
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 446 **Hearing Date:** April 6, 2021
Author: Glazer
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Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Factual innocence*

HISTORY

Source: Author

Prior Legislation: SB 1137 (Monning), never heard in committee, 2020
SB 269 (Bradford), Ch. 473, Stats. 2019
SB 1134 (Leno), Ch. 785, Stats. 2016
SB 1058 (Leno) Ch. 623, Stats. 2014
SB 618 (Leno), Ch. 800, Stats. 2013
AB 319 (Solorio), Ch. 432, Stats. 2009

Support: Alameda County Probation; California Attorneys for Criminal Justice; California Catholic Conference; California Coalition for Women Prisoners; California Innocence Coalition; Contra Costa County Probation Department; Drug Policy Alliance; Ella Baker Center for Human Rights; Initiate Justice; National Association of Social Workers, California Chapter; San Francisco Public Defender; San Mateo County Participatory Defense

Opposition: None known

PURPOSE

The purpose of this bill is to change existing procedures related to wrongful conviction compensation claims to shift the burden on the state to prove that the claimant is not entitled to compensation in specified cases.

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

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 a hearing or trial relating to the person's incarceration;

- False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person; or,
- New evidence, as defined, 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.

(Pen. Code, § 1473, subd. (b).)

Existing law authorizes a person no longer unlawfully imprisoned or restrained to prosecute a motion to vacate a judgment for any of the following reasons:

- Newly discovered evidence of fraud by a government official that completely undermines the prosecution's case, is conclusive, and points unerringly to his or her innocence;
- Newly discovered evidence that a government official testified falsely at the trial that resulted in the conviction and that the testimony of the government official was substantially probative on the issue of guilt or punishment; or,
- Newly discovered evidence of misconduct by a government official committed in the underlying case that resulted in fabrication of evidence that was substantially material and probative on the issue of guilt or punishment. Evidence of misconduct in other cases is not sufficient to warrant relief under this paragraph. (Pen. Code, § 1473.6, subd. (a).)

Existing law authorizes a person who is no longer in criminal custody to file a motion to vacate a conviction or sentence when newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice. (Pen. Code, § 1473.7, subd. (a)(2).)

Existing law states 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. (Pen. Code, § 851.86.)

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 to the California Victim Compensation Board ("board"). (*Id.*; Pen. Code, § 4900.)

Existing law states that if a person has secured a declaration of factual innocence, the finding shall be sufficient grounds for compensation by the 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 if the district attorney or the Attorney General (AG) stipulates to or does not contest the factual allegations underlying one or more grounds for granting a writ of habeas corpus or a motion to vacate a judgement, the facts underlying the basis for the court's ruling shall be binding on the AG, the factfinder, and the board. (Pen. Code, § 1485.5, subd. (a).)

Existing law states that in a contested or uncontested proceeding, the express factual findings made by the court in considering a petition for habeas corpus, a motion to vacate judgment, or an application for a certificate of factual innocence, shall be binding on the AG, the factfinder, and the board. (Pen. Code, § 1485.5, subd. (c).)

Existing law states 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 that the person is factually innocent, that the finding shall be binding on the 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 the claim paid. (Pen. Code, § 1485.55, subd. (a).)

Existing law provides that, in a contested or uncontested proceeding, if the court has granted a writ of habeas corpus or vacated a judgment, as specified, the person may move for a finding of factual innocence by a preponderance of the evidence that the crime with which they were charged was either not committed at all or, if committed, was not committed by the petitioner. (Pen. Code, § 1485.55, subd. (b).)

Existing law states that if the court makes a finding that the petitioner has proven their factual innocence by a preponderance of the evidence, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and any claim filed shall be paid. (Pen. Code, § 1485.55, subd. (c).)

This bill specifies that the finding of factual innocence may be under any standard for factual innocence applicable in those proceedings.

Existing law states that a presumption does not exist in any other proceeding for failure to make a motion or obtain a favorable ruling on factual innocence. (Pen. Code, § 1485.55, subd. (d).)

