

Date of Hearing: August 23, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Chris Holden, Chair
SB 78 (Glazer) – As Amended June 6, 2023

Policy Committee: Public Safety Vote: 8 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill allows a person to petition a court for a finding that they are entitled to wrongful conviction compensation, if the court has granted a writ of habeas corpus or vacated a judgment, and the charges against the person were dismissed or the person was acquitted on retrial.

Specifically, among other provisions, this bill:

- 1) Provides that, if the court granted a person's writ of habeas corpus or vacated a judgment against them, and the charges against the person were dismissed or the person was acquitted on retrial, the person may move the court for a finding that they are entitled to approval of a claim for wrongful conviction compensation.
- 2) Requires the court to grant the motion, unless the district attorney objects to the motion and establishes by clear and convincing evidence that the person committed the acts constituting the offense and is therefore not entitled to wrongful conviction compensation.
- 3) Provides that, if the motion is granted, upon application by the person, the California Victim Compensation Board (VCB), shall without a hearing, approve wrongful conviction compensation payment to the person, if sufficient funds are available, upon appropriation by the Legislature.

FISCAL EFFECT:

Costs (Trial Court Trust Fund, General Fund) of an unknown amount to the courts to adjudicate motions authorized by this bill. Actual costs to the courts will depend on the number of motions filed, the number of motions to which a district attorney objects, and the amount of court time needed for each hearing. It generally costs about \$1,000 to operate a courtroom for one hour. The VCB reported receiving 28 claims in 2021 and 39 claims in 2022. Even if this bill generates 30 to 40 related motions annually – a high estimate – total court costs would likely be less than \$150,000.

COMMENTS:

- 1) **Purpose.** 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 that proceed in front of the Victim's Compensation Board. 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 a more fair and efficient process in the VCB rather than having the same fair and efficient process in the court. 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.

- 2) **Background.** Current law allows an individual whose conviction is reversed, and who meets certain requirements, to submit a claim to the VCB for compensation from the state for their improper imprisonment. If the VCB approves the exonerated person's claim, they are entitled to compensation from the state of up to \$140 per day of their incarceration. The VCB has approved compensation claims for 68 individuals in California since 2000.

A person who was erroneously convicted (the "claimant") can take two paths to seek compensation from the VCB. If a court made a finding that the claimant was factually innocent, the claimant can submit a copy of the court order to the VCB and the VCB must provide compensation to the claimant within 30 days. If the court does not independently make such a finding, current procedure allows a person whose habeas petition is granted or judgment is vacated to file a motion asking the court to make a finding of factual innocence. Once the claimant has a finding from the court, the VCB does not need to conduct a hearing; the court's finding of factual innocence is sufficient grounds for the VCB to approve a compensation claim.

Alternatively, if the claimant does not have a court finding of factual innocence, they can submit a claim to the VCB but the Attorney General (AG) has an opportunity to contest the claim. If the AG objects to the claim, the VCB sets a hearing on the matter. At the hearing, the AG must prove by clear and convincing evidence that the claimant committed the offense of which they were convicted and therefore the claimant is not entitled to compensation. If the AG cannot meet this burden of proof, the VCB must approve payment to the claimant.

This bill provides another way for a person who has not obtained a finding of factual innocence in court to obtain compensation from the VCB without having a hearing by the VCB. Under the bill, if the court has granted a claimant's habeas petition or vacated the judgment against them, the claimant can file a motion asking the court to make a finding that

the claimant is entitled to approval of a claim of wrongful conviction compensation. This is not technically the same as a court finding of factual innocence, but under this bill each of these findings would have the same ultimate effect – allowing the VCB to approve a claim for compensation without holding a hearing. If the claimant moves for a finding that they are entitled to wrongful conviction compensation, the district attorney has an opportunity to object and present evidence to counter the claim. If the district attorney cannot show by clear and convincing evidence that the claimant committed the offense and is not entitled to compensation, the court must grant the claimant’s motion.

This bill is substantially similar to SB 981 (Glazer), of the 2021-2022 Legislative Session, which passed with bipartisan support. However, SB 981 contained provisions that conflicted with a VCB payment process established by the 2022 Budget bills. For that reason, Governor Newsom vetoed SB 981, writing that he “look[ed] forward to the author submitting a new bill next year on this issue.” SB 78 addresses the Governor’s concerns and is consistent with the current VCB payment process.

The VCB believes this bill will significantly increase the number of compensation claims submitted to the board, causing a corresponding increase in its workload. The VCB reports SB 446 (Glazer), Chapter 449, Statutes of 2021, resulted in roughly a 40% increase in claims submitted to and approved by the VCB. However, SB 446 shifted the burden of proof in compensation claims from the claimant to the AG – a major change that significantly increased the likelihood that a claimant will prevail if their claim has merit. In contrast, this bill makes a relatively minor procedural change that gives the court discretion over whether to make a finding that leads to compensation by the VCB. It is not clear that this bill would result in an influx of motions to the court or applications to the VCB, and the VCB may even experience modest savings to the extent some cases are handled in court rather than through VCB hearings.

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