



**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*

April 29, 2013

Hon. Kevin de León, Chair  
Senate Appropriations Committee  
State Capitol, Room 5108  
Sacramento, California 95814

Subject: SB 569 (Lieu), as introduced, February 22, 2013 – Fiscal Impact Statement  
Hearing: Senate Appropriations Committee – April 29, 2013

Dear Senator de León:

SB 569 requires recording interrogations of minors with 707(b) offenses, and provides courts with standards for the admissibility of those electronically recorded interrogations as well as the admissibility of interrogations that cannot be taken electronically. The bill further requires the courts to craft and distribute a survey to judges and prosecutors to fill out about each case in which there was an interrogation.

*Fiscal Impacts*

*Procedural Burdens:* There were approximately 20,000 707(b) juvenile petitions filed in 2011, plus over 600 additional juveniles directly charged in the superior court (which necessarily include the filing of a 707(b) petition in each case). We estimate an additional quarter hour for each juvenile hearing in which the minor defendant is either charged with a 707(b) offense in the juvenile court, or charges against the juvenile are directly filed in the superior court for the consideration of admissibility of the electronically recorded interrogations as required by the authority of SB 569 should it be signed into law. Taking into account the time of the judicial officer and courtroom staff, the average cost of a day in court is approximately \$4000. One

quarter hour (\$125) multiplied by 20,000 juvenile petitions (707(b) petitions) will result in additional costs to the courts of \$2.5 million.

*Monitoring for Noncompliance:* SB 569 further requires that the Judicial Council develop survey instruments, and to collect and monitor the forms, with the goal of identifying any patterns of noncompliance of the interrogation requirements required by this bill. Regarding the survey itself and the cost of development, the proposed legislation doesn't provide a thoughtful sense of the scope of the survey, for example the types of questions that would need to be asked.

If the survey is meant to figure out how many cases end up with each of the outcomes identified in the text of the bill, then a survey instrument would be a simpler, more straightforward document. But the language that specifically requires the survey to identify "any patterns of non-compliance" speaks to a more in-depth instrument that could take into account all sorts of factors like the arresting agency, the juvenile's race or ethnicity, etc.

Taking into consideration the chasm between a simpler and a more substantial survey, and understanding that there are no easy ways to determine the cost of a survey instrument, we err on the side of being conservative. Taking into consideration the different kinds of staff who are engaged in the survey development process, we estimate a total staff investment of 115 hours, at an estimated total cost of \$10,163. A more complicated and thorough survey will cost substantially more to implement – as much as ten times the cost as represented here.

*Rules of Court and Forms:* The changes required by the authority created in SB 569, should it become law, are likely to be the creation of a series of as many as 12 rules of court and seven conforming forms. Taking into consideration the different kinds of staff who are engaged in the rule and form process, we estimate a total staff investment of 1158 hours, at an estimated total cost of \$76,616. Additional expenses, for translation of forms into Chinese, Korean, Spanish, and Vietnamese, are estimated at \$22,610. Combined, we estimate the one-time costs of new rules of court and forms related to the implementation of SB 569, should the bill be signed into law, to be \$99,226. Please note that this cost estimate does not include the time of committee members, commentators, court staff, or others who contribute to the development and review process, nor does it include time spent by the Judicial Council's Office of Governmental Affairs.

Each year, the Legislature passes bills that have impacts on the California court system. Many of these bills require the adoption of new rules and forms, or the amendment of current rules and revisions to existing forms, to be consistent with newly enacted laws. Most fiscal impacts of legislation on rules and forms are not minor or insubstantial. Based on a review of the bills that are enacted each year, it is determined that many bills require specific changes that need to be carefully prepared, considered by advisory bodies, circulated for public comment and presented to the Judicial Council for final approval and ratification.

The rule-making and forms-adoption process is a careful, deliberative, and public process. Although there are enormous benefits to using such open and effective process, it does require the expenditure of funds and incur costs.

