

Date of Hearing: March 14, 2017  
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

AB 16 (Cooper) – As Introduced December 5, 2016

**SUMMARY:** Expands existing DNA provisions to require adults convicted of specified misdemeanors to provide DNA samples for inclusion in the DNA database. The misdemeanor offenses are as follows:

- 1) Shoplifting where the value does not exceed \$950.
- 2) Forgery where the value for the forged document does not exceed \$950.
- 3) Check fraud where the total amount of checks does not exceed \$950.
- 4) Theft where the value does not exceed \$950.
- 5) Possession of stolen property where the value does not exceed \$950.
- 6) Possession of specified drugs, including cocaine, methamphetamine, concentrated cannabis.

**EXISTING LAW:**

- 2) Requires the following persons provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis.
  - a) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile where a court has found that they have committed any felony offense. (Pen. Code, § 296, subd. (a)(1).)
  - b) Any adult person who is arrested for or charged with a felony offense. (Pen. Code, § 296, subd. (a)(2)(C).)
  - c) Any person, including any juvenile, who is required to register as a sex offender or arson offender because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense. (Pen. Code, § 296, subd. (a)(3).)
- 3) The term “felony” includes an attempt to commit the offense. (Pen. Code, § 296, subd. (a)(4).)

- 4) Allows the collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense. (Pen. Code, § 296, subd. (a)(5).)
- 5) Requires submission of specimens, samples, and print impressions as soon as administratively practicable by qualified persons and shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles (Pen. Code, § 296, subd. (c).)
  - a) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender. (Pen. Code, § 296, subd. (c)(1).)
  - b) Any person who is designated a mentally ordered offender. (Pen. Code, § 296, subd. (c)(2).)
  - c) Any person found to be a sexually violent predator. (Pen. Code, § 296, subd. (c)(3).)
- 6) Specifies that the court shall inquire and verify, prior to final disposition or sentencing in the case, that the specimens, samples, and print impressions have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. (Pen. Code, § 296, subd. (f).)
- 7) Provides that failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements to provide samples. (Pen. Code, § 296, subd. (f).)
- 8) Provides that The Department of Justice(DOJ), through its DNA Laboratory, is responsible for the management and administration of the state's DNA and Forensic Identification Database and Data Bank Program and for liaising with the Federal Bureau of Investigation (FBI) regarding the state's participation in a national or international DNA database and data bank program such as the Combined DNA Index System (CODIS) that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide. (Pen. Code, § 295, subd. (g).)
- 9) Provides that DOJ can perform DNA analysis, other forensic identification analysis, and examination of palm prints pursuant to the Act only for identification purposes. (Pen. Code, § 295.1, subs. (a) & (b).)
- 10) Provides that the DOJ DNA Laboratory is to serve as a repository for blood specimens, buccal swab, and other biological samples collected and is required to analyze specimens and samples and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following (Pen. Code, § 295.1, subd. (c).):
  - a) Forensic casework and forensic unknowns. (Pen. Code, § 295.1, subd. (c)(1).)
  - b) Known and evidentiary specimens and samples from crime scenes or criminal investigations. (Pen. Code, § 295.1, subd. (c)(2).)

- c) Missing or unidentified persons. (Pen. Code, § 295.1, subd. (c)(3).)
  - d) Persons required to provide specimens, samples, and print impressions. (Pen. Code, § 295.1, subd. (c)(4).)
  - e) Legally obtained samples. (Pen. Code, § 295.1, subd. (c)(5).)
  - f) Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control. (Pen. Code, § 295.1, subd. (c)(6).)
- 11) Specifies the Director of Corrections, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, buccal swab samples, and thumb and palm print impressions were collected send them promptly to the Department of Justice. (Pen. Code, § 298.)
- 12) Requires the DNA Laboratory of DOJ to establish procedures for entering data bank and database information. (Cal. Penal Code § 298(b)(6).)
- 13) Specifies that a person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her DNA specimen and sample destroyed and searchable database profile expunged from the data bank program if the person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Data Bank Program and there otherwise is no legal basis for retaining the specimen or sample or searchable profile. (Cal. Pen. Code § 299, subd. (b).)
- a) Following arrest, no accusatory pleading has been filed within the applicable period allowed by law charging the person with a qualifying offense or if the charges which served as the basis for including the DNA profile in the state's DNA Database and Data Bank Identification Program have been dismissed prior to adjudication by a trier of fact (Pen. Code, § 299, subd.(b)(1).); or
  - b) The underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed (Pen. Code, § 299, subd.(b)(2).); or
  - c) The person has been found factually innocent of the underlying offense (Pen. Code, § 299, subd.(b)(3).); or
  - d) The defendant has been found not guilty or the defendant has been acquitted of the underlying offense. (Pen. Code, § 299, subd.(b)(4).)
- 14) Requires the person requesting the data bank entry to be expunged send a copy of his or her request to the trial court of the county where the arrest occurred, or that entered the conviction or rendered disposition in the case, to the DNA Laboratory of the Department of Justice, and to the prosecuting attorney of the county in which he or she was arrested or, convicted, or adjudicated, with proof of service on all parties. The court has the discretion to grant or deny the request for expungement. The denial of a request for expungement is a nonappealable order and shall not be reviewed by petition for writ. (Pen. Code, § 299, subd.

