apparent intent of the section, which requires that "testimony of each witness in *cases of homicide* shall be reduced to writing . . ." and in other cases, on the demand of a party. Although the statute appears to be addressing homicide matters only, subdivision (e), which is proposed to be amended, confusingly states that preliminary hearing transcripts must be provided if the defendant is being held to answer the charge of a *felony*, or in any other case if the defendant or the prosecution order the transcript. As a result, preliminary hearing transcripts are being produced, and purchased by the courts, in more cases than anticipated by the statute.

Most defendants are held to answer at the preliminary hearing. That means that the court must produce the transcripts in nearly all felonies that haven't settled before the preliminary hearing. In practice, the transcripts are mostly used by the defense to prepare a motion to dismiss under Penal Code section 995, which asks a subsequent court to review the preliminary hearing court's probable cause finding anew. Penal Code section 995 motions should include line-by-line references to the preliminary hearing transcripts. Because most felony cases settle after preliminary hearing, often with no section 995 motions filed, production of the transcripts in many cases is unnecessary, so requiring a party to request the transcript would eliminate waste without impairing the parties' access to transcripts.

The existing requirement to produce the transcripts *in every felony* appears to have been a drafting error. Courts report that a sizeable number of transcripts are never picked up by parties. Parties wishing to obtain a transcript will still be able to ask for one under this proposal. To pay

for a product or service that is of no use to participants in the court process is a gross misuse of the courts' limited resources.

Statutory Change

Penal Code section 869 would be amended to read:

869. The testimony of each witness in cases of homicide shall be reduced to writing, as a deposition, by the magistrate, or under his or her direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his or her counsel. The magistrate before whom the examination is had may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witness shall be authenticated in the following form:

(a) It shall state the name of the witness, his or her place of residence, and his or her business or profession; except that if the witness is a peace officer, it shall state his or her name, and the address given in his or her testimony at the hearing.

(b) It shall contain the questions put to the witness and his or her answers thereto, each answer being distinctly read to him or her as it is taken down, and being corrected or added to until it conforms to what he or she declares is the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him or her.

(c) If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, shall be stated.

(d) The deposition shall be signed by the witness, or if he or she refuses to sign it, his or her reason for refusing shall be stated in writing, as he or she gives it, except in cases where the deposition is taken down in shorthand, it need not be signed by the witness.

(e) The reporter shall, ~~within 10 days after the close of the examination,~~ if the defendant be held to answer the charge of a felony homicide, or in any other case if upon request of either the defendant or the prosecution ~~orders the transcript,~~ transcribe his or her shorthand notes within 10 days following the close of the examination where the defendant was held to answer on a homicide, or within 10 days following the request in all other cases, making an original and one copy and as many additional copies thereof as there are defendants (other than fictitious defendants), regardless of the number of charges or fictitious defendants included in the same examination, and certify and deliver the original and all copies to the clerk of the superior court in the county in which the defendant was examined. The reporter shall, before receiving any compensation as a reporter, file his or her affidavit setting forth that the transcript has been delivered within the time herein provided for. The compensation of the reporter for any services rendered by him or her as the reporter in any court of this state shall be reduced one-half if the provisions of this section as to the time of filing said transcript have not been complied with by him or her.

(f) In every case in which a transcript is delivered as provided in this section, the clerk of the court shall file the original of the transcript with the papers in the case, and shall deliver a copy of the transcript to the district attorney immediately upon his or her receipt thereof and shall deliver a copy of said transcript to each defendant (other than a fictitious defendant) at least five days before trial or upon earlier demand by him or her without cost to him or her; provided, that

if any defendant be held to answer to two or more charges upon the same examination and thereafter the district attorney shall file separate informations upon said several charges, the delivery to each such defendant of one copy of the transcript of the examination shall be a compliance with this section as to all of those informations.

(g) If the transcript is delivered by the reporter within the time hereinbefore provided for, the reporter shall be entitled to receive the compensation fixed and allowed by law to reporters in the superior courts of this state.

