



JUDICIAL COUNCIL OF CALIFORNIA

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

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

April 7, 2015

Hon. Jimmy Gomez, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 696 (Jones-Sawyer), as introduced – Fiscal Impact Statement

Dear Assembly Member Gomez:

We respectfully request that AB 696 be assigned to the Assembly Appropriations Committee where the costs to the judicial branch and trial courts can be considered in detail.

AB 696, if enacted, would extend the provisions of Penal Code section 991 to misdemeanor defendants not in custody prior to arraignment, specifically requiring the court to determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty of that offense. AB 696 will result in significant costs to the trial courts by adding a new procedural element to misdemeanor matters, adding significantly to delays already experienced in California's trial courts due to reduced operations caused by budget constraints, and without enhancing court efficiencies or improving access to justice for the out-of-custody misdemeanor defendants, let alone anyone else needing access to the courts. The costs, which will be considered in greater detail below, are those related to the time and resources required for a probable cause hearing for misdemeanor defendants not in custody, and the possible additional requirement that, unlike such hearings for in-custody defendants, the probable cause hearing proposed in AB 696 be an evidentiary hearing, requiring even more court time and resources. AB 696 will result in significant delays to misdemeanor arraignment calendars as a result of the

new procedures anticipated by AB 696, as well as the need for the Judicial Council to implement one or more rules of court to address implementation of AB 696 should it be enacted.

Fiscal Impacts

More lengthy, and therefore costly, misdemeanor arraignment procedures. AB 696 would require the courts to determine if there is probable cause for detaining and charging non-custodial misdemeanor defendants. Under current law, only misdemeanor defendants held in custody are entitled to a probable cause determination. (See PEN § 991(a) “If the defendant is in custody at the time he appears before the magistrate for arraignment, and if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate... shall determine whether there is probable cause...”.) According to the Appellate Division of the Superior Court for the State of California, County of Los Angeles decision in *People v. McGowan* (filed 3/27/15 BR 051696; Airport Trial Court No. 4WA22795), “The constitutional right to a judicial determination of probable cause following arrest has its roots in *Gerstein v. Pugh* (1975) 420 U.S. 103. In that case, the United States Supreme Court held the Fourth Amendment vests an in-custody defendant with the right to have a prompt postarrest determination of whether there is probable cause to believe he or she committed ‘a crime.’” (*Id.* at pp. 114, 119-120.) According to *McGowan*, “[Penal Code] Section 991 protects a misdemeanant from unconstitutional pretrial confinement when there is no probable cause...” (*McGowan* p. 6) Providing the same protection for misdemeanor defendants not in custody would, per the reasoning in *McGowan*, not make sense because there is no risk of “unconstitutional pretrial confinement” for those defendants.

Practically speaking, probable cause determinations are not made in court hearings for many in-custody misdemeanor defendants. Rather, they are often made at the time of arrest via electronic law enforcement affidavits that are reviewed and signed by judges at all hours of the day and night, including weekends. The result is that, currently, there is little actual in-court time devoted to probable cause determinations for misdemeanor defendants. When the percentage of in-custody misdemeanants is considered (only 10 percent of misdemeanants are held in custody in many jurisdictions), AB 696 would require courts to provide in-court probable cause determinations for the remaining 90 percent of a county’s misdemeanants.

The implementation of probable cause determinations for non-custodial misdemeanants would add significant time to already impacted court calendars, and the expenditure of court resources (most significantly court personnel costs). It is reasonable to assume that a simple, uncontested probable cause determination requires about three minutes of court time. In Fresno, a court serving a county of under one million people, there are 800 misdemeanor arraignments in a week. Subtracting 10 percent (representing the in-custody population) leaves 720 out-of-custody misdemeanor defendants each week entitled to a probable cause determination should AB 696 be signed into law. At three minutes per defendant, 36 additional hours would be required to

