



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

770 L Street, Suite 1240 • Sacramento, California 95814-3368
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TANI G. CANTIL-SAKAU
Chief Justice of California
Chair of the Judicial Council

STEVEN JAHR
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

August 6, 2014

Hon. Kevin de León, Chair
Senate Appropriations Committee
State Capitol, Room 2206
Sacramento, California 95814

Subject: AB 1014 (Skinner), as amended August 4, 2014 – fiscal impact statement

Dear Senator de León:

AB 1014 creates a gun violence restraining order process to provide family members and law enforcement with an additional tool to help avoid gun violence by those who pose a likely and significant risk of harm to themselves and others by use of a gun. As required by the Trial Court Funding Act of 1997 (AB 233; Chapter 850, Statutes of 1997), the Judicial Council submits this fiscal analysis on AB 1014. Please note, too, that the Judicial Council has not taken a position on AB 1014, and submits this information for your consideration.

The bill has been amended many times and, at the time of the writing of this fiscal impact statement, was still undergoing changes. For purposes of this letter, we refer to the version amended on August 4, 2014.

There are no actual calculations that have been prepared for this fiscal analysis because there appear to be a number of practical considerations that impact how a fiscal calculation would be undertaken. This letter will point out the implementation issues we have identified, the majority of which have come from staff members at a number of courts. We anticipate, however, that without these issues being addressed in any meaningful way, the costs to the courts could be significant, and ongoing.

Specific cost pressures

1. Section 18115(a)(2)¹ requires notice be submitted to the Department of Justice (DOJ) “in a manner prescribed by the department.” In discussions with DOJ related to the implementation of AB 1131 (ch. 747, Statutes of 2013), the DOJ agreed to develop a web-based reporting mechanism for the reporting of arm-prohibited persons as required under that law. This same reporting process could be identified and used for AB 1014. In the absence of such precise language, there may be confusion as to what the reporting process might be for all 58 courts, and cost pressures would be likely on those courts that don’t have dedicated servers or other non-traditional computer systems.
2. Section 18115(b)(1) and (2) require the court to notify the district attorney and law enforcement when a gun violence restraining order (GVRO) is issued, renewed, dissolved or terminated. We believe this to be an unnecessary burden on courts because the DOJ notice should be sufficient to alert all justice partners. Otherwise, this is a cost pressure for the courts that provides no specific guidance as to how it is to be implemented. The development of a reporting system that would meet the expectations of the bill places cost pressures on the courts. The development of the process would be a one-time cost, followed by the on-going costs of on-going reporting.
3. Section 18120(d) takes into consideration a defendant’s right against self-incrimination while requiring restrained persons to relinquish their weapons. The burden on the courts of this section is based in the practical application of the paragraph as written. The fact that the language for the district attorney (DA) to “request... use immunity for the act of relinquishment” that the court “may grant” seems problematic; both elements utilize permissive rather than mandatory language. Since the constitutional protections against self-incrimination likely would be superior to the obligations to relinquish weapons created under this bill, the language should be written more precisely to make mandatory that a court will grant use immunity under the circumstances contemplated in this section. Without further amendments, the cost pressures on the courts will be in determining how to accommodate the situation in which a DA fails to request use immunity under a circumstance when a restrained person, also a defendant, is entitled to the constitutional protections against self-incrimination.
4. Section 18185 allows the restrained party, after an order granting a GVRO after a hearing, to petition the court to request termination of the order. This additional hearing at the request of the restrained party is a hearing that doesn’t exist in other civil protective order schemes. There would be new cost burdens on the courts to hear these petitions. While the Judicial Council cannot suggest how many such hearings would be requested, even a modest one-hour hearing will require the equivalent of \$500 of court time. Hearings for restraining orders are commonly one to three hours in duration.

¹ All reference are to the Penal Code unless otherwise specifically identified.

5. Following directly on the heels of the previous section, section 18190 allows an immediate family member or law enforcement officer to request a renewal of a GVRO. While a renewal process does exist for other civil restraining orders, the GVRO paradigm is potentially subject to three to ten times as many requests for hearings (both under this section and section 18185). Whereas traditional civil restraining orders are granted for periods of three to 10 years, the GVRO is limited to an initial one-year period followed by requests for renewals, increasing the likelihood that more hearings will be required more frequently under the authority created by AB 1014. The cost pressures of these two sections, mindful that a single hour of court time costs \$500 (including time of the judicial officer and appropriate court staff), is significant. If there are 1,000 hearings throughout the courts of California (approximately 17 hearings per court) of one hour in duration (either for termination or renewal, or both) the cost to the courts would be \$500,000. If there are 3,000 such hearings (just over 52 hearings per court), the cost to the courts will be \$1.5 million. The costs increase if the hearings require more time, or if more hearings are required.

We believe there are cost pressures of AB 1014 as it currently is written, and we hope that this letter provides you with an understanding of those pressures on California's trial courts.

