



JUDICIAL COUNCIL OF CALIFORNIA

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March 29, 2018

Hon. Reginald B. Jones-Sawyer, Sr., Chair
Assembly Public Safety Committee
State Capitol, Room 2117
Sacramento, California 95814

Subject: Assembly Bill 2438 (Ting), as introduced - Oppose
Hearing: Assembly Public Safety Committee – April 3, 2018

Dear Assembly Member Jones-Sawyer:

The Judicial Council regrettably opposes AB 2438, in view of the tremendous new burdens the bill would place on courts through the automatic processes it requires courts to implement to provide relief to eligible defendants. Further, the council has many concerns about how on a practical level its requirements could be implemented, including, for example, whether the courts have access to all of the required information to determine eligibility for relief.

More specifically, the council has concerns the burdens imposed on courts by requiring the court automatically to withdraw a plea of guilty or nolo contendere and enter a plea of not guilty when a defendant has fulfilled the conditions of probation and has completed probation on or after November 23, 1970. This time frame could easily involve hundreds of thousands of cases, if not more. Additionally, for a defendant convicted of a misdemeanor and not granted probation and a defendant convicted on an infraction, after the lapse of one year from the date of pronouncement of judgment, the bill requires the court to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty, or if the defendant has been convicted after a plea of not guilty, to set aside the verdict of guilty, if a defendant has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of

any crime, and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land. The council is concerned that the bill also eliminates the fee that courts may charge under the existing petition process, which enables courts to offset some of the costs of petitions, but does not provide an alternative funding source for the new processes contemplated by the bill.

Without the petition process, which provides courts with the information required to determine an individual's eligibility for relief, it is not clear how a court would gain access to the information. To name a few of the new fiscal and operational burdens imposed on courts, AB 2438 would require courts to do the following:

- Identify eligible defendants who have completed probation all the way back to November 1970. In many instances that will require a manual process depending on the court's electronic capabilities. Moreover, even if the courts are able to identify some individuals electronically, retrieval of their information could still need to be done manually. Going forward, courts would need a new tracking system to identify when defendants complete probation so that the automatic expungement may occur. The courts would also be required to determine whether a defendant has fulfilled the conditions of probation for the entire period of probation or was discharged prior to termination of the period of probation, without specifying how courts would gain access to that information.
- For defendants convicted of a misdemeanor and not granted probation and/or convicted of an infraction, without specifying how courts would gain access to the necessary information, courts would need to determine whether the defendant:
 - Has fully complied with and performed the sentence, which would require new tracking systems for all defendants to identify when the lapse of one year from the date of pronouncement of judgment occurs.
 - Is not serving a sentence for any offense and is not under charge of commission of any crime.
 - Has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land.
- Gain access to rap sheets to determine if an individual has engaged in disqualifying conduct, however the bill does not grant courts access to rap sheets. Without this information, courts cannot determine whether a defendant is serving for an offense or is under charge of commission of any crime if the conduct occurred in another county. Further, it is unclear how courts could make that determination for crimes or arrests that occur outside of California.

For these reasons, the Judicial Council opposes AB 2438.

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

Hon. Reginald B. Jones-Sawyer, Sr.

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Sincerely,

Mailed March 29, 2018

Cory T. Jasperson

Director, Governmental Affairs

CTJ/SR/yc-s

cc: Members, Assembly Public Safety Committee

Hon. Philip Ting, Member of the Assembly

Mr. Alex M. Johnson, Managing Director, Californians for Safety and Justice

Ms. Liah Burnley, 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