

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1900

Introduced by Senator Burton

March 4, 2004

An act to ~~amend Section 12071 of~~ add Section 76104.6 to the Government Code, to amend Section 1405 of, and to add Section 296.3 to, the Penal Code, relating to ~~firearms~~ forensic DNA.

LEGISLATIVE COUNSEL'S DIGEST

SB 1900, as amended, Burton. ~~Firearms~~ Forensic DNA.

Existing law provides for DNA collection and testing in connection with forensic identification, as specified.

This bill would impose a fee of \$1.50 per every \$10 of a fine, penalty or forfeiture collected by a county, as specified. The funds collected would be deposited by the county into a DNA Collection Reimbursement Fund. Ninety percent of those funds would be transferred to the Controller for deposit in the state DNA Identification Fund for use, upon appropriation, to support DNA testing and analysis, as specified. Ten percent of the transferred funds would be deposited in the state DNA Innocence Protection Fund, for disbursement, upon appropriation by the Legislature, to entities supporting the California Innocence Protection Program, as specified. The funds remaining in the county DNA Collection Reimbursement Fund would be used to reimburse local law enforcement agencies and other specified entities for costs of collecting and analyzing DNA forensic samples, as specified. The bill would also require an annual report, as specified, from the county board of supervisors to the Legislature and the Department of Justice regarding the amount of fines collected and allocated pursuant to the provisions of the bill.

By imposing additional reporting duties on county governments, this bill would impose a state-mandated local program.

The bill would also authorize a defendant or other specified persons to petition the court for an order directing the appropriate law enforcement or prosecutorial agency to compare biological evidence from a crime scene against DNA databank profiles, as specified.

The bill would further provide that if the result of DNA testing does not identify the person requesting the testing or the victim the court would be required to vacate the judgment against the person and order a new trial for the defendant.

By imposing additional burdens on local prosecuting entities, 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.

~~Existing law generally regulates firearms dealers and the transfer of firearms.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

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

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

- 1 ~~SECTION 1. Section 12071 of the Penal Code is amended to~~
- 2 *SECTION 1. Section 76104.6 is added to the Government*
- 3 *Code, to read:*
- 4 *76104.6. (a) There shall be levied an additional penalty of*
- 5 *one dollar and fifty cents (\$1.50) for every ten dollars (\$10) or*
- 6 *fraction thereof in each county which shall be collected together*
- 7 *with and in the same manner as the amounts established by Section*
- 8 *1464 of the Penal Code, upon every fine, penalty or forfeiture*



1 *imposed and collected by the courts for criminal offenses,*
2 *including all offenses involving a violation of the Vehicle Code or*
3 *any local ordinance adopted pursuant to the Vehicle Code, except*
4 *parking offenses subject to Article 3 (commencing with Section*
5 *40200) of Chapter 1 of Division 17 of the Vehicle Code. The board*
6 *of supervisors shall establish in the county treasury a DNA*
7 *Collection Reimbursement Fund into which the moneys collected*
8 *pursuant to this section shall be deposited. The moneys collected*
9 *shall be allocated pursuant to subdivision (b).*

10 (b) (1) *The moneys described in subdivision (a), together with*
11 *any interest earned thereon, shall be held by the county treasurer*
12 *separate from any funds subject to transfer or division pursuant to*
13 *Section 1463 of the Penal Code.*

14 (2) *On the last day of each calendar quarter, the county*
15 *treasurer shall transfer 90 percent of the moneys in the county's*
16 *DNA Collection Reimbursement Fund to the Controller. The*
17 *Controller shall deposit 90 percent of the moneys transferred from*
18 *the county into the state's DNA Identification Fund, which is*
19 *hereby established in the State Treasury. The Controller shall*
20 *deposit 10 percent of the moneys transferred from the county into*
21 *the DNA Innocence Protection Fund, which is hereby established*
22 *in the State Treasury, but if the amount of money in the fund exceeds*
23 *two million dollars (\$2,000,000) the excess shall be deposited into*
24 *the DNA Identification Fund.*

25 (3) *Funds remaining in the county's DNA Collection*
26 *Reimbursement Fund shall only be used to:*

27 (A) *Reimburse the sheriff or other law enforcement agencies*
28 *for the cost of collecting DNA specimens, samples, and print*
29 *impressions pursuant to this chapter.*