Fiscal Impact

Based on information received from three courts, it was determined that 2.5 percent of preliminary hearings relate to homicide cases, and all homicide cases are held to answer at the preliminary hearing. Using data from 2009–2010, that would mean that annually 33,671 non-homicide cases are held to answer. The low range estimate provided by the courts of cost of a transcript in such matters is \$85, with a high range of \$194. Eliminating the requirement that courts purchase a transcript in these non-homicide matters results in a savings of \$2,862,000 to \$6,532,106. Even assuming a request for a transcript is made in some percentage of these cases, the savings to the courts is significant.

12. Court costs for deferred entry of judgment

Description of Proposal

This proposal would clarify that the court can recoup its costs in processing a request or application for diversion or DEJ. The AOC Legal Services Office (formerly the Office of the General Counsel) has previously opined that the statute currently allows the court to recoup its costs, but presumably because the statute is silent on this and the State Controller’s manual directs distribution of such collections to counties, thus rendering the collection of “court costs” moot. Existing law allows the county to recoup its costs, but not the courts. This anomaly may be a vestige of the laws prior to state trial court funding, as there is no apparent rationale to allow counties to recoup their costs, but not courts. This amendment would make clear that court costs can be collected.

Statutory Change

Penal Code section 1001.15 would be amended to read:

1001.15 (a) (1) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in a diversion program, by a defendant accused of a felony to cover the actual cost of any criminalistics laboratory analysis, the county’s actual cost of processing a request or application for diversion, and the actual cost of supervising the divertee pursuant to Chapter 2.5 (commencing with Section 1000), not to exceed five hundred dollars (\$500). The fee shall be payable at the time of enrollment in the diversion program.

(2) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee payable to the court by a defendant accused of a felony to cover the court’s actual costs of processing a request or application for diversion.

(3) The court shall take into consideration the defendant’s ability to pay, and no defendant shall be denied diversion because of his or her inability to pay these fees.

(b) ***

(c) (1) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in a diversion program, by a defendant accused of an act charged as, or reduced to, a misdemeanor to cover the county's actual cost of processing a request or application for diversion pursuant to Chapter 2.6 (commencing with Section 1000.6), the county's actual costs of reporting to the court on a defendant's eligibility and suitability for diversion, the actual cost of supervising the divertee, and for the actual costs of performing any duties required pursuant to Section 1000.9, not to exceed three hundred dollars (\$300). The fee shall be payable at the time of enrollment in the diversion program. ~~The fee shall be determined on a sliding scale according to the defendant's ability to pay, and no defendant shall be denied diversion because of his or her inability to pay.~~

(2) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee payable to the court by a defendant accused of a felony to cover the court's actual costs of processing a request or application for diversion.

(3) The fees shall be determined on a sliding scale according to the defendant's ability to pay, and no defendant shall be denied diversion because of his or her inability to pay these fees.

(d) The fees established pursuant to this section may not exceed the actual costs incurred by the court or required for the programs authorized to be reimbursed by these fees ~~this fee~~. All proceeds from the fees established pursuant to this section shall be allocated only to the court or for the programs authorized to be reimbursed by these ~~this~~ fees.

(e) * * *

Penal Code section 1001.16 would be amended to read:

1001.16(a) (1) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee, as part of an enrollment fee in a diversion program, by a defendant accused of a misdemeanor to cover the actual cost of any criminalistics laboratory analysis in a case involving a violation of the California Uniform Controlled Substances Act under Division 10 (commencing with Section 11000) of the Health and Safety Code, the county's actual cost of processing a request or application for diversion, and the actual cost of supervising the divertee, not to exceed three hundred dollars (\$300). The fee shall be payable at the time of enrollment in the diversion program.

(2) In addition to the fees authorized or required by other provisions of law, a judge may require the payment of an administrative fee payable to the court by a defendant accused of a felony to cover the court's actual costs of processing a request or application for diversion.

(3) The court shall take into consideration the defendant's ability to pay, and no defendant shall be denied diversion because of his or her inability to pay these fees.

(b) * * *

(c) * * *

(d) The fees established pursuant to this section may not exceed the actual costs incurred by the court or required for the programs authorized to be reimbursed by these fees ~~this fee~~. All proceeds from the fees established pursuant to this section shall be allocated only to the court or for the programs authorized to be reimbursed by these fees. ~~this fee~~.

