
CONSENT

Bill No: SB 78
Author: Glazer (D), et al.
Introduced: 1/12/23
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-0, 3/28/23
AYES: Wahab, Ochoa Bogh, Bradford, Skinner, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Criminal procedure: factual innocence

SOURCE: California Innocence Coalition: Northern California Innocence
Project
California Innocence Project
Loyola Project for the Innocent

DIGEST: This bill conforms the compensation process for wrongfully convicted in court to the process that occurs in the California Victims Compensation Board.

ANALYSIS:

Existing law:

- 1) 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. (Penal Code §§ 1474-1508.)
- 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 a hearing or trial relating to the person's incarceration;

- b) 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,
 - c) 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. (Penal Code § 1473 (b).)
 - d) *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:
 - e) 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;
 - f) 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,
 - g) 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. (Penal Code § 1473.6(a).)
- 3) 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. (Penal Code § 1473.7(a)(2).)
- 4) 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. (Penal Code § 851.86.)
- 5) 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”). (Penal Code § 4900.)

- 6) 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. (Penal Code § 4900 (b))
- 7) 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.)
- 8) 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. (Penal Code § 1485.5 (a).)
- 9) 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. (Penal Code § 1485.5 (c).)
- 10) 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. (Penal Code § 1485.5 (b).)
- 11) 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. (Penal Code § 1485.55 (a).)

- 12) 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. (Penal Code § 1485.55 (b).)
- 13) 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. (Penal Code § 1485.55, (c).)
- 14) Provides that if a federal court, after granting a writ of habeas corpus, finds a petitioner factually innocent by no less than preponderance of the evidence, the board shall without a hearing recommend the Legislature that an appropriation be made and any claim paid. (Penal Code § 1485.55)
- 15) 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. (Penal Code § 4902(a))
- 16) 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. (Penal Code § 4902(d))

This bill:

- 1) Provides that the notice from the district attorney to the Attorney General shall be no fewer than seven days before entering into a stipulation of facts that will be the basis for granting a writ of habeas corpus or a motion to vacate a judgment.
- 2) Provides that a response from the Attorney General is not required to proceed with the stipulation.
- 3) Provides that instead of recommending to the Legislature the payment be made, the board shall approve the payment if sufficient funds are available, upon appropriation by the Legislature.

- 4) Provides that instead of recommending to the Legislature, the board shall approve payment of the claim if funds are available, upon appropriation of the Legislature.
- 5) Provides that in a contested or uncontested proceeding, if a state has granted a writ of habeas corpus, or vacated a judgement, and the charges were subsequently dismissed, or the person was acquitted of the charges on a retrial, the petition may move the court for a finding that they are entitled to compensation.
- 6) Provides that the court shall issue a finding in favor of compensation unless the district attorney objects in writing within 15 days from when the person files the motion and can establish by clear and convincing evidence that the person committed the acts constituting the offense and is therefore entitled to compensation.
- 7) Provides that the district attorney shall bear the burden of proving by clear and convincing evidence that the person committed the acts constituting the offense. The district attorney may request a single 30 day extension of time upon a showing of good cause and a further extension of time may be given if agreed upon by both parties.
- 8) Provides that if the district attorney does not object, or if the district attorney fails to establish by clear and convincing evidence that the person committed the acts constituting the offense, the court shall grant the motion and the board shall, upon application by the person, without a hearing, approve of payment to the claimant, if sufficient funds are available, upon appropriation by the Legislature.
- 9) Provides that if the motion is granted pursuant to a stipulation of the district attorney, the duty of the board to without a hearing, approve payment to the claimant, if sufficient funds are available, upon appropriation by the Legislature shall apply.
- 10) Provides that if a conviction reversed and dismissed is no longer valid, thus the district attorney may not rely on the fact that the state still maintains that the claimant is guilty of a crime for which they were wrongfully convicted, that the state defended the conviction against the petitioner through litigation, or that there was conviction to establish that the petitioner is not entitled to compensation.

