Judicial Council *of* California

520 Capitol Mall, Suite 600 · Sacramento, California 95814-4717
Telephone 916-323-3121 · Fax 916-323-4347

PATRICIA GUERRERO
Chief Justice of California
Chair of the Judicial Council

MILLICENT TIDWELL
Acting Administrative Director

September 20, 2023

Hon. Gavin Newsom
Governor of California
1021 O Street, Suite 9000
Sacramento, California 95814

Subject: Senate Bill 81 (Skinner)—Request for Veto

Dear Governor Newsom:

The Judicial Council respectfully requests your veto on Senate Bill 81, which, among other things, upon a filing of a petition of writ of habeas corpus relating to denial of parole by the Board of Parole (BPH) hearings, requires a court to uphold a decision to deny parole only if the court finds, by a preponderance of the evidence, that the person presents a current, unreasonable risk of danger to public safety.

While the council appreciates the several clarifying changes to the bill, the council remains concerned that while the bill modifies the current standard of review in habeas corpus petitions relating to denial of parole from a "some evidence" standard to a "preponderance of the evidence" standard, the bill appears to also require a new evidentiary review when the court reviews the petition, which does not happen in writ proceedings.

Specifically, requiring a court to only uphold a decision by BPH to deny parole if the court finds by preponderance of evidence that the petitioner presents an unreasonable risk to public safety could be interpreted to necessitate a full evidentiary hearing of the evidence considered by BPH rather than simply reviewing the record BPH reviewed to deny parole as the court does under the current standard. Currently, BPH regulations do not specify what standard of evidence BPH must apply when reviewing a parole application which will make it difficult for a court to review their decision. Further, it's not clear how a court would have access to all of the evidence considered by BPH to conduct a hearing on the evidence and whether a court must consider additional information that was not considered by BPH that is presented by the petitioner. While the Judicial Council requested an amendment that would have clarified that the bill only requires the court to look at evidence available to BPH when denying parole, that amendment was not taken.

In addition, the council is concerned that because the bill is ambiguous it will require years of appellate litigation to interpret its application. In addition, removing the limitation on petitions filed by individuals serving indeterminate sentences will greatly expand the number of individuals eligible to file petitions under the bill from approximately 3,000 to nearly 5,000 individuals annually, which will place new additional workload burdens on the courts. While individuals who are not serving indeterminate sentences often waive their parole hearings, the council has unfunded workload concerns that the bill will incentivize more individuals to seek parole hearings and subsequently file petitions for writ review.

For these reasons, the Judicial Council respectfully requests your veto on Senate Bill 81.

Should you have any questions or require additional information, please contact Tracy Kenny at 916-323-3121.

Sincerely,

Cory T. Jasperson
Director
Governmental Affairs

CTJ/SR/lmm
cc: Hon. Nancy Skinner, Member of the Senate, 9th District
Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California

Judicial Council *of* California

520 Capitol Mall, Suite 600 · Sacramento, California 95814-4717
Telephone 916-323-3121 · Fax 916-323-4347

PATRICIA GUERRERO
Chief Justice of California
Chair of the Judicial Council

MILLICENT TIDWELL
Acting Administrative Director

September 12, 2023

Hon. Nancy Skinner
Member of the Assembly, 9th District
1021 O Street, Suite 8630
Sacramento, California 95814

Subject: Senate Bill 81 (Skinner), as amended September 7, 2023—Oppose unless amended.

Dear Senator Skinner:

The Judicial Council regretfully opposes Senate Bill 81 unless amended, which, among other things, upon a filing of a petition of writ of habeas corpus relating to denial of parole by the Board of Parole (BPH) hearings, requires a court to uphold a decision to deny parole only if the court finds, by a preponderance of the evidence, that the person presents a current, unreasonable risk of danger to public safety.

While the council appreciates the several clarifying changes to the bill, the council remains concerned that while the bill modifies the current standard of review in habeas corpus petitions relating to denial of parole from a "some evidence" standard to a "preponderance of the evidence" standard, the bill appears to also require a new evidentiary review when the court reviews the petition, which does not happen in writ proceedings.

Specifically, requiring a court to only uphold a decision by BPH to deny parole if the court finds by preponderance of evidence that the petitioner presents an unreasonable risk to public safety could be interpreted to necessitate a full evidentiary hearing of the evidence considered by BPH rather than simply reviewing the record BPH reviewed to deny parole as the court does under the current standard. Currently, BPH regulations do not specify what standard of evidence that BPH must apply when reviewing a parole application which will make it difficult for a court to review their decision. Further, it's not clear how a court would have access to all of the evidence considered by BPH to conduct a hearing on the evidence and whether a court must consider additional information that was not considered by BPH that is presented by the petitioner. While the Judicial Council requested an amendment that would have clarified that the bill only requires

the court to look at evidence available to BPH when denying parole, that amendment was not taken.

In addition, the council is concerned that because the bill is ambiguous it will require years of appellate litigation to interpret its application. Also removing the limitation on petitions filed by individuals serving indeterminate sentences will greatly expand the number of individuals eligible to file petitions under the bill from approximately 3,000 to nearly 5,000 individuals annually, which will place new additional workload burdens on courts. While individuals who are not serving indeterminate sentences often waive their parole hearings, the council has unfunded workload concerns that the bill will incentivize more individuals to seek parole hearings and subsequently file petitions for writ review.

The council respectfully requests that you consider making Senate Bill 81 a two-year bill so that the council can provide technical assistance on the bill to remove the ambiguity relating to court procedures.

For these reasons, the Judicial Council opposes Senate Bill 81 unless amended.

Should you have any questions or require additional information, please contact Sharon Riley at 916-323-3121.

Sincerely,

Cory T. Jasperson
Director
Governmental Affairs

CTJ/SR/lmm
cc: Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California