
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 321 **Hearing Date:** March 21, 2017
Author: Monning
Version: February 13, 2017
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Compensation for Wrongful Conviction: Hearings by a Special Master*

HISTORY

Source: California Attorneys for Criminal Justice
California Innocence Project

Prior Legislation: AB 1802 (Chavez), 2015-16 Legislative Session, held in Assembly Appropriations' Suspense File
AB 672 (Jones-Sawyer), Ch. 403, Stats. 2015
SB 635 (Nielsen), Ch. 422, Stats. 2015
SB 1058 (Leno) Chapter 623, Stats. 2014
SB 618 (Leno), Ch. 800, Stats. 2013
AB 316 (Solorio), Ch. 432, Stats. 2009
AB 2937 (Solorio), 2007-08 Legislative Session, vetoed
AB 1799 (Baugh), Ch. 630, Stats. 2000

Support: American Civil Liberties Union of California

Opposition: California District Attorneys Association (Oppose Unless Amended)

PURPOSE

The purpose of this bill is to provide for a Special Master to oversee hearings to determine compensation after a wrongful conviction.

Existing law establishes procedures for the filing and hearing of a petition for a writ of habeas corpus, which allows a person to challenge his or her incarceration or related restraint as unlawful. (Pen. Code, §§ 1474-1508.)

Existing law requires the court to inform a person whose conviction has been set aside based upon a determination that the person was factually innocent of the charge of the availability of indemnity for persons erroneously convicted and the time limitations for presenting those claims. (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 Board (Board). Upon application the Board shall, without a hearing, recommend to the Legislature that an appropriation be made. (Penal Code § 851.865.)

Existing law provides that any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison for that conviction, is granted a pardon by the Governor for the reason that 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, or who, being innocent of the crime with which he or she was charged for either of the foregoing reasons, shall have served the term or any part thereof for which he or she was imprisoned, may, as specified, present a claim against the state to the board for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment. (Pen. Code, § 4900.)

Existing law gives erroneously convicted and pardoned individuals two years to file a claim against the state. (Pen. Code, § 4901.)

Existing law sets the rate of compensation at \$140 per day of incarceration served subsequent to the claimant's conviction, and specifies that this appropriation shall not be considered gross income for state tax purposes. (Pen. Code, § 4904.)

Existing law provides that there is within the Government Operations Agency the Board that consists of the Secretary of Government Operations or his or her designee and the Controller, both acting ex officio, and a third member who shall be appointed by and serve at the pleasure of the Governor. The third member may be a state officer who shall act ex officio. (Gov. Code, § 13901.)

This bill requires the Governor to appoint a Special Master who shall serve at the pleasure of the Governor. The special master shall oversee all wrongful conviction claim hearings.

This bill requires the Special Master to be an individual who is qualified by education, training, and work experience in taking evidence, making determinations of fact, and applying the facts to law, particularly in the area of wrongful convictions.

This bill requires hearings on wrongful conviction claims to be heard by the Special Master.

COMMENTS

1. Need for This Bill

According to the author of this bill:

When an individual is wrongful incarcerated by the state, California has an obligation to compensate that person for the unjust loss of their freedom. Current law provides wrongfully incarcerated individuals the ability to petition the California Victim's Compensation Board (Board), within two years of their release, for compensation equivalent to \$140 for each day of unjust incarceration.

The existing compensation process presents many hurdles for recently released exonerees who have almost no resources or guidance in pursuing restitution for their unjust sentence. In order to receive compensation, exonerated persons must prove to the Board, by a preponderance of the evidence, that a crime was either not committed, or that they were not the perpetrator of the crime. The claims process, which can take up to three of four years to complete, does not provide

exonerated individuals with legal counsel, and requires the Attorney General to present adversarial evidence in opposition to the exonerated person's claim.

The Victim's Compensation Board, which reviews compensation claims, is a three member body comprised of the Secretary of the Government Operations Agency, the California State Controller, and a member appointed by the Governor. These members are typically not experienced in the finding of facts or the legal nuances involved in wrongful convictions. This lack of expertise has resulted in the Board overwhelmingly siding with the Attorney General and denying many exoneree compensation claims.

SB 321 will move the compensation hearing process from the three-member Victim's Compensation Board, and place it under the administration of a special master that has the education and experience necessary to properly assess the validity of compensation claims under the current legal standard. Placing the investigation of exoneree claims under a special master will allow for a more efficient and faster claims process, and provide a more impartial decision as to whether compensation is appropriate for a given exoneree. The measure will also provide needed relief on the Victim's Compensation Board, and allow it to focus on its mission of determining compensation for victims of crime in California.

2. Claims by Wrongly Convicted and Imprisoned Persons

California law allows a factually innocent person -- an "exonoree" -- who has been wrongfully convicted of a felony and imprisoned to apply for compensation at a rate of \$140 per day. (Pen. Code, § 4904.) If a claimant has first obtained a declaration of factual innocence from a court, this finding is binding on the 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, a person 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. While the process was somewhat streamlined by SB 613 (Leno, Chapter 800, Statutes of 2013) which required the board to recommend compensation, without an additional hearing, for persons who have been declared factually innocent by a court, there are still concerns that the claim process is unduly long and that the members of the board may not be the best persons to make these determinations. In order to remedy these issues, this bill requires a special master who is required

to have a certain level of experience in the area wrongful convictions to oversee these types of claims, while the victim compensation claims will remain with the Board.

3. Support

According to the California Innocence Project, the sponsor of this bill:

Although the process was originally designed to be simple and efficient – the claims form itself is only two pages long – in practice the resolution of these claims have become incredibly difficult and lengthy. The Board handles hundreds of claims every year, but only a small fraction – 1% or less – of those claims relate to exonerees. When the Board does address innocence claims, the practical realities of the process demonstrates an unfamiliarity with the conviction reversal process, and a lingering suspicion the original conviction was accurate, regardless of the fact the conviction was reversed by a judge, and even when the conviction is reversed after new evidence (like DNA testing or the recantation of a prosecution witness) shows the claimant is innocent. Indeed, and unfortunately, the Board’s decisions have, in the past, shown reluctance and skepticism of court findings in these matters, and as a result, many wrongfully convicted individuals have been denied compensation when a court finds them innocent.

SB 321 directly addresses these concerns. The bill amends the process by which innocent claimants are considered for compensation, and provides for a Special Master who is qualified by education, training, and work experience in taking evidence, making determinations of fact, and applying the facts to the law, particularly in the area of wrongful convictions. In sum, the bill dramatically improves the Board’s approach to exonerees in ensuring their claims are properly addressed and resolved.

4. Opposition

The California District Attorneys Association opposes this bill unless amended to further clarify who would qualify as a Special Master:

While it makes sense to have an experienced jurist make these decisions, we are concerned that the qualifications currently set forth in this would require a person to have a particular experience in wrongful convictions. It is unclear whether the current language is sufficient to limit the special master to a jurist, rather than a professor who, for example, may have sat on an administrative panel. As currently drafted, we are concerned that the bill would favor those with a belief that there are not enough wrongful convictions to be “experienced in that area,” and, thus, be biased in that direction.

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