

AMENDED IN SENATE JULY 6, 2015
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 *Burke, Campos, Cooley, Gonzalez,*
***Irwin, Lackey, Obernolte, Perea, Steinorth, and Wagner*)**
(Coauthor: Senator Wolk)

February 18, 2015

An act to amend ~~Section 296~~ *Sections 296 and 299* 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, if they have a prior conviction of other specified misdemeanors,~~ *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.

Existing law prohibits a judge from relieving a person of the separate administrative duty to provide specimens, samples, or print impressions required by the DNA Act if the person has been found guilty of an offense for which DNA collection is required. Existing law, added by Proposition 47, allows a person to petition the court for resentencing if he or she was convicted of a felony that was reduced to a misdemeanor by Proposition 47. Existing law requires the court to resentence the petitioner, unless the court determines that the person would pose an unreasonable risk to public safety.

This bill would clarify that the prohibition on judges relieving a person of the duty to provide specimens, samples, or print impressions is not affected by resentencing under Proposition 47.

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.

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

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

7 (B) Murder or voluntary manslaughter or any attempt to commit
8 murder or voluntary manslaughter.

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

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

19 (4) Any person, excluding a juvenile, ~~who has a prior~~
20 ~~misdemeanor conviction of Section 136.1, 136.5, 171b, or 186.28,~~
21 ~~subdivision (b), (c), or (d) of Section 243, Section 243.4, 244.5,~~
22 ~~245, 245.5, 417, 417.6, 422, 646.9, or 25300, subdivision (d) of~~
23 ~~Section 26100, or Section 32625, and who is convicted of, or pleads~~
24 ~~guilty or no contest to, any of the following offenses:~~

25 (A) A misdemeanor violation of Section 459.5.

26 (B) Any misdemeanor punishable pursuant to subdivision (b)
27 of Section 473.

28 (C) A violation of subdivision (a) of Section 476a that is
29 punishable as a misdemeanor pursuant to subdivision (b) of Section
30 476a.

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

33 (E) A violation of Section 496 that is punishable as a
34 misdemeanor.

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

37 (G) A misdemeanor violation of subdivision (a) of Section
38 11357 of the Health and Safety Code.

39 (H) A misdemeanor violation of subdivision (a) of Section
40 11377 of the Health and Safety Code.

1 (I) A misdemeanor violation of Section 666.

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

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

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

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

25 (1) Any person committed to a state hospital or other treatment
26 facility as a mentally disordered sex offender under Article 1
27 (commencing with Section 6300) of Chapter 2 of Part 2 of Division
28 6 of the Welfare and Institutions Code.

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

32 (3) Any person found to be a sexually violent predator pursuant
33 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
34 2 of Division 6 of the Welfare and Institutions Code.

35 (d) The provisions of this chapter are mandatory and apply
36 whether or not the court advises a person, including any juvenile,
37 that he or she must provide the data bank and database specimens,
38 samples, and print impressions as a condition of probation, parole,
39 or any plea of guilty, no contest, or not guilty by reason of insanity,

1 or any admission to any of the offenses described in subdivision
2 (a).

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

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

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

28 *SEC. 2. Section 299 of the Penal Code is amended to read:*

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

38 (b) Pursuant to subdivision (a), a person who has no past or
39 present qualifying offense, and for whom there otherwise is no
40 legal basis for retaining the specimen or sample or searchable

1 profile, may make a written request to have his or her specimen
2 and sample destroyed and searchable database profile expunged
3 from the data bank program if:

4 (1) Following arrest, no accusatory pleading has been filed
5 within the applicable period allowed by law charging the person
6 with a qualifying offense as set forth in subdivision (a) of Section
7 296 or if the charges which served as the basis for including the
8 DNA profile in the state's DNA Database and Data Bank
9 Identification Program have been dismissed prior to adjudication
10 by a trier of fact;

11 (2) The underlying conviction or disposition serving as the basis
12 for including the DNA profile has been reversed and the case
13 dismissed;

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; or

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

19 (c) (1) The person requesting the data bank entry to be expunged
20 must send a copy of his or her request to the trial court of the
21 county where the arrest occurred, or that entered the conviction or
22 rendered disposition in the case, to the DNA Laboratory of the
23 Department of Justice, and to the prosecuting attorney of the county
24 in which he or she was arrested or, convicted, or adjudicated, with
25 proof of service on all parties. The court has the discretion to grant
26 or deny the request for expungement. The denial of a request for
27 expungement is a nonappealable order and shall not be reviewed
28 by petition for writ.

29 (2) Except as provided below, the Department of Justice shall
30 destroy a specimen and sample and expunge the searchable DNA
31 database profile pertaining to the person who has no present or
32 past qualifying offense of record upon receipt of a court order that
33 verifies the applicant has made the necessary showing at a noticed
34 hearing, and that includes all of the following:

35 (A) The written request for expungement pursuant to this
36 section.

37 (B) A certified copy of the court order reversing and dismissing
38 the conviction or case, or a letter from the district attorney
39 certifying that no accusatory pleading has been filed or the charges
40 which served as the basis for collecting a DNA specimen and

1 sample have been dismissed prior to adjudication by a trier of fact,
2 the defendant has been found factually innocent, the defendant has
3 been found not guilty, the defendant has been acquitted of the
4 underlying offense, or the underlying conviction has been reversed
5 and the case dismissed.

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

8 (D) A court order verifying that no retrial or appeal of the case
9 is pending, that it has been at least 180 days since the defendant
10 or minor has notified the prosecuting attorney and the Department
11 of Justice of the expungement request, and that the court has not
12 received an objection from the Department of Justice or the
13 prosecuting attorney.

14 (d) Upon order from the court, the Department of Justice shall
15 destroy any specimen or sample collected from the person and any
16 searchable DNA database profile pertaining to the person, unless
17 the department determines that the person is subject to the
18 provisions of this chapter because of a past qualifying offense of
19 record or is or has otherwise become obligated to submit a blood
20 specimen or buccal swab sample as a result of a separate arrest,
21 conviction, juvenile adjudication, or finding of guilty or not guilty
22 by reason of insanity for an offense described in subdivision (a)
23 of Section 296, or as a condition of a plea.

24 The Department of Justice is not required to destroy analytical
25 data or other items obtained from a blood specimen or saliva, or
26 buccal swab sample, if evidence relating to another person subject
27 to the provisions of this chapter would thereby be destroyed or
28 otherwise compromised.

29 Any identification, warrant, probable cause to arrest, or arrest
30 based upon a data bank or database match is not invalidated due
31 to a failure to expunge or a delay in expunging records.

32 (e) Notwithstanding any other provision of law, the Department
33 of Justice DNA Laboratory is not required to expunge DNA profile
34 or forensic identification information or destroy or return
35 specimens, samples, or print impressions taken pursuant to this
36 section if the duty to register under Section 290 or 457.1 is
37 terminated.

38 (f) Notwithstanding any other provision of law, including
39 Sections 17, *1170.18*, 1203.4, and 1203.4a, a judge is not
40 authorized to relieve a person of the separate administrative duty

1 to provide specimens, samples, or print impressions required by
2 this chapter if a person has been found guilty or was adjudicated
3 a ward of the court by a trier of fact of a qualifying offense as
4 defined in subdivision (a) of Section 296, or was found not guilty
5 by reason of insanity or pleads no contest to a qualifying offense
6 as defined in subdivision (a) of Section 296.

7 ~~SEC. 2.~~

8 *SEC. 3.* 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.