

Introduced by Senator RunnerFebruary 24, 2012

An act to amend Sections 68661, 68662, 68664, and 68665 of, and to add Section 68661.1 to, the Government Code, and to amend Sections 190.8, 1054.9, 1240, 1241, 1335, and 3603 of, and to add Sections 679.022, 1239.1, 1509, 1509.5, and 3604.5 to, the Penal Code, relating to capital cases, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1372, as introduced, Runner. Justice for Murder Victims Act of 2012.

(1) Existing law establishes the California Habeas Corpus Resource Center in the judicial branch of state government and authorizes it to employ up to 34 attorneys who may be appointed by the Supreme Court to represent any person convicted and sentenced to death in this state, who is without counsel, and who is determined by a court to be indigent, for the purposes of instituting and prosecuting postconviction actions in state and federal courts, challenging the legality of the judgment or sentence imposed against that person, and preparing petitions for executive clemency. Among other things, existing law requires the center to establish and periodically update a roster of attorneys qualified as counsel in postconviction proceedings in capital cases. Existing law requires the Supreme Court to offer to appoint counsel to represent all state prisoners subject to a capital sentence for state postconviction proceedings and enter an order to appoint one or more counsel to represent the prisoner in postconviction state proceedings upon a finding that the prisoner is indigent or unable to completely decide whether to accept or reject that offer. Existing law grants the center the power to

provide legal or other advice or, to the extent not otherwise available, any other assistance to the appointed counsel in postconviction proceedings as is appropriate.

This bill would provide that the superior court which imposed the death sentence shall offer to appoint counsel to represent state prisoners subject to a capital sentence for purposes of state postconviction proceedings, and would require the superior court to appoint one or more counsel to represent the prisoner in a state habeas corpus proceeding. The bill would provide that the center shall annually recommend attorneys to the Supreme Court for inclusion in a roster of attorneys qualified as counsel in postconviction proceedings in capital cases, provided that the final determination of whether to include an attorney in a roster shall be made by the Supreme Court and not delegated to the center. This bill would remove the power of the center to provide assistance other than legal or other advice.

The bill would provide that the center may only represent a person sentenced to death on one federal habeas corpus petition, and only if certain requirements are met, as specified. The bill would require that every attorney or organization receiving appointments or a contract to represent indigent defendants in criminal cases in the superior court accept appointments if qualified to do so as a condition of receiving the appointments or contract, as provided.

(2) Existing law requires that the executive director of the California Habeas Corpus Resource Center be chosen by a 5-member board of directors and confirmed by the Senate, as provided.

This bill would eliminate the provisions regarding the 5-member board of directors and instead require the executive director to be appointed by the Supreme Court. The bill would provide that the executive director shall receive the salary that is specified in existing law for the State Public Defender and would require all other attorneys employed by the center to be compensated at the same level as comparable positions in the office of the State Public Defender.

(3) Existing law requires the Judicial Counsel and the Supreme Court to adopt binding and mandatory competency standards for the appointment of counsel in death penalty direct appeals and habeas corpus proceedings.

This bill would require the Judicial Counsel and the Supreme Court, in establishing the standards, to consider the qualifications needed to achieve competent representation and would provide that experience requirements shall not be limited to defense experience. If the standards

promulgated include the completion of approved training, the bill would require that the entity providing the training make the training available to any member of the State Bar who is not currently a prosecutor, and make a copy of all written materials and any audio or video recordings available to the State Law Library. The bill would require the Judicial Council to reconsider its rule regarding the minimum qualifications for attorneys appointed by the Supreme Court in death penalty appeals and habeas corpus proceedings related to sentences of death and to promulgate an amendment to that rule within 6 months.

(4) Existing law requires the California Habeas Corpus Resource Center to report annually to the Legislature, the Governor, and the Supreme Court on the status of appointment of counsel for indigent persons in postconviction capital cases, and on the operations of the center.

This bill would require the report to list all cases in which the center is providing representation. For each case that has been pending for more than one year in any court, the bill would require the report to state the reason for the delay and actions the center is taking to bring the case to completion. The bill would require the report to be made permanently available on the center's Internet Web site or by another medium providing equal or better access to the public.

(5) Existing law requires the record on appeal to be expeditiously certified in 2 stages, first for completeness and 2nd for accuracy, in any case in which the death sentence has been imposed. Existing law requires the clerk of the superior court to provide trial counsel copies of the clerk's transcript within 30 days of the imposition of the death sentence. Existing law requires trial counsel to alert the court's attention to any errors in the transcripts incidentally discovered by counsel while reviewing them in the normal course of trial preparation. Existing law requires the trial court to certify the record for completeness and for incorporation of all corrections no later than 90 days after entry of the imposition of the death sentence unless good cause is shown, except that existing law provides this time period may be extended if the trial transcript exceeds 10,000 pages.

Existing law requires the trial court to hold one or more hearings for trial counsel to address the completeness of the record and any outstanding errors that have come to their attention and to certify that they have reviewed all docket sheets to ensure that the record contains transcripts for any proceedings, hearings, or discussions that are required to be reported. Existing law requires the trial court to certify the record

for accuracy no later than 120 days after the record has been delivered to appellate counsel, except that existing law provides that this time may be extended, as provided.

This bill would delete the requirement that the record be certified in 2 stages for completeness and accuracy. The bill would require the superior court to provide trial counsel with copies of the clerk's transcript, the reporter's transcript, and a comprehensive journal of proceedings, as provided. The bill would require trial counsel to undertake to identify and promptly alert the court's attention to any errors in the transcript of proceedings and to provide a list of any proposed corrections to the reporter's transcript. The bill would remove the exception to the 90-day certification requirement for proceedings in which the trial transcript exceeds 10,000 pages. The bill would require the clerk of the trial court to deliver a copy of the record on appeal to the Attorney General.

