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AB-1987 Discovery: postconviction. (2017-2018)

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Assembly Bill No. 1987

CHAPTER 482

An act to amend Section 1054.9 of the Penal Code, relating to discovery.

[Approved by Governor September 18, 2018. Filed with Secretary of State September 18, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1987, Lackey. Discovery: postconviction.

(1) Existing law requires, in a case in which a sentence of death or life in prison without the possibility of parole has been imposed, a court to order that a defendant be provided reasonable access to discovery materials upon prosecution of a postconviction writ of habeas corpus or a motion to vacate judgment and a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful. Existing law defines "discovery materials" for these purposes as materials in the possession of the prosecuting and law enforcement authorities to which the defendant would have been entitled at time of trial.

This bill would expand this right of access to discovery materials to any case in which a defendant is convicted of a serious or violent felony resulting in a sentence of 15 years or more. By authorizing the court to require local agencies to provide access to physical evidence under certain circumstances, this bill would impose a state-mandated local program.

The bill would, in a case in which a sentence other than death or life in prison without the possibility of parole has been imposed, if a court has entered a previous order granting discovery pursuant to the above provision, authorize a subsequent order granting discovery to be made in the court's discretion. The bill would require a subsequent request for discovery to include a statement by the person requesting discovery as to whether he or she has previously been granted an order for discovery.

This bill would, in cases involving a conviction resulting in a sentence of 15 years or more for a serious or violent felony, require trial counsel to retain a copy of his or her client's files for the term of his or her imprisonment.

The bill would also request the State Bar to study the issue of closed-client file release and retention by defense attorneys and prosecutors in criminal cases, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that post-conviction discovery promotes the fair administration of justice in seeking to assure that innocent persons do not remain unjustly incarcerated and that the availability and integrity of a client's file in such cases are necessary to the accomplishment of this important public protection objective.

SEC. 2. Section 1054.9 of the Penal Code is amended to read:

1054.9. (a) In a case involving a conviction of a serious felony or a violent felony resulting in a sentence of 15 years or more, upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment, or in preparation to file that writ or motion, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (b) or (d), order that the defendant be provided reasonable access to any of the materials described in subdivision (c).

(b) Notwithstanding subdivision (a), in a case in which a sentence other than death or life in prison without the possibility of parole has been imposed, if a court has entered a previous order granting discovery pursuant to this section, a subsequent order granting discovery pursuant to subdivision (a) may be made in the court's discretion. A request for discovery subject to this subdivision shall include a statement by the person requesting discovery as to whether he or she has previously been granted an order for discovery pursuant to this section.

(c) For purposes of this section, "discovery materials" means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial.

(d) In response to a writ or motion satisfying the conditions in subdivision (a), the court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief. The procedures for obtaining access to physical evidence for purposes of postconviction DNA testing are provided in Section 1405, and this section does not provide an alternative means of access to physical evidence for those purposes.

(e) The actual costs of examination or copying pursuant to this section shall be borne or reimbursed by the defendant.

(f) This section does not require the retention of any discovery materials not otherwise required by law or court order.

(g) In criminal matters involving a conviction for a serious or a violent felony resulting in a sentence of 15 years or more, trial counsel shall retain a copy of a former client's files for the term of his or her imprisonment. An electronic copy is sufficient only if every item in the file is digitally copied and preserved.

(h) As used in this section, a "serious felony" is a conviction of a felony enumerated in subdivision (c) of Section 1192.7.

(i) As used in this section, a "violent felony" is a conviction of a felony enumerated in subdivision (c) of Section 667.5.

(j) The changes made to this section by the act that added this subdivision are intended to only apply prospectively.

SEC. 3. Consistent with the obligation of the State Bar of California to make public protection its highest priority, the State Bar is requested to study the issue of closed-client file release and retention by defense attorneys and prosecutors in criminal cases. If the State Bar studies the issue, it shall ascertain whether an attorney's duties related to file release and retention upon the finality of a case or the termination of the attorney-client relationship are clear in light of the Rules of Professional Conduct that become operative on November 1, 2018. To the extent the State Bar finds there are generally applicable file release and retention duties that are not sufficiently apparent in the specific context of post-conviction discovery, the State Bar shall consider issuing an advisory ethics opinion that makes those duties evident. If the State Bar finds that any file release or retention duties in the new rules are deficient in protecting clients and the public in the context of post conviction discovery, the State Bar shall consider adopting an appropriate new or amended Rule of Professional Conduct for submission to the Supreme Court of California for the Supreme Court's consideration and possible approval.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.