Fiscal Impact

The proposal could allow courts to recoup between 19,000 and \$1,047,600 in court costs. Using data from 2009–2010, it was determined that there 1,746 cases with dismissal after diversion. Assuming that 50 percent of these would meet eligibility standards for a waiver of court costs, and assuming an average time of 20 minutes to process each case, results in a total of 291 hours of case processing time for which the proposal would result in a recovery of costs. Using the average hourly clerk salary and the maximum amount of \$300 in court costs that may be charged results in a low and high estimate of fiscal impact. Accounting for the fact that the estimates are based on data from a limited set of courts, and the use of the high estimate of fee waiver eligible defendants, the low and high estimates were doubled, resulting in an estimated cost recovery of \$19,000 to \$1,047,600.

13. Court fee for reinstatement of bail bond

Description of Proposal

This proposal would set a specific amount the court could impose for court expenses related to the reinstatement of a bail bond. This will allow courts to cover some of the court staff time, faxing, and other activities associated with reprocessing a bail bond.

Statutory Change

Penal Code section 1305 would be amended to read:

1305. (a) A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following:

- (1) Arraignment.
- (2) Trial.
- (3) Judgment.
- (4) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.
- (5) To surrender himself or herself in execution of the judgment after appeal.

However, the court shall not have jurisdiction to declare a forfeiture and the bail shall be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment.

(b) If the amount of the bond or money or property deposited exceeds four hundred dollars (\$400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.

If the surety is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then notice of the forfeiture shall be mailed to the surety at that address and to the bail agent, and mailing alone to the surety or the bail agent shall not constitute compliance with this section.

The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:

(1) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture.

(2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond.

(3) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on the bond.

(c) (1) If the defendant appears either voluntarily or in custody after surrender or arrest in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required under subdivision (b), the court shall, on its own motion at the time the defendant first appears in court on the case in which the forfeiture was entered, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(2) If, within the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, and is subsequently released from custody prior to an appearance in court, the court shall, on its own motion, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(3) If, outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, the court shall vacate the forfeiture and exonerate the bail.

(4) In lieu of exonerating the bond, the court may order the bail reinstated and the defendant released on the same bond if both of the following conditions are met:

(A) The bail is given prior notice of the reinstatement.

(B) The bail has not surrendered the defendant.

The court may require an administrative fee of \$65 payable to the court for reinstatement of a bail bond to cover the cost of the process.

(d)-(i) ***

Fiscal Impact

Unknown.

14. Refining procedure for pursuing reimbursement for court-appointed dependency counsel

Description of the Proposal

This proposal would modify the process for evaluating the ability of a parent or guardian to reimburse the court for the cost of court-appointed counsel in dependency matters. Current law

provides that parents will not be required to reimburse the court if doing so would interfere with their ability to support the child if the family had been reunified, or if reunification is ongoing and repayment would interfere with the reunification process. Current law allows the court financial evaluation officer to decline to petition the court for an order of repayment in the former situation, but not in the latter. This proposal would authorize the court financial officer not to petition the court for a repayment order in either situation, thereby preventing the court from having to hold a hearing to determine if repayment is appropriate in those cases in which reunification is ongoing. It will streamline the process for determining whether repayment is necessary by providing court evaluation officers with the tools they need to screen cases and not forward them to the court when doing so would be inconsistent with the reunification of the family.

Statutory Change

Subdivision (b) of Welfare and Institutions Code section 945 would be amended as follows:

903.45. (b) In any county where a board of supervisors has designated a county financial evaluation officer, the juvenile court shall, at the close of the disposition hearing, order any person liable for the cost of support, pursuant to Section 903, the cost of legal services as provided for in Section 903.1, probation costs as provided for in Section 903.2, or any other reimbursable costs allowed under this code, to appear before the county financial evaluation officer for a financial evaluation of his or her ability to pay those costs; and if the responsible person is not present at the disposition hearing, the court shall cite him or her to appear for such a financial evaluation. In the case of a parent, guardian, or other person assessed for the costs of transport, food, shelter, or care of a minor under Section 207.2 or 903.25, the juvenile court shall, upon request of the county probation department, order the appearance of the parent, guardian, or other person before the county financial evaluation officer for a financial evaluation of his or her ability to pay the costs assessed.

