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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 1094                      **Hearing Date:** April 17, 2018  
**Author:** Anderson  
**Version:** February 13, 2018  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Wrongful Convictions*

### HISTORY

**Source:** California Innocence Project  
Loyola Project for the Innocent  
Northern California Innocence Project

**Prior Legislation:** SB 321 (Monning), 2017, held in Senate Appropriations Comm.  
SB 1134 (Leno), Ch. 785, Stats. 2016  
SB 694 (Leno), 2015, held in Assembly Appropriations Comm.  
AB 672 (Jones-Sawyer), Ch. 403, Stats. 2015  
SB 635 (Nielsen), Ch. 422, Stats. 2015  
SB 1058 (Leno) Ch. 623, Stats. 2014  
SB 618 (Leno), Ch. 800, Stats. 2013  
AB 316 (Solorio), Ch. 432, Stats. 2009  
AB 2937 (Solorio), 2008, vetoed  
AB 1799 (Baugh), Ch. 630, Stats. 2000

**Support:** California Public Defenders Association; Ella Baker Center for Human Rights

**Opposition:** California District Attorneys Association

### PURPOSE

*The purpose of this bill is to require the California Victim Compensation Board to, without a hearing, recommend payment of a claim by a person who has been granted a writ of habeas corpus or a motion to vacate based on newly discovered evidence of actual innocence, as specified.*

*Existing law* establishes procedures for the filing and hearing of a petition for a writ of habeas corpus, which allows a person to challenge his or her incarceration or related restraint as unlawful. (Pen. Code, §§ 1474-1508.)

*Existing law* authorizes a person to file a motion to vacate a conviction or sentence based on newly discovered evidence, as specified, or because the conviction or sentence was legally invalid. (Pen. Code, §§ 1473.6 and 1473.7.)

*Existing law* requires the court to inform a person whose conviction has been set aside based upon a determination that the person was factually innocent of the charge of the availability of indemnity for persons erroneously convicted and the time limitations for presenting those claims. (Pen. Code, § 851.86.)

*Existing law* states that if a person has secured a declaration of factual innocence, the finding shall be sufficient grounds for compensation by the California Victim Compensation Board. Upon application the Board shall, without a hearing, recommend to the Legislature that an appropriation be made. (Penal Code § 851.865.)

*Existing law* provides that if the district attorney or Attorney General (AG) stipulates to or does not contest the factual allegations underlying one or more grounds for granting a writ of habeas corpus or a motion to vacate a judgement, the facts underlying the basis for the court's ruling shall be binding on the AG, the factfinder, and the California Victim Compensation Board. (Pen. Code, § 1485.5, subd. (a).)

*Existing law* states that in a contested or uncontested proceeding, the express factual findings made by the court in considering a petition for habeas corpus, a motion to vacate judgment, or an application for a certificate of factual innocence, shall be binding on the AG, the factfinder, and the California Victim Compensation Board. (Pen. Code, § 1485.5, subd. (c).)

*Existing law* states that, in a contested proceeding, if the court has granted a writ of habeas corpus or when the court vacates a judgement, and if the court has found that the person is factually innocent, that the finding shall be binding on the California Victim Compensation Board for a claim presented to the board, and upon application by the person, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid. (Pen. Code, § 1485.55, subd. (a).)

*This bill* repeals Penal Code section 1485.5. and subdivision (a) of Penal Code section 1485.55.

*This bill* instead provides that if a state or federal court grants a writ of habeas corpus or if a state court grants a motion to vacate based on newly discovered evidence, as specified, or legal invalidity, and as a result of either or those actions the charges are dismissed or the person is acquitted of the charges on a retrial, the California Victim Compensation Board, shall, upon application by the person, and without a hearing, recommend to the Legislature that an appropriation be made and the claim paid.

*Existing law* provides that any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison for that conviction, is granted a pardon by the Governor for the reason that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her, or who, being innocent of the crime with which he or she was charged for either of the foregoing reasons, shall have served the term or any part thereof for which he or she was imprisoned, may, as specified, present a claim against the state to the board for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment. (Pen. Code, § 4900.)

