

## **SUBCOMMITTEE NO. 5**

---

## **Agenda**

---

**Senator Nancy Skinner, Chair**  
**Senator John M.W. Moorlach**  
**Senator Jim Beall**



**Thursday, March 14, 2019**  
**9:30 a.m. or upon adjournment of Session**  
**State Capitol - Room 113**

Consultant: Christopher Francis, Ph.D.

<b><u>Item</u></b>	<b><u>Department</u></b>	<b><u>Discussion Items</u></b>	<b><u>Page</u></b>
<b>0250</b>	<b>Judicial Branch</b>		
Issue 1	Special Panel on Collaborative Courts		3
Issue 2	Oversight of Trial Courts' Funding		4
Issue 3	Deferred Maintenance BCP		5
Issue 4	Court Appointed Counsel in Juvenile Dependency Proceedings Proposal		7
Issue 5	Pre-Trial Decision-Making Pilot		8

### **Public Comment**

---

*Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling (916) 651-1505. Requests should be made one week in advance whenever possible.*

---

## ITEMS TO BE HEARD

### 0250 JUDICIAL BRANCH

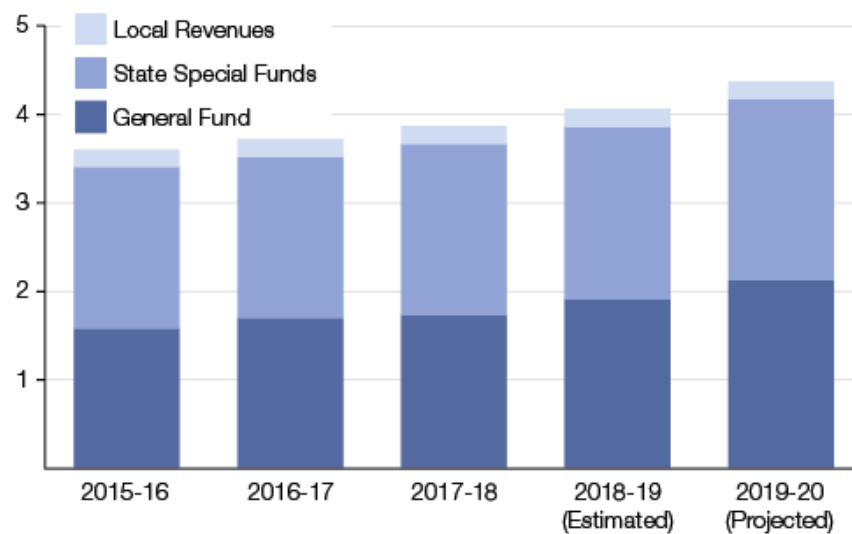
The judicial branch is responsible for the interpretation of law, the protection of individual rights, the orderly settlement of all legal disputes, and the adjudication of accusations of legal violations. The branch consists of statewide courts (the Supreme Court and Courts of Appeal), trial courts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

Due to the state's fiscal situation, the judicial branch, like most areas of state and local government, received a series of General Fund reductions from 2008-09 through 2012-13. Many of these General Fund reductions were offset by increased funding from alternative sources, such as special fund transfers and fee increases. A number of these offsets were one-time solutions, such as the use of trial court reserves and, for the most part, those options have been exhausted. In addition, trial courts partially accommodated their ongoing reductions by implementing operational actions, such as leaving vacancies open, closing courtrooms and courthouses, and reducing clerk office hours. Some of these operational actions resulted in reduced access to court services, longer wait times, and increased backlogs in court workload.

**Budget Overview:** The Governor's budget proposes an increase of \$310 million, or eight percent, above the revised amount for 2018-19. Overall, about \$4.2 billion from all state funds is proposed (General Fund and state special funds) to support the operations of the judicial branch in 2019-20.

### Total Judicial Branch Funding

(In Billions)



Source: LAO

**Issue 1: Special Panel on Collaborative Courts**

**Background.** Collaborative justice courts, also known as problem-solving courts, combine judicial supervision with rehabilitation services that are rigorously monitored and focused on recovery to reduce recidivism and improve offender outcomes.<sup>1</sup> Collaborative courts have a dedicated calendar and judge for specific types of offenders.

