



## JUDICIAL COUNCIL OF CALIFORNIA

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September 16, 2020

Hon. Gavin Newsom  
Governor of California  
State Capitol, First Floor  
Sacramento, California 95814

Subject: Assembly Bill 3070 (Weber) – No Position

Dear Governor Newsom:

The Judicial Council writes to respectfully inform you that while the council was pleased to provide technical and procedural assistance to the author and very much appreciates the amendments made to the bill in response to that assistance, the council does not have a position on AB 3070. Notably, there were misstatements during the floor debates about the Judicial Council's position on the bill and the Supreme Court's Jury Selection Workgroup, thus the council is writing to correct the record and clear up any confusion.

As noted by the Chair of the Judicial Council's Legislation Committee in Floor Alerts to both the Senate and Assembly:

Under the California Constitution, the Judiciary and Legislature are separate branches of government and both branches have important separate roles to play in this timely conversation focused on ensuring that juries fairly represent the communities they serve.

Indeed, when the Supreme Court announced the membership of the [Supreme Court's California Jury Selection Work Group](#), Justice O'Leary, the chair of the work group noted: "we join a broad statewide and national dialogue that is focused on ensuring juries fairly

represent the communities they serve and we look forward to contributing to the ongoing multibranch reassessment of jury selection practices.”

As a member of the Judicial Council and chair of the council’s Legislation Committee, I note that the [Judicial Council’s Strategic Plan](#) embraces the importance of access to justice, and emphasizes a commitment to “remove all barriers to access and fairness by being responsive to the state’s cultural, ethnic, socioeconomic, linguistic, physical, gender, and age diversities, and to all people.” I further note that the judicial branch will continue its efforts on this, and other, important issues just as the legislative branch will continue its efforts within our respective roles.

With that in mind, the Judicial Council was pleased to respond to the request for technical drafting assistance by Assemblymember Weber on the provisions of the bill as they apply to core court procedures. The council has **no position** on AB 3070 as it believes that the proposed changes to peremptory challenges in AB 3070 are a policy call that is within the purview of the Legislature.

With respect to the technical assistance the council provided on AB 3070, the remaining point of disagreement is that the council proposed that the standard of proof to overcome objections to presumptively invalid peremptory challenges should be “preponderance of the evidence” as opposed to the “clear and convincing” standard contained in the bill. While the council appreciates that the “clear and convincing” standard is defined, the council believes that this could result in new burdens on courts to hear arguments on the requisite proof needed to meet this higher standard. It is important to note that this higher evidentiary standard applies only to the reasons enumerated in 231.7(e), the standard of proof for all other peremptory challenges would remain at preponderance.

#### *Fiscal Concerns*

The Judicial Council is still developing an estimate of the fiscal impacts of AB 3070, however at this point we believe the bill could have on-going costs of up to \$5 million for the courts. Feedback from courts indicates that this bill could add a few hours to the jury selection phase of trials where these issues are raised. This increase would be necessary to allow the attorneys to present “clear and convincing” evidence that the peremptory challenge does not violate the bill.

To the extent that these additional evidentiary hearings increase jury selection time and jury panels are required to return to court for an additional day, there would be a corresponding increase in juror per diem costs as courts are required to compensate jurors beginning on their second day of service, regardless if they are ultimately picked to serve on a jury or not.

We also note that our current fiscal impact estimate is focused on the impacts to criminal cases and does not include the fiscal impacts AB 3070 may have in civil cases beginning in January 2026.

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Any new unfunded workload to the courts as a result of AB 3070 could result in delays of court services, prioritization of cases, and may impact access to justice.

Should you have any questions or require additional information, please contact Sharon Reilly at 916-323-3121.

Sincerely,

*Sent September 16, 2020*

Cory T. Jasperson  
Director, Governmental Affairs

CTJ/SR/jh

cc: Hon. Shirley Weber, Member of the Assembly  
Mr. Anthony Williams, Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California