

**RESOLUTION 07-10-2016**

**DIGEST**

Factual Innocence: Greater Compensation and Services

Adds Penal Code sections 1203, 1425, 4907, and 4908 and amends Penal Code section 4904 to provide a procedure for vacating the conviction of the factually innocent and to provide greater compensation and services.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to add Penal Code sections 1203, 1425, 4907 and 4908 and amend Penal Code section 4904 to read as follows:

1    §1203

2           (a) Any person whose criminal conviction has been vacated by a court, either on  
3 direct appeal or a petition for habeas corpus, and the person has been released from  
4 custody because of that court decision, is eligible for services under this section.

5           (b) Whenever any person serving a state prison sentence has been released from  
6 custody because of a court decision vacating his or her criminal conviction, all the  
7 following shall occur:

8           (1) The Department of Corrections and Rehabilitation shall provide the  
9 wrongfully convicted person with release funds pursuant to Section 2713.1.

10          (2) The clerk of the court in which the conviction was vacated shall send notice  
11 by certified mail to the agency designated to provide reentry assistance to any person  
12 described in subdivision (a) by the board of supervisors for the county in which the  
13 person intends to reside. The notice shall inform the agency that the person may be  
14 eligible for reentry assistance and shall provide contact information for the person and his  
15 or her attorney. The attorney representing the person shall assist the clerk in determining  
16 the county in which the person intends to reside. The clerk shall send the notice within  
17 two business days of the court's decision vacating the conviction. If, within two business  
18 days, the clerk has not been able to identify the county in which the person intends to  
19 reside, then the clerk shall send the notice to the county of conviction.

20          (3) The agency designated by a county board of supervisors shall secure a case  
21 manager for the person within 14 days of receiving notice of the person's release, unless  
22 the person declines the assistance of a case manager or the agency determines that the  
23 person intends to reside in another county. The agency shall also secure a case manager  
24 within fourteen (14) days of receipt of a written request for services from either a person  
25 described in subdivision (a) who initially declined the assistance of a case manager, if the  
26 request is received by the agency within one year of his or her release from custody, or a  
27 person described in subdivision (a) who was released between January 1, 2010, and the  
28 effective date of this statute. The case manager shall assist the person for two years from  
29 the date of assignment. The case manager shall not be a parole agent, probation officer, or  
30 other law enforcement officer, and shall not be a staff person of the Department of  
31 Corrections and Rehabilitation. If the agency determines that the person intends to reside  
32 in another county, the agency shall immediately send notice by certified mail to that other

33 county's designated agency notifying the agency that the person may be eligible for  
34 reentry services.

35 (c) Upon the request of a person described in subdivision (a), a local county social  
36 service agency shall provide the person with the assistance of a case manager for a period  
37 of two years from the date of the assignment of the case manager to the person.

38 (d) The case manager for the person shall do all of the following:

39 (1) Conduct a risk and needs assessment for the person and his or her family.

40 (2) In consultation with one or more organizations that advocates for the  
41 wrongfully convicted, develop a reentry plan for the person.

42 (3) For two years, assist the person and his or her family by identifying and  
43 referring him or her to needed services, including, but not limited to, housing,  
44 psychological counseling, medical services, and vocational training, based on the reentry  
45 plan. The case manager shall refer the person to service providers that already provide  
46 services in the county. Nothing in this act requires the local county social services agency  
47 to fund additional services specifically for a person described in subdivision (a), beyond  
48 provision of the case manager, though a county social services agency is not prohibited  
49 from doing so if it chooses.

50 (e) By April 1, 2018, every county board of supervisors shall designate an agency  
51 to assist a person described in subdivision (a) with reentry services. The designated  
52 agency may be the county social services department, the county health department, or a  
53 qualified nonprofit organization. The designated agency may not be a probation  
54 department or a law enforcement agency. The board of supervisors shall post contact  
55 information about the designated agency on the county Web site and shall send the name  
56 and contact information of the designated agency to the Administrative Office of the  
57 Courts.

58  
59 §1425

60 (a) If a person currently serving a term of imprisonment for a felony is granted a  
61 motion for DNA testing pursuant to Section 1405 and the DNA test proves that the  
62 person is excluded from the field of possible perpetrators of that felony, the court that  
63 granted the motion for testing shall do both of the following:

64 (1) Upon motion of the person, or on its own motion, grant a motion to vacate the  
65 sentence and declare the person factually innocent of the crime.

