

CONCURRENCE IN SENATE AMENDMENTS

AB 1036 (Schultz)

As Amended August 29, 2025

Majority vote

SUMMARY

Authorizes reasonable access, except as specified, to post-conviction discovery materials for felonies resulting in a sentence of incarceration in state prison.

Senate Amendments

- 1) Limits reasonable access to post-conviction discovery materials for felonies resulting in a state prison sentence, but not a county jail sentence.
- 2) Makes other technical, non-substantive change.

COMMENTS

As passed by the Assembly: This bill authorized reasonable access, except as specified, to post-conviction discovery materials for felonies resulting in a sentence of incarceration in state prison or county jail.

Major Provisions

- 1) Expanded the definition of "discovery materials" to include materials that tend to negate guilt, the offense, the sentence, or otherwise are favorable or exculpatory to the defendants.
- 2) Specified "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 jury selection notes, as specified.
- 3) Mandated 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.
 - c) The prosecution's lack of exercised peremptory challenges during jury selection shall constitute good cause to withhold disclosure of jury selection notes.
- 4) Clarified that a defendant's trial counsel maintain a copy of a former client's case file for any felony for which the defendant was sentenced to state prison or county jail.
- 5) Provided that reasonable access to post-conviction discovery materials is authorized after a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful.

- 6) Defined "the prosecution" as a prosecuting agency, as well as counsel for the respondent in a habeas petition.
- 7) Stated 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) Stated, beginning January 1, 2026, the electronic copies are sufficient only if every item in the file is digitally copied in color and preserved.

According to the Author

"California's current post-conviction discovery laws create unnecessary barriers for incarcerated individuals seeking access to critical evidence that could prove their innocence or reduce their sentences. Under existing law, only those convicted of serious or violent felonies with sentences of 15 years or more can request discovery materials, and only after first attempting to obtain them from their trial counsel. This restrictive process often leaves wrongfully convicted individuals without the evidence needed to challenge their convictions, disproportionately impacting marginalized communities and undermining trust in our justice system.

"AB 1036 seeks to address these inequities by expanding access to post-conviction discovery to all individuals convicted of felonies with sentences of one year or more. It eliminates the burdensome requirement of first seeking discovery from trial counsel and broadens the definition of "discovery materials" to include exculpatory and mitigating evidence and jury selection notes. Additionally, this bill ensures transparency and accountability by requiring trial counsel to maintain digital color copies of case files, preventing the loss of crucial records.

"By modernizing California's post-conviction discovery laws, AB 1036 enhances fairness in our criminal legal system and helps correct wrongful convictions more efficiently. Providing broader access to evidence will not only prevent innocent individuals from remaining incarcerated but will also strengthen public confidence in the integrity of our legal system. AB 1036 ensures that truth and fairness remain at the core of our system, making California safer and more just for all."

Arguments in Support

According to *Californians for Safety of Justice*, "This bill ensures greater fairness in the post-conviction process by allowing individuals convicted of felonies with sentences of one year or more to obtain crucial discovery materials from prosecutors and law enforcement. AB 1036 removes the requirement to seek discovery from trial counsel first and expands the definition of "discovery materials" to include exculpatory, mitigating evidence, and jury selection notes. These changes will modernize and enhance California's post-conviction statutes, ensuring a more efficient and fair justice system, while addressing wrongful convictions.

"In California, the current law presents significant barriers to justice by limiting access to discovery materials that could prove a person's innocence. Many wrongfully convicted individuals are unable to access critical evidence that could lead to their exoneration or help mitigate their sentence. The existing requirement for petitioners to prove they attempted to obtain materials from trial counsel before petitioning the court often proves burdensome and inequitable. This system makes it unnecessarily difficult for individuals to access the evidence

that could demonstrate their innocence, leaving many incarcerated without the ability to seek justice.

"AB 1036 seeks to address this injustice by expanding access to discovery materials in a way that removes these barriers, giving all individuals convicted of felonies resulting in a sentence of one year or more the opportunity to obtain the evidence they need to challenge their conviction or reduce their sentence. By eliminating the requirement to first seek discovery from trial counsel, this bill opens access to the full range of materials that could potentially exonerate a person, including critical exculpatory evidence, newly discovered mitigating information, and even jury selection notes. These materials are often pivotal to revealing the truth in cases of wrongful conviction, and their availability is crucial for a just and fair process. The expansion of this access would ensure that individuals who were wrongfully convicted have a fair chance to challenge their convictions considering new evidence that could prove their innocence."

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."

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) 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.
- 2) 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.
- 3) 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.

VOTES:**ASM PUBLIC SAFETY: 7-0-2**

YES: Schultz, Mark González, Haney, Harabedian, Nguyen, Ramos, Sharp-Collins

ABS, ABST OR NV: Alanis, Lackey

ASM APPROPRIATIONS: 12-2-1

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache, Ta

NO: Dixon, Tangipa

ABS, ABST OR NV: Sanchez

ASSEMBLY FLOOR: 53-13-13

YES: 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

NO: Davies, DeMaio, Dixon, Ellis, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Macedo, Patterson, Sanchez, Tangipa, Wallis

ABS, ABST OR NV: Alanis, Castillo, Chen, Flora, Krell, Lackey, Muratsuchi, Pacheco, Michelle Rodriguez, Blanca Rubio, Solache, Soria, Stefani

UPDATED

VERSION: August 29, 2025

CONSULTANT: Kimberly Horiuchi / PUB. S. / (916) 319-3744

FN: 0002113