

REPORT TO THE
CHIEF JUSTICE

**COMMISSION
ON THE
FUTURE OF
CALIFORNIA'S
COURT
SYSTEM**

2017



REPORT TO THE
CHIEF JUSTICE

**COMMISSION
ON THE
FUTURE OF
CALIFORNIA'S
COURT
SYSTEM**

2017





COMMISSION ON THE FUTURE OF CALIFORNIA'S COURT SYSTEM

HON. CAROL A. CORRIGAN, *Chair*
Associate Justice, California Supreme Court

HON. WILLIAM R. MCGUINNESS, *Vice-Chair*
Administrative Presiding Justice, Court of Appeal,
First Appellate District

April 26, 2017

Hon. Tani G. Cantil-Sakauye
Chief Justice of California
455 Golden Gate Avenue
San Francisco, California 94102

Dear Chief Justice Cantil-Sakauye,

We are pleased to submit for your consideration the final report of the Commission on the Future of California's Court System. It represents the committed efforts of 63 commission members to research and analyze innovative proposals for the justice system of the future.

You asked us to identify practical ways to more effectively adjudicate cases, achieve greater fiscal stability for the branch, and use technology to enhance the public's access to its courts.

Five working groups gathered information, studied current practices, and determined what benefits might be achieved by a given change. Importantly, each proposal was also evaluated in terms of the savings to be gained as well as the cost of transition. The commission also recognized the importance of public input, which was solicited through a formal survey, multiple public comment sessions, and targeted outreach.

Our recommendations present new ideas for the branch along with proposals to revitalize and expand a number of existing initiatives. They provide pathways to change in-court practice, procedure, and judicial administration.

We are grateful to each member of the commission who gave most generously of their time, expertise, and wise counsel to these efforts. We particularly acknowledge the Chairs and Vice chairs of the working groups. These leaders drew on decades of experience to guide, motivate, and create consensus. On behalf of the commission members, we also note the invaluable assistance of the Judicial Council's staff. Finally, and on a personal note, we thank you for the opportunity to lead this important initiative.

Your determination to build on our soundest traditions while embracing practical and necessary change will be one of the hallmarks of your tenure as Chief Justice. We are honored to have been of assistance in that visionary leadership and respectfully submit this report for your consideration.

Very truly yours,



Carol A. Corrigan
Associate Justice
California Supreme Court and
Chair of Commission on the
Future of California's Court System



William R. McGuiness
Administrative Presiding Justice
Court of Appeal, First Appellate District,
Division Three and Vice-Chair of Commission on the
Future of California's Court System



COMMISSION MEMBERSHIP

COMMISSION ON THE FUTURE OF CALIFORNIA'S COURT SYSTEM

Hon. Carol A. Corrigan,
Chair

Associate Justice of the
California Supreme Court

Hon. William R. McGuiness,
Vice-Chair

Administrative Presiding Justice
of the Court of Appeal, First
Appellate District, Division Three

EXECUTIVE COMMITTEE

Hon. Lorna A. Alksne

Judge of the Superior Court of
California, County of San Diego

**Hon. Patricia Bamattre-
Manoukian**

Associate Justice of the Court of
Appeal, Sixth Appellate District

Mr. Jake Chatters

Court Executive Officer,
Superior Court of California,
County of Placer

Hon. J. Richard Couzens

Retired Judge of the
Superior Court of California,
County of Placer

Hon. Stacy Boulware Eurie

Judge of the Superior Court of
California,
County of Sacramento

Hon. Judith L. Haller

Associate Justice of the Court
of Appeal, Fourth Appellate
District, Division One

EXECUTIVE COMMITTEE (CONT'D)

Hon. Jim M. Humes

Presiding Justice of the Court of Appeal,
First Appellate District, Division One

Hon. Carolyn B. Kuhl

Judge of the Superior Court of California,
County of Los Angeles

Hon. Patricia M. Lucas

Presiding Judge of the Superior Court of California,
County of Santa Clara

Hon. Louis R. Mauro

Associate Justice of the Court of Appeal,
Third Appellate District

Hon. Douglas P. Miller

Associate Justice of the Court
of Appeal, Fourth Appellate District, Division Two

Hon. Kathleen E. O'Leary

Presiding Justice of the Court
of Appeal, Fourth Appellate District, Division Three

Hon. Carrie McIntyre Panetta

Judge of the Superior Court of California,
County of Monterey

Hon. Steven Z. Perren

Associate Justice of the Court of Appeal, Second
Appellate District, Division Six

Mr. Michael Planet

Court Executive Officer, Superior Court of
California, County of Ventura

Hon. Charles S. Poochigian

Associate Justice of the Court of Appeal, Fifth Ap-
pellate District

Mr. Mike Roddy

Court Executive Officer, Superior Court of
California, County of San Diego

Hon. Peter J. Siggins

Associate Justice of the Court of Appeal, First
Appellate District, Division Three

Hon. Marsha Slough

Associate Justice of the Court of Appeal, Fourth
Appellate District, Division Two

Hon. Robert J. Trentacosta

Judge of the Superior Court of California,
County of San Diego

Hon. Emily E. Vasquez

Judge of the Superior Court of California,
County of Sacramento

Mr. David H. Yamasaki

Court Executive Officer, Superior Court of
California, County of Orange

Ms. Charlene Ynson

Clerk/Administrator of the Court of Appeal,
Fifth Appellate District

Special Advisor

Mr. Patrick Kelly

Western Region Managing Partner,
Wilson Elser Moskowitz Edelman & Dicker LLP

Project Lead

Ms. Jody Patel

Chief of Staff, Judicial Council of California

CIVIL WORKING GROUP

Hon. Judith L. Haller, *Chair*

Associate Justice of the Court of Appeal,
Fourth Appellate District, Division One

Hon. Patricia M. Lucas, *Vice-Chair*

Presiding Judge of the Superior Court
of California, County of Santa Clara

Hon. Jeffrey B. Barton

Presiding Judge of the Superior Court
of California, County of San Diego

Hon. Michelle Williams Court

Judge of the Superior Court of California,
County of Los Angeles

Mr. Robert P. Feldman

Attorney at Law, Quinn Emanuel Urquhart
& Sullivan, LLP

Ms. Kimberly Flener

Court Executive Officer, Superior Court
of California, County of Butte

Hon. Bruce G. Iwasaki

Judge of the Superior Court of California,
County of Los Angeles

Mr. Michael A. Kelly

Attorney at Law, Walkup, Melodia, Kelly
& Schoenberger

Mr. Patrick Kelly

Western Region Managing Partner,
Wilson Elser Moskowitz Edelman & Dicker LLP

Hon. Carolyn B. Kuhl

Judge of the Superior Court of California,
County of Los Angeles

Ms. Edith Matthai

Attorney at Law, Robie & Matthai

Hon. Robert J. Moss

Judge of the Superior Court of California,
County of Orange

Hon. Emily E. Vasquez

Judge of the Superior Court of California,
County of Sacramento

Advisory Member**Hon. John H. Sugiyama**

Chair, Judicial Council Probate and Mental Health
Advisory Committee
Judge of the Superior Court of California,
County of Contra Costa

CRIMINAL/TRAFFIC WORKING GROUP

Hon. Carrie McIntyre Panetta, *Chair*

Judge of the Superior Court of California,
County of Monterey

Hon. J. Richard Couzens, *Vice-Chair*

Retired Judge of the Superior Court of
California, County of Placer

Hon. Patricia Bamattre-Manoukian

Associate Justice of the Court of Appeal,
Sixth Appellate District

Hon. Thang Nguyen Barrett

Judge of the Superior Court of California,
County of Santa Clara

Hon. Lewis Clapp

Judge of the Superior Court of California,
County of Orange

Hon. Le Jacqueline Duong

Judge of the Superior Court of California,
County of Santa Clara

Hon. Kory Honea

Sheriff, Butte County

Mr. Mack A. Jenkins

Retired Chief Probation Officer, San Diego County
Probation Department

Hon. Jackie Lacey

District Attorney, Los Angeles County

Ms. Phyllis Morris

Public Defender, San Bernardino County Public
Defender's Office

Hon. Steven Z. Perren

Associate Justice of the Court of Appeal,
Second Appellate District, Division Six

Ms. Teresa A. Risi

Former Court Executive Officer, Superior Court of
California, County of Monterey

Hon. Charles A. Smiley III

Judge of the Superior Court of California,
County of Alameda

Hon. Andrew E. Sweet

Judge of the Superior Court of California,
County of Marin

Ms. Charlene Ynson

Clerk/Administrator of the Court of Appeal,
Fifth Appellate District

Advisory Members

Hon. Tricia Ann Bigelow

Chair, Judicial Council Criminal Law Advisory
Committee

Presiding Justice of the Court of Appeal,
Second Appellate District, Division Eight

Hon. Mark S. Borrell

Former Chair, Judicial Council Traffic Advisory
Committee

Judge of the Superior Court of California,
County of Ventura

FAMILY/JUVENILE WORKING GROUP

Hon. Stacy Boulware Eurie, *Chair*
Judge of the Superior Court of California,
County of Sacramento

Hon. Lorna A. Alksne, *Vice-Chair*
Judge of the Superior Court of California,
County of San Diego

Hon. Jose L. Alva
Presiding Judge of the Superior Court of
California, County of San Joaquin

Hon. Steven Basha
Judge of the Superior Court of California,
County of Yolo

Hon. Lewis A. Davis
Judge of the Superior Court of California,
County of Contra Costa

Hon. Holly J. Fujie
Judge of the Superior Court of California,
County of Los Angeles

Hon. Donna Quigley Groman
Supervising Judge of the Juvenile Delinquency
Division, Superior Court of California,
County of Los Angeles

Ms. Leslie Starr Heimov
Executive Director, Children’s Law Center
of California

Hon. Mark A. Juhas*
Judge of the Superior Court of California,
County of Los Angeles

Hon. Clare Keithley
Judge of the Superior Court of California,
County of Butte

Ms. Teri Ann Kezirian
Attorney at Law, Law Firm of Julia Ann Brungess

Hon. Louis R. Mauro
Associate Justice of the Court of Appeal,
Third Appellate District

Hon. Kimberly J. Nystrom-Geist
Judge of the Superior Court of California,
County of Fresno

Mr. David H. Yamasaki
Court Executive Officer, Superior Court
of California, County of Orange

*Judge Juhas also served as an advisory member to the Family/Juvenile Working Group as cochair of the Family and Juvenile Law Advisory Committee.

FISCAL/COURT ADMINISTRATION WORKING GROUP

Hon. Kathleen E. O’Leary, *Chair*

Presiding Justice of the Court of Appeal,
Fourth Appellate District, Division Three

Mr. Mike Roddy, *Vice-Chair*

Court Executive Officer, Superior Court of
California, County of San Diego

Hon. Marla O. Anderson

Presiding Judge of the Superior Court of
California, County of Monterey

Hon. Thomas James Borris

Judge of the Superior Court of California,
County of Orange

Mr. Jake Chatters

Court Executive Officer, Superior Court of
California, County of Placer

Hon. C. Don Clay

Judge of the Superior Court of California,
County of Alameda

Mr. Michael Cohen

Director, California Department of Finance

Hon. Mark Ashton Cope

Judge of the Superior Court of California,
County of Riverside

Hon. Jim M. Humes

Presiding Justice of the Court of Appeal,
First Appellate District, Division One

Hon. Douglas P. Miller

Associate Justice of the Court of Appeal,
Fourth Appellate District, Division Two

Mr. Michael Planet

Court Executive Officer, Superior Court
of California, County of Ventura

Hon. Charles S. Poochigian

Associate Justice of the Court of Appeal,
Fifth Appellate District

Hon. Peter J. Siggins

Associate Justice of the Court of Appeal,
First Appellate District, Division Three

Hon. Marsha Slough

Associate Justice of the Court of Appeal,
Fourth Appellate District, Division Two

Hon. Robert J. Trentacosta

Judge of the Superior Court of California,
County of San Diego

Advisory Member

Hon. Laurie M. Earl

Former Chair, Judicial Council Trial Court Budget
Advisory Committee
Judge of the Superior Court of California,
County of Sacramento

TECHNOLOGY WORKING GROUP

Hon. Robert J. Trentacosta, *Chair*
Judge of the Superior Court of California,
County of San Diego

Mr. Michael Planet, *Vice-Chair*
Court Executive Officer, Superior Court
of California, County of Ventura

Hon. Lorna A. Alksne
Judge of the Superior Court of California,
County of San Diego

Mr. Jake Chatters
Court Executive Officer, Superior Court
of California, County of Placer

Hon. Lewis Clapp
Judge of the Superior Court of California,
County of Orange

Hon. Mark Ashton Cope
Judge of the Superior Court of California,
County of Riverside

Hon. Robert J. Moss
Judge of the Superior Court of California,
County of Orange

Ms. Teresa A. Risi
Former Court Executive Officer, Superior Court
of California, County of Monterey

Mr. Mike Roddy
Court Executive Officer, Superior Court
of California, County of San Diego

Hon. Marsha Slough
Associate Justice of the Court of Appeal,
Fourth Appellate District, Division Two



CONTENTS

EXECUTIVE SUMMARY	1
COMMISSION ACTIVITIES.....	9
Appendix 1	13
CHAPTER ONE: CIVIL RECOMMENDATIONS.....	17
Recommendation 1.1: Revise Civil Case Tiers and Streamline Procedures	19
Recommendation 1.2: Increase and Improve Assistance for Self-Represented Litigants	29
Recommendation 1.3: Integrate Best Practices for Complex Case Management	37
Chapter One Notes	45
CHAPTER TWO: CRIMINAL/TRAFFIC RECOMMENDATIONS.....	51
Recommendation 2.1: Reduce Continuances in Criminal Cases.....	53
2.1 Appendices	61
Recommendation 2.2: Reduce Certain Misdemeanors to Infractions.....	63
2.2 Appendix	69
Recommendation 2.3: Refine the Adjudication and Settlement of Fines, Fees, and Assessments	71
2.3 Appendices	81
Recommendation 2.4: Implement a Civil Model for Adjudication of Minor Traffic Infractions	85
2.4 Appendices	95
Chapter Two Notes	99

CHAPTER THREE: FAMILY/JUVENILE RECOMMENDATIONS 103

Recommendation 3.1: Consolidate Juvenile Court Jurisdictions 105

3.1 Appendices 123

Recommendation 3.2: Provide Mediation without Recommendations as Initial
 Step in All Child Custody Disputes 139

3.2 Appendices 149

Chapter Three Notes 155

CHAPTER FOUR: FISCAL/COURT ADMINISTRATION RECOMMENDATIONS 159

Recommendation 4.1: Increase Transparency, Predictability, and Consistency of
 Trial Court Employment Through Study and Reporting
 of Classification and Compensation 161

4.1 Appendix 177

Recommendation 4.2: Restructure Fines and Fees for Infractions and Unify
 Collection and Distribution of Revenue 181

4.2 Appendices 193

Recommendation 4.3: Propose Legislation to Authorize the Judicial Council to
 Reallocate Vacant Judgeships 197

Chapter Four Notes 205

CHAPTER FIVE: TECHNOLOGY RECOMMENDATIONS 211

Recommendation 5.1: Expand the Use of Technology in the Courts to Improve
 Efficiency and Enhance Access 213

5.1 Appendices 253

Chapter Five Notes 267

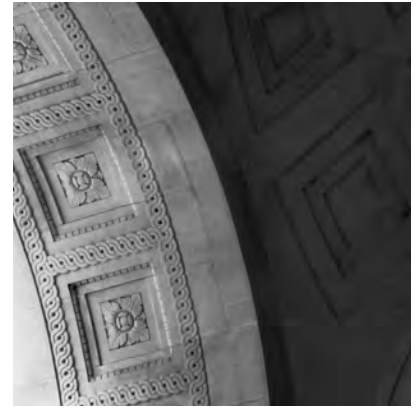
GLOSSARY OF TERMS 279

ABBREVIATIONS AND ACRONYMS 285

ACKNOWLEDGMENTS 289

The commission's charge will be to take a fresh look at legal and structural challenges to long-term efficiency and stability for the judicial branch and develop practical, achievable recommendations that may be implemented by the Judicial Council, the Legislature, or the Governor.

—Chief Justice Tani G. Cantil-Sakauye



EXECUTIVE SUMMARY

In July of 2014, Chief Justice Tani G. Cantil-Sakauye established the Commission on the Future of California's Court System (Futures Commission) to take an in-depth look at the way our trial courts are serving the people of California. The Futures Commission was asked to think creatively about how court operations could be improved and streamlined.

California's court system is the largest in the nation, serving a population of over 39 million. Every year, millions of Californians come to a courthouse, whether to serve as a juror, seek a restraining order, resolve a traffic citation, or litigate a case. What they encounter often differs little from what previous court users have experienced over the decades. Yet, advances in technology, communications, and information processing all present opportunities for the judicial branch to give Californians greater, more efficient, and more responsive access to justice. Those goals have informed the Futures Commission's work.

Bringing change to a branch of government requires vision, careful analysis, and critical evaluation. The Futures Commission began with a

consideration of how the trial courts currently operate, what is working well, and where modifications are advisable.

Five working groups were created to study various aspects of court organization:

- Civil and small claims cases
- Criminal and traffic law and procedures
- Family and juvenile law
- Fiscal and administrative operations
- Technology

Working groups in each area gathered information, and then studied what current practices cost, what savings might be achieved, and what interim costs would be required to make a proposed change. They also considered whether important aspects of the branch's work, and those of its operational partners, might be negatively affected by modification.

Consideration of change in a system that is based on precedent and steeped in tradition can be difficult, particularly as it is unfolding. But the world changes around us and the needs of Californians

continue to evolve. Simply because a given practice has been in place for decades should not stand in the way of achievable improvement.

The recommendations presented seek to provide the Chief Justice with information and proposals she may choose to consider in leading the branch into the 21st century.

ESTABLISHMENT OF FUTURES COMMISSION MEMBERSHIP AND WORKING GROUPS

In creating the Futures Commission, the Chief Justice called together justices, judges, operational officers, and members of the bar. The Futures Commission's 63 members were drawn from around the state and included both those with deep experience and those with fresh insights. Judicial officer and court administrator members have served in large, mid-sized, and small courts in urban, rural, and geographically diverse counties. Attorney members represent private firms of various sizes, public law offices, and particular practice areas. Members also include representatives of judicial branch partners, including probation departments and law enforcement.

The Futures Commission was chaired by Associate Justice Carol A. Corrigan of the California Supreme Court and vice-chaired by Administrative Presiding Justice William R. McGuiness of the Court of Appeal, First Appellate District. For a complete roster of the Futures Commission, see the *Commission Membership* which precedes this summary.

HOW THE FUTURES COMMISSION APPROACHED ITS TASK

While the Chief Justice wanted input on a variety of topics, she also envisioned a focused undertaking, with a report to be delivered in less than three years. The Futures Commission has attempted to meet this charge by seeking broad input from a variety of sources and responding to the Chief Justice's direction with an eye toward a timely response.

SURVEY

The Futures Commission wanted to ensure that all judicial branch partners and all those interested in its work had the opportunity to make suggestions and provide comment. At the beginning of its efforts, the Futures Commission conducted a survey soliciting ideas on how the branch could be more efficient and effective. It reached out to the legal community, business leaders, and subject-matter experts. The Futures Commission received over 2,000 responses from lawyers, judges, other judicial branch professionals, and those Californians who use the courts.

PUBLIC HEARINGS

The Futures Commission's working groups considered all the received suggestions, along with ideas for change generated by their own members. The groups then began to formulate proposals that would receive substantive study. The Futures Commission conducted two rounds of live public comment sessions, with five sessions in total. The first round helped sharpen the scope of proposed inquiries; the second presented draft ideas for more in-depth comment. Throughout its efforts, the Futures Commission continued to receive written input. In all, the Futures Commission heard live comment from 95 individuals and,

in addition to the thousands of survey responses, received more than 500 written comments and prepared statements from around the state. Each voice provided insight and perspective further informing the Commission’s work.

WORKING GROUPS

The individual working groups then began to refine their proposals. In all, the groups held over 430 conference calls and 22 in-person meetings. The goal was to present ideas that had been considered in depth, with an emphasis on the practical. This report describes what aspects of trial court administration or operations might be enhanced and why a change is advisable. It presents fact-based information on how current operations are conducted and what it costs to operate in that way. Every effort has been made to analyze what savings can realistically be expected and what costs will be incurred in making a proposed change. Proposals have been framed in terms of actual steps to be taken, rather than on theoretical possibilities. As with any change, some consequences are difficult to foresee with certitude. Most recommendations suggest the establishment of a pilot program in a limited number of counties, so that the challenges of broader implementation can be effectively gauged and planned for. A number of recommendations suggest further study of issues for which comprehensive data or information is currently unavailable.

The 13 recommendations presented focus on increasing access for court users through new technology as well as changes to statutes and rules of court. Additionally, there is a focus on increasing efficiency and reducing costs throughout the court system. Some recommendations emerged in response to new challenges and opportunities confronting courts in California

and across the nation. Others are ideas that have been explored previously, but for various reasons were not advanced or fully implemented. Individually and collectively, the recommendations offer a bridge to the future with efficient modernized courts and expanded access to justice for California’s diverse and growing population.

RECOMMENDATIONS

CHAPTER 1: CIVIL RECOMMENDATIONS

Recommendation 1.1: Revise Civil Case Tiers and Streamline Procedures

The Futures Commission recommends:

1. Increasing the maximum jurisdictional dollar amounts for limited civil cases to \$50,000.
2. Creating a new intermediate civil case track with a maximum jurisdictional dollar amount of \$250,000.
3. Streamlining methods of litigating and managing all types of civil cases.

Recommendation 1.2: Increase and Improve Assistance for Self-Represented Litigants

The Futures Commission recommends:

1. Developing an early education program for SRLs in small claims and in civil cases where SRLs are most common (i.e., unlawful detainers, small-value debt collection, automobile accidents, and employment cases).
2. Creating a Center for Self-Help Resources to assist courts in their role as self-help providers.

Recommendation 1.3: Integrate Best Practices for Complex Case Management

The Futures Commission recommends:

1. Establishing and maintaining an online centralized repository and educational resource for effective management of complex litigation.
2. Establishing and maintaining a listserv, or electronic mailing list, of judges who frequently handle complex cases, allowing communications among courts.
3. Continuing to provide judicial education in complex case management.

CHAPTER 2: CRIMINAL/TRAFFIC RECOMMENDATIONS

Recommendation 2.1: Reduce Continuances in Criminal Cases

The Futures Commission recommends reducing continuances in criminal cases by:

1. Creating and implementing training for presiding judges and new judges on the statutory requirements for granting continuances.
2. Requiring presiding judges to adopt policies to conform court practices to existing law.
3. Encouraging courts to track the data on continuances.
4. Encouraging presiding judges to create a local court working group to monitor continuance data and recommend corrective measures when needed.
5. Expanding meetings between local judges and justice partners to include the discussion of limiting continuances.

Recommendation 2.2: Reduce Certain Misdemeanors to Infractions

The Futures Commission recommends:

1. Enabling certain misdemeanors currently punishable by a maximum term not exceeding six months in county jail to be charged by the district attorney as either a misdemeanor or an infraction (“wobblettes”).
2. Allowing plea negotiations to designate the offense as an infraction.

Recommendation 2.3: Refine the Adjudication and Settlement of Fines, Fees, and Assessments

The Futures Commission recommends:

1. Expanding judicial discretion to strike, modify, or waive fines, fees, penalties, and civil assessments based on a defendant’s ability to pay.
2. Limiting the use of civil assessments.
3. Establishing alternative payment methods that are accessible 24 hours a day.
4. Allowing conversion of fines, fees, and assessments to community service or jail if requested by the defendant and agreed to by the court.
5. Creating alternative means to facilitate the conversion of fines, fees, and assessments to jail or community service.

Recommendation 2.4: Implement a Civil Model for Adjudication of Minor Traffic Infractions

The Futures Commission recommends:

1. Implementing a civil model of adjudication for minor vehicle infractions.
2. Providing online processing for all phases of traffic infractions.

CHAPTER 3: FAMILY/JUVENILE RECOMMENDATIONS

Recommendation 3.1: Consolidate Juvenile Court Jurisdictions

The Futures Commission recommends:

1. Establishing a single consolidated juvenile court in California.
2. Providing juvenile court jurisdiction over children and parents in all cases, and creating judicial discretion to provide children and parents with appointed counsel when appropriate.
3. Testing these proposals through pilot projects in diverse courts.

Recommendation 3.2: Provide Mediation without Recommendations as Initial Step in All Child Custody Disputes

The Futures Commission recommends:

1. Providing mediation without recommendations as the first step in resolving all child custody disputes.
2. Exploring, through pilot projects or otherwise, whether additional services and procedures, including tiered mediation, would be effective in complex or contentious cases.

CHAPTER 4: FISCAL/COURT ADMINISTRATION RECOMMENDATIONS

Recommendation 4.1: Increase Transparency, Predictability, and Consistency of Trial Court Employment through Study and Reporting of Classification and Compensation

The Futures Commission recommends:

1. Conducting a uniform classification and compensation study of trial court employees to create common classifications and salary structures across the branch.
2. Creating a branchwide structure that includes regular reporting on compensation and benefits provided for court classifications to bring greater transparency and benefit both trial court employees and management.
3. Requesting that the Judicial Council (Council) reconsider the elements of the Workload-Based Allocation and Funding Methodology (WAFM) formula that include funding based on the actual cost of health benefits paid by each court.

Recommendation 4.2: Restructure Fines and Fees for Infractions and Unify Collection and Distribution of Revenue

The Futures Commission recommends:

1. Increasing criminal base fines for infractions and misdemeanors to proportionate and deterrent levels established by the Legislature and eliminating all add-ons (i.e., surcharges, penalties, and assessments).
2. Requiring that all court-imposed criminal fines be paid to a special state treasury fund.

3. Providing alternative funding to adequately support the judicial system and thereby reduce or preferably eliminate reliance on fines and fees as a source of court funding.
4. Designating one state executive branch entity, such as the Franchise Tax Board, to be responsible for collection of these fines.

Recommendation 4.3: Propose Legislation to Authorize the Judicial Council to Reallocate Vacant Judgeships

The Futures Commission recommends that the legislation:

1. Be modeled on Government Code section 69614, which authorized 50 new judgeships in 2006, and Government Code section 69615, which authorized the conversion of subordinate judicial officers.
2. Direct that vacant judgeships be reallocated by the Council under a methodology approved by the Council.
3. Retain the Legislature's authority to create and fund judgeships and the Governor's authority to fill them.

Once such legislation is enacted, the Futures Commission recommends that the Chief Justice and the Council develop a reallocation methodology. The methodology should:

1. Incorporate the principles of the Council's biennial Judicial Needs Assessment Report and methods for subordinate judicial officer conversion under Government Code section 69615.
2. Minimize court disruptions.
3. Address changes in judicial workload needs.

4. Ensure appropriate funding to support reallocated judgeships.

CHAPTER 5: TECHNOLOGY RECOMMENDATIONS

Recommendation 5.1: Expand the Use of Technology in the Courts to Improve Efficiency and Enhance Access

1. Current Technology Initiative

Continuing judicial branch support and implementation of initiatives currently underway by the Information Technology Advisory Committee of the Judicial Council (Council), as reflected in the Council's *Tactical Plan for Technology (2017–2018)*, including

- Video remote interpreting;
- Remote self-help services for self-represented litigants;
- Cloud services for application hosting and data storage;
- Case and document management systems that support the digital court; and
- Electronic filing.

2. Remote Video Appearances

Developing a pilot project to allow remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings.

3. Video Arraignments

Authorizing video arraignments in all cases, without the defendant's stipulation, if certain minimum technology standards are met.

4. **Intelligent Chat Technology**

Developing a pilot project using intelligent chat technology to provide information and self-help services.

5. **Voice-to-Text Language Services Outside the Courtroom**

Developing a pilot project that would use voice-to-text language interpretation services for use at court filing and service counters and in self-help centers.

6. **Innovations Lab**

Establishing an Innovations Lab to identify and evaluate emerging technologies and cooperate with industry experts to tailor them to court use.

7. **Access to the Record of Court Proceedings**

Implementing a pilot program to use comprehensive digital recording to create the official record for all case types that do not currently require a record prepared by a stenographic court reporter.



The Commission on the Future of California’s Court System (Futures Commission) was established by Chief Justice Tani Cantil-Sakauye in July 2014. By early 2015 the Futures Commission’s Executive Committee and working group members were appointed. (See the timeline below for a high-level overview of activities from 2014–2017.) The

COMMISSION ACTIVITIES

Commission was committed to ensuring that the process was transparent and included input from the public as well as from justice partners and stakeholders. To this end, the Futures Commission focused on sharing information and seeking input through public meetings and other avenues, as discussed on the following pages.

WEBPAGE

The Futures Commission established a webpage on the California Courts website at www.courts.ca.gov/futurescommission.htm that provided information about its charge, membership, activities, and public comment sessions.

Commission on the Future of California’s Court System Timeline of Activities 2014-2017



* Judgeship allocation proposals are included in the Governor’s January 10, 2017 budget proposal. The Council is working with the Legislature and the Governor’s Office to move the proposal forward.

SURVEY

In November 2014, shortly after the Futures Commission was established, a survey was developed and distributed to over 450 targeted individuals and entities including various stakeholders/justice partners, court leadership, and the public. The survey solicited suggestions for making the California judicial branch more efficient and effective.

The survey was available in an electronic format, with printable versions provided to respondents without computer access.

The survey solicited responses from the public as well as branch affiliates, including government employees, private or public-interest attorneys, court employees, justice partners, judicial officers, and law school faculty. The survey sought information from the public regarding personal court experiences, as well as input from branch affiliates on court operations and specific case types. A total of 2,080 survey responses was received—89 percent from branch affiliates and 10 percent from the public.

Commission staff reviewed and categorized the open-ended responses. In February 2015 they summarized the responses for the working groups, identifying potential areas for further review and analysis.

PUBLIC COMMENT

As concepts were developed, the Futures Commission held four public comment sessions in San Francisco and Los Angeles:

- December 8, 2015—San Francisco
- February 8, 2016—San Francisco
- February 9, 2016—San Francisco

- July 22, 2016—Los Angeles
- August 29, 2016—Los Angeles

Over 300 written and in-person comments were received. (For additional details on the concepts presented and a breakdown of the number of in-person and written comments, see *Appendix 1: Overview of Public Comment Sessions*.)

TARGETED OUTREACH AND CONSULTATION

To gain greater insight and solicit feedback, the working groups reached out to specific justice partners and stakeholders. They also consulted with experts in specific subject areas, including but not limited to:

- Local and statewide legal aid foundations, associations, and self-help organizations
- Other groups, including:
 - ◆ Public Policy Institute of California
 - ◆ National Association for the Advancement of Colored People
 - ◆ Western Center on Law and Poverty
- Civil law firms and organizations, including:
 - ◆ American Board of Trial Advocates
 - ◆ Consumer Attorneys of California
 - ◆ Association of Business Trial Lawyers
 - ◆ Association of Defense Counsel
 - ◆ San Francisco Trial Lawyers Association
- Criminal law firms and organizations, including:
 - ◆ California District Attorneys Association
 - ◆ California Public Defenders Association
 - ◆ Central California Appellate Program
 - ◆ Criminal Justice Legal Foundation
 - ◆ California Attorneys for Criminal Justice
- Law enforcement, including:
 - ◆ California Highway Patrol

- ◆ California Police Chiefs Association
- ◆ California State Sheriffs' Association
- ◆ California Probation, Parole and Correctional Association
- ◆ Chief Probation Officers of California
- Technology companies, including:
 - ◆ Google, Inc.
 - ◆ Microsoft Corporation
 - ◆ Cisco Systems, Inc.
 - ◆ Justice AV Solutions
- The State Bar, county bar associations, and specialized bar associations
- State agencies, including:
 - ◆ California Department of Corrections and Rehabilitation
 - ◆ California Department of Motor Vehicles
 - ◆ California Office of Traffic Safety
- Judicial organizations, court leadership and staff, and Judicial Council advisory bodies, including:
 - ◆ Family and juvenile law specialists, family court services directors, and mental health experts
 - ◆ Trial court presiding judges and court executive officers
 - ◆ Presiding juvenile judges
 - ◆ Judicial Council advisory bodies
 - ◆ Judges associations
 - ◆ California Court Commissioners Association

The Civil, Criminal/Traffic, and Family/Juvenile working groups targeted over 300 specific stakeholders, interested parties, and judicial partners to solicit feedback and comments. They asked many of the recipients to share the request with their colleagues and contacts. Approximately 50 percent of the targeted parties responded and provided additional input.

FUTURES INBOX

Interested parties were encouraged to submit communications directly to the Futures Commission through a dedicated inbox that received nearly 300 e-mails over the life of the project. Interested parties submitted ideas for commission consideration as well as comments about proposed concepts.

MEETINGS AND CALLS

To identify, refine, analyze, and develop recommendations, working groups held more than 430 conference calls and 22 in-person meetings over the two-year period.

APPENDIX

COMMISSION ACTIVITIES

APPENDIX 1: OVERVIEW OF PUBLIC COMMENT SESSIONS

December 8, 2015—San Francisco

INITIAL CONCEPTS

- 1. Judgeships** (Fiscal/Court Admin)
Explore a mechanism within the judicial branch for more equitable distribution of judgeships based on population/workload.
- 2. Trial Court Funding** (Fiscal/Court Admin)
Explore a new funding structure for the judicial branch.
- 3. Collection of Court-Ordered Debt**
(Fiscal/Court Admin)
Realign the court-ordered debt collection process and conduct a comprehensive evaluation of court-ordered debt collection practices and responsibilities.
- 4. Decriminalizing Traffic Infractions**
(Criminal/Traffic)
Explore decriminalizing traffic infractions and/or moving their processing to an administrative or noncriminal forum.
- 5. Miscellaneous Comments**
Labor • Appointed Counsel • Court Reporters in Family Law

February 8–9, 2016—San Francisco

INITIAL CONCEPTS

- 1. One Juvenile Court—Consolidated Juvenile Court Jurisdiction in California** (Family/Juvenile)
Consider consolidation of all juvenile court cases (juvenile dependency and juvenile delinquency) under one unified juvenile court.
- 2. Efficient and Effective Resolution in Family Courts** (Family/Juvenile)
Explore a new funding structure for the judicial branch.
- 3. Trial Court Administrative Support** (Fiscal/Court Admin)
Explore and identify the most cost-effective staffing model for the provision of trial court administrative services.
- 4. Trial Court Employment and Labor Relations** (Fiscal/Court Admin)
Explore ways to ensure labor agreements are more consistent from court to court and that labor negotiations are conducted in the most effective and efficient manner, while maintaining appropriate local control of employment decisions.
- 5. Court Record** (Fiscal/Court Admin)
Explore ways to provide a cost-effective official record in all case types.
- 6. Technology-Enhanced Court Proceedings and Online Transactions** (Fiscal/Court Admin)
Explore ways to leverage technology to enhance access to justice.
- 7. Self-Help Resource Center for Courts** (Civil)
Consider developing a judicial branch self-help resource center that serves as a central location for court employees, administrators, and judicial officers to share and obtain self-help resources and provide model approaches for small, medium, and large-sized courts.
- 8. Using Technology to Increase Access and Self-Help** (Family/Juvenile)
Provide all court users with increased access and education through technology.
- 9. Reduce the Number of Peremptory Challenges in Misdemeanor Criminal Cases** (Criminal/Traffic)
Explore reducing the number of peremptory challenges in misdemeanor criminal cases.
- 10. Reduce Certain Misdemeanors to Infractions** (Criminal/Traffic)
Explore reducing time-consuming but less serious misdemeanors to infractions.
- 11. Civil Case Tiers** (Civil)
Consider increasing the maximum jurisdictional dollar amounts for small claims and limited civil cases and developing a new civil tier with streamlined methods for litigating and processing cases with a value greater than those in the limited civil case tier, up to \$250,000.
- 12. Complex Case Management Model** (Civil)
Explore refining case management models utilized for complex cases to incorporate principles developed in dedicated complex departments so that these procedures can be utilized in appropriate cases irrespective of the size of the court.
- 13. Improved Education and Processes for Self-Represented Litigants** (Civil)
Consider developing a case management model for limited civil and small claims cases that combine early education for all self-represented litigants with simplified and streamlined litigation procedures.
- 14. Reduced Jury Size** (Civil)
Explore the benefits of reducing jury size in civil limited, intermediate (proposed), and unlimited cases.
- 15. Miscellaneous Comments**
AB 1058
Judicial Discretion
Judicial Assignments

July 22, 2016—Los Angeles

INITIAL CONCEPTS

- 1. One Juvenile Court—Consolidated Juvenile Court Jurisdiction in California** (Family/Juvenile)
Consider consolidation of all juvenile court cases (juvenile dependency and juvenile delinquency) under one unified juvenile court.
- 2. Efficient and Effective Resolution in Family Courts** (Family/Juvenile)
Implement a statewide, uniform, multi-tiered child-custody mediation process in California family courts, featuring the best practices from existing systems, and provide alternative dispute resolution and other expedited resolution services for all other family law matters.
- 3. Restructuring Criminal Fines and Fees** (Fiscal/Court Admin)
Explore: (1) increasing base fines for infractions and misdemeanors while eliminating surcharges, penalties, and assessments; (2) depositing fine revenue into a single fund for distribution to the courts and state and local programs; and (3) placing overall responsibility for collecting delinquent court-ordered debt in the state executive branch and not the courts and counties.

August 29, 2016—Los Angeles

INITIAL CONCEPTS

- 1. Fines and Fees: Judicial Discretion and Court Adjudication** (Criminal/Traffic)
Explore: (1) increasing judicial discretion to strike, modify, or waive criminal fees and civil assessments based on a defendant's ability to pay; (2) establishing an alternative means to pay fines, fees, and assessments, accessible 24 hours a day; (3) allowing conversion of fines, fees, and civil assessments to jail or community service; and (4) creating an alternative method to facilitate the conversion of fines, fees, and civil assessments to jail or community service.
- 2. Reduce Certain Non-Serious Misdemeanors to Infractions** (Criminal/Traffic)
Explore recommending legislative changes to allow misdemeanors currently punishable by a maximum term not exceeding six months in a county jail to be charged as a misdemeanor or an infraction in the prosecuting attorney's discretion at arraignment or at the court's discretion with agreement of the defendant.
- 3. Reduce Continuances in Criminal Cases** (Criminal/Traffic)
Explore reducing the frequency of continuances by enforcing the use of existing tools to ensure that criminal continuances comply with statutes and rules.
- 4. Decriminalize Traffic Infractions and Move to an Alternative Forum** (Criminal/Traffic)
Decriminalize traffic infractions and move adjudication of these violations to a noncriminal judicial forum.
- 5. Increased and More Effective Assistance for Self-Represented Litigants** (Civil)
Develop a comprehensive approach to facilitating access to justice by self-represented litigants in civil matters through the formalized integration of education and the enhancement of available self-help resources through the creation of an enhanced statewide Center for Self-Help Resources. This center will be dedicated to providing assistance to courts in addressing the needs of self-represented litigants.
- 6. Revise Civil Case Tiers** (Civil)
Consider methods of reducing the cost of litigation and providing increased access to justice, by increasing the maximum jurisdictional dollar amounts for limited civil cases to \$50,000; creating a new intermediate civil case track with a maximum jurisdictional dollar amount of \$250,000; and streamlining methods of litigating and managing all types of civil cases.
- 7. Complex Litigation Management: Repository and Other Shared Resources** (Civil)
Establish an online centralized repository and educational resource containing information on the effective management of complex litigation to be shared and used by judges and research attorneys.
- 8. Explore Court Reporters' Dual Status, Compensation Discrepancies, and Ownership of Transcripts** (Fiscal/Court Admin)
Explore court reporters' preparation of transcripts as part of their court employment and compensation, resulting in court ownership of transcripts. Alternatively, provide that courts may, after purchasing an original transcript, make and sell copies of the transcript.
- 9. Improve the Consistency, Predictability, and Portability of Trial Court Employment** (Fiscal/Court Admin)
To bring greater consistency, predictability, and portability to the judicial branch and local trial court employment systems: (1) consider a uniform classification and compensation study to develop common classification and salary structures across the branch; and (2) review and reconsider the Workload-Based Allocation and Funding Methodology (WAFM) formula, including funding for each trial court's employee benefits.
- 10. Digital Recording of Court Proceedings to Provide an Official Record** (Criminal/Traffic)
Incorporate existing and emerging technologies in preparing an official record of court proceedings in a digital format that is cost-effective and accessible and envisions the record of the future.
- 11. Miscellaneous Comments**
Move Health and Safety Code sections 11377(a), 11350(a), and 11357 out of criminal courts and into the mental health department.
Child physical and sexual safety in family court custody decisions.

- **Recommendation 1.1:**
Revise Civil Case
Tiers and Streamline
Procedures
(page 19)
- **Recommendation 1.2:**
Increase and Improve
Assistance for Self-
Represented Litigants
(page 29)
- **Recommendation 1.3:**
Integrate Best Practices
for Complex Case
Management
(page 37)

CIVIL RECOMMENDATIONS

Civil courts in California reflect trends seen in civil courts across the nation. The vast majority of cases involve smaller value matters^{1*} primarily related to landlord-tenant and consumer debt collection disputes.² Of the nearly 750,000 civil cases filed in California in 2014–2015, over 75 percent were limited civil or small claims. The number of individuals representing themselves is increasing dramatically at all levels. Litigation costs are outpacing the value of cases, thus fewer and fewer cases are being resolved on the merits. These factors undermine the public’s access to justice, diminish the right to a jury trial, and erode confidence in the judicial process. Both the public and the courts benefit when courts implement changes to decrease litigation costs, streamline the process, provide more extensive self-help options to self-represented litigants (SRLs), and take advantage of improved technology to process cases.

Rising litigation costs in all types of civil cases have had a dramatic impact on the public’s access to justice. Studies show these increases are due primarily to the length of time it takes to process cases through the system and the costs associated with conducting discovery.³ In a recent survey, attorneys nationwide noted litigation costs often inhibit the filing of cases. Attorneys are reluctant to take cases where the costs of representation outweigh the expected financial benefits.⁴ As a result, meritorious cases of moderate value are often not filed, or are filed by SRLs.

Attorneys also observed that when cases are filed, litigation costs often force parties to settle even where an evaluation based on the merits

*Footnotes and citations can be found at the end of this chapter on page 45.

would suggest that the case be tried.⁵ This reality negatively impacts the right to resolve disputes before a jury and results in either plaintiffs receiving less than the case merits or defendants giving up the right to show the case had no merit.

Another result of increasing litigation costs has been the dramatic increase nationwide in the number of SRLs in civil matters. In the past 10 years, the total number of civil cases in California has been decreasing, but the number of parties representing themselves in these cases has risen. Although the courts have become accustomed to SRLs in family law cases, other general civil departments are now seeing an increase in self-representation. This trend is most apparent in landlord-tenant and consumer debt collection cases,⁶ but SRLs are becoming prevalent in other civil cases, including limited civil, probate, and even on appeal. This trend is expected to continue.

A 2012 study by the National Center for State Courts (NCSC) evaluated over one million civil cases in ten urban areas. It revealed that, in over 76 percent of the cases, at least one party—usually the defendant—was not represented by counsel.⁷ Although these data include cases in which defendants defaulted, the sheer numbers and the potential impact on the courts remains striking. Because SRLs typically have little or no experience with the legal system, they are often ill prepared to effectively advocate on their own behalf or navigate the process, undermining both their access to justice and the courts' ability to resolve cases efficiently.

To address these issues, the Futures Commission offers a series of recommendations to improve access to justice, better serve the public, and foster efficient court operations. The goal of the first set of recommendations is to reduce the cost of civil litigation at all levels by streamlining litigation procedures, incorporating proportionality concepts into

the discovery process, and encouraging the use of technology. The goal of the second set of recommendations is to develop ways to assist SRLs and reduce the number of court appearances required to resolve these cases. The goal of the third recommendation is to integrate procedures that expedite the resolution of complex cases and promote effective and efficient decision making.

The changes are aimed at improving access to justice, encouraging attorneys to assist parties who might otherwise go unrepresented, reducing costs, and permitting parties to litigate cases on the merits when appropriate. These changes will also create administrative efficiencies and improve the manner in which the courts serve the public.

One other important goal will be served: In addition to fair and expedient resolution of disputes, the civil courts are responsible for the development of the jurisprudence supporting our system of common law. It is thus vital to the development of the rule of law that the courts be a competitive and desirable forum where litigants can resolve controversies. Alternative dispute resolution (ADR) mechanisms have their place, and may appeal to parties in certain contexts as a means of speedy and convenient resolution. Yet, private dispute resolution mechanisms do not contribute to the development of the rule of law through published opinions, as do our trial and appellate courts.

For this reason, it is important that the courts be accessible, prompt, and economically competitive when compared to other dispute resolution mechanisms. The ability of California's courts to do so is critical to ensuring that the people's system of adjudication contributes to the development of the rule of law for future generations.

RECOMMENDATION 1.1:
REVISE CIVIL CASE
TIERS AND STREAMLINE
PROCEDURES

The Futures Commission urges that existing civil procedures be modified to reduce litigation costs, facilitate the early exchange of information, and establish a new tier of cases. Accordingly, the Futures Commission recommends:

1. Increasing the maximum jurisdictional dollar amounts for limited civil cases to \$50,000.
2. Creating a new intermediate civil case track with a maximum jurisdictional dollar amount of \$250,000.
3. Streamlining methods of litigating and managing all types of civil cases.

BACKGROUND

Several decades ago, court unification created one level of trial court in California but retained three separate procedural tracks for civil cases, divided according to the amount in controversy: small claims, limited civil, and unlimited civil cases. Simpler procedures generally apply to cases with lower amounts in controversy.

- Small claims procedures are intended to resolve disputes without attorneys. The current jurisdictional limit is \$10,000 for individual claimants and \$5,000 for other claimants. Procedures are informal by statutory mandate and intended to make it easy and convenient for individuals to resolve their disputes in court.⁸ (Code of Civil Procedure section 116.110 et seq.)
- In limited civil cases, \$25,000 or less is at issue. Except for unlawful detainers, simplified procedures and discovery limits generally apply. Jury trials are, with some exceptions, conducted as expedited jury trials, with a shorter time frame and smaller jury than in larger cases.⁹ (Code of Civil Procedure section 630.02.)
- Unlimited civil cases are those in which more than \$25,000 is at stake. The jurisdictional limit between unlimited and limited civil

cases has not changed since 1986. Due to inflation, a case worth \$25,000 in 1986 would be worth over \$55,000 in 2017.¹⁰

RECOMMENDATIONS

To increase access and improve efficiency, the Futures Commission recommends:

1. Increasing the maximum jurisdictional dollar amounts for limited civil cases to \$50,000.
2. Creating a new intermediate civil case track with a maximum jurisdictional dollar amount of \$250,000.
3. Streamlining methods of litigating and managing all types of civil cases.¹¹

Should these recommendations move forward, it will be vital to work with stakeholders, particularly bar groups and legal aid providers, to ensure that the procedures are fair and equitable. For each tier, the focus of any changes should remain as follows:

SMALL CLAIMS CASES

- No change in jurisdictional limit or procedures generally. The Futures Commission considered recommending an increase in the jurisdictional limit for small claims cases, but ultimately declined to do so based on comments received and input from Judicial Council (Council) advisory committees. If cases of higher value were subject to the informal and expedited procedures of small claims court, the right to jury trial and representation by counsel would be lost in a certain strata of cases where litigants currently enjoy those rights.
- Providing more alternative dispute resolution (ADR) options, including online ADR programs.

- Allowing remote appearances by parties and witnesses via telephone or video technology.
- Providing video remote interpreting where in-person interpreters are not available.¹²

*Due to inflation,
a case worth
\$25,000 in 1986
would be worth over
\$55,000 in 2017.*

LIMITED CIVIL CASES¹³

- Raising the jurisdictional limit to \$50,000.
- Providing an information sheet to all plaintiffs at time of filing, which must also be served on all defendants, with the following information:
 - ◆ Description of early education program and other self-help resources.
 - ◆ Flow chart or checklist of applicable civil procedures, with targeted versions for high-volume case types (unlawful detainer, debt collection, and auto accident cases).
- Discovery
 - ◆ Mandating bilateral early disclosure of factual information supporting claims or defenses, identification of witnesses, and production of key documents.
 - ◆ Reducing current limits on written discovery requests from 35 to no more than 15 to 20.
 - ◆ Developing form interrogatories expressly directed to each of the high-volume case types.

- ◆ Maintaining current limit of one deposition per side.
 - Alternative dispute resolution
 - ◆ Providing more opportunities for ADR and/or early neutral evaluation of cases.
 - ◆ Providing different ADR options and timing based on the type of case, particularly for the three types of high-volume cases.
 - ◆ Providing options for online ADR, with oversight to avoid abuse resulting from financial imbalance of parties.
 - Remote appearances
 - ◆ Providing for video and telephonic appearances for law and motion hearings, case management conferences if requested, and any other nonevidentiary hearings.
 - ◆ Providing video remote interpreting where in-person interpreters are not available.
 - Expanding mandatory expedited jury trials to include unlawful detainer cases.
- ◆ production of documents, and requests for admission).
 - ◆ Developing additional Council form interrogatories expressly directed to specific case types.
 - ◆ Maintaining current general proportionality provisions for discovery of electronically stored information.
 - ◆ Permitting parties to seek leave of court for additional discovery on showing of good cause and proportional to value of case.
 - Expert witnesses
 - ◆ Limiting expert witnesses to two per side, subject to expansion for good cause.
 - ◆ Requiring longer time before trial for disclosure of experts, to facilitate depositions if needed.
 - Case management conferences
 - ◆ Retaining court discretion on whether to hold a case management conference.
 - ◆ Allowing courts to waive case management conferences where appropriate for financial reasons or when other effective case management strategies have been implemented.
 - ◆ Allowing counsel to appear by phone or video unless court determines an in-person appearance is necessary.
 - Remote appearances
 - ◆ Encouraging video and telephonic appearances for law and motion hearings, case management conferences if requested, and any other nonevidentiary hearings.
 - ◆ Encouraging video appearances for appearances of witnesses and parties at trials and evidentiary hearings, with consent of all parties.

INTERMEDIATE CIVIL CASES (NEW TIER)

- Cases with value between \$50,000 and \$250,000.
 - ◆ Permitting parties to opt out for good cause, as provided for in limited civil cases.
- Factual discovery proportional to value of case, as set forth below:
 - ◆ Mandating bilateral early disclosure of factual information supporting claims or defenses, identification of witnesses, and production of key documents.
 - ◆ Limiting each side to taking 20 hours of depositions.
 - ◆ Limiting total written discovery requests to 35 (interrogatories, requests for

- ◆ Providing video remote interpreting where in-person interpreters are not available.
- Alternative dispute resolution
 - ◆ Providing more opportunities for ADR and/or early neutral evaluation of cases.
 - ◆ Providing different types/times for ADR based on the type of case.
 - ◆ Providing options for online ADR.

**UNLIMITED CIVIL CASES
(CASES OVER \$250,000)**

- Expert witnesses
 - ◆ Providing longer time before trial for disclosure of experts, to facilitate depositions if needed.
 - ◆ In cases with claims over \$1 million, requiring experts to provide a report of all opinions about which they intend to testify. The report should include all facts in support of the opinions and be produced when experts are disclosed.
 - ◆ Allowing parties to make a single motion for partial summary adjudication of facts, similar to procedures permitted under rule 56 of the Federal Rules of Civil Procedure, but limited to material facts only.
- Remote appearances
 - ◆ Providing for video and telephonic appearances at law and motion hearings, case management conferences, and any other nonevidentiary hearings.
 - ◆ Providing for video appearances for appearances of witnesses and parties at trials.
 - ◆ Providing video remote interpreting where in-person interpreters are not available.

RATIONALE FOR THE RECOMMENDATIONS

SMALL CLAIMS PROCEDURES

The Futures Commission’s recommendations relating to small claims focus on making the courts more accessible by increasing education and facilitating self-help efforts and using technology to allow small claims parties to conduct their court business remotely. Travel costs, work absences, and other costs associated with attending a court hearing can deter self-represented parties from filing or defending actions, particularly in small claims court, where no counsel are permitted. Allowing parties to appear remotely, by phone or video, can ease these burdens.¹⁴

*If more cases come within
the ambit of the existing
economic litigation procedures,
the cost of litigation
could be reduced and
public access increased.*

The Futures Commission also recommends providing online ADR, either as an alternative or adjunct to in-person ADR. Currently, courts in British Columbia, Canada, are working on both aspects of dispute resolution for small claims courts. An ADR program is already in place¹⁵ and a separate online civil resolution tribunal is under development.¹⁶ In Southern California, small claims advisors for two different courts (the Legal Aid Society of Orange County and the Department of Consumer and

Business Affairs in Los Angeles County) are developing or using online ADR for small claims cases and other cases involving lower dollar amounts. Like the British Columbia system, the programs allow the settlement attempts through online communications, asynchronous e-mail or text messaging, or live chat. The parties may also seek assistance from mediators via video remote appearance technology. These options allow parties to resolve their own cases without having to go to the courthouse to do so.¹⁷

CHANGING JURISDICTIONAL LIMIT FOR LIMITED CIVIL CASES

The Futures Commission's focus on changing the limited case jurisdictional limit takes into account the changes in the value of the dollar since jurisdictional amounts were last increased in 1986. If more cases come within the ambit of the existing economic litigation procedures, the cost of litigation could be reduced and public access increased.

Changing the jurisdictional limit can also result in efficiencies for the courts. Because more cases would be subject to these provisions, in-person case management conferences would not be required (see California Rules of Court, rule 3.722(e)), and expedited jury trial rules will apply, resulting in smaller juries and less time for jury selection and deliberation (Code of Civil Procedure section 630.02).

THE NEW INTERMEDIATE CIVIL CASES TIER

Providing a new tier for cases between \$50,000 and \$250,000 reflects the changing value of the dollar over the years, but more importantly, reflects an attempt to slow the increasing cost of litigation. While it is difficult to calculate the cost of litigation, one study shows that the *median* cost for attorney and expert witness fees on an

automobile case through trial is \$43,000;¹⁸ for a premises liability case, \$54,000; for a real property case, \$66,000; for an employment case, \$88,000; for a contract case, \$91,000; and for a malpractice case, \$122,000.¹⁹ That study also found that, while the trial itself is the most time-intensive stage of litigation, discovery is the second most time-intensive stage by far. Moreover, because almost 80 percent of unlimited civil cases resolve before trial,²⁰ the time spent in discovery is the major generator of litigation costs. Reducing the time spent on discovery and trial could reduce the cost of litigation as well as provide speedier resolutions. The intermediate tier is designed to ensure that discovery for cases is proportional to the value of the case.

RECOMMENDED DISCOVERY REVISIONS

The proposed requirement that each party make an initial disclosure of factual information and key documents is a significant change in how discovery currently occurs in California. It will have less impact in limited cases than in higher-value and intermediate tier cases, but will be significant in all case types. The key is that the parties will be provided with more information about the other side's claims without having to initiate formal discovery requests. This shift will reduce costs and permit both sides to evaluate cases early in the process.

This proposal is broader than Federal Rule of Civil Procedure 26(a)(1) initial disclosure rules. It would require the *production* of documents, not merely their description. The majority of attorneys surveyed nationally have not found that the federal description provision reduced discovery or saved clients' money. However, Arizona requires more extensive initial disclosures, including documents. A survey of lawyers using Arizona's procedures produced

far more positive results.²¹ The proposal is also in line with the recommendations recently made to the Conference of Chief Justices by the Civil Justice Improvements Committee, which include recommendations for robust mandatory initial disclosures followed by tailored, proportional discovery.²²

In 2011, the State of Utah developed an approach similar to the one proposed here. Utah's rules provide that proportionality is the key principle governing discovery. They mandate comprehensive initial disclosures, including documents and physical evidence, and provide for tiered amounts of discovery based on the amount in controversy.²³ A recent study of the impact of these rules found that for cases in which an answer was filed, the "revisions have had a positive impact on civil case management in terms of both reduced time to disposition overall, and decreased frequency of discovery disputes in non-debt collection and non-domestic cases."²⁴ The study concluded that the increase in discovery disputes in smaller debt collection cases following the new initial disclosure requirements might "confirm judicial beliefs that these types of cases are now being litigated on a more even playing field between collection agencies and debtors—a positive effect."²⁵

A similar mandatory exchange of information was included in a Colorado court pilot project to simplify civil procedure and decrease discovery costs in civil cases with claims under \$100,000. In that project, the comprehensive initial exchange was the *only* discovery provided unless the parties agreed to more. Project evaluators concluded that the exchange definitely controlled discovery costs, and would be more fully effective if opt-outs were not permitted. Litigants noted that a limited amount of targeted discovery in addition to the initial exchange would aid in more efficient resolution either by settlement or dispositive motion.²⁶

The proposal here takes both of those factors into account: mandating the initial exchange in all limited and intermediate civil cases, but also allowing some further discovery in proportion to the size of the case.²⁷

The proposal here would also allow for parties to seek expansion of the limits on discovery where good cause exists.

EXPERT WITNESSES

The limitation on the number of experts in the new intermediate tier is a further attempt to achieve proportionality. As with the other proposed limitations, a party would be able seek expansion of the limit for good cause.

For experts in cases involving claims over \$1 million, the proposal includes a new requirement: to prepare a report with more detailed disclosure of opinions and supporting facts. This, along with a longer time interval between disclosures and deposition deadlines in all unlimited cases, is intended to make expert witness depositions more efficient. Because of the expense involved in preparing such reports, this requirement is proposed only for higher-value cases.

REMOTE APPEARANCES

Technology can provide a less expensive and more effective way for parties and counsel to make court appearances. Statutes and rules of court currently permit granting a request for telephonic appearances at nonevidentiary hearings in most civil cases including unlawful detainer and probate matters, unless a court finds good cause to require a personal appearance.²⁸ This rule should be expanded to include video appearance and to permit remote appearances at trials and evidentiary hearings in all civil tiers.²⁹ Remote

appearances when appropriate can substantially reduce costs.

OTHER RECOMMENDATIONS

- Providing procedural checklists to the parties in limited cases will significantly assist SRLs. Better education for SRLs should produce fewer missed deadlines and hearings on Orders to Show Cause. Most checklists could be developed on a statewide basis by the Council, permitting courts to tailor them as needed.
- As noted above, most limited cases are subject to mandatory expedited jury trials. (Code of Civil Procedure section 630.02.) Currently, unlawful detainers are exempted from this requirement, even though they result in more jury trials than any other type of limited civil case.³⁰ Including these cases under the provisions of the mandatory expedited jury trial statute would reduce party cost and increase court efficiency.
- Robust case management conferences, held early in the case, are useful tools for expediting the litigation process.³¹ However, resource and budget constraints can limit a court's ability to provide such conferences. Therefore, this recommendation retains existing case management rules. For limited cases, this approach allows judicial review of the case management conference statements without requiring the parties to attend a conference. (California Rules of Court, rule 3.720(e).) In intermediate or unlimited cases, conferences should generally be held, unless the court decides not to do so.³² Telephonic and video appearances should be permitted for such conferences.
- Another area of focus is the use of ADR. In recent years, many courts were forced to reduce or even eliminate court-provided ADR programs due to fiscal constraints. Although such programs may increase court expenditures, they also offer long-term benefits for both the courts and the parties. ADR programs help to resolve cases more quickly, reduce court workloads, save litigants' time and money, and improve user satisfaction with court services.³³ ADR programs also fulfill standard 10.70(a) of the California Standards of Judicial Administration, which provides that all trial courts should implement mediation programs for civil cases as part of their core operations. The most effective and efficient type of ADR differs among case types. While day-of-trial mediation or an online settlement negotiation program may be most effective in small claims cases, earlier neutral evaluation or mediation may be more effective in other cases, avoiding unnecessary discovery or dispositive motions. Settlement discussions are critical aspects of effective case management.
- To ensure that the jurisdictional amounts remain in step with inflation, the Council should charge its Civil and Small Claims Advisory Committee with reviewing the jurisdictional limits of the civil tracks every five years, and recommend whether higher limits should be sought based on changes in the value of the dollar and any other relevant factors.

COSTS TO IMPLEMENT

Some of these recommendations will require expenditure of both time and resources and could result in some loss of revenue. For example, as noted above, increasing the jurisdictional amount for limited cases would result in more cases included at the lower filing fee rate.³⁴ Some implementations will require changes to the court case management system with commensurate costs for programming changes. Allowing for video remote appearances would require more video equipment, as discussed further in *Chapter 5: Technology Recommendations*. Developing and maintaining statewide checklists and flow charts for parties in limited civil cases will require efforts by Council staff and advisory committees, and possibly input from experts in this area.

Returning ADR programs to their prior status and expanding them will require a return to higher levels of funding. In years past, courts were able to seek grants from funds overseen by the Council to directly support superior court ADR programs for civil cases. From 2008 to 2011, funds in the amount of \$1.74 million a year were made available to courts, with up to \$7,500 for a planning project and up to \$100,000 to implement or maintain a new mediation or settlement program or to maintain or improve an existing program.³⁵ Similar funds would be required to return ADR programs to prior levels and refocus them in light of the increasing number of SRLs.

Online ADR programs can be less costly than in-person programs, but will still require funding.³⁶ The ADR program in Orange County is being developed under a \$150,000 Technology Initiative Grant from Legal Services Corporation. That program, created with the assistance of the Justice Education Society of British Columbia, will include the use of volunteer mediators. They

will be trained by a community mediation group funded from civil filing fees. Online ADR programs could also be good candidates for the Council's Court Innovations Grant Program, should that program continue over the coming years. For long-term stability, funding should be made part of the judicial branch budget and provided on an ongoing basis rather than through grants.

PUBLIC COMMENT

CHANGES TO JURISDICTIONAL AMOUNTS

Commenters were mostly opposed to raising the small claims jurisdictional amount. These cases are often handled by temporary judges, without a jury trial or assistance of counsel. The Futures Commission is not recommending an increase in jurisdictional limits at this time.

Comments received on increasing the limited jurisdiction amount to \$50,000 were few and mixed. The California Commission on Access to Justice approves of the increases and the proposed discovery changes for limited cases. Some individual attorneys were opposed.

NEW INTERMEDIATE TIER AND DISCOVERY CHANGES

Many who provided comments on the new intermediate tier, including the California Chapters of the American Board of Trial Advocates, either agreed with the concept or did not formally oppose it. Many were interested in working on the details of implementation. However, some commenters, including the Consumer Attorneys of California and some individual attorneys, opposed specific discovery limitations and changes regarding experts. Others raised concerns about implementation in noneconomic cases. The Futures Commission revised the original concept and

proposes expert witness reports only in cases with claims over \$1 million.

Some Commission members expressed concern that permitting summary adjudication of facts in unlimited civil cases would increase litigation costs and burden the courts. The majority were satisfied this type of motion will facilitate settlements and narrow the scope of trials. To minimize any disadvantages, this type of motion would be limited to one per case and to material facts.

As noted above, it will be critically important to work with stakeholders concerning the details of all proposals to ensure fair implementation.

FEASIBILITY OF BRANCHWIDE IMPLEMENTATION AND PILOT PROGRAMS

It is envisioned that these this recommendations will be most effective if implemented statewide. However, they represent major changes in the judicial branch and might be better tested on a pilot basis. Participation by one or more large, medium, and small counties would provide data on effectiveness and identify areas where further changes might be appropriate.

Any implementation would require the following statutory changes:

- Permitting video remote appearances by parties and witnesses in small claims trials will require amending Code of Civil Procedure section 116.520 (regarding presenting evidence at trial) or some other provisions within the code.
- Increasing the limited jurisdiction amount will require amendments to Code of Civil Procedure sections 85 and 86.
- Amending the discovery provisions in limited cases to require an initial exchange

of documents and information will require amending Code of Civil Procedure sections 93 through 95, and possibly others.

- Requiring that parties in limited civil action be provided checklists or other information about case processes will require a new rule of court.
- Including trials in limited unlawful detainer cases within the mandatory expedited jury trial procedures will require amendments to Code of Civil Procedure section 630.02 and to the rules of court.
- Adding a new intermediate tier will require new statutory provisions similar to Code of Civil Procedure sections 85 and 86 for limited cases, along with new statutes delineating applicable procedures and discovery limits similar to Code of Civil Procedure sections 90 et seq., and revised filing fees.
- Amending the provisions regarding the timing and content of expert witness disclosures and discovery as well as motions for summary judgment in unlimited cases will require amending several sections in the Code of Civil Procedure.
- Providing for expanded video remote appearances will necessitate either a new code section or amendments to the current provisions regarding telephonic appearances.

Legislative authority would be needed for a pilot program, but the statutory change would not be as extensive.

Provision of online or other types of ADR programs by an individual court would not require any legislative or rule change, and could be implemented by courts across the state if funding is provided.

The Orange County and Los Angeles County online ADR programs are essentially functioning as pilot programs now. Evaluation of those programs over the next few years should provide more information as to whether specific rules regarding oversight of such programs should be developed.

The factors to consider in measuring success in a pilot program are best left to those who implement the proposal. However, the Futures Commission offers the following as potential factors to evaluate.

For small claims:

- **Online ADR programs:** Compare the number of parties using the program with the rate of cases being resolved before trial, and measure the level of parties' satisfaction.
- **Video remote appearances:** Consider the number of parties choosing to take part in such a program and the level of satisfaction for the parties and judicial officers.

For limited civil cases, track:

- The number of filings of limited cases
- The number of defaults
- The time to complete discovery in limited cases
- The time to disposition of cases in limited cases
- The cost of discovery
- The satisfaction levels of parties, attorneys, and judicial officers with changes in discovery rules

For new intermediate tier cases, track:

- The number of cases filed in the new tier
- The number of pretrial appearances compared to unlimited cases
- The time to complete discovery compared to unlimited cases
- The time to case disposition compared to unlimited cases
- The cost of discovery
- The satisfaction levels of attorneys and judicial officers

CONCLUSION

The rising cost of litigation has outpaced the value of cases and has resulted in fewer cases being resolved based on their merits. These changes erode the public's access to justice and confidence in the judicial process. Amending civil case procedures to reduce costs and improve court efficiencies is a step toward improving access to justice statewide and in assisting the growing number of SRLs attempting to navigate an overwhelming court system.

RECOMMENDATION 1.2:
INCREASE AND IMPROVE
ASSISTANCE FOR
SELF-REPRESENTED
LITIGANTS

Civil litigation across America is changing, with more parties coming to court on their own. As the National Center for State Courts (NCSC) recently concluded, “The idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion.”³⁷ While this observation has long been true in family law cases, it is increasingly so in other civil matters as well. Figures from a 2013 NCSC survey show that there were self-represented litigants (SRLs) in over 76 percent of civil cases nationally.³⁸ A 2003 California survey showed that the SRL rate in unlawful detainers was 34 percent, and up to 90 percent if landlords were excluded from the count. In some other types of civil litigation the rate was as high as 50 percent.³⁹

Today, most of the civil cases in which SRLs appear and the great majority of civil cases overall have a low monetary value. The 2013 NCSC survey of civil courts shows that the average judgment obtained in all civil cases was \$10,000.⁴⁰ The California experience is similar. Seventy-five percent of civil cases filed in fiscal year 2014–2015 involved claims of under \$25,000, with most claims under \$10,000.⁴¹ Given the proliferation of lower value cases and the increasing cost of litigation, it is not surprising that more parties are unable to afford attorneys and are forced to represent themselves. This is particularly true in unlawful detainer and small debt collection matters.

Although the case values are low, the legal processes are not simple, making self-representation challenging. SRLs face a variety of challenges, including the technicalities of specialized legal language, applicable rules and procedures, complex requirements for notice and proof of service, and procedural rules that vary among types of cases. SRLs’ lack of knowledge of due dates and filing timelines can cause them to be unprepared and to incur unnecessary, time-consuming continuances or outright dismissal of their cases. Also, SRLs frequently do not understand court orders or how to enforce them. These barriers can inhibit

informed decisions about cases or the forfeiture of meritorious claims and defenses.

The inability to afford legal representation should not preclude litigants from obtaining justice. The challenge is to make sure the courts are accessible to all. As the neutral adjudicator, the court is not in a position to advise or represent SRLs. However, the court system does have a role in ensuring that SRLs are provided with the knowledge necessary to better represent themselves. This approach not only provides more meaningful access for SRLs, but also allows courts to run more efficiently and effectively, enhancing the experience and just outcomes for all court users.

The Futures Commission recommends:

1. Developing an early education program for SRLs in small claims and civil cases where SRLs are most common (i.e., unlawful detainers, small-value debt collection, automobile accidents, and employment cases).
2. Creating a Center for Self-Help Resources (Resource Center).

BACKGROUND

Currently, there are limited resources to help SRLs. The “Equal Access” webpage on the California Courts website, maintained by the Judicial Council (Council), includes video tutorials and instructional materials, access to “smart” forms (automated document assembly), and assistance in creating self-help programs.⁴² However, it is a static webpage and infrequently updated. Council staff also assist with various partnership projects between courts and legal services providers, but again resources are insufficient to provide adequate assistance to this important population.⁴³

“The idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion.”

National Center for State Courts
*The Landscape of Civil Litigation
in State Courts*

This is particularly true in areas beyond family law and restraining orders.

Having a structure to help SRLs navigate court processes benefits both courts and litigants. In 2004, the Council adopted a *Statewide Action Plan for Serving Self-Represented Litigants*. This plan recognized that court-based assistance should be a core function. It included a recommendation for court-based self-help centers in each court. In 2008, the Council adopted a rule of court identifying court-based assistance to SRLs as a core court function. (California Rules of Court, rule 10.960.) *Guidelines for the Operation of Self-Help Centers in California Trial Courts* were issued by the Council that same year and reaffirmed in 2011. While there are now self-help centers in courts throughout the state, only about a quarter of the necessary funding has been made available.⁴⁴

Currently, due to fiscal issues, self-help centers have been consolidated with the family law facilitators and provide help primarily in family law matters, restraining orders, and occasionally guardianships or conservatorships. While some

provide assistance with small claims and unlawful detainers, only a few provide any assistance in other civil matters.⁴⁵

RECOMMENDATIONS

The Futures Commission recommends:

1. Developing an early education program for SRLs in small claims and civil cases where SRLs are most common (i.e., unlawful detainers, small-value debt collection, automobile accidents, and employment cases).
2. Creating a Center for Self-Help Resources.

EARLY EDUCATION PROGRAMS

Early education can help litigants understand how cases are generally processed and the basic substantive laws relating to their cases. SRLs can become better informed in a manner becoming increasingly common: online, 24 hours a day. Elements of this recommendation include:

- Developing an education program for SRLs in small claims and civil cases, designed to be completed before the case is filed or within 30 days of filing a complaint or answer.
 - ◆ The program should be available online, via video and text. It should be integrated with smart complaint and answer forms that can be completed online, or at courthouse kiosks for those without access to technology.⁴⁶
 - ◆ It is not recommended that this program be mandatory, but should be strongly encouraged in an information sheet provided to all SRLs at the time the case is filed and served.
 - ◆ If possible, incentives should be provided for completing the program within a

certain time frame (e.g., early trial preference or early neutral evaluation).

- ◆ Course curriculum for this program should include available alternative dispute resolution processes, an overview of civil procedure, and requirements for parties before, during, and after trial. Flow charts of the steps required to proceed to trial would be particularly helpful and should be given to every party at the time of filing or service.
- Developing additional targeted information for high-volume case types (unlawful detainer, auto accident, consumer debt collection), including checklists for pleadings and the mandated exchanges of information recommended in this report.
- Developing virtual self-help centers with “real-time” interaction via chat or telephone support⁴⁷ as well as access to electronic resources like video tutorials and online clinics.
- Developing a summary of resources available within the courts and the local community.
- Developing targeted education partnerships with law libraries, law schools, local bar associations, volunteer attorneys, and legal services organizations.

CENTER FOR SELF-HELP RESOURCES

The branch should also consider the creation of a Resource Center to increase the scope of SRL services, expanding services currently provided by the Center for Families, Children, and the Courts. Resource Center activities should include the following:

- Coordinating and convening self-help providers throughout the state, and facilitating relationships with local courts.⁴⁸
- Connecting with established community organizations that currently provide services to SRLs and others.
- Developing and publishing best practices and guidelines for providing SRL assistance in all civil cases.
- Providing substantive and technical assistance to courts implementing programs and technology for self-help tools.
- Providing ongoing expertise to support court self-help centers.
- Maintaining, updating, and expanding the California Courts Online Self-Help Center to provide 24/7 assistance to SRLs.
- Developing and maintaining interactive self-help programs, such as the early education programs recommended in this report.
- Developing and maintaining online support for e-filing modules as they are implemented by the courts, including online chat or telephone support.
- Developing an online small claims advising program for courts unable to support in-person small claims assistance, integrating website e-filing, online chat, and telephone support.
- Developing training programs and materials for non-lawyer facilitators to help SRLs in self-help centers or elsewhere.
- Creating a virtual clearinghouse of self-help resources covering all applicable case types.
- Maintaining and updating the “Equal Access” webpage on the California Courts website by providing self-help materials, videos, and other online resources.

- Providing language access information and assistance for self-help providers.

RATIONALE FOR THE RECOMMENDATIONS

BENEFITS AND EFFICIENCIES ACHIEVED FROM EARLY EDUCATION PROGRAMS

Most SRLs do not choose to go to court without counsel, but are forced to do so by economic realities.⁴⁹ Addressing some of the barriers faced by SRLs is challenging, but well worth the effort. Judicial officers and court staff can do their jobs more effectively and efficiently when litigants understand the process and correctly prepare filings. In many cases, courts experience long lines at front counters as SRLs try to file documents, only to be turned away when the filing is incomplete or procedurally improper. In many cases, these parties appear repeatedly. In many situations, SRLs and the courts may experience continuances and clogged calendars when litigants are unaware of legal requirements or unprepared for the proceedings. This is especially troubling when litigants have taken time off from work or incurred childcare expenses, only to be told to come back for a future hearing. SRLs frequently misunderstand orders and judgments, leading to unnecessary motions and needless appeals.

Providing critical information and support early in the process allows outcomes based on the merits unhindered by procedural mistakes. This also reduces the court workload and allows for more efficient case processing. Research on self-help efforts in family law matters has shown that providing services through one-on-one interaction with SRLs can save an average of 5 to 15 minutes of hearing time for every hearing held in the case, and one to one-and-a-half hours of court

staff time related to providing assistance to SRLs and to reviewing and rejecting judgments.⁵⁰ The most effective information is provided in multiple modalities: in person, telephonic, and online support, available 24 hours a day, seven days a week. Many SRLs have jobs or family responsibilities. Providing self-help assistance onsite during court operating hours is not effective in reaching this population.

Recommendations to the Conference of Chief Justices urge that litigants in high-volume civil cases “have access to accurate and understandable information about court processes and appropriate tools such as standardized court forms and checklists for pleadings and discovery requests.”⁵¹ The Institute for the Advancement of the American Legal System recommends that courts “increase availability of targeted self-help resources,” “explore virtual and innovative means of delivering self-help resources,” and “facilitate litigant awareness of available resources.”⁵²

BENEFITS AND EFFICIENCIES ACHIEVED FROM THE RESOURCE CENTER

The Resource Center will be particularly beneficial for smaller courts with reduced staff and resources.⁵³

In 2004, the Council’s Task Force on Self-Represented Litigants made three key findings in this area:

1. Court-based, staffed self-help centers, supervised by attorneys, are the optimal way for courts to facilitate the timely and cost-effective processing of SRL cases.
2. It is imperative for efficient court operation that well-designed strategies to serve SRLs and effectively manage their cases are incorporated and budgeted as core court functions.
3. Partnerships between the courts and other governmental and community-based legal and social service organizations are critical to providing the comprehensive services needed.⁵⁴

As the number of SRLs increases, so does the need to effectively provide assistance while easing the corresponding demands on court time and resources. The implementation of a holistic approach to provide education and access will help SRLs navigate the litigation process. At the same time, providing courts with significant technical assistance will maximize the efficient use of administrative and judicial resources.

COSTS TO IMPLEMENT

EARLY EDUCATION PROGRAMS

The primary costs for education programs stem from the development of videos or interactive educational programs to be embedded in court webpages. Several such videos would be appropriate. Depending on the topic and issues covered, the videos will range from a single 15- or 30-minute piece or shorter videos on different aspects of litigating civil cases. Videos should be developed for limited and intermediate civil actions. They should cover the major types of cases in which SRLs are most likely to appear: unlawful detainer, auto accident, consumer debt, and employment law cases. The cost for a 30-minute video would range from \$60,000 to \$65,000.⁵⁵

The additional work needed to implement the early education programs, including the development of and assistance with the updating of proposed smart forms and informational sheets, would be included within the work of the proposed Resource Center and the respective advisory committees.

THE RESOURCE CENTER

Development of these programs will involve an investment by the judicial branch. A proposed staffing model⁵⁶ for the Resource Center would require current Council staff plus approximately \$1.5 million per year for new personnel. There would also be a one-time cost of approximately \$100,000 to convert the current self-help website to one enabled for mobile devices.

Development or expansion of self-help centers to provide the needed assistance will likely require additional funding. In 2006–2007, the Council conducted a survey of trial courts to assess the funding needs for fully staffed, civil self-help centers. The consolidated total yearly budget necessary to fully meet the needs of both the public and the courts was \$44,404,373. That level of funding has never occurred. Currently, state-wide funding for self-help centers in the courts is \$11,200,000 annually; courts also receive Assembly Bill 1058 funding for family law facilitators totaling \$15,040,301 annually.

Some courts fund self-help services from their local budgets, but many have been forced to reduce services due to significant reductions in funding. The self-help centers that exist are overcrowded and lack the means to expand. Once early education programs and new civil tiers are implemented, an evaluation of local needs based on case analytics and coordination with the services to be provided by the Resource Center should be conducted.

PUBLIC COMMENT

Several groups and a few individuals commented on these proposals. The California Commission on Access to Justice, the Legal Aid Association of California, and the Legal Aid Foundation of Los Angeles support expansion of self-help services and increased funding for self-help centers. The legal services groups would like to be involved with the proposed Resource Center.

The California Judges Association (CJA) raised concerns about the funding needed to develop and support these programs. The CJA also questioned whether providing education to SRLs involves providing legal advice. The Futures Commission notes that assistance to SRLs, including providing information and education, has been recognized as a core court function. (See California Rules of Court, rule 10.960.) Courts do have to strike a balance between providing information and aiding a party in litigation. That balance is struck by providing general information rather than making specific recommendations on procedural or strategic choices in a particular case.

SIMILAR PROPOSAL IMPLEMENTED ELSEWHERE

The Futures Commission studied several groups that furnish enhanced services to courts and self-help providers:

- *Center on Court Access to Justice for All*—An NCSC resource center offering information and assistance to advance access to justice, especially for low-income individuals. The center addresses a variety of areas including forms simplification and automation; accessible online information; e-filing; training of judges, clerks, and other court staff; using federal IV-D funding in child support cases; developing

a JusticeCorps volunteer program; setting up self-help centers or hotlines; and using pro bono assistance to help SRLs. See www.ncsc.org/microsites/access-to-justice/home.

