

## **SUBCOMMITTEE NO. 5**

## **Agenda**

**Senator María Elena Durazo, Chair**  
**Senator Josh Newman**  
**Senator Kelly Seyarto**



**Thursday, March 16, 2023**  
**9:30 a.m. or upon adjournment of Session**  
**State Capitol - Room 112**

Consultant: Nora Brackbill, Ph.D.

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## ITEMS FOR DISCUSSION

### **5227 BOARD OF STATE AND COMMUNITY CORRECTIONS**

The Governor's Budget includes \$905.2 million for the Board of State and Community Corrections (BSCC). BSCC was established in its current form in 2012 to provide statewide coordination and technical assistance for local justice systems, largely in response to the 2011 public safety realignment. BSCC develops minimum standards for local detention facilities, inspects and reports on facility compliance, sets training standards for correctional staff, and administers facility funding and numerous grant programs for local corrections and law enforcement entities.

The agency is overseen by a 13-member board, largely consisting of corrections and law enforcement staff, including:

- 10 members appointed by the Governor and confirmed by the Senate, including:
  - Chair.
  - Secretary of CDCR.
  - Director of Division of Adult Parole Operations for CDCR.
  - Sheriff in charge of a small detention facility (capacity of 200 or less).
  - Sheriff in charge of a large detention facility (capacity over 200).
  - Chief probation officer from a small county (population of 200,000 or fewer).
  - Chief probation officer from a large county (population over 200,000).
  - County supervisor or county administrative officer.
  - Chief of police.
  - Member of the public.
- 3 members appointed by others, including:
  - Judge appointed by Judicial Council of California.
  - Community provider of rehabilitative treatment or services for adult offenders appointed by the Speaker of the Assembly.
  - Advocate or community provider of rehabilitative treatment or services for juvenile offenders appointed by the Senate Rules Committee.

BSCC is also often required to consult stakeholders and subject matter experts. BSCC typically fulfills this requirement through Executive Steering Committees (ESCs), which are appointed by the board to carry out specific tasks and provide recommendations, and working groups, which are appointed by ESCs to carry out subtasks and make recommendations. For example, BSCC routinely appoints an ESC to oversee the review of the local detention facility standards and recommend changes, and the ESC may assign working groups to review specific areas of the standards, such as nutritional health.

**Issue 1: Proposed Reduction in Public Defense Pilot Program**

**Proposal.** The proposed budget eliminates the third year of funding for the Public Defense Pilot Program, a reduction of \$50 million General Fund in 2023-24.

**Panelists.**

- Kathleen Howard, Executive Director, Board of State and Community Corrections
- Graciela Martinez, Assistant Public Defender, Los Angeles County and President of California Public Defenders Association (appearing remotely)
- Tracie Olson, Yolo County Public Defender and California Public Defenders Association Board Member and Executive Officer
- Caitlin O’Neil, Principal Fiscal and Policy Analyst, Legislative Analyst’s Office
- Patrick Plant, Staff Finance Budget Analyst, Department of Finance

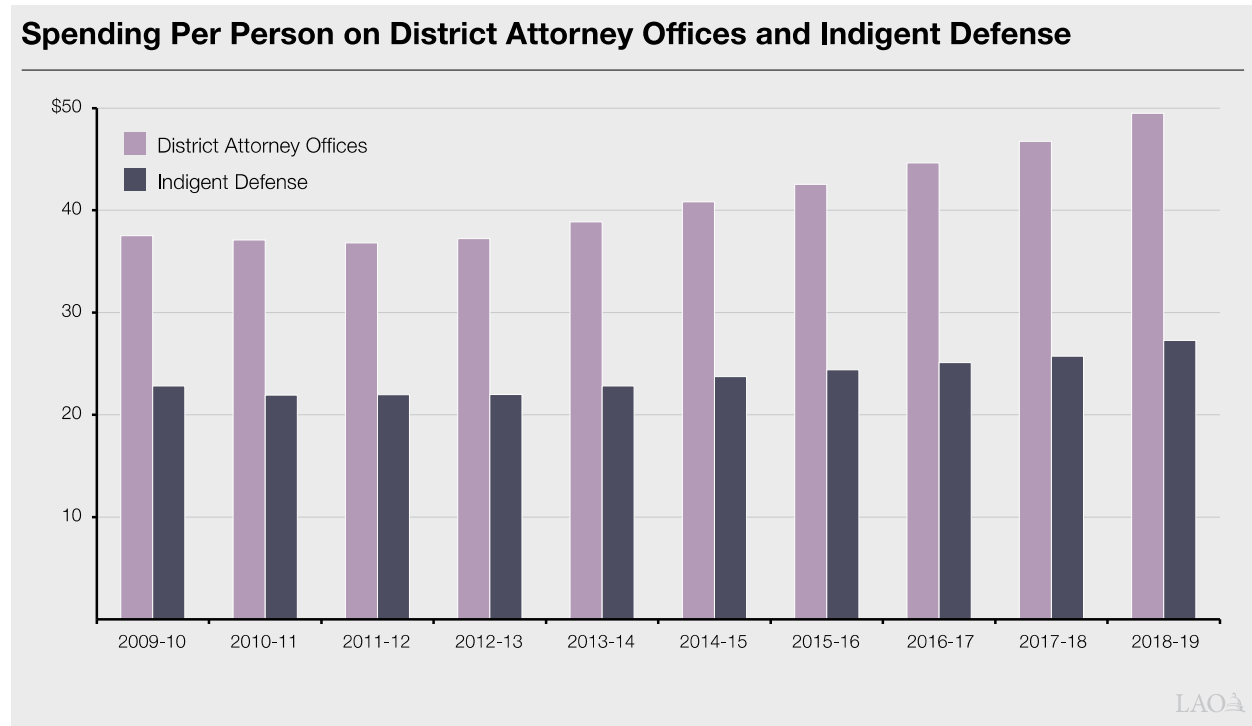
**Background.** The 2021 Budget Act included \$50 million General Fund per year for three years for public defender offices, alternative public defender offices, and other alternative offices providing indigent criminal defense services to support specific resentencing workloads. BSCC was required to collaborate with the Office of the State Public Defender (OSPD) to identify offices providing indigent services in each county. Each office receiving funding will report to BSCC by March 1, 2025 on the use of the funds. BSCC was also required to contract with a university or research institution to complete the independent evaluation of the program. Of the amount appropriated in 2021-22, \$500,000 was available for this and other administrative costs.

This funding was designated to support specific resentencing workloads. When laws defining crimes or sentences are amended, there may be incarcerated individuals whose criminal charges and/or sentence lengths are no longer consistent with the new law. However, if enabled by the Legislature, these individuals may seek to be resentenced. Resentencing legislation results in an increased workload for all those involved in criminal cases, including both prosecutors and defense attorneys.

SB 1437 (Skinner), Chapter 1015, Statutes of 2018 amended the statutes related to felony murder, and created a legal path for those convicted of murder under the old laws to ask a judge to resentence them to a lesser crime if they (1) were not the person who took a life, (2) did not act with intent to take a life, or (3) were not a major participant who acted with reckless indifference to life in a felony that resulted in a loss of life. SB 775 (Becker), Chapter 551, Statutes of 2021 extended similar resentencing options for individuals convicted of manslaughter or attempted murder. These statutes were included in the Public Defense Pilot Program, but these are not the only resentencing changes that have created additional workload for public defenders.

While both defense and prosecution are affected by resentencing efforts, historically, prosecutor offices have been better funded than indigent defense offices<sup>1</sup>. In 2018-19, spending on indigent defense across the state was about 55 percent of the amount spent statewide on district attorney offices (see figure on the next page).

<sup>1</sup> <https://lao.ca.gov/Publications/Report/4623>



### *Impact of Resentencing.*

OSPD provided the following general information on resentencing efforts related to SB 1437 (Skinner) and SB 775 (Becker):

- Preliminary data from January 1, 2019 to June 30, 2022 indicate approximately 470 people have been resentenced, resulting in a cumulative reduction of 10,380 years of incarceration and \$135 million in savings from marginal incarceration costs.
- Approximately 88% of the people resentenced were people of color, with Black individuals comprising the largest share (45%).

In addition, OSPD noted that 414 people received reduced sentences under Penal Code 1172.1, which allows CDCR, jail administrators, and prosecutors to recommend resentencing under certain circumstances, resulting in a cumulative reduction of 2,186 years of incarceration time and roughly \$30 million in savings.

*Recidivism.* OSPD also noted that individuals released from a long prison sentence have a lower recidivism rate than other populations. For example, according to CDCR, the three-year re-conviction rate for persons who previously served an indeterminate term was 3.2 percent.

<sup>2</sup> <https://lao.ca.gov/Publications/Report/4623>

*Proposal.* The Governor's Budget proposes to remove the third year of funding from the program, resulting in savings of \$50 million in 2023-24. The Administration did not express any policy concerns with the program; it was primarily a fiscal decision given that the funding has not yet been granted. The Administration noted that the evaluation would still proceed as planned.

**Staff Comment.**

*Outstanding Workload.* In Los Angeles County, an estimated 189 individuals have been resentenced. However, the Los Angeles County Public Defender's Office has identified nearly 2,500 individuals as potentially eligible for resentencing under SB 1437 alone.

*State Funding of Prosecutors.* The Legislature should consider how the state contributes to unequal funding of prosecution and indigent defense. For example, the 2022 Budget Act included an additional \$10 million per year for three years for district attorneys to prosecute retail theft, and provided the DOJ with \$4.8 million to implement resentencing legislation (including \$3.6 million in 2022-23 and \$3.5 million ongoing specifically for the implementation of SB 775), but included no commensurate funding for public defenders or other providers of indigent defense.

**Staff Recommendation.** Hold Open.

**Issue 2: Increase Federal Spending Authority – Safer Communities Act**

**Proposal.** The Governor’s Budget proposes to augment BSCC’s federal fund authority by \$50 million annually for five years beginning in 2023-24 (for a total of \$250 million) to allow it to receive and spend anticipated federal funding from the Bipartisan Safer Communities Act (BSCA).

**Panelists.**

- Kathleen Howard, Executive Director, Board of State and Community Corrections
- Caitlin O’Neil, Principal Fiscal and Policy Analyst, Legislative Analyst’s Office
- Patrick Plant, Staff Finance Budget Analyst, Department of Finance

**Background.** The BSCA was signed by President Biden on June 25, 2022 and made various changes to federal firearm laws, including expanding background check requirements, broadening the scope of existing restrictions, and establishing new criminal offenses. In addition, the act authorized over \$4.5 billion for various new and existing programs intended to promote access to behavioral and mental health services, enhance school safety and security initiatives, and address gun violence in communities.

This included \$750 million over five years for the State Crisis Intervention Program (SCIP), administered by the United States Department of Justice (U.S. DOJ). Under SCIP, states receive grants to implement crisis intervention programs, which broadly seek to address situations involving people who could potentially be a danger to themselves or others due to physical, mental, or other distress. The goal of the program is to reduce crime and violence, with a particular focus on gun violence. Examples of eligible activities include:

- Extreme risk protection order programs, which temporarily limit firearm access for people who are believed to be at imminent risk of harming themselves or others.
- Drug, mental health, and veteran collaborative courts, which are special courts for criminal defendants that combine judicial supervision with rehabilitation, treatment, or other services to address the defendant’s underlying needs to improve defendant outcomes.
- Behavioral health crisis mobile response teams, which are teams that can consist of law enforcement, mental health counselors, and/or others to respond to emergency calls in which a person is suffering from a mental health crisis.

SCIP funding will be allocated to states based on population and violent crime rates, mirroring an existing federal grant. The funding also goes to the same entity as that existing grant, which in California’s case is BSCC. California should be eligible receive about \$75 million over the five-year period: an already allocated \$29.2 million in the first application period (which represents two years of funding), and roughly \$15 million per year in the last three years (which California will most likely have to reapply for).

Of the initial \$29.2 million allocation for California, up to \$17.5 million (60 percent) can be kept by the state, a minimum of \$10.7 million must be directly passed through to local governments,

and a minimum of \$997,000 must be provided to courts that serve small jurisdictions and/or to the small jurisdictions themselves. Up to 10 percent of the total amount—or \$2.9 million—can be used for direct administrative costs. Under BSCA, SCIP funding cannot be used to supplant state or local funds. States are allowed to determine how the funds passed through to local governments are used, and which local entities receive funds.

***SCIP Plan and Crisis Intervention Advisory Board.*** In December 2022, BSCC staff applied to the U.S. DOJ for the first allocation of SCIP funding. The application included an initial plan for using the funds. The state was allocated \$29.2 million, but to receive this funding, the state must form an advisory board, and that board must approve a final plan. BSCC does not intend to make changes to its initial plan, and intends to recommend that the advisory board adopt it as the final plan on April 13, 2023.

The advisory board members must include, but are not limited to, representatives from law enforcement, the community, courts, prosecution, behavioral health providers, victim services, and legal counsel. At the February 9, 2023 board meeting, BSCC created a board consisting of all members of the BSCC board as well as two additional members that are intended to represent prosecution, behavioral health, victim services, and legal counsel<sup>3</sup>. BSCC appointed a behavioral health specialist from a nonprofit focused on health, education, and community building, and one of their staff, a legal counsel.

***Planned Use of Federal SCIP Funds.*** As previously mentioned, in California’s application for \$29.2 million in SCIP funding, BSCC provided its initial plan for use of the SCIP funds, which it intends to adopt as its final plan. Under the plan, the state would spend the \$29.2 million over a five-year period, including:

- \$15.4 million in grants to state trial courts to temporarily establish new or expand existing drug, mental health, and veteran collaborative courts, administered by Judicial Council.
- \$2.1 million for administrative costs and for Judicial Council to research how courts and local partners are complying with Proposition 63 (2016) firearm relinquishment requirements. Proposition 63 created a new court process to ensure that people convicted of criminal offenses that prohibit them from owning firearms relinquish them. This research would include how relinquishment orders are being enforced, how relinquished firearms are retained, and what information is being documented. Judicial Council staff would also provide the necessary training and technical assistance related to Proposition 63 to trial courts and their criminal justice partners.
- \$10.7 million local share of SCIP funding, administered by BSCC, to fund various activities, including law enforcement firearm relinquishment programs, behavioral health programs for those at risk to themselves or others, and programs that support collaborative courts. Details of the proposed local grant program have not been determined at this time.

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<sup>3</sup> <https://www.bscc.ca.gov/wp-content/uploads/Agenda-Item-E-Establishment-of-Byrne-SCIP-Advisory-Board-FINAL.pdf>

- \$997,000 in funding designated to serve certain small jurisdictions, administered by Judicial Council. Judicial Council would identify trial courts that serve these small jurisdictions and encourage that at least one of these courts apply for funding to represent all of the remaining courts serving small jurisdictions. The funding is expected to be used to support new or expanded collaborative courts and/or to focus on developing local policies and procedures related to gun violence, firearm relinquishment, as well as ammunition and lethal weapon buybacks.

### **LAO Comments.**

*Submitting Finalized SCIP Plan in April Unnecessarily Limits Legislative Input.* BSCC staff intend to request that the Crisis Intervention Advisory Board approve and finalize the initial plan for SCIP funds at its April 13, 2023 meeting. BSCC staff plan to subsequently submit documentation of this approval to the U.S. DOJ to enable the state to begin implementing the program. While it is understandable that BSCC would be eager to submit a finalized plan in order to receive the funding as quickly as possible, it would effectively mean that the use of grant funds would be finalized before the enactment of the 2023-24 budget. This would prevent the Legislature from having sufficient time to deliberate and provide any guidance on the plan, as well as take any corresponding actions as part of the budget package, prior to the plan being finalized. According to BSCC, there is no specific deadline set by the U.S. DOJ for when states must obtain approval from the Crisis Intervention Advisory Board or submit their final plan.

*Proposed Uses of SCIP Funding Appear Permissible, but the Legislature May Have Different Priorities.* BSCC's initial plan to use SCIP funding appears permissible under the federal guidelines. However, the allowable uses of SCIP funding are broad, and the Legislature may have different priorities. For example, the Legislature may want to ensure that a greater share of funding is targeted towards reducing gun violence rather than addressing behavioral health needs through the planned funding for collaborative courts. This could include directing funding to extreme risk protection order programs, gun violence recovery courts, the development of validated gun violence risk assessment tools, and funding for law enforcement agencies to store and track relinquished firearms. Alternatively, the Legislature may want to prioritize funding to address behavioral health needs, which could involve funding other activities rather than collaborative courts.

*Requested Reimbursement Authority Not Aligned With Anticipated Amount of Federal Funds.* BSCC initially estimated that, to receive and spend SCIP funds, it would need a five-year \$50 million augmentation in federal funds authority—a total of \$250 million—based on preliminary information about the program. Subsequently, BSCC learned that the state is eligible to apply for only \$29.2 million via its current application and potentially around \$15 million for each of the subsequent three applications—a total of roughly \$75 million. (The LAO notes that the judicial branch—which would not receive any reimbursement authority under the Governor's proposal—has indicated that it may require increased reimbursement authority in order to expend its proposed share of funding.)



**LAO Recommendation.**

*Direct BSCC Not to Finalize Use of Grant Funds Until After Budget Adopted.* The LAO recommends directing BSCC not to finalize the use of grant funds until after the 2023-24 budget is adopted to ensure that the Legislature has the opportunity to provide direction to BSCC on the use of these funds through the 2023-24 budget package.

*Ensure SCIP Funding Plan Reflects Legislative Priorities.* The LAO recommends the Legislature ensure the finalized SCIP funding plan and related budget actions reflect its priorities for the use of the initial \$29.2 million in SCIP funding. In order to assist the Legislature in determining its priorities, the LAO identified a series of key issues and guiding principles for consideration.

- *Maximize Use of SCIP Funds to Limit New General Fund Spending.* Given the deterioration in the state's budget condition, together with projected out-year deficits, it would be beneficial to utilize SCIP funds to support new or expanded programs that are eligible for SCIP funding under the federal guidelines and would otherwise be supported with new General Fund spending. For example, the Governor's budget proposes \$10.6 million General Fund in 2023-24 (increasing to \$33 million to upon full implementation) for the Department of Social Services to support increased child welfare social worker workload related to their participation in Child and Family Teams for certain families at risk of child removal. This can include social workers helping children or their families connect with services to address underlying behavioral issues that could result in them presenting a risk to themselves or others. To the extent the Legislature prioritizes this proposal, it would want to explore the possibility of initially funding it with SCIP funding rather than General Fund as proposed by the Governor—which would include rejecting the Governor's proposal to use General Fund.
- *Focus on Funding Limited-Term Programs or Activities.* Given that the federal funding is one time in nature, it would be prudent to focus the funds on supporting programs or activities that are limited term in nature in order to prevent the creation of new ongoing General Fund cost pressures in the out-years relative to the Governor's budget. A couple examples include using SCIP funding to (1) reduce current backlogs (such the seizing of firearms to reduce the current total number of people who are prohibited from having them) and (2) support start-up implementation costs that would eventually be supported with non-General Fund resources (such as establishing Proposition 63 firearm relinquishment processes that would subsequently be funded from fees charged as allowed under Proposition 63).
- *Consider Using Funding to Support Pilot Programs.* The Legislature could consider using the funding to test new programs or activities, in order to determine their cost-effectiveness and whether they merit consideration for state funding in the future. For example, the Legislature could use the funding to pilot and evaluate (1) behavioral health crisis response teams to provide immediate and informed assistance to people suffering a mental health crisis or (2) the implementation of validated gun violence risk assessment tools to identify people at risk of being victims of gun violence so that they can receive case management or intervention services to reduce this risk. Pilot programs that measure impacts across

multiple cities and counties within California could help the Legislature assess whether such programs are cost-effective and merit being expanded statewide if sufficient resources are available in the future. This includes providing the Legislature with the necessary information to weigh the tested programs or activities against other legislative priorities, to the extent new ongoing General Fund support would be needed or if additional federal funds become available to support them. It would also help determine whether the programs may need to operate differently based on key factors (such as county size or population density) as well as whether there are any implementation challenges or barriers that may need to be addressed.