If the county financial evaluation officer determines that a person so responsible has the ability to pay all or part of the costs, the county financial evaluation officer shall petition the court for an order requiring the person to pay that sum to the county or court, depending on which entity incurred the expense. If the parent or guardian is liable for costs for legal services pursuant to Section 903.1, the parent or guardian has been reunified with the child pursuant to a court order, and the county financial evaluation officer determines that repayment of the costs would harm the ability of the parent or guardian to support the child, then the county financial evaluation officer shall not petition the court for an order of repayment, and the court shall not make that order. In addition, if the parent or guardian is currently receiving reunification services, and the court finds or the county financial officer determines that repayment by the parent or guardian will pose a barrier to reunification with the child because it will limit the ability of the parent or guardian to comply with the requirements of the reunification plan or compromise the parent's or guardian's current or future ability to meet the financial needs of the child, or in any case in which the court finds that the repayment would be unjust under the circumstances of the case, the county financial officer shall not petition the court for an order of repayment and the court shall not order repayment by the parent or guardian. In evaluating a person's ability to pay under this section, the county financial evaluation officer and the court shall take into consideration the family's income, the necessary obligations of the family, and the number of persons dependent

upon this income. Any person appearing for a financial evaluation shall have the right to dispute the county financial evaluation officer's determination, in which case he or she shall be entitled to a hearing before the juvenile court. The county financial evaluation officer at the time of the financial evaluation shall advise such a person of his or her right to a hearing and of his or her rights pursuant to subdivision (c).

At the hearing, any person so responsible for costs shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, to confront and cross-examine adverse witnesses, to disclosure of the evidence against him or her, and to receive a written statement of the findings of the court. The person shall have the right to be represented by counsel, and, when the person is unable to afford counsel, the right to appointed counsel. If the court determines that the person has the ability to pay all or part of the costs, including the costs of any counsel appointed to represent the person at the hearing, the court shall set the amount to be reimbursed and order him or her to pay that sum to the county or court, depending on which entity incurred the expense, in a manner in which the court believes reasonable and compatible with the person's financial ability.

If the person or persons, after having been ordered to appear before the county financial evaluation officer, have been given proper notice and fail to appear as ordered, the county financial evaluation officer shall recommend to the court that he, she, or they be ordered to pay the full amount of the costs. Proper notice to him, her, or them shall contain all of the following:

- (1) That he, she, or they have a right to a statement of the costs as soon as it is available.
- (2) His, her, or their procedural rights under Section 27755 of the Government Code.
- (3) The time limit within which his, her, or their appearance is required.
- (4) A warning that if he, she, or they fail to appear before the county financial evaluation officer, the officer will recommend that the court order him, her, or them to pay the costs in full.

If the county financial evaluation officer determines that the person or persons have the ability to pay all or a portion of these costs, with or without terms, and he, she, or they concur in this determination and agree to the terms of payments, the county financial evaluation officer, upon his or her written evaluation and the person's or persons' written agreement, shall petition the court for an order requiring him, her, or them to pay that sum to the county or the court in a manner which is reasonable and compatible with his, her, or their financial ability. This order may be granted without further notice to the person or persons, provided a copy of the order is served on him, her, or them by mail.

However, if the county financial evaluation officer cannot reach an agreement with the person or persons with respect to either the liability for the costs, the amount of the costs, his, her, or their ability to pay the same, or the terms of payment, the matter shall be deemed in dispute and referred by the county financial evaluation officer back to the court for a hearing.

