



JUDICIAL COUNCIL OF CALIFORNIA

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Director, Governmental Affairs

June 26, 2017

Hon. Nancy Skinner, Chair
Senate Public Safety Committee
State Capitol, Room 2059
Sacramento, California 95814

Subject: Assembly Bill 411 (Bloom), as proposed to be amended in the Senate Public Safety Committee—Oppose
Heating: Senate Public Safety Committee—June 27, 2017

Dear Senator Skinner:

The Judicial Council regrettably opposes AB 411, which, as we understand the proposed amendments, would amend the bill to again require the court, if requested, to give appropriate jury instructions if a therapy dog is utilized in a criminal jury trial, “to prevent prejudice against any party.” The council opposes the proposed amendment because: (1) it interferes with the discretion of judges to interpret the law when rendering jury instructions that are appropriate to the individual facts and circumstances of a case and (2) it is unnecessary because the Judicial Council already has a process to develop balanced jury instructions. The council had adopted an oppose position to AB 411 on that basis prior to the June 20, 2017 amendments that removed the jury instruction language and was prepared to remove its opposition. However, given the proposed amendments, the council must once again oppose.

The council firmly believes that, because the judicial branch has constitutional responsibility for interpreting laws enacted by the Legislature, identifying the need for and the drafting of jury instructions is something that must remain within the exclusive purview of the judicial branch. Jury instructions, by their very nature, require a judge to interpret the law and communicate in plain English to the jury about how they should apply the law to the particular facts and circumstances of a case. The council believes that requiring a specific jury instruction, in statute,

interferes with judicial discretion to deliver balanced jury instructions that are appropriate to the unique facts and circumstances of each trial. Rule 2.1050 of the California Rules of Court recognizes that a judge may need to modify an instruction if “he or she finds that a different instruction would more accurately state the law and be understood by jurors.” Judges also need flexibility in responding to questions from jurors about what a jury instruction means. While the proposed amendments to AB 411 do not dictate the exact language of the jury instruction, they would undermine the court’s discretion to instruct the jury, as appropriate and specifically require the instruction to address “prejudice against any party.”

The Judicial Council believes the jury instruction requirement is unnecessary because the Judicial Council already has a process to develop balanced jury instructions and the decision in *People v. Chenault* (2014) 227 Cal. App. 4th 1503, review denied, gives appropriate guidance to trial courts on the issue of the necessity for, and content of, a jury instruction relating to the presence of a therapy dog. In *Chenault*, the court considered the issue of whether a court had discretion to allow two child witnesses in a case involving two counts of forcible lewd acts on a child under 14 years of age to be accompanied by a therapy dog. *Chenault* also addressed the issue of proper instructions to a jury, finding in dicta:

Furthermore, whenever the support dog's presence becomes known, or is likely to become known, to the jury, it generally will be the preferred practice for the court to give an appropriate admonishment to the jury to avoid, or at least minimize, any potential prejudice to the defendant. For example, the court may admonish the jury that it should disregard the dog's presence and decide the case based solely on the evidence presented, should not consider the witness's testimony to be any more or less credible because of the dog's presence, and should not be biased either for or against the witness, the prosecution, or the defendant based on the dog's presence. (*Id.* at p. 1517-18).

The Judicial Council, through its Advisory Committee on Criminal Jury Instructions (CALCRIM), has a well-established process for adopting jury instructions based on case law. Accordingly, CALCRIM regularly updates and refines recommended jury instructions for use by criminal courts, prosecutors, and defense counsel. Those instructions are highly acclaimed and were selected for an award for jury innovation by the National Center for State Courts. The committee’s process is rigorous and balanced, and involves the work of experts, including distinguished jurists, prosecutors and defense attorneys, and a law professor. The CALCRIM committee’s proposed jury instructions and amendments are circulated for public comment before they are adopted by the Judicial Council and published. Trial judges, as well as prosecutors and defense attorneys are encouraged to submit for the council’s consideration suggestions for improving or modifying instructions or creating new instructions. In drafting model instructions, CALCRIM is committed to ensuring the instructions are neutral, balanced, and understandable to jurors. The council updates the model jury instructions at least twice a year to reflect new statutes, case law, and suggestions from trial judges, prosecutors, defense attorneys, and other stakeholders, so the instructions are current, reflecting constant changes in the law. As a result, the council believes that under the existing processes, the author of AB 411

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already has the opportunity to suggest revisions to jury instructions to the council for its consideration.

