



KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or Preempted **Unconstitutional as Applied by** [People v. Buza](#), Cal.App. 1 Dist., Dec. 03, 2014

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 1. Of Crimes and Punishments \(Refs & Annos\)](#)

[Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals \(Refs & Annos\)](#)

[Chapter 6. DNA and Forensic Identification Data Base and Data Bank Act of 1998 \(Refs & Annos\)](#)

[Article 1. Purpose and Administration \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 295

§ 295. Short title; findings and intent; administration and implementation of chapter; responsibility for collection of specimens, samples and imprints; costs and funds

Effective: January 1, 2008

[Currentness](#)

(a) This chapter shall be known and may be cited as the DNA and Forensic Identification Database and Data Bank Act of 1998, as amended.

(b) The people of the State of California set forth all of the following:

(1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a useful law enforcement tool for identifying and prosecuting criminal offenders and exonerating the innocent.

(2) It is the intent of the people of the State of California, in order to further the purposes of this chapter, to require DNA and forensic identification data bank samples from all persons, including juveniles, for the felony and misdemeanor offenses described in [subdivision \(a\) of Section 296](#).

(3) It is necessary to enact this act defining and governing the state's DNA and forensic identification database and data bank in order to clarify existing law and to enable the state's DNA and Forensic Identification Database and Data Bank Program to become a more effective law enforcement tool.

(c) The purpose of the DNA and Forensic Identification Database and Data Bank Program is to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious and accurate detection and prosecution of individuals responsible for sex offenses and other crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children.

(d) Like the collection of fingerprints, the collection of DNA samples pursuant to this chapter is an administrative requirement to assist in the accurate identification of criminal offenders.

(e) Unless otherwise requested by the Department of Justice, collection of biological samples for DNA analysis from qualifying persons under this chapter is limited to collection of inner cheek cells of the mouth (buccal swab samples).

(f) The Department of Justice DNA Laboratory may obtain through federal, state, or local law enforcement agencies blood specimens from qualifying persons as defined in [subdivision \(a\) of Section 296](#), and according to procedures set forth in [Section 298](#), when it is determined in the discretion of the Department of Justice that such specimens are necessary in a particular case or would aid the department in obtaining an accurate forensic DNA profile for identification purposes.

(g) The Department of Justice, through its DNA Laboratory, shall be responsible for the management and administration of the state's DNA and Forensic Identification Database and Data Bank Program and for liaison 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 FBI's Combined DNA Index System (CODIS) that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide.

(h) The Department of Justice shall be responsible for implementing this chapter.

(1) The Department of Justice DNA Laboratory, and the Department of Corrections and Rehabilitation may adopt policies and enact regulations for the implementation of this chapter, as necessary, to give effect to the intent and purpose of this chapter, and to ensure that data bank blood specimens, buccal swab samples, and thumb and palm print impressions as required by this chapter are collected from qualifying persons in a timely manner, as soon as possible after arrest, conviction, or a plea or finding of guilty, no contest, or not guilty by reason of insanity, or upon any disposition rendered in the case of a juvenile who is adjudicated under [Section 602 of the Welfare and Institutions Code](#) for commission of any of this chapter's enumerated qualifying offenses, including attempts, or when it is determined that a qualifying person has not given the required specimens, samples or print impressions. Before adopting any policy or regulation implementing this chapter, the Department of Corrections and Rehabilitation shall seek advice from and consult with the Department of Justice DNA Laboratory Director.

(2) Given the specificity of this chapter, and except as provided in [subdivision \(c\) of Section 298.1](#), any administrative bulletins, notices, regulations, policies, procedures, or guidelines adopted by the Department of Justice and its DNA Laboratory or the Department of Corrections and Rehabilitation for the purpose of the implementing this chapter are exempt from the provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with [Section 11400](#)), and Chapter 5 (commencing with [Section 11500](#)) of [Part 1 of Division 3 of Title 2 of the Government Code](#).