Adult criminal collaborative court programs combine intensive judicial supervision and collaboration among justice system partners with rehabilitation services to reduce recidivism and improve outcomes for moderate- and high-risk offenders with significant treatment needs. Although program models differ among court types and local jurisdictions, adult criminal collaborative courts are generally led by a judge and include an interdisciplinary team consisting of a defense attorney, a prosecutor, a representative from probation or parole, and treatment staff and/or case managers or other representatives specific to the particular court.

Collaborative courts focus on high risk/high needs cases and utilize evidence-based practices. Collaborative court participants are typically assessed for their risk of recidivating and for their mental health issues, substance-use disorders, and other treatment needs. Community supervision and treatment plans are created based on the information obtained from these assessments. Participants also attend regularly scheduled court sessions—usually one to four times a month—to discuss their adherence to individualized supervision/treatment plans and other program requirements. Graduated sanctions (e.g., admonishments, increased frequency of court sessions, and jail sanctions) are used to respond to noncompliant behaviors, and incentives (e.g., verbal praise, reduced frequency of court hearings, and transportation or food vouchers) are used to reward prosocial behaviors and encourage participants' progress.

**History.** In January 2000, then Chief Justice Ronald M. George appointed the Collaborative Justice Courts Advisory Committee to explore the effectiveness of such courts and advise the Judicial Council about the role of these courts in addressing complex social issues and problems that make their way to the trial courts. Formation of the committee expanded the scope of the Oversight Committee for the California Drug Court Project, which was appointed by Chief Justice George as of July 1, 1996, and continued until December 31, 1999. On August 3, 2000, the Conference of Chief Justices and the Conference of State Court Administrators passed a resolution to support collaborative justice courts.

**Numbers and types of collaborative courts.** The number of collaborative courts has increased substantially since the creation of the Judicial Council's Collaborative Justice Courts Advisory Committee in 2000. California currently has more than 425 collaborative courts in all but three small jurisdictions, with many jurisdictions having four or more court types. The most numerous types of collaborative courts include adult drug courts (85), juvenile drug courts (33), dependency drug courts (37), adult mental health courts (44), juvenile mental health courts (12), veterans' courts (34), homeless courts (13), adult reentry courts (17), DUI courts (16), community courts (12), and peer/youth courts (72). Newer courts such as girls' courts and CSEC courts for commercially sexually exploited children are also growing. The balance of collaborative courts includes dual diagnosis courts, family law drug courts, truancy courts, prop 36 courts, and unique courts, as well as veterans' stand-down programs.

**Staff Recommendation.** This is an informational item. No action is to be taken.

<sup>1</sup> Citation: <http://www.courts.ca.gov/programs-collabjustice.htm>

**Issue 2: Oversight of Trial Courts' Funding**

**Background.** The 2018 Budget Act included a \$123 million General Fund augmentation to general purpose funding for trial court operations—the Judicial Council’s priorities and equalization of trial court funding levels. The ongoing augmentations included the following:

- \$75 million discretionary funding for allocation to trial courts by the Judicial Council. The Administration stated that it anticipated that the Judicial Council would rely on recommendations made by the Commission on the Future of California’s Court System to improve the accessibility and efficiency of court operations. The Administration also states that it expects the Judicial Council to report on any anticipated outcomes.
- \$47.9 million for allocation to certain trial courts that are comparatively underfunded relative to other trial courts.

***Workload Allocation Funding Methodology (WAFM) and equalization of trial court funding levels.*** The Judicial Council utilizes the Workload Allocation Funding Methodology (WAFM) to allocate funds for trial court operations. WAFM was intended to distribute funding based on workload instead of the historic “pro rata” approach because the pro rata approach generally maintained funding inequities among trial courts. WAFM uses the Resource Allocation Study, which estimates the number of personnel needed for each court primarily based on the number of filings for various case types and the amount of time it takes staff to process such a filing. Each court’s estimated staffing need is then converted to a cost estimate using various assumptions and is combined with various other cost factors to determine the total estimated workload-driven costs for each trial court. The resulting total is the amount the judicial branch believes is needed to fully operate each trial. In addition, the Judicial Council may allocate any augmentations in the state budget for trial court operations and not designated for a specific purpose through WAFM.

