PROPOSITION

69

DNA Samples. Collection. Database. Funding. Initiative Statute.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

DNA Samples. Collection. Database. Funding. Initiative Statute.

- Requires collection of DNA samples from all felons, and from adults and juveniles arrested for or charged with specified crimes, and submission to state DNA database; and, in five years, from adults arrested for or charged with any felony.
- Authorizes local law enforcement laboratories to perform analyses for state database and maintain local database.
- Specifies procedures for confidentiality and removing samples from databases.
- Imposes additional monetary penalty upon certain fines/forfeitures to fund program.
- Designates California Department of Justice to implement program, subject to available moneys: Authorizes $7,000,000 loan from Legislature for implementation.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Net state costs to collect and analyze DNA samples of potentially several million dollars initially, increasing to nearly $20 million annually when the costs are fully realized in 2009–10.
- Local costs to collect DNA samples likely more than fully offset by revenues, with the additional revenues available for other DNA-related activities.

ANALYSIS BY THE LEGISLATIVE ANALYST

Background

DNA Samples. Deoxyribonucleic Acid (DNA) is the genetic material contained in most living organisms, including human beings, that controls the production of substances needed for the organisms' development and life activities. The genetic information contained in DNA can be used, like a chemical fingerprint, to identify and differentiate between individuals. Using DNA evidence, law enforcement agencies and district attorneys have been able to effectively identify, arrest, and convict criminals, as well as exonerate persons wrongly accused or convicted of a crime.

Under current law, any person convicted of a serious felony offense is required to provide to law enforcement a blood sample from which DNA is obtained. The samples are collected by the California Department of Corrections (CDC), the Department of the Youth Authority (Youth Authority), and local jails, and then submitted to the California Department of Justice (DOJ). The DOJ laboratory analyzes the samples and stores the DNA profiles of convicted felons in a statewide DNA databank. The DNA profiles are also submitted by DOJ to the Combined DNA Index System, a national repository maintained by the Federal Bureau of Investigation. The information in the DNA databank is compared to evidence collected from crime scenes for possible matches.

Court Fines. Persons convicted of certain crimes, including violations of traffic laws, may be ordered by the court to pay a fine. The total fine typically consists of a "base fine" which goes entirely to local government and a "penalty assessment" which is shared by the state and local governments. The latter is often referred to as a "criminal penalty." The state and local governments use the revenue to support a variety of programs and activities.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

Proposal

This measure makes the following changes to current law.

Expands DNA Collection. This measure expands the collection of DNA to include all convicted felons and some nonfelons, as well as individuals arrested for certain offenses. Figure 1 lists the individuals who would be required to provide DNA samples under this measure.

FIGURE 1

EXPANDED DNA COLLECTION CATEGORIES

Upon Enactment of Measure

- ✓ Adults and juveniles convicted of *any* felony offense.
- ✓ Adults and juveniles convicted of *any* sex offense or arson offense, or an attempt to commit any such offense (not just felonies).
- ✓ Adults *arrested* for or charged with felony sex offenses, murder, or voluntary manslaughter (or the attempt to commit such offenses).

Additionally, Starting in 2009

- ✓ Adults *arrested* for or charged with *any* felony offense.

The expanded list of qualifying offenses would be retroactive regardless of when the person was convicted (adults) or adjudicated (juveniles). As a result, DNA would be obtained from adults and juveniles already serving time in correctional facilities as well as those who are on parole or probation for these offenses.

Requires Timely Collection and Analysis of Samples. Immediately following either arrest or conviction, state or local law enforcement personnel would be required to collect a sample of inner cheek cells of the mouth (known as a "buccal swab" sample). This sample would be in addition to the right thumbprint and full palm print impression of each hand required by current law. Also, state and local law enforcement would continue to have the authority to collect blood samples upon request by DOJ.

The measure requires DOJ to contract with public or private laboratories to process samples that it has not analyzed within six months of receipt. The DOJ and CDC would be required to publish and place on their Web sites a quarterly progress report on the processing of DNA samples.

