

ASSEMBLY BILL

No. 16

Introduced by Assembly Member Cooper
(Principal coauthor: Senator De León)

December 5, 2016

An act to amend Section 296 of the Penal Code, relating to DNA evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 16, as introduced, Cooper. Criminal law: DNA evidence.

Existing law, as amended by the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, Proposition 69, approved by votes at the November 2, 2004, general election requires a person who has been convicted of a felony offense to provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required for law enforcement identification analysis. Existing law imposes these requirements regardless of when the crime charged or committed became a qualifying offense.

This bill would expand these provisions to require persons convicted of specified misdemeanors to provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required for law enforcement identification analysis. By imposing additional duties on local law enforcement agencies to collect and forward these samples, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 296 of the Penal Code is amended to
2 read:

3 296. (a) The following persons shall provide buccal swab
4 samples, right thumbprints, and a full palm print impression of
5 each hand, and any blood specimens or other biological samples
6 required pursuant to this chapter for law enforcement identification
7 analysis:

8 (1) Any person, including any juvenile, who is convicted ~~of~~ of,
9 or pleads guilty or no contest ~~to~~ to, any felony offense, or is found
10 not guilty by reason of insanity of any felony offense, or any
11 juvenile who is adjudicated under Section 602 of the Welfare and
12 Institutions Code for committing any felony offense.

13 (2) Any adult person who is arrested for or charged with any of
14 the following felony offenses:

15 (A) Any felony offense specified in Section 290 or attempt to
16 commit any felony offense described in Section 290, or any felony
17 offense that imposes upon a person the duty to register in California
18 as a sex offender under Section 290.

19 (B) Murder or voluntary manslaughter or any attempt to commit
20 murder or voluntary manslaughter.

21 (C) ~~Commencing on January 1 of the fifth year following~~
22 ~~enactment of the act that added this subparagraph, as amended,~~
23 ~~1, 2009,~~ any adult person arrested or charged with any felony
24 offense.

25 (3) Any person, including any juvenile, who is required to
26 register under Section 290 or 457.1 because of the commission of,
27 or the attempt to commit, a felony or misdemeanor offense, or any
28 person, including any juvenile, who is housed in a mental health
29 facility or sex offender treatment program after referral to such
30 facility or program by a court after being charged with any felony
31 offense.

1 (4) Any person, excluding a juvenile, who is convicted of, or
2 pleads guilty or no contest to, any of the following offenses:

3 (A) A misdemeanor violation of Section 459.5.

4 (B) A violation of subdivision (a) of Section 473 that is
5 punishable as a misdemeanor pursuant to subdivision (b) of Section
6 473.

7 (C) A violation of subdivision (a) of Section 476a that is
8 punishable as a misdemeanor pursuant to subdivision (b) of Section
9 476a.

10 (D) A violation of Section 487 that is punishable as a
11 misdemeanor pursuant to Section 490.2.

12 (E) A violation of Section 496 that is punishable as a
13 misdemeanor.

14 (F) A misdemeanor violation of subdivision (a) of Section 11350
15 of the Health and Safety Code.

16 (G) A misdemeanor violation of subdivision (a) of Section 11357
17 of the Health and Safety Code.

18 (H) A misdemeanor violation of subdivision (a) of Section 11377
19 of the Health and Safety Code.

20 ~~(4)~~

21 (5) The term “felony” as used in this subdivision includes an
22 attempt to commit the offense.

23 ~~(5) Nothing in this chapter shall be construed as prohibiting~~

24 (6) ~~This chapter does not prohibit~~ collection and analysis of
25 specimens, samples, or print impressions as a condition of a plea
26 for a non-qualifying offense.

27 (b) The provisions of this chapter and its requirements for
28 submission of specimens, samples and print impressions as soon
29 as administratively practicable shall apply to all qualifying persons
30 regardless of sentence imposed, including ~~any~~ a sentence of death,
31 life without the possibility of parole, or ~~any~~ a life or indeterminate
32 term, or any other disposition rendered in the case of an adult or
33 juvenile tried as an adult, or whether the person is diverted, fined,
34 or referred for evaluation, and regardless of disposition rendered
35 or placement made in the case of juvenile who is found to have
36 committed any felony offense or is adjudicated under Section 602
37 of the Welfare and Institutions Code.

38 (c) The provisions of this chapter and its requirements for
39 submission of specimens, samples, and print impressions as soon
40 as administratively practicable by qualified persons as described

1 in subdivision (a) shall apply regardless of placement or
2 confinement in any mental hospital or other public or private
3 treatment facility, and shall include, but not be limited to, the
4 following persons, including juveniles:

5 (1) Any person committed to a state hospital or other treatment
6 facility as a mentally disordered sex offender under *former* Article
7 1 (commencing with Section 6300) of Chapter 2 of Part 2 of
8 Division 6 of the Welfare and Institutions Code.

9 (2) Any person who has a severe mental disorder as set forth
10 within the provisions of Article 4 (commencing with Section 2960)
11 of Chapter 7 of Title 1 of Part 3 of the Penal Code.

12 (3) Any person found to be a sexually violent predator pursuant
13 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
14 2 of Division 6 of the Welfare and Institutions Code.

15 (d) The provisions of this chapter are mandatory and apply
16 whether or not the court advises a person, including any juvenile,
17 that he or she must provide the data bank and database specimens,
18 samples, and print impressions as a condition of probation, parole,
19 or any plea of guilty, no contest, or not guilty by reason of insanity,
20 or any admission to any of the offenses described in subdivision
21 (a).

22 (e) If at any stage of court proceedings the prosecuting attorney
23 determines that specimens, samples, and print impressions required
24 by this chapter have not already been taken from any person, as
25 defined under subdivision (a) of Section 296, the prosecuting
26 attorney shall notify the court orally on the record, or in writing,
27 and request that the court order collection of the specimens,
28 samples, and print impressions required by law. However, a failure
29 by the prosecuting attorney or any other law enforcement agency
30 to notify the court shall not relieve a person of the obligation to
31 provide specimens, samples, and print impressions pursuant to this
32 chapter.

33 (f) Prior to final disposition or sentencing in the case the court
34 shall inquire and verify that the specimens, samples, and print
35 impressions required by this chapter have been obtained and that
36 this fact is included in the abstract of judgment or dispositional
37 order in the case of a juvenile. The abstract of judgment issued by
38 the court shall indicate that the court has ordered the person to
39 comply with the requirements of this chapter and that the person

1 shall be included in the state's DNA and Forensic Identification
2 Data Base and Data Bank program and be subject to this chapter.

3 However, failure by the court to verify specimen, sample, and
4 print impression collection or enter these facts in the abstract of
5 judgment or dispositional order in the case of a juvenile shall not
6 invalidate an arrest, plea, conviction, or disposition, or otherwise
7 relieve a person from the requirements of this chapter.

8 SEC. 2. If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.