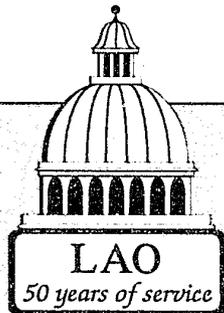


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Reprint

FROM THE 1994-95 BUDGET: PERSPECTIVES AND ISSUES

TRIAL COURT FUNDING ISSUES

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Elizabeth G. Hill
Legislative Analyst

April 1994

TRIAL COURT FUNDING ISSUES

Summary

The Trial Court Realignment and Efficiency Act of 1991 modified the Trial Court Funding Program, enacted by Ch 945/88 (SB 612, Presley), and significantly changed the state-local funding relationship for support of the trial courts. The 1994-95 Governor's Budget proposes to (1) significantly increase state support for trial court operations and (2) fund trial court operations within the state budget through a "functional" budgeting format. This is the first year state expenditures for trial courts are displayed by function, instead of by block grant amounts.

As a result of the Governor's proposal, we identified a number of issues regarding the methodology used in constructing the proposed budget and the lack of performance measures by which to adequately assess proposed and future expenditures. We address these and other issues in the Analysis of the 1994-95 Budget Bill and offer a number of suggestions to limit state costs under the Trial Court Funding Program.

TRIAL COURT FUNDING (0450)

The Trial Court Funding Program, enacted by Ch 945/88 (SB 612, Presley), the Brown-Presley Trial Court Funding Act, requires the state to assume primary responsibility for funding the operations of the trial courts in counties that choose to participate in the program. Chapter 90, Statutes of 1991 (AB 1297, Isenberg), the Trial Court Realignment and Efficiency Act of 1991, significantly modified the program and specifies the Legislature's intent to increase state support for trial court operations 5 percent per year, from 50 percent in 1991-92 to a maximum of 70 percent in 1995-96.

The budget proposes total expenditures of \$1 billion for support of the Trial Court Funding Program and assumes that all 58 counties will participate in 1994-95. The amount requested is \$400 million, or 65 percent, above estimated expenditures in the current year. This significant increase is due to the Governor's proposal to provide additional funds to support trial courts as part of his state and county restructuring proposal (we discuss the proposal in more detail below). The program is supported by appropriations of \$876 million from the General Fund and \$142 million from the Trial Court Trust Fund.

OVERVIEW OF TRIAL COURT FUNDING

There are two components of the program: (1) Trial Court Funding (Item 0450) and (2) Contributions to Judges' Retirement Fund (Item 0390). The Trial Court Funding component contains three elements: (1) Salaries for Superior Court Judges (listed in previous budgets under Item 0420), (2) Assigned Judges Program (until last year a part of both Items 0250 and 0450), and (3) "Functional Budget Funding" (a new program under Item 0450 that budgets funds for court operations by function and takes the place of block grant funding).

Figure 24 shows proposed expenditures for support of the trial courts in the past, current, and budget years. We discuss Contributions to the Judges' Retirement Fund (Item 0390) in detail in the State Administration chapter of this *Analysis*. We discuss the remaining elements below.

As Figure 24 shows, the budget proposes total expenditures of \$969 million for support of Trial Court Funding. This is \$388 million, or 67 percent, above estimated current-year expenditures.

Figure 24

**State Costs
Trial Court Funding Program
1992-93 Through 1994-95**

(Dollars in Millions)

	Actual 1992-93	Estimated 1993-94	Proposed 1994-95
Trial Court Funding (Item 0450)	\$602.3	\$581.0	\$969.4
Salaries of superior court judges ^a	73.9	75.8	77.7
Assigned Judges Program	—	(10.0)	(10.0)
Trial Court Trust Fund ^b	(119.2)	(141.5)	—
Trial court funding block grants ^b	(483.1)	(353.8)	—
Functional Budget Funding	—	—	(881.7)
Judges' Retirement Fund^c	54.5	36.1	48.0
Total	\$730.7	\$617.2	\$1,017.4

^a Previously listed under Item 0420 in the Governor's Budget.

