



## AB 813

### POST-CONVICTION RELIEF, PENAL CODE § 1473.7

#### SUMMARY

Assembly Bill 813, codified at California Penal Code § 1473.7, created a critical opportunity for people no longer in criminal custody to challenge legally invalid California convictions. The ability to challenge unlawful convictions is critical for noncitizens seeking to erase or mitigate the catastrophic immigration consequences that can attach to even old convictions and for noncitizens and U.S. citizens who continue to suffer bars to housing and employment as a result of prior contact with the criminal justice system. Before we passed Cal. Pen. C. § 1473.7, California criminal law only provided a legal vehicle to challenge convictions to individuals who were on parole, probation, or serving time in custody. This left countless people without a mechanism to go before a judge and challenge their convictions in state court. AB 813 closed this gap by providing countless people with the opportunity to correct prior convictions and get a meaningful day in court. Specifically, the law permits people no longer in criminal custody to file a motion to vacate a conviction or sentence based on either one of two claims: (1) a prejudicial error damaging the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere, or (2) newly discovered evidence of actual innocence. This procedural change in the law corrects critical injustices that flow from unconstitutional California convictions.

AB 813 was co-sponsored by the American Civil Liberties Union of California, California Attorneys for Criminal Justice, California Public Defenders Association, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, and the ILRC. Assemblymember Lorena Gonzalez Fletcher championed this bill in the California legislature before Governor Jerry Brown signed it into law in 2016.

#### ORIGINAL STATUTORY LANGUAGE

The California Legislature publishes each version of a bill, showing the additions and deletions made to the text as the bill moves through committees and floor votes in the legislature. For advocates considering a similar bill, be sure to view the original legislative text of AB 813 set out in the Assembly on March 26, 2015 here: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB813](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB813).

#### FINAL STATUTORY LANGUAGE

View the final statutory text of the law, California Penal Code § 1473.7, as chaptered on September 28, 2016 here: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB813](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB813).

#### INFOGRAPHIC

See [here](#) for an advocate-facing infographic which summarizes the various post-conviction relief vehicles available in California.

## TALKING POINTS

Here are some case stories of impacted individuals that we used when advocating for this bill:

**Sigifredo.** Sigi had been in this country since he was 13 years old. At the age of 19, he had secured his lawful permanent resident status and was working as landscaper and living in an apartment with his three brothers. A police search of a car parked in Sigi's parking space, though not belonging to him, resulted in Sigi pleading guilty to possession of cocaine, despite the fact that he had never touched drugs. He served four days in county jail and never had any future contact with the criminal justice system. Sigi eventually married a U.S. citizen with whom he had three U.S. citizen children. One day, twenty years after his conviction, at three in the morning, his family was awakened by loud knocks on their door. Sigi opened the door to find five ICE agents who promptly arrested him and placed him in immigration detention. Within months he was deported to Mexico, away from his school-aged sons. His youngest was three at the time of his father's deportation and has recurring nightmares about the day the men in helmets came and took his father away. His U.S. citizen wife was forced to sell the family home and move in with her parents. If we are able to vacate his conviction, Sigi's deportation will be overturned and he will be able to return to live again with his family in the United States.

**Richard.** When he was 12 years old, Richard left his home country of Jamaica to join his parents in the United States as a lawful permanent resident. He loved this country and volunteered to serve in the U.S. Army during the Vietnam War. He had a tough time reintegrating after he got returned from his tours. He was convicted three times for small scale drug offenses for which, at most, he served twenty three days in county jail. Richard eventually sobered up, got his life back on track, and decided to apply for U.S. citizenship. Instead of receiving his citizenship, however, Richard was placed in removal proceedings, and threatened with deportation to a country he hadn't called home in over fifty years. Unless we vacate the conviction that is triggering Richard's immigration problems, he will be removed from the United States forever.

**Michelle.** Michelle was born in Canada, but came to California with her family as a young child for her father's job. Michelle had always resided in the United States as a lawful permanent resident. On August 8, 2003, when Michelle was 19, she and her then-boyfriend were stopped by the police. Michelle's boyfriend passed her a bag of 3.7 grams of cocaine and Michelle was charged with possession for sale. She pleaded guilty, served no time in jail, and severed her relationship with her former boyfriend. She went on to enroll in college and then obtain her nursing degree. Fourteen years after her drug charge, now married to a U.S. citizen and pregnant with her first child, Michelle decided that she wanted to become a U.S. citizen. She contacted an immigration attorney who told her that her conviction not only barred her from naturalizing, it also classified her as an "aggravated felon" under federal immigration law, subjecting her to mandatory immigration and discretionless deportation from the United States.

