

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 618

**Introduced by Senator Leno
(Principal coauthor: Senator Steinberg)**

February 22, 2013

An act to amend Sections 4900, 4901, 4902, and 4903 of, and to add Sections 851.865, 1485.5, and 1485.55 to, the Penal Code, relating to wrongful convictions.

LEGISLATIVE COUNSEL'S DIGEST

SB 618, as amended, Leno. Wrongful convictions.

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 specified reasons, and having served the term or any part thereof for which he or she was imprisoned, may present a claim against the state to the California Victim Compensation and Government Claims Board for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment, as specified.

This bill would extend those provisions to a person who was incarcerated in county jail for a felony conviction. The bill would provide that if the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained, or when the court vacates a judgment for a person on the basis of newly discovered evidence concerning a person who is no longer unlawfully imprisoned or restrained, and if the court finds that the evidence on the petition points unerringly to innocence, the court's finding would be binding on the California Victim Compensation and Government Claims Board.

The bill would provide that, upon application by the petitioner, the California Victim Compensation and Government Claims Board would, without a hearing, be required to recommend to the Legislature that an appropriation be made, and the claim be paid, as specified.

The bill would also provide that when the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained, or when the court vacates a judgment in a criminal matter against a person, the California Victim Compensation and Government Claims Board, in making its determination as to any claim submitted by that person, would be required to incorporate and be consistent with the factual findings, including credibility determinations, of the court granting the writ or reversing the conviction, and that those factual findings, including credibility determinations, would be binding upon the board.

Existing law requires a claim for wrongful imprisonment be presented by the claimant to the California Victim Compensation and Government Claims Board within a period of 2 years after judgment of acquittal or discharge given, or after pardon granted, or after release from imprisonment in order to be considered by the board.

This bill would revise those provisions to extend the time period to be 2 years from release from custody. The bill would define *release from custody* for those purposes as release from imprisonment from state prison or from incarceration in county jail, where there is no subsequent parole jurisdiction or postrelease jurisdiction exercised by the Department of Corrections and Rehabilitation or community corrections program, respectively, or where there is a parole period or postrelease period subject to jurisdiction of a community corrections program, when that period ends.

Existing law requires the California Victim Compensation and Government Claims Board to, upon presentation of a claim, fix a time and place for the hearing of the claim, and to mail notice thereof to the claimant and to the Attorney General at least 15 days prior to the time fixed for the hearing.

This bill would require the board to order the Attorney General to respond to the claim within 60 days of the date of the order, or to request an extension of time, upon a showing of good cause, to file a response, except in those cases involving a finding of factual innocence, as specified, or a finding by the court that facts point unerringly to innocence, as specified. The bill would require the board in those cases to calculate the compensation for the claimant within 30 days of

presentation of the claim, as specified, and recommend to the Legislature the payment of that sum, as specified.

Existing law provides that at the hearing set by the board, the claimant is required to prove, among other things, the fact that he or she 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. Existing law also provides that when determining whether the claimant intentionally contributed to the bringing about of his or her arrest or conviction, the factfinder shall not consider statements obtained from an involuntary false confession or involuntary plea, and that the claimant bears the burden of proving by a preponderance of the evidence that the statements were obtained from an involuntary false confession or involuntary plea.

This bill would delete those provisions. The bill would ~~authorize~~ *require* the board to deny a claim ~~where a claimant has been convicted of fraud or obstruction of justice relating to the underlying conviction for which the claimant seeks compensation~~ *if the board finds by a preponderance of the evidence that a claimant willfully plead guilty to protect the prosecution of another for the underlying conviction for which the claimant is seeking compensation.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 851.865 is added to the Penal Code, to
- 2 read:
- 3 851.865. (a) ~~If the claimant~~ *a person* has secured a declaration
- 4 of factual innocence from the court pursuant to Section 851.8 or
- 5 851.86, the finding shall be sufficient grounds for payment of
- 6 compensation for a claim made pursuant to Section 4900. Upon
- 7 application by the ~~petitioner~~ *person*, the California Victim
- 8 Compensation and Government Claims Board shall, without a
- 9 hearing, recommend to the Legislature that an appropriation be
- 10 made and the claim paid pursuant to Section 4904.
- 11 (b) If the declaration of factual innocence is granted pursuant
- 12 to a stipulation of the prosecutor, the duty of the board to, without
- 13 a hearing, recommend to the Legislature payment of the claim,
- 14 shall apply.
- 15 SEC. 2. Section 1485.5 is added to the Penal Code, to read:

