
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 78 **Hearing Date:** March 28, 2023
Author: Glazer
Version: January 12, 2023
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal procedure: factual innocence*

HISTORY

Source: The California Innocence Project/ Northern California Innocence Project

Prior Legislation: SB 981 (Glazer) Vetoed 2022
SB 446 (Glazer) Chapter 490; Stats. 2021
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: California Innocence Coalition; Northern California Innocence Project, California Innocence Project, Loyola Project for The Innocent; California Public Defenders Association; Californians United for A Responsible Budget; Initiate Justice; Legal Services for Prisoners With Children; Smart Justice California; University of San Francisco School of Law | Racial Justice Clinic

Opposition: None known

PURPOSE

The purpose of this bill is to conform the compensation process for wrongfully convicted in court to the process that occurs in the California Victims Compensation Board.

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. (Penal 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. (Penal Code § 1473 (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. (Penal Code § 1473.6(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. (Penal Code § 1473.7(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. (Penal 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"). (Penal Code § 4900.)

Existing law provides that after a writ of habeas was granted and the charges are subsequently dismissed, or the person was acquitted of the charges, the board, shall upon application by the person, without a hearing, recommend to the legislature that an appropriation be made and the claim paid, unless the Attorney General establishes that the person is not entitled to compensation. (Penal Code § 4900 (b))

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. (Penal Code § 1485.5 (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. (Penal Code § 1485.5 (c).)

Existing law provides that the district attorney shall provide notice to the Attorney General prior to entering into a stipulation of facts that will be the basis for the granting of a writ of habeas corpus or a motion to vacate the judgement. (Penal Code § 1485.5 (b).)

This bill provides that the notice from the district attorney to the Attorney General shall be no fewer than seven days before entering into a stipulation of facts that will be the basis for granting a writ of habeas corpus or a motion to vacate a judgment.

This bill provides that a response from the Attorney General is not required to proceed with the stipulation.

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. (Penal Code § 1485.55 (a).)

This bill provides that instead of recommending to the Legislature the payment be made, the board shall approve the payment if sufficient funds are available, upon appropriation by the Legislature.

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. (Penal Code § 1485.55 (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. (Penal Code § 1485.55, (c).)

This bill provides that instead of recommending to the Legislature, the board shall approve payment of the claim if funds are available, upon appropriation of the Legislature.

This bill provides that in a contested or uncontested proceeding, if a state has granted a writ of habeas corpus, or vacated a judgement, and the charges were subsequently dismissed, or the person was acquitted of the charges on a retrial, the petition may move the court for a finding that they are entitled to compensation.

This bill provides that the court shall issue a finding in favor of compensation unless the district attorney objects in writing within 15 days from when the person files the motion and can establish by clear and convincing evidence that the person committed the acts constituting the offense and is therefore entitled to compensation.

This bill provides that the district attorney shall bear the burden of proving by clear and convincing evidence that the person committed the acts constituting the offense. The district attorney may request a single 30 day extension of time upon a showing of good cause and a further extension of time may be given if agreed upon by both parties.

This bill provides that if the district attorney does not object, or if the district attorney fails to establish by clear and convincing evidence that the person committed the acts constituting the offense, the court shall grant the motion and the board shall, upon application by the person, without a hearing, approve of payment to the claimant, if sufficient funds are available, upon appropriation by the Legislature.

This bill provides that if the motion is granted pursuant to a stipulation of the district attorney, the duty of the board to without a hearing, approve payment to the claimant, if sufficient funds are available, upon appropriation by the Legislature shall apply.

This bill provides that if a conviction reversed and dismissed is no longer valid, thus the district attorney may not rely on the fact that the state still maintains that the claimant is guilty of a crime for which they were wrongfully convicted, that the state defended the conviction against the petitioner through litigation, or that there was conviction to establish that the petitioner is not entitled to compensation.

This bill provides that the district attorney may also not rely solely on the trial record to establish that the petitioner is not entitled to compensation.

Existing law provides that if a federal court, after granting a writ of habeas corpus, finds a petitioner factually innocent by no less than preponderance of the evidence, the board shall without a hearing recommend the Legislature that an appropriation be made and any claim paid. (Penal Code § 1485.55)

This bill provides that if a federal court after granting a writ of habeas corpus finds a petitioner factually innocent by no less than a preponderance of the evidence the board without a hearing shall approve payment to the claimant, if sufficient funds are available, upon appropriation by the Legislature.

Existing law provides that the Attorney General has 60 days to respond to any claim for which the board has recommended to the Legislature that a claim be paid and for which the person was not declared factually innocent. (Penal Code § 4902(a))

Existing law provides that in cases where a person was acquitted or the charges were dismissed after a habeas petition was granted, the Attorney General may object to a claim in writing within 45 days and may request a single 45 day extension. (Penal Code § 4902(d))

This bill provides that an extension beyond this period may be given if agreed upon by stipulation between both parties. Time needed to obtain and review juvenile records may establish good cause for additional 45-day extensions upon a showing that through the exercise

of due diligence the Attorney General's office is unable to obtain sufficient documents for review.