This bill additionally provides that no res judicata or collateral estoppel finding in any other proceeding shall be made for failure to make a motion or obtain a favorable ruling on factual innocence.

This bill clarifies that “court” in the above provisions is defined as a state or federal court, unless otherwise stated.

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 or county jail 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 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 gives erroneously convicted and pardoned individuals ten years after acquittal, pardon or release of custody to file a claim against the state. (Pen. Code, § 4901.)

Existing law states that if a person has secured a declaration of factual innocence or if the court has granted a writ of habeas corpus or vacated a judgement and has found that the person is factually innocent, the board, shall, within 30 days of the presentation of the claim, calculate compensation and recommend to the Legislature payment of that sum. For any other claim, the AG shall respond to the claim within 60 days or request an extension of time, upon a showing of good cause, and the board shall fix a time and place for the hearing of the claim. (Pen. Code, § 4902, subd. (a)-(b).)

Existing law states that, except in cases where there is a finding of factual innocence, the board shall fix a time and place for the hearing of the claim. At the hearing the claimant shall introduce evidence in support of the claim and the AG may introduce evidence in opposition thereto. The claimant shall prove the facts set forth in the statement constituting the claim, including the fact that the crime with which they were charged was either not committed at all, or, if committed, was not committed by the claimant, and the injury sustained by them through their erroneous conviction and incarceration. (Pen. Code, § 4903, subd. (a).)

This bill provides that if a state or federal court has granted a writ of habeas corpus or if a state court has granted a motion to vacate based on newly discovered evidence of fraud or false testimony by the government or newly discovered evidence of actual innocence, and the charges are subsequently dismissed, or the person was acquitted of charges on a retrial, the board shall, upon application of the person, and without a hearing, recommend to the Legislature that an appropriation be made and the claim paid, unless the AG establishes that the claimant is not entitled to compensation.

This bill provides that if any of the above circumstances applies in a claim for compensation, the board shall, within 60 days of the presentation of the claim, calculate the compensation for the claimant and recommend to the Legislature payment of the sum, unless the AG objects in writing within 45 days from when the claimant files the claim. The AG may request a single 45-day extension of time, upon a showing of good cause.

This bill provides that upon receipt of the AG's objection, the board shall fix a time and place for the hearing of the claim, and shall provide notice to the claimant and the AG at least 15 days prior to the fixed time for the hearing. At the hearing the AG shall bear the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. If the AG fails to meet this burden, the board shall recommend to the Legislature payment of the compensation sum.

This bill states that a conviction reversed and dismissed is no longer valid, thus the AG may not:

- Rely on the fact that the state still maintains that the claimant is guilty of the crime for which they were wrongfully convicted;
- Rely on the fact that the state defended the conviction against the claimant through court litigation;
- Rely on the fact that there was a conviction against the claimant through court litigation;

- Rely on the fact that there was a conviction to establish that the claimant is not entitled to compensation; or,
- Rely solely on the trial record to establish that the claimant is not entitled to compensation.

This bill states that a presumption does not exist in any other proceeding if the claim for compensation is denied and no res judicata or collateral estoppel finding shall be made in any other proceeding if the claim for compensation is denied.

This bill makes other conforming changes.

COMMENTS

1. Need for This Bill

According to the author of this bill:

This bill would remove barriers to compensation for those who have been proven to be wrongfully convicted.

Since 1989, 212 California inmates have obtained court reversals of their convictions and have been released from prison after spending years fighting to prove their wrongful conviction and decades unjustly behind bars, according to the National Registry of Exonerations.

However, once these wrongly convicted persons have obtained court reversals, they must re-litigate their case to ensure they are fairly compensated. Not only do they have to prove their innocence, they must meet a higher legal standard than for a court reversal of their conviction.

In seeking to be compensated by the California Victim Compensation Board, those same persons are required to provide added evidence such as providing DNA evidence, having law enforcement agree that the person is innocent, or identifying the true perpetrator. This is not required for a court reversal.

Of the 120 compensation cases since the current system has been in place, only 46, or 38%, have been approved, according to the California Victim's Compensation Board, Claims for Erroneously Convicted Persons.

