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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair  
2023 - 2024 Regular

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**Bill No:** SB 843                      **Hearing Date:** April 18, 2023  
**Author:** Glazer  
**Version:** March 29, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Crimes: murder*

## HISTORY

**Source:** After Innocence  
**Prior Legislation:** SB 1468 (Glazer) Vetoed 2022  
**Support:** California Public Defenders Office  
**Opposition:** None known

## PURPOSE

***The purpose of this bill is to provide non-monetary relief in the form of updating records and issuing 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. (Penal Code § 851.86)

*This bill* provides that the court shall report the finding of innocence to the Department of Justice (DOJ) and shall issue both of the following:

- An order entitling the defendant, upon application to the DOJ, to specified relief, and, upon proof that the defendant was incarcerated, solely as a result of the former conviction, the number of dates that the individual was on parole or community supervision, and the number of days the person was required to register as a sex offender. A person granted relief under this section prior to January 1, 2024, may bring a motion for relief available under this bill.
- Upon written or oral motion of a party in the case or court, and with notice to all parties to the case, an order that the records in the case be sealed, including any record of arrest

or detention. If such an order is made, the court shall give the defendant a copy of that order and inform the defendant that they may thereafter state they were not convicted of that charge, and that they were found innocent of that charge in court.

*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)

*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.

*This bill* provides that if the DOJ receives notice that a person has received a finding of innocence from a state or federal court, or of an award or recommendation of compensation for erroneous conviction from a VCB, it shall send notice of that fact to all officers and agencies it has previously notified of the arrest or other proceedings against the person.

*This bill* provides that a person who has received an order granting relief based on a finding of factual innocence, 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, and that either a court has found the claimant did not commit the crime underlying the former conviction of the VCB has awarded compensation to the claimant for an erroneous conviction. If the application includes a certified order with findings on the number of days incarcerated, etc. those day counts should also be included in the certificate.
  - 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 court to have not committed the crime or the VCB has awarded compensation to the claimant for erroneous conviction.
  - c) Request that the law enforcement agency that has jurisdiction over the offense underlying the conviction at issue, as well as any local, state, or federal agency or entity to which the DOJ has provided criminal offender record information regarding the claimant, annotate its records to state that either a court found the claimant did not commit the crime underlying the former conviction or the VCB has awarded compensation to the claimant for erroneous conviction. Each agency receiving such a request shall annotate its records accordingly.

*This bill* provides that 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 did not commit the crime underlying the former conviction or VCB has awarded compensation to the claimant for erroneous 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 did not commit the crime underlying the former conviction or VCB has awarded compensation to the claimant for erroneous

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 fact and date of an annotation under this bill shall be included in the criminal record information.

## COMMENTS

### 1. Need for This Bill

According to the author:

For example, when they apply for jobs or housing, 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.

SB 843 would provide that, upon receipt of a certified copy of a court finding of innocence or a recommendation or award of compensation for erroneous conviction, the Department of Justice will provide the individual a certificate that states (1) the dates of the wrongful conviction and its reversal; and (2) the source of the finding of innocence or compensation for erroneous conviction.

By reducing these additional challenges and moving towards a mindset of prevention and rehabilitation, these individuals will be able re-enter society with more ease.

This bill will help lower recidivism levels and create a path for those who were found innocence to reintegrate into society.

### 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 innocence. 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 when a person who has received an order granting relief for innocence, a federal court order containing a finding of factual innocence, or an award or recommendation by the VCB of compensation for erroneous conviction, may file an application with the DOJ for a certificate and an annotation in their criminal record information. The certificate shall be issued on DOJ letterhead within six weeks from when DOJ receives the application.

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 or from the VCB after granting an award? 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. Wouldn't the court issuing a plain language document be more efficient?

#### b) Annotate claimant's criminal history

This bill provides that within six weeks of being notified that a court has found a person factually innocent, or the VCB has awarded a claim, 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 six 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.

### 4. Veto Message to SB 1468 (Glazer) 2022

The Governor vetoed SB 1468 a similar bill stating:

This bill would provide nonmonetary relief for all persons who have been either (1) declared factually innocent by a federal or state court under any standard, or (2) approved for compensation by the California Victim Compensation Board (CalVCB) as an erroneously convicted individual. The nonmonetary relief includes

an official certificate of innocence, as well as an annotation in the claimant's criminal history information stating that the claimant has been found innocent of the crime.

I support ensuring that those who have been erroneously convicted have the tools necessary to reenter society. While this bill is well intended, I am concerned it deems an informal decision by CalVCB to approve compensation to necessarily be an official finding of innocence.

For this reason, I cannot sign this bill.

Since this bill still includes an award by VCB as a trigger for the certificate and the changes to the criminal record, does this bill address the Governor's concerns?

### **5. Argument in Support**

The California Public Defenders Association supports this bill stating:

SB 843 clarifies and expands the exemption for who can be charged with murder of a fetus. SB 483 amends Penal Code Section 187 to specify that if the mother of the fetus sought, arranged, or agreed to the killing, then the person who committed the act resulting in the fetus's death cannot be charged with murder with malice aforethought. These changes protect women's rights to bodily autonomy by protecting those who assist them in carrying out their wishes from prosecution.

**-- END --**