The bill would provide that no additional motion for correcting the record may be entertained after the record is certified, except that either party may file in the Supreme Court a motion for referral to the trial court for correction of a material error in the record, as provided. The bill would require the Supreme Court to rule on the motion not later than 21 days after it is filed.

The bill would specify certain rights that the victim in a capital crime shall have, including the right not to be excluded from public court proceedings, the right to a prompt completion of all postconviction proceedings, the right to be treated with fairness and respect, and the right to notice of certain hearings, among others, as specified. The bill would specify that a prompt completion of postconviction proceedings is completion within 3 years from the date of judgment in a typical capital case, with exceptions, as provided. The bill would specify how the capital crime victim may assert his or her rights.

(6) Existing law authorizes the Supreme Court to appoint counsel other than the State Public Defender in cases where a judgment of death has been rendered.

This bill would instead prohibit the State Public Defender from being appointed in a noncapital case at any time when there is a backlog of capital cases awaiting appointment of more than 3 months and the State Public Defender is unable to take all of the cases for which the State Public Defender would otherwise be appointed. The bill would require the clerk of the court appointing counsel to notify the State Public Defender of a case promptly upon docketing, and would require the

State Public Defender to notify the court if the office is unable to represent the appellant within 30 days. The bill would require the court to promptly issue an order appointing the State Public Defender as counsel for the appellant if notice is not received within the 30 days. The bill would require any attorney who is qualified for appointment in capital appeals to agree to accept any appointments as a condition of remaining on the list of attorneys for appointment by a court of appeals in noncapital cases, as provided.

(7) Existing law provides that when counsel other than the public defender has been appointed by the Supreme Court or by a court of appeal to represent a party to any appeal or proceeding the counsel shall receive a reasonable sum for compensation and necessary expenses, as provided.

This bill would provide that in capital appeals the Supreme Court may pay a bonus of up to 15% of the compensation if counsel has filed all pleadings within the time limits specified in the rules of court without extensions, and may reduce compensation up to 15% if counsel fails to file pleadings on time or requires excessive extensions of time.

(8) Existing law authorizes the conditional examination of material witnesses for the defendant or the people when the witness is about to leave the state, is so sick or infirm that he or she will be unable to attend the trial, or is a person 65 years of age or older, or a dependent adult, or when there is evidence that the life of the witness is in jeopardy. Existing law states that the provisions of law regarding conditional examination apply in all cases other than those for which the punishment may be death.

This bill would remove the limitation in cases for which the punishment may be death in regard to having witnesses examined conditionally.

(9) Existing law provides that every person unlawfully imprisoned or restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint. Existing law requires that the person upon whom the writ is served to file a return. Existing law requires that if the party is held under illegal restraint or custody, he or she must be discharged, and if not, he or she must be restored to the care or custody of the person entitled thereto. Existing law provides that an appeal may be taken from a final order of a superior court upon the return of a writ of habeas corpus discharging the defendant to the court of appeal in all criminal cases, except that existing law requires

the appeal to be to the Supreme Court in cases where judgment of death has been rendered.

This bill would provide the exclusive procedure for collateral attack on a judgment of death. The bill would require any petition for writ of habeas corpus filed by a person in custody pursuant to a judgment of death to be filed in, or transferred to, the court that imposed the sentence unless good cause is shown for the petition to be heard by another court. The bill would require that the prisoner be offered counsel, and that either party may appeal the decision on the petition to the Supreme Court. The bill would prohibit a successive petition to be used as a means of reviewing a denial of habeas relief. The bill would require the initial petition to be filed within one year of appointing counsel or of the defendant's rejecting of counsel, unless the court finds, by a preponderance of all available evidence that the defendant is actually innocent of the crime. The bill would require that a successive petition claiming innocence to disclose all material information relating to guilt in possession of the petitioner. The bill would provide that counsel shall not raise frivolous issues.

(10) Existing law requires, on a prosecution of a postconviction writ of habeas corpus or motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, that the court order the defendant challenging the judgment to be provided reasonable access to any discovery materials in the possession of the prosecution and law enforcement to which the defendant would have been entitled to at the time of trial.

This bill would revise and recast this provision to require that upon the appointment of counsel or upon the filing of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or life in prison without the possibility of parole has been imposed, the court which made the appointment or in which the proceeding is pending may order that the defendant challenging the judgment to be provided reasonable access to any discovery materials in the current possession of the prosecution and law enforcement authorities that the defendant actually received prior to or during trial. The bill would state that these provisions do not relieve the prosecution of any ethical obligation to inform the appropriate authority of information that casts doubt upon the correctness of the judgment and conviction.

The bill would require that, in any postconviction proceeding in which the court requests any pleading in response to a claim alleging that a

defendant was denied his or her right to effective assistance of counsel, that the respondent is entitled to discovery of the defendant's records relevant to the claim of ineffective assistance of counsel, and would provide that an attorney-client privilege of confidential communications would not prevent disclosure of communications relevant to the issue of ineffective assistance of counsel. The bill would provide that no work product privilege exists if the work product is relevant to an issue of ineffective assistance of counsel, but would allow the holder of a privilege to request an in-camera hearing to determine whether the defendant's records are subject to discovery.

(11) Existing law requires a judgment of death to be executed within the walls of the California State Prison at San Quentin.

This bill would instead require the judgment of death to be executed within the walls of a state prison to be determined by the Secretary of the Department of Corrections and Rehabilitation. The bill would provide that this determination, and any standards, procedures, or regulations promulgated by the department in regard to the administration of the penalty of death, would not be subject to review by the Office of Administrative Law, as provided.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. This act shall be known, and may be cited, as the
2 Justice for Murder Victims Act of 2012.
3 SEC. 2. The Legislature of California finds and declares that
4 the review of capital cases in this state is taking far longer than is
5 needed for a fair adjudication of the claims, that the delay is
6 contrary to the right of victims and their families to a prompt
7 conclusion of the case, that the delay impairs the deterrent effect
8 of capital punishment, costing innocent lives, and that the delay
9 constitutes a denial of justice in the worse criminal cases. The
10 length and number of reviews and the cost of incarceration during
11 the needlessly extended review process impose unnecessary costs
12 on the incarceration during the extended review process and impose
13 unnecessary costs on the state. Reforms in the review process are
14 needed to bring these cases to a prompt, fair conclusion.

