

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005-06 REGULAR SESSION

ASSEMBLY BILL

No. 2850

Introduced by Assembly Member Spitzer

February 24, 2006

An act to amend Sections ~~296~~ 296.1, 297, and 298.1 of the Penal Code, and to amend Section ~~76104.6~~ of the Government Code, relating to DNA testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2850, as amended, Spitzer. DNA testing.

(1) Existing law requires persons who are arrested for, charged with, or convicted of specified crimes to provide biological samples for law enforcement identification, as specified, ~~regardless of the sentence imposed, including any disposition rendered or whether the person is diverted, fined, or referred for evaluation.~~ Existing law provides that these provisions shall apply retroactively to specified offenders and that collection of required specimens, samples, and print impressions shall occur regardless of when the crime charged or committed became a qualifying offense and regardless of when the person was convicted of the qualifying offense or a similar crime.

This bill would state the intent of the Legislature to codify the official view of the Department of Justice regarding classes of persons who are subject to DNA collection, as specified, and would remove the reference to diversion from these provisions persons who have been arrested for or charged with a felony sexual offense or attempt to commit a felony sexual offense requiring registration and persons who have been arrested for or charged with murder or voluntary manslaughter or any attempt to commit murder or voluntary

manslaughter from retroactive application of these provisions. This bill would also remove provisions that would have required that commencing January 1, 2009, biological samples also be provided by persons who are arrested for, or charged with, any felony offense.

(2) Existing law provides that specified accredited laboratories are authorized to analyze crime scene samples and perform anonymous analysis of specimens and samples for forensic identification, as specified.

This bill would change the accreditation required of these laboratories, as specified. *This bill would also provide that laboratories of the Department of Justice and designated public law enforcement crime laboratories may upload to available DNA and forensic identification data banks, as specified.*

(3) Existing law provides that authorized law enforcement, custodial, or corrections personal, including peace officers, may employ reasonable force to collect biological samples from individuals who refuse to provide those samples, as required by law.

This bill would include the officers of a state mental hospital among those peace officers who may collect those samples as described above.

~~(4) Existing law provides that for the purposes of implementing the DNA Fingerprint Unsolved Crime and Innocence Protection Act, an additional penalty shall be levied upon every fine, penalty, or forfeiture composed and collected for criminal offenses.~~

~~This bill would clarify that this penalty shall be levied in the case of both adult and juvenile criminal offenses.~~

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

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~~
- 7 ~~identification analysis:~~
- 8 (1) ~~Any person, including any juvenile, who is convicted of or~~
- 9 ~~pleads guilty or no contest to any felony offense, or is found not~~

1 guilty by reason of insanity of any felony offense, or any juvenile
2 who is adjudicated under Section 602 of the Welfare and
3 Institutions Code for committing any felony offense.

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

6 (A) Any felony offense specified in Section 290 or attempt to
7 commit any felony offense described in Section 290, or any
8 felony offense that imposes upon a person the duty to register in
9 California as a sex offender under Section 290.

10 (B) Murder or voluntary manslaughter or any attempt to
11 commit murder or voluntary manslaughter.

12 (C) Commencing on January 1 of the fifth year following
13 enactment of the act that added this subparagraph, as amended,
14 any adult person arrested or charged with any felony offense.

15 (3) Any person, including any juvenile, who is required to
16 register under Section 290 or 457.1 because of the commission
17 of, or the attempt to commit, a felony or misdemeanor offense, or
18 any person, including any juvenile, who is housed in a mental
19 health facility or sex offender treatment program after referral to
20 such facility or program by a court after being charged with any
21 felony offense.

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

24 (5) Nothing in this chapter shall be construed as prohibiting
25 collection and analysis of specimens, samples, or print
26 impressions as a condition of a plea 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
30 persons regardless of sentence imposed, including any sentence
31 of death, life without the possibility of parole, or any life or
32 indeterminate term, or any other disposition rendered in the case
33 of an adult or juvenile tried as an adult, or whether the person is
34 fined or referred for evaluation, and regardless of disposition
35 rendered or placement made in the case of juvenile who is found
36 to have committed any felony offense or is adjudicated under
37 Section 602 of the Welfare and Institutions Code.

