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SB 694: How Low Can You Go? Reducing the Evidentiary Standard for State Habeas Corpus Petitions

Michelle Ahronovitz

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SB 694: How Low Can You Go? Reducing the Evidentiary Standard for State Habeas Corpus Petitions

Michelle Ahronovitz

Code Sections Affected

Penal Code §§ 1473, 1485.55 (amended).
SB 694 (Leno); held in Assembly Appropriations.

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I. INTRODUCTION

August 10, 1993 started out normally for Bill Richards.¹ He walked around the neighborhood hand-in-hand with his wife, Pamela.² He then went to work, where it was business as usual.³ After driving home, eager to see his wife, he arrived

1. *William Richards*, CAL. INNOCENCE PROJECT, <http://californiainnocenceproject.org/read-their-stories/william-richards/> (last visited Sept. 27, 2015) (on file with *The University of the Pacific Law Review*)

2. *Id.*

3. *Id.*

home and found his property completely unlit.⁴ Richards and Pamela were in the process of building a new home, so they lived in a generator-powered motor home.⁵ When Richards went inside to ask Pamela why the generator was not running, he found his wife dead on the floor with her head exposed after someone beat her with two rocks.⁶

Hours after Richards called the police, police finally conducted an investigation of the crime scene.⁷ At that point, there was no evidence that anyone besides Richards had ever been on the property.⁸ They charged Richards with Pamela's murder and a jury found him guilty after three trials.⁹ The prosecution's evidentiary silver bullet was a bite mark found on Pamela's body that supposedly matched Richards' teeth.¹⁰ To support this assertion, the prosecution utilized an expert to explain the match to the jury.¹¹

California briefly exonerated Richards in 2002, until the Court of Appeals overruled the decision.¹² In 2007, Richards filed a petition for habeas corpus.¹³ His petition argued that newly discovered evidence showed that the expert's incriminating testimony was not based on substantial scientific evidence.¹⁴ Furthermore, the expert who testified at the trial reviewed other evidence and stated that he was no longer sure that Richards' teeth matched the bite marks.¹⁵ Other dental experts agreed the testimony was incorrect.¹⁶

Armed with this evidence, the California Supreme Court agreed to hear the case to determine whether the lower court's finding that this evidence "pointed unerringly to innocence," the standard required for newly discovered evidence, was correct.¹⁷ According to the court, the evidence that the alleged bite mark linking Richards to the murder may not have been a bite mark at all and did not meet the "point unerringly to innocence" standard.¹⁸ Due to what the court considered to be other persuasive evidence from trial, although they agreed this

4. *Id.*

5. *Id.*

6. *Id.*

7. *See In re Richards*, 55 Cal. 4th 948, 953 (2012) (stating that the length of time was due to the remote location of the property).

8. *William Richards*, *supra* note 1.

9. *Richards*, 55 Cal. 4th at 955.

10. *Id.* at 955.

11. *See id.* (presenting Dr. Sperber as an expert testifying based only on his own professional dentistry experience with almost no foundational scientific background to substantiate his testimony).

12. *William Richards*, *supra* note 1.

13. *Richards*, 55 Cal. 4th at 956.

14. *Id.*

15. *See id.* (admitting that in his testimony that the bite marks were attributable to only one or two percent of the population was based on personal experience and no science supported his assertion).

16. *Id.* at 956-57.

17. *Id.* at 959.

18. *Id.* at 968.

new evidence undermined the expert's credibility, it was insufficient to overturn Richards' conviction.¹⁹

In cases like Richards', where new evidence does not definitively exculpate the prisoner, it is much harder to successfully file a habeas petition.²⁰ SB 694 attempted to change the evidentiary standard of habeas petition claims letting prisoners introduce new evidence that has a "reasonable probability" of changing the outcome if granted a new trial, but the bill was held in the Assembly Appropriations Committee.²¹

II. LEGAL BACKGROUND

This section will look at the common law origins of habeas corpus and how the United States adopted the writ, California's own version of habeas, and the remedies available to exonerate prisoners.²² This section will also briefly introduce how federal habeas corpus has changed over the years and its interaction with state habeas claims.²³

A. Historical Origins of the Common Law Writ of Habeas Corpus

A writ of habeas corpus brings a convicted person before a court to "ensure that the person's imprisonment or detention is not illegal."²⁴ Habeas corpus originated from what the medieval period referred to as habeas corpus *ad subjiciendum*, which required the person imprisoning the individual who requested the writ to bring the prisoner to court and explain the reason for the imprisonment.²⁵ The court could order the prisoner's release if it found that the state detained the prisoner without a valid reason.²⁶

Historically, the writ of habeas corpus dealt with jurisdictional issues more than concerns with prisoner's rights violations.²⁷ When Parliament realized the monarchy may have been unjustifiably detaining prisoners it believed were

19. *See id.* (concluding that denial was appropriate based on the nature of Richards' relationship with his wife at the time, the remote location of the property, and Richards' knowledge of the crime scene).

20. *See* ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 694, at 2 (Aug. 24, 2015) (discussing California's high standard for habeas claims based upon new evidence).

21. SB 694, 2015 Leg., 2015–2016 Reg. Sess. (Cal. 2015) (as amended on Aug. 17, 2015, but not enacted).

22. *Infra* Part II.A–D.

23. *Infra* Part II.B.

24. BLACK'S LAW DICTIONARY 825 (10th ed. 2014).

25. James Landman, *You Should Have the Body: Understanding Habeas Corpus*, SOCIAL EDUCATION 99 (2008).

26. *Id.*

27. *Id.*

plotting against it, the focus of the writ of habeas corpus shifted to prisoners' rights.²⁸

After initial attempts to force the monarchy to enforce writs of habeas corpus, Parliament enacted the Habeas Corpus Act in 1679.²⁹ The Act created rules on how much time the monarchy had to "return on a writ" and imposed very hefty fines if the monarchy did not complete a timely return.³⁰

B. Habeas Corpus Introduced into American Law

Article I, section 9 of the Constitution grants specific protection of the writ of habeas corpus—the only English common law right included in the original drafting of the Constitution in 1787.³¹ A few years later, the Judiciary Act of 1789 empowered the federal courts to grant writs of habeas corpus.³² The Civil War tested the limits of habeas and the Suspension Clause in the Constitution by suspending the writ of habeas corpus.³³ When citizens challenged President Lincoln's authority to do so, the case made it all the way to the Supreme Court.³⁴ When Chief Justice Taney decided the President did not have authority, Congress gave him the authority to suspend the writ during wartime for public safety in 1863.³⁵ After the Civil War, Congress enacted the Habeas Corpus Act of 1867, extending the authority of the federal government to issue writs "where any person may be restrained of his or her liberty in violation of the Constitution."³⁶ This allowed the federal government to hear petitions from state prisoners.³⁷

Today, petitioning for habeas corpus is protected by the federal Constitution,³⁸ as well as the California Constitution.³⁹ A petitioner may file habeas claims in both state and federal court; however, in order to file a habeas

28. *Id.*

29. *Id.* at 99–100. First, the Parliament passed the Petition of Right in 1628, which stated that the monarchy was imprisoning individuals without any justified reason. *Id.* Following this petition, the Parliament passed an act in 1641, abolishing a special prisoner quarters called the "Star Board" which the monarchy kept a secret and hid away prisoners who it specifically felt were targeting the monarchy. *Id.* at 100.

30. *Id.*

31. U.S. CONST. art I, § 9 cl. 2.; Landman, *supra* note 25, at 102.

32. Judiciary Act, 1 Stat. 73 (1789). The act only granted the writ to individuals who were in custody under the federal government. Landman, *supra* note 25, at 100.

33. Landman, *supra* note 25, at 100–01. The Suspension Clause is found in Article I of the Constitution, which defines congressional powers just as the English use of the writ historically limited the executive power of the monarchy. *Id.* After the Civil War began, President Lincoln suspended the writ of habeas corpus in order to be able to apprehend individuals believed to be acting against the federal government. *Id.* at 102.

34. *Ex parte Merryman*, 9 Am. Law Reg. 524 (1861).

35. *Id.*; cf. U.S. CONST. art I, § 9 cl. 2. (adopting similar principles to the Habeas Corpus Suspension Act of 1863); Landman, *supra* note 25, at 101.

