

Staff Memorandum 2024-09

Innocence, Wrongful Convictions, and Related Matters

At its September 2024 meeting, the Committee on Revision of the Penal Code will address factual innocence and wrongful convictions. This memorandum primarily explores current law on how factually innocent people can have their convictions vacated through petitions for habeas corpus and how they can receive financial compensation from California’s Victim Compensation Board.

This memorandum gives general background and staff recommendations for the Committee’s consideration. A supplement to this memorandum, which will be released shortly, will present written submissions from invited panelists.

Table of Contents

Introduction.....	2
Habeas Corpus in California.....	2
Procedural requirements.....	3
Legal standards.....	3
Data on filed petitions.....	7
Conviction Integrity Units.....	8
Discovery.....	9
Remedies.....	10
Compensation from the California Victim Compensation Board.....	10
Staff Recommendations.....	14
• Harmonize the standards for relief in the habeas statutes.....	14
• Clarify that strict procedural rules should not result in the dismissal of meritorious habeas petitions.....	14
• Expand post-conviction discovery.....	14
• Specify that courts can dismiss criminal cases as a remedy.....	15
• Modernize compensation.....	15
Conclusion.....	16

Introduction

Since the National Registry of Exonerations began keeping track in 1989, more than 3,500 people have been found innocent after a criminal conviction, including 287 people in California.¹

“Innocence” has technical definitions. Someone who did not commit the underlying offense is “factually innocent.” The most common reasons factually innocent people are convicted are false or misleading forensic evidence, false or coerced confessions, mistaken eyewitness identification, unreliable informant testimony, official misconduct, and inadequate defense counsel.²

But people can also be “legally” innocent — meaning the prosecution failed to prove their guilt beyond a reasonable doubt in court — without being factually innocent.

Finally, people who are not legally or factually innocent can also be wrongfully convicted if there were serious errors with the process that led to the conviction, such as racially-biased jury selection.³

To state the obvious: convictions of innocent people present the most profound injustice in the criminal legal system and often reflect a total failure of the law enforcement, prosecutorial, defense, and judicial functions. They can also raise grave public safety issues — if the wrong person has been convicted in a serious case, the actually guilty person often remains free.

Habeas Corpus in California

The primary way a person establishes their innocence is by filing a petition for “habeas corpus.”⁴ Unlike a direct appeal from a conviction, a habeas corpus petition allows a convicted person to present new evidence to a court. A habeas

¹ National Registry of Exonerations, August 27, 2024. The National Registry of Exonerations, a project of the University of California Irvine, University of Michigan Law School and Michigan State University College of Law, collects, analyzes, and disseminates information about all known exonerations of innocent criminal defendants in the United States. Included as exonerations are declarations of factual innocence by government agencies or courts, pardons, and acquittals or dismissals based on new evidence.

² National Institute of Justice, *Wrongful Convictions: The Literature, the Issues, and the Unheard Voices*, December 2023, 19-20.

³ National Institute of Justice, *Wrongful Convictions*.

⁴ “Habeas corpus,” also known as the “Great Writ,” is a reference to the ancient writ of “habeas corpus ad subjiciendum,” which is Latin for “that you have the body to submit to.” See Legal Information Institute, “habeas corpus ad subjiciendum” definition. The writ was traditionally used to challenge the basis for the detention of the petitioner but has expanded over time. See *In re Clark*, 5 Cal.4th 750, 763–764 (1993). A petitioner may also bring a writ of habeas corpus in federal court, which may only include claims based on federal law. The federal writ is not addressed in this memorandum.

corpus petition can also be used to challenge denials of parole, prison or jail conditions, and denials of other rights.⁵

Procedural requirements

Relief through habeas corpus is often limited by complex procedural requirements.⁶ For example, under existing law, a habeas corpus petition in a non-death-penalty case must be filed “as promptly as the circumstances allow.”⁷ There are also strict rules on “successive” petitions, meaning a person cannot engage in “piecemeal litigation” and must bring all their claims at once.⁸

A recent bill, AB 3088 (Friedman), would have eliminated these procedural bars by requiring courts to always consider a habeas petition “in light of all of the evidence now before the court, it is more likely than not the outcome of the case would have been different.”⁹ The bill did not pass the Senate Appropriations Committee.

Legal standards

While California’s constitution provides the right to habeas corpus to challenge violations of constitutional rights,¹⁰ the Penal Code specifies how courts should evaluate claims based on false evidence presented at trial or new evidence.

California’s habeas statute was enacted in 1872 and not significantly amended until 1975 to include how claims of false evidence could be used to vacate a conviction.¹¹ It was not updated again until 2014 and has been regularly changed

⁵ See, e.g., *In re Lawrence*, 44 Cal.4th 118,1 (2008) (denial of parole); *In re Von Staich*, 56 Cal.App.5th 53 (2020) (conditions); *In re Humphrey*, 11 Cal.5th 135 (2021) (bail).

