

AMENDED IN ASSEMBLY APRIL 19, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2440

Introduced by Assembly Member Gatto

February 19, 2016

An act to amend Section 76104.6 of, and to add Section 76104.8 to, the Government Code, 14252 to the Penal Code, relating to public safety, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2440, as amended, Gatto. County DNA Identification Fund: ~~penalty assessment. Fund.~~

Existing law requires the Department of Justice to develop a DNA database for all cases involving the report of an unidentified deceased person or a high-risk missing person, provides for the collection of DNA samples from unidentified deceased persons and from potential sources for comparison, as specified, and requires that the database be funded by a \$2 increase on death certificates issued by a local governmental agency or by the State of California. Existing law requires a penalty of \$1 for every \$10 or part thereof to be levied in each county upon every fine, penalty, or forfeiture imposed and collected by the court for all criminal offenses, as specified. Existing law requires the county board of supervisors to establish a DNA Identification Fund in the county treasury into which the additional penalty is deposited. Existing law requires the county treasurer to transfer a specified amount from that fund to the Controller for credit to the state's DNA

Identification Fund. Existing law specifies the purposes for which the remaining funds in the county’s DNA Identification Fund may be used.

~~This bill would create an additional penalty of \$4 for every \$10 or part thereof to be levied in each county upon every fine, penalty, or forfeiture imposed and collected by the court for specified offenses, including, among others, misdemeanor and felony offenses, misdemeanor violations of any city, county, or city and county ordinance, and violations of the Penal Code initially charged as a misdemeanor and reduced to an infraction. The bill appropriate \$15,000,000 from the General Fund, would require this penalty that money to be deposited into the a county DNA Identification Fund Fund, and would require the county treasurer to distinguish moneys collected pursuant to this penalty the bill’s provisions from other penalty assessments: moneys in the fund. The bill would require the money from this penalty the bill’s provisions to be used, upon a resolution by the board of supervisors, to assist local law enforcement agencies with the investigation of specified cases involving DNA evidence. The bill would require the district attorney to publicize, as specified, when an investigation using these funds results in a solved case. The bill would also make conforming changes. Because this bill would require county officials to perform additional duties, it 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~~^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. ~~Section 76104.6 of the Government Code is~~
- 2 ~~amended to read:~~
- 3 76104.6. (a) (1) ~~Except as otherwise provided in this section,~~
- 4 ~~for the purpose of implementing the DNA Fingerprint, Unsolved~~
- 5 ~~Crime and Innocence Protection Act (Proposition 69), as approved~~
- 6 ~~by the voters at the November 2, 2004, statewide general election,~~

1 ~~there shall be levied an additional penalty of one dollar (\$1) for~~
2 ~~every ten dollars (\$10), or part of ten dollars (\$10), in each county~~
3 ~~upon every fine, penalty, or forfeiture imposed and collected by~~
4 ~~the court for all criminal offenses, including all offenses involving~~
5 ~~a violation of the Vehicle Code or a local ordinance adopted~~
6 ~~pursuant to the Vehicle Code.~~

7 ~~(2) The penalty imposed by this section shall be collected~~
8 ~~together with and in the same manner as the amounts established~~
9 ~~by Section 1464 of the Penal Code. The moneys shall be taken~~
10 ~~from fines and forfeitures deposited with the county treasurer prior~~
11 ~~to any division pursuant to Section 1463 of the Penal Code. The~~
12 ~~board of supervisors shall establish in the county treasury a DNA~~
13 ~~Identification Fund into which shall be deposited the moneys~~
14 ~~collected pursuant to this section. Except as otherwise provided~~
15 ~~in Section 76104.8, the moneys of the fund shall be allocated~~
16 ~~pursuant to subdivision (b).~~

17 ~~(3) The additional penalty does not apply to the following:~~

18 ~~(A) A restitution fine.~~

19 ~~(B) A penalty authorized by Section 1464 of the Penal Code or~~
20 ~~this chapter.~~

21 ~~(C) A parking offense subject to Article 3 (commencing with~~
22 ~~Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.~~

23 ~~(D) The state surcharge authorized by Section 1465.7 of the~~
24 ~~Penal Code.~~

25 ~~(b) (1) The fund moneys described in subdivision (a), together~~
26 ~~with any interest earned thereon, shall be held by the county~~
27 ~~treasurer separate from any funds subject to transfer or division~~
28 ~~pursuant to Section 1463 of the Penal Code. Deposits to the fund~~
29 ~~may continue through and including the 20th year after the initial~~
30 ~~calendar year in which the surcharge is collected, or longer if and~~
31 ~~as necessary to make payments upon any lease or leaseback~~
32 ~~arrangement utilized to finance any of the projects specified herein.~~

