



JUDICIAL COUNCIL  
OF CALIFORNIA

TRIAL COURT BUDGET  
ADVISORY COMMITTEE

TRIAL COURT BUDGET ADVISORY COMMITTEE  
FUNDING METHODOLOGY SUBCOMMITTEE

MATERIALS FOR SEPTEMBER 22, 2021  
VIRTUAL MEETING

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# JUDICIAL COUNCIL OF CALIFORNIA

TRIAL COURT BUDGET  
ADVISORY COMMITTEE

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## TRIAL COURT BUDGET ADVISORY COMMITTEE FUNDING METHODOLOGY SUBCOMMITTEE

### 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

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**Date:** September 22, 2021  
**Time:** 12:00 p.m. to 1:30 p.m.  
**Public Call-in Number:** <https://jcc.granicus.com/player/event/1376>

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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 [tcbac@jud.ca.gov](mailto:tcbac@jud.ca.gov).

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

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

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##### Call to Order and Roll Call

##### Approval of Minutes

Approve minutes of the April 12 and April 15, 2021 Funding Methodology Subcommittee meetings.

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

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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 [tcbac@jud.ca.gov](mailto:tcbac@jud.ca.gov). Only written comments received by 12:00 p.m. on September 21, 2021 will be provided to advisory body members prior to the start of the meeting.

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**III. DISCUSSION AND POSSIBLE ACTION ITEM (ITEM 1)**

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**Item 1**

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

Consideration of an allocation methodology for up to \$30 million in support of court appointed counsel in dependency cases.

Presenter(s)/Facilitator(s): Ms. Audrey Fancy, Principal Managing Attorney  
Judicial Council Center for Families, Children & the Courts

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**IV. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)**

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**None**

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**V. ADJOURNMENT**

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**Adjourn**



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TRIAL COURT BUDGET ADVISORY COMMITTEE  
FUNDING METHODOLOGY SUBCOMMITTEE

MINUTES OF OPEN MEETING

April 12, 2021

1:00 p.m. - 3:00 p.m.

Call-in Number: 877-820-7831, Pass Code: 18884843 (listen only)

**Advisory Body Members Present:** Judges: Hon. Daniel J. Buckley (Cochair), Hon. Mark Ashton Cope, Hon. Patricia L. Kelly, and Hon. B. Scott Thompson.

Executive Officers: Ms. Rebecca Fleming (Cochair), Ms. Sherri R. Carter, Ms. Nancy Eberhardt, Mr. Neal Taniguchi, and Mr. David Yamasaki.

**Advisory Body Members Absent:** Mr. Michael D. Planet

**Others Present:** Mr. Zlatko Theodorovic, Ms. Fran Mueller, Ms. Brandy Olivera, Ms. Michele Allan, Ms. Oksana Tuk, and Mr. Catrayel Wood.

OPEN MEETING

**Call to Order and Roll Call**

The cochairs called the meeting to order at 1:01 p.m. and took roll call.

**Approval of Minutes**

The subcommittee reviewed and approved the minutes of the February 18, 2021 Funding Methodology Subcommittee (FMS) meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 1)

**Item 1: Allocation Methodology of Trial Court Funding in 2021-22 Governor's Budget (Action Required)**

Discuss allocation methodologies for the \$167.8 million funding restoration and the \$72.2 million new, discretionary funding included in the 2021-22 Governor's Budget for inclusion in the 2021-22 Workload Formula allocation should the funding be included in the enacted budget.

Presenter(s)/Facilitator(s): Ms. Oksana Tuk, Senior Analyst, Judicial Council Budget Services

**Action:** The FMS voted to approve, with one member opposed to recommendation c, the following recommendations for consideration by the Trial Court Budget Advisory Committee at its April 22, 2021 meeting:

- a) Restore \$167.8 million and allocate to the trial courts on a dollar-for-dollar basis consistent with the initial reduction, without allowing any court to exceed 100 percent of their Workload Formula amount;
- b) Funds resulting from courts going over 100 percent of their Workload Formula amounts due to the restoration will be used to bring cluster 1 courts up to 100 percent of their funding needs; and
- c) Any remaining funds will be added to the \$72.2 million in new funding and will be allocated via the approved Workload Formula methodology for new money.
  - a. The non-sheriff court security will be reduced from the \$72.2 million prior to adding any remaining restoration funds and the Workload Formula calculation.

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**A D J O U R N M E N T**

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There being no further business, the meeting was adjourned at 1:44 p.m.

Approved by the advisory body on [date].



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TRIAL COURT BUDGET ADVISORY COMMITTEE  
FUNDING METHODOLOGY SUBCOMMITTEE

MINUTES OF OPEN MEETING

April 15, 2021

4:30 p.m. - 5:30 p.m.

Call-in Number: 877-820-7831, Pass Code: 18884843 (listen only)

**Advisory Body Members Present:** Judges: Hon. Daniel J. Buckley (Cochair), Hon. Mark Ashton Cope, and Hon. B. Scott Thompson.