- *Sargent Shriver National Center on Poverty Law*—The Shriver Center provides national leadership to secure justice and improve the lives and opportunities for people living in poverty. Its work includes an Advocate Resources and Training Program that trains and connects equal justice providers nationwide to strengthen capacity and help drive systemic change. See <http://povertylaw.org/>.

FEASIBILITY OF BRANCHWIDE IMPLEMENTATION

The early education programs could be developed on a statewide basis initially, then tailored to specific court procedures as courts choose to implement them. The Resource Center could oversee the development of the programs, with assistance from local self-help centers and input from pertinent Council advisory committees. The Resource Center itself would be, by definition, a statewide resource.

No specific legislation or rule-making is required to move this recommendation forward, although an increase in funding would be required.

Although factors for evaluating the success of the early education program would best be left to the group charged with implementing it, the Futures Commission suggests the following as potential factors for evaluation:

- Early education program measures:
 - ◆ Time from filing to case conclusion.
 - ◆ Number of hearings on discovery disputes.
 - ◆ Time consumed by trials or hearings.
 - ◆ Requests for relief from defaults.
 - ◆ Continuances necessitated by incomplete pleadings or failure to follow procedural requirements.
 - ◆ Number of defaults in consumer debt collection cases.
 - ◆ Level of satisfaction of SRLs and judicial officers.
- Resource Center evaluates:
 - ◆ Effectiveness of provider outreach activities, measured by meetings, webinars, conference calls, and other means connecting stakeholders, including local, statewide, and national legal services providers, law schools, law libraries, and court self-help centers.
 - ◆ Effectiveness of community outreach activities, measured by the number of contacts with established community organizations serving SRLs, including legal services providers and other community-based entities such as houses of worship, community-based hospitals, and social service programs.⁵⁷
 - ◆ Breadth of technical assistance provided, measured by the number of technical assistance contacts with court-based self-help resource centers.
 - ◆ Effectiveness of technical assistance provided, measured by a survey of self-help center administrators.
 - ◆ Utilization of the online tools accessed through the California Courts Online Self-Help Center and “Equal Access” webpages, and other sources of assistance.

- ◆ Levels of satisfaction with courts and self-help centers, through a survey of court administrators, self-help center staff, and targeted bench officers adjudicating cases with numerous SRLs.
- ◆ Levels of satisfaction with legal services providers, measured through a survey of those who participate in the Resource Center convening activities and those using the center's online tools.

CONCLUSION

Most civil cases in California's trial courts have a low monetary value and many have at least one self-represented party. The judicial process can be overwhelming for SRLs and challenging to navigate. Additional education programs for SRLs will allow them to make better-informed decisions and litigate their cases effectively. Implementing these recommendations will improve access to justice and increase court efficiencies, resulting in outcomes based on the merits of the litigation.

RECOMMENDATION 1.3:

INTEGRATE BEST PRACTICES FOR COMPLEX CASE MANAGEMENT

Complex court case management techniques have demonstrably enhanced effective decision making and expeditious resolution of complex cases. During the nearly 15-year Complex Civil Litigation Program, judges in the six participating courts developed case management techniques, robust judicial management tailored to the needs of a particular case, sustained judicial supervision, and focused progress toward resolution. Using Judicial Council (Council) funding under an allocation from the State Trial Court Improvement and Modernization Fund, the six courts handled these cases in courtrooms devoted solely to complex litigation. Judges participated in annual training presented by the Council's Center for Judicial Education and Research (CJER). Complex cases continue to be filed in large numbers. (See the following *Number of cases* section.) With the funding allocation no longer available, however, there is a greater need to make complex case management techniques and other strategies developed by the participating courts available to judges in other courts that may occasionally have complex cases. This can be done through continued judicial education and by providing written materials in an online repository.

Although complex cases are more often filed in large courts and assigned to dedicated departments, they are sometimes filed in small- and medium-sized courts. To address these issues, the Futures Commission recommends:

1. Establishing and maintaining an online centralized repository and educational resource for effective management of complex litigation.
2. Establishing and maintaining a listserv, or an electronic mailing list, of judges who frequently handle complex cases, allowing communications among courts.
3. Continuing to provide judicial education in complex case management.

BACKGROUND

A complex case is defined in the California Rules of Court as “an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.” (California Rules of Court, rule 3.400(a).) Because complex cases ideally require exceptional judicial management beyond that in more common civil cases, many judges have not developed expertise in the area. In small courts, complex case filings are rare, and in large courts, the bulk of complex cases are often assigned to a small number of judges. A judge unfamiliar with complex case management would greatly benefit from resources to help effectively manage the case.

A complex case must first be identified. The criteria for designating an action as a complex case are listed in rule 3.400. Such a case is likely to involve:

- Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve;
- Management of a large number of witnesses or a substantial amount of documentary evidence;
- Management of a large number of separately represented parties;
- Coordination with related actions pending in other counties, states, countries, or federal courts; or
- Substantial postjudgment judicial supervision. (California Rules of Court, rule 3.400(b).)

Specific types of cases are identified as provisionally complex—absent a judicial determination that a particular case does not so qualify. Provisionally complex cases have claims that involve the following:

- Antitrust or trade regulation claims;
- Construction defect claims involving many parties or structures;
- Securities claims or investment losses involving many parties;
- Environmental or toxic tort claims involving many parties;
- Claims involving mass torts;
- Claims involving class actions; or
- Insurance coverage claims arising out of any of the claims listed directly above. (California Rules of Court, rule 3.400(c).)

A judicial determination of complexity is made after a party designates a case complex, or a court on its own motion decides that an action is complex. (California Rules of Court, rules 3.401, 3.402, and 3.403.) In many courts, a complex case remains in the pool of unlimited civil cases. It may or may not be individually assigned to a judge and may or may not receive specialized management.

When a complex case is not actively managed, it will not be expeditiously resolved and it is likely to affect a court’s overall efficiency. An “unmanaged” complex case can demand significant time on the law-and-motion calendar, to the detriment of all civil cases. Providing the tools and resources for active complex case management benefits all courts and court users.

HISTORY OF THE COMPLEX CIVIL LITIGATION PROGRAM

The Complex Civil Litigation Program began in 2000 and included six courts. It was designed to give judges training and resources to manage complex civil cases effectively and efficiently. Participating courts agreed to have one or more courtrooms dedicated solely to complex cases; provide trained and experienced judges and appropriate support staff; employ advanced technology to achieve prompt, cost-effective, and fair resolutions; and apply an appropriate case management infrastructure. The program was established largely in response to a study of business leaders, judges, and attorneys examining whether specialized courts should be created for business cases. The study concluded that a better approach would be to enable courts to handle a broader range of public disputes and be responsive to periodic fluctuations in caseloads. Thus, the Complex Civil Litigation Program was created. Simultaneously, the Council approved the following:

- Distributing the *Deskbook on the Management of Complex Civil Litigation* to all judges and charging the Council’s Civil and Small Claims Advisory Committee with ongoing responsibility for updating the deskbook.
- Providing a special judicial education curriculum on complex civil case management.
- Adopting new California Rules of Court, effective January 1, 2000, including a rule that defines a complex case.
- Amending relevant rules and seeking conforming legislation.

After a 2003 evaluation by the National Center for State Courts (NCSC), the Council approved

continuing the program and identified characteristics that should be present in participating courts: assignment of each complex case to a single judge to handle all aspects of the litigation; judges who have experience, interest, and expertise in handling complex civil litigation; innovative case management techniques; technology designed for

When a complex case is not actively managed, it will not be expeditiously resolved and it is likely to affect a court’s overall efficiency. An “unmanaged” complex case can demand significant time on the law-and-motion calendar, to the detriment of all civil cases. Providing the tools and resources for active complex case management benefits all courts and court users.

complex cases; and additional experienced court personnel, including a dedicated research attorney for each department. These program characteristics were maintained in the six program courts until the program’s funding allocation was discontinued at the end of fiscal year 2014–2015. Judicial education in complex litigation has been offered at least annually since establishment of the program and continues to be offered by CJER. It currently has spaces for 30 judges to attend. Participation is no longer restricted to judicial officers from the six original courts that participated in the program.

Any judicial officer may attend if she or he has a designated complex civil assignment or hears cases designated as complex under the California Rules of Court.

For a number of years, CJER maintained an online Complex Civil Litigation Toolkit. The complex toolkit provided an online repository for information to guide complex litigation management. Gradually it became difficult to obtain information for posting in the toolkit. The materials were limited and did not include bench aids, checklists, or case management resources specific to complex cases. Because there was very little traffic to the webpage, CJER dismantled the complex toolkit and migrated the articles into the general civil law toolkit in July 2015.

FUNDING MATTERS

During the last years of the program, a total of \$4 million was allocated to the six participating courts. The funding is no longer available, but the six courts have continued to operate complex litigation departments, demonstrating the value of having courtrooms and judges dedicated to complex case management.

NUMBER OF CASES

Based on an extrapolation from the total amount of complex case fees collected,⁵⁸ there are about 4,000 to 6,000 complex cases filed in California courts annually.⁵⁹ Figure 1 below shows the totals for all courts.

Total filings for the five-year period numbered more than 23,000. There is no indication that the number of complex cases will decrease in the near future. Complex case filings are numerous and are filed in 52 out of the 58 trial courts. Of the 17 courts with between 6 and 15 judges, all have complex cases in their caseloads. The five-year total for these courts is 625, for a mean of 7 per court per year. This demonstrates the need for effective management of complex cases by judges around the state. Judges in the program during its 15-year run developed specialized tools and methods for management of complex civil litigation and a body of expertise. Judges in dedicated complex litigation departments continue to do so. That knowledge can and should be shared.

RECOMMENDATIONS

The Futures Commission recommends:

1. Establishing and maintaining an online centralized repository and educational resource for effective management of complex litigation.
2. Establishing and maintaining a listserv, or an electronic mailing list, of judges who frequently handle complex cases, allowing communications across courts.
3. Continuing to provide judicial education in complex case management.

Figure 1: Complex case filings in California trial courts

2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
4,518	5,908	4,365	4,042	4,559

RATIONALE FOR THE RECOMMENDATIONS

THE COMPLEX CASE REPOSITORY WILL ASSIST JUDGES IN SHARING BEST PRACTICES AND BENEFIT THE COURTS AND COURT USERS

The 4,000 to 5,000 complex cases that are filed annually in California courts need active management to expedite cases, reduce costs, and promote effective decision making by the courts, parties, and counsel. Establishing a repository of current materials on complex case management will help achieve these outcomes. Judges with experience in managing complex litigation will be the main contributors to the repository. Judges new to the area can access the repository to locate orders governing case management, discovery, coordination of multiple cases, and other specialized topics, including class certification and approval of class settlement. Templates, outlines, and editable orders will be available for tailoring to specific case needs.

The repository could be located on the Judicial Resources Network, a password-protected website for judges and court professionals containing judicial toolkits developed by CJER, a variety of reference materials, and links to other resources and websites.

A LISTSERV OF JUDGES WILL FACILITATE COMMUNICATIONS

The listserv would be a judges-only network with safeguards to limit access to ensure that a judge does not participate in a discussion regarding a case from which he or she is or would be recused. Judges who do not regularly handle complex litigation could seek advice through the network as well.

ONGOING EDUCATION IN COMPLEX LITIGATION

Judicial education is a necessary and important complement to written materials. Current CJER civil education courses in introductory and advanced complex case management should be maintained and expanded.

OTHER RESOURCES FOR MANAGING COMPLEX LITIGATION

Existing resources on complex case management include the Federal Judicial Center's *Manual for Complex Litigation* guides, the National Judicial College's *Resource Guide for Managing Complex Litigation*, and the Council's *Deskbook on the Management of Complex Civil Litigation*. The deskbook is updated annually by the Council's Civil and Small Claims Advisory Committee and published by LexisNexis. It is available in loose-leaf book form and online to LexisNexis subscribers.

The repository would differ from and complement these three benchbooks by offering current content that is used in California courts. It could be updated more frequently than the benchbooks and include a variety of case management approaches from different judges. The repository would include a current roster of California judges experienced in complex litigation who are willing to be resources for judges new to this area.

COSTS TO IMPLEMENT

Regularly maintaining the repository will be crucial to its utility. Materials based on statutes, rules, and case law will be most useful if they are recently drafted. Maintenance will require the assignment of Council staff. All materials posted to the repository website should be dated so the user can check for subsequent developments in statutes and case law. Judges and research

attorneys who submit materials for posting will be encouraged to provide updates to content. It may be helpful to establish criteria for when materials should be removed or updated. Automated methods can be used to identify outdated content.

The proposed repository would require staff to (1) identify those judges sitting in complex assignments or hearing complex cases, (2) actively seek materials for posting, (3) coordinate material review, and (4) periodically monitor the materials to ensure that they remain legally accurate. In addition, web content staff would be involved in constructing and posting to the website. CJER has recommended that a consultant attorney be hired to oversee the implementation of the repository over an estimated six-month period. The estimated cost is \$72,500.⁶⁰ The estimated cost for web content staff to assist in constructing the repository is \$13,140.⁶¹ Ongoing maintenance for the repository is estimated to take two to four weeks per year and would be absorbed by current staff.

An alternative approach would be to model the repository after CJER's section of the website called "By Judges For Judges," where judges share information. CJER staff do not review or vet the materials, nor do CJER attorneys update and maintain the materials. Typically, the judges who submit the materials are responsible for their maintenance. With this approach, Council staff would do steps (1) and (2) outlined above, ensure that materials include a submission date, and create a toolkit of judicially created resources. New materials could be solicited at educational programs and content would be purged periodically. This option would require a current staff attorney to dedicate between 20 and 40 hours, costing approximately \$3,565. Ongoing maintenance would be minimal and would be absorbed by current staff and added to the workload.

PUBLIC COMMENT

Strong support is anticipated from judges in complex assignments who are generous in sharing techniques and practices they have developed. Judges who only occasionally have complex cases in their caseloads welcome information from those more experienced. The Futures Commission also expects support from the Trial Court Presiding Judges Advisory Committee. During the public comment session, a prominent plaintiffs' attorney provided a written comment, expressing, "A standard set of rules and a standard set of educational materials would provide great benefit to those handling complex cases." He further stated the view that both judges and lawyers should participate in the development of this concept and be able to access the repository. The president of the California Chapters of the American Board of Trial Advocates expressed interest in the concept. He suggested that early identification of legal issues for resolution in a limited evidentiary hearing could reduce the complexity of cases.

FEASIBILITY OF BRANCHWIDE IMPLEMENTATION

The repository would be implemented through either the Judicial Resources Network or CJER Online. A pilot is not necessary. All information can be effectively disseminated statewide.

The launch of the repository should be accompanied by communications to all courts describing its purpose, summarizing its content, and promoting its use. After the repository has been operational for six months to a year, its success can be measured through data analytics and surveys. All CJER courses ask participants to evaluate the course. Participants can also be asked to evaluate the repository.

CONCLUSION

Complex civil cases differ vastly from typical civil matters and require “exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.”⁶³ Many large courts are able to manage these cases effectively with a dedicated complex litigation department presided over by an experienced judge. This is not the case in small- and medium-sized courts where complex matters are less common. Creating a repository where complex case management techniques can be stored and shared would allow judges and research attorneys to easily access and share information. Further, providing a listserv and education courses for judges encourages communication and ensures information is up-to-date and accurate.

NOTES

CHAPTER 1: CIVIL RECOMMENDATIONS

INTRODUCTION

1. Judicial Council of California, *2016 Court Statistics Report: Statewide Caseload Trends 2005–2006 Through 2017–2015* (2016), 90. In addition, the Budget Services office of the Judicial Council reports that 75% of the limited civil cases filed involved claims for under \$10,000.
2. National Center for State Courts (NCSC), *The Landscape of Civil Litigation in State Courts* (2015), iii.
3. *Ibid.*, 2 (time devoted to discovery is the primary cause of delay in the litigation process), citing C. Gerety, *Excess and Access: Consensus on the American Civil Justice Landscape* (Institute for the Advancement of the American Legal System (IAALS), 2011) (summarizing results of a survey of members of the American College of Trial Lawyers, the American Bar Association, Section of Litigation, and the National Employment Lawyers Association).
4. C. Gerety, *Excess and Access*, 9.
5. *Ibid.*
6. According to Judicial Branch Statistical Information System reports, in 2014–2015, as many as a third of limited civil cases had a self-represented defendant, with the numbers significantly higher in landlord-tenant cases. Almost 10% of the limited civil cases were brought by self-represented plaintiffs.
7. NCSC, *Call to Action: Achieving Civil Justice for All—Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee* (2016), 4–5.

RECOMMENDATION 1.1: REVISE CIVIL CASE TIERS AND STREAMLINE PROCEDURES

8. No answer is required in small claims cases, no discovery is authorized, only bench trials are permitted, and hearings are held under relaxed rules of evidence and procedure. (Code of Civil Procedure sections 116.310–116.540.)
9. Special demurrers are eliminated, and motions to strike limited. Discovery by each party is limited to 35 written discovery requests in total, one deposition, and certain other discovery. Plaintiffs may use a case questionnaire to elicit fundamental factual information about the case. Either party may request pretrial exchanges of witness and exhibit lists. Parties may offer evidence by affidavits or declarations under penalty of perjury. (See Code of Civil Procedure sections 90–98.)
10. This value was calculated using the CPI Inflation Calculator from the Bureau of Labor Statistics, www.bls.gov/data/inflation_calculator.htm.
11. Using technology to facilitate the creation of digital records of court proceedings in limited, intermediate, and unlimited civil cases would also provide efficiencies in litigation for parties and the courts. That recommendation is addressed in more detail in *Chapter 5: Technology Recommendations*.
12. The proposal to provide video remote interpreting in all case tiers where no in-person interpreter is available conforms to the recommendations in the Judicial Council’s *Strategic Plan for Language Access for the California Courts* (2015), recommendations 12–15. Recommendation 16 in that plan—to develop a pilot project for video remote interpreting—is currently being implemented by the Council’s Information Technology Advisory Committee. See *California Judicial Branch Tactical Plan for Technology (2017–2018)*.

13. Many aspects of this proposal, including the provisions for simplified forms and checklists, mandated exchange of information early in the case, language assistance, and remote appearances, can be found among the recent recommendations to the Conference of Chief Justices. (See *Call to Action: Achieving Civil Justice for All*.) The recommendations for the multiple tiers here are generally consistent with those recommendations as well. Both sets of recommendations are intended to streamline processes to address the differential in court time and litigant expense appropriate in different types of cases. Under the proposal here, cases are initially assigned to a tier based on an amount in controversy, although a case may be moved to another tier for good cause. Under the recommendations to the Conference of Chief Justices, cases are assigned to different tiers based on a triage system in which each case is individually reviewed by the court upon filing.
14. This recommendation is in line with the recent recommendations made by the Civil Justice Improvements Committee to the Conference of Chief Justices. See *Call to Action: Achieving Civil Justice for All*, recommendation 13.4 (Judges should promote use of remote audio and video services for case hearings and case management meetings). It also aligns with the technology recommendations made by the Futures Commission.
15. Small Claims BC (British Columbia) Online Dispute Resolution, www.smallclaimsbc.ca, is a web-based application providing parties with tools to help them settle online, without going to court. The program provides a secure, confidential web-based platform for online negotiation before any claim is filed. It also allows for mediation via video conference or telephone. If the parties reach an agreement, they can use the program to create a legal agreement, including payment terms and alternatives if the terms are not met.
16. British Columbia's online adjudication program, still under development, includes both online ADR and adjudication of cases, via a new court, the Civil Resolution Tribunal (CRT), www.civilresolutionbc.ca. The CRT, with its own rules and decision makers, will be optional for all small claims cases (most cases under \$25,000) and mandatory for all "strata" (condominium homeowner association) cases. As currently proposed, the first CRT level, with no or minimal charge to the parties, is an online ADR program on a platform called the Solution Explorer. The second level, with a more traditional filing fee, provides online adjudication.
The United Kingdom is also considering a similar program for small civil cases. See United Kingdom Civil Justice Council, *Online Dispute Resolution for Low Value Civil Claims* (Jan. 2015).
17. The Los Angeles County program has been fully operational for 24 months. The program administrator reports that during that time, 382 cases used one or more aspects of the program's online dispute resolution platform, including online messages exchanged through a mediator (no direct party contact); mediation with the parties together online via instant chat messaging; back and forth bids and counteroffers via text messaging; and video mediation. Almost 85% of the cases that entered the program were resolved without a hearing. The Orange County program is still in development, preventing current evaluation.
18. The range in fees is wide: for auto cases in the 75th percentile range, the fees averaged over \$100,000.
19. See P. Hannaford-Agor and N. Waters, "Estimating the Cost of Civil Litigation," 20 *Caseload Highlights* 1, 7 (Jan. 2015).
20. *2016 Court Statistics Report*, 94 (Superior Courts, table 5b).
21. See IAALS and American College of Trial Lawyers, *Reforming Our Civil Justice System: A Report on Progress and Promise* (2015), 19, citing IAALS, *Survey of the Arizona Bench and Bar on the Arizona Rules of Civil Procedure* (2010), 19–26.
22. *Call to Action: Achieving Civil Justice for All*, recommendation 4.3 (for simpler cases, in what it refers to as a "streamlined pathway" similar to the limited case procedures) and recommendation 6.3 (for more involved cases, in what it refers to as the "general pathway"). The Civil Justice Improvements Committee also calls for mandatory initial disclosures in complex cases (see recommendation 5.4). The Futures Commission concluded that appropriate discovery in such cases can be determined by the parties and judicial officer under current rules regarding complex litigation. (See California Rules of Court, rules 3.400 and 3.750.)
23. Rule 26 of the Utah Rules of Civil Procedure. In cases with claims of \$50,000 or less, each party is limited to 3 hours of deposition, no interrogatories, 5 requests for production, and 5 requests for admission. In cases with claims over \$50,000 but under \$300,000 or nonmonetary relief, parties are limited to 15 hours of deposition, 10 interrogatories, 10 requests for production, and 10 requests for admission. In cases with claims of \$300,000 or more, each party is limited to 30 hours of deposition, 20 interrogatories, 20 requests for production, and 20 requests for admission. (Rule 26(c)(5) of the Utah Rules of Civil Procedure.)
24. P. Hannaford-Agor and C. Lee, *Civil Justice Initiative—Utah: Impact of the Revisions to Rule 26 on Discovery Practice in the Utah District Courts* (NCSC, 2015), 53.
25. *Ibid.*
26. C. Gerety and L. Cornett, *Measuring Rule 16.1: Colorado's Simplified Civil Procedure Experiment* (IAALS, 2012). The initial results led to development

of the Colorado Civil Access Pilot Project, applicable to all business cases and now implemented as law in Colorado. Under those rules, the initial exchange of documents may be followed by other discovery requests, which must be proportional to the value of the case. See C. Gerety and L. Cornett, *Momentum for Change: The Impact of the Colorado Civil Access Pilot Project* (IAALS, 2014).

27. A mandatory exchange of information and documents, followed by proportional discovery, are principles enunciated by the American College of Trial Lawyers Task Force on Discovery and Civil Justice in a project it undertook with the IAALS. See IAALS and American College of Trial Lawyers, *Reforming Our Civil Justice System: A Report on Progress and Promise* (2015), 19–24.
 28. See Code of Civil Procedure section 367.5 and California Rules of Court, rule 3.670.
 29. The Futures Commission is not recommending such appearances in limited civil cases. Abuses could occur in light of the imbalance of financial resources in many of those cases, particularly in unlawful detainer and debt collection.
 30. Judicial Branch Statistical Information System reports show that almost half of the cases reported as disposed by jury trial are unlawful detainer cases.
 31. See *Reforming Our Civil Justice System*, 7 (calling for a robust case management conference at “the beginning of a case in all but those very few cases that do not require or are not amenable to such a conference”) and *Call to Action: Achieving Civil Justice for All*, 26 (except for very simple cases, cases generally need more case management and a judge may need to be involved from the beginning to move them forward and guard against cost and delay).
 32. This approach would conform to the current rule allowing for emergency exemptions from mandatory case management conferences. (See California Rules of Court, rule 3.720(b).)
 33. The 2004 legislatively mandated Early Mediation Pilot Programs study found that:
 - An average of 58% of the unlimited cases and 71% of the limited cases mediated in these programs settled as a direct result of early mediation;
 - In two courts with good data for comparison, the study showed a reduction of between 24% and 30% in the trial rate;
 - Motions and hearings were reduced between 11% and 48%;
 - By reducing the trial rates, motions, and other court events, judge were made available for other cases;
 - Attorneys in cases that settled at mediation estimated savings between 61% and 68% in litigant costs; and
 - Attorneys in mediated cases were more satisfied with the services provided by the courts, *regardless of whether their cases settled in mediation.*
- See Judicial Council of California, *Evaluation of the Early Mediation Pilot Programs* (2004), xix–xxii, www.courts.ca.gov/empprept.pdf.
34. Without a change in the filing fee structure, the creation of this tier could result in some loss of revenue to the courts. Currently, the filing fees for higher-value limited cases is currently \$65 less than for unlimited cases. Some idea of the impact of changes in the jurisdictional amount can be gathered from the impact of previous changes. When the jurisdictional amount for municipal court cases tripled from \$5,000 to \$15,000 effective July 1, 1979, approximately 8%–10% more cases were filed the following year. When the jurisdictional amount increased from \$15,000 to \$25,000 effective January 1, 1986, the impact was a 3%–4% increase in filings. (See *Judicial Council Report on Raising Municipal Court Jurisdiction and Economic Litigation from \$25,000 to \$50,000* (Oct. 24, 1995), 3, 10–11.) This suggests that doubling the jurisdictional amount from \$25,000 to \$50,000 might produce a 5%–7% increase in cases filed as limited cases. Further analysis will be required to determine the fiscal impact. It may be appropriate to apply different fees within this tier as is currently done in limited cases where a lower fee applies to cases below \$10,000.
 35. Judicial Council of California, *Report on Annual Dispute Resolution (ADR): Use of Remaining Fiscal Year 2010–2011 Judicial Administration Efficiency and Modernization Fund Allocation for ADR Projects* (2011). After 2011, the annual amount of funding made available to support mediation and settlement programs was reduced to \$75,000 a year.
 36. Development of an online adjudication program for small claims or other civil matters, either statewide or as a pilot, would require significant funding. If current resources are not available, such a program should be considered in future planning.

RECOMMENDATION 1.2: INCREASE AND IMPROVE ASSISTANCE FOR SELF-REPRESENTED LITIGANTS

37. *The Landscape of Civil Litigation in State Courts* (2013), iv.
38. *Call to Action: Achieving Civil Justice for All*, 4–5 (recommendations by the Civil Justice Improvements Committee to the Conference of Chief Justices), citing *The Landscape of Civil Litigation in State Courts*.
39. Judicial Council of California, *Task Force on Self-Represented Litigants: Final Report on Implementation of the Judicial Council Statewide Action Plan for Serving Self-Represented Litigants* (Oct. 2014).
40. *The Landscape of Civil Litigation in State Courts*, 24. This was of judgments greater than zero. Most judgments are at the lower end of the range, with an

interquartile range from \$1,273 at the 25th percentile to \$5,154 at the 75th percentile. Even considering only courts of general jurisdiction, the figures were low (mean judgment amount of \$24,117, with \$2,270 at the 25th percentile and \$14,273 at the 75th percentile).

41. Of the nearly 750,000 civil cases filed in California in 2014–2015, over 75% were limited civil or small claims. (See *2016 Court Statistics Report*, 90.) In addition, the Budget Services office of the Judicial Council reports that 75% of the limited civil cases filed involved claims for under \$10,000.
42. The “Equal Access” webpage is available on the California Courts website at www.courts.ca.gov/programs-equalaccess.htm.
43. On the Judicial Council staff there is currently a single, senior attorney who devotes only a part of her time to providing coordination and subject matter expertise for self-help programs. Other individuals provide various types of support on a part-time basis. This limited staff support restricts the ability of courts and other self-help providers to maximize even those resources. Current staffing is insufficient to allow effective dissemination of information about ongoing self-help services in various courts, or similar programs elsewhere.
44. *Task Force on Self-Represented Litigants: Final Report* (Oct. 2014).
45. An interactive map showing the self-help centers throughout the state, with links to information about the services they provide, is posted on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-start.htm. Neighborhood Legal Services of Los Angeles County, which staffs the self-help centers at 10 Los Angeles courthouses, reports SRLs were assisted in over 380,000 matters between 2014 and 2016. Twenty-two percent were non-family-related civil matters. Within that category, about 85% focused on unlawful detainers or civil harassment restraining orders. Other civil complaints, including consumer cases, represent only 2% of all matters in which assistance was provided during that period.
46. An example of an interactive program for small claims cases is RePresent, designed to teach SRLs what to do before court and how to proceed to trial. Developed by Northeastern University School of Law, the program is hosted at <https://ctlawhelp.org/represent>, a website that provides free legal information to low-income SRLs in Connecticut.
47. See also the technology recommendations in this report.
48. The Resource Center would also continue the services currently handled by Judicial Council staff, including coordinating services provided to the courts in grant-funded and partnership programs such as JusticeCorps and programs under the Equal Access Fund grant program.
49. N. Knowlton, *Cases Without Counsel: Our Recommendations After Listening to the Litigants* (IAALS, 2016), 6.
50. Judicial Council of California, Center for Families, Children & the Courts, *The Benefits and Costs of Programs to Assist Self-Represented Litigants: Results from Limited Data Gathering Conducted by Six Trial Courts in California's San Joaquin Valley* (May 2009) (prepared by John Greacen, Greacen Associates, LLC), 12–13.
51. *Call to Action: Achieving Civil Justice for All*, recommendation 11.3.
52. N. Knowlton, *Cases Without Counsel*, 1.
53. *Task Force on Self-Represented Litigants: Final Report* (Oct. 2014).
54. *Statewide Action Plan for Serving Self-Represented Litigants* (2004), 1.
55. Production of a video would include the following steps:
 - Determine the topics and information to be presented.
 - Identify existing video models.
 - Identify and gather subject matter experts to develop the video.
 - Develop the script.
 - Work with the Judicial Council's Center for Judicial Education and Research (CJER) to identify the production needs.
 - Plan, film, and edit the video.
 - Translate the video into Spanish.
 - Share the video with self-help centers and courts across the state.

The following factors were taken into consideration to calculate the estimated expense for a 30-minute video, based on the hours and cost for videos recently produced by the Judicial Council: 80–100 hours of work by a staff attorney; spoken and written Spanish translation services; 80 hours of work by a consultant to develop the script; and filming and postproduction by CJER staff or an outside vendor. Translation into other languages would entail additional cost.
56. One model for the Resource Center would be to add the following to staff currently working on SRL issues:
 - Analyst and supervising attorney to provide small claims assistance through live chat, phone, and e-mail support. The analyst or supervising attorney would also build a database of common answers in a variety of languages, expand the self-help website, and explore online dispute resolution options for small claims.
 - Analyst to provide live chat, phone, or e-mail assistance to people who have basic questions about online forms and document assembly programs

such as HotDocs or Odyssey Guide & File; make specific referrals to the self-help website; and identify problems where more detailed legal help is needed.

- Attorney with family law background to provide assistance to self-help center staff (online chat and services).
 - Attorney with general civil background to provide assistance to self-help center staff (online chat and services).
 - Analyst to help with various program maintenance, and migration to mobile-enabled sites.
 - Media producer to create and maintain instructional videos.
 - Translation contract for basic translating of self-help materials.
 - Subject matter expertise contracts to secure assistance with instructional materials and website content.
57. In some communities, the first point of contact for those ultimately seeking access to the courts is not a traditional legal services provider or governmental entity. Rather, potential court users first seek assistance from other trusted sources in the community, including places of worship, social service agencies, hospitals, and other health care providers.

RECOMMENDATION 1.3: INTEGRATE BEST PRACTICES FOR COMPLEX CASE MANAGEMENT

58. Information provided by Judicial Council Budget Services.
59. The exact number of complex cases filed each year in California courts is not known, as case management systems do not collect this information. The total amount of statutorily required fees paid in cases determined to be complex is used as a proxy for the number of complex cases filed.
60. To calculate the cost for a consultant attorney for six months, staff was given an estimated rate of \$100 an hour and determined the full-time equivalent to be 1,450 hours per year.
61. The positions include an application development analyst for approximately 20 hours and a business systems analyst for approximately 120 hours.
62. California Rules of Court, rule 3.400.



- **Recommendation 2.1:**
Reduce Continuances
in Criminal Cases
(page 53)
- **Recommendation 2.2:**
Reduce Certain
Misdemeanors to
Infractions
(page 63)
- **Recommendation 2.3:**
Refine the Adjudication
and Settlement of Fines,
Fees, and Assessments
(page 71)
- **Recommendation 2.4:**
Implement a Civil
Model for Adjudication
of Minor Traffic
Infractions
(page 85)

CRIMINAL/TRAFFIC RECOMMENDATIONS

The Commission on the Future of California’s Court System (Futures Commission) is making a series of recommendations to improve access to justice, increase criminal court efficiency and effectiveness, and address the potentially disproportionate negative consequences of minor criminal violations.

One hurdle to the resolution of criminal matters is the large number of cases that are set for hearing or trial but are continued. Unwarranted continuances waste court resources, burden defendants and counsel, and increase court congestion. Continuances are, of course, allowed for good cause when additional time for investigation or preparation is necessary. Excessive continuances, however, delay resolution, cause substantial hardship to victims and other witnesses, and can lead to longer periods of pre-sentence confinement for in-custody defendants.

Permitting some offenses, now defined only as misdemeanors, to be alternatively charged or bargained to infractions, will give prosecutors, defense counsel, and the courts greater flexibility, allow a resolution that more appropriately matches the conduct to the level of the offense, and reduce both costs and collateral consequences to the defendants.

California courts and court users face daily challenges due to the high volume of traffic infraction cases filed annually. Traffic infractions make up the majority of the criminal filings, and although the offender is generally not represented by counsel, he or she is processed under formal rules of criminal procedure. Traffic infractions and other offenses often result in high fines and fees that defendants are unable to pay, resulting in adverse consequences such as the suspension of a driver’s license or

imposition of a monetary penalty. Alternatives to payment, such as community service, are limited in availability. Many defendants also find it difficult to travel to the courthouse to make a payment or discuss alternatives. These hurdles make it difficult for the courts and defendants to effectively resolve the matters.

The Futures Commission explored how court efficiencies could be implemented to further improve access to the public, including the timely resolution of cases and the appropriateness of the punishment to the level of the offense.

RECOMMENDATION 2.1:
REDUCE CONTINUANCES
IN CRIMINAL CASES

INTRODUCTION

Continuances of criminal cases affect the court, victims, witnesses, defendants, and justice partners. There is no disputing that continuances are costly to both parties and the courts. Despite the legislative mandate that motions for a continuance be in writing, continuances based on oral requests have become part of court culture statewide. Sanctions are in place to prevent misuse and abuse of continuance requests, but they are rarely imposed.

Continuances of criminal cases affect the court, victims, witnesses, defendants, and justice partners. There is no disputing that continuances are costly to both parties and the courts.

Courts statewide ignore statutes limiting continuances by permitting excessive oral requests and granting a high number of continuances without good cause. The Futures Commission seeks to provide additional tools to promote efficiency by providing training and statutory compliance.

The Futures Commission recommends reducing continuances in criminal cases by:

1. Creating and implementing training for presiding judges and new judges on the statutory requirements for granting continuances.
2. Requiring presiding judges to adopt policies to conform court practices to existing law.
3. Encouraging courts to track the data on continuances.

4. Encouraging presiding judges to create a local court working group to monitor continuance data and recommend corrective measures when needed.
5. Expanding meetings between local judges and justice partners to include the discussion of limiting continuances.

BACKGROUND

California statutes specify the order of priority for the trial of calendared criminal cases based on the nature of the offense and the defendant's custody status.^{1*} The Judicial Council's (Council) standards for timely processing and disposition of civil and criminal actions² serve as guidelines for measuring the effectiveness of case management in the trial courts.³ The law recognizes that circumstances may necessitate a delay and allow both prosecution and defense to move for a continuance upon a showing of good cause.

Penal Code section 1050 includes legislative findings that criminal courts are becoming increasingly congested, increasing costs and adversely affecting the public, as well as defendants. Section 1050 requires that continuances be granted in strict compliance with the law, which is intended to prevent unnecessary and excessive continuances.⁴ The judge has discretion to grant or deny a continuance request,⁵ subject to statutory restrictions that include a finding of good cause. Motions to continue the trial of a criminal case are disfavored and are to be denied unless the moving party presents affirmative proof in open court that the ends of justice require a continuance.⁶ Several factors are considered by the judge in determining if good cause has been shown.⁷

As an exception to the written motion, the law disfavors, but allows, parties to orally request continuances. The moving party must also show good cause for failing to give written notice of the request. If good cause is not shown for the lack of written notice, the court may sanction the moving attorney with a fine not exceeding \$1,000, report the attorney to the appropriate disciplinary committee, or both.⁸

Continuances have a ripple effect on other criminal cases by taking up additional court calendar time and delaying the setting of other cases. Criminal continuances also impact civil cases by consuming the resources of courts and justice system partners.

*[F]or fiscal year 2008–2009 ...
by reducing the number
of continuances by one in
each felony case, the courts
would realize savings of
approximately \$60 million.*

Continuance hearings involve costs for providing courtroom security, attorneys, operational costs, and the transportation of in-custody defendants, none of which move the case toward trial. Court cost data related to continuances are not tracked by the individual courts, which masks the extent of the impact. A 2011 California study estimated that the court operational cost of each continuance is over \$230.⁹

This cost has likely increased, but for purposes of this report, this amount will be used as the

*Footnotes and citations can be found at the end of this chapter on page 99.

conservative court administrative cost estimate. As discussed in greater detail below, unwarranted continuances cost courts millions of dollars annually. Operational costs include, but are not limited to, staff time and court resources to re-file, then re-pull the case file on the new calendar date, along with new data entry, and preparation of new minute orders, reminder slips, and subpoenas for the calendar date. In addition to the court's operational costs, additional expenses must be absorbed by justice partners such as the sheriff, prosecution, and defense counsel.

If a typical case is continued 10 times, the continuances alone can cost the taxpayers \$2,300 for a single case. A report titled *Felony Hearing and Trial Date Certainty Study* (October 6, 2011), for fiscal year 2008–2009, indicated that by reducing the number of continuances by one in each felony case, the courts would realize savings of approximately \$60 million.¹⁰ Using misdemeanor filings for that same year, it is estimated that courts would see a saving of approximately \$324 million by reducing the number of continuances by one in each misdemeanor case.¹¹ Related costs include loss of productivity and costs to victims, witnesses, and defendants who must repeatedly change their schedules when a continuance is granted. Granting these continuances frustrates the public's reasonable expectation of prompt and fair resolution of criminal cases as required by law.

Judges often encounter resistance when denying requests for continuances due to the local legal culture. Some attorneys may file peremptory challenges¹² against judges who strictly enforce the law's notice, writing, and good cause requirements.

Not all courts collect specific data on the number of continuances requested or granted. The Futures Commission recently asked various counties to provide continuance data and received information

from select courts. (See *Appendix 2.1A: Summary of Informal Continuance Information Request Results*.) Due to the differing case management systems and varying case data priorities, not all of the information provided by the courts contains the same data elements. However, the information does indicate that oral continuance motions are heard and/or granted with great frequency and without good cause. In one example, for approximately every 36 continuance hearings, only 10 written motions were filed. In another court, for every 100 continuances granted, only one written motion was filed.

The continuance data, combined with anecdotal information from various judicial officers throughout the state and Futures Commission members' own experiences, reveal that oral motions are too often granted. The cultural norm in the courts permits requests for continuances without meeting the statutory requirements. This practice has become the rule more than the exception, counter to the intent of the statutory requirements. Following the statutory requirements will provide immediate and concrete relief to budget-strapped courts. Achieving these efficiencies is part of the judicial branch's obligation to provide justice, follow statutory imperatives, and use its budgeted resources prudently.

Despite the law, oral continuances without notice and a showing of good cause are routinely granted.

RECOMMENDATIONS

This recommendation does not propose legislation, but only asks that the courts comply with existing mandates and be mindful of the burdens unwarranted continuances impose. The Futures Commission recommends reducing the frequency of continuances in criminal matters through the enhanced use of existing procedures and the following mechanisms:

1. Creating and implementing training for presiding judges and new judges on the statutory requirements for granting continuances.
2. Requiring presiding judges to adopt policies to conform court practices to existing law.
3. Encouraging courts to track the data on continuances.
4. Encouraging presiding judges to create a local court working group to monitor continuance data and recommend corrective measures when needed.
5. Expanding meetings between local judges and justice partners to include the discussion of limiting continuances.

RATIONALE FOR THE RECOMMENDATIONS

Expedient enforcement of laws and timely resolution of criminal cases, while maintaining defendants' due process rights, are necessary to maintain public confidence in the judicial branch. Data reviewed by the Futures Commission and anecdotal discussions with bench officers indicate a great majority of continuances are granted in violation of statutory requirements. It is incumbent on the courts to uniformly follow the law. Unjustified continuances undermine the timely resolution of criminal cases, burden witnesses and litigants, and squander millions of dollars annually.

TRAINING PRESIDING JUDGES AND NEW JUDGES WILL CREATE A NEW COURT CULTURE

The Council's Center for Judicial Education and Research (CJER) provides a comprehensive program of education for judges and other bench officers. CJER provides specific training for presiding judges in the Presiding Judges

Orientation and Court Management Program.¹⁵ The Futures Commission recommends that this training include the importance of fostering a court culture where continuances are limited, and the law followed.

Expedient enforcement of laws and timely resolution of criminal cases, while maintaining defendants' due process rights, are necessary to maintain public confidence in the judicial branch.

Programs such as New Judge Orientation and primary assignment education can increase awareness of the need, and provide techniques to manage continuances, by complying with the statute and responsibly using court funds.

COURT POLICIES AND PROCEDURES PROVIDE ADDITIONAL TOOLS TO JUDGES

Local court culture can undermine proper procedure. The presiding judge's review of current continuance processing and rulings, and adoption of policies and procedures that promote adherence to Penal Code section 1050, can limit excessive continuances.

In considering materials and tools for presiding judges to monitor continuances, the Futures Commission reviewed the Model Continuance Policy of the National Center for State Courts (NCSC).¹⁴ The intent behind the NCSC policy¹⁵ is similar to that of Penal Code section 1050. Like

section 1050, the NCSC model requires that continuance requests be in writing and filed at least 48 hours before the court event, except in unusual circumstances. Each continuance motion must state the reasons for the request and be signed by both the attorney and the requesting party.

Also like section 1050, the NCSC model requires case-by-case evaluation with continuances granted only upon a showing of good cause. The NCSC model, however, sets out specific circumstances that would or would not qualify under the good cause standard. These circumstances include examples that are stricter than California law.

For example, under the NCSC model, the following are generally considered insufficient: counsel or the parties agree to a continuance, or the case has not previously been continued. Sufficient reasons include: sudden medical emergency or death of a party, counsel, or subpoenaed material witness, or illness or family emergency of counsel.

In contrast, section 1050 provides that in making the good cause determination “the court shall consider the general convenience and prior commitments of all witnesses, including peace officers,” but party convenience is not alone sufficient. As noted, the Futures Commission is not recommending any changes to section 1050.

The NCSC model also requires the “chief judge” to review and discuss the collected continuance data by major case type with the other judges to promote consistent application of the continuance policy, with an emphasis on the incidence and duration of trial-date continuances. When necessary, the NCSC model requires the court

to work with bar representatives and justice partners on systemic problems causing court continuances.

The Futures Commission noted that portions of this policy are appropriate and may serve as a basis for the local approaches. The Futures Commission recommends requiring a presiding judge to adopt policies and procedures and the court to adopt local rules, as appropriate, to limit the granting of continuances. The presiding judge should also be actively involved in discussions with all judges regarding their practices and the appropriateness of their granting of continuances.

COURT CONTINUANCE DATA-SHARING AND WORKING GROUP EFFORTS WILL MITIGATE AN EXCESSIVE NUMBER OF CONTINUANCES

In order to enhance leadership in the area of continuances, presiding judges need information to share with their colleagues. In particular, judges should be aware of the substantial budget impact unnecessary continuances cause.

Under this recommendation, courts would also track formal and informal requests for continuances, the number of grants and denials, the reasons for each outcome, and any sanctions levied on the requesting attorney.

With this information, leadership can address specific case areas or overburdened calendars. The presiding judge, or his or her designee, would be encouraged to communicate with the criminal court judges to responsibly manage continuances.

Additionally, the data collected may identify trends and opportunities for enhancing court efficiencies. Presiding judges, with the assistance and input of a working group, should analyze the local court’s continuance data to determine why

cases are being continued and take corrective action. For example, if continuance requests are frequently made based on discovery issues, the working group should recommend developing new protocols to reduce discovery problems.

EXPANDED JUSTICE PARTNERS DISCUSSIONS WILL AID COOPERATION AND ADHERENCE

Continuance requests are driven by prosecutors and defense attorneys and are overseen by the sitting judge. Efforts by all involved are vital to successfully change a court's current continuance practices. Meetings between local judges and justice partners pursuant to California Rules of Court, rule 10.952¹⁶ should be expanded to include discussion of the frequency of continuances and the cooperative development of practices to reduce them. The "buy-in" of all stakeholders is essential.

COST AND IMPACT OF IMPLEMENTATION

Effective management of continuances is part of the court's responsibility to use its budgeted resources wisely. Anticipated savings to the judicial branch, resulting from the reduction in the number of appearances per case, would include time spent by judges and court personnel. Similarly, the reduction in the number of appearances required by the prosecution and defense bar, and the resources of sheriffs' offices used to transport in-custody defendants to and from jails would reduce costs for the court's justice partners and the counties.

Efficiencies linked to shorter time spent from complaint to resolution include more cases processed in a timely manner and less court congestion. Defendants detained pretrial would spend less time in custody, lessening impact of pretrial detention.

Between July 1, 2014, and June 30, 2015, there were 214,088 felonies and 922,730 misdemeanor filings. If one continuance was granted for each filing during this time period, rescheduling would cost the state \$49 million for felonies and \$212 million for misdemeanors in court operational costs. These costs include but are not limited to staff time and court resources to re-file and re-pull the case file on the new calendar date, re-calendar the matter, preparing minute orders, and reissuing subpoenas for the new calendar date.

By reducing the number of continuances granted in each filing by one, the total statewide savings would be \$261,468,140. A reduction by four continuances results in a statewide savings of \$6,275,235,360. (See *Appendix 2.1B: Court Operational Costs Resulting from Granting Continuances*.) The availability of significant savings is impossible to ignore.

PUBLIC COMMENT

The Futures Commission sought public comment on the proposals during multiple public comment sessions on February 8, 2016, and August 29, 2016. Written and in-person comments were provided for both sessions. In September 2016, the Futures Commission also reached out to various stakeholders to acquire additional comments.

The comments reflected a high level of public engagement based on the number of detailed suggestions. In support of the recommendations, commenters noted that continuances cost taxpayers money and impact law enforcement's ability to provide public safety services when they are required to make multiple court appearances on a single case.

Judicial officers noted that local culture contributes to backlog and delays and agreed with the elements of the recommendation. Judicial officers also expressed support for systemic reforms by

following section 1050, and gathering information to address the burden continuances impose. One judicial officer suggested the use of the California Standards of Judicial Administration time frames for holding counsel on both sides accountable for unnecessary delays.

RECENT DEVELOPMENTS REGARDING CONTINUANCES

The Futures Commission reviewed information from the Superior Court of Sonoma County (Sonoma Court) regarding their recent efforts to reduce continuances. Approximately three years ago, the court made efforts to reform its approach to this aspect of operations.

It employed both available and new tools, including enforcing monetary sanctions. The court began tracking key elements of continuance requests, including case type, written or oral request, and number of continuances granted.

The court distributes these reports to all sitting judges, which provides the opportunity for collegial discussion. The presiding judge meets with sitting judges to discuss this issue, review quarterly reports, and identify methods for improvement.

Although this effort met with some resistance from attorneys, it is generally agreed that they have become accustomed to the process. The judges began to notice their own trends and adjust their practices, granting continuances only for good cause. Some judges increased prosecutor and defense attorney input on trial settings, holding parties to an agreed trial date.

The number of continuances for felony and misdemeanors in Sonoma Court decreased by approximately 8 percent in 2014 and 11 percent

in 2015. Based on this experience, the Futures Commission notes an 11 percent reduction state-wide would result in significant savings.

FEASIBILITY OF BRANCHWIDE IMPLEMENTATION

Implementing these recommendations requires effort on the part of presiding judges and all bench officers. There is likely to be some resistance from a number of judges hearing criminal matters. Various prosecutors and defense attorneys may also oppose the enforcement of existing requirements, as it requires a shift in the local culture and accepted practices.

The development of forms by the Council, rather than legislative action, is appropriate to facilitate implementation of this recommendation. Local policies can clarify Penal Code section 1050 and support its requirements for written motions and showings of good cause. Such policies can also provide guidelines for considering such a motion.

CONCLUSION

Excessive criminal continuances adversely impact the court system and the public and squander millions of dollars annually. Of course, continuances granted for good cause are necessary to allow additional investigation, review evidence, interview witnesses, and accommodate certain unavoidable circumstances impacting participants. This recommendation will preserve the use of continuances for good cause while addressing the current systemic failure to apply the law as written.

APPENDICES

RECOMMENDATION 2.1: REDUCE CONTINUANCES IN CRIMINAL CASES

APPENDIX 2.1A: SUMMARY OF INFORMAL CONTINUANCE INFORMATION REQUEST RESULTS

COUNTY A CONTINUANCE INFORMATION

The county has a population between 750,000 and 1 million residents. The court provided continuance information for three randomly selected days from April 14, 2015, to April 12, 2016.

- Approximately 230 misdemeanor and felony cases were calendared for jury trial.
- A total of 2,263 continuances were granted.
- Only 22 formal motions for a continuance were filed.

For every 100 continuances granted, an average of only one motion was filed. An average of 10 continuances were granted in every jury trial. These data do not reflect continuances granted for motions, preliminary hearings, settlement conferences, or other pretrial matters.

COUNTY B CONTINUANCE INFORMATION

The county has a population between 3 million to 3.5 million residents. The court provided continuance information from July 1, 2014, to June 30, 2015.

- Approximately 85,085 misdemeanor and felony cases were filed for jury trial.
- A total of 56,995 continuance hearings were conducted.
- Only 15,733 formal motions for a continuance were filed.

For every 36 continuance hearings, an average of only 10 motions were filed.

APPENDIX 2.1B: COURT OPERATIONAL COSTS RESULTING FROM GRANTING CONTINUANCES

During the 2014–2015 fiscal year, 214,088 felonies and 922,730 misdemeanors were filed statewide. The estimated court operational cost to reschedule the matter upon a granting of continuance is \$230 (as discussed in *Recommendation 2.1*).

The estimated cost of granting one to six continuances is provided in Figure 1 below for felony and misdemeanor filings. For example, if two continuances were granted for every felony and misdemeanor filing, the resulting cost to the state would be nearly \$523 million (\$98 million from felonies and over \$424 million from misdemeanor filings).

Figure 1: Estimated court operational costs resulting from granting continuances

Number of continuances per filing	Cost for felony filing (214,088)	Cost for misdemeanor filing (922,730)	Cost for statewide combined total (1,136,818)
1	\$49,240,240	\$212,227,900	\$261,468,140
2	\$98,480,480	\$424,455,800	\$522,936,280
3	\$295,441,440	\$1,273,367,400	\$1,568,808,840
4	\$1,181,765,760	\$5,093,469,600	\$6,275,235,360
5	\$5,908,828,800	\$25,467,348,000	\$31,376,176,800
6	\$35,452,972,800	\$152,804,088,000	\$188,257,060,800

RECOMMENDATION 2.2:

REDUCE CERTAIN MISDEMEANORS TO INFRACTIONS

INTRODUCTION

Approximately one million misdemeanors are filed in California every year. Many carry a maximum penalty of six months in jail and can currently be charged as either a misdemeanor or infraction. Diverting low-level misdemeanor offenses away from the criminal justice system will avoid significant costs to courts and stakeholders. As discussed in greater detail below, expanding the option to treat offenses as either misdemeanors or infractions could save millions of dollars in court costs with no impact on public safety.

To reduce the time and costs associated with prosecuting nonserious misdemeanors, the Futures Commission recommends the following legislative changes:

1. Enabling certain misdemeanors currently punishable by a maximum term not exceeding six months in county jail to be charged by the district attorney as either a misdemeanor or an infraction (“wobblettes”).
2. Allowing plea negotiations to designate the offense as an infraction.

BACKGROUND

The classification of state crimes and public offenses is determined by the Legislature and often is determined by the seriousness of the crime. Existing law defines and classifies crimes as felonies, misdemeanors, or infractions.¹⁷ A felony carries the most severe punishment: more than a year in state prison, fines, and probation.¹⁸ A defendant charged with a felony is guaranteed the right to an attorney and a jury trial.

A misdemeanor generally carries a maximum jail term of six months or one year in jail, a fine not exceeding \$1,000, probation, or a combination of all three.¹⁹ As with felonies, defendants charged with a misdemeanor are guaranteed an attorney and a jury trial.

Infractions, the least serious of crimes, are not punishable by imprisonment or probation. Every offense declared to be an infraction, unless otherwise prescribed by law, is punishable by a base fine not exceeding \$250.²⁰

Except as otherwise provided by law, all provisions of law relating to misdemeanors apply to infractions including, but not limited to, powers of peace officers, jurisdiction of courts, periods

Although the incarceration time for a misdemeanor may be less than that for a felony, the collateral consequences a defendant may suffer are significant. They can affect an individual's employment or employment opportunities, access to government benefits and programs, housing, and other rights.

for commencing action and for bringing a case to trial, and burden of proof.²¹ Because infractions do not result in imprisonment or probation, a person charged with an infraction is not entitled to a trial by jury, nor, with some exceptions, entitled to have the public defender or other counsel appointed at public expense.²² As a result, the average court cost to adjudicate a misdemeanor is \$380, compared with \$35 for an infraction.²³

Statutes are sometimes written to include sentencing options that classify the crime as either a felony or a misdemeanor. These offenses are called “wobblers.” Considering the particular circumstances of each offender and case, prosecutors may elect to charge the crime under either classification.²⁴ Judicial officers may also use their discretion to order sentencing under one of the two classifications.²⁵ Assault with a deadly weapon²⁶ and criminal threats²⁷ are examples of crimes that may be charged and sentenced as either a felony or misdemeanor.

Statutes can also be written to classify the offense as either a misdemeanor or an infraction—a “wobblette.”²⁸ The Penal Code currently includes a list of specific offenses that may be charged as infractions or misdemeanors.²⁹ Similar to wobblers, existing law allows the charge to be reduced to the lesser offense and may be done by either the prosecuting attorney or by the court.

The prosecuting attorney may charge the offense as a misdemeanor or an infraction. If the prosecutor elects to amend the complaint, reducing the offense to an infraction, after the defendant has entered a plea to the misdemeanor, the defendant may elect to have the case proceed as a misdemeanor after being advised that he or she will be giving up the right to a jury trial and an attorney because no custody time is involved. If the decision is made by the court, with the defendant's consent to lower the charge, the case proceeds as if the defendant had been arraigned on an infraction complaint.³⁰

Misdemeanors make up a large percentage of criminal filings. Between July 1, 2014, and June 30, 2015, a total of 1,136,818 felonies and misdemeanors were filed. Eighty-one percent were misdemeanors. In the last five years, there has been an annual average of 1,022,775 misdemeanor

filings in California.³¹ These misdemeanors command considerable resources from the court and criminal justice system partners, including pretrial services, prosecutors, the defense bar, law enforcement agencies, and correctional facilities. Courts spend approximately \$500 million per year on processing misdemeanors.³²

Although the incarceration time for a misdemeanor may be less than that for a felony, the collateral consequences a defendant may suffer are significant. They can affect an individual's employment or employment opportunities, access to government benefits and programs, housing, and other rights.³³ These sanctions and restrictions are often complex and although some may be discretionary, others are mandatory.³⁴

Technology has made access to these records easier. Criminal records can be taken from government records then published or sold online. With online access, it is no longer necessary to go to the local courthouse. A quick search of an individual's name can yield excerpts from the individual's criminal record from other sources, which may be used to determine the "desirability" of the individual applicant.

RECOMMENDATIONS

Due to the impact of misdemeanor convictions on the court, justice system partners, and defendants, the Futures Commission recommends that legislation be sought and procedural changes be made to allow certain nonserious misdemeanors to also be charged as infractions under the current wobblette procedures using the following mechanisms:

1. Enabling certain misdemeanors currently punishable by a maximum term not exceeding six months in county jail to

be charged by the district attorney as either a misdemeanor or an infraction ("wobblettes").

2. Allowing plea negotiations to designate the offense as an infraction.

This recommendation recognizes that misdemeanor offenses and defendants present varying degrees of risk to public safety. It allows individual circumstances to be considered by the prosecutor and court, with an option to charge certain misdemeanors as infractions under wobblette laws and procedures.

RATIONALE FOR THE RECOMMENDATIONS

California law currently recognizes that there are varying degrees of severity of an offense within each crime classification. Not all crimes within the same classification include the same severity of punishment. For example, a defendant convicted of petty theft³⁵ can be sentenced up to six months in county jail, a fine of up to \$1,000, or both. The sentence for mail theft³⁶ can be misdemeanor probation, up to one year in county jail, a fine of up to \$1,000, or all three.

Defendants may have differing conviction histories, which allow the classification of the crime, and the resulting punishment, to be increased. For example, if an individual has serious prior convictions and is charged and convicted of petty theft (the misdemeanor described above), the crime may be punishable as a felony.³⁷ Repeated instances of petty theft may result in felony charging.³⁸

A defendant's individual circumstances, in combination with the offense, should be considered in determining the appropriate punishment. Some misdemeanors, currently punishable by

In fiscal year 2014–2015, a total of 922,730 misdemeanors were filed.

If 5 percent of these misdemeanors were filed and adjudicated as

infractions, the state would save

\$17 million annually.

a maximum term not exceeding six months in county jail, should carry the option to be charged or disposed of as either a misdemeanor or an infraction.

The Futures Commission also notes some misdemeanors with a maximum term of six months or less should not be eligible for treatment as infractions. The final determination on which misdemeanors should qualify is within the Legislature's authority.

COST AND IMPACT OF IMPLEMENTATION

Diverting low-level misdemeanor offenders away from the criminal justice system will avoid costs to the courts and stakeholders. It will also reduce or eliminate the stigma of conviction to the offenders. The potential benefits of reducing nonserious misdemeanors to infractions include court savings in judicial and staff resources, costs of jury trials, juror time, reduced prosecution and defense resources, reduced jail resources, and reduced probation costs.³⁹

Statewide data on the number of misdemeanor cases potentially impacted under this measure were not available at the time of this analysis. However, after accounting for only those

misdemeanor offenses with maximum terms of six months and the offenses already chargeable as infractions under Penal Code section 19.8, available data indicate slightly more than 25 percent of annual misdemeanor filings could be impacted by this recommendation.⁴⁰

In fiscal year 2014–2015, a total of 922,730 misdemeanors were filed. If 5 percent of these misdemeanors were filed and adjudicated as infractions, the state would save approximately \$17 million annually. Savings could exceed \$48 million annually if 15 percent of the misdemeanors were filed and adjudicated as infractions. (See *Appendix 2.2A: Court Administration Costs for Misdemeanors versus Infractions*.) The potential cost savings to the courts is based on the difference between the \$380 average court cost to administer a misdemeanor compared to \$35 for an infraction.⁴¹

Cost savings in prosecution and defense resources could run in the millions of dollars annually due to fewer misdemeanor filings and trials. Substantial savings in county jail and probation costs could also result.

To the extent this recommendation results in a reduction in misdemeanor convictions, the number of cases in which victim restitution fines are imposed will likewise decrease.⁴² The number of cases potentially impacted statewide is unknown. However, for every 50,000 cases affected, assuming the minimum fine amount of \$150 per misdemeanor conviction, \$7.5 million would no longer be imposed. The revenue impact in any one year would be dependent on numerous factors, including the rate of collection.

With regard to court debt, such as base fines, fees, and penalty assessments, this recommendation could result in a reduction to the General Fund and, to various special funds, in the tens of millions of

dollars to the extent that reducing the maximum fine from \$1,000 to \$250 results in lower restitution fine amounts. Revenue impact would be dependent on the number of cases involved, the actual fines imposed, and rates of collection. (See *Recommendation 2.3: Refine the Adjudication and Settlement of Fines, Fees and Assessments* and *Recommendation 4.2: Restructure Fines and Fees for Infractions and Unify Collections and Distribution of Revenue*.)

The proposed recommendation should not compromise public safety. Rather it gives prosecutors, defense counsel, and judges enhanced options to hold minor offenders appropriately accountable while wisely using the resources of all three entities.

PUBLIC COMMENT

The Futures Commission sought public comment on the proposals on February 8 and 9, 2016, and August 29, 2016, and written and in-person comments were provided for both sessions. In September 2016, the Futures Commission also reached out to various stakeholders to acquire additional comments.

Commenters generally agreed with the recommendation. Written comments reflect a high level of public engagement based on the number of detailed suggestions.

Some commenters expressed concern regarding the potential for uneven application among jurisdictions, an increase in the overall number of court cases caused by an increase in the number of infractions, and an increase in the resources used by self-represented litigants.

RECENT DEVELOPMENTS REGARDING MISDEMEANOR RECLASSIFICATION AND OTHER ALTERNATIVES

The issues surrounding the classification of crimes and the resulting collateral consequences have been of concern to other branches of government and in other states. In exploring the reduction of less serious misdemeanors to infractions, the Futures Commission considered various models to promote efficiency while maintaining public safety and due process guarantees.

The proposed recommendation should not compromise public safety.

Rather it gives prosecutors, defense counsel, and judges enhanced options to hold minor offenders appropriately accountable while wisely using the resources of all three entities.

Specifically, the Futures Commission examined certain less serious misdemeanors, practices in other jurisdictions, and the potential impact on the courts, criminal justice partners, and the convicted individuals. Several offenses classified as misdemeanors in California are treated as infractions, or their equivalent, in other states.⁴³

AUTHORIZATION NEEDED TO IMPLEMENT

Implementing this recommendation would require amendments to the Penal Code. For example:

- Section 17, which currently defines felonies, misdemeanors, and infractions, will require amendment to incorporate wobblettes;
- Section 19, which currently sets forth the punishment for misdemeanors, will need to be modified to incorporate alternate punishment for wobblettes;
- Section 19.7, which provides that all provisions of law relating to misdemeanors apply to infractions, may also require modification; and
- Sections will need amendment to specify which misdemeanors do and do not qualify for charging or resolution as wobblettes.

CONCLUSION

Certain misdemeanors may pose varying degrees of risk to public safety. Depending on the conduct and the circumstances of the defendant, misdemeanor treatment may remain appropriate. It should be noted, however, that a misdemeanor conviction can carry serious collateral consequences for a defendant. Misdemeanors also cost substantially more to prosecute, defend, and adjudicate than infractions. Allowing certain identified misdemeanors to be resolved as infractions will streamline case disposal, reduce costs, and allow for more flexible punishment of misconduct.

APPENDIX

RECOMMENDATION 2.2: REDUCE CERTAIN MISDEMEANORS TO INFRACTIONS

APPENDIX 2.2A: COURT ADMINISTRATION COSTS FOR MISDEMEANORS VERSUS INFRACTIONS

The estimated court administration cost to process a misdemeanor is \$380 and an infraction is \$35 (as discussed in *Recommendation 2.2*). In fiscal year 2014–2015, a total of 922,730 misdemeanors were filed. The estimated cost of administering 5 percent, 10 percent, and 15 percent of those misdemeanors as infractions is provided in Figure 1 below, reflecting the savings if the number of cases administered were filed and adjudicated as infractions rather than misdemeanors. For example, if the number of misdemeanors were reduced by 5 percent by administering those cases as infractions, the savings to the court would be \$16.9 million.

Figure 1: Court administration costs for misdemeanors versus infractions

% of total misdemeanor filings (922,730)	Number of cases administered	Cost of misdemeanor or administration (\$380)	Cost of infraction administration (\$35)	Savings—Infraction instead of misdemeanor
5%	46,137	\$17,532,060	\$1,614,795	\$16,917,265
10%	92,273	\$35,063,740	\$3,229,555	\$31,834,158
15%	138,410	\$52,595,800	\$4,844,350	\$47,751,450

RECOMMENDATION 2.3:
REFINE THE
ADJUDICATION AND
SETTLEMENT OF FINES,
FEES, AND ASSESSMENTS

INTRODUCTION

Criminal fines and fees in California are among the highest in the country. They are burdensome to many defendants both due to the cost and the need to travel to the courthouse to make payments.⁴⁴

A failure to pay fines and fees may lead to added assessments. It may also result in a suspended driver's license, which can impact more than the defendant's ability to drive. A suspended license can restrict access to current or future employment, health care, education, and other essential activities. Such hurdles further decrease a defendant's ability to pay and may extend the time required to satisfy court-ordered debt.

The Futures Commission recommends that legislation be sought to refine the process of adjudication and settlement of fines, fees, and assessments through the following mechanisms:

1. Expanding judicial discretion to strike, modify, or waive fines, fees, penalties, and civil assessments based on a defendant's ability to pay.
2. Limiting the use of civil assessments.
3. Establishing alternative payment methods that are accessible 24 hours a day.
4. Allowing conversion of fines, fees, and assessments to community service or jail if requested by the defendant and agreed to by the court.
5. Creating alternative means to facilitate the conversion of fines, fees, and assessments to jail or community service.

Recommendation 4.2: Restructure Fines and Fees for Infractions and Unify Collections and Distribution of Revenue in *Chapter 4: Fiscal/Court Administration Recommendations* discusses, in part, the restructuring of the funding and finances of the judicial branch by modifying the manner in which base fines are established. This recommendation examines

refining and expanding current systems in place to allow broader judicial discretion and to provide administrative alternatives to traditionally adjudicated requests.

BACKGROUND

Trial courts impose statutory fines and fees on those convicted of criminal offenses for felonies, misdemeanors, and infractions, including traffic violations. The initial step in determining the total amount owed by the defendant is to ascertain the base fine prescribed by law. Base fines can be either mandatory amounts or minimum bail amounts.⁴⁵ The law requires that additional fines and fees be added to the base fine. Several of the penalties are derived from the base fine, while others are set regardless of the base fine amount.

The court also must assess a restitution fine which is payable to the state's Restitution Fund.⁴⁶ There is a minimum restitution fine paid in every felony and misdemeanor case without consideration of the defendant's ability to pay. The total amount assessed against a defendant is referred to as the "court-ordered debt." If a defendant willfully fails to pay the full court-ordered debt by the specified date, or fails to appear in court on the ordered date, the court may impose a civil assessment.

Historically, California statutes did not include penalty amounts as add-ons to the base fine. California enacted the first penalty assessments in 1953 (Stats. 1953, ch. 1877), setting the original penalty assessment rate at \$1 for every \$20 of the base fine or fraction thereof for most violations of the Vehicle Code.⁴⁷ These additional fees and assessments were based on the concept that defendants who commit certain offenses should help fund programs related to those and similar violations and should contribute to costs incurred by the court in adjudicating similar offenses. The

fines, fees, and assessments imposed on violations, including traffic citations, have steadily increased.

For example, the base fine for a red signal violation⁴⁸ is \$100,⁴⁹ but after penalties and assessments have been added, the total court-ordered debt is \$490. If a defendant fails to pay the original amount in a timely manner or fails to appear for the court date, a civil assessment of up to \$300 may be added. In the example of the red signal violation, the total amount owed may quickly grow to \$790 or more. (See *Appendix 2.3A: Fines and Fees Calculations for Red Signal Violation*.) In the case of misdemeanor public intoxication,⁵⁰ the base fine can be up to \$1,000;⁵¹ if a judge orders only a \$500 fine, the total court-ordered debt is still \$2,425. (See *Appendix 2.3B: Fines and Fees Calculations for Public Intoxication*.)

The court may impose an additional amount for failure to appear in court or to pay the debt.⁵² A civil assessment of \$300 may be imposed on a defendant for each failure to appear or pay. For example, if a defendant fails to pay the court-ordered debt by the due date, a civil assessment may be added to the total; if the defendant then arranges a payment plan and fails to pay an installment, an additional civil assessment may be added for this failure to pay.

In addition to fines, fees and assessments, a defendant who fails to pay a court-ordered debt resulting from a traffic violation, suffers a driver's license suspension. This action impacts more than the defendant's ability to drive. It can restrict access to employment, health care, education, and other essential activities. Furthermore, the limited availability of locations to pay, as well as the necessity of an in-person appearance to

convert fines to community service, requires time off work that may result in loss of income and additional transportation issues.

The state occasionally offers amnesty programs of vehicle infractions and provides less burdensome methods to reinstate their driver's licenses and satisfy debt. For example, the most recent Statewide Traffic Tickets/Infraction Amnesty Program,⁵³ signed into law by the Governor in 2015, offers reduction of debt and reinstatement of driver's licenses for defendants who meet the program's requirements.⁵⁴ The program began on October 1, 2015, and runs through March 31, 2017.

Although important, amnesty programs only provide one-time relief limited to a specific time frame. They are limited to defendants meeting specific criteria, apply only to infractions, and does not reach amounts owed on current or future violations. Amnesty programs may also require defendants to appear in court to request amnesty, causing further hindrance for those with transportation issues.

Currently, judicial officers may be able to strike, modify, or waive certain criminal fines that involve set minimum fines, but their discretion to do the same to mandatory fines and certain fees and assessments is limited.⁵⁵

In the red light violation example above, a judicial officer may lower the base fine owed by the defendant, but may not be able to reduce all of the remaining \$390 owed for penalties and fees.⁵⁶ For a defendant earning the minimum wage of \$10 or \$10.50 an hour,⁵⁷ this amount may consume nearly a full week's gross wages. In the example of the misdemeanor of public intoxication, the remaining amount after reduction may take a few weeks' gross wages.

Years of significant budget cuts following the 2008–2009 recession negatively affected the California court system. Over 200 courtrooms have been closed and staff has been reduced. Defendants now encounter fewer open courthouses, limited counter hours, and longer wait times. Defendants may have to go to a courthouse to make payments during traditional working hours, often resulting in loss of income needed to pay the debt.

Some courts offer online payment methods for traffic infractions, but do not always offer the ability to pay all fines and fees online. Of the 55 trial courts that offer the ability to pay online, 54 allow payment for traffic tickets, while 25 allow payment of only select fines and fees. Online payment is generally managed by third party vendors who charge a transaction fee. A survey of court websites indicates that the third party charged either a flat fee or one based on a percentage of the total amount. Flat fees ranged from \$2.25 to \$12.50. Percentages ranged from 1.99 to 3.5 percent. One court charged a flat rate plus a percentage of the amount owed.

Despite their best efforts, some defendants simply do not have the resources to pay the full amount of court-imposed fines. The ability to modify a sentence to community service or jail time offers a more feasible alternative to the defendants and the courts.

Defendants convicted of an infraction may request satisfaction through community service.⁵⁸ But community service may not be used to satisfy the amount of a civil assessment. In addition, some courts do not allow fines to be converted to community service if the defendant elects to attend traffic school or is employed full time.

Additionally, there is no statutorily set rate for converting fines and fees to community service.

Court conversion rates ranged from \$50 for 8 hours performed to \$16 per hour; the most common conversion rate was \$10 per hour. Defendants whose offense carries large fines and fees, and who are allowed to convert into community service, may find that the conversion results in a daunting number of hours required.

Applying the common conversion rate of one hour of community service work for every \$10 of fine imposed to the red light violation example, the defendant would be required to perform 10 hours of community services to satisfy the base fine and, if allowed, 49 hours of community service to satisfy the full amount.

The ability to modify a sentence to community service or jail time offers a more feasible alternative to the defendants and the courts.

Penal Code sections 1205 and 2900.5 were amended effective January 2017 to provide that “[i]f an amount of the base fine is not satisfied by jail credits, *or by community service*, the penalties and assessments imposed on the base fine shall be reduced by the percentage of the base fine that was satisfied.” (Emphasis added.) It is the intent of the Legislature that any credit for community service first be applied to reduce the base fine, thus reducing or eliminating any of the penalty assessments.

In misdemeanor and felony cases, courts may credit excess custody time already served on the offense or a related offense in the conversion of

fines and fees. If the court allows conversion, the defendant receives credit on the base fine at a rate of no less than \$125 a day for each day or portion thereof served in jail.

Defendants who seek conversion of fines and fees to community service or credit for time served, must make this request before a judicial officer in an official courtroom proceeding. This process places additional burdens not only on the defendant but also on judicial officers to make a finding that could appropriately be made by other means. In an atmosphere of reduced hours and courtroom closures, alternatives to both a judicial determination and an in-person request for conversion appear sensible.

RECOMMENDATIONS

The Futures Commission recommends that legislation be sought to achieve the following:

1. Expanding judicial discretion to strike, modify, or waive fines, fees, penalties, and civil assessments based on a defendant’s ability to pay.
2. Limiting the use of civil assessments.
3. Establishing alternative payment methods that are accessible 24 hours a day.
4. Allowing conversion of fines, fees, and assessments to community service or jail if requested by the defendant and agreed to by the court.
5. Creating alternative means to facilitate the conversion of fines, fees, and assessments to jail or community service.

The recommendations are designed to enhance the process of adjudication and settlement of fines, fees, penalties, and assessments.

RATIONALE FOR THE RECOMMENDATIONS

The penalty system should balance the need for appropriate fines and fees with the reality of what a defendant can pay. Defendants' inability to satisfy court-ordered debt is reflected in the large amount of outstanding debt and the courts' inability to collect it. The means by which defendants may satisfy their court-ordered debt can be expanded to avoid multiple civil assessments.

CURRENT JUDICIAL DISCRETION AND CIVIL ASSESSMENTS DO NOT ALLOW FULL CONSIDERATION OF INDIVIDUAL CIRCUMSTANCES

Current law provides that, upon the defendant's request, the court must consider a defendant's ability to pay when determining the fine amount imposed.⁵⁹ Recently, the Judicial Council (Council) adopted rule 4.335 of the California Rules of Court⁶⁰ to standardize the procedures, require notice to the defendant regarding ability-to-pay determinations, and to allow the judge to use discretion in determining if the defendant has the ability to pay.⁶¹

In addition, California Rules of Court, rule 4.106 allows the court to consider the defendant's financial circumstances before imposing civil assessments for failure to appear pursuant to citation or failure to pay a fine.⁶²

Unfortunately, the consideration of ability to pay, with the exception of rule 4.106 regarding civil assessments, only applies to the base fine. As indicated in the red signal violation and the public intoxication examples above, and taking into consideration the amount of fees that are calculated on top of the base fine, the total amount will always be more than twice the base fine.

Modification based on ability to pay should be expanded to include all fines, fees, penalties, and assessments.

Legislation can expand current judicial discretion and notice requirements to encompass all fines (including mandatory or minimum amounts), fees, penalties, and assessments. This expansion should not impact restitution amounts or restitution fines as these amounts are intended to compensate the victims.

In an atmosphere of reduced hours and courtroom closures, alternatives to both a judicial determination and an in-person request for conversion appear sensible.

Civil assessments must be vacated for good cause within specified time periods.⁶³ However, neither Penal Code section 1214.1 nor the new rule prevent the imposition of multiple civil assessments resulting from the same original incident. The imposition of multiple civil assessments exacerbates the cycle of debt and may decrease the defendant's ability to pay the full amount owed. Legislation can limit the imposition of civil assessments to once per incident, unless the court finds that a second failure to pay or appear is willful.

NEW MEANS AND PAYMENT METHODS WILL PROVIDE ALTERNATIVES THAT DO NOT UNDULY BURDEN PAYERS

Today's technologies facilitate many daily transactions. Defendants should be able to pay any court-ordered debt 24 hours a day. This form of continuous access for payment may take many forms.

As many of today's defendants have access to a computer or a smart phone, the primary form of access should be online. Innovative online payment systems can assist defendants in satisfying court-ordered debt. Programs or applications should also be developed to allow payments using mobile phones. If this recommendation is implemented, consideration should be given to payment fees and processing guidelines. Kiosks located at courthouses throughout the jurisdiction can provide another method of online access for those defendants who do not have access to a computer or mobile device.

Courts are increasingly overcoming barriers in sharing information. New and improved case management systems provide opportunities to streamline business transactions. If feasible, courts should allow payments made at one court location to be applied to debt at another court location. At the very least, the court should implement a process by which court-ordered debt may be paid at a central location for any other court location within the jurisdiction.

Courts and defendants would benefit greatly by the establishment of alternate payment methods in all cases. Courts should accept as many forms of payment as practical, including but not limited to check, debit card, credit card, and cash. Courts should continue to take into consideration the fees charged by third party vendors and safeguard against usage fees that unduly inhibit online payment.

EXPANSION AND MODIFICATION OF METHOD TO CONVERT TO COMMUNITY SERVICE AND JAIL TIME WILL ENHANCE SETTLEMENT OF COURT-ORDERED DEBT

The Futures Commission recommends expansion of the types of fines and fees that can be converted to jail time or community service hours to include all fines and fees, except those associated with victim restitution. The Futures Commission also recommends an increase of the community service conversion rate.

The ability to convert fines and fees to community service is not currently available in all jurisdictions. In some, community service options are limited to a few organizations. The courts should endeavor to qualify a reasonable number of organizations by creating an application for qualification to provide community service hours. The court should actively reach out to potential organizations. A list of the qualified organizations should be created for each court and provided to the defendant who may choose an organization that best fits the defendant's travel and timing needs. Courts should be encouraged to use organizations that permit service to be completed on the weekends and evenings. Courts should disfavor using a process or third party vendor that charge defendants a referral fee.

As discussed above, there is no standard conversion rate for community service. The Futures Commission recommends the conversion rate be at least the current minimum wage in place at the time community service is ordered. The Council recently issued Invitation to Comment LEG17-06, which includes the Traffic Advisory Committee's proposal to equate the applicable community service rate to double the lowest schedule for minimum wage.⁶⁴

A defendant sentenced to jail time for a misdemeanor or felony may also face burdensome debt. Those jailed for a misdemeanor or felony have the additional burden of overcoming a criminal record in seeking or maintaining employment. The ability to consider any excess jail time already served for the offense in question as credit toward court-ordered fines and fees should be expanded to include all fines, fees, penalties, and civil assessments except victim restitution and restitution fees.

ALTERNATIVES TO CONVERSION BY A JUDICIAL OFFICER MAY BE APPROPRIATE

Requirements that a defendant appear in person before a judicial officer or transact court business in person is often a barrier to access as discussed above. Therefore, the Futures Commission recommends implementing administrative processes to allow a one-time right to convert fines and fees without having to appear before a judicial officer, with the right to appeal a denial to a judicial officer. Any future requests by the defendant would be heard by a judicial officer.

It is common for the courts to streamline processes, creating an administrative function where appropriate. For example, defendants may submit a request to attend traffic school to the court without a judicial officer's participation. Initial conversion requests may benefit from the same streamlining.