(c)(1.)

- 15) Requires DOJ destroy a specimen and sample and expunge the searchable DNA database profile pertaining to the person who has no present or past qualifying offense of record upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following (Pen. Code, § 299, subd. (c)(2).):
- a) The written request for expungement pursuant to this section. (Pen. Code, § 299, subd.(c)(2)(A).);
  - b) A certified copy of the court order reversing and dismissing the conviction or case, or a letter from the district attorney certifying that no accusatory pleading has been filed or the charges which served as the basis for collecting a DNA specimen and sample have been dismissed prior to adjudication by a trier of fact, the defendant has been found factually innocent, the defendant has been found not guilty, the defendant has been acquitted of the underlying offense, or the underlying conviction has been reversed and the case dismissed. (Pen. Code, § 299, subd.(c)(2)(B).)
  - c) Proof of written notice to the prosecuting attorney and the Department of Justice that expungement has been requested. (Pen. Code, § 299, subd.(c)(2)(C).)
  - d) A court order verifying that no retrial or appeal of the case is pending, that it has been at least 180 days since the defendant or minor has notified the prosecuting attorney and the Department of Justice of the expungement request, and that the court has not received an objection from the Department of Justice or the prosecuting attorney . (Pen. Code, § 299, subd.(c)(2)(D).)
- 16) States that the Department of Justice shall destroy not any specimen or sample collected from the person and any searchable DNA database profile pertaining to the person, if department determines that the person is subject to the provisions of this chapter because of a past qualifying offense of record or is or has otherwise become obligated to submit a blood specimen or buccal swab sample as a result of a separate arrest, conviction, juvenile adjudication, or finding of guilty or not guilty by reason of insanity for an offense requiring a DNA sample, or as a condition of a plea. (Pen. Code, § 299, subd. (d).)
- 17) The Department of Justice is not required to destroy analytical data or other items obtained from a blood specimen or saliva, or buccal swab sample, if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed or otherwise compromised. (Pen. Code, § 299, subd. (d).)
- 18) States that a judge is not authorized to relieve a person of the separate administrative duty to provide specimens, samples, or print impressions required, including reduction to a misdemeanor(Cal. Penal Code § 17.), or dismissal following conviction. (Cal. Penal Code §§ 1203.4, 1203.4a.) (Cal. Penal Code § 299(f).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "AB 16 will allow for restoration of DNA sample collection for crimes which were previously felonies but were reclassified as misdemeanors by the Safe Neighborhoods and Schools Act. The passage of this act created an unintended consequence which has limited the ability of law enforcement to solve rapes, murders, and other violent crimes through the collection of reliable forensic DNA evidence. With one of the largest databases in the world, California has been able to accurately identify those who have committed prior unsolved violent crimes. This has benefitted the people of California by allowing for the introduction of reliable scientific evidence that provides powerful proof of identity, both in exonerating some individuals and convicting others. It has been said that DNA technology "constitutes the single greatest advance in the 'search for truth', and the goal of convicting the guilty and acquitting the innocent, since the advent of cross examination." (See *United States v. Kincade* (9th Cir. 2004) 379F.3d 813; *People v. Robinson* (2010) 47 Cal. 4th 1104; *People v. Wesley* (1998) 533 N.Y.S. 2d 643, 644.) AB 16 reaffirms the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69) by making the criminal justice system more reliable and more just through accurate and expeditious identification using DNA of recidivist criminal offenders, and by focusing investigations on existing unsolved rapes, murders and other violent cases."
- 2) **California DNA Database:** The profile derived from the DNA sample is uploaded into the state's DNA databank, which is part of the national Combined DNA Index System (CODIS), and can be accessed by local, state and federal law enforcement agencies and officials. When a DNA profile is uploaded, it is compared to profiles contained in the Convicted Offender and Arrestee Indices; if there is a "hit," the laboratory conducts procedures to confirm the match and, if confirmed, obtains the identity of the suspect. The uploaded profile is also compared to crime scene profiles contained in the Forensic Index; again, if there is a hit, the match is confirmed by the laboratory. CODIS also performs weekly searches of the entire system. In CODIS, the profile does not include the name of the person from whom the DNA was collected or any case-related information, but only a specimen identification number, an identifier for the agency that provided the sample, and the name of the personnel associated with the analysis. CODIS is also the name of the related computer software program. CODIS's national component is the National DNA Index System (NDIS), the receptacle for all DNA profiles submitted by federal, state, and local forensic laboratories. DNA profiles typically originate at the Local DNA Index System (LDIS), then migrate to the State DNA Index System (SDIS), containing forensic profiles analyzed by local and state laboratories, and then to NDIS.
- 3) **Proposition 69:** Proposition 69 was passed by the voters in 2004. That proposition expanded the categories of people required to provide DNA samples for law enforcement identification analysis to include any adult person arrested or charged with any felony offense.
- 4) **Proposition 47:** Proposition 47 was passed by the voters in 2014. By passing Proposition 47, the voters determined that certain offense can only be charged and punished as misdemeanors. The offenses that were affected by the voters in Prop. 47 were predominantly "wobblers." A wobbler is an offense which can be charged as a felony, or a misdemeanor, at the discretion of the district attorney's office responsible for charging the crime. The only offense affected by Proposition 47, that was chargeable exclusively as a felony, was possession of specified drugs, primarily cocaine. (Health and Saf. Code, § 11350(a).)