- *Weigh Relative Priorities in Utilizing Funds at the State or Local Level.* Depending on its priorities, the Legislature will want to consider whether funding would be most effectively used at the state or local level. While the minimum local pass-through amount cannot be reduced, the state can provide more funding to local governments. For example, if the Legislature determines that the priority should be to ensure people suffering from behavioral health crises are not harmed and receive immediate service locally, the Legislature could consider providing more money from the state share to local entities to support, or test, more programs and activities—such as increased training for law enforcement in dealing with people with mental health issues, crisis mobile response teams, peer support services, or behavioral health crisis stabilization centers.
- *Ensure Legislative Priorities for Use of SCIP Funds Are Reflected in Budget Package.* In order to ensure that the Legislature’s priorities regarding the use of SCIP funds are adhered to by the administration, it will be important to take steps as part of the budget package to restrict the use of the funds to those priorities. This includes enacting appropriate budget bill language that specifies how SCIP funding should be distributed to state and local entities, the types of activities and programs that are eligible to be funded, and any funding conditions. Examples of funding conditions could include requiring that funding to local entities be distributed in a competitive manner to ensure the strongest ideas receive support or that courts, local entities, or community-based organizations are required to partner with one another through a joint application to ensure there is a high level of coordination to achieve desired outcomes.

*Align BSCC’s Federal Funds Authority With Funding Level Anticipated Through State’s First Allocation.* Given that the Governor’s proposal would provide BSCC with excess federal funds authority, which potentially limits legislative oversight, the LAO recommends that the Legislature only approve the amounts necessary for BSCC to receive and spend the \$29.2 million anticipated through the state’s first application. Specifically, the LAO recommends increasing BSCC’s federal funds authority by \$29.2 million in 2023-24 and adopting budget bill language specifying that the authority can be used through 2026-27, as SCIP funds may not be spent after September 2026. The LAO notes that the Legislature may also need to adjust the level of reimbursement authority for Judicial Council—and/or other state entities that the Legislature may choose to involve—so that it can receive grant funds from BSCC.

*Do Not Approve Increased Federal Funds Authority Related to Future SCIP Applications.* As discussed above, it is expected that BSCC will be able to submit applications for about \$15 million

in additional SCIP funding per year in 2024-25, 2025-26 and 2026-27. However, at this time it is not clear how this money would be used. Accordingly, the LAO recommends not providing federal funds authority to BSCC for such funds at this time. The administration can request the necessary adjustments in future budget cycles when more information is available about how the funds would be used and when associated reimbursements from the federal government would be received.

**Staff Comment.**

*Advisory Board.* As noted above, BSCC formed a Crisis Intervention Advisory Board consisting of the 13 Board Members, one BSCC staff, and one outside member. The Legislature may wish to consider whether this advisory board contains the expertise and perspectives intended by the federal guidelines.

*Details of Local Grants.* SCIP funding has a broad range of allowable uses, and the details of the local pass-through funding are unclear.

**Staff Recommendation.** Hold Open.

**Issue 3: Post Release Community Supervision Funding**

**Proposal.** The Governor proposes \$8.2 million one-time General Fund for BSCC to distribute to county probation departments in recognition of the temporary increase in the PRCS population caused by Proposition 57. The administration indicates that the proposed funding amount is based on an estimate that the average daily PRCS population will be 801 higher in 2023-24 than otherwise due to Proposition 57 and—like previous augmentations—provides \$10,250 per person. Similar to previous augmentations, the proposed funding would be distributed among counties based on a schedule developed by the Department of Finance.

**Panelists.**

- Kathleen Howard, Executive Director, Board of State and Community Corrections
- Caitlin O’Neil, Principal Fiscal and Policy Analyst, Legislative Analyst’s Office
- Patrick Plant, Staff Finance Budget Analyst, Department of Finance

**Background.**

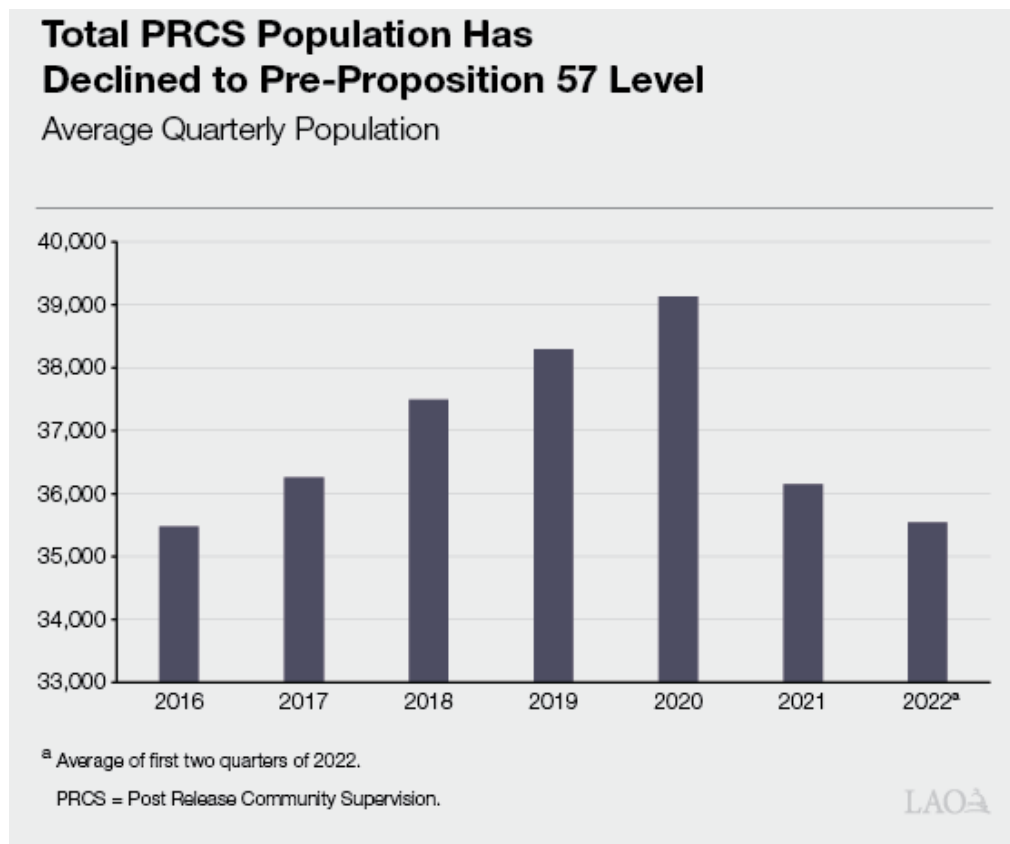
Prior to the 2011 public safety realignment, all individuals released from prison were supervised by state parole agents at the California Department of Corrections and Rehabilitation (CDCR). Realignment shifted the responsibility for supervising low-level offenders to the county probation departments, while serious, violent, and high-risk offenders are still supervised by CDCR. The 2011 realignment included significant funding for the shift of this population. In the first half of 2022 (the most recent data available), the average quarterly Post Release Community Supervision (PRCS) population was 35,500.

Proposition 57 (2016) expanded credit earning opportunities and enabled earlier parole consideration for individuals not convicted of violent crimes, leading some individuals being released to parole or PRCS earlier than would have been expected. As a result, there was a temporary increase of people on PRCS and on parole. This temporary increase is not the product of new people being placed on PRCS or parole, but rather the result of people being released to PRCS and parole ahead of schedule. Since implementation of Proposition 57 began in 2017, the prison population has declined by about 35,700 people (27 percent)—from 131,300 on June 30, 2017 to 95,600 as of February 1, 2023.

While counties receive realigned sales tax revenue to support the PRCS population, this funding does not get moved forward in time to reflect people starting their supervision terms earlier. The state has provided a series of one-time augmentations associated with Proposition 57—totaling \$111 million from 2017-18 through 2022-23—to BSCC to distribute to probation departments. These augmentations were based on estimates of the average daily population increase in the PRCS population caused by Proposition 57 and funded at a rate of \$10,250 per person. The state has also provided funding to probation departments for temporary increases in the PRCS population caused by population reduction measures implemented in response to (1) a federal court order related to prison overcrowding and (2) the COVID-19 pandemic.

## LAO Comments.

*Proposed Funding Likely Not Needed.* Unlike the state prison and parole populations, the administration does not report projections of the statewide PRCS population. Accordingly, there are no available projections of the total PRCS population in 2023-24. However, as shown below, preliminary 2022 data suggest that the PRCS population is declining. Moreover, it is notable that the preliminary 2022 population is comparable with the 2016 level, which was the year before Proposition 57 implementation began. Accordingly, the LAO finds it unlikely that counties continue to need funding to support the temporary increase in the PRCS population for cash-flow reasons. Moreover, the administration has not provided any data indicating that current 2011 realignment funding levels are such that cash-flow problems are likely to occur.



Source: LAO<sup>4</sup>

*Higher Bar for Approving New Spending Proposals Given General Fund Condition.* The Governor's proposal would commit the state to \$8.2 million in discretionary General Fund expenditures, as the state is not required to provide payments to the counties to offset the cost of the workload. Importantly, the state currently is experiencing a budget problem, where revenues already are insufficient to fund existing commitments. In this context, every dollar of new spending in the budget year comes at the expense of a commitment the Legislature deemed a priority and approved funding for, as it requires finding a commensurate level of solution somewhere within

<sup>4</sup> <https://lao.ca.gov/Publications/Report/4703>

the budget. The Governor “makes room” for this (and other) proposed new spending by making reductions to funds committed for other programs. The LAO therefore thinks the Legislature likely will want to apply a higher bar to its review of new spending proposals such as this proposal than it might in a year in which the General Fund had more capacity to support new commitments. In the LAO’s view, this proposal does not meet that higher bar.

**LAO Recommendation.**

*Reject Governor’s Proposal.* The LAO recommends that the Legislature reject the Governor’s proposal for two primary reasons. First, the proposed funding is likely not needed. Second, given the state’s budget problem, dedicating new General Fund to this purpose would come at the expense of previously identified priorities, and the LAO does not find it sufficiently justified for prioritizing limited state resources.

**Staff Recommendation.** Hold Open.

**8140 OFFICE OF THE STATE PUBLIC DEFENDER**

The Office of the State Public Defender (OSPD) was originally created in 1976 to represent indigent criminal defendants in appellate cases. Since 1990, however, the mandate of the office has been to focus on death penalty cases. The mission of the office was expanded in 2020 to include representation in trial court indigent defense cases—which is in addition to the representation provided by county public defenders and indigent defense counsel. Additionally, the state also expanded OSPD’s mission to include providing assistance and training to indigent defense attorneys as well as improving the quality of indigent defense representation.

**Issue 4: Recruitment Support**

**Proposal.** The Governor’s budget proposes \$280,000 ongoing General Fund and two Associate Governmental Program Analyst (AGPA) positions for OSPD to engage in activities to improve diversity, equity, and inclusion (DEI) in the recruitment, hiring, and retention of staff. The requested positions are also expected to help OSPD leadership develop a DEI strategic plan, create strategies to achieve DEI-related goals, implement and maintain DEI policies and processes, and coordinate DEI training.

**Panelists.**

- Charlene Bennett, Administration Chief, Office of the State Public Defender
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst’s Office
- Mark Jimenez, Principal Program Budget Analyst, Department of Finance

**Background.** White attorneys account for 70 percent of California’s active licensed attorney population, while people of color constitute 60 percent of the state’s population<sup>5</sup>. 31 out of 41 of OSPD attorneys (76%) are white<sup>6</sup>. OSPD clients in their active capital cases are 78 percent nonwhite.

OSPD currently has a group of volunteer attorneys, human resources staff, and legal analyst staff (organized into a committee) who provide support of diversity hiring efforts at OSPD. The agency has a second committee of legal and support staff focusing on efforts related to retention and training on DEI related issues.

According to OSPD, the two requested positions will consolidate these two volunteer committees into a cohesive effort to recruit and retain a diverse staff, as well as train staff on DEI issues. This staff will: research, identify, and recommend training, including developing and presenting training and writing contract justifications and participating in the contracting process to secure vendors to develop and deliver training and other DEI services; develop and conduct surveys, collect, analyze and track data to assess progress and inform recommendations based on trends and best practices; assess current recruitment and hiring practices and make recommendations for improvement and assist in the implementation of adopted recommendations. This new staff will also advise leadership on diversity and inclusion goals, help create strategies to address or resolve

<sup>5</sup> <https://www.calbar.ca.gov/Portals/0/documents/reports/State-Bar-Annual-DiversityReport.pdf>.

<sup>6</sup> <https://www.calhr.ca.gov/Pages/workforce-analysis.aspx>

diversity and inclusion barriers at OSPD, promote diversity and inclusion at OSPD, and collaborate with other staff and leadership to accomplish diversity goals in hiring and retention.

### **LAO Comments.**

*Merits Consideration, but Different Methods Available to Achieve Desired Outcomes.* The LAO finds that seeking to improve DEI policies and practices within OSPD in order to improve the diversity and retention of staff is a laudable goal that merits legislative consideration. Research indicates that a more diverse, equitable, and inclusive workplace can have various benefits—such as increased employee morale, longevity, and productivity. Additionally, as noted by OSPD, 76 percent of its attorneys are white, while 78 percent of its active death penalty clients are non-white. Research suggests attorney representation could be more effective if trust is built when clients and attorneys are of similar backgrounds (such as race) or through effective DEI training. The specific methods used to improve such policies and practices, however, can vary. For example, one option is to employ dedicated state employees for such work, while another is to employ external contractors to identify recommendations for implementation.

*Should Resources Be Provided Before the California Department of Human Resources (CalHR) Develops a DEI Strategy for the State's Civil Service?* CalHR is generally responsible for managing state personnel policies, including issues related to recruitment, selection, and training. The 2022-23 budget package included 43 permanent positions and \$7.5 million in 2022-23 and \$6.8 million ongoing to implement various proposals aimed at finding ways to make the state a better employer. One such proposal was to improve statewide data on the workforce to then develop a statewide DEI strategic plan. To date, such a strategic plan has not yet been developed. Given that OSPD has under 100 employees, it might be beneficial to wait for CalHR to issue the statewide plan before OSPD proceeds with its department-specific efforts to ensure they are consistent with the statewide plan. On the other hand, there could be merit in allowing a department that has a unique mission or a high-priority and immediate DEI problem to move forward with its efforts prior to the release of the statewide report. In addition, the LAO notes that OSPD is not the only state department that is making efforts to make a department-specific DEI recruitment and retention strategy.

*Should OSPD Efforts Be Coordinated With Other Statewide Efforts?* OSPD states that the racial demographics of its attorneys are similar to the overall demographics of attorneys statewide. This suggests that the lack of diversity at OSPD could be related to there being an insufficient number of non-white attorneys statewide. To the extent this is the case, it could be important for OSPD to coordinate its efforts with those being undertaken to address this wider problem. In particular, statewide attorney DEI efforts are currently being pursued by the State Bar of California. For example, the State Bar has launched the DEI Leadership Seal Program to recognize employers that implement specified actions to further DEI within their workplaces. The Legislature could consider the extent to which the OSPD efforts are, or should be, coordinated with these other efforts.

*Should OSPD First Develop a Clear Plan Before Resources Are Provided?* OSPD currently does not have an existing DEI strategic or tactical plan in place. This is because OSPD indicates that developing the office's DEI strategic or tactical plan, along with other activities, would be the responsibility of the requested positions. However, before resources are provided, it could be more



appropriate for a plan to be developed. This is because a lack of such a plan can make it difficult to determine what goals or outcomes OSPD is seeking to meet, what specific steps are needed to accomplish them, and what level of resources are needed. It would also be difficult to determine whether it is consistent with existing state law—such as Proposition 209 (1996) which amended the California Constitution to prohibit discrimination or preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

*Are Ongoing Resources Needed at This Time?* To the extent the Legislature decides to provide OSPD with resources before a DEI strategic or tactical plan is in place, the Legislature could consider whether ongoing resources are justified at this time. On the one hand, it could be reasonable to provide limited-term resources to allow OSPD to begin its work and clearly identify its DEI plan and the steps it plans to take to accomplish them. The Legislature would then be able to review the plan to see if it is in line with legislative priorities and/or the statewide DEI plan. On the other hand, to the extent that the Legislature determines that OSPD recruitment, hiring, and training is such a pressing need that improving it should be pursued immediately, ongoing funding could be provided to specifically support those activities the Legislature believes is justified.

*Would Consultants Be Better Positioned to Obtain Desired Outcomes?* DEI expertise typically involves conceptual and technical expertise developed over time through research or study as well as experience. For example, DEI experts frequently have a historical and current understanding of race-related concepts, the impacts specific policies have had in particular policy areas (such as housing) over time, and behavioral theory used to overcome prevailing institutional and organizational DEI barriers. Researchers, academics, and others have spent years developing such expertise. It could be difficult for the state generally to recruit people with this background into less senior and lower-paying classifications—such as the AGPA position classification requested by OSPD. Moreover, it might not be cost-effective to use more senior, higher-paying classifications given that the agency has under 100 employees. Instead, the Legislature could determine that providing resources to contract externally for such expertise may be more effective. For example, the Legislature could provide funding for OSPD to contract with an external consultant to develop its DEI strategic plan and/or evaluate and recommend actions to be taken specifically to improve the hiring and retention of staff—which would involve the input of OSPD staff. Ongoing staff resources, such as to execute the recommended actions, could then be requested at a future date.

*What Classification(s) Are Most Appropriate for DEI-Related Work?* If the Legislature determines that state employees should be used and that ongoing resources should be dedicated to OSPD, the Legislature will want to consider which classifications are most appropriate. As noted above, OSPD may have difficulty recruiting people with DEI expertise to AGPA positions. The LAO notes that CalHR received five Staff Services Manager (SSM) positions specifically to develop the statewide DEI plan. In a January 2023 progress report, CalHR reported challenges with filling these positions due to insufficient applications being received. As SSM position classifications have higher technical qualifications than AGPA positions, this raises questions regarding whether OSPD would have similar problems filling AGPA positions. If the positions are filled with individuals who lack such expertise, the quality or thoroughness of the resulting work could be impacted. Moreover, more senior classifications may be needed to inspire departmental culture or

organization changes as well as to implement such changes, monitor whether the desired outcomes are being achieved, and further modify such changes as necessary. However, if the state's goal is to implement clearly specified actions identified by departmental management or hired consultants, less senior position classifications could be needed as such tasks may be less complex or technical.

*How Should Legislative Oversight Be Conducted?* To the extent the Legislature provides resources to OSPD or other departments, the Legislature will want to consider how to conduct oversight of how the resources are used and what outcomes are achieved. Such oversight could include requiring regular reporting on key metrics or that surveys or evaluations be conducted to assess the impact of the DEI activities. This would provide the Legislature with the necessary information to determine whether state funds were used effectively as well as whether there are any unintended challenges or unanticipated outcomes. Such information could also inform legislative deliberations on potential proposals from other departments in the future and how DEI work should be coordinated across the state.

**Staff Recommendation.** Hold Open.

## 0250 JUDICIAL BRANCH

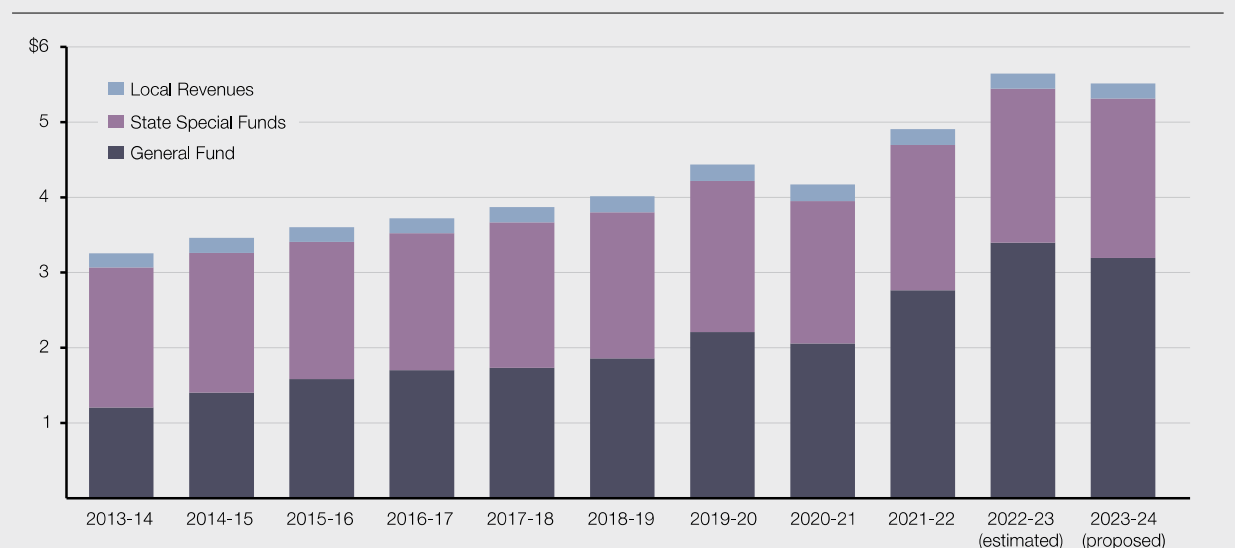
The Judicial Branch is responsible for the interpretation of law, the protection of people's rights, the orderly settlement of all legal disputes, and the adjudication of accusations of legal violations. The branch consists of statewide courts (the Supreme Court and Courts of Appeal), trial courts in each of the state's 58 counties, and statewide entities of the branch (Judicial Council, the Judicial Council Facility Program, and the Habeas Corpus Resource Center). The branch receives support from several funding sources including the state General Fund, civil filing fees, criminal penalties and fines, county maintenance-of-effort payments, and federal grants.