^b Included in functional budget funding beginning in 1994-95.

^c Listed separately under Governor's Budget Item 0390.

Salaries for Superior Court Judges. The state funds roughly 90 percent of each superior court judges' \$104,262 salary, plus the full cost of health benefits. The balance of the salaries is paid by counties. The budget proposes expenditures of \$77.6 million for superior court judges salaries. This amount is \$1.9 million, or 2.5 percent, above estimated current-year expenditures, and reflects full-year funding for the judges' salary increase that became effective on January 1, 1994.

Assigned Judges Program. The state Constitution provides the Chief Justice of the California Supreme Court with the authority to assign active and retired judges to hear cases in trial courts on a temporary basis. These assignments are generally made due to illness or disqualification of permanent judges, judicial vacancies, or court calendar congestion. Prior to 1993-94, the Assigned Judges Program was supported by General Fund expenditures from the Judicial budget and State Block Grants for Trial Court Funding. Legislative action taken in the 1993 Budget Act combined both expenditures within Item 0450. The budget proposes to maintain expenditures for the Assigned Judges Program at the current-year level of \$10 million.

Functional Budgeting. Chapter 90 directed the Judicial Council to report to the Legislature on the most efficient and cost-effective means by which to incorporate state trial court expenditures into the annual

Budget Act. In its report, the Judicial Council recommended that trial court expenditures be incorporated into the Governor's Budget based on major functions of court operations. Chapter 158, Statutes of 1993 (AB 392, Isenberg), authorized the Judicial Council to appoint a Trial Court Budget Commission (TCBC) to allocate trial court funding monies among the various courts. The budget proposes to include funding for trial court operations based on the functional budgeting format recommended by the Judicial Council. We discuss the new format in greater detail below.

STATE-COUNTY RESTRUCTURING PROPOSAL

Governor Proposes Major Restructuring Initiative

The Governor's state-county restructuring proposal as it relates to trial courts has merit. However, the Legislature should consider how the various components of the restructuring proposal are linked, and be aware of a number of cost containment and incentive issues.

The budget proposes a major shift of program responsibilities and funding from the state to the counties. About \$3.2 billion in existing state costs for health and welfare programs would be shifted to counties, in exchange for higher allocations of local property tax revenues, an additional shift of state sales taxes, and greater state support for trial courts. These changes are intended to increase the financial incentives of counties to make program investments and operating decisions in ways that improve program performance. The budget proposes that the restructuring be fiscally neutral.

With respect to the Trial Court Funding Program, the budget proposes that the state pay 65 percent of the costs of local courts, an increase of \$400 million, or 65 percent, in state funding. In addition, the budget proposes that counties and cities retain fine, fee, and forfeiture revenues that they currently remit to the state (we discuss this issue in more detail below).

The Governor's Budget indicates that the state should assume the major share of funding for trial courts because of the compelling statewide interest in promoting the uniform application of justice, and because trial court operations are governed by state statutes and regulations.

State Funding for Trial Courts Makes Programmatic Sense. We concur with the administration that the state should assume financial responsibility for the trial courts, as we proposed last year in "Making Government Make Sense." In our view, the state should assume respon-

sibility for truly statewide functions, in order to ensure adequate service levels. Ensuring and improving citizens' access to justice through the courts is such a statewide function.

In addition, we concur with the administration that trial court operations are governed primarily by state law and regulations; judges are appointed by the Governor, and supervised and disciplined by the Judicial Council; and judges' salaries are set by the Legislature. We also note, however, that there is a strong linkage between the workload of the courts and the activities of local government officials, particularly in the area of criminal caseloads (criminal cases are brought to the courts by local law enforcement officials).

