

---

# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

---

**Bill No:** AB 2521                      **Hearing Date:** June 25, 2024  
**Author:** Waldron  
**Version:** February 13, 2024  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *Criminal procedure: confidentiality and DNA testing*

## HISTORY

**Source:** San Diego County District Attorney

**Prior Legislation:** SB 243 (Wiener) held Sen. Approps. 2021  
SB 1134 (Leno) Chapter 785, Stats. 2016  
SB 694 (Leno) held Assembly Approps 2015  
SB 980 (Lieu) Chapter 554, Stats. 2014  
SB 1058 (Leno), Chapter 623, Stats. 2014,  
SB 618 (Leno), Chapter 800, Stats. 2013  
AB 1593 (Ma), Chapter 809, Stats. 2012  
SB 83 (Burton) Chapter 943, Stats. 2001  
SB 1342 (Burton) Chapter 821, Stats 2000

**Support:** California District Attorneys Association

**Opposition:** None known

**Assembly Floor Vote:** 73 - 0

## PURPOSE

*The purpose of this bill is to clarify that a court may grant any prosecuting agency representing the state on appeal in a capital case access to the application and contents of the application for specified funds by an indigent defendant when relevant to an issue raised by the defendant.*

*Existing law* authorizes an indigent defendant, in the trial of a capital case or a case under subdivision (a) of Section 190.05, the indigent defendant, to request through defense counsel that funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. (Penal Code, § 987 (a).)

*Existing law* provides that the fact that an application has been made shall be confidential and the contents of the application shall be confidential. (Penal Code, § 987 (a).)

*Existing law* provides that the confidentiality provided in this section shall not preclude any court from providing the Attorney General with access to documents relating to an indigent defendant's application for funds when the defendant raises an issue on appeal or collateral

review where the recorded portion of the record on the application for funds relates to the issue raised. (Penal Code § 987 (b).)

*Existing law* provides that when the defendant raises that issue, the funding records, or relevant portions thereof, shall be provided to the Attorney General at the Attorney General's request, in which case the documents shall remain under seal and their use shall be limited solely to the pending proceeding. (Pen. Code § 987 (b).)

*Existing law* authorizes a person convicted of a felony and currently serving a term of imprisonment to make a written motion, as specified, before the trial court that entered the judgment of conviction in their case, for DNA testing. (Penal Code, § 1405, subd. (a).)

*Existing law* requires the request to include the person's statement that they were not the perpetrator of the crime and to explain how the DNA testing is relevant to their assertion of innocence. (Penal Code § 1405 (b)(1).)

*Existing law* provides that upon request of the convicted person or convicted person's counsel, the court may order the prosecutor to make all reasonable efforts to obtain, and police agencies and law enforcement laboratories to make all reasonable efforts to provide, if the documents exist, among other documents, copies of DNA lab reports and copies of evidence logs. (Penal Code § 1405 (c)(1) & (2).)

*Existing law* requires the court, if the court finds evidence was subjected to DNA or other forensic testing previously by either the prosecution or defense, to order the party at whose request the testing was conducted to provide all parties and the court with access to the laboratory reports, underlying data, and laboratory notes prepared in connection with the DNA or other biological evidence testing. (Penal Code § 1405 (e).)

*Existing law* requires the court to grant the motion for DNA testing if it determines all of the following have been established:

- a) The evidence to be tested is available and in a condition that would permit the DNA testing requested in the motion;
- b) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect;
- c) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case;
- d) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence;
- e) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction;

- f) The evidence sought was not tested previously of, the evidence was previously tested, the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results;
- g) The testing requested employs a method generally accepted within the relevant scientific community; and,
- h) The motion is not made solely for the purpose of delay. (Pen. Code, § 1405 (g)(1)-(8).)

*Existing law* requires the court order granting the motion to identify the specific evidence to be tested and the DNA technology to be used. (Pen. Code, § 1405 (h)(1).)

*Existing law* requires the testing to be conducted by a laboratory that meets the FBI Director's Quality Assurance Standards and that is mutually agreed upon by the district attorney in a noncapital case, or the Attorney General in a capital case, and the person filing the motion. (Pen. Code, § 1405 (h)(2).)

*Existing law* requires the court, if the parties cannot agree on a laboratory, to designate a laboratory that meets the FBI Director's Quality Assurance Standards. (Pen. Code, § 1405 (h)(2).)

*This bill* clarifies that the prosecuting agency representing the state, not just the Attorney General, may access documents relating to the application and contents of the application for specified funds by an indigent defendant in a capital case when the defendant raises an issue on appeal or collateral review and the recorded portion of the record relating to the application for funds also relates to the issue raised.