1 SEC. 3. Section 68661 of the Government Code is amended
2 to read:

3 68661. There is hereby created in the judicial branch of state
4 government the California Habeas Corpus Resource Center, which
5 shall have all of the following general powers and duties:

6 (a) To employ up to 34 attorneys who may be appointed by the
7 ~~Supreme Court~~ pursuant to Section 68662 to represent any person
8 convicted and sentenced to death in this state who is without
9 counsel, and who is determined by a court of competent jurisdiction
10 to be indigent, for the purpose of instituting and prosecuting
11 postconviction actions in the state and federal courts, challenging
12 the legality of the judgment or sentence imposed against that
13 person, *subject to the limitations specified in Section 68661.1*, and
14 preparing petitions for executive clemency. An appointment may
15 be concurrent with the appointment of the State Public Defender
16 or other counsel for purposes of direct appeal under Section 11 of
17 Article VI of the California Constitution.

18 (b) To seek reimbursement for representation and expenses
19 pursuant to Section 3006A of Title 18 of the United States Code
20 when providing representation to indigent persons in the federal
21 courts and process those payments via the Federal Trust Fund.

22 (c) To work with the Supreme Court in recruiting members of
23 the private bar to accept death penalty habeas corpus case
24 appointments.

25 (d) ~~To establish and periodically update~~ *recommend attorneys*
26 *on an annual basis to the Supreme Court for inclusion in a roster*
27 *of attorneys qualified as counsel in postconviction proceedings in*
28 *capital cases, provided that the final determination of whether to*
29 *include an attorney in the roster shall be made by the Supreme*
30 *Court and not delegated to the center.*

31 (e) To establish and periodically update a roster of experienced
32 investigators and experts who are qualified to assist counsel in
33 postconviction proceedings in capital cases.

34 (f) To employ investigators and experts as staff to provide
35 services to appointed counsel upon request of counsel, provided
36 that when the provision of those services is to private counsel under
37 appointment by the ~~Supreme Court~~, those services shall be pursuant
38 to contract between appointed counsel and the center.

39 (g) To provide legal or other advice ~~or, to the extent not~~
40 ~~otherwise available, any other assistance~~ to appointed counsel in

1 postconviction proceedings as is appropriate when not prohibited
2 by law.

3 (h) To develop a brief bank of pleadings and related materials
4 on significant, recurring issues that arise in postconviction
5 proceedings in capital cases and to make those briefs available to
6 appointed counsel.

7 (i) To evaluate cases and recommend assignment by the court
8 of appropriate attorneys.

9 (j) To provide assistance and case progress monitoring as
10 needed.

11 (k) To timely review case billings and recommend compensation
12 of members of the private bar to the court.

13 (l) The center shall report annually to the *people, by way of its*
14 *Internet Web site or other medium providing equal or better public*
15 *access, the Legislature, the Governor, and the Supreme Court on*
16 *the status of the appointment of counsel for indigent persons in*
17 *postconviction capital cases, and on the operations of the center.*
18 ~~On or before January 1, 2000, the Legislative Analyst's Office~~
19 ~~shall evaluate the available reports.~~ *The report shall list all cases*
20 *in which the center is providing representation. For each case that*
21 *has been pending for more than one year in any court, the report*
22 *shall state the reason for the delay and the actions the center is*
23 *taking to bring the case to completion. The center shall make the*
24 *report permanently available to the public on its Internet Web site*
25 *or by another medium providing equal or better public access.*

26 SEC. 4. Section 68661.1 is added to the Government Code, to
27 read:

28 68661.1. (a) The center may represent a person sentenced to
29 death on one federal habeas corpus petition if, and only if, all of
30 the following requirements are met:

31 (1) The center was appointed to represent that person on a state
32 petition for habeas corpus.

33 (2) The center is appointed for that purpose by the federal court.

34 (3) The executive director determines and certifies to the
35 Supreme Court that compensation from the federal court will fully
36 cover the cost of representation.

37 (b) Neither the center nor any other person or entity receiving
38 state funds shall use state resources to attack any judgment by a
39 state court in a capital case in a federal court, other than review in

1 the United States Supreme Court pursuant to Section 1257 of Title
2 28 of the United States Code.

3 (c) The center is not authorized to represent any person on
4 successive habeas corpus petitions or in any action other than
5 habeas corpus that constitutes a collateral attack on the judgment
6 or seeks to delay or prevent its execution. The center shall not
7 engage in any other litigation or expend funds in any form of
8 advocacy other than as expressly authorized by this section or
9 Section 68661.

10 SEC. 5. Section 68662 of the Government Code is amended
11 to read:

12 68662. (a) ~~The Supreme Court~~ *superior court that imposed*
13 *the sentence* shall offer to appoint counsel to represent all state
14 prisoners subject to a capital sentence for purposes of state
15 postconviction proceedings, and shall enter an order containing
16 one of the following:

17 (a)

18 (1) The appointment of one or more counsel to represent the
19 prisoner in ~~postconviction state~~ *proceedings pursuant to Section*
20 *1509 of the Penal Code* upon a finding that the person is indigent
21 and has accepted the offer to appoint counsel or is unable to
22 competently decide whether to accept or reject that offer.

23 (b)

24 (2) A finding, after a hearing if necessary, that the prisoner
25 rejected the offer to appoint counsel and made that decision with
26 full understanding of the legal consequences of the decision.

27 (c)

28 (3) The denial to appoint counsel upon a finding that the person
29 is not indigent.