⁶ In addition to the procedural issues discussed above, the process for a court deciding a habeas corpus petition can be quite complicated. After an initial petition is filed, the court may ask for an “informal” response from the state. Cal. Rules of Court 4.551(a)–(b). If the court determines the petitioner has made a prima facie showing they are entitled to relief, the court will issue an “order to show cause” and appoint counsel if the petitioner does not have an attorney. Cal. Rules of Court 4.551(c)(1) & (c)(2). (In determining whether the petitioner has made a prima facie case, “the court takes petitioner’s factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if his or her factual allegations were proven”). More briefing – a “return” and a “denial” – follows, which often results in a hearing in court, typically followed by post-hearing briefing, and, finally, a decision. Cal. Rules of Court 4.551(d)–(g).

⁷ *In re Douglas*, 200 Cal.App.4th 236, 242 (2011) (cleaned up).

⁸ *In re Clark*, 5 Cal.4th 750, 767 (1993).

⁹ This provision would have been added as Penal Code § 1473(i). Some district attorney offices may already incorporate this policy. For example, the Los Angeles County District Attorney’s Office will not raise a procedural bar when there is a credible claim of factual innocence. Los Angeles County District Attorney’s Office, Memorandum: Special Directive 21-04, November 29, 2021, 3–4.

¹⁰ *In re Harris*, 5 Cal.4th 813, 824 (1993).

¹¹ Stats. 1975, c. 1047 (AB 48). This amendment codified, with some modification, the due process requirements of *Napue v. Illinois*, 360 U.S. 264 (1959). For example, in *Napue*, a prosecutor

since. But these amendments — which have included creating parallel statutes for people no longer in custody to prove their innocence¹² — have resulted in a tangle of different standards.

The timeline below shows the law’s evolution over the last two decades:

- 2001: The Legislature (SB 799 Karnette) created a new statute allowing people who were victims of intimate partner battering to present expert testimony not presented at trial and have their convictions vacated if the evidence would have made a difference in the proceedings.¹³ It only applied to violent felony offenses committed before August 29, 1996.
- 2002: In response to the Rampart police corruption cases from the Los Angeles Police Department where misconduct came to light years after it occurred, the Legislature (SB 1391 Burton) allowed people who were no longer incarcerated to ask a court to vacate a conviction based on newly obtained evidence of fraud or misconduct by a government official.¹⁴
- 2008: The California Supreme Court addressed habeas corpus relief for people claiming they are factually innocent: new evidence “must undermine the entire prosecution case and point unerringly to innocence or reduced culpability.”¹⁵ This standard is among the most difficult to meet in the United States.¹⁶
- 2014: The Legislature (SB 1058 Leno) specified that “false evidence” includes “opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances.”¹⁷

“knowingly use[d] false evidence,” *id.* at 269, but the Penal Code notes that any “allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial.” Penal Code § 1473(b)(3).

¹² Habeas corpus petitions traditionally applied to people still in custody. See Penal Code § 1473(a) (“A person *unlawfully imprisoned or restrained of their liberty*, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.” (emphasis added)); *In re Wesley W.*, 125 Cal.App.3d 240, 246 (1981) (custody includes people on parole, probation, bail, and any situation where someone “may later lose his liberty and be eventually incarcerated.”). Mechanisms that allow someone out of custody to vacate a conviction are sometimes referred to as “statutory coram nobis,” coram nobis being, of course, another ancient writ that allowed a court to correct errors when presented with new information. See Laurie Levenson & Alex Ricciardulli, *California Criminal Procedure*, § 30:35 (November 2023).

¹³ Penal Code § 1473.5.

¹⁴ Penal Code § 1473.6. See also *People v. Germany*, 133 Cal.App.4th 784, 791 (2005).

¹⁵ *In re Lawley*, 42 Cal.4th 1231, 1239 (2008).

¹⁶ Keith A. Findley, *Defining Innocence*, 74 Albany Law Review 1157, 1198 (2011).

¹⁷ Penal Code § 1473(b)(2).

- 2016
 - SB 1134 (Leno) modified the court-created “point unerringly to innocence” standard to vacate a conviction based on new evidence. New evidence must be of “such decisive force and value that it would have more likely than not changed the outcome at trial” and “could not have been discovered prior to trial by the exercise of due diligence.”¹⁸ However, this new standard was not uniformly substituted throughout the Penal Code and the “point unerringly to innocence” standard still appears in some places.¹⁹
 - AB 813 (Gonzalez) allowed people no longer in custody to ask a court to vacate a conviction based on “[n]ewly discovered evidence of actual innocence [] that requires vacation of the conviction or sentence as a matter of law or in the interests of justice.”²⁰
- 2022: In response to changing standards in forensic science, the Legislature (SB 467 Wiener) allowed people in custody to obtain habeas relief if a “significant dispute has emerged or further developed in the petitioner’s favor regarding expert medical, scientific, or forensic testimony that was introduced at trial or a hearing.”²¹
- 2023: The Legislature (SB 97 Wiener) again amended the new evidence standard for people in custody, eliminating the requirement that new evidence could not have been discovered before trial by due diligence.

