

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 703 (Weber) – As Amended March 26, 2019

SUBJECT: Public postsecondary education: fee waivers for exonerated persons

SUMMARY: Provides that no mandatory systemwide tuition and fees be required at the University of California (UC), the California State University (CSU), and the California Community Colleges (CCC) for any student who has been exonerated, as currently defined in Section 3007.05 of the Penal Code.

EXISTING LAW:

- 1) Requires the California Department of Corrections and Rehabilitation to assist a person exonerated as to a conviction for which they are serving a state prison sentence at the time of exoneration with the following:
 - a) Transitional housing assistance, job training, and mental health services, as applicable.
 - b) Enrollment in the Medi-Cal program.
 - c) Enrollment in Cal Fresh.
 - d) Referral to the Employment Development Department and applicable regional planning units for workforce services; and,
 - e) Enrollment in the federal and state supplemental security income programs (SSI/SSP).
- 2) Provides a payment of \$1,000 to an exonerated person upon their release from prison.
- 3) Defines “exonerated”, for purposes of the above and for purposes of this bill, to mean the person has been convicted and one of the following subsequently occur:
 - a) A writ of habeas corpus concerning the person was granted on the basis that the evidence unerringly points to innocence, or the person’s conviction was reversed on appeal on the basis of insufficient evidence;
 - b) A writ of habeas corpus concerning the person was granted, either resulting in dismissal of the criminal charges for which he or she was incarcerated or following a determination that the person is entitled to release on his or her own recognizance, or to bail, pending a decision by a prosecutor regarding retrial or appeal; or
 - c) The person was given an absolute pardon by the Governor on the basis that the person was innocent. (Penal Code (PC) Section 3007.05.)
- 4) States that any person who, having been convicted of any felony and imprisoned in the state prison or county jail for that conviction, is granted a pardon by the Governor for the reason he or she was innocent of the crime with which he or she was convicted, is eligible to present a claim against the state to the Victims Compensation Board for the monetary injury sustained by him or her through the erroneous conviction and imprisonment. (PC Sect. 4900.)

- 5) Gives erroneously convicted individuals two years to file a claim against the state. (PC Sect. 4901.)
- 6) Sets the rate of compensation at \$140 per day of incarceration served subsequent to the claimant's conviction, and specifies that this appropriation shall not be considered gross income for state tax purposes. (PC Sect. 4904.)
- 7) Provides that no mandatory systemwide fees be required by the UC Regents, the Board of Directors of Hastings College of Law, the CSU Trustees, or the Board of Governors of the CCC from any surviving spouse or child, of a deceased person, who met all of the following requirements:
 - a) He or she was a resident of this state;
 - b) He or she was employed by a state or local public agency, or was a contractor, or an employee of a contractor, performing services for a public agency, or was a firefighter employed by the federal government whose duty assignment involved performing firefighting services in California;
 - c) His or her principal duties consisted of active law enforcement service or active fire suppression and prevention; and,
 - d) He or she was killed in the performance of active law enforcement or active fire suppression and prevention duties, died as a result of an accident or an injury caused by external violence or physical force during the performing those duties, or died as a result of an industrial injury or illness arising out of and in the course of performing those duties. (Education Code (EC) Section 68120.)
- 8) Provides that no mandatory systemwide fees be required by the UC Regents, the CSU Trustees, or the Board of Governors of the CCC from any of the following: (EC Sects. 66025.3 and 76300.)
 - a) The dependent of any California resident killed in the September 11, 2001 terrorist attacks;
 - b) The dependent of veteran killed or permanently disabled in the line of duty, as specified; and
 - c) Current and former foster youth, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose. According to the author, when someone is wrongfully convicted for a crime they did not commit there are countless adverse impacts, including the loss of years or decades of their life that could have been spent pursuing higher education, training and job experience. As a result of their wrongful imprisonment, the majority of exonerees are financially dependent on others upon release. The author believes that access to an education would provide exonerated individuals with resources and access to better-paying jobs to create a path to financial

independence. AB 703 would help in this regard by waiving systemwide tuition and fees for exonerated students at California's public postsecondary institutions.

This bill is co-sponsored by Exoneration Nation and the California Attorneys for Criminal Justice.

