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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 3042                      **Hearing Date:** June 18, 2024  
**Author:** Stephanie Nguyen  
**Version:** May 16, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *County penalties*

## HISTORY

**Source:** Office of the Attorney General

**Prior Legislation:** AB 1869 (Committee on Budget), Chapter 92, Statutes of 2020  
SB 824 (Committee on Budget) held Assembly Floor 2020  
SB 144 (Mitchell) held Assembly Public Safety 2019  
Proposition 69, passed November 2004

**Support:** California Association of Crime Laboratory Directors; California District Attorneys Association; California State Sheriffs' Association; County of Los Angeles Board of Supervisors; Los Angeles County Professional Peace Officers Association; San Diego County Sheriff's Department

**Opposition:** None known

**Assembly Floor Vote:** 73 - 0

## PURPOSE

*The purpose of this bill is to extend the sunset date from January 1, 2025 to January 1, 2030 to collect and deposit funds into the DNA Identification Fund pursuant to Proposition 69 (2004), the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (hereinafter "Prop. 69"), or a longer period of time if necessary to make payments on any lease or leaseback arrangement utilized to finance any specific projects, as specified.*

*Existing law* mandates a state penalty be assessed on any person convicted of a crime of an amount of \$10 for every \$10 assessed by the court, with some exceptions. (Penal Code § 1464 (a)(1).)

*Existing law* requires pursuant to Proposition 69, that each person be levied a fine of an additional \$1 for every \$10 assessed for any criminal offenses, including vehicle code violations. (Gov. Code § 76104.6 (a)(1).)

*Existing law* states any deposit into the Prop. 69 account may continue through and including the 20th year after the initial calendar year in which the surcharge is collected, or longer if and as necessary to make payments upon any lease or leaseback arrangement utilized to finance any of

the projects, as specified. (Gov. Code § 76104.6 (b)(1).)

*Existing law* states that on the last day of each calendar quarter of the year, the county treasurer shall transfer funds in the county's DNA Identification Fund to the State Controller for credit to the state's DNA Identification Fund, as specified.

- a) In the first two calendar years following the effective date of this section, 70 percent of the amounts collected, including interest earned thereon.
- b) In the third calendar year following the effective date of this section, 50 percent of the amounts collected, including interest earned thereon.
- c) In the fourth calendar year following the effective date of this section and in each calendar year thereafter, 25 percent of the amounts collected, including interest earned thereon. (Pen. Code, § 76104.6, subd. (b)(2).)

*Existing law* requires the state's DNA Identification Fund be administered by the Department of Justice (DOJ) and funds in the state's DNA Identification Fund, upon appropriation by the Legislature, shall be used by the Attorney General (AG) only to support DNA testing in the state and to offset the impacts of increased testing.

*Existing law* provides that to ensure expeditious and economical processing of offender DNA specimens and samples for inclusion in the FBI's Combined DNA Index System (CODIS) and the state's DNA Database and Data Bank Program, the DOJ DNA Laboratory is authorized to contract with other laboratories, whether public or private, including law enforcement laboratories, that have the capability of fully analyzing offender specimens or samples within 60 days of receipt, for the anonymous analysis of specimens and samples for forensic identification testing, as specified. (Pen. Code § 298.3 (a).)

*Existing law* states that in addition to the \$10 on every \$10 assessed for any criminal offense for deposit in the DNA Identification fund, an additional state-only penalty of \$4 for every \$10, or part of \$10, in each county on every fine, penalty, or forfeiture imposed and collected by the courts. (Gov. Code § 76104.7 (a).)

*Existing law* requires the following persons 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:

- a) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense.
- b) Any adult person who is arrested for or charged with any of the following felony offenses:
  - i. Any felony offense for which a person is required to register as a sex offender, or attempt to commit any felony offense described in sex offender registration provisions, or any felony offense that imposes on a person the duty to register in California as a sex offender.

