

AMENDED IN SENATE JULY 2, 2001  
AMENDED IN SENATE JUNE 13, 2001  
AMENDED IN ASSEMBLY MAY 1, 2001  
AMENDED IN ASSEMBLY APRIL 19, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 453**

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**Introduced by Assembly Member Correa**

February 20, 2001

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An act to amend Section 121065 of, and to add Section 121056 to, the Health and Safety Code, and to amend Sections 1405 and 1417.9 of the Penal Code, relating to biological specimen testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 453, as amended, Correa. Department of Justice: DNA testing: infectious disease: employee contact.

Existing law allows a court in specified circumstances to order criminal defendants and minors charged with certain offenses to provide blood samples for testing for indications of acquired immunity deficiency syndrome (AIDS) and other conditions and diseases. Under existing law, specified persons are entitled to test results.

This bill would allow specified persons who conduct forensic testing to petition the court to have the aforementioned test performed and would entitle those persons to test results, *as specified*.

The bill would also make conforming or technical, nonsubstantive changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 121056 is added to the Health and  
2 Safety Code, to read:  
3 121056. (a) Any forensic scientist, including, but not limited  
4 to, any criminalist, toxicologist, and forensic pathologist, or any  
5 other employee required to handle or perform DNA or other  
6 forensic evidence analysis within the scope of his or her duties,  
7 who comes into contact with blood or other bodily fluids on, upon,  
8 or through the skin or membranes of his or her person while  
9 handling or performing testing on forensic evidence, may petition,  
10 ex parte, the court having jurisdiction over the laboratory in which  
11 he or she works for an order authorized under this chapter.  
12 The employing agency, officer, or entity of the affected  
13 employee may also file an ex parte petition for an order authorized  
14 under this chapter. *Before filing a petition, the requesting party*  
15 *shall make a reasonable effort to obtain the consent of the person*  
16 *whose blood or bodily fluids is to be tested.*  
17 (b) The court shall promptly consider any petition filed  
18 pursuant to this section. If the court finds that probable cause exists  
19 to believe that a possible transfer of blood, saliva, semen, or other  
20 bodily fluid took place between the forensic evidence collected  
21 and the forensic scientist, criminalist, toxicologist, forensic  
22 pathologist, or any other employee required to handle evidence or  
23 perform forensic testing thereon as specified in this section, the  
24 court shall promptly order that the existing forensic evidence be  
25 tested as provided in this chapter.  
26 (c) (1) Except as provided in paragraph (2), copies of the test  
27 results shall be sent to each requesting employee named in the  
28 petition, and his or her employing agency, officer, or entity, to the  
29 person whose sample was tested, ~~if the person is known to be~~  
30 ~~incarcerated or detained in a California facility,~~ and to the officer  
31 in charge and the chief medical officer of the facility in which the  
32 person is incarcerated or detained.  
33 (2) The person whose sample was tested, ~~if known to be~~  
34 ~~incarcerated or detained in California,~~ shall be advised that he or  
35 *shall be advised that he or she will be informed of the HIV test*



1 results only if he or she wishes to be so informed. If the person  
2 declines to be informed of the HIV test results, then he or she shall  
3 sign a form documenting that refusal. The person’s refusal to sign  
4 that form shall be construed to be a request to be informed of the  
5 HIV test results.

6 SEC. 2. Section 121065 of the Health and Safety Code is  
7 amended to read:

8 121065. (a) The withdrawal of blood shall be performed in  
9 a medically approved manner. Only a physician, registered nurse,  
10 licensed vocational nurse, licensed medical technician, or licensed  
11 phlebotomist may withdraw blood specimens for the purposes of  
12 this chapter.

13 (b) The court shall order that the blood specimens be  
14 transmitted to a licensed medical laboratory and that tests be  
15 conducted thereon for medically accepted indications of exposure  
16 to or infection by acquired immunity deficiency syndrome (AIDS)  
17 virus, AIDS-related conditions, and those communicable diseases  
18 for which medically approved testing is readily and economically  
19 available as determined by the court.

20 (c) Copies of test results that indicate exposure to or infection  
21 by AIDS, AIDS-related conditions, or other communicable  
22 diseases shall also be transmitted to the department.

