

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 84

Introduced by Assembly Member Gatto

January 6, 2015

An act to amend Sections ~~295.1, 296, 298, 299~~, and 300 of, *and to amend and add Sections 293 and 294 of*, the Penal Code, relating to DNA samples.

LEGISLATIVE COUNSEL'S DIGEST

AB 84, as amended, Gatto. Forensic testing: DNA samples.

(1) Existing law, as amended by the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, Proposition 69, approved by the voters at the November 2, 2004, general election (the DNA Act) requires that any adult person who is arrested or charged with any 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 requires that blood specimens and buccal swab samples be forwarded promptly to the Department of Justice for analysis. Existing case law, *People v. Buza (2014) 231 Cal.App.4th 1446, review granted February 18, 2015, S223698*, holds that the DNA Act, to the extent it requires felony arrestees to submit to a DNA sample for law enforcement analysis and inclusion in the state and federal DNA databases, without independent suspicion, a warrant, or a judicial or grand jury determination of probable cause, unreasonably intrudes on the arrestee's expectation of privacy and is invalid under the California Constitution. The DNA Act provides that it may be amended by a statute passed by each house of the Legislature that furthers the purpose of the measure.

This bill would state that it is the intention of the Legislature to further the purposes of the DNA Act in light of the above-specified case law. The bill would, *if the California Supreme Court rules to uphold People v. Buza*, require that a blood specimen or buccal swab sample taken from a person arrested for the commission of a felony be forwarded to the department after a judicial determination of probable cause to believe the person has committed the offense for which he or she was arrested has been made.

(2) Existing law, as amended by the DNA Act, 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 makes these provisions retroactive, regardless of when the crime charged or committed became a qualifying offense. ~~Existing law, subject to exceptions, provides that any person who has been convicted of certain misdemeanors may not, within 10 years of the conviction, own, purchase, receive, possess, or have under his or her custody or control, any firearm.~~

This bill would require a person who has been convicted of ~~a misdemeanor to which the 10-year prohibition on the possession of a firearm applies;~~ *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.

(3) Existing law, as amended by the DNA Act, requires that a DNA specimen and sample be destroyed and that a searchable database profile be expunged from the ~~data bank~~ *databank* program if the person from whom the specimen or sample was collected has no past or present offense or pending charge which qualifies that person for inclusion in the database and if that person submits an application, as specified. Existing law gives the court discretion to grant or deny the application.

This bill would, *if the California Supreme Court rules to uphold People v. Buza*, require the DNA specimen and sample to be destroyed and the searchable database profile expunged from the database without the requirement of an application.

(4) *Existing law, as amended by the DNA Act, states that nothing in the act shall be construed to restrict the authority of local law enforcement to maintain their own DNA-related databases or databank.*

This bill would allow a law enforcement agency to use a publicly available database, excluding a law enforcement database that is not linked to the Combined DNA Index System (CODIS), if the case being investigated involves a homicide or sexual assault involving force and the case is unsolved and all investigative leads have been exhausted, in which case the bill would require the law enforcement agency to review nonforensic information in order to identify additional evidence bearing on relatedness.

(4)

(5) Existing law, as amended by the DNA Act, states that its provisions do not prohibit collection and analysis of specimens, samples, or print impressions as a condition of a plea for an offense that does not require the taking of samples and specimens.

The bill would state that it is the intent of the Legislature to allow buccal swab samples to be taken for DNA analysis as a condition of a plea or reduction or dismissal of charges. The bill would permit a law enforcement agency to use any publicly available database to aid in the investigation of a crime.

(5)

(6) 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. It is the intent of the Legislature to limit the
2 analysis of buccal swab samples and blood samples taken from
3 felony arrestees for purposes of DNA analysis only to the extent
4 required by the decision in *People v. Buza* (2014) 180 Cal Rptr.
5 3d 753 231 Cal.App.4th 1446, and to further the purposes of the
6 DNA Fingerprint, Unsolved Crime and Innocence Protection Act,
7 Proposition 69, approved by the voters at the November 2, 2004,
8 statewide general election, in light of that decision.

1 SEC. 2. It is the intent of the Legislature to allow buccal swab
2 samples to be taken for DNA analysis as a condition of a plea or
3 reduction or dismissal of charges, provided that all uses of the
4 DNA sample have been disclosed to the defendant in writing, that
5 consent has been obtained in writing, and that the defendant has
6 signed a written agreement allowing his or her buccal ~~swab~~ *swab*
7 sample or blood sample to be taken for DNA analysis. *It is the*
8 *intent of the Legislature that buccal swab samples taken as a*
9 *condition of a plea or reduction or dismissal charges be done on*
10 *the basis of individualized consideration.*

11 SEC. 3. ~~Section 295.1 of the Penal Code is amended to read:~~

12 ~~295.1. (a) The Department of Justice shall perform DNA~~
13 ~~analysis and other forensic identification analysis pursuant to this~~
14 ~~chapter only for identification purposes.~~

15 ~~(b) The Department of Justice Bureau of Criminal Identification~~
16 ~~and Information shall perform examinations of palm prints pursuant~~
17 ~~to this chapter only for identification purposes.~~

18 ~~(c) The DNA Laboratory of the Department of Justice shall~~
19 ~~serve as a repository for blood specimens and buccal swab and~~
20 ~~other biological samples collected, and shall analyze specimens~~
21 ~~and samples, and store, compile, correlate, compare, maintain, and~~
22 ~~use DNA and forensic identification profiles and records related~~
23 ~~to the following:~~