If you have any questions about this letter or the information contained in it, please contact me.

Sincerely,



Andi Liebenbaum
Senior Analyst, Governmental Affairs

AL/nco

cc: Members, Senate Appropriations Committee
Hon. Nancy Skinner, Member of the Assembly
Ms. Jolie Onodera, Consultant, Senate Appropriations Committee
Mr. Matt Osterli, Fiscal Consultant, Senate Republican Fiscal Office
Ms. Jessica Devencenzi, Counsel, Senate Public Safety
Mr. Eric Csizmar, Policy Consultant, Senate Republican Office of Policy
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor
Ms. Madelynn McClain, Budget Analyst, Department of Finance



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September 10, 2014

Hon. Nancy Skinner
Member of the Assembly
State Capitol, Room 6026
Sacramento, CA 95814

Subject: AB 1014 (Skinner), as amended August 21, 2014—Fiscal Impact
Statement (revised)

Dear Assemblymember Skinner:

On behalf of the Judicial Council, I want to thank you for your thoughtful and detailed response to the fiscal impact statement my office prepared on AB 1014 (as amended August 4, 2014) related to gun violence restraining orders (GVRO). As you know, a number of judicial officers and our staff provided important feedback and technical assistance during the drafting process, and we appreciate your willingness to incorporate many of the council's suggestions into the bill. Attached with this letter is a revised fiscal impact statement we have prepared for the Governor that reflects the August 21, 2014 amendments to the bill. Below you will find additional information in response to your comments.

1. With regard to our concerns regarding the language of proposed PEN section 18115(a)(2), you wrote that while you do not believe a change is necessary, you would consider clarifying language. As you recall, our concern with the language was that it would require notice to be submitted to the Department of Justice "in a manner prescribed by the department." After many constructive discussions with your staff, we

believe that the intent with this section is to have courts utilize the web-based reporting system developed for AB 1131 (ch. 747, Statutes of 2013). Assuming that is the case, then we foresee no cost burdens to the courts with this language. Our concern was that the department might expect/request notice in a different manner, which would place courts in a position of either incurring unforeseen costs to comply, or in a position where they simply cannot comply.

2. Amendments that removed the requirement that courts notify law enforcement when a GVRO is issued, renewed, dissolved, or terminated are greatly appreciated. In our revised fiscal impact statement, we have removed any mention of this concern; thanks for making this adjustment.
3. Amendments that removed the language related to the issues of immunity and self-incrimination are also greatly appreciated. In our revised fiscal impact statement to the Governor, no mention of this provision has been included.
4. While it is true that W&I section 8103(f)(4) allows the restrained party to petition the court for termination of the order protective order, this section applies to five-year protective orders, and allows for only one such petition during the entirety of the five-year order. The GVRO provisions of AB 1014 allow for one-year orders, and proposed section 18185 allows the restrained party to file a petition seeking to terminate the order. Assuming that a GVRO was extended each year for five years, this would provide a restrained person five times the number of petitions as would be allowed under W&I 8103(f)(4). Because this is a significant potential cost burden on the courts, it must remain part of the fiscal impact statement.
5. In your response letter to our fiscal impact statement, you state that the renewal provision contained in proposed section 18190 would be cost-effective (“saves money and resources for the courts...”) because a renewal process is less cumbersome than a re-application process. We have no doubt this is accurate. Nevertheless, other civil restraining orders are generally renewed in three to five year time increments, and in the case of domestic violence restraining orders may be renewed on a permanent basis¹.

¹ Civil harassment restraining orders may be initially ordered for up to five years, and if the order does not specify a time-period, for a default period of three-years (Civ. Proc. C. § 527.6(j)). Those orders may be renewed for not more than five years without a showing of further harassment since the original order. Domestic violence restraining orders may initially be ordered for up to five years, and if the order does not specify a time-period, for a default period of three-years (Fam. C. § 6345(a) & (c)). Those orders may be renewed for five years or permanently without a showing of any further abuse since the original order (Fam. C. § 6345(a)).

Because GVROs are issued in one-year increments, over a ten year period, for example, renewals could be requested three to ten times more frequently than renewals for other civil restraining orders. This, too, is a significant potential cost burden to the trial courts.

Our revised fiscal impact statement, makes it clear that Judicial Council cannot estimate the number of hearings (for terminations or renewals) that will be requested. Using existing civil restraining orders as a foundation, most such contested hearings range from one to three hours. Based on time studies undertaken by our Office of Court Research, an hour of court time, taking into consideration the time of the judicial officer, necessary court employees, and OE&E costs, is about \$500 (\$4,000 per court day). We provide calculations for illustrative purposes only, that show a possible range of costs to California's trial courts, but without any way to estimate the number of hearings that will result from the provisions of AB 1014, should it become law, these are just estimates.