Executive Officers: Ms. Rebecca Fleming (Cochair), Ms. Sherri R. Carter, Ms. Nancy Eberhardt, Mr. Neal Taniguchi, and Mr. David Yamasaki.

**Advisory Body Members Absent:** Hon. Patricia L. Kelly and Mr. Michael D. Planet.

**Others Present:** Mr. John Wordlaw, Mr. Zlatko Theodorovic, Ms. Fran Mueller, Ms. Brandy Olivera, Ms. Michele Allan, Ms. Oksana Tuk, and Mr. Catrayel Wood.

OPEN MEETING

**Call to Order and Roll Call**

*This Funding Methodology Subcommittee (FMS) meeting occurred three days following an April 12, 2021 FMS meeting to revisit urgent allocation concepts for consideration by the Trial Court Budget Advisory Committee.*

The cochairs called the meeting to order at 4:31 p.m. and took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 1)

**Item 1: Allocation Methodology of Trial Court Funding in 2021-22 Governor's Budget (Action Required)**

Continue to discuss allocation methodologies for the \$167.8 million funding restoration and the \$72.2 million new, discretionary funding included in the 2021-22 Governor's Budget for inclusion in the 2021-22 Workload Formula allocation should the funding be included in the enacted budget.

Presenter(s)/Facilitator(s): Hon. Daniel J. Buckley, Cochair, Funding Methodology Subcommittee  
Ms. Rebecca Fleming, Cochair, Funding Methodology Subcommittee

**Action:** The FMS voted, with five "yes" and three "no" votes, to approve scenario 2 which is to allocate the \$72.2 million to bring all courts up to the statewide average funding level of at least 80.7%.

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**A D J O U R N M E N T**

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There being no further business, the meeting was adjourned at 5:17 p.m.

Approved by the advisory body on [date].

JUDICIAL COUNCIL OF CALIFORNIA  
BUDGET SERVICES  
Report to the Funding Methodology Subcommittee

**(Action Item)**

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

**Date:** September 22, 2021

**Contact:** Audrey Fancy, Principal Managing Attorney, Judicial Council Center for Families, Children & the Courts | [audrey.fancy@jud.ca.gov](mailto: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](mailto:kelly.meehleib@jud.ca.gov) | 916-263-1693

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**Issue**

The 2021 Budget Act<sup>1</sup> included up to \$30 million in General Fund dollars for court-appointed counsel (CAC) in dependency cases to address a shortfall in what was expected could be claimed from Federal Title IV-E dollars 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 Assembly Judiciary Committee and Senate Standing Committee on Judiciary 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, Judicial Council Center for Families, Children & the Courts (CFCC) staff are seeking a recommendation from the Funding Methodology Subcommittee (FMS) on how to allocate and distribute the funds to be considered by the Trial Court Budget Advisory (TCBAC), the Judicial Branch Budget Committee (Budget Committee), and then the Judicial Council at its January 2022 business meeting.

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<sup>1</sup> 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.” Senate Bill 129 (Skinner) *Budget Act of 2021* [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB129](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB129).



JUDICIAL COUNCIL OF CALIFORNIA  
BUDGET SERVICES  
Report to the Funding Methodology Subcommittee

**Background**

The council has taken an active role to ensure funding for CAC in dependency cases is adequate to ensure 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. 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 funds<sup>2</sup> to support enhanced legal representation services for families and children in dependency proceedings. When the program was initiated, council staff worked with California's Title IV-E administrator, the 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 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 the Spring of 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 considered 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 boost in Federal funding that had been anticipated.

To address this gap, the 2021-22 budget 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.

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<sup>2</sup> 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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**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 (see Attachment A for detail on 2019–20 payments). As with any effort to implement a new system of invoicing and documentation to meet state and federal requirements, the learning curve was steep for providers who 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. Judicial Council 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, a number of providers who did not have adequate records to document the work for the retroactive period opted to invoice 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 total of just under \$54 million to be claimed. Because council CFCC staff was awaiting guidance from the Federal ACF on the precise scope of eligible activities, invoicing for this year was delayed. Most of those issues have now been resolved, and providers are in the process of submitting invoices for the fiscal year that just ended. 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. For 2021-22, additional providers may join the program, so a final total FFDRP contract amount is not yet available, but it is expected to be similar to 2020-21 such that the shortfall will be less than the \$30 million budgeted as the upper bound of what can be allocated to address the shortfall.

Questions for Discussion

***Should allocations be limited to providers who have entered into FFDRP contracts?***

In conversations with the Department of Finance and referring to language in the 2021 Budget Act, it is clear that the council is to propose a system for allocating and distributing the additional dollars that will “address any shortfalls in federal reimbursements...” As a result, it seems clear that only those providers who have entered into a FFDRP contract should be eligible. FFDRP is currently asking non-participating courts about interest in having their CAC providers join FFDRP. Should there be an annual deadline of December 31<sup>st</sup> to join the program to access these additional funds for that fiscal year?