38 (e) 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 Article 1
7 (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
11 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

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

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

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

34 (f) Prior to final disposition or sentencing in the case the court
35 shall inquire and verify that the specimens, samples, and print
36 impressions required by this chapter have been obtained and that
37 this fact is included in the abstract of judgment or dispositional
38 order in the case of a juvenile. The abstract of judgment issued
39 by the court shall indicate that the court has ordered the person to
40 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 *SECTION 1. It is the intent of the Legislature in enacting*
9 *Sections 2 and 4 of this measure to codify the official view of the*
10 *Department of Justice regarding classes of persons who are*
11 *subject to DNA collection pursuant to Proposition 69, as stated*
12 *in the Information Bulletin issued by the department on January*
13 *11, 2005.*

14 *SEC. 2. Section 296.1 of the Penal Code is amended to read:*

15 296.1. (a) The specimens, samples, and print impressions
16 required by this chapter shall be collected from persons described
17 in subdivision (a) of Section 296 for present and past qualifying
18 offenses of record as follows:

19 (1) Collection from any adult person following arrest for a
20 felony offense as specified in subparagraphs (A), (B), and (C) of
21 paragraph (2) of subdivision (a) of Section 296:

22 (A) Each adult person arrested for a felony offense as
23 specified in subparagraphs (A), (B), and (C) of paragraph (2) of
24 subdivision (a) of Section 296 shall provide the buccal swab
25 samples and thumb and palm print impressions and any blood or
26 other specimens required pursuant to this chapter immediately
27 following arrest, or during the booking or intake or reception
28 center process or as soon as administratively practicable after
29 arrest, but, in any case, prior to release on bail or pending trial or
30 any physical release from confinement or custody.

31 (B) If the person subject to this chapter did not have
32 specimens, samples, and print impressions taken immediately
33 following arrest or during booking or intake procedures or is
34 released on bail or pending trial or is not confined or incarcerated
35 at the time of sentencing or otherwise bypasses a prison inmate
36 reception center maintained by the Department of Corrections,
37 the court shall order the person to report within five calendar
38 days to a county jail facility or to a city, state, local, private, or
39 other designated facility to provide the required specimens,

1 samples, and print impressions in accordance with subdivision (i)
 2 of Section 295.

3 (2) Collection from persons confined or in custody after
 4 conviction or adjudication:

5 (A) Any person, including any juvenile who is imprisoned or
 6 confined or placed in a state correctional institution, a county jail,
 7 a facility within the jurisdiction of the Department of ~~the Youth~~
 8 ~~Authority, the Board of Corrections~~ *Corrections and*
 9 *Rehabilitation, the Corrections Standards Authority*, a residential
 10 treatment program, or any state, local, city, private, or other
 11 facility after a conviction of any felony or misdemeanor offense,
 12 or any adjudication or disposition rendered in the case of a
 13 juvenile, whether or not that crime or offense is one set forth in
 14 subdivision (a) of Section 296, shall provide buccal swab
 15 samples and thumb and palm print impressions and any blood or
 16 other specimens required pursuant to this chapter, immediately at
 17 intake, or during the prison reception center process, or as soon
 18 as administratively practicable at the appropriate custodial or
 19 receiving institution or placed in program if:

20 (i) The person has a record of any past or present conviction or
 21 adjudication as a ward of the court in California of a qualifying
 22 offense described in subdivision (a) of Section 296 or has a
 23 record of any past or present conviction or adjudication in any
 24 other court, including any state, federal, or military court, of any
 25 offense that, if committed or attempted in this state, would have
 26 been punishable as an offense described in subdivision (a) of
 27 Section 296; and

28 (ii) The person’s blood specimens, buccal swab samples, and
 29 thumb and palm print impressions authorized by this chapter are
 30 not in the possession of the Department of Justice DNA
 31 Laboratory or have not been recorded as part of the department’s
 32 DNA data bank program.