All of the Components of the Restructuring Proposal Need to be Considered Together. It will be important for the Legislature to consider how the various components of the Governor's restructuring proposal interact and the extent to which they further the goal of improving state and county operations (for a full discussion of the restructuring proposal, please see our companion document, *The 1994-95 Budget: Perspectives and Issues*). Although we find merit in the proposal as it relates to state support of the trial courts, we point out a number of concerns regarding trial court governance, cost containment, and incentives, later in this analysis and conclude that the Legislature should direct the Judicial Council to improve expenditure reporting, develop performance measures, and distribute funds to courts based on a system of incentives.

Budget Proposes to Fund 65 Percent of Trial Court Costs, But Falls Short

Although the Governor's Budget indicates the budget supports 65 percent of trial court costs, recent data from the Judicial Council indicate that the Governor's proposed expenditures will support approximately 58 percent of trial court costs. If the Legislature wishes to fund the program at the 65 percent level, the budget would have to be augmented by up to \$108 million.

As indicated above, the Governor's Budget proposes total expenditures of \$1 billion for support of trial court operations, including General Fund contributions for the Judges' Retirement Fund. The budget projects that this level of appropriation would support 65 percent of the total statewide operating costs for trial courts, as expressed in Chapter 90.

However, the Governor's Budget also notes that the figures displayed for the Trial Court Funding Program are based on *preliminary* estimates. Subsequent budget information submitted by the Judicial Council,

projects that total baseline budget expenditures submitted by trial courts for 1994-95 totalled more than \$1.7 billion, or roughly \$165 million more than the amount assumed by the budget.

Our review indicates that the Judicial Council's projected costs are essentially correct, although we have some concerns with the estimates as we discuss later in this write-up. Using the Judicial Council's data, we estimate that the Governor's proposed level of expenditures will support only about 58 percent of the statewide costs for trial court operations in the budget year. The Governor's proposal would have to be augmented by up to \$108 million to reach the 65 percent funding level.

Budget Proposes to Leave Fines, Fees, and Forfeiture Revenues at Local Level

Trial court fines, fees, and forfeiture revenue collections continue to be below projections. However, permitting local governments to retain these revenues will provide a strong incentive for them to increase collections significantly.

Chapter 90 and Ch 189/91 (AB 544, Isenberg) reduced the city and county share of nonparking fines by transferring 50 percent of the cities' share and 75 percent of the counties' share to the state General Fund. In addition, the Legislature also increased several fines, fees, and forfeitures to provide revenues to the General Fund to offset appropriations for support of trial court operations. These revenues amounted to \$347 million in 1992-93, and are estimated to total approximately \$317 million in the current year and \$348 million in the budget year.

The budget proposes to allow local governments to retain these revenues for support of local programs and services, starting in 1994-95. Based on estimates from the DOF, this action will provide \$296 million for counties and \$52.3 million for cities.

We believe that permitting local governments to retain these revenues is likely to increase the amount of revenues collected. This is because local governments will have a greater incentive to collect the revenues. As a result, we believe that it is quite likely that the revenue collections will exceed current estimates.

Trial Court Trust Fund Revenues Continue to Fall Short of Projections

Trial Court Trust Fund revenues continue to fall significantly below projections. To the extent that revenues fall below projected levels, the state will fund less than 58 percent of total statewide trial court costs.