As a result of these changes, to vacate a conviction some claims require only showing a “reasonable probability” of a different result,²² others require showing that the result “more likely than not” — that is, by a preponderance of evidence — would have been different,²³ and at least one still requires evidence that “completely undermines the prosecution’s case, is conclusive, and points unerringly to [petitioner’s] innocence.”²⁴

¹⁸ Stats. 2016, c. 785 (SB 1134) (creating Penal Code § 1473(b)(3), now § 1473(b)(1)(C)).

¹⁹ See Penal Code § 1473.6(a)(1); Penal Code § 3007.05(j)(1).

²⁰ The bill also created Penal Code § 1473.7(a)(1), which allows out of custody people to ask to vacate convictions because of errors involving immigration consequences.

²¹ Penal Code § 1473(b)(1)(D).

²² See *In re Richards*, 63 Cal.4th 291, 312–313 (2016) (standard applies to false evidence claims under Penal Code § 1473(b)(1) and is the same used to evaluate state-law errors under *People v. Watson*, 46 Cal.2d 818 (1956)); *People v. Hendrix*, 13 Cal.5th 933, 944 (2022) (*Watson* “does not mean more likely than not, but merely a reasonable chance, more than an abstract possibility”).

²³ Penal Code §§ 1473(b)(1)(C) & (D).

²⁴ Penal Code § 1473.6(a)(1).

This chart summarizes some of the complexity and specifies what someone must prove to have their conviction vacated:

Habeas corpus legal standards

Penal Code §	Scope	Custody?	Language	Burden
1473(b)(1)(A)	False evidence "introduced against a person at a hearing or trial relating to the person's incarceration"	In	"material on the issue of guilt or punishment"	Probability
1473(b)(1)(B)	"False physical evidence ... which was a material factor directly related to the plea of guilty by the person"	In	"factual, probative, or material on the issue of guilt"	Probability
1473(b)(1)(C)	New evidence "that has not previously been presented and heard at trial and has been discovered after trial"	In	"admissible, and is sufficiently material and credible that it more likely than not would have changed the outcome of the case"	Preponderance
1473.7(a)(2)	"Newly discovered evidence of actual innocence"	Out	"requires vacation of the conviction or sentence as a matter of law or in the interests of justice."	Unclear
1473.6(a)(1)	"Newly discovered evidence of fraud by a government official"	Out	"completely undermines the prosecution's case, is conclusive, and points unerringly to his or her innocence"	Unerring
1473.6(a)(2)	"Newly discovered evidence that a government official testified falsely at trial"	Out	"substantially probative on the issue of guilt or punishment"	Unclear
1473.6(a)(3)	"Newly discovered evidence of misconduct by a government official committed in the underlying case that resulted in fabrication of evidence"	Out	"substantially material and probative on the issue of guilt or punishment"	Unclear
1473(b)(1)(D)	Expert testimony: "significant dispute has emerged or further developed" about expert testimony "introduced at trial or a hearing"	In	"more likely than not affected the outcome of the case"	Preponderance
1473.5(a)	Expert testimony: related to intimate partner battering	Unclear, but limited to offenses before August 29, 1996	"reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, that the result of the proceedings would have been different"	Probability

Created with Datawrapper

There is significant ambiguity and variation for how these standards apply to individual cases. For example, different standards can apply depending on whether the person seeking relief is still in custody or whether their claim is based on “false” versus “new” evidence.²⁵ Different phrases are used to seemingly impose the same legal standard,²⁶ while similar wording imposes seemingly different standards.²⁷ Similar factual scenarios have different standards.²⁸

There is also a significant lack of clarity around what someone with new evidence of innocence must prove to have a conviction vacated if they are no longer in custody. The statutory language for this claim — that the evidence must “require[] vacation of the conviction or sentence as a matter of law or in the interests of justice” — is different from all others in habeas law.²⁹ One appellate court has noted the ambiguities in this statute and flagged them for legislative intervention.³⁰

Data on filed petitions

Even though the Legislature has expanded the availability of habeas corpus to more people and made relief more achievable in some scenarios — most notably SB 1134, effective in 2017, which created a lower standard to vacate a conviction based on new evidence — the number of petitions filed in California’s Superior Courts has decreased in recent years, as shown in the chart below. Note that this data include *all* habeas corpus petitions — not just those seeking to vacate convictions because of innocence issues. For this reason, the increase in

²⁵ Compare Penal Code § 1473(b)(1)(A) (false evidence must be “material on the issue of guilt or punishment”) with § 1473(b)(1)(C) (new evidence must be “admissible ... and sufficiently material and credible that it more likely than not would have the changed the outcome of the case”). Both of those standards only apply to people who are still in custody. People who are out of custody and who are claiming there was evidence of false testimony by a government official at trial must show that their new evidence was “substantially probative on the issue of guilt or punishment.” Penal Code § 1473.6(a)(2).

²⁶ Compare Penal Code § 1473(b)(1)(A) (“material on the issue of guilt or punishment”) with § 1473(b)(1)(B) (“factual, probative, or material on the issue of guilt”).

