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Prepared By _____

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An act to amend Section 116.232 of the Code of Civil Procedure, to amend Sections 12419.10, 70627, and 70628 of the Government Code, to amend Section 11361.5 of the Health and Safety Code, to amend Sections 869, 1001.15, and 1001.16 of the Penal Code, to amend Sections 40508.6 and 40902 of the Vehicle Code, and to amend Section 903.45 of the Welfare and Institutions Code, relating to courts, and making an appropriation therefor, to take effect immediately, bill related to the budget.

which that person is a party, but if the party requests more than one search at a time, ten dollars (\$10) shall be charged for each search after the first search.

SEC. 4. Section 70628 of the Government Code is amended to read:

70628. For an exemplification of a record or other paper on file, the fee is ~~twenty dollars (\$20)~~ fifty dollars (\$50), in addition to the charges allowed for copying or comparing each page of the record or other paper.

SEC. 5. Section 11361.5 of the Health and Safety Code is amended to read:

11361.5. (a) Records of ~~any~~ a court of this state, ~~any~~ a public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of ~~any~~ a state agency pertaining to the arrest or conviction of ~~any~~ a person for a violation of subdivision ~~(b)~~, (c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall be retained until the offender attains ~~the age of~~ 18 years of age, at which time the records shall be destroyed as provided in this section. ~~Any~~ A court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of ~~any~~ a conviction occurring prior to January 1, 1976, or records of ~~any~~ an arrest not followed by a conviction occurring prior to that date.

(b) (1) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

~~(1) Any~~

~~(A) A~~ violation of Section 11357 or a statutory predecessor thereof.

~~(2)~~

~~(B)~~ Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

~~(3)~~

~~(C)~~ Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

~~(4)~~

~~(D)~~ Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

~~Any~~

(2) A person subject to an arrest or conviction for those offenses specified in paragraph (1) may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount ~~which~~ that will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50). The application form may be made available at every

local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

~~The~~

(3) The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints ~~which~~ that may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address ~~which~~ that may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount ~~which~~ that is a portion of the fee, the department may retain a portion of the fee ~~which~~ that the department determines will defray the actual costs of processing the application, ~~provided~~ but the amount of the portion retained shall not exceed ten dollars (\$10).

~~Upon~~

(4) Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c), and shall notify the Federal Bureau of Investigation, the law enforcement agency ~~which~~ that arrested the applicant, and, if the applicant was convicted, the probation department ~~which~~ that investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, ~~where~~ if (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, ~~no~~ records shall not be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction ~~which~~ that made the arrest or instituted the prosecution, and if the agency ~~which~~ that is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

The 2013-14 Budget:

Governor's Criminal Justice Proposals



MAC TAYLOR • LEGISLATIVE ANALYST • FEBRUARY 15, 2013

LAO 

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Summary of Proposed Administrative Efficiencies and User Fee Increases

The Governor proposes the following administrative efficiencies and user fee increases to generate savings or increase revenues to help trial courts address ongoing reductions. At the time of this report, neither the administration nor the judicial branch had provided estimates of the savings or additional revenue that could be achieved for most of the proposed changes. The proposed administrative efficiencies and increased user fees are described in more detail below.

Court-Ordered Debt Collection. Courts (or sometimes counties on behalf of courts) may choose to utilize the state's Tax Intercept Program, operated by the Franchise Tax Board (FTB) with participation by the State Controller's Office (SCO), to intercept tax refunds, lottery winnings, and unclaimed property from individuals who are delinquent in paying fines, fees, assessments, surcharges, or restitution ordered by the court. Current law allows FTB and SCO to require the court to obtain and provide the social security number of a debtor prior to running the intercept. Under the proposed change, courts will no longer be required to provide such social security numbers to FTB. Instead, FTB and SCO (who issues payments from the state) would be required to use their existing legal authority to obtain social security numbers from the Department of Motor Vehicles. This change will reduce court costs associated with attempting to obtain social security numbers from debtors.

Destruction of Marijuana Records. Courts are currently required to destroy all records related to an individual's arrest, charge, and conviction for the possession or transportation of marijuana if there is no subsequent arrest within two years. Under the proposed change, courts would no longer be required to destroy marijuana records related to an infraction violation for the possession of up to 28.5 grams of marijuana, other than concentrated cannabis. This proposed change would reduce staff time and costs associated with the destruction process.

Preliminary Hearing Transcripts. Courts are currently required to purchase preliminary hearing transcripts from certified court reporters and provide them to attorneys in all felony cases. In all other cases, the courts purchase transcripts upon the request of parties. Under the proposed change, courts would only be required to provide preliminary hearing transcripts to attorneys in homicide cases. Transcripts would continue to be provided upon request for all other case types. This change reduces costs as the court will no longer be required to purchase copies of all non-homicide felony cases from the court's certified court reporter, but will only need to purchase them when specifically requested.

Court-Appointed Dependency Counsel. Current law states that parents will not be required to reimburse the court for court-appointed counsel services in dependency cases if (1) such payments would negatively impact the parent's ability to support their child after the family has been reunified or (2) repayment would interfere with an ongoing family reunification process. Designated court staff currently has the authority to waive payment in the first scenario, but are required to file a petition for a court hearing to determine whether payment can be waived in the second scenario. Under the proposed change, staff would be permitted to waive payments under this second scenario, thereby eliminating the need for some court hearings.

