



JUDICIAL COUNCIL OF CALIFORNIA

770 L Street, Suite 1240 • Sacramento, California 95814-3368
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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

May 13, 2016

Hon. Ricardo Lara, Chair
Senate Appropriations Committee
State Capitol, Room 5050
Sacramento, California 95814

Subject: SB 823 (Block), as amended March 31, 2016 – Fiscal Impact Statement

Dear Senator Lara:

SB 823, if enacted, would, among other things, allow an individual convicted of any non-violent offense committed while that individual was a human trafficking victim to petition the court to set aside the verdict of guilty and dismiss the accusation or information against the individual. Per the terms of the bill, official documentation of the petitioner's status as a victim of human trafficking shall establish a presumption that his/her participation in the offense was the result of his/her status as a victim of human trafficking. Official documentation is defined as "documentation issued by a federal, state, or local agency that tends to show the petitioner's status as a victim of human trafficking." Additionally, official documentation is not required for the issuance of a dismissal.

The bill, if signed into law, invites the filing of petitions to vacate previous convictions, and requires the court to determine which filings have merit. The number of petitions could be significant, and the review and determinations of each case, while perhaps not taking up a huge amount of time per individual proceeding, could, by sheer quantity, significantly increase court calendars. This is based on the fact that there are tens of thousands of potentially eligible

nonviolent crimes that may be the subject of petitions under the authority of SB 823. More significantly (and as we have seen with Prop. 47 filings), far more people file petitions for court review than are eligible.

If the review and judgement on a petition to set aside a guilty verdict and dismiss the accusation requires just 15 minutes of court time¹, the cost per petition would be \$209 (two hundred nine dollars)². The Judicial Council is unable to predict the number of petitions that would be filed annually³. Therefore, we have presented a range of potential costs.

- At 10,000 (representing 1.3%) petitions in a year, the cost to California's trial courts would be \$2.1 million.
- At 74,000⁴ petitions, the cost to California's court would escalate to \$15.5 million.

By way of example, funding has been made available to address court staffing and operational needs to process tens of thousands of Prop. 47 petitions and applications to avoid clogging the courts and denying justice to other court users. In the Current Year, the Legislature and Governor authorized \$26.9 million to address the first wave of Prop. 47 filings; an additional \$21.4 million has been proposed for the Budget Year. The impacts of AB 1762, should it be signed into law, could be significantly greater than the impacts of Prop. 47 on California's courts because the universe of potential petitioners who could file with the courts to vacate convictions for nonviolent crimes is orders of magnitude larger than the Prop. 47 filers⁵.

¹ We believe 15 minutes is extremely conservative considering that there is no time limit on how far back qualifying nonviolent crimes may have been committed. The 15-minute estimate includes all court staff time, the time of the judicial officer, and appropriate OE&E. It assumes a minimum amount of time for clerks to find the original case file and submit it to the proper clerk or staff attorney; time to review the file and craft a recommendation; time to submit the file and recommendation to the judicial officer who must review the file and recommendation; and time for the judicial officer to make a ruling.

² The cost of a day in court is \$6,695, including the time of the judicial officer, staff, supporting personnel and appropriate OE&E. Divided by 8 (eight) hours, the cost per hour is \$837, which, divided by four quarters (15 minutes) is \$209.

³ The 2015 Court Statistics Report (covering the period from FY 2004-05 to FY 2013-14) reports over 330,000 non-traffic misdemeanors filed in the most recent year for which data was collected (FY 2013-14). If traffic misdemeanors and some percentage of felonies are added to this number, the total universe of non-violent crimes processed in the courts in FY 2013-14 was more than three-quarters of a million (750,000).

⁴ Representing a rough 10% of the annual non-violent filings in the most recent year.

