
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 701 **Hearing Date:** July 2, 2019
Author: Weber
Version: March 19, 2019
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Prisoners: Exoneration: Housing Costs*

HISTORY

Source: Exonerated Nation
California Attorneys for Criminal Justice

Prior Legislation: SB 1050 (Lara), Ch. 979, Stats. 2018
SB 336 (Anderson), Ch. 728, Stats. 2017
AB 672 (Jones-Sawyer), Ch. 403, Stats. 2015

Support: California Public Defenders Association; Drug Policy Alliance; Ella Baker Center for Human Rights; Root & Rebound; Tenants Together

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to provide a person who is exonerated of a crime \$5,000 upon release from prison to be used to pay for housing and entitles the exonerated person to receive direct payment or reimbursement for reasonable housing costs for between one and four years thereafter.

Existing law states that whenever a person is convicted of a charge, and the conviction was set aside based upon a determination that the person was factually innocent of the charge, the judge shall order that the records in the case, including records of arrest and detention, be sealed and allows the defendant to state that he or she was not arrested, convicted of that charge or that he or she was found innocent of that charge by the court. (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 (CalVCB). (Pen. Code, § 851.865.)

Existing law requires the CalVCB to recommend to the Legislature that an appropriation be made, without a hearing, upon receipt of the application. (Pen. Code, § 851.865.)

Existing law specifies that the rate of compensation be \$140 per day of incarceration served subsequent to the claimant's conviction. (Pen. Code, § 4904.)

Existing law prohibits this compensation from being considered gross income for state tax purposes. (Pen. Code, § 4904.)

Existing law states that any person who, having been convicted of any felony and imprisoned in the state prison or county jail for that conviction, is granted a pardon by the Governor for the reason he or she was innocent of the crime with which he or she was convicted, is eligible to present a claim against the state to the CalVCB for the monetary injury sustained by him or her through the erroneous conviction and imprisonment. (Pen. Code, § 4900.)

Existing law requires erroneously convicted and pardoned individual to present a claim to the CalVCB against the state within a period of two years after judgment of acquittal or after pardon granted, or after release from custody. (Pen. Code, § 4901, subd. (a).)

Existing law requires the Department of Corrections and Rehabilitation (CDCR) to assist a person who is exonerated as to a conviction for which he or she is serving a state prison sentence at the time of exoneration with transitional services, including housing assistance, job training, and mental health services, as applicable. (Pen. Code, § 3007.05, subd. (c).)

Existing law authorizes CDCR to determine the extent of transitional services to be made applicable. (Pen. Code, § 3007.05, subd. (c).)

Existing law requires that the CDCR provide transitional services to an exonerated person for a period of not less than six months and not more than one year from the date of release, as specified, including housing assistance, job training, and mental health services. (Pen. Code, § 3007.05, subd. (c)(1) to (5).)

Existing law requires that a person be entitled to, in addition to any other payment to which that person is entitled to by law, upon release be paid the sum of one thousand dollars (\$1,000) from funds to be made available upon appropriation by the Legislature. (Pen. Code, § 3007.05, subd. (d).)

Existing law requires the CDCR to establish a case management reentry pilot program for offenders who are likely to benefit from case management reentry strategies designed to address homelessness, joblessness, mental disorders, and developmental disabilities among offenders transitioning from prison into the community. (Pen. Code, § 3016, subd. (a).)

Existing law defines “exonerated” as a person who has been convicted and subsequently either of the following occurred:

- 1) A writ of habeas corpus concerning the person was granted on the basis that the evidence unerringly points to innocence, or the person’s conviction was reversed on appeal on the basis of insufficient evidence;
- 2) A writ of habeas corpus concerning the person was granted, either resulting in dismissal of the criminal charges or following a determination that the person is entitled to release on their own recognizance, or to bail, pending retrial or pending appeal; or
- 3) The person was given an absolute pardon by the governor on the basis that the person was innocent. (Pen. Code, § 3007.05, subd. (d).)

This bill states that in addition to any other payment to which the person is entitled to by law, a person who is exonerated shall be paid the sum of five thousand dollars (\$5,000) upon release, to be used for housing, including, but not limited to, a down payment, security deposit, or any payment necessary to secure rental housing accommodations.

This bill states that the exonerated person shall also be entitled to receive direct payment or reimbursement for reasonable housing costs for a period of not less than one year and not more than four years following release from custody.

