
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 1468 **Hearing Date:** April 26, 2022
Author: Glazer
Version: March 14, 2022
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Factual innocence*

HISTORY

Source: After Innocence

Prior Legislation: None

Support: California Attorneys for Criminal Justice; California Innocence Coalition; Northern California Innocence Project, California Innocence Project, Loyola Project for The Innocent; California Public Defenders Association; Californians for Safety and Justice

Opposition: None known

PURPOSE

The purpose of this bill is to provide non-monetary relief in the form of updating records and a certificate of factual innocence to people who have been found factually innocent by a court.

Existing law provides that 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, the judge shall 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. If such an order is made, the court shall give the defendant a copy of that order and inform the defendant that he or she may thereafter state he or she was not arrested for that charge and that he or she was not convicted of that charge, and that he or she was found innocent of that charge by the court. The court shall also inform the defendant of the availability of indemnity for persons erroneously convicted and the time limitations for presenting those claims. (Pen. Code Sec. 851.86)

This bill provides that the defendant shall also be provided with the nonmonetary relief that is available pursuant to this bill.

Existing law provides that when a person is found factually innocent, either after a habeas corpus petition, motion, or after the dismissal of charges, a person is entitled to specified monetary compensation. (Pen. Code Sec. 1485.55; 4900; 4902)

This bill provides that in addition to compensation through the VCB and Legislature, the person shall be granted the nonmonetary relief that is available pursuant to this bill.

Existing law provides that when the VCB has found that a claimant has sustained injury through their erroneous conviction, the VCB shall report the facts of the case and its conclusions to the Legislature and recommend an appropriation of \$140 per day of incarceration. (Pen. Code Sec. 4904)

This bill provides that if the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, or the Attorney General's office has not met their burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense, the claimant shall be entitled to the following relief:

- 1) The Department of Justice shall, within two weeks do all the following:
 - a. Issue to the claimant a certificate of innocence on Department of Justice letterhead, stating the charge set forth in the original and any amended accusatory pleading that resulted in the former conviction, the fact and date of the former conviction, the number of days that the claimant was incarcerated solely as a result of the former conviction, the number of days that the individual was on parole, community supervision, or was required to register as a sex offender solely as a result of the former conviction, and that the claimant has been found by the State of California to be factually innocent of the crime underlying the former conviction and has hereby been exonerated.
 - b. Annotate the claimant's state summary criminal history information to state, directly next to or below the entry or entries regarding the former conviction that the claimant has been found by the State of California to be innocent of the crime underlying the former conviction.
 - c. Request that any local, state, or federal agency or entity to which the Department of Justice has provided criminal offender record information regarding the claimant annotate its records to state the claimant has been found by the State of California to be innocent of the crime underlying the former conviction. Each state or local agency or entity within the State of California receiving such a request shall annotate its records accordingly.
- 2) The law enforcement agency that has jurisdiction over the offense underlying the conviction at issue shall, within two weeks, do both of the following:
 - a. Annotate any local summary criminal history information for the claimant to state, directly next to or below the entry or entries regarding the former conviction, that the claimant has been found by the State of California to be innocent of the crime underlying the former conviction.
 - b. Request that any local, state, or federal agency or entity to which the law enforcement agency has provided criminal offender record information regarding the claimant annotate its records to state that the claimant has been found by the State of California to be innocent of the crime underlying the former conviction. Each state or local agency or entity within the State of California receiving such a request shall annotate its records accordingly.

This bill provides that any person who has been found factually innocent prior to January 1, 2023 is entitled to the nonmonetary relief it creates.

This bill provides that if the Department of Justice receives notice that a person has received a finding of innocence, it shall send notice of that fact to all officers and agencies it had previously notified of the arrest or other proceedings against the person.

Existing law includes what shall be included in a person's criminal record information. (Pen. Code Sec. 13102)

This bill provides that a finding of factual innocence shall be included in the criminal record information.

This bill provides that when a court orders a finding of factual innocence the court shall report the proceeding and the finding of innocence to the Department of Justice.

COMMENTS

1. Need for This Bill

According to the author:

Individuals released after having been imprisoned for crimes they did not commit face many barriers to rebuilding their lives. For many, a core problem is having their exonerations and innocence recognized by others.

For example, when they apply for jobs or housing, they typically find that prospective employers and landlords will learn about their conviction and incarceration by reviewing commercial background checks, online research, or their employment or rental histories. But those sources typically do not include subsequent exonerations or findings by the state of factual innocence. As a result, prospective employers or landlords have no reason to believe that applicants were exonerated and found innocent, and the individuals have no simple way to prove otherwise. (The court orders finding them factually innocent are typically lengthy legal documents that do not concisely present the bottom line: that these individuals have been found innocent of the crimes for which they were incarcerated.)

In addition, their Department of Justice criminal history summary records – which are seen by law enforcement, state agencies and some employers – do not reflect the findings of factual innocence. As a result, even after emerging from wrongful incarceration and having been found factually innocent by the state, these individuals unfairly bear the burden of proving their innocence to employers, landlords and others, and also run the risk that police will treat them as convicts. Further, they often suffer the ongoing psychological impacts of being perceived as “guilty” of crimes they did not commit.