30 (B) *Reimburse the costs of expenditures and administrative*
31 *costs made or incurred to comply with the requirements of*
32 *paragraph (5) of subdivision (b) of Section 298 of the Penal Code,*
33 *including the procurement of equipment and software integral to*
34 *confirming that a person qualifies for entry into the Department*
35 *of Justice DNA Database and Databank Program.*

36 (C) *Reimburse the sheriff, police, district attorney, and*
37 *regional crime laboratories for expenditures and administrative*
38 *costs made or incurred in connection with the processing, analysis,*
39 *tracking, and storage of DNA crime scene samples from cases in*
40 *which DNA evidence would be useful in identifying or prosecuting*



1 suspects, including the procurement of equipment and software for
2 the processing, analysis, tracking, and storage of DNA crime scene
3 samples from unsolved cases.

4 (4) The state's DNA Identification Fund shall be administered
5 by the Department of Justice. Funds in the state's DNA
6 Identification Fund, upon appropriation by the Legislature, shall
7 only be used to support DNA collection and testing conducted by
8 the Department of Corrections and the Department of Justice.

9 (c) On or before April 1, 2006, and annually thereafter, the
10 Board of Supervisors of each county shall submit a report to the
11 Legislature and the Department of Justice. The report shall
12 include the total amount of fines collected and allocated pursuant
13 to this section, and the amounts expended by the county for each
14 program authorized pursuant to subparagraph (3) of subdivision
15 (b) of this section. The Department of Justice shall make the
16 reports publicly available on the Department's Web site.

17 (d) All requirements imposed on the Department of Justice
18 pursuant to this measure are contingent upon the availability of
19 funding and are limited by revenue, on a fiscal year basis, received
20 by the Department of Justice pursuant to this section and any
21 additional appropriation approved by the Legislature for purposes
22 related to implementing this measure.

23 (e) The DNA Innocence Protection Fund shall be administered
24 by the Controller, which, upon appropriation by the Legislature,
25 shall disburse the funding to qualified entities, in equal
26 proportions, pursuant to this subdivision on a quarterly basis.
27 Funds in the DNA Innocence Protection Fund shall be used for the
28 purpose of supporting the California Innocence Protection
29 Program as follows:

30 (1) Two-thirds of the moneys in the fund, not to exceed one
31 million two hundred and fifty thousand dollars (\$1,250,000)
32 annually, shall be distributed to private nonprofit organizations
33 meeting guidelines established by the American Bar Association
34 for operating legal clinics using law students. Moneys shall only
35 be used for the purpose of representing persons with a California
36 conviction who are attempting to establish their actual innocence
37 through the use of DNA and other forensic testing. Only those
38 entities that have been in existence for at least two years prior to
39 the effective date of this section shall be eligible to receive funding.
40 The entity shall provide written certification to the Controller that



1 *it meets the requirements of this subdivision at the beginning of*
2 *each fiscal year. In the event there is more than one qualifying*
3 *entity, the Controller shall apportion the funds in equal*
4 *proportions. Entities receiving funding under this program shall*
5 *report to the Legislature no later than April 1, 2006, and annually*
6 *thereafter to include detailed expenditure reports on the use of*
7 *funds provided under this paragraph and on the number of*
8 *requests received and the number of cases in which any of the*
9 *following have occurred:*

10 (A) *A preliminary investigation was conducted.*

11 (B) *A full investigation was conducted and DNA testing was*
12 *sought.*

13 (C) *The appellant was represented in court proceedings or an*
14 *attempt was made to vacate a conviction.*

15 (D) *An appellant's conviction was vacated or overturned as a*
16 *direct result of the representation by the entity or attorney.*

17 (2) *One-third of the moneys in the fund, not to exceed seven*
18 *hundred and fifty thousand dollars (\$750,000) annually, to a*
19 *private nonprofit organization composed of local prosecutors*
20 *which shall use these funds for the exclusive purpose of providing*
21 *a statewide program for district attorneys and law enforcement on*
22 *education and training in ethics and the proper use and storage of*
23 *DNA evidence including technical assistance to local agencies for*
24 *DNA purposes. Entities receiving funding under this paragraph*
25 *shall report to the Legislature no later than April 1, 2006, and*
26 *annually thereafter, on the use of the funds, including a detailed*
27 *expenditure report, a description of the education and training*
28 *conducted, the number of persons participating, any other uses*
29 *hereby permitted.*

