

Senate Bill No. 1242

CHAPTER 632

An act to amend Section 298.1 of the Penal Code, relating to criminal identification, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 2002. Filed
with Secretary of State September 18, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1242, Brulte. Criminal identification: specimen or sample collection: use of reasonable force.

Existing law makes it a misdemeanor for persons convicted of specified offenses to refuse or fail to provide 2 specimens of blood, a saliva sample, and a thumb and palm print impression for law enforcement identification analysis after receiving written notice of the requirement to do so.

This bill would provide that, notwithstanding the above, authorized law enforcement, custodial, or corrections personnel, including specified peace officers, may employ reasonable force to collect required specimens, samples, or print impressions from individuals who, after request, refuse to provide those specimens, samples, or print impressions. The bill would require the Department of Corrections and the Department of the Youth Authority to adopt regulations regarding the use of reasonable force. The bill would require the Board of Corrections to adopt regulations regarding the use of reasonable force for local detention facilities. The bill would also require the Department of Corrections, the Department of the Youth Authority, and the Board of Corrections to report to the Legislature, no later than January 1, 2005, regarding implementation of the provisions of the bill, as specified.

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 298.1 of the Penal Code is amended to read:

298.1. (a) As of the effective date of this chapter, any person who refuses to give any or all of the following, blood specimens, saliva samples, or thumb or palm print impressions as required by this chapter, once he or she has received written notice from the Department of Justice, the Department of Corrections, any law enforcement personnel,



or officer of the court that he or she is required to provide specimens, samples, and print impressions pursuant to this chapter is guilty of a misdemeanor. The refusal or failure to give any or all of the following, a blood specimen, saliva sample, or thumb or palm print impression is punishable as a separate offense by both a fine of five hundred dollars (\$500) and imprisonment of up to one year in a county jail, or if the person is already imprisoned in the state prison, by sanctions for misdemeanors according to a schedule determined by the Department of Corrections.

(b) (1) Notwithstanding subdivision (a), authorized law enforcement, custodial, or corrections personnel, including peace officers as defined in Sections 830, 830.1, 830.5, and 830.55, or subdivision (d) of Section 830.2, may employ reasonable force to collect blood specimens, saliva samples, or thumb or palm print impressions pursuant to this chapter from individuals who, after written or oral request, refuse to provide those specimens, samples, or thumb or palm print impressions.

(2) The withdrawal of blood shall be performed in a medically approved manner in accordance with the requirements of paragraph (2) of subdivision (b) of Section 298.

(3) The use of reasonable force as provided in this subdivision shall be carried out in a manner consistent with regulations and guidelines adopted pursuant to subdivision (c).

(c) (1) The Department of Corrections and the Department of the Youth Authority shall adopt regulations governing the use of reasonable force as provided in subdivision (b), which shall include the following:

(A) The term “use of reasonable force” shall be defined as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance with this chapter.

(B) The use of reasonable force shall not be authorized without the prior written authorization of the supervising officer on duty. The authorization shall include information that reflects the fact that the offender was asked to provide the requisite specimen, sample, or impression and refused.

(C) The use of reasonable force shall be preceded by efforts to secure voluntary compliance with this section.

(D) If the use of reasonable force includes a cell extraction, the regulations shall provide that the extraction be videotaped.

(2) The Board of Corrections shall adopt guidelines governing the use of reasonable force as provided in subdivision (b) for local detention facilities, which shall include the following:



(A) The term “use of reasonable force” shall be defined as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance with this chapter.

(B) The use of reasonable force shall not be authorized without the prior written authorization of the supervising officer on duty. The authorization shall include information that reflects the fact that the offender was asked to provide the requisite specimen, sample, or impression and refused.

(C) The use of reasonable force shall be preceded by efforts to secure voluntary compliance with this section.

(D) If the use of reasonable force includes a cell extraction, the extraction shall be videotaped.

(3) The Department of Corrections, the Department of the Youth Authority, and the Board of Corrections shall report to the Legislature not later than January 1, 2005, on the use of reasonable force pursuant to this section . The report shall include, but is not limited to, the number of refusals, the number of incidents of the use of reasonable force under this section, the type of force used, the efforts undertaken to obtain voluntary compliance, if any, and whether any medical attention was needed by the prisoner or personnel as a result of force being used.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enable the state’s DNA and Forensic Identification Data Base and Data Bank program to expeditiously and accurately solve crime and exonerate the innocent in accordance with its statutory mandate, it is necessary that this act take immediate effect.