The mains stages in the process are as follows:

- Identification and analysis by staff of legislation that requires a rule or form change;
- Preparation of draft rules and form changes to implement the legislation; and preparation of supporting explanatory materials (memorandums, etc);
- Review by subcommittees and committees of the proposed rule or form changes and the making of recommendations;
- Preparation of Invitations to Comment for each rule and form proposal, including review and approval by the Judicial Council's Rules and Projects Committee (RUPRO);
- Circulation for public comment, including review by the public and the courts;
- Preparation of summary of comments for review by subcommittees and committees and the preparation of supporting memoranda including recommendations by committees; and,
- Preparation of Judicial Council reports, including review and approval by RUPRO and submission to the council for final approval.

The staff time is considerable, even for simple rule and form changes. For those that require multiple forms to be crafted or amended, and the appropriate rules to be drafted or amended, the costs can be significant.

All told, we conservatively estimate that the costs of implementing SB 569 would be \$2.6 million.

Please contact me at 916-323-3121 or [andi.liebenbaum@jud.ca.gov](mailto:andi.liebenbaum@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,



Andi Liebenbaum  
Senior Governmental Affairs Analyst

Hon. Kevin de León

April 29, 2013

Page 4

AL/yc

cc: Members, Senate Appropriations Committee

Hon. Ted Lieu, Member of the Senate

Ms. Jolie Onodera, Consultant, Senate Appropriations Committee

Mr. Matt Osterli, Fiscal Consultant, Senate Republican Fiscal Office

Ms. Mary Kennedy, Counsel, Senate Public Safety Committee

Mr. Eric Csizmar, Consultant, Senate Republican Office of Policy

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

Ms. Madelynn McClain, Budget Analyst, Department of Finance



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August 12, 2013

Hon. Tom Ammiano, Chair  
Assembly Public Safety Committee  
State Capitol, Room 3146  
Sacramento, California 95814

Subject: SB 569 (Lieu), as amended May 28, 2013 – Oppose language for jury instruction  
Hearing: Assembly Public Safety Committee – August 13, 2013

Dear Assembly Member Ammiano:

The Judicial Council regrettably opposes the provisions of SB 569 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 SB 569 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.

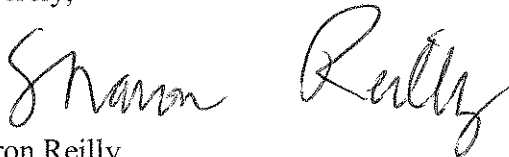
The courts are guided by the Judicial Council Criminal Jury Instructions, CALCRIM. Rule 2.1050 of the California Rules of Court expressly provides that those instructions may be modified by a judge if another instruction “would more accurately state the law and be understood by jurors.” Not only is it

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 regrettably must oppose the provisions in SB 569 that would require courts to admonish a jury in a manner "substantially similar" to language set forth in the bill.

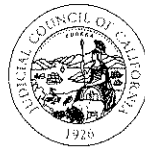
Sincerely,

A handwritten signature in cursive script, reading "Sharon Reilly".

Sharon Reilly  
Senior Attorney

SR/yc-s

cc: Members, Assembly Public Safety Committee  
Hon. Ted Lieu, Member of the Senate  
Ms. Kimberly Horiuchi, ACLU  
Ms. Liberty Sanchez, California Public Defenders Association  
Ms. Stella Choe, Counsel, Assembly Public Safety Committee  
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor  
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy



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*Director, Office of Governmental Affairs*

August 28, 2013

Hon. Mike Gatto, Chair  
Assembly Appropriations Committee  
State Capitol, Room 2114  
Sacramento, California 95814

Subject: SB 569 (Lieu), as amended May 28, 2013 – Oppose language for jury instruction

Dear Assembly Member Gatto:

The Judicial Council regrettably opposes the provisions of SB 569 that would require the Judicial Council to adopt a jury instruction for use by courts that is “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 SB 569 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 regrettably must oppose the provisions in SB 569 that would require courts to admonish a jury in a manner “substantially similar” to language set forth in the bill.

Sincerely,

A handwritten signature in black ink that reads "Sharon Reilly". The signature is written in a cursive, flowing style.