⁵ In *The State of Human Trafficking in California* (2012, California Attorney General Kamala Harris), the primary recommendation for California's efforts to increase the detection and prosecution of human traffickers is for California to gather comprehensive human trafficking information, which, according to the report, is because statistical data on victims, arrests, and convictions are unreliable. (See pp. 60-61)

Hon. Ricardo Lara

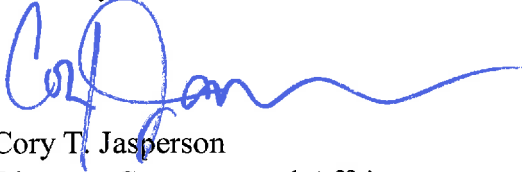
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It's important to note that at current workloads and levels of filings, California's trial courts are underfunded by as much as \$400 million. Additional delays and costs for addressing the petitions of former victims of human trafficking will, without appropriate augmented funding, result in additional court backlogs and delays in justice.

Please contact me if you have questions about the information contained in this letter.

Sincerely,



Cory T. Jasperson

Director, Governmental Affairs

CTJ/AL/yc-s

cc: Members, Senate Appropriations Committee
Hon. Marty Block, Member of the Senate
Ms. Jolie Onodera, Consultant, Senate Appropriations Committee
Mr. Matt Osterli, Fiscal Consultant, Senate Republican Fiscal Office
Mr. Jerome McGuire, Counsel, Senate Public Safety Committee
Mr. Eric Csizmar, Consultant, Senate Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Secretary, Office of the Governor
Ms. Tiffany Garcia, Budget Analyst, Department of Finance
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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GOVERNMENTAL AFFAIRS

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Director, Governmental Affairs

June 14, 2016

Hon. Reginald B. Jones-Sawyer, Sr., Chair
Assembly Public Safety Committee
State Capitol, Room 4126
Sacramento, California 95814

Subject: SB 823 (Block), as amended May 31, 2016 - Oppose
Hearing: Assembly Public Safety Committee – June 21, 2016

Dear Assembly Member Jones-Sawyer:

The Judicial Council regrettably opposes SB 823, which extends the relief available under Penal Code section 1203.49 for dismissal of adult prostitution convictions suffered by human trafficking victims to dismissal of any non-violent offenses committed as a direct result of or in clear connection with a human trafficking scheme of which the person was a victim. The bill also provides that a person who was arrested for a crime allegedly committed while the person was a human trafficking victim may petition for a judicial finding of his or her status as a human trafficking victim at the time of the offense and an order that the arrest record be sealed. The bill further provides that official documentation, as defined, of the petitioner's status as a victim of human trafficking establishes a presumption that his/her participation in the offense was the result of his/her status as a victim of human trafficking.

While the council appreciates the author's efforts to provide redress to victims of human trafficking, unfortunately the council believes in its current form the bill is both overbroad and potentially very burdensome on courts.

As currently written, SB 823 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. Similarly, the Judicial Council is concerned that SB 823 could permit a court to overturn judgements, jury and sentencing decisions without ordering a new trial or going through the appeals or habeas process.

SB 823 uses vague and inconsistent terms. For example, it makes a defendant, who is also a victim of "human trafficking" and arrested or convicted of a crime, eligible for petition without defining that term. Further, SB 823, on the one hand, appears to require that a petitioner establish that the arrest or conviction was the "*direct* result of or in clear connection with a human trafficking scheme of which he or she is a victim" (see proposed Pen. C. § 263.13(a); emphasis added). On the other hand, if a court determines that there is insufficient evidence that the arrest or conviction was the "result" rather than the "direct result" of being a victim of human trafficking, then the court must allow the petitioner a reasonable amount of time to cure the deficiencies upon which the court has based the denial, a lower threshold (see proposed Pen. C. § 263.13(k)). Moreover, SB 823 lacks guidance on what "direct result" or "clear connection" means or what evidence would support such a finding.

Finally, the council is concerned that SB 823 could infringe on judicial discretion by creating a presumption that the grounds for relief have been met, thereby requiring the court to set aside the verdict of guilty and dismiss the accusation or information against the petitioner. Based on this language it is unclear if a court is permitted to determine that a nexus exists between the non-violent crime and the individual's status as a victim of human trafficking. As a result of these potential inconsistencies, the council is concerned that judges will have little discretion when granting or denying relief.

With respect to imposing significant new burdens on courts, the council is concerned that SB 823 could result in the filing of thousands of petitions to vacate previous convictions. As the courts have seen 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 council is 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 can petition the court for relief.