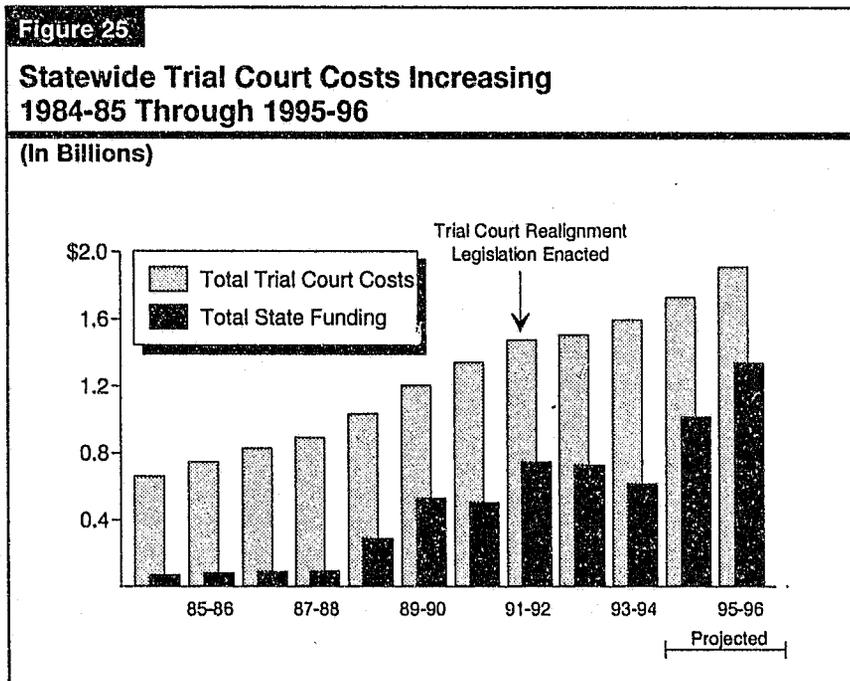
The Trial Court Trust Fund was established pursuant to Ch 696/92 (AB 1344, Isenberg) and allows the state to retain certain trial court civil fees to support a portion of the costs of trial court operations. The Governor's Budget proposes to expend \$142 million from the Trial Court Trust Fund in support of trial court operations in both the current and budget years. Unlike fines, fees, and forfeiture revenues, trust fund revenues (such as filing fees and court reporter fees) are derived from services provided to the public by the trial courts. As a result, there is a direct connection between the cost for the service and the revenues remitted to the state for support of trial court operations.

Revenues remitted to the fund have not met projected amounts, which reflects a general pattern of overestimating revenues. In 1992-93 \$119 million was remitted to the trust fund versus the estimate of \$140 million. The 1993 Budget Act projects that \$175 million will be remitted to the Trial Court Trust Fund in the current year. However, as of January 1, 1994, revenues remitted to the trust fund are roughly 44 percent below projected full-year collection levels and are projected to be 25 percent below *actual* remittances for 1992-93. Although revenues remitted to the trust fund are expended only for support of trial courts, any shortfall to the trust fund will result in the state funding even less than 58 percent of total statewide trial court costs.

Future Costs for Trial Court Operations Likely to Increase

Expenditures for trial court operations are projected to increase 8.4 percent in the budget year. Absent additional cost constraints, annual expenditures for trial court operations are likely to continue to increase significantly in future years.

Trial Court Costs Increased Significantly in the Past. Figure 25 shows the total costs of the trial courts and the state funding for these operations since 1984-85. As the figure shows, both trial court costs and state funding for these costs have increased significantly over this period. State support for trial court operations would increase from \$72 million, or 11 percent of total statewide costs in 1984-85, to a projected \$1.3 billion, or 70 percent of total costs, in 1995-96, assuming implementation of legislative intent expressed in Chapter 90.



Trial court costs increased at an average annual rate of about 13 percent from 1984-85 through 1990-91, when trial court costs were largely funded by the counties. During the first three years of trial court realignment (1991-92 through 1993-94), trial court costs increased an average of 4 percent per year. Expenditure data provided by the TCBC indicate that costs are projected to increase 8.4 percent between the current and budget years.

Our review indicates that the growth rate in trial court costs was substantially reduced during the past three years largely because of legislation requiring trial courts to implement operating efficiencies and cost saving measures. In addition, Ch 90/91 requires trial courts to develop plans that will achieve a statewide reduction in trial court operating costs of 3 percent in 1992-93, 2 percent in 1993-94, and 2 percent in 1994-95. However, even with these constraints in place, trial court costs increased 5.8 percent in 1993-94 and are projected, based on data provided by the Judicial Council, to increase 8.4 percent in 1994-95. Absent any additional constraints, we believe that the Legislature can expect these cost increases to continue in future, especially if new judgeships are created.