33 (3) Collection from persons on probation, parole, or other
 34 release:

35 (A) Any person, including any juvenile, who has a record of
 36 any past or present conviction or adjudication for an offense set
 37 forth in subdivision (a) of Section 296, and who is on probation
 38 or parole for any felony or misdemeanor offense, whether or not
 39 that crime or offense is one set forth in subdivision (a) of Section
 40 296, shall provide buccal swab samples and thumb and palm

1 print impressions and any blood specimens required pursuant to
2 this chapter, if:

3 (i) The person has a record of any past or present conviction or
4 adjudication as a ward of the court in California of a qualifying
5 offense described in subdivision (a) of Section 296 or has a
6 record of any past or present conviction or adjudication in any
7 other court, including any state, federal, or military court, of any
8 offense that, if committed or attempted in this state, would have
9 been punishable as an offense described in subdivision (a) of
10 Section 296; and

11 (ii) The person's blood specimens, buccal swab samples, and
12 thumb and palm print impressions authorized by this chapter are
13 not in the possession of the Department of Justice DNA
14 Laboratory or have not been recorded as part of the department's
15 DNA data bank program.

16 (B) The person shall have any required specimens, samples,
17 and print impressions collected within five calendar days of
18 being notified by the court, or a law enforcement agency or other
19 agency authorized by the Department of Justice. The specimens,
20 samples, and print impressions shall be collected in accordance
21 with subdivision (i) of Section 295 at a county jail facility or a
22 city, state, local, private, or other facility designated for this
23 collection.

24 (4) Collection from parole violators and others returned to
25 custody:

26 (A) If a person, including any juvenile, who has been released
27 on parole, furlough, or other release for any offense or crime,
28 whether or not set forth in subdivision (a) of Section 296, is
29 returned to a state correctional or other institution for a violation
30 of a condition of his or her parole, furlough, or other release, or
31 for any other reason, that person shall provide buccal swab
32 samples and thumb and palm print impressions and any blood or
33 other specimens required pursuant to this chapter, at a state
34 correctional or other receiving institution, if:

35 (i) The person has a record of any past or present conviction or
36 adjudication as a ward of the court in California of a qualifying
37 offense described in subdivision (a) of Section 296 or has a
38 record of any past or present conviction or adjudication in any
39 other court, including any state, federal, or military court, of any
40 offense that, if committed or attempted in this state, would have

1 been punishable as an offense described in subdivision (a) of
2 Section 296; and

3 (ii) The person's blood specimens, buccal swab samples, and
4 thumb and palm print impressions authorized by this chapter are
5 not in the possession of the Department of Justice DNA
6 Laboratory or have not been recorded as part of the department's
7 DNA data bank program.

8 (5) Collection from persons accepted into California from
9 other jurisdictions:

10 (A) When an offender from another state is accepted into this
11 state under any of the interstate compacts described in Article 3
12 (commencing with Section 11175) or Article 4 (commencing
13 with Section 11189) of Chapter 2 of Title 1 of Part 4 of this code,
14 or Chapter 4 (commencing with Section 1300) of Part 1 of
15 Division 2 of the Welfare and Institutions Code, or under any
16 other reciprocal agreement with any county, state, or federal
17 agency, or any other provision of law, whether or not the
18 offender is confined or released, the acceptance is conditional on
19 the offender providing blood specimens, buccal swab samples,
20 and palm and thumb print impressions pursuant to this chapter, if
21 the offender has a record of any past or present conviction or
22 adjudication in California of a qualifying offense described in
23 subdivision (a) of Section 296 or has a record of any past or
24 present conviction or adjudication or had a disposition rendered
25 in any other court, including any state, federal, or military court,
26 of any offense that, if committed or attempted in this state, would
27 have been punishable as an offense described in subdivision (a)
28 of Section 296.

