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AB-2988 Criminal procedure: disposition of evidence. (2017-2018)

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Assembly Bill No. 2988

CHAPTER 972

An act to amend Section 1417.9 of the Penal Code, relating to evidence.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2988, Weber. Criminal procedure: disposition of evidence.

Existing law requires the appropriate governmental entity to retain any biological material that is secured in connection with a criminal case in a condition suitable for DNA testing for the duration of time that any person is incarcerated in connection with that criminal case. Existing law, however, authorizes the governmental entity possessing that material to dispose of it earlier if certain conditions are met, including that the incarcerated person is sent notice of the intent to destroy the evidence and does not object, as specified.

This bill would require the governmental entity to preserve any object or material that contains or includes that biological material. The bill would also require the notice of intent to destroy to be sent to the incarcerated person at the location where the person is currently incarcerated.

By imposing new evidence preservation requirements, this bill would create a state-mandated local program.

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. Section 1417.9 of the Penal Code is amended to read:

1417.9. (a) Notwithstanding any other law and subject to subdivisions (b) and (c), the appropriate governmental entity shall retain any object or material that contains or includes biological material that is secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for deoxyribonucleic acid (DNA) testing.

(b) A governmental entity may dispose of any object or material that contains or includes biological material before the expiration of the period of time described in subdivision (a) if all of the conditions set forth below are met:

(1) The governmental entity notifies all of the following persons of the provisions of this section and of the intention of the governmental entity to dispose of the material:

(A) Any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case. This notification shall be sent to the current location where the person is incarcerated.

(B) Any counsel of record.

(C) The public defender in the county of conviction.

(D) The district attorney in the county of conviction.

(E) The Attorney General.

(2) The notifying entity does not receive, within 180 days of sending the notification, any of the following:

(A) A motion filed pursuant to Section 1405. However, upon filing of that motion, the governmental entity shall retain the material only until the time that the court's denial of the motion is final.

(B) A request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file a motion for DNA testing pursuant to Section 1405 within one year, unless a request for an extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

(C) A declaration of innocence filed with the court under penalty of perjury. However, the court shall permit the destruction of the evidence upon a showing that the declaration is false or there is no issue of identity that would be affected by additional testing. The convicted person may be cross-examined on the declaration at any hearing conducted under this section or on an application by or on behalf of the convicted person filed pursuant to Section 1405.

(3) No other law requires that biological evidence be preserved or retained.

(c) Notwithstanding any other law, the right to receive notice pursuant to this section is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendere.

SEC. 2. 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.