
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 3088 **Hearing Date:** June 25, 2024
Author: Friedman
Version: February 16, 2024
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Criminal procedure: writ of habeas corpus*

HISTORY

Source: The California Innocence Coalition

Prior Legislation: SB 97 (Wiener) Chapter 381, Stats. 2023
SB 467 (Wiener) Chapter 982, Stats. 2022
SB 243 (Wiener) held on Appropriations Suspense 2021
SB 938 (Wiener, 2020) not heard COVID
SB 1134 (Leno, 2016) Chapter 785, Stats. 2016
SB 694 (Leno) held in Assembly Appropriations 2015
SB 1058 (Leno) Chapter 623, Stats. 2014
SB 618 (Leno) Chapter 800, Stats. 2013
AB 1593(Ma) Chapter 809, Stats. 2012

Support: ACLU California Action; All of Us or None Bakersfield; All of Us or None Los Angeles; All of Us or None Orange County; All of Us or None Riverside; All of Us or None San Diego; California Alliance for Youth and Community Justice; California Public Defenders Association; Californians United for A Responsible Budget; Courage California; Ella Baker Center for Human Rights; Felony Murder Elimination Project; Initiate Justice; LA Defensa; Legal Services for Prisoners with Children; San Francisco Public Defender; Santa Cruz Barrios Unidos; Smart Justice California, a Project of Tides Advocacy; University of San Francisco School of Law, Racial Justice Clinic

Opposition: California District Attorneys Association

Assembly Floor Vote: 49 - 14

PURPOSE

The purpose of this bill is to require habeas corpus petition to be considered on the merits and not dismissed on grounds that it is untimely or successive if, the allegations in the petition taken as true, establish by a preponderance of evidence that at least one juror would not have convicted the petitioner in light of the new evidence.

Existing law provides that every person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint. (Penal Code § 1473(a).)

Existing law states that a writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

- a) False evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to his incarceration;
- b) False physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person.
- c) 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 of the trial. “New evidence” is evidence that was discovered after trial that could not have been discovered before trial and is admissible.(Penal Code § 1473 (b))

Existing law provides that any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus. (Penal Code § 1473(c).)

Existing law states that nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies. (Penal Code § 1473(d).)

Existing law provides that “false evidence” includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or have been undermined by later scientific research or technological advances. (Penal Code § 1473(e)(1).)

Existing law provides that this section does not create additional liabilities, beyond these already recognized, for an expert who repudiates the original opinion provided at a hearing or trial or whose opinion has been undermined by later scientific research. (Penal Code § 1473(e)(2).)

This bill requires a habeas corpus petition be considered on the merits and not dismissed based on timeliness considerations or as an abuse of the writ if the allegations in the petition establish by a preponderance that at least one juror would not have convicted the petitioner after a review of the evidence in the record in light of any new evidence developed by the petitioner.

COMMENTS

1. Need for This Bill

According to the author:

People who are innocent but imprisoned face obstacles in seeking habeas petition relief due to unclear procedural bars. They are prevented from presenting crucial evidence that could exonerate them, leading to unjust incarceration. California must address this legal ambiguity to ensure fair opportunities for the wrongly convicted.

AB 3088 seeks to empower those wrongly imprisoned with the chance to present their case effectively, fostering a criminal legal system that prioritizes the vital goal of establishing innocence.

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).)

Other avenues of challenging a conviction include a motion to vacate the judgement after being released. Such motions may be pursued in a couple of situations, including when new evidence is discovered that tends to prove the defendant is innocent, and when it is discovered that false evidence was used in trial and it was material and substantial in proving the defendant's guilt. (See Pen. Code, §§ 1473.6 and 1473.7, subd. (a)(2).)

3. Dismissals Based on Timeliness:

Under existing law, a person who wishes to challenge their conviction by filing a petition for a writ of habeas corpus in state court must present each claim in a timely fashion¹. There is no express time period in which to seek state habeas corpus relief in a non-capital criminal case. (*In re Douglas* (2011) 200 Cal.App.4th 236, 242.) Whether a claim has been timely presented is assessed based on an indeterminate reasonableness standard. A petition is timely if filed "within a reasonable time." (*Evans v. Chavis* (2006) 546 U.S. 189, 191-192.)

Generally, delay in seeking habeas corpus relief in a non-capital case is measured from the time a petitioner or petitioner's counsel becomes aware of the grounds for relief, which may be as early as the date of conviction. (*Douglas, supra*, 200 Cal.App.4th at 243.) To show that there was not a substantial delay in filing a habeas petition, the "petitioner must allege, with specificity, facts showing when information offered in support of the claim was obtained, and that the information neither was known, nor reasonably should have been known, at any earlier time." (*In re Reno* (2012) 55 Cal.4th 428, 461.)

