



JUDICIAL COUNCIL OF CALIFORNIA

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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

May 21, 2018

Hon. Lorena S. Gonzalez-Fletcher, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 2988 (Weber), as proposed to be amended by RN 18 12628 03 –
Fiscal Impact Statement

Dear Assembly Member Gonzalez-Fletcher:

AB 2988, as proposed to be amended by RN 18 12628 03, would extend the period for which courts must retain exhibits introduced or filed in certain felony criminal cases. Specifically, it prohibits courts from destroying exhibits in cases charging a violent felony, specified sex offenses, an aggravated assault on a child, or any charge that results in a life sentence until one year after the term of imprisonment ends. Finally, the bill authorizes a governmental entity to dispose of any object or material that contains or includes biological material if that entity does not receive a response within one year of sending the notification.

Fiscal Impacts

AB 2988 seeks to extend the period for which courts would be required to keep exhibits presented in a variety of criminal felony cases, which preliminary estimates indicate would cost courts between \$4.2 million and \$8.5 million to initially comply with. In the long term, we estimate additional costs in the tens of millions to comply with the requirements this bill adds to existing statute related to the electronic storage of court records.

Physical Costs

We estimate the courts would require between \$2.5 million and \$5.0 million to meet increased costs for the physical storage of exhibits mandated by this bill.¹ This bill's changes to storage timelines will require courts to store exhibits for several decades beyond current statutory requirements.² Although this bill contemplates district attorneys and public defenders providing courts with electronic copies of exhibits, there is no requirement or guarantee that these parties will agree to do so. Furthermore, courts have no ability to compel these parties to agree to convert exhibits to an electronic format. Additionally, it is likely that many exhibits presented in criminal cases, such as weapons or clothing, would likely lose their evidentiary value if digitally photographed and therefore would need to be stored as a physical exhibit. Also, the majority of the cases affected by this bill are filed in courts located in urban settings, which typically have higher physical storage costs. Finally, this bill assumes that the court will be provided with updates from the Department of Corrections and Rehabilitation (Corrections) when an individual is released from prison. However, it is unlikely that Corrections will automatically update the courts regarding the release of individual prisoners given their current population of individuals in custody for violent felonies or with life sentences.³ This will require courts to dedicate staff resources to contact Corrections to determine an offender's imprisonment status, and in the absence of updated information, store the exhibit for longer than may be required by this bill.

Staffing Needs

We estimate that courts would require between \$1.7 million and \$3.5 million to obtain staff to address increased workload that this bill would create.⁴ This bill would require courts to obtain

¹ Estimates for physical storage needs were obtained from a sample of courts that analyzed this bill's impact on their existing exhibit storage processes. Collectively, these courts disposed of approximately 20% of statewide felony cases in 2016. The sample courts indicated that this bill would impose between \$500,000 and \$1 million per year. We then multiplied these estimates by 5 to produce a statewide estimate (\$500,000*5=\$2.5 million, \$1 million x 5=\$5 million)

² Penal Code section 1417.1 provides courts with post-trial exhibit storage requirements that range from 30 days to 1 year, depending on case specific issues. The longest duration for exhibit storage, 1 year, applies to cases where an appeals court orders the case to be re-tried at the superior court level. The 2017 Court Statistics report showed that 90% of criminal appeals cases are decided within 2 years of filing, which indicates that, at the longest, trial courts currently store criminal exhibits for approximately 3 to 5 years post-conviction.

³ Corrections Offender Data Points, published in June 2017, indicates they have approximately 86,600 offenders in custody for violent or serious and violent offenses, which are typically felonies (Page 14). Additionally, the report indicates that there are currently 32,600 inmates serving sentences of Life or Life Without the Possibility of Parole (Page 6). https://www.cdcr.ca.gov/Reports_Research/docs/Data-Points-Jun-2017.pdf

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additional storage space outside of their existing court facilities, which would lead to an increased need for staff to transport exhibits to these locations. We note that the sponsors of this bill have indicated they intend for staff from either the district attorney's and/or the public defender's offices to convert case exhibits to an electronic format after trial to reduce court workload. However, the bill does not change the requirement under existing law that court staff observe the conversion of the exhibit into an electronic format, which would not eliminate the staff workload.⁵ Therefore, the conversion of case records, even if performed by non-court personnel, would still have a workload impact on courts.

Implications for Electronic Storage of Court Records

This bill provisions, combined with existing statutes relating to electronic court records, could lead to unknown costs, but potentially in the millions, related to courts obtaining electronic storage systems or adding capacity to existing systems. We note that this bill's sponsors have indicated they envision parties providing an electronic copy of exhibits on flash drives, external hard drives or similar devices, but will not require courts to store the exhibits on their own electronic systems. While some courts currently accept electronic copies of case exhibits on these devices, this bill's extension of the duration that a court would be required to store exhibits creates some issues. Courts are currently permitted to store their records electronically, but are required to store them in a manner that ensures the public can access and obtain copies of these records with "at least the same amount of convenience as paper records."⁶ Additionally, current law requires courts to update the format in which records are stored to ensure that they remain retrievable and reproducible.⁷ These existing statutes, coupled with this bill's extended storage timelines, will require courts to place greater scrutiny on the electronic storage devices they accept from the parties as they would need to ensure that they can safely and reliably access the information on the device. It is reasonable to assume, given rapid changes in technology, that some existing electronic storage devices will be obsolete within 5 to 10 years with the potential that the data stored on those devices will become inaccessible. Ultimately, courts will have to acquire electronic storage systems or modify existing systems to comply with current statutes as well as this bill's provisions. There is a wide range of electronic storage capabilities between the courts and it is not possible at this time to provide an estimate that accounts for the cost that existing court record storage statutes have placed on courts and the incremental costs related to acquiring additional electronic systems and storage capacity that this bill creates.