For these reasons, the Judicial Council regretfully opposes SB 823.

Hon. Reginald B. Jones-Sawyer, Sr.

June 14, 2016

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cory Jaspersen', with a long, sweeping horizontal line extending to the right.

Cory T. Jaspersen

Director, Governmental Affairs

CTJ/SR/yc-s

cc: Members, Assembly Public Safety Committee
Hon. Marty Block, Member of the Assembly
Mr. David Billingsley, Counsel, Assembly Public Safety Committee
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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Director, Governmental Affairs

July 13, 2016

Hon. Lorena Gonzalez, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: SB 823 (Block), as amended June 27, 2016 – Fiscal Impact Statement

Dear Assembly Member Gonzalez:

SB 823, if enacted as amended, would allow an individual convicted of any non-violent offense committed while that individual was a human trafficking victim to petition the court to set aside the verdict of guilty and dismiss the accusation or information against the individual. Per the terms of the bill, petitioners have the burden to prove their status as human trafficking victims, as specified. Petitioners must serve the prosecuting agencies that handled the original case; those agencies have 45 days in which to oppose the petition, or the court may deem the petition unopposed and grant the vacatur.

After careful review of the amended version of the bill, the Judicial Council significantly amends/reduces our previously calculated fiscal impact. While the council is not able to predict the number of petitions that will be opposed and thus require hearings under the authority of the bill, we can calculate an estimated cost per hearing. SB 823 would require a hearing for petitions opposed by the prosecuting agencies who originally prosecuted the defendants who now seek vacatur under the authority of the bill. If each hearing lasts two hours, the cost to the courts,

Hon. Lorena Gonzalez

July 13, 2016

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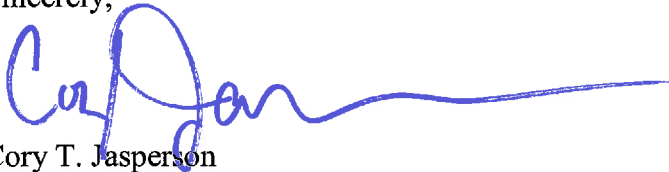
taking into consideration personnel, resource and infrastructure costs, would be \$1,674 per hearing. If the hearings require a full day, the cost to the courts would be \$6,695 per hearing.

Using these numbers as examples of costs, should the courts in California experience 100 hearings in a year under the authority established by SB 823, the range of costs would be \$167,400¹ to \$669,500² a year. If there are 1,000 hearings in a year, the range of costs would be \$1.674³ million to \$6.695⁴ million.

It's important to note that at current workloads and levels of filings, California's trial courts are underfunded by as much as \$400 million. Additional delays and costs for addressing the SB 823 petitions could, without appropriate augmented funding, result in additional court backlogs and delays in justice.

Please contact Andi Liebenbaum at andi.liebenbaum@jud.ca.gov or 916-323-3121 if you have questions about the information contained in this letter.

Sincerely,



Cory T. Jaspersen

Director, Governmental Affairs

CTJ/AL/yc-s

cc: Members, Assembly Appropriations Committee
Hon. Marty Block, Member of the Senate
Mr. Pedro Reyes, Chief Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Senior Consultant, Assembly Republican Fiscal Office
Mr. Daniel Seeman, Deputy Legislative Secretary, Office of the Governor
Ms. Emma Jungwirth, Budget Analyst, Department of Finance
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

¹ \$1674 for a two-hour hearing x 100 hearings = \$167,400.

² \$6695 for a full eight-hour day in court x 100 hearings = \$669,500.

³ \$1674 x 1,000 hearings = \$1,674,000.

⁴ \$6695 x 1,000 hearings = \$6,695,000.



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CORY T. JASPERSON
Director, Governmental Affairs

August 4, 2016

Hon. Marty Block
Member of the Senate
State Capitol, Room 4072
Sacramento, California 95814

Subject: SB 823 (Block), as amended August 1, 2016 - Support

Dear Senator Block:

The Judicial Council is pleased to remove its opposition to and instead support SB 823, as amended August 1, 2016. SB 823 establishes process for a person who has been arrested for, convicted of, or adjudicated a ward of the juvenile court for, committing a nonviolent offense, as defined, while he or she was a victim of human trafficking to petition the court to vacate the conviction at any time after it was entered and seal and destroy records of arrest.

