

AMENDED IN ASSEMBLY APRIL 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 818**

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**Introduced by Assembly Member Quirk**

February 26, 2015

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An act to add Sections 1405.2, 1405.3, and 1405.4 to the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 818, as amended, Quirk. Criminal procedure: evidence.

Existing law allows an incarcerated person who has been convicted of a felony to make a written motion for the performance of forensic deoxyribonucleic acid (DNA) testing according to a specified procedure. Existing law allows the court to order a hearing on the motion if the court determines the convicted person has met specified requirements and that the hearing is necessary. Existing law requires the motion to be granted if certain facts have been established, including, among others, that the identity of the perpetrator of the crime was, or should have been, a significant issue in the case.

This bill would authorize a party in a criminal action to make a written motion for the comparison of DNA ~~evidence~~, *evidence* or latent fingerprint ~~evidence~~, or ~~firearms-related~~ evidence with information contained in relevant databases. The bill would require the party seeking the comparison to provide written notice, as specified, 30 court days prior to a hearing on the motion. The bill would ~~require~~ *authorize* the court to grant the motion ~~if, in the case of a DNA comparison, if~~ the source of the DNA profile *or the latent fingerprint comparison* is material to guilt or ~~innocence, in the case of latent print comparison,~~ ~~the comparison may identify the putative perpetrator of the crime, or,~~

~~in the case of firearms-related evidence comparison, the comparison may provide evidence that is material to guilt or innocence. innocence. The bill would require that the local law enforcement agency to conduct the comparison and provide the results of any comparison to the court. The bill would require the court, if the results are material, to disclose the results to the parties. court for distribution to the parties.~~ By imposing additional duties on local law enforcement agencies with regard to evidence comparison, this bill would impose 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 these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares both of  
2 the following:  
3 (1) One of the purposes of a criminal trial is the ascertainment  
4 of the truth of the charges against the accused person.  
5 Deoxyribonucleic acid (DNA) profile comparisons, latent  
6 fingerprint comparison, and firearms comparison evidence are  
7 commonly used in criminal proceedings to help identify the  
8 perpetrator of the crime. With these techniques, the evidence from  
9 a crime scene is compared with information stored in a database  
10 to determine whether the DNA profile or fingerprint matches a  
11 previously convicted person, who may then be identified as a  
12 suspect, ~~or whether firearms-related evidence appears to match~~  
13 ~~firearms-related evidence used in another crime, thereby potentially~~  
14 ~~identifying a suspect.~~ *suspect*. The systems commonly used are  
15 known as the Combined DNA Index System-~~(CODIS)~~, *(CODIS)*  
16 *and* the Integrated Automated Fingerprint Identification System  
17 ~~(IAFIS)~~, *and* the National Integrated Ballistic Information Network  
18 ~~(NIBIN)~~. *(IAFIS)*. There are also local databases, including the  
19 Los Angeles Automated Fingerprint Identification System-~~(LAFIS)~~

1 and other databases that utilize an Integrated Ballistics  
2 Identification System (IBIS): (*LAFIS*).

3 (2) Currently, a law enforcement agency on its own or at the  
4 request of the prosecuting attorney has the sole discretion to  
5 determine if evidence recovered from a crime scene is searched  
6 against any of these databases. A court does not have the power  
7 on its own to order a search of these databases even if a search  
8 will lead to relevant exculpatory evidence, helping prove that the  
9 person accused of a crime is being wrongfully prosecuted, or  
10 helping identify the actual perpetrator of the crime.

11 (b) It is the intent of the Legislature that the act that added this  
12 section grant a court the authority to make a pretrial order to  
13 compare relevant evidence with information contained in these  
14 databases. It is further the intent of the Legislature that the act that  
15 added this section will promote fairness and justice, will prevent  
16 wrongful convictions, and will ensure that the guilty are prosecuted  
17 and the innocent exonerated.

18 SEC. 2. Section 1405.2 is added to the Penal Code, to read:

19 1405.2. (a) (1) A party in a criminal action may make a written  
20 motion for the comparison of deoxyribonucleic acid (DNA)  
21 obtained from biological evidence in the case with DNA profiles  
22 contained in the State DNA Index System (SDIS) and, if  
23 appropriate, the National DNA Index System (NDIS).

24 (2) This subdivision does not require a prosecuting attorney to  
25 file the motion described in paragraph (1) prior to comparing DNA  
26 obtained from biological evidence in a case with DNA profiles  
27 contained in SDIS or NDIS.