Sharon Reilly  
Senior Attorney

SR/yc-s

cc: Members, Assembly Appropriations Committee  
Hon. Ted Lieu, Member of the Senate  
Ms. Kimberly Horiuchi, ACLU  
Ms. Liberty Sanchez, California Public Defenders Association  
Mr. Geoff Long, Chief Consultant, Assembly Appropriations Committee  
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor





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September 5, 2013

Hon. Ted Lieu  
Member of the Senate  
State Capitol, Room 4061  
Sacramento, California 95814

Subject: SB 569 (Lieu), as amended September 3, 2013 – Oppose jury instruction provision

Dear Senator Lieu:

The Judicial Council regrettably opposes the provisions of SB 569 that would require, a court, if a custodial interrogation of a minor accused of murder is not video recorded, provide the jury with an instruction to be developed by the Judicial Council that advises the jury to view the statements made in that custodial interrogation with caution. While the council appreciates that the bill was amended to address concerns raised by the council, unfortunately the council is still opposed.

The Judicial Council notes that under well settled California law, as expressed in CALCRIM No. 358, courts already have a sua sponte duty to instruct jurors to view a defendant's statements with caution, unless they are written or otherwise recorded. Thus, the CALCRIM committee believes the instruction is unnecessary and could lead to confusion among the courts about the purpose of the proposed amendments. Moreover, 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.

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 regrettably must oppose the provisions in SB 569 requiring the jury instruction.

Sincerely,

A handwritten signature in black ink that reads "Sharon Reilly". The signature is written in a cursive, flowing style.

Sharon Reilly  
Senior Attorney

SR/yc-s

cc: Ms. Kimberly Horiuchi, ACLU  
Ms. Liberty Sanchez, California Public Defenders Association  
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor



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*Director, Office of Governmental Affairs*

September 19, 2013

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

Subject: SB 569 (Lieu) – Request for Veto

Dear Governor Brown:

The Judicial Council regrettably opposes the provisions of SB 569 requiring the Judicial Council to draft a CALCRIM jury instruction.<sup>1</sup> The proposed instruction would explain the bill's provisions in cases where officers have not video-recorded custodial interrogations of minors accused of murder. It would both duplicate and in part contradict provisions of CALCRIM No. 358, *Evidence of Defendant's Statements*, enclosed as exhibit 1. Both the duplication and contradiction are potentially very confusing. The contradiction is of particular concern because it cuts against established Supreme Court precedent on recorded statements of criminal defendants. While the council appreciates that the bill was amended to address its concerns, unfortunately we must still oppose it.

Under well settled California law, as expressed in CALCRIM No. 358, courts already have a sua sponte duty to instruct jurors to view a defendant's statements with caution, unless they are written or otherwise recorded. This duplication of subject matter demonstrates why responsibility for drafting jury instructions best belongs in the judicial

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<sup>1</sup> The Judicial Council Advisory Committee on Criminal Jury Instructions, or CALCRIM committee, is the intended recipient of that mandate.

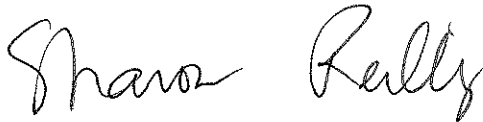
branch, where the experts on the Judicial Council Advisory Committee on Jury Instructions can take the time to carefully craft accurate, balanced instructions.

Rule 10.59 of the California Rules of Court guarantees the balanced composition of the CALCRIM committee by requiring a diverse team of experts, including appellate court justices, trial court judges, prosecutors and defense attorneys, and law professors specializing in criminal law. The rule also charges the committee with regularly updating, supplementing, and maintaining the instructions. The rigorous process has seven separate levels of review, including circulating proposed amendments for public comment. All criminal law practitioners, including prosecutors and defense attorneys, are encouraged to submit comments and suggestions. This process ensures that the jury instructions are accurate, balanced and understandable to the average juror.

The council believes that having a neutral, balanced team of experts responsible for drafting jury instructions is essential for the fair administration of justice.

For these reasons, the Judicial Council requests your veto on SB 569.

Sincerely,

A handwritten signature in black ink, reading "Sharon Reilly". The signature is written in a cursive, flowing style.

Sharon Reilly  
Senior Attorney

SR/yc-s  
Enclosure

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

# EXHIBIT 1

Evidence

## 358. Evidence of Defendant's Statements

You have heard evidence that the defendant made [an] oral or written statement[s] (before the trial/while the court was not in session). You must decide whether the defendant made any (such/of these) statement[s], in whole or in part. If you decide that the defendant made such [a] statement[s], consider the statement[s], along with all the other evidence, in reaching your verdict. It is up to you to decide how much importance to give to the statement[s].