30 *SEC. 2. Section 296.3 is added to the Penal Code, to read:*

31 *296.3. A person who is a defendant in a criminal case, or any*
32 *person who has filed a motion pursuant to Section 1405, shall, at*
33 *any time, have the right to petition the court to order the*
34 *appropriate law enforcement or prosecutorial agency to compare*
35 *biological evidence from a crime scene against the DNA databank*
36 *profiles when the biological evidence is not identified as belonging*
37 *to, or is inconclusive as to, the petitioner, victim, or other known*
38 *person.*

39 *SEC. 3. Section 1405 of the Penal Code is amended to read:*

1 1405. (a) A person who was convicted of a felony and is
2 currently serving a term of imprisonment may make a written
3 motion before the trial court that entered the judgment of
4 conviction in his or her case, for performance of forensic
5 deoxyribonucleic acid (DNA) testing.

6 (b) (1) An indigent convicted person may request appointment
7 of counsel to prepare a motion under this section by sending a
8 written request to the court. The request shall include the person's
9 statement that he or she was not the perpetrator of the crime and
10 that DNA testing is relevant to his or her assertion of innocence.
11 The request also shall include the person's statement as to whether
12 he or she previously has had counsel appointed under this section.

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

17 (3) (A) Upon a finding that the person is indigent, he or she has
18 included the information required in paragraph (1), and counsel
19 has not previously been appointed pursuant to this subdivision, the
20 court shall appoint counsel to investigate and, if appropriate, to file
21 a motion for DNA testing under this section and to represent the
22 person solely for the purpose of obtaining DNA testing under this
23 section.

24 (B) Upon a finding that the person is indigent, and counsel
25 previously has been appointed pursuant to this subdivision, the
26 court may, in its discretion, appoint counsel to investigate and, if
27 appropriate, to file a motion for DNA testing under this section and
28 to represent the person solely for the purpose of obtaining DNA
29 testing under this section.

30 (4) Nothing in this section shall be construed to provide for a
31 right to the appointment of counsel in a postconviction collateral
32 proceeding, or to set a precedent for any such right, in any context
33 other than the representation being provided an indigent convicted
34 person for the limited purpose of filing and litigating a motion for
35 DNA testing pursuant to this section.

36 (c) (1) The motion shall be verified by the convicted person
37 under penalty of perjury and shall do all of the following:

38 (A) Explain why the identity of the perpetrator was, or should
39 have been, a significant issue in the case.



1 (B) Explain, in light of all the evidence, how the requested
2 DNA testing would raise a reasonable probability that the
3 convicted person's verdict or sentence would be more favorable if
4 the results of DNA testing had been available at the time of
5 conviction.

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

9 (D) Reveal the results of any DNA or other biological testing
10 that was conducted previously by either the prosecution or
11 defense, if known.

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

14 (2) Notice of the motion shall be served on the Attorney
15 General, the district attorney in the county of conviction, and, if
16 known, the governmental agency or laboratory holding the
17 evidence sought to be tested. Responses, if any, shall be filed
18 within 60 days of the date on which the Attorney General and the
19 district attorney are served with the motion, unless a continuance
20 is granted for good cause.

21 (d) If the court finds evidence was subjected to DNA or other
22 forensic testing previously by either the prosecution or defense, it
23 shall order the party at whose request the testing was conducted to
24 provide all parties and the court with access to the laboratory
25 reports, underlying data, and laboratory notes prepared in
26 connection with the DNA or other biological evidence testing.

27 (e) The court, in its discretion, may order a hearing on the
28 motion. The motion shall be heard by the judge who conducted the
29 trial, or accepted the convicted person's plea of guilty or nolo
30 contendere, unless the presiding judge determines that judge is
31 unavailable. Upon request of either party, the court may order, in
32 the interest of justice, that the convicted person be present at the
33 hearing of the motion.

34 (f) The court shall grant the motion for DNA testing if it
35 determines all of the following have been established:

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

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



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

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

8 (5) The requested DNA testing results would raise a reasonable
9 probability that, in light of all the evidence, the convicted person's
10 verdict or sentence would have been more favorable if the results
11 of DNA testing had been available at the time of conviction. The
12 court in its discretion may consider any evidence whether or not
13 it was introduced at trial.