COMMENTS

1. Need for This Bill

According to the author:

The signing of SB 446 into law created a more just and equitable compensation process by transferring the responsibility of proof from the wrongfully convicted individual to the Attorney General in compensation proceedings in front of the Victim's Compensation Board (VCB).

Individuals who have claimed compensation are granted the presumption of innocence by law if their conviction has been overturned. Current law requires the Attorney General to object to only those claims in which they believe the person should not be compensated. If the Attorney General chooses to object to the individual's claim, there must be sufficient, clear, and concise evidence proving the decision to not grant compensation.

However, while SB 446 constructed a fair shift to the Attorney General's office in compensation proceedings in front of the VCB, the law did not allocate the burden to the District Attorney's office if a wrongfully convicted person instead chose to pursue the existing process through the court.

This oversight has unintentionally tipped the scales to create a more fair and efficient process in the VCB than the courts. The potential for incentivizing wrongfully convicted individuals to go through the VCB rather than the courts, likely places an unbalanced burden on the Attorney General's office to handle these cases rather than them being equitably distributed through the processes

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).)

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.

4. Presumption of factual innocence in court.

Existing law provides that if the court grants a writ of habeas corpus or vacates the judgement, a person may move for a finding of factual innocence by a preponderance of the evidence that the crime with which they were charge was either not committed at all or, if committed, was not committed by the petitioner.

As SB 446 did with cases before the board, this bill changes the presumption so that if the court grants a writ of habeas corpus or vacates the judgement a person may move for a finding of factual innocence and if the court or district attorney has dismissed the charges, or if the person has been acquitted on retrial it shall be presumed. The presumption may only be overturned if the district attorney objects and can establish by clear and convincing evidence that the person committed the acts constituting the offense and is therefore not entitled to compensation. The district attorney's objection must occur within 15 days with the possibility of one 30 day extension. The time may also be extended if both parties agree by stipulation.

5. Notice to the Attorney General

Existing law requires a district attorney to notify the Attorney General when they enter into a stipulation of facts that will be the basis for granting a writ of habeas corpus or a motion to

vacate a judgment. This bill provides that that stipulation should be no fewer than seven days prior to the stipulation of facts.

6. Veto to SB 981 (Glazer) 2022

In his veto message to SB 981 the Governor stated:

I am returning Senate Bill 981 without my signature.

This bill would provide that, for defendants whose convictions were reversed on habeas and the district attorney fails to object and provide clear and convincing evidence of guilt, the court issues an order that they are entitled to compensation through the California Victim Compensation Board (CalVCB).

The 2022 Budget included an improvement in the payment process for the erroneously convicted, allowing them to receive their compensation more quickly. This bill would unintentionally reverse part of that new payment process. If this bill is signed, some claimants will have their compensation delayed by several months, or in some cases, up to a year. I look forward to the author submitting a new bill next year on this issue.

For these reasons, I cannot sign this bill

This bill addresses the Chaptering problems that happened with SB 981.

7. Argument in Support

According to the Innocence Coalition:

To receive compensation for years lost to wrongful incarceration, exonerated persons choose whether to pursue compensation proceedings in (1) a Superior Court where they litigate against the District Attorney or (B) at the Victim's Compensation Board where they litigate against the Attorney General. Thus, after a court has already found that an individual was wrongfully convicted by the State, their conviction has been reversed and the State has dismissed the charges or the person was acquitted after a retrial and that individual is now cloaked with the presumption of innocence, the individual must then, through additional litigation, show that they are innocent in order to obtain compensation. The claims process involves lengthy litigation and inconsistent results, leaving many wrongfully convicted citizens without compensation.

Last year, the Legislature came together to reform one of California's two compensation forums, making the process more efficient, consistent, and just for the wrongfully convicted. Representing an important first step in ameliorating this burdensome system, SB 446 enacted important changes to the VCB's compensation proceedings: the legislation shifted the burden of proof from the wrongly convicted person to the Attorney General. When arguing in front of the VCB, the Attorney General now must prove by clear and convincing evidence that an exonerated person does not deserve compensation. Unfortunately, however, SB 446 neglected to make the same changes to the compensation process in Superior Courts.

SB 78 extends the spirit of SB 446; it would make the same change to compensation proceedings in the Superior Courts by shifting the burden to the District Attorney to prove by clear and convincing evidence that an exonerated person does not deserve compensation. SB 981 merely ensures that both paths for pursuing compensation are consistent so as to not unduly burden one representative of the State and to make the process fair and just for the wrongfully convicted in both arenas.

SB 78 will bring consistency to California's two compensation systems. Consistency in this case is important both for exonerated individuals as well as for the systems they navigate – if SB 78 is not passed, most wrongfully convicted individuals will file for compensation through the VCB process, straining VCB and the Attorney General's resources in ways that will likely create additional delays and costs.

The wrongfully convicted have lost years of their lives due to their incarceration and years in litigation proving their innocence in the Courts. These individuals deserve to be compensated by a system that is not only just but also efficient – for as the timeworn maxim goes: Justice delayed is justice denied. SB 78 is being run again in 2023 as some language in SB 981 for 2022 was chaptered out by the 2022 budget bill.

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