Total operational funding for the judicial branch has steadily increased from 2013-14 through 2022-23. The percent of total operational funding from the General Fund has also steadily increased during this period, from 37 percent in 2013-14 to 60 percent in 2022-23. Since 2019-20, most of the judicial branch budget has been supported by the General Fund. This growth is generally due to increased operational costs and decreases in fine and fee revenue.

For 2023-24, the Governor's budget includes nearly \$5.5 billion from all fund sources in support for the judicial branch. This amount includes about \$5.3 billion from all state funds (General Fund and special funds), a decrease of \$130 million (2.4 percent) below the revised amount for 2022-23. These totals do not include expenditures from local reserves or trial court reserves. Of this amount, about \$3.2 billion (or 63 percent) is from the General Fund. This is a net decrease of \$205 million (or 6 percent) from the 2022-23 General Fund amount. This decrease is generally due to the expiration of one-time General Fund support provided in 2022-23.

### Total Judicial Branch Funding<sup>a</sup>

(In Billions)



<sup>a</sup> State law requires excess property tax revenues collected by county offices of education beyond their annual funding allotment be used to offset state General Fund support of trial courts. This chart reflects these revenues as state special funds.

LAO

Source: LAO<sup>7</sup>

<sup>7</sup> <https://lao.ca.gov/Publications/Report/4673>

**Issue 5: Proposed Reduction in Court Appointed Special Advocate Funding**

**Proposal.** The 2022 Budget Act included \$20 million per year for three years for the Court Appointed Special Advocate (CASA) program. The Governor's Budget proposes maintaining the 2022-23 funding but rescinding the funding for the 2023-24 and 2024-25 years.

**Panelists.**

- Mark Jimenez, Principal Program Budget Analyst, Department of Finance
- Sharon M. Lawrence, Esq., Chief Executive Officer, California CASA Association (appearing remotely)
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office
- Charlene Depner, Director, Center for Families, Children and the Courts, Judicial Council of California

**Background.** CASAs are volunteers appointed by judges to provide direct, one-on-one, consistent support and advocacy to children in foster care. These volunteers are trained and supervised by professional staff through a network of local programs, and typically stay with the same child throughout the entire court process. Children with a CASA tend to experience better outcomes<sup>8</sup>. Earlier interventions that can help foster youth avoid becoming unhoused or involved with the criminal justice system can lead to significant long-term savings for the state.

In California, there are 44 local programs serving 51 counties. Last year, CASA volunteers served nearly 13,000 foster children, 16 percent of the roughly 80,000 youth in foster care. It costs roughly \$4,000 per CASA per year, amounting to around \$50 million per year in California. The state contributes \$2.7 million annually, which provides paid staff members to oversee the local programs. CASA programs also receive Victims of Crime Act (VOCA) and philanthropic funding.

The 2022-23 Budget included an additional \$20 million per year for three years to assist local CASA programs and expand operational capacity. According to the California CASA Association, the funding is being used to help stabilize programs, improve staff compensation to bring salaries up to living wage levels, and support innovative new projects to increase numbers of children and families served by CASAs. In addition, the funds would assist with recruiting new CASA volunteers, data collection to help us learn more about the impact of CASAs on our children/families, and initiating statewide efficiencies in HR, training of new CASAs, and expanded public awareness to enhance volunteer recruitment and community philanthropy.

**Staff Recommendation.** Hold Open.

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<sup>8</sup> <https://nationalcasagal.org/our-impact/research-and-effectiveness/>

**Issue 6: Ongoing CARE Act Court Support**

**Proposal.** The proposed budget includes \$23.8 million General Fund in 2023-24, \$50.6 million in 2024-25, and \$68.5 million in 2025-26 and ongoing for the Judicial Branch to implement the CARE Act. In addition, the proposed budget includes \$6.1 million in 2023-24 increasing to \$31.5 million in 2025-26 and ongoing to support public defender and legal services organizers to provide legal counsel to CARE participants.

**Panelists.**

- Charlene Depner, Director, Center for Families, Children and the Courts, Judicial Council of California
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst’s Office
- Mark Jimenez, Principal Program Budget Analyst, Department of Finance

**Background.**

SB 1338 (Umberg), Chapter 319, Statutes of 2022 created the CARE Program—a new civil court proceeding that will allow specific people to seek assistance for certain adults with severe mental illness. In order to be admitted to the CARE Program, individuals must be over the age of 18 and currently experiencing both a severe mental illness and having a diagnosis of schizophrenia or other psychotic disorders. People in other civil and criminal proceedings—specifically assisted outpatient treatment, conservatorship, or misdemeanor proceedings in which the person has been determined to be incompetent to stand trial—could also be referred by courts to the program. SB 1338 also included requirements for the California Health and Human Services Agency (CalHHS) or Department of Health Care Services (DHCS) to collect data, contract with an independent entity to evaluate the program, and submit reports to the Legislature.

The CARE process begins when a petition is filed to admit a person to the program. The petition can be filed by the individual themselves, or a family member, first responder, county behavioral health provider, or a licensed behavioral health professional who has provided treatment to the person within the past 30 days. The court reviews the petition to assess whether the person clearly and convincingly meets the criteria for admission. If so, the court orders an individualized treatment plan, which can include behavioral health care, stabilization medications, housing, and other supportive services. These services are expected to be delivered by the counties. Participants are entitled to legal counsel for assistance and representation throughout the process. Participants are also permitted to have a “supporter,” an adult providing the participant with decision-making and other assistance throughout the process. The court-ordered CARE plan lasts up to one year, but may be extended one time for up to one additional year under certain conditions.

The court-related responsibilities in the CARE process include:

- *Court Proceedings.* State law specifies a particular legal process for CARE proceedings. For example, within 14 court days of determining from a cursory review of a CARE Program petition that a person could be eligible for the program, trial courts are generally required to either (1) schedule a hearing on the CARE Program petition or (2) order the

county to investigate (if needed) and report in writing on whether the person subject to the petition meets the CARE eligibility criteria, the outcome of any efforts to engage the person, and conclusions and recommendations on the person's ability to voluntarily engage in services. Subsequent hearings are required to adopt a CARE plan and to regularly monitor participant and county compliance with the plan. At the one-year status hearing, the court will determine whether to allow the participant to leave the program or continue in the CARE Program for up to an additional year. Judicial Council is required to adopt forms and rules to ensure statewide consistency in the CARE legal process, provide training and technical assistance to judges, and assist with data collection from the trial courts.

- *Legal Representation.* State law requires that legal counsel be provided to any person who is the subject of a CARE Program petition if it appears that the person may meet the eligibility requirements. Such legal counsel is to be provided by the government through a qualified legal services project (such as a legal-aid organization) or a county public defender if no legal services project is available to accept CARE cases. However, a person may choose to retain their own private counsel instead. Counsel is required to represent the person through all court proceedings (including appeals) as well as in any matters related to the CARE plan. State law requires DHCS, in consultation with other state departments, to provide training to counsel regarding the CARE process as well as the services and supports that can be included in court-ordered plans.

*CARE Program Implementation Plan and Recent Developments.* Senate Bill 1338 specified that one group of counties (“Cohort 1”)—which included Glenn, Orange, Riverside, San Diego, San Francisco, Stanislaus, and Tuolumne Counties—are generally required to begin CARE Program operations no later than October 1, 2023. All remaining counties (“Cohort 2”) are generally required to begin CARE Program operations no later than December 1, 2024. In January 2023, Los Angeles County—a member of Cohort 2—announced plans to implement the CARE Program by December 1, 2023, a year earlier than required.

Additionally, in January 2023, a group of disability and civil rights advocates filed a lawsuit with the California Supreme Court challenging the constitutionality of SB 1338 and seeking to block its implementation<sup>9</sup>. The plaintiffs argue that it violates due process and violates the civil rights of the participants. The Administration noted in its response that the program does not force people to participate (although a lack of compliance may be used as a factor in determining eligibility for other involuntary mental health treatment)<sup>10</sup>.

*Workload Assumptions.* The Administration assumes that there will be 18,000 CARE Program petitions received annually statewide upon full implementation, resulting in 12,000 participants. These estimates are adjusted for 2023-24 and 2024-25 based on Cohort 1's and Cohort 2's share of total state population and the statutorily specified implementation dates to estimate the funding needed. The Administration noted that the prorated amounts included at Governor's Budget do not

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<sup>9</sup> <https://www.latimes.com/california/story/2023-01-26/disability-advocates-lawsuit-care-court-newsom-mental-illness-addiction-homeless>

<sup>10</sup> <https://www.sacbee.com/news/politics-government/capitol-alert/article272394748.html>

account for LA County's plan for early implementation, and will have to be adjusted later in the spring. The Administration assumes that an average of one court hearing will be needed to review initial petitions, and an average of nine hearings will be needed for each CARE participant. For legal representation costs, the administration assumes that an average of 20 hours of representation would be needed per CARE client. These assumptions are outlined in the table below from the Department of Finance.

<b>CARE Act Court Cost Assumptions</b>	
<b>Petitions and Cases</b>	
Total Annual Petitions	18,000
Total Annual Cases	12,000
<b>Cohorts</b>	
<b>Cohort 1</b>	
% of total population	26%
FY23-24 percent of year hearing cases	75%
FY 24-25 and following percent of year hearing cases	100%
<b>Cohort 2</b>	
% of total population	74%
FY23-24 percent of year hearing cases	0
FY 24-25 percent of year hearing cases	58%
FY 25-26 and following percent of year hearing cases	100%
<b>Court costs</b>	
Judicial officer per hour review time	\$204
Clerk per hour review time	\$92
Court hearing cost per hour	\$1,034
<b>Initial Petition Review</b>	
15 minutes judicial officer and 15 clerk review	\$74.00
<b>Total Hearings in case</b>	
(3) 30 minute hearing	\$1,551
(6) 15 minute hearing	\$1,551
(9) 10 minute judicial officer review	\$306
(9) 15 minute clerk review	\$207
Total hearing cost	\$3,615

Source: DOF<sup>11</sup>

*Initial Funding Provided in 2022-23.* The 2022-23 budget package provided \$5.9 million in 2022-23 (increasing to \$37.7 million ongoing in 2023-24) for judicial branch preparation to implement the CARE Program and \$250,000 one-time in 2022-23 for legal-aid planning and preparation. Of the amount provided to the judicial branch in 2022-23, \$2.8 million was allocated directly to the trial courts in Cohort 1 to support their administrative and other costs related to planning for CARE Program implementation. The budget also included additional funding for DHCS and CalHHS.

<sup>11</sup> [https://esd.dof.ca.gov/Documents/bcp/2324/FY2324\\_ORG0250\\_BCP6672.pdf](https://esd.dof.ca.gov/Documents/bcp/2324/FY2324_ORG0250_BCP6672.pdf)

*Proposed Funding for 2023-24.* The statewide funding for the CARE Program is outlined in the tables below from the LAO.

### Summary of Total Proposed CARE Program Funding

General Fund (In Millions)

Entity	Purpose	2022-23	2023-24	2024-25	2025-26 and Ongoing
<b>Judicial Branch</b>					
Judicial Branch	Court Operations	\$5.9	\$23.8	\$50.6	\$68.5
Judicial Branch	Legal Representation	0.3	6.1	21.8	31.5
<b>Totals, Judicial Branch</b>		<b>\$6.1</b>	<b>\$29.9</b>	<b>\$72.4</b>	<b>\$100.0</b>
<b>Health Entities</b>					
CalHHS	Training	\$5.0	—	—	—
DHCS	Training, Data Collection, and Other Activities	20.2	\$6.1	\$6.1	\$6.1
DHCS	County Grants	57.0	16.5	66.5	108.5
<b>Totals, Health Entities</b>		<b>\$82.2</b>	<b>\$22.6</b>	<b>\$72.6</b>	<b>\$114.6</b>
<b>Total CARE Program Funding</b>		<b>\$88.3</b>	<b>\$52.4</b>	<b>\$144.9</b>	<b>\$214.6</b>

CARE = Community Assistance, Recovery, and Empowerment; CalHHS = California Health and Human Services Agency; and DHCS = Department of Health Care Services.

### Summary of Allocation of Proposed Court Operations CARE Program Funding

(In Millions)

Judicial Branch Entity	Purpose	2022-23	2023-24	2024-25	2025-26 and Ongoing
Judicial Council	Trial court support, training and resources, and data collection costs	\$3.0	\$3.2	\$2.6	\$2.6
Trial Courts	Hearings, self-help attorneys, and other administrative costs	2.8	20.5	48.0	66.0
<b>Totals</b>		<b>\$5.9</b>	<b>\$23.8</b>	<b>\$50.6</b>	<b>\$68.5</b>

CARE = Community Assistance, Recovery, and Empowerment.

Source: LAO<sup>12</sup>

The Governor proposes to provide the judicial branch with additional funding to support court operations as well as legal representation costs. Specifically, the budget proposes General Fund support totaling \$29.9 million in 2023-24, increasing to \$100 million in 2025-26 and ongoing, representing roughly half of the proposed total funding for the CARE Program across all departments. This funding would include:

- *Court Operations.* As previously mentioned, the 2022-23 budget package assumed a funding level of \$37.7 million annually beginning in 2023-24 to support CARE hearing and other court operations. The Governor's budget proposes to adjust this planned funding level. Specifically, the proposed budget includes \$23.8 million in 2023-24 (increasing to \$50.6 million in 2024-25 and to \$68.5 million annually beginning in 2025-26). While most of this funding will go directly to the trial courts to cover hearing costs, a small amount of

<sup>12</sup> <https://lao.ca.gov/Publications/Report/4673>



this funding will go to Judicial Council for statewide coordination and support, training and resources, and data collection.

The court operations funding includes resources for five full-time staff at the Judicial Council to develop the legal and procedural framework for implementation, training and providing resources to the trial courts and stakeholders, and managing the required data collection. It also includes funding for an estimated 116 staff at the trial courts, including self-help attorneys and other administrative staff.

- *Legal Representation Costs.* The Governor's budget proposes \$6.1 million in 2023-24 (increasing to \$31.5 million annually beginning in 2025-26) to provide legal representation in the CARE process. The details of this funding are not finalized, but the Administration indicated that the State Bar is working on distributing planning grants, and the Administration is working with stakeholders to further develop the plans for this funding.

The table below contains a breakdown of the Judicial Branch's share of the CARE Act Funding based on hearing and staff costs. As noted above, this does not include funding for LA County, and may need to be updated later in the spring.

**CARE ACT COURT BUDGET 2022-23 -- 2025-26**

	2023-24	2024-25	2025-26
<b>Petitions for initial review</b>	3,510	12,406	18,000
<b>Initial review costs</b>	\$259,740	\$918,014	\$1,332,000
<b>Participants</b>	2,340	8,270	12,000
<b>Hearing costs</b>	\$8,466,120	\$29,922,307	\$43,416,000
<b>Court staff FTE</b>	58.0	116.0	116.0
<b>Court staff cost</b>	\$ 11,310,000	\$ 17,173,800	\$ 21,228,000
<b>Total Court Cost (rounded)</b>	<b>\$ 20,036,000</b>	<b>\$ 48,014,000</b>	<b>\$ 65,976,000</b>
<b>Total Judicial Council Program Support</b>	<b>\$ 3,230,000</b>	<b>\$ 2,560,000</b>	<b>\$ 2,560,000</b>
<b>Legal Services Representation</b>	\$ 5,800,000	\$ 20,750,000	\$ 30,000,000
<b>Legal Services Admin</b>	\$ 293,000	\$ 1,038,000	\$ 1,500,000
<b>Total Legal Services Cost</b>	<b>\$ 6,093,000</b>	<b>\$ 21,788,000</b>	<b>\$ 31,500,000</b>
<b>TOTAL</b>	<b>\$ 29,359,000*</b>	<b>\$ 72,362,000</b>	<b>\$ 100,036,000</b>

\*The Budget includes an additional \$500,000 in 2023-24 in excess of the cost estimate, which will be revised in the Spring budget revision.

Source: DOF<sup>13</sup>

<sup>13</sup> [https://esd.dof.ca.gov/Documents/bcp/2324/FY2324\\_ORG0250\\_BCP6672.pdf](https://esd.dof.ca.gov/Documents/bcp/2324/FY2324_ORG0250_BCP6672.pdf)

**LAO Comments.**

*Funding Needs Uncertain as Program Has Not Been Implemented.* The CARE process is a new court process that has not yet been implemented. Some details of the program are still being worked out by state and local entities. For example, it is not clear in which counties legal representation will be provided by qualified legal services projects versus county public defenders. Once implemented, operational processes may need to be adjusted to address unintended challenges that emerge. In addition, the number of petitions and/or participants could be significantly different from the administration's estimates. The LAO notes that the administration's assumptions and requested resources appear reasonable for the initial implementation of the CARE Program in 2023-24. However, ongoing program costs could be significantly different than assumed in the Governor's budget.

*Actual Implementation Data Important for Determining Appropriate Funding Levels After 2023-24.* Data collected from Cohort 1 should be used to inform the resources provided for statewide implementation. For example, monitoring the implementation of Cohort 1 may show that more time is needed by judicial and court staff to process CARE Program petitions or by legal counsel to appropriately represent their clients. This additional time could be needed for various reasons, including to ensure that all participants have the ability to be heard (which could simply require more time and resources) or to address conflicting interpretations or application of the language (which could be resolved legislatively or through statewide Judicial Council guidance).

*Other Factors Can Also Impact Actual Funding Needs.* Other factors—such as county decisions and court rulings—can also impact the actual level of funding needed to implement the CARE Program statewide. As noted above, the Governor's Budget funding does not include an earlier start date by LA County. The LAO estimates that additional resources in the range of \$10 million would be needed in 2023-24 to support the court-related costs for LA County, which consists of about 25 percent of the state's population, as well as additional resources in 2024-25. It is also unclear whether any other counties have the intention of launching CARE Program implementation earlier than expected. Finally, court rulings or developments in the lawsuit may affect the implementation of the CARE Program.

**Staff Comment.** *Capacity of legal aid organizations and public defenders.* Both legal aid organizations and public defenders have significant workload and recruitment challenges. The Legislature may wish to consider how to expand the capacity of these organizations to manage their existing workload in addition to these new duties.

**LAO Recommendation.** *Recommend Only Providing Funding for CARE Program in 2023-24 and Require Reporting on Implementation.* The LAO recommends the Legislature only provide the requested funding in 2023-24. The LAO also recommends the Legislature require the courts scheduled to first begin CARE Program implementation report monthly on key metrics that directly impact the estimates for the level of implementation funding needed. Such information would help the Legislature ensure that appropriate levels of funding are provided in future years.

