

# The Capitol Connection

A publication of the Judicial Council of California's Office of Governmental Affairs  
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## HIGHLIGHTS OF COURT-RELATED BILLS INTRODUCED IN 2001

The bill introduction deadline for 2001 was February 23. Brief summaries of some of the court-related bills are presented below. The full text of bills may be viewed on the Internet at: [www.leginfo.ca.gov/bilinfo.html](http://www.leginfo.ca.gov/bilinfo.html)

### CIVIL AND SMALL CLAIMS

#### **AB 329 (Jackson) - Court proceedings: disqualification of judge**

Requires that the reassignment of a judge in counties with five or more judges shall be made on a random basis.

#### **AB 1067 (Jackson) - Arbitration**

Expands the grounds and conditions for the vacation of arbitration awards.

#### **AB 1260 (Wayne) - Discovery: misuses of the process**

Adds destruction of relevant evidence to those actions constituting misuses of the discovery process.

#### **SB 110 (Ackerman) - Small claims court**

Authorizes the filing or maintenance of a claim in small claims court by an assignee of a claim under \$750 provided the assignee reduces the claim by 10 percent and pays a special filing fee. Limits the number of claims to five per day or a lesser number to be determined by the Judicial Council.

#### **SB 476 (Escutia) – Summary judgment**

Changes the burden of proof in summary judgment motions.

### CRIMINAL PROCEDURE

#### **AB 299 (Rod Pacheco) – Criminal jurisdiction**

Grants a court exercising jurisdiction over multiple offenses involving criminal sexual acts and stalking that occurred in more than one jurisdictional territory jurisdiction over properly joinable offenses.

#### **AB 765 (Maddox) – Chief probation officer: appointment**

Requires that the chief probation officer be appointed by a majority of a selection committee made up of specified representatives.

#### **AB 1016 (Oropeza) – Bail: deportation**

Specifies that deportation constitutes a form of inability to appear in court that can support a court's decision to vacate an order of forfeiture and exonerate bail.

#### **AB 1304 (Rod Pacheco) – Criminal procedure: motions to suppress: appeal**

Specifies that if a defendant in a misdemeanor case appeals denial of his or her suppression motion, the trial court has discretion to grant a stay of the trial pending disposition of the appeal.

#### **AB 1652 (Goldberg) – Sentencing**

Gives courts discretion in three strikes cases to impose sentences consecutively or concurrently and deletes the provisions providing that the length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of the sentence.

#### **SB 177 (Haynes) – Property seizures**

Provides that, for property seizures where there are not specific procedures for having the property returned, the property shall be returned within a maximum of 30 days from the date the case concludes. Provides that the individual or entity from whom the evidence is seized shall be advised of their right to request a hearing to determine whether or not the property is contraband that is subject to forfeiture.

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**SB 791 (McPherson) – Marijuana: penalties**

Reclassifies as an infraction the possession of 28.5 grams or less of marijuana.

**SB 1034 (Vincent) – Bail: procedures**

Provides that where judgment is entered on a plea against a defendant who is free on bail, the defendant be remanded to the proper officer to await the judgment of the court, unless the court concludes that the evidence supports the court's decision to allow the defendant to remain free on bail. Also provides that if the court fails to remand the defendant or to make a finding on the record of the probability of the defendant failing to appear for the judgment of the court upon the verdict, or for sentencing, the bail would be exonerated.

**DOMESTIC VIOLENCE**

**AB 160 (Bates) - Domestic violence: protective orders**

Specifies that the criminal restraining order or protective order has precedence over any civil court order.

**SB 66 (Kuehl) - Domestic violence: protective orders**

Requires the court, when considering issuance of a protective order, to cause a search of specified records and data bases to determine if the proposed subject of the order has any specified prior criminal convictions or outstanding warrants, is on parole or probation, or is or was the subject of other protective or restraining orders.

**SB 927 (Escutia) - Court interpreters**

Requires an interpreter to be present for any party who needs an interpreter in a Domestic Violence Prevention Act proceeding, or in other settings mandated by the court, including mediation and supervised visitation. Requires the fees for interpreters for the deaf or hard of hearing to be paid by the county. Requires the fees for interpreters for all other parties to be paid by the court in DVPA-related proceedings.

**SB 1221 (Romero) - Spousal support: domestic violence**

Provides that in any proceeding for dissolution of marriage brought within six months of a criminal conviction for an act of domestic violence perpetrated by one spouse against the other spouse, there shall be a rebuttable presumption that any award of spousal support to the abusive spouse otherwise awardable pursuant to the standards of the provisions governing the award of spousal support should be reduced by at least 20 percent.