36. Landman, *supra* note 25, at 102.

37. *Id.*

38. U.S. CONST. art I, § 9 cl. 2.

39. CAL. CONST. art. I, § 11; CAL. CONST. art. VI, § 10.

claim in federal court, the claim must be related to the U.S. Constitution or federal law.⁴⁰ Habeas corpus is most commonly used during post-conviction review of a possible violation of the prisoner's constitutional rights that may have resulted in an unfair trial, thereby making the prisoner's imprisonment illegal.⁴¹

Habeas corpus is not a substitute for a conviction appeal, but only filed once a prisoner has exhausted all appeals.⁴² To file a state habeas petition, the petitioner's direct appeal must either be heard in state court concurrently at the time of filing the petition or after the state Supreme Court denies the appeal.⁴³ Additionally, circumstances that cannot be heard on appeal, such as false or newly discovered evidence, are grounds for filing a habeas petition.⁴⁴ In the event the petitioner's appeals to all levels of the state court fail and his or her state habeas claim is denied, the petitioner may raise a federal habeas claim.⁴⁵

States differ on the standard of proof required in a habeas petition based solely on new evidence.⁴⁶ Thirty-eight states and the District of Columbia currently utilize a statutorily created post-conviction remedy intending to replace the writ of habeas corpus that uses the "reasonable possibility of a different outcome" standard.⁴⁷ California and eleven other states use the writ of habeas corpus as the primary judicial remedy for post-conviction relief.⁴⁸ Applying a "reasonable possibility" standard to claims based on new evidence matches the standard required for other post-conviction relief claims, such as ineffective assistance of counsel or prosecutorial misconduct.⁴⁹

Petitioners filing for federal habeas face major obstacles due to limited appellate records.⁵⁰ State courts increasingly deny petitions for summary

40. Theresa Hsu Schriever, *In Our Own Backyard: Why California Should Care About Habeas Corpus*, 45 MCGEORGE L. REV. 763, 767 (2014).

41. 30 C.J.S. *Habeas Corpus* §§ 2, 6–7 (2014).

42. CAL. PENAL CODE §1473 (West 2013); see also *In re Carpenter*, 9 Cal. 4th 634, 645–46 (1995) (finding that the superior court did not interfere with the appellate jurisdiction by entertaining claims of juror misconduct that did not appear in the record).

43. *Marks v. Superior Court*, 27 Cal. 4th 176, 188 (2002) (“[The argument that habeas corpus derives from the record] conflicts with the rule that collateral review by habeas corpus is not a reiteration of or substitute for an appeal.”).

44. PENAL § 1473; SB 694, 2015 Leg., 2015-2016 Reg. Sess. (Cal. 2015) (as amended on Aug. 17, 2015, but not enacted).

45. Schriever, *supra* note 40, at 771–72; Letter from Prison Law Office on Collateral Attacks on Criminal Conviction through State and Federal Habeas Corpus Petitions (Aug. 2009) (on file with *The University of the Pacific Law Review*). Federal habeas claims require a constitutional or federal statutory basis. Schriever, *supra* note 40, at 779.

46. STATE POST-CONVICTION REMEDIES AND RELIEF HANDBOOK 256–57 (Donald E. Wilkes, Jr. ed., 11th ed. 2011) [hereinafter STATE POST-CONVICTION REMEDIES].

47. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 694, at 4 (Apr. 21, 2014); STATE POST-CONVICTION REMEDIES, *supra* note 46, at 4–5.

48. STATE POST-CONVICTION REMEDIES, *supra* note 46, at 4–5.

49. SENATE COMMITTEE ON PUBLIC SAFETY, *supra* note 47, at 4.

50. See Schriever, *supra* note 40, at 771 (explaining that courts are not required to provide opinions for petitions denied summarily).

judgment and are not required to provide an explanation.⁵¹ These summary judgment denials severely limit the state appellate record, making it difficult for the petitioner to provide enough evidence of entitlement to relief as required for a federal habeas claim upon review.⁵² As a result, unless the petitioner can prove a separate constitutional violation, which would give the claim federal standing, the current “point unerringly to innocence” standard for new or false evidence bars many petitioners from relief under federal habeas corpus.⁵³

Filing federal habeas claims became more difficult in 1996 when Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA).⁵⁴ The AEDPA contains a provision that limits the power of a federal judge to grant relief under a habeas corpus provision if the state court previously denied it.⁵⁵ The federal court may review the claim if one of two exceptions applies: either the state court proceeding was contrary to federal law or the state court’s application of federal law was unreasonably wrong.⁵⁶

C. The Evolution of the Habeas Corpus Standard in California

California added the common law writ of habeas corpus as a statutory post-conviction remedy in 1872.⁵⁷ In 1975, California amended the Penal Code to distinguish between a claim based on “false evidence” and “newly discovered evidence,” suggesting, but not expressly stating, that only claims of false evidence were permissible to file a habeas claim.⁵⁸ Case law later clarified that newly discovered evidence was considered permissible grounds for a habeas corpus petition.⁵⁹

When a prisoner files a habeas corpus petition on the grounds of false evidence, proof must show that the evidence was “material or probative on the issue of the [prisoner’s] guilt.”⁶⁰ Courts consider evidence to be material or

51. *Id.*

52. *Id.* at 793

53. *Id.* at 779.

54. Antiterrorism and Effective Death Penalty Act, 28 U.S.C. 2254 (2015); Letter from Prison Law Office, *supra* note 45.

55. Antiterrorism and Effective Death Penalty Act § 2254.

56. *Id.*

57. CAL. PENAL CODE §§ 1473–1508 (West 2013).

58. *Id.* § 1473(a). Claims of false evidence are where the prisoner’s conviction depended on evidence later proven to be incorrect or obtained under false pretense, while newly discovered evidence claims are where years after the conviction, new evidence is discovered that disproves the prisoner’s conviction. *Id.*

59. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 694, at 6 (July 13, 2015); *see In re Clark*, 5 Cal. 4th 750, 760, (1993) (“A refusal to consider a claim of factual innocence based on newly discovered evidence would be constitutionally suspect in a capital case.”).

60. *In re Bell*, 42 Cal. 4th 630, 637 (2007).

probative if there was a reasonable probability that the outcome of the trial would have been different had the evidence been introduced.⁶¹

For the court to consider a prisoner's habeas claim on the grounds of newly discovered evidence, the evidence must be conclusive and point unerringly to innocence, thereby effectively "undermining the entire structure" of the prosecution's case.⁶² Statutory law defines new evidence as "evidence that [the petitioner] could not have discovered with reasonable diligence prior to judgment."⁶³

The "point unerringly to innocence" standard is very high and the California Supreme Court stated in *In re Lawley* that this standard exceeds the standard used in other habeas claims, which use the civil law "preponderance of the evidence" standard.⁶⁴ When federal courts review state petitions, the court presumes the judgment is final because the state court is expected to make correct factual determinations.⁶⁵ So in order to prevail, the petitioner must successfully overcome that presumption by proving the newly discovered evidence certainly demonstrates his or her innocence.⁶⁶

In cases where the evidence "merely" undermined the prosecution's case or created a "more difficult" decision for the jury in determining guilt, courts held the standard was not met.⁶⁷ California courts have applied the standard for new evidence broadly.⁶⁸

In 2013, Senator Leno authored two bills that affected the rights of prisoners and exonerated individuals, both of which were chaptered.⁶⁹ Chapter 623 allows prisoners to petition for a writ of habeas corpus when scientific or technological

61. Sosan Madanat, *SB 1058: Wrongful Convictions Involving Improper Forensic Science*, UNDER THE DOME (Sept. 14, 2015), <http://blogs.mcgeorge.edu/lawandpolicy/wp-content/uploads/2014/09/SB-1058-False-Evidence.pdf> (on file with *The University of the Pacific Law Review*).

62. *In re Lindley*, 29 Cal. 2d 709, 723 (1947) ("newly discovered evidence does not justify relief unless it is of such character that will completely undermine the entire structure of the case upon which the prosecution was based."); *see also In re Clark*, 5 Cal. 4th 750, 766 (stating that so long as the evidence demonstrates "fundamental doubt on the accuracy" of earlier hearings, the conviction may be questioned).

