



JUDICIAL COUNCIL OF CALIFORNIA

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May 26, 2016

Hon. Nora Campos
Member of the Assembly
State Capitol, Room 4016
Sacramento, California 95814

Subject: AB 1762 (Campos), as amended April 5, 2016 - Oppose

Dear Assembly Member Campos:

The Judicial Council regrettably opposes AB 1762, which allows an individual convicted of a non-violent crime committed while that individual was a human trafficking victim to petition the court to vacate the conviction. The bill also requires the court to grant the application upon a finding that the applicant's participation in the non-violent crime was a direct result of being a human trafficking victim and provides that a court may make a determination based on the sworn statement of the applicant, which alone is sufficient evidence to support vacating the conviction. If the application is based on a crime related to a commercial sex act, as defined, and upon a finding that the applicant was under the age of 18 years old at the time of the conviction, the bill requires the court to grant the application and vacate the conviction without further findings.

While the Judicial Council appreciates your efforts to provide redress to victims of human trafficking, the council has concerns about the drafting of the legislation and its impact on judicial discretion as well as the potential for it to result in significant new burdens on the courts.

Specifically, the council is concerned the bill could allow an individual who raised a human trafficking defense at trial that was rejected by the jury to petition the court for a different result based on the same factual situation. Thus, the bill would permit a court to overturn court, jury and sentencing decisions without ordering a new trial or going through the appeals or habeas process. Also, the council believes that because there are internal inconsistencies in the drafting of AB 1762, it is unclear when the courts would be required to vacate a conviction. On the one hand, AB 1762 requires the court to “grant the application of a finding that the applicant’s participation in the offense was a “direct result” of being a victim of human trafficking (see proposed Pen. C. § 236.24(a) and (f)) and that there is “clear and convincing evidence” (*id.* @ (h)). On the other hand, AB 1762 provides that the court in making its determination “may consider any evidence it deems of sufficient credibility and probative value, *including the sworn statement of the applicant* (*id.* @ (i); emphasis added).” The bill goes on to provide that the statement alone is sufficient evidence to support vacating a conviction if the statement is found credible (*ibid.*). Thus, it is unclear what standards the courts should review when reviewing petitions.

In addition, AB 1762, among other things, provides that evidence in support of a petition may include certain certified records of governmental agencies, including courts, that document that the individual was a victim of human trafficking at the time of the non-violent offense. That evidence creates a “rebuttable presumption” that the offense was committed by the defendant as a direct result of being a victim of human trafficking. A court may also consider as evidence a sworn statement by a professional, including an attorney, from whom the defendant sought assistance relating to human trafficking. Based on this language it is unclear if a court must actually determine that a nexus exists between the non-violent crime and the individual’s status as a victim of human trafficking. Without the requirement of a nexus, the Judicial Council is concerned that judges will have little discretion when granting or denying relief.

With regard to the potential for significant new burdens on criminal courts, the council is concerned that AB 1762 will result in the filing of thousands of petitions to vacate previous convictions. As with Proposition 47 of the November 2014 General Election (Prop. 47), courts will be required to review all filed petitions to determine whether they have merit, resulting in substantial new burdens to the courts. The Judicial Council is very concerned about the impact of additional hearings on court case processing, particularly because there is no time limit on how long ago a person convicted of prostitution, for example, can petition the court for relief.

For these reasons, the Judicial Council regrettably opposes AB 1762.

Hon. Nora Campos

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Sincerely,

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

Sharon Reilly

Attorney

SR/yc-s

cc: Ms. Stephanie Richard, Esq. Policy & Legal Services Director, Coalition to
Abolish Slavery and Trafficking

Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor

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