1 1485.5. (a) If the district attorney or Attorney General
2 stipulates to or does not contest the factual allegations underlying
3 one or more of the grounds for granting a writ of habeas corpus
4 or a motion to vacate a judgment, those facts shall be binding on
5 the Attorney General, the factfinder, and the ~~board~~ *California*
6 *Victim Compensation and Government Claims Board*.

7 (b) Factual findings made by the court, including credibility
8 determinations, in considering a petition for habeas corpus, a
9 motion for new trial pursuant to Section 1473.6, or an application
10 for a certificate of factual innocence, shall be binding on the
11 Attorney General, the factfinder, and the ~~board~~ *California Victim*
12 *Compensation and Government Claims Board*.

13 SEC. 3. Section 1485.55 is added to the Penal Code, to read:

14 1485.55. (a) If the court grants a writ of habeas corpus
15 concerning a person who is unlawfully imprisoned or restrained,
16 or when, pursuant to Section 1473.6, the court vacates a judgment
17 for a person on the basis of newly discovered evidence concerning
18 a person who is no longer unlawfully imprisoned or restrained,
19 and if the court finds that the evidence on the petition points
20 unerringly to innocence, that finding shall be binding on the
21 California Victim Compensation and Government Claims Board
22 for a claim presented ~~pursuant to subdivision (a) to the board~~, and
23 upon application by the ~~petitioner~~ *person*, the board shall, without
24 a hearing, recommend to the Legislature that an appropriation be
25 made and the claim paid pursuant to Section 4904.

26 (b) *If the court grants a writ of habeas corpus concerning a*
27 *person who is unlawfully imprisoned or restrained on any ground*
28 *other than new evidence that points unerringly to innocence or*
29 *actual innocence, the petitioner may move for a finding of*
30 *innocence by a preponderance of the evidence.*

31 (c) *If the court vacates a judgment pursuant to Section 1473.6,*
32 *on any ground other than new evidence that points unerringly to*
33 *innocence or actual innocence, the petitioner may move for a*
34 *finding of innocence by a preponderance of the evidence.*

35 (d) *If the court makes a finding that the petitioner has proven*
36 *his or her innocence by a preponderance of the evidence pursuant*
37 *to subdivision (b) or (c), the board shall, without a hearing,*
38 *recommend to the Legislature that an appropriation be made and*
39 *the claim paid pursuant to Section 4904.*

1 (e) *No presumption shall exist in any other proceeding for*
2 *failure to make a motion or obtain a favorable ruling pursuant to*
3 *subdivision (b) or (c).*

4 (f) *If a federal court, after granting a writ of habeas corpus,*
5 *pursuant to a nonstatutory motion or request, finds a petitioner*
6 *innocent by no less than a preponderance of the evidence, the*
7 *board shall, without a hearing, recommend to the Legislature that*
8 *an appropriation be made and the claim paid pursuant to Section*
9 *4904.*

10 SEC. 4. Section 4900 of the Penal Code is amended to read:

11 4900. Any person who, having been convicted of any crime
12 against the state amounting to a felony and imprisoned in the state
13 prison or incarcerated in county jail pursuant to subdivision (h) of
14 Section 1170 for that conviction, is granted a pardon by the
15 Governor for the reason that the crime with which he or she was
16 charged was either not committed at all or, if committed, was not
17 committed by him or her, or who, being innocent of the crime with
18 which he or she was charged for either of the foregoing reasons,
19 shall have served the term or any part thereof for which he or she
20 was imprisoned in state prison or incarcerated in county jail, may,
21 under the conditions provided under this chapter, present a claim
22 against the state to the California Victim Compensation and
23 Government Claims Board for the pecuniary injury sustained by
24 him or her through the erroneous conviction and imprisonment or
25 incarceration.