How Many? According to the National Registry of Exonerations' most recent report, dated April 9, 2019, since 1989, exonerations in California totaled 201, or less than seven per year on average. (Last year there were six exonerations in the state.) These exonerees lost a total of 1,692 years in prison, or an average of 8.4 years per exoneree. The bill would thus benefit a small number of individuals. Moreover, of those who would be eligible for, and take advantage of, this benefit, most would likely begin their studies at a community college and many would likely already qualify for an income-based fee waiver.

State Claims for Exonerated Persons. The bulk of funds owed to a wrongly incarcerated person come from the \$140 per day a person is owed for each day of wrongful incarceration, which a person may recover after following procedures established in by SB 618 (Leno) Statutes of 2013. If a person has secured a declaration of factual innocence from the court after having a conviction set aside, the finding is grounds for payment of a claim against the state and upon application by the petitioner, the California Victim Compensation Board shall, without a hearing, recommend to the Legislature an appropriation to cover the claim. Likewise, if the court finds the petitioner has proven their innocence by a preponderance of the evidence, or the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned, or when the court vacates a judgment for a person on the basis of new evidence concerning a person who is no longer unlawfully imprisoned, and the court finds the evidence points unerringly to innocence, the board shall, upon application by the claimant, without a hearing, recommend to the Legislature an appropriation to cover the petitioner's claim.

Otherwise, a claimant is required to introduce evidence in support of their claim at a hearing before the board, and the Attorney General may introduce evidence in opposition. The claimant must prove, by a preponderance of the evidence: (a) the crime was not committed at all, or, if committed, was not committed by the claimant; (b) the claimant did not contribute to the arrest or conviction for the crime; and (c) the claimant sustained pecuniary injury though the erroneous conviction and imprisonment.

If a claimant meets the burden of proof, the board shall recommend to the Legislature an appropriation of \$140 per day (\$51,110 per year) of incarceration served in a state prison, subsequent to the claimant's exoneration. The most recent such appropriations bills – SB 1186 (Lara, 2016), AB 212 (Gonzalez-Fletcher, 2017), SB 534 (Lara, 2017), SB 941 (Lara, 2018) and AB 1897 (Committee on Appropriations, 2018) – included \$11.6 million from the General Fund for the claims of 15 exonerees, or an average claim of about \$780,000 each. This year's claims bill – AB 1830 (Gonzalea), pending in Assembly Appropriations – is an urgency measure proposing appropriations totaling \$2.3 million for four exonerees whose claims have been approved by the board.

The committee may wish to consider whether those exonerees receiving such large payments should also receive tuition waivers, as proposed in this bill. Proponents note that not all exonerees are approved for compensation and that there can be a considerable time lag between their release from prison and the enactment of the legislation providing their compensation.

Other States. AB 703 is similar to bills previously enacted in the states of Colorado, Minnesota, Montana, North Carolina, and Texas.

Related Legislation. AB 703 is one of three bills the author is carrying to enhance opportunities for exonerees:

- 1) AB 701 – pending in Assembly Appropriations after passing on Consent in Assembly Public Safety - provides a person who is exonerated of a crime \$5,000 upon release from prison, to be used to pay for housing, and entitles the exonerated person to receive direct payment or reimbursement for reasonable housing costs for between one and four years thereafter.
- 2) AB 702 – also pending in Appropriations after passing unanimously from Public Safety - requires the Victim Compensation Board to reimburse an exonerated person for mental health services that are reasonably related to their incarceration, or to provide payment to the person's provider, as specified.

Prior Legislation. Recently, the Legislature has taken action to provide benefits and services to exonerees, who, while determined to be innocent and having been released from prison, are not subject to parole, and thus did not receive the services available to parolees:

- 1) AB 672 (Jones-Sawyer), Chapter 672, Statutes of 2015, required the CDCR to assist an exonerated person with transitional services, including housing assistance, job training, and mental health services, and provided that such persons would not be charged for obtaining a driver's license within six months of release from prison.
- 2) SB 1050 (Lara), Chapter 979, Statutes of 2016, expanded the benefits for which CDCR to provide assistance to exonerees to include enrollment in Medi-Cal, CalFresh, and SSI/SSP, and provided \$1,000 upon release from prison.
- 3) SB 618 (Leno), Chapter 618, Statutes of 2013, streamlined the process for compensating persons who have been exonerated after being wrongfully convicted and imprisoned.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
Exonerated Nation

Opposition

None on file.

Analysis Prepared by: Chuck Nicol / HIGHER ED. / (916) 319-3960