Under such a system, the court would have the discretion to identify qualifying factors to convert fines and fees to community service, allow fines and fees to be converted to jail time or allow already served jail time to be converted to fines and fees. The conversion request would be submitted to the court clerk in-person or online. In determining if the defendant should be granted the conversion,

the clerk would employ the court-created algorithm. If the request to convert fines and fees to community service or jail time is denied, the court would be required to notify the defendant of the right to appeal the denial before a judicial officer. This new process would not modify the court's current requirements regarding proof of community service or other elements under the court's discretion, but instead modifies the manner in which such requests can be made.

Implementing this recommendation, notwithstanding the other recommendations regarding conversion, would not expand the types of fines, fees, penalties, and assessments that may be converted. Instead, this recommendation seeks to remove the initial conversion request from the judicial officer and transfer it to the court clerk.

BENEFITS OR EFFICIENCIES ACHIEVED BY THE COURTS AND THE JUDICIAL BRANCH

Chief Justice Tani G. Cantil-Sakauye's vision for the courts, Access 3D, is to provide full and meaningful access to justice for all Californians.⁶⁵ Implementing these recommendations would enhance these three aspects of access.

COST TO IMPLEMENT

Increasing judicial discretion to assess monetary judgments that are relative to the severity of the violation, permitting consideration of individual circumstances, and expanding conversion will result in a decrease of individual court-ordered debt, which in turn increases the likelihood of debt payment. With more defendants able to pay their court-ordered debt, fewer driver's licenses will be suspended for failure to pay, reducing defendants' requests for reinstatement. Judicial and court resources otherwise spent on these matters may be shifted to other matters. However, to the extent

that any recommendations expand existing rule 4.335, there may be additional judicial and administrative resources involved in ability to pay determinations and verifying ability to pay, including staff resources in processing time.

Establishing alternative means to pay court-ordered debt will result in a decrease in court clerk time expended in handling payments. Savings may be difficult to quantify without monitoring workload by individual task and transaction. The court clerks' time and attention that would otherwise be spent on this task can be shifted to other duties. There will be costs to develop and maintain alternative forms of payment, including developing and implementing online and mobile payment processes.

Court clerk processing of requests for conversion will relieve judicial officers, in-courtroom staff, and other courtroom resources that would have been spent hearing these requests in a formal proceeding. This will remove these matters from the judge's calendar and allow resources to be used in other matters. Although there may be additional one-time resource needs in implementing new proceedings.

The issues surrounding the steady increase of fines and fees, their partial use as a funding tool instead of a punishment, and procedural unfairness have been of concern to the other branches of government and stakeholders. Their efforts indicate that this is a priority in all three branches of state government and highlights the need to bring fines, fees, and penalties and assessments back to their punitive origins and to enhance procedural fairness. (See *Appendix 2.3C: Recent Developments Regarding Fines and Fees.*)

PUBLIC COMMENT

The Futures Commission sought public comment on the proposals in various public comment sessions. Comments were heard on these recommendations on December 8, 2015, and August 29, 2016. Written and in-person comments were provided for both sessions. In September 2016, the Futures Commission also reached out to various stakeholders to acquire additional comments.

Commenters agreed generally with the concept of reforming the system of fines and fees, and voiced concerns about reliance on them for funding. Commenters noted that the courts should be funded from the General Fund and discontinue reliance on fines and fees to avoid the appearance of conflict; the imposition of financial penalties should focus on changing the defendant's behavior, not creating a source of income. Further, excessive fines, fees, and other penalties delegitimize the judicial and law enforcement systems in the eyes of those who believe citations are written to generate revenue.

Commenters also expressed concern regarding the impact of court-ordered debt that acts as a bar to gainful employment and self-sufficiency.

Some commenters had concerns or questions regarding the Futures Commission's approach to the conversion of fines and fees to community service and jail time. Commenters expressed concern that the ability to convert should not replace judicial discretion in considering ability to pay or in reducing or waiving fines and fees. Regarding community service, commenters expressed concern that if a defendant does not have an ability to pay, any civil assessment should be waived. One commenter felt that only a judicial officer should be allowed to approve conversion.

Another commenter urged that defendants have options in choosing the time and location of their community service. The commenter noted that fees associated with community service hours make it difficult for low-income defendants to participate in this alternative.

Some concern was expressed regarding conversion to jail time. Courts should ensure that defendants understand the rights they may be giving up when accepting conversion to jail time.

Commenters generally supported the expansion of judicial discretion to recalculate debt based on ability to pay. One commenter supported the recommendation and asserted there should be specific guidelines to assess income qualifications and the particular challenges experienced by homeless defendants.

Those that commented in support of limiting the imposition of civil assessments stated that all civil assessments for failure to pay penalties should be waived if the court waives the underlying fines and fees. They also noted that the consequences for failure to pay ultimately results in unequal treatment of defendants charged with the same offense.

EFFORTS REQUIRED TO IMPLEMENT

Some defendants value in-person appearances before a judicial officer in order to communicate their circumstances and may be resistant to conversion requests being processed by a court clerk. Information should be provided to explain that the algorithm used by the court clerk is based on the court's priorities and that an appeal is still available if the conversion request is denied.

The online options recommended are not intended to eliminate a defendant's ability to perform the

same transaction in-person. Instead, the recommended online options are intended as available alternatives.

Implementing expanded judicial discretion in this area should be straightforward. This proposal would expand the existing discretion to encompass debt not already included. It would require implementing the new regulations.

Establishing alternative means of payment may require additional effort depending on which means are selected. Each court currently has a website providing general information and other. Courts should include an easy-to-find online payment webpage.

Changing conversion regulations and procedures would require some effort. Courts could create a committee to screen and approve groups providing a community service alternative. The court would also need to create the algorithm by which the court clerk would determine a defendant's eligibility and final conversion. Implementation will require court staff training and outreach to the public.

AUTHORIZATION NEEDED TO IMPLEMENT

To expand judicial discretion as described would require amendments to Vehicle Code and Penal Code, California Rules of Court and Judicial Council forms. Additional forms and rules may be required.

In order to create an alternative method of conversion, specifically utilizing the court clerk to process the request and determination, Penal Code section 1205 may need amendment.

CONCLUSION

California's criminal fines and fees are among the highest in the country and can be disproportionate to the severity of the offense, and burdensome to many defendants. Penalties for nonpayment add an additional hurdle to the ability to pay the court-ordered debt in full. This recommendation is designed to restructure fines and fees that are more commensurate with the underlying conduct, take into account the ability to pay, and offer greater and more convenient payment methods.

APPENDICES

RECOMMENDATION 2.3: REFINE THE ADJUDICATION AND SETTLEMENT OF FINES, FEES, AND ASSESSMENTS

APPENDIX 2.3A: FINES AND FEES CALCULATIONS FOR RED SIGNAL VIOLATION

Red Signal Violation Fines and Fees		
Base Fine		\$100
Penalty Assessment <i>For every \$10 or part of \$10 of Base Fine</i>	State	\$100
	County	\$70
	DNA	\$50
	Court	\$50
	Emergency Medical Services	\$20
	Surcharge	\$20
Penalty Assessment <i>Flat fee amount</i>	Emergency Medical Air Transportation	\$4
	Court Operations Fee	\$40
	Criminal Conviction Fee	\$35
	Night Court Fee	\$1
	Original Total	\$490
Civil Assessment		\$300
	Failure to Pay or Appear Total	\$790

APPENDIX 2.3B: FINES AND FEES CALCULATIONS FOR PUBLIC INTOXICATION

Public Intoxication Fines and Fees		
Base Fine		\$500
Penalty Assessment <i>For every \$10 or part of \$10 of Base Fine</i>	State	\$500
	County	\$350
	DNA	\$250
	Court	\$250
	Emergency Medical Services	\$100
	Surcharge	\$100
Penalty Assessment <i>Flat fee amount</i>	Emergency Medical Air Transportation	\$4
	Court Operations Fee	\$40
	Criminal Conviction Fee	\$30
	Night Court Fee	\$1
	Original Total	\$2,125
Civil Assessment		\$300
	Failure to Pay or Appear Total	\$2,425

APPENDIX 2.3C: RECENT DEVELOPMENTS REGARDING FINES AND FEES

In his veto letter on Assembly Bill 1657 (2011–2012 Reg. Sess.),¹ Governor Brown stated, “Fines should be based on what is reasonable punishment, not on paying for more general fund activities.”

In response to significant concerns about procedural fairness in traffic infraction proceedings, the Chief Justice tasked the Judicial Council’s Rules and Projects Committee with developing a recommendation, on an emergency basis, to establish fair and effective statewide practices related to the deposit of bail in traffic infraction cases.

The Rules and Projects Committee proposed a new rule of court, rule 4.105 (adopted effective June 8, 2015, and amended effective January 1, 2017),² which clarifies that if a defendant who has received a written notice to appear declines to use a statutorily authorized alternative, courts must allow the defendant to appear as promised for arraignment and trial without prior deposit of bail as specified.

The Traffic Advisory Committee³ is pursuing several projects addressed in the committee’s Key Objectives (included in the annual agenda).⁴ Among them are efforts to both promote access in infraction cases and evaluate the ability to pay criminal fines, penalties, and civil assessments. The Criminal Law Advisory Committee is studying these issues as well.⁵

A new grant from the U.S. Department of Justice awarded nearly \$3 million to support justice system reforms directed at fines, fees, and related charges, and the elimination of unnecessary confinement. The Judicial Council (Council), one of the five state-level jurisdictions to receive funds, has been awarded \$488,000 to study and identify issues related to defendants’ inability to pay fines and fees.⁶

¹ Governor Edmund G. Brown, Jr.’s September 17, 2012 veto letter to the Members of the California State Assembly on Assembly Bill 1657. The bill would have required an additional \$1 penalty on all traffic infractions for deposit into a fund for spinal cord injuries.

² California Rules of Court, rule 4.105 (appearance without deposit of bail in traffic infraction cases).

³ California Rules of Court, rule 10.54: The Traffic Advisory Committee makes recommendations to the Judicial Council for improving the administration of justice in the area of traffic procedure, practice, and case management and other areas.

⁴ Judicial Council of California, Traffic Advisory Committee Annual Agenda—2017, www.courts.ca.gov/documents/traffic-annual.pdf (as of Mar. 2017).

⁵ Judicial Council of California, Criminal Law Advisory Committee Annual Agenda—2017, www.courts.ca.gov/documents/clac-annual.pdf (as of Mar. 2017).

⁶ PR Newswire, “Office of Justice Programs Awards Nearly \$3 Million to Reduce Unnecessary Confinement, Save Corrections Costs” (Sept. 14, 2016), www.prnewswire.com/news-releases/office-of-justice-programs-awards-nearly-3-million-to-reduce-unnecessary-confinement-save-corrections-costs-300328290.html (as of Mar. 2017). Assistant Attorney General Karol V. Mason for the Office of Justice Programs stated, “Overreliance on criminal fines and court-related fees harms the poorest members of the community and erodes faith in the justice system Today we are taking another step toward ending unfair and often unconstitutional practices that perpetuate a cycle of poverty and incarceration.” The article detailed that the grants are a critical start to increasing transparency among stakeholders and justice-involved individuals to promote rather than undermine rehabilitation, reintegration, and community trust. The grant program developed from a growing body of research showing people are being incarcerated for failing to pay fines and fees, despite their inability to do so; an inappropriate reliance by justice agencies on revenue generation rather than rehabilitation; and racial and ethnic disparity in the impacts of criminal justice debt.

The Council's Administrative Director was named to the National Task Force on Fines, Fees and Bail Practices (Task Force), which is led by the Conference of Chief Justices and the Conference of State Court Administrators. The Task Force is charged with addressing the ongoing impact that fines, fees, and bail practices have on individuals and communities.⁷

In a report issued in January 2016, the California Legislative Analyst's Office issued recommendations⁸ directed at the existing fine and fee system, stating, "As part of this process, the Legislature will want to determine the specific goals of the system, whether ability to pay should be incorporated into the system, what should be the consequences for failing to pay, and whether fines and fees should be regularly adjusted."

⁷ The National Task Force on Fines, Fees and Bail Practices will (1) draft model statutes, court rules, written policies and procedures for setting, collection, and waiving court-imposed payments; (2) compile and create suggested best practices for setting, processing, and codifying the collection of fines and fees and bail/bonds; and (3) develop an online clearinghouse of information containing resources and best practices. Administrative Director Hoshino will co-chair the Task Force's Transparency, Governance and Structural Reform working group with the Chief Justice of the Texas Supreme Court, Nathan Hecht.

⁸ Legislative Analyst's Office, *Improving California's Criminal Fine and Fee System* (Jan. 2016), 7, www.lao.ca.gov/reports/2016/3322/criminal-fine-and-fee-system-010516.pdf (as of Mar. 2017).

RECOMMENDATION 2.4:**IMPLEMENT A
CIVIL MODEL FOR
ADJUDICATION OF
MINOR TRAFFIC
INFRACTIONS**

INTRODUCTION

Traffic infractions are by far the greatest proportion of California’s criminal filings. In-person trials for traffic infractions use the same evidentiary rules applicable to all criminal trials. Failure to appear or pay the fine imposed may result in an additional infraction or a misdemeanor violation, a civil assessment, or suspension of the defendant’s driver’s license. In certain circumstances, the defendant’s failure to appear causes an arrest warrant to be issued.

The Futures Commission recommends:

1. Implementing a civil model of adjudication for minor vehicle infractions.
2. Providing online processing for all phases of traffic infractions.

BACKGROUND

Classification of offenses is usually determined by the seriousness of the crime. Crimes are classified as infractions, misdemeanors, or felonies.⁶⁶ Infractions are the least serious, punishable only by fine.

Criminal cases, including infractions, are handled in the superior court’s criminal or traffic division. In fiscal year 2014–2015, traffic infractions made up approximately 75 percent of total criminal filings⁶⁷ (see Figure 1 on the following page).

Adjudicating minor traffic cases under formal rules of criminal procedure places a burden on the criminal justice system that could otherwise be directed toward more serious criminal offenses.

Most traffic infraction matters follow a typical procedure. A law enforcement officer witnesses a traffic infraction and issues a citation called a notice to appear,⁶⁸ directing an appearance at or before a particular date. Current law requires that a cited motorist either sign a written promise to appear in court or be taken before a judge.

Currently, the initial step in the criminal traffic court system is the judicial arraignment, where the defendant is advised of the charges, informed of certain procedural rights, and required to enter a plea of guilty or not guilty.

Criminal law procedures and safeguards, developed to apply to more complicated and serious prosecutions, may at times seem needlessly complicated and too formal to an unrepresented traffic defendant.

Traffic infraction trials may be conducted without a prosecuting attorney. The trial judge may call and question witnesses,⁶⁹ and must ensure that the evidence is fully developed.⁷⁰ The citing officer routinely gives a narrative of the events. The defendant may cross examine the officer.⁷¹

Formal procedures, when applied to minor traffic cases, may frustrate access to justice and impair efficient court operations. For many Californians, dealing with a traffic ticket may be their only contact with the courts, and most will resolve their

cases without the assistance of counsel. Criminal law procedures and safeguards, developed to apply to more complicated and serious prosecutions, may at times seem needlessly complicated and too formal to an unrepresented traffic defendant. Unnecessarily complex procedures also take additional time, meaning those who choose to challenge a citation may have to sit through slow-moving court calendars just waiting for their case to be called.

Traffic infractions also raise other access issues, including the financial burden of fines, fees, penalties, and civil assessments (for failure to appear or pay). (For further discussion of these issues, see *Recommendation 2.3: Refine the Adjudication and Settlement of Fines, Fees, and Assessments.*)

As described further in *Chapter 5: Technology Recommendations*, defendants often find it difficult to come to the courtroom. Failures to appear or pay may result in suspension of the defendant's driver's license. The loss of a person's driving privilege can have a cascading series of consequences. Without a license, the person may lose employment, insurance, childcare, and educational opportunities.

RECOMMENDATIONS

The Futures Commission recommends:

1. Implementing a civil model of adjudication for minor vehicle infractions.
2. Providing online processing for all phases of traffic infractions.

This recommendation is designed to enhance access and resolve minor infractions as civil matters, similar to parking tickets. A civil model of traffic infraction adjudication offers greater transparency, flexibility, and simplicity.

Figure 1: Superior court criminal filings

Fiscal Year	Criminal	Traffic Infractions
2014-2015	5,561,688	4,150,989 (75%)
2013-2014	6,097,660	4,622,172 (76%)
2012-2013	6,241,424	4,776,091 (77%)

RATIONALE FOR THE RECOMMENDATIONS

The Futures Commission has analyzed several practical issues that a change to a civil model may present. Specific recommendations for several elements of a civil model are discussed below.

Law enforcement authority to stop a motorist

Current law allows a law enforcement officer to stop and temporarily detain a motorist when the officer has probable cause to believe a violation has occurred or is about to occur. However, an officer may not detain a motorist beyond the time necessary to issue a citation, or search a motorist solely incident to issuing a citation.

Adopting a civil traffic adjudication model should not impact the authority of law enforcement officers to stop, temporarily detain, and cite a motorist suspected of a violation. The law governing traffic stops and detentions for a traffic infraction is well established. These rules should apply in a civil model as well. This recommendation only relates to proposed changes to the process occurring *after* a citation is issued.⁷²

Motorist identification and signature on citation

Current law requires a motorist suspected of a violation to provide satisfactory evidence of identity, generally a driver's license, and allows the officer to obtain a thumbprint when sufficient proof of identification is not produced.⁷³ These provisions of existing law should be retained as part of a civil traffic adjudication system. Under a civil model, as under current law, the state would bear the burden to prove the identity of a violator. Law enforcement should retain the tools necessary to collect evidence of identity.

Currently, the motorist must sign a promise to appear. A motorist who refuses to sign can be taken before a magistrate. This practice is not necessary or appropriate in a civil model. Instead, service of lawful process by the citing officer is sufficient to obtain jurisdiction over the motorist. A civil infraction proceeding would be initiated by the issuance, service, and filing of the notice of civil infraction, which would act as both the summons and the charging document.

Courtesy notice

Although most courts currently send traffic defendants courtesy notices, as of May 1, 2017, courts will be required to send a notice reminding the defendant of the appearance date.⁷⁴ The reminder notice must provide information about the citation, the appearance date and location, whether an appearance is mandatory or optional, the total bail amount and payment options, and the court's contact information. The notice must also contain warnings about the potential consequences for failure to appear or pay, information about the right to request an ability-to-pay determination, and information about the availability of community service or installment plans.

Adopting a civil traffic adjudication model should not impact the authority of law enforcement officers to stop, temporarily detain, and cite a motorist suspected of a violation.

Reminder notices would also serve a useful purpose in a civil model and should be continued.

Court rules specifying the content of those notices should be updated to reflect the applicable civil laws and procedures.

Initial appearance by the defendant

Currently, a defendant not wishing to contest a citation may deposit and forfeit cash bail or pay bail in installments without making an appearance.⁷⁵ Alternatively, a defendant accused of a criminal traffic infraction may appear at an in-person arraignment to plead and/or have a trial date set.

Under a civil model, a defendant may not need to appear in court. The model offers greater flexibility and simpler procedures. Supporting forms may be developed to allow a defendant to admit or deny an allegation without an in-court appearance and without resorting to concepts of bail or forfeiture. These practices will allow courts to develop online methods to enter a plea, pay fines, and set matters for hearing.

Consequences for failure to appear and failure to pay

Under current law, a defendant who fails to appear may be deemed to have chosen a trial by written declaration. The court may treat the notice to appear as evidence, and the defendant may be convicted in absentia.⁷⁶ Alternatively, in certain circumstances a warrant may be issued for the defendant's arrest. Also under the current criminal model, a defendant who willfully violates a written promise to appear or who fails to pay a fine may be charged with an additional infraction or misdemeanor,⁷⁷ a civil assessment of up to \$300 may be imposed, and the defendant's driver's license may be suspended.

Under a civil model, a defaulting party would be deemed to have submitted the alleged violation to the court for adjudication without opposition.

A failure to appear itself is not treated as a violation or a basis for additional punishment. Instead, a failure to appear results in a default judgment and a determination of the charge in the defendant's absence. Because the failure to appear is not punished, the court will not impose a driver's license suspension, a civil assessment, or any other penalty beyond that associated with the underlying infraction.

Under the general rules of civil procedure, a party who defaults with good cause may seek relief within a specified time. A civil traffic model should provide a similar process, allowing a defendant to move to set aside a default judgment within a reasonable time. This new procedure should be intuitive and simple. A proposed model could be based on small claims procedures that address similar objectives.

Under small claims procedures, moving parties may file a written motion to vacate a judgment entered in their absence within 30 days after the clerk has mailed notice of the entry of judgment. If service of plaintiff's notice of claim was improper, a defendant should be permitted to move to vacate a judgment within 180 days after he or she discovers, or should have discovered, the entry of judgment. Relief should be granted upon a showing of good cause. Standardized forms should be created for this purpose.

Civil violations in criminal cases

Implementation of a civil model for traffic infractions raises questions about how a new civil violation would be handled when joined with non-infraction criminal charges.⁷⁸ These questions could be addressed by the Traffic, Civil and Small Claims, and Criminal Law Advisory Committees of the Judicial Council (Council).

Burden of proof at trial

An important consideration in any adjudication process is the burden of proof. Under the current criminal model, the standard of proof, like in all other criminal trials, is “proof beyond a reasonable doubt.” As used here, “burden of proof” refers to the burden of persuasion: the degree to which the trier of fact must be convinced of the truth of the violator’s guilt. The three most common burdens of proof are preponderance of the evidence, clear and convincing evidence, and proof beyond a reasonable doubt.

The Futures Commission examined each level of burden of proof and concluded that “a preponderance of the evidence” standard—used in most civil cases—is the appropriate standard for adjudicating minor traffic infractions under a civil model.

Evidence at trial

Criminal traffic infraction trials are currently conducted under the same evidentiary rules applicable to all criminal trials, including hearsay.

In considering the changes required to move to a civil model, the Futures Commission discussed what evidentiary rules would be appropriate and examined case types of a similar nature. The Futures Commission considered rules in other jurisdictions that currently have a civil model. The Futures Commission initially considered applying the rules of evidence used in small claims court. Although small claims rules met the objective of being user-friendly, the Futures Commission concluded that a more structured set of rules was required given the nature of the proceedings contemplated.

The Futures Commission considered the language found in Government Code section

11513 concerning evidence and examination of witnesses in administrative hearings⁷⁹ as a basis for the proposed evidentiary rules in a civil model. This code section offers rules of evidence that are more easily understood by non-attorney court users. The Futures Commission, however, is recommending two modifications tailored to the unique nature of a civil traffic court trial.

First, a more flexible and intuitive rule of hearsay evidence is appropriate for in-court infraction trials. Government Code section 11513 puts the burden on the parties to assert objections based on general rules of hearsay evidence.⁸⁰ However, in most traffic trials, there is no prosecuting attorney and law enforcement officers do not have standing to raise evidentiary objections. Moreover, non-attorney court users are likely unfamiliar with the highly technical rules of hearsay evidence. The Futures Commission believes that a hearsay rule, which vests the bench officer with greater discretion to admit or exclude hearsay evidence based on considerations of trustworthiness is appropriate. The rule would not allow a violation to be proved solely by otherwise inadmissible hearsay evidence and, therefore, will not dispense with the need for the in-court testimony of the officer observing the violation.

Second, Government Code section 11513(b) allows a respondent to be called as an adverse witness by the opposing party. The Futures Commission recommends language be adopted that grants a motorist the statutory right to refuse to be compelled to testify.

Role of judge and law enforcement in adjudication

Existing statutory and case law defines the role of both judicial and law enforcement officers in criminal traffic infraction proceedings, including trials.

Adjudication of minor traffic infractions in a civil model should retain the ability of law enforcement officers to determine the charges to be alleged, through the filing of a notice to appear, and to request that charges be dismissed.

For example, law enforcement officers may determine the charges to be alleged through the filing of a notice to appear and to request charges be dismissed.⁸¹ Adjudication of minor traffic infractions in a civil model should retain the ability of law enforcement officers to determine the charges to be alleged, through the filing of a notice to appear, and to request that charges be dismissed.

Trial by written declaration

Under current law, a defendant may request a trial by written declaration in lieu of an in-person court trial.⁸² If the defendant is found guilty, he or she has a right to a trial de novo before a bench officer.

In a civil model, the right to a trial by written declaration should continue as it offers a valuable alternative to physically attending a trial. However, the Futures Commission recommends that the right to a trial de novo not be retained. It is an unnecessary procedural safeguard because trial by declaration is entirely at the defendant's election and not imposed by the court. In other words, in a civil model, the defendant would only be able to

choose an in-person trial or trial by written declaration. A defendant will retain the right to appeal a judgment from either form of trial.

Sentencing

Under existing criminal procedures, limitations exist to prevent multiple punishments for the same criminal conduct. It is recommended that comparable restrictions under a civil traffic adjudication system be retained in order to assure fairness in determining fine amounts where multiple violations are proved based on the same conduct.

Alternative resolution procedures

Once the civil process for resolution of traffic infractions has been established and is operating smoothly, it may be appropriate to explore alternative resolution procedures for early disposition. Many jurisdictions with a civil model have successfully implemented processes to facilitate early resolution. These processes vary.

Examples of alternative resolution procedures used by other states with civil models include:

- Option 1: A defendant can request a “prehearing” program where authorized law enforcement officers (not the citing officer) are authorized to bargain down the violation to a lower offense.
- Option 2: A defendant who admits guilt but would like to present mitigating circumstances can request an “informal hearing” adjudicated by a magistrate. The hearing is not bound by formal procedural and evidentiary rules, but both parties may subpoena witnesses. An appeal from an informal hearing is held at a formal trial de novo.

One alternative resolution procedure historically available in California is the option to attend a traffic school. The Futures Commission recommends that this option be retained in a civil model.

It is expected that alternative resolution practices presently employed in traffic courts could be carried forward into a civil model. Additionally, the greater flexibility of a civil model will help courts develop new early resolution programs tailored to the unique circumstances of that court and community. Statutes and rules adopted to implement a civil model should allow for innovation. The Futures Commission strongly suggests that appropriate alternative dispute resolutions be adopted and implemented after the civil model has been implemented.

ONLINE PROCESSING AND ADJUDICATION ENHANCE ACCESS

Many court user transactions and court processes may be enhanced by providing expanded online access. Technological tools currently available would allow court users online access to view their citation and case information, including the ability to track, manage, and resolve traffic infraction cases via the Internet. (See *Chapter 5: Technology Recommendations* for a more in-depth discussion of the technologies and their benefits.) An ideal court online system for case processing includes the following:

Online self-help services

Online services can provide information about the process of infraction cases and encourage prompt resolution. Information includes: steps in the resolution process; consequences of failing to address the citation, how Department of Motor Vehicle points are assigned to violations, and alternative resolution options. This information should

be accessible in two ways: website postings using links to relevant Judicial Council webpages if needed, and the use of interactive intelligent chat.

Online transactions

The system should allow the ability to perform case-related transactions online, including: electronic submission of filings and evidence, request for trial by written declaration and continuances, receipt of electronic court date and payment notifications, online payment, and online enrollment and tracking of community service. Using form wizards, e-filing, and online payment, a defendant can complete the form, file, and pay for the filing online in the same transaction. Automatic notifications allow the court to inform the defendant of an upcoming court date or payment due date.

Online access to records

There should be online access to case records through the court website. This may be accomplished in two ways: the prompt scanning of hard copy case documents and citations, or the use of digital citations and online documents processing. Although courts can scan hard copy citations and documents, the use of digital citations and electronic document processing does not require this extra step and allows defendants access to the information almost immediately. Current tools allow the citing officer to submit the citation electronically using a handheld device. This tool also allows the citing officer to give the motorist a copy of the citation on scene.

Remote participation in proceedings

The model should permit participation through video conferencing.

IMPACT OF IMPLEMENTATION

Adoption and implementation of civil adjudication of minor traffic violations would represent a significant change in the law. New legislation would be required to revise or replace current traffic procedures. Implementation would require revision of various provisions of the Vehicle and Penal Codes as well as corresponding rules of court and Council-approved forms.

The experience of other states shows the courts, law enforcement, and public benefit from the flexibility and the efficiencies proposed. (See *Appendix 2.4A: Summary of Research and Conference Calls with Civil Traffic Model States*.) Adjudicating minor traffic infractions in a civil model provides the flexibility to create a fair and much more user-friendly process. Fewer law enforcement officers will have to attend traffic proceedings. Adopting and implementing a civil adjudication process for minor traffic violations will reduce the number of court hearings associated with driver's license suspensions and civil assessments arising from failure to appear determinations.

EXAMPLES OF IMPLEMENTATION OF SIMILAR PROPOSALS

The Futures Commission reviewed previous efforts to create a civil model for minor traffic infractions in California and several states. Specifically, Futures Commission members analyzed how the states of Michigan, Minnesota, Rhode Island, and Washington adjudicate traffic infractions. (See *Appendix 2.4A: Summary of Research and Conference Calls with Civil Traffic Model States*.)

The Futures Commission identified the following features of the civil models implemented in these other states: application of the civil model only to infractions or less-serious infractions, use of

technology, development of alternative resolution practices, adoption of civil models which retain some criminal law procedures, and methods to address failures to appear and setting aside judgment after default.

California has considered similar steps before. An experimental program, the Traffic Adjudication Board (TAB), was created as an independent state agency in 1979 to test the feasibility of adjudicating minor traffic offenses in an administrative setting. (See *Appendix 2.4B: Summary of California Traffic Adjudication Board*.) It was modeled after programs in New York, Rhode Island, and Washington. The program was met with approval. Unfortunately, funding was not available to pursue expansion to all courts.

Some of TAB's recommendations for a civil model include:

- Increased use of the "informal trial," allowing motorists one hearing in any given three-year period without the presence of the citing officer;
- Relaxed rules of evidence similar to administrative hearings; and
- Recommendation for simplified appeals procedure.

PUBLIC COMMENT

On December 8, 2015, and August 29, 2016, the Futures Commission solicited input from the public on this concept. In September 2016, the Futures Commission also reached out to various stakeholders to acquire additional comments. The recommendation generally received full support as well as support with some suggested modifications, although some opposition was expressed.

Commenters opposed any requirement that defendant file a written response as a condition of setting trial and expressed concern that the recommended change would:

- Have reduced deterrent effect;
- Limit the ability of peace officers to effectuate a search if no criminal offense has occurred;
- Result in collateral consequences to defendants, such as loss of a commercial driver's license or higher insurance rates;
- Eliminate a defendant's ability to cross examine the charging officer, as there is no requirement for a law enforcement officer to appear at trial;
- Increase default judgments and requests to remove default judgments, resulting in more hearings and paperwork for the clerk's office; and
- Result in more defendants asking for a trial.

Commenters' suggested modifications include that:

- The probable cause standard for a stop should remain;
- Courtesy notices be sent via certified mail, with return receipt requested;
- No civil filing fees or fees for trial by declaration;
- No required exchange of evidence and witness lists before a prehearing, following the California Administrative Procedures Act;
- Hearsay not provided as the sole basis of a finding;
- Maintenance of the reasonable doubt standard;

- Maintaining limitations on multiple punishments for the same conduct;
- Provision for ability-to-pay hearings; and
- Protection of substantive and procedural due process rights.

The final recommendation addresses many of these comments.

FEASIBILITY OF BRANCHWIDE IMPLEMENTATION

The implementation of any legislation resulting from this recommendation would require that all courts adjudicate minor traffic infractions in a civil forum under modified laws and procedures described here. Implementation will also require communications with law enforcement regarding the potential impact on the process of stopping a motorist and citing for an infraction. Outreach efforts may also be needed to educate the public and update traffic infraction information on courts' websites.

CONCLUSION

Traffic infractions make up the majority of California's criminal trials, and use the same evidentiary rules. This results in a large burden on court resources. Modifying the minor traffic infraction system to a civil model would provide enhanced access to justice, while simplifying the process for defendants and make limited resources available for more pressing court obligations.

APPENDICES

RECOMMENDATION 2.4: IMPLEMENT A CIVIL MODEL FOR ADJUDICATION OF MINOR TRAFFIC INFRACTIONS

APPENDIX 2.4A: SUMMARY OF RESEARCH AND CONFERENCE CALLS WITH CIVIL TRAFFIC MODEL STATES

Below is a summary of important information gathered from independent research and contacts with judicial officers in Michigan, Minnesota, Rhode Island, and Washington.

Michigan

In 1979, Michigan implemented a civil model for many previously classified criminal traffic misdemeanors. These offenses became civil infractions with adjudication in civil hearings, following the rules of civil procedure. The defendant can opt for an informal hearing with a magistrate, or a formal hearing with a judge. The defendant may appeal from either hearing. There is no opportunity for a trial by written declaration.

Minnesota

Minnesota has three types of civil traffic violations: (1) payable citations that do not require a court appearance, (2) administrative citations for violation of minor city-imposed infractions, and (3) “court-required citations” that require court involvement and may require an appearance. Hearings for payable citations are heard by a hearing officer, who may be an attorney or a court employee. The hearing officer employs a judicially approved decision tree. If the defendant appeals the hearing officer’s decision, the matter is heard by trial de novo. There is no trial by written declaration.

Rhode Island

Rhode Island’s traffic infractions were once processed through an administrative agency under the state’s Department of Transportation. In 1999, cases moved from the administrative agency to a traffic tribunal

under the judicial branch. The traffic tribunal adjudicates noncriminal traffic violations. In 2007, the judicial branch recognized the tribunal as an independent “traffic court.” The process is technically civil, but is informally described as “civil but quasi-criminal” as the model still maintains some penal aspects.

The citing officer schedules an arraignment date when the citation is issued. A defendant who pleads no contest may pay the fine without appearing in court if the citation is the first or second violation within a 12-month period. Court appearance is mandatory when the violation is the third or more in the 12-month period.

If there is a mandatory court appearance or if the defendant pleads not guilty, the defendant appears at an arraignment where the law enforcement officer serves as a quasi-prosecutor under the court’s supervision.

The defendant has a right not to testify. If the defendant does not appear, the judge will review related documents to ensure the defendant received notice before issuing a default judgment. The failure to appear does not result in monetary sanctions. There is no trial by written declaration.

Washington

In the late 1980s, Washington State implemented a civil model for minor traffic infractions, removing incarceration as a sentencing option. Under this model, cities may form traffic violation bureaus to expedite traffic cases within their jurisdiction.

A defendant who pleads no contest may pay a fine without appearing in court. A finding of guilt is entered in the court’s records and furnished to the agency responsible for the suspension and revocation of driver’s licenses.

A defendant who pleads no contest with mitigating circumstances may appear in court and the court may reduce the total paid. If the defendant pleads not guilty, a hearing is held. The citing officer is not required to attend unless subpoenaed by the defendant. Failure to respond to the court’s notice or failure to appear at the scheduled hearing results in a default judgment and may result in the suspension of the person’s driver’s license if the matter is not resolved.

Washington does allow trial by written declaration but the defendant waives the right to appeal when choosing this option.

The state also provides a process called “deferred finding option under mitigation circumstances” for certain traffic violations. The court may defer a finding of violation for up to one year and impose conditions. If the defendant satisfies the conditions and commits no traffic infractions during the deferral time, the court may dismiss the infraction. The defendant is allowed one deferral in a seven-year period.

APPENDIX 2.4B: SUMMARY OF CALIFORNIA TRAFFIC ADJUDICATION BOARD

The Traffic Adjudication Board (TAB) was created as an independent state agency in California in 1979 to test the feasibility of adjudicating minor traffic offenses in an administrative setting.¹

The TAB's experimental program of administrative adjudication of traffic infractions was found feasible to assimilate into the courts to improve the quality of traffic processing by reducing costs, promoting uniformity and consistency in the adjudication process, increasing motorists' convenience and awareness regarding legal rights and options, and providing for more accurate and up-to-date driver records. There was an underlying assumption that local government should not be required to incur additional costs to implement this recommendation. However, the program did not address or identify fiscal mechanisms by which this goal can be met. The TAB believed it was more properly addressed by the Governor, the Legislature, and appropriate local government representatives.

The TAB pilot program was put in place in the counties of Sacramento and Yolo on October 1, 1980.² During the program's existence, over half a million tickets were processed and almost \$15 million was collected in various fines, penalties, and service fees.

The experimental program's recommendations included the following:

- Require all courts to promptly mail a courtesy notice to the address on the Notice to Appear.
- Allow convenient trial scheduling by mail. In the TAB program, motorists were allowed to request a trial by simply checking a box on their courtesy notice and returning the notice to TAB.
- Increase use of the "informal trial," allowing motorists one hearing in any given three-year period.
- Relax rules of evidence and procedure.
- Eliminate bailiffs in traffic court. The TAB operated without bailiffs and experienced no significant operational or security problems in this regard; however, its main office in Sacramento had on-site state police who were, on occasion, called in to control irate motorists. On the basis of their experience, TAB management personnel concluded that the availability of on-site security personnel would be highly desirable for field offices in major urban areas, but security personnel in individual hearing rooms would not be necessary.

¹ The California Traffic Adjudication Board was modeled after programs operated in New York, Rhode Island, and Washington.

² In January 1984, the TAB program ceased operation after the completion of a comprehensive evaluation of the cost-benefit and traffic safety implications of the program. The TAB pilot sunsetted on July 1, 1985, pursuant to Vehicle Code section 40750.5. This decision was based primarily on the belief that improvements could be made to the courts and that the creation of new bureaucracy was not the best solution to resolve the issues facing the courts at the time.

NOTES

CHAPTER 2: CRIMINAL/TRAFFIC RECOMMENDATIONS

RECOMMENDATION 2.1: REDUCE CONTINUANCES IN CRIMINAL CASES

1. Penal Code section 1048 prescribes the following order:
 1. Prosecutions for a felony, when the defendant is in custody;
 2. Prosecutions for a misdemeanor, when the defendant is in custody;
 3. Prosecutions for a felony, when the defendant is on bail;
 4. Prosecutions for a misdemeanor, when the defendant is on bail; and
 5. Specific instances in which, upon motion, good cause is shown for the case to be given priority.

Exceptions are made for trials that must be scheduled on an expedited timeline. For example, continuances granted in a hate crime, sex crime, or stalking case must be for the shortest time possible and the trial date will receive priority over other offenses.

2. The Judicial Council's standards for timely processing and disposition of civil and criminal actions are required by Government Code section 68603.
3. Standard 2.2 of the California Standards of Judicial Administration sets forth trial court case disposition guidelines. Except for capital cases, all felony cases should have a total processing time of no more than one year from the defendant's first arraignment to disposition. Goals for misdemeanor cases include: (1) 90% of dispositions within 30 days after the defendant's first arraignment on the complaint; (2) 98% of dispositions within 90 days after the defendant's

first arraignment on the complaint; and (3) 100% of dispositions within 120 days after the defendant's first arraignment on the complaint.

4. Penal Code section 1050(a) includes legislative findings that criminal courts are becoming increasingly congested, with adverse consequences to the public and the defendant, and increased court costs. Repeated continuances may contribute to this congestion, causing hardship to victims and other witnesses, and lead to extended confinement for in-custody defendants.
5. Penal Code section 1050.
6. California Rules of Court, rule 4.113.
7. An important consideration in ruling on a request for a continuance is whether prior continuances have been granted and whether the requesting party has been diligent in pursuing the matter. The potential adverse impact on the witnesses and the speedy trial rights of both the prosecution and defense are to be borne in mind. Neither the convenience of the parties nor a stipulation is in and of itself, good cause to continue the matter. In granting a continuance, the judge must state the facts constituting good cause on the record and must also take into account the convenience of the witnesses in setting the new date. Although no one rule can address every situation, some examples of allowable reasons for continuances include:
 - Time for the defense attorney to prepare an adequate defense;
 - A missing witness, if the moving party can show that the witness's testimony is material and noncumulative, the moving party has exercised

due diligence to secure the witness's presence, and that the witness will be available within a reasonable length of time;

- Physical incapacity of the defendant, counsel, or the judge;
 - Defendant's absence;
 - Some instances of the defense counsel and prosecutor's unavailability;
 - Prejudicial publicity; and
 - Codefendant continuances.
8. Penal Code section 1050(c).
 9. John M. Greacen and Frederick G. Miller, *Felony Hearing and Trial Date Certainty Study* (Oct. 6, 2011).
 10. *Ibid.*
 11. This estimate is based on the 1,410,552 misdemeanors filed in fiscal year 2008–2009.
 12. Code of Civil Procedure section 170.6.
 13. California Rules of Court, rule 10.462(c)(3) requires a judge beginning a presiding judge role to complete the Center for Judicial Education and Research of the Judicial Council's Presiding Judges Orientation and Court Management Program within one year of beginning the presiding judge role, preferably before beginning the role unless he or she is returning to a presiding judge role after two years or less in another role or assignment.
 14. David C. Steelman, *Model Continuance Policy* (2009), developed for the National Center for State Courts, <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1484> (as of Mar. 2017).
 15. "It is the policy of this Court to provide justice for citizens without unnecessary delay and without undue waste of the time and other resources of the Court, the litigants, and other case participants. For all of its case types and dockets, and in all of its courtrooms, the Court looks with strong disfavor on motions or requests to continue court events. To protect the credibility of scheduled trial dates, trial-date continuances are especially disfavored." *Ibid.*
 16. "The supervising judge or, if none, the presiding judge must designate judges of the court to attend regular meetings to be held with the district attorney, public defender, representatives of the local bar, probation department, parole office, sheriff department, police departments, and Forensic Conditional Release Program (CONREP), county mental health director or his or her designee, county alcohol and drug programs director or his or her designee, court personnel, and other interested persons to identify and eliminate problems in the criminal court system and to discuss other problems of mutual concern." California Rules of Court, rule 10.952.

RECOMMENDATION 2.2: REDUCE CERTAIN MISDEMEANORS TO INFRACTIONS

17. Penal Code section 16.
18. Penal Code section 17.
19. Penal Code section 19.
20. Penal Code section 19.8(b).
21. Penal Code section 19.7.
22. Under Penal Code section 19.6, a defendant charged with an infraction may be entitled to have the public defender or other counsel appointed at public expense to represent him or her if he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail.
23. Legislative Analyst's Office, *California's Criminal Justice System: A Primer* (2013), 36.
24. Penal Code section 17(b).
25. *Ibid.*
26. Penal Code section 245(a)(1)—punishment is imprisonment in the state prison for two, three, or four years (felony); or in county jail for not exceeding one year (misdemeanor); or by a fine not exceeding \$10,000; or by both the fine and imprisonment.
27. Penal Code section 422—punishment is imprisonment in county jail not exceed one year (misdemeanor); or by imprisonment in state prison (felony).
28. Senate Bill 617 (Block; 2015–2016 Reg. Sess.), had it passed, would have allowed misdemeanors punishable by a maximum term of confinement not exceeding six months in the county jail to be charged as a misdemeanor or an infraction, at the prosecutor's discretion. SB 617 was sponsored by the San Diego County District Attorney.
29. Penal Code section 19.8.
30. Penal Code section 17(d).
31. Judicial Council of California, *2016 Court Statistics Report: Statewide Caseload Trends 2005–2006 Through 2014–2015*, www.courts.ca.gov/documents/2016-Court-Statistics-Report.pdf (as of Mar. 2017).
32. Legislative Analyst's Office, *California's Criminal Justice System: A Primer* (Jan. 2013), 36, www.lao.ca.gov/reports/2013/crim/criminal-justice-primer/criminal-justice-primer-011713.pdf (as of Mar. 2017). Costs include staffing by bench officers, clerks, court reporters, and bailiffs.
33. Some examples of collateral consequences are:
 - Criminal offender record (pursuant to Penal Code sections 13125–13128);
 - Loss of or ineligibility for a driver's license or certain professional licenses;
 - Loss of or ineligibility for certain employment, public housing, and public benefits;

- Loss of or ineligibility for student loans;
 - Loss of or ineligibility for opportunities for sentencing reductions;
 - Loss of or ineligibility for the right to bear arms;
 - Loss of the ability to vacate, set aside, or dismiss an earlier, more serious conviction;
 - Deportation, loss of visa, and other immigration consequences; and
 - Expulsion from school.
34. To access a table of regulatory sanctions triggered by a misdemeanor conviction, see The Council of State Governments Justice Center, *National Inventory of the Collateral Consequences of Conviction*, California table, <https://niccc.csjjusticecenter.org/search/?jurisdiction=10> (as of Mar. 2017).
 35. Penal Code section 459.
 36. Penal Code section 530.5(e).
 37. Penal Code section 484.
 38. Penal Code section 666.
 39. Based on comments in Senate Bill 617 (Block; 2015–2016 Reg. Sess.), Senate Committee on Appropriations January 14, 2016 analysis.
 40. *Ibid.*
 41. Legislative Analyst’s Office, *California’s Criminal Justice System: A Primer* (2013), 36.
 42. Based on comments in Senate Bill 617, Senate Committee on Appropriations January 14, 2016 analysis.
 43. Driving with a suspended or revoked license is a misdemeanor in California punishable by not less than five days or more than six months in jail pursuant to Vehicle Code section 14601. It is not punishable by jail time in other states, including Indiana, Maine, New Hampshire, New Jersey, Ohio, Pennsylvania, Texas, Vermont, and Wisconsin.
- RECOMMENDATION 2.3: REFINE THE ADJUDICATION AND SETTLEMENT OF FINES, FEES, AND ASSESSMENTS**
44. Legislative Analyst’s Office, *Improving California’s Criminal Fine and Fee System* (Jan. 2016), 7, www.lao.ca.gov/reports/2016/3322/criminal-fine-and-fee-system-010516.pdf (as of Mar. 2017).
 45. Most bail for traffic infraction is set by the Uniform Bail and Penalty Schedules pursuant to California Rules of Court, rule 4.102.
 46. Penal Code section 1464(f)(2).
 47. Legislative Analyst’s Office, *Penalty Assessments: A Review of Their Use as a Financing Mechanism* (Jan. 1988), 5, www.lao.ca.gov/reports/1988/391_0188_penalty_assessments_a_review_of_their_use_as_a_financing_mechanism.pdf (as of Mar. 2017).
 48. Vehicle Code section 21453(a).
 49. Vehicle Code section 42001.15.
 50. Penal Code section 647(f).
 51. Penal Code section 19.
 52. Penal Code section 1214.1.
 53. SB 881 (Stats. 2016, ch. 779, section 1) amended Vehicle Code section 42008.8.
 54. With certain exceptions, defendants with unpaid tickets whose fines were originally due to be paid on or before January 1, 2013, and who have not made a payment after September 30, 2015, may be eligible to have both their debts reduced by 50% or 80%, depending on income, and their driver’s licenses reinstated, unless an exclusion applies. With certain exceptions, defendants who made a payment after September 30, 2015, on a ticket are not eligible for a reduction for that ticket, but may be eligible to have their driver’s licenses reinstated if they are in good standing on a payment plan with a comprehensive collection program.
 55. In modifying the fine amount, Vehicle Code section 42003 governs the payment of fines for Vehicle Code violations, and provides that the court must consider a defendant’s ability to pay upon the defendant’s request. In December 2016, the Judicial Council adopted rule 4.335 of the California Rules of Court regarding ability-to-pay determinations as recommended by the Criminal Law Advisory Committee and the Traffic Advisory Committee. Rule 4.335 standardizes the notice required and procedures for ability-to-pay determinations for infractions.
 56. The new fees will be calculated on the new lowered base fine, but the judge may not exercise discretion to lower the fees below this amount.
 57. Labor Code section 1182.12. From January 1, 2017, until January 1, 2018, the minimum wage for employers with 25 employees or fewer is \$10 an hour and the minimum wage for employers with 26 or more employees is \$10.50 an hour.
 58. California Rules of Court, rule 4.106(e)(1), Advisory Committee Comment. Penal Code section 1209.5. A survey of court websites found 7 of 58 courts showing community service as an alternative to the payment of the fine.
 59. Vehicle Code section 42003.
 60. In December 2016, the Judicial Council adopted rule 4.335 of the California Rules of Court regarding ability-to-pay determinations as recommended by the Criminal Law Advisory Committee and the Traffic Advisory Committee.
 61. An advisory committee comment to rule 4.335 of the California Rules of Court states that courts should consider factors such as whether a defendant receives public benefits or has a monthly income of 125% or less of the current poverty guidelines.

62. California Rules of Court, rule 4.106(c), regarding the procedure for consideration of good cause for failure to appear or pay.
63. California Rules of Court, rule 4.106, Advisory Committee Comment to subdivision (a).
64. Judicial Council of California, *Proposed Legislation (Traffic): Uniform Hourly Rate for Community Service in Lieu of Infraction Fine* (Invitation to Comment; deadline: Apr. 28, 2017), www.courts.ca.gov/documents/LEG17-06.pdf (as of Mar. 2017).
65. Access 3D, <http://newsroom.courts.ca.gov/access-3d> (as of Mar. 2017). The vision includes physical access (courts must be safe, secure, accessible, and open during hours that benefit the public); remote access (court users should be able to conduct their business online); and equal access (courts must serve people of all languages, abilities and needs, in keeping with California's diversity).
- RECOMMENDATION 2.4: IMPLEMENT A CIVIL MODEL FOR ADJUDICATION OF MINOR TRAFFIC INFRACTIONS**
66. Penal Code section 16.
67. As reported in *2016 Court Statistics Report*, 73.
68. Judicial Council form TR-130, *Traffic/Nontraffic Notice to Appear*.
69. *People v. Carlucci* (1979) 23 Cal.3d 249, 255.
70. *Ibid.*, 255, 256.
71. *Ibid.*, 258.
72. California case law and case law from jurisdictions that have implemented a civil model suggest that, with appropriate enabling legislation, California law enforcement officers will have comparable authority under a civil model to stop and temporarily detain a motorist for a suspected civil violation. This recommendation is not intended to modify the authority of law enforcement to stop and detain a motorist.
73. Vehicle Code section 40500.
74. The Judicial Council adopted rule 4.107 in December 2016 as recommended by the Traffic Advisory Committee and the Criminal Law Advisory Committee. Rule 4.107 requires that trial courts send reminder notices to traffic defendants before their initial appearance and specifies what information must be provided in those notices. This rule became effective January 1, 2017, with implementation no later than May 1, 2017.
75. This practice is based on the premise that the money deposited with the court is considered bail, although in actuality it is not posted as a means of securing the defendant's appearance in court.
76. Vehicle Code section 40903.
77. Vehicle Code section 40508.
78. In the current system, a traffic infraction may be joined with misdemeanors or felonies in a criminal case. Procedures should be developed to address the various ways that civil infractions may become linked to criminal charges.
79. As relevant here, Government Code section 11513 provides: "(c) ... Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions ... [¶] (e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing. [¶] (f) The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time."
80. With respect to the admission of hearsay evidence, Government Code section 11513(d) provides: "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration."
81. Vehicle Code section 40500.
82. Vehicle Code section 40902.

- **Recommendation 3.1:**
Consolidate Juvenile
Court Jurisdictions
(page 105)
- **Recommendation 3.2:**
Provide Mediation
Without Recommenda-
tions as Initial Step in All
Child Custody Disputes
(page 139)

FAMILY/JUVENILE RECOMMENDATIONS

The Commission on the Future of California’s Court System (Futures Commission) approached family and juvenile issues with the understanding that these matters do not fit the mold of other case types. These cases are not intended to be fundamentally adversarial and are more focused on conflict resolution and serving the best interests of children whether it be in a family law case, a child welfare case, or a juvenile justice case. With this in mind, the Futures Commission focused on best serving the interests of families and children and improving the resources available to assist them.

In a family court setting, most litigants are not represented by counsel. Some of the most important and personal decisions in the lives of California families are made in family law courts. For the parents and children involved, avoiding unnecessary delay and providing safe, responsive, court-connected services is essential. Appropriate court intervention can make the difference between litigants being able to live safely and peacefully or facing more uncertainty and conflict.

Parents and children in juvenile dependency courts are represented by counsel, but the funding for this representation is inadequate, with burdensome caseloads that hinder effective advocacy.

In juvenile justice (juvenile delinquency) courts the child is represented by counsel. Parents are typically left to navigate the process on their own, despite being subject to timelines for reunification in some cases that can ultimately lead to termination of their parental rights.^{1*}

*Footnotes and citations can be found at the end of this chapter on page 155.

A 2004 study conducted by the Judicial Council (Council) found that litigants in both family and juvenile courts had less trust with court experience and were less satisfied with the procedural fairness of the process. Litigating personal and private family issues in open court or before strangers is often difficult.² The high-volume caseloads in these courts left litigants feeling that their cases had been given insufficient time and attention.

With this background in mind, the Futures Commission devised recommendations for reforming the family and juvenile court processes. The aim is to enhance public trust and confidence in the courts, provide more opportunities for parties to craft their own solutions, and increase overall satisfaction with the process. The first recommendation is to restructure the jurisdiction of the juvenile courts, allowing them to address both child welfare and juvenile justice issues in a unified proceeding. The second recommendation addresses family court procedures with an emphasis on effective alternative dispute resolution services.

Both sets of recommendations are intended to enhance efficiency by resolving cases at the earliest appropriate time, thus reducing the need for additional court appearances. They are also intended to ensure that all parties have the opportunity to participate in their cases, develop successful orders and case plans, and protect the best interests of children and families.

RECOMMENDATION 3.1:
CONSOLIDATE JUVENILE
COURT JURISDICTIONS

INTRODUCTION

The California juvenile court is divided into two distinct jurisdictional systems: child welfare (known as dependency) and juvenile justice (known as delinquency). Because those systems are separate, courts sometimes fail to serve families facing issues in both dependency and delinquency, do not fully address the well-being of some individuals, and are limited in the ability to integrate and coordinate available services. This can result in family disruption, unaddressed personal dysfunction, criminal recidivism, and unacceptable human and societal costs.

To address these issues, the Futures Commission recommends a different approach—one that brings child welfare and juvenile justice together to better address individual needs and to better promote family unity with support and services from available providers and disciplines, while protecting due process for the participants. To accomplish this, the Futures Commission recommends:

1. Establishing a single consolidated juvenile court in California.
2. Providing juvenile court jurisdiction over children and parents in all cases, and creating judicial discretion to provide children and parents with appointed counsel when appropriate.
3. Testing these proposals through pilot projects in diverse courts.

BACKGROUND

SIMILARITIES AND DIFFERENCES IN THE TWO SYSTEMS

The Welfare and Institutions Code establishes the juvenile court, sets forth its jurisdiction and procedures, and identifies the court's main purpose: to protect the public and the child and to preserve and strengthen the child's family.³ That unitary purpose, however, is implemented in two separate jurisdictional systems, which we identify as child welfare and juvenile justice because those names are

more descriptive of the work of the court and less imbued with derogatory connotations.

The bulk of child welfare cases are initiated with the filing of a petition alleging that the child is a victim of, or at risk of, abuse or neglect as set forth in Welfare and Institutions Code section 300.⁴ Most juvenile justice cases are initiated based on an allegation that a child committed a crime, thus subjecting the child to jurisdiction pursuant to Welfare and Institutions Code section 602.⁵ Despite these differences, there are some similarities regarding how the cases begin. In each system, the court often determines whether the child should be removed from the home, and then proceeds to determine whether the underlying jurisdictional allegations have been proven such that the court can craft a disposition for the child and family.

But there are also significant differences in how the jurisdictional phase is handled in each system. In a child welfare case, the petitioner is the county child welfare agency, which is typically represented by county counsel.⁶ The jurisdictional allegations focus on the conduct of the parents or guardians of the child, and thus the child and the parents or guardians are entitled to counsel,⁷ with the cost of counsel borne by the state. However, in a juvenile justice case, the petitioner is the county district attorney.⁸ The jurisdictional allegations focus on the criminal behavior of the child, and thus the child is entitled to appointed defense counsel, with the cost borne by the county and typically provided by the county public defender's office.⁹ But the parents of a child in a juvenile justice case are generally not entitled to counsel.¹⁰

Under both systems, if the court finds the jurisdictional allegations have been proven, a case disposition is crafted to address the issues giving rise to jurisdiction. In child welfare cases, that involves

an order for care and custody of the child, services for the parents to address the factors that led to jurisdiction, and needed services for the child.¹¹ The dispositional orders are carried out by the child welfare agency. In juvenile justice cases, a key determination at disposition is whether the child will be placed or will remain placed outside the home, and if so, whether that will involve a commitment to a county or state secure facility or a foster care placement. The court has authority to order the parents to carry out the dispositional plan for the child,¹² but unless the court places the child on probation without probation department supervision, the dispositional orders in a juvenile justice case are carried out by the probation agency.

MANY YOUTH HAVE A HISTORY IN BOTH SYSTEMS, AND A CHILD WELFARE HISTORY INCREASES THE LIKELIHOOD OF FUTURE CRIMINAL CONDUCT

Although California lacks consistent statewide data on the subject, those who work in the juvenile court, including judges, attorneys, probation officers, and service providers, note that many juvenile justice youth have a history of abuse and neglect. In fact, studies in other states as well as in Los Angeles County demonstrate that a child welfare history is a significant risk factor for juvenile justice involvement, and that youth with such a history are more likely to offend at a younger age and commit more serious offenses. Recent studies supporting this overlap are described in *Appendix 3.1A: Mental Health Vision Statement*.

NEVERTHELESS, YOUTH WHO FALL WITHIN THE JURISDICTION OF BOTH SYSTEMS GENERALLY MUST BE ASSIGNED A SINGLE STATUS UNLESS THE COUNTY ADOPTS A DUAL-STATUS PROTOCOL

It is not uncommon for a child to fit within the jurisdiction of both the child welfare and juvenile justice systems. Many youth who have experienced abuse or neglect have also been accused of criminal conduct. Usually a child involved in a child welfare matter is later arrested for a crime, but sometimes a criminal investigation discloses that the subject of the investigation suffered abuse or neglect. Under such circumstances, California law generally requires the court to assign a single status in a process commonly known by its statutory number, 241.1. Welfare and Institutions Code section 241.1 requires each county probation department and child welfare agency to make a joint recommendation to the court regarding the jurisdictional status that will best serve the interests of the child and protect the public. A child may not be simultaneously subject to both types of jurisdiction unless the probation department, the child welfare agency, and the presiding judge of the juvenile court have created and signed a protocol allowing a child to be designated dual status.¹³

The dual-status option was added to Welfare and Institutions Code section 241.1 by Council-sponsored legislation enacted in 2004.¹⁴ Currently 18 courts have implemented a dual-status protocol.¹⁵

THE CALIFORNIA STATE AUDITOR MADE PRELIMINARY OBSERVATIONS INDICATING THAT PLACEMENTS AND SERVICES IN SINGLE- AND DUAL-STATUS COUNTIES ARE SIMILAR, BUT DUAL STATUS APPEARS TO REDUCE RECIDIVISM

In 2016, the California State Auditor (State Auditor) sought to compare outcomes for dually involved youth in single- and dual-status counties. Although the State Auditor was unable to make conclusive determinations because available data was insufficient, the State Auditor made the following preliminary observations based on a sample of cases:

- Dual-status youth appeared to have less juvenile justice involvement and lower recidivism than youth who moved from child welfare jurisdiction to juvenile justice jurisdiction.
- Rates and types of out-of-home placements and additional services were similar in both systems.
- The number of services ordered for the youth increased after 241.1 assessment in both systems.
- Youth in non-dual-status counties receive more reunification services.
- Dual-status youth in lead court/lead agency counties have greater continuity of child welfare staff and attorney involvement.

Because the State Auditor could not make conclusive determinations, the key recommendation of the audit was for the Council to convene a group of stakeholders to develop standard definitions and outcome measures for these youth and ensure that they can be identified and tracked over time.¹⁶ The State Auditor noted, for example, the absence of the defined key term “recidivism” hampered its

ability to assess the success of county efforts for this population of youth and that with divergent county definitions of recidivism the state needs to establish a standard definition. Legislation was enacted in 2016 to require the Council to enact these recommendations and establish such definitions, and the stakeholder group anticipates preparing recommendations later this year.¹⁷

IMPROVEMENT IS NEEDED IN OUR JUVENILE COURT SYSTEMS

Professionals who serve our youth recognize the need for greater collaboration and service integration. They express concern about isolating “silos.” Many counties in California have worked to overcome such barriers and to institutionalize multi-disciplinary practice. Nevertheless, our current jurisdictional framework draws lines that limit collaboration, efficiency, and creativity.

Outcome data (i.e., information about how a child does after a case is concluded) is limited for the juvenile justice systems in California.¹⁸ Child welfare outcome data is more available because all agencies use a single statewide case management system that collects data on some performance measures. But according to available data from both systems, improvement is needed in our juvenile court systems:

- 12.3 percent of children who exited foster care to reunification with their families in 2013–2014 returned to care within 12 months.¹⁹
- Youth housed at the Division of Juvenile Justice have a recidivism rate of over 50 percent after three years,²⁰ and for youth in locally operated programs shown to reduce delinquency, over 20 percent are rearrested and incarcerated.²¹

The Futures Commission recommendations are premised on the benefits that will emerge from formally including parents as parties in juvenile justice matters so that family-centered dispositions can be crafted that will be effective and allow the child to refrain from future delinquent behavior.

- Students in foster care constitute an at-risk subgroup that is distinct from low socioeconomic students (low-SES). Students in every type of foster care placement lagged significantly behind their peers who were not in foster care.²²
- Only 29 percent of foster youth test as proficient or higher in language arts, compared to 53 percent of all California students and 40 percent of low-SES. For students with three or more placements the rate is 24 percent.
- Only 37 percent of foster youth test as proficient or higher in mathematics, compared to 60 percent of all California students and 50 percent of low-SES. For students with three or more placements the rate is 31 percent.
- Only 58 percent of 12th grade foster youth graduate from high school compared to 84 percent of all California students and 79 percent of low-SES. For students with three or more placements the rate is 43 percent.

- In 2004, 25 percent of Los Angeles County youth who exited child welfare supervision between the ages of 16 and 21 were incarcerated in jail and/or supervised on adult probation within four years of the exit.²³
- 19.3 percent of youth in Los Angeles County who aged out of foster care in 2004–2005 experienced homelessness in the 12 months after exiting care, and 20.9 percent reported engaging in criminal activity in that period, including 2 percent who reported engaging in prostitution.²⁴

THE ROLE OF PARENTS IN OUR CURRENT SEPARATED SYSTEMS

Depending on the system or the case, parents are given notice of proceedings, may be represented by counsel, are jointly and severally liable for restitution and court fines, and may be ordered to participate in specific services. But such piecemeal inclusion does not recognize the centrality of parents in these matters. California determined that children must be recognized as parties in dependency matters because of the life-changing decisions being made about their future. The Futures Commission recommendations are premised on the benefits that will emerge from formally including parents as parties in juvenile justice matters so that family-centered dispositions can be crafted that will be effective and allow the child to refrain from future delinquent behavior. California already provides reunification services to parents in many delinquency matters in which the child is being placed in foster care. Yet these parents are not formally before the court as parties, and typically they have no legal representation. Statutes and the rules of court provide that parents are entitled to representation in these proceedings, and the court is authorized to appoint counsel, but in practice the court rarely does so.²⁵

THE JUVENILE COURT IS FUNDED BY THE STATE, BUT SERVICES ARE PROVIDED FROM FEDERAL, STATE, AND COUNTY FUNDS

The juvenile court is funded like other trial court operations from the Trial Court Trust Fund. Counsel for parents and children in child welfare cases are a trial court operations expense. The Council has recognized that the funding allocated for counsel is insufficient for attorneys in these cases to meet the needs of their clients.

Services for children and families in the child welfare and juvenile justice systems are funded by federal, state, and county monies that vary depending on the placement of the child, the agency delivering the service, and the extent to which the family is eligible for federal foster care support from the Title IV-E waiver program. Counties provide services using dedicated sales tax and vehicle license fee revenue that is not considered part of the General Fund. Counties have more flexibility in using the funds within dedicated subaccounts, and no additional obligations can be placed by the state on the counties without also providing the additional funding needed to carry out the higher level of service.

RECOMMENDATIONS

The Futures Commission recommends:

1. Establishing a single consolidated juvenile court in California.
2. Providing juvenile court jurisdiction over children and parents in all cases, and creating judicial discretion to provide children and parents with appointed counsel when appropriate.
3. Testing these proposals through pilot projects in diverse courts.

RATIONALE FOR THE RECOMMENDATIONS

OVER TIME, A CONSOLIDATED JUVENILE COURT WILL IMPROVE OUTCOMES AND REDUCE RECIDIVISM, CASELOADS, AND STATEWIDE COSTS

As the State Auditor observed, our single- and dual-status counties provide similar placements and services, but dual-status youth appear to have less juvenile justice involvement and lower recidivism. If the juvenile court already has an available dual-status process, why do we recommend going further and implementing a consolidated juvenile court? The answer is that our separate jurisdictional systems with single- and dual-status processes are overly expensive, unduly restrictive, and in some ways redundant. A consolidated juvenile court can improve outcomes for all court participants, create efficiencies in case handling, and increase collaboration. We expect the recommended pilot projects will confirm such results. Such improved outcomes will help children, families, communities, and society; provide court participants with greater satisfaction in their court experience; and help the court, reducing caseloads and lowering costs.

The National Council of Juvenile and Family Court Judges (NCJFCJ) summarized the likely long-term benefits of this proposal by noting that although there will be short-term costs to implement a consolidated juvenile court, “significant cost savings can be achieved due to a reduction in recidivism, repeated abuse or neglect, mental health issues, and substance abuse.”²⁶ The NCJFCJ added that in ensuring collaboration between the court, juvenile probation officers, caseworkers, and relevant stakeholders, “the juvenile court system can increase effectiveness, maximize cost efficiencies by reducing duplication of services, promote

interagency relationships, and increase the satisfaction of youths and their families by providing appropriate and necessary resources and services.”²⁷

Because the cost savings from improved outcomes will be realized long term, the savings are difficult to quantify. But the benefits are clear. If fewer youth engage in criminal activity, there will be savings to the state derived from reduced criminal prosecution and punishment. There will be increased tax revenue from youth gainfully employed. And when a child can be safely reunified and not sent into the child welfare system, savings are achieved by avoidance of foster care placement costs. In addition, the reduction in recidivism means fewer cases coming to the courts. The Justice Policy Institute (Institute) recently estimated the costs associated with incarceration of juvenile offenders and the likely accrued savings from a national decline in the number of incarcerated youth. The Institute considered costs of incarceration, recidivism, lower lifetime earnings, reduced tax revenues, increased reliance on public assistance, and increased victimization. The Institute estimated the likely cost nationwide of youth incarceration could be as high as \$21 billion, but recent reductions in incarceration rates have saved billions of dollars.²⁸ Juvenile court consolidation would improve outcomes and reduce costs.

The costs to place child welfare and juvenile justice children in out-of-home placements are a substantial burden on the state budget. For example, for fiscal year 2015–2016, it is estimated that the total annual cost of out-of-home placements for just over 2,700 probation-supervised youth was \$201,098,173.²⁹ The primary driver of that cost was the use of intensive group home placements at an average monthly cost of over \$8,000 per child; over 6 to 12 months, the placements cost between \$48,000 and \$96,000 per child.³⁰

However, there are programs and services a consolidated court could use across the current jurisdictional lines to reduce such costs. Multisystemic therapy, an evidence-based program designed for juvenile justice youth with mental health needs (a population often placed in foster care group homes), is estimated to cost just over \$7,000 for the duration of the program.³¹ A consolidated court could reduce the amount of time youth spend in out-of-home placement and increase the use of cost-effective, evidence-based programs, thereby saving tens of thousands of dollars per child. Such savings would far outweigh the cost of consolidating the juvenile court.

Similar savings can be achieved with more effective front-end interventions for child welfare-involved youth, resulting in reduced services for such youth and fewer youth becoming involved in the juvenile justice system. The annual cost of out-of-home placements for child welfare-supervised youth is estimated at over a billion dollars annually. Although most child welfare-supervised youth are placed in lower-cost settings—the average cost for their care based on the distribution of the caseload is just over \$1,800 per month³²—placements nevertheless range in average monthly cost from just over \$900 for the least expensive placements in county-licensed foster care or with relative caregivers to \$8,100 for group home placements.³³ Thus, reducing the time spent in such placements by providing better front-end services would result in significant savings. In addition, because these child welfare costs are lower than the more intensive placement costs for the typical juvenile offender, preventing child welfare youth from juvenile justice intervention would save thousands of dollars per month per child. Locked placement costs in California vary from county to county but have monthly costs that are far higher than child welfare placement options. For example, even

after careful cost controls were put in place at the Division of Juvenile Justice, the cost per ward was \$179,400 annually in 2012 (a monthly cost of just under \$15,000).³⁴ A Los Angeles County audit found that locked detention costs were running over \$233,600 per year, while similar placements in San Diego had a cost of \$127,750 per year. A reduction in the number of youth who require these locked placements would generate significant cost savings at the county level that could be redirected to cover additional costs such as expanded attorney representation.³⁵

YOUTH IN THE CHILD WELFARE AND JUVENILE JUSTICE SYSTEMS SHARE MANY NEEDS AND BENEFIT FROM THE SAME PROGRAMS

There is convergence in the needs of system-involved children and their families involved in the system, as well as in the best practices for meeting those needs. As discussed above, many children in the juvenile justice system have a documented history of abuse or neglect, while others have experienced such trauma without it coming to the attention of the child welfare agency (for additional research, see *Appendix 3.1B: Research on Dually Involved Youth*). In addition, the child welfare and juvenile justice populations have significantly higher prevalence of mental health diagnoses than other children. A recent study by the Substance Abuse and Mental Health Administration of mental health diagnoses of children in foster care receiving Medicaid-funded services found that children in foster care have much higher rates of mental disorder and substance abuse disorder than non-foster care youth in Medicaid across all ages.³⁶ Similar findings have been made for juvenile justice youth.³⁷ Both groups have rates of disorder that are many times the magnitude of their peers, and there is significant overlap in the

most prevalent diagnoses. These demonstrably high rates require significant improvements be made in the assessment, diagnosis, and treatment of youth with mental health needs. Simply consolidating the juvenile court will not fully address this significant need, but consolidation will lower some of the barriers to providing consistent and continuous quality services.

Children in the child welfare and juvenile justice systems also exhibit similar patterns with regard to their educational needs and challenges. A series of studies has shown that child welfare and juvenile justice youth have higher rates of special education needs than their peers and attain lower rates of academic success, including lower test scores and fewer graduations. Similarly, child welfare and juvenile justice youth have more behavioral sanctions and attendance problems, often beginning early in their school years.³⁸ The California judicial branch has recognized the significance of these needs by adopting rule 5.651 of the California Rules of Court, which requires the court to consider the educational needs of all children subject to juvenile court jurisdiction at each court hearing. Nevertheless, the outcomes for these youth demonstrate that more help is needed.

Because California law generally requires the court to assign a single status to children, juvenile justice youth with child welfare histories and intensive mental health needs may be excluded from the most effective services and interventions due to their jurisdictional label. But our child-serving systems could more effectively assist our children and families if they could focus on the needs of the child and his or her family without jurisdictional limitation, and if staff in these systems could work collaboratively to deliver targeted services.

BECAUSE PARENTS PLAY A CENTRAL ROLE IN REDUCING RECIDIVISM, AND BECAUSE FAMILY-CENTERED DISPOSITIONS ARE MOST EFFECTIVE, A CONSOLIDATED COURT SHOULD HAVE JURISDICTION OVER CHILDREN AND PARENTS IN ALL CASES IN WHICH THERE IS STATE ACTION, AND CONSIDERATION MUST BE GIVEN TO WHEN CHILDREN AND PARENTS SHOULD HAVE A RIGHT TO COUNSEL IN SUCH CASES

The proposed restructuring would bring parents of juvenile justice children formally into the process by making them parties just as parents are parties in dependency, and it would allow the court to craft dispositions in juvenile justice matters that would expressly take into account the family context in which the offending behavior occurred. Similarly, when dependent children engage in unlawful behavior, a consolidated court could provide services and protect community safety without disrupting the path to permanency that is underway via the child welfare system. Services and sanctions for these “crossover” or dually involved youth could be more seamlessly incorporated into their existing case plans for greater effectiveness and efficiency, and the petitions in these cases could be serially amended to reflect the complexity of issues facing individual children and families, issues which may well include abuse and neglect of a child at the time the child is engaging in unlawful behavior.

Because the proposal would result in parents or guardians and children being represented parties regardless of the jurisdictional allegation, it would be an expansion of the court’s existing authority pursuant to Welfare and Institutions Code section 634. Thus, consideration must be given to when children and parents should have a right to counsel, who should provide the representation, and how

conflicts in representation can be avoided. For example, counsel for parents might assist the court by ensuring that parents are informed and engaged from the detention/initial hearing through the termination of jurisdiction, as well as by holding parents accountable for ensuring that the child and family are receiving and completing the interventions needed to protect the community and rehabilitate the child. As another example, to ensure that the due process rights of a child alleged to have committed a crime are not compromised by this reform, attorneys for parents might have a very limited role at the jurisdictional phase of the case when the jurisdictional allegations solely involve the conduct of the child. Trial strategy in these cases might be at the sole discretion of the child and his or her attorney, with parents' counsel providing a conduit of information to counsel for the child. In cases with allegations of abuse and/or neglect of a child and criminal behavior by the child, it might be ideal if one attorney were sufficiently trained to represent all of the child's needs and interests. But given the challenges in achieving such training, two attorneys may be required to provide adequate representation for the child.

MORE CONSISTENT AND HOLISTIC ASSESSMENT OF MENTAL HEALTH NEEDS WILL IMPROVE OUTCOMES AND SAVE MONEY

A key objective of the unified jurisdictional approach is a more holistic and multidisciplinary assessment of the needs of children and families in juvenile court. In particular, a focus on mental health needs and a response to exposure to trauma is warranted by the significant challenges children and families in both systems face. As described above, studies on youth involved in both child welfare and the juvenile justice system show high rates of mental health disorders. Appropriate treatment depends

on timely and accurate screening and assessment,³⁹ but there is no consistent screening and assessment tool in use to identify these individuals.⁴⁰ As a result, a juvenile court may only learn about mental health concerns in the small percentage of cases presenting questions of competency, which dramatically understates the true extent of mental health issues affecting youth in the juvenile justice system. And while focusing on mental health issues, it is equally important to understand the impact of trauma, as children are sometimes misdiagnosed with mental health disorders and inappropriately treated, when in fact the child is displaying behaviors related to past or current trauma episodes.⁴¹ These behaviors are not symptoms of mental illness, but are behavioral adaptations developed to cope with past trauma.⁴²

To respond to the needs of youthful offenders with mental health illnesses or disorders who have experienced traumatic events, the judicial branch needs to ensure timely and adequate mental health screening and assessment as well as treatment where necessary. Program effectiveness should be defined as reducing recidivism. A claim of program effectiveness should be evidence-based, meaning that it should be measured by long-term, randomized, and controlled studies that employ large samples of program participants and yield statistically valid evaluation results that can be replicated. Follow-up monitoring should be undertaken to ensure the permanence of positive treatment results.

Programs meeting these requirements should receive the imprimatur of the court system, while those that are not evidence-based should not. Implementing these recommendations will result in millions of dollars in savings and, more importantly, will yield an informed and effective response to those youthful offenders who have

mental health illnesses and disorders—the goals articulated in two prior Council studies on this topic. More information about how mental health services for children might be improved can be found in *Appendix 3.1A: Mental Health Vision Statement*.

IMPLEMENTATION OF CONSOLIDATED JURISDICTION WILL RESULT IN ADDITIONAL COSTS IN THE SHORT TERM

COSTS TO PROVIDE TRAINING, DATA, AND STAFF FOR A COLLABORATIVE/ MULTIDISCIPLINARY MODEL

A consolidated juvenile court might have jurisdiction over a child or family as a result of allegations of abuse and/or neglect of the child, status offenses by the child, and/or criminal behavior by the child. The Futures Commission's recommendations are premised on the benefits of performing a full assessment of the needs and strengths of each child and family to shape appropriate and effective dispositional orders, which may require the involvement of multiple service agencies from inception to conclusion of a case. The objective is not to deliver more services, but rather to assess and prioritize services early in the case and provide a mechanism for flexible revision of dispositional plans as the case develops. It would also demand shared accountability across child- and family-serving systems and eliminate incentives to shift responsibility for a particular child or family from one agency to another. The resulting system would assess all children and families who come before the juvenile court on a case-by-case basis and generate dispositional orders for the most effective and appropriate services based on need rather than the jurisdictional origin of the case.

A key objective of the unified jurisdictional approach is a more holistic and multidisciplinary assessment of the needs of children and families in juvenile court.

To implement this vision, development of a new data infrastructure would be necessary to ensure that information can be shared as appropriate, and staff would need training to understand the structure and objectives of the consolidated court. Each of these components would impose additional short-term costs. In addition, implementation may result in more stakeholders participating in case planning for each case with the result that additional staff would be needed to meet this demand.

Initial implementation of a pilot program would require an evaluator to collect and analyze the data collected on the pilot. It would also be optimal for each pilot program to have a dedicated staff person at the court assigned to lead the project by convening stakeholders, working with the evaluator to ensure appropriate data collection, and arranging for multidisciplinary training of all of those who are to participate in the pilot. If the lead position were staffed by a Court Services Manager (or similar classification), the cost for the position would likely range from \$105,000 to \$180,000 annually based on the range of salaries for this position across the courts. Initial data collection and training costs would most likely be accommodated within existing resources. Staffing demands for agencies outside the courts would be determined as the pilot was implemented.

COSTS FOR PROVIDING COURT-APPOINTED COUNSEL

To the extent it is determined that children and parents would have a right to counsel, providing such representation may be an added expense. But it is anticipated that the heightened effectiveness of the proposed system overall would produce efficiency gains that would more than offset the costs. Because the extent of such representation would need to be determined, any additional costs are impossible to estimate at this time. We know that the caseload filings in juvenile justice cases are roughly equal to those in child welfare at present. The Council estimates the total funding currently needed to provide representation in child welfare cases is \$203 million, and roughly half of that cost is for representation of parents. (For additional information on court-appointed counsel costs, see *Appendix 3.1C: Court-Appointed Counsel Funding for Child Welfare Cases*.) But the issue of *when* children and parents would have a right to counsel in consolidated proceedings would remain to be determined.

It might also be possible that courts provide some other form of advocacy and representation short of full legal representation. For example, because sanctions for parents' failure to comply with court orders would be rare, one option would be to reserve attorney representation for that eventuality and to use staff or volunteers to support parents in disposition planning. Parent mentors or case managers could be recruited from the community to advise parents and support their efforts to become active participants in case planning and compliance. Because mentors would not be required to be licensed attorneys, the cost to employ them would be substantially lower than a full representation model.

INPUT ON THE RECOMMENDATIONS

MANY JUVENILE COURT LEADERS SUPPORT THE CONCEPT UNDERLYING THE RECOMMENDATIONS

Numerous juvenile court judges and juvenile court reform advocates expressed strong support for creating unified juvenile court jurisdiction in California. Two national entities working to improve outcomes for youth in both systems, the NCJFCJ and the Robert F. Kennedy National Resource Center for Juvenile Justice, provided extensive comments in support of the proposal grounded within their experience working with courts to better meet the needs of dually involved youth. Given that the recommendations call for initial pilot implementation of the proposals, it is expected that these national organizations would be supportive of moving forward and possibly interested in providing support and technical assistance.

