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COMMITTEE ON BUDGET AND FISCAL REVIEW

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Agenda

August 15, 2020

9:00 a.m. – State Capitol – Senate Chamber

California's COVID-19 Response Spending and The Division of Juvenile Justice (DJJ) Realignment

- I. Welcoming Remarks and Introductions**
- II. COVID-19 Response Spending**
 - Jessica Peters, Principal Fiscal & Policy Analyst, Legislative Analyst's Office
 - Teresa Calvert, Assistant Program Budget Manager, Department of Finance
- III. Discussion of the Governor's and Legislature's DJJ Realignment Proposals**
 - Luke Koushmaro, Fiscal and Policy Analyst, Legislative Analyst's Office
 - Clint Kellum, Assistant Program Budget Manager, Department of Finance
- IV. What policy considerations, lessons learned, and other aspects are critical to ensuring successful realignment?**
 - Chief Tanja Heitman, Santa Barbara, Vice Chair of the Chief Probation Officers of California's Legislative Committee
 - *Invited:* Dr. Robert K. Ross, President and CEO of The California Endowment
 - Shimica Gaskins, Executive Director, Children's Defense Fund-California
 - Frankie Guzman, Director, Youth Justice Initiative at the National Center for Youth Law
- IV. Public Comment**

CALIFORNIA'S COVID-19 RESPONSE SPENDING

The COVID-19 pandemic has required a disaster response effort unlike any other in California's modern history. Governor Newsom declared a state of emergency on March 4, paving the way for an unprecedented expenditure of disaster-related funding by federal, state and local governments. As the pandemic continues, it is difficult to estimate how much it will ultimately cost, but it is safe to say that all levels of government will combine to spend tens of billions of dollars.

DIRECT STATE COSTS

The Department of Finance (DOF) has tried to estimate the state's current and projected spending on COVID-19-related expenditures, which are reflected in the budget that was approved in June. Combined, the budgets for fiscal years 2019-20 and 2020-21 project spending of approximately \$8.6 billion, with the Federal Emergency Management Agency (FEMA) reimbursing up to 75% of the state's costs. However, the projection of \$8.6 billion is likely to change as the state adjusts its response.

2019-20 BUDGET ACT

To date, the state's General Fund expenditures from the 2019-20 Budget Act have amounted to \$4.1 billion. The funding came from two sources – Control Section 36 and the Disaster Response-Emergency Operations Account (DREOA). Control Section 36 was created in March, immediately before the Legislature recessed to observe the state's stay-at-home order. The Legislature appropriated \$1 billion in funding which was available for urgent COVID-19-related expenditures. Of the \$1 billion, \$827 million was augmented to the 2019-20 Budget to support a wide range of programs. As specific augmentations were made, the Administration notified the Legislature through the Joint Legislative Budget Committee (JLBC). Second, the Administration in two separate transactions transferred a total of \$3.2 billion to DREOA. In March, the Administration notified the Legislature that it transferred funds from the Special Fund for Economic Uncertainties (SFEU) to DREOA, increasing the account balance to \$1.4 billion. In May, the Administration transferred another \$1.8 billion from other available sources. DOF has interpreted the provisions of DREOA as granting the Administration very broad authority to expend these funds, only requiring them to notify the Legislature when the funds are transferred. It does not require the notification to include any specificity about planned or possible expenditures.

2020-21 BUDGET ACT

The 2020-21 Budget Act anticipates a total of \$4.4 billion in COVID-19-related spending. This includes \$1.5 billion in General Fund allocated to "continuing commitments" which include additional procurement of supplies, surge capacity, testing and contact tracing. In addition, the Administration anticipates needing \$2.9 billion for other contingency plans in the coming months. 75% of the \$2.9 billion is budgeted as reimbursements from FEMA with the state's 25% portion or \$716 million in General Fund allocated as a set aside within the SFEU. Ultimately, these funds will be transferred to DREOA before being allocated to specific activities. If additional state resources are needed, the Governor can access any remaining funds in the SFEU. Additionally, the Governor is authorized by Government Code section 8645 "to make expenditures from any fund legally available in order to deal with actual or threatened conditions" of a state or local emergency. Ultimately, the impact of the state's response could exceed what is currently budgeted.

It is important to note that the state expects to receive 75% reimbursement from FEMA for most of the General Fund expenditures. To date, FEMA has provided California with an advancement of \$501 million, the first installment of what the state expects to receive in reimbursements. In May, DOF notified the JLBC that it estimates that FEMA reimbursements will total \$6.1 billion.

FEDERAL FUNDS ALLOCATED BY THE STATE

The 2020-21 Budget Act also allocates a significant amount of federal funding.