24 ~~(1) Forensic casework and forensic unknowns.~~

25 ~~(2) Known and evidentiary specimens and samples from crime~~
26 ~~scenes or criminal investigations.~~

27 ~~(3) Missing or unidentified persons.~~

28 ~~(4) Persons required to provide specimens, samples, and print~~
29 ~~impressions under this chapter.~~

30 ~~(5) Legally obtained samples.~~

31 ~~(6) Anonymous DNA records used for training, research,~~
32 ~~statistical analysis of populations, quality assurance, or quality~~
33 ~~control.~~

34 ~~(d) The computerized data bank and database of the DNA~~
35 ~~Laboratory of the Department of Justice shall include files as~~
36 ~~necessary to implement this chapter.~~

37 ~~(e) This section does not require the Department of Justice to~~
38 ~~provide specimens or samples for quality control or other purposes~~
39 ~~to those who request specimens or samples.~~

1 ~~(f) Submission of samples, specimens, or profiles for the state~~
2 ~~DNA Database and Data Bank Program shall include information~~
3 ~~as required by the Department of Justice for ensuring search~~
4 ~~capabilities and compliance with National DNA Index System~~
5 ~~(NDIS) standards.~~

6 ~~(g) DNA specimens collected from a person who has been~~
7 ~~convicted of an offense specified in subdivision (a) of Section 296~~
8 ~~may be used to conduct familial searches of the DNA Database.~~

9 ~~SEC. 4.~~

10 *SEC. 3.* Section 296 of the Penal Code is amended to read:

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

16 (1) (A) Any person, including any juvenile, who is convicted
17 of or pleads guilty or no contest to any felony ~~offense or to a~~
18 ~~misdemeanor offense specified in Section 29805, offense,~~ or is
19 found not guilty by reason of insanity of any felony ~~offense or~~
20 ~~misdemeanor offense specified in Section 29805, offense,~~ or any
21 juvenile who is adjudicated under Section 602 of the Welfare and
22 Institutions Code for committing any felony ~~offense or a~~
23 ~~misdemeanor offense specified in Section 29805, offense.~~

24 (B) *Any person, not including a juvenile, who is convicted or*
25 *pleads guilty or no contest to a misdemeanor violation of Section*
26 *136.1, 136.5, 171b, or 186.28, subdivision (b), (c), or (d) of Section*
27 *243, Section 243.4, 244.5, 245, 245.5, 417, 417.6, 422, 646.9,*
28 *25300, or 32625, or subdivision (d) of Section 26100, or who is*
29 *found not guilty by reason of insanity of any of those misdemeanor*
30 *offenses.*

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

33 (A) Any felony offense specified in Section 290 or attempt to
34 commit any felony offense described in Section 290, or any felony
35 offense that imposes upon a person the duty to register in California
36 as a sex offender under Section 290.

37 (B) Murder or voluntary manslaughter or any attempt to commit
38 murder or voluntary manslaughter.

39 (C) Commencing on January 1, 2009, any adult person arrested
40 or charged with any felony offense.

1 (3) Any person, including any juvenile, who is required to
2 register under Section 290 or 457.1 because of the commission of,
3 or the attempt to commit, a felony or misdemeanor offense, or any
4 person, including any juvenile, who is housed in a mental health
5 facility or sex offender treatment program after referral to such
6 facility or program by a court after being charged with any felony
7 offense.

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

10 (5) This chapter does not prohibit collection and analysis of
11 specimens, samples, or print impressions as a condition of a plea
12 for a ~~non-qualifying~~ *nonqualifying* offense.

13 (b) The provisions of this chapter and its requirements for
14 submission of specimens, samples and print impressions as soon
15 as administratively practicable shall apply to all qualifying persons
16 regardless of sentence imposed, including a sentence of death, life
17 without the possibility of parole, or a life or indeterminate term,
18 or other disposition rendered in the case of an adult or juvenile
19 tried as an adult, or whether the person is diverted, fined, or referred
20 for evaluation, and regardless of disposition rendered or placement
21 made in the case of juvenile who is found to have committed any
22 felony offense or is adjudicated under Section 602 of the Welfare
23 and Institutions Code.

24 (c) The provisions of this chapter and its requirements for
25 submission of specimens, samples, and print impressions as soon
26 as administratively practicable by qualified persons as described
27 in subdivision (a) shall apply regardless of placement or
28 confinement in any mental hospital or other public or private
29 treatment facility, and shall include, but not be limited to, the
30 following persons, including juveniles:

31 (1) Any person committed to a state hospital or other treatment
32 facility as a mentally disordered sex offender under former Article
33 1 (commencing with Section 6300) of Chapter 2 of Part 2 of
34 Division 6 of the Welfare and Institutions Code.

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

38 (3) Any person found to be a sexually violent predator pursuant
39 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
40 2 of Division 6 of the Welfare and Institutions Code.

1 (d) The provisions of this chapter are mandatory and apply
2 whether or not the court advises a person, including any juvenile,
3 that he or she must provide the data bank and database specimens,
4 samples, and print impressions as a condition of probation, parole,
5 or any plea of guilty, no contest, or not guilty by reason of insanity,
6 or any admission to any of the offenses described in subdivision
7 (a).