- 5) **The Proposed Legislation Would Result in DNA Samples From Individuals that Would Not Have Been Required to Provide DNA Prior to Proposition 47.** The proposed legislation requires that DNA samples be taken from individuals convicted of misdemeanors that were all affected by Prop. 47. Given that these offenses were wobblers (except possession of cocaine), an individual arrested for one of these offenses, could have been arrested for a felony or a misdemeanor, at the discretion of the officer. Similarly, these offenses could have been charged (if charges were filed at all) as either misdemeanors or felonies at the discretion of the district attorney's offices responsible for making charging decisions. Thus, many instances covered by the proposed legislation would not have triggered DNA collection prior to Proposition 47, or would have allowed the sample to be expunged from the database if there was no conviction for a qualifying offense.
- 6) **This Bill Would Mandate Collection of DNA for Misdemeanor Offenses That Are Low Level, Non-Violent Offenses:** The misdemeanors in this bill include petty theft, receiving stolen property (\$950 or less), passing a bad check (\$950 or less), and simple possession of drugs. These are all non-violent offenses on the lower end of the criminal spectrum.

California criminal law generally imposes consequences in proportion to the level of criminal conduct for which the defendant has been convicted. Thus, a conviction on a felony offense generally justifies consequences which are more serious or more intrusive on an individual's privacy and rights than a conviction on a misdemeanor.

California law currently requires DNA samples to be collected in relation to felony offenses. The only misdemeanor convictions which currently require a DNA sample are those misdemeanor convictions which result in registration of the defendant as a sex or arson offender. Those are offenses on the serious end of the spectrum for misdemeanor conduct and reflect conduct for which the individual is appropriately subject to additional scrutiny. Requiring DNA for those offenses is more consistent with concept of proportionality that runs through California's criminal law. Requiring DNA for those offenses is more consistent with the concept of proportionality that runs through California's criminal law.

A DNA sample from an individual contains a tremendous amount of private and sensitive information about that individual. This bill raises the question of whether California should allow such a significant intrusion based on conviction of a low level, non-violent misdemeanor offense.

- 7) **Argument in Support:** According to the *California Police Chiefs Association*, "The Proposition 47 reclassification of certain felony offenses to misdemeanors has resulted in a significant reduction of DNA samples collected from offenders, which has negatively impacted law enforcement's ability to solve serious crimes such as sexual assault and murder. In fact, the Sacramento Bee's February 14 Editorial claims that, 'More than 250,000 DNA samples collected since November can no longer be analyzed. That number grows daily. Several hundred thousand more that were collected in felony arrest before Proposition 47 passed may be expunged from the database because these crimes have since been reclassified as misdemeanors' Prior to Proposition 47, the DNA database was expanding and had tremendous success accurately identifying individuals who have committed prior unsolved violent crimes, while exonerating others who were proven innocent."