30 (b) *Every attorney or organization receiving appointments or*
31 *a contract to represent indigent defendants in criminal cases*
32 *pursuant to this section shall, as a condition of the appointments*
33 *or contract, accept any appointment if qualified to do so. The*
34 *superior court may suspend operation of this requirement if it finds*
35 *that there is no more than a six-month delay in the appointment*
36 *of counsel in any capital case within its jurisdiction, but shall lift*
37 *the suspension if a delay of six-months or more develops. The*
38 *county public defender may be appointed pursuant to this section.*

39 SEC. 6. Section 68664 of the Government Code is amended
40 to read:

1 68664. (a) The center shall be managed by an executive
2 director who shall be responsible for the day-to-day operations of
3 the center.

4 (b) The executive director shall be chosen by ~~a five-member~~
5 ~~board of directors and confirmed by the Senate. Each Appellate~~
6 ~~Project shall appoint one board member, all of whom shall be~~
7 ~~attorneys. However, no attorney who is employed as a judge,~~
8 ~~prosecutor, or in a law enforcement capacity shall be eligible to~~
9 ~~serve on the board. The executive director shall serve at the will~~
10 ~~of the board~~ *the Supreme Court and shall serve at the will of the*
11 *Supreme Court.*

12 (c) ~~Each member of the board shall be appointed to serve a~~
13 ~~four-year term, and vacancies shall be filled in the same manner~~
14 ~~as the original appointment. Members of the board shall receive~~
15 ~~no compensation, but shall be reimbursed for all reasonable and~~
16 ~~necessary expenses incidental to their duties. The first members~~
17 ~~of the board shall be appointed no later than February 1, 1998.~~

18 (d)

19 (c) The executive director shall meet the appointment
20 qualifications of the State Public Defender as specified in Section
21 15400.

22 (d) *The executive director shall ensure that all matters in which*
23 *the center provides representation are completed as expeditiously*
24 *as possible, consistent with providing effective representation. All*
25 *representation by the center and all assistance provided to other*
26 *counsel shall be consistent with the requirements of subdivision*
27 *(g) of Section 1509 of the Penal Code.*

28 (e) The executive director shall receive the salary that shall be
29 specified for the ~~executive director~~ *State Public Defender* in
30 Chapter 6 (commencing with Section 11550) of Part 1 of Division
31 3 of Title 2. *All attorneys employed by the center shall be*
32 *compensated at the same level as positions with the same or similar*
33 *experience requirements in the office of the State Public Defender.*

34 SEC. 7. Section 68665 of the Government Code is amended
35 to read:

36 68665. (a) The Judicial Council and the Supreme Court shall
37 adopt, by rule of court, binding and mandatory competency
38 standards for the appointment of counsel in death penalty direct
39 appeals and habeas corpus proceedings. *In establishing the*
40 *standards, the Judicial Council and the Supreme Court shall*

1 *consider the qualifications needed to achieve competent*
2 *representation, the need to avoid unduly restricting the available*
3 *pool of attorneys in order to provide a timely appointment, and*
4 *the standards needed to qualify pursuant to Chapter 154*
5 *(commencing with Section 2261) of Part VI of Title 28 of the United*
6 *States Code. Experience requirements shall not be limited to*
7 *defense experience.*

8 *(b) If the standards promulgated pursuant to subdivision (a)*
9 *include completion of approved training, the Judicial Counsel or*
10 *Supreme Court, as the case may be, shall require, as a condition*
11 *of approval, that the entity providing the training agree to all of*
12 *the following:*

13 *(1) The training shall be open to any member of the State Bar*
14 *who is not presently employed as a prosecutor.*

15 *(2) All instructions regarding the duties of counsel shall be*
16 *consistent with subdivision (g) of Section 1509 of the Penal Code*
17 *and subdivision (c) of Section 1239.1 of the Penal Code.*

18 *(3) Within 30 days of the completion of training, a copy of all*
19 *written materials and any audio or video recordings will be*
20 *delivered to the State Law Library where they may be viewed by*
21 *any person.*

22 *(c) Immediately upon enactment of this act amending this*
23 *subdivision, the Judicial Counsel shall begin reconsideration of*
24 *Rule 8.605 of the Rules of Court, and the council shall promulgate*
25 *an amendment to that rule in accordance with subdivisions (a)*
26 *and (b) within six months.*

27 SEC. 8. Section 190.8 of the Penal Code is amended to read:

28 190.8. (a) In any case in which a death sentence has been
29 imposed, the record on appeal shall be expeditiously certified ~~in~~
30 ~~two stages, the first for completeness and the second for accuracy,~~
31 ~~as provided by this section.~~ The trial court ~~may~~ *shall* use all
32 reasonable means to ensure compliance with all applicable statutes
33 and rules of court pertaining to record certification in capital
34 appeals, including, but not limited to, the imposition of sanctions.

35 (b) Within 30 days of the imposition of the death sentence, the
36 clerk of the superior court shall provide to trial counsel copies of
37 the clerk's transcript ~~and shall deliver the transcript as provided~~
38 ~~by the court reporter, the reporter's transcript, and a~~
39 ~~comprehensive journal of proceedings, prepared on a form~~
40 *approved by the Judicial Council, listing every date on which*

1 *proceedings culminating in the judgment occurred and noting the*
2 *duration and nature of each session, the names of the court*
3 *reporters present at each session, and the page length and volume*
4 *designation of all transcriptions prepared in connection with each*
5 *session. Trial counsel shall promptly notify the court if he or she*
6 *has not received the transcript within 30 days.*

7 (c) (1) During the course of a trial in which the death penalty
8 is being sought, trial counsel shall *undertake to identify and*
9 *promptly alert the court's attention to any errors in the transcripts*
10 ~~*incidentally discovered by counsel while reviewing them in the*~~
11 ~~*ordinary course of trial preparation transcripts of the proceedings.*~~
12 The court shall periodically request that trial counsel provide a list
13 ~~*of errors in the trial any proposed corrections to the reporter's*~~
14 *transcript during the course of trial and may hold hearings in*
15 *connection therewith.*

16 **Corrections**

17 (2) *Corrections* to the record shall not be required to include
18 immaterial typographical errors that cannot conceivably cause
19 confusion.

