

AMENDED IN ASSEMBLY AUGUST 14, 2000

AMENDED IN ASSEMBLY JUNE 27, 2000

AMENDED IN ASSEMBLY JUNE 13, 2000

AMENDED IN SENATE APRIL 25, 2000

AMENDED IN SENATE MARCH 30, 2000

AMENDED IN SENATE FEBRUARY 10, 2000

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.~~

This bill would grant to a defendant who was convicted of a felony and currently serving a term of imprisonment, the right to make a written motion under specified conditions for the performance of forensic DNA testing. The bill would require that the motion include an explanation of why the applicant's identity was or should have been a significant issue in the case, how the requested DNA testing would raise a reasonable probability that the verdict or sentence would have been more favorable if the DNA testing had been available at the trial resulting in the judgment of conviction, and a reasonable attempt to identify the evidence to be tested and the type of DNA testing sought. The motion would also have to include the results of any previous DNA tests and the court would be required to order the party in possession of those results to provide access to the reports, data and notes



prepared in connection with the DNA tests to all parties. The bill would also provide that the cost of DNA testing ordered under this act would be borne by either the state or by the applicant if, in the interests of justice the applicant is not indigent and possesses the ability to pay.

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~~



1 ~~contained in the motion is true and correct to the best of~~
2 ~~his or her knowledge.~~

3 ~~(b) The court shall order a hearing on the motion if the~~
4 ~~defendant presents a prima facie case that identity was a~~
5 ~~significant issue that resulted in his or her conviction. A~~
6 ~~notice of the hearing shall be served upon the Attorney~~
7 ~~General and the district attorney in the county of~~
8 ~~conviction or sentence 30 days prior to the hearing. The~~
9 ~~motion shall be heard by the judge who conducted the~~
10 ~~trial unless the presiding judge determines that judge is~~
11 ~~unavailable. The court shall grant the motion if the court~~
12 ~~finds all of the following:~~

13 ~~(1) The result of the testing has the scientific potential~~
14 ~~to produce new, nonecumulative evidence that is material~~
15 ~~and relevant to the defendant's assertion of innocence.~~

16 ~~(2) The testing requested employs a method generally~~
17 ~~accepted within the relevant scientific community.~~

18 ~~(3) The evidence to be tested is available and in a~~
19 ~~condition that would permit the DNA testing that is~~
20 ~~requested in the motion.~~

21 ~~(4) The evidence to be tested has been subject to a~~
22 ~~chain of custody sufficient to establish it has not been~~
23 ~~substituted, tampered with, replaced or altered in any~~
24 ~~material aspect.~~

25 ~~(e) Upon request of the defendant, the court may~~
26 ~~order, in the interest of justice, that the defendant be~~
27 ~~present at the hearing of the motion.~~

28 ~~(d) If known to the defendant, or his or her counsel,~~
29 ~~the motion shall identify the evidence subject to the~~
30 ~~testing and the specific type of testing that is requested.~~
31 ~~If the prosecuting attorney objects either to the specific~~
32 ~~items sought to be tested or the specific type of testing~~
33 ~~being requested by the defendant, the court shall conduct~~
34 ~~a hearing to determine what items are to be tested and~~
35 ~~what specific DNA tests shall be conducted.~~

36 ~~(e) If there is an issue as to the condition of a~~
37 ~~questionable sample, the court shall conduct a hearing to~~
38 ~~determine the consequences of typing a questionable~~
39 ~~sample. Any additional testing requested by the district~~



1 ~~attorney or Attorney General shall not be borne by the~~
2 ~~defendant.~~

3 ~~(f) The court may at any time appoint counsel for an~~
4 ~~indigent applicant under this section.~~

5 ~~(g) If, after the hearing, the court grants the motion~~
6 ~~for DNA testing, the testing shall be conducted by a~~
7 ~~laboratory mutually agreed upon by the district attorney~~
8 ~~in a noneapital case or the Attorney General in a capital~~
9 ~~case and the person filing the motion. If the parties cannot~~
10 ~~agree, the court shall designate the laboratory to conduct~~
11 ~~the testing.~~