29 (B) If the person is not confined, the specimens, samples, and
30 print impressions required by this chapter must be provided
31 within five calendar days after the person reports to the
32 supervising agent or within five calendar days of notice to the
33 person, whichever occurs first. The person shall report to a
34 county jail facility in the county where he or she resides or
35 temporarily is located to have the specimens, samples, and print
36 impressions collected pursuant to this chapter. The specimens,
37 samples, and print impressions shall be collected in accordance
38 with subdivision (i) of Section 295.

39 (C) If the person is confined, he or she shall provide the blood
40 specimens, buccal swab samples, and thumb and palm print

1 impressions required by this chapter as soon as practicable after
2 his or her receipt in a state, county, city, local, private, or other
3 designated facility.

4 (6) Collection from persons in federal institutions:

5 (A) Subject to the approval of the Director of the FBI, persons
6 confined or incarcerated in a federal prison or federal institution
7 who have a record of any past or present conviction or juvenile
8 adjudication for a qualifying offense described in subdivision (a)
9 of Section 296, or of a similar crime under the laws of the United
10 States or any other state that would constitute an offense
11 described in subdivision (a) of Section 296, are subject to this
12 chapter and shall provide blood specimens, buccal swab samples,
13 and thumb and palm print impressions pursuant to this chapter if
14 any of the following apply:

15 (i) The person committed a qualifying offense in California.

16 (ii) The person was resident of California at the time of the
17 qualifying offense.

18 (iii) The person has any record of a California conviction for
19 an offense described in subdivision (a) of Section 296, regardless
20 of when the crime was committed.

21 (iv) The person will be released in California.

22 (B) The Department of Justice DNA Laboratory shall, upon
23 the request of the United States Department of Justice, forward
24 portions of the specimens or samples, taken pursuant to this
25 chapter, to the United States Department of Justice DNA data
26 bank laboratory. The specimens and samples required by this
27 chapter shall be taken in accordance with the procedures set forth
28 in subdivision (i) of Section 295. The Department of Justice
29 DNA Laboratory is authorized to analyze and upload specimens
30 and samples collected pursuant to this section upon approval of
31 the Director of the FBI.

32 ~~(b) Retroactive application of paragraphs (1), (2), (3), (4), (5),~~
33 ~~and (6) of subdivision (a):~~

34 ~~(1) Subdivision (a) and all of its paragraphs—Paragraphs (2),~~
35 ~~(3), (4), (5), and (6) of subdivision (a) shall have retroactive~~
36 ~~application. Collection shall occur pursuant to paragraphs ~~(1),~~~~
37 ~~(2), (3), (4), (5), and (6) of subdivision (a) regardless of when the~~
38 ~~crime charged or committed became a qualifying offense~~
39 ~~pursuant to this chapter, and regardless of when the person was~~
40 ~~convicted of the qualifying offense described in subdivision (a)~~

1 of Section 296 or a similar crime under the laws of the United
2 States or any other state, or pursuant to the United States Code of
3 Military Justice, 10 U.S.C., Sections 801 and following, or when
4 ~~disposition was rendered in the case of a juvenile who is~~
5 ~~adjudged a ward of the court~~ *a juvenile petition is sustained* for
6 commission of a qualifying offense described in subdivision (a)
7 of Section 296 or a similar crime under the laws of the United
8 States or any other state.

9 ~~SEC. 2.~~

10 *SEC. 3.* Section 297 of the Penal Code is amended to read:

11 297. (a) ~~(1) The laboratories of the Department of Justice~~
12 ~~that are accredited by an accrediting organization identified by~~
13 ~~the Director of the Federal Bureau of Investigations, or his or her~~
14 ~~designee, in accordance with federal statutes, and any law~~
15 ~~enforcement crime laboratory designated by the Department of~~
16 ~~Justice that is accredited by an organization identified by the~~
17 ~~director of the Federal Bureau of Investigations, or his or her~~
18 ~~designee in accordance with federal statutes, are authorized to~~
19 ~~analyze crime scene samples and other samples of known and~~
20 ~~unknown origin and to upload the results of those analysis for~~
21 ~~comparison against available DNA and forensic identification~~
22 ~~data banks and databases in order to establish identity and origin~~
23 ~~of samples for identification purposes.~~