20 (d) The trial court shall certify the record ~~*for completeness and*~~
21 ~~*for incorporation of all corrections, as provided by subdivision*~~
22 ~~*(e), no later than 90 days after entry of the imposition of the death*~~
23 ~~*sentence unless good cause is shown. However, this time period*~~
24 ~~*may be extended for proceedings in which the trial transcript*~~
25 ~~*exceeds 10,000 pages in accordance with the timetable set forth*~~
26 ~~*in, or for good cause pursuant to the procedures set forth in, the*~~
27 ~~*rules of court adopted by the Judicial Council.*~~

28 (e) Following the imposition of the death sentence and prior to
29 the deadline set forth in subdivision (d), the trial court shall hold
30 one or more hearings for trial counsel to address the completeness
31 of the record and ~~*any outstanding errors that have come to their*~~
32 ~~*attention proposed corrections,*~~ and to certify that they have
33 reviewed all docket sheets to ensure that the record contains
34 *complete and correct* transcripts for ~~*any*~~ *all* proceedings, hearings,
35 ~~*or*~~ *and* discussions that are required to be reported and that have
36 occurred in the course of the case in any court, as well as all
37 documents required by this code and the rules adopted by the
38 Judicial Council.

39 (f) The clerk of the trial court shall deliver a copy of the record
40 on appeal to *the Attorney General and the appellant's* appellate

1 counsel when the clerk receives notice of counsel's appointment
2 or retention, or when the record is certified for completeness under
3 subdivision (d), whichever is later.

4 ~~(g) The trial court shall certify the record for accuracy no later~~
5 ~~than 120 days after the record has been delivered to appellate~~
6 ~~counsel. However, this time may be extended pursuant to the~~
7 ~~timetable and procedures set forth in the rules of court adopted by~~
8 ~~the Judicial Council. The trial court may hold one or more status~~
9 ~~conferences for purposes of timely certification of the record for~~
10 ~~accuracy, as set forth in the rules of court adopted by the Judicial~~
11 ~~Council.~~

12 *(g) After the record is certified as provided in subdivision (d),*
13 *no additional motions for correcting the record shall be entertained*
14 *except as provided in subdivision (h).*

15 *(h) Either party may file a motion in the Supreme Court for*
16 *referral to the trial court for correction of a material error in the*
17 *record. The motion shall (1) specify the particular correction*
18 *sought, (2) identify the basis for the moving party's belief that the*
19 *proposed correction will accurately reflect what transpired at*
20 *trial, and (3) explain both how and why the existence of the*
21 *asserted error requiring correction could not reasonably have*
22 *been discovered within the period prescribed in subdivision (d).*
23 *The motion shall be made no later than five days after filing the*
24 *moving party's principal brief, except that a motion may be made*
25 *later if the moving party demonstrates by clear and convincing*
26 *evidence that failure to effect the corrections will result in a*
27 *miscarriage of justice.*

28 *(i) The Supreme Court shall rule on any motion under*
29 *subdivision (h) not later than 21 days after it is filed. That motion*
30 *may be granted only upon a showing of good cause. If the motion*
31 *is granted, the Supreme Court shall specify the proposed*
32 *corrections that shall be considered by the trial court. The trial*
33 *court shall, within 30 days, or any shorter period specified by the*
34 *Supreme Court, issue an order granting or denying the proposed*
35 *corrections referred for the trial court's consideration.*

36 ~~(h)~~

37 *(j) The Supreme Court shall identify in writing to the Judicial*
38 *Council any case that has not met the time limit for certification*
39 *of the record for completeness under subdivision (d) or for accuracy*
40 *under subdivision (g), and shall identify those cases, and its*

1 reasons, for which it has granted an extension of time. The Judicial
2 Council shall include this information in its annual report to the
3 Legislature.

4 ~~(i)~~

5 (k) As used in this section, “trial counsel” means both the
6 prosecution and the defense counsel in the trial in which the
7 sentence of death has been imposed.

8 ~~(j)~~

9 (l) This section shall be implemented pursuant to rules of court
10 adopted by the Judicial Council.

11 ~~(k)~~

12 (m) This section shall only apply to those proceedings in which
13 a sentence of death has been imposed following a trial that was
14 commenced on or after January 1, 1997.

15 (n) *The amendments made to this section by the act adding this*
16 *subdivision shall apply only to cases in which the trial commenced*
17 *on or after the effective date of the act amending this section.*

18 SEC. 9. Section 679.022 is added to the Penal Code, to read:

19 679.022. (a) In addition to the rights otherwise provided by
20 law, a capital crime victim shall have the following rights:

21 (1) The right not to be excluded from any public court
22 proceedings in any capital postconviction proceeding, unless the
23 court, after receiving clear and convincing evidence, determines
24 the proposed testimony by the capital crime victim would be
25 materially altered if the capital crime victim heard other testimony
26 at that proceeding.

27 (2) The right to prompt completion of all postconviction
28 proceedings, and, if the judgment is affirmed, execution of the
29 judgment within a reasonable time.

30 (3) The right to be treated with fairness and respect for the
31 capital crime victim’s dignity and privacy.

32 (4) The right to accurate and timely notice of any public capital
33 postconviction proceedings involving a defendant who injured the
34 victim.

35 (5) The right to accurate and timely notice of the initiation of
36 any capital postconviction proceedings involving a defendant who
37 injured the victim.

