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AMENDED IN SENATE JULY 16, 2015
AMENDED IN SENATE JUNE 29, 2015
AMENDED IN ASSEMBLY APRIL 30, 2015
AMENDED IN ASSEMBLY APRIL 15, 2015
AMENDED IN ASSEMBLY MARCH 26, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1492

**Introduced by Assembly Member Gatto
(Coauthor: Assembly Member Atkins)**

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1492, 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 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, for which review

has been granted by the California Supreme Court, 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*, limit the above-specified requirements to persons arrested for specified sex offenses or serious or violent felonies. 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 felony arrest warrant has been signed by a judicial officer, a grand jury indictment has been found and issued, or a judicial determination of probable cause to believe the person has committed the offense for which he or she was arrested has been made.* ~~made~~ *made at the time the defendant has been arraigned.*

(2) 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 that 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.

(3) 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 that if buccal swab samples are taken for DNA analysis as a condition of a plea or reduction or dismissal of charges, that all uses of the DNA sample be

disclosed to the defendant in writing, that consent be obtained in writing, that the defendant sign a written agreement allowing his or her buccal swab sample or blood sample to be taken for DNA analysis, and that the defendant have an opportunity to consult with counsel prior to signing the agreement. ~~The bill would permit a law enforcement agency to use any publicly available database to aid in the investigation of a crime.~~

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

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*, and to further the
5 purposes of the DNA Fingerprint, Unsolved Crime and Innocence
6 Protection Act, Proposition 69, approved by the voters at the
7 November 2, 2004, statewide general election, in light of that
8 decision.

9 SEC. 2. It is the intent of the Legislature that if buccal swab
10 samples are taken for DNA analysis as a condition of a plea or
11 reduction or dismissal of charges, that all uses of the DNA sample
12 shall first be disclosed to the defendant in writing, that consent
13 shall be obtained in writing, that the defendant shall sign a written
14 agreement allowing his or her buccal swab sample or blood sample
15 to be taken for DNA analysis, and that the defendant shall have
16 an opportunity to consult with his or her legal counsel prior to
17 signing the agreement. It is the intent of the Legislature that buccal
18 swab samples taken as a condition of a plea or reduction or
19 dismissal of charges be done on the basis of individualized
20 consideration.

21 SEC. 3. Section 296 of the Penal Code is amended to read:
22 296. (a) The following persons shall provide buccal swab
23 samples, right thumbprints, and a full palm print impression of
24 each hand, and any blood specimens or other biological samples
25 required pursuant to this chapter for law enforcement identification
26 analysis:

27 (1) Any person, including any juvenile, who is convicted of or
28 pleads guilty or no contest to any felony offense, or is found not

1 guilty by reason of insanity of any felony offense, or any juvenile
2 who is adjudicated under Section 602 of the Welfare and
3 Institutions Code for committing any felony offense.

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

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

10 (B) Murder or voluntary manslaughter or any attempt to commit
11 murder or voluntary manslaughter.

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

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

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

23 (5) This chapter does not prohibit collection and analysis of
24 specimens, samples, or print impressions as a condition of a plea
25 for a nonqualifying offense.

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

37 (c) The provisions of this chapter and its requirements for
38 submission of specimens, samples, and print impressions as soon
39 as administratively practicable by qualified persons as described
40 in subdivision (a) shall apply regardless of placement or

1 confinement in any mental hospital or other public or private
2 treatment facility, and shall include, but not be limited to, the
3 following persons, including juveniles:

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

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

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

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

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

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

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

6 (g) This section shall become inoperative if the California
7 Supreme Court rules to uphold the California Court of Appeal
8 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard
9 to the provisions of Section 296 of the Penal Code, as amended
10 by Section 3 of the DNA Fingerprint, Unsolved Crime and
11 Innocence Protection Act, Proposition 69, approved by the voters
12 at the November 2, 2004, general election, in which case this
13 section shall become inoperative immediately upon that ruling
14 becoming final.

15 SEC. 4. Section 296 is added to the Penal Code, to read:

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

21 (1) Any person, including any juvenile, who is convicted of or
22 pleads guilty or no contest to any felony offense, or is found not
23 guilty by reason of insanity of any felony offense, or any juvenile
24 who is adjudicated under Section 602 of the Welfare and
25 Institutions Code for committing any felony offense.

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

28 (A) Any felony offense specified in Section 290 or attempt to
29 commit any felony offense described in Section 290, or any felony
30 offense that imposes upon a person the duty to register in California
31 as a sex offender under Section 290.

32 (B) Murder or voluntary manslaughter or any attempt to commit
33 murder or voluntary manslaughter.

34 (C) Any adult person arrested or charged with a felony offense
35 specified in subdivision (c) of Section 667.5 or subdivision (c) of
36 Section 1192.7.

