



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 26, 2011

Title	Agenda Item Type
Criminal Justice Realignment: Allocations for FY 2011-2012	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
N/A	August 26, 2011
Recommended by	Date of Report
Trial Court Budget Working Group	August 12, 2011
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Executive Summary

The Trial Court Budget Working Group recommends that the Judicial Council approve the allocation of \$17.689 million in operational funding and \$1.149 million in court security-related funding contained in the Budget Act of 2011 (Stats. 2011, ch. 33) to address the trial courts' increased workload as a result of the passage of the Criminal Justice Realignment Act of 2011 (Realignment Act).

Recommendation

The Trial Court Budget Working Group (TCBWG) recommends that the Judicial Council approve in FY 2011–2012: (a) the allocation of \$17.689 million in Criminal Justice Realignment Act operational funding to the superior courts based on each court's percentage of the statewide estimated number of petitions for revocation filed (Attachment A, column C); (b) the permanent transfer of \$1.149 million in court security funding appropriated through the Realignment Act to

the counties based on the same pro-rata methodology as the operational funding (Attachment A, column D), and (c) the tracking by courts of the number of *Petition for Revocation of Community Supervision* forms (Proposed CR-300) that are filed starting on October 1, 2011.

Previous Council Action

There has been no previous Judicial Council action on this item.

Rationale for Recommendation

Criminal justice realignment, enacted via the Budget Act of 2011 and various budget trailer bills, is intended to make changes to California's correctional system... "to stop the costly, ineffective and unsafe 'revolving door' of lower-level offenders and parole violators through our state prisons," according to Governor Jerry Brown. The Governor continues:

"For too long, the state's prison system has been a revolving door for lower-level offenders and parole violators who are released within months—often before they are even transferred out of a reception center," Brown said. ... "Cycling these offenders through state prisons wastes money, aggravates crowded conditions, thwarts rehabilitation, and impedes local law enforcement supervision."

[Criminal Justice Realignment] will give local law enforcement the right and the ability to manage offenders in smarter and cost-effective ways.¹

The recently-enacted State Budget² augments the judicial branch budget by \$18.931 million for the estimated increase in the courts' caseload, education activities, and court security associated with new court revocation proceedings enacted in the Realignment Act. Of this amount, \$1.149 million is to address the increase in the need for court security resulting from the new caseload, and \$93,000 is intended to be used for education and training activities, according to the state Department of Finance (DOF). Training funds will be used by the Administrative Office of the Courts (AOC) Education Division to develop statewide broadcasts for hearing officers and court staff, online resources, faculty materials and associated participant materials for faculty in courts, regional workshops, and support for local court training programs. The \$18.931 million is the total augmentation in the Budget Act of 2011, following the Governor's line-item veto actions, which reflect (1) a two-year delay for the state parole revocation portion of the new caseload, and (2) the funding of only three-quarters of a fiscal year for the caseload associated with petitions to revoke postrelease community supervision, which becomes operative October 1, 2011.³

¹ Press release issued by the Governor's Office on April 5, 2011.

² Senate Bill 87 (Leno), Stats. 2011, ch. 33

³ *Ibid.*, and accompanying line-item vetoes.

Overview of court-related impact of criminal justice realignment

Sentencing. The Realignment Act will eliminate prison as a sentence option for various felonies by authorizing courts to impose terms of over one year in county jail for certain felonies committed by specified defendants. There is no limit to the amount of time that may be served in county jail if the conviction is for a felony punishable by imprisonment in county jail. Offenders who serve their sentences in county jail pursuant to this change in the law are not subject to automatic parole or postrelease supervision. However, the court will be authorized to impose a sentence that includes a period of county jail time less than the maximum allowed by law, and a subsequent period of mandatory supervision, for a total period not to exceed that of the maximum sentence allowed by law.

(Pen. Code § 1170(h), effective October 1, 2011.)

Revocation hearing officer. Superior courts will be authorized to appoint hearing officers to carry out the duties of the courts in conducting parole and community postrelease revocation hearings. Appointment to serve as a revocation hearing officer will require that the individual has been an active member of the State Bar for at least 10 years continuously prior to appointment; was a judge of a court of record of California within the last 5 years or is currently eligible for the Assigned Judges Program; or was a commissioner, magistrate, referee, or hearing officer authorized to perform the duties of a subordinate judicial officer of a court of record of California within the last 5 years. The superior courts of two or more counties may appoint the same person as a hearing officer.

