
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 467 **Hearing Date:** January 11, 2022
Author: Wiener
Version: January 3, 2022
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Trial testimony: expert witnesses: writ of habeas corpus*

HISTORY

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

Prior Legislation: 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: California Attorneys for Criminal Justice; California Public Defenders Association; Initiate Justice

Opposition: Unknown

PURPOSE

The purpose of this bill is to expand the definition of “false evidence” for the purpose of a habeas corpus petition to include expert testimony that has been undermined by scientific research, even if the research existed at the time of the testimony and to permit a habeas to be brought on the basis that there is a reasonable dispute about the science of an expert opinion that was material or probative of the an issue at trial.

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))

This bill additionally allows a person to prosecute a writ of habeas corpus if expert opinion testimony that was material or probative on the issue of guilt or punishment was introduced and a reasonable dispute within the relevant scientific community as to the validity of the methods, theories, research, or studies upon which the expert based their opinion has developed or further developed after the person’s trial.

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 proves 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 expands the definition of false evidence to include the opinions of experts that are undermined by scientific research that existed at the time of the expert’s testimony and opinions.

COMMENTS

1. Need for This Bill

According to the author:

Senate Bill 467 further articulates the definition of false testimony to ensure that anyone wrongfully convicted of a crime due to faulty and/or unreliable scientific evidence may seek post-conviction relief. SB 467 also seeks to prevent wrongful convictions based on faulty and/or unreliable expert opinion testimony by ensuring this testimony is based on valid methodology, theory, research, studies, and/or evidence.

Studies have found that most expert testimony regarding forensic science is accepted without demonstrating the precision of its methods, its potential

limitations, or the possibility for human error. Unreliable forensic science remains a leading cause of wrongful convictions, occurring in 45% of DNA exoneration cases, 24% of all exonerations in the nation and 15% of the California exoneration cases known since 1989. In wrongful conviction cases, experts either used forensic science that was flawed or scientific methods that are widely debated within the scientific community. The National Academy of Science (NAS) states that a significant part of this problem is the “CSI effect,” where jurors have “unrealistic and preconceived notions about the availability and precision of forensic evidence in criminal trials” because of what they’ve seen on television, such as CSI. This report also found that “for many long-used types of forensic science, including fingerprint identification....experts’ conclusions were simply not supported by their methodology or training.”

When someone is wrongfully incarcerated, current law allows an individual to have their conviction reversed if they can demonstrate that false evidence was introduced against them at any hearing or trial and that this evidence substantially resulted in their conviction. SB 1058 (Leno, Chapter 623, 2014) expanded the definition of false evidence to include opinions of experts that have either: 1) been renounced by the original expert who provided the opinion at a hearing or trial; or 2) that have been undermined by later scientific research or technological advances. However, this definition has proven too narrow and there is a need to further define what false evidence is. For example, in cases where the original expert cannot retract their testimony due to unforeseen events or when there is a wide dispute within the scientific community on the merits and reliability of certain forensic science, the definition of false evidence is not met.

To address this, 467 expands the definition of false scientific evidence to also include: 1) opinions that were based on flawed scientific research or outdated technology that were flawed, and thus, were an unreliable basis from which the expert opinion was originally provided. An example of this again is microscopic hair comparison. The Federal Bureau of Investigation (FBI) used to testify that “with 100% scientific certainty” that fingerprints or microscopic hairs could be a conclusive match. Now, given scrutiny within the community of these scientific practices, they do not make these statements because they have been wrong before. In fact, the FBI admits that in the past they “went beyond the limits of science” by stating their microscopic hair comparison analysis could result in 100% matches (see attached letter). They’ve since requested that all California prosecutors re-examine any testimony that didn’t make clear the scientific limits of this type of forensic science because they worry that juries and judges may have been misled on the scientific reliability of microscopic hair comparison. Moreover, because science is ever evolving it faces scrutiny far more frequently within the scientific community rather than in the courts. As a result scientific areas where a reasonable dispute has emerged within the expert’s relevant scientific community as to the validity of methods or theories upon which the expert based their opinions would render evidence that was once received by a jury as infallible and solid evidence of one’s guilt cannot now be reliable.