Provides Additional Funding. This measure raises existing criminal penalties to fund the proposed expansion of DNA collection. Specifically, an additional $1 would be levied for every $10 in penalties, with revenues shared by the state and local governments. The state would receive 70 percent of the revenue in the first two years, 50 percent in the third year, and 25 percent annually thereafter. Local government would receive the difference to support DNA sample collection, as well as other related activities such as analysis, tracking, and processing of crime scene samples.

Creates a New Crime. This measure makes it a felony offense punishable by 2, 3, or 4 years in prison for a person required to submit a sample or print to tamper (or attempt to tamper) with a DNA sample, or thumb or palm print impression.

Fiscal Effects

State Government. This measure would result in net state costs of potentially several million dollars initially, increasing to nearly $20 million annually when costs are fully realized in 2009–10. This estimate primarily reflects the costs of analyzing additional DNA samples, partially offset by new revenues proposed by the measure. Specifically, CDC and the Youth Authority would require additional state resources to collect DNA from prisoners and wards currently in custody, as well as parolees, for crimes covered by the measure. In addition, DOJ would incur costs to hire and train staff, purchase equipment and supplies, acquire additional laboratory space, and contract with public or private labs for the processing of DNA samples.

The measure requires a General Fund loan of $7 million to DOJ for the implementation of its provisions. This loan would be repaid with interest, no later than four years after it is made with revenue generated from the increased penalty assessments.

Local Government. This measure would likely result in no net costs to local governments on a statewide basis. Local law enforcement agencies would require staff and training to collect additional DNA samples. These costs—estimated to be several millions of dollars initially increasing to less than $8 million annually beginning in 2008–09—would likely be more than fully offset by the local share of penalty revenues generated under the measure. Local penalty revenue above the amount required to support the costs of DNA collection would be used for other related activities, such as analysis of DNA evidence collected from crime scenes.

Other Effects on State and Local Government. This measure could result in other unknown fiscal effects on state and local governments. To the extent that expanded DNA collection results in increased investigations and prosecutions, and higher rates of incarceration, there would be unknown increased costs to state and local governments. It may also lead to unknown state and local savings by identifying individuals who, having been falsely accused and imprisoned, would be released from incarceration.

For text of Proposition 69 see page 135.

PROP 69

DNA SAMPLES. COLLECTION. DATABASE. FUNDING. INITIATIVE STATUTE.

ARGUMENT in Favor of Proposition 69

"In California, the remains of a boy missing for two decades are finally identified. Two cold murders are solved in Kansas. And in Texas, a serial sexual predator is captured. The cases are cracked thanks to technology police are calling the fingerprints of the 21st century." (Associated Press, March 2004)

DNA IDENTIFIES CRIMINALS AND PROTECTS THE INNOCENT

"Hunch leads to Rape Suspect's Arrest; Detective obtains DNA Sample from a convicted burglar that links him to attacks on 11 women." (LA Times, April 2004)

"DNA tests clear man of slayings; man jailed since late 2002 on charges of killing his ex-girlfriend and her sister." (Bakersfield Californian, May 2004)

PROPOSITION 69—CALIFORNIA'S ALL-FELON DNA DATABASE

The DNA Fingerprint, Unsolved Crime and Innocence Protection Act helps solve crime, free those wrongfully accused, and stop serial killers. Written by public safety experts, 69 is nonpartisan and endorsed by every major statewide law enforcement organization; crime scene investigators, victims' advocates, district attorneys, defense lawyers, sheriffs, police chiefs, Republicans and Democrats.

PROPOSITION 69 PROTECTS SOCIETY

69 requires convicted felons and those arrested for rape and murder to give DNA (collected by mouth swab, not blood) for a statewide database. Starting in 2009, felony arrestees will also be tested, but those not convicted can have their DNA removed from the database. Taking DNA during the booking process at the same time as fingerprints is more efficient and helps police conduct accurate investigations. No wasting time chasing false leads; DNA can prove innocence or guilt. Protecting peoples' privacy, 69 prohibits any use of DNA besides identification.

34 STATES HAVE ALL-FELON DNA DATABASES

Every unsolved homicide enables criminals to kill again. Currently, California's DNA database is too small, unable to deal with thousands of unsolved rapes, murders, and child abductions. Initiative sponsor Bruce Harrington's brother and sister-in-law were murdered by one of America's most brutal serial criminals; in Northern California known as the East Area Rapist, in Southern California the Original Nightstalker. Detectives have the killer's DNA, but the database lacks a matching profile. They believe the Harrington murders could have been prevented if DNA technology and a complete database were available back then.

