

## **Senate Bill No. 446**

### **CHAPTER 490**

An act to amend Sections 1485.5, 1485.55, 4900, 4902, 4903, and 4904 of the Penal Code, relating to criminal procedure.

[Approved by Governor October 4, 2021. Filed with Secretary of State October 4, 2021.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 446, Glazer. Factual innocence.

Existing law authorizes a person who has been convicted and incarcerated for a felony and later pardoned on the basis of innocence or found to be factually innocent of that crime, as specified, to present a claim against the state to the California Victim Compensation Board for the pecuniary injury sustained by the person through the erroneous conviction and incarceration. Existing law requires the board to recommend to the Legislature that an appropriation be made and the claim paid if a court has made a finding that the person is factually innocent or if the person proves to the board that they are factually innocent. Existing law specifies that there is no presumption in any other proceeding for failure to make a motion or obtain a favorable ruling pursuant to these provisions. Existing law establishes the process and timeframes for the Attorney General to respond to a claim and for the board to set a hearing and make a recommendation on the claim. Under existing law, the person is considered factually innocent if the crime with which they were charged was either not committed at all, or if committed, was not committed by that person.

This bill would revise and recast these provisions to instead require the board, upon application by a person whose writ of habeas corpus was granted in state or federal court, or whose motion to vacate the charges was granted by a state court and the charges were dismissed, or if the person was acquitted of the charges on retrial, to recommend to the Legislature that an appropriation be made without a hearing, unless the Attorney General establishes that the claimant is not entitled to compensation. The bill would require the Attorney General, for claims brought under specified provisions, to establish by clear and convincing evidence that the claimant committed the acts constituting the offense in order to establish that the claimant is not entitled to compensation. The bill would prohibit the Attorney General, from relying solely on the trial record of a conviction that has been reversed or dismissed to establish that the claimant is not entitled to compensation. This bill would specify that no res judicata or collateral estoppel finding can be made in any other proceeding for failure to make a motion or obtain a favorable ruling under these provisions.

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

SECTION 1. Section 1485.5 of the Penal Code is amended to read:

1485.5. (a) If the district attorney or Attorney General stipulates to or does not contest the factual allegations underlying one or more of the grounds for granting a writ of habeas corpus or a motion to vacate a judgment, the facts underlying the basis for the court's ruling or order shall be binding on the Attorney General, the factfinder, and the California Victim Compensation Board.

(b) The district attorney shall provide notice to the Attorney General prior to entering into a stipulation of facts that will be the basis for the granting of a writ of habeas corpus or a motion to vacate a judgment.

(c) In a contested or uncontested proceeding, the express factual findings made by the court, including credibility determinations, during proceedings on a petition for habeas corpus, a motion to vacate judgment pursuant to Section 1473.6, or an application for a certificate of factual innocence, shall be binding on the Attorney General, the factfinder, and the California Victim Compensation Board.

(d) For the purposes of this section, "express factual findings" are findings established as the basis for the court's rulings or orders.

(e) For purposes of this section, "court" is defined as a state or federal court.

SEC. 2. Section 1485.55 of the Penal Code is amended to read:

1485.55. (a) In a contested or uncontested proceeding, if the court has granted a writ of habeas corpus or when, pursuant to Section 1473.6, the court vacates a judgment, and if the court has found that the person is factually innocent, under any standard for factual innocence applicable in those proceedings, that finding shall be binding on the California Victim Compensation Board for a claim presented to the board, and upon application by the person, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid pursuant to Section 4904.

(b) In a contested or uncontested proceeding, if the court has granted a writ of habeas corpus or vacated a judgment pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, the person may move for a finding of factual innocence 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.

(c) If the court makes a finding that the petitioner has proven their factual innocence by a preponderance of the evidence pursuant to subdivision (b), the board shall, without a hearing, recommend to the Legislature that an appropriation be made and any claim filed shall be paid pursuant to Section 4904.

(d) A presumption does not exist in any other proceeding for failure to make a motion or obtain a favorable ruling pursuant to subdivisions (a) and (b). No res judicata or collateral estoppel finding in any other proceeding

shall be made for failure to make a motion or obtain a favorable ruling pursuant to subdivision (a) or (b) of this section.

(e) If a federal court, after granting a writ of habeas corpus, pursuant to a nonstatutory motion or request, finds a petitioner factually innocent by no less than 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, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and any claim filed shall be paid pursuant to Section 4904.

(f) For the purposes of this section, unless otherwise stated, “court” is defined as a state or federal court.

SEC. 3. Section 4900 of the Penal Code is amended to read:

4900. (a) Any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison or incarcerated in county jail pursuant to subdivision (h) of Section 1170 for that conviction, is granted a pardon by the Governor for the reason that the crime with which they were charged was either not committed at all or, if committed, was not committed by the person, or who, being innocent of the crime with which they were charged for either of those reasons, shall have served the term or any part thereof for which they were imprisoned in state prison or incarcerated in county jail, may, under the conditions provided under this chapter, present a claim against the state to the California Victim Compensation Board for the injury sustained by the person through the erroneous conviction and imprisonment or incarceration.

