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AB-1036 Criminal procedure: postconviction discovery. (2025-2026)

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Assembly Bill No. 1036

CHAPTER 444

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

[Approved by Governor October 07, 2025. Filed with Secretary of State October 07, 2025.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1036, Schultz. Criminal procedure: postconviction discovery.

Existing law requires the court, in a case involving a conviction of a serious or violent felony resulting in a sentence of 15 years or more, to order that the defendant be provided reasonable access to discovery materials upon the 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" as materials in the possession of the prosecution and law enforcement authorities that the defendant would have been entitled to at the time of trial.

Existing law requires trial counsel to retain copies of files for criminal convictions of serious or violent felonies resulting in a sentence greater than 15 years for the duration of the client's imprisonment. Existing law authorizes trial counsel to retain those copies digitally, if every item is preserved.

This bill would authorize reasonable access, except as specified, to discovery materials for felonies resulting in a sentence of incarceration in the Department of Corrections and Rehabilitation. The bill would broaden the definition of "discovery materials" to include, among other things, materials from any prosecutor who tried or worked on the case that tend to negate guilt, or mitigate the sentence or offense. The bill would clarify the definition of "the prosecution" to include the prosecuting agency and counsel for the respondent to a habeas corpus petition. The bill would require the prosecutor, in order to shield jury selection notes from disclosure, to make a foundational proffer describing how information in their file would bear on their case strategy. The bill would require the court, upon a showing of good cause by the prosecutor, to conduct an in camera review and order necessary redactions. The bill would clarify that good cause to shield jury selection notes from disclosure is shown when the prosecution did not exercise any peremptory challenges during jury selection.

The bill would additionally require trial counsel, for all criminal convictions on or after July 1, 2026, that result in a sentence of incarceration in the Department of Corrections and Rehabilitation to retain digital color copies of every item in the file. By increasing the duties of public defenders, 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 1054.9 of the Penal Code is amended to read:

1054.9. (a) In a case in which a defendant is or has ever been convicted of a felony resulting in incarceration in the Department of Corrections and Rehabilitation, 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), or when a protective order prohibits disclosure, order that the defendant be provided reasonable access to any of the discovery 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 is or has ever 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 that person has previously been granted an order for discovery pursuant to this section.

(c) (1) For purposes of this section, "discovery materials" means materials in the possession of the prosecution and law enforcement authorities that the same defendant would have been entitled at time of trial or materials that tend to negate guilt, mitigate the offense, mitigate the sentence, or otherwise are favorable or exculpatory to the defendant. "Discovery materials" includes all materials that the convicted person would be entitled to if they were being tried today, irrespective of whether the materials were discoverable at the time of the convicted person's original trial. "Discovery materials" includes the prosecution's jury selection notes.

(2) For purposes of this section, "the prosecution" includes the prosecuting agency and counsel for the respondent to a habeas corpus petition.

(3) This section does not impose an additional obligation to investigate the existence of new discovery materials. This section does not prohibit a court from ordering the prosecution or law enforcement to investigate the existence of new discovery materials when appropriate.

(4) (A) If the prosecution believes there is good cause to shield jury selection notes from disclosure, they shall make a foundational proffer describing how information in their file would bear on their case strategy.

(B) If the court finds good cause, the court shall conduct an in camera review and order necessary redactions.

(C) The prosecution's lack of exercised peremptory challenges during jury selection shall constitute good cause to withhold disclosure of jury selection notes pursuant to this section.

(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 felony resulting in incarceration in the Department of Corrections and Rehabilitation, trial counsel shall retain a copy of a former client's files for the term of that client's imprisonment. An electronic copy is sufficient only if every item in the file is digitally copied in color and preserved. To the extent this section imposes new requirements on trial counsel, trial counsel shall begin retaining their physical files and digital color copies of evidence for all felony convictions on or after July 1, 2026.

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.