In 2018, Judicial Council approved significant changes related to WAFM. First, in years where increased funding is provided by the state, the funding would be first allocated to the fifteen smallest trial courts to ensure they received 100 percent of their WAFM-identified costs. Up to fifty percent of the remaining augmentation would be allocated to courts below the statewide average funding ratio. The remaining amount would be allocated to all trial courts according to WAFM. Second, in the first year in which there are no general-purpose funding augmentations provided for trial court operations, allocations would remain the same. In the second year in which no increased funding is provided, up to one percent of funding allocated to trial courts that are more than two percent above the statewide average funding ratio could be reallocated to those courts that are more than two percent below the statewide average funding ratio. Trial courts receiving this funding would have complete flexibility in how to use these funds.

***Legislative intent expressed for court reporter funding.*** As part of the Budget Act of 2018, budget bill language was attached to the \$75 million by the Legislature. The language expressed the following: “it is the intent of the Legislature that \$10,000,000 be utilized to increase the level of court reporters in family law cases. Further, it is the intent of the Legislature that the \$10,000,000 not supplant existing trial court expenditures on court reporters in family law cases.”

**Staff Recommendation.** This is an oversight item meant to provide the subcommittee with an update on 2018-19 trial court and court reporter expenditures as well as discuss 2019-20 expenditures.

**Issue 3: Deferred Maintenance BCP**

**Governor's Budget.** The budget proposes a one-time General Fund augmentation of \$40 million to address the most vital deferred maintenance in trial courts and appellate courts. These funds will support fire alarm systems repair and replacement.

**Background.** The Judicial Council's (JCC) Office of Facilities Services administers a portfolio of 470 facilities which house the Supreme Court, Courts of Appeal, Superior Courts, the Habeas Corpus Resource Center, and the Judicial Council. Roughly 44 percent of these facilities (208) are fully managed by the JCC, 30 percent (139) are managed by the county; 19 percent (91) are leased; and seven percent (32) are delegated by the JCC to either the county or the court. The portfolio includes a variety of building types: courthouses, jails, offices, parking structures and parking lots. Facilities were transferred to the JCC from counties beginning in 2007, ten years after the Trial Court Funding Act began the process of shifting financial responsibility for support of trial courts from the counties to the state. This time lag in transfer led to facility degradation due to postponed or decreased maintenance. Accordingly, the facilities all include an extensive backlog of deferred maintenance, which contributes to the challenges of bringing the facilities up to industry standards for system maintenance.

**Base Funding for Facility Modifications and Deferred Maintenance.** In 2018-19 the Judicial Council has an allocation of \$65 million, \$40 million from the State Court Facilities Construction Fund (SCFCF) and \$25 million from the Immediate and Critical Need Account, to be used for facilities modifications in trial courts only. Facility modifications range from major repairs to renovations and system lifecycle replacements. This funding is ongoing at the current level until 2024-25 when the total amount funded from the SCFCF will reduce to \$25 million for a total of \$50 million. In addition, the Judicial Council received one-time General Fund in 2016-17 of \$45 million and in 2018-19 of \$50 million to address deferred maintenance needs in the trial courts.

**Justification.** The 2018-19 Deferred Maintenance Report reflects a backlog of \$2.8 billion in deferred maintenance across the portfolio. The deferred maintenance backlog continues to grow due to insufficient funding to address system lifecycle replacements. As a result, the JCC uses the limited ongoing funding available to address only those most urgent, prioritized building system needs.

A General Fund augmentation of \$40 million allows for repairs and replacement of fire alarm systems, a small subset of the current deferred maintenance in the Judicial Branch portfolio. Fire alarm systems provide the essential first alarm on a fire/life/safety event to the building occupants and first responders, so that evacuation can be completed in an appropriate amount of time. System failures create a higher cost due to the urgent nature of the work, and the lack of time to plan the effort. In 2018, one such example occurred when the Burbank Courthouse experienced a fire alarm system failure. Due to the fire/life/safety implications of the failure, a 24/7 fire watch was required to ensure the safety of the building, court employees, and public. The fire watch requirement, and urgent nature of the system replacement, increased the costs of the project to over \$1.08 million for the 58,000 square foot courthouse. Due to insufficient funding for system lifecycle replacements, the JCC operates on a run-to-failure mode for some building systems. Failure of fire/life/safety systems results in a significant risk of loss of life in the event of an emergency.