Potential Future Pressure on the General Fund. The budget proposes to increase state funding for trial court operations, with the county share of costs declining. Because the counties will continue to make decisions which, in part, will drive the costs of this program, there could be additional pressure on the General Fund in the budget year and beyond. Later in this write-up we outline several steps that the Legislature can take to contain future cost increases of the trial courts.

State's Control Over Court Costs is Currently Limited

Although the state funds a significant portion of trial court costs, its budgetary control over expenditures is limited. The Legislature needs to assess whether the current budgeting process provides sufficient review and control of trial court expenditures.

Under the current trial court funding arrangement, trial court budgets are developed at the local level and then submitted to the TCBC for adoption and inclusion into a statewide trial court budget for approval by the Judicial Council. The council then submits the request to the Department of Finance for inclusion in the Governor's Budget.

The expenditure requests contained within the submitted budgets are affected by a number of factors, a number of which are currently outside the direct control of the state. For example, the budget proposes expenditures of \$219 million for court interpreters and court security. Most of these expenditures are for salaries and benefits for bailiffs and court interpreters. However, the state does not participate in salary negotiations with either bargaining unit. As a result, there is limited incentive for the county to hold down costs in these areas in future years as the state assumes a larger portion of trial court costs.

State control over expenditures was less of a funding issue when counties supported the majority of trial court costs. During 1991-92, 1992-93, and 1993-94, state appropriations for trial court operations supported approximately 51 percent, 48 percent, and 39 percent, respectively, of total statewide trial court costs. However, the budget proposes to fund a higher share of the total statewide costs for trial court operations in 1994-95, and the administration may propose to support an even higher level in 1995-96. As a result, the state has a direct interest in controlling the costs for trial court operations.

In our view, the Legislature needs to assess the current budgeting process and determine if it allows sufficient review and control of expenditures. We offer three recommendations later in this analysis that are designed to control or reduce costs.

Some Progress in Implementing Trial Court Efficiencies

Although many courts have implemented various efficiencies and cost savings measures, wide disparities still exist among the counties. We recommend the enactment of legislation to provide for additional court efficiencies.

As we indicated above, the rate of growth for trial court operating costs was significantly reduced by legislatively directed efficiencies and cost saving measures contained in the trial court funding realignment legislation. Our review of trial court operations indicates that a significant number of trial courts have taken steps to implement efficiencies, such as:

- Allowing superior, municipal, and justice court judges to hear matters regardless of trial court jurisdiction.
- Allowing centralization of administrative tasks for trial courts and cross-training of support staff for all courts.
- Coordinating trial court calendars so that scheduling of all prosecutors, defense attorneys, judges, and court personnel eliminates conflicts and ensures appearances.
- Establishing single jury selection systems for all trial courts within a judicial district.
- Allowing the use of electronic recording devices for verbatim reporting and video arraignment of defendants without transporting them to court.

Other Efficiency Options Should be Adopted. Although many efforts have been made, our review indicates that a wide disparity still exists among trial courts in their efforts to coordinate operations and implement efficiencies. We believe that the Legislature should enact legislation directing trial courts to implement other efficiencies to reduce operational costs in the future. The options could include the following:

- Change statutorily-established verbatim reporting costs for court reporters in order to capture savings from advances in computer technology and eliminate court reporter ownership of verbatim transcripts after the first certified copy.
 - Authorize the Chief Justice of the California Supreme Court to assign a judge within a county to any court within the same county in order to address workload needs.
 - Authorize courts to order probationers to pay a fee for processing court ordered payments.
-

- Allow trial courts to use electronic recording technology in all cases, except serious felony and death penalty cases.

To the extent that trial courts implement additional efficiencies, the growth in trial court costs will be reduced.

A NEW APPROACH TO TRIAL COURT BUDGETING

Overview

Currently, the state provides funding for trial court operations, with the exception of superior court judges salaries and health care benefits, through block grant subventions to participating counties. Typically, the subventions are deposited into the counties' general funds to support trial court operations. With minor limitations, counties have wide discretion in the use of block grant funds to support trial court operations.

