



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

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Chief Justice of California
Chair of the Judicial Council

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CURT SODERLUND
Interim Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

March 19, 2012

Hon. Tom Ammiano, Chair
Assembly Public Safety Committee
State Capitol, Room 2014
Sacramento, California 95814

Subject: AB 1709 (Mitchell), as introduced - Oppose
Hearing: Assembly Public Safety Committee – March 20, 2012

Dear Assembly Member Ammiano:

I regret to inform you that the Judicial Council opposes AB 1709, which provides that any minor whose case is being adjudicated in juvenile court for an offense that could be used as a future felony conviction under the “Three Strikes” law must be provided an opportunity for a jury trial in the same manner that a jury trial would be held in criminal court, because it would be infeasible for the courts to carry out these additional jury trials in juvenile court.

The Judicial Council opposes AB 1709 because it could not be implemented within the current structure of the juvenile courts. While juvenile delinquency courts provide most of the procedural safeguards afforded to criminal defendants, the key exception is that they do not provide the opportunity for a jury trial. In deciding that jury trials were not required in juvenile proceedings, the U.S. Supreme Court in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) emphasized that while juveniles must be afforded the right to counsel and the application of the rules of evidence, it was not advisable to make these proceedings into full blown adversarial proceedings. In California, juvenile cases must be decided within 15 judicial days of when the delinquency petition is filed. Delinquency proceedings are typically held in facilities that are separate and apart from the criminal courthouse. Proceedings are generally confidential to aid in the rehabilitation of the minor. For these reasons the juvenile courts of California are not

designed or prepared to handle jury trials, and legislation that would graft jury trials to the existing juvenile court structure cannot be accommodated without tremendous expense and inconvenience to other court proceedings.

Many juvenile court facilities in California have no means to accommodate juries. They have no jury boxes in the court rooms and no jury assembly rooms in the courthouses. As a result, court facilities would need to be modified at significant expense to accommodate these trials, or juvenile court proceedings would need to be held in the adult criminal court facility. The latter result would also be costly and disruptive. Because the jury trial would need to be held within 15 days, courts would be challenged to call a sufficient number of jurors to meet this new demand. Moreover, trying to add numerous additional trials into already heavily burdened criminal court facilities would harm the court's ability to meet its existing criminal court calendars. Finally there would be logistical problems associated with shifting the personnel and the alleged wards from one part of the county (where the juvenile detention facility and the court are located) to the locale in the county where the adult criminal court is located so that a jury trial can be provided. All of this would add cost and workload to already overburdened courts.

The intent of AB 1709 is to prevent adult sentencing enhancements from attaching for a proceeding that did not include an opportunity for a jury trial. The constitutionality of attaching such consequences to juvenile adjudications has been settled (see *People v. Nguyen*, 467 Cal.4th 1007 (2009)). The question of whether this is the appropriate policy is a question that the Legislature could put before the voters in seeking to revise the Three Strikes law. It is not, however, appropriate to try and resolve this issue by attempting to turn the juvenile court into a criminal court by requiring jury trials in proceedings that were designed to exclude them.

For these reasons, the Judicial Council opposes AB 1709.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Kenny", written in a cursive style.

Tracy Kenny
Attorney

TK/yc

cc: Members, Assembly Public Safety Committee
Hon. Holly Mitchell, Member of the Assembly
Ms. Milena N. Blake, Counsel, Assembly Public Safety Committee
Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy



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CURTIS L. CHILD
Director, Office of Governmental Affairs

April 9, 2012

Hon. Felipe Fuentes, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 1709 (Mitchell), as amended March 14, 2012 – Fiscal Impact Statement
Hearing: Assembly Appropriations Committee – April 18, 2012

Dear Assembly Member Fuentes:

AB 1709 would require that any minor whose case is being adjudicated in juvenile court for an offense that could be used as a future felony conviction under the “Three Strikes” law must be provided an opportunity for a jury trial in the same manner that a jury trial would be held in criminal court but within the current timeframe of 15 judicial days used in juvenile adjudications. The Judicial Council opposes AB 1709 because it could not be implemented within the current structure of the juvenile courts. While juvenile delinquency courts provide most of the procedural safeguards afforded to criminal defendants, the key exception is that they do not provide the opportunity for a jury trial.

