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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 1134                      **Hearing Date:** April 5, 2016  
**Author:** Leno  
**Version:** February 18, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Habeas Corpus: New Evidence: Motion to Vacate Judgment: Indemnity*

### HISTORY

**Source:** California Innocence Project  
Northern California Innocence Project  
Loyola Project for the Innocent  
American Civil Liberties Union

**Prior Legislation:** 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:** A New Path; A New Way of Life Re-Entry Project; California Attorneys for Criminal Justice; California Catholic Conference; California Civil Liberties Advocacy; Friends Committee on Legislation of California; John Van de Kamp, former California Attorney General; Judge Ladoris H. Cordell (Ret.); Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Ella Baker Center for Human Rights; Legal Services for Prisoners with Children

**Opposition:** None known

### PURPOSE

*The purpose of this bill is to allow the granting of a habeas corpus petition based on new evidence which "is credible, material and presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial."*

*Existing law* provides that every person unlawfully imprisoned or restrained of his or her liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of such 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:

- 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; or
- 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. (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).)

*This bill* would add, as grounds for a writ of habeas corpus, when 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.

*This bill* provides that for purposes of this section “new evidence” means evidence that has been discovered after trial, that could not have been discovered prior to trial but the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

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

Existing law provides that the express factual findings made by the court, including credibility determinations, in considering a petition for a habeas corpus, a motion to vacate or an application for a certificate of factual innocence shall be binding on the Attorney General, the factfinder, and the California Victim Compensation and Government Claims board. (Penal Code § 1485.5 (c))

*This bill* clarifies that the above is true in both contested and uncontested proceedings.

*Existing law* provides that in a contested proceeding, if a court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained, the court vacates a judgment on the basis of new evidence concerning a person who is no longer unlawfully imprisoned or restrained and if the court finds that the new evidence on the petition *points unerringly to innocence*, that finding shall be binding on the California Crime Victims Compensation and Government Claims board for acclaim 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 a claim paid. (Penal Code § 148.55(a))

*This bill* provides instead 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 the that the person is factually innocent, that finding shall be binding on the California Victim Compensation and Government Claims 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 a claim paid.

*Existing law* if the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained on any ground other than new evidence that points unerringly to innocence or actual innocence, the petitioner may move for a finding of innocence by a preponderance of evidence that the crime with which he or she was charged was either not committed at all, or if committed, was not by him or her. (Penal Code § 148.55(b))

*This bill* instead provides that in a contested or uncontested proceeding, if the court grants a writ of habeas corpus and did not find the person factually innocent in the habeas corpus proceedings, the petition may move for a finding of innocence by a preponderance of the evidence that the crime with which he or she was charged was either not committed at all, or if committed, was not by him or her.

*Existing law* provides that for the purposes of this section, “new evidence” means evidence that is not available or known at the time of trial that completely undermines the prosecution case and points unerringly to innocence. (Penal Code § 148.55(g))

*This bill* deletes the above provision.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

Under existing California law, an inmate who has been convicted of committing a crime for which he or she claims that s/he has new evidence that points to innocence may file a petition for writ of habeas corpus. The burden for proving that newly discovered evidence entitles an individual to a new trial is not currently defined by statute, but has evolved from appellate court and California Supreme Court opinions. In order to prevail on a new evidence claim, a petitioner must undermine the prosecution's entire case and “point unerringly to innocence with evidence no reasonable jury could reject” (*In re Lawley* (2008) 42 Cal.4th 1231, 1239). The California Supreme Court has stated that this standard is very high, much higher than the preponderance of the evidence standard that governs other habeas claims. (*Ibid.*) In fact, this standard is so high that it is nearly impossible to meet absent DNA evidence, which exists only in a tiny portion of prosecutions and exonerations. For example, if a petitioner has newly discovered evidence that completely undermines all evidence of guilt—in other words, if the evidence completely disproves every piece of evidence in the prosecution’s original case—and shows that the original jury would therefore definitely not have convicted, but the new evidence does not “point unerringly to innocence,” the petitioner will not have met the standard and will have no chance at a new trial. Thus, someone who would likely never have been convicted if the newly discovered evidence had been available in their original trial is almost guaranteed to remain in prison under the status quo in California.