The objective is not to deliver more services, but rather to assess and prioritize services early in the case and provide a mechanism for flexible revision of dispositional plans as the case develops.

COMMENTER CONCERNS REGARDING THE RECOMMENDATIONS

It will be expensive to retrofit or adapt existing court facilities

Numerous individuals who provided comments on the proposed jurisdictional reform suggested that it would pose facility management challenges, as many courts have separate courthouses for child welfare and juvenile justice cases, with the latter often co-located with the juvenile detention facility. Moreover, child welfare courts do not have secure holding areas, and the cost to add that capacity to existing facilities would be significant. Courts were also concerned about the ability to use these facilities interchangeably and the possible costs if key stakeholders were required to travel between them on a daily or weekly basis. One objective of piloting this approach will be to develop calendar management and remote appearance strategies to overcome some of these challenges at little cost.

Improved outcomes can be accomplished within the existing jurisdictional structure

Commenters expressed the view that the existing legal framework is sufficient. It has been asserted that the recommendations fail to adequately acknowledge the following existing statutory mechanisms by which the recommendations' principal objectives may be achieved without revamping the juvenile court law:

- Welfare and Institutions Code section 241.1 [procedure to determine whether dependency or delinquency status would be most appropriate for a youth who appears to fall within both provisions].
- Welfare and Institutions Code section 245.5 [delinquency court authority to direct orders to parents or guardian of

the minor who is subject to juvenile court jurisdiction that are deemed necessary for the best interests of or rehabilitation of the minor].

- Welfare and Institutions Code section 329 [mechanism to determine if a youth should be a subject of the dependency court].
- Welfare and Institutions Code section 654 [permits probation officer to set up specific programs of supervision for a minor].
- Welfare and Institutions Code section 654.2 [authorizes court to establish a program of supervision].
- Welfare and Institutions Code section 729.2 [court may order parents or guardian of the minor (who is delinquent or truant) to participate with the minor in a counseling or education program].

In particular, it is claimed that the framework created by Welfare and Institutions Code section 241.1 and the option for a dual-status protocol provides sufficient ability to improve coordination and collaboration without changing the jurisdictional structure of the court. Commenters noted that efforts are already underway in various counties to achieve the goals of the recommendations,⁴³ existing law already grants authority to the court and probation to ask child welfare to investigate a case and report to the court,⁴⁴ the court already has statutory mechanisms to direct orders to parents requiring their participation in any juvenile matter,⁴⁵ and improved education and use of existing authority could lead courts to demand greater parent engagement and accountability within the existing jurisdictional structure. Alternatively, it was suggested that something more modest, such as requiring all counties to

implement a dual-status option, could accomplish similar objectives with less disruption. Noting that this proposal would require additional funds for court-appointed counsel when that function in child welfare cases is already underfunded, there

The objective of these recommendations is not only to better meet the needs of youth who cross over from one system to the other but also to restructure the court so that the individual needs of all children and families are taken into account, further state intervention is minimized or avoided altogether, and the public is protected without regard to the jurisdictional door through which the children and families enter.

was significant skepticism about the feasibility of implementing these recommendations. It was also asserted that the recommendations fail to present data supporting the assumption that existing statutory mechanisms are ineffective in promoting parental involvement and accountability.

The foregoing concerns are legitimate, but the objective of these recommendations is not only to better meet the needs of youth who cross over from one system to the other but also to restructure the court so that the individual needs of all children and families are taken into account,

further state intervention is minimized or avoided altogether, and the public is protected without regard to the jurisdictional door through which the children and families enter. A key limitation of the dual-status approach is that it only encompasses those juvenile justice-involved youth with an active child welfare case. For those youth who may enter the juvenile justice system with histories of abuse and neglect that contribute to their delinquent behavior and need to be addressed in an effective case plan, they do not come within the existing dual-status statutes, nor do they qualify for cross-system services and support.

A King County, Washington, study on child welfare and juvenile justice found that while 16 percent of the youth referred to juvenile justice had been in a child welfare placement or had legal activity in the child welfare system, 59 percent of referred youth were part of families referred to the child welfare agency for allegations of abuse or neglect.⁴⁶ This suggests a connection between family instability and subsequent delinquent behavior that the dual-status approach leaves untouched. California has expanded the authority of the court to examine family issues for those delinquent youth who are placed in foster care, but the current jurisdictional framework sees the family as the unit for intervention in child welfare matters, while the child is the primary focus in juvenile justice matters. This distinction is not supported by research or by the experience of stakeholders.

Systems need to be kept separate to protect abused and neglected children from those alleged to have committed serious crimes

Juvenile courts currently handle a wide range of cases, from those involving infants removed from their parents at birth because they show signs of prenatal exposure to illegal drugs, to

cases involving youth who have been alleged to have committed serious and violent crimes. One possible advantage of the current distinction in jurisdiction between child welfare and juvenile justice is that it draws a bright line between children who are victims of abuse and neglect and those whose own behavior is the focus of the court's jurisdiction. Some stakeholders were concerned that blending these groups together might stigmatize blameless victims and/or expose them to the negative influences of youth with demonstrated antisocial tendencies. For example, current law provides limitations on placing youth from the child welfare system and youth from the juvenile justice system in the same settings.⁴⁷ Children removed from parents for abuse and neglect cannot be detained with those who have been arrested for criminal behavior and cannot be placed in a secure facility. In addition, a dependent child cannot be placed in a foster care setting with a probation-supervised child unless the social worker finds that the placement setting meets the child's specific needs. If the distinction between the two jurisdictions is eliminated, these provisions will need to be revisited and updated to ensure the safety and best interests of all children who come before the court.

In addition, there are key differences in law concerning how these proceedings are to be conducted. Although child welfare and juvenile justice proceedings are generally closed to the public (with discretion provided to the court to admit others whom the court deems have a legitimate interest in the case or the work of the court), there are nevertheless specific provisions applicable to juvenile justice cases allowing the public to be present when the child is alleged to have committed a serious or violent offense.⁴⁸ Moreover, in juvenile justice cases the victim and

up to two support persons may be present, subject to limitations by the court.⁴⁹ Commenters believe that consolidation will require reconciling or eliminating some of these standards.

District attorney and public defender organizations have expressed opposition

The California District Attorneys Association and two groups representing defense counsel in juvenile justice matters (the California Public Defenders Association and the Pacific Juvenile Defender Center) expressed opposition to the proposals. The California District Attorneys Association opposed blurring the distinctions between child welfare and juvenile justice courts and their different functions. The association suggested the proposals would subject abused and neglected children to criminogenic influences and raised concerns about the extent to which counsel for parents in juvenile justice cases could cause conflicts and delays. The defense counsel commenters were concerned about having the prosecuting attorney's office more involved in nonadversarial child welfare matters and had serious concerns about how a single attorney would be able to represent a child in both child welfare and juvenile justice matters.

NO OTHER JURISDICTION APPEARS TO HAVE IMPLEMENTED A CONSOLIDATED JUVENILE COURT LIKE THE ONE RECOMMENDED

A number of jurisdictions, including superior courts in California, have experimented with a concept often called "unified courts for families."⁵⁰ The efforts are designed to coordinate, and to the greatest extent possible place before one judge, all cases in the court system that involve the same or overlapping children and families. In addition, many jurisdictions in California and around the

country are working to improve services for youth who are child welfare involved and then become involved in the juvenile justice system. A prominent example of a framework for improving services and support for these youth is the Crossover Youth Practice Model, developed by the

[I]t is recommended that before statewide implementation is considered, pilot projects be adopted in a number of courts to consider the questions and concerns identified in this report.

Center for Juvenile Justice Reform at Georgetown University.⁵¹ The model shows great promise and is currently being used in varying degrees by the juvenile courts in the counties of Sacramento, San Diego, Los Angeles, and Alameda, but it does not begin until the youth is in jeopardy of crossing over from child welfare to juvenile justice. The hope for our recommendations is to create greater prevention and efficiency by looking at families holistically from the first day they come before the court and to continue doing so with a single case plan throughout the case.

PILOT PROJECTS WILL PERMIT IMPLEMENTATION TESTING

These recommendations would result in a substantial change to the existing statutory framework and the way juvenile court cases are heard in California. Implementation would have

significant impact on the state's under-resourced child welfare and juvenile justice systems. To address these concerns, it is recommended that before statewide implementation is considered, pilot projects be adopted in a number of courts to consider the questions and concerns identified in this report. Demonstration projects will enable the judicial branch to first identify the best implementation methods. As each pilot site develops processes, the branch will be able to collect data, evaluate the program, and determine the extent to which reentry and recidivism rates are reduced and other positive outcomes are achieved over a sufficient length of time. The pilot projects would identify costs and cost savings.

Pilot projects would ideally include at least one small-, medium-, and large-sized court and reflect the geographic diversity of the state. Pilot courts would be given the resources needed to plan for and implement the consolidated court and be provided with technical assistance and data collection support to ensure that information gleaned from the pilot can be used for effective statewide implementation. In addition to striving for variety in size and geographical diversity, the criteria for the selection of pilot courts should include:

- A history of multidisciplinary teaming, collaboration, and coordination between child welfare and probation (e.g., does the court have a dual-status protocol or a robust Welfare and Institutions Code section 241.1 process?);
- A data and information infrastructure that allows for appropriate information sharing as well as outcome tracking;
- Participation in the Title IV-E waiver demonstration program, which allows for more flexible use of foster care funds; and

- Support for the pilot project from the leadership of key stakeholder agencies.

To encourage courts to participate in such an undertaking, the Futures Commission recommends that outside funding and support be obtained to cover the costs of pilot implementation and to provide needed training, technical assistance, and support for data collection and evaluation. Given the high degree of interest nationally in improving outcomes for youth in both the child welfare and juvenile justice systems, with the particular focus on dually involved youth, it is anticipated

The recommendation to pilot a consolidated jurisdictional approach seeks to better serve all children and families in the juvenile courts by recognizing that their needs are complex and overlapping and do not fit neatly into jurisdictional boxes.

that philanthropic support for the pilot would be forthcoming.

Initial startup costs to implement the pilot would include:

- A project manager at each court location to oversee data collection, training, and convening of stakeholders (estimated annual cost: \$105,000 to \$180,000);
- A contract with an outside evaluator to collect and analyze the results of the pilot (estimated annual cost: \$110,000); and

- The possibility of additional costs to the extent it is determined that children and parents have a right to counsel in a consolidated court.

Funds would have to be obtained from the philanthropic sector or from government sources. The pilot would then track costs and benefits with the expectation that demonstrated savings could be reinvested to cover the ongoing costs and provide an ongoing source of funding for this approach to be implemented statewide.

LEGISLATION WOULD BE REQUIRED TO MOVE FORWARD WITH PILOT, WHILE STATEWIDE IMPLEMENTATION WOULD REQUIRE SIGNIFICANT REDRAFTING OF THE WELFARE AND INSTITUTIONS CODE

Legislation authorizing pilot courts to exercise jurisdiction over all juvenile court matters in a single petition or proceeding will be required to ensure that all stakeholders are able to participate in the multidisciplinary approach that would result from this proposal. That legislation could provide broad authority to the courts that are participating in the pilot to consolidate jurisdiction notwithstanding specific statutory or jurisdictional constraints, while specifying those provisions of law that would remain unchanged to protect due process and the safety of the community. The factual bases for juvenile court jurisdiction would essentially remain the same and the proceedings to determine whether there is sufficient evidence for the court to exercise jurisdiction would also be fundamentally unchanged.

If a determination is made that statewide implementation would be beneficial, that phase would require review and revision of various child welfare and juvenile justice provisions of the Welfare and Institutions Code.

PILOT SUCCESS WOULD BE MEASURED PRIMARILY BY EXAMINING IMPROVED OUTCOMES FOR CHILDREN AND FAMILIES THAT COME BEFORE THE JUVENILE COURT

Ultimately, these recommendations seek to reduce juvenile recidivism and better serve California's children and families. Recidivism and crossover should be tracked, along with other indicators of the well-being of juvenile youth, such as educational indicators (test scores, truancy, dropouts, and graduation rates). To obtain meaningful and reliable data, pilot projects would need to be in place for a significant period of time (such as five years).

CONCLUSION

The Welfare and Institutions Code provides a common purpose for the juvenile courts, whether they are acting under their child welfare jurisdiction or their juvenile justice jurisdiction, but in practice these courts often operate with little coordination despite research demonstrating that child welfare system involvement is a risk factor for youth becoming involved in the juvenile justice system. With the large number of juvenile justice youth who have a history of abuse and neglect, coupled with statistical data that shows that these youth are more likely to offend at a younger age and commit serious offenses, a unified juvenile system would provide a holistic approach to these youths and lend itself to a much more effective practice.

The recommendation to pilot a consolidated jurisdictional approach seeks to better serve all children and families in the juvenile courts by recognizing that their needs are complex and overlapping and do not fit neatly into jurisdictional boxes. Given the significant resources currently

expended to serve children and families in both of these systems, improving the effectiveness of the systems could yield significant savings by reducing recidivism in both. In addition, it could lead to better life outcomes for the children, whose best interests are at the heart of the juvenile court's mission.



APPENDICES

RECOMMENDATION 3.1: CONSOLIDATE JUVENILE COURT JURISDICTIONS

APPENDIX 3.1A: MENTAL HEALTH VISION STATEMENT: COMMISSION ON THE FUTURE OF CALIFORNIA'S COURT SYSTEM, FAMILY/JUVENILE WORKING GROUP

It is estimated that 40 to 70 percent of youth in the juvenile justice system have mental health illnesses or disorders.¹ Of those, between 15 and 25 percent have illnesses severe enough to impair their ability to function.² Appropriate treatment depends on timely and accurate screening and assessment,³ but there is no consistent screening and assessment tool in use to identify these individuals.⁴ As a result, a juvenile court may only learn about mental health concerns in the small percentage of cases presenting questions of competency, which dramatically understates the true extent of mental health issues affecting youth in the juvenile justice system.

While focusing on mental health issues, it is equally important to understand the impact of trauma, as children are sometimes misdiagnosed with mental health disorders and inappropriately treated, when in fact the child is displaying behaviors related to past or current trauma episodes.⁵ These behaviors are not symptoms of mental illness but are behavioral adaptations developed to cope with past trauma.⁶

Even where mental health illnesses and disorders are identified, it is difficult to determine appropriate treatment. There are often inadequate evaluation data to support claims that any particular treatment

¹ Berkeley Center for Criminal Justice, *Juvenile Justice Policy Brief Series: Mental Health Issues in California's Juvenile Justice System* (May 2010), 2.

² Ibid.

³ Ibid., 5.

⁴ Ibid., 6.

⁵ National Child Traumatic Stress Network (NCTSN), *NCTSN National and Community Partners Report 2011*.

⁶ K. M. Abram et al., "PTSD, Trauma and Comorbid Psychiatric Disorders in Detained Youth" (June 2013) *Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin*.

program is effective, there is no meaningful definition of program effectiveness, and there are no scientifically sound evaluation studies to justify claims of effectiveness.

To respond to the needs of youthful offenders with mental health illnesses or disorders, the judicial branch needs to ensure timely and adequate mental health screening and assessment as well as treatment where necessary. Program effectiveness should be defined as reducing recidivism. A claim of program effectiveness should be evidence-based, meaning that it should be measured by long-term, randomized, and controlled studies that employ large samples of program participants and yield statistically valid evaluation results that can be replicated. Follow-up monitoring should be undertaken to ensure the permanence of positive treatment results.

Programs meeting these requirements should receive the imprimatur of the court system, while those that are not evidence-based should not. Implementing these recommendations will result in millions of dollars in savings and, more importantly, will yield a humane and effective response to those youthful offenders who have mental health illnesses and disorders—the goals articulated in two prior Judicial Council (Council) studies on this topic.

Consistent with these goals, we recommend that the Futures Commission collect further information and data on the following topics:

1. The incidence of mental health illnesses and disorders, including post-traumatic stress disorder, among juvenile offenders;
2. The types of screening and assessment processes currently available to juvenile offenders, including post-screening intervention;
3. The current definitions of relevant concepts, such as “evidence-based practices” and “recidivism”;
4. The programs demonstrated to be evidence-based and to reduce recidivism;
5. Trauma-informed programs and practices, including practices to ensure that youth and families feel psychologically and physically safe while encountering all parts of the juvenile justice system;
6. Promoting a juvenile justice system that operates in a clear and transparent manner, engendering more trust in the system and better understanding on behalf of youth and families, and acknowledging the strengths of youth and families;
7. The costs incurred by the criminal justice system and victims as a result of crimes committed by youthful offenders with mental health illnesses or disorders; and
8. The extent to which these recommendations are consistent with current laws, rules, and prior Council studies and recommendations.

In the remainder of this vision statement we address each of these exploratory topics in turn.

INCIDENCE OF MENTAL HEALTH ILLNESSES AND DISORDERS, INCLUDING POST-TRAUMATIC STRESS DISORDER, AMONG JUVENILE OFFENDERS

As noted in one study, while it is significant that there is such a high percentage of youthful offenders with mental health disorders, it is of equal concern that the estimates are so imprecise.⁷ The high end of the estimate of youthful offenders who have mental health disorders or illnesses (70 percent) is close to double the low end (40 percent).⁸ The high end of the estimate of youthful offenders whose mental illnesses are sufficiently severe to impair their ability to function (25 percent) is nearly double the low end (15 percent).⁹ The imprecision is the result of many factors, including the lack of standard definitions and inconsistency in mental health data collection and reporting.¹⁰

Another study concluded that the rates of mental illness in the juvenile detention population are substantially higher than in the general adolescent population—psychotic illness rates are 10 times higher; major depression rates for boys are estimated to be twice as high, and for girls, 4 to 5 times higher; attention deficit hyperactivity disorder (ADHD) rates are 2 to 4 times higher; and conduct disorder rates for boys are 5 to 10 times higher, and for girls, 10 to 20 times higher.¹¹ Even when conduct disorders are removed from the analysis, nearly two-thirds of youth had one or more diagnoses.¹²

The first major epidemiological study on the prevalence of psychiatric disorders in a juvenile detention population concluded that 50.7 percent of males and 46.8 percent of females had substance abuse disorders.¹³ More than 25 percent of the youthful offenders had a severe mental disorder (meaning that they met the criteria for certain severe disorders or had been hospitalized for a mental disorder).¹⁴ In addition, “[d]etained juvenile offenders also have substantially higher rates of substance use disorders than do their non-offending peers.”¹⁵ The rates of dual diagnosis (co-occurring psychiatric and substance abuse disorders) range from 50 to 73 percent among detained youth.¹⁶ Dual diagnosis among detained youth is associated with increased delinquent behavior and higher rates of recidivism and future incarceration than with their counterparts who do not have dual diagnoses.¹⁷

⁷ *Mental Health Issues in California’s Juvenile Justice System*, 2.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid., 2–3.

¹¹ Seena Fazel et al., “Mental Disorders Among Adolescents in Juvenile Detention and Correctional Facilities: Systematic Review and Metaregression Analysis of 25 Surveys” (Sept. 2008) 47 *Journal of the American Academy of Child and Adolescent Psychiatry* 9.

¹² Jennie L. Shufelt and Joseph J. Cocozza, “Youth With Mental Health Disorders in the Juvenile Justice System: Results From a Multi-State Prevalence Study,” *National Center for Mental Health and Juvenile Justice Research and Program Brief* (June 2006), www.ncmhjj.com/wp-content/uploads/2013/07/7.-PrevalenceRPB.pdf (as of Mar. 2017).

¹³ Linda Teplin et al., “Psychiatric Disorders in Youth in Juvenile Detention” (2002) 59 *Archives of General Psychiatry* 1133.

¹⁴ Judicial Council of California, *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report* (2011), 45, www.courts.ca.gov/documents/Mental_Health_Task_Force_Report_042011.pdf.

¹⁵ Marian Tolou-Shams et al., “Predictors of Detention Among Juveniles Referred for a Court Clinic Forensic Evaluation” (2014) 42 *Journal of the American Academy of Psychiatry and the Law* 56.

¹⁶ Ibid. (additional citations omitted).

¹⁷ Ibid. (additional citations omitted).

THE TYPES OF SCREENING AND ASSESSMENT PROCESSES CURRENTLY AVAILABLE TO JUVENILE OFFENDERS, INCLUDING POST-SCREENING INTERVENTION

Availability of mental health screening, assessment, treatment, and post-screening intervention

In California in 2010, only a handful of counties used validated mental health assessment tools.¹⁸ Yet timely assessment of mental health needs is the key in providing necessary treatment, in reducing additional crimes, and in preventing youth from entering the adult criminal justice system.¹⁹ Studies have recognized two important points at which screening and assessment tools should be employed: (1) intake and detention; and (2) disposition.

The purpose of initial screening is to (1) identify an immediate mental health crisis experienced by a youthful offender, including an assessment of potential suicide risk or other harm to self or others; and (2) determine whether the youthful offender is currently under the influence or is taking psychotropic medications.²⁰

The juvenile court attempts to fashion dispositions that serve both to promote public safety and to facilitate the rehabilitation of the minor.²¹ With respect to rehabilitation of youthful offenders who are not placed on probation as well as those who are, the Welfare and Institutions Code declares (and most juvenile justice professionals agree) that a program is effective if it reduces recidivism.²² Although there is substantial discussion concerning the goal of reducing recidivism, there has been little agreement about a meaningful definition of recidivism and how it is to be measured.²³

Availability of post-traumatic stress screening, assessment, treatment, and post-screening intervention

The judicial branch must also focus its attention and awareness on the issue of childhood trauma, and learn how these early traumatic experiences may lead to involvement in the juvenile justice system. As a result of the multitude of research in this area, increased focus has been drawn to the development of practices addressing the negative impact of trauma in many child-serving systems, including the juvenile justice system.²⁴

The majority of youth in the juvenile justice system has experienced multiple types of trauma. A study of detained youth showed 92.5 percent had experienced at least one traumatic episode, and 56.8 percent

¹⁸ *Mental Health Issues in California's Juvenile Justice System*, 6.

¹⁹ *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report*, 45.

²⁰ Seena Fazel et al., 9.

²¹ *Mental Health Issues in California's Juvenile Justice System*, 6, 10; Welfare and Institutions Code section 202.

²² Welfare and Institutions Code section 4686.2(d)(3).

²³ In November 2014, the Board of State and Community Corrections (BSCC) announced that it had finalized its definition of recidivism. BSCC defines recidivism as a conviction of a new felony or misdemeanor committed within three years of release from custody or committed within three years of placement on supervision for a previous criminal conviction. The California Department of Corrections and Rehabilitation (CDCR) relies primarily on the "return to prison" measure at one-, two-, and three-year intervals. CDCR's definition results in a lower recidivism rate than does the BSCC's since the CDCR definition excludes convictions that do not result in a prison commitment.

²⁴ *NCTSN National and Community Partners Report 2011*.

were exposed six or more times to a traumatic event.²⁵ Another study determined that each youth involved in the juvenile justice system experienced an average of 4.9 traumatic events.²⁶

A traumatic experience is an event that threatens someone's life, safety, or well-being.²⁷ Trauma may be caused by exposure to violence, physical and sexual abuse, neglect, or natural disasters or accidents.²⁸ These events can overwhelm a person's capacity to cope and may intensify feelings of fear, terror, helplessness, and despair. The experience of childhood trauma can impact brain development, especially in areas of the brain that control learning and self-regulation. Exposure to trauma caused by parents or caregivers often results in distrust of adults and disregard of rules and laws by the child. Exposure to trauma places youth at a greater risk for delinquency.²⁹

While focusing on mental health issues, it is equally important to understand the impact of trauma, as children are sometimes misdiagnosed with mental health disorders and inappropriately treated with medication, when in fact they are displaying behaviors related to past or current trauma episodes. These behaviors are not symptoms of mental illness, but are behavioral adaptations developed to cope with past trauma. An example of one such behavior is "hypervigilance," an abnormally increased physiological arousal and responsiveness to stimuli. Hypervigilance impairs the ability to sleep, conflicts with the ability to focus and concentrate in school, and conflicts with the ability to regulate emotions and behaviors at school, home, and in the community.³⁰

Left untreated, unresolved post-traumatic stress can lead to serious long-term consequences, including issues with cognitive functioning, the development of post-traumatic stress disorder and other mental disorders, substance abuse, anxiety, depression, and conduct problems. These issues may increase the severity of offenses committed by the youth, his or her involvement in the juvenile justice system, and recidivism.³¹

As discussed previously, mental health screening and assessment is vital. However, research has demonstrated that some mental health screening tools, including the widely used MAYSI-2 (Massachusetts Youth Screening Instrument–Version 2) questionnaire, "under-detect youths with histories of exposure to traumatic stress." It is recommended that the MAYSI-2 and other mental health screening tools be used in conjunction with a specific tool for trauma screening.³² By using trauma screening and standardized assessments at intake, misdiagnosis and overmedication can be prevented.³³ The National Child Traumatic

²⁵ K. M. Abram et al.

²⁶ C. B. Dierkhising et al., "Trauma Histories Among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network" (2013) 4 *European Journal of Psychotraumatology* 1.

²⁷ K. Buffington et al., *Ten Things Every Juvenile Court Judge Should Know About Trauma and Delinquency* (National Council of Juvenile and Family Court Judges, 2010).

²⁸ Substance Abuse and Mental Health Services Administration, *Essential Components of Trauma-Informed Judicial Practice* (2013).

²⁹ NCTSN *National and Community Partners Report 2011*.

³⁰ *Ibid.*

³¹ Patricia K. Kerig et al., *Assessing Exposure to Psychological Trauma and Posttraumatic Stress Symptoms in the Juvenile Justice Population* (NCTSN, 2014).

³² *Mental Health Issues in California's Juvenile Justice System*, 2.

³³ *Ibid.*

Stress Network recommends the use of the University of California at Los Angeles PTSD Reaction Index or the Trauma Symptoms Checklist for Children, both evidence-based assessment tools.³⁴

Current Definitions of Relevant Concepts

Evidence-based practices—In the Welfare and Institutions Code, the phrase “evidence-based practices” is mentioned six times. Only one of those mentions pertains directly to juvenile delinquency—section 1766 (The Youth Authority). That section addresses the conditions under which the reentry of wards discharged from the Department of Corrections and Rehabilitation, Division of Juvenile Justice, would be effectuated. At the reentry hearing, the court will “identify those conditions of supervision that are appropriate under all the circumstances of the case and consistent with evidence-based practices.”³⁵

Although not directly relevant to the work of the Futures Commission, Welfare and Institutions Code section 4686.2(d)(3) (pertaining to services for individuals with developmental disabilities) may offer some helpful suggestions that might inform our efforts. That section defines evidence-based practice as “a decision making process that integrates the best available scientifically rigorous research, clinical expertise, and individual’s characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment. Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual- or family-reported, clinically observed, and research-supported evidence. The best available evidence, matched to consumer circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.”³⁶

The phrase “evidence-based practices” appears nine times in the Penal Code, and its definition there might also be of help to us. The phrase most frequently refers to a particular supervision policy, procedure, program, or practice that has been found “scientifically” to reduce recidivism among individuals under probation, parole, or postrelease community supervision.³⁷

The Futures Commission believes that having a consistent definition of the phrase “evidence-based practices” is important to ensure that only appropriate evidence-based practices and programs are used with youth under the court’s jurisdiction.

Another strong endorsement of evidence-based practices has been expressed by the Washington State Institute for Public Policy (WSIPP). That group also understands the importance of consistent definitions. Recognizing that some programs may not be as methodologically evolved as others, WSIPP has formulated the following definitions:³⁸

³⁴ *Helping Traumatized Children: Tips for Judges*.

³⁵ See Welfare and Institutions Code section 1766.

³⁶ See Welfare and Institutions Code section 4686.2(d)(3).

³⁷ See Penal Code sections 17.5, 1170.05, 1170.06, 1229, 1231, 3016, 3450, 3451, and 6027.

³⁸ E. Drake, *Inventory of Evidence-Based and Research-Based Programs for Adult Corrections* (WISPP Document No. 13-12-1901, 2013). Although the three suggested definitions were developed for adult corrections, they seem perfectly appropriate for the Family/Juvenile Working Group with respect to juvenile delinquency and dependency, and they are completely consistent with well-accepted research practice.

Evidence-based—A program or practice that has been tested in heterogeneous or intended populations with multiple randomized and/or statistically controlled evaluations, or one large, multiple-site randomized and/or statistically controlled evaluation, where the weight of the evidence from a systematic review demonstrates sustained improvements in recidivism or other outcomes of interest. In addition, “evidence-based” means a program or practice that can be implemented with a set of procedures to allow successful replication throughout the state and, when possible, has been determined to be cost-beneficial.

Research-based—A program or practice that has been tested with a single randomized and/or statistically controlled evaluation demonstrating sustained desirable outcomes or where the weight of the evidence from a systematic review supports sustained outcomes as identified in the term “evidence-based” above but does not meet the full criteria for evidence-based practices.

Cost-beneficial—A program or practice where the monetary benefits exceed costs with a high degree of probability.

The Futures Commission agrees with the definitions developed by WSIPP and recommends that they be adopted by the California judicial branch and incorporated into rules of court and statutes as appropriate.³⁹

The Futures Commission also recommends development of a statewide definition of the term “recidivism.” In each statute in which the word is used, there are no specific criteria that would allow decision makers to determine whether recidivism is reduced as a result of any particular approach. There is no mandate for the collection of statistical information that would facilitate a meaningful analysis of alleged reductions in recidivism or that would permit ongoing monitoring to suggest modifications in any program or approach. Some approaches may work, some may not. We simply do not know.

Although in both the Penal Code and the Welfare and Institutions Code there is recognition of a close analytical relationship between recidivism and evidence-based programs, there is no practical definition of recidivism. Such a definition should do more than prescribe a reduction in crime.

For example, the following questions require addressing: (1) Should recidivism be measured by subsequent arrest or sustained petition? (2) Should subsequent conduct measured by either arrest or sustained petition be limited to felony conduct or should misdemeanors be counted as well? (3) If misdemeanors are to be included, should it be all misdemeanors or only violent ones? (4) Over what period of time should a minor’s subsequent behavior be monitored? (Many studies tout positive results within one year as proof that a program is effective.) (5) Does the program employ an experimental design by which program participants are randomly assigned to particular programmatic approaches? (6) Does the program design contemplate the use of a control group?

³⁹ Judge J. Richard Couzens (Ret.), Superior Court of Placer County, defined “evidence-based practices” in the following way: “EBP [evidence-based practices] comes from professional practice supported by the best research evidence from rigorous evaluation (i.e., use of control groups), replicated in multiple studies, and has been subjected to systematic review (meta-analysis). It reflects two decades of rigorous, legitimate scientific research.” Judicial Council of California, *Evidence-Based Practices—Reducing Recidivism to Increase Public Safety: A Cooperative Effort by Courts and Probation* (July 25, 2011), 5, www.courts.ca.gov/documents/EVIDENCE-BASED-PRACTICES-Summary-6-27-11.pdf. This definition comports with the WSIPP work.

The Futures Commission will seek to craft a definition of recidivism and will consider the questions above as it does so.

PROGRAMS DEMONSTRATED TO BE EVIDENCE-BASED AND TO REDUCE RECIDIVISM

Mental health programs that are evidence-based and reduce recidivism

While few mental health programs fulfill all of these criteria, there are three treatment approaches that to varying degrees do: (1) multisystemic therapy; (2) Functional Family Therapy; and (3) multidimensional treatment foster care.⁴⁰

Multisystemic therapy (MST)—MST is described in one study as “a community- and family-based treatment that focuses on youth with serious clinical programs (e.g., violent juvenile offenders, juvenile sexual offenders, substance-abusing juvenile offenders, and youth with serious emotional disturbance) at high risk for out-of-home placement. MST usually involves 60 hours of professional intervention over four months, and staff members are on call 24 hours per day.⁴¹ Youth are viewed as nested within multiple systems (e.g., family, peer, school, neighborhood) that have direct (e.g., parenting practices) and indirect (e.g., neighborhood context affects parenting practices) influences on behavior.”⁴²

Functional Family Therapy (FFT)—FFT initially addresses the problem of dysfunctional family relations and aims to provide interventions that establish and maintain new patterns of family behavior to replace the dysfunctional ones. The therapy is provided over a period of 8 to 30 hours by trained providers.⁴³ It “integrates behavioral (e.g., communications training) and cognitive behavioral interventions (e.g., assertiveness training, anger management) into treatment protocols.”⁴⁴

Multidimensional treatment foster care (MTFC)—“MTFC is based on the principles of social learning theory, which include behavioral principles (i.e., learning through overt reward and punishment) and the impact of the natural social context on learning. ... Many of the specific intervention techniques used in MTFC are derived from behavior therapy (e.g., development of behavioral management plans) and cognitive behavioral approaches (e.g., problem solving skills training).”⁴⁵ “MTFC may be appropriate when home placement is not a viable option. Youth are placed with specially trained foster families that usually only work with one child at a time. Foster parents strictly monitor the youth’s whereabouts.”⁴⁶

Of the three models discussed, MST programs have received the highest effectiveness rating. Their effectiveness is described in more detail in the scores of evaluations of MST programs, many of which employ

⁴⁰ Of the 600 delinquency, drug, and violence prevention and intervention programs reviewed in *The Blueprints* initiative, www.blueprintsprograms.com/, only 11 met the research criteria. Those 11 employed one of the three models discussed immediately below.

⁴¹ *Mental Health Issues in California's Juvenile Justice System*, 11.

⁴² Scott W. Henggeler and Sonja Schoenwald, “Evidence-Based Intervention for Juvenile Offenders and Juvenile Justice Policies That Support Them” (2011) *25 Social Policy Report* 5.

⁴³ *Mental Health Issues in California's Juvenile Justice System*, 11.

⁴⁴ Scott W. Henggeler and Sonja Schoenwald, 5.

⁴⁵ *Ibid.*, 6.

⁴⁶ *Mental Health Issues in California's Juvenile Justice System*, 11.

all of the program design elements widely held by mental health professionals as necessary to a meaningful determination that a program is effective. These include random assignment, use of a control group, a sufficiently large sample size of program participants to yield statistically significant evaluative results that can be replicated, and monitoring program participants for as long as 22 years with significant positive results.⁴⁷

The three programmatic models discussed above are designed for use with youthful offenders who are not in custody. Although there are some studies in progress that are attempting to demonstrate the viability of these programs for in-custody youth, they have not been completed. Only Aggression Replacement Therapy (ART) has been subjected to meaningful evaluation. ART aims to reduce aggressive behavior among youthful offenders and has been employed with youth who are on probation, who are returning to their communities following confinement, or who are in custody.⁴⁸ But the follow-up period for the evaluation has only been six months after release—a period woefully inadequate to demonstrate ART’s long-term effectiveness. For the population of youthful offenders requiring confinement, the applicability of FFT, MST, MTFC, and ART has not yet been established.⁴⁹

Trauma programs that are evidence-based and reduce recidivism

Treatment for traumatic stress includes psychoeducation, caregiver involvement and support, emotional regulation skills, anxiety management, cognitive processing, construction of a trauma narrative, and personal empowerment training. Some of the common evidence-based treatment programs include Cognitive Behavioral Intervention for Trauma in Schools (CBITS), Trauma Affect Regulation: Guide for Education and Therapy (TARGET-A), and Trauma-Focused Cognitive Behavioral Therapy.⁵⁰

It should be noted that there is a lack of gender-specific programming addressing the trauma suffered by girls. Although boys are more likely than girls to experience community violence, girls were found to be significantly more likely to be victims of family abuse than boys—that is, physical abuse (37.8 percent versus 14.9 percent) and sexual abuse (35.1 percent versus 6.7 percent).⁵¹

Restoring healthy development and functioning are key goals for the juvenile justice system. To be successful in this endeavor, the judicial branch must be well informed about the effects of trauma and be familiar with

⁴⁷ Aaron M. Sawyer and Charles M. Borduin, “Effects of Multisystemic Therapy Through Midlife: A 21.9-Year Follow-Up to a Randomized Clinical Trial With Serious and Violent Juvenile Offenders” (2011) 79 *Journal of Consulting and Clinical Psychology* 643. See also *Multisystemic (MST) Therapy Research at a Glance: Published MST Outcome, Implementation and Benchmarking Studies* (Jan. 2015).

⁴⁸ *Mental Health Issues in California’s Juvenile Justice System*, 12.

⁴⁹ An adaptation of multisystemic therapy known as Family Integrated Transitions (FIT) has been used as a treatment intervention with youths who have a dual diagnosis of substance abuse and mental health disorders who are transitioning from incarceration and returning home. A nonrandomized evaluation of that program determined that the 36-month felony recidivism rates for youths participating in FIT were 30% lower than an equivalent treatment population that did not participate in FIT for felonies. However, no statistically significant reduction occurred for violent felony or misdemeanor recidivism. (Eric J. Trupin et al., “Family Integrated Transitions: A Promising Program for Juvenile Offenders with Co-Occurring Disorders” (2011) 20 *Journal of Child and Adolescent Substance Abuse* 421.) There is also an ongoing randomized control group evaluation for a FIT program for youth leaving a secure residential program and returning to New York City, but the study has not yet been concluded.

⁵⁰ K. M. Abram et al.

⁵¹ Patricia K. Kerig and Julian D. Ford, *Trauma Among Girls in the Juvenile Justice System* (NCTSN Consortium, 2014).

resources to address traumatic stress. Equally important is the need for the court to promote system-level changes to improve a feeling of safety, reduce exposure to traumatic reminders, and equip youth with tools to cope with traumatic stress reactions.⁵² Trauma-informed judicial interactions begin with treating individuals with dignity and respect, and by using less negative, punitive, and judgmental language.

THE COSTS INCURRED BY THE CRIMINAL JUSTICE SYSTEM AS WELL AS BY VICTIMS AS A RESULT OF CRIMES COMMITTED BY YOUTHFUL OFFENDERS WHO HAVE MENTAL HEALTH ILLNESSES OR DISORDERS⁵³

A number of studies have documented the substantial costs incurred by the criminal justice system and victims from crimes committed by high-risk youthful offenders. Most of those studies have not focused on the costs resulting from high-risk youthful offenders who suffer from mental health disorders. However, there is every reason to believe that the costs already determined to apply to the population of high-risk juvenile offenders would also apply to those high-risk youthful offenders who have mental health disorders.

It is reasonable to assume that programs effective in reducing recidivism by high-risk youthful offenders would also result in substantial reductions in criminal justice system spending.⁵⁴ In a California-specific study, the following key findings were made regarding the costs of incarcerating youth with mental illness:⁵⁵

- The juvenile justice system has become a de facto mental health system for poor and minority youth who are unable to access care through the formal mental health system.⁵⁶
- In 2007, youth with mental disorders cost \$7,210 more per youth than other youth in detention based solely on their increased lengths of stay as a result both of pre-disposition delays (17 days) and post-disposition delays (18 days). These delays result from a lack of a continuum of care ranging from community-based outpatient and transitional programs to secure hospital and residential placement alternatives; they are also the result of the time required for court-ordered evaluations.⁵⁷
- A youth with mental illness can cost at least \$18,800 more than other youth (estimate includes the increased lengths of stay noted above as well as other variable expenses associated with the youth's mental illness, such as psychotherapy sessions, substance abuse treatment, and medication monitoring).⁵⁸

⁵² K. M. Abram et al.

⁵³ This section is included because any recommendation submitted by the Futures Commission is required to include discussions of the benefits, the costs, and the savings or efficiencies the proposal would achieve. Although this section does not specify the exact costs and savings to be realized, it does suggest that savings would be substantial.

⁵⁴ Assuming, of course, that the treatment costs were not greater than the costs of confinement. The Washington State Institute for Public Policy has determined that for every \$1 spent in support of an MST program, there are \$3.05 in benefits realized, yielding a total benefit per youth of \$15,507. Washington State Institute for Public Policy, *Benefit-Cost Results: Multisystemic Therapy* (Feb. 23, 2015).

⁵⁵ Edward Cohen and Jane Pfeifer, *Costs of Incarcerating Youth with Mental Illness: Final Report* (2007), prepared for the Chief Probation Officers of California and the California Mental Health Directors Association, www.cdcr.ca.gov/COMIO/docs/Costs_of_Incarcerating_Youth_with_Mental_Illness.pdf (as of Mar. 2017).

⁵⁶ *Ibid.*, iii.

⁵⁷ *Ibid.*, iv.

⁵⁸ *Ibid.*, vi.

In another study that is not based on California data and is not focused on youthful offenders with mental health disorders, the following categories are identified that reflect the frequency with which serious violent and property offenses are committed by high-risk youth, as well as the substantial outlays of public funds required to address those offenses and offenders. These findings are relevant in determining the overall costs incurred by the criminal justice system and by victims from crimes committed by youthful offenders with mental health disorders, since such a significant percentage of crimes is committed by these individuals.

1. The number of crimes committed by career criminals is calculated as between one and four crimes annually for youth ages 14 to 17, contrasted with a rate of 10.6 crimes annually for six years for adult offenders.
2. The cost of individual crimes, including victim costs, criminal justice system costs (police, courts, and prisons), and the lost productivity of offenders who are incarcerated, calculated for murder as \$4.6 million in victim costs, \$300,000 in criminal justice system costs, and \$140,000 in lost productivity of incarcerated offenders for a total of \$5 million.⁵⁹
3. The present value of a career criminal offender, predicated on an estimate of between one and four crimes committed per year for four years (for offenders between 14 and 17 years of age), totals between \$314,000 and \$552,000.⁶⁰ For career criminals committing crimes at the rate of 10.6 crimes annually for offenders between 18 and 26 years of age, the total costs range between \$2.9 million and \$4.5 million.⁶¹ The total number of crimes committed by the career criminal offender, which is estimated to be about 68 to 80, is based on an estimate that 6 percent of boys who are chronic juvenile offenders commit about 50 percent of all offenses.⁶²

CONSISTENCY OF THE PROPOSED RESEARCH DESIGN WITH CURRENT LAWS, RULES, AND PRIOR JUDICIAL COUNCIL STUDIES AND FINDINGS

The recommendations for trauma-informed practices are perfectly aligned with the charge of Welfare and Institutions Code section 202(d) and California Standards of Judicial Administration, standard 5.40(e). In this very important area, the court must “provide active leadership within the community” in determining needs, developing resources, and assessing the availability of treatment programs for trauma-exposed youth. Moreover, in ensuring the psychological and physical safety of children and families while they are involved

⁵⁹ The breakdown for the aggregate of victim costs, criminal justice system costs, and lost productivity costs for offenders who committed rape, armed robbery, robbery, aggravated assault, simple assaults, burglary, or motor vehicle theft range from a high of \$150,000 for rape to \$9,000 for motor vehicle theft. (Mark A. Cohen and Alex R. Piquero, “New Evidence on the Monetary Value of Saving a High-Risk Youth” (2009) 25 *Journal of Quantitative Criminology* 25.) There are certain limitations to this study that are recognized by the authors, including the predication of their findings on what they term the “Philadelphia Cohort”—that is, 27,186 individuals born in Philadelphia between 1958 and 1984. (Ibid., 27.) They also note a methodological question regarding whether “cost” should be determined by the actual hard costs referred to as “bottom-up costs” or whether “cost” should also include costs incurred by the public to reflect fear of crime, that is, actions taken by the public to avoid the risk of crime, as well as any other “residual loss to the community in terms of social cohesion, community development, etc.,” known as “willingness to pay costs.” This problem statement uses the more conservative “bottom-up” definition.

⁶⁰ Mark A. Cohen and Alex R. Piquero, 25.

⁶¹ Ibid.

⁶² Ibid., 28.

in the juvenile justice system, the judicial branch is acting consistently in promoting “the public safety and welfare”⁶³ of those it is charged to protect.

In addition, the recommendations of two prior Council studies support the recommendations in this vision statement. Specifically, the *Juvenile Delinquency Court Assessment 2008* (the first comprehensive assessment of California’s delinquency court system) made the following pertinent observations and recommendations:

- “There is a need to measure the effectiveness of system response to youthful offenders. The juvenile delinquency system needs better ways to measure outcomes and increase accountability.”⁶⁴
- “Local jurisdictions should establish a graduated continuum of evidence-based services and sanctions to respond to the needs of each offender.”⁶⁵
- “The courts and probation should comprehensively examine and address all aspects of the needs of youth with mental health issues who are involved in the delinquency system.”⁶⁶

The Council’s Task Force for Criminal Justice Collaboration on Mental Health Issues (Task Force) was charged with a number of specific tasks, including the identification of needs for court-related programs and services that address offenders with mental illness in adult and juvenile courts, dissemination of locally generated best practices to trial courts and partner agencies, and identification of methods for evaluating the long-term effectiveness of mental health programs in the courts and for identifying best or promising practices that improve case processing and outcomes.⁶⁷ In achieving those charges, the Task Force operated under a set of “guiding principles,” one of which was that “[p]rograms and practices considered best practice models should be adopted in an effort to effectively utilize diminishing resources and improve outcomes.”⁶⁸

Consistent with both its charge and its guiding principles, in 2011 the Task Force made the following relevant recommendations:

- “Every juvenile who was been referred to the probation department pursuant to [Welfare and Institutions Code] section 602 should be screened for mental health issues as appropriate.”⁶⁹
- “Each presiding judge of the juvenile court should work with relevant stakeholders, including family members, to develop procedures and processes to provide appropriate services to youth in the delinquency system who have a diagnosable mental illness or a developmental disability, including developmental immaturity or a co-occurring disorder. These procedures should include collaboration with mental health systems, probation departments, and other community resources.”⁷⁰

⁶³ Standard 5.40(e) of the California Standards of Judicial Administration.

⁶⁴ Judicial Council of California, *Juvenile Delinquency Court Assessment 2008*, 3, www.courts.ca.gov/documents/JDCA2008CombinedV1V2.pdf. There are many other recommendations and findings. Only those that pertain directly to the recommendations in this Problem Statement are included.

⁶⁵ *Ibid.*, 5, recommendation 14.

⁶⁶ *Ibid.*, 6, recommendation 26.

⁶⁷ *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report*, 6–7.

⁶⁸ *Ibid.*, 8.

⁶⁹ *Ibid.*, 47, recommendation 89.

⁷⁰ *Ibid.*, 46–47, recommendation 88.

- “The presiding judge of the juvenile court should work collaboratively with relevant local stakeholders to ensure that mental health services are available for all juveniles in the juvenile court system who need such services, including facilitating the delivery of culturally competent and age appropriate psychological and psychiatric services.”⁷¹
- “The presiding judge of the juvenile court of each county should work collaboratively with relevant agencies to ensure that youth in detention receive adequate and appropriate mental health treatment.”⁷²
- “The presiding judge of the juvenile court should establish an interagency work group to identify and access local, state, and national resources for juveniles with mental health issues. This work group might include, but is not limited to, stakeholders such as schools, mental health, health care, social services, local regional centers, juvenile probation, juvenile prosecutors, juvenile defense attorneys, and others.”⁷³
- “Counties should uniformly apply standards of care for youth in detention who have mental illness or developmental disabilities. Local jurisdictions should collaborate to develop strategies and solutions for providing services to youth with mental health issues that meet this minimum statewide standard of care utilizing available local and state resources.”⁷⁴
- “The presiding judge of the juvenile court of each county should work collaboratively with relevant local stakeholders to ensure that out-of-custody youth with co-occurring disorders are obtaining community-based mental health services. These stakeholders can include, but are not limited to, schools, mental health services, social services, local regional centers, juvenile probation, juvenile defense attorneys, drug and alcohol programs, family members, and others.”⁷⁵
- “The [Council] should disseminate information to the courts regarding evidence-based collaborative programs or services that target juvenile defendants with mental illness or co-occurring disorders.”⁷⁶

⁷¹ Ibid., 50, recommendation 101.

⁷² Ibid., recommendation 102.

⁷³ Ibid., recommendation 103.

⁷⁴ Ibid., recommendation 105.

⁷⁵ Ibid., recommendation 106.

⁷⁶ Ibid., 51, recommendation 109.

CONCLUSION

To respond to the needs of youthful offenders with mental health illnesses or disorders, the judicial branch needs to ensure timely and adequate mental health and trauma screening, assessment, and treatment where necessary. Program effectiveness should be defined as reducing recidivism. A claim that a program reduces recidivism should be evaluated by the extent to which a program fulfills all of the evaluation criteria discussed in this vision statement, including completion of a long-term, randomized, and controlled study that employs large samples of program participants and yields statistically valid evaluation results that can be replicated. Follow-up monitoring should be undertaken to ensure the permanence of positive treatment results.

The judicial branch should strongly encourage the use of programs meeting these requirements, while discouraging the use of programs that do not. Implementing these recommendations will result in millions of dollars in savings and, more importantly, will yield a humane and effective response to those youthful offenders who have mental health illnesses and disorders, consistent with the Council's endorsement of these goals in prior studies.

APPENDIX 3.1B: RESEARCH ON DUALY INVOLVED YOUTH

The most extensive recent examination of the overlap between child welfare and juvenile justice was a study conducted by the National Center for Juvenile Justice in King County, Washington, that tracked a one-year cohort of juvenile offenders referred in 2006 for two years to examine their child welfare and juvenile justice involvement through 2008.¹ The researchers found that two-thirds of the youth referred in 2006 had some contact with the child welfare system.² In addition, they found that youth with such contact were (1) more likely to have had two or more juvenile justice referrals prior to the study period; (2) started their delinquent activity at an earlier age and were more likely to be detained; (3) were more likely to have been status offenders prior to their referral; and (4) had higher rates of recidivism after their first referral than the one-third of youth without such contact. They also noted that there was a higher representation of girls, African American children, and Native American children in the offenders with a child welfare history. These findings led the authors to conclude that systems must respond more quickly and effectively to youth who are involved with both child welfare and juvenile justice to prevent a rapid escalation of their criminal behavior and system involvement. A more recent study in Massachusetts, which looked at all youth detained or committed to the state Department of Youth Services custody in 2014, found that youth with an active child welfare case made up 39 percent of the detention population and 37 percent of the youth committed to state custody.³

A study on youth in Los Angeles County who entered the juvenile justice system between 2002 and 2005 with an open child welfare case reached similar conclusions.⁴ As compared to other youth in the juvenile justice system, these youth were (1) more likely to be female and African American; (2) younger at their point of first contact; (3) more likely to have committed a violent offense; and (4) more likely to end up in restrictive placements such as juvenile halls or camps. This earlier, more violent offense pattern was of particular concern to the researchers, as youth who start offending at a younger age are more likely to recidivate and become involved in future violent offenses.

¹ Gregory Halemba and Gene Siegel, *Doorways to Delinquency: Multi-System Involvement of Delinquent Youth in King County (Seattle, WA)* (National Center for Juvenile Justice, Sept. 2011), www.ncjj.org/pdf/MFC/Doorways_to_Delinquency_2011.pdf (as of Mar. 2017).

² For analysis purposes, the study divided the youth into four groups: (1) those with no child welfare contact, (2) those with a child welfare case number but no further information, (3) those with referrals that had been investigated but no court action was taken, and (4) those with legal activity and/or out-of-home placement.

³ Citizens for Juvenile Justice, *Missed Opportunities: Preventing Youth in the Child Welfare System From Entering the Juvenile Justice System* (2015), 1, www.njjn.org/uploads/digital-library/CfJJ-MissedOpportunities-2015.pdf.

⁴ Joseph P. Ryan and Denise Herz, *Crossover Youth and Juvenile Justice Processing in Los Angeles County* (Dec. 2008), www.courts.ca.gov/documents/AB129-CrossoverResearchUpdate.pdf (as of Mar. 2017).

APPENDIX 3.1C: COURT-APPOINTED COUNSEL FUNDING FOR CHILD WELFARE CASES

The most recent update to the Judicial Council's (Council) workload funding allocation model for court-appointed counsel in dependency cases suggests that with expected caseloads for the 2016–2017 fiscal year, the total need for funding is \$202.9 million—meaning that this aspect of court operations is currently underfunded by \$88 million.¹ In her efforts to restore funding for critical judicial branch operations as part of her three-year *Blueprint for a Fully Functioning Judicial Branch*, the Chief Justice asked the Governor and the Legislature in 2014 to provide an additional \$33.1 million for court-appointed counsel in child welfare cases to fully fund the prior caseload funding model.² The 2015–2016 Budget Act did provide an additional \$11 million to begin meeting this objective, but additional funding for this purpose was not included in the 2016–2017 Budget Act, although it was given serious consideration by the Legislature in its budget deliberations. Funding for counsel in juvenile justice matters is a county expense.

¹ See Attachment B, “Phase-In of Reallocation of Court-Appointed Dependency Counsel Funding: Current vs. Recommended Workload Model,” in Judicial Council of California, *Juvenile Dependency: Court-Appointed Counsel Funding Reallocation* (Apr. 7, 2016), www.courts.ca.gov/documents/jc-20150122-itemj.pdf (as of Mar. 2017).

² See *Blueprint for a Fully Functioning Judicial Branch* (2014), www.courts.ca.gov/documents/JudicialBranchBlueprint.pdf (as of Mar. 2017).

RECOMMENDATION 3.2:
PROVIDE MEDIATION
WITHOUT
RECOMMENDATIONS AS
INITIAL STEP IN ALL CHILD
CUSTODY DISPUTES

INTRODUCTION

California law mandates custody mediation in all contested child custody matters. Family Code section 3177 requires the mediation be confidential. However, Family Code section 3183(a) permits each court to authorize recommendations by a counselor as to custody and visitation when parents do not reach an agreement in mediation. This combined mediation and recommendation process is called child custody recommending counseling (CCRC).

The CCRC process has sparked significant criticism. Many argue it is not true mediation because it is not confidential. Instead, the CCRC process allows information shared in CCRC sessions to be divulged to the court. Moreover, because some courts employ CCRC but others do not, mediation experiences vary widely from court to court. Some urge this difference violates due process. Others argue court decisions are based on insufficient information, placing families at risk.

To improve the handling of contested child custody matters, the Futures Commission recommends the following:

1. Providing mediation without recommendations as the first step in resolving all child custody disputes.
2. Exploring, through pilot projects or otherwise, whether additional services and procedures, including tiered mediation, would be effective in complex or contentious cases.

Although these recommendations would bring significant changes in many courts, this model has proven successful in the Superior Court of Fresno County (Fresno Court). Fresno was formerly a CCRC court, but has successfully implemented a tiered mediation program. In Fresno, all parties now receive mediation without recommendations as a first step. A judicial officer then determines whether additional levels of service are

needed. This tiered-mediation process provides better and more efficient service to the parties without increased cost.

BACKGROUND

Some of the most important and personal decisions in the lives of Californians are made in family law courts. For the parents and children involved, safe, responsive, court-connected services are essential. Effective court intervention can help litigants live safely and peacefully. To achieve these ends, California established mandatory mediation.

Family court cases involve a wide range of issues. Some cases involve serious allegations of child abuse and domestic violence, requiring a variety of services and adjudications. In other cases, parents are able to resolve disputes with more limited judicial involvement. Some cases may initially appear straightforward but become more difficult as disputes and complications arise. In addition, a great many family law litigants appear without

Some of the most important and personal decisions in the lives of Californians are made in family law courts.

attorneys, making it very challenging for them to navigate the process.

One of the biggest challenges for many courts has been the limited availability of courtrooms and judicial officers. Overcrowded family court calendars can create unnecessary delays, allowing conflicts to fester. For cases involving children, even a few-month delay can have an enormous impact,

like delaying school enrollment or supervised visitation, or simply regularizing a predictable parenting schedule. Access to early resolution through confidential mediation can resolve many cases with less judicial involvement, and may provide greater stability to families in conflict.

MEDIATION IN CHILD CUSTODY CASES

Over the years, various legislative and judicial branch efforts have sought to improve the handling of family law child custody matters. Court-connected child custody mediation, legislatively mandated since 1981, has been the focus of many efforts.⁵² All families facing a contested child custody matter in California will go through this process by working with what is generally referred to as “family court services.”

Family Code section 3161 states the purpose of mandatory child custody mediation as follows:

- (a) To reduce acrimony that may exist between the parties.
- (b) To develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child, consistent with Sections 3011 and 3020.
- (c) To effect a settlement of the issue of visitation rights of all parties that is in the best interest of the child.

Family Code section 3177 requires that child custody mediation be confidential.⁵³ But Family Code section 3183(a) allows courts to permit a “child custody recommending counselor” to mediate a case and then make recommendations to the court regarding custody and visitation if the parents do not reach agreement in mediation.⁵⁴ The recommendation must first be provided to the parties in writing.⁵⁵ As noted, this combined mediation and

recommendation process is known as child custody recommending counseling or CCRC.⁵⁶ When a recommendation is made to the court, the parents may call the recommending counselor to testify.

Regardless of whether a court has authorized CCRC, the dispute resolution process must comply with applicable laws and rules.⁵⁷ However, because some courts have adopted CCRC while others have not, the state now has a patchwork of approaches whereby some parents have more opportunity than others to resolve their disputes in mediation. Understaffing and reduction of services exacerbates the problem. The Elkins Family Law Task Force (Elkins Task Force), was established in 2008 to enhance efficiency and fairness in marital dissolutions. It noted:

For over 30 years, California’s policy has been to encourage parents to decide [parenting time] issues themselves through the provision of mediation services. But like other areas of the court, mediation services in most courts have become severely under-funded, and mediators are often unable to give the parties the time they need to resolve their disputes.⁵⁸

Confidentiality of the process has generally been considered key in supporting parties’ ability to negotiate without consideration for what the mediation professional might recommend. To that end, Family Code section 3188 was enacted in 2002 to authorize in CCRC courts pilot programs that would restrict the original mediator from making recommendations, but allow subsequent mediation services that could result in recommendations from a different professional. The statute assumes that the pilot programs would require additional funding, but it was never provided. Pilot programs envisioned under the statute have not been implemented.

The Elkins Task Force sought to address the benefits of providing mediation services consistently,

Access to early resolution through confidential mediation can resolve many cases with less judicial involvement, and may provide greater stability to families in conflict.

safely, effectively, and efficiently while simultaneously providing options for family courts and litigants when agreements are not reached. In recommendations accepted by the Judicial Council (Council), the Elkins Task Force wrote:

If the parents are unable to agree on a parenting plan in mediation and the court needs to make a decision about custody and parenting time, the court should provide an opportunity for the parties themselves to provide information directly to the court. Judicial officers need relevant, useful information for making judicial determinations in contested child custody cases, but should not make decisions based solely on the mediator’s recommendations.⁵⁹

To encourage mediation that supports private settlement, reduces pressure on overburdened calendars, and provides the courts with options for obtaining additional information at hearings, the Elkins Task Force recommended pilot projects that focus on confidential mediation for parties in contested child custody matters but that permit additional services as needed, such as factual investigations or CCRC. (For the text of the Elkins

Task Force recommendation, see *Appendix 3.2A: Elkins Family Law Task Force: Recommendation for Child Custody Mediation Pilot Projects.*)

Since the release of the *Elkins Family Law Task Force: Final Report and Recommendations (Elkins Report)*, Fresno Court has implemented the Elkins Task Force recommendation. One other court, the Superior Court of Placer County, is in the process of adopting similar approaches, and others have shown interest. As of this writing, however, about half of the family courts in California allow the same court-connected professional to both mediate and make recommendations to the court in contested child custody matters.

As noted, some litigants have criticized the CCRC process in which the family court professional switches hats in the middle of the process. Some feel deprived of their right to present their case to the judge without opinions and recommendations. Others argue that CCRC is not true mediation because it is not confidential. Critics point to inconsistencies among courts and decisions made with insufficient information.

RECOMMENDATIONS

To improve the handling of contested child custody matters, the Futures Commission recommends the following:

1. Providing mediation without recommendations as the first step in resolving all child custody disputes.
2. Exploring, through pilot projects or otherwise, whether additional services and procedures, including tiered mediation, would be effective in complex or contentious cases.

RATIONALE FOR THE RECOMMENDATIONS

Providing mediation without recommendations at the outset gives families a genuine opportunity to reduce acrimony and develop a parenting plan in the best interests of their children. In courts choosing a tiered mediation model, a judicial officer would determine the need for further services. A new professional would enter the case rather than having the original mediator switch hats. This approach promotes both efficiency and flexibility.

As the law recognizes, it is important to give parents in child custody litigation the opportunity to meet with a trained mediator to confidentially present their issues and state their positions. Mediation offers the parties the opportunity to settle disputes and to reach long-term agreements. It also allows the parties to work with trained professionals to decide on custody, scheduling, and services. Successful mediation participants are more likely to feel satisfied with the process because they feel they have been heard and understood.⁶⁰

CCRC certainly provides some of these benefits. However, because CCRC participants know the child custody recommending counselor will make recommendations to the court if they do not reach an agreement, they may be less candid or less willing to compromise if they believe the recommendation will be in their favor. Additionally, child custody recommending counselors must base their recommendations on sound information, but obtaining it requires significant time and resources. Given the resource constraints under which these professionals operate, time that might otherwise be dedicated to creating an environment conducive to mediation may instead go toward gathering information to support a recommendation.

A consistent statewide approach to initial mediation would also benefit attorneys practicing in multiple jurisdictions and parents who must make court appearances in different counties.

AMEND FAMILY CODE SECTION 3183

To accomplish these goals, the Futures Commission recommends amending Family Code section 3183 and that courts consider pilot projects for tiered mediation programs. Family Code section 3183 currently allows a court by local rule to authorize a child custody recommending counselor to make recommendations to the court. Section 3183 should be amended to provide that all litigants in contested child custody cases must receive mediation without recommendations as the first step in resolving child custody disputes, consistent with the provisions for a confidential mediation program set out in Family Code section 3188.

The proposed amendment to Family Code section 3183 would also preclude the person who conducts the initial mediation from making recommendations, but permit a court to call for recommendations, tiered mediation, or other services with a different professional if a resolution is not reached in the initial mediation. The process might include services such as child custody evaluations, investigations pursuant to Family Code section 3111, or other methods of obtaining information for the judicial officer. (See *Appendix 3.2B: Obtaining Information in Family Law Child Custody Matters*.)

TIERED MEDIATION

The Futures Commission recommends that courts consider pilot projects for tiered mediation programs to develop and test the best practices for implementing these recommendations. This recommendation is based on the successful program implemented in Fresno Court in 2013.⁶¹

The multi-tiered approach used in Fresno Court includes the following levels:

Tier I: Mediation. All regularly filed dissolution cases in which child custody is in dispute are referred to Family Court Services for confidential mediation, to be scheduled at an initial readiness hearing.⁶² (Domestic Violence Prevention Act matters involving child custody are heard as part of the request for a restraining order before requiring the parties to attend mediation; all other rules and statutes regarding cases involving allegations of domestic violence still apply.) In the Fresno Court program many disputes are resolved at this initial level. If a dispute is not resolved by an agreement of the parties, the parties appear before a family law judicial officer, where they can testify and present evidence. The judicial officer may issue a custody decision at that time.

If the judicial officer determines at the hearing that further services are appropriate before making a decision, he or she may order the parties to proceed to Tier II or, if appropriate, to Tier III. The number of Tier II and Tier III slots are limited but have proven adequate to support judicial discretion and access to additional services for those litigants most in need of them.

Tier II: Fact gathering. A judicial officer could direct a new Family Court Services staff member to conduct interviews or gather additional information. That staffer prepares a fact-based report on these issues to be provided to the court and the parties, but makes no recommendation on parenting time or visitation. The matter is scheduled for a hearing, where the court makes appropriate final orders, unless a referral to Tier III is deemed necessary.

Tier III: Child custody recommending counseling. In this tier, a child custody recommending

counselor, different than the original mediator, meets with the parties and prepares a report and recommendation as currently permitted pursuant to Family Code section 3183(a).

In an emergency, and in only the most complex cases, the court could order the parties directly into Tier III from the outset of the case.

PARTIES AND COURTS BOTH BENEFIT

Parties will benefit from these recommendations because their geographic location will not dictate their opportunity for mediation without recommendations. The initial mediation would be the same no matter where the case originated.

Mediation without recommendations allows parties to resolve parenting issues with minimal governmental intrusion. The parties can be more candid in the initial mediation, knowing that the information shared would not be provided to the judicial officer. With CCRC there are concerns that parties may take adversarial positions rather than attempting to truly resolve issues, in the hope that the CCRC will provide a recommendation favorable to their side. Sessions can polarize the parties rather than bring them together. In confidential mediation, the parties no longer have any need to try to win over the mediator because no recommendation will be developed.⁶⁵ Fresno Court found that this fact made a substantial difference in how many parents were able to reach resolution early in the case. In the first two years that the program was in effect mediation agreement rates rose from 27 percent at CCRC sessions to 55 percent in Tier I.⁶⁴

Moreover, the waiting time for mediation dates in current CCRC courts will likely decrease. When more cases resolve in initial mediation, mediators have more time to mediate and spend less time writing reports and recommendations. In the first

two years of the program in Fresno Court, the waiting time for a mediation appointment with Family Court Services decreased from 90 days after the initial readiness conference to 28 days, with no increase in the number of mediators.

Early resolution of cases leaves more time for judicial officers to devote to the more complex cases. If the initial mediation is unsuccessful, the parties present their case to the judicial officer. Although doing so may require a second appearance by the parties, it will provide them with an opportunity for a true evidentiary hearing, rather than a hearing primarily focused on the validity of a recommendation. Should the judicial officer conclude that further information or services are required, that judicial officer could order an investigation/evaluation (Tier II) or CCRC (Tier III).

The experience in Fresno Court shows that most cases would resolve in Tier I.⁶⁵ Even those cases that proceed to Tier II will involve a less costly process than a full report and recommendation, which would be prepared only for those cases in which a judicial officer determines Tier III is necessary.⁶⁶ Therefore, the program would ultimately provide efficiencies in most courts currently employing CCRC processes, while still providing the flexibility to address complex issues.⁶⁷

Fresno Court has achieved significant efficiencies from the program, with minimal start-up costs. Council staff participated in the initial collaborative meeting and provided transition assistance. Fresno Court's Family Court Services department received a \$4,500 grant from the Council to provide skill-based training to help the mediators to refocus to mediation rather than formulating recommendations. Fresno Court was able to significantly reduce the time from filing of petition to resolution by decreasing delays in scheduling mediation sessions and increasing the

number of cases resolved at the end of Tier I. It was able to do so with fewer mediators. In 2012, due to budget constraints, Fresno Court's Family Court Services was down from 17 mediators to 10. It took an average of over six months from filing to resolution. Currently, using only 9 mediators, the great majority of cases are resolved within 65 days of filing.

Early resolution of cases leaves more time for judicial officers to devote to the more complex cases.

The manager of Fresno Court's Family Court Services believes the new model has changed the way the staff mediators work with parents and changed the experience for parties.⁶⁸ Mediators have more time to spend with the parents and process the important issues confronting them, rather than having to follow up with collateral contacts. Parents appear to be focused less on winning over the Family Court Services counselor and more on other issues that may help the family reorganize.

COSTS TO IMPLEMENT

Implementing a tiered mediation model in current CCRC courts may require some reorganization and education of judicial officers and court staff. Family Court Services staff who mediate a case could no longer provide services if the case does not resolve at Tier I. Therefore, in small courts

currently using CCRC as an initial step, at least one additional mediator/child custody recommending counselor will likely be needed to allow two different people to perform initial mediation and investigate and make recommendations if needed. The cost of an additional mediator is on average approximately \$135,629 per year, for a total of \$2,034,435 if required in all small courts in the state.⁶⁹

Most medium- and large-sized courts will not need additional staff to implement the proposal. Because medium-sized courts employ an average of 5 mediators/child custody recommending counselors and large courts have an average of 19, all services could be administered with existing staff. In fact, using Fresno Court as an example, the tiered mediation system could ultimately result in more efficient use of existing staff, at least in courts with 3 or more mediators.

Other implementation costs may include training of judicial officers and court staff. The Council could assist in this process. Additionally, courts could be encouraged to serve as mentor courts, sharing their expertise and participating in joint training programs.

PUBLIC COMMENT

The Futures Commission sought public comments in several forums. Thoughtful comments were received from presiding judges, court executive officers, and Family Court Services staff regarding the three-tier model. Comments were also received from individual judicial officers, family court facilitators and mediators, attorneys and paralegals, a local bar association, two groups opposing domestic violence, the California Judges Association, the California Association of Family

Several of the commenting courts and Family Court Services offices supported implementation of the three-tier model statewide in theory. Some were concerned that the change would require funding for additional staff, especially in smaller courts. The Futures Commission notes, however, that the experience in Fresno Court has shown that a tiered mediation program may be a more efficient and effective approach. If resources are needed, they should be identified during the pilot.

Other commenters expressed concerns in opposition to the proposal:

- One stakeholder group was particularly supportive of confidential mediation but was vigorously opposed to the third tier, objecting that judicial officers were supposed to be the fact finders and should not be receiving recommendations from others.
- Some commenters asserted that the three-tier model would increase, rather than decrease, the number of required appearances, thus increasing costs.

The Futures Commission has concluded that the benefits of the statewide approach proposed here offset the concerns raised on this point. As noted in the discussion of the Fresno Court experience, a referral to Tiers II or III occurred in less than 15% of cases.

- Some commenters believe the CCRC model is more efficient and less confusing than the tiered model because they are able to obtain a judgment with a single court appearance.
- Although some commenters supported the idea of a consistent process statewide if the most effective process could be

determined, several courts argued that such consistency was not a good idea because it would eliminate flexibility. The concern was that implementing the program statewide would eliminate the possibility for individual courts to develop programs that work well for them. Examples included voluntary mediation programs that covered all issues in dissolution cases and a program in which interdisciplinary experts were included in the settlement process.

The recommendation is not intended to preclude courts from developing and implementing a variety of approaches at the local level.⁷⁰

- Several commenters objected that a single statewide program should not be implemented without additional empirical evidence. They noted that no evidence currently shows that confidential mediation is more effective and efficient than CCRC. Several commenters agreed that a pilot program of some kind might be the best way to further consider and resolve the question.

The Futures Commission agrees and has incorporated that proposal.⁷¹

PILOT PROJECTS

The Futures Commission recognizes that a statewide change that essentially eliminates CCRC as an initial step in child custody cases would be a substantial shift for many courts.⁷² Accordingly, the Futures Commission recommends that pilot projects be implemented in courts of varying sizes across the state. The pilot should be of sufficient length to determine how tiered programs compare

to programs currently in use, with an eye toward effectiveness, efficiency, and cost.

Fresno Court found that the change from a CCRC program to tiered mediation was less expensive and more effective. As described above, Fresno Court initiated the change with a small grant and assistance from Council staff.⁷⁵ Smaller courts that currently have only one or two mediators might need funding to add another. As noted above, the average annual cost of one mediator is \$135,629. Transition training would be approximately \$9,800 for each court.

The Futures Commission believes that pilot projects will demonstrate a level of efficiency and effectiveness that will outweigh any transition costs.

Potential measures of success for the pilot projects could include:

- Shorter time to resolve child custody cases.
- Shorter time from filing to mediation.
- Shorter time from filing to custody order.
- More parenting plans agreed to in the initial mediation session.
- More parenting plans agreed to overall.
- More effective and efficient use of Family Court Services staff.
- Fewer return visits to court after agreement on a parenting plan.
- Greater satisfaction on the part of parties, judicial officers, and mediators.

CONCLUSION

Dissolution disputes involve the most important and personal decisions for families. Currently, these decisions are made in a challenging environment that can be unnerving and unpleasant. Limited availability of courtrooms and judicial officers increases delay that can have particular impact on children and increase both cost and acrimony. The recommendation will give family law litigants access to the most useful and beneficial alternative dispute resolution options and promote effective and efficient resolution through safe, responsive, court-connected services.



APPENDICES

RECOMMENDATION 3.2: PROVIDE MEDIATION WITHOUT RECOMMENDATIONS AS INITIAL STEP IN ALL CHILD CUSTODY DISPUTES

APPENDIX 3.2A: ELKINS FAMILY LAW TASK FORCE: RECOMMENDATION FOR CHILD CUSTODY MEDIATION PILOT PROJECTS

“Pilot projects should be funded and implemented throughout the state to provide litigants initially with the opportunity to mediate their contested child custody matters confidentially and identify promising practices. Pilot programs should include those superior court jurisdictions in both large metropolitan areas and suburban areas that currently authorize recommendations by local court rule. The programs should be structured so that the pilot courts follow the same procedures and develop uniform protocols for later consideration by other courts.

“As part of these pilot programs, if the parties are able to come to a full or partial agreement with the assistance of the mediator, that agreement should be submitted to the court and incorporated into a parenting plan or child custody order. If the parties are unable to come to an agreement, the pilot court should either hold hearings at which the court determines temporary or final custody orders or, under specific conditions, order additional processes, such as investigations or evaluations, to provide information to the court to assist in resolving the child custody dispute. In these pilot courts, this subsequent process should be conducted by someone other than the mediator who provided confidential mediation so as to guard against bias, perceived or otherwise. To ensure due process, these pilot efforts must include procedures to provide parties copies of any reports or recommendations and to enable parties to call investigators or evaluators to testify.”¹

¹ Judicial Council of California, *Elkins Family Law Task Force: Final Report and Recommendations* (Apr. 2010), 47, recommendation 2, www.courts.ca.gov/documents/elkins-finalreport.pdf.

APPENDIX 3.2B: OBTAINING INFORMATION IN FAMILY LAW CHILD CUSTODY MATTERS¹

Judges hearing contested child custody matters are often asked to make difficult and long-lasting decisions with very limited evidence or information. A typical case may involve two self-represented parties with limited resources, each of whom has made allegations about substance abuse, children exposed to domestic violence, or other serious risks to the children in the case.

While California law provides that *mediation* is mandatory in contested child custody matters (Family Code section 3170(a)), investigations, which are standard procedure in probate guardianship and juvenile dependency matters, are not only not required but often unavailable because no specified public funding provides for that service in family law cases. As a result, the burden generally falls on parents to provide the court with the evidence it needs to make an order in the best interest of the child or to provide the resources to cover investigations or attorneys.

Where there are competing concerns and serious allegations, and parents have limited ability to present evidence, questions arise about the steps judges can take to obtain information on which to base an informed decision in the child's best interest. California law in this area includes some limited mandates for information required to be obtained (e.g., criminal background information on parties to be restrained in Domestic Violence Prevention Act matters) but generally provides for significant judicial discretion and local control over how and when to obtain information not otherwise provided by the parties.

Figure 1 on the next page lists various information-gathering approaches authorized by statute. This list does not seek to be comprehensive, but efforts have been made to identify those areas of the existing family law statutes and statewide rules that may provide established methods for getting information through professionals, the parties, justice system agencies, and others.

¹ Excerpted from Judicial Council of California, *Informational Handout for Family Law Trainings: Obtaining Information in Family Law Child Custody Matters* (Center for Families, Children & the Courts, Aug. 2016); available to California courts on the Judicial Resources Network.

Figure 1: Approaches to gathering information in family, domestic violence, and other cases

Approaches	Code/Rule*	Types of Cases†	Private (PC) or Trial Court (TC) Costs?
1. Child Welfare Investigations	FC 3027 W&I 328 W&I 827.10	Fam	No
2. Minor's Counsel	FC 3150 FC 3150 CRC 5.240, 5.241, 5.242	Fam	PC or TC
3. Mediators	FC 3160 FC 3177 FC 3183 FC 3184 CRC 5.210, 5.215, 5.235, 5.250	Fam, DV	TC
4. Child Custody Recommending Counselors	See above	Fam, DV	TC
5. Investigators/Evaluators	FC 3110.5 FC 3111 FC 3118 CRC 5.220, 5.225, 5.230	Fam	TC or PC
6. Children's Participation	FC 3042 CRC 5.250	Fam	No
7. Criminal Background Checks	FC 6306 CRC 5.215	DV	TC employee
8. Checks for Existing Restraining Orders	FC 6380	All	TC employee
9. Registered Sex Offender Databases	FC 3030 CRC 5.215	All	TC employee
10. Drug Testing	FC 3041.5	Fam	PC
11. Appointment of Expert	Evidence Code 730	Fam	PC or TC
12. Ex parte Communication	FC 216 CRC 5.235	Fam	No
13. Supervised Visitation Reports	FC 3200 et seq. Standard 5.20	Fam	PC
14. Case Management Systems	CRC 5.440 CRC 5.445	Fam, DV	No
15. Firearms	CRC 5.495	Fam, DV	Hearing Costs

Source: Excerpted from Judicial Council of California, *Informational Handout for Family Law Trainings: Obtaining Information in Family Law Child Custody Matters* (Center for Families, Children & the Courts, Aug. 2016); available to California courts on the Judicial Resources Network.

* FC = Family Code, W&I = Welfare and Institutions Code, CRC = California Rules of Court.

† Fam = Family, DV = Domestic Violence.

APPENDIX 3.2C: EXAMPLES OF COURT-BASED PROGRAMS FOR ASSISTING FAMILY LAW LITIGANTS IN RESOLVING FINANCIAL AND PROPERTY ISSUES

LOS ANGELES COUNTY BAR ASSOCIATION DAILY SETTLEMENT OFFICERS PROGRAM SUPERIOR COURT OF LOS ANGELES COUNTY

The Daily Settlement Officers (DSO) Program provides two experienced family law attorneys at the Stanley Mosk Courthouse each day to work with family law parties as neutral settlement officers. On Wednesdays, a certified public accountant (CPA) with experience in financial forensics is also available. Spanish-speaking counsel are available most Thursdays. The family law departments at the Mosk courthouse are aware of this scheduling, and referrals of parties with more complex financial issues and those who require Spanish-speaking counsel are made accordingly. All the conferences are confidential. None of the communications may be used as evidence in any proceedings.

The DSO program, which uses volunteer attorneys and accountants from the community, was originally developed by the Los Angeles County Bar Association. Oversight and administration was later assumed by the Superior Court of Los Angeles County, and the program was run through the court's alternative dispute resolution (ADR) office for many years. In May 2013, after budget cuts resulted in the court closing its ADR office, the bar association resumed administration of the program. Over the past two years, the program has expanded to include a small-scale DSO program at the court's Compton Courthouse.

The calendar for scheduling the DSOs, including the specialist Spanish-speaking and CPA officers, is run online in real time. Notifications are sent by e-mail to remind participants of their assignments. The volume of cases referred and settlement rates are monitored monthly.

In the three years since the Los Angeles County Bar Association resumed administration of the program in 2013, the family law departments at the Stanley Mosk Courthouse referred 3,457 cases to the DSO program. During that time, 2,201 matters were either completely resolved or had the issues significantly narrowed in a partial settlement through the DSO program.

All participants are volunteers, so no costs are incurred by the court for the program at this time.

FAMILY LAW ALTERNATIVE DISPUTE RESOLUTION PROGRAM SUPERIOR COURT OF SAN MATEO COUNTY

The Family Law Alternative Dispute Resolution Program was designed to provide family law litigants with an effective means to resolve aspects of their family law matters without protracted and costly litigation and to reduce the demands on judicial and staff resources.

In this program, all parties are notified of ADR options at the time of filing. If parties agree to mediation and register with the program, they are prescreened by court ADR staff to determine if the program is suitable for the case. If so, they are referred to a family law mediator from an established panel of family law attorneys with mediation training and experience. The panel is vetted by a committee of bench, bar, and community stakeholders and ADR staff.

