
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair
2025 - 2026 Regular Session

AB 1036 (Schultz) - Criminal procedure: postconviction discovery

Version: July 3, 2025

Urgency: No

Hearing Date: August 18, 2025

Policy Vote: PUB. S. 5 - 1

Mandate: Yes

Consultant: Liah Burnley

Bill Summary: AB 1036 increases access to post-conviction discovery for individuals convicted of felony offenses.

Fiscal Impact:

- The Judicial Council estimates an annual, ongoing cost of \$800,000 to \$4.3 million for AB 1036 for the additional hearings need to resolve discovery disputes in these postconviction proceedings. The estimate is based on the expected population of defendants who might seek post-conviction discovery as authorized by AB 1036 and have their requests come before the court for resolution and it should be noted that this estimate also includes the currently eligible population because the judicial branch does not have data on how often these post-conviction requests come to the court. The estimate includes hearing workload and judicial determination time to process and order releases of discovery that were withheld after the defendant's request. Beginning in fiscal year 2024-25, the trial courts have absorbed an ongoing \$55 million reduction to their operational funding, which impacts their ability to provide core services. Absent an appropriation, this bill will result in new, unfunded workload for the trial courts, putting further pressure on their limited resources.
- Costs (local funds, General Fund) of an unknown but potentially significant amount to district attorney offices and local law enforcement agencies to provide post-conviction discovery. This bill expands eligibility for post-conviction discovery to more defendants and requires production of more discovery materials to a defendant upon a court order. As a result, prosecutors and law enforcement agencies may experience higher workload to review, redact, and produce discovery materials. Actual costs will depend on the number of court orders granting access to post-conviction relief and the amount of workload needed to comply with each order, but total aggregate costs statewide may be in the hundreds of thousands to millions of dollars annually. General Fund costs will depend on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.
- Costs (local funds, General Fund) of an unknown amount to public defender offices to comply with the bill's record retention requirements. The bill permits attorneys to retain digital color copies of evidence rather than storing physical copies of files, so costs may be primarily for additional workload to scan the files for all clients who meet the bill's new eligibility requirements. General Fund costs

will depend on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates.

Background: Post-conviction discovery is the provision of materials and documents to a defendant after they have been convicted at trial and have exhausted their appeals. In recent years, the Legislature has enacted multiple bills to expand post-conviction resentencing, greatly increasing the pool of people who are entitled to petition the court to be resentenced or have their convictions vacated. The Penal Code governs the circumstances in which a court must order a prosecutor or law enforcement agency to provide specified discovery materials to a defendant pursuing post-conviction relief. With some exceptions, the court must generally issue such an order if: (a) the defendant was convicted of a serious or violent felony and sentenced to at least 15 years of incarceration; (b) the defendant has filed or is preparing to file a specified petition for post-conviction relief; and (c) the defendant shows a good faith but unsuccessful effort to obtain the discovery materials from the attorney who represented the defendant at trial.

Proposed Law:

- Expands reasonable access to post-conviction discovery materials to any case in which a defendant is or has ever been convicted of a felony resulting in incarceration in the Department of Corrections and Rehabilitation or in a county jail.
- Adds to the definition of, “discovery materials” materials that tend to negate guilt, mitigate the offense, mitigate the sentence, or otherwise are favorable or exculpatory to the defendant.
- Clarifies that “Discovery materials” includes all materials that the convicted person would be entitled to if they were being tried today, irrespective of whether the materials were discoverable at the time of the convicted person’s original trial.
- Provides that “Discovery materials” include the prosecution’s jury selection notes.
- States that these provisions do not impose an additional obligation to investigate the existence of new discovery materials and does not prohibit a court from ordering the prosecution or law enforcement to investigate the existence of new discovery materials when appropriate.
- States that, if the prosecution believes there is good cause to shield jury selection notes from disclosure, they shall make a foundational proffer describing how information in their file would bear on their case strategy. If the court finds good cause, the court shall conduct an in camera review and order necessary redactions.

- The prosecution's lack of exercised peremptory challenges during jury selection shall constitute good cause to withhold disclosure of jury selection notes.
- Requires, if the defendant's trial counsel retains an electronic copy of a former client's files, that the electronic copy be in color and preserved. To the extent this section imposes new requirements on trial counsel, trial counsel shall begin retaining their physical files and digital color copies of evidence for all felony convictions on or after July 1, 2026.

Staff Comments: Over the past decade, the legislature has passed numerous measures that lowered standards, added claims, and made it more accessible to prepare and file a habeas petition. However, according to the Judicial Council report the amount of habeas petitions filed has decreased.¹ Thus, it is uncertain whether expanding access to post-conviction discovery as proposed by this bill will lead to a substantial increase in habeas filings.

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¹ Judicial Council, *2024 Court Statistics Report Statewide Caseload Trends 2013–14 through 2022–23*, at p. 59. Available at: <https://courts.ca.gov/sites/default/files/courts/default/2024-12/2024-court-statistics-report.pdf>.