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SB-467 Expert witnesses: writ of habeas corpus. (2021-2022)

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Senate Bill No. 467

CHAPTER 982

An act to amend Section 1473 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 467, Wiener. Expert witnesses: writ of habeas corpus.

Existing law allows a person who is unlawfully imprisoned or restrained of their liberty to prosecute a writ of habeas corpus to inquire into the cause of their imprisonment or restraint. Existing law allows a writ of habeas corpus to be prosecuted on the basis of false evidence that is substantially material or probative to the issue of guilt or punishment that was introduced at trial. Existing law defines false evidence for these purposes as including the opinions of experts that have been repudiated by the expert or that have been undermined by later scientific research or technological advances.

This bill would additionally allow a person to prosecute a writ of habeas corpus 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 and contributed to the conviction, such that it would have more likely than not changed the outcome at trial, as specified. The bill would also expand the definition of false evidence to include the opinions of experts that are undermined by the state of scientific knowledge.

This bill would incorporate additional changes to Section 1473 of the Penal Code proposed by AB 256 to be operative only if this bill and AB 256 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1473 of the Penal Code is amended to read:

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.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, “new evidence” means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(4) 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 and contributed to the conviction, such that it would have more likely than not changed the outcome at trial.

(A) For purposes of this section, the expert medical, scientific, or forensic testimony includes the expert’s conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

(B) For purposes of this section, the significant dispute may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific or forensic expert based their testimony.

(C) Under this section, a significant dispute can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(D) In assessing whether a dispute is significant, the court shall give great weight to evidence that a consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony or that there is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(E) The significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic community, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

(F) If the petitioner makes a prima facie showing that they are entitled to relief, the court shall issue an order to show cause why relief shall not be granted. To obtain relief, all the elements of this paragraph must be established by a preponderance of the evidence.

(G) This section does not change the existing procedures for habeas relief.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, “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 the state of scientific knowledge or later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at a hearing or trial or whose opinion has been undermined by scientific research, technological advancements, or because of a reasonable dispute within the expert’s relevant scientific community as to the validity of the methods, theories, research, or studies upon which the expert based their opinion.

(f) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745 if judgment was entered on or after January 1, 2021. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner’s conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising

a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant shall appear at the hearing by video unless counsel indicates that their presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

SEC. 1.5. Section 1473 of the Penal Code is amended to read:

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.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(4) 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 and contributed to the conviction, such that it would have more likely than not changed the outcome at trial.

(A) For purposes of this section, the expert medical, scientific, or forensic testimony includes the expert's conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

(B) For purposes of this section, the significant dispute may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific or forensic expert based their testimony.

(C) Under this section, a significant dispute can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(D) In assessing whether a dispute is significant, the court shall give great weight to evidence that a consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony or that there is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(E) The significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic community, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

(F) If the petitioner makes a prima facie showing that they are entitled to relief, the court shall issue an order to show cause why relief shall not be granted. To obtain relief, all the elements of this paragraph must be established by a preponderance of the evidence.

(G) This section does not change the existing procedures for habeas relief.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, "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 the state of scientific knowledge or later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at a hearing or trial or whose opinion has been undermined by scientific research, technological advancements, or because of a reasonable dispute within the expert's relevant scientific community as to the validity of the methods, theories, research, or studies upon which the expert based their opinion.

(f) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (k) of Section 745. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 1473 of the Penal Code proposed by both this bill and Assembly Bill 256. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends Section 1473 of the Penal Code, and (3) this bill is enacted after Assembly Bill 256, in which case Section 1 of this bill shall not become operative.