Exemplification of a Record. Exemplification involves a triple certification attesting to the authenticity of a copy of a record by the clerk and the presiding judicial officer of the court for use as evidence by a court or other entity outside of California. The fee for this certification is proposed to increase from \$20 to \$50. The cost of a single certification is \$25. The increased fee is estimated to generate \$165,000 in additional revenue.

Copies or Comparisons of Files. The fee for copies of court records is proposed to increase from \$0.50 to \$1 per page, which is estimated to generate an additional \$5.9 million in revenue. Additionally, fees to compare copies of records with the original on file would increase from \$1 to \$2 per page.

Record Searches. Current law requires court users to pay a \$15 fee for any records request that requires more than ten minutes of court time to complete. Typically, courts interpret this to mean that the fee can only be applied when the search for any single record takes more than ten minutes to complete, regardless of the total number of requests made by the requester. Under the Governor's proposal, courts would charge a \$10 administrative fee for each name or file search request. A fee exemption is provided for an individual requesting one search for case records in which he or she are a party.

Small Claims Mailings. The fee charged for mailing a plaintiff's claim to each defendant in a small claims action would increase from \$10 to \$15 to cover the cost of postal rate increases that have occurred over the past few years.

Deferred Entry of Judgment. Courts would be permitted to charge an administrative fee—up to \$500 for a felony and \$300 for a misdemeanor—to cover the court's actual costs of processing a defendant's request for a deferred entry of judgment. This occurs when the court delays entering a judgment on a non-violent drug charge pending the defendant's successful completion of a court-ordered treatment (or diversion) program.

Vehicle Code Administrative Assessment. Courts would be required to impose a \$10 administrative assessment for every conviction of a Vehicle Code violation, not just for subsequent violations as required under current law. This new assessment is estimated to generate \$2.2 million in annual revenue.

Trial by Written Declaration. Currently, defendants charged with a Vehicle Code infraction may choose to contest the charges in writing—a trial by written declaration. Originally implemented to allow individuals living far from the court to contest the charge, courts have discovered that more and more individuals living close to the court have been using this service. If the local violator is unsatisfied with the decision rendered in the trial by declaration process, they may then personally contest the charges in court as if the trial by written declaration never took place. In recognition of the unintended increased workload, courts would be authorized to collect a non-refundable \$50 administrative fee from individuals residing in the county in which a traffic citation was issued to process their request for a trial by written declaration. This new fee is estimated to generate \$3.2 million in annual revenue.

addition, while most SCFCF projects are already under construction, the majority of ICNA construction projects are currently in either the site acquisition or design phase. Several of the ICNA projects have been delayed already because of transfers. (A more detailed discussion of ICNA is provided in a later section of this report.) On a one-time or short-term basis, the Legislature could further delay projects not currently under construction and transfer more funds to offset reductions to the trial courts. Alternatively, the Legislature could consider canceling certain courthouse construction projects altogether in order to free up additional revenues for transfer to the trial courts on an ongoing basis. Of course, actions to further delay or cancel construction projects would result in the ongoing use of courthouses with various problems—including insufficient space as well as health, safety, or security concerns.

- **General Fund Restoration.** If the Legislature (1) determines that minimizing the amount of additional impacts of budget cuts on court users is a statewide priority and (2) is unable to attain its desired level of offsetting solutions from all of the other options listed above, the Legislature could consider providing the courts with additional General Fund support. The Legislature could choose an amount of one-time or ongoing General Fund support to provide based on what it felt was necessary to allow the courts to meet a desired level of service. To the extent additional General Fund support is provided, the Legislature will want to ensure that certain legislative priorities are achieved.

LAO Recommendation

We recommend approval of the Governor's proposed trailer bill language to implement administrative efficiencies and increase user fees as they provide trial courts with ongoing fiscal relief. Further, we recommend that the Legislature request that judges, court executives, court employees, and other judicial branch stakeholders identify at budget hearings this spring additional efficiencies that could provide further savings. This could provide the Legislature with additional options that, if adopted, could further offset ongoing General Fund reductions. However, the Legislature may be concerned that the ongoing reductions to the trial courts could have increasingly negative impacts on court users, especially as the amount of ongoing budget reductions that the trial courts must absorb increases in 2014-15. Thus, the Legislature should require the judicial branch to report at budget hearings on how the trial courts plan to implement their remaining ongoing budget reductions and what impacts any operational changes may have upon public access to the courts in the future.

Trial Court Reserves Policy

Background

Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle), allowed Judicial Council to authorize trial courts to establish reserves to hold any unspent funds from prior years. Chapter 850 did not place restrictions on the amount of reserves each court could maintain or how they could be used. As shown in Figure 10, trial courts had \$531 million in reserves at the end of 2011-12. The judicial branch estimates that reserves will decrease to roughly \$125 million by the end of 2012-13. This decline reflects, in large part, the expectation in the 2012-13 budget that courts would use \$385 million of their reserves to offset General Fund reductions.