37 (3) Any person, including any juvenile, who is required to
38 register under Section 290 or 457.1 because of the commission of,
39 or the attempt to commit, a felony or misdemeanor offense, or any
40 person, including any juvenile, who is housed in a mental health

1 facility or sex offender treatment program after referral to such
2 facility or program by a court after being charged with any felony
3 offense.

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

6 (5) This chapter does not prohibit collection and analysis of
7 specimens, samples, or print impressions as a condition of a plea
8 for a nonqualifying offense.

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

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

27 (1) Any person committed to a state hospital or other treatment
28 facility as a mentally disordered sex offender under former Article
29 1 (commencing with Section 6300) of Chapter 2 of Part 2 of
30 Division 6 of the Welfare and Institutions Code.

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

34 (3) Any person found to be a sexually violent predator pursuant
35 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
36 2 of Division 6 of the Welfare and Institutions Code.

37 (d) The provisions of this chapter are mandatory and apply
38 whether or not the court advises a person, including any juvenile,
39 that he or she must provide the data bank and database specimens,
40 samples, and print impressions as a condition of probation, parole,

1 or any plea of guilty, no contest, or not guilty by reason of insanity,
2 or any admission to any of the offenses described in subdivision
3 (a).

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

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

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

29 (g) This section shall only become operative if the California
30 Supreme Court rules to uphold the California Court of Appeal
31 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard
32 to the provisions of Section 296 of the Penal Code, as amended
33 by Section 3 of the DNA Fingerprint, Unsolved Crime and
34 Innocence Protection Act, Proposition 69, approved by the voters
35 at the November 2, 2004, general election, in which case this
36 section shall become operative immediately upon that ruling
37 becoming final.

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

39 298. (a) The Secretary of the Department of Corrections and
40 Rehabilitation, or the Chief Administrative Officer of the detention

1 facility, jail, or other facility at which the blood specimens, buccal
2 swab samples, and thumb and palm print impressions were
3 collected shall cause these specimens, samples, and print
4 impressions to be forwarded promptly to the Department of Justice.
5 The specimens, samples, and print impressions shall be collected
6 by a person using a Department of Justice approved collection kit
7 and in accordance with the requirements and procedures set forth
8 in subdivision (b).

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

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

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

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

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

39 (5) The law enforcement or custodial agency collecting
40 specimens, samples, or print impressions is responsible for

1 confirming that the person qualifies for entry into the Department
2 of Justice DNA Database and Databank Program prior to collecting
3 the specimens, samples, or print impressions pursuant to this
4 chapter.

5 (6) The DNA Laboratory of the Department of Justice is
6 responsible for establishing procedures for entering databank and
7 database information.

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

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

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

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

33 SEC. 6. Section 298 is added to the Penal Code, to read:

34 298. (a) (1) (A) The Secretary of the Department of
35 Corrections and Rehabilitation, or the Chief Administrative Officer
36 of the detention facility, jail, or other facility at which the blood
37 specimens, buccal swab samples, and thumb and palm print
38 impressions were collected shall cause these specimens, samples,
39 and print impressions to be forwarded promptly to the Department
40 of Justice, except that a blood specimen or buccal swab sample

1 taken from a person arrested for the commission of a felony as
2 specified in paragraph (2) of subdivision (a) of Section 296 shall
3 be forwarded to the Department of Justice ~~after a judicial~~
4 ~~determination of probable cause to believe the person has~~
5 ~~committed the offense for which he or she was arrested has been~~
6 ~~made pursuant to Section 825. The only after one of the following~~
7 *has occurred, which shall be deemed a finding of probable cause,*
8 *whichever occurs first:*

9 (i) *A felony arrest warrant has been signed by a judicial officer*
10 *pursuant to Section 813 or 817.*

11 (ii) *A grand jury indictment has been found and issued pursuant*
12 *to Sections 939.8, 940, or 944.*

13 (iii) *A judicial officer has determined that probable cause exists*
14 *to believe the person has committed the offense for which he or*
15 *she was arrested at the time the defendant has been arraigned.*

16 (B) *The specimens, samples, and print impressions shall be*
17 *collected by a person using a Department of Justice approved*
18 *collection kit and in accordance with the requirements and*
19 *procedures set forth in subdivision (b).*

20 (2) *A blood specimen or buccal swab sample taken from a*
21 *person arrested for the commission of a felony as specified in*
22 *paragraph (2) of subdivision (a) of Section 296 that has not been*
23 *forwarded to the Department of Justice within six months following*
24 *the arrest of that person because the agency that took the blood*
25 *specimen or buccal swab sample has not received notice to forward*
26 *the DNA specimen or sample to the Department of Justice for*
27 *inclusion in the state's DNA and Forensic Identification Database*
28 *and Databank Program pursuant to paragraph (1) following a*
29 *determination of probable cause, shall be destroyed by the agency*
30 *that collected the blood specimen or buccal swab sample.*

