

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 of conviction for the performance of forensic DNA testing on evidence that is relevant to the charges that resulted in the conviction but was not subject to 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 notice of the motion be served upon the Attorney General and the district attorney in the county of conviction. The court would be required to allow the testing upon specified findings.

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

1 evidence that is relevant to the charges that resulted in
2 his or her conviction or sentence, but which was not
3 tested because either the evidence or the technology for
4 the forensic testing of the evidence was not available to
5 the defendant at the time of trial. A notice of the motion
6 shall be served upon the Attorney General and the
7 district attorney in the county of conviction 30 days prior
8 to the hearing. The motion shall be heard by the judge
9 who conducted the trial unless *the presiding judge*
10 *determines* that judge is unavailable.

11 (b) The court shall allow the testing if the defendant
12 presents a prima facie case that identity was a significant
13 issue that resulted in his or her conviction; *and* the court
14 finds *all of* the following:

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

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

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

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

27 (c) If known to the defendant, or his or her counsel,
28 the motion shall identify the evidence subject to the
29 testing and the specific type of testing that is requested.

30 (d) The court may at any time appoint counsel for an
31 indigent applicant under this section.

32 (e) If, after the hearing, the court grants the motion
33 for DNA testing, the testing shall be conducted by a
34 laboratory mutually agreed upon by the district attorney
35 in a noncapital case or the Attorney General in a capital
36 case and the person filing the motion. If the parties cannot
37 agree, the court shall designate the laboratory to conduct
38 the testing.

39 (f) The result of any testing ordered under this section
40 shall be fully disclosed to both the person filing the motion

1 and to the district attorney. If requested by either party,
2 the court shall order production of the underlying data
3 and notes.

4 (g) The cost of DNA testing ordered under this section
5 shall be borne by the state or the applicant, as the court
6 may order in the interests of justice, if it is shown that the
7 applicant is not indigent and possesses the means to pay.

8 (h) 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 (i) 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 all of the following
28 conditions 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).

1 (3) No other provision of law requires that biological
2 ~~notice~~ *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.