**Staff Recommendation.** Hold Open.

**Issue 7: Capital Outlay and Facilities**

**Proposal.** The Governor's Budget includes the following resources for capital outlay and facilities.

- *Capital Outlay.* The Administration proposes \$108.5 million General Fund and \$153 million lease revenue bond (LRB) authority for one new capital outlay project and to continue six ongoing projects.
- *State Court Facilities Construction Fund (SCFCF) Insolvency.* The SCFCF, which covers a range of costs including facility modifications, repairs, and debt service, has a structural deficit due to a decline in fine and fee revenues. The Governor's Budget includes the following proposals related to the SCFCF:
  - Provide \$34 million General Fund in 2023-24 to backfill the SCFCF and maintain existing service levels. Around \$120 million will be needed ongoing to backfill the fund.
  - Shift \$55.5 million trial court operation support from SCFCF to General Fund.
  - Extend permanently \$15 million to support trial court facility modification projects that was set to expire in 2024-25.
- *Other Facilities Support.* The proposed budget includes:
  - \$440,000 one-time General Fund to provide the necessary resources for the design, fabrication, and installation of new signage to rename the Superior Court of Merced County's main courthouse as the Charles James Ogletree, Jr. Courthouse pursuant to AB 2268 (Gray), Chapter 410, Statutes of 2022.
  - \$5.97 million ongoing General Fund and \$27 million reimbursement authority ongoing to support operations and maintenance for nine facilities which have recently completed construction and are planned to open to the public.
- *Deferred Maintenance Reduction.* The 2021 Budget Act included \$188 million one-time General Fund, available through June 30, 2024, to support deferred maintenance projects in trial courts and Courts of Appeal. The Governor's Budget proposes to remove \$49.5 million in 2022-23, reducing the total amount available to \$138.5 million.

**Panelists.**

- Pella McCormick Director Facilities Services, Judicial Council of California
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office
- Phil Osborn, Staff Finance Budget Analyst, Department of Finance

## Background.

The judicial branch currently manages around 450 facilities across all 58 counties. Its facility program is responsible for various activities including maintaining these facilities, managing leases, and constructing new courthouses to replace outdated facilities. In a November 2019 assessment of its facilities<sup>14</sup>, the judicial branch identified a need for a total of 80 construction projects—56 new buildings and 24 renovations—totaling \$13.2 billion. These projects were categorized into five groups—and ranked within each group—in the following descending priority order: 18 immediate need projects (\$2.3 billion), 29 critical need projects (\$7.9 billion), 15 high need projects (\$1.3 billion), 9 medium need projects (\$1.6 billion), and 9 low need projects (\$100 million). The status of these projects is listed in the table below. Additionally, in August 2022, the judicial branch identified 22,042 deferred maintenance projects totaling around \$4.5 billion<sup>15</sup>.

<b>Status of Trial Court Construction Projects From 2019-20 through 2022-23 Budget</b>			
<b>Priority Group</b>	<b>Number of Projects</b>	<b>Estimated Project Costs (in billions)</b>	<b>Number Initiated</b>
Immediate Need	18	\$2.3	11
Critical Need	29	7.9	—
High Need	15	1.3	—
Medium Need	9	1.6	—
Low Need	9	0.1	—
<b>Total</b>	<b>80</b>	<b>\$13.2</b>	<b>11</b>

Source: LAO<sup>16</sup>

**State Court Facilities Construction Fund (SCFCF).** State law authorizes Judicial Council to construct trial court facilities and established a special fund, the SCFCF, to support the judicial branch’s court facility-related projects. This fund was supported by increases in certain criminal and civil fines and fees. Funds may also be transferred from the SCFCF to support trial court operations. Currently, a total of \$55.5 million is redirected annually for this purpose. The amount of revenue deposited into the SCFCF has steadily declined over time, largely due to declining criminal fine and fee revenue. This has resulted in SCFCF expenditures—such as debt service and facility modifications—routinely exceeding revenues. To support this level of spending, the judicial branch has been expending funds from the SCFCF fund balance. As a result, the SCFCF faces insolvency in 2023-24.

**New Construction Supported by General Fund.** Given the insolvency of the SCFCF, the 2021-22 budget shifted support for the construction of any future courthouses to the General Fund. Accordingly, the 2021-22 and 2022-23 budgets included General Fund support to start the construction or renovation of nearly a dozen of the highest ranked immediate need projects identified in the judicial branch’s 2019 assessment of facilities.

The table on the next page outlines the status of approved court construction projects.

<sup>14</sup> <https://www.courts.ca.gov/documents/Statewide-List-Capital-Projects-2019.pdf>

<sup>15</sup> <https://www.courts.ca.gov/documents/facilities-deferred-maintenance-report-fy-2022-23.pdf>

<sup>16</sup> <https://lao.ca.gov/handouts/crimjust/2023/Trial-Court-Construction-Maintenance-Overview-022723.pdf>

City	Courtrooms	Square Feet	Current Phase	Phase % Complete	Approved Project Budget	Forecast Project Completion
Yreka	5	67,000	Completed	100%	\$78,008,000	6/2/21
Sonora	5	62,000	Completed	100%	\$72,385,000	10/15/21
El Centro	4	48,000	Construction	96%	\$73,431,000	5/12/22
Nevada City	6	NA	Completed	100%	\$972,000	9/30/22
Willows	3	42,000	Construction	86%	\$62,768,000	6/16/23
Redding	14	165,000	Construction	96%	\$203,006,000	7/28/23
Los Angeles	NA	NA	Study	68%	\$2,347,000	11/3/23
Menifee	9	85,000	Construction	43%	\$95,253,000	3/21/24
Sacramento	53	540,000	Construction	67%	\$514,792,000	5/1/24
Santa Rosa	15	169,000	Construction	34%	\$204,803,000	7/31/24
Indio	5	53,000	Construction	22%	\$80,874,000	10/25/24
Oroville	1	610	Working Drawings	5%	\$3,955,000	11/18/24
Modesto	27	309,284	Construction	20%	\$351,909,000	12/31/24
San Bernardino	2	5,000	Working Drawings	5%	\$9,433,000	10/8/25
Lakeport	4	46,000	Design Build Phase	1%	\$86,722,000	10/16/25
Mendocino	7	82,000	Performance Criteria	95%	\$144,924,000	3/5/27
Monterey	7	83,000	Acquisition	63%	\$174,684,000	3/16/28
Plumas	3	54,000	Acquisition	22%	\$100,891,000	1/3/29
Solano	12	141,000	Acquisition	23%	\$265,123,000	7/25/29
Fresno	36	413,000	Acquisition	26%	\$749,369,000	9/23/29
San Luis Obispo	12	145,000	Acquisition	23%	\$291,895,000	12/12/29
Los Angeles	24	278,000	Acquisition	20%	\$519,561,000	1/25/30
Judgeship (San Joaquin)	1	1,900	Preliminary Plans	61%	\$6,025,000	7/11/25
Judgeship (Sacramento)	2	10,000	Working Drawings	5%	\$11,532,000	1/13/25
Judgeship (Sutter)	1	2,500	Preliminary Plans	5%	\$6,025,000	7/12/24
Judgeship (Kings)	1	6,800	Preliminary Plans	52%	\$6,025,000	7/12/24

*Additional Support for Ongoing Facility Modification Provided in 2022-23.* The annual budget typically provides the judicial branch with a specified amount of funding to support trial court facility modification projects that arise during the year. This funding is used at Judicial Council's discretion to generally address the highest-priority needs that arise. The 2022-23 budget provided \$65 million from the SCFCF to support trial court facility modification projects. This amount included \$50 million in annual funding and \$15 million in temporary funding. The temporary

funding of \$15 million annually for ten years was first provided as part of the 2014-15 budget package, which means that it is scheduled to expire at the end of 2023-24. Additionally, the 2022-23 budget included \$15.4 million in ongoing General Fund support for trial court facility modification projects. In combination, this increased total support for trial court facility modification projects to \$80.4 million annually in 2022-23 and 2023-24—before declining to \$65.4 million annually beginning in 2024-25 due to the expiration of the temporary SCFCF funding. The expiration of the temporary funding would restore funding levels to the amount available annually between 2014-15 and 2021-22.

*Proposed Resources.* The Governor’s 2023-24 budget includes one proposal for ongoing SCFCF expenditures and two proposals to provide a total of \$89.5 million General Fund in 2023-24 (increasing to \$175.5 million annually beginning in 2024-25) to address the SCFCF insolvency. Specifically, the Governor’s budget proposes to:

- *Make SCFCF Funding Scheduled to Expire Ongoing.* The Governor’s budget proposes to make permanent the \$15 million to support trial court facility modification projects that was previously approved for ten years—permanently increasing the amount available to support trial court facility projects from \$65.4 million to \$80.4 million annually.
- *Shift SCFCF Support of Trial Court Operations to General Fund.* The Governor’s budget proposes to shift the \$55.5 million currently redirected from the SCFCF to the General Fund in order to address the insolvency of the SCFCF.
- *Provide General Fund to Backfill Remaining Shortfall.* With the two above changes, SCFCF revenues are expected to be \$215 million, while expenditures are estimated to be about \$336 million, resulting in a \$120 million shortfall. The Governor’s budget proposes to spend down the balance of the SCFCF and provide a \$34 million General Fund backfill in 2023-24. However, the full backfill amount of \$120 million is needed on an ongoing basis beginning in 2024-25. Budget bill language authorizes the Department of Finance to increase the backfill amount 30 days after notification to the Legislature if SCFCF revenues are lower than expected.

*Capital Outlay.* The Governor’s Budget includes \$108.5 million General Fund and \$153 million lease revenue bond (LRB) authority for one new capital outlay project and to continue six ongoing projects, described in the table on the next page. For three of the continuing projects, their construction costs were shifted entirely from LRB to General Fund as part of last year’s budget package, due to the budget condition and federal limits on tax-exempt bond expenditures. Specifically, federal tax code for the issuance of tax-exempt bonds requires, among other things, that the bonds must be issued within three years of initial project expenditures. However, a portion of expenditures for each of these three projects are expected to fall outside of the three-year window. Due to the declining revenue projections, the Administration is proposing to fund most of the construction costs using bonds, and only cover the construction expenditures outside of the three-year window with General Fund. These projects, the El Centro Courthouse, Sacramento, and Redding Courthouses, are indicated as “Bonds to Cash” in the table.

Proposal	Status	Description
Court of Appeal - New Sixth Appellate District Courthouse	New, Performance Criteria Phase  FY 23-24: \$2.8 million GF Total Cost: \$86.7 million Estimated Completion Date: October 2028	The proposed new courthouse project will provide construction of a new one-courtroom, two-story courthouse of approximately 50,000 square feet (SF) on an existing approximately 2-acre, state-owned property in the city of Sunnyvale in Santa Clara County. The project includes secured parking for justices and surface parking spaces. The project will use the Design-Build delivery method. The project will include the demolition of an existing building on the state-owned site as well as replace the appellate court's current leased facility.
Imperial County – New El Centro Courthouse – Bonds to Cash	Continuing, Construction Phase  FY 23-24: \$18.2 million GF Total Cost: \$65.4 million	This proposal requests General Fund to pay a portion of expenditures for the construction phase of the Imperial County – New El Centro Courthouse project. The project includes the construction of a new 4-courtroom courthouse, containing approximately 48,000 square feet in the city of El Centro, in Imperial County. Bonds for the project are scheduled to be sold in Fall 2023.
Monterey County - New Fort Ord Courthouse	Continuing, Design-Build Phase  FY 23-24: \$153.0 million LRB Total Cost: \$191.8 million Estimated Completion Date: December 2027	The proposed budget includes Lease Revenue bond authority for the Design-Build phase of the New Fort Ord Courthouse in Monterey County. The proposed new courthouse project will provide construction of a new 7-courtroom courthouse of approximately 83,000 square feet (SF) in the Fort Ord area. The project includes secured parking for judicial officers and surface parking spaces. The project will require acquisition of a site of approximately 5 acres. The project will use the design-build delivery method. The project will consolidate operations and replace three facilities.
Nevada County - New Nevada City Courthouse	Continuing, Acquisition Phase  FY 23-24: \$8.1 million GF Total Cost: \$178.4 million Estimated Completion Date: August 2030	The proposed budget includes funding to acquire an approximately 5-acre site for the New Nevada City Courthouse in Nevada County. The proposed new courthouse project will provide construction of a new 6-courtroom courthouse of approximately 77,000 square feet (SF) in the city of Nevada City. The project includes secured parking for judicial officers and surface parking spaces. The project will use the Design-Build delivery method. The project will replace and consolidate two facilities, including the current Nevada City Courthouse and the Courthouse Annex. These buildings are overcrowded and not ADA-compliant, among other issues.
Sacramento County – New Sacramento Courthouse – Bonds to Cash	Continuing, Construction Phase  FY 23-24: \$17.0 million GF Total Cost: \$473.5 million	This proposal requests General Fund to pay a portion of expenditures for the construction phase of the Sacramento County – New Sacramento Courthouse project. The project includes the construction of a new 53-courtroom courthouse, containing approximately 540,000 square feet in the city of Sacramento, in Sacramento County. Bonds for the project are scheduled to be sold in Spring 2024.
San Bernardino County – Juvenile Dependency Courthouse Addition and Renovation	Continuing, Construction Phase  FY 23-24: \$8.3 million GF Total Cost: \$9.9 million Estimated Completion Date: October 2025	This proposal includes funding for the Construction phase for the San Bernardino Juvenile Dependency Courthouse. The project provides for an approximately 5,000 square feet (SF) addition for two courtrooms, associated clerical space, and a lobby expansion at the current Juvenile Dependency Courthouse in San Bernardino. The project will require revisions to the joint occupancy/transfer agreement with the County to construct the project. The project will use the Design-Bid-Build delivery method.
Shasta County – New Redding Courthouse – Bonds to Cash	Continuing, Construction Phase  FY 23-24: \$54.1 million GF Total Cost: \$171.4 million	This proposal requests General Fund to pay a portion of expenditures for the construction phase of the Shasta County – New Redding Courthouse project. The project includes the construction of a new 14-courtroom courthouse, containing approximately 165,000 square feet in the city of Redding, in Shasta County. Bonds for the project are scheduled to be sold in Fall 2023.

**Other Facilities Funding.** The proposed budget also includes two other facilities-related proposals:

- *Charles James Ogletree, Jr. Courthouse (AB 2268).* The proposed budget includes \$440,000 one-time General Fund to provide the necessary resources for the design, fabrication, and installation of new signage to rename the Superior Court of Merced County's main courthouse as the Charles James Ogletree, Jr. Courthouse pursuant to Chapter 410, Statutes of 2022 (AB 2268, Gray). The Judicial Council reported costs of approximately \$175,000 during the policy process. However, through further evaluation, the building and site have more existing signage requiring replacement than initially estimated.
- *Support for Judicial Branch Facilities Operations and Maintenance.* The proposed budget includes \$5.97 million ongoing General Fund and \$27 million reimbursement authority ongoing to support operations and maintenance for nine facilities which have recently completed construction and are planned to open to the public. The Administration noted that the reimbursement authority level will be updated later in the spring.

#### **LAO Comments.**

*Cash Financing Presents Trade-Off Between Reducing Long-Term Obligations and Funding Short-Term Budget Priorities.* The Legislature will have to weigh the trade-off between reducing long-term budget obligations versus funding short-term budget priorities. Across all departments, the Governor's Budget includes \$491 million cash for certain capital outlay projects (including the three courthouses noted above) which avoids about \$42 million in annual debt service payments over the next 25 years. The avoided costs for these projects are somewhat larger than normal because projected interest rates are currently high (6 to 7 percent), and these projects would require taxable bonds, which carry a higher interest rate than tax-exempt bonds. On the other hand, using cash means less funding is available to support near-term budget priorities.

*SCFCF Proposal Generally Reasonable.* The LAO finds the Governor's SCFCF proposals generally reasonable as they address the SCFCF's insolvency on an ongoing basis. Shifting ongoing support for trial court operations to the General Fund maintains existing operational levels. Additionally, committing to an ongoing General Fund backfill of the SCFCF ensures that, going forward, the General Fund will address any shortfall in the ability of the SCFCF to meet its construction-related obligations (such as debt service for previously constructed courthouses). This is important as it will ensure that these obligations are accounted for and considered when evaluating the state's overall fiscal condition and determining General Fund priorities.

*SCFCF General Fund Backfill Amount Will Change Over Time.* The backfill amount required by the SCFCF will change over time. Revenues could increase or decrease. For example, the number of people required to pay criminal fines could differ by year for various reasons—including the number of tickets written by law enforcement. Additionally, expenditures will also change over time. SCFCF debt service obligations will decrease over time as more projects are fully paid off, including decreases of roughly \$40 million annually beginning in 2032-33 as six construction projects are fully paid off, \$50 million beginning in 2038-39, and \$40 million in 2039-40.



*Making Facility Modification Funding Permanent Helps Address Facility Needs, but Results in Additional General Fund Cost Pressures.* As discussed earlier, the judicial branch has identified significant facility needs that will eventually need to be addressed. The Governor's proposal to make the temporary SCFCF facility modification funding permanent would be a step forward in that direction on an ongoing basis. However, because the SCFCF is insolvent, the proposal would effectively result in \$15 million in additional cost pressure on the state General Fund to backfill the SCFCF.

### **LAO Recommendations.**

*Recommend Approving SCFCF Budget Proposal, Requiring Annual Reporting of SCFCF Condition, and Weighing Facility Modification Funding Extension Against Other Priorities.* The LAO finds the Governor's SCFCF proposals to be generally reasonable as they address the SCFCF's insolvency on an ongoing basis. As such, the LAO recommends the Legislature approve shifting support for trial court operations from the SCFCF to the General Fund. While the LAO agrees with the Governor's proposal to provide a General Fund backfill to the SCFCF, the amount required will change over time. Thus, the LAO recommends the Legislature direct Judicial Council to report annually on the SCFCF's long-term fund condition to enable the Legislature to ensure that the budget is adjusted annually to include the appropriate General Fund backfill in future years. Finally, the LAO recommends the Legislature weigh the proposal to make SCFCF facility modification funding ongoing against its other budget priorities, since it would result in additional General Fund cost pressures. Reducing or rejecting the proposed ongoing spending on facility modification projects would provide the Legislature with a budget solution to help address the projected out-year deficits that would occur under the Governor's proposed budget.

*Consider Shifting to Lease Revenue Bonds.* Ultimately, the Legislature's financing approach will depend on how it weighs support for short-term budget priorities against reducing long-term budget obligations. However, given the current budget problem facing the state—including the LAO's assessment that the problem will likely be even larger than the Governor projects—and the state's relatively low debt service ratio, the Legislature might want to switch to lease revenue bonds instead of cash financing for some of the projects. In the LAO's view, this would be one reasonable way to free up some General Fund cash to maintain funding for existing programs that might otherwise need to be cut to address the budget problem. Even though interest rates are relatively high right now, if interest rates come down in the future, the state typically has the option of effectively refinancing at a lower interest rate.

**Staff Recommendation.** Hold Open.

### Issue 8: Elimination of Sunset Dates for Expiring Civil Fees

**Proposal.** The proposed budget includes trailer bill language to permanently extend certain civil fee increases that were set to expire in the budget year, and are estimated to generate roughly \$38 million in revenue.

**Panelists.**

- Zlatko Theodorovic, Director, Budget Services, Judicial Council of California
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office
- Mark Jimenez, Principal Program Budget Analyst, Department of Finance

**Background.** The affected fees were initially increased in 2012 to offset declining revenues during the Great Recession, and are listed in the table below. These fees are deposited into the Trial Court Trust Fund and are used to fund basic trial court operations. A sunset date was initially included, but that date has been extended multiple times. These fees have sunset dates of either July 1, 2023, or January 1, 2024. The Administration is proposing to eliminate the sunset and make the fee increases permanent. These fees include motion fees, complex case fees, and first paper fees. Most of these fees are initial filing fees, and individuals can apply for income-based waivers. Complex case fees are more likely to involve commercial entities.