Parties pay \$100 for the first 90 minutes of ADR and then market rate for time thereafter. Financially challenged parties may apply for financial aid in the form of reduced and pro bono mediation services offered by several panelists.

The court requests parties and mediators to complete an evaluation form after participating in the program. Responses are used to determine success. Evaluations indicate that 54 percent of those responding were able to fully settle the issues addressed in mediation, 20 percent were able to reach a partial agreement, and 26 percent did not settle.

The primary expense for the Superior Court of San Mateo County to implement the program was the salary of one ADR Program Specialist, \$109,498–\$128,934 (including benefits), to administer and oversee the program. Other costs included brochures and printing, at approximately \$850.

The resources necessary for the ADR administrator to process a case are significantly less through than if the case proceeded with litigation. Removing these cases from the litigation track increases the ability of the court to adjudicate remaining cases.

NOTES

CHAPTER 3: FAMILY/JUVENILE RECOMMENDATIONS

INTRODUCTION

1. Parents are entitled to counsel when termination of rights is being considered, but not before that point.
2. Judicial Council of California, *Trust and Confidence in the California Courts: Public Court Users and Judicial Branch Members Talk About the California Courts* (Dec. 2006), 18, www.courts.ca.gov/documents/PTC_phase_II_web.pdf (as of Mar. 2017).

RECOMMENDATION 3.1: CONSOLIDATE JUVENILE COURT JURISDICTIONS

3. See Welfare and Institutions Code section 202 and standard 5.40 of the California Standards of Judicial Administration.
4. A child who is over 17 years and 5 months of age or a nonminor child under age 21 may come under the court's child welfare jurisdiction in Welfare and Institutions Code section 450, but that jurisdiction applies to a narrow group of minors and nonminors.
5. A child may also be under the court's juvenile justice jurisdiction for commission of an offense that is noncriminal pursuant to Welfare and Institutions Code section 601, which addresses minors who are truant or habitually disobedient.
6. See Welfare and Institutions Code section 318.5.
7. See Welfare and Institutions Code section 317.
8. See Welfare and Institutions Code section 650.
9. See Government Code section 77003 and California Rules of Court, rule 10.810.
10. Parents of youth supervised by probation in foster care are entitled to court-appointed counsel when (but not before) the court considers termination of their parental rights if they are unable to reunify

with their children within statutory timeframes. (See Welfare and Institutions Code section 727.31(a).)

11. See Welfare and Institutions Code section 362.
12. See Welfare and Institutions Code section 727.
13. See Welfare and Institutions Code section 241.1(e).
14. See Assembly Bill 129 (Cohn; Stats. 2004, ch. 368).
15. See "Assembly Bill 129: Dual Status Children," a resource page on the California Courts website, www.courts.ca.gov/7989.htm (as of Mar. 2017).
16. See California State Auditor, *Dually Involved Youth: The State Cannot Determine the Effectiveness of Efforts to Serve Youth Who Are Involved in Both the Child Welfare and Juvenile Justice Systems* (Report 2015-115, Feb. 2016), www.bsa.ca.gov/pdfs/reports/2015-115.pdf (as of Mar. 2017).
17. See Assembly Bill 1911 (Eggman; Stats. 2016, ch. 637) (dual-status minors).
18. The Legislature recognized this in 2014 and enacted legislation to require the Board of State and Community Corrections to convene a statewide Juvenile Justice Data Working Group to develop and recommend options for the coordination and modernization of juvenile justice data systems. In its final report, the Juvenile Justice Data Working Group recommended creation of a new statewide juvenile justice data collection system and expanded outcome data at the state and local levels, but at present statewide juvenile justice data is largely descriptive without meaningful measures of recidivism.
19. University of California at Berkeley and the California Department of Social Services, *California Child Welfare Indicators Project*, http://cssr.berkeley.edu/ucb_childwelfare/C1M4.aspx (as of Mar. 2017).

20. See California Department of Corrections and Rehabilitation, *2012 Outcome Evaluation Report*, www.cdcr.ca.gov/adult_research_branch/Research_Documents/ARB_FY_0708_Recidivism_Report_10.23.12.pdf (as of Mar. 2017).
21. Each county used its own time frame, but many used a time frame as short as six months. See Board of State and Community Corrections, *Juvenile Justice Crime Prevention Act Annual Report* (Mar. 2015), www.bscc.ca.gov/downloads/JJCPA%20Report%20Final%204.2.2015%20mr-r.pdf (as of Mar. 2017).
22. W. Wiegmann et al., *The Invisible Achievement Gap, Part 2: How the Foster Care Experiences of California Public School Students Are Associated with Their Education Outcomes* (Stuart Foundation, 2014), <http://stuartfoundation.org/wp-content/uploads/2016/04/IAGpart2.pdf> (as of Mar. 2017).
23. Dennis P. Culhane et al., *Young Adult Outcomes of Youth Exiting Dependent or Delinquent Care in Los Angeles County* (2011), https://works.bepress.com/dennis_culhane/113/ (as of Mar. 2017).
24. Michael R. Pergamit and Heidi Johnson, *Extending Foster Care to Age 21: Implications and Estimates from Youth Aging Out of Foster Care in Los Angeles* (The Urban Institute, 2009), www.cafosteringconnections.org/wp2/wp-content/uploads/2014/09/Extending-Foster-Care-to-Age-21-LA-Urban-Institute.pdf (as of Mar. 2017).
25. See Welfare and Institutions Code sections 633 and 634 and California Rules of Court, rule 5.534.
26. Comments of Melissa Gueller, program director, Child Abuse and Neglect, National Council of Juvenile and Family Court Judges, letter to Judge Stacy Boulware Eurie, Superior Court of Sacramento County (May 16, 2016).
27. Ibid.
28. Justice Policy Institute, *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* (Dec. 2014), www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf (as of Mar. 2017).
29. Information provided to Judicial Council staff by the California Department of Social Services, Fiscal Forecasting and Policy Branch (Sept. 1, 2016).
30. Ibid.
31. See program costs information for multisystemic therapy at Center for the Study and Prevention of Violence, *Blueprints for Healthy Youth Development*, www.blueprintsprograms.com/factsheet/multisystemic-therapy-mst (as of Mar. 2017).
32. Ibid.
33. Information provided to Judicial Council staff by the California Department of Social Services, Fiscal Forecasting and Policy Branch (Sept. 15, 2016).
34. See Legislative Analyst's Office, *The 2012-13 Budget: Completing Juvenile Justice Realignment* (Feb. 15, 2012), www.lao.ca.gov/analysis/2012/crim_justice/juvenile-justice-021512.pdf (as of Mar. 2017).
35. See Garrett Therolf, "L.A. County Spends More Than \$233,000 a Year to Hold Each Youth in Juvenile Lockup," *Los Angeles Times* (Feb. 23, 2016), www.latimes.com/local/countygovernment/la-me-probation-sticker-shock-20160223-story.html (as of Mar. 2017).
36. Center for Mental Health Services and Center for Substance Abuse Treatment, *Diagnoses and Health Care Utilization of Children Who Are in Foster Care and Covered by Medicaid* (HHS Publication No. (SMA) 13-4804, 2013), <https://store.samhsa.gov/shin/content/SMA13-4804/SMA13-4804.pdf>.
37. See, for example, Seena Fazel et al., "Mental Disorders Among Adolescents in Juvenile Detention and Correctional Facilities: A Systematic Review and Metaregression Analysis of 25 Surveys" (Sept. 2008) 47 *Journal of the American Academy of Child and Adolescent Psychiatry* 9; Jennie L. Shufelt and Joseph J. Cocozza, "Youth With Mental Health Disorders in the Juvenile Justice System: Results From a Multi-State Prevalence Study," *National Center for Mental Health and Juvenile Justice Research and Program Brief* (June 2006), www.ncmhjj.com/wp-content/uploads/2013/07/7-PrevalenceRPB.pdf (as of Mar. 2017).
38. See Peter Leone and Lois Weinberg, *Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems* (Center for Juvenile Justice Reform, May 2010), http://cjjr.georgetown.edu/wp-content/uploads/2015/03/EducationalNeedsOfChildrenandYouth_May2010.pdf (as of Mar. 2017).
39. Ibid., 5.
40. Ibid., 6.
41. National Child Traumatic Stress Network, *NCTSN National and Community Partners Report* (2011), www.nctsn.org/sites/default/files/assets/pdfs/community_partners_final2011.pdf (as of Mar. 2017).
42. K. M. Abram et al., "PTSD, Trauma and Comorbid Psychiatric Disorders in Detained Youth" (June 2013) *Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin*.
43. Information about the California Department of Social Services' Continuum of Care Reform initiative may be found at www.cdss.ca.gov/cdssweb/PG4869.htm (as of Mar. 2017).
44. See Welfare and Institutions Code sections 329 and 331.
45. See Welfare and Institutions Code sections 245.5, 654, 654.2, 727(d), and 729.2.
46. Gregory Halemba and Gene Siegel, *Doorways to Delinquency: Multi-System Involvement of Delinquent*

Youth in King County (Seattle, WA) (National Center for Juvenile Justice, Sept. 2011), www.ncjj.org/pdf/MFC/Doorways_to_Delinquency_2011.pdf (as of Mar. 2017).

47. See Welfare and Institutions Code sections 206 and 16514.
48. See Welfare and Institutions Code sections 346 and 676.
49. See Welfare and Institutions Code section 676.5.
50. See, for example, Judicial Council of California, *Unified Courts for Families Deskbook: A Guide for California Courts on Unifying and Coordinating Family and Juvenile Law Matters* (2004); National Council of Juvenile and Family Court Judges, *Project ONE*, www.ncjfcj.org/our-work/project-one (as of Mar. 2017).
51. See Center for Juvenile Justice Reform, *Crossover Youth Practice Model*, <http://cjjr.georgetown.edu/our-work/crossover-youth-practice-model> (as of Mar. 2017).

RECOMMENDATION 3.2: PROVIDE MEDIATION WITHOUT RECOMMENDATIONS AS INITIAL STEP IN ALL CHILD CUSTODY DISPUTES

52. Family Code section 3160 requires that superior courts make a mediator available, and section 3170(a) makes that mediation mandatory: “If it appears on the face of a petition, application, or other pleading to obtain or modify a temporary or permanent custody or visitation order that custody, visitation, or both are contested, the court shall set the contested issues for mediation.”
53. “Mediation proceedings pursuant to this chapter shall be held in private and shall be confidential. All communications, verbal or written, from the parties to the mediator made in the proceeding are official information within the meaning of Section 1040 of the Evidence Code.” Family Code section 3177.
54. Family Code section 3183(a).
55. Ibid.
56. Ibid.
57. For example, see Family Code sections 3160–3188 and California Rules of Court, rules 5.210, 5.215, and 5.235. After mediation, courts may use a variety of procedures to obtain further information on which to base a judicial decision should it be needed. For a list of authorized procedures, see *Appendix 3.2B: Obtaining Information in Family Law Child Custody Matters*.
58. Judicial Council of California, *Elkins Family Law Task Force: Final Report and Recommendations* (Apr. 2010), www.courts.ca.gov/documents/elkins-finalreport.pdf (as of Mar. 14, 2017).
59. *Elkins Family Law Task Force: Final Report and Recommendations*, 46.
60. Research strongly supports the use of mediation in family disputes. Family mediation has proven to be consistently successful in resolving custody, access, and child-protection disputes. Studies show that mediation clients are more satisfied with mediation than adversarial clients are with the processes of court hearings and trials. J. B. Kelly, “Family Mediation Research: Is There Empirical Support for the Field?” *Conflict Resolution Quarterly* 22 (2004), 3–35.
61. The Fresno Court had provided child custody recommending counseling before implementation of the multi-tiered approach.
62. A readiness hearing is an initial conference to be held in all matters with child custody issues to confirm that all appropriate papers have been filed and to set a date for mediation with Family Court Services.
63. This benefit was also noted in a 2004 analysis of client feedback on court-based child custody mediations collected as part of the Statewide Uniform Statistical Reporting System (SUSRS). See Judicial Council of California, *Client Feedback in California Court-Based Child Custody Mediation* (Center for Families, Children & the Courts, Apr. 2004), 22, www.courts.ca.gov/documents/Clientfdbk.pdf (as of Mar. 14, 2017).
64. The overall agreement rate in the most recent statewide analysis is complete agreement reached in 43% and at least partial agreement in 50% of cases. Judicial Council of California, *Snapshot Study 2008: Agreement Rates* (Center for Families, Children & the Courts, Dec. 2012), 3, www.courts.ca.gov/documents/Snapshot_2008_agreement_rates_final2.pdf (as of Mar. 14, 2017).
65. According to the experience in the Fresno Court during the three years that the tiered mediation program has been in place, 55% of the cases assigned to the program have settled in Tier I, with most of the remaining cases receiving judicial determinations at that point without recommendations. Less than 15% of the cases were sent on to Tier II or Tier III.
66. Approximately 10% of the child custody cases in the Fresno court program have gone to Tier III.
67. The Fresno Court program also led to some additional efficiencies resulting from a significant reduction in the number of Family Court Services staff subpoenaed to testify (because there were far fewer recommendations on which they would be requested to testify), and a reduction in complaints about Family Court Services staff.
68. Cheryl Scott, manager of Family Court Services for the Superior Court of Fresno County.
69. The average annual cost of a mediator/child custody recommending counselor in California courts, \$135,629 (salary plus benefits), is based on Schedule 7A data submitted by trial courts for fiscal year 2014–2015.
70. An initial proposal circulated for public comment by the Futures Commission drew objections to the extent it suggested that courts already providing mediation services without recommendations in child custody

matters should be required to adopt a three-tier model. The Futures Commission acknowledged the concerns and modified its recommendations as a result. The current recommendations focus on state-wide consistency at the initial contact with Family Court Services by providing an initial mediation without recommendations.

71. Although the recommendations in this report focus on conflicted child custody matters, the Futures Commission also urges courts to expand services to assist litigants in resolving aspects of family law cases relating to support and property division. As noted in the *Elkins Report*, many courts offer mediation and settlement services only for custody disputes in family law matters, but courts that expanded services to assist with child support, property division, and other matters report that many cases can be resolved, or at least have issues significantly narrowed. For parties with counsel, mediation and settlement services can help limit attorney expense, and for self-represented parties such programs provide the assistance of a third party to help them focus their discussions, reflect back potential solutions proposed by the parties, and draft agreements. (See *Elkins Report*, 67.) California Rules of Court, rule 5.83(c)(6)(D) expressly lists providing financial and property settlement opportunities with judicial officers or qualified settlement attorneys as a tool for courts to use in assisting family law cases to move toward resolution in an effective manner. Examples of such programs—one in the Superior Court of Los Angeles County run by volunteers from the Los Angeles County Bar Association, and one in the Superior Court of San Mateo County run by the court—are described in *Appendix 3.2C: Examples of Court-Based Programs for Assisting Family Law Litigants in Resolving Financial and Property Issues*.
72. The Superior Court of Placer County, informed by the Fresno Court experience, is implementing a similar program; it is expected to be in place by the end of 2017.
73. The Superior Court of Placer County is planning to proceed in the same manner, but the education costs will be higher than in Fresno Court, where one of the educational consultants was a volunteer.

- **Recommendation 4.1:**
Increase Transparency, Predictability, and Consistency of Trial Court Employment Through Study and Reporting of Classification and Compensation (page 161)
- **Recommendation 4.2:**
Restructure Fines and Fees for Infractions and Unify Collection and Distribution of Revenue (page 181)
- **Recommendation 4.3:**
Propose Legislation to Authorize the Judicial Council to Reallocate Vacant Judgeships (page 197)

FISCAL/COURT ADMINISTRATION RECOMMENDATIONS

The Commission on the Future of California’s Court System (Futures Commission) focused on uniformity, transparency, funding stability, and the effective use of court resources when approaching the areas of fiscal and court administration. To this end, issues relating to consistency in trial court employment, the courts’ current funding structure, and the effective allocation of judicial resources were reviewed.

COMPENSATION

California courts underwent significant changes beginning in 1997 with the Lockyer-Isenberg Trial Court Funding Act. The act shifted financial responsibility for all trial court operations from individual counties and established the state as the primary funding source. In 2000, the Trial Court Employment Protection and Governance Act (TCEPGA) changed the status of the trial courts’ 17,000 workers. Previously, these staff members were county employees. After TCEPGA they became employees of their respective trial courts, supported by state funding. While that shift brought greater stability to court operations, significant differences remain in compensation and benefits among employees with the same duties. With employee compensation constituting the largest cost in the judicial branch budget, these differences and the difficulty in comparing funding for employment across all trial courts hamper responsible decision making.

FINES AND FEES

Currently, a significant portion of the judicial branch budget comes from criminal and civil fines and fees. Policy makers, branch partners, and the public have expressed concern that this funding approach is inefficient and places a disproportionate burden on the less affluent. The Futures Commission studied the process for imposition and collection of court-ordered debt and the distribution of fine and fee revenue.

JUDICIAL ALLOCATIONS

As California's population has increased, growth has been unevenly distributed among the counties and regions. This distribution of growth has left some courts with more judges, and some with fewer judges, than each needs to meet local caseload demands. In 2001, the Judicial Council began to regularly evaluate and report on judgeship needs, using workload standards developed by the National Center for State Courts. These biennial reports show that the statewide need for judicial officers has remained consistently greater than the number of authorized judicial positions.

The Futures Commission submitted its recommendations on judgeship reallocations to Chief Justice Tani Cantil-Sakauye on April 12, 2016. For an update on recent legislation to implement the recommendations, see page 204.

RECOMMENDATION 4.1:
INCREASE TRANSPARENCY,
PREDICTABILITY, AND
CONSISTENCY OF TRIAL
COURT EMPLOYMENT
THROUGH STUDY
AND REPORTING OF
CLASSIFICATION AND
COMPENSATION

INTRODUCTION

It has been 15 years since California’s judicial branch transitioned from 58 individual, county-funded courts to a structure in which the state has funding responsibility for trial court operations. One area that remains a vestige of the prior county structure is the individual employment of trial court staff at each of the 58 courts. Although the trial courts are state-funded, there is no corresponding state-based employment structure for trial court employees. As demonstrated by budget data for fiscal year 2014–2015, there are notable differences across the branch in salary ranges, benefits, and classifications for similar trial court positions. This structure allows trial court employers to address their own specific needs through individual courts bargaining separately with the labor unions that represent their employees. There are approximately 125 bargaining units spread across 58 trial courts. However, this structure has also resulted in a lack of standard ranges for trial court employee earnings and has made it more difficult for the branch to advocate to the Legislature and Governor for additional funding to cover increases in the salaries of court employees.

Given these challenges, it is important for the branch to examine trial court employment to identify whether courts could benefit from a regional or branchwide approach to improve consistency and uniformity in employment. To increase consistency and predictability in trial court employment compensation and benefits, the Futures Commission recommends:

1. Conducting a uniform classification and compensation study of trial court employees to create common classifications and salary structures across the branch.
2. Creating a branchwide structure that includes regular reporting on compensation and benefits provided for court classifications to bring greater transparency and benefit both trial court employees and management.

3. Requesting that the Judicial Council (Council) reconsider the elements of the Workload-Based Allocation and Funding Methodology (WAFM) formula that include funding based on the actual cost of health benefits paid by each court.

- Enhance equal access to justice by removing disparities resulting from the varying abilities of individual counties to meet the needs of the courts.^{1*}

BACKGROUND

TRIAL COURT FUNDING AND EMPLOYMENT

To understand the structure of the current employment scheme for trial court employees, it is important to understand the history and evolution of trial court funding and employment.

Trial Court Funding Act of 1997

State funding of the trial courts began with the Lockyer-Isenberg Trial Court Funding Act (Trial Court Funding Act), which shifted financial responsibility for all trial court operations from the counties to the state. The Trial Court Funding Act also gave the Legislature authority to make budget allocations for the trial courts. The Council was given the responsibility of allocating the funds to the trial courts. County financial responsibility for the courts was capped at the level provided in 1994. The intent of the Trial Court Funding Act was to:

- Provide stable, consistent funding for the courts;
- Promote fiscal responsibility and accountability by managing resources more efficiently;
- Recognize that the state is primarily responsible for funding the courts, enabling the courts, state, and counties to better engage in long-term planning; and

Despite the shift in funding, the Trial Court Funding Act did not immediately change the employment status of court staff who remained county employees. As such, the Trial Court Funding Act included a requirement that the judicial branch establish a task force to review and recommend the appropriate employment relationship within a state-funded trial court system.

Trial Court Employment Protection and Governance Act

In 2000, the Trial Court Employment Protection and Governance Act (TCEPGA) changed the status of the courts' 17,000 employees from employees of the county to employees of the respective trial courts. As a result of TCEPGA, a court worker is neither a county nor a state employee, but rather a "trial court employee."

Before enacting TCEPGA, virtually all court workers were represented by unions. The TCEPGA preserved this situation by expressly stating that the legislation was "not intended to require changes in existing representation units, memoranda of agreement or understanding, or court rules."² Under TCEPGA, the same unions that represented employees as county employees continued to represent them as trial court employees. However, TCEPGA replaced the counties with individual trial courts as employers for purposes of the existing memorandums of understanding (MOUs). New bargaining units consisting solely of court employees were formed, with the same unions continuing to represent the same

*Footnotes and citations can be found at the end of this chapter on page 205.

employees.³ The TCEPGA also provided for the continuation of salary and benefits that were available during county employment, until expiration of the applicable MOUs. Since expiration of the MOUs, individual trial courts have met and conferred directly with unions over the terms and conditions of employment.⁴ There are approximately 125 bargaining units spread across 58 trial courts.

Each trial court is now an independent employer with the responsibility to oversee hiring; establish and manage workers' compensation and benefits; and provide personnel rules and regulations.⁵ The TCEPGA empowers each trial court to design and control the terms and conditions of court employment (e.g., classifications, compensation, and benefits). Neither conformance to a central model nor coordination with other trial courts, is required.⁶

Although implementation of TCEPGA and transition to court employment did not change salary ranges for any employee position⁷ wages, salaries, hours, and terms and conditions of employment can be modified under a new MOU arrived at through collective bargaining.⁸ One benefit that may not be changed for current employees is the formula for retirement pension benefits because it is deemed vested at the time of employment.⁹

Uniform Model Classification Plan

The Trial Court Funding Act also required the Council to recommend a system of uniform court employee classifications to the Legislature.¹⁰ In January 2000, the Council adopted recommendations for a Trial Court Uniform Model Classification (UMC) Plan that included 104 classifications and a register of salaries for salary ranges of comparable classes used by the trial courts as of July 1, 1999.¹¹ The Council has maintained the register

of salaries, which was last updated in 2007. The current UMC Plan includes 143 classifications across various functional areas such as legal, finance, administration, information systems, court services, human resources, security, interpreters, court reporters, and custodians.

Given the diversity among California's trial courts in terms of size and organization, the UMC Plan does not require any court to conform to a common classification plan. Instead it is designed to provide benchmarks for the trial courts to assist with position classifications, employee selection, training, and other human resources needs.

The Council requires the trial courts to match their classes to one of the UMC Plan classifications as part of the annual budget process. The Schedule 7A, submitted by each trial court every fiscal year, includes budgeted salaries and benefits for each staff position by classification. For each staff position, the Schedule 7A provides the court's classification title and identifies the UMC Plan classification.

TRIAL COURT FUNDING FOR COURT EMPLOYEES TODAY

Trial courts receive most of their funding, including money for employee costs, from the Trial Court Trust Fund. Funding allocations are distributed according to WAFM based on workload and historical funding levels. WAFM calculates each court's annual budget allocation, which is then distributed to the courts on a monthly basis. The courts then develop their own budgets, which allows for local decision-making and the flexibility to adjust spending based on need and changing conditions.

The budgeting flexibility given trial court management creates a natural competition between resources available for salaries and funding for

general court operations. Local court leadership must delicately balance the operational needs of their court with potential salary increases for their employees. WAFM is calculated based on workload and the average cost of labor in each court's region. However, health care benefit costs are funded based on actual costs each fiscal year.

This distinction between salary averages and benefit actuals reflects in part the way benefits had historically been provided by the trial courts. At the time of trial court unification in 1997, retirement and health care benefits were identical to those provided by the counties to all their employees and were not controlled by the trial courts. This continues to be the case for retirement costs for employees hired before the California Public Employees' Pension Reform Act (PEPRA) of 2013.¹² However, over time the cost of health care benefits has moved increasingly away from the benefit levels provided to county employees. Health care benefits vary from court to court depending on the MOU between the court and their employee labor organizations. For courts that experience health benefit cost increases, WAFM allocations are tied to actual cost increases reported by the court. Advocates of the WAFM structure suggest this funding system encourages efficiencies and flexibility within each trial court, including the management of employee costs and other local workforce considerations. However, there is also concern that this approach provides little incentive for courts to control health benefit costs during labor negotiations.

The current structure for providing funding to individual trial courts as one lump-sum allocation has presented challenges when advocating for increased trial court funding. Over the last three years, additional funding has been provided to support general trial court operations. However,

these funds can also be used to increase salaries. This option to use additional funding for salaries, rather than operations, means salaries can be raised without a specific appropriation for trial court employee salary increases. The process to fund trial court employee salary and benefit increases through the state budget has been an area of concern to the legislative and executive branches. They appear unwilling to provide increased funding unless the judicial branch can demonstrate that funding will improve and equalize access to justice across the courts.

Each trial court operates independently and uses discretion in allocating funding to employee salaries, staffing levels, and other operating costs. In fiscal year 2014–2015, the percentage of each trial court's budget allocated to personal services costs ranged from 47 percent to 86 percent, with the remaining 14 to 53 percent dedicated to operating expenses and equipment. These differences result in variations in the types of services offered. As an example, consider the availability of court reporters for family law cases. Currently, 20 courts provide court reporters for all family law proceedings. In the remaining courts, court reporters are provided for some family law proceedings or not at all, requiring parties to arrange for court reporters on their own time and at their own expense. This example highlights the different services provided by courts and the potential for unequal access to justice based merely on location. Other examples can be found in how the courts navigated the most recent economic recession. Between January 2009 and November 2014, 29 courts (50 percent) addressed budget cuts by closing at least one courtroom or courthouse. In addition to the implementation of staff furloughs, other service reductions across all trial courts were made to counter and telephone hours;

self-help, mediator, and facilitation services; and court reporter services. As additional funding has been provided to support trial court operations, each court has applied the additional funds differently, either by restoring services or changing the amounts provided for employee salaries and benefits. These differences highlight the challenge to tie funding with service levels and provide equal access to justice across the trial courts.

[S]ignificant differences have evolved among the courts for particular classifications and the compensation within the UMC Plan.

In contrast, funding for executive branch agencies is divided among personal services, operating expenses and equipment. This division of funding allows the Administration and the Legislature to specifically designate increases in funding for these expenses and track the expenditure of funds by type. If trial court funding were allocated in a similar manner, the individual courts would not be faced with balancing the operational needs of their courts against the needs of their employees. This type of funding allocation could improve transparency in how funds are used by the trial courts; however, it would represent a paradigm shift for the branch. Any change would require collaboration between the Council, the Legislature,

and the Administration, and would also change the accounting and budgeting systems of the State Controller's Office, the FISCal system, the Department of Finance (DOF), and the Council.

CURRENT SYSTEM OF TRIAL COURT EMPLOYMENT AND LABOR

In the trial court system today, there are approximately 125 bargaining units spread across the 58 trial courts. The current trial court employment system provides significant local autonomy, over hiring, classifications, and pay and benefits. This autonomy also allows each trial court to respond to local labor market, local employment conditions, and the specific interests of employees during labor negotiations. Finally, this model allows trial court leadership to adapt to workload fluctuations as well as changes in court operations, such as improved technology.

Local leadership can respond to changing demands by moving staff to different positions, training them for new responsibilities, or even creating specialized job classifications to meet the courts' unique needs. This system is also credited with building labor-management relationships that help reduce grievances when changes in staffing are necessary. Finally, trial courts credit their ability to accommodate the significant budget cuts following the 2008–2009 recession to this local autonomy and flexibility.

DISPARATE CLASSIFICATIONS, COMPENSATION, AND HEALTH BENEFITS AMONG THE TRIAL COURTS

The UMC Plan mentioned previously was designed to provide a system of uniform court employee classifications while allowing for local flexibility. However, significant differences have evolved among the courts for particular classifications and the compensation within the UMC Plan. One example is the Legal Process Clerk classification, 3,252 trial court employees were matched to this classification in fiscal year 2014–2015. For this group, the UMC Plan includes a wide variety of job titles, with some followed by numbers or letters suggesting classification series defining different levels of responsibility or duties. Although all are designated “Legal Process Clerk,” it is unclear how the duties and responsibilities of a Court Clerk I, Court Clerk II, Court Clerk IV, Court Services Assistant, and Information Processing Specialist in one jurisdiction compare to those with the same titles in another jurisdiction.

Additionally, the salary levels for those job titles vary significantly. For courts with more than 50 judges, the monthly salary of positions matched to this classification range from \$1,790 to \$4,285 at the beginning step and \$1,992 to \$5,274 at the highest step. This trend is replicated in other classifications. (See *Appendix 4.1A: Examples of Disparate Classifications and Compensation Monthly Salary Ranges*.)

Core health benefits (medical, dental, and vision) are provided to trial court employees as part of employees’ overall compensation. While a comparison of the exact plans offered to employees was not conducted, the employer costs for such plans provide some insight into potential differences in plan benefits. For 14 sampled courts, employer-paid core health benefit costs

for fiscal year 2014–2015 ranged from \$4,882 to \$23,863 per filled, full-time equivalent (FTE) position.¹³ The Futures Commission identified several reasons for this variance. First, the percentage of plan costs paid by employees of different courts varies. Second, lower-paid employees may receive greater core health benefits. As discussed above, the relationship between salaries and benefits is bargained locally. This may result in one court

The Trial Court Funding Act of 1997 was based on the premise that state funding of court operations was necessary to provide uniform standards and procedures, economies of scale, and structural efficiency to the court system and an improved, uniform, and more equitable court system would follow. The Futures Commission believes it is time to take the initial steps to explore whether the variances in employment arrangements are appropriate and consistent with the goals of the Trial Court Funding Act.

offering lower salaries and higher benefits and a second offering higher salaries and lower benefits.

Overall, it appears that although the UMC Plan was designed to move the trial courts toward greater uniformity in employee classifications,

there remains notable variability in the classifications, salary levels, and core health benefits. The Futures Commission believes it is time to take the initial steps to explore whether the variances in employment arrangements are appropriate and consistent with the goals of the Trial Court Funding Act.

RECOMMENDATIONS

It is important for the judicial branch to revisit and refresh key elements of trial court employment to identify whether the current decentralized system put into place in 2000 is providing the consistency and uniformity sought as a goal of state funding or whether trial courts could benefit from a regional or branchwide approach. To increase consistency and predictability in trial court employment compensation and benefits, the Futures Commission recommends:

1. Conducting a uniform classification and compensation study of trial court employees to create common classifications and salary structures across the branch.
2. Creating a branchwide structure that includes regular reporting on compensation and benefits provided for court classifications to bring greater transparency and to benefit both trial court employees and management.
3. Requesting that the Council reconsider the elements of the WAFM formula that include funding based on the actual cost of health benefits paid by each court.

RATIONALE FOR CLASSIFICATION AND COMPENSATION STUDY

GENERAL OUTCOMES OF A CLASSIFICATION AND COMPENSATION STUDY

It is not uncommon for adjustments to be made over time to an organization's classification and compensation structures. Most court employees are represented by unions. These employees generally experience changes in classification and compensation through the collective bargaining process as courts negotiate with employee labor unions. Additionally, courts' existing classification and compensation structures may require periodic updates to reflect changes in the external market for the court to remain competitive in retaining and attracting employees. Over time, these combined changes may lead to significant inconsistencies in a court's classification and compensation system. To address these inconsistencies and ensure a healthy, functioning organization, courts should review their classification and compensation structures periodically, just as other public entities do.¹⁴ The two primary objectives of a classification and compensation study are to ensure internal equity and external competitiveness.¹⁵ Internal equity refers to the relationship of positions to each other within an organization. External competitiveness refers to the relationship of positions to the external labor market.¹⁶ Addressing these two factors helps organizations attract and retain a high-quality workforce while also ensuring equitable compensation.

Depending on the scope of a classification and compensation study, additional outcomes of the study may include assessment of total remuneration and Fair Labor Standards Act (FLSA) designations. Total remuneration includes both

compensation (base salary and bonuses) and other benefits (medical, dental, retirement, leave programs, and work-life balance). Including total remuneration in the compensation study may be an important aspect to include in an analysis due to local collective bargaining and the historical funding levels of the different courts. Higher benefit levels may have been bargained in one court compared to higher compensation in another. The assessment of FLSA designations would determine overtime pay eligibility for each classification.

BENEFITS TO THE TRIAL COURTS AND THE JUDICIAL BRANCH

For the trial courts, a statewide classification and compensation study would provide empirical data concerning compensation. The information could then be referenced by trial court leadership to make informed decisions during the collective bargaining process. A statewide study may benefit those courts for which a study at the local court level has not been feasible due to staffing levels or financial resources. For trial court employees, a statewide classification and compensation study may address internal and external equity concerns while improving the ability of court employees to move to or between trial courts. Following the classification and compensation study, consistent periodic reporting of compensation and benefits for the same positions across trial courts would increase transparency regarding pay, spotlight the differences in compensation and benefits for the same position, and provide an informational tool for trial courts and employees during employment negotiations.

A statewide compensation study would provide many benefits to the judicial branch. As discussed previously, the judicial branch has encountered

challenges when advocating for increased judicial branch funding. A notable benefit of a statewide compensation study would be strong, empirical evidence to support the compensation needs of trial court employees. Although a statewide

*A statewide study
may benefit those courts
for which a study
at the local court level
has not been feasible
due to staffing levels or
financial resources.*

compensation study would not address the variance in how trial courts use their funding, a study of compensation would assist the judicial branch demonstrate prudent stewardship of public funds.

COST TO IMPLEMENT

The Council conducted a classification and compensation study, spanning 2013 to 2015. The Futures Commission used this experience as a benchmark to estimate the cost for a trial court study. The Council's study focused solely on its support staff agency. This consisted of 21 offices spread over four divisions, with 725 incumbents in 183 job classifications, and approximately 77 pay ranges across various functional areas including legal, finance, administration, education, information systems, court services, human resources, governmental affairs, and security. It consisted of a comprehensive, agency-wide classification, FLSA designation, and compensation study. It considered whether the duties performed by each

incumbent were within the scope of the assigned classification for all positions within the organization (managers, supervisors, and below). As originally contracted, the deliverables consisted of new classification specifications including job descriptions, FLSA designations, salary range recommendations for each classification, and an appeal process. The contract amount for this study was \$788,000.¹⁷

In comparison, a classification and compensation study for the trial courts would be larger in scope. A study for the trial courts, depending on the methodology, may include up to 58 different employers and encompass approximately 16,676 filled, FTE positions currently matched to one of the UMC Plan's 143 classifications.¹⁸ Across the courts, the number of FTE staff per court ranges from 3 to 4,220, with an average of 287.5 FTEs. Given the large number of staff employed, it would not be feasible to include each incumbent in the study. In coordination with the vendor, it would be necessary to identify an appropriate sample of courts and staff to ensure the results are transferable to other similar courts. Despite the greater number of staff, it is important to note that the trial courts currently match their staff to one of the UMC Plan's 143 classifications—fewer than the Council's study, which included 183 classifications. It is not unreasonable to estimate that a classification and compensation system for the trial courts might cost more than \$1 million.

Obtaining an exact cost quote would require the issuance of a request for information (RFI) to identify potential vendors with the needed expertise and to scope the project so a detailed request for proposal (RFP) could be developed. It would also be necessary to determine the appropriate sample of courts that should be included in the study, and to identify deliverables required to establish a uniform system.

As an alternative to contracting with a vendor, the judicial branch may consider consulting with other state agencies that have the experience and expertise to conduct the study or that have an interest in the study outcomes. The branch may consider consulting with the California Department of Human Resources (CalHR) or the DOF. The Personnel Management Division of CalHR is responsible for administering the executive branch's classification plan, salaries, manager and supervisor programs, and other personnel-related tasks. The DOF's director is the chief fiscal policy advisor to the Governor. The DOF would certainly have an interest in the outcomes of this, the implementation of the results, and fiscal results.

Naturally, concern regarding study outcomes may cause anxiety for trial court employees. These concerns could be addressed through a sound communication plan and the opportunity to appeal results.

PUBLIC COMMENT

Opposition was expressed in person at the public comment session held on August 29, 2016, as well as through written comments. The comments include letters from the Superior Court of Los Angeles County; the Alliance of California Judges; Service Employees International Union; individual court employees; the California Judges Association; and a letter signed by the presiding judges and court executive officers of 54 courts. The comments can be summarized as follows:

- Existing law provides for local control and management, including of compensation.
- The current system provides the ability to adapt to changes in caseload mix and size and to changes that affect court operations.

- Standardization would not improve or bring uniform levels to service.
- Standardization would not improve efficiency and would inhibit innovation.
- A uniform classification and compensation system would bring inflexibility and unresponsiveness.
- Moving to a uniform system would be expensive.

Additional comments include the following:

- Legislative history, the Trial Court Funding Act, and the TCEPGA support local trial court control.
- Implementing the recommendation would either reduce pay and benefits or require increased funding to raise all employees to the highest level currently received. This change would result in significant costs.
- There is no connection between a uniform system and improved access or quality of service.
- A statewide system would be unworkable due to different caseloads, court sizes, and levels of automation.
- Disparities in trial court compensation are not the result of disparities in trial court funding. WAFM currently gives local trial courts a strong incentive to control labor costs. Local courts can match available funding with appropriate and fair compensation packages.

PRECEDENTS FOR STATEWIDE SYSTEMS

The implementation of a uniform classification and compensation system is the necessary first step in achieving more uniform branchwide employment. Implementation of this recommendation would

not be unprecedented. Examples of similar efforts since the Trial Court Funding Act and TCEPGA are provided below.

- *Phoenix Program*

The Phoenix Program has two major components: a financial system and a human resources system. It is a statewide effort to provide these services to the trial courts.¹⁹ The Phoenix Financial System includes accounting and financial services, a centralized treasury system, trust accounting services, and core business analysis and support. It is implemented in all 58 superior courts. The Phoenix HR System provides the human resources/payroll component, and builds on the financial system. It is currently used by 12 courts.

- *Transfer of court facilities to state jurisdiction*

The Trial Court Facilities Act of 2002 shifted the governance of California's courthouses from the counties to the state, with the Council assuming full responsibility for managing real estate, court construction, renovations, operations, and maintenance. It operates with ongoing input from county and community representatives.²⁰

- *Judicial Branch Contracting Manual*

Senate Bill 78 (Stats. 2011, ch. 10) enacted a new provision of the Public Contract Code called the California Judicial Branch Contract Law (JBCL).²¹ With certain exceptions,²² the JBCL requires that judicial branch entities, including trial courts, comply with provisions of the Public Contract Code applicable to state agencies and departments related to the

procurement of goods and services. In 2012, the Council adopted the *Judicial Branch Contracting Manual*, incorporating procurement and contracting policies and procedures for all judicial branch entities.

- *California Courts Protective Order Registry*

The California Courts Protective Order Registry (CCPOR) is a statewide repository that provides restraining and protective order information to judicial officers and law enforcement.²³ The program is currently deployed in 43 counties and 13 tribal courts. It allows courts to view the full text of restraining and protective orders not only within different departments of the same court, but also in different courts throughout the state.

- *Judicial Branch Statistical Information System*

The judicial branch implemented the Judicial Branch Statistical Information System (JBSIS) in 1998 to provide accurate, consistent, and timely information for the judicial branch, the Legislature, and other state agencies.²⁴ JBSIS improved data exchange among courts and other agencies by developing standards, incorporating data exchange requirements into case management systems, and developing solutions for data integration. Forty-three courts are now reporting at least some of their statistical data via JBSIS.

- *Case management system master service agreement for California courts*

In February 2013, the Superior Court of Sacramento County acted as the signatory for a master service agreement (MSA) to provide the Superior Courts with a set of vendor solutions and pricing for case

management systems upgrades.²⁵ The MSA provides the starting point for a negotiated agreement between a third party court and the vendor. Any court seeking to replace its legacy case management system can make requests for offers from one or more selected vendors under the MSA.

- *Resource Assessment Study*

The Resource Assessment Study (RAS) model, approved by the Council in 2005, estimates the number of FTE staff needed, to handle the volume of filings coming before the courts.²⁶ With state trial court funding, the model was necessary to establish a uniform workload measure against which all trial courts could be evaluated, to assist with the allocation of funding and to create a more predictable and transparent fiscal environment.

- *Workload-Based Allocation and Funding Methodology*

WAFM was approved by the Council in spring 2013. It estimates funding needed, by court, for nonjudicial, filings-driven functions and establishes a methodology for allocating funding if the available funding is less than required.²⁷

- *California Public Employees' Pension Reform Act*

PEPRA changed certain provisions for both new and “classic” employees of the state’s two largest pension systems,²⁸ as well as 20 county systems that operate under the County Employees Retirement Law of 1937, known as the ‘37 Act.²⁹

- *Uniform Model Classification Plan*

As discussed above, the UMC Plan provides a system of uniform classifications to assist trial courts with position classifications, employee selection, training, and other human resources needs. While trial courts are required to match their classifications to the UMC Plan for purposes of Schedule 7A, trial courts are not required to conform to the plan.

EXAMPLES OF OTHER LARGE STATEWIDE EMPLOYMENT SYSTEMS

University of California

The University of California (UC) system consists of nearly 200,000 employees across 10 campuses, five medical centers, and three laboratories.³⁰ It is governed by a 26-member Board of Regents.³¹ Decisions concerning employment, compensation, and benefits are made by the regents under its governing documents.³² The majority of represented UC employees are in systemwide bargaining units.³³ Employees are assigned to classifications by campus leadership working with their respective human resources classification and compensation staff. The same classifications are used across all campuses. Some bargaining units span all campuses and apply to all locations.³⁴ Wages are assigned to each classification, with geographic differentials.

Executive branch employees

Within California's executive branch, jobs are grouped into approximately 2,500 classifications.³⁵ The classifications are broad. Placement of employees within a classification and the associated duty statements are left to the discretion of the individual offices. A salary range with minimum and maximum rates is provided for each

classification.³⁶ The standard pay ranges include some geographic differentials.

Rank-and-file employees are divided into 21 bargaining units and span multiple state offices.³⁷ Each bargaining unit is represented by a union; in some cases the same union represents multiple units. The unions negotiate directly with the state employer, represented by CalHR, which manages collective bargaining for the executive branch.

Labor structure of the Minnesota judicial branch

In 2001, the Minnesota judicial branch began merging and integrating employees from 87 counties into a single, centralized system.³⁸ It established a new compensation system, new job classifications, additional human resources positions in district offices, and the selection of three new unions.³⁹ The new system consists of a single classification structure with 19 different salary ranges. The classification ranges are very broad, giving flexibility to accommodate local discretion. The salary ranges are wide enough to accommodate any salary adjustments that may be needed to accommodate cost-of-labor differentials.

REGIONAL BARGAINING PROCESS CURRENTLY IMPLEMENTED WITHIN THE CALIFORNIA JUDICIAL BRANCH

The Trial Court Interpreter Employment and Labor Relations Act⁴⁰ established regional bargaining for trial court interpreters. The state was split into four regions⁴¹ for purposes of multi-employer collective bargaining. In all four regions the California Federation of Interpreters (CFI) is the recognized employee organization.⁴² Four separate MOUs are negotiated, addressing various aspects of employment in each region.

Before bargaining sessions begin, the trial courts in each region select representatives from their courts who comprise the management-side bargaining team led by a chief spokesperson selected by the courts in that region. This bargaining team—empowered to speak on behalf of all of the courts in the region—then negotiates the terms of the MOU with the CFI team.⁴³ Reducing the bargaining process to just four regions and two courts, in contrast to each of the 35 courts that employ interpreters, was designed to save time, money, and resources.⁴⁴ Additionally, a regional approach means that the bargaining teams become familiar with the key bargaining issues relating to interpreters for that region. This is a benefit, as many of the same issues arise around the state, and familiarity with bargaining issues often allows for a solution reached in one region to be considered for the next region's bargaining. With less bargaining, arguably there would be fewer opportunities to compare the MOU at issue in the bargaining to other MOUs.⁴⁵

The system has some drawbacks. These include difficulty in reaching consensus among regional court employers and difficulty reaching agreement on new initiatives, and inconsistencies among the courts in how the terms of the regional MOUs are applied. Further, regional bargaining improves the leverage of the union during negotiation because, with more employees tied to each contract, there is a greater effect if the employees use their power to strike.⁴⁶

FEASIBILITY OF BRANCHWIDE IMPLEMENTATION

To ensure accurate results, an analysis will be needed to determine the sample of the courts and staff to be included in the study. This analysis should be done with the input from the selected vendor to conduct the study to ensure an appropriate sample of courts, allowing the results to be applied to similar courts and branchwide.

AUTHORIZATION NEEDED TO IMPLEMENT

To fund the classification and compensation study, the Council would need to work with the DOF to ensure funding is included in the judicial branch budget. With funding in place, the Council would authorize Council staff to develop an RFI and RFP, solicit and score proposals, and award a contract. This would be additional work absorbed by Council staff. The alternative, consulting with other state agencies, would need to be explored in coordination with the leadership of each agency involved.

RATIONALE FOR REGULAR REPORTING ON COMPENSATION AND BENEFITS

Requiring the regular reporting of compensation and benefits will increase the availability of this information branchwide, benefitting both the courts and their employees. Currently, courts are required by the *Trial Court Financial Policies and Procedures Manual* to submit the Schedule 7A report annually as part of the state budget process. The Schedule 7A requires data on budgeted amounts for salaries and benefits of court employees and lists court employee positions as defined by the UMC Plan (see the UMC Plan discussion on page 163). This provides a point-in-time *estimate* of court employee salaries and benefits but does not

reflect the actual costs. Additionally, the information is quite extensive and not easily comparable between trial courts. To compare the information, considerable staff time is necessary to sort through the large spreadsheets submitted by each court and to create a usable format for comparison. This recommendation enhances the requirements for regular reporting to now reflect *actual* salaries and benefits. Additional structured reporting on the data that is collected can assist courts in promoting consistency across the court system relating to salaries and benefits. Courts will be able to make comparisons of *actual* salary and benefits for like positions with up-to-date annual data. This can lead to information for court employees in general and will be very helpful to trial courts by providing comparative salary and benefit information for conducting labor negotiations.

COST TO IMPLEMENT

Because Council staff already collect similar data, there will be minimal costs to implement this recommendation. Courts will be required to report actual costs on an annual basis in addition to the existing requirements of the Schedule 7A. Additional Council resources may be needed to develop a usable report format that can easily be used to compare information between courts.

FEASIBILITY OF BRANCHWIDE IMPLEMENTATION AND AUTHORIZATION NEEDED TO IMPLEMENT

Implementation statewide will not require any legislative changes or changes to the California Rules of Court, and as discussed above, will require minimal resources.

Changes to the *Trial Court Financial Policies and Procedures Manual* to mandate this report will be necessary.

RATIONALE FOR RECONSIDERING ELEMENTS OF THE WAFM FORMULA

WAFM allocations currently provide courts with funding for the actual costs of health care benefits. Changing the funding of health care benefits from actual costs to a formula-driven methodology will ensure that the funding is fairly distributed, with a nexus to the workload and staffing of each court. As the cost of health care benefits has moved increasingly away from the level of benefits provided to county employees, it is appropriate to reconsider the practice of funding actual costs and including health care costs in the WAFM formula. This change will promote consistency across the state regarding the employee/employer share of health benefit costs and will potentially aid the branch in cost control.

COST TO IMPLEMENT

The change to the WAFM formula would require action on the part of the Council, through the Trial Court Budget Advisory Committee. If implemented, courts would need to be cognizant that funding for health benefits would be handled as part of the WAFM formula rather than the full 100 percent funding at actual cost, and would need to account for that change in the budgeting of their WAFM allocation.

FEASIBILITY OF BRANCHWIDE IMPLEMENTATION AND AUTHORIZATION NEEDED TO IMPLEMENT

Branchwide implementation is feasible because the changes would be incorporated into WAFM funding calculations for all courts. Any changes to the WAFM distribution method would need to be approved by the Council.

CONCLUSION

One goal of state funding was achieving consistency across the branch. With the current decentralized system of trial court employment there are still notable differences in salary ranges, benefits, and classifications for similar trial court positions. If implemented these recommendations will improve the consistency, predictability, and uniformity in trial court employment.



APPENDIX

RECOMMENDATION 4.1: INCREASE TRANSPARENCY, PREDICTABILITY, AND CONSISTENCY OF TRIAL COURT EMPLOYMENT THROUGH STUDY AND REPORTING OF CLASSIFICATION AND COMPENSATION

APPENDIX 4.1A: EXAMPLES OF DISPARATE CLASSIFICATIONS AND COMPENSATION MONTHLY SALARY RANGES

Figure 1: Account Clerk (Model Class #3003a): Position titles and beginning step and last step of monthly salary ranges

Court Size	Position Titles	Beginning Step Range	Last Step Range
Courts with 2-3 Judges	Admin Services Specialist I - Conf Debt Collections Clerk Fiscal Technician II	\$2,208-\$2,976	\$3,262-\$4,106
Courts with 4-11 Judges	Account Clerk I Account Clerk II/Court Services Account Clerk Journey Account Specialist II - Conf Accounting Assistant Finance Clerk Fiscal Clerk II	\$2,323-\$3,795	\$2,966-\$5,353
Courts with 19-45 Judges	Account Clerk Account Clerk II Accountant I - Conf Collections Fiscal Assistant III Collections Fiscal Assistant III - UF Collections Fiscal Assistant III - UF II	\$2,331-\$3,990	\$2,841-\$4,871
Courts with more than 50 Judges	Account Clerk Accounting Assistant, SC Court Administrative Clerk III Fiscal Assistant I Fiscal Assistant II Fiscal Services Assistant Payroll Clerk	\$2,253-\$3,926	\$2,253-\$4,761

Source: Judicial Council of California, Schedule 7A—Salary and Position Worksheets for Fiscal Year 2014–2015.

Figure 2: Court Reporter (Model Class #2006a): Position titles and beginning step and last step of monthly salary ranges

Court Size	Position Titles	Beginning Step Range	Last Step Range
Courts with 2-3 Judges	Court Reporter Court Reporter II	\$3,654-\$6,486	\$4,897-\$8,486
Courts with 4-11 Judges	Court Reporter Court Reporter (Lead) Court Reporter III Senior Court Reporter	\$3,946-\$7,028	\$4,796-\$7,715
Courts with 19-45 Judges	Court Reporter Court Reporter Real Time Certified Court Reporter Real Time Official Court Reporter Reporter	\$3,585-\$7,715	\$4,358-\$8,941
Courts with more than 50 Judges	Court Reporter Court Reporter Temp Court Reporter Pro Tem Court Reporter Per Diem Official Court Reporter	\$3,014-\$8,978	\$6,929-\$9,509

Source: Judicial Council of California, Schedule 7A—Salary and Position Worksheets for Fiscal Year 2014–2015.

Figure 3: Attorney (Model Class #2010a): Position titles and beginning step and last step of monthly salary ranges

Court Size	Position Titles	Beginning Step Range	Last Step Range
Courts with 2-3 Judges	Court Research Attorney Research Attorney	\$5,529-\$6,819	\$7,412-\$8,289
Courts with 4-11 Judges	Attorney Dispute Resolution Officer Judicial Attorney II Judicial Staff Attorney Legal Research Attorney I Legal Research Attorney II Public Law Center Director	\$4,854-\$12,1585	\$4,854-\$13,297
Courts with 19-45 Judges	Attorney - Civil Case Management Court Research Attorney I Research Attorney I Research Attorney III Research Attorney IV Court Staff Attorney II Deputy Attorney Self Help Attorney	\$3,980-\$7,902	\$4,836-\$10,990
Courts with more than 50 Judges	Attorney/Assistant Facilitator Contracts Attorney Family Law Attorney Judicial Staff Attorney I Judicial Staff Attorney II Judicial Staff Attorney III Research Attorney Research Attorney II Research Attorney III Senior Research Attorney Staff Attorney	\$5,929-\$9,379	\$6,958-\$11,651

Source: Judicial Council of California, Schedule 7A—Salary and Position Worksheets for Fiscal Year 2014–2015.



RECOMMENDATION 4.2:
RESTRUCTURE FINES AND
FEES FOR INFRACTIONS
AND UNIFY COLLECTION
AND DISTRIBUTION OF
REVENUE

INTRODUCTION

The statutory fines imposed for common infractions have risen to levels considered excessive and disproportionate. They are used to supplement funding for a variety of state and local programs in addition to financially supporting the courts. There is increasing awareness and concern expressed by policymakers and the public that court-imposed and -enforced fines should not be a significant source of court funding. Moreover, the process for collection and distribution of court-imposed fines is diffuse and complex. Significant amounts of court-ordered debt have historically gone uncollected. This proposal seeks to address these issues.

The Futures Commission recommends that legislation be sought to restructure the funding and finances of the judicial branch through the following mechanisms:

1. Increasing criminal base fines for infractions and misdemeanors to proportionate and deterrent levels established by the Legislature and eliminating all add-ons (i.e., surcharges, penalties, and assessments).
2. Requiring that all court-imposed criminal fines be paid to a special state treasury fund.
3. Providing alternative funding to adequately support the judicial system and thereby reduce or preferably eliminate reliance on fines and fees as a source of court funding.
4. Designating one state executive branch entity, such as the Franchise Tax Board, to be responsible for collection of these fines.

BACKGROUND

In 1997, the Lockyer-Isenberg Trial Court Funding Act (Trial Court Funding Act) acknowledged the courts as a separate branch of state government and found that funding for the judiciary is most logically a state, rather than local, function. The Trial Court Funding Act was intended to provide state responsibility for trial court funding and any growth in the costs of trial court operations. County contributions to trial court funding were permanently capped at levels prescribed by statute. Revenue from certain fines and forfeitures were redirected to the counties to assist them in meeting their obligation to support the trial courts.⁴⁷

As recently as fiscal year 2012–2013, the California judiciary's share of the state General Fund was just 0.8 percent. This level is among the lowest of court systems supported by state general funds, ranking California at 29th out of 36 states.⁴⁸ (See *Appendix 4.2A: National Patterns of General Fund Support of Judiciary and Trial Courts*.) For fiscal year 2016–2017, \$1.7 billion, or approximately 1.4 percent, of California's General Fund provided 46 percent of the judiciary's \$3.7 billion budget.⁴⁹ This 1.4 percent share is, again, among the lowest of court systems supported by state general funds. The remaining necessary financial support for the judicial branch is largely derived from fines and fees imposed in criminal and infraction cases and from civil filing fees.

Fines and fees are currently payable to the imposing court or county. The process for receipt and distribution of the funds received is complex and cumbersome. The *Trial Court Revenue Distribution Guidelines* from the State Controller contain 98 pages of distribution tables organized by code sections that detail how fines assessed for particular violations are to be distributed among the potential receiving entities.⁵⁰ The distribution

is often affected not only by the statutory basis for a violation, but also by whether the violation occurred within city limits or on county land. Depending on those factors there may be a special restriction on the use of the distributed funds.

Courts spend significant time and money to receive and distribute fines and fees. One small- to medium-sized court reports 90 hours per month to track and ensure distribution is accurately posted by its automated case management system. A medium-sized court estimates approximately 400 hours per month to post and distribute fines and fees. A large-sized court spends approximately 3,000 hours per month or five percent of its workforce on this function.⁵¹ Despite these efforts, proper allocation is quite low. Since 2007, the Controller has conducted 66 audits of revenue from fines and fees in 52 counties. Only six percent of the audits showed distribution of remittances that were substantially correct. Sixty-eight percent showed revenues were underpaid to the state. Twenty-six percent showed revenues were overpaid. The combined results show underpayments to the state total more than \$18 million.⁵²

In 1992, the Judicial Council (Council) adopted base bail schedules for traffic offenses pursuant to Vehicle Code section 40310. Those base amounts have changed modestly over the years, but the true cost of an infraction or traffic violation has risen dramatically due to a variety of enhancements and assessments added by the Legislature to provide funding to worthwhile programs.⁵³

Each time a trial court imposes a monetary fine for a traffic infraction, it must calculate the base fine, then add corresponding fines and surcharges known as the penalty assessment. The amounts of some base fines are fixed by statute, but many are subject to judicial discretion with a suggested minimum in the bail and penalty schedules.⁵⁴

When the trial judge determines the base fine, the penalty assessment is added using amounts that must be calculated under as many as 12 other statutes.⁵⁵ Some of the statutes specify a specific dollar amount per offense, while others require an assessment that is a multiple of the base fine. For example, there is a court construction penalty of \$5 for every \$10 of the base fine imposed.⁵⁶ Thus, in every case the trial court must separately calculate all the components of the penalty based on the amount of the base fine. The penalty can exceed the base fine by as much as 300 percent.⁵⁷ Under the current system, a stop sign violation with a base fine of \$35 can result in a total fine of \$238.⁵⁸ These costs are among the highest in the United States for an infraction violation.⁵⁹ Between 1994 and 2015, reliance on fines and fees as a support mechanism for the California courts increased as over 300 new offenses were added to those eligible for payment by forfeited bail.⁶⁰

California's courts rely heavily on civil filing fees as well as criminal fines and fees. As an example, in fiscal year 2013–2014, civil filing fees provided the trial courts with approximately \$430 million.⁶¹ Fines and fees imposed on violators generated approximately \$1.7 billion. Approximately \$600 million, or 35 percent, of all fines and fees went to the court system as its direct share, with 65 percent going to other state and local programs.⁶² But \$160 million of the local money was paid back to the courts by counties from fines and forfeitures redirected to them as part of revenue-related maintenance of effort obligations under the Trial Court Funding Act.⁶³ Approximately \$114 million was paid as costs of collection, and the remaining \$840 million in revenue from fines and fees provided funding to more than 100 state and local programs.⁶⁴

RECOMMENDATION

The Futures Commission recommends that legislation be sought to restructure the funding and finances of the judicial branch through the following mechanisms:

1. Increasing criminal base fines for infractions and misdemeanors to proportionate and deterrent levels established by the Legislature and eliminating all add-ons (i.e., surcharges, penalties, and assessments).
2. Requiring that all court-imposed criminal fines be paid to a special state treasury fund.
3. Providing alternative funding to adequately support the judicial system and thereby reduce or preferably eliminate reliance on fines and fees as a source of court funding.
4. Designating one state executive branch entity, such as the Franchise Tax Board, to be responsible for collection of these fines.

This recommendation is designed to enhance the impartiality of the role of the courts in the imposition and collection of fines and fees for infractions and low-level offenses. Base fines should be set by the Legislature at levels that reflect the gravity of offenses and are designed to deter violations. In setting new fines, the Legislature will have the opportunity to take into account an offender's circumstances or other factors that courts could consider in exercising discretion to set the fine owed or impose an alternative punishment. Such fines should be payable to the state for deposit in the Special Deposit Fund rather than to the superior courts or counties for distribution. An executive branch department, not the courts, should be primarily responsible for collections of fines. These

changes should enhance public confidence in the judiciary, streamline processes by eliminating an unduly complex system for distribution of fines and fees, and provide more fairness and transparency to the process of adjudicating minor offenses and holding offenders accountable. To the extent that revenue from base fines continues to diminish over time, this proposal will ensure that policymakers have access to necessary information to make financial projections, explore other sources for stable court funding, and use fine and fee revenue to supplement—rather than supplant—the state's responsibility to fund the judiciary.

RATIONALE FOR THE RECOMMENDATION

FINES AND FEES NO LONGER COMMENSURATE WITH OFFENSE

The impact of court-imposed fines for infractions and misdemeanors is especially burdensome on Californians with limited income. Public testimony and published reports relay a common scenario for low-income residents who violate traffic laws. The steep cost of a violation, even for a low-grade offense, is often out of reach for California's most economically disadvantaged residents. An offender's inability to pay a fine can have a drastic impact on his or her employment in a way that is disproportionate to the offense.⁶⁵ As noted, a stop sign infraction with a base penalty of \$35 actually costs \$238. If the violator misses a court appearance or fails to pay the full fine when due, his or her driver's license is suspended and a civil assessment of up to \$300 can be added to the ticket.⁶⁶ Thus, a ticket with a \$35 base penalty can be \$538. A driver's license suspension can be particularly onerous.⁶⁷ A more serious violation, such as driving more than 25 miles per hour over the speed limit, can result in a fine of \$490, and if not timely paid, \$790.⁶⁸ A

job may be lost because an employee can no longer drive, or a work location may be just too distant for an employee to arrive on time with public transportation.⁶⁹ Although performance of public service may substitute for payment of a fine, and courts may allow installment payments, there is reason to question whether these alternatives have been widely known, publicized, or encouraged.⁷⁰

The impact of court-imposed fines for infractions and misdemeanors is especially burdensome on Californians with limited income.

One report estimates that over 4 million driver's licenses have been suspended in California due to failure to appear or pay a court-imposed fine.⁷¹ While this number has been disputed, Department of Motor Vehicles data show that currently more than 600,000 drivers have had their licenses suspended for failure to pay a fine or appear in court on a traffic ticket.⁷² The Governor's proposed budget for 2017–2018 proposes the repeal of driver's license holds and suspensions for failure to pay a fine on the basis that "[t]here does not appear to be a strong connection between suspending someone's drivers license and collecting their fine or penalty."⁷³

A willful failure to pay a fine when due is a misdemeanor, even if the fine is paid late.⁷⁴ In such cases, the court may also impose a civil assessment of up to \$300 for any willful failure to appear for a court proceeding or pay a court-imposed fine when due.⁷⁵ The Department of Motor Vehicles may be

notified of the failure to pay and may not issue or renew a defendant's driver's license until payment is certified by the court.⁷⁶ Thus, unpaid fines cause additional penalties, loss of driving privileges, and, in certain circumstances, expose the offender to arrest and criminal prosecution with attendant procedural protections and expense, including the right to council and jury trial.⁷⁷ The Conference of State Court Administrators observes: "In addition to the disparate impact [court imposed fees] appear to have on the economically disadvantaged, they also appear to be inefficient as a means of producing revenue. ... 'A true cost-benefit analysis of user fees would reveal that costs imposed on sheriffs' offices, local jails and prisons, prosecutors and defense attorneys, and the courts themselves surpass what the state takes in as revenue.'" ⁷⁸ It is not clear how the current system of driver's license suspension and criminalization for inability to pay a fine contributes to effective public safety.⁷⁹

DECLINING AND INAPPROPRIATE SOURCE OF REVENUE

In recent years, the funding of state court systems through fines assessed in court proceedings has received increasing scrutiny. On March 14, 2016, the Civil Rights Division of the U.S. Department of Justice transmitted a letter to the Chief Justices and Administrators of the state courts regarding the imposition of fines and fees in misdemeanor and infraction cases.⁸⁰ The letter summarized the unnecessary harm that can be inflicted on violators by a system of fines and fees that is used to financially support state courts. The letter echoes a perspective expressed by many critics of the California system when it states that to the extent fines and fees "are geared not toward addressing public safety, but rather toward raising revenue, they can cast doubt on the impartiality of the tribunal and erode trust between local governments and their

constituents."⁸¹ These concerns were echoed in comments received by the Futures Commission on the subject of court-imposed fines and fees in a public hearing held December 8, 2015.

In a 2015 letter to the Administrative Director of the Council, state senate leaders expressed concern that this system of fines has approached its maximum revenue-generating level, and "issues of equity and efficacy of penalty assessments requires addressing program reliance on these revenue streams."⁸² Recently, California's Legislative Analyst observed that the revenue distributed from this system has steadily declined from approximately \$2.1 billion in 2010–2011 to \$1.7 billion in 2015–2016.⁸³

The Chief Justice in her 2016 State of the Judiciary address succinctly pointed out the challenge presented by our current system:

We have a system of fines and fees that has morphed from a system of accountability to a system that raises revenue for essential government services. For example, we raise approximately \$1.7 billion in fines, fees, and assessments. More than 60 percent of that money goes to fund programs and services at the local and state level. The rest goes to the court system. This is an inequity when we have taken a fines, fees, and assessment accountability system and turned it into a revenue-generating system for government services.⁸⁴

Considerations of public policy support separation between court and agency funding and the assessment and collection of fines. As the Department of Justice has recognized, the public has reason to question the independence and impartiality of courts with a direct economic stake in fines and fees.⁸⁵ Serious questions of due process may arise when an adjudicative entity has a pecuniary

interest in the outcome of cases. The vast majority of jurisdictions in this country do not support judicial branch salaries with revenue derived from court-imposed fines or fees. California appears to be one of only 10 states that do.⁸⁶

INAPPROPRIATE AND INFLEXIBLE MECHANISM FOR FUNDING PROGRAMS

As California's Legislative Analyst observed, the existing system of fines and fees also undermines the authority of the Governor and Legislature to assess and provide funding to worthwhile programs through the budgetary process.⁸⁷ Gubernatorial and legislative discretion are limited to the extent that traffic violator revenues are automatically applied to specific programs and restricted in use pursuant to statutory formula. The California Constitution requires the Governor to propose to the Legislature an annual budget with "statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided."⁸⁸ Revenue derived from fines and fees directed to certain uses by statute may play no role in budget solutions or shifting priorities of the Governor and the Legislature when considering proposed expenditures and estimated revenue.

INCREASING BASE FINES

The projected fiscal impact of a reconfiguration may be highly variable, and is likely to be a topic of considerable negotiation in the Legislature. As noted, the courts received \$600 million from criminal fines and fees in 2013–2014, and counties received about \$600 million, of which approximately \$160 million was paid back to the courts as part of revenue-related maintenance of

effort obligations. More than 100 state and local programs received the remaining annual distributions totaling approximately \$500 million.⁸⁹ The degree to which these programs will be affected turns largely on the amount that could reasonably be generated by restructured base fines after the elimination of all enhancements and assessments.

Given current levels, after the elimination of penalties and assessments, it would not be unreasonable for the Legislature to consider raising base fines by multiples of four or six. This would mean that an offense currently with a base fine of \$20 would be recalibrated to a total fine of \$80 or \$120. A more serious offense with a base fine of \$70 would be recalibrated to a total fine of \$280 or \$420. The exact amounts of reconfigured base fines may vary based on what the Legislature considers to be roughly proportionate to the offenses in light of present-day economic realities. But multiples of four or six could be within the realm of what the Legislature considers appropriate. For example, analysis of a representative group of imposed fines indicates that if base fines were increased by a multiple of four, the total amount receivable would be slightly less than under the current system. (See *Appendix 4.2B: Estimates for Increasing Base Bail/Fines and Redistributing Proceeds, Eliminating All Assessments/Surcharges.*) Base fines increased by a multiple of six, would yield slightly more than under the current structure.

Public comment on this proposal addressed the calculation of new base fines in two ways. There is overwhelming support to reduce the amount due for infraction violations through the elimination of all surcharges, penalties, and assessments and the recalculation and establishment of a new schedule of fines. There was also significant legislative and public support for a system that takes into account

an offender's ability to pay when setting the amount due. Thus, the recalibration of fines without the various enhancements should result in a reduction of the maximum fine owed for specific infractions violations. But the Legislature may also wish to consider a range of fines that may be imposed for each category of infraction. The amount actually imposed by the court could take into account an offender's financial circumstances and other appropriate factors when determining a fine amount or imposing an alternative punishment.

*[T]he public has reason
to question the
independence and
impartiality of courts
with a direct economic
stake in fines and fees.*

Regardless of the specific formula, once new base fines are agreed on, the amount available for distribution to programs will be affected by an amount the Legislature considers to be appropriate and fair for different classes of violations or violators. Obviously, if restructuring base fines does not cause a reduction in total revenue, funds could be appropriated to the courts, and state and local programs in much the same way as under the current system. The reconfiguration of base bail amounts will still continue to generate significant revenue. But there will be a set of base fines, without penalties or assessments that will be established on the basis of fairness in light of the gravity of the offense. To the extent that base fine revenue is not calculated to yield current levels of support, programs should be funded based

on need and desirability rather than an automatic statutory formula. Such a distribution will reflect gubernatorial and legislative priority, and will allow policymakers to consider the needs of the many worthwhile programs currently funded automatically from court-generated revenues.

In restructuring base fines and distributions, policymakers may also wish to address the distributive share of proceeds payable to local government. Under the current structure, in fiscal year 2013–2014, counties and cities received approximately 41 percent of total collections. This included the \$160 million required under Government Code section 77201.3 remitted to the state for support of trial court operations. That amount was based on a formula taking into account the counties' historical support for the courts, but it is important to bear in mind that counties are required under law to provide more support for the courts than this \$160 million. The 20 largest counties were required to pay an additional \$499 million in 2013–2014 to support court operations, and all counties paid \$94 million to support the maintenance of court facilities. Payment of significantly enhanced base fines to a state special fund will provide the courts, state policymakers, and counties the opportunity to revisit and reconsider the best structure for these county payments. In other words, should the payments continue to be made, or should the amounts required by the Trial Court Funding Act be set off before remaining revenue from base fines is paid to counties and local programs under a new system? The elimination of penalty assessments will also require restructuring county obligations to remit collections of penalties received pursuant to Government Code section 70372 that are currently paid by the counties for operation and construction of court facilities.

DEPOSITING FINE REVENUE IN A SPECIAL DEPOSIT FUND

The specific fiscal impact on the judicial branch from this proposal will of course vary based on the amounts paid under a new schedule of fines. But any adverse effect should be minimized by taking into account the state's obligation, whether from the General Fund or some other source, to provide necessary resources for a functional judicial system. For fiscal year 2013–2014, after adding in the payments made by counties, 48 percent of fines and fees collected went to the courts and comprised about 21 percent of the 2015–2016 judicial branch budget.⁹⁰ Under this proposal, the revenue collected from newly structured base fines will be payable to the state and placed in a special deposit fund to be applied for the benefit of state and local programs as determined by the Legislature. However, it is important to note that revenue from fines and fees is on a downward trend. Advances in technology—such as communications improvements that facilitate telecommuting, autonomous vehicles, and public transit projects like high-speed rail—may result in fewer violations or fewer cars on the road that will likely hasten the decline.⁹¹ In fact, the Governor's proposed budget for 2017–2018 contains a \$55 million appropriation from the General Fund to backfill a continued decline in revenue from fines and fees.⁹² To the extent the Legislature determines the courts should share in any portion of newly structured base fines, receipt of all monies should be centralized in an account in the state treasury to ensure that forecasting for the judicial branch accurately accounts for this declining stream of projected revenue, and that fines are used to supplement—not supplant—the state's obligation to fund the judiciary at an adequate level to serve the public.

Placing payment and collection of all court-ordered criminal fines at the state level will also afford policymakers the opportunity to consider whether revenue supporting the courts from such fines should be replaced with some source that is more stable than the General Fund. The primary sources of General Fund revenue are corporate and individual income taxes. Both are highly volatile. One group studying the volatility of California's General Fund observed that two-thirds of the time corporate tax revenues will change between -9.9 percent and 15.9 percent when compared to the previous year. Individual income tax revenues will also change two-thirds of the time, between -6.7 percent and 18.3 percent compared to the previous year.⁹³ In light of this volatility and existing demands on the General Fund, it may be preferable for policymakers to replace declining fine revenue with a more stable source.

For example, as most fines are related to Vehicle Code violations and the adequate enforcement of the traffic laws benefits all California drivers, the Highway Users Tax Account or a dedicated component of vehicle registration fees could be explored to find a stable source to replace this declining revenue. To provide the full \$600 million the courts currently receive directly from fine and fee revenue, fuel taxes would need to be increased by 3.5 cents per gallon, or a surcharge of \$17 would need to be added to the vehicle registration fees. Whether the full \$600 million should be replaced by additional fees, or only a portion thereof, is a matter for future negotiation.⁹⁴ But the motivating consideration should be to replace this declining revenue stream with some source other than the General Fund that does not vest the courts with a stake in the amount of fees and fines imposed and collected for infractions.

Once the penalties for infractions are restructured into a schedule of new base fines and all criminal fines are payable to the state for deposit in a special deposit fund, sound public policy supports transferring the responsibility for collection of fines from the courts to an executive branch agency. The amounts due will no longer be received and distributed by the courts or counties, but will be obligations owed to the state. If in setting the penalty for an infraction, ability to pay may be taken into account or alternative sanctions may be imposed, the courts will be charged with exercising the discretion to do so.⁹⁵ Thus, as the arbiters of the measure and possible alternatives to fines, sound policy considerations support shifting the primary responsibility for enforcement and collection from the courts to the executive branch. To continue relying on the courts as both arbiter and collection agency may cast doubt on judicial impartiality and undermine public confidence.

To continue relying on the courts as both arbiter and collection agency may cast doubt on judicial impartiality and undermine public confidence.

SHIFTING COLLECTION RESPONSIBILITY OUT OF THE JUDICIAL BRANCH

The collection of fines and fees imposed by the courts has a troublesome history. In 2011, the Council convened the Court-Ordered Debt Task Force (Task Force) to evaluate and make

recommendations to the Council and the Legislature for consolidating and simplifying the imposition and distribution of the revenue derived from court-ordered debt. The goal was to improve the process for those entities that benefit from the revenues.⁹⁶ The Task Force revised a series of recommendations for best practices, first made in 2008, and encouraged collections programs to follow as many of these practices as possible in an effort to enhance collections.⁹⁷ Programs may also use third party entities to assist in collections. Yet, notwithstanding these efforts, in fiscal year 2013–2014, the amount of outstanding court-ordered debt grew over the previous year from \$8.3 billion to \$9.1 billion. A large portion of this sum may be uncollectable.⁹⁸

In order to encourage the payment of old fines and allow courts to resolve delinquent cases, an amnesty program took effect in 2015.⁹⁹ As a result, for certain fines, courts may accept 50 percent, or in some cases as little as 20 percent, of the total amount in full satisfaction of the debt.¹⁰⁰ The program estimates there are 6 million eligible delinquent accounts worth approximately \$5 billion. The program ended March 31, 2017. As of August 31, 2016, approximately 176,000 delinquent accounts were resolved, with more than \$28 million in gross revenue collected and \$18.6 million in net revenue collected to be distributed among courts and local and state agencies.¹⁰¹

When the amnesty program ends, all amounts that remain outstanding and delinquent should be re-based as a matter of policy by eliminating the debt that cannot realistically be collected from the total debt outstanding. Once re-based, the oversight of all efforts to collect and receive payment of court-ordered debt should be placed under the supervision of an agency in the executive branch. In this way, courts will be rightly perceived as neutral arbiters of any challenge to court-ordered

debt or its collection, and will be free of any taint that may derive from having a direct stake in the collection process. At present, the California Franchise Tax Board has two programs that provide collections services to courts and counties. It could possibly provide the appropriate oversight of collections programs statewide. These programs are the Court-Ordered Debt Program and the Interagency Intercept Collection Program.¹⁰² Both currently offer services for accounts that are delinquent for at least 90 days.¹⁰³

With the exception of the 2015 amnesty program, there are no current standards or guidelines that permit collecting courts or counties to accept less than payment in full to satisfy court-ordered debt. However, sound considerations of public policy may support doing so in certain cases. As discussed above, the inability to pay court-imposed fines can have collateral adverse consequences for those violators who try their best but cannot fulfill their financial responsibilities. In some cases, compromise of the amount due may be the most desirable outcome. For example, when an offender cannot pay a fine and the loss of the privilege to drive means he or she will lose a job, compromise may be in the state's best interest as well as the offender's. Acceptance of installment payments or a discounted amount as payment in full may be warranted. A state agency charged with statewide collections responsibility can establish policies to inform these kinds of decisions to compromise, free from any taint that its policy positions may be affected by a direct interest in the collection of revenue. Unifying collections efforts under a single executive branch agency will also foster the equitable treatment of violators who are unable to pay fines in full or on time for valid reasons. The high levels of delinquent court-ordered debt, and the mixed results of collections efforts that led to

the amnesty program, indicate that flexibility and discretion may yield a better statewide outcome than inflexible attempts at enforcement.

CONCLUSION

As a matter of sound public policy, California should not rely on fines and fees imposed on offenders to meet the fiscal needs of the courts. There should be a schedule of base fines that affords offenders convenient notice and a realistic opportunity for payment. All fees, assessments,

A state agency charged with statewide collections responsibility can establish policies to inform these kinds of decisions to compromise, free from any taint that its policy positions may be affected by a direct interest in the collection of revenue.

and additional penalties should be eliminated and base fines should be prescribed at levels proportionate to offenses. The system of fines for infractions should not work a disproportionate hardship on violators in a way that impairs their ability to earn a living. Judges should be afforded the discretion to impose base fines in a way that takes into account the offender's ability to pay. As recognized in the Governor's proposed budget, driver's licenses should not be suspended or withheld simply because an offender cannot pay a fine. Nor

should the courts be the primary enforcement arm for collection of court-imposed fines. The policy concerns expressed in this proposal counsel shifting responsibility for collection and distribution of fines and fees out of the judicial branch.

Practical considerations also support the policy changes advanced in this proposal. The recognition in the Governor's proposed budget that the declining trend in revenue from fines and fees warrants changes in distribution from the State Penalty Fund highlights the problem faced by the courts and other recipient programs on a larger level. This declining and inappropriate revenue stream should be replaced by another source. In light of its volatility and the significant demands already placed on the General Fund, policymakers should consider some alternative and stable method to fund the courts. Because all Californians benefit from the resources courts devote to enforcing traffic violations and adjudicating traffic-related issues, a component of vehicle license fees or fuel taxes may be appropriate.

On March 3, 2017, California's Legislative Analyst released a report on the Governor's budget proposals to repeal driver's license suspensions and address the declining revenue to the State Penalty Fund. That report states, in part:

[T]he Governor's proposal raises larger questions about appropriate sanctions for failing to pay fines and fees. However, this issue is only one piece of the overall criminal fine and fee system. The state's current system has evolved from statutes passed over the course of numerous years. In order to ensure that the system effectively meets current legislative goals and priorities, we recommend that the Legislature reevaluate the overall structure of the criminal fine and fee system.¹⁰⁴

State policymakers should take up this recommendation to craft a just system of penalties for low-level offenses and find a new and better way to adequately fund our courts.