8 (e) If at any stage of court proceedings the prosecuting attorney
9 determines that specimens, samples, and print impressions required
10 by this chapter have not already been taken from any person, as
11 defined under subdivision (a) of Section 296, the prosecuting
12 attorney shall notify the court orally on the record, or in writing,
13 and request that the court order collection of the specimens,
14 samples, and print impressions required by law. However, a failure
15 by the prosecuting attorney or any other law enforcement agency
16 to notify the court shall not relieve a person of the obligation to
17 provide specimens, samples, and print impressions pursuant to this
18 chapter.

19 (f) Prior to final disposition or sentencing in the case the court
20 shall inquire and verify that the specimens, samples, and print
21 impressions required by this chapter have been obtained and that
22 this fact is included in the abstract of judgment or dispositional
23 order in the case of a juvenile. The abstract of judgment issued by
24 the court shall indicate that the court has ordered the person to
25 comply with the requirements of this chapter and that the person
26 shall be included in the state's DNA and Forensic Identification
27 ~~Data Base and Data Bank program~~ *Database and Databank*
28 *Program* and be subject to this chapter.

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

34 ~~SEC. 5. Section 298 of the Penal Code is amended to read:~~

35 ~~298. (a) The Secretary of the Department of Corrections and~~
36 ~~Rehabilitation, or the Chief Administrative Officer of the detention~~
37 ~~facility, jail, or other facility at which the blood specimens, buccal~~
38 ~~swab samples, and thumb and palm print impressions were~~
39 ~~collected shall cause these specimens, samples, and print~~
40 ~~impressions to be forwarded promptly to the Department of Justice,~~

1 except that a blood specimen or buccal swab sample taken from
2 a person arrested for the commission of a felony as specified in
3 paragraph (2) of subdivision (a) of Section 296 shall be forwarded
4 to the Department of Justice after a judicial determination of
5 probable cause to believe the person has committed the offense
6 for which he or she was arrested has been made pursuant to Section
7 825. The specimens, samples, and print impressions shall be
8 collected by a person using a Department of Justice approved
9 collection kit and in accordance with the requirements and
10 procedures set forth in subdivision (b).

11 (b) (1) The Department of Justice shall provide all blood
12 specimen vials, buccal swab collectors, mailing tubes, labels, and
13 instructions for the collection of the blood specimens, buccal swab
14 samples, and thumbprints. The specimens, samples, and
15 thumbprints shall thereafter be forwarded to the DNA Laboratory
16 of the Department of Justice for analysis of DNA and other forensic
17 identification markers.

18 Additionally, the Department of Justice shall provide all full
19 palm print cards, mailing envelopes, and instructions for the
20 collection of full palm prints. The full palm prints, on a form
21 prescribed by the Department of Justice, shall thereafter be
22 forwarded to the Department of Justice for maintenance in a file
23 for identification purposes.

24 (2) The withdrawal of blood shall be performed in a medically
25 approved manner. Only health care providers trained and certified
26 to draw blood may withdraw the blood specimens for purposes of
27 this section.

28 (3) Buccal swab samples may be procured by law enforcement
29 or corrections personnel or other individuals trained to assist in
30 buccal swab collection.

31 (4) Right thumbprints and a full palm print impression of each
32 hand shall be taken on forms prescribed by the Department of
33 Justice. The palm print forms shall be forwarded to and maintained
34 by the Bureau of Criminal Identification and Information of the
35 Department of Justice. Right thumbprints also shall be taken at
36 the time of the collection of samples and specimens and shall be
37 placed on the sample and specimen containers and forms as
38 directed by the Department of Justice. The samples, specimens,
39 and forms shall be forwarded to and maintained by the DNA
40 Laboratory of the Department of Justice.

1 ~~(5) The law enforcement or custodial agency collecting~~
2 ~~specimens, samples, or print impressions is responsible for~~
3 ~~confirming that the person qualifies for entry into the Department~~
4 ~~of Justice DNA Database and Data Bank Program prior to~~
5 ~~collecting the specimens, samples, or print impressions pursuant~~
6 ~~to this chapter.~~

7 ~~(6) The DNA Laboratory of the Department of Justice is~~
8 ~~responsible for establishing procedures for entering data bank and~~
9 ~~database information.~~

10 ~~(e) (1) Persons authorized to draw blood or obtain samples or~~
11 ~~print impressions under this chapter for the data bank or database~~
12 ~~shall not be civilly or criminally liable either for withdrawing blood~~
13 ~~when done in accordance with medically accepted procedures, or~~
14 ~~for obtaining buccal swab samples by scraping inner cheek cells~~
15 ~~of the mouth, or thumb or palm print impressions when performed~~
16 ~~in accordance with standard professional practices.~~

17 ~~(2) There is no civil or criminal cause of action against any law~~
18 ~~enforcement agency or the Department of Justice, or any employee~~
19 ~~thereof, for a mistake in confirming a person's or sample's~~
20 ~~qualifying status for inclusion within the database or data bank or~~
21 ~~in placing an entry in a data bank or a database.~~

22 ~~(3) The failure of the Department of Justice or local law~~
23 ~~enforcement to comply with Article 4 or any other provision of~~
24 ~~this chapter shall not invalidate an arrest, plea, conviction, or~~
25 ~~disposition.~~

26 ~~SEC. 6. Section 299 of the Penal Code is amended to read:~~

27 ~~299. (a) A person whose DNA profile has been included in~~
28 ~~the data bank pursuant to this chapter shall have his or her DNA~~
29 ~~specimen and sample destroyed and searchable database profile~~
30 ~~expunged from the data bank program if the person has no past or~~
31 ~~present offense or pending charge which qualifies that person for~~
32 ~~inclusion within the state's DNA and Forensic Identification~~
33 ~~Database and Data Bank Program and there otherwise is no legal~~
34 ~~basis for retaining the specimen or sample or searchable profile.~~