## MEDIA ARTICLES

Here is a list of some of the media coverage for AB 813:

- [How This New California Law Could Help Immigrants Clear Previous Crimes, and Avoid Deportation](#), East Bay Times, March 12, 2015. This article provides a brief overview of what this law does, why it was necessary, and addresses some of the misconceptions and formal opposition it received through the legislative process.
- [Immigrant Felons and Deportation: One Grandmother's Case](#), NPR, April 9, 2016. This article

features direct impact stories that reveal the common implications immigrants and their families faced before this law.

- Man's name cleared based on new evidence and new California law, Lake County News, Jan. 18, 2018. This article highlights how this law helped a US citizen erase an old conviction based on a claim of actual innocence.

## OTHER STATES' SIMILAR LAWS

Below is a summary of similar state laws which have been passed across the United States.

**Indiana:** A petition for post-conviction relief is available pursuant to the Indiana Rules of Court PC1 for convictions or sentences "in violation of the Constitution of the United States or the constitution or laws of this state." Ind. R. P. for Post-Conviction Remedies R. PC 1. View this law here: <https://www.in.gov/judiciary/rules/postconvict/index.html>.

**Massachusetts:** A Rule 30 motion provides a similar remedy for convictions obtained "in violation of the Constitution or laws of the United States or the Commonwealth of Massachusetts." Mass. R. Crim. P. 30(a). View this law here: <https://www.mass.gov/rules-of-criminal-procedure/criminal-procedure-rule-30-postconviction-relief>.

**Minnesota:** A post-conviction petition may be filed to review whether the conviction obtained or the sentence or other disposition made violated the Constitution or laws of the United States or of the state; or scientific evidence not available at trial, obtained pursuant to a motion granted, establishes the petitioner's actual innocence. Minn. Stat. Ann. § 590.01. View this law here: <https://www.revisor.mn.gov/statutes/cite/590.01>.

**New York:** There are nine grounds for making a Rule 440 motion to challenge the legality of a conviction or sentence. These include ineffective assistance of counsel under *Padilla* and newly discovered evidence. N.Y. Crim. Proc. Law § 440.10(1)(a)-(i). View this law here: <https://www.nysenate.gov/legislation/laws/CPL/440.10>.

## STORY OF THE BILL - INTERVIEW/FAQ

Below is an interview with Rose Cahn, Post-Conviction Relief expert and lead ILRC attorney on this bill. This interview provides an overview of certain considerations for advocates considering similar bills in their state.

### ***What was the primary goal and motivation behind this bill?***

For years, California was in a complicated jurisdictional mess for challenging the legal validity of convictions. This mess was felt particularly acutely by noncitizens who first became aware of the immigration consequences of a conviction many years after their criminal sentence had ended. The primary legal tools for relief, a writ of habeas corpus or *coram nobis*, were problematic because they are limited in scope. Habeas corpus is challenging because the court only has jurisdiction when the individual is in actual or constructive criminal custody. To get around the custody requirement, practitioners were using a writ of *coram nobis* to challenge the legal validity of a conviction. However, the California Supreme Court rejected this procedure in 2009 when it held that claims of ineffective assistance of counsel could not be raised in *coram nobis* petitions. *People v. Kim*, 45 Cal.4th 1078 (2009). As a result, many individuals who were only made aware of their conviction's consequences years after being released from custody, had no legal recourse to remedy this injustice. In one case, a grandmother and longtime legal permanent resident in California landed in removal proceedings because of a 14-year-old conviction for cultivating a small amount of marijuana to treat her arthritis. The public defender advised her to take the plea deal without advising her of the immigration consequences and despite serving four months under house arrest and three years' probation, federal immigration law considered her conviction an aggravated felony, subject to deportation. Even though she had a clear claim for ineffective assistance of counsel, she could not raise this claim because there was no clear legal procedural vehicle.