**FAMILY LAW**

**AB 511 (Matthews) - Community property – primary residence**

Creates a rebuttable presumption that, if community property, the primary residence of the children should be awarded to the parent who has primary physical custody of the children.

**SB 78 (Kuehl) - Premarital agreements**

Sets forth specified findings that the court is required to make in order to find that a premarital agreement was executed voluntarily.

**SB 174 (Kuehl) - Child support: computer software**

Requires the California Child Support Automation System to contain the official state computer software for the calculation of the appropriate amount of child support pursuant to California's child support guidelines and all applicable statutes and rules of court.

**SB 566 (Morrow) - Family law court files**

Provides that files relating to dissolution, nullity, legal separation, and Uniform Parentage Act are confidential and may be inspected only by specified individuals (parties, attorneys, authorized people, law enforcement, court personnel, etc.).

**JUDGES**

**AB 1099 (Havice) – JRS II prior service credit**

Permits a judge to buy back years of service as a court commissioner as credit toward retirement.

**SB 1179 (Senate Committee on Public Employees and Retirement) -- Judges retirement fund**

States the Legislature's intent to fund the unfunded liability in the JRS over a 30-year period.

**ACA 1 (Nation) – Judicial elections**

Eliminates elections to fill vacancies, providing instead that the Governor shall fill judicial vacancies. Provides that all judges appear on the ballot uncontested, with the question presented whether the candidate shall be elected.

**JURIES**

**AB 1660 (McLeod) – Jury service excuse: pollworkers**

Excuses a pollworker at a national, statewide, or local election from jury service for a period of one year following the date of the election at which the pollworker serves.

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**SB 303 (Torlakson) – Jury service exemption: peace officer**

Adds the San Francisco Bay Area Rapid Transit District police to the list of peace officers exempt from both civil and criminal jury duty.

**TRAFFIC**

**AB 73 (Dunn) – Traffic violations: failure to appear: fines**

Limits the amount of additional fines the court may assess to \$100 for a failure to appear when the underlying traffic violation is an infraction involving vehicle registration and equipment violations.

**AB 241 (Dickerson) – Driving on suspended license: penalty**

Makes it a misdemeanor or felony if a person is convicted of driving without a valid driver's license if the conviction occurred within seven years of three or more prior convictions. Prohibits the court from striking any prior conviction in these cases.

**SB 255 (Speier) – Vehicles: children unattended: fine**

Imposes a new fine of not more than \$100 to leave a child 6 years of age or younger unattended in a vehicle for more than one minute.

**TRIAL COURT FUNDING**

**SB 518 (Dunn) - Trial court funding**

Reduces the trial court funding maintenance of effort for specified counties.

**SB 82 (Burton) – Judicial salaries**

Increases the salaries of justices and judges of the Supreme Court, courts of appeal and trial courts by 8.5 percent effective January 1, 2002.

**SB 805 (McPherson) – Court reporters: depositions**

Excludes from recordings of a deposition available to parties any nonstenographic technology used by a deposition officer as well as any data recorded by means of nonstenographic technology.

**SB 1153 (Johannessen) – Trial court funding: court operations**

Includes within the definition of court operations the costs directly related to court security in counties with a population of 103,000 or less.

**AB 1700 (Assembly Judiciary Committee) – Courts**

Judicial Council-sponsored bill amends portions of the Civil Code, Code of Civil Procedure, Government Code, Penal Code, and Welfare and Institutions Code to make changes to the organizational and financial arrangements between the Judicial Council, trial courts, counties and other state agencies.

## 2001-02 BUDGET BILL

Governor Gray Davis released his proposed budget for Fiscal Year 2001-2002 on January 10. The release of Governor Davis's budget is the first step in the annual process to enact a budget for the State of California. The budget proposal reflects the Governor's priorities, and sets in motion negotiations in the Legislature, where the budget undergoes revisions before it is signed by the Governor and enacted into law.

Once the Governor's budget is released, it moves to the Legislature, where it is introduced in the Senate and Assembly as identical bills. At that point, the Legislative Analyst's Office, which provides non-partisan fiscal and policy advice to the Legislature, prepares an extensive analysis of the Budget Bill. This analysis becomes the starting point for discussions in the Senate and Assembly.

### BUDGET HIGHLIGHTS AND SUMMARY OF LAO ANALYSIS

The budget proposes total expenditures of \$2.51 billion for judiciary programs in 2001-02. This is an increase of \$129.7 million, or 5.45 percent, above the estimated current-year spending. The increase is due primarily to a projected increase in the cost of state support for trial courts.

