
THIRD READING

Bill No: AB 1036
Author: Schultz (D)
Amended: 8/29/25 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-1, 7/1/25
AYES: Arreguín, Caballero, Gonzalez, Pérez, Wiener
NOES: Seyarto

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/29/25
AYES: Caballero, Cabaldon, Grayson, Richardson, Wahab
NOES: Seyarto, Dahle

ASSEMBLY FLOOR: 53-13, 6/2/25 - See last page for vote

SUBJECT: Criminal procedure: postconviction discovery

SOURCE: California Innocence Coalition

DIGEST: This bill increases access to postconviction discovery for felony defendants who were sentenced to state prison.

ANALYSIS:

Existing law:

- 1) Provides that in a case in which a defendant is or has ever been convicted of a serious felony or a violent felony resulting in a sentence of 15 years or more, upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment, or in preparation to file that writ or motion, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided, order that the defendant be provided reasonable access to any of the materials, as defined. (Penal Code (Pen. Code), § 1054.9, subd. (a).)

- 2) Provides that in a case in which a sentence other than death or life in prison without the possibility of parole is or has ever been imposed, if a court has entered a previous order granting discovery, a subsequent order granting discovery may be made in the court's discretion. (Pen. Code, § 1054.9, subd. (b).)
- 3) Defines "discovery materials" in this context as "materials in the possession of the prosecution and law enforcement authorities to which the defendant would have been entitled to at the time of trial." (Pen. Code, § 1054.9, subd. (c).)
- 4) Provides that in response to a writ or motion, the court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief. (Pen. Code, § 1054.9, subd. (d).)
- 5) States the retention of discovery materials is not required unless otherwise required by law or court order. (Pen. Code, § 1054.9, subd. (f).)
- 6) Provides that in criminal matters involving a conviction for a serious or violent felony resulting in a sentence of 15 years or more, trial counsel shall retain a copy of a former client's files for the term of imprisonment. An electronic copy is sufficient only if every item in the file is digitally copied and preserved. (Pen. Code, § 1054.9, subd. (g).)
- 7) Provides that specified changes to the postconviction discovery laws are intended to only apply prospectively. (Pen. Code, § 1054.9, subd. (j).)
- 8) Requires the prosecution to disclose the following evidence to the defendant or their attorney before trial, if it is possessed by the prosecution or the prosecutor knows it is possessed by the investigating agencies:
 - a) Names and addresses of persons the prosecutor intends to call as witnesses at trial;
 - b) Statements made by all defendants;
 - c) All relevant real evidence obtained as part of the investigation of the charged offenses;

- d) The existence of felony convictions of material witnesses whose credibility is likely to be critical to the outcome of the trial;
- e) Any exculpatory evidence; and,
- f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at trial. (Pen. Code, § 1054.1.)

This bill:

- 1) Extends post-conviction discovery to include cases in which a defendant is or has ever been convicted of a felony resulting in incarceration in state prison, instead of those convicted of a serious or violent felony resulting in a sentence of 15 years or more.
- 2) Excepts from post-conviction discovery cases in which a protective order prohibits the disclosure.
- 3) Expands the definition of post-conviction "discovery materials" to include materials that tend to negate guilt, mitigate the offense, mitigate the sentence, or otherwise are favorable or exculpatory to the defendant.
- 4) Specifies post-conviction "discovery materials" also 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 and the prosecution's jury selection notes.
- 5) Requires the following regarding the production of jury selection notes:
 - a) 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;
 - b) If a court finds good cause to believe the jury selection notes would bear on the prosecution's case strategy, it must conduct an in camera review and order necessary redactions; and,
 - c) The prosecution's lack of exercised peremptory challenges during jury selection shall constitute good cause to withhold disclosure of jury selection notes.
- 6) Defines "the prosecution" as a prosecuting agency, as well as counsel for the respondent in a habeas petition.