24 ~~(2) Laboratories, including law enforcement laboratories, that~~
25 ~~are accredited by an accrediting organization as specified in~~
26 ~~paragraph (1) that contract with the Department of Justice~~
27 ~~pursuant to Section 298.3 are authorized to perform anonymous~~
28 ~~analysis of specimens and samples for forensic identification as~~
29 ~~provided in this chapter. *Only the following laboratories are*~~
30 ~~*authorized to analyze crime scene samples and other forensic*~~
31 ~~*identification samples of known and unknown origin and to*~~
32 ~~*upload and compare those profiles against available DNA and*~~
33 ~~*forensic identification data banks and databases in order to*~~
34 ~~*establish identity of samples for forensic identification purposes:*~~

35 ~~(1) *The laboratories of the Department of Justice that meet*~~
36 ~~*state and federal requirements, including the Federal Bureau of*~~
37 ~~*Investigation (FBI) Quality Assurance Standards, and that are*~~
38 ~~*accredited by an organization approved by the National DNA*~~
39 ~~*Index System (NDIS) Procedures Board.*~~

1 (2) *Designated public law enforcement crime laboratories that*
2 *meet state and federal requirements, including the FBI Quality*
3 *Assurance Standards, and that are accredited by an organization*
4 *approved by the NDIS Procedures Board.*

5 (b) *The laboratories of the Department of Justice and*
6 *designated public law enforcement crime laboratories may*
7 *upload to available DNA and forensic identification data banks*
8 *and databases forensic identification samples of known and*
9 *unknown origin that are generated by private forensic*
10 *laboratories that meet state and federal requirements, including*
11 *the FBI Quality Assurance Standards, and that are accredited by*
12 *an organization approved by the NDIS Procedures Board.*

13 ~~(b)~~

14 (c) (1) A biological sample obtained from a suspect in a
15 criminal investigation for the commission of any crime may be
16 analyzed for forensic identification profiles, including DNA
17 profiles, by the DNA Laboratory of the Department of Justice or
18 any law enforcement crime laboratory—~~accredited by the~~
19 ~~ASCLD/LAB or any certifying body approved by the~~
20 ~~ASCLD/LAB~~ *or private forensic laboratory that meets all of the*
21 *FBI Quality Assurance Standards and accreditation*
22 *requirements in paragraphs (1) and (2) of subdivision (a) and*
23 *then compared by the Department of Justice in and between as*
24 *many cases and investigations as necessary, and searched against*
25 *the forensic identification profiles, including DNA profiles,*
26 *stored in the files of the Department of Justice DNA data bank or*
27 *database or any available data banks or databases as part of the*
28 *Department of Justice DNA Database and Data Bank Program.*

29 (2) The law enforcement investigating agency submitting a
30 specimen, sample, or print impression to the DNA Laboratory of
31 the Department of Justice or law enforcement crime laboratory
32 pursuant to this section shall inform the Department of Justice
33 DNA Laboratory within two years whether the person remains a
34 suspect in a criminal investigation. Upon written notification
35 from a law enforcement agency that a person is no longer a
36 suspect in a criminal investigation, the Department of Justice
37 DNA Laboratory shall remove the suspect sample from its data
38 bank files. However, any identification, warrant, arrest, or
39 prosecution based upon a data bank or database match shall not

1 be invalidated or dismissed due to a failure to purge or delay in
 2 purging records.

