Senate Bill No. 1391

CHAPTER 1105

An act to amend Section 1417.9 of, and to add Sections 1054.9 and 1473.6 to, the Penal Code, relating to criminal procedure.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1391, Burton. Criminal procedure.

Under existing law, pretrial discovery in criminal cases is governed by a detailed statutory scheme, but discovery issues in postconviction habeas corpus proceedings are decided largely on a case-by-case basis.

This bill would require that discovery materials to which a defendant would have been entitled at the time of trial be made reasonably accessible to the defendant if he or she has been sentenced to death or life in prison without the possibility of parole and files a specified motion or writ of habeas corpus that makes a specified showing. This bill would require a defendant be given access to physical evidence only upon a separate court finding, as specified, and would specify that the only means of obtaining access to physical evidence for postconviction DNA testimony is through other specified procedures.

By authorizing the court to require local agencies to provide access to physical evidence under certain circumstances, this bill would impose a state-mandated local program.

Under existing law, although persons not presently restrained of liberty may seek certain types of relief from the disabilities of a conviction, the writ of habeas corpus is generally not available to them. A writ of habeas corpus generally will not issue unless all other remedies at law are exhausted, and must be filed within a reasonable time, as provided.

This bill would create an explicit right for a person no longer unlawfully imprisoned or restrained to prosecute a motion to vacate a judgment based on newly obtained evidence of fraud or misconduct by a government official, as specified. The right would extend for one year from the later of the effective date of the bill or the date that the moving party discovered, or could have discovered with the exercise of due diligence, additional evidence of the misconduct or fraud by a government official beyond the moving party's personal knowledge.

Existing law grants a person who was convicted of a felony and is currently serving a term of imprisonment the right to make a written

motion under specified conditions for the performance of forensic DNA testing. Existing law, to be repealed by its own terms on January 1, 2003, requires that DNA evidence secured in connection with a criminal case be retained by an appropriate governmental entity, and may be disposed of only at specified times and under specified conditions.

This bill would eliminate the repeal of these provisions relating to the retention of DNA evidence.

By requiring local authorities to maintain DNA evidence that would otherwise be subject to disposal after January 1, 2003, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 1054.9 is added to the Penal Code, to read:

1054.9. (a) Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c), order that the defendant be provided reasonable access to any of the materials described in subdivision (b).

(b) For purposes of this section, ‘‘discovery materials’’ means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial.

(c) In response to a writ or motion satisfying the conditions in subdivision (a), court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant’s effort to obtain relief. The procedures for obtaining

access to physical evidence for purposes of postconviction DNA testing are provided in Section 1405, and nothing in this section shall provide an alternative means of access to physical evidence for those purposes.

(d) The actual costs of examination or copying pursuant to this section shall be borne or reimbursed by the defendant.

SEC. 2. Section 1417.9 of the Penal Code is amended to read:

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

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

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

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

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

(B) A request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing pursuant to Section 1405 that is followed within 180 days by a motion for DNA testing pursuant to Section 1405, unless a request for an extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

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

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

(c) Notwithstanding any other provision of law, the right to receive notice pursuant to this section is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendre.

SEC. 3. Section 1473.6 is added to the Penal Code, to read:

1473.6. (a) Any person no longer unlawfully imprisoned or restrained may prosecute a motion to vacate a judgment for any of the following reasons:

(1) Newly discovered evidence of fraud by a government official that completely undermines the prosecution's case, is conclusive, and points unerringly to his or her innocence.

(2) Newly discovered evidence that a government official testified falsely at the trial that resulted in the conviction and that the testimony of the government official was substantially probative on the issue of guilt or punishment.

(3) Newly discovered evidence of misconduct by a government official committed in the underlying case that resulted in fabrication of evidence that was substantially material and probative on the issue of guilt or punishment. Evidence of misconduct in other cases is not sufficient to warrant relief under this paragraph.

(b) For purposes of this section, ''newly discovered evidence'' is evidence that could not have been discovered with reasonable diligence prior to judgment.

(c) The procedure for bringing and adjudicating a motion under this section, including the burden of producing evidence and the burden of proof, shall be the same as for prosecuting a writ of habeas corpus.

(d) A motion pursuant to this section must be filed within one year of the later of the following:

(1) The date the moving party discovered, or could have discovered with the exercise of due diligence, additional evidence of the misconduct or fraud by a government official beyond the moving party's personal knowledge.

(2) The effective date of this section.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one

million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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