process the same number of defendants, without, according to the court in *McGowan*, the advancement or protection of any constitutional right or protection. In dollars, 36 hours of court time is \$21,600 per week. Extrapolated to a 50-week year (due to budget cuts, Fresno is closed over the course of a year by about two full weeks), the cost is \$1,080,000. According to the most recent filings data,¹ there were 926,169 misdemeanors filed in California. (Fresno accounted for 38,431 of those filings, representing 4.1% of statewide total.) Using the same ratio of in-custody to not-in-custody misdemeanants (10% to 90%), the total number of probable cause determinations that would be required in California per the terms of AB 696 would be 833,553. The cost to California's courts would be an estimated \$25 million every year². It is also worth noting that Prop. 47 will add thousands of misdemeanants to the courts' calendars, which may result in even greater costs to the courts should AB 696 be enacted. This calculation represents revenues that courts currently spend on access to justice, for example self-help centers, counter clerks, clerks to answer telephones, filing clerks, research staff, and other court operations. Diverting this funding from court operations for probable cause determinations for misdemeanor defendants would have significant impacts on court operations.

Evidentiary versus non-evidentiary hearings. Adding to the potential costs of AB 696, should it be enacted into law, is the bill's language that may make probable cause determinations for misdemeanants not in custody more like preliminary hearings for felonies by allowing discovery and evidence to be presented. AB 696 would add to the language granting misdemeanor defendants who are not in custody the right to delay a court's determination of probable cause to allow for discovery. With some exceptions, probable cause determinations are not testimonial hearings that allow for discovery. Usually, probable cause determinations rely on arrest records. The addition of language to Penal Code section 991 that provides for discovery in probable cause determinations for defendants not in custody is potentially costly because of the delays that are inherent in discovery motions and the exchange of information between the sides. The additional time required for discovery and presentation of evidence in addition to the arrest record could require anywhere from 30 minutes to several hours. Any additional time added to the estimated three minutes per probable cause determination exacerbates an already costly proposition.

The costs of delay. Unfortunately there is no calculus for the costs to society for delayed access to the courts. No research entity has, to our knowledge, undertaken let alone completed, an analysis of how much business revenue is lost, how much additional costs escalate, and how legal fees, insurance premiums, health and other costs are impacted by the inability of people to

¹ See <http://www.courts.ca.gov/12941.htm> "2014 Court Statistics Report, Statewide Caseload Trends, 2003-2004 Through 2012-2013" published by the Judicial Council of California each year. References to misdemeanor filings can be found on page 78.

² 833,553 probable cause hearings X 3 minutes each = 2,500,659 minutes/60 minutes = 41,678 court hours at \$600 per hour for the time of the judicial officer and appropriate court staff = \$25 million.

access their courts in a timely fashion. Nevertheless, such costs are a burden, and underscore the Legislature's repeated call for court efficiencies and restored funding for the trial courts to enable a restoration of public access to their halls of justice. In its current form, AB 696 promotes inefficiency within the courts, and leads to additional delays of justice. In the first instance, the bill, if enacted, would extend a procedure to defendants who do not need such a procedure, for whom other opportunities, such as evidentiary hearings, to address whether the charges are supported or not, and for whom liberty is not an issue because the defendant is not in custody. Compounding this waste of court resources unnecessarily, the bill language is vague, possibly requiring the probable cause hearing for defendants not in custody to include discovery.

At current workloads and levels of filings, California's trial courts are underfunded by \$600 million to \$800 million. Additional delays, whether for the expansion of probable cause hearings, or the conversion of probable cause into testimonial hearings, will result in additional backlogs, and the need for additional funding to support California's trial courts. Both elements add to delays in justice.

For all of these reasons, the Judicial Council believes that AB 696 as introduced should be heard in Assembly Appropriations for fair and reasonable consideration of its costs to California's 58 trial courts. Please note that the information contained in this request does not constitute a position in favor or against the proposed legislation by the Judicial Council of California, and sets forth only the considerations related to the fiscal burdens that would be faced by the branch and branch entities should the bill be enacted into law.

Please contact me if you have questions about the information contained in this letter.

