

SENATE THIRD READING
SB 467 (Wiener)
As Amended August 15, 2022
Majority vote

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.

Major Provisions

- 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 the state of scientific knowledge.

COMMENTS

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."

Arguments 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.'"

Arguments in Opposition

None submitted

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Costs (General Fund (GF)) of \$19,000 in fiscal year (FY) FY 2022-23, \$36,000 in FYs 2023-2024 and 2024-25, and \$9,000 annually thereafter to the Department of Justice (DOJ) to support anticipated workload addressing new habeas petitions.
- 2) Cost pressures (Trial Court Trust Fund (TCTF)) in the low hundreds of thousands of dollars in increased workload to the trial courts. This bill allows a person to file a habeas petition where there is a significant dispute regarding expert medical, scientific, or forensic testimony introduced at trial and contributed to the conviction. The estimated cost of one eight hour court day is approximately \$8,000. Although it is unknown how many petitions may be filed, however, if 15 petitions require 16 total hours of workload each, the cost would be approximately \$240,000. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the GF to perform existing duties.

- 3) Cost savings (GF) possibly in the millions to tens of millions of dollars to the California Department of Corrections and Rehabilitation (CDCR) in reduced incarceration costs to the extent people obtain release pursuant to habeas petitions regarding false evidence.

VOTES

SENATE FLOOR: 30-3-7

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Borgeas, Nielsen, Wilk

ABS, ABST OR NV: Bates, Dahle, Dodd, Grove, Hurtado, Jones, Melendez

ASM PUBLIC SAFETY: 6-0-1

YES: Jones-Sawyer, Lackey, Mia Bonta, Bryan, Quirk, Santiago

ABS, ABST OR NV: Seyarto

ASM APPROPRIATIONS: 12-0-4

YES: Holden, Bryan, Calderon, Arambula, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

ABS, ABST OR NV: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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