

AMENDED IN ASSEMBLY AUGUST 4, 2014

AMENDED IN ASSEMBLY JUNE 19, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE MAY 7, 2014

AMENDED IN SENATE MARCH 17, 2014

SENATE BILL

No. 980

**Introduced by Senator Lieu
(Coauthor: Senator Leno)**

February 11, 2014

An act to amend Sections 1405 and 1417.9 of, and to add Section 1405.1 to, the Penal Code, relating to DNA testing.

LEGISLATIVE COUNSEL'S DIGEST

SB 980, as amended, Lieu. Prisoners: DNA testing.

(1) Existing law allows an incarcerated person who has been convicted of a felony to make a written motion for the performance of forensic deoxyribonucleic acid (DNA) testing according to a specified procedure. *Existing law allows the court to order a hearing on the motion in the court's discretion.*

~~This bill would, upon appointment or retention of counsel to investigate and file a motion pursuant to these provisions, or at any time after a petition for DNA testing has been filed, authorize a court to order that counsel be provided information and documentation as to the existence and availability of evidence that may be subject to DNA testing, relating to the investigation, arrest, or prosecution of the defendant upon a showing that there is good cause to believe that the information and documentation is reasonably necessary to the counsel's~~

effort to investigate whether a motion for DNA testing is appropriate, as specified:

This bill would instead allow the court to order a hearing on the motion if the court determines the convicted person has met specified requirements and that the hearing is necessary. This bill would, upon request of the convicted person or the convicted person's counsel, allow a court to order the prosecutor to make all reasonable efforts to obtain, and police agencies and law enforcement laboratories to make all reasonable efforts to provide, copies of DNA lab reports, copies of evidence logs, and other specified documents.

(2) Existing law requires notice of a motion for DNA testing to be served on the Attorney General, the district attorney in the county of conviction, and, if known, the governmental agency or laboratory holding the evidence sought to be retested. Existing law requires the response, if any, to be filed within 60 days of the date on which the Attorney General and the district attorney are served with the motion, unless a continuance is granted for good cause.

This bill would extend the time for filing a response to 90 days. The bill would also allow either party to request an additional 60 days to brief certain specified issues.

~~(2)~~

(3) Existing law requires a court to grant the motion for DNA testing if it determines, among other things, that the requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction.

This bill would state that the defendant is not required to show that a favorable test result would conclusively establish his or her innocence before the court may grant a motion for DNA testing. The bill would prohibit a court from deciding whether the requested DNA testing results, assuming a DNA test result favorable to the defendant, would ultimately require some form of relief from the conviction. ~~The bill would authorize a court to order the relevant governmental entity to conduct a keyboard search of the state index system or the Combined DNA Index System (CODIS) to compare a profile obtained from the results of DNA testing conducted pursuant to these provisions to the profiles contained in the state index system or the CODIS databank. The bill would change the accreditation requirements for a laboratory that may be designated by the court to perform the DNA testing pursuant~~

~~to these provisions if the parties cannot mutually agree on a laboratory, as specified.~~

If the court grants a motion for DNA testing and a profile of an unknown contributor is generated, the bill would allow the court to conduct a hearing to determine if the DNA profile should be uploaded into the State Index System, and if appropriate, the Federal Index System, if certain conditions are met, as specified.

The bill would revise the requirements that a laboratory is required to meet in order to conduct testing pursuant to a motion for DNA retesting, as specified.

(3)

(4) Existing law requires the appropriate governmental entity to 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 the case. Existing law allows the governmental entity to dispose of biological material before the expiration of this time period if the governmental entity notifies the inmate and his or her counsel, and the notifying entity does not receive, within 90 days of sending the notification, a motion for DNA testing, a request that the material not be destroyed because a motion for DNA testing will be filed within 180 days, or a declaration of innocence that has been filed with the court within 180 days of the judgment of conviction.

~~This bill would require the governmental entity to retain all biological material that is secured in connection with a criminal case for the period of time that any person remains incarcerated or on parole in connection with the case. The bill would allow the governmental entity to dispose of biological material before the expiration of this time~~ *the time that the person remains incarcerated in connection with the case* if the governmental entity notifies the inmate and his or her counsel, and the notifying entity does not receive, within one year of sending the notification, a motion for DNA testing, a request that the material not be destroyed because a motion for DNA testing will be filed within one year, or a declaration of innocence that has been filed with the court within one year of the judgment of conviction. By increasing the duties of local governmental entities in regard to the retention of biological material, this bill would impose a state-mandated local program.