(Gov. Code § 71622.5, effective October 1, 2011.)

Postrelease community supervision. Persons released from state prison on or after October 1, 2011, after serving a prison term for a felony that is not a serious felony (as described in Pen. Code § 1192.7(c)), a violent felony (as described in Pen. Code, § 667.5(c)), a third strike (pursuant to paragraph (2) of subdivision (e) of Pen. Code, § 667 or paragraph (2) of subdivision (c) of Pen. Code, § 1170.12), a crime where the person is classified as a high risk sex offender, or a crime where the person is required as a condition of postrelease supervision to undergo treatment by the California Department of Mental Health, will be supervised by a county agency, such as a probation department (to be determined by the board of supervisors). All other persons released from state prison on or after October 1, and all persons currently on parole will continue to be supervised by state parole.

(Pen. Code, § 3451, effective October 1, 2011.)

Violation of condition of postrelease community supervision. County supervising agencies will have authority to dispose of violations of conditions of postrelease supervision using specified intermediate sanctions up to and including a period of “flash incarceration” in county jail for up to 10 days. There is no court involvement in cases disposed of in this way.

(Pen. Code, § 3454, effective October 1, 2011.)

Revocation of postrelease supervision. If a supervising county agency determines, following application of its assessment processes, that authorized intermediate sanctions up to and

including flash incarceration are not appropriate, the supervising county agency shall petition the revocation hearing officer to revoke and terminate postrelease supervision. The Judicial Council must adopt forms and rules of court to establish uniform statewide procedures to implement the final revocation process.

Upon a finding that the person has violated the conditions of postrelease supervision, the revocation hearing officer shall have authority to (1) return the person to postrelease supervision with modifications of conditions, if appropriate, including a period of incarceration in county jail; (2) revoke postrelease supervision and order the person to confinement in the county jail; or (3) refer the person to a reentry court pursuant to Penal Code section 3015 or other evidence-based program in the hearing officer's discretion. Confinement pursuant to paragraphs (1) and (2) shall not exceed a period of 180 days in the county jail.
(Pen. Code, § 3455, effective October 1, 2011.)

State parole supervision. Phase I (October 1, 2011, to July 1, 2013). Persons released from state prison on or after October 1, 2011, who do not meet the criteria described above for postrelease community supervision will continue to be subject to the jurisdiction of and parole supervision by the California Department of Corrections and Rehabilitation (CDCR). Until July 1, 2013, the Board of Parole Hearings will continue to conduct all revocation proceedings. Persons whose parole is revoked by the board will be referred to county jail, rather than being returned to state prison. There is no court involvement in revocation of parole for these individuals during phase I.

(Pen. Code, § 3000.08, effective October 1, 2011, and operative until July 1, 2013.)

Phase II (beginning July 1, 2013). The supervising parole agency will have authority to dispose of violations of conditions of parole using authorized intermediate sanctions up to and including a period of "flash incarceration" in county jail for up to 10 days. There is no court involvement in cases disposed of in this way. If the supervising parole agency has determined, following application of its assessment processes, that intermediate sanctions up to and including flash incarceration are not appropriate, the supervising agency shall petition the revocation hearing officer to revoke parole. The Judicial Council must adopt forms and rules of court to establish uniform statewide procedures to implement the final revocation process.

Upon a finding that the person has violated the conditions of parole, the revocation hearing officer shall have authority to (1) return the person to parole supervision with modifications of conditions, if appropriate, including a period of incarceration in county jail; (2) revoke parole and order the person to confinement in the county jail; or (3) refer the person to a reentry court pursuant to section 3015 or other evidence-based program in the hearing officer's discretion. Confinement pursuant to paragraphs (1) and (2) shall not exceed a period of 180 days in the county jail.

(Pen. Code, § 3000.08, effective July 1, 2013.)

Community corrections partnership. Each county’s local community corrections partnership is required to recommend a local plan to the county board of supervisors for the implementation of the Realignment Act. The plan shall be voted on by an executive committee consisting of the chief probation officer of the county as chair, a chief of police, the sheriff, the district attorney, the public defender, the presiding judge of the superior court, or his or her designee, and specified county representatives.

