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AMENDED IN SENATE MAY 10, 2000

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AMENDED IN SENATE APRIL 13, 2000

**SENATE BILL**

**No. 1818**

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**Introduced by Senator Speier**

(Principal coauthor: Assembly Member Dickerson)

**(Coauthors: Senators Rainey and Solis)**

(Coauthors: Assembly Members Alquist, Bock, Kuehl,  
Longville, Machado, and Mazzoni)

February 24, 2000

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An act to add Title 12.5 (commencing with Section 14250) to Part 4 of, and to repeal Section 14251 of, the Penal Code, relating to DNA.

LEGISLATIVE COUNSEL'S DIGEST

SB 1818, as amended, Speier. DNA data base.

Existing law establishes the DNA and Forensic Identification Data Base and Data Bank and requires the Department of Justice to be responsible for the management and administration of the data base and data bank

identification program. The program includes DNA samples for offenders of specified sex offenses and violent felonies.

This bill would require the Department of Justice to develop a DNA data base for all cases involving the report of an unidentified deceased person or a high-risk missing person, as defined, and to match and compare samples of recovered unidentified deceased persons with those of reported missing persons. The data base would be comprised of DNA data from genetic markers that are appropriate solely for human identification but have no capability to predict biological function. The department would be required to compare DNA samples taken from the remains of unidentified deceased persons with DNA samples taken from the parents or appropriate relatives of high-risk missing persons, and then to return the evidence to ~~local law enforcement~~ or the local coroner after taking a sample of the remains for DNA analysis.

The bill would require the responsible investigating law enforcement agency to inform the parents or other appropriate relatives that they may give a voluntary sample for DNA testing and may collect a DNA sample from a personal article of the missing person if available. The investigating agency may not wait any longer than 30 days after a report is made of a missing person under high-risk circumstances to inform the parents or relatives of their right to give a sample. All samples and DNA extracted from a living person would be required to be destroyed after a positive identification is made and a report issued. The bill would make all DNA samples ~~and test results~~ confidential and would authorize disclosure only to specified persons for the purpose of investigating and prosecuting crime. The bill would impose a \$2 fee increase on death certificates issued by local government agencies or the state to fund the "Missing Persons DNA Data Base," to remain in effect until January 1, 2006, or until federal funding for the operation of the data base becomes available before that date. The bill would provide that the provisions of the bill relating to funding would remain in effect only until January 1, 2006, and as of that date would be repealed, unless a later enacted statute, enacted before January 1, 2006, deletes or extends that date. The death certificate fee increase would begin *on* and the funds *would*



be directed to the Missing Persons DNA Data Base Fund beginning on January 1, 2001, ~~and the~~. The funding for the first year would be used to develop the data base and laboratory infrastructure and the department's protocols and personnel. The department would be required to begin case analysis in 2002. By increasing the duties of local officials, this bill would impose a state-mandated local program.

Additionally, this bill would make persons who collect, process or store DNA or samples used for DNA testing, as specified, and who violate the provisions of the bill relating to disposal or confidentiality, liable to the DNA donor for civil damages of \$5,000 plus attorney's fees and costs. This bill also would make it a misdemeanor for a person who collects, processes, or stores DNA or samples used for DNA testing to violate the disposal and confidentiality requirements, punishable by imprisonment in a county jail. By creating a new crime, 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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. The Legislature finds and declares the  
2 following:



1 (a) That unidentified remains and unsolved missing  
2 persons cases constitute a critical problem for law  
3 enforcement and victims’ families in the State of  
4 California.

5 (b) Hundreds of people, both children and adults,  
6 vanish each year under suspicious circumstances, and  
7 their cases remain unsolved. Meanwhile, coroners retain  
8 dozens of remains each year that cannot be identified.  
9 Families of missing persons must live with no sense of  
10 closure, even though their loved one may have already  
11 been found.

12 (c) The Legislature finds that new technology can  
13 play an invaluable role in identifying these remains  
14 through deoxyribonucleic acid (DNA) analysis.

15 (d) In order to identify these remains and bring  
16 closure to missing persons cases, the Legislature enacts  
17 the “Missing Persons DNA Data Base.” This data base  
18 shall be used to identify remains and to locate missing  
19 persons. The intention of this data base is to identify  
20 remains to bring closure to the families of missing  
21 persons.

