

Introduced by Senator AndersonFebruary 24, 2012

An act to amend Sections 190.6, 190.8, 1239, 1240, 1405, and 1506 of the Penal Code, relating to death sentences.

LEGISLATIVE COUNSEL'S DIGEST

SB 1514, as introduced, Anderson. Death sentences: automatic appeal.

Existing law provides that an appeal is automatically taken by the defendant in any case where a judgment of death is rendered, without any action by the defendant or his or her counsel. The California Constitution provides that the State Supreme Court has appellate jurisdiction when judgment of death has been pronounced. Existing law states the intention of the Legislature that the sentence in all capital cases should be imposed expeditiously and requires that the record on appeal be expeditiously certified, as provided. Existing law requires that the opening appellate brief in an automatic appeal of a judgment of death to the Supreme Court be filed no later than 7 months after the certification of the record for completeness, unless the transcript exceeds 10,000 pages. Existing law states that it is the Legislature's goal that the appeal be decided and an opinion reaching the merits be filed within 210 days of the completion of the briefing.

This bill would remove the automatic appeal to the State Supreme Court in cases where a judgment of death is rendered and would instead provide that an appeal may be taken to an appellate court in the same manner as an appeal where a judgment of death is not rendered in a murder case, except as required by the above provisions of law pertaining to the expeditious resolution of capital cases. The bill would make conforming changes. The bill would become operative only if

Senate Constitutional Amendment ____ of the 2011–12 Regular Session is approved by the voters.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) During a three-week period in October 2002, a deranged
4 sniper shot and killed 10 people and injured three others along
5 Interstate 95 in Virginia and the Capital Beltway in Washington,
6 D.C. John Allen Muhammad, the “Beltway Sniper,” and an
7 accomplice were caught and arrested on October 24, 2002.

8 (b) Muhammad was convicted and sentenced to death in two
9 states, Maryland and Virginia. After six years of legal maneuvering,
10 Muhammad’s last minute appeal to the United States Supreme
11 Court was rejected and he was executed by lethal injection on
12 November 9, 2009.

13 (c) It took two states with separate judicial systems less than
14 seven years to convict, sentence, and execute a murderer. Compare
15 that to California where the average time in death penalty cases
16 from sentencing until punishment is over 25 years. In the last 20
17 years, California has executed only 13 murderers while Texas has
18 executed over 400.

19 (d) Justice delayed is justice denied.

20 SEC. 2. Section 190.6 of the Penal Code is amended to read:

21 190.6. (a) The Legislature finds that the sentence in all capital
22 cases should be imposed expeditiously.

23 (b) Therefore, in all cases in which a sentence of death has been
24 imposed on or after January 1, 1997, the opening appellate brief
25 in the appeal to the State Supreme Court shall be filed no later than
26 seven months after the certification of the record for completeness
27 under subdivision (d) of Section 190.8 or receipt by the appellant’s
28 counsel of the completed record, whichever is later, except for
29 good cause. However, in those cases where the trial transcript
30 exceeds 10,000 pages, the briefing shall be completed within the
31 time limits and pursuant to the procedures set by the rules of court
32 adopted by the Judicial Council.

1 (c) In all cases in which a sentence of death has been imposed
2 on or after January 1, 1997, it is the Legislature’s goal that the
3 appeal be decided and an opinion reaching the merits be filed
4 within 210 days of the completion of the briefing. However, where
5 the appeal and a petition for writ of habeas corpus is heard at the
6 same time, the petition should be decided and an opinion reaching
7 the merits should be filed within 210 days of the completion of
8 the briefing for the petition.

9 (d) The failure of the parties or the ~~Supreme Court~~ court to meet
10 or comply with the time limit provided by this section shall not be
11 a ground for granting relief from a judgment of conviction or
12 sentence of death.

13 SEC. 3. Section 190.8 of the Penal Code is amended to read:

14 190.8. (a) In any case in which a death sentence has been
15 imposed, the record on appeal shall be expeditiously certified in
16 two stages, the first for completeness and the second for accuracy,
17 as provided by this section. The trial court may use all reasonable
18 means to ensure compliance with all applicable statutes and rules
19 of court pertaining to record certification in capital appeals,
20 including, but not limited to, the imposition of sanctions.

21 (b) Within 30 days of the imposition of the death sentence, the
22 clerk of the superior court shall provide to trial counsel copies of
23 the clerk’s transcript and shall deliver the transcript as provided
24 by the court reporter. Trial counsel shall promptly notify the court
25 if he or she has not received the transcript within 30 days.

26 (c) (1) During the course of a trial in which the death penalty
27 is being sought, trial counsel shall alert the court’s attention to any
28 errors in the transcripts incidentally discovered by counsel while
29 reviewing them in the ordinary course of trial preparation. The
30 court shall periodically request that trial counsel provide a list of
31 errors in the trial transcript during the course of trial and may hold
32 hearings in connection therewith.