- 11) Provides that the district attorney may also not rely solely on the trial record to establish that the petitioner is not entitled to compensation.
- 12) Provides that if a federal court after granting a writ of habeas corpus finds a petitioner factually innocent by no less than a preponderance of the evidence the board without a hearing shall approve payment to the claimant, if sufficient funds are available, upon appropriation by the Legislature.
- 13) Provides that an extension beyond this period may be given if agreed upon by stipulation between both parties. Time needed to obtain and review juvenile records may establish good cause for additional 45-day extensions upon a showing that through the exercise of due diligence the Attorney General's office is unable to obtain sufficient documents for review.

Background

According to the author:

The signing of SB 446 into law created a more just and equitable compensation process by transferring the responsibility of proof from the wrongfully convicted individual to the Attorney General in compensation proceedings in front of the Victim's Compensation Board (VCB).

Individuals who have claimed compensation are granted the presumption of innocence by law if their conviction has been overturned. Current law requires the Attorney General to object to only those claims in which they believe the person should not be compensated. If the Attorney General chooses to object to the individual's claim, there must be sufficient, clear, and concise evidence proving the decision to not grant compensation.

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

This oversight has unintentionally tipped the scales to create a more fair and efficient process in the VCB than the courts. The potential for

incentivizing wrongfully convicted individuals to go through the VCB rather than the courts, likely places an unbalanced burden on the Attorney General's office to handle these cases rather than them being equitably distributed through the processes.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 5/2/23)

California Innocence Coalition: Northern California Innocence Project (co-source)
California Innocence Project (co-source)
Loyola Project for the Innocent (co-source)
ACLU California Action
California Public Defenders Association
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice
Legal Services for Prisoners With Children
Prosecutors Alliance California
San Francisco Public Defender
Smart Justice California
University of San Francisco School of Law | Racial Justice Clinic

OPPOSITION: (Verified 5/2/23)

None received

ARGUMENTS IN SUPPORT: According to the sponsors:

To receive compensation for years lost to wrongful incarceration, exonerated persons choose whether to pursue compensation proceedings in (1) a Superior Court where they litigate against the District Attorney or (B) at the Victim's Compensation Board where they litigate against the Attorney General. Thus, after a court has already found that an individual was wrongfully convicted by the State, their conviction has been reversed and the State has dismissed the charges or the person was acquitted after a retrial and that individual is now cloaked with the presumption of innocence, the individual must then, through additional litigation, show that they are innocent in order to obtain compensation. The claims process involves lengthy litigation and inconsistent results, leaving many wrongfully convicted citizens without compensation.

Last year, the Legislature came together to reform one of California's two compensation forums, making the process more efficient, consistent, and just for the wrongfully convicted. Representing an important first step in ameliorating this burdensome system, SB 446 enacted important changes to the VCB's compensation proceedings: the legislation shifted the burden of proof from the wrongfully convicted person to the Attorney General. When arguing in front of the VCB, the Attorney General now must prove by clear and convincing evidence that an exonerated person does not deserve compensation. Unfortunately, however, SB 446 neglected to make the same changes to the compensation process in Superior Courts.

SB 78 extends the spirit of SB 446; it would make the same change to compensation proceedings in the Superior Courts by shifting the burden to the District Attorney to prove by clear and convincing evidence that an exonerated person does not deserve compensation. SB 981 merely ensures that both paths for pursuing compensation are consistent so as to not unduly burden one representative of the State and to make the process fair and just for the wrongfully convicted in both arenas.

SB 78 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 78 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.

The wrongfully convicted have lost years of their lives due to their incarceration and years in litigation proving their innocence in the Courts. These individuals deserve to be compensated by a system that is not only just but also efficient – for as the timeworn maxim goes: Justice delayed is justice denied. SB 78 is being run again in 2023 as some language in SB 981 for 2022 was chaptered out by the 2022 budget bill.

Prepared by: Mary Kennedy / PUB. S. /
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**** END ****