



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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April 7, 2011

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

Subject: Criminal justice alignment

Dear Governor Brown:

I write to express the Judicial Council's grave concerns regarding the transfer of parole jurisdiction to the courts, as provided in AB 109, your criminal justice realignment bill. Be assured that the Judicial Council is acutely aware of the severity and complexity of the fiscal challenges you face. We are deeply grateful for your staff's and the Department of Finance's continuing commitment to provide all of the resources necessary for the trial courts to effectively carry out this fundamental change in criminal justice policy, and to work with us on any substantive changes necessary to protect the independence of the judicial branch and ensure effective implementation.

At the same time, however, we must advise you that shifting parole jurisdiction from the executive branch to the courts, resulting in an entirely new caseload, presents severe and complex challenges to the judicial branch as well. Such a shift would bring challenges in the best of circumstances. In the context of the branch's current fiscal circumstances, this shift will have a profound impact.

The Judicial Council does not support the concept of shifting parole jurisdiction to courts. Without careful consideration of traditional judicial branch jurisdiction and allocation of

necessary resources, including new judgeships, this change in criminal justice policy will jeopardize the courts' ability to carry out existing constitutional functions.

The following are some of our major concerns:

- **Effective procedures** – We respectfully request the opportunity to present for your consideration more efficient alternatives for parole proceedings. Some or all parole proceedings may more effectively and efficiently be carried out administratively rather than in judicial branch proceedings. Parole discharge proceedings, for example, are not contested and do not need to be adjudicated through an evidentiary process. Your staff has indicated that it plans to establish a process for this discussion, which is to begin shortly, and we will have a workgroup of judicial branch experts to be a part of it.
- **Resources** – In 2010, the Judicial Council found that 330 additional judges were needed statewide. The 330 positions were in addition to the 50 new judicial positions created by the Legislature in 2007 that have not yet been funded, leaving the courts already short 380 judges. The judicial branch cannot begin to accommodate the new workload that will flow from having jurisdiction over parolees within its current resources. We will provide you with a detailed analysis of the resources necessary to implement the changes in the law—including additional judgeship positions, court administrative staff, facilities, and court security—as soon as possible. We understand from your staff that determining the mechanism for shifting funds to the judicial branch will take place over the next several weeks. We cannot overstate how important it will be that the branch is provided with the necessary resources to avoid unacceptable delays in civil, criminal, family law, probate, and other court matters.
- **Proper judicial function** – Although any specific legal challenges to the criminal justice realignment bill ultimately would be decided by a court, some have expressed concern that shifting parole jurisdiction from the executive branch to the judicial branch raises potentially serious constitutional questions, for example, about whether the shift would (a) infringe on the inherent functions and powers of the respective branches, (b) materially impair the courts' ability to perform their constitutional function, for example, by precluding them from adjudicating civil cases, and (c) conflict with existing constitutional provisions that prescribe authority over parole proceedings. In addition, the extent to which replacing informal administrative hearings with formal courtroom proceedings will implicate fundamental due process and equal protection rights of parolees remains unclear.
- **Judicial branch jurisdiction** – It is critical to ensure that any new responsibility that is ultimately directed to the judiciary is crafted in statute with care and attention. This brand new judicial branch jurisdiction must be exclusive (i.e., not shared with state or

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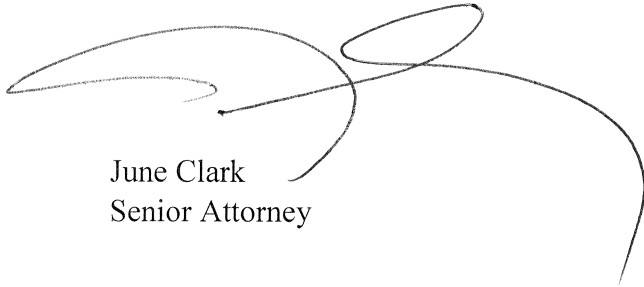
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local executive branch agencies), and clearly delineated to avoid inappropriate overlap of branch functions.

- Delayed operative date – A transition in policy, practice, and expertise of the scope and scale of this proposal requires time to implement properly. We recognize that the bill does not take effect until at least July 1, 2011, and funding is made available to the counties. However, additional time to develop court processes, implement the substantive changes, and provide the necessary bench and staff training is critical to the success of your program.

In closing, we want to emphasize how vitally important it will be to effectively address these concerns and any other issues that may surface as we continue to assess the impacts on the judicial branch. Thank you for considering these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'June Clark', with a long, sweeping horizontal line extending to the right.

June Clark
Senior Attorney

JC/lp

cc: Hon. Darrell Steinberg, Senate President pro Tempore
Hon. John Pérez, Speaker of the Assembly
Hon. Bob Dutton, Senate Republican Leader
Hon. Connie Conway, Assembly Republican Leader
Hon. Mark Leno, Chair, Senate Budget and Fiscal Review Committee
Hon. Bob Huff, Vice-chair, Senate Budget and Fiscal Review Committee
Hon. Robert Blumenfeld, Chair, Assembly Budget Committee
Hon. Jim Nielsen, Vice-chair, Assembly Budget Committee
Hon. Loni Hancock, Chair, Senate Public Safety Committee
Hon. Joel Anderson, Vice-chair, Senate Public Safety Committee
Hon. Tom Ammiano, Chair, Assembly Public Safety Committee
Hon. Stephen Knight, Vice-chair, Assembly Public Safety Committee
Ms. Ana Matosantos, Director, Department of Finance
Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitzke, Deputy Director of Legislation, Governor's Office of Planning and Research