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

16 (A) The evidence was not tested previously.

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

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

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

24 (g) If the court grants the motion for DNA testing, the court
25 order shall identify the specific evidence to be tested and the DNA
26 technology to be used. The testing shall be conducted by a
27 laboratory mutually agreed upon by the district attorney in a
28 noncapital case, or the Attorney General in a capital case, and the
29 person filing the motion. If the parties cannot agree, the court shall
30 designate the laboratory to conduct the testing and shall consider
31 designating a laboratory accredited by the American Society of
32 Crime Laboratory Directors Laboratory Accreditation Board
33 (ASCLD/LAB).

34 (h) (1) The result of any testing ordered under this section shall
35 be fully disclosed to the person filing the motion, the district
36 attorney, and the Attorney General. If requested by any party, the
37 court shall order production of the underlying laboratory data and
38 notes.

39 (2) *If the result of any testing ordered pursuant to this section*
40 *does not identify the person requesting the testing or the victim the*



1 *court shall enter an order vacating the prior judgment of guilt and*
2 *order a new trial.*

3 (i) (1) The cost of DNA testing ordered under this section shall
4 be borne by the state or the applicant, as the court may order in the
5 interests of justice, if it is shown that the applicant is not indigent
6 and possesses the ability to pay. However, the cost of any
7 additional testing to be conducted by the district attorney or
8 Attorney General shall not be borne by the convicted person.

9 (2) In order to pay the state's share of any testing costs, the
10 laboratory designated in subdivision (e) shall present its bill for
11 services to the superior court for approval and payment. ~~It is the~~
12 ~~intent of the Legislature to appropriate funds for this purpose in the~~
13 ~~2000-01 Budget Act.~~

14 (j) An order granting or denying a motion for DNA testing
15 under this section shall not be appealable, and shall be subject to
16 review only through petition for writ of mandate or prohibition
17 filed by the person seeking DNA testing, the district attorney, or
18 the Attorney General. The petition shall be filed within 20 days
19 after the court's order granting or denying the motion for DNA
20 testing. In a noncapital case, the petition for writ of mandate or
21 prohibition shall be filed in the court of appeal. In a capital case,
22 the petition shall be filed in the California Supreme Court. The
23 court of appeal or California Supreme Court shall expedite its
24 review of a petition for writ of mandate or prohibition filed under
25 this subdivision.

26 (k) DNA testing ordered by the court pursuant to this section
27 shall be done as soon as practicable. However, if the court finds
28 that a miscarriage of justice will otherwise occur and that it is
29 necessary in the interests of justice to give priority to the DNA
30 testing, a DNA laboratory shall be required to give priority to the
31 DNA testing ordered pursuant to this section over the laboratory's
32 other pending casework.

33 (l) DNA profile information from biological samples taken
34 from a convicted person pursuant to a motion for postconviction
35 DNA testing is exempt from any law requiring disclosure of
36 information to the public.

37 (m) Notwithstanding any other provision of law, the right to
38 file a motion for postconviction DNA testing provided by this
39 section is absolute and shall not be waived. This prohibition



1 applies to, but is not limited to, a waiver that is given as part of an
2 agreement resulting in a plea of guilty or nolo contendere.

3 (n) The provisions of this section are severable. If any
4 provision of this section or its application is held invalid, that
5 invalidity shall not affect other provisions or applications that can
6 be given effect without the invalid provision or application.

7 *SEC. 4. Notwithstanding Section 17610 of the Government*
8 *Code, if the Commission on State Mandates determines that this*
9 *act contains costs mandated by the state, reimbursement to local*
10 *agencies and school districts for those costs shall be made*
11 *pursuant to Part 7 (commencing with Section 17500) of Division*
12 *4 of Title 2 of the Government Code. If the statewide cost of the*
13 *claim for reimbursement does not exceed one million dollars*
14 *(\$1,000,000), reimbursement shall be made from the State*
15 *Mandates Claims Fund.*

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**All matter omitted in this version of the
bill appears in the bill as introduced in the
Senate, March 04, 2004 (JR 11)**