Sincerely,



Andi Liebenbaum

Senior Governmental Affairs Analyst

AL/yc-s

cc: Members, Assembly Appropriations Committee
Hon. Reginald Jones-Sawyer, Member of the Assembly
Mr. Pedro Reyes, Chief Consultant, Assembly Appropriations Committee
Mr. Alan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office
Mr. Eric Swanson, Staff Director, Assembly Republican Fiscal Office
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Madelynn McClain, Budget Analyst, Department of Finance



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CORY T. JASPERSON
Director, Governmental Affairs

April 21, 2015

Hon. Reginald Jones-Sawyer
Member of the Assembly
State Capitol, Room 4126
Sacramento, California 95814

Subject: AB 696 (Jones-Sawyer), as introduced - Oppose

Dear Assembly Member Jones-Sawyer:

The Judicial Council regrettably opposes AB 696, which requires that probable cause determinations for misdemeanants not in custody be made 30 days before the date calendared for trial at the arraignment, unless a later date is requested by the defense in order to allow the prosecution to comply with specified disclosure requirements. As a result, AB 696 extends the provisions of Penal Code section 991 to misdemeanor defendants not in custody prior to arraignment, specifically requiring the court to determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty of that offense.

The council is concerned with the potential for a significantly increased workload for courts because AB 696 will require probable cause hearings for non-custodial misdemeanor defendants. Thus, AB 696 could greatly overburden misdemeanor courts, which are already experiencing significantly increased workload from the passage of Proposition 47 in the November 2014 general election. While providing this extra hearing could provide an opportunity to the defense to test its evidence, the council notes that there are already probable cause tests built into the existing process for non-custodial defendants. Further, unlike the current expedited probable

Hon. Reginald Jones-Sawyer

April 21, 2015

Page 2

cause hearings that protect *in-custody* defendants from unwarranted delays without probable cause, the same urgency does not exist for defendants who are not in custody.

For these reasons, the Judicial Council regretfully opposes AB 696.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sharon Reilly". The signature is fluid and cursive, with the first name "Sharon" and last name "Reilly" clearly distinguishable.

Sharon Reilly
Senior Attorney

SR/yc-s

cc: Mr. Caliph Assagai, California Public Defenders Association

Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor



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GOVERNMENTAL AFFAIRS

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TANI G. CANTIL-SAKAUYE
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CORY T. JASPERSON
Director, Governmental Affairs

June 9, 2015

Hon. Loni Hancock, Chair
Senate Public Safety Committee
State Capitol, Room 2082
Sacramento, California 95814

Subject: AB 696 (Jones-Sawyer), as amended May 18, 2015 – Oppose
Hearing: Senate Public Safety Committee – June 16, 2015

Dear Senator Hancock:

The Judicial Council regrettably opposes AB 696, which requires that probable cause determinations for misdemeanants not in custody be made 30 days before the date calendared for trial at the arraignment, unless a later date is requested by the defense in order to allow the prosecution to comply with specified disclosure requirements. As a result, AB 696 extends the provisions of Penal Code section 991 to misdemeanor defendants not in custody prior to arraignment, specifically requiring the court to determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty of that offense.

The council is concerned with the potential for a significantly increased workload for courts because AB 696 will require probable cause hearings for non-custodial misdemeanor defendants. Thus, AB 696 could greatly overburden misdemeanor courts, which are already experiencing significantly increased workload from the passage of Proposition 47 in the November 2014 general election as well as reduced operations caused by budget constraints. While providing this extra hearing could provide an opportunity to the defense to test its evidence, the council notes that there are already probable cause tests built into the existing process for non-custodial defendants. Further, unlike the current expedited probable cause hearings that protect *in-custody* defendants from unwarranted delays without probable cause, the same urgency does not exist for

defendants who are not in custody. While the bill was amended May 18, 2015 to specify that the determination is required upon motion of counsel for the defendant or the defendant, unfortunately the amendments do not diminish the council's concerns about the burdens AB 696 would place on the courts.

Fiscal Impacts

The costs, which will be considered in greater detail below, are those related to the time and resources required for a probable cause hearing for misdemeanor defendants not in custody, and the possible additional requirement that, unlike such hearings for in-custody defendants, the probable cause hearing proposed in AB 696 be an evidentiary hearing, requiring even more court time and resources. AB 696 will result in significant delays to misdemeanor arraignment calendars as a result of the new procedures anticipated by AB 696, as well as the need for the Judicial Council to implement one or more rules of court to address implementation of AB 696 should it be enacted.