As you know, California's courts are significantly under-funded and struggling to provide access to justice despite closures, furloughs, and reduced services across the state. Just in the first two months in this fiscal year a number of courts, including Glenn, Humboldt, Kings, Mono, Plumas, Sierra, Santa Barbara, Shasta, Santa Clara, and Solano, have closed courthouses or reduced services to the public. This list is growing. In light of these fiscal circumstances, any additional costs to the courts must be addressed in order to maintain already diminished services.

Thank you for your work on AB 1014, it is an important issue. And thank you for carefully considering and accepting many of the suggestions from staff and others representing the Judicial Council. If I can provide any additional information, please do not hesitate to call on me.

Sincerely,

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

Cory T. Jasperson
Director, Governmental Affairs

CJ/AL/SR/nco
Enclosure



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September 10, 2014

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

Subject: AB 1014 (Skinner), as amended August 21, 2014—Fiscal Impact
Statement (revised)

Dear Governor Brown:

AB 1014 creates a gun violence restraining order (GVRO) process to provide family members and law enforcement with an additional tool to help avoid gun violence by those who pose a likely and significant risk of harm to themselves and others by use of firearms and ammunition. As required by the Trial Court Funding Act of 1997 (AB 233; Chapter 850, Statutes of 1997), the Judicial Council submits this revised fiscal analysis on AB 1014.

The Judicial Council has taken a neutral position on the bill.

AB 1014 has been amended many times. The bill's author, Assemblymember Nancy Skinner, has reached out to an impressive diversity of stakeholders, including representatives from the Judicial Council. A number of judicial officers and Judicial Council staff provided feedback and technical assistance during the drafting process, and the author has taken several amendments that reduce cost pressures on the courts. Despite significant amendments and the technical

assistance provided by Judicial Council staff and others, there remain costs to the judicial branch should the bill be signed into law.

Specific cost pressures

1. Section 18115(a)(2)¹ requires notice be submitted to the Department of Justice (DOJ) “in a manner prescribed by the department.” In discussions with DOJ related to the implementation of AB 1131 (ch. 747, Statutes of 2013), the DOJ agreed to develop a web-based reporting mechanism for the reporting of prohibited-armed persons as required under that law. We believe the intent of this section of AB 1014 is that the DOJ would use the same web-based portal developed for AB 1131. Should DOJ prescribe another or different manner for the submission of notice as required by section 18115(a)(2), cost pressures would be likely, especially for those courts that don’t have dedicated servers or newer case management systems.
2. Section 18185 allows the restrained party, after an order granting a GVRO following a hearing, to petition the court to terminate the order. This additional hearing at the request of the restrained party is a procedure that will result in additional costs to the courts.
3. Section 18190 allows an immediate family member or law enforcement officer to request a renewal of a GVRO. While a renewal process does exist in current law for other civil restraining orders, over a ten-year period the GVRO paradigm is potentially subject to three to ten times as many requests for hearings (both under this section and section 18185)². Whereas other civil restraining orders, including domestic violence restraining orders are granted for periods of three to five years, with one five-year renewal period, or in the case of domestic violence restraining orders a permanent renewal, the GVRO is limited to an initial one-year period followed by requests for renewals of one-year terms. Since the renewal process anticipated by AB 1014 is more frequent (instead of every three to five years, the renewal process would be annual), there is a reasonable likelihood that more hearings will be required more frequently under the authority created by the bill.

¹ All statutory references are to the Penal Code unless otherwise specifically identified.

² Civil harassment restraining orders may be initially ordered for up to five years, and if the order does not specify a time-period, for a default period of three-years (Civ. Proc. C. § 527.6(j)). Those orders may be renewed for not more than five years without a showing of further harassment since the original order. Domestic violence restraining orders may initially be ordered for up to five years, and if the order does not specify a time-period, for a default period of three-years (Fam. C. § 6345(a) & (c)). Those orders may be renewed for five years or permanently without a showing of any further abuse since the original order (Fam. C. § 6345(a)).

Taking into consideration that a single hour of court time costs \$500 including time of the judicial officer and necessary court staff, the cost pressures of these two sections (PEN 18185 and 18190) as described in paragraphs 2 and 3 are significant. The Judicial Council cannot estimate the number of hearings that might be requested; the numbers used in the calculation here are for illustrative purposes only. Hearings for contested restraining orders are commonly one to three hours in duration.

- If there are 1,000 hearings throughout California (approximately 17 hearings per court) of one hour in duration (either for termination or renewal, or both) the cost to the courts would be \$500,000.
- If there are 3,000 such hearings (just over 52 hearings per court), the cost to the courts would be \$1.5 million.
- The costs increase if the hearings require more time, or if more hearings are required each year.

If you have any questions, please contact me.

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Andi Liebenbaum
Senior Analyst, Governmental Affairs

AL/SR/nco

cc: Members, Senate Appropriations Committee
Members, Assembly Appropriations Committee
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Ms. Stella Choe, Assembly Public Safety Committee
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Mr. Geoff Long, Assembly Appropriations Committee
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