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July 17, 2019

Hon. Anthony J. Portantino, Chair
Senate Appropriations Committee
State Capitol, Room 3086
Sacramento, California 95814

Subject: AB 1076 (Ting), as amended June 26, 2019 – Fiscal Impact Statement

Dear Senator Portantino:

AB 1076, among other things, requires the Department of Justice (DOJ), on a weekly basis, to review the state summary criminal history repository to find individuals with felony, misdemeanor and infraction convictions dating back to January 1, 1973 that may be eligible, except in limited circumstances, to have their case records withheld from public disclosure. Once the DOJ identifies eligible cases, on a weekly basis they must electronically notify the appropriate superior court of cases that can no longer be released publicly. The bill also allows prosecuting attorneys, for cases resolved on or after January 1, 2018, to file a motion to prohibit the DOJ from requesting that the court withhold the case from public release. If the court grants that motion, the case remains available to the public, but the person continues to be eligible to petition to have their case withheld through existing statutes. Finally, it requires a court, at the time of sentencing, to advise each defendant of their right to an automatic conviction relief under the bill.

We conservatively estimate that AB 1076 will have a workload impact of between \$3.5 million and \$10 million on courts and lead to potential court revenue reductions of between \$12 million and \$16 million annually. Further, the bill has the potential to create significant costs related to the modification of existing court case management systems to provide the technology interface that must exist between the DOJ and the courts for the bill to be implemented.

Fiscal Impacts

This bill creates significant new workload for courts to ensure that court case files granted relief by the DOJ are not released to the public. It creates both a retroactive and a prospective workload impact on the courts as the bill applies to both existing criminal case records dating back to January 1, 1973 and future criminal case records. Courts currently rely on a mix of electronic and paper case files to handle all criminal case types. Generally, courts that utilize electronic case management systems that are completely paperless for criminal cases have the lowest workload costs for ensuring eligible case files are not released to the public. Yet, these same courts continue to maintain the physical case files of older criminal cases that pre-date the implementation of electronic case management systems. Courts that rely on paper files to manage criminal cases will have the highest workload to implement the provisions of this bill. A survey of courts found that, on average, performing the workload required by this bill will take between 5 minutes to 15 minutes of clerk time per case to complete. Although this is a relatively short workload time in minutes, the provisions of this bill apply to *all* criminal felony, misdemeanor and infraction cases statewide that were concluded after January 1, 1973.

We used court data on criminal case filings for just the past 10 years to develop an estimate of the potential number of cases that may be retroactively eligible for the DOJ to grant relief. Between FY 2008 and FY 2017 courts handled approximately 57.2 million criminal felony, misdemeanor and infraction cases¹. Determining the number of cases that would be retroactively eligible is difficult, but even if only 1 percent of criminal cases disposed of just since FY 2008 were eligible for relief, this would translate to 600,000 cases². Table 1 presents the workload calculations associated with processing past cases.

Table 1:

Case Estimate	Processing Time (<i>per case</i>)	Workload Impact
600,000	5 minutes	\$3,000,000
	15 minutes	\$9,000,000

Estimating the number of eligible prospective cases is also difficult, but even if 1 percent of all future criminal cases were eligible that would total 32,000 cases annually³. Table 2 presents the workload calculations associated with processing future eligible cases.

¹ Judicial Council of Cal., “2018 Court Statistics Report,” Office of Court Research, www.courts.ca.gov/documents/2018-Court-Statistics-Report.pdf

² Judicial Council of Cal., “2018 Court Statistics Report,” Office of Court Research, www.courts.ca.gov/documents/2018-Court-Statistics-Report.pdf

³ Based on the 5-year average rate of change in criminal case disposition. Criminal disposition data was obtained from the 2018 Court Statistics Report, available at www.courts.ca.gov/documents/2018-Court-Statistics-Report.pdf

Table 2:

Case Estimate	Processing Time (<i>per case</i>)	Workload Impact
32,000	5 minutes	\$200,000
	15 minutes	\$500,000

Additionally, this bill creates workload for hearings to consider motions by the prosecution to prohibit the DOJ from indicating a case file must be withheld from public release. Although there are many variables that influence whether a prosecutor will file a motion challenging relief and considering the broad language under which the prosecution may challenge relief, if only 10 percent to 15 percent of the very conservative estimate of 32,000 cases granted relief prospectively by the DOJ are challenged, this would equate to between 3,200 to 4,800 cases annually. Responses from the courts indicate that hearings on these motions would last at least 5 minutes. Table 3 presents the workload calculations associated with conducting hearings to consider motions from the prosecution in these cases.

Table 3:

Case Estimate	Hearing Time (<i>per case</i>)	Workload Impact
3200	5 minutes	\$ 256,000
4800		\$ 384,000

Revenue

This bill also has a potential revenue impact because it states: “persons[s] granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted” (emphasis added). We believe that courts likely would interpret this language to mean the individual is no longer responsible for paying any outstanding monetary penalties associated with the conviction once relief is granted.