Control Section 11.90 was added to the budget and allocates \$9.5 billion in funds from the federal Coronavirus Relief Funds (CRF), which was part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. These funds are available until December 31, 2020 and will be allocated as follows:

Coronavirus Relief Fund Allocations
(Dollars in Thousands)

State Directed Coronavirus Relief Fund Allocations	Amount
State Offsets: Vulnerable Populations and Public Safety	\$2,692,681
Housing for Homeless Individuals and Families	\$550,000
K-14 Learning Loss Mitigation	4,493,819
County Homelessness, Public Health, Public Safety, and Other Services	1,289,065
City Homelessness, Public Health, Public Safety, and Other Services	500,000
Total	\$9,525,565

In July, as required under Section 11.90, DOF notified the JLBC that it was allocating \$1.3 billion to counties and \$500 million to cities for homelessness, public health, public safety, and other services that help address the COVID-19 pandemic. DOF will distribute the funds in six allotments to cities and counties that did not get a direct appropriation from the federal government.

In addition, as required in Section 11.90, \$550 million was appropriated to the Department of Housing and Community Development (HCD) to increase its Multifamily Housing Program for Homekey, the state’s program to address homelessness during the COVID-19 crisis.

To avoid having any funds revert to the federal Treasury, Section 11.90 authorizes DOF to reallocate any funds that are unspent by September 1, 2020.

Finally, Section 11.95 was added to the 2020-21 Budget Act, authorizing the Department of Finance to allocate funds from the federal government for testing and contact tracing. In July, the Administration notified the JLBC it was allocating \$499 million to local health departments to support these efforts.

BUDGET SPENDING AUTHORITY

Below are additional details about the various spending authorities that the Administration has utilized to respond to the COVID-19 pandemic:

CONTROL SECTION 36

SB 89, which passed the Legislature on March 17, 2020 with bipartisan support, added Control Section 36.00 to the 2019-20 Budget Act to address the Governor's March 4, 2020 COVID-19 Proclamation of Emergency. It included an appropriation of \$1 billion in General Fund to be utilized, upon the order of the Director of Finance and a 72-hour written notice to the Joint Legislative Budget Committee, for any purpose related to the March 4, 2020 Proclamation of Emergency. The funds were available until June 30, 2020 – the end of the 2019-20 fiscal year. In total, the Director made a total of \$827 million in COVID-19-related augmentations. Control Section 36 was not included in the 2020-21 Budget Act.

DISASTER RESPONSE-EMERGENCY OPERATIONS ACCOUNT

Disaster Response-Emergency Operations Account (DREOA) provides the Director of Finance with the authority to make disaster-response allocations to state agencies and departments for immediate and necessary activities that occur within 120 days after a proclamation of emergency by the Governor and extended in 120 day increments through notification of the JLBC. The Director of Finance is authorized to transfer money from the Special Fund for Economic Uncertainties (SFEU) to pay for expenditures from DREOA. In addition, as noted above, under Government Code section 8645, the Governor can transfer any fund legally available into DREOA in order to deal with the state of emergency.

Until a few years ago, DREOA was rarely used and had a limited amount of funding because the Administration generally used existing program funding and authority to pay for disaster response. Prior to 2016-17, very little, if any funds were transferred to DREOA.

In 2019, DREOA was amended to allow the Administration a little longer time (generally until the end of the current fiscal year) to access the available resources for disaster response and recovery efforts that took longer than 120 days to complete – like debris removal after some of the largest fires in California's history. However, the authority was still time limited.

Until 2020, DREOA was only used for extraordinary emergency responses for things like wildfires, earthquake, flooding, and other natural disasters. They were short-term, regional emergencies (generally natural disasters) and DREOA helped provide financial assistance for emergency work and the repair, restoration or replacement of public real property that was damaged or destroyed by disasters. It is a funding source that provides the state an opportunity for a more expeditious response to and recovery from disasters.

There are very limited reporting requirements associated with the use of DREOA. Because the statute is ambiguous, the Administration has interpreted DREOA as only requiring the Director of Finance notify the Legislature after the transfer of funds are made from SFEU to DREOA, but not the actual allocation or expenditure of funds. While the administration has been granted significant latitude regarding expenditures for natural disasters, the response to the COVID-19 pandemic is decidedly different in terms of duration and scope. During the COVID-19 crisis it has been difficult to get basic information about what was being funded, the cost, and what contracts were anticipated and executed.

CONTROL SECTION 11.90

Control Section 11.90 was added to the Budget Act of 2020-21 to give the Department of Finance the authority to allocate Coronavirus Aid, Relief, and Economic Security (CARES) Act funds. The CARES Act, adopted by Congress and signed into law on March 27, 2020, included \$2.2 trillion in federal stimulus for the nation. The CARES Act established the Coronavirus Relief Fund (CRF) and appropriated \$150 billion to the Fund. According to the Department of Finance, California will receive \$9,525,564,744 for expenditures incurred by the state and local governments due to the COVID-19 public health emergency.

