



## JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE  
*Chief Justice of California*  
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CORY T. JASPERSON  
*Director, Governmental Affairs*

April 24, 2017

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

Subject: AB 665 (Levine), as amended April 18, 2017 – Fiscal Impact Statement

Dear Assembly Member Gonzalez Fletcher:

AB 665 provides that a person currently serving a sentence for a felony conviction, whether by trial or plea, who is or was a member of the United States military and who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service may petition for a recall of sentence before the trial court that entered the judgement of conviction to request resentencing pursuant to subdivision (a) of Penal Code section 1170.91 if both of the following conditions are met:

- 1) The circumstance of suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service was not considered as a factor in mitigation at the time of sentencing; and
- 2) The person was sentenced prior to January 1, 2015.

There is no sunset date as to when these petitions would have to be filed.

AB 665 could result in new unfunded costs to a trial court if that court receives multiple contested filings under the authority of AB 665 in a single year.

### Fiscal Impacts

#### *Number of veterans*

According to CDCR, as of February 28, 2017, there were 4,715 people in state prison that had been matched with Veterans Affairs (VA) records that were serving felony sentences and who were sentenced prior to January 1, 2015.<sup>1</sup>

According to the U.S. Department of Justice, more than half—approximately 55 percent—of imprisoned veterans informed researchers that they'd been told they had a mental health disorder at some time.<sup>2</sup>

It is not known how many of the 4,715 veterans in California prisons suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service. Relying on the US DOJ figure of 55 percent, approximately 2,594 veterans serving time for felonies in California's prisons are possible candidates for relief under the authority of AB 665. It is likely that many of these veterans will not seek the relief provided in the legislation because of the ongoing stigma associated with mental illness that keeps mental illness a seriously under-represented health issue. Still others may be released within the next year, so there would be no basis for a petition from those veterans. For the purposes of this analysis, we will assume that somewhere between one-third (865) and one-half (1,297) of the veterans in CDCR custody with qualifying mental health issues would seek relief under the bill.

#### *Amount of court time*

Upon filing a petition, a hearing will be required to prove eligibility. Prior to the hearing, the petition must be processed, set for hearing, and properly assigned in the court's queue. Combined, the filing, processing, and calendaring is estimated to require 10 minutes of court time. The court's research attorney will be responsible for researching and reviewing the petition, and preparing a memorandum for the judicial officer. This is estimated to require 20 minutes of time. A typical uncontested hearing likely will require about 30 minutes of court time.

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<sup>1</sup> Department of Veterans Affairs Re-entry Search Service System as reported by CDCR personnel 04/21/2017.

<sup>2</sup> U.S. Justice Department's Bureau of Justice Statistics, as quoted by the online periodical Military.com in an article called "Number of Veterans Behind Bars Continues to Fall: Justice Department" citing data from a 2011–12 survey. (13 December 2015; Bryant Jordan, author)

A more robust hearing might require a half a day of court time (four hours).<sup>3</sup> As such, we're looking at a normal range of court time for proceedings brought under the authority of AB 665 from a likely lower amount of one hour, to perhaps a half day (4.5 court hours).

A day of court time, including the cost of the judicial officer, staff, benefits, OE&E, and other expenses, is \$7,010 per day, which is \$876 per hour. At four and a half hours of court time, the cost would be \$3,943 per proceeding<sup>4</sup>.

Defendants	One hour	4.5 hours
1,297 <sup>5</sup>	\$1.13 million <sup>6</sup>	\$5.11 million <sup>7</sup>
865 <sup>8</sup>	\$757,740 <sup>9</sup>	\$3.41 million <sup>10</sup>

Because there is no sunset provision in the bill for when the veterans would be required to have their petitions filed, we cannot say that these costs are likely to fall in a single year, although we presume that some public defenders will, as with other recent resentencing provisions (Prop. 47, for example) proactively work with incarcerated veterans to prepare their petitions.

Please note that the information contained in this analysis does not constitute a position in favor or against the proposed legislation by the Judicial Council of California, and sets forth only the considerations related to the fiscal burdens that are likely to be faced by the branch and branch entities should the bill be enacted into law.

