JUDICIAL COUNCIL OF CALIFORNIA

520 Capitol Mall, Suite 600 • Sacramento, California 95814-3368
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

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

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

September 20, 2021

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

Subject: Senate Bill 538 (Rubio) – Request for Veto

Dear Governor Newsom:

The Judicial Council respectfully requests your veto on SB 538, which imposes impracticable technology and staffing requirements for the implementation of rules, forms, electronic filing protocols, website management, and telephone services in the context of domestic and gun violence restraining order petitions. It also unreasonably eliminates judicial discretion related to remote appearances by parties and witnesses in domestic and gun violence restraining order hearings.

The bill requires, by July 1, 2023:

- Each court facility that receives petitions for domestic violence restraining orders, gun violence restraining orders, or domestic violence temporary restraining orders to accept

those petitions and any related filings electronically during and after normal business hours;
- Each court to develop local rules and instructions for electronic filing, and post those rules and instructions online;
- Each court to provide, post on its internet website, and staff during specified hours, a telephone number for the public to call to obtain information about electronic filing;
- Each court to provide, post on its internet website, and staff a telephone number for the public to call to obtain assistance regarding remote appearances;
- Each court to permit, at a party's or witness's discretion (without the judge being able to weigh in), the party or witness to appear remotely at the hearing on a petition for a domestic or gun violence restraining order; and
- Each court to develop local rules and instructions for remote appearances, and post those rules and instructions online.

While the Judicial Council supports the important goals of the author in removing barriers and increasing access to the courts by allowing these restraining orders to be submitted electronically and hearings to be conducted remotely, the council also recognizes the folly of requiring 58 different solutions in 58 different courts. In fact, a common theme from stakeholders and court users as courts have implemented remote access during the pandemic is the strong need for uniformity and consistency statewide. To this end, we worked with court leadership and information technology staff to come up with language to accomplish the goals of the legislation without risking 58 different local solutions or requiring individual courts to forgo other vital services in order to implement technology solutions or hire staff for which they lack resources and expertise.

Our proposed amendments would have accomplished the following:

1) Removed the specificity from the bill regarding how electronic submissions must be made and what procedures must be followed, thereby allowing the council to develop a statewide solution.
2) Clarified how a petitioner would be notified that their petition had been received and a hearing date placed on the court calendar.
3) Eliminated the need for courts to duplicate the work of self-help centers with phone lines and on-demand staff by, instead, referring petitioners and respondents to specified existing resources.
4) Retained appropriate judicial discretion with regard to in-person versus remote testimony.
5) Permitted the Judicial Council to develop and implement Rules of Court and Judicial Council forms for statewide uniformity and consistency.

During months of good faith negotiations with the author's office, it was our understanding that our proposed language was agreeable and would be amended into SB 538 in order for the bill to

be workable for the courts and help to reduce implementation costs. Unfortunately, these necessary changes were never amended into the bill.

At the end of session when it became clear that the bill would not be amended, we asked that the bill be put over to next year to allow time for amendments. That request was declined.

It's important to note that our proposed amendments, while still likely to result in some fiscal impact, would, at a minimum, have provided a workable framework for the filing of electronic domestic and gun violence restraining order petitions, and for requests by parties and witnesses to attend hearings remotely.

For these reasons, the Judicial Council respectfully requests your veto on SB 538 and welcomes an opportunity to continue working on this important issue next year. This could be accomplished while still maintaining the July 1, 2023 implementation date currently in the bill.

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

Sincerely,

Sent September 20, 2021

Cory T. Jasperson
Director, Governmental Affairs

CTJ/AL/yc-s
cc: Hon. Susan Rubio, Member of the Senate
Moira Topp, Topp Strategies, for the City of San Diego
Jessica Devencenzi, Deputy Legislative Affairs Secretary, Office of the Governor
Martin Hoshino, Administrative Director, Judicial Council of California

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
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MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

August 31, 2021

Hon. Susan Rubio
Member of the Senate
State Capitol, Room 5035
Sacramento, California 95814

Subject: Senate Bill 538, as amended May 25, 2021 – Oppose unless amended

Dear Senator Rubio:

The Judicial Council opposes SB 538 unless it is amended pursuant to the technology-neutral and related amendments submitted to your office in April of this year, and several times since.