3 (e)

4 (d) All laboratories, including the Department of Justice DNA
 5 laboratories, contributing DNA profiles for inclusion in
 6 California’s DNA Data Bank shall ~~be accredited by the~~
 7 ~~ASCLD/LAB or any certifying body approved by the~~
 8 ~~ASCLD/LAB~~ *meet state and federal requirements, including the*
 9 *FBI Quality Assurance Standards and accreditation*
 10 *requirements, and shall be accredited by an organization*
 11 *approved by the NDSI Procedures Board.* Additionally, each
 12 laboratory shall submit to the Department of Justice for review
 13 the annual report required by ~~the ASCLD/LAB or any certifying~~
 14 ~~body approved by the ASCLD/LAB~~ *which the submitting*
 15 *laboratory’s accrediting organization that documents the*
 16 *laboratory’s adherence to ASCLD/LAB standards or FBI Quality*
 17 *Assurance Standards and the standards of any certifying body*
 18 ~~approved by the ASCLD/LAB~~ *the accrediting organization.* The
 19 requirements of this subdivision do not preclude DNA profiles
 20 developed in California from being searched in the National
 21 DNA ~~Database or Data Bank (CODIS) Index System (NDIS).~~

22 (d)

23 (e) Nothing in this section precludes local law enforcement
 24 DNA laboratories from maintaining local forensic databases and
 25 data banks or performing forensic identification analyses,
 26 including DNA profiling, independently from the Department of
 27 Justice DNA and Forensic Identification Data Base and Data
 28 Bank Program.

29 (e)

30 (f) The limitation on the types of offenses set forth in
 31 subdivision (a) of Section 296 as subject to the collection and
 32 testing procedures of this chapter is for the purpose of facilitating
 33 the administration of this chapter by the Department of Justice,
 34 and shall not be considered cause for dismissing an investigation
 35 or prosecution or reversing a verdict or disposition.

36 (f)

37 (g) The detention, arrest, wardship, adjudication, or conviction
 38 of a person based upon a data bank match or database
 39 information is not invalidated if it is determined that the

1 specimens, samples, or print impressions were obtained or placed
2 or retained in a data bank or database by mistake.

3 ~~SEC. 3.~~

4 *SEC. 4.* Section 298.1 of the Penal Code is amended to read:

5 298.1. (a) As of the effective date of this chapter, any person
6 who refuses to give any or all of the following, blood specimens,
7 saliva samples, or thumb or palm print impressions as required
8 by this chapter, once he or she has received written notice from
9 the Department of Justice, the Department of Corrections, any
10 law enforcement personnel, or officer of the court that he or she
11 is required to provide specimens, samples, and print impressions
12 pursuant to this chapter is guilty of a misdemeanor. The refusal
13 or failure to give any or all of the following, a blood specimen,
14 saliva sample, or thumb or palm print impression is punishable as
15 a separate offense by both a fine of five hundred dollars (\$500)
16 and imprisonment of up to one year in a county jail, or if the
17 person is already imprisoned in the state prison, by sanctions for
18 misdemeanors according to a schedule determined by the
19 Department of Corrections.

20 (b) (1) Notwithstanding subdivision (a), authorized law
21 enforcement, custodial, or corrections personnel, including peace
22 officers as defined in Sections 830, 830.1, subdivision (d) of
23 Section 830.2, Sections 830.5, 830.38, or 830.55, may employ
24 reasonable force to collect blood specimens, saliva samples, or
25 thumb or palm print impressions pursuant to this chapter from
26 individuals who, after written or oral request, refuse to provide
27 those specimens, samples, or thumb or palm print impressions.

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

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

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

38 (A) The term “use of reasonable force” shall be defined as the
39 force that an objective, trained and competent correctional
40 employee, faced with similar facts and circumstances, would

1 consider necessary and reasonable to gain compliance with this
2 chapter.