²⁷ Compare Penal Code § 1473(b)(1)(A) (“material on the issue of guilt or punishment”) with § 1473.6(a)(3) (“substantially material and probative on the issue of guilt or punishment”).

²⁸ Compare Penal Code § 1473.6(a)(1) (new evidence of “fraud by government official” must “completely undermine[] the prosecution’s case, [be] conclusive, and point[] unerringly to [petitioner’s] innocence”) with § 1473.6(a)(3) (new “evidence of misconduct by a government official committed in the underlying case that resulted in fabrication of evidence” will prevail if “substantially material and probative on the issue of guilt or punishment”). Both of these provisions only apply to people no longer in custody.

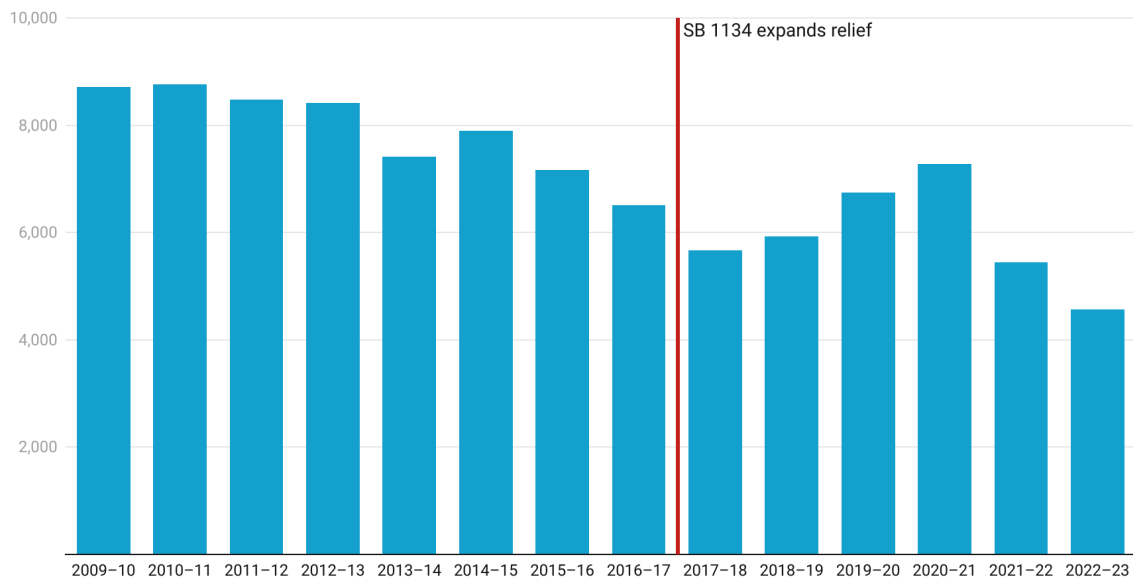
²⁹ Penal Code § 1473.7(a)(2).

³⁰ See *People v. Perez*, 47 Cal.App.5th 994, 999 (2020) (“While the outcome in this case may be unfortunate for defendant, we are not here to rewrite legislation. The Legislature could amend section 1473.7 to address issues raised in this case.”).

petitions in Fiscal Years 2019–2020 and 2020–21 may be due to petitions related to prison or jail conditions caused by the COVID-19 pandemic.³¹

Habeas corpus filings, Fiscal Year 2009–10 to 2022–23

Data is petitions filed in Superior Courts.



Note that SB 1134 became effective in January 2017 but this data is divided into Fiscal Years that begin midway through the calendar year.
Source: Judicial Council of California, Statewide Caseload Trends reports • Created with Datawrapper

In addition, though statewide data is incomplete, the number of habeas corpus petitions resolved with a hearing is a small percentage of filed petitions. In the most recent year of data, Fiscal Year 2023–24, 356 petitions were resolved with a hearing, while more than 4,500 had been filed.³² The rest of the petitions were disposed of summarily; there is no data on the number of petitions granted or denied.

Conviction Integrity Units

Some prosecutor’s offices have created “Conviction Integrity Units” (CIUs) to help innocent people vacate their convictions. The policies and effectiveness of CIUs vary greatly. Some CIUs in California have yet to vacate any convictions, while others, including offices in Los Angeles, Santa Clara, and Ventura counties, have exonerated multiple people.³³ Last year, Attorney General Rob Bonta created a Post-Conviction Justice Unit that to investigate and resolve wrongful or

³¹ See, e.g., *In re Von Staich*, 56 Cal.App.5th 53 (2020); 477 P.3d 537 (California Supreme Court vacating decision and ordering reconsideration).

