

AMENDED IN ASSEMBLY MAY 28, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 390

Introduced by Assembly Member Cooper

(Principal coauthor: Senator Galgiani)

**(Coauthors: Assembly Members Cooley, Lackey, Obernolte, Perea,
Steinorth, and Wagner)**

(Coauthor: Senator Wolk)

February 18, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 390, as amended, 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~~ *misdemeanors, if they have a prior conviction of other 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

1 person, including any juvenile, who is housed in a mental health
2 facility or sex offender treatment program after referral to such
3 facility or program by a court after being charged with any felony
4 offense.

5 (4) Any person, excluding a juvenile, *who has a prior*
6 *misdemeanor conviction of Section 136.1, 136.5, 171b, or 186.28,*
7 *subdivision (b), (c), or (d) of Section 243, Section 243.4, 244.5,*
8 *245, 245.5, 417, 417.6, 422, 646.9, or 25300, subdivision (d) of*
9 *Section 26100, or Section 32625, and who is convicted of, or pleads*
10 *guilty or no contest to, any of the following offenses:*

11 (A) A misdemeanor violation of Section 459.5.

12 (B) Any misdemeanor punishable pursuant to subdivision (b)
13 of Section 473.

14 (C) A violation of subdivision (a) of Section 476a that is
15 punishable as a misdemeanor pursuant to subdivision (b) of Section
16 476a.

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

19 (E) A violation of Section 496 that is punishable as a
20 misdemeanor.

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

23 (G) A misdemeanor violation of subdivision (a) of Section
24 11357 of the Health and Safety Code.

25 (H) A misdemeanor violation of subdivision (a) of Section
26 11377 of the Health and Safety Code.

27 (I) A misdemeanor violation of Section 666.

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

30 (6) Nothing in this chapter shall be construed as prohibiting
31 collection and analysis of specimens, samples, or print impressions
32 as a condition of a plea for nonqualifying offense.

33 (b) The provisions of this chapter and its requirements for
34 submission of specimens, samples and print impressions as soon
35 as administratively practicable shall apply to all qualifying persons
36 regardless of sentence imposed, including any sentence of death,
37 life without the possibility of parole, or any life or indeterminate
38 term, or any other disposition rendered in the case of an adult or
39 juvenile tried as an adult, or whether the person is diverted, fined,
40 or referred for evaluation, and regardless of disposition rendered

1 or placement made in the case of juvenile who is found to have
2 committed any felony offense or is adjudicated under Section 602
3 of the Welfare and Institutions Code.

4 (c) The provisions of this chapter and its requirements for
5 submission of specimens, samples, and print impressions as soon
6 as administratively practicable by qualified persons as described
7 in subdivision (a) shall apply regardless of placement or
8 confinement in any mental hospital or other public or private
9 treatment facility, and shall include, but not be limited to, the
10 following persons, including juveniles:

11 (1) Any person committed to a state hospital or other treatment
12 facility as a mentally disordered sex offender under Article 1
13 (commencing with Section 6300) of Chapter 2 of Part 2 of Division
14 6 of the Welfare and Institutions Code.

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

18 (3) Any person found to be a sexually violent predator pursuant
19 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
20 2 of Division 6 of the Welfare and Institutions Code.

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

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

39 (f) Prior to final disposition or sentencing in the case the court
40 shall inquire and verify that the specimens, samples, and print

1 impressions required by this chapter have been obtained and that
2 this fact is included in the abstract of judgment or dispositional
3 order in the case of a juvenile. The abstract of judgment issued by
4 the court shall indicate that the court has ordered the person to
5 comply with the requirements of this chapter and that the person
6 shall be included in the state's DNA and Forensic Identification
7 Data Base and Data Bank program and be subject to this chapter.

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

13 SEC. 2. If the Commission on State Mandates determines that
14 this act contains costs mandated by the state, reimbursement to
15 local agencies and school districts for those costs shall be made
16 pursuant to Part 7 (commencing with Section 17500) of Division
17 4 of Title 2 of the Government Code.