

West's Ann.Cal.Penal Code § 1417.9

West's Annotated California Codes [Currentness](#)

Penal Code ([Refs & Annos](#))

Part 2. Of Criminal Procedure ([Refs & Annos](#))

☞ [Title 10](#). Miscellaneous Proceedings

☞ [Chapter 13](#). Disposition of Evidence in Criminal Cases ([Refs & Annos](#))

➡ § 1417.9. Retention of biological material

(a) Notwithstanding any other provision of law and subject to subdivision (b), the appropriate governmental entity shall retain all 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 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: 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, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.

(2) The notifying entity does not receive, within 90 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 within 180 days a motion for DNA testing pursuant to [Section 1405](#) that is followed within 180 days by a motion for DNA testing pursuant to [Section 1405](#), 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 under penalty of perjury that has been filed with the court within 180 days of the judgment of conviction or July 1, 2001, whichever is later. 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 provision of law requires that biological evidence be preserved or retained.

(c) Notwithstanding any other provision of 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.

## CREDIT(S)

(Added by [Stats.2000, c. 821 \(S.B.1342\), § 2](#). Amended by [Stats.2001, c. 943 \(S.B.83\), § 2](#); [Stats.2002, c. 1105 \(S.B.1391\), § 2](#).)

## HISTORICAL AND STATUTORY NOTES

### 2006 Electronic Update

### 2001 Legislation

Stats.2001, c. 943 (S.B.83), in subd. (a), substituted, in the first sentence, "all biological material that is" for "any biological material" prior to "secured in connection with a criminal case" and, at the end of the second sentence, substituted "deoxyribonucleic acid (DNA)" for "DNA" prior to "testing"; in subpar. (A) of subd. (b)(2), reformatted the existing subparagraph into two sentences and in the new second sentence substituted "motion" for "application" following "upon filing of that"; inserted subd. (c) relating to the absolute right to receive notice under this section; and inserted subd. (d), providing for repeal of this section on

Jan. 1, 2003.

## 2002 Legislation

Stats.2002, c. 1105 (S.B.1391), deleted subd. (d), which read:

"(d) This section shall remain in effect only until January 1, 2003, and on that date is repealed unless a later enacted statute that is enacted before January 1, 2003, deletes or extends that date."

For Governor's signing message regarding Stats.2002, c. 1105 (S.B.1391), see Historical and Statutory Notes under [Penal Code § 1054.9](#).

## CROSS REFERENCES

Prosecution of postconviction writ of habeas corpus or motion to vacate judgment involving sentences of death or life imprisonment, see [Penal Code § 1054.9](#).  
Reasons allowing a person no longer unlawfully imprisoned or restrained to prosecute motion to vacate judgment, see [Penal Code § 1473.6](#).

## LAW REVIEW AND JOURNAL COMMENTARIES

[Don't believe everything you read: A review of modern "post-conviction" DNA testing statutes. Kathy Swedlow, 38 Cal.W.L.Rev. 355 \(2002\).](#)

[DNA: Law enforcement's miracle of technology: The missing link to truth and justice. Jerilyn Stanley, 32 McGeorge L.Rev. 601 \(2001\).](#)

## RESEARCH REFERENCES

### Encyclopedias

[Cal. Jur. 3d Criminal Law: Trial § 388](#), After Final Determination of Action or Proceeding.

### Treatises and Practice Aids

[4 Witkin Cal. Crim. L. 3d Intro. to Crim. Proc. § 53](#), Collection of Forensic Information.

## NOTES OF DECISIONS

Misdemeanors [1](#)

[1](#). Misdemeanors

A governmental entity is not required to retain biological material secured in connection with a misdemeanor case for the period of time that a person is incarcerated in connection with the case. Op.Atty.Gen. 04-405 ([May 17, 2005](#)), [2005 WL 1711680](#).

West's Ann. Cal. Penal Code § 1417.9, CA PENAL § 1417.9

Current through Ch. 6 of 2006 Reg.Sess. urgency legislation