Date of Hearing: June 1, 2022
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 467 (Wiener) – As Amended May 25, 2022

**SUMMARY:** Permits a person to bring a habeas writ where a significant dispute has developed regarding expert medical, scientific, or forensic testimony that would have more likely than not changed the outcome of their trial, and expands the definition of false evidence for the purpose of a habeas writ. Specifically, **this bill**:

1) Allows a person to prosecute a writ of habeas corpus where a significant dispute has emerged or developed in their favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome of their trial.

2) Specifies that the expert medical, scientific, or forensic testimony includes the expert's conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

3) Provides that the "significant dispute" may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific or forensic expert based their testimony.

4) States that a "significant dispute" can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

5) Provides that in assessing whether a dispute is significant, the court shall give great weight to evidence that:

    a) A consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony; or

    b) There is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

6) States that the significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to

practitioners or proponents of a particular scientific or technical field or discipline.

7) Requires the court to issue an order to show cause why relief should not be granted if the petitioner makes a prima facie showing that they are entitled to relief.

*8)* Provides that to obtain relief, the person must make the required showing, as stated above, by a preponderance of the evidence.

9) Expands the definition of "false evidence" to include the opinions of experts that are undermined by scientific research that existed at the time of the expert's testimony.

**EXISTING LAW**:

1) 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. (Pen. Code, § 1473, subd. (a).)

2) 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 the person's incarceration; or,

   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. (Pen. Code, § 1473, subd. (b).)

3) 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. (Pen. Code § 1473, subd. (c).)

4) Provides that nothing in these provisions 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. (Pen. Code, § 1473, subd. (d).)

5) 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. (Pen. Code, § 1473, subd. (e)(1).)

6) Provides that these provisions do 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 or technological advancements. (Pen. Code, § 1473, subd. (e)(2).)

**FISCAL EFFECT**: Unknown.

**COMMENTS**:

1) **Author's Statement**: According to the author, "Senate Bill 467 further articulates the definition of false testimony to ensure that anyone wrongfully convicted of a crime due to faulty and/or unreliable scientific evidence may seek post-conviction relief. SB 467 also seeks to prevent wrongful convictions based on faulty and/or unreliable expert opinion testimony by ensuring this testimony is based on valid methodology, theory, research, studies, and/or evidence. Studies have found that most expert testimony regarding forensic science is accepted without demonstrating the precision of its methods, its potential limitations, or the possibility for human error. Unreliable forensic science remains a leading cause of wrongful convictions, occurring in 45% of DNA exoneration cases, 24% of all exonerations in the nation and 15% of the California exoneration cases known since 1989. In wrongful conviction cases, experts either used forensic science that was flawed or scientific methods that are widely debated within the scientific community. SB 467 simply responds to the reality that forensics science is ever changing and improving and that these advancements and discoveries in the scientific community can be considered in cases where testimony relied on outdated understandings and applications of forensic science, which ultimately resulted in wrongful convictions."

2) **Convictions Based on False or Undermined Scientific Evidence: "**Inaccurate expert testimony and faulty forensic science can lead to wrongful convictions. According to a report from UC Berkeley School of Law and the University of Pennsylvania Law School, erroneous convictions cost California taxpayers over $282 million between 1989 and 2012. Approximately 200 people in California wrongfully served jail sentences for serious crimes since 1989." (https://www.jurist.org/news/2021/01/california-lawmaker-introduces-bill-to-change-expert-testimony-forensic-evidence-legal-standards/ [as of May 23, 2022].)

   "False or misleading forensic evidence was a contributing factor in 24% of all wrongful convictions nationally, according to the National Registry of Exonerations, which tracks both DNA and non-DNA based exonerations.[1] "This includes convictions based on forensic evidence that is unreliable or invalid and expert testimony that is misleading. It also includes mistakes made by practitioners and in some cases misconduct by forensic analysts. In some cases, scientific testimony that was generally accepted at the time of a conviction has since been undermined by new scientific advancements in disciplines including:

   - **Hair comparisons**: Microscopic hair analysis involves comparing hair found at a crime scene with the hair of the defendant. A 2009 National Academy of Sciences report stated that microscopic hair comparisons could not be used to match hair with a specific

[1] (https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=Contributing_x0020_Factors_x0020&FilterValue1=False%20or%20Misleading%20Forensic%20Evidence [as of May 20, 2022].)

individual.[2] In 2015 the FBI announced that its hair microscopy experts overstated the probability of a match between hair evidence and the defendant's hair in 95 percent of the 268 cases it had reviewed.[3]

- **Arson**: Two decades of fire research has debunked evidence that was used to convict people of arson. The 1992 publication of National Fire Protection Association (NFPA) 921 noted that many of the physical artifacts previously thought to occur only in intentional fires—such as "alligatoring" of wood, crazed glass, and sagged furniture springs—could actually occur in accidental fires.[4] NFPA 921 only became generally accepted by the relevant scientific community in the early 2000's.