APPENDICES

RECOMMENDATION 4.2: RESTRUCTURE FINES AND FEES FOR INFRACTIONS AND UNIFY COLLECTION AND DISTRIBUTION OF REVENUE

APPENDIX 4.2A: NATIONAL PATTERNS OF GENERAL FUND SUPPORT OF JUDICIARY AND TRIAL COURTS

State	Judiciary is State-Funded System	Trial Courts Included in State Budget	State Pays for Courthouses, Facilities	Judiciary Portion of State General Fund
Alabama	Yes	Yes	No	2.00%
Alaska	Yes	Yes	Yes	2.12%
Arizona	Mix	No	No	1.28%
Arkansas	Mix	Mix	No	<1%
California	Yes	Yes	Yes	0.80%
Colorado	Yes	Yes	No	3.00%
Delaware	Yes	Yes	Yes	2.50%
Florida	Mix	Yes	No	0.60%
Georgia	Mix	Mix	No	0.86%
Hawaii	Yes	Yes	Yes	2.34%
Idaho	Mix	Mix	No	1.00%
Indiana	Mix	Mix	No	0.89%
Kansas	Yes	Mix	No	1.70%
Kentucky	Yes	Yes	Yes	3.41%
Louisiana	Mix	Mix	No	<0.5%
Maine	Yes	Yes	Yes	1.90%
Maryland	Yes	Yes	Yes	2.60%
Massachusetts	Yes	Yes	Yes	1.80%
Michigan	Mix	Mix	No	1.90%
Minnesota	Yes	Yes	No	1.70%

State	Judiciary is State-Funded System	Trial Courts Included in State Budget	State Pays for Courthouses, Facilities	Judiciary Portion of State General Fund
Missouri	Yes	Mix	No	2.13%
Montana	Yes	Yes	No	<2.0%
Nebraska	Yes	Yes	No	2.00%
Nevada	Mix	Mix	No	0.97%
New Hampshire	Yes	Yes	Yes	5.00%
New Jersey	Yes	Yes	No	2.10%
New Mexico	Yes	Yes	No	2.52%
New York	Yes	Yes	Yes	appx 2%
North Carolina	Yes	Yes	Yes	2.20%
North Dakota ¹	Yes	Yes	No	not provided
Oklahoma	Yes	Yes	No	<1%
Oregon ¹	Yes	Yes	No	2.67%
Pennsylvania	Mix	Mix	No	not provided
South Carolina	Mix	Yes mostly	No	<0.7%
South Dakota	Yes	Yes	No	2.70%
Tennessee	Mix	Mix	No	0.40%
Texas	No	No	No	0.43%
Utah	Yes	Mix	Mix	2.10%
Virginia	Yes	Yes	No	2.15%
Washington	No	No	No	0.50%
West Virginia	Yes	Yes	50/50	3.00%
Wisconsin	Mix	Mix	No	0.77%

Source: National Center for State Courts, *The 2012 Budget Survey of State Court Administrators* (All States' Responses), www.ncsc.org/Information-and-Resources/Budget-Resource-Center/Budget_Funding.aspx.

¹ Biennial budget.

APPENDIX 4.2B: ESTIMATES FOR INCREASING BASE BAIL/FINES AND REDISTRIBUTING PROCEEDS, ELIMINATING ALL ASSESSMENTS/SURCHARGES

There is no comprehensive database for determining the total number of citations issued for infractions. Thus, to assess the impact of this scenario, actual data were drawn from a medium-sized court for the top 18 violations during fiscal year 2013–2014. At the time of the analysis, this was the most recent year for which detailed fiscal data was available.

Figure 1 provides the revenue generated for 18 violations under the current fine and fee structure and for two scenarios in which the base fine is quadrupled (4x) and sextupled (6x) with no additional penalties and assessments. In essence, these figures demonstrate that by quadrupling the base fine amount, the yield would be slightly less than under the current structure. Should base fines be increased by a multiple of six, the yield would be slightly higher.

Figure 1: Revenue impact of quadrupled (4X) and sextupled (6X) base bail/fines from the top 18 violations in one medium-sized court, no assessments/surcharges

	Base Year Current Conditions	Bail/Fines Only— Increased 4X	Bail/Fines Only— Increased 6X
Total Base Fine Revenue Generated	\$3,873,705	\$15,494,820	\$23,242,230
COUNTIES			
County Base Bail/Fines	1,162,112	1,162,112	1,743,167
County General Fund	2,579,766	—	—
County DNA	1,997,720	—	—
Maddy Local EMS	799,088	—	—
Total County	\$6,538,686	\$1,162,112	\$1,743,167
STATE			
State Portion Base Bail/Fines	—	—	—
State Penalty Assessment Fund	3,995,440	—	—
State General Fund	774,741	—	—
State EMAT	198,160	—	—
Total State	\$4,968,341	—	—
COURTS			
Base Bail/Fines	—	7,747,410	11,621,115
Court PA	1,997,720	—	—
Court Ops, Conv Assess., Night Court	3,765,040	—	—
Total Courts	\$5,762,760	\$7,747,410	\$11,621,115
CITIES/LOCAL JURISDICTIONS			
City/Local Jurisdiction Base Bail/Fines	\$2,711,594	\$2,711,593	\$4,067,390
Proceeds to Distribute to Other Entities^a	—	\$3,873,705	\$5,810,558
Total Base Bail/Fines, Assessments	\$19,981,380	\$15,494,820	\$23,242,230

^a To be legislatively determined.

For 10 common vehicle code violations, Figure 2 provides a comparison between the base bail/fine amount and total bail amount, including penalties and assessments, under the current system, and the total bail under two scenarios in which the base fine is quadrupled (4x) and sextupled (6x) with no additional penalties and assessments. As demonstrated, a four-fold increase would result in a total amount receivable that is slightly less than under the current system; a six-fold increase produces yield that is slightly higher than under the current structure.

Figure 2: Total bail calculations on 10 violations: existing structure compared to two levels of base bail/fine with no assessment/surcharges

Vehicle Code Section	Description	Base Bail/Fine ^a	Total Bail ^b	Total Bail Under 4X	Total Bail Under 6X
5200(a)	Two License Plates—Display Specified	\$25	\$197	\$100	\$150
12951(a)	No Valid License in Possession	\$35	\$238	\$140	\$210
4000(a)(1)	No Evidence of Current Registration	\$50	\$285	\$200	\$300
22450(a)	Failure to Stop at Stop Sign	\$35	\$238	\$140	\$210
27360(a)	Child Restraints in Rear Seat—Children Under 8	\$100	\$490	\$400	\$600
22349(a)	Exceeding Maximum Speed Limit of 65 mph (≥ 26 mph over 65)	\$100	\$490	\$400	\$600
34506.3	Failure to Comply Rules/Regulations—Driving Logs	\$150	\$695	\$600	\$900
16028(a)	Failure to Provide Evidence of Financial Responsibility	\$200	\$900	\$800	\$1,200
14601.1(a)	Driving Motor Vehicle or Off-Highway Motor Vehicle While Suspended or Revoked for Offenses Not Relating to Driving Ability (Infraction)	\$150	\$695	\$600	\$900
23152(a)	Driving Under Influence of Alcohol	\$390	\$1,674	\$1,560	\$2,340

^a Base bail/fine obtained from Judicial Council of California, *Uniform Bail and Penalty Schedules (2017 Edition)*.

^b Includes the following: state penalty assessment (PA) (10 per 10); county PA (7 per 10); DNA PA (5 per 10); court PA (5 per 10); surcharge (20%); emergency medical service PA (2 per 10); emergency medical air transportation PA; and court operations, convenience assessment, and night court.

RECOMMENDATION 4.3:
PROPOSE LEGISLATION
TO AUTHORIZE THE
JUDICIAL COUNCIL TO
REALLOCATE VACANT
JUDGESHIPS

EXECUTIVE SUMMARY

The Futures Commission recommends that Chief Justice Tani G. Cantil-Sakauye refer this proposal to the Judicial Council (Council) for its consideration to draft and sponsor legislation authorizing the Council to reallocate vacant judgeships from courts with less judicial workload needs to courts with greater judicial workload need. The Futures Commission recommends that the legislation:

1. Be modeled on Government Code section 69614, which authorized 50 new judgeships in 2006, and Government Code section 69615, which authorized the conversion of subordinate judicial officers.
2. Direct that vacant judgeships be reallocated by the Council under a methodology approved by the Council.
3. Retain the Legislature's authority to create and fund judgeships and the Governor's authority to fill them.

Once such legislation is enacted, the Futures Commission recommends that the Chief Justice and the Council develop a reallocation methodology. The methodology should:

1. Incorporate the principles of the Council's biennial Judicial Needs Assessment Report and methods for subordinate judicial officer conversion under Government Code section 69615.
2. Minimize court disruptions.
3. Address changes in judicial workload needs.
4. Ensure appropriate funding to support reallocated judgeships.

BACKGROUND

August 2001, the Council approved a statewide methodology for determining the number of trial court judges needed based on workload standards developed by the National Center for State Courts.¹⁰⁵ Two months later, Council staff completed the first statewide judicial needs assessment. This assessment identified a need for 365 new judgeships and proposed a method to prioritize those positions.¹⁰⁶

Since 2001, the Council has supported many legislative efforts to establish 150 new judgeships, which were considered to be the most critically needed. Only two bills have been successful: Senate Bill 56 (Dunn, ch. 390) in 2006, which authorized the first 50 of the 150 critically needed judgeships, which were then funded in the 2007 Budget Act (and the positions have been filled); and Assembly Bill 159 (Jones, ch. 722) in 2007, which authorized, but did not fund, the second 50 of these judgeships. Various Council-sponsored bills in the following years to fund all or portions of the second set of 50 judgeships or to authorize the third set of 50 critically needed judgeships have failed.¹⁰⁷

When it created and funded the first set of 50 new judgeships, the Legislature directed that new judgeships would be allocated according to the assessed judicial need and prioritization methodology approved by the Council. In addition, Government Code section 69614(c)(1) required that the Council report by November 1 of every even-numbered year “on the factually determined need for new judgeships in each superior court using the uniform criteria for allocation of judgeships” established in the judicial workload model. Reports have been submitted as required in 2008, 2010, 2012, and 2014 and can be found in the Legislative Reports section at www.courts.ca.gov.

These biennial reports show that the statewide need for judicial officers has remained consistently greater than the number of authorized judicial positions (AJPs). The most recent *Judicial Needs Assessment Report* (2014) estimates that nearly 270 additional judicial officers are necessary to manage court workload.¹⁰⁸ These reports also show that there is an uneven statewide distribution of judgeships; some courts have proportionately fewer judges than others to handle their assessed needs. For example, the trial courts in Riverside and San Bernardino have only 60 percent of the judicial officers they need. But the trial courts in Alameda and Santa Clara have more judges than necessary to handle their assessed need, 14 and 19 more judicial officers, respectively. Currently, Alameda has three vacant judgeships and Santa Clara has two.

Presently, it is unclear what mechanism is available for the Chief Justice to transfer existing authorized judgeships from one court to another. Courts with more AJPs than their assessed need have, over many years, absorbed the full availability of judicial resources into their court operations. And courts with fewer AJPs than their assessed need have had to spread their workload among their existing authorized judicial officers and rely heavily on the Assigned Judges Program.

The lack of judicial officers was a top concern mentioned by branch-affiliated stakeholders who responded to a widely distributed Futures Commission survey that sought recommendations to improve the California court system. Many responses stated that the lack of judicial officers, particularly for family law and civil cases, creates a backlog and limits the time that a judge can spend on each case.

Governor Brown has been reluctant to fund new judgeships until action is taken to distribute judge

positions based on workload needs. In his veto message for Senate Bill 229 (Roth; 2015–2016 Reg. Sess.), which would have appropriated \$5 million from the General Fund to fund 12 of the second set of 50 authorized judgeships, Governor Brown stated the following:

I am aware that the need for judges in many courts is acute—Riverside and San Bernardino are two clear examples. However, before funding any new positions, I intend to work with the Judicial Council to develop a more system wide approach to balance the workload and the distribution of judgeships around the state.¹⁰⁹

Also, in June 2015, Governor Brown’s administration signaled its desire for the Futures Commission to address reallocation of judgeships when Keely Bosler, the chief deputy director of the Department of Finance, told a legislative budget committee that with regard to new judicial positions,

[w]e think that the Commission should do their work and report back to the Legislature and the administration when their work is complete about what additional modifications may be needed.¹¹⁰

In his proposed budget for fiscal year 2016–2017, the Governor reiterated his goal of promoting the redistribution of judgeships based on workload need:

[T]he Administration is proposing to work with the Judicial Council to reallocate up to five vacant superior court judgeships and the staffing and security complements needed to support and implement the proposal. This will shift judgeships where the workload is highest without needing to increase the overall number of judges.¹¹¹

RECOMMENDATION

The Futures Commission recommends that the Chief Justice refer this proposal to the Council for its consideration to sponsor legislation to reallocate existing judgeships that would incorporate the following elements:

1. Be modeled on Government Code section 69614, which authorized 50 new judgeships in 2006, and Government Code section 69615, which authorized the conversion of subordinate judicial officers.
2. Direct that vacant judgeships be reallocated by the Council under a methodology approved by the Council.
3. Retain the Legislature’s authority to create and fund judgeships and the Governor’s authority to fill them.

Once the legislation is enacted, the Futures Commission recommends that the Chief Justice and the Council develop a reallocation methodology to help implement the legislation that incorporates the following factors:

1. Incorporate the principles of the Council’s biennial Judicial Needs Assessment Report and methods for subordinate judicial officer conversion under Government Code section 69615.
2. Minimize court disruptions.
3. Address changes in judicial workload needs.
4. Ensure appropriate funding to support reallocated judgeships.

RATIONALE

LEGISLATION WITH DELEGATION TO THE JUDICIAL BRANCH

Legislation is required to clarify that the Chief Justice has express authority to transfer existing judgeships from one court to another. The legislation should direct that reallocations be implemented by the Council. The Council already compiles the biennial *Judicial Needs Assessment Report*, which contains most of the data necessary for reallocation (e.g., number and type of case filings per county and the workload associated with each case type).

There are two recent precedents in which the Legislature delegated authority regarding judgeships to the Council. In 2006, when the Legislature created and funded 50 new judgeships through Government Code section 69614, it delegated authority to the Council to allocate the judgeships according to “uniform standards approved by the Council in August 2001, and as modified and approved by the Council in 2004.”¹¹² Similarly, in 2007, when the Legislature authorized the conversion of subordinate judicial officers under Government Code section 69615, it again delegated to the Council the authority to develop uniform standards for the allocation of those conversions. Thus, there appears to be an acceptance by the Legislature and the executive branch that the judicial branch, under the direction of the Council, is in the best position to determine the allocation of its judgeships. Given these recent precedents, it would now be appropriate for the Legislature to enact a statute that clearly establishes the Chief Justice’s authority to transfer an existing judgeship from one jurisdiction to another.

Furthermore, as with Government Code section 69615 (conversion of subordinate judicial officers)

and Government Code section 69614 (creation of 50 new judgeships in 2006), the legislation need not affect the Legislature’s authority to create and fund judgeships or the Governor’s authority to appoint judgeships.

ONLY VACANT JUDGESHIPS SHOULD BE REALLOCATED

Judgeships should be reallocated only when a position is vacant. Forcing a sitting judge to move jurisdictions would be disruptive, and possibly unconstitutional.

The rate of judgeship vacancies is unpredictable because vacancies occur for reasons over which the judicial branch has no control (e.g., retirements, elevation to another court, career or life changes). The Council is in the best position to effectively respond to this unpredictability by implementing reallocations in a manner to minimize court disruptions. If several judgeships become vacant in any year, the Council can minimize disruptions to the affected courts by appropriately timing the reallocations. If no judgeships become vacant in any year, no positions will be reallocated. In Alameda and Santa Clara, for example (the two courts with the greatest number of judges in view of their assessed judicial needs), the judicial vacancy rate during 2015 ranged from two to five vacancies per court.¹¹⁵ Although judgeship vacancies occur at an unpredictable rate, they will occur, and allowing these vacancies to be reallocated will provide real, and currently unavailable, relief to counties that have the greatest workload needs.

WORKLOAD ASSESSMENT ADVISORY COMMITTEE

As a standing advisory body of the Council, the Workload Assessment Advisory Committee (WAAC)¹¹⁴ is charged with making:

recommendations to the Council on judicial administration standards and measures that provide for the equitable allocation of resources across courts to promote the fair and efficient administration of justice.¹¹⁵

WAAC is responsible for overseeing the models that are used to measure judicial need and workload need in the trial courts. Given its charge and past and current responsibilities, WAAC is the Council body best suited for developing the reallocation methodology.

DATA, CRITERIA, AND PRINCIPLES UNDERLYING THE BIENNIAL JUDICIAL NEEDS ASSESSMENT REPORT

The data, criteria, and principles underlying the Council's biennial *Judicial Needs Assessment Report* have been vetted and accepted by the Legislature, the executive branch, and the superior courts. The methodology developed for reallocating judgeships should incorporate these elements where appropriate.

STAFF AND FACILITY FUNDING

Reallocating a judgeship to an under-resourced court will help ease that court's workload only if necessary funds for support staff and appropriate one-time costs are transferred or otherwise provided. Judges require a minimum complement of support staff. Budget change proposals for new judgeships have always included funding for a complement of staff to accompany a new judgeship, which might include such position types as

court reporters, research attorneys, judicial secretaries, courtroom and back office clerks, court interpreters, and security staff. Also, facilities such as a courtroom and chambers need to be outfitted for the judge.¹¹⁶

Currently, the calculation for individual trial court funding under the Workload-Based Allocation and Funding Methodology (WAFM) is based on the level of funding needed for a trial court to be fully staffed to handle its workload. In addition to providing the allocation methodology for new state funding for trial courts, WAFM provides for the incremental shifting of funds from better resourced courts to historically under-resourced courts over a five-year period starting fiscal year 2013–2014.¹¹⁷ Under WAFM, by fiscal year 2017–2018, a minimum of 50 percent of a court's funds will be allocated pursuant to WAFM and the remaining percentage will be allocated pursuant to fiscal year 2013–2014 historically based funding methodology.¹¹⁸ Although WAFM is causing funds to be shifted to under-resourced courts to address workload needs, a court that receives a reallocated judgeship may require additional funding sooner than the incremental approach provided for under WAFM. Consideration should be given to if and how much additional funding a court would need to provide adequate staff support to a reallocated judgeship, as well as the source of this funding.

Furthermore, WAFM does not address the allocation of funding for the one-time facilities costs associated with a reallocated judgeship. Nor does it address the allocation of funding for any potential increase in court security costs, which is largely the responsibility of sheriffs, funded separately and apart from judicial branch funding. Therefore, WAAC will need to work with other Council bodies such as the Trial Court Budget Advisory Committee, the Court Executives Advisory Committee, the

Court Security Advisory Committee, and the Trial Court Facility Modification Advisory Committee to determine potential costs and funding sources.

MAXIMUM NUMBER OR PERCENTAGE OF REALLOCATIONS PER COURT PER DESIGNATED TIME PERIOD

Even if a court is deemed to have more judgeships than needed for its assessed needs, reallocating judgeships from that court could negatively impact its operations. And courts receiving reallocated judgeships may need time to absorb them effectively. At a minimum, these courts will need to hire or reassign staff to support the reallocated judgeship and outfit a courtroom and the judge's chambers. This consideration was first conveyed to the Futures Commission by Presiding Judge Harold Hopp of Riverside County Superior Court in his comment at the Futures Commission's December 8, 2015 public comment session, in which he thanked the Futures Commission for tackling the shortage of judicial resources in the state but also asked that reallocation of judgeships be incremental and deliberate so that under-resourced courts have stability and predictability in their court operations. The Futures Commission agrees that reallocation of judgeships should not overwhelm an under-resourced court so that the additional resources are underutilized. Accordingly, in developing the reallocation methodology, the Futures Commission recommends that any methodology that is adopted should consider the pace of the reallocations so that courts gaining and losing judgeships can manage the transition with the least possible disruption to court operations.

MINIMUM NUMBER OF JUDGES

Currently, the smallest number of judicial officers allocated to a superior court is 2.3 full-time equivalent (FTE) AJPs. (This FTE figure includes a

federally funded AB 1058 child support commissioner.) Of the 14 courts with 2.3 AJPs in the state, 10 are deemed by the 2014 *Judicial Needs Assessment Report* to be “over-resourced.” However, a closer examination of the *Judicial Needs Assessment Report* shows that in five of those ten courts, the excess AJP is less than one AJP. Thus, in these courts, reallocation of one judgeship would actually result in making the court under-resourced in terms of judgeships.

Furthermore, although five of the ten courts with 2.3 AJPs are over-resourced by at least one AJP, as a practical matter these courts need two judges to provide timely judicial coverage during absences by one of the judges due to illness, vacancy, or a conflict of interest, which is common in small communities. Given the practical need to have two judges and the small number of judgeships that can be reallocated from these 2.3 AJP courts (five judgeships collectively), the methodology ultimately developed may want to establish 2.3 AJPs as the minimum number of judges that should be allocated to each court, even if its assessed judicial need does not quite reach that number.

FLEXIBILITY

The number and/or composition of filings can fluctuate unpredictably from year to year. It would be too disruptive to a court to take a judgeship away one year, only to have to reallocate one back the next year. Accordingly, the reallocation methodology may want to incorporate a margin of error to the assessed judicial needs of a court that would buffer against workload fluctuations over a short period of time. This margin of error would mitigate against the premature reallocation of judges from any one court by holding back from reallocation a small proportion of judgeships over and above a court's assessed judgeship need.

Over longer periods of time, demographic, population, and workload shifts may once again alter a court’s judicial needs in ways currently unpredictable. Courts that are currently assessed as having a deficit in judicial resources may eventually have their judicial needs stabilize or even be deemed overly satisfied. Whatever methodology is ultimately developed, it should allow for continual reassessments and reallocations.

PUBLIC COMMENT

PUBLIC COMMENT SESSION COMMENTS

The Futures Commission solicited public input on the concept of the reallocation of judgeships through both a public comment session held at the Council office in San Francisco on December 8, 2015, and an invitation to submit written comments.

At the public comment session, two individuals spoke on the reallocation of judgeships concept, Presiding Judge Harold Hopp of Riverside County Superior Court and Ms. Kimberly Rosenberger, a representative from the Service Employees International Union (SEIU).

In addition to asking that reallocation of judgeships be conducted at a deliberate pace that avoids overwhelming affected courts, Presiding Judge Hopp suggested that the principles underlying where to place newly funded judgeships be used in reallocating judgeships (see additional comments from Presiding Judge Hopp above, under *Maximum number or percentage of reallocations per court per designated time period*). The Futures Commission appreciates and agrees with Presiding Judge Hopp’s comments and has incorporated his suggestions into this report.

Ms. Rosenberger expressed concern that a reallocation of judgeships may corrupt existing “checks and balances in place with judgeships through

elections and the legislative process.” However, Ms. Rosenberger did not elaborate on how these checks and balances would be corrupted. Instead, she asked that SEIU be apprised of developments concerning this concept. The Futures Commission appreciates SEIU’s comments and has incorporated in its recommendations the principle that the reallocation of judgeships should not usurp the Legislature’s authority to fund and authorize judgeships or the Governor’s ability to appoint vacant judgeships.

WRITTEN COMMENTS

The Futures Commission received written comments regarding the reallocation of judgeships from the following entities and individuals: the California Judges Association (CJA), California State Senator Richard D. Roth (D-Riverside), and a coalition of five Interest on Lawyer Trust Accounts–funded California disability advocacy organizations. In one comment, the CJA asked to be included in the Futures Commission’s work, adding that:

while [the branch’s] decimated budget is often measured in bricks and mortar, crumbling, dilapidated and shuttered courthouses, what is truly at risk is justice itself. Our people depend on our courts, the best legal talent on the bench and at the bar, and sufficient staffing to assist them through physical danger, unpermitted financial harms, unconstitutional over-reaching, and much more.

The Futures Commission appreciates and agrees with the comment by the CJA that adequate funding of the judiciary is necessary to provide access to justice.

Senator Roth, whose State Senate District 31 includes western Riverside County, expressed his concern regarding access to justice given

the insufficient numbers of judicial officers. He reminded the Futures Commission that the reallocation of judgeships alone will not resolve the ongoing, critical need for additional judgeships throughout the state. Senator Roth also asked the Futures Commission to keep judicially underserved communities in mind when making its recommendations regarding reallocation. The Futures Commission appreciates and agrees with Senator Roth's comments. Reallocating judgeships is an inexpensive measure that will provide some critical relief to underserved communities.

In their written comments, the disability advocacy organizations urged the Futures Commission to build into the mechanism for reallocation of judgeships an "efficient mechanism for anticipating and implementing the 'reasonable accommodation' entitlements of state court judges with disabilities." The Futures Commission appreciates these comments and understands that the development of a reallocation methodology must include an appropriate consideration of the needs of judges with disabilities.

UPDATE

The Futures Commission sent this proposal to Chief Justice Tani G. Cantil-Sakauye in April 2016. The proposal was approved for Council sponsorship in May 2016 by the Policy Coordination and Liaison Committee; however, the bill (Assembly Bill 2341, Obernolte) was held in the Senate Appropriations Committee. The proposal was again approved as a legislative priority by the Council in December 2016. In 2017, Senate Bill 39 was introduced by Senator Roth and contains language that was sought out last year after compromise with the affected courts. In addition, Assembly Member Jose Medina (D-Riverside) also introduced AB 414, which contains language from a prior version of AB

2341. Finally, it is also included in the Governor's January 10, 2017 budget proposal with alternative language. The Council has been working with both legislative offices and the Governor's office to move the proposal forward.

NOTES

CHAPTER 4: FISCAL/COURT ADMINISTRATION RECOMMENDATIONS

RECOMMENDATION 4.1: INCREASE TRANSPARENCY, PREDICTABILITY, AND CONSISTENCY OF TRIAL COURT EMPLOYMENT THROUGH STUDY AND REPORTING OF CLASSIFICATION AND COMPENSATION

1. Robert Fleshman, “Dividing the Pie: How State Funding Benefited the Trial Courts,” *California Courts Review* (Winter 2009), 26.
2. Government Code section 71630.
3. Over the years since the TCEPGA was enacted, some bargaining unit representatives have changed.
4. Tula Bogdanos and Dena Graff, “Going Into Labor: The Birth of Trial Courts as Employers,” 182 *California Public Employee Relations Journal* 7 (2007).
5. Government Code sections 71620 and 71673.
6. The scope of representation under the TCEPGA includes wages, hours, and other terms and conditions of employment for trial court employees. But the Legislature recognized “the unique and special responsibilities” of the trial courts in administering justice for California residents, and expressly excluded from the scope of representation certain issues including the merits and administration of the trial court system; coordination, consolidation, and merger of trial courts and support staff; automation, such as fax filing, electronic recording, and implementation of information systems; design, construction, and location of court facilities; delivery of court services; hours of operation of the trial courts; and assignment and transfer of court employees. Government Code section 71634.
7. Government Code section 71612.
8. Government Code section 71623(b).
9. *Betts v. Board of Administration of Public Employees’ Retirement System* (1978) 21 Cal.3d 859, 863.
10. Assembly Bill 233 (Stats. 1997, ch. 850, section 48).
11. Judicial Council of California, *Trial Court Uniform Model Classification Manual* (Sept. 2007).
12. Government Code section 7522.04(f).
13. Employer-paid core health benefit costs were obtained from the state’s Phoenix Financial System. Filled, full-time equivalent positions are from the Schedule 7A for each trial court.
14. A review of classification and compensation studies conducted by consultants generally provides a time frame of every 3 to 5 years, with a high range of every 7 to 10 years. For example, see Management Advisory Group Intl., Inc., *Classification and Compensation Study Final Report for the Broward County, FL Commission* (Oct. 6, 2015), 3–10 (3 to 5 years); Condrey and Associates, Inc., *A Job Classification and Compensation Plan for the City of Miami Beach, Florida* (Aug. 2009), 1 (7 to 10 years).
15. Condrey and Associates, Inc.
16. The determination of an appropriate comparator market is a fundamental and necessary component of any compensation study. Prior to a compensation study, organizations should determine internally the markets from which the organization is attracting employees and the markets to which it is losing employees. This provides beneficial information for the compensation study to lead to a final recommendation as to an appropriate comparator market. For trial courts this may include other trial courts, public sector organizations, or even private industry. The determination of the appropriate market for trial

courts may vary across geographic locations, by trial court, or for a subset of trial courts.

17. The vendor that conducted the study was selected after competitive bidding. There was considerable variance in the bid amounts received. The contract with this vendor was subsequently amended, removing the deliverable of job descriptions for each position. The amended contract amount was \$529,066.
18. Staffing numbers are based on data provided by the courts in the Schedule 7A for filled positions.
19. Judicial Council of California, *Phoenix Program* (fact sheet, July 2010), www.courts.ca.gov/documents/Phoenix.pdf (as of Feb. 2017).
20. Judicial Council of California, *Transfer of Court Facilities* (fact sheet, Aug. 2009), www.courts.ca.gov/documents/factrans.pdf.
21. The California Judicial Branch Contract Law is codified in Public Contract Code sections 19201–19210. The law was amended by Senate Bill 92 (Comm. on Budget and Fiscal Review; Stats. 2011, ch. 36), effective June 30, 2011.
22. See Public Contract Code sections 19204(c), 19207, and 19208.
23. Judicial Council of California, *California Courts Protective Order Registry* (fact sheet, Oct. 2016), www.courts.ca.gov/documents/ccpor.pdf (as of Oct. 20, 2016).
24. California Rules of Court, rule 10.400.
25. Superior Court of Sacramento County, “Award of Request for Proposal for Case Management Systems (CMS),” News Release (Feb. 14, 2013), www.saccourt.ca.gov/general/docs/pr-cms-rfp.pdf (as of Nov. 3, 2016).
26. Judicial Council of California, *Resource Assessment Study* (fact sheet, Apr. 2015), www.courts.ca.gov/documents/RAS.pdf (as of Feb. 2017).
27. *Ibid.* The WAFM calculation estimates the funding needed for each court by (1) converting the court’s RAS FTE need into dollars using the average salary cost for all RAS-related positions and adjusting for cost-of-labor differentials by region using U.S. Bureau of Labor Statistics data; (2) including the estimated actual retirement, health, and other benefit costs as provided by the trial court for the fiscal year; and (3) including an estimate of nonpersonnel costs (operating expenses and equipment) per FTE needed for operations, accounting for office supplies and equipment, IT equipment, software and services, janitorial services, transcripts, etc.
28. The state’s two largest pension systems are the California Public Employees’ Retirement System (CalPERS) and the California State Teachers’ Retirement System (CalSTRS).
29. Reason Foundation, *Analysis of the California Public Employees’ Pension Reform Act of 2013* (Policy Brief No. 126, Mar. 2015), http://reason.org/files/pepra_pension_reform.pdf.
30. University of California, *The UC System: Overview*, <http://universityofcalifornia.edu/uc-system> (as of Feb. 2017).
31. As established by article IX, section 9 of the California Constitution.
32. University of California Board of Regents, *Regents Policies*, <http://regents.universityofcalifornia.edu/governance/policies/#policy-series-7000> (as of Feb. 2017).
33. The Higher Education Employer-Employee Relations Act (HEERA) covers UC employees (Government Code section 3562(g)). Under HEERA, the Public Employment Relations Board determines the appropriate bargaining units for the UC system (Government Code section 3575).
34. University of California UCnet, *Bargaining Units and Contracts*, <http://ucnet.universityofcalifornia.edu/labor/bargaining-units/index.html>. Some bargaining units are not included in systemwide bargaining; for example, employees in the skilled craft classifications are in separate bargaining units at each campus. Skilled crafts include positions such as electricians, plumbers, and elevator mechanics. Given the variation in campus facilities, the type of skilled craft classifications and number of employees in each classification at each campus vary greatly.
35. California State Jobs, *Job Descriptions and Statistical Information*, <https://jobs.ca.gov/Public/Tools/ClassSalarySearch.aspx> (as of Oct. 13, 2016).
36. California Department of Human Resources, *About Salaries*, www.calhr.ca.gov/state-hr-professionals/Pages/about-salaries.aspx (as of Oct. 13, 2016).
37. California Department of Human Resources, *Bargaining Contracts*, www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx (as of Oct. 13, 2016). There are a few bargaining units that are specific to one state agency (e.g., California Highway Patrol, Department of Corrections and Rehabilitation guards, and firefighters). Employees in management, supervisory, and confidential classifications are excluded from collective bargaining. For these excluded employees, CalHR is required to meet and confer with the organizations representing the employees as to their wages, hours, and working conditions, but formal agreements are not negotiated.
38. Nancy Dietl, director of the Human Resources and Development Division of the Minnesota State Court Administrator’s Office, interview by subcommittee of the Fiscal/Court Administration Working Group (Dec. 18, 2015). Ms. Dietl provided a history of the Minnesota judicial branch and how it became a fully unified, state-funded, centralized system. Currently, there are 100 court locations, 10 judicial districts, 300 judges, and approximately 3,000 employees within the branch.

39. To set up the infrastructure to establish a statewide unified system, it was necessary to establish collective bargaining. In the new statewide unified system, 43% of the judicial branch employees are represented by one of three unions: the American Federation of State, County, and Municipal Employees; the Teamsters; and the court reporters union. Unrepresented employees include clerical staff of the Court of Appeals and the state Supreme Court; statewide analytical professionals, State Court Administrator's Office staff, and the Eighth District.
40. Government Code sections 71800–71829.
41. Region 1 consists of Los Angeles, Santa Barbara, and San Luis Obispo Counties. Region 2 consists of the counties of the First and Sixth Appellate Districts, except Solano County. Region 3 consists of the counties of the Third and Fifth Appellate Districts. Region 4 consists of the counties of the Fourth Appellate District.
42. Government Code section 71828 exempted the Superior Courts of Solano County and Ventura County entirely from the Interpreter Act. Section 71828(d) also provided that interpreter employment positions already represented by existing labor unions (e.g., SEIU, AFSCME, etc., as well as local independent associations) would be excluded from Interpreter Act coverage. Rather, those positions would continue to be represented by those unions under the TCEPGA.
43. The aspects of employment bargained included, but was not limited to, salary; medical, dental, and vision benefits; vacation; sick leave; management rights; union rights; workweek and hours; cross-assignments (where employees of one court may work as interpreters at another court); and grievance/arbitration.
44. With regional bargaining, fewer court resources, including employee time, are devoted to bargaining. Only four or five court personnel are on each of the four management teams, and only five to seven employees are on each of the union bargaining teams. Bargaining takes place at different intervals, but often the regional agreements last two to three years. In comparison, when the trial courts bargain with the unions representing their noninterpreter staff, there are—depending on the size of the court—usually between two and four trial court employees on the court management bargaining team and between two and seven employees on the union team. These teams could meet as often as each year, but even assuming that they met with the same frequency as the interpreters, many more court FTE resources are used on noninterpreter bargaining. As such, if court interpreter bargaining were not regional, considerably more resources in staff time would be spent on the bargaining process.
45. In traditional trial court bargaining, there are over 125 contracts to examine, making it far easier for the union to “cherry pick” better terms and demand that those terms be mirrored in the current contract.
46. In 2007 this occurred when approximately 300 court interpreters went on strike for seven weeks. See Anna Gorman, “Court Interpreters Strike for 22% Pay Increase,” *Los Angeles Times* (Sept. 6, 2007), <http://articles.latimes.com/2007/sep/06/local/me-interpreters6> (as of Feb. 2017).

RECOMMENDATION 4.2: RESTRUCTURE FINES AND FEES FOR INFRACTIONS AND UNIFY COLLECTION AND DISTRIBUTION OF REVENUE

47. Assembly Bill 233 (Stats. 1997, ch. 850, sections 2, 3, and 46).
48. National Center for State Courts, *The 2012 Budget Survey of State Court Administrators*, www.ncsc.org/Information-and-Resources/Budget-Resource-Center/Budget_Funding.aspx (as of June 7, 2016). Note that although 42 states participated in the survey, 2 were not state-funded systems and 4 did not provide sufficient funding information for comparison purposes.
49. Judicial Council of California, “Fact Check: Judicial Branch Budget Fiscal Year 2016–2017,” *California Courts Newsroom* (July 20, 2016), <http://newsroom.courts.ca.gov/facts/branch-budget-FY2016-2017> (as of Feb. 2017).
50. State Controller's Office, *Trial Court Revenue Distribution Guidelines*, www.sco.ca.gov/lard_trialcourt_manual_guidelines.html (as of June 7, 2016).
51. These statements are based on personal interviews with the courts' respective court executive officers in August 2016. Classification of court size is in accordance with 2014 authorized and funded judicial positions: small (2 to 3 judges), small to medium (4 to 15 judges), medium (21 to 49 judges), and large (65 or more judges).
52. These statements are based on an analysis of the court revenue audit reports since 2007. State Controller's Office, *Court Revenue Audit Reports*, www.sco.ca.gov/aud_court_revenues.html (as of Aug. 11, 2016).
53. Legislative Analyst's Office, *Improving California's Criminal Fine and Fee System* (Jan. 2016), 6–7, www.lao.ca.gov/reports/2016/3322/criminal-fine-and-fee-system-010516.pdf (as of May 6, 2016).
54. See, for example, Judicial Council of California, *Uniform Bail and Penalty Schedules (2016 Edition)*, www.courts.ca.gov/documents/2016-JC-BAIL.pdf (as of Feb. 28, 2017).
55. See Government Code sections 70372, 70373, 76000(e), 76000.5, 76000.10(c), 76104.6, 76104.7; Penal Code sections 1464, 1465.7, 1468.5; Vehicle Code sections 40508.6, 42006.
56. Government Code section 70372.

57. *California Judges Benchguide 82: Traffic Court Proceedings* (Center for Judicial Education and Research, 2017) section 82.70.
58. *Improving California's Criminal Fine and Fee System*, 6. See Legislative Analyst's Office, *The 2017–18 Budget: Governor's Criminal Fine and Fee Proposals* (Mar. 3, 2017), 7, www.lao.ca.gov/reports/2017/3600/Criminal-Fine-Fee-030317.pdf.
59. *Improving California's Criminal Fine and Fee System*, 7.
60. Comparison between the 1994 and the 2015 uniform bail schedules. See Judicial Council of California, *Uniform Bail and Penalty Schedules (January 1994)*; Judicial Council of California, *Uniform Bail and Penalty Schedules (2015 Edition)*, www.courts.ca.gov/documents/2015-JC-BAIL.pdf (as of Oct. 21, 2016).
61. Judicial Council of California, Finance Office staff. See *Improving California's Criminal Fine and Fee System*, 24.
62. *Improving California's Criminal Fine and Fee System*, 6–7.
63. *Ibid.*
64. *Trial Court Revenue Distribution Guidelines; Governor's Criminal Fine and Fee Proposals*, 9–10. See Marcus Nieto, “Who Pays for Penalty Assessment Programs in California?” *California Research Bureau* (Feb. 2006), 7 (“California now has over 269 dedicated funding streams for court fines, fees, forfeitures, surcharges and penalty assessments that may be levied on offenders and violators. These fines, fees, forfeitures, surcharges, and penalties appear in statutes in 16 different government codes, and are in addition to the many fees, fines, and special penalties that local governments may impose on most offenses”).
65. Lawyers' Committee for Civil Rights of the San Francisco Bay Area et al., *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California* (Apr. 2015), www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf (as of May 6, 2016).
66. Penal Code section 1214.1.
67. *Not Just a Ferguson Problem*, 7.
68. Judicial Council of California, “Fact Check: Anatomy of a Traffic Ticket in California,” *California Courts Newsroom* (Oct. 9, 2016), <http://newsroom.courts.ca.gov/facts/anatomy-of-a-traffic-ticket-in-california> (as of May 10, 2016).
69. *Not Just a Ferguson Problem*, 7.
70. American Civil Liberties Union Foundation of Northern California, letter to Superior Court of San Mateo County (Mar. 21, 2016) regarding traffic court practices and driver's license suspensions, www.aclunc.org/docs/20160321-letter_to_san_mateo_county_superior_court.pdf (as of Feb. 2017).
71. *Not Just a Ferguson Problem*, 7.
72. Judicial Council of California, “Amnesty Program Summary: Reporting Period January 1, 2016–April 30, 2016,” www.courts.ca.gov/documents/Q2TrafficAmnestyReport.pdf (as of Oct. 21, 2016).
73. Edmund G. Brown, Jr., Governor, State of California, *Governor's Budget Summary 2017–2018* (Jan. 10, 2017), 84, www.ebudget.ca.gov/2017-18/pdf/BudgetSummary/FullBudgetSummary.pdf.
74. Vehicle Code sections 40000.25, 40508(b), and 40510.5.
75. Penal Code section 1214.1.
76. Vehicle Code section 12807(c).
77. Penal Code sections 681 et seq., 976 et seq., and 1268 et seq. See Government Code section 72401.
78. Conference of State Court Administrators, *The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations* (2015–2016 Policy Paper), 3.
79. *Not Just a Ferguson Problem*, 6.
80. Vanita Gupta and Lisa Foster, U.S. Department of Justice, Civil Rights Division, letter to colleagues (Mar. 14, 2016) regarding law enforcement fines and fees, www.justice.gov/crt/file/832461/download (as of May 6, 2016).
81. *Ibid.*, 2.
82. Kevin de León, President pro Tempore of the California State Senate, and Loni Hancock, Chair, Senate Public Safety Committee, letter to Martin Hoshino, Administrative Director, Judicial Council of California (May 19, 2015).
83. *Improving California's Criminal Fine and Fee System*, 24. See State of California, *California 2015–16 State Budget*, 50, www.ebudget.ca.gov/2015-16/pdf/Enacted/Budget-Summary/FullBudgetSummary.pdf. See also *Governor's Criminal Fine and Fee Proposals*, 7.
84. Tani G. Cantil-Sakauye, Chief Justice of California, address to the Joint Session of the California Legislature (Sacramento, Mar. 8, 2016), video and text, www.courts.ca.gov/34477.htm (as of May 6, 2016).
85. *Law Enforcement Fines and Fees*, 2.
86. Shauna Strickland et al., eds., *State Court Organization* (National Center for State Courts, 2015), www.ncsc.org/sco (as of June 14, 2016).
87. *Improving California's Criminal Fine and Fee System*, 14.
88. Article IV, section 12 of the California Constitution.
89. Judicial Council of California, Finance Office staff.
90. *Ibid.*
91. *Improving California's Criminal Fine and Fee System*, 5.
92. Edmund G. Brown, Jr., Governor, State of California, *Governor's Budget Summary 2017–2018* (Jan. 7, 2016), 114, www.ebudget.ca.gov/FullBudgetSummary.pdf. The Governor's proposed budget for 2017–2018 also recognizes the corollary decline in revenue to the State Penalty Fund since 2008–2009, and proposes

changes in the distributions from the fund in light of the reductions (ibid., 82–84; *Governor’s Criminal Fine and Fee Proposals*, 11–14). But as discussed above, the declines in the State Penalty Fund are just part of this larger decline in revenue from fines and fees.

93. California Common Sense, *Unsustainable California: The Top 10 Issues Facing the Golden State* (June 2014), 15, <http://uscommonsense.org/pdf/52.pdf>.
94. The calculations are based on the following sources: State Controller’s Office, *Highway Users Tax Account* (Sept. 2016), www.sco.ca.gov/Files-ARD-Payments/Highway/fy1617_09hwycover.pdf (as of Oct. 21, 2016); and Department of Motor Vehicles, *Statistics for Publication: January Through December 2015*, <https://www.dmv.ca.gov/portal/wcm/connect/5aa16cd3-39a5-402f-9453-0d353706cc9a/official.pdf?MOD=AJPERES> (as of Oct. 21, 2016).
95. The process and criteria affecting the adjudication of traffic offenses is addressed in *Recommendation 2.4: Implement a Civil Model for Adjudication of Minor Traffic Infractions*.
96. Judicial Council of California, *Court-Ordered Debt Task Force*, www.courts.ca.gov/codtf.htm (as of June 8, 2016).
97. Judicial Council of California, *Judicial Council Approved Collections Best Practices* (Mar. 3, 2014), www.courts.ca.gov/partners/documents/collectbp.pdf (as of June 8, 2016).
98. Judicial Council of California, *Report to the Legislature on the Statewide Collection of Delinquent Court-Ordered Debt: FY 2013–2014* (Dec. 2014), www.courts.ca.gov/partners/documents/lr-delinquentcourt-ordereddebt_2013-14.pdf (as of June 8, 2016).
99. Vehicle Code section 42008.8.
100. Judicial Council of California, *Amnesty Program Frequently Asked Questions* (Mar. 2016), www.courts.ca.gov/partners/documents/rc-amnesty2015-FAQs.pdf (as of June 8, 2016).
101. Judicial Council of California, *Amnesty Program Summary: Reporting Period May 1, 2016–August 31, 2016*, www.courts.ca.gov/documents/Amnesty2015-Quarterly-Report-20160501-20160831.pdf (as of Feb. 10, 2017).
102. The Governor’s proposed budget for 2017–2018 increases the operating appropriations for these programs by \$1.1 million. Edmund G. Brown, Jr., Governor, State of California, *California Budget 2017–2018* (Jan. 7, 2017), Agency 7730 Franchise Tax Board, Account 0242 Court Collection Account, www.ebudget.ca.gov/2017-18/pdf/GovernorsBudget/7500/7730RWA.pdf.
103. Local officials expressed concern in public comments that this aspect of the proposal would require the formation of a new executive agency that would divest local agencies of any role in collection. It is not the intention of the Futures Commission to establish a new state bureaucracy or to divest local agencies of any role. Rather, this proposal seeks to place responsibility for the oversight of the collections program in an existing executive branch agency that would be free to engage the services of local governments to assist the collections process in situations where the executive agency determines that doing so would be the most effective and efficient means to serve the public and collect court-ordered debt.
104. *Governor’s Criminal Fine and Fee Proposals*, 21–22.

RECOMMENDATION 4.3: PROPOSE LEGISLATION TO AUTHORIZE THE JUDICIAL COUNCIL TO REALLOCATE VACANT JUDGESHIPS

105. Judicial Council of California, *A New Process for Assessing Judicial Needs in California* (Aug. 24, 2001), www.courts.ca.gov/documents/judneedsreview.pdf (as of Mar. 2016); Judicial Council of California, Judicial Council meeting minutes (Aug. 24, 2001), www.courts.ca.gov/documents/min0801.pdf (as of Mar. 2016).
106. Judicial Council of California, *Results of Statewide Assessment of Judicial Needs Including List of Recommended New Judgeships* (Oct. 26, 2001), www.courts.ca.gov/documents/stateassess.pdf (as of Mar. 2016).
107. Sen. Bill 1150 (2007–2008 Reg. Sess.); Sen. Bill 377 (2009–2010 Reg. Sess.); Assem. Bill 1405 (2011–2012 Reg. Sess.); Sen. Bill 1190 (2013–2014 Reg. Sess.); and Sen. Bill 229 (2015–2016 Reg. Sess.).
108. Judicial Council of California, *The Need for New Judgeships in the Superior Courts: 2014 Update of the Judicial Needs Assessment* (Dec. 17, 2014), www.courts.ca.gov/documents/lr-2014-judicialneedsassessment-gov_69614-c-1-3.pdf (as of Mar. 2016).
109. Edmund G. Brown, Jr., Office of the Governor, letter to members of the California State Senate (Oct. 8, 2015), www.gov.ca.gov/docs/SB_229_Veto_Message.pdf (as of Mar. 2016).
110. Cheryl Miller, “Governor Gives Thumbs Down to New Judgeships,” *The Recorder* (June 4, 2015).
111. Edmund G. Brown, Jr., Governor, State of California, *Governor’s Budget Summary 2016–17* (Jan. 7, 2016), 116, www.ebudget.ca.gov/2016-17/pdf/BudgetSummary/JudicialBranch.pdf (as of Mar. 2016).
112. In 2014, this section was amended to require use of the most current Judicial Needs Assessment rather than the one from 2004. (See Assem. Bill 2745 (Stats. 2014, ch. 311).) The section now reads: “The judges shall be allocated, in accordance with the uniform standards for factually determining additional judicial need in each county, as approved by the Judicial Council in August 2001, and as modified and updated and approved by the Judicial Council in August 2004, pursuant to the Update of Judicial Needs Study”
113. Judicial Council of California, *Judicial Vacancy Reports*, www.courts.ca.gov/15893.htm (as of Mar. 2016) (a full list of vacancy reports for each California court with current vacancies).

114. The Judicial Council established the Judicial Branch Resource Needs Assessment Advisory Committee (JBRNAAC) as a standing Judicial Council advisory committee on December 13, 2013. The JBRNAAC succeeded the Senate Bill 56 Working Group established by the Administrative Director of the Courts in 2009. In April 2014, the JBRNAAC was renamed the Workload Assessment Advisory Committee.
115. California Rules of Court, rule 10.66(a).
116. Estimated facility costs should include possible reasonable accommodation entitlements of state court judges with disabilities.
117. Judicial Council of California, *Trial Court Budget Working Group: Recommendation of New Budget Development and Allocation Methodology* (July 1, 2013), www.courts.ca.gov/documents/jc-20130426-itemP.pdf (as of Mar. 2016).
118. Ibid.

- **Recommendation 5.1:**
Expand the Use of
Technology in the
Courts to Improve
Efficiency and
Enhance Access
(page 213)

TECHNOLOGY RECOMMENDATIONS

Modern information technology has evolved dramatically over the past several decades. Today's technology allows organizations to do more things more efficiently than ever before. An increasing number of individuals use personal electronic devices to conduct business and obtain services online, at any time of day or night. The Commission on the Future of California's Court System (Futures Commission), through outreach to technology leaders and innovators, explored ways technology could be used to provide additional service and operate more efficiently. The Futures Commission recommends:

1. **Current Technology Initiative**

Continuing judicial branch support and implementation of initiatives currently underway by the Information Technology Advisory Committee of the Judicial Council (Council), as reflected in the Council's *Tactical Plan for Technology (2017-2018)*, including:

- Video remote interpreting;
- Remote self-help services for self-represented litigants;
- Cloud services for application hosting and data storage;
- Case and document management systems that support the digital court; and
- Electronic filing.

2. Remote Video Appearances

Developing a pilot project to allow remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings.

3. Video Arraignments

Authorizing video arraignments in all cases, without the defendant's stipulation, if certain minimum technology standards are met.

4. Intelligent Chat Technology

Developing a pilot project using intelligent chat technology to provide information and self-help services.

5. Voice-to-Text Language Services Outside the Courtroom

Developing a pilot project that would use voice-to-text language interpretation services for use at court filing and service counters and in self-help centers.

6. Innovations Lab

Establishing an Innovations Lab to identify and evaluate emerging technologies and cooperate with industry experts to tailor them to court use.

7. Access to the Record of Court Proceedings

Implementing a pilot program to use comprehensive digital recording to create the official record for all case types that do not currently require a record prepared by a stenographic court reporter.

RECOMMENDATION 5.1:

EXPAND THE USE OF
TECHNOLOGY IN THE
COURTS TO IMPROVE
EFFICIENCY AND
ENHANCE ACCESS

BACKGROUND

IDENTIFYING TECHNOLOGY TO ADVANCE THE GOALS OF THE BRANCH

The use of technology has become increasingly integrated in the lives of Californians. Following the Chief Justice's charge, and in keeping with her Access 3D initiative, the Futures Commission studied how existing and future technology can be used to make California's courts more efficient and accessible.^{1*}

Industry expert input

Working with industry experts, the Futures Commission studied both current technology and how it is evolving. Much of the technology explored is currently available. The only limitations on implementation are policy or budget issues.

The Commission also sought expert opinions on how technology will evolve in the next 10 to 15 years. Industry experts noted that the rapid pace of change in this area makes it difficult to provide such lengthy predictions. Ultimately, these meetings confirmed that many solutions are available today.

Existing branchwide technology initiatives

The Futures Commission explored the work of the Council's Technology Committee and the Information Technology Advisory Committee (ITAC) to examine technology that is already implemented. (For detailed information about the duties and responsibilities of these committees, see *Appendix 5.1A: The Judicial Council's Technology Committee and Information Technology Advisory Committee*.) These committees developed the four-year *Strategic Plan for Technology (2014–2018)*, and the two-year *Tactical Plan for Technology (2014–2016)*, which became effective November 1, 2014.²

*Footnotes and citations can be found at the end of this chapter on page 267.

Working with industry experts, the Futures Commission studied both current technology and how it is evolving. Much of the technology explored is currently available. The only limitations on implementation are policy or budget issues.

An updated two-year *Tactical Plan* was adopted by the Council in March 2017. The *Tactical Plan for Technology (2017-2018)*⁵ includes 14 technology initiatives currently being developed by ITAC. The Futures Commission consulted with ITAC to avoid duplication of initiatives already underway, and to provide context for our own recommendations.

CALIFORNIA COURTS' CURRENT USE OF TECHNOLOGY AND IMPACT ON ACCESS

California's court system is diverse in the ways and efforts to which it uses technology. As of October 2016, just over half of the trial courts had migrated to new case management systems (CMSs) or have projects underway to do so.⁴ Some courts still rely on paper-based systems. Others have or are transitioning to electronic documents with mandated electronic filing (e-filing) in civil matters, robust document management systems, and paper-on-demand environments. The level of remote and online self-help services available for self-represented litigants (SRLs) also varies greatly. Many courts maintain static websites. Others are more advanced, offering video conferencing to deliver workshops to provide face-to-face services

remotely in another location.⁵ This broad range of uses is influenced by a court's size, organizational culture, technical capabilities, and budget.

The Futures Commission identified the following examples of current court technology that should now be adopted statewide:

- Access to digital court records;
- Online self-help services;
- Assistance with online completion of court forms;
- E-filing;
- Electronic noticing, online scheduling, and continuance processing; and
- Language services (e.g., video remote interpreting (VRI)).

Each example is discussed in more detail in *Rationale for Recommendation 1: Current Technology Initiatives* beginning on page 216.

CURRENT FISCAL STATUS

Funding for technology is currently provided to individual court budgets through the Workload-Based Allocation and Funding Methodology (WAFM) and other earmarked funding. However, limited budgets often restrict a court's ability to implement technology because upfront implementation costs cannot be supported by annual budgets.⁶ The Council has also developed budget change proposals to request funding for technology initiatives. Most recently, the judicial branch received funding for the Court Innovations Grant Program. These funds will support 52 programs, many of which focus on the technology solutions described in this chapter.⁷

CURRENT LAWS AND RULES AFFECTING TECHNOLOGY

Few statutes restrict the use of technology to conduct daily court business operations. Records may be created and maintained electronically,⁸ electronic case and document management systems are encouraged,⁹ and courts may allow or mandate that parties file and serve papers electronically.¹⁰ Some self-help centers provide services electronically through online videos and assistance.

Existing statutes and rules of court have not yet progressed as far with regard to proceedings inside the courtroom. Remote appearances are encouraged by statute, but the law currently addresses only telephonic appearances and only at nonevidentiary hearings.¹¹ At the same time, there is no law prohibiting a variety of remote appearances in evidentiary civil hearings with agreement of all parties and the court. Remote appearances are more problematic in criminal cases, but remote video appearances at criminal arraignments are currently authorized with the consent of the defendant.¹² Electronic recording is only authorized as the official court record in limited civil, misdemeanor, and infraction cases.¹³ Courts are prohibited from using electronic recording as an official record of any other action or proceeding.¹⁴ Courts may not use recording equipment to make unofficial records, even for purposes of judicial notetaking.¹⁵

*California's court system is diverse
in the ways and efforts to which
it uses technology...*

*This broad range of uses is influenced
by a court's size, organizational culture,
technical capabilities, and budget.*

RECOMMENDATIONS

To increase technology use in the courts, the Futures Commission recommends the following:

1. Current Technology Initiatives

Continuing judicial branch support and implementation of initiatives currently underway by ITAC, as reflected in the Council's *Tactical Plan for Technology (2017–2018)*, including:

- ◆ VRI;
- ◆ Remote self-help services for SRLs;
- ◆ Cloud services for application hosting and data storage;
- ◆ Case and document management systems that support the digital court; and
- ◆ E-filing.

2. Remote Video Appearances

Developing a pilot project to allow remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings.

3. Video Arraignments

Authorizing video arraignments in all cases, without the defendant's stipulation, if certain minimum technology standards are met.

4. Intelligent Chat Technology

Developing a pilot project using intelligent chat technology to provide information and self-help services.

5. Voice-to-Text Language Services Outside the Courtroom

Developing a pilot project that would use voice-to-text language interpretation services for use at court filing and service counters and in self-help centers.

6. Innovations Lab

Establishing an Innovations Lab to identify and evaluate emerging technologies and cooperate with industry experts to tailor them to court use.

7. Access to the Record of Court Proceedings

Implementing a pilot program to use comprehensive digital recording to create the official record for all case types that do not currently require a record prepared by a stenographic court reporter.

RATIONALE FOR RECOMMENDATION 1: CURRENT TECHNOLOGY INITIATIVES

The following initiatives should be pursued statewide and are reviewed in detail here to provide the reader with the foundation on which the other recommendations in this chapter are built.

VIDEO REMOTE INTERPRETING (PILOT PROGRAM)

An increase in limited English proficiency (LEP) court users requires expanded resources to provide meaningful access. As noted in the Council's *Strategic Plan for Language Access in the California Courts*, California has the most diverse population in the country. Approximately 7 million LEP residents speak more than 200 languages and are dispersed over a vast geographic area.¹⁶ In-person interpreting, while generally preferred, is not always available, especially for less common languages in particular areas. VRI can fill this gap.

One pilot program for VRI has already been successfully completed. In 2011, four trial courts began a VRI pilot program for deaf or hearing-impaired court users, providing American Sign

Language (ASL) interpreters by video. Outcomes for this project included high judicial officer satisfaction, increased likelihood of using a court certified interpreter, efficiencies in the use of interpreters, and cost savings.¹⁷ A participating court reported an average savings of \$209 per half day where VRI was used in place of an in-person interpreter.¹⁸ Program administrators for a large court with an annual interpreting budget of \$1,007,250 could save approximately \$125,336 annually, if VRI were used for ASL for the top four languages other than Spanish¹⁹ and for cases in which Spanish interpreters from the large court were used for cross-assignment in courthouses with no assigned interpreters.²⁰

Based on the ASL program and the experience of other states, ITAC included a pilot program for remote spoken language interpreting within its proposed *Tactical Plan for Technology (2017-2018)*. Three vendors for the no-cost pilot project²¹ were selected in October 2016, and three trial courts will begin piloting VRI for spoken languages in spring 2017.²² An initial evaluation of the pilot project is expected to go before the Council in fall 2017. The goal is to define statewide technical standards, provide program guidelines, and preapprove vendors.²³ ITAC will evaluate the pilot projects in terms of prompt availability of language access for litigants, decreased use of less qualified interpreters, decreased dismissals for failure to meet court deadlines, increased number of LEP litigants served, and decreased travel expenses. If the pilot projects are successful, VRI could be expanded branchwide.

REMOTE SELF-HELP SERVICES FOR SELF-REPRESENTED LITIGANTS

The Futures Commission explored technological assistance for SRLs, especially in family law and other civil proceedings. Solutions considered included online services for self-help assistance, intelligent chat functions,²⁴ document assembly assistance,²⁵ and document submission. Most of the technologies explored by the Futures Commission are currently underway as part of ITAC’s Self-Represented Litigants E-Services initiative.²⁶

SRLs are a growing segment of court users, especially in family law and civil proceedings. For these litigants, identifying required forms, completing them accurately, and filing them in a timely manner can be challenging. The available resources to assist SRLs vary from court to court. Further, self-help resources were reduced in some courts during the economic recession. Traveling to the courthouse during business hours can be an additional burden for SRLs, who often must leave work or family duties to go to the courthouse during business hours.

SRLs are a growing segment of court users, especially in family law and civil proceedings. For these litigants, identifying required forms, completing them accurately, and filing them in a timely manner can be challenging.

The Self-Represented Litigants E-Services initiative builds upon the existing California Courts Online Self-Help Center and leverages available judicial

branch resources. The goal is to provide a central access point for self-represented parties and the community organizations that assist them. Providing consistent and accurate information, the access point will use existing question-and-answer interview processes, “smart” forms, and document assembly tools. Completed forms can then be electronically filed with courts that have the ability to accept them, or electronically delivered using current branch infrastructure.²⁷ Development and implementation costs could be recovered through a small service fee paid by nonindigent SRLs. This cost should be lower than that incurred by SRLs who would otherwise travel to the courthouse or use self-help services to submit documents.²⁸

CLOUD SERVICES FOR APPLICATION HOSTING AND DATA STORAGE

The Futures Commission explored the use of cloud technology to improve court operations. The cloud provides Internet access to significantly more powerful and less expensive computing resources. It can include networks, servers, storage, applications, and services. It is a widely used, cost-effective, and reliable solution. In general, the benefits of the cloud include the following:

- *Flexibility.* There are a variety of different types of cloud services including software, platforms, and infrastructure. Each court can design a cloud service that best fits its needs.
- *Scalability.* The ability to scale up or down in terms of bandwidth, storage capacity, and computing power is available on a pay-as-you-go basis. This ability negates the need to acquire, manage, and maintain technology infrastructure.

- *Data backup and disaster recovery.* Preservation of data and programs in the event of service outages or natural disasters is seamless with cloud backup.
- *Increased security and compliance.* Cloud services generally include multiple layers of data encryption, ensuring data security.
- *Improved performance.* Placing high-volume functions and services in the cloud improves performance because computing resources can be quickly increased or decreased as needed. Doing so also reduces the impact of network traffic and bandwidth from a court's on-premises systems.
- *Increased access.* Cloud storage allows the courts to store, access, and retrieve files from any Internet-accessible location.
- *Data exchange.* "Data lakes" are storage repositories that hold a great amount of data in its native format. They can be used for sharing, searching, and analyzing data from various sources including information in nonuniform formats. They allow easy information sharing with less cost and increased speed.

ITAC's *Tactical Plan for Technology (2017–2018)* includes two initiatives related to cloud technology:

- The completed Develop Standard CMS Interfaces and Data Exchanges initiative developed a set of commonly used CMS interfaces and data exchanges between trial courts and justice partners.²⁹
- Under the Transition to Next-Generation Branchwide Hosting Model initiative implementers will reevaluate judicial branch and court hosting models to ensure the

branchwide strategy for application and services hosting is the most cost-effective.³⁰

The incorporation of cloud technology for both initiatives further supports data exchanges between the courts and justice partners. The Futures Commission recommends that future judicial branch projects include use of cloud technology where appropriate.

CASE AND DOCUMENT MANAGEMENT SYSTEMS THAT SUPPORT THE DIGITAL COURT

The trial courts require technology solutions that promote efficiencies, meet the needs of public and justice partners, and deliver timely access. Such solutions must include modern case and document management systems. Full branchwide implementation of these systems is critical. The anticipated benefits and outcomes include:

- Cost savings, operational efficiencies, and enhanced case processing;
- Elimination or reduction of the costs associated with the storage, retrieval, archiving, and destruction of paper records;
- Improved access to records for clerks, judges, litigants, and the public; and
- More efficient use of the judicial branch workforce.

Modern case management systems

At least 32 percent of the trial courts have outdated CMSs (legacy systems)³¹ that are functionally obsolete, no longer supportable, and do not meet the needs of today's court users and personnel. Modern CMSs are required to provide timely and accurate case information, support judicial decision making, enable e-filing, and provide court operational efficiencies.

For courts that have upgraded or plan to upgrade their legacy CMSs, a master service agreement (MSA) was established in February 2013. The agreement relieves individual courts of the cost and organizational burden of proceeding on their own. It provides the trial courts with a set of vendor solutions and pricing for CMSs.³² The MSA provides the starting point for a negotiated agreement between a third party court and the vendor.³³

ITAC's *Tactical Plan for Technology (2017-2018)* includes an initiative to oversee the deployment and migration of CMSs throughout the state and determine strategies to aid those courts needing modernization. In recognition of the courts' need, the Governor's proposed 2017-2018 judicial branch budget includes \$5 million over two years to replace outdated CMSs in nine small courts.³⁴ If included in the final budget, the funding will enable these courts to establish a digital foundation for effective service delivery.

To the extent possible, courts are encouraged to migrate to a new system as soon as possible and to incorporate online scheduling and automatic notifications as features in their CMSs.

- *Online scheduling.* This feature incorporates court calendaring programs on a court's website, allowing parties to choose and set dates for court appearances. The Superior Court of Orange County (Orange Court) has successfully implemented online scheduling for traffic hearings, which has decreased wait times in the clerk's office and enabled customers to report directly to a courtroom without having to go to a clerk's window.³⁵
- *Automatic notifications.* A variety of tools can be used to push an e-mail, text message, or phone call to court users to provide case-related information, including hearing dates, schedule changes, and reminders to bring certain items or to complete certain forms. Notifications can be used on the day of the hearing to inform attorneys and parties on a long calendar or with multiple appearances on a single day that the case will be heard soon. These notifications can also be used to remind a litigant of an upcoming payment deadline. The courts using automatic notifications experienced decreased no-shows, improvement in parties' preparedness for court hearings, and reduction in unnecessary delays in courts with longer calendars. The Superior Court of Los Angeles County (Los Angeles Court),³⁶ the Superior Court of Santa Clara County,³⁷ and Orange Court³⁸ have implemented successful automated reminder systems, which have decreased failure-to-appear rates.

Document management systems

Most courts still rely on paper-based systems. As of February 2014, the official record of the action for 71 percent of the trial courts was on paper. Just 4 percent of the trial courts relied exclusively on electronic documents. Twenty-five percent relied on both formats, depending on the case type.³⁹ Expenses for traditional filing and retention of documents on paper include physical storage, security, and staff time to access and move physical files around the courthouse. Further, these files are not searchable, must be manually entered into CMSs, and are often not replaceable in the event of physical damage or natural disaster.

Using a document management system to receive and store records in electronic format and integrating that system with a court's CMS provides substantial operational efficiencies. Electronic documents provide more immediate and reliable access for judicial officers, staff, and the public. It also reduces retrieval, storage, and destruction costs and permits the use of common disaster recovery solutions.

The Superior Court of San Diego County (San Diego Court) and the Superior Court of Napa County (Napa Court) provide two examples of the benefits of document management systems. San Diego Court has implemented document management systems for civil, probate, small claims, and family law cases.⁴⁰ Savings included the reduction of staff hours dedicated to records management, elimination of physical file storage, and revenue from the sale of online records.⁴¹ By 2005, Napa Court successfully transitioned to document management systems for all case types and reported annual savings of \$650,000 for a total savings of \$6.5 million over 10 years.⁴²

ITAC's *Tactical Plan for Technology (2017-2018)* includes an initiative specifically related to the digitization of court records: Document Management System Expansion. For courts without a document management system, this initiative will:

- Identify opportunities for acquisition and integration of document management systems with existing CMSs;
- Identify the most efficient and cost-effective solution for implementation;
- Leverage MSAs for software procurement; and
- Develop educational sessions for implementation.⁴³

ELECTRONIC FILING

Trial courts have traditionally required court users to file paper documents in person or by mail. Most hard copy forms and documents are first produced on a computer. The document is then printed out and filed with the court and copies are served on all parties. The court then enters, often manually, document contents in the court's CMS. Depending on the capabilities of the court, the document is then either maintained in hard copy or scanned and converted into an electronic format.

Many if not all of these intermediate steps can be reduced with e-filing, which enables secure document filing online at any time and from any location. E-filing is intended to be more than an electronic delivery system. E-filing automates the entire process, eliminating the need for processing by a clerk. It transmits documents to the courts with the information necessary to integrate them directly into the court's CMSs. By integrating e-filing with existing CMS systems a more efficient, automatic, streamlined process for records administration is achieved.⁴⁴ The benefits include cost savings by reduced staff time for data entry, screening, scanning and filing documents, processing mail, and document review.⁴⁵

Effective July 1, 2013, California approved pilot projects to allow and even mandate e-filing in civil actions either directly with the court or through one or more e-filing service providers (EFSPs).⁴⁶ Orange Court established the first pilot project mandating the e-filing of court documents in all civil cases, unless excused by the court.⁴⁷ Evaluation of that court's pilot project⁴⁸ has informed subsequent mandatory e-filing efforts throughout the state and showed the following results:

- Significant cost savings for the court.
 - ◆ A 38 percent reduction in staffing levels for civil case processing.⁴⁹
 - ◆ Decreased security needs and wear and tear to facilities.
- Cost-effectiveness for represented and self-represented parties.⁵⁰
 - ◆ Among represented parties, 55 percent thought e-filing was less expensive than physical filings.
 - ◆ Among self-represented parties, 34 percent thought e-filing was less expensive, 34 percent were uncertain, and 8 percent perceived no difference.
- Convenience for parties.⁵¹
 - ◆ Parties who received fee waivers were generally satisfied with e-filing.
 - ◆ Among SRLs, 75 percent found e-filing to be more convenient, 51 percent indicated it was less time-consuming, and 50 percent viewed late-night filing as a benefit.

Today, approximately 45 percent of trial courts have some e-filing capacity, but 55 percent, mostly small and a few medium courts, have none.⁵² Many courts that accept or require e-filing in civil cases chose to use EFSPs.⁵³ Currently, between 15 and 20 EFSPs operate in various parts of the state.⁵⁴ Because choosing and certifying EFSPs can be difficult and time-consuming for the courts, ITAC has designated several statewide e-filing managers (EFMs), who will work with courts and EFSPs.⁵⁵ Going forward, EFSPs will be required to work with all statewide EFMs, which will in turn be required to work with all four of the major electronic CMSs.⁵⁶ ITAC is continuing to study how best to support e-filing for courts that are using other CMSs.⁵⁷ For those courts without a modern case or document management system, a variation of e-filing known as “e-delivery” will

be employed. E-delivery is a system for electronic document transmission.

RATIONALE FOR RECOMMENDATION 2: REMOTE VIDEO APPEARANCES

Today, video technology is integrated into most personal devices. As access to such devices increases, court users are becoming accustomed to, and often reliant on, video conferencing for both business and personal matters. Video conferencing is a reliable, cost-effective, and high-quality substitute to in-person appearances. Its use is becoming more common in court systems throughout the United States.

The high quality of existing video conferencing reflects advances in hardware and software, which have greatly improved the services provided in business settings. Current video technology makes it possible to provide a 360-degree view of a room; recognize individual speakers through voice recognition, automatically switching focus and zooming in on the speaker; and allow documents to be viewed on a split screen. Telephonic appearances currently provide remote access to proceedings in many courts. Video technology expands on this access by allowing the court and the remote participants to see as well as hear each other. The court can directly view an individual’s demeanor.

The use of any type of remote appearance technology, including teleconferencing, is currently underused. For example, fewer than half the courts use video conferencing for arraignment. Although telephonic appearances are permitted in nonevidentiary hearings for civil and family law cases,⁵⁸ this technology is used irregularly. One large court in California indicated that although it had the ability to use video conferencing, it was used an average of only 15 times in 2015 and

2016. A few examples of courts that use video conferencing follow:

- The Superior Court of Fresno County (Fresno Court) has been using video technology for a variety of remote appearances since 2013. The court began using this technology for traffic infraction cases with defendants who live in rural areas, letting parties appear at hearings by video from a north county location. For some parties, this service eliminated a 90-minute drive both to and from the main courthouse.⁵⁹ In 2014, the court started using video conferencing to provide certain interpreting services. The court also facilitates the use of these interpreters' services by other courts not able to provide the needed interpreter on their own. Starting in 2016, the court⁶⁰ began offering assistance to rural court users seeking domestic violence restraining orders and related services of domestic violence advocates via video conferencing from a Fresno Court courthouse to two secure locations in other parts of the county. This service allows

the advocates and court users to view and complete documents simultaneously.

- The Superior Court of Merced County permits parties to request video appearances. It does not limit the types of proceedings for which a request may be made.⁶¹
- Orange Court provides⁶² video remote appearance services in family law proceedings, including hearings on orders to show cause, law and motion, readiness conferences, trial setting and status conferences, settlement conferences, and fee waiver hearings.

Although remote video appearances are not used extensively throughout the trial courts, judicial officers who have used them are generally satisfied with the experience.⁶³

Reduced use of remote appearances may reflect a lack of awareness by court users that it is available. An additional barrier may include judges' willingness to permit remote appearances, and requirements for the consent of all parties. Statutory provisions encouraging the use of video appearances, a uniform and consistent use of video conferencing, and a branchwide effort to inform court users of its availability would promote its use. Remote appearances would especially benefit those court users who face mobility and vulnerability barriers and individuals who live or work far from the courthouse.

The Futures Commission believes that the option to attend court proceedings remotely should ultimately be available for all noncriminal case types and appearances, and for all witnesses, parties, and attorneys in courts across the state.⁶⁴ Judges should retain discretion to require in-person appearances, as appropriate.

Although remote video appearances are not used extensively throughout the trial courts, judicial officers who have used them are generally satisfied with the experience.

The Futures Commission recommends the development of a pilot project in one or more courts for remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings, including evidentiary hearings, unless there is good cause for mandating a personal appearance.

BENEFITS TO THE PARTIES AND THE COURTS

Video conferencing provides the following benefits:

- Gives participants options for appearance locations, including from their homes or workplaces.
- Saves time, cost of travel, and the need to miss work or arrange childcare.
- Provides easy access for those with physical disabilities or who live far from the courthouse.
- Offers predetermined, convenient video conferencing locations to be set up for users without access to needed devices.
- Provides individuals in custody the ability to appear in civil matters, reducing costs for the state and the person in custody.

COSTS TO IMPLEMENT

The costs to a court to implement video conferencing technology will vary. One-time cost for video conferencing hardware (i.e., cameras, microphones, and video screens) for one courtroom is approximately \$9,300.⁶⁵ Usually, only one 360-degree camera is needed to provide video images, one LCD computer screen is needed for the judge's use, and at least one large LCD screen or projector screen is needed for the courtroom. The size and layout of the courtroom will determine the number of actual cameras, microphones, and video screens needed. Total cost for hardware also depends on the equipment

The option to attend court proceedings remotely should ultimately be available for all noncriminal case types and appearances, and for all witnesses, parties, and attorneys in courts across the state.

already installed or available to the court. Courts may need to increase the capacity of their high-speed Internet connections to support conferencing equipment, or purchase software that facilitates the online connection between the courts and the remote participants. In the past few years, one court reported that a one-time purchase of software to provide this service cost approximately \$25,000. In another court, the system is provided by a third party vendor, at no cost to the court. The cost to the remote participant is approximately \$90 per session.⁶⁶

Courts will also need to commit staff resources to ensure proper system functioning and to troubleshoot any problems that may occur during use.

PUBLIC COMMENT

Public comment on the proposal to use remote video appearances was generally positive for civil unlimited cases, certain family law cases, and traffic infraction cases. The Office of the Attorney General agreed with the proposal. Members of the California Police Chiefs Association's Technology Committee indicated that remote appearances would be beneficial for off-duty officers who need to provide testimony.

SIMILAR PROCEDURE IMPLEMENTED ELSEWHERE

Other states have incorporated and expanded the use of video technology in settings such as SRL services, inmate competency evaluations, trial preparation, and attorney jail interviews.⁶⁷ Some specific examples follow:

- Minnesota uses video conferencing for remote appearances in certain civil case types⁶⁸ and to conduct child support enforcement hearings.⁶⁹
- Florida and New Jersey often use this technology for child dependency proceedings when one of the parents is in custody.⁷⁰
- Illinois uses video conferencing for a variety of court proceedings and meetings in 46 courtrooms and conference rooms.⁷¹

PILOT PROJECT FOR REMOTE VIDEO APPEARANCES FOR NONCRIMINAL COURT PROCEEDINGS

The Futures Commission suggests a robust pilot project be employed to test technology and procedures for remote video appearances. The pilot projects will assist in determining the appropriate case types and proceedings for video appearances. The pilot should help address concerns about replacing the traditional forum of in-person interactions with increased reliance on technology. The intent is not to create virtual courthouses, but to allow remote appearances in proceedings where it is deemed appropriate, while retaining the option of in-person appearances. The pilot project will also address concerns about potential costs for equipment and fees.

In developing the pilot project, it will be important to consider how video participation best promotes

effective communication between the different locations. Proper technology and facilities in both the courtroom and remote location should meet minimum standards as to image and audio quality. The technology should also permit private communication with attorneys or parties, document transmission with electronic signatures, display of multiple images, and distribution of electronic evidence from one location to another.

Court processes and procedures will require updating to reflect and complement the use of video conferencing for remote appearances. A new process for enforcing laws of contempt of court will need to take into account that the violator may not be physically present in the courtroom. Below are examples of areas that should be addressed in updated court processes and procedures:

- Determining what specific video applications, platforms, or technical standards are appropriate.
- Training for court staff, judicial officers, attorneys, and other court users.⁷²
- Developing procedures for:
 - ◆ Notice of remote appearance to parties and court;
 - ◆ Determining the maximum number of participants who may appear remotely;⁷³
 - ◆ Addressing technical issues during proceedings;
 - ◆ Administering oaths or affirmations for those giving testimony;
 - ◆ Handling evidentiary issues, including viewing evidence, creating the record, and preserving the original when appropriate; and
 - ◆ Addressing the completion and signing of documents.

AUTHORIZATION NEEDED TO IMPLEMENT

No law currently precludes appearances by remote video conferencing in noncriminal cases. This technology is already used with consent of all parties in some cases. Specific legislation is needed to authorize the use of video remote appearances without consent of all parties for courts participating in the pilot project. Eventually, the current statute and rules of court regarding telephonic appearances⁷⁴ would be expanded to include video appearances and to apply to evidentiary hearings and trials. The statute and rules could also be amended to include any additional issues identified during the pilot program.

The pilot project will require funding to implement and evaluate the outcomes. Determination of the metrics for the pilot project should be left to those implementing it. However, evaluation data could include:

- Number of requests and users by case and proceeding type.
- Actual cost to provide remote appearances for the courts and parties.
- Satisfaction level of parties, counsel, and judicial officers with the:
 - ◆ Effectiveness of remote appearances in the various proceeding types;
 - ◆ Ability to evaluate credibility of a remote participant;
 - ◆ Ability to confront a remote participant;
 - ◆ Effectiveness of communication between the users in various locations; and
 - ◆ Ability to share evidence between locations.

If the pilot project is determined to be successful, minimum technology standards for remote video appearances, software, and equipment should be developed for branchwide implementation.

RATIONALE FOR RECOMMENDATION 3: VIDEO ARRAIGNMENTS

A “video arraignment” uses video conferencing technology to connect the defendant in the county jail to the judge and other participants in the courtroom. The previous section on video conferencing in noncriminal proceedings includes discussion on the technology and the impact it may have on the courts and justice partners. To reduce duplicate discussion, this section will refer to those areas of discussion consistent with its use for video arraignment but provide more detailed discussion directly pertinent to arraignment proceedings. Unlike the recommendation for use of video conferencing, which calls for a pilot project, this recommendation calls for statewide implementation.

Travel time, costs, and congested calendars often make in-person arraignments burdensome to parties, court users, courts, and transporting agencies. This is particularly true when defendants are housed in county jails. On the day of the arraignment, in-custody defendants are escorted from their living cells to a holding cell where they wait to be transported to the courthouse. Information shared with the Futures Commission indicates that the wait time before transport can be many hours, depending on when officers are available for escort when the arraignment begins, and whether inmates are divided into multiple vehicles. Before transport, defendants and vehicles are thoroughly searched. Defendants are then driven by bus or van to the courthouse. At the courthouse, defendants may remain in a holding cell until their proceedings begin, and are then escorted to the courtroom. Following the arraignment, most defendants remain in custody. Once arraignments and all other proceedings for in-custody defendants are complete, the in-custody defendants are driven back to the county jail. The

county sheriff monitors the defendants during this entire process to protect both the public and other inmates and to reduce the risk of escape. This is a costly, labor-intensive, and cumbersome system. An arraignment may take only a minute or two, but an in-custody defendant may spend an entire day being readied, driven, and waiting for that brief appearance. Often, all in-custody defendants must wait until every inmate is finished with court before any will be returned to the jail. The use of video technology for remote appearances can improve efficiency for courts and sheriff's departments, and reduce the burden on defendants.