33 ~~(2) Except as otherwise provided in Section 76104.8, on the last~~
34 ~~day of each calendar quarter of the year specified in this~~
35 ~~subdivision, the county treasurer shall transfer fund moneys in the~~
36 ~~county's DNA Identification Fund to the Controller for credit to~~
37 ~~the state's DNA Identification Fund, which is hereby established~~
38 ~~in the State Treasury, as follows:~~

1 ~~(A) In the first two calendar years following the effective date~~
2 ~~of this section, 70 percent of the amounts collected, including~~
3 ~~interest earned thereon.~~

4 ~~(B) In the third calendar year following the effective date of~~
5 ~~this section, 50 percent of the amounts collected, including interest~~
6 ~~earned thereon.~~

7 ~~(C) In the fourth calendar year following the effective date of~~
8 ~~this section and in each calendar year thereafter, 25 percent of the~~
9 ~~amounts collected, including interest earned thereon.~~

10 ~~(3) Except as otherwise provided in Section 76104.8, funds~~
11 ~~remaining in the county's DNA Identification Fund shall be used~~
12 ~~only for the following purposes:~~

13 ~~(A) To reimburse local sheriff or other law enforcement agencies~~
14 ~~for the collection of DNA specimens, samples, and print~~
15 ~~impressions pursuant to this chapter.~~

16 ~~(B) For expenditures and administrative costs made or incurred~~
17 ~~to comply with the requirements of paragraph (5) of subdivision~~
18 ~~(b) of Section 298 of the Penal Code, including the procurement~~
19 ~~of equipment and software integral to confirming that a person~~
20 ~~qualifies for entry into the Department of Justice DNA and Forensic~~
21 ~~Identification Database and Data Bank Program.~~

22 ~~(C) To reimburse local sheriff, police, district attorney, and~~
23 ~~regional state crime laboratories for expenditures and~~
24 ~~administrative costs made or incurred in connection with the~~
25 ~~processing, analysis, tracking, and storage of DNA crime scene~~
26 ~~samples from cases in which DNA evidence would be useful in~~
27 ~~identifying or prosecuting suspects, including the procurement of~~
28 ~~equipment and software for the processing, analysis, tracking, and~~
29 ~~storage of DNA crime scene samples from unsolved cases.~~

30 ~~(D) (i) If authorized by a resolution of the board of supervisors,~~
31 ~~and after the distributions provided in subparagraphs (A), (B), and~~
32 ~~(C), a local sheriff or police department, or the district attorney's~~
33 ~~office, may use remaining funds, either independently or in~~
34 ~~combination with remaining funds from another county, to provide~~
35 ~~supplemental funding to a qualified local or regional state forensic~~
36 ~~laboratory for expenditures and administrative costs made or~~
37 ~~incurred in connection with the processing, analysis, and~~
38 ~~comparison of DNA crime scene samples and forensic~~
39 ~~identification samples, and testimony related to that analysis. This~~
40 ~~subparagraph shall apply only to those counties that do not have~~

1 a local public law enforcement laboratory, and does not authorize
2 any transfer that will interfere with the operation of subparagraph
3 (A). Any supplemental funding provided pursuant to this
4 subparagraph shall not be used to supplant funds already allocated
5 to a qualified local or regional state forensic laboratory by the
6 state's DNA Identification Fund.

7 (ii) For purposes of this subparagraph, a qualified local or
8 regional state forensic laboratory is a Department of Justice
9 regional forensic laboratory or a local law enforcement agency
10 forensic laboratory that meets state and federal requirements for
11 contributing DNA profiles for inclusion in California's DNA
12 databank, including the FBI Quality Assurance Standards and
13 accreditation requirements, and shall be accredited by an
14 organization approved by the National DNA Index System (NDIS)
15 Procedures Board.

16 (4) The state's DNA Identification Fund shall be administered
17 by the Department of Justice. Funds in the state's DNA
18 Identification Fund, upon appropriation by the Legislature, shall
19 be used by the Attorney General only to support DNA testing in
20 the state and to offset the impacts of increased testing and shall be
21 allocated as follows:

22 (A) Of the amount transferred pursuant to subparagraph (A) of
23 paragraph (2) of subdivision (b), 90 percent to the Department of
24 Justice DNA Laboratory, first, to comply with the requirements
25 of Section 298.3 of the Penal Code and, second, for expenditures
26 and administrative costs made or incurred in connection with the
27 processing, analysis, tracking, and storage of DNA specimens and
28 samples including the procurement of equipment and software for
29 the processing, analysis, tracking, and storage of DNA samples
30 and specimens obtained pursuant to the DNA and Forensic
31 Identification Database and Data Bank Act of 1998, as amended
32 by Chapter 6 (commencing with Section 295) of Title 9 of Part 1
33 of the Penal Code, and 10 percent to the Department of Justice
34 Information Bureau Criminal History Unit for expenditures and
35 administrative costs that have been approved by the Chief of the
36 Department of Justice Bureau of Forensic Services made or
37 incurred to update equipment and software to facilitate compliance
38 with the requirements of subdivision (c) of Section 299.5 of the
39 Penal Code.