Virginia has a comprehensive DNA database including arrestees. Virginia's population is less than Los Angeles County, but solves more crimes with DNA than California. In 2002, California solved 148 cases; Virginia 445.

DEFENSE LAWYERS THROUGHOUT AMERICA USE DNA TO PROTECT INNOCENT PEOPLE

DNA evidence is one of the most effective ways to prove someone was not involved with a crime. 69's complete DNA database helps ensure people are not wrongfully accused.

RESPECTING TAXPAYERS

Proposition 69 is funded through a small increase in criminal penalties, not a tax increase or deficit spending. Money is distributed to state and local public safety agencies to maintain the database and solve cases.

PROPOSITION 69—PUBLIC SAFETY AND ACCOUNTABILITY

69 can prevent thousands of crimes by taking dangerous criminals off the streets. Using precise DNA technology, innocent people can be quickly exonerated. For a safer California, VOTE YES ON 69.

ARNOLD SCHWARZENEGGER, *Governor of California*
BILL LOCKYER, *California State Attorney General*
STEVE COOLEY, *Los Angeles County District Attorney*

REBUTTAL to Argument in Favor of Proposition 69

As people who have worked on behalf of victims of violent crime, we support the best tools for solving crimes. BUT PROPOSITION 69 WILL NOT MAKE US SAFER. *69 risks taking money that could be spent solving actual crimes. 69 traps thousands of innocent Californians in a criminal database.*

69 IS NOT AN "ALL FELON DATABASE." California already has a DNA database of violent criminals. 69 collects DNA samples from anyone arrested, even if your identity is mistaken, if you are mistakenly arrested or among thousands that are arrested and never charged with a crime. Taking thousands of innocent people's DNA and storing it permanently alongside felons is wrong. Mixing the innocent and guilty in one CRIMINAL DATABASE risks your privacy rights.

69 DOES NOTHING TO PROTECT THE INNOCENT. In Nevada, a 26-year-old man was jailed for over a year and faced life in prison before it was discovered that the crime lab had switched his DNA with that of the true rapist. Last year, it was discovered that a DNA test was misinterpreted in Texas, causing an innocent man to spend 4 years in jail. DNA processing errors may become all too common because 69 requires *immediate* testing of more than 500,000 Californians.

69 TRAPS YOUR DNA ALONGSIDE CONVICTED CRIMINALS. Once your DNA is in the database, government has no obligation to remove it. The League of Women Voters, responsible law officials, and California's working men and women ALL AGREE: VOTE NO ON 69!

For more information: www.protectmyDNA.com.

RONALD E. HAMPTON, *Executive Director*
National Black Police Association
BOB BARR, *Chair*
Privacy and Freedom Center, American Conservative Union

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ARGUMENT Against Proposition 69

Everyone recognizes the importance of expanding tools to find criminals, but Proposition 69 goes too far. *Proposition 69 risks your privacy.* Your DNA reveals the most intimate and sensitive information about you and your family. *Proposition 69 may put your DNA in a common government database alongside convicted killers and rapists.*

How could this happen? Because Proposition 69 would force many Californians *who have never committed a crime* to be included in a *criminal database.*

INNOCENT PEOPLE ARE TREATED JUST LIKE CRIMINALS.

Every year in California, there are 50,000 arrests that never result in people being charged with a crime. Arrests might range from traffic stops to mistaken identity. *Under Proposition 69, these people must provide a DNA sample. Everyone that is arrested for any felony whatsoever*—even trespassing, shoplifting, or writing a bad check—is subject to DNA testing, sampling, and filing in criminal databases.

California already requires the collection, testing, and storage of DNA from serious and violent felons, including kidnappers, rapists, murderers, and child molesters. Proposition 69 is a dangerous departure from current law because it would put innocent citizens in the same database as convicted criminals.

Initiative Risks Your Privacy.

