
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No: SB 1211 **Hearing Date:** April 14, 2026
Author: Gonzalez
Version: April 6, 2026
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Criminal procedure: postconviction investigation*

HISTORY

Source: Los Angeles County District Attorney

Prior Legislation: SB 78 (Glazer), Ch. 702, Stats. of 2023
SB 981 (Glazer), vetoed, 2022
SB 446 (Glazer), Ch. 490; Stats. of 2021
SB 269 (Bradford), Ch. 473, Stats. of 2019
SB 1134 (Leno), Ch. 785, Stats. of 2016
SB 1058 (Leno), Ch. 623, Stats. of 2014
SB 618 (Leno), Ch. 800, Stats. of 2013
AB 316 (Solorio), Ch. 432, Stats. of 2009
AB 2861 (Hannigan), Ch. 1172, Stats. of 1980

Support: California Civil Liberties Advocacy

Opposition: None known

PURPOSE

The purpose of this bill is to outline parameters for district attorney offices that accept cases for postconviction review related to innocence claims and to enable those offices to have access to materials that they would not otherwise have access to because the case is closed.

Existing law provides, in any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. Requires a copy of the petition to be served upon the prosecuting attorney of the county or city having jurisdiction over the offense. Requires the law enforcement agency having jurisdiction over the offense to seal its arrest records and the petition for relief for three years from the date of the arrest and thereafter destroy its arrest records and the petition, upon a determination that the person arrested is factually innocent. (Pen. Code, § 851.85, subd. (a).)

Existing law requires the law enforcement agency having jurisdiction over the offense to notify the Department of Justice (DOJ), and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent, of the sealing of the arrest records and the reason. Requires DOJ and any law

enforcement agency so notified to seal their arrest records and the notice of sealing for three years from the date of the arrest, and thereafter destroy their records of the arrest and the notice of sealing. Requires the law enforcement agency having jurisdiction over the offense and the DOJ to request the destruction of any records of the arrest which they have given to any local, state, or federal agency or to any other person or entity. Requires each agency, person, or entity within California receiving the request to destroy its records of the arrest and the request, unless otherwise provided in this section. (Pen. Code, § 851.85, subd. (a).)

Existing law provides that after receiving a petition for relief, if the law enforcement agency and prosecuting attorney do not respond to the petition by accepting or denying the petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, the petition is deemed to be denied. (Pen. Code, § 851.85, subd. (b).)

Existing law authorizes a petition to the superior court that would have had territorial jurisdiction over the matter in any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied. Requires a copy of the petition to be served on the law enforcement agency and the prosecuting attorney of the county or city having jurisdiction over the offense at least 10 days prior to the hearing. (Pen. Code, § 851.85, subd. (b).)

Existing law authorizes the prosecuting attorney and the law enforcement agency through the district attorney to present evidence to the court at the hearing. (Pen. Code, § 851.85, subd. (b).)

Existing law authorizes any judicial determination of factual innocence to be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant, and reliable. Prohibits a finding of factual innocence and an order for the sealing and destruction of records from being made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. (Pen. Code, § 851.85, subd. (b).)

Existing law provides, in any court hearing to determine the factual innocence of a party, that the initial burden of proof rests with the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. Provides that the burden of proof shifts to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made if the court finds that this showing of no reasonable cause has been made by the petitioner. (Pen. Code, § 851.85, subd. (b).)

Existing law requires the court, if it finds the arrestee to be factually innocent of the charges for which the arrest was made, to order the law enforcement agency having jurisdiction over the offense, the DOJ, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent to seal their records of the arrest and the court order to seal and destroy the records, for three years from the date of the arrest and to then destroy their records of the arrest and the court order to seal and destroy those records. (Pen. Code, § 851.85, subd. (b).)

Existing law requires the court to order the law enforcement agency having jurisdiction over the offense and the DOJ to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person, or entity. Requires each state or local agency,

person or entity within California receiving such a request to destroy its records of the arrest and the request to destroy the records, unless otherwise provided. (Pen. Code, § 851.85, subd. (b).)

Existing law authorizes a defendant, in any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, to petition the court that dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made, at any time after dismissal of the action. Requires a copy of the petition to be served on the prosecuting attorney in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence. Authorizes the prosecuting attorney to present evidence to the court at the hearing. Requires the hearing to be conducted as provided above. Requires the court to grant relief if the court finds the petitioner to be factually innocent of the charges for which the arrest was made. (Pen. Code, § 851.85, subd. (c).)

Existing law authorizes the court, with the concurrence of the prosecuting attorney, to grant the relief described above, in any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, at the time of the dismissal of the accusatory pleading. (Pen. Code, § 851.85, subd. (d).)

Existing law authorizes the court, whenever any person is acquitted of a charge and it appears to the judge presiding at the trial at which the acquittal occurred that the defendant was factually innocent of the charge, to grant the relief described above. (Pen. Code, § 851.85, subd. (e).)

