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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2440                      **Hearing Date:** June 28, 2016  
**Author:** Gatto  
**Version:** May 27, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *County DNA Identification Fund*

## HISTORY

Source: Author

Prior Legislation: SB 1006 (Budget) – Ch. 32, Stats. 2012  
AB 434 (Logue) – Ch. 195, Stats. 2011

Support: Association of Deputy District Attorneys; California District Attorneys Association; California Police Chiefs Association; Crime Victims United of California; Los Angeles County District Attorney's Office; Los Angeles County Professional Peace Officers; Los Angeles Deputy Sheriffs; Los Angeles Police Protective League; Riverside Sheriffs; Orange County District Attorney's Office

Opposition: None known

Assembly Floor Vote: 77 - 0

## PURPOSE

***The purpose of this bill is to appropriate fifteen-million-dollars (\$15,000,000) to a County DNA Identification Fund.***

*Existing law* provides that for the purpose of implement the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69) as approved by the voters at the November 2, 2004, statewide general election, there shall be levied an addition penalty of \$1 for every \$10 or part of \$10 in each county upon every fine, penalty, or forfeiture imposed by the courts for all criminal offenses including Vehicle Code offenses. (Government Code § 76104.6)

*Existing law* specifies that the "Missing Persons DNA Database" shall be funded by a two dollar (\$2) fee increase on death certificates issued by a local governmental agency or by the State of California. The issuing agencies may retain up to 5 percent of the funds from the fee increase for administrative costs. (Penal Code §14251 (a).)

*Existing law* state funds shall be directed on a quarterly basis to the "Missing Persons DNA Data Base Fund," hereby established, to be administered by the department for establishing and maintaining laboratory infrastructure, DNA sample storage, DNA analysis, and labor costs for cases of missing persons and unidentified remains. Funds may also be distributed by the

department to various counties for the purposes of pathology and exhumation consistent with this title. The department may also use those funds to publicize the database for the purpose of contacting parents and relatives so that they may provide a DNA sample for training law enforcement officials about the database and DNA sampling and for outreach. (Penal Code § 4251 (b).)

*Existing law* provides that the Department of Justice (DOJ) shall develop a DNA database for all cases involving the report of an unidentified deceased person or a high-risk missing person. (Penal Code § 14250 (a)(1).)

*Existing law* provides that the database shall be comprised of DNA data from genetic markers that are appropriate for human identification, but have no capability to predict biological function other than gender. These markers shall be selected by the department and may change as the technology for DNA typing progresses. The results of DNA typing shall be compatible with and uploaded into the CODIS DNA database established by the Federal Bureau of Investigation. The sole purpose of this database shall be to identify missing persons and shall be kept separate from the database established as specified. (Penal Code, §14250 (a)(2).)

*Existing law* provides that DOJ shall compare DNA samples taken from the remains of unidentified deceased persons with DNA samples taken from personal articles belonging to the missing person, or from the parents or appropriate relatives of high-risk missing persons. (Penal Code §14250 (a)(3).)

*Existing law* defines "high-risk missing person" means a person missing as a result of a stranger abduction, a person missing under suspicious circumstances, a person missing under unknown circumstances, or where there is reason to assume that the person is in danger, or deceased, and that person has been missing more than 30 days, or less than 30 days in the discretion of the investigating agency. (Penal Code §14250 (a)(4).)

*Existing law* requires that DOJ shall develop standards and guidelines for the preservation and storage of DNA samples. Any agency that is required to collect samples from unidentified remains for DNA testing shall follow these standards and guidelines. These guidelines shall address all scientific methods used for the identification of remains, including DNA, anthropology, odontology, and fingerprints. (Penal Code §14250 (b).)

*Existing law* specifies that all DNA samples and profiles developed therefrom shall be confidential and shall only be disclosed to personnel of the Department of Justice, law enforcement officers, coroners, medical examiners, district attorneys, and persons who need access to a DNA sample for purposes of the prosecution or defense of a criminal case, except that a law enforcement officer or agency may publicly disclose the fact of a DNA profile match after taking reasonable measures to first notify the family of an unidentified deceased person or the family of a high-risk missing person that there has been an identification. (Penal Code §14250 (d).)

*Existing law* states that all DNA, forensic identification profiles, and other identification information retained by the Department of Justice pursuant to this section are exempt from any law requiring disclosure of information to the public. (Penal Code §14250 (e).)

*This bill* appropriates fifteen-million-dollars (\$15,000,000) from the General Fund to the Controller for apportionment to counties based on a county's proportionate contribution to the state's DNA Identification Fund in the most recent calendar year for which information is available on January 1, 2017

*This bill* provides that these funds shall be deposited into a county treasury DNA Identification Fund by the county treasurer, who shall clearly distinguish moneys collected under this section from money collected pursuant to Government Code Section 76104.6 and shall be dispersed upon a resolution by the board of supervisors the object of which shall be to assist the county sheriff, district attorney and other local law enforcement agencies with the investigation of cases.