~~If evidence has been destroyed in violation of these provisions, and if the appropriate governmental entity receives a request for evidence, the bill would require the agency to submit a statement that a representative from the agency personally searched for the requested~~

~~evidence and determined that the evidence has been destroyed. This bill would require the statement to be signed under penalty of perjury. By expanding the crime of perjury, this bill would impose a state-mandated local program. The bill would require the court to consider appropriate remedies if it finds that biological evidence has been destroyed.~~

~~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.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

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.

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.

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

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

1 SECTION 1. Section 1405 of the Penal Code is amended to
2 read:
3 1405. (a) A person who was convicted of a felony and is
4 currently serving a term of imprisonment may make a written
5 motion, *pursuant to subdivision (d)*, before the trial court that
6 entered the judgment of conviction in his or her case, for
7 performance of forensic deoxyribonucleic acid (DNA) testing.
8 (b) (1) An indigent convicted person may request appointment
9 of counsel *in order* to prepare a motion ~~under this section~~ *pursuant*
10 *to subdivision (d)* by sending a written request to the court. The
11 request shall include the person's statement that he or she was not
12 the perpetrator of the crime and ~~that shall explain how the DNA~~

1 testing is relevant to his or her assertion of innocence. The request
2 also shall include the person’s statement as to whether he or she
3 previously has had counsel appointed under this section.

4 (2) If any of the information required in paragraph (1) is missing
5 from the request, the court shall return the request to the convicted
6 person and advise him or her that the matter cannot be considered
7 without the missing information.

8 (3) (A) Upon a finding that the person is indigent, he or she
9 has included the information required in paragraph (1), and counsel
10 has not previously been appointed pursuant to this subdivision,
11 the court shall appoint counsel to investigate and, if appropriate,
12 to file a motion for DNA testing under this section and to represent
13 the person solely for the purpose of obtaining DNA testing under
14 this section.

15 (B) Upon a finding that the person is indigent, and counsel
16 previously has been appointed pursuant to this subdivision, the
17 court may, in its discretion, appoint counsel to investigate and, if
18 appropriate, to file a motion for DNA testing under this section
19 and to represent the person solely for the purpose of obtaining
20 DNA testing under this section.

21 (4) This section does not provide for a right to the appointment
22 of counsel in a postconviction collateral proceeding, or to set a
23 precedent for any such right, in any context other than the
24 representation being provided an indigent convicted person for the
25 limited purpose of filing and litigating a motion for DNA testing
26 pursuant to this section.

27 ~~(e) Upon appointment of counsel pursuant to subdivision (b),
28 or upon retention of counsel in all other cases, to investigate and,
29 if appropriate, to file a motion for DNA testing pursuant to this
30 section, and upon request of counsel, or at any time after a petition
31 has been filed pursuant to this section, a court may order that
32 counsel, or counsel’s representatives, be provided information and
33 documentation as to the existence and availability of evidence that
34 may be subject to DNA testing, including, but not limited to, any
35 physical evidence relating to the investigation, arrest, or
36 prosecution of the defendant, upon a showing that there is good
37 cause to believe that the information and documentation is
38 reasonably necessary to the counsel’s effort to investigate whether
39 a motion for DNA testing is appropriate. Upon request of counsel,
40 and upon a showing that there is good cause to believe that it is~~

1 reasonably necessary to counsel's effort to investigate whether a
2 motion for DNA testing is appropriate, the court also may order
3 all of the following:

4 (1) ~~The appropriate governmental entity to locate and provide~~
5 ~~counsel with any documents, notes, logs, or reports relating to~~
6 ~~items of physical evidence collected in connection with the case~~
7 ~~or to otherwise assist the defendant in locating items of biological~~
8 ~~evidence that the governmental entity contends have been lost or~~
9 ~~destroyed.~~

10 (2) ~~The appropriate governmental entity to take reasonable~~
11 ~~measures to locate biological evidence that may be in its custody.~~

12 (3) ~~The appropriate governmental entity to assist counsel in~~
13 ~~locating relevant evidence that is accessible to the governmental~~
14 ~~entity that may be in the custody of a public or private hospital,~~
15 ~~public or private laboratory, or other facility.~~