The new control section authorizes allocations received from the CRF for the state's COVID-19 response. These funds are available for specified purposes for costs incurred between March 1, 2020 and December 31, 2020. The DOF is required to notify the JLBC 10 days prior to making any allocations or changes to the planned expenditures. If there are unspent funds on September 1, 2020, DOF is authorized to reallocate money for any purpose that is allowable under federal law, ensuring the funds do not revert to the federal Treasury at the end of the year.

To date, the Administration has made two augmentations under the new authority established by Control Section 11.90.

DOF appropriated \$550 million to the Department of Housing and Community Development's (HCD) Multifamily Housing Program for Homekey to support housing for individuals and families who are experiencing homelessness or who are at risk of homelessness due to the COVID-19 pandemic. HCD will issue grants to local agencies to acquire hotels, motels, and other properties to help address homelessness during the pandemic.

DOF allocated \$1.8 billion from the state's share of the CRF to cities and counties for homelessness, public health, public safety, and other services to combat the COVID-19 pandemic.

CONTROL SECTION 11.95

Control Section 11.95 was added to the Budget Act of 2020-21 to give DOF the authority to allocate federal funding for testing and contact tracing. The federal Paycheck Protection Program and Health Care Enhancement Act provided the state with \$499 million for these purposes. In July, DOF provided the JLBC a 10-day notification that it intended to allocate the funds to local public health departments to assist with diagnostic and surveillance testing capacity, support individuals that need to isolate and quarantine, and aid local public health contact tracing efforts.

DIVISION OF JUVENILE JUSTICE REALIGNMENT

Proposal. The Governor’s budget proposed to transfer the Division of Juvenile Justice to a newly created independent department within the Health and Human Services Agency on July 1, 2020. That approach was intended to align the rehabilitative mission of the state’s juvenile justice system with trauma-informed and developmentally appropriate services supported by programs overseen by the state’s Health and Human Services Agency. The unprecedented fiscal impact of COVID-19 resulted in the withdrawal of this proposal. Subsequently, the May Revision proposed to expand on previous efforts to reform the state’s juvenile justice system by transferring the responsibility for managing all youthful offenders to local jurisdictions. The following table show the provisions for the Governor’s June proposal and the Legislature’s Alternative proposal:

Provisions	Governor’s June Proposal	Legislative Alternative
Intake Closure Date	<ul style="list-style-type: none"> July 1, 2021 	<ul style="list-style-type: none"> July 1, 2023
Final DJJ Closure Date	<ul style="list-style-type: none"> No closure date provided. The Administration has stated that they plan to provide a final closure date in the 2021-22 budget process after more planning for the closure of DJJ occurs. 	<ul style="list-style-type: none"> December 31, 2023 Any youth remaining would be transferred back to their county of jurisdiction.
State-Level Planning and Oversight Body	<ul style="list-style-type: none"> Until DJJ is closed, the existing Child Welfare Council (CWC) would advise DJJ in various ways such as providing input on oversight, developing strategies to avoid adult court transfers, and guidelines for grant funding. (CWC is an advisory body for agencies and courts that serve children and youth in the child welfare and foster care systems.) 	<ul style="list-style-type: none"> Beginning September 1, 2020, CWC would provide recommendations and information on juvenile justice issues to the Legislature. Beginning May 1, 2021, The Office of Youth Justice would be created under the Health and Human Services Agency and would be (1) responsible for all juvenile justice duties currently assigned to the Board of State and Community Corrections and (2) other tasks, such as regulatory oversight, data collection, and investigating complaints.
Baseline Funding	<ul style="list-style-type: none"> Beginning July 1, 2021, \$40 million General Fund— increasing to \$209 million annually by July 1, 2024. Beginning July 1, 2024, 	<ul style="list-style-type: none"> Beginning July 1, 2021, \$27 million General Fund— increasing to \$139 million annually by July 1, 2024.