*This bill* provides that the prosecuting agency representing the state, not just the Attorney General, shall be provided with funding records at their request when the defendant raises an issue related to the application for funds on appeal or in a collateral review where an order to show cause has issued.

*This bill* clarifies that, if a court grants a motion for DNA testing in a felony case where the person is serving a term of imprisonment, the laboratory conducting the test must be mutually agreed upon by the person filing the motion and the Attorney General or district attorney, regardless of whether the case is capital or noncapital.

## COMMENTS

### 1. Need for This Bill

According to the author:

AB 2521 recognizes recent policy changes by tasking District Attorneys with managing vital legal challenges following appeals in death penalty cases. By delegating the oversight of capital habeas corpus petitions to District Attorneys, we grant them authority over DNA testing requests and access to funding records in capital cases, roles previously exclusive to the Attorney General. This shift is

crucial for District Attorneys, providing them with equal responsibilities in post-trial capital litigation, and reducing delays.

## 2. Post-Conviction proceedings

Approved by California voters in November 2016, Death Penalty Reform and Savings Act of 2016 was “intended to facilitate the enforcement of judgments and achieve cost savings in capital cases.” (*Briggs v. Brown* (2017) 3 Cal.5th 808, 822.)

Proposition 66 includes a series of findings and declarations to the effect that California's death penalty system is inefficient, wasteful, and subject to protracted delay, denying murder victims and their families justice and due process. (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) § 2, p. 212 (Voter Guide).) The measure enacts a series of statutory reforms, which may be grouped into three general categories: (1) provisions to expedite review in capital appeals and habeas corpus proceedings; (2) provisions governing the confinement of prisoners sentenced to death and the administration of the death penalty; and (3) provisions pertaining to California's Habeas Corpus Resource Center. (*Id.* at p. 823.)

As part of the effort to expedite review of capital cases, Proposition 66 shifted responsibility for habeas proceedings from the California Supreme Court to county courts:

The measure requires that habeas corpus petitions first be heard in trial courts instead of the California Supreme Court. (Direct appeals would continue to be heard in the California Supreme Court.) Specifically, these habeas corpus petitions would be heard by the judge who handled the original murder trial unless good cause is shown for another judge or court to hear the petition. The measure requires trial courts to explain in writing their decision on each petition, which could be appealed to the Courts of Appeal. The decisions made by the Courts of Appeal could then be appealed to the California Supreme Court. The measure allows the California Supreme Court to transfer any habeas corpus petitions currently pending before it to the trial courts.

[https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=2358&context=ca\\_ballot\\_props](https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=2358&context=ca_ballot_props)

Existing law provides that the “Attorney General has direct supervision over the district attorneys of the several counties of the state.” (Cal. Const., art. 5, § 13; Gov. Code, § 12550.) Under this authority, the Attorney General has delegated some responsibility for post-conviction litigation to district attorneys.

This bill would clarify that a court may grant any prosecuting agency representing the state on appeal in a capital case access to the application and contents of the application for specified funds by an indigent defendant when relevant to an issue raised by the defendant. Existing law limits access to only the Attorney General.

## 3. Post-conviction DNA testing

SB 1342 (Burton) Chapter 821, Statutes of 2000 created a process for a person currently incarcerated for a felony to make a motion for performance of DNA testing. At that time the bill provided that the testing should be done at a lab that meets specified accreditation standards and

mutually agreed upon by the attorney general and the person filing the motion in a capital case or by the district attorney and the person filing the motion in a non-capitol case.

This bill clarifies, if a court grants a motion for DNA testing in a felony case where the person is serving a term of imprisonment, the laboratory conducting the test must be mutually agreed upon by the Attorney General or district attorney, regardless of whether the case is capital or noncapital, and the person filing the motion.

#### **4. Argument in Support**

The sponsor, the San Diego District Attorney's Office supports this bill stating:

The San Diego County District Attorney's Office is pleased to sponsor Assembly Bill (AB) 2521 and would like to thank Assemblymember Waldron for authoring this important legislation. AB 2521 will fix two procedural gaps in the Penal Code, which derive from the now-outdated premise that the California Attorney General will handle all petitions for writ of habeas corpus in capital cases. Based on a policy change, these matters are increasingly delegated to District Attorneys. Thus, it is important to update the Penal Code in two areas to reflect these policy changes. Additionally, it is crucial to provide the District Attorney the same authority to access documents and to agree to additional DNA testing in order to litigate habeas petitions pending in the Superior Court.

-- END --