



JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE
*Chief Justice of California
Chair of the Judicial Council*

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

April 17, 2017

Hon. Ash Kalra
Member of the Assembly
State Capitol, Room 5160
Sacramento, California 95814

Subject: Assembly Bill 1541 (Kalra), as proposed to be amended – Oppose

Dear Assembly Member Kalra:

The Judicial Council regrettably opposes AB 1541, which requires the court as part of voir dire in a criminal case, to use a written questionnaire, which may include questions approved by the Judicial Council, to be completed by all prospective jurors who are not excused for hardship. AB 1541 also authorizes the court, in the exercise of its discretion, to limit the oral and direct questioning of the initial panel of prospective jurors by counsel to one hour by each party.

The Judicial Council believes that AB 1541 is a premature response to the reduction in the number of peremptory challenges in misdemeanor cases enacted by the Public Safety Trailer Bill to the Budget Act of 2016 (Stats. 2016, ch. 33, §§ 1-2) (hereafter trailer bill). Under the trailer bill, commencing January 1, 2017, and until January 1, 2021, a court must grant a defendant 6 peremptory challenges in a misdemeanor case. In cases where two or more defendants are tried jointly, the number of additional peremptories was reduced from four (4) to two (2) in misdemeanor cases. While the sponsors of AB 1541 argue that this change to peremptory challenges significantly curtails the ability of counsel to remove jurors who may not be able to render a fair and impartial verdict, this argument fails to acknowledge that the trailer bill requires the Judicial Council to conduct a study. Specifically, the study, which is due to the Legislature

by January 1, 2020, must “include, but not be limited to, an examination of the number of peremptory challenges used by the defendant and the state in misdemeanor jury trials, a representative sample of the types of cases that go to jury trial, and the resulting cost savings to the courts” (CCP § 231(f)). Thus, the Judicial Council believes that AB 1541 seeks a solution without any evidence that a problem exists.

In addition, the Judicial Council believes that the requirements of AB 1541 are unnecessary, inefficient, burdensome, infringe on judicial discretion, and interfere with the ability judges to manage their courtrooms.

Existing law requires the court, in a criminal case, to conduct an initial examination of prospective jurors, which may include additional questions requested by the parties, or counsel for the parties, as the court deems proper (CCP § 223). After completion of this initial examination by the court, counsel for each party has the right to examine, by oral and direct questioning, any or all of the prospective jurors. In its discretion, the court may limit the oral and direct questioning of prospective jurors by counsel, and may specify the maximum amount of time that counsel for each party may question an individual juror or an aggregate amount of time for each party, to be allocated by counsel among the prospective jurors. Additionally, Rule 4.201 of the California Rules of Court provides that in criminal proceedings, to select a fair and impartial jury, the judge must conduct an initial examination of the prospective jurors orally, or by written questionnaire, or by both methods, and that after completion of the initial examination, the court must permit counsel to conduct supplemental questioning as provided in statute, above. Existing law grants courts the *discretion* to perform these core judicial functions, however, AB 1541 seeks to limit this discretion.

First, with regard to requiring a written juror questionnaire in all criminal cases, the Judicial Council believes this is simply not necessary in all criminal cases and the determination of whether written questions are necessary is a core judicial function. For example, while a written questionnaire may be appropriate in a complicated felony trial, they are typically not necessary for simple misdemeanor trials, such as DUI trials. Further, when written questionnaires are used, practices vary by county, some courts use the Judicial Council model questionnaires and others use their own questionnaires. Many courts use a questionnaire and administer it orally. The council is concerned that mandating the use of a written questionnaire in all criminal cases potentially adds hours to the jury selection process as jurors in each case must be given instructions for the questionnaire and time to complete the questionnaire, the forms would then need to be copied (or if done in triplicate, separated), then distributed to the court clerk and counsel for each party, and reviewed. As a result, the council is concerned that AB 1541 would require courts to redirect resources that they simply do not have. Also, requiring written questionnaires in all criminal cases could greatly increase the volume of the record on appeal.