Code Section	Description	2021-22 Actual Revenue	2022-23 Estimated Revenue
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Motion Fees (\$20 increase)			
GC 70617(a)	Motion Fee: Motion, Application or Any Other Paper Requiring a Hearing Subsequent to the First Paper Filing	\$5,814,017.41	\$5,580,847.61
GC 70657(a)	Subsequent Papers - Probate: Motion, application or other paper requiring a hearing after the first paper; certain subsequent petitions, applications, or other opposition	\$293,487.69	\$288,003.35
GC 70677(a)	Motion Fee Family Law: Motion or order to show cause in family law matter (unless it is the party's first paper and the first paper filing fee is paid)	\$1,662,844.12	\$1,739,692.26
Total \$20 Motion Fees		\$7,770,349.21	\$7,608,543.22

Complex Case Fees (\$450 increase)			
GC 70616(a)	Complex Case Fee - Plaintiff: Additional fee for case designated as complex (one fee for all plaintiffs)	\$3,117,031.76	\$2,924,510.59
GC 70616(b)	Complex Case Fee - Response: Additional fee for case designated as complex (for each defendant, up to \$18,000 total for case)	\$5,835,600.00	\$5,684,400.00
Total \$450 Complex Fees		\$8,952,631.76	\$8,608,910.59

First Paper Fees (\$40 increase)			
GC 70611, 70602.5, 70602.6	Unlimited Civil Filing: Complaint or other first paper in unlimited civil case (amount over \$25,000), including: unlawful detainer over \$25,000; petition for a writ of review, mandate, or prohibition (other than issues in a limited civil case); petition for a decree of change of name or gender	\$6,796,480.00	\$6,849,746.67
GC 70612, 70602.5, 70602.6	Unlimited Civil Filing Response: Answer or other first paper filed by each party other than plaintiff (amount over \$25,000) (including unlawful detainer)	\$6,721,600.00	\$6,947,413.33
GC 70650(a), 70602.5, 70602.6	First petition for letters of administration or letters testamentary, or the first petition for special letters of administration with the powers of a general personal representative pursuant to Section 8545 of the Probate Code	\$797,320.00	\$686,280.00
GC 70650(b), (c), 70602.5, 70602.6	Probate Petitions or Objections: Will contests (first objections to probate of will or first petition for revocation of probate of will under Prob. Code §§ 8250, 8270); later-filed petitions for letters of administration, letters testamentary, or special letters of administration with powers of general representative by persons other than the original petitioner	\$287,920.00	\$256,453.33
GC 70651, 70602.5, 70602.6	Probate - Opposition to Petition: Opposition to petitions for appointment of a personal representative in a decedent's estate other than competing petitions for appointment or will contests, and objections or other opposition to first account of testamentary trustee subject to court supervision	\$63,720.00	\$59,226.67
GC 70652, 70602.5, 70602.6	Probate - Internal Affairs: Petitions and objections or other opposition to petitions concerning the internal affairs of a trust under Probate Code §§ 17200 et seq. or first account of trustee of testamentary trust	\$490,640.00	\$476,040.00
GC 70653, 70602.5, 70602.6	Appointment of Conservator: Petition for appointment of conservator, guardian of the estate or guardian of the person and estate or opposition to these petitions	\$154,520.00	\$147,533.33
GC 70655, 70602.5, 70602.6	First Papers - Other Probate: Petition commencing other proceedings under the Probate Code and objections or other opposition to such petitions	\$688,360.00	\$622,720.00
GC 70658, 70602.5, 70602.6	Subsequent Papers: Petitions, objections, or other papers in opposition for orders that are filed after issuance of letters testamentary, letters of administration, letters of special administration to a personal representative of a decedent's estate, or letters of guardianship or conservatorship to a guardian or conservator	\$505,640.00	\$575,426.67
GC 70662	Request for special notice in decedent's estate, guardianship, conservatorship, and trust proceedings (Prob. C 1250, 2700, 17204)	\$144,120.00	\$130,093.33
GC 70670(a), 70602.5, 70602.6	Family Law First Paper: First paper in family law matter other than dissolution of marriage or domestic partnership, legal separation, or nullity	\$533,840.00	\$526,293.33

GC 70670(b), 70602.5, 70602.6	Marriage Dissolution - First Paper: Petition or other first paper (including a joint petition) for dissolution of marriage or domestic partnership, legal separation, or nullity	\$3,109,520.00	\$3,101,106.67
GC 70670(c), 70602.5, 70602.6	Family Law Response: First paper filed in response in family law matter other than dissolution of marriage or domestic partnership, legal separation, or nullity	\$371,840.00	\$356,573.33
GC 70670(d), 70602.5, 70602.6	Marriage Dissolution Response: Response or other first paper filed in response to petition for dissolution of marriage or domestic partnership, legal separation, or nullity	\$991,640.00	\$996,720.00
Lab. 98.2; cross-ref. GC 70611, 70602.5, 70602.6	Appeal of Labor Commission Decision: Appeal from Labor Commissioner's Award	\$5,480.00	\$5,973.33
Total \$40 First Paper		\$21,662,640.00	\$21,737,600.00
Total All Fees		\$38,385,620.97	\$37,955,053.81

*Filing Fee Waivers.* The 2022 Budget Act included trailer bill language and \$18 million ongoing to expand eligibility for automatic filing fee waivers. The expanded eligibility includes increasing the income threshold from 125 percent to 200 percent of the federal poverty guidelines, and automatic eligibility for recipients of the California Special Supplemental Nutrition Program for Women, Infants, and Children and of unemployment compensation.

**Staff Recommendation.** Hold Open.

**0820 DEPARTMENT OF JUSTICE**

Under the direction of the Attorney General, the Department of Justice (DOJ) provides legal services to state and local entities; brings lawsuits to enforce public rights; and carries out various law enforcement activities, such as seizing firearms and ammunition from those prohibited from owning or possessing them. DOJ also provides various services to local law enforcement agencies, including providing forensic services to local law enforcement agencies in jurisdictions without their own crime laboratory. In addition, the department manages various databases including the statewide criminal history database.

The Governor's budget proposes \$1.2 billion to support DOJ operations in 2023-24—an increase of \$9 million (less than 1 percent) over the revised amount for 2022-23. About half of the proposed funding supports DOJ's Division of Legal Services, while the remainder supports the Division of Law Enforcement and the California Justice Information Services Division (CJIS). Of the total amount proposed for DOJ operations in 2022-23, nearly 40 percent—\$486 million—is from the General Fund. This is an increase of \$18 million (or 3.9 percent) from the revised 2022-23 General Fund amount.

**Issue 9: DNA Identification Fund Backfill**

**Proposal.** The Bureau of Forensic Services (BFS) is funded through the DNA Identification Fund. The DNA ID Fund is not structurally balanced due to declines in criminal fine and fee revenue. The Governor’s budget proposes:

- \$17.3 million in increased annual funding from the DNA Identification Fund to support BFS. This replaces \$10 million previously redirected from other fund sources, and an additional \$7.3 million for BFS to support equipment replacement (\$5.8 million) and facility maintenance (\$1.5 million).
- \$53.4 million General Fund ongoing to backfill the DNA Identification Fund due to declines in criminal fine and fee revenue.
- Provisional budget language authorizing the Department of Finance to transfer additional General Fund to the DNA Identification Fund if revenues deposited into the fund decline further and are insufficient to support BFS.

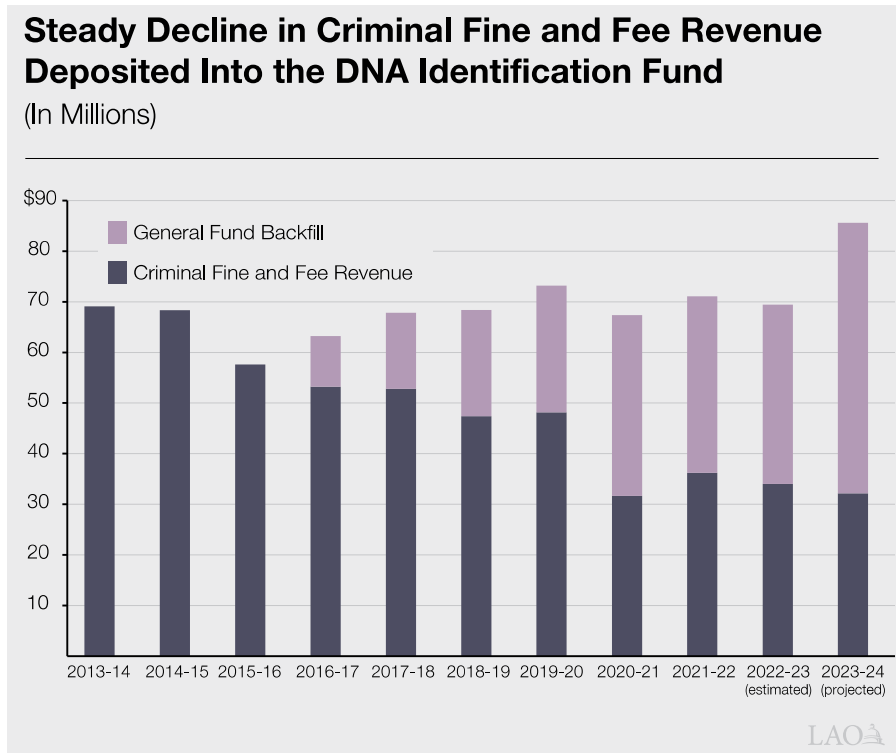
**Panelists.**

- Chris Ryan, Chief of Operations, Department of Justice
- Barry Miller, Bureau Chief, Bureau of Forensic Services, Department of Justice
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst’s Office
- Kevin Clark, Staff Finance Budget Analyst, Department of Finance

**Background.**

BFS provides criminal laboratory services—such as DNA testing, alcohol and controlled substances analysis, and on-site crime scene investigative support. Ten regional laboratories provide services generally at no charge for local law enforcement and prosecutorial agencies in 46 counties that do not have access to those services. BFS also assists the 12 counties and 8 cities that operate their own laboratories where BFS offers services their laboratories lack. (Local agencies also contract with private or other governmental laboratories for services.) Additionally, BFS operates the state’s DNA laboratory as well as the state’s criminalistics training institute.

BFS receives support from various sources, but primarily from the DNA Identification Fund—a state special fund that receives criminal fine and fee revenue—and the state General Fund. As shown below, the amount of criminal fine and fee revenue deposited into the DNA Identification Fund has steadily declined over the past decade—from a high of \$69 million in 2013-14 to \$34 million in 2022-23 (a decline of 51 percent). To help address this steady decline and to maintain the level of services provided by BFS, the state has provided General Fund support to backfill the reduction in criminal fine and fee revenue deposited in the DNA Identification Fund since 2016-17.



*Alternative Revenue Sources for the DNA Identification Fund.* The 2021-22 budget package required DOJ to provide a report by March 10, 2022 that identifies various options—other than the state General Fund—to support BFS annual operations. The budget package specifically directed DOJ to consider an option that would require sharing costs with local agencies that make use of BFS services based on the specific type of forensic services sought, the speed of the service, the size of the agency, and any other factors DOJ chooses to include.

In response to the above requirement, DOJ provided a report to the Legislature on March 10, 2022. The department identified the following options to support BFS operations: (1) a general tax increase, (2) allowing the surcharge added to criminal history background check fees to also cover BFS costs (and adjusting the surcharge accordingly), (3) increasing the specific fee added when individuals are convicted of criminal offenses which generates the revenue deposited into the DNA Identification Fund, (4) requiring the judicial branch to provide funding to support BFS as it similarly is supported by criminal fine and fee revenue and forensic science is important to courts, and (5) requiring nonlocal government entities (such as the California Department of Corrections and Rehabilitation or CDCR) pay for their share of BFS services.

Additionally, DOJ discussed the benefits and drawbacks of various methods for implementing a cost-sharing model with local agencies. Such methods included establishing: (1) an hourly rate for services provided, (2) a flat fee by type of service provided, (3) a flat fee by county, and (4) a hybrid flat fee-hourly rate model. After its assessment of the cost-sharing model and alternative

<sup>17</sup> <https://lao.ca.gov/Publications/Report/4701>

funding options, DOJ maintained that it believes a General Fund backfill is the best approach for supporting BFS annual operations.

*Proposed Resources.* The Governor's budget proposes \$17.3 million in increased annual funding from the DNA Identification Fund to support BFS. This amount includes \$10 million to restore BFS's historical level of spending authority from the fund. In prior years, the budget partially addressed the DNA Identification Fund's shortfall by reducing the bureau's expenditure authority from the fund by \$10 million and redirecting \$10 million General Fund previously budgeted for CJIS to support BFS. CJIS then received a backfill from the Fingerprint Fees Account (FFA). (The FFA could not directly backfill BFS due to statutory limits on how the funds in FFA can be used.) As such actions are no longer sustainable due to the condition of the FFA, the Governor's budget proposes to restore the DNA Identification Fund to its historical expenditure levels. The proposed increase also includes \$7.3 million for BFS to support equipment replacement (\$5.8 million) and facility maintenance (\$1.5 million).

The Governor's budget proposes to transfer \$53.4 million General Fund on an ongoing basis to the DNA Identification Fund to backfill reductions in criminal fine and fee revenue deposited into the fund and to support the increased BFS funding levels discussed above. The Governor's budget also proposes provisional budget language authorizing the Department of Finance to transfer additional General Fund to the DNA Identification Fund if revenues deposited into the fund decline further and are insufficient to support BFS. This transfer could only occur 30 days after written notification is provided to the Legislature. To the extent that this proposed language is included in the annual budget act, the General Fund would be permanently responsible for backfilling the DNA Identification Fund to ensure there is sufficient funding to support BFS.

### **LAO Comments.**

*Governor's Proposal Would Permanently Address Ongoing Decline in DNA Identification Fund Revenues.* The Governor's proposal would fully address the ongoing decline in DNA Identification Fund revenues and provide BFS with a stable level of funding. This is because the General Fund would be permanently responsible for supporting any BFS costs that cannot be supported by the DNA Identification Fund.

*Increased DNA Identification Fund Support for BFS Reasonable.* The LAO finds that the Governor's proposed level of funding for BFS generally appears reasonable as DOJ has provided sufficient workload justification for the total level of funding provided for the bureau's operations as well as the ongoing need for equipment replacement and facility maintenance.

*Requiring Users of BFS Services to Partially Support BFS Merits Consideration.* As noted above, DOJ was directed to provide the Legislature with funding alternatives to support BFS that did not include the General Fund. Upon review of DOJ's March 2022 report on such alternative funding options, the LAO concludes that requiring users of BFS services to partially support BFS operations is the best option.



Specifically, the LAO finds that directing local governments to partially support BFS operations merits consideration for the following reasons:

- *BFS Provides Certain Local Governments Substantial Benefits.* City and county law enforcement and prosecutorial agencies are predominantly responsible for collecting and submitting forensic evidence for testing as well as using the evidence to pursue criminal convictions in court. However, certain counties and cities benefit significantly more than others. Specifically, while 12 counties and 8 cities currently use their own resources to support local criminal laboratories, 46 counties generally do not have to use any of their resources for criminal laboratory services. This is because BFS is effectively subsidizing the agencies in these counties with tens of millions of dollars in services annually. As such, the current system is inequitable.
- *Local Governments Lack Incentive to Use BFS Services Cost-Effectively.* BFS's current funding structure provides the agencies it serves with little incentive to use its services in a cost-effective manner. Since BFS does not charge for its services, these local agencies lack incentive to prioritize what forensic evidence is collected and submitted for testing. Their submissions instead are generally only limited by BFS's overall capacity and service levels, as determined by the amount of funding provided to the bureau in the annual state budget. In contrast, counties and cities that use their own resources to support their labs—or those that decide they want to pay a private laboratory for testing—have greater incentive to carefully prioritize what evidence should be tested and how quickly it should be done.

Similarly, the LAO finds that requiring nonlocal government entities pay for their share of BFS also merits consideration. As previously mentioned, this was a funding option identified in DOJ's March 2022 report. Specifically, DOJ notes that nearly 34 percent of BFS workload in 2020 was for nonlocal governmental entities—with the California Highway Patrol and CDCR as major users. Requiring nonlocal government entities pay for their share of services encourages entities to consider what evidence is submitted, why it is submitted, and whether it should be submitted to DOJ or another entity. The LAO notes that this could require some level of increased resources for state agencies that receive BFS services. However, this would reduce the General Fund backfill needed to support BFS.

*Most Other Potential Alternative BFS Funding Options Identified by DOJ Raise Concerns.* In reviewing DOJ's March 2022 report, the LAO identified various concerns about the viability of some of the potential funding options identified. Specifically, the LAO has concerns related to the following options:

- *General Tax Increase.* A general tax increase would effectively be an increase in General Fund resources as such taxes are typically deposited into the state's General Fund to support various purposes. As such, this does not represent an alternative other than simply using the General Fund. As noted above, the Legislature requested options other than the General Fund to support BFS.

- *Criminal History Background Check Fee Increase.* These fees are typically assessed to cover DOJ's costs for providing criminal history information for employment, licensing, or certification purposes—including the maintenance of the systems from which the criminal history information is obtained. BFS work does not seem as if it would be consistent with the intent of these fees. For example, it is unclear the extent to which applicants seeking background checks would benefit from BFS services.
- *Criminal Conviction Fee Increase.* Given the state's complex formula for distributing criminal fine and fee revenue, there is no guarantee that increasing this specific fee will actually increase the amount of revenue deposited in the DNA Identification Fund annually. This is because the complex formula dictates the order in which special funds receive criminal fine and fee revenue that is collected. Given the fund's priority order in this formula, it is not certain that it would receive the expected revenues as funds with a higher-priority order could receive the bulk of any additional revenue collected.
- *Requiring Judicial Branch Support.* While forensic science is a key component of evidence in criminal cases, the judicial branch is not responsible for determining whether a criminal case is to be filed and the type and quality of evidence provided to prosecute such cases. In fact, this is a responsibility of local prosecutors and law enforcement rather than the judicial branch who is responsible for fairly and objectively adjudicating such cases.

**LAO Recommendation.**

*Recommend Requiring BFS Users to Partially Support BFS and Providing Requested General Fund Backfill for Only One Year.* The LAO finds that requiring users of BFS services to partially support BFS operations is a better option for maintaining support for the bureau as it minimizes the impact on the General Fund and results in the users having incentive to prioritize what workload is submitted to BFS. Accordingly, the LAO recommends the Legislature require (1) users of BFS services to partially support BFS beginning in 2024-25 and (2) DOJ develop a plan for calculating each agency's share of the BFS services it uses by October 1, 2023. To allow for this new funding structure to be implemented, the LAO recommends the Legislature provide the proposed General Fund backfill—but only for one year.

**Staff Recommendation.** Hold Open.

### Issue 10: Fee Increase to Maintain Operations of the Missing Persons DNA Program

**Proposal.** The Governor's budget includes \$1,464,000 Missing Persons DNA Data Base Fund and 1.0 position in 2023-24, \$1,447,000 in 2024-25, and \$1,610,000 in 2025-26 and ongoing to maintain operations of the Missing Persons DNA Program (MPDP). This brings the total budget for the program to \$5.7 million. This proposal includes trailer bill language to increase the death certificate fee by \$1.63 to support the program's operating costs.

#### Panelists.

- Chris Ryan, Chief of Operations, Department of Justice
- Barry Miller, Bureau Chief, Bureau of Forensic Services, Department of Justice
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office
- Kevin Clark, Staff Finance Budget Analyst, Department of Finance

**Background.** The MPDP provides specialized DNA testing services to any California law enforcement agency that submits unidentified human remains or other biological samples from their missing person investigations. MPDP develops DNA profiles from the samples, which are often degraded and/or environmentally compromised, and compares them to federal missing person databases and relatives of missing persons. MPDP also assists in disaster response, providing on-site consultation, DNA collection kits, and transportation of case samples (California also does not have a State Coroner or Medical Examiner). Since 2001, the program has made identifications of more than 1,100 remains and missing persons. The current average case turnaround is about 2 months.

The MPDP is funded through a fee charged on each death certificate ordered in the state, which is deposited into the Missing Persons DNA Data Base Fund. The current fee is \$2.00, and has been unchanged for more than 20 years (it did not include a CPI adjustment). However, the programs operating costs are increasing, in part due to new technologies that require more expensive supplies and equipment, and the revenue generated by the fee is no longer sufficient to support the program.

The proposed budget increases the fee to \$3.63, generating an estimated \$2.6 million in revenue and bringing the total program budget to \$5.7 million (the program currently has budgetary authority greater than revenues, leading to the discrepancy between the amount of new revenue and the requested authority). The proposal also includes an additional supervisory position, as noted in the staffing chart below. The trailer bill language is keyed as a two-thirds vote.