The proposed new standard in SB 1134 addresses this anomaly. Our criminal justice system was built on the understanding that even innocent people cannot always affirmatively prove innocence, which is why the burden is on the prosecution to prove guilt when a charge is brought to trial, and absent evidence of guilt beyond a reasonable doubt, innocence is presumed. The new standard contained in this bill ensures that innocent men and women do not remain in prison even after new evidence shows that a conviction would not have occurred had it been available.

SB 1134 seeks to bring California's innocence standard into line with the vast majority of other states' standards, forty-three in total, and to bring it closer in line with other postconviction standards for relief such as ineffective assistance of counsel, or prosecutorial misconduct, and not so unreasonably high.

As a result of the onerously high standard governing new evidence claims, individuals often choose to re-package evidence of innocence into other types of claims, such as ineffective assistance of counsel for example. The impact of this is not just a dearth in case law on new evidence claims but it also means that some exonerees may never receive legal recognition of their innocence. To illustrate, consider the case of Maurice Caldwell. Caldwell was convicted of murder in 1991 based on the mistaken identification of a single eyewitness. Investigators later established that it was scientifically impossible for the witness to have identified the perpetrator from her vantage point, thus rendering his conviction invalid. It was not for the fact that there was new evidence available, however, that the conviction was overturned. It was a claim of ineffective assistance of counsel that ultimately ended Caldwell's wrongful incarceration.

This misleading and often farcical repackaging of legitimate claims of innocence into other unrelated claims, such as ineffective assistance of counsel, is the direct result of the impossibly high standard for new evidence as it currently stands. California judges are forced to determine not whether the person's new evidence shows that he is innocent, but whether the new evidence shows his attorney was ineffective, even when the attorney could not have known about the evidence, as in the case of DNA. The effect of the law is that courts must decide whether a person's conviction should be reversed based on something other than their claim of innocence, and innocent people are often denied because their claims (understandably) do not fit into a category they were not intended to.

## **2. Habeas Corpus**

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 Penal Code section 1473(a): "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:

- 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;
- 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; and,
- 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.

### 3. Standard

In California, there is no codified standard of proof for a writ of habeas corpus brought on the basis of new evidence. The current standard is based on case law. *In re Lawley* (2008) 42 Cal. 4<sup>th</sup> 1231, 1239 found that newly discovered evidence “must undermine the entire prosecution case and point unerringly to innocence or reduced culpability;” and “if ‘a reasonable jury could have rejected the evidence presented, a petition has not satisfied his burden.” This bill would instead set the standard for the granting of a writ of habeas corpus as “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.” As noted in the author’s statement, this standard will make California’s postconviction standard consistent with 43 other states.

According to the February 3, 2016 report of National Registry of Exonerations at the University of Michigan Law School there were 149 exonerations nationwide in 2015, five of which were in California. That was five exonerations under a standard that is higher than the standard in most other states, it is unclear how many others were denied a hearing because they did not meet the standard who would be eligible under this standard to have their habeas corpus petition heard.

### 4. Victims Compensation Board

This bill also makes conforming changes, making it clear if there is a finding of factual innocence by a court then the Victim Compensation and Government Claims Board shall make a recommendation for an appropriation to the Legislature.

### 5. Support

In support former Attorney General John Van de Kamp states:

To win a claim of factual innocence under current California case law, an individual must “undermine the entire prosecution case and point unerringly to innocence” with evidence that no “reasonable jury would reject.” This standard is the most difficult in the country and is so impossibly high that it functions as a barrier to wrongfully convicted individuals seeking justice in our criminal justice system. SB 1334 amends California Penal Code to incorporate a standard of proof in line with the standards in 43 other states.

SB 1134 will allow courts to grant relief to innocent people who have new evidence that is so strong that it “would likely than not changed the outcome at trial.” The “more likely that not” standard proposed by the bill is clear and is a

standard familiar to the courts. It is still a very high standard, but a fair one. To prevail with a claim of factual innocence under the bill, an individual must still have new evidence that “is credible, material, presented without substantial delay,” and “admissible” and that “could not have been discovered prior to the trial by the exercise of due diligence.”

The bill provides a vital claim to innocent individuals who do not have another recourse under other habeas claims such as false testimony, *Brady* violations or ineffective assistance of counsel. Under the current standard, those innocent individuals have little chance of proving their innocence, so remain wrongfully imprisoned. SB 1134 gives these individuals a fair chance to prove their innocence and the criminal justice system a chance to rectify the wrongful imprisonment of innocent individuals.

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