Initial fiscal impact analysis

In April 2011, the AOC prepared a fiscal impact analysis of the courts conducting only *final revocation hearings*, one of several options under consideration as part of the Judicial Council’s work to narrow the court role from that enacted in Assembly Bill 109 (Stats. 2011, ch. 15). This analysis used caseload estimates obtained from the DOF and the CDCR, and assumptions about how cases would be processed, as described below.

The DOF noted at the time its estimate was made that approximately 93,000 individuals were on supervised parole. Those individuals were involved in approximately 84,424 violation “events” over a 12-month period.⁴ Of those events, 76,358 were disposed of without a revocation hearing, leaving approximately 8,066 final revocation hearings by the Board of Parole Hearings.

Based on input from courts of various sizes, the AOC estimated that each final revocation hearing would involve approximately two hours of court time. This rough average reflects the projection that many cases would be relatively summary, taking perhaps 30 minutes, while others would require fuller adjudicatory proceedings, up to half a day or longer. This court time was translated into judgeship needs using existing council-approved methodology: one new judgeship per 77,400 minutes of court time. Using this formula, along with the two-hour-per-hearing estimate and the estimated caseload of 8,066, 12.51 new judgeships were estimated to be required to manage the new caseload, at a cost of about \$36.3 million. (Each judgeship costs \$2,903,379, which includes salary, benefits, facilities, one-time and ongoing operating expense and equipment (OE&E), and a full staff complement in year one.)

Using this fiscal impact analysis, the DOF added 15 percent to the estimated caseload due to the many uncertainties about realignment, for a revised estimate of 9,276. The Governor’s May Revision to the budget, issued on May 16, 2011, then proposed to augment the judicial branch budget by \$41,754,191 (\$36.3 million x 115%), reflecting the Governor’s decision to narrow the court role in criminal justice realignment to only final revocation hearings, rather than the much broader role that was enacted earlier in the year.⁵ Ultimately, the judicial branch budget was augmented by \$18.931 million, the amount of funding included in the Budget Act of 2011 after the Governor’s line-item veto actions reflecting (1) a reduction of roughly 45 percent in the projected caseload for the first two fiscal years, due to the two-year delay for the state parole

⁴ One parolee may be involved in more than one violation “event.”

⁵ Assembly Bill 109 (Committee on Budget), Stats. 2011, ch. 15

revocation portion of the new caseload, and (2) the funding of only three-quarters of a fiscal year for the caseload associated with petitions to revoke postrelease community supervision, which becomes operative October 1, 2011. Of this \$18.931 million, \$17.689 million is available for trial court operational costs, \$1.149 million is available for related security costs, and the state DOF specified that \$93,000 is to be made available to the AOC to address court-related training and education costs.

Tracking petitions for revocation

The options considered by the TCBWG described below are for allocation of the funding included in the Budget Act of 2011 under the Realignment Act and are based on the CDCR's estimate of the number of petitions for revocation that it believes would have been subject to court action had the Realignment Act been in effect in 2010. The TCBWG recommends that future allocations of the ongoing funding be based on actual court-specific information. For this reason, the number of petitions for revocation filed in each court should be tracked by the court and reported to the AOC through the use of a year-end survey. Additional expenditure information may also be necessary in order to more accurately ascertain courts' needs. The Judicial Council is required by the Realignment Act to adopt forms to implement the final revocation process. A mandatory *Petition for Revocation of Community Supervision* (form CR-300) is currently being developed for approval by the council. The survey could be based on the number of these new Judicial Council forms that are filed with the court.

Comments, Alternatives Considered, and Policy Implications

A criminal justice realignment act subcommittee of the TCBWG met on August 2 to discuss possible methods of allocating, in FY 2011–2012, the funding provided in the Budget Act of 2011 for increased superior court workload as a result of the Criminal Justice Realignment Act and to make recommendations to the full working group for allocation of the available funding. The full TCBWG met on August 8, 2011 to review and discuss the subcommittee's recommendations. The alternatives described below were considered at these meetings. A question asked at the working group meeting was whether estimated data for years before 2010 could be obtained from the CDCR to examine fluctuation in this revocation hearing workload. As was explained to the members, this isn't possible at this time because the CDCR does not track information by county and just providing the calendar year 2010 data took months.