Proposition 69 is contrary to California's tradition of legal protection of medical, financial, and personal privacy rights. Why? DNA is FAR MORE THAN A FINGERPRINT. Your DNA tells anyone who has this information whether you and your family are predisposed to contract diseases such as heart disease, obesity, Alzheimer's, multiple sclerosis, or cancer.

The "safeguards" in the initiative are inadequate to protect your privacy. Once you are in the database, government has no obligation to remove your profile. Restrictions and enforcement necessary to protect you are not clearly spelled out in the initiative. Moreover, government databases grow and merge. There's no guarantee that these DNA databases will not be expanded in the future. The initiative allows DNA testing and sorting to be conducted by private laboratories. Do you feel confident that private, for-profit laboratories will protect your privacy rights?

PROPOSITION 69 WILL COST MILLIONS.

Proponents of Proposition 69 have hidden the real costs of this initiative. Proposition 69 has tens of millions of dollars of start-up costs and ongoing costs that may not be adequately funded by the initiative. To make up any shortfall, Proposition 69 could TAKE MONEY FROM OTHER PUBLIC SAFETY, EDUCATION, and government programs. Proposition 69 will cost millions of dollars for a DNA data bank that puts sensitive genetic information about innocent people alongside criminals.

This initiative allows for collection of Californians' most personal and revealing information, but it lacks government accountability if your DNA is mishandled or misused. Once your DNA is seized by the government, it will be filed alongside criminals. Proposition 69 violates the privacy rights of innocent Californians without necessary safeguards, privacy protection, and accountability to make sure government does its job right.

Vote NO on Proposition 69. This initiative goes too far and costs all of us too much.

BETH GIVENS, *Executive Director*
Privacy Rights Clearinghouse
BOB BARR, *Chair*
Privacy & Freedom Center, American Conservative Union
PAUL BILLINGS, *Chair*
Council for Responsible Genetics

REBUTTAL to Argument Against Proposition 69

Don't be fooled by deceptive attacks. Opponents cannot dispute that an all-felon DNA database makes California safer.

FACT: *34 States Already Have All-Felon DNA Databases:*

WASHINGTON, OREGON, MONTANA, WYOMING, UTAH, COLORADO, ARIZONA, NEW MEXICO, SOUTH DAKOTA, KANSAS, TEXAS, MINNESOTA, IOWA, ARKANSAS, LOUISIANA, WISCONSIN, ILLINOIS, TENNESSEE, MISSISSIPPI, ALABAMA, GEORGIA, FLORIDA, NORTH CAROLINA, VIRGINIA, WEST VIRGINIA, MARYLAND, DELAWARE, NEW JERSEY, CONNECTICUT, MASSACHUSETTS, ALASKA, SOUTH CAROLINA, MISSOURI, AND MICHIGAN.

FACT: *DNA Is Required From Convicted Felons Only*

Only convicted felons are required to have DNA samples included in the database. DNA samples can be removed from the database if felony charges are exonerated.

FACT: *69 Respects Privacy*

Analyzed DNA database samples *have no genetic trait information!* Medical/privacy rights are fully protected.

"Since criminal DNA databases were first created 14 years ago, privacy advocates have not found any instance where the databases or DNA samples were misused." *USA Today Editorial*

FACT: *69 Delivers Justice*

"The chances of solving a rape or murder increase by 85% with an all-felon DNA database." *California State Sheriffs' Association President Robert Doyle*

"69 protects people from being falsely accused and destroying lives." *Defendants Rights Counsel Christopher Plourd*

FACT: *69 Saves Taxpayers*

California taxpayer advocates strongly support Proposition 69 because it doesn't raise taxes and makes investigations efficient, preventing wasted time on false leads. Taxfighters agree 69 saves lives and money.

Sheriffs, police, victims, Governor Arnold Schwarzenegger, Democratic Attorney General Bill Lockyer, and Assemblyman Lou Correa, and Republican Assemblyman Todd Spitzer and State Senator Jim Brulte endorse nonpartisan 69. Learn more: www.DNAYES.org

VOTE YES!

DAVID W. PAULSON, *President*
California District Attorneys Association
SCOTT CURRIE, *President*
California Sexual Assault Investigators Association
JERRY ADAMS, *President*
California Peace Officer's Association

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