Lengthier, and therefore costly, misdemeanor arraignment procedures. AB 696 would require the courts to determine if there is probable cause for detaining and charging non-custodial misdemeanor defendants. Under current law, only misdemeanor defendants held in custody are entitled to a probable cause determination. (See PEN § 991(a) "If the defendant is in custody at the time he appears before the magistrate for arraignment, and if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate... shall determine whether there is probable cause...") According to the Appellate Division of the Superior Court for the State of California, County of Los Angeles decision in *People v. McGowan* (filed 3/27/15 BR 051696; Airport Trial Court No. 4WA22795), "The constitutional right to a judicial determination of probable cause following arrest has its roots in *Gerstein v. Pugh* (1975) 420 U.S. 103. In that case, the United States Supreme Court held the Fourth Amendment vests an in-custody defendant with the right to have a prompt postarrest determination of whether there is probable cause to believe he or she committed 'a crime.'" (*Id.* at pp. 114, 119-120.) According to *McGowan*, "[Penal Code] Section 991 protects a misdemeanant from unconstitutional pretrial confinement when there is no probable cause..." (*McGowan* p. 6) Providing the same protection for misdemeanor defendants not in custody would, per the reasoning in *McGowan*, not make sense because there is no risk of "unconstitutional pretrial confinement" for those defendants.

Practically speaking, probable cause determinations are not made in court hearings for many in-custody misdemeanor defendants. Rather, they are often made at the time of arrest via electronic law enforcement affidavits that are reviewed and signed by judges at all hours of the day and night, including weekends. The result is that, currently, there is little actual in-court time devoted to probable cause determinations for misdemeanor defendants. When the percentage of in-custody misdemeanants is considered (only 10 percent of misdemeanants are held in custody in many jurisdictions), AB 696 could, upon motion of defense counsel or the defendant, require courts to provide in-court probable cause determinations for up to the remaining 90 percent of a county's misdemeanants.

The implementation of probable cause determinations for non-custodial misdemeanants would add significant time to already impacted court calendars, and the expenditure of court resources (most significantly court personnel costs). It is reasonable to assume that a simple, uncontested probable cause determination requires about three minutes of court time. In Fresno, a court serving a county of under one million people, there are 800 misdemeanor arraignments in a week. Subtracting 10 percent (representing the in-custody population) leaves 720 out-of-custody misdemeanor defendants each week entitled to a probable cause determination should AB 696 be signed into law. At three minutes per defendant, 36 additional hours would be required to process the same number of defendants, without, according to the court in *McGowan*, the advancement or protection of any constitutional right or protection. In dollars, 36 hours of court time is \$21,600 per week. Extrapolated to a 50-week year (due to budget cuts, Fresno is closed over the course of a year by about two full weeks), the cost is \$1,080,000. According to the most recent filings data,¹ there were 926,169 misdemeanors filed in California. (Fresno accounted for 38,431 of those filings, representing 4.1% of statewide total.) Using the same ratio of in-custody to not-in-custody misdemeanants (10% to 90%), the total number of probable cause determinations that could be required in California per the terms of AB 696 would be 833,553. The cost to California's courts would be an estimated \$25 million every year². It is also worth noting that Prop. 47 will add thousands of misdemeanants to the courts' calendars, which may result in even greater costs to the courts should AB 696 be enacted. This calculation represents revenues that courts currently spend on access to justice, for example self-help centers, counter clerks, clerks to answer telephones, filing clerks, research staff, and other court operations. Diverting this funding from court operations for probable cause determinations for misdemeanor defendants would have significant impacts on court operations.

Evidentiary versus non-evidentiary hearings. Adding to the potential costs of AB 696, should it be enacted into law, is the bill's language that may make probable cause determinations for misdemeanants not in custody more like preliminary hearings for felonies by allowing discovery and evidence to be presented. AB 696 would add to the language granting misdemeanor defendants who are not in custody the right to delay a court's determination of probable cause to allow for discovery. With some exceptions, probable cause determinations are not testimonial hearings that allow for discovery. Usually, probable cause determinations rely on arrest records. The addition of language to Penal Code section 991 that provides for discovery in probable cause determinations for defendants not in custody is potentially costly because of the delays that are inherent in discovery motions and the exchange of information between the sides. The additional time required for discovery and presentation of evidence in addition to the arrest record could require anywhere from 30 minutes to several hours. Any additional time added to the estimated three minutes per probable cause determination exacerbates an already costly proposition.