- 7) States that access to post-conviction discovery materials, as specified, does not impose an additional obligation to investigate the existence of new discovery materials or prohibit a court from ordering the prosecution or law enforcement to investigate the existence of new discovery materials when appropriate.
- 8) Clarifies that a defendant's trial counsel shall maintain a copy of a former client's case file for any felony conviction resulting in incarceration in state prison. Digital copies must be preserved in color.
- 9) Provides that to the extent this imposes new requirements on trial counsel, trial counsel shall begin retaining their physical files and digital color copies of evidence for all felony convictions resulting in incarceration in state prison on or after July 1, 2026.

Comments

Post-Conviction Discovery Generally. Existing law generally allows for limited discovery in post-conviction proceedings like petitions for habeas corpus or motions to vacate. Penal Code section 1054.9 allows for reasonable access to any discovery available to the defendant at the time of trial, but only in cases where the defendant was sentenced to 15 years or more on a serious or violent felony. However, the defendant must demonstrate that efforts to obtain the trial attorney's file were unsuccessful. Defense attorneys must retain client files when the person was incarcerated for more than 15 years on a serious or violent felony for the period of the person's confinement. (Pen. Code, § 1054.9, subd. (a).)

Penal Code section 1054.9, subdivision (c) only allows discovery of materials to which the defendant would have been entitled at time of trial. This includes discovery of materials to which the defendant was entitled at trial but did not receive. (*Barnett v. Superior Court* (2010) 50 Cal.4th 890, 898.)

This bill allows for post-conviction discovery in any felony case resulting in incarceration in state prison – not just serious and violent felonies for which the defendant is sentenced to 15 years or more – and clarifies that discoverable materials includes any evidence that may be available to the defendant today, regardless of whether it would have been available at the time of trial. This bill provides the following with respect to post-conviction discovery of the prosecution's jury notes:

- 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 a court finds good cause to believe the jury selection notes would bear the prosecution's case strategy, it must conduct an in camera review and order necessary redactions; and,

Moreover, the prosecution's lack of exercised peremptory challenges during jury selection shall constitute good cause to withhold disclosure of jury selection notes. Finally, this bill requires criminal defense attorneys to retain records for any felony resulting in a sentence of a year or more for the term of the defendant's incarceration.

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

According to the Senate Appropriations Committee:

Fiscal Impact:

- Unknown costs to the state funded trial courts (Trial Court Trust Fund, General Fund) for the additional hearings need to resolve discovery disputes in these postconviction proceedings. The actual costs depend 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. 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 postconviction 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.

SUPPORT: (Verified 8/29/25)

ACLU California Action
California Public Defenders Association
Catalyst California
Communities United for Restorative Youth Justice
Courage California
Death Penalty Focus
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
San Francisco Public Defender
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
The W. Haywood Burns Institute
University of San Francisco School of Law | Racial Justice Clinic

OPPOSITION: (Verified 8/29/25)

California District Attorneys Association
One Private Individual

ARGUMENTS IN SUPPORT:

According to the California Public Defenders Association:

It is a sad truth that our system of justice is far from perfect, and that far too often innocent people are convicted for crimes they have not committed. (See, e.g., <https://www.nbcalosangeles.com/news/local/california-man-exonerated-released-prison-1998-whittier-shooting-miguel-solorio/3274941/> [Californian man recently exonerated after spending

25 years in prison]; <https://www.eastbaytimes.com/2024/07/26/i-loved-her-temecula-man-exonerated-for-mistress-murder-says/> [California man recently exonerated after spending 20 years in prison]; <https://www.dailynews.com/2024/05/07/la-county-approves-24-million-for-exonerated-men-after-their-years-in-prison/> <https://www.dailynews.com/2024/05/07/la-county-approves-24-million-for-exonerated-men-after-their-years-in-prison/> [Two Californian men recently exonerated after spending 23 years in prison].)

Under current law, however, wrongfully convicted men and women are prevented from accessing the evidence necessary to prove their innocence, either because that evidence was not preserved, or because the state refuses to give them access.

Assembly Bill 1036 addresses this issue, in part, by requiring defense counsel to preserve trial records, and by requiring the state to give post-conviction defendants access to relevant evidence, including evidence that tends to negate guilt, mitigate the offense, or prove that the conviction was wrongfully obtained.