	CIS II (now Crime Analyst)	Senior Criminalist	Criminalist Supervisor	Criminalist Manager
<b>Initial Authorized Staffing (2001)</b>	2	10	0	1
<b>Current Authorized Staffing</b>	2	9	1*	1
<b>Proposed Staffing</b>	2	9	2	1

\* The MPDP lost a vacant Senior Criminalist position when it was reclassified to this Criminalist Supervisor position. The program was in need of a second supervisor to assist with oversight of the program's eleven rank-and-file staff.

According to the DOF, the proposal would increase the cost of the average death certificate in California from \$21 to \$22.50 (costs vary by county). An informal survey of death certificate costs in other states shows that many states charge higher fees for death certificates, e.g.: Delaware (\$25), Georgia (\$25), Ohio (\$25), Oregon (\$25), Illinois (\$29), Alaska (\$30), New York (\$30), and Michigan (\$34).

**Staff Comments.** *Long term sustainability of program.* The proposed fee increase is based on the current workload of the MPDP. However, as shown in the table below from the BCP, DOJ expects the workload of this unit to continue increasing over time. It is not clear whether this is a sustainable solution to funding this program.

#### Workload History

	FY 2016-17*	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Analysis Requests Received	797	912	1159	1165	1272	1282
Requests Completed	746	892	1082	1120	1167	1334**
Ending Backlog	268	288	365	410	515	333
% Change In Requests Received***	-15.75%	14.43%	27.08%	0.52%	9.18%	0.79%

\* The decrease in requests received in FY 2016-17 may be attributable to the use by some coroner's offices of Rapid DNA testing instruments. Despite the availability of this new technology, it is only useful for typing good quality samples. Agencies will still rely on the MPDP for testing of compromised and degraded DNA samples.

\*\* In 2021-22, requests completed was higher than projected because the addition of a second supervisor enabled the program to investigate and close out a limited number of pending cases that no longer needed analysis.

\*\*\* The average change in the analysis requests for the last three fiscal years was an increase of 3.50%.

#### Projected Outcomes

	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27
Authorized Expenditures*	3,898	3,898	3,898	3,898	3,898
Anticipated Revenues	3,200	5,808	5,808	5,808	5,808
Authorized Positions	14	14	14	14	14
Analysis Requests Received**	1331	1379	1428	1479	1532
Requests Completed***	1156	1156	1156	1156	1156
Ending Backlog	563	785	1057	1380	1758

\* Authorized Expenditure is per the 2022-23 Budget Act Allotment.

\*\*After 2021-22, requests received are expected to return to pre-pandemic levels as the State returns to more normal operations. The projected increase in new requests is based on the average annual increase of 3.57% observed for 2019-20 through 2021-22 (See Table 2).

\*\*\* In 2021-22, 1,156 analysis requests were completed by the nine filled Senior Criminalist positions.

**Staff Recommendation.** Hold Open.

**Issue 11: Legal Workload and Implementation of Legislation**

**Proposal.** Governor’s budget proposes \$24.5 million in 2023-24 (\$15 million General Fund and \$9.5 million from the Legal Services Revolving Fund (LSRF), Antitrust Account, and Unfair Competition Law (UCL) Fund)—decreasing to \$20.6 million annually in 2027-28—to support DOJ’s legal workload.

**Panelists.**

- Chris Ryan, Chief of Operations, Department of Justice
- Thomas Patterson, Senior Assistant Attorney General, Civil Law Division, Department of Justice
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst’s Office
- Kevin Clark, Staff Finance Budget Analyst, Department of Finance

**Background.** The Attorney General (AG) is charged with various legal duties. These include investigating and prosecuting violations of state law when either the AG believes it is not being adequately enforced or when statutorily directed to. The AG also represents state agencies and employees in judicial proceedings (with some exceptions). About 53 percent of DOJ’s budget supports the Division of Legal Services, which is responsible for these litigation activities. This funding comes from various sources—about 40 percent from reimbursements (generally from state agencies receiving DOJ legal services), 35 percent from the state General Fund, 16 percent from state special funds (including litigation proceeds, which are generally payments to the state in exchange for the state ending its pursuit of legal action), and 9 percent from federal funds.

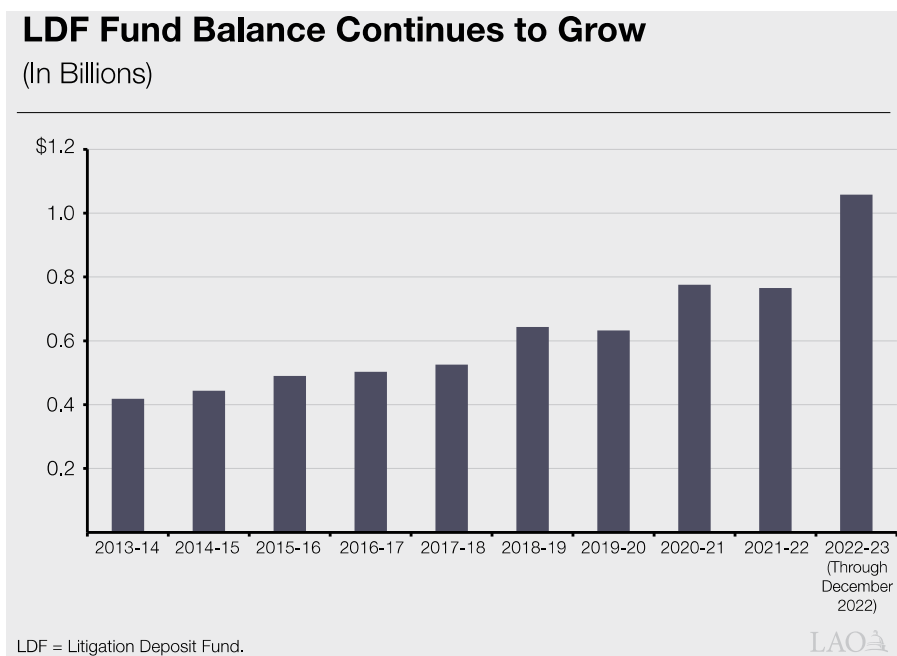
The Division of Legal Services is further divided into four subdivisions—Civil Law, Criminal Law, Medi-Cal Fraud and Elder Abuse, and Public Rights. Of the total amount of funding provided to support the division in 2022-23, \$241 million (or 37 percent) supported Civil Law, \$139 million (or 21 percent) supported Criminal Law, \$73 million (or 11 percent) supported Medi-Cal Fraud and Elder Abuse, and \$193 million (or 30 percent) supported Public Rights.

*Self-Initiated Workload.* DOJ can initiate legal actions, and defend or represent the state in actions filed by others. These costs are generally paid for from DOJ’s budget through General Fund dollars or special funds. DOJ has significant flexibility over this workload, as it is the sole decision maker in determining whether to initiate a case, how the case is initiated, and how cases are resolved.

*State Agencies Workload.* State agencies can request DOJ initiate legal action, defend or represent them in legal actions filed by others, or provide legal advice. DOJ typically bills state agencies for their costs, which are reflected as reimbursements in DOJ’s budget. (These reimbursements are deposited into a special fund, the Legal Services Revolving Fund.) State agencies generally pay for these costs from their own budgets, which can consist of General Fund and/or special fund dollars, such as licensing fee revenue. The DOJ has less flexibility over this workload, because decisions on whether to pursue legal action and how such cases are resolved are either determined by the state agency, or in partnership with the state agency.

**Litigation Deposit Fund (LDF).** The LDF is a state special fund created to receive litigation proceeds in cases where the state is a party to the legal action and no other state statutes specifically provide for (1) the handling and investing of the money and (2) how any earned interest is distributed. (The state generally earns interest from the investment of monies that are held prior to allocation, and DOJ indicated that interest is typically administered in the same manner as the principal.) The fund primarily supports payments to individuals and entities harmed by those breaking the law, as well as transfers to DOJ special funds to support DOJ litigation-related costs. State law requires that any monies remaining in the LDF that are not needed to satisfy court-ordered payments as documented in legal agreements or to support DOJ's litigation costs be transferred to the state General Fund no later than July 1 of each fiscal year.

Deposits of litigation proceeds into the LDF, as well as the amount of funds allocated from the LDF, vary over time. As shown below, the LDF fund balance—or the amount of money remaining in the fund at the end of the year after all revenues have been received and all allocations have been made—has grown significantly and relatively steadily over the past decade. As of the end of December 2022, the LDF fund balance was just under \$1.1 billion. According to DOJ, this balance includes \$633 million (57 percent) restricted by special fund statutes, court orders, or settlement agreements; \$2.2 million (0.2 percent) unrestricted funding; and \$483 million (43 percent) unavailable, e.g., the case is on appeal, the funds are held in trust for restitution or specified for other uses, etc. Over half of the restricted funding is in the Consumer Protection area, followed by Medi-Cal Fraud and Elder Abuse, False Claims, and Environmental areas. DOJ reported earning over \$3 million in interest in the final quarter of 2022.



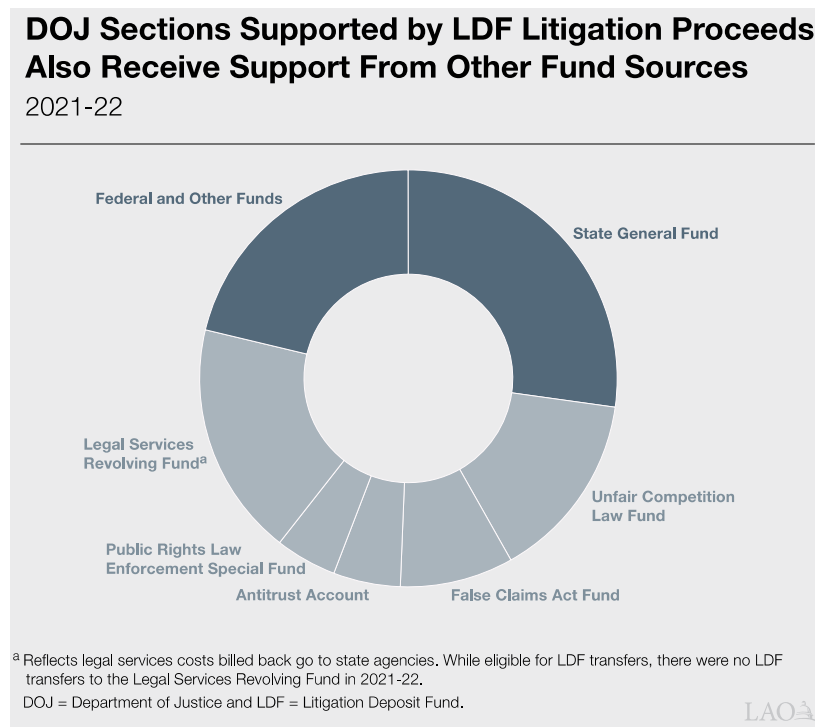
Source: LAO<sup>18</sup>

Because the LDF was created to hold monies as a trust fund, it is not reflected in or considered part of the state budget, similar to other state funds with this status. Instead, DOJ is only required

<sup>18</sup> <https://lao.ca.gov/Publications/Report/4701>

to report quarterly to the Legislature on the number of deposits received, the amount of interest received, the amount disbursed to claimants, and the amount used to support DOJ litigation costs. DOJ is generally authorized to make allocation decisions whenever, and to whomever, it deems appropriate, as long as the decisions are consistent with the terms of underlying legal agreements or state law. Until such allocations are made, monies remain in the LDF fund balance.

*Transfers to Special Funds.* Tens of millions of dollars in LDF monies are regularly transferred each year to four DOJ special funds: the Unfair Competition Law (UCL) Fund, the False Claims Act Fund, the Antitrust Account, and the Public Rights Law Enforcement Special Fund (PRLESF). State law specifies what types of litigation proceeds can be transferred into these funds and provides guidelines for how such proceeds are to be used. For example, state law requires the state's share of litigation proceeds from cases related to unlawful, unfair, or fraudulent business practices, as well as false or misleading advertising, be deposited into the UCL Fund to exclusively support the enforcement of consumer protection laws by the Attorney General. Most transfers to these DOJ special funds support work of roughly a dozen sections within the Public Rights Division as well as the Medi-Cal and Elder Abuse Division. As shown below, these sections generally receive support from other funds as well, including the state General Fund and federal funds. The specific level and mix of funding for these various sections can vary annually based on DOJ funding decisions.



Source: LAO<sup>19</sup>

**Fourteen Proposals Seeking to Implement Legislation.** The Governor's budget proposes \$11 million General Fund in 2023-24 (decreasing to \$10.4 million annually in 2027-28) to implement 14 pieces of enacted legislation. Some of these proposals require DOJ take certain actions. For

<sup>19</sup> <https://lao.ca.gov/Publications/Report/4701>

example, beginning July 2023, Chapter 326 of 2020 (AB 1506, McCarty) requires DOJ review law enforcement agencies' use of deadly force policies (upon agency request) and provide specific and customized recommendations. Other proposals authorize—but do not require—DOJ to take action. For example, beginning July 2023, Chapter 857 of 2022 (SB 301, Skinner) requires online marketplaces to mandate their high-volume, third-party sellers to (1) report specific information, (2) verify the provided information, (3) suspend future sales of third-party sellers that do not comply with reporting and other specified conditions, and (4) comply with certain recordkeeping procedures. DOJ is authorized to seek civil penalties, reasonable attorney's fees and costs, and preventative relief (such as an injunction) for violations.

***Four Proposals for Two Specific Cases and Other Legal Workload.*** The Governor's budget proposes \$13.4 million in 2023-24 (\$4 million General Fund and \$9.5 million from various special funds)—decreasing to \$10.2 million annually in 2027-28—for four budget proposals supporting DOJ legal workload. These are outlined below.

***Outside Co-Counsel.*** To mitigate a rise in evictions caused by the pandemic, the state and various local entities passed various eviction moratoria including the COVID-19 Tenant Relief Act of 2020 (Relief Act) in August 2020 which expired in September 2021. A group of eighty-nine property owners and managers filed two suits challenging the Relief Act. Both cases involve state and federal inverse condemnation claims, and one also asserts a commandeering claim under the Emergency Services Act. Both cases are not class actions because each property owner's rights are unique to that owner. DOJ has determined that it does not have the resources to defend all 89 claims, particularly for discovery and evaluation of damages, and is requesting \$3 million per year for four years to retain outside legal assistance, including a property valuation expert.

***Housing Strike Force.*** The Attorney General announced the formation of the Housing Strike Force on November 3, 2021, including a public interface to receive public comments and complaints. The DOJ has received over 1,684 emails to that address as of July 11, 2022, but the section has been unable to pursue those tips and complaints due to insufficient resources. The Strike Force is a collaborative effort of attorneys in four sections within the DOJ's Public Rights Division, each approaching the housing crisis from their areas of expertise. These include the Civil Rights Enforcement Section, which focuses on housing discrimination and access; the Consumer Protection Section, which focuses on tenant protection; the Environmental Section, which investigates pollution in relation to housing; and the Land Use and Conservation Section, which focuses on housing production. Resources are being requested for the Civil Rights Enforcement and Land Use and Conservation Sections; the other two are supporting the Housing Strike Force workload within their existing budgets.

The Land Use and Conservation Section represents the Department of Housing and Community Development (HCD), both in an advisory capacity and in litigation, supporting its decisions enforcing California's housing laws, including the Housing Element Law and SB 9 (Atkins), Chapter 162, Statute of 2021. Prior to the advent of the Housing Strike Force, the section's housing work was all on behalf of HCD, and was almost entirely client-funded (unlike the other sections). The section is also interested in supporting to cities facing community opposition to housing production. The work of HCD has expanded recently, as it has received additional funding and formed a Housing Accountability Unit to track impediments to housing development and enforce



housing laws. However, they are limited to enforcing specific housing laws and cannot pursue criminal charges. The DOJ indicated that they have regular communication with this unit to ensure their efforts are coordinated and not duplicative.

The proposed budget includes \$1,375,000 (\$973,000 General Fund and \$402,000 Legal Services Revolving Fund) and 4.0 positions in 2023-24 and \$1,337,000 in 2024-25 and ongoing to address litigation workload related to housing production and planning, expand enforcement of the state's housing production laws and fair housing laws, and take a proactive approach to increase housing.

*Antitrust.* DOJ is requesting \$7,956,000 (\$3,978,000 Attorney General Antitrust Account and \$3,978,000 Unfair Competition Law Fund) in 2023-24 and \$7,786,000 (\$3,893,000 Attorney General Antitrust Account and \$3,893,000 Unfair Competition Law Fund) ongoing to prosecute antitrust violations within the gas and oil, technology, and agricultural sectors. The proposal also includes 12 additional attorneys, 4 paralegals, 2 supervising attorneys, and 2 research specialists. The Antitrust Law Section currently has 36 staff (25 attorneys, 3 supervising attorneys, and 8 paralegals). DOJ indicated that current workload is roughly evenly split three ways: tech, gasoline, and other matters.

While antitrust laws are generally enforced at the federal level, the DOJ asserts that there is a need for additional state assistance, particularly for cases that disproportionately affect California. For example, DOJ cited mergers between agricultural entities that primarily affect California, and federal agencies are looking to the California DOJ to investigate. In the area of oil and gas, DOJ asserts that neither the federal agencies nor any other states have strong interests in California's oil and gas markets, despite calls for investigations of rising gasoline prices. Similarly, DOJ asserts the need to investigate large technology companies due to potential antitrust violations. In 2021-22, DOJ allocated and self-funded six additional positions for technology investigations temporarily. Recent reports indicate that mergers and acquisitions have increased dramatically – deal volume in 2021 was 60% higher than 2020, which was 50% higher than 2019; the number of transactions in 2021 was 24% higher than 2020<sup>20</sup>.

*Wage Theft.* DOJ is requesting \$1.1 million UCL Fund ongoing and 4 positions for its Worker Rights and Fair Labor Section (WRFLS) to pursue wage theft criminal prosecutions. The section currently consists of 18 positions (15 attorneys, 1 investigative auditor, and 2 paralegals), including 11 unfunded vacant positions that were transferred from other areas in the Department and funded using existing resources in the Public Rights Division. As compared to similar efforts at the Department of Industrial Relations, the Attorney General has broader enforcement powers, and can expand investigations to include tax evasion, licensing violations, insurance fraud, deceptive practices, and unfair competition claims, in addition to violations of the labor code. DOJ also has the unique ability to seek criminal sanctions. WRFLS has investigated independent contractor misclassifications, “labor consultants” who help employers evade workers compensation payments, illegal non-compete clauses, among other actions. The section is involved in multi-state efforts targeting deceptive practices and protecting worker rights, including filing amicus briefs. DOJ also states that the Section is receiving a steady stream of requests from worker advocates; federal, state, and local government agencies; and the public to examine new cases.

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<sup>20</sup> <https://corpgov.law.harvard.edu/2022/01/27/mergers-and-acquisitions-2022/>

The following tables summarize the proposals included in this issue.

