Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS
OFFICE OF GOVERNMENTAL AFFAIRS
770 L Street, Suite 1240 • 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

STEVEN JAHR
Administrative Director of the Courts

CORY T. JASPERSON
Director, Office of Governmental Affairs

September 11, 2013

Hon. Tom Ammiano
Member of Assembly
State Capitol, Room 3146
Sacramento, California 95814

Subject: AB 807 (Ammiano), as amended September 10, 2013 – Oppose language for jury instruction

Dear Assembly Member Ammiano:

The Judicial Council regretfully opposes the provisions of AB 807 that would require courts to admonish juries in a manner "substantially similar" to the language expressly set forth in the bill.

The council strongly believes that the responsibility for drafting jury instructions should be left with the judicial branch. Instructing a jury is a core function of trial courts, and there are many practical reasons why that responsibility should belong to the courts. Issuing jury instructions is inextricably linked with the exercise of judicial discretion in giving instructions that are understandable to a jury and tailored to the particular facts and circumstances of each individual case. Limiting this discretion, as AB 807 seeks to do, may impair judges' ability to quickly adapt statutorily mandated instructional language to evolving case law. While awaiting a legislative fix to the statute to catch up with this new law, the innocent could be convicted and the guilty set free.

The courts are guided by the Judicial Council Criminal Jury Instructions, CALCRIM. Rule 2.1050 of the California Rules of Court expressly provides that those instructions may be

modified by a judge if another instruction "would more accurately state the law and be understood by jurors." Not only is it clear that a judge may modify CALCRIM instructions as needed, they are prepared by a neutral, balanced committee of experts. The CALCRIM committee is composed of experienced trial judges, appellate court justices, public defenders, private defense counsel, and professors of linguistics, who work collaboratively to create legally accurate and easily understood instructions.

The CALCRIM committee regularly updates, supplements, and maintains them as needed. The committee's rigorous process includes five separate levels of review, including circulating proposed amendments for public comment. All criminal law practitioners, including both prosecutors and defense attorneys, are encouraged to submit their comments and suggestions. Thus the CALCRIM committee ensures that the jury instructions are accurate, balanced and understandable to the average juror. The council believes this process is essential for the fair administration of justice.

For the reasons stated above, the Judicial Council regretfully must oppose the provisions in AB 807 that would require courts to admonish a jury in a manner "substantially similar" to language set forth in the bill.

Sincerely,

Sharon Reilly

Sharon Reilly
Senior Attorney

SR/yc-s
cc: Ms. Kimberly Horiuchi, ACLU
Ms. Liberty Sanchez, California Public Defenders Association
Mr. Gregory Pagan, Chief Counsel, Assembly Public Safety Committee
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy
Ms. Alison Anderson, Chief Counsel, Senate Public Safety Committee
Mr. Eric Csizmar, Consultant, Senate Republican Office of Policy
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor