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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### SB 467 (Wiener) - Trial testimony: expert witnesses: writ of habeas corpus

**Version:** January 3, 2022

**Policy Vote:** PUB. S. 5 - 0 (previous votes not relevant)

**Urgency:** No

**Mandate:** No

**Hearing Date:** January 18, 2022

**Consultant:** Mark McKenzie

**Bill Summary:** SB 467 would expand the definition of “false evidence” for the purpose of habeas corpus relief, as specified, and expand the bases for seeking habeas corpus relief to include circumstances in which a reasonable dispute has developed after a person’s trial about the scientific basis of expert witness testimony that was relevant to determine guilt or punishment.

#### **Fiscal Impact:**

- Department of Justice (DOJ): The department reports costs of \$19,000 in FY 2022-2023, \$36,000 in FYs 2023-2024 and 2024-25, and \$9,000 annually thereafter to support anticipated workload addressing new habeas petitions seeking relief under changes proposed by this bill. (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 2022-23 budget proposes to allocate \$117.8 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund\*)
- Transportation & supervision: Unknown 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 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 causes of the imprisonment or restraint (Pen. Code, §1473, subd. (a).)

Existing 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).) Existing law defines "false evidence" 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).)

**Proposed Law:** SB 467 would expand the definition of "false evidence" for habeas corpus relief purposes to include the opinions of experts that are undermined by scientific research that existed at the time of the expert's testimony, as specified.

This bill would also expand the bases for prosecuting a writ of habeas corpus to include instances in which expert opinion testimony that was material or probative on the issue of guilt or punishment was introduced and a reasonable dispute within the scientific community as to the validity of the methods, theories, research or studies upon which the expert based their opinion has developed or further developed after the person's trial.

**Related Legislation:** SB 243 (Wiener), which was held on this Committee's Suspense File last year, would have expanded the definition of "false evidence" for the purpose of habeas corpus relief, and required the court to make specified determinations when considering the admission of expert testimony in criminal proceedings.

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 fiscal impact of SB 467 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 this bill 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.

Staff notes that this bill was amended on January 3, 2021 to delete the previous contents of the bill and insert provisions related to habeas corpus relief and expert witness testimony. The previous version of SB 467, which failed passage in the Senate Natural Resources and Water Committee, would have prohibited the issuance or renewal of permits for oil and gas extraction in specified areas, and prohibit certain “well stimulation treatment” extraction methods, as specified.

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