16 (4) ~~The production of laboratory documents of analyses~~
17 ~~performed from the time of evidence intake to disposition, in the~~
18 ~~original form provided by the laboratory, as prepared in connection~~
19 ~~with the examination or analyses of any items collected as evidence~~
20 ~~that may contain biological material. This includes, but is not~~
21 ~~limited to, the underlying data and laboratory notes prepared in~~
22 ~~connection with DNA tests, presumptive tests for the presence of~~
23 ~~biological material, serological tests, and analyses of trace~~
24 ~~evidence, if the evidence had been subjected to that testing. Any~~
25 ~~and all items from the requested case file shall be made available,~~
26 ~~including digital files and nonphotocopied photograph-quality~~
27 ~~prints of photographs taken.~~

28 (c) *Upon request of the convicted person or convicted person's*
29 *counsel, the court may order the prosecutor to make all reasonable*
30 *efforts to obtain, and police agencies and law enforcement*
31 *laboratories to make all reasonable efforts to provide, the following*
32 *documents that are in their possession or control, if the documents*
33 *exist:*

34 (1) *Copies of DNA lab reports, with underlying notes, prepared*
35 *in connection with the laboratory testing of biological evidence*
36 *from the case, including presumptive tests for the presence of*
37 *biological material, serological tests, and analyses of trace*
38 *evidence.*

1 (2) *Copies of evidence logs, chain of custody logs and reports,*
2 *including, but not limited to, documentation of current location of*
3 *biological evidence, and evidence destruction logs and reports.*

4 (3) *If the evidence has been lost or destroyed, a custodian of*
5 *record shall submit a report to the prosecutor and the convicted*
6 *person or convicted person’s counsel that sets forth the efforts that*
7 *were made in an attempt to locate the evidence. If the last known*
8 *or documented location of the evidence prior to its loss or*
9 *destruction was in an area controlled by a law enforcement agency,*
10 *the report shall include the results of a physical search of the area.*

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

14 (A) *A statement that he or she is innocent and not the perpetrator*
15 *of the crime.*

16 ~~(A)~~

17 (B) Explain why the identity of the perpetrator was, or should
18 have been, a significant issue in the case.

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

21 ~~(B)~~

22 (D) Explain, in light of all the evidence, how the requested DNA
23 testing would raise a reasonable probability that the convicted
24 person’s verdict or sentence would be more favorable if the results
25 of DNA testing had been available at the time of conviction.

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

28 ~~(D)~~

29 (E) Reveal the results of any DNA or other biological testing
30 that was conducted previously by either the prosecution or defense,
31 if known.

32 ~~(E)~~

33 (F) State whether any motion for testing under this section
34 previously has been filed and the results of that motion, if known.

35 (2) Notice of the motion shall be served on the Attorney General,
36 the district attorney in the county of conviction, and, if known, the
37 governmental agency or laboratory holding the evidence sought
38 to be tested. Responses, if any, shall be filed within ~~60~~ 90 days of
39 the date on which the Attorney General and the district attorney

1 are served with the motion, unless a continuance is granted for
2 good cause.

3 (e) If the court finds evidence was subjected to DNA or other
4 forensic testing previously by either the prosecution or defense, it
5 shall order the party at whose request the testing was conducted
6 to provide all parties and the court with access to the laboratory
7 reports, underlying data, and laboratory notes prepared in
8 connection with the DNA or other biological evidence testing.

9 ~~(f) The court, in its discretion, may order a hearing on the~~
10 ~~motion. The motion shall be heard by the~~ *If the court determines*
11 *that the convicted person has met all of the requirements of*
12 *subparagraphs (A) to (F), inclusive, of paragraph (1) of subdivision*
13 *(d), the court may, as it deems necessary, order a hearing on the*
14 *motion. The judge who conducted the trial, or accepted the*
15 *convicted person's plea of guilty or nolo contendere, shall conduct*
16 *the hearing unless the presiding judge determines that judge is*
17 *unavailable. Upon request of either party, the court may order, in*
18 *the interest of justice, that the convicted person be present at the*
19 *hearing of the motion. Either party, upon request, may request an*
20 *additional 60 days to brief issues raised in subdivision (g).*