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Second, the provision requiring courts to provide one hour each for counsel for each party in all criminal cases, to engage in direct questioning of the initial panel of prospective jurors, is equally problematic. While AB 1541 provides that the court may limit voir dire by each party to one hour, the council is concerned that the practical effect of this provision is that the both parties would use the full hour, which establishes a floor of two hours for oral voir dire. The council believes that in many misdemeanor cases counsel for each party are regularly able select a fair and impartial jury using as little as fifteen minutes each of oral voir dire. Thus allowing two hours of oral voir dire will unnecessarily result in delays impacting already overburdened criminal calendars. For example, additional voir dire time could easily double the time taken for a typical DUI case. Moreover, the council believes that judges need discretion to limit the examination of prospective jurors, as appropriate, to manage their busy court calendars and in doing so they endeavor to allow counsel for each party as much time as is necessary to ensure a fair and impartial jury.

For these reasons, the Judicial Council regrettably opposes AB 1541.

Sincerely,

Mailed on April 17, 2017

Sharon Reilly
Attorney

SR/yc-s

cc: Mr. Caliph Assagai, California Public Defenders Association
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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April 20, 2017

Hon. Mark Stone, Chair
Assembly Judiciary Committee
State Capitol, Room 3146
Sacramento, California 95814

Subject: Assembly Bill 1541 (Kalra), as proposed to be amended - Oppose
Hearing: Assembly Judiciary Committee – May 2, 2017

Dear Assembly Member Stone:

The Judicial Council regrettably opposes AB 1541, which requires the court as part of voir dire in a criminal case, to use a written questionnaire, which may include questions approved by the Judicial Council, to be completed by all prospective jurors who are not excused for hardship. AB 1541 also establishes a two-hour minimum, one-hour for each party, for oral and direct questioning of the initial panel of prospective jurors by counsel.

The Judicial Council believes that AB 1541 is a premature response to the reduction in the number of peremptory challenges in misdemeanor cases enacted by the Public Safety Trailer Bill to the Budget Act of 2016 (Stats. 2016, ch. 33, §§ 1-2) (hereafter trailer bill). Under the trailer bill, commencing January 1, 2017, and until January 1, 2021, a court must grant each party at least 6 peremptory challenges in a misdemeanor case. Keep in mind that in most other states peremptory challenges in misdemeanor cases are limited to just three. While the sponsors of AB 1541 argue that this change to peremptory challenges significantly curtails the ability of counsel to remove jurors who may not be able to render a fair and impartial verdict, this argument fails to acknowledge that the trailer bill requires the Judicial Council to conduct a study, due to the

Legislature by January 1, 2020, that must “include, but not be limited to, an examination of the number of peremptory challenges used by the defendant and the state in misdemeanor jury trials, a representative sample of the types of cases that go to jury trial, and the resulting cost savings to the courts” (CCP § 231(f)). Thus, the Judicial Council believes that AB 1541 seeks a solution without any evidence that a problem exists.

In addition, the Judicial Council believes that the requirements of AB 1541 are unnecessary, inefficient, burdensome, infringe on judicial discretion, and interfere with the ability of judges to manage their courtrooms.

Existing law requires the court, in a criminal case, to conduct an initial examination of prospective jurors, which may include additional questions requested by the parties, or counsel for the parties, as the court deems proper (CCP § 223). After completion of this initial examination by the court, counsel for each party has the right to examine, by oral and direct questioning, any or all of the prospective jurors. In its discretion, the court may limit the oral and direct questioning of prospective jurors by counsel, and may specify the maximum amount of time that counsel for each party may question an individual juror or an aggregate amount of time for each party, to be allocated by counsel among the prospective jurors. Additionally, Rule 4.201 of the California Rules of Court provides that in criminal proceedings, to select a fair and impartial jury, the judge must conduct an initial examination of the prospective jurors orally, or by written questionnaire, or by both methods, and that after completion of the initial examination, the court must permit counsel to conduct supplemental questioning as provided in statute, above. Existing law grants courts the *discretion* to perform these core judicial functions, however, AB 1541 seeks to limit this discretion.