- ii. Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.
- iii. Commencing on January 1 of the fifth year following enactment of the act that added this subparagraph, as amended, any adult person arrested or charged with any felony offense. (Penal Code § 296 (a)(1).)

*Existing law* states that whenever the DNA Laboratory of the DOJ notifies the CDCR or any law enforcement agency that a biological specimen or sample, or print impression is not usable for any reason, the person who provided the original specimen, sample, or print impression shall submit to collection of additional specimens, samples, or print impressions. CDCR or other responsible law enforcement agency shall collect additional specimens, samples, and print impressions from these persons as necessary, and transmit these specimens, samples, and print impressions to the appropriate agencies of the DOJ. (Penal Code 296.2 (a).)

*This bill* extends the sunset on the DNA Identification Fund until January 1, 2030.

## COMMENTS

### 1. Need for This Bill

According to the author:

Proposition 69, the “DNA Fingerprint, Unsolved Crime and Innocence Protection Act,” was passed by voters in November 2004 to support and expand the use of DNA technology to improve public safety. Among its provisions, Prop. 69 directs funding from criminal fines to be allocated between state and local crime labs to support expanded efforts to collect and test DNA samples.

In the 20 years since the measure was passed, the state has recorded over 106,000 DNA hits to unsolved crimes, many of which were sexual assault crimes. By contrast, the program, which was underfunded and limited, recorded only 1,108 hits between 1984 and 2004. Currently, the fund generates approximately \$12 million annually for state and local labs.

AB 3042 extends the sunset date for Prop 69 funding for five years, to maintain this steady source of revenue outside of the General Fund that supports DNA testing programs at both state and local levels.

Retaining this key funding source will not only aid in exonerating the innocent but also support public safety in our communities for generations to come.

### 2. DNA Fingerprint, Unsolved Crime and Innocence Protection Act

The DNA Identification Fund was adopted by the voters in 2004 as Prop. 69. In the early 2000s, the rise of DNA technology made it an attractive component to a criminal prosecution – it theoretically eliminates all other suspects that are not guilty; and conclusively identifies the suspect that is guilty. Furthermore, after multiple instances of states including Georgia, Texas, and Illinois nearly executing or actually executing innocent people that were exonerated by DNA, DNA became a literal life saver and acted as a form of protection against wrongful

conviction.<sup>1</sup> Prop. 69 requires felony arrestees to have their DNA taken at the time of arrest and, ideally, uploaded into the CODIS.

Prop. 69 set up a funding mechanism that required assessing penalties on criminal and traffic offenses and transferring those funds between state and local agencies for DNA testing. Government Code section 76104.6 requires each county to submit an annual report to the Legislature and the DOJ on the total amount of penalty assessments they collected, allocated, and expended for authorized programs to implement Prop. 69. The DNA Identification Fund is used for a variety of purposes on both the state and county levels, including law enforcement collection and analysis of DNA specimens, and to reimburse local law enforcement for processing, tracking, and storing DNA samples that may be tested by the state or a private lab. (See Gov. Code, § 76104.6 (b)(3).)

Civil Rights advocates objected at the time to the enactment of Proposition 69, and filed suit arguing it constituted an unconstitutional invasion of privacy and was overbroad. The ACLU, in particular, filed suit alleging Prop. 69 is an unconstitutional violation of the 4th Amendment prohibition against unlawful search and seizure.<sup>2</sup> The California Supreme Court held in *People v. Buza* (2018) 4 Cal.5th 658, 690-91, that Prop. 69's collection requirement were constitutionally valid because of the safeguards built into the law. In its decision, the Court held:

Safeguards against the wrongful use or disclosure of sensitive information may minimize the privacy intrusion when the government accesses personal information, including sensitive medical information. The DNA Fingerprint, Unsolved Crime and Innocence Protection Act makes the misuse of a DNA sample a felony, punishable by years of imprisonment and criminal fines. (See Pen. Code, § 299.5.)

