

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 813**

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**Introduced by Assembly Member Gonzalez**

February 26, 2015

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~~An act relating to criminal procedure.~~ *An act to add Section 1473.7 to the Penal Code, relating to criminal procedure.*

LEGISLATIVE COUNSEL'S DIGEST

AB 813, as amended, Gonzalez. ~~Criminal procedure.~~ *procedure: postconviction relief*

*Under existing law, although persons not presently restrained of liberty may seek certain types of relief from the disabilities of a conviction, the writ of habeas corpus is generally not available to them. Existing law creates an explicit right for a person no longer unlawfully imprisoned or restrained to prosecute a motion to vacate a judgment based on newly obtained evidence of fraud or misconduct by a government official, as specified.*

*This bill would create an explicit right for a person no longer imprisoned or restrained to prosecute a motion to vacate a conviction or sentence based on error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of the conviction, or based on newly discovered evidence of actual innocence, as specified. The bill would require a court to grant the motion if the moving party establishes a ground for relief, by a preponderance of the evidence.*

~~If an offense is bailable, a judgment of imprisonment has been given, and the defendant will surrender himself or herself in execution of the judgment when, among other things, the judgment is affirmed or~~

~~modified, existing law authorizes the defendant in a criminal case to be admitted to bail after the conviction and during the appeal of the conviction.~~

~~This bill would state the intent of the Legislature to enact legislation that authorizes judicial review of a conviction in a criminal case even if a person is not in custody.~~

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

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

1     SECTION 1. Section 1473.7 is added to the Penal Code, to  
2     read:  
3     1473.7. (a) A person no longer imprisoned or restrained may  
4     prosecute a motion to vacate a conviction or sentence for any of  
5     the following reasons:  
6     (1) The conviction or sentence is legally invalid due to error  
7     damaging the moving party’s ability to meaningfully understand,  
8     defend against, or knowingly accept the actual or potential adverse  
9     immigration consequences of the conviction.  
10    (2) Newly discovered evidence of actual innocence exists that  
11    requires vacation of the conviction or sentence as a matter of law  
12    or in the interests of justice.  
13    (b) A motion pursuant to this section shall be filed with  
14    reasonable diligence after the later of the following:  
15    (1) The date the moving party receives a notice to appear in  
16    immigration court or other notice from immigration authorities  
17    that asserts the conviction or sentence as a basis for removal.  
18    (2) The date a removal order against the moving party, based  
19    on the existence of the conviction or sentence, becomes final.  
20    (3) The date the moving party discovered, or could have  
21    discovered with the exercise of due diligence, the evidence that  
22    provides a basis for relief under this section.  
23    (4) The effective date of this section.  
24    (c) All motions shall be entitled to a hearing. At the request of  
25    the moving party, the court may hold the hearing without the  
26    personal presence of the moving party if counsel for the moving  
27    party is present and the court finds good cause as to why the  
28    moving party cannot be present.  
29    (d) When ruling on the motion:

1 (1) *The court shall grant the motion to vacate the conviction or*  
2 *sentence if the moving party establishes, by a preponderance of*  
3 *the evidence, the existence of any of the grounds for relief specified*  
4 *in subdivision (a).*

5 (2) *In granting or denying the motion, the court shall make*  
6 *specific findings of fact and conclusions of law on all issues*  
7 *presented.*

8 (3) *If the court grants the motion to vacate a conviction or*  
9 *sentence obtained through a plea of guilty or nolo contendere, the*  
10 *court must allow the moving party to withdraw the plea.*

11 (e) *An order granting or denying the motion is appealable under*  
12 *subdivision (b) of Section 1237 as an order after judgment affecting*  
13 *the substantial rights of a party.*

14 ~~SECTION 1. It is the intent of the Legislature to enact~~  
15 ~~legislation that authorizes judicial review of a conviction in a~~  
16 ~~criminal case even if a person is not in custody.~~