63. CAL. PENAL CODE § 1473.6 (West 2013).

64. 42 Cal. 4th 1231, 1240, (2008); SENATE COMMITTEE ON PUBLIC SAFETY, *supra* note 47, at 3. When compared to the evidentiary standard for filing a motion for a new trial, the standard to petition for habeas corpus on the grounds of new evidence is much higher. PENAL § 1181.

65. Schriever, *supra* note 40, at 779.

66. *Id.*

67. *Ex parte Lindley*, 29 Cal. 2d at 723; 36 CAL. JUR. 3D, Habeas Corpus § 50 (2006).

68. *See Ex parte Lindley*, 29 Cal. 2d at 723 ("Proof that a red-headed man other than Lindley was in the vicinity of the boat house at the time the crime was committed, or the identification by a witness of this stranger as the 'man in the willows' would have weakened the prosecution's case and presented a more difficult question for the trier of fact. But the testimony in regard to the other man does not point unerringly to Lindley's innocence."); Daniel S. Medwed, *California Dreaming? The Golden State's Restless Approach to Newly Discovered Evidence of Innocence*, 40 U.C. DAVIS L. REV. 1437, 1453–56 (2007) (citing CAL. JUR. 3D, *Habeas Corpus* § 50 (2006)).

69. 2013 STAT. Ch. 623 (amending CAL. PENAL CODE § 1473); CAL. PENAL CODE §§ 4900–04 (enacted by 2013 STAT. Ch. 800)

advances discovered after the original trial discredited the evidence used to convict the prisoner.⁷⁰ Additionally, if the expert who corroborated the evidence at trial recanted his or her testimony, a prisoner is allowed a writ.⁷¹ Chapter 800 augments Chapter 623; it simplifies the compensation process for exonerated individuals who seek remuneration from the time they were incarcerated.⁷²

D. Remedies for Habeas Corpus in California

Exonorees, or persons who have been cleared of blame through habeas or other means, have a right to seek compensation for their wrongful incarceration.⁷³ If evidence shows a person was charged with a crime that was either not committed or not committed by that person, California Victim Compensation and Government Claims Board (CalVCP) must recommend an appropriation to the legislature.⁷⁴ A claim is filed with CalVCP, which reviews the claim to determine if the exonoree qualifies for compensation.⁷⁵ If CalVCP denies the claim, the exonoree may petition for an appeal, which, if granted, could lead to an administrative hearing before the Victim and Government Claims Board.⁷⁶ The evidence relied on must meet the standard of pointing “unerringly to innocence,” and the board must recommend the appropriation without holding a hearing first.⁷⁷

III. SB 694

SB 694 would have lowered the evidentiary standard required for petitioners to prevail on a “new evidence” writ of habeas corpus premised upon new evidence.⁷⁸ SB 694 would have changed the evidentiary standard from “point unerringly to innocence” to a lower standard that evidence be “credible, material, presented without delay, and of such decisive force that it would have more likely than not changed the outcome at trial.”⁷⁹ The evidence could not have been evidence that which could have been discovered before the original trial if the

70. SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF SB 694, at 3 (May 4, 2015).

71. *Id.*

72. CAL. PENAL CODE §§ 4900–04 (enacted by 2013 STAT. Ch. 800); SENATE APPROPRIATIONS COMMITTEE, *supra* note 70, at 3.

73. *See Appeals*, CAL. VICTIM COMP. PROGRAM, <http://vcgcb.ca.gov/law/appeals/> (last visited Sept. 27, 2015) (on file with *The University of the Pacific Law Review*) (providing how to seek compensation for wrongful incarceration).

74. PENAL § 1485.55 (amended by 2015 STAT. Ch. 422).

75. *Appeals*, *supra* note 73.

76. *Id.*

77. PENAL § 1485.55 (West 2013).

78. SB 694, 2015 Leg., 2015-2016 Reg. Sess. (Cal. 2015) (as amended on Aug. 17, 2015, but not enacted).

79. *Id.*

attorney exercised due diligence, nor may the evidence have been “cumulative, corroborative, collateral, or impeaching.”⁸⁰

If the court that exonerated the inmate found the prisoner was factually innocent, the decision would have bound the CalVCP and the Board would have been required to recommend the legislature pay a claim and file an appropriation.⁸¹

IV. ANALYSIS

This section examines the impact SB 694 would have had on California’s prison population and the costs that would have been associated with implementing SB 694.⁸² This section will also explore what effect SB 694 would have had on the number on habeas claims filed by prisoners and whether it would have made petitions easier to file than it is under the present standard.⁸³ Lastly, this section will look at how SB 694 would have impacted court judgments and how SB 694 could be improved in the future.⁸⁴

A. Envisioned Effect of SB 694 on California Prisons

Between 1980 and 2010, the California state prison population increased by 572 percent.⁸⁵ In one year, the prison population in California increased by one percent and admitted 1,900 more prisoners than it released, averaging nearly 4,000 newly admitted inmates.⁸⁶

Criminal justice experts criticize California’s state penal system operations, and California continuously remains one of the top three states for incarceration rates.⁸⁷ Attempting to curb this statewide problem, the California Senate Committee for Public Safety considered legislation numerous times over the last decade to address prison overcrowding.⁸⁸

80. *Id.*

81. *Id.*

82. *See infra* Part IV.A, C (discussing that impact to prisons would be minimal and that high costs, if any, would likely be seen during first years of implementation).

83. *See infra* Part IV.B (explaining the procedural difficulties habeas petitioners handle and the rate petitions are filed under the current standard).

84. *See infra* Part IV.D–E (addressing criticisms that SB 694 would eliminate certainty in judicial verdicts).

85. SARAH LAWRENCE, CALIFORNIA IN CONTEXT: HOW DOES CALIFORNIA’S CRIMINAL JUSTICE SYSTEM COMPARE TO OTHER STATES? 1 (2012).

86. E. Ann Carson, *Prisoners in 2013*, BUREAU OF J. STATISTICS BULL., Sept. 30, 2014, at 4, 9.

87. *Id.* at 3. California’s system was previously criticized by some for its perceived high conviction of innocent people, with speculation that California has one the three largest penal systems in the world. Medwed, *supra* note 68, at 1442–42.

88. SENATE COMMITTEE ON PUBLIC SAFETY, *supra* note 47, at 8. In 2011, the Supreme Court affirmed district court and Ninth Circuit decisions, ordering California to reduce its in-house adult prison population to 137.5 percent of design capacity by February 2016. *See Brown v. Plata*, 131 S. Ct. 1910, 1945 (2011)

Following Proposition 47 (Prop. 47) and realignment, California successfully reduced the population to 136.6 percent of prison capacity as of February 2015.⁸⁹ The state must now demonstrate that this solution is viable and sustainable over time in order to prevent overcrowding from reoccurring, as one of the ultimate goals for the Committee for Public Safety and the state legislature is to encourage legislation that maintains a reduced prison population.⁹⁰

Codifying a less stringent standard for bringing a “new evidence” habeas petition may increase the number of successful petitions by a small amount as SB 694 would have promulgated a preponderance standard rather than relying on the “point unerringly to innocence” standard.⁹¹ However, recent statistics show that a large number of habeas petitions are denied before a hearing is ever granted.⁹² Nationally, there were 125 exonerations last year with only two exonerations specifically in California, so the average number of exonerations California could reasonably expect per year would be in the single digits.⁹³

The states that do use the preponderance standard for habeas petitions yield similar exoneration rates to California.⁹⁴ In 2012, New York amended its post-conviction statute to use the preponderance standard.⁹⁵ In the last year, New York exonerated seventeen people—seven less than were exonerated in 2014.⁹⁶ Unfortunately, there is little data that identifies how far up the court system a case went before exoneration, which would offer more evidence on how directly habeas petitions contribute to these fluctuating rates of exoneration.⁹⁷

Even if there was a connection between exoneration rates and habeas petitions, the most recent statistics available show that a majority of habeas petitions are shuffled through the system.⁹⁸ In the 2014 fiscal year, the California Supreme Court received forty-one habeas petitions related to automatic appeals and denied

(discussing that Bureau of Prisons recommendation of 130 percent bolstered the three-judge panel’s conclusion that a 130 percent population limit will alleviate pressure, but that upward adjustment to a higher percent population was warranted based on evidence from the State’s Corrections Independent Review Panel).

89. SENATE COMMITTEE ON PUBLIC SAFETY, *supra* note 47, at 2.

90. *See id.* at 8 (inferring this from the numerous legislative attempts at reforming habeas corpus).

