
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1987 **Hearing Date:** June 26, 2018
Author: Lackey
Version: April 18, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Discovery: Postconviction*

HISTORY

Source: California Innocence Coalition

Prior Legislation: SB 1391 (Burton) Chapter 1105, Stats. 2002

Support: American Civil Liberties Union; California Attorneys for Criminal Justice;
California Public Defenders Association; Ella Baker Center for Human Rights

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to expand the availability of a post-conviction motion for discovery materials to include cases where a defendant was convicted of a serious or violent felony and sentenced to 15 years or more.

Existing law requires a court to order that discovery materials be produced to a defendant who has been convicted and sentenced to death or life in prison without the possibility of parole 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 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 (b).)

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 (c).)

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This bill expands the availability of a post-conviction motion for discovery materials to include cases where a defendant was convicted of a serious or violent felony and sentenced to 15 years or more.

This bill requires a defendant bringing a motion for post-conviction discovery to state whether he or she has previously been granted discovery.

This bill gives the court discretion to grant (or deny) a subsequent motion for discovery if the defendant has previously been granted discovery.

This bill requires a criminal defense attorney to retain his or her client’s file throughout the duration of that client’s prison sentence if the client was convicted of a serious or violent felony and sentenced to 15 years or more. An electronic copy is sufficient only if every item in the file is digitally copied and preserved.

COMMENTS

1. Need for This Bill

According to the author:

AB 1987 would expand the post-conviction right to discovery materials in cases where a defendant was convicted of a serious or violent felony. This simple change to current law would allow for post-conviction discovery access to the defense in the most high stakes cases, increase the efficiency of post-conviction review, and allow innocent people to dramatically reduce the amount of time they spend behind bars for crimes they did not commit.

According to the California Innocence Coalition, cases worthy of post-conviction review, on average, take 3 – 4 years to review and investigate before they can be in a position to potentially litigate innocence. The largest contributor to that immense amount of time is the inability to obtain evidence supporting their claim of innocence.

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 Need for this Bill and the California Innocence Project

The sponsor of the bill, 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. Maintenance of Client Files

This bill requires criminal defense attorneys to maintain their client files for the duration of the client's imprisonment when he or she was sentenced to 15 years or more. They may keep the file electronically provided every document is filed. This is consistent with California ethics rules. (*See* Formal Opinion No. 2001-147 Cal. State Bar Standing Committee on Professional Responsibility and Conduct.)

5. According to the bill's sponsor, the *California Innocence Coalition*;

The California Innocence Coalition is proud to sponsor AB 1987, a bill that would improve retention of client files and expand the post-conviction right to discovery materials in cases where a defendant was convicted of a serious or violent felony and sentenced to 15 years or more. This expansion will allow for a more efficient system of post-conviction review and better share the responsibility between the State and the defense community to maintain critical records in the highest stakes criminal cases.

The California Innocence Coalition consists of three innocence projects in California, the California Innocence Project, the Northern California Innocence Project and the Loyola Project for the Innocent. The mission of our projects is to protect the rights of the innocent and to promote a fair and effective criminal justice system by advocating for change in California laws and policy. Collectively, the California Innocence Coalition has won the freedom of over 50 wrongly imprisoned individuals who collectively spent over 517 years in prison for crimes they did not commit.

The California Innocence Coalition provides pro-bono representation to inmates who, unlike those serving on death row, do not have the right to post-conviction attorneys yet are serving life-long sentences. Our cases on average take 3-4 years to review and investigate before we are in a position to potentially file a habeas petition or motion to vacate in a case of wrongful conviction. We strive to gather all of the documents in the case by reaching out to defense counsel, appellate counsel and the inmate, but there are often situations where the trial files have been destroyed, lost, or incomplete. Under current law we have no avenue to obtain the discovery in these cases unless we get a sympathetic District Attorney's office to give us those documents. We are fortunate enough to have some great working relationships with DA offices and can obtain documents that way, but in other counties we are unable to obtain documents because the law does not allow us to. AB 1987 proposes legislation to ensure the maintenance of the discovery by the defense, enforces a good faith effort by the defendant to obtain it, and if all that fails, access to it through district attorney offices.

The vast majority of felony convictions would be unaffected by the change in this law, as only those individuals who did not retain their legal documents from trial—and who are interested in challenging their conviction through a habeas process—would be interested in obtaining these documents. To mitigate concerns about privacy and cost, all of the limitations and protections in place to protect victims and witnesses are still in effect and applicable because post-conviction discovery encompasses any items that would have been accessible to the defendant at the time of trial. Additionally, California law already ensures that the costs of copying or examination is borne or reimbursed by the defendant.

AB 1987 will provide a simple fix to current legislation to allow for post-conviction discovery access to the defense in high stake cases and increase the efficiency of post-conviction review, reducing the amount of time innocent men and woman remain behind bars for crimes they did not commit.