*Existing law* sets the rate of compensation at \$140 per day of incarceration served subsequent to the claimant's conviction, and specifies that this appropriation shall not be considered gross income for state tax purposes. (Pen. Code, § 4904.)

*Existing law* gives erroneously convicted and pardoned individuals two years after acquittal, pardon or release of custody to file a claim against the state. (Pen. Code, § 4901.)

*This bill* specifies that the two-year deadline applies to whichever action occurs later: judgment of acquittal, pardon granted, release from custody, or dismissal of charges.

*Existing law* states that if a person has secured a declaration of factual innocence or if the court has granted a writ of habeas corpus or vacated a judgement and has found that the person is factually innocent, the California Victim Compensation Board, shall, within 30 days of the presentation of the claim, calculate compensation and recommend to the Legislature payment of that sum. (Pen. Code, § 4902, subd. (a).)

*This bill* requires the California Victim Compensation Board, within 30 days of the presentation of the claim, to calculate compensation and recommend to the Legislature payment of that sum in a claim where a state or federal court has granted a writ of habeas corpus or if a state court has granted a motion to vacate, and as a result of either or those actions the charges were dismissed or the person has been acquitted of the charges on a retrial.

*This bill* makes other conforming changes.

## COMMENTS

### 1. Need for This Bill

According to the sponsor of this bill:

In 2013, SB 618 (Leno) was a great step towards making the compensation process fairer for exonerees. SB 618 allowed for people who had already proven their innocence to be granted automatic compensation rather than go through the sometimes years-long process of assessing whether they should be granted compensation. In pertinent part, SB 618 did a couple of things: 1) It made compensation automatic in cases that were contested, later reversed or vacated, and a court found that new evidence pointed unerringly to innocence (California's common law "freestanding actual innocence standard") and; 2) It made compensation automatic for exonerees who had their convictions reversed and dismissed and later, through more litigation, received a finding of factual innocence by a court under a preponderance of the evidence standard.

Recent legislative changes introduced in the last few years, notably SB 1058 (Leno) and SB 1134 (Leno), have further streamlined the standards by which a conviction may be reversed based on newly discovered evidence. These changes have provided welcome clarification and guidance to the area of wrongful convictions. However, the changes mean a reversal based on these new laws do not necessarily result in automatic compensation, as the compensation scheme was enacted before the laws changed. Indeed, there is no longer any automatic compensation without further litigation now that courts will no longer find the new evidence points unerringly to innocence.

Therefore, for most of our cases, after a court examines all of the evidence of innocence, reverses the conviction and then charges are dismissed by the state or our clients are acquitted on re-trial, require that we go back to court or to the hearing officer for the Victims Compensation Government Claims Board (VCGCB), to conduct another hearing to convince them to make a finding of factual innocence by a preponderance standard in order for compensation to be automatic.

SB 1094 would make compensation required for a narrow category of cases in which convictions were reversed through a habeas petition or motion to vacate – both require new evidence showing that the individual was wrongfully convicted – and the charges are dismissed. SB 1094 also expands the time one can file an application for compensation to include the time that an individual's conviction is reversed as there are innocent men and women, who have served their entire sentence and are back in society, yet under current law, do not have the opportunity to even apply for compensation.

## **2. Writ of Habeas Corpus**

Writ of habeas corpus, also known as "the Great Writ", is a process guaranteed by both the federal and state Constitutions to obtain prompt judicial relief from illegal restraint. The functions of the writ is set forth in subdivision (a) of Penal Code section 1473: "Every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint."

A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons: (1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to his or her incarceration; (2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person; or (3) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial. (Pen. Code, §1473, subd. (b).)

## **3. Claims by Wrongly Convicted and Imprisoned Persons**

California law allows a factually innocent person – an "exonoree" – who has been wrongfully convicted of a felony and imprisoned to apply for compensation at a rate of \$140 per day. (Pen. Code, § 4904.) If a claimant has first obtained a declaration of factual innocence from a court, this finding is binding on the Victim Compensation Board and the Attorney General (AG), who represents the state in wrongful conviction claims, and the board is required to recommend to the Legislature to make a payment to the claimant within 30 days of the claim. For claimants who have not obtained a declaration of factual innocence, the AG must respond to the claim within 60 days or request an extension of time, upon a showing of good cause. Upon receipt of the response from the AG, the board must set a time and place for the hearing and mail notice of the hearing to the claimant and the AG. The board is required to use reasonable diligence in setting the date for the hearing and shall attempt to set the date for the hearing at the earliest date convenient for all parties and the board. (Pen. Code, § 4902.)

