
CONSENT

Bill No: SB 1211
Author: Gonzalez (D)
Amended: 4/6/26
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 6-0, 4/14/26
AYES: Arreguín, Seyarto, Caballero, Cortese, Pérez, Wiener

SUBJECT: Criminal procedure: postconviction investigation

SOURCE: Los Angeles County District Attorney's Office

DIGEST: This bill outlines parameters for district attorney offices that accept cases for postconviction review related to innocence claims and enables those offices to have access to materials that they would not otherwise have access to because the case is closed.

ANALYSIS:

Existing law:

- 1) Provides, in any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. Requires a copy of the petition to be served upon the prosecuting attorney of the county or city having jurisdiction over the offense. Requires the law enforcement agency having jurisdiction over the offense to seal its arrest records and the petition for relief for three years from the date of the arrest and thereafter destroy its arrest records and the petition, upon a determination that the person arrested is factually innocent. (Penal (Pen.) Code, § 851.85, subd. (a).)
- 2) Requires the law enforcement agency having jurisdiction over the offense to notify the Department of Justice (DOJ), and any law enforcement agency that

arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent, of the sealing of the arrest records and the reason. Requires DOJ and any law enforcement agency so notified to seal their arrest records and the notice of sealing for three years from the date of the arrest, and thereafter destroy their records of the arrest and the notice of sealing. Requires the law enforcement agency having jurisdiction over the offense and the DOJ to request the destruction of any records of the arrest which they have given to any local, state, or federal agency or to any other person or entity. Requires each agency, person, or entity within California receiving the request to destroy its records of the arrest and the request, unless otherwise provided in this section. (Pen. Code, § 851.85, subd. (a).)

- 3) Provides that after receiving a petition for relief, if the law enforcement agency and prosecuting attorney do not respond to the petition by accepting or denying the petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, the petition is deemed to be denied. (Pen. Code, § 851.85, subd. (b).)
- 4) Authorizes any judicial determination of factual innocence to be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant, and reliable. Prohibits a finding of factual innocence and an order for the sealing and destruction of records from being made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. (Pen. Code, § 851.85, subd. (b).)
- 5) Provides, in any court hearing to determine the factual innocence of a party, that the initial burden of proof rests with the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. Provides that the burden of proof shifts to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made if the court finds that this showing of no reasonable cause has been made by the petitioner. (Pen. Code, § 851.85, subd. (b).)
- 6) Requires the court, if it finds the arrestee to be factually innocent of the charges for which the arrest was made, to order the law enforcement agency having jurisdiction over the offense, the DOJ, and any law enforcement agency which

arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent to seal their records of the arrest and the court order to seal and destroy the records, for three years from the date of the arrest and to then destroy their records of the arrest and the court order to seal and destroy those records. (Pen. Code, § 851.85, subd. (b).)

- 7) Authorizes a defendant, in any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, to petition the court that dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made, at any time after dismissal of the action. Requires a copy of the petition to be served on the prosecuting attorney in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence. Authorizes the prosecuting attorney to present evidence to the court at the hearing. Requires the hearing to be conducted as provided above. Requires the court to grant relief if the court finds the petitioner to be factually innocent of the charges for which the arrest was made. (Pen. Code, § 851.85, subd. (c).)
- 8) Authorizes the court, with the concurrence of the prosecuting attorney, to grant the relief described above, in any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, at the time of the dismissal of the accusatory pleading. (Pen. Code, § 851.85, subd. (d).)
- 9) Authorizes the court, whenever any person is acquitted of a charge and it appears to the judge presiding at the trial at which the acquittal occurred that the defendant was factually innocent of the charge, to grant the relief described above. (Pen. Code, § 851.85, subd. (e).)
- 10) Requires the law enforcement agency having jurisdiction over the offense or court, in any case where a person who has been arrested is granted relief, to issue a written declaration to the arrestee stating that it is the determination of the law enforcement agency having jurisdiction over the offense or court that the arrestee is factually innocent of the charges for which the person was arrested and that the arrestee is thereby exonerated. Provides that the arrest is deemed not to have occurred and the person may answer accordingly any question relating to its occurrence. (Pen. Code, § 851.85, subd. (f).)

- 11) Authorizes the judge, whenever a person is acquitted of a charge and it appears to the judge presiding at the trial that the defendant was factually innocent of the charge, to order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case. Requires the court, if such an order is made, to give to the defendant a copy of such order and inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court. (Pen. Code, § 851.85.)
- 12) Requires the judge, 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, to 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. Requires the court, if such an order is made, to give the defendant a copy of that order and inform the defendant that the person may state they were not arrested for that charge and that they were not convicted of that charge, and that they were found innocent of that charge by the court. (Pen. Code, § 851.86.)