¹ The changes made by this bill would apply to non-capital cases only. Proposition 66, codified as California Penal Code section 1509, provides that the initial habeas petition in a death penalty case must be filed within one year of the order in which habeas corpus counsel was appointed. (See also, *Briggs v. Brown* (2017) 3 Cal.5th 808.)

There are exceptions to the rule. California courts allow a longer delay if the petitioner demonstrates good cause. (*In re Robbins* (1998) 18 Cal.4th 770, 780.) “A petitioner may establish good cause by showing particular circumstances to justify substantial delay.” (*Ibid.*) A petitioner can also bring an untimely habeas petition if they can show “error of constitutional magnitude led to a trial that was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner”; that they are “actually innocent of the crime or crimes of which he or she was convicted”; or that they were “convicted or sentenced under an invalid statute.” (*In re Reno* (2012) 55 Cal.4th 428, 460; *In re Clark* (1993) 5 Cal.4th 750, 797–98.)

This bill would additionally require a habeas corpus petition to be considered on the merits and not dismissed on grounds that it is untimely if, the allegations in the petition taken as true, establish by a preponderance of evidence that at least one juror would not have convicted the petitioner in light of the new evidence.

4. Dismissals Based on Successive Petitions

Under existing law, a person is not allowed to engage in “piecemeal litigation” by bringing successive habeas petitions (i.e. “abuse of the writ”). For example, courts may refuse to consider new arguments if those arguments were known to the person when they brought a prior attack on the judgment. (*In re Clark, supra*, 5 Cal.4th 750.) Similarly, previously rejected claims will not be considered in a successive petition. “It has long been the rule that absent a change applicable law of facts the court will not consider repeated applications for habeas corpus presenting claims that were previously rejected.” (*Ibid.*) Before a successive petition is considered on its merits, the petitioner must explain their failure to timely present their claims in prior petitions. (*Id.*, at p. 779.)

This bill would require a habeas petition to be considered on the merits and not dismissed even if it is a successive petition if the allegations in the petition establish, by a preponderance of evidence, that at least one juror would not have convicted the petitioner.

5. Argument in Support

LA Defensa supports this bill stating:

AB 3088 seeks to articulate the standard by which procedural barriers can be overcome by innocent individuals attempting to secure their release from prison through habeas petitions in California. AB 3088 would allow for habeas petitions implicating a wrongful conviction to be evaluated on their merits rather than being summarily dismissed based on procedural grounds. Specifically, if it is indicated that by a preponderance of the evidence, at least one juror would not have convicted the petitioner, the claims raised in a petition should be considered by the court on their merits in light of the new evidence presented.

The result of the current system is innocent incarcerated people being barred from habeas petition consideration due to ill-defined procedural barriers. These individuals find themselves barred from presenting compelling evidence that could prove their innocence, resulting in wrongly incarcerated people remaining in prison. This clarification in the law is necessary for California to ensure that the wrongfully convicted are given an equitable process to prove their innocence. AB

3088 aims to ensure that the wrongfully incarcerated are empowered with the rightful opportunity to argue their case, fostering a justice system that genuinely honors and prioritizes the crucial task of determining innocence.

6. Argument in Opposition

California District Attorneys Association oppose this bill stating:

AB 3088 would implement a mandate for courts to disregard longstanding rules that require habeas corpus petitioners to file new claims in a timely manner and prohibit repetitive attempts to raise previously rejected claims. These procedural rules already permit a court to hear a petition that is unduly delayed or successive if the court finds that the claims raised would show a fundamental miscarriage of justice. AB 3088 however would mandate the court hear an otherwise barred petition based on a finding that a single juror would – for any reason – not have convicted the defendant.

A hung jury is not a finding of actual innocence nor does the rogue opinion of a single juror suggest there has been a miscarriage of justice. Especially when the jury hangs by a single vote, the reason may be based on confusion or improper jury nullification. Importantly, if a jury does return a hung verdict, prosecutors have the opportunity to try the case again while the evidence is still fresh and while the victims can still receive some sense of justice.

If a habeas corpus petition is granted, however, prosecutors may be unable to retry the case. This is especially true when the petition is brought decades after the original verdict. Evidence may have been lost and witnesses may have forgotten details or may even be deceased. This is especially true if the habeas proceedings are commenced long after the original conviction. The procedural protections that this bill would eliminate help ensure that persons convicted of crimes cannot take unfair advantage of the passage of time.

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