	<p>funding would be adjusted annually based on growth in the Juvenile Justice Growth Special Account during the prior fiscal year.</p> <ul style="list-style-type: none"> • Funding would be allocated to counties based on the county’s recent use of DJJ. • Counties would be guaranteed a minimum award of \$250,000. • Use of funds would be subject to some restrictions, such as being limited for rehabilitative housing and supervision for youths otherwise eligible for DJJ. 	<ul style="list-style-type: none"> • Funding would be allocated to counties based on a formula that includes factors such as a county’s youth population, number of youth with offenses that would have been DJJ-eligible, and—on a temporary basis—recent use of DJJ. • Counties would be guaranteed a minimum award of \$250,000. • Use of funds would be subject to some restrictions, such as limits on private contracting. Counties would be required to annually submit a plan subject to state approval detailing how funding would be used and an outcome report.
<p>Additional Grant Programs</p>	<ul style="list-style-type: none"> • Start-up Grants: \$9.6 million for one-time start up grants to develop local continuums of care, including regional treatment facilities and sex offender treatment programs. • Use of Existing Youthful Offender Block Grant: Clarifies that counties could use funding provided through the existing Youthful Offender Block Grant to provide enhanced services to youth who would have been DJJ-eligible. In recent years, annual funding for the program has been around \$140 million. 	<ul style="list-style-type: none"> • Regional Grant: Establishes a one-time competitive grant to support juvenile justice infrastructure in order to provide geographically diverse, secure placements and programming. Recipients would have to meet various requirements, such as allowing other counties to contract for use of the infrastructure. Funding for the program would be subject to future legislative appropriation. • Youth and Community Restoration Grant: Establishes a competitive grant for evidenced based and promising programs delivered by non-law enforcement entities that are targeted at youth who would have been DJJ-eligible. Recipients could not be certain private entities and would have to meet various requirements, such as

		<p>providing an evaluation plan. Sanctions would be in place for the misuse of funds. Funding for the program would be subject to future legislative appropriation.</p>
<p>Secure Youth Treatment Facilities</p>	<ul style="list-style-type: none"> Realigned youth could be housed in one of the various types of existing county juvenile facilities currently specified in statute including juvenile homes, ranches, camps, or halls. In addition, start-up grants that could be used for regional treatment facilities. 	<ul style="list-style-type: none"> In addition to the existing types of county juvenile facilities, realigned youth could be housed in a new type of secure facility intended to provide programming and treatment to individuals adjudicated for serious or violent offenses. The court would be required set the term of confinement for any youth committed to such a facility in accordance with baseline confinement terms to be set by Judicial Council.
<p>County Fees and Funding for DJJ Youth</p>	<ul style="list-style-type: none"> For each youth under age 23 committed to DJJ, counties would continue to pay \$24,000 per year until July 2021. Beginning July 2021, counties would be charged \$125,000 for each youth under age 23 committed to DJJ. 	<ul style="list-style-type: none"> For each youth under age 23 committed to DJJ, counties would continue to pay \$24,000 per year. For each youth recalled by counties between January 1, 2021 and December 31, 2022, counties would receive \$150,000 for each year the youth would have been in DJJ.
<p>Youth Sentenced to Prison</p>	<ul style="list-style-type: none"> When DJJ intake closes, counties would house youth sentenced to prison until they are 18 years old. The state would pay counties a rate of \$616 per day for each youth under the age of 18 who is sentenced to prison and is being housed in a local juvenile facility. Once 18, youths would be transferred to prison. 	<ul style="list-style-type: none"> When DJJ intake closes, counties would house youth sentenced to prison until they are 18 years old. Once 18, youths would be transferred to prison and counties would be required to pay the California Department of Correction and Rehabilitation’s marginal cost for the duration of the sentence.

<p>Age of Jurisdiction</p>	<ul style="list-style-type: none"> Once DJJ intake stops, juvenile court jurisdiction would increase to the age of 23 for youth adjudicated for certain offenses or up to 25 if the youth would have received a sentence of seven or more years in criminal court. (Currently, courts can only retain jurisdiction until an individual is 21 unless the youth is committed to DJJ.) 	<ul style="list-style-type: none"> Same as Governor’s Proposal
<p>Pine Grove Youth Conservation Camp</p>	<ul style="list-style-type: none"> Includes intent language to keep the Pine Grove Youth Conservation Camp open through a state-local partnership or other arrangement. 	<ul style="list-style-type: none"> Same as Governor’s Proposal
<p>Restriction on Transfer to Adult Facilities</p>	<ul style="list-style-type: none"> No Proposal. 	<ul style="list-style-type: none"> Would require court approval before a juvenile-court youth who is 19 or older could be moved to an adult facility (Currently, such youth can be moved to an adult facility upon recommendation by probation.)
<p>Plan for Improving Juvenile Justice Data Collection</p>	<ul style="list-style-type: none"> No proposal. 	<ul style="list-style-type: none"> Requires the Department of Justice to submit a plan by January 1, 2022 for the replacement of the current Juvenile Court and Probation Statistical System.
<p>Intent Language on Private Entities and Out-of-State Facilities</p>	<ul style="list-style-type: none"> No proposal. 	<ul style="list-style-type: none"> Includes intent language to end the practice of placing youth in the custody of certain private entities or in out-of-state entities that do not properly address the programming, service, safety, and other needs of placed youth.