

POLITICS 10/01/2016 07:15 pm ET

Cheating California Prosecutors Face Prison Under New Law

Prosecutors thinking of bending the rules might think twice in the Golden State.



By Matt Ferner



HEMERA TECHNOLOGIES VIA GETTY IMAGES

California prosecutors who knowingly withhold or falsify evidence can now be charged with a felony and go to prison under a law signed Friday by Gov. Jerry Brown (D).

California Assemblywoman Patty Lopez (D) introduced the bill ([AB 1909](#)) which makes the withholding or falsifying of evidence by prosecutors a felony in the state. Falsifying or withholding evidence was previously a misdemeanor for the general public and a felony for law enforcement officers in the state.

If prosecutors “intentionally and in bad faith alter, modify, or withhold” any information “knowing that it is relevant and material to the outcome of the case,” they could be punished by 16 months, two or three years in prison, depending on the severity of the violation.

The law arrives as [a jailhouse informant scandal](#) continues to rock the state’s third-most populous county, Orange County. In a series of blockbuster motions, Assistant Public Defender Scott Sanders has accused county prosecutors and police of violating defendants’ rights for years through illegally obtaining, and at times withholding, evidence gleaned from jail informants. His discoveries have led to the unraveling of multiple murder cases in the county, even resulting in a convicted murderers [having his sentence vacated](#).

In one high-profile murder case in the county — the case of Scott Dekraai, a man who [shot and killed eight people in 2011](#) in the deadliest mass murder in Orange County history — Superior Court Judge Thomas Goethals found that the Orange County District Attorney’s office did commit misconduct in its use of the county’s jail informant program; but the office did so unintentionally, he ruled. Still, the judge found the OCDA’s conduct so egregious that he [booted the entire office](#) from the case.

It remains unclear exactly how many cases in the county may have been affected by tainted informant evidence, but Sanders has argued that every case involving a jailhouse informant in Orange County over the last 30 years deserves to be re-examined.

County DA Tony Rackauckas has maintained that no one in his office intentionally behaved inappropriately in relation to the

While the law doesn't create any new legal obligations for prosecutors, it does create new sanctions for those willing to violate the law, which is "desirable," Erwin Chemerinsky, dean of the law school at the University of California, Irvine, told The Huffington Post in an email.

"Hopefully, this will provide an additional deterrent against prosecutorial misconduct," Chemerinsky said.

Ben Feuer, chairman of the California Appellate Law Group and a former clerk on the U.S. 9th Circuit Court of Appeals, told HuffPost the law is "a good step in the right direction" and that the law may have a significant effect on disincentivizing prosecutorial misconduct.

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Where a state prosecutor in the past may have willfully withheld evidence in order to boost convictions to advance his or her career, Feuer explained, now a prosecutor has to at least weigh that theoretical benefit against committing an actual felony that could land the prosecutor in jail.

"That may give folks thinking of bending the rules a lot more pause before doing so — ideally, enough pause to make the right decision," Feuer said.

Prosecutors are the most powerful government agents in the American criminal justice system. They have complete and unrivaled access to evidence that can determine a person's guilt or innocence.

Multiple [Supreme Court rulings](#) over the years have sought to chip away at the unilateral power of prosecutors, requiring them to provide any and all evidence to the defense that might be favorable to the defendant. But this puts defense attorneys on the back foot as they're forced to blindly trust that prosecutors will turn over all their evidence — which doesn't always happen.

Prosecutors are also largely shielded from any liability that might result from their actions thanks to a Supreme Court ruling granting them ["absolute immunity."](#)

In California, there often have been no consequences for prosecutors who have been caught cheating the system. According to a 2010 study from criminal justice reform group the [Northern California Innocence Project](#), there were more than 700 California cases of prosecutorial misconduct from 1997 to 2009 — and only six prosecutors in those cases were ever disciplined.

Of course, most prosecutors behave ethically. But even one bad actor in a prosecutor's office can have a significant impact on countless defendants and cases. And based on the data that is available, it's clear that there are more than a few bad apples.

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A non-trivial number of prosecutors — and sometimes entire prosecutorial offices — engage in misconduct that seriously undermines the fairness of criminal trials.

—Judge Alex Kozinski, 9th Circuit Court of Appeals

"There are disturbing indications that a non-trivial number of prosecutors — and sometimes entire prosecutorial offices — engage in misconduct that seriously undermines the fairness of criminal trials," Alex Kozinski, a judge on the 9th Circuit Court of Appeals, wrote last year in a landmark [paper critiquing the criminal justice system](#) nationwide. "The misconduct ranges from misleading the jury, to outright lying in court and tacitly acquiescing or actively participating in the presentation of false evidence by police."

In a further effort to crack down on such malfeasance from prosecutors in the state, on Saturday morning, the California State Bar Board of Trustees voted 11-1 on new ethics rules regarding prosecutors' duty to turn over evidence, a spokeswoman for the board

Under the rule, any state prosecutor who does not disclose evidence or information which they “know or reasonably should know” to be favorable to a defendant would be subject to discipline. The rules must still be approved by the state Supreme Court in order to take effect.

“There are several current and former prosecutors on the board, some who spoke in favor of the proposal and some who spoke against it,” said Laura Ernde, managing director of communications for the state bar. “But all recognized the need for more public trust in the system.”

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