38 (b) For purposes of this section, a “capital crime victim” means
39 any person within the definition of a victim in subdivision (e) of
40 Section 28 of Article I of the California Constitution with regard

1 to the crime for which a sentence of death has been imposed, any
2 other crime which was jointly tried in conjunction with the trial
3 of a capital case, or of any other crime which was alleged as a
4 special circumstance under paragraph (2) or (3) of subdivision (a)
5 of Section 190.2, or introduced as evidence pursuant to subdivision
6 (b) or (c) of Section 190.3.

7 (c) For purposes of this section, a “capital case” is a proceeding
8 in which the defendant was sentenced to death pursuant to Section
9 190.2 and related sections.

10 (d) For the purpose of implementing paragraph (2) of
11 subdivision (a) and paragraph (9) of subdivision (b) of Section 28
12 of Article I of the California Constitution, a prompt completion of
13 postconviction proceedings in state courts, including the appeal
14 pursuant to Section 1239, the habeas corpus proceeding pursuant
15 to Section 1509, and the appeal of the habeas proceeding, is
16 completion within three years from the date of judgment in a
17 typical capital case. Additional time may be reasonable for this
18 purpose if needed to resolve a genuine question of guilt of the
19 offense or in other circumstances which make the case unusual
20 relative to other capital cases, but the courts shall use all available
21 means to minimize any additional delay. The Judicial Council shall
22 continuously monitor the processing of capital cases. Every three
23 years, the Judicial Council shall report to the people and the
24 Legislature on the status of the judiciary’s compliance with the
25 timeliness requirements and shall adopt rules and make
26 recommendations for legislation needed to correct any deficiency.

27 (e) A capital crime victim may assert his or her rights in any
28 state court in which a capital postconviction proceeding is pending.

29 (1) A capital postconviction proceeding is defined as an
30 automatic appeal pursuant to Section 1239 of the Penal Code, a
31 state habeas corpus proceeding in which a capital defendant is
32 seeking relief from a judgment of death, or any other state court
33 postconviction proceeding relating to a judgment of death.

34 (2) A capital crime victim may only assert his or her rights in
35 the court in which a capital postconviction proceeding is pending.
36 The court shall take up and resolve the victim’s matter forthwith.
37 If relief is denied, the capital crime victim may petition the
38 Supreme Court for relief.

39 (3) If the capital postconviction proceeding is pending in the
40 Supreme Court, the capital crime victim may file a motion asserting

1 his or her rights. The court shall take up and deal with that motion
2 forthwith. If the motion is denied, the capital crime victim may
3 file a complaint with the Commission on Judicial Performance.

4 (4) A capital crime victim may assert his or her rights in a capital
5 postconviction proceeding pursuant to Section 190.8 of the Penal
6 Code in either the court of judgment or the Supreme Court.

7 (5) All motions and their dispositions filed pursuant to this
8 section shall be reported to the Judicial Council and the Legislature
9 on an annual basis. A report to the Legislature shall be submitted
10 in compliance with Section 9795 of the Government Code.

11 (f) The Judicial Council may establish necessary rules of court
12 for implementation of this section.

13 SEC. 10. Section 1054.9 of the Penal Code is amended to read:

14 1054.9. (a) ~~Upon the prosecution~~ *Following appointment of*
15 *counsel pursuant to subdivision (b) of Section 1509 or after the*
16 *filing* of a postconviction writ of habeas corpus or a motion to
17 vacate a judgment in a case in which a sentence of death or of life
18 in prison without the possibility of parole has been imposed, and
19 on a showing that good faith efforts to obtain discovery materials
20 from trial counsel were made and were unsuccessful, the court
21 ~~shall~~ *which made the appointment or in which the proceeding is*
22 *pending may*, except as provided in subdivision (c), order that the
23 defendant be provided reasonable access to any of the *discovery*
24 materials described in subdivision (b).

25 (b) For purposes of this section, “discovery materials” means,
26 *and is limited to*, materials in the *current* possession of the
27 prosecution and law enforcement authorities ~~to~~ which the same
28 defendant ~~would have been entitled at time of trial~~ *actually received*
29 *prior to or during trial*.

30 (c) In response to a writ or motion satisfying the conditions in
31 subdivision (a), court may order that the defendant be provided
32 access to physical evidence for the purpose of examination,
33 including, but not limited to, any physical evidence relating to the
34 investigation, arrest, and prosecution of the defendant only upon
35 a showing that there is good cause to believe that access to physical
36 evidence is reasonably necessary to the defendant’s effort to obtain
37 relief. The procedures for obtaining access to physical evidence
38 for purposes of postconviction DNA testing are provided in Section
39 1405, and nothing in this section shall provide an alternative means
40 of access to physical evidence for those purposes.

1 (d) Nothing in this section relieves the prosecution of any ethical
2 obligation to inform the appropriate authority of information that
3 casts doubt upon the correctness of the judgment and conviction.

4 (e) In any postconviction proceeding in which the court requests
5 any pleading in response to a claim alleging that a defendant was
6 denied his or her right to the effective assistance of counsel under
7 either the United States Constitution or the California Constitution,
8 the respondent is entitled to discovery of the defendant's records
9 relevant to the claim of ineffective assistance of counsel. Any
10 attorney-client privilege of confidential communication shall not
11 prevent disclosure of communications that are relevant to an issue
12 of ineffective assistance of counsel by the lawyer or the client. No
13 work product privilege exists if the work product is relevant to an
14 issue of ineffective assistance of counsel. The holder of any
15 privilege may request an in-camera hearing in the court in which
16 a postconviction proceeding is pending to determine whether the
17 defendant's records are subject to discovery pursuant to this
18 subdivision. The court shall promptly hear and determine whether
19 the documents are privileged.

20 (d)

21 (f) The actual costs of examination or copying pursuant to this
22 section shall be borne or reimbursed by the ~~defendant~~ party
23 receiving the discovery documents.

