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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, Perata, 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~~ *Section 1405 to, and to add and repeal Section 1417 of,* 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 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.~~

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 the Legislature finds there is no mandate contained in the bill that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to these constitutional and 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~~ *person* who was convicted of
4 a felony and is currently serving a term of imprisonment
5 may make a written motion before the trial court that
6 entered the judgment of conviction in his or her case, for
7 performance of forensic ~~DNA~~ *deoxyribonucleic acid*
8 *(DNA)* testing.

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

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

15 (B) Explain in light of all the evidence, how the
16 requested DNA testing would raise a reasonable
17 probability that the ~~defendant's~~ *convicted person's*
18 verdict or sentence would be more favorable if the results



1 of DNA testing had been available at the ~~trial resulting in~~
2 ~~the judgment~~ time of conviction.

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

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

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

11 ~~(4) Responses, if any, shall be filed within 60 days of~~
12 ~~the date on which the Attorney General and the district~~
13 ~~attorney are served with the motion, unless a continuance~~
14 ~~is granted.~~

15 (3) If any DNA or other biological evidence testing
16 was conducted previously by either the prosecution or
17 defense, the results of that testing shall be revealed in the
18 motion for testing, if known. If evidence was subjected to
19 DNA or other forensic testing previously by either the
20 prosecution or defense, the court shall order the
21 prosecution or defense to provide all parties and the court
22 with access to the laboratory reports, underlying data,
23 and laboratory notes prepared in connection with the
24 DNA testing.

25 (b) The court, in its discretion, may order a hearing on
26 the motion. The motion shall be heard by the judge who
27 conducted the trial unless the presiding judge determines
28 that judge is unavailable. Upon request of either party,
29 the court may order, in the interest of justice, that the
30 ~~defendant~~ convicted person be present at the hearing of
31 the motion.

32 ~~(e) The court may at any time appoint counsel for an~~
33 ~~indigent applicant under this section.~~

34 (c) *The court shall appoint counsel for the convicted*
35 *person who brings a motion under this section if that*
36 *person is indigent.*

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



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

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

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

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

16 ~~(4) There is a reasonable probability that the~~
17 ~~requested DNA testing, if it produces exculpatory results,~~
18 ~~will constitute new, nonecumulative evidence that, in light~~
19 ~~of all the evidence, could establish the defendant's~~
20 ~~nonidentity as the perpetrator or accomplice.~~

21 ~~(5) The evidence was never previously subjected to~~
22 ~~DNA testing, or was not subjected to the testing that is~~
23 ~~now requested that can resolve an issue not resolved by~~
24 ~~previous testing.~~

25 ~~(6)–~~

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

33 (6) *The evidence sought to be tested meets either of*
34 *the following conditions:*

35 (A) *It was not tested previously.*

36 (B) *It was tested previously, but the requested DNA*
37 *test would provide results that are reasonably more*
38 *discriminating and probative of the identity of the*
39 *perpetrator or accomplice or have a reasonable*
40 *probability of contradicting prior test results.*



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

3 (8) *The motion is not made solely for the purpose of*
4 *delay.*

5 (e) If the court grants the motion for DNA testing, the
6 *court order shall identify the specific evidence to be*
7 *tested and the DNA technology to be used. The testing*
8 shall be conducted by a laboratory mutually agreed upon
9 by the district attorney in a noncapital case, or the
10 Attorney General in a capital case, and the person filing
11 the motion. If the parties cannot agree, the ~~court~~ *court's*
12 *order* shall designate the laboratory to conduct the testing
13 and shall consider designating a laboratory accredited by
14 the American Society of Crime Laboratory Directors
15 Laboratory Accreditation Board (ASCLD/LAB).

16 (f) The result of any testing ordered under this section
17 shall be fully disclosed to the person filing the motion, the
18 district attorney, and the Attorney General. If requested
19 by any party, the court shall order production of the
20 underlying laboratory data and notes.

