Bill No: SB 1256   **Hearing Date:** April 16, 2024
Author: Glazer
Version: April 2, 2024
Urgency: No   **Fiscal:** Yes
Consultant: MK

Subject: *Crimes: prostitution: DNA collection*

HISTORY

Source: Author

Prior Legislation: SB 757 (Glazer) failed Senate Public Safety 2018
SB 1355 (Glazer) held Senate Public Safety 2016
AB 390 (Cooper) held Senate Public Safety 2015
Proposition 69 November 2, 2004
SB 883 (Margett) not heard Assembly Public Safety 2004
SB 284 (Brulte) failed Senate Public Safety 2003
SB 1242 (Brulte) Chapter 632, Stats. 2002
AB 2105 (La Suer) Chapter 160, Stats. 2002
AB 673 (Migden) Chapter 906, Stats. 2001
AB 2814 (Machado) Chapter 823, Stats. 2000
AB 557 (Nakano) not heard in Senate Public Safety 1999-2000
SB 654 (Schiff) Chapter 475, Stats. 1999
AB 1332 (Murray) Chapter 696, Stats. 1998

Support: California District Attorneys Association; California Police Chiefs Association; California State Sheriffs' Association; Peace Officers' Research Association of California (PORAC)

Opposition: ACLU California Action

PURPOSE

The purpose of this bill is to require an adult convicted of misdemeanor solicitation of an adult or minor to give a sample to the DNA databank.

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)

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).)

Existing law provides any person arrested for or charged with a felony and any person required to register as a sex offender or arsonist shall be required to submit buccal swab samples, a full palm print impression of each hand and any blood specimens or other biological samples required for submission to the DNA databank. (Penal Code § 296)

Existing law makes it a misdemeanor for an individual to solicit, or agree to engage in, or engage in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by another person who is 18 years of age or older to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution. (Penal Code § 647 (b)(2))

Existing law makes it a misdemeanor for an individual to solicit, or who agree to engage in, or engage in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation was made by a minor who also possessed the specific intent to engage in an act of prostitution. (Penal Code § 647 (b)(3))

This bill provides that a person convicted of Penal Code 647 (b)(2) or (3), excluding a juvenile must submit the required samples to be included in the DNA databank.

COMMENTS

1. Need for This Bill

According to the author:

> SB 1256 would expand DNA collection to include individuals found to have solicited, or engages in prostitution with a minor in an effort to combat the persistent issue of child sex trafficking. By requiring those convicted of these crimes to provide DNA samples, we aim to strengthen law enforcement's efforts in identifying and combatting this heinous crime. DNA has been demonstrated to be useful in combatting trafficking. The provisions in this bill build upon existing laws, such as Proposition 35 and Proposition 69, to further protect vulnerable children and enhance the integrity of our justice systems.

2. DNA collection for solicitation conviction

This bill would provide that any adult who is convicted of solicitation of a minor or adult be required to give his or her DNA to the DNA databank.

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.

The only misdemeanors in the DNA databank are those sex offense misdemeanors for which registration is required. These offenses are forcible sex offenses or a person is guilty because the person is a minor and cannot consent. Is it appropriate to require an adult who solicits another adult in act of prostitution to give his or her DNA to the databank?

3. Argument in Support

PORAC supports this bill stating:

> Current law, as amended by the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, Proposition 69, approved by the voters at the November 2, 2004, general election, requires a person who has been convicted of a felony offense 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. Current law makes these provisions retroactive, regardless of when the crime charged or committed became a qualifying offense. The Legislature may amend Proposition 69 by a statute passed in each house by majority vote, as specified.
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> This bill would expand these provisions to require persons convicted of soliciting, agreeing to engage in, or engaging in, an act of prostitution with a minor in exchange for providing money or compensation to the minor 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.

3. Argument in Opposition

ACLU California Action opposes this bill stating:

> SB 1256 will require people to submit their DNA to law enforcement for lifetime inclusion in a DNA database, accessible to local, state, and federal law enforcement agencies across the country. These requirements will apply not only to those who are convicted of misdemeanor offenses of purchasing and engaging in commercial sex with a person under age 18, but also to those who solicit commercial sex with a person under age 18 without engaging in any sexual act. The ACLU has long fought to preserve the privacy of sensitive medical and genetic information and are compelled to do so here.
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> While people of all races, economic backgrounds, and sexual preferences purchase commercial sex, people of color who earn low incomes, immigrants, and LGBTQ people suffer disproportionate arrests for this conduct.[1] Even after *Lawrence v. Texas* (the U.S. Supreme Court case finding unconstitutional a Texas law that banned homosexual adults from engaging in consensual sexual acts)*,* police departments in California continue to regularly target and arrest men in the LGBTQ community on charges of solicitation and other offenses such as lewdness.[2] LGBTQ people in many communities are also simply more frequently stopped by police than non-LGBTQ people, thus making them more likely to be arrested for the conduct targeted by SB 1256.[3] Disproportionate enforcement is often fueled by purposeful and implicit bias.[4]
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> Given that people of color who earn low incomes and LGBTQ people are stopped, arrested, and convicted for the crimes targeted by SB 1256 at higher rates than higher income people, whites, and non-LGBTQ people, respectively, it follows that they will also be disproportionately impacted by the negative consequences of DNA collection. Racial justice, civil liberties, and privacy advocates across the

country have argued against the use of DNA databases in law enforcement given the general disparate arrest and conviction rates of people of color.5 A report for the Council for Responsible Genetics termed the practice, "building Jim Crow's database."6 Inclusion in the DNA database opens people up to wrongful arrests and convictions and raises very serious privacy concerns.

While SB 1256 is premised on the belief that DNA collection protects public safety, the reality is increasing the size of DNA databases actually raises the likelihood of false hits. Recent studies have confirmed that erroneous matches between DNA profiles from different people, including close relatives, are far from impossible and can lead to false arrests and convictions. This is important because in California, inclusion in the database potentially subjects people's family members to investigation, through a controversial technique called "familial DNA searching," which extends the size and reach of the California database to effectively include the parents, children, and siblings of the millions of convicted and arrested people whose DNA profiles are stored in the database. This bill would vastly increase the number of people whose privacy is compromised and who are subject to potential false arrest.

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