



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS
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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

STEVEN JAHR
Administrative Director of the Courts

CORY T. JASPERSON
Director, Office of Governmental Affairs

April 12, 2013

Hon. Mike Gatto, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 765 (Ammiano), as amended March 19, 2013 – Fiscal Impact Statement
Hearing: Assembly Appropriations Committee – April 17, 2013

AB 520 provides that, effective January 1, 2014, the court may not impose an upper term based on aggravating facts unless facts were first presented to the factfinder and the factfinder found the facts to be true.

Fiscal Impact

Based on information published by the California Department of Corrections and Rehabilitation (http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/UpperTerm/UpperTermd1212.pdf) covering calendar year 2012, there were 7,391 felon admissions to CDCR with a flag indicating that the defendant received at least one upper term sentence out of a total of 33,997 total felons admitted during the same period. That accounts for nearly 22% of all felons admitted to CDCR.

According to the California District Attorneys Association, a requirement that there be a hearing to plead and prove aggravating facts supporting an upper term would unduly prolong trials and burden already stretched judicial resources. In most cases, such a system would require bifurcated trials. Assuming that a hearing on an upper term sentence enhancement would require three hours of courtroom time during which the prosecution and the defense would present their cases and witnesses, the cost would be \$1500 per hearing. This is based on the average cost of a day in court, which is approximately \$4000, taking into account the time of the judicial officer and courtroom staff. The cost of one additional day of a jury to deliberate on the enhancement

April 12, 2013

Page 2

issue would cost \$200. Based on these figures, we estimate that AB 765 could result in additional cost burdens to the courts of upwards of \$12.5 million annually.

Please contact me at 916-323-3121 or andi.liebenbaum@jud.ca.gov if you would like further information or have any questions about the fiscal impact of this legislation on the judicial branch.

Sincerely,

A handwritten signature in cursive script, reading "Andi Liebenbaum".

Andi Liebenbaum

Senior Governmental Affairs Analyst

AL/yc

cc: Members, Assembly Appropriations Committee

Hon. Tom Ammiano, Member of the Assembly

Mr. Allan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office

Sandy Uribe, Counsel, Assembly Public Safety Committee

Mr. Mike Petersen, Consultant, Assembly Republican Office of Policy

Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Madelynn McClain, Budget Analyst, Department of Finance



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May 7, 2013

Hon. Tom Ammiano
Member of the Assembly
State Capitol, Room 3146
Sacramento, California 95814

Subject: AB 765 (Ammiano), as amended March 19, 2013 - Oppose

Dear Assembly Member Ammiano:

The Judicial Council opposes AB 765, which provides that, effective January 1, 2014, the court may not impose an upper term sentence based on aggravating facts unless facts were first presented to the factfinder and the factfinder found the facts to be true.

The council opposes AB 765 because under current law, courts are vested with broad discretion to fashion appropriate sentences. The bill would diminish the court's discretion by preventing courts from imposing upper terms in the absence of certain findings. We believe that the determination of the existence of aggravating factors should be left to judicial officers' discretion. The Judicial Council believes this determination is a function of judicial officers, in order to ensure fair and appropriate sentences. Moreover, AB 765 will impact the length of trials because it will require juries to make a factual finding as to aggravating circumstances, which in most cases will require bifurcated trials. AB 765 will unduly prolong trials and burden already stretched judicial resources.

For these reasons, the Judicial Council opposes AB 765.

Hon. Tom Ammiano

May 7, 2013

Page 2

Sincerely,

A handwritten signature in cursive script, reading "Sharon Reilly". The signature is written in black ink and is positioned above the typed name.

Sharon Reilly
Senior Attorney

SR/yc-s

cc: Ms. June Clark, Deputy Legislative Secretary, Office of the Governor