In assessing whether the demand for a sample of an arrestee's DNA was reasonable under California Constitution, article I, section 13, we agree that it may be appropriate to consider not only the minimal nature of the physical intrusion associated with a buccal swab, but the arrestee's reasonable expectations about what would happen to the sample after collection. But in so analyzing the arrestee's choice, we cannot ignore the safeguards built into the DNA Act: the limited nature of the information stored in databases on an arrestee (specifically, a numerical profile describing noncoding parts of the arrestee's DNA); the legal protections against possible misuse of the profile or the sample (including felony sanctions for knowing improper use or dissemination); and the availability of procedures for removing the profile from the database and destroying the sample should the basis for the arrestee's inclusion dissipate. We have no record before us to show that these legal protections would have been violated or proved unworkable had defendant chosen to comply with the requirement to provide a DNA sample on booking. ... To be sure, as explained above, defendant was entitled to the full scope of constitutional protection against unreasonable searches, despite his arrest on evident probable cause. And had he later found himself in a position to seek

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<sup>1</sup> See Death Penalty Information Center, Executed but Possibly Innocent, located at <https://deathpenaltyinfo.org/policy-issues/innocence/executed-but-possibly-innocent>

<sup>2</sup> See ACLU of Northern California (2004) *DNA Dagnet Includes Victims of Identity theft and Domestic Violence*, press release, located at <https://www.aclu.org/press-releases/aclu-challenges-california-law-permitting-government-seizure-dna-samples-innocent> last visited March 22, 2024.

expungement of his sample and profile and found the statutory procedures inadequate, he would have been entitled to challenge the retention of his information on that basis.” (*Buza, supra*, at 692.)

### 3. DNA Identification Fund

For the purpose of implementing Prop. 69, there is levied an additional penalty by the courts in each county which will be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. The penalty amounts will be collected by the counties and deposited into a DNA Identification Fund, established within each county treasury.

This money, along with any interest earned, is held by the county treasurer until transferred to the State Controller for credit to the DNA Identification Fund. (Gov. Code, § 76104.6 (b)(2); Gov. Code, § 76104.7 (b).) The DNA Identification Fund was created within the State Treasury to deposit the penalties collected to be used by the AG only to support DNA testing in the state and to offset the impacts of increased testing. Its scope is further expanded to fund the operations of all of the DOJ forensic laboratories.

Government Code section 16346 states that in the absence of language that either eliminates the 20 year sunset or extends it, or no other successor fund is identified, any remaining balance and existing obligations in this fund upon abolishment shall be transferred to the General Fund. If this bill or any related bills are not signed into law, the fund would simply be deposited into the GF. As explained below, the Budget process has used the GF to backfill the DNA Identification Fund because it is increasingly unstable. (See Department of Finance, Manual of State Funds, April 2021, DNA Identification Fund, No. 3086.)<sup>3</sup>

According to the Legislative Analyst’s Office (“LAO”), the Governor’s 2023-24 Budget included \$54.9 million from the GF in 2023-24 (decreasing to \$47.6 million in 2024-25 and 2025-26) to maintain existing service levels. In addition, the budget includes a \$10 million increase in DNA Identification Fund expenditure authority annually for three years to restore historical expenditure levels from the fund. (This was reduced in prior years when the budget partially addressed the fund’s insolvency by temporarily redirecting General Fund support from another DOJ program to support BFS instead.)