³² Judicial Council of California, *2024 Court Statistics Report: Statewide Caseload Trends*, Table 13d. The Counties of Los Angeles, Sacramento, San Bernardino, San Diego, and San Francisco — and additional smaller counties — did not provide information on habeas corpus dispositions, though did provide the number of petitions filed. Petitions may not be resolved the same year as filing

³³ The National Registry of Exonerations, Conviction Integrity Units (lasted updated June 25, 2024). The NRE’s list of CIUs — and whether they have recorded exonerations — is based on publicly available data.

improper criminal convictions, primarily focusing on cases in jurisdictions that do not have CIUs.³⁴

Since CIUs are a relatively new phenomenon, some gaps in current law affect their ability to review criminal convictions. For example, until a habeas petition is filed, there is no active criminal case number, and it may be difficult for prosecutors to subpoena documents, obtain search warrants, or get confidential records of police officers if misconduct is alleged.³⁵

Discovery

A petitioner seeking habeas corpus relief must provide support for their claims.³⁶ The Penal Code provides a limited statutory right to discovery — the legal process for obtaining documents and other evidence — for people sentenced to a term of 15 years or more who anticipate filing a prospective habeas writ or motion to vacate.³⁷ Under this post-conviction discovery statute, a petitioner may only obtain what they would have been entitled to at the time of trial from the prosecutor and law enforcement authorities and must first try to obtain the materials from prior trial counsel.³⁸

One recurring issue in habeas corpus practice is discovery of notes made by prosecutor offices during jury selection, which are not explicitly addressed by the Penal Code. These documents can reveal violations of the law related to racial bias. For example, a federal judge recently ordered Alameda County prosecutors to review all death penalty cases in the county after evidence of racial bias was revealed by prosecutors' jury selection notes from death penalty cases in the 1980s and 1990s.³⁹

Prosecutors have argued that their notes during jury selection are “work product” that are exempt from disclosure.⁴⁰ But one appellate court recently held that where a prima facie case of racial bias during jury selection has been made, a defendant is entitled to discovery of the prosecution's jury selection notes and they were not categorically shielded as work product.⁴¹

³⁴ California Attorney General, *Press Release: Attorney General Bonta Establishes First-Ever Post-Conviction Justice Unit within the California Department of Justice*, February 17, 2023.

³⁵ See, e.g., Penal Code §§ 1326, 832.7(a).

³⁶ *People v. Duvall*, 9 Cal.4th 464, 474 (1995).

³⁷ Penal Code § 1054.9(a). The conviction must also be considered serious or violent under California law.

³⁸ Penal Code § 1054.9(a).

³⁹ Annelise Finney, *Allegations of Prosecutorial Bias Spark Review of Death Penalty Convictions in Alameda County*, KQED, April 22, 2024.

⁴⁰ The statutory work product privilege protects from discovery any “writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories.” Code Civil Procedure § 2018.030(a); Penal Code § 1054.6.

⁴¹ *Box v. Superior Court*, 87 Cal.App.5th 60, 67 (2022). See also *People v. Jones*, 12 Cal.5th 348 (2021) (prosecutor waived work-product arguments).

North Carolina, which was the first state to enact legislation requiring prosecutors to provide full open-file discovery, expanded this to non-death-penalty defendants in post-conviction proceedings in 2009.⁴² The right is subject to the defendant being represented by counsel.⁴³

Remedies

A criminal case is not definitively resolved once a habeas corpus petition is granted. The habeas corpus statutes specify that a court may “dispose of such party as the justice of the case may require,”⁴⁴ and the California Supreme Court has held that the “scope of a court’s authority in granting habeas corpus relief is quite broad.”⁴⁵ But courts usually vacate a conviction and sentence — which means the prosecution has an opportunity to prosecute the case again. Even if the case is ultimately dismissed, this may take months or years to be decided. And as explained in the next section, some paths to compensation are triggered only once the prosecution dismisses the charges.

Compensation from the California Victim Compensation Board

Since 1942, California has offered, like a majority of states,⁴⁶ compensation to people who were wrongfully convicted and have proven their innocence. The California Victim Compensation Board (CalVCB) — which consists of the Secretary of Government Operations, the State Controller, and a member appointed by the Governor — determines these claims at regular public meetings.⁴⁷ A person who has been erroneously convicted and incarcerated for a felony offense — misdemeanors are not covered — that they did not commit will be compensated for each day of wrongful incarceration.⁴⁸

From 1970 to 2000 the maximum someone could receive was \$10,000.⁴⁹ In 2000, California began offering compensation at the rate of \$100 a day, with no cap.⁵⁰ In 2016, this amount was raised to \$140 per day (\$51,100 a year).⁵¹ A person seeking compensation has 10 years to bring a claim after an acquittal, dismissal

⁴² N.C. Gen. Stat. 15A-1415(f).

⁴³ N.C. Gen. Stat. 15A-1420(b1)(3).

⁴⁴ Penal Code § 1484.

⁴⁵ *In re Duval*, 44 Cal.App.5th 401, 411 (2020).

⁴⁶ See Innocence Project, *Key Provisions in Wrongful Compensation Laws* (May 2022) (38 states, the federal government, and Washington DC have laws to compensate the wrongfully convicted).

⁴⁷ Government Code § 13901(b). The current gubernatorial appointee is Contra Costa County District Attorney Diane Becton.