31 (b) (1) *The Department of Justice shall provide all blood*
32 *specimen vials, buccal swab collectors, mailing tubes, labels, and*
33 *instructions for the collection of the blood specimens, buccal swab*
34 *samples, and thumbprints. The specimens, samples, and*
35 *thumbprints shall thereafter be forwarded to the DNA Laboratory*
36 *of the Department of Justice for analysis of DNA and other forensic*
37 *identification markers.*

38 *Additionally, the Department of Justice shall provide all full*
39 *palm print cards, mailing envelopes, and instructions for the*
40 *collection of full palm prints. The full palm prints, on a form*

1 prescribed by the Department of Justice, shall thereafter be
2 forwarded to the Department of Justice for maintenance in a file
3 for identification purposes.

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

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

11 (4) Right thumbprints and a full palm print impression of each
12 hand shall be taken on forms prescribed by the Department of
13 Justice. The palm print forms shall be forwarded to and maintained
14 by the Bureau of Criminal Identification and Information of the
15 Department of Justice. Right thumbprints also shall be taken at
16 the time of the collection of samples and specimens and shall be
17 placed on the sample and specimen containers and forms as
18 directed by the Department of Justice. The samples, specimens,
19 and forms shall be forwarded to and maintained by the DNA
20 Laboratory of the Department of Justice.

21 (5) The law enforcement or custodial agency collecting
22 specimens, samples, or print impressions is responsible for
23 confirming that the person qualifies for entry into the Department
24 of Justice DNA and Forensic Identification Database and Databank
25 Program prior to collecting the specimens, samples, or print
26 impressions pursuant to this chapter.

27 (6) The DNA Laboratory of the Department of Justice is
28 responsible for establishing procedures for entering databank and
29 database information.

30 (c) (1) Persons authorized to draw blood or obtain samples or
31 print impressions under this chapter for the databank or database
32 shall not be civilly or criminally liable either for withdrawing blood
33 when done in accordance with medically accepted procedures, or
34 for obtaining buccal swab samples by scraping inner cheek cells
35 of the mouth, or thumb or palm print impressions when performed
36 in accordance with standard professional practices.

37 (2) There is no civil or criminal cause of action against any law
38 enforcement agency or the Department of Justice, or any employee
39 thereof, for a mistake in confirming a person's or sample's

1 qualifying status for inclusion within the database or databank or
2 in placing an entry in a databank or a database.

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

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

16 SEC. 7. Section 299 of the Penal Code is amended to read:

17 299. (a) A person whose DNA profile has been included in
18 the databank pursuant to this chapter shall have his or her DNA
19 specimen and sample destroyed and searchable database profile
20 expunged from the databank program pursuant to the procedures
21 set forth in subdivision (b) if the person has no past or present
22 offense or pending charge which qualifies that person for inclusion
23 within the state's DNA and Forensic Identification Database and
24 Databank Program and there otherwise is no legal basis for
25 retaining the specimen or sample or searchable profile.

26 (b) Pursuant to subdivision (a), a person who has no past or
27 present qualifying offense, and for whom there otherwise is no
28 legal basis for retaining the specimen or sample or searchable
29 profile, may make a written request to have his or her specimen
30 and sample destroyed and searchable database profile expunged
31 from the databank program if any of the following apply:

32 (1) Following arrest, no accusatory pleading has been filed
33 within the applicable period allowed by ~~law~~ *law*, charging the
34 person with a qualifying offense as set forth in subdivision (a) of
35 Section 296 or if the charges which served as the basis for including
36 the DNA profile in the state's DNA and Forensic Identification
37 Database and Databank Program have been dismissed prior to
38 adjudication by a trier of fact;

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

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

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

9 (c) (1) The person requesting the databank entry to be expunged
10 must send a copy of his or her request to the trial court of the
11 county where the arrest occurred, or that entered the conviction or
12 rendered disposition in the case, to the DNA Laboratory of the
13 Department of Justice, and to the prosecuting attorney of the county
14 in which he or she was arrested or, convicted, or adjudicated, with
15 proof of service on all parties. The court has the discretion to grant
16 or deny the request for expungement. The denial of a request for
17 expungement is a nonappealable order and shall not be reviewed
18 by petition for writ.

19 (2) Except as provided in this section, the Department of Justice
20 shall destroy a specimen and sample and expunge the searchable
21 DNA database profile pertaining to the person who has no present
22 or past qualifying offense of record upon receipt of a court order
23 that verifies the applicant has made the necessary showing at a
24 noticed hearing, and that includes all of the following:

25 (A) The written request for expungement pursuant to this
26 section.