Additionally, the bill provides that individuals convicted of infractions and misdemeanors who are not on probation are automatically eligible for relief one year after conviction. This would have the unintended effect of discouraging a defendant from paying their fines, fees, penalties and assessments forthwith as they could expect to have their fines eliminated by the DOJ after one year.

Further, individuals convicted of a felony or misdemeanor would become eligible for automatic relief upon completion of probation. It is our understanding that the term of probation for misdemeanors averages three years and for felonies it ranges between three and five years. If an individual who has completed probation still has outstanding monetary penalties, the bill would relieve those individuals of any monetary penalties once relief is granted. Also, an individual who was sentenced prior to January 2, 2012, but would be eligible for sentencing under Penal Code section 1170(h) today, would be eligible for automatic relief two years from the date their sentence is completed. Thus, for individuals who have completed their sentences but still have outstanding monetary penalties, the bill would relieve those individuals of any monetary penalties once relief is granted.

Finally, it is unclear why individuals who complete probation become immediately eligible for relief, while those who would have been eligible for sentencing under Penal Code section 1170(h) only become eligible for relief two years after completing their sentences.

We estimate the provisions of the bill granting automatic release from “all penalties and disabilities” resulting from all eligible felonies, misdemeanors, and infractions would lead to annual court revenue losses of between \$12 million and \$16 million⁴.

Technology Costs

The bill also creates potentially significant but currently unknown costs related to systems modifications that would be required to allow the DOJ to electronically notify the courts of cases that should no longer be made available for public release. Based on discussions with the DOJ, they do not have specific details on how they would implement the provisions of this bill. Some trial courts have indicated that the DOJ currently provides information to them on compact discs sent by U.S. Mail.

Background Checks

Finally, the issue this bill seeks to address, limiting the publicly available information on an individual’s criminal case record that could be discovered in “background checks” for, as an example, housing and employment, may not be resolved by the bill. Currently there are many private companies⁵ that obtain publicly available data from courts and subsequently sell this data. Since these private companies would not update this data on a weekly basis, the bill as currently written may not stop the adverse impact on individuals eligible for relief. Under AB 1076 there is a minimum one-year period that will pass before an infraction or misdemeanor for an individual who is not on probation is automatically eligible for relief, during which time private background check companies would still be able to obtain and distribute criminal record information from courts even if these cases subsequently become eligible for the relief envisioned by AB 1076. While the Investigative Consumer Reporting Agencies Act addresses reporting on criminal convictions, it’s unclear how the various timelines in the act will work with AB 1076 given the reports that must be made by the DOJ to courts on a weekly basis.⁶

⁴ This conservative estimate is based on the assumption this bill would incentivize behavior that would lead to a decrease of 5% to 7% in the court fund share (40%) of the \$584 million in delinquent criminal fines, fees, penalties and assessment revenues as reported in the Judicial Council’s Report on the Statewide Collection of Court Ordered Debt for 2017–18. We note in 2017-18 that courts collected a total of \$1.5 billion in forthwith and delinquent payments for criminal fines, fees, penalties and assessments. The council’s report is available at: www.courts.ca.gov/documents/lr-2018-statewide-court-ordered-debt-2017-18-pc1463_010.pdf

⁵ Under the Investigative Consumer Reporting Agencies Act, these private companies are defined as “investigative consumer reporting agencies” (Civ. C., Title 1.6A (commencing with section 1786; Civ. C. section 1786.2(d)).

⁶ Civil Code section 1786.18(a)(7) prohibits an investigative consumer reporting agency from furnishing any investigative consumer report containing “records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the or disposition, release, or parole, antedate the report by more than seven years,” unless a full pardon is granted. Subdivision (c) of that section provides that those agencies shall not provide information that relates to a conviction unless the agency has verified the accuracy of that information during the 30-day period ending on the date on which the report is furnished. Finally, section 1786.30 provides that information may not be reported in a subsequent report unless the agency received that information within the three-month period preceding the date the subsequent report is furnished.

Hon. Anthony J. Portantino

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If you have any questions, please feel free to contact Mark Neuburger at (916) 323-3121 or mark.neuburger@jud.ca.gov.

Sincerely,

Mailed July 18, 2019

Cory T. Jasperson
Director, Governmental Affairs

CTJ/MN/jh

cc: Members, Senate Appropriations Committee
Hon. Philip Ting, Member of the Assembly
Mr. Shaun Naidu, Senate Appropriations Committee
Mr. Matt Osterli, Consultant, Senate Republican Office of Policy
Ms. Melissa Immel, Deputy Legislative Secretary, Office of the Governor
Ms. Timothy Weber, Budget Analyst, Department of Finance
Mr. Martin Hoshino, Administrative Director, Judicial Council of California