



Judicial Council of California

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July 31, 2006

Hon. Nicole Parra
Member of the Assembly
State Capitol, Room 4005
Sacramento, California 95814

Subject: ACA 37 (Parra), as introduced - No position on policy, but have significant implementation and fiscal concerns

Dear Assembly Member Parra:

I write regarding ACA 37, which would expand victims' rights in the California Constitution. The Judicial Council agrees that it is critically important to ensure that victims' rights are protected throughout the criminal justice system. However, it is equally important to ensure that the proposed constitutional amendment is drafted with as much precision as possible to avoid unintended consequences and the failure to accomplish the valid goals of the bill. ACA 37 contains provisions that interfere with the court's fundamental discretion and authority to control the courtroom, are ambiguous, will delay criminal proceedings, and may have a potentially significant fiscal impact on the criminal justice system. We respectfully request the opportunity to work with you and the sponsor of ACA 37 on amendments that will address these concerns.

Inappropriate interference with judicial discretion

ACA 37 provides victims with the right to be present at all criminal and juvenile proceedings and post-sentence hearings when the defendant has the right to be present (Sec. 28(a)(6) and (7)). Victims currently have a statutory right to be present at all criminal proceedings at which the defendant has the right to be present. In statute, however, this right is appropriately and necessarily balanced by the court's authority to exclude the victim when there are overriding interests, such as the defendant's right to a fair trial, the protection of witnesses, or the government's interest in inhibiting the disclosure of sensitive information. (See Penal Code

section 1102.6) ACA 37 lacks provisions safeguarding the court's ability to balance these competing interests.

Ambiguous provisions

The council has identified several provisions in ACA 37 that lack the necessary specificity to ensure that they will be effectively carried out. For example:

- Who is responsible for informing victims of their rights (Sec. 28(a)(1))? The district attorney may be best situated to do this, but the measure does not assign responsibility.
- Who would enforce the victim's right to reasonably confer with the prosecution (Sec. 28(a)(4))? It appears that the trial court would be required to settle disputes regarding the reasonableness of the conferences, but it is unclear.
- Who would provide or pay for the "advocate or other support person of the victim's choice" (Sec. 28(a)(10))?
- Who would provide the victim with written notice of pending pretrial disposition and the disposition of the case (Sec. 28(a)(5))? Who would provide the victim with presentence reports (Sec.(a)(11))? Who would pay for copies?
- How would the court calculate the assessments that it would be required to impose on the defendant to pay for costs of enforcing the victim's rights (Sec. 28(a)(17))? What would those costs be? How would they be calculated; collected; and distributed?
- What would be the mechanism for the enforcement of the victim's rights (Sec. 28(e))?

Implementation requirements and costs

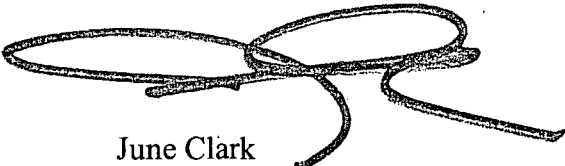
Several provisions of ACA 37 may increase the processing time for criminal proceedings and may have significant fiscal impact on the court system because of the potential for numerous additional hearings to implement its provisions. New responsibilities that could have fiscal impacts include:

- Depending on the form of the notice, if the court is required to inform the victim of his or her rights there would be costs associated with preparing and distributing materials (Sec. 28(a)(1)).
- Court involvement may be necessary to resolve disputes over victim's ability to "reasonably confer" with the district attorney (Sec. 28(a)(4)). It is unknown how often or how many hearings would be required.

- The measure does not appear to authorize the court to impose limits on the form or duration of the victim's right to "be heard" at court proceedings involving a post-arrest release decision, plea, or sentencing (Sec. 28(a)(12)). The resulting additional court time could significantly slow the processing of other cases or require additional resources.
- Additional hearings or rescheduling of hearings may be necessary when a victim alleges that there was no opportunity to reasonably confer with the district attorney (Sec. 28(a)(4)); did not receive notice of the proceedings (Sec. 28(a)(5), (6), and (7)); or was not notified of a discovery request in time to object to the request (Sec. 28(A)(9)). Again, the additional court time would impact the handling of other cases or result in the need for additional resources.

I look forward to working with you on these critical issues.

Sincerely,

A handwritten signature in dark ink, appearing to be "June Clark", with a stylized, looping flourish at the end.

June Clark
Senior Attorney

JC/yt

cc: Hon. Arnold Schwarzenegger, Governor, State of California
Hon. Mark Leno, Chair, Assembly Public Safety Committee
Mr. Eric Csizmar, Deputy Legislative Secretary, Office of the Governor
Ms. Sue Blake, Director of Legislation, Office of Planning and Research