⁴⁸ Penal Code § 4904.

⁴⁹ See Stats. 1969, c. 704, (SB 166). The original limit set in 1941 was \$5,000. Stats. 1941, c. 106 (SB 1250).

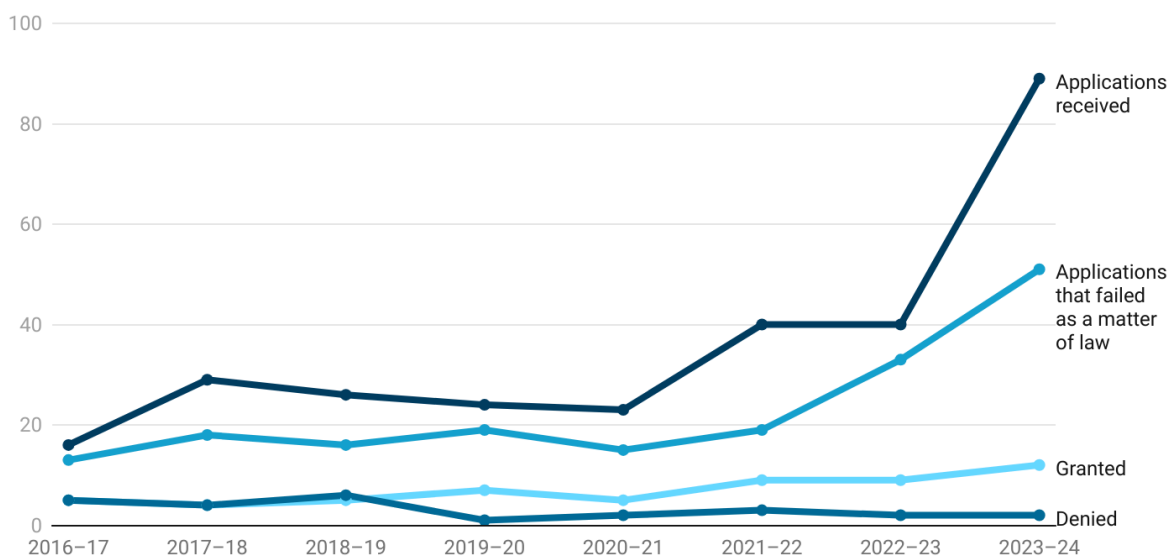
⁵⁰ Stats. 2000, c. 630, (AB 1799).

⁵¹ Stats. 2016, c. 31 (SB 836). Compensation awards “shall not be treated as gross income to the recipient under the Revenue and Taxation Code.” Penal Code § 4904(a).

of charges, pardon, or release from custody, whichever is later.⁵² From 1942 to 2010, the time to bring a claim was 6 months; the period was increased to 2 years beginning in 2010 and to 10 years beginning in 2020.⁵³

The number of claims filed with CalVCB has increased in recent years. For example, in Fiscal Year 2019–2020, 24 claims were submitted to CalVCB; in 2023–24 it was 89. Though many claims are dismissed soon after filing for failure to include sufficient information,⁵⁴ 85 people have received compensation since 1997 for a total of \$61,338,940, with 38 claims granted in the last 5 years.⁵⁵

Innocence compensation claims at CalVCB, FY 2016–17 to 2023–24



Claims may be considered in a different year than received. Applications that failed to qualify as a matter of law are that did not include all the information required by law.

Source: California Victim Compensation Board • Created with Datawrapper

In general, claimants must prove by a preponderance of the evidence that the crime they were convicted of did not occur or was not committed by them and that they were wrongfully incarcerated as a result.⁵⁶

⁵² Penal Code § 4901(a).

⁵³ See Stats. 1941, c. 106 (SB 1250); Stats. 2009, c. 432 (AB 316); Stats. 2019, c. 473 (SB 269).

⁵⁴ See 2 C.C.R. § 642(a) (hearing officer can dismiss claims “that are untimely or are otherwise not in compliance with Penal Code sections 4900 and 4901”).

⁵⁵ California Victim Compensation Board, Board Decisions for Penal Code Section 4900 Claims.

⁵⁶ Penal Code §§ 4900(a) & 4903(a); 2 C.C.R. §§ 644(d)(1) (burden of proof) & 640(f) (incarceration satisfies injury). There is no requirement that the person’s conviction be vacated before applying for compensation. Until 2014, claimants also had to prove that they “did not, by any act or omission on his or her part, intentionally contribute to the bringing about of his or her arrest or conviction for the crime with which he or she was charged.” See Stat. 2013, c. 800 (SB 618 (Leno)) (deleting this language). In addition, CalVCB considers California law as defined at the time of the offense, so more recent changes in the law that have decriminalized certain behavior does not allow compensation, including people whose convictions were modified due to changes to

But for people who have their convictions vacated through habeas corpus, the usual hearing process does not occur in the following circumstances:⁵⁷

- Since 2014, if a state or federal court has made a finding of factual innocence “under any standard for factual innocence applicable in those proceedings,” CalVCB must approve compensation without a hearing within 90 days of a claim.⁵⁸