26 SEC. 5. Section 4901 of the Penal Code is amended to read:

27 4901. (a) A claim under Section 4900, accompanied by a
28 statement of the facts constituting the claim, verified in the manner
29 provided for the verification of complaints in civil actions, is
30 required to be presented by the claimant to the California Victim
31 Compensation and Government Claims Board within a period of
32 two years after judgment of acquittal or discharge given, or after
33 pardon granted, or after release from custody, and no claim not so
34 presented shall be considered by the California Victim
35 Compensation and Government Claims Board.

36 (b) For purposes of subdivision (a), “release from custody”
37 means release from imprisonment from state prison or from
38 incarceration in county jail when there is no subsequent parole
39 jurisdiction exercised by the Department of Correction and
40 Rehabilitation or postrelease jurisdiction under a community

1 corrections program, or when there is a parole period or postrelease
2 period subject to jurisdiction of a community corrections program,
3 when that period ends.

4 *(c) A person may not file a claim under Section 4900 until 60*
5 *days have passed since the date of reversal of conviction or*
6 *granting of the writ, or while the case is pending upon an initial*
7 *refiling, or until a complaint or information has been dismissed a*
8 *single time.*

9 SEC. 6. Section 4902 of the Penal Code is amended to read:

10 4902. If the provisions of Section 861.865 or ~~Section~~ 1485.55
11 apply in any claim, the California Victim Compensation and
12 Government Claims Board shall, within 30 days of the presentation
13 of the claim, calculate the compensation for the claimant pursuant
14 to Section 4904 and recommend to the Legislature payment of that
15 sum. As to any claim to which Section 861.865 or 1485.55 does
16 not apply, the board shall order the Attorney General to respond
17 to the claim within 60 days of the date of the order, or to request
18 an extension of time, upon a showing of good cause, to file a
19 response. Upon receipt of a response from the Attorney General,
20 the board shall fix a time and place for the hearing of the claim,
21 and shall mail notice thereof to the claimant and to the Attorney
22 General at least 15 days prior to the time fixed for the hearing. The
23 board shall use reasonable diligence in setting the date for the
24 hearing and shall attempt to set the date for the hearing at the
25 earliest date convenient for the parties and the board.

26 SEC. 7. Section 4903 of the Penal Code is amended to read:

27 4903. (a) At the hearing the claimant shall introduce evidence
28 in support of the claim, and the Attorney General may introduce
29 evidence in opposition thereto. The claimant shall prove the facts
30 set forth in the statement constituting the claim, including the fact
31 that the crime with which he or she was charged was either not
32 committed at all, or, if committed, was not committed by him or
33 her, and the pecuniary injury sustained by him or her through his
34 or her erroneous conviction and imprisonment.

35 ~~(b) The Attorney General, the factfinder, and the board shall~~
36 ~~incorporate and be consistent with the factual findings and~~
37 ~~determinations, including credibility determinations, of the court~~
38 ~~which heard the petition for habeas corpus, a motion for new trial~~
39 ~~pursuant to Section 1473.6, or an application for a certificate of~~
40 ~~factual innocence as described in Section 1485.5.~~

1 (b) *The factual findings and credibility determinations*
2 *underlying the granting of a writ of habeas corpus, a motion for*
3 *new trial pursuant to Section 1473.6, or an application for a*
4 *certificate of factual innocence as described in Section 1485.5*
5 *shall be binding on the Attorney General, the factfinder, and the*
6 *board.*

7 (c) ~~The board may shall deny payment of any claim where a~~
8 ~~claimant has been convicted of fraud or obstruction of justice~~
9 ~~relating to the board finds by a preponderance of the evidence that~~
10 ~~a claimant willfully plead guilty to protect the prosecution of~~
11 ~~another for the underlying conviction for which the claimant is~~
12 ~~seeking compensation.~~