
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 97 **Hearing Date:** March 28, 2023
Author: Wiener
Version: March 15, 2023
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal procedure: writ of habeas corpus*

HISTORY

Source: California Innocence Coalition: Northern California Innocence Project, California Innocence Project, Loyola Project for The Innocent

Prior Legislation: SB 467 (Wiener) Chapter 982, Stats. 2022
SB 243 (Wiener) held on Appropriations Suspense 2021
SB 938 (Wiener, 2020) not heard COVID
SB 1134 (Leno, 2016) Chapter 785, Stats. 2016
SB 694 (Leno) held in Assembly Appropriations 2015
SB 1058 (Leno) Chapter 623, Stats. 2014
SB 618 (Leno) Chapter 800, Stats. 2013
AB 1593(Ma) Chapter 809, Stats. 2012

Support: California Public Defenders Association (CPDA); Californians United for A Responsible Budget; Californians United for A Responsible Budget;
Communities United for Restorative Youth Justice (CURYJ); Initiate Justice;
Legal Services for Prisoners With Children; Secure Justice; Smart Justice
California; University of San Francisco School of Law | Racial Justice Clinic

Opposition: San Diegans Against Crime; San Diego Deputy District Attorneys Association;
California District Attorneys Association (oppose unless amended)

PURPOSE

The purpose of this bill is to refine the process by which those who are wrongfully convicted can prove their innocence and have their convictions reversed.

Existing law provides that every person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint. (Penal Code § 1473(a).)

Existing law states that a writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

- a) False evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to his incarceration;
- b) False physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person.
- c) 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 of the trial. “New evidence” is evidence that was discovered after trial that could not have been discovered before trial and is admissible.(Penal Code § 1473 (b))

This bill would allow a person to prosecute a writ of habeas corpus if expert opinion testimony that was material at a hearing or trial relating to incarceration and a significant dispute has emerged or further developed in the petitioner’s favor regarding expert, medical, scientific, or forensic testimony that was introduced at trial or a hearing and that expert testimony more likely than not affected the outcome of the case.

This bill instead allows a person to prosecute a writ of habeas corpus if new evidence is presented without substantial delay is admissible and sufficiently credible than it more likely than not would have changed the outcome of the case and defines new evidence as evidence discovered after a plea that has not previously been presented and heard.

Existing law provides that any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus. (Penal Code § 1473(c).)

Existing law states that nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies. (Penal Code § 1473(d).)

Existing law provides that “false evidence” includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or have been undermined by later scientific research or technological advances. (Penal Code § 1473(e)(1).)

Existing law provides that this section does not create additional liabilities, beyond these already recognized, for an expert who repudiates the original opinion provided at a hearing or trial or whose opinion has been undermined by later scientific research. (Penal Code § 1473(e)(2).)

This bill provides that if the court holds an evidentiary hearing with a signed or oral waiver on record, or they may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant’s presence in court is needed.

This bill provides that under this section, habeas relief cannot be denied on the grounds that the facts raised in support of claims and relevant to granting relief lack credibility without first holding an evidentiary hearing.

This bill provides that if the district attorney in the county of conviction or the Attorney General concedes or stipulates to a factual or legal basis for habeas relief, there shall be a presumption in favor of granting relief. This presumption may be overcome only if the record before the court

contradicts the concession or stipulation or it would lead to the court issuing an order contrary to law.

This bill provides that if after the court grants postconviction relief under this section and the prosecuting agency elects to retry the petitioner, the petitioner's postconviction counsel may be appointed as counsel or co-counsel to represent the petition on the retrial if both of the following requirements are met:

- The petitioner and postconviction counsel both agree for postconviction counsel to be appointed.
- Postconviction is qualified to handle trials.

This bill provides that counsel shall be paid under the applicable pay scale for appointed counsel, otherwise the court shall appoint other appropriate counsel.