91. *See* JUD. COUNCIL OF CAL., 2015 COURT STATISTICS REPORT STATEWIDE CASELOAD TREND 2003-2004 THROUGH 2013-2014 10 (2015) (lowering the standard for evidence may require more evidentiary hearings which could reduce the number of habeas dispositions prior to evidentiary hearings); SB 694, 2015 Leg., 2015-2016 Reg. Sess. (Cal. 2015) (as amended on Aug. 17, 2015, but not enacted).

92. *See* JUD. COUNCIL OF CAL., *supra* note 91, at 8 (demonstrating the large percentage of denied petitions compared to granted).

93. *Exonerations in 2014*, NAT’L REGISTRY OF EXONERATIONS, Jan. 27, 2015, at 1.

94. *See* STATE POST-CONVICTION REMEDIES, *supra* note 46 at 4–5 (listing the states that utilize the same form of habeas as California); *see also Exonerations in 2014*, *supra* note 93 (listing the exoneration rates for those states).

95. N.Y. PENAL LAW § 440.10(g-1)(2) (McKinney 2015).

96. *Compare Exonerations in 2014*, *supra* note 93 (listing 24 exonerated people), with *Exonerations in 2015*, NAT’L REGISTRY OF EXONERATIONS, Feb. 3, 2016 at 5 (listing seventeen exonerated people).

97. *See generally Exonerations in 2015*, *supra* note 96 (describing the trends in exoneration by crime or error, but not including reference to how many appeals various exonerations face previously).

98. *Id.*

twenty-eight of those petitions.⁹⁹ In total, the California Supreme Court received 243 petitions for review and denied 233 petitions.¹⁰⁰ In the trial courts, 7,410 habeas corpus petitions were filed throughout the state and of those petitions, 6,764 were dispositions that denied the petition before holding an evidentiary hearing.¹⁰¹

These statistics indicate that less than one percent of petitions filed are granted, and less than ten percent of habeas petitions were granted hearings before the court reached a decision.¹⁰² Based on these numbers, the current standard does not release many prisoners on habeas, though other factors may contribute to this.¹⁰³ If the Legislature passed SB 694, a lower evidentiary standard would have required more evidentiary hearings to determine the validity of the evidence and how much it weighed towards the petitioner's innocence, which might have affected the number of dispositions on habeas petitions.¹⁰⁴

B. SB 694 and Increasing the Number of Petitions Filed

Critics worried that SB 694 would result in more petitions, and the increase would overburden the courts, just as Prop. 47 did.¹⁰⁵ Prop. 47 reduced non-serious and non-violent felony and property drug crimes from felonies to misdemeanors.¹⁰⁶ It is estimated that Prop. 47 reduced the number of felony convictions in California by 40,000 per year and nearly one million prior felony convictions will be wiped from convicted persons' records.¹⁰⁷ Particularly in Los Angeles, one of the most populated areas in California, the court system saw a significant increase in applications.¹⁰⁸ Local courts expected to process between 4,000 and 14,000 applications from defendants who were arrested for felonies,

99. JUD. COUNCIL OF CAL., *supra* note 91 at xiv. Capital convictions are cases that require automatic appeals. *Id.*

100. *Id.* at 8.

101. *Id.*

102. *Id.*

103. *See infra* Part IV.B.2 (explaining that habeas' complexity and lack of counsel lead to often meritless petitions).

104. *See* Medwed, *supra* note 68, at 1458 (showing the California Penal Code and case law require an evidentiary hearing when there are factual disputes apparent in the pleading).

105. 103 CAL. PENAL CODE §§ 459.5, 473, 490.2, 666, 1170.18 (West 2014).

106. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, *supra* note 59, at 8.; CAL. PENAL CODE §§ 459.5, 473, 490.2, 666, 1170.18 (West 2014).

107. Robert K. Ross, *Op-Ed: Four Ways to Make Black, Brown and All Lives Matter*, L.A. TIMES (Jan. 15, 2015) <http://www.latimes.com/opinion/op-ed/la-oe-0116-ross-california-reform-20150116-story.html> (on file with *The University of the Pacific Law Review*).

108. Abby Sewell & Cindy Chang, *Proposition 47: County Report Details Profound Effect on Justice System*, L.A. TIMES (Feb. 25, 2015) <http://www.latimes.com/local/lanow/la-me-ln-proposition-47-la-county-report-20150225-story.html> (on file with *The University of the Pacific Law Review*). Nearly twenty-five percent of California's population is in Los Angeles County. *Los Angeles County*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/06/06037.html> (last visited Sept. 27, 2015) (on file with *The University of the Pacific Law Review*).

but not yet convicted, who wanted to change their charges to misdemeanors.¹⁰⁹ Another 20,000 applications were expected from people who were convicted and currently serving time.¹¹⁰ Lastly, the courts expected to receive 300,000 cases from people who served their time and wanted their felony convictions changed to misdemeanors.¹¹¹

The state is still calculating the financial aftermath of Prop. 47.¹¹² State courts anticipated a “one-time” increase in costs resulting from Prop. 47 due to processing resentencing and reclassification petitions, which require hearings.¹¹³ The Legislative Analyst’s Office factored in safeguard from Prop. 47 that would reduce the additional burden, such as eliminating hearings for reclassification petitions.¹¹⁴ Long-term, the costs to courts will diminish because misdemeanors cost less to try in court than felonies, lowering the cost to try cases per offender.¹¹⁵ As a result, the Governor’s budget recommended an increase in the court budgets for the next two years to handle the upfront short-term costs, but because the data relied on was out-of-date, it is unclear whether the courts will need the additional money budgeted for later years.¹¹⁶

SB 694 critics feared a similar mechanism would play out with habeas petitions.¹¹⁷ First, the standard would lead to more prisoners filing writs of habeas corpus in both trial and appellate courts because petitions that would have been previously denied for insufficient evidence would potentially be entitled to, at minimum, a hearing.¹¹⁸ Alternatively, the evidence could meet the lower standard, which would grant the prisoner the petition on the merits of his case.¹¹⁹ This concern relates to the impact of Prop. 47 because Prop. 47 lowered the threshold for several different crimes, just as SB 694 seeks to lower a standard.¹²⁰ However, courts process far more felony and misdemeanor cases—it is the crux of criminal trial courts—than habeas petitions.¹²¹ While more evidentiary hearings would be

109. Sewell & Chang, *supra* note 108.

110. *Id.*

111. *Id.*

112. See Mac Taylor, *The 2015-2016 Budget: Implementation of Proposition 47*, LEG. ANALYST’S OFFICE 16 (2015) (explaining that the fiscal impact is difficult to determine with certainty because of out-of-date data).

113. *Id.* at 14.

114. *Id.*

115. *Id.* at 14–15.

116. *Id.* at 15.

117. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, *supra* note 59 at 8.

118. *Id.*

119. See *id.* (qualifying for a petition would increase more hearings to determine the merits).

120. Compare SB 694, 2015 Leg., 2015-2016 Reg. Sess. (Cal. 2015) (as amended on Aug. 17, 2015, but not enacted) (lowering evidentiary standard for habeas), with CAL. PENAL CODE §§ 459.5, 473, 490.2, 666, 1170.18 (West 2014) (reducing certain felony crimes to misdemeanor levels).

121. See JUD. COUNCIL OF CAL., *supra* note 91 at preface (comparing over four million criminal trial hearings in superior court with over 400 habeas petitions heard).

required, it would not be at nearly the same rate as if every reclassification petition required one¹²²

Another contrast is the cost of total litigation.¹²³ Prop. 47's effects in the long-term are ideal because courts will save on future litigation costs, but habeas petitions are a prisoner's last resort.¹²⁴ Before filing the habeas petition, the prisoner utilized all other court resources to file every appeal possible, which cost the state money.¹²⁵ However, if the habeas petition is the last option than the money spent on reviewing one prisoner's habeas petition could be a small fraction of the total cost.¹²⁶ To some critics, SB 694 posed a serious threat of increasing costs and it is likely that economic concern is what stalled the bill in the Appropriations Committee.¹²⁷

1. *Could More Prisoners File Habeas Claims?*

Critics suggested that the lower evidentiary standard could have increased the number of frivolous claims, where the prisoner lacks any basis for relief under habeas, but files the claim anyway.¹²⁸ The concern was that under the lower standard, prisoners would file more claims because more cases would be eligible for relief.¹²⁹ An increase in claims was unlikely even before Senator Leno presented SB 694; prisoners filed habeas claims in droves in both state and federal courts in spite of the high "point unerringly to innocence" standard.¹³⁰ The California courts also have a number of procedural mechanisms that prevent filing repetitive or additional claims, which would weed out any attempts by prisoners to overload the system with multiple frivolous claims.¹³¹

Since prisoners are not deterred from filing frivolous claims under the current "point unerringly to innocence" standard, prisoners would only have continued to file petitions under the standard in SB 694.¹³² Lowering the standard would not

122. *Cf. id.* (considering that the total number habeas petitions is far less than total trials, even assuming only a quarter are misdemeanors, the qualifying habeas petitions would be a drop in the bucket).

