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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** SB 269                      **Hearing Date:** April 2, 2019  
**Author:** Bradford  
**Version:** February 12, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Wrongful Convictions*

### HISTORY

**Source:** California Innocence Coalition

**Prior Legislation:** AB 1094 (Anderson), held in Assembly Appropriations, 2018

**Support:** California Public Defenders Association; San Francisco Public Defender's Office

**Opposition:** None known

### PURPOSE

*The purpose of this bill is to require the California Victim Compensation Board to, without a hearing, recommend payment of a claim by a person who has been granted a writ of habeas corpus or a motion to vacate based on newly discovered evidence of actual innocence, as specified.*

*Existing law* establishes procedures for the filing and hearing of a petition for a writ of habeas corpus, which allows a person to challenge his or her incarceration or related restraint as unlawful. (Pen. Code, §§ 1474-1508.)

*Existing law* authorizes a person no longer unlawfully imprisoned or restrained to prosecute a motion to vacate a judgment for any of the following reasons:

- Newly discovered evidence of fraud by a government official that completely undermines the prosecution's case, is conclusive, and points unerringly to his or her innocence;
- Newly discovered evidence that a government official testified falsely at the trial that resulted in the conviction and that the testimony of the government official was substantially probative on the issue of guilt or punishment; or,
- Newly discovered evidence of misconduct by a government official committed in the underlying case that resulted in fabrication of evidence that was substantially material and probative on the issue of guilt or punishment. Evidence of misconduct in other cases is not sufficient to warrant relief under this paragraph. (Pen. Code, § 1473.6, subd. (a).)

*Existing law* authorizes a person who is no longer in criminal custody to file a motion to vacate a conviction or sentence when newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice. (Pen. Code, § 1473.7, subd. (a)(2).)

*Existing law* states that 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, the judge shall 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. (Pen. Code, § 851.86.)

*Existing law* requires the court to inform a person whose conviction has been set aside based upon a determination that the person was factually innocent of the charge of the availability of indemnity for persons erroneously convicted and the time limitations for presenting those claims. (*Id.*)

*Existing law* states that if a person has secured a declaration of factual innocence, the finding shall be sufficient grounds for compensation by the California Victim Compensation Board. Upon application the Board shall, without a hearing, recommend to the Legislature that an appropriation be made. (Penal Code § 851.865.)

*Existing law* provides that if the district attorney or Attorney General (AG) stipulates to or does not contest the factual allegations underlying one or more grounds for granting a writ of habeas corpus or a motion to vacate a judgement, the facts underlying the basis for the court's ruling shall be binding on the AG, the factfinder, and the California Victim Compensation Board. (Pen. Code, § 1485.5, subd. (a).)

*Existing law* states that in a contested or uncontested proceeding, the express factual findings made by the court in considering a petition for habeas corpus, a motion to vacate judgment, or an application for a certificate of factual innocence, shall be binding on the AG, the factfinder, and the California Victim Compensation Board. (Pen. Code, § 1485.5, subd. (c).)

*Existing law* states that, in a contested proceeding, if the court has granted a writ of habeas corpus or when the court vacates a judgement, and if the court has found that the person is factually innocent, that the finding shall be binding on the California Victim Compensation Board for a 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 and the claim paid. (Pen. Code, § 1485.55, subd. (a).)

*Existing law* provides that any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison for that conviction, is granted a pardon by the Governor for the reason that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her, or who, being innocent of the crime with which he or she was charged for either of the foregoing reasons, shall have served the term or any part thereof for which he or she was imprisoned, may, as specified, present a claim against the state to the board for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment. (Pen. Code, § 4900.)

*Existing law* sets the rate of compensation at \$140 per day of incarceration served subsequent to the claimant's conviction, and specifies that this appropriation shall not be considered gross income for state tax purposes. (Pen. Code, § 4904.)

*Existing law* gives erroneously convicted and pardoned individuals two years after acquittal, pardon or release of custody to file a claim against the state. (Pen. Code, § 4901.)

*Existing law* states that if a person has secured a declaration of factual innocence or if the court has granted a writ of habeas corpus or vacated a judgement and has found that the person is factually innocent, the California Victim Compensation Board, shall, within 30 days of the presentation of the claim, calculate compensation and recommend to the Legislature payment of that sum. (Pen. Code, § 4902, subd. (a).)

*This bill* requires the California Victim Compensation Board to, without a hearing, recommend payment of a claim by a person who has been granted a writ of habeas corpus and reversed the conviction or a motion to vacate based on newly discovered evidence that either shows actual innocence or is substantially probative on the issue of guilt or punishment and as a result of any of those actions the charges were subsequently dismissed or the person was acquitted of the charges on a retrial.

*This bill* specifies that the automatic recommendation of payment does not apply to a claim by a person whose conviction for felony murder was vacated pursuant to the provisions of Senate Bill 1437 (Skinner), Ch. 1015, Stats. 2018.

*This bill* specifies that the two-year deadline applies after judgment of acquittal, dismissal of charges, pardon granted, or release from custody, whichever is later.

*This bill* requires the California Victim Compensation Board, within 30 days of the presentation of the claim, to calculate compensation and recommend to the Legislature payment of that sum in a claim where a state or federal court has granted a writ of habeas corpus or if a state court has granted a motion to vacate, and as a result of either or those actions the charges were dismissed or the person has been acquitted of the charges on a retrial.