This bill provides that payment for reimbursement pursuant to this paragraph is permitted for any rent or mortgage expense, hotel costs, or other housing accommodations. CDCR shall approve payments or reimbursements pursuant to this paragraph from funds to be made available upon appropriation by the Legislature for this purpose.

COMMENTS

1. Need for This Bill

According to the author of this bill:

People who are wrongfully convicted of crimes lose much more than their freedom. They often lose their jobs, homes, family and community as well.

The exonerated experience warrants extensive support for the injustices suffered while in prison, as well as the problems they encounter upon their release, particularly housing assistance. AB 701 will help an exonerated individual secure a safe place to live upon release.

The wrongfully convicted clearly have suffered an injustice at the hands of the state and many others, and the state is in the best position to provide meaningful support.

2. Formerly incarcerated Individuals Face Barriers to Finding Housing

According to one law review article, “Unless there is serious attention paid to community economic development, and the development of affordable housing and opportunities for gainful employment in the communities where entanglement in the criminal justice system is concentrated, these communities will be unable to breakout of the ‘carceral lattice spanning the prison and neighborhoods deeply penetrated and constantly destabilized by the penal state.’” (Orains, *“I’ll Say I’m Home, I Won’t Say I’m Free”*: *Persistent Barriers to Housing, Employment, and Financial Security for Formerly Incarcerated People in Low-Income Communities of Color* (2016) 25 UCLA NATIONAL BLACK LAW JOURNAL 23, 46.)

“Even if lenders, housing providers, and employers did not inquire about conviction history, or even if people who have a conviction history were considered a class protected from discrimination, the collateral consequences of incarceration would still act as a barrier to financial services. Put simply, there are a lot of ways to tell that someone has been in prison besides a formal record. Even a few days in jail can cost someone their job and their housing.

Several years in prison stands as an obvious and difficult to explain gap in employment and rental history.” (*Id.* at 48.)

Recently released exonerated individuals do not have a traditionally recognized work history or credit history, which affects their ability to find and obtain housing. Without access to housing, the exonerated individual is forced to either rely on friends and family or resort to homelessness.

3. Currently Available Assistance for Exonerated Individuals

Existing law allows a person who has been wrongfully convicted of a felony and imprisoned to file a claim for compensation at a rate of \$140 per day of imprisonment. (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, the claimant 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. This committee has been informed by attorneys who litigate these cases that claims where the claimant must make their case to the board take anywhere from 2 to 5 years to litigate.

Existing law also mandates that an exonerated person be provided \$1,000 upon release; the person receiving the funds is permitted to spend it however they want.

This bill provides for an additional \$5,000 in initial disbursement upon release, and additional funds be provided throughout the first year of release, and for up to four years following release specifically for housing purposes “including, but not limited to, a down payment, security deposit, or any payment necessary to secure rental housing accommodations.”

4. CDCR Is Tasked With Approving Payments

This bill states that an exonerated person shall be entitled to receive direct payment or reimbursement for reasonable housing costs for a period of not less than one year and not more than four years following release from custody. CDCR is tasked with approving payments and reimbursements. Currently, CDCR does provide some services to exonerees upon release, including referrals to transitional services including housing assistance, as well as payment of \$1,000 upon release. This bill would require an additional payment of \$5,000 for exonerees to be used specifically for housing and authorizes CDCR to approve payments and reimbursements for “reasonable housing costs” for a period of not less than one year and not more than four years following release from custody.

The term “reasonable housing cost” is not defined in the bill, and there is no guidance provided as to what factors should be considered in determining what is reasonable or what circumstances would warrant more than one year of payments or reimbursements for housing.

5. Argument in Support

According to Exonerated Nation, the sponsor of this bill:

AB 701 would provide exonerees with access to funds that would be used for housing costs. When an exoneree is released, the individual is released without a traditionally recognized work and credit history. This greatly inhibits an exoneree’s access to housing. As a result, some exonerees are forced to rely on friends, family, their attorney or resort to homelessness upon release with about 44% of exonerees living in someone else’s house or apartment indefinitely.

Access to housing is critical to aiding an exoneree with building a foundation for their future since it provides a stable home, reduces the likelihood of a transient lifestyle and will remove one burden an exoneree faces. AB 701 is a crucial component in a series of legislation that will aid exonerees after their exoneration.

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