24 SEC. 11. Section 1239.1 is added to the Penal Code, to read:

25 1239.1. (a) An appeal pursuant to Section 1239, whether
26 automatic or by notice, may be voluntarily abandoned by the
27 appellant.

28 (b) The appellate court may require the appellant to be
29 represented by counsel, but counsel shall respect the right of the
30 client to decide the goals of representation. The authority to decide
31 whether to challenge the guilty verdict, sentence, or both, or
32 neither, belongs exclusively to the client.

33 (c) The duty of counsel on appeal is to identify the central issue
34 or issues and focus on the appeal on those issues. Counsel shall
35 not raise frivolous issues.

36 SEC. 12. Section 1240 of the Penal Code is amended to read:

37 1240. (a) When in a proceeding falling within the provisions
38 of Section 15421 of the Government Code a person is not
39 represented by a public defender acting pursuant to Section 27706
40 of the Government Code or other counsel and he is unable to afford

1 the services of counsel, the court shall appoint the State Public
2 Defender to represent the person except as follows:

3 (1) The court shall appoint counsel other than the State Public
4 Defender when the State Public Defender has refused to represent
5 the person because of conflict of interest or other reason.

6 (2) The court may, in its discretion, appoint either the State
7 Public Defender or the attorney who represented the person at his
8 trial when the person requests the latter to represent him on appeal
9 and the attorney consents to the appointment. In unusual cases,
10 where good cause exists, the court may appoint any other attorney.

11 (3) A court may appoint a county public defender, private
12 attorney, or nonprofit corporation with which the State Public
13 Defender has contracted to furnish defense services pursuant to
14 Government Code Section 15402.

15 ~~(4) When a judgment of death has been rendered the Supreme
16 Court may, in its discretion, appoint counsel other than the State
17 Public Defender or the attorney who represented the person at trial.~~

18 *(4) The State Public Defender shall not be appointed in a
19 noncapital case at any time when there is a backlog of capital
20 cases awaiting appointment of more than three months, and the
21 State Public Defender is unable, by reason of workload, to take
22 all of the cases that the State Public Defender would otherwise be
23 appointed as provided in subdivision (b).*

24 *(b) Promptly upon docketing an appeal in a capital case, the
25 clerk of the court appointing counsel shall notify the State Public
26 Defender of the case. Within 30 days, the State Public Defender
27 shall notify the court if the office is unable to represent the
28 appellant by reason of a conflict, workload, or other good cause.
29 If the court does not receive such a notice, it shall promptly issue
30 an order appointing the State Public Defender as counsel for the
31 appellant.*

32 *(c) An attorney who is qualified for appointment in a capital
33 appeal shall accept appointments to capital appeals as a condition
34 of remaining on the list of attorneys for appointment by the
35 appellate court in noncapital cases. The attorney shall handle one
36 case every three years to meet the requirements of this subdivision.
37 An attorney who is not yet qualified for appointment in capital
38 appeals shall make good faith efforts to become qualified as a
39 condition of remaining on the list of attorneys for appointment by
40 the appellate court in noncapital cases. The Supreme Court may*

1 *suspend these requirements if it determines that there is no more*
2 *than a six-month delay in the appointment of counsel for capital*
3 *appeals, on average, but shall reinstate these requirements if an*
4 *average delay of six months or more develops.*

5 (b)

6 (d) If counsel other than the State Public Defender is appointed
7 pursuant to this section, he may exercise the same authority as the
8 State Public Defender pursuant to Chapter 2 (commencing with
9 Section 15420) of Part 7 of Division 3 of Title 2 of the Government
10 Code.

11 SEC. 13. Section 1241 of the Penal Code is amended to read:

12 1241. (a) In any case in which counsel other than a public
13 defender has been appointed by the Supreme Court or by a court
14 of appeal to represent a party to any appeal or proceeding, such
15 counsel shall receive a reasonable sum for compensation and
16 necessary expenses, the amount of which shall be determined by
17 the court and paid from any funds appropriated to the Judicial
18 Council for that purpose. Claim for the payment of such
19 compensation and expenses shall be made on a form prescribed
20 by the Judicial Council and presented by counsel to the clerk of
21 the appointing court. After the court has made its order fixing the
22 amount to be paid the clerk shall transmit a copy of the order to
23 the State Controller who shall draw his warrant in payment thereof
24 and transmit it to the payee.

25 (b) *In capital appeals, the Supreme Court may pay a bonus of*
26 *up to 15 percent of the compensation if counsel has filed all*
27 *pleadings within the time limits specified in the rules of court*
28 *without extensions. The court may reduce the compensation by as*
29 *much as 15 percent if counsel fails to file pleadings on time or*
30 *requires excessive extensions of time.*

31 SEC. 14. Section 1335 of the Penal Code is amended to read:

32 1335. (a) ~~When~~ If a defendant has been charged with a public
33 offense triable in any court, he or she ~~in all cases, and the people~~
34 ~~in cases other than those for which the punishment may be death,~~
35 *or the people* may, if the defendant has been fully informed of his
36 or her right to counsel as provided by law, have witnesses examined
37 conditionally in his or her or their behalf, as prescribed in this
38 chapter.

39 (b) When a defendant has been charged with a serious felony
40 or in a case of domestic violence, the people or the defendant may,

1 if the defendant has been fully informed of his or her right to
2 counsel as provided by law, have a witness examined conditionally
3 as prescribed in this chapter, if there is evidence that the life of the
4 witness is in jeopardy.

5 (c) As used in this section, “serious felony” means any of the
6 felonies listed in subdivision (c) of Section 1192.7 or any violation
7 of Section 11351, 11352, 11378, or 11379 of the Health and Safety
8 Code.