- **Comparative Bullet Lead Analysis**: Comparative Bullet Lead Analysis ("CBLA") was believed to be able to link bullets found at a crime scene to bullets possessed by a suspect based on the assumption that the lead composition in a bullet was unique and limited to the batch that it came from. Since the early 1980's the FBI conducted bullet lead examined in over 2,500 cases. The FBI stopped using CLBA after a 2002 National Academy of Sciences (NAS) report found problems with interpretations of the results of these analyses.[5]"

(https://innocenceproject.org/overturning-wrongful-convictions-involving-flawed-forensics/, emphasis omitted [as of May 20, 2022].)

3) **Admissibility of Scientific Evidence:** In *People v. Kelly* (1976) 17 Cal.3d 24, our Supreme Court established a three-step procedure for evaluating a challenge to the admissibility of evidence involving new scientific techniques.[6] "[E]vidence obtained through a new scientific technique may be admitted only after its reliability has been established under a three-pronged test. The first prong requires proof that the technique is generally accepted as reliable in the relevant scientific community. [Citation.] The second prong requires proof that the witness testifying about the technique and its application is a properly qualified expert on the subject. [Citation.] The third prong requires proof that the person performing the test in the particular case used correct scientific procedures." (*People v. Bolden* (2002) 29 Cal.4th 515, 544-545.)

As to the first prong, "general acceptance under *Kelly* means a consensus drawn from a typical cross-section of the relevant, qualified scientific community." (*People v. Leahy*

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[2] (https://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf [as of May 20, 2022].)

[3](https://www.washingtonpost.com/local/crime/fbi-overstated-forensic-hair-matches-in-nearly-all-criminal-trials-for-decades/2015/04/18/39c8d8c6-e515-11e4-b510-962fcfabc310_story.html?noredirect=on&utm_term=.4ff328772ea2 [as of May 20, 2022].)

[4] (https://studylib.net/doc/18648668/national-fire-protection-association--nfpa-921--guide-for... [as of May 20, 2022].)

[5] (https://archives.fbi.gov/archives/news/pressrel/press-releases/fbi-laboratory-announces-discontinuation-of-bullet-lead-examinations [as of May 20, 2022].)

[6] The test was adopted from *Frye v. United States* (D.C. Cir. 1923) 293 F. 1013. (*Id*. at p. 32.)

(1994) 8 Cal.4th 587, 612.) "[I]f a fair overview of the literature discloses that scientists significant either in number or expertise publicly oppose [the technique] as unreliable, the court may safely conclude there is no such consensus at the present time." (*Id.* at p. 611 [citation and quotations omitted].)

"Proof of a technique's general acceptance in the relevant scientific community [is not] necessary once a published appellate decision ha[s] affirmed a trial court ruling admitting evidence obtained by that scientific technique, 'at least until new evidence is presented reflecting a change in the attitude of the scientific community.' [Citation.]" (*Bolden, supra,* 29 Cal.4th at p. 545.) Moreover, "*Kelly* does not demand that the court decide whether the procedure is reliable as a matter of scientific fact: the court only determines from the professional literature and expert testimony whether or not the new scientific technique is accepted as reliable in the relevant scientific community . . . ." (*People v. Soto* (1999) 21 Cal.4th 512, 519 [citation and quotations omitted].)

According to the author, "Once a court accepts a 'new scientific methodology' under *Kelly/Frye* and it is affirmed by a higher court, the science faces rather few future challenges at the trial stage. The consequence of the resulting complacency is little legal scrutiny of scientific or medical expert testimony despite the emergence of concerns regarding the underlying reliability of the science."

4) **Writ of Habeas Corpus as a Mechanism for Challenging Convictions Based on False or Undermined Scientific Evidence**: A writ of habeas corpus is a mechanism that can be used to challenge a conviction that is based on false or undermined scientific evidence. 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 function of the writ is set forth in Penal Code section 1473, subdivision (a): "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: 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 their incarceration; or 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. For purposes of a habeas petition, false evidence includes opinions of experts that have either [1] been repudiated by the expert who originally provided the opinion at a hearing or the trial or [2] that have been undermined by later scientific research or technological advances. (Pen. Code, § 1473, subds. (b)(1) & (2), (e)(1).)

A person's habeas corpus claim of false testimony requires proof that false evidence was introduced against them at trial and that it was material or probative on the issue of their guilt. (*In re Bell* (2007) 42 Cal.4th 630, 637.) The false evidence is substantially material or probative if there is a reasonable probability that, had the false evidence not been introduced, the result would have been different. A reasonable probability is a chance great enough, under the totality of circumstances, to undermine the court's confidence in the outcome. (*In re Roberts* (2003) 29 Cal.4th 726, 741-742.)

This bill would expand the definition of "false evidence" for purposes of a habeas writ to include an expert opinion that has been undermined by scientific research that existed at the time the expert's opinion was given – i.e., not just later scientific research or technological advancements. This change in definition would allow evidence of opinions that were based on flawed or outdated scientific research at the time the opinion was given to be challenged via a habeas writ. This would not be a blanket exclusion to forensic evidence. Instead, it simply responds to the reality that forensic science is constantly changing and improving.