This bill:

- 1) Authorizes the district attorney to file a notice with the court notifying the court of intent to conduct a postconviction investigation of a claim of factual innocence, if the district attorney accepts a case for postconviction review.
- 2) Provides that “accepts a case for postconviction review” means that a conviction integrity unit or other formally designated unit of a district attorney’s office that is structurally independent from the trial, appellate, and habeas litigation divisions of the office, has formally accepted for internal review a claim of factual innocence at the request or initiation of the petitioner alleging factual innocence.
- 3) Requires the case, upon the filing of a notice described above, to be treated as if it were an open case for the purpose of investigating a claim of factual innocence. Specifies that the district attorney has the power to issue subpoenas and compel the production of documents and testimony, as provided, and file motions necessary to investigate claims, as provided.

- 4) Requires the district attorney, to the extent the district attorney seeks otherwise confidential materials relating to the petitioner, to obtain a written waiver from the petitioner or the petitioner's counsel before the discovery is authorized.
- 5) Prohibits the authority granted by the provisions of this bill from being exercised if any direct appeal, habeas corpus proceeding, motion for new trial, or other collateral attack concerning the same conviction is pending in any state or federal court, unless the petitioner or petitioner's counsel agrees to the exercise of that authority.

Background

A Conviction Integrity Unit (CIU) is a division of a prosecutor's office that works to prevent, identify, and remedy false convictions. They are also called Conviction Review Units (CRUs). Their purpose is described as follows:

“Conviction Integrity Review” or, more expansively “Case Integrity Review” or “Post-Conviction Integrity Review” ... were initially conceived (and as many still exist in their narrowest form) the focus was solely on actual innocence claims, often where the defendant was serving a life sentence or received the death penalty. Many of these earliest units operated internally ... Where a claim was substantiated, the office's response was generally limited to releasing that person from prison, and perhaps providing some monetary relief to the wrongfully convicted individual. (Fair and Just Prosecution, *Conviction Integrity Units and Internal Accountability Mechanisms* (Sept. 2017) <<https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.ConvictionIntegrity.9.25.pdf> .)

Several counties in the state have a district attorney office with a CIU, including Los Angeles, Santa Clara, Sacramento, San Diego, Contra Costa, among others. In 2023, Attorney General (AG) Bonta established the first-ever Post-Conviction Justice Unit (PCJU) within the Department of Justice.

(<https://oag.ca.gov/news/press-releases/attorney-general-bonta-establishes-first-ever-post-conviction-justice-unit>)

The AG's PCJU requires factual innocence in order to review a conviction. (<https://oag.ca.gov/pcju/conviction>) The PCJU generally requires that a request for conviction review is made in the county where the conviction was obtained. (*Ibid.*) The PCJU will only review cases after a referral has been made by another

prosecution office or after a completed application has been submitted if the AG's Office prosecuted the case. (*Ibid.*) The PCJU webpage provides:

PCJU is guided by California Rules of Professional Conduct, rule 3.8(f), which states that when a prosecutor knows of new, credible, and material evidence that shows a person was convicted of a crime they did not commit, the prosecutor must cause an investigation to determine whether somebody was wrongfully convicted. With this rule, PCJU will investigate cases where there is credible and material evidence currently available or can be reasonably obtained that shows a convicted person did not commit the crime for which they were convicted. A person does not need to fully investigate their case before applying for conviction review. (*Ibid.*)

This bill is designed to outline parameters for district attorney offices that accept cases for postconviction review and to enable these offices access to materials that they would not otherwise have access to because the case is closed.

First, this bill authorizes the district attorney to file a notice with the court notifying it of intent to conduct a postconviction investigation of a claim of factual innocence. "Accepts a case for postconviction review" is defined as a CIU or other formally designated unit of a district attorney's office that is structurally independent from the trial, appellate, and habeas litigation divisions of the office, that has formally accepted a claim of factual innocence at the request or initiation of the petitioner alleging factual innocence for internal review.

This bill provides that after notice is filed, the case is treated as if it were an open case for the purpose of investigating a claim of factual innocence. This bill specifies that the district attorney has the power to issue subpoenas and compel the production of documents and testimony, file motions necessary to investigate claims, including, but not limited to, motions for personnel records pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, motions for court-ordered appointment of counsel, and motions for removal of incarcerated individuals consistent with the district attorney's authority under existing law and consistent with the criminal discovery process.

This bill provides guardrails to protect confidential materials by requiring the district attorney to obtain a written waiver from the petitioner or the petitioner's counsel before discovery is authorized if the district attorney is seeking otherwise

confidential materials relating to the petitioner, including, but not limited to, materials contained in the petitioner's central file or institutional records.

Finally, this bill limits its application if any direct appeal, habeas corpus proceeding, motion for new trial, or other collateral attack concerning the same conviction is pending in any state or federal court, unless the petitioner or petitioner's counsel agrees to the exercise of that authority.

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

SUPPORT: (Verified 4/14/26)

Los Angeles County District Attorney (source)
California Civil Liberties Advocacy
San Quentin Skunkworks

OPPOSITION: (Verified 4/14/26)

None received

Prepared by: Stephanie Jordan / PUB. S. /
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**** **END** ****