In the most recent two years of data, CalVCB reports that 9 of the 21 successful compensation claims used this process.⁵⁹

- Since 2022, if there has been an acquittal or dismissal of charges after vacatur — in other words, the person is legally innocent — CalVCB must presumptively approve compensation, even without an express finding of factual innocence by a court.⁶⁰ The Attorney General can overcome the presumption before CalVCB with clear and convincing evidence that the claimant “committed the acts constituting the offense.”⁶¹

In the most recent two years of data, CalVCB reports that 12 of the 21 successful claims used this process and the Attorney General did not object in any of them.⁶²

- In addition, beginning on January 1 of this year, if there has been an acquittal or dismissal of charges after vacatur, people who have had their conviction vacated can ask a court for a finding that they are entitled to compensation.⁶³ The court must grant this request unless the District

California’s felony murder law. See 2 C.C.R. § 642(a)(3). “[E]xpress factual findings made by the court, including credibility determinations” during a habeas corpus proceeding are binding on CalVCB. Penal Code § 1485.5(c). See also Penal Code § 4903(c).

⁵⁷ This includes convictions vacated through habeas corpus for people in custody and through Penal Code §§ 1473.6 and 1473.7(a)(2) for people out of custody. CalVCB must also grant compensation without a hearing in some other circumstances. See Penal Code § 851.865(a) (finding of factual innocence under § 851.8 after arrest without prosecution or where no conviction occurred and charges were dismissed).

⁵⁸ Penal Code §§ 1485.55(a), (c) & 4902(a). See also Penal Code § 851.865(a). Vacaturs under Penal Code § 1473.7(a)(2) are not included in this process unless the person who has had their conviction vacated requests that the court make an express finding of innocence. Penal Code §§ 1485.55(b) & (c). A person making such a request must show “by a preponderance of the evidence that the crime with which they were charged was either not committed at all or, if committed, was not committed by the petitioner.” Penal Code § 1485.55(b).

⁵⁹ California Victim Compensation Board, Indemnity for Persons Erroneously Convicted, Annual Reports of Approved Claims for Fiscal Years 2022–2023 & 2023–2024.

⁶⁰ Penal Code § 4900(b). See Stats. 2021, c. 490 (S.B. 446).

⁶¹ Penal Code § 4902(d).

⁶² CalVCB Annual Reports of Approved Claims for Fiscal Years 2022–2023 & 2023–2024.

⁶³ Penal Code § 1485.55(d).

Attorney shows with “clear and convincing evidence that the person committed the acts constituting the offense.”⁶⁴

These provisions streamlining the process for compensation after an acquittal or dismissal do not apply to convictions that are vacated on direct appeal — even if the reason for vacating the conviction was that there was not enough evidence to convict the person, an extremely high legal standard that is rarely met.⁶⁵

While the state has taken significant steps to compensate innocent people — for example, they are not prevented from filing state or federal civil rights lawsuits related to their wrongful conviction and upon release from prison receive \$6,000 and 4 years of housing assistance funds⁶⁶ — some gaps remain. California does not compensate for time spent wrongfully on parole or other supervision, in juvenile detention, involuntary hospitalization, or on probation or the sex offender registry.⁶⁷ Other states compensate for these deprivations of liberty: for example, Colorado and Virginia provide compensation for juvenile detention,⁶⁸ and 9 states explicitly allow for compensation for time spent on parole or the sex offender registry.⁶⁹

California also does not include separate attorneys fees as part of a compensation award so a successful claimant may have to pay an attorney a contingency fee out of their payment. At least 20 other states provide for reasonable attorney fees, including Colorado, Florida, Minnesota, and Virginia,⁷⁰ and the fees are not deducted from any compensation.

⁶⁴ Penal Code § 1485.55(d)(1).

⁶⁵ See, e.g., *People v. Ware*, 14 Cal.5th 151, 167 (2022) (court reviewing insufficient evidence claim must “review the entire record in the light most favorable to the judgment” of conviction) (cleaned up). Cf. *White v. California Victim Compensation Board*, 2021 WL 5351741 (2021) (affirming denial of compensation after conviction had been reversed for insufficient evidence; this case predates the presumptions created by Penal Code §§ 4900(b) & 1485.55(d)).

⁶⁶ Penal Code § 3007.05(i). An “exonerated” person for these benefits is anyone who has (1) received “an absolute pardon by the Governor on the basis that the person was innocent,” (2) been granted a writ of habeas corpus on the grounds that “the evidence unerringly points to innocence,” (3) had their conviction reversed on appeal for insufficient evidence, or (4) had their conviction vacated via habeas corpus and the charges were dismissed or they are released while awaiting retrial. Penal Code § 3007.05(j).

⁶⁷ In 2022, state law was conditionally amended to provide \$70 for each day spent on supervised release, effective July 1, 2024, if certain budgetary conditions were met. The conditions were not met. See SB 76 (2023 Glazer), § 6. These changes would also have adjusted compensation amounts for inflation.