21 (g) (1) The cost of DNA testing ordered under this
22 section shall be borne by the state or the applicant, as the
23 court may order in the interests of justice, if it is shown
24 that the applicant is not indigent and possesses the ability
25 to pay. However, the cost of any additional testing to be
26 conducted by the district attorney or Attorney General
27 shall not be borne by the ~~defendant~~ *convicted person.*

28 (2) In order to pay the state's share of any testing costs,
29 the laboratory designated in subdivision (e) shall present
30 its bill for services to the superior court for approval and
31 payment. It is the intent of the Legislature to appropriate
32 funds for this purpose *in the 2000–01 Budget Act.*

33 (h) An order granting or denying a motion for DNA
34 testing under this section shall not be appealable, and
35 shall be subject to review only through petition for writ
36 of mandate or prohibition filed by the person seeking
37 DNA testing, the district attorney, or the Attorney
38 General. Any such petition shall be filed within 20 days
39 after the court's order granting or denying the motion for
40 DNA testing. In a noncapital case, the petition for writ of



1 mandate or prohibition shall be filed in the court of
2 ~~appeal~~ *Appeals*. In a capital case, the petition shall be filed
3 in the California Supreme Court. The court of ~~appeal~~
4 *Appeals* or California Supreme Court shall expedite its
5 review of a petition for writ of mandate or prohibition
6 filed under this subdivision.

7 (i) DNA testing ordered by the court pursuant to this
8 section shall be done as soon as practicable. However, if
9 the court finds that a miscarriage of justice will otherwise
10 occur and that it is necessary in the interests of justice to
11 give priority to ~~The~~ *the* DNA testing, a DNA ~~Laboratory~~
12 *laboratory* shall be required to give priority to the DNA
13 testing ordered pursuant to this section over the
14 laboratory's other pending casework.

15 (j) DNA profile information from biological samples
16 taken from a ~~defendant~~ *convicted person* pursuant to a
17 motion for postconviction DNA testing is exempt from
18 any law requiring disclosure of information to the public.

19 ~~(k) DNA means deoxyribonucleic acid.~~

20 ~~(l)~~

21 (k) The provisions of this section are severable. If any
22 provision of this section or its application is held invalid,
23 that invalidity shall not affect other provisions or
24 applications that can be given effect without the invalid
25 provision or application.

26 SEC. 2. Section 1417.9 is added to the Penal Code, to
27 read:

28 1417.9. (a) Notwithstanding any other provision of
29 law and subject to subdivision (b), the appropriate
30 governmental entity shall retain any biological material
31 secured in connection with a criminal case for the period
32 of time that any person remains incarcerated in
33 connection with that case. The governmental entity shall
34 ~~make the determination of whether a piece of evidence~~
35 ~~contains biological material. The evidence shall be have~~
36 *the discretion to determine how the evidence is retained*
37 *pursuant to this section, provided that the evidence is*
38 retained in a condition suitable for DNA testing.

39 (b) A governmental entity may dispose of biological
40 material before the expiration of the period of time



1 described in subdivision (a) if all of the conditions set
2 forth below are met:

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

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

14 (A) ~~An application~~ *A motion* filed pursuant to Section
15 1405, *however, upon filing of that application, the*
16 *governmental entity shall retain the material only until*
17 *the time that the court's denial of the motion is final.*

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

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

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

39 ~~SEC. 3. Notwithstanding Section 17610 of the~~
40 ~~Government Code, if the Commission on State Mandates~~



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

9 *(c) This section shall remain in effect only until*
10 *January 1, 2003, and on that date is repealed unless a later*
11 *enacted statute that is enacted before January 1, 2003,*
12 *deletes or extends that date.*

13 *SEC. 3. Pursuant to Section 17579 of the Government*
14 *Code, the Legislature finds that, because activities*
15 *required by the act are part of activities required by*
16 *existing law, there is no mandate contained in this act that*
17 *will result in costs incurred by a local agency or school*
18 *district for a new program or higher level of service which*
19 *require reimbursement pursuant to Section 6 of Article*
20 *XIII B of the California Constitution and Part 7*
21 *(commencing with Section 17500) of Division 4 of Title*
22 *2 of the Government Code.*