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

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

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

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

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

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

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

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

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

39 ~~SEC. 4. Section 76104.6 of the Government Code is amended~~
40 ~~to read:~~

1 ~~76104.6. (a) For the purpose of implementing the DNA~~
2 ~~Fingerprint, Unsolved Crime and Innocence Protection Act, there~~
3 ~~shall be levied an additional penalty of one dollar for every ten~~
4 ~~dollars (\$10) or fraction thereof in each county which shall be~~
5 ~~collected together with and in the same manner as the amounts~~
6 ~~established by Section 1464 of the Penal Code, upon every fine,~~
7 ~~penalty, or forfeiture imposed and collected by the courts for~~
8 ~~adult and juvenile criminal offenses, including all offenses~~
9 ~~involving a violation of the Vehicle Code or any local ordinance~~
10 ~~adopted pursuant to the Vehicle Code, except parking offenses~~
11 ~~subject to Article 3 (commencing with Section 40200) of Chapter~~
12 ~~1 of Division 17 of the Vehicle Code. These moneys shall be~~
13 ~~taken from fines and forfeitures deposited with the county~~
14 ~~treasurer prior to any division pursuant to Section 1463 of the~~
15 ~~Penal Code. The board of supervisors shall establish in the~~
16 ~~county treasury a DNA Identification Fund into which shall be~~
17 ~~deposited the collected moneys pursuant to this section. The~~
18 ~~moneys of the fund shall be allocated pursuant to subdivision (b).~~

19 ~~(b) (1) The fund moneys described in subdivision (a), together~~
20 ~~with any interest earned thereon, shall be held by the county~~
21 ~~treasurer separate from any funds subject to transfer or division~~
22 ~~pursuant to Section 1463 of the Penal Code. Deposits to the fund~~
23 ~~may continue through and including the 20th year after the initial~~
24 ~~calendar year in which the surcharge is collected, or longer if and~~
25 ~~as necessary to make payments upon any lease or leaseback~~
26 ~~arrangement utilized to finance any of the projects specified~~
27 ~~herein.~~

28 ~~(2) On the last day of each calendar quarter of the year~~
29 ~~specified in this subdivision, the county treasurer shall transfer~~
30 ~~fund moneys in the county's DNA Identification Fund to the~~
31 ~~state Controller for credit to the state's DNA Identification Fund,~~
32 ~~which is hereby established in the State Treasury, as follows:~~

33 ~~(A) in the first two calendar years following the effective date~~
34 ~~of this section, 70 percent of the amounts collected, including~~
35 ~~interest earned thereon;~~

36 ~~(B) in the third calendar year following the effective date of~~
37 ~~this section, 50 percent of the amounts collected, including~~
38 ~~interest earned thereon;~~

1 ~~(C) in the fourth calendar year following the effective date of~~
2 ~~this section and in each calendar year thereafter, 25 percent of the~~
3 ~~amounts collected, including interest earned thereon.~~

4 ~~(3) Funds remaining in the county's DNA Identification Fund~~
5 ~~shall be used only to reimburse local sheriff or other law~~
6 ~~enforcement agencies to collect DNA specimens, samples, and~~
7 ~~print impressions pursuant to this chapter; for expenditures and~~
8 ~~administrative costs made or incurred to comply with the~~
9 ~~requirements of paragraph (5) of subdivision (b) of Section 298~~
10 ~~including the procurement of equipment and software integral to~~
11 ~~confirming that a person qualifies for entry into the Department~~
12 ~~of Justice DNA Database and Data Bank Program; and to local~~
13 ~~sheriff, police, district attorney, and regional state crime~~
14 ~~laboratories for expenditures and administrative costs made or~~
15 ~~incurred in connection with the processing, analysis, tracking,~~
16 ~~and storage of DNA crime scene samples from cases in which~~
17 ~~DNA evidence would be useful in identifying or prosecuting~~
18 ~~suspects, including the procurement of equipment and software~~
19 ~~for the processing, analysis, tracking, and storage of DNA crime~~
20 ~~scene samples from unsolved cases.~~

21 ~~(4) The state's DNA Identification Fund shall be administered~~
22 ~~by the Department of Justice. Funds in the state's DNA~~
23 ~~Identification Fund, upon appropriation by the Legislature, shall~~
24 ~~be used by the Attorney General only to support DNA testing in~~
25 ~~the state and to offset the impacts of increased testing and shall~~
26 ~~be allocated as follows:~~

