
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 981 **Hearing Date:** March 29, 2022
Author: Glazer
Version: March 23, 2022
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal procedure: factual innocence*

HISTORY

Source: The California Innocence Project/ Northern California Innocence Project

Prior Legislation: SB 446 (Glazer), Ch.449, 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 Coalition for Women Prisoners; California Public Defenders Association; Ella Baker Center for Human Rights; Initiate Justice

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. (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 (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(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(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 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. (Pen. Code, § 4900 (b))

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. (Pen. 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. (Pen. Code, § 4902(d))

This bill would allow an extension of time beyond that period if both parties stipulate.

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 (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 (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. (Pen. Code, § 1485.5 (b).)

This bill provides that that notice shall be no fewer than 7 days before entering the stipulation of facts and that a response from the Attorney General is not necessary to proceed.

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 (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 (b).)

This bill instead provides that if the court granted a writ of habeas corpus or vacated a judgment the person may move for a finding of factual innocence and provides that if the district attorney or court has dismissed the charges against the person or the person has been acquitted on retrial, there exists a presumption in favor of a finding of factual innocence for the purposes of eligibility for compensation, unless the district attorney objects within 15 days and can establish by clear and convincing evidence that the person committed the acts constituting the offense and is therefore not entitled to compensation.

This bill provides that the district attorney may request a single 30 day extension of time upon a showing of good cause, and an extension beyond this period may be given if agreed upon by stipulation between parties.

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

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

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, (c).)

This bill instead provides that if the district attorney does not object, or the court makes a finding that the district attorney has not overcome the presumption of innocence, the court shall grant the motion and the board shall, without a hearing recommend the Legislature make the appropriation.

COMMENTS

1. Need for This Bill

According to the author:

Last year, the signing of SB 446 into law created a more fair and equitable compensation process by shifting the burden of proof from the wrongfully convicted person to the Attorney General in compensation proceedings that proceed in front of the Victim's Compensation Board. Claimants are now cloaked with the presumption of innocence by law if their conviction has been overturned. Now, the law requires 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.

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

This omission has inadvertently tipped the scales to a more fair and efficient process in the VCB rather than having the same fair and efficient process in the court. This oversight has the potential for incentivizing wrongfully convicted persons to go through the VCB rather than the courts, likely placing an unbalanced burden on the Attorney General's office to handle these cases rather than them being fairly distributed through either process.

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.

As noted in the author's statement, SB 446 (Glazer), Ch.449, Stats. 2021 instead shifted 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.

This bill clarifies that the time frames by which the Attorney General must file a claim can be extended by stipulation of the parties.

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 SB 446 (Glazer), Ch.449, Stats. 2021 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. Argument in Support

The California Coalition for Women Prisoners supports this bill stating:

SB 981 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 981 is not passed, most wrongly 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.

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