In order to be successful on a claim of wrongful conviction, a person must show at the hearing, by a preponderance of the evidence, that (1) the crime with which he or she was charged was either not committed at all or if committed, was not committed by him or her, and (2) the pecuniary injury sustained by him or her through his or her erroneous conviction and imprisonment. (Pen. Code, § 4903.) At the hearing, the board considers all of the evidence presented and makes a determination as to whether the claimant has met the burden of proof required under Penal Code section 4903.

In 2013, SB 618 (Leno, Chapter 800, Statutes of 2013) required the board to recommend payment on a wrongful conviction claim, without a hearing, for persons who have been declared factually innocent by a court. Then in 2014, SB 1058 (Leno, Chapter 623, Statutes of 2014) defined false evidence, for purposes of a writ of habeas corpus, to include opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances. And in 2016, SB 1134 (Leno, Chapter 785, Statutes of 2016) changed the standard to be granted a habeas petition based on new evidence from “must point unerringly to innocence” to the lower “more likely than not, would have changed the trial outcome.”

While the process was somewhat streamlined by previous legislation, there are concerns that the claim process is still unduly long and that the members of the board may not be the best persons to make these determinations. According to information provided by the sponsor, these claims take anywhere from 2 to 5 years to litigate. Additionally, the new standard codified by SB 1134 was put into statute after the passage of SB 618, thus automatic compensation does not apply to persons whose cases were overturned under the newer standard.

This bill provides that if a state or federal court grants a writ of habeas corpus or if a state court grants a motion to vacate based on newly discovered evidence, as specified, or legal invalidity, and as a result of either or those actions the charges are dismissed or the person is acquitted of the charges on a retrial, the person shall be entitled to payment on his or her claim without a separate Victims Compensation Board hearing.

#### **4. Amendments to be Adopted in Committee**

Currently the bill states that a person who has been granted a writ of habeas corpus or a motion to vacate based on specified findings does not have to have a separate hearing on his or her claim before the Victims Compensation Board. One of the statutes that govern motions to vacate prior convictions include those whose convictions are deemed legally invalid because the defendant did not meaningfully understand or knowingly accept the actual or potential adverse immigration consequences of a guilty plea. (Pen. Code, § 1473.7, subd. (a)(1).) The amendment would only apply the provisions of this bill to subdivision (a)(2) of Penal Code section 1473.7 which is a motion to vacate based on newly discovered evidence of actual innocence.

The amendments also make technical and conforming changes.

#### **5. Argument in Support**

The California Public Defenders Association writes in support of this bill:

Under current law, California provides compensation for those wrongly convicted and imprisoned for crimes they did not commit. However, because of the

complexity of the current compensation system, exonerated defendants, after suffering through decades of wrongful imprisonment, are forced to spend years after their release navigating an expensive and convoluted compensation process. As a result, such defendants remain uncompensated, often while living in abject poverty.

SB 1094 seeks to address this problem by streamlining the compensation process. SB 1094 removes unnecessary and duplicative litigation, thereby ensuring that the wrongfully convicted can focus on rebuilding their lives, rather than spending their limited resources litigating their compensation claim. Moreover, because SB 1094 streamlines the compensation procedures only for a narrow category of cases in which a conviction was reversed based on evidence not previously available to the finder of fact, it is a narrow, well-tailored approach that promises to improve our justice system.

## **6. Argument in Opposition**

The California District Attorneys Association writes in opposition to this bill:

Under PC 4900(b), if a court grants a PC 1473.6 or PC 1473.7 motion, and the person is retried and acquitted, the California Victim's Compensation Board "shall...recommend to the Legislature that an appropriation be made and the claim paid." So, even if the local district attorney believed there was sufficient evidence to prove the case and justify the retrial, a person would be able to recover if they were acquitted. We believe there are significant cost concerns associated with opening the door to victim compensation for individuals who were acquitted of criminal charges, regardless of whether they were actually innocent.

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