

AMENDED IN SENATE SEPTEMBER 4, 2015

AMENDED IN SENATE JULY 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1328

Introduced by Assembly Member Weber

February 27, 2015

An act to *amend Section 6086.7 of the Business and Professions Code, and to add Section 1424.5 to the Penal Code*, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1328, as amended, Weber. Criminal procedure: withholding of evidence.

Existing law requires the prosecuting attorney to disclose to the defendant or his or her attorney certain materials and information, including statements of all defendants and any exculpatory evidence, as specified. Existing law authorizes a court to grant a motion to disqualify a district attorney from performing an authorized duty, subject to specified procedural requirements.

This bill would ~~require~~ *authorize* a court, ~~if the court determines that upon receiving information that~~ the prosecuting attorney has deliberately and intentionally withheld relevant *or material* exculpatory ~~materials~~ *evidence* or information in violation of law, *to make a finding, supported by clear and convincing evidence, that a violation occurred. If the court makes such a finding, the bill would require the court* to inform the State Bar of California of that violation if the prosecuting attorney acted in bad faith and the impact of the withholding contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion

of trial, seriously limited the ability of a defendant to present a defense. The bill would authorize a court to disqualify an individual prosecuting attorney from a case if the court ~~determines that the prosecuting attorney deliberately and intentionally withheld relevant exculpatory materials or information in that case in violation of law and that the prosecuting attorney acted in bad faith.~~ *finds that a violation occurred in bad faith.* The bill would also ~~authorize a court~~ *authorize, upon a determination by a court to disqualify an individual prosecuting attorney from a case, the defendant or his or her counsel to file and serve a notice of a motion to disqualify the prosecuting attorney's office if there is sufficient evidence that other employees of the prosecuting attorney's office knowingly and in bad faith participated in or sanctioned the intentional withholding of the relevant or material exculpatory materials evidence or information and that withholding is part of a pattern and practice of violations.* The bill would specify that its provisions do not limit the authority or discretion ~~of, or any requirement placed upon,~~ the court or other individuals to make reports to the State Bar of California regarding the same conduct, or otherwise limit other available legal authority, *requirements, remedies, or actions.*

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. Section 6086.7 of the Business and Professions
- 2 Code is amended to read:
- 3 6086.7. (a) A court shall notify the State Bar of any of the
- 4 following:
- 5 (1) A final order of contempt imposed against an attorney that
- 6 may involve grounds warranting discipline under this chapter. The
- 7 court entering the final order shall transmit to the State Bar a copy
- 8 of the relevant minutes, final order, and transcript, if one exists.
- 9 (2) Whenever a modification or reversal of a judgment in a
- 10 judicial proceeding is based in whole or in part on the misconduct,
- 11 incompetent representation, or willful misrepresentation of an
- 12 attorney.
- 13 (3) The imposition of any judicial sanctions against an attorney,
- 14 except sanctions for failure to make discovery or monetary
- 15 sanctions of less than one thousand dollars (\$1,000).

(4) The imposition of any civil penalty upon an attorney pursuant to Section 8620 of the Family Code.

(5) *A violation described in paragraph (1) of subdivision (a) of Section 1424.5 of the Penal Code by a prosecuting attorney, if the court finds that the prosecuting attorney acted in bad faith and the impact of the violation contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion of trial, seriously limited the ability of a defendant to present a defense.*

(b) In the event of a notification made under subdivision (a) the court shall also notify the attorney involved that the matter has been referred to the State Bar.

(c) The State Bar shall investigate any matter reported under this section as to the appropriateness of initiating disciplinary action against the attorney.

SECTION 1.

SEC. 2. Section 1424.5 is added to the Penal Code, immediately following Section 1424, to read:

1424.5. (a) (1) ~~If a court determines~~ *Upon receiving information that a prosecuting attorney has may have deliberately and intentionally withheld relevant or material exculpatory materials evidence or information in violation of law, a court may make a finding, supported by clear and convincing evidence, that a violation occurred. If the court finds such a violation, the court shall inform the State Bar of California of that violation if the prosecuting attorney acted in bad faith and the impact of the withholding contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion of trial, seriously limited the ability of a defendant to present a defense.*

(2) ~~A court may hold a hearing to consider whether a prosecuting attorney or his or her office should be disqualified~~ *violation occurred pursuant to this section shall be initiated only upon the court's own motion: paragraph (1).*

(b) (1) ~~Upon its own motion, a~~ *If a court finds, pursuant to subdivision (a), that a violation occurred in bad faith, the court may disqualify an individual prosecuting attorney from a case if the court determines that the prosecuting attorney deliberately and intentionally withheld relevant exculpatory materials or information in that case in violation of law and that the prosecuting attorney acted in bad faith: case.*

1 (2) ~~The court may also~~ *Upon a determination by a court to*
2 *disqualify an individual prosecuting attorney pursuant to*
3 *paragraph (1), the defendant or his or her counsel may file and*
4 *serve a notice of a motion pursuant to Section 1424 to disqualify*
5 the prosecuting attorney's office if there is sufficient evidence that
6 other employees of the prosecuting attorney's office knowingly
7 *and in bad faith* participated in or sanctioned the intentional
8 withholding of the relevant *or material* exculpatory ~~materials~~
9 evidence or information and that withholding is part of a pattern
10 and practice of violations.

11 (c) This section does not limit the authority or discretion ~~of of,~~
12 *or any requirement placed upon,* the court or other individuals to
13 make reports to the State Bar of California regarding the same
14 conduct, or otherwise limit other available legal authority,
15 *requirements, remedies, or actions.*