For these reasons, the Judicial Council regrettably opposes AB 411, as proposed to be amended.

Sincerely,

Mailed on June 26, 2017

Cory T. Jasperson

Director, Governmental Affairs

CTJ/SR/lmb

cc: Hon. Richard Bloom, Coauthor, Member of the Assembly
Hon. Al Muratsuchi, Coauthor, Member of the Assembly
Mr. Daniel Felizzatto, Deputy District Attorney, Los Angeles County District Attorney
Mr. Gabe Caswell, Counsel, Senate Public Safety Committee
Ms. Sandy Uribe, Counsel, Assembly Public Safety Committee
Mr. Eric Csizmar, Consultant, Senate Republican Office of Policy and Budget
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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September 18, 2017

Hon. Edmund G. Brown, Jr.
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: Assembly Bill 411 (Bloom) – Request for Veto

Dear Governor Brown:

The Judicial Council respectfully requests your veto on AB 411, which, among other things, requires the court, if requested, to give appropriate jury instructions if a therapy dog is utilized in a criminal jury trial, “to prevent prejudice against any party.” The council opposes the proposed amendment because: (1) it interferes with the discretion of judges to interpret the law when rendering jury instructions that are appropriate to the individual facts and circumstances of a case and (2) it is unnecessary because the Judicial Council already has a process to develop balanced jury instructions.

The council firmly believes that, because the judicial branch has constitutional responsibility for interpreting laws enacted by the Legislature, identifying the need for and the drafting of jury instructions is something that must remain within the exclusive purview of the judicial branch. Jury instructions, by their very nature, require a judge to interpret the law and communicate in plain English to the jury about how they should apply the law to the particular facts and circumstances of a case. The council believes that requiring a specific jury instruction, in statute, interferes with judicial discretion to deliver balanced jury instructions that are appropriate to the unique facts and circumstances of each trial. Rule 2.1050 of the California Rules of Court

recognizes that a judge may need to modify an instruction if “he or she finds that a different instruction would more accurately state the law and be understood by jurors.” Judges also need flexibility in responding to questions from jurors about what a jury instruction means. While AB 411 does not dictate the exact language of the jury instruction, it would undermine the court’s discretion to instruct the jury, as appropriate and specifically require the instruction to address “prejudice against any party.”

The Judicial Council also believes the jury instruction requirement is unnecessary because the Judicial Council already has a process to develop balanced jury instructions and the decision in *People v. Chenault* (2014) 227 Cal. App. 4th 1503, review denied, gives appropriate guidance to trial courts on the issue of the necessity for, and content of, a jury instruction relating to the presence of a therapy dog. In *Chenault*, the court considered the issue of whether a court had discretion to allow two child witnesses in a case involving two counts of forcible lewd acts on a child under 14 years of age to be accompanied by a therapy dog. *Chenault* also addressed the issue of proper instructions to a jury, finding in dicta:

Furthermore, whenever the support dog's presence becomes known, or is likely to become known, to the jury, it generally will be the preferred practice for the court to give an appropriate admonishment to the jury to avoid, or at least minimize, any potential prejudice to the defendant. For example, the court may admonish the jury that it should disregard the dog's presence and decide the case based solely on the evidence presented, should not consider the witness's testimony to be any more or less credible because of the dog's presence, and should not be biased either for or against the witness, the prosecution, or the defendant based on the dog's presence. (*Id.* at p. 1517-18).

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Hon. Edmund G. Brown, Jr.

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the law. As a result, the council believes that under the existing processes, the author of AB 411 already has the opportunity to suggest revisions to jury instructions to the council for its consideration.

For these reasons, the Judicial Council respectfully requests your veto on AB 411.

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

Sincerely,

Mailed on September 18, 2017

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/SR/yc-s

cc: Hon. Richard Bloom, Member of the Assembly
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