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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** SB 651                      **Hearing Date:** April 2, 2019  
**Author:** Glazer  
**Version:** February 22, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Discovery: Postconviction*

## HISTORY

**Source:** California Innocence Coalition

**Prior Legislation:** AB 1987 (Lackey) Chapter 482, Stats. 2018  
SB 1391 (Burton) Chapter 1105, Stats. 2002

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

**Opposition:** California District Attorneys Association

## PURPOSE

***The purpose of this bill is to clarify that the right to post conviction discovery applies to any case in which a person was convicted of a serious or violent felony resulting in a sentence of 15 years or more whenever that conviction occurred and that the only provision to be prospective is the one requiring attorneys to keep their files for the term of the client's incarceration.***

*Existing law* requires a court to order that discovery materials be produced to a defendant who has 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 judgement or in preparation to file that writ or motion if the defendant has shown a good faith effort to obtain the materials from the criminal defense attorney who represented him or her at the time of the conviction. (Penal Code, § 1054.9 (a).)

*Existing law* provides that in a case in which a sentence other than death or life in prison without the possibility of parole has been imposed, if the court has entered a previous order granting discovery pursuant to this section, a subsequent order granting discovery may be made at the court's discretion. (Penal Code, § 1054.9 (b).)

*Existing law* defines "discovery materials" in the post-conviction 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." (Penal Code, § 1054.9 (c).)

*Existing law* provides that a court may allow the defendant access to physical evidence relating to the investigation, arrest, and prosecution of the defendant if he or she makes a showing of

good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief. (Penal Code, § 1054.9 (d).)

*Existing law* 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. (Penal Code, § 1054.9 (g).)

*This bill* clarifies that the right to post conviction discovery in this section shall apply to a defendant who has ever been convicted of a serious or violent felony resulting in a sentence of 15 years or more.

*This bill* clarifies that the requirement that counsel retain a copy of a former client's only applies prospectively commencing January 1, 2019.

## COMMENTS

### 1. Need for This Bill

According to the author:

Innocent people are currently serving time for crimes they did not commit. From 1999-2018, the California Innocence Coalition won the freedom of over 60 wrongly imprisoned individuals who collectively spent over 750 years in prison. It takes innocence projects, on average, 3-4 years to investigate these cases because they are often working with incomplete files to recreate what happened years prior. Access to discovery is a critical tool for post-conviction review and expanding post-conviction discovery eligibility would speed up the review process, reducing the number of years an innocent person spends wrongfully incarcerated.

In 2018, Governor Brown signed AB 1987 (Lackey) into law, which expanded post-conviction motion for discovery for defendants convicted of serious and violent crimes for more than 15 years. However, the bill only applied prospectively to future cases—omitting any conviction prior to January 1, 2019. SB 651 would allow the motion for discovery provisions of AB 1987 to be uniformly applied to anyone who qualifies.

### 2. Discovery in Post-Conviction Cases

“Post-conviction discovery” is generally understood in the legal community as the provision of materials and documents to defendants after they have been convicted at the trial level and exhausted their appeals. Current law limits post-conviction discovery to only those cases in which a person is sentenced to death or life without parole. This bill would expand the kinds of cases in which a defendant can seek and obtain post-conviction discovery to cases where a person was convicted of a violent or serious felony and sentenced to 15 years in prison or more. There are four categories of evidence or documents that may be necessary for a person attempting to establish his or her innocence in the post-conviction context. Those are documents or materials that either (1) the prosecution did provide at time of trial but have since become lost to the defendant; (2) the prosecution should have provided at time of trial because they came within the scope of a discovery order the trial court actually issued at that time, a statutory duty to provide discovery, or the constitutional duty to disclose exculpatory evidence; (3) the

prosecution should have provided at time of trial because the defense specifically requested them at that time and was entitled to receive them; or (4) the prosecution had no obligation to provide at time of trial absent a specific defense request, but to which the defendant would have been entitled at time of trial had the defendant specifically requested them. (*Davis v. Superior Court* (2016) 1 Cal. App. 5th 881, 886.)

### **3. The stated need for AB 1987 (Lackey) Chapter 482, Statutes 2018**

The sponsor of AB 1987 (Lackey), the *California Innocence Project* is a law school clinical program that exclusively works on post-conviction cases where there is evidence of actual innocence. (<<https://californiainnocenceproject.org/>>) According to their website:

The California Innocence Project (CIP) is a law school clinical program at California Western School of Law dedicated to releasing wrongfully convicted inmates and providing an outstanding educational experience to the students enrolled in the clinic.

Founded in 1999, CIP reviews more than 2,000 claims of innocence from California inmates each year. Students who participate in the year-long clinic work alongside CIP staff attorneys on cases where there is strong evidence of factual innocence. Together, they have secured the release of many innocent people who otherwise may have spent the rest of their lives in prison.

Clinic students assist in investigation and litigation by locating and re-interviewing witnesses, examining new evidence, filing motions, securing experts, and providing support to attorneys during evidentiary hearings and trials. CIP has trained more than 200 students who have gone on to become highly successful criminal defense attorneys, criminal prosecutors, Assistant Attorneys General, and civil attorneys; all of whom, after their experience in CIP, believe in a fair and honest justice system and realize there is always room for improvement in the law.

On its website, the *California Innocence Project* provides numerous examples of individuals they have successfully exonerated through their efforts. Many of those cases involved some sort of sentence that fell short of the death penalty or life in prison without the possibility of parole.

### **4. Clarification on the prospective portion of the bill**

AB 1987 (Lackey) extended to the right to post-conviction discovery to serious or violent felonies resulting in a sentence of 15 years or more. The intent was to have this apply to cases no matter when the person was convicted. The section in the bill requiring defense attorneys to keep their client's files for the duration of incarceration was intended to be prospective only. However, when the amendments were drafted to make the section dealing with the client's files prospective, there was an error in the drafting and the entire section became prospective. This bill corrects that error and makes it clear that the only portion that shall be prospective is the provision requiring attorneys to keep client files. The expansion of post-conviction discovery to serious or violent felonies with sentences longer than 15 years will apply to convictions occurring before the implementation date as originally intended.