

ASSEMBLY BILL

No. 855

**Introduced by Assembly Members Hagman and Ma
(Principal coauthor: Assembly Member Logue)
(Coauthor: Assembly Member Gorell)**

February 17, 2011

An act to amend Section 14250 of the Penal Code, relating to DNA testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 855, as introduced, Hagman. DNA testing.

Existing law requires the Department of Justice to develop a DNA database for all cases involving the report of an unidentified deceased person or a high-risk missing person. Existing law defines a high-risk missing person for purposes of that provision.

This bill would make a technical, nonsubstantive change to that definition.

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

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

- 1 SECTION 1. Section 14250 of the Penal Code is amended to
2 read:
3 14250. (a) (1) The Department of Justice shall develop a DNA
4 database for all cases involving the report of an unidentified
5 deceased person or a high-risk missing person.
6 (2) The database required in paragraph (1) shall be comprised
7 of DNA data from genetic markers that are appropriate for human

1 identification, but have no capability to predict biological function
2 other than gender. These markers shall be selected by the
3 department and may change as the technology for DNA typing
4 progresses. The results of DNA typing shall be compatible with
5 and uploaded into the CODIS DNA database established by the
6 Federal Bureau of Investigation. The sole purpose of this database
7 shall be to identify missing persons and shall be kept separate from
8 the database established under Chapter 6 (commencing with
9 Section 295) of Title 9 of Part 1.

10 (3) The Department of Justice shall compare DNA samples
11 taken from the remains of unidentified deceased persons with DNA
12 samples taken from personal articles belonging to the missing
13 person, or from the parents or appropriate relatives of high-risk
14 missing persons.

15 (4) For the purpose of this database, “high-risk missing person”
16 means a person missing as a result of a stranger abduction, a person
17 missing under suspicious circumstances, a person missing under
18 unknown circumstances, or ~~where~~ *if* there is reason to assume that
19 the person is in danger, or deceased, and that person has been
20 missing more than 30 days, or less than 30 days in the discretion
21 of the investigating agency.

22 (b) The department shall develop standards and guidelines for
23 the preservation and storage of DNA samples. Any agency that is
24 required to collect samples from unidentified remains for DNA
25 testing shall follow these standards and guidelines. These
26 guidelines shall address all scientific methods used for the
27 identification of remains, including DNA, anthropology,
28 odontology, and fingerprints.

29 (c) (1) A coroner shall collect samples for DNA testing from
30 the remains of all unidentified persons and shall send those samples
31 to the Department of Justice for DNA testing and inclusion in the
32 DNA databank. After the department has taken a sample from the
33 remains for DNA analysis and completed all DNA testing, the
34 remaining evidence shall be returned to the appropriate local
35 coroner.

36 (2) After a report has been made of a person missing under
37 high-risk circumstances, the responsible investigating law
38 enforcement agency shall inform the parents or other appropriate
39 relatives that they may give a voluntary sample for DNA testing
40 or may collect a DNA sample from a personal article belonging

1 to the missing person if available. The samples shall be taken by
2 the appropriate law enforcement agency in a manner prescribed
3 by the Department of Justice. The responsible investigating law
4 enforcement agency shall wait no longer than 30 days after a report
5 has been made to inform the parents or other relatives of their right
6 to give a sample.

7 (3) The Department of Justice shall develop a standard release
8 form that authorizes a mother, father, or other relative to voluntarily
9 provide the sample. The release shall explain that DNA is to be
10 used only for the purpose of identifying the missing person and
11 that the DNA sample and profile will be destroyed upon request.
12 No incentive or coercion shall be used to compel a parent or
13 relative to provide a sample.

14 (4) The Department of Justice shall develop a model kit that
15 law enforcement shall use when taking samples from parents and
16 relatives.

17 (5) Before submitting the sample to the department for analysis,
18 law enforcement shall reverify the status of the missing person.
19 After 30 days has elapsed from the date the report was filed, law
20 enforcement shall send the sample to the department for DNA
21 testing and inclusion in the DNA database, with a copy of the crime
22 report, and any supplemental information.

23 (6) All retained samples and DNA extracted from a living
24 person, and profiles developed therefrom, shall be used solely for
25 the purpose of identification of the deceased's remains. All samples
26 and DNA extracted from a living person, and profiles developed
27 therefrom, shall be destroyed after a positive identification with
28 the deceased's remains is made and a report is issued, unless any
29 of the following has occurred:

30 (A) The coroner has made a report to a law enforcement agency
31 pursuant to Section 27491.1 of the Government Code, that he or
32 she has a reasonable ground to suspect that the identified person's
33 death has been occasioned by another by criminal means.

34 (B) A law enforcement agency makes a determination that the
35 identified person's death has been occasioned by another by
36 criminal means.

37 (C) The evidence is needed in an active criminal investigation
38 to determine whether the identified person's death has been
39 occasioned by another by criminal means.

1 (D) A governmental entity is required to retain the material
2 pursuant to Section 1417.9.

3 (7) Notwithstanding any other provisions of this section, upon
4 the request of any living person who submits his or her DNA
5 sample and profile pursuant to this section, including the parent
6 or guardian of a child who submits a DNA sample of the child,
7 the DNA sample shall be removed from the DNA database.

8 (d) All DNA samples and profiles developed therefrom shall
9 be confidential and shall only be disclosed to personnel of the
10 Department of Justice, law enforcement officers, coroners, medical
11 examiners, district attorneys, and persons who need access to a
12 DNA sample for purposes of the prosecution or defense of a
13 criminal case, except that a law enforcement officer or agency may
14 publicly disclose the fact of a DNA profile match after taking
15 reasonable measures to first notify the family of an unidentified
16 deceased person or the family of a high-risk missing person that
17 there has been an identification.

18 (e) All DNA, forensic identification profiles, and other
19 identification information retained by the Department of Justice
20 pursuant to this section are exempt from any law requiring
21 disclosure of information to the public.

22 (f) (1) Any person who knowingly discloses DNA or other
23 forensic identification information developed pursuant to this
24 section to an unauthorized individual or agency, or for any purpose
25 other than for identification or for use in a criminal investigation,
26 prosecution, or defense, is guilty of a misdemeanor.

27 (2) A person who collects, processes, or stores DNA or DNA
28 samples from a living person that are used for DNA testing
29 pursuant to this section who does either of the following is liable
30 in civil damages to the donor of the DNA in the amount of five
31 thousand dollars (\$5,000) for each violation, plus attorney's fees
32 and costs:

33 (A) Fails to destroy samples or DNA extracted from a living
34 person pursuant to paragraph (6) of subdivision (c).

35 (B) Discloses DNA samples in violation of subdivision (d).

36 (g) (1) If a disclosure or failure to destroy samples described
37 in paragraph (2) of subdivision (f) is made by an employee of the
38 Department of Justice, the department shall be liable for those
39 actions of its employee.

1 (2) Notwithstanding any other law, the remedy in this section
2 shall be the sole and exclusive remedy against the department and
3 its employees available to the donor of the DNA against the
4 department and its employees.

5 (3) The department employee disclosing DNA or other forensic
6 identification information or otherwise violating this section shall
7 be absolutely immune from civil liability under this or any other
8 law.

9 (h) It is not an unauthorized disclosure or violation of this
10 section to release DNA and other forensic identification
11 information as part of a judicial or administrative proceeding, to
12 a jury or grand jury, or in a document filed with a court or
13 administrative agency, or for this information to become part of
14 the public transcript or record of proceedings.

15 (i) In order to maintain computer system security, the computer
16 software and database structures used by the DNA laboratory of
17 the Department of Justice to implement this chapter are
18 confidential.

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