



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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March 27, 2009

Hon. Jose Solorio, Chair
Assembly Public Committee
State Capitol, Room 2196
Sacramento, California 95814

Subject: AB 447 (Nestande), as introduced - Oppose

Dear Assembly Member Solorio:

The Judicial Council opposes AB 447, which makes mandatory on the court and defendant several provisions relating to the court's determination of a defendant's ability to pay for counsel:

- In every case in which a defendant appears at arraignment without counsel, requires, instead of permits, the court to order a defendant to file a financial statement with the court or appear before a county financial officer, following which the court would be required to make a determination on the record whether the defendant is able to employ his or her own counsel.
- In every case in which a court determines that a defendant cannot employ his or her own counsel, requires, instead of authorizes, the court to hold a hearing or order the defendant to appear before a county financial officer to determine whether the defendant owns or has an interest in real property or other assets.

- In every case in which public counsel is appointed, requires, instead of authorizes the court, after notice and a hearing, to determine the defendant's present ability to pay for his or her appointed counsel.
- In every case in which a juvenile is represented by public counsel, requires, instead of authorizes, the court to determine the ability of the juvenile's parent or guardian to reimburse the county for the costs of counsel.

The council opposes AB 447, because it would add a enormous amount of unnecessary and time-consuming workload to the trial courts, when existing law and practices are sufficient to address the sponsor's concerns. Courts currently have discretion to seek additional information, review a defendant's financial statement, hold hearings, and use other tools to determine whether a defendant has the ability to reimburse the county for costs of his or her representation. Courts use these tools in appropriate cases. To do so in every case, without regard to consideration of the cost to the state of court time for this purpose, would likely not result in significantly increased payments by defendants, but would potentially be so burdensome as to bring other court activities to a halt.

According to the Administrative Office of the Courts' 2008 Court Statistics Report, 1,741,844 criminal cases were filed in California, excluding infractions. The Criminal Law Advisory Committee believes that adding the processes required under AB 477 is an inefficient and impractical approach to the issue of possible changed defendant behavior resulting from jail overcrowding. As the courts' resources continue to shrink and its caseloads grow, it is indeed critical to protect the court's discretion to determine on a case-by-case basis when the cost of these procedures are likely to be outweighed by potential benefits.

For these reasons, the Judicial Council opposes AB 447.

Sincerely,

June Clark
Senior Attorney

JC/yt

cc: Members, Assembly Public Safety Committee
Hon. Brian Nestande, Member of the Assembly
Riverside County District Attorney
Committee staff not yet made

Mr. Michael Prosio, Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy

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****NOTE****

For **ALL Assembly Judiciary Committee** position letters

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For **ALL Senate Judiciary Committee** position letters

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