28 (b) The party seeking the comparison shall provide written  
29 notice to the local law enforcement agency and opposing counsel  
30 30 court days prior to a hearing on the motion.

31 (c) The court ~~shall~~ *may* grant the motion for DNA comparison  
32 if it determines that the source of the DNA profile is material to  
33 guilt or innocence.

34 (d) ~~(4)~~ If the court grants the motion for DNA comparison, the  
35 court shall order the local law enforcement agency to conduct the  
36 comparison and order that the identity of any individuals whose  
37 DNA profile matched the DNA submitted for comparison, if  
38 available, and a description of DNA profiles that matched the DNA  
39 submitted for comparison, if no identity is associated with the

1 matching DNA profile, be provided to the ~~court.~~ *court for*  
2 *distribution to the parties.*

3 ~~(2) The court shall review any results submitted pursuant to~~  
4 ~~paragraph (1) and determine if the results are material. Upon a~~  
5 ~~finding of materiality, the court shall disclose the results to the~~  
6 ~~parties.~~

7 SEC. 3. Section 1405.3 is added to the Penal Code, to read:

8 1405.3. (a) (1) A party in a criminal action may make a written  
9 motion for the comparison of latent print evidence in the case with  
10 fingerprints contained in the Integrated Automated Fingerprint  
11 Identification System (IAFIS) and in local fingerprint databases,  
12 including, but not limited to, the Los Angeles Automated  
13 Fingerprint Identification Systems (LAFIS).

14 (2) This subdivision does not require a prosecuting attorney to  
15 file the motion described in paragraph (1) prior to comparing latent  
16 print evidence in a case with fingerprints contained in IAFIS or  
17 local fingerprint databases.

18 (b) The party seeking the comparison shall provide written  
19 notice to the local law enforcement agency and opposing counsel  
20 30 court days prior to a hearing on the motion.

21 ~~(e) The court shall grant the motion for latent print comparison~~  
22 ~~if it determines that the comparison may identify the putative~~  
23 ~~perpetrator of the crime.~~

24 ~~(c) The court may grant the motion for latent print comparison~~  
25 ~~if it determines that the comparison is material to guilt or~~  
26 ~~innocence.~~

27 ~~(d) (1) If the court grants the motion for latent print comparison,~~  
28 ~~the court shall order the local law enforcement agency to conduct~~  
29 ~~the comparison and order that the identity of any individuals whose~~  
30 ~~fingerprints match the latent prints submitted for comparison be~~  
31 ~~provided to the court.~~ *court for distribution to the parties.*

32 ~~(2) The court shall review any results submitted pursuant to~~  
33 ~~paragraph (1) and determine if the results are material. Upon a~~  
34 ~~finding of materiality, the court shall disclose the results to the~~  
35 ~~parties.~~

36 SEC. 4. ~~Section 1405.4 is added to the Penal Code, to read:~~

37 1405.4. ~~(a) (1) A party in a criminal action may make a written~~  
38 ~~motion for the comparison of firearms-related evidence, including,~~  
39 ~~but not limited to, cartridge casings, bullets, or firearms, in the~~  
40 ~~case with firearms-related data contained in an Integrated Ballistics~~

1 Identification System (IBIS), the National Integrated Ballistic  
2 Information Network (NIBIN), or both.

3 (2) This subdivision does not require a prosecuting attorney to  
4 file the motion described in paragraph (1) prior to comparing  
5 firearms-related evidence in a case with firearms-related data  
6 contained in an IBIS or the NIBIN.

7 (b) The party seeking the comparison shall provide written  
8 notice to the local law enforcement agency and opposing counsel  
9 30 court days prior to a hearing on the motion.

10 (e) The court shall grant the motion for firearms-related evidence  
11 comparison if it determines that the comparison may provide  
12 evidence that is material to guilt or innocence.

13 (d) (1) If the court grants the motion for firearms-related  
14 evidence comparison, the court shall order the local law  
15 enforcement agency to conduct the comparison and order that the  
16 identity of any individual associated with firearms-related data  
17 that matched the firearms-related evidence submitted for  
18 comparison be provided to the court.

19 (2) The court shall review any results submitted pursuant to  
20 paragraph (1) and determine if the results are material. Upon a  
21 finding of materiality, the court shall disclose the results to the  
22 parties.

23 ~~SEC. 5.~~

24 *SEC. 4.* If the Commission on State Mandates determines that  
25 this act contains costs mandated by the state, reimbursement to  
26 local agencies and school districts for those costs shall be made  
27 pursuant to Part 7 (commencing with Section 17500) of Division  
28 4 of Title 2 of the Government Code.