123. Taylor, *supra* note 112, at 15.

124. *Id.*; *In re Clark*, 5 Cal. 4th 750, 803 (J. Kennard dissenting) (describing habeas corpus as a traditionally "flexible procedural remedy of last resort to prevent severe and manifest injustice").

125. *Capital Habeas Representation Budget Phases*, U.S. DIST. CT., N. DIST. OF CAL., <http://www.cand.uscourts.gov/budgetingforms> (last visited Sept. 27, 2015) (on file with *The University of the Pacific Law Review*)

126. *Cf. Taylor*, *supra* note 112, at 15 (suggesting the bulk of costs to more hearings would be upfront).

127. ASSEMBLY COMMITTEE ON APPROPRIATIONS, *supra* note 20.

128. *See Schriever*, *supra* note 40, at 791 (addressing whether courts could handle the influx of new claims if the standard is lowered).

129. *Id.* at 767.

130. *Walker v. Martin*, 562 U.S. 307, 307 (2011) ("Because a habeas petitioner may skip over the lower courts and file directly in the California Supreme Court, that court rules on a staggering number of habeas petitions each year.")

131. *See infra* Part IV.B.2 (explaining how frivolous claims are filed even under the higher standard).

132. Schriever, *supra* note 40, at 791.

have eliminated frivolous habeas claims because petitions are based on the quality of evidence produced and judges are able to identify when a claim is insufficient.¹³³ By focusing on the quality of the evidence, courts would be able to catch the frivolous claims and deny them, just as they do under the current framework.¹³⁴ Only claims that have a genuine dispute as to whether the evidence would make a conviction change more or less likely would require evidentiary hearings or reviews.¹³⁵ A large number of habeas petitions fail automatically on procedural or timeliness issues, so while it is possible courts may need to utilize resources reviewing unmeritorious petitions, a large portion of frivolous petitions will be eliminated early on.¹³⁶

Despite critics' concerns about the possible influx of habeas petitions, the purpose of SB 694 was to increase the number of petitions.¹³⁷ SB 694's purpose aligned with Senator Leno's previous support for changes to habeas, such as Chapter 623.¹³⁸ Following Bill Richards' failed petition based on incorrect scientific evidence, Senator Leno presented then SB 1058.¹³⁹ In the wake of Prop. 47 and California's initiative to reduce prison populations, Senator Leno presented possible reforms to habeas to reduce the number of wrongly incarcerated people.¹⁴⁰ Under the new standard, prisoners who could not successfully file claims or seek other remedies would have had a chance at filing a petition.¹⁴¹ Although courts already considered allowing habeas claims on new evidence based on case law, adding a clause specifically about using new evidence as grounds for proving innocence would have codified the judicially created standard into the penal code.¹⁴²

SB 694 would have made the standard of review consistent with the other alternatives for post-conviction relief, such as ineffective assistance of counsel.¹⁴³

133. *Id.* at 791–92.

134. *Id.* at 791.

135. *See* SB 694, 2015 Leg., 2015-2016 Reg. Sess. (Cal. 2015) (as amended on Aug. 17, 2015, but not enacted). The standard for new evidence would require that a jury be more likely than not to reach a different outcome, so evidence that does not raise this issue would not require any hearing or review by courts. *Id.*

136. Schriever, *supra* note 40, at 773–75.

137. *See* ASSEMBLY COMMITTEE ON APPROPRIATIONS, *supra* note 20, at 2 (“The burden for proving one’s innocence in such cases based on newly available evidence is not currently defined by statute, but has evolved from appellate court opinions, and is practically impossible to achieve in California . . . Even when new evidence shows that their conviction would have never occurred in the first place, an individual is likely to remain wrongfully incarcerated under the status quo in California.”).

138. 2013 STAT. Ch. 623 (amending CAL. PENAL CODE § 1473).

139. Madanat, *supra* note 61.

140. 2013 STAT. Ch. 623 (amending CAL. PENAL CODE § 1473); CAL. PENAL CODE §§ 4900–04 (enacted by 2013 STAT. Ch. 800).

141. *See* SENATE COMMITTEE ON PUBLIC SAFETY, *supra* note 47, at 4 (stating that those who currently cannot meet the higher standard must “repackage” their claims into other post-conviction standards of relief that apply the lower standard).

142. SENATE COMMITTEE, COMMITTEE ANALYSIS OF SB 694, at 3 (May 30, 2015).

143. ASSEMBLY COMMITTEE ON APPROPRIATIONS, *supra* note 20, at 2.

Although concerns over increased filing stemmed from concerns about overburdening courts, the ultimate goal of the legislation, to grant wrongfully incarcerated people a chance at long-awaited justice, should be balanced against the possibility of burden.¹⁴⁴ Proponents of SB 694 sought to release inmates from prison who do not deserve to be incarcerated.¹⁴⁵

2. *Would Petitions Have Been Easier to File?*

Habeas corpus is a complicated legal concept.¹⁴⁶ Trained lawyers struggle with it, and since habeas falls outside of someone's *Gideon* right to counsel, prisoners must figure it out themselves without any legal training.¹⁴⁷ Opponents of SB 694 claimed a lower evidentiary standard would make petitions easier to file, which would increase the number of petitions courts would review.¹⁴⁸ However, the reason habeas petitions are so difficult is not because of evidentiary standards, but because of procedural roadblocks to filing and limited resources prisoners have to create their petitions.¹⁴⁹ Even before the court could consider the strength of the evidence under SB 694's preponderance standard, there would be legal and procedural requirements that would need to be met.¹⁵⁰

Once a prisoner files a habeas claim and it is denied, the general rule is that repeat petitions are not allowed.¹⁵¹ A petitioner may not appeal the lower court's denial of the petition, but must re-file the petition in the court of appeals.¹⁵² However, a court will refuse to hear the repetitious claim if a lower court rejected it, unless an additional claim exists that the petitioner did not include in the first petition.¹⁵³ Even if there are additional claims, this does not guarantee that the court will approve the petition.¹⁵⁴

The court must determine that an additional claim, like newly discovered evidence, was not reasonably discoverable at the time the first petition was filed.¹⁵⁵ If the new evidence could have been discovered had the petitioner's

144. *See id.* (describing the purpose of the bill as giving individuals who believe they were wrongfully a chance to prove their innocence and to get out jail).

145. *Id.*

146. Emily Garcia Uhrig, *A Case for Constitutional Right to Counsel in Habeas Corpus*, 60 HASTINGS L.J. 541, 595 (quoting *Jackson v. State*).

147. *Id.* at 541.

148. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, *supra* note 59, at 8.

149. Schriever, *supra* note 40, at 772–74.

150. Medwed, *supra* note 68, at 1456–60 (explaining the venue where prisoners may file their habeas petitions, the stringent requirements for what the petition must contain, and the subsequent hearings they must attend presuming the petition is not denied); Schriever, *supra* note 40, at 773–75 (discussing limitations on repetitious claims and successive petitions, timeliness requirements, and procedural defaults).