Option 1. Pro-rata based on percentage of the statewide total (recommended option)

This option would allocate the funds in FY 2011–2012 based on each court's percentage of the total estimated petitions for revocation (Attachment A, columns C and D). This would provide funding to a greater number of courts, as compared to option 2. All courts that are estimated by the CDCR to have had actions that would require court action under the Realignment Act, would receive some level of funding.

Option 2. Pro-rata based on percentage of the statewide total with a minimum threshold of 12 or more estimated petitions filed per year

This option would allocate funds in FY 2011–2012 only to those courts with 12 or more estimated petitions per year. The funding that would otherwise have gone to courts with fewer than 12 estimated petitions is spread among the other courts (Attachment A, columns G and H). This would provide more funding than option 1 to those courts with a higher number of estimated petitions, which would be assumed to equate to a higher workload. On the other hand, the concern with this option was that even though a court may have less than one estimated petition per month, they may still have additional workload whose costs should be addressed through supplementary funds.

Option 3. Reimbursement based on actual number of petitions filed

This option would establish a reimbursement process whereby courts would be surveyed at the end of FY 2011–2012 regarding the actual number of *Petition for Revocation of Community Supervision* forms (form CR-300) filed. Funding would then be allocated on a pro-rata basis. Using this method, allocations would be more accurate because they would be based on actual court information. The concern with this option is that courts would have to wait until after the end of the current fiscal year to receive this funding.

Implementation Requirements, Costs, and Operational Impacts

The recommended allocations should provide sufficient funding to the courts to address costs for the estimated increased workload resulting from the Realignment Act, i.e., hiring or sharing in the cost of revocation hearing officers, and hiring support staff to handle the processing of the actions.

In FY 2012–2013, the funding appropriation will change as ongoing funding will increase as a result of full-year funding being provided (rather than the nine months of funding in FY 2011–2012). In order to allocate the funds next year based on more accurate data, courts will need to implement a way to track the number of *Petition for Revocation of Community Supervision* forms filed. The AOC will then survey the courts to collect this information.

Attachments

Attachment A: Postrelease Community Supervision Revocation Hearing Caseload Criminal Justice Realignment Act of 2011 Proposed Allocation of FY 2011–2012 Funding

**Postrelease Community Supervision Revocation Hearing Caseload
Criminal Justice Realignment Act of 2011
Proposed Allocations for FY 2011-2012 Funding**

Court	Option 1				Option 2			
	Total Estimated Petitions to Revoke*	Percentage of Statewide Petitions to Revoke (A/7,003)	Allocation of Operations Funding (Bx\$17.689M)	Allocation of Security Funding (Bx\$1.149M)	Estimated Petitions to Revoke (12 or more only)	Percentage of Total of Column E (E/\$6,934)	Allocation of Operations Funding (Fx\$17.689M)	Allocation of Security Funding (Fx\$1.149M)
	A	B	C	D	E	F	G	H
Alameda	388	5.54%	\$ 980,126	\$ 63,665	388	5.60%	\$ 989,808	\$ 64,294
Alpine	1	0.01%	2,526	164	-	0.00%	-	-
Amador	3	0.04%	6,315	410	-	0.00%	-	-
Butte	58	0.83%	146,514	9,517	58	0.84%	147,961	9,611
Calaveras	1	0.01%	2,526	164	-	0.00%	-	-
Colusa	1	0.01%	2,526	164	-	0.00%	-	-
Contra Costa	134	1.91%	337,234	21,905	134	1.93%	340,566	22,122
Del Norte	3	0.04%	7,578	492	-	0.00%	-	-
El Dorado	29	0.41%	73,257	4,758	29	0.42%	73,981	4,805
Fresno	336	4.80%	848,769	55,132	336	4.85%	857,154	55,677
Glenn	8	0.11%	18,946	1,231	-	0.00%	-	-
Humboldt	60	0.86%	151,566	9,845	60	0.87%	153,063	9,942
Imperial	31	0.44%	78,309	5,087	31	0.45%	79,083	5,137
Inyo	3	0.04%	6,315	410	-	0.00%	-	-
Kern	221	3.16%	558,268	36,263	221	3.19%	563,783	36,621
Kings	28	0.39%	69,468	4,512	28	0.40%	70,154	4,557
Lake	16	0.23%	40,418	2,625	16	0.23%	40,817	2,651
Lassen	3	0.04%	7,578	492	-	0.00%	-	-
Los Angeles	1,942	27.73%	4,904,419	318,570	1,942	28.00%	4,952,869	321,717
Madera	40	0.56%	99,781	6,481	40	0.57%	100,767	6,545
Marin	10	0.14%	25,261	1,641	-	0.00%	-	-
Mariposa	-	0.00%	-	-	-	0.00%	-	-
Mendocino	25	0.35%	61,889	4,020	25	0.35%	62,501	4,060
Merced	66	0.94%	166,722	10,830	66	0.95%	168,369	10,937
Modoc	1	0.01%	2,526	164	-	0.00%	-	-
Mono	1	0.01%	2,526	164	-	0.00%	-	-
Monterey	128	1.83%	323,341	21,003	128	1.85%	326,535	21,210
Napa	11	0.16%	27,787	1,805	-	0.00%	-	-
Nevada	4	0.06%	10,104	656	-	0.00%	-	-
Orange	328	4.68%	827,297	53,738	328	4.72%	835,470	54,268
Placer	41	0.59%	103,570	6,727	41	0.59%	104,593	6,794
Plumas	2	0.02%	3,789	246	-	0.00%	-	-
Riverside	266	3.80%	671,942	43,646	266	3.84%	678,580	44,078

