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## **SENATE COMMITTEE ON PUBLIC SAFETY**

**Senator Loni Hancock, Chair**

**2015 - 2016 Regular**

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**Bill No:** SB 694                    **Hearing Date:** April 21, 2015

**Author:** Leno

**Version:** February 27, 2015

**Urgency:** No

**Fiscal:** Yes

**Consultant:** MK

**Subject:** *New Evidence: Habeas Corpus: Motion to Vacate Judgment: Indemnity*

### **HISTORY**

**Source:** California Innocence Project  
Northern California Innocence Project

**Prior Legislation:** SB 1058 (Leno) Chapter 623, Stats. 2014  
SB 618 (Leno) Chapter 800, Stats. 2013

**Support:** California Attorneys for Criminal Justice; California Public Defender's Association; Ella Baker Center for Human Rights; Friends Committee on Legislation of California; American Civil Liberties Union; Drug Policy Alliance; Legal Services for Prisoners with Children; The Innocence Project

**Opposition:** California District Attorneys Association; Crime Victims Action Alliance

### **PURPOSE**

*The purpose of this bill is to allow the granting of a habeas corpus petition based on new evidence which “raises a reasonable probability of a different outcome if a new trial were granted.”*

*Existing law* provides that every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint. (Penal Code § 1473(a).)

*Existing law* states that a writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

- False evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to his incarceration;
- False physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person. (Penal Code § 1473 (b))

*Existing law* provides that any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus. (Penal Code § 1473(c).)

*Existing law* states that nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies. (Penal Code § 1473(d).)

*This bill* would add, as grounds for a writ of habeas corpus, new evidence exists which would raise a reasonable probability of a different outcome if a new trial were granted.

*Existing law* provides that in a contested proceeding, if a court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained, the court vacates a judgment on the basis of new evidence concerning a person who is no longer unlawfully imprisoned or restrained and if the court finds that the new evidence on the petition *points unerringly to innocence*, that finding shall be binding on the California Crime Victims Compensation and Government Claims board for claim presented to the board, and upon application by the person, the board shall, without a hearing, recommend to the legislature that an appropriation be made. (Penal Code § 148.55(a))

*This bill* changes that standard from “points unerringly to innocence” to “raises a possibility of a different outcome if a new trial were granted.”

*Existing law* provides that “new evidence” means evidence that was not available or known at the time of trial that completely undermines the prosecution case and points unerringly to innocence. (Penal Code § 148.55(b))

*This bill* changes that standard from “undermines the prosecution case and points unerringly to innocence” to “raises a possibility of a different outcome if a new trial were granted.”

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is

now below the court-ordered reduction to 137.5% of design bed capacity.”( Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### **1. Need for This Bill**

According to the author:

Under existing California law, an inmate who has been convicted of committing a crime for which he or she claims that s/he has new evidence that points to innocence may file a petition for writ of habeas corpus. The burden for proving that newly discovered evidence entitles an individual to a new trial is not currently defined by statute, but has evolved from appellate court opinions. In order to prevail on a new evidence claim, a petitioner must undermine the prosecution's entire case and “point unerringly to innocence with evidence no reasonable jury could reject” (*In re Lawley* (2008) 42 Cal.4th 1231, 1239). The California Supreme Court has stated that this standard is very high, much higher than the preponderance of the evidence standard that governs other habeas claims. (*Ibid.*)

This standard is nearly impossible to meet absent DNA evidence, which exists only in a tiny portion of prosecutions and exonerations. For example, if a petitioner has newly discovered evidence that completely undermines all evidence of guilt and shows that the original jury would likely not have convicted, but the new evidence does not “point unerringly to innocence” the petitioner will not have met the standard and will have no chance at a new trial. Thus, someone who would likely never have been convicted if the newly discovered evidence had been available in their original trial is almost guaranteed to remain in prison under

the status quo in California. The proposed new standard in SB 694 addresses this anomaly. Our criminal justice system was built on the understanding that even innocent people cannot always affirmatively prove innocence, which is why the burden is on the prosecution to prove guilt when a charge is brought to trial, and absent evidence of guilt beyond a reasonable doubt, innocence is presumed. The new standard contained in this bill ensures that innocent men and women do not remain in prison even after new evidence shows that a conviction never would have occurred had it been available.

