



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

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Administrative Director of the Courts

CORY T. JASPERSON
Director, Office of Governmental Affairs

June 11, 2014

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

Subject: AB 1585 (Alejo), as amended May 23, 2014 – Support, if amended
Hearing: Senate Public Safety Committee – June 17, 2014

Dear Senator Hancock:

The Judicial Council supports, if amended, AB 1585, which provides that a defendant who has been convicted of solicitation or prostitution may petition the court to set aside the conviction if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. Specifically, the Judicial Council supports AB 1585 if amended to prohibit the filing of such petitions by individuals who (1) affirmatively raised human trafficking as a duress defense during trial, but for whom the jury or judge still convicted the individual of solicitation or prostitution based on the evidence; or (2) if on or January 1, 2014, had the opportunity to raise human trafficking as a duress defense but failed to do so.

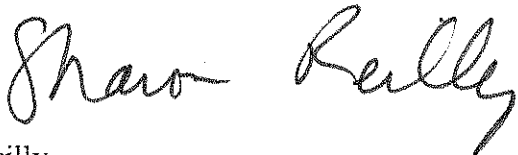
The Judicial Council is seeking these amendment because the council is concerned that AB 1585, as currently written, in essence allows a court to make a finding that an individual was a victim of human trafficking even when at trial the jury or court finds that a defendant was not a victim of human trafficking or that, while the defendant had the opportunity to raise a human trafficking defense, that defense was never raised in court. For example, the council believes the

bill as currently written could allow an individual who raised a human trafficking defense at trial that was rejected by the jury, to turn around and petition the court for a different result based on the same factual situation. Thus as written, the bill would permit a court to overturn sentencing court and jury decisions without ordering a new trial or going through the appeals or habeas process. Further, the Judicial Council believes the awareness of a human trafficking defense, is now sufficiently high enough to warrant prohibiting individual who fail to raise the defense on or after January 1, 2014 from filing the petitions. The Judicial Council is also 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. The proposed amendments would help alleviate those concerns.

Finally, the Judicial Council believes that the underlying goal of the bill to permit persons who have previously been convicted of prostitution or solicitation without the opportunity to raise a human trafficking defense to petition the court to set aside the conviction both enhances judicial discretion and serves the interests of justice.

For these reasons the Judicial Council supports AB 1585, if amended as stated above.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Reilly". The signature is written in black ink and is positioned above the printed name and title.

Sharon Reilly
Senior Attorney

SR/yc-s

cc: Members, Senate Public Safety Committee
Hon. Luis Alejo, Member of the Assembly
Ms. Mary Kennedy, Counsel, Senate Public Safety Committee
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor
Mr. Eric Csizmar, Consultant, Senate Republican Office of Policy



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June 23, 2014

Hon. Kevin de León, Chair
Senate Appropriations Committee
State Capitol, Room 5108
Sacramento, California 95814

Subject: AB 1585 (Alejo), as amended May 23, 2014 – Fiscal Impact Statement
Hearing: Senate Appropriations Committee – June 30, 2014

Dear Senator de León:

AB 1585 provides that a defendant who has been convicted of solicitation or prostitution may petition the court to set aside the conviction if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. The result of such a petition, if successful, would be equivalent to no charges ever having been filed, and releasing the defendant from all penalties and disabilities resulting from the offense of which he or she had been convicted. The Judicial Council is concerned about the impact of increased filings and hearings related to AB 1585 should it become law, particularly in light of two factors: (1) there is no limit on how long ago a person was convicted of prostitution or solicitation; presumably *anyone ever* convicted of prostitution or solicitation may file a petition under the authority of AB 1585, and (2) there is no time limit (statute of limitations) within which a defendant who might qualify for relief may petition the court. The proposed amendments, apparently rejected by the author, would have helped to alleviate those concerns.

Fiscal impact

AB 1585 creates a new petition for relief, likely similar to relief available under Penal Code section 1203.4¹. Therefore, we have used the 1203.4 petition process as the basis for the fiscal calculation for AB 1585. Based on feedback from several criminal court managers, the filing and initial review of the petition could take a total of 90 minutes of court time (from start to finish, and including filing, document management, review, and disposition). The several courts that responded to an informal survey said that this maximum of 90 minutes would likely be divided as follows: 25% judicial officer time, and 75% court clerk time. Based on current hourly rates for court clerks and judicial officers (based on information provided by courts on annual 7A statements), a 90-minute procedure would cost approximately \$101 dollars.

Determining a number of petitions

It is very difficult to estimate the number of likely petitions that would be filed were AB 1585 to become law. Courts report that, generally, there are not many petitions for relief filed under Penal Code section 1203.4. That said, AB 1585 seeks to address the victimization of people through trafficking and forced prostitution. The precise number of prostitution filings each year is not known, although in an analysis of a related bill earlier this year, Assembly Appropriations reported that there are 10,000 misdemeanor prostitution dispositions annually in California. (The Judicial Council cannot verify the source of this information.) We also do not know how many solicitation and prostitution dispositions there are, or historically were, related to what we now call human trafficking. The procedure for relief embodied in AB 1585 is broad. And, it should be noted that the only threshold requirements for filing for relief under the authority created by AB 1585 would be that the defendant has been convicted of solicitation or prostitution, and the defendant completed any term of probation for that conviction. The possible number of filers is very high based on these criteria alone. (It's only after a petition is filed that the issues of clear and convincing evidence related to a context of human trafficking are even considered.)

Assuming the number of 10,000 annual dispositions for misdemeanor prostitution is accurate, a range of possible petitions is presented below:

1% of 10,000 dispositions files for relief (100) = \$10,100
10% of 10,000 dispositions files for relief (1,000) = \$101,000
25% of 10,000 dispositions files for relief (2,500) = \$252,500
100% of 10,000 dispositions files for relief (10,000) = \$1,010,000

A significantly low number (1% of 10,000 annual dispositions) the cost burden is likewise low, however, the burden increases quickly. Moreover, the base number of 10,000 annual

¹ Penal Code 1203.4 states, in relevant part, that "[i]n any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and... he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted..."

Hon. Kevin de León

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dispositions, even if accurate in terms of annual dispositions, doesn't address the tens of thousands of historical misdemeanor prostitution and solicitation convictions for which the defendant has completed any term of probation. In other words, the numbers could grow quickly if a number of potentially qualifying dispositions going back ten, or even just five, years could be determined.

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 black ink, reading "Andi Liebenbaum". The signature is fluid and cursive, with the first name "Andi" and last name "Liebenbaum" clearly distinguishable.

Andi Liebenbaum

Senior Governmental Affairs Analyst

ABL/nco

cc: Members, Senate Appropriations Committee
Hon. Luis Alejo, Member of the Assembly
Ms. Jolie Onodera, Consultant, Senate Appropriations Committee
Mr. Eric Csizmar, Consultant, Senate Republican Fiscal Office
Ms. Mary Kennedy, Counsel, Senate Public Safety Committee
Mr. Mike Peterson, Consultant, Senate Republican Office of Policy
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Madelynn McClain, Budget Analyst, Department of Finance