⁶⁸ Co. Rev. Stats. 13-65-101(c)(5) (Colorado), Va. Stats. § 8.01-195.10.B (Virginia).

⁶⁹ Co. Rev. Stats. 13-65-103(3)(a)(II) (Colorado); D.C. sec. 2-423.02(a)(1)(A)(ii); Id. Code 6-3503(1)(b) (Idaho); K.S.A. 60-5004(e)(1)(B) (Kansas); Minn. Stat. Ann. 611.365.(a) (Minnesota); NV 41.950(1)(b) (Nevada); Or. Rev. Stats sec. 30.657(5)(a)(B) (Oregon); Tx. Civ. Prac. & Rem. Code § 103.052(b) (Texas); Wa. Rev. Code 4.100.060(5)(b) (Washington).

⁷⁰ See, e.g., Co. Rev. Stat. 13-65-103(2)(e)(IV) (Colorado); Fla. Stat. 961.06(1)(d) (Florida); Mn. Stat. Ann. 611.365(2)(b) (Minnesota); Va. Stats. 8.01-195.11(C) (Virginia).

While California does not, 9 other states reimburse claimants who paid fines, fees, or restitution as a result of their wrongful conviction.⁷¹ And 5 other states pay any child support arrears in addition to compensation since the claimant lacked the ability to pay while wrongfully incarcerated; California does not.⁷²

Staff Recommendations

The Committee may wish to consider the following proposals to address the issues raised in this memorandum.

- **Harmonize the standards for relief in the habeas statutes.**
The Penal Code contains at least three legal standards that apply to innocence claims brought by habeas corpus petitions or other post-conviction motions to vacate convictions. These standards could be harmonized to allow relief if the petitioner shows a reasonable probability that the outcome of the case would have been different, a standard used in the habeas context for almost 50 years.
- **Clarify that strict procedural rules should not result in the dismissal of meritorious habeas petitions.**
Rigid procedural rules can result in meritorious claims of innocence not being reviewed in court. A recent bill, AB 3088 (Friedman), would have provided a limited exception to these rigid rules if the outcome of the case would have been different in light of new evidence. The Committee should consider recommending a similar change.
- **Expand post-conviction discovery.**
 - Anyone who has filed a habeas petition or is preparing to has a statutory right to discovery in any case in which they are serving a sentence of at least 15 years for a serious or violent felony. Lowering or eliminating this threshold would allow more people access to key evidence to prove their innocence.
 - Expand and codify case law that a defendant is entitled to discover a prosecutor's jury selection notes under the habeas discovery statute.⁷³

⁷¹ See, e.g., Co. Rev. Stat. 13-65-103(2)(e)(V); Fla. Stat. 961.06(1)(c); Va. Stats. 8.01-195.11(C); Wa. Rev. Code 4.100.060(5)(d).

⁷² Co. Rev. Stat. 13-65-103(2)(e)(III); D.C. sec. 2-423.02(a)(1)(B); Mn. Stat. Ann. 611.365(a)(5); Tx. Civ. Prac. & Rem. Code § 103.052(a)(2); Wa. Rev. Code 4.100.060(5)(c)

⁷³ The Legislature can amend the post-conviction discovery statute with a majority vote without violating Proposition 115. See *People v. Superior Court (Pearson)*, 48 Cal.4th 564, 573 (2010).

- **Specify that courts can dismiss criminal cases as a remedy.**

The California Supreme Court has held that a trial court has broad authority when granting habeas relief.⁷⁴ The Committee should consider recommending that the Penal Code specify that one of the available remedies to a court is dismissal, preventing a prosecutor from prosecuting the case again.

- **Modernize compensation.**

Elements of California's compensation scheme for innocent people are outdated and can be updated as follows:

- Apply the stream-lined process currently in place for convictions vacated through habeas corpus to convictions overturned on direct appeal and require CalVCB to presumptively approve compensation unless the Attorney General shows clear and convincing proof of the claimant's guilt.
- Automatically adjust the compensation formula to account for inflation.
- Compensate wrongfully convicted persons for other deprivations of liberty, including juvenile detention, involuntary hospitalization, and time spent on parole, probation, community supervision, and the sex offender registry.
- Create a one-time lookback period that allows claimants who received the maximum of \$10,000 — the cap allowed until 2000 — to file a supplemental claim.
- Pay reasonable attorney fees when compensation is awarded.
- Reimburse restitution, fees, court costs, and other sums paid by the claimant that were required by the conviction, and any child support arrears incurred due to the wrongful conviction.

⁷⁴ *In re Duval*, 44 Cal.App.5th 401, 411 (2020).

Conclusion

California has created meaningful processes to help correct the manifest injustice of an innocent person being convicted of a crime they did not commit. But the Penal Code provisions addressing this problem would benefit from significant revision to make them fairer, less confusing, and more effective. The Committee should consider the analysis and proposals here in making recommendations that will accomplish these goals.

Respectfully submitted,

Thomas M. Nosewicz
Legal Director

Joy F. Haviland
Senior Staff Counsel