66 (2) Notify the person that he or she is authorized to present a claim against the  
67 California Victim Compensation and Government Claims Board for pecuniary injury  
68 sustained due to the erroneous conviction and incarceration before and after conviction,  
69 pursuant to Chapter 5 (commencing with Section 4900) of Title 6 of Part 3.

70 (b) If a court grants a motion to vacate pursuant to paragraph (1) of subdivision  
71 (a), the prosecuting attorney may, within 10 days of the motion being granted, file a  
72 motion for an order to show cause why the motion to vacate should not be granted.

73 (c) A person described in subdivision (a) shall notify the court at the time the  
74 motion to vacate is granted if he or she intends to file a civil action for wrongful  
75 conviction or a claim pursuant to paragraph (2) of subdivision (a). If the person declares  
76 his or her intention to file an action or claim, the court shall seal all records relating to the  
77 arrest and conviction, and those records shall be retained and not destroyed pending  
78 resolution of the action or claim.

79 (d) (1) Unless the person has declared his or her intention to file an action or  
80 claim as provided in subdivision (c), the court shall, within 10 days of granting a motion  
81 to vacate pursuant to paragraph (1) of subdivision (a), order the Department of Justice to,  
82 within 30 days, redact the name of, and remove all references to, that person, in records  
83 relating to the crime of which the person was erroneously convicted.

84 (2) The Department of Justice shall, within 10 days of receiving the order  
85 pursuant to paragraph (1), send to all relevant local law enforcement jurisdictions a notice  
86 of the declaration of factual innocence, and a request to, within 30 days, redact the name  
87 of, and remove all references to, that person, in all records in their possession relating to  
88 the crime of which the person was erroneously convicted.

89 (3) Any local law enforcement jurisdiction that receives a notice specified in  
90 paragraph (2) shall report to the department as soon as the redaction and removal has  
91 been accomplished. The report may be made as part of any other periodic report  
92 otherwise required to be made to the department in that period.

93 (4) The Department of Justice shall, after redacting the records pursuant to  
94 paragraph (1) or receiving a report of redaction pursuant to paragraph (3), notify the  
95 person that his or her name, and all references to him or her in records relating to the  
96 crime of which the person was erroneously convicted have, in fact, been redacted or  
97 removed.

98 (e) The district attorney may request that the court order any relevant arrest and  
99 criminal records to be sealed and preserved, pending an investigation of the crime for  
100 which the person was erroneously convicted, as long as that person's name is redacted  
101 from those records. Those records shall not be released without prior court approval.

102 (f) In all cases in which a motion to vacate has been granted under this chapter, it  
103 shall operate to do the following for the wrongfully convicted person:

104 (1) Restore to the person all the rights, privileges, and franchises of which he or  
105 she has been deprived in consequence of that conviction or by reason of any matter  
106 involved in the conviction.

107 (2) Relieve the person of the obligation to disclose the conviction in response to  
108 any direct question contained in any questionnaire or application for employment or  
109 public office, for licensure by any state or local agency, or for contracting with the  
110 California State Lottery.

111  
112 §4904

113 If the evidence shows that the crime with which the claimant was charged was  
114 either not committed at all, or, if committed, was not committed by the claimant, and that  
115 the claimant has sustained injury through his or her erroneous conviction and  
116 imprisonment, the California Victim Compensation and Government Claims Board shall  
117 report the facts of the case and its conclusions to the next Legislature, with a  
118 recommendation that the Legislature make an appropriation for the purpose of  
119 indemnifying the claimant for the injury. The amount of the appropriation recommended  
120 shall be a sum equivalent to one hundred forty dollars (\$140) per day of incarceration  
121 served, and shall include any time spent in custody, including in a county jail, that is  
122 considered to be part of the term of incarceration, and economic damages, including but  
123 not limited to, reasonable attorneys fees associated with his or her criminal defense and  
124 efforts to prove his or her innocence, and medical expenses required after release. ~~And~~

125 ~~that~~ This appropriation shall not be treated as gross income to the recipient under the  
126 Revenue and Taxation Code.

127

128 §4907

129 (a) The Legislature finds and declares that it is in the public interest to assist  
130 persons released from prison by reason of having been exonerated of their crimes based  
131 on a finding of factual innocence pursuant to Section 851.8 or 1425, and who are eligible  
132 to present claims for compensation pursuant to this chapter, with obtaining compensation  
133 for goods and services to assist them in meeting basic needs prior to receiving any  
134 indemnification under Section 4904.