23 (d) The test results shall be sent to the designated recipients  
24 with the following disclaimer:

25 “The tests were conducted in a medically approved manner but  
26 tests cannot determine exposure to or infections by AIDS or other  
27 communicable diseases with absolute accuracy. Persons receiving  
28 this test result should continue to monitor their own health and  
29 should consult a physician as appropriate.”

30 If the person subject to the test is a minor, copies of the test result  
31 shall also be sent to the minor’s parents or guardian.

32 (e) The court shall order all persons, other than the test subject,  
33 who receive test results pursuant to Sections 121055, 121056, or  
34 121060, to maintain the confidentiality of personal identifying  
35 data relating to the test results except for disclosure that may be  
36 necessary to obtain medical or psychological care or advice.

37 (f) The specimens and the results of tests ordered pursuant to  
38 Sections 121055, 121056, and 121060 shall not be admissible  
39 evidence in any criminal or juvenile proceeding.



1 (g) Any person performing testing, transmitting test results, or  
2 disclosing information pursuant to the provisions of this chapter  
3 shall be immune from civil liability for any action undertaken in  
4 accordance with the provisions of this chapter.

5 ~~SEC. 3.—Section 1405 of the Penal Code is amended to read:~~

6 ~~1405.—(a) A person who was convicted of a felony and is~~  
7 ~~currently serving a term of imprisonment may make a written~~  
8 ~~motion before the trial court that entered the judgment of~~  
9 ~~conviction in his or her case, for performance of forensic~~  
10 ~~deoxyribonucleic acid (DNA) testing.~~

11 ~~(1) The motion shall be verified by the convicted person under~~  
12 ~~penalty of perjury and shall do all of the following:~~

13 ~~(A) Explain why the identity of the perpetrator was, or should~~  
14 ~~have been, a significant issue in the case.~~

15 ~~(B) Explain, in light of all the evidence, how the requested~~  
16 ~~DNA testing would raise a reasonable probability that the~~  
17 ~~convicted person's verdict or sentence would be more favorable if~~  
18 ~~the results of DNA testing had been available at the time of~~  
19 ~~conviction.~~

20 ~~(C) Make every reasonable attempt to identify both the~~  
21 ~~evidence that should be tested and the specific type of DNA testing~~  
22 ~~sought.~~

23 ~~(2) Notice of the motion shall be served on the Attorney~~  
24 ~~General, the district attorney in the county of conviction, and, if~~  
25 ~~known, the governmental agency or laboratory holding the~~  
26 ~~evidence sought to be tested. Responses, if any, shall be filed~~  
27 ~~within 60 days of the date on which the Attorney General and the~~  
28 ~~district attorney are served with the motion, unless a continuance~~  
29 ~~is granted.~~

30 ~~(3) If any DNA or other biological evidence testing was~~  
31 ~~conducted previously by either the prosecution or defense, the~~  
32 ~~results of that testing shall be revealed in the motion for testing, if~~  
33 ~~known, and the court shall order the party at whose request the~~  
34 ~~testing was conducted to provide all parties and the court with~~  
35 ~~access to the laboratory reports, underlying data, and laboratory~~  
36 ~~notes prepared in connection with the DNA or other biological~~  
37 ~~evidence testing.~~

38 ~~(b) The court, in its discretion, may order a hearing on the~~  
39 ~~motion. The motion shall be heard by the judge who conducted the~~  
40 ~~trial or accepted the convicted person's plea of guilty or nolo~~



1 ~~contendere, unless the presiding judge determines that judge is~~  
2 ~~unavailable. Upon request of either party, the court may order, in~~  
3 ~~the interest of justice, that the convicted person be present at the~~  
4 ~~hearing of the motion.~~

5 ~~(e) The court shall appoint counsel for the convicted person~~  
6 ~~who brings a motion under this section if that person is indigent.~~

7 ~~(d) The court shall grant the motion for DNA testing if it~~  
8 ~~determines all of the following have been established:~~

9 ~~(1) The evidence to be tested is available and in a condition that~~  
10 ~~would permit the DNA testing requested in the motion.~~