Existing law requires the law enforcement agency having jurisdiction over the offense or court, in any case where a person who has been arrested is granted relief, to issue a written declaration to the arrestee stating that it is the determination of the law enforcement agency having jurisdiction over the offense or court that the arrestee is factually innocent of the charges for which the person was arrested and that the arrestee is thereby exonerated. Provides that the arrest is deemed not to have occurred and the person may answer accordingly any question relating to its occurrence. (Pen. Code, § 851.85, subd. (f).)

Existing law prohibits any finding that an arrestee is factually innocent from being admissible as evidence in any action, except that the finding is admissible as evidence at a hearing before the California Victim Compensation Board. (Pen. Code, § 851.85, subd. (i).)

Existing law prohibits records from being destroyed if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of the records has received a certified copy of the complaint in the civil action, until the civil action has been resolved. Provides that the records are confidential and be available for inspection only by the court, jury, parties, counsel for the parties, and any other person authorized by the court. Requires the records to be sealed and destroyed immediately following the final resolution of the civil action. (Pen. Code, § 851.85, subd. (k).)

Existing law provides that petitions for relief under the above provisions may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Provides that any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice. (Pen. Code, § 851.85, subd. (l).)

Existing law authorizes the judge, whenever a person is acquitted of a charge and it appears to the judge presiding at the trial that the defendant was factually innocent of the charge, to order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case. Requires the court, if such an order is made, to give to the defendant a copy of such order and inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court. (Pen. Code, § 851.85.)

Existing law requires the judge, whenever a person is convicted of a charge and the conviction is set aside based upon a determination that the person was factually innocent of the charge, to order that the records in the case be sealed, including any record of arrest or detention, upon written or oral motion of any party in the case or the court, and with notice to all parties to the case. Requires the court, if such an order is made, to give the defendant a copy of that order and inform the defendant that the person may state they were not arrested for that charge and that they were not convicted of that charge, and that they were found innocent of that charge by the court. (Pen. Code, § 851.86.)

This bill authorizes the district attorney to file a notice with the court notifying the court of intent to conduct a postconviction investigation of a claim of factual innocence, if the district attorney accepts a case for postconviction review.

This bill provides that “accepts a case for postconviction review” means that a conviction integrity unit or other formally designated unit of a district attorney’s office that is structurally independent from the trial, appellate, and habeas litigation divisions of the office, has formally accepted for internal review a claim of factual innocence at the request or initiation of the petitioner alleging factual innocence.

This bill requires the case, upon the filing of a notice described above, to be treated as if it were an open case for the purpose of investigating a claim of factual innocence. Specifies that the district attorney has the power to issue subpoenas and compel the production of documents and testimony, as provided, and file motions necessary to investigate claims, as provided.

This bill requires the district attorney, to the extent the district attorney seeks otherwise confidential materials relating to the petitioner, to obtain a written waiver from the petitioner or the petitioner’s counsel before the discovery is authorized.

This bill prohibits the authority granted by the provisions of this bill from being exercised if any direct appeal, habeas corpus proceeding, motion for new trial, or other collateral attack concerning the same conviction is pending in any state or federal court, unless the petitioner or petitioner’s counsel agrees to the exercise of that authority.

COMMENTS

1. Need For This Bill

According to the author:

Conviction Integrity Units (CIUs), housed within District Attorney offices, are tasked with researching post-conviction innocence claims, including the mishandling of evidence, constitutional violations, juror misconduct, and factual innocence. California has 297 recorded exonerations, and CIUs have, to date, exonerated 35 individuals since their formation. Factual innocence investigations are investigations of closed cases, which makes it difficult for CIUs to access the documents and evidence needed to conduct their research of the claim. These delays can prevent access to justice for incarcerated individuals serving prison time for a crime they did not commit. SB 1211 streamlines the processing of post-conviction claims of factual innocence by clarifying that CIUs within prosecutorial agencies may investigate these claims as if they were open cases.

2. Factual Innocence

Existing law provides a process for anyone who was arrested but not charged, or arrested and charged but not convicted to petition the court for a finding that the defendant is factually innocent of the charges for which the arrest was made. (Pen. Code, § 851.85, subs. (b), (c).) After the petition is filed, the court will hold a hearing on the matter, and the prosecuting attorney may present evidence at the hearing. (Pen. Code, § 851.85, subd. (b).) The court may consider declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant, and reliable to make a determination on factual innocence. (*Ibid.*) The court is prohibited from finding factual innocence unless it finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. (Pen. Code, § 851.85, subd. (b).)

The burden of proof rests initially with the petitioner to show that no reasonable cause exists to believe that they committed the offense for which the arrest was made. (Pen. Code, § 851.85, subd. (b).) The burden of proof then shifts to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made. (*Ibid.*)

If the court finds the arrestee to be factually innocent of the charges for which the arrest was made, it must order the law enforcement agency having jurisdiction over the offense, the DOJ, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent to seal their arrest records and the court order to seal and destroy the records. (*Ibid.*) When three years from the date of arrest have passed, these entities must destroy the records of the arrest and the court order to seal and destroy the records. (*Ibid.*) The arrest is deemed not to have occurred, and the person may answer accordingly any question relating to its occurrence. (Pen. Code, § 851.85, subd. (f).)