[Consider with caution any statement made by (the/a) defendant tending to show (his/her) guilt unless the statement was written or otherwise recorded.]

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*New January 2006; Revised June 2007, December 2008*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction when there is evidence of an out-of-court oral statement by the defendant. In addition, the court has a **sua sponte** duty to give the bracketed cautionary instruction when there is evidence of an incriminating out-of-court oral statement made by the defendant. (*People v. Beagle* (1972) 6 Cal.3d 441, 455–456 [99 Cal.Rptr. 313, 492 P.2d 1].) An exception is that in the penalty phase of a capital trial, the bracketed paragraph should be given only if the defense requests it. (*People v. Livaditis* (1992) 2 Cal.4th 759, 784 [9 Cal.Rptr.2d 72, 831 P.2d 297].)

The bracketed cautionary instruction is not required when the defendant's incriminating statements are written or tape-recorded. (*People v. Gardner* (1961) 195 Cal.App.2d 829, 833 [16 Cal.Rptr. 256]; *People v. Hines* (1964) 61 Cal.2d 164, 173 [37 Cal.Rptr. 622, 390 P.2d 398], disapproved on other grounds in *People v. Murtishaw* (1981) 29 Cal.3d 733, 774, fn. 40 [175 Cal.Rptr. 738, 631 P.2d 446]; *People v. Scherr* (1969) 272 Cal.App.2d 165, 172 [77 Cal.Rptr. 35]; *People v. Slaughter* (2002) 27 Cal.4th 1187, 1200 [120 Cal.Rptr.2d 477, 47 P.3d 262] [admonition to view non-recorded statements with caution

applies only to a defendant's incriminating statements].) If the jury heard both inculpatory and exculpatory, or only inculpatory, statements attributed to the defendant, give the bracketed paragraph. If the jury heard only exculpatory statements by the defendant, do not give the bracketed paragraph.

When a defendant's statement is a verbal act, as in conspiracy cases, this instruction applies. (*People v. Bunyard* (1988) 45 Cal.3d 1189, 1224 [249 Cal.Rptr. 71, 756 P.2d 795]; *People v. Ramirez* (1974) 40 Cal.App.3d 347, 352 [114 Cal.Rptr. 916]; see also, e.g., *Peabody v. Phelps* (1858) 9 Cal. 213, 229 [similar, in civil cases]; but see *People v. Zichko* (2004) 118 Cal.App.4th 1055, 1057 [13 Cal.Rptr.3d 509] [no sua sponte duty to instruct with CALJIC 2.71 in criminal threat case because "truth" of substance of the threat was not relevant and instructing jury to view defendant's statement with caution could suggest that exercise of "caution" supplanted need for finding guilt beyond a reasonable doubt].)

When a defendant's statement is an element of the crime, as in conspiracy or criminal threats (Pen. Code, § 422), this instruction does not apply. (*People v. Zichko* (2004) 118 Cal.App.4th 1055, 1057 [13 Cal.Rptr.3d 509].)

### ***Related Instructions***

If out-of-court oral statements made by the defendant are prominent pieces of evidence in the trial, then CALCRIM No. 359, *Corpus Delicti: Independent Evidence of a Charged Crime*, may also have to be given together with the bracketed cautionary instruction.

## **AUTHORITY**

- Instructional Requirements ▶ *People v. Beagle* (1972) 6 Cal.3d 441, 455–456 [99 Cal.Rptr. 313, 492 P.2d 1]; *People v. Livaditis* (1992) 2 Cal.4th 759, 784 [9 Cal.Rptr.2d 72, 831 P.2d 297].

### ***Secondary Sources***

5 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Criminal Trial, §§ 614, 641, 650.

1 Witkin, *California Evidence* (4th ed. 2000) Hearsay, § 51.

3 Witkin, *California Evidence* (4th ed. 2000) Presentation, § 113.

2 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 30, *Confessions and Admissions*, § 30.57 (Matthew Bender).