21 ~~(g) Before the granting of a motion for DNA testing pursuant~~
22 ~~to this section, the defendant is not required to show that a~~
23 ~~favorable test would conclusively establish his or her innocence.~~
24 *In determining whether to grant testing, the court shall not decide*
25 *whether the requested DNA testing results, assuming a DNA test*
26 *result favorable to the convicted person, would ultimately require*
27 *some form of relief from the conviction. In addition, before the*
28 *granting of a motion for DNA testing pursuant to this section, the*
29 *convicted person is not required to show that a favorable test*
30 *would conclusively establish his or her innocence. Rather, the*
31 *court shall grant the motion for DNA testing if it determines all*
32 *of the following have been established:*

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

35 (2) The evidence to be tested has been subject to a chain of
36 custody sufficient to establish it has not been substituted, tampered
37 with, replaced, or altered in any material aspect, ~~or if the chain of~~
38 ~~custody does not establish the integrity of the evidence, the testing~~
39 ~~itself has the potential to establish the integrity of the evidence.~~
40 ~~For purposes of this section, evidence that has been in the custody~~

1 of law enforcement, other government officials, or a public or
2 private hospital shall be presumed to satisfy the chain of custody
3 requirement of this paragraph, absent specific evidence of material
4 tampering, replacement, or alteration *aspect*.

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

7 (4) The convicted person has made a prima facie showing that
8 the evidence sought to be tested is material to the issue of the
9 convicted person's identity as the perpetrator of, or accomplice
10 to, the crime, special circumstance, or enhancement allegation that
11 resulted in the conviction or sentence.

12 (5) The requested DNA testing results would raise a reasonable
13 probability that, in light of all the evidence, the convicted person's
14 verdict or sentence would have been more favorable if the results
15 of DNA testing had been available at the time of conviction. ~~In~~
16 ~~determining whether to grant testing, the court shall not decide~~
17 ~~whether the requested DNA testing results, assuming a DNA test~~
18 ~~result favorable to the defendant, would ultimately require some~~
19 ~~form of relief from the conviction.~~ The court in its discretion may
20 consider any evidence whether or not it was introduced at trial.

21 (6) The evidence sought to be tested meets either of the
22 following conditions:

23 (A) The evidence was not tested previously.

24 (B) The evidence was tested previously, but the requested DNA
25 test would provide results that are reasonably more discriminating
26 and probative of the identity of the perpetrator or accomplice or
27 have a reasonable probability of contradicting prior test results.

28 (7) The testing requested employs a method generally accepted
29 within the relevant scientific community.

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

31 (h) (1) If the court grants the motion for DNA testing, the court
32 order shall identify the specific evidence to be tested and the DNA
33 technology to be used.

34 (2) The testing shall be conducted by a laboratory *that meets*
35 *the FBI Director's Quality Assurance Standards and that is*
36 mutually agreed upon by the district attorney in a noncapital case,
37 or the Attorney General in a capital case, and the person filing the
38 motion. If the parties cannot agree, the court shall designate ~~the~~
39 ~~laboratory to conduct the testing and shall consider designating a~~
40 ~~laboratory accredited by an accreditation body that is a signatory~~

1 to the International Laboratory Accreditation Cooperation (ILAC)
2 Mutual Recognition Agreement (MRA) and offers forensic
3 laboratory accreditation services a laboratory that meets the FBI
4 Director's Quality Assurance Standards. Laboratories accredited
5 by the following entities have been determined to satisfy this
6 requirement: the American Association for Laboratory
7 Accreditation (A2LA), the American Society of Crime Laboratory
8 Directors/Laboratory Accreditation Board (ASCLD/LAB), and
9 Forensic Quality Services (ANSI-ASQ National Accreditation
10 Board FQS).

11 ~~(3) Analysts, technicians, or other agents of the laboratory~~
12 ~~conducting the testing, including local or state governmental~~
13 ~~laboratories, shall communicate directly with and provide~~
14 ~~documentation directly to both parties, and shall not communicate~~
15 ~~with, or take direction from, one party individually, unless the~~
16 ~~parties agree otherwise.~~

17 *(3) If the accredited laboratory selected by the parties or*
18 *designated by the court to conduct DNA testing is not a National*
19 *DNA Index System (NDIS) participating laboratory that takes or*
20 *retains ownership of the DNA data for entry into the Combined*
21 *DNA Index System (CODIS), the laboratory selected to perform*
22 *DNA testing shall not initiate analysis for a specific case until*
23 *documented approval has been obtained from an appropriate NDIS*
24 *participating laboratory's technical leader of acceptance of*
25 *ownership of the DNA data from the selected laboratory that may*
26 *be entered into or searched in CODIS.*