The Governor's Budget proposes to fund trial court operations using a functional budgeting approach recommended by the Judicial Council. Functional budgeting groups various tasks involved in trial court operations into relatively discreet functional categories. The functions are essentially the same used to determine which trial court costs are allowable under the current block grant program. Each trial court's functional expenditure data is combined with all participating trial courts to produce a statewide aggregate function cost.

Figure 26 shows total expenditures (state and county) for court operations by the eleven functional budgeting categories for 1992-93 through 1994-95. The budget projects total *state and county* expenditures at \$1.5 billion for 1994-95. (As we indicated earlier, more recent information from the Judicial Council shows that these expenditures are more likely to be around \$1.7 billion.) This amount reflects a *net* \$42.6 million decrease in state-county expenditures from current-year estimated costs. This consists of an increase of \$10.7 million, or 6.3 percent, for judicial officers and a decrease of \$53.3 million, or 46 percent, for indirect costs. (All other costs are projected to remain unchanged.) The increase for judicial officers reflects full-year funding for salary increases effective January 1, 1994, and half-year salary increases effective January 1, 1995. According to the Governor's Budget, the decrease in expenditures for "Indirect Costs" reflects changes in the criteria for estimating these costs.

Figure 26.

**Total Trial Court Expenditures
Functional Budgeting Categories
1992-93 Through 1994-95**

(In Thousands)

	Actual 1992-93	Estimated 1993-94	Proposed 1994-95
Judicial officers	\$167,709	\$169,747	\$180,450
Jury fees and mileage	20,912	19,280	19,280
Verbatim reporting	123,195	124,889	124,889
Interpreters	31,867	32,071	32,071
Collection enhancements	10,923	24,157	24,157
Dispute resolution program	20,078	24,106	24,106
Court appointed counsel	35,100	35,778	35,778
Court security	167,905	187,307	187,307
Data processing	96,406	119,585	119,585
Staff and other operating costs	684,959	696,180	696,180
Indirect costs	94,840	116,720	63,391
Total	\$1,453,894	\$1,549,820	\$1,507,194

Judicial Council Should Refine Expenditure Reporting

There are a number of problems with the data in the expenditure plan submitted by the Judicial Council. We recommend that the Legislature adopt supplemental report language directing the Judicial Council to work with the State Controller's Office to refine the procedures and guidelines for reporting trial court expenditures.

Problems with Cost Estimates. In its report to the Judicial Council, the TCBC acknowledged significant problems with expenditure information collected from trial courts. The problems primarily are the result of inadequate cost accounting systems at the local level, inconsistent application of State Controller's cost reporting guidelines, and substantive differences in cost accounting practices between the various counties and the state. As a result, the Judicial Council is unable to state that the expenditures listed in Figure 26 accurately reflect projected statewide expenditures for each function.

Lack of Expenditure Detail for Staff and Other Operating Expenses. The Governor's Budget proposes expenditures of \$696 million for staff and other operating expenses (also known as "Function 10"). This amount represents 68 percent of total expenditures for the Trial Court Funding Program. Information provided by the Judicial Council indicates that this category covers such costs as salaries and benefits of

judicial support staff not listed in other functions, judicial officer benefits (excluding retirement), and *all other* costs not listed in other functions that are allowable for state support.

In our view, this category is too broad in its description and content to provide meaningful information to the Legislature. The lack of fiscal detail for such a large portion of the Trial Court Funding component does not allow the Legislature to adequately review and evaluate the various expenditures contained within that line item. As a result, the Legislature is unable to adequately assess the funding and policy priorities of the judicial branch.

Improvement Needed in Cost Data. The problems outlined above make it very difficult for the Legislature to have an accurate picture of how state funds will be used to support the trial courts. For this reason, we recommend that the Legislature adopt supplemental report language directing the Judicial Council to work with the State Controller's Office to refine the procedures and guidelines for reporting trial court expenditures. Specifically, we recommend the following language:

The Judicial Council shall work with the State Controller's Office (SCO) to further refine expenditure reporting and standardization of accounting guidelines for trial courts. The council shall report to the Legislature by October 1, 1994, on improvements to expenditures and accounting resulting from work with the SCO.