Under existing law, the court is also authorized to grant the relief described above whenever a person is acquitted of a charge and it appears to the judge presiding at the trial at which the acquittal occurred that the defendant was factually innocent of the charge. (Pen. Code, § 851.85, subd. (e).)

3. Conviction Integrity Units

A Conviction Integrity Unit (CIU) is a division of a prosecutor's office that works to prevent, identify, and remedy false convictions. They are also called Conviction Review Units (CRUs). Their purpose is described as follows:

“Conviction Integrity Review” or, more expansively “Case Integrity Review” or “Post-Conviction Integrity Review” ... were initially conceived (and as many still exist in their narrowest form) the focus was solely on actual innocence claims, often where the defendant was serving a life sentence or received the death penalty. Many of these earliest units operated internally ... Where a claim was substantiated, the office's response was generally limited to releasing that person from prison, and perhaps providing some monetary relief to the wrongfully convicted individual. (Fair and Just Prosecution, *Conviction Integrity Units and Internal Accountability Mechanisms* (Sept. 2017) <<https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.ConvictionIntegrity.9.25.pdf>>.)

Several counties in the state have a district attorney office with a CIU, including Los Angeles, Santa Clara, Sacramento, San Diego, Contra Costa, among others. In 2023, Attorney General Bonta established the first-ever Post-Conviction Justice Unit (PCJU) within the Department of Justice.¹

The AG's PCJU requires factual innocence in order to review a conviction.² The PCJU generally requires that a request for conviction review is made in the county where the conviction was obtained.³ The PCJU will only review cases after a referral has been made by another prosecution office or after a completed application has been submitted if the AG's Office prosecuted the case.⁴ The PCJU webpage provides:

PCJU is guided by California Rules of Professional Conduct, rule 3.8(f), which states that when a prosecutor knows of new, credible, and material evidence that shows a person was convicted of a crime they did not commit, the prosecutor must cause an investigation to determine whether somebody was wrongfully convicted. With this rule, PCJU will investigate cases where there is credible and material evidence currently available or can be reasonably obtained that shows a convicted person did not commit the crime for which they were convicted. A person does not need to fully investigate their case before applying for conviction review.⁵

¹ <https://oag.ca.gov/news/press-releases/attorney-general-bonta-establishes-first-ever-post-conviction-justice-unit>

² <https://oag.ca.gov/pcju/conviction>

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

4. Effect of This Bill

This bill is designed to outline parameters for district attorney offices that accept cases for postconviction review and to enable these offices access to materials that they would not otherwise have access to because the case is closed.

First, this bill authorizes the district attorney to file a notice with the court notifying it of intent to conduct a postconviction investigation of a claim of factual innocence. “Accepts a case for postconviction review” is defined as a CIU or other formally designated unit of a district attorney’s office that is structurally independent from the trial, appellate, and habeas litigation divisions of the office, that has formally accepted a claim of factual innocence at the request or initiation of the petitioner alleging factual innocence for internal review.

This bill provides that after notice is filed, the case is treated as if it were an open case for the purpose of investigating a claim of factual innocence. The bill specifies that the district attorney has the power to issue subpoenas and compel the production of documents and testimony, file motions necessary to investigate claims, including, but not limited to, motions for personnel records pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, motions for court-ordered appointment of counsel, and motions for removal of incarcerated individuals consistent with the district attorney’s authority under existing law and consistent with the criminal discovery process.

This bill provides guardrails to protect confidential materials by requiring the district attorney to obtain a written waiver from the petitioner or the petitioner’s counsel before discovery is authorized if the district attorney is seeking otherwise confidential materials relating to the petitioner, including, but not limited to, materials contained in the petitioner’s central file or institutional records.

Finally, this bill limits its application if any direct appeal, habeas corpus proceeding, motion for new trial, or other collateral attack concerning the same conviction is pending in any state or federal court, unless the petitioner or petitioner’s counsel agrees to the exercise of that authority.

5. Argument in Support

The Los Angeles County District Attorney’s Office, the bill’s sponsor, writes:

The State of California has enacted several new statutory remedies for defendants who believe they were unjustly convicted and added new statutory responsibilities to prosecutorial agencies to review these claims. Unfortunately, current statutes unintentionally hinder the ability of prosecutorial agencies to perform the necessary investigations of innocence claims that are part of the post-conviction work.

...Current law provides prosecutorial agencies such as ours with avenues to resources during the pendency of open cases but denies us the ability to access materials after a defendant has been convicted. This unavailability of important information hinder our Office’s ability to perform a comprehensive investigation of a post-conviction factual claim of innocence.

...

SB 1211 would solve these unintended obstacles to investigating factual innocence claims by providing prosecutorial agencies with the jurisdictional authority to investigate post-conviction claims in the same manner that our Office has to investigate open cases.

...

...Without the investigatory tools that are typically available for an open case, the truth-finding process of innocence claims is unnecessarily delayed and sometimes actually hindered.

-- END --