27 *(i) In accordance with the court's order pursuant to subdivision*
28 *(h), the laboratory may communicate with either party, upon*
29 *request, during the testing process. The result of any testing*
30 *ordered under this section shall be fully disclosed to the person*
31 *filing the motion, the district attorney, and the Attorney General.*
32 *If requested by any party, the court shall order production of the*
33 *underlying laboratory data and notes.*

34 *(j) (1) The cost of DNA testing ordered under this section shall*
35 *be borne by the state or the applicant, as the court may order in*
36 *the interests of justice, if it is shown that the applicant is not*
37 *indigent and possesses the ability to pay. However, the cost of any*
38 *additional testing to be conducted by the district attorney or*
39 *Attorney General shall not be borne by the convicted person.*

1 (2) In order to pay the state's share of any testing costs, the
2 laboratory designated in subdivision ~~(g)~~ (h) shall present its bill
3 for services to the superior court for approval and payment. It is
4 the intent of the Legislature to appropriate funds for this purpose
5 in the 2000–01 Budget Act.

6 (k) An order granting or denying a motion for DNA testing
7 under this section shall not be appealable, and shall be subject to
8 review only through petition for writ of mandate or prohibition
9 filed by the person seeking DNA testing, the district attorney, or
10 the Attorney General. The petition shall be filed within 20 days
11 after the court's order granting or denying the motion for DNA
12 testing. In a noncapital case, the petition for writ of mandate or
13 prohibition shall be filed in the court of appeal. In a capital case,
14 the petition shall be filed in the California Supreme Court. The
15 court of appeal or California Supreme Court shall expedite its
16 review of a petition for writ of mandate or prohibition filed under
17 this subdivision.

18 (l) DNA testing ordered by the court pursuant to this section
19 shall be done as soon as practicable. However, if the court finds
20 that a miscarriage of justice will otherwise occur and that it is
21 necessary in the interests of justice to give priority to the DNA
22 testing, a DNA laboratory shall be required to give priority to the
23 DNA testing ordered pursuant to this section over the laboratory's
24 other pending casework.

25 (m) DNA profile information from biological samples taken
26 from a convicted person pursuant to a motion for postconviction
27 DNA testing is exempt from any law requiring disclosure of
28 information to the public.

29 (n) Notwithstanding any other provision of law, the right to file
30 a motion for postconviction DNA testing provided by this section
31 is absolute and shall not be waived. This prohibition applies to,
32 but is not limited to, a waiver that is given as part of an agreement
33 resulting in a plea of guilty or nolo contendere.

34 (o) The provisions of this section are severable. If any provision
35 of this section or its application is held invalid, that invalidity shall
36 not affect other provisions or applications that can be given effect
37 without the invalid provision or application.

38 ~~SEC. 2.— Section 1405.1 is added to the Penal Code, to read:~~

39 ~~1405.1. (a) If the court grants a motion for DNA testing~~
40 ~~pursuant to Section 1405, testing is performed, and a DNA profile~~

1 is obtained from the results of DNA testing of biological material
2 that excludes the convicted person, the court may, on its own
3 motion or by motion of the defendant, order the relevant
4 governmental agency to conduct a keyboard search of the
5 Combined DNA Index System (CODIS) to compare the profile
6 obtained from the results of DNA testing of biological material to
7 the profiles contained within the state index system or the CODIS
8 databank. DNA profiles shall meet current national DNA database
9 index system eligibility standards and conform to current Federal
10 Bureau of Investigation quality assurance standards in order to be
11 eligible for search against the state index system or the CODIS
12 databank. A court shall not order a keyboard search of the state
13 index system or the CODIS databank to make a comparison that
14 would violate state index system or CODIS rules.

15 (b) For the purposes of this section, profiles contained within
16 the CODIS databank includes those profiles contained with the
17 Convicted Offender Index, the Forensic Index, the Arrestee Index,
18 the Missing or Unidentified Persons Index, and the Missing Persons
19 Reference Index.