COMMENTS

1. Need for This Bill

According to the author:

Senate Bill 97 refines the process by which those who are wrongfully convicted can prove their innocence and have their convictions reversed. This legislation will serve the twin aims of saving both time in unnecessary litigation and taxpayer resources, as well as ensuring justice for the innocent, victims, and survivors of crime. Putting innocent people in prison for crimes they didn't commit is a miscarriage of justice and undermines public safety. SB 97 makes our legal system more just for everyone by creating a cleaner path for people wrongfully convicted to be exonerated.

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. Fixes to existing postconviction processes

This bill makes a number of changes to refine the process by which those who are wrongfully convicted can prove their innocence and have their convictions reversed.

a. New evidence

This bill makes changes to the provisions regarding when new evidence can be used as the basis for a habeas petition. It brings the existing new evidence standard into conformity with other standards like *Brady* and IAC (ineffective assistance of counsel).

b. District Attorney or Attorney General stipulation

This bill creates a presumption that if the district attorney in the county of conviction or the Attorney General concedes or stipulates to a factual or legal basis for habeas relief, there should be a presumption in favor of granting relief that should be overcome only if the record before the court contradicts the concession or stipulation. According to the background information provided by the author a number of jurisdictions have given little weight to a district attorney's stipulation, which may result in unnecessary proceedings.

c. Appointment of counsel

This bill makes it clear that if postconviction relief is granted, and the district attorney elects to retry the case, then the defendant can have the postconviction counsel appointed as their attorney, if they are qualified trial counsel, instead of the public defender. This will allow a continuation of representation.

d. Technical changes

This bill makes a number of other technical changes to help streamline and clarify the postconviction process.

4. Argument in Support

According to the Innocence Coalition:

Though California's habeas corpus law is more comprehensive than most states', decades of revisions and amendments have created unintended obstacles and barriers to cases warranting relief, even when both the prosecution and the defense agree that the person is innocent. One example is when Courts order that investigations and hearings be carried out even after prosecutors determine a person has been wrongfully convicted, citing that existing law was not clear enough to allow them to grant relief or reverse the conviction. As a result, innocent people lose years to unnecessary litigation.

SB 97 aims to eliminate confusion and unnecessary litigation surrounding technical requirements within California's habeas laws to ensure Courts are given the discretion to scrutinize the integrity of a conviction and grant relief. It also creates a new statutory habeas claim that allows Courts to consider the totality of a case to determine if a wrongful conviction has occurred. SB 97 additionally guarantees the wrongfully convicted are provided the opportunity for continuous counsel in their cases. Further, this bill allows the state to initiate proceedings when it discovers a person has been wrongfully convicted, and directs Courts to give great weight to a prosecutor's determination and concession that a person has been wrongfully convicted.

With the increase in prosecutor attention to wrongful convictions, these laws can be improved to ensure we rectify these wrongs. These clarifications in the law are necessary for California to ensure that the wrongfully convicted are given an equitable process to prove their innocence. All Californians—but particularly those who are wrongly incarcerated—deserve a penal system that can evolve and recognize its mistakes accordingly.

5. Argument in Opposition

The San Diego Deputy District Attorneys Association appreciates that the author and sponsors have been working with them on their concerns but are requesting an addition amend:

What we propose is some sort of judicial filter that allows an impartial judicial officer to summarily deny frivolous petitions at the prima facie stage without requiring costly, time-consuming evidentiary hearings for most of the many habeas petition filed in the State of California. Similar filters exist in the law that contain a similar judicial gatekeeping function. For instance, under the Sexually Violent Predator Law, patients committed to the State Hospital may themselves petition for release once they have progressed far enough in treatment to be safely returned to the community either as outpatients or unconditionally. (Welf. & Inst. Code, §§ 6608 & 6605.) Petitions with some merit usually have at least some independent factual support attached to them, usually in the form of one or more doctors opining that the patient is ready to leave the State Hospital. Before the court is required to hold hearings into the propriety of such a release, appoint attorneys, and set aside a courtroom to hold full trials into those petitions, judges are permitted to deny some petitions as “frivolous” without a hearing. We think such a system applied to petitions for habeas corpus, unsupported by any evidentiary support other than an incarcerated individual's factual assertions, would endeavor to maintain the promise of the “Great Writ” by preserving courtrooms for petitions with genuine factual disputes that require resolution.

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