35 ~~(b) Pursuant to subdivision (a), a person who has no past or~~
36 ~~present qualifying offense, and for whom there otherwise is no~~
37 ~~legal basis for retaining the specimen or sample or searchable~~
38 ~~profile shall have his or her specimen and sample destroyed and~~
39 ~~searchable database profile expunged from the data bank program~~
40 ~~if any of the following apply:~~

1 ~~(1) Following arrest, no accusatory pleading has been filed~~
2 ~~within the applicable period allowed by law charging the person~~
3 ~~with a qualifying offense as set forth in subdivision (a) of Section~~
4 ~~296 or if the charges which served as the basis for including the~~
5 ~~DNA profile in the state's DNA Database and Data Bank~~
6 ~~Identification Program have been dismissed prior to adjudication~~
7 ~~by a trier of fact, in which case the district attorney shall submit a~~
8 ~~letter to the Department of Justice as soon as these conditions have~~
9 ~~been met.~~

10 ~~(2) The underlying conviction or disposition serving as the basis~~
11 ~~for including the DNA profile has been reversed and the case~~
12 ~~dismissed, in which case the court shall forward its order to the~~
13 ~~Department of Justice upon disposition of the case.~~

14 ~~(3) The person has been found factually innocent of the~~
15 ~~underlying offense pursuant to Section 851.8, or Section 781.5 of~~
16 ~~the Welfare and Institutions Code, in which case the court shall~~
17 ~~forward its order to the Department of Justice upon disposition of~~
18 ~~the case.~~

19 ~~(4) The defendant has been found not guilty or the defendant~~
20 ~~has been acquitted of the underlying offense, in which case the~~
21 ~~court shall forward its order to the Department of Justice upon~~
22 ~~disposition of the case.~~

23 ~~(e) Except as provided in this section, the Department of Justice~~
24 ~~shall destroy a specimen and sample and expunge the searchable~~
25 ~~DNA database profile pertaining to the person who has no present~~
26 ~~or past qualifying offense of record upon receipt of the following:~~

27 ~~(1) A certified copy of the court order reversing and dismissing~~
28 ~~the conviction or case, or a letter from the district attorney~~
29 ~~certifying that no accusatory pleading has been filed or the charges~~
30 ~~which served as the basis for collecting a DNA specimen and~~
31 ~~sample have been dismissed prior to adjudication by a trier of fact,~~
32 ~~the defendant has been found factually innocent, the defendant has~~
33 ~~been found not guilty, the defendant has been acquitted of the~~
34 ~~underlying offense, or the underlying conviction has been reversed~~
35 ~~and the case dismissed.~~

36 ~~(2) A court order verifying that no retrial or appeal of the case~~
37 ~~is pending.~~

38 ~~(d) Upon order from the court, the Department of Justice shall~~
39 ~~destroy any specimen or sample collected from the person and any~~
40 ~~searchable DNA database profile pertaining to the person, unless~~

1 ~~the department determines that the person is subject to the~~
2 ~~provisions of this chapter because of a past qualifying offense of~~
3 ~~record or is or has otherwise become obligated to submit a blood~~
4 ~~specimen or buccal swab sample as a result of a separate arrest,~~
5 ~~conviction, juvenile adjudication, or finding of guilty or not guilty~~
6 ~~by reason of insanity for an offense described in subdivision (a)~~
7 ~~of Section 296, or as a condition of a plea.~~

8 ~~The Department of Justice is not required to destroy analytical~~
9 ~~data or other items obtained from a blood specimen or saliva, or~~
10 ~~buccal swab sample, if evidence relating to another person subject~~
11 ~~to the provisions of this chapter would thereby be destroyed or~~
12 ~~otherwise compromised.~~

13 ~~Any identification, warrant, probable cause to arrest, or arrest~~
14 ~~based upon a data bank or database match is not invalidated due~~
15 ~~to a failure to expunge or a delay in expunging records.~~

16 ~~(e) Notwithstanding any other law, the Department of Justice~~
17 ~~DNA Laboratory is not required to expunge DNA profile or~~
18 ~~forensic identification information or destroy or return specimens,~~
19 ~~samples, or print impressions taken pursuant to this section if the~~
20 ~~duty to register under Section 290 or 457.1 is terminated.~~

21 ~~(f) Notwithstanding any other law, including Sections 17,~~
22 ~~1203.4, and 1203.4a, a judge is not authorized to relieve a person~~
23 ~~of the separate administrative duty to provide specimens, samples,~~
24 ~~or print impressions required by this chapter if a person has been~~
25 ~~found guilty or was adjudicated a ward of the court by a trier of~~
26 ~~fact of a qualifying offense as defined in subdivision (a) of Section~~
27 ~~296, or was found not guilty by reason of insanity or pleads no~~
28 ~~contest to a qualifying offense as defined in subdivision (a) of~~
29 ~~Section 296.~~

30 *SEC. 4. Section 298 of the Penal Code is amended to read:*

31 298. (a) ~~The Director of Corrections~~ *Secretary of the*
32 *Department of Corrections and Rehabilitation*, or the Chief
33 Administrative Officer of the detention facility, jail, or other facility
34 at which the blood specimens, buccal swab samples, and thumb
35 and palm print impressions were collected shall cause these
36 specimens, samples, and print impressions to be forwarded
37 promptly to the Department of Justice. The specimens, samples,
38 and print impressions shall be collected by a person using a
39 Department of Justice approved collection kit and in accordance
40 with the requirements and procedures set forth in subdivision (b).