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² $833,553 \text{ probable cause hearings} \times 3 \text{ minutes each} = 2,500,659 \text{ minutes} / 60 \text{ minutes} = 41,678 \text{ court hours at } \$600 \text{ per hour for the time of the judicial officer and appropriate court staff} = \25 million.

The costs of delay. Unfortunately there is no calculus for the costs to society for delayed access to the courts. No research entity has, to our knowledge, undertaken let alone completed, an analysis of how much business revenue is lost, how much additional costs escalate, and how legal fees, insurance premiums, health and other costs are impacted by the inability of people to access their courts in a timely fashion. Nevertheless, such costs are a burden, and underscore the Legislature's repeated call for court efficiencies and restored funding for the trial courts to enable a restoration of public access to their halls of justice. In its current form, AB 696 promotes inefficiency within the courts, and leads to additional delays of justice. In the first instance, the bill, if enacted, would extend a procedure to defendants who do not need such a procedure, for whom other opportunities, such as evidentiary hearings, exist to address whether the charges are supported or not, and for whom liberty is not an issue because the defendant is not in custody. Compounding this waste of court resources unnecessarily, the bill language is vague, possibly requiring the probable cause hearing for defendants not in custody to include discovery.

At current workloads and levels of filings, California's trial courts are underfunded by \$600 million to \$800 million. Additional delays, whether for the expansion of probable cause hearings, or the conversion of probable cause into testimonial hearings, will result in additional backlogs, and the need for additional funding to support California's trial courts. Both elements add to delays in justice.

For these reasons, the Judicial Council regretfully opposes AB 696.

Sincerely,

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Sharon Reilly
Senior Attorney

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cc: Members, Senate Public Safety Committee
Hon. Reginald Jones-Sawyer, Member of the Assembly
Mr. Caliph Assagai, California Public Defenders Association
Ms. Mary Kennedy, Counsel, Senate Public Safety Committee
Mr. Eric Csizmar, Consultant, Senate Republican Office of Policy
Ms. Jolie Ondera, Consultant, Senate Appropriations Committee
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor
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Director, Governmental Affairs

July 1, 2015

Hon. Ricardo Lara, Chair
Senator Appropriations Committee
State Capitol, Room 2206
Sacramento, California 95814

Subject: AB 696 (Jones-Sawyer), as amended May 18 – Fiscal Impact Statement
Hearing: Senate Appropriations Committee – July 7, 2015

Dear Senator Lara:

AB 696, if enacted, would extend the provisions of Penal Code section 991 to misdemeanor defendants not in custody prior to arraignment, specifically requiring the court to determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty of that offense. AB 696 will result in significant costs to the trial courts by adding a new procedural element to misdemeanor matters, adding significantly to delays already experienced in California's trial courts due to reduced operations caused by budget constraints, and without enhancing court efficiencies or improving access to justice for the out-of-custody misdemeanor defendants, let alone anyone else needing access to the courts. The costs, which will be considered in greater detail below, are those related to the time and resources required for a probable cause hearing for misdemeanor defendants not in custody, and the possible additional requirement that, unlike such hearings for in-custody defendants, the probable cause determination proposed in AB 696 be an evidentiary hearing, requiring even more court time and resources. AB 696 will result in significant delays to misdemeanor arraignment calendars as a result of the new procedures anticipated by AB 696, as well as the need for the Judicial Council to implement one or more rules of court to address implementation of AB 696 should it be enacted.