1 ~~(B) Of the amount transferred pursuant to subparagraph (B) of~~
2 ~~paragraph (2) of subdivision (b), funds shall be allocated by the~~
3 ~~Department of Justice DNA Laboratory, first, to comply with the~~
4 ~~requirements of Section 298.3 of the Penal Code and, second, for~~
5 ~~expenditures and administrative costs made or incurred in~~
6 ~~connection with the processing, analysis, tracking, and storage of~~
7 ~~DNA specimens and samples including the procurement of~~
8 ~~equipment and software for the processing, analysis, tracking, and~~
9 ~~storage of DNA samples and specimens obtained pursuant to the~~
10 ~~DNA and Forensic Identification Database and Data Bank Act of~~
11 ~~1998, as amended.~~

12 ~~(C) Of the amount transferred pursuant to subparagraph (C) of~~
13 ~~paragraph (2) of subdivision (b), funds shall be allocated by the~~
14 ~~Department of Justice to the DNA Laboratory to comply with the~~
15 ~~requirements of Section 298.3 of the Penal Code and for~~
16 ~~expenditures and administrative costs made or incurred in~~
17 ~~connection with the processing, analysis, tracking, and storage of~~
18 ~~DNA specimens and samples including the procurement of~~
19 ~~equipment and software for the processing, analysis, tracking, and~~
20 ~~storage of DNA samples and specimens obtained pursuant to the~~
21 ~~DNA and Forensic Identification Database and Data Bank Act of~~
22 ~~1998, as amended.~~

23 ~~(e) On or before April 1 in the year following adoption of this~~
24 ~~section, and annually thereafter, the board of supervisors of each~~
25 ~~county shall submit a report to the Legislature and the Department~~
26 ~~of Justice. The report shall include the total amount of fines~~
27 ~~collected and allocated pursuant to this section, and the amounts~~
28 ~~expended by the county for each program authorized pursuant to~~
29 ~~paragraph (3) of subdivision (b). The Department of Justice shall~~
30 ~~make the reports publicly available on the department's Internet~~
31 ~~Web site.~~

32 ~~(d) All requirements imposed on the Department of Justice~~
33 ~~pursuant to the DNA Fingerprint, Unsolved Crime and Innocence~~
34 ~~Protection Act are contingent upon the availability of funding and~~
35 ~~are limited by revenue, on a fiscal year basis, received by the~~
36 ~~Department of Justice pursuant to this section and any additional~~
37 ~~appropriation approved by the Legislature for purposes related to~~
38 ~~implementing this act.~~

39 ~~(e) Upon approval of the DNA Fingerprint, Unsolved Crime~~
40 ~~and Innocence Protection Act, the Legislature shall lend the~~

1 Department of Justice General Fund in the amount of seven million
 2 dollars (\$7,000,000) for purposes of implementing the act. The
 3 loan shall be repaid with interest calculated at the rate earned by
 4 the Pooled Money Investment Account at the time the loan is made.
 5 Principal and interest on the loan shall be repaid in full no later
 6 than four years from the date the loan was made and shall be repaid
 7 from revenue generated pursuant to this section.

8 (f) Notwithstanding any other law, the Controller may use the
 9 state's DNA Identification Fund, created pursuant to paragraph
 10 (2) of subdivision (b), for loans to the General Fund as provided
 11 in Sections 16310 and 16381. Any such loan shall be repaid from
 12 the General Fund with interest computed at 110 percent of the
 13 Pooled Money Investment Account rate, with the interest
 14 commencing to accrue on the date the loan is made from the fund.
 15 This subdivision does not authorize any transfer that will interfere
 16 with the carrying out of the object for which the state's DNA
 17 Identification Fund was created.

18 SEC. 2.— Section 76104.8 is added to the Government Code, to
 19 read:

20 76104.8.— (a) Except as otherwise provided in this section, in
 21 addition to the penalties levied pursuant to Sections 76104.6 and
 22 76104.7, there shall be levied an additional penalty of four dollars
 23 (\$4) for every ten dollars (\$10), or part of ten dollars (\$10), in each
 24 county upon every fine, penalty, or forfeiture imposed and collected
 25 by the court for all of the following offenses:

- 26 (1) A misdemeanor or felony offense.
- 27 (2) A misdemeanor violation of any city, county, or city and
 28 county ordinance.
- 29 (3) A violation of the Penal Code initially charged as a
 30 misdemeanor and reduced to an infraction.
- 31 (4) A traffic violation of the Vehicle Code initially charged as
 32 a felony or misdemeanor and reduced to an infraction.
- 33 (5) A violation of subdivision (b) of Section 11357 of the Health
 34 and Safety Code.