*This bill* specifies funds pursuant to this section shall only be used for the following purposes:

- a) To assist law enforcement agencies within the county, including local sheriff and district attorney agencies, with the identification, review, and investigation of unsolved serious or violent cold cases to determine if biological evidence exists that could provide a DNA investigative lead to law enforcement, including, but not limited to, the DNA profile of a putative suspect that could be uploaded into national, state, local, or other law enforcement DNA databases, and when more than three years have elapsed since the date of violation of the cold case crime.
- b) To assist law enforcement agencies within the county, including local sheriff and district attorney agencies, with the investigation of cases where crime scene biological evidence has been collected and analyzed and a DNA profile that could provide an investigative lead to law enforcement agencies, including, but not limited to, the DNA profile of a putative suspect, has been generated and uploaded into national, state, local, or other law enforcement DNA databases and a DNA match has resulted in the identification of a putative suspect or a match to a DNA profile from another crime scene.

*This bill* requires the district attorney to publicize, as specified, when an investigation using these funds results in a solved case.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

California voters in November 2004 passed Proposition 69, the "DNA Fingerprint, Unsolved Crime and Innocence Protection Act," to expand and modify state law regarding the collection and use of criminal offender DNA samples and palm print impressions. The initiative gives the Attorney General's Office, California Department of Justice, and many other state and local agencies the responsibility of implementing the new law.

As part of this new allocation of responsibility, the Proposition included an additional penalty of \$1 per every \$10 of every criminal fine (including traffic violations), to reimburse county and state agencies for the cost of collection and to assist crime labs with analysis of DNA evidence.<sup>1</sup> However, no funds were specifically allocated to assist with the DNA investigatory process. This money is

split between the state and counties, but the fund has decreased in recent years. According to the County DNA Identification Fund Annual Reports, in 2054 counties were allocated roughly \$12.5 million for the DNA Identification fund, down from \$17.5million in 2011. This drop in funding comes at a critical juncture, as legislation in recent years has put increased pressure on the fund.

For example, AB 1517 (Skinner, 2014), amended Penal Code Section 680 to decrease the timelines for law enforcement agencies and crime labs to perform and process DNA testing of rape kit evidence.<sup>ii</sup> This mandate to actually utilize the DNA evidence procured during the commission of these crimes is a laudable one, and certainly in the best interest of the public safety at large. But as the Senate Appropriations Committee noted in its analysis, these public safety directives result in significant non-reimbursable costs to local crime labs to meet the testing timeframes and to local law enforcement agencies to meet these new turnaround time requirements for submittal of evidence to crime labs.

Additionally, as DNA evidence has become a more central part of criminal investigations, and the technology has evolved to be more accessible and conclusive, more DNA is being submitted to crime labs, which is resulting in more cold hits. However, there isn't funding to support this increase in cold hit follow-up for these serious crimes. According to figures provided by the DOJ, in 2004 when Prop. 69 was passed, there was an average of 50 DNA cold hits per month. Today, an average of 450 DNA cold hits occurs each month.

This bill would add Section 14252 to the Penal Code to appropriate \$15,000,000 from the General Fund to the State Controller for apportionment to counties throughout the state. The Controller would distribute funds to counties proportionately based on their contributions to the state's DNA Identification Fund the previous year.<sup>iii</sup> This funding is meant to assist county sheriffs, district attorneys, and other local law enforcement agencies investigate cold cases.

AB 2440 would require the district attorney to publicize, as specified, when an investigation using these funds results in a solved case.

The legislation would describe "cold cases" as unsolved serious or violent cases where biological evidence exists, and more than three years has elapsed since the commission of the crime.

## **2. \$15,000,000 for DNA Identification**

This bill would \$15,000,000 from the General Fund to the Controller for distribution to counties to assist law enforcement with investigations using DNA. The money is to be distributed based on the amount a county contributes to the state's DNA Identification Fund.

The California Police Chiefs Association supports this bill stating:

As DNA evidence has become increasingly central part of criminal investigations, and the technology has evolved to be more accessible and conclusive, greater amounts of DNA is being submitted to crime labs, which is resulting in more cold

hits. However, there isn't funding to support this increase in cold hit follow-up for these serious crimes. According to figures provided by the Department of Justice, in 2004 when Prop. 69 was passed, there was an average of 50 DNA cold hits per month. Today, an average of 450 DNA cold hits occur each month. AB 2440 will assist law enforcement in investigating these cases.

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<sup>i</sup> <http://oag.ca.gov/bfs/prop69>

<sup>ii</sup> [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB1517](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1517)

<sup>iii</sup> <https://www.oag.ca.gov/sites/all/files/agweb/pdfs/bfs/2015-dna-fund-report.pdf>