151. Schriever, *supra* note 40, at 772.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.* at 772–73.

attorney exercised due diligence, the habeas petition likely would be denied under a new evidence basis.¹⁵⁶ However, the petitioner would not be completely out of options because then the petitioner could argue that he had ineffective assistance counsel.¹⁵⁷ If the petitioner is able to demonstrate that he or she did not receive a fair trial because the attorney was ineffective, it is possible that the court may grant the petition, presuming the other procedural requirements were met.¹⁵⁸

A court can deny a petition if there is a substantial delay in filing.¹⁵⁹ Courts are sometimes willing to allow petitions to be filed despite the delay, but only if the prisoner can prove reasonable grounds for the delay.¹⁶⁰ The courts consider a petition timely filed when it is filed “as promptly as the circumstances allow,” and if there is any delay, courts look to “the time the petitioner or counsel knew, or reasonably should have known, of the information offered in support of the claim.”¹⁶¹

Considering court’s interest in proceeding efficiency and preserving finality of judgment, it is very hard for petitioners to persuade courts that their delay is reasonable.¹⁶² However, SB 694 added text to the “new evidence” clause that specifically stated the evidence must be presented “without substantial delay.”¹⁶³ The time required to discover the evidence is separate from the issue of the timeliness to file the petition so petitioners who would have filed following SB 694 could have still been denied on timeliness grounds unless there was a good reason.¹⁶⁴

Nearly ninety-five percent of habeas petitions are filed pro se, meaning the prisoners complete the paperwork and navigate the legal system without the aid of an attorney.¹⁶⁵ A petitioner’s initial burden when filing the petition is very high and the prima facie case must overcome the presumption that exists in favor of

156. *See id.* (If a court were to determine that newly discovered evidence could have reasonably been discovered for the first trial, it is possible that a habeas petition could still be denied even if it satisfied the SB 694 standard).

157. STATE POST-CONVICTION REMEDIES, *supra* note 46, at 256–57.

158. *See* Schriever, *supra* note 40, at 772 (describing the procedural requirements for bringing a habeas petition).

159. *Id.* at 773.

160. *Id.*

161. *Id.* (quoting Walker v. Martin, 131 S. Ct. 1120, 1125 (2011)).

162. *Id.*

163. SB 694, 2015 Leg., 2015-2016 Reg. Sess. (Cal. 2015) (as amended on Aug. 17, 2015, but not enacted).

164. *See id.* (showing SB 694 did not affect any procedural posture of filing a habeas petition, solely the standard of the details evidentiary assessment).

165. Frank Tankard, *Tough Ain’t Enough: Why District Courts Ignore Tough-on-Paper Standards for a Federal Prisoner’s Right to a Hearing and How Specialty Courts Would Fix the Problem*, 79 UMKC L. REV. 775, 782–83 (2011). However, when death-row inmates file a habeas petition, the court is obligated to appoint them an attorney, but in non-capital cases the discretion to appoint an attorney rests with the court. *Id.*

the judgment.¹⁶⁶ Since the standard is focused on the quality of evidence, unless the evidence adequately demonstrates that likelihood existed for a jury to return a “not guilty” verdict, the court will not approve the petition.¹⁶⁷

Although the evidentiary standard will affect the odds of a court reviewing a prisoner’s petition, it will not make the petition easier for a prisoner to complete.¹⁶⁸ The Supreme Court ruled on a number of cases designed to improve access to legal resources for prisoners to help them successfully file their habeas claims, but this fails to take into account the education and mental competency necessary to file a pro se petition.¹⁶⁹ Most prisoners do not enter prison with the necessary knowledge about the legal system and how it operates, making it difficult to understand the procedures they need to complete to file claims.¹⁷⁰

Particularly with habeas corpus—a notoriously difficult legal remedy—prisoners may have trouble figuring out the requirements and procedure if they do not have sufficient or up-to-date practice guides, access to legal databases or relevant secondary sources.¹⁷¹ Federal law limits assistance from law clerks to prisoners in preparing a habeas petition so most prisoners are presumably not preparing their petitions with the legal evidentiary standard in mind.¹⁷² A prisoner’s lack of legal knowledge and limited educational background often leads to “hard-to-decipher” petitions, making it difficult to accurately determine the merits of a prisoner’s habeas petition.¹⁷³ Staff attorneys and court clerks initially read habeas petitions and determine the merits of the petition before recommending it to a magistrate or judge.¹⁷⁴ Petitions filed pro se are generally lacking in meritorious claims, the staff do not have sufficient resources to investigate each claim independently to determine the actual merits of the petition.¹⁷⁵

166. Schriever, *supra* note 40, at 770.

167. See SB 694 (changing the standard to “raises the possibility of a different outcome if a new trial were granted” with the newly discovered evidence presented).

168. Thomas C. O’Byrant, *The Great Unobtainable Writ: Indigent Pro Se Litigation After the Antiterrorism and Effective Death Penalty Act of 1996*, 41 HARV. C.R.C.L. L. REV. 299, 307 (2006).

169. See *Lane v. Brown*, 372 U.S. 477, 481 (1963) (holding that states cannot adopt regulations that cut off defendants from appealing convictions because they are indigent); see also *Burns v. Ohio*, 360 U.S. 252, 257–58 (1959) (waiving docket fees for indigent prisoners who file appeals and habeas petitions); *Griffin v. Illinois*, 351 U.S. 12, 19–20 (1956) (waiving fees for accessing prior trial records if the prisoner who needs them cannot afford it); *Ex parte Hull*, 312 U.S. 546, 549 (1941) (overruling a regulation that required a legal investigator to overlook prisoners’ petitions before they could be filed in the courts); *Bounds v. Smith*, 430 U.S. 817, 828 (1977) (holding that prisons are required to provide prisoners with sufficient resources in the law library and access to people trained in filing legal documents and withholding this access is unconstitutional).

170. See O’Byrant, *supra* note 168, at 309.

171. *Id.* at 309–10 (discussing the low level of legal knowledge and education of the average prisoner).

172. *Id.* at 309.

173. Schriever, *supra* note 40, at 795; Joseph L. Hoffmann 24(4) FED. SENT’G REP. 300, 302 (2012) (discussing the procedure of reviewing federal habeas corpus petitions).

174. *Cf.* Hoffmann, *supra* note 173, at 302 (discussing the procedure of reviewing federal habeas corpus petitions).

175. *Cf. id.*

Beyond limited access to useful legal sources in prison, inmates are not free to work on their petitions whenever is convenient for them.¹⁷⁶ Prison runs on a schedule and every activity, from eating to sleeping, is scheduled.¹⁷⁷ So the limited time someone has to work on his or her petition is restricted, including opportunities with speak with individuals who may be able to assist in writing the petition.¹⁷⁸ This limitation is compounded when considering the procedural requirements which means the prisoner is working against the clock to file.¹⁷⁹ Even if SB 694 lowered the evidentiary standard, filing a habeas petition remains very difficult for the average prisoner seeking exoneration.¹⁸⁰

C. Would SB 694 Increase the State's Costs?

In addition to its effect on the prison population, there were possible financial effects of SB 694.¹⁸¹ The legislation would have resulted in the prison system, the judiciary, and the state's general fund accruing costs associated with releasing prisoners who are wrongfully convicted, courts reviewing the petition itself, and granting an evidentiary hearing if the petition is granted.¹⁸²

1. Paying for Lost Time

When exonorees seek compensation for their wrongful incarceration, the general fund pays appropriations for compensation claims from exonorees, ranging from hundreds of thousands of dollars, to the low millions of dollars in any given year.¹⁸³ Michael Hanline, presently the victim of the longest case of wrongful incarceration in California history, collected \$1.8 million dollars and is still collecting.¹⁸⁴ In addition to increasing the possibility of more successful habeas claims, which would provide prisoners the opportunity for exoneration, the general fund would have received claims from convicted individuals whose judgments could have been vacated under the new standard.¹⁸⁵ An accurate

176. O'Bryant, *supra* note 168, at 329.

177. *Id.*

178. *Id.* at 330–31.

179. *Id.*

180. *Id.* at 307 (noting the specific difficulties prisoners often face when filing a habeas corpus petition); Schriever, *supra* note 40, at 773.

181. *See infra* Part IV.C.1 (explaining the state's process for paying exonerated individuals compared to imprisonment).

182. *See infra* Part IV.C.2 (noting the court's costs in hearing these petitions).

183. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 694, at 3 (May 30, 2015).

184. Michael Hanline, CAL. INNOCENCE PROJECT, <http://californiainnocenceproject.org/read-their-stories/michael-hanline/> (last visited Aug. 20, 2015) (on file with *The University of the Pacific Law Review*).