The Legislative Analyst's Office recently published their non-partisan analysis of the Governor's budget. A summary of that analysis follows. The full text of the report is available on the Internet at: [www.lao.ca.gov/analysis\\_2001/analysis\\_2001\\_contents.html](http://www.lao.ca.gov/analysis_2001/analysis_2001_contents.html)

### THE JUDICIAL BRANCH BUDGET

The budget for the Supreme Court, Courts of Appeal, Administrative Office of the Courts, and the Habeas Corpus Resource Center proposes total appropriations of \$351 million in 2001-02. This is an increase of \$26.3 million, or 6 percent, above estimated current-year expenditures. The increase in the judicial branch budget is primarily due to requests for:

- \$5 million for an augmentation to the Equal Access Fund to provide attorneys for unrepresented indigent litigants.
- \$3 million for the Administrative Office of the Courts to provide services to the trial courts.
- \$2 million for the increased operating expenses for the Court-Appointed Counsel program.
- \$1.9 million for the creation of an external fiscal review and audit process for trial courts.
- \$832,000 for pilot projects to determine the effectiveness of court-based self-help programs for low-income persons.
- \$675,000 for the expansion of the Court Appointed Special Advocates Grants Project.
- \$605,000 for increased expenditure authority for child support commissioner salaries.

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**LAO: Current Budget Display Understates Assistance to the Trial Courts**

The Legislative Analyst's Office recommends that, prior to budget hearings, the Judicial Council report to the Legislature on the amount of local assistance funding provided to the trial courts through the judicial branch budget item.

**LAO: Reporting Requirements Needed for Model Self-Help Pilot Programs**

The LAO recommends approval of \$832,000 for the Administrative Office of the Courts to begin pilot projects to determine the effectiveness of court-based self-help programs for low-income persons.

**TRIAL COURT FUNDING**

The Trial Court Funding item provides state funds for support of the state's trial courts. The budget proposes total expenditures in 2001-02 of \$2.2 billion for support of the Trial Court Funding Program. This is \$110 million, or 5.3 percent, greater than estimated current-year expenditures. The major proposals include the following:

- \$22.5 million for cost increases and additional levels of service for security, including equipment.
- \$4.6 million for infrastructure improvements in trial court facilities.
- \$4.2 million for implementation of the one-day/one-trial system.
- \$3.9 million for increased costs in the appointment of counsel for parents in juvenile dependency proceedings.
- \$3.7 million for court interpreter workload growth.
- \$3.6 million for appointed counsel and Court-Appointed Special Advocates for Children in dependency proceedings.
- \$3.5 million to establish a new trial court personnel system in accordance with the Trial Court Employment and Governance Act.
- \$3 million for court services for family and children.

The Legislative Analyst's Office provided feedback in five areas pertaining to Trial Court Funding.

**LAO: State Needs to Take Action on Court Facilities**

The Legislative Analyst's Office believes that because existing law already requires the state to assume responsibility for court operations, having the state

assume responsibility for court facilities is consistent with that action. In addition, failure to do so may result in continued neglect and deterioration of some facilities. The LAO, therefore, recommends the enactment of legislation that transfers responsibility for court facilities to the state.

**LAO: Clarification Needed on Undesignated Court-Related Fees**

Trial courts collect a number of fees that were not specifically designated for either the courts or the counties by the Trial Court Funding Act of 1997. The LAO believes that it is necessary to obtain more detailed information on how these fees should be divided.

**LAO: Mechanism Needed for Funding Trial Court Salary Increases**

The LAO recommends that the Judicial Council develop and submit a proposal to the Legislature, prior to budget hearings, for funding the costs of negotiated salary increases for trial court staff and court security personnel.

**LAO: Courts Experience Changes in County-Provided Services**

The budget requests \$35.8 million to fund the increased costs of court operations. In order to develop a strategy for dealing with these escalating costs, the LAO recommends the Legislature adopt supplemental report language directing the Judicial Council to report on ways to improve cost efficiencies.

**LAO: Funding to Implement New Trial Court Personnel System Premature**

The Legislative Analyst's Office withholds recommendation on the proposal for \$3.5 million for the trial courts to implement the new trial court personnel system in accordance with the Trial Court Employment Protection and Governance Act because the LAO believes the request is premature. The Judicial Council anticipates that a consultant report, due May 2001, will provide detailed information about actual trial court needs. The LAO recommends that the Judicial Council present the consultant report and detailed justification for its proposal prior to budget hearings.



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## **PROPOSITION 36: IMPLEMENTATION AND RELATED LEGISLATION**

Last November, voters approved Proposition 36, which provides that certain non-violent drug offenders will receive drug treatment rather than being sent to state prison or county jail. The measure takes effect July 1, 2001.

Following passage of Proposition 36, Chief Justice George appointed a Proposition 36 Implementation Work Group, chaired by Judge Darrell W. Stevens of the Butte County Superior Court.