20 *SEC. 2. Section 1405.1 is added to the Penal Code, to read:*

21 *1405.1. (a) When the Court grants a motion for DNA testing*
22 *pursuant to Section 1405 and a DNA profile of an unknown*
23 *contributor is generated, the court may conduct a hearing to*
24 *determine if the DNA profile should be uploaded into the State*
25 *Index System, and if appropriate, the National Index System. The*
26 *court may issue an order directing the upload of the DNA profile*
27 *into the State Index System, and if appropriate, the National Index*
28 *System, only if all of the following conditions are met:*

29 *(1) The source of the DNA profile is attributable to the putative*
30 *perpetrator of the crime.*

31 *(2) The profile meets all requirements, whether technical or*
32 *otherwise, for permanent inclusion into the State Index System,*
33 *and if appropriate, the National Index System, as determined by*
34 *the Department of Justice, the Federal Bureau of Investigation,*
35 *federal law, and California law.*

36 *(3) The convicted person or convicted person's counsel provides*
37 *written notice to the California Combined DNA Index System*
38 *(CODIS) State Administrator at the Department of Justice, the*
39 *Attorney General, and the District Attorney 15 court days prior*
40 *to the hearing to determine if the DNA profile should be uploaded*

1 *into the State Index System, and if appropriate, the National Index*
2 *System.*

3 *(b) A court shall not order an upload of a DNA profile into the*
4 *State Index System or the National Index System that violates any*
5 *CODIS or state rule, policy, or regulation.*

6 SEC. 3. Section 1417.9 of the Penal Code is amended to read:

7 1417.9. (a) Notwithstanding any other provision of law and
8 subject to subdivision (b), the appropriate governmental entity
9 shall retain all biological material that is secured in connection
10 with a criminal case for the period of time that any person remains
11 incarcerated ~~or on parole~~ in connection with that case. The
12 governmental entity shall have the discretion to determine how
13 the evidence is retained pursuant to this section, provided that the
14 evidence is retained in a condition suitable for deoxyribonucleic
15 acid (DNA) testing.

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

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

27 (2) The notifying entity does not receive, within one year of
28 sending the notification, any of the following:

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

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

39 (C) A declaration of innocence under penalty of perjury that
40 has been filed with the court within one year of the judgment of

1 conviction or July 1, 2001, whichever is later. However, the court
2 shall permit the destruction of the evidence upon a showing that
3 the declaration is false or there is no issue of identity that would
4 be affected by additional testing. The convicted person may be
5 cross-examined on the declaration at any hearing conducted under
6 this section or on an application by or on behalf of the convicted
7 person filed pursuant to Section 1405.

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

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

15 ~~(d) If evidence has been destroyed in violation of this section~~
16 ~~or otherwise, and if the appropriate governmental entity receives~~
17 ~~a request for evidence under Section 1405, the appropriate~~
18 ~~governmental entity shall submit a statement that a representative~~
19 ~~from the agency personally searched for the requested evidence,~~
20 ~~without relying solely upon the agency's internal index or evidence~~
21 ~~location database, and determined that the evidence has been~~
22 ~~destroyed. The statement shall be signed under penalty of perjury~~
23 ~~by the agency's representative who conducted the search. If the~~
24 ~~court finds that biological evidence was destroyed in violation of~~
25 ~~the provisions of this section, it shall consider appropriate remedies.~~

26 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
27 ~~Section 6 of Article XIII B of the California Constitution for certain~~
28 ~~costs that may be incurred by a local agency or school district~~
29 ~~because, in that regard, this act creates a new crime or infraction,~~
30 ~~eliminates a crime or infraction, or changes the penalty for a crime~~
31 ~~or infraction, within the meaning of Section 17556 of the~~
32 ~~Government Code, or changes the definition of a crime within the~~
33 ~~meaning of Section 6 of Article XIII B of the California~~
34 ~~Constitution.~~

35 ~~However, if the Commission on State Mandates determines that~~
36 ~~this act contains other costs mandated by the state, reimbursement~~
37 ~~to local agencies and school districts for those costs shall be made~~
38 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
39 ~~4 of Title 2 of the Government Code.~~

1 *SEC. 4. If the Commission on State Mandates determines that*
2 *this act contains costs mandated by the state, reimbursement to*
3 *local agencies and school districts for those costs shall be made*
4 *pursuant to Part 7 (commencing with Section 17500) of Division*
5 *4 of Title 2 of the Government Code.*

O