(3) The Department of Corrections and Rehabilitation shall submit copies of any of its policies and regulations with respect to this chapter to the Department of Justice DNA Laboratory Director, and quarterly shall submit to the director written reports updating the director as to the status of its compliance with this chapter.

(4) On or before April 1 in the year following adoption of the act that added this paragraph, and quarterly thereafter, the Department of Justice DNA Laboratory shall submit a quarterly report to be published electronically on a Department of Justice Internet Web site and made available for public review. The quarterly report shall state the total number of samples received, the number of samples received from the Department of Corrections and Rehabilitation, the number of samples fully analyzed for inclusion in the CODIS database, and the number of profiles uploaded into the CODIS database for the reporting period. Each quarterly report shall state the total, annual, and quarterly number of qualifying profiles in the Department of Justice DNA

Laboratory data bank both from persons and case evidence, and the number of hits and investigations aided, as reported to the National DNA Index System. The quarterly report shall also confirm the laboratory's accreditation status and participation in CODIS and shall include an accounting of the funds collected, expended, and disbursed pursuant to subdivision (k).

(5) On or before April 1 in the year following adoption of the act that added this paragraph, and quarterly thereafter, the Department of Corrections and Rehabilitation shall submit a quarterly report to be published electronically on a Department of Corrections and Rehabilitation Internet Web site and made available for public review. The quarterly report shall state the total number of inmates housed in state correctional facilities, including a breakdown of those housed in state prisons, camps, community correctional facilities, and other facilities such as prisoner mother facilities. Each quarterly report shall also state the total, annual, and quarterly number of inmates who have yet to provide specimens, samples and print impressions pursuant to this chapter and the number of specimens, samples and print impressions that have yet to be forwarded to the Department of Justice DNA Laboratory within 30 days of collection.

(i)(1) When the specimens, samples, and print impressions required by this chapter are collected at a county jail or other county facility, including a private community correctional facility, the county sheriff or chief administrative officer of the county jail or other facility shall be responsible for ensuring all of the following:

(A) The requisite specimens, samples, and print impressions are collected from qualifying persons immediately following arrest, conviction, or adjudication, or during the booking or intake or reception center process at that facility, or reasonably promptly thereafter.

(B) The requisite specimens, samples, and print impressions are collected as soon as administratively practicable after a qualifying person reports to the facility for the purpose of providing specimens, samples, and print impressions.

(C) The specimens, samples, and print impressions collected pursuant to this chapter are forwarded immediately to the Department of Justice, and in compliance with department policies.

(2) The specimens, samples, and print impressions required by this chapter shall be collected by a person using a collection kit approved by the Department of Justice and in accordance with the requirements and procedures set forth in [subdivision \(b\) of Section 298](#).

(3) The counties shall be reimbursed for the costs of obtaining specimens, samples, and print impressions subject to the conditions and limitations set forth by the Department of Justice policies governing reimbursement for collecting specimens, samples, and print impressions pursuant to [Section 76104.6 of the Government Code](#).

(j) The trial court may order that a portion of the costs assessed pursuant to [Section 1203.1c](#), [1203.1e](#), or [1203.1m](#) include a reasonable portion of the cost of obtaining specimens, samples, and print impressions in furtherance of this chapter and the funds collected pursuant to this subdivision shall be deposited in the DNA Identification Fund as created by [Section 76104.6 of the Government Code](#).

(k) The Department of Justice DNA Laboratory shall be known as the Jan Bashinski DNA Laboratory.

Credits

(Added by Stats.1998, c. 696 (A.B.1332), § 2. Amended by Stats.2002, c. 916 (S.B.1490), § 1; Initiative Measure (Prop. 69, § III.1, approved Nov. 2, 2004, eff. Nov. 3, 2004); Stats.2006, c. 69 (A.B.1806), § 28, eff. July 12, 2006; Stats.2007, c. 130 (A.B.299), § 188.)

[Notes of Decisions \(25\)](#)

West's Ann. Cal. Penal Code § 295, CA PENAL § 295

Current with urgency legislation through Ch. 807 of 2015 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

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