Senator Ted W. Lieu
28th Senate District

Senate Bill 980
DNA Evidence Testing Fact Sheet

Issue:
Despite the widespread acceptance of DNA testing as a powerful and reliable form of forensic evidence that can conclusively reveal guilt or innocence, many prisoners face insurmountable hurdles during the legal process and do not have the legal means to secure testing on evidence in their cases.

Senate Bill 980's reforms would eliminate hurdles and streamline the judicial process associated with post-conviction DNA testing requests. This would help reduce the likelihood of wrongful convictions and further the cause of justice in California.

Background:
One of the greatest injustices a government can commit is the wrongful conviction and imprisonment of an innocent person while the true perpetrator remains free.

In 2000, California became one of the first states to create a process by which an incarcerated person who had been convicted of a felony could obtain DNA testing to prove innocence. Fourteen years later, however, California's post-conviction DNA testing process is in need of some commonsense but crucial reforms.

These reforms would provide **greater access to available evidence** for people requesting DNA testing, and establish **clear guidelines** for police, prosecutors and courts to follow when determining whether to grant testing. They give courts the ability to order DNA profiles to be run through the national DNA database, making it possible to **find the real perpetrators of crimes**. They establish **more consistent and thorough protocols** for the preservation and destruction of evidence after conviction, enabling more innocent people to get testing.

Existing Law and This Bill:
Access: Existing law requires an individual requesting testing to show that the evidence to be tested is available and in a testable condition. Yet the law does not provide a right of access to the evidence to see if it is testable, or even determine if the evidence was preserved or destroyed.

This bill would allow individuals requesting testing access to physical and biological evidence preserved in their cases. It would also require law enforcement agencies to attempt to locate evidence and confirm whether it was preserved or destroyed. In addition, the bill would allow courts to order unknown DNA profiles to be run through the FBI's Combined DNA Index System (CODIS) database to identify the true perpetrator.

Standard: Existing law provides that an individual requesting testing must "raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available" at trial. The confusing nature of this standard has been difficult for courts to interpret, and has often resulted in denials when testing should have been granted.

This bill would clarify the standard required to get DNA testing by requiring only that the person requesting testing establish that the testing is relevant to the identity of the perpetrator and does not require a showing that the DNA testing will prove innocence.

Evidence Challenges: Existing law requires an individual requesting testing to establish that the evidence was not substituted, tampered with, replaced, or altered after it was collected. In practice, this often means courts will deny a request

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for testing because of a remote possibility the evidence was improperly handled.

This bill would clarify that evidence in the custody of law enforcement agencies is presumed to satisfy chain of custody requirements, absent specific evidence of contamination or tampering.

Retention: Existing law provides that law enforcement agencies retain evidence that contains biological material. In order for the agency to destroy evidence, notice must be sent to the inmate and counsel, who must within 90 days request that the evidence be preserved and file a motion for testing within 180 days. In practice, these timeframes are too short.

This bill would extend the period of notification from 90 days to one year, and for the filing of a request for testing from six months to one year.

Remedial Actions: Existing law does not provide any remedy for courts to consider if a law enforcement agency negligently or intentionally destroys evidence in violation of the law.

This bill would allow courts to take appropriate actions in instances where DNA evidence was destroyed in violation of code.

Payment: Existing law provides for the state of California to pay for testing in the event the person requesting testing is unable to pay. However, because of the way the law is drafted, many courts believe individual counties are required to pay for testing, and have denied testing on these grounds.

This bill would clarify that individual counties and courts are not obligated to pay for testing under the statute.

Lab Certification: Existing law provides for testing to be completed by laboratories accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB), to which many labs no longer subscribe.

This bill would allow for testing to be completed by laboratories accredited by an accreditation body who is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Agreement (MRA) and offers forensic laboratory accreditation services.

Support:
California Innocence Project, cosponsor
Northern California Innocence Project, cosponsor
American Civil Liberties Union of California
American Association for Laboratory Accreditation

Opposition:
None received

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