11 ~~(2) The evidence to be tested has been subject to a chain of~~  
12 ~~custody sufficient to establish it has not been substituted, tampered~~  
13 ~~with, replaced or altered in any material aspect.~~

14 ~~(3) The identity of the perpetrator of the crime was, or should~~  
15 ~~have been, a significant issue in the case.~~

16 ~~(4) The convicted person has made a prima facie showing that~~  
17 ~~the evidence sought to be tested is material to the issue of the~~  
18 ~~convicted person's identity as the perpetrator of, or accomplice to,~~  
19 ~~the crime, special circumstance, or enhancement allegation that~~  
20 ~~resulted in the conviction or sentence.~~

21 ~~(5) The requested DNA testing results would raise a reasonable~~  
22 ~~probability that, in light of all the evidence, the convicted person's~~  
23 ~~verdict or sentence would have been more favorable if the results~~  
24 ~~of DNA testing had been available at the time of conviction. The~~  
25 ~~court, in its discretion, may consider any evidence whether or not~~  
26 ~~it was introduced at trial.~~

27 ~~(6) The evidence sought to be tested meets either of the~~  
28 ~~following conditions:~~

29 ~~(A) It was not tested previously.~~

30 ~~(B) It was tested previously, but the requested DNA test would~~  
31 ~~provide results that are reasonably more discriminating and~~  
32 ~~probative of the identity of the perpetrator or accomplice or have~~  
33 ~~a reasonable probability of contradicting prior test results.~~

34 ~~(7) The testing requested employs a method generally accepted~~  
35 ~~within the relevant scientific community.~~

36 ~~(8) The motion is not made solely for the purpose of delay.~~

37 ~~(e) If the court grants the motion for DNA testing, the court~~  
38 ~~order shall identify the specific evidence to be tested and the DNA~~  
39 ~~technology to be used. The testing shall be conducted by a~~  
40 ~~laboratory mutually agreed upon by the district attorney in a~~



1 nonecapital case, or the Attorney General in a capital case, and the  
2 person filing the motion. If the parties cannot agree, the court shall  
3 designate the laboratory to conduct the testing and shall consider  
4 designating a laboratory accredited by the American Society of  
5 Crime Laboratory Directors Laboratory Accreditation Board  
6 (ASCLD/LAB).

7 (f) ~~The result of any testing ordered under this section shall be~~  
8 ~~fully disclosed to the person filing the motion, the district attorney,~~  
9 ~~and the Attorney General. If requested by any party, the court shall~~  
10 ~~order production of the underlying laboratory data and notes.~~

11 (g) (1) ~~The cost of DNA testing ordered under this section~~  
12 ~~shall be borne by the state or the applicant, as the court may order~~  
13 ~~in the interests of justice, if it is shown that the applicant is not~~  
14 ~~indigent and possesses the ability to pay. However, the cost of any~~  
15 ~~additional testing to be conducted by the district attorney or~~  
16 ~~Attorney General shall not be borne by the convicted person.~~

17 (2) ~~In order to pay the state's share of any testing costs, the~~  
18 ~~laboratory designated in subdivision (e) shall present its bill for~~  
19 ~~services to the superior court for approval and payment. It is the~~  
20 ~~intent of the Legislature to appropriate funds for this purpose in the~~  
21 ~~2000-01 Budget Act.~~

22 (h) ~~An order granting or denying a motion for DNA testing~~  
23 ~~under this section shall not be appealable, and shall be subject to~~  
24 ~~review only through petition for writ of mandate or prohibition~~  
25 ~~filed by the person seeking DNA testing, the district attorney, or~~  
26 ~~the Attorney General. Any such petition shall be filed within 20~~  
27 ~~days after the court's order granting or denying the motion for~~  
28 ~~DNA testing. In a nonecapital case, the petition for writ of mandate~~  
29 ~~or prohibition shall be filed in the court of appeal. In a capital case,~~  
30 ~~the petition shall be filed in the California Supreme Court. The~~  
31 ~~court of appeal or California Supreme Court shall expedite its~~  
32 ~~review of a petition for writ of mandate or prohibition filed under~~  
33 ~~this subdivision.~~