12 ~~(h) The result of any testing ordered under this section~~
13 ~~shall be fully disclosed to both the person filing the motion~~
14 ~~and to the district attorney or Attorney General. If~~
15 ~~requested by either party, the court shall order~~
16 ~~production of the underlying data and notes.~~

17 ~~(i) The cost of DNA testing ordered under this section~~
18 ~~shall be borne by the state or the applicant, as the court~~
19 ~~may order in the interests of justice, if it is shown that the~~
20 ~~applicant is not indigent and possesses the means to pay.~~
21 ~~In order to pay the state's share of any testing costs, the~~
22 ~~laboratory designated pursuant to subdivision (g) shall~~
23 ~~present its bill for services for approval to the superior~~
24 ~~court. If, after 30 days, the superior court has taken no~~
25 ~~action on the bill, the bill shall be deemed approved.~~
26 ~~Upon approval, the laboratory shall present the bill~~
27 ~~directly to the Treasurer for payment out of the State~~
28 ~~Treasury.~~

29 ~~(j) Evidence samples containing biological material~~
30 ~~are exempt from any law requiring disclosure of~~
31 ~~information to the public or the return of biological~~
32 ~~specimens.~~

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

38 ~~SEC. 2. Section 1417.9 is added to the Penal Code, to~~
39 ~~read:~~



1 ~~1417.9. (a) Notwithstanding any other provision of~~
2 ~~law and subject to subdivision (b), the appropriate~~
3 ~~governmental entity shall preserve any biological~~
4 ~~material secured in connection with a criminal case for~~
5 ~~the period of time that any person remains incarcerated~~
6 ~~in connection with that case.~~

7 ~~(b) A governmental entity may destroy biological~~
8 ~~material before the expiration of the period of time~~
9 ~~described in subdivision (a) if the conditions set forth~~
10 ~~below are met:~~

11 ~~(1) The governmental entity notifies all of the~~
12 ~~following persons of the intention of the governmental~~
13 ~~entity to destroy the material; and the provisions of this~~
14 ~~section: any person who remains incarcerated in~~
15 ~~connection with the case, any counsel of record, the~~
16 ~~public defender in the county of conviction, the district~~
17 ~~attorney in the county of conviction, and the Attorney~~
18 ~~General.~~

19 ~~(2) No person makes an application under Section~~
20 ~~1405 within 180 days of receiving notice under paragraph~~
21 ~~(1) or the defendant fails to file with the court a~~
22 ~~declaration of innocence under penalty of perjury.~~

23 ~~(3) No other provision of law requires that biological~~
24 ~~evidence be preserved.~~

25 *1405. (a) A defendant who was convicted of a felony*
26 *and is currently serving a term of imprisonment may*
27 *make a written motion before the trial court that entered*
28 *the judgment of conviction in his or her case, for*
29 *performance of forensic DNA testing.*

30 *(1) The motion shall be verified under penalty of*
31 *perjury and shall do all of the following:*

32 *(A) Explain why the identity of the applicant was, or*
33 *should have been, a significant issue in the case.*

34 *(B) Explain in light of all the evidence, how the*
35 *requested DNA testing would raise a reasonable*
36 *probability that the defendant's verdict or sentence*
37 *would be more favorable if the results of DNA testing had*
38 *been available at the trial resulting in the judgment of*
39 *conviction.*



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

4 (2) Notice of the motion shall be served on the
5 Attorney General, the district attorney in the county of
6 conviction, and, if known, the governmental agency or
7 laboratory holding the evidence sought to be tested.

8 (3) Reply briefs, if any, shall be filed within 60 days.

9 (4) If any DNA or other biological evidence testing
10 was conducted previously by either the prosecution or
11 defense, the results of that testing shall be revealed in the
12 motion for testing, if known. If evidence was subjected to
13 DNA or other forensic testing previously by either the
14 prosecution or defense, the court shall order the
15 prosecution or defense to provide all parties and the court
16 with access to the laboratory reports, underlying data,
17 and laboratory notes prepared in connection with the
18 DNA testing.

19 (b) The court, in its discretion, may order a hearing on
20 the motion. The motion shall be heard by the judge who
21 conducted the trial unless the presiding judge determines
22 that judge is unavailable. Upon request of either party,
23 the court may order, in the interest of justice, that the
24 defendant be present at the hearing of the motion.