8) **Argument in Opposition:** According to the *Electronic Frontier Foundation*, “**AB 16 Will Not Result in More Crimes Solved**

“AB 16 will significantly increase the number DNA profiles contained in California’s already overly large DNA database but will not solve more crimes. Although California’s databank is the largest state database in the country and the third largest in the world, the databank “is anomalous in the relatively low number of investigations aided.” This is because, as research has repeatedly shown, notwithstanding anecdotal claims by advocates to the contrary, bigger is not better when it comes to arrestee and offender DNA databases. The ability of the police to solve crimes using DNA is ‘more strongly related to the *number of crime-scene samples* than to the number of offender profiles in the database.’ ‘[S]tudy after study has shown that *improving the collecting of DNA from crime scenes*, not from known offenders, would make the real difference in solving cases.’

**“AB 16 Impacts Privacy**

“AB 16 threatens privacy because it would require approximately 40,000 additional Californians to submit to DNA testing every year with no proven benefit to society. DNA can reveal an extraordinary amount of private information about a person beyond mere identifying information, including familial relationships, medical history, predisposition for disease, and possibly even behavioral tendencies and sexual orientation. DNA samples, which contain this sensitive information, are retained by the state indefinitely.

“AB 16 impacts not only the privacy rights of the convicted misdemeanor but also those of his or her family members. California currently allows familial searches of its convicted offender database—searches designed to find a biological relative whose DNA is not in the database. This means that family members who may not have had any connection to criminal activity could be implicated through DNA database searches.

**“AB 16 Undermines the Will of California Voters by Reverting Proposition 47 Crimes to “Felonies” for Purposes of Penal Code § 296 and by Taking Law Enforcement Resources Away from Violent and Serious Crime**

“Almost all other states that require DNA collection from those convicted of misdemeanors do so solely for sex offenses or violent crimes. By amending Penal Code 296 to include Proposition 47 misdemeanors, AB 16 goes against this norm and against the will of California voters who explicitly determined those crimes should no longer be charged as felonies.

“AB 16 also undermines the will of supporters of Proposition 47 because it would take law enforcement focus away from “violent and serious crime.” As Proposition 47 supporters noted in the ballot guide, the main intent behind Proposition 47 was to “improve public safety” by “focus[ing] law enforcement resources on violent and serious crime.” AB 16 would undermine this intent by taking law enforcement focus and resources away from serious criminals and placing it right back on those non-violent crimes now listed as misdemeanors.”

9) **Related Legislation:** SB 781 (Glazer), would require DNA samples from individuals convicted of misdemeanors that were the subject of Proposition 47 (2014). SB 781 is

awaiting committee assignment.

**10) Prior Legislation:**

- a) AB 1492 (Gatto), Chapter 487, Statutes of 2015, provided back up language for DNA collection if the California Supreme Court rules to uphold the case of *People v. Buza*, and find the current legal framework for collecting DNA from felony arrestees unconstitutional.
- b) AB 390 (Cooper), of the 2015-2016 Legislative Session, would have required persons convicted of specified misdemeanors to provide buccal DNA samples. AB 390 was held in the Senate Public Safety Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Alameda County District Attorney  
Association of Deputy District Attorneys  
California Association of Code Enforcement Officers  
California College and University Police Chiefs Association  
California Correctional Supervisors Association  
California Narcotic Officers Association  
California Peace Officers Association  
California Police Chiefs Association  
California State Sheriffs' Association  
Crime Victims United of California  
Los Angeles County Professional Peace Officers Association  
Los Angeles Deputy Sheriffs  
Los Angeles Police Protective League  
Peace Officers Research Association of California  
Riverside Sheriffs Association

**Opposition**

American Civil Liberties Union of California  
California Attorneys for Criminal Justice  
California Civil Liberties Advocacy  
California Public Defenders Association  
California Immigrant Policy Center  
Drug Policy Alliance  
Ella Baker Center for Human Rights  
Electronic Frontier Foundation  
Immigrant Legal Resource Center  
Tarzana Treatment Centers

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