1 (b) (1) The Department of Justice shall provide all blood
2 specimen vials, buccal swab collectors, mailing tubes, labels, and
3 instructions for the collection of the blood specimens, buccal swab
4 samples, and thumbprints. The specimens, samples, and
5 thumbprints shall thereafter be forwarded to the DNA Laboratory
6 of the Department of Justice for analysis of DNA and other forensic
7 identification markers.

8 Additionally, the Department of Justice shall provide all full
9 palm print cards, mailing envelopes, and instructions for the
10 collection of full palm prints. The full palm prints, on a form
11 prescribed by the Department of Justice, shall thereafter be
12 forwarded to the Department of Justice for maintenance in a file
13 for identification purposes.

14 (2) The withdrawal of blood shall be performed in a medically
15 approved manner. Only health care providers trained and certified
16 to draw blood may withdraw the blood specimens for purposes of
17 this section.

18 (3) Buccal swab samples may be procured by law enforcement
19 or corrections personnel or other individuals trained to assist in
20 buccal swab collection.

21 (4) Right thumbprints and a full palm print impression of each
22 hand shall be taken on forms prescribed by the Department of
23 Justice. The palm print forms shall be forwarded to and maintained
24 by the Bureau of Criminal Identification and Information of the
25 Department of Justice. Right thumbprints also shall be taken at
26 the time of the collection of samples and specimens and shall be
27 placed on the sample and specimen containers and forms as
28 directed by the Department of Justice. The samples, specimens,
29 and forms shall be forwarded to and maintained by the DNA
30 Laboratory of the Department of Justice.

31 (5) The law enforcement or custodial agency collecting
32 specimens, samples, or print impressions is responsible for
33 confirming that the person qualifies for entry into the Department
34 of Justice DNA Database and ~~Data Bank~~ *Databank* Program prior
35 to collecting the specimens, samples, or print impressions pursuant
36 to this chapter.

37 (6) The DNA Laboratory of the Department of Justice is
38 responsible for establishing procedures for entering ~~data bank~~
39 *databank* and database information.

1 (c) (1) Persons authorized to draw blood or obtain samples or
2 print impressions under this chapter for the ~~data bank~~ *databank* or
3 database shall not be civilly or criminally liable either for
4 withdrawing blood when done in accordance with medically
5 accepted procedures, or for obtaining buccal swab samples by
6 scraping inner cheek cells of the mouth, or thumb or palm print
7 impressions when performed in accordance with standard
8 professional practices.

9 (2) There is no civil or criminal cause of action against any law
10 enforcement agency or the Department of Justice, or any employee
11 thereof, for a mistake in confirming a person's or sample's
12 qualifying status for inclusion within the database or ~~data bank~~
13 *databank* or in placing an entry in a ~~data bank~~ *databank* or a
14 database.

15 (3) The failure of the Department of Justice or local law
16 enforcement to comply with Article 4 or any other provision of
17 this chapter shall not invalidate an arrest, plea, conviction, or
18 disposition.

19 (d) *This section shall become inoperative if the California*
20 *Supreme Court rules to uphold the California Court of Appeal*
21 *decision in People v. Buza (2014) 231 Cal.App.4th 1446 in regard*
22 *to the provisions of Section 298 of the Penal Code, as amended*
23 *by Section 6 of the DNA Fingerprint, Unsolved Crime and*
24 *Innocence Protection Act, Proposition 69, approved by the voters*
25 *at the November 2, 2004, statewide general election, in which case*
26 *this section shall become inoperative immediately upon that ruling*
27 *becoming final.*

28 SEC. 5. Section 298 is added to the Penal Code, to read:

29 298. (a) (1) *The Secretary of the Department of Corrections*
30 *and Rehabilitation, or the Chief Administrative Officer of the*
31 *detention facility, jail, or other facility at which the blood*
32 *specimens, buccal swab samples, and thumb and palm print*
33 *impressions were collected shall cause these specimens, samples,*
34 *and print impressions to be forwarded promptly to the Department*
35 *of Justice, except that a blood specimen or buccal swab sample*
36 *taken from a person arrested for the commission of a felony as*
37 *specified in paragraph (2) of subdivision (a) of Section 296 shall*
38 *be forwarded to the Department of Justice after a judicial*
39 *determination of probable cause to believe the person has*
40 *committed the offense for which he or she was arrested has been*

1 *made pursuant to Section 825. The specimens, samples, and print*
2 *impressions shall be collected by a person using a Department of*
3 *Justice approved collection kit and in accordance with the*
4 *requirements and procedures set forth in subdivision (b).*

5 (2) *A blood specimen or buccal swab sample taken from a*
6 *person arrested for the commission of a felony as specified in*
7 *paragraph (2) of subdivision (a) of Section 296 that has not been*
8 *forwarded to the Department of Justice within six months following*
9 *the arrest of that person because the agency that took the blood*
10 *specimen or buccal swab sample has not received notice to forward*
11 *the DNA specimen or sample to the Department of Justice for*
12 *inclusion in the state's DNA and Forensic Identification Database*
13 *and Databank Program pursuant to paragraph (1) following a*
14 *determination of probable cause, shall be destroyed by the agency*
15 *that collected the blood specimen or buccal swab sample.*