*This bill* authorizes compensation at a rate of \$70 a day for any time the claimant, who after serving a term of imprisonment for which the claimant is eligible for compensation for wrongful conviction, was either on parole or supervised release or required to register as a sex offender.

*This bill* makes other conforming changes.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

Under current law, in order to receive compensation an exonerated person must prove either to a court or to the California Victim's Compensation Board that a crime was not committed or that they were not the perpetrator of the crime. The

claims process typically takes over two years to complete and involves lengthy litigation.

SB 269 would make compensation required for cases in which convictions were reversed through a habeas corpus petition or motion to vacate and the charges are dismissed or the individual is acquitted on retrial. A habeas petition or motion to vacate specified under this bill are only granted when a court makes a determination that there is new evidence that the original jury did not hear and had the jury heard that evidence it is probable or likely that the person would not have been convicted for the crime for which they spent years incarcerated. The bill also provides additional compensation of \$70 per day for the time an exonerated person spent on parole, supervised release, or required to register as a sex offender as a result of their wrongful conviction. SB 269 also removes the two-year deadline an individual has to file a claim for compensation.

## **2. Writ of Habeas Corpus**

Writ of 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 subdivision (a) of Penal Code section 1473: "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: (1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to his or her incarceration; (2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person; or (3) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial. (Pen. Code, §1473, subd. (b).)

Other avenues of challenging a conviction include a motion to vacate the judgement even after being released. Such motions are pursuable in a couple of situations, including when new evidence is discovered that tends to prove the defendant is innocent, and when it is discovered that false evidence was material and substantial in proving the defendant's guilt. (See Pen. Code, §§ 1473.6 and 1473.7, subd. (a)(2).)

## **3. Compensation for the Wrongfully Convicted**

California law allows a person who has been wrongfully convicted of a felony and imprisoned to file a claim for compensation at a rate of \$140 per day of imprisonment. (Pen. Code, § 4904.) If a claimant has first obtained a declaration of factual innocence from a court, this finding is binding on the Victim Compensation Board and the Attorney General (AG), who represents the state in wrongful conviction claims, and the board is required to recommend to the Legislature to make a payment to the claimant within 30 days of the claim.

For claimants who have not obtained a declaration of factual innocence, the AG must respond to the claim within 60 days or request an extension of time, upon a showing of good cause. Upon receipt of the response from the AG, the board must set a time and place for the hearing and mail

notice of the hearing to the claimant and the AG. The board is required to use reasonable diligence in setting the date for the hearing and shall attempt to set the date for the hearing at the earliest date convenient for all parties and the board. (Pen. Code, § 4902.) In order to be successful on a claim of wrongful conviction, the claimant must show at the hearing, by a preponderance of the evidence, that (1) the crime with which he or she was charged was either not committed at all or if committed, was not committed by him or her, and (2) the pecuniary injury sustained by him or her through his or her erroneous conviction and imprisonment. (Pen. Code, § 4903.) At the hearing, the board considers all of the evidence presented and makes a determination as to whether the claimant has met the burden of proof required under Penal Code section 4903.

According to information provided by the sponsor, claims where the claimant must make their case to the board take anywhere from 2 to 5 years to litigate. This bill would expand the types of claims that would not require a hearing before the board. This bill provides that if a state or federal court grants a writ of habeas corpus or if a state court grants a motion to vacate based on newly discovered evidence, as specified, and as a result of either or those actions the charges are dismissed or the person is acquitted of the charges on a retrial, the person shall be entitled to payment on his or her claim without a separate board hearing.

Additionally, this bill allows compensation at a rate of \$70 a day for any time the claimant, who after serving a term of imprisonment for which the claimant is eligible for compensation for wrongful conviction, was either on parole or supervised release or required to register as a sex offender.

This bill also clarifies the timeline to file wrongful conviction claims to specify that the two years is from the point of judgment of acquittal, dismissal of charges, pardon granted, or release from custody, whichever is later.

#### **4. Argument in Support**

According to the California Innocence Project, the sponsor of this bill:

SB 269 is an effort to make compensation automatic for wrongfully convicted individuals whose convictions were overturned by a court based on 1) a writ of habeas corpus or a motion to vacate based on newly discovered evidence and, subsequently, 2) had their charges dismissed or were acquitted in a retrial.

The bill does not allow for automatic compensation for those who: 1) plead guilty after the reversal of their conviction, 2) had a motion to vacate their conviction granted due to the new felony-murder rule, 3) had a motion to vacate their conviction granted for failure to receive proper advisement of immigration consequences, 4) were serving a concurrent sentence for an additional valid conviction, or 5) had their convictions reversed on direct appeal.

Furthermore SB 269 also provides compensation to the wrongfully convicted for their years spent on parole, supervised release, or the sex offender registry as a result of their conviction. These men and women not only had to survive incarceration, but had to survive years under the worst stigmas in society all because of their wrongful conviction.

The current compensation process is lengthy, expensive, and inconsistent. More importantly, the process underestimates the amount of evidence that was required to justify the reversal of our clients' convictions and erodes the presumption of innocence. This is why compensation should be automatic for the narrow category of cases in which convictions are reversed and charges are dismissed or the jury acquits the person after a new trial. These people have proven they were wrongfully convicted and they are presumed innocent; they should be compensated automatically.

**-- END --**