However, there presently exists n California state law that allows one to challenge their conviction based on the existence of a dispute within the relevant community as to the reliability of the science, thus, they remain wrongfully incarcerated. This

expanded definition of false evidence and new legal challenge better captures what unreliable forensic science is and therefore provides innocent people the opportunity to seek justice. This definition is not a blanket exclusion of any specific forensic science. Instead, it simply responds to the reality that forensic science is ever changing and improving.

To that end, if an expert would give a different opinion today and the certainty of the forensic evidence would be weighed entirely differently given scientific developments, then a wrongfully incarcerated person could file for a conviction reversal. SB 467 ensures that these advancements and discoveries in the scientific community can be considered in cases where testimony relied on outdated understandings and applications of forensic science, which ultimately resulted in wrongful convictions.

2. False Evidence

Under existing law a person can bring a habeas corpus based on false evidence at trial. False evidence is defined including 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

This bill also expands that definition of false evidence instead of having been undermined by later scientific research or technological advances to more clearly state that it has been undermined by “scientific research, including scientific research that existed at the time the expert’s testimony was given or later scientific research or technological advances.” This change in definition would allow evidence of opinions that were based on flawed scientific research or outdated technology that were flawed, and thus, were an unreliable basis from which the expert opinion was originally provided; and scientific areas where a reasonable dispute has emerged within the expert’s relevant scientific community as to the validity of methods or theories upon which the expert based their opinions. The author asserts that this expanded definition of false evidence better captures what unreliable forensic science is and therefore provides innocent people the opportunity to seek justice. It is not a blanket exclusion of any specific forensic science. Instead, it simply responds to the reality that forensic science is ever changing and improving

3. Change in scientific evidence

In addition to the existing reasons a person may bring a writ of habeas corpus, this bill allows a writ to be brought when expert opinion testimony that was material or probative on the issue of guilt or punishment, regardless of whether it was offered by the prosecution or defense, was introduced and a reasonable dispute within the relevant scientific community as to the validity of the methods, theories, research, or studies upon which the expert based their opinion has developed or further developed after the person’s trial. The bill provides that “disputes” include both disputes about the expert’s ultimate conclusion and disputes about facts upon which the expert opinion is based. This will allow a writ to be brought when the science on which the opinion was based has come into question since the time it was introduced or even if it was questionable at the time of introduction.

4. Argument in Support

The sponsors of this bill, the California Innocence Projects, support this bill stating:

Problematic forensic science remains a leading cause of wrongful convictions, occurring in nearly half (45%) of DNA exoneration cases and one-quarter (24%) of all exonerations in the United States. Research shows that experts whose opinions led to wrongful convictions either used forensic science that was flawed or scientific methods that are widely questioned within the scientific community. The National Academy of Science (NAS) states that “for many long-used types of forensic science, including fingerprint identification....experts’ conclusions were simply not supported by their methodology or training.”

Current law allows an individual to have their conviction reversed if they can demonstrate that false evidence was introduced against them at any hearing or trial and that it substantially contributed to their conviction. SB 1058 (Leno, Chapter 623, 2014) expanded the definition of false evidence to include opinions of experts that have either 1) been renounced by the original expert who provided the opinion at a hearing or trial; or 2) that have been undermined by later scientific research or technological advances. This legislation was in response to the fact that forensic and scientific errors were the second most common cause for the wrongful conviction of innocent people in the United States.

SB 467 further clarifies that the definition of false testimony includes opinions based on flawed scientific evidence or when a reasonable scientific dispute has emerged in the relevant scientific community as to the validity of theories or methods upon which the expert based their opinions and would create a new habeas path for challenging a conviction based on evidence that is now at the heart of a reasonable dispute within the relevant community to ensure that criminal convictions are based only on reliable evidence.

Science in the courtroom brings great complexity in the criminal legal system and has caused wrongful convictions. These good sense clarifications are a step forward for California in addressing concerns set forth — by the scientific community itself — to ensure that there are avenues for justice to be served when a conviction is based on unreliable scientific evidence.

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