The goals of the Work Group are to improve communication and build consensus among the various constituent groups, as well as identify issues needing action, in order to ensure the initiative's effective implementation. The Work Group is charged with the critically important task of developing consistent recommendations in a variety of areas within a tight time frame. The Work Group has met several times and will continue to meet through the implementation date.

In addition, several bills have been introduced in the Legislature this year addressing a variety of Proposition 36-related issues. Following are summaries of these bills.

### ***AB 1345 (Daucher) – Proposition 36: drug testing***

Requires persons ordered to undergo drug treatment pursuant to Proposition 36 to submit to drug testing.

### ***SB 118 (Poochigian) – Proposition 36: drug treatment***

Requires that a state agency license or certify the drug treatment programs that qualified probationers and parolees are ordered to complete under Proposition 36.

### ***SB 223 (Burton) – Proposition 36: drug testing***

Provides funds for drug testing in Proposition 36 cases. Provides that, where drug treatment has been ordered as a condition of probation, drug testing shall primarily be used as a treatment tool.

### ***SB 918 (Ortiz) – Proposition 36: probation services***

States that the Legislature finds that successful implementation of Proposition 36 requires appropriate staffing and training of probation and parole agencies, drug testing of probationers and parolees, certification and licensing of treatment providers, facilitation of the siting of treatment facilities, and oversight of treatment providers.

### ***SB 1089 (Karnette) – Proposition 36: treatment services***

Requires the State Department of Social Services, in consultation with specified entities, to develop and submit to the Legislature plans regarding the implementation of Proposition 36. One plan would be for a statewide database of treatment and recovery facilities. The second plan would propose the most efficient and effective system for regulating existing unlicensed residential programs.

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## **PROPOSITION 21: RECENT COURT ACTIVITY**

The California Fourth District Court of Appeal recently ruled that a portion of Proposition 21, which gave prosecutors rather than judges the option to try a juvenile as an adult or a minor, was unconstitutional. *People v. Manduley*, 104 Cal.Rptr.2d 140 (Feb. 7, 2001). The court held that “by placing within the discretion of the prosecuting attorney the determination of which of two legislatively authorized sentencing schemes is available to the courts, Proposition 21’s amendment to section 707(d) violates the constitutional principle of the separation of powers between the executive and judicial branches of government.” (*Id.* at p.142.)

Justice McDonald, writing for the majority, concluded that Proposition 21 allowed prosecutors “unchecked authority to curtail the judiciary’s power to select which dispositional scheme to apply if the juvenile was convicted of a specified qualifying offense.” It is the vesting of the sentencing authority in the prosecutors that the majority held to be a violation of the separation of powers principle. (*Id.* at p.143.)

The separation of powers principle bars one branch from exercising or interfering with the exercise of the functions or powers of either of the other branches. Historically, the majority explains, the power to determine whether to bring charges and what charges to bring are vested in the prosecuting attorney. The process leading to a conviction or acquittal and the authority to select from legislatively prescribed sentencing options are judicial functions.

Justice Nares’ dissent describes the “discretion” afforded prosecutors under §707(d) as discretion naturally given to prosecutors at the charging stage. “The discretion given to prosecutors...derives from the separation of powers doctrine. Placing such broad

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discretion in the hands of prosecutors rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. The majority finds a constitutional defect here by characterizing the decision to file in juvenile or criminal court as a 'judicial' function, not part of the prosecutor's broad authority to file charges, because the exercise of discretion, under §707(d) impacts whether a juvenile will be subject to juvenile or adult sentencing or disposition." (*Id.*, at p.155.)

The San Diego District Attorney has appealed the decision to the California Supreme Court. If the Supreme Court declines to review the case, the district attorney has asked them to de-publish the appellate court's decision, which is currently binding statewide because it is the only appellate ruling on the issue. Challenges to Proposition 21 are also pending in the first, second, and third Appellate Districts. Among other things, the pending appeals raise separation of powers issues and contend that Proposition 21 violates the single subject rule, which states that an initiative measure embracing more than one subject may not be submitted to the electors or have any effect.

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## SENATE BUDGET SUBCOMMITTEE APPOINTED

When the last issue of *Capitol Connection* went to press, appointments to the Senate Budget Subcommittee that hears the judiciary's budget had not been made. The members have since been appointed, as follows:

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### *Senate Budget and Fiscal Review Subcommittee #2*

Hon. Byron Sher (Chair)	D – Palo Alto
Hon. Sheila Kuehl	D – Santa Monica
Hon. Bruce McPherson	R – Santa Cruz



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The Capitol Connection is a publication of the Judicial Council's Office of Governmental Affairs and is designed to inform judges and court personnel of current events in and around the California Legislature.

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