### ***What was the process for writing the bill language?***

I had the unfortunate experience of being on the team that helped litigate and lose *People v. Kim* in 2009. That loss stuck with me. In 2014, I was working at the Lawyer's Committee for Civil Rights and wanted to run a bill to create a new legal vehicle for individuals no longer in custody. I was aware of New York's legal vehicle for post-conviction relief, the "440 motion," which covers individuals in and out of custody. I wanted to create something similar in California that could be used by citizens and noncitizens to challenge old convictions. It really boiled down to addressing this fundamental issue that unites citizens and noncitizens; no one should face ongoing consequences on the basis of an illegal conviction.

### ***What was the dream bill and what concessions were made?***

This bill started out as a broad, all-encompassing motion available to anyone no longer in criminal custody to challenge old, legally invalid convictions. Of course, it slowly got whittled down through the legislative process.

At many points, people asked that I narrow it just to noncitizens, but I resolutely refused. Everyone deserves these fundamental constitutional protections regardless of their immigration status.

Both the Judicial Council and District Attorneys Association's raised concerns that the bill would open the floodgates to litigation. We compromised by limiting the bill just to convictions obtained by a plea of guilty or no lo contendere, and precluding attacking old jury convictions.

We rejected an amendment that sought to limit the bill to "nonviolent offenses" and we continually rejected amendments that would limit the bill to noncitizens.

We did not limit the grounds to claims of "ineffective assistance of counsel," but intentionally drafted the bill broadly to include a noncitizen's failure to meaningfully understand immigration consequences, or based on newly discovered evidence of actual innocence for noncitizens and citizens.

### ***How did other organizations or individuals get involved and what were their roles?***

The ACLU and California Attorneys for Criminal Justice helped to run the bill through the lobbying process and I supported throughout with my technical expertise in testimonies. The bill received support from different organizations, including the two co-sponsors, the American Civil Liberties Union of California ("ACLU") and California Public Defenders Association, as well as the California Immigrant Policy Center; Centro Legal de la Raza; Lawyers Committee for Civil Rights of San Francisco; Legal Services for Prisoners with Children; National Day Laborer Organizing Network; Pangea Legal Services; Public Counsel; Root and Rebound; Rubicon Programs; and San Francisco Public Defender.

### ***Who were the likely and unlikely allies throughout the process?***

The major allies included the various criminal justice reform groups and immigrant rights groups.

### ***How did you frame the bill to get legislators on board?***

The bill ended up in a position where it was unopposed, passed with flying colors, and Governor Brown signed it without any issues. Coming after the 2016 election, I think the timing could not have been better because individuals with convictions were under enhanced scrutiny and filled such a huge gap in the criminal procedural landscape.

### ***What challenges did you face in passing the bill?***

Shortly before the bill was scheduled to go before a committee, a tragedy occurred involving a noncitizen who was alleged to have shot a US citizen. The incident made national headlines and even presidential candidates ceased upon it. No one wanted to be on record voting for a bill that might help immigrants with criminal

convictions, so the bill was turned into a two-year bill, and it was passed and signed the following year.

***Do you have any tips on lobbying for this particular bill?***

Start with as broad a bill as possible; ensure that the only jurisdictional requirement is that the person is no longer in criminal custody; make sure that the bill covers as many grounds of legal invalidity as possible—not just claims of ineffective assistance; ensure that you are building intersectional collaborations including citizens and noncitizens; create as many presumptions of legal invalidity as possible the bill as broad as possible to include jury convictions and make the argument why it should include them.

***How did you address misconceptions or opposition to the bill?***

Many legislators simply didn't understand the criminal procedural landscape and were surprised to find out that there did not previously exist any way for people to challenge unlawful convictions once custody had ended.

***Once the bill became a law, how did you go about monitoring and implementation? Were there any implementation issues that arose and if so, how were they resolved?***

We wrote an advisory, drafted a free toolkit, created a listserv for all practitioners to join and, led trainings—both in-person and webinars—for thousands of people throughout the state. We have had to pass a clean up bill, see AB 2867, to address some courts' inconsistencies in application.

***What was the biggest lesson learned and what would you do differently next time?***

There is a yawning gap between writing a law and implementation. Legal defense for indigent clients will not improve without funding. It was crucial to create new funding streams to support nonprofit organizations to begin engaging in post-conviction relief representation otherwise we would end up with a law but no one could litigate unless they could afford to pay for private counsel. Now, we are working with the state to set up the funding for post-conviction relief trainings and bring together service providers for capacity building. It is also critical to have a concrete plan to engage as many legal service providers as possible because many are new to this area and need experts with credibility and experience to help introduce them to this new legal pathway.