34 (i) ~~DNA testing ordered by the court pursuant to this section~~  
35 ~~shall be done as soon as practicable. However, if the court finds~~  
36 ~~that a miscarriage of justice will otherwise occur and that it is~~  
37 ~~necessary in the interests of justice to give priority to the DNA~~  
38 ~~testing, a DNA laboratory shall be required to give priority to the~~  
39 ~~DNA testing ordered pursuant to this section over the laboratory's~~  
40 ~~other pending casework.~~



1 ~~(j) DNA profile information from biological samples taken~~  
2 ~~from a convicted person pursuant to a motion for postconviction~~  
3 ~~DNA testing is exempt from any law requiring disclosure of~~  
4 ~~information to the public.~~

5 ~~(k) The provisions of this section are severable. If any~~  
6 ~~provision of this section or its application is held invalid, that~~  
7 ~~invalidity shall not affect other provisions or applications that can~~  
8 ~~be given effect without the invalid provision or application.~~

9 ~~SEC. 4. Section 1417.9 of the Penal Code is amended to read:~~

10 ~~1417.9. (a) Notwithstanding any other provision of law and~~  
11 ~~subject to subdivision (b), the appropriate governmental entity~~  
12 ~~shall retain any biological material secured in connection with a~~  
13 ~~criminal case for the period of time that any person remains~~  
14 ~~incarcerated in connection with that case. The governmental entity~~  
15 ~~shall have the discretion to determine how the evidence is retained~~  
16 ~~pursuant to this section, provided that the evidence is retained in~~  
17 ~~a condition suitable for DNA testing.~~

18 ~~(b) A governmental entity may dispose of biological material~~  
19 ~~before the expiration of the period of time described in subdivision~~  
20 ~~(a) if all of the conditions set forth below are met:~~

21 ~~(1) The governmental entity notifies all of the following~~  
22 ~~persons of the provisions of this section and of the intention of the~~  
23 ~~governmental entity to dispose of the material: any person, who as~~  
24 ~~a result of a felony conviction in the case is currently serving a term~~  
25 ~~of imprisonment and who remains incarcerated in connection with~~  
26 ~~the case, any counsel of record, the public defender in the county~~  
27 ~~of conviction, the district attorney in the county of conviction, and~~  
28 ~~the Attorney General.~~

29 ~~(2) The notifying entity does not receive, within 90 days of~~  
30 ~~sending the notification, any of the following:~~

31 ~~(A) A motion filed pursuant to Section 1405. However, upon~~  
32 ~~filing of that motion, the governmental entity shall retain the~~  
33 ~~material only until the time that the court's denial of the motion is~~  
34 ~~final.~~

35 ~~(B) A request under penalty of perjury that the material not be~~  
36 ~~destroyed or disposed of because the declarant will file within 180~~  
37 ~~days a motion for DNA testing pursuant to Section 1405 that is~~  
38 ~~followed within 180 days by a motion for DNA testing pursuant~~  
39 ~~to Section 1405, unless a request for an extension is requested by~~



1 ~~the convicted person and agreed to by the governmental entity in~~  
2 ~~possession of the evidence.~~

3 ~~(C) A declaration of innocence under penalty of perjury that~~  
4 ~~has been filed with the court within 180 days of the judgment of~~  
5 ~~conviction or July 1, 2001, whichever is later. However, the court~~  
6 ~~shall permit the destruction of the evidence upon a showing that~~  
7 ~~the declaration is false or there is no issue of identity that would~~  
8 ~~be affected by additional testing. The convicted person may be~~  
9 ~~cross-examined on the declaration at any hearing conducted under~~  
10 ~~this section or on an application by or on behalf of the convicted~~  
11 ~~person filed pursuant to Section 1405.~~

12 ~~(3) No other provision of law requires that biological evidence~~  
13 ~~be preserved or retained.~~

14 ~~(e) This section shall remain in effect only until January 1,~~  
15 ~~2003, and on that date is repealed unless a later enacted statute that~~  
16 ~~is enacted before January 1, 2003, deletes or extends that date.~~

17 \_\_\_\_\_

18 CORRECTIONS

19 Text — Page 2.

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