Under current law, persons can have their wrongful convictions reversed if they show by a preponderance of evidence that a reasonable jury would not have convicted them.

But, in seeking to be compensated for their wrongful imprisonment, those same persons are required to provide added evidence to the California Victim Compensation Board. They have to prove that they are actually innocent in order to be compensated.

The bill . . . recognizes that the wrongfully convicted are once again presumed innocent. It shifts the burden of proof to the State to determine whether compensation should be granted. This bill would make the standard for compensation essentially the same as the standard that the court applied when it found the person was wrongfully convicted.

2. Writ of Habeas Corpus

Writ of 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 subdivision (a) of Penal Code section 1473: "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: (1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to his or her incarceration; (2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person; or (3) 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. (Pen. Code, §1473, subd. (b).)

Other avenues of challenging a conviction include a motion to vacate the judgement after being released. Such motions may be pursued in a couple of situations, including when new evidence is discovered that tends to prove the defendant is innocent, and when it is discovered that false evidence was used in trial and it was material and substantial in proving the defendant's guilt. (See Pen. Code, §§ 1473.6 and 1473.7, subd. (a)(2).)

This bill provides that if a writ of habeas corpus has been granted or if a motion has been granted to vacate a conviction based on newly discovered evidence of fraudulent or false testimony by the government or newly discovered evidence of actual innocence, and the charges are subsequently dismissed, or the person was acquitted of charges on a retrial, the board shall, upon receiving an application for compensation, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid, unless the AG objects to the claim and establishes that the claimant is not entitled to compensation.

3. Compensation for the Wrongfully Convicted

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 board and the 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. (Pen. Code, § 4903, subd. (a).) 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.) The AG may introduce evidence in opposition of the claim. (Ibid.) At the hearing, the board considers all of the evidence presented and makes a determination as to whether the claimant has met the requisite burden of proof.

This bill instead shifts the burden of proof from the claimant to prove that they are entitled to compensation onto the AG to prove that the claimant is not entitled to compensation in specified cases. Specifically, this bill provides that if a state or federal court grants a writ of habeas corpus or if a state court grants a motion to vacate based on newly discovered evidence, as specified, and as a result of either or those actions the charges are dismissed or the person is acquitted of the charges on a retrial, the person shall be entitled to payment on his or her claim without a separate hearing, unless the AG objects in writing within 45 days of the filing of the claim for compensation. The board would then be required to hold a hearing where the AG would have the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. If the AG fails to meet this burden, the board shall recommend to the Legislature payment of the compensation sum.

4. Argument in Support

According to the California Innocence Coalition:

California has long recognized its obligation to compensate the innocent for their wrongful incarceration. However, the current process is inefficient, unduly burdensome, and not consistently just. Current law allows a wrongfully incarcerated individual to petition the California Victim's Compensation Board (VCB) within ten years of their release for compensation of \$140 for each day of their wrongful incarceration. However, in order to receive compensation, exonerated persons must prove either to a court or to the VCB by a preponderance of the evidence, that a crime was either not committed or, if committed, that they were not the perpetrator of the crime. For our clients, a court has already found that they were wrongfully convicted by the State and reversed their conviction, restoring the presumption of innocence. Yet, even though the State has dismissed the charges or the person was acquitted after a retrial the individual must then, through additional litigation, affirmatively prove that they are innocent to receive compensation. The claims process typically takes 2.5 years to complete and involves lengthy litigation, leaving many of our clients without compensation at all.

SB 446 would ensure a more fair process by shifting the burden of proof to the state to prove why an individual is not entitled to compensation. Instead of placing the burden of proof on the claimant to prove to the Victims Compensation Board that they are factually innocent, the burden instead shifts to the Attorney General to object to only those claims in which they believe the person should not be compensated. The Attorney General must then prove by clear and convincing evidence that the claimant is not entitled to compensation.

The wrongfully convicted have already lost years of their lives proving their innocence in the Courts. These individuals deserve a just and comprehensive process to ensure that they are rightfully compensated. We believe SB 446 will do just that.

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