Fiscal Impacts

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Hon. Ricardo Lara

July 1, 2015

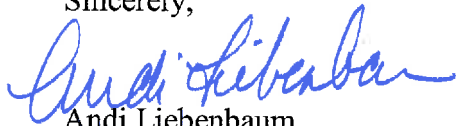
Page 4

a restoration of public access to their halls of justice. In its current form, AB 696 promotes inefficiency within the courts, and leads to additional delays of justice. In the first instance, the bill, if enacted, would extend a procedure to defendants who do not need such a procedure, for whom other opportunities, such as evidentiary hearings, to address whether the charges are supported or not, and for whom liberty is not an issue because the defendant is not in custody. Compounding this waste of court resources unnecessarily, the bill language is vague, possibly requiring the probable cause hearing for defendants not in custody to include discovery.

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Please contact me if you have questions about the information contained in this letter.

Sincerely,



Andi Liebenbaum

Senior Governmental Affairs Analyst

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cc: Members, Senate Appropriations Committee
Hon. Reginald Jones-Sawyer, Member of the Assembly
Ms. Jolie Onodera, Consultant, Senate Appropriations Committee
Mr. Matt Osterli, Fiscal Consultant, Senate Republican Fiscal Office
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September 15, 2015

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

Subject: AB 696 (Jones-Sawyer) – Request for Veto

Dear Governor Brown:

The Judicial Council respectfully requests that you veto AB 696, which requires that, when a defendant is not in custody at the time he or she appears before the magistrate for arraignment for a misdemeanor to which the defendant has pleaded not guilty, on motion by the defendant or defendant's counsel, the court determine whether there is probable cause to believe that the defendant is guilty.

Workload Considerations

The council is concerned with the potential for a significantly increased workload for courts because AB 696 will require probable cause determinations at arraignment for non-custodial misdemeanor defendants upon motion by counsel. Thus, AB 696 could greatly overburden misdemeanor courts, which are already experiencing significantly increased workload from the passage of Proposition 47 at the November 2014 general election as well as reduced operations resulting from budget constraints. While this expansion of probable cause determinations, from the current practice of determining whether or not there is justification to keep an accused in custody until the misdemeanor arraignment to a process akin to a felony preliminary hearing that

allows the opportunity for the defense to test its evidence, the council notes that there are several reasons why AB 696 is not the correct approach. There already exist probable cause tests built into the existing process for non-custodial defendants. More importantly, unlike the current expedited probable cause hearings that protect *in-custody* defendants from unwarranted detention and delays without probable cause, the same urgency does not exist for defendants who are not in custody.

AB 696 would require the courts to determine if there is probable cause for detaining and charging non-custodial misdemeanor defendants. Under current law, only misdemeanor defendants held in custody are entitled to a probable cause determination. (See PEN § 991(a) “If the defendant is in custody at the time he appears before the magistrate for arraignment, and if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate... shall determine whether there is probable cause...”.) According to the Appellate Division of the Superior Court for the State of California, County of Los Angeles decision in *People v. McGowan* (filed 3/27/15 BR 051696; Airport Trial Court No. 4WA22795), “The constitutional right to a judicial determination of probable cause following arrest has its roots in *Gerstein v. Pugh* (1975) 420 U.S. 103. In that case, the United States Supreme Court held the Fourth Amendment vests an in-custody defendant with the right to have a prompt postarrest determination of whether there is probable cause to believe he or she committed ‘a crime.’” (*Id.* at pp. 114, 119-120.) According to *McGowan*, “[Penal Code] Section 991 protects a misdemeanant from unconstitutional pretrial confinement when there is no probable cause...” (*McGowan* p. 6) Providing the same protection for misdemeanor defendants not in custody would, per the reasoning in *McGowan*, not make sense because there is no risk of “unconstitutional pretrial confinement” for those defendants.

As presented in the bill, AB 696 will result in significant delays to misdemeanor arraignment calendars as a result of the new procedures anticipated by AB 696, as well as the need for the Judicial Council to implement one or more rules of court to address implementation of AB 696 should it be enacted.

Practically speaking, probable cause determinations are not made in court hearings for many in-custody misdemeanor defendants. Rather, they are often made at the time of arrest via electronic law enforcement affidavits that are reviewed and signed by judges at all hours of the day and night, including weekends. The result is that, currently, there is little actual in-court time devoted to probable cause determinations for misdemeanor defendants. When the percentage of in-custody misdemeanants is considered (only 10 percent of misdemeanants are held in custody in many jurisdictions), AB 696 could, upon motion of defense counsel or the defendant, require courts to provide in-court probable cause determinations for up to the remaining 90 percent of a county’s misdemeanants.