9 (d) If a defendant has been charged with a case of domestic
10 violence and there is evidence that a victim or material witness
11 has been or is being dissuaded by the defendant or any person
12 acting on behalf of the defendant, by intimidation or a physical
13 threat, from cooperating with the prosecutor or testifying at trial,
14 the people or the defendant may, if the defendant has been fully
15 informed of his or her right to counsel as provided by law, have a
16 witness examined conditionally as prescribed in this chapter.

17 (e) For the purposes of this section, “domestic violence” means
18 any public offense arising from acts of domestic violence as defined
19 in Section 13700.

20 SEC. 15. Section 1509 is added to the Penal Code, to read:

21 1509. (a) This section applies to any petition for writ of habeas
22 corpus filed by a person in custody pursuant to a judgment of death.
23 A writ of habeas corpus made pursuant to this section is the
24 exclusive procedure for collateral attack on a judgment of death.
25 A petition filed in any court other than the court which imposed
26 the sentence shall be transferred to that court unless good cause is
27 shown for the petition to be heard by another court. A petition to
28 be filed in or transferred to the court which imposed the sentence
29 shall be assigned to the original trial judge unless that judge is
30 unavailable or there is other good cause to assign the case to a
31 different judge.

32 (b) After the entry of judgment in the trial court, that court shall
33 offer counsel to the defendant as provided in Section 68662 of the
34 Government Code. Counsel’s appointment terminates upon the
35 final disposition of the petition, including appellate review.

36 (c) Either party may appeal the decision on the petition to the
37 Supreme Court. A successive petition shall not be used as a means
38 of reviewing a denial of habeas relief.

1 (d) Except as provided in subdivisions (e) and (h), the initial
2 petition shall be filed within one year of the order entered pursuant
3 to Section 68662 of the Government Code.

4 (e) An initial petition which is untimely pursuant to subdivision
5 (d), or a successive petition whenever filed, shall be dismissed
6 unless the court finds, by a preponderance of all available evidence,
7 whether or not admissible at trial, that the defendant is actually
8 innocent of the crime of which he or she was convicted. A stay of
9 execution shall not be granted for the purpose of considering a
10 successive or untimely petition and counsel shall not be appointed
11 for such a petition unless the court finds that the petitioner has a
12 substantial claim of actual innocence. A claim based on voluntary
13 intoxication, a claim based on mental disease or defect, or a claim
14 which goes to the sentence, is not a claim of actual innocence for
15 the purposes of this section.

16 (f) A petitioner claiming innocence pursuant to subdivision (e)
17 shall disclose all material information relating to guilt that is in
18 the possession of the petitioner or present counsel for the petitioner.
19 If the petitioner willfully fails to make the disclosure required by
20 this subdivision to authorize disclosure by counsel, the petition
21 shall be dismissed.

22 (g) Proceedings held pursuant to this section shall be conducted
23 as expeditiously as possible, consistent with a fair adjudication.
24 In the typical case, the Superior Court shall render a decision on
25 the petition within one year of filing, and the Supreme Court shall
26 decide the appeal from the decision of the Superior Court within
27 one year. All cases shall be decided within two years unless the
28 court finds that a delay is necessary to resolve a substantial claim
29 of actual innocence. Filing of pleadings for the sole purpose of
30 delay, or to increase the expenses of the proceeding, is unethical
31 and is subject to sanction by the court and discipline by the State
32 Bar. The duty of counsel for the petitioner is to identify the central
33 issue or issues and focus the petition on them. Counsel shall not
34 raise frivolous issues.

35 (h) This section shall apply to all cases where a judgment of
36 death is entered after the effective date of the act adding this
37 section, and to all cases where a judgment was entered earlier but
38 no application for habeas corpus has been filed as of the effective
39 date of the act adding this section. If a habeas petition is pending
40 on the effective date of the act adding this section, the court may

1 transfer it to the court which imposed the sentence. If no habeas
2 petition has been filed prior to the effective date of this section, a
3 motion that would otherwise be barred by subdivision (d) may be
4 filed within one year of the effective date, or within the time
5 allowed under law as it existed prior to the effective date of the
6 act adding this section, whichever is earlier.

7 SEC. 16. Section 1509.5 is added to the Penal Code, to read:

8 1509.5. It is the policy of the State of California to qualify for
9 Chapter 154 (commencing with Section 2261) of Part VI of Title
10 28 of the United States Code. The Supreme Court and the Judicial
11 Council shall promulgate rules as necessary to achieve and
12 maintain qualification under that chapter. No agency of the State
13 of California shall take any action to oppose qualification.

14 SEC. 17. Section 3603 of the Penal Code is amended to read:

15 3603. The judgment of death shall be executed within the walls
16 ~~of the California State Prison at San Quentin~~ *a state prison facility*
17 *to be determined by the Secretary of the Department of Corrections*
18 *and Rehabilitation.*

19 SEC. 18. Section 3604.5 is added to the Penal Code, to read:

20 3604.5. The provisions of Chapter 3.5 (commencing with
21 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
22 Code shall not apply to the standards, procedures, or regulations
23 promulgated pursuant to Section 3604, or to the secretary's
24 determination pursuant to Section 3603.

25 SEC. 19. If any provision of this act, or any part of any
26 provision, or if its application to any person or circumstance is
27 held to be invalid or unconstitutional for any reason, the remaining
28 provisions and application that can be given effect without the
29 invalid or unconstitutional provisions or application shall not be
30 affected, but shall remain in full force and effect, and, to this end,
31 the provisions are severable.

32 SEC. 20. Except as more specifically provided in this act, all
33 sections of this act shall take effect immediately upon enactment
34 and shall apply to all proceedings conducted on or after the
35 effective date.

36 SEC. 21. This act is an urgency statute necessary for the
37 immediate preservation of the public peace, health, or safety within
38 the meaning of Article IV of the Constitution and shall go into
39 immediate effect. The facts constituting the necessity are:

- 1 Due to the need to provide justice for victims of capital crimes
- 2 at the earliest date possible, it is necessary that this act go into
- 3 immediate effect.

O