16 (b) (1) *The Department of Justice shall provide all blood*
17 *specimen vials, buccal swab collectors, mailing tubes, labels, and*
18 *instructions for the collection of the blood specimens, buccal swab*
19 *samples, and thumbprints. The specimens, samples, and*
20 *thumbprints shall thereafter be forwarded to the DNA Laboratory*
21 *of the Department of Justice for analysis of DNA and other forensic*
22 *identification markers.*

23 *Additionally, the Department of Justice shall provide all full*
24 *palm print cards, mailing envelopes, and instructions for the*
25 *collection of full palm prints. The full palm prints, on a form*
26 *prescribed by the Department of Justice, shall thereafter be*
27 *forwarded to the Department of Justice for maintenance in a file*
28 *for identification purposes.*

29 (2) *The withdrawal of blood shall be performed in a medically*
30 *approved manner. Only health care providers trained and certified*
31 *to draw blood may withdraw the blood specimens for purposes of*
32 *this section.*

33 (3) *Buccal swab samples may be procured by law enforcement*
34 *or corrections personnel or other individuals trained to assist in*
35 *buccal swab collection.*

36 (4) *Right thumbprints and a full palm print impression of each*
37 *hand shall be taken on forms prescribed by the Department of*
38 *Justice. The palm print forms shall be forwarded to and maintained*
39 *by the Bureau of Criminal Identification and Information of the*
40 *Department of Justice. Right thumbprints also shall be taken at*

1 *the time of the collection of samples and specimens and shall be*
2 *placed on the sample and specimen containers and forms as*
3 *directed by the Department of Justice. The samples, specimens,*
4 *and forms shall be forwarded to and maintained by the DNA*
5 *Laboratory of the Department of Justice.*

6 (5) *The law enforcement or custodial agency collecting*
7 *specimens, samples, or print impressions is responsible for*
8 *confirming that the person qualifies for entry into the Department*
9 *of Justice DNA and Forensic Identification Database and Databank*
10 *Program prior to collecting the specimens, samples, or print*
11 *impressions pursuant to this chapter.*

12 (6) *The DNA Laboratory of the Department of Justice is*
13 *responsible for establishing procedures for entering databank and*
14 *database information.*

15 (c) (1) *Persons authorized to draw blood or obtain samples or*
16 *print impressions under this chapter for the databank or database*
17 *shall not be civilly or criminally liable either for withdrawing*
18 *blood when done in accordance with medically accepted*
19 *procedures, or for obtaining buccal swab samples by scraping*
20 *inner cheek cells of the mouth, or thumb or palm print impressions*
21 *when performed in accordance with standard professional*
22 *practices.*

23 (2) *There is no civil or criminal cause of action against any law*
24 *enforcement agency or the Department of Justice, or any employee*
25 *thereof, for a mistake in confirming a person's or sample's*
26 *qualifying status for inclusion within the database or databank or*
27 *in placing an entry in a databank or a database.*

28 (3) *The failure of the Department of Justice or local law*
29 *enforcement to comply with Article 4 or any other provision of*
30 *this chapter shall not invalidate an arrest, plea, conviction, or*
31 *disposition.*

32 (d) *This section shall only become operative if the California*
33 *Supreme Court rules to uphold the California Court of Appeal*
34 *decision in People v. Buza (2014) 231 Cal.App.4th 1446 in regard*
35 *to the provisions of Section 298 of the Penal Code, as amended*
36 *by Section 6 of the DNA Fingerprint, Unsolved Crime and*
37 *Innocence Protection Act, Proposition 69, approved by the voters*
38 *at the November 2, 2004, statewide general election, in which case*
39 *this section shall become operative immediately upon that ruling*
40 *becoming final.*

1 *SEC. 6. Section 299 of the Penal Code is amended to read:*

2 299. (a) A person whose DNA profile has been included in
3 ~~the data bank databank~~ pursuant to this chapter shall have his or
4 her DNA specimen and sample destroyed and searchable database
5 profile expunged from the ~~data bank databank~~ program pursuant
6 to the procedures set forth in subdivision (b) if the person has no
7 past or present offense or pending charge which qualifies that
8 person for inclusion within the state's DNA and Forensic
9 Identification Database and ~~Data Bank Databank~~ Program and
10 there otherwise is no legal basis for retaining the specimen or
11 sample or searchable profile.

12 (b) Pursuant to subdivision (a), a person who has no past or
13 present qualifying offense, and for whom there otherwise is no
14 legal basis for retaining the specimen or sample or searchable
15 profile, may make a written request to have his or her specimen
16 and sample destroyed and searchable database profile expunged
17 from the ~~data bank databank~~ program if *any of the following apply:*

18 (1) Following arrest, no accusatory pleading has been filed
19 within the applicable period allowed by law charging the person
20 with a qualifying offense as set forth in subdivision (a) of Section
21 296 or if the charges which served as the basis for including the
22 DNA profile in the state's DNA *and Forensic Identification*
23 ~~Database and Data Bank Identification Databank~~ Program have
24 been dismissed prior to adjudication by a trier of fact;

25 (2) The underlying conviction or disposition serving as the basis
26 for including the DNA profile has been reversed and the case
27 dismissed;

28 (3) The person has been found factually innocent of the
29 underlying offense pursuant to Section 851.8, or Section 781.5 of
30 the Welfare and Institutions Code; or

31 (4) The defendant has been found not guilty or the defendant
32 has been acquitted of the underlying offense.