Because a justice system that is unwilling to acknowledge its own errors is never just, AB 1036's push for transparency and fairness in the post-conviction context is a vital step in the right direction.

ARGUMENTS IN OPPOSITION:

According to the California District Attorneys Association:

Current law provides several ways in which a person pursuing a postconviction writ of habeas corpus may request discovery. For example, any time a court has issued an order to show cause and thus has recognized that if the person's claims are true, they may be entitled to relief, that same court may order discovery. This is true of any petition for writ of habeas corpus brought by any person, regardless of what they were convicted of or how much time they were ordered to serve.

In addition, Penal Code section 1054.9 currently provides enhanced postconviction discovery rights to individuals convicted of a serious or violent felony and sentenced to 15 years or more. These individuals

may obtain discovery when pursuing a postconviction writ of habeas corpus or a motion to vacate judgment. Though many discovery requests brought under section 1054.9 are made after a petition for writ of habeas is filed, the requests may be made before filing. AB 1036 would broaden these enhanced discovery rights to any person convicted of a felony who received a sentence of at least a year of incarceration.

Section 1054.9 currently includes safeguards to protect against unnecessarily burdensome requests. For example, the law currently requires a showing that good faith efforts to obtain the materials from trial counsel have been made and were unsuccessful. Moreover, since 2019, defense counsel has been required to maintain discovery materials for this purpose for the duration of the client's imprisonment. AB 1036 would eliminate the requirement that convicted individuals first seek copies of discovery that their defense lawyers have retained specifically for this purpose, and allow them to instead seek the discovery directly from the prosecution.

Further, the bill broadens the definition of "discovery materials" in two ways. First, it requires discovery of materials that "tend to negate guilt, mitigate the offense, or mitigate the sentence, or otherwise are favorable or exculpatory to the defendant." This attempt to codify existing decisional authority is unnecessary. Prosecutors are already subject to an ongoing obligation upon prosecutors under *Brady v. Maryland* to supply convicted persons with material favorable evidence. In addition, Rule 3.8 of the California Rules of Professional Conduct requires prosecutors to disclose new, credible and material evidence that creates a reasonable likelihood the convicted person did not commit crime. CDAA believes that these standards do not require codification.

The second way in which AB 1036 expands the definition of discovery is by including as discovery the prosecutor's jury selection notes regardless of whether a colorable – or any claim – of misconduct in jury selection is made. Under current law a convicted person may receive the prosecutor's jury selection notes if they can demonstrate a *prima facie* case of racial bias in jury selection. This standard recognizes that much of what is contained in a prosecutor's jury selection notes may reflect upon trial strategy or contain other information that qualifies as core work product, and that disclosure of

jury selection notes should not be ordered without good cause and judicial review. CDAA strongly objects to any amendment that would mandate disclosure of jury notes in all cases regardless of whether there is any evidence of bias or misconduct in jury selection.

CDAA is deeply concerned that by expanding the pool of convicted persons who may seek pre-filing habeas discovery, by eliminating the requirement that a convicted person first seek copies from defense counsel, and by expanding the definition of discovery materials far beyond current discovery obligations, AB 1036 lacks sufficient safeguards to prevent misuse of discovery requests and may create opportunities for frivolous or abusive litigation that could overwhelm courts and prosecutors' offices.

We urge you to reconsider the language of AB 1036 and work with stakeholders, including prosecutors, to ensure that postconviction discovery processes remain fair for convicted persons without becoming unduly burdensome on prosecutors and without creating easy opportunities for abuse of process.

ASSEMBLY FLOOR: 53-13, 6/2/25

AYES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Lee, Lowenthal, McKinnor, Nguyen, Ortega, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Rogers, Schiavo, Schultz, Sharp-Collins, Ta, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

NOES: Davies, DeMaio, Dixon, Ellis, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Macedo, Patterson, Sanchez, Tangipa, Wallis

NO VOTE RECORDED: Alanis, Castillo, Chen, Flora, Krell, Lackey, Muratsuchi, Pacheco, Michelle Rodriguez, Blanca Rubio, Solache, Soria, Stefani

Prepared by: Cheryl Anderson / PUB. S. /
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