SB 694 seeks to bring California's innocence standard into line with the vast majority of other states' standards, thirty-nine in total, and to make it consistent with other post-conviction standards for relief such as ineffective assistance of counsel, or prosecutorial misconduct. There is no justification for a different standard to govern these types of claims, as opposed to those brought on the basis of newly discovered evidence. Our laws must recognize that if evidence exists that a jury did not hear (regardless of whether it is the fault of a mistaken or lying witness, an ineffective attorney, or the misconduct of law enforcement) creates a reasonable probability of a different outcome, the conviction should be reversed.

As a result of the onerously high standard governing new evidence claims, individuals often choose to re-package evidence of innocence into other types of claims, such as ineffective assistance of counsel for example. The impact of this is not just a dearth in case law on new evidence claims but it also means that some exonerees may never receive legal recognition of their innocence. To illustrate, consider the case of Maurice Caldwell. Caldwell was convicted of murder in 1991 based on the mistaken identification of a single eyewitness. It was later established that it was scientifically impossible for the witness to have identified the perpetrator from her vantage point, thus rendering his conviction invalid. It was not for the fact that there was new evidence available, however, that the conviction was overturned. It was a claim of ineffective assistance of counsel that ultimately ended Caldwell's wrongful incarceration. While Caldwell no longer suffers from the immediate harm of a wrongful conviction he still has no legal recognition of his innocence, which may limit his ability to continue to recover from the long-lasting and difficult burdens of a wrongful conviction. A finding of innocence is a crucial component of recovery for many people who have been wrongfully convicted in California and without justification for such a high standard, there is no basis for requiring the victims of wrongful incarceration to meet it.

## 2. Habeas Corpus

Habeas corpus, also known as "the Great Writ", is a process guaranteed by both the federal and state Constitutions to obtain prompt judicial relief from illegal restraint. The functions of the writ is set forth in Penal Code section 1473(a): "Every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint." A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

- False evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to his incarceration;

- False physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person; and,
- Any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus.

### 3. Reasonable Probability Standard

In California, there is no codified standard of proof for a writ of habeas corpus brought on the basis of new evidence. The current standard is based on case law. *In re Lawley* (2008) 42 Cal. 4<sup>th</sup> 1231, 1239 found that newly discovered evidence “must undermine the entire prosecution case and point unerringly to innocence or reduced culpability;” and “if ‘a reasonable jury could have rejected’ the evidence presented, a petition has not satisfied his burden.” This bill would instead set the standard for the granting of a writ of habeas corpus as “new evidence exists which would raise a reasonable probability of a different outcome if a new trial were granted. The reasonable probability standard the same standard that is used in most other states and in California is used for cases of: ineffective assistance of counsel; false evidence; and, prosecutorial misconduct.

In support the ACLU notes that:

SB 694 would incorporate into California law a standard of proof that is in alignment with almost all other states. SB 694 will allow a wrongfully convicted person to receive a new trial if he or she presents the reviewing court with evidence that is of such a decisive value and force that there is a reasonable probability of a different outcome if a new trial were granted. This standard brings the actual innocence claim into alignment with other post-conviction remedies for established constitutional violations, including claims of ineffective assistance of counsel, prosecutorial misconduct, and false evidence.

This bill also makes conforming changes, making it clear the standard is a “reasonable probability of a different outcome if a new trial were granted” in the section requiring the Victim Compensation and Government Claims Board to make a recommendation for an appropriation when the court has granted a writ of habeas corpus on the basis of new evidence.

### 4. Opposition

The California District Attorneys Association opposes this bill stating:

The proposed standard allows for a new trial when there is merely a **reasonable probability** that the outcome would be different because of newly discovered evidence. This standard is even less than a preponderance of the evidence, and thus is ridiculously low in this context. The proposed standard is currently mandated by the United States Constitution only when there is a constitutionality defective trial because of ineffective assistance of counsel or *Brady* error for example. (*emphasis in original*)

In contrast, SB 694 proposes to use the standard for relief designed to remedy a constitutionally defective trial, even though the trial was fair. Simply put, the finality of judgments is sacrificed, and the meaning of a guilty verdict is redefined

for the public, victims, and the justice system to mean guilty unless the defendant can produce newly discovered evidence with less than fifty percent chance of changing the outcome. The standard is no longer that the defendant appears to be innocent, but rather, even though the defendant is more likely guilty than not, the defendant gets a new trial.

When habeas relief is granted years after a conviction by trial, it is frequently not possible to retry the defendant due to passage of time. Thus the effect of SB 694 is to “exonerate” convicted individuals who have less than fifty percent chance of winning a new trial.

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