27 ~~(A) Of the amount transferred pursuant to subparagraph (A) of~~
28 ~~paragraph (2) of subdivision (b), 90 percent to the Department of~~
29 ~~Justice DNA Laboratory, first, to comply with the requirements~~
30 ~~of Section 298.3 of the Penal Code and, second, for expenditures~~
31 ~~and administrative costs made or incurred in connection with the~~
32 ~~processing, analysis, tracking, and storage of DNA specimens~~
33 ~~and samples including the procurement of equipment and~~
34 ~~software for the processing, analysis, tracking, and storage of~~
35 ~~DNA samples and specimens obtained pursuant to the DNA and~~
36 ~~Forensic Identification Database and Databank Act, as amended,~~
37 ~~and 10 percent to the Department of Justice Information Bureau~~
38 ~~Criminal History Unit for expenditures and administrative costs~~
39 ~~that have been approved by the Chief of the Department of~~
40 ~~Justice Bureau of Forensic Services made or incurred to update~~

1 ~~equipment and software to facilitate compliance with the~~
2 ~~requirements of subdivision (c) of Section 299.5 of the Penal~~
3 ~~Code.~~

4 ~~(B) Of the amount transferred pursuant to subparagraph (B) of~~
5 ~~paragraph (2) of subdivision (b), funds shall be allocated by the~~
6 ~~Department of Justice DNA Laboratory, first, to comply with the~~
7 ~~requirements of Section 298.3 of the Penal Code and, second, for~~
8 ~~expenditures and administrative costs made or incurred in~~
9 ~~connection with the processing, analysis, tracking, and storage of~~
10 ~~DNA specimens and samples including the procurement of~~
11 ~~equipment and software for the processing, analysis, tracking,~~
12 ~~and storage of DNA samples and specimens obtained pursuant to~~
13 ~~the DNA and Forensic Identification Database and Databank Act,~~
14 ~~as amended.~~

15 ~~(C) Of the amount transferred pursuant to subparagraph (C) of~~
16 ~~paragraph (2) of subdivision (b), funds shall be allocated by the~~
17 ~~Department of Justice to the DNA Laboratory to comply with the~~
18 ~~requirements of Section 298.3 of the Penal Code and for~~
19 ~~expenditures and administrative costs made or incurred in~~
20 ~~connection with the processing, analysis, tracking, and storage of~~
21 ~~DNA specimens and samples including the procurement of~~
22 ~~equipment and software for the processing, analysis, tracking,~~
23 ~~and storage of DNA samples and specimens obtained pursuant to~~
24 ~~the DNA and Forensic Identification Database and Databank Act,~~
25 ~~as amended.~~

26 ~~(e) On or before April 1 in the year following adoption of this~~
27 ~~section, and annually thereafter, the board of supervisors of each~~
28 ~~county shall submit a report to the Legislature and the~~
29 ~~Department of Justice. The report shall include the total amount~~
30 ~~of fines collected and allocated pursuant to this section, and the~~
31 ~~amounts expended by the county for each program authorized~~
32 ~~pursuant to paragraph (3) of subdivision (b) of this section. The~~
33 ~~Department of Justice shall make the reports publicly available~~
34 ~~on the department's Web site.~~

35 ~~(d) All requirements imposed on the Department of Justice~~
36 ~~pursuant to the DNA Fingerprint, Unsolved Crime and Innocence~~
37 ~~Protection Act are contingent upon the availability of funding~~
38 ~~and are limited by revenue, on a fiscal year basis, received by the~~
39 ~~Department of Justice pursuant to this section and any additional~~

1 appropriation approved by the Legislature for purposes related to
2 implementing this measure.
3 (e) ~~Upon approval of the DNA Fingerprint, Unsolved Crime~~
4 ~~and Innocence Protection Act, the Legislature shall loan the~~
5 ~~Department of Justice General Fund in the amount of \$7,000,000~~
6 ~~for purposes of implementing that act. This loan shall be repaid~~
7 ~~with interest calculated at the rate earned by the Pooled Money~~
8 ~~Investment Account at the time the loan is made. Principal and~~
9 ~~interest on the loan shall be repaid in full no later than four years~~
10 ~~from the date the loan was made and shall be repaid from~~
11 ~~revenue generated pursuant to this section.~~