Many juvenile court facilities in California have no means to accommodate juries. They have no jury boxes in the court rooms and no jury assembly rooms in the courthouses. As a result, court facilities would need to be modified at significant expense to accommodate these trials, or juvenile court proceedings would need to be held in the adult criminal court facility. The latter result would also be costly and disruptive. Because the jury trial would need to be held within 15 days, courts would be challenged to call a sufficient number of jurors to meet this new demand. Moreover, trying to add numerous additional trials into already heavily burdened criminal court facilities would harm the court’s ability to meet its existing criminal court calendars. Finally there would be logistical problems associated with shifting the personnel and

the alleged wards from one part of the county (where the juvenile detention facility and the court are located) to the locale in the county where the adult criminal court is located so that a jury trial can be provided. All of this would add cost and workload to already overburdened courts.

Fiscal Impact

AB 1709 would require many proceedings that are currently tried in juvenile court by a judge to instead be tried by a jury. Jury trials are significantly more resource intensive than court trials both because they are much longer proceedings, and because they require the summons and compensation of many jurors. Based upon petitions filing data for the relevant offenses and ages from the Department of Justice for 2010, we estimate that approximately 9,234 alleged wards would be afforded the right to request a jury trial under AB 1709. Based on the current frequency with which these offenses go to trial we estimate that at least 10 percent of these minors would request a jury trial (this number may be low because proponents suggest that many minors currently do not seek a trial because they cannot be heard by a jury – if more trials are requested than under current conditions, then the number of jury trials would be higher). Thus we expect at least an additional 923 jury trials to be required as a result of AB 1709. Based on current average times for felony trials in juvenile and criminal court, we would expect that the jury trial would require five additional court days to complete as compared to the court trial. Jury trials are longer because they require time to complete voir dire and seat the jury, a longer period to present the evidence and explain the legal issues to the jurors, and a time period for the jury to deliberate and reach its verdict. The annual cost of these additional court days is projected to be \$18.5 million.

In addition to the extra court time, there is a cost associated with summoning and compensating jurors. We estimate that an average felony trial requires 76 jurors to be summoned, and that the administrative cost for the entire process, including the compensation to the juror, is \$16.76 per juror. Thus we estimate that the direct cost of providing juries in these proceedings would be \$1.2 million.

Because in many instances juvenile court facilities are not equipped to hear these matters, courts would have two options, retrofit existing juvenile court facilities or hear these cases in criminal court facilities. The costs to retrofit the juvenile facilities to accommodate juries would include the construction of jury boxes in the courtrooms as well as rooms within the courthouse for jurors to assemble in while awaiting assignment, and to deliberate in after the evidence has been presented. The cost of these changes is unknown, but would be quite significant. There are also unknown but significant costs associated with hearing these cases in criminal court facilities, as juveniles must be held and transported separately from any adult criminal defendants, which imposes burdens on court security in those facilities. In addition, because of the short time frame allowed for these proceedings, they would likely take precedence over adult criminal trials and lead to delays in those matters. Note that in FY 2009-10 the courts statewide held 5,981 felony jury trials. AB 1709 would lead to a 15 percent increase in the total number of felony trials. This increase would be devastating to the courts which are suffering from unprecedented cuts and additional criminal court workload as a result of the criminal justice realignment legislation.

Hon. Felipe Fuentes
April 9, 2012
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Please contact me at 916-323-3121 or tracy.kenny@jud.ca.gov if you would like further information or have any questions about the fiscal impact of this legislation on the judicial branch.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy E. Kenny", with a long, sweeping horizontal stroke at the end.

Tracy Kenny
Attorney

TK/yc

cc: Members, Assembly Appropriations Committee
Hon. Holly Mitchell, Member of the Assembly
Mr. Geoff Long, Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office
Ms. Milena N. Blake, Counsel, Assembly Public Safety Committee
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy
Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Michael Miyao, Budget Analyst, Department of Finance