Distribution of Trial Court Funding Should Be Based on Incentives

The Governor's Budget does not contain an allocation formula for trial court expenditures. We recommend adoption of Budget Bill language directing the Trial Court Budgeting Commission and the Judicial Council to implement an allocation formula which includes incentives for trial courts to implement efficiencies and cost saving measures.

The Judicial Council submitted a formula for distributing state funds to local trial courts when it submitted its original 1994-95 expenditure request to the Director of Finance. The Governor's Budget does not contain a distribution formula. Thus, it is uncertain how the funds will be distributed to the various trial courts. Under current law, the TCBC will allocate the funds, subject to approval of the Judicial Council.

Incentives Needed. As we indicated earlier, a wide disparity exists among individual courts with regard to implementation of efficiency and cost savings measures. In our view, the best way to achieve implementation of efficiencies is to establish a system of incentives to reward

courts that implement efficiencies, and create disincentives for trial courts that have not adopted efficiencies. Such a system of incentives could be implemented through the TCBC and Judicial Council's distribution of appropriations from the Functional Budget Funding. For example, the Council could provide additional funds so that courts could establish automated accounting and fine collection systems. Conversely, the Legislature could direct the Judicial Council to withhold expenditures for the Assigned Judges Program in courts that do not coordinate judicial calendars or cross assign judges, or reduce jury fee payments for trial courts that do not have coordinated jury selection procedures.

We believe that creating such incentives is also consistent with the administration's stated intention with regard to its overall state-county restructuring plan.

Analyst's Recommendation. In order to ensure that efficiencies and cost reduction measures are fully implemented by the trial courts, we recommend that the Legislature amend Provision 1 of Item 0450-101-001 as follows:

The amount appropriated in Schedule (a) shall be allocated and reallocated by the Trial Court Budget Commission, and by the Judicial Council. *The commission and council shall implement allocation criteria that includes incentives for courts to implement optional court efficiency measures enacted since 1991. The council shall advise the Legislature by October 1, 1994, on how it has incorporated the incentives for efficiencies into its allocation criteria.*

Proposal Lacks Statewide Performance Measures

We recommend that the Legislature adopt supplemental report language directing the Judicial Council to develop performance measures to be used in the development of the 1995-96 Trial Court Funding budget.

Chapter 90 requires trial courts to implement certain efficiencies and cost saving measures in order to reduce the growth in trial court operating costs. As we indicated earlier, a wide variation exists among trial courts in the implementation of efficiencies and cost saving measures.

Performance Measures Needed. The Governor's Budget does not contain performance measures by which to compare similar categorical expenditures from different trial courts within the same county, or among counties statewide. Use of performance measures would improve the budget process and would allow the Legislature to assess trial court *outputs* (such as public satisfaction, length of time required to

resolve a matter, or length of time to file civil papers) instead of *inputs* (such as number of criminal or civil filings) and to make comparisons among the courts.

We believe that the Legislature needs performance measures that allow it to adequately assess expenditure requests and the effectiveness of efficiencies on trial court operations. Therefore, we recommend that the Legislature direct the Judicial Council to develop performance measures for trial court operations.

Council Should Begin to Prepare for 1995-96. We recognize that it may be too late to refine the expenditure data and develop performance measures for the budget year. However, we believe that the Judicial Council should begin to develop such performance measures for 1995-96. Thus, we recommend that the Legislature adopt the following supplemental report language:

The Judicial Council shall develop specific trial court performance measures for use in developing its 1995-96 budget proposal for the Trial Court Funding Program. The council shall report to the Legislature by November 1, 1994, on the development of these measures.

This report was prepared by David Esparza and Craig Cornett. This material was originally printed in the *Analysis of the 1994-95 Budget Bill*. For information concerning this report, please contact the authors at (916) 445-4660.

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