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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 1079                      **Hearing Date:** April 12, 2016  
**Author:** Glazer  
**Version:** March 28, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *DNA Evidence: CODIS Hit Outcome Project*

### HISTORY

Source: Attorney General Kamala Harris

Prior Legislation: None

Support: Unknown

Opposition: Electronic Frontier Foundation

### PURPOSE

*The purpose of this bill is to require local law enforcement to submit information regarding the outcome of investigative leads provided by the DNA Database to a CODIS Hit Outcome Project database to be managed and administered by the Department of Justice.*

*Existing law* provides that the Department of Justice (DOJ), through its DNA Laboratory, is responsible for the management and administration of the state's DNA and Forensic Identification Database and Data Bank Program and for liaising with the Federal Bureau of Investigation (FBI) regarding the state's participation in a national or international DNA database and data bank program such as the Combined DNA Index System (CODIS) that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide. (Penal Code, § 295 (g).)

*Existing law* provides that DOJ can perform DNA analysis, other forensic identification analysis, and examination of palm prints pursuant to the Act only for identification purposes. (Penal Code § 295.1 (a) & (b).)

*Existing law* provides that the DOJ DNA Laboratory is to serve as a repository for blood specimens, buccal swab, and other biological samples collected and is required to analyze specimens and samples and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following:

- Forensic casework and forensic unknowns;
- Known and evidentiary specimens and samples from crime scenes or criminal investigations;

- Missing or unidentified persons;
- Persons required to provide specimens, samples, and print impressions;
- Legally obtained samples; and
- Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control. (Penal Code § 295.1(c))

*Existing law* specifies that the Director of Corrections, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, buccal swab samples, and thumb and palm print impressions were collected send them promptly to the DOJ.(Penal Code § 298.)

*Existing law* requires the DNA Laboratory of DOJ to establish procedures for entering data bank and database information. (Penal Code § 298(b)(6).)

*This bill* declares that the CODIS Hit Outcome Project (CHOP) shall be managed and administered by the Department of Justice.

*This bill* states that the CHOP database shall provide a restricted-access repository for tracking the occurrence and consequences of DNA database hits, such that information with investigatory value may be shared among affected law enforcement agencies and efficacy of the DNA database may be monitored and reported upon by the state.

*This bill* states that every city, county or state laboratory in California participation in CODIS shall, upon notification by the DOJ that a CODIS hit has occurred, enter into the CHOP database the data specified by the department.

*This bill* provides that on a schedule set forth by the department, and pursuant to instructions published by the department, each law enforcement agency within California responsible for the investigation or prosecution of a case involving a DNA database match to a California offender shall report to the DOJ, through the CHOP database, the status or outcome of that investigative lead.

*This bill* provides that a city, county and city and county shall be reimbursed for the cost of submitting the required information to the CHOP database.

*This bill* states that the CHOP database shall contain records of indexed information related to DNA hits and case-to-case matches, including but not limited to the identity of the submitting crime laboratory, the investigating law enforcement agency, a district attorney contact, and offender information, including criminal charges and conviction information.

*This bills* states that the CHOP database shall not contain DNA profiles.

*This bill* provides that information collected by the DOJ for the CHOP database is investigatory in nature and shall be deemed official information and subject to the disclosure protections of Sections 1040 and 1041 of the Evidence Code.

*This bill* provides that nothing in this section shall require DOJ or a local law enforcement agency to disclose any information protected under Sections 1040 and 1041 of the Evidence Code or Section 6245 of the Government Code.

## 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:

Several large counties regularly entered their data into CHOP. However, local participation in CHOP is currently optional. Only a fraction of CODIS hits have been complete follow-up information, such as whether a suspect identified by a DNA profile search has been located; if the required reference sample has been taken and sent to the laboratory; and further status on pending investigations, filed charges, or ultimate convictions. The absence of full participation makes the information in CHOP incomplete and unreliable.

A lack of universal CHOP use makes it very difficult for local agencies and DOJ to ensure that CODIS hit information is being used to its full potential for case investigation and prosecution.

### 2. California DNA Database

The profile derived from a DNA sample is uploaded into the state's DNA databank, which is part of the national Combined DNA Index System (CODIS), and can be accessed by local, state and federal law enforcement agencies and officials. When a DNA profile is uploaded, it is compared to profiles contained in the Convicted Offender and Arrestee Indices; if there is a "hit," the laboratory conducts procedures to confirm the match and, if confirmed, obtains the identity of the suspect. The uploaded profile is also compared to crime scene profiles contained in the Forensic Index; again, if there is a hit, the match is confirmed by the laboratory. CODIS also performs weekly searches of the entire system. In CODIS, the profile does not include the name of the person from whom the DNA was collected or any case-related information, but only a specimen identification number, an identifier for the agency that provided the sample, and the name of the personnel associated with the analysis. CODIS is also the name of the related computer software program. CODIS's national component is the National DNA Index System (NDIS), the receptacle for all DNA profiles submitted by federal, state, and local forensic laboratories. DNA profiles typically originate at the Local DNA Index System (LDIS), then migrate to the State DNA Index System (SDIS), containing forensic profiles analyzed by local and state laboratories, and then to NDIS.

### 3. CHOP Database

This bill creates the CHOP database in the DOJ. City, county and state laboratories participating in CODIS will be required to enter specified data into the CHOP database after they are notified that a hit in the CODIS database has occurred. The database shall contain information related to DNA hits and case-to-case matches, including, but not limited to, the identity of the submitting crime laboratory, the investigating law enforcement agency, a district attorney contact, offender information, investigative status and resulting criminal charges and conviction information.

#### 4. Investigatory in Nature

This bill provides that the information collected in the CHOP data base to be investigatory in nature and official information and therefore its disclosure will be limited under Evidence Code Section 1040 and 1041 and Government Code Section 6254.

It is unclear why this data that is collected should be considered investigatory. The CHOP database does not contain any actual DNA information. The data could even be collected in a manner that provides for no personal identifying information of the person whose DNA resulted in a CODIS hit. Evidence Code Sections 1040 and 1041 would give the DOJ the privilege to disclose the information but contrary to the point of these sections which is to keep information confidential when it is in the public interest, the data in CHOP is information that is clearly in the public interest to be disclosed. The public, through the Legislature, press, defense bar, academic institutions etcetera, has an interest in the effectiveness of the DNA databank. It is in the public interest to know whether taking DNA from a great number of people is valuable, whether investment in state and local data banks is valuable and this information should be able to be evaluated by people outside the law enforcement community.

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