***Should there be a threshold requirement for invoicing to ensure that providers are drawing down all available Federal funds, and if so, how should it be determined?***

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Report to the Funding Methodology Subcommittee

There are numerous hurdles involved in invoicing for this program, but in order to maximize the Federal funds for reimbursement, providers must make a good faith effort to comply with these requirements and claim all eligible expenses. To ensure this occurs, the allocation methodology may need to address the following:

1. Should the allocation method require a minimum level of participation?
2. Should that minimum require that an invoice be submitted for every month of the fiscal year?
3. Should there be a minimum percentage of the contract that is billed in order to be eligible for distribution of the funds and, if so, how should that percentage be determined?
4. If a provider is participating, but has not met the minimum requirements, should there be some distribution to that provider, and how would that be calculated (e.g., pro rata to the provider's compliance with the minimum requirements)?

***If a provider can meet the threshold for participation, should the allocation fully fund the gap between what they claim and the contract maximum, or should there be another method to distribute the funds?***

Given that the funds appropriated in the budget are intended to address the shortfall, the simplest way to allocate and distribute the funds would be to give each provider the difference between what was claimed for the year and the maximum contract amount. As noted above, staff estimate that such a gap will be significantly less than the \$30 million available.

An alternative approach might seek to reward providers who bill at a higher percentage of the contract, although that could result in either paying out more than the total contract amount or create incentives to artificially limit non-eligible work (e.g., attending drug court proceedings). However, if each provider receives the difference between what they bill and their contract, the proportional share of the funds distributed will not be the same (e.g., a provider who bills at 85% of the contract will get 15% and a provider who bills at 75% will get 25%).

***Should the gap exceed \$30 million, what process should be used to distribute the available funds?***

While it appears that the gap will not exceed \$30 million, CFCC staff believe it would be prudent to establish a methodology to spread any reductions in fulling funding the gap proportionally or by an alternative method as recommended by the FMS.

***Should the allocation method make one lump sum payment, or should payments be periodic (monthly or quarterly)?***

In this initial year, funds will be available in the last quarter so there will need to be a lump sum distribution; however, in future years, the council will need to determine a distribution schedule.

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*What additional information does the FMS need from staff in order to develop final recommendations to TCBAC, the Budget Committee, and the council on how to allocate and distribute these funds?*

Because of the invoicing delays for 2020-21, there is not good data yet on what percentage of the FFDRP contracts each provider is likely to claim. Many CAC providers are completing a three-month time study to determine the percentage of eligible activities. Once that information is submitted in early October, CFCC staff will be better able to provide data to determine a threshold for good faith participation. What other information would the FMS like staff to assemble in order to make a recommendation?

**Attachments and Links**

**Attachment A:** Detail on 2019–20 payments

**Link A:** Juvenile Law: Federally Funded Dependency Representation Program (September 3, 2020 report to the Judicial Council)

<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>.

**Federally Funded Dependency Representation Program  
2019-2020  
Summary Report**

ATTACHMENT A

County	# of County Providers	# of County Providers in 2019-20 FFDRP	Reimbursement Rate Based on Actual CAC Payments to Providers	Reimbursement Rate Based on FFDRP Contracts
Alameda	2	2	82%	66%
Alpine				
Amador	1	1	28%	23%
Butte				
Calaveras				
Colusa				
Contra Costa				
Del Norte	4	2	87%	75%
El Dorado	1	1	53%	42%
Fresno				
Glenn				
Humboldt				
Imperial	2	2	61%	49%
Inyo				
Kern				
King				
Lake*	3	1		
Lassen				
Los Angeles	2	2	64%	51%
Madera				
Marin	1	1	81%	69%
Mariposa				
Mendocino*	5	5	88%	67%
Merced				
Modoc				
Mono				
Monterey				
Napa				
Nevada	3	3	81%	66%
Orange	11	10	75%	61%
Placer	2	2	85%	70%
Plumas	4	2	98%	90%
Riverside	2	2	55%	45%
Sacramento	2	2	71%	58%
San Benito				
San Bernardino	2	2	27%	22%
San Diego	2	2	80%	65%
San Francisco	1	1	91%	75%
San Joaquin	2	1	91%	73%

**Federally Funded Dependency Representation Program  
2019-2020  
Summary Report**

County	# of County Providers	# of County Providers in 2019-20 FFDRP	Reimbursement Rate Based on Actual CAC Payments to Providers	Reimbursement Rate Based on FFDRP Contracts
San Luis Obispo	1	1	87%	68%
San Mateo	1	1	120%	98%
Santa Barbara	3	3	41%	27%
Santa Clara	2	2	94%	76%
Santa Cruz	2	2	98%	77%
Shasta				
Sierra				
Siskiyou				
Solano	1	1	68%	55%
Sonoma	2	2	88%	67%
Stanislaus	3	2	70%	54%
Sutter				
Tehama				
Trinity				
Tulare				
Tuolumne				
Ventura	2	2	94%	77%
Yolo	1	1	97%	79%
Yuba				
<b>Total</b>	<b>70</b>	<b>61</b>		
	<b>Overall Participation Averages:</b>		<b>77%</b>	<b>62%</b>

Participating Counties - All Providers Participating

Participating Counties - Partial Participation from Providers

\* Lake/Mendocino: Joint provider contract (1 participating provider)