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<sup>3</sup> A rare highly contested hearing could require a full three days of evidence, witness testimony, victim's testimony (pursuant to Section 28 of Article I of the California Constitution (Marsy's Law) and deliberation, but Veterans Court experts in Sacramento and Los Angeles agree that this would be a rare exception.

<sup>4</sup>  $\$7010/8 \text{ hours} = \$876.25$ ;  $\$876.25 \times 4.5 \text{ hours} = \$3,943.12$ .

<sup>5</sup> Represents one-half of the estimated 2,594 veteran inmates in CDCR custody who suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems.

<sup>6</sup> If 1,297 people petition the court for relief under the authority of AB 665, and the resolution of their cases requires just one hour at \$876, the math is  $1297 \times 876 = \$1,136,172$ .

<sup>7</sup> If 1,297 people petition the court for relief under the authority of AB 665, and the resolution of their cases requires four and a half hours of court time at \$3,943, the math is  $1297 \times 3943 = \$5,114,071$ .

<sup>8</sup> Represents one-third of the estimated 2,594 veteran inmates in CDCR custody who suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems.

<sup>9</sup> If 865 people petition the court for relief under the authority of AB 665, and the resolution of their cases requires just one hour at \$876, the math is  $865 \times 876 = \$757,740$ .

<sup>10</sup> If 865 people petition the court for relief under the authority of AB 665, and the resolution of their cases requires four and a half hours of court time at \$3,943, the math is  $865 \times 3943 = \$3,410,695$ .

Hon. Lorena Gonzalez Fletcher

April 24, 2017

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

Sincerely,

*Mailed on April 24, 2017*

Cory T. Jasperson,  
Director, Governmental Affairs

CTJ/AL/yc-s

cc: Members, Assembly Appropriations Committee  
Hon. Marc Levine, Member of the Assembly  
Mr. Pedro Reyes, Chief Consultant, Assembly Appropriations Committee  
Mr. Allan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office  
Ms. Cheryl Anderson, 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  
Ms. Emma Jungwirth, Budget Analyst, Department of Finance  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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CORY T. JASPERSON  
*Director, Governmental Affairs*

July 26, 2017

Hon. Ricardo Lara, Chair  
Senate Appropriations Committee  
State Capitol, Room 2206  
Sacramento, California 95814

Subject: AB 665 (Levine), as amended June 13, 2017 – Removal of Fiscal Impact

Dear Senator Lara:

AB 665 provides that a person currently serving a sentence for a felony conviction, whether by trial or plea, who is or was a member of the United States military and who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service may petition for a recall of sentence before the trial court that entered the judgement of conviction to request resentencing pursuant to subdivision (a) of Penal Code section 1170.91 if both of the following conditions are met:

- 1) The circumstance of suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service was not considered as a factor in mitigation at the time of sentencing; and
- 2) The person was sentenced prior to January 1, 2015.

Hon. Ricardo Lara

July 26, 2017

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Previously, the Judicial Council quantified potential costs for AB 665 based on an analysis that California's trial courts could receive multiple contested filings under the authority of AB 665 in a single year. Based on subsequent analysis and additional information provided by trial courts as well as veterans advocates related to the frequency of current sentencing practices under Penal Code section 1170.91 (enacted as SB 2098 (Levine); Stats. 2014, ch. 163, and which became effective January 1, 2015), which, as of the effective date, requires courts to consider a defendant's status as a veteran, or current member of the military, who is suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or other mental health problems as result of his or her military service as a factor in mitigation when choosing one of three authorized terms of imprisonment, we write to remove the fiscal analysis of AB 665 and state, instead, that any costs that should arise from the implementation of AB 665 if enacted will be minor and absorbable.

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

Sincerely,

*Mailed on July 26, 2017*

Cory T. Jaspersen,  
Director, Governmental Affairs

CTJ/AL/yc-s

cc: Members, Senate Appropriations Committee  
Hon. Marc Levine, Member of the Assembly  
Ms. Debra Cooper, Consultant, Senate Appropriations Committee  
Mr. Wade Cooper Teasdale, Senate Veterans Affairs Committee  
Mr. Doug Yoakam, Consultant, Senate Republican Office of Policy  
Mr. Michael Martinez, Deputy Legislative Affairs Secretary, Office of the Governor  
Ms. Emma Jungwirth, Budget Analyst, Department of Finance  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California