33 (c) (1) The person requesting the ~~data bank databank~~ entry to
34 be expunged must send a copy of his or her request to the trial
35 court of the county where the arrest occurred, or that entered the
36 conviction or rendered disposition in the case, to the DNA
37 Laboratory of the Department of Justice, and to the prosecuting
38 attorney of the county in which he or she was arrested or,
39 convicted, or adjudicated, with proof of service on all parties. The
40 court has the discretion to grant or deny the request for

1 expungement. The denial of a request for expungement is a
2 nonappealable order and shall not be reviewed by petition for writ.

3 (2) Except as provided ~~below~~ *in this section*, the Department
4 of Justice shall destroy a specimen and sample and expunge the
5 searchable DNA database profile pertaining to the person who has
6 no present or past qualifying offense of record upon receipt of a
7 court order that verifies the applicant has made the necessary
8 showing at a noticed hearing, and that includes all of the following:

9 (A) The written request for expungement pursuant to this
10 section.

11 (B) A certified copy of the court order reversing and dismissing
12 the conviction or case, or a letter from the district attorney
13 certifying that no accusatory pleading has been filed or the charges
14 which served as the basis for collecting a DNA specimen and
15 sample have been dismissed prior to adjudication by a trier of fact,
16 the defendant has been found factually innocent, the defendant has
17 been found not guilty, the defendant has been acquitted of the
18 underlying offense, or the underlying conviction has been reversed
19 and the case dismissed.

20 (C) Proof of written notice to the prosecuting attorney and the
21 Department of Justice that expungement has been requested.

22 (D) A court order verifying that no retrial or appeal of the case
23 is pending, that it has been at least 180 days since the defendant
24 or minor has notified the prosecuting attorney and the Department
25 of Justice of the expungement request, and that the court has not
26 received an objection from the Department of Justice or the
27 prosecuting attorney.

28 (d) Upon order from the court, the Department of Justice shall
29 destroy any specimen or sample collected from the person and any
30 searchable DNA database profile pertaining to the person, unless
31 the department determines that the person is subject to the
32 provisions of this chapter because of a past qualifying offense of
33 record or is or has otherwise become obligated to submit a blood
34 specimen or buccal swab sample as a result of a separate arrest,
35 conviction, juvenile adjudication, or finding of guilty or not guilty
36 by reason of insanity for an offense described in subdivision (a)
37 of Section 296, or as a condition of a plea.

38 The Department of Justice is not required to destroy analytical
39 data or other items obtained from a blood specimen or saliva, or
40 buccal swab sample, if evidence relating to another person subject

1 to the provisions of this chapter would thereby be destroyed or
2 otherwise compromised.

3 Any identification, warrant, probable cause to arrest, or arrest
4 based upon a ~~data bank~~ *databank* or database match is not
5 invalidated due to a failure to expunge or a delay in expunging
6 records.

7 (e) Notwithstanding any other ~~provision of law~~, the Department
8 of Justice DNA Laboratory is not required to expunge DNA profile
9 or forensic identification information or destroy or return
10 specimens, samples, or print impressions taken pursuant to this
11 section if the duty to register under Section 290 or 457.1 is
12 terminated.

13 (f) Notwithstanding any other ~~provision of law~~, including
14 Sections 17, 1203.4, and 1203.4a, a judge is not authorized to
15 relieve a person of the separate administrative duty to provide
16 specimens, samples, or print impressions required by this chapter
17 if a person has been found guilty or was adjudicated a ward of the
18 court by a trier of fact of a qualifying offense as defined in
19 subdivision (a) of Section 296, or was found not guilty by reason
20 of insanity or pleads no contest to a qualifying offense as defined
21 in subdivision (a) of Section 296.

22 (g) *This section shall become inoperative if the California*
23 *Supreme Court rules to uphold the California Court of Appeal*
24 *decision in People v. Buza (2014) 231 Cal.App.4th 1446 in regard*
25 *to the provisions of Section 299 of the Penal Code, as amended*
26 *by Section 9 of the DNA Fingerprint, Unsolved Crime and*
27 *Innocence Protection Act, Proposition 69, approved by the voters*
28 *at the November 2, 2004, statewide general election, in which case*
29 *this section shall become inoperative immediately upon that ruling*
30 *becoming final.*

31 *SEC. 7. Section 299 is added to the Penal Code, to read:*

32 *299. (a) A person whose DNA profile has been included in the*
33 *databank pursuant to this chapter shall have his or her DNA*
34 *specimen and sample destroyed and searchable database profile*
35 *expunged from the databank program if the person has no past or*
36 *present offense or pending charge which qualifies that person for*
37 *inclusion within the state's DNA and Forensic Identification*
38 *Database and Databank Program and there otherwise is no legal*
39 *basis for retaining the specimen or sample or searchable profile.*

1 ***(b) Pursuant to subdivision (a), a person who has no past or***
2 ***present qualifying offense, and for whom there otherwise is no***
3 ***legal basis for retaining the specimen or sample or searchable***
4 ***profile shall have his or her specimen and sample destroyed and***
5 ***searchable database profile expunged from the databank program***
6 ***if any of the following apply:***

7 ***(1) Following arrest, no accusatory pleading has been filed***
8 ***within the applicable period allowed by law charging the person***
9 ***with a qualifying offense as set forth in subdivision (a) of Section***
10 ***296 or if the charges which served as the basis for including the***
11 ***DNA profile in the state's DNA and Forensic Identification***
12 ***Database and Databank Program have been dismissed prior to***
13 ***adjudication by a trier of fact, in which case the district attorney***
14 ***shall submit a letter to the Department of Justice as soon as these***
15 ***conditions have been met.***