### Summary of 2023-24 Legal-Related Budget Proposals by Requested Fund Source

(In Millions)

Budget Proposal	Legal Section and Division	2023-24	2024-25	2025-26	2026-27	2027-28 and Ongoing
<b>General Fund</b>						
Outside Co-Counsel	Torts (Civil)	\$3.0	\$3.0	\$3.0	\$3.0	—
Chapter 739 of 2022 (AB 256, Kalra): Criminal Procedure Discrimination	AWT (Criminal)	2.2	2.1	0.8	0.8	—
Chapter 806 of 2022 (AB 2778, McCarty): Race-Blind Charging <sup>a</sup>	Various (Criminal)	0.8	2.4	2.4	2.4	\$2.4
Chapter 98 of 2022 (AB 1594, Ting): Firearm Civil Suits	Consumer (PRD)	0.6	0.6	0.6	0.6	0.6
Chapter 269 of 2022 (AB 587, Gabriel): Social Media Companies Terms of Service	Consumer (PRD)	0.7	0.6	0.6	0.6	0.6
Chapter 320 of 2022 (AB 2273, Wicks): California Age-Appropriate Design Code Act	Consumer (PRD)	0.9	1.2	1.1	1.1	1.1
Chapter 642 of 2022 (AB 1837, Bonta): Residential Real Property Foreclosure	Consumer (PRD)	0.2	0.2	0.2	0.2	0.2
Chapter 700 of 2022 (AB 2879, Low): Cyberbullying Online Content	Consumer (PRD)	0.3	0.4	0.4	0.4	0.4
Chapter 857 of 2022 (SB 301, Skinner): Online Marketplaces	Consumer (PRD)	0.8	0.8	0.8	0.8	0.8
Chapter 326 of 2020 (AB 1506, McCarty): Police Practices Division	CRES (PRD)	1.8	1.8	1.8	1.8	1.8
Chapter 555 of 2022 (AB 1287, Bauer-Kahan): Gender Price Discrimination	CRES (PRD)	0.3	0.3	0.3	0.3	0.3
Chapter 750 of 2021 (AB 1084, Low): Gender Neutral Retail Departments	CRES (PRD)	0.3	0.5	0.5	0.5	0.5
Chapter 854 of 2022 (AB 655, Kalra): California Law Enforcement Accountability Reform Act	CRES (PRD)	0.3	0.3	0.3	0.3	0.3
Chapter 986 of 2022 (SB 863, Min): Domestic Violence Death Review Teams	CRES (PRD)	1.5	1.1	1.1	1.1	1.1
Chapter 475 of 2022 (AB 923, Ramos): Government-to-Government Consultation Act <sup>b</sup>	IGLS (PRD)	0.3	0.3	0.3	0.3	0.3
Housing Strike Force	Land and CRES (PRD)	1.0	0.9	0.9	0.9	0.9
Subtotal, General Fund		(\$15.0)	(\$16.6)	(\$15.2)	(\$15.2)	(\$11.4)
<b>Special Funds</b>						
<b>Legal Services Revolving Fund</b>						
Housing Strike Force	Land and CRES (PRD)	\$0.4	\$0.4	\$0.4	\$0.4	\$0.4
<b>Antitrust Account</b>						
Antitrust Gasoline Pricing, Agriculture, and Technology Enforcement	Antitrust (PRD)	\$4.0	\$3.9	\$3.9	\$3.9	\$3.9
<b>Unfair Competition Law Fund</b>						
Antitrust Gasoline Pricing, Agriculture, and Technology Enforcement	Antitrust (PRD)	\$4.0	\$3.9	\$3.9	\$3.9	\$3.9
Wage Theft Criminal Prosecutions	WRFLS (PRD)	1.1	1.1	1.1	1.1	1.1
Subtotal, Special Funds		(\$9.5)	(\$9.2)	(\$9.2)	(\$9.2)	(\$9.2)
<b>Totals, All Funds</b>		<b>\$24.5</b>	<b>\$25.8</b>	<b>\$24.4</b>	<b>\$24.4</b>	<b>\$20.6</b>

<sup>a</sup> Also reflects associated Research Center Costs.

<sup>b</sup> Adjusted to reflect only legal-related portion of the request.

Consumer = Consumer Protection Section; Torts = Torts and Condemnation Section; CRES = Civil Rights Enforcement Section; AWT = Appeals, Writs and Trials Section; PRD = Public Rights Division; Land = Land Use and Conservation Section; WRFLS = Worker Rights and Fair Labor Section; and IGLS = Indian and Gaming Law Section.

## Description of 2023-24 Legal-Related Budget Proposals

Budget Proposal	Description
<b>Recently Enacted Legislation</b>	
Chapter 739 of 2022 (AB 256, Kalra): Criminal Procedure Discrimination	Authorizes people to file a petition alleging that the state sought or obtained a criminal conviction or sentence on the basis of sex, ethnicity, or national origin and for the court to impose specified remedies (such as vacating the conviction). Also authorizes the use of nonstatistical evidence to demonstrate racial bias and requires the court to consider systemic and institutional racial bias and racial profiling when assessing evidence of racial bias. The Department of Justice (DOJ) requests resources to address such petitions from past convictions that are subsequently appealed.
Chapter 806 of 2022 (AB 2778, McCarty): Race-Blind Charging	Beginning January 2024, requires DOJ develop and publish “race-blind charging” guidelines for agencies prosecuting felonies or misdemeanors to implement a process which redacts suspect, victim, or witness racial identifying information from charging documents received from law enforcement agencies. Beginning January 2025, requires such prosecuting agencies implement versions of the DOJ guidelines. DOJ requests resources to develop these guidelines and to complete redaction and race-blind reviews of DOJ criminal cases.
Chapter 98 of 2022 (AB 1594, Ting): Firearm Civil Suits	Beginning July 2023, requires firearm industry members comply with a specified standard of conduct—such as to implement reasonable controls to prevent firearm-related loss or theft. Prohibits firearm industry members from manufacturing, marketing, importing, or selling firearm-related products that are abnormally dangerous and likely to create an unreasonable risk of harm to public health and safety. Authorizes a person suffering harm because of a firearm industry member’s conduct to seek court relief. Authorizes DOJ, city attorneys, and county counsel to bring civil actions for violations and allows the court to award damages, attorney’s fees and costs, and injunctive or other relief. DOJ requests resources to investigate and pursue such cases.
Chapter 269 of 2022 (AB 587, Gabriel): Social Media Companies Terms of Service	Requires a social media company post their terms of service, including certain specific information, for each social media platform it owns or operates and report certain information semiannually to DOJ beginning January 2024. Requires DOJ make such reports publicly available on its website. Authorizes DOJ and select city attorneys to seek civil penalties. For DOJ actions, penalty revenues are split equally between the state General Fund and the county in which the judgment was entered. DOJ requests resources to post reports on its website as well as to investigate and pursue such cases.
Chapter 320 of 2022 (AB 2273, Wicks): California Age- Appropriate Design Code Act	Beginning July 2024, requires businesses that provide an online service or product likely to be accessed by children comply with certain privacy requirements—including the completion of a data protection impact assessment for any new service or product which must be provided to DOJ within five business days upon written request. Authorizes DOJ to seek civil penalties for any violations and requires that any penalties, fees, and expenses recovered be deposited into the Consumer Privacy Fund, with the intent that they be used to fully offset costs incurred by DOJ. DOJ requests resources to conduct investigations and pursue cases, to review complaints and impact assessments, and other activities.
Chapter 642 of 2022 (AB 1837, Bonta): Residential Real Property Foreclosure	Makes various changes to processes and requirements related to the sale of residential properties. Requires a trustee or its authorized agent send specific information to DOJ if the winning bidder at a trustee sale of property pursuant to a power of sale under a mortgage or deed of trust is an eligible tenant buyer, prospective owner-occupant, or other eligible bidder and requires DOJ publish a summary of such information on its website. Authorizes DOJ, county counsel, city attorneys, and district attorneys bring legal action to enforce specific residential property foreclosure sale procedures and requirements. DOJ requests resources to process the submitted data, respond to requests for information, and assist with investigations and legal cases.
Chapter 700 of 2022 (AB 2879, Low): Cyberbullying Online Content	Requires social media platforms disclose all cyberbullying reporting procedures in its terms of service and provide an online mechanism to report cyberbullying or any content that violates existing terms of service. Beginning September 2023, authorizes DOJ to seek civil penalties and injunctive relief for violations. DOJ requests resources to investigate and pursue such cases.
Chapter 857 of 2022 (SB 301, Skinner): Online Marketplaces	Requires online marketplaces to require their high-volume third-party sellers report certain specific information, to verify the provided information, to suspend future sales of third-party sellers that do not comply with reporting and other specified conditions, and to comply with certain recordkeeping procedures. Beginning July 2023, authorizes DOJ to seek civil penalties, reasonable attorney’s fees and costs, and preventative relief (such as an injunction) for violations. DOJ requests resources to investigate and pursue such cases.

(continued)

Name of Budget Proposal	Description
Chapter 326 of 2020 (AB 1506, McCarty)	Requires DOJ investigate officer-involved shootings resulting in the death of an unarmed citizen. Also requires DOJ review, upon the request of a local law enforcement agency, the agency's use of deadly force policies and make recommendations. DOJ requests resources to review use of force policies and make recommendations.
Chapter 555 of 2022 (AB 1287, Bauer-Kahan)	Prohibits a person or business from charging a different price for any two goods that are substantially similar if the difference is based on the gender of the people for whom the goods are marketed and intended. Authorizes DOJ to seek a court order, after providing 5-day notice to the defendant, to prevent the continuation of such practices and allows the court to impose civil penalties. DOJ requests resources to investigate and pursue such cases
Chapter 750 of 2022 (AB 1084, Low)	Requires retail department stores physically located in the state with a total of 500 or more employees that sells childcare items or toys to maintain a gender neutral section area in which a reasonable selection shall be displayed. Beginning January 2024, authorizes DOJ, district attorneys, or city attorneys seek civil penalties and reasonable attorney's fees and costs for violations of the law. DOJ seeks resources to process, investigate, and pursue such cases as well as any other legal violations that emerge.
Chapter 854 of 2022 (AB 655, Kalra)	Requires public agencies investigate any complaint alleging its employed peace officers engaged in membership in a hate group, participated in hate group activity, or advocated public expressions of hate and requires DOJ develop guidelines for investigation and adjudication of these complaints by local agencies. DOJ requests resources to develop such guidelines, responding to inquiries, providing technical assistance to local agencies, and enforce compliance.
Chapter 986 of 2022 (SB 863, Min)	Authorizes interagency domestic violence death review teams to assist local agencies identify and review domestic violence near-death cases. Subject to available funding, requires DOJ develop by January 2025 a protocol to facilitate communication between persons conducting autopsies and those involved in domestic violence case to ensure such domestic violence incidences, near-deaths, and deaths are recognized and surviving family members receive appropriate services. Adds near-deaths to the domestic violence related data that may be collected and reported annually. DOJ requests resources to develop this protocol, to collect near-death domestic violence data, to facilitate the sharing of data, and to issue an annual report on an ongoing basis.
Chapter 475 of 2022 (AB 923, Ramos)	Encourages state agencies to consult on a government-to-government basis with tribes within 60 days of a tribal request and designates specific state officials (including the Attorney General) authorized to represent the state in such consultations. Requires these designated state officials complete an annual training on such consultations. DOJ seeks additional resources to provide legal advice and representation in tribal issues.
<b>Special Funds</b>	
Outside Co-Counsel	DOJ requests resources to pay for private legal services to assist in the state's defense in two pending cases related to state pandemic eviction-related laws.
Housing Strike Force	DOJ requests resources to support increased housing-related litigation workload--specifically related to land use, conservation, and civil rights--of its Housing Strike Force.
Antitrust Gasoline Pricing, Agriculture, and Technology Enforcement	DOJ requests resources to support increased workload to investigate and prosecute antitrust violations in the technology, gasoline and oil, and agriculture sectors.
Wage Theft Criminal Prosecutions	DOJ requests resources to support increased workload for wage theft criminal investigations and prosecutions as well as other labor-related violations.

## LAO Comments.

*Legal Workload Would Increase Due to Enacted Legislation and Other Factors...* Some of the budget proposals to implement recently enacted legislation direct DOJ to engage in certain new activities that are expected to generate ongoing workload. For example, AB 1506 (McCarty), Chapter 326, Statutes of 2020 allows for any law enforcement agency to request DOJ review its use of force policies and requires DOJ to provide individualized recommendations. This is new

workload that is likely to persist into the future given the number of law enforcement agencies in the state. Similarly, DOJ has demonstrated that the state can benefit from increased legal activity in certain areas—such as housing and wage theft—as it could reduce potential harm to Californians. For example, wage theft-related legal action can address business practices (such as employee misclassification or tax evasion) that are harmful to workers. DOJ has provided sufficient workload justification for these proposals that suggests additional resources appear to be needed. As such, it would be reasonable to provide the requested funding to support this workload on the assumption that all funding provided for legal activities is currently used efficiently and effectively.

Other budget proposals to implement recently enacted legislation authorize—but do not require—DOJ action. This provides DOJ with discretion on how much workload is generated—such as whether DOJ pursues investigations and litigation as well as how many such cases are initiated. For example, SB 301 (Skinner), Chapter 857, Statutes of 2022 authorizes DOJ to seek civil penalties and other remedies if online marketplaces do not comply with state law. It is important that DOJ has the ability to enforce such laws and that it do so if the law is violated. However, it is unclear the extent to which sufficient workload would be generated on an ongoing basis. For example, businesses would likely adapt their business practices to comply with Chapter 857 in the coming years. This—along with the threat of potential DOJ litigation—could reduce illegal activity and require little resources for DOJ litigation on an ongoing basis.

*...But Unclear Whether Requested Resources Are Needed.* The Legislature currently lacks information on how DOJ prioritizes its workload, how it uses its appropriated funds, and the extent to which LDF or offsetting revenues are available to support DOJ workload. This makes it difficult for the Legislature to determine whether additional resources are truly needed or if the Legislature could instead redirect existing resources to support this workload.

*Difficult for Legislature to Monitor How Funding for Legal Workload Is Used Over Time.* Annual budgets since 2009-10 have typically appropriated funding to the entire Legal Division from various fund sources. This means that DOJ has flexibility on how such resources are specifically used across the division. This includes how the legal division is organized (such as how staff are divided into sections) as well as what legal investigations and litigation are pursued based on DOJ priorities.

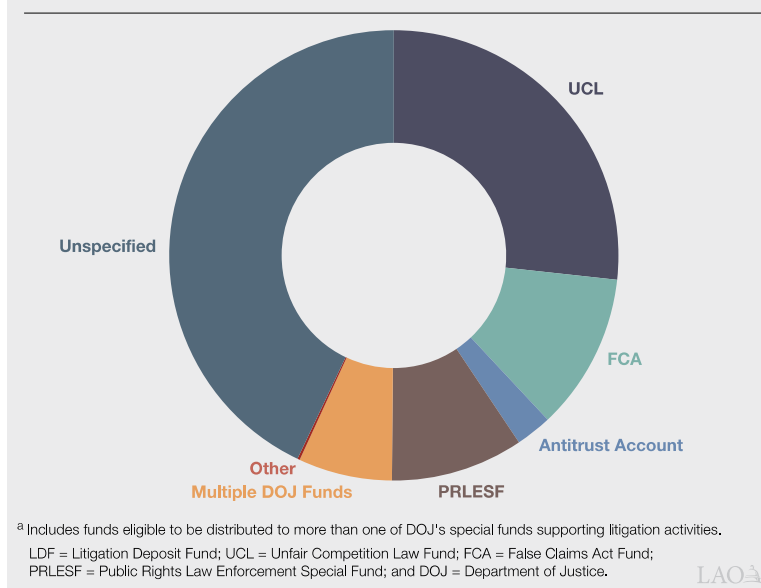
Such flexibility can be a major benefit to the state as it allows DOJ to pivot quickly to address the issues most likely to significantly impact Californians as well as to focus resources where necessary (such as if a case or investigation moves forward suddenly due to court action). It also allows DOJ to “test” the use of resources in a particular way before approaching the Legislature to seek ongoing funding. For example, because it was a priority for the Attorney General at the time, DOJ established the Bureau of Children’s Justice in 2014-15—to focus on legal workload related to children (such as school discrimination)—using one-time settlement revenues and existing positions redirected from the Public Rights Division. The bureau’s work was then used to justify DOJ’s subsequent 2018-19 budget request, which was approved, for \$3.6 million on an ongoing basis from the PRLESF and 14 positions. In contrast, such a test that generated outcomes that were not effective or did not meet legislative expectations or priorities would demonstrate that ongoing funding was not merited.

However, this flexibility can make it difficult to monitor how resources provided to support DOJ's legal workload are used over time. Some DOJ budget requests seek additional funding for particular purposes. However, over time, it is unclear whether such resources are still being used for that purpose or if the resources have been redirected to other workload that has become a greater priority. For example, DOJ received \$6.5 million in increased annual General Fund resources and 31 positions beginning in 2017-18 for increased workload related to challenging or responding to various federal directives that could significantly impact California in a negative manner. With a different federal administration issuing fewer such directives, it is unclear how this ongoing funding is currently used or whether the activities it is supporting are consistent with legislative priorities. Similarly, while DOJ budget requests seeking additional resources typically focus on a particular section, this flexibility could allow DOJ to shift resources between its subdivisions and sections. A lack of transparency on how legal funding is used across the Legal Division broadly makes it difficult for the Legislature to assess whether additional resources are truly needed or if funding could instead be redirected from other DOJ legal workload on an ongoing or temporary basis.

*Unclear Whether LDF Could Support Workload Given Limited Opportunity for Legislative Oversight of LDF.* It is unclear the extent to which funds in the LDF are eligible for transfer to support DOJ workload (all litigation funds that DOJ has decision-making authority over, not pending allocation to specific individuals or for narrowly defined purposes or cases on appeal). For example, LDF funds may be available for transfer to the UCL Fund to support the Consumer Protection Section—in lieu of the requested General Fund. This uncertainty is generally because current state law and DOJ practices related to the LDF limit the opportunity for the Legislature to conduct effective oversight of the LDF. Based on a review of high-level, DOJ-provided data, the LAO estimated that nearly 60 percent of the LDF fund balance could be eligible for transfer to various special funds. The status of the remaining 40 percent is unclear, as shown below.

### Nearly 60 Percent of LDF Fund Balance Could Be Eligible for Transfer to Other Special Funds

As of January 2023



*Maximizing Use of LDF Monies Would Reduce Need for General Fund Resources.* To the extent LDF monies were available to support DOJ legal activities, it would reduce the cost pressure on the General Fund. This is notable as the Governor's budget proposes various budget solutions to address the estimated budget problem for 2023-24. However, the LAO's estimates suggest the budget problem is likely to be larger in May. Moreover, even under Governor's budget assumptions, the proposed solutions also are insufficient to keep the state budget balanced in future years, with projected out-year deficits in the \$4 billion to \$9 billion range. Reducing the amount of General Fund needed to support such requests on an ongoing basis would provide additional General Fund relief in the budget and future years relative to the Governor's budget.

*Unclear How DOJ Accounts for Offsetting Revenue.* Several of the proposed budget requests pertain to implementing legislation that authorizes DOJ to seek civil penalties and/or reasonable attorney fees and costs—some of which is intended to offset DOJ costs. For example, AB 2273 (Wicks), Chapter 320, Statutes of 2022 requires businesses that provide an online service or product likely to be accessed by children comply with certain privacy requirements and authorizes DOJ to seek civil penalties for any violations. AB 2273 further requires that any penalties, fees, and expenses recovered be deposited into the Consumer Privacy Fund, with the intent that they be used to fully offset costs incurred by DOJ. DOJ, however, is requesting General Fund resources to implement AB 2273. While General Fund or other funds could be needed to initially pursue such cases, litigation proceeds should be available to reimburse or offset such funds in the future. In discussions with DOJ, it is unclear the extent to which such penalty revenues and attorneys' fees will be sought, how much might be obtained, and the extent to which they will be used to offset this workload.

*Anti-Trust Gasoline Pricing, Agriculture and Technology Enforcement.* DOJ was able to identify recent and potential legal workload in particular sectors which could benefit California. For example, California is the home of a significant number of technology firms where antitrust violations can result in harm to consumers. DOJ temporarily redirected six existing unfunded attorney positions within the Public Rights Division to the Antitrust Law Section in 2021-22 and supported them using a total of \$1.4 million in General Fund, Antitrust Account, and UCL Fund savings. According to DOJ, this redirection allowed DOJ to conduct one new major investigation in the technology industry which is anticipated to conclude in 2022-23 and result in litigation or a significant settlement. In combination, this suggests that additional, dedicated resources could be needed and benefit the state.

*Unclear Whether Sufficient Revenue to Support Ongoing Antitrust Law Section Costs.* While additional resources could potentially be needed for increased antitrust legal activities which could benefit the state, it is unclear if sufficient revenue will be generated for the Antitrust Account and UCL Fund to support the ongoing cost of increased investigations and prosecutions of antitrust violations. This is because the two funds partially rely on revenue generated through litigation proceeds from antitrust cases that typically are complex, technical, resource intensive, and can take quite a bit of time to resolve. While DOJ currently has sufficient Antitrust Account and UCL Fund revenues to support the increased workload costs temporarily, it is unclear whether these funds will receive sufficient proceeds from cases pursued by the Antitrust Law Section to support the section's workload costs on an ongoing basis.