The proposed amount consists of \$46.1 million annually for three years to backfill a decline in criminal fine and fee revenue deposited into the DNA Identification Fund used to support the Department of Justice (“DOJ”) Bureau of Forensic Services (“BFS”) Division. BFS provides criminal laboratory services, such as DNA testing, alcohol and controlled substances analysis, and on-site crime scene investigation support. Ten regional laboratories provide services at no charge for local law enforcement and prosecutorial agencies in 46 counties that do not have access to those services. BFS also assists the 12 counties and 8 cities that operate their own laboratories where BFS offers services their laboratories lack. Local agencies also contract with providers or other government laboratories for services. Additionally, BFS operates the state’s DNA laboratory as well as the state’s

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<sup>3</sup> Located at <https://ebudget.ca.gov/budget/2024-25/#/FundIndex>, last visited March 19, 2024.

criminalistics training institute. (LAO, 2023-24 Budget (February 23, 2023) DOJ Budget Proposals.)<sup>4</sup>

This bill extends the sunset on the fund until January 2030.

The DNA Identification Fund has been underfunded for at least the last four years. Over the past several years, the Legislature has taken steps to reduce the cycle of criminal justice debtors by reducing or eliminating fines and fees based on criminal convictions. It may make more sense to fund these programs through GF allocation rather than by low or no income members of the community who cannot pay exorbitant fines. It lead to catastrophic consequences for people in the community and did not generate much money. Does it make more sense to simply deposit the funds into the GF and continue to allocate moneys for BSF as a general fund appropriation?

**4. Penalty Assessments**

As explained above, Prop. 69 is funded via penalty assessments on criminal convictions. Government Code section 76104.6, subdivision (a) states:

For the purpose of implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, there shall be levied an additional penalty of one dollar for every ten dollars (\$10) or fraction thereof in each county which shall be collected together with and in the same manner as the amounts otherwise levied against a criminal defendant, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except parking offenses.... These moneys shall be taken from fines and forfeitures deposited with the county treasurer....The board of supervisors shall establish in the county treasury a DNA Identification Fund into which shall be deposited the collected moneys pursuant to this section.

In the past several years, numerous changes to the law have eliminated penalty assessments on convictions because it creates a cycle of poverty for historically marginalized communities. Currently, penalty assessments may amount to thousands of dollars and ultimately act as a bar to services, and may even result in a violation of probation, resulting in jail time. Fines are assessed as follows:

For a base fine of \$1,000:

Penal Code § 1464 state penalty on fines	\$1,000 (\$10 for every \$10).
Penal Code § 1465.7 state surcharge	\$200 (20%)
Penal Code §1465.8 court operations assessment	\$40 (\$40 per criminal offense)
Government Code §70372 court construction penalty	\$500 (\$5 for every \$10).
Government Code §70373 assessment	\$30 (\$30 for any felony or misdemeanor)
Government Code §76000 penalty	\$700 (\$7 for every \$10)
Government Code §76000.5 EMS penalty	\$200 (\$2 for every \$10)
Government Code §76104.6 DNA fund penalty	\$100 (\$1 for every \$10)

<sup>4</sup> Located at <https://www.lao.ca.gov/Publications/Report/4701>, last visited March 19, 2024.

Government Code §76104.9 additional DNA fund penalty	\$400 (\$4 for every \$10)
<b>Total Fine with Assessments:</b>	\$4,170.

The total amount would obviously increase depending on the amount of the base fine. Penalty assessments more than triples the total fine. If the Legislature and prosecutors have deemed DNA testing important, should the Legislature consider creating a permanent funding source that is not predicated on steadily declining fines and fees but allocations from the GF? Additionally, as explained above, the DNA Identification Fund is steadily declining and requires backfill from the GF. Does it make more sense to simply fund DNA testing directly, rather than through specified county transfers based on penalty assessments?

**5. Argument in Support**

The County of Los Angeles supports this bill stating:

These penalty funds play a crucial role in supporting the Los Angeles County Sheriff’s Department’s Crime Laboratory. More specifically, these funds are used by the Biology Section within the Crime Lab for the testing of DNA evidence pertinent to criminal cases involving murder, sexual assault, and other violent offenses. The testing conducted provides pivotal evidence necessary in determining the innocence or guilt of individuals.

Without this bill, the impending sunset would imperil the operations of the Biology Section within the Crime Lab, potentially leading to its closure.

**-- END --**