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

38 (D) A court order verifying that no retrial or appeal of the case
39 is pending, that it has been at least 180 days since the defendant
40 or minor has notified the prosecuting attorney and the Department

1 of Justice of the expungement request, and that the court has not
2 received an objection from the Department of Justice or the
3 prosecuting attorney.

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

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

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

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

27 (f) Notwithstanding any other law, including Sections 17,
28 1170.18, 1203.4, and 1203.4a, a judge is not authorized to relieve
29 a person of the separate administrative duty to provide specimens,
30 samples, or print impressions required by this chapter if a person
31 has been found guilty or was adjudicated a ward of the court by a
32 trier of fact of a qualifying offense as defined in subdivision (a)
33 of Section 296, or was found not guilty by reason of insanity or
34 pleads no contest to a qualifying offense as defined in subdivision
35 (a) of Section 296.

36 (g) This section shall become inoperative if the California
37 Supreme Court rules to uphold the California Court of Appeal
38 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard
39 to the provisions of Section 299 of the Penal Code, as amended
40 by Section 9 of the DNA Fingerprint, Unsolved Crime and

1 Innocence Protection Act, Proposition 69, approved by the voters
2 at the November 2, 2004, statewide general election, in which case
3 this section shall become inoperative immediately upon that ruling
4 becoming final.

5 SEC. 8. Section 299 is added to the Penal Code, to read:

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

14 (b) Pursuant to subdivision (a), a person who has no past or
15 present qualifying offense, and for whom there otherwise is no
16 legal basis for retaining the specimen or sample or searchable
17 profile shall have his or her specimen and sample destroyed and
18 searchable database profile expunged from the databank program
19 if any of the following apply:

20 (1) Following arrest, no accusatory pleading has been filed
21 within the applicable period allowed by ~~law~~ *law*, charging the
22 person with a qualifying offense as set forth in subdivision (a) of
23 Section 296 or if the charges which served as the basis for including
24 the DNA profile in the state's DNA and Forensic Identification
25 Database and Databank Program have been dismissed prior to
26 adjudication by a trier of fact, in which case the district attorney
27 shall submit a letter to the Department of Justice as soon as these
28 conditions have been met.

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

33 (3) The person has been found factually innocent of the
34 underlying offense pursuant to Section 851.8, or Section 781.5 of
35 the Welfare and Institutions Code, in which case the court shall
36 forward its order to the Department of Justice upon disposition of
37 the case.

38 (4) The defendant has been found not guilty or the defendant
39 has been acquitted of the underlying offense, in which case the

1 court shall forward its order to the Department of Justice upon
2 disposition of the case.

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

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

16 (2) A court order verifying that no retrial or appeal of the case
17 is pending.

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

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

33 Any identification, warrant, probable cause to arrest, or arrest
34 based upon a databank or database match is not invalidated due
35 to a failure to expunge or a delay in expunging records.

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

1 (f) Notwithstanding any other law, including Sections 17,
 2 1170.18, 1203.4, and 1203.4a, a judge is not authorized to relieve
 3 a person of the separate administrative duty to provide specimens,
 4 samples, or print impressions required by this chapter if a person
 5 has been found guilty or was adjudicated a ward of the court by a
 6 trier of fact of a qualifying offense as defined in subdivision (a)
 7 of Section 296, or was found not guilty by reason of insanity or
 8 pleads no contest to a qualifying offense as defined in subdivision
 9 (a) of Section 296.

10 (g) This section shall only become operative if the California
 11 Supreme Court rules to uphold the California Court of Appeal
 12 decision in *People v. Buza* (2014) 231 Cal.App.4th 1446 in regard
 13 to the provisions of Section 299 of the Penal Code, as amended
 14 by Section 9 of the DNA Fingerprint, Unsolved Crime and
 15 Innocence Protection Act, Proposition 69, approved by the voters
 16 at the November 2, 2004, statewide general election, in which case
 17 this section shall become operative immediately upon that ruling
 18 becoming final.

19 ~~SEC. 9.—Section 300 of the Penal Code is amended to read:~~

20 ~~300. (a) This chapter does not limit or abrogate any existing~~
 21 ~~authority of law enforcement officers to take, maintain, store, and~~
 22 ~~utilize DNA or forensic identification markers, blood specimens,~~
 23 ~~buccal swab samples, saliva samples, or thumb or palm print~~
 24 ~~impressions for identification purposes.~~

25 ~~(b) A law enforcement agency may use a publicly available~~
 26 ~~database, excluding a law enforcement database that is not linked~~
 27 ~~to the Combined DNA Index System (CODIS), if the case being~~
 28 ~~investigated involves a homicide or sexual assault involving force~~
 29 ~~and the case is unsolved and all investigative leads have been~~
 30 ~~exhausted, in which case the law enforcement agency shall review~~
 31 ~~nonforensic information in order to identify additional evidence~~
 32 ~~bearing on relatedness.~~