

New law: Prosecutors face felonies if they falsify or withhold evidence

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California prosecutors who willfully falsify or withhold evidence could wind up in prison, under a new law signed Friday by Gov. Jerry Brown.

The bill, AB 1909, makes it a felony for prosecutors to intentionally falsify or withhold evidence. Previously, such acts were prosecuted as misdemeanors; they are already felonies for police officers.

"Those individuals who are willing to win a case at all costs, who abuse their power as officers of the court, must answer for their actions," said Assemblywoman Patty Lopez, D-San Fernando, who carried the legislation.

The punishment is 16 months, two years or three years incarceration, depending on the circumstances and the specific violation.

Lopez introduced the legislation as local and national media started to focus on accusations that Orange County prosecutors and police have illegally used jailhouse snitches and regularly withheld information favorable to the defense.

One Superior Court judge, reacting to such accusations, removed the Orange County District Attorney's Office from the penalty phase trial of Scott Dekraai, who killed eight people at a Seal Beach salon in 2011. That decision is being appealed by the state Attorney General's Office, which inherited the case.

Judge Thomas Goethals, in the Dekraai case, ruled that Orange County prosecutors could not guarantee a fair trial for the defendant. He found that prosecutors had, indeed, committed misconduct, but not intentionally. Under the new law, they would not be eligible for prosecution.

That is one of the criticisms of the bill.

In a past statement, Orange County District Attorney Tony Rackauckas said he favored legislation to increase the penalties for intentional violations, but that it should apply to all attorneys.

Opponents have said boosting the penalty for prosecutors would bog down the courts and that prosecutors who commit misconduct already are subject to sanctions by the state Bar Association.

Supporters say existing sanctions weren't enough, and note that judges and the Bar rarely take action against offending prosecutors.

The California Attorneys for Criminal Justice called the new law the "first ... of its kind in the nation to specifically hold prosecutors accountable for their decision to choose a conviction above seeking justice, often leading to wrongful convictions and miscarriages of justice."

"By signing AB 1909 into law, California is no longer going to allow this epidemic to grow with impunity," said Matthew Guerrero, president of the California Attorneys for Criminal Justice.

"This law will put bad-acting prosecutors on notice; the state is watching your actions and these ethical violations will incur severe and justified punishment."

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