The council is in support of SB 823 because the council believes that the judicial procedures set forth in SB 823 enhance the efficiency of procedures relating to victims of human trafficking and provide access to justice to individuals who have arrested for or been convicted of certain crimes by virtue of a direct result of their being victims of human trafficking.

Under current California law, a defendant who has been convicted of solicitation or prostitution may petition the court for, and the court may set aside the conviction if the defendant can show that the conviction was the result of his/her status as a victim of human trafficking (Pen, C. § 1203.49). A number of other statutes exist that allow individuals convicted of certain crimes to

Hon. Marty Block

August 4, 2016

Page 2


petition courts for relief (see for example, Pen. Code, § 1203.4, subd. (a); Pen. Code, §§ 851.7; 1203.45; and 1203.47). The council believes that SB 823 provides a clear and efficient process for courts to process petitions for relief by individuals who have been arrested for or been convicted of certain crimes by virtue of the unique situation in which those individuals have been arrested for or convicted of non-violent crimes as a direct result of their status as victims of human trafficking.

Further, the council believes that the bill preserves judicial discretion by providing that if opposition is not filed, the court may, but is not required to, grant the petition. The court may then vacate the conviction if certain findings are made thereby permitting courts to exercise their discretion based upon the evidence. Further, if a court denies the petition, the court may do so without prejudice and may state its reasons on the record.

Finally, the bill enhances the efficiency of courts by authorizing, but not requiring, courts to hold hearings at their discretion if a petition is unopposed. Further, the bill now permits a court to consolidate into one hearing a petition with multiple convictions from different jurisdictions upon agreement of the parties, also enhancing the efficiency of courts.

For these reasons, the Judicial Council supports SB 823.

Sincerely,

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

Sharon Reilly
Attorney

SR/yc-s

cc: Mr. Pedro R. Reyes, Chief Consultant, Assembly Appropriations Committee
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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CORY T. JASPERSON
Director, Governmental Affairs

August 26, 2016

Hon. Edmund G. Brown, Jr.
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: SB 823 (Block) – Request for Signature

Dear Governor Brown:

The Judicial Council respectfully requests your signature on SB 823, which establishes a process for a person who has been arrested for, convicted of, or adjudicated a ward of the juvenile court for, committing a nonviolent offense, as defined, while he or she was a victim of human trafficking to petition the court to vacate the conviction at any time after it was entered and seal and destroy records of arrest.

The council is in support of SB 823 because the council believes that the judicial procedures set forth in SB 823 enhance the efficiency of procedures relating to victims of human trafficking and provide access to justice to individuals who have arrested for or been convicted of certain crimes by virtue of a direct result of their being victims of human trafficking.

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Hon. Edmund G. Brown, Jr.

August 26, 2016

Page 2

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Further, the council believes that the bill preserves judicial discretion by providing that if opposition is not filed, the court may, but is not required to, grant the petition. The court may then vacate the conviction if certain findings are made thereby permitting courts to exercise their discretion based upon the evidence. Further, if a court denies the petition, the court may do so without prejudice and may state its reasons on the record.

Finally, the bill enhances the efficiency of courts by authorizing, but not requiring, courts to hold hearings at their discretion if a petition is unopposed. Further, the bill now permits a court to consolidate into one hearing a petition with multiple convictions from different jurisdictions upon agreement of the parties, also enhancing the efficiency of courts.

For these reasons, the Judicial Council requests your signature on SB 823.

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

Sincerely,



Cory T. Jasperson

Director, Governmental Affairs

CTJ/SR/LS/yc-s

cc: Hon. Marty Block, Member of the Senate

Hon. Steven M. Glazer, Member of the Senate

Hon. Robert M. Hertzberg, Member of the Senate

Hon. Bob Wieckowski, Member of the Senate

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

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