16 ***(2) The underlying conviction or disposition serving as the basis***
17 ***for including the DNA profile has been reversed and the case***
18 ***dismissed, in which case the court shall forward its order to the***
19 ***Department of Justice upon disposition of the case.***

20 ***(3) The person has been found factually innocent of the***
21 ***underlying offense pursuant to Section 851.8, or Section 781.5 of***
22 ***the Welfare and Institutions Code, in which case the court shall***
23 ***forward its order to the Department of Justice upon disposition***
24 ***of the case.***

25 ***(4) The defendant has been found not guilty or the defendant***
26 ***has been acquitted of the underlying offense, in which case the***
27 ***court shall forward its order to the Department of Justice upon***
28 ***disposition of the case.***

29 ***(c) Except as provided in this section, the Department of Justice***
30 ***shall destroy a specimen and sample and expunge the searchable***
31 ***DNA database profile pertaining to the person who has no present***
32 ***or past qualifying offense of record upon receipt of the following:***

33 ***(1) A certified copy of the court order reversing and dismissing***
34 ***the conviction or case, or a letter from the district attorney***
35 ***certifying that no accusatory pleading has been filed or the charges***
36 ***which served as the basis for collecting a DNA specimen and***
37 ***sample have been dismissed prior to adjudication by a trier of***
38 ***fact, the defendant has been found factually innocent, the defendant***
39 ***has been found not guilty, the defendant has been acquitted of the***

1 *underlying offense, or the underlying conviction has been reversed*
2 *and the case dismissed.*

3 *(2) A court order verifying that no retrial or appeal of the case*
4 *is pending.*

5 *(d) Upon order from the court, the Department of Justice shall*
6 *destroy any specimen or sample collected from the person and any*
7 *searchable DNA database profile pertaining to the person, unless*
8 *the department determines that the person is subject to the*
9 *provisions of this chapter because of a past qualifying offense of*
10 *record or is or has otherwise become obligated to submit a blood*
11 *specimen or buccal swab sample as a result of a separate arrest,*
12 *conviction, juvenile adjudication, or finding of guilty or not guilty*
13 *by reason of insanity for an offense described in subdivision (a)*
14 *of Section 296, or as a condition of a plea.*

15 *The Department of Justice is not required to destroy analytical*
16 *data or other items obtained from a blood specimen or saliva, or*
17 *buccal swab sample, if evidence relating to another person subject*
18 *to the provisions of this chapter would thereby be destroyed or*
19 *otherwise compromised.*

20 *Any identification, warrant, probable cause to arrest, or arrest*
21 *based upon a databank or database match is not invalidated due*
22 *to a failure to expunge or a delay in expunging records.*

23 *(e) Notwithstanding any other law, the Department of Justice*
24 *DNA Laboratory is not required to expunge DNA profile or*
25 *forensic identification information or destroy or return specimens,*
26 *samples, or print impressions taken pursuant to this section if the*
27 *duty to register under Section 290 or 457.1 is terminated.*

28 *(f) Notwithstanding any other law, including Sections 17, 1203.4,*
29 *and 1203.4a, a judge is not authorized to relieve a person of the*
30 *separate administrative duty to provide specimens, samples, or*
31 *print impressions required by this chapter if a person has been*
32 *found guilty or was adjudicated a ward of the court by a trier of*
33 *fact of a qualifying offense as defined in subdivision (a) of Section*
34 *296, or was found not guilty by reason of insanity or pleads no*
35 *contest to a qualifying offense as defined in subdivision (a) of*
36 *Section 296.*

37 *(g) This section shall only become operative if the California*
38 *Supreme Court rules to uphold the California Court of Appeal*
39 *decision in People v. Buza (2014) 231 Cal.App.4th 1446 in regard*
40 *to the provisions of Section 299 of the Penal Code, as amended*

1 *by Section 9 of the DNA Fingerprint, Unsolved Crime and*
2 *Innocence Protection Act, Proposition 69, approved by the voters*
3 *at the November 2, 2004, statewide general election, in which case*
4 *this section shall become operative immediately upon that ruling*
5 *becoming final.*

6 ~~SEC. 7.~~

7 SEC. 8. Section 300 of the Penal Code is amended to read:

8 300. (a) This chapter does not limit or abrogate any existing
9 authority of law enforcement officers to take, maintain, store, and
10 utilize DNA or forensic identification markers, blood specimens,
11 buccal swab samples, saliva samples, or thumb or palm print
12 impressions for identification purposes. ~~A law enforcement agency~~
13 ~~may use any publicly available database to aid in the investigation~~
14 ~~of a crime.~~

15 (b) *A law enforcement agency may use a publicly available*
16 *database, excluding a law enforcement database that is not linked*
17 *to the Combined DNA Index System (CODIS), if the case being*
18 *investigated involves a homicide or sexual assault involving force*
19 *and the case is unsolved and all investigative leads have been*
20 *exhausted, in which case the law enforcement agency shall review*
21 *nonforensic information in order to identify additional evidence*
22 *bearing on relatedness.*

23 ~~SEC. 8.~~

24 SEC. 9. If the Commission on State Mandates determines that
25 this act contains costs mandated by the state, reimbursement to
26 local agencies and school districts for those costs shall be made
27 pursuant to Part 7 (commencing with Section 17500) of Division
28 4 of Title 2 of the Government Code.