Fiscal Impacts

The costs included in this fiscal analysis are those related to the time and resources required for a probable cause hearing for misdemeanor defendants not in custody, and the possible additional requirement that, unlike such hearings for in-custody defendants, the probable cause hearings proposed in AB 696 be an evidentiary hearing, requiring even more court time and resources.

The implementation of probable cause determinations for non-custodial misdemeanants would add significant time to already impacted court calendars, and the expenditure of court resources (most significantly court personnel costs). It is reasonable to assume that a simple, uncontested probable cause determination requires about three minutes of court time in addition to the time already utilized for the arraignment. In Fresno, a court serving a county of under one million people, there are 800 misdemeanor arraignments in a week. Subtracting 10 percent (representing the in-custody population) leaves 720 out-of-custody misdemeanor defendants each week entitled to a probable cause determination should AB 696 be signed into law. At three minutes per defendant, 36 additional hours¹ would be required to process the same number of defendants, without, according to the court in *McGowan*, the advancement or protection of any constitutional right or protection. In dollars, 36 hours of court time is \$21,600 per week. Extrapolated to a 50-week year (due to budget cuts, Fresno is closed over the course of a year by about two full weeks), the cost is \$1,080,000. According to the most recent filings data,² there were 926,169 misdemeanors filed in California. (Fresno accounted for 38,431 of those filings, representing 4.1% of statewide total.) Using the same ratio of in-custody to not-in-custody misdemeanants (10% to 90%), the total number of probable cause determinations that could be required in California per the terms of AB 696 would be 833,553. The cost to California's courts would be an estimated \$25 million every year³. This calculation represents revenues that courts currently spend on access to justice, for example self-help centers, counter clerks, clerks to answer telephones, filing clerks, research staff, and other court operations. Diverting this funding from court operations for probable cause determinations for misdemeanor defendants would have significant impacts on court operations. While it is unlikely that Prop. 47 petitions will increase the number of probable cause determinations should AB 696 become law, the compounded impacts of Prop. 47 and AB 696 would significantly reduce criminal court efficiencies, specifically in terms of misdemeanor arraignments

There is no calculus for the costs associated with delayed access to the courts. No research entity has, to our knowledge, undertaken let alone completed, an analysis of how much business

¹ 720 out-of-custody people X 3 minutes = 2,160; this divided by 60 minutes = 36 hours.

² See <http://www.courts.ca.gov/12941.htm> "2014 Court Statistics Report, Statewide Caseload Trends, 2003-2004 Through 2012-2013" published by the Judicial Council of California each year. References to misdemeanor filings can be found on page 78.

³ 833,553 probable cause hearings X 3 minutes each = 2,500,659 minutes/60 minutes = 41,678 court hours at \$600 per hour for the time of the judicial officer and appropriate court staff = \$25 million.

Hon. Edmund G. Brown, Jr.

September 15, 2015

Page 4

revenue is lost, how much additional costs escalate, and how legal fees, insurance premiums, health and other costs are impacted by the inability of people to access their courts in a timely fashion. Nevertheless, such costs are a burden, and underscore the repeated calls for court efficiencies. In its current form, AB 696 promotes inefficiency within the courts by creating significant delays in misdemeanor arraignments.

In sum, the bill, if enacted, would extend a procedure to defendants who do not need such a procedure, for whom other opportunities, such as evidentiary hearings, exist to address whether the charges are supported or not, and for whom liberty is not an issue because the defendant is not in custody.

For these reasons, the Judicial Council requests your veto AB 696.

Should you have any questions or require any additional information, please contact Sharon Reilly at 916-323.3121.

Sincerely,



Cory T. Jasperson

Director, Governmental Affairs

CTJ/SR/yc-s

cc: Hon. Reginald Jones-Sawyer, Member of the Assembly

Mr. Caliph Assagai, California Public Defenders Association

Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor

Mr. Martin Hoshino, Administrative Director, Judicial Council of California