First, with regard to requiring a written juror questionnaire in all criminal cases, the Judicial Council believes this is simply not necessary in all criminal cases and the determination of whether written questions are necessary is a core judicial function. For example, while a written questionnaire may be appropriate in a complicated felony trial, they are typically not necessary for simple misdemeanor trials, such as DUI trials. Further, when written questionnaires are used, practices vary by county, some courts use the Judicial Council model questionnaires and others use their own questionnaires. Many courts use a questionnaire and administer it orally. The council is concerned that mandating the use of a written questionnaire in all criminal cases potentially adds hours to the jury selection process as jurors in each case must be given instructions for the questionnaire and time to complete the questionnaire, the forms would then need to be copied (or if done in triplicate, separated), then distributed to the court clerk and counsel for each party, and reviewed. As a result, the council is concerned that AB 1541 would require courts to redirect resources that they simply do not have. Also, requiring written questionnaires in all criminal cases could greatly increase the volume of the record on appeal.

Hon. Mark Stone
April 20, 2017
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Second, the provision requiring courts to provide a minimum of one hour each for counsel for each party in all criminal cases, to engage in direct questioning of the initial panel of prospective jurors, is equally problematic. The council believes that in many misdemeanor cases counsel for each party are regularly able to select a fair and impartial jury using much less than an hour each of oral voir dire. Thus requiring at least two hours of oral voir dire will unnecessarily result in delays and increase costs, which will impact already overburdened criminal calendars. For example, additional voir dire time could easily double the time taken for a typical DUI case. Moreover, the council believes that judges need discretion to limit the examination of prospective jurors, as appropriate, to manage their busy court calendars and in doing so they endeavor to allow counsel for each party as much time as is necessary to ensure a fair and impartial jury.

For these reasons, the Judicial Council regretfully opposes AB 1541.

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

Sincerely,

Mailed on April 21, 2017

Cory T. Jasperson
Director, Governmental Affairs

CTJ/SR/yc-s

cc: Members, Assembly Judiciary Committee
Hon. Ash Kalra, Member of the Assembly
Mr. Caliph Assagai, California Public Defenders Association
Mr. Eric Dang, Counsel, Assembly Judiciary Committee
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

May 5, 2017

Hon. Mark Stone, Chair
Assembly Judiciary Committee
State Capitol, Room 3146
Sacramento, California 95814

Subject: Assembly Bill 1541 (Kalra), as proposed to be amended - Oppose
Hearing: Assembly Judiciary Committee – May 9, 2017

Dear Assembly Member Stone:

The Judicial Council remains opposed to AB 1541, which mandates the court as part of voir dire in a criminal case, to use a written questionnaire, which may include questions approved by the Judicial Council, to be completed by all prospective jurors who are not excused for hardship. It is our understanding that AB 1541, as proposed to be amended, will delete the provisions that would have established a two-hour minimum, one-hour for each party, for oral and direct questioning of the initial panel of prospective jurors by counsel and instead language will be added that would apply a new standard for the oral and direct examination of jurors in a criminal case.

The Judicial Council believes that AB 1541 is a premature response to the reduction in the number of peremptory challenges in misdemeanor cases enacted by the Public Safety Trailer Bill to the Budget Act of 2016 (Stats. 2016, ch. 33, §§ 1-2) (hereafter trailer bill). Under the trailer bill, commencing January 1, 2017, and until January 1, 2021, a court must grant each party at least 6 peremptory challenges in a misdemeanor case. Keep in mind that in most other states peremptory challenges in misdemeanor cases are limited to just three. While the sponsors of AB

1541 argue that this change to peremptory challenges significantly curtails the ability of counsel to remove jurors who may not be able to render a fair and impartial verdict, this argument fails to acknowledge that the trailer bill requires the Judicial Council to conduct a study, due to the Legislature by January 1, 2020, that must “include, but not be limited to, an examination of the number of peremptory challenges used by the defendant and the state in misdemeanor jury trials, a representative sample of the types of cases that go to jury trial, and the resulting cost savings to the courts” (CCP § 231(f)). Thus, the Judicial Council believes that AB 1541 seeks a solution without any evidence that a problem exists.

In addition, the Judicial Council believes that the requirements of AB 1541 are unnecessary, inefficient, burdensome, infringe on judicial discretion, and interfere with the ability of judges to manage their courtrooms.

