

**ASSEMBLY BILL**

**No. 390**

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**Introduced by Assembly Member Cooper**  
**(Coauthors: Assembly Members Lackey and Perea)**  
(Coauthor: Senator Wolk)

February 18, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 390, as introduced, Cooper. Criminal law: DNA evidence.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (A) A misdemeanor violation of Section 459.5.

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

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

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

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

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

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

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

20 ~~(4)~~

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

23 ~~(5)~~

24 (6) Nothing in this chapter shall be construed as prohibiting  
25 collection and analysis of specimens, samples, or print impressions  
26 as a condition of a plea for a ~~non-qualifying~~ *nonqualifying* offense.

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

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

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

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

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

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

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

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

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

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

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

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