Fiscal Impact

Giving authority to the financial evaluation officer not to petition the court for an order of repayment where reunification services are ongoing would result in savings of \$3 million to \$5 million annually. In 2009, the most recent year for which data are available, there were 33,573 original dependency petitions filed in California. Using the prior three years of data, it is assumed that 82.5 percent of those cases, or 27,698, reach disposition, and are thus potentially liable for the cost of appointed counsel. It is estimated that 80 percent, or 22,158, of the cases reaching disposition would receive family reunification of services. Using data provided by the

Contra Costa court, the cost of providing a judicial officer and court to determine whether ordering a parent or guardian currently receiving reunification services to pay would pose a barrier to reunification or compromise the parent's or guardian's current or future ability to support the child is \$327, whereas it would cost \$55 per case for a financial evaluation officer to make the same determination—a savings of \$280 per case. Estimating that the compensation rates in Contra Costa County are 125 percent of the statewide average results in a projected statewide annual savings of \$225 per case. Multiplying the number of cases receiving reunification services by the projected savings per case (22,158 x \$225) yields a projected annual statewide savings of \$4,985,550.00.

If only those counties known to have collections programs take advantage of this statutory change, an estimated 14,018 cases receive reunification services at disposition. At a savings of \$225 per case, the total savings would be \$3,154,050.

15. Fee for filing request for special notice

Description of the Proposal

This proposal would add a new probate fee of \$40 for the filing of a request for special notice in decedents estate, guardianship, conservatorship, or trust proceedings. The proposed new fee is designed to compensate courts for the costs involved in providing these special notices, for which court staff estimate an average of at least two requests for such notice per case for these particular case types. The amount is in line with other fees in probate actions.

Statutory Change

Government Code section 70658.6 would be added to read:

70658.6. (a) The fee for filing a request for special notice under Sections 1250, 2700, or 17204 of the Probate Code is forty dollars (\$40).

(b) The fee provided by this section is in addition to any other fee charged for a paper filed concurrently with the request for special notice.

Fiscal Impact

This proposal would result in new revenue to the courts of \$190,159. Using data from three courts, AOC staff estimated that 5.63 percent of probate filings involve a request for special notice, for a total of 2,377 cases (5.63 percent of 42,220 cases). Because the data was limited, and because, in many instances, there are multiple requests for special notice, the resulting revenue was number was multiplied by 2, yielding potential revenue of \$190,159.

16. Administrative assessment for maintaining records of convictions under the Vehicle Code

Description of Proposal

This proposal would clarify that courts are required to impose the \$10 administrative assessment for each conviction of a violation of the Vehicle Code, not just upon a “subsequent” violation. The amount of court staff work involved in checking for subsequent convictions is as

burdensome as checking for the first conviction. It is reasonable and consistent to impose this fee on all violators.

Statutory Change

Vehicle Code section 40508.6 would be amended to read:

40508.6. The superior court in any county may establish administrative assessments, not to exceed ten dollars (\$10), for clerical and administrative costs incurred for the following activities:

(a) An assessment for the cost of recording and maintaining a record of ~~the defendant's~~ prior convictions for violations of this code. The assessment shall be payable at the time of payment of a fine or the fee under section 42007 for traffic violator school or when bail is forfeited for any ~~subsequent~~ violations of this code other than parking, pedestrian, or bicycle violations.

(b) An assessment for all defendants whose driver's license or automobile registration is attached or restricted pursuant to Section 40509 or 40509.5, to cover the cost of notifying the Department of Motor Vehicles of the attachment or restriction.

Fiscal Impact

Using estimates provided by two courts of additional revenue this proposal would yield to estimate the percentage of traffic filings that are first violations and thus would be subject to this assessment, and reducing this number to address the fact that some unknown number of courts are currently collecting this fee because their automated system does not distinguish between first and subsequent violations, it is estimated that this statutory change may yield \$1.1 million in new revenue.

17. Trial by written declaration

Description of Proposal

This proposal authorizes courts to collect an administrative fee for processing a request for trial by written declaration. Increasingly, trials by written declaration are being used by those who live *locally*. In some counties, a trial de novo is requested in 40 to 50 percent of cases where the defendant has not prevailed on the written declaration. Rather than providing a convenient way for a traffic violator who lives an impractical or inconvenient distance from the court to contest matters, the process is being used to give a second bite at the apple to win a case. This proposal recognizes the administrative costs to the court for processing the cases, while retaining the violators' rights.