**LAO Recommendation. Monitor Accumulation of Deferred Maintenance.** The LAO recommends that the Legislature adopt Supplemental Report Language (SRL) requiring that, no later than January 1, 2023, the judicial branch identifies how their deferred maintenance backlog has changed since 2019.

The LAO further recommends that the SRL require that, to the extent a department's backlog has grown in the intervening years, the department shall identify (1) the reasons for the increase and (2) specific steps it plans to take to improve its maintenance practices on an ongoing basis. This is because, if a department experienced a large increase in its backlog, it might suggest that its actual routine maintenance activities are insufficient to keep up with its annual needs and that it should improve its maintenance program to prevent the further accumulation of deferred maintenance. In such cases, it will be important for the Legislature to understand this so it can direct departments to take actions to improve their maintenance programs.

***Require Future Reporting of Projects Completed.*** In the LAO's budget report, [\*The 2019-20 Budget: Deferred Maintenance\*](#), they recommend that the Legislature adopt additional SRL requiring DOF to report, no later than January 1, 2023, on which deferred maintenance projects all departments undertook with 2019-20 funds. This would provide greater transparency and accountability of the funds by ensuring that the Legislature has information on what projects were ultimately implemented and that the funds were spent consistent with any legislative directive given.

**Staff Recommendation.** Hold Open.

**Issue 4: Court Appointed Counsel in Juvenile Dependency Proceedings Proposal**

**Governor's Budget.** The budget includes \$20.0 million General Fund in 2019-20 and ongoing to support court-appointed dependency counsel workload. This augmentation increases the total funding for this workload to \$156.7 million, which represents 76 percent of the funding need determined by the Judicial Council.

**Background.** Court-Appointed Dependency Counsel became a state fiscal responsibility through the Brown-Presley Trial Court Funding Act AB 1197 (W. Brown), Chapter 944, Statutes of 1988, and SB 612 (Presley), Chapter 945, Statutes of 1988, which added section 77003 to the Government Code and made an appropriation to fund trial court operations. Welfare and Institutions Code section 317(c) requires the juvenile court to appoint counsel to represent all children in dependency proceedings absent a finding that the particular child will not benefit from the appointment. The court must also appoint counsel for all indigent parents whose children have been placed out of the home or for whom out-of-home placement is recommended, and may appoint counsel for all other indigent parents.

The statewide funding need for court-appointed counsel is based primarily on the number of children in court-ordered child welfare supervision. The Judicial Council has established a caseload standard of 141 clients per full time equivalent attorney and a total funding need of \$207.0 million to achieve this standard.

Inadequate funding and subsequent high caseloads lead to high attorney turnover and lack of retention of qualified advocates for children. Effective counsel will ensure that the complex requirements in juvenile law for case planning, notice, and timeliness are adhered to, thereby reducing case delays, improving court case processing and the quality of information provided to the judge, and ultimately shortening the time children spend in foster care.

**Justification.** According to the proposal, the funding will help reduce the attorney caseloads statewide. This augmentation increases the total funding for this workload to \$156.7 million, which represents 76 percent of the funding need determined by the Judicial Council. The total need, based on the current workload model to achieve the Judicial Council's statewide caseload standard of 141 clients per attorney, is \$207.0 million<sup>2</sup>.

**Staff Recommendation.** Hold Open

---

<sup>22</sup> In 2016 the Judicial Council approved an updated workload and funding methodology for court-appointed juvenile dependency counsel as detailed in *Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology* (Apr. 1, 2016) see <https://jcc.legistar.com/View.ashx?M=F&ID=4382676&GUID=E8BCCA8A-5DED-48C3-B946-6E21EBB0BEAF>

**Issue 5: Pre-Trial Decision-Making Pilot**

**Governor’s Budget.** The budget proposes budget bill language outlining a pre-trial decision-making pilot. The language proposes a \$75 million allocation to the Judicial Council to fund the implementation, operation, or evaluation of programs or efforts in eight to ten courts related to pretrial decision-making.