185. SENATE COMMITTEE ON APPROPRIATIONS, *supra* note 70, at 1.

estimate of costs is difficult to calculate because it depends on the number of claims filed and the duration of the exonorees' unlawful imprisonments.¹⁸⁶

As of May 4, 2015, three claims for compensation were pending in the legislature, totaling \$1 million, which would bring the total payment value in the last thirteen years to \$6.3 million.¹⁸⁷ There is the possibility that short term costs will increase if more prisoners are released on the basis of the writ of habeas corpus; as restitution per person could cost more than the average of \$47,421 the state spends per year per inmate.¹⁸⁸ However, over the long term, avoiding future incarceration costs for wrongfully convicted inmates may far outbalance restitution settlements.¹⁸⁹

Senator Leno argued that SB 694 would have saved the state money because the cost of housing prisoners adds up quickly and the compensations are generally one-time payments to the exonorees.¹⁹⁰ Using the average cost, housing an inmate for the rest of his or her life could cost up to \$1,185,525, not considering increases due to inflation, which raises costs an average of \$9,000 a year.¹⁹¹

This amount is similar to the award Michael Hanline received, but is not indicative of the expected cost for all future exonorees, considering the gravity of Hanline's wrongful incarceration.¹⁹² The cost would have peaked immediately after passing if petitions were granted to prisoners incarcerated for several decades, but eventually those imprisoned for shorter time could have petitions granted, reducing the payment costs.¹⁹³ Proponents of SB 694 did not anticipate a large influx of exonerations from the lowered evidentiary standard, but at most, a few new exonerations would occur each year.¹⁹⁴ Therefore, proponents do not anticipate a significant financial burden to the general fund, especially when compared to the impact of the thousands people who enter prison each year.¹⁹⁵

186. *See id.* (explaining that payment expected in any given year payment can range from hundreds of thousands to low millions of dollars).

187. *Id.* Since 2002, the Victim Compensation and Government Claims Board paid fourteen claims, totaling \$5.3 million. *Id.*

188. LAWRENCE, *supra* note 85, at 8. This estimate does not take into consideration additional healthcare costs for aging prisoners. *Id.*

189. *Id.*

190. SENATE RULES COMMITTEE, *supra* note 183, at 4.

191. David Breston, *Cost of Prisons in the United States*, VERA INST. OF JUST., <http://www.davidbreston.com/prisonmap/> (last visited Aug. 26, 2015) (on file with *The University of the Pacific Law Review*). If you multiply the average cost of an inmate by about twenty-five years, this can approximate the cost of housing a prisoner during his or her wrongful incarceration. *Id.*

192. *Hanline*, *supra* note 184.

193. *Cf.* Taylor, *supra* note 112, at 15 (suggesting the potential decrease of petitions, reducing the overall cost to the state under Prop. 47).

194. Telephone Interview with Alex Simpson, Assoc. Dir., Cal. Innocence Project (July 27, 2015) (notes on file with *The University of the Pacific Law Review*).

195. *See* SENATE COMMITTEE ON APPROPRIATIONS; *supra* note 70, at 1 (May 4, 2015). Compare the cost of \$5.3 million spent in compensations over the past thirteen years for fourteen claims with the cost of one

2. Cost to the Courts

Although the number of filed claims would not necessarily have increased under the new standard, the courts would have likely incurred costs due to the time expended on reviewing more individual cases.¹⁹⁶ Courts already suffered almost \$1 billion in budget cuts in 2008.¹⁹⁷ Although in 2014 Governor Jerry Brown proposed adding \$105 million dollars to the judiciary budget to compensate for the influx of petitions from Prop. 47, Chief Justice Tani Cantil-Sakauye felt this amount was still insufficient.¹⁹⁸

In some cases, courts pay the costs of petitioning for a writ of habeas corpus, such as in capital cases, using funds from tax revenues.¹⁹⁹ Since the “unerringly to innocence” standard is so high, it is fairly easy for courts to determine whether or not it would be met, allowing them to issue judgments summarily.²⁰⁰ California summarily denied approximately ninety-seven percent of habeas petitions.²⁰¹ Under SB 694, courts would have needed to spend more time reviewing records in order to determine whether it is “more likely than not” that the evidence could have resulted in a different outcome, and this would lead to more evidentiary hearings.²⁰² Since a petitioner is entitled to file a petition through all levels of state court, this could increase the possibility that a frivolous claim may require review from all levels, furthering waste of court resources.²⁰³ However, the procedural mechanisms currently in place could limit this effect.²⁰⁴

year of housing prisoners multiplied by average number of incoming prisoners (4,000), which totals approximately \$188,000,000. LAWRENCE, *supra* note 85, at 7.

196. See *In re Clark*, 5 Cal. 4th 750, 776 (1993) (Mosk, J., dissenting). “I know of only one sure way to discover abuse without defeating justice: to examine each petition on its own facts.” *Id.* at 802–03.

197. Don Clyde, *State’s Chief Justice Fights to Restore Funding for Courts*, KQED, (Apr. 30, 2014) <http://ww2.kqed.org/news/chief-justice-tani-cantil-sakauye-fights-for-increased-court-funding> (on file with *The University of the Pacific Law Review*).

198. *Id.* (quoting Chief Justice Cantil-Sakauye: “In order to maintain the status quo—lines out the door, the delay, the closures—we need \$266 million simply to maintain the status quo, which in my mind is substandard.”).

199. *Capital Habeas*, *supra* note 125. There are four budget phases for capital hearings. *Id.* The first is for records review and preliminary investigation. *Id.* The second is for petition preparation, answer, and exhaustion. *Id.* The third is for the motion for evidentiary hearing and briefing of claims, and discovery. *Id.* The last is for the evidentiary hearing and final briefing. *Id.* Costs are associated based on the time of the attorney and any associates involved in researching and putting together the petition plus any experts required to testify. *Id.* The amount is calculated on an hourly rate. *Id.*; ASSEMBLY COMMITTEE ON PUBLIC SAFETY, *supra* note 59, at 8 (quoting the Judicial Council of California).

200. Matthew Seligman, *Harrington’s Wake: Unanswered Questions on AEDPA’s Application to Summary Dispositions*, 64 STAN. L. REV. 469, 471 (2012).

201. *Id.* “Summary dispositions” are decisions issued without a written opinion. *Id.*

202. See *In re Clark*, 5 Cal. 4th 750, 776 (1993) (Mosk, J., dissenting). “I know of only one sure way to discover abuse without defeating justice: to examine each petition on its own facts.” *Id.* at 802–03.

203. See *supra* Part IV.C.1 (discussing the number of frivolous claims filed and existing means of preventing overburdened courts).

204. *Id.*

D. SB 694's Impact on Finality of Judgment and Guilty Verdicts

It is indisputable today that wrongful convictions occur—and they occur more often than exonerations.²⁰⁵ The purpose of SB 694 was to address this reality and provide the criminal justice system an opportunity to correct these wrongful convictions.²⁰⁶ According to opponents of SB 694, this would have affected the finality of judgment because by applying a lower standard to trials that were considered “fair,” SB 694 would have challenged and redefined the finality of a guilty verdict.²⁰⁷ It gives prisoners an opportunity to switch the verdict if the court grants their petition.²⁰⁸ The state certainly has an interest in preserving finality of judgment in order to demonstrate the effectiveness of the legal system because regularly overturning convictions could raise concerns about the accuracy of trial.²⁰⁹

The competing interests of the state to ensure valid judgments are weighed against the interest of ensuring people are not wrongly imprisoned.²¹⁰ Some argue that the standard under SB 694 would no longer have been about whether a defendant is innocent or not, because the standard merely considers whether it is possible for a jury to reach a different verdict.²¹¹ This does not speak toward an individual’s guilt or innocence, so an allegedly guilty defendant could still meet this standard.²¹² However, the standard only allows a person’s petition to be considered, and subsequent hearings and trials would be necessary to determine whether an individual is actually innocent or guilty.²¹³

While it is possible that a guilty person could be acquitted under the standard set forth in SB 694, its purpose is to address and remedy the convictions of innocent people who were mistakenly convicted.²¹⁴ However, if someone successfully jumps all the hurdles presented in filing a petition and meeting the evidentiary standard, it indicates that there is significant cause for calling his or her guilt into question.²¹⁵ Although the petitioner already had his or her day in court when convicted, the significance of SB 694 was that it explicitly addressed

205. Samuel R. Gross & Barbara O’Brien, *Frequency and Predictors of False Conviction: Why We Know So Little, and New Data on Capital Cases*, 5 J. EMPIRICAL LEGAL STUDIES 927, 940 (2008).