USE OF VIDEO ARRAIGNMENTS IN CALIFORNIA

California courts conduct numerous arraignments each year.⁷⁵ In 2016, a small court conducted a total of 16,093 arraignments,⁷⁶ a medium-sized court performed approximately 73,000 in-custody arraignments,⁷⁷ and a large court performed approximately 126,328 in-custody arraignments. The potential for efficiencies is clear.

The use of video arraignment for in-custody defendants was authorized in California in 1983 by Penal Code section 977(c), establishing video arraignment pilot projects.⁷⁸ The December 1991 Council report to the Legislature⁷⁹ on the pilot projects concluded that the 14 participating courts enthusiastically supported video arraignment and that cooperation and coordination with the various agencies involved were vital to the success of the projects. The report also noted that in addition to cost savings, cost avoidance should be included in any evaluation of video arraignment projects. Costs are avoided when security risks are reduced with a decrease of in-custody defendants managed in court and detained in court holding cells. With some exceptions, Penal Code

section 977(c) continues to permit an initial court appearance for any charges to be conducted by two-way electronic audio-video communication, with consent of an in-custody defendant.

The Legislature has given the California Department of Corrections and Rehabilitation (CDCR) similar authority, pursuant to Penal Code section 977.2. This section permits certain court appearances via two-way electronic audio-video communication for a state prison inmate charged with a new offense. Before this legislation, the Legislature had authorized CDCR to establish a three-year pilot project to evaluate video conferencing for this purpose in five facilities.⁸⁰

*The use of video technology
for remote appearances
can improve efficiency
for courts and sheriff's
departments, and reduce
the burden on defendants.*

Some trial courts currently maintain a video arraignment program. For example, the Superior Court of Sierra County (Sierra Court) conducts video arraignments as a result of decommissioning the county jail. Currently, Sierra Court inmates are held in a Nevada County facility.⁸¹ Data were unavailable regarding the number of video arraignments conducted. However, anecdotal information reported the reduced need for additional security is a substantial benefit. The Superior Courts of Merced and San Bernardino⁸² Counties also have a video arraignment program.

Despite decades of successful and well-received pilot programs, the use of video arraignment has neither spread across the judicial branch nor maintained longevity in many courts. Feedback received by the Futures Commission suggests that the lack of use stems from the requirement that defendants consent, and resistance by public defenders.

The Futures Commission recommends legislation authorizing the use of video arraignments in all cases without the defendant's stipulation so long as certain minimum technology standards are met by the trial court.

Implementation of video arraignment requires the same technology discussed in the recommendation for video conferencing. The technology must support interactive and confidential communications among the defendant, judge, defense attorney, and district attorney. A court's design and implementation of video arraignments should consider how current processes and procedures would require modification and include best practices for implementation. The court technology and facilities requirements and minimum capabilities of the technology discussed previously apply to the use of video arraignment as well. But unlike remote appearances, video arraignment requires that a physical location and equipment be provided for the remote participant as well as in the courtroom. A room within the jail must be identified and configured for this use. At a minimum the space should accommodate the defendant, an attorney, and a sheriff's officer.

Implementation of such a system will require the following:

- Training for staff, judicial officers, attorneys, and sheriff's officers, and informational documents or videos for the defendant.

- Procedures for:
 - ◆ Addressing technical issues during proceedings, including how to handle a proceeding if the issue cannot be resolved;
 - ◆ Addressing the completion and signing of paperwork;
 - ◆ Providing for confidential communication between attorney and client; and
 - ◆ Providing for conferences among counsel and the judicial officer.

A court's implementation plan should include data collection and measure program success. Data collected by the court include types of technology issues, costs associated with the project, and other issues not originally identified that may be relevant to the evaluation of the program. This information will help identify any additional changes to enhance program success.

If video arraignments prove successful, consideration should be given to expanding the use of video conferencing in other criminal proceedings involving in-custody defendants. In 2016, a large court spent approximately \$574,000 in transportation costs, including employee salaries and benefits, vehicle rental, and fuel and maintenance for proceedings other than arraignment. This court now performs in-custody arraignments at the jail and does not currently incur transportation costs related to those appearances.

AUTHORIZATION NEEDED TO IMPLEMENT

Legislation will be needed to authorize video arraignments without the defendant's stipulation. The legislation would amend Penal Code section 977(c), and any other relevant statutes, to:

- Apply in all case types; and
- Remove the requirement of stipulation so long as certain minimum technology

standards are met. Such standards should include minimum color, video, and audio quality; minimum viewing area of cameras in the courtroom and in the jail; public ability to view arraignment from the courthouse (not necessarily in the courtroom); and minimum security protocols.

EFFICIENCIES GAINED IN OPERATIONS

The Futures Commission was unable to obtain specific cost information because these data are not recorded by county sheriffs. However, using the example of a medium-sized court, if 73,000 in-custody defendants do not require transport to proceedings, it is reasonable to expect significant cost savings.

In its October 1998 report to the Legislature regarding its pilot project discussed above, CDCR noted that it saved approximately \$120,000 a year by using video arraignment in five facilities versus transporting inmates to court. CDCR also noted a two-thirds reduction in the time of actual court appearances, which reduced the court's calendar, enhanced county jail bed availability, increased court/jail security, and alleviated court and county jail congestion.⁸³ Although this pilot project addressed arraignment for defendants in state prison, the benefits and savings noted in the CDCR report provide a useful reference. The number of CDCR inmates who would otherwise be brought to court is dwarfed by the number of in-custody arraignments conducted annually statewide.

COSTS TO IMPLEMENT

It will cost approximately \$5 million to install the video conferencing equipment necessary to conduct video arraignments in trial courts and county detention facilities across the state. (For detailed information about these cost esti-

mates, see *Appendix 5.1B: Estimated Cost of Video Arraignment Equipment for Trial Courts and Sheriff's Departments*.) This estimated cost includes installation of video arraignment equipment in:

- 371 criminal courtrooms, for a cost of \$3.5 million for the courts;⁸⁴ and
- 118 county detention facilities, for a cost of almost \$1.6 million for sheriff's departments.⁸⁵

In addition to equipment costs, courts and county detention facilities will also need to commit staff resources to maintain and troubleshoot any problems that may occur when the video conferencing system is in use.

PUBLIC COMMENT

Public comment was generally in support of the recommendation. It should be noted, however, that defense counsel and prosecutors will have to modify some staffing arrangements to support this approach. Statutory changes should clarify that a video appearance qualifies as an in-person appearance.

SIMILAR PROCEDURES IMPLEMENTED ELSEWHERE

Approximately 30 states currently allow video arraignments or video preliminary hearings.

- Louisiana, in 2009, developed the Video Conference Project.⁸⁶ The focus of the pilot was for appearances, arraignments, and hearings involving interpreters. The project resulted in reduced risk to the public, offender, and staff; reduction in courtroom congestion and staff overtime; and an increased presence of officers at the facility instead of at the courthouse.

- Florida allows video arraignment and provides a live stream of the proceedings for public view.⁸⁷
- The Corrections Center of Northwest Ohio offers video conferencing services in criminal matters, including arraignments, attorney-client conferences, and presentence investigations.⁸⁸
- Maine began using video conferencing services for video arraignments and mental health hearings in 2005.⁸⁹
- The Fairbanks Courthouse in Alaska first used video arraignment in 1984. Since then, video conferencing has seen occasional use in felony first appearances or misdemeanor sentencing for in-custody defendants.⁹⁰

FEASIBILITY OF BRANCHWIDE IMPLEMENTATION

The success of the implementation of this recommendation depends on coordination with the courts' justice partners, including the jail staff, prosecution, and defense counsel. All should be involved in the development and training for transition to such a system.

RATIONALE FOR RECOMMENDATION 4: INTELLIGENT CHAT TECHNOLOGY

“Intelligent chat” or a “chatbot” can provide information online through a question-and-answer exchange, often via text messages on a webpage or through a messaging or texting interface,⁹¹ automating responses to simple and repetitive questions. Such programs are frequently used by many businesses for the first level of customer service interactions. The information provided and the questions that can be answered increase and improve with usage. Many court users today

use an intelligent chat function when dealing with businesses. This technology is fairly simple to create and does not require implementation of any particular hardware or software platform.

Intelligent chat technology can be used to provide more interactive assistance for court users, especially for SRLs. Through any Internet-enabled device or smart phone with text messaging, court users could request information in their normal manner of speaking, including slang. The programs could be used to obtain procedural information, asking questions such as: How do I get a divorce? How do I serve a complaint? What do I do with this complaint? How can I pay my ticket? or How do I get a hearing? Questions about jury duty, courthouse parking, and similar inquiries can also be answered. Little knowledge of court terminology or legal procedure is required for a successful interaction. The software would identify and provide the relevant information, forms, and tools to help users navigate and understand the court process or direct them to further information or live assistance. Intelligent chat technology is available in many languages.

With intelligent chat technology, court users do not have to search multiple court webpages to identify the information, forms, or services. When integrated with CMSs, this technology can allow a court user to input a case number and retrieve information on pending court dates, upcoming deadlines, or any other information selected by the court. Once implemented, the software can continue to “learn” and the types of questions and resources it can provide will increase.

Chat technology can be especially helpful as a means of triaging self-help assistance and answering frequently asked questions, thus giving staff more time to assist court users with more complex and individualized questions.

The Superior Court of Los Angeles County (Los Angeles Court) has instituted a very successful chatbot program called Gina.⁹² The Gina chatbot, shown as an onscreen avatar, is currently online in the traffic section of the court's website and is integrated with the court's CMSs. The program allows tens of thousands of court users to pay traffic tickets, register for traffic school, or schedule court dates by using questions and easy-to-understand automated prompts to gather relevant information. It then guides the user to the appropriate webpage to expeditiously find needed services. Gina provides assistance in English, Armenian, Chinese, Korean, Spanish, and Vietnamese.

Gina greatly increases the accessibility of Los Angeles Court's traffic operations, which handle approximately 1.2 million new citations annually. Because most customers understand online services and web platforms, many of these 1.2 million citations will be handled online, reducing staff workload, foot traffic, and long wait times. Because of courthouse closures in 2014, wait times in Los Angeles Court reached 2.5 hours just to see a clerk to handle a traffic transaction. The chatbot alone now handles 200,000 interactions annually. The Los Angeles traffic court wait times have been cut from over 2 hours to 8 to 12 minutes by combining Gina with the court's online traffic court program. Four thousand customers now use Gina each week to resolve their traffic citations online.⁹³

The costs to implement this intelligent chat technology are low compared with the dramatic decrease in processing and wait time associated with traffic cases. Los Angeles Court spent about 240 programming hours to create Gina using a program called SitePal, which costs the court \$2,500 annually. The bulk of the court's cost was the \$40,000 one-time fee that included translation

services such as voice recording for Armenian and Vietnamese, and other services related to website enhancement.⁹⁴

Another tool is the Orange Court's "Ask a Question" program, which provides general procedural information in response to online questions in civil and small claims cases. Parties enter the program by clicking on the "Ask a Question" link on the court's self-help webpage.⁹⁵ An automated Q&A application selects an answer based on keywords contained in the question. Parties use natural language to ask questions. Staff monitor the application to ensure the relevance of the answers provided. The program eliminates the need for staff to respond to many individual e-mail inquiries.

Four thousand customers now use Gina each week to resolve their traffic citations online.

PILOT PROJECT

The Futures Commission recommends developing a pilot project to implement intelligent chat technology for information and self-help services.

The pilot program would start with development of an intelligent chat function to answer questions commonly asked in static form on the judicial branch's California Courts Online Self-Help Center.⁹⁶ Areas could include family law, certain civil and probate questions, and traffic issues. The intelligent chat feature would have a statewide entrance point on that website and would also be deployed to two or three pilot courts. Additional topics would be developed for information specific

to each of the pilot courts. The pilot would be implemented in consultation with ITAC to leverage technology where appropriate.

If successful, this pilot would provide standards and samples for courts to implement on their own websites. This approach has been successfully used, for example, in the development of court website home pages. For that project, Council staff, working with court representatives, designed and developed a standard template that courts could customize for their local needs.

Implementation of intelligent chat functions will not only provide easier access to information for SRLs, but it should ultimately free up time currently spent by clerks and self-help centers in answering simple and repetitive questions. This extra time will allow courts to better serve those who need more direct, in-person help at the courthouse, by phone, or online.

The pilot project and the use of intelligent chat are not intended to replace all direct communication between court staff and customers, but instead to answer frequently asked questions and provide noncomplex information. The pilot intelligent chat program should include an option for the court user to contact court staff during normal court hours, online or by phone.

FEASIBILITY OF BRANCHWIDE IMPLEMENTATION

The Futures Commission acknowledges the challenge of deploying intelligent chat technology branchwide because not all courts have the in-house resources or funds to create and deploy this technology. A pilot project funded by the judicial branch will help develop and test this function before requiring specific court funds or staff. The pilot will also allow the testing of a

handoff from statewide chat functionality to the local chat function.

The pilot would also analyze operational efficiencies achieved by measuring the frequency of use, the duration of each session, after-hours usage, and customer satisfaction. These data would allow for comparisons of time spent in chat sessions versus that spent in person or by telephone or e-mail, as well as analysis of call waiting times and dropped calls.

AUTHORIZATION NEEDED TO IMPLEMENT

No known existing rules or legislation would preclude the use of intelligent chat services for court users.

COSTS TO IMPLEMENT

The costs to implement intelligent chat would include program development and assistance from Council staff self-help experts. Resources for translation programs would also be required for multilanguage access. No additional hardware would be required by the courts or the judicial branch because the programs are not platform dependent. To provide a cost estimate on what this could cost, the Futures Commission used development-cost information from Los Angeles Court's Gina program.⁹⁷ The Futures Commission estimates that covering the wider variety of topics included in the current online self-help center would take up to six months of programming time, at a cost of approximately \$80,000.⁹⁸

Additional costs would be incurred to provide assistance in multiple languages. The Los Angeles Court program, using a set script, has been able to provide language access through the use of a program costing \$2,400 per year, plus a one-time cost of \$40,000 for translation into two languages

that were not included in that program. Although this figure could serve as a cost baseline to provide the pilot program in multiple languages, the cost of interpreting the natural language queries would ultimately be more expensive.

PUBLIC COMMENT

The Futures Commission sought public comment on the proposal to promote the use of intelligent chat and received no comments directly discussing this recommendation. General comments on the greater use of technology were positive.

RATIONALE FOR RECOMMENDATION 5: VOICE-TO-TEXT LANGUAGE SERVICES OUTSIDE THE COURTROOM

California residents are among the most diverse in the country, with approximately 7 million speaking more than 200 languages. Without proper language assistance, LEP court users may be excluded from meaningful participation. Many courts have bilingual staff to assist some non-English-speaking users; however, they are usually limited to the most frequently used languages in that community. No court has staff fluent in the multitude of languages spoken by all court users. Court interpreters are also used when possible, but courts prioritize their services for in-court proceedings. Because court users can appear any time, scheduling interpreters on short notice is virtually impossible. Another limitation is the availability of interpreters for emerging languages spoken by newly arrived immigrants.⁹⁹ Typically, these court users come to the public filing counters, self-help centers, and information desks. Court staff often find themselves assisting LEP individuals without an interpreter present.

In the absence of an interpreter, many court users rely on the help of a family member or friend. Often these individuals do not, themselves, understand legal terminology or court procedures.¹⁰⁰ Friends and family members may also experience LEP, limiting their own availability to assist.

Some courts use telephonic interpreter services provided by a third party.¹⁰¹ The services are provided on demand in such settings as customer service counters, self-help centers, and other areas.¹⁰² These services can be provided in multiple languages.¹⁰³ The cost for a certified telephonic language interpreter ranges from \$1.49 to \$1.99 per minute and \$0.99 per minute for a noncertified interpreter. The vendor provides a single, toll-free number. From March 2016 to February 2017, the services under this master agreement were used by 17 courts.¹⁰⁴

Current technology can combine speech recognition technology and translation software. Speech recognition turns spoken language into text by a computer or other device. Speech recognition technology is used successfully by business organizations in various applications, including voice dialing for smart phones, data entry by phone in customer service calls, word processing by dictation, and language learning. More complex applications include military use of voice commands for fighter aircraft.

This technology integrated with translation software now allows two individuals who speak different languages to converse without the assistance of an interpreter. The process works as follows:

- When an individual speaks, his or her words are heard by the other participant. The text of the spoken words is displayed on screen in the speaker's language and immediately translated into the listener's language.

- When an individual finishes speaking, the software also provides an audio interpretation in the listener’s language.
- At the end of the conversation, a transcript of the conversation is available, which includes a record of the conversation in each speaker’s language.

This technology integrated with translation software now allows two individuals who speak different languages to converse without the assistance of an interpreter.

Recent advances in voice-to-text language technology have been substantial and will continue to improve. Although these services are not yet accurate enough for hearings or trials, use of the technology within the courts for noncourtroom activities would greatly improve access for LEP court users. The technology can be customized, incorporating court-specific terms into the software. The voice-to-text language technology could be accessed by court staff on a tablet or other device to assist communication between court staff and LEP court users at clerk’s counters, business offices, self-help centers, and other locations. Further, these translation services can be combined with intelligent chat technology to further enhance access for LEP court users. Use of this technology may replace other contracted services and their associated costs.

The Futures Commission recommends developing a pilot project for the use of voice-to-text language interpretation services to serve court users at court filing and service counters and in self-help centers.

Successful application of this technology would enhance access in multiple languages conveniently, without court users having to wait for an interpreter, family member, or friend to translate for them. Use of this technology also allows court staff to print out the conversation for later reference by the court user, and to serve as a record of the information given. This technology can also enhance information available at self-help centers.

PILOT PROJECT

The pilot project should include several courts, preferably of different sizes. The courthouses participating in the project should serve a large number of LEP court users, at the clerk’s counter and in self-help centers.

AUTHORIZATION NEEDED TO IMPLEMENT

No existing statutes or rules of court preclude the use of voice-to-text language services outside the courtroom. However, to implement the pilot project, participating courts would need to work cooperatively with any affected unions. Voice-to-text translation services must be used in a manner consistent with:

- The court’s obligations under their respective regional interpreter memoranda of understanding;
- All applicable sections of the Trial Court Interpreter Employment and Labor Relations Act, as well as the Trial Court Employment Protection and Governance Act;

- The payment policies for contract court interpreters; and
- The Government Code sections, California Rules of Court, and Judicial Council forms applicable to the use of noncertified and nonregistered interpreters during court proceedings.

The pilot project will require funding to implement and to evaluate. Evaluation factors include:

- Frequency of use by location, case and proceeding type, and the duration of each session;
- Actual cost of devices and software for the court and a comparison to previous expenses for telephonic interpreter services from LanguageLine Solutions, if applicable; and
- Satisfaction of court staff and court users with the effectiveness of the interpretation in the various locations of use and proceeding types.

Evaluation of the pilot project will allow the judicial branch to assess the technology's usefulness and define best practices for using voice-to-text language services. If the pilot project is successful, minimum standards for its use should be developed and implemented branchwide to achieve the goals of Access 3D.

COSTS TO IMPLEMENT

Costs for the pilot project will vary based on size of court, number of courthouses, and number of clerk counters, as well as the device the court uses for this technology. The estimated cost of a laptop is \$500, or \$400 per tablet. Currently, voice-to-text language software is available on most devices at no charge.

Some courts currently use LanguageLine when the need for interpretation arises. Use of voice-to-text translation technology would replace use of LanguageLine and the associated costs.

PUBLIC COMMENT

Public comment on this proposal was generally supportive. Some comments highlighted the need for funding assistance for some courts. No comments were received in opposition.

FEASIBILITY OF BRANCHWIDE IMPLEMENTATION OR PILOT PROJECT

The Futures Commission recognizes that with certain new processes, implementing a pilot project is more feasible and prudent than implementing a branchwide program. A pilot project provides the opportunity to gauge the impact on court and user interaction and to fine-tune a branchwide program. As such, a pilot project to provide voice-to-text translation services would be more feasible than branchwide implementation. The pilot project would provide information vital to future expansion.

The pilot project could include a few courts or a single court. If a single court is chosen, a medium-sized court with a known LEP court user population would be optimal. A participating court should have the flexibility to select the specific hardware to be used to access the voice-to-text translation service software.

This recommendation supports Goal 3 of California's language access plan, which states: "By 2020, courts will provide language access services at all points of contact in the California courts. Courts will provide notice to the public of available language services."¹⁰⁵ The use of this technology will further assist LEP court users when prepared information, either electronic or

printed in their language, may not address their particular questions.

If the pilot project is successful, extending its use, in conjunction with intelligent chat technology, would also support ITAC's SRL E-Services initiative, included in the *Tactical Plan for Technology (2017–2018)*.

*Failure to innovate
results in the
failure to thrive.*

RATIONALE FOR RECOMMENDATION 6: INNOVATIONS LAB

Technology is constantly and rapidly developing and will continue to do so at an exponential rate. This pace makes it challenging to predict what the future will bring and what will become possible. Personal computers and the Internet have completely altered how information is accessed. Mobile technology and cell phones have revolutionized how individuals interact with each other and the businesses and services they use. Development of quantum computing, expected to be many times faster than today's digital computing, is likely to lead to yet another revolution, the scope of which is unpredictable.

Private sector companies commit time and resources to innovation. In the world of commerce, failure to innovate results in the failure to thrive. Even large companies that do not innovate disappear. For forward-thinking companies, this innovation has been identified through "innovations labs" or similar working groups dedicated to considering what is coming next and how best to use it.

In light of this proven utility, the Futures Commission believes that the judicial branch must promote this culture of innovation within the court system through the creation of a similar innovative group. Courts that do not innovate will not disappear. They will, however, become increasingly costly, inefficient, and anachronistic. Ultimately, their ability to provide meaningful access to justice will be compromised.

It should be noted that the Council's strategic and tactical technology plans provide an existing framework for judicial branch technology initiatives in the short term. Many innovations currently underway statewide began with innovation in local courts supported by the technology expertise available in-house. Although local innovation is important, a key to staying current is to look even further out, beyond the next few years, and to do so in a focused and consistent way. The judicial branch will benefit if it can continually interact with experts on the front line of technology. Focused efforts of an Innovations Lab will allow the judicial branch to be involved in technologies as they develop rather than belatedly reacting to them, at a cost of modification efforts and delayed implementation. It will also keep the Council informed so innovation can be meaningfully included in its long-term planning.

INNOVATIONS LAB MODEL

Structure

The Futures Commission envisions that the Innovations Lab would be a small unit staffed by members of the Council's Information Technology office. A new technology innovations advisory committee would be developed to review and make recommendations to the Council based on the work of the Innovations Lab. This advisory committee would be under the oversight of the Council's Technology

Committee. It would work in parallel with ITAC, but would focus on a longer-term view than that currently possible for ITAC. The members of the innovations advisory committee would be judicial officers, court executives, and information technology directors, academics, and possibly members of private industry or other subject matter experts appointed by the Chief Justice.¹⁰⁶ Unlike ITAC in its current form, this new group would not be involved in implementation.

*A key to staying current
is to look even further out,
beyond the next few years,
and to do so in a focused
and consistent way.*

Innovations Lab staff and the director of the Council's Information Technology office would be responsible for providing periodic updates to the new technology innovations advisory committee. At least once a year, the advisory committee would review and provide input into the areas of technology and specific projects being investigated by the lab and its plan for future work. The advisory committee would also report to the Council annually on the work of the Innovations Lab and make appropriate recommendations.

Charge

Innovations Lab staff, working with its advisory committee, would be responsible for exploring developing technology with potential applications for the judicial branch. It is envisioned that the Innovations Lab would develop goals for the year and memorialize these goals with identified

activities in an annual work plan. Specific activities for the Innovations Lab could include the following:

- Meeting regularly with technology companies to make sure the judicial branch is aware of the latest innovations that could be useful to the courts. In its research for developing these recommendations, the Futures Commission was able to meet with several technology companies to learn about the latest innovations in business and government. The Futures Commission envisions that the Innovations Lab could continue this model. This ongoing partnership with industry technology leaders will allow the judicial branch to be part of conversations and brainstorming as to what concepts, products, or services might benefit the court and the public. Such a relationship would allow the judicial branch to influence developments, rather simply reacting later. One model for collaboration is the Center for Legal and Court Technology (begun as the Courtroom 21 Project), sponsored by the National Center for State Courts in collaboration with William & Mary Law School. This program conducts a technologically advanced trial and appellate courtroom in which new technologies and courtroom procedures can be tested.
- Participating in and facilitating communication among individuals, company representatives, and court staff regarding new ways for courts to conduct their business and to present their ideas.¹⁰⁷
- Participating in or attending national or state technology forums focused on future court innovations.

- Conducting analysis and research on identified innovations, both in private industry and government, including newest hardware and software, to develop recommendations for the Council’s Technology Committee.

The Innovations Lab’s scope of review would include new ways in which technology can benefit the courts and the public. The increasing amount of data that will become available as more courts implement electronic CMSs will lead to the possible use of data analytics, for example. Such information clearly will be helpful in improving day-to-day operations of a particular court and may also be useful for addressing other, larger issues statewide.

BENEFITS ACHIEVED BY DEVELOPMENT OF INNOVATIONS LAB

By learning more about what new technology is on the horizon, the Innovations Lab would also assist the Technology Committee and ITAC to comply with one of the Council’s guiding principles for technology initiatives: “Plan ahead. Create technology solutions that are forward thinking and that enable courts to favorably adapt to changing expectations of the public and court users.”¹⁰⁸

The judicial branch would benefit by becoming aware of emerging technologies early on so those solutions can become part of the judicial branch’s future planning. As was identified through many discussions with technology companies, most technology that the judicial branch could benefit from is ready and available now. The judicial branch should reposition itself from playing catch-up to active involvement as advances develop. Early information would help align current resources with upcoming innovations.

The work of the Innovations Lab would not replace or duplicate the work being done by individual

trial courts as they implement new technology. It would take a longer view, looking beyond technology solutions currently available for implementation. By leveraging its statewide focus, the Innovations Lab could ensure that all 58 trial courts, regardless of size or technological expertise, are provided with the same level of information and opportunities. Technology companies may not always be willing to provide dedicated time to smaller courts, but they will generally be willing to meet with branchwide representatives. Through the work of the Innovations Lab and the proposed advisory committee, small courts will have the same access to new ideas and cutting edge technology solutions that large ones do.

COSTS TO IMPLEMENT

The cost for the recommended Innovations Lab would be approximately \$425,000 per year. This estimate would cover annual salary and benefits for three Information Technology employees,¹⁰⁹ along with a budget for travel to national and in-state conferences and vendor locations.

The new technology innovations advisory committee would cost approximately \$28,000 per year.¹¹⁰

AUTHORIZATION NEEDED TO IMPLEMENT

The work of Council staff is organized and directed by the Administrative Director, under the supervision of the Chief Justice.¹¹¹ Their direction would be sufficient to develop the Innovations Lab as a new unit within the Council’s Information Technology office.

New advisory committees may be created by order of the Chief Justice or by amending the California Rules of Court.¹¹² A new rule would be needed describing the charge of the new innovations advisory committee and identifying categories of membership and potential activities.

RATIONALE FOR RECOMMENDATION 7: ACCESS TO THE RECORD OF COURT PROCEEDINGS

BACKGROUND

This rationale section contains additional background and history regarding the production of the record of court proceedings in California. The Commission deemed this information necessary to better understand the reasoning for this recommendation.

Traditional production of the record in California courts

Within the California trial courts there are approximately 1,334 filled, full-time equivalent, court-employed court reporter positions.¹¹³ Traditionally, these court reporters, in addition to contracted and pro tem court reporters, make note of oral proceedings and prepare a verbatim transcript that serves as the official record.

This current system and structure involves a unique employment situation in which reporters are court employees for reporting purposes, but independent contractors for the production and sale of the transcripts. (For a brief history of the development of this unique employment system, see *Appendix 5.1C: Historical Background on Verbatim Reporting of Court Proceedings*.) This system has resulted in different procedures and requirements based on whether the transcript will be purchased by a trial court or a party.

California laws related to providing a record of court proceedings

Authorized use of electronic recording

Under current law, California trial courts are authorized to use electronic recordings to make an official court record in only limited civil, misdemeanor, and infraction cases.¹¹⁴ Courts are prohibited from using electronic recording as an official record of any other action or proceeding.¹¹⁵

Verbatim reporting of proceedings by certified court reporters

The law requires verbatim reporting by a court-provided, certified court reporter only for felony cases, as well as criminal grand jury, juvenile, and involuntary civil commitment proceedings.¹¹⁶ Verbatim reporting is also required in criminal misdemeanor and infraction cases, but may be provided by electronic means.¹¹⁷

In other case types, including unlimited civil, most family law,¹¹⁸ and probate matters, most courts¹¹⁹ are not required to provide a court reporter. Instead, the party must arrange and pay for a court reporter or go without a record. Even when the court provides a reporter, the parties must pay for the reporter's services in the courtroom.¹²⁰

Purchase of transcripts

Courts are required to purchase transcripts when needed to provide the record on appeal for most criminal, juvenile, and involuntary civil commitment proceedings.¹²¹ In felony and misdemeanor appeals, an indigent defendant is generally entitled to a complete verbatim transcript at court expense.¹²² Alternative forms of the record that provide the constitutionally required "record of sufficient completeness"¹²³ include agreed statements and settled statements.¹²⁴

The cost for a court to purchase a transcript is set by statute based on either a set fee per 100 words or by an estimated number of words, or “folios,” on a typical transcript page.¹²⁵ For the original transcript, the set fee per 100 words, or folio, is currently 85 cents. A copy costs between 15 and 20 cents per folio.¹²⁶ Statutorily grandfathered procedures have resulted in different assumptions among the courts about how many folios are contained on each page.¹²⁷ A court reporter may also add a fee for delivering the transcript using a medium other than paper.¹²⁸ Although a reporter has no copyright interest in the transcript,¹²⁹ a purchaser may not provide or sell a copy.¹³⁰ A copy made by the purchaser (or excerpts thereof) can be used only as an exhibit or for internal use. For that reason, for preliminary hearings and criminal proceedings, courts usually purchase the original plus two copies (one for the public defender and one for the district attorney).

For all other proceedings, the parties involved must pay for transcripts. In those cases, the statute regulating the cost of transcription¹³¹ applies only to transcripts that are requested and paid for using the advance deposit procedures in the rules of court.¹³² When transcripts in civil, family, and probate proceedings are obtained directly from the reporter, a different rate from that defined by statute may be charged. Reporters are free to vary rates.

Accountability for transcript preparation

By statute and rule of court, court reporters are responsible for the timely preparation of transcripts. Repeated failure to carry out this responsibility may result in license revocations or limitation on services as reporters.¹³³ Trial court presiding judges are responsible for enforcing the timely preparation of transcripts. This responsibility,

normally delegated to the court executive officer, involves the following: “(1) maintaining records of outstanding transcripts to be completed by each court reporter, (2) reassigning court reporters as necessary to facilitate prompt completion of transcripts, and (3) reviewing court reporters’ requests for extensions of time to complete transcripts in appeals of criminal cases.”¹³⁴

ACCESS ISSUES

Reduced availability of court reporters in nonmandated cases

As a result of budget cuts and competing priorities, many courts have stopped providing or reduced the availability of court reporters in nonmandated cases. This decision creates significant access challenges for litigants needing a record of proceedings. A December 2016 survey of trial courts across the state provided the following information for the 57 responding courts:¹³⁵

- For family law proceedings:
 - ◆ 35 percent of courts provided court reporters for *all* proceedings;
 - ◆ 19 percent did not provide court reporters for any family law proceedings beyond those statutorily mandated; and
 - ◆ 46 percent provided court reporters for *some* proceedings.
- For probate proceedings:
 - ◆ 37 percent of courts provided court reporters for *all* proceedings;
 - ◆ 35 percent did *not* provide court reporters for any probate proceedings beyond those statutorily mandated; and
 - ◆ 28 percent provided court reporters for *some* proceedings.

- For civil proceedings:
 - ◆ 16 percent of courts provided court reporters for *all* proceedings;
 - ◆ 35 percent did not provide court reporters for any civil proceedings; and
 - ◆ 49 percent provided court reporters for *some* proceedings.

The survey also examined which courts used electronic recording, as permitted, when a court reporter is unavailable for limited civil cases, misdemeanors, and infractions:¹³⁶

- Only 28 percent of courts use electronic recording to make the record of proceedings in all three case types, although not in *all* proceedings within each case type.
- 33 percent of courts use electronic recording in *one or two* of the case types, although also not in all proceedings within the case type.
- 9 percent of courts have electronic recording equipment available for these case types; however, the recordings are not used to provide a record, but are used only for internal court purposes.¹³⁷
- 30 percent of courts *do not* have electronic recording equipment.

Parties obtain the recording of proceedings directly from the court, which are generally provided on a compact disc for a fee between \$10 and \$25. For parties who need a transcript of the recording, three courts require the use of court reporters while the remaining courts refer parties to private vendors for transcription services.

Decreasing numbers of court reporters

National data show the number of skilled court reporters is decreasing. Certified court reporting schools have experienced smaller enrollment and graduation rates, which are declining by an annual

average of 7.3 percent.¹³⁸ Since the early 1990s, California's courts have experienced a steady reduction in the number of qualified shorthand reporters. This trend is projected to continue in California with an expected shortage of 2,320 court reporters in 2018.¹³⁹ The need to explore additional and alternative means to preserve and expand access to the record of proceedings is manifest.

Challenges for litigants

Providing an official record is essential to equal access, transparency, and fundamental fairness. This is particularly true in cases with SRLs. In some courts today, 75 percent of the cases in family law involve at least one SRL.¹⁴⁰ Both limited and unlimited civil cases also have an increasing number of self-represented parties. In unlawful detainer cases as many as 90 percent of tenants are self-represented.¹⁴¹ Without a record, a party, especially a self-represented party, is less likely to understand a court's decision or be able to draft the text for a court's orders. This is true even for lawyers. Matters can carry on over several months. Memories and notes of the bench's rulings may lose clarity over time. Differences of opinion between counsel as to what actually took place are common.

To obtain appellate review a party must generally provide a record; failure to do so can be fatal.¹⁴² Parties can try to prepare a settled statement, but this option is often beyond the abilities of SRLs who may not know this alternative exists or may fail to comply with the procedural requirements. Again, fading memories, disagreements, and other uncertainties can make settled statements impossible to complete. To fairly allow parties the option of appeal, a record of the oral proceedings is crucial.

In cases where a court reporter is neither provided nor mandated, the litigants must hire a private court reporter.¹⁴³ Private court reporter appearance fees can be considerable. In 2012, the per diem rate

for court reporters was \$735 in San Francisco and \$764 in Los Angeles.¹⁴⁴ When the court does provide a court reporter for nonmandated proceedings, the cost is partially offset by fees. The fee can be waived for an indigent party,¹⁴⁵ but such a waiver is not applicable when a private court reporter must be retained. Many litigants, especially SRLs, are unable to afford the cost of court-provided court reporters or the expense of a private court reporter.

Providing an official record is essential to equal access, transparency, and fundamental fairness.

Simply obtaining a transcript of court proceedings is an additional stumbling block for many. To receive a transcript, a civil litigant must arrange for payment, either by depositing the estimated payment in advance with the courts (see rule 8.130(b)) or by making arrangements directly with the court reporter. Transcripts purchased directly from the reporter can cost as much as \$7 per page. Family law and civil attorneys reported that they had been given cost estimates ranging from \$600 to \$1,300 per day for trial transcripts.¹⁴⁶ The cost to purchase a transcript from individual court reporters cannot be waived by the court. The Transcript Reimbursement Fund¹⁴⁷ was established to help low-income individuals obtain transcripts, but the fund is limited and is exhausted quickly each year.

These factors have created a two-tier system, leaving indigent litigants without the same opportunity to obtain a record as a party with means. These due process and equal protection issues have been noted in several cases¹⁴⁸ and in the Elkins Family

Law Task Force report to the Council.¹⁴⁹

Courts that currently use electronic recording for eligible case types are able to provide copies for all or parts of proceedings quickly, often by the next day. The recordings can be used by litigants to better understand what occurred, as the basis for a settled statement, or as the initial step to obtaining a transcript.

FISCAL ISSUES FOR COURTS

In fiscal year 2014–2015, an estimated \$215 million was spent by the trial courts to provide an official record of proceedings.¹⁵⁰ This figure includes just over \$196 million to provide court reporter services,¹⁵¹ and \$19.3 million for the purchase of transcripts.¹⁵² With more than \$200 million spent annually by the trial courts for these services, it is vital that the judicial branch exercise its fiduciary responsibility by evaluating the current system.

The overall cost for providing the record (court reporter services and cost of transcripts) varies among courts, ranging from \$9,851 to over \$66 million. Costs vary even among courts of similar sizes, ranging from:

- \$9,851 to \$265,218 for small courts;
- \$212,898 to \$1.4 million for small to medium-sized courts;
- \$1.5 million to \$6.8 million for medium-sized courts; and
- \$8.1 million to \$66 million for large courts.¹⁵³

Variances also exist for court costs to purchase transcripts. These variances may be attributed to differences among the courts including the nature of cases, ratio of preliminary hearings to trials, legal culture of the court and county justice partners, assumptions as to how many folios are on a page,¹⁵⁴ and the extent of strict adherence to the

transcript format standards.¹⁵⁵ Transcript costs can range from:¹⁵⁶

- Up to \$36,826 for small courts;¹⁵⁷
- \$20,363 to \$323,359 for small to medium-sized courts;
- \$28,377 to \$575,230 for medium-sized courts; and
- \$19,489 to \$6.5 million for large courts.¹⁵⁸

As noted previously, litigant cost for transcripts in nonmandated case types varies greatly, and can be very expensive.

Court costs to provide reporter services in civil proceedings are partially offset by fees paid by parties.¹⁵⁹ For these civil proceedings, \$23.7 million was collected in court reporter fees in fiscal year 2014–2015, of which \$17.2 million was distributed back to the courts.¹⁶⁰ In comparison, the estimated expense to the courts to provide court reporter services in civil proceedings was \$67.3 million.¹⁶¹ Although the fees are intended to provide an incentive for courts to provide court reporters, they apparently do not cover the full court expense based on the relatively small percentage of courts that normally provide court reporters for *all* family, civil, and probate proceedings.

These factors have created a two-tier system, leaving indigent litigants without the same opportunity to obtain a record as a party with means.

TECHNOLOGICAL ADVANCES IN DIGITAL RECORDINGS OF PROCEEDINGS

Audio-visual technology has evolved rapidly over the last five years and has improved significantly since Council pilot projects in the early 1990s demonstrated electronic recording was a reliable, cost-effective alternative to stenographic court reporting.¹⁶² More than two decades later, the technology available to provide a digital recording has improved substantially. It allows a more comprehensive record, including high-definition audio and video, indexing, and improved access to records. Current features of digital recording systems for courtrooms include:

- *Cameras*—Multiple, discreet, high-definition video cameras are controlled by a computer system and switch automatically to focus on whoever is speaking.
- *Microphones*—At least five discreet microphones are controlled by a computer system and switch automatically to whomever is speaking. The microphones can pick up voices, even those that are soft, from 15 to 20 feet away. Multiple microphones placed throughout the courtroom allow multi-channel recording. When more than one person speaks at a time, the recording can be isolated to the relevant microphone to capture what was said by each speaker.
- *Customizing audio recordings*—Audio can be recorded in normal, private, or bench conference mode. Private mode is used for conversations that need to be limited between the speakers, but still on the record. Bench conference mode plays a white noise through the courtroom's speakers during conversations between the judge and lawyers.

- *Indexing*—Case number, time, and date stamps are automatically added to the recording and the court clerk and judge can add supplemental comments during the recording. This index allows easy retrieval of specific portions of the recording for parties, judges, clerks, and appellate review.
- *Comprehensive record*—Evidence presented through in-court electronic technology such as document and exhibit displays, videos, remote witness appearances, and 3-D animation can be included in the record.
- *Storage and access of recordings*—Years of recordings can be stored in a small area, with servers often taking up no more than a closet space for a medium-sized court. Recordings can be automatically saved both on-site and in a backup location, and integrated with CMSs. Access to the recording is quick and easy with the clerk downloading the file electronically. Recordings can be made accessible to parties online.

Other advances in electronic recording systems available today or expected in the near future include voice recognition, speech-to-text capability, redaction, and streaming rough transcripts.

MECHANICS OF USING DIGITAL RECORDING IN THE COURTROOM

Responsibility for the digital recording system's daily use and operation is generally done by a courtroom monitor. The monitor role may be filled by existing courtroom staff, or by an additional staff person, generally an electronic monitor who can oversee recording in several courtrooms. The monitor is responsible for all aspects of starting, stopping, and monitoring the digital recording equipment.

The following provides general information about the monitor's activities:¹⁶³

- Before the day's proceedings begin, test the software and equipment to ensure proper operation. This includes ensuring each microphone and camera's correct placement and recording quality, and confirming proper software function.
- During a proceeding:
 - ◆ Monitor the recording to ensure it works properly and if necessary, interrupt the proceeding using the judge's established protocols to alert a judge to issues affecting the recording's quality.
 - ◆ Make log notes and annotations to enable efficient playback.
 - ◆ Assist the judge by providing playback of the recording during court proceedings while simultaneously recording; stopping the recording for "off the record" proceedings at the judge's direction; ensuring sidebar or bench conferences are recorded unless otherwise directed by the judge; and emitting white noise through courtroom speakers to prevent jurors from overhearing conversations such as bench conferences that should be recorded, but not heard by jurors.
- At the proceeding's conclusion, make entries in the CMS,¹⁶⁴ including court orders and next hearing dates and ensure the recording is properly stored and archived.

Log notes and annotations made by the monitor during the proceeding are important for the efficient playback of recorded proceedings. Log notes capture important information about the spelling of proper names, unusual terms, relevant lists of attorneys' names and addresses, witnesses, exhibits, and other information to supplement the record. Annotations mark specific points of interest

in the recording (such as when each type of examination begins, when the jury enters or leaves the courtroom, etc.). Both log notes and annotations allow monitors, judges, and lawyers to quickly find and play a specific part of the recording.¹⁶⁵

The presence of a monitor responsible for the daily use and operation of the digital recording system ensures that the recording system is an ancillary part of conducting court proceedings, which allows judges to focus on their primary responsibilities.

BENEFITS FOR PARTIES, COURTS, AND THE BRANCH

Comprehensive digital recording will provide a record of court proceedings not currently available for many parties, either because court reporters are not provided or because the cost for a court reporter and transcripts is beyond the parties' means. Digital recording of the proceeding will also serve as the official record for appellate review, rather than a transcript created from the recording.

Digital recording allows parties to obtain a record of the proceeding in a timely manner for a small fee (\$10 to \$25) as a digital file available for downloading online or via other electronic means. Digital recordings will provide additional benefits, including equal access, enhanced accuracy and completeness by preserving the original language of testimony as well as translations, enhancing the "cold record" by capturing inflection and tones of voice, and permitting broadcast of court proceedings to assistive listening devices.

Transparency of court proceedings will improve trust and confidence in the courts. Currently, the lack of a record in family law, civil, and probate proceedings results in a disservice to the public, who could benefit from a record that shows what the court did throughout the proceedings. Additionally, when parties make accusations about a

judicial officer or others during the proceedings, a comprehensive digital record of what did or did not occur during a hearing benefits all involved.

Costs to the courts will be reduced because the courts will own all records of court proceedings, obviating the need to purchase them.¹⁶⁶ Implementing a digital record will allow courts to integrate the recording system with case management and calendaring systems, use the recordings for judicial officer review and training, and reduce storage costs.

If the pilot program is successful, the judicial branch should expand the use of digital recording to all nonmandated case types statewide,¹⁶⁷ and eventually to those case types where use of court reporters is currently mandated.¹⁶⁸ If expanded to criminal matters, digital recording would result in even more substantial savings. When fully implemented, trial courts would no longer be required to purchase transcripts, with potential savings of \$19 million annually.¹⁶⁹ After initial investments in the recording systems, courts will be able to provide a record of court proceedings in all cases, likely at a lower cost than the \$196 million spent annually to provide court reporter services in select case types.¹⁷⁰

IMPLEMENTATION OF DIGITAL RECORDING IN OTHER ORGANIZATIONS

The 2013–2014 Court Reporting Industry Outlook Report, sponsored by the National Court Reporters Association, evaluated the extent to which various states use digital recording for court proceedings and classified each state's use of digital recording as either low, high, or medium.¹⁷¹ The map in Figure 1 on the next page represents these ratings, with the lightest shade for low use and the darkest shade for high use. As the map shows, 47 states use digital recording more extensively than

California. Of these states, 6 were considered to have a high usage.

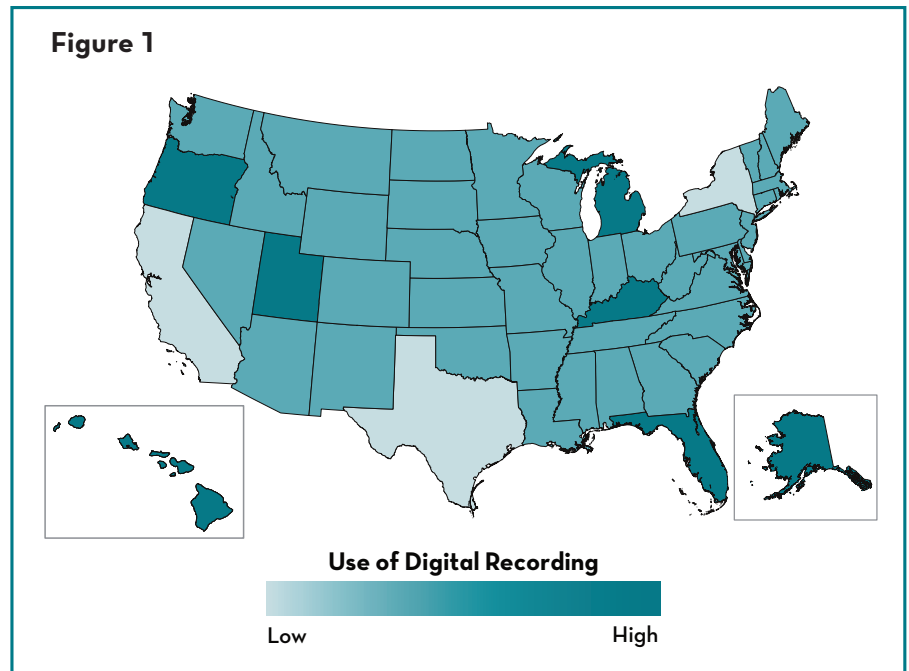
The use of digital recording in other California jurisdictions and in other states is described below.

California Department of Social Services

The State Hearing Division of the California Department of Social Services (Social Services) conducts administrative hearings to resolve various disputes.¹⁷² Social Services has used audio recordings instead of court reporters for all of its administrative hearings for at least 20 years. In fiscal year 2015–2016, Social Services conducted and recorded audio in 25,390 hearings. During the hearings, Social Services uses audio recording software with storage on a central computer system. Each hearing, which typically lasts between 30 and 60 minutes, is time-stamped in the computer system. The hearings are only transcribed when Social Services' legal office asks for the transcription pending a writ filed in a superior court.¹⁷³

Kentucky court system

The Kentucky courts have used digital recording in place of court reporters for the last 30 years. This transition began in the early 1980s when court reporters were behind in producing transcripts and courts were spending more than \$2 million a year in direct expenditures for court reporting services. In 1989, court rules were amended to allow the recordings as an official record on appeal. The rules were further amended in 1999



to provide that only the audio-visual recording would be the official record, eliminating written transcripts.¹⁷⁴ The transition to the digital recording systems occurred through an attrition process as court reporters retired.¹⁷⁵

Kentucky currently has more than 600 installations throughout the state, including courtrooms and judges' chambers.¹⁷⁶ The average cost of the digital recording systems for a "power" courtroom, which includes all the technological advances described above, is \$45,000 for installation, with an average annual maintenance cost of \$3,625.¹⁷⁷ This system includes 5 courtroom cameras, 10 microphones, a chambers option, a public address system, and basic evidence presentation. Kentucky courts estimate they are saving \$19.4 million per year by replacing court reporters and transcripts with the digital recording systems.¹⁷⁸

Utah court system

Beginning in 2008, the Utah courts faced severe budget reductions and began shifting away from

court reporters to digital recording, with centralized transcript management.¹⁷⁹ To implement this change, the judicial rules were modified in 2008 to state that a transcript of a video or audio recording would represent the official transcript for all case types.¹⁸⁰ Since 2009, all Utah court proceedings are captured with audio or audio-visual recording systems.¹⁸¹

*Forty-seven states
use digital recording
more extensively
than California.*

The cost per courtroom to install the system hardware is approximately \$25,000 per courtroom, \$1,042 for software licensing, and \$800 for a computer.¹⁸² If a courtroom already has a public address system, the hardware required to connect the microphones to the software system is approximately \$500.¹⁸³ The court clerk starts, stops, and monitors the recording system in each courtroom.¹⁸⁴ The recordings for all courts across the state are stored at a primary data center and replicated on a secondary center.¹⁸⁵

By 2009 all court reporter positions were eliminated, saving the court system an estimated \$1.1 million annually after factoring in the cost of equipment installation.¹⁸⁶ Additionally, the management of transcript production is handled by 1.5 coordinators at the Court of Appeals Clerk's Office, rather than 50 clerks statewide monitoring the production process, resulting in additional savings of about \$3 million.¹⁸⁷ The court system of Utah is significantly smaller than California's. Savings expected for California would be proportionately larger.

The Utah court system also implemented an effective online transcript management system, which:¹⁸⁸

- Provides transcribers with access to online recordings of court proceedings;
- Allows attorneys and SRLs to request transcripts; and
- Allows judges, attorneys, and litigants to view the electronically filed transcripts in the court's CMS.

The Utah court system contracts for transcription services and many transcribers are former stenographic court reporters. Since the transition to audio-visual recording, the time to complete transcripts for cases on appeal shortened from 138 days to 22 days. Only 12 days are required for cases not on appeal.¹⁸⁹

Courts in Clark County, Nevada

In Clark County, Nevada, each judge decides whether to use a court reporter or a digital recording system. Of the 32 judges currently sitting in Clark County, 28 choose to use digital systems.¹⁹⁰ Of these, several family law judges indicated they chose the systems because of the ease of producing the record for SRLs and cost savings to the court.¹⁹¹ In transitioning to the digital systems, court reporter positions were reclassified to one of two new court recorder/transcriber classifications.¹⁹²

The family court division in Clark County, which traditionally does not receive as many requests for written transcripts as the civil and criminal divisions, reports "a couple hundred thousand dollars a year in net savings" by using the digital recording systems.¹⁹³ For the Clark County courts, the digital recording systems have proven to be a more cost-effective method of recording court proceedings in many courtrooms.¹⁹⁴

COSTS TO IMPLEMENT

The Futures Commission considered several different approaches for providing a record in all proceedings.

Estimate 1: Use court-employed court reporters in each civil courtroom.

Estimate 2: Use digital recording with current courtroom staff (judicial officer or courtroom clerk) operating the system and a single court-employed information systems technician responsible for effective configuration and operation of digital recording systems within the court.

Estimate 3: Use digital recording with additional court employees: electronic monitors¹⁹⁵ to operate the systems for up to four courtrooms from a central location¹⁹⁶ and a single court-employed information systems technician responsible for effective configuration and operation of digital recording systems within the court. This option relieves current courtroom staff (judicial officer or courtroom clerk) of the responsibility of running the system.

Figure 2 below provides the estimated cost for four courts over a five-year period to provide a record of proceedings in nonmandated civil case types.¹⁹⁷ (For detailed information on these cost estimates, see *Appendix 5.1D: Cost Estimates to Provide a Record of Nonmandated Court Proceedings*.)

The cost of using digital recording with existing courtroom staff as operators (Estimate 2) is just 15 to 34 percent of the cost of providing court reporters in each courtroom. In comparison to using court reporters, digital recording with electronic monitors (Estimate 3) is less expensive for all four courts. Depending on court size, savings range from \$332,021 (Court 1) to \$10.6 million. Generally, the cost of Estimate 3 is 36 percent to 70 percent of the cost of using court reporters (Estimate 1).

Successful implementation of digital recording will require prior acceptance by the courts, judges, and justice partners. Understandably, resistance to this change is expected given the long-standing tradition in California to rely on the physical presence of a court reporter in the courtroom to provide the record.¹⁹⁸

Figure 2: Estimated cost to provide a record of court proceedings over five years for three options

Court	Court Size	Number of Civil Courtrooms	Estimate 1 Court Reporters (Total)	Estimate 2 Digital Record (Total)	Estimate 3 Digital Record Using Electronic Monitors (Total)
Court 1	Small	3	\$1,100,020	\$372,061	\$767,999
Court 2	Small to Medium	3	\$1,140,300	\$372,061	\$767,999
Court 3	Medium	8	\$3,463,550	\$669,561	\$2,253,312
Court 4	Large	35	\$16,615,775	\$2,469,621	\$6,033,062

PAST LEGISLATIVE EFFORTS TO EXPAND ELECTRONIC RECORDING

Since the report of the Legislative Analyst's Office in 2008 recommending that electronic reporting be phased into all California courts over a five-year period,¹⁹⁹ there have been several legislative attempts to expand the use of electronic recording in the courts. All have been unsuccessful.

In 2008, there was a legislative attempt to add to the budget trailer bill an expansion of the permissible uses of electronic recording to proceedings in family law, probate, mental health, and civil law and motion. Despite language ensuring that this change would “not result in the loss of employment for any court employee performing court reporting services,” the proposal failed.

In 2009, Government Code section 69957 was amended to expressly *prohibit* use of electronic recording for judicial note-taking, but allow it for internal monitoring of subordinate judicial officer performance.²⁰⁰ The amendments also added a requirement for advance approval from the Council for a court's purchase of electronic recording equipment.

In 2011, Assembly Bill 803 (Wagner) was introduced based on the recommendations made by the Legislative Analyst's Office several years earlier.²⁰¹ The bill would have required the Council to:

[I]mplement electronic court reporting in 20 percent of all superior court courtrooms not currently utilizing electronic recording... [and]... annually thereafter, phase in electronic recording in at least an additional 20 percent of the total number of superior court courtrooms.²⁰²

The bill further allowed the Council to implement electronic recording in more courtrooms if it would achieve additional savings. Felony cases were expressly excluded from the bill. It failed passage

in the first policy committee. Court reporter associations and labor unions opposed the bill with, among others, the California District Attorneys Association, the California Public Defenders Association, and the California Defense Counsel, citing concerns over replacing a court reporter with electronic recording when an individual's liberties are at stake, as well as past and potential difficulties with electronic recordings.

In 2013, Assembly Bill 251 (Wagner) would have added family law to the list of court proceedings that could be electronically recorded if a court reporter is unavailable. The bill failed passage in the Assembly Judiciary Committee.

PUBLIC COMMENT

Court reporters, court reporter organizations, labor unions, and judges provided written and in-person comments regarding the proposal for digital recordings.²⁰³ This input reflected opposition and an overall belief that this recommendation promotes replacement of court reporters. Comments also centered on the technology itself and its perceived downsides, including the inability to pick up softer voices and inaudible recordings that result in longer production times as well as the potential for an inadequate record. Commenters also mentioned court costs to purchase, maintain, and replace court-owned equipment versus the current structure where court reporters purchase and maintain their own equipment.

Comments in support of the proposal raised the following points:²⁰⁴

- Digital recording is preferable to a complete lack of record, which is currently the case for many litigants.
- Transcripts from recordings using current technology are of good quality.

- The recommendation addresses the serious due process and access to justice issues from lack of verbatim records in civil cases.
- A pilot project will make it possible to assess the costs, benefits, and reliability of digital recordings given the technology advances since the Council's earlier pilot studies.

The Futures Commission considered all comments received, and concluded that it should advance this recommendation. Many other states successfully use digital recording in their courtrooms. California courts should take all necessary steps to capitalize on significantly evolved technology to enable greater access to the record by all parties and achieve efficiencies and savings in conducting court business on behalf of the people of California.

PILOT PROGRAM FOR DIGITAL RECORDING

During its investigation, the Fiscal/Court Administration, Family/Juvenile, and Technology working groups considered whether to recommend using digital recording in all courtrooms, regardless of case type. Such a proposal was met with considerable resistance, particularly from court reporters. Recommending such broad use of digital recording raised a number of complex issues. For court reporters, labor and contractual issues would be implicated. A number of additional statutes that require only certified reporting for specified case types would have to be amended. As a result, the Futures Commission is currently recommending implementation of a pilot program to digitally produce records where they are not currently mandated. This approach will not run counter to existing labor and contractual constraints while still allowing the testing of this technology to enhance access to the record of court proceedings.

Implementing digital recording in all cases across the state would require substantial investment of time and funds. The Futures Commission is instead recommending an initial pilot project in a small number of superior courts and the appellate district courts in which they sit for cases in which court reporters are not currently mandated by statute. This pilot project would provide valuable information on the use of this modern technology in existing California courtrooms, more precise cost and savings estimates, and the experience of using this method for appellate review purposes. This pilot project approach is consistent with, although less ambitious than, the 2008 proposal by the Legislative Analyst's Office, which proposed implementing electronic recording in 20 percent of all superior court courtrooms in the first year and phasing in another 20 percent of courtrooms annually thereafter.²⁰⁵

Digital recording is preferable to a complete lack of record, which is currently the case for many litigants.

The participation of one or more courts that generally do not provide court reporters for certain nonmandated case types would meet a previously unmet need. Although details should be left to the implementation effort, participating courts, in collaboration with the Council, should have flexibility in selecting the digital recording systems, determining who will operate the systems in the courtroom, how the digital record will be provided to the parties, and the fee charged for the record.

Voluntary court participation in the pilot project would help to ensure an appropriate level of effort to properly evaluate the pilot.

AUTHORIZATION NEEDED TO IMPLEMENT

Legislation would be required to authorize digital recording of proceedings as the official record in those cases in which courts are not currently mandated to provide court reporters during a specified pilot period. The legislation would:

- Permit pilot courts to use digital recording to provide the official record of court proceedings in these nonmandated case types.
- Establish the recordings as the official record for appellate purposes.
- Permit pilot courts to sell the digital recording to the parties.
- Authorize the development of Council rules to implement the pilot project.

The pilot will require funding to implement the digital recording systems, evaluate outcomes, and identify any modifications that may be needed to best achieve statewide implementation. Although determining the metrics for the project should be left to those implementing it, some to be considered include:

- Increase, if any, in the number and percentage of proceedings for which there is a record of proceedings, compared to a current baseline.
- Increase in the percentage of cases on appeal with a record of proceedings.
- Satisfaction of parties, counsel, and judicial officers, at both trial and appellate levels.
- Actual cost to provide digital recording compared to the estimated cost to provide the same service with court reporters, including the cost to parties to purchase transcripts.

If the pilot program is successful, minimum standards for digital recording systems, software, and equipment should be developed for statewide implementation.

OTHER ALTERNATIVES EXPLORED

In addition to considering a broader use of digital recording, the Futures Commission also explored the following as options to improve access to transcripts for litigants and the courts:

- For all cases in which a transcript is required to be purchased by the court²⁰⁶ or is requested by a party,²⁰⁷ allowing the court to purchase the transcript at a statutorily set fee for an original transcript. This statutorily set fee could be set at a higher rate than what courts currently pay for originals. The court would then own the transcript and the rights to reproduce the transcript for its own use.²⁰⁸ The court could then charge parties at the cost paid by the court as a pass-through expense.
- Setting by statute the cost of transcripts that can be charged by court reporters to parties in nonmandated proceedings.²⁰⁹
- Providing for court ownership of all requested and required transcripts, ending the purchase of transcripts by the court by (1) making the preparation of transcripts, for court-employed court reporters, part of their court employment; and (2) having courts hire court employees (court reporters or other court employees) to perform transcription tasks or contract with vendors for transcription services, if reporters were not permitted to transcribe their notes during the court day.

Although these options were explored, the Futures Commission determined that the recommended pilot project should be pursued, at least at the outset. Based on the evaluation of the pilot, other alternatives could be considered in the future.

CONCLUSION

Given the dramatic advances in information technology over the past decade and the public's embrace of this technology, advancing the use of technology in the courts is necessary to improve court operations and enhance access.

These recommendations are designed to advance the use of technology to allow court users, judicial officers, and court staff to interact, and conduct business, more efficiently. Using this technology, courts can mitigate the impact of insufficient funding, personnel shortages, courtroom and courthouse closures, and reduced business hours. At the same time, court users, accustomed to 24/7 access, will be better served by this branch of government.

APPENDICES

RECOMMENDATION 5.1: EXPAND THE USE OF TECHNOLOGY IN THE COURTS TO IMPROVE EFFICIENCY AND ENHANCE ACCESS

APPENDIX 5.1A: THE JUDICIAL COUNCIL'S TECHNOLOGY COMMITTEE AND INFORMATION TECHNOLOGY ADVISORY COMMITTEE

To guide the innovation of the judicial branch, the Judicial Council (Council) currently relies on the activities of its Technology Committee and the Information Technology Advisory Committee (ITAC).

The Technology Committee, one of five Council internal committees, provides input on the Council's technology policies.¹ The Technology Committee presents recommendations focusing on the long-term strategic leadership in this area. The responsibilities of the Technology Committee include:

- Developing and recommending a strategic technology plan for the judicial branch with input from advisory committees and the courts; and
- Providing oversight approval and prioritization of a tactical plan for technology. The tactical plan outlines initiatives and projects to achieve the strategic technology plan.²

ITAC, a Council advisory body, makes recommendations to the Council for improving the administration of justice through the use of technology; fosters cooperative endeavors to resolve common technological issues with other stakeholders in the justice system; and promotes, coordinates, and acts as executive sponsor for projects and initiatives that apply technology to the work of the courts.³ A specific duty of ITAC is to develop and recommend a tactical plan for technology, as described above, with input from the individual appellate and trial courts. ITAC is also expressly charged with overseeing the implementation of branchwide technology initiatives, which the committee accomplishes through sponsoring workstreams

¹ California Rules of Court, rule 10.16(a).

² California Rules of Court, rule 10.16(d).

³ California Rules of Court, rule 10.53(a). Oversight responsibility for ITAC is assigned to the Technology Committee in accordance with California Rules of Court, rule 10.30(d).

with ad hoc teams of technology experts throughout the judicial branch and through subcommittees of ITAC itself.

The Technology Committee's *Court Technology Governance and Strategic Plan*,⁴ which included a *Technology Governance and Funding Model*, a four-year *Strategic Plan for Technology (2014–2018)*, and a two-year *Tactical Plan for Technology (2014–2016)*, was adopted by the Council effective November 1, 2014. ITAC developed an updated two-year *Tactical Plan for Technology (2017–2018)* that was adopted by the Council effective March 24, 2017. Its foundation continues to be the *Strategic Plan for Technology (2014–2018)*. Together, the *Technology Governance and Funding Model*, *Strategic Plan for Technology*, and *Tactical Plan for Technology* provide a comprehensive and cohesive technology strategy that includes clear, measureable goals and objectives at the judicial branch level.

GOVERNANCE AND FUNDING MODEL

The *Technology Governance and Funding Model* includes detailed recommendations for technology governance and funding and includes a vision for judicial branch technology; 14 guiding principles to establish considerations for justice system decision makers; and suggested decision-flow processes, internal and external benchmarking data, and detailed analysis of the proposed governance and funding models.

The vision for judicial branch technology, established by the adoption of the model, guides the judicial branch in statewide and local court innovations and is a foundation for the *Strategic Plan for Technology* and the *Tactical Plan for Technology*.

Through collaboration, initiative, and innovation on a statewide and local level, the judicial branch adopts and uses technology to improve access to justice and provide a broader range and higher quality of services to the courts, litigants, lawyers, justice partners, and the public.⁵

STRATEGIC PLAN

The *Strategic Plan for Technology (2014–2018)* has four overarching goals:

1. *Promote the Digital Court*—Increase access to the courts, administer timely and efficient justice, gain case processing efficiencies, and improve public safety by establishing a foundation for the Digital Court throughout California and by implementing a comprehensive set of services for both public interaction with the courts and collaboration with judicial branch justice partners.
2. *Optimize Branch Resources*—Maximize the potential and efficiency of its technology resources by fully supporting existing and future infrastructure and assets, and leveraging branchwide technology resources through procurement, collaboration, communication, and education.

⁴ See Judicial Council of California, *Judicial Branch Administration: Update to Court Technology Governance and Strategic Plan* (Oct. 2, 2014), www.courts.ca.gov/documents/jc-20141028-item4.pdf.

⁵ Judicial Council of California, *Technology Governance and Funding Model* (Oct. 2, 2014), 13, www.courts.ca.gov/documents/jctc-Court-Technology-Governance-Funding-Model.pdf.

3. *Optimize Infrastructure*—Leverage and support a reliable, secure technology infrastructure. The judicial branch will ensure continual investment in existing infrastructure and exploration of consolidated and shared computing where appropriate.
4. *Promote Rule and Legislative Changes*—Modernize statutes, rules, and procedures to facilitate the use of technology in court operations and the delivery of court services.

TACTICAL PLAN

The strategic plan in turn drives a detailed two-year tactical plan consisting of individual technology projects and initiatives, which ITAC is responsible for revising on an ongoing basis.⁶ The *Tactical Plan for Technology (2017–2018)* includes 14 technology initiatives encompassed in a number of focused projects. A subset of these, which are related to technologies explored by the Futures Commission, include:

Case management system (CMS) migration and deployment—Identify strategies and solutions for implementing case management systems with document management functionality that support the Digital Court. The focus is primarily on migration and systems deployments in progress.

Document management system (DMS) expansion—To achieve the full benefit and efficiencies of electronic filing, a court’s CMS must integrate with a DMS to provide a true paper-on-demand environment and other operational benefits. While the majority of modern case management systems include integrated DMS, extending existing case management systems with DMS where feasible is far less expensive and disruptive than acquiring new case management systems.

Courthouse video connectivity (including video remote interpreting)—Restore and enhance public access to court information and services and create court cost savings and efficiencies by expanding the use of remote video appearances and hearings in appropriate case types and matters; expanding remote availability of certified and registered court interpreter services; and expanding the use of remote video outside of the courtroom (e.g., self-help center/family law facilitator and/or mediation).

Self-represented litigants (SRLs) e-services portal—Define digital services for SRLs to provide more convenience to the public and tangible benefits and cost efficiencies to the courts. The initiative will develop a comprehensive set of business and technical requirements intended to deliver increased online assistance, greater integration of self-help resources, and greater self-reliance for those hoping to resolve legal problems without representation.

Statewide e-filing program development—Historically, each court has certified e-filing service providers (EFSPs) individually for its particular CMS and jurisdiction, resulting in 15 to 20 EFSPs doing business in the courts. This initiative is a statewide approach to select multiple vendors to service California’s trial court e-filing needs by shifting the duty of selection and certification of EFSPs away from the court and to the judicial branch.

E-filing deployment—One component of a successful e-filing implementation is a court e-filing manager (EFM) to track all inbound and outbound transmissions and perform some validation checking. This initiative will select an EFM for a statewide e-filing solution.

⁶ California Rules of Court, rule 10.53(b)(8).

Identify and encourage projects that provide innovative services—This initiative will investigate the potential for starting projects focused on providing innovative services to the public, the State Bar, justice partners, and law enforcement agencies. These services will provide a conduit for easier access to court resources, generate automated mechanisms for conducting court business, and generate efficiencies within each judicial branch entity, thereby promoting more effective use of judicial branch resources and existing infrastructure.

Expand collaboration within the branch IT community—Although there are experienced technology staff branchwide, insufficient technology resources within individual courts continue to be a challenge. This initiative is intended to identify opportunities for sharing technical resources, advancing technology leadership, and expanding collaboration throughout the judicial branch.

Transition to next-generation branchwide hosting model—The current California Courts Technology Center (CCTC) hosting model for information technology applications and services was developed largely based on the strategy of central hosting of court case management systems and other shared applications. As hosting models and technology evolve, the most cost-effective branchwide strategy for applications and services hosting may be enabled through a combination of selective consolidation, virtualization, and implementation of secure private and public “cloud” environments (i.e., storing and accessing data and programs over the Internet). This initiative will determine an updated model for branchwide hosting, including all judicial branch entities.

APPENDIX 5.1B: ESTIMATED COST OF VIDEO ARRAIGNMENT EQUIPMENT FOR TRIAL COURTS AND SHERIFF'S DEPARTMENTS

ESTIMATED COST FOR COURTS

The estimated cost for each court to install the equipment necessary to conduct video arraignments was calculated as follows:

1. A December 2016 survey of trial courts statewide provided information on the total number of courtrooms in each court that hear criminal proceedings.¹
2. Based on the number of criminal courtrooms for each court, the number of criminal courtrooms that would need video arraignment systems was estimated as follows:
 - Small courts: For courts with 2 or fewer criminal courtrooms, each would be equipped to conduct video arraignments; for courts with 3 or more criminal courtrooms, 50 percent of the criminal courtrooms would be equipped.²
 - Small- to medium-sized courts: 50 percent of the criminal courtrooms would be equipped.
 - Medium-sized courts: 40 percent of the criminal courtrooms would be equipped.
 - Large courts: 30 percent of the criminal courtrooms would be equipped.
3. The number of courtrooms to be equipped was multiplied by \$9,300 (the cost of video arraignment equipment).

ESTIMATED COST FOR SHERIFF'S DEPARTMENTS

The estimated cost for each sheriff's department to install the equipment necessary to conduct video arraignments was calculated as follows:

1. The number of county detention facilities operated by each sheriff's department³ was identified.
2. The number of detention facilities was multiplied by \$13,400 (the cost to equip the facility with the equipment necessary for one video arraignment system). This cost represents a low estimate, as some detention facilities may need multiple systems depending on the number of arraignments conducted each day and their space availability within the jail.

ESTIMATED COST SUMMARY

Figure 1 on the next page provides the estimated cost for video arraignment equipment for both courts and sheriff's departments aggregated for each court size⁴ grouping. Based on the estimates, video arraignment

¹ Of the 58 superior courts, 57 responded to the survey. The results represent a snapshot in time that may not reflect current or future practices. For the court that did not respond, the number of criminal courtrooms was estimated as 50% of the total number of courtrooms, a value consistent with the data provided by the 57 courts.

² Values were rounded to provide a whole number for the number of courtrooms to be equipped.

³ Based on information obtained from the Board of State and Community Corrections' Jail Profile Survey data, on February 27, 2017. Information for June 2016 was the latest available. <https://app.bscc.ca.gov/joq/jps/QuerySelection.asp>. The count of detention facilities excluded honor farms, work furlough facilities, and transitional facilities, as they are not likely to have arraignment inmates.

⁴ Classification of court size is in accordance with 2014 authorized and funded judicial positions: small (2–3 judges); small to medium (4–15 judges); medium (21–49 judges); and large (65 or more judges).

equipment will be required in 371 criminal courtrooms for a cost of \$3.5 million to the courts and in 118 county detention facilities for a cost of almost \$1.6 million for sheriff's departments.

Figure 1: Estimated cost for video arraignment equipment for courts and sheriff's departments by court size grouping

Court Cluster Size	Number of Criminal Courtrooms to Equip	Cost of Equipment for Courtrooms	Number of County Detention Facilities	Cost of Equipment for Detention Facilities
Small (2–3 judges)	25	\$232,500	13	\$174,200
Small to Medium (4–15 judges)	70	\$651,500	31	\$415,400
Medium (21–49 judges)	83	\$771,900	33	\$442,200
Large (65+ judges)	193	\$1,794,900	41	\$549,400
Total	371	\$3,450,300	118	\$1,581,200

Estimated Cost Details by Court Size

Within each court size grouping, Figures 2 through 5 below provide the estimated video arraignment equipment costs for the court and sheriff's department within each county.

Figure 2: Estimated cost for video arraignment equipment for each court and sheriff's department within the small court size grouping

Court	Number of Criminal Courtrooms to Equip	Cost of Equipment for Courtrooms	Number of County Detention Facilities	Cost of Equipment for Detention Facilities
Alpine ^a	1	\$9,300	0	\$0
Amador	2	\$18,600	1	\$13,400
Calaveras	1	\$9,300	1	\$13,400
Colusa	2	\$18,600	1	\$13,400
Del Norte	2	\$18,600	1	\$13,400
Glenn	2	\$18,600	1	\$13,400
Inyo	2	\$18,600	1	\$13,400
Lassen	2	\$18,600	1	\$13,400
Mariposa	2	\$18,600	1	\$13,400
Modoc	2	\$18,600	1	\$13,400
Mono	2	\$18,600	1	\$13,400
Plumas	1	\$9,300	1	\$13,400
San Benito	1	\$9,300	1	\$13,400
Sierra ^b	1	\$9,300	0	\$0
Trinity	2	\$18,600	1	\$13,400
Total	25	\$232,500	13	\$174,200

^a There are no jail facilities in Alpine County. Jail services are contracted to El Dorado County and Calaveras County.

^b Sierra County inmates are housed occasionally at the Plumas County Jail in Quincy, California, but primarily in Nevada County at the Wayne Brown Correctional Facility in Nevada City.

Figure 3: Estimated cost for video arraignment equipment for each court and sheriff's department within the small to medium court size grouping

Court	Number of Criminal Courtrooms to Equip	Cost of Equipment for Courtrooms	Number of County Detention Facilities	Cost of Equipment for Detention Facilities
Butte	8	\$74,400	1	\$13,400
El Dorado	3	\$27,900	2	\$26,800
Humboldt	2	\$18,600	1	\$13,400
Imperial	5	\$46,500	2	\$26,800
Kings	4	\$37,200	2	\$26,800
Lake	2	\$18,600	1	\$13,400
Madera	3	\$27,900	1	\$13,400
Marin	3	\$27,900	1	\$13,400
Mendocino	3	\$27,900	1	\$13,400
Merced	4	\$37,200	2	\$26,800
Napa	2	\$18,600	1	\$13,400
Nevada	2	\$18,600	1	\$13,400
Placer	4	\$37,200	3	\$40,200
San Luis Obispo	4	\$37,200	1	\$13,400
Santa Cruz	3	\$27,900	3	\$40,200
Shasta	4	\$37,200	1	\$13,400
Siskiyou	2	\$18,600	1	\$13,400
Sutter	1	\$9,300	1	\$13,400
Tehama	3	\$27,900	1	\$13,400
Tuolumne	2	\$18,600	2	\$13,400
Yolo	4	\$37,200	1	\$26,800
Yuba	2	\$18,600	1	\$13,400
Total	70	\$651,000	31	\$415,400

Figure 4: Estimated cost for video arraignment equipment for each court and sheriff's department within the medium court size grouping

Court	Number of Criminal Courtrooms to Equip	Cost of Equipment for Courtrooms	Number of County Detention Facilities	Cost of Equipment for Detention Facilities
Contra Costa	9	\$83,700	3	\$40,200
Fresno	16	\$148,800	3	\$40,200
Kern	8	\$74,400	4	\$53,600
Monterey	4	\$37,200	2	\$26,800
San Joaquin	7	\$65,100	1	\$13,400
San Mateo	8	\$74,400	4	\$53,600
Santa Barbara	6	\$55,800	3	\$40,200
Solano	5	\$46,500	3	\$40,200
Sonoma	4	\$37,200	2	\$26,800
Stanislaus	5	\$46,500	3	\$40,200
Tulare	5	\$46,500	3	\$40,200
Ventura	6	\$55,800	2	\$26,800
Total	83	\$771,900	33	\$442,200

Figure 5: Estimated cost for video arraignment equipment for each court and sheriff’s department within the large court size grouping

Court	Number of Criminal Courtrooms to Equip	Cost of Equipment for Courtrooms	Number of County Detention Facilities	Cost of Equipment for Detention Facilities
Alameda	11	\$102,300	3	\$40,200
Los Angeles	78	\$725,400	8	\$107,200
Orange	22	\$204,600	5	\$67,000
Riverside	13	\$120,900	5	\$67,000
Sacramento	12	\$111,600	2	\$26,800
San Bernardino	12	\$111,600	3	\$40,200
San Diego	25	\$232,500	7	\$93,800
San Francisco	7	\$65,100	5	\$67,000
Santa Clara	13	\$120,900	3	\$40,200
Total	193	\$1,794,900	41	\$549,400

APPENDIX 5.1C: HISTORICAL BACKGROUND ON VERBATIM REPORTING OF COURT PROCEEDINGS

Most court reporters are court employees and occupy a unique dual status, as they are considered court employees when taking notes in recording a proceeding, but operate as independent contractors when producing and selling the certified verbatim transcript. Hence, these reporters receive a salary and benefits from the courts as court employees for recording the proceedings and earn a separate income from the sale of the transcripts they produce from their notes. After factoring in average salary, benefits, and transcript earnings, court reporters may make an estimated yearly income ranging from \$90,379 to \$194,809.¹ This variance increases when you consider the potential income for the subset of court reporters who have high transcript earnings ranging from \$95,567 to \$251,120 annually. In many courts, court-employed court reporters are permitted to work on the various tasks associated with preparing transcripts during regular court hours when they are not working in court.²

HISTORICAL REASON FOR COURT REPORTERS' DUAL STATUS

Before the Trial Court Funding Act, when trial courts were still part of county governments, most court reporters were independent contractors.³ Around the 1950s, courts began seeking legislation known as “staffing statutes” to provide them with authority to hire employees, including court reporters. These staffing statutes were sought by the trial courts to stabilize funding and increase their independence in an era when staffing decisions were influenced by county boards of supervisors. In the late 1950s to early 1960s, the Los Angeles court obtained staffing statutes which became the guide for other courts also seeking staffing statutes. Courts created and updated their respective staffing statutes individually negotiating with the Legislature.

When these staffing statutes were being created, many factors came together to influence a court trend in which court reporters transitioned from independent contractors to court-employed court reporters. These factors included a shortage of court reporters in some regions. Courts began offering employee status to

¹ Transcript earnings were estimated by court based on data obtained from the Phoenix Financial System after fiscal year 2014–2015 year-end data was made available. Estimated average transcript earnings included transcript costs paid to pro tems, independent contractors, and court-employed court reporters. This variance is not unique to the court reporter classification and this inconsistency is the focus of another recommendation. For more information, see *Recommendation 4.1, Increase Transparency, Predictability, and Efficiency of Trial Court Employment*.

² Based on responses from 10 courts representing small, small to medium, and medium-size courts, to a July 2016 PINetwork listserv inquiry. These tasks would include contacting other reporters, coordinating the pagination/index, due dates, requests for extensions, and other coordinating efforts to ensure the record is timely prepared and accurate. Informal inquiries suggest this is common practice in courts across the state. Government Code section 69956 provides that when a court reporter is not actually engaged in the performance of another duty imposed by the Government Code, the court reporter “shall render stenographic or clerical assistance, or both, to the judge or judges of the superior court as such judge or judges may direct.” However, this section also provides that in providing the assistance, the court reporter “shall receive such compensation therefor as the superior court may prescribe, not to exceed the sum of twenty dollars (\$20) a day, which shall be payable by the county in the same manner and from the same funds as other salary demands against the court.” This appears to be outdated and no longer followed. It remains part of the statute.