(b) If a state or federal court has granted a writ of habeas corpus or if a state court has granted a motion to vacate pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, and the charges were subsequently dismissed, or the person was acquitted of the charges on a retrial, the California Victim Compensation Board shall, upon application by the person, and without a hearing, recommend to the Legislature that an appropriation be made and the claim paid pursuant to Section 4904, unless the Attorney General establishes pursuant to subdivision (d) of Section 4902, that the claimant is not entitled to compensation.

SEC. 4. Section 4902 of the Penal Code is amended to read:

4902. (a) If the provisions of Section 851.865 or 1485.55 apply in any claim, the California Victim Compensation Board shall, within 30 days of the presentation of the claim, calculate the compensation for the claimant pursuant to Section 4904 and recommend to the Legislature payment of that sum. As to any claim to which Section 851.865 or 1485.55 does not apply, the Attorney General shall respond to the claim within 60 days or request an extension of time, upon a showing of good cause.

(b) Upon receipt of a response from the Attorney General, the board shall fix a time and place for the hearing of the claim, and shall mail notice thereof to the claimant and to the Attorney General at least 15 days prior to the time fixed for the hearing. The board shall use reasonable diligence in setting the date for the hearing and shall attempt to set the date for the hearing at the earliest date convenient for the parties and the board.

(c) If the time period for response elapses without a request for extension or a response from the Attorney General pursuant to subdivision (a), the board shall fix a time and place for the hearing of the claim, mail notice thereof to the claimant at least 15 days prior to the time fixed for the hearing, and make a recommendation based on the claimant's verified claim and any evidence presented by the claimant.

(d) If subdivision (b) of Section 4900 applies in any claim, the California Victim Compensation Board shall calculate the compensation for the claimant pursuant to Section 4904 and recommend to the Legislature payment of that sum, unless the Attorney General objects in writing, within 45 days from when the claimant files the claim, with clear and convincing evidence that the claimant is not entitled to compensation. The Attorney General may request a single 45-day extension of time, upon a showing of good cause. If the Attorney General declines to object within the allotted period of time, then the board shall issue its recommendation pursuant to Section 4904 within 60 days thereafter. Upon receipt of the objection, the board shall fix a time and place for the hearing of the claim, and shall mail notice thereof to the claimant and to the Attorney General at least 15 days prior to the fixed time for the hearing. At a hearing, the Attorney General shall bear the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. If the Attorney General fails to meet this burden, the board shall recommend to the Legislature payment of the compensation sum calculated pursuant to Section 4904.

SEC. 5. Section 4903 of the Penal Code is amended to read:

4903. (a) Except as provided in Sections 851.865 and 1485.55, and in subdivision (b) of Section 4900, the board shall fix a time and place for the hearing of the claim. At the hearing the claimant shall introduce evidence in support of the claim, and the Attorney General may introduce evidence in opposition thereto. The claimant shall prove the facts set forth in the statement constituting the claim, including the fact that the crime with which they were charged was either not committed at all, or, if committed, was not committed by the claimant, and the injury sustained by them through their erroneous conviction and incarceration.

(b) For claims falling within subdivision (b) of Section 4900 in which the Attorney General objects to the claim pursuant to subdivision (d) of Section 4902, the board shall fix a time and place for the hearing of the claim. At the hearing, the Attorney General shall bear the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. The claimant may introduce evidence in support of the claim.

(c) In a hearing before the board, the factual findings and credibility determinations establishing the court's basis for writ of habeas corpus, a motion to vacate pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, or an application for a certificate of factual innocence as described in Section 1485.5 shall be binding on the Attorney General, the factfinder, and the board.

(d) A conviction reversed and dismissed is no longer valid, thus the Attorney General may not rely on the fact that the state still maintains that the claimant is guilty of the crime for which they were wrongfully convicted, that the state defended the conviction against the claimant through court litigation, or that there was a conviction to establish that the claimant is not entitled to compensation. The Attorney General may also not rely solely on the trial record to establish that the claimant is not entitled to compensation.

(e) The board shall deny payment of any claim if the board finds by a preponderance of the evidence that a claimant pled guilty with the specific intent to protect another from prosecution for the underlying conviction for which the claimant is seeking compensation.

(f) A presumption does not exist in any other proceeding if the claim for compensation is denied pursuant to this section. No res judicata or collateral estoppel finding shall be made in any other proceeding if the claim for compensation is denied pursuant to this section.

SEC. 6. Section 4904 of the Penal Code is amended to read:

4904. If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, or for claims pursuant to subdivision (b) of Section 4900, the Attorney General's office has not met their burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense, and the California Victim Compensation Board has found that the claimant has sustained injury through their erroneous conviction and imprisonment, the California Victim Compensation Board shall report the facts of the case and its conclusions to the next Legislature, with a recommendation that the Legislature make an appropriation for the purpose of indemnifying the claimant for the injury. The amount of the appropriation recommended shall be a sum equivalent to one hundred forty dollars (\$140) per day of incarceration served, and shall include any time spent in custody, including in a county jail, that is considered to be part of the term of incarceration. That appropriation shall not be treated as gross income to the recipient under the Revenue and Taxation Code.