

Summary of Key Provisions of the California Proposition 69 Initiative Statute

Alice A. Noble, J.D., M.P.H.

Grant No. 1 ROI-HG0002836-01

California Proposition 69, passed by the electorate on November 2, 2004, amends the California Penal Code. The proposition was enacted out of a perceived necessity "...to clarify existing law and to enable the state's DNA and Forensic Identification Database and Data Bank Program to become a more effective law enforcement tool." Calif. PENAL CODE § 295 (b)(3). The key provisions of the measure are outlined below.

Expanding the DNA Data Bank

Calif. Penal Code § 296(a)

The key provisions include expansion of categories of individuals from which a DNA sample may be taken for inclusion in the DNA data bank. These individuals include the following categories:

- All adults and juveniles convicted of any felony offense or adjudicated delinquent for committing a felony offense. The definition of "felony" also includes attempts to commit the felony.
- Adults and juveniles who are required to register as a sex offender or arsonist because of the commission of, or attempt to commit, a misdemeanor or felony; and adults and juveniles housed in a mental health facility or sex offender treatment program per referral of the court as a result of being charged with a felony offense.
- Adults arrested for or charged with felony sex offenses, murder, or voluntary manslaughter (or an attempt to commit such an offense)
- Beginning in 2009, adults arrested or charged with any felony offense

These provisions apply retroactively, thus authorizing the collection of DNA samples from those currently incarcerated for qualifying offenses, or those serving probation or parole for qualifying offenses. Upon arrest, a "buccal swab," a sample of the inner cheek cells of the mouth, will be obtained from those individuals charged with a qualifying offense, as noted above. Blood samples may be collected in certain situations at the discretion of the California Department of Justice.

Collection and Purging of Suspect Profiles and Samples

Calif. Penal Code § 297(b), (e), (f)

In the case of DNA profiles of suspects, including those who submit DNA samples voluntarily for the purpose of exclusion, the sample may be retained in the data bank for two years. The sample may be compared to evidence from as many cases and investigations as necessary, and searched against DNA profiles in any available data bases.

The law enforcement agency that submits a sample from a suspect shall notify the appropriate crime lab(s) after a period of two years whether the individual continues to be considered a suspect in a criminal investigation. If the individual is no longer a suspect, the DOJ DNA laboratory shall remove the suspect sample from the data bank files.

Failure to purge or a delay in purging such samples, however, will not be grounds for an invalidation of an identification, warrant, or arrest, or for a dismissal of a prosecution, based on the samples in question.

The law states that the limitations on the types of offenses under Section 296(a) that qualify for inclusion of the individual's DNA into the database is for the purpose of facilitating the administration of this chapter by the DOJ, and these limitations shall not be the basis for dismissing an investigation or prosecution or for reversing a verdict of disposition. Moreover, the where a sample is obtained or placed or retained in the data bank by mistake, an arrest, conviction, or adjudication based on that sample will not be invalidated.

New Felony Offense: Tampering with DNA Samples

Calif. Penal Code § 298.2(9)

The measure creates a new felony offense for anyone who is required to submit a specimen sample and (1) knowingly facilitates the collection of wrongfully attributed DNA samples with the intent to deceive as to its origins; or (2) knowingly tampers with any DNA sample or collection container with the intent to deceive as to the sample origins. Conviction under this provision is punishable by imprisonment for two, three, or four years.

Timely Collection and Analysis of Samples

Calif. Penal Code § 298.3

The measure encourages the timely collection and analysis of samples. The DOJ is required, contingent upon the availability of funding, to contract with other public or private labs for analysis of samples that are not fully analyzed and uploaded into state or federal data banks within six months of receipt.

Quarterly Reports

Calif. Penal Code § 295 (h)(4),(5)

The DOJ is required to file quarterly reports tracking the number of DNA samples obtained, analyzed and included in the state and federal data banks, as well as the number of "hits" and "investigations aided," as reported to the National DNA Index System. The report shall also document the lab's accreditation status, its participation in CODIS, and the money collected, expended, and disbursed pursuant to the statute. The quarterly reports will be posted on the DOJ web site and made accessible to the public.

The Department of Corrections is also required to make quarterly reports to be published electronically, which shall include the number of inmates yet to provide DNA samples to the DOJ DNA Laboratory and the number of samples yet to be forwarded to the DNA Laboratory within 30 days of collection.

Expungement Requests

Calif. Penal Code § 299

The measure permits certain individuals whose DNA have been included in the DOJ data bank to petition to have their DNA sample destroyed and the profile expunged from the data bank. The individual must have no past or present qualifying offense, or be subject

to any other legal basis for retaining their sample and profile. The individual may file a written request for expungement if one of the following are satisfied:

- Following arrest, no charges were filed;
- Underlying conviction serving as the basis for inclusion in the data bank has been reversed and the case dismissed;
- A finding of actual innocence of the offense in question; or
- A finding of not guilty or an acquittal has been entered as to the underlying offense.

[This represents a change. Under prior law, the court issuing the reversal, acquittal, or dismissal was required to issue an order that the DOJ expunge all identifiable information in the data bank and any criminal identification records pertaining to the person.]

The court has the discretion to allow or deny the request, and any such determination is final and nonreviewable. If the request is granted, the DOJ will destroy the sample and profile when it receives a court order acknowledging that the petitioner has met the requirements of the law. These include the written request of the individual, along with written documentation, as specified, that the requirements for expungement have been met, that adequate notice has been given to prosecutors and the DOJ and that they have not filed an objection, that no retrial or appeal is pending. Failure to expunge, or a delay in expunging, the sample and profile will not invalidate an identification, warrant, probable cause to arrest, or an arrest.

International Law Enforcement Database or Data Bank System

Calif. Penal Code § 296.6 (a)(b)

The statute contemplates California's participation in international data bank systems. It gives the Department of Justice responsibility for "liaison" with the FBI regarding the state's participation in national or international DNA data banks. Also, the statute permits the population databases and databanks of the DNA Laboratory to be made available to and searched by any national or international law enforcement database or data bank system.

Additional Funding

Calif. Government Code § 76104.6

The measure provides for additional funding to subsidize the DNA data bank expansion by adding \$1 to every \$10 in criminal penalties. The measure sets forth percentages for apportioning revenues realized from this surcharge between the state and local governments. After an initial phase-in period, local governments will receive 75% of the funds realized, with 25% apportioned to the state. At the local level, this funding will offset costs associated with DNA sample collection, and analysis, tracking and processing of crime scene samples.