³ The statements in this subsection are based on a personal interview on June 8, 2016, with a former court executive officer (CEO) and a personal interview on June 15, 2016, with another former CEO. Both served as CEOs for at least 30 years.

attract and retain reporters. Court reporters and their representing associations sought court employment. In some cases, judicial officers advocated for their court-employment. Some believed that improved oversight could be gained if court reporters were court employees. Accordingly, the staffing statutes included all court employees, including reporters. In addition, other statutes provided per diem rates for contracted court reporters and transcript rates that left the responsibility for ownership and filing of transcripts with reporters. The creation of the staffing statutes contributed to the dual status of court reporters today. The statutes pertaining to court payments for transcripts apply regardless of the reporter's status as either a contractor or employee, they leave the responsibility for ownership and filing of transcripts with court reporters. As a result, court reporters are paid the same by the court for producing the transcript regardless of whether they are an independent contractor, a pro tem, or an employee.

COURT REPORTERS' CONTRIBUTIONS IN THE CURRENT SYSTEM

Within California's courts, official court reporters are licensed by the Court Reporters Board of California.⁴ Obtaining a license requires passing a three-part exam.⁵ Qualification for the exam may be met by graduation from a state-approved court reporting school, a valid out-of-state license, or appropriate work experience.⁶ Most prospective reporters attend a state-approved school that requires, on average, four years to graduate and costs approximately \$46,050.⁷ In addition to the hours and coursework, prospective reporters must be able to type 200 words per minute with a 97.5 percent accuracy rate.⁸

Official court reporters supply, at their own expense, the equipment necessary to provide the verbatim record.⁹ This equipment includes a stenographic machine; computer-aided transcription software; notebook computer; carrying bags or cases for stenographic machine and computer; and a printer and other office supplies (e.g., power strip, external drives, flash drives, paper, toner, and billing software).¹⁰ The first-year start-up cost for this equipment is \$12,045. The cost to maintain the equipment is estimated at \$2,280 per year, with additional costs of \$800 for computer replacement every three to four years and \$5,140 for stenographic machine replacement every five years.¹¹

⁴ Government Code section 69941.

⁵ Court Reporters Board of California, *Launching a Career as a Court Reporter*, 4, www.courtreportersboard.ca.gov/formspubs/student_career.pdf (as of Dec. 20, 2016).

⁶ Business and Professions Code section 8020.

⁷ Cost estimates are approximate and based on an average of tuition fees from three NCRA-approved court reporting schools.

⁸ *Launching a Career as a Court Reporter*, 4.

⁹ Under Government Code section 70313, courts are not authorized to supply to court reporters stenographic machines or other equipment or supplies for use in the preparation of transcripts.

¹⁰ National Court Reporters Association, *A Cost Comparison of Stenographic Reporting and Electronic Recording in the Courtroom* (May 2014), <http://ncra.files.cms-plus.com/GovernmentRelations/Final%20-%20Cost%20Comparison%20White%20Paper%205-20-14.pdf> (as of Dec. 21, 2016).

¹¹ Ibid.

APPENDIX 5.1D: COST ESTIMATES TO PROVIDE A RECORD OF NONMANDATED COURT PROCEEDINGS

Cost Estimate 1

To estimate the cost to use court-employed court reporters (Estimate 1), the following information was obtained from four courts of varying sizes:¹

- Number of courtrooms dedicated to civil cases (family, probate, and civil);² and
- Average annual compensation, including salary and benefits, for court-employed court reporters.³

For each court, the first-year cost to provide one court-employed court reporter in each civil courtroom⁴ was calculated by multiplying the number of civil courtrooms by the average annual compensation for court reporters. This formula was followed for each subsequent year. Average annual compensation assumed a 2 percent annual increase.⁵ To account for the potential offset in cost to the courts by collecting fees from civil litigants, the estimated cost for each year was reduced by 25 percent.⁶ For a five-year period, Figure 1 provides the estimated cost for each court.

Figure 1: Estimate 1—Cost to provide court reporters in each civil courtroom over a five-year period for four courts

Estimated Cost	Court 1 (Small, 3 Civil Courtrooms)	Court 2 (Small to Medium, 3 Civil Courtrooms)	Court 3 (Medium, 8 Civil Courtrooms)	Court 4 (Large, 35 Civil Courtrooms)
1st Year	\$211,378	\$219,118	\$665,550	\$3,192,861
2nd Year	\$215,606	\$223,501	\$678,861	\$3,256,718
3rd Year	\$219,918	\$227,971	\$692,438	\$3,321,852
4th Year	\$224,316	\$232,530	\$706,287	\$3,388,289
5th Year	\$228,802	\$237,181	\$720,413	\$3,456,055
Total Cost Over Five Years	\$1,100,020	\$1,140,300	\$3,456,055	\$16,615,775

¹ Classification of court size is in accordance with 2014 authorized and funded judicial positions: small (2–3 judges); small to medium (4–15 judges); medium (21–49 judges); and large (65 or more judges).

² The number of civil courtrooms is based on the responses provided by the courts to a December 2016 survey. This number represents a snapshot in time that may not reflect current or future practices.

³ Based on Schedule 7A data submitted by trial courts for fiscal year 2014–2015.

⁴ Assumes one court-employed court reporter per civil courtroom. Depending on how the court manages courtrooms, this estimate may be high if some courtrooms are not in use on certain days or time periods, or it may be low and a small surplus may be needed to provide coverage for sick and vacation leave.

⁵ This was done to account for step increases and cost-of-living adjustments. Although negotiated locally, a 2% increase each year was chosen as an estimate, considering that many court-employed court reporters are already at their maximum step.

⁶ This percentage is based on the court reporter fees collected in fiscal year 2014–2015 distributed back to the courts, \$17.2 million, in comparison to the estimated expense to provide court reporter services in civil proceedings, \$67 million, or 25%.

Cost Estimate 2

For the same four courts above, the following information was used to estimate the potential cost to use digital recording, with current courtroom staff operating the recording system and a court-employed information systems technician for effective operation and troubleshooting of the digital recording system:

- Number of courtrooms dedicated to civil cases (family, probate, and civil);⁷
- A cost of \$45,000 per courtroom to install a top-of-the-line digital recording system (includes evidence presentation, video conferencing, private chambers recording, courtroom recording, voice-activated multi-channel microphones, high-definition cameras that automatically focus on the speaker, and white noise over the gallery when attorneys approach the bench);⁸
- Average annual compensation, including salary and benefits, for a court-employed information systems technician;⁹ and
- An average yearly maintenance cost for each electronic recording system of \$3,625.¹⁰

For each court, the first-year cost to install a digital recording system in each civil courtroom was calculated by multiplying the number of civil courtrooms by \$45,000 (the cost to purchase and install a top-of-the-line digital recording system). The first-year labor cost for the information systems technician was calculated by multiplying the number of full-time equivalent (FTE) positions needed by the court¹¹ times the average annual compensation for information systems technicians. For each court, the total first-year cost was the sum of the initial installation cost and the first-year labor cost for the technician. The cost to the court for each subsequent year, up to the fifth year, was calculated by multiplying the number of civil courtrooms by \$3,625 (the average yearly maintenance cost for each system), and adding in the estimated annual compensation for the FTE technicians required. For each subsequent year, compensation assumed a 2 percent increase annually.¹² For a five-year period, Figure 2 provides the estimated cost for each court.¹³ This estimate does not include potential revenue from the sale of recordings to offset some of the cost of providing these services¹⁴ and does not reflect potential savings to the parties.¹⁵

⁷ Based on responses provided by the courts to a December 2016 survey. The number of civil courtrooms represents a snapshot in time that may not reflect current or future practices.

⁸ Andrew Green, president and CEO of Justice AV Solutions, personal interview by subcommittee of the Fiscal/Court Administration Working Group (Jan. 13, 2016).

⁹ Salary data based on Schedule 7A data submitted by three of the four trial courts for information systems technicians (UMC 4004a) for fiscal year 2014–2015. Benefit costs were estimated at 30% of salary costs.

¹⁰ Andrew Green, personal interview (Jan. 13, 2016).

¹¹ For the three smaller courts with 3 to 8 courtrooms, the estimated FTE need was 0.5. For the larger court with 35 courtrooms, the estimated FTE need was 1.0.

¹² This was done to account for step increases and cost-of-living adjustments. Although negotiated locally, a 2% increase each year was chosen as an estimate.

¹³ This estimate does not include training costs, the cost to increase server capacity and data backup, or IT staff, as these costs will vary by court depending on the resources currently available to the court.

¹⁴ For estimate purposes, these were considered pass-through expenses not to exceed the expense for staff time and media to provide the record.

¹⁵ With digital recording, it is assumed the parties will no longer pay the required fees for court reporter services in civil proceedings. If a fee is charged for digital recording, it would be less than the parties currently pay for court reporting services.

Figure 2: Estimate 2—Cost to provide digital recording over a five-year period for four courts

Estimated Cost	Court 1 (Small, 3 Civil Courtrooms)	Court 2 (Small to Medium, 3 Civil Courtrooms)	Court 3 (Medium, 8 Civil Courtrooms)	Court 4 (Large, 35 Civil Courtrooms)
1st Year	\$172,194	\$172,194	\$397,194	\$1,649,389
2nd–5th Years	\$199,866	\$199,866	\$272,366	\$820,233
Total Cost Over Five Years	\$372,061	\$372,061	\$669,561	\$2,469,621

Cost Estimate 3

For the same four courts above, the following information was used as a basis to provide an estimate of the potential cost to use digital recording with electronic monitors, who operate the electronic recording systems for up to four courtrooms from a single, central location:

- The total cost over five years to the courts for Estimate 2 (last row of Figure 2), with digital recording systems in each civil courtroom, and an information systems technician; and
- The average annual compensation, including salary and benefits, for court-employed electronic monitors.¹⁶

For each court, the first-year labor cost to the court to provide court-employed electronic monitors (on a one-to-four basis) was calculated by multiplying the number of FTE positions needed by the court (number of courtrooms divided by 4) times the average annual compensation for an electronic monitor. This formula was followed for each subsequent year. Average annual compensation included a 2 percent increase over the previous year.¹⁷ For a five-year period, Figure 3 provides the estimated cost for each court. This estimate does not include potential revenue from the sale of recordings to offset some of the cost of providing these services¹⁸ and does not reflect potential savings to the parties.¹⁹

Additionally, parties would no longer be required to purchase transcripts on appeal, thus saving money.

¹⁶ Based on Schedule 7A data submitted by trial courts for electronic monitors for fiscal years 2010–2011 through 2014–2015.

¹⁷ This was done to account for step increases and cost-of-living adjustments. Although negotiated locally, a 2% increase each year was chosen as an estimate.

¹⁸ For estimate purposes, these were considered pass-through expenses not to exceed the expense for staff time and media to provide the record.

¹⁹ With digital recording it is assumed parties will no longer pay the required fees for court reporter services in civil proceedings. If a fee is charged for digital recording, it would be less than parties currently paid for court reporting services. Additionally, parties would no longer be required to purchase transcripts on appeal, thus saving money.

Figure 3: Estimate 3—Cost of digital recording with electronic monitors (EM) over a five-year period for four courts

Estimated Cost	Court 1 (Small, 3 Civil Courtrooms)	Court 2 (Small to Medium, 3 Civil Courtrooms)	Court 3 (Medium, 8 Civil Courtrooms)	Court 4 (Large, 35 Civil Courtrooms)
Five-Year Cost: Estimate 2	\$372,061	\$372,061	\$669,561	\$2,469,621
Five-Year Cost: EM Labor	\$395,938	\$395,938	\$1,583,752	\$3,563,441
Total Over Five Years	\$767,999	\$767,999	\$2,253,312	\$6,033,062

Summary of Cost Estimates

Figure 4 provides a summary of the estimated cost for four courts over a five-year period to provide a record of proceedings in the nonmandated case types for each of the three estimates.

Figure 4: Cost to provide a record of court proceedings over a five-year period: three cost estimates

Court	Size of Court	Number of Civil Courtrooms	Estimate 1 Court Reporters	Estimate 2 Digital Record (current staff)	Estimate 3 Digital Record (additional staff)
Court 1	Small	3	\$1,100,020	\$372,061	\$767,999
Court 2	Small to Medium	3	\$1,140,300	\$372,061	\$767,999
Court 3	Medium	8	\$3,463,550	\$669,561	\$2,253,312
Court 4	Large	35	\$16,615,775	\$2,469,621	\$6,033,062

Of the three estimates, Estimate 2 (digital recording with current courtroom staff operating the recording systems) is considerably less expensive, with savings ranging from \$727,959 (Court 2) to \$14 million (Court 4). Generally, the cost of Estimate 2 is just 15 to 34 percent of the cost of using court reporters (Estimate 1). In comparison to using court reporters, Estimate 3 (digital recording with electronic monitors) is less expensive for all four courts. Depending on court size, savings range from \$332,021 (Court 1) to \$10.6 million (Court 4). Generally, the cost of Estimate 3 is 36 to 70 percent of the cost of using court reporters (Estimate 1).

NOTES

CHAPTER 5: TECHNOLOGY RECOMMENDATIONS

RECOMMENDATION 5.1: EXPAND THE USE OF TECHNOLOGY IN THE COURTS TO IMPROVE EFFICIENCY AND ENHANCE ACCESS

1. Tani G. Cantil-Sakauye, Chief Justice of California, *Restoring Access to Justice: Access 3D* (Aug. 17, 2013), video, www.courts.ca.gov/25417.htm (as of Jan. 5, 2017).
2. Judicial Council of California, *Judicial Branch Administration: Update to Court Technology Governance and Strategic Plan* (Oct. 2, 2014), www.courts.ca.gov/documents/jc-20141028-item4.pdf (as of Feb. 3, 2017).
3. Judicial Council of California, *Tactical Plan for Technology (2017–2018)* (Mar. 2017), <https://jcc.legistar.com/View.ashx?M=F&ID=5005031&GUID=D7C3E004-2F31-4762-94D6-3A3406601FCC> (as of Mar. 20, 2017).
4. *Tactical Plan for Technology (2017–2018)*, Appendix B: Tactical Plan for Technology Progress Report.
5. Self-Represented Litigation Network, *Serving Self-Represented Litigants Remotely: A Resource Guide* (July 1, 2016) (prepared by John Greacen, Greacen Associates, LLC), 10, 31, www.srln.org/system/files/attachments/Remote%20Guide%20Final%208-16-16_0.pdf (as of Feb. 9, 2017).
6. This issue was compounded by the capping of fund balances that trial courts can carry forward from one year to the next at 1%.
7. The Budget Act of 2016 provided \$25 million in one-time competitive grant funding.
8. Government Code section 68150(a); California Rules of Court, rule 10.850 et seq.; Judicial Council of California, *Trial Court Records Manual* (rev. Jan. 1, 2017).
9. Judicial Council of California, *Judicial Branch Administration: Update to Court Technology Governance and Strategic Plan* (Oct. 2, 2014), www.courts.ca.gov/documents/jc-20141028-item4.pdf.
10. Code of Civil Procedure section 1010.6; California Rules of Court, rule 2.253. Note that when e-filing is mandated, however, exceptions must be provided for self-represented litigants and any others who would suffer an undue hardship or prejudice by being required to use technology. California Rules of Court, rule 2.253(b)(2) & (4).
11. Code of Civil Procedure section 367.5; California Rules of Court, rule 3.670.
12. Penal Code section 977(c).
13. Government Code section 69957(a).
14. Twice a year, the Council is required to survey all 58 superior courts and report to the Legislature regarding all new purchases and leases of electronic recording equipment that will be used to record proceedings (Government Code section 69958). Courts may use electronic recording for the internal personnel purpose of monitoring the performance of subordinate judicial officers, hearing officers, and temporary judges, as long as proper notice is provided to the litigants and the subordinate judicial officer, hearing officer, or temporary judge that the proceeding may be recorded for that purpose (Government Code section 69957(b)).
15. Government Code section 69957(a).
16. Judicial Council of California, *Strategic Plan for Language Access in the California Courts* (Jan. 6, 2015), 12.
17. Judicial Council of California, “Video Remote Interpreting (VRI) Project for American Sign Language Interpreting—Stanislaus Superior Court,” California Courts website, www.courts.ca.gov/27697.htm (as of Feb. 6, 2017). See program description and court’s presentation.
18. Ibid.

19. Similar to ASL, languages other than Spanish have scarce interpreter resources, only occasional need, and the likelihood of interpreter travel expenses.
20. “Video Remote Interpreting (VRI) Project for American Sign Language Interpreting—Stanislaus Superior Court,” California Courts website. The total annual projected savings for the single large court were calculated as follows: The projected savings for ASL interpreting was \$41,275. The projected savings for the top four languages other than Spanish included \$36,449 in travel expenses, \$30,485 in savings from allowing interpreters to be cross-assigned among different courthouses, and \$17,127 from cross-assigning interpreters in Spanish to courthouses with no assigned interpreters. Based on costs of \$300 to \$600 per service day, these savings would likely allow the court to provide an additional 200 to 400 interpreter service days at then-existing funding levels.
21. The pilot will cost the court nothing initially because the same vendor will provide and support the equipment for up to six months.
22. Superior Courts of Sacramento, Merced, and Ventura Counties.
23. Judicial Council Technology Committee, materials for the February 8, 2016, meeting, Item 3: *Review California’s Language Access Plan: Video Remote Interpreting Pilot Project*, 8, www.courts.ca.gov/documents/jctc-20160208-materials.pdf (as of Feb. 6, 2017).
24. For more on intelligent chat, see Recommendation 4 in this chapter.
25. Document assembly is available in the form of wizards, similar to TurboTax, which walk users through questions and help them identify correct forms and processes. Wizards help self-represented litigants complete forms correctly and eliminate issues of incomplete and difficult-to-read forms. The program can be configured to allow users to complete forms over a period of time. Some courts are already using or developing technology wizards for certain forms, via the HotDocs programs available from the Judicial Council or with the Odyssey Guide & File program. Wizards should cover more forms and be used more extensively.
26. *Tactical Plan for Technology (2017–2018)*, 28.
27. *Ibid.*
28. For more information regarding this initiative, see *Tactical Plan for Technology (2017–2018)*, 28–29, and Judicial Council of California, *The Critical Role of the State Judiciary in Increasing Access for Self-Represented Litigants: Self-Help Access 360°* (Center for Families, Children & the Courts, July 10, 2015), www.courts.ca.gov/documents/ctac-20150710-report-addendum.pdf (as of Feb. 7, 2017).
29. *Tactical Plan for Technology (2017–2018)*, 16; *Tactical Plan for Technology (2014–2016)*, 37–38. Initial data exchanges and interfaces focused on those most common, including those between trial courts and the Department of Child Support Services, the Department of Motor Vehicles, the Department of Justice, the California Highway Patrol, and the Department of Corrections and Rehabilitation.
30. *Ibid.*, 43–44.
31. Based on a January 23, 2017, trial court CMS status matrix maintained by the Court Information Technology Management Forum, a group of California court IT leaders. The data is informally and voluntarily updated and maintained by the chief information officer/technology manager of each court. The status of trial courts across the state in the modernization of case management systems follows:
- 3% have already updated systems for *all* case types.
 - 9% are in the process of updating systems for *all* case types.
 - 26% have either already updated systems for *some* cases types and are in the process for the remainder, or are in the process of updating systems for *some* case types with plans to update the remainder.
 - 32% have outdated case management systems; 3% are in the preliminary stages of updating systems and 29% currently have no plans to update systems.
32. Superior Court of Sacramento County, “Award of Request for Proposal for Case Management Systems (CMS),” News Release (Feb. 14, 2013), www.saccourt.ca.gov/general/docs/pr-cms-rfp.pdf (as of Nov. 3, 2016). This master service agreement (MSA) was the result of a joint effort initiated by the Court Information Technology Management Forum with the superior courts to leverage court resources to obtain case management systems. The Superior Courts of Sacramento and Santa Clara Counties sponsored the request for proposals (RFP) with the intent to select up to five proposers to enter into a master software license and services agreement. The Superior Court of Sacramento County is the contract signatory, but the system is available to any superior court in California. The agreement includes implementation and deployment services, including user training. Any court seeking to replace its legacy system can request offers from one or more vendors under the MSA. Any contract to provide software and implementation services is executed between that court and the selected vendor. Courts are not required to award any contracts based on the MSA and may conduct their own solicitations if they choose.
33. The four major CMS vendors/products that met the minimum qualifications established by the CMS RFP are Tyler Odyssey, JSI FullCourt Enterprise, Thomson Reuters C-Track, and Journal Technologies eCourt.
34. Edmund G. Brown, Jr., Governor, State of California, *Governor’s Budget Summary—2017–18* (Jan. 10, 2017), 114, www.ebudget.ca.gov/FullBudgetSummary.pdf.

35. Judicial Council of California, “Reserve a Court Date (Traffic)—Orange Superior Court,” California Courts website, www.courts.ca.gov/27767.htm (as of Feb. 8, 2017). Eleven additional courts provide similar programs.
- The Superior Court of Orange County implemented the Traffic Reserve a Court Date project in 2010. It allows customers to make a hearing reservation online for any justice center in Orange County, cancel appearances online, and provide an e-mail address to receive confirmation of the reservation (as well as the Advisement of Rights). Benefits to the public are noted in the text of the report. Benefits to the court include:
- Elimination of a morning rush, resulting in a staff resource savings of at least 45 hours per day across the court in the clerk’s office alone.
 - Improved quality of work and case preparation because calendars can be prepared three days in advance.
 - More efficient use of court resources, with courtroom clerks able to review the calendar in advance and prepare the record for judicial officers and group case types (e.g., open cases, collection cases, interpreter cases), resulting in a more efficient calendar call and better interpreter use.
36. The Superior Court of Los Angeles County implemented the Court Appearance Reminder System (CARS) in March 2009, using automated phone technology to send messages to defendants in traffic court. It reminds them of scheduled court dates, documents to bring to the hearing, and the option of paying the citation in lieu of appearing in court. Since the implementation of CARS, the court has experienced:
- A 22% decrease in failure-to-appear rates, resulting in annual cost savings of over \$30,000;
 - Fewer delinquency notification mailings;
 - Increased revenue from fine payments as more defendants appear on their originally scheduled court dates. There was an approximate 13% increase in revenue collection at the Metropolitan Courthouse following the implementation of CARS.
- Judicial Council of California, “Court Appearance Reminder System—Los Angeles Superior Court,” California Courts website, www.courts.ca.gov/27771.htm (as of Feb. 8, 2017).
37. The Superior Court of Santa Clara County uses automatic reminders in family law. A robocall automated system notifies self-represented litigants on the Case Status Conference Calendar one week before their scheduled hearing date. The messages can be provided in English or Spanish. Since implementation, the court has realized a 73% increase in the number of SRLs appearing for hearings. Judicial Council of California, “Robo Call—Santa Clara Superior Court,” California Courts website, www.courts.ca.gov/27659.htm (as of Feb. 8, 2017).
38. The Orange Court has a program similar to Santa Clara’s.
39. Judicial Council of California, *Trial Court E-Filing Survey and Findings Report* (Apr. 2014), 24. Updated current branchwide information was not readily available.
40. San Diego Court’s document management system for civil and probate case types cost \$982,000 to implement and \$1.5 million in one-time costs to image older records for all case types to reduce storage costs.
41. In addition to fully imaging all new cases after the date of implementation, the Superior Court of San Diego County has also archived records from select prior years and continues to expand the inventory of archived records. The court reports the following benefits:
- Elimination of virtually all work traditionally done by records clerks such as filing loose documents; pulling and returning case files to the file banks; creating new volumes; consolidating cases; searching for lost case files; and filling copy requests, which are reduced because files are available online. So far, the court estimates the time savings equal to three to four clerks, who have been reassigned to other areas.
 - Reduced staff hours assigned to the records viewing counter by hours each day because viewing and printing can be done online. Total staff hours spent on this task fell by 50%.
 - Revenue from the sale of online records. The court is currently on track to realize \$820,000 per year in online document revenue for active cases and \$35,000 per year in archived records. The revenue should continue to grow as more of the older records are converted to digital format.
 - Cost savings from eliminating the need for physical file storage. For example, the court recently imaged the 2007–2008 civil files that would have previously gone into offsite storage. The court estimates that it saved \$15,000 in storage costs. With annual cost for offsite storage topping \$200,000, converting paper records to a digital format would yield substantial savings.
42. For the Superior Court of Napa County, implementation of the document management system cost \$775,000, with ongoing yearly expenditures of \$70,000. The court reports the following annual savings:
- \$30,000 from the elimination of file storage costs.
 - \$560,000 in staff expenses attributed to streamlined and less labor-intensive procedures.
 - \$60,000 from the elimination of file folders.
43. *Tactical Plan for Technology (2017–2018)*, 22.

44. Judicial Council of California, *Judicial Branch Administration: Trial Court Electronic Filing—Approval of Electronic Filing Standards and of Policies on Electronic Filing Managers* (June 3, 2016), www.courts.ca.gov/documents/jctc-20160613-materials.pdf (as of Mar. 20, 2017).
45. See Judicial Council of California, *Report on the Superior Court of Orange County's Mandatory E-Filing Pilot Project* (Sept. 30, 2014), www.courts.ca.gov/documents/lr-SC-of-Orange-e-file-pilot-proj.pdf (as of Feb. 9, 2017).
46. Assembly Bill 2073 (Stats. 2012, ch. 320, § 1); California Rules of Court, rule 2.253(b).
47. *Report on the Superior Court of Orange County's Mandatory E-Filing Project*. Pilot included all limited, unlimited, and complex civil actions.
48. Ibid.
49. Ibid., attachment, Superior Court of Orange County, *Preliminary Evaluation of the E-Filing Pilot Project in the Superior Court in and for the County of Orange* (July 12, 2014), 16. Analysis considered typical time required to accept, review, and input data; scan paper documents; and accept the accompanying fees. It compared overall staffing levels for civil case processing before e-filing and staffing levels after implementation.
50. Depending on the previous filing method, the potential for savings to litigants includes travel expenses, parking, postage, and wait time, as well as the time required to print, copy, and assemble documents. Costs from e-filing include the EFSP's fee and the time spent inputting data.
51. Self-represented parties were permitted, but not required, to e-file. There were limitations in the data collection regarding the effect on self-represented litigants, but any potential issues were likely addressed by subsequent amendments to the rules exempting all self-represented litigants from mandatory e-filing.
52. *Approval of Electronic Filing Standards and of Policies on Electronic Filing Managers*. The courts were surveyed in March 2016. Results represent a snapshot in time, which may not reflect current or future practices.
53. EFSPs provide a user interface for filing for parties and attorneys. When the documents and case information are ready for filing, the EFSP transmits them in the appropriate electronic format to the court's e-filing managers (EFMs). The EFM provides temporary storage for the electronic documents for clerk review before the documents are integrated with the court's case management system and permanently retained. Currently, most courts that provide e-filing have multiple EFSPs and an EFM through their case management vendor.
54. *Tactical Plan for Technology (2017–2018)*, 32.
55. Ibid., 30–31 (E-filing Service Provider (EFSP) Selection/Certification initiative).
56. Tyler, Thomson Reuters, Justice Systems, and Journal Technologies.
57. *Tactical Plan for Technology (2017–2018)*, 31–32 (E-filing Deployment initiative).
58. Code of Civil Procedure section 367.5; California Rules of Court, rules 3.670 and 5.9.
59. This program originally began as a pilot program to address the closure of a courthouse in the northern part of the county, but was later made permanent. Judicial Council of California, *Trial Courts: Permanent Authorization for Remote Video Proceedings and Implementation of Rule 4.105 in Traffic Infraction Cases* (Aug. 11, 2015); and see California Rules of Court, rule 4.220.
60. The Superior Court of Fresno County provides these services in partnership with the Marjaree Mason Center and the Comprehensive Youth Services. It is funded by a grant from the U.S. Department of Justice, Office on Violence Against Women, www.fresno.courts.ca.gov/l_pdfs/news_releases/Remote%20Services%20Media%20Release%2010-3-16.pdf (as of Mar. 17, 2017).
61. Superior Court of Merced County, "Video Appearance," www.mercedcourt.org/video_appearance.shtml (as of Mar. 17, 2017).
62. Superior Court of Orange County, "Family Law Courtroom Schedule & Requirements," www.occourts.org/directory/family/fl_resources/courtroom-schedule.html (as of Mar. 17, 2017).
63. Judicial Council of California, *Video Remote Technology in California Courts: Survey and Findings* (Dec. 2014). Survey results showed:
 - 81% of the judicial officers expressed satisfaction with the use of video remote technology; 46% were very satisfied; less than 3% reported dissatisfaction.
 - 40% of respondents believed the use of video technology was equivalent to having the entire proceeding and all parties and witnesses physically in the courtroom; 52% believed something was lost in the process but the loss did not affect the ultimate result.
 - Judicial officers generally seem to accept the use of video conferencing so long as proper protections are in place and exceptions to required appearances are allowed.
64. Although this recommendation is to expand the use of video conferencing for appearances in court proceedings, use of this technology also benefits other court users and court business interactions, such as self-help services for SRLs. At least one court's self-help center is already using this technology to meet remotely with SRLs using tablets at the county law library.

65. This figure assumes a large monitor, articulating wall mount for monitor, video conference unit with a camera and dual-array microphones, and a shelf for the receiving device.
66. Video conferencing costs in the Superior Court of Orange County are \$86 for use of vendor connection plus a \$10 court fee, www.occourts.org/general-public/notices/general/2015-05-26_Notice%20to%20Attorneys-CourtCall.pdf (as of Mar. 17, 2017).
67. National Association for Presiding Judges and Court Executive Officers, *Study of State Trial Courts Use of Remote Technology: Final Report* (Apr. 2016), <http://napco4courtleaders.org/wp-content/uploads/2016/08/Remote-Technology-Report-April-2016.pdf> (as of Mar. 17, 2017). The National Association for Presiding Judges and Court Executive Officers, with the assistance of the National Center for State Courts, received a grant from the State Justice Institute to compile information on remote technology used by rural and urban state courts.
68. Minnesota Judicial Branch, Hennepin County District Court, “Civil Court Video Appearances Now Available,” www.mncourts.gov/Find-Courts/Hennepin.aspx (as of Mar. 17, 2017).
69. *Study of State Trial Courts Use of Remote Technology*.
70. Ibid.
71. U.S. District Court, Northern District of Illinois, “Mobile Video,” www.ilnd.uscourts.gov/Pages.aspx?qns8gi/Ba/RLBfwYbV0UIn8Boiyk8VHG (as of Mar. 17, 2017).
72. Training materials that provide explanations relevant to the user of court procedures in video conferencing settings will be needed to prepare the user to fully participate in the process.
73. Numbers may be limited due to the technology used (capacity of Internet connection, screen size, etc.).
74. Code of Civil Procedure section 637.5; California Rules of Court, rules 3.670 and 5.9.
75. Because of the difference in court case management systems and the varying case data priorities, the total number of arraignments performed is not available. As a point of reference, between July 1, 2014, and June 30, 2015, 1,136,818 felonies and misdemeanors were filed in California courts.
76. These totals do not distinguish custody status.
77. Based on a reported average of 6,110 in-custody arraignments each month in 2016. This number is derived from the number of arraignments scheduled.
78. Penal Code section 977(c) was enacted to: (1) reduce the cost of transporting defendants to court; (2) eliminate security problems; (3) minimize pre-arraignment detention time and costs; and (4) eliminate defendant’s discomfort from being shackled and spending long periods in court holding cells.
79. Judicial Council of California, *Report to the Legislature on Video Arraignment Projects* (Dec. 1991), p. I of Appendix A.
80. Calipatria State Prison; Central California Women’s Facility; California State Prison, Corcoran; Pelican Bay State Prison; and California Institution for Men.
81. Most counties have reciprocal agreements in the event of emergencies. These agreements allow the county in the state of emergency to transfer inmates to the other county’s jail.
82. Superior Court of Merced County, “Video Appearance,” www.mercedcourt.org/video_appearance.shtml (as of Mar. 18, 2017); Superior Court of San Bernardino County, *Schedule of Assignments* (Feb. 14, 2017), www.sb-court.org/Portals/0/Documents/PDF/General%20Information/schedAssign.pdf (as of Mar. 18, 2017).
83. Senate Committee on Public Safety, bill analysis on Senate Bill 1126 (1999–2000 Reg. Sess.) for hearing on April 6, 1999, <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml> (as of Mar. 19, 2017).
84. General costs for video arraignment equipment for courts is approximately \$9,300 per courtroom. This estimate includes a large monitor, an articulating wall mount, and a video conference unit that includes a camera, dual-array microphones, and a shelf for the receiving device. The total cost for hardware will depend on the equipment already available.
85. General costs for video arraignment for county detention facilities is approximately \$13,400 per system. This estimate includes the monitor, video conference unit, camera, microphone, and one year of support.
86. Louisiana Department of Public Safety and Corrections, *Video Conference Project* (May 2016), PowerPoint presentation, www.ncsc.org/~media/files/pdf/services%20and%20experts/areas%20of%20expertise/language%20access/resources%20for%20program%20managers/2016%20clac%20conference%20presentation%20materials/video%20conference%20project%202016.ashx (as of Mar. 19, 2017).
87. Joe Bodiford, “3.130, First Appearance,” Florida Criminal Procedure (blog) <https://floridacriminalprocedure.com/3-130-first-appearance/> (as of Mar. 19, 2017); Ninth Judicial Circuit Court of Florida, “Initial Appearances ‘Live,’ ” www.ninthcircuit.org/services/initial-appearances (as of Mar. 19, 2017).
88. Corrections Center of Northwest Ohio, “Video Court Appearances/Video Arraignment,” www.ccnoregionaljail.org/Video%20Arraignment.htm (as of Mar. 19, 2017).
89. Maine Judicial Branch, 2005 Annual Report, www.courts.maine.gov/reports_pubs/reports/annual_reports/ar:2005.pdf (as of Mar. 19, 2017).
90. Alaska Judicial Council, *Fairbanks Video Arraignment Assessment* (May 1999), www.ajc.state.ak.us/reports/fbkvid.pdf (as of Mar. 19, 2017).

91. Some programs use sophisticated natural language processing systems, but many simpler systems scan for keywords within the input and then pull from a database a reply with the most matching keywords or the most similar wording pattern. Chatbots, short for “chat robots,” can also provide information audibly and interact in conversations over the phone.
92. Self-Represented Litigation Network, “Gina—LA’s Online Traffic Avatar Radically Changes Customer Experience,” News (Oct. 16, 2016), www.srln.org/node/1186/gina-las-online-traffic-avatar-radically-changes-customer-experience-news-2016.
93. Ibid.
94. Ibid.
95. Superior Court of Orange County, “Self-Help, Traffic: General Information,” www.occourts.org/self-help/traffic/ (as of Mar. 19, 2017).
96. California Courts Online Self-Help Center, www.courts.ca.gov/selfhelp.htm?genpubtab (as of Mar. 19, 2017).
97. Programming for the Gina program to address only traffic court issues, but including connections to the court’s case management program, took 240 hours.
98. This figure is based on the cost of a Senior Applications Development Analyst at \$159,074, including benefits, per year.
99. Emerging languages are those that are spoken by newly arrived immigrants who have not yet established themselves in significant numbers or for sufficient time to be recognized by service providers, census trackers, or other data collectors. They are varied and ever changing, as migration patterns shift. Judicial Council of California, *Strategic Plan for Language Access in the California Courts* (Jan. 6, 2015), 10, fn. 2, www.courts.ca.gov/documents/jc-20150122-itemK.pdf (as of Apr. 4, 2017).
100. *Strategic Plan for Language Access in the California Courts*, 19.
101. The Council has executed a master agreement and subsequent amendments for the benefit, in part, of the 58 superior courts of California (State of California Master Agreement No. MA 201301, Statewide Limited Telephonic Interpreter Services Leveraged Purchasing Agreement with Language Select, LLC [effective July 1, 2013 through June 30, 2017]).
102. These services are not intended to replace or supplement services provided by interpreters in court proceedings. The master agreement includes a provision that the services shall be consistent with the law, including, but not limited to, the Trial Court Interpreter Employment and Labor Relations Act (Government Code sections 71800–71829) and any applicable memoranda of understanding between the court interpreter collective bargaining regions and recognized employee organizations.
103. Telephonic interpretation services are provided in, but not limited to, Arabic, Armenian, Cantonese, Farsi, Hmong, Japanese, Khmer, Korean, Laotian, Mandarin, Mien, Portuguese, Punjabi, Russian, Spanish, Tagalog, and Vietnamese.
104. Similar services may be provided by other vendors to other courts under separate agreements.
105. *Strategic Plan for Language Access in the California Courts*, 54.
106. The Futures Commission recommends that the new technology innovations advisory committee have some joint members with ITAC and that other members be ongoing appointments, with longer terms than the three-year appointments of members of traditional advisory committees, to allow for development of expertise in the area.
107. Current conferences in this area include the National Center for State Courts (NCSC) annual Court Technology Conference and e-Courts conference. NCSC has also recently joined with others to sponsor CourtHack, legal technology “hackathons,” at which young and technologically advanced individuals gather with the brightest legal minds, technologists, entrepreneurs, and others for a 30-hour hackathon to work on innovations that could benefit the administration of justice. Such conferences bring in technical talent and innovators to generate new ideas that can be shared among the courts.
108. *Tactical Plan for Technology (2017–2018)*, 7.
109. The staffing assumptions for the estimate include salaries and benefits for two Business Systems Analysts and a Senior Business Systems Analyst.
110. This estimate assumes one in-person meeting in San Francisco and three to six conference calls each year, along with travel by several members to at least one technology conference or vendor meeting within the state.
111. California Rules of Court, rule 10.81(a).
112. California Rules of Court, rule 10.30(g).
113. Filled, full-time equivalent (FTE) positions were obtained from the fiscal year 2014–2015 Schedule 7A for each court and include the court reporter (n=1,306), senior court reporter (n=10), and supervising court reporter (n=18) classifications.
114. Government Code section 69957(a).
115. Twice a year, the Council is required to survey all 58 superior courts and report to the Legislature regarding all new purchases and leases of electronic recording equipment that will be used to record proceedings (Government Code section 69958). Courts may use electronic recording for the internal purposes of monitoring subordinate judicial officers, hearing officers, and temporary judges, as long as proper notice is provided to the litigants (Government Code section 69957(b)). Courts may not use the equipment to make unofficial records of proceedings, even for purposes

- of judicial note-taking (Government Code section 69957(a)).
116. See, for example, Government Code section 69952(a) (record to be made at public expense in certain matters); Code of Civil Procedure section 269(a) and (c); Penal Code sections 190.9 and 938. See also Penal Code sections 704, 817, 869, 1017, 1526, 1042, and 1062); Code of Civil Procedure section 274a; Welfare and Institutions Code sections 347 and 677.
 117. Code of Civil Procedure section 269(a); Government Code section 69957(a); see *In re Armstrong* (1981) 126 Cal.App.3d 565.
 118. Statutes mandate a court reporter in a very few family law proceedings. See, for example, Family Code sections 7895 (termination of parental rights) and 9005(d) (stepparent adoption in-chamber proceedings).
 119. In some smaller courts, statutes mandate that the court provide a court reporter in one or more of these case types. See Government Code sections 70045.75 (Nevada County), 70045.77 (El Dorado County), 70045.8 (Butte County), 70045.9 (Shasta County), 70045.10 (Tehama County), 70046.4 (Lake County), 70056.7 (Monterey County), and 70063 (Mendocino County). In 2013, the Council sought to repeal these provisions in 14 courts, but was unsuccessful (SB 1313; Nielsen, 2013–2014 Reg. Sess.).
 120. Government Code section 68086.
 121. Government Code sections 269 and 69952.
 122. The California Rules of Court relating to reporter's transcripts and official electronic recordings in misdemeanor appeals include provisions intended to recognize an indigent defendant's right to a record at state expense. See California Rules of Court, rules 8.866(a)(2)(E)(iii) (reporter transcript) and 8.868(e)(2)(D)(ii) (electronic transcript). Once an indigent appellant has identified the issues on appeal, the burden shifts to the state to show that an alternative form of the record, such as a settled statement or portion of the transcript, will be sufficient (*Mayer v. Chicago* (1971) 404 U.S. 189, 195 and *March v. Municipal Court* (1972) 7 Cal.3d 422, 428). In misdemeanor appeals by nonindigent defendants, California Rules of Court generally allow the appellant to elect what form of the record of oral proceedings to use on appeal (California Rules of Court, rule 8.864(a)).
 123. *Mayer v. Chicago* (1971) 404 U.S. 189, 193–194 and *March v. Municipal Court* (1972) 7 Cal.3d 422, 427–442.
 124. California Rules of Court, rule 8.134 (agreed statement) and 8.137 (settled statement).
 125. Government Code section 69950. A folio is defined in Government Code section 27360.5 as 100 words. For purposes of determining the cost of transcripts, some courts have negotiated various "folio rates" with court reporters over the years.
 126. Assembly Bill 2629, which the Governor vetoed on September 24, 2016, would have increased the fee charged for originals and copies of transcripts under Government Code sections 69950, 69950.5, and 69951. Currently, there is no pending legislation in this area.
 127. These assumptions as to folios per page vary across the courts from 2.3 to 3.0. Judicial Council of California, *Final Report: Reporting of the Record Task Force* (Feb. 18, 2005), www.courts.ca.gov/documents/10205item7.pdf. Government Code section 69950(c) provides that "if a trial court had established transcription fees that were in effect prior to Jan. 1, 2012, based on an estimate or assumption as the number of words or folios on a typical transcript page, those transcription fees shall be the transcription fees for proceedings in those trial courts" (emphasis added).
 128. Government Code section 69954(a) addresses payment for transcripts prepared by a reporter using computer assistance and delivered on a medium other than paper. It requires compensation at the same rate set for paper transcripts, except the reporter may also charge an additional fee not to exceed the cost of the medium or any copies thereof. The fee for a copy of a transcript in computer-readable format is set at one-third the rate set forth for a second copy of a paper transcript (Government Code section 69954(b)). A reporter may also charge an additional fee not to exceed the cost of the medium or any copies thereof.
 129. *Lipman v. Massachusetts* (1973) 475 F.2d 565, 568, citing *Nimmer on Copyright*: "Since transcription is by definition a verbatim recording of other persons' statements, there can be no originality in the reporter's product."
 130. Government Code section 69954(d).
 131. Government Code section 69950.
 132. See California Rules of Court, rule 8.130(f)(2); and cf. *Bitters v. Networks Electronic Corp.* (1997) 54 Cal.App.4th 246, 250 (statutory protections do not apply to transcripts which a party has requested and paid for directly with the court reporter).
 133. Business and Professions Code section 8025(e). Any failure to carry out a court reporter's duties that delays the filing of an appellate record may be treated as interference in addition to or instead of any other sanction that may be imposed by law (California Rules of Court, rule 8.23). When a court reporter is required to transcribe his or her notes for a case on appeal, that reporter is not permitted to act as an official reporter in any court until the reporter has fully completed and filed all transcriptions (Government Code section 69944).
 134. California Rules of Court, rule 10.603(c)(10).
 135. Of the 58 superior courts, 57 responded to the survey. One small-to-medium court was unable to reply. The results represent a snapshot in time, which may not reflect current or future practices. For the purposes of

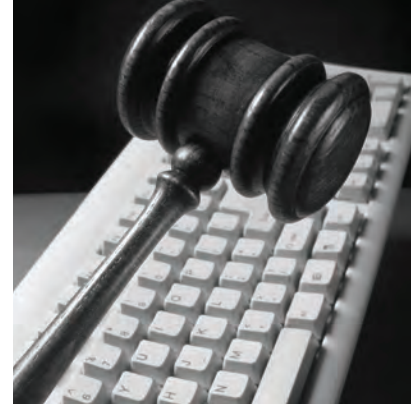
the survey, the term “normally available” was used as defined in California Rules of Court, rule 2.956.

136. The survey showed that the electronic recording systems in these courts are audio only. Most of the systems are digital, although four courts still use analog audio recording systems. While the number of microphones and placement may vary, generally the recording systems use four to five microphones, which are placed at the judge’s bench, plaintiff table, defense table, witness stand, and at the clerk’s or speaker’s stand.
137. The recordings are used for internal purposes such as assisting the court clerks in performing their duties and monitoring commissioners and temporary judges. Two of these courts previously used electronic recordings as a record of court proceedings. Use of the equipment was halted following courthouse moves and calendar changes and has not been reinstated.
138. National Court Reporters Association (NCRA), “Graduation Trends in NCRA-Certified Programs: 1996 to 2006,” www.ncra.org/News/content.cfm?ItemNumber=10831 (as of Mar. 2017).
139. Ducker Worldwide, *2013–2014 Court Reporting Industry Outlook Report* (Mar. 2014), 13, www.crtakenote.com/about-court-reporting/2013-14_NCRA_%20Industry_Outlook.pdf (as of Jan. 23, 2017). The estimate considered the demand for court reporters (official court reporters, freelance court reporters who primarily take depositions and examinations under oath, and captioners).
140. Judicial Council of California, *Elkins Family Law Task Force: Final Report and Recommendations* (Apr. 2010), 10, www.courts.ca.gov/documents/elkins-finalreport.pdf (as of Mar. 2017).
141. Judicial Council of California, *Task Force on Self-Represented Litigants: Final Report* (Oct. 2014), www.courts.ca.gov/documents/jc-20141028-itemP.pdf.
142. See *Jameson v. Desta* (2015), previously published as 241 Cal.App.4th 491, 504 (accepted for review by Supreme Court (Jan. 27, 2016) ___ Cal.4th ___, 197 Cal.Rptr.3d 522) (affirming order granting nonsuit based on “absence of a reporter’s transcript”); *Cueto v. Dozier* (2015) 241 Cal.App.4th 550, 563 (Court of Appeal reversed denial of renewal of a domestic violence restraining order based on the trial transcript).
Failure to provide an accurate record on an issue requires that the issue be resolved against the appellant (see, e.g., *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362; *Foust v. San Jose Const. Co., Inc.* (2011) 198 Cal.App.4th 181, 187).
143. California Rules of Court, rule 2.956(c); see Government Code section 68086(d)(2).
144. Ciaran McEvoy, “Shrinking court reporter staffs bring changes to civil litigation,” *Daily Journal* (Mar. 15, 2012). Bar members indicate the rates can be even higher today, up to as much as \$1,000 a day in San Francisco.
145. California Rules of Court, rule 3.55(7).
146. Additional charges can be added for “expediting” a transcript in order to avoid months-long delays.
147. The Transcript Reimbursement Fund was established by the Legislature in 1981 and is funded through the Certified Shorthand Reporters annual license renewal fees. Business and Professions Code sections 8030.2–8030.8.
148. See, for example, *In re James R.* (1978) 83 Cal.App.3d 977, 980 (citing *Draper v. Washington* (1963) 372 U.S. 487, 496); *March v. Municipal Court* (1972) 7 Cal.3d 422, 428; *Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93, 99–100.
149. Judicial Council of California, *Elkins Family Law Task Force: Final Report and Recommendations* (Apr. 2010), 80, www.courts.ca.gov/documents/elkins-finalreport.pdf (as of Mar. 2017).
150. Court costs for contracted and pro tem court reporters, differential, travel and transcript acquisition were obtained from the branchwide Phoenix Financial System used by all superior courts. Costs associated with court-employed court reporters was based on salary and benefit budget estimates from Schedule 7A data submitted by trial courts, aggregated for court reporter classifications.
151. This figure includes cost for contracted court reporters, pro tem court reporters, salaries and benefits for court-employed court reporters, travel and differential. Most courts rely on a combination of court-employed court reporters and independent contractors. However, the Superior Courts of Alpine, Colusa, Glenn, Inyo, Mono, Placer, Sierra, and Sutter Counties provide only contracted court reporters. The Superior Courts of Fresno, Los Angeles, Sacramento, San Francisco, Stanislaus, and Ventura Counties provide only employee court reporters.
152. These costs are for transcripts the courts are required to purchase. Details of costs by case type, original or number of copies purchased are not tracked by the council and only a few courts divide costs by non-felony and felony appeals.
153. Classification of court size is in accordance with 2014 authorized and funded judicial positions: small (2 to 3 judges); small to medium (4 to 15 judges); medium (21 to 49 judges); and large (65 or more judges). For large-size courts, removing the Superior Court of Los Angeles as a clear outlier at \$66 million, the cost ranged from \$8.1 million to \$16.3 million.
154. Statutorily grandfathered procedures, under which some courts use different assumptions as to how many folios are on each page, have led to significant cost differences between courts. Assumptions as to folios per page vary across the courts from 2.3 to 3.0. *Final Report: Reporting of the Record Task Force* (Feb.

- 18, 2005). For example, the cost of an original and two copies can range from \$2.30 to \$3.45 per page, depending on the folio rate applied. As a result, for a 30-page transcript, the cost to the court for the original and two copies can range from \$69 to \$103.50.
155. Minimum transcript format standards are set forth in California Code of Regulations, title 16, section 2473. These standards are superseded by any transcript format set forth by the court or jurisdiction for which the official court reporter is employed. As a result, transcript formats may vary from court to court.
156. Transcript costs reported are for transcripts that the courts are required to purchase. They do not include any costs paid directly to court reporters by parties. Information on these costs are not available. However, page 241 provides two examples of these costs.
157. Excluding two courts as clear outliers with transcripts costs of \$0 and \$231 for the fiscal year, the cost to purchase transcripts ranged from \$5,739 to \$36,823, with an average cost of \$17,580.
158. For large-sized courts, removing the Superior Court of Los Angeles County as a clear outlier at \$6.5 million, the cost for transcripts ranged from \$19,489 to \$1.5 million.
159. See Government Code section 68086(a)(1) (\$30 for civil proceedings anticipated to last one hour or less), 68086(a)(2) (fee, on pro rata basis, for civil proceedings lasting more than one hour), and 68086.1 (\$30 from civil and family first filing fees).
160. Judicial Council of California, *Report of Court Reporter Fees Collected and Expenditures for Court Reporter Services in Superior Court Civil Proceedings for Fiscal Year 2014–2015* (Jan. 22, 2016), www.courts.ca.gov/documents/lr-CourtReporterExpendituresandFeesCollected-fy2014-15.pdf (as of Mar. 2017).
Of the \$17,194,655 distributed back to the courts, \$4,892,621 was returned dollar for dollar back to the courts that collected the fee (Government Code section 68086(a)(1)) and \$12,302,034 was used to support courts' base allocations and was allocated through WAFM (\$4,301,960 of which was collected in accordance with Government Code section 68086(a)(2) and \$8,000,074 was collected in accordance with Government Code section 68086.1).
161. Ibid.
This expenditure amount is an estimate. Most courts do not track the time court reporters spend in proceedings by case categories. The estimate was made by taking the sum of budgeted salaries and benefits for all filled court-reporter employee positions, costs for contract court reporters, and multiplying by the estimated proportion of time court reporters spend on civil cases versus all cases, 34.5%. This time percentage estimate is based on the most recent time study survey, which was conducted by the National Center for State Courts in September 2003. It involved the superior courts in nine California counties, representing about 46.5% of statewide authorized court reporter positions.
162. The pilot program's cost-effectiveness was noted by the Legislative Analyst's Office. See *2011–2012 Budget: Analysis of the Legislative Analyst's Office* (2011 LAO Report), 3, www.lao.ca.gov/analysis/2011/crim_justice/targeted_reductions_012511.aspx (as of Mar. 2017). The benefits of electronic reporting were demonstrated in a pilot study conducted in the California courts between 1991 and 1994. The study found savings of \$28,000 per courtroom per year in using audio reporting and \$42,000 per year using video reporting, instead of using a court reporter. Despite the demonstrated cost-savings, neither the pilot program nor the Legislative Analyst's proposal moved forward due to opposition from court reporters.
163. Lee Suskin, James McMillan, & Daniel J. Hall, *Making the Record Utilizing Digital Electronic Recording* (National Center for State Courts, Sept. 2013), www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Court%20reengineering/09012013-making-the-digital-record.ashx (as of Mar. 2017).
164. Extent of entries depends on the court and the functionality of the case management system.
165. National Association for Court Management, *Making the Verbatim Court Record* (June 2007), 9.
166. Ibid.
167. Expansion of digital recording to courts currently required to provide court reporters in all or some of the otherwise nonmandated case types will require amendments to Government Code sections 70045.75 et seq. as well as amending section 69957 (limitation on use of electronic reporting).
168. Selection of appropriate case types for rollout of electronic recording should be informed by the pilot program. Any expansion of electronic recording to mandated proceedings should occur as the result of court reporter reductions through attrition.
169. In fiscal year 2014–2015, trial courts spent \$19.3 million just to purchase transcripts.
170. In fiscal year 2014–2015, trial courts spent \$196 million to provide court reporter services.
171. Ducker Worldwide, *2013–2014 Court Reporting Industry Outlook Report* (Mar. 2014), 14–16, www.crtakenote.com/about-court-reporting/2013-14_NCRA_%20Industry_Outlook.pdf (as of Mar. 2017).
172. California Department of Social Services, State Hearings Division, "Mission, Vision, and Values," www.cdss.ca.gov/shd/PG1140.htm (as of Feb. 6, 2017).
173. Albert Bresticker, presiding administrative law judge at the California Department of Social Services, e-mail message (Feb. 8, 2017).
174. Appellate briefs point judges quickly and accurately to relevant places in the digital recording.
175. David Steelman and Samuel Conti, *An Evaluation of*

- Kentucky's Innovative Approach to Making a Videotape Record of Trial Court Proceedings* (Apr. 1985).
176. Julie Helling, *Savings and Satisfaction: Making the Video Court Record in Kentucky* (Justice AV Solutions Whitepaper Series, 2016).
 177. Andrew Green, president and CEO of Justice AV Solutions, interview by subcommittee of the Fiscal/Court Administration Working Group (Jan. 13, 2016).
 178. *Savings and Satisfaction: Making the Video Court Record in Kentucky*.
 179. Matthew Kleiman, Kathryn Holt, and Sarah M. Beason, "Making the Verbatim Record: A Window of Opportunity for Systemic Change," in *The Book of the States 2014*, Council of State Governments, knowledgecenter.csg.org/kc/system/files/Making%20the%20Verbatim%20Record_0.pdf (as of Mar. 2017).
 180. *Ibid.* The rules included an exception that allowed trial judges to use a court reporter for capital cases, and a fund was set aside to pay for such reporters. However, there have been almost no expenditures from this fund, which reflects the confidence both the trial and appellate bench have in the recording systems.
 181. C. Durham and D. Becker, *Reaping Benefits and Paying the Price for Good Business Decisions in Future Trends in State Courts* (2010), www.ndcrc.org/sites/default/files/future_trends_2010.pdf (as of Jan. 31, 2017).
 182. Ron Bowmaster, "Fw: Transcript Management," e-mail received by Futures Commission staff (Jan. 13, 2017).
 183. *Ibid.*
 184. *Ibid.*
 185. *Ibid.* Currently, 20 terabytes of internal storage at both the primary and secondary data centers have been allocated, with another 20 terabytes of cloud storage as a backup. The cloud storage costs \$3,200 per year and is used merely for data recovery should the primary and secondary data centers fail.
 186. *Ibid.*
 187. *Ibid.*
 188. J. McMillan and L. Suskin, *Digital Court Recording Makes the Record Effectively* (Trends in State Courts: National Center for State Courts, 2015), www.ncsc.org/~media/Microsites/Files/Trends%202015/DigitalCourtRecording_McMillan_Suskin.ashx (as of Nov. 17, 2016).
 189. *Ibid.*
 190. Andrew Green and Mike Doan, interview by members of the Futures Commission during a visit to the Clark County Regional Justice Center in Las Vegas, Nevada (Mar. 30, 2016). Andrew Green is the president and CEO of Justice AV Solutions. Mike Doan is the chief information officer for the Clark County Regional Justice Center.
 191. Grace Leong, "Vegas Court Reporters Try Dispelling Myths," *Las Vegas Sun* (Apr. 25, 2002), <https://lasvegassun.com/news/2002/apr/25/vegas-court-reporters-try-dispelling-myths/> (as of Jan. 17, 2017).
 192. Lorraine Benavides, "Re: Clark County Courts," e-mail received by Futures Commission (Apr. 18, 2016). Annual salaries for these classifications range from \$39,998–\$61,984 for the court recorder/transcriber classification and \$43,222–\$66,955 for the senior classification. Currently, Clark County, Nevada, has 28 court recorder/transcriber positions.
 193. "Vegas Court Reporters Try Dispelling Myths," *Las Vegas Sun*.
 194. *Ibid.*
 195. The minimum requirements for an electronic recording monitor are a GED and experience as a journey-level court services assistant. Given these lower qualifications, an electronic recording monitor's salary is less than that of a court reporter. The training of electronic monitors is conducted by the courts at its expense. Electronic monitors use court-owned systems and would not be required to purchase their own equipment, as is currently required of court reporters.
 196. The use of a single electronic monitor operating the digital recording systems for multiple courtrooms is a practice consistent with courts across the country.
 197. The estimated cost of using court-employed court reporters includes an offset from fees paid by parties for court reporter services in civil proceedings. Estimate 2 and Estimate 3 do not include potential revenue from the sale of recordings to offset some of the cost of providing these services. For estimate purposes, these were considered as pass-through expenses not to exceed the expense for staff time and media to provide the record.
 198. Conference of State Court Administrators. *Digital Recording: Changing Times for Making the Record* (2009), 9. Judges and court reporters have traditionally worked as a team. One court reporter was usually assigned to a judge and the pair often worked closely together over the course of many years. Switching to digital recording will shift responsibility for the record to the judge and court staff. Judges will have primary responsibility for ensuring all parties speak both clearly and one at a time.
 199. Legislative Analyst's Office, *Judicial and Criminal Justice* (2008–09 Analysis), D-44, www.lao.ca.gov/analysis_2008/crim_justice/crimjust_anl08.pdf (as of Mar. 2017).
 200. SB 13 (Stats. 2009–2010 4th Ex. Sess., ch. 22 § 9).
 201. See *2008–2009 Budget: Analysis of the Legislative Analyst's Office* (2008 LAO Report), D-44–45; and *2011–2012 Budget: Analysis of the Legislative Analyst's Office* (2011 LAO Report). The LAO estimated a \$13 million savings in the first year from 20% conversion

- to electronic recording and upwards of \$111 million in savings each year from full conversions. For a critique of a similar 2008 LAO analysis, see Justice Served, *An Analysis of Court Reporting and Digital Recording (DR) in California Courts* (rev. June 1, 2009), www.cal-ccra.org/assets/documents/Analysis_CourtReporting_DigitalRecording6-1-09.pdf (as of Mar. 2017).
202. See AB 803, § 3 (2011–2012 Reg. Sess.) as introduced Feb. 17, 2011, www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0801-0850/ab_803_bill_20110217_introduced.pdf (as of Mar. 2017).
203. Comments in opposition were provided by California Court Reporters Association; Los Angeles County Court Reporters Association; San Diego Superior Court Reporters Association; Sacramento Official Court Reporters Association; court reporter speaking on behalf of official court reporters of the Ventura Superior Court; California Official Court Reporters Association; Northern California Court Reporters Association; Service Employees International Union; Teamsters; Laborers International Union of Association, North America, Locals 777 & 792 Association; Orange County Employees Association; American Federation of State County and Municipal Employees; San Diego County Court Employees; San Luis Obispo County Employees; Deposition Reporters Association of California, Inc.; Alliance of California Judges; and a judge of the Superior Court of Madera County.
204. Comments in support were provided by California Judges Association; Legal Aid Association of California; Legal Services of Northern CA; and Family Violence Appellate Project, together with 20 public interest organizations including California Partnership to End Domestic Violence; California Women’s Law Center; Centro Legal de la Raza; Child Abuse Forensic Institute; Domestic Abuse Center; Domestic Violence Legal Empowerment and Appeals Project; Harriett Buhai Center for Family Law; Inner City Law Center; Laura’s House; Law Foundation of Silicon Valley; Legal Aid Association of California; Legal Aid Foundation of Los Angeles; Legal Aid Society of San Diego, Inc.; Legal Aid Society of San Mateo County; Los Angeles Center for Law and Justice; National Housing Law Project; Pro Bono Project of Silicon Valley; Rape Crisis Advocates Serving Fresno County; San Diego Volunteer Lawyer Program, Inc.; and the UC Davis Family Protection and Legal Assistance Clinic.
205. See AB 803, § 3 (2011–2012 Reg. Sess.) as introduced Feb. 17, 2011, www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0801-0850/ab_803_bill_20110217_introduced.pdf (as of Mar. 2017).
206. These proceedings are felony criminal cases, criminal grand jury proceedings, juvenile proceedings, proceedings under Family Code section 9005(d), and involuntary civil commitment proceedings.
207. These are the nonmandated proceedings (family law, civil, and probate matters). Under the current system, most transcripts are purchased by litigants from court reporters.
208. The Alaska and Kansas court systems are just two examples of courts that do not purchase transcript copies. The Alaska court system reserves the right to duplicate any transcript filed with the court without payment of fees to the transcriber. Alaska Court System, *Manual of Transcript Procedures* (Mar. 2016), www.courtrecords.alaska.gov/webdocs/forms/tf-410.pdf (as of Jan. 18, 2017). The Kansas court system does not require the purchase of a copy when requesting production of an original transcript, and access to the record is permitted under an open records act and Supreme Court rule. Kansas Judicial Branch, Rules Relating to the State Board of Examiners of Court Reporters, Rule 10, www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+the+State+Board+of+Examiners+of+Court+Reporters&r2=320 (as of Mar. 2017).
209. The Connecticut and Illinois court systems are examples of courts that define the transcript rates for both the public and government agencies. In Connecticut, the rates for private parties (\$3 per page for an original, \$1.75 per page for copies) are higher than the rates for state and municipal offices (\$2 per page for an original, \$0.75 per page for copies). Connecticut Judicial Branch, *Procedures for Ordering a Court Transcript*, 7, www.jud.ct.gov/Publications/transcript.pdf (as of Jan. 18, 2017). In Illinois, the rates for private parties (\$3.15 per page for an original, \$1 per page for copies) are higher than the rates for government agencies (\$3 per page for an original, \$0.50 per page for copies). State of Illinois, Circuit Court of Cook County, “Official Court Reporters,” www.cookcountycourt.org/ABOUTTHECOURT/OfficeoftheChiefJudge/CourtRelatedServices/OfficialCourtReporters.aspx (as of Jan. 18, 2017). Additional examples include Montana, Missouri, Nebraska, Nevada, New Mexico, New York, Rhode Island, and Wisconsin.



GLOSSARY OF TERMS

ability to pay

The financial capacity of a defendant to pay court-ordered debt resulting from fines, fees, penalties, and assessments.

Access 3D

California Chief Justice Tani G. Cantil-Sakauye's vision for full and meaningful access to justice, which includes physical, remote, and equal access.

Amnesty Program

The Statewide Traffic Tickets/Infraction Amnesty Program, pursuant to Vehicle Code section 42008, allows defendants with delinquent fines and bail imposed for an infraction or misdemeanor violation to pay a designated amount less than the outstanding court-ordered debt, which will be accepted by the court in full satisfaction of the delinquent fine or bail. The program ran from October 1, 2015 to March 31, 2017.

bail schedules

The Uniform Bail and Penalty Schedules that are revised and adopted annually by the Judicial Council to conform to legislation.

base fine

The standard amount set by court order, statute, or by the court's bail schedule for violation of a California Code prior to the addition of fees, penalties, or assessments.

burden of proof

A party's duty to prove disputed fact or facts in dispute on an issue raised between the parties in a case.

chatbot

A means of providing information online through a question-and-answer exchange, often via text messages on a webpage or through a messaging or texting interface. Synonymous with intelligent chat.

child custody evaluation/investigation

A child custody evaluation conducted under Family Code section 3111 and California Rules of Court, rule 5.220.

child welfare jurisdictional system

Juvenile dependency.

cloud services; cloud technology

Any service made available to users on demand via the Internet from a network of remote servers hosted on the Internet to store, manage, and process data, rather than a local server or a personal computer.

community service

Work performed by a defendant in lieu of paying an infraction total fine (base fine and all assessments, penalties, and additional monies) pursuant to Penal Code section 1209.5; the work is generally performed for nonprofit agencies.

community service conversion rate

The hourly rate at which a defendant performs community service in lieu of payment of court-ordered debt.

complex case

“An action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.” (California Rules of Court, rule 3.400(a).)

Conference of Chief Justices

Association of the highest judicial officers of the United States, formed to meet and discuss matters of importance in improving the administration of justice, rules and methods of procedure, and the organization and operation of state courts and judicial systems, and to make recommendations and bring about improvements on such matters.

continuance

A postponement to an action; in criminal cases, such postponement is pursuant to Penal Code section 1050.

Controller's Office

California State Controller's Office.

Council

Judicial Council of California.

court-ordered debt

The total amount assessed against the defendant under a court order.

default judgment

A binding judgment in favor of either party based on some failure to take action by the other party. Most often, it is a judgment in favor of a plaintiff when the defendant has not responded to a summons or has failed to appear before a court of law.

digital recording

Recording of proceedings using digital methods and storage, providing a comprehensive record that includes high-definition audio and video, indexing, and improved access to records.

discovery

The process of gathering information before trial to reveal facts and develop evidence.

Division of Juvenile Justice

A division of the California Department of Corrections and Rehabilitation.

document management system

Software system that receives and stores records in electronic format.

dual-status protocol

A process for assessing a juvenile justice-involved youth who has an active child welfare case.

early neutral evaluation

A process in which a neutral person (usually an experienced attorney) listens to summaries of the evidence and arguments of each party, and then gives his or her nonbinding opinion of the strengths and weakness of each party's case and about how the dispute could be resolved.

e-filing

Electronic filing of electronic court documents and forms via the Internet in lieu of hard copy filing.

electronic recording

Audio recording of court proceedings.

Elkins Family Law Task Force

Established by the Judicial Council at the recommendation of the California Supreme Court to study and propose measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for litigants, many of whom are self-represented.

“Equal Access” webpage

Materials available for courts, court-based self-help programs, and other nonprofit providers of legal self-help services on the California Courts website at www.courts.ca.gov/programs-equalaccess.htm.

evidence-based

A program measured by long-term, randomized, and controlled studies that employ large samples of program participants and yield statistically valid evaluation results that can be replicated.

Family Court Services

A program at each superior court providing mediation services to help divorcing and separating parents resolve disagreements about the care of their children. In some counties, Family Court Services may also provide other services such as parental orientation classes.

felony

The most serious of crimes in California, which carry a maximum sentence of more than one year in state prison, or county jail. Fines can be assessed in addition to or in lieu of imprisonment. Probation may also be granted in lieu of imprisonment.

Futures Commission

Commission on the Future of California's Court System.

General Fund

The predominant fund for financing the state's operations. The primary sources of General Fund revenue are corporate and individual income taxes. Through the budget process, the Governor and the Legislature determine how the monies in the General Fund are spent. Other funds are generally restricted by law for a particular use.

Gina

The name given to the onscreen chatbot avatar used in the Superior Court of Los Angeles County's traffic program that uses questions and easy-to-understand automated prompts to gather relevant information that then guides users to webpages to pay traffic tickets, register for traffic school, or schedule their court dates.

hearsay evidence

An out-of-court statement offered in court to prove the truth of the matter asserted.

infraction

Infractions, the least serious of crimes, are not punishable by imprisonment or probation and only carry monetary punishment. Every offense declared to be an infraction, unless otherwise prescribed by law, is punishable by a base fine not exceeding \$250.

Innovations Lab

A physical or virtual space that enables and supports innovation, technological or otherwise, of those who participate in the space; in this report, a virtual space, for the judicial branch.

intelligent chat

A means of providing information online through a question-and-answer exchange, often via text messages on a webpage or through a messaging or texting interface. Synonymous with chatbot.

intermediate civil tier

A proposed tier for civil cases that involve claims with a value that falls between \$50,000 and \$250,000.

Interpreter Act, the

Trial Court Interpreter Employment and Labor Relations Act. Government Code Title 8, Chapter 7.5.

juvenile justice jurisdictional system

Juvenile delinquency.

Legislative Analyst

California Legislative Analyst's Office.

limited civil case

A civil case that involves a claim with a value of \$25,000 or less. The Futures Commission proposes to raise the limit to \$50,000.

mediation

A confidential process in which a trained neutral third party assists disputing parties in resolving conflict.

meritorious

Something that has value or that is deserving of praise or rewards. A lawsuit that makes a valid legal claim for which the plaintiff may recover compensation is an example of a meritorious lawsuit.

misdemeanor

A crime that generally carries a maximum term of six months or one year in jail, a fine not exceeding \$1,000, probation, or a combination of all three.

model continuance policy

A National Center for State Courts document that provides a model policy for continuances for use by courts to achieve more effective caseflow management.

nonevidentiary hearing

A court hearing at which no testimony is provided and the court makes its decision based on written submissions and legal arguments.

parenting plan

Also called a "custody and visitation agreement" or a "time-share plan." The parents' written agreement about how much time the child will spend with each parent, and how the parents will make decisions about the child's welfare and education.

penalty assessment

An amount added to base fines or base bail on infraction, misdemeanor, and felony offenses.

Pubble

A technology platform that provides question-and-answer messaging for websites.

readiness hearing

An initial conference sometimes held in matters with child custody issues to confirm that all appropriate papers have been filed and to set a date for mediation with Family Court Services.

remote appearance technology

The teleconferencing or video conferencing technology used to appear and participate in court proceedings.

remote video appearance

Appearance of an individual in a court proceeding using video and audio technology.

restitution fine

State law requires all offenders to pay a restitution fine when convicted of committing a crime pursuant to Penal Code section 1202.4(b)(1). The restitution fine goes into the State Restitution Fund, an important funding source for the Victim Compensation Program, which helps victims of many types of crime, including assault, domestic violence, sexual assault, and molestation.

Schedule 7A

The salary and position worksheet submitted annually by each trial court. Provides budgeted (versus actual) salaries and benefits for each court staff position by classification.

small claims case

A civil case filed in small claims court, with claims valued at \$10,000 or less (\$5,000 or less if brought by business plaintiffs), subject to simpler procedures than other civil cases.

special deposit fund

A depository of money collected by the state for specific purposes in instances where no other fund exists to be credited for the money received.

tiered mediation program

Program for managing and resolving contested child custody matters, with confidential mediation without recommendations as the first step, and with additional steps including further services provided only as needed.

trauma informed

An approach to organizational structure and delivery of services that recognizes, understands, and responds to the effects of all kinds of trauma.

trial by written declaration

A defendant's challenge to a traffic infraction citation in writing, without having to appear in court pursuant to Vehicle Code section 40902.

Trial Court Financial Policies and Procedures Manual

Provides the financial and accounting policies of California's 58 trial courts as required by rule 10.804 of the California Rules of Court.

Trial Court Funding Act

The Lockyer-Isenberg Trial Court Funding Act of 1997 (Assem. Bill 233; Stats. 1997, ch. 850), established the Trial Court Trust Fund to support the operation of the trial courts. This act shifted fiscal responsibility for support of the trial courts from the counties to the state.

Trial Court Trust Fund

Portion of the state budget that provides funds for the operations of California's trial courts.

unlawful detainer

The unjustifiable retention of the possession of real property by one whose initial entry was lawful, as when a tenant holds over after the termination of a lease. A landlord must file an unlawful detainer lawsuit in order to evict the tenant.

unlimited civil case

A civil case that involves a claim with a value of over \$25,000. The Futures Commission proposes to raise this lower limit to a value of over \$250,000, and add an intermediate civil tier for claims with a value between \$50,000 and \$250,000.

verbatim reporting

A word-for-word reporting of a court proceeding providing exactly the same words as were originally used.

video arraignment

Appearance of a defendant in a criminal arraignment using video and audio technology.

voice-to-text language services

Speech recognition (or automatic speech recognition) technology that turns spoken language into text using a computer or other device.

Welfare and Institutions Code section 241.1

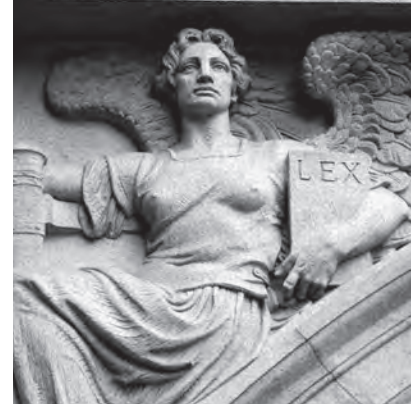
The code section that requires juvenile courts to determine which jurisdictional status should be used when a child meets the statutory criteria to be under either child welfare or juvenile justice jurisdiction and that authorizes courts to implement a dual-status protocol on a voluntary basis.

wobblers

An offense that prosecutors can elect to file as a misdemeanor or felony depending on the facts of the case and defendant's criminal history.

wobblettes

An offense that prosecutors can elect to file as an infraction or misdemeanor depending on the facts of the case and defendant's criminal history.



ABBREVIATIONS AND ACRONYMS

ADR	alternative dispute resolution Includes dispute resolution processes and techniques that allow disagreeing parties to come to an agreement short of litigation. Collective term for the ways that parties can settle disputes, with or without the help of a third party.
AJP	authorized judicial positions The number of judicial positions authorized by statute.
ASL	American Sign Language
CalHR	California Department of Human Resources
CCRC	child custody recommending counseling A process in which a counselor may mediate a contested child custody claim and then make recommendations to the court regarding custody and visitation if the parents do not reach agreement in mediation; conducted pursuant to Family Code section 3183.
CDCR	California Department of Corrections and Rehabilitation
CJER	Center for Judicial Education and Research

CMS	case management system Software that assists courts in case management activities, including scheduling functions, and allows the electronic sharing of information with stakeholders.
DOF	California Department of Finance
EFMs	e-filing managers Third party vendors who track inbound and outbound electronic documents and perform some validation tracking.
EFSPs	electronic filing service providers Third party vendors who provide electronic filing services.
FFT	Functional Family Therapy A form of family therapy that focuses on both family interaction patterns and on the benefits family members may derive from problem behavior.
FLSA	Fair Labor Standards Act A federal law that established minimum wage, overtime pay eligibility, recordkeeping, and child labor standards affecting workers.
FTB	California Franchise Tax Board
FTE	full-time equivalent Used in reference to the number of working hours that represents one full-time employee.
ITAC	Information Technology Advisory Committee A Judicial Council advisory body that makes recommendations to the Council for improving the administration of justice through technology and for fostering cooperative endeavors to resolve common technological issues with other stakeholders in the justice system.
JBSIS	Judicial Branch Statistical Information System A statistical reporting system that defines and electronically collects summary information from court case management systems for each major case processing area of the court. California Rule of Court, rule 10.53.
LEP	limited English proficiency
MOU	memorandum of understanding
MSA	master service agreement A contract that spells out most but not all of the terms between signing parties. Its purpose is to speed up and simplify future contracts. The initial time-consuming contract is created once, then future agreements need only identify differences from the contract.

NCJFCJ	National Council of Juvenile and Family Court Judges
NCSC	National Center for State Courts
ODR	<p>online dispute resolution</p> <p>The use of technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation, or arbitration, or a combination of all three; often seen as being the online equivalent of alternative dispute resolution. However, ODR can also augment these traditional means of resolving disputes by applying innovative techniques and online technologies to the process.</p>
PEPRA	<p>California Public Employees’ Pension Reform Act</p> <p>PEPRA took effect on January 2, 2013 and changed certain retirement benefits for California Public Employees’ Retirement System members as well as members of 20 county systems that operate under the County Employees Retirement Law of 1937.</p>
RFI	request for information
RFP	request for proposal
SRLs	self-represented litigants
TAB	Traffic Adjudication Board
TCEPGA	<p>Trial Court Employment Protection and Governance Act</p> <p>In 2000, TCEPGA changed the status of the trial courts’ workers from county employees to employees of their respective trial courts.</p>
UMC Plan	<p>Trial Court Uniform Model Classification Plan</p> <p>A uniform system of classification provided as a resource to trial courts in managing their own classification and pay plans. When working with the Judicial Council on budgetary matters, existing court classifications are matched to the UMC Plan.</p>
VRI	<p>video remote interpreting</p> <p>Participation of a court interpreter using video and audio technology to provide interpreter services in lieu of in-person participation in the courtroom.</p>
WAFM	<p>Workload-Based Allocation and Funding Methodology</p> <p>The funding methodology adopted by the Judicial Council in 2013. WAFM is based on case filings and weighted case types to allocate funding based on workload rather than historic funding levels.</p>



ACKNOWLEDGMENTS

LEAD STAFF TO THE COMMISSION

Ms. Jody Patel
Chief of Staff

Ms. Maureen Dumas
Special Projects

Ms. Michelle Brooke
Special Projects

Ms. Laura Brown
Special Projects

Ms. Marcela Eggleton
Special Projects

Ms. Tracy Kenny
Center for Families, Children
& the Courts

Ms. Thienan McDougall
Special Projects

Ms. Susan McMullan
Legal Services

Ms. Linda Nguyen
formerly with Legal Services

Ms. Christa Penfold
Special Projects

Ms. Kasey Rathbone
Special Projects

Ms. Anne Ronan
Legal Services

CONSULTATIVE SUBJECT MATTER EXPERTS

Ms. Heather Anderson

Legal Services

Mr. Chris Belloli

Court Operations Services

Ms. Kimberly DaSilva

Criminal Justice Services

Ms. Lucy Fogarty

Budget Services

Mr. Scott Gardner

Human Resources

Ms. Bonnie Hough

Center for Families, Children & the Courts

Ms. Jamel Jones

Information Technology

Ms. Tara Lundstrom

Criminal Justice Services

Mr. Patrick O'Donnell

Legal Services

Ms. Leah Rose-Goodwin

Court Operations Services

Ms. Jamie Schechter

Criminal Justice Services

Mr. Patrick Sutton

Legal Services

Ms. Adrienne Toomey

Criminal Justice Services

Mr. Courtney Tucker (retired)

Criminal Justice Services

Ms. Julia Weber

Center for Families, Children & the Courts

REPORT DEVELOPMENT

Ms. Tina Carroll

Executive Office

Mr. Joseph Carozza

Executive Office

Ms. Laura Speed

Governmental Affairs

EDITING AND GRAPHICS

Ms. Amy Ashcroft

Center for Judicial Education and Research

Ms. Yelena Bondarenko

Judicial Council and Trial Court Leadership

Ms. Karen Gernand

Judicial Council and Trial Court Leadership

Mr. Marcus Gonzalez

Judicial Council and Trial Court Leadership

Ms. Susie Hara

Center for Judicial Education and Research

Ms. Sheila Ng

Judicial Council and Trial Court Leadership

Ms. Patricia Valentine

Judicial Council and Trial Court Leadership

PRODUCTION

Mr. Michael Jaffe

Administrative Support

Mr. Stephen Fong

Administrative Support

Mr. Stephen Mitchell

Administrative Support

Mr. Andrew Taylor

Administrative Support

Mr. Manuel Terrado

Administrative Support