



JUDICIAL COUNCIL OF CALIFORNIA

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Director, Governmental Affairs

September 13, 2018

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

Subject: Senate Bill 1437 (Skinner) – Support, if amended

Dear Governor Brown:

Senate Bill 1437 limits liability for individuals based on a theory of 1st or 2nd degree felony murder and allows individuals previously sentenced on a theory of felony murder to petition for resentencing if they meet specified qualifications. The council appreciates the August 20, 2018 amendments, which include the majority of the amendments requested by the council. However, the council believes that to make the process as efficient as possible, the bill should be amended to authorize courts to summarily dismiss petitions that do not make a prima facie case without a hearing consistent with petitions for writs of habeas corpus¹ and for resentencing under Proposition 36² and Proposition 47³.

¹ See California Rule of Court 4.551(c)(1), which provides: “The court must issue an order to show cause if the petitioner has made a *prima facie showing* that he or she is entitled to relief. In doing so, the court takes petitioner’s factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if his or her factual allegations were proved. If so, the court must issue an order to show cause (emphasis added).”

² Proposition 36, the Three Strikes Reform Act of 2012, was passed by the voters in November 2012. The process under section Penal Code section 1170.126 contemplates four distinct phases: (1) the filing of a petition for relief under section 1170.126; (2) *an initial screening of the petition to determine whether the inmate meets the minimum statutory requirements for relief*; (3) if a prima facie basis for relief has been shown, a qualification hearing to determine whether the inmate has met all of the statutory requirements for relief and, if so, whether the resentencing of the inmate will pose an unreasonable risk of danger to public safety; and (4) the order of the court on the issue of resentencing (emphasis added).

³ Under Proposition 47, the Safe Neighborhoods and Schools Act, the court may summarily deny relief based on any petition that is facially deficient. Resentencing may be denied based solely on the fact of a prior conviction of a designated “super strike” or any offense requiring registration as a sex offender under section Penal Code section 290(c). (§ 1170.18(i).)

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Consistent with these other provisions of law, the council believes that it is more efficient for courts to have the ability to deny petitions filed pursuant to SB 1437 early in the process when they do not make a prima facie showing. Thus, the council requested that SB 1437 be amended to: (1) require that upon receipt of a petition, the court shall determine whether the petitioner has made a prima facie showing that the petitioner falls within the provision of the bill and that the court may request an informal response from the prosecutor before making that determination; (2) provide that if the court determines that the petitioner makes a prima facie showing, the court shall issue an order to show cause (OSC); (3) provide that if a prima facie showing is made and the petitioner is indigent and has requested counsel, the court shall appoint counsel to represent the petitioner; (4) require the prosecution to file and serve a response within 60 days of service of the OSC and provide that the petitioner may file and serve a reply within 30 days after service of the prosecutor's response; and (5) provide that within 60 days after receipt of petitioner's reply is served or the time to serve a reply has expired, the court shall hold a hearing.

Courts regularly review and deny writs of habeas corpus and resentencing petitions filed under Propositions 36 and 47 that do not make a prima facie showing without having a hearing, as contemplated by SB 1437. The proposed amendments would make the petition process more efficient and consistent with these other resentencing laws. This consistency is especially important for courts that have lighter writ calendars. Moreover, the council is concerned that appointing counsel and involving the prosecution in the petition process before an initial review by the court will place unnecessary burdens on courts and on the prosecutors and public defenders to review and respond to petitions that the judge will ultimately summarily deny at a hearing because the petition does not make a prima facie showing.

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

Sincerely,

Mailed on September 13, 2018

Cory T. Jasperson
Director, Governmental Affairs

CTJ/SR/yc-s

cc: Hon. Nancy Skinner, Member of the Senate
Hon. Mike A. Gipson, Member of the Assembly, Principal coauthor
Hon. Scott D. Wiener, Member of the Senate, Coauthor
Hon. Rob Bonta, Member of the Assembly, Coauthor
Hon. Autumn R. Burke, Member of the Assembly, Coauthor
Hon. Jose Medina, Member of the Assembly, Coauthor
Ms. Kate Chatfield, Policy Director, Restore Justice
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
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TANI G. CANTIL-SAKAUYE
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MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

August 28, 2018

Hon. Nancy Skinner
Member of the Senate
State Capitol, Room 2059
Sacramento, California 95814

Subject: Senate Bill 1437 (Skinner), as amended August 20, 2018 – Support, if amended

Dear Senator Skinner:

The Judicial Council supports SB 1437, if amended, which limits liability for individuals based on a theory of 1st or 2nd degree felony murder and allows individuals previously sentenced on a theory of felony murder to petition for resentencing if they meet specified qualifications. The council appreciates the August 20, 2018 amendments, which include the majority of the amendments requested by the council. However, the council believes that to make the process as efficient as possible, the bill should be amended to authorize courts to summarily dismiss

petitions that do not make a prima facie case without a hearing consistent with petitions for writs of habeas corpus¹ and for resentencing under Proposition 36² and Proposition 47³.

Consistent with these other provisions of law, the council believes that it is more efficient for courts to have the ability to deny petitions filed pursuant to SB 1437 early in the process when they do not make a prima facie showing. Thus, the council requests that SB 1437 be amended to: (1) require that upon receipt of a petition, the court shall determine whether the petitioner has made a prima facie showing that the petitioner falls within the provision of the bill and that the court may request an informal response from the prosecutor before making that determination; (2) provide that if the court determines that the petitioner makes a prima facie showing, the court shall issue an order to show cause (OSC); (3) provide that if a prima facie showing is made and the petitioner is indigent and has requested counsel, the court shall appoint counsel to represent the petitioner; (4) require the prosecution to file and serve a response within 60 days of service of the OSC and provide that the petitioner may file and serve a reply within 30 days after service of the prosecutor's response; and (5) provide that within 60 days after receipt of petitioner's reply is served or the time to serve a reply has expired, the court shall hold a hearing.

Courts regularly review and deny writs of habeas corpus and resentencing petitions filed under Propositions 36 and 47 that do not make a prima facie showing without having a hearing, as contemplated by SB 1437. The proposed amendments will make the petition process more efficient and consistent with these other resentencing laws. This consistency is especially important for courts that have lighter writ calendars. Moreover, the council is concerned that appointing counsel and involving the prosecution in the petition process before an initial review by the court will place unnecessary burdens on courts and on the prosecutors and public defenders to review and respond to petitions that the judge will ultimately summarily deny at a hearing because the petition does not make a prima facie showing.

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For these reasons, the Judicial Council respectfully supports SB 1437, if amended.

Sincerely,

Mailed on August 28, 2018

Sharon Reilly
Attorney

SR/yc-s

cc: Ms. Kate Chatfield, Policy Director, Restore Justice
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California