22 SEC. 2. Title 12.5 (commencing with Section 14250)  
23 is added to Part 4 of the Penal Code, to read:

24

25 TITLE 12.5. DNA

26

27 14250. (a) (1) The Department of Justice shall  
28 develop a DNA data base for all cases involving the report  
29 of an unidentified deceased person or a high-risk missing  
30 person.

31 (2) The data base required in paragraph (1) shall be  
32 comprised of DNA data from genetic markers that are  
33 appropriate for human identification, but have no  
34 capability to predict biological function. These markers  
35 shall be selected by the department and may change as  
36 the technology for DNA typing progresses. The results of  
37 DNA typing shall be compatible with and uploaded into  
38 the CODIS DNA Data base established by the Federal  
39 Bureau of Investigation. The sole purpose of this data base  
40 shall be to identify missing persons and shall be kept



1 separate from the data base established under Chapter 6  
2 (commencing with Section 295) of Title 9 of Part 1.

3 (3) The Department of Justice shall compare DNA  
4 samples taken from the remains of unidentified deceased  
5 persons with DNA samples taken from personal articles  
6 belonging to the missing person, or from the parents or  
7 appropriate relatives of high-risk missing persons.

8 (4) For the purpose of this data base, “high-risk  
9 missing person” means a person missing as a result of a  
10 stranger abduction, a person missing under suspicious  
11 circumstances, a person missing under unknown  
12 circumstances, or where there is reason to assume that  
13 the person is in danger, or deceased, and that person has  
14 been missing more than 30 days, or less than 30 days in the  
15 discretion of the investigating agency.

16 (b) The department shall develop standards and  
17 guidelines for the preservation and storage of DNA  
18 samples. Any agency that is required to collect samples  
19 from unidentified remains for DNA testing shall follow  
20 these standards and guidelines. These guidelines shall  
21 address all scientific methods used for the identification  
22 of remains, including DNA, anthropology, odontology,  
23 and fingerprints.

24 (c) (1) A ~~law enforcement officer~~ *coroner* shall  
25 collect samples for DNA testing from the remains of all  
26 unidentified persons and shall send those samples to the  
27 ~~department~~ *Department of Justice* for DNA testing and  
28 inclusion in the DNA data bank. After the department  
29 has taken a sample from the remains for DNA analysis and  
30 analyzed it, the remaining evidence shall be returned to  
31 the appropriate ~~local law enforcement agency or the local~~  
32 coroner.

33 (2) After a report has been made of a person missing  
34 under high-risk circumstances, the responsible  
35 investigating law enforcement agency shall inform the  
36 parents or other appropriate relatives that they may give  
37 a voluntary sample for DNA testing or may collect a DNA  
38 sample from a personal article belonging to the missing  
39 person if available. The samples shall be taken *by the*  
40 *appropriate law enforcement agency* in a manner



1 prescribed by the Department of Justice. The responsible  
2 investigating law enforcement agency shall wait no  
3 longer than 30 days after a report has been made to  
4 inform the parents or other relatives of their right to give  
5 a sample.

6 (3) The Department of Justice shall develop a  
7 standard release form that authorizes a mother, father, or  
8 other relative to voluntarily provide the sample. The  
9 release shall explain that DNA is to be used only for the  
10 purpose of identifying the missing person. No incentive  
11 or coercion shall be used to compel a parent or relative  
12 to provide a sample.

13 (4) The Department of Justice shall develop a model  
14 kit that law enforcement shall use when taking samples  
15 from parents and relatives.

16 (5) Before submitting the sample to the department  
17 for analysis, law enforcement shall reverify the status of  
18 the missing person. After 30 days has elapsed *from the*  
19 *date the report was filed*, law enforcement shall send the  
20 sample to the department for DNA testing and inclusion  
21 in the DNA data base, with a copy of the crime report, and  
22 any supplemental information.

23 (6) All samples and DNA extracted from a living  
24 person shall be destroyed after a positive identification is  
25 made and a report is issued.