206. SENATE COMMITTEE ON PUBLIC SAFETY, *supra* note 47, at 4.

207. *Id.* at 5.

208. *Id.* at 6.

209. Schriever, *supra* note 40, at 790.

210. *Id.*

211. SENATE COMMITTEE ON PUBLIC SAFETY, *supra* note 47, at 6.

212. *Id.*

213. Medwed, *supra* note 68, at 1452–60.

214. Schriever, *supra* note 40, at 790.

215. *Id.*

cases where the guilty verdict of the petitioner is questioned because particular evidence was not available on that day in court.²¹⁶

Just as Chapter 623 codified the standard for prisoners to file habeas petitions when new, unavailable technology presented exculpatory evidence, SB 694 attempted to codify the same standard for prisoners whose evidence was not available at their original trial and could not be reasonably tracked down.²¹⁷ SB 694 would have offered a tool to check the legal system's efficiency and accuracy at the same standard as other tools for post-conviction relief.²¹⁸

E. Alternative Considerations in the Wake of SB 694 Failure

Adjusting the evidentiary standard for new evidence to meet other habeas claims is the first step in improving odds of reversal for wrongfully convicted prisoners.²¹⁹ To meet SB 694's goals, there are steps future legislation could take.²²⁰

First, California could consider creating a publicly funded state agency similar to North Carolina's Innocence Inquiry Commission.²²¹ The Innocence Inquiry Commission investigates claims of wrongful conviction independent of state courts.²²² When it reviews meritorious claims, the commission refers the claims to a special three-judge panel that solely conducts evidentiary hearings.²²³ In cases where the meritorious claims sufficiently meet the burden, the panel has the authority to order the reversal of the conviction and the prisoner's release.²²⁴ This could be a middle ground for proponents and opponents of SB 694 because it provides an agency whose sole purpose is to review habeas petitions for meritorious claims and avoids overburdening the courts.²²⁵ Pro se prisoners would

216. SB 694, 2015 Leg., 2015-2016 Reg. Sess. (Cal. 2015) (as amended on Aug. 17, 2015, but not enacted).

217. *Id.*

218. *See id.* (codifying a standard to allow those wrongfully convicted the opportunity to present new evidence gives the opportunity to re-establish innocence).

219. *See* Medwed, *supra* note 68, at 1465–75 (illustrating that timing restrictions, rigid legal standards, appellate review, and forum limitations are all flawed areas with how California currently handles new evidence claims).

220. Schriever, *supra* note 40, at 796–98 (suggesting ways to create a record in the courts by requiring standardized forms for summary denials to give some indication about why the petition was insufficient); *see generally*, Hoffmann, *supra* note 173, at 303; Medwed, *supra* note 68, at 1475–80 (suggesting that California create a single procedure for reviewing claims based on newly discovered evidence to eliminate administrative burden on state courts).

221. Hoffmann, *supra* note 173, at 303.

222. *Id.*

223. *Id.*

224. *Id.*

225. *See* O'Bryant, *supra* note 168, at 307 (explaining the limited resources prisoners have when filing habeas petitions).

also benefit from having a state employee paid to develop the prisoner's case rather than trying to the entire process alone.²²⁶

Second, California could provide more resources to California prisoners who may be filing their habeas claims *pro se*.²²⁷ Similar to labor law requirements mandating that businesses post information regarding employee rights, prisons could similarly be required to post information on prisoner's rights and the legal process for exercising those rights.²²⁸ Prisons could apply for non-profit grants to fund informational sessions from attorneys on how to file a habeas petition or how to fill one out.²²⁹ Often, prisons have older edition books, so their information is out of date.²³⁰ The legislature could impose some kind of requirement that if it is not feasible for books to be updated every time a new edition is released, then similar to the potential posted information on prisoner's rights, there could be posters on updates to the law explaining the law and the implications on the prisoner's rights.²³¹

V. CONCLUSION

But for California's initial efforts to improve habeas corpus standards, prisoners like Bill Richards would have no opportunity for release.²³² Judicial opinion determined that newly discovered evidence that contradicted critical expert testimony was insufficient to "point unerringly to innocence," but the

226. *See generally* Garcia Uhrig, *supra* note 146 (arguing for a constitutionally mandated right to counsel for habeas); see also O'Bryant *supra* note 168, at 331 (explaining how some prisons prohibit law library staff from assisting prisons in writing their petitions, forcing them to become jailhouse lawyers).

227. *See* O'Bryant, *supra* note 168 (explaining the limited resources prisoners have when filing habeas petitions).

228. *Cf. Workplace Postings*, CAL. DEP'T OF INDUS. RELATIONS, <http://www.dir.ca.gov/wpnodb.html> (last visited Sept. 27, 2015) (on file with *The University of the Pacific Law Review*) (showing the department requires all employers to hang up various posters describing employee rights, similar posters could hang in prisons explaining protocol and remedies for prisoners who believe they are wrongfully convicted).

229. *See cf. Hoffmann, supra*, note 173, at 302 (explaining that there is no guaranteed right to counsel for federal habeas petitions and there is no realistic chance of the Supreme Court or state legislation recognizing such a right because the only statutory right exists for prisoners convicted in capital cases).

230. *See generally* Joseph A. Schouten, *Not So Meaningful Anymore: Why a Law Library is Required to Make a Prisoner's Access to the Courts Meaningful*, 45 WM. & MARY L. REV. 1195, 1211–12 (2004) (discussing a state's constitutional obligation to provide prisoners with adequate libraries in order to research legal sources used to file appeals).

231. *See cf. Hoffmann, supra*, note 173, at 302 (describing that many petitions are "hard to decipher" because prisoners have no access to counsel so it would be beneficial for the State to provide a reasonable means of learning the law and receiving updates when the changes in a way that affects how their petition must be filed).

232. *In re Richards*, 55 Cal. 4th 948, 968 (2012); see Madanat, *supra* note 61 (explaining that a 2013 court decision, Richards, inspired SB 1058, which eventually became law).

evidentiary value under a preponderance standard could have been much greater.²³³

New evidence is frequently brought up in California state habeas petitions.²³⁴ Historically, courts have hesitated to consider new evidence, regarding it with distrust and disfavor.²³⁵ This stems from consideration of what is supposed to occur during trial: both sides, the prosecution and defense, are zealously advocating their positions in order to secure their ultimate goal—a conviction or an acquittal, respectively.²³⁶ In conducting a complete trial, no stone should be left unturned, and the lawyers should uncover any and all evidence to support their positions.²³⁷ Because new evidence was rare at the time the “point unerringly to innocence” standard was enacted, any evidence brought forward indicative of a prisoner’s innocence needed to be very strong in order to change the status quo of a guilty conviction.²³⁸

Senator Leno presented SB 694 as his latest attempt to help those wrongfully convicted reclaim their lives and move forward without the stain of prior convictions on their records.²³⁹ SB 694 garnered significant support from legal and civil liberty organizations.²⁴⁰ Considering the procedural and systematic mechanisms that limit filing of habeas petitions, lowering the evidentiary standard could not only allow California to adequately provide justice to those wrongfully convicted, but also align California with the majority of states who already apply this standard.²⁴¹

233. See SENATE COMMITTEE ON PUBLIC SAFETY, *supra* note 47, at 3–4 (“Thus, someone who would likely never have been convicted if the newly discovered evidence had been available in their original trial is almost guaranteed to remain in prison under the status quo in California.”).

234. Schriever, *supra* note 40, at 769.

235. *People v. Gaines*, 204 Cal. App. 2d 624, 628 (1962); Medwed, *supra* note 68, at 1445; CAL. JUR. 3D, *Habeas Corpus* § 50 (2006).

236. Simpson, *supra* note 194.

237. *Id.*

238. *Id.*

239. SENATE COMMITTEE ON PUBLIC SAFETY, *supra* note 47, at 4.

240. *Id.* at 1. California Attorneys for Justice, American Civil Liberties Union, Drug Policy Alliance, and Innocence Project were among the eight organizations sponsoring support of SB 694. *Id.*

241. SENATE COMMITTEE ON PUBLIC SAFETY, *supra* note 47, at 4.