Note that the Judicial Council's opposition to SB 538 is rooted in the specificity of technological approaches that the bill contains, which make the bill's provisions almost impossible to comply with, especially in light of the lack of resources available to the branch. The council does not opine on the overarching policy issues of electronic filing and easy availability of information to the public related to domestic and gun violence restraining orders, which remain the purview of the Legislature. The council also opposes the bill's interference with judicial discretion in determining if remote participation by parties or witnesses properly protects due process and ensures the safety of the parties or witnesses.

As it is currently in print, SB 538 requires, by July 1, 2023, a court or court facility that receives petitions for domestic violence restraining orders, gun violence restraining orders, or domestic violence temporary restraining orders to accept those petitions and any related filings electronically during and after normal business hours, and requires each court to develop local rules and instructions for electronic filing, with those rules and instructions posted on the courts' internet websites. The bill further requires each court to provide, post on its internet website, and staff during specified hours, a telephone number for the public to call to obtain information about electronic filing. The bill requires each court to provide, post on its internet website, and staff a telephone number for the public to call to obtain assistance regarding remote appearances

because the bill also requires the courts to permit, at a party's or witness's discretion, a party or witness to appear remotely at the hearing on a petition for a domestic or gun violence restraining order. Finally, the bill requires the superior court of each county to develop local rules and instructions for remote appearances, and post those on its internet website.

For over eight months, the Judicial Council has provided consistent and reliable feedback to your office regarding the problems associated with implementing the provisions of SB 538 as they are currently in print. Further, as a result of assurances that the bill would be amended, the council delayed taking a position so staff could work out the issues. However, as of the date of this letter, and despite those assurances, the bill has not yet been amended to ensure that the courts and Judicial Council are able to do the work that the bill seeks to accomplish.

The Judicial Council's opposition to SB 538 unless it is amended is based on specific language identified in the bill by Judicial Council's Information Technology experts. The bill as currently in print imposes unreasonable and insurmountable burdens on individual trial courts given the courts' currently available budgets, staff, expertise and time. The language of SB 538 presumes specific e-filing technology/capacity at each court, refers vaguely to operations deadlines, assumes that courts can, without hardship, launch web-based systems and staffed phone lines, and provide on-demand assistance to litigants and witnesses. The bill also prohibits judicial discretion related to permitting parties and witnesses to participate in domestic and gun violence restraining order hearings remotely.

To address these concerns, JCC technology staff developed language to help the Legislature achieve the policy goals of the bill without risking 58 different solutions or requiring individual courts to implement technology solutions or hire staff for which they lack resources and expertise. Even though as proposed to be amended the bill would still have fiscal impacts to the branch, the proposed amendments accomplish several critical goals related to the implementation of the bill, as follows:

1) They remove the specificity from the bill regarding how electronic submissions must be made and what procedures must be followed.
2) They clarify how the courts will provide petitioners with notification that the petition has been received and hearing dates have been calendared.
3) They eliminate the need for courts to duplicate the work of their self-help centers with phone lines and additional on-demand staff by, instead, referring petitioners and respondents to existing resources.
4) They retain appropriate judicial discretion with regard to in-person versus remote testimony.
5) They permit the Judicial Council to develop and implement rules to achieve the goals of the legislation.

As we have for the duration of this legislative session, the Judicial Council continues to be available to discuss the significance of these amendments in helping achieve the policy goals of the proposal. Unfortunately, due to the lack of movement to amend SB 538 to make it less burdensome on the budgets and operations of the courts, the Judicial Council must oppose SB 538, unless it is amended. Should you have any questions or require additional information, please contact me at 916-323-3121.

Sincerely,

Andi Liebenbaum
Attorney

AL/yc-s
cc: Moira Topp, Topp Strategies, for the City of San Diego
Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Martin Hoshino, Administrative Director, Judicial Council of California