Statutory Change

Vehicle Code section 40902 would be amended to read:

40902.(a)(1) The court, pursuant to this section, shall, by rule, provide that the defendant, upon payment of a nonrefundable administrative fee of fifty dollars (\$50) to process the request, may elect to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of this code or any local ordinance adopted pursuant to this code, other than an infraction cited pursuant to Article 2 (commencing with Section 23152) of Chapter 12 of Division 11.

(2) The Judicial Council may adopt rules and forms governing trials by declaration in accordance with this section. Any rule or form adopted by the Judicial Council pursuant to this paragraph shall supersede any local rule of a court adopted pursuant to paragraph (1).

(b) If the defendant elects to have a trial by written declaration, the defendant shall, at the time of submitting that declaration, submit the fee required pursuant to paragraph (1) of subdivision (a) and bail in the amount established in the uniform traffic penalty schedule pursuant to Section 40310. If the defendant is found not guilty or if the charges are otherwise dismissed, the amount of the bail shall be promptly refunded to the defendant.

(c)–(d) ***

Fiscal Impact

Based on this information provided by four courts of varying sizes, it is estimated that the number of trials by declaration equates to 1 percent of all traffic dispositions, or 63,603 trials by declaration. Imposing a \$50 fee for each of those matters would result in new revenue of \$3.2 million.

Trial Court Funding Reduction History/Recommendation

	2009-2010	2010-2011	2011-2012	Recommended 2012-2013	Estimated 2013-2014
# I. General Fund Reduction	A	B	C	D	E
1 Ongoing	-260,809,000	-285,809,000	-285,809,000	-605,766,575	-605,766,575
2 One-Time	-100,000,000	-30,000,000			
3 Budget Act/Council Action			-319,957,575		
4 Budget Act of 2012 ¹				-536,000,000	-111,000,000
5 Total, Reduction	-360,809,000	-315,809,000	-605,766,575	-1,141,766,575	-716,766,575
7 II. Offsets					
8 Various	135,000,000	160,000,000	302,400,000	0	0
9 Budget Act of 2012 (see Attachment H for details)	-	-	-	401,000,000	100,000,000
10 Additional offsets from TCTF	0	0	0	47,500,000	0
11 Total, Offsets	135,000,000	160,000,000	302,400,000	448,500,000	100,000,000
13 III. New Revenues					
14 Various	18,000,000	66,290,000	70,580,000	70,580,000	70,580,000
15 SB 1021 (new and increased fees)	-	-	-	50,400,000	50,400,000
16 Total, New Revenues	18,000,000	66,290,000	70,580,000	120,980,000	120,980,000
18 Total Net Reduction	-207,809,000	-89,519,000	-232,786,575	-572,286,575	-495,786,575
20 IV. Reduction Adjustments					
21 Add: Share of Reduction - Other State Trial Court Funding Programs (see Attachment I for details)	-	3,713,000	5,190,444	15,141,778	15,141,778
22 Add: Security Share of Reduction	17,682,408	17,049,000	17,049,000	17,049,000	17,049,000
23 Less: Court Appointed Counsel Ongoing Shortfall	-	-7,075,000	-3,537,500	-	-
24 Total, Reduction Adjustments	17,682,408	13,687,000	18,701,944	32,190,778	32,190,778
26 Cumulative net court operations reduction from 2008-09	-190,126,592	-75,832,000	-214,084,631	-540,095,797	-463,595,797
28 Statewide 2% reserve				-27,813,940	-30,293,940
29 Cumulative net court operations reduction from 2008-09 with 2% holdback	-190,126,592	-75,832,000	-214,084,631	-567,909,737	-493,889,737
31 Change from prior year before 2% holdback		114,294,592	-138,252,631	-326,011,166	76,500,000
32 Change from prior year after 2% holdback		114,294,592	-138,252,631	-353,825,106	74,020,000
34 Offset to \$385 million reduction before 2% holdback				58,988,834	
35 Offset to \$385 million reduction after 2% holdback				31,174,894	

1. Assumes the ongoing \$10 million offset to the trial court funding reduction of \$121 million in 2013-2014 is a General Fund augmentation.

