



JUDICIAL COUNCIL OF CALIFORNIA

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June 30, 2015

Hon. Loni Hancock, Chair
Senate Public Safety Committee
State Capitol, Room 2082
Sacramento, California 95814

Subject: AB 813 (Gonzalez), as amended June 22, 2015 – Oppose, unless amended
Hearing: Senate Public Safety Committee – July 7, 2015

Dear Senator Hancock:

The Judicial Council regrettably opposes AB 813, unless amended, which, among other things, provides an explicit right for a person no longer imprisoned or restrained to prosecute a motion to vacate a conviction or sentence based on the existence of newly discovered evidence of actual innocence that requires vacation of the conviction or sentence as a matter of law or in the interests of justice. In addition AB 813 provides that all motions to vacate on the basis of actual innocence or related to adverse immigration consequences are entitled to a hearing and requires the court, in granting or denying the motion to make specific findings of fact and conclusions of law on all issues presented. While the council very much appreciates the June 22, 2015 amendments, the council continues to believe that these provisions remain problematic.

The Judicial Council opposes AB 813 unless amended to (1) delete the provisions making newly discovered evidence of actual innocence as grounds for the motion to vacate; (2) clarify that hearings on motions to vacate are not required in all instances; and (3) clarify that the motion to vacate is on the basis of ineffective assistance of counsel with regard to the advice or information

imparted by counsel about actual or potential adverse immigration consequences of the convictions.

The council's primary concern is the significant burdens that AB 813 would impose on courts by a new motion to vacate on the basis of actual innocence and the requirement that courts hold a hearing for each motion to vacate based on new evidence or immigration consequences. The council is concerned that AB 813 merges two distinct reasons for making a motion to vacate: adverse immigration consequences and new evidence. Unfortunately, the council believes that the new procedure for a motion to vacate a conviction on the basis of "new evidence" is vague and undeveloped. AB 813 does not establish a process for how the "new evidence" would be reviewed by the court, other than authorizing persons to bring a motion to vacate based on new evidence. The bill does not address the impact granting a motion to vacate based on new evidence has on subsequent proceedings, such as a new trial. In contrast, with regard to a motion to vacate related to adverse immigration consequences, AB 813 expressly provides that "if the court grants the motion to vacate a conviction or sentence obtained through a plea of guilty or nolo contendere, the court shall allow the moving party to withdraw the plea."

The council is concerned that potentially any individual who has even been convicted or sentenced and is not in custody would have an opportunity to file a motion to vacate based on "new discovered evidence that requires vacation of the conviction or sentence as a matter of law or in the interests of justice." AB 813 does not define what "a matter of law or in the interests of justice" means and thus could be read very broadly. Also, while AB 813 requires the court to grant the motion to vacate "if the moving party establishes, by a preponderance of the evidence" that new evidence exists, it appears to be a lesser standard of proof than the California Supreme Court has established for a writ of habeas corpus brought on the basis of new evidence. *In re Lawley* found that newly discovered evidence "must undermine the entire prosecution case and point unerringly to innocence or reduced culpability;" ((2008) 42 Cal. 4th 1231, 1239) and "if 'a reasonable jury could have rejected' the evidence presented, a petition has not satisfied his burden." (*Id.*)

The council is also concerned that AB 813 will substantially increase the number of evidentiary hearings for the new motion to vacate based on new evidence or adverse immigration consequences that are held in superior court, and thereby increase costs. Such evidentiary hearings may involve, among other things, the calling of witnesses, a review of the entire prior record, and a review of "new evidence" presented by moving party. The council estimates that the evidentiary hearings could take anywhere from one to three days. The council is particularly concerned about the potential new burdens on criminal courts because they are already overburdened with workload from the passage of Proposition 47 (November 2014).

Hon. Loni Hancock

June 30, 2015

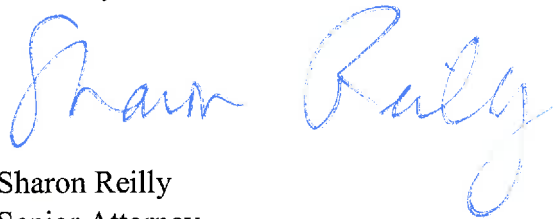
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The council is also concerned that the requirement that all motions are entitled to a hearing suggests that a court would be required to hold a hearing for any motion, even one that lacks merit on its face. The council believes that AB 813 should be amended to clarify that hearings are not required in all instances and suggests using the procedures for writs of habeas corpus. Under those procedures, a petition must state a prima facie case in the pleadings to be entitled to an evidentiary hearing on the writ (*Gomez v. Superior Court* (2012) 54 Cal.4th 293, 295).

Finally, the council understands that the new motion related to failure to understand immigration consequences would be the result of ineffective assistance of counsel with regard to the advice or information imparted by counsel about actual or potential adverse immigration consequences of the convictions the council believes AB 813 would benefit from stating that expressly in the bill.

For these reasons, the Judicial Council regrettably opposes AB 813, unless amended.

Sincerely,



Sharon Reilly
Senior Attorney

SR/yc-s

cc: Members, Senate Public Safety Committee
Hon. Lorena Gonzalez, Member of the Senate
Ms. Natasha Minsker, American Civil Liberties Union
Mr. Caliph Assagai, California Public Defenders Association
Mr. Ignacio Hernandez, CACJ
Ms. Mary Kennedy, Chief 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
Mr. Martin Hoshino, Administrative Director, Judicial Council of California