26 (d) All DNA samples ~~and test results~~ shall be  
27 confidential and shall only be disclosed to personnel of the  
28 Department of Justice, law enforcement officers,  
29 coroners, medical examiners, and district attorneys,  
30 *except that a law enforcement officer may notify a*  
31 *victim's family to disclose whether or not a match has*  
32 *occurred.*

33 (e) (1) A person who collects, processes, or stores  
34 DNA or samples *from a living person* used for DNA  
35 testing under this section, who *intentionally* violates  
36 paragraph (6) of subdivision (c) or subdivision (d) is  
37 guilty of a misdemeanor punishable by imprisonment in  
38 a county jail.

39 (2) A person who collects, processes, or stores DNA ~~or~~  
40 ~~samples from a living person or samples from a living~~



1 *person* used for DNA testing under this section, who  
2 *intentionally* violates paragraph (6) of subdivision (c) or  
3 subdivision (d) is liable in civil damages to the donor of  
4 the DNA in the amount of five thousand dollars (\$5,000)  
5 for each violation, plus attorney's fees and costs.

6 14251. (a) The "Missing Persons DNA Data Base"  
7 shall be funded by a two dollar (\$2) fee increase on death  
8 certificates issued by a local government agency or by the  
9 State of California. The issuing agencies may retain up to  
10 ~~4~~ 5 percent of the funds from the fee increase for  
11 administrative costs. This fee increase shall remain in  
12 effect only until January 1, 2006, or when federal funding  
13 for operation of the data base becomes available if it  
14 becomes available before that date.

15 (b) Funds shall be directed on a quarterly basis to the  
16 "Missing Persons DNA Data Base Fund," hereby  
17 established, to be administered by the department for  
18 establishing and maintaining laboratory infrastructure,  
19 DNA sample storage, DNA analysis, and labor costs for  
20 cases of missing persons and unidentified remains. Funds  
21 may also be distributed by the department to various  
22 counties for the purposes of pathology and exhumation as  
23 the department deems necessary. The department may  
24 also use those funds to publicize the data base for the  
25 purpose of contacting parents and relatives so that they  
26 may provide a DNA sample for training law enforcement  
27 officials about the data base and DNA sampling and for  
28 outreach.

29 (c) The department shall create an advisory  
30 committee, comprised of coroners and appropriate law  
31 enforcement officials, and interested stakeholders to  
32 prioritize the identification of the backlog of unidentified  
33 remains. The identification of the backlog may be  
34 outsourced to other laboratories at the department's  
35 discretion.

36 (d) (1) The death certificate fee increase shall begin  
37 and funds shall be directed to the Missing Persons DNA  
38 Data Base Fund beginning January 1, 2001. Funding for  
39 year one shall be used to develop the data base and



1 laboratory infrastructure, and to establish Department of  
2 Justice protocols and personnel.

3 (2) The Department of Justice shall begin case analysis  
4 in 2002. The Department of Justice shall retain the  
5 authority to prioritize case analysis, giving priority to  
6 those cases involving children.

7 (3) If federal funding is made available, it shall be used  
8 to assist in the identification of the backlog of high-risk  
9 missing person cases and long-term unidentified remains.

10 (4) This section shall remain in effect only until  
11 January 1, 2006, and as of that date is repealed, unless a  
12 later enacted statute, that is enacted before January 1,  
13 2006, deletes or extends that date.

14 SEC. 3. No reimbursement is required by this act  
15 pursuant to Section 6 of Article XIII B of the California  
16 Constitution for certain costs that may be incurred by a  
17 local agency or school district because in that regard this  
18 act creates a new crime or infraction, eliminates a crime  
19 or infraction, or changes the penalty for a crime or  
20 infraction, within the meaning of Section 17556 of the  
21 Government Code, or changes the definition of a crime  
22 within the meaning of Section 6 of Article XIII B of the  
23 California Constitution.

24 However, notwithstanding Section 17610 of the  
25 Government Code, if the Commission on State Mandates  
26 determines that this act contains other costs mandated by  
27 the state, reimbursement to local agencies and school  
28 districts for those costs shall be made pursuant to Part 7  
29 (commencing with Section 17500) of Division 4 of Title  
30 2 of the Government Code. If the statewide cost of the  
31 claim for reimbursement does not exceed one million  
32 dollars (\$1,000,000), reimbursement shall be made from  
33 the State Mandates Claims Fund.

