

TESTIMONY

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ASSEMBLY PUBLIC SAFETY COMMITTEE HEARING

June 10, 2003

Senate Bill 784: habeas relief for battered women in prison

Thank you for the opportunity to testify today in support of SB 784. My name is Nausheen Hassan, and I am the Audrey & Sydney Irmas Fellow at the California Women's Law Center. I am the Southern California coordinator for the Habeas Project, which assists battered women who are eligible for habeas relief pursuant to California Penal Code §1473.5. The Habeas Project is a collaborative effort of the California Women's Law Center, the University of Southern California Law School Post-Conviction Justice Project and Domestic Violence Clinics, Legal Services for Prisoners with Children, and Free Battered Women, formerly known as the California Coalition for Battered Women in Prison.

The California Women's Law Center is sponsoring Senator Karnette's bill, SB 784, to extend the sunset clause for Penal Code §1473.5 by five years, from January 1, 2005 until January 1, 2010. We strongly believe that the current filing deadline for these habeas petitions, approximately a year and a half from now, will not allow enough time for all eligible women to adequately prepare their petitions.

The Habeas Project has been working to provide assistance to women who meet all the requirements of Penal Code §1473.5 ever since the law was signed by Governor Gray Davis in October 2001. The statute gave a three-year timeframe, from 2002 until 2005, for these women to submit a petition for habeas corpus. However, given the large numbers of potential candidates for this new law, it has taken a significant amount of time simply to identify women who are eligible. There are approximately 900 women incarcerated in the state of California for homicide. Although the California Department of Corrections has no official mechanism for tracking whether the crime was related to domestic violence when a new prisoner is admitted, estimates stemming from research during the early 1990s indicate there were about 600 women incarcerated in California for killing their batterer at that time. As you know, a battered woman submitting a habeas petition pursuant to Penal Code §1473.5 must have either been convicted or begun her trial before January 1, 1992, when Evidence Code §1107 was enacted to permit expert testimony on battering and its effects (called Battered Women's Syndrome in both statutes).

Because the correctional system does not track whether the commitment offense is related to domestic violence, the Habeas Project had to utilize other means to determine which prisoners would likely fall into the category of qualifying for Penal Code §1473.5. No one in the Legislature or among the advocate groups had anticipated that the task of merely identifying eligible inmates would require so much effort. At this point, June 2003, the Habeas Project has identified over 40 women who meet all the criteria for submitting a Penal Code §1473.5 habeas petition. We believe the majority of eligible cases have now been identified; however there are still screening efforts underway to ensure we do not overlook any potential candidates.

In order to carry out the implementation of Penal Code §1473.5 more effectively, the collaborating organizations have organized into two groups, for Northern California and Southern California. The Southern California participants held a training for pro bono attorneys a year ago and at that time assigned the 17 eligible cases from the California Institution for Women, the prison facility located in Chino. So far, only one petition has been filed from this batch of petitions being handled by volunteer attorneys. Fortunately, it was successful and resulted in the release of Susan Deering. A previous petition handled directly by USC Post-Conviction, instead of a volunteer attorney, was also successful in allowing the release of Marva Joyce Wallace.

However, it is clear that many petitions will need far more than one year to be thoroughly prepared for filing. Several petitions in Southern California are expected to be filed soon, within the next 2-3 months. However, a handful of these petitions were transferred between attorneys after the initial assignment, and have experienced significant delays as a result. Some of these delayed cases are still pending a permanent assignment, because law firm pro bono committees must spend several weeks to review a potential case before accepting it.

The experience of Southern California is likely an indicator of what will happen in Northern California. The Northern California training took place eight months after the first one in Southern California, in January 2003. Due to the bulk of the state's female prison population being located in Chowchilla, screening efforts have taken a much longer time. However, the Northern California phase has been dealing with an additional difficulty: many of their pro bono attorneys are solo and small firm practitioners or public interest attorneys, who do not have the financial resources to cover the expenses associated with preparing a habeas petition.

Expert fees are the largest expense for these habeas petitions. Hiring an expert on battering and its effects is crucial to the success of a petition pursuant to Penal Code §1473.5 because the basis of this law is to assist women who were denied the opportunity to present such expert testimony at their original trial. The Southern California phase of the Habeas Project was fortunate to recruit attorneys primarily from large law firms that could afford to absorb the costs, but the Northern California volunteer base is different. As a result, the Northern California cases were only recently assigned to counsel in the past few months, and these attorneys will have the additional burden of fundraising in order to pay for costs. The Habeas Project is attempting to conduct fundraisers as well, but there is no guarantee that we can provide the full amount of money needed for most of the Northern California petitions.

In sum, many of the obstacles faced by the Habeas Project in assisting battered women can be fixed with time and money. Of course, given the current state budget crisis, it is infeasible for the Project to request money from the Legislature. Instead, we are requesting time. Additional time will give us an opportunity to seek extra funds and donations. Additional time will ensure that having to rely on volunteers will not preclude eligible women from filing. Additional time will not increase the number of women prisoners who meet the criteria. Additional time will simply allow the currently eligible women to file a habeas petition that is thoroughly prepared instead of hastily thrown together just to meet the deadline.

We urge the Assemblymembers to approve SB 784 and support battered women incarcerated for killing their abusers. The Legislature enacted Penal Code §1473.5 to remedy the injustice of being denied expert testimony on battering. The law can be truly implemented only if there is additional time to file these habeas petitions. Thank you for your attention to our concerns.