***Housing Strike Force.*** The DOJ has been able to identify recent workload, as well as potential forthcoming workload, related to ensuring compliance with recently enacted housing related laws. Part of this work would be conducted in partnership with HCD to ensure HCD's expertise is utilized. This part of the work would be supported by the LSRF portion of the budget request as DOJ would bill HCD for this workload. In addition, DOJ will pursue certain legal activities separate from HCD under the Attorney General's broad authority. Pursuing action in this manner can sometimes be a cost-effective method of enforcing state laws. For example, if a local jurisdiction seeks to implement state law in a manner that DOJ interprets to be inappropriate and HCD believes it does not have the authority to pursue legal action, immediate DOJ legal intervention can deter such implementation by other local jurisdictions as well as limit the amount of litigation generated. Such work would be supported by the proposed General Fund resources.

***Ongoing Workload and Outcomes for Housing Strike Force Unclear.*** In recent years, there has been an increase in housing related laws which is expected to continue in the near future as it remains a significant area of concern for the Legislature, state and local government entities, and members of the public. This could result in disagreements over how such laws are or should be implemented and enforced, which could then result in litigation workload for DOJ. However, it is unclear whether the ongoing workload would remain high enough to justify the requested resources on an ongoing basis.

Additionally, the LAO notes that it is unclear the extent to which such workload may be impacted by HCD's new Housing Accountability Unit in the future. This new unit was created in 2021-22 to hold jurisdictions accountable for meeting their housing commitments and complying with state housing laws. As a result, the new unit could result in more reimbursable DOJ workload being pursued in coordination with HCD due to increased violations being referred to DOJ for legal action. As this unit and DOJ's Housing Strike Force becomes fully operational, it will be important to ensure legal activities are pursued in the most efficient and effective manner. Similarly, it is possible that DOJ's workload could be impacted by the activities of the Civil Rights Department (formerly the Department of Fair Employment and Housing), which is tasked with protecting Californians from unlawful discrimination in housing and other areas. For example, the department could increase its enforcement actions, which could have the effect of reducing the workload of DOJ. This is because a portion of the requested resources would support DOJ's Civil Rights Enforcement Section, which could work on issues similar to those handled by the Civil Rights Department. Given this housing workload uncertainty, the Legislature could consider whether annual reporting to monitor DOJ work in this area would be beneficial to conduct ongoing oversight over state legal activities in this area.

### **LAO Recommendation.**

***Recommend Requiring Annual Reporting on Legal Workload and Providing Requested Funding on a Two-Year Basis.*** The Governor's budget proposes \$24.5 million in 2023-24 (\$15 million General Fund and \$9.5 million special funds), decreasing to \$20.6 million annually in 2027-28, to support 18 budget proposals implementing enacted legislation and increasing legal activities in key areas (such as pursuing more antitrust litigation). The LAO finds that implementing the enacted legislation and increasing legal activities in key areas would increase DOJ's workload. However, the LAO also finds that there is insufficient information on how DOJ prioritizes its



existing resources and the extent to which litigation proceeds are available to support DOJ workload. This makes it difficult for the Legislature to determine whether DOJ truly needs additional resources or if the workload could be supported with existing resources or litigation proceeds. Accordingly, the LAO recommends the Legislature (1) direct DOJ to report annually on its legal workload beginning January 2025 and (2) provide the requested funding on a two-year basis to support the increased workload while the recommended report is completed and analyzed to determine appropriate funding levels in the future.

**Staff Recommendation.** Hold Open.

## Issue 12: Firearms Workload

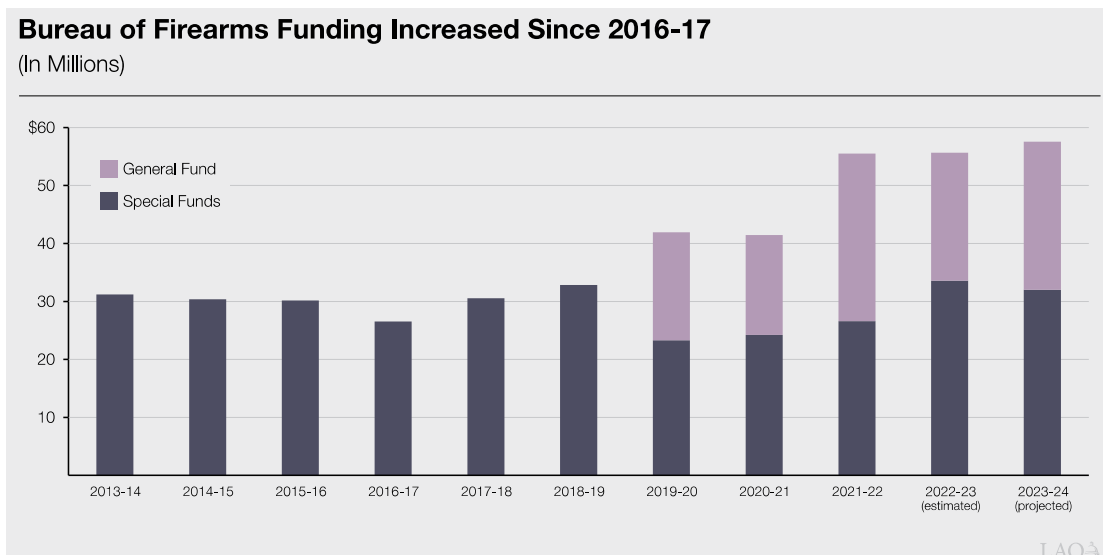
**Proposal.** The Governor’s budget proposes \$6.9 million in 2023-24 (\$6.3 million General Fund and \$573,000 from the DROS Special Account)—declining to \$3.5 million annually beginning in 2026-27 (\$3.3 million General Fund and \$179,000 from the DROS Special Account)—to support DOJ firearm workload. The proposed funding would support seven budget proposals, including five related to workload resulting from recently enacted legislation.

### Panelists.

- Chris Ryan, Chief of Operations, Department of Justice
- Mayra Morales, Staff Services Manager III, Bureau of Forensic Services, Department of Justice
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst’s Office
- Kevin Clark, Staff Finance Budget Analyst, Department of Finance

**Background.** DOJ’s Bureau of Firearms (BOF) is primarily responsible for the regulation and enforcement of the state’s firearm and ammunition laws. This includes conducting background checks, licensing vendors, conducting vendor compliance investigations, ensuring lawful possession of firearms and ammunition, and administering various other programs. For example, BOF has enforcement teams who are primarily responsible for investigating the illegal purchase or possession of firearms and ammunition, as well as seizing them from individuals who are prohibited from owning or possessing them.

Support for BOF has increased over the past decade from \$31.2 million in 2013-14 to \$55.7 million in 2022-23, an increase of 78 percent. BOF began receiving General Fund support in 2019-20, and received 40 percent General Fund and 60 percent Special Fund in 2022-23. Most of the General Fund is used to support the enforcement teams (the 2019 Budget shifted full support of these teams to General Fund). CJIS separately receives millions of dollars annually from various fund sources to maintain and update various databases, such as the Automated Firearms System which tracks firearm serial numbers, needed to support BOF’s activities.

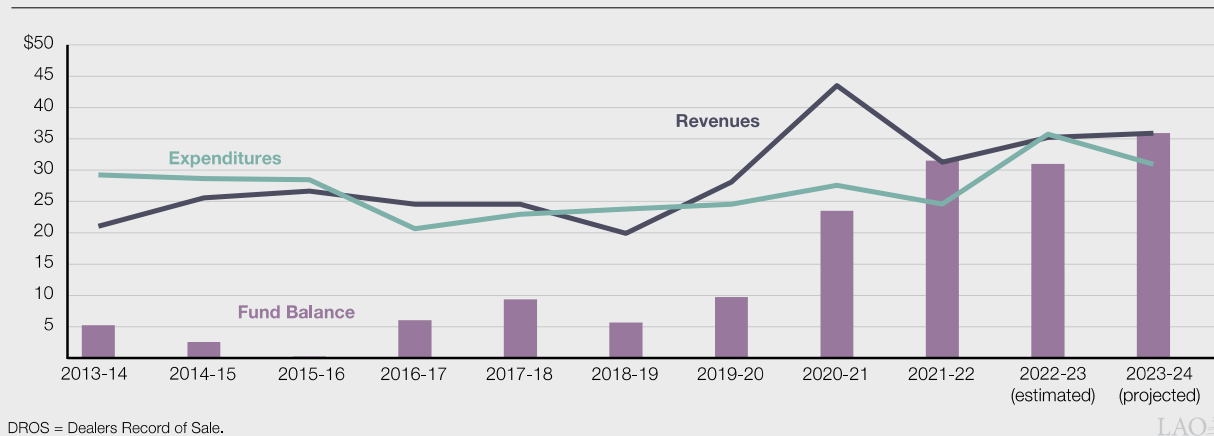


**DROS Special Account.** State law authorizes DOJ to charge various fees related to firearms and ammunition that are deposited into special funds to support BOF programs and activities. For example, an individual purchasing a firearm currently pays fees totaling \$37.19—a \$31.19 fee deposited into the DROS Special Account (the “DROS fee”), a \$5 fee into the Firearm Safety and Enforcement Special Fund, and a \$1 fee into the Firearm Safety Account. State law also authorizes DOJ to administratively increase some of these fees to account for inflation as long as the fee does not exceed DOJ’s regulatory and enforcement costs. State law authorizes revenues deposited into each of these special funds to be used for various purposes.

State law authorizes the DROS Special Account to support a wide range of BOF programs and activities (as well as CJIS activities needed to support BOF workload). As shown below, revenues often fluctuate from year to year, generally reflecting changes in fee levels and the number of firearms sold. DROS Special Account expenditures routinely exceeded revenues prior to 2019-20—resulting in the use and decline of the fund balance. To help ensure sufficient revenues would be available to support BOF workload, Chapter 736 of 2019 (AB 1669, Bonta) enabled DOJ to increase the DROS fee charged from \$19 to \$31.19. This resulted in DROS Special Account revenues generally exceeding expenditures in recent years—thereby allowing the fund balance to steadily increase. The Governor’s budget estimates \$35.9 million in DROS Special Account revenues in 2023-24 and expenditures of \$30.9 million, resulting in a fund balance of \$35.9 million at the end of the year.

### DROS Special Account Fund Balance Increasing in Recent Years

(In Millions)



The Governor’s budget proposes \$6.9 million in 2023-24 (\$6.3 million General Fund and \$573,000 from the DROS Special Account)—declining to \$3.5 million annually beginning in 2026-27 (\$3.3 million General Fund and \$179,000 from the DROS Special Account)—to support DOJ firearm workload.

The proposals supported by this funding are outlined in the table on the next page.

### Summary of Governor's Firearm Workload Proposals

Workload	Proposed Resources	Description
<b>Recently Enacted Legislation</b>		
Chapter 76 of 2022 (AB 1621, Gipson)	21 positions (11 limited term) and \$2.8 million General Fund in 2023-24, declining to \$1.2 million annually in 2025-26	AB 1621 requires any person possessing an unserialized firearm, as well as new residents within 60 days of arrival in the state, to apply to DOJ for a unique identification mark. The legislation also modifies the definition of firearm precursor parts and generally prohibits the sale or possession of unserialized firearm precursor parts. DOJ seeks resources to address this increased workload.
Chapter 142 of 2022 (AB 2156, Wicks)	\$911,000 General Fund in 2023-24	AB 1621 prohibits any person from manufacturing firearms without being licensed by the state and requires people manufacturing between 4 and 49 firearms in a calendar year now be licensed. The legislation also prohibits any person who is not licensed as a firearm manufacturer from manufacturing any firearm or precursor part using a 3D printer. DOJ requests resources to update firearms systems to enforce these provisions.
Chapter 138 of 2022 (AB 228, Rodriguez)	5 positions and \$797,000 General Fund in 2023-24, declining to \$738,000 annually in 2024-25	AB 228 requires DOJ generally inspect firearm dealers at least every three years and audit a sampling of 25 percent to 50 percent of each record type. DOJ seeks resources to address this increased workload.
Chapter 696 of 2022 (AB 2552, McCarty)	1 limited-term position and \$408,000 (\$12,000 General Fund and \$396,000 DROS) in 2023-24, declining to \$191,000 (\$12,000 General Fund and \$179,000 DROS) annually in 2025-26	AB 2552 requires DOJ conduct enforcement and inspections at a minimum of one-half of all gun shows or events in the state, public posting of certain violations, and annual reporting to the Legislature on enforcement activities. Also authorizes inspection of any firearm precursor part vendors at gun shows or events. DOJ seeks resources to address this increased workload.
Chapter 995 of 2022 (SB 1384, Min)	1 limited-term position and \$177,000 DROS in 2023-24 and \$164,000 in 2024-25	AB 1384 requires licensed firearms dealers to have a digital video surveillance system on business premises and to carry a general liability insurance policy. DOJ seeks resources to develop regulations for dealers to certify these conditions are met.
<b>Other Workload</b>		
Firearm Compliance Support Section Workload	3 positions and \$342,000 General Fund in 2023-24, declining to \$307,000 annually in 2024-25	DOJ requests resources to support increased carry concealed weapons licensing and Automated Firearms System workload.
Microstamping and Law Enforcement Transfer <sup>a</sup>	5 positions and \$1.5 million General Fund in 2023-24, declining to \$1.1 million annually in 2026-27	DOJ requests additional resources, above the level provided as part of the 2021-22 budget, to complete changes to existing firearms databases in order to implement previously enacted legislation related to the microstamping of handguns and the tracking of unsafe handguns.
<sup>a</sup> Continued implementation of Chapters 289 of 2020 (AB 2699, Santiago) and 292 of 2020 (AB 2847, Chiu). DOJ = Department of Justice and DROS = Dealers Record of Sale Special Account.		

DOJ indicated that all of the proposals requesting significant General Fund could have potentially been funded, at least partially, by DROS Special Account (implementation of AB 1621, AB 2156, and AB 288; Firearm Compliance Support Section; and part of the Microstamping and Law Enforcement Transfer).

### LAO Comments.

*Proposals Reasonable, but Could Be Funded by DROS Special Account Rather Than General Fund.* The LAO finds the level of funding requested in the Governor's proposals to be generally

reasonable to support increased workload and/or is necessary to implement enacted legislation. However, the LAO believes that all of the requested resources could be funded by the DROS Special Account rather than the General Fund. This is because the workload appears to be allowable uses of DROS Special Account revenues. Additionally, there appears to be sufficient DROS Special Account revenues and fund balance to support this workload. Specifically, DROS Special Account annual revenues are currently about \$5 million higher than expenditures and the fund balance is estimated to be \$35.9 million at the end of 2023-24. This is sufficient to support the \$6.3 million in increased support requested in 2023-24 as well as the \$3.3 million in requested ongoing support. The LAO notes that DOJ indicates that it is seeking General Fund resources to support these proposals in order to ensure that there are sufficient resources in the DROS Special Account to support future proposals—most notably a project to replace 17 firearms and ammunition databases and systems, which is currently in the planning process. However, those proposals have not been presented to the Legislature for consideration at this time.

Furthermore, the LAO notes that funding such workload from the DROS Special Account instead of the General Fund means that additional General Fund would be available to support other legislative priorities. This includes helping to balance the state budget in 2023-24 as well as to address projected out-year deficits under the Governor's budget.

**Staff Comments.** The BOF also has a relatively high vacancy rate (81 vacancies, or roughly 25 percent; of these 21 are sworn and 60 are professional staff). The Legislature may want to consider how to support recruitment, or else the handful of proposed new positions may not impact the effective workload.

#### **LAO Recommendation.**

*Recommend Supporting Firearm Workload From Dealers Record of Sale (DROS) Special Account Rather Than General Fund.* The Governor's budget proposes \$6.9 million in 2023-24 (\$6.3 million General Fund and \$573,000 from the DROS Special Account), declining to \$3.5 million annually in 2026-27, to support seven budget proposals related to increased firearm workload. The LAO finds the proposals reasonable, but recommend that they be funded by the DROS Special Account as it appears to be an allowable use of the fund and the fund can support the proposals.

**Staff Recommendation.** Hold Open.

### Issue 13: Special Operations Unit

**Proposal.** The Governor's Budget includes \$7,206,000 General Fund in 2023-24 and ongoing to maintain the Special Operations Unit Program.

**Panelists.**

- Luis Lopez, Assistant Chief, Division of Law Enforcement, Department of Justice
- Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office
- Kevin Clark, Staff Finance Budget Analyst, Department of Finance

**Background.** The Special Operations Unit (SOU) Program provides statewide enforcement for combating violent career criminals, gangs, and organized crime groups. SOU expertise lies in electronic surveillance and advanced investigative techniques, and works to support local agencies and task forces. The SOU Program consists of three regional teams: Fresno, Sacramento, and Riverside. The California Highway Patrol (CHP) provided 4 officers to each team, in addition to DOJ special agents and special agent supervisors.

In 2012-13, DOJ received \$3.9 million General Fund and 9 positions for the Fresno team. In 2014, DOJ along with CHP received \$9.4 million in two-year funding to create the Sacramento and Riverside teams. The funding for these two teams was renewed multiple times, and is set to expire in 2023. CHP has indicated to DOJ that it does not plan to renew the funding.

#### Existing SOU Organization

The existing SOU program is managed by one SAC, and the individual teams are comprised as follows, with participation of 12.0 CHP Officers:

	SAC	SAS	SA	CHP	CA I	OT
Sacramento	1*	1	7	4	1	1
Fresno	-	1*	6*	4	1	1
Riverside	-	1	7	4	1	1

\*Denotes General Funded positions.

The Governor's Budget includes \$7.2 million and ten new positions ongoing to DOJ to permanently support the Sacramento and Riverside teams without the support of CHP. The proposed organization of the teams is listed below.

#### Proposed SOU Organization

	SAC	SAS	SA	CA II	OT
Sacramento	1	1	10	1	1
Fresno		1	10	1	1
Riverside		1	10	1	1

- 1.0 Special Agent in Charge (existing)
- 3.0 Special Agent Supervisors (3.0 existing)
- 30.0 Special Agents (20.0 existing / 10.0 new)
- 3.0 Crime Analyst II (upgrade from existing 3.0 Crime Analyst I positions)
- 3.0 Office Technicians (existing)

\*Totaling 40.0 personnel

The SOU works on cases at the request of local police departments, which coordinate the investigation. In calendar year 2021, the SOU received 45 requests, and initiated 29 investigations (the remaining requests were either rejected or are backlogged). The potential crimes involved range from murder, conspiracy to commit murder, attempted murder, conspiracy to commit assault with a deadly weapon, assault likely to produce great bodily injury, identity theft, child abduction, robbery, grand theft, human trafficking, and extortion. These multi-faceted, multi-jurisdictional investigations focused on Transnational Criminal Organizations including criminal street gangs and prison gangs. The investigations resulted in 139 search warrants, 280 felony arrests, seizure of approximately 2,180 pounds of drugs (cocaine, methamphetamine, fentanyl, heroin and illegal cannabis), 349 firearms seized, \$775,870.00 in U.S. currency seized, and the prevention of 12 violent crimes. From calendar year 2017 to date, SOU has solved approximately 51 homicides, prevented 136 violent criminal acts (almost entirely of which were planned shootings), and seized 349 firearms from dangerous individuals.

<b>Workload Measure</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Opened Cases	25	28	15	24	29
Closed Cases	19	19	9	13	24
Felony Arrests	493	250	268	218	280
Search Warrants	448	224	256	128	139
Pen Registers/Electronic Surveillance	405	315	528	635	269
Firearms Seized	360	129	194	149	349
U.S. Currency	\$359,868	\$58,905	\$149,062	\$618,555	\$775,870
Methamphetamine	369.1 lb	16.7 lb	34.5 lb	150 lb	131.25 lb
Heroin	6 lb	5.6 lb	4.2 lb	5.3 lb	168.5 g
Cocaine	82.12 lb	N/A	17 lb	8 lb	21.3 lb
Illegal Marijuana	122 lb	8 lb	60 lb	49 lb	2,025 lb
Fentanyl	N/A	N/A	N/A	N/A	333 pills/10 g
Violent Crimes Prevented	52	30	23	19	12

**Staff Recommendation.** Hold Open.