

RESOLUTION 08-08-2015 (as amended and adopted)

DIGEST

Criminal Law: Prosecutorial Duty to Disclose Exculpatory Evidence.

Amends Penal Code section 1054.1 to require disclosure of exculpatory evidence and adds Penal Code section 1183 requiring further investigation by prosecution teams.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1054.1 and to add Penal Code section 1183 to read as follows:

§1054.1

1 The prosecuting attorney shall disclose to the defendant or his or her attorney all of the
2 following materials and information, if it is in the possession of the prosecuting attorney or if the
3 prosecuting attorney knows it to be in the possession of the investigating agencies:

4 (a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.

5 (b) Statements of all defendants.

6 (c) All relevant real evidence seized or obtained as a part of the investigation of the
7 offenses charged.

8 (d) The existence of a felony conviction of any material witness whose credibility is
9 likely to be critical to the outcome of the trial.

10 (e) Any exculpatory evidence, including but not limited to, timely disclosure to the
11 defense of all evidence or information known to the prosecution team that tends to negate the
12 guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the
13 defense and to the court all unprivileged mitigating information known to the prosecution team,
14 except when the prosecution team is relieved of this responsibility by a protective order of a
15 court.

16 (f) Relevant written or recorded statements of witnesses or reports of the statements of
17 witnesses whom the prosecutor intends to call at the trial, including any reports or statements of
18 experts made in conjunction with the case, including the results of physical or mental
19 examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer
20 in evidence at the trial.

21
22 §1183

23 a) Notwithstanding any limitation of time contained anywhere else in any code, at any
24 time a prosecution team knows of new, credible and material evidence creating a reasonable
25 likelihood that a convicted defendant did not commit an offense of which the defendant was
26 convicted, the prosecution team shall:

27 (1) promptly disclose that evidence to an appropriate court or authority, and

28 (2) if the conviction was obtained in the prosecutor's jurisdiction,

29 (i) promptly disclose that evidence to the defendant and his or her attorney unless a court
30 authorizes delay, and

31 (ii) undertake further investigation, or make reasonable efforts to cause an investigation,
32 to determine whether the defendant was convicted of an offense that the defendant did not
33 commit.

34 (b) When a prosecution team knows of clear and convincing evidence establishing that a
35 defendant in the prosecution team's jurisdiction was convicted of an offense that the defendant
36 did not commit, the prosecution team shall seek to remedy the conviction.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association.

STATEMENT OF REASONS:

The Problem: The problem, to put it simply, is wrongful convictions. Justice depends upon each part of the criminal justice system doing its job. This means that prosecution teams, who have special responsibilities to ensure that justice is done, must disclose exculpatory evidence in a timely manner. In addition, there must be a duty, and a mechanism, for prosecution teams to remedy wrongful convictions.

The Solution: The American Bar Association has recognized that prosecutors play a very special role in the criminal justice system. Their job is not necessarily to obtain a conviction, rather it is to see that justice is done. The ABA model Rules of Professional Conduct mandate that prosecutors disclose ALL exculpatory material and mandate that prosecutors act to remedy wrongful convictions. These rules have not been adopted in California. This resolution adopts codifies Model Rule 3.8, subdivisions (d), (g), and (h) into law. Justice isn't just a goal, it's a requirement.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

AUTHOR AND/OR PERMANENT CONTACT: Mark Harvis, Los Angeles County Public Defender, 320 W. Temple Ste 590, Los Angeles, CA 90012 213 974-3066, mharvis@pubdef.lacounty.gov

RESPONSIBLE FLOOR DELEGATE: Mark Harvis

RESOLUTION COMMITTEE RECOMMENDATION
DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1054.1 to require disclosure of exculpatory evidence and adds Penal Code section 1183 requiring further investigation by prosecution teams. This resolution should be disapproved because the prosecution team already has the duty to disclose exculpatory evidence, and the addition of Penal Code section 1183 places an unjust burden on prosecution teams to perform an investigation on the defendant's behalf.

Penal Code section 1054.1 already requires prosecutors to timely disclose to the defense all known, and unprivileged evidence or information that tends to negate the guilt of the accused, or mitigates the offense. (*Brady v. Maryland* (1963) 373 U.S. 83; *People v. Lucas* (2014) 60 Cal.4th 153, *reh'g denied, petition for cert. denied on June 1, 2015*.) The burden of proving a criminal prosecution falls on the prosecuting authority.

Prosecutors are already required to timely disclose any exculpatory evidence with an accused or convicted defendant. Therefore, the amendment to Penal Code section 1054.1 is unnecessary.

While the disclosure of later-discovered, post-conviction, exculpatory evidence would further justice, the proposed addition of Penal Code section 1183 goes far beyond that. This proposed section would force prosecution teams to perform an investigation determining whether the defendant was properly convicted. In effect, this section would require the prosecutor to do the defense attorney's job, and track down evidence for the defendant. The law should not require attorneys to advocate for their opponent.