135 (b) For the purposes of this section and Section 4908, “exonerated person” means  
136 a person who is eligible to present a claim for compensation pursuant to this chapter.

137 (c) An exonerated person shall be eligible for compensation for goods and  
138 services necessary for the person to meet basic needs and successfully reintegrate into  
139 society. Those goods and services may include, without limitation, medical services,  
140 mental health counseling, housing, transportation, food, clothing, educational and  
141 vocational counseling, job training, job placement, and any other goods and services that  
142 a case management agency authorized pursuant to Section 4908 deems necessary.

143 (d) An exonerated person shall be eligible for compensation pursuant to  
144 subdivision (c) for up to three years from the date of his or her release from prison, if  
145 deemed necessary, or until the date that he or she receives indemnification pursuant to  
146 Section 4904, whichever occurs first.

147 (e) The Department of Corrections and Rehabilitation shall notify each exonerated  
148 person, at or before the time that he or she is released from prison, of his or her eligibility  
149 for compensation under this chapter.

150 (f) Claims under this section, and administrative costs associated therewith, shall  
151 be paid to the extent that funds are appropriated for that purpose in the Budget Act.

152 (g) This section shall apply to persons who were exonerated before the effective  
153 date of this section to the same extent as to persons exonerated on or after that date.

154

155 §4908

156 (a) Private entities may be authorized to serve as case management agencies for  
157 exonerated persons. An entity shall not be authorized to serve as a case management  
158 agency unless its primary function is to serve exonerated persons, it provides  
159 individualized case management, and it specializes in assisting exonerated persons to  
160 rebuild their lives.

161 (b) An authorized case management agency shall be responsible for identifying  
162 goods and services needed by an exonerated person and compensable under subdivision  
163 (c) of Section 4907, purchasing those goods and services on behalf of the exonerated  
164 person, and submitting claims for compensation for those goods and services.

165 (c) In addition to receiving compensation for goods and services purchased for an  
166 exonerated person under subdivision (b), an authorized case management agency shall  
167 receive compensation annually for its reasonable administrative expenses.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

The Problem: Services and compensation made available to the factually innocent could be better. The factually innocent do not have a case manager to reintegrate them into society, no compensation for basic needs during their reintegration, and only \$100 for every day they were in jail.

The Solution: This resolution ensures greater services and compensation for the factual innocent: (1) It grants them a case manager to assist in their reintegration into society. (2) It ensures compensation for basic needs during their reintegration. (3) It ensures damages for their wrongful conviction include reasonable attorney fees in proving innocence and medical needs after reintegration.

**IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule.

**CURRENT OR PRIOR RELATED LEGISLATION**

AB 851 (2005), AB 283 (2006), AB 2937 (2008), AB 316 (2009), SB 618 (2013).

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**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

Similar to Resolution 02-24-2008, which was approved in principle.

Reasons:

This resolution adds Penal Code sections 1203, 1425, 4907, and 4908 and amends Penal Code section 4904 to provide a procedure for vacating the conviction of the factually innocent and to provide greater compensation and services. This resolution should be approved in principle because it recognizes that persons who have been wrongfully convicted should receive compensation and social services necessary to transition to life after their incarceration.

Under the resolution, any person released following a finding of factual innocence becomes eligible for his or her sentence to be vacated and to receive a variety of social services. To recover the compensation, including attorneys' fees, the individual must prove that he or she did not commit the offense and also that he or she has suffered injury

as the result of the wrongful incarceration. (Pen. Code, §§ 4903 and 4904.) In 2015, section 4904 was amended to increase the amount of the per diem recovery from \$100 to \$140 per day. In addition to monetary benefits, this resolution would create a case management system, as well as procedures for reentry assistance and sealing conviction records. The resolution's text for the amendment to Penal Code section 4904, and the addition of sections 1425, 4907, and 4908 are taken from Assembly Bill No. 851 (2004-2005 Reg. Sess.), which died in the Assembly. The text for the addition of section 1203 is taken from Assembly Bill No. 2937 (2007-2008 Reg. Sess.), which was vetoed on September 27, 2008. The proposed systems would not impose a significant fiscal burden on the State. According to the National Registry of Exonerations maintained by the University of Michigan Law School, five Californians were exonerated in 2015. These factually innocent individuals should receive services and compensation following their release from incarceration, to enable them to return to society.