Existing law requires the court, in a criminal case, to conduct an initial examination of prospective jurors, which may include additional questions requested by the parties, or counsel for the parties, as the court deems proper (CCP § 223). After completion of this initial examination by the court, counsel for each party has the right to examine, by oral and direct questioning, any or all of the prospective jurors. In its discretion, the court may limit the oral and direct questioning of prospective jurors by counsel, and may specify the maximum amount of time that counsel for each party may question an individual juror or an aggregate amount of time for each party, to be allocated by counsel among the prospective jurors. Additionally, Rule 4.201 of the California Rules of Court provides that in criminal proceedings, to select a fair and impartial jury, the judge must conduct an initial examination of the prospective jurors orally, or by written questionnaire, or by both methods, and that after completion of the initial examination, the court must permit counsel to conduct supplemental questioning as provided in statute, above. Existing law grants courts the *discretion* to perform these core judicial functions, however, AB 1541 seeks to limit this discretion.

First, with regard to requiring a written juror questionnaire in all criminal cases, the Judicial Council believes this is simply not necessary in all criminal cases and the determination of whether written questions are necessary is a core judicial function. For example, while a written questionnaire may be appropriate in a complicated felony trial, they are typically not necessary for simple misdemeanor trials, such as DUI trials. Further, when written questionnaires are used, practices vary by county, some courts use the Judicial Council model questionnaires and others use their own questionnaires. Many courts use a questionnaire and administer it orally. The council is concerned that mandating the use of a written questionnaire in all criminal cases potentially adds hours to the jury selection process as jurors in each case must be given instructions for the questionnaire and time to complete the questionnaire, the forms would then need to be copied (or if done in triplicate, separated), then distributed to the court clerk and counsel for each party, and reviewed. As a result, the council is concerned that AB 1541 would require courts to redirect resources that they simply do not have. Moreover, the council is

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concerned that the written questionnaire requirement could result in jury selection going into the next day, defeating the “one day or one trial” jury service goal, which is a statewide policy adopted by the Judicial Council, effective July 1, 1999. Finally, requiring written questionnaires in all criminal cases could greatly increase the volume of the record on appeal.

Second, while the council appreciates the author’s willingness to amend AB 1541 to remove the problematic provision requiring courts to provide a minimum of one hour each for counsel for each party in all criminal cases, to engage in direct questioning of the initial panel of prospective jurors, the council continues to have concerns. The proposed amendments apparently would create a new standard for the oral and direct examination of jurors in a criminal case, borrowing language from Code of Civil Procedure section 222.5, however the exact language remains unclear. While the council believes that looking to that code section as a model has merit, the council is concerned that there has not been sufficient time to consider the proposed language and how it would apply to voir dire in a criminal proceeding.

For these reasons, the Judicial Council remains opposed to AB 1541.

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

Sincerely,

Mailed on May 5, 2017

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/SR/yc-s

cc: Members, Assembly Judiciary Committee
Hon. Ash Kalra, Member of the Assembly
Mr. Caliph Assagai, California Public Defenders Association
Mr. Eric Dang, Counsel, Assembly Judiciary Committee
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May 30, 2017

Hon. Ash Kalra
Member of the Assembly
State Capitol, Room 5160
Sacramento, California 95814

Subject: Assembly Bill 1541 (Kalra), as amended May 30, 2017 – Withdrawal of
opposition

Dear Assembly Member Kalra:

The Judicial Council is pleased to inform you of its removal of opposition to AB 1541, as amended May 30, 2017. The Judicial Council very much appreciates that you have amended the bill to remove the provisions that: (1) would have required the court, as part of voir dire in a criminal case, to use a written questionnaire to be completed by all prospective jurors who are not excused for hardship; and (2) would have required courts to provide a minimum of one hour of oral voir dire per party in all criminal cases. As we have discussed with your staff, there may still be some provisions of the bill that require revision, thus the council is removing its opposition based on your commitment to continuing to work with the Judicial Council on language as the bill makes its way through the legislative process. In view of those amendments, and your commitment to continue working with Judicial Council on the language of the bill, the council takes no position on the current version of AB 1541. We look forward to continuing the dialogue about AB 1541.

Sincerely,

Mailed on May 30, 2017

Cory T. Jaspersen
Director, Governmental Affairs

Hon. Ash Kalra

May 30, 2017

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CTJ/SR/yc-s

cc: Mr. Caliph Assagai, California Public Defenders Association

Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor

Mr. Martin Hoshino, Administrative Director, Judicial Council of California