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AMENDED IN SENATE APRIL 25, 2000
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SENATE BILL

No. 1342

Introduced by Senator Burton

(Principal coauthor: Assembly Members Baugh and
Villaraigosa)

**(Coauthors: Senators Alarcon, Alpert, Figueroa, Johnson,
Lewis, McPherson, Murray, Polanco, Solis, Speier, and
Vasconcellos)**

(Coauthors: Assembly Members Ackerman, Alquist, Bock,
Campbell, Cardenas, Cardoza, Cox, Dutra, Keeley, Knox,
Kuehl, Leach, Longville, Mazzoni, Migden, and
Washington)

January 10, 2000

An act to add Sections 1405 and 1417.9 to the Penal Code,
relating to forensic testing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1342, as amended, Burton. Forensic testing: post
conviction.

Existing law authorizes the defendant in a criminal case to
file a motion for a new trial upon specified grounds including,
but not limited to, the discovery of new evidence that is

material to the defendant, and which could not, with reasonable diligence, have been discovered and produced at the trial.

This bill would grant to a defendant who was convicted in a criminal case, the right to file a motion, after entry of judgment, for the performance of forensic DNA testing on evidence that is relevant to the charges that resulted in the conviction *or sentence* but was not subject to DNA testing, upon specified conditions, if the evidence or the technology for testing that evidence was not available to the defendant at the time of trial. The bill would require that the defendant verify under penalty of perjury that the information in the motion is true and correct and that notice of the motion be served upon the Attorney General and the district attorney in the county of conviction. If the defendant presents a prima facie case that identity was a significant issue resulting in his or her conviction *or sentence*, the court would be required to order a hearing on the motion and to grant the motion upon specified findings. Additionally, the bill would require that for the purpose of paying the state's share of testing costs, the laboratory that conducts the DNA tests would be required to present its bill for approval to the superior court and upon approval, present the bill to the Treasurer for payment from the State Treasury.

The bill would also require, except as otherwise specified, the appropriate governmental entity to preserve any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. By increasing the duties of local officials 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.

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 is added to the Penal Code,
2 to read:

3 1405. (a) A defendant who was convicted in a
4 criminal case, may make a written motion before the trial
5 court that entered the judgment of conviction in his or
6 her case for performance of forensic DNA testing on
7 evidence that is relevant to the charges that resulted in
8 his or her conviction or sentence, but which was not
9 tested because either the evidence or the technology for
10 the forensic testing of the evidence was not available to
11 the defendant at the time of trial. The defendant shall
12 verify under penalty of perjury that the information
13 contained in the motion is true and correct to the best of
14 his or her knowledge.

15 (b) The court shall order a hearing on the motion if the
16 defendant presents a prima facie case that identity was a
17 significant issue that resulted in his or her conviction. A
18 notice of the hearing shall be served upon the Attorney
19 General and the district attorney in the county of
20 conviction *or sentence* 30 days prior to the hearing. The
21 motion shall be heard by the judge who conducted the
22 trial unless the presiding judge determines that judge is
23 unavailable. The court shall grant the motion if the court
24 finds all of the following:

25 (1) The result of the testing has the scientific potential
26 to produce new, noncumulative evidence that is material
27 and relevant to the defendant's assertion of innocence.

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

30 (3) The evidence to be tested is available and in a
31 condition that would permit the DNA testing that is
32 requested in the motion.



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

5 (c) Upon request of the defendant, the court may
6 order, in the interest of justice, that the defendant be
7 present at the hearing of the motion.

8 (d) If known to the defendant, or his or her counsel,
9 the motion shall identify the evidence subject to the
10 testing and the specific type of testing that is requested.
11 If the prosecuting attorney objects either to the specific
12 items sought to be tested or the specific type of testing
13 being requested by the defendant, the court shall conduct
14 a hearing to determine what items are to be tested and
15 what specific DNA tests shall be conducted.

16 (e) If there is an issue as to the condition of a
17 questionable sample, the court shall conduct a hearing to
18 determine the consequences of typing a questionable
19 sample. Any additional testing requested by the district
20 attorney or Attorney General shall not be borne by the
21 defendant.

22 (f) The court may at any time appoint counsel for an
23 indigent applicant under this section.

24 (g) If, after the hearing, the court grants the motion
25 for DNA testing, the testing shall be conducted by a
26 laboratory mutually agreed upon by the district attorney
27 in a noncapital case or the Attorney General in a capital
28 case and the person filing the motion. If the parties cannot
29 agree, the court shall designate the laboratory to conduct
30 the testing.

31 (h) The result of any testing ordered under this section
32 shall be fully disclosed to both the person filing the motion
33 and to the district attorney *or Attorney General*. If
34 requested by either party, the court shall order
35 production of the underlying data and notes.

36 (i) The cost of DNA testing ordered under this section
37 shall be borne by the state or the applicant, as the court
38 may order in the interests of justice, if it is shown that the
39 applicant is not indigent and possesses the means to pay.
40 In order to pay the state's share of any testing costs, the



1 laboratory designated ~~in subdivision (e)~~ pursuant to
2 subdivision (g) shall present its bill for services for
3 approval to the superior court. If, after 30 days, the
4 superior court has taken no action on the bill, the bill shall
5 be deemed approved. Upon approval, the laboratory shall
6 present the bill directly to the Treasurer for payment out
7 of the State Treasury.

8 (j) Evidence samples containing biological material
9 are exempt from any law requiring disclosure of
10 information to the public or the return of biological
11 specimens.

12 (k) The provisions of this section are severable. If any
13 provision of this section or its application is held invalid,
14 that invalidity shall not affect other provisions or
15 applications that can be given effect without the invalid
16 provision or application.

17 SEC. 2. Section 1417.9 is added to the Penal Code, to
18 read:

19 1417.9. (a) Notwithstanding any other provision of
20 law and subject to subdivision (b), the appropriate
21 governmental entity shall preserve any biological
22 material secured in connection with a criminal case for
23 the period of time that any person remains incarcerated
24 in connection with that case.

25 (b) A governmental entity may destroy biological
26 material before the expiration of the period of time
27 described in subdivision (a) if the conditions set forth
28 below are met:

29 (1) The governmental entity notifies all of the
30 following persons of the intention of the governmental
31 entity to destroy the material; and the provisions of this
32 section: any person who remains incarcerated in
33 connection with the case, any counsel of record, the
34 public defender in the county of conviction, the district
35 attorney in the county of conviction, and the Attorney
36 General.

37 (2) No person makes an application under Section
38 1405 within 180 days of receiving notice under paragraph
39 (1) or the defendant fails to file with the court a
40 declaration of innocence under penalty of perjury.



1 (3) No other provision of law requires that biological
2 evidence be preserved.

3 SEC. 3. Notwithstanding Section 17610 of the
4 Government Code, if the Commission on State Mandates
5 determines that this act contains costs mandated by the
6 state, reimbursement to local agencies and school
7 districts for those costs shall be made pursuant to Part 7
8 (commencing with Section 17500) of Division 4 of Title
9 2 of the Government Code. If the statewide cost of the
10 claim for reimbursement does not exceed one million
11 dollars (\$1,000,000), reimbursement shall be made from
12 the State Mandates Claims Fund.