This bill would also allow a person to bring a habeas writ when expert testimony that was material to the issue of guilt or punishment was introduced and a significant dispute has emerged or further developed in their favor which would have more likely than not changed the outcome of their trial. The "significant dispute" could be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number and expertise, have concluded that developments have occurred that undermine the reliability or validity of the basis of the expert's testimony.

5) **Argument in Support**: According to the *California Innocence Coalition*, the sponsor of this bill, "Unreliable scientific evidence is the second most common cause of wrongful convictions in the United States. In California specifically, faulty or unreliable scientific evidence was presented in 15% of known exonerations since 1989. In 70% of such cases, these innocent men and women were given life sentences; one was sentenced to death. The California Innocence Coalition (CIC) believes SB 467 represents a critical step in the broader effort to stay lock step with advancements within and scrutiny of science as it intersects with the criminal legal system so that we protect the innocent by intervening when a conviction was based on flawed, invalidated or unreliable science.

"The CIC consists of the three innocence projects in California: the California Innocence Project, the Northern California Innocence Project and the Loyola Project for the Innocent. Our dual mission begins with exonerating wrongly convicted individuals; we then leverage our expert knowledge of wrongful convictions to identify good sense reforms that ensure justice for innocent Californians. CIC has won the freedom of over 70 wrongly imprisoned individuals who collectively lost over 800 years in prison for crimes they did not commit.

"The CIC is a proud sponsor of SB 467. SB 467 includes two tailored fixes to the post-conviction relief process. First, SB 467 expands the definition of false testimony to explicitly include expert opinions that were undermined by the state of scientific knowledge available at the time of trial. This seemingly minor clarification is necessary because current law narrowly describes false testimony as including statements that were undermined by the state of scientific knowledge or advances made after the trial. Under current law, individuals are prevented from challenging their conviction in cases where the relevant scientific community scrutinizes their work simply out of a quest for integrity (rather than in response to specific advances) and realizes that their science was not as reliable as it was once presented. For example, in the last 5 years, the FBI reviewed their own work, which revealed that microscopic hair comparison was not an infallible science that could connect a person to hair from a crime scene to a reasonable degree of scientific certainty. The FBI's pivot was not due to scientific advancements, rather it was due to the FBI's own internal scrutiny of their work, yet a convicted person, under current law, would not be able to establish the devastating impact this invalid evidence had on their case because of the law's current narrow definition.

Secondly, SB 467 creates a new habeas claim to challenge a conviction based on medical, scientific, or forensic evidence whose reliability or validity is now at the heart of a 'significant dispute' within the relevant expert community. These habeas challenges are applicable only when the dispute would have more likely than not changed the trial's outcome. At a time when scientific advancements and scrutiny are casting doubt on certain forensic methods, once considered infallible and certain, and almost always relied upon by a jury, this second fix will help ensure that criminal convictions are upheld only when based on evidence that contemporary scientists agree is reliable and valid.

"These good-sense clarifications are a step forward for California in addressing concerns set forth by the scientific community itself and to also allow our courts to remain lockstep with advancements in science. All Californians – but particularly those who are wrongly incarcerated – deserve a penal system that can evolve with scientific advancements and recognize its mistakes accordingly. According to Magistrate Judge Martin Carlson, 'As our understanding of scientific truth grows and changes, the law must follow the truth in order to secure justice.'"

6) **Prior Legislation**:

a) SB 243 (Wiener), of the 2021-2022 Legislative Session, 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 243 was held on the Senate Appropriations suspense file.

b) SB 938 (Wiener), of the 2019-2020 Legislative Session, would have expanded the definition of "false evidence" for the purpose of habeas corpus relief and specified that expert opinion based on circular reasoning is not the type of matter on which expert testimony may reasonably be based. SB 938 was not heard in the Senate due to the shortened 2020 Legislative Calendar.

c) SB 1134 (Leno) Chapter 785, Statutes of 2016, codified a standard for habeas corpus petitions filed on the basis of new evidence.

d) SB 694 (Leno), of the 2015-2016 Legislative Session, would have codified a standard for habeas corpus petitions filed on the basis of new evidence. SB 694 was held in Assembly Appropriations Committee.

e) SB 1058 (Leno), Chapter 623, Statutes of 2014, allowed a writ of habeas corpus to be prosecuted when evidence given at trial has subsequently been repudiated by the expert that testified or undermined by later scientific research or technological advances.

f) SB 618 (Leno), Chapter 800, Statutes of 2013, streamlined the process for compensating persons who have been exonerated after being wrongfully convicted and imprisoned.

g) AB 1593 (Ma), Chapter 809, Statutes of 2012, allows a writ of habeas corpus to be prosecuted if expert testimony relating to intimate partner battering and its effects was received into evidence but was limited at the trial court proceedings relating to a prisoner's incarceration for the commission of a violent felony committed prior to August

29, 1996, and there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that if the testimony had not been limited, the result of the proceedings would have been different.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Innocence Coalition: Northern California Innocence Project, California Innocence Project, Loyola Project for the Innocent (Sponsor)
ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Initiate Justice
Smart Justice California

**Opposition**

None

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