

West's Annotated California Codes
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)

West's Ann.Cal.Penal Code § 1417.9

§ 1417.9. Retention of biological material

Effective: January 1, 2015

[Currentness](#)

(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 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.

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(C) A declaration of innocence under penalty of perjury that has been filed with the court within one year 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.

Credits

(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; [Stats.2014, c. 554 \(S.B.980\)](#), § 3, eff. Jan. 1, 2015.)

[Notes of Decisions \(1\)](#)

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

Current with all 2014 Reg.Sess. laws, Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on 2014 ballots

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