This bill would reduce barriers to reentry for individuals who were released from prison after wrongful incarceration, and were found by the State of California to be innocent of the crimes for which they were imprisoned, by entitling them to one-page Certificates of Innocence from the Department of Justice. The bill would also require that their statewide and local “rap sheets” be annotated to reflect the findings of factual innocence they received.

2. Factual Innocence

Under existing law there are a number of ways in which a person may be found by a state or federal court to be factually innocent. A person found factually innocent is entitled to reimbursement for their time served. The Victim's Compensation Board (VCB) makes a recommendation to Legislature to appropriate the funds.

This bill clarifies that when a court finds a person factually innocent, the court shall notify the DOJ of that fact and the DOJ shall in turn include it in its criminal record information and notify anyone to whom they have sent a criminal record.

3. Nonmonetary relief

This bill creates the right to the following "nonmonetary relief" for anyone that has been found to be factually innocent.

a) Certificate of Innocence

This bill provides that within two weeks of being notified that a court has found a person factually innocent, the DOJ shall issue to the claimant a certificate of innocence and sets forth what that certificate shall include.

Is the DOJ the proper entity to issue a certificate of innocence? Would it be more appropriate coming from the court that made the determination? If the concern that it be uniform, couldn't Judicial Council come up with a form? The courts are as much a representative of the State as DOJ. If the issue is the abstract of judgement a person would receive is too confusing, the court could attach a more easily understood certificate of innocence. If DOJ is required to automatically issue the certificate, will they know where to send it? The court's notification of innocence will not necessarily include a current address.

b) Annotate claimant's criminal history

This bill provides that within two weeks of being notified that a court has found a person factually innocent, the DOJ and any local law enforcement agency having jurisdiction over the case, shall annotate any local summary criminal history information for the claimant to state, directly next to or below the entry or entries regarding the former conviction that the claimant has been found by the State of California to be innocent of the crime underlying the former conviction.

c) Have other agencies update their records

This bill provides that within two weeks of being notified that a court has found a person factually innocent, the DOJ and any local law enforcement agency having jurisdiction over the case, shall request that local, state, or federal agencies or entities to which the DOJ has provided records, update their records to reflect the innocence.

d) Retroactivity

This bill provides that anyone who received a finding of factual innocence before the effective date of this bill is entitled to this relief upon a request to the DOJ. Will two weeks be enough time for the DOJ to meet their duties in this bill if they get a number of requests after this bill takes effect? Should the DOJ be given more time to respond to these retroactive requests?

4. Technical suggestions

This bill amends Penal Code Section 4904 in a way where (a) and (b) are separated and so the reference to the DOJ failing to meet their burden would no longer seem to apply to the provision in (b) which requires the VCB to send notify the legislature about an appropriation for a claimant. The author should consider clarifying this along the way.

In the newly recreated Penal Code Section 11105.55 a number of sections where a finding of factual innocence can be made are referenced including Penal Code 4904. Technically Penal Code 4904 is not a finding of factual innocence section so should probably be deleted.

5. Argument in Support

According to The California Innocence Coalition:

The California Innocence Coalition (CIC) consists of the three innocence projects in California: the California Innocence Project, the Northern California Innocence Project and the Loyola Project for the Innocent. The mission of our projects is to protect the rights of the innocent by litigating their cases to bring them home and to promote a fair and effective criminal legal system by advocating for change in California laws and policy. Collectively, the California Innocence Coalition has won the freedom of over 70 wrongly imprisoned individuals who collectively lost over 800 years in prison for crimes they did not commit.

One of our core missions at the CIC is to ease reentry for wrongfully convicted individuals. Unfortunately, even after the State of California finds our clients to be factually innocent of the crimes for which they were imprisoned, many exonerees nevertheless struggle to prove their innocent, exonerated status to critical authorities. Exonerees are regularly denied jobs or housing simply because prospective employers or landlords discover their conviction via commercial background checks, online research, or rental histories. All too often, these sources do not indicate subsequent exonerations or findings of factual innocence. Similarly, the Department of Justice's criminal history summary records – which are viewed by law enforcement, state agencies, and some employers – do not reflect findings of factual innocence.

Such inaccurate records force exonerees to bear the burden of proving their innocence to societal gatekeepers, while simultaneously fearing that police will treat them as convicts. As one can imagine, documents from reputable third-party sources that indicate an exoneree's criminal past will often outweigh an exoneree's verbal claim to innocence, making the burden of proving their innocence all but impossible in many cases.

SB 1468 is critical to ensure that official records reflect one's exonerated and innocent status. The bill requires the Department of Justice and local law enforcement agencies to update an exoneree's criminal history summary record so as to reflect their finding of factual innocence. Moreover, the bill provides that at the time an individual is found to have been factually innocent of the crime for which they were convicted, the Department of Justice will issue that individual a Certificate of Innocence. The Certificate will include information regarding an exoneree's conviction, sentence, and eventual finding of factual innocence.

The wrongfully convicted have lost years of their lives for crimes they did not commit. The State of California owes it to its innocent exonerees to ensure that their wrongful conviction does not itself present a barrier to important life opportunities upon release. Similarly, law enforcement and other authorities deserve accurate records that can allow them to make informed decisions.

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