



## JUDICIAL COUNCIL OF CALIFORNIA

### GOVERNMENTAL AFFAIRS

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September 20, 2021

Hon. Gavin Newsom  
Governor of California  
State Capitol, First Floor  
Sacramento, California 95814

Subject: Assembly Bill 1540 (Ting)—Note Concerns

Dear Governor Newsom:

The Judicial Council adopted a neutral, if amended, position on AB 1540, which requires the court to appoint counsel for the defendant when there is a recommendation from the Secretary of the Department of Corrections and Rehabilitation (CDCR), the Board of Parole Hearings (BPH), the county correctional administrator, or the prosecuting agency, to recall an inmate's sentence and resentence that inmate to a lesser sentence. The bill also creates a presumption favoring recall and resentencing that may only be overcome by a showing of an unreasonable risk of danger to public safety, as defined, when the recommendation has been made by one of those agencies. The bill further provides that "unreasonable risk of danger to public safety" is defined by subdivision (c) of Section 1170.18 of the Penal Code, which relates to crimes commonly known as "super strikes" and provides: "As used throughout this code, 'unreasonable risk of danger to public safety' means an unreasonable risk that the petitioner will commit a *new violent felony* within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667." (Emphasis added.) That clause lists felonies for certain sex crimes, homicide or attempted homicide, solicitation to commit murder, and certain crimes involving weapons.

While the Judicial Council appreciates that the author made several requested amendments, regrettably there are two amendments not accepted of sufficient concern such that the Judicial Council was unable to adopt a neutral position on the bill.

First, the council requested that the bill be amended to either remove the presumption favoring recall and resentencing or delete the definition of “unreasonable risk of danger to public safety” as “superstrikes,” and instead provide that the presumption may be overcome by a finding of “unreasonable risk of danger to public safety.” The council is concerned that the presumption inappropriately interferes with judicial discretion because it only allows courts to overcome the presumption favoring recall and resentencing under very limited circumstances. The council is further concerned that by limiting judicial discretion in this manner, the presumption potentially raises separation of powers issues as it appears to transfer the decision to recall and resentence to executive branch agencies (CDCR, BPH, county correctional administrators, and prosecutors) because the ability of the court to overcome the presumption is so limited.

Second, the council requested that the bill be amended to provide for a longer timeframe by which to set the status conference on a request for recall and resentencing (45 or 60 days) to allow courts the ability to better manage their criminal calendars, particularly in light of the current backlogs stemming from the ongoing COVID-19 pandemic.

The Judicial Council notes these concerns on AB 1540 for your consideration.

Should you have any questions or require additional information, please contact Sharon Reilly at 916-323-3121 or [sharon.reilly@jud.ca.gov](mailto:sharon.reilly@jud.ca.gov).

Sincerely,



Cory T. Jaspersen  
Director, Governmental Affairs

CTJ/SR/lb

cc: Hon. Philip Y. Ting, Member of the Assembly  
Ms. Jessica Devencenzi, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Martin Hoshino, Administrative Director, Judicial Council of California