Per proposed budget bill language: “Funds may be used for the support of activities associated with the validation of the use of risk assessment tools on local populations, exchange of pretrial risk assessment information between the courts and county probation departments, data exchanges among the courts and county probation departments prior to arraignment, contracts between the courts and county probation departments to conduct pretrial risk assessments, judicial officer release and detention decision-making prior to arraignment, court reminders, and other projects related to pretrial decision-making that enhance public safety, appearance in court, and the efficient and fair administration of justice. In selecting its pilot courts, the Judicial Council should seek a diversity in court size, location, court case management systems, and other appropriate factors. Funds may be used for local costs and a county match of resources is not required. Of these funds, ten percent shall be used by the Judicial Council for costs associated with implementing and evaluating these programs, including, but not limited to: facilitating the exchange of information between probation departments and courts, identifying effective pretrial risk assessment tools and potential bias in the tools, and aiding the courts in implementing the pilots. The amount allocated shall be available for encumbrance or expenditure until June 30, 2021.”

**Background.** Pretrial release generally refers to an arrested individual being released from jail prior to their trial. A common way that this occurs is by requiring individuals to pay bail.

**Recent Efforts to Change Pretrial Release.** In recent years, significant concerns have been raised by criminal justice stakeholders, civil rights organizations, and others related to how pretrial release is determined. Specifically, questions have been raised about the fairness of individuals remaining in custody pretrial because they cannot afford bail as well as along socioeconomic lines. Additionally, questions have been raised about whether pretrial risk assessment tools accurately identify those individuals who are likely to fail to appear in court or represent a risk to public safety and whether they have built-in implicit biases. These concerns have led to a variety of efforts to change the pretrial release decision-making process. These efforts include the following:

**Statewide Judicial Branch Initiatives.** In 2016, the Chief Justice convened the Pretrial Detention Reform Workgroup to study current pretrial release and detention practices and provide recommendations for potential reforms. This workgroup issued a report in October 2017 with ten recommendations, including implementing a risk-based pretrial assessment and supervision system to replace the current monetary bail system. In January 2019, the Chief Justice convened a Pretrial Reform and Operations Workgroup to review the progress of pretrial reforms and identify next steps to continue reform efforts.

**Individual Trial Court Initiatives.** A number of individual trial courts and/or their county criminal justice partners have implemented various pretrial programs and pilots. According to a 2015 survey of counties, 46 of 58 counties had some type of pretrial program, with 70 percent being established within the past five years. Some counties—such as San Francisco, Riverside, and Santa Cruz—have had pretrial programs for many years. This survey also indicated that at least 49 counties use a type of pretrial risk assessment tool that provides judges with information about the risk of releasing a defendant before trial.



***Recidivism Reduction Fund (RRF) Pretrial Pilots.*** The 2014-15 and 2015-16 budgets appropriated a total of \$16.3 million from the RRF for a competitive grant program to support projects known to reduce offender recidivism, including the use of risk and needs assessments and the use of evidence-based practices. (The RRF was supported by one-time savings resulting from the underutilization of funding provided to CDCR in 2013-14 for contract prison beds.) The LAO notes that \$5.7 million was allocated specifically to support 11 pretrial pilot projects. Nine of these projects indicate that they are continuing to operate even after the RRF grant program ended. Judicial Council is required to submit a report in 2019 on the outcomes of the funded projects, including their effectiveness and impact on public safety and offender outcomes.

***SB 10 (Hertzberg), Chapter 244, Statutes of 2018.*** SB 10 eliminates money bail in California and replaces it with a process in which individuals would be released on their own recognizance. While some arrested individuals would be released automatically (predominantly for certain misdemeanors), others would be released based on their level of risk to reoffend and fail to appear in court as determined by a pretrial risk assessment. Based on these assessments, an individual could be (1) released on their own recognizance but required to adhere to certain conditions of release, (2) detained until a judge can review the case prior to arraignment, or (3) detained until arraignment (typically within 48 hours of arrest) when a judge would determine whether the individual should be released on his or her own recognizance or detained until trial. On January 16, 2019, the Secretary of State certified that sufficient signatures were collected to qualify a referendum on SB 10 for the November 2020 ballot. This placed the implementation of SB 10 on hold.