35 (b) The penalty shall be collected together with, and in the same
 36 manner as, the amounts established by Section 1464 of the Penal
 37 Code. These funds shall be deposited into the county treasury DNA
 38 Identification Fund by the county treasurer, who shall clearly
 39 distinguish moneys collected under this section from moneys
 40 collected under Section 76104.6, and shall be disbursed upon a

1 resolution by the board of supervisors. The objective and intent of
2 the resolution shall be to assist the county sheriff, district attorney,
3 and other local law enforcement agencies with the investigations
4 of cases described in subdivision (d).

5 (e) The penalty does not apply to the following:

6 (1) A restitution fine.

7 (2) A penalty authorized by this chapter or by Section 1464 of
8 the Penal Code.

9 (3) A parking offense subject to Article 3 (commencing with
10 Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

11 (4) The state surcharge authorized by Section 1465.7 of the
12 Penal Code.

13 (d) Funds collected pursuant to this section shall only be used
14 for the following purposes:

15 (1) To assist law enforcement agencies within the county,
16 including local sheriff and district attorney agencies, with the
17 identification, review, and investigation of unsolved serious or
18 violent cold cases to determine if biological evidence exists that
19 could provide a DNA investigative lead to law enforcement,
20 including, but not limited to, the DNA profile of a putative suspect
21 that could be uploaded into national, state, local, or other law
22 enforcement DNA databases, and when more than three years have
23 elapsed since the date of violation of the cold case crime.

24 (2) To assist law enforcement agencies within the county,
25 including local sheriff and district attorney agencies, with the
26 investigation of cases where crime scene biological evidence has
27 been collected and analyzed and a DNA profile that could provide
28 an investigative lead to law enforcement agencies, including, but
29 not limited to, the DNA profile of a putative suspect, has been
30 generated and uploaded into national, state, local, or other law
31 enforcement DNA databases and a DNA match has resulted in the
32 identification of a putative suspect or a match to a DNA profile
33 from another crime scene.

34 (e) The district attorney shall publicize on its Internet Web site
35 and notify the local media every time an investigation that receives
36 funding from the penalty assessment described in subdivision (a)
37 results in a solved case.

38 *SECTION 1. Section 14252 is added to the Penal Code, to*
39 *read:*

1 14252. (a) *The sum of fifteen million dollars (\$15,000,000) is*
2 *hereby appropriated from the General Fund in the State Treasury.*
3 *These funds shall be deposited into a county treasury DNA*
4 *Identification Fund by the county treasurer, who shall clearly*
5 *distinguish moneys collected under this section from moneys*
6 *collected under Section 76104.6 of the Government Code, and*
7 *shall be disbursed upon a resolution by the board of supervisors.*
8 *The objective and intent of the resolution shall be to assist the*
9 *county sheriff, district attorney, and other local law enforcement*
10 *agencies with the investigations of cases described in subdivision*
11 *(b).*

12 (b) *Funds collected pursuant to this section shall be used only*
13 *for the following purposes:*

14 (1) *To assist law enforcement agencies within the county,*
15 *including the sheriff and district attorney, with the identification,*
16 *review, and investigation of unsolved serious or violent cold cases*
17 *to determine if biological evidence exists that could provide a DNA*
18 *investigative lead to law enforcement, including, but not limited*
19 *to, the DNA profile of a putative suspect that could be uploaded*
20 *into national, state, local, or other law enforcement DNA*
21 *databases, and when more than three years have elapsed since*
22 *the date of violation of the cold case crime.*

23 (2) *To assist law enforcement agencies within the county,*
24 *including the sheriff and district attorney, with the investigation*
25 *of cases where crime scene biological evidence has been collected*
26 *and analyzed and a DNA profile that could provide an investigative*
27 *lead to law enforcement agencies, including, but not limited to,*
28 *the DNA profile of a putative suspect, has been generated and*
29 *uploaded into national, state, local, or other law enforcement DNA*
30 *databases and a DNA match has resulted in the identification of*
31 *a putative suspect or a match to a DNA profile from another crime*
32 *scene.*

33 (c) *The district attorney shall publicize on its Internet Web site*
34 *and notify the local media every time an investigation that receives*
35 *funding from the appropriation described in subdivision (a) results*
36 *in a solved case.*

37 ~~SEC. 3.~~

38 SEC. 2. If the Commission on State Mandates determines that
39 this act contains costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O