33 **Corrections**

34 (2) *Corrections* to the record shall not be required to include
35 immaterial typographical errors that cannot conceivably cause
36 confusion.

37 (d) The trial court shall certify the record for completeness and
38 for incorporation of all corrections, as provided by subdivision
39 (c), no later than 90 days after entry of the imposition of the death
40 sentence unless good cause is shown. However, this time period

1 may be extended for proceedings in which the trial transcript
2 exceeds 10,000 pages in accordance with the timetable set forth
3 in, or for good cause pursuant to the procedures set forth in, the
4 rules of court adopted by the Judicial Council.

5 (e) Following the imposition of the death sentence and prior to
6 the deadline set forth in subdivision (d), the trial court shall hold
7 one or more hearings for trial counsel to address the completeness
8 of the record and any outstanding errors that have come to their
9 attention and to certify that they have reviewed all docket sheets
10 to ensure that the record contains transcripts for any proceedings,
11 hearings, or discussions that are required to be reported and that
12 have occurred in the course of the case in any court, as well as all
13 documents required by this code and the rules adopted by the
14 Judicial Council.

15 (f) The clerk of the trial court shall deliver a copy of the record
16 on appeal to appellate counsel when the clerk receives notice of
17 counsel's appointment or retention, or when the record is certified
18 for completeness under subdivision (d), whichever is later.

19 (g) The trial court shall certify the record for accuracy no later
20 than 120 days after the record has been delivered to appellate
21 counsel. However, this time may be extended pursuant to the
22 timetable and procedures set forth in the rules of court adopted by
23 the Judicial Council. The trial court may hold one or more status
24 conferences for purposes of timely certification of the record for
25 accuracy, as set forth in the rules of court adopted by the Judicial
26 Council.

27 (h) ~~The Supreme Court~~ *appellate court hearing an appeal*
28 *pursuant to this section* shall identify in writing to the Judicial
29 Council any case that has not met the time limit for certification
30 of the record for completeness under subdivision (d) or for accuracy
31 under subdivision (g), and shall identify those cases, and its
32 reasons, for which it has granted an extension of time. The Judicial
33 Council shall include this information in its annual report to the
34 Legislature.

35 (i) As used in this section, "trial counsel" means both the
36 prosecution and the defense counsel in the trial in which the
37 sentence of death has been imposed.

38 (j) This section shall be implemented pursuant to rules of court
39 adopted by the Judicial Council.

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

4 SEC. 4. Section 1239 of the Penal Code is amended to read:

5 1239. (a) Where an appeal lies on behalf of the defendant or
6 the people, it may be taken by the defendant or his or her counsel,
7 or by counsel for the people, in the manner provided in rules
8 adopted by the Judicial Council.

9 (b) When upon any plea a judgment of death is rendered, an
10 ~~appeal is automatically taken by the defendant without any action~~
11 ~~by him or her or his or her counsel.~~ *may be taken to an appellate*
12 *court in the same manner as an appeal where a judgment of death*
13 *is not rendered, except as provided in this chapter for the*
14 *expeditious resolution of capital cases.* The defendant's trial
15 counsel, whether retained by the defendant or court appointed,
16 shall continue to represent the defendant until completing the
17 additional duties set forth in paragraph (1) of subdivision (e) of
18 Section 1240.1.

19 SEC. 5. Section 1240 of the Penal Code is amended to read:

20 1240. (a) When in a proceeding falling within the provisions
21 of Section 15421 of the Government Code a person is not
22 represented by a public defender acting pursuant to Section 27706
23 of the Government Code or other counsel and he is unable to afford
24 the services of counsel, the court shall appoint the State Public
25 Defender to represent the person except as follows:

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

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

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

38 (4) When a judgment of death has been rendered the ~~Supreme~~
39 ~~Court~~ *appellate court* may, in its discretion, appoint counsel other

1 than the State Public Defender or the attorney who represented the
2 person at trial.

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

8 SEC. 6. Section 1405 of the Penal Code is amended to read:

9 1405. (a) A person who was convicted of a felony and is
10 currently serving a term of imprisonment may make a written
11 motion before the trial court that entered the judgment of conviction
12 in his or her case, for performance of forensic deoxyribonucleic
13 acid (DNA) testing.

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

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

25 (3) (A) Upon a finding that the person is indigent, he or she
26 has included the information required in paragraph (1), and counsel
27 has not previously been appointed pursuant to this subdivision,
28 the court shall appoint counsel to investigate and, if appropriate,
29 to file a motion for DNA testing under this section and to represent
30 the person solely for the purpose of obtaining DNA testing under
31 this section.

32 (B) Upon a finding that the person is indigent, and counsel
33 previously has been appointed pursuant to this subdivision, the
34 court may, in its discretion, appoint counsel to investigate and, if
35 appropriate, to file a motion for DNA testing under this section
36 and to represent the person solely for the purpose of obtaining
37 DNA testing under this section.