**Postrelease Community Supervision Revocation Hearing Caseload
Criminal Justice Realignment Act of 2011
Proposed Allocations for FY 2011-2012 Funding**

Court	Option 1				Option 2			
	Total Estimated Petitions to Revoke*	Percentage of Statewide Petitions to Revoke (A/7,003)	Allocation of Operations Funding (Bx\$17.689M)	Allocation of Security Funding (Bx\$1.149M)	Estimated Petitions to Revoke (12 or more only)	Percentage of Total of Column E (E/\$6,934)	Allocation of Operations Funding (Fx\$17.689M)	Allocation of Security Funding (Fx\$1.149M)
	A	B	C	D	E	F	G	H
Sacramento	479	6.83%	1,208,738	78,514	479	6.90%	1,220,679	79,290
San Benito	6	0.09%	15,157	985	-	0.00%	-	-
San Bernardino	415	5.92%	1,047,068	68,013	415	5.98%	1,057,411	68,685
San Diego	354	5.06%	894,239	58,086	354	5.11%	903,073	58,660
San Francisco	201	2.87%	507,746	32,981	201	2.90%	512,762	33,307
San Joaquin	180	2.56%	453,435	29,453	180	2.59%	457,914	29,744
San Luis Obispo	47	0.67%	118,727	7,712	47	0.68%	119,899	7,788
San Mateo	69	0.99%	174,301	11,322	69	1.00%	176,023	11,434
Santa Barbara	62	0.89%	156,618	10,173	62	0.89%	158,165	10,274
Santa Clara	245	3.49%	617,631	40,119	245	3.53%	623,732	40,515
Santa Cruz	45	0.64%	113,674	7,384	45	0.65%	114,797	7,457
Shasta	62	0.88%	155,355	10,091	62	0.89%	156,890	10,191
Sierra	-	0.00%	-	-	-	0.00%	-	-
Siskiyou	7	0.10%	17,683	1,149	-	0.00%	-	-
Solano	145	2.06%	365,021	23,710	145	2.08%	368,627	23,944
Sonoma	68	0.96%	170,512	11,076	68	0.97%	172,196	11,185
Stanislaus	113	1.61%	285,449	18,542	113	1.63%	288,269	18,725
Sutter	21	0.29%	51,785	3,364	21	0.30%	52,297	3,397
Tehama	21	0.29%	51,785	3,364	21	0.30%	52,297	3,397
Trinity	-	0.00%	-	-	-	0.00%	-	-
Tulare	47	0.66%	117,464	7,630	47	0.67%	118,624	7,705
Tuolumne	6	0.08%	13,894	902	-	0.00%	-	-
Ventura	151	2.15%	380,178	24,695	151	2.17%	383,933	24,939
Yolo	46	0.65%	114,937	7,466	46	0.66%	116,073	7,540
Yuba	35	0.50%	88,413	5,743	35	0.50%	89,287	5,800
TOTAL	7,003	100.00%	\$ 17,689,000	\$ 1,149,000	6,934	100.00%	\$ 17,689,000	\$ 1,149,000
Total Operations Funding:	\$ 17,689,000							
Total Security Funding:	\$ 1,149,000							

* Source: California Department of Corrections and Rehabilitation