
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 243 (Wiener) - Trial testimony: expert witnesses: writ of habeas corpus

Version: March 9, 2021

Policy Vote: PUB. S. 5 - 0

Urgency: No

Mandate: No

Hearing Date: April 5, 2021

Consultant: Shaun Naidu

Bill Summary: SB 243 would expand the definition of “false evidence” for the purpose of habeas corpus relief. It also would require the court to make specified determinations when considering the admission of expert testimony in criminal proceedings.

Fiscal Impact:

- Department of Justice (DOJ): The department reports costs of \$21,000 in FY 2021-2022, \$306,000 in FY 2022-2023, \$289,000 in FY 2023-2024, and \$21,000 annually thereafter to support anticipated workload related to an increase of issues raised on appeal, that DOJ believes would taper off after initial appeals are raised, and related to an increase in petitions seeking habeas corpus relief under changes proposed by this measure. (General Fund)
- Courts: Unknown, potentially-significant workload cost pressures to adjudicate habeas corpus petitions filed under changes proposed by this bill. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. The Governor's proposed 2021-2022 budget would appropriate \$118.3 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund*)
- Transportation & supervision: Unknown, potentially-significant workload costs in the thousands of dollars to the Department of Corrections and Rehabilitation to supervise and transport individuals in state custody to attend habeas corpus hearings. Actual costs would depend on the number of incarcerated persons who file a petition pursuant to this measure and make a prima facie showing that they are entitled to relief and for whom remote/video appearances at the proceedings are not exercised. (General Fund)
- Incarceration savings: Unknown, potentially savings in state incarceration costs for individuals who are granted a writ of habeas corpus. The proposed FY 2020-2021 per capita cost to detain a person in a state prison is \$112,691 annually, with an annual marginal rate per person of over \$13,000. The contract bed rate averages to about \$35,000 annually. Actual savings would depend on the number of incarcerated persons who successful petition the court for relief pursuant to changes proposed by this measure. Aside from marginal cost savings per individual, however, the department would experience an institutional cost savings only if the number of persons incarcerated decreased to a level that would effectuate the closing of a prison yard or wing. (General Fund)

*Trial Court Trust Fund

Background: Existing statutory law allows an incarcerated person to seek habeas corpus relief if, among other bases, false evidence that was 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. (Pen. Code, §1473, subd. (b)(1).) "False evidence" is defined to include opinions of experts that have been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances. (Pen. Code, § 1473, subd. (e)(1).)

With respect to the admissibility of expert witness opinion testimony, existing statutory law provides that the testimony must be (i) related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact and (ii) based on matter (including the expert witness' special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to the witness at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which the testimony relates, unless an expert is prevented by law from using such matter as a basis for the opinion. (Evid. Code, § 801.) On direct examination, the expert witness may state the reasons for their opinion and the matter (including their special knowledge, skill, experience, training, and education) upon which it is based, unless prevented by law from using such reason or matter as a basis for the opinion (Evid. Code, § 802.) Before testifying, the court may require an examination of the matter upon which a witness bases their opinion. (*Ibid.*) Read together, the California Supreme Court has held that statutory law places a duty on trial courts to act "as a gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative[and that o]ther provisions of law, including decisional law, may also provide reasons for excluding expert opinion testimony." (*Sargon Enterprises, Inc. v. Univ. of Southern Cal.* (2012) 55 Cal. 4th 747, 771-72.)

Proposed Law: This bill would expand the definition of "false evidence" for habeas corpus relief purpose to include the opinions of experts that are undermined by scientific research that existed at the time of the expert's testimony and opinions for which a reasonable dispute has emerged within the expert's relevant scientific community as to the validity of the methods or theories upon which the expert based their opinion.

SB 243 also would require a court to determine if an expert's opinion and any supporting literature, studies, research, or other bases on which the expert relies in forming their opinion are based on a reliable foundation, properly tested methodology, and sound logic, as specified, when considering if expert testimony is based on matter that is of a type that reasonably may be relied upon by an expert in forming an opinion in a criminal proceeding. It also would specify (i) that an opinion or any supporting literature, studies, research, or other bases that lack a reliable foundation, properly tested methodology, and sound logic are not matter that may reasonably be relied upon and (ii) that, if a portion of the expert's testimony extends beyond the underlying support, the court may allow the portions of the testimony that do not extend beyond the underlying support if they otherwise are admissible.

Related Legislation: SB 938 (Wiener, 2019-2020 Reg. Sess.) would have expanded the definition of “false evidence” for the purpose of habeas corpus relief and would have changed the criteria for when an expert witness could provide opinion testimony. SB 938 was never heard in the Senate Committee on Public Safety.

SB 1134 (Leno, Ch. 785, Stats. 2016), among other things, permitted habeas corpus relief on the basis of new evidence, as specified.

SB 1058 (Leno, Ch. 623, Stats. 2014) defined “false evidence” for the purpose of habeas corpus relief.

Staff Comments: The Department of Justice anticipates an increased workload resulting from this measure. Committee staff queries if the additional personnel and costs reported by DOJ accurately reflects the workload that this measure would produce, as it is not known how many additional appeals or petitions actually would be filed. Without specific information or an estimate as to the likely workload involved, the need for these positions appears to be speculative.

Relatedly, the fiscal impact of SB 243 to the courts is unknown, as it would depend on how many new petitions for habeas relief would be filed pursuant to changes proposed by this measure. While it is not known how many new petitions that the courts ultimately would have to process and adjudicate, it generally costs about \$8,032 (in FY 2020-2021) to operate a courtroom for one eight-hour day. Consequently, if the changes proposed by SB 243 lead to the filing of habeas petitions that, combined, take 50 or more hours of court involvement, the cost pressures of this measure to the courts would surpass the Suspense File threshold. As indicated above, while courts are not funded on a workload basis, an increase in workload could result in delayed services and would put pressure to increase the backfill amount appropriated from the General Fund for trial court operations.

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