38 (4) Nothing in this section shall be construed to provide for a
39 right to the appointment of counsel in a postconviction collateral
40 proceeding, or to set a precedent for any such right, in any context

1 other than the representation being provided an indigent convicted
2 person for the limited purpose of filing and litigating a motion for
3 DNA testing pursuant to this section.

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

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

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

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

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

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

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

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

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

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

- 1 (1) The evidence to be tested is available and in a condition that
2 would permit the DNA testing requested in the motion.
- 3 (2) The evidence to be tested has been subject to a chain of
4 custody sufficient to establish it has not been substituted, tampered
5 with, replaced or altered in any material aspect.
- 6 (3) The identity of the perpetrator of the crime was, or should
7 have been, a significant issue in the case.
- 8 (4) The convicted person has made a prima facie showing that
9 the evidence sought to be tested is material to the issue of the
10 convicted person's identity as the perpetrator of, or accomplice
11 to, the crime, special circumstance, or enhancement allegation that
12 resulted in the conviction or sentence.
- 13 (5) The requested DNA testing results would raise a reasonable
14 probability that, in light of all the evidence, the convicted person's
15 verdict or sentence would have been more favorable if the results
16 of DNA testing had been available at the time of conviction. The
17 court in its discretion may consider any evidence whether or not
18 it was introduced at trial.
- 19 (6) The evidence sought to be tested meets either of the
20 following conditions:
- 21 (A) The evidence was not tested previously.
- 22 (B) The evidence was tested previously, but the requested DNA
23 test would provide results that are reasonably more discriminating
24 and probative of the identity of the perpetrator or accomplice or
25 have a reasonable probability of contradicting prior test results.
- 26 (7) The testing requested employs a method generally accepted
27 within the relevant scientific community.
- 28 (8) The motion is not made solely for the purpose of delay.
- 29 (g) (1) If the court grants the motion for DNA testing, the court
30 order shall identify the specific evidence to be tested and the DNA
31 technology to be used.
- 32 (2) The testing shall be conducted by a laboratory mutually
33 agreed upon by the district attorney in a noncapital case, or the
34 Attorney General in a capital case, and the person filing the motion.
35 If the parties cannot agree, the court shall designate the laboratory
36 to conduct the testing and shall consider designating a laboratory
37 accredited by the American Society of Crime Laboratory Directors
38 Laboratory Accreditation Board (ASCLD/LAB).
- 39 (h) The result of any testing ordered under this section shall be
40 fully disclosed to the person filing the motion, the district attorney,

1 and the Attorney General. If requested by any party, the court shall
2 order production of the underlying laboratory data and notes.

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
5 the interests of justice, if it is shown that the applicant is not
6 indigent 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 (g) 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
13 the 2000–01 Budget Act.

14 (j) An order granting or denying a motion for DNA testing under
15 this section shall not be appealable, and shall be subject to review
16 only through petition for writ of mandate or prohibition filed by
17 the person seeking DNA testing, the district attorney, or the
18 Attorney General. The petition shall be filed within 20 days after
19 the court's order granting or denying the motion for DNA testing.
20 ~~In a noncapital any 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 from
34 a convicted person pursuant to a motion for postconviction DNA
35 testing is exempt from any law requiring disclosure of information
36 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 applies

1 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 provision
4 of this section or its application is held invalid, that invalidity shall
5 not affect other provisions or applications that can be given effect
6 without the invalid provision or application.

7 SEC. 7. Section 1506 of the Penal Code is amended to read:

8 1506. An appeal may be taken to the court of appeal by the
9 people from a final order of a superior court made upon the return
10 of a writ of habeas corpus discharging a defendant or otherwise
11 granting all or any part of the relief sought, in all criminal cases;
12 ~~excepting criminal cases where judgment of death has been~~
13 ~~rendered, and in such cases to the Supreme Court;~~ and in all
14 criminal cases where an application for a writ of habeas corpus
15 has been heard and determined in a court of appeal, either the
16 defendant or the people may apply for a hearing in the Supreme
17 Court. Such appeal shall be taken and such application for hearing
18 in the Supreme Court shall be made in accordance with rules to
19 be laid down by the Judicial Council. If the people appeal from an
20 order granting the discharge or release of the defendant, or petition
21 for hearing in either the court of appeal or the Supreme Court, the
22 defendant shall be admitted to bail or released on his own
23 recognizance or any other conditions which the court deems just
24 and reasonable, subject to the same limitations, terms, and
25 conditions which are applicable to, or may be imposed upon, a
26 defendant who is awaiting trial. If the order grants relief other than
27 a discharge or release from custody, the trial court or the court in
28 which the appeal or petition for hearing is pending may, upon
29 application by the people, in its discretion, and upon such
30 conditions as it deems just stay the execution of the order pending
31 final determination of the matter.

32 SEC. 8. This bill shall become operative only if Senate
33 Constitutional Amendment ____ of the 2011–12 Regular Session
34 is approved by the voters.