***Pending Court Cases.*** There are several court cases pending in the federal and state courts challenging the use of bail related to pretrial releases. For example, the state Court of Appeal ordered a new bail hearing for a specific individual—who was unable to pay the bail set by a judge and remained detained prior to his trial—as it found that the rules used to set his original bail were unconstitutional. The Court of Appeal also ruled that a judge must consider this individual’s ability to pay bail as well as consider alternatives to bail that could ensure public safety or that he returns to court as ordered. This case is currently pending review at the California Supreme Court.

According to the judicial branch, the Pretrial Reform and Operations Workgroup would develop recommendations for allocating the above funding.

#### **LAO Comments.**

***Lack of Detail on Proposed Grant Program.*** While it is possible that the Governor’s proposed grant program could be worthwhile, the Legislature currently lacks sufficient information to effectively evaluate the proposal and weigh the proposed funding relative to its other General Fund priorities. This is because it is unclear (1) what specific goals the program is intended to achieve, (2) whether the eligible projects that could be funded are aligned with these goals, (3) how the proposed funding would be allocated, and (4) how the funded projects would be evaluated to inform future budgetary and policy decisions.

***Well-Developed Proposal Should Include Certain Key Information.*** In contrast, a well-developed proposal should include certain key pieces of information in order to ensure that the proposed funding will be used in an accountable and effective manner. Specifically, the Governor’s proposal should answer the following questions:

- ***What Are the Primary Goals of the Program?*** Specifying the primary goals of a proposed program helps ensure that the program is structured in a manner capable of achieving those goals. For example, if the goal of the program is to determine whether particular pretrial tools or methods are more effective than others, it could make more sense to pilot particular tools or methods at a variety of courts that could be compared against one another—a structure that is different from the proposed program.
- ***What Program or Activities Would Be Supported?*** Clearly specifying the number and type of programs or activities that will be funded would help ensure that Legislative priorities and expectations are met. The LAO notes that identifying the specific activities that would be supported helps ensure that any new grant funding will not be used to (1) duplicate projects that have already been funded and evaluated (such as those supported by RRF funds) and (2) support programs that implement provisions of SB 10, which is prohibited given that the measure is currently subject to a referendum.
- ***How Would Funding Be Allocated?*** Clearly specifying the methodology and criteria used to allocate funding will help the Legislature ensure that funding is distributed in a fair and transparent manner that meets legislative priorities. It will also be important to ensure that funding is allocated to a sufficient number of courts as well as a mix of courts based on size and other factors, in order to ensure that the results can be generalized statewide. The LAO notes that under the Administration’s proposal, nearly all such decisions would be made by Judicial Council—providing the Legislature with little input to ensure funding is used in a manner consistent with its priorities.
- ***How Would Programs or Activities Be Evaluated?*** Clearly specifying (1) how funded programs and activities would be evaluated and (2) the specific information that programs would be expected to collect would help the Legislature ensure that funded projects or activities are evaluated in a manner that can generate information to inform statewide decision-making. As such, it is important to identify specific outcome or performance measures that would be collected (such as the number of people served and the ability of a risk assessment tool to accurately measure risk of committing another offense or to appear in court). It is also important to clearly specify how certain measures should be defined in order to ensure programs collect information consistently.

**LAO Recommendations. *Direct Administration and Judicial Council to Provide Well-Developed Proposal.*** In view of the above, the LAO recommends that the Legislature direct the Administration and Judicial Council to provide a more well-developed proposal regarding the proposed grant program by April 15, 2019. Specifically, the proposal should specify (1) the primary goals of the proposed program, (2) the specific programs or activities that would be funded and how they are aligned with the goals, (3) how funding would be allocated, and (4) how funded programs or activities would be evaluated to inform statewide decision-making. This would help the Legislature effectively evaluate whether the proposed program is aligned with its priorities.

***Withhold Recommendation Pending Additional Information.*** Pending receipt and review of the above information, the LAO withholds recommendation on the Governor’s proposed pretrial grant program. To the extent that the administration and the Judicial Council are unable to provide a more well-developed proposal, the LAOs would recommend the Legislature rejects the proposed program.

**Staff Recommendation.** Hold Open.