



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

520 Capitol Mall, Suite 600 • 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

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

May 15, 2019

Hon. Rob Bonta
Member of the Assembly
State Capitol, Room 2148
Sacramento, California 95814

Subject: AB 1636 (Bonta), as amended April 4, 2019 – Oppose

Dear Assembly Member Bonta:

The Judicial Council regrettably opposes AB 1636, which requires the court to make a probable cause determination at arraignment upon motion of a defendant charged with a felony offense.

The council opposes the bill for these reasons (1) a probable cause determination at arraignment is unnecessary because state law already requires a probable cause determination by the magistrate when issuing an arrest warrant (Pen. § 817) or in the case of a warrantless arrest, case law requires that the magistrate make the determination within 48 hours of arrest (see *County of Riverside v. McLaughlin* (1991) 500 U.S. 44; *Gerstein v. Pugh*, 420 U.S. 103); (2) an additional probable cause determination for felony complaints is made at the preliminary hearing held within 10 days of arraignment unless that right is waived or there is good cause for a continuance (Pen. §§ 859b; 866(b)); (3) the existing process for making timely probable cause determinations is supported by well-established case law; and (4) requiring the probable cause determinations, upon motion, at arraignment will place tremendous burdens on courts by either requiring two probable cause determinations before the preliminary hearing, or if the case is dismissed at arraignment and then refiled by the prosecution, at least three probable cause determinations before the preliminary hearing.

For these reasons, the Judicial Council regrettably opposes AB 1636.

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Should you have any questions or require additional information, please contact me at 916-323-3121 or sharon.reilly@jud.ca.gov.

Sincerely,

Mailed May 15, 2019

Sharon Reilly

Attorney

SR/jh

cc: Donna Mandel, Legislative Policy Analyst, Office of the Public Defender
City and County of San Francisco
Mr. Anthony Williams, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California