25 (c) The court may at any time appoint counsel for an
26 indigent applicant under this section.

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

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

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

36 (3) The defendant has made a prima facie showing
37 that the evidence sought to be tested is material to the
38 issue of the defendant's identity as the perpetrator of, or
39 accomplice to, the crime, special circumstance, or



1 *enhancement allegation that resulted in the conviction or*
2 *sentence.*

3 *(4) There is a reasonable probability that the*
4 *requested DNA testing, if it produces exculpatory results,*
5 *will constitute new, noncumulative evidence that, in light*
6 *of all the evidence, could establish the defendant's*
7 *nonidentity as the perpetrator or accomplice.*

8 *(5) The evidence was never previously subjected to*
9 *DNA testing, or was not subjected to the testing that is*
10 *now requested that can resolve an issue not resolved by*
11 *previous testing.*

12 *(6) The testing requested employs a method generally*
13 *accepted within the relevant scientific community.*

14 *(e) If the court grants the motion for DNA testing, the*
15 *testing shall be conducted by a laboratory mutually*
16 *agreed upon by the district attorney in a noncapital case,*
17 *or the Attorney General in a capital case, and the person*
18 *filing the motion. If the parties cannot agree, the court*
19 *shall designate the laboratory to conduct the testing and*
20 *shall consider designating a laboratory accredited by the*
21 *American Society of Crime Laboratory Directors*
22 *Laboratory Accreditation Board (ASCLD/LAB).*

23 *(f) The result of any testing ordered under this section*
24 *shall be fully disclosed to the person filing the motion, the*
25 *district attorney, and the Attorney General. If requested*
26 *by any party, the court shall order production of the*
27 *underlying laboratory data and notes.*

28 *(g) (1) The cost of DNA testing ordered under this*
29 *section shall be borne by the state or the applicant, as the*
30 *court may order in the interests of justice, if it is shown*
31 *that the applicant is not indigent and possesses the ability*
32 *to pay. However, the cost of any additional testing to be*
33 *conducted by the district attorney or Attorney General*
34 *shall not be borne by the defendant.*

35 *(2) In order to pay the state's share of any testing costs,*
36 *the laboratory designated in subdivision (e) shall present*
37 *its bill for services to the superior court for approval and*
38 *payment. It is the intent of the Legislature to appropriate*
39 *funds for this purpose.*



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

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

23 (j) DNA profile information from biological samples
24 taken from a defendant pursuant to a motion for
25 postconviction DNA testing is exempt from any law
26 requiring disclosure of information to the public.

27 (k) DNA means deoxyribonucleic acid.

28 (l) The provisions of this section are severable. If any
29 provision of this section or its application is held invalid,
30 that invalidity shall not affect other provisions or
31 applications that can be given effect without the invalid
32 provision or application.

33 SEC. 2. Section 1417.9 is added to the Penal Code, to
34 read:

35 1417.9. (a) Notwithstanding any other provision of
36 law and subject to subdivision (b), the appropriate
37 governmental entity shall retain any biological material
38 secured in connection with a criminal case for the period
39 of time that any person remains incarcerated in
40 connection with that case. The governmental entity shall



1 *make the determination of whether a piece of evidence*
2 *contains biological material. The evidence shall be*
3 *retained in a condition suitable for DNA testing.*

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

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

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

19 *(A) An application filed pursuant to Section 1405.*

20 *(B) A request under penalty of perjury that the*
21 *material not be destroyed or disposed of because the*
22 *declarant will file within 180 days an application for DNA*
23 *testing pursuant to Section 1405.*

24 *(C) A declaration of innocence under penalty of*
25 *perjury that has been filed with the court.*

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

28 SEC. 3. Notwithstanding Section 17610 of the
29 Government Code, if the Commission on State Mandates
30 determines that this act contains costs mandated by the
31 state, reimbursement to local agencies and school
32 districts for those costs shall be made pursuant to Part 7
33 (commencing with Section 17500) of Division 4 of Title
34 2 of the Government Code. If the statewide cost of the
35 claim for reimbursement does not exceed one million
36 dollars (\$1,000,000), reimbursement shall be made from
37 the State Mandates Claims Fund.