⁵ Penal Code 1417.7 allows parties in a criminal case to convert an exhibit to an electronic format. Additionally, to address chain of custody requirements, this section specifies that court staff are to "observe the taking of the photographic or digital record" and that this process must occur "in the presence of the clerk."

⁶ Government Code section 68150(c).

⁷ Government Code section 68150(k).

Hon. Lorena S. Gonzalez-Fletcher

May 21, 2018

Page 4

Please contact Mark Neuburger if you have questions about the information contained in this letter at mark.neuburger@jud.ca.gov or 916-323-3121.

Sincerely,

Mailed May 21, 2018

Cory T. Jasperson

Director, Governmental Affairs

CTJ/MN/jh

cc: Members, Assembly Appropriations Committee
Hon. Shirley Weber, Member of the Assembly
Ms. Jessica Peters, Consultant, Assembly Appropriations Committee
Mr. Matthew Fleming, Consultant, Assembly Public Safety Committee
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Secretary, Office of the Governor
Ms. Rebecca Kirk, Budget Analyst, Department of Finance
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June 5, 2018

Hon. Lorena S. Gonzalez-Fletcher, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 2988 (Weber) as amended May 25, 2018 – Fiscal Impact Statement

Dear Assembly Member Gonzalez-Fletcher:

AB 2988, as amended May 25, 2018, would extend the period for which courts must retain exhibits introduced or filed in certain felony criminal cases. Specifically, it prohibits courts from destroying exhibits in cases charging a violent felony, specified sex offenses, an aggravated assault on a child, or any charge that results in a life sentence until one year after the term of imprisonment ends. Finally, the bill authorizes a governmental entity to dispose of any object or material that contains or includes biological material if that entity does not receive a response within one year of sending the notification.

Fiscal Impacts

AB 2988 seeks to extend the period for which courts would be required to keep exhibits presented in a variety of criminal felony cases, which preliminary estimates indicate would cost courts between \$4.2 million and \$8.5 million to initially comply with. In the long term, we estimate additional costs in the tens of millions to comply with the requirements this bill adds to existing statute related to the electronic storage of court records.

Physical Costs

We estimate the courts would require between \$2.5 million and \$5.0 million to meet increased costs for the physical storage of exhibits mandated by this bill.¹ This bill's changes to storage timelines will require courts to store exhibits for several decades beyond current statutory requirements.² Although this bill contemplates district attorneys and public defenders providing courts with electronic copies of exhibits, there is no requirement or guarantee that these parties will agree to do so. Furthermore, courts have no ability to compel these parties to agree to convert exhibits to an electronic format. Additionally, it is likely that many exhibits presented in criminal cases, such as weapons or clothing, would likely lose their evidentiary value if digitally photographed and therefore would need to be stored as a physical exhibit. Also, the majority of the cases affected by this bill are filed in courts located in urban settings, which typically have higher physical storage costs. Finally, this bill assumes that the court will be provided with updates from the Department of Corrections and Rehabilitation (Corrections) when an individual is released from prison. However, it is unlikely that Corrections will automatically update the courts regarding the release of individual prisoners given the current population of individuals in custody for violent felonies or with life sentences.³ This will require courts to dedicate staff resources to contact Corrections to determine an offender's imprisonment status, and in the absence of updated information, store the exhibit for longer than may be required by this bill.

Staffing Needs

We estimate that courts would require between \$1.7 million and \$3.5 million to obtain staff to address increased workload that this bill would create.⁴ This bill would require courts to obtain additional storage space outside of their existing court facilities, which would lead to an

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² Penal Code section 1417.1 provides courts with post-trial exhibit storage requirements that range from 30 days to 1 year, depending on case specific issues. The longest duration for exhibit storage, 1 year, applies to cases where an appeals court orders the case to be re-tried at the superior court level. The 2017 Court Statistics report showed that 90% of criminal appeals cases are decided within 2 years of filing, which indicates that, at the longest, trial courts currently store criminal exhibits for approximately 3 to 5 years post-conviction.

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Hon. Lorena S. Gonzalez-Fletcher

June 5, 2018

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August 8, 2018

Hon. Anthony Portantino, Chair
Senate Appropriations Committee
State Capitol, Room 3086
Sacramento, California 95814

Subject: AB 2988 (Weber) as amended June 28, 2018 – Fiscal Impact Statement

Dear Senator Portantino:

AB 2988, as amended June 28, 2018, would extend the period of time courts must retain exhibits introduced or filed in certain felony criminal cases. Specifically, it prohibits courts from destroying exhibits in cases charging a violent felony, specified sex offenses, an aggravated assault on a child, or any charge that results in a life sentence until one year after the term of imprisonment ends. Finally, the bill authorizes a governmental entity to dispose of any object or material that contains or includes biological material if that entity does not receive a response within one year of sending the notification.

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Hon. Anthony Portantino

August 8, 2018

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Sincerely,

Mailed August 9, 2018

Cory T. Jasperson
Director, Governmental Affairs

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cc: Members, Senate Appropriations Committee
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